THE POLITICAL SOCIOLOGY OF JUVENILE PUNISHMENT: TREATING JUVENILE OFFENDERS AS ADULTS

DISSERTATION

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By

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ABSTRACT

Numerous studies have investigated the determinants of formal social control employed by the state to control its citizens. Only a small number have used explanations derive from conflict theory and political sociology. I follow this research tradition by hypothesizing that the threat produced by racial and ethnic minorities leads to increases in the demand for formal control mechanisms including more punitive responses to juvenile crime through adult sanctioning. I also consider broader political arguments that link the variation in punitive outcomes to differences in political arraignments across jurisdictions.

While the punishment of juvenile offenders has increasingly become an issue of major concern to the public, there are few studies that test the governments coercive response to this particular type of offending. This dissertation addresses this issue by examining the treatment of juvenile offenders in the adult criminal system. First, I use pooled time-series negative binomial regression to analyze raw counts of juveniles admitted to adult prisons. Second, I use multivariate regression to predict the length of sentence that violent juvenile offenders receive in adult criminal courts. Finally, I use zero-inflated negative binomial regression to analyze the probability that states used the death penalty against juvenile when this practice was still constitutional.

Results consistently show that states with larger minority populations admit more juvenile offenders to prisons and had a greater probability of using the juvenile death penalty. The findings also show that differences in the ideological climate of each state are a strong predictor of the variation in adult sanctions for juvenile offenders. Specifically, the strength of the Republican Party in each state and the presence of a conservative public are both strong predictors of all three of the outcomes at issue here. Additional evidence shows that states where judges must run in an election to gain their seats proscribe more severe sanctions on juvenile offenders. Theoretical implications for these findings are discussed.
Dedicated to my children, Jonah and Hanna
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While the arduous task of writing this dissertation was mine alone, it would not have been possible without the guidance and support of many people. First and foremost, I would like to thank my advisor, David Jacobs for his guidance and friendship during my graduate career. I would also like to thank J. Craig Jenkins and Zhenchao Qian for all their help, not only with this dissertation, but throughout my years at Ohio State.

Additionally, I would like to acknowledge the entire faculty at Ohio State for helping me grow into the scholar that I am.

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CHAPTER 1

INTRODUCTION

This chapter introduces the overarching question that guides this dissertation. I will also briefly identify the theoretical framework that guides this research. Additionally, I will outline the analyses and explain why these three outcomes will help us better understand social control generally and the use of state punishment against juveniles more specifically.

1.1 Introduction to the Topic

Over the past several decades there has been a substantial increase in the punitive efforts directed at juvenile offenders with the hope of deterring them from criminal activity. Since the 1970s—but increasingly since the early 1990s—there has been an enormous amount of state and federal legislation aimed at increasing the punishment for offenses committed by juveniles (Zimring 2005). This legislation was largely designed to restrict the juvenile justice system’s role in dealing with juvenile offenders who are either suspected of particularly serious crimes or are relatively close to the age of majority. One of the most consequential objectives associated with this legislation has been to treat more and more serious (and some not so serious) juvenile offenders in the criminal courts rather than the juvenile courts. This legislative assault on the juvenile courts has had a number of consequences and has raised a number of concerns. Most importantly, these
statutory changes have raised doubts about the continuing role of the juvenile justice system. These statutory changes have also called into question the rehabilitative model of the juvenile court as well as the extent to which juveniles are held accountable for their transgressions in the courts.

For over a century there has been an effort by legislatures, the judiciary, scholars and others to determine the proper penal proportionality necessary to punish juvenile crime. Since the late 19th century, progressive thinkers have argued that juveniles are much less culpable for their transgressions than adults and should therefore be treated in a separate justice system that takes this into full account. But beginning in the 1980s and increasingly in the 90s legislators and the public alike began demanding harsh criminal penalties for serious young offenders. While the recent shifts in juvenile justice policy and practice toward the harsher treatment of juvenile offenders is grounded in concerns about public protection and the belief that there is no justification for exercising leniency with youthful offenders, this debate has been largely isolated from the consideration of other policies toward juveniles and the scientific evidence regarding the degree to which juveniles are responsible for their actions.

Whether it is a discussion about the transfer of juveniles to the adult criminal system or how long a particular juvenile should be sentenced in adult prison, there is rarely any reference to the age boundaries—and the justifications therein—used in other areas of the law. Assumptions about adolescent development, for example, for some crime policies are inconsistent with assumptions used when creating other policies regulating the behavior of juveniles and rites of passage granted to those of adult status. If Zimring
(2005) is correct in his assertion that the best measure of the merits of punitive policies towards juveniles is the “degree to which the legal policy on this topic is consistent with the assumptions about adolescent competencies that can be found in other areas of the law (pg. 65)”, then it seems fair to say that treating juvenile offenders as adults is lacking merit and consistency.

Failing to regard persons under the age of 18 as anything other than less mature and therefore less culpable for their crimes is contradictory to the laws regarding the age of majority in every state. Each state, for example, has legislation providing circumstances under which persons under 18 years of age who commit serious offenses can be tried as adults with little recognition that their age should merit a reduction in punishment due to diminished capacity. The primary rationale behind this punitive stance toward serious juvenile offenders is that they are not seen by state legislatures and many in the public as being less mature and therefore less culpable for their crimes than adult criminals. Juveniles, like adults, are viewed by legislatures as being perfectly accountable for their actions because they should have the same capacity to understand the seriousness and long-term consequences of their actions. As such, it is believed to be appropriate to treat many juveniles in adult criminal courts where they can receive the serious sanctions they deserve.

The inconsistency in state statutes regarding the treatment of juvenile offenders as adults is evident when one observes the restrictions placed on juveniles in non-punitive areas of the law and, more importantly, the implicit rationales for these limitations. Every state, for example, has laws both prohibiting juveniles from specific behavior that
would otherwise be legal for adults (status offenses) and laws restricting citizenship rights granted to adults. These ‘rites of passage’ implicitly suggest that as a society we believe that because of juveniles’ lack of maturity, inability to make accurate cost-benefit analyses, and their weaker understanding of social norms, juveniles should not be permitted to participate in certain activities and/or make some particularly important decisions until they reach a certain age. To illustrate this point, Table 1.1 identifies some of the prohibited activities that state legislatures have deemed inappropriate for adolescents to make. This table is useful for a few reasons. First, it identifies restrictions placed on juveniles’ actions. Second, it illustrates how state legislators and the society-at-large view young peoples’ capacity to make important decisions. Finally, the table identifies the age at which legislatures consider juveniles capable of making these decisions and presumably other decisions of consequence.

More specifically, Table 1.1. shows that many restrictions are placed on juveniles that have a fairly longstanding tradition in the jurisprudence related to the age of majority. Laws, for instance, that forbid persons under the age of 18 from certain citizenship rights such as the right to vote or the right to sit on a jury have long legal histories. More interesting though are the relatively recent additions to the list of prohibited activities. Legislators in some states have made it a crime for young people under the age of 18 to get a tattoo, get their bodies pierced, or to use tanning beds. The intent of this type of legislation is clear. Legislatures (and presumably the constituents they represent) do not consider people under the age of 18 capable of making decisions with such long-term
consequences. Perhaps just as important they do not think that parents are capable of making these decisions for their children either (abortion being the only exception).

Table 1.1 is not only useful in identifying important restrictions placed on adolescents but is also valuable in that it shows that, as a society, we have deemed the age of 18 as a “bright line” at which point a young persons’ decision-making capacity is thought to be sufficient enough to make important choices with long-term consequences. Legislators assume then, that prior to this age, most juveniles cannot make such decisions and thus need the protection of the state. In large part, these laws are consistent with research in many fields--particularly developmental psychology--that identify, among other things, the limitations of adolescents’ decision-making capacities. Thus, in and of themselves, statutes restricting the behavior of juveniles are consistent with our understanding of juveniles’ inability to use effective reasoning. This paternalistic legislation, however, is inconsistent when compared to the statutes regarding criminal sanctions for juveniles.

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<td>Alcohol</td>
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<td>Cigarettes*</td>
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<td>Tattoos</td>
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<td>Body Piercing</td>
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Table 1.1: Various Prohibit Activities for Juveniles
The inconsistency regarding the rights and responsibility given to juveniles arises when we compare statutes regulating the treatment of young criminals to those mentioned above regulating certain rights and behavior of young people. Every state, for instance, has statutory provisions that allow for the transfer of some juvenile offenders to adult criminal courts. Table 1.2 shows the age at which each state allows for such transfers through the traditional mechanism of transfer known as judicial waiver. This process involves a hearing where the juvenile court judge is presented with evidence regarding the “amenability to treatment” and risk to the public about a particular juvenile and decides, based on this information, whether to retain jurisdiction over the juvenile or to remand the juvenile to the adult criminal courts. The assumption inherent in this statutory provision suggests that there are certain juveniles who are capable of understanding the seriousness and long-term consequences of their behavior but the judge is given the discretion to decide this on a case by case basis.

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**Table 1.2: Minimum Age Juvenile Court Judges Can Waive Jurisdiction over Certain Cases and Transfer them to Adult Criminal Courts (1999)**
We see from Table 1.2 that numerous states have no minimum age at which they can be transferred through a waiver hearing. Presumably, then, a juvenile of any age who commits a serious offense could technically be subject to adult criminal sanctions for their transgressions. For those states that do stipulate an age at which transfer is an option, we see that eleven states allow juveniles below the age of fourteen to be transferred.

As I mentioned above, the judicial waiver decision is made on a case by case basis, thus allowing judge to decide on an individual basis whether or not a particular juvenile is capable of being processed in the juvenile court. More recent transfer schemes, however, have begun to take this discretion out of the hands of the juvenile court and placed it in the hands of the legislature. Specifically, transfer provisions known as statutory exclusions have mandated that certain crimes committed by juveniles over a specific age will automatically be waived to adult courts. It is important to note that under this transfer scheme the decision to transfer is not based on an individual assessment of the juvenile’s capacity but solely on the age of the offender and the offense type. Typically, statutory exclusions have been attached to serious crimes against persons such as murder or rape but increasingly they are being mandated for less serious crimes. Table 1.3 outlines the minimum age at which juveniles can be transferred under such provisions. We see from the table that in many states, legislatures view all children
under the age of sixteen who commit a specific crime as having the capacity to make
decisions at an adult-level such that they are equally culpable for their crimes and
deserving of the same severe sanctions.

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**Table 1.3 Minimum Age Juveniles are Subject to Statutory Exclusion for Certain Crimes – (1999)**

These statutory changes in transfer provisions, and the implication about the
culpability of juveniles for their crimes that lies within them, illustrate the inconsistency
in the law when placed against statutory restrictions placed on juveniles. This shift in
crime control polices related to juveniles begs several questions that I address in this
dissertation. First, why have so many states moved away from treating juveniles in the
juvenile courts? Second, is this shift in policy a response to some specific threats?
Finally, because the aggressive provisions used to sanction youth in the criminal courts
cannot be justified by our knowledge of developmental psychology (Scott and Steinberg
2003), the positive effects associated with certain treatment provisions administered in
the juvenile system (Fagan 1990), ethical and philosophical justifications for punishment, the protection of the community (Gendreau and Ross 1987), or any deterrent effect (Feld 1983, Jensen and Metsger 1994, Singer 1996), what factors may be driving these get-tough policies? The purpose of this dissertation is to answer these questions by exploring the sociopolitical factors related to the punitive response juveniles receive in adult criminal courts in some jurisdictions. Before I proceed to a discussion of the specific analyses, I provide a brief discussion of the theoretical framework that this dissertation relies upon.

1.2 Theoretical Background

In this section I outline the theoretical framework used in this dissertation. I begin with a discussion of conflict explanations of social control and punishment. After this initial introduction of the theory, I place conflict explanations in the context of broader theories of the state. To do so I outline some of the specific theories of the state that conflict theorists rely upon and I discuss how these theories underlie conflict theories of punishment.

*Using Conflict Theory to explain Social Control:* Conflict theory assumes that the legal order reflects the interests of the powerful rather than a widely held consensus about proper conduct and that the behavior of the state punishment apparatus is a response to perceived threats to the interests of the powerful. Theorists who subscribe to such claims argue that the entire process of lawmaking, lawbreaking, and law enforcement is a direct reflection of the fundamental conflict between group interests and the struggle for control over state power (Vold, Bernard, and Snipes 2002). More specifically, the formulation
and enforcement of the legal code is assumed to reflect the interests of the powerful who use the legal system to criminalize the activities that threaten their favorable social position. Proponents claim that violations of the law will be enforced with more vigor when the infractions are threatening to the powerful. Stone (1987: p. 250), for example, writes that “the criminal law—but not the civil law—was indeed in the last resort an instrument of the elite to protect their own and other people’s lives and property by the use of selective terror”. This interpretation leads to views of the criminal law as a means by which the elite express their values. The criminal justice system is, then, one of the vehicles by which the elite enforce these views and regulate dissimilar populations.

The conflict approach assumes that structural factors such as race, segregation, and income inequality directly influence punitive outcomes. Conflict theorists attribute these direct effects to the response of the dominant group to the real or perceived threat to the social order posed by oppressed minorities and the poor. These theorists hold that such threats will be intensified when there are significant income disparities between the dominant and subordinate groups (Quinney 1977; Spitzer 1975; Turk 1969). This perceived threat of the “dangerous classes” might lead members of the majority group to pressure authorities to increase social control.

If conflict theorists are correct in their assumptions then we should expect to see increases in state formal control efforts in those jurisdictions where there are more ‘dangerous’ groups because their primary assertion is that the amount of social control is based on the amount of criminal acts committed by people that threaten the powerful. Critics of this theory often argue that conflict theorists neglect to identify detailed
mechanisms through which the powerful members of society translate their perceptions of threat into public policy, particularly increases in crime control. Some theorists have, however, provided insight into this process by identifying both the need and the capacity of the elite to protect their interests by manipulating public policy related to crime.

First, why is it that elites need to manipulate public policy to protect their interests? As I mentioned, the conflict perspective assumes an uneven distribution of political and economic resources that favors privileged groups in the construction and implementation of social policies that reflect their interests. This presumption is based on the idea that the power to influence public policy is intimately connected to economic resources (Collins 1975; Chambliss and Seidman 1980). Conflict theorists assume that while economic resources create opportunity for a small group of elites to wield great power, economic inequality produces an unstable social order that needs greater levels of social control to maintain order (Collins 1975). Chambliss and Seidman (1980) highlight this point when they write that "The more economically stratified a society becomes, the more it becomes necessary for dominant groups to enforce through coercion the norms of conduct that guarantee their supremacy" (pg. 31). Thus, elites have a need to control public policy related to crime control because income inequalities can create an unstable social order that could, if left unchecked, lead to aggressive attempts to redistribute wealth in favor of the less fortunate.

While it is clear that the need for elites to control public policies exists, how does their desire to do so translate into real change in policy? The answer to this question also revolves around income differences between affluent members of society and those at the
lower end of the income distribution. Specifically, unequal distributions in income should give the most prosperous greater access and influence over political actors relative to the less affluent. If this is the case, we should expect the affluent members of society to have the ability to make successful demands for increases in formal responses to crime when they feel that the social order that disproportionately benefits them is being threatened.

In addition to fears related to high levels of income inequality and the presence of the poor, some theorists have argued that the presence of a large, culturally dissimilar racial or ethnic minority group may also threaten elite members of society such that they may demand increases in social control to protect themselves from these groups. Based on the assumption that majority group members have more political power because of their larger numbers (and typically greater affluence), majority group members should be able to transfer any perceived threat of these groups into changes in public policy. While historically dominant group members dealt with the perceived threat of minorities through brutal violence such as lynchings (Beck and Tolnay 1996) in an effort to maintain the racial caste system, advances in civil rights made this overt use of force unacceptable.

Several scholars have argued that after the successful implementation of civil rights protections for minorities in the 1950s and 60s, new avenues of repression directed at minorities were employed that took a less overt form. Wacquant (2000) argues, for example, that after the passage of new civil rights provisions, whites attempted to ensure the existence of a social and symbolic gulf between themselves and African Americans.
To do so they removed their children from public schools that were subject to
desegregation, shunned public spaces and fled to the suburbs in the millions in an effort
to perpetuate the racial boundaries that had existed prior to the civil rights movement.
Perhaps more importantly for our discussion here, is the suggestion that many whites
began to support law and order policies after the civil rights victories (Wacquant 2000,
Beckett 1997). This support for law and order appeals was largely driven by two factors:
1) the consensus on the part of many majority group members that urban violence is
almost entirely committed by racial and ethnic minorities (Chiricos, Welch, and Gertz
2004) and 2) racial stereotypes (Beckett 1997). Because there is a strong link in the eyes
of dominant group members between minority group members and crime, it may lead the
latter to feel threatened by the presence of a large minority population. In reaction to this
threat, many dominant group members may pressure political actors to increase formal
control efforts that will likely target minorities. Additionally, because race and class in
the United States often coexist so minorities are among the less affluent, racial
differences in political power are produced in favor of the white majority. If the above
discussion regarding the influence of economic capacity on political outcomes is true and
economic disparities often fall along racial lines, then we should expect that states with a large minority presence will be more inclined to use formal social control especially against minority group members.

The above discussion suggests that much of the link between social threat and crime control policies comes to full form through the political arena. The following section will examine in more detail the link between politics and crime control policies within the conflict tradition.

**A Political Expression of Conflict Theory:** One of the primary assertions of conflict theory is that crime control is shaped in the political arena and that what happens in this arena is largely driven by elite members of society (Foucault 1977, Weber 1978, Garland 1990). Because affluent members of society have a greater capacity to influence both state actors through lobbying and the public through the media (Domhoff 2002), and because crime control policies are largely made by politicians, affluent individuals who are better able to influence political actors should have greater control over how the criminal justice system is used.

In addition to this largely class-based explanation of political power, there is also reason to believe that political power is racially based. Racial minorities have a disadvantage in the democratic political process relative to dominate group members for a number of reasons. First, because democratic rule implies that the majority has the strongest voice in public policy, it presupposes that minority group members will garner limited attention by political elites. Second, the political efficacy of minority groups has been questioned. If the greatest expression of political participation in the U.S. is voting...
for particular candidates that most closely support one’s views, than it is clear from the relevant literature that minorities are much less likely to fully participate in political life. Studies of voter turn-out, for instance, have repeatedly shown that minority group members are less likely to either register to vote or go to the polls on Election Day (Manza, Brooks, and Sauder 2005). Thus, minorities’ already limited control over politics is exaggerated by their lower levels of involvement in the process. Without strong participation in the political process, minorities are less likely to have significant influence on the politicians who make many of the decisions regarding crime control. This evidence suggests that majority group members may be much more likely than minorities to make successful demands for crime control policies that may disproportionately target racial minorities.

Many of the assertions by conflict theorists regarding crime control, in general, and punishment, specifically, rely upon broader theories of the state (Duff and Garland 1994). Specifically, conflict theorists assume that political outcomes are controlled in large part by affluent (or elite) members of society. This assertion has, at its base, specific assumptions about the state. The theories most closely aligned with the claim that elites define political outcomes are the class or elite theories of the state. While I cannot directly test these theories here, it is useful to include a brief discussion of these theories in order to provide some theoretical context.

Class (Marxist) theories of the state- Classical Marxists hold three underlying assumptions about the role of the state in a capitalist society. The first is that there is a single dominant class in society consisting of those who own or control the major means
of economic production. Second, Marxist theorists hold that the dominant class is relatively cohesive in its interests and are able to act in a relatively cohesive manner to protect those interests. Finally, because the capitalist economy shapes and constrains all other institutions, it is not important who the current elite are or how they are organized because all are driven to act in a way that protects corporate interests. In other words, the state, like all other institutions in a society, is shaped by the mode of production and those who control the means of production (economic activity) also control the state.

**Elite theories of the state**—Like class theorists, elite theorist assume that there is a small group that is in control in a capitalist society. Unlike class theorists, however, elitists assume that there is not just one dominant class but numerous elite groups that compete for power. They disagree that this elite has to be attached to the interests of an upper class who controls or owns the means of production. They also disagree with class theorists about the evolutionary nature of society. While class theorists claim that society will evolve to a socialist society where the working class will rule, elitists see the rule by a few as a fundamental part of society because of the ineptness of the working class.

Elite theorists (Pareto 1935, Mosca 1939, Weber 1947, Mills 1956, Michels 1962, Dye and Zeigler 1996) claim that a minority of the population controls the majority because they are organized, informed, and have legitimacy. They also claim that the masses are incapable of having any effect on the state because of their apathy, passivity, and lack of information. To the extent that they are informed, elite theorists claim that mass sentiment is manipulated by elites through the media and other sources. Social change is,
according to elitists, a result of a gradual shift in the elite composition due to ‘elite
circulations’ from the lower strata or the rise of rival elite (usually in a coalition with the
working class).

1.3 Measuring the Variation in the Treatment of Juvenile Offenders: The Analysis

The theoretical perspectives discussed above should be useful in an assessment of
differences in social control exerted against juvenile offenders across jurisdictions. To
assess the factors related to the variation in the treatment of juvenile offenders I examine
three related outcomes. The first explores the adjudication of juvenile offenders in the
adult criminal justice system by examining the number of juveniles who are admitted to
adult prisons in 29 states between 1983 and 2000. The conflict and political theories
discussed in the previous section are well suited to this particular outcome because the
adjudication of juvenile offenders is often undertaken by political actors. Additionally,
group threat theories that suggest crime control efforts will be strengthened when a large
minority group is present should also help explain differences in the number of juveniles
admitted to prison across states.

The second analysis examines the severity of the prison sentences that juveniles
receive for violent crimes. In this analysis, I simultaneously explore both individual and
macro level explanation to determine the specific factors that may lead some states to
treat juvenile offenders more punitively than others. Again I draw upon the conflict
perspective and political theories to explain the state-level variation present in sentence
severity. The inclusion of individual characteristics for each juvenile offender allows for
an assessment of how these micro factors may also influence the outcome. Specifically, numerous sentencing studies have provided evidence that characteristics such as race and sex influence sentencing outcomes.

Thus, I will examine both the macro-level explanations and the individual level factors to see why some states treat violent juvenile offenders more punitively than others by sentencing them to longer prison terms.

Finally, I conduct a macro level analysis that explores the determinants of the number of juveniles sentenced to death. While the Supreme Court has recently declared the use of this sanction unconstitutional for those under the age of 18, it is important to understand why it is that some states were willing to sentence juveniles to death while so many others refused to do so. In my analysis I will try to ascertain why, using the political and threat explanations discussed above, some states continued to sentence young offenders to death while the vast majority of states did not.

1.4 Summary

The goal of this dissertation is to develop models that establish a link between structural factors and the treatment of juvenile offenders as adults. This dissertation begins with the underlying premise that juveniles should not be held to the same standard of criminal responsibility as adults because of their immaturity, limited freedom to resist coercive influences, and a character that is still being developed and should therefore be treated in a separate justice system. Using this as a starting point, I assess why it is that some states
appear to have accepted the conventional thought on the diminished capacities of juveniles and treated their transgressions less punitively while others appear to have weakened their commitment to this approach.

In brief, the argument of this paper is that the increased punitiveness directed towards juveniles is a function of sociopolitical factors. Specifically, I draw upon social threat and political theories to explain the vast differences in the treatment of juvenile offenders as adults that exists across states and over time. The empirical analyses that follow develop this argument in three steps. The first step is to demonstrate an empirical relationship between changes in political, social and economic characteristics and the number of juveniles admitted to prison. The second is to identify and analyze a model of the determinants of severity of the sentence that juveniles receive in adult jurisdictions. Finally I will develop an explanatory model that will improve our understanding of the juvenile death penalty by analyzing the number of juvenile sentenced to death.

Before I proceed with the analytical sections of the dissertation, it is important to briefly discuss the history and justification for the juvenile justice system as well as the rationale for treating young people who commit crime different from adults. In order to set this dissertation in a broader historical context, the following section provides the philosophical justifications and goals of the juvenile court and discusses how these are distinct from the adult criminal system. This is necessary because without this understanding it is difficult to appreciate why a move away from the juvenile justice system for some juvenile offenders is so meaningful for further study.
CHAPTER 2

THE HISTORICAL BACKGROUND OF THE JUVENILE COURT AND THE TREATMENT OF JUVENILES OFFENDERS IN ADULT CRIMINAL COURTS

The purpose of this chapter is twofold. First, I will provide a brief overview of the historical background of the juvenile justice system as well as the resent challenges that the court has faced. While doing so, I will also outline the primary justifications for a separate system of justice for juvenile offenders. Second, I will briefly address the literature related to the development of young people and how this should influence the extent to which juvenile offenders are considered responsible for their transgressions.

2.1 The Background of the Juvenile Justice System

The Social Context during the Establishment of the Juvenile Justice System: Toward the end of the 19th century, there were increasing concerns about the decline in social control in urban industrial cities in the United States (Highman 1994, Platt 1977). Rapid industrialization, modernization, urbanization, and immigration were threatening the traditional social stability of the country (Highman 1994). These four factors often culminated into a distinct impression about the causes of criminality. Specifically, Platt (1977) suggests that the city was seen as the “breeding ground” of criminals, but a breading ground for particular residents of the urban industrial centers. European
immigrants to the urban ghettos of large U.S. cities during the later part of the 19th century were regarded as unsocialized and the city’s ills were believed to intensify their moral lackings because the city (to many) symbolized all the worst features of industrial modern life (Lathrop 1905). The typical impression of many commentators during this period was that these new immigrants were inferior human species who were inherently incapable of adjusting to American norms and traditions (Highman 1994). Among those commentators was William Douglas Morrison who stated that:

> It is notorious that people of the type of the Italians and Hungarians exhibit much less respect for human life than is to be found among the northern races. Contact with the humanizing influences of American civilization no doubt has a wholesome effect in modifying the character and temperament of the children of the emigrants from the south. But family and racial characteristics cannot altogether be obliterated by social surroundings, and it is not at all unlikely that juvenile delinquency of the most serious kind in the United States is in some measure to be set down to the boundless hospitalities of our shores (Quoted in Platt 1977 pg. 37).

This emphasis on both the social and biological causes of current social problems as well as a basic distrust for urban life, gained broad public support. Reformers sympathetic to this line of reasoning, took on the task of making city life more akin to life on the farm, where social relationships were considered wholesome and capable of producing a good moral character and work ethic (Platt 1977). By doing so, they sought to remedy some of the serious social problems related to the city, namely crime.

Of particular concern to many of these reformers was the plight of children living in the urban ghettos. The city, it was argued, was no place for the innocence of a young child because it corrupted and misled them. Children growing up in urban slums were assumed to be intellectually, physically, and morally lacking because their character was
shaped by physical surroundings that could not provide them with the kind of upbringing that produced healthy character (Platt 1977). In an effort to correct these social ills, reformers worked for social changes that would provide adequate supervision and control necessary to achieve their desired ends.

Within this context a more modern conception of childhood began to appear among the affluent classes and along with it emerged a movement known as the progressive movement. The movement surfaced during this period in response to the social problems created by modernity, urbanization, immigration, and industrialization (Rothman 1980). Progressives sought to implement rational, scientific solutions to solve the problems created by modernity. They also believed that the state was the only authority capable of administering these new solutions. Most of the programs advanced by the progressives shared a child-centered theme that incorporated this new found conception of childhood (Feld 1987). Policies advocated by the progressives included child labor laws, child welfare laws, compulsory schooling, and the adoption of the juvenile court (Rothman 1980). The progressives envisioned a juvenile court that was much different than the retribution-centered criminal justice system. They introduced reforms that emphasized informal, open-ended policies that aimed to rehabilitate the offenders (Platt 1977). Policies such as indeterminate sentencing, probation and parole were advocated because it was believed that “curing” delinquency required ample discretion on the part of juvenile justice agents so they could more easily identify the causes of and proper cures for the deviant behavior committed by young offenders (Rothman 1980). Rothman (1980) claims that the increasing use of the medical model in treating criminals combined
with the growth of new social science professions gave rise to the “Rehabilitative Ideal”. Progressives shared the belief in a social order that would likely only be sustained – given the corrupting forces of modernization -- by the new social sciences that could provide society with the tools for systematic human change (Feld 1980).

*The Emergence of the Juvenile Court:* The juvenile court was part of this broader movement toward reducing the harm directed towards children for their transgressions. Zimring (2005) summarizes the justifications for the juvenile justice reforms advanced by the progressives by identifying three main postulates that the movement rested on. The first is that childhood is a period of dependency and risk and that supervision and control are essential for the survival of all children. Second, while the family takes the primary role in raising a child, the state should play an important role in the education of children and “intervene forcefully whenever the family setting fails to provide adequate nurture, moral training, or supervision” (Zimring 2005, pg. 6). Finally, when a child is at risk, the only appropriate authority who can decide what is in the best interest of a child is a public official.

To this end, the advent of the juvenile court was an attempt to remove children from the adult criminal justice system and provide them with the type of individualized treatment administered by professionals that the progressives envisioned. The separation of juvenile offenders from the adult criminal system had two primary aims. First, by separating juveniles from adult offenders, the juvenile court would avoid the procedural limitations of criminal case processing that detracted from the kind of individualized treatment that progressives desired. Courtroom procedures were modified in several
ways including to decrease the formality of the proceeding. Changes included the elimination of juries, the elimination of defense counsel, and the removal of protection against self-incrimination. The focus of the proceeding was also less concerned with the particular offense that brought the child before the court and instead concerned itself with the best strategies for treating the underlying causes of the behavior given all the relevant social, psychological and environmental information that the court could gather. Progressives believed that the procedural safeguards that existed in the criminal courts were detrimental to finding the underlying causes of delinquency. By removing these barriers it was believed that the juvenile court agents could design treatment plans that served the “best interest of the child”.

The second rationale for a separate juvenile justice system was to avoid the stigma associated with being labeled a criminal. A leading progressive thinker emphasized the importance of doing so when she stated that “the first idea that should be grasped concerning the juvenile court is that it came into the world to prevent children from being treated as criminals.” (Miriam Van Walters, 1925 Quoted in Zimring 2005 pg. 33). Providing a separate system to adjudicate juvenile offenders had a number of ethical and moral justifications. First, while the criminal law punishes criminals for their reprehensible actions based on the assumption that they are morally responsible for their behavior, it is assumed that juveniles are less culpable for their transgressions because of their diminished capacities. The limited decision-making capacity of juveniles suggests that they do not deserve the same level of punishment as adult criminals because they are less culpable for their crimes. Thus, treating juveniles under a system that was less
concerned about retribution and punishment and more concerned about treating young people was perceived to be more appropriate. Additionally, because juveniles are still developing their moral character, it was assumed they would be more responsive to rehabilitative efforts. Because the criminal justice system is concerned primarily with retributive punishment it was assumed that the only way to ensure that juveniles received the type of treatment they needed was to process them in an entirely separate bureaucratic system staffed by professional experts specializing in the rehabilitation of minors. Finally, by detaining juvenile offenders in separate detention facilities, one could avoid the possibility of juveniles being socialized into a life of crime by adult criminals.

Because the juvenile court formally rejected punishment and was instead focused on the “best interest of the child” it took under its ambit of control behavior that was previously ignored by the criminal courts such as smoking, truancy, immorality, stubbornness, vagrancy, and living a wayward life (Feld 1980). It was thought that by intervening in children’s lives for these less serious offenses as well as criminal behavior, the juvenile court could forestall delinquency and criminality in later years. To this end, no distinction was made between juveniles based on the criminal or non-criminal conduct in the juvenile court proceedings. Rather, the court would base its recommendations on the best interest of the child because it was assumed that actions either criminal or not indicated a need for supervision to reduce the likelihood of future transgressions. By
placing these children under the protection of the state, professionals – rather than the apparently incapable parents – could take charge of the child’s moral upbringing (Rothman 1980).

In sum, the progressives envisioned a juvenile court that was administered by expert judges assisted by other social service personnel such as scientists, probation officers and other clinicians who would investigate the background of the child and develop a treatment plan to meet the child’s individual needs. Because their aims were benevolent and their intervention was, in theory, guided by science, juvenile court judges were granted enormous discretion when making their dispositions (Feld 1980). By considering every aspect of the child based on a rational, scientific analysis of the facts—not just the particular infraction that brought them before the court – the court could determine the real needs of the child and therefore come to a conclusion about the proper treatment.

The first juvenile court was established in Illinois in 1899 and was quickly adopted by other states. By the mid 1920s nearly every state in the union had established a separate juvenile court for the adjudication of young offenders (Rothman 1977). This new innovation also spread through most of the developed and developing world (Zimring 2005). It was heralded as an innovation beyond compare in the law. Roscoe Pound, for instance, claimed that the establishment of the juvenile court was the greatest single event in Anglo-American jurisprudence since the Magna Charta (Feld 1980). Prior to the 1960s, juvenile courts proceeded much as the progressives had envisioned with indeterminate nonproportional sentencing, informal proceeding, and a rehabilitative
orientation. This organizational structure was placed under severe scrutiny in the 1960s and beyond as the Supreme Court and state legislatures began attacking many of the core principles of the juvenile justice system.

2.2 The Assault on the Juvenile Court

In recent years the juvenile court has received an onslaught of criticism which has challenged the boundary between the juvenile courts and the adult criminal courts. Recent procedural changes mandated by statutory changes and court decisions have brought the juvenile court’s justification for existence into question. Fagan and Piper Deschenes (1990) identify two primary sources of criticisms calling for the restructuring of the juvenile court. First, critics suggest that the procedural informalities and the offender-based decision-making processes of the juvenile court threatened the due process rights of juveniles. This informality, it is feared, could result in inequitable dispositions. Many researchers (c.f. Tittle and Curran 1988) have provided evidence to support such a charge by showing in their analyses of juvenile court processing that there is evidence of disparate treatment based on race and socioeconomic status.

The second primary criticism of the juvenile court comes from those who strongly support the deterrent effects of punitive policies. These critics suggest that the juvenile court is an ineffective vehicle for controlling violent juvenile crime through deterrence because the sanctions available in the juvenile court were less certain and inappropriately lenient relative to the severity of the crime relative to the criminal courts (Fagan and Piper Deschenes 1990). With the increase in juvenile crime and particularly violent juvenile crime, came the assertion that this leniency in the juvenile system was leading to
an increase in crime because it failed to deter. Despite the fact that there is ample
evidence to suggest that subjecting juveniles to the severe sanctions available in adult
criminal courts does not deter juvenile crime (Singer and McDowall 1988, Jensen and
Metsger 1994), one study conducted by economist Steven Levitt (1998) finds that those
states who punish juvenile offenders more severely see a reduction in juvenile crime and
that a substantial amount of this reduction can be attributed to deterrence. Regardless of
the evidence, proponents of the deterrence model suggest that more juvenile offenders
should be treated in the criminal system where they can receive the types of dispositions
that are better able to deter crime.

The following section will identify how both of these concerns translated into a
restructuring of the juvenile courts’ role in processing juvenile offenders through court
decisions and statutory changes.

*Concerns for Due Process:* By the mid-1960s several Supreme Court decisions moved to
formalize juvenile court procedures with the dual purpose of protecting the due process
rights of juvenile offenders and strengthening their capacity to hand out punitive
sanctions. In 1966, the Court found in *United States v. Kent* that the informality of the
juvenile court violated due process guarantees provided for in the constitution.
Specifically, the Court extended the due process rights granted to defendants on criminal
courts to juveniles facing transfer hearings. Taking this a step further, the Court in *In re
Gault (1967) granted juveniles numerous other due process rights including the right to receive notice of the charges against them, to legal representation, to confront and cross-examine witnesses, to avoid self-incrimination, and to appeal court decisions.

While the additional due process rights granted to juvenile offenders were given in an attempt to introduce procedural safeguards to the juvenile justice system’s adjudication procedures, they had the possibly unintended consequence of putting the entire philosophy of the juvenile court into question. As noted above, the informal nature of juvenile justice proceedings was one of its defining characteristics. The reformers who worked to introduce the juvenile court believed that this particular feature helped assure that the court could identify treatment options that would be best for the child. By introducing these due process safeguards, the Supreme Court effectively struck down this entire philosophy. By introducing these due process right into the juvenile court the Court affectively made the juvenile court much more like the criminal courts with an increased focus now placed on the offense rather than the individual child’s needs.

The Waiver of Serious Juvenile Offenders: Of central concern to this dissertation is changes that were made to the juvenile justice policies regarding the transfer of serious young offenders to adult criminal courts. For without such provisions, it would not be possible to reach the outcomes at issue here. No young offender below the age of 18 years would be considered for time in adult prison or the death penalty without first being transferred to the adult criminal system because, obviously, these sanctions are unavailable in the juvenile justice system. Because of their central importance, I will
consider changes in this policy more closely. I will begin the discussion by outlining the primary mechanisms through which young offenders are transferred to the adult courts then discuss some of the research that discusses how these provisions are used.

**Transfer Provisions:** While the traditional age boundary for criminal liability has been set at eighteen, recent legislation suggests this boundary is changing for certain types of behavior. While all states have had a mechanism for transferring juvenile offenders who commit more serious crimes to the adult criminal courts, this process has undergone substantial changes over the last few decades. The most traditional means of transferring juvenile offenders to the criminal courts—and the only transfer mechanism in the early years of the juvenile court—was a judicial waiver (Fagan 1990). Under this transfer scheme, the juvenile court judge hears evidence concerning the “amenability of treatment” of the juvenile offenders as well as the risk to the community. After weighing these factors the juvenile judge would determine the appropriateness of retaining jurisdiction of a particular defendant.

Many states, however, have begun to move away from this traditional waiver procedure. Perhaps most importantly, many state legislatures have instituted policy changes that mandate transfer under certain circumstances. Specifically, statutory changes place certain offenses committed by juveniles at or above specific ages outside of the juvenile court’s jurisdiction. In some states, for example, a fourteen year-old offender who commits a murder will automatically be adjudicated in the adult criminal system without receiving a hearing in the juvenile court. While the most common
statutory exclusions are violent offenses committed against persons (e.g. murder, rape) there has been a significant trend in some states to include less serious offenses such as weapons and drug offenses in the list of exclusions.

In other states, prosecutors have taken over the transfer decision almost entirely. In these states it is the prosecutor, not the judge, who decides what jurisdiction a particular juvenile will be adjudicated. Unlike the judicial waiver procedure, the prosecutor does not have to be concerned with presenting evidence of the amenability to treatment or risk to the community. Rather, prosecutors rely primarily on the seriousness of the offense and prior criminal behavior to determine the best jurisdiction for adjudication. Transfers under this particular provision tend to be much more akin to criminal justice processing and much less like the offender driven, needs based, processing in the juvenile court system. Thus, much like the statutory exclusion changes discussed above, taking the transfer decision out of the hands of juvenile court judges and placing it in the control of prosecutors and/or legislators suggests that much of the rationale behind such changes in policy has the aim of removing the discretion for the decision away from the juvenile justice officials (who are presumed to be too lenient on the juvenile offenders) and places it in the hands of those who can treat the cases properly (i.e. severely punish) (Fagan and Piper Deschenes 1990).

As the above discussion suggests, some of the assault on the juvenile court was focused on the role the juvenile court should take in the adjudication of any serious juvenile offenders. This debate is one of the most controversial issues in crime control policy today (Fagan and Piper Deschenes 1990). This debate reflects the differences in
assumptions about the cause and the appropriate punishment for juvenile crime. In the eyes of many, some juvenile offenders, especially those who commit violent offenses are unlikely to receive the kind of retributive punishment demanded by the public. Others argue that the goals of the juvenile court are themselves at odds with public demands for retribution and incapacitation for all crime regardless of the age of the offender. Often, the choice between adjudicating a juvenile offender in the juvenile court or in the criminal courts is seen as a choice between the offender receiving a “slap on the wrist” or an explicitly punitive, retributive, proportional response to their actions (Fagan and Piper Deschenes 1990).

Critics of the juvenile court’s rehabilitative model suggest that the sanctions given to violent juvenile offenders are grossly disproportionate relative to the seriousness of the offense and are thus incapable of deterring future criminal behavior (Feld 1983). These critics contend that the criminal courts, with their punitive rather than rehabilitative focus, should adjudicate serious juvenile offenders because it is only in the adult criminal jurisdiction that these offenders receive the lengthy incarceration they deserve (Murray and Cox 1979).

Supporters of the juvenile court obviously saw the issue differently. Many argued that young criminals—even those offenders who commit serious offenses—were unlikely to escalate to more serious persistent criminal behavior (Rojek and Erickson 1982, Shannon 1985). These supporters argued that juvenile offenders 1) benefit from the rehabilitative services they receive in the juvenile system 2) pose a minimal threat to public safety, and 3) avoid the stigma associated with criminal processing (Fagan and Piper Deschenes
Proponents of the juvenile court also do not support the assertion by critics that the rehabilitative model is ineffective. They argue, rather, that the research in this area is methodologically weak and that poor funding quality masks the potential strengths of many of these programs (Fagan 1990).

While this debate continues, the legislative changes that have taken place suggest that the critics have either advanced their position more effectively or political leaders and/or the public have become more sympathetic to this particular position. Since 1978, forty states have modified their laws to restrict the jurisdiction of the juvenile court (Feld 1980). These statutory changes include changes in the procedures involved in the transfer of juveniles to the adult system. Specifically, Hamparian et al. (1985) report that half of the state legislatures in the U.S. amended their transfer provisions between 1978 and 1982. Some states have also lowered the age at which juveniles who commit certain offenses (typically violent offenses) are subject to the criminal law. Others have shifted the decision of transfer from the juvenile court judge to the prosecutor. In Florida, for example, over 90% of the transfers are now done by the prosecutors who directly filed certain cases in the adult criminal system (Frazier, Bishop and Lanza-Kaduce 1999). Perhaps most importantly, though, some state legislatures have eliminated any discretion at the juvenile court level for the transfer decision. They have, rather, created statutory exclusions that prohibit certain offenders over a certain age from being treated in the juvenile court (Feld 1980).

Research Related to the Transfer Provisions: What Kids do we Transfer?: Despite the wide use of transfer provisions and the significant implications that are attached to such
procedures, there are few studies that have examined the determinants of the transfer
decision for juvenile offenders. This is likely due to the fact that data for all states and/or
jurisdictions are not available either in cross-sectional or longitudinal form. In other
words, no one knows for sure how many young offenders are being adjudicated in the
adult criminal system each year in the United States. This is surprising given the
magnitude of such a procedure and the debate that surrounds it. Those studies that have
been conducted on the subject have restricted their analyses to only a few jurisdictions.
Even with this limitation, the studies that have been conducted have produced rather
interesting results.

Several studies have shown that the rate of youths being transferred varies
substantially by jurisdiction. Fagan and his colleagues (1990), for instance, find that in
the four jurisdictions they examined the overall transfer rate for those juveniles
considered for transfer ranged from 21% in Boston to 71% in Phoenix. When these
researchers examined the transfer rates by crime category they found that there was also
significant variation across jurisdictions. None of the juveniles charged with murder, for
example, in Boston were transferred to adult courts whereas 80% of those in Phoenix
charged with murder were transferred. The authors argue that the prevailing philosophy
and crime control policies in each jurisdiction was the primary factor influencing this
variation in transfer rates.

Studies that have analyzed the juvenile waiver decision and specifically the types of
offenders that have been transferred have noted that the process is arbitrary and often
discriminatory. Specifically, these researchers have found that minority youth are
disproportionately transferred to criminal courts (Hamparian 1985, Fagan, Slaughter and Hartstone 1987, Fagan and Piper Deschenes 1990, Jackson and Pabon 2000). Additionally, Hamparian (1985) found that interracial offenses were significantly more likely to be transferred even after legal factors were held constant.

Several explanations for these racial disparities in waiver decision-making have been offered. Some have suggested that minority youth are disproportionately waived to the adult jurisdiction because they are more likely to be involved in violent crime (Fagan and Piper Deschenes 1990). The evidence to support such a conclusion is weak. In 1997, 53 percent of juveniles arrested for violent offenses were white and 44 percent were Black (Snyder 1998). While it is clear that Black youth commit a disproportionate amount of violent crime, it is not clear that this amount of criminal activity on the part of minority youth can fully explain why they represent the majority of those transferred and a greater percentage of those serving time in adult prisons.

An alternative explanation suggests that racial disparities in the decision-making process are not due to racial differences in offending but rather reflect underlying racial discrimination (Jackson and Pabon 2000). Survey research, to this affect, suggests that people are more likely to prefer transfer to an adult court when the juvenile in question is Black (Jackson and Pabon 2000). Feld (1998) describes this finding as “the political demonization of young Black males as morally impoverished ‘super-predators’.” While troubling, this finding is consistent with the numerous studies that show fear of victimization is associated with the fear of minority youth, particularly young black males (Quillian and Pager 1999). Additional evidence points to an acceptance of these
racial stereotypes among juvenile justice officials. Bridges and Steen (1998), for example, show in their investigation of probation officer reports that these officers were more likely to report different causes of crime for white youth than they did for Black youth. Specifically, they show that officers are more likely to attribute external factors for the cause of white youth crime but internal factors for minority children. These differences in attribution contributed to significant differences in assessments of risk of reoffending and to sentencing recommendations even after holding legally relevant factors constant. Thus, the evidence from this research suggests that we need to more closely examine the use of transfer provisions with particular emphasis on which youth we transfer and the justifications for transferring them.

Some researchers have critically assessed the transfer decisions in an attempt to develop alternative explanations for who we transfer. Alternative explanations are needed because researchers have shown that “the best available evidence indicates that the rush to impose adult status on juveniles is neither reducing juvenile crime nor enhancing public safety” (Frazier, Bishop, and Lanza-Kaduce 1996 pg. 40) and that the youth who are waived to adult court were not always committing the most severe offenses nor did they receive the harshest sanctions available in the adult system (Frazier, Bishop, and Lanza-Kaduce 1996). Bortner (1986) is one of the few scholars who have offered a viable alternative explanation. She shows in her research related to the remand of juveniles to adult courts that organizational and political factors account for the high rates of remand in some jurisdictions rather than the traditional justification of community protection. She suggests that by waiving a small percentage of juvenile offenders, and
portraying these juveniles as the most dangerous, hardened offenders, the juvenile court “not only creates an effective symbolic gesture regarding the protection of the public but it also advances its territorial interests in maintaining jurisdiction over the vast majority of juveniles and, at the same time, deflects more encompassing criticisms of the entire system”(pg. 53).

In sum, the changes in policy related to the treatment of juvenile offenders reflect the perceived weakness of the rehabilitative model used by the juvenile court. These get-tough strategies were adopted to increase the certainty and severity for serious offenses committed by juveniles. The debate concerning the deterrent effect of juvenile sanctions and the need to treat them as adults is inconsistent with relevant research related to the developmental immaturity of young people and the degree to which this immaturity leads to a reduction in blameworthiness that should produce a less severe sanction. The next section of this chapter addresses this issue by exploring the relevant literature on juvenile development and its relationship to criminal culpability.

2.3 Are Kids Different than Adults?

Much of the debate surrounding the proper treatment of juvenile offenders has to do with how advanced a juvenile’s decision-making capacities is relative to adults. As I discussed above, one of the most important justification for the treatment of juvenile offenders in a separate system of justice is the assumption that adolescents, simply by virtue of their age, are believed to have a diminished decision-making capacity and are therefore less culpable for their transgressions than are adults (Morse 1984).

Understanding the (in) appropriateness of the recent trend to punish juvenile offenders
more severely requires a careful consideration of the specific capacities of young
offenders as well as the conditions where, under criminal law, culpability for harmful acts
is reduced and, in turn, subjected to less severe punishment.

**Mitigation and Penal Proportionality:** Penal proportionality holds that appropriate
criminal punishment should be determined not only by the amount of pain caused by the
particular act but also by the actor’s blameworthiness. Thus, in the case of juvenile
offenders, the question is whether and to what extent, they deserve a less severe
punishment for their criminal acts.

To assess this question it is useful to first identify the difference between excuse and
mitigation in a legal context. While these two constructs are often used interchangeably
in lay discussions of crime and punishment, they are in fact quite distinct (Scott and
Steinberg 2003). Scott and Steinberg (2003) point out the legal distinction between these
two terms. They state that in legal terms, an excuse refers to the complete lack of
responsibility of an individual for a criminal act. Under this condition, an individual,
because they bear no responsibility for their action in a particular instance, deserves no
punishment. Scott and Steinberg (2003) also state that defenses that excuse defendants
from their actions are very narrowly defined in the law. An example of an excuse would
be a crime committed under extreme duress. For example, if an individual is forced to
commit a crime at gunpoint or one who uses force in self-defense is not held criminally
responsible for their actions. Unlike an excuse that completely removes the
responsibility for an act, mitigation is used when an actor is sufficiently blameworthy for
their crimes but their capacities are in some way compromised (Scott and Steinberg
2003). A common example would be a mentally ill defendant whose illness is significant but not severe enough to support an insanity defense. In this case, the defendant is likely to receive less severe punishment for their particular crime (Bonnie et al. 1997, Scott and Steinberg 2003).

The conventional assumption is that juveniles who commit a serious offense have only two options: 1) be treated as an adult or 2) get a “slap on the wrist” in the juvenile justice system. While it is clear that being a juvenile does not excuse any particular crime (except in extreme cases such as when the juvenile is very young, usually less than 8 years old) and that the public demands severe punishment for serious juvenile offenders it is also clear from the scientific evidence that juveniles should be afforded a great deal of consideration for their immaturity. The following section will briefly outline why it is that a juvenile’s immaturity should reduce her/his culpability and thus encourage a less serious punitive response.

**Maturity and Culpability:** Before I specifically address how the developmental immaturity of juveniles mitigates culpability and justifies a more lenient punishment, I will first outline how a reduction in culpability is outlined in the law. Steinberg and Scott (2003) state that the criminal law has generally established three categories that would reduce culpability. The first includes factors that would impair the decision-making capacities that would influence the choice to commit a particular criminal act. This may include factors such as mental illness, mental retardation and extreme duress. The second category allowing for a reduction in culpability has to do with “external” circumstances. If, for example, a person commits a criminal act because of provocation, threat, or
extreme need, the may have mitigated culpability under the law and receive a less severe sentence. The final category refers to a reduction of culpability because the particular act is “out of character”. For example, if the crime was a first-offense, or if the defendant expresses sincere remorse for their actions, or if he/she has a history of steady employment, or has other evidence of good citizenship (see United States Sentencing Commission for a more detailed description of typical mitigating factors in criminal cases). The question then is how mitigating is youth? Does this mitigating factor suggest we should not treat juveniles as responsible for their crimes as those adults who commit similar offenses?

Researchers who use a developmental perspective to examine questions about the criminal culpability of juveniles argue that the uniqueness of immaturity as a mitigating factor is sufficient to provide for a legal environment where juveniles are treated in a separate justice system that takes this diminished culpability into full account. (c.f. Steinberg and Scott 2003). Because a typical juvenile would likely qualify for all three sources of mitigation under the criminal law that I discussed above, they should be viewed as less culpable for their crimes. In the following section I will discuss the scholarly evidence related to juvenile development and how it likely diminishes their decision-making capacities such that their culpability for crime should be reduced. 

The evidence: The literature in developmental psychology and other fields regarding cognitive, psychosocial, and neurobiological development during adolescence suggests that juveniles should not be held to the same criminal standards as adults who commit a comparable offense because of their diminished decision-making capacity. It has been
well established that younger juveniles often have serious deficiencies in their decision-making capacity relative to typical adults (Keating 1990). While most agree that very young children are not responsible for their actions, the real debates among scholars is whether and to what extent older adolescents (mid teens) are capable of making decisions. More specifically, are juvenile substantially different in their reasoning capacities from adults such that they are entitled to more lenient punitive responses for their transgressions.

While the relevant literature does conflict at times, recent studies have suggested that there is reason to believe that impairment in decision-making can last not only into late adolescence but well into young adulthood (Steingberg and Cauffman 1996). Several factors contribute to the limitation in reasoning skills among juveniles. First, research has shown that juveniles are more susceptible to adverse influences from their peers than are adults. Second, juveniles are less “future oriented” than are adults. In other words, juveniles are much more likely to discount long-term consequences of their actions and instead tend to focus on short-term gains (Halpern-Felsher and Cauffman, 2001). Third, juveniles tend to be much more likely to participate in risky activity than are adults. Researchers suggest that juveniles place much less weight on risks and much more on rewards (Steinberg and Scott 2003, Halpern-Felsher and Cauffman, 2001). One explanation for the risky behavior patterns of adolescents is the fact that they tend to spend more time in groups and that they are more susceptible to pressure from these group members. Vinokur (1971) points out that juveniles are far more likely to make risky decisions when in groups than they are when alone. This is consistent with other
studies that suggest that most juvenile crime (unlike adult crime) is committed in groups (Zimring 2005). Finally, research also suggests that juveniles are far more impulsive than adults (Steinberg and Cauffman 1996).

While the above research suggests that cognitive and psychosocial functioning in adolescence is limited relative to adults, there is mounting evidence which suggests that differences between adults and juveniles may be more of a neurobiological issue. Studies of brain development show that the most important development of the brain during adolescence occurs in that region of the brain (specifically, the prefrontal cortex) that processes long-term planning, the regulation of emotion, impulse control, and risk-reward considerations and that development of this part of the brain takes place well into late adolescence (Spears 2000, Geidd et al. 1999). The important conclusion to draw from this evidence is that juveniles’ diminished decision-making capacities relative to adults may be due to differences in their psychological make-up that are biological in origin.

Together, research on adolescent development suggests that juveniles may have impaired decision-making capacities relative to adults. Thus, much like the mitigation of culpability typically granted to mentally retarded and mentally ill defendants, juveniles should be accorded consideration for the mitigating effects of impaired decision-making when being punished for their crimes.

The second factor that may mitigate culpability under the criminal law has to do with coercion. As mentioned above, a defendant is considered to be less culpable for their crimes if they are exposed to circumstances that impose extraordinary pressures on the individual. Because of the developmental immaturity associated with adolescents,
juveniles may be more susceptible to external pressure from others (i.e. peer groups). Thus, juveniles may be much more likely than adults to engage in criminal behavior at the suggestion of peers. Psychologist Lawrence Steinberg and law professor Elizabeth Scott (2003) suggest that juveniles’ claim to mitigation on the grounds that they are more likely to succumb to peer pressure is particularly compelling because as legal minors, “they lack the freedom that adults have to remove themselves from criminogenic settings” (see Fagan 2000 for a detailed discussion).

The final factor that mitigates the culpability of a defendant under the criminal law has to do with the character of the defendant. In addition to the mitigating effects of juvenile’s limited decision-making capacity and increased likelihood to succumb to external pressures, they also have character that is largely developing. The criminal law assumes that criminal conduct reflects an individual’s bad character and treats evidence to the contrary as mitigating (Steinberg and Scott 2003, Duff 1993). Given that several researchers have shown that the character of juveniles is still emerging (Steinberg 2002), the above assumption is inaccurate. It has been well noted that the process of character formation includes considerable experimentation (often with risky, illegal, and dangerous activities) over the course of adolescence and into young adulthood (Steinberg and Scott 2003). Criminology research that explores the relationship between age and crime is consistent with this psychological research. This research suggests that criminal behavior (without punishment, treatment, etc.) reduces as individuals enter adulthood (Farrington, 1986, Steffensmeier et al. 1989, Tittle and Grasmick 1997). Thus, juveniles who commit crimes should be considered less culpable than adults who commit similar crimes because
their behavior reflects character that is still substantially unformed relative to adults and 
their criminal behavior does not represent deep-seated moral deficiencies.

The above discussion suggests that punishment of juveniles as adults is only 
justifiable under the law if they are found to be as responsible for their actions as adults. 
Because developmental evidence suggests that this is an unreasonable assumption to 
make about juveniles, it seems unjustifiable to 1) make more aggressive transfer 
provisions or 2) give juveniles the same sanctions as adult criminals. The question is, 
then, why, given the discussion above, have some states reduced their commitment to 
treating juveniles categorically different from adult criminal offenders? In the following 
sections I will attempt to answer these questions by exploring three outcomes related to 
the treatment of juveniles in adult criminal court that should help develop our 
understanding of this process.
CHAPTER 3

JUVENILE PRISON ADMISSIONS

3.1 Introduction

Why do states vary so dramatically in the number of juveniles they send to adult prisons? Why, for instance, do some states sentence only a handful of young offenders in a particular year to adult prisons in some years (e.g. Massachusetts, Maine, New Hampshire, Utah), whereas other states send over 1,000 children a year (e.g. Texas, Florida, North Carolina, New York, Illinois)? Conventional explanations for such differences typically center on factors such as the size of the juvenile population or variation in juvenile crime. Unfortunately, even a cursory look at the data suggests that differences in juvenile crime rates cannot account for the variation in the number of juveniles admitted to prisons each year. So what factors can account for this variation?

Considering the enormous debate concerning the punishment of juvenile offenders as adults and the seriousness of removing a juveniles’ liberty through incarceration, it is surprising that only a handful of studies have attempted to answer these important questions. Those studies that have attempted to study this outcome, have relied almost
entirely on the analysis of a small number of jurisdictions and have primarily focused their attention on the number of children subjected to adult court jurisdiction. Those studies that have looked at juveniles in adult prisons have primarily discussed the subject on a descriptive level. No study that I am aware of has attempted to systematically test the variation in the number of juvenile offenders exposed to adult prisons across a large number of jurisdictions. This study begins to fill this gap in the literature by examining social and political factors that may account for the variation in the number of juveniles in adult prisons across jurisdictions and over time.

While the conventional explanations for the variation in the treatment of juvenile offenders suggests that the magnitude of the punitive response is simply a function of the levels of juvenile criminality, the possibility that alternative explanations may be useful in accounting for such variation in punishment have been largely ignored. It is clear from other studies of social control and punishment that alternative explanations do exist (c.f. Jacobs and Carmichael 2001, Carmichael 2005, Sutton 2000), but differences in the punishment of juveniles has failed to receive any significant attention.

There are several reasons it is meaningful to study variations in punitive outcomes for juveniles across jurisdictions. First, from a theoretical standpoint, it is important to know why, and under what circumstances, the state employs its power to punish. Such an understanding can provide valuable insights into the fundamental processes responsible
for the maintenance of social order. Specifically, we may ascertain whether the primary role of the formal crime-control apparatus is to punish infractions of widely held normative beliefs or to maintain the inequalities of the social order.

Studying the use of punishment may also improve our understanding of the role of the state more generally. The discussion in the first chapter of this dissertation outlined some of the alternative conceptions of the state. By studying the state's willingness to punish, it is possible to come to some conclusions about who the state is protecting when it employs one of its most powerful tools of social control (the removal of liberty through incarceration).

It is arguable that the question of social order is one of the most central theoretical problems in sociology. Social theorists who have attempted to construct comprehensive theories of society have been forced to address the means by which social order is maintained. Durkheim, for example, spent a considerable amount of time grappling with the fundamental aspects of social order and the role that punishment plays in maintaining that order. Studies that follow this tradition point out how punishment upholds broadly held sentiments pertaining to order. Weber also addressed this issue and claimed that the power to punish dissidents is the most crucial element of the state and that without such power the state would cease to exist. More recently, scholars have attempted to explain social order within the Marxist and neo-Marxist perspective (Garland 1990). These analyses uncover ways in which the penal system reinforces class divisions and ensures
ruling class dominance. The attention paid to this topic by social theorists suggests that the use of punishment to maintain order is a fundamental part of sociological theory and is therefore worthy of serious inquiry.

An examination of the punitive efforts directed toward juveniles is particularly interesting for many reasons. First, the recent trend away from adjudicating juveniles in a separate system of justice that recognizes their limited culpability for their transgressions is a shift we know very little about. While the conventional explanations suggest the movement away from the juvenile court is due primarily to the dramatic increases in the amount of violent crime committed by juveniles, no study has empirically tested this assumption. If the number of juveniles receiving serious sanctions from the state can be understood as a response to the size of the crime problem, then this relationship would provide support for the conventional wisdom, but if legally questionable factors such as race, ideological differences, or other extralegal factors also matter then we need to find alternative theoretical explanations to account for these influences.

While no effort has been made to test alternative explanations for the variation in juvenile punishment in criminal courts, some studies that deal with other crime-control efforts and other decision points in the criminal justice system should be a useful starting point. First, evidence from studies of police encounters with juveniles suggests that extra-legal factors may be playing a role in arrest decisions. An observational study, for instance, of these encounters showed that the discretion to arrest used by police officers was often affected by legal factors such as the prior offenses, but also by extra-legal factors such as race, and demeanor (Piliavin and Briar 1964). In fact, these researchers
suggest that officers themselves stated that over half of the decision to arrest was based on the demeanor of the juvenile. They also suggest that the racial differences in the arrest of young offenders was due to the fact that African American youth were more likely to be arrested than white youth because the latter was more likely to exhibit demeanor associated by officers with truly delinquent young people.

There is also evidence of extralegal factors influencing outcomes at other points of discretion in the processing of juvenile offenders as adults that may help guide the present study. Probably the most studied aspect of the treatment of juveniles as adults has been the transfer decision itself. This is of particular concern here because without a transfer to adult criminal court, juveniles would not be subject to the sanction at issue in this analysis. Those studies that have examined the determinants of the waiver decision have found that legal factors such as the seriousness of the offense and the number of prior infractions do have an influence on the decision (Poulos and Orchowsky 1994, Fagan and Deschenes 1990, Frazier, Bishop, and Lanza-Kaduce 1999). But these studies along with several others have also noted that extralegal factors play a role in the waiver process. Frazier (1988), for instance, shows that race plays a strong role in the decision to transfer some juvenile offenders to adult criminal courts. Perhaps the most striking example of discriminatory practices can be found when one examines the adjudication of minority youth in adult courts for drug offenses. Hopson and Obidah (2002) report that “despite using drugs at a lower rate than white youth (15.7% of Blacks, 16.5% of Hispanics and 19.6% of Whites aged 12-17 used drugs in the last year), 75% of juvenile defendant charged with drug offenses in adult court are Black, and, 95% of juveniles
sentenced to adult prison for drug offenses are minorities” (pg. 171). It is clear from this evidence that we should consider race in any analysis of juvenile punishment as adults.

Other studies of the waiver decision have focused their attention on the political factors that may create variation in the number of juveniles sanctioned in adult courts. Bortner (1986), for instance, suggests that organizational and political factors account for the high rates of remand in some jurisdictions rather than the traditional justification of community protection. Bortner identifies several key organizational and political factors that may influence the decision to remand juveniles to adult courts. First, from an organizational standpoint, remanding those juveniles that appear to be the worst offenders to adult court the juvenile court maintains credibility with the public and politicians and thereby helps to ensure its continued organizational acceptance and existence. One inference that can be made from this argument would be that those juvenile courts that are facing the greatest amount of scrutiny from the public and politicians will transfer more youth to adult courts in an effort to protect their organizations from an onslaught that may lead to a further curtailing of the juvenile court’s jurisdiction.

While the research discussed above provides some insight into the types of factors that could account for variation in the punishment of juveniles, none of them speak directly to the specific question I address in this analysis. One reason we know so little about the number of juveniles in prison has to do with data availability. Specifically, most state corrections departments do not record the age at which the inmate committed their
offense or the court processes that brought them to prison. This study overcomes this limitation and allows for an assessment of the number of juveniles in prison in most U.S. states.

In sum, the analytical objective of this study, then, will be to find out whether a relationship exists between theoretically derived indicators and the number of juveniles admitted to prison across states and over time and to see if such relationships persist after several measures of juvenile crime are held constant. Doing so will not only broaden our understanding of why some states have a greater propensity to use criminal sanctions against juveniles, but it will also provide greater insight into the role that formal sanctions play in the maintenance of social order. Because single factor explanations are not as effective as more extensive specifications, we must explore many hypotheses in this analysis. Johnston provides ample justification for such an approach by stating that “It is more serious to omit relevant variables than to include irrelevant variables since in the former case the coefficients will be biased, the disturbance variance overestimated, and conventional inference procedures rendered invalid, while in the latter case the coefficients will be unbiased, the disturbance variance properly estimated, and the inference procedures properly estimated. This constitutes a fairly strong case for including rather than excluding relevant variables in equations. There is, however, a
qualification. Adding extra variables, be they relevant or irrelevant, will lower the precision of estimation of the relevant coefficients” (1984, p. 262), therefore, a more inclusive specification will typically provide more conservative results.

3.2 Theorizing Juvenile Prison Admissions

While a number of social theories attempt to explain punishment, only a few important ones will be addressed here: consensus and conflict hypotheses as well as political explanations. The first theoretical approach I draw from is the consensus or legalistic approach. According to this perspective, laws are constructed to reflect a value consensus. The punishment enacted to enforce these laws comes as a response to violations of these widely shared views. Conflict theory, on the other hand, assumes that the legal order reflects the interests of the powerful and that the volume of punishment in a given jurisdiction is a response to perceived threats to the interests of the powerful. Political explanations attribute variations in punishment to partisan differences in the role of punishment and political tactics used to gain votes. The following discussion will explore these opposing theoretical approaches in detail.

The Consensus Approach: Consensus theory assumes that the majority of the individuals within a given society agree on what is right and wrong, and that the law is simply a codification of these agreed upon social values. The criminal justice system, according to this model, is the mechanism of control used when some members of society deviate from what is considered acceptable behavior. Hence, criminal punishment is a reflection of the magnitude of infractions against the collectively agreed upon legal order. The most widely used measure of these infractions is the crime rate. While it does not reflect
the true rate of crime, the official crime rates reported by various law enforcement agencies are the best means we have to measure criminal activity (Liska et al. 1981). At any rate, official crime statistics are typically the only avenue through which the public and authorities become informed about the extent to which crime is a problem in a given jurisdiction. The reported crime rates or arrest statistics are therefore likely to play a significant role in creating a general perception of the crime problem and may be responsible for systematic variations in the public demand for punitive measures (Liska et al. 1981).

While not directly concerned with the punishment of children, empirical evidence suggests that there is a positive relationship between crime rates and the size of formal crime-control mechanisms. Several studies, for example, report a positive relationship between crime rates and the size of police departments (Liska et al. 1981; Land and Felson 1976). Research that examines the effect of crime rates on levels of imprisonment has also found a significant positive association (Colvin 1990; Arvanites 1993; Jacobs and Helms 1996). If the consensus model is correct and if local jurisdictions respond to similar forces as the states, we can expect that juvenile prison admissions will be higher in those states with the most juvenile crime.

While the consensus approach stresses the importance of crime rates on punishment, proponents do concede that structural determinants such as income inequality, segregation, unemployment and race have an indirect effect on incarceration through crime. This assertion is based on the assumption that problematic social conditions like racial discrimination act to reduce legitimate economic opportunity. Groups faced with
these obstacles may be more likely to resort to illegitimate means which in turn lead to incarceration (Merton 1938). If this hypothesis is correct, we should expect that those states with the greatest amount of juvenile crime will have the most number of juveniles admitted to prison. Any direct association between extralegal factors and crime, however, would be inconsistent with the consensus approach. The next set of hypothesis differ from the consensus perspective in that they assume extralegal factors will directly influence punitive responses to crime.

**Minority Group Threat – Racial Threat**: Many theorists contend that the degree of threat associated with racial or ethnic groups is a function of the size of these groups relative to the dominant group. According to this position, negative racial attitudes and discrimination are brought about in part by a feeling that dominant racial groups have prerogatives that entitle them to a superordinate position within society. Minorities are seen as a threat to existing social arrangements because they may seek to redistribute social resources in their favor. Proponents argue that a large minority group threatens dominant members of a society because they compete with them for jobs and other economic resources. Blumer (1958) and Blalock (1967), for example, make theoretically based assertions that dominant racial groups are threatened by larger minority populations. Blalock claims that threat is related to minority group size because a large minority presence heightens perceived competition for jobs and other economic resources as well as increasing the possibility of successful collective action against the dominant group. Majority group members’ ethnocentric beliefs accentuate majority assumptions that they are entitled to exclusive claims over rights and resources (Bobo and
Hutchingson 1996). Hence, any attempt (perceived or otherwise) by racial or ethnic groups to redistribute these rights and resources is contested by majority members. To maintain their advantageous position, majority members will often use their political and economic resources to demand more repressive measures that are likely to target minorities.

Empirical work has provided strong support for these theoretical assertions. First, there is convincing evidence that links whites’ attitudes about African Americans and the perception of the crime problem to the size of this minority group. Studies have shown that whites’ hold criminal stereotypes of blacks and their lifestyles (Swigert and Ferrell 1976; Tittle and Curran 1988). Additional research reveals that, after holding crime constant, fear of crime is greater in cities with more African Americans (Liska, Lawrence, and Sanchirico 1982, Quillian and Pager 1996). Also, whites with higher levels of racial prejudice appear to have more punitive attitudes about crime (Cohen, Barkan, and Halterman 1991).

While research has provided evidence that whites are fearful of crime when a large minority population is present and that they are more punitive when they hold racially prejudiced attitudes, it does not show that this fear is translated into action. Some researchers have tried to establish whether majority group members can use their advantageous positions to shape criminal justice outcomes. The empirical evidence suggests that elite members of society are successful in their demands for more aggressive crime-control measures. Studies have found, for instance, that after controlling for crime, a positive relationship between the percentage of African
Americans in a community and the size of the police force exists (Jacobs 1979; Carroll and Jackson 1982; Jackson 1989; Liska, Lawrence, and Benson 1981). Others find a positive association between spending on corrections and the size of the non-white population (Jacobs and Helms 1999). Studies examining court outcomes have found a positive correlation between the percentage of blacks and sentencing length (Myers 1990; Chiricos and Crawford 1995; Chambliss 1995). Thus, when blacks make up a large proportion of the population, punishment efforts are strengthened, regardless of the crime rate.

The above discussion implies a political connection between racial threat and crime-control. Because policies related to crime control are enacted through the political process, it is assumed that majority group members are able to influence state actors to strengthen their efforts. If this is true, then one should expect that once minorities reach a certain proportion of the population, that they too could influence these particular political outcomes. Jackson (1989) adapts this threat explanation to include such a scenario and finds empirical evidence to support the claim. In a study of police expenditures in large U.S. cities, Jackson shows that expenditures on police increase until minorities become a numeric majority of the population. Once they reach this threshold, expenditures begin to decline. Jackson argues that once minorities have enough political power due to their larger number, they exert their influence by demanding reductions in crime-control measures they feel are largely directed at them in a discriminatory manner. If these findings are relevant to the treatment of young offenders, than we should expect to find that those jurisdictions with the most blacks will have the highest number of
juveniles admitted to adult prisons until they account for a sizable proportion of the population at which point there would be fewer juveniles sanctioned with prison terms.

But because, unlike some cities, there is no state in the U.S. where African Americans reach 50 percent of the population, this threshold affect would have to be lower.

**Ethnic Threat:** If whites perceive blacks as a threat, it is likely that other minority groups will also be seen as a threat. Hispanics are another minority that may be perceived as a threat by members of the majority (Anderson 1995). While the evidence for an ethnic version of the group threat hypothesis is less voluminous than the evidence for a racial threat, there is some evidence a perception of threat may exist. A series of recent articles by Lane and Meeker show that fear of crime in a set of southern California neighborhood was associated with the size of the Hispanic population after levels of crime were held constant (Lane and Meeker 2003a, Lane and Meeker 2003b). The researchers suggest that the stereotype of young Hispanic males as violent gang members was responsible for the increases in fear of crime associated with their presence. Thus, given the perceived threat associated with Hispanic presence, it seems reasonable to assume—if group threat hypothesis are correct-- that those jurisdictions with a sizable Hispanic population may have stronger crime-control measures because majority group members will use their economic and political power to pressure state actors to strengthen their crime fighting efforts. Much like the case with African Americans, however, Jacksons (1989) hypothesis about a threshold effect may also play a role here. We should assume then that a non-linear relationship between the size of the Hispanic population and the number of juveniles admitted to prisons. This non-linear relationship should take the shape of an
inverted U, where there is an increase in the number of juveniles admitted to prison until a certain threshold in the size of the Hispanic population is reached, at which point there should be a decrease.

There is some empirical evidence that supports this hypothesis. Research has shown, for example, that Hispanic presence increases law enforcement efforts on a variety of levels. Specifically, Jackson (1989) finds a significant relationship between the size of the Hispanic population and expenditures on police. Research also shows that imprisonment may be influenced by the presence of Hispanics. Jacobs and Carmichael (2001) provide evidence suggesting that fear of Hispanics may lead to more repressive control efforts by showing that imprisonment rates are greater in states with a large Hispanic population. Similarly, Carmichael (2005) shows that more people are admitted to jails in those cities where Hispanic presence is large. If crime-control measures directed at serious juvenile offenders being adjudicated in adult criminal courts follow similar processes, we should expect that those jurisdictions with the largest Hispanic presence will have a higher number of juveniles admitted to prison until they reach a sizable proportion of the population.

**Political Explanations:** While the group threat hypotheses discussed above have a political component, some theorists argue that the link between politics and punishment is more direct. Garland (1990) justifies a political approach to the study of punishment when he argues that criminal sanctions should not be seen narrowly as a reaction to the crime problem but rather as a political mechanism used to control the underclass. Because Foucault (1977) and others have argued that state punishment is a fundamental
component of political power, a better understanding of how that power is sustained and administered should increase our knowledge of the state’s power and its role in maintaining social order. More specifically, a study of punishment that emphasizes political explanations may help explain why it is that the punitive response to crime has taken place over the last several decades. Thus, examining political explanations in this study should be valuable.

Only a few studies have explored the explanatory power of political explanations for the variation in punishment. Most rely on the well noted partisan differences on the issue of crime-control to explain differences in punishment between jurisdictions and over time. With most Republicans subscribing to the get-tough on crime philosophy and most Democrats still holding out hope for a rehabilitative ideal, most researchers have noted an increase in punitive responses when Republican strength is high. At the national level, Jacobs and Helms (1996), find in their analysis of shifts in national prison admission rates that rates are higher in years when the Republican Party is strongest. Caldeira and Cowart (1980) found that since 1935, more money was spent on the criminal justice during Republican administrations than was spent during Democratic tenures.

At the state level, where the Republican Party is strongest, more tax dollars are spent on corrections and law enforcement than in those states where Democrats are dominant. Jacobs and Carmichael (2001) show that imprisonment rates are higher in states where Republicans control the state legislature. In another study (Jacobs and Carmichael 2002) these authors also report a positive association between Republican strength in the state legislature and the legality of the death penalty. If the same process can be applied to the
harsh treatment of juvenile offenders, then we should conclude that those states with a strong Republican presence in the state legislature will have a higher number of juvenile prison admissions.

Another political explanation stresses the ideological make-up of the states citizens. Because conservatives stress individual responsibility for criminal behavior, they are much more inclined than their liberal counterparts who stress the role that adverse social arraignments play in producing crime, to demand harsh penalties for serious transgressions (Garland 1990). Conservatives demand for more severe punishment for crime rests on the assumption that rational individuals choose crime after making a cost-benefit calculus. This logic, in turn, leads to the logic that an increase in the cost of committing a crime should reduce the likelihood that an individual will choose crime over legal alternatives. Additionally, conservatives believe that human nature is fixed and therefore the possibility for rehabilitation is unlikely (Thorne 1990). Thus, the goal of punishment should be to incapacitate the most serious offenders so they can not continue to harm others.

Unlike conservatives, liberals are much more optimistic about the ability of the state to rehabilitate offenders. They are also much less inclined to support harsh penalty for crime and are particularly averse to the death penalty (Langworthy and Whitehead 1986). Instead, liberals stress that a substantial reduction in crime requires an alleviation of the social problems that lead to crime such as poverty, unemployment and income inequality (Thorne 1990). Thus, severe punitive sanctions may be more likely in those jurisdictions that where a conservative ideology that supports get-tough policies is more prevalent.
Despite the plausibility of such an assumption, few studies have attempted to study the relationship between a conservative public and the legal code. Those few studies that have tested this assumption have provided rather strong support for the idea that a conservative public will demand harsh criminal penalties. Jacobs and Carmichael (2002) find that a legal death penalty is more likely in those states with a conservative public. Additionally, Jacobs and Carmichael (2004) show that states with a more liberal public are significantly more likely to have zero death sentences. If we can apply these findings to the treatment of juvenile offenders in adult courts then we should expect that those states with a more conservative public will admit more juveniles to adult prisons than those with a liberal public.

The final political explanation I will discuss pertains to the impact that judicial selection may play in the severity of punitive responses to crime. In most states, trial judges are elected to their office. The type of election varies across these states. In some states, judges run against opponents in partisan elections. In others, they run in non-partisan elections. Another alternative for the selection of judges is a retention election where the citing judge runs unopposed but the voters can remove the judge in the election. The alternative to judicial selection via election is appointment by the governor or legislature. Several scholars have noted the risks to judicial independence when judges have to run in political campaigns to seek and maintain their office. Many have provided evidence that suggests judges in jurisdictions where they must run for election are more susceptible to public demands for harsh punishment for offenders. Brace and Hall (1997) support this assertion when they argue that “soft” judges who ignore public
support for harsh punishment for crime are vulnerable to loosing their seat upon election. There is also empirical evidence to support these claims. Hall (1992) found that state appellate judges were less likely to overturn death penalty verdicts in states with short election cycles. Huber and Gordon (2004) show that felony sentences became more severe the closer judges were to their election date.

Two hypotheses can be generated from these finding. First, we should assume that those jurisdictions *where judges must run in an election to gain their seat will admit more juveniles to adult prisons*. And because judges may be more punitive when they have to face the voters in a shorter amount of time we may expect to find that those *states with a shorter election cycles may admit more juveniles to prison*.

**Controls:** I also introduce a number of controls into the analysis. The first is a control for the size of the juvenile population. It is plausible to assume that those jurisdictions with more juveniles will have more juveniles that are involved in the kinds of serious crime that would lead them to the adult criminal courts. Thus, we should assume that states with more youth will have more juveniles admitted to prison. I also introduce a control for regional differences in the incarceration of young offenders. Prior research on the criminal justice system shows that cultural differences exist across regions of the U.S. that may affect punitive outcomes (c.f. Jackson 1989, Klofas 1990). Entering a control for regional differences will help assure that the variation across states is not simply due to the cultural differences that may exist across regions.

I also include a control for each states fiscal capacity. This control is useful in that it holds constant the variation that exists across states in their ability to finance large
corrections departments. It is plausible that some of the variation that exists in the punishment of juveniles could be due to the fiscal constraints that some state have relative to other states. Holding fiscal strength constant will ensure that the variation that exists across states is not simply a function of the states ability to fund correctional facilities. We should expect to see a positive association between the fiscal capacity of a state and the number of juveniles admitted to prison.

3.3 Data and Measure
To test the above hypothesis, I compiled a panel dataset for the years 1983 to 2001 that includes data for all 50 states. Because of missing data, the total number of states in this analysis is 29. Federal facilities and those in the District of Columbia were not included in the analysis.

Unit of Analysis: Because the most appropriate approach to the study of criminal justice organizations involves an examination of the characteristics of the communities they serve, I use the state as the unit of analysis. The state is the most appropriate unit of analysis for a number of reasons. First, prisons themselves are state-level phenomena. Individuals are admitted to state operated facilities not county or some other level. Second, the sentencing schemes that trial judges are beholden to are designed by state legislatures.

An additional justification for using the state as the unit of analysis concerns the nature of the theories I test in this study. Given that this dissertation is primarily interested in how political factors are associated with punitive action toward juvenile offenders, it is important to use the unit where much of the political process associated
with this outcome is originated. In the case of criminal justice policy this would be the state since all relevant procedures are designed at the state level by state legislators. Thus, it is the political arrangements at the state that should produce the most important results.

**Advantages of Panel Data:** Before operationalizing the variables tested in this analysis, it is useful to note the particular advantages that the use of panel data has over cross-sectional design. Hsiao (2003) identifies several major advantages to using panel data. First, panel data increases the degrees of freedom by increasing the overall number of cases. If, for example, a cross-sectional design on states were employed the number of cases would be reduced to just 50 cases. By using a panel design with annual data for, say 10 years, would increase the number of cases to 500. This increase in the number of cases allows for both an increase in the reliability of the estimates and the ability to use substantially more explanatory variables.

Another benefit of panel data is its ability to overcome problems with heterogeneity due to misspecification which leads to biased estimates. In fact, Kennedy (2003) claims that the ability of panel data to deal with the problems associated with omitted variables is the most important advantage of a panel design. Hsiao (2003), also claims that panel data, by combining both cross-sectional and over time variation that creates more variation, reduces the problems of multicollinearity that are often associated with both cross-sectional and time-series data. Finally, unlike cross-sectional data, panel data
allows us to examine dynamic sociological relationships. Thus, the benefits associated with panel design to assess the outcome at issue here should produce the most reliable estimates.

**The Dependent Variables:** The dependent variable is the number of juvenile admitted to state prisons and is measured using raw counts of these events (see the estimation section for justification of using raw counts). The data for the dependent variables come from the National Corrections Reporting Program Series (NCRP) compiled by the U.S. Department of Justice’s Bureau of Justice Statistics (BJS) and housed at the University of Michigan’s Inter-University Consortium for Political and Social Research (ICPSR). The NCRP is a voluntary survey given to the department of correction departments in all 50 states. The survey began in 1983 and the most recent survey is in 2001. All available years are used in this analysis.

The purpose of the NCRP is to gather data on all prisoners entering the custody of state and federal authorities. The data gathered refer to every prisoner admitted to prison in each participating state in a given year. Variables include incarceration history, current offenses, and total time served. Background information is also included on all individuals including year of birth, sex, age, race, Hispanic origin, and educational attainment.

The individual level data from the NCRP was aggregated to the state level to obtain a count of the number of juvenile offenders admitted to state prison in a given year. Because the date of offense was not part of the data gathering process it is impossible to directly identify the exact number of individuals admitted to prison that committed their
offense as a juvenile. The only relevant data is the age the individual was admitted to prison. To calculate the number of juveniles admitted to prison I aggregated all individuals admitted to prison on or before 18 and one-half years of age (18.5 years) with the assumption that individuals at this age would have likely committed the offense as juveniles. The additional six months assumes that the period between arrest and trial, the time required for transfer from juvenile to an adult court, trial time, time between trial and sentencing and time before admission would be (conservatively) more than six months. Thus, given the time associated with the legal process, those admitted to prison at the age of 18 and one-half years of age and younger likely committed their offense as juveniles.

One additional attribute of the dependent variable is associated with the number of states participating in the study. Because the NCRP is a voluntary survey it is not completed by every state in each year the program was administered. In no year did every state participate in the study but participation did improve over time. In 1983 (the first year NCRP was conducted) 29 states participated in the survey. By 2001 (the most current data file) 37 states participated. For statistical accuracy, I restrict the sample to those 29 states that have participated in the study consistently since 1983. Table 3.1 identifies those states that are in the sample and those that are excluded.
Table 3.1: Sample of States

<table>
<thead>
<tr>
<th>Sample of States (n=29)</th>
<th>Not in Sample (21 states)</th>
</tr>
</thead>
<tbody>
<tr>
<td>AL MD NE RI WI</td>
<td>AK IN NM</td>
</tr>
<tr>
<td>CA MA NH SD</td>
<td>AZ IA OK</td>
</tr>
<tr>
<td>CO MI NC TN</td>
<td>AR KS PA</td>
</tr>
<tr>
<td>DE MN ND TX</td>
<td>CT LA SC</td>
</tr>
<tr>
<td>GA MS NY VA</td>
<td>FL ME UT</td>
</tr>
<tr>
<td>IL MO OH WA</td>
<td>HI NV VT</td>
</tr>
<tr>
<td>KY MT OR WV</td>
<td>ID NJ WY</td>
</tr>
</tbody>
</table>

While a number of states are excluded from the analysis because they declined to participate in the NCRP, those that do respond to the survey represent all regions of the U.S. and are among the largest and smallest states. Thus, it is plausible to assume that the results from the analysis should be generalizable to all U.S. states.

The Explanatory Variables: With few exceptions, annual data for all of the explanatory variables was collected. Annual data for those variables that were not available on an annual basis were obtained through linear interpolation to fill in the missing years. The measures for the explanatory variables are as follows:

Control for population at risk: All models include a control for population at risk. Including this term is useful not only because it identifies the size of the group at risk but because, as was mentioned above, its inclusion effectively makes the dependent variable a rate (the number of juveniles admitted to prison with the juvenile population as a base). The indicator used to measure the at-risk population was the number of juveniles 10-17
years of age. Two rationales were used to justify the use of the population ages 10-17 years as opposed to the population under age 18. First, ten is the youngest age at which, according to state statutes, juvenile offenders are at risk of being transferred to the adult criminal system for adjudication. Second, prior research on juveniles and the criminal justice system have used the same age range as a base in their research (OJJDP 1999). Data for this measure was obtained from the U.S. Census Bureau.

Social threat explanations: Social threat is measured using two indicators. First, to measure racial threat I use the percentage of the population that is African American according to the U.S. Census. To test for a non-linear effect, I also include a squared term for the percentage Black. To assess ethnic threat I use the percentage of the population that is Hispanic. I also include a squared term to ascertain whether or not the presence of Hispanics influences juvenile prison admissions in a non-linear fashion. The non-linear relationship is assumed because prior research (Jackson 1989) suggests that the relationship between minority group size and crime control outcomes may be quadratic.

Legalistic explanations: I use several measures to assess the influence of juvenile crime on the variation in juvenile prison admissions. Because no readily available data source provides statistics for the juvenile crime rates, the only reliable way of measuring juveniles’ involvement in crime is to use arrest statistics. Several categories of crime are assessed with these arrest statistics. These include the arrest rate for violent crime,
property crime, and arrest rates for Part II offenses. Part II offenses are often described as public order offenses and include, for example, offenses such as simple assault, stolen property, trespassing, public drunkenness, disorderly conduct, and prostitution.

I also include a measure of juvenile crime that considers how much of the overall crime juveniles are committing. It seems plausible that some jurisdictions may be “cracking down” on juvenile crime not because juveniles are committing a significant number of offenses relative to the size of the juvenile population, but rather because young offenders are accounting for a more significant share of the overall number of serious crimes. In some jurisdictions for some years, for example, juveniles account for more than one-third of all the arrests for violent crime (e.g. Illinois, Maryland, and Pennsylvania). It is plausible, then, that political actors who control the courts as well as the public may be more alarmed by these particular statistics in these states and demand harsh sanctions for juveniles. I therefore expect to find that those states where juveniles commit a higher proportion of overall serious crime will admit more juvenile offenders to adult prisons.

Most juvenile arrest statistics are in rate form with the juvenile population ages 10-17 as the base. The exception is the share of overall crime that juvenile account for. This data will be a percentage. The data for arrest rates was taken from the FBI’s Uniform Crime Reports (UCR) arrest files that summarize yearly arrests by police officers in most jurisdictions in the United States.

Political Explanations: These include measures of citizen ideology, republican strength and judicial selection. Citizen ideology is measured using Berry et al.’s (1998) data. The
Berry measure is the only published longitudinal state-level indicator of citizen ideology. The measure calculates a score for each state ranging from 0 (most conservative) to 100 (most liberal). Scores are based on the ideological position of each member of Congress using interest group rating taken from Americans for Democratic Action (ADA) and the Committee on Political Education (COPE). An estimated ideology score is obtained for a challenger to the incumbent based on the average ideological score of all incumbents in the state from the same party. A district score is calculated by averaging the ideological scores of both candidates and weighting them based on each candidate’s share of support in the district. State-level ideology scores are then obtained by taking the average ideological score for each district. While a number of political scientist have been critical of this particular measure of citizen ideology, largely because they prefer ideological self-identification as an alternative, those studies that have attempted to assess the validity of the Berry measure have shown that it is highly correlated with self-report measures in the states and years where there is comparable data (Meinke, Staton, and Wuhs 2005).

**Additional variables:**

- A dummy variable is entered for the South (Census) to capture otherwise unmeasured cultural factors.
- To capture a states fiscal capacity, I use median household income taken from the Census.
- A dummy variable that identifies the 1990s is also included to ascertain whether or not any of the findings are period specific and to control for over-time trends.
3.4 Estimation

The estimation technique used to assess the hypotheses discussed above is negative binomial regression. This is the most appropriate procedure to employ when the dependent variable is a count. Negative binomial regression is superior to Ordinary Least Squares regression (OLS) for several reasons. First, since OLS assumes a normal distribution that is unlikely to be the case because some states have zero, or very few, juveniles admitted to prison in some years, the distribution is skewed toward small counts. This skewness violates OLS assumption about normality and will produce biased and inconsistent estimates in such cases (Long 1997, Osgood 2000). Because negative binomial estimators assume a Poisson distribution that is skewed it will be a more efficient estimator in this case.

A second reason negative binomial regression is the best estimator when analyzing rare events is because it treats the outcome as a count instead of a rate. Osgood (2000) suggests that analyzing rare events in rate form can produce a number of problems including an increase in heterogeneity. This is the case because small counts lead to higher error variance (which violates the OLS assumption of homogeneity). Osgood (2000) suggests that this is the case because the error variance is influenced by population size when rates are generated based on small counts. Thus, ratios based on rare events can produce significant outliers that degrade the estimates. Techniques based on the Poisson distribution (like negative binomial regression) do not assume homogeneity of variance. Rather residuals are expected to be a function of the particular number of
events and the size of the population (Osgood 2000). Poisson based models are built on the assumption that the underlying data take the form of non-negative integers with a small mean which is the case with the outcome being analyzed here.

Negative binomial regression (NBR) was chosen over alternative count estimators for a number of reasons. First, the traditional count estimator, Poisson regression, is limited in that it assumes the mean of the outcome is equal to the variance. In practice, however, the variance often exceeds the mean when analyzing rare events. This produces a condition known as “overdispersion”. Using Poisson to estimate an outcome when overdispersion is present produces inefficient standard errors for the coefficients and hence unreliable significance tests (Cameron and Trivedi 1986). NBR overcomes this weakness by allowing the variance to exceed the mean. This is accomplished by adding an error term to the traditional Poisson regression model that captures unobserved heterogeneity. A look ahead to Table 3.2 shows that the variance of the dependant variable is much higher than the means which suggests that overdispersion is present. Thus, NBR is the most appropriate estimator for this particular analysis.

**3.5 Specification**

The following is a general specification for the juvenile admissions model:

\[
NJUVADMIT = b_0 + b_1 \text{PERBLACK} + b_2 \text{PERBLKSQ} + b_3 \text{LNPERHISP} + b_4 \\
\text{LNPERHISPSQ} + b_5 \text{JUVPOP} + b_6 \text{JUVARRESTVIOL} + b_7 \text{JUVARRESTPROP} + b_8 \\
\text{JUVARRESTPII} + b_9 \text{JUVPROPVIOL} + b_{10} \text{CITIDEOLOGY} + b_{11} \text{REPLEG} + b_{12} \\
\text{JUDGESEL} + b_{13} \text{JUDGETERM} + b_{14} \text{STH} + b_{15} \text{MEDINC} + b_{16} \text{Y90s} + e
\]

Where \(NJUVADMIT\) is the count of the number of juveniles admitted to state prisons,
PERBLACK is the percentage of the population that is African American, PERBLKSQ is the square of the percentage African American, LNPERHISP is the natural log of the percentage of the population that is Hispanic, LNPERHISPSQ is the natural log of the square of the percentage Hispanic, JUVPP is the juvenile population ages 10-17 years, JUVARRESTVIOL is the juvenile arrest rate for violent crime, JUVARRESTPROP is the juvenile arrest rate for property crime, JUVARRESTPII is the juvenile arrest rate for part II offenses, JUVPROPVIOL is the percentage of all violent crime that juveniles account for, CITIDEOLOGY is the Berry et al. measure of citizen ideology, REPLEG is the percentage of the state legislature that is Republican, JUDGESEL is a dummy coded “1” if trial judges in the state must run for some type of election to gain and retain their seats, JUDGETERM is the length of trial judges term, STH is a dummy coded “1” if the state is in the South as determined by the U.S. Census bureau, MEDINC is median household income, and Y90s is a dummy coded “1” for all years in the 1990s.

3.6 Descriptive Statistics

Table 3.2 provides a summary of the means, standard deviations and the expected direction of the relationships between each variable and the number of juveniles admitted to prisons. The table also includes both cross-sectional and over-time variation as well as the minimum and maximum values. We see from this table that positive relationships are expected between most explanatory variables and the number of juveniles admitted to
prison. The only exceptions to this is the squared terms for the percentage black and Hispanic, citizen ideology (only because the coding of this variable places a higher value for those states with more liberal citizens), and the length of term for trial judges.

In Table 3.2, we see that the mean number of juveniles admitted to prisons in each state is about 237 per year. This varies widely among the states. With a number of states admitting no juveniles to prison in some years and others admitting as many as 1700 (North Carolina in 1994). Figures 3.1 and 3.2 show how the magnitude of juveniles admitted to prisons has varied at the national level over the last couple of decades. Table 3.3 identifies the number of juveniles admitted to prison by year. We see from the table that there was a substantial increase in juvenile admissions beginning in the mid to late 1980s and that these levels were largely maintained until the late 1990s. Table 3.4 places juvenile admissions in rate form. A similar trend is present so we can assume that the fluctuation is not simply due to demographic shifts in the juvenile population over time.
<table>
<thead>
<tr>
<th>Variable</th>
<th>Predicted Sign</th>
<th>Mean</th>
<th>Std. Dev.</th>
<th>Min</th>
<th>Max</th>
</tr>
</thead>
<tbody>
<tr>
<td># of Juveniles Admitted to Prison</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>overall</td>
<td>236.73</td>
<td>318.18</td>
<td>0.00</td>
<td>1770.00</td>
<td>1274.47</td>
</tr>
<tr>
<td>between</td>
<td>313.37</td>
<td>3.00</td>
<td>-541.54</td>
<td>787.46</td>
<td></td>
</tr>
<tr>
<td>within</td>
<td>115.89</td>
<td>0.57</td>
<td>8.54</td>
<td>14.03</td>
<td></td>
</tr>
<tr>
<td>% Black</td>
<td>+</td>
<td>11.16</td>
<td>9.81</td>
<td>0.25</td>
<td>37.50</td>
</tr>
<tr>
<td>overall</td>
<td>313.37</td>
<td>0.06</td>
<td>1274.47</td>
<td></td>
<td></td>
</tr>
<tr>
<td>between</td>
<td>9.79</td>
<td>0.25</td>
<td>36.22</td>
<td></td>
<td></td>
</tr>
<tr>
<td>within</td>
<td>0.57</td>
<td>8.54</td>
<td>14.03</td>
<td></td>
<td></td>
</tr>
<tr>
<td>% Black Squared</td>
<td>-</td>
<td>220.65</td>
<td>321.21</td>
<td>0.06</td>
<td>1406.31</td>
</tr>
<tr>
<td>overall</td>
<td>316.01</td>
<td>0.06</td>
<td>1312.34</td>
<td></td>
<td></td>
</tr>
<tr>
<td>between</td>
<td>24.91</td>
<td>86.70</td>
<td>375.72</td>
<td></td>
<td></td>
</tr>
<tr>
<td>within</td>
<td>2.17</td>
<td>9.06</td>
<td>3.50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ln % Hispanic</td>
<td>+</td>
<td>1.03</td>
<td>0.99</td>
<td>-0.92</td>
<td>3.28</td>
</tr>
<tr>
<td>overall</td>
<td>9.79</td>
<td>0.25</td>
<td>36.22</td>
<td></td>
<td></td>
</tr>
<tr>
<td>between</td>
<td>0.99</td>
<td>-0.63</td>
<td>2.01</td>
<td></td>
<td></td>
</tr>
<tr>
<td>within</td>
<td>0.29</td>
<td>0.25</td>
<td>2.01</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ln % Hispanic Sq.</td>
<td>-</td>
<td>2.24</td>
<td>2.17</td>
<td>0.08</td>
<td>3.70</td>
</tr>
<tr>
<td>overall</td>
<td>24.91</td>
<td>86.70</td>
<td>375.72</td>
<td></td>
<td></td>
</tr>
<tr>
<td>between</td>
<td>2.17</td>
<td>9.06</td>
<td>3.50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>within</td>
<td>0.61</td>
<td>1.11</td>
<td>4.52</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juvenile Population (10-17)</td>
<td>+</td>
<td>682,798</td>
<td>690,189</td>
<td>60,872</td>
<td>4,152,151</td>
</tr>
<tr>
<td>overall</td>
<td>663,402</td>
<td>61,007</td>
<td>3,469,108</td>
<td></td>
<td></td>
</tr>
<tr>
<td>between</td>
<td>80,250</td>
<td>292,899</td>
<td>1,365,841</td>
<td></td>
<td></td>
</tr>
<tr>
<td>within</td>
<td>80,250</td>
<td>292,899</td>
<td>1,365,841</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juv. Arrest Rates for Violent Crime (10-17)</td>
<td>+</td>
<td>24.59</td>
<td>16.50</td>
<td>1.54</td>
<td>91.55</td>
</tr>
<tr>
<td>overall</td>
<td>15.24</td>
<td>4.97</td>
<td>68.06</td>
<td></td>
<td></td>
</tr>
<tr>
<td>between</td>
<td>7.46</td>
<td>-2.00</td>
<td>48.07</td>
<td></td>
<td></td>
</tr>
<tr>
<td>within</td>
<td>2.17</td>
<td>9.06</td>
<td>3.50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juv. Arrest Rate for Property Crime (10-17)</td>
<td>+</td>
<td>199.57</td>
<td>97.35</td>
<td>14.39</td>
<td>516.04</td>
</tr>
<tr>
<td>overall</td>
<td>84.63</td>
<td>76.78</td>
<td>406.83</td>
<td></td>
<td></td>
</tr>
<tr>
<td>between</td>
<td>46.44</td>
<td>-152.51</td>
<td>346.99</td>
<td></td>
<td></td>
</tr>
<tr>
<td>within</td>
<td>2.17</td>
<td>9.06</td>
<td>3.50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juv. Arrest Rate for Part II Offenses (10-17)</td>
<td>+</td>
<td>183.34</td>
<td>113.94</td>
<td>8.88</td>
<td>801.33</td>
</tr>
<tr>
<td>overall</td>
<td>96.18</td>
<td>48.42</td>
<td>559.17</td>
<td></td>
<td></td>
</tr>
<tr>
<td>between</td>
<td>53.22</td>
<td>-214.85</td>
<td>425.50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>within</td>
<td>53.22</td>
<td>-214.85</td>
<td>425.50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juvenile's Share of All Arrest for Violent Crime</td>
<td>+</td>
<td>17.14</td>
<td>6.34</td>
<td>3.91</td>
<td>41.06</td>
</tr>
<tr>
<td>overall</td>
<td>5.38</td>
<td>8.21</td>
<td>33.85</td>
<td></td>
<td></td>
</tr>
<tr>
<td>between</td>
<td>3.31</td>
<td>5.72</td>
<td>35.33</td>
<td></td>
<td></td>
</tr>
<tr>
<td>within</td>
<td>13.55</td>
<td>26.47</td>
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<td>18.67</td>
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<td>5.38</td>
<td>8.21</td>
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<td>5.72</td>
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<tr>
<td>% Republican in State Legislature</td>
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<td>42.29</td>
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<td>15.26</td>
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<td>between</td>
<td>6.83</td>
<td>19.26</td>
<td>65.45</td>
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<td>within</td>
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<td>16.00</td>
<td>4.57</td>
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<td>Judicial Selection (1=election)</td>
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<tr>
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<td>0.49</td>
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<td>1.00</td>
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<tr>
<td>between</td>
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<td>0.66</td>
<td>0.66</td>
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<td>5.83</td>
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</tr>
<tr>
<td>overall</td>
<td>7.82</td>
<td>2.00</td>
<td>50.00</td>
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</tr>
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<td>between</td>
<td>7.82</td>
<td>2.00</td>
<td>50.00</td>
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<td>7.86</td>
<td>2.00</td>
<td>50.00</td>
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<td></td>
</tr>
<tr>
<td>I=1990s</td>
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<td>0.00</td>
<td>1.00</td>
<td></td>
<td></td>
</tr>
<tr>
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<td>0.49</td>
<td>0.00</td>
<td>1.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I= South</td>
<td>+</td>
<td>0.37</td>
<td>0.48</td>
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</tr>
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<td>0.49</td>
<td>0.00</td>
<td>1.00</td>
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<td></td>
</tr>
<tr>
<td>between</td>
<td>0.49</td>
<td>0.00</td>
<td>1.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>within</td>
<td>0.49</td>
<td>0.00</td>
<td>1.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Median Household Income</td>
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<td>31,395</td>
<td>8,067</td>
<td>14,787</td>
<td>54,535</td>
</tr>
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<td>overall</td>
<td>5,897</td>
<td>19,124</td>
<td>50,075</td>
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<tr>
<td>between</td>
<td>6,399</td>
<td>17,958</td>
<td>50,498</td>
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<tr>
<td>within</td>
<td>6,399</td>
<td>17,958</td>
<td>50,498</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 3.2: Predicted Signs, Means and Standard Deviations for Juvenile Admission Models
Figure 3.1: The Number of Juveniles Admitted to Adult Prisons in 26 States from 1983-2001.
Figure 3.2: The Rate of Juveniles Admitted to Prison per 10,000 Juveniles in 26 States from 1983-2001

Other descriptive from Table 3.2 are interesting to note as well. While the mean percentage of African American in the states used in this study is just over 11 percent, the percentage varies dramatically across the states. Mississippi has the highest percentage Black with this group accounting for over 37 percent of the total state population. In fact, there are six states where Blacks are more than 25 percent of the population (South Carolina, Alabama, Georgia, Louisiana, Maryland, and Mississippi). There are many states, however, that have few African Americans. There are eleven states where Blacks account for less than 1 percent of the total population (Hawaii, Idaho, Maine,
Minnesota, Montana, New Hampshire, North Dakota, South Dakota, Utah, Vermont and Wyoming). The Hispanic population is geographically concentrated as well. New Mexico has the largest Hispanic presence at 43 percent. Hispanics account for over one-quarter of the population in a number of states (e.g. CA-34%, TX-31%, AZ-27%). Conversely, there are twenty states where Hispanic presence is less than one percentage point.

The mean score for citizen ideology in the sample states is 49. This suggests that these states lean conservative. Some of the most conservative states, according to this scale, are Mississippi (7), Kentucky (8), and Oklahoma (9), Georgia (9). The most liberal are: Vermont (95), Rhode Island (79), Massachusetts (76). Table 3.2 also shows that, on average, Republicans account for just over 42% of the states legislative offices, but they account for as little as 4.6 percent (Mississippi 1982) and as great as 81 percent (Utah 1985). Finally, the table shows that trial judges are elected in about two out of three of the states in the sample and they serve an average term of approximately 8 years.

Figure 3.1 highlights the relationship between the presence of African Americans and judicial selection by indicating the mean number of juveniles admitted to prison based on selection type and quartiles of the percentage Black. The table shows that states with a large percentage of Blacks admit nearly 10 times more juveniles to prison than those states with few Blacks (mean of 225 vs. a mean of 22). We also see that states where judges must run in an election to gain their seats admit far more juveniles to prison than those states where judges do not have to face the voters. In fact, the mean number of juveniles admitted to prison in states where judges are elected that also have the most
Blacks is the highest of any category. This tentatively suggests that we should expect to see a rather strong relationship between the presence of African Americans and judicial elections and juvenile prison admissions. The next set of analyses will determine if these results persist after holding constant the effects of other explanations.

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<th>Quartiles of % Black</th>
<th>Judicial Elections</th>
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<td></td>
<td>0</td>
</tr>
<tr>
<td>1</td>
<td>22</td>
</tr>
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<td>2</td>
<td>51</td>
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<td>3</td>
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<td>4</td>
<td>225</td>
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<tr>
<td></td>
<td>(64)</td>
</tr>
<tr>
<td>Total</td>
<td>97</td>
</tr>
<tr>
<td></td>
<td>(223)</td>
</tr>
</tbody>
</table>

Anova F Test = 75.21, significant >=.000.

Table 3.3: Mean Number of Juveniles Admitted to Prison by Quartiles of % Black and by the Presence or Absence of Judicial Elections (number of state years in parentheses).

### 3.7 Negative Binomial Regression Results

Table 3.5 presents the results from the negative binomial regression models. Model 1 includes measures of racial and ethnic threat as well as a control for the juvenile population. Model 1 shows that the size of the juvenile population contributes significantly to the number of juveniles admitted to prison. In this model I also find that the measure of racial threat is a significant predictor of juvenile prison admissions.
<table>
<thead>
<tr>
<th>Conflict Variables</th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
<th>Model 4</th>
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<td>% Black</td>
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<td>.188***</td>
<td>.180***</td>
<td>.211***</td>
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<tr>
<td></td>
<td>(.043)</td>
<td>(.047)</td>
<td>(.047)</td>
<td>(.045)</td>
</tr>
<tr>
<td>% Black Squared</td>
<td>-.003**</td>
<td>-.003**</td>
<td>-.003**</td>
<td>-.004***</td>
</tr>
<tr>
<td></td>
<td>(.001)</td>
<td>(.001)</td>
<td>(.001)</td>
<td>(.001)</td>
</tr>
<tr>
<td>Ln % Hispanic</td>
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<td>.546*</td>
<td>.680**</td>
<td>.788***</td>
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<tr>
<td></td>
<td>(.224)</td>
<td>(.238)</td>
<td>(.264)</td>
<td>(.224)</td>
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<tr>
<td>Ln % Hispanic Squared</td>
<td>-.245**</td>
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<td>-.219*</td>
<td>-.244**</td>
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<tr>
<td></td>
<td>(.096)</td>
<td>(.097)</td>
<td>(.108)</td>
<td>(.087)</td>
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<td>Juvenile Population (10-17 yrs.)&lt;sup&gt;a&lt;/sup&gt;</td>
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<td>.007***</td>
<td>.006***</td>
<td>.006***</td>
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<tr>
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<td>(.002)</td>
<td>(.002)</td>
<td>(.002)</td>
<td>(.002)</td>
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<td>Crime &amp; Disorder Variables</td>
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<td>Arrest Rate for Violent Crime of</td>
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<td></td>
</tr>
<tr>
<td>Juveniles (10-17 yrs.)</td>
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<td></td>
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</tr>
<tr>
<td></td>
<td></td>
<td>-.001</td>
<td>-.001</td>
<td>-.002</td>
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<tr>
<td></td>
<td></td>
<td>(.006)</td>
<td>(.005)</td>
<td>(.005)</td>
</tr>
<tr>
<td>Arrest Rate for Property Crime of</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juveniles (10-17 yrs.)</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>-.001</td>
<td>-.001</td>
<td>-.001</td>
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<td>(.001)</td>
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<td>Arrest Rate for Part II Offenses of</td>
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<td></td>
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<tr>
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<td>.001</td>
<td>.001</td>
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<tr>
<td></td>
<td></td>
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<td>(.001)</td>
<td>(.001)</td>
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<td>% of All Arrests for Violent Crime of</td>
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<td>.009*</td>
<td>.008*</td>
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<tr>
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<td>(.005)</td>
<td>(.004)</td>
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<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>-.002</td>
<td>-.002</td>
<td>-.003*</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.002)</td>
<td>(.002)</td>
<td>(.001)</td>
</tr>
<tr>
<td>Republican Legislature</td>
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<td></td>
<td></td>
<td>-.002</td>
<td>-.002</td>
<td>-.003</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.004)</td>
<td>(.004)</td>
<td>(.003)</td>
</tr>
<tr>
<td>Judicial Selection (1= Elected)</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>.830**</td>
<td>.750**</td>
<td>.750**</td>
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<tr>
<td></td>
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<td>(.309)</td>
<td>(.294)</td>
<td>(.294)</td>
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<tr>
<td>Judicial Length of Term</td>
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<tr>
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<td>-0.042***</td>
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<td>-0.042***</td>
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<tr>
<td></td>
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<td>1=1990s</td>
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<td>(.030)</td>
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</tr>
<tr>
<td>1=Southern Region (Census)</td>
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<td></td>
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<td>Median Household Income&lt;sup&gt;a&lt;/sup&gt;</td>
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</tr>
<tr>
<td></td>
<td>2.727***</td>
<td>2.370***</td>
<td>2.082***</td>
<td>2.606***</td>
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<td>(.212)</td>
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<td>(.511)</td>
<td>(.424)</td>
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<td>404</td>
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<td>Model $\chi^2$</td>
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<td>239.89***</td>
<td>482.74***</td>
<td>418.74***</td>
</tr>
</tbody>
</table>

* $P \leq .05$; ** $P \leq .01$; *** $P \leq .001$. Standard Errors are in parentheses. All Models corrected for serial correlation and unspecified heteroskedasticity.

<sup>a</sup> Coefficients and Standard Errors are multiplied by 10,000.


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The coefficients for both the main effect and the squared term for the percentage Black are both strong predictors. This suggests that the best specification for the relationship between the percentage Black and the outcome variable takes a non-linear form. The coefficients for the two terms suggest that the form of this non-linear relationship takes the shape of an inverted U such that juvenile prison admissions increase as the size of the Black population increases until it reaches a threshold after which they begin to decline.

A similar non-linear relationship exists between the ethnic threat measures and juvenile admissions. The coefficients for the percentage Hispanic and the squared term are both highly significant. The signs on the coefficients suggest that, similar to the results for Black threat, that the non-linear shape takes the form of an inverted U. Thus, we can assume from this initial model, like the Black effect, that the number of juveniles admitted to prison is larger until some threshold is reached, at which point there is a decline.

This initial model provides rather strong support for hypotheses derived from Jackson’s (1989) research which suggests that the relationship between minority size and crime control outcomes should be non-linear. Thus, Jackson’s assertion that a non-linear relationship is a result of minority’s gains in political power and that this power enables them to demand state actors to be less punitive to crime, may be correct. But before we can be confident in this assertion it is necessary to see if these results persist after additional explanatory factors and control variables are introduced.

In Model 2 I add several measures of juvenile crime to the variables in Model 1 to test legalistic explanations. The coefficients show that the juvenile arrest rates for violent
crime, property crime, and part II offenses are not significant predictors of juvenile prison admissions. The percentage of violent crime arrests that juveniles account for is the only variable with significant explanatory power. This suggests that a more punitive response to juvenile crime may be realized when juveniles make-up a large share of the overall amount of violent crime that occurs in a state. This model provides some initial support for the legalistic/consensus hypothesis which suggest that severe juvenile sanctions are a function of serious crime committed by young offenders. We also see that over and above the amount of juvenile crime are introduced; the minority threat variables maintain their significance.

Model 3 adds citizen ideology, republican strength in the state legislature and a dummy for those states where judges must be elected to test the political explanations. This model suggests that neither the presence of a conservative public nor a Republican dominated state legislature have the expected significant influence on juvenile prison admissions. There is, however, support for the hypothesis that judges who must run for election risk their judicial independence. The dummy coefficient for those states where judges are elected suggests that these states admit a larger number of juveniles to prison.

The final model adds an additional variable to test the influence of the election cycle length for trial judges and a set of dummy variables to control for year and region as well as a control for each states economic base. The positive coefficient for the dummy variable in the 1990s suggests that more juveniles are admitted to prison during this period then they were in the 1980s. This is consistent with the numerous scholars who have noted the increased punitive stance that has been taken toward juvenile crime in this
decade (c.f. Podkopacz and Feld 2001). Neither the regional dummy for the South nor the control for median household income had a significant influence on the outcome. Thus, we can assume that cultural differences across regions and variations in the tax base do not account for the number of juvenile prison admissions.

The coefficient for the length of judges’ term in office is highly significant. The negative sign suggests that judges who have to face the voters less frequently sentence fewer young offenders to adult prison terms. This is consistent with prior studies that have produced similar results (Hall 1992, Huber and Gordon 2004). The judicial selection dummy also maintains significance in this model. Citizen ideology reaches significance in this fully specified model as well. In line with my earlier hypothesis, the negative sign suggests that states with a more liberal public admit fewer young offenders to adult correctional facilities. The presence of a strong Republican legislature, however, still fails to reach significance.

Model 4 also shows that after many other factors are held constant, the racial and ethnic threat measures maintain their significance. The percentage of the population that African Americans and Hispanics account for, continue to have a significant non-linear relationship with the number of juvenile admissions. To assist in the interpretation of this association, Figure 3.2 plots the relationship between the percentage African American and the number of juvenile prison admissions. As illustrated by this figure, we see that states with the fewest Blacks have very few juveniles admitted to prison but as their presence becomes larger there is an increase in admissions. But once Blacks reach a significant proportion of the population the number of juveniles being incarcerated begins
to decline. The data shows that the threshold (or inflection point) where admissions begin to decline is attained when African Americans reach 26 percent of the population. For Hispanics, the required percentage is lower (17%).

![Graph: Relationship between % African American and # of Juveniles Admitted to Prison.]

Figure 3.3: The Relationship Between the % African American and the # of Juveniles Admitted to Prison.

3.8 Additional Considerations

A closer look at Race: Because the non-linear racial and ethnic threat effect discussed above relies on an assumption that punitive efforts directed at juveniles will be disproportionately directed at minority youth, it is important to ascertain whether or not this is the case. Table 3.6 identifies the number of juveniles admitted to prison by race.
and offense. The table is useful for a number of reasons. First, it highlights what appears
to be disparate treatment of young offenders, base on race. The counts for 1985 show
that Blacks account for well over half of all juveniles admitted to prison and are much
more likely to be incarcerated for violent offenses than are white offenders. While this
in-and-of-itself does not definitively suggest that racial discrimination is taking place in
light of the documented racial differences in offending patterns that could justify such
disparities based on legal grounds, but it is cause for concern.

<table>
<thead>
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<th>Most Serious Offense</th>
<th>1985 Total</th>
<th>1985 Violent Offenses</th>
<th>1985 Property Offenses</th>
<th>1985 Drug Offenses</th>
<th>1985 Public-Order Offenses</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>White</td>
<td>Black</td>
<td>White</td>
<td>Black</td>
<td>White</td>
</tr>
<tr>
<td>Total</td>
<td>1818</td>
<td>2251</td>
<td>2336</td>
<td>4671</td>
<td>2418</td>
</tr>
<tr>
<td>Violent Offenses</td>
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<td></td>
</tr>
<tr>
<td>Murder</td>
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<td>74</td>
<td>123</td>
<td>276</td>
<td>104</td>
</tr>
<tr>
<td>Rape</td>
<td>38</td>
<td>95</td>
<td>44</td>
<td>92</td>
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<td>Aggravated Assault</td>
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<td>164</td>
<td>210</td>
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<td>303</td>
</tr>
<tr>
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<td>1339</td>
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<td>997</td>
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<td>967</td>
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<td>1106</td>
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<tr>
<td>Motor Vehicle Theft</td>
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<td></td>
<td>87</td>
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<td>151</td>
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<td>Drug Offenses</td>
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<tr>
<td>Sale</td>
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<td>151</td>
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<tr>
<td>Possession</td>
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<td>11</td>
<td>12</td>
<td>39</td>
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<tr>
<td>Public-Order Offenses</td>
<td>237</td>
<td>267</td>
<td>251</td>
<td>422</td>
<td>351</td>
</tr>
</tbody>
</table>

Note: All data on the 26 states in the NCRP. Data are not disaggregated by Hispanic origin. Other offenses not shown in detail. Public-order offenses included: Simple Assault, Sexual Assault, Forgery, Stolen Property, Trespassing, Weapons Offenses, Public Drunkenness, Vagrancy, Disorderly Conduct, Prostitution, and DUI. Based on data from the National Correction Reporting Program (NCRP).

Table 3.5: The Number of Juvenile Offenders Admitted to State Prisons, by Race and Offense, 1985-2000.
The most telling feature of this table, however, is how the pattern changes over time. In 1990 more than twice as many young African Americans were admitted to prison than whites. Also, when one compares 1985 and 1990 we see that twice as many Blacks are admitted to prison in 1990 than in 1985. Many commentators have suggested this dramatic shift was due to the substantial increase in violent crimes that were disproportionately committed by young black males. While juvenile admissions for violent crime did indeed rise, admissions for these particular offenses did not account for the vast majority of the increase from 1985 to 1990 nor did it account for most of the racial differences. Most of the dramatic growth in prison admissions for young black offenders can be accounted for by a sharp increase in the number of being incarcerated for drug offenses. In 1985, less than 50 whites and 50 black were admitted to prisons for drug offenses. In 1990 over 1,300 Black children but only 151 white offenders were admitted for drug offenses. Given that drug use is fairly normally distributed across racial groups it is difficult to conclude that the racial disparity is not at least, in part, a result of discriminatory treatment in the criminal justice system.

Because the number of African American youth admitted to prisons may have different determinants than the overall juvenile admission models discussed above, I analyze a separate set of models that predicts the number of Black juvenile admissions (analyses not shown). Using a similar set of explanatory variables, these models show that racial threat is an even stronger predictor of the number of Black youth admitted to prison then it was in the overall models. Additional variables that were significant in the overall models were also significant in the model restricted to Blacks. We can assume,
then, that similar structural factors can explain the variation in the total number of juveniles as well as the number of black juveniles admitted to prison. Thus, a more punitive response to juvenile crime appears to be driven by the same factors for Black and whites but the punishment appears to fall disproportionately on minority youth.

3.9 Conclusion

The national trend over the last two decades to transfer and sanction juvenile offenders in criminal courts has largely been justified by an escalation in youth violence. The results presented here suggest that sociopolitical factors may also be playing a role in this punitive response. Specifically, the findings suggest that when judges sentence juveniles to adult incarceration, issues of race and ideology conjoin to produce variations in adults sanctioning of young offenders. In this new era of get-tough policies, juveniles (and particular juveniles of color) are often being subjected to more harsh punitive responses for their transgressions in jurisdictions that are more inclined to support severe responses to crime because of their particular ideology or because of racial fears.

The results provide strong support for conflict expectations by showing a consistent link between the presence of a large minority group and the severity of criminal sanctions. While prior studies have shown that whites fear of victimization is often linked to the size of the minority group they see as being particularly criminogenic (e.g. Quillian and Pager 2001), this study suggests that whites are capable of translating that increased fear of crime into stronger crime-control efforts. Because crime policies are
largely in the hands of politicians, it seems unlikely that whites are translating their demands for more punishment through the political arena either by supporting like-minded candidates or by pressuring others to strengthen crime control measures.

While macro data is ill suited to capture the micro-level political processes that lead to shifts in punitive responses to crime, the non-linear relationship between the size of the minority group and the outcome suggests that the political power of minorities relative to that of whites may indeed be playing a role in the punitive response to juvenile crime. If political power in a representative democracy is, at least in part, derived from group (or coalition) size, then it seems plausible that Jackson’s (1989) politically originated hypothesis about the curvilinear relationship between minority size and crime control may be useful in explaining the findings presented here. Jackson’s claim that majority group members will increasingly demand more punishment for crime as the size of the minority population grows is clearly consistent with the results from the analysis. Additionally, her claim that a reduction in crime control will occur once minorities reach a large proportion of the population is also supported here. Again, this is likely due to the political clout that accompanies sizable political coalitions. But why would African Americans demand less severe punishment for crime, particularly given the fact that they are disproportionately victims of crime? Jackson explanation is that minority’s perceive punitive responses to crime as attacks directed against members of racial minority groups with discriminatory intent. Table 3.6 suggests that these perceptions may be real, at least when it come to the treatment of juvenile offenders as adult criminals. Thus, to combat
perceived discrimination, minority group members may be less inclined than whites to support harsh punishment for juvenile offenders and the political actors that control this outcome may be less inclined to use it for fear of losing their positions.

The results from this study also provide interesting results related to judicial politics. Consistent with the prior studies conducted by judicial scholars (c.f. Hall 1992, Huber and Gordon 2004), the findings presented here suggest that judges who must face the voters to gain their seats are more inclined to sentence juvenile offenders to adult prison. This is not necessarily problematic for those who believe that all state actors should be subject to their constituents. The tradition of jurisprudence, however, has long suggested that the judicial branch of government requires independence from the political arena so as to prevent judicial decisions based on the demands of a particularly influential segment of the population. Democratic theory suggests that public policy is dictated largely by the will of the majority. The rationale for having an independent judiciary branch of government centers on the philosophy that the only factor being considered by judges hearing a case is the law and the facts in the case.

Embedding judges in politics increases the likelihood that they will not only consider these legal factors but also consider how a particular decision may influence their chances of retaining their seat. The findings from this study suggest that juvenile offenders are at a much greater risk of adult sanctions when judges must be elected.
Thus, it appears from these results that judicial independence is being threatened in those jurisdictions where judges must be elected to their positions and that juveniles are one group of offenders at the receiving end of the ensuing prejudicial treatment.

In sum, it appears that the punitive responses to juvenile crime in the form of incarceration are, at least in part, explained by racial politics. Results suggest that the punishment of juveniles may be a response to racial and ethnic threat as much as it is response to juvenile crime. Additionally, the reduction of judicial independence through elections is also producing a larger number of juveniles subject to adult prisons. Thus, future studies of social control should account for the sociopolitical context of each jurisdiction when attempting to understand variations in punishment and other crime-control measures.
CHAPTER 4

SENTENCE SEVERITY FOR JUVENILES ADMITTED TO PRISON

4.1 Introduction

Do sociopolitical factors in the court environment influence the sentence severity for violent offenders adjudicated in adult criminal courts who committed their crimes as juveniles? If not, how can we account for the variation that exists in sentence length across jurisdictions for similar crimes? Why, for instance, does a juvenile in an adult court who has committed a robbery receive an average prison term of 105 months in Alabama whereas a prison terms for juveniles committing the same offense in Michigan is typically sentenced to 233 months? Are there individual or contextual factors that can help us understand this variation?

There are a number of reasons to be concerned about the treatment of those offenders who commit crimes as juveniles and are transferred to adult courts for adjudication. Juveniles have traditionally been held less responsible for their transgressions but this leniency toward young offenders has been challenged in some states in recent years. This trend toward harsh adult sanctioning for young people who commit crimes has not been spread evenly across the United States. Some states sentence young offenders to lengthy prison terms, for instance, while others seem to be more inclined to consider the
mitigating impact of youth and sentence these offenders less severely. How can we account for this variation in treatment of juvenile offenders? The purpose of this chapter is to attempt to answer this question by examining the impact of theoretically and empirically derived factors on the length of prison terms for offenders who committed their crimes as juveniles.

While numerous studies have examined the determinants of sentencing severity, no study has explored them in the context of juvenile offenders in adult criminal courts. Additionally, only a few studies have looked at the sociopolitical aspects of the environment in which courts reside to ascertain whether or not these external factors influence the severity of sanctions. Rather, most studies of sentence length have focused on the effects of legally irrelevant factors such as the race and gender of the offender after controlling for legal factors such as the seriousness of the offense and prior offending. While claims that the justice system is racially discriminatory are at the core of these studies, findings related to the relevance of race in sentencing have been mixed.

One plausible explanation for the inconsistency of the racial findings is that almost all the studies in this area have analyzed sentencing outcomes in one or just a few jurisdictions. Restricting the analysis to a small number of courts makes it difficult to consider the influence that the court’s environment may have on sentencing. In particular, it makes it almost impossible to ascertain whether or not extralegal factors such as race are influential in the sentencing of offenders in some jurisdictions but not in others because of a particular court’s environmental context. Given that the few studies that have taken the courts environment into consideration have shown that it can
influence court outcomes (c.f. Myers and Talarico 1987, Helms and Jacobs 2002), there is ample justification for inclusion of environmental factors in any analysis of sentencing outcomes. Thus, this particular study analyzes the joint effects of the court context and offender attributes in a large number of jurisdictions to see if courts are influenced by their environments.

While multiple environmental determinants will be considered in this study, I concentrate on political explanations. Many scholars have provided a strong theoretical rationale for the consideration of political factors in sentencing outcomes (Garland 1990, Foucault 1977, Savelsberg 1994). Garland (1990) claims that: “Criminal penal measures are shaped not just by patterns of criminality, but primarily by governmental perceptions of the poor as social problems” (pg. 130). Empirical evidence has substantiated this claim. Many studies have shown, for instance, a strong link between a conservative political climate and increases in punishment. Specifically, the strength of the conservative party has been linked to the increase in imprisonment in the U.S. (Jacobs and Helms 1996), and cross-nationally (Sutton 2000). It has also been associated with the legality of the death penalty (Jacobs and Carmichael 2002). But few studies have examined the relationship between politics and sentencing. By doing so, this study aims to determine if the courts respond to political and other contextual factors that may contribute to disparate sentencing outcomes.

Two research traditions exist in the literature on sentencing. The first focuses on individual-level factors that may influence sentence length. Others have ignored micro processes and have instead concentrated on aggregate level shifts in certain crime control
outcomes such as the size of the police force (Jacobs 1979, Liska et al. 1981), jail use (Carmichael 2005), and prison use (Jacobs and Carmichael 2001). While both of these traditions have produced useful insights into the factors associated with crime-control and punishment, little effort has been made to integrate them. One of the first studies to do so was conducted by Myer and Talarico (1987) who analyzed sentences in Georgia counties and found a link between racial threat and sentence length. Specifically, they show that the race of the offender is a significant predictor of sentence length once community measures for black-to-white income inequality, the size of the African American population and urban population had been introduced. Additionally, Helms and Jacobs use the political context of criminal courts to study sentencing and show that longer sentences are given to African Americans in those jurisdictions with a conservative public.

I build on the approach used by these authors by examining the impact of both offender characteristics and state-level indicators on sentence length for juveniles sentenced to adult prison terms for violent offenses. This multi-state analysis allows for the examination of several environmental factors that would be difficult to measure at other units of analysis. States are chosen over a smaller unit of analysis because this unit allows for a closer look at state-level political factors that may influence local court decisions. While it is true that local courts sentence offenders, state officials are often responsible for sentencing schemes that judges must comply with as well as determining
other important factors that may influence the decision such as prison capacity. Thus, given that the political context is of primary importance in this analysis, using the state as the contextual level should provide the most intriguing results.

4.2 Theorizing Prison Sentence Severity for Violent Juvenile Offenders

Individual Effects

Race and Sentence Severity – While race is one of the most explored aspects of the sentencing literature, findings remain mixed (see Chiricos and Crawford 1995; Kleck 1981 for review). Despite the fact that most of the inconclusive evidence can be attributed to limitations in the research designs, many observers have begun to question the relevance of race in the justice system. When race is considered in empirical analyses, a common set of theoretical justifications are typically advanced. The first contends that racial disparities exist because of differences in offending patterns between white and minority individuals. This argument, often referred to as a legalistic argument, is based on the assumption that punishment is principally used against actors who violate widely held normative behaviors. Thus, minority juvenile offenders may be sentenced more severely than white offenders because legally relevant factors such as the seriousness of the offense or prior criminal behavior warrant such differences. Some researchers argue that after controlling for legally relevant factors in an analysis they should account for any observed differences between white and minority youth (Bishop
and Frazier 1992, Sampson and Lauritsen 1997). Thus, if this perspective is correct, we should assume that *an offender’s race will not be a contributing factor once legally relevant variables have been introduced.*

An alternative explanation for racial disparities in sentence severity is primarily concerned with racial discrimination. It posits that minorities receive more severe forms of formal social control than whites at all stages of the criminal justice system. If this is the case, then we should expect that, regardless of the legal characteristics associated with the particular offense, *minorities will receive longer sentences for similar crimes.*

A third approach used to explain the racial differences in criminal justice outcomes focuses more on structural arrangements that may influence the decision-making process such that it places the minorities involved in the system at a disadvantage. As a defendant works his/her way through the criminal justice system they pass-through a number of discretionary points usually beginning with an arrest and ending with a sentencing decision (or in some states a parole board decision). While most studies focus on one particular point in this process, some researchers have argued and shown that while racial bias may appear to be subtle at any given point, it accumulates at every stage to produce substantial differences such as serious racial disproportionality in prisons (e.g. McCarthy and Smith 1986; Hill, Harris and Miller 1985; Bailey and Peterson 1981; Liska and Tausig 1979). While it is clear from the research that bias likely accumulates at all stages, this analysis will not test this thesis because the data necessary is unavailable.

The final approach used to explain racial disparities in criminal justice outcomes is related to social context. Some researchers argue that community characteristics are
important in understanding formal social control in ways that influence racial disparities. This contextual explanation for racial effects will be developed in the following section related to contextual factors.

**Gender and Sentence Severity**: The effects of gender on sentencing outcomes may also be a function of the court’s environment. Numerous studies have shown that women are treated less punitively in the criminal justice system (Daly 1987; Daly and Bordt 1995, Albonetti 1986; Boritch 1992). Albonetti (1986), for instance, examines the prosecutor’s decision to move forward with charges against suspected offenders and finds that they are less likely to proceed to trial when the defendant is a female. Similarly, in an historical analysis of sentencing (1871-1920), Boritch (1992) finds that women were treated less severely in assault cases (the rationale being that women can’t hurt men, physically) but equally punitive in cases of vagrancy, drunkenness, and prostitution. She claims that a more punitive response to some offenses is the result of women acting “unladylike”. She suggests that doing so likely removes any leniency or protection accorded to women in the justice system. In a study of more contemporary sentencing outcomes, Daly (1987) also finds evidence of gender differences in sentences. She suggests that these differences are due primarily to the fact that men commit more serious crimes and have more prior offenses. Additionally, she suggests that family ties are an important contributor to gender specific sentencing disparities because judges are reluctant to
sentence people with family obligations. Regardless of its underlying causes, we should expect that female juveniles being sentenced to prison for violent offenses will receive shorter sentences.

**Age and Sentence Severity:** Because there may still be some leniency granted to younger offender due to their diminished capacities, it is plausible that they will receive shorter sentences for their transgressions. Fagan and Deschenes (1990) provide evidence to support such a claim based on an examination of the juvenile waiver decision. They find that juvenile courts are more reluctant to transfer the youngest juvenile offenders and much more inclined to transfer those who were close to the age of majority. If court officials make similar concessions for the younger juveniles who do get transferred to adult courts than we should expect to see shorter sentences for the youngest juvenile offenders.

**Legally Relevant Factors Associated with Sentence Severity:** While this study explores sentencing severity for juveniles convicted and sentenced to adult prisons for committing all violent offenses, obviously a conviction for murder will likely not result in a sentence as severe as one for aggravated assault. For this reason we should assume that offense seriousness should influence sentence severity such that more serious crimes will produce longer sentences than less serious crimes. The other legally relevant factor often used in sentencing studies is prior offense and prior incarceration. In this particular study it is somewhat less relevant because the vast majority of juveniles are being adjudicated and incarcerated for the first time (time served in juvenile detention facilities is not considered in most adult jurisdictions) and because prior juvenile offenses are not
considered for sentencing in most states. Thus, we can assume for most juveniles that prior offenses and prior incarceration in juvenile detention facilities will not be considered in adult courts and will therefore have little relevance to the outcome.

**Contextual Effects**

*The Politics of Sentencing:* Perhaps because court officials do not act in isolation, many scholars have suggested that court environments should be given greater attention when analyzing sentencing outcomes (Helms and Jacobs 2002). In particular, the political context of the courts should account for some of the variation in sentencing. Because conservatives are more inclined to support calls for law and order it is plausible that jurisdictions with more conservatives will have more punitive sentencing outcomes. Numerous studies have provided evidence for these claims. Huang et al. (1996) analyzes variations in sentencing outcomes across Georgia counties and finds that the most conservative counties had the longest sentences. Kiklinski and Stanga (1979) find that sentences for drug offenses were shorter in California counties where voters favored liberalized marijuana laws. Another study by Helms and Jacobs (2002) found that sentences were shorter in those jurisdictions where public support for a Republican candidate for President was minimal.

Macro analyses also suggest a relationship exists between the political context of the courts and sentencing outcomes. These studies have shown that a conservative public is associated with a number of punitive outcomes including incarceration rates (Jacobs and Carmichael 2001), death sentences for Black offenders (Jacobs, Carmichael and Kent 2005) and the legality of the death penalty (Jacobs and Carmichael 2002). Given the
individual and macro-level relationship that has been identified between public ideological preferences and sentencing outcome, we should assume that juveniles adjudicated in adult courts will receive longer sentences in those states where the public is more conservative.

While a conservative public may be capable of influencing punishment by supporting tough-on-crime candidates in offices that effect sentencing policies and outcomes (e.g. judges, prosecutors, and legislatures), it may be that these state actors play an independent role. For decades, Republican candidates have campaigned using law-and-order appeals (Beckett 1997). Once in office, these candidates have spent more money than their Democratic counterparts on police and corrections (Jacobs and Helms 1999; Caldeira 1983). Studies have also shown that a strong Republican Party is associated with higher incarceration rates and more police on the streets (Jacobs and Helms 1996, 1997). Sutton (2000) found similar evidence linking a conservative party with high incarceration rates. Thus, we should assume that when Republicans control important political positions, juveniles will be sentenced more harshly.

The final political explanation I will discuss pertains to the impact that judicial selection may play in the severity of punitive responses to crime. In most states, trial judges are elected to their office. Several scholars have criticized the mixing of politics and justice claiming that doing so runs the risk of limiting judicial independence. In particular, it is feared that trial judges may succumb to public demands for harsh sentences for particularly heinous crimes or those that receive a great deal of media attention. Brace and Hall (1997) articulate the problem when they claim that “soft”
judges who ignore public support for harsh punishment for crime are vulnerable to loosing their seat upon election. Several scholars have provided evidence to support such fears. Hall (1992) found that state appellate judges were less likely to overturn death penalty verdicts in states with short election cycles. Huber and Gordon (2004) show that felony sentences became more severe the closer judges were to their election date. We may assume, then, that juveniles sentenced in states where judges must face the voters will receive longer sentences.

Racial and Ethnic Threat: A number of neo-Marxist and group threat theorists have suggested that discrimination in the justice system is largely due to the perceived threat that poor and minorities pose to dominant group members’ interests and culture (Chambliss and Seidman 1971, Quinney 1970, Blumer 1967, Blalock 1967, Turk 1969, 1982). More recent approaches attribute racial disparities to stereotypes about minority group members that influence individuals’ fear of crime. Research has shown that negative attitudes about Blacks are more common in communities with more Black residents (Bobo and Hutchings 1996). These negative attitudes often relate to issues of race and crime. Quillian and Pager (2001), for instance, show that stereotypes about minority males as violent and criminogenic lead individuals to report increased fear of victimization in neighborhoods where there are more African Americans. Liska et al. (1982) support this assertion by finding that fear of crime is positively related to the size of the African American population after controlling for the amount of crime committed.
in each city. Other researchers have argued that discrimination against minorities occurs indirectly through other considerations such as socioeconomic status, family structure, demeanor, or school status (Pope and Feyerherm 1990).

While a number of studies have suggested that this fear affects crime control outcomes such as the resources devoted to the police departments (Jackson and Carroll 1981; Liska Lawrence and Benson 1981), and spending on corrections (Jacobs and Helms 1999), the evidence supporting a link between minority presence and sentence length has been mixed (Chiricos and Crawford 1995). Because most of these studies rely upon only one or a few jurisdiction to analyze this relationship an analysis of a large number of court environments may be able to produce more generalizable findings. To this end, I will test the hypothesis that jurisdictions with the greatest African American presence will sentence juvenile offenders to longer prison terms. Because ethnic groups may also be perceived as a threat to majority group members in some states, we may also expect to see longer sentences in states where a Hispanics account for a large percentage of the population.

**Economic Threat:** The final contextual factors I will discuss has to do with a potential economic threat. There is a significant body of literature that tests the association between unemployment and incarceration rates. Neo-Marxists, following the Rusche-Kirchheimer tradition, have long claimed that punishment is a mechanism used by the dominant class to control ‘labor surplus’ (Rusche and Kirchheimer 1939; Quinney 1977; Jankovic 1977). Rusche and Kirchheimer (1939) maintain that punishment must not be seen as a means of crime control but rather as an instrument used by the rich to dominate
the poor. During harsh economic times, punishment is employed to reduce the labor surplus by using incarceration to absorb some of the unemployed population. Those most susceptible to unemployment are unskilled workers. It is argued that these members of society are less committed to the law and the dominant moral order and are therefore more likely to be punished for conduct that threatens this order. For this reason, Jankovic (1977) hypothesizes that “a rise in unemployment will lead to an increase in prison commitments because the policy of deterrence dictates an intensification of punishment in order to combat the increasing temptation to commit crime” (1977: 20).

On the other hand, when demand for labor is high, penal institutions may be less inclined to keep (or bring under their control) a large number of individuals when their labor is needed by private employers. During times of economic expansion, therefore, penal institutions may (after instilling the discipline necessary for ‘legitimate’ work in inmates) release a labor force that is ready to conform to this dominant work ethic. Judges may also be less likely to choose incarceration when the labor supply is low, but rather choose a punishment that does not involve incarceration. Greenburg (1977) maintains that it is “plausible to assume that judges are less willing to grant probation to offenders when they are unemployed, or that unemployment affects levels of community tolerance toward offenders, to which judges respond in sentencing (p. 650).

Findings from studies that have tried to analyze the correlation between unemployment and incarceration have provided mixed support for the neo-Marxist claims. Numerous studies report a significant and direct positive relationship between unemployment and incarceration (Greenberg 1977; Inverarity and McCarthy 1988;
Many others found an insignificant unemployment effect (Arvanites 1993; Colvin 1990; Galster and Scaturo 1985; Michalowski and Pearson 1990; Parker and Horowitz, 1986).
Empirical research has also found a relationship between rates of unemployment and sentencing outcomes. After reviewing the results of a large number of studies, Chiricos and Crawford (1995) concluded that blacks are more likely to receive prison sentences in jurisdictions where unemployment was high. While the results may be mixed, neo-Marxist theories suggest that any significant effect that unemployment would have on the severity of punishment is positive. Hence, I expect those states with the highest unemployment rates to sentence juveniles.

**Additional Controls:** I also control for two additional factors that may influence the outcome. Because the amount of crime that juveniles commit may influence the severity of sentences, I include a control for juvenile crime in some models. I expect that those states with the highest juvenile crime will have the longest sentences for violent crime. I also introduce a control for some years. It has been well established that severe punishment for juvenile offenders reached it highest intensity in the 1990s. Including a dummy for these years will ensure that other findings do not completely rely on these years.

4.3 Data and Measure
To test the above hypothesis, I compiled a panel dataset for the years 1983 to 2001 that includes data for all 50 states. Because of missing data, the total number of states in this
analysis is 36. Federal facilities and those in the District of Columbia were not included in the analysis. Because the National Corrections Reporting Program Series (NCRP) is a voluntary program not all states participated. These states represent missing data. The 14 missing states are as follows: Arizona, Connecticut, Delaware, Idaho, Indiana, Kansas, Louisiana, Maryland, Montana, New Mexico, Oregon, Rhode Island, Vermont, and Wyoming.

**Unit of Analysis:** The unit of analysis in this analysis is the individual juvenile sentenced to adult prison. Because prior research suggests that studies of criminal justice outcomes should consider community characteristics, I nest each individual within the the state they are sentenced. The state is the most appropriate unit to cluster each individual for a number of reasons. First, prisons themselves are state-level phenomena. Individuals are admitted to state operated facilities not to county or some other unit. An additional justification for using the state as the unit of analysis concerns the nature of the theories I test in this study. Given that this dissertation is primarily interested in how political factors are associated with punitive action toward juvenile offenders, it is important to use the unit where much of the political process associated with this outcome is originated. In the case of criminal justice policy this would be the state since all relevant procedures are designed at the state level by state legislators. Thus, it is the political arraignments at the state that should produce the most important results.

**The Dependent Variable:** The dependent variable in this study is the individual-level sentence length for each person sentenced to prison for a crime they committed as a juvenile in 36 states from 1983 to 2001. Sentence length for each individual is measured
in months. Because some of these juvenile offenders are sentenced to life in prison and others are sentenced to terms that are longer than several life-spans, I recode life sentences and those sentences greater than 720 months to equal 720 months (60 years). This cut-off point was selected based on life table estimates that suggest the average 17 year old will live approximately 60 more years. In addition to this correction I transform the sentence length into a natural log form to correct for skewness and create normal error terms.

Data for the dependent variable come from the National Corrections Reporting Program Series (NCRP) compiled by the U.S. Department of Justice’s Bureau of Justice Statistics (BJS) and housed at the University of Michigan’s Inter-University Consortium for Political and Social Research (ICPSR). The NCRP is a voluntary survey given to the department of correction in all 50 states. The survey began in 1983 and the most recent survey was conducted in 2001. All available years are used in this analysis.

The purpose of the NCRP is to gather data on all prisoners entering the custody of state and federal correctional institutions. The data gathered refer to every prisoner admitted to serve a term of incarceration in each participating state’s correctional facilities in a given year. Variables include each individual’s history of incarceration, current offenses, and total time served. Background information is also included on all individuals including year of birth, sex, age, race, Hispanic origin, and educational attainment. In addition to the above data, the survey also includes data on the length of the sentence that each juvenile offender receives.
Because the date of offense was not part of the data gathering process it is impossible to directly identify the exact number of individuals admitted to prison that committed their offense as a juvenile. The only relevant data is the age the individual was admitted to prison. To capture all defendants sentenced to prison terms for committing a crime as a juvenile I assume that all individuals admitted to prison on or before 18 and one-half years of age (18.5 years) would have likely committed their crimes as juveniles. The additional six months assumes that the period between arrest, the time required for transfer from juvenile to an adult court, trial time, time between trial and sentencing and time before admission would be (conservatively) more than six months. Thus, given the time associated with the legal process, those individuals who were sentenced and admitted to prison at the age of 18 and one-half years of age and younger likely committed their offense as juveniles so I consider them as juvenile offenders in this study.

One additional attribute of the dependent variable is associated with the number of states participating in the study. Because the NCRP is a voluntary survey it is not completed by every state in each year the program was administered. In no year did every state participate in the study, but participation did improve over time. For statistical accuracy, I restrict the sample to those 36 states that have participated in the study consistently since 1983. Thus, data for all 36 states who participated in the survey
are used to analyze the outcome. States excluded from the sample are: Alaska, Arizona, Connecticut, Delaware, Idaho, Indiana, Kansas, Montana, New Mexico, Rhode Island, South Dakota, Utah, Vermont and Wyoming.

**The Explanatory Variables:** With few exceptions, annual data for all of the explanatory variables was collected. Annualized data for those variables that were not available in some years were obtained through linear interpolation to fill in the missing years. The measures for the explanatory variables are as follows.

**Individual Effects**

A number of dummies were introduced to capture individual characteristics of the offender and the offense. To assess the individual influence of a juvenile’s race on sentence severity, I use a dummy coded “1” when their race is Black. I use another dummy to capture ethnicity (1=Hispanic). Another dummy for gender is also introduced (1=Female). Two dummy variables are used to assess the influence of age. One dummy is coded “1” if the juvenile’s age at admission was 15 years or less. The other age dummy is for those who are sixteen (the reference category is 17 to 18.5 years of age).

To assess the influence of the offense, I use three separate dummy variables. One dummy identifies those juveniles sentenced to prison for robbery, another captures those who were convicted of rape. The final dummy identifies those who were sentenced for aggravated assault. The reference category for all three offense dummies is murder. Thus, if the hypothesis I discussed above is correct, we should expect that all three of these offenses will be negatively associated with sentence length relative to murder.
Contextual Effects

**Political Explanations:** These include measures of citizen ideology, republican strength and judicial selection. Citizen ideology is measured using Berry et al.’s (1998) data. The measure calculates a score for each state ranging from 0 (most conservative) to 100 (most liberal). Scores are based on the ideological position of each member of Congress using interest group ratings taken from Americans for Democratic Action (ADA) and the Committee on Political Education (COPE).

The strength of the Republican Party in each state is measured using two separate indicators. The first is a dummy variable coded “1” if the state has a Republican Governor. The second dummy identifies states where Republicans control 60% or more of the state legislature. Data for both measures were taken from the U.S. Census bureau’s Statistical Abstracts.

To measure judicial selection type I include a dummy coded “1” if judges are elected. The data for this variable comes from the American Judicature Society (AJS) (http://www.ajs.org/js/). AJS provides a historical data archive of the mechanism through which judges are selected for their seat.

**Social threat explanations:** Social threat is measured using two indicators. First, to measure racial threat I use the percentage of the population that is African American according to the U.S. Census. To assess ethnic threat I use the percentage of the population that is Hispanic.

**Juvenile Crime Effects:** To measure the effect of juvenile crime on juvenile sentence severity, I include a measure of juvenile violent crime that considers what share of the
overall violent crime juveniles are responsible for. Specifically, the variable is the percentage of all arrests for violent crime where the offender is a juvenile. It seems plausible that the public as well as political officials may be more alarmed when juveniles commit a greater proportion of the total number of violent crimes. If so, they may respond to such concerns by strengthening punitive responses to crime committed by young offenders. The data for violent crime arrests was taken from the FBI’s Uniform Crime Reports (UCR) arrest files that summarize yearly arrests by police officers in most jurisdictions in the United States.

4.4 Descriptive Statistics

Table 4.1 provides a summary of the means, standard deviations and the expected direction of the relationships between each variable and the length of sentence for those persons admitted to state prisons for crimes they committed as a juvenile. We see from this table that positive relationships are expected between most contextual explanatory variables and sentence length. The only exception to this is the citizen ideology score. This is the case because the coding of the variables gives higher scores to states with a more liberal public. If, as expected, conservative states sentence offenders more harshly, then we should see a significant negative sign.

As for the individual level effect on sentencing severity, I expect to find a positive sign for both the dummy for Black offenders and the one for Hispanic offenders. A negative sign is anticipated for the female dummy, the age dummies, as well as the dummies for offense type. As a reminder, the negative sign expected for the specific offense is due to the fact that the reference category is murder.
Table 4.1: Predicted Signs, means and standard deviations.

Table 4.1 also shows that the mean sentence length for offenders who where convicted and sentenced for every type of violent crimes is roughly 159 months (about 13 years). This mean varies widely based on the specific offense. For murder the mean sentence is 482 months (40 years). The average sentence for the other violent offenses is 243 months for rape (20 years), 149 months for robbery (12.5 years), and 114 months for aggravated
assault (9.5 years). The offense breakdown of juvenile offender sentenced for violent crime is as follows: 15 percent were convicted of murder; 56 percent for robbery; 25 percent for aggravated assault; and 4 percent for rape.

We also see from Table 4.1 that young African Americans represent 69 percent of those incarcerated for violent offenses. Also, only about 15 percent of those juvenile offenders receiving prison terms were the ages 16 and under. Thus, the vast majority of juveniles who receive adult prison terms are 17 years of age.

Before proceeding to the multivariate results it may be useful to discuss whether or not juveniles are receiving any leniency for the fact that they were very young when they committed their offenses. As the prior discussion in chapters 2 emphasized, there are ample reasons to believe juveniles should receive less severe sanctions for their transgressions because of their immaturity. Thus, if there is some consideration for immaturity, juveniles should be receiving shorter sentences than adult who commit the same offense.

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<tbody>
<tr>
<td>Violent Offenses</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Murder</td>
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<td>557</td>
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<td>554</td>
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<tr>
<td>Rape</td>
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<td>318</td>
<td>212</td>
<td>257</td>
<td>177</td>
<td>249</td>
</tr>
<tr>
<td>Aggravated Assault</td>
<td>174</td>
<td>197</td>
<td>89</td>
<td>89</td>
<td>94</td>
<td>78</td>
</tr>
<tr>
<td>Robbery</td>
<td>233</td>
<td>330</td>
<td>122</td>
<td>143</td>
<td>103</td>
<td>132</td>
</tr>
</tbody>
</table>

Note: All data are estimated. Other offenses not shown in detail. Based on data from the National Correction Reporting Program.

Table 4.2: Mean Sentence Length for Juvenile and Adult Offenders Admitted to State Prisons by Offense, 1985, 1990 and 2000 (sentence in months)
Table 4.2 provides the mean sentence length for each violent offense considered in this analysis for both those who committed their crimes as juveniles and those who did so as adults. We see from this table that, on average, in 1985 the mean sentence length for violent juvenile offenders was 50 months shorter than similarly offending adults. It appears, then, that at least in this early period, juveniles were receiving some consideration for their age. In 1990, however, the gap in sentence length disappears. In 1990, juveniles and adults receive roughly the same sentence for violent offenses. It is not surprising that this parity was reached when the demand for greater punishment for serious juvenile offenders was becoming intense.

4.5 Multivariate Analyses

To assess the influence of the independent variables on logged sentence lengths for offenders sentenced to adult prisons for crimes they committed while they were under the age of 18, I use Ordinary Least Squares (OLS) Regression using a cluster procedure in Stata 9.2 that basis the significance tests on the 36 states rather than the 26,931 individuals. Table 4.3 provides the regression estimates for this outcome.

Model 1 assesses the influence of the individual level effects on the outcome. All three of the offense variables are significant in the predicted direction. As would be expected, the three offense types produce significantly shorter sentences than the reference offense (murder). We also see from this model that neither the dummy for race nor the dummy for ethnicity reach the level of significance with the offense type held constant. These findings are contradictory to predictions that minorities receive discriminatory treatment in the form of longer sentences. Rather it is consistent with the
hypothesis that race effects are a function of legal factors. Specifically, minorities may be receiving longer sentences than whites but this is likely due to them committing more serious violent offenses.

Younger juvenile offenders convicted and sentenced to prison terms were also not receiving shorter sentences. This suggests that judges appear not to be using their discretion to exercise leniency for the youngest juveniles they sentence to prison. As expected, however, young women adjudicated in adult courts are receiving significantly shorter sentences than males.

Model 2 adds the contextual level variables associated with threat theory to the individual level indicators found in Model 1. Contrary to the expectation of social threat theorists, the size of the African American and Hispanic populations do not influence sentence length. The results for the economic variable in this early model, however, are consistent with the neo-Marxist position that crime control reacts in response to the size of the surplus labor population. Specifically, the results show that when the size of the unemployed population is high, offenders who receive prison terms for crimes they committed as juveniles receive significantly longer prison terms. The results for the individual level effects are consistent with those found in Model 1 after the threat variables were introduced.

Model 3 adds the remaining political contextual variables and some additional controls to those variables in Model 2. As expected, after all the individual level characteristics are held constant, states where judges must run in an election to gain their

<table>
<thead>
<tr>
<th></th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
<th>Model 4</th>
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<td><strong>Individual Level Variables</strong></td>
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<tr>
<td>1=Black</td>
<td>-.019</td>
<td>-.009</td>
<td>.027</td>
<td>.052</td>
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<td></td>
<td>(.049)</td>
<td>(.053)</td>
<td>(.053)</td>
<td>(.052)</td>
</tr>
<tr>
<td>1=Hispanic</td>
<td>-.208</td>
<td>-.185</td>
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<td></td>
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<td>(.177)</td>
<td>(.078)</td>
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<td>-.139***</td>
<td>-.169***</td>
<td>-.172***</td>
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<td></td>
<td>(.034)</td>
<td>(.034)</td>
<td>(.037)</td>
<td>(.036)</td>
</tr>
<tr>
<td>Age (1=16 years)</td>
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<td>-.059</td>
<td>-.007</td>
<td>-.008</td>
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<td>(.066)</td>
<td>(.062)</td>
<td>(.074)</td>
<td>(.073)</td>
</tr>
<tr>
<td>Age (1=15 years and under)</td>
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<td>-.066</td>
<td>.021</td>
<td>.017</td>
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<td></td>
<td>(.088)</td>
<td>(.099)</td>
<td>(.117)</td>
<td>(.111)</td>
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<tr>
<td>Rape (^a)</td>
<td>-.966***</td>
<td>-.987***</td>
<td>-1.002***</td>
<td>-1.105***</td>
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<td></td>
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<td>(.086)</td>
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<td>Robbery</td>
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<td>-1.643***</td>
<td>-1.749***</td>
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<td>(.142)</td>
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<td>-1.863***</td>
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<td>(.099)</td>
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<tr>
<td><strong>Social Threat Variables</strong></td>
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<tr>
<td>Percent Black</td>
<td>--------</td>
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<td></td>
<td>--------</td>
<td>(.008)</td>
<td>(.008)</td>
<td>(.008)</td>
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<tr>
<td>Percent Hispanic</td>
<td>--------</td>
<td>-.010</td>
<td>-.002</td>
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<td></td>
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<td>(.009)</td>
<td>(.011)</td>
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<tr>
<td>Unemployment Rate</td>
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<td>.093**</td>
<td>.052</td>
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<td>(.034)</td>
<td>(.037)</td>
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<td><strong>Political Variables and Controls</strong></td>
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<td>--------</td>
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<td>.282**</td>
<td>.283**</td>
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<td>(.104)</td>
<td>(.104)</td>
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<td>Republican Legislature (1=% &gt;60)</td>
<td>--------</td>
<td>--------</td>
<td>.280*</td>
<td>.277*</td>
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<tr>
<td></td>
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<td>(.147)</td>
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<tr>
<td>Republican Governor</td>
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<td>--------</td>
<td>.185*</td>
<td>.186*</td>
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<td></td>
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<td>--------</td>
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<tr>
<td>Citizen Ideology</td>
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<td>-.010*</td>
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<td>(.005)</td>
<td>(.005)</td>
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</tr>
<tr>
<td>Juvenile Population (10-17 yrs.) (^b)</td>
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<td>.008</td>
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<td></td>
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<td>(.012)</td>
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<tr>
<td>% of Arrests for Violent Crime Arrests that are of Juvenile</td>
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<td>-.007</td>
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<tr>
<td></td>
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<td>(.011)</td>
<td>(.011)</td>
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</tr>
<tr>
<td>1 if Year is in 1990s</td>
<td>--------</td>
<td>.081</td>
<td>.081</td>
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<td></td>
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<tr>
<td>Black * Murder</td>
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<td>--------</td>
<td>-.170*</td>
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<tr>
<td><strong>Constant</strong></td>
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<td>5.645***</td>
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<td>6.242***</td>
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<td>(.284)</td>
<td>(.308)</td>
<td>(.312)</td>
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<tr>
<td><strong># of Cases (states)</strong></td>
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<td>26,931 (36)</td>
<td>26,931 (36)</td>
<td>26,931 (36)</td>
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<tr>
<td><strong>R^2</strong></td>
<td>.271</td>
<td>.289</td>
<td>.343</td>
<td>.344</td>
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</tbody>
</table>

\(^a\) P ≤ .05; \(^**\) P ≤ .01; \(^***\) P ≤ .001. Standard Errors are in parentheses. \(^b\) The Reference group is Murder.

\(^b\) Coefficients and Standard Errors are multiplied by 10,000 to aid in interpretation.
seats sentence juvenile offenders to significantly longer prison terms than those states where judges do not have to face the voters. The results that consider the strength of the Republican Party are also interesting. These findings show that states with a Republican Governor and those where members of the Republican Party maintain substantial control over the state legislature sentence juvenile offenders to longer prison terms. Thus, it appears that states controlled by conservative politicians treat juvenile offenders more harshly by sentencing them to longer prison terms.

Model 3 also indicates that a conservative public plays a role in the sentence length for offenders sentenced to prison for offenses they committed as juveniles. We see from these results that states with a more liberal public sentence these young offenders to shorter prison terms. Conversely, states with more conservative public sentiments sentence juvenile offenders to longer prison terms for violent offenses even after the individual offenses and many other factors have been held constant.

The controls for the juvenile population, the amount of violent juvenile crime in the state and the dummy for the 1990s did not reach significance. Also note that, with the addition of the political variables and the above mentioned controls, the effect of unemployment on sentence length no longer reaches significance. Thus, this initial effect was likely a function of one or more of these additional factors. The individual level effects, however, are consistent with the prior models even after the inclusion of the political factors. In this final model we see that these variables account for 34 percent of the variation in the sentence length for violent juvenile offenders.
4.6 Additional considerations: A closer look at the race of the offender

While the lack of a race or ethnicity effect at the individual level is not necessarily surprising given the mixed results produced by prior research, there is reason to believe that we should not consider this non-significant finding as definitive. There may, in fact, be characteristics of the offense that are not captured here that, if present, would result in a significant racial or ethnic effect. Specifically, a number of scholars have noted that the law varies directly with social distance and/or differences in power between the victim and the offender (Black 1987, Collins 1975, Turk 1967). This argument suggests that individuals who are victimized by persons of a lower social status will be punished more harshly for their offenses. Because we know from other studies that most violent offenses are intraracial, it is fair to assume that Blacks are more likely to victimize other Blacks. Thus, we could assume that blacks would be punished less severely for the majority of the crimes they commit. In those rare occasions when they do victimize whites, they would be treated more harshly. Several studies have provided some empirical support for these claims. LaFree (1980), for example, found that Black men who rape white women received longer prison terms than Black men who rape other Black women. Also, Barkan and Cohen (1994) show that blacks are less likely to receive a death sentence because they are more likely to kill other blacks.

Unfortunately, no information on the race of victim for those sentenced to prison terms is currently available. I did introduce an interaction term between the race of the offender and murder (see Model 4), however, that may shed some light on this issue. The coefficient for the interaction term was significantly negative. Thus, when young African
Americans are sentenced to prison for committing murder, they are sentenced to shorter terms than young whites who commit the same offense. If the argument discussed above is correct, this negative sign is likely produced because most of the victims of white offenders are other whites (producing more serious sanctions) while the victims of Black offenders are predominantly other Blacks (generating less severe punishment). This suggests that race is indeed playing some role in the sentencing of these young offenders but is more complicated than a simple account of the offender’s race. When data on the race of the victim are available, future studies should consider the victim/offender dyad to explore the effect of race on sentencing outcomes for young offenders.

4.7 Conclusion

The results regarding individual attributes are consistent with many other prior studies. The characteristics of the offense (offense type) are consistently strong predictors of sentence length. This is consistent with a legalistic interpretation of the law and its enforcement. While this is an important finding, the primary interest of this study is to determine is there are other, extra-legal factors that matter above and beyond these legal considerations. By all accounts, however, there are no other factors that should influence sentencing. The findings of this study suggest this is not the case.

With legal factors considered in the model, race and ethnicity do not account for sentence length. Thus, the findings do not support the conclusion by some scholars that overt discrimination in the form of race based sentencing is taking place. Similarly, the findings also show that the younger offenders adjudicated in the adult courts do not appear to be receiving consideration for their youthfulness in the form of shorter
sentences. As I discussed in earlier chapters, there are a number of reasons to believe juveniles should be treated less harshly for their crimes by the courts and that the younger the defendant, the more she/he should be accorded leniency. It appears from this study that judges in adult criminal courts do not consider this a legitimate factor to base their decisions.

The finding related to the influence of gender and sentence length is also consistent with other studies (Daly 1987, Daly and Bordt 1995, Albonetti 1986). Female offenders do appear to be granted some concessions for their gender based on the fact that they are receiving shorter sentences for their violent crimes. Significantly shorter sentences for female defendants after their offense has been held constant may be explained by a number of factors. First, it may be that the court is acting paternalistically fashion toward women. Women who commit violent crimes may be perceived by the court as less violent or less lethal than their male counterparts simply because of their gender thereby producing a shorter sentence. Alternatively, it could be that Daly’s (1987) finding that women are treated less harshly by the courts because of their greater family commitments is correct. It is also possible that the gender effect is in fact related to a legal consideration. Daly and Bordt (1995) suggest that females convicted of the same offense as males often had less significant roles in the crime than their male partners. Regardless of the actual mechanism through which courts are basing this rationale it is clear from these findings that gender is playing a role in sentencing outcomes.

The findings concerning social threat explanations were also somewhat surprising. Contrary to expectations, the size of the minority population in the state does not have a
significant impact on sentencing length. Unlike other studies that have shown a direct association between crime control and the size of the minority group (Chiricos and Crawford 1995), this study suggests that courts are not considering such factors when adjudicating young offenders. It may be, however, that the role of race and ethnicity may be significant at smaller units. Rather than the state, courts may be responding to racial threat at the local level. Thus, future studies should consider the influence of minority presence using the local court context.

The studies findings also ran contrary to expectations related to an economic threat. Despite claims by a number of neo-Marxist theorists and a number of empirical studies, there was not significant link between the size of the unemployed population and sentence length. Thus, we should assume that in the case of the sentencing of juvenile offenders in adult courts, the threat of a large unemployed population does not appear to be entering into the sentencing decision.

This study’s primary contribution to a better understanding of the criminal processing of juvenile offenders, though, centers on the political effects that have been discovered. While I found no evidence to support racial, ethnic, or economic threat hypotheses, these findings presented here suggest that the political context of the court has a strong influence on the sentencing of young offenders. Courts embedded in states with a strong Republican presence in the government sentence offenders who commit their offenses as juveniles more harshly than those states where Democrats are predominant. Specifically, the findings suggest that states with a Republican governor and those where Republicans have significant control over the state legislature sentence violent juvenile offenders to
longer prison terms. Clearly, the get-tough philosophy related to crime control that these particular politicians emphasize is trickling down to the criminal courts. These findings are consistent with results from other studies based on aggregate data that show a link between partisan accounts and punishment (Jacobs and Helms 1996; Sutton 2000; Jacobs and Carmichael 2001, Jacobs and Carmichael 2004).

The presence of a conservative public also appears to influence the outcome at issue here. We see from the findings that those states where conservative ideologies dominate public thought, sentences for violent juvenile offenders are longer. This result is consistent with the many macro-level analyses that show a link between the political context of the courts and sentencing outcomes (Kiklinski and Stanga 1979, Huang et al. 1996, Helms and Jacobs 2002). It appears, then, that the public is able to exert their influence into the criminal courts through public outcries for severe sanctions. Thus, the findings related to both the presence of Republican officials and a conservative public support theoretical claims that punishment is shaped by the political context of each jurisdiction (Garland 1990, Savelsberg 1994). It is also consistent with prior research on the transfer of juveniles to adult criminal courts (Bortner 1986).

One factor that may be responsible for the influence of a conservative public on the sentencing outcomes is the mechanism through which judges gain their seats. As the results from this study show, states where judges must run for election sentence violent juvenile offenders to longer prison terms than those states where judges do not have to
face the voters. These findings are consistent with those done by political scientists who have explored judicial politics (Huber and Gordon 2004, Hall 1992). Thus, it appears that judicial integrity is impaired when judges must face the voters.

This study provides strong evidence to support the claim that the political context of the court plays a strong role in punishment. The question is, though, why should this matter? Shouldn’t the courts be beholden to the public when determining the appropriate punishment for wrongdoers? Helms and Jacobs (2002) provided some potential answers to these questions by examining Supreme Court decisions on the death penalty. They note that when the Court handed down the set of opinions that re-instituted the death penalty in 1976 (Gregg, Proffitt, and Jurek) it held that this punishment was constitutional if states added guided discretionary sentencing provisions to their statutes. The Court hoped that doing so would ensure horizontal equity across jurisdictions. Helms and Jacobs conclude that there is no reason to believe that similar legal requirements for equity should not be considered for other punishments such as incarceration. Thus, departures from horizontal equity based on the political context of each local trial court should also be constitutionally questionable. The findings from this study suggest this is the case and should therefore be of serious concerns for both scholars and the public.
CHAPTER 5

THE POLITICAL SOCIOLOGY OF THE JUVENILE DEATH PENALTY

5.1 Introduction

Until 2005, several states allowed individuals who committed their crimes as juveniles to be subjected to the death penalty. While this practice has recently been declared unconstitutional (Roper v Simmons 2005), many important questions still remain. Why, for instance, did so many states retain this practice in light of the national and global trend toward abolition? Only some of those states that had a legal juvenile death penalty actually used it. How are those states that sentenced juvenile offenders to death different from those that did not use this sanction for young offenders but allowed it in principle? Can, as conventional explanations suggest, the rise in violent juvenile crime in some states account the use of this severe punishment? Or, alternatively, is there a link between the environmental conditions of a state and its willingness to sentence juvenile offenders to death?

It is surprising that no study has attempted to answer these questions about the juvenile death penalty. While the death penalty is clearly the most severe sanction advanced states can impose on their citizens, few studies have attempted to explain the environmental conditions that influence its use (see Jacobs and Carmichael 2004 for an
example of research that has explored environmental factors related to the death penalty) and no study has explored the environmental factors that may account for the use of this penalty on young offenders. This study begins to fill this gap in the literature by examining social and political factors that may account for the variation in the number of juveniles sentenced to death across jurisdictions and over time.

While conventional wisdom suggests that the variation in the imposition of severe sanctions can be accounted for by the rise in violent juvenile crime, only a limited number of studies have attempted to test alternative explanations. Those studies that have tested unconventional explanations for variation in crime control or punishment (e.g. Sutton 2000, Carmichael 2005, Jacobs and Carmichael 2002) have provided rather compelling evidence that suggests environmental conditions should be considered when attempting to understand the states use of punishment. Using these studies as a model, the present study explores contextual accounts for punishment by identifying determinants of the imposition of the death sentence on young offenders.

There are a number of reasons that a specific study of the imposition of the death penalty on juveniles should be studied. While the most advanced democracies have prohibited the use of the death penalty, nearly every country in the world has condemned the imposition of the death penalty on children on the grounds that it violates basic human rights (Amnesty International 1995). Thus, it is useful to understand why it is that the country that purports to champion human rights is one of only a few countries to support this most draconian of sanctions for its young criminal offenders. But not every state subscribes to the juvenile death penalty. It is important, then, to ascertain if there
are particular attributes of those states that sentenced juvenile offenders to death that
distinguish them from those states that did not? Attempts to answer this question should
improve our understanding of state punishment in general and the use of the death
penalty in particular.

The study of the juvenile death penalty is also important on purely theoretical
grounds. Many theorists have identified punishment as fundamentally involving
questions of power of the state. Foucault (1977), for instance, spent a great deal of
energy discussing the role that punishment plays in society. For Foucault, punishment is
seen as a political tactic used to achieve domination of the public. He describes justice as
“an exercise in terror intended to remind the populace of the unrestricted power behind
the law”. For Foucault, state executions are “… a ritual display of strength and an
affirmation of power…a fact that is dramatically reinforced by the practice of last minute
pardons or suspension of sentence over which the sovereign retains full and personal
control.” (pg. 66).

Like Foucault, Garland (1990) claims that “penality is, in its last instance, a political
instrument of repression” (pg. 113). But unlike Foucault, Garland identifies why the state
is interested in maintaining order through punishment. He claims that punishment is used
by the state to perpetuate the inequities of the social order. Specifically, he argues that
“penal law, at base, concerns itself with social authority and the governing claims of
those in power (pg. 123). He goes on to suggest that a key component of crime control
policies is to regulate the “problem populations” (pg 130). This study will test these
claims by empirically assessing political explanations of juvenile death sentences.
Alternative political accounts also exist. Some scholars have claimed that politicians use crime control for their own political gains (Beckett 1997, Chambliss 1994, Davey 1998, Oliver 2003, Tonry 1994). In recent decades, many politicians have campaigned on crime related issues in an effort to win votes (Beckett 1997). At the forefront of the crime issue, for many politicians, is how to control crime through severe sanctions. Because the death penalty is the most severe sanction possible, it has often been used as an indicator of a politician’s sincerity in reducing the crime problem (Bright 1998). Candidates seeking offices from the local to the national level have won and/or lost their seats based on their positions on this issue (see Bright 1998 for illustrations). Thus, a study that explores the explanatory power of these political accounts should provide valuable insight into the use of punishment. To this end, I will focus this analysis on the political factors that may be related to the variation in the imposition of the juvenile death penalty.

While numerous studies have examined the death penalty, most have focused primarily on the individual level characteristics such as race that may explain the imposition of the death sentence (Paternoster 1991, Kleck 1981, Barkan and Cohen 1994, Costanza 1997, Baldus 1990) and the deterrent effect of this punishment (c.f. Peterson and Bailey 1998, Bailey and Peterson 1999, Bailey 1998, Radelet and Borg 2000). A handful of recently published studies conducted by David Jacobs and his colleagues (Jacobs and Carmichael 2002, Jacobs and Carmichael 2004, Jacobs, Carmichael, and Kent 2005), however, have moved beyond these commonly explored factors and have instead examined theoretically derived determinants (particularly the political context).
that help explain the legality and use of the death penalty. Despite the attention given to the use of the death penalty more broadly, no study has attempted to ascertain whether or not these contextual factors can explain the use of the juvenile death penalty. I will do so in this chapter.

**A Brief Overview of the Juvenile Death Penalty:** Over the last several decades there has been a movement away from the execution of juvenile offenders around the globe. Since 1990, there have only been a handful of countries that have executed individuals who committed their crime(s) as a juvenile. The list of nations who allow for the execution of juvenile offenders includes Congo, Iran, Yemen, Saudi Arabia, Pakistan, Nigeria, and, until very recently, the United States (Bradley 2002). Until 2004 when the Supreme Court declared the execution of minors unconstitutional, 22 U.S states had statutes permitting the execution of minors. Table 5.1 identifies those states that permitted the imposition of the death penalty on juveniles prior to the Court declaring this practice unconstitutional. The states that retained the juvenile death penalty (in Table 5.1) were compelled by the Supreme Court’s landmark decision in 2005 to remove these provisions from their statutes because the Court declared this practice unconstitutional.

<table>
<thead>
<tr>
<th>Alabama</th>
<th>Georgia</th>
<th>Missouri</th>
<th>Pennsylvania</th>
<th>Virginia</th>
</tr>
</thead>
<tbody>
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<td>Nevada</td>
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<td>Wyoming</td>
</tr>
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<tr>
<td>Florida</td>
<td>Mississippi</td>
<td>Oklahoma</td>
<td>Utah</td>
<td></td>
</tr>
</tbody>
</table>

Source: Streib 2003.

**Table 5.1: States Permitting the Imposition of the Death Penalty for Juveniles in 2003**
Between 1973 and 2003, 226 juvenile had been sentenced to death in the United States (all of the following statistics are from Streib 2003). During this period 22 had been executed (or 2.6 percent of the total number of executions). About one-third (78) of those juvenile death sentences that were handed out during the current era were still in force when the Court made its final decision in *Roper*. In total, about 85 percent of those juveniles who were sentenced to death had their sentences commuted or reversed on appeal. While juvenile death sentences were relatively spread out across the country, two-thirds of the executions that took place in the current era happened in just one state (Texas).

**The Literature:** Those studies that have explored the juvenile death penalty have largely been concerned with identifying the extent to which juveniles are subjected to this punishment and assessing the public opinion of this sanction for young people. The leading scholar in the area of the juvenile death penalty has been Victor Streib. His work has highlighted the legal history of its use as well as an historical account of every juvenile executed in the U.S. since the early 1600s (Streib 1998, Streib 2003).

Many other studies have focused on the extent to which the public supported the use of the death penalty for serious young offenders. Much of this research appears to have been used to bolster claims by either those who support or those who oppose the use of the juvenile death penalty (public support for a sanction is one item the court could use to gauge “evolving standards of decency” standards). The results from these studies tend to be somewhat mixed. Vogel and Vogel (2003), for instance, assessed public attitudes about the juvenile death penalty and found that only one-quarter of those surveyed said
they would be willing to sentence a juvenile who was 15 year old or younger at the time of their crime to death. Additionally, they find that fewer respondents supported the death penalty for juveniles in general compared to adult criminals. Other scholars have moved beyond simply asking respondents to gauge their support for a particular sanction and have instead provided details of a hypothetical offender and crime and asked respondents to provide the appropriate sentence. One such study, conducted by Crosby et al. (1995), allowed each respondent to read an outline of a particularly heinous crime and asked each respondent to provide a sentence, life or death. One of the only varying factors of the story was the age of the defendant (10, 15, 16, or 19). Interestingly, the age of the offender did not appear to influence the respondents’ sentence. Amazingly, 71 percent of men and 52 percent of women voted for execution of the 10-year-old defendant and nearly 88 percent of the men and 53 percent of the women voted for the execution of the 15-year-old defendant. It appears, then, that, faced with an actual brutal case, the public is quite willing to execute even the youngest of violent offenders.

The Legal Context of the Juvenile Death Penalty: Prior to the 1980s, the Supreme Court had not addressed the issue of the juvenile death penalty. While the Court has provided substantial guidance on the constitutionality of the death penalty generally, it has only recently begun to address the issue of the juvenile death penalty directly. After sidestepping the issue on a couple of occasions (Eddings v. Oklahoma, 1981 and Burger v. Kemp 1987) the Court finally began to decide on the constitutionality of executing children for their crimes in Thompson v. Oklahoma (1987). In Thompson, the Court was to decide if the death penalty for a 15-year-old offender violated the constitutions
prohibition against ‘cruel and unusual punishment’. The Court held in this case that executing offenders who committed their crimes under the age of 16 was unconstitutional based on the Eighth Amendment standard of ‘evolving standard of decency’. The Court considered a number of factors to test this ‘standard’ including current statutes relating to the age limits for the death penalty, the willingness of juries to impose this sanction on offenders below a certain age, and international acceptance of this practice.

The Court also noted in this case that both the limited culpability of young people and their greater capacity for rehabilitation makes the imposition of such a severe sanction ‘cruel and unusual’. They also rejected claims that the death penalty for children acted as a general deterrent claiming that it was out of line with the social science research related to young people’s ability to conduct an effective decision-making calculus prior to acting. While the Court appeared to be making a strong claim for the elimination of the juvenile death penalty in its entirety, they did not feel it was appropriate to discuss the age at which the death penalty was appropriate because the particular individual in the case was only fifteen. Thus, the Court ruled only on the merits of sentencing an individual to death who was under the age of 16 at the time of the crime. They held that any juvenile under the age of 16 could not be subjected to the death penalty. Only two years later, however, the Court would address the juvenile death sentence again but this time in reference to a 17-year-old petitioner.

In *Stanford v. Kentucky* (1989), the Court again addressed the issue of the juvenile death penalty but in this case the juveniles in question were sixteen and seventeen years old. This time the Court held that the imposition of the death penalty for juveniles who
were sixteen or older at the time of their crime did not reach the Eighth Amendment standard for ‘cruel and unusual punishment’. It appeared after Stanford, then, that the constitutionality of the juvenile death penalty had been firmly established. A juvenile offender sixteen and seventeen years of age could be executed.

While this decision would stand for over a decade, it was again challenged in 2004. In Roper v Simmons (2005), the Court again heard a case involving a petitioner who had been sentenced to death for a crime he committed as a seventeen-year-old. Using the same Eighth Amendment prohibition against ‘cruel and unusual punishment’ the Court ruled that it was unconstitutional to sentence offenders who committed their crimes under the age of eighteen to death. The Court’s rationale for declaring the juvenile death penalty unconstitutional was based on a few arguments. First, they noted that juveniles cannot be subject to the death penalty because, among other reasons, they are not as culpable for their crimes due to their limited decision-making capacities relative to adults. They also claimed that the inconsistency in the law regulating the behavior of youth in other areas of the law (similar to those I discussed in chapter 1). Thus, they believed that the states themselves believed there was a bright line at the age of eighteen at which point minors were capable of making the kinds of decisions associated with adulthood. The Court argued that subjecting juveniles to this most severe sanction with the assumption that they are equally culpable for their crimes is inconsistent with the other areas of the law that deny certain rights to juveniles based solely on their age. The basis of such laws lead the Court to conclude that state legislatures believed that young people under eighteen lack the maturity and decision-making skills to participate in
certain activities. According to the Court, if the state felt juveniles were not responsible for their actions in other capacities then they should not be held entirely responsible for their criminal actions. Thus, they should not be subject to a penalty reserved for those most culpable of heinous acts. Ultimately, however, the Court based their decision on the idea that the punishment was so grossly disproportionate as to be “cruel and unusual” based on “the evolving standard of decency that mark the progress of a maturing society”.

It is likely that those states that had retained the death penalty for juveniles under the age of eighteen would likely still be sentencing children to death unless the Court ruled it unconstitutional. It should be instructive, then, to ascertain why these were willing to sentence young people to death in light of the global condemnation of this sanction. Also, why did it take the Supreme Court’s decision in Thomas to stop some states from imposing the death sentence on young offender? Regardless of the fact that this sanction has now been declared unconstitutional, it is still useful to understand why some states did not appear to be part of this evolution toward a more decent society (as the Court states).

**Summary**: In sum, the analytical objective of this study will be to find out whether a relationship exists between theoretically derived indicators and the number of juveniles sentenced to death in the U.S. from 1973-2001. Doing so will not only broaden our understanding of why some states have a greater propensity to use criminal sanctions
against juveniles, but it will also provide greater insight into the role that formal sanctions play in the maintenance of social order. The following section will outline the theoretically derived hypotheses.

5.2 Theorizing Juvenile Death Sentences

The Politics of Sentencing: Because criminal court officials are likely influenced by their environment, several scholars have suggested that the context within which courts operate be given greater attention when sentencing outcomes are being studied (Hughes 1995, Carp and Stidham 1996, Helms and Jacobs 2002). Specifically, many authors have claimed that the political context of the courts may account for some of the variation in sentencing outcomes. Because conservative ideology stresses individual accountability for a person’s transgressions and incapacitation over rehabilitation, it is plausible that jurisdictions with a more conservative public will have more punitive sentencing patterns.

A number of studies have supported this assertion both in the rate of incarceration across states and the extent to which the death penalty is utilized. Some studies have shown, for instance, that courts respond to ideological positions of those in their jurisdiction. One study (Kiklinski and Stanga 1979) shows that sentences for drug offenses were shorter in California counties where voters favored liberalized marijuana laws. Thus, sentences appeared to reflect the attitudes of the local population in which the court is embedded. Another study found that this was also the case in the federal courts. Cook (1977) shows that a strong correlation existed between the public attitude
toward draft dodgers during the Vietnam War and sentencing outcomes. While both of these studies implicitly show that the courts are responding to ideological positions within the court’s environment, they do not identify any direct political ideology behind such positions.

Some studies have attempted to directly test the ideological differences across jurisdictions to ascertain whether or not ideological variation could help explain shifts in sentencing severity. Helms and Jacobs (2002), for instance, found that sentences were shorter in those jurisdictions where public support for a Republican candidate for President was minimal. Other scholars have shown that the most conservative jurisdictions have the longest sentences (Huang et al. 1996). A relationship between a conservative public and the rate of incarceration has also been identified (Jacobs and Carmichael 2001).

Other studies that explore the relationship between political ideology and punishment have looked specifically at the death penalty. Evidence from attitudinal surveys, for example, has shown that whites’ support for the death penalty is greater among political conservatives (Barkan and Cohen 1994, Young 1992). Empirical evidence suggests that these attitudes translate into variation in the actual use of the death penalty. Jacobs and Carmichael (2002) use political factors to help predict those states that have a legal death penalty and those that do not. They find that more conservative states have a greater likelihood of having a legal death penalty. Studies have also shown that conservative states are more likely to actual use their death penalty provisions through death sentences (Jacobs, Carmichael, Kent 2005). Thus, if findings related to the use of the juvenile
death penalty are consistent with those about other sentencing outcomes, we may assume that *states with the most conservative public will be more likely to sentence juveniles to death.*

In addition to a conservative public, a state dominated by the politically conservative Republican Party may also be more punitive toward offenders. For decades, Republican candidates have campaigned using law-and-order appeals as a wedge issue to gain votes (Beckett 1997). These tough-on-crime appeals helped many candidates gain their seats (Bright 1998). Once in office, Republican candidates lived up to their campaign pledges. Studies have shown that Republican officials spent more money on crime control than their Democratic counterparts (Jacobs and Helms 1999; Caldeira 1983) put more police on the street and put more people in prisons (Jacobs and Helms 1996, 1997). Thus, we should assume that *when Republicans control important political positions, juveniles will be more likely to receive death sentences.*

The mechanism through which judges are selected for their seat may also play a role in the severity of punitive responses to crime. In most states, trial judges must face the voters to gain their seats. Several scholars have criticized the mixing of politics and justice claiming that doing so runs the risk of limiting judicial independence. In particular, it is feared that trial judges may succumb to public demands for harsh sentences for particularly heinous crimes or those that receive a great deal of media attention. Brace and Hall (1997) articulate the problem when they claim that “soft” judges who ignore public support for harsh punishment for crime are vulnerable to loosing their seat upon election. Several scholars have provided evidence to support such
fears. Hall (1992) found that state appellate judges were less likely to overturn death penalty verdicts in states with short election cycles. We may assume, then, that juvenile death sentences may be more likely in states where judges must be elected to their office.

**Religious Fundamentalism:** If, as studies have shown, judges are likely to respond to their environment, then other factors beyond political ideology may influence sentencing outcomes. Historical research has shown a strong association between fundamentalism and the evolution of punishment more broadly (Erickson 1966) and the death penalty in particular (Ignatieff 1978). Fundamentalists tend to be less inclined to accept the possibility of rehabilitation and have little sympathy for claims for a reduction in culpability because they believe human nature is fixed (Thorne 1990). Thus, religious conservatives tend to be more inclined to support harsh sanctions to serve as vehicles of retribution and incapacitation. Attitudinal research has shown that religious conservatives tend to have greater support for harsh treatment of criminals (Cohn et al. 1991). Specifically, opinion surveys suggest that fundamentalists have greater support for corporal punishment (Ellison and Sherkat 1993) the death penalty (Curry 1996) and they are more inclined to see retribution as the primary goal of punishment (Grasmick et al. 1992; Ellison and Sherkat 1993). Because fundamentalists are less likely to give great weight to any mitigating factor, it seems unlikely that the mitigating influence of youth
would influence their expectation for severe criminal sanctions. Thus, we may assume that those states with a large fundamentalist population will be more likely to sentence juveniles to death.

**Racial and Ethnic Threat:** A number of theorists from the neo-Marxist tradition have asserted that discrimination in the courts is a function of the perceived threat that the poor and minority populations pose to majority group members’ interests and culture (Chambliss and Seidman 1971, Quinney 1970, Blumer 1967, Blalock 1967, Turk 1969, 1982). Blumer (1958) and Blalock (1967), for example, claim that dominant racial groups are threatened by larger minority populations. Blalock claims that threat is related to minority group size because a large minority presence heightens perceived competition for jobs and other economic resources as well as increasing the possibility of successful electoral success.

Recent studies have provided evidence for such claims by exploring the attitudinal relationship between race and crime as well as macro level studies that have explored the link between the size of the minority population and crime control efforts. Studies have shown that negative attitudes about blacks are more common in communities with more African American residents (Bobo and Hutchings 1996). These negative attitudes often relate to issues of race and crime. Quillian and Pager (2001), for instance, show that stereotypes about minority males as violent and predatory contribute to an increase in fear of victimization. Liska et al. (1982), for instance, find that fear of crime is positively related to the size of the African American population after controlling for the amount of
crime committed in cities. Other researchers have argued that discrimination against minorities occurs indirectly through other considerations such as socioeconomic status, family structure, demeanor, or school status (Pope and Feyerherm 1990).

This increase in fear of crime related to the size of the minority population has been associated with a rise in a number of crime control measures such as spending on police (Jackson and Carroll 1981), the number of police on the street (Liska, Lawrence and Benson 1981), and spending on corrections (Jacobs and Helms 1999). There is also evidence to support a connection between minority group size and the death penalty. States with a large African American population are more likely to have a legal death penalty (Jacobs and Carmichael 2002) and much more likely to use this severe sanction (Jacobs and Carmichael 2004). If the use of the juvenile death penalty follows a similar pattern we may expect to see those states with a large African American population to sentence juveniles to death. Because some ethnic groups may also be perceived as a threat to majority group members, we may also expect to see a greater likelihood of juvenile death sentences in those jurisdictions where Hispanics make up a sizable proportion of the overall population.

**Economic Threat:** Theorists have also suggested the threat of a large unemployed population may also increase threat. Beginning with the important work done by Rusche-Kirchheimer, numerous scholars have claimed that punishment is employed by dominant members of society to control the labor supply (Rusche and Kirchheimer 1939; Quinney 1977; Jankovic 1977). Rusche and Kirchheimer (1939) maintain that punishment is not a means of crime control but it is rather an instrument used by the rich to dominate the
poor. These authors presume that those at the bottom of the income distribution are less committed to the law and the dominant moral order and are therefore more likely to participate in activities that threaten the social order. Consistent with this assertion, Jankovic (1977) hypothesizes that “a rise in unemployment will lead to an increase in prison commitments because the policy of deterrence dictates an intensification of punishment in order to combat the increasing temptation to commit crime” (1977: 20).

On the other hand, when demand for labor is high, penal institutions may be less inclined to keep (or bring under their control) a large number of individuals when their labor is needed by private employers. During times of economic expansion, therefore, penal institutions may (after instilling the discipline necessary for ‘legitimate’ work in inmates) release a labor force that is ready to conform to this dominant work ethic. Findings from studies that have tried to analyze the correlation between unemployment and incarceration have provided mixed support for the neo-Marxist claims (Inverarity and McCarthy 1988, Chiricos and Delone 1992) but a slim majority provides affirmative support. If sentencing young offenders follows the anticipated pattern then we should expect states with higher unemployment rates to have a greater propensity to sentence juveniles to death.

**Additional Controls:** Because the public and the courts may be responding to levels of violent crime when they sentence juvenile offenders, it may be that those states with higher violent crime rates will be more inclined to sentence some juvenile offenders to death. Also, states with a larger juvenile population are more likely to have the type of violent offenders that qualify for the most severe sanction. To account for this
possibility, I will include measures for the juvenile population in each model. I also include regional controls to account for cultural differences that may influence the variation in juvenile death sentences.

Finally, I will include a control for the presence of sentencing guidelines. Recently, several researchers have explored the effects legislative attempts to reduce judges’ discretionary powers (and the potential discriminatory bias that goes with it) by introducing sentencing guidelines (D’alessio and Stolzenburg 1995, Marvell and Moody 1996). These guidelines may not only reduce the bias in the justice system but may also reduce public outcries about unpopular sentence outcomes for particular cases because judges in these jurisdictions have little discretion about the sentence. If these guidelines are successful at reducing both the bias and the need to respond to public demands for punishment then we may expect those states with such sentencing guidelines will be less inclined to sentence juvenile offenders to death.

5.3 Data and Measure

*Unit of Analysis*: To test the hypotheses outlined above, I complied a panel dataset for the years 1973-2001 that includes data for all 50 states. Because prior research suggests that any examination of the criminal justice system should consider characteristics of the community in which each court is embedded, I include state-level indicators to predict the likelihood that a state will sentence juvenile offenders to death. The state is the most appropriate unit of analysis because this is the unit where much of the political process associated with this outcome is originated. State legislatures determine the legality of the death penalty and the age at which this sanction can be imposed on offenders. Thus, it is
The political arraignments at the state that should produce the most important results.

**The Dependent Variable:** The dependent variable in this study is the number of juveniles sentenced to death in each state from 1973-2001. Data for the dependent variable was taken from Victor Strieb’s (2003) detailed account of the juvenile death penalty during this period. His data includes the date of the death sentence, the state the sentence was imposed and the race of the juvenile for each person receiving a death sentence for crimes committed while they were under the age of eighteen.

**Estimation:** Because the juvenile death penalty is so rare, I use an estimation technique uniquely suited for dealing with such data. OLS is inappropriate when the event in question is rare and the distribution is not normal, but dedicated count estimators provide accurate estimates for these events (Cameron and Trivedi 1998, Long 1997). The two most common count estimators are Poisson and negative binomial regression. I use negative binomial because tests show that over-dispersion is present (see Chapter 3 for a discussion of over-dispersion).

In addition to the methodological consideration that was taken into account because of the rarity of the event, I also had to consider other issues with the data. There are a number of reasons that a state may have zero juvenile death sentences. They may not have a legal death penalty (for adults or juveniles). Alternatively, they could have a legal death penalty but not allow offenders under 18 to be sentenced to death. They may also have a legal juvenile death penalty but not use it. One possibility for dealing with this problem is to only analyze those states that allow juvenile offenders to be sentenced to death. This solution is not ideal because it introduces selection bias. Rather than risk
selection bias, I use an alternative estimation procedure that analyzes all states but separately models the determinants of one or more juvenile death sentences and those states with zero.

This technique, known as a zero-inflated model, is ideally suited for the particular outcome in question here. Specifically Cameron and Trivedi (1998) state that this procedure is particularly useful when the zero categories can be broken down into several categories where some are never at risk of the outcome and others are not. This is precisely the case with juvenile death sentences (see preceding paragraph). I combine the qualities of the negative binomial regression technique that is ideally suited for rare counts with the zero-inflated procedure that handles the multiple reasons for the zeroes. The estimation technique I use, then, is known as zero-inflated negative binomial.

Because the data is in panels (states by year), and the observations within each state are likely not to be independent, I use a clustering technique available in Stata that corrects the standard errors for the interdependence that is present within each state.

The Explanatory Variables: Annual data was collected for all of the explanatory variables. In the case of missing data, annualized data was obtained through linear interpolation. Hispanic presence was interpolated between 1970 and 1980 and also between 1980 and 1990. Unemployment figures were also missing for a small number of states during the early 1970s so these figures were interpolated. The measures for the explanatory variables are as follows.

Threat Explanations: Measures for racial, ethnic and economic threat are as follows:

- To measure racial threat I use the percentage of the population that is African
American. Data for African American presence is taken from the U.S. Census. To correct for skewness this variable is placed in natural log form.

- Ethnic threat is assessed by using the percentage of the population that is of Hispanic origin taken from the U.S. Census. This variable will also be in natural log form.

- Economic threat is measured using unemployment rates taken from the *Statistical Abstracts*.

**Political and Cultural Explanations:** The political measures include citizen ideology, Republican governor, Republican strength in the legislature, and judicial selection. The cultural measure is religious fundamentalism. These variables are measured as follows:

  - Citizen ideology is assessed using data taken from Berry et al. (1998). The measure calculates a score for each state ranging from 0 (most conservative) to 100 (most liberal). Scores are based on the ideological position of each member of Congress using interest group rating taken from Americans for Democratic Action (ADA – organization affiliated with AFL-CIO) and the Committee on Political Education (COPE).

  - Republican governor is a dummy variable coded “1” if the governor is Republican. Data for this measure is taken from the *Statistical Abstracts*.

  - Republican strength in the legislature is assessed by using the percentage of the state legislature that is Republican. Data for this measure is also taken from the Census.

  - The effect of judicial selection on juvenile death sentences by including a dummy
coded “1” if judges in that state must run in an election to gain their seats. Data for this measure is taken from the American Judicature Society (AJS) (http://www.ajs.org/js/). AJS provides a historical data archive of the mechanism through which judges are selected for their seat.

- Religious fundamentalism is assessed using data from Morgan and Watson (1991). The measure is the proportion of the population that belongs to the following churches: Assemblies of God, Churches of Christ, All Baptist bodies, Church of God, Church of the Nazarene, All Pentecostal churches, and all Evangelical churches.

Additional Controls:

- Juvenile crime is assessed using two measures. The first is the juvenile arrest rates for murder taken from the FBI arrest data archives. The second measure is the percent of all arrests for murder that juveniles account for.

- Juvenile population is measured using number of juveniles ages 10-17 in each state. This age range is selected because juveniles younger than 10 years of age are not eligible for the death penalty. Also, crime is relatively rare younger at earlier ages.

- Determinant sentencing legislation is assessed using a dummy coded “1” if states have this particular sentencing scheme. Data for this measure was taken from Marvell and Moody (1996) who identify each state with this provision.

- Region is assessed using the Census derived regional breakdown of the states.
5.4 Descriptive Statistics

Table 5.2 provides a summary of the means, standard deviations and the expected direction of the relationships between each variable and the likelihood that a state will sentence juveniles to death (primary equation predicting the number of death sentences only). The table also includes both cross-sectional and over-time variation as well as the minimum and maximum values. All expected signs are positive except for citizen ideology which is negative because of the way the variable is coded (more liberal states have higher numbers). Also, the regional dummies are expected to be negative because the reference category is the South. This Table also shows that there is considerable variation in the dependent variable both over time and cross-sectionally.

There are a number of other details pertaining to the dependent variable that are interesting as well. From 1973-2002, 222 juveniles were sentenced to death in 23 different states. Table 5.3 identifies the number of juveniles sentenced to death in the current era. This table is important in that it shows that at some point in this time period nearly every state with a legal juvenile death penalty used it at least once. We also see that the vast majority of these sentences were handed down in just a few Southern states. Nearly 1 in 4 juvenile death sentences were handed down in just one state (Texas). Just four states in the South accounted for over 57 percent of the death sentences imposed on
these offenders (Texas, Florida, Alabama, and Louisiana). While this regional concentration is an important detail, it is also indicative of the need for the regional dummies that are introduced in the models.

<table>
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<td>0.32</td>
<td></td>
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</tr>
<tr>
<td>Ln of Religious Fundamentalism</td>
<td>+</td>
<td>-2.23</td>
<td>1.29</td>
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</tr>
<tr>
<td>overall</td>
<td>1.30</td>
<td>-4.61</td>
<td></td>
<td>-0.37</td>
<td></td>
</tr>
<tr>
<td>between</td>
<td>0.00</td>
<td>-2.23</td>
<td></td>
<td>-2.23</td>
<td></td>
</tr>
<tr>
<td>within</td>
<td>0.00</td>
<td>-0.23</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judicial Selection (1=Election)</td>
<td>+</td>
<td>0.78</td>
<td>0.42</td>
<td>0.00</td>
<td>1.00</td>
</tr>
<tr>
<td>overall</td>
<td>0.42</td>
<td>0.00</td>
<td></td>
<td>1.00</td>
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</tr>
<tr>
<td>between</td>
<td>0.42</td>
<td>0.00</td>
<td></td>
<td>1.00</td>
<td></td>
</tr>
<tr>
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<td>0.42</td>
<td>0.00</td>
<td></td>
<td>1.00</td>
<td></td>
</tr>
<tr>
<td>1= Republican Governor</td>
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<td>0.48</td>
<td>0.50</td>
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</tr>
<tr>
<td>overall</td>
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<td>1.00</td>
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<td>between</td>
<td>0.24</td>
<td>0.00</td>
<td></td>
<td>1.00</td>
<td></td>
</tr>
<tr>
<td>within</td>
<td>0.44</td>
<td>-0.34</td>
<td></td>
<td>0.78</td>
<td></td>
</tr>
<tr>
<td>Juvenile Population (10-17 yrs)</td>
<td>+</td>
<td>594,373</td>
<td>63,250</td>
<td>56,753</td>
<td>1,522,151</td>
</tr>
<tr>
<td>overall</td>
<td>635,270</td>
<td>63,250</td>
<td></td>
<td>1,522,151</td>
<td></td>
</tr>
<tr>
<td>between</td>
<td>632,358</td>
<td>63,227</td>
<td></td>
<td>1,411,486</td>
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</tr>
<tr>
<td>within</td>
<td>76,224</td>
<td>213,097</td>
<td></td>
<td>1,335,038</td>
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</tr>
<tr>
<td>Juvenile Arrest Rate for Murder</td>
<td>+</td>
<td>0.47</td>
<td>0.45</td>
<td>0.00</td>
<td>2.67</td>
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<td>within</td>
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<td>0.26</td>
<td>0.44</td>
<td>0.00</td>
<td>1.00</td>
</tr>
<tr>
<td>overall</td>
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<td>0.00</td>
<td></td>
<td>1.00</td>
<td></td>
</tr>
<tr>
<td>between</td>
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<td></td>
</tr>
<tr>
<td>within</td>
<td>0.00</td>
<td>0.26</td>
<td></td>
<td>0.26</td>
<td></td>
</tr>
<tr>
<td>1= Midwest</td>
<td>-</td>
<td>0.24</td>
<td>0.43</td>
<td>0.00</td>
<td>1.00</td>
</tr>
<tr>
<td>overall</td>
<td>0.43</td>
<td>0.00</td>
<td></td>
<td>1.00</td>
<td></td>
</tr>
<tr>
<td>between</td>
<td>0.43</td>
<td>0.00</td>
<td></td>
<td>1.00</td>
<td></td>
</tr>
<tr>
<td>within</td>
<td>0.00</td>
<td>0.24</td>
<td></td>
<td>0.24</td>
<td></td>
</tr>
<tr>
<td>1= Northeast</td>
<td>-</td>
<td>0.18</td>
<td>0.39</td>
<td>0.00</td>
<td>1.00</td>
</tr>
<tr>
<td>overall</td>
<td>0.39</td>
<td>0.00</td>
<td></td>
<td>1.00</td>
<td></td>
</tr>
<tr>
<td>between</td>
<td>0.39</td>
<td>0.00</td>
<td></td>
<td>1.00</td>
<td></td>
</tr>
<tr>
<td>within</td>
<td>0.00</td>
<td>0.18</td>
<td></td>
<td>0.18</td>
<td></td>
</tr>
</tbody>
</table>

Note: Predicted signs refer to equations that explain one or more juvenile death sentences. Expected signs are the opposite when the same variable is in the equation predicting zero juvenile death sentences.

Table 5.2: Predicted Signs, Means, and Standard Deviations.
<table>
<thead>
<tr>
<th>State</th>
<th># of Juv Death Sentences</th>
<th>% of Total</th>
<th>State</th>
<th># of Juv Death Sentences</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>25</td>
<td>11.3</td>
<td>Nebraska</td>
<td>1</td>
<td>.5</td>
</tr>
<tr>
<td>Arizona</td>
<td>7</td>
<td>3.2</td>
<td>Nevada</td>
<td>3</td>
<td>1.4</td>
</tr>
<tr>
<td>Arkansas</td>
<td>2</td>
<td>1</td>
<td>New Jersey</td>
<td>1</td>
<td>.5</td>
</tr>
<tr>
<td>Delaware</td>
<td>1</td>
<td>.5</td>
<td>North Carolina</td>
<td>11</td>
<td>5</td>
</tr>
<tr>
<td>Florida</td>
<td>31</td>
<td>14</td>
<td>Ohio</td>
<td>6</td>
<td>2.7</td>
</tr>
<tr>
<td>Georgia</td>
<td>11</td>
<td>5</td>
<td>Oklahoma</td>
<td>7</td>
<td>3.2</td>
</tr>
<tr>
<td>Indiana</td>
<td>3</td>
<td>1.4</td>
<td>Pennsylvania</td>
<td>6</td>
<td>2.7</td>
</tr>
<tr>
<td>Kentucky</td>
<td>3</td>
<td>1.4</td>
<td>South Carolina</td>
<td>6</td>
<td>2.7</td>
</tr>
<tr>
<td>Louisiana</td>
<td>17</td>
<td>7.7</td>
<td>Texas</td>
<td>54</td>
<td>24.3</td>
</tr>
<tr>
<td>Maryland</td>
<td>3</td>
<td>1.4</td>
<td>Virginia</td>
<td>6</td>
<td>2.7</td>
</tr>
<tr>
<td>Mississippi</td>
<td>13</td>
<td>5.9</td>
<td>Washington</td>
<td>1</td>
<td>.5</td>
</tr>
<tr>
<td>Missouri</td>
<td>4</td>
<td>1.8</td>
<td>TOTAL</td>
<td>222</td>
<td>100</td>
</tr>
</tbody>
</table>

Table 5.3: The number of juveniles sentenced to death from by state, 1973-2001.

5.5 Multivariate Results

To assess the influence of the independent variables on the number of individuals sentenced to death for crimes they committed as juveniles, I use zero-inflated negative binomial regression with cluster corrected standard errors that bases the significance tests on the 50 states rather than the individual observations. Table 5.4 provides the regression estimates for this outcome.

Model 1 assesses the influence of the racial and ethnic threat variables as well as the controls for juvenile crime and the size of the juvenile population. We see from this early model that while the percentage of the population that is African American does significantly increase the likelihood that a state will have one or more juvenile death sentences, the size of the Hispanic population does not appear to matter. We also see in the primary equation (1 or more juvenile death sentences) that neither the juvenile
population nor the juvenile arrest rate for murder produce a greater likelihood for the number of juveniles sentenced to death. In the secondary equation (zero juvenile death sentences), only the size of the juvenile population appears to matter. The negative sign indicates that, as expected, having more juveniles decreases the likelihood that there will be no juvenile death sentences in a particular state.

Model 2 adds to the first model by introducing the political variables into both equations as well as the economic threat variable into the secondary equation. We see from this model that both the racial and ethnic threat variables now reach significance in the primary equation. Thus, as I expected, those states with more African Americans and Hispanics are more likely to sentence juvenile offenders to death. The results for the political variables are also intriguing. All of the political contextual variables in the primary equation are significant in the expected direction. States with a more liberal public are significantly less likely to sentence juvenile offenders to death. Another cultural factor associated with the public is also associated with the use of the juvenile death penalty. States with a greater proportion of religious fundamentalists are, as expected, significantly more likely to sentence young offenders to death.

The partisanship of state officials also appears to be influencing this outcome. Having a Republican governor is associated with a greater likelihood to sentence juvenile offenders to death. This is in line with my earlier expectations that having a Republican governor could influence punitive outcomes due to their law and order stance on crime.
### Table 5.4. Zero-Inflated Negative Binomial Estimates for the Number of Juveniles Sentenced to Death in the United States, 1973-2001 (all models use cluster corrected standard errors).*

<table>
<thead>
<tr>
<th></th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
<th>Model 4*</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1 + Juvenile Death Sentence</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ln % Black</td>
<td>.127***</td>
<td>.544*</td>
<td>.214</td>
<td>.176</td>
</tr>
<tr>
<td></td>
<td>(.292)</td>
<td>(.263)</td>
<td>(.316)</td>
<td>(.315)</td>
</tr>
<tr>
<td>Ln % Hispanic</td>
<td>.442</td>
<td>.645**</td>
<td>.600**</td>
<td>.566**</td>
</tr>
<tr>
<td></td>
<td>(.299)</td>
<td>(.251)</td>
<td>(.239)</td>
<td>(.240)</td>
</tr>
<tr>
<td>Juvenile Population (10-17 yrs.)a</td>
<td>.013</td>
<td>.014</td>
<td>.017</td>
<td>.015</td>
</tr>
<tr>
<td></td>
<td>(.049)</td>
<td>(.036)</td>
<td>(.035)</td>
<td>(.035)</td>
</tr>
<tr>
<td>Juvenile Arrest Rate for Murder (10-17 yrs.)</td>
<td>.251</td>
<td>.476*</td>
<td>.628**</td>
<td>.644**</td>
</tr>
<tr>
<td></td>
<td>(.264)</td>
<td>(.262)</td>
<td>(.223)</td>
<td>(.223)</td>
</tr>
<tr>
<td>Citizen Ideology</td>
<td>--------</td>
<td>-.029*</td>
<td>-.029*</td>
<td>-.027*</td>
</tr>
<tr>
<td></td>
<td>(.013)</td>
<td>(.013)</td>
<td>(.013)</td>
<td></td>
</tr>
<tr>
<td>Ln Religious Fundamentalism</td>
<td>--------</td>
<td>.825*</td>
<td>.940**</td>
<td>.929**</td>
</tr>
<tr>
<td></td>
<td>(.403)</td>
<td>(.327)</td>
<td>(.316)</td>
<td></td>
</tr>
<tr>
<td>Republican Governor</td>
<td>--------</td>
<td>.419**</td>
<td>.513***</td>
<td>.542***</td>
</tr>
<tr>
<td></td>
<td>(.167)</td>
<td>(.169)</td>
<td>(.173)</td>
<td></td>
</tr>
<tr>
<td>Judicial Selection (1= Elected)</td>
<td>--------</td>
<td>.629**</td>
<td>.764**</td>
<td>.727**</td>
</tr>
<tr>
<td></td>
<td>(.244)</td>
<td>(.260)</td>
<td>(.252)</td>
<td></td>
</tr>
<tr>
<td>1 if Westc</td>
<td>--------</td>
<td>--------</td>
<td>-.935</td>
<td>.929</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(.708)</td>
<td>(.714)</td>
</tr>
<tr>
<td>1 if Midwest</td>
<td>--------</td>
<td>--------</td>
<td>-.686</td>
<td>-.703</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(.643)</td>
<td>(.639)</td>
</tr>
<tr>
<td>1 if Northeast</td>
<td>--------</td>
<td>--------</td>
<td>1.474</td>
<td>1.447</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(1.201)</td>
<td>(1.188)</td>
</tr>
<tr>
<td>Constant</td>
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<td>-2.44*</td>
<td>-2.238*</td>
<td>-2.201*</td>
</tr>
<tr>
<td></td>
<td>(.969)</td>
<td>(1.103)</td>
<td>(1.003)</td>
<td>(1.039)</td>
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</table>

**Juvenile Death Sentence Absence**

<table>
<thead>
<tr>
<th></th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
<th>Model 4*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Juvenile’s Share of all Arrests for Murder</td>
<td>.067</td>
<td>.032</td>
<td>.033</td>
<td>.035</td>
</tr>
<tr>
<td></td>
<td>(.083)</td>
<td>(.084)</td>
<td>(.078)</td>
<td>(.077)</td>
</tr>
<tr>
<td>Juvenile Population (10-17 yrs.)a</td>
<td>-.104***</td>
<td>-.085**</td>
<td>-.087**</td>
<td>.087**</td>
</tr>
<tr>
<td></td>
<td>(.030)</td>
<td>(.031)</td>
<td>(.029)</td>
<td>(.029)</td>
</tr>
<tr>
<td>% Republican in State Legislature</td>
<td>--------</td>
<td>.010</td>
<td>-.007</td>
<td>-.007</td>
</tr>
<tr>
<td></td>
<td>(.038)</td>
<td>(.026)</td>
<td>(.027)</td>
<td></td>
</tr>
<tr>
<td>1=Determinate Sentencing Legislation</td>
<td>--------</td>
<td>2.431*</td>
<td>2.456**</td>
<td>2.457**</td>
</tr>
<tr>
<td></td>
<td>(1.162)</td>
<td>(0.895)</td>
<td>(0.880)</td>
<td></td>
</tr>
<tr>
<td>Unemployment Rate</td>
<td>--------</td>
<td>-.507*</td>
<td>-.577*</td>
<td>-.575*</td>
</tr>
<tr>
<td></td>
<td>(.245)</td>
<td>(.264)</td>
<td>(.250)</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>1.460</td>
<td>4.962</td>
<td>6.083*</td>
<td>5.988*</td>
</tr>
<tr>
<td></td>
<td>(1.516)</td>
<td>(4.069)</td>
<td>(3.514)</td>
<td>(3.427)</td>
</tr>
</tbody>
</table>

|                              |         |         |         |         |
| Number of Cases             | 1068    | 1068    | 1068    | 1018    |
| Log Likelihood             | -388.22 | -332.91 | -324.79 | -313.39 |
| AIC                        | 794.44  | 697.81  | 687.57  | 664.79  |

*P ≤ .05; **P ≤ .01; ***P ≤ .001. Standard Errors are in parentheses. All models use 1 year lag b/w Ivs and DV. a Coefficients and Standard Errors are multiplied by 10,000. a Model 4 Restricted to 1980-2001. c South is reference category.
that may shape decisions in the criminal justice system. In the secondary equation, however, we see that having a sizable Republican presence in the state legislature does not predict having zero death sentences.

Model 2 also shows that judicial selection is playing a role in the use of the juvenile death penalty. Judges in states who they must run in an election are more likely to sentence juveniles to death. Thus, judges in these states appear to be more susceptible to outside public pressure when they must run for election. Clearly, judicial independence is compromised in these states.

We also see in this model that the juvenile murder rate has now reached significance in the primary equation. Thus, as expected, courts are responding to the juvenile violence in their communities by sanctioning these offenders more harshly.

In the secondary equation in Model 2 we see that having determinant sentencing legislation significantly influences the likelihood of having zero juvenile death sentences. It appears, then, that these statutes, that are implicitly designed to limit judicial discretion in sentencing, produce fewer juvenile death sentences. We also see from this equation that having a high unemployment rate is associated with a significantly lower likelihood of having zero juvenile death sentences.

Model 3 adds to Model 2 by introducing regional controls to the primary equation. While none of these dummies are significant, they do influence some of the results for other independent variables. Most importantly, the coefficient for the percentage African American fails to reach significance with regional differences accounted for. It is likely,
then, that the effect of race is largely driven by one particular region of the United States. Results for the ethnic threat variable, however, maintain significance even after the introduction of the regional dummies.

All other variables in both the primary and secondary equation that were significant in Model 2 remain significant in the same direction after the regional dummies are introduced.

The final model includes the same variables that were present in Model 3 but considers the time-period. The death penalty was declared unconstitutional after the Supreme Court’s Furman decision in 1972 and was not reinstated until the Gregg, Jurek, and Proffitt decision in 1976. States often spent years restructuring their statutes to conform to the requirements set forth in these decisions to reinstate the death penalty. Because of the questions about the constitutionality related to the death penalty in the 1970s it should be useful to determine how the results might be affected if the equation removed these years. Thus, Model 4 includes the years 1980-2001. We see from the results of this model that all the variables that were significant in Model 3 remain significant in this restricted model. It is therefore appropriate to assume that the results are not being biased by these early years in the study.

The results from all four models provide a relatively consistent picture of the determinants of juvenile death sentences. The presence of a conservative public as well as fundamentalists is associated with a greater likelihood of sentencing one or more juvenile to death. Having a Republican Governor and having judges subjected to the voters also produces more juvenile death sentences. Two of the threat indicators (ethnic
and economic threat) both provided consistent results in the expected direction. Thus, the results here provide a rather compelling need to consider the contextual factors of the court environment to assess the variations in the punishment of violent juveniles.

5.6 Conclusions

While the conventional explanation for the use of the juvenile death penalty was a response to a violent juvenile act, the results presented here suggest that sociopolitical factors also influence this outcome. Specifically, ethnicity and ideology appear to have played a role in the juvenile death penalty while this sanction was still constitutional. The results presented here show that juveniles were being subjected to the most severe sanction the state can administer in jurisdictions where the public had stronger support for severe sanctions because of their ideological persuasions.

The results provide strong support for conflict expectations about the role of punishment. By showing a consistent link between the presence of minority group members, a large unemployed population and the severity of criminal sanctions for juveniles, this study suggests that punishment is not simply a response to levels of violent crime but is also reacting to majority group fears about minority group members and the poor. The findings related to the influence of the size of the minority population are consistent with prior studies that have shown that white’s fear of victimization is often linked to the size of the minority group they see as particularly criminogenic (e.g. Quillian and Pager 2001). Because crime policies are largely in the hands of politicians,
it seems likely that fears about minority group members are generating greater demand for punishment through the political arena either by supporting like-minded candidates or by pressuring others to strengthen crime control measures.

In addition to the largely political results associated with minority threat, the findings also show that directly political factors influenced the use of the death penalty on juvenile offenders. The results showed that having a Republican governor increased the likelihood of having one or more death sentence. This is not surprising given the emphasis Republicans have placed on law and order issue in order to win votes (Beckett 1997). Within this particular rhetorical area no other issue was more important that the death penalty. As Bright (1998; pg. 122) suggests, “the death penalty has become the ultimate litmus test for demonstrating that one is not soft on crime.” Beginning in the late 1980s this law and order rhetoric began to focus on the death penalty for young offenders. Purportedly in response to widely publicizes juvenile violent crimes, many politicians began to campaign around the issue of juvenile crime and ways to deals with it. For Republicans, the answer was to increase the severity of punishment to include an increased use of the juvenile death penalty (Zimring 2005). The implication of this, however, is that these politicians are influencing court outcomes through their rhetoric. This is consistent with prior studies that have shown a similar connection between a Republican governor and punitive outcomes (c.f. Jacobs and Carmichael 2004).

Other directly political factors also influenced the use of the juvenile death penalty. Those jurisdictions with a conservative public and many religious fundamentalists were much more likely to use the juvenile death penalty. Given that both these groups are
more inclined to support harsh sanctions, have little faith in the possibilities for rehabilitation, and have much greater support for the death penalty (Barkan and Cohen 1994; Throne 1990), it is presumable that they would support candidates for all three branches of government that shared their views or pressure those who do not conform to their beliefs to act according to their demands. This would likely produce the findings we see in this study. The results concerning the cultural context of the court are consistent with prior research that shows a link between these contextual factors and punitive outcomes (Jacobs and Carmichael 2002; Jacobs, Carmichael and Kent 2005; Huang et al. 1996).

The results presented here also suggest that the way judges are selected for their seats has an influence on juvenile death sentences. Specifically, we see from the findings that those jurisdictions where judges must be elected to their seats have a greater likelihood of having one or more juveniles sentenced to death. This has rather serious implications for the rule of law which is the cornerstone of our society. Justice depends on the courts deciding their cases based on the law and the facts of the case. While members of the legislature or executive branches of government are expected to gauge the public mood on a particular issue before they act, judges are not meant to do so. In fact, as Bright (1998; pg. 122) states “one of the highest responsibilities of a court is to protect the rights of various minorities—political, racial, ethnic—from the majority.” When judges must gain their seat through a political process, this basic responsibility of the courts appears to be compromised. This study, as well as others (Hall 1992; Cook 1977), shows that the courts are indeed gauging the public mood before they decide cases. When judges decide
cases based on the will of the majority, justice is threatened and the rule of law becomes just one more mechanism for the majority to discriminate against those who do not share their views or culture.

Now that the juvenile death penalty has finally been removed from the list of sanctions available to juvenile offenders the question now is – what is the alternative to death? Over ten thousand inmates are now serving life sentences for crimes they committed as juveniles. Is this the appropriate response to violent juvenile crime? Is there no possibility for an individual who commits a crime while they are a child to reform? Obviously, public demands for retribution when juveniles commit reprehensible acts, but is locking them in prison for the rest of their lives appropriate given the limited culpability that the Supreme Court has suggested juvenile have? Now that the juvenile death penalty has been abolished, these questions will have to be answered. What this study adds to the debate that should ensue, is a clear indication that contextual factors are driving the punitive response to juveniles. These factors have no place in a justice system that purports to be governed by the rule of law and not the will of the powerful. We must decide as a society whether this is the kind of justice we want.
CHAPTER 6

SUMMARY / CONCLUSION

The purpose of this dissertation was to determine if sociopolitical factors contribute to the punishment of juvenile offenders in the adult criminal system. To assess the explanatory power of these factors on juvenile punishment I explored a number of outcomes. First, I examined the determinants of the number of juveniles admitted to adult prison across states and over time. Second, I tested threat hypotheses and political explanations to assess their influence on the length of prison sentence on those juvenile sentenced to adult prisons for violent offenses. Finally, I used similar explanatory variables to explain the use of the death penalty for juveniles. I will review the results from these separate analyses in the following section.

6.1 Review of the Major Findings

*Review of the Racial and Ethnic Threat Findings:* One of the goals of this dissertation was to assess the influence of racial and ethnic threat on juvenile punishment. The threat perspective suggests that majority group members will be threatened by the presence of a large minority population (Blumer 1958, Blalock 1967). The source of this threat is racial and ethnic stereotypes that associate minorities with violent, predatory behavioral attributes (Quillian and Pager 2001). According to threat theory, whites respond to this
perceived threat by pressuring authorities to be more punitive towards criminals.

Majority group members are presumed to be capable of manipulating crime control mechanisms because of their economic clout and the numeric advantage they typically have in an electoral process. Thus, because dominant group members tend to see the crime problem largely in terms of race, they perceive a sizable minority population as a threat, specifically, as a criminal threat. A number of prior studies have provided some support for such claims by showing that crime control efforts are greater where minority populations are large (Jacobs 1979; Carroll and Jackson 1982; Jackson 1989; Liska, Lawrence, and Benson 1981; Jacobs and Helms 1999). The results from this dissertation, however, provide mixed support for the racial and ethnic threat hypotheses.

The findings from the regression analysis for the number of juveniles admitted to prison show provide rather strong support for the threat hypothesis. The results show that there is a non-linear relationship between both the size of the African American population and the Hispanic population. This suggests that punitive responses to juvenile crime (in the form of juvenile imprisonment) increase as the size of the minority population grows but once a threshold is reached there is a reduction in punishment for these offenders. I argue, as have others, that this quadratic relationship is due to the increase in political and economic resources associated with having a sizable presence. This finding is consistent with both theory and prior empirical work (c.f. Jackson 1989). Because threat theory assumes that the majority group’s ability to influence punitive
outcomes rests primarily on their political and economic resources, it stands to reason that once minorities reach a certain proportion of the population they too are capable of influencing political outcomes.

While strong support was found for racial and ethnic threat in the analysis of the number of juvenile offenders sentenced to adult prison terms, the results for the additional analyses provides mixed support. The regression analysis predicting sentence length for juvenile offenders convicted of violent offenses fails to provide support for racial or ethnic threat. Neither the size of the African nor the Hispanic population significantly predicted the length of prison terms for these offenders. While the racial and ethnic threat variables do not appear to be influencing the sentence length for juvenile offenders at the macro level, there does appear to be some influence of race at the individual level.

As I note in chapter 4, race does appear to be influencing sentence length at the individual level. While the main effects for race and ethnicity do not appear to effecting sentence severity, a significantly negative interaction term between Black juveniles and the offense of murder suggests that race may be playing a role but that the variables needed to test it accurately may not be included in the model. Prior work has suggested that what majority group members may be responding to is not overall crime rates but rather interracial crimes (c.f. Black 1983). Specifically, it is suggested that whites are threatened (and therefore demand more punishment) when they are victimized by members of minority groups. To test this argument, however, one would need data on both the race of the offender and the race of the victim. While the race of the offender is
available, data on the race of the victim is not. The findings presented here, however, do provide some insight into this issue. I find that black juveniles who are convicted of murder are likely to receive shorter sentences than white juveniles convicted of the same crime. This finding makes intuitive sense given that the vast majority of crime (particularly murder) is intraracial (Jacobs and Wood 1999). This finding is also consistent with claims by Black (1983) and others who suggest that punishment varies according to the social distance between the victim and the offender.

The final analysis also provides only limited support for racial and ethnic threat hypotheses. While initial models predicting the use of the juvenile death penalty show a strong relationship between both the size of the African American population and Hispanic population, only the coefficients for the ethnic threat variable maintain significance once the model is fully specified.

*Review of the Economic Threat Findings:* Another important theory tested in this dissertation is the economic threat hypothesis. Economic threat theory stipulates that punishment must not be seen as a means of crime control but rather as an instrument used by the rich to dominate the poor (Rusche and Kirchheimer 1939). Specifically, some scholars have claimed that during harsh economic times, punishment is employed to reduce the labor surplus by using incarceration to absorb some of the unemployed population. According to this theory, powerful members of society believe this is necessary because the unemployed may be less committed to the law and the dominant
moral order and are therefore more likely to be punished for conduct that threatens this order. Empirical evidence supporting these claims have been somewhat mixed (see Chiricos and Delone 1992 for a review). The results presented here are also mixed.

I test economic threat in two of the three analyses. While the initial models predicting the length of prison terms for juvenile offenders convicted of violent offenses provides support for the economic threat hypothesis, it fails to maintain significance in the fully specified models. In the analysis of juvenile death sentences, however, there was consistent support for the hypothesis. The results show that states with high unemployment rates have a significantly lower probability of zero juvenile death sentences. If economic threat theory is correct, then we can assume that the imposition of the most severe sanction available in the U.S. is at least in part a response to the threat of a large unemployed population.

Review of the Political Findings: While the theories discussed above where important to this dissertation, the central concern was the potential impact that the political arraignments of each states might have on the punishment of juvenile offenders. Political factors are important to assess in any study of punishment both because a number of theorists have stressed the link between politics and punishment and because a number of prior studies have shown a significant relationship between the political environment and punitive outcomes. Both Garland (1990) and Foucault (1977) justify a political approach to the study of crime control. Garland argues that criminal sanctions should not be seen
narrowly as a reaction to the crime problem but rather as a political mechanism used to control the underclass. Foucault makes similar claims by suggesting that punishment is best seen as a fundamental component of political power used to maintain social order.

Numerous studies have found a relationship between the political environment and punitive responses to crime. Most have used partisan differences to explain the variation in crime control. Most rely on the well noted partisan differences on the issue of crime-control to explain differences in punishment between jurisdictions and over time. With most Republicans subscribing to the get-tough on crime philosophy and Democrats are more likely to hold out hope for a rehabilitative ideal, most researchers have noted an increase in punitive responses when Republican political strength is high. A strong Republican Party has been associated with a number of punitive outcomes including prison admission rates (Jacobs and Helms 1996), imprisonment rates (Jacobs and Carmichael 2001), spending on the criminal justice system (Caldeira and Cowart 1980), and the use of the death penalty (Jacobs and Carmichael 2004). This study also provides support for a relationship between political ideology and punishment. I will address the findings for the political factors tested in this dissertation below:

*Republican Strength:* The explanatory capability of Republican strength was assessed using a number of measures. The first was the presence of a Republican governor in the state. Results from the models predicting sentence length and those predicting the use of the juvenile death penalty both produced significant findings. Estimates of the sentence length for juvenile offenders convicted of violent crimes suggest that states with a Republican governor sentence these young offenders to significantly longer terms. A
number of factors could account for this relationship. It may be that law and order rhetoric from Republican governors helps establish a get-tough philosophy within the state such that public pressure on court officials for harsh sanctions for criminals grows during Republican governorships. Alternatively, Republican governors may also be directly challenging judges who are “soft” on crime (see Bright 1998 for numerous examples).

The second test of the impact of Republican strength was the presence of Republicans in the state legislatures. Results from the three analyses were somewhat mixed. Coefficients for Republican legislature in the models predicting the number of juveniles admitted to prison and the use of the juvenile death penalty did not reach significance. Republican legislature, however, did have a significant influence on sentence length for juvenile offenders. There are two possible explanations for these mixed findings. First, it could be the differences in the measures used. Republican strength did not reach significance in the two analyses where it was measured in its continuous form. It was significant when I created a dummy variable for those states that where Republicans controlled sixty percent or more of the seats in the legislature. It seems plausible that once they dominate a state legislature the need to compromise with other political parties is diminished. At this point the Republican law and order agenda can be advanced with few impediments.

The second plausible explanation for the mixed findings related to Republican presence in the state legislatures has to do with the differences in the outcomes themselves. It is likely that the greatest control Republican legislatures have on court
outcomes is sentence length. It is the state legislature that will outline sentencing guidelines that judges in each state must follow. Death sentences, on the other hand, are primarily in the hands on juries. Juries, not the judge, decide whether a defendant will receive life or death for a particular crime. While they do establish the legal conditions under which the death sentence can be imposed, legislators have less control of this outcome. Thus, it makes sense that Republican control of the legislature matters for sentence severity but not juvenile death sentences.

*Citizen Ideology:* A number of scholars have suggested that public values help shaped criminal punishment (Garland 2001, Savelsberg 1994). To test this argument I used a measure of citizen ideology created by Berry et al. (1998). All three analyses tested the explanatory power of this indicator and all provided strong support. The results suggest that states with a more conservative public sentence more juveniles to prison, sentenced juveniles to longer prison terms for their crimes, and were more likely to sentence young offenders to death. There are a couple of explanations for these findings. First, the results are consistent with the idea that courts respond to their environments (Carp and Stidham 1996; Hughes 1995). Second, states where a conservative ideology predominates may be more likely to support state officials (including judges) that support harsh criminal sanctions for those who violate the law. Those officials that do not support get-tough crime-control policies may not be elected or may not be re-elected. Finally, having a more conservative public generates more conservative juries. Juries convict capital defendants and, if the prosecutors are seeking the death penalty, they
determine which ones will receive life and which will receive death. In that respect, having a conservative public may produce juries that are more punitive and less willing to consider the mitigating influence of youth.

**Religious Fundamentalism:** I also test another cultural factor that may influence punitive outcomes. Like political conservatives, religious conservatives may also influence state reactions to crime (Erickson 1966, Ignatieff 1978). Similar to political conservatives, religious fundamentalists are less sympathetic to the possibility of rehabilitation and attributes that could limit culpability (Thorne 1990). They tend to support harsh punishment aimed primarily at retribution (Ellison and Sherkat 1993). More specifically religious conservatives tend to be strong supporters of the death penalty (Curry 1996).

To test these assertions, I included a measure of religious fundamentalism in the analysis of the juvenile death penalty. The findings suggested that states with more religious fundamentalists were more likely to sentence juvenile offenders to death. It appears that fundamentalists are capable of influencing the court when it is considering this most severe sanction.

**Judicial Selection:** There is reason to believe that the sociopolitical factors have a better likelihood of influencing punitive outcomes when judges must face the voters. A number of studies have suggested that judges who must run in an election to gain their seats are more susceptible to demands for harsh punishment (Hall 1992; Huber and Gordon 2004). To test this idea, I included a dummy variable for those states where judges must be elected. In each case, the indicator was significant. Those states where judges are subjected to the voters admit more juveniles to prison, sentence juveniles to longer
sentences, and are more likely to sentence young offenders to death. These findings suggest that this particular judicial selection type compromises judicial independence. Instead of considering only the facts of the case and the law, judges in these states appear to be more inclined to gauge the public’s mood before sentencing.

*Juvenile Violent Crime:* I also considered the conventional explanations, which suggest that the severity and use of punishment is a function of the crime problem. According to this account, variations in punishment are due primarily to the differences in the crime problem across jurisdictions. Even a cursory look at the data calls this claim into question. Despite the fact that juvenile crime declined by 23 percent from 1994 to 1997 (Snyder 1998), the number of juveniles transferred to adult courts was higher in 1997 than any time in the preceding two decades (Jackson and Pabon 2000). Additionally, throughout most of the time-period under investigation here, there was a 70 percent increase in the number of juveniles transferred to adult courts between the late 80s and the beginning of the 90s (Hopson and Obidah 2002). These transfers produced a rather startling increase in the number of juvenile subject to adult sanctions.

The analyses presented here, test the assumption that the more punitive reaction towards juvenile offenders was primarily a response to juvenile’s greater involvement in crime. All three analyses included indicators of juvenile crime. Support for the
conventional wisdom, however, was strong in two of the three analyses. In the analysis of the number of juveniles admitted to prison, we see that the share that juvenile’s account for of the arrests for violent crime is a consistent predictor. In other words, in those states where juveniles are committing a larger proportion of the violent crime, courts are responding with more punitive sanctions.

In the analysis of sentence length for violent juvenile offenders, the results were somewhat different. While sentence length was not a response to juvenile arrest rates for violent crime at the state-level, the specific crime they were sentenced for was among the strongest predictors of sentence severity. In the final analysis of the juvenile death penalty, the results indicate that the probability of sentencing juveniles to death was significantly higher in those states where the juvenile arrest rate for murder was highest. While the multivariate results presented here suggest that the punitive response to juvenile offenders is a function of the level and severity of crime committed by these young offenders, the most important contribution of this dissertation is that sociopolitical factors also matter over and above the extent of juvenile crime.

6.2 Wider Implications

Over the last few decades there has been a dramatic shift in the way juvenile offenders are treated. A greater number of young people have been transferred to adult criminal courts for adjudication. As would be expected, this increase in transfers has produced a greater number of juveniles in adult prisons. While conventional wisdom suggests that this punishment is a direct response to the severity and size of the juvenile crime problem, this dissertation has explored alternative explanations for the rapid expansion in
the treatment of juvenile offenders as adults. Doing so not only increases our understanding of the use of adult sanctions on juveniles but also help us better understand the imposition of punishment more generally. Using aggregate data, this dissertation has been able to identify associations between contextual factors and punishment. While aggregate analyses are limited in their ability to isolate micro-level processes, they do allow us to recognize community level factors that may influence punitive outcomes that may otherwise go unnoticed. This dissertation has uncovered evidence that sociopolitical factors play a role in determining the extent to which the state uses its power to punish miscreants.

The primary purpose of this dissertation was to test the explanatory capacity of theoretically derived political determinants of punishment to see if they could help improve our understanding of the increased punitive response to juvenile crime that has taken place over the last few decades. While a number of theorists have argued that the political environment of the courts influences punishment (Garland 1990, 2001; Foucault 1977), relatively few studies attempt to test these claims empirically. The aim of this dissertation is to improve our knowledge of punishment by empirically testing these theoretical claims. Results from this dissertation provide evidence from three hypotheses derived from political sociology: partisan tactics, judicial selection, and racial divisions.

*Partisan Tactics:* The results are consistent with hypothesis that partisan tactics employed during electoral campaigns translate into policy changes when candidates reach office. Specifically, the Republican Party’s stress on ‘law and order’ appears to play a role in the increased punitiveness directed at juvenile offenders. It is not surprising that Republican
office holder’s use these tactics given that their share of the electoral base is smaller without the use of such issues. Because Republican economic policies tend to favor the relatively small number of affluent persons in the society (Hibbs 1987), they have often relied upon social issues that generate votes from the less affluent while at the same time not alienate their affluent base. For decades, Republican politicians have used law and order rhetoric to appeal to less affluent voters (Beckett 1997). The results presented here suggest that the Republican Party’s use of this tactic helps explain the recent punitive response directed at serious juvenile offenders. Additionally, the influence of the Republican Party appears to be above and beyond the prevailing culture in each state. The results show that having a strong Republican presence in a state influences the outcomes at question here even after public ideologies have been held constant. This suggests that tough on crime policies were not imposed upon Republican officeholders by the public.

Judicial Selection: The results do show, however, that having a conservative public does independently influence the treatment of juvenile offenders. It appears that the public is capable of imposing their will on the courts. The findings related to judicial selection highlight this point. The results consistently show across all three of the analyses that states where judges must be elected are more punitive toward juvenile offenders. The plausible assumption that one can make from these conclusions is that these judges are more susceptible to public pressure and alter their decisions accordingly.

Court outcomes that consider public opinion are inconsistent with expectations of impartiality, justice and the oath that all judges take to uphold the constitution. The
judicial oath, for example, states that:

"I, __________, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as (name of position) under the Constitution and laws of the United States. So help me God.

Judges, then, are expected to base their decisions on the law and the evidence of the case. They are also entrusted to safeguard the procedural protections outlined in the Constitution such as the right to a fair trial and an impartial jury. To ensure impartiality, courts have historically been expected to be removed from the political process that those in the executive and legislative branches of government were subject to. Despite this, many states require judges to participate in the political process by running in elections to gain their seats. This has drawn into question judge’s ability to adjudicate defendants fairly. The Supreme Court has, on numerous occasions, questioned the integration of justice and politics. The Court, for example, has stated that:

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied to the courts. One’s right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections (West Virginia State Board of Education v. Barnette 1943: 638; Quoted in Bright 1998).

The results presented here suggest that judges who are elected to their seats may be more inclined to consider public demands for harsh treatment of offenders, thereby threatening our fundamental rights. Numerous judges have been attacked or lost their seats when they make unpopular decisions (Bright 1998). Under such scrutiny from the public, it is
unlikely that the judges who gain or retain their seats will be free to judge cases based solely on the law. Obviously, the rule of law is put into question when judges must succumb to this type of public pressure. In particular, when judges weigh public demands prior to making their decisions, they allow the will of the majority to proscribe the outcome of cases. The results suggest that a justice system that defines itself on independence and integrity appears to be unable to operate effectively when court officials must enter the political arena.

*Racial and Ethnic Cleavages:* Another important contribution that this dissertation makes to our theoretical understanding of punishment has to do with the impact that racial and ethnic cleavages may play when juveniles are being punished for their crimes. Two of the three analyses presented here suggest that demands for harsh sanctions are associated with the size of the minority population. These findings challenge the claim that racial stratification has begun to lose its overall importance (Wilson 1978). Specifically, this dissertation provides evidence that racial divisions influence punishment. The size of the African American and Hispanic populations account for a significant amount of the variation in the juvenile prison admissions and the size of the Hispanic population helps predict the use of the juvenile death penalty. Importantly, these results maintain significance after crime rates and numerous other factors have been held constant. These results do not fit with conventional expectations which suggest that punishment is a direct response to criminal activity. Instead, the results hint at the idea that the neo-Marxists are
right in the their assertion that punishment is best seen as a mechanism intimately connected to the class struggle between the dominant and subordinate groups rather than as a means of crime control (Garland 1990).

But threat effects did not matter in one of the analyses. In the study of sentence length for juvenile offenders, neither of the main effects for racial and ethnic threat reached significance. This is rather surprising in light of the numerous studies that have explored racial differences in punishment. Despite the fact that a number of empirical studies have shown that criminal justice agents as well as juries are less likely to be concerned about the mitigating impact of immaturity when judging the seriousness of minority youth (Bridges and Steen 1998, Engen, et. al. 2002), and that court officials perceive offenses by minority youth to be more serious and due to individual characteristics as opposed to societal, the results presented here suggest that race and ethnicity do not play a direct role in the sentence length for violent juvenile offenders. Interactive models, however, show that the race effect may be more complicated than a simple examination of the race of the offender. The results indicate that sentence length is shorter for black juveniles than it is for white juveniles who commit a murder. Because murder is likely to be intraracial (Jacobs and Wood 1999) and many theorists have claimed that it is perceived to be a more serious offense to kill a person of higher social status (Black 1978), it stands to reason that African American juveniles are punished less harshly than whites for committing murder. This finding suggests that the victim-offender dyad may be an
important consideration if one hopes to isolate racial discrimination in sentencing outcomes. Despite my inability to test this hypothesis directly, the results at least hint at the idea that race and ethnicity produce disparities in criminal outcomes.

Conclusion: The question of whether juveniles should be punished like adults is important because of its implications on many facets of the criminal justice system from sentencing guidelines to the treatment of juveniles in adult facilities, to the effectiveness of the juvenile corrections over adult incarceration. Broadly speaking, the decision of how we punish juvenile offenders and whether the sanctions available in the adult court are appropriate for them depends on how we as a society eventually answer the following question. How much do we care as a society about the diminished capacity associated with adolescence? Is this diminished capacity a sufficient enough reason to remove all juvenile offenders from the threat of adult sanctions? An examination of statutes that remove a vast number of rights and privileges from juveniles suggests that we as a society believe juveniles suffer from diminished capacity. This means of treating juveniles is consistent with nearly every statute regarding the rights of juveniles from voting to marriage, drinking to tanning. It is assumed that juveniles lack the maturity, moral convictions, or reasoning capacity to make important, long-term decisions. Once they reach eighteen years of age, however, children throughout the society are assumed to have gained a sufficient level of reasoning capacity to enables them to assume the responsibility for the right and privileges accorded to adults.

Yet when our children commit criminal offenses, it appears that we have become increasingly reluctant to use similar logic. While states have always had provisions for
transferring juvenile offenders to adult criminal courts for adjudication, it has only been in the last few decades that the numbers began to be sizable. Additionally, the trend toward treating juvenile offenders as adult criminals has not taken place evenly across all jurisdictions. This primary goal of this dissertation was to identify factors that could help predict the shift away from the juvenile court and toward the more punitive sanctions of the adult criminal courts. I provided evidence that much of the transition can be accounted for by differences in the sociopolitical environment between the states. This suggests that the reluctance of some states to treat juveniles as less culpable and therefore less deserving of severe sanctions can, at least in part, be accounted for by differences in the political arraignments.

The trend toward treating juvenile’s offenders as adults is disturbing because the fundamental fairness of our justice system is called into question when courts fail to properly mitigate the impact of youth. Given what we know about child developmental psychology, neurobiology, and other disciplines, it is implausible that juveniles are as equally capable of understanding the long-term consequences of their behavior as adults. As I note in chapter 2 of this dissertation, juveniles are likely to qualify for every type of mitigating factors that court officials could consider when determining the appropriate sanction for criminal behavior. That said, it appears that judges may be failing to attach the proper mitigating influence of youth when making sentence determination. The results presented here suggest that this lack of (or limited) consideration of this mitigating factor may be due to prevailing political arraignments.
Additionally, the Court’s decision in *Roper*, appears to provide a rationale not just for the elimination of the juvenile death penalty but also outlines a justification for not treating juveniles in adult jurisdictions at all. Consistent with the points I raised throughout this dissertation, the Court declared the juvenile death penalty unconstitutional, in part, because they did not believe juvenile were capable of understanding the long-term consequences of their behavior and lacked the decision-making capacities that would meet the level of culpability required in the law to receive such a severe sanction. While the argument the Court introduces is specifically intended to address the constitutionality of the juvenile death penalty, it is seems plausible that a similar line of reasoning could be used to prevent juveniles from being subject to adult sanctions for any offense.

If juveniles are not treated in the subject to adult criminal sanctions, how can we punish them? Can the juvenile court provide sufficient punishment for these serious juvenile offenders? It is likely that the public would demand more severe sanctions than the juvenile court has available to it for, say, a seventeen year-old who kills several people. It is clear from the data that the vast majority of those juvenile who are sentenced in adult prisons are in fact near the age of majority when they commit the particular crime that brings them before the criminal courts. It seems perfectly reasonable for some to say “close enough”. This logic is again inconsistent when we look at other areas of the law.
regarding children. The law fails to use the ‘close enough’ logic if a seventeen year-old attempted to vote, or be on a jury, or drink alcohol. There is a bright-line established at the age of eighteen for most of these behaviors. Why not criminal behavior?

While it is true that older juveniles are the ones most likely to receive the adult sanctions, the evidence from this study also shows that the severe sanctions associated with adult criminal courts are not necessarily going to the most serious juvenile offenders nor, as other studies suggest, is attributing adult status to these juveniles better protecting the public (Frazier et al. 1996), or providing a stronger deterrent for juvenile crime (Fagan and Piper Deschenes 1990). If adult sanctions for juvenile offenders serves no role in public safety then there appears to be no justification to use them. Again, this study suggests that sociopolitical factors can help explain the use of adult sanctions on juvenile offenders. It appears from these findings that states where conservative ideologies predominate, the consideration of youth as a mitigating factor or any assessment of the benefit of these sanctions is given little weight.

Regardless of social science research to the contrary (see Lipsey 1999 for meta-analysis that shows rehabilitation efforts in the juvenile court are effective if administered properly), many people believe the rehabilitative model is antithetical to punishment and deterrence. The juvenile justice system, with its rehabilitative emphasis, is viewed by many as soft punishment that is incapable of delivering the kinds of sanctions that deter crime. Those who demand retribution and not rehabilitation for serious offenses will likely never believe that the juvenile court is capable of delivering the necessary punishment. The problem is that there is little evidence that suggests treating juvenile
offenders more severely by incarcerating them for long periods of time acts as an efficient deterrent to criminal behavior (Jackson and Pabon 2000). In light of this, it seems unwise to use such sanctions on individuals whose culpability is questionable and the sanctions themselves call our system of justice into question.

Despite the trend to treat juvenile offenders in adult courts, there is one hopeful finding in this study. During the late 1990s we began to see a decline in the number of juveniles sent to adult prisons. While many people still believe that get-tough policies will eventually affect offending, it appears that the inability of such policies to reduce offending patterns among juveniles has led to a renewed commitment for the existence of the juvenile court. In the end, philosophies and justifications for punishment may not change in the minds of many but we may be seeing a shift back to a prevention/rehabilitation model for the sheer fact that many have realized that the price of incarcerating so many people is simply too high. Politicians as well as ordinary citizens may be coming to the realization that, as a society, we are spending more money on crime control policies such as prison construction and operation and police forces than we are on education. Thus, in the context of tightening state revenues, legislatures in many states may have become reluctant to advance get-tough policies after weighing the costs associated with these polices against other government priorities. In the end, then, juvenile justice may be saved due to dollars not justice or fairness.

6.3 Summary

This dissertation investigated the individual and contextual determinants of adult punishment for juvenile offenders. After testing a hypotheses derived from conflict
theory and a number of political explanations, I found that the variation in the use of these severe adult sanctions on juvenile offenders can be attributed to the sociopolitical context of each jurisdiction. Specifically, rather strong support was found for the racial and ethnic threat hypotheses as well as a number of political accounts. I found that these contextual factors contributed to the number of juveniles sentenced to adult prisons, the severity of the sentences they receive for violent offenses, and the use of the death penalty for juveniles. Finally, I found strong evidence to suggest that having judges elected to their seats threatens these judges’ ability to make impartial decisions. The results consistently show that states where judges must be elected respond more punitively to juvenile crime in the form of adult incarceration and death sentences. In total, the findings presented here suggest that when criminal courts are sanctioning young offenders they not only respond to the seriousness of the crime problem in their jurisdictions these decisions appear to be partly a function of the sociopolitical arraignments.
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