

Deconstructing Mass-Incarceration by Teaching Reconstruction: Implementing a Chat & Chew on 13th

College of Liberal Arts Diversity Resource Module

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Deconstructing Mass-Incarceration by Teaching Reconstruction: Implementing a Chat & Chew on 13th

Overview of Topic

The goal of this project is to have students critically examine how various forms of oppression evolve over time and how we must examine pop-culture through a historical lens to see the roots of current social problems. 13th opened a public dialogue about the criminal justice in America. It is undeniable that pop culture informs much of our social understanding and in that Netflix-and-chill way, 13th is an incredibly powerful film for mobilizing intellectual thought around the issue of race and criminal justice. It is for this very reason that it is also a powerful teaching tool.

Oppression must be taught historically. In other words, if we want students to understand current events, we must provide them with a foundation in history. The goal for our module is to hook students into learning history by using the popular documentary film 13th. Using our Chat & Chew activity, we will teach history backwards. First, by having students contextualize and unpack the social construction of race, the growth of the prison-industrial complex, and current events surrounding police violence while live viewing and discussing the film with their peers; and, then, by moving backwards in time from the passing of the 13th Amendment to Reconstruction.

Although the title of the film is short and sweet, it obscures the socio-historical processes of resistance that were involved in passing the 13th Amendment. The motivation is an attempt to make the argument that the mass incarceration system in the US is a continuation of slavery—a provocative and important point of thought. While mass incarceration is a form of unfree labor, it is a different system of unfree labor than slavery. Studying the gains of Reconstruction forces us to deal with systems of racial oppression after slavery, and the reality that systems of racial oppression hinge on our present, not just our past. The Reconstruction Era, when actually taught in public high schools, is glazed over.

Reconstruction was arguably the largest democratic revolution in the United States. The actions of Black people who used their feet to leave plantations in the midst of the Civil War created a critical mass, forcing the issue of slavery onto the federal agenda, leading to the passage of the 13th Amendment. In the decade after the Amendment's passage, grassroots political mobilization in Black communities across the South resulted in the passage of the 14th and 15th Amendments (securing equal rights under the law and universal male suffrage, respectively). Biracial constitutional conventions, in a radical departure from previous constitutions, provided for universal male suffrage, removed property requirements for voting and officeholding, called for the establishment of free schools, and democratized the judicial system by making judges, justices of the peace, solicitors, and constables popularly elected rather than appointed.[1]

But you wouldn't know that a social movement involving Black resistance took place based on the title of the film. 13th provides attention to the various law and policy scaffolding upon which the modern prison industrial complex driven by compulsory labor rests. But, despite this, many walk away with a sense that prison labor began with the 13th Amendment and continues because of it. This type of ahistorical thinking obscures the lessons of the film—that the revolution began by the 13th Amendment was met with an equally organized counterrevolution, that change is constant negotiation, and that we, ourselves, are capable of change.

[1] On the 13th Amendment as a result of Black activism, see Barbara J. Fields, "Who Freed the Slaves?," *The Civil War: An Illustrated History*, ed. Geoffrey Ward (New York: Knopf, 1990). On Reconstruction as a democratic revolution, see Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper and Row, 1988).

Outline

Overview:

Historical Roots: Why start with the 13th Amendment? To make the connection between incarceration and slavery.

Of course, the 13th amendment did not invent incarcerated labor, that had long existed. The connection argues that a system of incarceration replaced a system of race-slavery to supply uncompensated compulsory labor. The use of the 13th Amendment to call attention to the modern system of mass incarceration also suggests that both are similar racialized systems of compulsory labor.¹ If the 13th Amendment did not create incarcerated labor, but incarcerated labor increased with emancipation then it suggests that prison labor was a counterrevolution to the revolution begun by the 13th Amendment.

Question: Is incarceration slavery?

- I. The 13th Amendment and the end of hereditary race slavery
 - a. What is Reconstruction and the 13th Amendment
 - i. The Thirteenth Amendment was passed in 1865 and made unconstitutional the system of race-slavery that had existed in the American colonies and had been codified into law during the making of the new nation. The Amendment was the work of decades of grassroots activism by abolitionists, white and Black, free and enslaved. Seasoned abolitionists had long recognized the need for a constitutional amendment as a means to counter the Constitution's guarantee of property, which contemporary interpretation applied to human beings. In 1863, encouraged that the political climate was changing, abolitionists started a campaign calling for congressional action. On February 9, 1864, two African American activists submitted a petition to Senator Charles Sumner on the senate floor bearing the signatures of a half million American men and women calling for a constitutional amendment abolishing slavery. They told him that more signatures were coming. The petition was a campaign launched by [The Women's Loyal National League](#) in which over 2,000 grassroots men, women,

¹ There is a clear connection here, that in an effort to compel formerly enslaved workers to resume uninterrupted production, laws were created that disproportionately incarcerated former slaves. And because only Black people could be legally enslaved, Black people were disproportionately incarcerated. For the early construction of laws that expressly targeted Black people by race, see (Blackmon 2009 – Slavery by Another Name). For work on laws that on the surface were seemingly colorblind, but disproportionately targeted formerly enslaved Americans, see Eric Foner ; Foner, for example, examines the construction of hunting and fishing laws which had long been customary Southern fare, became illegal after emancipation as a means to criminalize those who intended to survive on the land. Thus, while self-sufficient Southern yeoman communities had long survived on the margins of the labor capital or slave labor systems, laws now compelled many such communities into wage labor or the alternative, incarceration, by outlawing their existing lifestyle.

and children, black and white hit the streets to collect signatures. Sumner presented the petition on the senate floor and proposed an amendment stating that “all persons are equal before the law, so that no person can hold another as slave.” From there, the political process debated and shaped language that ultimately resulted in the 13th Amendment.²

- b. Illuminating oppression as a policy process. After the 13th Amendment, neither emancipation nor its counterrevolution happened all at once. Both emerged over time because it is always a struggle.
 - i. The Black Codes (1865-1867): States of the former Confederacy instituted Black Codes at the state level as a means to codify slavery under another name. While the codes varied by state, they all restricted civil rights, forbade voting, and punished crime with compulsory labor, often through apprenticeship to former masters.
 - ii. The Fourteenth Amendment (1866): This Amendment tried to counter the Black Codes and provide civil rights to Black people in the South. It was rejected by the former Confederate states, demonstrating that they saw the law as a means to reinstitute compulsory labor.
 - iii. The Reconstruction Acts (1867): When the former Confederate states refused to ratify the Fourteenth Amendment, the federal government was forced to recognize what Black Wilmingtonians had been pointing out all along: without Black suffrage, freedom could not take root. On March 2, 1867, Congress passed “An Act to Provide for the More Efficient Government of the Rebel States” over the veto of President Andrew Johnson. It placed the recalcitrant states under military government and transformed their electorates by enfranchising black men and at least temporarily denying the suffrage to men who had previously taken an oath of allegiance to the U.S. Constitution and then supported the Confederacy. Using the new suffrage standard, the former Confederate states were to elect delegates who would draft new constitutions, and those constitutions were required to include black male suffrage. The act divided the former Confederacy into five military districts, each under the command of a general appointed by President Johnson.³
 - iv. Southern State Constitutions (1868): Black communities rewrote state constitutions in a way that expanded democracy, elected Black officeholders,

² For a legal history of the political wrangling behind getting the Thirteenth Amendment passed, or how a bunch of white guys were convinced to even consider the abolition of race slavery at this point in history, see, see Alexander Tsesis, *The Thirteenth Amendment and American Freedom* (New York: NYU Press, 2004), ch. 2; James M. McPherson, *The Struggle for Equality: Abolitionists and the Negro in the Civil War and Reconstruction* (Princeton: Princeton University Press, 1992), ch. 5. On Charles Sumner’s original language, see David Herbert Donald, *Charles Sumner and the Rights of Man* (New York: Open Road Media, 2016), p. 13.

³ “An Act to Provide for the More Efficient Government of the Rebel States,” 2 March, 1867, in *Statutes at Large, Treaties and Proclamations of the United States of America from December, 1865, to March, 1867*, vol. 14 (Boston: Little, Brown and Co., 1868), 428-29; Eric Foner, *Reconstruction: America’s Unfinished Revolution, 1863-1877* (New York: Harper & Row, 1988), 272-76.

including city council, state legislators, judges, and justices of the peace that strongly countered attempts to re-enslave Black people using the justice system. It would take decades of terrorism, gerrymandering, and voter suppression to counter the revolution of Reconstruction and implement Jim Crow. ...and that system STILL did not hold a candle to the mass incarceration highlighted in the film.

- v. The Fifteenth Amendment (1870): With Black men enfranchised, elected to public office, and in the U.S. Congress, the Fifteenth Amendment guaranteeing universal male suffrage is passed and ratified.
- Questions: Surely this crisis does not start and stop with the 13th Amendment. So... what happened? Is freedom just a constant struggle? What has been the process by which freedom and unfreedom has taken shape and how is it continuing right now?

Questions: What is the purpose of the criminal justice system? Whose interest does it serve?

II. The racialization of the justice system

a. The meaning of segregation

The system of segregation is not the aftermath of slavery, it is the aftermath of Reconstruction. The criminalization of social space changed as Black people were able to navigate white spaces in ways that were previously restricted (Davis 1998, Thompson 2010). The 1896 Supreme Court ruling, *Plessy v. Ferguson*, made racial segregation and the distribution of public resources according to race constitutional by writing race into law. Much as slave-law had affirmed something called race into law, so too did *Plessy*. After all, segregation was not a slavery system. Slavery was the opposite. Slavery demanded close contact, intimate interactions, and constant access with enslaved people on-site. And, because enslaved people WERE property, there was no policy required to regulate their ability to own property. Not so with Jim Crow. While Jim Crow still demanded close contact, intimate interactions, and constant access, it most significantly was about property distribution. Jim Crow redistributed resources based on race. Call it race capitalism, American communism, herrenvolk socialism or whatever you want, but the lesson is that the government distributed property and resources according to race WITHOUT the input of Black people since they had been disenfranchised. This could NOT have happened across the board during Reconstruction because Black people had political power and rejected this type of policy. They had to be disenfranchised before the “loophole” in the 13th Amendment could be fully exploited.

b. The Legal Constructions of Race

While it is academically accepted that race is a construct, it nevertheless exists in law.

- i. A short history of laws since the 13th Amendment that are specific to race.

*Consider an assignment that tracks laws that specify race.

1. [Chinese Exclusion Act](#) (1882)
 2. [Dawes Act](#) (1887)
 3. [Plessy v. Ferguson](#) (1896)
 4. [Ozawa v. United States](#) (1922)
 5. [United States v. Thind](#) (1923)
- ii. The US Census is one example of the way in which race is created and re-created in code over time. Administrative definitions of race shape the distribution of resources in communities across the country.
1. For some examples, See Snipp 2003 and Racebox.org:
 - 1820 – census started tracking foreign-born populations (concern for immigrants)
 - 1850 – “mulatto” category was added (acknowledged inter-racial mixing)
 - 1890 – Chinese and Japanese were added as categories
 - 1930 – added categories for Mexican, Hindus, Koreans, and Filipinos
- iii. *Reconstruction: America After the Civil War*
- iv. W. E. B. DuBois, *Black Reconstruction in American, 1860-1880*
- III. The racialization of the justice system
- a. The Drug War
- While the laws that comprise what is known as the drug war are racially neutral on the surface, they are disproportionately implemented against people of color in predominantly Black and Latinx neighborhoods. Additionally, as pointed out in 13th, drug laws have been written around activity disproportionately found in these neighborhoods. For example, crack, a cheaper form of cocaine, was penalized with heavier punishments than cocaine, creating a post-racial law that nevertheless punished people differently for possession of the same drug (100:1; now 18:1). Because crack was cheaper, this targeted people in poor and working-class neighborhoods. Because poor and working neighborhoods were historically Black as a result of segregation, such laws disproportionately incarcerated Black people (see Anderson 2012, Bobo & Thompson 2006; Steinmetz, Schaefer and Henderson 2017).
- b. Mass Incarceration
- The War on Drugs refueled racialized ideologies of drug usage and ideas of Black criminality that we saw after the Civil War (see Hughey 2015, Davis 1998, Reinerman 1994, Steinmetz et al. 2017). Police practices had changed in response to quelling civil unrest that took place in the 1960s. The militarization of police agencies took place, with several cities adopting SWAT units, and a cultural shift to a soldier and warrior-mentality (Kraska and Kappeler 1997). Politicians positioned themselves as punitive and “tough on crime” to get reelected, passing legislation like three strikes and mandatory minimums, which lead to a dramatic increase in the size of the US prison population. This had a

ripple effect, creating detrimental impacts on cities and families (Thompson 2010).

c. Prison Labor

Just as the criminalization of Black people after the Civil War was tied to labor relations, the same patterns are noted by historians who highlight how general workers' rights were often pitted against the rights of prisoners. Mass incarceration provides corporations with a supply of forced involuntary labor. It is the system being equated with slavery in the 13th and Jim Crow segregation in *The New Jim Crow*. Thompson (2010) discusses how the Hawes-Cooper Act (1929), the Ashurst-Sumners Act (1935), and the Walsh-Healey Act (1936) regulated prison labor, how the New Deal changed prison labor practices, and how these restrictions were weakened over time in response to activism by prison laborers on their poor pay and working conditions. Thompson (2010) demonstrates how the construction of prisons in rural areas change the labor market, while also giving a nuanced discussion of how the expansion of the carceral state is profitable for private industries.

Instructor Annotated Bibliography

Albonetti, Celesta A. 1991. "An Integration of Theories to Explain Judicial Discretion." *Social Problems*. 38:247- 266.

Albonetti integrates uncertainty avoidance and causal attribution theory to assess the relevance of "defendant's race, gender, prior record of conviction, and earlier decision outcomes to the sentencing decision" (250). Building on March and Simon's (1958) organizational social psychological approach, she explains how judges try to reduce uncertainty when making decisions with limited information, often relying on their past experiences and patterns in the courtroom, in attempts of predicting the likelihood of an offenders' future criminality. Using 2,158 felony cases from 1974 Superior Court of Washington DC data. As hypothesized, "black social status, financial pretrial release outcomes, weapon use, and a prior record of felony conviction are positively associated with sentence severity," while "contrary to expectations, defendant/victim relationship and case information indicating the victim provoke the offense are unrelated to sentence severity" (255). An interaction between race and bail was found to exist. Albonetti asserted that in times of uncertainty that judges rely more so on stereotypes, which results in black defendants being perceived as more likely to recidivate and in turn Black defendants receiving harsher sentences. Albonetti gains support for her integrated theory, as judges' attempts to make rational decisions to reduce uncertainty results in sentencing disparities.

Bridges, George and Robert Crutchfield. 1988. "Law, Social Standing and Racial Disparities in Imprisonment." *Social Forces* 66: 699-724.

Bridges and Crutchfield frame their article using the normative and the stratification perspectives to explain racial differences in imprisonment. Building on Durkheim's arguments, normative theorists argue that the severity of the punishment varies directly with the importance of the law violated, whereas stratification theorists argue that the severity of the punishment should be determined by how threatening the violation is to the dominant political and economic structure. Those coming from the stratification perspective see disparity in imprisonment rates reflecting institutional mechanisms used to maintain the political and economic hegemony of the dominant class. It is important to note that these theorists recognize that the racial biases pervade the entire criminal justice process—it is not simply at the sentencing or arrest phase. They examined the racial composition of 48 state prisons and found that disparity is highest in states with heavy parole use, no habitual offender laws, and less overcrowding (711). The authors conclude by suggesting that normative and stratification theories be integrated.

Reiman, Jeffrey. 2007. *The Rich Get Richer and the Poor Get Prison: Ideology, Class, and Criminal Justice*. Boston" Pearson/Allyn & Bacon.

The primary focus of this book is to get readers to think about crime and criminals from a different perspective. The analysis centers on social class differences, specifically how the wealthy avoid the criminal justice system because they can define what is criminal, making corporate crime and white collar crime slide under the radar despite being costly for society. Reiman makes the reader understand through various examples that how we define crime and harm to society shapes whose behaviors are investigated, prosecuted, and convicted as criminal. Poor people are more likely to be arrested, less likely to be released on bail, and then as a result more likely to be charged and convicted of offenses than the rich. He argues that there are two transmission belts of justice in the criminal justice system: one for the poor and one for the affluent. Because some are able to afford private attorneys (on a varying scale of quality), while others rely on indigent defense, it's not surprising that disparities occur.

Bobo, Lawrence D. and Victor Thompson. 2006. "Unfair by Design: The War on Drugs, Race, and the Legitimacy of the Criminal Justice System."

The authors frame the paper using the promise of the American Dream and highlight the unequal access to pursue it by different people in the US. They problematize the disproportionate rates in which Black people are incarcerated by focusing on three central points: 1) policy changes that "use incarceration for purposes of social control" (p447), 2) how these policies impact Black communities and shape their attitudes on criminal justice policies, and 3) how this undermines trust in the system. Using data from the Race, Crime, and Public Opinion Study (Bobo and Johnson, 2002), the authors asked white and Black participants about their attitudes on the seriousness of crime and the fairness of the criminal justice system. The authors provide an overview on the growth of incarceration as a form of social control throughout the 1980s and 1990s, linking it to the War on Drugs, and detrimental consequences on families, as a result of criminal records barring people from employment, housing, and the right to vote. The authors found racial differences in attitudes on bias in the system. For example, 89% of the Black participants thought the system was biased against them, whereas only 38% of white respondents agreed. These differences were seen when asked about treatment from police, judges, and the system as a whole. The authors supplement quantitative data with focus-group respondents' remarks, providing more nuanced explanations, highlighting their direct experiences with different actors in the system that shape their levels of trust and distrust. This article is good for demonstrating how various research methods can be use to compliment one another.

DuBois, W. E. B. *Black Reconstruction in America, 1860-1880*

At over 700 pages, DuBois's *Black Reconstruction* is still an unparalleled history of Reconstruction. For an excellent popular examination of *Black Reconstruction*, see [Robert Greene II, "The Legacy of Black Reconstruction" in Jacobin \(August 27, 2018\)](#).

Fields, Barbara Jeanne. "Slavery, Race and Ideology in the United States of America." *New Left Review* 181 (May/June 1990): 94-118.

"If race lives on today, it does not live on because we have inherited it from our forbearers of the seventeenth century or the eighteenth century or nineteenth, but because we continue to create it today."

In this essay, Fields reminds us that race is not just a construct, it is an ideological historical construct. This does not mean its construction exists in the past. Quite the opposite, it means that the conceptualization of race and, thus, the meaning of race is created and re-created over time. To prove her point, Fields locates the emergence of a thing called race in U.S. history. For Fields the construction of race is premised on rational historical reasons to underpin identifiable social structures. Race was not in existence in 1619 when the first Europeans and Africans landed in Virginia, she argues, rather, it took generations for even slave laws to emerge and those still did not deal in the business of Black and White, but African and English. Race, she says, "took even more time than slavery did to become systematic." (Fields, 106) She challenges the argument that Africans were enslaved because Europeans saw them as inferior, arguing that the reverse was true, that Africans became seen as inferior as they became customarily seen as oppressed. Europeans regarding Africans as heathens or weird, argues Fields, did not constitute an ideology of racial inferiority. Rather, it took shape in "the incorporation of Africans and their descendants into a polity and society in which they lacked rights that others not only took for granted, but claimed as a matter of self-evident natural law" (Fields, 106). Race, the ideological construct, was not the reason for slavery, but rather the vocabulary created to explain the existence of continued unfreedom in a nation claiming to be free. Of course, the meaning of race is not fixed in that moment of national formation. Again, the meaning is created and re-created as needed. Race is "a social vocabulary that will allow us to make sense, not of what our ancestors did then, but of what we ourselves choose to do now." This is the essence of this module (Fields, 118).

Fields, Barbara Jeanne. "Who Freed the Slaves." In *The Civil War: An Illustrated History*, edited by Geoffrey C. Ward with Ken Burns and Ben Burns, 178-181. New York: Alfred A. Knopf, 1990.

In answer to the historical question posed by her title, Barbara J. Fields argues that slaves freed themselves. She begins by telling you who it was not, namely President Abraham Lincoln and his Emancipation Proclamation. Ending slavery had never been Lincoln's strategic aim, rather it was preserving the Union. Rather, it was the slaves themselves who made the war about freedom. Fields maintains that emancipation starts when slaves walked off plantations in numbers that equaled a critical mass at the first available opportunity, as soon as masters and slave patrollers left to fight. From there, Fields walks us through the process. It was this initial liberation of slaves taking to the streets, literally walking off plantations and finding Union lines, that caused Union generals to begin taking them in as soldiers and soldier support before it was policy. Despite Lincoln over-turning such measures, they only resulted in an increase of escaped slaves showing up on Union lines. It was this consistent pressure, caused by this critical mass, that eventually convinces Lincoln of what the generals had long been saying... we can use 200,000 extra soldiers that have inside knowledge of enemy territory. Once in uniform, mobilized Black political leaders again pushed for policy that rewarded their service with freedom. It was this pressure that results in the push for the Thirteenth Amendment. It is in this way, argues Fields, that enslaved people successfully made the war about freedom and overthrew slavery starting with their feet on the streets.

Student Annotated Bibliography

Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: The New Line Press, 2010.

Michelle Alexander's *New Jim Crow* is an excellent companion to an assignment on 13th. Moving chronologically, the monograph walks the reader through the establishment of a criminal justice system that allows for the stripping of constitutional rights, equating mass incarceration with the creation of a caste system in the US. Those with felony convictions on their records became second-class citizens and the growth of mass incarceration has resulted in the creation of an undercaste. Alexander argues that the War on Drugs is the New Jim Crow. Although colorblind on the surface, the new system is laid atop a long legal precedence that is inextricably tied to a belief in racialized criminality. In this way, by establishing laws that target historically segregated neighborhoods and mark those neighborhoods for heavy policing, the system of mass incarceration ideologically links crime and race, and undermines the representation of poor people and people of color by excluding them from employment opportunities, juries, housing, and the right to vote in some states.

Fields, Barbara Jeanne. "Who Freed the Slaves." In *The Civil War: An Illustrated History*, edited by Geoffrey C. Ward with Ken Burns and Ben Burns, 178-181. New York: Alfred A. Knopf, 1990.

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Bobo, Lawrence D. and Victor Thompson. 2006. "Unfair by Design: The War on Drugs, Race, and the Legitimacy of the Criminal Justice System."

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Thompson, Heather Ann. 2010. "Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History" *The Journal of American History* New Jim Crow p703-734

Thompson historically situates the growth of incarceration in the United States by examining several postwar policies and their ties between the labor movement and the carceral state. The author argues, "Historicizing mass incarceration can provide new perspectives on many of the questions that historians ask about the postwar period. One of the most central of these concerns is why America's inner cities came to suffer such crisis toward the end of the twentieth century" (p706). She compares how the expansion of the carceral state in the south was dependent on the "criminalization of urban space," after the Civil War, in much the same way as following the Civil Rights movement, highlighting how the ideologies of surrounding Black criminality were weaponized. She provides an overview of leading figures, such as Governor Rockefeller's (NY) changing attitudes on drugs and prisoner's rights. As measures moved from rehabilitative to punitive, drug offenses resulted in more people being locked behind bars, with cities and people of color being disproportionately targeted. She reviews changes in sentencing practices, such as the introduction of mandatory minimums, three strikes, and truth in sentencing. Thompson illuminates how the Juvenile Justice and Delinquency Prevention Act of 1974 changed how schools were policed in cities such as Baltimore as a result of student activism during the Civil Rights Movement in the 60s. She touches on how Supreme Court cases

like *Terry v Ohio* impacted how officers could stop and detain people (i.e., “stop & frisk”) and like *Richardson v Ramirez* increased felony disenfranchisement. Thompson outlines how mass incarceration has had detrimental impacts on cities, families, health, employment, but also connects it to the decline in the labor movement, and the rise of the right and “law & order” rhetoric.

Historical Annotations on Reconstruction: The Primary Sources

The Black Codes (State laws regulating Black Southerners after emancipation, 1866-1867)

Just as former slaves mobilized to secure their freedom, white political leaders mobilized to establish a legal framework to perpetuate black subordination. The result was the laws commonly referred to as the black code. Beginning in 1865, committees met to devise a set of laws to regulate Black Southerners. Committee proposals reflected two desires. The first was to control the labor of the former slaves. The second was to alleviate the alarm white North Carolinians felt in regard to the revolution that, they believed, had unleashed a dangerous and inferior population into their midst. To most white legislators, these tasks were one and the same. Each state of the former Confederacy enacted its own set of codes but all states denied Black people the right to testify in courts of law, serve on juries, and vote. Vagrancy laws demanded that Black people be signed into a labor contract for a full year or face prosecution upon which punishment was the hiring out of convicts to white landowners. Apprenticeship laws allowed white judges to assign Black children to white landowners, typically former masters, without the consent of Black parents. When people argue that carceral labor began in its present form as a result of the 13th Amendment, they typically offer the Black Codes as evidence. However, historical examination clearly shows that the Black Codes had all been repealed by 1867. Why? Black people fought tooth and nail against the codes, using them as an example of anti-free-labor capitalism and the need for political rights. Congress agreed and drafted the 14th Amendment, when that was rejected by the former Confederate States, Congress passed the Reconstruction Act. As a result, Southern Black officeholders repealed the Black Codes in every single state in which they had existed when they rewrote and ratified their state's constitutions in 1867 and 1868, respectively.

*NOTE: This is not about old laws... this is about new laws built on the precedence of old legal ideology. (see Fields, "Slavery, Race and Ideology")

[The Reconstruction Acts](#)—"An Act to Provide for the More Efficient Government of the Rebel States," 2 March 1867, in *Statutes at Large, Treaties and Proclamations of the United States of America from December, 1865, to March, 1867*, vol. 14 (Boston: Little, Brown and Co., 1868).

When the former Confederate states refused to ratify the Fourteenth Amendment, the federal government was forced to recognize what Black Southerners had been pointing out all along: without black suffrage, freedom could not take root. On March 2, 1867, Congress passed the Act over the veto of President Andrew Johnson. It placed the recalcitrant states under military government and transformed their electorates by enfranchising black men and at least temporarily denying the suffrage to men who had previously taken an oath of allegiance to the U.S. Constitution and then supported the Confederacy. Using the new suffrage standard, the former Confederate states were to elect delegates who would draft new constitutions, and those constitutions were required to include black male suffrage. The act divided the former Confederacy into five military districts, each under the command of a general appointed by

President Johnson. The new constitutions were the most democratic the South ever seen and surpassed the rights in the North. In a radical departure from previous constitutions, the new rejected the notion that political rights and privileges were dependent on the ownership of property, provided for universal male suffrage, removed property requirements for voting and officeholding, based representation in the state Senate on population rather than the amount of taxes paid, and called for the establishment of free schools.

The Reconstruction Amendments to the United States Constitution

- [Thirteenth Amendment](#) (1865)
- [Fourteenth Amendment](#) (1866)
- [Fifteenth Amendment](#) (1870)

Not to be confused with the Reconstruction Act, the Reconstruction Amendments are a typical phrase to refer to the Thirteenth (1865), Fourteenth (1866), and Fifteenth Amendments (1870). One potential pitfall in the study of the Amendments, is the tendency to visualize them as happening all at once rather than as part of a process implemented by changing congressional legislators (most notably, the inclusion of Black men in 1868). While some representatives pushed to include citizenship and civil rights in the 13th Amendment, without Black political participation and with a congress of all white legislatures debating both the basic human equality of Black people and the meaning of freedom, the Thirteenth Amendment only abolished race-based hereditary slavery. Without civil rights, the states of the former Confederacy quickly implemented Black Codes, state level laws that restricted civil rights based on race. Implementing apprenticeship, vagrancy, prohibition of serving on juries or even testifying against white people in courts of law, and of course complete exclusion from the political system, the Black Codes attempted to reinstitute slavery by another name. Aside from being obviously racist, the Black Codes were a serious impediment to the resumption of capitalism, i.e. cotton production (why would one go back to work for wages if they did not have access to courts to ensure their compensation and security of property?). As a result, the U.S. Congress passed the Fourteenth Amendment, ensuring citizens' civil rights under the Constitution and establishing birthright citizenship as rule of law. The Fourteenth Amendment was rejected by the states of the former Confederacy who refused to ratify it. This rejection resulted in the Reconstructions Acts which enfranchised Black men in the South and provided for the right to political office. This is important to the ultimate passage of the Fifteenth Amendment because it was passed with the political participation of Black Congressmen. For years, white legislators debated the human equality of Black people. Black legislators did not have that problem. With their inclusion, the Fifteenth Amendment, guaranteeing universal male suffrage, was passed.

Activities

Activity #1 = 13th Chat & Chew

13th Amendment – Abolition of Slavery

- Passed by Congress January 31, 1865. Ratified December 6, 1865. The 13th Amendment changed a portion of Article IV, Section 2
 - Section 1: 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.
 - Section 2: Congress shall have power to enforce this article by appropriate legislation.
- Writing Prompt: Please read and reflect on the amendment above.
 - Do you know why the 13th Amendment was passed and what led up to the passing of it?
 - Who do you think supported this Amendment and who do you think was against it?
 - Are you in support of it?
 - How many people do you think are behind bars in the US?
 - Which nation do you think incarcerates the most people?
 - What is the relationship between law and justice?
 - What is slavery? What is involuntary servitude?
 - What is incarceration?
 - Is incarceration slavery?
- In this exercise, the class watches the film and simultaneously chats in real time through the Canvas platform.
 - Allows instructor to call attention to certain parts of the film with pointed questions and comments.
 - Instructors can pause the film at certain parts to unpack comments and questions in the chat and then resume the film.
 - Students are accustomed to consuming media while texting, posting, and chatting.
 - “Watch & Chat” is a way to see what students are thinking as they are viewing and making connections.
 - Students should do a freewrite on what they learned after finishing the film and before having a class discussion.

Tips and Pitfalls

In many ways, this module pivots on the potential pitfalls of an unexamined viewing of this film. One feature of this module is to illuminate oppression as a process, as a now issue not a then issue. Keeping that lesson in mind helps this exercise to be flexible.

Tips:

1. Be historical. Think about how processes develop over time. For example, the 13th Amendment is a response to slavery and Jim Crow is a response to the 13th Amendment. Think about how particular policies were marketed to the people of the time as a means to pass and implement.
2. Be intentional. This assignment calls for a current accounting of race in America. The criminal justice system purports to be colorblind but this film is making an argument that it nevertheless operates in a racial context. Openly and uncomfortably discuss.
3. Have fun! This is a serious topic but online chatting about films is a mood.

Activity #2: 13th Soundtrack Content Analysis

- Soundtrack Remix: Is Hip-Hop storytelling?
 - Research the music used in the film. What are the lyrics telling you?
 - When was the song written?
 - What does the song say about the time period in which it was written?
 - What historical social, political, economic, justice issues that were happening at the time of the song's writing does the song reference?
 - What does that say about 2016 (the year the film was made)?
- Remix 2.0. Remix *13th*: Make your own song. This assignment is inspired by Alexander Weheliye's scholarship in *Phonographies: Grooves in Sonic Afro-Modernity* that mixes the scholarship of literary theory and the art of DJing. On the process of developing his methodology, Weheliye writes:

The practice of DJing itself served as my guide in this murky topography, since DJs mix records not according to primary content, but for the various dimensions of rhythm, timbre, texture, and the overall "feel" of the tracks in question. Rather than putting my faith only in the protocols of literary studies that do not even register these features' existence, much less deploy them, I chose to intermingle the two in order to fashion different methodologies. Infusing techniques of close textual reading and historical contextualization, for instance, with the much more vague, but nonetheless useful, parameters of DJing that are a potential of experience but often resist the explanatory strictures of critical discourse, opened up and reinvented the function of the literary in *Phonographies*.

- As you watch the film and read the supplemental readings, keep a journal.
- Then, looking at your notes, chats, and your marked-up readings, select 3-5 of your favorite phrases, or bars, and bring them with you to class.
- You will then assemble into production teams/studios (breakout groups) to splice, cut, loop, and repeat the various words and phrases of each bar, rearranging them into new bars but according to the groove of history set by the thinkers in the readings.
- Be passionate about it. Use the words that jump out at you. Toss in some James Baldwin and mix it with Angela Davis and lay it on top of Public Enemy.
- Use anything from the material in this module. So often, we think of historical work as taking a certain view or perspective on events; this activity is designed to hone and attune your ears to listen for history as a polyrhythmic and phonically-textured soundscape of life.

* When mixing your track, consider our entire course context. Your track is part of the soundtrack of our class. Give voice to the significance of our work together. Think about honing in on the rhythm of one of the film's themes (see our outline for themes). Take note of passages and scenes that are along the same groove, that make you feel similar feelings. Borrow and sample from the

popular culture referenced and alluded to in *13th*. Hip-hop is not static; it freely borrows from the pantheon of art and openly speaks to any audience by constantly remixing itself in time and place.

Activity #3: Policy Timeline

- Create a timeline of criminal justice policy and social justice movements in the U.S. since the 13th Amendment was passed.
 - Instructor Note: Depending on the size of the class, you may want to break students into groups to focus on particular decades or geographic locations.
- Not every policy needs to be on the list, but your group should rationalize why you selected the ones you did.
 - How did these laws or policies impact policing, criminal sentencing, and ideas about punishment and rehabilitation of offenders?
 - Did the policies have any unintended consequences for particular segments of the population?

Resources

To Read

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- Bobo, Lawrence D. and Victor Thompson. 2006. "Unfair by Design: The War on Drugs, Race, and the Legitimacy of the Criminal Justice System."
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- _____. "Who Freed the Slaves." In *The Civil War: An Illustrated History*, edited by Geoffrey C. Ward with Ken Burns and Ben Burns, 178-181. New York: Alfred A. Knopf, 1990.
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- Pfaff, John. *Locked In: The True Causes of Mass Incarceration-and How to Achieve Real Reform*. New York: Basic Books, 2017.
- Reiman, Jeffrey. 2007. *The Rich Get Richer and the Poor Get Prison: Ideology, Class, and Criminal Justice*. Boston: Pearson/Allyn & Bacon.
- Stevenson, Bryan. *Just Mercy: A Story of Justice and Redemption*. New York: Spiegel & Grau, 2014.

Story, Brett. *Prison Land: Mapping Carceral Power Across Neoliberal America*. Minneapolis: The University of Minnesota Press, 2019.

Taylor, Keeanga-Yamahtta. *From #Black Lives Matters to Black Liberation*. Chicago: Haymarket Books, 2006.

_____. *How We Get Free: Black Feminism and the Combahee River Collective*. Chicago: Haymarket Books, 2018.

Thomas, Angie. *The Hate You Give*. New York: Harper Collins, 2017.

Thompson, Heather Ann. 2010. "Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History" *The Journal of American History*

Thuma, Emily L. *All Our Trials: Prisons, Policing, and the Feminist Fight to End Violence*. Champaign: University of Illinois Press, 2019.

Vitale, Alex S. *The End of Policing*. New York: Verso, 2017.

To Watch

*Try a Chat & Chew with any of these films!

- [Eyes on the Prize](#) (1990)
- [Reconstruction: America After the Civil War](#) (2019)
- [I Am Not Your Negro](#) (2016)
- [When They See Us](#) (2019)
- [The Pharmacist](#) (2020)
- [Watchmen](#) (2019)
- [The Wire](#)
(There is a beautiful scene in the episode, "[Reformation](#)" ([season 3, episode 10](#)), in which police Major, Bunny Colvin, delivers a monologue about the difference between policing and soldiering. His conclusion that thinking of policing like soldiering makes the neighborhoods police are sworn to protect nothing more than occupied territory is Black intellectual thought straight from [Martin Luther King, Jr.'s speech to the Chicago Freedom Festival](#).)
- [TIME: The Kalief Browder Story](#) (2017)
- [Birth of a Movement](#) (2017)
(optional: [Birth of a Nation](#) (1915) as a primary source to interpret. If you are going to also watch Birth of a Movement, consider watching *Birth of a Nation* first. *NOTE: *Birth of a Nation* should not be watched alone without examining the historical constructs of race and how it changes over time. I argue that *Birth of a Nation* was a moment of racial construction through popular culture.)

To Listen

- Recommended Podcasts
 - [Justice in America](#)
 - [Voices of Juvenile Justice](#)
 - [Reentry Radio](#)
 - [Serial](#)
 - [Ear Hustle](#)

- [Caught](#)
- [The Appeal](#)

To Do

- Get Involved Locally
 - [Restorative Partners](#)
 - [Get on the Bus](#)
 - [Alternatives to Violence](#)