

## Mass Incarceration

Below you will find four modules related to the intersections of race, the legal system, and incarceration. The essays and resources selected are included in *The 1619 Project* from *The New York Times Magazine* or identified as companions to the project by the module authors. These materials were created by law students at Howard University and the University of Miami.

1. “Mass Incarceration” by Bryan Stevenson (pages 80–81)| Module 1

*Module Authors:* Ariana Aboulafia, Jordan Gary, Emely Sanchez, Maddie Seales, Sydney Smith, and Mike Walker

<p>Excerpt</p>	<p>“The 13th Amendment is credited with ending slavery, but it stopped short of that: It made an exception for those convicted of crimes. After emancipation, black people, once seen as less than fully human ‘slaves,’ were seen as less than fully human ‘criminals.’ The provisional governor of South Carolina declared in 1865 that they had to be ‘restrained from theft, idleness, vagrancy and crime.’ Laws governing slavery were replaced with Black Codes governing free black people — making the criminal-justice system central to new strategies of racial control.”</p> <p>“This appetite for harsh punishment has echoed across the decades. Late in the 20th century, amid protests over civil rights and inequality, a new politics of fear and anger would emerge. (President Richard) Nixon’s war on drugs, mandatory minimum sentences, three-strikes laws, children tried as adults, ‘broken windows’ policing — these policies were not as expressly racialized as the Black Codes, but their implementation has been essentially the same. It is black and brown people who are disproportionately targeted, stopped, suspected, incarcerated and shot by the police.”</p>
<p>Key Names, Dates, and Terms</p>	<p>Mass incarceration, criminal law, criminal justice system, prison industrial complex, Black Codes, slavery, 13th Amendment, emancipation, punishment</p>
<p>Guiding Questions</p>	<ol style="list-style-type: none"> <li>1. Bryan Stevenson mentions the exception to ending slavery in the 13<sup>th</sup> Amendment, allowing forced labor for those convicted of crimes. Taking this into account, how effective has the 13<sup>th</sup> Amendment been? How would you change the language of the 13<sup>th</sup> Amendment? Was this exception a purposeful attempt to keep Blacks enslaved or an oversight?</li> <li>2. It is often said that the criminal justice system is “broken.” Is that what Stevenson is arguing? Or, is he arguing that, by disproportionately</li> </ol>

	<p>targeting people of color, the criminal justice system is actually working exactly in the way in which it was intended?</p> <ol style="list-style-type: none"> <li>3. Stevenson writes, “Hopelessness is the enemy of justice.” Discuss this view, and the ways in which hope is important within the practice of law, particularly public interest law.</li> <li>4. While looking at different rates and statistics related to mass incarceration, create an infographic highlighting some of what you would consider the most important statistics. Discuss why these statistics are meaningful to you and how they make you feel when looking at them.</li> <li>5. Jails and prison systems were originally founded on the belief that they would rehabilitate their inmates, instead of only punishing them. In what ways do you think jails and prisons fail to properly rehabilitate those who are incarcerated? What are some of the ways they can improve this?</li> <li>6. Research prison systems in other countries where recidivism is low (Norway, for example). How do attitudes and practices differ from those in the U.S.?</li> </ol>
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2. “Mass Incarceration” by Bryan Stevenson (pages 80–81 ) | Module 2

*Module Authors:* Ariana Aboulaflia, Jordan Gary, Emely Sanchez, Maddie Seales, Sydney Smith, and Mike Walker

<p>Excerpts</p>	<p>“Their disciplinary records show that if they refused to pick cotton—or failed to pick it fast enough—they could be punished with time in ‘the hole,’ where food was restricted and inmates were sometimes tear-gassed. Still, some black prisoners, including Matthew, considered the despair of the hole preferable to the unbearable degradation of being forced to pick cotton on a plantation at the end of the 20th century.”</p> <p>“As the Supreme Court of Alabama explained in 1861, enslaved black people were ‘capable of committing crimes,’ and in that capacity were ‘regarded as persons’ – but in most every other sense they were ‘incapable of performing civil acts’ and considered ‘things, not persons.’”</p>
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<p>Key Names, Dates, and Terms</p>	<p>13<sup>th</sup> Amendment, Black Codes, capital punishment, reconstruction, sharecropping, prison labor, slave labor, politics of fear, Anti-Drug Abuse Act of 1986, collateral consequences, convict leasing, mandatory sentencing, prison industrial complex, “presumption of guilt,” school-to-prison pipeline, three-strikes laws, war on drugs, 8th Amendment, prisoners’ rights, law and order</p>
<p>Guiding Questions</p>	<ol style="list-style-type: none"> <li>1. Prior to reading the “Mass Incarceration” article, or any supplements, break into small groups and brainstorm some things you know/think about prisons. After reading through some of the materials, think back on your original lists. What were you able to learn? What surprised you, or what did you not find surprising?</li> <li>2. Prior to reading the materials, discuss what the concept “Mass Incarceration” means to you. Think about what type of people are affected by mass incarceration. Consider the ways in which it does/might affect you personally. After reading some of the materials, revisit these questions, thinking about how the concept of “mass incarceration” has changed in your mind.</li> <li>3. Over the past 400 years, how have laws been written and enforced in the U.S. to disproportionately punish Black Americans?</li> <li>4. How does Stevenson argue that the modern-day prison system acts as a continuation of slavery?</li> <li>5. Discuss and create a list of rights/responsibilities that U.S. citizens enjoy being a part of a democracy. After creating the list, discuss the ways in which these rights/responsibilities can be infringed upon as a result of being incarcerated.</li> <li>6. Discuss some of the adjectives/stereotypes that come to your mind when thinking about people who have found themselves involved in the criminal justice system. Then, whether through research or personal knowledge, discuss cases of people who have personally been involved with the system. Is it still fair to use these stereotypes to describe the people who have been impacted by the criminal justice system?</li> <li>7. Discuss some of the problems that can be found while studying the criminal justice system, whether it is the high recidivism rates, unfair discriminatory laws, unjust policing tactics, or the school-to-prison</li> </ol>

	<p>pipeline. Break into groups and discuss the problem that stands out the most to you and brainstorm how this problem can be addressed. Is it as simple as changing laws, or is there a bigger societal problem that should be addressed? Also, discuss in what ways you can help bring about this change yourself.</p> <p>8. In groups, research organizations that are fighting to defeat mass incarceration, or at least lessen its impact. Discuss your findings with the class and focus on how your organization’s mission can be effective in defeating mass incarceration.</p> <p>9. Do you find that <i>Brown v. Plata</i> was a successful case in terms of its holding and how it has been applied? What is the standard the court applies to determine whether a prison official has violated the 8th Amendment? What must a court find to limit the prison population? Do you agree with Justice Antonin Scalia’s dissent? Why or why not?</p> <p>10. Does the First Step Act do enough to stem the tide of mass incarceration? Does it do enough to reverse the personal and societal damage caused by mass incarceration? In what ways can it be improved upon?</p>
<p>Additional Resources</p>	<p><b>Articles:</b></p> <p><a href="#">“Exploiting Black Labor After the Abolition of Slavery”</a> by Kathy Roberts Forde and Bryan Bowman</p> <p><a href="#">Michelle Alexander: “A System of Racial and Social Control”</a> by Sarah Childress</p> <p><a href="#">“The Black Family in the Age of Mass Incarceration”</a> by Ta-Nehisi Coates</p> <p><a href="#">“Why people are delivering jars of gummy bears to fight mass incarceration across the US”</a> by Grace Hauck</p> <p><b>Books:</b></p> <p>Alexander, Michelle. <i>The New Jim Crow: Mass Incarceration in the Age of Colorblindness</i>. The New Press, 2012.</p> <p>Foreman, Jr., James. <i>Locking Up Our Own: Crime and Punishment in Black America</i>. Farrar, Straus and Giroux, 2017.</p>

Stevenson, Bryan. *Just Mercy: A Story of Justice and Redemption*. One World, 2019.

**Films & Videos:**

[American Kids & The School-To-Prison Pipeline](#) published by AJ+

[Bryan Stevenson on Life Without Parole: Juvenile Justice|MacArthur Foundation](#) published by macfound

[Collateral Consequences in 60 Seconds](#) published by Charles Koch Institute

[Convict Leasing | Black History in Two Minutes or So](#) published by Black History in Two Minutes

[Equal Justice Initiative Founder on Race, Police and How to Move Forward](#) published by *CBS This Morning*

[How America’s Justice System is Rigged Against the Poor](#) published by Vox

[How Mandatory Minimums Helped Drive Mass Incarceration](#) published by Vox

[Incarceration in America: The Inside Story](#) published by THINKR

[Jailed In America | WHY SLAVERY?](#) by Roger Ross Williams published by THE WHY

*Just Mercy*. Directed by Destin Daniel Cretton, Warner Bros. Pictures, 2019.

[Mass Incarceration in the US](#) published by vlogbrothers

[Mass Incarceration: Why Does the U.S. Jail so Many People?](#) published by AJ+

[Mandatory Minimums: Last Week Tonight with John Oliver \(HBO\)](#) published by LastWeekTonight

[Mandatory Minimums – Why Prison Sentences are so High](#) published by AJ+

[Meek Mill: Do You Understand These Rights as I’ve Read Them to You? | NYT Opinion](#) published by *The New York Times*

	<p><a href="#">Prison: Last Week Tonight with John Oliver (HBO)</a> published by LastWeekTonight</p> <p><a href="#">Slavery to Mass Incarceration</a> published by Equal Justice Initiative</p> <p><b>Online Resources:</b></p> <p><a href="#">“American History, Race, and Prison”</a> by Ruth Delaney, Ram Subramanian, Alison Shames, and Nicholas Turner, published by Vera Institute of Justice</p> <p><a href="#">“Criminal Justice Facts”</a> published by The Sentencing Project</p> <p><a href="#">“Mandatory Sentencing was Once America’s Law-and-Order Panacea. Here’s Why it’s Not Working.”</a> published by Families Against Mandatory Minimums</p> <p><a href="#">“Mass Incarceration: The Whole Pie 2019”</a> by Wendy Sawyer and Peter Wagner, published by Prison Policy Initiative</p> <p><a href="#">“Sentencing Laws and How They Contribute to Mass Incarceration”</a> by James Cullen, published by Brennan Center for Justice</p> <p>H.R. 5682 (<a href="#">Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act</a>) published by Congress.gov</p> <p><b>Legal Cases:</b></p> <p><i>Roper v. Simmons</i>, 543 U.S. 551 (2005)</p> <p><i>Graham v. Florida</i>, 130 S. Ct. 2011 (2010)</p> <p><i>Brown v. Plata</i>, 131 S. Ct. 1910 (2011)</p> <p><i>Miller v. Alabama</i>, 132 S. Ct. 2455 (2012)</p> <p><i>Montgomery v. Louisiana</i>, 136 S. Ct. 718 (2016)</p>
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**ADDITIONAL RECOMMENDED READINGS AND MODULES**

1. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* by Michelle Alexander  
Module Author: Ariana Aboulafia

<p>Excerpt</p>	<p>“The rules and reasons the political system employs to enforce status relations of any kind, including racial hierarchy, evolve and change as they are challenged. The valiant efforts to abolish slavery and Jim Crow and to achieve greater racial equality have brought about significant changes in the legal framework of American society—new ‘rules of the game,’ so to speak. These new rules have been justified by new rhetoric, new language, and a new social consensus, while producing many of the same results.”</p>
<p>Key Names, Dates, and Terms</p>	<p>Mass incarceration, colorblindness, slavery, Jim Crow laws, prison industrial complex, criminal law</p>
<p>Guiding Questions</p>	<ol style="list-style-type: none"> <li>1. How have laws, policies, and systems developed to enforce the enslavement of Black Americans after the abolition of slavery and Jim Crow laws?</li> <li>2. What are the similarities between slavery, Jim Crow laws, and the carceral state? What are the differences?</li> <li>3. What are the strengths of Alexander's analogy between Jim Crow and mass incarceration? What are the weaknesses?</li> <li>4. Discuss and create a list of rights and responsibilities that U.S. citizens enjoy as part of a democracy. After creating the list, discuss the ways in which these rights and responsibilities can be infringed upon as a result of being incarcerated.</li> <li>5. Discuss some of the problems that can be found while studying the criminal justice system, whether it is the high recidivism rates, unfair discriminatory laws, unjust policing tactics, or the school-to-prison pipeline. Break into groups and discuss the problem that stands out the most to you. Brainstorm how these problems can be addressed. Is it as simple as changing laws, or is there a bigger societal problem that should be addressed? Also, discuss in what ways you can help bring about this change yourself.</li> <li>6. In groups, research organizations that are fighting to defeat mass incarceration, or at least lessen its impact. Discuss your findings with the class, and focus on how your organization’s mission can be effective in defeating mass incarceration.</li> </ol>

Note	Alternative resource for this module: <a href="#">“The New Jim Crow” - Author Michelle Alexander, George E. Kent Lecture 2013</a> published by The University of Chicago
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2. [The Supreme Court 2018 Review – Foreword](#) by Dorothy Roberts, published by Harvard Law Review

*Module Author:* Ariana Aboulafia

Excerpt	“For purposes of my analysis, I find especially useful three central tenets that are common to formulations of abolitionist philosophy. First, today’s carceral punishment system can be traced back to slavery and the racial capitalist regime it relied on and sustained. Second, the expanding criminal punishment system functions to oppress black people and other politically marginalized groups in order to maintain a racial capitalist regime. Third, we can imagine and build a more humane and democratic society that no longer relies on caging people to meet human needs and solve social problems. These tenets lead to the conclusion that the only way to transform our society from a slavery-based one to a free one is to abolish the prison industrial complex.”
Key Names, Dates, and Terms	Prison abolition, abolitionism, mass incarceration, prison industrial complex, slavery, constitutional law
Guiding Questions	<ol style="list-style-type: none"> <li>1. Do you agree that the Constitution is an “abolitionist document”? Do you believe that constitutional law is the best justification for prison abolition? If not, what other type of law do you think would be useful in making an argument for prison abolition?</li> <li>2. Do you think there are pragmatic concerns with prison abolition? If so, what are they?</li> <li>3. Discuss the pros and cons of prison abolition, both as a philosophy and as an adopted policy.</li> </ol>

The 1619 Project Law School Initiative is a partnership of the Pulitzer Center, Howard University School of Law, and University of Miami School of Law. The Initiative is also part of the Racial Justice initiative by the Squire Patton Boggs Foundation and its Deans’ Circle. You can find more educational resources at [www.pulitzercenter.org/1619](http://www.pulitzercenter.org/1619)