



Privilege and Punishment: Unequal Experiences of Criminal Justice

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Privilege and Punishment: Unequal Experiences of Criminal Justice

A dissertation presented
by
Matthew Kevin Clair
to
The Department of Sociology

in partial fulfillment of the requirements
for the degree of
Doctor of Philosophy
in the subject of
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Privilege and Punishment: Unequal Experiences of Criminal Justice

Abstract

Scholarly examinations of race and class disparities in criminal punishment seldom consider how defendants—especially those who are white or middle-class—experience criminal justice processing. Analyzing in-depth interviews, ethnographic observations, and archival data among defendants and legal authorities in the Boston area, this dissertation offers a rare examination of how defendants from a range of backgrounds navigate the criminal justice process.

Chapter 1 reviews what scholars know about the nature and scope of race and class disparities—and what explanations have been offered to account for them. These explanations often focus either on the discriminatory actions of legal authorities or the differential criminal involvement of alleged offenders. Relying on cultural sociological literature, I theorize a new approach that examines how cultural, social, and economic resources shape defendants' differential navigation of legal institutions and that considers how these patterns may contribute to disparities in criminal justice experiences.

Chapter 2 introduces the 49 individuals who shared their experiences of criminal justice involvement with me in interviews. In addition to conducting in-depth interviews with all respondents, I directly observed six of these individuals in court proceedings. All individuals in my sample—white and black, rich and poor—experienced childhood alienation in the home or at school. Alienation and stigmatization often coincided with experimentation with drugs/alcohol and other acts of delinquency. Similar delinquent behaviors aside, the realities of spatial,

cultural, and moral boundaries between police and civilians differentially enabled middle-class and white working-class individuals to evade and negotiate police encounters in ways unavailable to their black working-class and poor peers. I suggest that adolescent race and class differences in policing and parental responses set the stage for divergent criminal justice experiences in adulthood.

Chapter 3 examines how race- and class-based situational resources shape understandings of legal authorities, especially lawyers. Many working-class and poor (especially those who are black) defendants in my sample exhibit a deep mistrust of their lawyers as compared with their middle-class peers. Mistrust is not simply explained by poor representation or dissatisfaction with legal outcomes; rather, mistrusting relationships are developed through at least four mostly a priori conditions: a lack of familiarity with professionals and professional expertise; cultural mismatching between attorneys and clients on the basis of racialized or classed cultural experiences and tastes; clients' perceived mistreatment by lawyers at some point in the relationship (or even prior to the relationship, given prior personal or vicarious negative experiences with other legal authorities); and, the structural inability to choose one's lawyer.

Chapter 4 examines how defendants' interpretations of lawyers and the legal system more broadly shape their differential decision-making and ultimate punishment experiences. I develop the concept of "acquiring expertise" to describe how defendants who mistrust their lawyers often attempt to accrue legal knowledge and skills to use with—or without—the assistance of their lawyer. Whereas defendants who trust their lawyers often delegate authority to their lawyers to work on their behalf, those who do not trust their lawyers often withdraw from the attorney-client relationship and rely on their self-acquired forms of legal expertise. Defendants' legal expertise is often less effective than lawyers' expertise in achieving ideal court experiences for

defendants, given the punitive responses of legal authorities and court procedures. Moreover, the conditions of mistrust among working-class and poor defendants also constrain their legal choices, resulting in preferences for legal strategies or sanctions that are understood by lawyers and social scientists to be more punitive than alternative strategies or sanctions. These processes have implications for disparities.

The conclusion offers implications for sociological theory and criminological theory. In addition, I conceptualize a new legal theory that offers policymakers, activists, everyday legal authorities, and the Courts the legal tools needed to remedy race and class disparities. Drawing on disparate impact theory and original interpretations of affirmative action in employment and education, I term this legal theory “affirmative justice.” From an affirmative justice perspective, I offer specific race- and class-conscious policy recommendations that could tackle the multiple, interacting causes (e.g., differential navigation, discriminatory treatment, and differential involvement in crime) of criminal justice disparities.

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For my nephew David. I pray you inherit a more just world.

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histories deserve full elaboration. Every time I met with Bart, I left energized, optimistic, and smiling; Bart's keen insistence that I find a way to follow some of my respondents in real time as they navigated the court system proved invaluable, yielding some of the most insightful pieces of evidence in the dissertation.

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Preface

Several summers ago, in August, I was at an academic conference in Chicago when I witnessed something startling that would motivate the rest of my graduate school career. At the conference, a colleague and I were presenting research on how trial judges deal with the problem of racial disparities in criminal courts. Presenting our research was altogether ordinary. And so, the third morning of the conference, we decided to take a break from the panels to observe court proceedings in a Cook County courthouse. We were curious to get a sense of judicial behavior in Cook County, a court system larger and far more infamous in its treatment of criminal defendants than the Northeastern courthouses we were familiar with.

Not much surprised us in our observations that day, except one quite unfathomable thing: As we sat in a courtroom in one of the country's busiest courthouses on this random August day, a defendant with a familiar name—*my* fairly uncommon last name—was arraigned right in front of us. As this defendant was brought in handcuffs in front of the judge, I realized immediately—with his round face, button nose, brown skin, and small ears—that this had to be a relative of mine. Hours later at lunch, I would call my dad and learn that the man I had just watched shuffle through court was a first cousin, one of the many Clairs from Chicago that I have never met.

A few days later, back in Cambridge, I would google this cousin of mine. His mugshot was the first search result. He grimaced for the camera. This official, bureaucratic representation—available to the police, his defense attorney, and the judge who would sentence him—hardly inspired sympathy. *I don't know this man*, I remember thinking, *but still I see myself in him*. I understood that I easily could have been in his position if it weren't for my dad's chance-escape, in his teens, from the south side of Chicago to a boarding school in Southborough, Massachusetts. Blood and history drew me to him, and I suddenly felt an acute

sense of wanting to help, a reaction I found to be an uncomfortable mix of presumption, instinct, and empathy.

This dissertation is profoundly shaped by the strange moment of witnessing my cousin arraigned in court. Indeed, this dissertation may not exist at all if it were not for the introspection that the experience forced upon me. In some sense, I felt guilty: guilty that I was in a position of relative privilege in comparison to him. There I was, a Harvard graduate student, studying a social problem from a distance that presented very real dilemmas in the life of a relative I did not know existed. And at the same time, I grew curious: curious about the everyday experiences of men and women like my cousin—men and women who may not have suffered the extreme abuses of the criminal justice system that we read about in the news (such as being killed by a police officer or wrongfully sentenced to death) but who nevertheless experience the daily indignities, worries, fears, and economic and social losses of criminal justice processing. Rather than continue to examine inequality in the criminal courts from the perspective of legal authorities such as judges, I decided my dissertation should center on the experiences of criminal defendants, whose perspectives we continue to know little about.

To the men and women who agreed to share their experiences of criminal justice involvement with me, I owe a deep debt of gratitude. Throughout the process of data collection, they were patient and generous with their time and knowledge, often in the midst of dealing with the loss of friends to heroin overdoses, the loss of their families to burned social ties, and, at times, the loss of their liberty to the courts. Many of the individuals I met expressed to me their hope that the process of me collecting and explaining their stories would ultimately provide those in power with the resolve to craft effective solutions. While they recognize, just as I do, that their

own individual lives likely will not change for the better, perhaps the lives of people like them will change in the future. I hope they are right.

Introduction

“[I]n convictions by human courts, the rich always are favored somewhat at the expense of the poor, the upper classes at the expense of the unfortunate classes, and whites at the expense of Negroes.”

—W.E.B. Du Bois,
The Philadelphia Negro

Among social scientists, there is little disagreement that African Americans, Latinos, and the poor bear the brunt of criminal punishment in the United States. The causes of, and solutions to, this unequal punishment, however, sustain much debate.

This dissertation contributes to this debate by considering the everyday experiences of criminal defendants from different race and class backgrounds. So much research on criminal punishment, especially *disparities* in punishment, relies on abstracted quantitative analyses of administrative or survey data. While such research provides us with important evidence of population-level disparities from arrest to incarceration, these analyses often fall short in offering comprehensive accounts of the social processes and mechanisms—within and beyond the criminal justice system—that might explain such disparities. To understand the social processes that undergird these disparities, we need an in-depth, qualitative account from the perspective of defendants.

For many, the search for explanations of race and class disparities can be understood, at its core, to really be a search for who (or what), precisely, is to blame for this persistent social problem. Should we blame the police who target poor people committing petty crimes, or should we blame the poor who are more likely to engage in criminal behavior? Should we blame the laws—and the lawmakers—that criminalize poverty? Should we blame prosecutors who are biased in dropping charges for wealthy white defendants, or should we blame public defenders who fail to advocate effectively on behalf of their poor black clients? Of course, these factors can all be responsible to some extent; yet, researchers and policymakers often seek to identify which factors appear to be most important and under what conditions. Thus, the goal is often to identify which explanation can account for more of the variation and thus be understood to be more blameworthy. In this sense, the debate over the causes of disparities is at once a moral debate as well as a practical one in search of solutions.

Curiously, such inquiries often leave out the voices, interpretations, motivations, and decision-making of those who have the most at stake: the criminally accused. Whom do they find to be at fault, and how do they understand and seek to alter their circumstances? To be sure, a good amount of research on policing, delinquency, and violence in urban neighborhoods considers the cultural codes, rational incentives, and structural constraints that may explain higher rates of criminal offending among certain members of marginalized communities; yet, research that examines the experiences of criminal defendants as they make their way through criminal court processing is surprisingly sparse. And in this uniquely punitive moment in American history, when not just extreme numbers of the poor and people of color but also a good number of middle-class and white people have faced arrest and court processing at some point in their lives, such an examination of the experiences of criminal defendants would likely tell a

surprisingly variegated story of punishment experiences. Interrogating the perspectives and experiences of a diverse group of criminal defendants could at once provide potentially novel insider accounts of the causes of disparities as well as provide evidence for the way that micro-level social processes and interactions—between accused individuals and the legal authorities they encounter along the criminal justice process—may contribute to unequal punishment.

Through the analysis of in-depth interviews, ethnographic observations, and other forms of data among criminal defendants from different race and class backgrounds in the Boston area, this dissertation provides a rare in-depth account of the experience of criminal justice disparities from the perspective of the accused. I leverage these data to examine whether and under what conditions middle-class experiences differ from working-class and poor experiences, as well as how the experiences of whites differ from those of racial/ethnic minorities. Rarely do scholars consider the accounts of the privileged in interacting with punitive institutions. And yet, their experiences are important to consider because they could provide a contrasting set of narratives through which we can better understand just how distressing the criminal justice experiences of the disadvantaged are.

In analyzing these data, I ask: How do middle-class experiences of arrest, court processing, and imprisonment compare to working-class and poor experiences? How are these experiences shaped by access to economic, social, and cultural resources within and beyond the courthouse walls? How does race/ethnicity influence the acquisition and use of resources? What evidence can divergent experiences at the individual level provide for understanding the processes that may account for observed disparities in the aggregate? What insights could such a comparison provide for sociological theory on the reproduction, and consequences, of inequality in social institutions more broadly? And finally, relying on the answers to these questions, what

is to be done to make our criminal justice system more equal, if not generative of a better life for those suffering from economic marginalization, racial subordination, substance use disorders, and other disadvantages?

What follows is an examination of these questions through an analysis of the experiences of 49 men and women who have faced at least one drug or alcohol-related court case in the Boston area. Chapter 1 begins by outlining what scholars know about the nature and scope of race and class disparities in the criminal justice system—and what explanations scholars have offered to account for these disparities. Drawing on cultural sociological literature, I then offer a new theoretical approach to the study of disparities that centers on the experiences of a racially- and socioeconomically-diverse sample of criminal defendants, prioritizing the assessment of how race and class “situational resources” may shape institutional navigation, interaction with legal authorities, and even the articulation of constrained legal preferences and choices. Moving beyond dominant approaches to culture and the reproduction of social inequality, I develop and employ the concept of “situational resources” to provide a more precise portrait of the way individuals utilize resources in interactions in ways that cannot be captured by more rigid conceptions of class and race. I detail my research data and methods.

Chapter 2 introduces my respondents: 49 men and women who, over the life course, have experienced a range of race and class situations, shaping their general orientations toward and susceptibility to interaction with the criminal justice system. Over a third of the people in my sample grew up in middle- or upper-middle-class households, yet most experienced downward mobility over their life course. While childhoods burdened by social alienation, stigmatization, family abuse, substance use disorders, and delinquency cut across race and class lines, respondents from middle-class families raised in mostly-white neighborhoods recount less

vulnerability to legal sanction—from police and court officials—throughout adolescence than do their working-class, poor, black, and Latino peers.

To explain these differences, I theorize the processes of police evasion and police negotiation, each of which depend on the salience of spatial, cultural, and moral boundaries between police and civilians. I also show how respondents who grew up in working-class and poor households engaged in delinquent behaviors, such as drug use and drug dealing, within a cultural context of legal cynicism toward legal authorities and broader skepticism of traditional pathways to economic mobility, whereas their higher-status peers engaged in similar delinquent behaviors within an individualistic and laissez-faire cultural context of pleasure and enjoyment with little or no reference to the threat of legal sanctioning or delimited economic opportunities. I conclude by revealing how these race and class differences during adolescence set the stage for divergent criminal justice experiences in adulthood.

Chapter 3 begins to examine how race and class situational resources shape the differential navigation of court processing, in particular the negotiation of the attorney-client relationship. Analytically, this chapter considers the detailed narratives that each respondent shared in interviews about their experiences with a total of 132 court cases. In addition, I analyze field notes from general courthouse observations, targeted observations among 6 respondents who allowed me to accompany them to court, and informant interviews with lawyers and other court officials.

While lawyers serve, theoretically, as institutional mediators between defendants and the court system, I observe a deep mistrust of lawyers among many working-class and poor (especially those who are black) defendants as compared with their middle-class peers. While some respondents express a blanket disdain for public defenders (referring to them as “public

pretenders”), mistrust is not simply explained by bad lawyering or dissatisfaction with legal outcomes; rather, mistrusting relationships are developed through at least four mostly a priori conditions: a lack of familiarity with professionals and professional expertise; cultural mismatching between attorneys and clients on the basis of racialized or classed cultural experiences and tastes; clients’ perceived mistreatment by lawyers at some point in the relationship (or even prior to the relationship, given prior personal or vicarious negative experiences with other legal authorities); and, the structural inability to have a choice in one’s lawyer. I argue that this mistrust is symptomatic of a broader distrust of professionals and of expertise among the working class and poor in American society. My findings reveal this broader skepticism’s specific manifestations in the criminal justice process.

Chapter 4 examines how defendants make legal and extralegal decisions during criminal court processing—decisions such as calling witnesses, filing motions, ignoring their lawyers’ advice, heeding their lawyers’ advice, speaking in open court, taking pleas, having a say in the removal of jurors, and taking the witness stand. Contrary to most research on criminal justice processing which focuses on the decision-making of legal authorities such as police, prosecutors, defense attorneys and judges, I highlight, and offer a diagram that details, the many moments when defendants are legally allowed, or may simply attempt to, exert their agency in the process.

The nature of defendants’ decision-making often depends on whether defendants trust their lawyers. Whereas defendants who trust their lawyers often delegate authority to their lawyers to work on their behalf, those who do not trust their lawyers often withdraw from the attorney-client relationship and rely on their own self-acquired forms of legal expertise—knowledge and skills about criminal law and procedure. This cultivated expertise, a form of cultural capital, is often less effective in achieving ideal court experiences for defendants than

lawyers' legal expertise. In part, this is because defendants' expertise is discredited by the court and punished by legal authorities. In addition, I show that working-class, poor, and black defendants' acquired expertise and experiences of mistrust can also constrain legal choices, resulting in some lower-status defendants' preferences for legal strategies or sanctions that may contradict what the average lawyer or social scientist may view as a "good" legal outcome. Consequently, mistrust, the accrual of expertise, and constrained legal choices conspire to contribute to harsher punishment experiences among the working class, poor, and racial/ethnic minorities as compared to their higher-status peers.

The concluding chapter articulates the dissertation's theoretical and practical implications for research on criminal justice disparities, sociological theory, and legal theory. At its core, this dissertation reveals the many ways that differential navigation—alongside legal authorities' discriminatory treatment and differences in defendants' criminalized behaviors—may shape observed race and class disparities. Defendants' differential navigation of the criminal courts constitutes a heretofore underexamined explanation of disparities that should be developed and tested in future research.

This dissertation also revises sociological understandings of how micro-level interactions shape institutional inequality. Cultural sociologists examining school or workplace settings have shown how the middle class reproduces its privilege through proactive and demanding interactions with professionals and accrual of institutional knowledge. But in the criminal courts, it is the working class, the poor, and marginalized racial/ethnic minorities who are more likely to attempt to cultivate valued institutional knowledge and engage directly with legal officials in open court. Yet, their self-acquired expertise is devalued, and navigation of the courts requires that defendants allow designated legal authorities (i.e., lawyers) to work on one's behalf. Thus,

relatively successful navigation of the criminal courts relies on delegation of authority toward lawyers and other officials within a trusting interactional relationship. I argue that these findings likely translate to other punitive state institutions (e.g., probation offices and child welfare agencies), where civilians are required—rather than elect—to interact with authorities who control the extent to which they can avoid legal, political, and civic penalties.

Finally, drawing on original legal interpretations of affirmative action in employment and education, the concluding chapter offers “affirmative justice” as a new legal theory to remedy criminal justice disparities. This chapter suggests that if we understand the criminal justice system as yet another institution that reproduces inequality through the coordinated actions of both dominant and subordinated actors, our policy prescriptions should consider ways not only to correct the observed discriminatory treatment of those in power but also to account for the differential opportunities and outcomes of the disadvantaged. So much of the focus on criminal justice reform focuses on the former—i.e., reformers ask: how do we make legal officials less biased and less discriminatory? An affirmative justice lens would additionally ask: how do we rectify disparities in legal outcomes and how do we equip poor and minority defendants with greater access to legitimated channels of legal expertise and alternatives to incarceration and other punitive techniques of social control? A theory of affirmative justice would move contemporary legal jurisprudence away from remedying discriminatory intent toward remedying disparate outcomes. This latter approach requires race- and class-conscious solutions to dealing with disparities.

Chapter 1: Studying Unequal Experiences of Criminal Justice

When researchers, policymakers, social activists, and everyday citizens think about the typical criminal defendant, they often imagine someone who is poor and black or Latino. Television shows like *The Wire* and social justice advocacy organizations like The Innocence Project regularly reinforce the trope of the poor black or brown defendant caught up in an unjust system. Often such images are meant to inspire sympathy; they are progressive attempts to underscore the unequal burden that the criminal law places on marginalized social groups in the United States (see e.g., Bennett 2010). Yet, such portrayals do not tell the full story.

While the poor and marginalized racial/ethnic minorities are disproportionately arrested, detained, convicted, sentenced, and housed in our nation's jails and prisons (Travis, Western, and Redburn 2014), the punitive turn in our legal system has swept up increasing numbers of middle-class and white Americans (see Gottschalk 2015). And so, the general lack of attention that scholars and the media pay to whites and members of the middle class who find themselves

pulled into the system constitutes a missed opportunity for fully understanding the reproduction of racial and class-based inequality. Indeed, if we are to thoroughly understand the profound toll that our criminal justice system has wrought on low-income black and brown communities, we must gain a greater awareness of the relative weightlessness of criminal justice involvement for those who are unmarked by disadvantage. Doing so requires an in-depth and comparative examination of the experiences of criminal defendants from a range of race and class backgrounds and who have access to varying levels of resources.

Race, Class, and Mass Criminalization

Research on the punitive turn in the American criminal justice system often begins with what some scholars have now characterized as a “ceremonial nod to the numbers” (Kohler-Hausmann 2013, p. 351) of men and women incarcerated across the United States. Commonly, scholars refer to these historically high rates of incarceration as “mass imprisonment” or “mass incarceration” (Garland 2001). Such terms speak to the sheer size—unmatched in American history and around the world—of our incarcerated population. And our national dependence on punishment does not stop at the prison walls. Beyond the more than two million individuals incarcerated in prisons and jails today in our country, nearly 4.7 million people were on probation or parole in 2015 (Kaeble and Glaze 2016). Even more people are likely to have experienced arrest or other less serious police encounters in any given year.

Given the increasing use of punitive legal techniques and policies to control greater numbers of civilians in the United States, scholars have begun to offer new conceptual terms to grasp the depth of punishment beyond the prison. For example, Phelps (2016) refers to “mass probation,” or the historically high rate of individuals under probation supervision. DeMichele (2014) refers to “mass social control,” a term that draws on Foucault’s concept of

governmentality to reveal the ways that various forms of correctional supervision beyond probation attempt to control citizens through subtle techniques. Kohler-Hausmann (2013) refers to “misdemeanor justice,” or the mass processing of low-level criminal cases in the courts. And Stuart (2016) refers to “street-level criminalization,” or the heavy use of citations, surveillance, and stop-and-frisk techniques by police officers managing marginal populations in poor, urban neighborhoods.

Taken together, these trends toward increased policing, court processing, probation, and incarceration speak to a broader pattern of government regulation through surveillance and punitive legal control (Beckett and Western 2001; De Michele 2014; Miller and Alexander 2015; Wacquant 2009, 2010; Young and Petersilia 2015) that has its roots in changes to federal welfare policy in the 1960s (Hinton 2016). Scholars concerned about the political and societal causes and consequences of this governmental penal control have described these phenomena as indicia of what could be described as our nation’s “carceral state” (Gottschalk 2008, 2015; Hinton 2016; Weaver and Lerman 2010), or the “massive expansion of the state in the realm of penal policy” (Gottschalk 2005, p. 1693). This carceral state has, some scholars argue, replaced welfare programs with punitive programs meant to manage “dispossessed and dishonored populations” (Wacquant 2010, p. 80) through state investment in legal control and disinvestment from socially progressive programs such as job programs, housing, and neighborhood revitalization. Thus, the main purposes of government have increasingly become centered around punitive legal control of marginalized populations. As Simon (2007, p. 476) notes:

By the carceral state I mean something more than the politics of law and order [...] In ways that did not begin to take hold until long after 1968, American governance has been reshaped around the problem of crime. To a far greater degree than before, the pathways through which the population becomes known and can be acted upon by the agencies of government at all levels run through and are mediated by the category of crime and the host of discourses and practices that have grown up around that category since the early Republic.

To be sure, some scholars have suggested that these trends are not all that new; rather, they have simply taken a new form. Indeed, the racialized and classed dimensions of the carceral state remind us of the long history of punitive control of marginalized populations in the United States.

In addition to its scale, the carceral state has also been defined by its race and class disproportionalities, or what I refer to broadly as “criminal justice disparities.”¹ Research on criminal justice disparities tends to focus on racial disparities more so than class disparities. Indeed, scholars studying mass incarceration and the carceral state more broadly often mention the existence of racial disparities even if interrogating such disparities is not central to their analysis.

From arrest to incarceration, racial disparities not only persist but also, in some respects and depending on the type of crime, worsen. Take the following estimates based on an analysis of the National Longitudinal Survey of Youth (NLSY): whereas nearly 38 percent of all white men born in the early 1980s experienced at least one arrest by the age of 23, nearly 44 percent of Hispanic men and 49 percent of black men in the same cohort experienced at least one arrest by that age (Brame et al. 2014). While other estimates vary slightly, they all reveal similar racial/ethnic disparities (see Barnes et al. 2015; Travis et al. 2014).² Although researchers do not have quality estimates of cumulative risks of arrest by crime type and race/ethnicity, aggregate numbers reveal racial/ethnic disparities in the number of arrests per year by crime type. For

¹ Relatively little research has considered other demographic disparities, such as gender disparities (but see Chesney-Lind and Pasko 2013; Daly 1994; Steffensmeier 1980). Gender disparities, whereby women and girls are disproportionately underrepresented in the criminal justice system compared to men and boys, exist to a striking degree across all forms of system contact. While examining the causes of gender disparities is beyond the scope of this dissertation, the differential navigation perspective offered here could likely be appropriated to explore how women and girls’ gendered interactions with legal authorities contribute to gender disparities.

² Self-reports of arrests, as asked in surveys like the NLSY, may be biased for various reasons (see Krohn et al. 2013).

example, in 2016, the FBI Uniform Crime Report (UCR) indicated that whites accounted for 69.6 percent of all arrests and blacks accounted for 26.9 percent. These overall arrest proportions were similar to those for all drug abuse violations: 71 percent white and 26.7 percent black. Meanwhile, in 2016, census estimates from the American Community Survey show that whites are 76.9 percent of the population and blacks are 13.3 percent.

After arrest, racial disparities persist. For example, estimates suggest that in 2010, nearly 13 percent of all adult men had at least one felony conviction compared to just over 33 percent of adult black men (Shannon et al. 2017). At incarceration—the tail end of the system—racial disparities have been well-documented, given the availability of estimates of prison admissions rates and surveys of prison populations. While racial disparities in imprisonment have fluctuated over the twentieth century (see Muller 2012), such disparities increased during the rise of mass incarceration in the 1970s and 1980s, peaking in the 1990s (Travis et al. 2014, p. 58, 94). In 1990, the relative disparity between blacks and whites, or “the black-white ratio in incarceration rates” (Travis et al. 2014, p. 58), peaked at 6.8. In other words, the black incarceration rate was 6.8 times that of the white incarceration rate.

Given these stark racial disparities in incarceration over the prison boom period, some scholars have noted that mass incarceration and other forms of criminalization are indicators of, or even techniques meant to perpetuate, state-crafted racial subordination (Alexander 2012; Bobo and Thompson 2006, 2010; Murakawa and Beckett 2010; Ward 2012). Early on, Garland (2001, p. 2) and others made note of the unequal burden of mass incarceration among “young black males in urban centres” for whom “imprisonment has become normalized.” More recent critical perspectives further suggest that racial disparities are intentional outcomes of a racist, even if legal, form of social control. For example, Alexander (2012) argues that mass incarceration

constitutes a form of racialized social control analogous to Jim Crow in its treatment, segregation, and stigmatization of African Americans. She describes mass incarceration as a “racial caste system” that uses “law and custom” to “ensure the subordinate status of a group defined largely by race” (Alexander 2012, pp. 12-13). Mass incarceration affects not just those blacks who are currently trapped in prisons, but also whole communities of marginalized blacks—families, neighbors, and friends who face the stigmas of criminalization as well as formerly incarcerated individuals who face legal exclusions in voting, housing, and employment (see Asad and Clair 2018 on the spillover effects and collateral consequences of legal status).

Other observers have also noted that class disparities—and processes of class subordination and exploitation—are also a central part of the story of mass incarceration. While class disparities in criminal punishment have not been as thoroughly examined as racial disparities, there is a long tradition of sociological and criminological theory on the criminalization and punishment of those suffering from homelessness and economic precarity (e.g., Quinney 1977). Classic work on policing in urban neighborhoods (Bittner 1967) and examinations of jail populations (Irwin 2013 [1985]) reveal how policing and court processing have been used as tools to manage and, at times, rehabilitate the poor, especially those suffering from substance use disorders and mental health problems. Prior to the 1970s, a period of penal-welfarism approached the problems of social marginality and childhood delinquency from a correctionalist ideology that favored rehabilitation, individualized treatment, and indeterminate sentencing over lengthy and determinate sentences of incarceration (Garland 2002; see also Feeley and Simon 1992). Tasked with reintegrating individuals back into society (rather than punishing them), these rehabilitative techniques were sometimes off-limits to African Americans, who were viewed as unworthy of the benefits of early twentieth-century Progressive

Era reforms (Ward 2012). Over the last four decades, however, the increasing use of incarceration, as a punitive technique of legal control, has fallen more heavily on the poor and racial/ethnic minorities.

Contrary to Alexander (2012) as well as scholars who focus on race or class independently, Wacquant (2010) argues that mass incarceration is a class phenomenon first and a racial phenomenon second. He critiques the term mass incarceration because it suggests that incarceration has affected a broad swath of the population; instead, he argues that incarceration has had a targeted impact on the black poor. Wacquant (2010, p.78) writes:

Next, the expansion and intensification of the activities of the police, courts, and prison over the past quarter-century have been anything but broad and indiscriminate. They have been *finely targeted*, first by class, second by that disguised brand of ethnicity called race, and third by place. This cumulative targeting has led to the *hyperincarceration* of one particular category, lower-class African American men trapped in the crumbling ghetto, while leaving the rest of society—including, most remarkably, middle- and upper-class African Americans—practically untouched.

By highlighting the “finely targeted” impact on poor black men in “the crumbling ghetto,” Wacquant’s account of mass incarceration reveals the intersecting realities of both class and race with respect to the tail end of punishment. Still, Wacquant gives primacy to class over race, arguing that this unique moment of punitiveness is driven primarily by the welfare state’s retrenchment in an era of neoliberalism rather than state-sanctioned processes of racial subordination.

Largely missing from scholarly perspectives on race and class disparities is a recognition of middle-class and white Americans pulled into the system over the last four decades. Alexander (2012), for example, writes of increased rates of drug-related incarceration among whites as simply “collateral damage” (Alexander 2012, p. 205) of a distinctively racist form of social control (see Forman 2012). Meanwhile, Wacquant (2010), as quoted above, finds it

remarkable how “practically untouched” middle-class black Americans are by incarceration, indicting incarceration as a predominantly classist form of social control.

While such statements rightly focus attention on the relative disadvantage of the poor and minorities compared to the middle class and whites, such a framing does not consider relative changes within all groups. For example, even at the most extreme end of criminal justice contact (incarceration), an increased proportion of whites and those with a college degree have also experienced incarceration over the last several decades. Western and Pettit (2010) provide estimates that compare the cumulative risk of imprisonment at ages 30-34 for men born in the mid-1940s to men born in the mid-1970s. The cumulative risk of incarceration has increased among blacks, whites, and Latinos across all education levels from the 1940s cohort to the 1970s cohort. For example, among black men, 14.7 percent of high school dropouts in the 1940s cohort experienced imprisonment, whereas 68 percent of high school dropouts in the 1970s cohort had. For those with some college, the percentages were 5.3 and 6.6 respectively. Among whites with some college, the percentage tripled (given a relatively low starting point) from 0.4 percent among the 1940s cohort to 1.2 percent among the 1970s cohort; white high school dropouts went from 3.8 percent to 28 percent. A recent report by the Vera Institute of Justice found that whereas black incarceration rates in jails nationwide have been declining since 2005, white incarceration rates have been increasing since 1990 (Subramanian, Riley, and Mai 2018). The report found that white incarceration rates have increased most notably in smaller city and rural jurisdictions (see also Simes 2017). Moreover, it is illuminating to consider the incarceration rates of the least affected members of American society compared to the average incarceration rates of other countries. For example, white women have the lowest incarceration rate in the United States compared to other race-gender groups; yet, they have a higher incarceration rate

than the average incarceration rates of Germany, Sweden, Norway, Japan, and India (see Gottschalk 2015, p. 5).

And so, while there is no doubt that mass incarceration has fallen heaviest on subordinated racial/ethnic minorities and members of the poor and working classes, the rising tide of incarceration and other, less punitive forms of legal control have swept up increasing numbers of middle-class and white Americans. Recently, a small number of scholars have begun to grapple with the staggering presence of the carceral state in the lives of these relatively privileged individuals. Marie Gottschalk, one of the most ardent critics of the singular focus on disparities (especially, *racial* disparities), has suggested that scholars should consider the impact of incarceration across all racial groups, not just blacks and Latinos (Gottschalk 2015, chapter 6). Indeed, she notes that the degrading conditions of prison dehumanize all who experience it, not just those who are members of marginalized groups (Gottschalk 2015, p. 135-7). This argument logically extends to other degrading acts of punishment, such as stop-and-frisk policing, the hassles of court processing, and submitting to the authority and inquiries of a probation officer. These other acts of punishment are experienced by an even greater share of the American population than imprisonment.

While I share Gottschalk's plea to consider how the carceral state affects all who become entrapped in it, I depart from her in her suggestion that researchers pay too much attention to measuring and modeling the causes of racial disparities. Indeed, my motivation in studying the experiences of whites and the middle class is to develop a deeper explanation of both race and class disparities. What Gottschalk critically refers to as a "cottage industry" (Gottschalk 2015, p. 131) around measuring racial disparities, I understand as a sustained investigation into an axis of stratification in the contemporary United States. This is especially true because the criminal

justice system is a cause, not merely a reflection, of inequality, given the collateral consequences of criminal justice involvement for individuals, their families, and their communities (see Asad and Clair 2018; Pager 2008; Roberts 2000; Wakefield and Wildeman 2013; Wildeman and Muller 2012).

Much of Gottschalk's seeming indifference to the unique problem of racial disparities is driven by her (debatable) assessment of the current evidence that most of these disparities are not unwarranted. In other words, she argues that much of the evidence around racial disparities suggests that most variation between racial groups in punishment outcomes can be explained by legal factors, such as criminal charge and criminal record (see Gottschalk 2015, chapter 6).³ According to her interpretation of the available evidence, only a small fraction of racial disparities are unwarranted. But even if one were to accept this premise, race and class disparities matter profoundly to the individuals who experience them. As Crutchfield, Fernandes, and Martinez (2010, p. 94) point out:

We cannot help but wonder, though, if the minority driver pulled over a few extra times by profiling officers, or the Latino sentenced to just a bit more time in prison, or the African American with just a slightly higher probability of receiving a capital sentence would agree that small effect sizes can be dismissed as inconsequential.

The problem of race and class disparities, then, is both a personally and socially significant problem, worthy of sustained inquiry (see also Piquero 2008).

³ As I will detail below, there is much debate about what proportion of observed race and class disparities can be explained by legal vs. extra-legal factors. In the policy and sentencing literature, disparities that are unexplained by legal factors (e.g., crime type, criminal record, legally-relevant aggravating and mitigating factors, etc.) are defined as “unwarranted” (see Winter and Clair 2016). My read of the overall available evidence suggests that: (1) on average, a statistically significant, though relatively small, proportion of disparities are unexplained by legal factors, suggesting they are “unwarranted”; (2) the degree to which disparities are unwarranted varies considerably by crime type and jurisdiction; and (3) the currently available evidence is hampered by many data limitations (see Baumer 2013) as well as conceptual limitations around interpreting racism and racial effects (see Murakawa and Beckett 2010; Van Cleve and Mayes 2015). Importantly, what may appear to be “warranted” racial disparities in one context is likely the result of unwarranted racial discrimination in a prior context or domain of social life (see Asad and Clair 2018; Ray and Seamster 2016; Reskin 2012).

I begin from the assumption that it is important for researchers to consider both the scope of punitive legal control across all members of society as well as its disproportionate impacts on the poor and marginalized racial/ethnic minorities. Consequently, I use the term “mass criminalization” to describe our current punitive moment. Mass criminalization captures the fact that, over the last four decades, Americans from nearly all demographic groups have witnessed an increased likelihood of punitive contact with the police, courts, probation, incarceration, and other techniques of punitive control. I borrow this term from the writer, lawyer, and social activist Deborah Small who contrasts policy reforms around “mass incarceration” with policy reforms that could be imagined around a term like “mass criminalization.” In an article in *Salon*, Small (2014) writes:

Mass incarceration is one outcome of the culture of criminalization. Criminalization includes the expansion of law enforcement and the surveillance state to a broad range of activities and settings: zero tolerance policies in schools that steer children into the criminal justice system; welfare policies that punish poor mothers and force them to work outside of the home; employment practices that require workers to compromise their basic civil liberties as a prerequisite for a job; immigration policies that stigmatize and humiliate people while making it difficult for them to access essential services like health care and housing. These and similar practices too numerous to list fall under the rubric of criminalization.

Small centers her interpretation of mass criminalization around the criminalization of communities of color in particular. Pushing further, my use of the term additionally speaks to the way such criminalization has punitive, though unequal, effects across multiple communities—marginalized and privileged. Unlike terms such as mass incarceration or mass probation, the term mass criminalization speaks to all forms of legal control along the continuum from arrest to court processing to incarceration and re-entry. Not limited to any particular moment of criminal justice contact, the term better captures the full scope of punishment by federal, state, and local authorities as well as by everyday citizens and non-governmental organizations, such as employers who discriminate against former felons (see Pager 2008) and citizens who make residential choices based on publicly-available databases of convicted sex offenders (see Pickett,

Mancini, and Mears 2013; Wacquant 2009). Unlike more macro-level concepts like the “carceral state,” mass criminalization captures the lived reality of the use of penal techniques in the everyday lives of individuals living in the United States. Whereas Miller and Alexander’s (2015) concept of “carceral citizenship” usefully centers the lived realities of the carceral state in black and Latino communities, the term mass criminalization additionally contemplates how such lived realities are experienced differently across various demographic groups, neighborhoods, and communities.

Examining the processes that reproduce criminal justice disparities in an era of mass criminalization requires a detailed, grounded approach to investigating everyday experiences of punishment along the length of the criminal justice process. In the following section, I summarize existing approaches to and explanations of disparities, highlighting their limitations in understanding the multifaceted causes of race and class disparities. I show how existing approaches revolve around two broad perspectives. One perspective centers on the siloed actions of legal authorities who may discriminate against the poor and members of certain racial/ethnic minorities. Another perspective centers mostly on the criminalized behaviors of alleged offenders and how their behaviors are punished by legal procedures and policies on the books. I offer a third perspective, which I term the “differential navigation” explanation. This perspective pushes researchers to consider how interactional dynamics between defendants and authorities may shape disparities.

Existing Approaches to and Explanations of Criminal Justice Disparities

Sociologists and criminologists have long debated the causes of criminal justice disparities, especially racial disparities (see e.g., Du Bois 1996 [1899]; Sellin 1928; Von Hentig 1939). Most contemporary examinations into the factors that may explain disparities rely on quantitative

analyses of state or federal administrative data provided by police departments, courthouses, probation offices, prisons, and other agencies affiliated with the criminal justice system⁴ (Baumer 2013; Ulmer 2012). As John Pfaff (2017) and others have noted, the American criminal justice system is not one, unified entity; rather, it is a collection of local, state, and federal agencies that process, surveil, and supervise individuals who have been pulled into the system through arrest, criminal citation, or criminal complaint.⁵ These various agencies collect and, to varying degrees, share information about the criminally accused, including their (self- or agency-determined) race, gender, criminal history, residential address, and other demographic information. While some state and federal court systems also collect information on indigency status (often determined by income and access to other assets), employment, and educational status, the accessibility of these forms of data vary considerably across jurisdictions.

Relying on these administrative data, researchers have examined race and class disparities at arrest, prosecutorial charging, pre-trial detainment, the plea decision, conviction (by way of plea and by way of trial), and the sentencing decision (e.g., fines, alternative sanctions such as diversion to probationary programs, sentencing to jail, sentencing to prison, length of sentence). Seeking to identify the causes of disparities, researchers often employ counterfactual models that control for legally-relevant variables or attempt to match similarly-situated

⁴ Borrowing from the National Center for Victims of Crime (2008), I define a criminal justice system as a set of governmental agencies and procedures charged with controlling and punishing criminal offenses. The American criminal justice system includes federal, state, city, and college police, federal courts, municipal/district/lower (city-level dealing with misdemeanors and less serious charges) courts, and county/superior/upper (county-level dealing with more serious charges) courts, local and state jails, and state and federal prisons. See Mayeux (2017) for an interesting discussion of the history of the idea of a holistic and continuous “criminal justice system.”

⁵ Arrests involve police officers physically restraining a civilian and often taking them to a police station prior to arraignment in court. Criminal citations involve police officers issuing a notice to a civilian to face charges in court without arrest. Some criminal complaints are filed by police officers and other agents of the court; criminal complaints can also be filed by civilians against other civilians.

individuals who differ only by their race or socioeconomic status. Research on police stops and searches, for example, has found that blacks and Latinos are not only stopped at higher rates than whites (in cars and on the street) (see Engel and Calnon 2004, pp. 55-60) but also that they are more likely to be searched, issued citations, and arrested (Farrell et al. 2004; Ridgeway 2006). Some studies have found that police are less likely to find illegal items on black and Latino alleged offenders they search than white alleged offenders, suggesting racial/ethnic discrimination, net of legally-relevant variables, in searches (Pierson et al. 2017; but, for contrary evidence, see Knowles, Persico, and Todd 2001). Arrest disparities in drug arrests have often been found to be particularly striking along racial lines, given parity in drug use and distribution (two legally-relevant criteria) across groups (Mitchell and Caudy 2013; Tonry and Melewski 2008). These arrest disparities often translate directly into prosecutorial charging disparities, given that prosecutors often rubber stamp police filings of low-level charges (see Clair and Winter 2016, p. 345). Prosecutors also exhibit their own biases, often considering a witness's willingness to testify or even a defendant's race/ethnicity, net of other factors, in making charging decisions (Spohn, Gruhl, and Welch 1987). When seeking to explain disparities after arrest and prosecutorial charging, researchers often control for legal variables such as criminal charge, criminal record, and seriousness of the offense (e.g., Baldus et al. 1997; Tonry 1995). As I will detail below, numerous studies have found that racial/ethnic minority (specifically, blacks and Latinos⁶) and poor defendants often receive harsher formal legal punishments than white and higher status defendants, net of legally-relevant factors (Baumer 2013; Spohn 2013). Scholars

⁶ Relatively little research on disparities has examined Asian American or American Indian defendants' outcomes. Some work has suggested that Asian Americans tend to fare similarly to whites (e.g., Johnson and Betsinger 2009). American Indians, on the other hand, face correlated disadvantages similar to blacks and Latinos. These disadvantages likely translate into their processing by legal authorities. For example, American Indians have the highest rate of death in police custody (Hansen 2017).

often attribute variation unexplained by such legal factors to differential treatment by legal authorities (e.g., prosecutors and judges), who have been shown to hold stereotypes and implicit biases (Bridges, Crutchfield, and Simpson, 1987; Rachlinski et al. 2009; Van Cleve 2016) that may result in discrimination against minorities and the poor.

While the search for the causes of disparities through the use of administrative data (and sometimes survey data) is important, this research tradition is limited. Not only is it difficult to base causal claims solely on observational data, but also: even when researchers relying on quantitative methods use theory and qualitative data to enrich the interpretation of their results, their interpretations are often based on assumptions about the actions and decisions of legal authorities acting independently. Often, researchers assume that any variation that is not explained by legal variables captured in administrative data must be the result of discriminatory decision-making by legal authorities—such as prosecutors, probation officers, defense attorneys, and judges—acting unilaterally. Yet, research on the social and social-psychological processes surrounding legal authorities’ decision-making in the criminal courts reveals that legal authorities’ actions are shaped not only by their own biases and intentions but also by those of other legal authorities, their interpretations of their own legal discretion, their interpretations of legal procedure, and the broader demands of their larger caseload (see Clair and Winter 2016; Feeley 1992 [1979]; Levine and Wright 2012; Lynch 2017; McPherson and Sauder 2013; Steffensmeier, Ulmer, and Kramer 1998).⁷ Moreover, as I show in the following chapters, legal authorities’ decisions may also be shaped by the decisions, actions, and preferences of criminal

⁷ Other research on how social control agents (e.g., teachers, social workers, and legal authorities) make decisions reveal that broader organizational demands often shape individual-level decisions. As Emerson (1983) argues, broader caseload concerns about precedent and consistency can shape decisions about specific cases, beyond the individual merits of any one case.

defendants. While there is certainly evidence that legal authorities' biases and stereotypes directly impact the adjudication of criminal defendants, absent an in-depth account of the interpretations and actions of criminal defendants, researchers are left with an incomplete understanding of the reproduction of disparities.

What We Know: Race and Class as Independent Predictors of Pre-trial, Sentencing, and Incarceration Outcomes

Existing explanations of disparities in the criminal justice system center on two main perspectives, which have been defined as *disparate impact* and *differential treatment* explanations (Baumer 2013; Clair and Winter 2016). Disparate impact explanations emphasize the legal factors (e.g., criminal involvement or criminal record) that may explain higher rates of selection into each court decision-making moment, whereas differential treatment explanations suggest that any variation between race and class groups that cannot be explained by legal factors is a result of some form of discriminatory treatment by legal authorities.⁸ Researchers studying criminal justice disparities from charging to sentencing rely on administrative data to help to assess the relative weight of these two explanations in accounting for disparities in specific jurisdictions. While each of these explanations can be applied to our understanding of disparities at the moment of policing (i.e., disparities at and prior to arresting an alleged offender), I focus on examining how each of these explanations applies to disparities after arrest and during court processing. In particular, I focus on how researchers have used each of these explanations to understand disparities in pre-trial charging and dismissal decisions, sentencing decisions, and other court processing decisions.

⁸ Similarly, Piquero (2008) distinguishes between “differential involvement” and “differential selection” explanations of “disproportionate minority contact” among juveniles. The former term is similar to disparate impact, whereas the latter term is similar to differential treatment.

Disparate impact explanations of disparities between race and class groups emphasize the legal factors that may explain higher rates of selection into each court decision-making moment. In particular, many scholars focus on explanations for higher rates of arrest among marginalized race and class groups, which could explain their higher rates of involvement in prosecutorial charging the therefore in other later stages of criminal justice processing. Higher arrest rates could be explained by higher rates of criminal offending and violence, given limited opportunities for legal employment (Hagan 1993) and social disorganization in marginalized neighborhoods (Harding 2010; Sampson and Lauritsen 1997; Sharkey 2018). In addition, arrest rates may be higher among these groups given the enforcement of facially neutral laws that sanction behaviors or contexts associated with poverty and devalued racial groups (Bobo and Thompson 2006; Quinney 1977). Given discretion in the targeting of police resources (Beckett, Nyrop, and Pfingst 2006), empathy gaps among law enforcement (Lynch 2011), and the turbulence of local politics (Vargas 2016), these ostensibly race- and class-neutral laws can be enforced in discriminatory ways. Some scholars have suggested that differences in treatment by police at arrest could also be explained by alleged offenders' race and class differences in cultural codes and respect toward police (see e.g., Anderson 1999; Reisig et al. 2004), given the long-documented importance that street-level police officers give to whether they feel respected in their interactions with civilians (see e.g., Piliavan and Briar 1964; Westley 1953). To be sure, higher rates of arrest can also be explained by direct police officer discrimination. Police officers have been shown to be more disrespectful toward racial/ethnic minorities (Voigt et al. 2017), hold racist attitudes (see Hagan and Peterson 1995), and be more likely to stop, search, and arrest racial/ethnic minorities and alleged offenders in low-income neighborhoods, net of other factors (Fagan et al. 2015; Smith 1986; Tapia 2012; Unnever, Owusu-Bempah, Deryol 2017). Given my

particular focus on court system disparities (i.e., disparities post-arrest), I classify these forms of discriminatory treatment within the disparate impact explanatory account. In sum, disparate impact explanations—by focusing on higher arrest rates that pull a higher proportion of black, Latino, and poor people into the court system—consider disparities in court processing outcomes largely to be a function of inequality *prior to* alleged offenders’ contact with the court system. Figure 1 summarizes disparate impact explanations.

Figure 1. Disparate impact explanation of race and class disparities.



How much of the observed criminal justice disparities in the courts can be explained by higher arrest rates among marginalized groups? Researchers have long interrogated this question, often focusing on the most extreme and final outcome of court processing: a sentence of incarceration. At root, this question seeks to ascertain the extent to which court outcomes (e.g., incarceration) are a function of disparate impact explanations, such as differences in criminal offending or even discriminatory treatment at arrest and prior to contact with the court’s legal authorities. Blumstein (1982) undertook one of the early attempts to consider whether differences in arrest rates between whites and blacks can account for differences in their incarceration rates. Under the assumption that arrest rates are accurate indicators of criminal offending (and therefore assuming little discriminatory treatment by police officers)⁹, Blumstein

⁹ As noted earlier, a fair amount of research calls this assumption into question by revealing that that official arrest records likely do not reflect actual criminal offending (see Tonry and Melewski 2008; Unnever et al. 2017). While arrest statistics are generally accurate representations of actual rates of criminal involvement in certain violent crimes (Beck and Blumstein 2017), arrest statistics with respect to public order and drug crimes are much more susceptible to police discretion and police surveillance targeting the poor and racial/ethnic minorities (Beck and

argued that whatever proportion of incarceration disparities could not be explained by disparities at arrest were due to unfair discrimination by legal authorities during court processing. As he noted: “If there were no racially differential treatment of arrestees anywhere in the criminal justice system after arrest—including prosecution, conviction, commitment to prison, and time served—then one would expect to find the racial distribution of prisoners who were sentenced for any particular crime type to be the same as the racial distribution of persons arrested for that crime type” (Blumstein 1982, p. 1264). Comparing national arrest rates among whites and blacks in 1978 to incarceration rates among whites and blacks (in all state prisons) in 1979, Blumstein found that about 80 percent of disparities in imprisonment between blacks and whites was explained by arrest disparities, whereas about 20 percent was unexplained (Blumstein 1982, pp.127-72). His results varied by crime type. For example, arrest rates accounted for just over 50 percent of drug crimes, leaving nearly 49 percent unexplained (Blumstein 1982, p. 1274).

Blumstein’s attempt to measure the extent to which differential involvement in arrests accounts for disparities in incarceration has its limitations (see Kim and Keisel 2017; Tonry 1995, pp. 67-8); in recent years, several scholars have attempted to improve upon his methods and update his analyses for more recent time periods (e.g., Beck and Blumstein 2017; Harris et al. 2009; Kim and Keisel 2017; Tonry and Melewski 2008). These studies have relied on different forms of data at different time periods. While some have found that a larger proportion of racial disparities in incarceration are unexplained by arrest disparities than Blumstein originally found (e.g., Tonry and Melewski 2008; Travis et al. 2014), Beck and Blumstein (2017) argue that these findings are an artefact of measurement issues with respect to how individuals identifying as Hispanic are counted (or not) in black and white racial categories among arrest and

Blumstein 2017; Lynch 2011; Tonry and Melewski 2008). For a short assessment of the debates surrounding official arrest statistics, see Loftin and McDowall (2010).

prison populations. Overall, the general findings among all these studies are that, on average, arrest disparities account for somewhere between 70 to 80 percent of the racial disparities in incarceration, leaving 20 to 30 percent unexplained by arrest; and, with respect to drug crimes, the unexplained variation is even greater.

Another way to approach the question of criminal justice disparities in the courts is to focus on specific decision-making points in the criminal court process and compare similarly-situated defendants to one another, focusing on whether differences in race or class explain differences in these specific moments of court processing. One of the early attempts to consider disparities in this way was undertaken by Baldus et al. (1997). Like researchers using a similar approach, Baldus and his colleagues focused on the question of disparities in a specific jurisdiction, relying on administrative data from that jurisdiction. Drawing on data from state courts in Philadelphia on death penalty-eligible cases, they sought to examine direct race and SES effects on specific court stages (e.g., advancement to trial, advancement to a trial in which the prosecution sought a death sentence, conviction, conviction of a death sentence). They considered whether race and SES predicted these sequential outcomes, net of various legally-relevant measures of defendant culpability (e.g., defendant's criminal record, measures of the strength of evidence, mitigating/aggravating factors and the like). Overall, the researchers found consistent evidence of direct race and SES effects across multiple models that could not be explained by legitimate legally-relevant case characteristics (Baldus et al. 1997, p. 1714-1715).

Since as early as the mid-1980s, numerous additional studies relying on data from other jurisdictions in the United States have found mixed evidence in support of the general conclusions of the Baldus study. Reviews of this literature reveal that these studies have found the race (Mitchell 2005; Spohn 2000; Zatz 2000) and socioeconomic status (Zatz 2000) of a

criminal defendant to be directly associated, net of legal factors, with disparate criminal punishment outcomes. Many of these studies have focused on disparate outcomes either at bail/pre-trial release (e.g., Chiricos and Bales 1991; Demuth 2003; Kutateladze et al. 2014; Schlesinger 2005) or at sentencing (e.g., Chiricos and Bales 1991; D'Alessio and Stolzenberg 1993; Johnson and DiPietro 2012; Kutateladze et al. 2014; MacDonald et al. 2014; Nobiling, Spohn, and DeLone 1998; Petersilia 1985; Shermer and Johnson 2009). While many studies isolate specific stages of court processing, it is important to note that disparities at earlier stages of court processing can have a cumulative effect and contribute to disparities at later stages (Klepper, Nagin, and Tierney 1983). For example, Dobbie, Goldin, and Yang (2018) find that pre-trial detention increases the likelihood of conviction through a guilty plea. More recent studies take into account these cumulative effects (e.g., Kutateladze et al. 2014). Some studies have considered disparities in the decision to dismiss or reduce charges, finding mixed evidence for direct race and/or class effects (e.g., Spohn, Gruhl, and Welch 1987; Shermer and Johnson 2009). Importantly, evidence for direct race and class effects varies by courthouse and jurisdiction, as well as what legal factors and prior stages are controlled for (see Baldus, Pulaski, and Woodworth 1986; Johnson 2006).

Taken together, these approaches to the question of criminal justice disparities have generally come to a similar conclusion: a significant, even if relatively small, proportion of criminal justice disparities cannot be explained by legally-relevant variables or differences in criminal offending. These results have necessitated a second type of explanation of criminal justice disparities: *differential treatment explanations*. This explanation suggests that any variation between race and class groups that cannot be explained by legal factors within the court system or prior to the court system is a result of some form of biased treatment by legal

authorities. In this explanation, legal authorities such as prosecutors, judges, probation officers, and even defense attorneys are understood to discriminate against black, Latino, and poor defendants compared to their white and middle-class peers. As Blumstein (1982, p. 1280) wrote: “[...] disproportionality may be attributable to a variety of other explanations that are at least arguably legitimate, but may also reflect some unknown degree of discrimination based on race.”

To provide evidence for the differential treatment explanation, researchers have considered findings from in-depth qualitative research documenting legal authorities’ stereotypes (Bridges, Crutchfield, and Simpson 1987; Emmelman 2003; Sudnow 1965; Van Cleve 2016) and experimental research on implicit biases (Rachlinski et al. 2009). Classic ethnographies of the court system (e.g., Blumberg 1967; Eisenstein and Jacob 1977; Feeley 1992 [1979]; Heumann 1978; Mather 1979) have been foundational in this respect. While these ethnographies—written prior to the rise of mass incarceration and the blossoming of critical race scholarship—are largely unattuned to race and class differences, they have been vital in assisting researchers in understanding the complex social processes through which court officials’ interpretations bear on punishment outcomes. Though they differ in their conclusions, these ethnographies coalesce in their observations of high plea rates, the rare use of formal due process, overworked defense attorneys, and crowded courtrooms. They have also largely agreed that court officials are motivated by personal, organizational, and political choices (Feeley 1992 [1979]) and that their decision-making is constrained by organizational pressures (Clair and Winter 2016; Steffensmeier et al. 1998; Ulmer 1997), such as the shared goals of courtroom workgroups (Eisenstein and Jacob 1977).

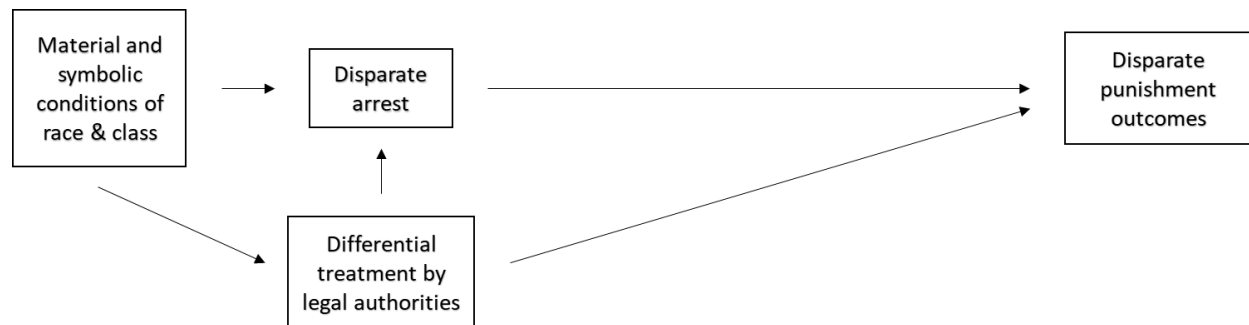
Building on this classic court ethnography tradition, more recent qualitative research has considered how court officials’ decision-making is shaped by their interpretations of defendants’

race (Bishop and Frazier 1996; Bridges, Crutchfield, and Simpson 1987; Clair and Winter 2016; Van Cleve 2016) and class (Emmelman 1994, 2003). For example, in her study of the Cook County, Illinois court system, Van Cleve (2016) finds that court officials use purportedly race-neutral moral labels to justify their harsher treatment of mostly black and Latino defendants in comparison to defendants who display white middle-class moral attributes. She also finds that defense attorneys, who personally object to the system's racialized legal habitus, nevertheless become complicit and must differentiate—on the basis of racialized moral attributes—between clients who are and are not worthy of their zealous advocacy. Emmelman's (1994) study of a non-profit defender's office serving mostly indigent clients in the late 1980s similarly reveals how defense attorneys' interpretations of the social standing of their clients shapes their advocacy. By focusing on authorities' interpretations and actions with respect to race and class, this growing body of work supports a differential treatment explanation of disparities, which has often been understood to operate in tandem with disparate impact processes.

Figure 2 summarizes how the differential treatment explanation complements the disparate impact explanation. While the summary above focuses on how differential treatment explanations have been used to explain discriminatory treatment by legal authorities within court processing, it should be noted (as the figure indicates) that differential treatment by legal authorities can also occur at arrest, prior to court processing. However, most research on disparities in court processing assumes that arrest disparities are neutral indicators of criminal offending (see footnote 9 for critiques of this assumption). But as noted in the earlier discussion of disparate impact explanations, researchers have shown that policing often involves differential treatment of the poor and racial/ethnic minorities through the targeting of police resources in

inner-city neighborhoods as well as the biases of individual police officers in their interactions with suspects.

Figure 2. Disparate impact and differential treatment explanations of race and class disparities.



While both disparate impact and differential treatment explanations likely account for a good proportion of disparities, the role of criminal defendants in shaping and altering their own experiences of the courts is missing from both explanations. Neither explanation accounts for the fact that alleged offenders are legally afforded agency in their responses to criminal justice processing—a fact that has often been alluded to but underexamined in classic court ethnographies (e.g., Feeley 1992 [1979], p. 152; Mather 1979, p. 10). Whereas disparate impact explanations cannot explain disparities that emerge after arrest and during court processing, differential treatment explanations do not consider how criminal justice processing in the courts, and its resultant disparities, may result not just from the interpretations and actions of legal authorities, but also from, and in interaction with, those of defendants. How do we understand the existence of disparities given that criminal justice processing—and especially, processing in the courts—is an interactive process in which legal authorities respond to, and anticipate the decision-making of, not only one another (Eisenstein and Jacob 1977; Kohler-Hausmann 2014; Ulmer 2012) but also criminal defendants (Emmelman 1994)?

What We Do Not Know: Experiences of Race and Class in Criminal Justice Processing

Missing from existing literature on criminal justice disparities is a consideration of the role of defendants in shaping criminal justice processing, especially in the courts. While a fair amount of scholarship has considered how civilians interact with police on the street and in everyday life, little research has considered civilians' interactions with criminal court officials such as prosecutors, defense attorneys, and judges. Even more inauspicious for understanding race and class disparities is that researchers rarely take a comparative approach: our in-depth knowledge of alleged offenders and defendants' interactions centers on the perspective of the poor and marginalized racial/ethnic minorities in isolation rather than in comparison to those more privileged (for exceptions, see Chambliss 1973; Shedd 2015).¹⁰ In-depth comparison of marginalized groups' interactions with legal authorities to those of more privileged groups—such as whites and members of the middle class—is necessary for understanding the micro-level reproduction of criminal justice disparities.

These knowledge gaps aside, what do scholars know about the experience of the poor and marginalized racial/ethnic minorities in interacting with legal authorities? A long tradition of ethnographic and interview-based research has considered how mostly-black and Latino men in poor urban neighborhoods engage with the police. Now-classic ethnographies on the urban poor have made note of the presence—or at least, residents' perceptions—of legal authorities in the

¹⁰ In "The Saints and the Roughnecks," Chambliss (1973) compares a group of white upper-middle-class youth to a group of white lower-class youth attending the same school with respect to their delinquent behaviors and encounters with police officers. And, in *Unequal City: Race, Schools, and Perceptions of Injustice*, Shedd (2015) compares the experiences of police surveillance in schools among black, white, and Hispanic students attending different schools in Chicago. Chambliss thus takes a comparative approach to examining unequal class experiences, while Shedd takes a comparative approach to examining unequal race and neighborhood/school experiences. While each of these works are insightful and employ a comparative logic to understanding how youth respond to perceptions of police and think about delinquent behavior, neither provides in-depth evidence on how individuals navigate the criminal justice process once they are entangled within it. We do not follow their respondents through moments of police and court processing.

lives of marginalized men (e.g., Anderson 1990; Young 2003). Continuing in this tradition but considering the growth of police presence in these marginalized areas, contemporary researchers have considered how mass criminalization has affected the everyday social and personal lives of boys and men living in poor, mostly-minority neighborhoods. For example, Stuart (2016) shows how mostly poor, black men in Los Angeles' Skid Row develop "cop wisdom," or a cultural frame of reference that enables them to interpret and predict police tactics to evade police stops. In her account of policing in a Philadelphia neighborhood, Goffman (2014) devotes a chapter to describing how poor young men subvert the jail system and courts as resources. Duck (2015, 2017) describes how residents of a poor neighborhood manage criminal justice encounters amidst a local interaction order structured by drug dealing, and Rios (2011) documents how youth labeled as delinquents manage a complex of authority figures who criminalize, punish, and monitor them. Moreover, interview-based studies have shed light on mostly-minority youths' perceptions of injustice and cumulative experiences of policing (e.g., Brunson 2007; Jones 2014; Shedd 2015). While these studies have uncovered the constraints faced by the poor and minorities, they do not shed light on the resources that unfairly advantage the middle class and whites.

A small amount of research has begun to investigate the experiences of relatively privileged groups in engaging in delinquent and criminal behaviors, especially in adolescence. Simon (2014) examines "famous and not-so-famous" cases of youth in America's suburbs as they cope with the demands of modern life in lonely, suburban communities, where delinquency emerges when children lack the emotional support of parents, teachers, and coaches. In their book *Code of the Suburb: Inside the World of Young Middle-Class Drug Dealers*, Jacques and Wright (2015) rely on in-depth interviews to explore how and why a group of mostly-white,

middle-class youth in a small town outside of Atlanta engage in drug dealing among their peers. Mohamed and Fritsvold (2010), through interviews and ethnography, explore similar themes of drug dealing and crime among college students in California. They reveal that the students in their sample rarely experience punishment from either university or legal authorities. Indeed, in all of these accounts, the *absence* of legal authorities is a common thread. Very few instances of arrest occur among the individuals these researchers study, providing little insight into how the privileged interact with legal authorities.

Beyond examinations of criminal behavior and policing, far less research has considered the experiences of criminal defendants; moreover, research that has considered the interpretations and actions of defendants (e.g., Casper 1972; O'Brien et al. 1977; Wilkerson 1972) has not considered whether these experiences are unequally patterned along race or class lines. One of the few systematic examinations of defendants' experiences of and interactions with the courts is political scientist Jonathan D. Casper's 1972 book *American Criminal Justice: The Defendant's Perspective*. Drawing on interviews with a sample of defendants who faced felony charges in Connecticut, Casper finds that the defendants in his sample, almost all of whom are poor, view the court system as an extension of their life on the streets (Casper 1972, p. 81). Like the streets, the courts require defendants to exploit the few skills and resources at their disposal to hustle a deal that is less-harsh than a sentence they might otherwise receive for the same charge. Casper also finds that the defendants in his sample exhibit distrust of not only the police and prosecutors but also their own defense attorneys, whom they view as agents of the state (Casper 1972, p. 69). While Casper's study remains as one of the few sustained examinations of defendants, the study does not consider race or class differences in defendants'

interpretations of the court system, and it does not examine how defendants' perceptions shape punishment through their differential interactions and access to resources.

While some theoretical statements exist on power imbalances in civil litigation (Galanter 1974) and, to a lesser extent, criminal adjudication (Black 1989), scholars have yet to provide a theoretical statement and empirical examination of how cultural, social, and economic resources may shape defendants' navigation of criminal processing and, ultimately, contribute to explanations of disparities. To be sure, researchers have posited and relied on quantitative data to test how certain economic resources may matter for defendants in making their way through court processing. For example, a handful of studies have posited that disparate financial resources, which are patterned along racial and class lines, may matter for criminal defendants in posting bail (e.g., Demuth and Steffensmeier 2004) or securing a private attorney (e.g., Cohen 2012; Holmes et al. 1996) and, in turn, shape other legal outcomes. Yet, the theoretical linkage between class status and criminal justice outcomes likely bears on more than simple access to liquid financial assets and other material resources. Cultural and social resources may also aid in the acquisition of lawyers and bail money, not to mention defendants' abilities to interact with criminal justice officials over the course of an open court case. For instance, Mears et al. (2017) find that black defendants who adhere to a "code of the street" culture (Anderson 1999) as measured by a close-ended survey are more likely to be arrested and convicted than their same-race peers. The authors suggest that more research should unpack the processes and interactions that explain such an association. Meanwhile, quantitative analyses that seek to account for class effects are stymied by coarse measures of SES. Many rely solely on a measure of employment status (i.e., employed or not) (e.g., Holmes et al. 1996; LaFrentz and Spohn 2006; Nobiling, Spohn, DeLone 1998; but see Chiricos and Waldo 1975 as an exception) or proxies such as type

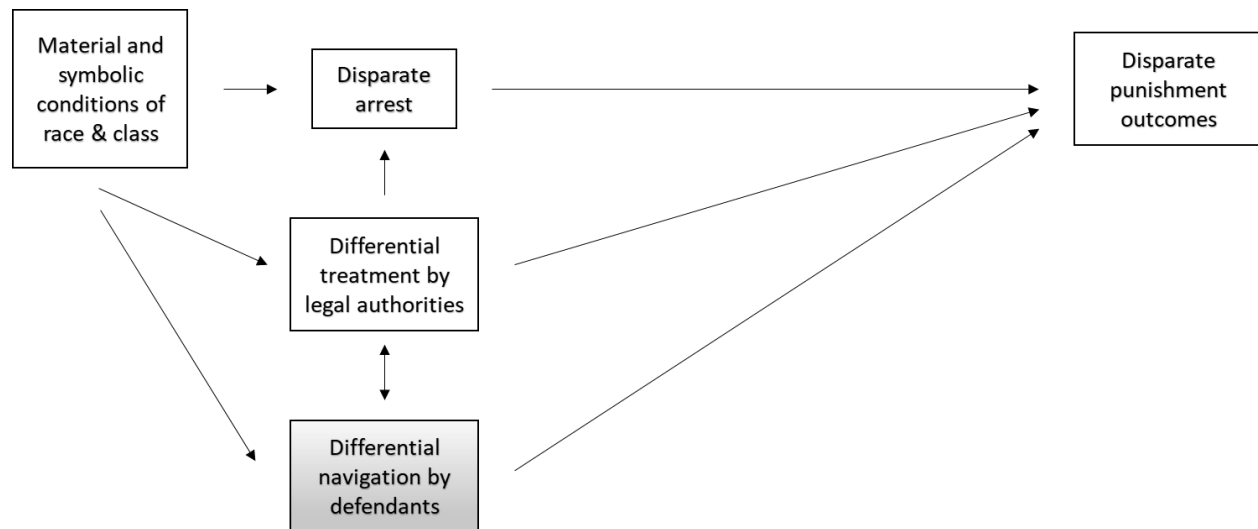
of attorney (e.g., Kutateladze et al. 2014); these measures are insufficient at capturing class-based resources such as occupational status, income, wealth, social ties, cultural knowledge, and cultural dispositions. Each of these resources has a different shelf-life over the life course (Elder and Rockwell 1979) and may be differentially implicated in the reproduction of criminal justice disparities. Such in-depth and fine-grained understandings of how resources shape, and are shaped by, defendants' experiences require systematic research on the experiences of defendants from a range of race and class backgrounds.

A New Approach: Studying the Differential Navigation Experiences of Defendants

This dissertation theorizes and empirically examines a novel explanation of criminal justice disparities, which I term a “differential navigation” explanation. The differential navigation explanation posits that cultural, social, and economic resources differentially enable defendants' navigation of criminal justice processing along race and class lines. Such differential navigation likely contributes to, but by no means fully explains the existence of, disparities.

This dissertation should be understood as a first step in assessing the role of differential navigation in explaining disparities. Through an in-depth, comparative empirical analysis of the experiences of defendants as they engage with legal authorities along the criminal justice process, I identify the interactive and navigational processes that may shape disparate outcomes without making claims about what precise proportion of these outcomes can be explained by such processes. Figure 3 foregrounds how the differential navigation explanation developed here complements existing explanations of disparities within the criminal justice system.

Figure 3. Differential navigation explanation as a complement to existing explanations of race and class disparities.



As I detail below, this differential navigation explanation is rooted in a well-established cultural sociological literature on how individuals from different class backgrounds interact with institutions. For decades, cultural sociologists have gathered evidence on the importance of resources in the navigation of common institutions such as schools and the workplace (e.g., Bourdieu and Passeron 1977; Lareau 2003, 2015), revealing how cultural resources, in particular, are both a function of inequalities in other resources as well as a key driver in the reproduction of inequality (Bourdieu 1987; Lamont, Beljean, Clair 2014). Meanwhile, law and society scholars have relied on cultural sociological insights to consider citizens’ everyday interactions with legal institutions and how resources shape, and are shaped by, cultural schemas, or distinct cultural practices with respect to the law (Ewick and Silbey 1998). I draw inspiration from these literatures and apply their theoretical insights to the case of criminal justice disparities. Moreover, as I note later in the research design section of this chapter, I draw on phenomenological and symbolic interactionist traditions in sociology in order to develop a

theoretically-rich and empirically-accurate accounting of the way race and class are experienced in everyday interactional situations. This framework enables me to offer a nuanced and in-depth investigation into the way race and class “situational resources” shape unequal punishment experiences.

Resources, Culture, and Institutional Navigation

Over the past few decades, sociologists have increasingly investigated how social and cultural resources—not just economic resources—are implicated in the reproduction of social inequality (see Lamont et al. 2014). Building on Weberian understandings of social status, sociologists have come to conceptualize how cultural distinctions are a basis of exclusion not only between, but also within, high- and low-status groups (Lamont and Lareau 1988). At the same time, some cultural sociologists and social psychologists have shifted attention toward understanding how micro-level decisions and interactions shape and are shaped by meso-level cultural structures and macro-level, structural inequalities (Fiske and Markus 2012; Lamont et al. 2014; Massey 2007; Ridgeway 2014; Schwalbe 2000).¹¹

Social inequality is reproduced not only by immediate differentials in access to economic resources, but also by—and mediated through—symbolic forms of power (Bourdieu 1987) that manifest in everyday interactions (Goffman 1967) and within institutions (Bourdieu 1987; Lareau 2015). Bourdieu defined symbolic power as the ability to have one’s vision of social life be the dominant vision of social life. As Lamont and Lareau (1988, p. 159) note, it is the power

¹¹ But as I detail later in this section as well as in the concluding chapter, much cultural sociological research on institutional inequality centers on the meso level of institutions rather than the micro level of interactions. Interactions—and their contingencies—are underexamined theoretically, given Bourdieu’s largely-deterministic vision of social reproduction. In other words, much research in this tradition focuses on how cultural structures at the institutional level shape individual-level interactions rather than how individual-level interactions aggregate up into cultural structures and macro-level structural inequalities.

“of legitimating the claim that specific cultural norms and practices are superior, and of institutionalizing these claims to regulate behavior and access to resources.” Such power manifests in everyday interactions and becomes objectified in social institutions, such as schools, the workplace, the law, and formal state power (Bourdieu 1987, 1990). Thus, cultural practices characteristic of those occupying upper- and middle-class positions in society tend to be reproduced by and legitimated within important institutions that shape the allocation of resources to the affluent, while restricting such resources from the poor.

Drawing largely on the insights of Pierre Bourdieu, researchers studying inequality within institutions have documented the myriad ways “gateway institutions” (Stephens, Markus, Phillips 2013), such as schools and the workplace, reproduce class inequalities through the disparate use of social and cultural resources, as well as economic resources. Indeed, Bourdieu empirically elaborated his conceptions of habitus, cultural capital, and symbolic power in the context of the French educational system, where he showed how upper-class students with certain linguistic capital were able to engage with pedagogic authority in ways lower-class students could not (Bourdieu and Passeron 1977). Lareau (2003) has revealed how family socialization results in disparate forms of cultural and institutional knowledge accumulated between middle-class and working-class families. These forms of knowledge enable children from middle-class families to gain individualized accommodations from institutions and navigate important life stages with ease well into adulthood, as compared with their working-class peers (Lareau 2011, 2015). In schools, researchers have found that upper-middle-class children dominate teachers’ attention to the detriment of working-class children (Streib 2011) and that middle-class children are actively coached by their parents to develop problem-solving strategies in school that can be translated into adulthood (Calarco 2014). In college, studies have revealed

the importance of middle-class cultural capital in engaging with authority figures (Jack 2016) and participating in peer social life (Armstrong and Hamilton 2013). These inequalities carry over into the labor market (Willis 1981 [1977]), where elite employers seek to hire employees who share their lifestyles (Rivera 2012) and low-income black job-holders discriminate against black job-seekers whom they perceive to lack the cultural dispositions valued by their employers (Smith 2007).

A central finding of this body of research is that the middle class tend to be individualistic, entitled and demanding, whereas the working class and poor tend to be deferential (see Stephens et al. 2013). These divergent styles of engagement are not inherently better or worse; instead, institutional actors reward the more proactive and entitled styles of engagement characteristic of the middle class because they are aligned with institutional expectations. Certain forms of capital are therefore beneficial only to the degree that they are afforded a positive institutional response. (The double-headed arrow in Figure 3 captures the interactive nature of institutional navigation.) While Lareau (2015) argues that cultural capital consists of the formal and informal knowledge of specific institutions and strategies for gaining individualized accommodations, her—and others’—interpretation is based on research on common institutions such as schools and the workplace. Different institutions may reward different forms of cultural capital or styles (see Carter 2003; Erickson 1996; Young 1999); the criminal justice system especially may not be responsive to the entitlement, negotiation, and persistent questioning characteristic of middle-class institutional engagement (see Lipsky 1980 on street-level bureaucrats’ unwillingness to respond to clients’ demands).

Unlike schools and workplaces, criminal justice institutions—police departments, courthouses, probation offices, and jails and prisons—have tended to be portrayed by social

scientists as uncommon institutional encounters, save for the most marginalized. Consequently, ethnographic and interview-based accounts of crime and punishment are overwhelmingly understood through the lens of the urban (often, black) poor (e.g., Duck 2015; Goffman 2014; Rios 2011; Stuart 2016). While such in-depth research has provided compelling accounts of navigational constraints—and even resistance—among the poor and minorities, it fails to provide an accounting of how those from higher-status groups engage with these same institutions. Some research has begun to examine delinquency and crime among the middle and upper-middle classes, but this research has largely detailed their evasion of, rather than interaction with, criminal justice institutions (e.g., Jacques and Wright 2015; Mohamed and Fritsvold 2010). Consequently, researchers have little evidence of whether disparate access to resources—and the advantages and disadvantages such resources afford in interactional situations with legal authorities—may contribute to the reproduction of criminal justice disparities.

Resources, Culture, and Legal Consciousness

If the literature on the navigation of schools and workplaces is any indication, it is likely that disparities emerge not only from differential treatment by legal authorities (i.e., the differential treatment explanation) but also through unequal access to resources required to navigate criminal justice processing. Research and theoretical insights from the socio-legal literature on legal consciousness provides a starting point for considering how defendants' resources and culture may contribute to observed criminal justice disparities.

A signal contribution to the legal consciousness literature is Patricia Ewick and Susan S. Silbey's *The Common Place of Law: Stories from Everyday Life*. Unlike other approaches to legal consciousness, Ewick and Silbey's approach defines legal consciousness not simply as the attitudes that individuals hold about the law but also as the cultural practices that individuals

engage in with respect to the law in everyday life (Ewick and Silbey 1998, p. 38-9; Silbey 2005, p. 334). They find that ordinary people engage with the law in three ways: as a formal entity that makes them feel powerless, as a game that can be used to their advantage, and as an unfair entity that they can resist through small tactics. Conceptually, their approach to legal consciousness draws on Sewell (1992)'s interpretation of cultural schemas—or, habits, styles, and rules of behavior—and how they shape (and are shaped by) resources, defined as human and nonhuman objects that are used to maintain power, such as knowledge, money, or raw materials. While Ewick and Silbey are therefore aware of the role of resources in constraining legal consciousness (and vice versa), they ultimately argue that legal consciousness does not necessarily map on to demographic groupings such as race or class. Instead, they highlight how forms of legal consciousness—like other cultural schemas—vary within the same person depending on context and structural opportunities and constraints (see Swidler 1986).

To be sure, race and class are likely not wholly determinative of how individuals engage with criminal justice institutions either; yet, unlike Ewick and Silbey's work, this dissertation seeks to assess whether and how legal consciousness in the criminal courts is shaped by race and class, and to what effect. Whereas Ewick and Silbey are concerned with legal consciousness in everyday life, I am concerned with defendants' legal consciousness in the context of criminal processing. The criminal justice system is particularly inflected with race and class inequalities, misgivings, and cynicisms (Hagan and Albonetti 1982; Shedd 2015; Tyler and Huo 2002). Therefore, any interrogation of "concrete inequalities" (Silbey 2005, p. 359) within the criminal law would be remiss not to interrogate whether and how legal consciousness varies by race and class.

Scholars have yet to consider a legal consciousness approach in the context of criminal justice processing. Most research that consciously frames itself in the legal consciousness tradition tends to focus on ordinary citizens' perceptions of legal authorities (Huo and Tyler 2000; Tyler 1990) or the law as experienced by social movements and activists outside of formal legal institutions (Marshall and Barclay 2003). Some scholarship and theoretical statements exist on power imbalances in civil litigation (Galanter 1974) and, to a lesser extent, criminal adjudication (Black 1989); yet, these approaches do not empirically examine the navigation of legal systems from the perspective of criminal defendants. Meanwhile, many of the in-depth qualitative studies noted above that consider alleged offenders' experiences are at once overwhelmingly focused on the tails of criminal processing (policing and prison) and, again, overwhelmingly focused on the marginalized (as opposed to the advantaged) (see Stuart et al. 2015).

Integrating insights from the cultural sociological literatures on legal consciousness and institutional navigation with the criminological literature on criminal justice disparities, this dissertation lays the foundation for empirical research on how resources shape—and are shaped by—defendants' differential navigation of the criminal justice system. In chapter 2, I show how social ties and the cultural and spatial boundaries of race and class serve as resources that shape alleged offenders' likelihoods of successfully negotiating with police when caught or, alternatively, evading police detection altogether. In chapter 4, I show how legal expertise—a particular kind of cultural resource—is used differentially by defendants depending on the race and class situations they find themselves in. I define legal expertise as knowledge and skills about criminal law and procedure (see Sandefur 2015 on civil legal expertise). I differentiate between two dimensions of expertise: substantive expertise (i.e., knowledge of criminal law and

procedure) and relational/process expertise (i.e., the skills and relationships necessary to put substantive expertise into action) (see Barley 1996; Kritzer 1998; Sandefur 2015). Legal expertise, as a whole, can be understood as cultural capital, given Lareau's (2015, p. 21) definition of institutional knowledge as a form of cultural capital. Like other kinds of cultural capital, legal expertise's power can vary depending on who owns it (see Sewell 1992). I show that lawyers and defendants each accrue distinct forms of legal expertise; unlike that of lawyers, defendants' expertise is imprecise, informally acquired, and discredited in court settings. Relying on defendants' expertise instead of that of one's lawyer can result in relatively worse court punishments. Defendants' differential ways of relying on their own and their lawyers' legal expertise can be understood as a form of legal consciousness, given Ewick and Silbey (1998)'s interpretation of legal consciousness as cultural practice. As I show in both chapters 3 and 4, these differential ways of using legal expertise depend on defendants' trust in their lawyers, which is differentially distributed along the lines of race and class.

A Note on Levels of Analysis: Micro-Level Situational Resources

Extant quantitative approaches to examining criminal justice disparities draw largely on administrative indicators of "race" and "class" to make claims about disparate rates at the macro level (e.g., population-level arrest rates or incarceration rates); by contrast, this dissertation examines micro-level experiences of race and class in social interactions. This approach requires that the conceptual categories of race and class be understood and analyzed in their everyday, situational, and interactional lived realities from the perspective of the people under study. My methodological analyses draw on interactionist approaches to understanding race and class—approaches that are slightly distinct from the foundational analyses of Bourdieu in his approach to studying cultural capital in educational contexts. Because Bourdieu's approach serves as a

common reference point in the cultural sociological literature on institutional navigation and social reproduction (Lareau 2015, pp. 3-4), it is important to articulate how my approach differs.

Dominant cultural sociological approaches to institutional navigation rarely engage interactionist, phenomenological, or ethnomethodological traditions (see Davies and Rizk 2017).¹² As insightful as Bourdieu's oeuvre has been for making sense of class reproduction within institutions, his approach does not unpack the role of interactions, situational processes, and contingent moments in reproducing inequality. In particular, Bourdieu's work has been criticized for making little room for individual agency (Jenkins 1982; Sewell 1992) and, despite his intention to offer a non-deterministic theory of the reproduction of inequality, his conceptions of habitus and cultural capital are often employed in deterministic, or at least inflexible, ways given scholars' concerns with identifying specific mechanisms that predictably reproduce inequality.

In *Distinction: A Social Critique of the Judgement of Taste* and other works, Bourdieu (1977; 1984; 1990 [1980]) argues that one's habitus—or, the durable dispositions and practices that are mostly unconscious and shape the way an individual interprets the world—both determines and is determined by one's social location (e.g., class position). One's habitus is at once a product of social class and reproducer of social class. Much like economic capital (e.g., money), habitus can operate as an embodied form of cultural capital (e.g., a taste in opera or the ability to play golf) that, when valued by those in power, can accrue social profits (Bourdieu 1986). Thus, those who grow up privileged and unconsciously acquire valued forms of cultural

¹² In their review of the diffusion of the concept of cultural capital in American sociology and educational research, for example, Davies and Rizk (2017) describe three distinct branches of research on cultural capital. They describe the last branch, which they attribute largely to Randall Collins who works in the interactionist tradition, as “less well-known and less developed than the other two” (Davies and Rizk 2017, p. 9). Indeed, while writing this dissertation, I had initially begun to incorporate Randall Collins' insights on the importance of culture in interaction rituals without any sense that Collins' work may be considered by some to be an extension of Bourdieu's—at least not in the same way as the work of DiMaggio, Lamont, or Lareau.

capital are able to maintain their social positions. Because Bourdieu views habitus and embodied cultural capital as unconscious and determinative of our perceptions across all fields of social life, his theory posits that this reproduction is largely certain. As Sewell (1992, p. 15) notes: “In Bourdieu’s habitus, schemas and resources so powerfully reproduce one another that even the most cunning or improvisational actions undertaken by agents necessarily reproduce the structure.” Thus, Bourdieu “presents a view of society that is automatic and inevitable [...]” (Hallett 2007, p. 152). This explanation does not enable us to consider how the deliberative actions and agency of individuals—such as criminal defendants—may contribute to, or at times resist, the reproduction of inequality.

In *Unequal Childhoods: Class, Race, and Family Life*, Annette Lareau (2003, p. 277-8) anticipates this criticism of Bourdieu, acknowledging that Bourdieu’s theory centers on reproduction in macro-level social fields rather than reproduction—and possible mobility—in the specific micro-level “moments” in which people interact within meso-level institutions (see also Erickson 1996; Lamont and Lareau 1988). Yet, Lareau argues that his concepts of habitus and cultural capital can be translated to make sense of these micro-level interactions, and she also suggests that Bourdieu allows more room for agency than his critics admit (Lareau 2015, p. 4). Lareau extends Bourdieu’s key insights to the specific moments “between parents and key actors of institutions” (Lareau 2003, p. 278). She finds that parents engage in two distinct parenting logics based on their class status: middle-class parents engage in a process of concerted cultivation with their children, whereas working-class parents engage in a process of the accomplishment of natural growth. She shows how these distinct logics play out in specific interactions with teachers, doctors, and extracurricular coaches, to the benefit of the middle class and the detriment of the working class. Thus, she reveals how cultural capital—defined as

“knowledge of the informal and formal rules of institutions, strategies for gaining individualized accommodations, and the timing and requirements for implementing any request for accommodation” (Lareau 2015, p. 21)—results in institutional advantages for the middle class and disadvantages for the working class.

While Lareau’s work provides invaluable insight into the operation of cultural capital in everyday interactions, her research similarly presents social reproduction as inevitable much like Bourdieu rather than examining the possibilities of resistance and ingenuity in institutional interactions. In her analyses, Lareau argues that the two parenting logics she identifies are almost perfectly patterned along class lines, do not vary by intersecting social categories such as race, and almost always result in positive outcomes for the middle class and negative outcomes for the working class. Moreover, her conceptualization of class is inflexible. In defining class groups as large social categories (e.g., working class vs. middle class) (Lareau 2003, p. 236), she directly critiques gradational approaches to class that consider how differences in occupational roles, income levels, educational levels, and other markers of class and class-based resources may intersect and combine in unpredictable ways to predict differences in various outcomes (see Weeden and Grusky 2005).¹³

Much work in the tradition of Lareau and Bourdieu often focuses on common patterns within class groups rather than assessing and seeking to explain possible heterogeneity within class groups (e.g., Calarco 2014; Streib 2011; but see Jack 2016 for an exception). Thus, dominant approaches to institutional navigation within cultural sociology tend to provide us with

¹³ While I agree with Lareau that, in the aggregate and on average, class can be “meaningfully and fruitfully” (Lareau 2003, p. 236) understood as large social categories, such a representation of class tends to obscure important variations within class groupings in individual moments and interactions. Indeed, Weeden and Grusky (2005) find that a microlevel approach to class that focuses on occupations and their institutionalized social structures (as opposed to “big-class” groupings or even gradational approaches that rank classes) is more predictive of various individual-level outcomes.

an ideal-typical interpretation of averages—not only within classes but also with respect to how members of each class navigate across institutional settings. Such accounts suggest that there is little or no situational variation in cultural styles across institutional settings. For example, in Lareau’s work, the two parenting logics and their resultant cultural skills among children translate across contexts and into adulthood (Lareau 2011, 2015).¹⁴ In this sense, defining cultural capital as knowledge and styles that enable one to successfully negotiate the rules of the game of specific institutions provides a somewhat tautological explanation of reproduction: the middle class successfully navigate institutions because they have the skills to successfully navigate institutions. But are these skills and resources transposable across class groups? Why or why not?

In contrast to Bourdieu, Lareau, and others but drawing on their indispensable theoretical insights, I consider how cultural, social, and economic resources manifest in micro-level interactions in ways that are probabilistically related to traditional markers of class and race, often—but not always—reproducing disparities. Focusing on the resources that are often available to members of certain classes rather than focusing on class groups themselves enables a more fine-grained analysis of the specific social entities that are doing the work of reproduction and/or mobility. The differences between my approach and that of most others studying culture and institutional navigation are mostly analytical—a matter of where I focus my analyses of my interview and ethnographic data and how I interpret my findings. At the same time, these differences have theoretical implications for how sociologists should understand the role of culture in the reproduction of race and class inequalities.

¹⁴ But, Lareau does give insight into moments when the activation of cultural capital may fail; see Lareau (2003, pp. 196-7).

Specifically, these differences enable me to make sense of the contingency and variability of my findings: I find that criminal defendants' resources change over their life course and become activated with creativity and agency in myriad interactions with legal authorities. As I will show, defendants' class or race statuses as captured by a survey instrument or an administrative record do not deterministically align with their abilities (or inabilities) to draw on resources in specific interactions.¹⁵ One's class location and (to a lesser degree) racial categorization vary in their salience over the life course¹⁶ and across contexts—to varying degrees and for certain individuals (on class, see e.g., DiMaggio 2012; on race, see e.g., Saperstein and Penner 2012). This social fluidity is especially true of social class among the individual defendants in this dissertation; a good number may have grown up in middle-class homes but find themselves as adults in lower social classes—some maintaining access to typically middle-class resources while others failing to maintain these resources. Class cultures, for me, constitute not only habitus-like dispositions that are rooted in childhood socialization but also situation-specific practices that can vary within individuals depending on the particular circumstances or contexts in which they find themselves.

In short, my analytic approach makes three departures from the dominant approaches to culture and institutional navigation. Each of these departures derive, in some sense, from my primary interest in the micro-level and subjective processes of individuals' experiences navigating specific interactions along the criminal justice process.

¹⁵ I will describe my definitions of race and class in more detail in the research design section of this chapter. Here, I will simply note that I classify race and class using the conceptual categories typically used in research on criminal justice disparities. I do so in an effort to align my findings with existing (mostly quantitative) research on disparities. This allows for ease of interpretation. It also allows for me to more clearly demonstrate how large groupings of class by education and/or employment—typical indicators used in research on disparities—are insufficient at capturing the fluidity and everyday reality of class in criminal justice contexts.

¹⁶ Indeed, Jenkins (1982, p. 278) critiques Bourdieu for his inability to explain class mobility.

First, I draw on interactionist traditions in sociology to give primacy to the micro-level realities of race and class as they are experienced among my respondents in particular interactions with legal authorities and institutions. Interactionist perspectives in sociology start at the level of the individual rather than that of culture, institutions, or social fields. Rather than asking how social forces above the individual—be they cultural styles or institutional rules—constrain action, such perspectives ask how individual interactions produce these social forces. Various traditions in sociology, from phenomenology, ethnomethodology, and symbolic interactionism, can be broadly characterized as “interactionist.” Symbolic interactionism, in particular, is useful for analyzing how race and class operate in different ways across different situations. Herbert Blumer (1969), who drew on the earlier work of Herbert Mead, argued that individuals’ subjective interpretations of symbols, objects, and the particular situations they confront influence how they act. People act in anticipation of, and through their interpretations of, others’ actions (see Goffman 1959). Blumer further noted that these micro-level actions are the fundamental building blocks of meso- and macro-level entities such as culture, institutions, and the division of labor (Blumer 1969).

In particular, it is micro-level *interactions*—or actions directed toward one or more other people—that constitute social forces. In his theorization of interaction ritual chains, Randall Collins (1981) argues that interactions between people often take on a routine nature; successful interactions are emotional rituals of identification with others that result in solidarity through the sharing of similar cultural resources (e.g., cultural capital) and emotional energy (e.g., mutual feelings of warmth). Therefore, interactions between people draw on and reproduce existing cultural frames, scripts, and tools (see Swidler 1986) as well as feelings of trustworthiness and warmth (see Cook 2005; Hardin 2002). At the same time, interactionism highlights the potential

for improvisation in interactions rather than the determinism of cultural resources in shaping interaction. As Collins (1981, p. 1013) writes, “social structure is constantly changing on the microlevel, but it tends to an aggregate stability if individual fluctuations of emotional and cultural resources are local and temporary.” As such, an interactionist perspective offers an account of agency—and even mobility—within theories of social reproduction.

Second, I view race and class not as static entities but rather as situationally constructed social categories. While Bourdieu acknowledges the social constructedness of class—e.g., he famously refers to habitus as “structuring structures” and a “product of history” (Bourdieu 1990, p. 53-4)—he and others drawing on his work largely view class, once structured, to be a stable condition across an individual’s life course with predictable and similar effects across institutions and fields. Indeed, much contemporary social scientific research views race and class in a similar vein. Researchers relying on quantitative methods, for example, regularly incorporate indicators of race/ethnicity or class (e.g., education level or occupation) into their models. Statistically significant associations between these indicators and a given social outcome are often interpreted as a measure of the average “effect” of race or class, net of other variables (see Martin and Yeung 2003 and Zuberi 2001 on “race” and causality in social science).

But race and class are neither objective nor deterministic variables; they are socially created classification systems. Researchers who study the everyday experiences of racial classification, for example, reveal how racial meanings vary across global and local contexts and are also associated with different structural realities across these contexts (Essed 1991; Lamont et al. 2016; Wimmer 2013). Researchers have shown how individuals cross racial boundaries, as well as how racial boundaries shift to include or exclude individuals over their lives (Lacy 2002; Loveman and Muniz 2007). Others have highlighted within-group variations, such as skin color,

that obscure individual-level differences in race-linked outcomes (Monk 2014). Moreover, scholars also note the cognitive dimensions of race (Brubaker, Loveman, Stamatov 2004). While race and class have real effects, in the aggregate, their effects at the individual level are influenced by different ways of seeing and making sense of race and racial classification (see Obasogie 2010 on a “constitutive approach” to understanding the micro-dynamics of racial classification). Class may operate in similar ways.¹⁷ DiMaggio (2012) argues that social class is actively “accomplished” through interaction, class identity changes over the life course, and (at least in the American context) class consciousness is weak. In sum, a constructivist perspective on race, class, and other social categories acknowledges (and seeks to explain) situational variation across interactions. Such a perspective would enable me to investigate whether—and to what extent—defendants’ resources and their relation to their race or class identities change from interaction to interaction (across both space and time).

Third, I draw on intersectionality theory to carve out analytic space for a comprehensive representation of the cross-cutting influence of multiple forms of disadvantage. Intersectionality theory suggests that examinations of average differences between individuals in two main social categories may obscure differences (and disadvantages) experienced by individuals who fall at the intersection of multiple social categories (Collins 1990; Crenshaw 1991). In the case of social

¹⁷ For example, a person who researchers may classify as “working class” may interpret her working-class identity in various ways in particular situations, resulting in different micro-level acts that are all nevertheless based on her interpretation of her class status. To be sure, her working-class status may constrain her regardless of her own interpretations, such as in the case of discrimination from others on the basis of their interpretations of her lower-class status. Yet, her reactions to their discrimination would still be shaped by her own perceptions. With respect to race, social psychologists have found that minorities who experience similar incidents of discrimination react differently depending on whether and how they interpret these incidents (see Eccleston and Major 2006; Schmitt et al. 2014). Moreover, the same black person may experience race differently, or not at all, in different situations. Among same-race family members, for example, a black person’s blackness may be interpreted as largely irrelevant in everyday discourse and interactions, whereas the same person’s blackness is likely highly salient in the workplace, where she may have to engage with non-black peers (Feagin and Sikes 1994; Lamont et al. 2016; Wingfield 2007).

reproduction in cultural sociology, it is common for researchers to consider how class shapes individual differences but not consider racial differences within and between class groupings. Bourdieu and Lareau, for instance, paint a portrait of class reproduction that does not take into account—or at least, does not find meaningful—racial difference (see Choo and Ferree 2010; Hall 1992; Young 1999).

While my own findings reveal the powerful influence of cultural, social, and economic resources in shaping defendants' interactions with legal authorities, these interactions—in particular, individuals' abilities to draw on different resources in interactions—are also shaped profoundly by race. Thus, resources are both classed and racialized. This is particularly true at the bottom end of the class distribution, where black and Latino individuals who often find themselves in working-class or poor situations often encounter everyday forms of racial discrimination (see Essed 1991) and are unable to rely on cultural and social resources often available to their white (see Royster 2003; Smith 2007) or middle-class black (see Lacy 2002) peers. Observing these findings in my analysis are only possible because I intentionally approach my analysis from an intersectional approach that considers how race and class intersect in interactional moments. While I am careful to analyze the intersection of race and class, I readily acknowledge my limited investigation into the role of gender. Gender differences are likely an important aspect of interactions with legal authorities (see e.g., Chesney-Lind and Pasko 2013; Daly 1994; Levine and Mellema 2001; Steffensmeier 1980) and engagement in delinquent behaviors (see e.g., Jones 2009; Peterson and Panfil 2017); yet, my sample includes too few women to uncover recurrent patterns along gender lines that take into account women's intersecting class and race positions.

In sum, this dissertation draws on the theoretical insights of Bourdieu and others in understanding how institutional navigation reproduces disparities. At the same time, I differ in that I center my analyses at the micro level of interactional moments between individuals and legal authorities, as recounted in interviews and observed in ethnographic encounters. These micro-level interactions reveal a certain contingency, unexplained by largely deterministic Bourdieusian approaches but nevertheless tending to aggregate into disparities.

Research Design

This dissertation draws on several sources of data. From October 2015 to July 2017, I collected interview, ethnographic, administrative, and archival data from the Boston, Massachusetts area criminal justice system. From December 2013 to April 2016, my research collaborator Alix S. Winter and I collected interview and ethnographic data in a state-wide trial court system in “Northeast State,” a pseudonym for a state in the northeastern United States (see Clair and Winter 2016, p. 337).¹⁸

Data from the two periods of data collection consist of: in-depth, semi-structured interviews with 49 criminal defendants with a range of race and class experiences; interviews with over 150 legal authorities (some from Northeast State, others from the Boston area), including police officers, prosecutors, defense attorneys, judges, and probation officers; more than 100 hours of ethnographic observations in 13 Boston-area courthouses, with a focus on one municipal-level courthouse handling mostly misdemeanors and lower-level felonies (Boston Municipal Court, Central Division) and one county-level courthouse with full jurisdiction but

¹⁸ This state-level trial court system is very similar to the trial court system in the Boston area. While I will not be explicit about any differences throughout the text (so as to preserve the confidentiality of the state), I have accounted for any differences in my analyses and interpretation of my findings.

mostly handling serious felonies punishable by multiple years in prison (Suffolk County Superior Court); ethnographic observations of 6 criminal defendants as they navigated Boston-area courthouses in real time; administrative data on demographic characteristics of court cases arraigned in 12 Boston-area courthouses in 2012 provided by the Massachusetts Probation Service (MPS) research department; administrative data on demographic characteristics of public defenders provided by the Massachusetts Committee for Public Counsel Services (CPCS); and, publicly-available archival data from the Massachusetts Trial Court (MTC).

While all sources of data were used in my analyses, the following chapters focus on the 49 interviews with criminal defendants, the ethnographic observations of six defendants' court cases, and the over 100 hours of general courthouse observations.

Drug and Alcohol Charges in the Boston Area

Many scholars have noted that the American criminal justice system is not one uniform system, but rather a collection of various federal, state, and local agencies that manage crime and alleged offenders in different ways (see Pfaff 2017).¹⁹ When it comes to understanding criminal justice disparities, it is important to acknowledge that disparities between individuals of the same race or class in two different jurisdictions may be greater than disparities between individuals of different races or classes in the same jurisdiction (see Eisenstein and Jacob 1977, p. 300). Still, the best available evidence suggests that there is a consistent disadvantage to being poor and/or black or Latino within the same jurisdiction. Understanding the reality of this persistent disadvantage within each of our nation's criminal justice systems is my concern. Consequently, my research design attempts to compare defendants facing similar local criminal justice contexts.

¹⁹ Borrowing from the National Center for Victims of Crime, I define a criminal justice system as a set of governmental agencies and procedures charged with controlling and punishing criminal offenses.

In particular, I focus on comparing the experiences of defendants who have faced (mostly) drug or alcohol-related charges in the Boston area. Table 1 identifies the main institutions in this system.²⁰

Drug and alcohol-related charges are an ideal focus for research on disparities. As noted earlier, extant research reveals stark racial disparities with respect to drug crimes despite proportionality in the use and sale of illegal substances among racial groups (Tonry and Melewski 2008). In addition, a relatively high proportion of variation between racial groups in incarceration rates for drug-related offenses remains unexplained after arrest (Blumstein 1982; Beck and Blumstein 2017). Therefore, this study intentionally selected Boston-area individuals who had faced at least one drug or alcohol-related charge over their life course.

In Massachusetts, drug/alcohol-related charges include possession, distribute or possess with intent, trafficking, drug paraphernalia, drug violation near school zone, operating under the influence (of drugs or alcohol) (OUI), and various liquor violations. Drug/alcohol charges are differentiated by the class of the substance involved.²¹ Classes A-E are all misdemeanors when they involve only possession and are first offenses. In the case of possession with intent to distribute or higher, classes A-C are felonies and classes D-E are misdemeanors. Some of the charges in classes A-C carry mandatory minimums. With respect to OUI charges, the first and second offense are misdemeanors, whereas the third offense is a felony. Overall, and depending

²⁰ This study focuses on state and local agencies in the Boston-Cambridge, Massachusetts criminal justice system. Although some respondents in my sample faced federal charges at some point in their lives, experiences with state-level criminal justice agencies is most common. These agencies include state, city, and college police, municipal/district (city-level courts dealing with misdemeanors and less serious charges) and superior (county-level courts dealing with more serious charges) courthouses, local and state jails, and state prisons.

²¹ Class A includes heroin and morphine; class B includes cocaine and LSD; class C includes Vicodin and clonazepam; class D includes marijuana; and class E includes codeine, morphine, and opium (Massachusetts Sentencing Commission 2015).

Table 1. Boston-Area Criminal Justice System

City	Police	Criminal Trial Courts	Correctional Facilities	District Attorney Offices	Defense Attorney Offices
<i>Boston</i>	Boston PD	BMC-Central BMC-Brighton BMC-Charlestown BMC-Dorchester BMC-East Boston BMC-Roxbury BMC-South Boston BMC-West Roxbury			
<i>Cambridge</i>	Cambridge PD	Cambridge District			
<i>Both Cities</i>	University PDs				
County					
<i>Suffolk</i>	Suffolk County Sheriff	Suffolk County Superior	Suffolk County Jail (Nashua) South Bay House of Corrections	Suffolk County DA	
<i>Middlesex</i>	Middlesex County Sheriff	Middlesex County Superior	Middlesex County Jail Middlesex County House of Corrections	Middlesex County DA	
State					
<i>Massachusetts</i>	Massachusetts State Police		18 State Prisons & Treatment Centers		Private Law Firms Committee for Public Counsel Services (CPCS)

on the class of substances involved and a defendant's criminal history, convictions on these offenses can range from a continuance without a finding (CWOFF)²² to 20 years in state prison (Massachusetts Sentencing Commission 2015). In analyses, I am careful to consider how different types of charges may shape defendants' experiences; yet, my analysis focuses on identifying how common situational interactions are differently shaped by defendants' access to cultural, social or economic resources (see Tavory and Timmermans 2013 on ethnographers seeking data set variation in constructing causal claims). No matter the type of charge, most defendants face the common situational interactions of arrest, arraignment, pre-trial proceedings, and negotiating with one's lawyer—central concerns of chapters 3 and 4.

While part of this dissertation considers defendants' experiences at arrest (chapter 2), most of the analysis considers the experience of court processing (chapters 2, 3, and 4). In Boston, misdemeanors are often arraigned and adjudicated in Boston's lower-level municipal courts (of which there are eight), whereas felonies are often indicted and adjudicated in Boston's upper-level court, known as the Suffolk Superior Court. Many respondents in my sample also faced charges in the Cambridge, Massachusetts court system, and some experienced charges in other court systems throughout Massachusetts and even as far away as New Hampshire and Florida. All court systems in Massachusetts have lower courts analogous to the Boston municipal courts and upper courts analogous to the Suffolk Superior Court. What often differentiates court systems within the state, especially from the perspective of defendants and their defense attorneys, is the nature of the District Attorney's (DA) office and the local laws at their disposal

²² In Massachusetts, a Continuance without a Finding (CWOFF) is a plea deal that results in a finding of no guilt if the defendant abides by the court's conditions (e.g., stay out of trouble by not getting arrested again) for a mandated period of time pre-trial. Sometimes a CWOFF involves pre-trial administrative probation during this time period. A CWOFF is technically an admission of guilt, or an admission to "sufficient facts," but results in a dismissal of the case if pre-trial conditions are abided by. This is similar to what Kohler-Hausmann (2013, p. 363) describes in New York City courts as Adjournment in Contemplation of Dismissal (see also Worden, McLean, and Kennedy 2012).

(see Pfaff 2017; Sklansky 2017; Stuntz 2001). In comparing respondents who faced charges in Boston to those who faced charges in Cambridge,²³ I am careful to consider how structural decisions around prosecutorial procedures and decision-making—made plain in my interviews with legal authorities and ethnographic observations in different courthouses—may differentially shape defendants’ experiences. But such a macro-level comparison is not the main focus of my inquiry. Unlike comparative ethnographies that seek to examine differences between court systems, courthouses, or even courtrooms within the same courthouse (e.g., Eisenstein, Flemming, and Nardulli 1988; Eisenstein and Jacob 1977; Ulmer 1997), my research question bears on differential experiences of court processing within similar court system contexts but between defendants with varying levels of resources to use in situational interactions.

Boston’s local, state, and federal drug/alcohol laws, racial and socioeconomic inequalities, police and prosecutorial practices, indigent and private defense systems, courthouse procedures, and spatial boundaries all combine to constitute the common socio-political environment faced by the individuals in my sample. Like other major American cities, the Boston area is racially and socioeconomically diverse—and unequal. A city of about 620,000 residents, Boston is about 54 percent white, 24 percent black, 17 percent Hispanic, and 9 percent Asian (2010 Census). Cambridge is about a sixth the size of Boston, with a greater share of white and Asian residents. The Metropolitan Statistical Area, which includes Boston, Cambridge, and smaller cities like Framingham, has a total population of more than 4.5 million. The state of Massachusetts, in 2010, had a population of more than 6.5 million. In the 2010 census, 80

²³ I focus on both the cities of Boston and Cambridge because defendants freely move between, and often face charges in, both cities, which are connected through the Boston metro area subway and bus system. Despite their proximity, the two cities are nestled in two counties with separate District Attorney’s offices and police departments.

percent of Massachusetts residents were white, 7 percent were black, 10 percent were Hispanic, and 5 percent were Asian.

Throughout the twentieth century, Boston has grappled with racism, racial inequality, and class inequality in schools, housing, and employment (see Eaton 2001; Formisano 2004). These inequalities persist today. Recent research has found that Boston is one of the most economically and racially segregated cities in the United States, as measured by the number of census tracts in the city that are considered “Racially Concentrated Areas of Affluence,” or where “90 percent or more of population is white and the median income is at least four times the federal poverty level” (Semuels 2015; see Goetz, Damiano, and Hicks 2017). Higher rates of lead toxicity, lower levels of social capital and trust, higher rates of violence, and lower levels of voter participation all cluster in the same geographic areas of the city, where disproportionate numbers of poor residents and residents of color live (Zimmerman et al. 2012). Neighborhoods like Roxbury, North Dorchester, and East Boston often experience these forms of disadvantage, whereas neighborhoods like Beacon Hill and the South End are relatively privileged.

The Boston-area criminal justice system mirrors the racial/ethnic inequalities—and likely the socioeconomic inequalities²⁴—of the city. Like other metropolitan-area police departments in the 1980s and 1990s, the Boston Police Department (BPD) engaged in heavy policing of majority-minority neighborhoods, oft-drawing on the broken windows theory of policing (Wilson and Kelling 1982). The broken windows theory justified proactive policing tactics around minor offenses, such as drinking in public, loitering, or vandalizing property, under the assumption that such aggressive policing would prevent more serious crimes. Such policing

²⁴ I am unaware of reports or available data on the educational status or occupational status of alleged offenders and defendants in the Boston area. Some policing data considers disparities by neighborhood, which likely approximates class disparities. But given the general lack of data on educational status or occupational status, I provide only a summary of racial/ethnic disparities in Boston.

often targeted poor, majority-minority communities. In Boston in the 1980s, the BPD initiated a “Search on Sight” policy that justified police officers’ searching of anyone who was “allegedly ‘associated with a gang’ in Boston’s predominantly-Black Roxbury neighborhood” (American Civil Liberties Union 2014, p. 3). While this policy ended in the 1990s, the BPD—following cities like New York—engaged in stop-and-frisk practices. An analysis by Fagan et al. (2015) of a sample of police-civilian encounters from 2007 to 2010 found that more than 63% of these encounters were initiated with black residents in Boston, far greater than their proportion of the city’s population. Moreover, when stopped, the report found that black and Hispanic alleged offenders were more likely than similarly-situated whites to be frisked or searched, and were more likely to be repeatedly targeted for police encounters. Similar racial/ethnic disparities exist in other police departments across Massachusetts (Farrell et al. 2004).

Disparities in the Boston area persist beyond police encounters. Data provided to me by the MPS research department reveal racial disparities in those who are arraigned in Boston-area courthouses. Table 2 compares the racial/ethnic demographics of Boston, Cambridge, and their respective counties with data on arraignments in four main courthouses—two district/municipal courts in Boston and Cambridge and two superior courts in their respective counties. Whites tend to be underrepresented in arraignments across these courthouses and across charge types compared to their representation in the population, whereas blacks and Hispanics tend to be overrepresented. However, this pattern does not hold for OUI charges, where whites—and blacks, to a lesser degree—are consistently overrepresented, and Hispanics are underrepresented. But, blacks and Hispanics are more likely to be arraigned for more serious crimes, if we take arraignments in the superior courts as indicators of case seriousness. This likely contributes, in part, to disparities at the tail end of the criminal justice system, where blacks and Hispanics are

Table 2. Criminal Offenses in Four Boston-Area Courts, by Race (2012), Compared to Boston-Area Populations, by Race (2010)

	Arraigned Defendants (Percent) for 5 Common Offenses, by Race & Court ^a							Percent of the Population, by Race ^b	
	Drugs (All)	OUI	Assault	Larceny/Fraud	Public Order	Boston	Cambridge	Suffolk County	Middlesex County
White									
BMC-Central	574 (52.2)	73 (55.7)	422 (46.2)	473 (49.1)	224 (47.3)	47.0			
Cambridge Dist.	164 (68.0)	109 (84.5)	268 (59.2)	192 (49.7)	128 (61.2)		70.2		
Suffolk Sup.	41 (25.0)	7 (63.7)	49 (21.6)	42 (50.0)	28 (28.3)			48.1	
Middlesex Sup.	19 (38.8)	20 (87.0)	100 (52.9)	58 (60.4)	86 (59.3)				76.5
Black									
BMC-Central	359 (32.7)	29 (22.1)	357 (39.1)	358 (37.2)	175 (37.0)	24.4			
Cambridge Dist.	65 (27.0)	13 (10.0)	127 (28.0)	151 (39.1)	62 (29.7)		7.5		
Suffolk Sup.	81 (49.4)	3 (27.3)	128 (56.4)	23 (27.4)	45 (45.5)			19.8	
Middlesex Sup.	11 (22.5)	3 (13.0)	39 (20.6)	15 (15.6)	20 (13.8)				4.4
Hispanic									
BMC-Central	157 (14.3)	23 (17.6)	107 (11.7)	102 (10.6)	62 (13.1)	17.5			
Cambridge Dist.	11 (4.6)	5 (3.9)	39 (8.6)	32 (8.3)	17 (8.1)		5.9		
Suffolk Sup.	41 (25.0)	1 (9.1)	48 (21.1)	18 (21.4)	24 (24.2)			19.9	
Middlesex Sup.	17 (34.7)	0 (0.0)	37 (19.6)	20 (20.8)	32 (22.1)				6.5
Asian									
BMC-Central	7 (0.6)	5 (3.8)	25 (2.7)	27 (2.8)	11 (2.3)	8.9			
Cambridge Dist.	1 (0.4)	2 (1.6)	18 (4.0)	10 (2.6)	1 (0.5)		12.8		
Suffolk Sup.	1 (0.6)	0 (0.0)	2 (0.9)	1 (1.2)	1 (1.0)			8.2	
Middlesex Sup.	2 (4.1)	0 (0.0)	13 (6.9)	3 (3.1)	7 (4.8)				9.3

^a *Source:* Number of defendants arraigned and percentages were calculated based on 2012 arraignment court data provided to the author by the research department of the Massachusetts Probation Services.

^b *Source:* Estimates based on 2010 decennial United States Census.

convicted and imprisoned in Massachusetts at disproportionate rates. In 2013, minorities in Massachusetts constituted 33% of people convicted for any crime but 38% of people sentenced to incarceration for any crime.²⁵ Overall, the state of Massachusetts has a lower incarceration rate than the national average but a higher black-white and Hispanic-white disparity than the national average: in 2015, blacks in Massachusetts were incarcerated at almost eight times the rate of whites, and Hispanics were incarcerated at almost five times the rate of whites.²⁶ Moreover, a study by Crutchfield, Bridges, and Pitchford (1994) suggest that the black-white disparity in imprisonment in Massachusetts is not well-explained by arrests. Only about 30-40% of disproportionate black imprisonment in the early 1980s was explained by disproportionate black involvement in arrests (Crutchfield et al. 1994, pp. 175, 178). This explained variation was much lower than the national average. Following Blumstein's (1982) analysis, these findings suggest that, at least in the 1980s, a substantial proportion of disparities in imprisonment in Massachusetts (60-70%) was likely due to unequal processes during court processing rather than the disparate impacts of arrest or criminal involvement.

Aside from these differences in the everyday experiences of living (and encountering police) in different neighborhoods and differences in punishment outcomes, all defendants must navigate certain common procedures and policies of the Boston-area criminal justice system. Chapter 4 provides detail regarding these common stages of the Boston-area criminal justice process. In brief, as defendants make their way through the criminal justice process (barring

²⁵ Statistics retrieved August 15, 2016 from the Massachusetts Sentencing Commission's document "Selected Race Statistics." URL: <http://www.mass.gov/courts/docs/sentencing-commission/selected-racestatistics.pdf>

²⁶ Statistics retrieved August 15, 2016 from the Massachusetts Sentencing Commission's document "Selected Race Statistics." URL: <http://www.mass.gov/courts/docs/sentencing-commission/selected-racestatistics.pdf>

diversion at any stage), they must interact with police during booking at a police station, interact with a bail magistrate at the police station, appear for arraignment and fill out paper work with a probation officer, retain (or refuse) counsel either through an attorney affiliated with the CPCS or through the private bar, and appear for myriad court dates and hearings. Once adjudicated, they may have to maintain interactions with probation officers or correctional officers for long periods of time.

Various kinds of lawyers are available to defendants in Massachusetts. Some defendants may hire lawyers on their own, paying directly for their services. Most defendants, however, rely on the indigent defense system, whereby the Court assigns them an attorney whom they may or may not pay for depending on their ability to pay, as determined by the Court and probation.²⁷ Attorneys for indigent defendants are managed by the Committee for Public Counsel Services (CPCS), a statewide agency. CPCS-affiliated attorneys are either staff public defenders or private defense attorneys who are appointed to take a certain number of indigent cases. Staff public defenders handle a minority of indigent defendants' cases in the state of Massachusetts, where about 75% of indigent cases in recent years are handled by court-appointed private attorneys (Gurley 2014). Compared to other states, Massachusetts' indigent defense system is more robust than the average across numerous indicators, including the amount of money invested in the system (see Strong 2016; Worden, Davies, and Brown 2010).

While there is variation in how some judges run their courtrooms throughout the city and the state, these basic features of the system are standardized. One aspect of the system that is not

²⁷ Rule 33 of the Massachusetts Rules of Criminal Procedure outlines indigency determinations in the state. Technically, indigency is determined by whether the defendant receives public assistance or has an income below a certain threshold. In practice, many judges and probation officers assign counsel to individuals who appear to be indigent. A middle group of defendants may be assigned counsel and pay a fee as high as a few hundred dollars to the court if they are determined to be able to contribute to their legal defense but do not have the financial ability to retain private counsel.

standardized is the way Suffolk County Assistant District Attorneys (ADAs) and Middlesex County ADAs, and their offices, treat the seriousness of certain charges. Among the defendants I interviewed as well as the legal authorities I spoke with, it is common knowledge that Suffolk County (where Boston is located) is more lenient than Middlesex County (where Cambridge is located). It was often remarked that Suffolk is more lenient in charging decisions and plea negotiations for certain crimes and provides more diversionary programs. But, prosecutorial policies are varied and change over time; for example, after I left the field, the Middlesex DA announced that line ADAs will no longer request bail in low-level cases (Cramer 2018). I do not have administrative data to confirm the existence of these common-knowledge procedures and practices; however, I take care to consider their possible effects in analyses of respondents' experiences.

Respondents

Given my focus on the experiences of criminal defendants in interactions with legal authorities, findings draw most heavily on my interviews among 49 criminal defendants and my ethnographic observations among six of them in court hearings.²⁸ Respondents were eligible for participation in the research study if they had ever been arrested for a drug/alcohol-related crime, such as drug possession, drug distribution, or OUI.

²⁸ While legal authorities' interpretations are not at the heart of this dissertation, interviews with legal authorities provide additional insight into the accounts provided by defendants (see Stuart et al. 2015, p. 246). As my theoretical approach to differential navigation suggests (see Figure 3), defendants' interpretations and actions do not occur in a vacuum. Defendants make decisions within situations that take into account their interpretations of legal authorities' beliefs and actions, as well as the broader constraints of criminal court cultures and procedures which necessarily channel their options. My approach to investigating the experiences of criminal defendants is very much rooted in a relational and processual understanding of their lived realities (Lamont et al. 2014; see also Desmond 2014 on relational ethnography), which, to my eye, works well with a micro-level interactionist approach to investigating the situational experiences defendants find themselves in.

To construct a diverse sample that would enable me to assess the way race and class-based cultural, social and economic resources shaped experiences, I relied on multiple recruitment strategies. I mailed letters to every person arrested in 2014 by the Cambridge Police Department (CPD) for a drug/alcohol-related offense and to a purposive sample of people arrested in 2014 by the Boston Police Department (BPD) for the same offenses, seeking to sample addresses in high-income neighborhoods. The response rate from these letters was low (11%), potentially due to either fear about being interviewed or not receiving the letter (28% of letters were formally returned to me by the post office and not included in the response rate). To account for non-response due to fears of participation, I snowball sampled several respondents by asking participants to share my study with their social ties. To account for non-response due to individuals not receiving letters, I recruited additional respondents by sharing flyers with defense attorneys, organizations for the formerly incarcerated, sober houses, drug rehabilitation centers, and shelters—institutions that often house or provide for individuals whose reported addresses in arrest records were invalid. These three sampling strategies enabled me to construct a diverse sample of men and women from four racial/ethnic groups and with occupations ranging from investment consultant to construction worker to unemployed (see Weiss 1994 on sampling for range). The goal in my analysis is not to make claims about representativeness, but rather to identify common interpretations and actions across similar cases (see Small 2009; Weiss 1994).

In order to investigate and highlight the situationally dependent nature of race and class, I operationalized race/ethnicity and class status in the conventional way it is operationalized in sociological and criminological research. Doing so serves two purposes. First, such an operationalization allows me to compare my findings to macro-level research on criminal justice disparities, which relies on administrative or survey-based categories. Second, such an

operationalization also allows me to examine how discrete categories of race and class often fall short analytically. When I consider variations of cultural, social, and economic resources employed by individuals within these discrete categories, I am able to better reveal how individuals' interactions are probabilistically related to such conventional markers of race and class in ways that often, though not always, reproduce disparities in the aggregate.

Race/ethnicity is operationalized into four racial/ethnic groups: white, black, Latino/a, and Native American. Two respondents identified as more than one race/ethnicity. Class is operationalized into three categories: middle class, working class, and poor. Following traditional definitions of socioeconomic status (SES) in sociology, I group individuals into these three classes based on their educational and occupational status. Middle class includes those who have at least a four-year college degree and have had a stable job or occupation at some point in their lives; working class includes those with no four-year college degree but who maintain a stable job or occupation; and poor includes those who have no four-year college degree and no stable job or occupation. I differentiate between respondents' SES at the time of the interview and in childhood. Respondents' childhood SES is based on the highest class status of one of their parents or guardians (e.g., if one parent has a college degree and a stable occupation but the other a high school diploma, the individual is coded as having a middle-class childhood). It should again be emphasized that while I group individuals into discrete race and class groupings for ease of interpretation and comparability to existing research²⁹ on disparities, I intend to examine the way cultural, social, and economic resources are employed by the individuals in my sample; in doing so, I find that the use

²⁹ See Tavory and Timmermans (2013) on the importance of framing one's findings and causal arguments in relation to the broader intellectual community, or "community of inquiry." This study would have little to contribute to existing scholarship if I did not make my findings interpretable within existing paradigms for conceptualizing race/ethnicity and class status.

of these resources does not always neatly align with sociologically-defined race/ethnicity or class categories.

Table 3. Demographics of defendant interview sample (N=49)

	N
Race/ethnicity*	
White	30
Black	17
Latino/a	3
Native American	1
Gender	
Male	42
Female	7
SES at childhood	
Middle class	19
Working class	23
Poor	7
SES at interview	
Middle class	10
Working class	23
Poor	16
SES at interview, by race/ethnicity*	
Middle class	
White	6
Minority	4
Working class	
White	13
Minority	10
Poor	
White	11
Minority	6

**Total is more than N because of respondents who identify as more than one race/ethnicity.*

Table 3 summarizes the demographic characteristics of the sample, which includes 42 men and 7 women from four racial/ethnic groups: white (N=30), black (N=17), Latino/a (N=3), and Native American (N=1). In their childhood, 19 respondents grew up in middle-class families, 23 in working-class families, and 7 in poor families. At the time of the interview, 10 respondents were

middle class, 22 were working class, and 16 were poor. Throughout the text, I designate each respondent by their race/ethnicity and class status using parentheses after their name.³⁰ Doing so enables the reader to more clearly see how race and class operate in the everyday experiences of the individuals in my sample.

Analyzing Unequal Experiences

This dissertation seeks to examine how criminal defendants' situational experiences of race and class could contribute to our understanding of criminal justice disparities. As summarized earlier, I examine how cultural, social, and economic resources manifest in micro-level interactions in ways that are probabilistically related to traditional markers of class and race, often—but not always—contributing to disparities in the aggregate.

Doing so requires an in-depth analysis of different experiences of criminal justice processing among a group of defendants who have experienced a range of race and class situations. Such an analysis draws on interactionist approaches, while remaining attuned to the importance of cultural and structural constraints and processes that frame and channel interactions. As Collins (1981, p. 987-8) writes about the analysis of micro-level situations:

There are several advantages in translating all sociological concepts into aggregates of microphenomena. The first point is epistemological. Strictly speaking, there is no such things as a 'state,' an 'economy,' a 'culture,' a 'social class.' There are only collections of individual people acting in particular kinds of microsituations—collections which are characterized thus by a kind of shorthand. [...] It is strategically impossible for sociology to do without this kind of macro summary. It would take too much time to recount all the micro-events that make up any large-scale social pattern, and a total recounting in any case would be tedious and unrewarding. Nevertheless, we need not reconcile ourselves to the complete loss of information of the truly empirical level, satisfying ourselves with remote abstractions. For if macrophenomena are made up of aggregations and repetitions of many similar micro-events, we can sample these essential microcomponents and use them as the empirical basis of all other sociological constructions. The significance of the first point, then, is: *Sociological concepts can be made fully empirical only by grounding them in a sample of the typical micro-events that make them up.*

³⁰ Following each respondent's name in parentheses, I designate each respondent by their race (W=white, B=black, L=Latino/a, N=Native American) and class status (MC=middle class, WC=working class, P=poor). The first listed class status designation denotes childhood class status, whereas the second listed class status designation denotes current class status at the time of the interview. For example, a person designated as (W, MC, WC) is white, comes from a middle-class childhood, and was working class at the time of the interview.

To ground our understandings of criminal justice disparities in the “micro events that make them up,” I employ two analytic strategies with two separate units of analysis. One unit of analysis considers individual respondents, and the other unit of analysis considers individual court cases.

In chapters 3 and 4, I focus on individual court cases—specifically, the many interactive situations of these court cases—as the unit of analysis. I analyze respondents’ accounts of their court case experiences over the life course. In total, the criminal defendants in my sample shared with me their experiences navigating 132 court cases (see Table 4). Because respondents in my sample come from a range of race and class childhoods and current statuses (see Table 3), their 132 court case experiences constitute what Collins might refer to as “a sample of the typical micro-events” that criminal defendants in the Boston area face. While this sample is not representative, it likely captures the range of typical experiences.

In chapter 2, individual defendants are the main unit of analysis. In this chapter, I reveal common experiences—across race and class—of delinquency and alienation at home and school in adolescence. I also consider how defendants’ different resources ultimately enabled or constrained their abilities to manage childhood experiences of police encounters, arrests, and court involvement. Some of this analysis, as in chapters 3 and 4, returns to interactive situations as the unit of analysis. In addition, I draw on other forms of data beyond interviews with defendants—such as interviews with legal authorities, ethnographic observations, and administrative data—to fully examine the broader courthouse environmental context in which defendants operate (see more below).

Table 4. Characteristics of court cases discussed in defendant interviews (N=132)

	N court cases
Case type*	
Drug possession or distribution	56
OUI	21
Other non-violent offenses	42
Other violent offenses	13
SES of defendant (childhood)	
Middle class	53
Working class	65
Poor	14
SES of defendant (at interview)	
Middle class	21
Working class	65
Poor	46
Race/ethnicity of defendant+	
White	82
Black	45
Latino/a	5
Native American	2

* *Categorized by most serious offense*

+ *Total more than N because of those who identify as more than one race/ethnicity*

In-depth interviews with the 49 criminal defendants in my sample began with a short demographic and attitudinal survey. Included in this survey were questions relating to respondents' feelings about the fairness of their treatment during their most recent arrest and court experience, as well as questions about their mental health and well-being. Upon completion of the survey, respondents were asked about their personal background, including their childhood experiences, past jobs, and their daily life. Respondents were next asked to choose at least two arrest experiences that they would like to discuss in detail—from arrest/summons through to final adjudication. Respondents were asked about their arrest, detainment pre-trial, engaging with their lawyer, attending court dates, managing pre-trial probation, choosing to go to trial versus take a plea, and managing their formal legal punishments. Sometimes, respondents chose to discuss court cases that did not involve drug/alcohol-related charges. The median interview

lasted 75 minutes, and all interviews were audio-recorded and transcribed. In addition to the interviews, I accompanied six respondents along to future court dates (for information on these respondents, see Table 5). These targeted observations and extended periods of interaction enabled me to observe formal sanctions in real-time and compare defendants' recollections in the interview with their observed behaviors.

Table 5. Characteristics of defendants interviewed and observed in real time (N=6)

Name	Race/ethnicity	SES at childhood	SES at interview	Gender	Case type observed
Tonya	White/Native American	P	P	F	Drug possession (cocaine), probation revocation
Don	Black	MC	WC	M	Distribute or possess with intent (heroin)
Ryan	White	MC	MC	M	Shoplifting by asportation
Brianna	White	MC	WC	F	OUI (drugs), drug possession (class C)
Mary	Latina	WC	WC	F	A&B with a dangerous weapon, disorderly conduct
Arnold	Black	WC	MC	M	Carrying a firearm without a license

Interviews with legal authorities were collected from two separate projects. The interviews collected from the 2013-2016 Northeast State project were in-depth, semi-structured interviews conducted with over 120 state prosecutors, public defenders, private defense attorneys, state trial court judges, and trial consultants. Most interviews lasted between 60 to 100 minutes. Respondents were asked questions about their decision-making processes at different stages of court processing, from arraignment and the bail decision to plea hearings and sentencing (see Clair and Winter 2016). They were also asked their opinions and beliefs about various aspects of their profession. The interviews collected from the 2015-2017 Boston-area

study were informal interviews, often conducted during field observations. These interviews lasted around 30 minutes and were not audio recorded. I rely on field notes taken during these interviews. In total, I interviewed 35 legal authorities, including police officers, public defenders, probation officers, prosecutors, and judges.

Ethnographic observations were conducted in both the Northeast State project and the Boston-area project. Together with my collaborator on the Northeast State project, we conducted more than 60 hours of observations in courthouses throughout the state, observing “arraignments, pretrial motions, plea hearings, jury selections, jury trials, bench trials, and parole hearings. In addition, we had several meetings with administrators of Northeast State Court” (Clair and Winter 2016, p. 337). For the Boston-area project, I conducted over 100 hours of ethnographic observations throughout the local criminal justice system. Most of my time was spent in two courthouses—BMC-Central and Suffolk County Superior Court. In addition, I went on ride-alongs with police officers, visited a jail, and viewed booking rooms in police stations.

Interviews and ethnographic observations require different analytic approaches. Sociologists have long debated whether, and to what extent, researchers should rely on their respondents’ accounts of their own beliefs and behaviors as articulated in interviews or surveys (see e.g., Jerolmack and Khan 2014; Pager and Quillian 2005). With respect to respondents’ articulations of their beliefs, values, and sentiments, researchers have questioned whether respondents will tell the truth, given the pressures of social desirability, or wanting to appear morally appropriate in front of the interviewer (see Bradburn 1983). With respect to respondents’ behaviors, researchers have questioned not only social desirability response bias but also the accuracy of respondents’ memories as well as their behavioral consistency. Even if respondents are making a good faith effort to be honest about their behaviors, they may simply forget

important details that matter to the social analyst or exhibit inconsistency in behaviors across situations (see Jerolmack and Khan 2014). Such problems, of course, exist with large-scale, quantitative survey research too (see Pager and Quillian 2005). Jerolmack and Khan (2014) argue that ethnographic data derived from in-depth observations of particular contexts enable researchers to make claims about the reality of respondents' situational behaviors. But still, observations alone cannot provide us insight into respondents' inner-beliefs and interpretations (Lamont and Swidler 2014; Pugh 2013).

These epistemological debates are important, and this dissertation seeks to overcome the limitations of any one form of data by carefully comparing multiple sources of data and clearly articulating each form's value in developing my arguments. I do so in several ways. First, I am careful in each chapter to plainly articulate the empirical basis of each argument. For example, if an argument is based on recollections from respondents in interviews, I make that clear by including quotations, detailing the general (using qualifiers like "many" or "some") number of respondents or cases that share the illustrated interpretation or account.

Second, whenever possible, I confirm accounts in defendants' interviews with: my own observations in court; available administrative or archival data; and, interviews with legal authorities. I also confirm defendants' accounts by comparing their own statements in one moment of the interview transcript with any inconsistent or consistent statements made in another moment of the transcript. If a respondent contradicts him or herself, I do not rely on that particular piece of data.

Third, I consider and attempt to mitigate the unique weaknesses of each data source. While it may be the case that respondents may obscure the truth from me in the interview setting, it may also be the case that my own observations of events could be clouded by my own biases.

Thus, it is important not only to critically interrogate the words of my respondents but also to be reflexive in the collection and analysis of my own ethnographic field notes. Doing both requires similar techniques: skepticism and scouring for more evidence. For example, in my interviews with defendants, I asked multiple follow-up questions in a friendly manner, especially if I believed an individual to be obscuring the truth or avoiding a straightforward answer. When asking about court case experiences in each interview, I asked questions not just about individuals' interpretations but also about the specific steps the individual remembered going through in navigating the court process. By asking questions about specific steps in a sequential manner, I was able to elicit in-depth details in a way that likely made it difficult for respondents to either obfuscate the truth or forget important details. Furthermore, to do my best to protect against social desirability response bias in defendants' answers to more subjective questions regarding beliefs about fairness and inequality, I did my best to invest them in the interview experience by being affirming and empathetic. Many times, I was surprised by how effective my non-judgmental affect was in eliciting racially insensitive or even homophobic statements from respondents.³¹

³¹ Despite my status as an upper-middle-class black man, some respondents were so comfortable in the interview setting that they made racist or homophobic remarks during their conversations with me. For example, in describing the substance abuse class she was taking as part of her probation, Jane (W, MC, MC) commented to me about the remarkable cross-section of people attending the class. She used a derogatory stereotype to describe a black woman (despite the fact that I was a black interviewer sitting across from her): "There's a guy from Boston Ballet Company who's from Hungary, an engineer, there's a nurse, there is like a construction worker, there's um a really ghetto baby momma. [laughs] I don't know! It's like a good cross section." Another respondent Max (W, MC, WC) told me that he would discriminate against and rob "Spanish" (Hispanic) dealers when he would buy drugs from them. He told me: "We'd only rob Spanish dealers. The guys I dealt with are like from here like black guys or something that I deal with I don't rob them. I rob, you know, Spanish guys that are coming from Brighton or something like that, you know what I mean?" Sometimes respondents would realize their words, expressions, or beliefs might be perceived as offensive by me. Yet, in those moments, I attempted to reassure respondents by remaining neutral and following their lead in the conversation; this enabled them to continue to express their opinions in a fairly unfiltered manner. This exchange with Paul (W, MC, WC) is illustrative: "[Matt]: Yeah, when you were growing up did you like high school or--? [Paul:] I loved it! I was the bully in high school. [Matt:] Oh, really? In high school? [Paul:] Yeah, pretty much ran the school but I wasn't the bully to the nerds because the nerds, you know, I'd take care of them so they'd do my homework, they would tutor me. I just...basically I was a bully towards like the jocks and stuff because they'd pick on the nerds and the nerds would be like I'll do your algebra homework if you get this guy to stop smacking me around. Ok. 'I'm going to put you through the window.' And of course I had a group of pot heads I

Overall, the arguments and analyses are concerned mostly with the level of subjective interpretation. In other words, I seek to center the everyday interpretive experiences of defendants to understand how their understandings of the resources available to them shape their accounts of legal authorities and navigation of various stages of criminal justice processing. Subjective interpretations are best collected through in-depth interview data (Lamont and Swidler 2014). Cultural sociologists variously refer to such interpretations as “accounts,” “stories,” or “narratives.” Such interpretive accounts may contain inconsistencies, but they are understood to guide future action by making social action intelligible (see Presser 2009; Somers 1994). Following Philomena Essed (1991), who examines the accounts of everyday racism experienced by black women, I examine the everyday accounts of court processing experienced by a diverse sample of defendants. For Essed, accounts are defined as reconstructions of events in the form of narratives about those events.

Essed (1991, p. 128) notes that accounts provide two kinds of subjective content: “stable” and “variable.” Stable interpretive content includes the “relatively fixed information” about an event, from the perspective of the person giving the account. This information would be the information that defendants provide me about their recollection of each step of their court process—where they were arrested, when they first went to court, how often they met with their lawyer, what plea deal they decided to take. Variable interpretive content, according to Essed, includes the evaluative interpretations of stable content (see also Chong 2013, p. 269 on the value of such content in understanding the phenomenology of cultural practices, especially when

used to hang out with and we'd kind of we were the pot heads and there were the jocks, the pot heads, the popular yuppies, faggots. I'm not racist, prejudiced, or like that. I was in the army with African Americans, there were Asians—[Matt:] Was your school diverse or was it mostly white...? [Paul:] There was one African American kid in the school. One. His name was Ray. [Matt:] It was a co-ed--boys and girls--school? [Paul:] Yeah. [Matt:] And was it a public school? [Paul:] Yes, it was a public school, and everybody broke up into little groups. That was the '80s. We had the one African American kid. We didn't treat him any different; he was the same as the rest of us. When I was in the army I went to war with African Americans um Puerto Ricans. We had some Mexican soldiers, Asian...”

such practices are not formally articulated). Variable content in my interviews would include the information that defendants provide me about their feelings about their arrest experience, their trust in their lawyer, and their belief they got a fair or unfair deal. Essed warns that variable information collected in interviews can change over the life course, as individuals come to learn more information about an event or gain new insight into the way the world or an institution really works. To account for the variability problem, I made sure, in interviews, to ask respondents clarifying questions about the time-order of their evaluations and interpretations. For example, I often asked a variation of these follow-up questions: “At what moment did you start to mistrust your lawyer?” or “When was the first time you felt that way about your probation officer?” In my analyses, I accounted for the variability issue by considering alternative causal explanations about how interpretations of, and access to, resources shape differential navigation strategies (see the last sections of chapters 3 and 4). Moreover, my ethnographic observations enable me to further assess the relationship between respondents’ real-time interpretations and their real-time decision-making.

The main themes and findings of this dissertation were identified by analyzing all forms of data in an iterative manner—moving back and forth between interviews, field notes, administrative data, and archival sources. Coding categories for the interviews and field notes emerged inductively during my time in the field (Glaser and Strauss 1967). As I read interview transcripts, collected field notes, met new respondents, and tested emerging themes with informants, I revised my coding scheme. In final rounds of coding, I focused on themes related to experiences of delinquency and drug abuse, alienation in the home and school, trust and mistrust in legal authorities, acquiring legal expertise, delegation and withdrawal from legal authorities, and legal preferences. In chapters 3 and 4, where I develop a causal argument about

the role of resources and trust in shaping disparate punishment experiences among defendants, I rely on an analytic strategy whereby I compare similar and different cases (Small 2009; Tavory and Timmermans 2013). Such a strategy enables me to assess when and how access to resources resulted in delegation or withdrawal among defendants and ultimately shaped each court case's "visualizable sequence of events" (Weiss 1994, p. 179). While this form of analysis does not enable me to make counterfactual causal claims about the precise effect of any one variable, it does enable me to make processual casual claims about likely mechanisms that explain observed disparities (see Small 2013; Tavory and Timmermans 2013).

What follows is an in-depth examination of the experiences of a diverse group of criminal defendants seeking to make sense of, and fight their way against, the encroachment of the criminal justice system in their lives.

Chapter 2: Drugs, Delinquency, and Divergence over the Life Course

On a warm morning in June 2016, I sat down to interview Ryan³² (W, MC, MC)³³ in a food court in downtown Boston. He was wearing khaki shorts and an untucked polo shirt. A white man in his early thirties with light brown hair and a round face, Ryan grew up in a two-parent household in western Massachusetts. His parents, both college educated, worked in middle-class jobs—one as a paralegal and the other as a health insurance agent. His parents also successfully sent both of their sons off to college. But, Ryan has suffered from alcoholism for nearly half of his life—and his struggles with alcoholism, through one avenue or another, have resulted in three arrests over his life course, the loss of his job in investment consulting, several hospitalizations, and several stints of recovery in sober houses.

³² All names are pseudonyms (often chosen by the respondent), unless the respondent asked for me to use their real name.

³³ As a reminder, I designate each respondent by their race (W=white, B=black, L=Latino/a, N=Native American) and class status (MC=middle class, WC=working class, P=poor) throughout the text. The first listed class status designation denotes childhood class status, whereas the second listed class status designation denotes current class status at the time of the interview. For example, a person designated as (W, MC, WC) is white, comes from a middle-class childhood, and was working class at the time of the interview.

At 17, while still in high school, Ryan started drinking alcohol, smoking marijuana, and using Benzodiazepines (an anti-anxiety drug). When his parents learned he was drinking underage, they weren't too concerned at first, even though both his mother and father also struggled with alcoholism. As Ryan told me, "They weren't aware that it could be genetic or anything like that." Plus, Ryan was drinking and smoking socially at that time: "I was never isolated in doing it, you know?" Even though he didn't do particularly well in high school, a family friend "wrote a nice letter [of recommendation] for" him for college. As he transitioned to college and started partying more with friends, the drinking picked up: "It was ... Thursday, Friday, Saturday, Sunday during the day, you know?" His drinking started to take a turn for the worse when he was arrested at 19 for driving under the influence as a minor. To be sure, the court experience itself resulted in a light punishment—a continuance without a finding (CWOFF)—and his parents were more concerned with keeping him out of the legal system than with dealing with his struggles with alcohol addiction. Ryan would go on to graduate from college and begin a promising career as an investment consultant. But in his mid-twenties, his alcoholism only got worse, abetted by the "wining and dining" of the corporate culture. He was arrested again for an OUI and would later be hospitalized and induced into a coma for problems with his pancreas. His girlfriend left him, and many of his friends from high school and college have lost touch. While he has lived with his parents for many years as he works toward recovery, he recently moved out of their house. When I met him, he was dealing with a shoplifting case in a courthouse in Boston and living in a halfway house in Jamaica Plain, a racially diverse and mixed-income neighborhood in Boston.

In a small food court at an Asian grocer in Cambridge a year after meeting Ryan, I met Tim (B, P, P), a forty-year-old black man. Tim—with his wrinkled forehead, mustache, and

small chin—had a weary appearance. As he quietly filled out the pre-interview survey across from me, I noticed a black suitcase and overflowing, tattered messenger bag; these items, I would later learn, were his only possessions. He carried his belongings around with him because he didn't trust leaving them at the shelter down the street where he was staying: "I don't like staying with a whole bunch of people because there's a whole bunch of guys and everybody has a story to tell. Sometimes I don't want to be around that drama." Unlike Ryan, Tim grew up poor, living between his mother's place and his aunt's, in public housing in Roxbury, a majority-black, low-income neighborhood in Boston. Growing up in Roxbury in the 1980s, Tim regularly witnessed drug dealing in his neighborhood and at school. As he told me, "Everyone sold dope." While Tim didn't start dealing until his 20s (when he found himself homeless and living in Atlanta), at 15 he started experimenting with marijuana and alcohol. Not long after that, he dropped out of high school: "I stopped going to school completely and started partying on the weekdays."

Tim started selling cocaine when he moved to Atlanta in the 1990s. He couldn't find work and was without a home, spending his nights at the Atlanta airport. He felt he had no other option but to use the skills he had picked up from watching his friends and neighbors selling dope during his childhood in Roxbury. He told me, "I tried to stay away from selling dope. I used to smoke and use and drink, but I never really wanted to sell dope. I did it like a couple of times, maybe a few times [...] I know the game, I know how it's done, I know how it works." He was first arrested at 19, while in Atlanta, for trespassing. At 22, he was arrested for possession of cocaine. Later, after moving back to Boston, he would be arrested for various other offenses, including assault and battery with a deadly weapon after getting into an altercation with another man he had gotten to know on the streets. Over his life course, Tim has been arrested eight

times—many more times than Ryan. Moreover, Tim has experienced multiple negative encounters with police, his first at the age of 13 when he was “walking downtown [in Boston] and they tried to stop me and harass me.” And unlike Ryan, whose main interactions with state-sponsored agencies were through halfway houses and sober houses, Tim’s main interactions with the state have been through homeless shelters and the police. When I asked Tim who he is closest to in life, he told me: “Nobody but my mom.” Yet, Tim’s mom hardly figures into his daily life. Still living in Roxbury, she regularly attends church and is thinking of moving into a retirement home. While she is vaguely aware of his life on the streets and his many encounters with the criminal justice system, she has told him: “I sympathize with you, but I got to take care of me.”

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The childhood and adult experiences of Ryan and Tim illustrate both the commonalities and the differences observed among the 49 men and women in my sample. While my motivation for this study centers on understanding the profound differences in how individuals of different races and classes experience criminal justice processing, I was struck by the many similarities in my respondents’ adolescent experiences of substance use, delinquency, and alienation in schools and at home. Feelings of alienation and stigma in school, experimentation with drugs and alcohol, family stress, and low levels of parental control and attention exist across race and class lines. And yet, despite these similarities, respondents in my sample who grew up poor or working class, especially those who are racial/ethnic minorities, often recounted more frequent encounters with police and harsher experiences with the court system during their adolescence and early adulthood.

In this chapter, I will: (1) reveal commonalities in experiences with alienation and stigmatization from family and school, as well as commonalities in experiences of delinquency and substance use, noting the uniquely pleasurable experience of drug use among the middle class and the uniquely practical experience of drug selling among the working class and poor; (2) show how the spatial, cultural, and moral boundaries of race and class shape the way middle-class, and even working-class white youth are able to evade and negotiate encounters with police and the courts in ways unavailable to their minority working-class and poor peers; and, (3) suggest that these disparate childhood encounters with police, courts, and other legal authorities set the stage for divergence along race and class lines in criminal justice experiences in adulthood, despite similarities in substance use and other forms of delinquency in adolescence.

These findings intervene in contemporary debates among criminologists about the prevalence of delinquency and crime among disadvantaged adolescents and adults as compared to their advantaged peers. For the better part of the twentieth century, American social scientists operated under the assumption that most crime is a problem unique to the poor and marginalized racial/ethnic minorities and immigrant groups living in urban areas. Classic theories of violence and delinquency, such as social disorganization theory (Shaw and McKay 1942) and strain theory (Merton 1957), were developed under this assumption. Indeed, the Progressive Era movement to develop a juvenile justice system was led by middle-class white women who were concerned about what they perceived to be an epidemic of deviance and delinquency among inner-city, ethnic (e.g., Irish) white and poor children (Platt 1969). These assumptions were supported by official arrest statistics that have shown (and continue to show) higher rates of arrest for various delinquent acts among youth from working-class and poor families, especially those who are racial/ethnic minorities (Elliott and Ageton 1980).

As early as the mid-twentieth century, however, scholars began to question this basic assumption (Nye, Short, and Olson 1958). In more recent decades, researchers have questioned the relationship between delinquency and race/class from various angles (see Tittle and Meier 1990); most commonly, scholars debate whether official arrest statistics reflect actual rates of delinquency or, instead, unequal enforcement of laws at the neighborhood or individual level (see Thornberry and Krohn 2000). These debates are far from settled (see Shoemaker 2009, chapter 6). On the one hand, some analyses of self-report data suggest that various kinds of delinquency are common across all class groups—and perhaps even *more* common among the middle- and upper-classes (Tittle and Meier 1990; Vaz 1969; but see Elliott and Ageton 1980). Scholars have also documented parity in both drug use and drug distribution across racial groups (Tonry and Melewski 2008). On the other hand, more serious forms of delinquency appear to exist at higher rates among the poor and members of marginalized racial/ethnic groups (Elliott and Ageton 1980; Hawkins, Laub, and Lauritsen 1998; Morenoff 2005).

This chapter does not attempt to assess the prevalence of delinquency across race and class lines in the Boston area; rather, I seek to reveal how race and class statuses shape the way delinquent behaviors are experienced among a sample of individuals who all engaged in some form of delinquent behavior in their adolescence. All of the men and women in my sample—whether they grew up rich or poor—engaged in either drug use, drug distribution, petty theft, or other minor forms of delinquency in childhood. Sometimes these engagements were long term, resulting in substance use addictions or careers in the drug trade; other times, these engagements were fleeting. For all of the 49 men and women I interviewed, they were ultimately caught by legal authorities and arrested for committing a criminal act at some point during their life—the majority of them experiencing their first arrest in adolescence.

The fact of their arrest differentiates the individuals in my sample from most people who engage in delinquent behaviors. Most of the time, people are not caught by legal authorities when they engage in most forms of victimless criminal behavior (see Alexander 2012 on drug violations), and the majority of police-civilian contacts do not result in arrest. Research relying on observations of police encounters has documented how one's race, class, gang affiliation, and neighborhood-level poverty and racial composition are associated with the likelihood that an individual is arrested (Sampson 1986; Smith 1986; Tapia 2012); this research tends to find that whites and those of higher-SES (especially if living in high-SES neighborhoods) are less likely to be arrested, net of legal factors. And recent ethnographic and interview-based accounts of middle- and upper-middle-class (often white) adolescents engaged in drug dealing and other delinquent acts reveal how the vast majority of them do not encounter, much less face arrest by, the police in their suburban communities (Jacques and Wright 2015; Mohamed and Fritsvold 2010). But what about the middle-class and/or white individuals who do encounter legal authorities—how do they and their families manage these moments of engagement with the legal system as compared to their working-class, poor, and racial/ethnic minority peers?

Scholars have yet to engage in a comparative, in-depth analysis of the diverse experiences of delinquency *and* criminal justice contact—from police contacts and arrests to court processing and incarceration. We know very little about policing and court involvement among adolescents from privileged backgrounds. Indeed, most studies of middle-class delinquency highlight the lack of criminal justice entanglement among this group (Chambliss 1973; Mohamed and Fritsvold 2010; Jacques and Wright 2015; Singer 2014). Moreover, we know very little about how delinquency is managed and experienced differently along race and class lines within *similar contexts*. In any one study, for example, researchers tend to focus either

on the rich or the poor in isolation; rarely do researchers consider these groups in comparison. And when researchers do, they often draw on research from other ethnographies to draw out comparisons. For example, Jacques and Wright's (2015) study of 30 mostly-white suburban Atlanta drug dealers provides insight into how these dealers obtain drugs, sell drugs, and hide their illicit activities from their parents and legal authorities; yet, to make claims about how suburban drug dealing is different from urban drug dealing, the authors rely on other ethnographic accounts of drug dealing among the poor rather than a comparison sample of drug dealers in urban Atlanta. Such an analysis relies on comparisons across different social, political, and legal environments.

By focusing on the experiences of men and women who have all experienced the criminal justice system in the Boston area,³⁴ my analysis highlights the way race and class backgrounds matter among individuals facing similar political, social, and legal contexts. To be sure, childhood and adulthood neighborhood context still varies in my sample—and I find that neighborhoods and neighborhood-level community organizations matter deeply in understanding varying experiences across race and class lines in Boston (see also Berrien and Winship 2002; Braga, Hureau, and Winship 2008; Harding 2010). Age varies as well, though most individuals in my sample experienced adolescence in the late 1980s and early 1990s,³⁵ when Boston experienced declines in youth violence (Berrien and Winship 2002). Despite these variations, the common legal environment in the Boston area presents common features that all respondents in

³⁴ While all respondents have experienced some form of criminal justice processing in the Boston area, a majority of respondents also encountered court processing in other cities in Massachusetts or even in other states. When respondents discussed these non-Boston-area cases, they often drew helpful contrasts between their experiences in Boston and their experiences elsewhere. In my analyses, I focus mostly on defendants' experiences in the Boston area.

³⁵ The average birth year in my sample is 1976 and the median birth year is 1977. Year of birth ranged from 1951 to 1994.

my sample have faced at some point. Therefore, my analysis seeks to be closer to the comparative analysis of William J. Chambliss (1973) who, writing more than four decades ago, compared the delinquent behaviors of, and community reactions to, two groups of boys living in the same community and attending the same high school but of different class backgrounds. Chambliss showed that the upper-middle-class white boys (the Saints) engaged in similar levels of delinquency as the lower-class white boys (the Roughnecks), but the Roughnecks were more likely to get in trouble with members of the community and the police. He argued that the Roughnecks' unequal treatment was a result of the community's biases, the differential visibility of the Roughnecks' illicit activity which often took place in public spaces, and their disrespectful and unapologetic reactions to the police. Missing from Chambliss' examination, however, is an analysis of race/ethnicity (in addition to class) as well as an analysis of the ramifications of, and responses to, criminal justice contact.

Overall, this chapter introduces the lives of the individuals who make up this study. Focusing on their experiences of delinquency and legal contact in adolescence, I show their common experiences of substance use, delinquency, and alienation. At the same time, I show how race and class shape adolescent trajectories and lay the foundation for inequalities later in life.

Unfortunate adolescence, for richer and poorer

No matter their race or class background, the individuals in this study all experienced various forms of trauma, alienation, stigma, or unhappiness in adolescence, albeit to varying degrees. Traumatic experiences such as parental abuse, suspension from school, or even bouts of homelessness were more common among the poor and the working class. However, feelings of loneliness and alienation at home or at school pervaded even the narratives of the more affluent

individuals in my sample. For some, the use of drugs and alcohol were an attempt to cope; for others, though, the use of psychoactive substances began by chance as a pleasurable experiment and often developed into full-blown addictions that contributed to their feelings of alienation as much as they served as an escape from them. When drug use transitioned into drug dealing, it often occurred within the context of peer influences from friends in the neighborhood or at school. For the poor, drug dealing often served as a way to make money amidst limited occupational prospects.

Alienation at home and at school

As adults at the time of their interviews with me, the majority of the individuals in my sample exhibited depressive symptomatology, had been diagnosed with depression by a mental health professional, and had talked to a mental health professional within the past year. The interview survey administered at the beginning of each interview captured these descriptive statistics. In response to a two-item question used by physicians to screen for depression, 33 of 48 (69 percent) respondents answered yes to at least one of the questions, indicating potential depression.³⁶ In response to the question “Has a doctor or other health professional ever told you that you have depression?”, 30 of 49 (61 percent) respondents answered yes. And in response to the question “In the last year, have you talked to a mental health professional such as a psychologist, psychiatrist, psychiatric nurse or clinical social worker about your health?”, 34 of 49 (69 percent) respondents answered yes. These responses do not vary by current class status or childhood class background, but they do vary by race. Blacks are less likely than both whites and

³⁶ I relied on the two-item screen for depression described by Whooley et al. (1997). This two-item screen for depression has been shown to capture nearly everyone who would be diagnosed as depressed in a detailed examination by a medical professional. However, the screen has a high false positive rate. In one study, for every one true positive, there were five false positives (Arroll, Khin, and Kerse 2003). Such a high false positive rate is slightly less likely in my sample given other confirmatory indicators of depression.

Latinos to report having ever been told by a doctor that they have depression (only 5 of 17, or 29 percent reported in the affirmative), and black respondents are slightly less likely to respond yes to the questions regarding depressive symptomatology (9 of 17, or 53 percent respond yes to each question).

Moreover, throughout my interviews, I often learned of other mental health problems faced by my respondents. For example, Donna (W, P, P), a white woman in her forties, told me that she suffers from Post-Traumatic Stress Disorder (PTSD) from living on the streets and in foster homes since the age of 12. She also suffers from neuropathy (nerve damage in her hands and feet) but refuses to take her medications because “they make me cry.” Meanwhile, Scott (W, WC, P), a white man in his early fifties, suffers from obsessive compulsive disorder and schizophrenia. In his twenties, he worked as a cook and then in construction but had to stop in his thirties because of his worsening mental health. He has been on Social Security Disability Insurance (SSDI) ever since. The high rates of mental illness and addiction observed in my sample have been documented in other samples of former offenders in Massachusetts (see Western et al. 2015 who sampled individuals recently released from prison).

The depression and mental health difficulties that many in my sample report in adulthood are reflected in their accounts of their childhood experiences at home and at school. Home and school are two central institutions of American adolescence. Social control theories of delinquency posit that the quality of an adolescent’s attachment to his or her family and school shape the likelihood of engagement in delinquent behaviors (Hirschi 1969; Laub and Sampson 2003; Loeber and Stouthamer-Loeber 1986). For the individuals in my sample, home and school were often stressful environments, where they felt alienated from parents, teachers, and sometimes their peers. I am unable to determine whether this alienation is a cause or

consequence of respondents' childhood experiences of depression and mental illness, but they appear to go hand in hand. And for some, their experiences of alienation, depression, and mental illness encouraged greater involvement with delinquent peers in school and during unstructured time in the afternoons and on weekends.

Some of the most extreme cases of alienation at home involved parental neglect and/or physical and verbal abuse. Donna (W, P, P) and Tim (B, P, P) both experienced parental neglect. Donna grew up in an unstable, single-parent household in Brockton, a city just south of Boston. Her father, who suffered from alcoholism, was never in the picture, whereas her mother, who suffered from mental illness, would verbally abuse her, often telling her: "You'll be in jail by the age of 13." But just before her thirteenth birthday, her mother left her in the foster care system. And at 14, she was arrested for the first time for possession of marijuana in Boston Common, where she was hanging out with several other teenagers. Tim was also left to fend for himself by his mother, though unlike Donna's mother, Tim's left him in the hands of a relative rather than the state. In sixth grade, Tim's mother left him with his aunt in public housing in Roxbury while she tried to focus on her own priorities in life: "I think she felt she could make it better without me being there." Tim still has a relationship with his mother to this day, but she never really raised him. As Tim recalls, "She tried her best. She's a single parent, and she tried her best [...] I only went home to my mom on the weekend. I'd see her every once in a while. Sometimes I went two or three years without seeing her at all."

Beyond neglect, some respondents survived physical abuse at the hands of their parents. For example, Mary (L, WC, WC), a Latina in her early twenties who grew up in a two-parent household, witnessed her father's violence throughout her adolescence. Mary described her father with ambivalence. On the one hand, she felt that he is fun to be around and has an

endearing personality, but on the other hand, she fears his anger and episodes of violence. She recounted to me that he suffers from alcoholism, which contributes to his violence:

So, he was always binge drinking, and when he binge drinks he gets angry. He gets violent with everybody [...] I remember the first time I told somebody about it was in middle school. I was just talking to my best friend and it slipped out that “Oh, my dad beat me the other day,” and she’s like: “What?!” And I’m just like, yeah. I thought ... it was normal, “Oh this is so daily to me,” it’s like “Whatever.”

When Mary graduated from high school, she moved in with her boyfriend after a particularly violent episode with her father. As she recalls, “Me and my father got into an altercation, and it was really bad that I was actually hospitalized [...] I had a ruptured eardrum and had a concussion, like it was just bad.” Justin (W, WC, P), a white man in his late forties, also experienced physical abuse. He lived in a studio apartment with just his father. His father would beat him regularly. He recalls that his childhood was “horrible.” He told me, “We lived in a studio apartment. It was a bedroom [and a] kitchen—yeah, it was awful. And we just we had a very stormy violent relationship growing up [...] So yeah it just when you have two people in a room and especially when one of them beats the other one up, you know?”

Aside from these extreme cases, other respondents more commonly experienced hectic households, full of partying or other forms of noise and chaos. Many of their parents, like the parents of Mary and Donna, also suffered from mental health or addiction problems. Jason (W, MC, MC) was adopted at birth by a mother who was a clinical psychologist and a father who was a business manager and co-owner of a nightclub with Jason’s aunt. Jason recounts spending much of his childhood in these nightclubs with his father and aunt, and he recalls how alcohol from the nightclub was readily available in their house. His first drink was at 13 during one of his older sister’s keg parties at their house:

It was my sister keg's party. She used to throw keg parties, and we had booze because my family owned nightclubs and we had boxes of booze like this and I remember the first time my sister got drunk and they were drinking bottles of Absolut Vodka in my aunt's basement from the club that was stored in the basement. Lots of parties.

Other individuals in my sample recounted trying alcohol or other substances for the first time during family gatherings and parties. Michael (W, P, P) grew up in Somerville in a single-parent household. His mother used to throw regular house parties with strangers and even sold drugs in a nearby housing project. Michael remarked upon how his mother's actions desensitized him to the presence of drugs and alcohol: "I mean, the drinking and the parties I'd seen, you know, so I grew up around it. It wasn't a big deal." For Kema (W, MC, MC), her father—an engineer who drank a six pack of beer a day—not only allowed her to drink underage in high school but actively encouraged it. She told me, "I think my parents put it [alcohol] in the bottle, seriously. Seriously. [...] my father would find empty bottles of alcohol in my car, and it was a joke. He would say 'I have to get you this [alcohol] because you like it.'"

Some respondents' parents were simply inattentive. This inattention appeared most commonly in the narratives of respondents who grew up in working-class households, where their parents had to work long hours. In such households, children were left mostly to their own devices, and parents rarely knew the details of their activities after school (see Lareau 2003). Richard (B, WC, WC), nearly forty-years-old, grew up in a two-parent household in a mostly-immigrant black and Hispanic neighborhood in a city on the north shore of Massachusetts, just outside Boston. His parents worked long hours and, as a result, they were unaware of the small fights—and later, the drug dealing—that he began taking part in around the neighborhood. In the following quotation, Richard ties his parents' long working hours to their ignorance of his after-school activities:

Richard: So that's when I first started getting my first taste of the streets and stuff like that. I remember when I was young [...] we'd used to fight on the basketball court, you know? I remember I got jumped I got jumped on the basketball court. I was fighting this one kid and this other kid came in because the kid thought I don't know he maybe thought I was soft or whatever but he threw the ball at me. And I ended up throwing the ball back. Now, these kids they had been around this court for a couple of years, been around this neighborhood. Now, I had just moved to this neighborhood um and um they ended up jumping me and um but I held my own and I came right back to the court. They'd seen me and they never fought me again but they knew—they weren't that much older than me—but they just knew, you know, I had a little hard to me so...That's what

really started turning me on. Now, previous to that, you know, I dived and dabbled, you know, playing around my brothers, but my parents did a great job, you know, at that time in their lives with their children but unfortunately my parents worked a lot of hours. They was not from this country so they worked hard for everything for everything they did. So a lot of times you'd come home and they wasn't there.

Matt: What were their jobs?

Richard: My mom was a nurse and my dad worked in a group home. So my dad worked fewer night shifts but he also but he would stay over and work the first shift and come back to sleep the second shift. So... Either he'd be asleep or sometimes we'd just he'll go second shift and night shift and he'd only come back in the morning so I would be asleep. My mom never be there because she was working as a nurse and she was pulling crazy hours. She'd almost pull 80 hours a week so it was just it was a lot. So a lot of times they wouldn't be home so a lot of issues I was going through--plus I was a quiet child and I kept a lot to myself--so a lot of issues that were going on in the household I wouldn't really tell them what was going on until they seen a drop in the they'd seen the um...they'd see-- one time they came to school because there was an issue, you know? They'd they'd came from different countries so they had a different mentality so they talked to me and they "you got to do this, you got to do that...", you know, but I'd tell them I didn't think they understand that, you know, in the United States things run a little differently. So, you know, of course they're taking care of the household--so stuff happens. I don't fault them. They did the best they could.

In this quotation, Richard also refers to his parents' immigrant status, suggesting that they were unable to fully understand the realities of street life for black boys in the United States because they were not native to the U.S. Jackson (B, WC, WC), in his mid-twenties and the son of a Haitian immigrant, and Caleb (B, MC, MC), also in his mid-twenties and the son of Ethiopian immigrants, all described similar experiences of distance, given their parents' lack of familiarity with (black) American culture. Research on immigrant assimilation and downward mobility among black immigrants to the U.S. reveals the powerful role that residential segregation and experiences of discrimination play in shaping social life among second-generation blacks (see Waters 2009; Waters, Kasinitz, and Asad 2014).

Respondents' childhood experiences, especially among those who grew up working class or poor, were also profoundly shaped by material hardship. Tonya (W/N, P, P), who described her parents as "Vermont Hillbillies," grew up in western Massachusetts. When her father was injured on the job, her family went on welfare. She told me: "It was very difficult for me to grow up. Everybody had the best ... the best brands of stuff, and I had K-Mart. So, it was difficult." Other respondents described being aware of the fact that they were on welfare as children. After his mom lost her job, Gregory (B/L, P, P) recounts that "We were full on welfare [...] She had

\$75 dollars, every two weeks? And the rent was \$75 dollars a month, so she had some budget planning, saving money.”

Watching parents struggle to make ends meet took a toll on some of my respondents.

Often, they strove to find ways to contribute to the household, sometimes through illegal means.

Royale’s (B, WC, WC) story is illustrative:

Royale: [...] So growing up as a child, you know, young children in an impoverished neighborhood of course, you know, the things they like, you know, nice sneakers and nice clothes and nice book bags and...you know now I understand where I come from and thinking and understanding now but at the time I was thinking that way because of that but I like nice stuff--

Matt: Did you steal stuff ever? Or was your mom able to buy stuff--?

Royale: Yes! My mom spoiled me so she always bought me what I wanted. I don't know how she got it. Now that I'm an adult—well, as I got older, I began to say, ‘You know something. I'm not going to take it from her anymore. I'm going to get it myself.’ But that's when the life of crime began. I didn't want to put that pressure on her anymore.

Matt: Oh, ok. Like at what age?

Royale: [sighs] By the time I was... 14...14. I started deciding that I can't afford to be making her um buy me these nice things because she can't really afford it. I began to grasp the concept and understand that she can't afford that. Look at the bills she's paying—she can't even handle that. And I love her. I have to earn for me to take that burden off of her. [...]

Royale’s desire to purchase nice things for himself without asking his mother for money contributed to his decision to sell drugs. Royale’s motives corroborate rationales for drug dealing provided in other ethnographic accounts of urban youth and adults (see Anderson 1990; Jacobs 1999; Venkatesh 2006).

Despite the myriad disadvantages in their home lives, a good number of respondents recounted moments of joy, playfulness, and love. It would be not only empirically inaccurate, but also too theoretically convenient, to suggest that their lives were only full of trauma and hardship from the outset. For Joseph (B, MC, WC), a black man who grew up in Roxbury, his home was a safe haven and nurturing environment, especially as compared to his neighborhood. His mother, a college-educated receptionist at a major company, doted on him and instilled a work ethic in him by making him do chores: “I only had um really basically two chores: walking my dog and

taking out the trash, you know what I mean?” His step-father, a construction worker, bonded with him over various hobbies. As Joseph recalls:

He and me bonded. He introduced me to bowling, you know what I mean, more of that camp thing, horseback riding, and stuff like that there. So he was more of a bonding with me man, you know what I mean, but mom was more of...How could I say it um...? She kept me in line. Like my stepfather let me get away with a little more than my mom did. You know what I mean?

Like Joseph, Brianna (W, MC, WC)—who grew up in Somerville, a city north of Cambridge—also recounted a joyful childhood. While Brianna’s home was not without its chaos (her parents drank, her mom worked long hours, and her parents often verbally fought when they would come home after their nights out bowling), she recalls a household full of love. She told me: “I’ve five siblings who are—like three of us are a year apart from each other, like stepping stones. So, very family oriented. Very—[we’re all] friends. It [growing up] was a good time, yeah. We got into trouble together and we all celebrated together. You know what I mean?” Brianna told me that she and her mom were so close in her childhood that they would freely talk about boys and sex. About her relationship with her mom, she said, “I was never afraid to ask or tell her like bad things that were going on in my community like my neighborhood or the kids or people at school.” Even Mary (L, WC, WC), whose father suffers from alcoholism and is physically abusive, reminisced to me about how fun her father could be when he was sober: “Even though he gets violent when he’s drunk, he’s the coolest guy. He’s a young soul. Even I would chill with my dad.” She also noted that her father was a soccer coach when she was little: “Every Sunday, we’ll be in the soccer field all day.”

Like the home, school was also an institution in which most of the individuals in my sample experienced prolonged forms of alienation. The overwhelming majority of respondents completed high school (45/49, or 92 percent), and a considerable minority of respondents went on to complete a four-year bachelor’s degree or higher (10/49, or 20 percent). While my sample

is less educated than the general population (about 33 percent of Americans over the age of 25 reported having a four-year college degree, according to the 2015 Current Population Survey), my sample, by design, contains a fairly high number of college-educated individuals who have nevertheless come into contact with the criminal justice system over their life course. Even if they completed high school or even college, most respondents experienced alienation or stigma in schooling contexts. Some dropped out of high school or college, but for those who stayed in these institutions until graduation, staying in school often required that they cope with boredom, detention, suspensions, misunderstandings, poor grades, and the lure and threat of delinquent peers.

Some respondents attended well-resourced elementary and secondary schools. Christopher (W, MC, P), for example, went to an expensive Catholic school in South Boston. While he recalls doing well in some of his classes, he was generally a very disruptive student. He was suspended a few times, once for mooning his teacher in the middle of class. He was ultimately expelled from the school, and his aunt and uncle, who had paid for him to attend, “were very disappointed obviously, and, you know, basically said: ‘You’re not going to [another] school. You’re going to work and get your GED.’” Joseph (B, MC, WC) also attended a Catholic school but stayed only through the end of elementary school, when he transitioned to his local public school. He told me that in high school he would frequently cut classes, and his mother never found out; the school did not report on his absences. Kema (W, MC, MC), who lived in several different states as a child, attended a California public high school in a high-income neighborhood. While she recalls enjoying some of her classes, she found her school to be socially isolating because of the upper-class status of her classmates. Although she had similar material resources as her peers (her father was a college-educated engineer who bought her a car

at 16), she still felt isolated from her classmates, who were a different kind of wealthy that she describes as unique to California. About moving to California and acclimating to her new school environment, Kema told me:

The thing is—because we moved there at 13, I didn't have that many friends because you establish them at a young age and then when you move into—especially in California because California is such that um... you know... You know, Matt, there are many people who are not from there... And it was a very cliquish school because it was upper-middle-class to upper class, wealthy parents, you know, very wealthy kids went there.

For Christopher, Joseph, and Kema, attending well-resourced schools did not protect them from feelings of isolation and frustration.

Most respondents attended local public schools, some of which were under-resourced and served families in low-income communities. For Royale (B, WC, WC), who grew up in Brooklyn, New York in the '80s and '90s, the lack of resources at his high school were striking. Not only was he exposed to violence in the hallways, but teachers and staff were ineffective in creating a nurturing learning environment. Reflecting on his high school experience, Royale told me, “The kids ran the schools! [...] [S]tudents were beating up teachers, slapping teachers, throwing chairs at teachers. So, it was like teachers were scared of students.” Royale also took part in this violence from an early age, noting that “I’ve been getting into trouble since the first grade. Fighting and not wanting to do the work and fooling around.” By high school, he “used to carry a gun” to school. Moreover, the police were often called to his high school, both reflecting the level of violence of his school context as well as contributing to his early childhood feelings of distrust toward police, teachers, and other authority figures (see Rios 2011; Shedd 2015). These feelings of distrust were also exacerbated by the conditions of his neighborhood (see Harding 2010): “I grew up in a very ... very dangerous neighborhood [...] A lot of crime, a lot of shootings, a lot of murders, robberies. [...] A lot of police harassment, you know?”

Such extreme cases of violence in school were not as common for the respondents in my sample who grew up and attended schools in the Boston area, even in low-income neighborhoods like Roxbury; yet, many still encountered teachers and staff who were unable to empathize with them and help them manage their daily stresses and adolescent problems (see Singer 2014 on the importance of meaningful relationships with authority figures in adolescence, even among suburban middle-class children). For example, Paul (W, MC, WC) who readily recalls being a “bully” in high school told me that he felt that his teachers were unsupportive. Even though he was a troublemaker, he notes that school felt oppressive for him because his teachers were *too* strict (contrary to Royale’s experience): “[Teachers] treated everybody like nothing. There was none of this laughing in class or the teacher making jokes. It was like...sit like this, hands together, head up. If you put your head down it was a smack on the table. And you had to sit like this, look forward, and pay attention. It was like prison. It sucked.” At the time Paul was arrested at 18 for an assault and battery, he was still in high school. His teachers were unforgiving—rather than seeking to understand him, they treated his arrest as expected, given his character. And his treatment from teachers in juvenile detention was even worse. Paul reflects: “Well, they [the teachers at his high school] kind of knew I was sort of a punk so they...you know they, you know, [said] ‘It was about time you got caught.’ And of course, the 10 days I was in [detention], I had to go to school in juvie hall and those teachers were assholes.”

Respondents who were diagnosed with learning disabilities also experienced alienation, both from the stigma of their diagnoses as well as the inability of teachers to effectively accommodate their disabilities. Mark (B, MC, P), an outgoing man who accompanied me on an engaging 30-minute walk from Central Square to Harvard Square after my recorded interview with him, told me that he was diagnosed with a learning disability in eighth grade. He recalls, “I

was that guy. I was in a little school next to the big school. I was that guy riding the little bus after the big bus.” I asked him if he had any fond memories of school—from teachers or peers—and he abruptly said “No” to each of my probing questions. For Scott (W, WC, P), who “barely” graduated from high school, his learning disabilities and diagnoses with mental illness so affected his schooling experience that he went through high school without ever finishing a book. The only book he ever read in full was *The Big Book*, a basic text used by individuals in Alcoholics Anonymous (AA): “The only book I ever read in my whole life was a big book Alcoholics Anonymous has ... never good at education. I learned how to read at AA.”

Experiences of alienation in school stemmed not just from teachers but, for some, their alienation was felt among their peers. Stephen Douglas (W, MC, P), for example, remembers how much he disdained his high school classmates. After moving from Mission Hill, a neighborhood in Boston, to Framingham, a city just west of Boston, he transitioned to a new school. He told me, “I thought it [the school] was the sticks. I hated it.” Compared to his school in Mission Hill, his new school was full of a bunch of “suburban kids” who “all acted like they were all ghetto and badass. And I just wanted to knock them out.” Much of his displeasure was about fitting in with a new peer group. At his old school, he told me: “I was popular. I had all these friends, and I was like the class clown.” Ultimately, he was able to convince his parents to send him to a technical high school. Even though he felt more socially integrated, he had a hard time adjusting to the potential opportunities of a technical education. He focused his studies on graphic arts but regrets that he didn’t learn a trade, such as plumbing. He told me, the students who studied plumbing “got their plumbing licenses as soon as they got out. They had a head start on everything.”

Respondents' recollections of their schools' resources and their engagement with their teachers and peers varied, to some extent, by their neighborhood—and so, by their race and their class. While most parents enrolled their children in their neighborhood public schools, some parents with resources attempted to move their children to better schools. Max's (W, MC, WC) parents—college graduates who worked as an engineer and an architect—raised him in Cambridge. While they felt that the public schools in his neighborhood were well-resourced, they worked to get him into another public school in North Cambridge because they were worried about his son's neighborhood friends—kids with whom he would steal bikes and throw rocks at cars. By enrolling Max in a “public school with like a lot of rich kids” in another neighborhood, they hoped they would encourage him to make new friends. But as Max told me, the plan didn't work: “it ended up that there were a few [neighborhood] kids whose parents wanted the same thing for them.” He still was able to spend time with some kids from his neighborhood during school, as well as after school when he returned home. And his delinquent behaviors continued: “By the time I got to be 14 or 15, the police got to know me by my first name.” Given their alienation from home and school, individuals in my sample were susceptible to the temptations of engaging in delinquent acts in their neighborhoods and among their peers in and outside of school. Withdrawal from home and school (social control institutions) coupled with affinity toward delinquent peer groups profoundly shaped the early delinquency of most of the individuals in my sample.

Several routes led to delinquency, but all were undergirded by feelings of alienation. For some, their feelings of loneliness directly led to depression and withdrawal into drugs and alcohol. For others, their alienation from their parents and/or teachers resulted in their deep investment in delinquent peer groups, who stole bikes, tagged buildings, smoked weed, or hung

out on railroad tracks and in abandoned buildings. Often, engagement in these activities was remembered as fun and exciting. And for yet others, alienation served as justification for engagement in unconventional means of making a living under the realization that their parents could not support them financially and their schooling could not be converted into a stable job.

Substance use and other forms of delinquency

All the respondents in my sample engaged in illegal behaviors at some point during their adolescence. While many debated the fairness of police stops and arrests, few denied that most of their police encounters and the overwhelming majority of their arrests resulted from their engagement in some form of illegal activity. That said, two individuals in my sample described what they perceived to be wholly illegitimate arrests. Caleb (B, MC, MC), a black man who suffered from back pain and worked in Information Technology at a large nonprofit in the Boston area, has been arrested twice in his life. He feels that his second arrest for possession of prescription pills (pills that he had been prescribed but did not have the prescription for at the time of his arrest) was illegitimate. Arnold (B, WC, MC), also a black man, was arrested for possession of an unlicensed firearm in a car that he was driving but did not own. For Caleb, he believes his arrest was illegitimate because he had a legal prescription for the drugs he was accused of possessing illegally. For Arnold, he believes his arrest was illegitimate because the firearm was not his and he had no knowledge of it being in the car. During my interview with Caleb, he believed his case would eventually be dismissed. During my interview and observations with Arnold, I observed him take his case to trial and be found not guilty. Aside from these two cases, most other cases in my sample were described by the individuals as legitimate, at least with respect to the criminal complaint having some basis in their admittedly illegal behaviors. While respondents may have questioned the legality of police tactics or

expressed frustration at perceived discrimination from judges or prosecutors, nearly all acknowledged some degree of factual guilt. Even Caleb and Arnold described engaging in illegal acts at some point over their life course.

What conditions were common routes to substance use and other adolescent delinquent behaviors among the men and women in my sample? For many, feelings of alienation at home or at school grew into depression, loneliness, and hopelessness. Engaging in delinquent behavior, particularly drug and alcohol use, enabled these individuals to withdraw from their unfortunate circumstances. For example, Nicholas (W, WC, P) described feeling “lost” as a kid. Growing up in a home with his mother, his step-father, and their children, he felt almost as if he were an interloper in another family: “I just felt like not a part of the family.” At 12, he ended up moving in with his biological father because his mother started seeing another man (a different man from his step-father). The whole process made him feel “blind-sided.” By the age of 16, he suffered from “serious depression” and an eating disorder. He associates his first attempts to drink and smoke pot with his efforts to cope with his depression: “I don’t know if the first time I drank I used alcohol to sort of escape from that. But, I do know that, you know, when I started drinking I instantly fell in love with it.”

Relatedly, drug use helped some cope with anxiety and depression by giving them the courage to make friends and be sociable while under the influence. When I asked why Christopher (W, MC, P) started taking pills recreationally, he remarked: “To fit in I guess or whatever it was [...] Looking back, I realize I was always looking for something in my life, you know, to fill whatever that, you know, void was.” John Blaze (W, WC, WC) described himself as an outsider as a kid; he didn’t have many friends. But drug use gave him confidence:

I wanted to be accepted. I wanted to fit in. I think even at a young age, I think I hated myself. It felt it difficult to be social, even with the girls, so I fit in with this crowd and the drugs made me – it made it easier for me

to open up! It made me able to talk to girls and have a social life, and I didn't feel that insecure about myself. It gave me the confidence I needed. I loved it.

Alienation in the home environment, specifically when driven by parental inattentiveness, also provided conditions that could enable children to experiment with substances in isolation. While a surprising number of the individuals in my sample first tried alcohol or other psychoactive substances among family members (especially in households full of partying), others first tried substances when parents were not home. As noted earlier, parents who worked long hours (often in working-class households) commonly left their children unattended after school. Children used these hours in various ways, sometimes getting into trouble with their friends or other times simply spending their time alone.

In addition to busyness at work, a handful of the parents of individuals in my sample left their children unattended because they were struggling with their own addictions. Red (W, P, WC) recounts having a strained relationship with his mother, who struggled with heroin addiction and alcoholism. His father, who died of a heroin overdose when he was 11, was never in the picture, and Red's mother's addiction structured daily life in the household, resulting in her lack of attention to his basic needs. Often, she would forget to feed him. Red told me:

Well, there was never dinner at home. Um I was I was alone a lot of the time. I have an older brother but we never got along um so I was I actually enjoyed going to school because I had friends at school. When school was over it was horrible because I had to go home and and I was by myself. So again that's when drugs came into play. It was it gave me something to do and I enjoyed the feeling. And I was by myself. Nobody could see what I was doing, nobody could stop me. I did what I wanted to do.

As this quotation from Red reveals, being alone and unattended provided both the environment through which he could engage in drug use as well as the motivation for his drug use. Drug use gave him "something to do" to cope with loneliness.

Many respondents in my sample recounted first starting to engage in delinquent behaviors with their peers. Criminologists have long studied the relationship between peer

groups and delinquent behaviors (e.g., Becker 1991 [1963]; Matsueda and Anderson 1998). Among the people I spoke to, drug use, vandalizing buildings, and other minor acts of delinquency were most often undertaken in a group setting. Indeed, most often an individual's first engagement in such delinquent acts was among friends. Brianna (W, MC, WC) described to me how she and her siblings ran around with other teenagers in her neighborhood in Somerville, a town just north of Cambridge. She recalls that once she was almost arrested when she was hanging out and drinking with a group of underage youth on railroad tracks. Many others—such as Joseph (B, MC, WC), who smoked weed in an abandoned building at 16 while skipping school, and Jimmy (B, MC, WC), who felt pressure to steal a bike after being prodded to by friends—recounted many instances of finding themselves in trouble amidst peers. Sometimes, such trouble—and resulting entanglements with the law—happen by pure association. For example, Joseph (B, MC, WC) recalls playing street hockey one day in the neighborhood with some friends. The police stopped and frisked them, and one of them had marijuana in his pocket. They were all arrested.

After repeated engagement in delinquent behaviors with friends, many individuals in my sample came to enjoy engaging in these behaviors, sometimes engaging in them on their own. In the classic book *Outsiders: Studies in the Sociology of Deviance*, Howard Becker (1991 [1963]) describes the process of becoming a marijuana user. He argues that this process transpires in a group setting, among peers who provide: access to drugs, the methods for experimenting with drugs, and ultimately, justifications for drug use. As Becker (1991 [1963], p. 60) writes: “In the course of further experience in drug-using groups, the novice acquires a series of rationalizations and justifications with which he may answer objections to occasional use if he decides to engage in it.” Such justifications can motivate future delinquent behaviors (see Sykes and Matza 1957).

This process unfolds in many of the adolescent experiences of drug use among the individuals I interviewed. Diego (L, WC, MC), who has smoked marijuana only a few times, first started with friends his freshman year of college. He recalls that he has only ever smoked in a group setting: “Yeah. So I think it was more of—many of the times have been... just like getting to know [other people]. It's always been in a group setting um...and I'd see it as a way to just get to like connect with like my friends.” Joseph (B, MC, WC) described how his first encounter with drinking and smoking was through peer pressure:

Matt: Yeah? Why do you think you started drinking?

Joseph: Peer pressure. They drinking. I guess it was it was always someone...that's a part of your little clique, your little crew, who's more advanced than the rest of us, you know what I mean? He was the one who introduced us to the weed, he was the one who introduced us to the drinking, to the cigarettes--'cause cigarettes were the first thing then the weed and then the drinking.

Matt: Was he an older guy?

Joseph: Uh, he wasn't older. He was just more experienced than us. Girls and you know you're always going to have that one person a little more experienced. So, it's like follow the leader you're going to do what he do, because it was cool. At least we thought it was cool back then. [laughs]

Once he was introduced to drinking and smoking, Joseph began doing it alone. Smoking weed, in particular, became a regular occurrence for him. Sometimes, he would skip school to smoke (recall his arrest described earlier in the abandoned building). Now, at the age of 50, he regularly attends Narcotics Anonymous (NA) meetings to manage his addiction to alcohol and other substances.

Unless and until substance use develops into a habit (as in the case of Joseph), substance use is often described as an enjoyable experience by many in my sample. There is pleasure in the process. In a process similar to the “ghetto trance” described by Mary Pattillo (2013 [1999]) or the “thrills” described by Jack Katz (1988), the individuals in my sample are lured in by the excitement of harmless, infrequent transgressions that can transition into more serious, recurrent forms of delinquency. Nicholas (W, WC, P), for example, left Massachusetts in his mid-twenties to live in Florida and take community college courses. He never finished these classes because

he was “partying my ass off!” This partying involved drug use: “I got into club drugs—I got into a lot down there. I got into, you know, I did a lot of things, a lot of crazy shit.” Ryan (W, MC, MC), who opened this chapter, recalled how college was a uniquely exciting moment for him using alcohol. About drinking, he told me: “[I]t [drinking] was more partying. Yeah, it was socially. It was ... Thursday, Friday, Saturday, Sunday during the day you know? ... I was never isolated in doing it, you know.” For Waine (W, WC, WC), who first started smoking weed at 15 with a friend and drinking soon after, his use of alcohol, pills, and other narcotics unfolded in the context of partying and pleasure on the job. A drummer in a few bands during his teens, he worked side jobs as a waiter and bartender before moving to Brooklyn in his thirties to try to make it in the music industry. While bartending, he would drink on the job, and while playing in bands, he would heavily abuse substances while on tour. He often thought that his use of substances might present a problem later in life, but things did not take a turn until his body began to physically wear down. He told me:

Matt: And when did you decide--ok. So when did looking back you think you developed sort of you realized you were having, you know, an alcohol problem?

Waine: I knew pretty--you know what's funny? I knew I had an alcohol problem when I was 18 years old. I remember having to drink seven volume rocks to get to sleep when I was 18. I remember going to bed one night--this memory is vivid --and I remember being this is going to be a problem down the road. I remember thinking that but with my lifestyle--I knew I had a problem at 18 for sure but it did not really hit me that I needed help until I was like 35.

Matt: Ok. What happened then? What was the impetus?

Waine: My body was talking back to me. I was getting hospitalized, throwing up blood all the time. I was physically addicted to alcohol, I was doing cocaine every night, pills. I was a mess. I couldn't I couldn't get my pills anymore and showed up to work showed up to work um a complete mess. As a bartender in New York City you can get away with that and my life enabled me to do all the stuff I wanted, you know what I mean, 'cause I could I mean playing drums in real rock bands and bartending in New York City, you know, you can you can be a disaster and get away with it so I was never called on my bullshit. It wasn't until--I used to have these stints of like throwing up blood for three days straight. I'd be hospitalized for like a month for dehydration from drinking and pills. But yeah. It was the physicalness because I thought "I got this, I got this" because I was still managing, I was just squeaking by with the pills, with the bands, with the work, but my body was like [chuckles] no way man. I was going to die pretty much at that point.

Waine's story of pleasure gradually eroding into sudden tragedy—such as a major hospitalization—is typical among the individuals in my sample who suffer from addiction.

Beyond the pleasure of drug use, drug selling was sometimes recounted as pleasurable, most notably by those from middle-class backgrounds. Amanda (W, MC, WC) described to me how she sold drugs on campus in college with her boyfriend. She and her boyfriend made several trips to Vermont to pick up “fairly large, for us, quantities of marijuana” to sell on campus. He had been selling when she met him, and, after moving into off-campus housing with him, she came to take part in his activities. She recalls how she was always “pro-legalization” with respect to drugs. She also recalls how unconcerned they were about ever being caught:

I don't know if it was just young stupidity but we both had that it can't happen to us mentality. Um...we thought and felt we were being careful. Everything seemed to be working so I didn't think that we could get caught. I don't know why. I mean we knew to drive a little over the speed limit, not speeding, get the car checked out before each trip, you know? I feel like some precautions were made and and in getting prepared for what we were doing but no not really any serious thought on what what would happen if we did or is a real threat that this that we could get caught.

It was only when they were arrested, charged, and convicted that things fell apart. She recalls remembering how, aside from her legal troubles, one of the most devastating aspects of her legal involvement was that she could no longer see her boyfriend, per the conditions of her bail. She told me: “Not only did I have the um the case stuff, you know, bearing on my mind, but I was stupid and young and felt I was in love for the first time and my partner had been tragically ripped from me by the, you know, the legal system, and our stupid decisions.” Amanda’s legal entanglement would ultimately contribute to her dropping out of college.

Those from working-class or poor backgrounds were less likely to recount drug dealing as pleasurable and more likely to recall it as a necessity, given economic constraints (see Contreras 2013 on constraints among poor youth of color and Loughran et al. 2016 on offending and rational decision-making among low-income adolescents). Recall from earlier, Royale’s (B, WC, WC) description of drug selling in order to buy clothes, shoes, and other accessories that he wanted but felt that his mother could not provide for him. To be sure, Royale also recounted the

lure of the streets (Royale told me, “I was infatuated with the street life at a very early age, you know? I was really attracted to it.”), but his motivation for drug selling in particular was economic, unlike Amanda’s described above. Gregory (B/L, P, P) explained that he started selling because “There wasn’t no work [...] It wasn’t easy, you know, selling, you know, weed or drugs or heroin. And that’s work.” Tim (B, P, P), whose story opened this chapter, also recounted how selling cocaine was borne out of the necessity to make ends meet. For Tim, using cocaine took priority and selling only complemented his addiction. Drug addiction and crimes of petty theft, shoplifting, and even drug distribution often reinforced one another. As Michael (W, P, P) remarks about cycling in and out of the system: “[I] do the 30 days, and then I stay out of trouble for a few years. And then I get arrested, get mixed up with the drugs, keep getting arrested for shoplifting. I got a lot of shoplifting; it's just money to support my habit.”

Not all of my respondents consider themselves to be addicted to substances (especially those who recount only smoking marijuana, such as Diego, described above); yet, a majority of them report eventually developing addictions and struggling with substance use disorders, such as alcoholism and heroin addiction. Such addictions frequently developed through turning points, such as injuries leading to opioid prescriptions or the death of a friend leading to extreme depression and use of illicit substances to cope.

For example, Amanda (W, MC, WC), a swimmer in both high school and college, was prescribed painkillers after an injury in high school. She recalls that her legal prescription to painkillers became inadequate at some point and she eventually developed an addiction. She told me, “my addiction had progressed, you know, all these years. Pain killer to like, like Percocet and Vicodin to Oxycontin so did that for a few years to Suboxone. Tried to get off Suboxone. Went to Kratom, which is still legal to buy.” Similarly, Kevin’s (W, WC, WC) turning point was

when he hurt his back while working as a carpet seller. When his prescription for Percocet ran out and he was low on money, he started doing heroin, a cheaper alternative to ease the pain. For Jason (W, MC, MC), who had already started drinking at the age of 13, his turning point came when his mom was diagnosed with cancer and later died. He told me, “Yeah. Lost my mom. We used to talk every day. Lost my mom. Got addicted to Dilaudid, and then my sister was always doing drugs. And one day, I was just like I'm so sad and my mom is sick, you know, here are some pills and, you know, opiates.”

Their addictions have resulted in social costs beyond the personal. Some respondents in my sample currently attend AA or NA (by choice or by court order), and many have lost ties with family and friends who have become exhausted by the consequences of addiction, such as overdoses and lost jobs. Many of these ties have been severed by their family members and friends. As John Blaze (W, WC, WC) told me, “My mother [...] kind of washed her hands of me, and she kicked me out on the street. And I think for a long time, she just sat by that phone and waited for a call that I was dead.” For some, though, removing themselves from unhealthy relationships with friends or family who only encouraged their drug use has been an important step on the road to recovery. Robert (W, WC, WC), for example, describes himself as a “lone wolf” these days. He recently moved to Boston from Worcester, where he left his family and friends to focus on his recovery: “I don't really talk to them now. I'm kind of out here and I just kind of doing my thing. All my friends, you know, they're not doing good. [chuckles] I probably shouldn't be associating with them at this point.”

Unequal encounters with the system, from adolescence and on

Despite similarities in delinquency and alienation in the home and school across my sample, working-class, poor, and non-white individuals in my sample are more likely to recount more

negative experiences with the police over the life course. In addition, they are less likely to agree that “The police treated me fairly [in my most recent arrest],” which was asked on the pre-interview survey. The differences are most divergent along racial lines, but also reveal a pattern along class lines. With respect to race, 14/29 (48 percent) whites agree or strongly agree that the police treated them fairly, whereas 5/17 (29 percent) of blacks agree/strongly agree and 5/20 (25 percent) of all non-whites agree/strongly agree. 60 percent of non-whites disagree/strongly disagree. With respect to class status at the time of the interview, a less striking pattern exists. Whereas 5/10 (50 percent) of currently middle-class individuals agree/strongly agree that the police treated them fairly, 7/22 (32 percent) working-class individuals agree/strongly agree and 7/16 (44 percent) of poor individuals agree/strongly agree. While the difference between the poor and the middle class surprisingly does not appear meaningful, the difference between the working class and the middle class appears more so. Of course, these differences are only suggestive of more general patterns, given that my sample is not representative of all defendants in the Boston area.

Overall, from the survey, racial differences are more apparent than class differences with respect to subjective feelings about police; yet, the median number of arrests over one’s life course reveal a surprising and different pattern in my sample. With respect to race, median number of arrests is slightly higher among whites (10 median arrests over their life) than among blacks (8 median arrests) and non-whites (8 median arrests). With respect to class, however, those who grew up in middle-class homes experience many fewer arrests over the life course (5 median arrests) than those from working-class (10 median arrests) or poor (12 median arrests) family backgrounds.

Taken together, the survey responses and the narratives provided in interviews suggest that both class and race still play an important role in vulnerability to police contact and arrest—largely to the disadvantage of blacks, Latinos, the working class, and the poor. Moreover, representative data on arrest rates have shown that blacks, Latinos, and the poor have a higher incidence of arrest than whites and those with higher education, though this varies by crime type (see chapter 1). In Boston, recent analyses of administrative data have found that blacks and Latinos are more likely to be stopped and questioned by police than whites (see Fagan et al. 2015; Farrell et al. 2004). At the same time, most of these police stops do not translate into arrest, and so they may not impact arrest disparities. As noted in Table 2 in chapter 1, for certain crimes, whites in Boston are charged at *higher* rates than their representation in the population. For example, whites are disproportionately charged at a higher rate in some Boston-area courts for OUIs and drug crimes, compared to their representation in the population. Some of this is due to the underrepresentation of Asians rather than of blacks or Hispanics, who are also overrepresented compared to their proportion of the population for many crimes listed in the table. But overall, charge (and by extension, arrest) disparities are worse for blacks and Latinos in Boston. For all crime types in 2012 in BMC-Central, blacks but not whites or Hispanics were disproportionately charged at a higher rate compared to their representation in city's population.³⁷ In Suffolk Superior Court in 2012, where more serious charges are adjudicated, blacks and Hispanics but not whites were disproportionately charged at a higher rate.³⁸

³⁷ Data provided to me on arraigned charges in BMC-Central in 2012 reveal that whites accounted for 47 percent of arraigned charges, blacks accounted for 36 percent, and Hispanics accounted for 13 percent. According to the 2010 Census, Boston is 54 percent white, 24 percent black, and 17 percent Hispanic.

³⁸ Data provided to me on arraigned charges in Suffolk County Superior in 2012 reveal that whites accounted for 24 percent of arraigned charges, blacks accounted for 50 percent, and Hispanics accounted for 24 percent. According to the 2010 Census, Boston is 54 percent white, 24 percent black, and 17 percent Hispanic.

How might we understand the production of disparate arrest and charging rates as observed in representative statistics? Given similarities in delinquency in my sample as well as in representative national data on drug use and distribution (Tonry and Melewski 2008), how might middle-class individuals be able to avoid negative encounters with the police compared to their less privileged peers? Social disorganization theories suggest that a breakdown in community and parental social controls or a lack of job opportunities explains higher arrest rates through the higher prevalence of criminal behaviors, especially violence (see Merton 1957; Sampson and Wilson 1995). Yet, such theories assume arrest rates to be unbiased indicators of criminal behavior and thus cannot explain how my sample of similarly-delinquent individuals have dissimilar experiences with police as well as dissimilar rates of contact with the system. Moreover, such theories do not account for the fact that violence can be directly shaped by state- and local-level governmental actions, not simply neighborhood-level disorganization (see Vargas 2016). Other theories suggest that police and legal authorities discriminate on the basis of race and class, contributing to disparate arrest rates. Both individual-level and neighborhood-level forms of discrimination are plausible explanations of the patterns I observe and are supported by myriad forms of evidence throughout the criminological and sociological literature (see e.g., Beckett et al. 2006; Fagan et al. 2015; Farrell et al. 2004; Tapia 2012). Indeed, there is evidence among the narratives of the men and women in my sample that support theories of pure discrimination, as I will describe below.

While theories of social disorganization and of discrimination are important and likely account for a considerable proportion of arrest disparities, neither considers the interactional processes between alleged offenders and legal authorities. Indeed, existing theories are largely captured by the differential treatment and disparate impact explanations described in chapter 1.

Such explanations are important in detailing the way that macro-level forces and the individual-level discriminatory actions of legal authorities may shape disparate arrest rates; yet, they provide little insight into how these arrest disparities are experienced in everyday life among individuals from different backgrounds and facing distinct social realities. An exception is Duck's (2017) detailed interview-based and ethnographic research on the interactional dynamics between police and citizens in one working-class black neighborhood. His work shows how surveilled African Americans respond to and interact with police through one of two processes: submissive civility or nonrecognition. He shows how submissive civility enables self-preservation in asymmetrical power relations with police, whereas nonrecognition may result in worse problems with the police when an individual resists an officer's directives, given the individual's perceptions of police illegitimacy, illegality, and refusal to recognize his or her dignity.

Building on the work of Duck and others, I consider how different race and class realities and social locations shape police-civilian interactions. I suggest that alleged offenders' differential ways of navigating policing likely contribute to observed race and class disparities, in addition to the unequal targeting of police resources. As Figure 3 from chapter 1 illustrates, such navigation is, in large part, determined by the macro-level realities of neighborhood-level inequalities and the unequal enforcement of the law. At the same time, I show that these broader social forces combine with everyday susceptibilities to police detection, everyday subjective interpretations of legal authorities, and everyday abilities to draw on cultural, social and economic resources to negotiate police-civilian interactions.

Specifically, I identify two processes that likely contribute to disproportionately higher arrest rates among the working class and poor in my sample. The first I term *police evasion*.

Police evasion is a process whereby individuals engaging in illegal behaviors rely on their awareness of the spatial boundaries of police activity to evade police surveillance and police contact. Spatial boundaries of police activity are racialized and classed, given that police in the Boston area target low-income, mostly-minority neighborhoods. Those who live in these heavily-policed areas develop ways to evade policing, similar to the framing resource of “cop wisdom” described by Stuart (2016) among mostly-black men on Skid Row. Yet, as I argue, strategies of police evasion are ultimately constrained by the structural realities of unequal police enforcement. The unequal evasion of police, then, is one way that middle-class and white individuals are less likely to be pulled into police encounters.

The second process is *police negotiation*. For those who do get stopped by the police, differential forms of police negotiation come into play. Drawing on cultural sociological work on symbolic and social boundaries, I argue that the moral and cultural boundaries of race and class manifest in interactional moments between police and civilians. While some researchers have considered the role of police or civilian (dis)respect and deference in shaping whether a police encounter escalates (Alpert, Dunham, and MacDonald 2004; Black and Reiss 1970; Duck 2017; Reisig et al. 2004), I offer a more detailed elaboration of the cultural power that is at stake in these interactions. These interactions are shaped by broader cultural fault lines between race and class groups in American society. I show that middle class and white working-class individuals are able to rely on cultural and moral boundaries as well as forms of social capital to negotiate their way out of arrest or negative police encounters in ways foreclosed to the poor and the black working class.

Conceptually, the two processes of police evasion and police negotiation draw on—and contribute to—broader sociological theory on boundary processes. From the classic work of Du

Bois, Durkheim, Weber, and Simmel to more recent interpretations from Pierre Bourdieu, Michèle Lamont, Mary Douglas, and others, sociologists have investigated the role of classification systems in shaping social identity, moral order, power, and social inequality (for reviews see, Lamont and Molnár 2002; Lamont, Pendergrass, and Pachucki 2001; Pachucki, Pendergrass, and Lamont 2007). Symbolic boundaries—defined as conceptual distinctions drawn between individuals, objects, or places—become social boundaries when they are objectified in social relationships by being widely-shared bases of exclusion from resources such as money, jobs, safe neighborhoods, honor, and recognition (see Lamont 1992; Lamont and Molnár 2002).

In her book *Money, Morals, and Manners: The Culture of the French and American Upper-Middle Class*, Michèle Lamont (1992) compares the symbolic boundaries drawn by upper-middle-class white professionals in France and the United States. Differentiating between three types of symbolic boundaries (cultural boundaries, socioeconomic boundaries, and moral boundaries), she argues that moral boundaries, or distinctions along the lines of moral character such as hard work and honesty, are an overlooked and highly salient feature of the mental maps of Americans. Later, in *The Dignity of Working Men*, Lamont (2000) reveals the importance of moral boundary work among working-class white and black men, who differentiate themselves from upper-middle-class men whom they view as exploitative and lacking honesty. She also finds that working-class men draw moral boundaries within their class group and against racial out-groups. Working-class white men view their black peers as lacking the morals of hard work and discipline, whereas working-class black men view their white peers as lacking the morals of compassion and care.

Research on symbolic boundaries has often been limited in its ability to make claims about social boundaries (see Lamont et al. 2001)³⁹, or what I have referred to in this dissertation as aggregate levels of inequality, such as criminal justice disparities. However, in line with more recent work on symbolic boundaries by Lamont and others that seeks to bridge levels of analysis (see e.g., Lamont et al. 2016), my analysis in this section seeks to consider how boundary work in micro-level interactions with police both reflects and contributes to social inequality—specifically, the unequal patterning of police evasion and police negotiation along race and class lines. I reveal how symbolic boundaries related to space (spatial boundaries), morals (moral boundaries), and shared cultural referents, tastes, and worldviews (cultural boundaries) shape micro-level interactions between police and civilians by serving as the common (or uncommon) ground upon which these interactions unfold. Scholars have suggested that feelings of social distance between police officers and the communities they police may shape officers’ interactions (e.g., Banton 1964). Through the cultural sociological concept of boundaries, I reveal the spatial, cultural, and moral classification systems that shape officers’ social distance from, and affinity for, certain groups.

Police officers in the United States are, by and large, working-class (and mostly white) men. For example, in the BPD, 66 percent of police officers in BPD are white (higher than their proportion in the population). The percent of BPD officers who are black is roughly

³⁹ In *Money, Morals, and Manners*, for example, Lamont (1992) refuses to definitively state that upper-middle-class white men’s symbolic boundaries necessarily translate into objectified forms of exclusion in social life. Some of this refusal is part of a larger theoretical critique of Bourdieu’s determinism—similar to my own critique in the previous chapter. However, some of this refusal is also Lamont’s careful analytic decision not to jump from the symbolic boundaries expressed in interviews to symbolic boundaries as they play out in daily life (which she does not observe). While I also do not observe police-civilian encounters in real time and thus cannot be sure whether the symbolic boundaries that my respondents (both alleged offenders and the handful of police officers I interviewed) express play out in daily life, I asked respondents to recount specific instances of police encounters in interviews. The procedure of asking interview respondents to recount specific instances (see Essed 1991; Lamont et al. 2016) gets us much closer to allowing for an assessment of how symbolic boundary work operates in actual moments—and thus may contribute to social boundary formation in the aggregate.

proportionate to the share of black residents, whereas the percent of Hispanic officers and Asian officers is less than their relative proportions of the population. The racial demographics of CPD is similar, except with respect to Hispanic officers who are represented in equal proportion to their share of the population.⁴⁰ Moreover, becoming a police officer in Boston does not require a college degree. Whereas detectives, sergeants, and commissioners may be more likely to have completed four-year college degrees than lower-level regular officers, the latter are more often engaged in everyday police encounters with civilians on the street. During a ride-along with two detectives in an unmarked car, I noticed that a car in front of us almost got into an accident after running a light. I asked the detectives whether they ever pulled people over for such traffic violations. They told me that such routine police actions are reserved for regular officers, not detectives. If something went wrong, they might call a cruiser or respond themselves in a life-threatening situation. But in general, detectives are less interested in minor infractions and more interested in working on long-term investigations, such as collecting evidence against an alleged drug dealer.

Given their working-class status and predominantly-white racial identities, police officers' moral and cultural boundary work in police-civilian interactions might include those like them (working-class whites) and exclude those they view as above them (the middle class) or below them (working-class blacks and the poor). Given the power (of arrest, physical force, detention, and even killing) wielded by individual police officers in micro-level interactions with civilians, these symbolic boundaries likely have individual and aggregate social consequences. Analyzing accounts of police encounters in interviews, I find that these predictions hold for all

⁴⁰ Police department racial demographics are taken from Governing.com, which analyzed the Bureau of Justice Statistics' 2013 Law Enforcement Management and Administrative Statistics (LEMAS) survey. Stable URL: <http://media.navigatored.com/documents/policediversityreport.pdf>

groups, except the middle class, against whom police sometimes draw symbolic boundaries that do not appear to have social significance. I show how these forms of boundary work play out in interactions—from the perspective of the individual defendants in my sample, as well as from the perspective of the handful of police officers I interviewed. I also show how the spatial boundaries of race and class make it so that members of the middle class are better able to evade police encounters altogether than members of the working class and poor.

Police evasion: the spatial boundaries of race and class

Police evasion is a process whereby individuals rely on their awareness of the spatial boundaries of police activity to evade police surveillance and police contact, even when they are not engaged in illegal behaviors. Evading the police helps to ensure avoidance of more serious forms of legal sanction and adjudication by the courts.⁴¹ Given that spatial boundaries of police activity are unequally patterned along race and class lines, police evasion is a process made available to middle-class and white individuals in a way that it is not made available to working-class, poor, black, and Latino individuals. Furthermore, the process of police evasion appears to play an important role in shaping unequal adolescent trajectories. In my sample, the median age of first arrest for those who grew up in working-class or poor households is 17 years old, whereas the median age of first arrest for those who grew up in middle-class households is 19 years old. With respect to race/ethnicity, the median age of first arrest for blacks was 16 years old, for all non-whites is 17.5 years old, and for whites is 18 years old. Again, my sample is not representative of

⁴¹ Most pathways into the criminal court system begin with some form of police contact, such as arrest or the writing of a citation. Yet, some paths into the courts do not require police contact. For example, individual civilians can file a complaint against another person. The alleged offender in the complaint would then be sent a letter in the mail asking him or her to show up to a hearing, where a clerk magistrate would determine whether there is probable cause to arraign the alleged individual for a crime. In Massachusetts criminal courts, this is referred to as a “show cause” hearing. If a determination of probable cause is made, then the individual will be summonsed to be arraigned to face charges.

Boston-area defendants; consequently, I am concerned with identifying the processes that may explain police evasion's uneven distribution. As noted earlier, other scholars have already documented unequal aggregate patterns of policing along racial lines across the country, and in Boston specifically.

When engaged in substance use, the individuals in my sample largely attested to the importance of privacy in evading police detection. The home was often noted as one of the safest areas where an individual is protected from police. For example, Kareem (B, WC, WC), who was currently living in a shelter despite holding down a job at a clinic for elderly patients, told me that he tries to smoke marijuana at his uncle's house. Even though marijuana had been decriminalized at the time and he could probably get away with smoking in his car "as long as you're parked and there's no keys in the ignition," he did not trust all police officers to go easy on those smoking weed. Some police officers still have an "old school attitude," he explained. But when smoking at his uncle's, he felt safe:

I'll go to a secluded area, or I'll go to an area where I now [there's someone] who doesn't mind [me] smoking as long as it's on the back porch or it's in the basement or something. [...] like my uncle's house, for instance. When the kids are asleep or...they're not home, I can smoke in his house; he doesn't mind.

Individuals who did not grow up in areas with heavy police surveillance but found themselves living on the street slowly learned the value of private space. Scott (W, WC, P), who grew up in Quincy, just south of Boston, realized the importance of privacy after his first time in jail: "After I got out of jail, I started drinking again. But I wasn't drinking outside; I was drinking at home."

Not all public spaces are equal in the danger they present. Different street corners or even whole neighborhoods were often identified as more dangerous than others. Recall the experiences of Joseph, Royale, and Tim, described in previous parts of this chapter. These are all black men who experienced police contact in public spaces—in their schools and on street

corners in their neighborhoods. While certain neighborhoods are more heavily policed than others, specific street corners draw police attention because of drug activity. When I was riding along with two officers, they showed me various areas that they target for drug activity. These areas were often around needle exchanges, sober houses, and homeless shelters.

Individuals I interviewed also drew distinctions between walking in public space and driving in public space. Cars can serve as a form of protection for those engaging in drug/alcohol use or even drug dealing as long as individuals are able to contain outward signs of such illegal behavior. For example, Wolf (W, WC, WC) recounted how he had never been arrested (though he had been stopped) for driving under the influence until 2014, despite having driven drunk regularly for nearly two decades. As he told me:

No OUIs up until this past year when I got my first OUI, which is amazing because sooner or later it was going to happen. I've been driving drunk almost 20 years. Not every single day but for the most part I'm like -and it's not like I try to do it to get caught but because I knew I could do it and I was good at it. I wasn't a sloppy drunk.

Wolf attributes his lack of detection to his ability to not be a “sloppy drunk.” In addition, Wolf’s racial identity as a white man likely shielded him from both unwarranted and warranted traffic stops (see Farrell et al. 2004).

The dangers of public space—which already place the poor at a disadvantage—are unevenly experienced along race and class lines in my sample. For example, Jimmy (B, MC, WC), who grew up in a middle-class neighborhood in Cambridge, remarked that his neighborhood generally did not have a heavy police presence. At the same time, he and his friends regularly drew police attention, in both his own and other neighborhoods. When I asked him whether he had ever been stopped by the police but not arrested, he recounted constant police harassment in childhood:

Matt: Have you ever --so I know about the three arrests but --have you ever been stopped by the police and then not arrested?

Jimmy: Yeah. A lot of times.

Matt: Yeah, tell me about those incidents.

Jimmy: It was just random. Like... 'cause all like when me and my friends used to walk home from school that's when you have the police following us or have us like "oh, what are you guys doing?" Or "where are you guys headed?" Like watching what we do. That's what they were mainly doing.

Matt: And so they'll stop you and talk to you?

Jimmy: Yeah. Like what are you guys doing? It was mostly like when I used to hang out in the neighborhoods and in different neighborhoods I would see I didn't know anything that was going on because I was just hanging out with my friends after school but after as soon as I go over there I see more police presence than where I live.

Matt: Were you ever stopped by the police and you had done something illegal but you got out of it?

Jimmy: No.

Matt: So each time they were just bothering you with little cause?

Jimmy: Yeah. [laughs]

Matt: Yeah.

Jimmy: "Stop hanging around here. You guys can't stand here. You guys have to move. You guys are too loud. This lady keeps calling us." [laughs] "Everybody has to leave now. It's curfew." That's what it was. [laughs]

Individuals in my sample who are currently without a home often perceive danger in places where those with housing did not. For example, in Cambridge, Central Square is often identified as a danger zone for those suffering from homelessness, especially if they have been identified by police in the past for drug dealing or using. For the everyday Cambridge resident, by contrast, Central Square is a vibrant area in between Harvard and MIT. Many graduate students and young professionals frequent the restaurants, coffee shops, and clubs along Massachusetts Avenue. They live in high-rent apartments along the side streets of the square. During my years as an undergraduate at Harvard, Central Square was the place we would go on rare occasions to treat ourselves to an expensive brunch on a Sunday or a quick burger at the only McDonald's in walking distance on a Friday night. For many of the poor individuals in my sample, Central Square is viewed in an altogether different light. For many of these people, their lives are structured around public service agencies in the square—the needle exchange on Green Street, the Salvation Army next to the fire station, and the homeless shelters around the area. Amanda (W, MC, WC) and Max (W, MC, WC) each referred to Central Square by various

pseudonyms (e.g., “Central Scare,” “Mental Square,” “Junky Central”) meant to highlight the heavy drug dealing and use that occurs amidst the brunching and clubbing of young professionals. According to many of the poor individuals I interviewed who live on the street, CPD officers, aware of the drug use and dealing, regularly stop and question them. At the same time, certain officers are known to be lenient: “There's a police officer named [redacted], and [he tells us] ‘As long as you’re not like [...] belligerent, [...] I'll let you be. But when those [school] kids are out there during school hours, absolutely not [no smoking of substances]. Otherwise, you're forcing my hand, you're forcing my hand’” (Kareem [B, WC, WC]).

Once an individual becomes known to the criminal justice system through a prior citation, arrest, or conviction, evasion becomes ever more difficult (see Goffman 2014; Stuart 2016). The individuals I interviewed come to recognize their heightened vulnerability to detection, seeking to avoid certain areas or interaction with certain individuals and institutions (see Brayne 2014). In his research on undocumented and documented immigrants in Dallas, Texas, Asad (2017) shows how legibility to the immigration system—either through prior experiences with deportation or simply by being formally included in the bureaucratic records of the system by acquiring legal papers—shapes the risk perceptions of all immigrants. Immigrants who have documented status also fear immigration enforcement and control, some even wishing they had not opted into the legal process altogether. Thus, Asad’s findings reveal how what he defines as “system embeddedness”—or, being included in the bureaucratic records of a legal system—leads to uncertainty among all immigrants, including those who have followed the law to the letter and are only included because they are on a pathway to citizenship.

Similarly, I argue that it is not just those who have active warrants out for their arrest who seek to evade the police in my sample; in addition, individuals who have served their time and

paid their debt to society as mandated by the court continue to fear, and seek to avoid, police contact. For instance, Michael (W, P, P) told me how he often avoids going into Cambridge because he has been arrested there before. He told me that, to the police, once you've been arrested, there's no chance of redemption: "To them, we're all guilty. We're all guilty of something to them." He recounted to me a recent experience of being stopped by the police in Cambridge:

Michael: Yeah. But I've been arrested in Cambridge before so I'm sure some of them have seen me or recognize or, you know, and then they'll like [say], "Oh, I remember him. Oh, yeah, Michael." And then they run my name and make sure I don't have any warrants. And then if I do they just come up to me: "Hey, Michael. How are you doing? We're just going to run your name just to make sure you ain't got a warrant"—even though they know I do.

Matt: Because they had just run it [before coming up to you].

Michael: Right. But then they can't do that legally. They just can't do that. They have to come up to me and engage in conversation. Oh, he was "acting suspicious"—the cure all, fucking "acting suspicious." How the hell do you act suspicious?!

Contrary to these general fears and attempts to evade police detection, there were a handful of individuals in my sample who recounted little fear of the police. I asked Max (W, MC, WC) whether he was "ever scared of police catching" him when he would leave his house to get "dope." He told me: "Not really. That was usually the last thing on my mind." Living at home at the time, he was more worried about drug dealers knowing where his parents lived than about being caught on the streets by the police. He told me: "I usually feel safest when I'm like when I'm meeting a dealer that's on foot." Those who recounted little fear of the police often recounted little fear in specific instances (as opposed to a generalized lack of fear), such as when they were high or when they really needed a "fix." In such moments, individuals rarely thought about the threat of police sanctioning. For example, Troy (W, P, P), who often ignored court summons' and has had multiple warrants out for his arrest, never worried much about being caught by the police while he was dealing and using drugs:

I never showed up for my court dates ... when you're running the streets, you're worried about getting killed or about getting money and all that. The last thing on your mid is going to court, so I have more defaults on

my record than arrests. I just don't go to court ... You know you're going to get caught eventually. I mean ... if you don't have dope, like you're sick, so you don't care ... All you care about is drugs.

To summarize, the process of police evasion relies on defendants' recognition and use of the spatial boundaries of race and class—boundaries that are constraining of evasion for some and enabling of evasion for others. Spatial boundaries exist between neighborhoods and between street corners within neighborhoods. There are also spatial boundaries between home life and public life, between those with access to housing and those living on the street. The individuals in my sample recount that vulnerability to police encounters on the street is heightened in certain neighborhoods and for certain kinds of people in certain areas, particularly those without homes and those with prior contact with the system. These spatial boundaries and ecological processes thus translate into race and class disparities in the frequency of police contact. My respondents' micro-level accounts are confirmed by aggregate-level racial/ethnic patterns of police stops and arrests in Boston (Fagan et al. 2015; Farrell et al. 2004).

Police negotiation: the cultural and moral boundaries of race and class

When evading the police fails and one encounters a police officer while engaging (or, being alleged to have engaged in) illegal behavior, the process of *police negotiation* unfolds.

Depending on the type of encounter, police negotiation can be more or less constrained and determined by police behavior. Relatively flexible encounters that allow for more negotiation tend to occur during everyday police-civilian interactions—encounters that for some members of criminalized populations can be rather routine and predictable (see Duck 2017; Jones 2014; Young 2014). By contrast, constrained encounters tend to occur when the legal system has already been informed of potential criminal behavior. Such encounters leave little room for negotiation on the part of the alleged offender. For instance, individuals who encounter police in

their home due to a 9-1-1 call, a search warrant, or a warrant for their arrest⁴² have little room for negotiation. In such instances, there is already a legal record established of a potential criminal problem.

Caleb's (B, MC, MC) arrest is a prime example of constrained police negotiation. When he was arrested for possessing pills without a prescription, he was at a friend's home where he had called the police to do a "well-being" check because his friend was having a mental breakdown. Caleb recalls little room for negotiation. After checking on Caleb's friend, the officers suddenly told Caleb, "put your hands up for a second" and "immediately started searching me." They found the pills on him and arrested him before he could utter a word about his prescription. When police arrived at Don's (B, MC, WC) house with a search warrant, he stood by and watched helplessly as the police scoured his place for drugs and drug paraphernalia. Don told me, "They was watching my house [...] And then they raided my house and they found stuff [...] they arrested me and they found drugs and money there." Amanda (W, MC, WC) recalls that when police arrived at her house with a search warrant, she could only stand by and watch them search through her belongings: "Yeah, so um they grabbed us, sat us down [...] one or two officers standing with each of us and then maybe a half dozen going through the rooms, searching, tearing the cushions, emptying the trash."

These constrained forms of police contact aside, there is room for negotiation in everyday street encounters (e.g., Terry Stops) and everyday traffic stops. I was struck by the frequency with which individuals in my sample recalled moments of the benevolent use of police

⁴² Search warrants authorize police officers to search a particular location, such as a home, to collect evidence in an investigation. For example, search warrants are often issued to collect evidence to build a case against a suspected drug dealer. Arrest warrants are distinct. Arrest warrants are court-issued orders to arrest an individual. These warrants are often issued by the court when a person defaults by not showing up to their court date for a serious offense.

discretion, whereby officers simply turned a blind eye to illegal behavior. Such recollections were common among white individuals. A typical statement of benevolent police discretion that involved little, if any, active strategy on behalf of alleged offenders is provided by Ken (W, WC, WC). Asked if he was ever stopped by the police for engaging in illegal behavior but not arrested, he told me: “Oh yeah [...] I mean because they’d catch us but then they’d give us a break. Like, we’d pour out beer—like, I had a cop in Philadelphia, you know, smashed some coke [cocaine] on the ground and said, ‘Get the hell out of here.’” Such benevolence in the use of police discretion requires little effort on the part of the alleged offender and can be classified as a form of differential treatment, or in-group discriminatory bias. Yet, many police-civilian negotiations require active strategy on the part of the alleged offender. Such negotiations with police involve alleged offenders attempting to draw on cultural and social resources to distinguish themselves as morally or culturally worthy individuals in the eyes of police. In such interactions, police officers’ cultural and moral boundaries are often intuited by alleged offenders, who are aware of stereotypes associated with drug dealers, drug users, and other criminalized social categories (see Stuart 2016).

When I spoke with police officers, they were rather forthcoming in articulating the ways they distinguish between “criminals” and non-criminals, or individuals worthy of their further investigation and those who should be given a pass. One officer who works for a university police department articulated moral boundaries against those above him, particularly middle-class professors. He said that many university-affiliated individuals are “entitled people,” then he corrected himself and said that he would actually describe them as “empowered” because entitled has a “pejorative meaning.” He felt that because so many students and faculty feel empowered, they often question the department’s policies (see Young and Munsch 2014 on

entitlement toward police among the college educated), which “forces us to be honest and transparent.” Another officer at another university campus scoffed about how students and faculty exhibit “entitlement” and feel that “we work for them.” Despite drawing such boundaries, however, neither officer articulated behaviors they engaged in that would result in harsher policing of those above them. But, one officer did note that respect is important to him: “If the person is compliant, respectful, polite, [and] well-mannered, we won’t ruin this kid’s life” (see also Piliavan and Briar 1964; Westley 1953).

In contrast to the boundaries they draw against those above them, when officers draw boundaries against those below them (e.g., the poor or racial/ethnic minorities), these boundaries are articulated in ways that suggest that they result in harsher behaviors by the police. For instance, another campus police officer, told me that he and the other officers in his department often have to be proactive in their policing of the streets surrounding the campus. He referred to “the projects” on the other side of campus, telling me that people from the community who are not affiliated with the university sometimes drive through campus. According to this officer, most of his department’s everyday interactions revolve around traffic stops that most often involve individuals not affiliated with the university. Moreover, when I went on a ride-along with two detectives in a city police department in the Boston area, these two officers shared with me the way they have become sensitized to differentiate between probable offenders and individuals who are not worth their energy. For example, they told me that sometimes they draw on the presence or absence of cultural markers related to middle-class status when deciding whether to let a civilian go after stopping them. One of the officers said, “If they are a person with a car, with a baby seat in the back of the car, and they’re on their way home to their wife

after going out to get milk, it's not worth it for that person, especially if they don't have a long record of traffic violations and citations.”⁴³

When it comes to drug use crimes, some police departments in Massachusetts have begun to establish both formal and informal policies around alternatives to arrest. Such policies provide room for negotiation among certain alleged offenders. A municipal police officer I spoke with drew inclusive boundaries toward worthy drug users, telling me that “a lot of these people with drug possessions are good people [... and the criminal justice system] isn't always the route to go and so we might want to get a social worker involved.” At least one department in the Boston area has a policy whereby individuals who are “cooperative” and “self-admit” to drug use can be put into contact with a social worker rather than be arrested. For a period of time, the Gloucester, Massachusetts police department initiated a well-known program that diverted drug users to treatment facilities rather than the courts (Marcelo 2016). Such discretionary policies can contribute to disparities, given officers' distinctions between worthy and unworthy drug users. As Elizabeth D. Scheibel, a former prosecutor in Massachusetts, commented about Gloucester's policy in the *New York Times*: “Selective enforcement [...of the law] could well have a disparate impact on the constitutional rights of other offenders” (Seelye 2016).

To varying degrees, the individuals in my sample are aware of, and often try to leverage, these symbolic boundaries when negotiating with police. Wolf (W, WC, WC) told me that the times he has been stopped while driving drunk and not arrested, he has sought to present himself as sober:

Matt: Did you ever get stopped any of these times when you were driving?

Wolf: Plenty of times, plenty of times.

Matt: Really? Then how did you get out of...?

⁴³ I did not audio record interviews and meetings with police officers. While all of the other quotations I have provided from police officers were captured verbatim in my written field notes, this particular quotation is paraphrased from my notes.

Wolf: I would just not sober up but I would just be like I got to play this off. It was basically like a 50-50 shot. Either the officer was going to smell something or he was going to assume I slurred a word and I could be drunk. And then it just would go on from there.

Wolf also recounted that he was able to get out of an arrest while smoking weed in a car with a group of his friends one evening in Cape Cod in his adolescence. He was in his twenties at the time and working at a pizza shop on the Cape. He recalls that he and his friends presented themselves as respectful and mentioned his work at the local shop, where police officers often frequented. He believes that his self-presentation and reference to a shop beloved by the officers in the town helped him escape arrest. He told me:

[The officer] goes “I don't ever want to see you guys come back here again, alright?” I'm like, “No problem. Thank you very much!” I'm just—[mentioning the shop] that had to have done it, it had to have helped, you know? Or maybe it was the fact that hey, you know, we weren't assholes about it, we denied it, it was blatantly obvious, and it was just weed. “Well, it's not crack, you know, they're not beating somebody up.”

In moments of desperation, some individuals may seek to distance themselves from their co-conspirators by agreeing to serve as confidential informants. One day while waiting between court sessions, Brianna (W, MC, WC) mentioned to me that she had once been a confidential informant. I asked her to tell me more. She explained that after finding drug paraphernalia at her house, a detective offered her a deal: she would not be arrested if she would work with them to build a case against her supplier by making transactions and returning the drugs to the police department. Her decision to work with the police to criminalize another person shifted moral blame away from her.

Brianna's willingness to serve as a confidential informant contrasts with the unwillingness of most working-class and poor individuals in my sample, who often refer to confidential informants as “rats” and “snitches.” Unlike Brianna, who expressed no remorse at helping detectives build a case against her supplier (she told me: “there's an overdose problem,

so whatever”), these individuals often express moral disdain for people who “rat.” Justin (W, WC, P) told me that he refused to serve as a confidential informant for these very reasons:

Justin: “Hey, you want to make some money?” they ask, you know? And you think hey I can make some money so of course! I need money, you know, who doesn’t? Everybody needs money, right? So yeah. So I’ve had them make the offer. A couple of times.

Matt: Why do you say no?

Justin: Because I don’t have it in me, you know? It’s not in my fabric, you know? A lot of it is from my upbringing, you know, growing up with some of them. The day you’re a rat, you know?

Others refuse to serve as confidential informants because they do not trust that the police will hold up their end of the bargain. Robert (W, WC, WC) told me that the police “were trying to get me to talk” when he was arrested for distribution of marijuana. I asked him why he didn’t tell them, and he said, “I grew up like that, I was taught loyalty—I knew not to rat on anybody, you know, because that leads to more problems... And I was in trouble anyways so... I’m not gonna get out of it. So I just took the blame, you know?”

Sometimes, individuals do not actively draw on their knowledge of symbolic boundaries but instead benefit from them with little effort. For instance, Jane (W, MC, MC) recalls that when she was stopped for drunk driving, the officers at the scene hesitated to arrest her because they recognized that she was an Emergency Medical Technician (EMT) because of the boots she was wearing and the information on her identification card. After “calling in to their supervisors,” they ultimately arrested her. She said, “I think they were going above and beyond just to make sure it was completely necessary [to arrest me].” At the station, they were “particularly nice”—allowing her to delay taking the Breathalyzer test so that her reading would be lower. Jane attributes this generous treatment to the fact that she was wearing her EMT boots that day. As she noted, “They were like being friends rather than cops it seemed like [...] Maybe they understood, because I know a lot of cops drink and EMTs drink.” The boots were a shared cultural marker that signaled, with little effort on her part, that Jane was a worthy individual.

Social ties often facilitate successful police negotiation among working-class or lower-middle-class whites, many of whom live and socialize in proximity to police officers. Wolf's (W, WC, WC) experience described earlier relied on social proximity, though he did not explicitly draw on social ties. Ryan (W, MC, MC) and his friends did, however, explicitly draw on social ties when they were stopped in high school while driving with open containers of alcohol in the car. Ryan recounts:

[...]the group of kids I hung out with one of them his dad was the hockey coach for the high school so we used to um like there was this one time we got pulled over and it was me and one of my buddies and he was driving and I was in the passenger seat and two more buddies in the back seat. They got a 30 in between them and I got one of them between my legs in front of me. [chuckles] Four open beers and the guy pulls us over. He gets all of our IDs and he's looking through them and I and he gets my buddy's [Name redacted], whose dad is the coach, and this guy he used to play hockey for the high school. [...] So he looks at it and is like "are you so-and-so's son?" and he's like "get the hell out of here," you know? But it...yeah. It was, there were a few times like that where like, you know, we um we got by on the skin of our teeth.

Ryan's experience shows how social ties with individual officers can result in leniency during encounters. Social ties with police officers can also help in evading police contact altogether. For example, Stephen Douglas (W, MC, P), whose cousins are police officers, was warned by one of his cousins to stop selling heroin to a specific person who was "ratting him out" to detectives in his department.

Social ties to officers are likely to be more available to lower-middle-class and working-class whites because of their greater proximity to, and familiarity with, police officers. Even for racial/ethnic minorities who have social ties to police officers, the activation of such ties can have its limits. For example, Caleb (B, MC, MC) described to me how he was arrested after helping to break up a fight in Cambridge. When the police arrived, one of the officers recognized him and searched his name: "I thought I saw your face [before]. You have a warrant." Caleb had a warrant for a larceny charge. One of the officers on the scene—an acquaintance from their local public high school—knew Caleb's character: "I sort of knew him from high school. He was

a couple years younger than me—but very friendly. [...] He remembers me and knows what sort of person I am.” This officer was kind to him but could not prevent him from being arrested that day. Caleb’s inability to draw on his social ties here could be largely due to the fact that he had a warrant for his arrest, thus constraining the officer’s ability to use his discretion. Still, I found no other instances in which a black person in my sample was able to draw on social ties with police officers to negotiate themselves out of an arrest.⁴⁴ This potential racialization of social ties within the lower-middle and working classes has been documented in other social contexts, such as the labor market (see e.g., Royster 2003).

Beyond the racialization of social tie activation in police-civilian interactions, cultural resources that could be marshalled to assist in presenting oneself as morally worthy are also racialized. As noted earlier, police officers differentiate between respectful and disrespectful alleged offenders; recent research has shown how these distinctions can be racialized to the detriment of blacks and Latinos during traffic stops (Voigt et al. 2017). In my sample, defendants also recounted the importance of demonstrating respect—and their accounts also reveal its racialized dimensions. As noted above, several defendants commonly remarked that you had to be “respectful” in interactions with police. Troy (W, P, P) remarked to me:

What I found—and this isn’t all the time, [but] if they cuff you and you get arrested and you’re not being an asshole, for the most part, they’ll probably be alright with you. Now, that’s not all the time, but that’s my experience. But it’s either mouthing off or being a jerk and stuff like that—I’ve seen people [get] beat.

Like Troy, Mary (L, WC, WC) also recounts her belief in the importance of respect. When caught by a loss prevention agent for stealing from a store, the agent warned her: “‘Alright, there's two ways we can do this.’ She [the agent] is like, ‘You can be a bitch and talk back to me

⁴⁴ Don (B, MC, WC), whose mother-in-law is a retired detective, was unable to use her position to prevent his arrests. She did, however, help him to confirm that the lawyer he was assigned by the court during one of his cases was a “good” lawyer. Don recalls: “She called some people and asked about him, and they said he was one of the best, so that’s why we stuck with him.”

[...] or you can man up and come with me right now and it's not going to be as serious.” Mary recalls that she decided to continue denying that she stole any items and lied about her social security number. “I was prideful at the time,” Mary explained, “And I’m over here just talking so rudely to her because she was talking so rudely to me!” A police officer was called to assist the loss prevention agent. When the police officer was in the room, Mary recalls responding to a question in a “mean tone” and ultimately the officer and loss prevention agent decided to arrest her, saying “We don’t have time for this. We don’t have time to deal with you back and forth.” Mary believes that if she had not behaved “rudely,” “I don’t think it would have escalated to that.” Perhaps.

But, comparing Mary’s reaction to police contact with that of Paul (W, MC, WC) reveals that the requirement to be respectful with police can be racialized. While many scholars have noted that displaying respect and attempting to adhere to white middle-class norms may work for some marginalized racial/ethnic minorities, often such respectability politics does not accrue the same benefits for minorities stigmatized as angry or disrespectful as they do for whites (see Higginbotham 1994 on respectability politics). Moreover, when white individuals are disrespectful, their disrespect may not be punished in the same way as similar behavior from minorities. Paul’s story is illustrative. He recounted to me that when he was pulled over in a small town west of Boston, he grew frustrated by the officer’s many questions. He started talking back to the officer, telling him to “Hey buddy, why don’t you take a ride to Boston and see how real cops [behave].” The officer responded by saying, “Well, I can arrest you for that,” and Paul retorted: “Well, no you can’t. Freedom of speech.” Paul was not arrested. To be sure, not all white people who recounted exhibiting disrespect came away from police interactions unscathed. For example, Nicholas (W, WC, P) told me that when he started “talking some shit to the cops”

during their inquiries about whether he was trespassing on his ex-roommate's property, they lost their patience and arrested him for not only trespassing but also burglary of his ex-roommate's clothes. Still, it is noteworthy that no racial/ethnic minorities in my sample recounted getting away with the level of disrespect that Paul exhibited.

Early encounters, divergent parental strategies, and the foundations of inequality

Adolescent encounters with the criminal justice system and parents' responses to these encounters likely shaped respondents' criminal justice "careers." While in-depth examination of how parents and children engaged with the legal authorities is beyond the scope of the current analysis, a few suggestive findings deserve brief mention. Most importantly, after their first arrest (if it was during their adolescence), the individuals in my sample recounted distinct parental strategies for dealing with their arrest and court processing. Some appeared to vary by class background and, to a lesser degree, by race. While some degree of abuse, neglect, or inattention from parents contributed to alienation in the home across all (rich or poor, black or white) the individuals in my sample, parental reactions more readily aligned by the resources available to certain parents given their class statuses. Parental strategies that were effective often protected children from accruing criminal records at an early age. Numerous scholars have noted the importance of juvenile criminal records in predicting later-life outcomes—within and beyond the criminal justice system (Mowen, Brent, and Bares 2017; Lopes et al. 2012; but for contrary evidence among certain communities, see Hirschfield 2008).

Respondents from middle-class homes often recalled that their parents' responses to their arrest were effective in assisting them in avoiding harsh court punishments, whereas those from working-class and poor homes were less likely to recount effective parental strategies. One common strategy among middle-class parents was to draw on social ties (e.g., friends in law

enforcement or friends who were lawyers). For instance, Kema (W, MC, MC) described to me how her father sought advice from a lawyer who happened to live in their neighborhood. Devin's (W, MC, WC) aunt was a lawyer whom he often relied on. Beyond lawyers, teachers and other authority figures were called on by some parents. For example, when Kareem (B, WC, WC) was 16, he was arrested for aggravated assault for throwing a brick through his school window with a group of friends. Kareem's father (a firefighter without a college degree) went to the school's principal and told her that his son was not to blame for the incident. The charges were eventually dropped. Some working-class families were also able to draw on social ties, given their social proximities to certain legal authorities such as police officers, as detailed in the previous section on working-class white affinity with the police.

Other working-class and poor parents, however, were less able to successfully draw on these social resources. Kevin (W, WC, WC), who grew up in Kentucky, recalls that when he was first arrested at 16 for stealing a truck, he was sent to a "boys camp" by the court for several months. He recalls that when he was dealing with the courts for the first time, he was not afforded a lawyer, and his mother could do little to help him, telling him to "do whatever you want." During Tweedy Bird's (B, WC, WC) first arrest at the age of 20 for robbery, he was appointed an attorney, but his grandmother refused to testify as a character witness on his behalf during his sentencing. He recalls that his grandmother—a family social tie—was embarrassed by the stigma of his arrest and refused to help: "You know how old people [...] if you do something like that it's like 'Hey, you're on your own.' [...] you embarrass the family, nobody come to your aid."

Middle-class parents also readily drew on financial resources (e.g., hiring lawyers, paying bail, paying court fees) to prevent their children from facing the harsh realities of the legal

system. Ryan (W, MC, MC) recalls that his lawyer during his first arrest cost his parents somewhere between \$3000-\$3500. Nowadays, in his most recent court case, he is personally unable to afford hiring a private attorney and his parents have not offered to help him pay legal fees. Amanda (W, MC, WC) similarly recounts hiring a lawyer for \$3500-\$5000 when she was first arrested at 19 for drug possession and distribution. Her mother not only paid for her lawyer, but also paid for her bail. For Joseph (B, MC, WC), his mother paid the \$500 in restitution that he owed after being convicted of breaking and entering at 16.

Some middle-class parents' effective use of resources to dampen the impact of legal system involvement in the early years of their children's lives slowly gave way during adulthood. Parents who were unable to control their children's drug habits or other illicit behavior, ultimately became enablers, giving them money when they called or providing them a place to stay if they lost their housing. When Christopher (W, MC, P) was arrested in his thirties for marijuana possession, his brother paid his bail and his mother picked him up from the county jail. She did not blame him for his actions. Christopher told me, "She didn't give a shit when I saw her [at the jail]. I mean, she wasn't happy with it. She'll take the side of anyone. You know, as if everyone was against me. You know what I mean? 'It's not your fault.'" Respondents often recount being well-aware of, and sometimes express remorse over, the toll they take on their families.

While working-class and poor parents were often described by their children as being unhelpful due to limited social and financial resources, some of their ineffectiveness was also partly due to their neighborhood environments. Parents living in low-income neighborhoods had relatively less control over the nature of their children's peer social activities—before or after arrest. For instance, John Blaze recalled that after his first arrest at 18, he felt almost "proud." He

described being arrested as a rite of passage among other youth in his white, working-class South Boston neighborhood. He told me:

My friends were across the hall [in the police station], and we were talking to each other [...] that strange sense of companionship. [...] And it was almost like a proud moment because after we knew we were getting out [...] it was like our first pinch, you know? It was like ... I don't know, I guess in Wellesley, they get rewards for like ... finishing reading their first book or winning the spelling bee. In South Boston, we got rewarded for our first arrest—not by our parents, but by all the kids [...] it was like, um, an initiation, you know. It was ok, it happened to everybody.

The influence of peers is even stronger when it is peers, rather than parents, who are helping individuals manage early encounters with legal authorities. For instance, when Royale (B, WC, WC) was arrested for stealing boots from a store at the age of 17, an “older guy” who was “already selling drugs” paid his \$500 bail. Out on bail with his friends, Royale never returned to court: “I was like man, it was cool to have warrants and dealing and looking out for police. That was the mindset, you know? I got a warrant!”

Differential access to these neighborhood resources, social ties, and financial resources resulted in different lessons learned by my respondents in their adolescence. These different lessons learned translated into cultural styles and worldviews that many individuals in my sample carried with them into adulthood. For the middle class and some members of the white working class, they learned the importance of drawing on, and trusting, social ties; for those who were less resourced, they learned to be skeptical of legal authorities and professionals. These unequal adolescent experiences with police and the courts—as well as vicarious experiences of their friends and other members of their communities and neighborhoods—often contributed to individuals’ expectations in later encounters with legal authorities, as I will explore in the following chapters (chapters 3 and 4) of this dissertation. Moreover, these unequal childhood experiences had structural implications by unequally shaping one’s juvenile or young adult

criminal record, setting the stage for how adolescents would grow up to be viewed by legal authorities into adulthood.

Through these processes, childhood socialization does appear to have a meaningful effect on later life outcomes, as Bourdieu or Lareau might predict (Bourdieu 1987; Lareau 2003, 2015). However, this effect is not necessarily predictable and is more so rooted in immediate access to resources rather than durable and transposable cultural styles. As I will detail in chapters 3 and 4, the immediate cultural, social, and economic resources available to defendants in specific interactional situations have a more immediate bearing on navigation of criminal justice institutions than dispositions acquired in childhood. Indeed, for most of the respondents in my sample, experiences with legal authorities (especially the court system, prison, and probation) are not very common in childhood and only become more regular in adulthood. Therefore, their fairly limited contact as adolescents does not enable them to develop a distinctive habitus, if you will, with respect to criminal justice institutions. Such cultural practices with respect to the law, or forms of legal consciousness (Ewick and Silbey 1998), are developed, tested, and revised throughout adulthood and depend to a greater degree on readily available situational resources.

Chapter 3: Trusting Lawyers and Other Legal Authorities

I met Christopher (W, MC, P), a heavy-set white man with a bald head and faint stubble, on a cold afternoon in February. As he filled out his pre-interview survey quietly in front of me, I noticed a smudge of black on his forehead. It was Ash Wednesday and, as I would learn during our conversation, Christopher was a practicing Catholic. He had even gone to a Catholic high school in his neighborhood in the South End of Boston. But, as he told me, he was a “disruptive” student. He was expelled from the school but was able to complete his GED before starting his first job as a cashier. His mother, who had sent him to live with his aunt and uncle after she experienced numerous instances of physical abuse at the hands of his father, was proud of her son even though he never finished traditional high school. Christopher remarked to me that through it all—his struggles with opioid addiction, his 15 arrests over his life course, and his stints in jail—his mother has only ever told him she loves him.

His mother's unwavering love is partly due to her guilt about being absent during his adolescence. After the age of 12, Christopher was raised by his aunt and uncle in a stable household that, compared to his turbulent early childhood with his mother and abusive father, "functioned [...] like a real family." Despite the stability of his new home life and his aunt and uncle's desire to ensure he receive the best education they could afford, Christopher had mixed emotions about leaving his mother: "I felt hurt, you know? I felt abandoned by my mother. Like, you know, really angry with her, you know, why would she let me leave the house to stay with my father being the way he was?" To this day, his mother "always had guilty feelings, feelings of guilt, and she kind of let things go. [...] [S]he would always be like, 'You know I love you.' ... And it still carries over today with her feelings of guilt."

Growing up in a middle-class home in the South End during his adolescence, Christopher recalled few meaningful encounters with police until his first arrest. His first arrest, at 16, was both a shock and a learning experience that slowly shaped his perceptions of, and willingness to trust in, legal authorities—from police to lawyers and judges. During the interview, he recalled his first arrest experience in a whimsical manner. Before he was arrested, he was riding in the passenger seat of a friend's car along a road in Quincy, Massachusetts. Up ahead, his friend saw a man jogging alongside the road. It had rained earlier that day and there were puddles along the road; his friend thought it would be amusing to splash the man. His friend sped up and splashed the runner, and then he turned the car around and did it again. Christopher recalls that the runner looked terrified and jumped into the bushes on the side of the road. Meanwhile, both Christopher and his friend got a good laugh out of it all, until they were pulled over in a fast food parking lot by local police officers and state troopers, their guns drawn. He was placed in the back of a squad car and interrogated. He recalls being honest and telling the officers everything, saying his

friend was driving and it was his friend's idea. Upon reflection, he notes that telling the police everything while being interrogated was probably a bad idea—for legal as well as social reasons. He told me that after the case was over his friend was mad at him for “ratting,” but in the moment he had thought to himself, “I didn’t want no part in it [...] I’m not going to jail because you wanted to splash this guy like 20 times, you know?” The police arrested both he and his friend and charged them with assault and battery with a deadly weapon.

At his arraignment, Christopher was assigned a court-appointed attorney, whom he recounts trusting and depending on throughout the process. He noted his naivete with respect to the legal process: “I didn’t even know what the law was at that point.” He deferred to his lawyer’s expertise, and he recounts that he “didn’t foresee anything really, you know, serious coming out of it.” In his first encounter with his attorney he was put at ease by attorney’s confidence:

You know, I basically relayed [my story] to him and, you know, he basically said, “Don’t worry, I’m going to ask you to get personal recognizance. You’ll be out today. This what they’re making it out to be.” So I felt a little better after talking to the lawyer, you know. I was trusting what he said.

While he was awaiting his next court date, his aunt and uncle were furious. Christopher told me, “I got the business from them, you know. Punishment, the whole nine yards.” They took away his car and told him that he was in serious trouble with the law, contrary to his lawyer’s reassurances that his case was not serious: “They were playing it up: ‘You’ll be lucky if you come out of this sentence.’” Ultimately, he pleaded to a CWOFF with six months of administrative probation. If he stayed out of trouble during that period, his case would be dismissed.

During our interview, Christopher discussed two other court cases in detail with me. These court cases were more serious and occurred later in his life. His experiences with them

reveal the way that both his declining socioeconomic position (and thus, his declining access to middle-class resources) as well as his increased experience with the criminal justice system conspired to increase his mistrust of legal authorities during these court experiences.

By the age of 33 when he was stopped by police in Harvard Square for possession of marijuana with intent to distribute, Christopher was jobless and had burned ties with his aunt and uncle—and was on the verge of alienating his younger brother. His mother, however, still remained in his life, as ever feeling guilty about sending him to live with his aunt and uncle. At the time of his arrest, he was selling marijuana to make ends meet and to support his worsening addiction to opioids. While selling to a few college students one night, a plainclothes police officer approached him from an unmarked vehicle. The officer asked him, “Hey, what you got there? Let me see,” almost as if to tease him. The college students he was dealing to raised their hands and summarily handed over the marijuana to the officer, but Christopher tried to deny any wrongdoing: “I’m like ‘Nope, I’m doing nothing.’ Kept trying to play it out. [They] went looking through my pockets. ‘Yo, you can’t do that. I didn’t do anything.’”

Ultimately, he was arrested and recounts feeling that his arrest was unfair for two reasons. First, whereas he was arrested, the college students, he observed, received only a citation. (To be sure, a citation is a legally valid police response to possession of marijuana in Massachusetts; yet, this does not invalidate Christopher’s perception of unfairness.) Second, he felt that the search of his person was illegal because there was no way for the officer to have seen the transaction:

This transaction, it was late at night. It was dark out. The guy [cop] was like over 30 feet away, you know what I mean? [...] But I knew in my head at the end of the day it doesn’t matter; whatever they put in that report is what they’re going to go by.

As the latter part of this quotation suggests, Christopher did not trust either the police to accurately describe the incident or the legal system more broadly to value his perspective over that of an officer. This mistrust of police and the law contrasts sharply with his willingness to confide in the police and faith in the process during his first arrest at 16. While he distrusted the police during this current arrest in Harvard Square, he ultimately trusted his attorney on this case. His attorney was a private attorney, whom his younger brother paid for. Christopher recalls, “I had a good relationship with him [the lawyer].” Ultimately, he recalls receiving a suspended sentence of two years probation.

Christopher would ultimately violate his probation during the two-year period and would be re-arrested. He was immediately detained in jail for 60 days, while awaiting his probation revocation hearing. His brother didn’t help him hire a private attorney this time, and he was in no position to afford one himself: “I didn’t have the money exactly available to me. I was working for cash again, selling drugs again.” For his probation revocation, he was assigned a court-appointed attorney whom he recalls mistrusting—not particularly for anything that she personally did or did not do for him, but more so because of her structural position as a professional who was likely overworked and who was not hired through payment. He told me:

I mean, public defenders—I just don’t think they have too much of a chance. I think it’s a huge difference, a huge jump to hiring your own attorney. I think the results would be 100 percent different 100 percent of the time, you know? Um I mean, I don’t doubt she worked hard for me [... but] she seemed flakey to me. I know public defenders have like huge caseloads and no time; you know, you’re not the only person. I mean, a private attorney—if you get them—they’re going to court for *you* that day. That’s it. Public defenders could have like 10 other people up there that they’re doing cases with that day.

Christopher’s views toward appointed attorneys have evolved over his life course—recall that he did not express such mistrusting sentiments during his first arrest at 16, when he also had a court-appointed attorney but had little knowledge of the legal system. Christopher’s feelings of mistrust toward his later court-appointed attorney cannot simply be explained by bad lawyering.

While he notes that she appeared “flakey,” he did not recount any instances in which she discriminated against him or ignored him. Moreover, his ultimate sentence for violating probation was fairly light—60 days in jail (which was mandated from his previous charge) and completion of a 10 day, two-week drug rehabilitation program. While he recalls not wanting to do the drug treatment program at the time, his lawyer told him it was the only way to get out of jail: “I can get you out of here but you have to stick to the treatment.” He begrudgingly accepted his lawyer’s advice, viewing it as his best option.

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While interaction with the police is often the first point of contact with the criminal justice system, interaction with one’s lawyer is an individual’s most significant relationship as he or she is processed through the courts. Lawyers serve, theoretically, as institutional mediators between defendants and the court. By law and professional norms, they are tasked with representing their clients’ interests (but legal theorists debate whether such representation should entail lawyers blindly doing their clients’ bidding or relying on their own expertise to strongly advise and inform their clients; see Uphoff and Wood 1998).

Despite their role as institutional mediators and representatives of their clients, numerous scholars have noted the potentially conflicted role of criminal defense attorneys, especially those who work for indigent clients. Court-appointed attorneys from the private bar and staff public defenders are often courtroom regulars who face competing demands to at once advocate for their clients while also maintaining collegial relationships with other legal officials (e.g., prosecutors and judges). Scholars have shown that defense attorneys often feel pressure to control their clients and coerce them into taking pleas, in order to keep the system functioning efficiently, maintain working relationships, and even maintain state funding for indigent defense

systems (see Eisenstein and Jacob 1977; Feeley 1992 [1979]; Heumann 1978; Sudnow 1965; but for contrary evidence see Emmelman 2003). Meanwhile, attorneys who are privately retained may have perverse incentives to encourage defendants to go to trial to exact a higher fee, even if trial may not be in their best interest (Schulhofer and Friedman 1993). In addition, heavy caseloads make it difficult for court-appointed lawyers to live up to the ideal of being zealous advocates for all of their clients (see Blumberg 1967; Uphoff 1992; Van Cleve 2016). Criminal defendants are often aware of the competing interests of their attorneys, some viewing the relationship as exploitative (O'Brien et al. 1977; Wilkerson 1972). As Blumberg (1967, p. 111) notes: "The client's attitude in this relationship is often a precarious admixture of hostility, mistrust, dependence, and sycophancy."

In this chapter, I show how defendants' feelings of mistrust and dependence on lawyers are profoundly shaped by their access to the cultural, social, and economic resources. I find that defendants from working-class, poor, and racial/ethnic minority backgrounds often recount experiencing a deep mistrust of their lawyers, whereas middle-class defendants are more likely to recount positive working relationships. In addition, I argue that the black working-class and poor are in a uniquely disadvantaged position with respect to the resources that enable trusting attorney-client relationships.

The experiences of Christopher are illustrative of the uncertainty and inequality that defendants experience when interacting with their lawyers during the length of court processing and over their life course. Dealing with a court case is a worrisome experience for most defendants, no matter their race or class. When engaging with the court, defendants quickly come to realize that their ultimate punishment—as well as the best strategy to achieve an ideal outcome—is rarely straightforward. Negotiation, brokered deals, concessions, and novel legal

strategies can be employed—for better or worse. 39 of 48 (81 percent) respondents in my sample reported in the pre-interview survey that they were worried about their most recent court case. These worries can either be assuaged or exacerbated when defendants first meet their attorney. In most of their court case experiences, most respondents in my sample reported that they relied on court-appointed attorneys rather than hiring private attorneys. In Massachusetts, as noted earlier, court-appointed attorneys can either be staff public defenders or private attorneys who are assigned indigent cases by the court (these latter attorneys are viewed by defendants as no different from staff public defenders). For those who are able to marshal the financial and social resources to identify and retain a paid private attorney, the act of selecting an attorney can itself be a positive step toward easing their worries. For those who must work with an attorney appointed to them by the court and not of their choosing, defendants diverge in whether the attorney-client relationship eases their worries. For some, they may develop a positive working relationship bolstered by feelings of mutual trust; for others, they may develop a negative relationship mired in feelings of mutual mistrust. This divergence is patterned by race and class.

Among the defendants in my sample, trust in lawyers is unevenly distributed along race and class lines and depends on more than simply whether one was able to hire a private attorney or not (contrary to arguments made by Casper 1972). In their descriptions of their court cases in interviews, white and middle-class defendants are more likely to recount experiencing trusting relationships with lawyers than are racial/ethnic minority, working-class, and poor defendants. This pattern is also reflected in their responses to the pre-interview survey. In response to the survey item “My lawyer did his/her best to defend me [in my most recent court case],” 17 of 28 (61 percent) white defendants, 10 of 20 (50 percent) non-white defendants, and 8 of 17 (47 percent) black defendants agree or strongly agree. These racial differences cannot be explained

by class differences between the whites and minorities in my sample, given their similar proportions within each current class status at the time of the interview (see Table 1); yet, differences in trust are starker along class lines. In response to the same item, 9 of 10 (90 percent) currently middle-class defendants agree or strongly agree, whereas 13 of 21 (62 percent) working-class defendants and only 5 of 16 (31 percent) poor defendants agree. Moreover, 0 percent of middle-class respondents disagree that their lawyer did his/her best to defend them (one respondent replied “neutral”), whereas 56 percent of (9 of 16) poor respondents disagree or strongly disagree. Therefore, class appears to be associated with mistrust more so than race/ethnicity; yet, among the working class and poor, racial/ethnic minorities are more likely than whites to experience mistrust. While my sample is not representative, these patterns of mistrust in lawyers is corroborated by other research showing similar patterns of distrust of police and the courts.

Indeed, the unequal patterning of trust in lawyers is not altogether surprising. As early as the turn of the twentieth century several observers noted distrust of legal authorities and criminal courts (e.g., Du Bois 1996 [1899]; Pound 1930). Over the past few decades, a well-developed literature has repeatedly documented higher levels of distrust of legal authorities among racial/ethnic minorities (Bobo and Thompson 2006; Hagan and Albonetti 1982; Muller and Schrage 2014)—and, to a lesser degree, among the working-class and poor of all racial/ethnic groups (Hagan and Albonetti 1982; but see Brooks and Jeon-Slaughter 2001 on higher levels of distrust of certain legal institutions among high-income blacks as compared to low-income blacks). Much of this distrust has to do with perceptions of unfair treatment by police, courts, juries, lawyers, and judges (Hagan and Albonetti 1982). The literature on procedural justice, which assess individuals’ perceptions of the fairness of their treatment in criminal processing,

has found that perceptions of (un)fairness are associated with (dis)satisfaction and (dis)trust in legal authorities (Tyler 1988; Tyler and Huo 2002) and such satisfaction can be influenced by whether the legal authority shares the same racial identity as the defendant (Baker et al. 2015). Simply having higher levels of contact with legal authorities has also been found to be associated with procedural injustice (Hagan, Shedd, and Payne 2005; Weitzer and Tuch 2005).

Racial/ethnic minorities, especially blacks, who cross social boundaries at work, at school, or in residential neighborhoods may also report higher levels of injustice (see Shedd 2015). Legal cynicism, or a cultural frame that interprets legal authorities as ill-equipped to fairly ensure public safety (Kirk and Papachristos 2011), has been shown to arise in socially isolated communities not just because of the greater presence of police in these communities but also because of these communities' social alienation from a functioning legal system (Anderson 1999; Sampson and Bartusch 1998). While important in highlighting perceptions of injustice and unfairness among the poor and racial/ethnic minorities, the procedural justice literature overwhelmingly focuses on how citizens view the decisions of police and judges in order to understand how this shapes citizens' willingness to obey the law (for critiques, see Bell 2017; Butler 2015). While research on legal cynicism is also focused mostly on policing, it is additionally distinct from my investigation into attorney-client trust in that it considers how distrust exists at the neighborhood-level rather than at the individual level.

Far less scholarship has considered trust in the attorney-client relationship. As described earlier in chapter 1, Casper's (1972) study of 71 defendants in Connecticut stands out in this still nascent literature. A more recent study by Boccaccini, Boothby, and Brodsky (2004) also examined levels of trust among criminal defendants. They sampled 96 mostly-black criminal defendants incarcerated in a prison in the Southeastern United States. Drawing on these

defendants' responses to a survey seeking to tap trust in attorney-client relationships (see Boccaccini and Brodsky 2002), the authors (Boccaccini et al. 2004) found that individuals who recalled that their attorneys allowed them to participate in their defense were more likely to recall trusting their lawyer. Moreover, higher levels of trust were found to be associated with satisfaction with attorneys as well as case outcomes. The authors, however, caution that a causal relationship could not be established based on their cross-sectional, retrospective data (Boccaccini et al. 2004, p. 209-10). While these studies provide unique insight into levels of trust among attorneys and clients, they are limited in their focus on homogenous samples of defendants. We know surprisingly little about whether members of the middle-class who experience criminal justice involvement have similar levels of trust in lawyers. Moreover, assuming that they do have distinct levels of trust and mistrust compared with their less affluent peers, we do not know the full range of conditions that might explain higher or lower levels of trust in attorneys and other court officials encountered during court processing.

This chapter examines how trust develops in micro-level interactions. I show how trust accrues in middle-class situational interactions with lawyers, whereas *mistrust* accrues in working-class and poor interactions. In one of his foundational articles on micro-level interactions, Collins (1981, p. 999) argues that interactions are emotional moments that are successful when they "invoke a common cognitive reality." This common reality depends on shared understandings (i.e., shared cultural resources) and shared emotional energy between two or more interaction partners. Collins also notes that interactions are iterative, such that repeated positive rituals of interaction between people increase positive emotional energy and vice versa. Trust and mistrust can be understood as both an input and an outcome of interactions that successively accrue or deplete emotional energy.

Although Collins has little to say about trust, the vast and interdisciplinary literature on trust has documented the importance of trust in enabling cooperation between two or more people, especially in modern societies where individuals often enter into relationships between strangers rather than between familiar members of a common community (Cook 2005; Cook and Hardin 2001). Because trust is shaped by whether the interests of interaction partners are perceived to be aligned (Hardin 2002), individuals who perceive that they have different goals or motivations behind their interaction may fail to develop trust and cooperation. A wide range of studies in various institutional settings (e.g., medical institutions, neighborhoods, welfare offices, and legal institutions) have revealed race and class disparities in trust and cooperation (see Alesina and La Ferrara 2002; Kramer and Cook 2004; Smith 2010). In the medical context, for example, some studies have considered how racial differences in trust may shape and be shaped by unequal interactional experiences between doctors and patients (see Armstrong et al. 2013; Sewell 2015; but for contrary evidence on racial differences in medical setting trust, see Anderson and Dedrick 1990, p. 1094).

The development of trusting interactions depends on what resources each interaction partner brings to the situation (Collins 1981). In the case of the attorney-client relationship, then, it is not just a defendant's resources, but also those of a lawyer, that matter. Lawyers have a role to play in investing their clients in a trusting relationship (see Flemming 1986), and defendants' experiences of trust or mistrust are by no means shaped solely by their interpretations and resources in isolation. Indeed, resources are only resources when they are socially agreed-upon (Sewell 1992). For example, a defendant's money is only of value if a lawyer decides to accept it; a defendant's compliance is only compliant if a lawyer interprets it as such. Defendants thus are dependent on their resources being accepted and acknowledged by lawyers. Moreover, given

power imbalances between the average lawyer and the average client, the asymmetric nature of the attorney-client relationship likely structures the way resources are able to be effectively employed by defendants in the interaction (on power differences and trust, see Cook 2005, pp. 11-12; Levine 2013).

Among the defendants in my sample, I find that four kinds of resources shape defendants' trust in lawyers: cultural matching on the basis of shared experiences, tastes, or worldviews, understanding of and familiarity with professionals and professional expertise, the nature of prior experiences with the courts and other aspects of the criminal justice system, and the ability to choose one's attorney through payment or other means. Importantly, many of these resources exist prior to a defendant's relationship with his or her lawyer. Consequently, I conceptualize their lack of trust as a form of *mistrust* rather than *distrust*. *Mistrust* suggests that a defendant's skepticism arises not so much because of what his or her specific attorney does or does not do but more so because of prior experiences, resources, and structural conditions that constrain the development of a mutually trusting interactive relationship.

The cultural and structural conditions of trust detailed in this chapter are racialized and classed. In Massachusetts, nearly 25 percent of staff public defenders⁴⁵ serving in Boston-area courthouses in 2016 were racial/ethnic minorities, whereas nearly 67 percent of defendants in 2014 were minorities.⁴⁶ In addition, most defendants likely come from lower socioeconomic

⁴⁵ Staff public defenders handle a minority of indigent defendants' cases in the state of Massachusetts, where about 75% of indigent cases in recent years are handled by private attorneys who serve court-appointed (Gurley 2014). Given the recruitment strategies and mission of the public defender agency, staff public defenders are likely more diverse than private attorneys who serve court-appointed.

⁴⁶ These calculations are based on data provided to me by the Committee for Public Counsel Services (data on staff public defenders) and data provided to me by the Massachusetts Probation Services (data on arraigned criminal defendants). For this comparison, I only included counts on staff public defender trial attorneys who are assigned in Boston-District, Boston-Superior, Roxbury-District and Roxbury-Superior courts and counts on criminal defendants arraigned in Boston Municipal Court-Central Division (district court), Boston Municipal Court-Roxbury Division (district court), and the Suffolk Superior Court.

backgrounds. Given these average differences between lawyers and defendants, minority and low-SES defendants are less likely to share cultural experiences and worldviews (and thus less likely to culturally match) with their attorneys. Moreover, minority and poor defendants face more opportunities for experiences of mistreatment over the life course, given their greater likelihood of being pulled into the system. In Massachusetts, in 2014, minorities constituted 17 percent of the population but 27 percent of marijuana possession arrests and 44 percent of marijuana distribution arrests.⁴⁷ Moreover, minorities and the poor are more likely to face more severe institutional encounters (Travis et al. 2014). In 2013, minorities in Massachusetts constituted 33 percent of people convicted for any crime but 38 percent of people sentenced to incarceration for any crime.⁴⁸ As I will show, skepticism of professionals as well as a lack of choice in one's attorney—the other two conditions of mistrust—are also more likely among working-class and poor defendants. Aside from examining these patterns, this chapter additionally considers the complex, interactive ways that race and class combine among multiply-(dis)advantaged defendants (see McCall 2005). In particular, at the end of this chapter, I consider the high levels of mistrust among the black poor in my sample, given the stigma and burdens particular to black poverty and the surveillance of black communities.

While the present chapter focuses on the conditions that account for unequal levels of trust in attorneys along race and class lines, chapter 4 considers the implications of this unequal patterning of trust for defendants' decision-making. Varying levels of trust are central to the differential navigation of the courts; in particular, trust shapes defendants' legal consciousness

⁴⁷ Statistics retrieved November 20, 2016 from the American Civil Liberties Union's document "The War on Marijuana." Stable URL: <https://aclum.org/wp-content/uploads/2016/10/TR-Report-10-2016-FINAL-with-cover.pdf>

⁴⁸ Statistics retrieved August 15, 2016 from the Massachusetts Sentencing Commission's document "Selected Race Statistics." Stable URL: <http://www.mass.gov/courts/docs/sentencing-commission/selected-racestatistics.pdf>

with respect to their lawyers. Whereas defendants who trust their lawyers often delegate authority to their lawyers to work on their behalf, those who do not trust their lawyers often withdraw from the attorney-client relationship and rely on their own, cultivated forms of legal expertise. Defendants' cultivated legal expertise is less effective in achieving ideal legal experiences than lawyers' professional legal expertise. How defendants and their attorneys resolve disagreements over consequential court decisions, such as filing motions, calling witnesses, and accepting pleas, can make the difference between a lighter or harsher punishment. These implications will be further unpacked in the next chapter.

Trust in middle-class situations

Defendants who find themselves in middle-class situations are more likely to develop trust in their attorneys than their peers who find themselves in working-class and poor situations. As described in chapter 1, I consider how interactional situations can be classed (as well as racialized⁴⁹) depending on the resources available to individual participants in the specific situation. While middle-class cultural, social, and economic resources are most often acquired and employed by individuals who appear to occupy middle-class social positions based on educational status, occupation, or income, individuals who are classified as working class or poor can also acquire such resources (and vice versa). For example, as I will show, some working-class and poor defendants happen upon attorneys whom they find commonality with through social ties, whereas some middle-class defendants may lose their job and then be unable to hire an attorney whom they have trusted and invested in in the past.

⁴⁹ The last section of this chapter considers how attorney-client interactional situations can become racialized and result in less trust among the black working class and poor.

In this section, I describe how attorney-client trust among those with middle-class resources is accrued prior to interaction with lawyers and bolstered in specific court processing moments, such as first meeting one's attorney, thinking through court strategy in an attorney's office, or whispering with and watching an attorney make arguments in open court sessions. Through these many moments, defendants are making mental notes about the trustworthiness of their attorneys as well as interacting with their attorneys in ways that can encourage trust and what Collins (1981) would refer to as emotional identification. In particular, I identify at least four conditions that explain how defendants with middle-class resources can positively engage with, and develop trust in, their attorneys: general familiarity with professionals and professional expertise, cultural matching with respect to common experiences and tastes, lack of prior experience with the criminal justice system, and the decisive power of attorney choice through the use of money.

Familiarity with professionals and professional expertise

Middle-class situations—such as growing up with parents holding middle-class occupations, regularly engaging in social interactions with members of the middle class, or living in a high-income neighborhood—provide individuals with myriad opportunities not only to engage with professionals but also to come to learn to value and respect their forms of expertise. Valuing their forms of expertise often translates into trusting these professionals to have a better understanding of their specific field of knowledge than the average person without field-specific professional credentials. Importantly, individuals in middle-class situations not only trust the *accuracy* of the knowledge of professionals but also trust the individuals bearing the knowledge to use it *effectively and responsibly on their behalf* (see Hardin 2002 on how trust is shaped by an estimation of how trustworthy one's interaction partner is in accomplishing a specific task).

While some degree of trust arises from direct or vicarious experiences of reliance on professionals such as particular doctors or lawyers to solve particular problems, trust also appears to arise from a general faith in professionalism and professional contractual obligations. In his study, Casper (1972, p. 118) notes that individuals who hired private attorneys believe their lawyers to be more efficacious, given their familiarity with professionalism: “The greater sense of efficacy exhibited by defendants with street lawyers [paid private attorneys] may in part be a product of their general lifestyles. Since they had some money or came from families with money, they were more used to the notion of employing someone to do work for them [...] Hence, they brought to their encounter with an attorney a sense of dignity and efficacy that affected their relationship.”

Some individuals in my sample grew up in proximity to professionals, such as lawyers, whom they personally knew and personally trusted. For example, when Jason (W, MC, MC) was arrested for possession of drug paraphernalia, he told me he thought his lawyer “was amazing.” I probed to get a sense of why he thought that and he told me that his attorney was the daughter of an attorney whom his father “had a retainer with” for his business. He had grown up around these two professionals his whole life and they were personally familiar to him. Similarly, Devin’s (W, MC, WC) attorney for many of his cases was his aunt, whom Devin’s father⁵⁰ told me they were comfortable working with. Kema (W, MC, MC), who grew up in a high-income neighborhood in California, told me that her first lawyer for her OUI charge was a neighbor. Her father was friendly with this neighbor and sought her legal advice. Kema told me: “She was a lawyer who lived in my neighborhood. And I didn't even do anything about it. My father went

⁵⁰ Devin passed away of a drug overdose prior to my study. His father, who received the letter I sent to recruit respondents, volunteered to take part in the study on his behalf. Devin is the only person in my sample who did not sit for his own interview.

over and talked to her about it and they put the whole thing in motion. And I don't even remember going to court or anything. She took care of everything.”

Amanda’s (W, MC, WC) trust in lawyers was rooted in her valuing their expertise, especially the expertise of lawyers who were using their skills to advocate for the legalization of marijuana. When she was dealing drugs in college, she regularly read and consulted the output of an activist, non-profit organization she found online. This organization shared information about the decriminalization of marijuana and provided services for individuals seeking legal advice. Amanda not only used the organization to find her lawyer but also consulted the organization’s website for information prior to her arrest. She told me, “I can't recall the first time I heard of them but on various occasions I had looked up, especially when traveling to other states--prior to being arrested um they had like a statewide map and you can click on it and it shows what are the laws for that state and what the punishments carry and stuff.” The value placed on expertise provided by lawyers and law-related organizations is common among those who grew up in middle-class homes or are currently middle class. As Jane (W, MC, MC), whose father was a judge, simply put it: lawyers know “more [about the law] than I do.”

This faith in professionals among those in middle-class situations can persist over one’s life course and, to an extent, across situations. Take the case of Ryan (W, MC, MC), who had just transitioned into a sober house and stopped working as an investment consultant before I met him. Without a job to list on the probation form that determines indigency, Ryan was assigned a court-appointed attorney to represent him in his current shoplifting case. When I followed him to court to resolve the case, I was struck by how much of a mess his lawyer was—he was disheveled, his file folder was overflowing with loose papers, and he was late to court (arriving well after the court session started and after Ryan’s case was first called). About Ryan’s lawyer, I

wrote in my field notes: “He’s an old guy, white, seems to be a court-appointed private attorney, he’s short, kind of a mess. [...] He’s not put together.” Still, Ryan seemed unbothered. During a break in the court session, I watched from a distance as he talked with his lawyer, nodding and answering his questions in a deferential manner. After the court session, I asked him how he felt about his lawyer. He told me: “You know, he’s kind of out there, kind of everywhere.” I nodded in agreement. Yet, he also shared with me that he felt that his attorney was the expert, despite his disheveled affect. Earlier when I interviewed him before observing him in court, he had this to say about his lawyer:

Matt: And so what's your attorney's strategy for you for this case?

Ryan: He, you know, he doesn't seem to worry about me. He's a court appointed guy so he has four or five different cases going on, you know, he told me not to worry about it basically like I told you. Worst case scenario maybe probation.

Matt: Ok. So he doesn't seem worried about it?

Ryan: No. And... I'm guessing he's like he has three or four of these a day for shoplifting, so he's he probably knows what he's talking about, you know? And I don't have a big record so, you know, hopefully this goes away with probation.

Unlike other individuals who find themselves in working-class or poor situations and whom I will describe in the next part of this chapter, Ryan never questioned his lawyer’s authority or expertise. Indeed, throughout the court session I observed, he appeared nervous and deferential in all his interactions with his lawyer as well as the court.

Cultural matching with middle class cultural experiences, tastes, and worldviews

Individuals’ trust in their lawyers also depends on whether they feel they share common cultural experiences, tastes, or worldviews—a process that can be understood as a form of cultural matching. Lauren Rivera (2012) describes cultural matching in the labor market as a process whereby employers hire job applicants who share “tastes, experiences, leisure pursuits, and self presentation” (Rivera 2012, p. 1000). In the courts, defendants in my sample recounted trusting lawyers who shared perceived experiences, tastes, and worldviews, which often matched along

class lines. When cultural matching could be established, defendants often felt a sense of control during their interactions with their lawyers and the court process more broadly.

Jane (W, MC, MC), mentioned in the previous section, found cultural commonalities with her lawyer given her middle-class childhood background and experience with college. The daughter of a deceased judge, Jane was part of a social circle of lawyers. During the interview, she displayed a general respect for lawyers as professionals. When she was arrested for an OUI, her mother found an attorney who was part of their local community. Jane recounts: “I trusted him because I trust my mom [...and] she has, like, good friends in town that are, like, trustworthy as well. But I guess [I also trusted him] because his office was nice. He seemed like a down-to-earth guy, like he knew the law.” The latter part of this quotation reveals that Jane’s trust in her lawyer was shaped not only by class-based social ties—as described in the preceding section—but also by his cultural class markers (general demeanor and his office environment), which she likely found quite familiar given her father’s profession and her time exploring professional career choices as a college student. Jane’s general familiarity with professionals further shaped her willingness to defer to her lawyer’s expertise: “I trusted him; he was a lawyer, and he knew more [about the law] than I do.”

While cultural matching on experiences and tastes is often a middle-class resource, some respondents recounted cultural matching across class lines but within the same racial group (see Baker et al. 2015 on race-matching between defendants and prosecutors and implications for procedural justice). Specifically, there were a few working-class white respondents who found shared experiences or tastes with their middle-class white lawyers in some of their court cases. Wolf (W, WC, WC), for example, came to bond with his lawyer, whom he first met at a bicycle shop prior to his first arrest. Earlier that summer before he was arrested, Wolf was working at the

shop when a man came in asking for a bike for his daughter, who would need a new bike when she went off to college that fall. The shop was busy at the time—with “like 218 repairs” to make on bikes—and Wolf told the customer that it would be difficult to get the bike he wanted for his daughter within the time he needed it. But, they started chatting, and Wolf realized the customer was being “pretty cool [about it] and he’s not being a jackass,” so he told him he would try to have the bike in and ready at an earlier date. Months later, when Wolf was arraigned in court, he ran into the same man on a bench in the courthouse: “I’m like ‘What are you doing here?’ He’s like ‘What are you doing here?’ And I’m like alright. I’m like ‘I got my OUI last night.’” Wolf soon learned that his former customer was also an attorney. The man looked over Wolf’s case and agreed to represent him, given how helpful Wolf had been with his daughter’s bike. They also ended up hitting it off personally. As Wolf reflects, “the guy’s got jokes [...] But like um he was awesome. He was just sitting there trying to tell me jokes.” The lawyer/former customer even offered Wolf a special rate for his representation. As Wolf recalls, he said: “I can help you out because you helped my daughter out and you pushed that bike through. So, my normal fee is \$2500, and I’ll do this for 500 bucks.”

Similar to Wolf, Ken (W, WC, WC) found himself in a typically middle-class situation when his mother paid to hire a private attorney during his drug possession arrest at 17. While Ken grew up in a typically working-class household (his mother was a care provider and his father was a veteran who worked in a factory), he found cultural affinity with his lawyer:

It was cool. He had a nice office, you know? He picked his ear. I remember he made this thing out of this paper he made this elaborate thing and scratched the inside of his ear--it was weird. And then he would look at his ear wax. He was eccentric. Rocket scientist.

Ken’s recollection of his lawyer as “cool” yet “eccentric” reveals that cultural matching is not always established on the basis of shared tastes or worldviews, but sometimes on the basis of the

recognition of the value of a lawyer's cultural affect. Ken does not refer to himself as eccentric, but fondly remembers eccentricity as an admirable quality of his lawyer.

Lack of system experience

A lack of experience with criminal justice institutions was a common condition for individuals who developed trusting relationships with their lawyers. Before their first arrest, defendants from middle-class backgrounds and living in white neighborhoods rarely encountered police, much less other legal authorities such as probation officers and social workers (see Jacques and Wright 2015). Unlike those living in poor, highly-surveilled communities who are more likely to have negative personal or vicarious experiences with legal authorities (Kirk and Papachristos 2011; Sampson and Bartusch 1998), these privileged individuals exhibited a certain naivete in their first moments of court involvement. Their naivete often translated into a strong faith in, and deference toward, the legal knowledge of lawyers.

Ryan's (W, MC, MC) case is illustrative. When he was arrested for driving under the influence in college, he recounted his arrest experience as frightening and unexpected. He exhibited naivete in his encounters with law enforcement and throughout criminal court processing. About the experience he told me:

I was scared shitless, yeah. You know I'm seeing them bring up all these, you know, weirdoes and, you know, all these people walking around in handcuffs. And I'm afraid I'm going to be arrested [charged]. And you know, I was so naive to the whole criminal justice [process] and how it works. You know, I never I never thought I'd be in court that way, you know? I wasn't brought up that way and I'd never seen myself in that situation. But there I was.

Given his naivete and shock at his first experiences with the courts which were so contrary to how he was "brought up," Ryan appreciated his lawyer's experience and expertise in dealing with numerous cases just like his. Ryan recounted:

Yeah, he [my attorney] was good. He was real matter-of-fact, and he was like, it was reassuring in the sense he seemed like it was a routine thing, he wasn't worried about it. While I was scared shitless. So, it was nice to have him be like "Don't worry" and "Everything is going to be fine." He'd done thousands of these before so, you know, again, I needed that because I didn't know what the hell I was doing.

Jimmy (B, MC, WC), the son of two college-educated parents who raised him in a racially-mixed middle-class neighborhood in Cambridge, also recounts being naive in his initial encounters with the legal system, facilitating his trust in his lawyer after his first arrest. After being arrested at 16 for stealing a bike with a baby seat attached to it (making it evident to police that it was not his bike), Jimmy told me that he remembers being confused by the court process: "I didn't understand anything they were doing [...] I didn't know why the process was so long." Jimmy's lawyer was a balm for him. His lawyer joked with him about his arrest ("He was like 'And you had a baby seat?!' He was cool. Yeah, he was cool."), making him feel comfortable about confiding in him. Not only did his lawyer's jokes enable Jimmy to trust him, but also his and his parents' lack of experience with the courts appear to have necessitated it. Jimmy recalls that his parents felt that they should just "let him [the lawyer] do his job" and everything would be alright. Similarly, Robert (W, WC, WC), who grew up working-class but in the mostly-white suburbs of Worcester, also recounted trusting his lawyer during his first court case at 17 when he was arrested for marijuana possession. He described his experience being detained in the police station as a "culture shock:"

I'm in there with guys who are older than me and they're talking about, you know, they'd been through it before so they're talking about what they do, you know, so I'm kind of like culture shock almost, you know? Because as I said I was just a kid playing football and selling weed, you know?

And so, in his first encounters with the court, he recalls deferring to the authority of his lawyer, whom he felt he had to trust given his lawyer's greater knowledge of the system and his professional ability to be "in accordance with the DA" to negotiate a plea. But over the years, after being arrested for larceny and armed robbery, he grew ever more skeptical of the role of

defense attorneys given their professional relationships with prosecutors: “Sometimes yeah you get the feeling like a lot of these public defenders are friends with the DAs, you know, they don’t want to fight them.” As a result of his continued system involvement as well as his growing skepticism, he acquired his own legal knowledge that he sometimes used when he found himself is less trusting attorney-client relationships (see more in chapter 4). In one part of the interview when I asked him how he had a sense of what counted as a “fair outcome,” Robert remarked, “I’ve had 20 years dealing with the court and I just—I’ve dealt with a lot of it, I’ve seen what people get, what they get on their cases, you know? So I have a general idea.”

Robert’s experiences (as well as those of Christopher, who opened this chapter) reveal how the willingness to trust lawyers varies over the life course; as an individual accrues more experiences with the criminal justice system, he or she acquires more knowledge about the system and thus becomes less willing to immediately trust legal authorities. Repeated interactions with the system are more common among those facing persistent social disadvantages in their everyday lives.

The decisive power of attorney choice

Trust also depends on the ability to choose one’s attorney, which is an option fully available only to defendants able to hire a private attorney. Defendants unable to pay for a private attorney are allowed to request a change of attorney, but—from my interviews and observations—such requests are rarely successful. The ability to choose one’s attorney shapes trust in two respects. First, the act of choosing an attorney is, in and of itself, a self-directed process that provides defendants with a sense of control during a stressful life event. Second, the ability to choose an attorney through payment serves as a form of insurance (see Casper 1972, p. 112 on defendants’

“sense of leverage” when paying for attorneys); defendants who hire private attorneys are able to exit the relationship at any time and hire a more trustworthy attorney.

Amanda (W, MC, WC) described to me the emotional significance of being able to choose an attorney during her first arrest. A college student at the time, she was arrested for drug possession with intent to distribute. She and her boyfriend were selling marijuana out of their apartment, when an informant—a fellow college student—tipped them off to the police. She recounted how confused and lost she was in making sense of the legal system: “[I remember being] scared and not really, um, comprehending anything and then having my lawyer kind of have to, you know, put it in layman’s terms to me when we met after [each] actual court process.” Being able to choose a lawyer helped to calm her nerves, especially since she found her lawyer through an advocacy organization for the legalization of marijuana that she had interacted with online many times before. It was through this organization that she was able to identify a private attorney who shared “the same [political] principles.”

For those who can afford to pay for private attorneys (as well as for the many defendants in my sample who are unable to), payment itself is often remarked upon as a guarantee of entering into a trustworthy relationship with a lawyer. For those who are able to hire an attorney, payment translates into a sense of security. For example, Diego (L, WC, MC), who was arrested with other college students for marijuana possession on campus, hired an attorney by borrowing money from one of his co-defendants, the son of a well-to-do professor. They all decided to hire the same attorney. When I asked Diego if he recalled any moments when he disagreed with his lawyer or questioned his legal advice, Diego told me that he couldn’t recount any such instances. Paying for his attorney had put him at ease:

[...] I was convinced that given that, you know, we had paid so much and this um...um...I guess they were regarded as like the top in the practice that like I guess my hands or I was like in good hands. And also just

not really knowing...what or how to approach that. Like what to ask--I guess I just always thought that like, you know, they were in good judgment and not really in need of pushback.

Some defendants in my sample who could afford to hire a private attorney—either independently or through social ties, like Diego—chose only to do so if they developed a mistrusting relationship with their court-appointed attorney. For example, Arnold (B, WC, MC), whose experiences I examine in detail at the opening of chapter 4, was originally appointed an attorney whom he ultimately felt was not working in his best interests. Relying on his own and his family’s financial resources, he decided to exit the relationship and hire a private attorney with whom he shared cultural similarities—a love for basketball—for \$15,000. Some respondents relied on social ties for direct access to lawyers free of charge. For example, Devin (W, MC, WC), also mentioned earlier, hired his aunt, a successful private attorney, to represent him free of charge. While acquiring attorneys through social ties can enable trusting relationships, only financial payment enables defendants full control—and insurance—over the attorney they hire.

Sometimes familiarity and the simple act of choosing a lawyer can foster trust—or at least, a sort of blind faith—beyond one’s better judgement. For example, when Waine (W, WC, WC) was arrested for an OUI in his thirties while he was living with his father on the Cape, his father insisted that he hire an attorney his father had used many years ago when he had been arrested for an OUI. Waine followed his father’s advice, since his father was the one paying for the attorney from his limited savings: “My dad had an OUI [when...] he was in his twenties and he had a lawyer who got him off and was still in Cape Cod and still acting as a lawyer, so my dad hired him.” At first, they were happy to have been able to retain private counsel, but they gradually came to realize the lawyer seemed “senile.” Regardless, Waine’s dad wanted to stick with the lawyer, given his fondness for the lawyer when he was younger:

Waine: [...] the guy [the lawyer] was so old, senile. It was like, I remember being like, "Dad, can we get somebody else?" He [the lawyer] was talking with pictures half the time—kind of a nightmare.

Matt: Shit. But you stuck with him even though...?

Waine: Stuck with him, yeah.

Matt: Why? Why did you decide to?

Waine: Because my dad was paying for it and I was the one who fucked up, you know? I fucked up my dad's car. I had zero I had zero to say. I was living at my dad's house, I fucked up his car, he was paying for the lawyer. So I kind of did what my dad wanted and my dad wanted it only because he had gotten my dad off like 30 years ago.

Matt: Really? So even though—did your dad also see that he was kind of senile?

Waine: Towards the end he started to voice his regrets with me being like, "Maybe we shouldn't have gotten this guy." He was starting to scare us. Um...he was just so, yeah, he was awful.

Waine's personal constraints in attorney choice arose from his current class condition at the time: he had recently lost his job at the time after relapsing from his addiction to cocaine. His father's financial ties provided his only access to choice in a lawyer outside of the indigent defense system. Thus, Waine was personally beholden to his father's faith in the lawyer. Ultimately, by the time his father started having second thoughts, they felt they had already invested in the relationship and continued working with the lawyer through to final disposition.

Mistrust in working-class and poor situations

Whereas those with access to typically middle-class resources are able to engage positively with attorneys in interactive situations, those with access only to working-class and poor resources are rarely able to develop positive relationships with their attorneys. In this section, I describe the barriers to attorney-client trust among those with working-class or poor resources in specific court processing moments. In particular, I identify four conditions—the reverse of the conditions identified in middle-class situations—that explain how defendants with fewer resources often disengage from, and ultimately mistrust, their attorneys. These conditions are: a general lack of familiarity with professionals and professional expertise, cultural mismatching with respect to common experiences, tastes or worldviews, repeated, and often negative, prior and current

experiences with the criminal justice system, and the decisive constraint of not having a say in selecting one's attorney.

Skepticism of professionals and professional expertise

Working-class and poor situations and experiences over the life course rarely endear individuals to trusting experts, expertise, or professional occupations. Not only do members of the working class and poor rarely engage with professionals (at least in everyday workplace settings or in leisure activities) (Lamont 2000; Young 1999), but also their engagements with professionals are often asymmetrical. Rarely do cross-class interactions occur on a level playing field (see Fiske et al. 2012). For example, in the employment context, individuals in lower-status occupations or jobs within the same firm or workplace interact on unequal terms with those in higher-status positions (Burawoy 1979; Levine 2013). These asymmetric interactions across myriad social spaces likely accumulate over the life course, shaping general as well as specific levels of distrust in professionals and professional expertise. And as reviewed at the beginning of this chapter, numerous studies have shown high levels of distrust, cynicism, and perceptions of injustice among the poor and racial/ethnic minorities with respect to legal institutions and legal authorities.

Few individuals in my sample who grew up working class or poor recounted any social ties with lawyers in their families' social networks, unlike individuals from middle-class families who often recounted ties to lawyers (e.g., Jane's [W, MC, MC] father was a judge, Devin's [W, MC, WC] aunt was a lawyer, and Kema's [W, MC, MC] neighbor was a lawyer, and Ryan's [W, MC, MC] father's friend knew a lawyer who happened to be the son of the local DA). Working-class parents' occupations were often in low-level service (e.g., grocery store clerk) or manual (e.g., construction) labor—far removed from meaningful, everyday interactions with lawyers or

members of other professional occupations, such as physicians, professors, consultants, or bankers.

Individuals from working-class families did, however, often recount social ties with police officers who lived in their neighborhoods or were former childhood friends, as described earlier in chapter 2. For example, John Blaze (W, WC, WC) put it quite succinctly: “Half my friends I grew up with are criminals and half are cops, and some are both.” But even those who recounted ties with police officers often viewed police officers with skepticism. For example, Caleb (B, MC, MC), who went to a local public high school with a boy who grew up to become a police officer, has a general fear and distrust of police. This fear exists despite the fact that the police officer he grew up with is an acquaintance who helped him, to an extent, during one of his arrest experiences. Caleb developed his fear of police when he observed a friend being arrested at 17. He told me:

Caleb: [...] it was shocking, you know, because he was the nicest kid in the world and someone lied and got him in trouble and it was the most ridiculous thing. We were only 17, and I was like it was scary, really really scary. You know I've always --being black you sort of have this fear of the police. I don't know if you probably understand what I'm saying—

Matt: Hmm-hmm. I'm from the South so...

Caleb: Oh my god. What part of the...?

Matt: I'm from Nashville. [chuckles]

Caleb: Oh, geez. Yeah. So, ok. Um so whenever a police officer comes by it's just like oh god even though I'm not doing anything it's just like oh god oh god. It's always this thing and I've always been a good person and I never went out robbing people. Like I knew people in high school who would do like really bad things and, you know, they would, you know, I mean obviously the way I was raised and my culture but I always was a good person who wanted to go to school and school was really important to me and that's why I always got good grades and stuff. Um but even with all that I see a police officer and I'm like holy shit. Um and, you know, there's some times when I run into a black police officer, and I'm like *should I be scared right now? Is this ok? I'm just going to keep walking* [...] I've had that thought a few times when I see black officers, but um I'm still like terrified of police.

Matt: Yeah. When did that fear kind of start? Was it in high school? Was it after high school or...?

Caleb: It was during school, yeah. I was in high school. I mean maybe it was because all the African Americans [note: Caleb is a black immigrant] around me were also terrified of police and stuff and um and... I'm not sure why but during high school at some point maybe even before yeah

Caleb's articulation of his fear of the police is deeply rooted in his race, not his class background.

Indeed, Caleb grew up in middle-class in Cambridge. Yet, his race and his association with same-

race peers who have experienced unfair police contact and who are not all middle class has placed him in situational interactions that contribute to his fear and distrust.

While many expressed skepticism of police officers, deeper levels of skepticism and mistrust were reserved for lawyers. Police officers were viewed as natural foes (see Casper 1972). In other words, many working-class and poor defendants often expressed their view that it was understandable for police officers to build a case against them or surveil them on the street because it was part of the job description. As Richard (B, WC, WC) told me, “[E]verybody has a job to do. I’m accountable to me, so I can’t expect this man to lose his job over me.” Ken (W, WC, WC) quipped: “They had their job and my job was to not help them do their job.” Similarly, John Blaze (W, WC, WC) told me: “[...] the police and FBI? They—they’re doing their job. [chuckles] [...] I don’t take it personally [...] You know, their job is to lie to you and get a confession. That’s their job.” Stephen Douglas (W, MC, P) also reflects a similar sentiment. He recalls desiring to be a police officer as a kid: “I actually wanted to be a cop but I got arrested my senior year right before graduation [...] After that was when I started doing coke.” While he was unable to attain his goal, two of his cousins are police officers. He reflects that “most cops” will treat you well “as long as you’re cool with them.”

But unlike police officers, lawyers are supposed to *protect* the criminally accused; this was understood as their job. Individuals in my sample who grew up in working-class or poor neighborhoods and/or who repeatedly relied on the indigent defense system often viewed lawyers as lacking the ability to effectively do their jobs. Most commonly, respondents would highlight particular aspects of lawyers’ demeanor or behavior that struck them as potentially problematic in them effectively doing their job. For instance, Arnold (B, WC, MC) worried that his lawyer’s Eastern European accent would hamper her ability to advocate on his behalf: “[S]he

had an accent, and I think they [other court officials] struggled to [...] understand what she was saying so they wasn't really paying attention to the facts.” Likewise, Mary (L, WC, WC) expressed her concern that her lawyer on her most recent case was inexperienced. She said, “I felt like he looked very inexperienced [...] He was very fast speaking like you could just tell he’s not as confident as he should be.” Yet, when I observed Mary’s lawyer in court, I recognized that her lawyer was a fast speaker and that what she interpreted as a lack of experience and confidence I understood was more about his effeminate demeanor. Such demeanor likely did not reflect his competence or shape his ability to advocate on her behalf, even if she perceived this to be the case. Indeed, my field notes during my second observation, I noted how comfortable her lawyer was with his colleagues:

Field Notes: I noticed Mary’s attorney sitting in the jury box with a couple other attorneys. He’s dressed in a grey suit today. He’s laughing and has a huge smile when he laughs. He’s chatting with other attorneys.

Complaints like those of Mary and Arnold highlight aspects of lawyers’ demeanor that may or may not indicate competence in advocating for their clients; regardless, these perceptions matter for defendants’ willingness to trust in them.

A small number of respondents described specific instances of their lawyers’ incompetent actions. For example, Frederick M. (W, WC, P) recalls being frustrated by his lawyer during his domestic assault case. In the middle of the case, he entered a treatment program to manage his addiction to heroin. He knew that he would miss his next court date, so he called his lawyer and asked him to send in forms to the court explaining that he was in a treatment facility; the facility would fax the forms to the lawyer. But his lawyer failed to submit the paperwork, resulting in a default arrest warrant being issued:

So I called my lawyer, and he didn't answer. So I called the courthouse to see when the date got pushed up to, and they said I had a warrant. And when I called my lawyer, he said they [the treatment center] faxed the thing Monday night instead of Sunday, so he never even got the fucking thing after court on Tuesday.

Stories of clear incompetence like Frederick M.'s were few among the individuals in my sample, but when they occurred, they contributed palpable evidence of ineffective assistance of counsel in the eyes of defendants.

More often than not, there was a recognition among working-class and poor defendants that not all lawyers are bad lawyers. Tweedy Bird (B, WC, WC), for example, expressed a general distrust of all lawyers, but admitted that sometimes you can luck out: "You go for a court appointed lawyer and you don't know who you're going to get [...] I've had the same lawyer as [Boston-area celebrity ...] I've had some powerhouses." Thus, individuals in my sample acknowledge that there are some lawyers who are more competent than others, even within the indigent defense system.

Relatedly, skepticism of lawyers' professional expertise sometimes has less to do with a lack of faith in their competence and knowledge and more to do with a lack of faith in their willingness to use their knowledge *on their clients' behalf*. There is a particular skepticism that lawyers reserve their most ardent advocacy only for clients who pay them for their services and ignore those who do not. In many ways, this element of mistrust is similar to what Levine (2013) identifies among low-income women in their interactions with welfare office case workers—workers whose structural incentives to reduce the size of their caseload directly counter the interests of welfare recipients. Royale (B, WC, WC) reflects that certain lawyers, particularly public defenders, have no incentives to work on your behalf: "He's not getting paid enough and half the time the public defenders are working with the DA. So they try to get you to take deals." As I describe later in chapter 4, the common observation that defense attorneys (especially public defenders) and prosecutors work together toward a plea deal for the defendant is sometimes

viewed as a valuable aspect of lawyer's expertise and other times, as Royale articulates, is viewed as an unfair component of a rigged system.

Cultural mismatch from middle class cultural experiences, tastes, and worldviews

Trust also depends on whether defendants and their attorneys share common experiences, tastes, or worldviews. When defendants perceive a cultural *mismatch*—or, that they do *not* share tastes or experiences—with their lawyers, they often feel alienated from the criminal court process and lose hope in achieving an ideal outcome with their specific lawyer. The process of cultural mismatching, as with the process of cultural matching, contains both racialized and classed components that are not easily distinguishable.

An incident I witnessed during a day of observations in a Cambridge courthouse illustrates the racialized, classed, and even gendered⁵¹ elements of cultural mismatching. During a pre-trial session, I observed a young white male defendant wearing a plaid button-up shirt and trendy jeans request to be assigned a new court-appointed attorney. He insisted to the judge that his current attorney, a black woman, was not representing him adequately: “I mean, I’m willing to take a plea, but I want to know about more options. I feel like she’s not giving me options or explaining things to me. She’s just layin’ it on me, you know.” During a break in the court session, I introduced myself to the black woman attorney and asked why her client was seeking to request a new lawyer. She told me, “Sometimes you and your client don’t hit it off.” But, she insisted: “I don’t take it personally when someone wants a change of attorney.” Indeed, later during the court session, she assisted her client in acquiring new representation:

⁵¹ As noted in chapter 1, I limit this dissertation to a discussion of race and class situational resources and disparities. Given that I did not systematically probe or seek to observe gendered resources and scripts in my interviews or observations, I hesitate to make claims about my findings relating to gender that emerged in the process of data analysis. Future research should consider how gender shapes differential navigation—not only from the perspective of defendants, but also from the perspective of lawyers, many of whom are women (e.g., 57 percent of staff public defenders in Boston-area courts in 2016 were women, according to data provided to me by CPCS).

Judge: Do you feel there's a breakdown in communication, counsel?

Attorney: Yes. I would be fine giving him another attorney.

The judge reassigned the white male defendant to a white male attorney who was on the bar that day. The white male attorney strode toward the defendant, winked, and handed him his card: "Give me a call." The defendant gave a thumbs-up and smiled as he left the courtroom, evidently pleased at his new legal representation.

It is uncommon for a white defendant in Boston to enter into an attorney-client relationship with a non-white attorney; as noted earlier, nearly 25 percent of staff public defenders are racial/ethnic minorities. In conversations with defense attorneys, I have been told that the private defense bar in Boston is probably even less diverse than the makeup of staff public defenders. Thus, it is more often the case that black, Latino, and other minority defendants will fail to share common experiences and tastes with their attorneys. Sometimes, defendants perceive a cultural mismatch on the basis of racial identity alone. Take the case of Slicer (B, MC, WC), a middle-aged black man who has faced two OUI charges in his life. During his first OUI charge, his attorney was a black man, and during his second charge, his attorney was a white woman. He felt his white attorney was "working for them [the government]." However, he recalls feeling more at ease in interactions with his black attorney. Slicer summarized his feelings: "He was black and looking out for a black brother in a certain way. [...] But when you're black and you have a white lawyer, you're fucked."

Cultural matching and mismatching develop through an iterative process of repeated interaction. Defendants may not immediately trust an attorney simply because their attorney shares their racial/ethnic or class identity, and vice versa. The case of Tim illustrates how mistrust can develop as a defendant slowly comes to learn more about his or her attorney and his or her attorney's worldview. Moreover, Tim's case illustrates class distinctions that can arise in

same-race attorney-client relationships. Tim (B, P, P) was initially excited to meet his lawyer, a black woman. But ultimately, they failed to establish a trusting relationship given their class differences. Over the course of his interactions with her, he began to sense that she was “stereotyping me [...] like I was some drug dealer,” because “so many black kids come through there with criminal records [...] and] she was surprised that I had only, like, petty cases like trespassing.” He concluded that she could not be trusted because she was not his kind of black person; instead, she was a “sellout”—“one of them type of [black people] who is like ‘Yes, sir.’ ‘No, sir.’” Tim’s experiences of mismatching with his attorney blur the line between dissimilar worldviews and perceived discrimination, a topic I discuss in the following section.

Prior and continuous experiences of discrimination

Mistrust is also shaped by whether the defendant perceives that he or she has been, or continues to be, unfairly treated by defense attorneys or other legal authorities. Fear of and cynicism toward police officers, described earlier, has also been documented in numerous studies of the poor and racial/ethnic minorities living in segregated, socially-isolated neighborhoods (see Kirk and Papachristos 2011; Sampson and Bartusch 1998). Racial/ethnic minorities have also been shown to exhibit lower levels of trust in various legal institutions, from police to the courts (see Bobo and Thompson 2006; Hagan and Albonetti 1982). Such distrust has been shown to be related to experiences of discrimination or unequal legal experiences (Brunson 2007; Muller and Schrage 2014; see also Smith 2010). While generalized distrust of the law matters, some studies have shown that generalized distrust does not necessarily translate into rejection of specific legal authorities. For example, Bell (2016) shows how low-income black women, despite their general distrust, draw on alternative strategies to rely on police officers. She reveals how some women

may distrust the police as an institution but trust specific officers in their neighborhood. Other women may trust police to handle domestic problems but not to handle violent street crime.

I also find that generalized distrust of the law does not necessarily translate into mistrust of specific lawyers. However, negative past experiences of mistreatment—either direct or vicarious—shape defendants’ willingness to trust in lawyers they have yet to meet. For many, past mistreatment clarifies any naïve or hopeful feelings they may have had about a fair and just legal system (recall the naivete of the mostly middle-class individuals in my sample who have fewer encounters with the system). Instances of mistreatment early in the life course appear to be highly salient in framing perceptions of future lawyers. Take the case of Donna (W, P, P). Donna grew up in and out of foster care and was first arrested when she was 14 for marijuana possession in a Boston park. Reflecting on her very first lawyer, she told me: “I didn’t think [she] did a good job at all.” At their first meeting, Donna’s lawyer was dismissive: “She looked at me and was like ‘Ok,’ and she wrote things down. And I was like, ‘What are you writing down?’ And she was like, ‘Don’t worry about it.’ And [I was] like, ‘I have the right—it’s my case.’” This early experience of mistreatment has stuck with her for over three decades. Multiple times during the interview and across the three court cases we discussed, she told me that she always has the sense that her attorneys are “working with the other side.”

Like Donna, Jeffrey (B, WC, P) also recounts several negative experiences of mistreatment at the hands of criminal justice officials, especially lawyers, over his life course. He vividly recalls that when he was charged with cocaine possession at 16, he felt that his lawyer had overpromised a positive outcome: “He told me he would get me off, and he never got me off. And ever since then, that’s what I’ve been dealing with.” After spending years in prison, he came to develop a greater mistrust of lawyers through conversations with other inmates:

If you're going to jail because of all these charges and he's not representing you—I mean, I know a lot of people who know about the law more than their lawyers! [...] Um...that's one thing about jail [...] they have a law library where you can look over your case. You can do a lot with that. You know, a lot of people have overturned their case by getting into the law library. [...] but it's just like nobody has got hope. There's people who don't do crime, but they just got [caught at] the wrong [place and] time [...]

Having experienced unexpected case outcomes from his own attorneys—and vicariously through other inmates—Jeffrey's negative experiences have resulted in not only a lack of faith in lawyers' expertise but also a heightened confidence in his own expertise.

Some defendants noted direct racism or classism from their attorneys. As described earlier, the experiences of both Slicer (B, MC, WC) and Tim (B, P, P) were framed as not just instances of cultural mismatch but also as instances of racism and classism. For Slicer, he even described his inability to get along with his white attorney as partly due to what he perceived as racism. He described his white attorney as one of many “racist whites.” It should be noted that perceptions of direct racism as expressed by the individuals in my sample were more common with respect to police interactions than with respect to lawyer interactions. Recalling his experiences with police, Slicer told me that they have used explicitly racist language toward him: “When they come up to you and they start to talk to you and start ‘nigger’ this this ‘motherfucker’—you know what I'm saying? You know how it is.” More often, many individuals—black and white—described the system as a whole as “racist.” Often such characterizations focused on laws and policies that had racially disparate impacts rather than specific legal authorities who engaged in discriminatory treatment. Don (B, MC, WC), who was hoping to be granted an alternative sentence of drug rehabilitation, reflected that such alternatives are provided in discriminatory ways. He said, “I think it's racism. I really believe that with all my heart. Because I've seen it over and over and over again where certain people get it. Treatment facilities. They go to drug court.” And Waine (W, WC, WC), a white man who

had just watched the 2016 documentary *13th*, told me: “I 100 percent agree with that documentary [...] all my friends that aren’t white have been a victim of stop and search. Every single one. Every single one. My white friends? None of them.”

It is not just the defendants I interviewed who describe incidents of mistreatment and discrimination from lawyers and other authorities; in addition, some of the lawyers I spoke with also described their own mistreatment of clients. In prior research on a Northeastern state court system, my colleague and I found that defense attorneys, like judges, acknowledge their own role in differentially treating criminal defendants on the basis of race and language (often associated with Latino ethnicity). We (Clair and Winter 2016, p. 346-7) wrote:

Research has found that defense attorneys exhibit implicit racial biases against Blacks and Latinos similar to those of the general population (Eisenberg and Johnson, 2003). Indeed, Public Defender 111 told us that, after auditing his own caseload of approximately 120 prior cases, he found that he had written special disposition memos more often for White defendants than for the “80 percent of my clients [who] were Black or Hispanic.” Moreover, a lack of information about a minority defendant, given a language barrier or a misunderstanding of the background of the defendant, could result in poor advocacy. For example, Public Defender 125 expressed frustration at how difficult it is to get to know his clients who speak other languages even when interpreters are available: “I do generally feel like I can connect, you know, reasonably well with clients of a different race who speak English. But clients who don’t speak English I think is where I tend to struggle.”

Attorneys I spoke with in the Boston area made similar comments. For example, one attorney exhibited bias in favor of one of her white clients. In describing case strategy, this attorney remarked that it was a good thing that her client was a “cute white girl” because she could easily take the stand if her case were to go to trial (see also Emmelman 1994 on attorney bias in favor of white and privileged clients).

I also observed instances that could be described as *laissez-faire* or colorblind forms of racism (Bobo, Kluegel, and Smith 1997; Bonilla-Silva 2010). These subtle forms of racism manifested in enacted behaviors or comments made in public courtrooms or courthouse

hallways.⁵² Sometimes, I would overhear prosecutors or defense attorneys make stereotypical remarks about the minority defendants in their midst. For instance, one prosecutor described how a black woman “probably” committed welfare fraud (a charge she was facing) because “I mean, look at her clothes and her iPhone.” I interpreted his remark as suggesting that the woman—a black indigent defendant—could only afford her clothes and phone if she were illegally withholding other sources of income from welfare agencies.

During one of my observations in a district courthouse, I made a note about how I personally might be hesitant to trust some (though by no means all) of the white defense attorneys in the courthouse, given my own perception that they may hold racist attitudes or engage in racist behaviors. In my notes, I observed a white lawyer who I thought might harbor racial prejudice:

Before the court session starts, I make a mental note about trust. I realize, looking at many of these old white male lawyers that I myself might not trust them. For example, a white male lawyer rolled in [to the courtroom before the session began] at 9:04am and shouted out his client’s name over the crowd of people slowly gathering and making their way into the courtroom and murmuring lowly. [Sometimes lawyers do this just to see if their client is present before court starts.] His client stood up and said, “I’m here.” And the attorney’s like, “Ok, great.” After the client started to get up, he held out his hand and said, “Please sit, wait.” He then repeated what he said, awkwardly and in a terrible Spanish accent: “*Por favor, sientate.*” I’m thinking to myself: “OK, that was unnecessary to say it in Spanish. You [the lawyer] clearly aren’t fluent, and he [the defendant] clearly perfectly understood what you said English.”

Lawyers’ own acknowledgement of discrimination coupled with defendants’ perceptions and my own observations speak to both the legitimacy and—perhaps even the rationality—of mistrust among working-class, poor, and especially poor non-white defendants. Peel (1998) and others have noted that distrust of governmental institutions and actors among the disadvantaged and marginalized can be understood as at once rational and potentially liberating (see also Cohen

⁵² Even more explicitly racist or classist behaviors and attitudes may have been expressed behind closed doors, in prosecutors’ offices, defense attorneys’ offices, or judges’ chambers. My data do not afford me access to these backstage social worlds. Yet, a number of studies have documented “back-stage” racism in other institutional contexts (Picca and Feagin 2007; see also Hughey 2012), and in the criminal court context, Van Cleve (2016) has documented such attitudes and behaviors in the Cook County court system.

2004). Distrust reflects the reality of disenfranchisement and oppression experienced by these disadvantaged individuals. In the case of the respondents in my study who are located in working-class and poor situations, their unwillingness to trust in their attorneys reflects their awareness of the court system's unfairness in their own lives and the lives of many of their peers. And yet, as I will show in chapter 4, disadvantaged defendants' mistrust of their lawyers can often have worse consequences for their ultimate punishment experiences. Indeed, one of the bases for attorney discrimination between clients is whether a client trusts in and defers to them; trust between defendants and clients goes both ways (see Flemming 1986). One attorney told me she has had clients who "have been very disrespectful to me [...] so, when that happens to me, it's a disservice to the client." While many defendants' hesitations to fully trust in one's attorney can preserve their dignity, doing so also spells trouble for extracting a relatively better punishment outcome from the courts.

The decisive constraint of attorney assignment

When defendants find themselves in mistrusting relationships with their lawyer, they can attempt to find another lawyer to represent them. As noted above, almost all individuals recognize that some lawyers are effective. The issue is that many find themselves in relationships with ones that they have reason to mistrust either because of a general skepticism of the profession of public defense, cultural mismatching, or experiences of mistreatment and discrimination. While defendants with financial resources can hire a new attorney, those without financial resources cannot and instead rely on court-appointed attorneys.

Most of the individuals I interviewed relied on court-appointed attorneys for most of their cases. Court-appointed attorneys—both public defenders and those from the private bar who sit court-appointed—may cost defendants a relatively minor amount of money, depending on their

ability to contribute. In most instances, all arraigned defendants are initially assigned an attorney by the court unless they appear at arraignment with their own privately retained counsel present. Later, probation and the court work to determine whether the client will be determined to be indigent based on specific indigency criteria or will be asked to pay a fee toward their representation. If a defendant is unable to pay this fee despite not qualifying for indigency, many judges will allow him/her to pay in the form of community service. Despite their contributions, indigent defendants who are dissatisfied with their attorney and want to be reassigned counsel often find it difficult to do so. Doing so requires not only the confidence—poise, articulation, and logical argumentation skills—to insist upon one’s right to choose an attorney, but also one’s claim of poor representation to be perceived as credible by judges. Such requirements can be a tall task for defendants who are accustomed to having their voices devalued in courtrooms. Structural constraints—such as being detained pre-trial—only dim certain defendants’ prospects.

In my over 100 hours of observations in Boston-area courthouses, I observed only one defendant with a court-appointed attorney successfully be reassigned a new lawyer. This defendant, whom I described earlier in the section on cultural mismatching, was a white man who wore a button-up shirt and trendy jeans to court. Although he qualified as indigent according to official bureaucratic categories, he presented in many ways as culturally middle class. He was able to articulate his circumstances clearly to the judge in a firm but deferential manner. He was also assisted by his attorney, who agreed that there had been a “breakdown in communication” between her and her client. This one instance aside, I witnessed no other incidents of a defendant successfully being reassigned a court-appointed attorney. More common were instances in which a poor defendant attempted to ask to be re-assigned counsel and it was denied by the judge. Yet, one such incident in which an individual was not re-assigned counsel

involved a poor white woman whom the judge noted had been reassigned an attorney five times prior. She exhibited behaviors in open court that suggested she suffered from mental illness. As Kevin (W, WC, WC) lamented to me about one of his cases, “I could’ve fired [my lawyer], but I tried to fire him and the judge wouldn’t let me.”

Beyond the difficulties of requesting a change in appointed counsel given lack of access to typically middle-class demeanor and forms of linguistic capital, poor defendants also find the structure of the court process to be a constraint in requesting a change of court appointed counsel. Tonya’s (W/N, P, P) story is illustrative. When she asked for a new lawyer during a case many years ago, she recounts: “[T]hey were like, ‘What is wrong with him? He’s representing you perfectly fine.’ And I was pissed, like: ‘I don’t feel he’s doing the right job for me.’” She then described the hurdles she faced trying to change her lawyer while detained pre-trial:

I would put letters into the court [from jail] saying I want to change my lawyer. I would get nowhere. I wouldn’t hear back, and then I’d be in the courtroom and I’d be like, “I don’t feel I’m getting correct representation.” [...and the judge would say]: “Why haven’t you sent anything in?” I said, “I’ve sent several papers. I have copies of them.” “Well, do you have documentation that you mailed these out?” I said, “Well, if I knew I needed that, I would have gotten copies before I came here.”

Her pre-trial detention, due to her inability to afford bail, directly contributed to her inability to be reassigned to a new lawyer. It is no coincidence that poor defendants face difficulties changing their lawyers. One defense attorney told me that judges do not want defendants “shopping for new attorneys,” and so judges require “strong justifications” for reassigning counsel. In sum, choice in one’s lawyer is more available to defendants with greater access to cultural and economic resources, affording them both a sense of control and an insurance policy if they ever have reason to mistrust their representation.

Mistrust and intersections of disadvantage: the burdens of black poverty

Much of the preceding analysis has centered on class differences; yet, I want to be clear that these classed conditions of mistrust are also highly racialized, especially at the bottom end of the class distribution. It is among the poor where race and racialized situational resources seem to play their greatest role. In particular, I have shown how the conditions of cultural mismatching and perceived discrimination appear to disadvantage black working-class and poor defendants most severely. The intersection of their class and race profoundly delimit the resources available to them in establishing trust in the attorney-client relationship. The patterns of trust as expressed in the pre-interview survey confirm the unique mistrust among lower-status black defendants. Five respondents are black and currently poor. All of these poor black individuals (5 of 5, 100 percent) reported that they disagree/strongly disagree with the statement “My lawyer did his/her best to defend me in my most recent case.” While my sample is not representative and is small, it is striking to compare poor blacks to poor whites. On this same measure, just 4 of 11 (36 percent) currently poor whites disagree/strongly disagree. Poor blacks appear to be in a unique position.

The narratives of the poor African-American men in my sample—which have been documented above—reveal how the multiple disadvantages of racial mismatch, racial discrimination, and stigma shape mistrust. These findings complement existing research on black poverty. The pioneering work of William Julius Wilson provided one of the earliest statements of the need to examine the unique disadvantages faced by low-income blacks living in highly segregated urban neighborhoods. In his book *The Declining Significance of Race*, Wilson (1980) argues that following economic developments of the post-World War II period, class status became a more salient aspect of differentiation within black communities. In the urban centers in the Northeast and Midwest, the loss of employment in inner-city neighborhoods coupled with the

out-migration of middle-class blacks (due to growing class variation within black communities) conspired to leave poor blacks socially isolated from mainstream institutions (Wilson 1980, 1996). Other scholars have shown how this context of social isolation is associated with violence (Anderson 1999; Massey 1995; Kirk and Papachristos 2011; Wilson 1996), has restricted residents' access to dominant forms of cultural and social resources and cultural frames (Duck 2017; Harding 2010; Young 1999; Wilson 2009), and persists across generations (Sharkey 2013). Moreover, some scholars have noted how governmental disinvestment of economic resources in poor black communities and rising economic inequality has been accompanied by increased policing of these same areas (Beckett and Western 2001; Wacquant 2010; see also Neckerman and Torche 2007, pp. 343-4).

Wilson's scholarship and that of others has not denied the important role of race as a dimension of stratification in the contemporary United States; rather, his oeuvre has highlighted the "diverging experiences of blacks along class lines [...indicating] that race is no longer the primary determinant of life chances for blacks" (Wilson 2011, p. 57). While Wilson focuses on class's negative effects among poor blacks, more recent scholarship has shown how black poverty is uniquely burdensome in comparison to white poverty across myriad contexts (e.g., Sharkey 2013; Western 2006), notably in the criminal courts (e.g., Winter and Clair 2018). Sociologists have come to understand that the inimitable position of the black poor does not so much diminish the role of race as much as it reveals the enduring stratifying role of race in the lives of poor blacks who are most vulnerable to the racialized causes and consequences of housing discrimination, disinvestment in schools, and hyper-investment in broken windows policing (Massey and Denton 1993; Reskin 2012). In Boston in the second decade of the twenty-first century, residential segregation still plays a powerful role in determining the spatial

boundaries of race and class for poor black Americans. Spatial boundaries—maintained by red-lining and labor market structures—make experiences with the criminal justice system more likely among poor African Americans and Latinos, who live in highly surveilled neighborhoods, such as Mattapan, Dorchester, and Roxbury (see Goetz et al. 2017).

Race and class can thus be understood to operate in tandem to create the pernicious conditions of mistrust in lawyers among the black poor in my sample. By contrast, the black middle class in my sample appear to be protected by their class status. Of the three currently middle-class black individuals, 2 of 3 (67 percent) strongly agree that “My lawyer did his/her best to defend me” in their most recent case; the other black middle-class individual responded “Neutral.” Their trust is surprising, especially given research that has shown that the black middle class is rarely isolated from the disadvantages of the black poor, given family ties and continued neighborhood residence in poorer neighborhoods (Pattillo 2005, 2013 [1999]) as well as a heightened perception of racial discrimination as compared to their poor peers (Feagin and Sikes 1994; Hochschild 1995; Young 2006).

One explanation could be that there is something unique about the middle-class blacks in my sample and that my sample size is simply too small to make claims about them. Yet, it should be recalled that the measure of trust in one’s most recent attorney has only been compared to respondents’ *current* class status at the time of the interview. While there are only three African Americans in my sample who are currently middle class, there are six who come from middle-class family backgrounds. In qualitatively analyzing the total number of court case experiences (N=13) that these six individuals shared with me, it is evident that their middle-class childhoods afforded them access to certain middle-class resources that enabled them to develop trust in their attorneys in many cases.

A more likely explanation for the surprising level of trust that middle-class blacks in my sample have in their lawyers is that they simply have access to middle-class resources that matter in shaping trust in lawyers. The processes and resources identified earlier in this chapter—familiarity with professionals, cultural matching with middle-class cultural experiences, relative lack of system experience, and the decisive power of attorney choice—are mostly available to the average middle-class African American. Indeed, middle-class blacks have been shown in other institutional settings to draw on their class-based identities and resources as a strategy to attain middle-class advantages despite their racial identities (see Lacy 2002, 2004; Neckerman, Carter, and Lee 1999). To be sure, middle-class blacks still may experience a relatively high level of (negative) contact with the legal system (through policing and family involvement) than middle-class whites, even when living in the same neighborhoods. Yet, unlike trust in police or other legal authorities, lawyers are understood by middle-class individuals to be in a professional position whereby their purported mandate is to protect their client. Recall the general familiarity and deference that middle-class individuals in my sample exhibit toward their lawyers. As will be further documented in the next chapter, the middle class—blacks and whites alike—are buying the professional expertise that lawyers are selling.

Chapter 4: Cultivating Legal Expertise, Making Legal Decisions, and the Reproduction of Disparities

When I interviewed Arnold (B, WC, MC), he had a gun possession case hanging over his head. A Boston native and minor league basketball player, Arnold was facing the charge in a rural, majority-white county in western Massachusetts, where he and a couple friends had been pulled over by a state trooper. The trooper alleged that, after running the car's plates, the car popped up as stolen. He arrested all three passengers. Upon searching the vehicle, the trooper found an unregistered gun in an equipment container in the car. None of the passengers' fingerprints were found on the gun.

During our interview, Arnold told me that he had originally been assigned a court-appointed attorney, but she was not effective in the courtroom: "She's a kind woman [...] and worked diligently to put together a case for me [but ...] she had a strong accent and so I think they [other court actors] couldn't understand her." She also did not fully believe in his innocence, or at least his ability to prove it, telling him that he should be prepared to "have

canteen money ready” for jail. Arnold recounted that her suggestion was “a red flag for me that she was willing to accept what the courts wanted to do, rather than forcefully impose her will on the situation on my behalf.” Because he did not trust her, he worked with his basketball agent to find an attorney he did trust—a white male attorney without an accent who was also a former basketball player.

Later, I followed Arnold to court the day his case was set for trial. He and his attorney had originally planned for a jury trial, which I had made a note of during our interview because it struck me as odd, given the whiteness of the county. At the time, Arnold did not express alarm at taking it to a jury. However, on the morning of trial, Arnold’s attorney suggested that it may make more sense to do a jury-waived trial, in which the judge (who his attorney told him was a former criminal defense attorney) would rule on his guilt. In a courthouse hallway, I watched quietly as Arnold thought for a second, then looked to his lawyer and asked, “What do you think I should do?” His lawyer explained the difference between the two types of trials and the benefit of going jury-waived, noting that the jurors would not look like him and therefore may not look objectively at the lack of evidence against him. Without hesitation, Arnold said, “OK, let’s do it. I trust you.” His trust allowed him to delegate expertise to his lawyer and rely on his lawyer’s substantive knowledge of the judge, the courthouse culture, and how evidence can be misunderstood by jurors. That afternoon, Arnold would be found not guilty.

Tonya (W/N, P, P), who has struggled with substance use disorders since childhood, recounts a very different experience with her lawyer. Tonya’s addiction to cocaine, which she first tried at 13, has gotten her into trouble with the law numerous times. When I interviewed her, she was facing a probation violation hearing, where a judge would decide whether her recent drug use should constitute a violation and result in jail time. During our interview, she told me

that her court-appointed lawyer—one of many “public pretenders” she has had represent her—was a nice enough woman. But, Tonya generally has a hard time trusting court-appointed attorneys, because “they’re all buddies with the district attorneys,” and instead of working for her, they “work for the courts.” Throughout the interview, she often referred to court-appointed lawyers as “public pretenders.”

About a month after the interview, I followed Tonya to court for an initial violation hearing. When I met her attorney, I was struck by how knowledgeable about Tonya’s case she seemed to be, given Tonya’s stated mistrust of her. Still, Tonya was skeptical—both before and after the hearing. Before the hearing, the two of us sat in a spacious, near-empty hallway waiting for her attorney. She told me about how she had been speaking to the women in her sober house (many of whom had also faced drug-related legal entanglements) about how she could get a letter from a psychologist who studies the brains of people addicted to drugs. Tonya told me she had been working to obtain such a letter to show to the court at her next hearing, in the hope that this would help to better explain her circumstances. After a while of us sitting there and chatting, Tonya began to complain to me about her attorney’s pattern of tardiness. With annoyance, she commented that her attorney was probably late because she was accompanying other defendants in their probation meetings even though she “never has time to visit me during my probation meetings.” A few minutes later, Tonya’s attorney rounded the corner, sat down, and started discussing strategy for the hearing. After the hearing, Tonya asked her attorney for advice about how to issue a complaint about her sober house’s living conditions: “Is there someone I can call?” Her attorney told her that she was not sure whom to call but emphasized to her that, above all else, she must stay in the sober house as mandated by probation. Outside the courthouse and after we parted from her attorney, Tonya lit a cigarette and sighed, visibly frustrated by her

attorney's insistence on "following the rules" no matter the cost to her personal life and her attorney's lack of knowledge about how to issue a complaint about her sober house.

Tonya's mistrust and frustration resulted in her often rejecting the expertise of her attorney. A month later, just before the final violation hearing, Tonya told her attorney that she wanted a chance to tell the judge her side of the story. She wanted to explain to the judge that she only violated probation because, having just been released from jail, she found herself sleeping on the street. After being sexually assaulted, she sought shelter at a friend's place, where cocaine was present and she ultimately succumbed to her addiction. Tonya's attorney cautioned against this strategy, telling her that the judge "doesn't want excuses;" he only cares about whether "you play by the rules [...and] take responsibility." During the hearing, after her probation officer recommended no jail time, the judge asked Tonya if she had anything to say to the court before he ruled. Tonya rejected her attorney's advice and began criticizing her current sober house's conditions and detailing excuses for her relapse. But it became evident that the judge was not buying her story, even to Tonya. As such, near the end of her statement, she changed her tune and instead followed her attorney's suggestion. She told the court: "I'm trying to learn and be responsible, your honor. And also, I want to apologize [to the court] ... I'm doing the best I can." Ultimately, the judge followed Tonya's probation officer's recommendation to reinstate her probation without jail time but for a longer period. But the judge didn't mince words and warned that another violation would result in jail time: "[...] undergirding all of this is you wanting to do things your way. I don't want to find out weeks from now that you violated again [...because] you want to do things on your own terms."

*

In contemporary scholarly accounts of the criminal courts, defendants play, at best, a supporting role. They are portrayed as background players who are acted upon and processed (Feeley 1992 [1979]; Van Cleve 2016) in an assembly-line fashion (Blumberg 1967) of mass dispensation (Kohler-Hausmann 2013). Their voices are rarely heard in open court (Natapoff 2005), and so, they are assumed to play little role in the determination of their final outcomes. Their minor role has been described in both lower courts that adjudicate mostly misdemeanors (Feeley 1992 [1979]; Kohler-Hausmann 2013) and also upper courts that handle mostly felonies (Blumberg 1967; Eisenstein and Jacob 1977; Lynch 2016). Once arrested, defendants are viewed to be at the mercy of the system, where it has been suggested there is little room for negotiation, resistance, or savvy leveraging of court cultures, procedures, and due process rights (Lynch 2016).

This chapter challenges this portrait of absence and powerlessness among criminal defendants. Through analyses of respondents' experiences in court and in interaction with their lawyers and other authorities, I offer evidence of criminal defendants' agency. While some defendants in my sample become resigned to criminal justice involvement after multiple interactions with the system, the majority never give up in their attempts to lessen the punishment they face. Defendants' actions often center around what I describe as *acquiring expertise*, or the process of accruing knowledge, skills, and relationships in relation to the criminal law that they believe will assist them in their goal of reducing the court's punishment in and control over their lives. Yet, I find that despite their agency, defendants' actions and attempts to use their expertise—e.g., speaking up in open court, seeking to change their lawyer, questioning their lawyer's strategies, rejecting their lawyer's advice, contesting the court's interpretation of their crimes—are often punished by legal authorities. In what follows, I show how individuals who delegate authority to their lawyers' expertise in interactional moments often

fare better than those who withdraw from their lawyers and reject their expertise. Mistrust, described in chapter 3, is a key ingredient in this interactional process. Withdrawal from lawyers and reliance on one's own expertise (as opposed to one's lawyer's) occurs amidst feelings of mistrust, in addition to structural constraints beyond the courthouse walls, such as living in highly-surveilled poor neighborhoods or being detained pre-trial. These processes are patterned along race and class lines and likely contribute to observed disparities in punishment, as the stories of Arnold and Tonya suggest.

Defendant agency and legal expertise

In his classic book *Criminal Justice*, Abraham Blumberg (1967) levied an influential critique of the way legal scholars, social scientists, and everyday people had come to portray the criminal court process. He argued that the court system is a bureaucracy that disposes cases in "assembly line" fashion. Rather than engaging in adversarial due process, defense attorneys and prosecutors, he argued, engaged in "justice by negotiation," whereby they relied on plea bargains to quickly and efficiently dispose of cases. Drawing on ethnographic and interview data from a criminal court system in a major American city, he showed that many defendants felt coerced by their defense attorneys into accepting guilty pleas, despite maintaining their innocence. Thus, he suggested that it was a "dangerous myth" to assume that defense attorneys were zealous defenders of their clients' rights and liberties. Instead, prosecutors and defense attorneys engaged in "bureaucratic due process" through "secret bargaining sessions, [and] employing subtle, bureaucratically ordained modes of coercion and influence to dispose of onerously large caseloads in an efficacious and 'rational' manner" (Blumberg 1967, p. 21). These methods of coercion included suggesting to defendants in their first meeting that the best option may be to take a plea. Moreover, these methods of coercion did not vary by the type of defendant presented

before the court. Blumberg (1967, p. 41) noted that “social position” could not overcome the overall domination of the bureaucratic court system:

[...] approximately 8 percent [of the defendants in the court in 1964], by virtue of their education, occupation, income, and nature of their offense, would qualify as ‘white collar’ criminals. While these offenders might ultimately have fared better by plea or sentence, they could not by virtue of a more favorable social position overcome the organizational mechanism of the court entirely—contrary to a rather shopworn notion among criminologists.

Importantly, Blumberg suggested that defense attorneys’ coercion of clients was not necessarily mal-intentioned; defense attorneys found themselves in an unenviable position. Their treatment of defendants was a function of the perverse incentives of the bureaucratic court process, which encouraged efficient case management, relied on support from public funds, and necessitated the maintenance of ongoing relationships between defense attorneys and prosecutors.

Blumberg’s account offered an important revision to prior portrayals of the courts as an adversarial system in which defense attorneys have the best interests of their clients at heart; yet, more recent research on the courts has questioned and revised some of his arguments. For the purposes of this chapter, I highlight how more recent ethnographic and interview-based work on the courts has suggested a more complex attorney-client relationship and a more complicated positionality of defense attorneys in relation to the court system. While these more recent accounts rarely deeply examine defendants’ interpretations and actions, they suggest that defendants may play an important and understudied role in court processing—and that access to various resources may shape their abilities to navigate the court process.

To be sure, much recent qualitative empirical work on court cultures and procedures has confirmed many aspects of Blumberg’s account; yet, this body of work offers important criticisms that motivate an in-depth examination into defendants’ agency. For example, Casper (1972), who centers on the defendants’ perspective, confirms aspects of Blumberg’s analysis in

the eyes of defendants, who distrust their attorneys given that they are employees of the state. At the same time, Casper argues that defendants view the criminal court process as a “game of resource exploitation” (Casper 1972, p. 18) wherein they seek to leverage “money, status, and the credibility that they produce; the ability to demand a trial; fortitude in ‘waiting them out’; and, often, luck” (Casper 1972, p. 79) in order to play the game to their favor. To be sure, Casper notes that defendants are not necessarily seeking a not guilty verdict, but they are often seeking to acquire a lesser sentence, or a more favorable plea deal. Thus, for Casper—even though he does not examine the topic of inequality or agency among defendants in detail—race and class disparities could be reproduced through the resources available to defendants. This suggestion contrasts with Blumberg, who decried propositions of social status differences as a “shopworn notion among criminologists” (Blumberg 1967, p. 41).

For their part, both Eisenstein and Jacob (1977) and Feeley (1992 [1979]) directly question Blumberg’s characterization of the courts as a bureaucracy. In their study of three felony court systems in Baltimore, Chicago, and Detroit, Eisenstein and Jacob note that courts are not hierarchically organized (thus suggesting a more flexible positionality of defense attorneys) and that cases are not disposed of in assembly line fashion (rather, they are individualized thereby suggesting room for differential treatment). Like Blumberg, though, they did find that defense attorneys felt pressure to control their clients, given perverse incentives, such as worries about state budget cuts if too many cases went to trial. Importantly, Eisenstein and Jacob find immense variation across the three city courts. They find variations in the mechanisms by which cases were dismissed, bail was set, and cases were adjudicated (i.e., jury trial vs. bench trial vs. plea deal). Their findings could suggest that defendants may have more or less room for agency depending on the court context. For example, defendants may have more

agency in contexts where adjudication is more common by trial rather than by plea. Even so, Feeley's (1992 [1979]) critique of Blumberg centers on Blumberg's assumption that a preponderance of pleas necessarily suggests a lack of adversarialism. Instead, Feeley argues that plea deals involve adversarial processes of negotiations, motions, and other "thoughtful examinations" by defense attorneys, prosecutors, and judges meant to get at a common understanding of the facts of a case (Feeley 1992 [1979], p. 13-29). Rather than conceptualizing the court process as a bureaucratic assembly line, he offers the metaphor of the marketplace (Feeley 1992 [1979], p. 12):

A court is not an assembly line, and court officials are not automatons mindlessly stamping out endless copies of the same product. It is neither a bureaucracy organized to pursue clearly articulated goals, nor is it an institution which possesses the means to discipline its members to accept such goals. Rather, the criminal court is more like a marketplace, a complex bargaining and exchange system, in which various values, goals, and interest are competing with one another.

The metaphor of a marketplace, I argue, would suggest that better or worse punishments can be bargained over. As with Casper's argument about the courts as a game of resource exploitation, Feeley's interpretation allows room for defendants' strategizing and use of resources—through the mediation of their defense attorneys—to extract a better deal.

Yet, it is important to note that most interpretations of the court, including Feeley's, suggest that the vast majority of defendants do not exercise any meaningful agency. It is not just that defendants do not appear to use their due process rights of taking their case to trial (Blumberg 1967; Lynch 2016; Van Cleve 2016), it is also that defendants have been described as not actively engaging with their lawyers or the court process more broadly. For instance, Casper (1972) notes that most of the defendants he interviewed exhibit resignation and simply want to get the process over with. Their resignation stems from their lack of knowledge about certain legal defenses, their distrust of lawyers, their sense that fighting their case may backfire, and

their acknowledgment of their factual guilt. For his part, Feeley similarly notes that defendants represented by public defenders “have much less intensity and interest than the clients of private lawyers” (Feeley 1992 [1979], p. 89). Both Emmelman (2003) and Flemming (1986) recount public defenders’ frustrations with clients who mistrust them. Both of their studies describe how defense attorneys, especially those with indigent clients, seek to encourage defendant participation and invest them in a positive working relationship. And contrary to Blumberg, Emmelman further finds that public defenders actively attempt to *not* encourage defendants to plea (Emmelman 2003, p. 109).

This portrayal of defendants as resigned actors whom defense attorneys must resuscitate into action contrasts sharply with my findings and constitutes one of the areas where my argument diverges most sharply with existing research. While I also document pervasive mistrust of defense attorneys, especially among those most socially disadvantaged (see chapter 3), I show how mistrust of lawyers should not be conflated with disengagement from the court process. Instead, as I will show throughout this chapter, many defendants are active decision-makers in the criminal courts, precisely because of their mistrust of lawyers. They engage in various acts within and outside the attorney-client relationship in an attempt to lessen their punishment.

The distinction between *agency within* and *agency outside* the attorney-client relationship is an important one. What Blumberg, Casper, Feeley and others have viewed as resignation does not consider the agency exhibited by defendants outside of their interactions with lawyers. Defendants often talk to other inmates, family, and friends while on trial, gather information and evidence from their communities, seek to evade or manipulate their terms of pre-trial probation, and even attempt to communicate with other court officials without the assistance of their lawyers. All of this action takes place outside the attorney-client relationship and thus outside the

purview of extant research on defendants that has unduly focused on defendants' apparent (lack of) agency in court settings.

Drawing on the concept of legal consciousness developed by Ewick and Silbey (1998), I highlight the way that everyday cultural practices of engagement with the criminal law constitute a form of self-acquired legal expertise among criminal defendants, often accrued and employed outside the attorney-client relationship. Moreover, I show how defendants also exhibit agency within the attorney-client relationship in ways that have also gone largely unnoticed by prior empirical work (but for theoretical statements, see Schulhofer and Friedman 1993; Spiegel 1979). Whereas some defendants question lawyers' strategies, refuse deals their lawyers negotiate, and attempt to hire different attorneys, others defer to their lawyers' expertise, listen attentively, and follow their advice judiciously. I refer to the former set of approaches as *rejecting the expertise* of one's lawyer and the second set as *delegating authority to the expertise* of one's lawyer. Defendants who are privileged to establish trusting relationships with their lawyers tend to delegate authority within attorney-client relationships, whereas those who do not tend to reject their lawyers' expertise and are more likely to cultivate expertise outside the attorney-client relationship.

Why might my findings regarding defendants' agency diverge from the findings of prior work? First, unlike most existing research, my findings begin from the perspective of defendants. I highlight how they view the courts and how they seek to manage its presence in their lives. Moreover, I consider the diversity of their perspectives, given the range of social backgrounds represented in my sample. Whereas Casper (1972) also considers the interpretations of defendants, his findings are based on a homogenous sample of mostly poor white defendants. I have the benefit of comparing how interpretations and strategies vary by access to cultural,

social, and economic resources, as well as trust in one's lawyer, across race and class lines. Second, some of my findings may be unique to my case. My data are collected in Massachusetts, which is known to have a particularly robust indigent defense system (see Strong 2016; Worden et al. 2010). In addition, due process protections for criminal defendants in the state may be more robust than in other systems (see Massachusetts Rules of Criminal Procedure 2017).⁵³ To be sure, the expansion of due process rights may not guarantee individualized substantive justice for most defendants; Van Cleve's (2016) findings regarding the racialized abuse of mostly-minority defendants in Chicago suggest as much. At the same time, expansive due process protections could be a resource leveraged by privileged defendants, thus providing additional mechanisms for the reproduction of disparities. Finally, my findings may be distinct because I consider defendants' interpretations and actions not just within the attorney-client relationship but also outside of it—in their communities, on the streets, and in jail. It is in these social contexts (as well as the court context) that defendants cultivate their own forms of legal expertise.

To serve as a reference point for the reader throughout this chapter, I offer a table that elaborates the decision-making opportunities available to different court actors during the length of the criminal court process in Massachusetts. Table 6 compares the actions that different court actors, including defendants, can take at each stage of the process. I developed this table inductively from analysis of archival data (especially the Massachusetts Rules of Criminal Procedure) as well as from my interviews and observations. The table illustrates the possible and actual actions that each court actor may take in relation to the others. Most possible actions taken

⁵³ For example, states vary by rules regarding discovery, or the sharing of evidence. A recent report by the Marshall Project found that in many jurisdictions, prosecutors are not required to hand over discovery (or, evidence) prior to trial. The report suggested that this lack of a due process guarantee induced defendants to plead guilty, since they would be unaware of the strength of the prosecutions' evidence—or even the possible presence of exculpatory evidence favorable to them—against them (Schwartzapfel 2017). As Table 6 below shows, this is not the case in Massachusetts, where certain evidence is automatically shared prior to pre-trial hearings. And further evidence can be acquired through pre-trial motions.

Table 6. Court actors' decision-making in the Massachusetts criminal court process, by stage (page 1 of 3)

	Court	Probation	Prosecutor	Defense Attorney	Defendant
Complaint	Clerk magistrate establishes probable cause of complaint issued by police or other party	No participation	No participation, unless contacted by police for guidance on filing complaint	No participation, unless contacted by defendant at issuance of complaint	Made aware of complaint at arrest, citation, or summons; may share incriminating information with police or clerk
	➤ Indictment	Superior court judge summons grand jury	Presents evidence and witnesses to grand jury to determine probable cause to indict	No participation	No participation
	Arraignment & Bail	Judge determines indigency status and whether defendant will receive public defender; determines whether bail or pre-trial conditions will be set; can dismiss	Collects demographic information on defendant and helps the court determine indigency status; provides other information to judge for bail	Meets client and discusses background and case events; asks about finances for bail; argues for personal recognition or lower bail & conditions; can move to dismiss	Provides demographics to probation; can resolve case by plea without lawyer; meets (or refuses a) lawyer and shares background & financial info; seeks money if bail is set; abides by pre-trial conditions if set
➤ Bail review	Superior court judge reviews bail decision to reduce/increase, or release on personal recognition	Provides information requested by judge	Superior court prosecutor argues to keep bail, reduce/increase it, place on conditions, or release on personal recognition	Argues for release on personal recognition or reduced bail or conditions	Provides information about social background to assist attorney in arguing for reduced bail
	Discovery	No participation	Must automatically share certain evidence with defense; acquires other evidence	Acquires evidence, goes over with defendant; must automatically share certain (though less) evidence with prosecution	Goes over evidence; collects and shares own evidence with attorney

Table 6 continued. Court actors' decision-making in the Massachusetts criminal court process, by stage (page 2 of 3)

	Court	Probation	Prosecutor	Defense Attorney	Defendant
➤ Pre-trial hearings and conferences	Judge generally oversees; rules on motions, continuances, appeals, and pleas	Manages any pre-trial conditions placed on defendant	Can dismiss or reduce charges at any time; preparing for trial; negotiates with defense; acquiring evidence or witnesses; thinking through case strategy	Preparing for trial; acquiring evidence or witnesses; thinking through case strategy; negotiates with prosecution	May be detained in jail or abiding by pre-trial conditions; acquiring evidence or witnesses; talking to social ties (friends, fellow inmates, family) about case strategy; talking to attorney about case strategy
	➤ Motions	Judge rules on motions	No participation	Can make or agree to several motions: motion to dismiss, motions regarding discovery, motion to suppress evidence, motion for mental health examination	Can ask for attorney to make any of the motions; informs attorney of mental health issues and motions for examination; informs attorney of any new evidence
	➤ Continuances	Judge rules on continuances	No participation	Can ask for continuances to gather more evidence, see if defendant abides by conditions	Can ask attorney to ask for continuances to gather more evidence, wait out witnesses, take time to show willingness to change to court by abiding by pre-trial conditions
	➤ Appeals	Appeals judge oversees	No participation	Can appeal motions decisions not in defense's favor	Can ask attorney to appeal motions
➤ Pleas	Judge conferences with counsel, accepts recommendations, and/or determines sentence if no joint recommendation from prosecution and defense	No participation, except to consult on pleas involving probation resources	Negotiation with defense for joint recommendation; failed negotiation leads to trial or separate plea recommendations	Negotiation with prosecution and client for joint recommendation; failed negotiation leads to trial or separate plea recommendations	Works with attorney, or directly with prosecutor to negotiate joint recommendation; if fails, can go to trial or plea without certainty of sentence; can withdraw plea if unfavorable

Table 6 continued. Court actors' decision-making in the Massachusetts criminal court process, by stage (page 3 of 3)

	Court	Probation	Prosecutor	Defense Attorney	Defendant
Trial	Judge generally oversees process and adjudicates	No participation, generally	Focuses on proving guilt beyond a reasonable doubt	Focuses on proving non-guilt	Provides assistance to defense attorney in proving own non-guilt
	➤ Trial process	Judge oversees	Selects jury, opening arguments, presents evidence, calls witnesses, makes objections, closing arguments	Selects jury, opening arguments, presents evidence, calls witnesses, makes objections, closing arguments; consults defendant on case strategy	Sits in courtroom, can share thoughts about jurors, can share thoughts about case strategy, can take witness stand
	➤ Verdict	Jury (jury trials) or judge (bench trials) determines guilt	No participation	No participation	No participation
	➤ Sentence	Judge determines sentence	No participation, unless judge needs information for probationary sentencing	Asks defendant about mitigating factors; recommends sentence to judge	Shares mitigating factors of social background (childhood trauma, mental illness, drug addiction, etc.)
Appeal	Appeals judge oversees	No participation	Defends determination of guilt	Seeks to prove fault in determination of guilt	Provides assistance to defense attorney in proving fault
	Can share pertinent information with parole board	Parole board oversees hearing, determines early release; probation oversees paroled individuals	Can share pertinent information with parole board	Can share pertinent information and evidence of defendant's worthiness to parole board	Attempts to demonstrate worthiness for early release shares background and worthy changes with parole board
Parole					
Probation revocation	Judge oversees, schedules hearings, reaches verdict and sentencing on violation	Initiates probation violation proceedings, upon new criminal complaint or violation of conditions; recommends sentencing on violation	Works with and defers to probation recommendations	Negotiates with probation and prosecution; seeks agreement on recommendations	Works with defense attorney or directly with prosecution/probation to seek agreement on recommendations; attempts to demonstrate willingness to comply

by defendants are mediated through their lawyer; however, as the table shows, there are some actions that the defendant can take without his or her lawyer's consent or mediation. These various actions often rely on defendants' knowledge of legal expertise, which is cultivated by speaking with social ties who have gone through the courts before, observing court proceedings of other defendants, studying legal texts, or speaking with one's lawyer.

Cultivating legal expertise amidst mistrust

Nearly all defendants in my sample acquire legal expertise to some extent. Even those most resigned to the specter of the state constantly intruding in their lives seek to learn about their criminal charge, its possible sanctions, and their possible legal defenses. Such cultivation of expertise does not necessarily harm a defendant's case and can, in some instances, contribute positively by assisting one's attorney and by serving as a sign of engagement (see Emmelman 2003; Flemming 1986). Yet, defendants who mistrust their attorneys are more likely to engage in an assertive, methodical, and persistent accrual of expertise that they may come to rely on over that of their lawyers.

Broadly defined, expertise constitutes the knowledge, skills, and relationships that actors employ to solve problems or complete tasks (Collins and Evans 2007). The broader social science literature on expertise often differentiates between professional expertise and lay expertise. Professional expertise is institutionalized within professions through legitimated training and licensing, whereas lay expertise refers to expertise acquired by actors without such professionalization (Haug and Sussman 1969; Hodson and Sullivan 1990). In the legal system, socio-legal scholars have considered the professional expertise of lawyers and the lay expertise of civil litigants (Emmelman 2003; Galanter 1974; Kritzer 1998), but have yet to consider the lay expertise of criminal defendants. This is largely due to the assumption, as noted earlier, that

criminal defendants rarely exhibit agency, especially given their nearly total representation by defense attorneys. While it is common for individuals in the civil system to represent themselves, indigent defendants in the criminal system have a constitutional right to an attorney. Thus, *pro se* criminal representation is quite rare (Abel 2006).

As noted in chapter 1, I define legal expertise as knowledge and skills about criminal law and procedure and differentiate between two dimensions of expertise: substantive expertise (i.e., knowledge of criminal law and procedure) and relational/process expertise (i.e., the skills and relationships necessary to put substantive expertise into action) (see Barley 1996; Kritzer 1998; Sandefur 2015). Legal expertise is a form of cultural capital in the court system, meaning it is an agreed-upon and dominant form of knowledge about how the criminal justice system works. But, as Table 7 previews, lawyers' and defendants' expertise is not equal and arises from distinct sources. Whereas lawyers' expertise constitutes professionalized knowledge of the criminal law,

Table 7. Sources of Lawyers' and Defendants' Legal Expertise

Dimension of Expertise	Lawyers' Expertise	Defendants' Expertise
Substantive	J.D. degree Professional training in criminal law and procedure Heavy caseload	Prison library "degree" Social and observational training in criminal law and procedure Own and/or social ties' cases Awareness of own background & legal preferences
Relational/Process	Professional relationships Daily familiarity with court cultures Criminal law and procedure by the book and in action Middle/upper-middle class cultures	Official-offender relationships Sporadic familiarity with court cultures Criminal law and procedure by the book Varying class cultures

facility in interacting with other court officials, and legitimacy as a court actor, defendants' expertise constitutes knowledges and dispositions that are cultivated through a defendant's court experiences and those of court-involved family and friends, resulting in an expertise that is often

less accurate, less complete, and less legitimated than that of lawyers. Consequently, relying on defendants' expertise instead of lawyers' can result in relatively worse court punishments.

Observing, studying, and talking about the law

Defendants recount cultivating substantive expertise, or knowledge about criminal law and procedure, through observing and studying criminal justice interactions and talking with social ties. Caleb (B, MC, MC) learned about court procedure through his personal observations. He told me: "The first time I was in Cambridge Court, I went back a couple of days later just to see how it worked. I sat there for like six hours. Just watching people go through." Caleb explained that, given his wariness about his court-appointed attorney, he was trying to understand the court process for himself:

I just wanted to see how it worked because when I was there they just—this was the first time um they gave me a lawyer. And then I got there, and he gave me a card and was like, "Call me," [and] walked away. And I was like: "That's it? I have a lot of things to tell you. Wait, wait." [...] I just went back and sat down a couple of days later and watched for a bunch of hours and got a handle of how it is, you know? I could see how the affluent people would come with their own lawyers—slick-talking people that would just get them out of whatever issue there was. And there's some court-appointed lawyers who just don't give a fuck.

Like Caleb, many respondents recounted cultivating substantive expertise through observations of institutional encounters and because of their wariness about their lawyers. For example, Don (B, MC, WC) told me he learned, from observing other defendants in court, to keep "documentation" of past drug treatment in order to prove a history of substance use disorder. For his most recent case, he hoped this documentation would help his lawyer to persuade the court to sentence him to rehabilitation rather than prison, noting: "I've seen it over and over and over again, where certain people get it: treatment facilities."

Jail or prison are other institutional encounters through which defendants develop substantive expertise. State prisons in Massachusetts provide those incarcerated with access to

library services, which includes access to legal materials. According to the Massachusetts

Department of Correction's regulations, these materials are to be provided to "every inmate":

Every Inmate shall have access to legal materials. As suggested by federal and state court rulings and national standards, legal materials should include at a minimum: state and federal constitutions, state statutes, state decisions, procedural rules and decisions and related commentaries, federal case law, court rules, practice treatises, citators, and legal periodicals.⁵⁴

Ken (W, WC, WC) has accessed library services as part of his cultivation of legal expertise.

After several arrests and during a stint in state prison, he told me that he decided he should take "constitutional law." He recalled:

I took constitutional law—I like the law. You know when you're incarcerated, you know, some guys do and I think everybody should get to that law library and look at your case and learn about—if you're going to commit a crime you want to learn how not to be caught. It's like if you're going to be a mechanic, you need to study some car manuals I'd imagine.

For Ken, he more actively began to cultivate legal expertise after an experience of incarceration.

During his incarceration, he was motivated to explore options for appealing his conviction by studying in the prison's "law library." He also used his legal expertise to help other incarcerated individuals. For instance, he described helping a "kid" file a motion to get an issue with his bail resolved:

Ken: [...] I helped another kid get \$100,000 dollars back that his mother put up um and he violated um...the conditions of his bail so...the city prosecutor's office was trying to um seize the bail money and they did seize it. And I filed a motion, citing a language barrier because his mother does not speak one word of English and I cited *Ramos*, which is active law—an act of God—so in other words they have to...There's a hurricane and I can't get to court so I forfeit my bail. This guy couldn't get to court because the dumbass got caught the night before court selling drugs and he was in another courtroom that morning under a new charge. *Ramos* was word for word verbatim. That's gold. So we shepardized and cross-referenced and you find the precedent or you create your own. You do it and if you get in front of the right judge they get shocked! If you word it properly and frame it correctly and support it? But they don't like to see first of all citing cases that are overturned. I mean—

Matt: Judges don't like to see--?

Ken: Yeah, you're wasting their time! They don't like to see anything *pro se* first of all. Ok? And...[For example, say that] [t]here's a PhD kid and you earned your PhD and you go into your field and the last thing you want is some some um, you know, some self-taught guy who doesn't have the proper credentials who knows just enough to kind of bullshit someone [...]

⁵⁴ These statements on the Massachusetts Department of Correction's regulations regarding library services were retrieved on February 5, 2018 under file number "103 CMR 478: Library services" and regulatory authority "MGL c. 124, § 1(c) and (q)." Stable URL: <https://www.mass.gov/files/documents/2017/09/04/103cmr478.pdf>

From this quotation, it is unclear the degree to which Ken assisted this fellow incarcerated individual in making his motion. Perhaps Ken helped the individual think through his possible legal strategies, and then the individual took the possibility of this particular motion to his lawyer. Also, it is unclear what case law Ken is referring to when he references *Ramos*. I could not find an applicable ruling of the Massachusetts appellate courts. These issues about Ken's narrative underscore an important reality about defendants' expertise: it is often imprecise or unclear. Moreover, as Ken acknowledges at the end of this quotation and as I will show below, judges and other legal officials rarely take defendants' attempts to use their expertise seriously—often punishing them for their participation in the legal process outside of legitimated channels.

Returning to Ken's prior quotation, it is also important to note how cultivating expertise in prison is often framed as a way for individuals to gain substantive knowledge that will assist in their evasion and negotiation of future police encounters. With respect to police evasion, Robert (W, WC, WC) told me that prison is a "school" for learning how to get away with crime: "It's like a network and almost like a school of getting away and how to get away and 'did you get away with it?' or 'how do you sell your drugs', you know? Do you throw away phones?" For Ken, he framed his own knowledge of police negotiation in comparison to that of some of his peers: "So the first thing [...] is the threshold inquiry. They [other alleged offenders] talk to the police and they talk themselves right into an arrest, you know? Me? I can go like this and I can sit here like this...until next New Years." Other individuals also noted how they learned about their rights in police negotiations after being pulled into the court system and through studying the law or talking with others who have had experience with the law. Similar to Ken, Christopher

(W, MC, P) told me about his substantive knowledge about unreasonable searches and seizures during an arrest in Harvard Square. He said:

Christopher: Not that I'm a lawyer or anything, but I'm a sucker for constitutional rights [...] I don't believe the police had [a] reasonable [...] reason to search me based on basically nothing unless they had an informant [...] by our laws, he had to see something to search me [...] so right there that's a Fifth Amendment rights violation, you know what I mean? And—is it Fifth or am I crazy here? Unreasonable search and seizure?
Matt: Yeah, I think it's the Fourth actually.
Christopher: Yeah, the Fourth, sorry. Whatever.
Matt: No, it's OK.
Christopher: I'm like whatever. It's like, I'm not a lawyer, but the bottom line is I understand the amendment! And I understand, from my case, that they're not allowed to do this!

Noteworthy in my exchange with Christopher is his recognition that his substantive expertise may not be as accurate as that of a lawyer. Besides mixing up the Fourth and Fifth amendments, he is careful to note his distance from the professional expertise of a lawyer. Later in this chapter, I will further explore the differences between lawyers' and defendants' legal expertise.

The accrual of expertise is often motivated and intensified by mistrust of legal authorities—from police who may illegally search your person to lawyers who appear unconcerned about your case. Jeffrey (B, WC, P), whose experience of prison I introduced in chapter 3, is a typical illustration of the context of mistrust within which expertise is often cultivated. A description of his mistrust and cultivation of expertise after an arrest and conviction at sixteen⁵⁵, the following quotation from Jeffrey (an abridged version of which was provided earlier in chapter 3) emphasizes this point:

The lawyers told me they would get me off and they never got me off. And ever since then that's what I've been dealing with because I don't have money paying lawyers and then stuff like that. I mean, it's messed up the way um it's very messed up the way they take a case but they don't want them to represent you the way they're supposed to and then when you ask for a new lawyer you can't even get any lawyers. You know what I mean? If you're going to jail because of all these charges and he's not representing you—I mean I know a lot of people who know about the law more than the other people and [than] their lawyers! You know what I mean? Um...that's one thing about jail, especially [facility name redacted], they have a law library where you can look over your case. You can do a lot with that. You know a lot of people have overturned their case by getting into the law library. Um but it's still it's just like nobody has got hope. There's people who don't

⁵⁵ Jeffrey told me that he was incarcerated for this case. The case was a cocaine possession case, for which he was arrested at the age of 16. Although I did not ask, it is likely that Jeffrey was indicted as a youthful offender, thus accounting for his incarceration in a prison other than the Department of Youth Services despite being under the age of 18.

do crime but they just got the wrong time to get caught and they get ... I remember people still in jail for something they never even did because their lawyer, [because] they listened to the lawyer and they pled out to this stuff. And the lawyer [...] nine times out of 10 the lawyers don't even send the scouts out. They don't look and help you with your case!

After time in prison, Jeffrey's mistrust of lawyers only worsened through conversations with other inmates. Moreover, his own and his vicarious experiences of mistrust resulted in a lack of faith in the expertise of lawyers as well as a heightened confidence in that of defendants.

Social ties within—and outside of—institutional spaces can also serve as an important resource for defendants in cultivating substantive expertise. Like Jeffrey and Ken, some individuals recounted discussing their case with other detainees while held in jail pre-trial or in state prison post-conviction. Others recounted learning about criminal law and their legal rights through friends and neighbors in their communities. When I asked Troy (W, P, P)—a young man who spent his childhood skipping school and “hanging out with the wrong crowd”—about his knowledge of criminal procedure, he told me: “I’ve had friends who have been in the system for a long time. And like I said, I know a lot of cops, you know what I mean?”

As detailed carefully in chapter 3, social ties with people who have had experience with the law is more common among working-class and poor respondents living in highly surveilled majority-minority neighborhoods or street corners. This vicarious knowledge of the law often provides individuals with pieces of advice from well-meaning friends and family members who seek to assist them in evading or negotiating police and in making their way through the court process. The “talk” between black parents and their black children about how to protect themselves if they ever encounter police while driving or walking to school is often understood as a middle-class black cultural script (see e.g., Graham 2014). There is another kind of talk about the police that occurs among mostly-poor black and white families in my sample; their talk involves not just preparing one's children for being stopped by the police when they are not

doing anything wrong, but also for evading and negotiating police encounters when they are actually engaged in illegal behavior or around neighborhood peers engaged in delinquency.

This talk about police evasion and negotiation is a form of expertise about the law that passes from generation to generation among some working-class and poor individuals. For example, Keith (B, WC, WC), who spent his childhood between his mother's house in Dorchester and his father's house in Roxbury (two black neighborhoods in Boston), told me about his father's advice for how he could smoke marijuana and avoid trouble with the police: "My father didn't really allow it [smoking marijuana] in the house, so I would do it in my car. And he was the one who was like, 'Yo man, as long as your key ain't in the ignition, you can do whatever you want ... I know how to go about my shit.'" Brianna (W, MC, WC), who grew up in a lower-middle-class, white ethnic neighborhood just north of Cambridge, told me that her mother taught her to assert her rights in police encounters, especially when hanging around her delinquent peers. When she shared a story about how she was nearly arrested in her teens when she was drinking and possessing marijuana along some railroad tracks, she told me that she assertively told the police to leave her alone, "said my name and where I lived," and walked away while some of her friends were ultimately arrested. Brianna recalled that she learned how to behave toward police from her mother:

[...] And like I would tell my mother stories of this when I got home, you know what I mean, so nothing I was telling her the cops came and stuff and she was like, "They have no right to talk to you like that," you know what I mean? My mother would tell me stuff like that like, you know what I mean, my mother would say things like—my mother didn't want me having a record that young, you know what I mean? "You get your ass out of there when things like that happen," you know what I mean? Obviously she told me to stay out of trouble although I didn't listen all the time and like yeah.

Brianna's ability to get away from the police with her assertive tactics during this episode in her adolescence contrasts sharply with black and Latino/a individuals in my sample who recounted asserting their rights during police encounters. It could be that Brianna's ability to engage

forcefully with the police in her teens is due to the confluence of both her race and her gender, as the other teens arrested that day were boys.

At the same time, Brianna's assertion of her rights in police encounters did not always enable her evasion of arrest. In later police encounters in her life, her general approach to the police did not always play out as she hoped. When she was stopped by the police at the age of 24 for smoking weed with friends in her friend's car, she was restrained by an officer. When she started talking back, she was arrested: "So I was like, 'Well, I want to know your name and your badge number and what time your shift is.'" She was thrown in the back of a "paddy wagon" and the officer intentionally drove the vehicle roughly: "Oh I think he drove a little crazy after I talked to him like that, but I don't know. I've never been in the back of a paddy wagon before. Inside it fucking sucked! [laughs] We kept on moving, and it was so hard to sit there."

In sum, the knowledge that defendants cultivate about the law and interaction with legal authorities is accrued through study, personal observation, and the sharing of information among family, friends, and other defendants. The expertise defendants cultivate is sometimes accurate and other times it is not. In addition, the act of cultivating substantive expertise about the law appears to be more common among the working-class and poor who have more familiarity with the legal system as well as more reason to mistrust the law and legal authorities.

Testing courthouse relationships

In the courtroom, the average defendant—especially one who is poor and/or a minority—carries a discredited social status as an alleged offender (Emmelman 2003; Van Cleve 2016). Given their discredited status, defendants are often presumed to be guilty and punished through procedural hassles and performative expectations, sometimes in lieu of formal legal sanctions (Kohler-Hausmann 2013). In any social setting, a discredited status strains face-to-face

interaction, often to the detriment of the discredited (Goffman 1963). Among the individuals in my sample, I find that their defendant status hampers their ability to create and sustain positive conversations and working relationships with court officials, critical elements of relational and process expertise.

When one enters most courthouses in Boston, it is hard to miss the collegial exchanges between defense attorneys, prosecutors, clerks, court officers, and even judges. Prior to the start of court sessions, these officials can be seen exchanging notes, catching up on gossip, and gleaning information about the day's docket. During court proceedings, opposing counsel often refer to one another as "my brother" or "my sister," an honorific that both reflects and encourages professional kinship and respect. This excerpt from one of my days observing the beginning of an arraignments session is illustrative of the familiarity of the "courtroom workgroup" (Eisenstein and Jacob 1977) in the Boston-area courts:

The session is buzzing prior to the judge's arrival. There's a lot of movement. People in and out of the doors. There's the faint smell of weed in the back corner of the gallery (on someone's clothes). 40-50 or so people are sitting quietly in the gallery part of the courtroom. Up in the front of the gallery and behind the bar, there's a lot of movement. Many attorneys are bustling around in suits; also, a probation officer is sitting at a desk on the left side against the wall, in front of a large TV monitor. There's two court officers—two women, but one other comes in now and then. There's about 12 or so attorneys in suits in all, talking back and forth, prosecutors and defense attorneys. Court officers and lawyers are chatting back and forth too. The guy who I saw earlier from the clerk's office has appeared here and is now talking to a lawyer.

This collegiality among professionals in the courts is sometimes viewed with suspicion by defendants. As described in the excerpt above, scores of defendants often sit in sessions quietly and observe the informal working relationships between lawyers prior to the formal start of court sessions, when a judge arrives and a clerk calls the session to order with the phrase: "All rise! Court is now in session. The Honorable [Judge's Name] presiding." Defendants who are assigned court-appointed attorneys—regulars of the courtroom workgroup—are especially suspicious of their lawyers' familiarity with prosecutors. As Max (W, MC, WC) told me,

“Sometimes you get the feeling like a lot of these public defenders are friends with the DAs, you know. They don’t want to fight them, you know, because they have to eat lunch together later in the day.” This suspicion of the working relationships between lawyers is also reflected in Tonya’s (W/N, P, P) reaction to my prompting that she describe to me what she means by the term “public pretenders.” Our conversation proceeded as follows:

Matt: So you mentioned before “public pretenders.”

Tonya: Yeah!

Matt: I'm wondering if you could tell me a little more about what you mean by that.

Tonya: Made and paid by the courts? Work for the courts.

Matt: Hmm-hmm. So it's almost as if they're not working for you?

Tonya: They're all buddies with the district attorneys! They all go out drinking together after work. And I know that because I used to go—I better not say anything more. I know because during that little binge I was on I got some of them cocaine. Ok? Let's just put it that way. [The court] is corrupt! Yeah. Two probation officers, district attorney, and one of the court officers.

Tonya and Max’s skepticism of the professional relationship between opposing counsel is rampant among those I interviewed.

At the same time, some respondents in my sample believed that their attorneys’ positive relationships with other court officials could be reassuring, viewing such relationships as a vital form of expertise that could be used effectively on their behalf. Reflecting on his former lawyers, Tweedy Bird (B, WC, WC) told me: “I’ve had some powerhouses [... including] a powerful, powerful black attorney ... He walked into the courtroom with the judge [and they were] laughing to themselves.” Tweedy Bird draws a connection between the power of an attorney and the working relationships the attorney has with other court professionals. His is an acknowledgement of the benefits of relational expertise between legal authorities.

For defendants themselves, cultivating relational expertise—or, the working relationships necessary to put substantive expertise to work effectively in the court process—is a restricted business. I witnessed some instances in which lower-level legal authorities, such as court

officers, might engage in friendly interactions with defendants. For instance, during a court recess, I observed this exchange between a white male court officer and a white male defendant:

Court Officer: [*Rolls into the courtroom. He sees someone—a defendant—in the gallery that he recognizes*]
How you doing? Good to see you. You doing good and staying clean?
Defendant: [*Smiles*] I am.
Court Officer: Keep up the good work. Hope you get better.
Defendant: Yeah, thanks.

While I sometimes witnessed such relationships with lower-status court officials, I never observed defendants engage in meaningful conversations with prosecutors and judges. Defendants of course engaged in casual conversation with their lawyers; yet, their lawyers served as the official intermediary between them and the other major players in the court.

When defendants seek to speak directly to prosecutors or judges without the assistance of counsel, they are often silenced or ignored. They simply have little legitimacy as court actors, despite their many due process rights, including the right to represent themselves throughout the criminal court process as *pro se* defendants. The reality, however, is that few defendants ever fully decline representation by a defense attorney (Abel 2006), and so the other actors in the court become accustomed to relying on defense attorneys as mediators by which they speak to, negotiate with, or argue against defendants. Judges, in particular, grow impatient when defendants try to speak directly to them in court. The sources of this frustration include judges' sense that defendants speak at the "wrong" time and that defendants will accidentally share information that could incriminate them (see Natapoff 2005). During courthouse observations, I witnessed numerous instances in which defendants violated procedural norms and courthouse routines by speaking out of turn, resulting in disciplining from judges and defense attorneys (see also Kohler-Hausmann 2013).

For example, in a Boston courthouse, I observed a black man, dressed in a jersey and baggy jeans, become upset during his pre-trial hearing. His attorney asked the judge for a motion to suppress hearing with respect to the potential presentation of video footage of the man's arrest. The assistant district attorney argued that the video footage should be included because it showed the defendant resisting arrest. At this suggestion, the defendant suddenly shouted—to no particular person but in the general direction of the judge—"Man, I'm only one person. I can't fight four officers!" His attorney tried to quiet him, but he rebuffed his attorney's subtle reproach, frustrated by the assistant district attorney's suggestion. The judge—visibly annoyed and having yet to hear full arguments from opposing counsel—calmly said, through pursed lips, "Please speak through your attorney, sir." Although I was unable witness whether the motion to suppress was successful, it was clear that the judge looked unfavorably upon the defendant because of his interruption.

From their own perspective, defendants often view their silencing by judges as a form of punishment, rather than as a form of protection from incrimination or the inappropriate use of their legal expertise. For example, when she was detained pre-trial in the Department of Youth Services (DYS) at the age of 14, Donna (W, P, P) sought to speak to her judge directly about the poor conditions of the facility but learned that her voice and perspective would be silenced. Initially, her attorney spoke for her, telling the judge that Donna had witnessed a social worker "hit a client in the face." The judge inquired as to whether Donna hallucinated the incident: "Maybe it's the medicine [she's taking]." Donna then spoke up for herself: "And I said, 'No, I wasn't seeing things.' And then he [the judge] said, 'Shut up. I'm not talking to you.'" For his part, Ken (W, WC, WC) recognizes the limits to cultivating relational expertise and, by

extension, using substantive expertise without the mediation of a lawyer. During our interview,

Ken reflected:

[...Lawyers] got their own language legally, you know? So, you got to know that going in so you can't get too full of yourself. If and when you ever do get to argue your case [...] you just got to remember where you are. "*Mea culpa*." "Please and thank you," you know? Short and sweet. They'll respect that! They really will because they'll appreciate the fact that you took the time. But don't go up there thinking you've got a freaking [law degree, or] that you're on the bar, you know?

In this reflection, Ken acknowledges both his limited substantive knowledge in comparison to lawyers who have "their own language" and also his limited credibility, as a defendant, to speak in open court.

Making legal decisions

The process of acquiring legal expertise that I have described among defendants counters the dominant portrayal of the silent, passive, and resigned criminal defendant bandied about in legal realist scholarship and social scientific studies of the legal process. This section considers under what conditions and with what consequences defendants delegate authority to their lawyers and rely on lawyers' legal expertise or, by contrast, withdraw from their lawyers and rely on their own self-acquired expertise. As I show, defendants' acquired expertise often does not live up to its seemingly promising potential to effectively aid them in navigating the court process.

There are several reasons. Defendants' expertise is often less precise and less effective than that of lawyers both substantively and with regard to the relational and procedural aspects of the criminal law. Relatedly, defendants' expertise is often not taken seriously by other, more legitimated court actors, such as judges, prosecutors, and even defendants' own defense attorneys. The denigration, minimization, and simple ignoring of defendants' substantive, process, and relational forms of expertise by court officials can frustrate defendants. When combined with mistrust of lawyers, defendants may come to rely on their own expertise over that of their lawyers, often to their detriment in negotiating relatively better plea deals, convincing

judges and prosecutors of their moral worth, and making strategic legal decisions. Sometimes, defendants' use of expertise is outright punished by legal authorities. Finally, defendants' expertise with respect to their own social position outside of the criminal justice system may constrain their legal choices, influencing their preferences with respect to the legal process. Thus, they may prefer legal strategies or have adjudicative ideals that contradict the assumptions of their lawyers, who exist in middle-class social positions and who have little, if any, personal experience with the lived realities of criminal punishment. And so, defendants' rejection of an attorney's legal expertise can also emerge from a rejection of white, middle-class norms regarding ideal legal preferences.

Delegating authority to lawyers and relying on lawyers' expertise

When defendants in my sample trust their lawyers, they often delegate authority to them and defer to their legal expertise, resulting in less punitive formal court experiences. The story of Arnold (B, WC, MC), whom we met at the very beginning of this chapter, illustrates the process of delegation and deference. Arnold's trust in his second lawyer enabled him to defer to his lawyer's expertise in at least two important decision-making moments. First, during our interview, Arnold was willing to take his case to a jury trial because his lawyer suggested that the evidence against him was weak and that he was confident he could win at a trial. Second, during my observation of him during the day of trial, I watched how Arnold immediately deferred to his lawyer's expertise with respect to the benefits of doing a jury-waived (or, bench) trial instead, in which a judge would rule on his guilt rather than a jury of his peers. Ultimately, Arnold's faith in his lawyer and his willingness to allow him to use his expertise to assist in his legal defense paid off; he was found not guilty.

For Arnold, delegating authority to his lawyer was an affirmative choice; yet, for many other defendants who recounted delegating authority to their lawyers, delegation oftentimes occurs under conditions of naivete and uncertainty about a legal process they have never before encountered. These conditions are most common among those who have had little contact with the legal system and little in the way of their own cultivated expertise, such as adolescents and those from white, middle-class homes and communities. For example, Kema (W, MC, MC), who was raised in an affluent family in California, recounted to me the complete weightlessness of her first arrest experience. A high school student in the 1980s, she crashed her car into a picket fence on her way home from a party. She was arrested for driving under the influence. Her father hired a neighbor as her lawyer and, as she recalls, the case simply disappeared. Kema told me: “I never went to court or anything.” She recalled fully delegating authority to her lawyer and her father, both of whom “took care of everything [...] just took the reins.” Kema did not face any formal legal consequences for her crime and, to this day, is unaware of how her lawyer resolved the case. Most likely, he attorney was able to get her charge dismissed or pleaded down to reckless driving prior to arraignment, given Kema’s recollection that she did not have to appear in court.

Kema’s story reflects a boarder pattern regarding delegation to lawyers among the individuals I interviewed: they are more likely to recount delegating authority to their lawyers in their earlier court experiences than in their later life court experiences. Delegation earlier in the life course is due to the confluence of two factors: first, the role of parents, who are also individuals to whom adolescents are in a period of their lives to be more likely to defer to and even fear; and second, the way that mistrust and the accrual of expertise slowly grow more

intense with repeated experiences of court involvement, as described in early parts of this chapter as well as throughout chapter 3.

When Joseph (B, MC, WC) was arrested at 16 for breaking and entering, he was more worried about his mother's punishment than the legal system's: "'My mom's gonna kill me, man!' I'm not worrying about the cops." His engagement with his lawyer was mediated through his mother. After his mother and his lawyer "worked something out," he was sentenced to probation (which he served at the Boys and Girls club), and his mother had to pay restitution. Similarly, Christopher (W, MC, P) recounts that during his first arrest for assault and battery with a deadly weapon, he gave total decision-making power to his attorney, noting "I didn't even know what the law was at that point." He ultimately received a CWOFF with six months to a year of administrative probation. Meanwhile, from his aunt and uncle (who were his guardians), he "got the business from them, you know. Punishment, the whole nine yards."

For Kema, Joseph, and Christopher, their delegation ultimately helped them obtain relatively benign sentences. In addition, their outcomes are likely due, in large part, to the non-seriousness of their charges. Yet, Amanda's (W, MC, WC) story (as well as Arnold's) illustrates how delegating authority to lawyers can result in relatively benign punishment experiences even when the charges are serious. Amanda faced her first charge—felony possession of marijuana with intent to distribute—while in college. She found and hired a lawyer through an organization that supports the legalization of marijuana. She trusted this lawyer, relying on his ability to "put [the court process] in layman's terms." For the felony charge, she ultimately received a relatively light sentence of one year probation and five months of community service. When I asked whether it was her lawyer or the circumstances of her case that explained her light sentence, she told me: "I believe more of it is my lawyer that helped me get the sentence that I got," because,

as she explained, “I’m surprised they didn’t add mandatory drug and alcohol counseling on to my sentence being it was a drug crime. That was something they could have done. Even license suspension.”

While substantive expertise about the criminal law provides attorneys with the substantive legal language and concepts to negotiate deals for their clients, relational expertise (or, familiarity with courtroom cultures and relationships with other officials) is also effective in assisting clients who delegate authority to them. Ryan’s (W, MC, MC) first and most recent court cases both illustrate the importance of an attorney’s relational expertise. For his first case, Ryan was arrested at 1:30 a.m. while driving drunk from a grocery store during his sophomore year of college. After blowing .22—well above the legal limit for a person under the age of 21 in Massachusetts—he was arrested and detained. For advice, Ryan’s father contacted a friend, who happened to be a detective. This detective helped him find an attorney, whom he recounts trusting partially because the attorney also happened to be the son of the county’s district attorney. In the end, Ryan ended up taking a CWOFF, which is a plea deal that results in no finding of guilt if the defendant is not re-arrested after a certain period of time (six months, for Ryan). Ryan recounts a CWOFF being particularly advantageous for him because, as his lawyer informed him, a “CWOFF doesn’t show up” on a background check even though it is essentially an admission of guilt. For Ryan, who would have a future career as a stockbroker, a CWOFF was a preferred outcome; yet, risking a trial may have been a better option for someone with a lengthier criminal record or limited occupational prospects. For Ryan, his attorney’s relational expertise secured his trust (and perhaps more, given that he was the son of the DA), while his attorney’s substantive expertise in criminal law (i.e., knowledge of a CWOFF) enabled Ryan to garner the benefits of a plea deal without the burden of a guilty conviction.

When I followed Ryan to court to face his most recent charge of shoplifting, I watched as he delegated authority to his current lawyer in real time. Of particular note, was the way Ryan's general deference to his lawyer—despite his lawyer's many eccentricities and faults—allowed his lawyer to improvise and leverage his relational expertise. During this day of observation, Ryan had a pre-trial hearing scheduled for his case that he hoped would be resolved that day with a relatively light deal with the DA's office. When the court session began and Ryan's case was called, his attorney was not present. He stood and told the court that he did not know where his attorney was. The judge said "second call," meaning they would hear his case later in the session, when his attorney arrived. I observed here, and in many other courtrooms, though, that this leniency was not similarly applied to defendants. For example, just after Ryan's case was called, another defendant was found not to be present in the courtroom. The ADA recommended a warrant, arguing that the defendant had defaulted in previous cases. The absent defendant's lawyer said, "Communication with my client has been spotty, your honor," suggesting that a warrant would perhaps be the only way to compel his client to court. The judge issued a warrant for the defendant's arrest. This scene suggests two things: first, lawyers' relational expertise and positions as court professionals insulate them from punitive action when they are late to court in a way that it does not insulate defendants; second, defense attorneys have the power to worsen their client's outcomes in subtle ways if their clients are not compliant with the rules of the court or if their clients do not have a positive working relationship with them.

While some defendants recounted to me getting frustrated by tardy lawyers or seeking to change their lawyer when they exhibit similar signs of incompetence, Ryan did not seem bothered by his lawyer's tardiness. He simply sat calmly in the session, waiting for his arrival. And he also told me in the interview and after the court session that despite his attorney being

“kind of out there,” he trusted his expertise because he had handled numerous cases like his before. For the second call of Ryan’s case, his attorney arrived just in time, stating to the court: “Hi, your Honor. I believe I’m on this case. Sorry I’m late. I grabbed the wrong file this morning.” He shook hands with Ryan, who was standing at the bar, and whispered something to the ADA beside him. His attorney asked the court for a second call to “conference with the Commonwealth (ADA).” The plan was to negotiate a deal. I watched as he walked Ryan outside the courtroom and then returned minutes later to deal with another one of his clients on that day. For this client, Ryan’s attorney asked for a motion regarding discovery of evidence. The judge asks for his motion, and I watch as the attorney quickly scribbles the motion on his legal pad, rips a page from his pad, and hands it to the judge. The informality of this motion (written last minute and not on the appropriate court form) further speaks to the importance of the attorney’s position as a legitimated court professional.

After a court recess and negotiation with the ADA, Ryan’s lawyer returns to the court session with Ryan when his case is called again. The negotiation between Ryan’s lawyer and the ADA resulted in the ADA moving to dismiss Ryan’s case as long as he completed 8 hours of community service by a certain date. The judge asks Ryan’s lawyer to speak. His lawyer agrees with the ADA’s motion to dismiss the charge, further noting Ryan’s minimal criminal record, his college degree, his current residence in a sober house, and the fact that he just acquired a new job—all mitigating factors that I watched Ryan share with his lawyer during the court recess. The judge agreed to dismiss the case on 8 hours of community service and the payment of \$150 to the court for attorney fees (which could also be paid off by an additional 15 hours of community service). After court, I asked Ryan how he felt about his ultimate outcome:

Matt: Do you think your sentence was fair?

Ryan: 8 hours?

Matt: Yeah.

Ryan: Yeah—definitely glad I got it. But I don't know about the other people. They didn't seem to get treated as fairly. She [the judge] was pretty tough. I was so worried as I watched other people's cases.

Despite his own relatively light sentence, Ryan was not so sure about how other defendants fared that day.

Withdrawing from lawyers and relying on defendants' cultivated expertise

In contrast to the process of delegating authority, withdrawal from the attorney-client relationship and rejection of a lawyer's expertise in favor one's own often results in more punitive formal and informal court experiences. Tonya (W/N, P, P), whose story opens this chapter as a contrast to Arnold's, illustrates the process of withdrawal and rejection. In her probation revocation hearings, I observed how Tonya's mistrust of her lawyer often resulted in her withdrawal and rejection of her lawyer's expertise in favor of her own acquired expertise. In key decision-making moments, Tonya withdrew and sought to put her own expertise to use. Her attempt to acquire a letter from a psychologist, which ultimately she was never able to do, was one aspect of her decision-making that her lawyer never affirmed would help her in her probation hearings. During her final hearing, when the judge asked if she wanted to speak, she attempted to set the record straight, providing justifications for violating probation, rather than heeding her lawyer's suggestion to simply admit fault. Sensing her approach was not working, she ultimately followed her attorney's advice and was sentenced to an extended period of probation, with a stern warning from the judge.

Tonya's experiences underscore an important aspect of court processing that has been documented in other court ethnographies: the symbolic importance of a defendant admitting fault. Some scholars have argued, for example, that pleading guilty—which requires defendants to verbally admit in open court to the facts of the crime as alleged by the prosecution—is a technique of legal control that enables the quick and efficient processing of presumed-guilty defendants

(Blumberg 1967). Few things are more powerful in determining guilt than a confession from the alleged offender. Defendants who resist the court's definition of their behavior or character—e.g., by refusing to admit guilt or by questioning aspects of a police officer's testimony or a prosecutor's characterization of their actions—are often pressured by the court to rethink their resistance. This is especially the case if their resistance is not mediated through legitimated procedures, such as a defense attorney's motion to suppress evidence or a defense attorney's back-room negotiations with a prosecutor.

When I witnessed Don (B, MC, WC) plead guilty in court, I observed first-hand the coercive power of guilty pleas articulated in many of my interviews. That day, Don had agreed to plead to several charges relating to his arrest for possession with intent to distribute several classes of drugs. As the clerk read each count, there was a palpable silence in the courtroom when he hesitated to answer "Guilty" to one of his charges. When he finally muttered, "guilty," I watched as both the clerk's and the judge's faces relaxed, as if consoled by his compliance. Later, after the ADA spent about seven minutes reading the facts of his case (many of which Don contested in our interview weeks earlier), the judge asked Don:

Judge: Do you dispute any of these things?

Don: No.

Judge: Are the facts told to the court true?

Don [hesitates, then mumbles]: Yes.

Don was ultimately sentenced to two years in state prison and three years of probation for several non-violent drug offenses. In his final words to the court, he said:

I know I'm better than this, but I am also a drug addict. The opioid epidemic is real. I've been going to get help at meetings for years now. And I feel I need that more than anything else—I need help. I apologize to the court for my actions.

The judge responded: "Well, you've got the right attitude. You will continue treatment after these two years, and I know you will continue down the right path." To be sure, Don's

compliance resulted in a lesser sentence than he otherwise would have had (several of his charges were negotiated to *nolle prosequi* by the prosecution); yet, his compliance could not save him from prison.

Sometimes defendants reject their lawyer's expertise even when they are aware of the costs of defiance. In the process, they maintain their dignity against a system they perceive as unfair. This strategy of resistance ultimately has negative implications for an individual's case outcome. For instance, at least once during extended periods of courthouse observations, I would witness a defendant speak out in open court, in an attempt to contest their characterization by prosecutors or probation officers. Recall the black man, described earlier, who shouted in the direction of the judge during his pre-trial hearing. In this instance, the judge reacted with annoyance, and it was unclear whether the individual's formal legal outcomes would be impacted.

Formal legal outcomes, though, are often at stake when defendants resist lawyers' expertise. Max (W, MC, WC), for example, recounted how a co-defendant in one of his cases decided to take his case to trial against the legal advice of his lawyer and lost, resulting in a far worse legal outcome than Max's. Both Max and his co-defendant Bob faced the same charge: several counts related to the distribution of heroin. When they were stopped by the police, Max was caught in his car with several bags of heroin, and Bob, who had just left the car, was caught a few blocks away. Bob threw his bags of heroin to the ground when he saw the police coming, and so was caught without the heroin on his person. Max recounts that the police report, however, said that his friend Bob was caught with heroin in his possession. "They lied and lied and lied and lied," he recounts. This is where Max and Bob's experiences diverge.

Whereas Max hired a lawyer he trusted and delegated authority to him to use his expertise, Bob was enraged by the false statements made by the police in the police report and resisted his lawyer's expertise. Max recounted that his lawyer's—as well as Bob's lawyer's—strategy was to delay trial and negotiate a less punitive deal. Max recounts that he was worried about this strategy, but his lawyer “had friends in the court system. Like, he had an amazing record, like he was a good fucking lawyer, man.” Ultimately, the strategy worked. As he recalls, his lawyer told him that the ADA offered to “drop five of the six charges, and he's going to leave you on the distribution, and he's going to give you two years probation. Take it or leave it.” Max took the two years probation. Meanwhile, Bob was offered a year of probation, but refused to take the deal and instead opted for trial because of his refusal to admit guilt. Max recalls:

[Bob] is crazy. I mean they were going to offer him a year probation, and he's like, “No, fuck that.” He's like, he's like, “I'd rather spend a year in jail just to see the cops on the stand and lie to my face.” And he did. He's getting out in 12 weeks. He spent two years in jail just to see the fucking cops lie. He's crazy.

Bob's refusal to submit resulted in a much harsher sentence than that of his co-conspirator, Max. Interestingly, Don's willingness to submit did not enable him to acquire a sentence similar to Max's; instead, Don's sentence was closer to that of Bob's. Recall that the three men all faced similar charges. This comparison suggests that while differential navigation strategies matter in shaping outcomes, so too do prosecutorial discretion and potential discrimination on the basis of race or other defendant characteristics.

In her book *Fixing Families: Parents, Power, and the Child Welfare System*, Jennifer Reich (2005) finds a similar benefit to deference in parents' interactions with Child Protective Services (CPS). Reich shows how CPS—a system of social workers, counselors, attorneys, and judges—seeks to modify the behavior of parents accused of mistreating or neglecting their children. Framing CPS as part of the “therapeutic state,” Reich argues that CPS seeks to coerce

parents into accepting the state's definitions of what it means to properly raise one's children. Reich (2005, p. 15) contends: "Social workers expect parents to defer to their authority and their accompanying definition of the situation, and in doing so, to communicate the requisite acceptance of their need for therapeutic help." Through a comparison of the experiences of three women in her study, Reich illustrates how the system presents parents with a constrained form of agency—either they can defer to case workers and be more likely to get their children back, or they can contest case workers and be more likely to lose their children forever. She even shows how one middle-class black woman, who contests a case worker, is unable to get her child back even after hiring a lawyer and writing a letter to her state representative.

There are striking similarities between the experience of CPS proceedings and that of criminal court proceedings. In Tonya's (W/N, P, P) case, for instance, the judge overseeing her probation used therapeutic language similar to that used by CPS in Reich's study. He told Tonya in open court that the purpose of probation is "to make you comport to the rules that we choose [in order] to help you find growth in your life." What is distinct in my findings, however, is that deference is not just beneficial in interactions with a punishment authority (i.e., a court, judge, or social worker who can take your kids away) but also in interactions with one's own lawyer. Unlike social workers or judges in CPS, defense lawyers in the criminal courts are not invested with the authority to punish an individual presumed guilty. Rather, they are institutional mediators whose legal role is protection of an individual's due process rights. Yet, I find that lawyers who sense their client's unwillingness to delegate authority to them may abrogate this role to the detriment of their clients.

In interviews with lawyers and observations of lawyer trainings, attorneys often talk about how the attorney-client relationship can be strained by "uncooperative" defendants. Much

of this strain results from mistrust. As one public defender told me, “[C]lients are always looking for a reason as to why they shouldn’t trust you.” Scott’s (W, WC, P) experience as a defendant suffering from mental illness illustrates the negative implications of a strained attorney-client relationship. Scott recounted to me how he was charged with intimidating a witness after threatening to punch a security guard for testifying against him in another case. He had a court-appointed attorney on the case, which he would “never recommend.” I asked him why, and he said that he felt his attorney forced him to plead, thus forcing him to admit to punching the security guard in the face, despite his insistence that he only threatened to punch the guard. He sensed that his attorney stigmatized him because he suffered from a mental illness and did not try to understand his personal background: “Yeah, mentally ill, and they knew that. They never knew my whole childhood.” This strained relationship made him withdraw from the relationship and only “speak a couple times” to his attorney, rather than engaging with his attorney and explaining his specific circumstances. He posits that if his attorney had gotten a better sense of who he was as a person, his mental illness could have potentially “made it easy on me” if framed as a mitigating factor. Scott ultimately pleaded to 18 months in jail for intimidating a witness.

Scott’s experience illustrates the importance of a positive attorney-client relationship in providing attorneys with information about their clients’ personal histories, such as a history of substance use disorder or mental illness, which can serve as important criteria that can lessen legal outcomes at crucial stages, such as bail or sentencing. But attorneys can introduce mitigating factors only if defendants are willing and able to share them. Scott—who rarely spoke to his attorney because of his mistrust—stands in contrast to Ryan (W, MC, MC), mentioned earlier, who freely shared his life story with his attorney, contributing to his case’s dismissal.

Direct rejection of an attorney's expertise frustrates attorneys more than withdrawal alone. Lawyers often decry defendants' attempts to use their expertise. For example, one public defender described how "jailhouse lawyering"—his term to describe the cultivation of defendants' expertise—can be frustrating because defendants often ask to file inapplicable motions or reference rarefied case law. He asserts: "[T]he law is really about nuance." From the defendant's perspective, lawyers' denigration of their expertise is frustrating. Kevin (W, WC, WC) recounted his frustration when his lawyer told him that the motions he hoped to file in one of his cases were inapplicable:

I'm telling [my lawyer] to file these motions because I'm looking up stuff on my own and asking questions of other people. So, I'm like, "File this, this, and this." And he's like, "Nah, the judge is a bitch. She won't do it. It's not gonna work."

Kevin responded to his lawyer's dismissal of his legal strategy by acquiescing to the court. He recounts ultimately being coerced into accepting a plea deal: "I had no choice but to take it [...] because my attorney said we aren't going to win ... because of that judge. [...] The lawyer] wouldn't do it [file the motions], so I got screwed."

Sometimes, defendants respond to such dismissals of their expertise by attempting to use their expertise outside the attorney-client relationship—in ways that go beyond their due process rights. For example, one lawyer told me that one of her client's attempted to file a motion without her knowledge while he was detained in jail pre-trial. While *pro se* defendants are legally allowed to file a motion on their own behalf, this defendant's attempt to file the motion violated procedure. He submitted the motion directly to the judge without the knowledge either of his attorney or, importantly, the prosecution. According to the attorney I spoke to, motions must be submitted to a judge in the presence of a representative from the district attorney's office, otherwise it constitutes *ex-parte* communication. When this happens, the court clerk will

notify the defendant's lawyer that the defendant is trying to file a *pro se* motion. The lawyer told me that it "really pisses me off" when defendants seek to file motions on their own because it violates court procedure and calls into question her "legal expertise and [ability to] practice [...] the law." One common finding from the qualitative court processing literature is that defense attorneys often must choose how to divide their limited time and resources between their many clients (Emmelman 1994; Richardson 2017; Van Cleve 2016), as do employees in other client-facing public bureaucracies (Lipsky 1980). A defendant who seeks to rely on his or her own expertise above that of his or her lawyer makes the lawyer's task of divvying up resources that much simpler.

Gregory's (B/L, P, P) experience of filing a motion from jail against his lawyer's advice illustrates, from the defendant's perspective, how such attempts can fail. After being arrested for selling cocaine in the South End of Boston to an undercover police officer who approached him, he was assigned a court-appointed attorney whom he recounts immediately stereotyped him as "the type of person who won't stop selling drugs." He began to withdraw from his lawyer after their first meeting: "I knew right then and there it [the attorney-client relationship] was going down the wrong road." While in jail pre-trial, he went into the "law library" and talked to "people who know the law more than you, and they sit down with you or you pay them." With the help of fellow detainees, he filed a motion to suppress the evidence relating to the exchange of cocaine with the police officer. But, the judge denied the motion: "In the court, you mail it. You put it, and they look at it. And then [...] nine times out of ten they're going to deny because the judge, you know, he's an asshole."

There are negative cases in which rejection of a lawyer's expertise proves beneficial for a defendant's formal legal outcomes. These cases are rare in my data and almost always involve a

defendant waiting out a plea deal against the recommendation and pressure of his or her lawyer. Thus, the defendant's rejection in this situation is not so much a rejection of the lawyer's legal expertise but more so of the pressure to plea too quickly. For their part, lawyers often note that pleas are often good deals, given the costs of taking a case to trial and losing, as noted above. And most defendants also recognize this. As Michael (W, P, P) told me, "I don't go to trial [...] I just see no point. [...] if you go before the trial and you talk to them and you got your lawyer, they'll give you a lighter sentence." But, defendants who are able to wait things out and insist that their attorneys ask for multiple continuances and multiple negotiations can gradually extract an even lesser final sentence. Such negotiations require a lengthy period of pre-trial processing, which has its own informal punitive costs (Feeley 1992 [1979]). For example, Troy (W, P, P) recounted to me how his attorney initially suggested that he plead guilty to one year of probation for his first drug possession charge. Troy refused, given his sense that he could get a better deal given his clean record:

Like, he was coming back to me like "Yeah, just plead guilty and take a year probation and do this right now." No, I'm not doing it. You know what I mean? Because at this point I didn't have a record. And usually the first couple of times they're easy on you—like, they'll work with you. So I said to him, "This is my first arrest. I'm not taking a year probation. For what?"

Meanwhile, the court required that Troy complete detox programs while he awaited adjudication. After several months of not showing up to court, ignoring his attorney's phone calls, and being re-arrested on default warrants, Troy learned that his attorney had finally negotiated a CWOFF with terms of probation. He took this deal. It was a marginally better outcome than pleading guilty with terms of probation because it would not leave a conviction on his record if he abided by the terms of his probation for a certain period of time. Troy's experience reveals the formal benefits of waiting out a case for some defendants, as well as the informal costs of pre-trial conditions and re-arrests.

Constraints beyond the courthouse walls and the unequal patterning of preferences

At times, what may be observed as a defendant's rejection of his or her lawyer's expertise constitutes, more fundamentally, misaligned preferences between attorneys and their clients. In such instances, it is not so much that a defendant decides to completely withdraw from his or her attorney but more so that a defendant is withdrawn from the normative ordering of gradational punishment schemes, such as intermediate punishments or alternative sanctions. Morris and Tonry (1991, p. 4) define intermediate punishments as sentences between administrative probation and incarceration, such as "intensive probation, substantial fines, community service orders, residential controls, [and] treatment orders." Such sentences are often understood exist on a continuum, meaning that they are ordered in terms of severity—administrative probation, for instance, being less severe than probation with conditions such as urine tests, which is less severe than incarceration.

However, as I argue in this part of the chapter, severity is subjective and depends on alleged offenders' neighborhood and community social ties and access to resources that would enable their effective compliance with these intermediate punishments. For example, one could imagine that a sentence requiring an individual to pay substantial fines may actually be more severe than a period of incarceration to someone who has limited access to financial resources to pay off those fines (see Martin et al. 2018). Moreover, when non-payment of those fines means an individual may be sent to prison anyway (Harris 2016), the element of risk becomes a factor in how individuals subjectively assess the severity of legal punishments. Yet, the assumption among legal scholars, lawyers, and social scientists who study and model criminal justice disparities is that a fine is objectively a less severe punishment outcome than a period of incarceration. I not only critique this assumption but also reveal how this assumption blinds

researchers to another potential explanation of criminal justice disparities: constrained choices and differences in legal preferences along race and class lines.

Over the past few decades, a handful of criminologists and legal scholars have observed that some individuals exhibit legal preferences that are not in line with the assumed hierarchy of punishment severity (e.g., Petersilia 1990; Wood and May 2003). In addition, among samples of convicted offenders and/or incarcerated individuals, scholars have found that certain intermediate punishments were perceived as harsher than certain periods of incarceration (see Martin, Hanrahan, and Bowers 2009; Petersilia and Deschenes 1994; Spelman 1995). In addition, some scholars have considered whether preferences vary by race/ethnicity and/or prior experience with various forms of punishment. For example, Wood and May (2003) find that, on average, about a quarter of black probationers in their sample reported that they would rather serve time in prison than various alternatives. Compared to whites, blacks were “two to three times more likely to choose prison” than alternatives such as boot camp, time served in a halfway house, electronic monitoring, or administrative probation (Wood and May 2003, pp. 618-9).

Few studies explicitly theorize whether differences in legal preferences may contribute to disparities in legal outcomes. Johnson and DiPietro (2012) is a notable exception. In their study of the use of alternative sanctions in the Pennsylvania court system, they find that judges are less likely to afford male and racial/ethnic minorities (specifically blacks and Hispanics) alternative sanctions to incarceration than their peers, all else equal. While the authors posit that one explanation for these findings is that judges may discriminate against men and racial/ethnic minorities on the basis of stereotypes about these defendants’ “suitability for intermediate

punishment programs” (Johnson and DiPietro 2012, p. 837), they also suggest that “offender agency” may play a role. Johnson and DiPietro (2012, p. 837-8) write:

Outside of specific exceptions, such as compulsory drug treatment, most intermediate punishments require at least tacit compliance on the part of the offender, and often, they involve the active participation of the offender in the sentencing process. Willingness to participate in intermediate punishment programs, or in some cases ability to pay, can serve as an important prerequisite for the judicial use of alternative sentences. Unlike more traditional punishments, then, the offender can exert important influence over the use of intermediate sanctions in criminal courts. [...] Further theoretical development and future empirical research is needed to develop the unique role that individual offender agency play in the use of intermediate punishments across court contexts.

Following Johnson and DiPietro (2012), I further develop the role of defendants’ interpretations and preferences in shaping their legal outcomes, more broadly. Importantly, I argue that these preferences vary not so much because poor racial/ethnic minorities are less “willing to participate” but more so because they are less able to, given the realities of the neighborhoods they live in, their community social ties, and their limited access to other resources.

Defendants’ preferences can be understood as a form of substantive expertise, or more precisely as knowledge about their preferred legal strategies and outcomes given their position in relation to the legal system. Their legal preferences may contradict that of their lawyers, who are middle-class legal professionals and whose views more closely align with those of policymakers, legal scholars, and middle-class society more generally. Whereas the legal preferences of affluent defendants may align with lawyers, the legal preferences of poor defendants and especially those living in highly-policed majority-minority neighborhoods are less likely to. Thus, legal strategies or outcomes that defendants perceive to be in their best interests given their real and perceived constraints may be understood as objectively more punitive by lawyers and social scientists. Such a discrepancy may have implications for how researchers understand the production of disparities in alternative sanctions, where much research focuses on whether

minorities and the unemployed are less likely to receive a sentence of probation as compared to their higher status peers (see Spohn 2000, 2013).

Several working-class and poor black defendants in my sample told me that, in the abstract, they often prefer sentences of incarceration over sentences of probation. For many black defendants, the lack of interest in the alternative sanction of probation is rooted in their own or others' experiences of discrimination. William (B, WC, MC) reflected on his probation experience after his first conviction. He told me, frankly, that "probation is not for black people." He elaborated:

Matt: What was being on probation like?

William: It's...probation is not...Probation is not for black people.

Matt: Hmm. What do you mean by that?

William: You're treated differently on probation—African Americans are treated totally different on probation than white people are treated on probation, than anyone else is treated on probation. And that goes for Asians, Hispanics, you name it, whatever nationality is. My personal experience and other people I've talked to on probation [is that] probation is not to be dealt with black people. That's why you see a lot of black guys doing the time instead of taking the probation.

Whereas William explicitly indicts probation for differential treatment between blacks and other racial groups, others focused on the burdensome requirements of probation given the realities of their classed and racialized social ties and neighborhood environments.

For instance, Richard (B, WC, WC), who was on probation at the time of our interview, recounted to me the difficulties of juggling the requirements of probation with everyday relationships with friends and families in one's neighborhood. I asked him what it was like being on probation, and he told me:

You have to watch out for anyone doing dumb shit. I can't deal with anybody who's fucking around. I just I watch out for my surroundings too. You know I could end up getting into a fucking fight and that could lead to being in the wrong place at the wrong time. And, you know, some drug transactions—plus, being a black male, I just understand that you get caught up in a lot of stuff even if you don't want even if you don't want to be there. So, you know, so I try to work and get my ass right home, sit my ass somewhere, or read, come to the library, go work out. Do constructive things with my time. And um definitely can't be around people doing any type of drugs or anything, man, 'cause it's...Man, it's crazy I was with this dude who was smoking—like I don't smoke or drink. Prior to me going to prison, I was smoking and drinking like a mother fucker but I don't smoke or drink at all and I didn't do it in prison either so...So um... I was with some guys--I went back

to my neighborhood, and we had a barbecue and ... I'd seen some of my guys and just, you know, having a good time, you know, 'cause I haven't seen them in a long time. But guys started smoking, you know, but they were smoking so much and they were smoking outside and I stayed away from it, but, you know, I came back and I had a urine and when I took the urine the THC line was kind of slim, kind of light. And my guy, you know, I don't smoke or nothing but damn second-hand smoke can make that shit light up like that so I'm like, you know, I definitely can't play around with nothing, I can't even be in the vicinity so...

For Richard, “being a black male” makes him uniquely susceptible to the sanctions of probation.

He recounts how not only can he not personally “smoke or drink,” but also he cannot be around people who do, lest he have a contact high.

Some poor white defendants also articulated their frustrations with probation, noting the difficulties of maintaining employment and abiding by conditions. Tonya (W/N, P, P), for instance, articulated the many burdens of probation that she has experienced. She said that being on probation was “basically like being in jail”—drawing an equivalence between the two types of sentences. I asked her to tell me more, and she went on to describe probation as “harder” than jail:

Matt: How was being on probation basically like being in jail?

Tonya: It's harder

Matt: Hmm. Tell me more about that.

Tonya: Um...You can't live a normal life. They put demands on you that are almost impossible. Um...programs, counseling, drug counseling, drug programs...urines, coming in and out of Braintree and Boston and paying for that. Paying for your trips, paying for your fees, paying um...Plus they want you to work. Scheduling all this stuff around your work?! There's nobody going to want to hire you for all that, you know, to schedule you around groups that probation mandates you to do. I got lucky and I got a job that was outside [the city]. Um, I got to skate around that because I was living in [a housing location], and I wasn't in my programs yet. Um I did individuals only at that time and maybe one group a week so at that time when I was working before I hurt myself I was good to go. Um...But it's, the demands are extremely high. Like I don't even have time to work now because I have four groups a week, 11:00-12:30, one's 10:00-11:30. Counseling--two counseling--sessions on Mondays from 11:00-12:30 --no, 11:00-12:00-- and then 12:00-1:00, and then on Thursday I have--or is it Wednesday? Here, I have my schedule right here.

The many conditions on Tonya's probation are exhausting to read, much less to experience on a daily basis. As she notes, her conditions were so involved during this one period of probation that she was barely able to maintain a job, which was yet another condition of her probation. As noted throughout this chapter, Tonya has had many interactions with probation over her life

course. Her many unsuccessful experiences with probation have indelibly shaped her negative perspective on it as an alternative sanction.

The preferences that these individuals articulated to me in the interviews were often articulated with reference to prior experiences of alternative sanctions they did not find to be positive. Despite their apparent preferences, they still participated in alternative sanctions. Therefore, it is unclear whether individuals with non-normative preferences actually *act on* those preferences when making legal decisions.

But, my data suggest that some of these defendants, though perhaps not all, do act on their preferences. Among some respondents, the realities of their constrained positions and their resultant preferences were expressly articulated as motivating factors in their decision-making accounts. While defendants rarely recount being presented with the opportunity to directly choose between alternative sanctions (e.g., probation vs. incarceration), they are often presented with decision-making moments where their preferences influence their decision to file a motion, accept a plea, continue bargaining, or take a case to trial. For example, Max (W, MC, WC) and his co-defendant Bob's divergent choices, described above, speak to the realities that some defendants' preferences may lead them to take riskier paths that could result in harsher legal outcomes.

In addition, defendants experiencing social or economic constraints may be more willing to accept a plea offer that carries a period of incarceration than other defendants who may seek to drag out their cases longer until being offered some alternative to incarceration. For example, Michael (W, P, P), who has been sentenced to county jail twice in life, told me that his experience with jail was not "as bad as people make it out to be." He even noted that jail was an opportunity to get sober:

You just go in county, and there's a bunch of people I know that I went to school with that I grew up with, so [...] Besides the freedom of choice and [lack of] females I mean it wasn't that bad. It was just a one year thing that cleaned me up and I tried to do something with myself.

Like Michael, many poor individuals in my sample similarly noted how jail and prison were not as punitive as some people might think; some individuals who were homeless even described incarceration as a respite from the uncertainties and risks of life on the streets. Still, Michael was rare among poor defendants in my sample in that he told me that he rarely ever thinks about taking his cases to trial or even actively fighting his charges. Michael's reaction to a probation violation hearing provides an illustration of his thought process:

So then my probation officer comes in, and he's got the he's got the paper and he's like "Alright we got him on two and half years. He violated. We need to give him the whole time." So I'm like, "Fuck it." Two and half years. And they said, "Oh the judge ain't here." And I'm like, "I don't care. I'll go in front of her. I was like just give me the time," you know. I'm getting fucked. Me and my girlfriend are homeless; we're not getting along. Just give me the fucking time, and let's do this. So my lawyer—I'm walking away and I got two [and a half] years—[and...] my lawyer is like, "I'm gonna ask for six months." And I'm like, "Alright." And the judge said, "Yeah, I'll give him six months." So I was like, alright. Score!

In this account, Michael describes how he told his lawyer he would be willing to do the full time that probation recommended (two and a half years in jail) because he had no interest in dragging out the violation hearing. Yet, his lawyer pushed back—telling him that he would ask for six months of jail time instead during the scheduled hearing in front of the judge. Ultimately, his lawyer's expertise, which was more or less forced upon him, resulted in a slightly lesser sentence than his own initial preferences and resignation (guided by his alienation from the legal system and the gloomy realities of his daily life) might have dictated.

Structural constraints *within* the criminal justice system can also shape the way non-normative legal preferences impact defendants' decision-making and thus the harshness of their legal outcomes. Take the case of Nicholas (W, WC, P), a man who has spent much of his adult life in and out of homeless shelters. After verbally assaulting his girlfriend and breaking a door,

he was arrested for threatening to commit a crime and malicious destruction of property. He was held pre-trial for several days. His attorney told him that he could wait to take the case to trial or he could take a plea, which in addition to him being found guilty of the charge, would require him to take a batterer intervention program and be on probation for 18 months. He remembers discussing his options with his attorney:

And then he [my attorney] came into the jail a couple of times and said, "You know, this is what your options are: We can wait and take it to trial, but you'll stay here another month; or you can plea out and you're going to have to take probation, a batterer's course, and all this other nonsense. Do you think you can do it?"

Both he and his attorney believed he could win at trial because his girlfriend refused to testify against him; but, trial was scheduled to take place in a month. Against his attorney's suggestion to wait it out to take the case to trial, Nicholas decided to take the plea deal because he did not want to miss out on summer activities with his friends and, given his drug addiction, jail was miserable without his medication. He "just wanted to get out." Thus, given his inability to post bail, he likely ended up with a harsher sentence (a conviction on his record and probation) than if he had gone to trial (acquittal). For Nicholas, he perceived this harsher sentence to be in his best interest at the time, revealing that legal preferences may be susceptible to shifting in specific decision-making moments depending on the resources available to defendants at the time and their assessments of their short-term and long-term needs.

Some preferences shape decisions not just during court processing, but also in relation to police encounters, impacting whether an individual may be charged with a crime in the first place. Numerous respondents recounted how police officers would offer deals to them in return for their cooperation. As noted in chapter 2, some were promised non-arrest if they cooperated with police by serving as confidential informants. Police officers I interviewed also acknowledged that they sometimes make such offers to certain alleged offenders if these alleged

offenders serve as informants to help detectives build a case against a drug distributor. Those who take such deals have preferences for minimizing their own possible legal sanctions in exchange for the potential worsening of legal sanctions against others (e.g., drug dealers). Such a preference to save oneself may appear rational to some observers. Yet, as noted in chapter 2, many working-class and poor individuals in my sample recounted preferring not to take such deals because doing so violated local norms against “snitching” or “ratting out” others. Recall Robert’s (W, WC, WC) reasons for not working with the police: “I grew up like that; I was taught loyalty. I knew not to rat on anybody, you know, because that leads to more problems.”

Legal authorities often make assumptions about defendants’ preferences that may result in differential treatment. Throughout the pre-trial process, which can be as short as a few days or as long as a few years⁵⁶, defendants and their cases are often assessed by defense attorneys, prosecutors, probation officers, and sometimes judges who discuss evidence strength, plea or charge bargaining, opportunities for alternative sanctions, and the like. During these negotiations, defendants themselves may be assessed for their fit for alternative sanctions given their articulated preferences to their defense attorneys, their articulated preferences to judges, or more subtle indications (e.g., demeanor) that can be read as a defendant’s “fit” for alternative sanctions (see Johnson and DiPietro 2012; Mears et al. 2017). A colleague and I found that judges in a Northeastern state recount using race, class, or neighborhood environment as proxies

⁵⁶ I do not have statistics on the average length of cases in the Boston-area. Yet, from my interviews with defense attorneys and defendants, it is likely that the majority of cases will take 90 days at a minimum. Most cases go through at least three pre-trial court hearings. First is arraignment, where a defendant can plea, but usually does not. The next court date is then usually set for 30 days later, when the defendant will show up for his or her pre-trial hearings/conferences. Sometimes a defendant will plead at this stage, but often a defendant will set a date for pre-trial motions, which will be held 30 days later. After a motions hearing, a defendant will then usually have another 30 days prior to the start of trial or the decision to take a plea. Throughout all of this, defendants and defense attorneys are able to negotiate with opposing counsel.

for the defendant's ability to abide by probation conditions, for the very reasons the individuals in my sample identify above (see Clair and Winter 2016, p. 342).

From policing to court processing decisions, defendants' constrained choices and resulting legal preferences can be understood to have implications for their legal outcomes. These findings underscore how differential navigation can be mediated not just by divergent ways of engaging with one's attorney but also by divergent options.

Legal decisions and the reproduction of disparities

Criminal defendants' ultimate punishment outcomes are shaped by numerous factors, including the nature of the charge, the criminal record, the demographic characteristics of the defendant, the competence of legal representation, and the attitudes and behaviors of court officials; I argue that differential navigation in the decision-making of defendants plays an additional role in explaining defendants' outcomes and, in turn, criminal justice disparities. The findings from this chapter illustrate the ways that distinct navigational styles can have disparate consequences. Those who delegate authority to their lawyers appear to experience relatively less punitive formal and informal legal outcomes than those who withdraw from the attorney client relationship and reject their lawyers' expertise. One exception to this general pattern, however, are cases in which individuals reject their lawyers' expertise to wait out a more lenient plea deal (note the dotted arrow in figure 4 below).

These different navigational strategies and their associated legal decisions appear to be patterned along race and class lines. Middle-class (across racial/ethnic groups) and some white working-class individuals in my sample appear to be more likely to delegate authority to lawyers, whereas working-class and poor individuals (especially those who are also racial/ethnic minorities) in my sample appear to be more likely to withdraw from their lawyers and rely on

their own cultivated expertise. This pattern is not deterministic, however; indeed, navigational approaches can vary within the same person. For example, Arnold (B, WC, MC) withdrew from his first lawyer but delegated authority to his second, while Tonya (W/N, P, P) generally withdrew from her lawyer but ultimately took her advice at the last minute. What is important to highlight is how situational cultural, social, and economic resources available to defendants in specific interactional moments shape these navigational strategies and legal choices through the mechanisms of trust and constrained preferences.

Figure 4. The unequal conditions and consequences of defendants' differential navigation

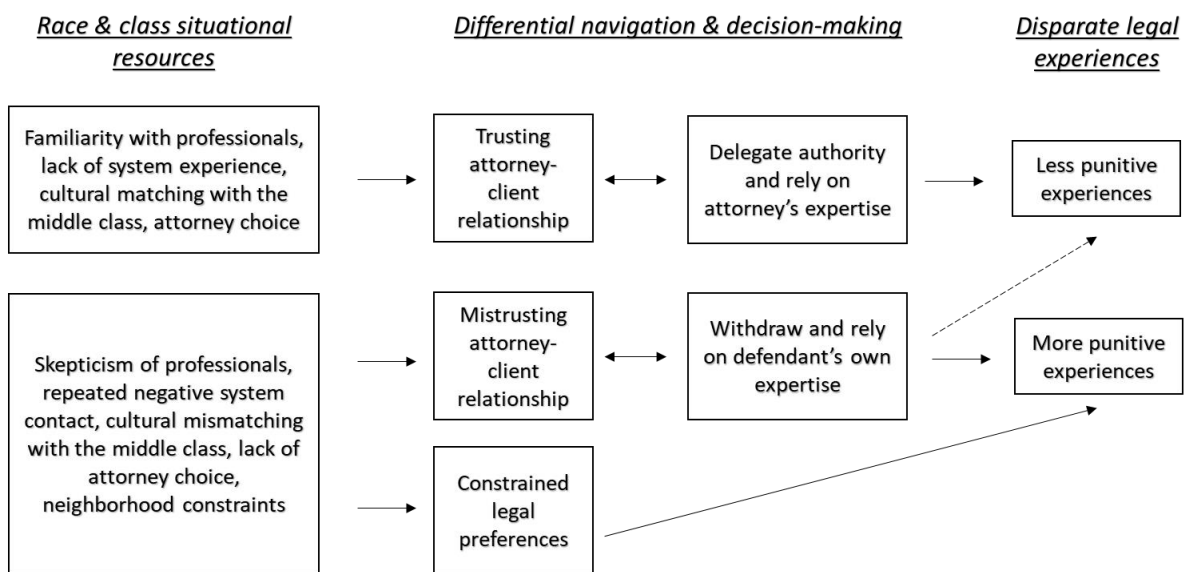


Figure 4 summarizes the processes described in this chapter and identifies their roots in the situational resources that produce (mis)trust, as described in chapter 3. Individuals who grew up in, or currently experience, middle-class situations are more likely to have access to middle-class resources, such as familiarity with professionals, lack of experience with the legal system, cultural matching with middle-class attorneys, and the ability to choose an attorney through payment. The opposite is true for those who grew up in, or currently experience, working-class

or poor situations, especially those who are black and Latino and living in socially-isolated minority neighborhoods where policing is regular and access to mainstream institutions of American society is sparse. Unequal access to resources shapes unequal levels of trust in attorneys and the unequal development of legal preferences, with implications for punishment experiences.

Alternative Explanations: Bad Memories, Bad Lawyers, and Bad Outcomes

There are a few alternative explanations for these findings that I will address at some length. First, it could be the case that rather than being a cause of harsher punishments, defendants' reported mistrust of their lawyers is instead caused by perceived harsher punishment experiences. In other words, defendants who recall mistrusting their lawyers in the interview setting could be rationalizing their relatively more punitive case experiences by convincing themselves that they never really trusted their lawyers.

Even if general system distrust is hardened by negative legal experiences, mistrust in specific lawyers can still precede, and negatively shape, punishment experiences through withdrawal and rejection of lawyers' expertise. First, distrust of the system should not be conflated with mistrust of specific lawyers. For example, some defendants in my sample recount trusting their lawyers despite perceptions of harsher criminal justice experiences. For example, Jimmy (B, MC, WC), who was arrested at 16 in Cambridge for stealing an expensive bike, recounted that both he and his parents trusted his lawyer. They trusted his lawyer because: "He was cool. He was honest too." He and his parents delegated authority to the lawyer to use his expertise: "He was the one who basically made the decision." While the lawyer was able to get his charge reduced from a felony to a misdemeanor, Jimmy ultimately pleaded to one year of probation, a sentence he describes as "unfair." As he told me, "I know other kids who got

arrested for worse things, [but] just because they were white they didn't get in trouble and they didn't have nothing happen to them. Literally no probation. None of that."

Even if feelings of mistrust in one's specific lawyer as expressed in the interview are heightened by perceived negative case outcomes, the evidence in the preceding two chapters shows that specific instances of mistrust shape subsequent instances of rejection of lawyers' legal expertise. The in-depth analyses of Arnold's and Tonya's experiences, for example, rely on ethnographic observations and interviews to show how (mis)trust unfolds in real time and prior to specific decision-making choices to delegate authority to or withdrawal from one's lawyer. Moreover, social psychological research shows that individuals differentiate between distributive justice (i.e., fair outcomes), the favorability of a justice outcome, and procedural justice (i.e., fair and trustworthy institutional processes) (see Tyler and Huo 2002). Thus, it is not necessarily surprising that some respondents in my sample may recount both trusting their lawyers and also being dissatisfied with their outcomes, and vice versa.

Second, it could be that mistrust and harsher experiences go hand-in-hand because lawyers whom defendants mistrust are also lawyers who are not zealous advocates on behalf of their clients. In this account, defendants' mistrust precedes negative punishments because their mistrust is reserved only for lawyers who are not acting in their best interests (Blumberg 1967). To be sure, many defense attorneys—especially court-appointed lawyers working with indigent clients—are overworked, manage a heavy caseload, and may be more committed to the courtroom workgroup's goal of disposing of cases rather than their client's goal of avoiding harsh punishment and/or exercising his or her due process rights (Sudnow 1965; Richardson 2017; Van Cleve 2016). Indeed, private lawyers who sit court appointed have been shown to obtain relatively worse outcomes for their clients than staff public defenders (see Anderson and

Heaton 2012 on the effect of counsel type on murder case outcomes in Philadelphia). As defendants' accounts in my own data reveal, defendants experience mistreatment from certain lawyers but not others—perceptions that could signal poor legal representation.

Yet, in the Boston area, staff public defenders are salaried, and the pay structure of court-appointed attorneys from the private bar—which compensates attorneys by the hour worked rather than the number of clients serviced—does not necessarily encourage flipping cases quickly, unlike other payment schemes elaborated in other court ethnographies (see Eisenstein and Jacob 1977, p. 51). Moreover, Massachusetts has one of the best-resourced indigent defense systems in the country, affording robust resources to staff attorneys and private bar attorneys alike (Strong 2016). All else equal, a defendant who is willing to trust in his or her lawyer and delegate authority will likely garner relatively better advocacy than a defendant who does not.

Furthermore, it is useful to revisit the case of Arnold (B, WC, MC) here. Arnold, whose story begins this chapter, was initially assigned a court-appointed attorney whom he did not trust. Interestingly, and unlike many in my sample, he mistrusted his lawyer not necessarily because of his skepticism of lawyers more broadly or his negative prior experiences with the courts (i.e., a priori reasons to mistrust a lawyer), but because of what he perceived to be her inability to effectively advocate for him given her seeming indifference to his professed innocence as well as her seeming lack of ability to engage with other court professionals, given her accent. In short, Arnold provides an example of mistrust arising from a perception of bad lawyering. What if Arnold had stuck with this lawyer? Would withdrawing and rejecting her expertise result in a relatively better outcome for Arnold than delegating authority to her and deferring to her expertise?

It is impossible to know for sure; yet, there are several reasons to believe that delegation and deference toward his original lawyer might have provided Arnold with a relatively better outcome than withdrawal and rejection, despite her apparent weaknesses in his eyes. First, overwhelmed defense attorneys may selectively advocate for clients who delegate authority to them and allow them to use their professional expertise (see Flemming 1986). As noted throughout this chapter, lawyers do not like clients who question their expertise. If Arnold had withdrawn and rejected, his lawyer would likely have responded in kind. Second, if Arnold's own cultivated expertise suggested to him that he should take his case to trial (as he learned was the best option for him with his second attorney given the weakness of the evidence against him), his first lawyer might not have been as successful at defending him at trial if she really was as bad at her job as he perceived her to be.

These reasons underscore the unenviable position in which many poor defendants find themselves. Without the ability to choose their attorneys, they are often forced to choose between the relatively better choice among an array of punitive choices. When it comes to understanding the reproduction of criminal justice disparities, we can see how the choice of a relatively better option among those who trust in their lawyers and defer to their expertise may result in a marginally better outcome at the individual level and, in the aggregate, contribute to the reproduction of disparities. Of course, when it comes to understanding the experiences of criminal defendants from a more humanistic standpoint, we can also see how withdrawing from lawyers and rejecting their legal expertise could constitute an important act of dignity and resistance against an unfair system.

Conclusion: Toward Affirmative Justice

“They have made no attempt, whatever, any of them, as far as I know, really to explain to the American people that the black cat in the streets wants to protect his house, his wife and children. And if he is going to be able to do this he has to be given his autonomy, his own schools, a revision of the police force in a very radical way. It means, in short, that if the American Negro, the American black man, is going to become a free person in this country, the people of this country have to give up something. If they don't give it up, it will be taken from them.”

—James Baldwin,
Esquire Magazine

This dissertation describes and explains defendants’ everyday experiences of criminal justice processing, focusing on how their experiences are shaped by race and class. As I have shown, defendants’ experiences in the Boston area are unequal. Despite similarities in drug/alcohol use and other delinquent behaviors in adolescence, the 49 individuals I got to know recounted facing the legal system—from the police to the courts—in divergent ways. Experiences with police evasion, police negotiation, trust in legal authorities, engagement with lawyers, and ultimate court punishments varied by individuals’ access to cultural, social, and economic resources patterned along race and class lines. Those with access to typically middle-class situational resources faced less harsh engagements with the law than those with access only to working-class and poor situational resources, especially among marginalized racial/ethnic minorities. In an era of mass criminalization, whereby increasing numbers of middle-class and white

individuals have been pulled into the criminal justice system through arrest, citation, and the proliferation of various techniques of legal control, it is nevertheless still the case that criminalization is experienced inequitably.

In this final chapter, I briefly summarize the findings, focusing on implications for criminological theory, sociological theory, and legal theory. With respect to criminological theory, my findings reveal how criminal justice disparities can be explained, in part, by differential navigation. It is not just that disadvantaged individuals are more likely to be arrested or that they are often discriminated against by legal authorities on the basis of their race or class, but also they are more likely to pursue navigational strategies that are punished by criminal justice authorities and institutions.

With respect to sociological theory, I revise dominant cultural sociological understandings of the social reproduction of inequality within institutions by showing how punitive institutions reward and punish different styles of engagement than gateway institutions, such as schools or the workplace. The rewarding of more passive and deferential styles of engagement in punitive institutions also highlights the inevitable tension faced by sociological theories of agency—the tension that social actors experience between escaping a system’s oppression at the individual level and fighting a system’s oppression at the collective level. In addition, I argue for the importance of conceptualizing race and class as heuristic, macro-level categories that correlate with situational resources employed and embodied by individuals in their everyday interactions. In doing so, race and class categories become probabilistic indicators of cultural styles and behaviors rather than deterministic, predictable indicators. Consequently, race and class disparities can be better understood to be rooted in differential access to resources rather than some fundamental characteristic of the race and class categories. Race- and class-

based *resources* are thus given primacy in explanations of disparities rather than raced and classed *individuals*.

With respect to legal theory, I offer a theory of what I term “affirmative justice.” This theory could be used to develop court procedures, state and federal legislation, and appellate case law that would provide justifications for legal authorities, legislators, and judges in developing expressly race- and class-conscious strategies for reducing criminal justice disparities. This theory draws on critical race theory, critical legal studies, and United States Supreme Court jurisprudence around affirmative action as articulated in employment and school settings. Taking my empirical findings as a starting point, I argue that the criminal justice system, just like the workplace and schools, is an institution that reproduces inequality through the coordinated actions of both dominant and subordinated actors. As such, our legal theories and policy prescriptions should consider ways to correct for both (past and present) discriminatory treatment as well as the lack of resources available to those subordinated. In recent years, the Court has increasingly questioned the foundations of disparate impact theory (or, consideration of disparate outcomes between groups) when determining racial bias, especially in the criminal justice system; but, prior legal interpretations of the Equal Protection Clause of the Fourteenth Amendment drew heavily on disparate impact theory. The theory of affirmative justice argues for the renewal of disparate impact theory in our policies, case law, and cultural practices with respect to our treatment of criminal defendants. In doing so, affirmative justice provides a path toward the elimination criminal justice disparities.

Limitations and Future Research

I first note several limitations and avenues for future research. First, this dissertation is unable to make claims about the proportion of disparities explained by individuals’ differential navigation

of the police and courts. While it could be the case that all unexplained variation in outcomes between groups is accounted for by differential navigation, such a reality would be unlikely, given the observed stereotypes and biases of legal authorities and differences in criminal offending, as measured both by arrest statistics and victim surveys. Instead of assessing the degree to which differential navigation explains disparate outcomes, I have provided an empirical description of the processes by which differential navigation likely contributes to unequal punishment experiences. Future research relying on administrative court data paired with detailed survey or observational data on defendants' interactions and behaviors may be able to better assess counterfactual causal questions regarding the proportion of variation explained by differential navigation. That said, disentangling differential treatment from differential navigation is empirically difficult, given that these processes are mutually-reinforcing—any social actor's behavior is constrained and enabled by another's.

Second, this dissertation is unable to thoroughly assess whether trust and differential navigation operate distinctively among defendants from certain demographic groups, such as Latinos, women, and the upper middle class. Only three respondents in my sample identify as Latino/a. Issues regarding English language proficiency and the legal considerations of the United States' complex immigration system (Stumpf 2013) could complicate the findings offered here. Future research could consider whether attorney-client trust and the delegation of authority operate differently among not only Latinos but also other demographic groups—and demographic intersections—not included in my sample. One demographic group that may deserve greater attention is black women. No individual in my sample is a black woman; yet, scholarship in other contexts, such as employment discrimination (Crenshaw 1991), has found that black women face unique forms of discrimination compared to white women and black men.

Women defendants, black or otherwise, should also be considered in future research given the unique stereotypes and vulnerabilities associated with female offenders (Chesney-Lind and Pasko 2013) as well as the unique position women may find themselves in when interacting with those in positions of power (Ridgeway and Correll 2004; Wingfield 2007).

In addition, the upper middle class may deserve greater attention. While some of my respondents were raised in upper-middle-class families (as defined by having at least one parent with a college degree and a professional-managerial occupation), I chose to collapse the middle class and the upper middle class into one social class category, given that their access to situational resources that matter in navigating the courts appears to be similar. Future research, however, could investigate whether there are meaningful differences between these two groups with respect to the navigation of other aspects of criminal justice processing beyond interaction with one's lawyer. Methodologically, future research could sample defendants facing offenses that are likely to include higher proportions of upper-middle-class individuals, such as financial institution fraud, embezzlement, or tax evasion.

Third, given that this study's sample may not be representative of defendants in the Boston area, I am unable to document the prevalence of the perceptions, resources, and processes that I document among the respondents in my sample. Future research drawing on large, representative samples of defendants in specific courthouses or jurisdictions should consider the extent to which certain factors such as police evasion, police negotiation, (mis)trust, delegation of authority, or cultivation of legal expertise exist as common ways of navigating the system. The unique contribution of this dissertation has been to uncover the existence of these processes and detail, through a careful consideration of multiple forms of evidence, how they likely contribute to disparities.

Relatedly, while I have taken care to analyze how resources shape different styles of navigation of the system along race and class lines, a representative sample of defendants could reveal that different ways of navigating do not cohere with race and class status categories. For example, if I were to sample 10 more currently middle-class individuals in Boston, I might find that their navigational strategies differ from those of the 10 currently middle-class individuals in the present sample. It might be the case that there is an unobserved variable (e.g., distrust of academics) that may be associated with both these 10 individuals' non-response to my recruitment to participate in this study and also their distinct navigational strategies. Such problems are characteristic of all non-representative samples. Throughout the analysis, I have attempted to deal with these issues by comparing my interview data with other sources of data as well as with prior research. Therefore, I believe it would be highly unlikely to find that (mis)trust and delegation/withdrawal are not patterned along race and class lines in a representative sample of defendants. Regardless, the resources and navigational strategies documented among the 49 individuals in my sample still produced meaningful effects in their own individual lives, and future scholars could parse the precise degree to which these resources and processes explain disparities in the aggregate.

Finally, while the ethnographic observations in this study enabled me to observe the relationship between defendants' interpretations and outcomes among a subset of my sample in real time, future research that systematically compares a larger sample of observed attorney-client relationships and observed decision-making choices would be useful for further developing my findings. My general courthouse observations combined with my targeted observations of six defendants enabled me to confirm many of the processes and stated decisions uncovered in interviews. However, I was unable to witness many of the legal choices described

in this study from an observational standpoint. One avenue for future research might be to embed in the private institutional spaces of legal authorities (e.g., defense attorneys or prosecutors' offices) in addition to the public courthouse setting. Prior work that has engaged in ethnography in legal authorities' private institutional spaces (e.g., Emmelman 1994, 2003; Van Cleve 2016) has tended to focus on legal authorities' interpretations and behaviors. Future research on differential navigation, however, would engage in institutional ethnography in order to gain insight into the relational interactions between legal authorities and defendants (see Desmond 2014). For example, researchers could observe the same defense attorney, probation officer, prosecutor, or judge for an extended period of time, taking note of how their interactions with, and trustworthiness among, the sample of defendants they encounter vary along race, class, or other dimensions. It would also be important to take note of the formal legal outcomes associated with such interactions.

Implications for sociological and criminological theory

Aside from these limitations, my findings offer several implications.

Institutional expertise, cultural interactions, and inequality in punitive institutions

This dissertation contributes to criminological theory on disparities by theorizing and empirically examining differential navigation of criminal justice processing. Moving beyond the disparate impact and differential treatment explanations of disparities described in chapter 1, I considered how differential navigation of the criminal justice process along race and class lines shapes disparate experiences of punishment. While all the individuals in my sample suffered from some form of alienation and drug/alcohol use in childhood in addition to varying degrees of engagement in other forms of delinquency, their experiences with policing and court

involvement varied by their access to social, cultural, and economic resources. Processes of police evasion and police negotiation were unequally available to individuals based on the spatial boundaries of racially- and socioeconomically-segregated neighborhoods and the moral and cultural boundaries of race and class affinity in police-civilian interactions. When it came to subjective experiences with police, being non-white appeared to have more of an influence on the way individuals felt treated by police than did lower class status, but being of a lower class status seemed to more clearly influence the number of arrests over one's life course.

Moreover, when it came to court processing, different experiences with police and other legal authorities as well as differential access to cultural and social resources (e.g., familiarity with professionals and cultural matching with respect to middle-class experiences) prior to court involvement shaped unequal levels of trust in lawyers. In my sample, I found that working-class and poor defendants (especially racial/ethnic minorities) experienced less trusting relationships with their lawyers than middle-class defendants. Mistrust shaped defendants' punishment experiences. Amidst mistrust, defendants were more likely to reject lawyers' professional legal expertise and instead rely on their own acquired expertise, which was often incomplete, imprecise, and ineffective, resulting in relatively worse forms of punishment. Moreover, unequal experiences beyond the courthouse walls—inequalities in neighborhoods and social ties—constrained legal choices and preferences among the working class and poor, resulting in them often choosing what appeared to be harsher legal outcomes in the eyes of legal authorities and many social scientists.

These findings also contribute to sociological theory by revising cultural sociological understandings of inequality in institutional navigation. My findings show how relatively successful navigation of the criminal courts relies on delegation and deference to lawyers rather

than demanding engagement and the accrual of institutional knowledge. Lareau (2003; 2015) and others (e.g., Calarco 2014; Streib 2011) have shown how middle-class parents and students reproduce their advantage in schools through their proactive, exacting, and demanding interactions with teachers and other authorities. In schools, authorities reward demanding parents and students with more class time (Streib 2011), exemptions from homework (Calarco 2014), and other accommodations, such as placement in higher level courses (Lareau 2003). Lareau (2003; 2015) shows how the sense of entitlement that middle-class children learn from their parents translates into their assertive negotiation of institutions into adulthood. Moreover, Calarco (2014) shows how working-class parents' deference toward, and trust in, teachers as experts negatively impacts their children's classroom and problem-solving strategies.

By contrast, I find that it is the working class and poor who are more assertive, demanding, and dissatisfied with legal authorities, the institutional actors in power in the criminal courts. While their dissatisfaction is perhaps unsurprising, given the working class's broader skepticism of professionals and experts as documented in sociological work on symbolic boundaries (Lamont 2002),⁵⁷ their greater likelihood to rely on their own expertise in the face of what they view to be inadequate representation is. While it would be inapt to characterize the working class and poor as exhibiting entitlement, they are more likely to cultivate the legal expertise they believe to be necessary for successful navigation of the courts in a way that the middle class are not, given the latter's trust in their lawyers. While the accrual of expertise, in itself, does not hamper a defendant's chances, rejection of a lawyer's expertise in favor of one's own does. Navigation of the courts requires allowing designated institutional actors (i.e., lawyers) to work on one's behalf rather than attempting to directly seek one's own

⁵⁷ See also Lareau (2003, p. 199) on the demanding interactions of working-class and poor parents with respect to cable companies and landlords, despite their deference to teachers in schools.

accommodations. These findings reveal that, unlike in schools, delegation and deference in the criminal courts are cultural styles that often privilege the middle class.

These navigational processes may operate similarly in other punitive institutions, such as probation offices, sober houses, and child welfare agencies, where everyday people are required—rather than elect—to interact with bureaucrats and experts who control the extent to which they can avoid legal, political, and civic penalties (Lipsky 1980; Miller 2014; Soss 2005). Through various empirical lenses, a well-developed literature in sociology has examined how contemporary punitive institutions—often intertwined with a retrenched welfare state (Miller 2014; Wacquant 2010)—surveil and control marginalized populations and places (e.g., Edwards 2016; Goffman 2014; Stuart 2016). Meanwhile, growing research in sociology and political science has considered how interaction with welfare and criminal justice institutions shapes how citizens view government and, in turn, engage in (or disengage from) political and civic life (e.g., Brayne 2014; Lerman and Weaver 2014; Manza and Uggen 2004; Soss 2005). These literatures have largely imagined a homogenous population of marginalized citizens interacting with these institutions, often finding that system contact results in withdrawal from political and civic life (but see Brayne 2014 on civic and religious institutions).

Rarely has research on punitive institutions interrogated how higher-status individuals engage with, and learn from, punitive system contact in comparison to lower-status individuals. Jennifer Reich's (2005) study of parents engaging with Child Protective Services (CPS) is an exception. Although Reich does not expressly theorize race- and class-based differences, her findings speak to the way that deference is rewarded in interactions with case workers and the way resistance is punished. Reich even describes how a middle-class woman with various forms of resources ultimately loses her children because she does not practice deference. My findings

regarding delegation and deference in the attorney-client relationship are even more drastic, given that lawyers are supposed to protect defendants' due process rights whereas case workers in CPS are investigators, analogous to the police or prosecutors. These findings suggest that research on punitive institutions could be enriched by considering how members of the middle class—so often used to interacting with state institutions and policy regimes that enrich their rights and provide entitlements (see Schneider and Ingram 2005)—strive to avoid the restriction of their rights when engaging with punitive authorities.

Differential navigation as individual and collective resistance

My findings also highlight the important place of agency in scholars' examinations of the plight of the working class, poor, and marginalized racial/ethnic minorities. Too often, scholars fail to consider agency, dignity, and resistance in the experiences of marginalized individuals when interacting with authorities and oppressive institutional structures. Instead, scholars tend to depict such individuals as resigned and helpless. Certainly, some of this failure to recognize agency among the subordinated is an artefact of methodological approaches that focus on abstracted outcomes as documented in administrative records, large-scale surveys, or population estimates. But by focusing on the micro-level experiences of criminal defendants, this dissertation both observes the way that access to situational resources is unevenly patterned along race and class lines and also the way that agency and resistance are also unequally patterned. Contrary to what some scholars may predict (see e.g., Young and Munsch 2014), I find that those who are marginalized are more likely than the privileged to exhibit agency and resistance in their interactions with legal authorities.

Over the past few decades, some scholars—especially those engaging with critical perspectives and/or those methodologically attuned to the micro-level experiences of

marginalized individuals—have also documented agency among the poor and racial/ethnic minorities in their interactions with powerful actors (see Cohen 2004; Kelley 1996; Scott 1990; Young 2016). For example, in his study of criminalized black and Latino boys, Victor Rios (2011) describes how they engage in a “deviant politics” through their expressive taste in music, style, and dress (see also Pattillo 2013 [1999]). Some youth in Rios’ study exhibited disrespect toward probation officers or engaged in delinquent behaviors in an attempt to maintain their dignity against a system that already devalued them. In Forrest Stuart’s (2016) study of black men on Skid Row, he describes how a subset of the men organized a “Community Watch” team to police the police. Stuart argues that their confrontations with police and their video documentation of abusive police practices constituted “collective strategies of resistance.” Some of the team’s videos even contributed to a successful federal class action lawsuit against the City of Los Angeles.

My findings contribute to these arguments in two ways. First, I show how the agency of the subordinated is not only *a reflection of* unequal punishment but also *brings about* unequal punishment. Rios (2011) makes a similar argument; yet, by analyzing defendants from a diverse range of race and class backgrounds, I show how whites and the middle class—who belong to “unmarked” social categories (Choo and Ferree 2010)—operate in relative privilege in comparison to their disadvantaged peers. The privilege of non-resistance and naivete in encounters with legal authorities enables an ease of navigation for middle class (especially white) individuals. Meanwhile, legal authorities react negatively to working-class and poor defendants’ agency, interpreting it as disrespect of their professional authority and expertise.

Second, I reveal a contradiction in the way agency operates at the individual level versus at the macro level. While agency, cultivation of expertise, and refusal to delegate authority to

lawyers worsens defendants' legal experiences at the individual level, these very same processes have the potential to alter the severity of the criminal law at the macro level. Stuart (2016)'s illustration of the Community Watch team is one illustration. Among the individuals in my sample, their cultivation of legal expertise was often used to contribute to broader system change, despite its largely ineffective use in their own individual cases. For example, Ken's (W, WC, WC) interest in the law as a tool for change motivated him to get involved with Families Against Mandatory Minimums (FAMM), an organization that seeks to overturn mandatory sentencing laws. He told me, "We overturned them. It took twenty years. [...] I joined [FAMM] and get the newsletter and try to stay current on all that. If nothing else, it gave me something to do that was positive." Other individuals in my sample altered their careers to seek broader change. Jason (W, MC, MC) has worked for needle exchange programs, and William (B, WC, MC) volunteers with a sober house program. Royale (B, WC, WC) is a motivational speaker who conducts workshops about "how to break the criminal mindset." He also has plans to start a community center. These examples reveal that defendants' agency should be understood as providing the seeds for resistance and social change (at the macro level), even if it contributes to negative formal legal punishments (at the micro level).

Conceptualizing race and class as situational resources

In chapter 1, I previewed how my analytic approach to assessing the situated and micro-level interactionist role of race and class draws heavily on interactionist tools of analysis and interpretation. I also noted how such an approach differs from dominant approaches to institutional navigation and social reproduction in cultural sociology. Here, I further detail how my findings regarding the way situational resources—cultural, social, and economic resources

that scholars often associate with race and class statuses—are fundamental building blocks of race and class disparities.

This analytic approach departs from—and contributes to—Bourdieu and Lareau’s interpretations of social reproduction in three ways. First, my analysis in the preceding chapters is rooted primarily at the micro level, whereas Lareau is focused at the meso level (institutions) and Bourdieu at the macro level (social fields). As such, I draw on interactionist traditions in sociology (Blumer 1969; Collins 1981; Goffman 1959, 1961, 1967) to ground my analyses. I show how everyday interactions are the elementary building blocks of inequality-generating processes (see Schwalbe 2000), processes that can have open-ended effects on inequality (Lamont et al. 2014). Second, my analysis allows the possibility for class and race to be flexible, situationally-dependent categories. I draw on a constructivist perspective on social groups (Barth 1998[1969]; Brubaker 2004, 2009; Brubaker and Cooper 2000; Cornell and Hartmann 2006; Lamont and Molnár 2002, pp. 171-77; Loveman and Muniz 2007; Nagel 1994; Omi and Winant 1994; Saperstein and Penner 2012; Wimmer 2013). Rather than taking social categories such as race, class, or gender as given social (much less, biological) facts, a constructivist perspective assesses the degree to which these social categories are constructed, contested, and experienced differently across various social contexts (see Clair and Denis 2015, p. 860). Third, my analyses focused on race as an important variable—often sidelined in cultural sociological research on the reproduction of inequality—that intersects with class by conditioning the way cultural, social, and economic resources are able to be embodied, imagined, and employed by individuals in everyday interactions. I drew on intersectionality theory (Collins 1990; Choo and Ferree 2010; Crenshaw 1991; McCall 2005), which enabled me to consider the way multiple forms of disadvantage coalesce in unique, sometimes unpredictable ways.

Taken together, these three departures from the Bourdieusian approach to the reproduction of inequality allow for a fine-grained analysis of the racialized and classed experiences of criminal defendants as they interacted with legal authorities throughout the criminal justice process. In addition, these three departures enable a more probabilistic analysis of the way that micro-level experiences aggregate—in sometimes unpredictable or imperfect ways—to observed disparities. As I show, not every working-class or poor defendant always found him or herself in what could be understood as a working-class or poor situation; and vice versa, not every middle-class defendant with a college degree and a stable job always found him or herself in a privileged situation. My approach allows scholars to understand how, sometimes, someone who is poor or uneducated can engage with legal authorities in a typically (or, stereotypically) middle-class way despite their class status, and the opposite can be true for someone with many advantages. That said, my analyses revealed that class and race deeply shape the likelihood that an individual would find him or herself in a certain class or race situational experience and with access to the cultural, social, and economic resources that matter in positively navigating interactions. Thus, class and race should be understood as providing resources that probabilistically result in unequal punishment experiences at the individual level and contribute to aggregate outcomes that we observe as race and class disparities at the macro level.

Implications for legal theory

Findings from this dissertation also have implications for legal theories about how the criminal justice system should deal with the problem of race and class disparities. Relying on my findings, I close by sketching the outlines of a legal theory that I term “affirmative justice.” This theory provides cultural, political, and policy foundations for developing new courthouse

procedures, legal justifications, legislation, and policy programs that can effectively reduce—and hopefully one day eliminate—criminal justice disparities.

A theory of affirmative justice: intervening against inequality

Numerous legal scholars have criticized the United States Supreme Court's jurisprudence with respect to racial inequality in the criminal justice system (Alexander 2012; Cole 1999; López 2000). For decades, the Court has proven unwilling to consider statistical evidence of racial disparities in policing and sentencing as, on its own, a violation of the Equal Protection Clause of the Fourteenth Amendment. Instead, the Court has adopted a standard of purposeful racial discrimination (also known as discriminatory intent), placing the burden on individual petitioners to prove that they personally experienced racial discrimination from specific legal authorities. A series of court decisions have distilled the Court's approach to dealing with racial inequality in the system. Legal scholars often cite the Court's ruling in *McCleskey v. Kemp* (1987) as a paradigmatic example.

In *McCleskey*, the Court ruled that statistical evidence of racial discrimination in a state's use of the death penalty does not violate equal protection. The case involved Warren McCleskey, a black man who was sentenced to death for the murder of a white police officer. He and his legal team appealed his case to the U.S. Supreme Court, arguing that Georgia's use of the death penalty violated equal protection because it was disproportionately applied to black defendants. McCleskey presented evidence that the state of Georgia sentenced black defendants to the death penalty at a slightly higher rate than whites (net of other factors) and that defendants who killed black victims were substantially less likely to receive the death penalty than those who killed white victims (net of other factors). However, the Court ruled that such evidence did not prove purposeful racial discriminatory intent in McCleskey's specific case. This standard of purposeful

intent has been upheld by the Court in later cases that have attempted to argue that racial disparities violate equal protection. Alexander (2012) importantly notes that the Court's stated reasoning in upholding McCleskey's conviction was that "[t]he Court openly worried that other actors in the criminal justice system might also face scrutiny for allegedly biased decision-making if similar claims of racial bias in the system were allowed to proceed" (Alexander 2012, p. 111). In other words, McCleskey's claim that evidence of disparities amounted to a violation of equal protection would have delegitimized the entire criminal justice system, where racial disparities exist at all levels.

By the same token, the Court's insistence on purposeful racial intent immunized the criminal justice system not only from disparate impact theory (or, the idea that the mere existence of group-based disparities merits legal remedy) but also from statistical evidence of "unwarranted" disparities (or, disparities that have been shown to exist even after controlling for all other legally-relevant variables and therefore can be assumed to involve unfair treatment on the basis of race or class). Only evidence of purposeful discrimination in an *individual's specific court case* violates equal protection. Such a standard sets the bar higher than even the most conservative analyses of discrimination in criminology, which often differentiate between "warranted" and "unwarranted" disparities (on the terminology, see Gottschalk 2015; Winter and Clair 2016; for a critique, see Murakawa and Beckett 2010). Recall from chapter 1 that, for social scientists, the distinction between unwarranted and warranted disparities is a matter of differentiating between racial disparities that are caused by discriminatory actions of legal authorities (differential treatment explanation) or by differential involvement in crime/arrest (disparate impact explanation). For example, any variation between defendants of different races that remains after controlling for "non-racial" variables (e.g., criminal record or nature of the

arrest charge) is considered “unwarranted” and assumed to result from some form of differential treatment. But even this conservative estimate of racial discrimination would not meet the Court’s standard. For the Court, evidence of differential treatment procured by statistics may constitute evidence of racial discrimination in the aggregate but not at the level of the individual petitioner before the Court.

Decades of social science research has shown that evidence of purposeful racial discrimination against an individual is difficult to prove—even when evidence of unwarranted and racially biased behaviors, procedures, or cultural systems can be demonstrated (Pager and Shepherd 2008; Reskin 2012). This is true of all institutions, including the criminal justice system. For example, in his research on institutional racism in grand juror selection in Los Angeles, Ian F. Haney López (2000) shows how white judges’ reliance on their social networks in selecting grand jurors resulted in bias in favor of whites and against Mexican Americans. He argues that this form of institutional racism reveals how ostensibly race-neutral practices can function as institutional racism. Similarly, in our study of trial court judges in a Northeastern state, Clair and Winter (2016) show how judges’ attempts to be neutral arbiters likely result in the reproduction of racial disparities given the biased decision-making of other actors at prior stages of criminal justice processing. We term judges’ reluctance to correct for the potential (and observed) racial biases of prior decisions as a “non-interventionist” approach to dealing with the problem of disparities, whereby judges focus on correcting only for their own personal racial biases but not those of other actors in the system. Moreover, in this dissertation, I have shown how the defendants in my sample who recount experiences of mistreatment, stereotyping, and disrespect from legal authorities are nevertheless rarely able to identify specific instances of intentional, race- or class-based discrimination that could not be chalked up to other forms of

bias. And without direct knowledge of the treatment of similarly-situated individuals, it is difficult to envision how an individual could even go about determining discriminatory intent; by definition, discrimination entails treating at least two individuals differently on the basis of some status or trait that they do not share. Without some explicit articulation of bias from legal authorities, discriminatory intent would be impossible to prove. In short, my respondents' experiences—as unequal as they are—would not violate the Court's current interpretation of equal protection.

We need a better way of dealing with the profound inequalities in our criminal justice system. For many critical race scholars, that better way may not be through the legal system, given that legal change has largely proven ineffective at countering racial inequality (see e.g., Bell 1987; Crenshaw 1988). For instance, many note the weak enforcement, and gradual dismantling, of many aspects of civil rights legislation and antidiscrimination law and jurisprudence developed in the 1950s and 1960s. A classic example is *Brown v. Board of Education* (1954), which some scholars have described as initially fulfilling the promises of Reconstruction-era constitutional amendments and legislation but then faltering through lack of enforcement and the narrowing of subsequent legal interpretations (see Bell 1987; 2004). When it comes to remedying disparities in the criminal justice system, then, critical race scholars have tended to propose solutions that do not rely solely on legal tools. For example, Alexander (2012) provides broad suggestions for altering “public consciousness” and the “culture” of law enforcement through social movement activism against mass incarceration.

While a fair number of critical race scholars tend to be skeptical about the efficacy of legal tools in dismantling criminal justice disparities and mass incarceration more broadly, there are others who nevertheless see a role for the law, if supported by other political and social

changes (see Akbar 2015; Butler 2015). Indeed, critical legal scholars as a whole have often highlighted the law's malleability in the face of political activism. Whereas legal realists have noted that the law is socially constructed, critical legal scholars have gone further to reveal how the law is susceptible to political power—and, by extension, could be changed through political intervention. In *The Politics of Law: A Progressive Critique*, Kairys (1998) describes the law not as objective or even based in precedent but rather as a set of “stylized rationalizations from which the courts can choose” (Kairys 1998, p. 4). The choice of these stylized rationalizations is shaped by political pressure. Kairys (1998, pp. 10-11) goes on to note:

There are only two periods in our entire history—from about 1937 to 1944 and from about 1961 to 1973—characterized by sustained judicial liberalism, and they correspond to periods of sustained progressive political power [...] Sustained popular pressure from progressive movements seems a necessary but not sufficient condition for sustained liberal judicial activism [...]

Thus, politics and jurisprudence work hand in hand to enable social change.

Following legal scholars who see a place for the law in reducing inequality, I argue that legal theories, procedures, and justifications that have been used to support affirmative action programs in education and employment could be transposed to the criminal justice context. Unlike current jurisprudence regarding racial inequality in criminal justice, such a proposal would require that the Court consider disparate impact theory in its assessments of unequal treatment in policing, court processing, sentencing, probation, and other criminal justice encounters. Unlike the discriminatory intent standard, disparate impact theory “demands legal relief for the effects of illegal society bias on groups” (Leiter and Leiter 2011, p. 12). In other words, disparate impact theory does not require evidence of discriminatory intent in a specific instance but instead only requires evidence of the existence of unequal outcomes between racial groups. The logic behind disparate impact theory, which is supported by the evidence presented here, is that these unequal outcomes are likely the result of unjust race- or class-based processes,

even if unambiguous evidence of such processes cannot be demonstrated in discrete moments (Murakawa and Beckett 2010; Van Cleve and Mayes 2015). Therefore, unequal results between racial groups should be understood as violating equal protection.

I am not the first to consider the notion of affirmative action in the criminal justice context. In his book *No Equal Justice: Race and Class in the American Criminal Justice System*, David Cole flirts with the idea of a “solution [to the problem of disparities] that expressly takes race into account” (Cole 1999, p. 182). But, he quickly dismisses the notion of affirmative action, suggesting that its theoretical foundations are “ill-suited to most criminal justice questions” (Cole 1999, p. 182). His main problem with race-conscious remedies in the criminal justice context is that our criminal law “proceeds against a strong background assumption of individual responsibility” (Cole 1999, p. 183). Another legal scholar, Richard Delgado, references the legal theory of affirmative action as potentially applicable in the criminal justice context. In his article “‘Rotten Social Background’: Should the Criminal Law Recognize a Defense of Severe Environmental Deprivation?,” Delgado (1985) considers whether “socioeconomic deprivation” among certain criminal defendants should “mitigate [their] criminal responsibility” (Delgado 1985, p. 10). While his article exhaustively considers the many moral and legal reasons for considering backgrounds of social disadvantage (or, what he terms a “rotten social background”—language used to describe poor defendants in *United States v. Alexander* (1973)) in excusing or justifying a poor defendant’s criminal behavior, his analysis is focused on criminal culpability and mitigation in individual defendants’ cases (see also Gilman 2012). I am instead interested in remedying the systemic fact of race and class disparities, which is caused by numerous social processes at both the individual and societal levels. Given the

limits of individual legal authorities striving to reduce disparities in their everyday decision-making (e.g., Clair and Winter 2016),⁵⁸ a systemic solution is necessary (see Crespo 2016).

My concept of affirmative justice goes further than existing proposals. Affirmative justice should be understood not merely as a specific policy nor simply as a legal defense to be used on a case-by-case basis by defense attorneys; rather, affirmative justice constitutes a general legal theory that insists that criminal justice disparities should be *systemically* remedied through positive, preferential treatment on behalf of individuals belonging to low-status, criminalized social groups. Understanding criminal justice disparities as largely symptomatic of the criminalization of the poor and marginalized racial/ethnic minorities (Alexander 2012; Roberts 2007), affirmative justice's ultimate goal is racial and socioeconomic justice, which demands affirmative efforts to include marginalized groups into American society. Part of this goal, therefore, also entails striving for what Dorothy Roberts (2017) has described as the democratization of criminal justice by reducing mass incarceration and other techniques of mass criminalization more broadly. The philosophy of affirmative justice could be applied in myriad systemic ways through legislation, case law, police use of force policies, or judicial sentencing guidelines all aimed at reducing the level of punishment experienced by individuals from working-class, poor, and marginalized racial/ethnic minority backgrounds.

To be clear, the theory of affirmative justice seeks to remedy both race and class disparities. While the social groups targeted by affirmative justice could change over time and space, black, Latino, and poor men, women, and adolescents are the most disproportionately

⁵⁸ Clair and Winter (2016) show how individual judges are hesitant to contest decisions that they believe to be racially discriminatory because they interpret their role as that of a neutral arbiter between opposing counsel. Judges and other legal authorities may face consequences when they seek to make race-conscious decisions that are meant to rectify racial disparities absent systemic procedures, rules, or legal precedent that may provide cover for their decisions. For example, a judge in Kentucky was criticized for posting comments alleging prosecutorial racial bias on Facebook and for dismissing all-white juries (Good 2015).

harmed by the criminal justice system in our contemporary moment. Of course, the degree to which these groups are disproportionately harmed varies by state and jurisdiction. And, given that race/ethnicity changes over time, in a hundred years, scholars may be concerned about a different racialized group bearing the brunt of punishment. The concept thus must be flexibly attuned to the social realities of place and time. At its core, affirmative justice is rooted in social justice philosophies that strive for equality of results between groups, under the assumption that group-based inequalities result from some form of group-based injustice (on racial inequality and injustice, see Anderson 2010, p. 21; Shelby 2016).

The theory of affirmative justice draws on original interpretations of affirmative action, which were initially rooted in disparate impact theory with respect to race and gender inequality. As noted above, disparate impact theory accounts for systemic inequalities in a way that the discriminatory intent standard does not. In the 1960s and early 1970s, affirmative action case law and legal doctrine focused on unequal outcomes rather than discriminatory intent. The Civil Rights Act of 1964 was originally interpreted as placing the burden on institutions to make efforts to correct for unequal group outcomes, especially between racial groups. For example, in *Griggs v. Duke Power* (1971), the Court ruled that employers must show that unequal outcomes served a legitimate business purpose. Otherwise, such outcomes violated equal protection. Under disparate impact theory, then, the burden rests on institutions to show that unequal outcomes are justified rather than on individuals to prove that an institution has purposefully discriminated (Leiter and Leiter 2011; Siegel 2015). Under disparate impact theory, institutions have been required to take “‘good faith’ steps, or other mandated requirements to remove the effects of disparate-impact discrimination [or else they] may be responsible for violating antidiscrimination laws” (Leiter and Leiter 2011, p. 12).

The Court's interpretation of affirmative action in employment has changed over the years, following subsequent decisions such as *Washington v. Davis* (1976), which required evidence of discriminatory intent (much like *McCleskey*, described earlier). In higher education, affirmative action on the basis of a robust understanding of disparate impact theory has also been dismantled by the Court, according to many legal scholars (Leiter and Leiter 2011; but see Siegel 2015 for a contrary interpretation). The Court has shifted from viewing affirmative action in higher education as a means of remedying past or present unequal racial discrimination (and outcomes) to a means of promoting a compelling governmental interest in diversity (Barnes, Chemerinsky, and Onwuachi-Willig 2015; Leiter and Leiter 2011). Despite these changes, Siegel (2015) argues that the current Roberts Court and prior jurisprudence have supported disparate impact theory with respect to affirmative action in ways that largely escape notice. For example, *Washington v. Davis* provides legislatures the "authority to adopt disparate impact laws," and "modern strict scrutiny law repeatedly affirms that government can act for benign race-conscious reasons" (Siegel 2015, pp. 669-70). In her analysis of *Fisher v. University of Texas at Austin* (2013), Siegel argues that the Court's ruling allows race-conscious state action aimed at diversity or equal opportunity as long as it appears facially neutral. Regardless of its viability in contemporary jurisprudence, disparate impact theory as originally imagined in affirmative action legislation and case law is the basis of affirmative justice.

Before turning to specific policy solutions, it is important to reiterate why race- and class-conscious remedies are necessary to solve the problem of criminal justice disparities. To do so, I consider three likely criticisms of affirmative justice from both sides of the political aisle. My responses to these criticisms underscore the ineffectiveness of race- or class-neutral remedies, and thus the necessity of conscious ones.

The first possible criticism could be that focusing on race or class ignores other social factors that shape unequal criminal justice outcomes. A similar criticism of affirmative action in education is that it focuses on race to the exclusion of class (see Kahlenberg 1996). While my theory of affirmative justice already includes class, critics could nevertheless argue that it does not consider other axes of stratification in the criminal justice system, such as gender (i.e., my theory does not seek to directly remedy the disproportionate number of men present in the system). We know that men are disproportionately arrested, convicted, and incarcerated compared to women. But, as I note earlier, affirmative justice is concerned with remedying the unjust criminalization of *low-status, criminalized* social groups. In contemporary American society, men—as a single social category—do not belong to a low-status group. It is not that men, per se, are criminalized; rather, it is that poor and racial/ethnic minority men are criminalized. Criminalization is, largely, a technique of social control of marginal populations (Alexander 2012; Wacquant 2010). Focusing on the disproportionate presence of men (as a single category rather than as an intersectional grouping of poor and minority men) would distract from affirmative justice’s goal of including marginalized social groups back into the body politic.

Moreover, affirmative justice theory, in my interpretation, does not operate under the assumption that crime does not exist or that punitive legal control is not a legitimate technique in certain instances. Punishment, and even incarceration, are certainly legitimate tools of our criminal justice system, especially given the utilitarian goal of protecting others from harm. For most social scientists, legal scholars, and even many activists,⁵⁹ the critique of racialized mass incarceration and criminalization is not that punishment is wrong in all instances but rather that the outsized and disproportionate degree to which we punish the poor and minorities is wrong.

⁵⁹ Indeed, how else could we explain the Movement for Black Lives’ calls for accountability (in the form of charging, prosecuting, and ultimately punishing) for police officers who abuse their power?

Given these realities, we must recognize that men may commit certain crimes of violence at higher rates than women—and they may do so for reasons that are not rooted in any particularly gendered form of injustice that is biased against men. In fact, there are crimes that men disproportionately commit, such as sexual assault, that are rooted in patriarchy. Punishment of such crimes by the legal system could be understood as justice for victims of patriarchal violence. When it comes to race and class, however, punishment of the poor and subordinated minorities, as a class, is rooted in discrimination, poverty, and inequality—injustices that do not exist among men, as a singular social group.

Relatedly, another criticism could be that race- and class-conscious remedies that would lessen punishment for certain groups and not others unfairly forgive certain individuals for their criminal behaviors. This criticism has two variants. First, it could be argued that, in general, just desert and/or deterrence are the only legitimate justifications for punishment (see Packer 1968), and so punishing (or not) on the basis of race or class is an illegitimate justification because it is unrelated to either culpability or deterrence. Second, it could be argued that reducing punishment for certain race or class groups and not others is unfair to the individuals whose punishment is not reduced on the basis of their membership in a privileged race or class group. These criticisms are analogous to the common critique of “reverse discrimination” in the case of affirmative action. While such criticisms are important to consider, they ultimately prove unpersuasive, especially when weighed against the injustices faced by the poor and minorities throughout the criminal justice process. Moreover, such criticisms often exaggerate the degree to which race and class function as determinants of race- and class-conscious remedies. As with affirmative action, affirmative justice would require that race and class disadvantage serve as one of many factors (not the only factor) in lessening the severity of punishment.

With respect to the first variant of this critique, Delgado (1985) offers persuasive arguments as to why the culpability and deterrence of an offender and his/her crime is in fact related to both race and class. In brief, Delgado summarizes social scientific evidence available in the 1980s that showed the relationship between criminal behavior and socially-deprived environments of poverty and racial segregation. Chapters 1 and 2 of this dissertation provide even more, contemporary evidence for this relationship. In addition, chapter 2 reveals how arrest disparities are likely racially and socioeconomically biased, suggesting that the individuals we see in our court system are not a neutral representation of culpable criminals. Still, Delgado (1985) and others (see Kennedy 1994) importantly note that victims of crime are disproportionately black and poor, and justice demands that their victimhood be recognized and rectified by the system. But this critique does not apply to victimless offenses (e.g., drug crimes), and a theory of affirmative justice does not demand that punishment never be levied; rather, it demands that punishment not be levied unevenly and without clear utility.

Consideration of justice for marginalized victims naturally extends to the question of deterrence. Evidence suggests that harsh punishment has a deterrent effect only up to a certain point, that the certainty of punishment may matter more than its severity, and that targeted strategies at crime reduction (e.g., “hot spots” policing) are more effective at reducing violent crime than mass criminalization (see e.g., Braga 2001; Loughran et al. 2016; Paternoster 2010). Importantly, scholars have shown that our current levels of incarceration are unnecessary for the purposes of deterrence (Travis et al. 2014). In addition, harsher treatment of offenders may also be criminogenic. For example, unequal policing and court processing contributes to perceptions of procedural injustice and legal cynicism (Sampson and Bartusch 1998), weakening compliance

with the law among individuals in low-income, majority-minority communities (Desmond, Papachristos, and Kirk 2016; Kirk and Papachristos 2011; Sierra-Arévalo 2016).

The second variant of this criticism concerns questions of fairness with respect to those who do not benefit from race- and class-conscious efforts to reduce punishment. This critique is simply answered by the fact that individuals who would not benefit from affirmative justice—white and middle-class defendants—already receive lessened punishment on the basis of their race and class statuses. While their lessened punishment is not explicitly articulated as being on the basis of race or class, it is manifested as such in the reality of our legal system’s biased functioning. Social processes from arrest to sentencing select middle class and/or white defendants out for lessened sanctioning through police evasion, police negotiation, charge reduction, trustworthy attorney-client interactions, preferences for alternative sanctions, favorable juries, lenient sentencing, and the like. It is also important to remember that the criminal justice system is not innocently passing along inequalities that exist prior to system contact; it is also producing inequalities. Through differential treatment, differential navigation, and the disproportionate collateral consequences of punishment among individuals and their communities, the criminal justice system generates race and class inequality in society (Asad and Clair 2018; Martin et al. 2018; Pager 2008; Roberts 2000; Wakefield and Wildeman 2013; Western 2006).

Because the system produces harm in the lives of the poor and minorities, the government has a compelling interest in providing a remedy. And, this remedy need not involve worsening punishment for whites or middle-class Americans; punishment could be reduced for all, as long as it is done so proportionately. In the case of affirmative action, the Court has repeatedly affirmed the notion that remedying racial discrimination and promoting diversity are a

compelling state interest. As Randall Kennedy (2013) argues, affirmative action is based not on the notion that the constitution should never take race into account (i.e., the idea that equal protection means that the constitution is colorblind), but rather that the constitution cannot take race into account in an *invidious* manner. If it is legitimate for the government to consider race to further non-invidious compelling state interests, then it is legitimate for the state to consider lessening punishment in the interest of race and class-based justice. It could even be suggested that reducing criminal justice disparities would increase diversity in the public sphere, an oft-stated goal of affirmative action in employment and education.

A final criticism of affirmative justice might be that it provides criminal justice benefits to defendants who may not deserve them. Increasingly, advocates and legal scholars have suggested that the criminal justice system should provide more therapeutic and other rehabilitative techniques (Perlin 2000; Wexler 1990), such as drug rehabilitation programs, mental health treatment, or other alternative sanctions. These alternatives to incarceration are more often afforded to middle-class and white defendants, contributing to disparities in incarceration. While some disadvantaged defendants may not prefer certain alternatives and/or may be unequally punished if they fail to meet the requirements of such programs (Petersilia 1990; Wood and May 2003), they are also less likely to be offered them (Johnson and DiPietro 2012). Affirmative justice would demand that minorities and the poor are offered opportunities for rehabilitation and support through alternative sanctions as often as whites and the middle class.

Critics might argue that basing decisions for rehabilitation and support on race or class disadvantage might waste benefits on individuals who are less likely to successfully complete such alternatives to incarceration. This criticism is similar to the “skills mismatch” criticism of

affirmative action, whereby supposedly less qualified minorities are thought to struggle in universities or workplaces where they do not have the requisite skills to compete. While it may indeed be true that, in the criminal justice context, the working class, poor, and minorities are less likely to succeed with alternative sanctions than their more privileged peers, their greater difficulties indicate flaws in the way alternative sanctions are implemented more so than unwillingness on their part to commit to alternative sanctions. In chapter 4, Tonya's (W/N, P, P) account of her difficulties in being on probation while finding a job, maintaining that job, and attending numerous drug rehabilitation meetings each week in different parts of Boston reveal the nearly-impossible conditions sometimes placed on probationers. Tonya's predicaments are emblematic of the way the criminal justice system devolves its obligations onto the individuals and communities most affected by crime and poverty—communities that are expected to shoulder the burden of rehabilitation and re-entry absent the economic, cultural, and legal supports necessary to fully re-integrate former offenders back into society (Miller 2014; Miller and Alexander 2015). Under affirmative justice principles, legal authorities and policymakers would be forced to consider how best to equitably distribute alternative sanctions to poor and minority defendants while at the same time reducing these same individuals' likelihood of incarceration resulting from violating conditions of release. Such a difficult task could provide the impetus for a more forgiving and supportive approach to alternative sanctions—or even the decriminalization of certain crimes (e.g., drug possession and drug use) that present little harm to others.

Affirmative justice policy solutions

What practical changes does a theory of affirmative justice demand? A starting point would be to consider the procedures, policies, legislation, and case law that has been developed to implement

affirmative action in employment and educational contexts. Leiter and Leiter (2011) note that affirmative action has justified numerous programs and policies at the federal, state, and institutional levels. They distinguish these myriad programs along five axes: (1) origin; (2) nature; (3) tools; (4) constituencies; (5) benefits; and (6) collateral effects. It is useful to consider practical changes to the criminal justice system along these axes. Having already considered the axes of the nature, benefits, constituencies, and collateral effects of affirmative justice, I conclude by briefly considering possible origins and tools of affirmative justice. The following origins and tools are by no means exhaustive.

With respect to their origins, affirmative justice initiatives could be implemented through federal consent decrees or other court orders, executive orders, or modifications to rules of criminal procedure. Each of these origins are systemic, but they would likely have an effect at the individual level. For example, a change to rules of criminal procedure that requires—or at a minimum, simply allows—judges to dismiss charges prior to arraignment on the basis of race- or class-biased prosecutorial charging patterns would result in changes in how individual judges and prosecutors manage individual cases. Such changes to criminal procedure would need to be supported by courts actively collecting and analyzing “systemic facts,” or institutional-level evidence of prosecutorial charging and adjudication patterns (Crespo 2016).

Another origin of affirmative justice could be legislative. For example, legislatures could change sentencing guidelines. For example, state or federal legislatures could pass legislation to implement sentencing guidelines that formally incorporate defendants’ class background (measured, say, by being below the federal poverty line) as a mitigating factor at sentencing, this would structure judicial sentencing decisions in individual cases in a consistent way that provides leniency on the basis of disadvantage. Legislatures could also consider taking

preventative steps to reduce disparities by reconsidering criminal laws currently on the books. The Fair Sentencing Act of 2010, which sought to reduce the crack-cocaine racial disparity, was one step in this direction at the federal level. Moreover, “Racial Impact Statements,” which “would obligate policymakers to review data on racial effects prior to adopting new legislation” (Mauer 2007, p. 21), could be mandated as part of any new legislation that adds to the criminal code.

Affirmative justice programs could rely on various tools to ensure that jurisdictions are making good-faith efforts to reduce disparities. The federal government or local jurisdictions could provide timelines to jurisdictions to meet certain agreed-upon targets. Independent sentencing commissions that involve community stakeholders (including victims of crime and former individuals convicted of crime) could be established to agree on such targets and their timelines. Systemic outreach programs could be implemented that seek to alter preferences against alternative sanctions in many majority-minority communities by asking for input on reforming probationary programs and conditions. Quotas, which have drawn criticism in employment and education contexts, could nonetheless be an effective way to ensure that the benefits of alternative sanctions are equally distributed to the poor and racial/ethnic minorities. State funding for such alternative programs could be tied to their proportionate distribution. Moreover, quotas regarding the number and race/class proportions of individuals who can be sentenced to incarceration in state prisons in each year could have a positive effect on promoting affirmative justice. Such quotas would force judges and juries to consciously consider the proper role of incarceration in their jurisdictions, as well as its unequal application. Moreover, such quotas would place pressure on all legal authorities to consciously consider how each of their

actions at different stages along the criminal justice process—from charging to bail to plea negotiation to jury trial—affect the likelihood of incarceration for disadvantaged defendants.

These suggestions are just a starting point. My aim here is to suggest these solutions as well as the broader theory of affirmative justice to encourage deliberation over race- and class-conscious remedies to criminal justice disparities. As I have shown, disparities are reproduced through myriad complex social processes. Only sweeping solutions within and beyond the law will be able to meet this persistent crisis.

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