



# Mass Incarceration

BY SERGE DANIELSON-FRANCOIS

GRADE LEVEL: 11TH-12TH GRADES

## Overview

In this lesson, students will engage in analysis and evaluation of arguments outlining the factors and solutions to mass incarceration. Students will read through various scholar's perspectives on the topic, analyze data, and create their own infographics.



## Objectives

- Define mass incarceration
- Data analysis of mass incarceration rates in America
- Argument analysis and evaluation on factors and solutions to mass incarceration
- Creation of infographic describing mass incarceration

## Materials

- Lesson handouts printed or shared via Google Docs
- Articles printed or shared via Google Docs

## Vocabulary

- Mass incarceration
- Decarceration
- Prison reform
- Abolitionist (in reference to prison reform)

## Pework

Optional to read the introduction chapter of *Criminal (In)justice: What the Push for Decarceration and Depolicing Gets Wrong and Who It Hurts Most* by Rafael Mangual. Recommended to complete Lesson 6: True Crime and the Court of Public Opinion.

## Day 1

### WARM-UP (5 MINUTES)

**Step 1:** Begin a three-column chart with students as a class that shows the first two columns of what they know and what they want to know about mass incarceration and prison reform.

**Step 2:** Tell students they will revisit this chart at the end of the next day's session to fill in the third column on what they have learned.

### ACTIVITY 1: DATA ANALYSIS (20 MINUTES)

**Step 1:** With a partner, have students look through the Sentencing Project's [US Criminal Justice Data](#) and the Pew Research Center's "[US Public Divided over Whether People Convicted of Crimes Spend Too Much Or Too Little Time in Prison](#)" and "[America's Incarceration Rate Falls to Lowest Level since 1995](#)."

**Step 2:** Ask students to identify the following:

- What trends do you notice?
- How do the data sets differ?
- What surprises you about the data?

**Step 3:** Have students share their findings as a class.

*Optional: For those not on a block schedule, start the Activity 2 video and then finish during the next day's lesson. For those on a block schedule, finish Activity 2 and allow time for students to work on the homework reading.*

## **ACTIVITY 2: BOOK FORUM TALK WITH RAFAEL MANGUAL (50 MINUTES)**

**Step 1:** Explain to students that they will be examining arguments about different solutions to mass incarcerations..

**Step 2:** Show students the video from the Manhattan Institute, "A Book Forum with Rafael Mangual." Ask students to take notes during the video either in Cornell style or focusing on the who, what, where, when, and why (5 Ws) of the topic and to fill out the argument he poses in the table in Handout 1. If students read the introduction chapter of the text as prework, you can ask them to compare what they learned in the introduction to the book talk.

**Step 3:** Upon completion of the book talk video, ask students to share what they think Mangual's main argument is.

**Step 4:** Add further contextualization to the discussion by sharing with students more information from his text that explains his points further. A teacher explainer summary of the text is included in the appendix.

## **HOMEWORK**

Have students read "[The Court of Mass Incarceration](#)" and fill out Barkow's argument in the table of Handout 1.

## **Day 2**

### **WARM-UP (5 MINUTES)**

**Step 1:** Have students list one thing that surprised them, that troubled them, or that they found interesting about the previous day's lesson.

**Step 2:** Have students share as a class.

### **ACTIVITY 1: ARGUMENT ANALYSIS (40 MINUTES)**

**Step 1:** Share with students that they will be engaging in an analysis of two more arguments posed about addressing mass incarceration. Explain that they will be comparing these two to the two they previously learned about in their homework and the prior lesson.

**Step 2:** Distribute or have students read online the articles “[What Is Case for Prison Abolition?](#)” and “[A Proposal to Reduce Unnecessary Incarceration.](#)”

**Step 3:** Have students in pairs split the articles to individually to read on their own and to fill out the chart on their own for their respective argument findings. Then have students share their takeaways with their partners.

**Step 4:** As a whole class, engage students in a discussion about the following questions:

- What does each scholar argue are the factors toward mass incarceration?
- How does each scholar justify their solutions toward mass incarceration?
- In your opinion, to what extent do you agree or disagree about the solutions argued for regarding mass incarceration?

### **ACTIVITY 2: MASS INCARCERATION INFOGRAPHIC PROJECT (REST OF CLASS SESSION THROUGH THE TIME TO COMPLETE THE PROJECT; RECOMMENDED TO COMPLETE AS HOMEWORK IN CONJUNCTION WITH REGULAR ADVANCED PLACEMENT READING HOMEWORK)**

**Step 1:** Introduce the project outlined in Sphere's Mass Incarceration Infographic Project.

**Step 2:** Provide students with the rest of class time to begin their project either independently or with a partner.

**Step 3:** Have students with a partner include a slide deck outlining the data they gathered about mass incarceration, the contributing factors, and their versions of solutions for it.

**Step 4 (optional):** Have students present their findings in another class session.

### **Exit Ticket (5 minutes)**

Revisit the chart as a class. Ask students to share what they have learned to demonstrate their growth in understanding of this topic.

### **Optional Extension**

Have students visit the following websites as either homework to discuss in the next class session or to include as supplemental reading.

- “[Returning Citizens Leverage Prison Work to Find Jobs](#)”
- “[Safety beyond Sentencing](#)”

- “The Mass Criminalization of Black Americans: A Historical Overview”

## Lesson Appendix

### **Summary of *Criminal (In)justice: What the Push for Decarceration and Depolicing Gets Wrong and Who It Hurts Most* by Rafael Mangual**

Rafael Mangual challenges the chief claim of prison abolitionists that America suffers from a mass incarceration crisis. He argues instead that the trauma suffered because of the failure to incapacitate repeat offenders should be the North Star of criminal justice policy discussions. He builds on the work of James Q. Wilson and argues that crime control is possible to achieve and should be the central national policy objective, particularly in the most marginalized communities (Brooklyn's Brownsville, Chicago's Austi, and Baltimore's Belair-Edison neighborhoods).

Mangual considers 1970s tough-on-crime tactics to be relevant and appropriate today. By contrast, he finds anti-police rhetoric and calls for decarceration and depolicing less useful. He notes that Black US residents have accounted for an outsized share of America's homicides for decades. He marshals the following key evidence to show the harm of the anti-police and anti-prison rhetoric: “while Black people already had the highest homicide victimization rate (19.5 per 100,000) of any group in 2019, the disparity grew even starker in 2020, when that number shot up to 25.3 per 100,000.”

Mangual rejects progressive arguments about economic, political, or social causes for minority overrepresentation in prison. Instead, he argues that entitlement and anti-social personality disorder are the best predictors of aggression and involvement in the criminal justice system. He suggests that “what drives criminal violence has a lot more to do with the anti-social disposition of violent criminals and street culture that elevates violence.” Only policing and incarceration, according to Mangual, can address these root causes.

Mangual also posits that “the most serious violent crimes are disproportionately committed by individuals with lengthy rap sheets and active criminal justice statuses, and many of these individuals could (and probably should) have been incarcerated at the time of the offenses in question.” Incapacitation can prevent crime for Mangual. He rejects the oversimplification that the “US has five percent of the world's population but nearly 25 percent of its prisoners.” For Mangual, such facile comparisons fail to account for the concentration of crime in certain communities. He notes that homicides in four American cities outpaced homicides in England, Wales, and Germany combined.

Furthermore, according to Mangual, postconviction imprisonment rarely matches the sentencing parameters for violent crimes. He cites a US Department of Justice study that shows that between 2003 and 2009, a minority (40 percent) of state felony convictions were of defendants subsequently sent to prison. He also places a spotlight on violent reoffenders. He notes that “the average number of prior arrests for cohorts of state

prisoners released in 2005, 2008, and 2012 ranged between 10.6 and 12.1. Additionally, as of 2018, more than 60 percent of state prisoners were primarily incarcerated for a violent or weapons offense. He suggests that these statistics may be an undercount because of plea bargaining.

Mangual is incensed that between 70.8 and 77 percent of inmates reoffend within five years of their initial arrest. Unmitigated recidivism is an argument against decarceration. Mangual argues that “decarceration advocates . . . focus on the subset of the prison population that doesn't belong behind bars, but what they don't grapple with is the larger subset of the general population that does.” Failure of unwillingness to incapacitate is, for Mangual, a major driver of America's crime problem. He cites a University of Chicago Crime Lab study that found that, on average, someone arrested for homicide or shooting had nearly 12 prior arrests and that almost 20 percent of Chicago shooters and killers had more than 20 priors.

In Chapter 3, Mangual turns his attention to pretrial detention. He observes that “of the 2 million or so individuals incarcerated in the US on a given day, approximately 631,000 of them are jail inmates and nearly three-quarters of those people are awaiting the disposition of their cases.” He concedes that a persuasive argument against pretrial justice can be made in the area of cash bail (“the problem with relying on cash bail is that it makes the question of pretrial release one of means rather than one of risk”). Still, he argues that bail reform involves trade-offs, namely public safety. Mangual cites a study by Princeton, Harvard, and Stanford university researchers that found that pretrial release increased the likelihood of rearrest prior to case disposition by more than 37 percent and the likelihood of a defendant failing to appear in court by 124 percent. Mangual would favor reform that the use of validated algorithmic risk assessment tools to empower judges to remand dangerous or high-risk offenders to pretrial detention, irrespective of the charges they face.

Mangual is unmoved by arguments that incarceration is “tearing families apart” (e.g., “approximately 17 million children are currently being raised without a father, a growing social problem that only perpetuates cycles of violence and crime”). For Mangual, “policy decisions driven by broad generalizations or the emotions certain unfortunate realities evoke” are meritless. Mangual instead argues that “exposure to highly antisocial fathers is extremely detrimental for children and associated with a host of negative life outcomes.” He finds the psychological effects of anti-social and criminal parents on children's outcomes the more compelling concern.

When Mangual discusses use of force in Chapter 5, he begins with the context of the Watts riot in 1965 and the Los Angeles riots in 1992. He finds “the tone of our police reform debate toxic” when it is limited to five most popular proposals: defunding the police, demilitarizing the police, abolishing qualified immunity, recommitting to de-escalation training, and diverting certain calls away from the police to mental health responders. He suggests that “the data on police shootings and other uses of force simply don't support”

an actionable pattern of behavior. Tragedies are individual affairs for Mangual. Mangual cites the 2018 study “Injuries Associated with Police Use-of-Force,” which analyzed more than a million calls for service that resulted in more than 114,000 criminal arrests. Police officers used physical force in just 1 in every 128 of those arrests, meaning that more than 99 percent of those arrests were completed without the use of any force. When Mangual widens the context for arrests to a national level, he asks the following question “in the context of almost 700,000 officers making more than 10 million arrests and conducting tens of millions of traffic and pedestrian stops, can you honestly say that the data on uses of force establish an institutional police violence problem?”

Mangual suggests that militarization is not driving the use of force. He cites a 2017 study that concluded that there is no “positive and statistically significant relationship between 1,033 transfers and fatalities from officer-involved shootings.” He concludes that police violence cannot be significantly reduced by limiting the use of SWAT teams or the access of officers to certain types of equipment. He also offers a contrarian view on no-knock warrants. Officer safety demands the use of “unannounced dynamic entry.”

Mangual is even more adamant on the question of qualified immunity. Mangual frames qualified immunity in terms of clear precedent of a clearly established civil right. Judging police conduct in light of a priori established civil rights is a fair standard, according to Mangual. Qualified immunity is a poor shield, according to a Yale Law Journal study by University of California, Los Angeles law professor Joanna Schwartz. Out of 1,100 cases filed against state and local law enforcement defendants under Section 1983 of Title 42 of the US Code, qualified immunity was a possible defense 83 percent of time and resulted in a partial or whole grant of dismissal 4 percent of the time. The real bugaboo should be indemnification (“the vast majority of American police officers work in jurisdictions that, pursuant to either collective bargaining . . . indemnify them against financial liability for damages awarded as a result of actions undertaken within the scope of their employment”).

With respect to de-escalation and mental health diversion, “there is little evidence in the peer-reviewed literature that crisis intervention training programs show benefits on objective measures of arrests, officer injury, or use of force.” Mangual indulges in some sociological conjecture in Chapter 6 when he blames the “tough-guy posture” of profiled Black men for escalation during police-involved altercations. For Mangual, anti-bias training for police would not reduce profiled stops (“Terry stops”). He also insists that “civilians didn’t have a particularly firm grasp of their right to terminate certain interactions with police.” In Chapter 7, Mangual finally engages race head-on. Racial gaps in sentencing are the result of urban reform policies of pursuing violent crime reductions through drug enforcement. He also notes that “in cities across the country, police chiefs, district attorneys, lawmakers, cops, prosecutors, and judges dedicated themselves to a mission of crime control.” The primary beneficiaries of crime declines “are people we’re told are singled out by the system for unfair treatment.” The unequal distribution of crime across America explains the unequal distribution of police attention and enforcement.

## Summary of *The Court of Mass Incarceration* by Rachel E. Barkow

Rachel Barkow argues that while the US Supreme Court justices may not have designed the American system of mass incarceration, they have, through their findings, nurtured its apogee. She notes that until the 1970s, the United States had a stable incarceration rate on par with other countries. Today, the US incarceration rate is more than five times what it was in 1972. She also highlights the fact that Black people make up about a third of the people incarcerated, even though they are 13.4 percent of the US population. Barkow insists that the Constitution is not silent in this matter of government overreach in criminal cases. Barkow argues that the Framers did not trust judges and did not think that judges would be sufficient protection against the possibility of state abuse in criminal cases.

She sees “constitutional regulation of all aspects of the government’s criminal power, from investigation to prosecution, from adjudication to the legislation defining punishment.” Barkow argues that the Supreme Court has been a critical player in opening the floodgates on admissions into jails and prisons and permitting lengthy sentences.” The Court “condoned coercive plea bargaining and permitted widespread pretrial detention.” Barkow also indicts the Court for its role in the enforcement of mandatory minimum sentences. Barkow names two seminal decisions: *Santobello v. New York* and *Bordenkircher v. Hayes*. She marvels the Court’s naivete in deciding that this erosion in civil liberties would not lead to “false self-condemnation.” Barkow observes that since *Santobello* and *Bordenkircher* were decided in the 1970s, guilty pleas have skyrocketed. Today, 98 percent of federal convictions are the result of guilty pleas.

Barkow notes that pattern holds up in state courts as well because of the threat of lengthier sentences:

*Defendants face sentences three times greater in federal cases if they go to trial. We have similar numbers at the state level. How can prosecutors credibly threaten sentences that are three times longer if a person just wants their right to a jury trial? How can that be anything other than an unconstitutional trial penalty?*

Barkow argues that because of the trial penalty, “we’re losing jury trials (the most valued of civil rights) and all the protections they bring against government overreach.” Plea bargaining allows for judicial turn whereas jury trials take time and make it hard “for the government to put people into cages and stigmatize them with the label of criminal.” Most insidious is the fact that the plea bargain process operates solely at the prosecutor’s discretion. Prosecutors and police do not have to share exculpatory evidence during plea bargaining. Sadly, “Congress and state legislatures now promulgate criminal statutes for a world in which plea bargaining is the overwhelming default mode of operation.”

Of equal concern is the precipitous rise in pretrial detention. Barkow notes that “we have about half a million people in America locked in cages without having been convicted of anything and without having pleaded guilty.” The ruling in *United States v. Salerno* opened the floodgates to this wave of mass incarceration. As Barkow notes, “The Court decided



that caging someone under the Bail Reform Act—in the exact same facility where people serve sentences after convictions—is constitutional even before conviction because the detention pretrial is regulatory in nature and not, in the Court's view, punitive." Barkow lists the collateral damage from widespread pretrial detention:

*When people are detained, they lose their jobs; they lose their housing because they get evicted for failing to pay rent; they lose custody of their kids. Their lives are in shambles, so it is that much harder to stay on a law-abiding path on release.*

Quoting from Justice Marshall's dissent in Salerno, Barkow reminds us that the Constitution "cannot protect us if we lack the courage, and the self-restraint, to protect ourselves." This is particularly true in the matter of lengthier sentencing. Barkow writes:

The Court has utterly failed to police sentence length, again in complete derogation of its duty under the Constitution, which has an entire amendment devoted to cruel and unusual punishments. A majority of justices have agreed that the Eighth Amendment prohibits excessively long sentences. Frighteningly and in contradiction of the language and history of the Eighth Amendment, we have had at least four justices—William Rehnquist, Antonin Scalia, Clarence Thomas, and Samuel Alito—who think no sentence of incarceration can be disproportionate.

The four examples of sentences did not violate its Eighth Amendment test that Barkow lists are heartbreaking:

- a mandatory life sentence for a defendant who committed three separate low-level theft offenses that cumulatively totaled less than \$230;
- a mandatory life sentence without parole for a defendant who did not have any prior record and whose only offense was possessing 672 grams of cocaine;
- a sentence of 25 years to life for an individual whose third strike under California's three-strikes law was the theft of three golf clubs worth roughly \$1,200, because the defendant had a record of prior offenses, including burglaries and a robbery;
- a 50-years-to-life sentence for an individual whose criminal history contained no violence and whose three strikes consisted of a petty misdemeanor theft and two separate incidents where he stole a total of nine videotapes worth \$150 from K-Mart.

Finally, Barkow brings into focus the Court's refusal to consider disparate impacts in criminal law enforcement—"from police stops on the basis of race to prosecutorial charging that disfavors Black people to sentencing disparities in non-capital and capital cases."

## Summary of *Dark Ghettos* by Thomas Shelby

Thomas Shelby argued in 2016 in his book *Dark Ghettos* that Black metropolitan neighborhoods with high levels of concentrated disadvantage should, on the grounds of justice, be abolished. He finds limits to the argument made by Angela Davis that prisons should be abolished. He favors thorough and comprehensive reform to abolition. He disagrees with abolitionists who insist that “reform efforts are not just ineffective but legitimize an inherently dehumanizing and unjust practice.” Shelby can imagine a world where we can rely on the police-court-prison apparatus, so long for instance that police were not armed with military-grade weapons and that prisons were not the primary form of crime control. Shelby believes that incarceration “under the right circumstances and in conjunction with other less harmful practices” can be worth its attendant risks and costs. Shelby’s book challenges public opinion about how best to combat crime and administer justice. He argues that public opinion was shaped by events in the late 1960s and early 1970s: “The volatile era of Black Power, when several Black radicals (many affiliated with the Black Panther Party) regarded themselves as effectively at war with the US government.” He names George Jackson, Huey Newton, Assata Shakur and Angela Davis as the leading proponents of this radical political vision. *Soledad Brother: the Prison Letters of George Jackson* stands out as a seminal work in this tradition. Shelby notes that Jackson rejects Martin Luther King Jr.’s nonviolent resistance “on the grounds that black people’s oppressors have no fellow feeling or sense of justice toward their subordinates.” Along with Shakur, Jackson asserts that Black self-determination is a “basic right.” Shelby observes that Black radicals trust neither the police nor the courts. Shelby writes:

*Prosecutors seek convictions on fabricated or flimsy evidence and use the threat of long sentences to extract unfair plea bargains. Judges deny bail or set it at unreachable heights. They also run trials in ways that favor the state’s case; and they impose excessive penalties upon conviction. Juries, when properly composed of peers, can sometimes be sympathetic. But more often they are overwhelmingly (if not exclusively white, strongly biased against black defendants, or manipulated by clever and unscrupulous prosecutors.*

Shelby quotes Jackson, who claims that behind bars, he underwent a political transformation, from someone with a “criminal mentality” to someone with a “revolutionary mentality.” Jackson and Shakur agree that “prisons are used as weapons in a genocidal war against Black and Third World people” and argue that “those relegated to prison as an institutional site of punitive incarceration (for example, San Quentin) [should be considered] ‘prisoners of war.’” Prisons, according to Davis, “are often used to maintain an unjust status quo and to put down any significant political resistance.” All three (Jackson, Shakur, and Davis) “set out to demonstrate that repression through incarceration.”

Shelby agrees with Davis that the United States grossly overuses punitive incarceration. He favors using “fines and property confiscation, community service and other work assignments, restitution and reparation, electronic monitoring, home confinement,

supervised probation, and the loss of certain privileges (for example, suspension of driver's license) for most criminal offenses." Shelby rejects the incapacitation argument for incarceration in most instances. He writes in Chapter 2 that "imprisonment cannot be permissibly imposed without satisfying due process requirements—just searches, freedom from coerced confessions, habeas corpus, rights to defend oneself against charges, access to legal counsel, impartial trials, fair sentences, opportunities to appeal court judgments, and so on."

In Chapter 4, Shelby entertains the idea of nonprofit prison privatization to expand noncarceral alternatives. He recognizes that an unintended consequence could be exploitation in commercial bail agreements and profit from electronic monitoring technology. He posits that "no one should gain financially from the suffering caused by imprisonment." For-profit prisons have no incentive to rehabilitate prisoners and a perverse incentive to promote crime and criminality. A nonprofit private incarceration facility could also be used to hold those charged with crimes but not yet convicted. The private organization could be held responsible for custodial care and for ensuring that prisoners appear for trial. Shelby insists that to reduce reliance on coercion and violence in the facility, it might be wise to permit only nonviolent offenders to be admitted to a private prison.

As an advocate for reform, he offers very specific next steps: 1) use-of-force rules and procedures could be altered with serious penalties for officers who fail to comply, including criminal prosecution; 2) certain uses of force (for example, chokeholds and other neck restraints) could be strictly prohibited; 3) reentry and reintegration conditions in wider society could be reformed in such a way that the general public is no longer indifferent to the mistreatment of prisoners; 4) mental health care should be available to all, affordable substance abuse treatment should be available to all; 5) restorative and transformative justice alternatives should be adopted to address interpersonal violence without sending people to prison. Shelby is not naive enough to imagine an end to crime.

## Handout 1

Scholar	Argument
Mangual	
Barkow	
Shelby	
Eisen, Subramanian, and Stroud's piece	