



Applying Black's Theory of Law to Juvenile Justice Decisions

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Abstract

An abundance of research has examined the impact of legal and extra-legal variables on juvenile justice processing. Much of this research, whether explicitly or implicitly, investigates the extent to which extra-legal variables, such as race, ethnicity, and gender, impact decision making. Some of these studies have also considered how social situational factors shape outcomes. However, there remains a need for theoretical development to improve our understanding of how the social structure of a case influences processing. Informed by an interpretation of Black's theory of law, the current study investigated the influence of family structure, school performance, prosocial activities, and demographic variables on intake and adjudication decisions in delinquency cases in a mid-Atlantic state. Overall, we found moderate support for Black's theory. Findings suggested that race, gender, and age consistently conditioned juvenile justice processing, but that social situational variables had inconsistent effects on intake and adjudication. Implications for theory, policy, and practice are discussed.

Keywords Juvenile justice · Detention · Racial disparities · Black's theory of law

The findings of this study are the responsibility of the researchers, and cooperation by the Virginia Department of Juvenile Justice in facilitating this research should not be construed as an endorsement of the conclusions drawn by the researchers.

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Introduction

A large body of research exists on juvenile justice decision making. Much of that research has investigated how race, gender, and age shape such decisions, while a smaller proportion of studies focus on the influence of social situational variables, such as school performance and family dynamics, on juvenile justice processing. Further, the majority of studies have examined the impact of these variables on custodial outcomes, such as detention and commitment. However, the juvenile justice system was designed to dispense rehabilitation and treatment rather than punishment (McCord, Widom, & Crowell, 2001), so dispositions are often more varied than custodial or noncustodial options. These outcomes can include diversion, a continuum of community supervision options, as well as dismissals. Thus, differences in outcomes may emerge not only from receiving harsher punishments but also from being less likely to receive alternative community sanctions or treatment (Bell & Lang, 1985; Cochran & Mears, 2015; Fader, Kurlychek, & Morgan, 2014).

Studies on juvenile justice processing tend to rely on theoretical perspectives that focus on individual behavior; either that of the offender, justice system personnel, or some combination thereof (Bishop, 2005). For example, differences in outcomes may be attributed to variations in rates of offending across groups, labeling, or bias on behalf of juvenile justice personnel (Fite, Wynn, & Pardini, 2009; Leiber, Brubaker, & Fox, 2009; Tracy, 2005; Tracy, Abramoske-James, & Kempf-Leonard, 2009). In *The Behavior of Law*, Black (1976) proposed an alternative lens through which to view variation in legal outcomes. He proposed that law, or governmental social control, varies by five aspects of social life (stratification, morphology, culture, organization, and informal social control), *rather than* by the behavior of either offenders¹ or justice system actors. Per Black (p. 7), “Theory of this kind predicts and explains social life without regard to the individual as such.” The theory often makes similar predictions to other theories and research, but for different reasons. In fact, oftentimes, “The theory of law predicts the same facts, but as an aspect of the behavior of law, not of the motivation of the individual” (p. 9). In this study, we use an interpretation of Black’s (1976) original formulation of his theory of law to frame juvenile justice decision making. Specifically, the current study examines legal responses in delinquency cases in one mid-Atlantic state, investigating whether family structure, school performance, prosocial activities, and demographic variables impact multi-category intake dispositions and adjudication decisions.

The following section summarizes Black’s original formulation of his theory of law, followed by a review of research on juvenile justice processing. Next, we describe the data and methods used for the study, and finally, we present the findings of the study and a discussion of the results as they relate to theory and policy.

¹ In a later publication, Black (2011) provided an empirical measure of crime seriousness, effectively combining both social and legal elements into a single concept which he termed ‘social time.’ He conceptualized the origin of conflict as ‘movement of social [relational, vertical, and cultural] time,’ which is the “the dynamic aspect of social life” (see Phillips & Cooney, 2015, p. 727; Phillips & Richardson, 2016). Black (2011) contends that movements of social time (e.g., offense seriousness) depend both on the act itself as well as the social characteristics of the offender and victim and their relationship to each other. Thus, according to Black, “seriousness” is not solely about the act itself, but who did the act to whom, their level of intimacy, etc.

Theoretical Background

In *The Behavior of Law*, Black (1976) aimed “to understand law as a natural phenomenon” (p. 10). According to Black, each case of human behavior has its own social structure, or location and direction in social space, that varies by the social characteristics of those involved, and this social structure predicts the quantity of law (Black, 1995, p. 853). As a quantitative dependent variable, a complaint to a legal official is more law than no complaint, the recognition of a complaint is more law than none, and an arrest is more law than no arrest. In the juvenile court, pre-adjudicatory detention is ‘more law’ than a petition, and diversion is ‘more law’ than dismissal. Per Black, the quantity and style of law can be predicted by five aspects of social life: stratification, morphology, culture, organization, and alternative social control. Black hypothesized a directional relationship between each of these and the quantity of law. Below, we summarize the aspects of Black’s theory that inform our study.

According to Black, stratification, or vertical status, varies within societies, across societies, as well as within and between organizations, families, and individuals (Black, 1976). Law varies directly with stratification; at the individual level, vertical status provides protection from the law. For example, wealth is an advantage for an offender, and law is more likely to be used against those of lower status, such as the poor. Morphology, the second characteristic of social life discussed by Black, is the “horizontal” aspect of social life. It refers to the distribution of people in relation to one another, such as networks of interaction, intimacy, and integration. According to Black, law is less likely to be used against those who are integrated and involved in social life and more likely to be used against those who are marginal. For example, Black (1976, p. 51) stated, “In every way a marginal man is more vulnerable to law; by comparison, an integrated man has an immunity.”

Third, culture is the symbolic aspect of social life and includes values, ideology, and literacy (Black, 1976, p. 61). Black posits that some societies, groups, and individuals have more culture than others, and that law has a cultural direction, varying inversely with the culture of the offender (Black, 1976, p. 63). For example, one element of culture is education/literacy, and according to Black, “Literacy is a legal advantage.” In fact, “The more educated an offender, the less serious is [their] offense,” and thus the less law they will be subjected to (p. 66). It follows that the offense of a child who is attending and performing well in school will be taken less seriously and therefore result in less law compared to that of a child not currently attending school.

According to Black, alternative social control is the normative aspect of social life, which defines right and wrong, good and bad, moral and immoral. Social control is found whenever and wherever people hold each other to standards, explicitly or implicitly. Black hypothesized that law varies inversely with alternative social control. For example, as familial control increases, the use of law decreases. Accordingly, juveniles are subject to less law than adults because they are subject to informal social control in the family and schools. Furthermore, because females have traditionally been subject to more informal social control than males, they receive less law than males. This extends to family structure, as “The police are more likely to arrest a boy who lives with just his mother than a boy who lives with both parents” (Black, 1976, p. 7). The quantity of law can also be predicted by the amount of social control one has been subjected to. This is known as respectability or “normative status” (Black, 1976, p.

111). Per Black, law varies inversely with respectability; those with less respectability are subject to more law than those with more respectability. Respectability provides protection from the law, and less respectability makes one more vulnerable to the law. For example, “known criminals” will be treated more harshly than those without a criminal record (Black, 1976, p. 115).

Black’s theory has received considerable empirical attention, discussion, and debate (e.g., Braithwaite & Biles, 1980; Cooney, 1986; Gottfredson & Hindelang, 1979; Greenberg, 1983; Horwitz, 1983; Hunt, 1983; Marshall, 2008a; Marshall, 2008b; Michalski, 2008), but only two studies to our knowledge have used it to examine juvenile justice decisions. Staples (1987) examined the relationship between informal social control and quantity of law. Consistent with Black, he found that youth with less respectability (measured with prior record) received more law, and girls and younger youth received less law compared to their counterparts. Another study applied Black’s theory to police decision making with juveniles in Canada and found that police were more likely to use the law as informal social control decreased. The study found that the quantity and style of law were affected by parental involvement (Schulenberg, 2010).

Since his original formulation in *The Behavior of Law*, Black has expanded and made modifications to the theory, making explicit that it is the social structure of a case (or conflict) that predicts the quantity of law (see Black, 1995). This includes the characteristics of the people in the conflict, their relationship to each other, and the context of the conflict (Black, 1995; Borg & Parker, 2001). Thus, to provide a true test of the theory, one must conduct a relational analysis with case-level data, but since such data are rarely available, the majority of studies testing his theory have either utilized individual-level data (e.g., Doyle & Luckenbill, 1991; Kruttschnitt, 1980–81; Myers, 1980; Staples, 1987) or, in some cases, macro-level data (e.g., Borg & Parker, 2001). Our study is no exception. While this is a significant limitation of our study, we argue that Black’s theory, especially as originally stated, provides an important framework to examine how offender social status influences the quantity of law.

First, it is implied by Black and Blackian theorists that increased social status (whether vertical, horizontal, etc.) provides protection from the law and that inferior social status makes one more vulnerable to the law. Second, the juvenile court differs from the criminal court in an important way. From its original creation to serve in the “best interests of the child,” the explicit focus is on tailoring dispositions to the offender (McCord et al., 2001). In contemporary juvenile justice practice, court actors (e.g., intake officers, judges) assess the dynamic and static characteristics of the offender when determining dispositions. Thus, we argue that, especially in the juvenile court, the social characteristics and circumstances of the offender matter more than the characteristics of the victim, complainant, or the case itself. Here, we assess the impact of the offender’s position in multidimensional social space on juvenile justice outcomes.

Recall that Black’s theory can be used to explain phenomena at all levels of analysis in social space (see Black, 1995), but here we focus on individual level measures. In prior studies, stratification has been measured by race, income, and other measures of social/economic rank, while morphology has been measured with involvement in sports, recreational activities, and employment. Culture has most commonly been measured by educational achievement. Alternative social control has been measured with the presence of two parent families (familial control), gender, and age, and respectability is most commonly measured with prior record (see Avakame, Fyfe, &

McCoy, 1999; Clay-Warner & McMahon-Howard, 2009; Copes, Kerley, Mason, & Van Wyk, 2001; Doyle & Luckenbill, 1991; Hembroff, 1987; Holfreter, 2008; Kruttschnitt, 1980–81; Myers, 1980; Staples, 1987; Ylang & Holfreter, 2019).²

Research on Juvenile Justice Decision Making

A large research literature examining juvenile justice decision making has identified individual, social, and community factors that impact how youth are treated in the juvenile justice system, many of which are in line with Black's propositions. Below, we summarize the research on race, gender, and age, as well as prosocial activities, education, and family structure.

Race, Gender, and Age

Studies have consistently found that racial minorities are treated more harshly compared to Whites in cases of delinquency (for an overview, see Bishop & Leiber, 2011). Studies also find that levels of disproportionality often vary based on the stage of the juvenile justice system that is being addressed (Bortner, Sunderland, & Winn, 1985; Leiber & Mack, 2003; Pope & Feyerherm, 1990, 1992). Research finds more pronounced racial disparities in the early stages of case processing, such as pre-dispositional detention and intake (Frazier & Cochran, 1986; Leiber & Johnson, 2008; Leiber & Mack, 2003; Poe-Yamagata & Jones, 2000), and due to the interlocking nature of the justice stages, the effects of disparate practices in one area of juvenile justice become compounded at later stages of the system. Those who are detained are more likely to be formally processed; thus disparities at the detention decision point create a state of cumulative disadvantage as juveniles progress through the system (Bortner & Reed, 1985; Frazier & Bishop, 1985; Frazier & Cochran, 1986; Kempf-Leonard, 2007; Leiber and Fox, 2005; Pope & Feyerherm, 1990). Studies have also found that race conditions diversion (Ericson & Eckberg, 2016), adjudication decisions (Evangelist, Ryan, Victor, Moore, & Perron, 2017), and dispositional decisions (Fader, Kurlychek, & Morgan, 2014), finding that youth from racial and ethnic minority groups receive harsher treatment compared to their White counterparts (Pope & Feyerherm, 1990).

Other research has found that race effects are less pronounced at later decision points (Fader et al., 2014). Some studies have either found no race effect at adjudication (Freiburger & Burke, 2010), or that White youth are more likely than Black youth to be adjudicated delinquent (Peck & Jennings, 2016; Rodriguez, 2010). The lack of race effect at adjudication has been explained by either a "corrective effect," where judges

² We recognize that there is some overlap between Black's theoretical concepts and the measures used (e.g., in prior studies, race has been used as a measure of stratification and culture, and age has been used as a measure of vertical location/stratification). According to Michalski (2014), who has published extensively on Black's theory, "specification of the degree and the manner in which the different statuses overlap or operate independently or conjointly have not yet been determined with any degree of precision" (p. 6). Further, according to Horwitz (1983, p. 381), "It is likely that the propositions will not be universally true and so will have to be modified to reflect variation in the conditions under which they hold." Given the practical realities of juvenile justice practice, we made subjective decisions regarding the operationalization of Black's concepts.

attempt to correct disparities occurring at earlier decision points, or as a result of “tight coupling” at this stage; that is, judges are more constrained by legal criteria compared to those making arrest and detention decisions (Bishop et al., 2010).

Some research has found that minority youth are less likely to be diverted and more likely to be dismissed than are White youth (Cochran & Mears, 2015; Guevara, Herz, & Spohn, 2006; Leiber, Brubaker, & Fox, 2009; Leiber & Jamieson, 1995). Policies in some states require parents to appear in person in order for a youth to be eligible for diversion. One study found that minorities were less likely to have phones, transportation, childcare, and freedom to take time off from work, which decreased the likelihood that they could participate in diversion programming (Bishop & Frazier, 1996; Cochran & Mears, 2015; Feld & Bishop, 2012). Cochran and Mears (2015) used Florida juvenile court data to examine racial differences in both punitive and rehabilitative juvenile justice interventions. They found that minority youth, especially Black males, received more punitive sanctions, more dismissals, and were less likely to receive rehabilitative interventions compared to their counterparts.

Research suggests that gender disparities exist in juvenile justice processing as well (see Tracy, Kempf-Leonard, & Abramoske-James, 2009). These studies, however, lack consistency in their findings. Some studies have found that females enjoy leniency compared to males (Bishop & Frazier, 1992; Bishop & Frazier, 1996; Evangelist et al., 2017; Maggard, Higgins, & Chappell, 2013) while others have found that females are treated more harshly than males, particularly for status and related “bootstrapping” offenses³ (Bishop & Frazier, 1996; Chesney-Lind, 1977). According to Chesney-Lind, “The traditional family has always exerted greater control over the behavior of its daughters in order to protect their virginity or virginal reputation” (1977, p. 122). Importantly, these relationships are sometimes complicated by race, with some studies finding that girls from racial and ethnic minority groups do not benefit from the same leniency afforded to White girls (Freiburger & Burke, 2011).

In terms of age, older youth are often found to be treated more harshly than younger youth (Bishop & Frazier, 1988; Rodriguez, 2013). Bishop and colleagues found that older youth were treated more harshly at the intake and disposition stages (Bishop et al., 2010). Ericson and Eckberg (2016) found that older juveniles were more likely to be formally charged, and Leiber and Peck (2015) found that older youth are treated more harshly at intake and adjudication. Some research suggests that the “youth discount” varies by race, gender, or both (Morrow, Dario, & Rodriguez, 2015; Spivak, Wagner, Whitmer, & Charish, 2014).

Social Situational Factors

Beyond demographics, researchers have often investigated the influence of social situational variables on juvenile justice decisions. For example, a few studies have found that participation in structured recreational activities is associated with improved school performance, lower dropout rates, less substance use, better mental health, and

³ Bootstrapping refers to the practice of issuing detention orders through findings of contempt of court, violations of probation, or violations of court orders for underlying status offenses or minor delinquent behavior (Sherman, 2005). Some evidence suggests more females are detained prior to adjudication for these types of charges than their male counterparts (Espinosa, Sorensen, & Lopez, 2013).

lower levels of delinquency (Feldman & Matjasko, 2005; Mahoney, Harris & Ecches, 2006). Similarly, some argue that involvement in organized prosocial activities helps to build social capital (Flanagan & Syversten, 2006; Winter, 2003) while facilitating interaction between youth and prosocial adults and peers. Additionally, organized activities may provide supervision and help to establish a connection to school that is separate from pure academics, which may be especially important for children who struggle academically and are at risk of experiencing alienation from school (Mahoney et al., 2006).

Indeed, studies have consistently shown that problems in school often precede or accompany delinquency, and that school performance is considered in juvenile justice decisions (McCord et al., 2001; Smerdon, 2002). Fagan and colleagues (Fagan & Pabon, 1990; Fagan, Piper, & Moore, 1986) have found that dropouts are more involved in all forms of delinquency, drug use and drug selling, and had more contacts with the juvenile justice system compared to high school graduates. Bishop et al. (2010) found that having problems in school and having dropped out of school increased the odds of referral for formal prosecution by 43% and 71%, respectively. Low school performance and dropout were associated with less favorable outcomes at intake, petition, and disposition. Rodriguez (2010) found that youth enrolled in school were more likely to receive diversion and less likely to receive detention, dismissals, and out-of-home placements, while Morrow, Dario, and Rodriguez (2015) discovered that attending school was associated with a higher likelihood of diversion and petition and a lower likelihood of detention and guilty adjudication. Much of the research by Leiber and colleagues has found that school status is more important at earlier stages (e.g., intake) than later stages (e.g., adjudication and disposition) (e.g., Leiber & Fox, 2005; Leiber & Johnson, 2008; Leiber & Mack, 2003), with some of their work finding dropout status specifically to be significant at later stages such as disposition (e.g., Bishop, Leiber, & Johnson, 2010).

Prior research has addressed the role of family structure in juvenile justice decisions (Bishop & Frazier, 1996; Bortner, 1982; Leiber & Mack, 2003; Rodriguez, Smith & Zatz, 2009). Some studies have suggested that poor family dynamics or instability can increase the likelihood that a child receives an out of home placement (Fader et al., 2014). For example, research has found that those from two-parent families receive leniency compared to those living with one parent (Dannefer & Schutt, 1982; Ericson & Eckberg, 2016; Leiber & Mack, 2003; Pope & Feyerherm, 1993). Bishop et al. (2010) found that coming from a single-parent home increased the odds of formal prosecution by 22%, and Morrow et al. (2015) found that youth from two-parent homes were more likely to receive diversion and petition and less likely to receive detention and adjudication. Research has also suggested that the impact of family structure on outcomes can vary by race. Studies have found that for minority youth, single parent families are seen as less qualified to provide supervision and proper socialization (Bishop et al., 2010; Leiber & Fox, 2005).

Significance of the Study

Based on our interpretation of Black's (1976) theory, prior studies evaluating his theory, and research on juvenile justice processing, we examine legal responses in

delinquency cases in one mid-Atlantic state, investigating whether family structure, school performance, prosocial activities, and demographic variables impact multi-category intake dispositions and adjudication decisions. This study makes theoretical, methodological, and practical contributions. First, it is one of the few studies using Black's theory to understand juvenile justice decision making (but see Schulenberg, 2010; Staples, 1987). Most of the existing research on juvenile justice decision making has been guided by the racial/symbolic threat hypothesis, attribution theory, the intersectionality framework, and/or labeling theory (e.g., Bridges & Steen, 1998; Maggard et al., 2013; Liberman, Kirk, & Kim, 2014). Although research guided by these theories has made significant contributions to the literature, there remains a need for continued theoretical development to understand juvenile justice processing, and Black's theory is "simply...a different way to predict the facts" (p. 8). According to Black, "It explains the behavior of law, and that is all" (p. 8).

While Black's theory is not necessarily at odds with other common theories of law (e.g., attribution theory), his perspective is that law, as a social phenomenon, functions independent from individual actors' motivations, human nature, rationality, or biases. This provokes theoreticians and policymakers to shift their perspective 'outside the box,' beyond individual explanations of justice system outcomes. This has the potential to inspire a different paradigm of interventions and system reforms in order to solve long-standing problems, such as disproportionality. For example, this approach may direct us to examine dynamic features of juvenile justice cases to develop innovative programs and practices to improve the cultural capital and social connectedness of youth which would make them less vulnerable to the law. In fact, Black (1989) suggested that one of the greatest disadvantages to individuals in legal conflict is their individualism, or lack of organization. He imagined the formulation of compulsory or voluntary legal co-operative associations to level the playing field for individuals. In essence, individuals would hold memberships in a legal co-op which would effectively transform them into organizations for the purposes of legal action, altering the social structure of the case and thus their immunity to law.

Prior research has suggested that the largest case processing disparities occur prior to formal court intervention (Leiber & Stairs, 1999), and much of the work on disparities in juvenile justice has focused on early decision points, in part, because inequities that occur early lead to "cumulative disadvantage" later on (Rodriguez, 2010). Further, much existing work examines binary intake variables that measure confinement (e.g., detention or not), thus incorporating a more nuanced dependent variable at the intake decision is important as it allows us to look beyond custodial/confinement decisions. Here, we build on prior work by using a multi-category dependent variable to examine a continuum of intake options as well as two decision points in the juvenile justice process.

Finally, the results of this study will contribute to the literature about complexities and patterns in the use of intake dispositions and adjudication in delinquency cases in a mid-Atlantic state experiencing a transition to evidence-based practices and a community model. It examines whether decision making is equitable across race, gender, and age, and how prosocial activities, family dynamics, and school performance impact a range of outcomes, including diversion and dismissals.

Hypotheses

Guided by Black, we predict harsher outcomes (i.e., more law) in cases where the offender has lower social status: lower vertical status, less social integration, lower literacy, less informal social control, and less respectability. First, Blacks and Hispanics will be subject to more law (more likely to be detained [vs. resolved, diverted, and/or petitioned] and adjudicated delinquent) compared with Whites because, according to Black, they have less vertical status. Second, youth who are involved in prosocial activities will be subject to less law compared with those who are not involved because they are more integrated. Third, because they have less culture/literacy, youth who have been expelled, suspended, or have dropped out of school, and those performing poorly in school, will be subject to more law compared with those attending/performing well in school. Fourth, younger youth, females, and those living with both parents will be subject to less law compared with older youth, males, and those not living with both parents because they are subject to more alternative [informal] social control. Finally, because they have less respectability, youth with prior adjudications and those under supervision (e.g., probation) will be subject to more law compared to youth with no prior adjudications/not on supervision, and similarly, youth who were detained predispositionally will be more likely to be adjudicated delinquent compared with those who were not detained.

Data and Methods

Data for this study were obtained from the centralized database of the juvenile justice office in a mid-Atlantic state. This was an opportune time to investigate juvenile justice decision making in this particular state. Reflecting a national trend, the state had seen a decrease in intake cases, probation cases, commitments, detainments, average daily population, and lengths of stay. Over the past fifteen years, the study site has taken an innovative approach to juvenile justice. For example, the Juvenile Detention Alternatives Initiative (JDAI), an approach to reducing the use of secure detention, was adopted by select jurisdictions in the state in 2003 and continues to be used in numerous jurisdictions. At the time of data collection, the JDAI philosophy had become customary and routine in many jurisdictions, especially in larger cities, and there was a concerted effort to embrace evidence-based programs and practices, objective decision making methods (e.g., screening and risk assessment instruments), and the reduction of Disproportionate Minority Contact (DMC).

While the state had been moving toward more data driven, innovative juvenile justice practice since the early 2000s, the data used in this study were obtained immediately prior to a statewide transformation initiated by a new progressive director. This transformation effort has since led to the closure of large institutions, reformation of remaining training schools to reflect a “Missouri model,” and the opening of smaller regional facilities to keep youth closer to their families. This has allowed for a significant redirection of resources toward more evidence-based programs and mental health treatment in this state.

The state uses the Youth Assessment Screening Instrument (YASI), which is a validated assessment tool used to assess youth’s risks, needs, and protective factors to

assist in the development of appropriate case plans (Jones, Brown, Robinson, & Frey, 2016). The YASI contains information about legal history, family, school, community, and peers, alcohol and drugs, mental health, aggression, attitudes, skills, employment, and free time, and is completed by the probation department.⁴ For the present study, variables measuring several of Black's concepts were drawn from the YASI.

Variables and Measurement

The full sample consists of all intake cases⁵ across all (34) jurisdictions between July 1, 2010 and June 30, 2015.⁶ For the purposes of the current study, the sample is limited to delinquency cases only (person, property, drug/alcohol, and "other") resulting in $n = 52,190$ valid delinquency cases with YASI for the intake decision analysis and $n = 44,004$ for the adjudication analysis.

Dependent Variable

The quantity of law in this study is operationalized with two variables. The first is a four-category variable describing the intake disposition (Detention > Petition⁷ > Diversion > Resolved),⁸ coded to reflect the range in quantity of law (i.e., detention is *more law* than petition, which is *more law* than diversion, which is *more law* than resolution/dismissal). To be detained (reference category) represents *more law* than any other outcome. The intake variable is a more nuanced dependent variable compared to most existing studies and separates diversion and dismissal, acknowledging that diversion is a proactive attempt to intervene (see Cochran and Mears, 2015; Leiber & Stairs, 1999). The second dependent variable is a binary adjudication variable (delinquent = 1; otherwise = 0), with delinquent adjudication being *more law* than not. This fits with Black's conceptualization of the quantity of law, as further penetration into the system represents *more law*.

Independent Variables

Race/ethnicity is measured with a series of dummy variables for Black (1 = Black, 0 = otherwise), White (1 = White, 0 = otherwise), Hispanic (1 = Hispanic, 0 = otherwise)

⁴ The measures were taken from the most recent YASI completed for the sake of simplicity and consistency (some youth have more than one YASI on file via prior court referrals). It is difficult to discern the exact timing of when the YASI was administered, though many were either on file from prior cases or conducted early in the process (intake).

⁵ Since the unit of analysis is the case, as with many studies on juvenile intakes, it is possible for youth to be involved in more than one case (especially over the span of three years). However, if they had multiple charges, these were aggregated at the case level. For example, there were some youth with as many as 50+ charges for one case, however these were restructured to represent only one case in the final dataset. We did not find any significant differences across models or issues with intra-class correlation.

⁶ In separate models (not shown here), we controlled for year and did not receive any significantly different results.

⁷ Court summons were collapsed into a category with petitions as they both represent a formal action to initiate court proceedings (i.e., more law than dismissal or diversion but less law than detention). Court summons comprised only 5% of the cases.

⁸ Detention requires a petition; this variable differentiates between detention with petition and petition only/court summons.

and Other races (1 = Other race, 0 = otherwise), where White is the reference category,⁹ which serves as a proxy measure for stratification/vertical status. Prosocial activities,¹⁰ our indicator of morphology/integration, is measured with a dummy variable (yes = 1). Two variables, school attendance and academic performance, are indicators of culture/literacy. School attendance is measured with a dummy variable asking if the child has been suspended, expelled, or dropped out (yes = 1) and academic performance is measured with a dummy variable (C or better in school, yes = 1). Gender (female = 1), age at intake (continuous), and whether the youth lives with both parents (yes = 1) measure alternative social control, and prior adjudications, under supervision (yes = 1) and preadjudicatory detention (yes = 1)¹¹ gauge respectability. We control for felony at the current offense (yes = 1), and urban area (1 = urban, 0 = rural). This measure was retrieved from the 2010 U.S. Census (U.S. Census Bureau, 2010).

Analytic Plan

The analyses proceed in several steps. First, we present demographics on the study sample. Next, we present two multivariate models. Multinomial and binary logistic regression were used due to the categorical nature of the dependent variables, and the models were built around hypotheses derived from Black's (1976) theory. First, we present the multinomial logistic regression model predicting the intake decision. Next, we present a logistic regression model predicting the adjudication decision. SPSS was used for all analyses.

Results

Sample

Descriptive statistics for the sample analyzing the intake decision and the sample analyzing the adjudication decision are presented in Table 1. Beginning with the sample analyzing the intake decision, 37.7% of the youth were White, 49.3% were Black, 9.5% were Hispanic, and 3.6% were of other races. The average age was 15.24¹² and the sample was 21% female. About 24% of the intake sample was under supervision at the current intake while about 32% were charged with a felony. Roughly 7% of this sample dropped out or were expelled from school, 18.1% lived with both parents, 43.6% were earning a C or better in school, and 47.3% were involved in pro-social activities. About 45% of the youth had prior adjudications, and 4.9% of the cases were resolved, 5.8% resulted in diversion, 59.5% received a petition, and 29.8% were detained. Finally, the sample for the adjudication analysis was very similar to the intake decision sample. Slightly more of the cases had prior adjudications and felony charges, and about 4% more of the cases had received pre-dispositional secure detention.

⁹ Race and ethnicity were treated as mutually exclusive categories (i.e., youth who self-identify as Hispanic were coded as Hispanic).

¹⁰ 'Prosocial activities' measures whether the youth is involved in prosocial community organizations, school activities, or structured recreational activities at the time of the YASI.

¹¹ Detention is used as an independent variable in the adjudication model only.

¹² The upper age of juvenile court jurisdiction is 17, but extended jurisdiction allows supervision until age 21.

Table 1 Descriptive statistics

Variable	Intake Decision	Adjudication
N	52,190	44,004
	%	%
Dependent Variables		
<i>Intake Decision</i>		
Resolved	4.9	0.8
Diversion	5.8	0.2
Petition	59.5	64.9
Detained	29.8	34
<i>Adjudication</i>		
Guilty		66
Independent Variables		
Stratification		
<i>Race</i>		
White	37.7	37.5
Black	49.3	50.1
Hispanic	9.5	9.0
Other Race	3.6	3.4
Morphology		
<i>Prosocial Activities</i>		
Yes	47.3	47
Culture		
<i>Dropped Out</i>		
Yes	7	7.5
<i>C or Better</i>		
Yes	43.6	43
Alternative Social Control		
<i>Gender</i>		
Female	21	21.0
<i>Age (continuous)</i>		
Mean	15.24	15.30
S.D.	1.56	1.50
Range	8–20	8–20
<i>Live with Both Parents</i>		
Yes	18.1	18.3
<i>Prior Adjudications</i>		
Yes	45.3	48.6
<i>Under Supervision</i>		
Yes	23.6	25
Control Variables		
<i>Felony Charge</i>		
Yes	31.9	36
<i>Urban</i>		
Yes	82.7	82.3

Intake Disposition Decision

The multinomial regression models predicting the intake decision are presented in Table 2. Table 2 displays the odds of a case being resolved, being referred to diversion, or whether a petition was filed, with secure detention as the reference category. Note that odds ratios <1 denote “more law.” Beginning with the likelihood a case was resolved versus resulting in secure detention, stratification (measured by race), alternative social control (measured by age, living with both parents) respectability (prior adjudications, under supervision), felony cases, and whether the case was in an urban jurisdiction were all statistically significant.

Specifically, cases involving a Black youth had about 18% decrease in odds of the case being resolved compared to detention, and those of “other” races had about 36% increase in odds of their case being resolved versus being detained. Cases involving older youth were less likely to be resolved and cases where the youth lived with both parents had about 26% decrease in odds of the case being resolved. Cases where the

Table 2 Multinomial Logistic Regression Predicting Intake Decision (N = 52,190)

Variable	Resolved			Diversion			Petition		
	Versus Secure Detention			Versus Secure Detention			Versus Secure Detention		
	<i>b</i>	S.E.	EXP (B)	<i>b</i>	S.E.	EXP (B)	<i>b</i>	S.E.	EXP (B)
Stratification									
Black	-0.20	.05	.82 *	-.25	.05	.78 *	-.25	.03	.78 *
Hispanic	.09	.08	1.09	.19	.08	1.21	-.01	.04	.99
Other Race	.31	.12	1.36 *	.07	.12	1.07	.11	.06	1.12
Morphology									
Prosocial	.11	.05	1.11	.03	.04	1.03	.08	.02	1.08 *
Culture									
Dropped Out	-.17	.09	.84	-.30	.09	.74 *	-.16	.04	.85 *
C or Better	.08	.05	1.09	.23	.04	1.26 *	.08	.02	1.08 *
Alternative Social Control									
Female	.06	.05	1.07	.15	.05	1.16 *	.13	.03	1.14 *
Age	-.19	.01	.83 *	-.22	.01	.80 *	.01	.01	1.01
Both Parents	-.30	.07	.74 *	-.04	.06	.96	.09	.03	1.10 *
Prior Adjud.	-1.04	.06	.36 *	-2.57	.08	.08 *	-.49	.03	.61 *
Supervision	-.43	.07	.65 *	-1.86	.13	.16 *	-.41	.03	.67 *
Control Variables									
Felony	-2.47	.07	.08 *	-3.10	.07	.05 *	-1.62	.02	.20 *
Urban	.52	.07	1.67 *	.13	.06	1.14	-.11	.03	.90 *
-2 Loglikelihood				21, 523.10					
Pseudo R-Square				.26					

Note: Significant relationships in bold

**p* < 0.01; *p*-values computed for two-tailed significance tests

youth had prior adjudications and where the youth was under supervision had about 64% and 35% decrease in odds of being resolved versus receiving detention, respectively. Finally, cases where the most serious offense was a felony had a 92% decrease in the odds of being resolved and cases in urban jurisdictions had about 67% increase in odds of being resolved versus resulting in detention.

Turning to the likelihood of the case being referred to diversion, stratification (measured by race), culture (measured by whether the youth had dropped out or been expelled from school and whether the youth earned a C or better in school), alternative social control (measured by gender and age), respectability (prior adjudications, supervision), and whether the most serious charge was a felony were all statistically significant. Compared to cases involving White youth, Black youth had about 22% *decrease* in odds of receiving diversion compared to detention. Cases where the youth had dropped out or been expelled from school had 26% *decrease* in odds of receiving diversion while those earning a C or better in school had about 26% *increase* in odds of receiving diversion. Compared to males, females had about 16% increase in odds of receiving diversion and older youth were less likely to receive diversion compared to being detained. Cases involving youth with prior adjudications as well as those where the youth was under supervision were less likely to receive diversion, having 92% and 84% decrease in odds, respectively. Those charged with a felony were much less likely to receive diversion with about 95% decrease in odds compared to being detained.

The last intake disposition outcome considered was whether the case resulted in a petition being filed versus detention. Stratification (measured by race), integration (measured by prosocial activities), culture (measured by whether the youth had dropped out of school and whether the youth had a C or better in school), alternative social control (measured by gender, living with both parents), respectability (prior adjudications, supervision), felony cases, and whether the case was in an urban jurisdiction were all statistically significant. Compared to White youth, Black youth had about 22% decrease in odds of having a petition filed and females had about 14% increase in odds, compared to detention. Youth with prosocial ties had about 8% increase in odds of having a petition filed versus being detained. Youth who dropped out of school had about 15% decrease in odds of having a petition filed versus receiving detention. Youth earning a C or better in school had about 8% increase in odds of having a petition filed rather than receiving detention, while females had about 14% increase in odds compared to males. Those living with both parents had about 10% increase in odds of having a petition filed compared to being detained pre-dispositionally. Youth with prior adjudications had about 39% decreased odds of having a petition filed while youth under supervision had about 33% decrease in odds compared to receiving secure detention. Youth charged with felonies had 80% decreased odds of having a petition filed versus being detained, while cases in urban jurisdictions had 10% decrease in odds of having a petition filed versus receiving detention.

Adjudication Decision

The logistic regression results predicting the adjudication decision are presented in Table 3. Note that odds ratios >1 denote “more law.” Significant predictors include stratification (measured by race), integration (measured by prosocial activities), alternative social control (measured by gender, age), respectability (prior adjudications,

supervision, and detention), felony cases, and whether the case was in an urban jurisdiction.

Compared to White youth, Black youth had about 9% decrease in odds of being adjudicated delinquent, while both Hispanics and youth of other races were more likely to be adjudicated. Compared to their male counterparts, female youth had about 16% decrease in odds of being adjudicated delinquent. Cases involving older youth were more likely to be adjudicated delinquent, with about 8% increase in odds for each additional year in age. Cases where the youth had prior adjudications had about 40% increase in odds of being adjudicated delinquent compared to those who did not, while youth who were under supervision at the time of intake had about 19% decrease in odds of being adjudicated delinquent compared to those not under supervision. Cases where the youth had been detained pre-dispositionally had nearly two times increase in odds of being adjudicated delinquent compared to those not detained. Finally, cases where the most serious charge was a felony had about 46% increase in odds of being adjudicated delinquent while cases from urban jurisdictions had a 23% decrease in odds of adjudication compared to those in non-urban jurisdictions.

Table 3 Logistic Regression Predicting Adjudication Decision ($N = 44,004$)

Variable	<i>b</i>	S.E.	EXP (B)
Stratification			
Black	−.09	.02	.91 *
Hispanic	.16	.04	1.18 *
Other Race	.15	.06	1.16 *
Morphology			
Prosocial	−.04	.02	.96
Culture			
Dropped Out	.02	.04	1.02
C or Better	−.01	.02	.99
Alternative Social Control			
Female	−.17	.03	.84 *
Age	.08	.01	1.08 *
Both Parents	.03	.03	1.03
Detained at Intake	.53	.02	1.70 *
Prior Adjudications	.33	.02	1.40 *
Supervision	−.21	.03	.81 *
Control Variables			
Felony	.37	.02	1.46 *
Urban	−.26	.03	.77 *
−2 Loglikelihood		54,699.80	
Pseudo R-Square		.06	

Note: Significant relationships in bold

* $p < 0.01$; p -values computed for two-tailed significance tests

Discussion

This study used Black's theory of law as an approach to understand legal responses in delinquency cases. We investigated whether juvenile intake and adjudication decisions were influenced by family structure, school performance, prosocial activities, and demographic variables. Overall, we found moderate support for Black's theory. Below, we summarize the findings and discuss how they relate to theory and extant literature.

While Black youth were more likely to be detained compared to receiving other intake dispositions, they were less likely to be adjudicated delinquent (see Peck & Jennings, 2016; Rodriguez, 2010). On the other hand, Hispanic youth were more likely to be adjudicated delinquent. Similarly, "other" races were more likely than White youth to have their case resolved at the intake stage and more likely to be adjudicated delinquent. This is in contrast to other studies which have found that Latinos are treated similarly to Blacks (Cochran & Mears, 2015; Fader et al., 2014). Recall that studies have shown that minorities are disadvantaged at some stages but not others, with more significant differences seen at early stages of processing such as intake and detention. It is possible that Black youth were arrested and treated harshly at intake (where there is less scrutiny and legal oversight), known as "the most loosely coupled" point in juvenile justice decision making (Leiber, 1995), and then treated neutrally at adjudication due to the increased influence of law at this stage. Research suggests the treatment of minorities varies by the context under which decisions are made (e.g., political climate, courtroom workgroups, urban vs. rural). Given the political focus on reducing Disproportionate Minority Contact (DMC) for Blacks specifically, we may be seeing a corrective effect for Blacks—but not other races/ethnicities—at the adjudication stage (see Bishop et al., 2010).

Further, the effects of race and ethnicity on court decisions vary across communities, and disparities in outcomes are interrelated with the residential and economic characteristics of youth (Rodriguez, 2007). In many jurisdictions within this particular state, the most economically disadvantaged communities are overwhelmingly African American, rather than Hispanic or White. And certainly, research has found that minority offenders from more economically disadvantaged and high crime areas are treated more harshly. If that is the case, Black (1976) may argue that Blacks have less vertical status compared to Hispanics and are therefore more vulnerable to the law. Future research should delve deeper by examining the interrelationship between community characteristics and race/ethnicity in individual jurisdictions.

Youth involved in prosocial activities—those who were more integrated—were more likely to receive petition than detention, providing limited support for Black's assertion that integration provides protection from the law (Black, 1976, p. 51). Mirroring past research on prosocial activities, our findings indicate that such activities are viewed as protective and taken into consideration by the court at the intake decision. Such activities may provide extra supervision during times when youth are at high risk for offending (e.g., after school), thereby making juvenile justice personnel more confident in keeping the child in the community. In practice, involvement in such activities may also be associated with assumptions about positive internal motivation (e.g., in the case of sports) or assumptions about social connectedness (e.g., church).

Culture/literacy was associated with the invocation of less law at intake, consistent with Black, but had no impact at adjudication. Youth who had dropped out or been

expelled were less likely to receive either diversion or petition compared to detention, and those performing well in school were more likely to receive diversion and petition rather than detention. It is possible that youth who are attending/succeeding in school are seen as more amenable to treatment and less of a public safety/flight risk due to the fact they are *in* school during the day, while youth who are not *in* school are at a high risk for offending. Putting a child in detention could also *lead to* school failure (since the child must be removed from their current school), effectively creating a new problem. Given the research on the relationship between school failure, delinquency, and other negative life outcomes, it is no surprise that these issues are taken into consideration by the courts.

Youth subject to more informal social control generally received less law, as expected by Black. Younger youth received more lenient outcomes, and in accordance with much of the literature, older youth were less likely to have their case resolved or to receive diversion compared to detention, and they were more likely to be adjudicated delinquent. Girls were more likely to receive diversion and petition than males and less likely to be adjudicated delinquent, which is consistent with many studies (e.g., Bishop & Frazier, 1992). However, at odds with Black, family structure was inconsistently related to outcomes. Youth who lived with both parents were less likely to have their case resolved and more likely to receive a petition compared to detention at the intake phase but living with both parents was unrelated to adjudication.

Black hypothesized that law is inversely related to informal social control, and he provided examples about how informal social control can appear in families. However, *The Behavior of Law* was published in the mid-1970s, so family structure (i.e., living with both parents) may be less relevant in contemporary American society. Perhaps whether youth live with both parents is an inferior measure of stability, family dynamics, or informal social control in the home when at present there are many different types of functional living arrangements.

As expected, respectability was generally associated with the invocation of less law. Youth with prior adjudications and those on supervision were more likely to be detained than to receive any other intake dispositions, and those with prior adjudications and preadjudicatory detention were more likely to be adjudicated delinquent. Regarding detention, research has consistently found it to be associated with a negative impact on youth development, increased likelihood of recidivism, and racial and gender inequities (Bishop, 2005; Leiber & Fox, 2005; Mendel, 2009). This provides more support for the use of detention reforms, such as JDAI, which aim to eliminate detention for all but the most serious offenders.

Overall, the variables appear to impact intake decisions differently than adjudication decisions. The reality is that decisions about adjudication are vastly different and carry different consequences than decisions at the preadjudicatory stage. Intake decisions are more subjective. They are less constrained by legal criteria, more contingent on the availability of community resources, more likely to be subject to assumptions about neighborhood, peer, and family influences, as well as assumptions about supervision/informal social control. These decisions may be more vulnerable to caseworkers' attributions about race, ethnicity, gender, and age. Intake decisions are largely influenced by juvenile justice actors *other than* judges (e.g., intake/probation officers and case workers). The adjudication decision, on the other hand, is based on legal criteria and is made by the judge. Thus, a decision at intake considers a variety of factors and

circumstances present in the child's life while adjudication decisions should be based on the facts of the case alone.

Limitations and Future Research

Regardless of the practical realities of juvenile justice administration, Black (1976) argued that the behavior of law can be predicted by five social variables. Our analysis found some support for our hypotheses, especially at the intake stage. The caveat is that Black assumes *all else constant* and insists that in order to test his theory accurately, researchers must measure the entire case (e.g., relationship between victim and offender) which is a significant limitation of this and most studies testing his theory (Black, 1995). Although the unit of analysis in this study was the case, we did not have victim information and were unable to capture relative differences between victims and offenders. This limited our ability to examine some of Black's directional hypotheses (see Borg & Parker, 2001 for a discussion), thus many theorists would argue our study is not a true or accurate test of his theory.

There are additional limitations associated with this study. First, we did not control for the structural characteristics of each jurisdiction/court unit. Instead, we incorporated a fixed effect measure indicating whether the court was in an urban or rural area, which controls for geography on some level. Certainly, anecdotal evidence suggests that the behavior of law is influenced by the organizational culture and politics of the court unit as well as across field offices and individuals within the unit. In the future, researchers should collect the relevant structural level data in order to further test these propositions. Additionally, the data come from one state in the mid-Atlantic in the early 2010s; thus, results are not generalizable to other states or other time periods.

This study makes an important contribution to the extant literature on Black's theory and disparities in juvenile justice decision making. While past studies have examined family and school variables, often as control variables, Black offers a compelling theoretical case for considering these measures as fundamental to understanding the way law behaves. Moving forward, we must continue to sharpen our measurement of Black's concepts and broaden our application of his theoretical propositions to practice. Some of Black's concepts may not be as distinct as he originally articulated them (e.g., overlap between culture, morphology, and alternative social control). In fact, in later work, he has addressed this limitation, arguing that the multiple dimensions of social status can be combined into a single composite measure (see Black, 1979; Michalski, 2014).

Black's theory can inform practice. For example, we found a relationship between our rudimentary measures of culture—literacy—and the way that law behaves, which should prompt scholars, policymakers, and practitioners alike to consider other ways in which culture may impact the behavior of law. We may think beyond literacy to investing in prosocial, cultural opportunities for youth such as art, photography, and other creative endeavors, which would not only expose the youth to activities more commonly afforded to middle class youth, but also create more opportunities for expression as well as supervision during high risk times of the day/week/year (e.g., after school, summer). A summer-long photography course facilitated by the court in partnership with a local art gallery or museum could be a cultural experience, increase a child's integration into mainstream society (morphology), and serve as a form of

alternative social control/supervision, effectively tapping into three of Black's theoretical propositions.

Finally, we must ensure that youth have strong support systems, and court personnel should avoid thinking narrowly about nuclear family structure and recognize that informal social control can come in many forms, including mentoring, extended family, neighborhood ties, and other organizational affiliations. Black's theory pushes us to think more abstractly and broadly about the importance of social space in juvenile justice cases and ways in which we can change a youth's social characteristics that may impact their vulnerability to the law (Black, 1989). Finally, all of these avenues for extending Black have the potential to impact the pervasive racial and ethnic disparities that have become an unfortunate reality in juvenile justice practice.

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