

JIM CROW AND THE ROOTS OF MASS INCARCERATION



ESSENTIAL QUESTION

How is mass incarceration of Black Americans a continuation of enslavement and Jim Crow?



OBJECTIVES

Students will:

- List and define examples of Jim Crow.
- Describe the connections between Jim Crow and the mass incarceration of Black Americans today.
- Investigate the history of convict leasing through an analysis of primary source documents.
- Examine one way in which individuals are working to reform the criminal justice system today.



LEARNING STANDARDS

See the [standards alignment chart](#) to learn how this lesson supports New Jersey State Standards.



TIME NEEDED

100–130 minutes



MATERIALS

- AV equipment to show a video and handouts
- *Excerpts from Punching the Air* handout, one per student
- *The Story of Green Cottenham* handout, one per student
- *Excerpt of a Letter from a Convict Laborer to the Alabama Board of Inspectors of Convicts, 1884* handout, one per student
- *Letter from a Federal Judge in Alabama to the U.S. Attorney General, 1903* handout, one per student



VOCABULARY

13 th Amendment	inequity	mass incarceration	segregation
chain gang	involuntary servitude	minstrel show	stereotype
convict leasing	Jim Crow	“new Jim Crow”	vagrancy

Procedures

3

PART I

The “New Jim Crow” (40 mins.)

- 1 Distribute the handout *Excerpts from Punching the Air* and read the introduction together with students, providing additional context as needed. Individually or in pairs, have students read the poems and choose one of the “Think About It” questions to respond to through writing or discussion.
- 2 Gather the class and ask for a few volunteers to share their reflections. Post the statistic below and allow students to react to it. If it feels safe and appropriate, ask students how mass incarceration of Black people impacts their communities or other communities they might know about.
Black people are 7 times more likely than white people to be wrongly convicted of murder, 3.5 times more likely of sexual assault and 12 times more likely of drug crimes.
- 3 Comment that the control of Black people through the criminal justice system today is referred to as the “new Jim Crow.” Ask students what the term *Jim Crow* means. Share the definitions below as needed.
 - **Jim Crow** was a fictional minstrel character created in the 1830s, depicting a clumsy and dim-witted enslaved man. The term Jim Crow became a common insult for Black people.
 - **Jim Crow** is also the name given to the system of segregation in the U.S. from 1876–1965. During that time, a series of laws were passed and brutally enforced that separated Black people from white people and limited their opportunity to vote, hold jobs, get an education and enjoy other freedoms.

NOTE

As an alternative to the “Think About It” questions, some students may want to write or speak about their personal experiences with the criminal justice system. This should be encouraged only if students choose to explore this option, and their responses should be kept confidential unless they wish to discuss them more openly. Be aware that this reflection may be emotionally difficult for some students. Allow those individuals to opt out if they wish, and seek support from a guidance counselor as needed.

NOTE

The following websites provide concrete examples of Jim Crow laws: Jim Crow Museum, “Examples of Jim Crow Laws,” <https://bit.ly/31Dgt3w>; National Park Service, “Jim Crow Laws,” <https://bit.ly/3cHBArJ>.

NOTE

From the Center for Law and Justice (<http://www.cflj.org/programs/new-jim-crow>): “More African Americans are under the control of the criminal justice system today—in prison or jail, on probation or parole—than were enslaved in 1850. Discrimination in housing, education, employment, and voting rights, which many Americans thought was wiped out by the civil rights laws of the 1960s, is now perfectly legal against anyone labeled a ‘felon.’ And since many more people of color than whites are made felons by the entire system of mass incarceration, racial discrimination remains as powerful as it was under slavery or under the post-slavery era of Jim Crow segregation.”

4

Follow up by asking: Can you think of ways in which mass incarceration today is connected to the Jim Crow of yesterday? Chart students’ examples. Share information from the note to the left and emphasize that while there has been progress toward racial equality, discrimination against Black people has never gone away—it has just evolved in different forms.

PART 2

Convict Leasing: The Reenslavement of Black Americans (60–90 mins.)

5

Tell students that there are many ways in which mass incarceration today is rooted in the eras of enslavement and Jim Crow, and they will explore one of those ways during this lesson. Explain that the example they will look at is related to a loophole in the 13th Amendment, which ended slavery in the U.S. Post the text of the amendment and challenge students—in pairs or small groups—to identify the loophole and its implications for Black Americans.

13th Amendment to the U.S. Constitution (ratified in 1865): *Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.*

6

Discuss students’ thoughts. Note that the phrase “except as a punishment for crime...” allowed the government to take advantage of people convicted of crimes by returning them to enslavement or involuntary servitude. Explain that in the period following the Civil War, Black codes and Jim Crow laws created many new types of offenses that sent Black people to prison at higher rates than ever before. Once convicted, these “criminals” could be reenslaved.

7

Share that the *convict leasing* system was one way in which this reenslavement occurred. Write the term on the board and allow students to share any prior knowledge they have about it. Then show the Black History in Two Minutes (or So) video, “Convict Leasing” [2:06]: <https://bit.ly/3fASGcx>. (Consider playing it a second time, as there is a lot of information packed into the two minutes.) Discuss some of the following questions with students:

- How did the convict leasing system work? Why did it disproportionately affect Black people?
- What was the economic incentive behind the system?

- Why does Kimberlé Crenshaw say that the “aftermath of slavery was in some ways worse than slavery itself”?
- How do you interpret the statement, “The pipeline from prison to profits in this country has deep roots”?
- How is today’s mass incarceration connected to the convict leasing system of the post-slavery/Jim Crow era?

8 Divide the class into small groups and distribute copies of the handouts below, which provide personal stories and primary source material exploring how the convict leasing system operated and affected real individuals.

- *The Story of Green Cottenham*
- *Excerpt of a Letter from a Convict Laborer to the Alabama Board of Inspectors of Convicts, 1884*
- *Letter from a Federal Judge in Alabama to the U.S. Attorney General, 1903*

9 In their groups, have students read and annotate the handouts using the method below. Following their analysis, gather the class to review and discuss their reactions, insights and questions.

- *Underline* information that shows the incentives behind the convict leasing system during the Jim Crow era.
- *Circle* information that shows connections between convict leasing and the “new Jim Crow” or mass incarceration of Black people today.
- *Record margin notes* with your reactions and questions in response to the readings.

10 Bring the conversation back to the idea of the “new Jim Crow” by playing the *New York Times* opinion piece by Meek Mill titled “Do You Understand These Rights as I’ve Read Them to You?” [2:26]: <https://nyti.ms/3t48GYJ>. Afterwards, have students free write in response to the quote below from the video. Allow them to share their writing and thoughts in pairs or small groups.

Meek Mill: “The plantation and the prison are actually no different. The past is the present. It ain’t no coincidence.”

11 Conclude the lesson by discussing some of the questions on the following page.

NOTE

Meek Mill is an American rapper and songwriter from Philadelphia. He was convicted on gun and drug charges in 2008 (which Mill has claimed were trumped up). After his release, Mill battled with the court system for almost a decade over probation violations that resulted in harsh penalties, including additional jail time. The severity of the punishments in response to what was perceived as minor violations made Mill a national cause célèbre and an activist for criminal justice reform. The purpose of this exercise is not to debate Mill’s guilt or innocence, but to consider the arguments he presents in his opinion piece on the criminal justice system.



Discussion Questions

1

How did Black Americans reexperience enslavement during the Jim Crow era?

2

How does mass incarceration of Black Americans today function as “the new Jim Crow”?

3

What have been the economic incentives behind the mass incarceration of Black people?

4

How does the criminal justice system target those who are innocent as well as guilty of crimes?

5

How does the criminal justice system today deny rights to people even after they have served their sentences?

6

How has racial bias in the criminal justice system affected your community or you personally?

7

How are some people working to address the “new Jim Crow”? What reforms do you think are most important?

Lesson Extensions

- Have students conduct a close reading of the excerpt from *The New Jim Crow* by Michelle Alexander at <https://bit.ly/3cVXxmZ>. In small groups, have them participate in a “group annotation” in which they work together to attach comments to the reading indicating commonalities between the Jim Crow of yesterday and mass incarceration today.
- In 2018, an unmarked gravesite was discovered in Sugar Land, Texas, containing the remains of 95 African Americans who were part of Texas’s convict leasing system. Have students learn about the Sugar Land 95 by visiting the Convict Leasing and Labor Project website (<https://www.clptx.org>) and watching the video “Unearthing the Truth of the Sugar Land 95” (<https://bit.ly/3cVWMuk>). Since the Sugar Land 95 were not memorialized upon their death, assign students to create a marker honoring them with information about the convict leasing system and the unjust treatment of Black Americans during Jim Crow.
- Form student-led discussion groups around one of the following young adult books: *Just Mercy or Punching the Air* (see Additional Resources). Have students journal as they read, identifying key themes and questions for discussion. In small groups, have them work collaboratively to pose their questions and share insights.
- Share the story of Winfred Rembert (1945–2021), who turned his painful experiences with wrongful imprisonment and forced labor into beautiful works of art (see <https://winfredrembert.com>). Have students view examples of his artwork and write reflectively in response to one or more of the following questions:
 - ➔ What do you think Rembert is communicating through these works? What feelings do they convey?
 - ➔ Rembert survived a near-lynching and time on a chain gang. Are you surprised to learn these practices existed in this country until relatively recently? Explain.
 - ➔ Why do you think it was important to Rembert to preserve and share the stories of his past? How has his story affected you?
 - ➔ How are art and memory forms of activism? Describe other examples of this kind of social action.

ADDITIONAL RESOURCES

- + Adrian, Christine. “The Convict-Lease System, 1866–1928.” *Middle Level Learning Number 44* (May/June 2012): 2–16.
- + Blackmon, Douglas A. *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II*. New York: Anchor Books, 2008.
- + Coven, Rebecca. “Teaching About Mass Incarceration: The Ongoing Narrative of Racial Oppression.” *Learning for Justice*, December 11, 2018. <https://www.learningforjustice.org/magazine/teaching-about-mass-incarceration-the-ongoing-narrative-of-racial-oppression>.
- + Salaam, Yusef and Zoboi, Ibi. *Punching the Air*. New York: HarperCollins, 2020.
- + Stevenson, Bryan. *Just Mercy (Movie Tie-In Edition, Adapted for Young Adults)*. New York: Penguin Random House, 2018.
- + “Teaching the New Jim Crow.” *Learning for Justice*. <https://www.learningforjustice.org/magazine/publications/teaching-the-new-jim-crow>.
- + “Timeline of the Rise of the Modern American Prison System.” T’ruah. <http://www.truah.org/wp-content/uploads/MIH/MIH-18-20-timeline-modern-american-prison.pdf>.



Excerpts from *Punching the Air* by Ibi Zoboi and Yusef Salaam

Punching the Air is the fictional story of Amal, a 16-year-old Black boy who is convicted and sent to prison for a crime he didn't commit. Yusef Salaam, one of the authors, is a member of the Exonerated Five. In 1989, Salaam and four other Black and Latino boys were wrongly convicted of attacking a white woman in New York's Central Park, and served prison sentences ranging from 6 to 12 years. All five were cleared of the charges after a prison inmate confessed to the crime in 2002. Racial bias played a large role in the "Central Park jogger" case. Today, Salaam is a prison reform activist who works against racism and other forms of inequity in the criminal justice system.

COURTROOM

I know the courtroom ain't
the set of a music video, ain't
Coachella or the BET Awards, ain't
MTV, VH1, or the Grammys
But still

There's an audience
of fans, experts, and judges

Eyes watching through filtered screens
seeing every lie, reading every made-up word
like a black hoodie counts as a mask
like some s*** I do with my fingers
counts as gang signs
like a few fights counts as uncontrollable rage
like failing three classes
counts as being dumb as f***
like everything that I am, that I've ever been
counts as being

guilty

GRAY SUIT

Umi told me to wear a gray suit
Because optics

But that gray didn't make me any less black
My white lawyer didn't make me any less black

And words can paint black-and-white pictures, too

Maybe ideas have their own eyes
separating black from white as if the world
is some old, old TV show

Maybe ideas segregate like in the days of
Dr. King, and no matter how many marches
or Twitter hashtags or Justice for So-and-So

our mind's eyes and our eyes' minds
see the world as they want to
Everything already illustrated
in black and white

SOURCE: Salaam, Yusef and Zoboi, Ibi. *Punching the Air*. New York: HarperCollins, 2020.

THINK ABOUT IT...

- 1 What does the author mean by "eyes watching through filtered screens"? What "filters" affect the way we see certain people, specifically Black youth, in our society?
- 2 In what ways is Amal reduced to a stereotype in the courtroom and in his life in general?
- 3 What are "optics"? Why are the gray suit and other optics unable to change people's perceptions of Amal?
- 4 What are examples that illustrate the line, "ideas have their own eyes, separating black from white"?
- 5 The author suggests that racial bias persists as in the past, despite modern protest movements. Do you agree? Why or why not?



The Story of Green Cottenham

Green Cottenham's story is described in detail in the book *Slavery by Another Name* by Douglas A. Blackmon.

Cottenham was born in Shelby County, Alabama, in 1886. He was the youngest of nine children born to formerly enslaved parents. On March 30, 1908, 22-year-old Cottenham headed to the Columbiana train depot, a popular meeting spot for Black men looking for work or to socialize. There, he was arrested for "vagrancy," a vague charge used to detain Black people for not working, working at jobs unrecognized by whites or just gathering in public places.

After a speedy trial in which no evidence of wrongdoing was presented, Cottenham was found guilty and sentenced to 30 days of hard labor. He was also charged about \$38 in court fees, a small fortune for a poor Black man in 1908. These fees were said to cover the costs of the sheriff, his deputy, the court clerk and witnesses, but they amounted to just another way to profit from poor convicts. Cottenham was, of course, unable to pay the fees, so his sentence was extended to nearly a year.

At the turn of the 20th century, industry in the U.S. was booming and there was a tremendous need for resources such as coal and iron. The U.S. Steel Corporation, headquartered in New York, was one of the largest companies in the world. In 1907, the year before Cottenham's arrest, U.S. Steel purchased its biggest competitor, the Tennessee Coal, Iron & Railroad Company. Tennessee Coal had relocated most of its business to Alabama in the late 1800s, and the city of Birmingham became the national center for iron and steel making.

Businesses like Tennessee Coal desired cheap labor to grow their industries and keep profits high. At the same time, southern states were desperate for funds to rebuild their economies in the decades following the Civil War. The passage of racist Jim Crow laws in those states led to the arrests of record numbers of Black people, who were



Tennessee Coal, Iron & Railroad Company furnaces, Ensley, Alabama

expensive to look after and increased states' financial burden. These trends led to the growth of *convict leasing*. The idea was ruthlessly simple: States provided prison labor to private businesses, like plantations and mining companies, for a set fee and a set period of time. The states profited from their prisoners and businesses obtained free labor in exchange for feeding and housing them. The cruel and dehumanizing treatment of mostly Black boys and men under this system led author Douglas A. Blackmon to call it "slavery by another name."

Cottenham was one of the hundreds of thousands of African Americans victimized by the convict leasing system. He was sold to Tennessee Coal for \$12 per month, and sent to the Pratt coal mines, where he labored in Slope No. 12. In the five years leading up to Cottenham's imprisonment, more than 1,000 mostly Black convicts were transported to these mines, including teenagers and children under the age of 10. The so-called crimes that brought them there included illegal voting, obscene language, selling cotton after sunset, disturbing females on a railroad car, riding a freight train without buying a ticket, having a relationship with a white woman and homosexuality.



The Story of Green Cottenham



Members of a southern chain gang, between 1900 and 1906.

In the mines, the prisoners performed back-breaking labor for six long days each week, and rarely saw the sun rise or set. People like Cottenham were forced to remove as much as eight tons of coal each day from the mines. Failure to meet this requirement led to severe punishments, including dozens of lashes with a whip that ripped the skin from the backs of its victims. At night, the prisoners were locked in a wooden barracks, 200 worn-out bodies chained to one another in a single chamber. Those who tried to escape were fixed with iron shackles, cuffs, collars, balls and chains.

In the crowded, filthy and airless environment of the mines, disease spread rapidly. Those who didn't succumb to the beatings, fires and gas explosions fell victim to dysentery, pneumonia, tuberculosis, typhoid and yellow fever. Others collapsed from exhaustion and malnutrition. In the first month after Cottenham arrived at Pratt, six people died. By the year's end, 60 had perished. Records from the years 1888–1889 show that 18 percent of the laborers at the mine died. The bodies of these mostly Black boys and men were dumped into nearby shallow graves or incinerated in coal ovens.

Sadly, Cottenham was among those lost. Four months after his arrest, he died of tuberculosis in a work-camp hospital run by Tennessee Coal. In a cruel twist of fate, a child born to the first generation of free Black people in his family died in bondage 43 years after the passage of the 13th Amendment, banning slavery and involuntary servitude throughout the United States.

SOURCES

Blackmon, Douglas A., *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Anchor Books, 2008), 84–115.

Detroit Publishing Company. "A Southern Chain Gang." 1900–1906. Washington, D.C.: Library of Congress, Prints & Photographs Division. <https://www.loc.gov/pictures/item/2016803065>.

Detroit Publishing Co. "Tennessee Coal, Iron and Railroad Co. [Company] furnaces, Ensley, Ala." 1910–1920.

Washington, D.C.: Library of Congress, Prints & Photographs Division. <https://www.loc.gov/pictures/item/2016815606>.

"The Untold History of Post-Civil War 'Neoslavery'," NPR Talk of the Nation, March 25, 2008, <https://www.npr.org/templates/story/story.php?storyId=89051115>.

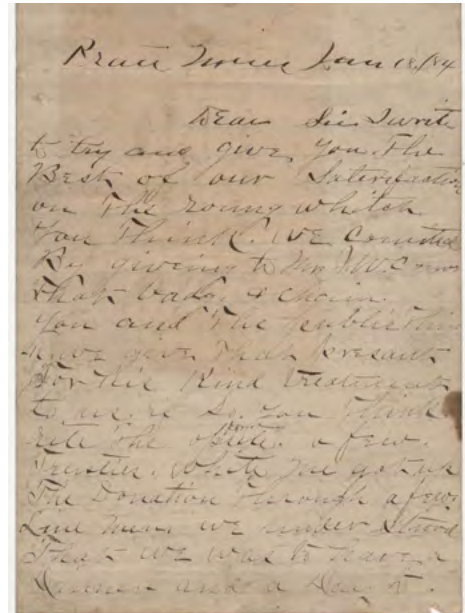
HANDOUT



Excerpt of a Letter from a Convict Laborer to the Alabama Board of Inspectors of Convicts, 1884

"[Our living quarters are] filled with filth and vermin. ... [Gunpowder cans were used to hold human waste that periodically] would fill up and run over on bed [where some prisoners were shackled in place at night].

... Every Day some one of us were carried to our last resting, the grave. Day after day we looked Death in the face & was afraid to speak. ... Fate seems to curse a convict. Death seems to summon us hence. ... Comer is a hard man. I have seen men come to him with their shirts a solid scab on their back and beg him to help them and he would say [']let the hide grow back and take it off again.['] I have seen him hit men 100 and 160 [times] with a ten prong strop [sic], then say they was not whiped [sic]. He would go off after an escape man come one day with him and dig his grave the same day. We go to cell wet, go to bed wet and arise wet the following morning and evry [sic] guard knocking[,] beating[,] yelling[,] Keep [sic] in line Jumping Ditches [sic]."



Guards watch over a group of convict-lease prisoners in Birmingham. Alabama's convict-lease system existed from 1875–1928.

SOURCES

Archev, Ezekiel. *Letter from a convict laborer at Pratt Mines in Jefferson County, Alabama, to Reginald Dawson, president of the Alabama Board of Inspectors of Convicts*. Letter. From Alabama Department of Archives and History, January 18, 1884. <https://digital.archives.alabama.gov/digital/collection/voices/id/5414/rec/1>.

Birmingham Public Library Archives and Encyclopedia of Alabama, "Convict-Lease System," <http://encyclopediaofalabama.org/article/h-1346>.

Clabough, Jeremiah and Bickford, John H. III, "Birmingham and the Human Costs of Industrialization: Using the C3 Framework to Explore the 'Magic City' in the Gilded Age," *Middle Level Learning* Number 63 (September 2018): 2–19.



Letter from a Federal Judge in Alabama to the U.S. Attorney General, 1903

Sir: Some witnesses before the Grand Jury here have developed the fact that in Shelby County [Alabama] in this District, and in this Coosa County in the Middle district, a systematic scheme of depriving negroes of their liberty, and hiring them out, has been practiced for some time.

The plan is to accuse the negro of some petty offense, and then require him, in order to escape conviction, to enter into an agreement to pay his accuser so much money, and sign a contract, under the terms of which his bondsmen can hire him out until he pays a certain sum. The negro is made to believe he is a convict, and treated as such. It is said that thirty negroes were in the stockade at one time.

Thursday, a negro witness who had been summoned here, and testified before the Grand Jury, was taken from the train by force, and imprisoned on account of his testimony; but finally his captors became frightened and turned him loose. The grand jury found indictments against nine of the parties. I deemed it essential to the safety of the negro that a deputy marshal should protect him while in that county, and while here giving testimony; and that the accused parties should be promptly arrested and held to bail, in order to deter them, at least, from further violence to the negro....

—Yours Truly, T. G. Jones



Juvenile convicts at work in the fields, 1903

SOURCES

Detroit Publishing Company. Juvenile convicts at work in the fields. 1903. Washington, D.C.: Library of Congress, Prints & Photographs Division. <https://www.loc.gov/resource/det.4a28370>.

Clabough, Jeremiah and Bickford, John H. III, "Birmingham and the Human Costs of Industrialization: Using the C3 Framework to Explore the 'Magic City' in the Gilded Age," *Middle Level Learning* Number 63 (September 2018): 2-19.

Jones, Thomas Goode. *Letter from Thomas Goode Jones to Philander C. Knox*. March 21, 1903. In *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* by Douglas A. Blackmon, p. 423-424. New York: Anchor Books, 2008.