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Curriculum Units by Fellows of the National Initiative
2018 Volume I: Race, Class and Punishment

The Intersection of Crime and Immigration

Curriculum Unit 18.01.03, published September 2018

by Mark A. Hartung

Introduction

In this unit students will be investigating negative attitudes and connotations about “criminals” and “immigrants” by examining and comparing the development of both mass incarceration and current immigration issues. Through that lens and a look at relevant Supreme Court cases they will examine how government institutions protect the rights of immigrants. Students will then be asked to think about solutions. How would my students change and improve the current situation and how can they meaningfully communicate their ideas?

Students will practice critical thinking skills such as primary source analysis, selection and use of evidence, identifying historical significance and making connections. These critical thinking skills are necessary for students in my classroom and beyond and the relevant subject matter will keep them engaged throughout.

I currently teach at Herbert Hoover Middle School in San Jose, California. Students from the downtown area make up a diverse student body of approximately 1,100. 67% of our students are from low-income families and ~30% are identified as English Language Learners. The majority of my students are non-white. Hispanic students make up roughly 80% of the total number of students, ~10% are other students of color. The current California Dashboard notes Hispanic students behind other groups in several academic categories so creating a unit that speaks to and engages this group is essential.

How to best to reach students with a strong immigrant experience that need to learn about their rights, the importance of those rights, and develop critical thinking skills? This unit is designed to speak to all of those needs while discussing the intersection of immigration and crime that directly affects the Latino community.

Content Matter Discussion

The criminal justice system in the United States has an extensive reach. According to various sources there are roughly 2.3 million people currently held in a combination of local, state, and federal jails for a wide variety of offenses. Much has been written in recent years about the mass incarceration of people of color due

to get-tough policies and the war on drugs. Still more recently the media have been full of stories about the separation of and incarceration of children from immigrant families. According to the Prison Policy Initiative's latest data, one in five incarcerated persons are put away for a drug related offence and tens of thousands are being detained by ICE and other border related services. (1) What is it about American society that has led to attitudes that tolerate this high level of incarceration and accept the idea of immigrant as criminal? My students will begin the unit by analyzing this issue and reviewing and comparing these attitudes.

Family Separation Issues

Beginning in April of 2018 the Trump administration announced a zero tolerance policy involving immigration at the southern border. This created the separation of more than 2,300 children from their families as adults were detained and prosecuted. Sights and sounds of children crying for their parents sparked controversy and outrage. President Trump signed an executive order in June of 2018 to stop the separations and keep families together even as they continue to prosecute unlawful crossings. The process of reunification continues as of August 2018. (2)

These contemporary issues provide fertile ground for student discussion about constitutional rights, specifically the 4th and 14th Amendments. Immigration is a relevant issue and example for my students as they participate in this discussion about rights. The overview below will provide the necessary background to inform that discussion.

Families have been separated at the border before. A New York Times article states that there have been seasonal spikes in immigration at the southern border for decades. It was an issue for Bush, for Obama, and now for Trump. Trump floated the idea of family separations as early as March 2017 but dropped the idea after a backlash was directed at then Homeland Security Secretary John Kelly. (3) The issue, however, did not go away and neither did the idea of zero tolerance and separation.

The policy of zero tolerance was announced by Attorney General Jeff Sessions in April 2018. It did not specifically call for family separations but when whole families are taken into custody (as they would be under a zero policy mindset) guidelines recognize the children as unaccompanied minors. As such, they are then removed. This is in accordance with U.S. Customs and Border Patrol standard practices listed on their website. (4) According to Sessions "Having children does not give you immunity from arrest and prosecution." (5)

So if Obama also dealt with immigration challenges and also separated families why the uproar now? There are specific differences in family separation during the Obama and Trump years. David Lind, writing for VOX, states that President Obama took a **mostly** punitive approach while Trump took an **entirely** punitive one. Trump is separating families as a standard practice due to zero tolerance, while Obama was separating families only in specific circumstance such as when a father might be carrying drugs into the country. (6)

These differences create a much different scope and size. Between October 2017 and April 2018 (while Trump departments were still following Obama era patterns) there were only ~700 families affected by separation. But between May 7, 2018 and June 20th, 2018 there were ~2,300 families separated. Obama tried to hold families indefinitely but courts ruled that according to the 1997 Flores Settlement they could only be held for 20 days. Trump has asked his Justice Department to pressure the other branches into changing or ignoring the Flores Settlement so that families can be held indefinitely until their asylum or immigration hearing is held. Although Trump signed an executive order ending the family separations it remains unclear what is happening to previously separated children. (7)

Trump, who favored a more universally punitive approach than Obama was actually dealing with a smaller problem. In October through May FY2014 while Obama was president there were 380,416 total border apprehensions. For the same period in FY2018 there were only 339,278 and the numbers were steadily declining even as the zero policy was announced. (8)

Why would a United States president favor a more punitive approach to controlling immigration even as the immigration problem seems to be declining? Punitive approaches and incarceration do not have their roots in facts and reason. There are many reasons why a society, and the leaders of that society, would choose to punish when data that says it is unnecessary or unproductive. The start of the mass incarceration era in the United States illustrates that dynamic.

Mass Incarceration

Today the rate of incarceration in the United States is the highest in the world. This country out-incarcerates everybody including countries such as Iran, China, France, Germany and Japan. Not only does the U.S. lock up more citizens than liberal European countries; but also more people than countries routinely thought to be repressive like Russia and North Korea. (9) Why this situation exists and whom it affects is important to examine. In the 1960s two main movements began that would come together starting the era of mass incarceration that persists today. First, there was in fact, a rise in crime. That rise in crime and the reaction to it significantly changed the nations attitudes towards punishment. Second, there was a white backlash to the modest successes of the Civil Rights movement that saw the rise in crime as an opportunity to re-establish control for one segment of the population over another.

The backlash to the Civil Rights movement helps to explain the color of mass-incarceration. According to Michelle Alexander in *The New Jim Crow* Southern white conservatives purposefully created a link between the growing pains of civil rights and the crime in cities that Americans saw around them. Civil disobedience was a political act of protest, but was framed as a criminal act by conservatives. A 1963 protest in Birmingham (The Children's March) produced images of dogs attacking and fire hoses spraying protestors, many of them young children. These images would be almost universally viewed today as a protest reaction to the harsh segregation and racism in Alabama. In the 1960s however whites framed them as something caused by the law-breaking actions of the protestors themselves.

State and national politicians helped to promote this attitude lending it credence. Alexander quotes Richard Nixon (then Vice-President) as saying that the increasing rate of crime "can be traced directly to the spread of the corrosive doctrine that every citizen possesses an inherent right to decide for himself which laws to obey and when to disobey them." Segregationists used growing, visible protests as a justification for segregation, implying that integration causes crime. Courts trying to dismantle segregation and discrimination were labeled soft and lenient. Gains made in the Civil Rights Movement were seen by Southern conservatives as actions that rewarded the lawbreakers for their perceived criminal actions. (10)

This backlash coincided with rising crime rates in the 1960s to produce a perfect storm of government policy and public opinions. Government leaders in the late 60s had a ready-made scapegoat for rising crime rates. Jones and Mauer in *Race to Incarcerate: A Graphic Retelling* note three main reasons for the rising crime rates of the 1960s. There were large numbers of baby-boomers that were growing into the 15-24-age bracket that tends to commit more crime than others. Heroin became epidemic in the United States, particularly in cities, during the 1960s. There was also a large-scale migration of people into American cities. The Great Migration saw roughly five million African Americans move north to places such as Detroit, Oakland, Washington D.C., and other major urban areas. (11)

Starting in roughly '64 with the Goldwater campaign Republican politicians helped to create and continue the tough on crime attitudes. According to Nixon advisor John Erlichmann the Nixon campaign for president had two main enemies in hippies and African Americans. Their strategy for dealing with both was the same. "We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news." (12)

Their strategy worked according to a 1969 poll that found that 81% of Americans believed that law and order had broken down and the majority blamed "negros who cause riots" and "communists". Concern for crime itself was, of course, not racist but the reaction and outcomes to that concern does reflect a racial bias and whites are far more likely to support strictly punitive measures. (13)

But it was not only whites calling for an increased response to crime and a tougher approach to law and order. Forman notes in *Locking Up Our Own* that in African American neighborhoods (specifically Washington, D.C.) many African American leaders were also calling for increased responses to rising crime. The heroin epidemic was hitting black neighborhoods hard and local officials and residents of those neighborhoods were asking for help in dealing with that crisis. (14) The 1960s and the decades that followed saw increasingly stringent and punitive attitudes toward crime develop in the United States.

In the 1970s New York State passed drug laws that created harsher mandatory sentences and limits on plea bargains, increasing incarceration. The success of New York led to similar laws in Massachusetts in 1975 and Michigan in 1977, and subsequently other states. The Federal government followed suit with the Federal Sentencing Act in 1984, which promoted punishment/imprisonment with little care for the circumstances of the case. (15) Ronald Reagan, elected in 1980, intensified the war on drugs that was driven mainly by politics. This led to a rise in drug prosecutions unrelated to any actual increase in drug offenses.

The arrival of a new drug continued the tough on crime rhetoric and actions. Crack cocaine descended on American cities in the mid 1980s. Fears of this epidemic were driven mainly by media coverage of several key events, including the death of basketball star Len Bias. Reports that Bias had died of an overdose of crack just after being drafted by the Boston Celtics and signing a huge endorsement deal reinforced the idea that society must remain tough on crime and tough on drugs, and it led to changes in the way crack crimes were sentenced compared with powdered cocaine. Because it was believed the crack cocaine was more dangerous, the sentences for that form were many times tougher than for the powdered form. Even though it was later shown that Bias had not been using crack the images and ideas had been put out there into society could not be withdrawn.

Politicians again responded to the ratcheting up of concern with another law, the Anti-Drug Abuse Act of 1988, which created Federal mandatory sentences. (16) During this period the government selectively ignored data that did not play into their narrative about increased incarceration. A 1983 report by the Reagan Justice Department showed that jailing more people did not, in fact, reduce crime. It only increased the prison population. This report was mostly ignored. Instead the government focused on a 1987 report that showed putting a single offender behind bars could save taxpayers \$405,000. The government could be seen as tough on crime and it was saving money all with one strategy of locking up more and more offenders. (17)

The strategy continued into the 1990s. More prisons were built and spending on corrections in the Reagan-Bush era went up a whopping 521%, while spending on employment and training was cut in half. (18) The election of Bill Clinton in 1992 gave the Democrats a chance to change course but the nation as a whole still

avored the get-tough attitudes and policies. Clinton decided that he needed to be sure that he and his party got credit for being tough on crime so the War on Drugs continued. His administration began to work on a comprehensive crime bill even though his own justice department published statistics showing that 36% of jailed drug offenders had a limited criminal history, were non-violent, and had minimal roles in carrying out the crimes that they were associated with. (19)

In order to reinforce his tough on crime reputation the Clinton administration passed a comprehensive crime bill in 1994. It was heavily tilted toward prison and punishment. Seventy-three percent of the funding in the 1994 bill was earmarked for prisons and police (including money to lock up “illegal aliens”, something discussed below), and only twenty-seven percent for prevention. (20) The Bush years of the 2000s would echo the Clinton years in some respects. Although coming into office claiming to be compassionate he would also adopt the tough on crime rhetoric and actions for most of his presidency. The Federal prison population grew during those years at roughly 3x times the state prison population. Prosecution and sentencing strategies and actions remained roughly consistent with what had been done during previous decades. (21)

Has mass incarceration been effective in reducing crime? Even though crime rates have fallen the data says no. From the start of the mass incarceration era, roughly 1970, the prison population has been steadily growing. The more time that passes, the more people in jail. But that is not the reason that crime rates are down because crime rates have not fallen in that same linear fashion. Crime rates were up in the 1970s and then declined between 1980 and 1984. From 1984 though 1991 crime rates rose again, then began to decline again in 1992. Burglary is down the most, but the number of burglars in prison has gone up the least. New York City saw a dramatic reduction in crime in the 1990s, but its prison population grew much less than the national population and its jail population went down. (22) If the reductions in rates of crime are not related to the increases in the prison population then why does the United States continue to lock up more people than any other country?

Looking at who gets jailed provides some insight. Forty percent of the prisoners in the United States are African American and twenty percent are Latino, (23) but in the general population African Americans made up only 13.4 percent in 2017 while Latinos made up 18.1 percent. (24) This discrepancy is due to specific and lingering racism and the criminalization of African Americans that began after the end of the Civil War. Vagrancy laws that made it illegal not to work were applied selectively to African Americans, creating a new class of criminal. (25) In the current mass incarceration era, racial profiling has meant that African Americans are more likely than others to be stopped, searched, arrested, and enter the system. (26) Criminal racism can be seen in the reaction to changes in marijuana habits and laws. In the 1950s when Americans thought of this drug as something that Mexicans and black people used, penalties for possession ranged from two to five years. In the 1960s marijuana became prevalent on college campus and was being smoked by more and more white people. By 1970 the penalties were lowered and enforcement efforts had dwindled as well. (27) Overall drug use by Blacks and Whites is not significantly different but looks and is treated differently (28):

	African American	White
Location	visible activity on street - easy to police	more private use in homes - harder to police
Form	crack cocaine	powder cocaine
Venue	Federal courts	State courts
Punishment	longer sentences/ fewer treatment options	shorter sentences/ more treatment options

Jones and Mauer suggest a number of changes that would reduce the number of people imprisoned due to tough on crime policies, people that are disproportionately African American. Shifting from punishment and

prosecution towards treatment, increased economic opportunities, more judicial discretion in sentencing, improving community/police relations are all items mentioned that can and should be pursued to change the status quo and end the mass incarceration era. (29) Although many in the African American community originally called for action against rising crime, Forman notes that they wanted not only more police to make neighborhoods safe but also better schools, more opportunity, and better housing. This has been referred to as a “Marshall Plan for urban America.” Unfortunately what they got was more police and tougher reactions to crime, but none of the other benefits.(30) In looking at the Jones and Mauer solutions it appears that they are calling for the speedy delivery of the rest of the package, and rightly so.

Crimmigration and Cycles of Hispanic Nativism

Mass incarceration shows that society will punish and lock away people for reasons related more to racism than crime, continuing even when presented with evidence that a more effective solution lies elsewhere. Alexander wrote that “What has changed since the collapse of Jim Crow has less to do with the basic structure of our society than with the language we use to justify it.” (31) In the United States immigrants are also affected by this mindset as the country began to link the idea of immigrant and criminal.

According to Yolanda Vazquez in *Crimmigration* the United States remains “categorically unequal.” (32) She notes disparities between Latinos and whites in areas of incarceration rates, poverty rates, unemployment rates, and in the area of detention and removal in the immigration system. Latinos make up over 90% of those impacted under U.S. immigration laws. Society condones this based on attitudes that echo the attitudes towards the civil right protester as criminal. Some believe that that like criminals the immigrant’s predicament is of their own making. Others feel that those detained or deported represent some threat, therefore their treatment and removal is justified.

The belief by American society that the immigrant is somehow criminal and must be isolated or removed has come to be called *Crimmigration*, a term developed by legal scholars beginning in ~2006. Similarly to mass incarceration it began to develop in the 1960s as a backlash to the Civil Rights Movement. In an intentional effort to retain the dominance of white America there was a need to limit the number of non-whites entering the country. Because of changing attitudes about race and racism it was no longer acceptable to overtly discriminate, so attempts to accomplish the retention of White dominance used immigration status as a stand in for race. (33)

Another similarity between mass incarceration and Crimmigration is the language used by those in power to establish and perpetuate the system. Similar to the language of Nixon and Goldwater the Crimmigration public debate centered on threats to community safety and national security and created rhetoric linking immigrant to criminal. Department of Homeland Security actions reinforced this mindset with their rationale and labels – criminal alien and illegal alien. (34)

A negative attitude towards immigrants has deep roots in the United States. Webster defines nativism as a *policy of favoring native inhabitants and opposed to immigrants*. In this ‘nation of immigrants’ nativism has persisted from pre-colonial times to the present. Nativism directed towards Latinos begins prior to the Mexican American War and continues today. What is unique about Latino nativism is that at the same time society wants to eliminate these immigrants they are also needed as a labor source. This push/pull type of attitude creates ongoing cycles of attraction and repulsion of Mexicans and Mexican Americans. Because nativism leads to and influences Crimmigration my students must have an understanding of these cycles.

Benjamin Franklin had such a dim view of German immigrants in the 1700s that he commented they would

“shortly be so numerous as to Germanize us instead of Anglifying them.” (35) Continuing into the 19th Century Americans with an English background had negative feelings about immigrants who were not Protestant, or who were not from Western European countries, and discriminated against both Irish Catholics and German immigrants. However, Feagin notes that by the mid-19th Century these same immigrants were critically important in filling jobs at labor-intensive factories. He states, “every time that nativists have succeeded in getting restrictive legislation, business interests needing cheap labor have found ways around the laws.” (36) Resisting immigrants because they would upset the balance of White supremacy but needing immigrants as a labor force is the central story of the Mexican/U.S. border. Gilbert Paul Carrasco calls these cycles “Invitation and Exile.”

The current Mexican/U.S. border was created in 1848 with the Treaty of Guadalupe Hidalgo that ended the Mexican-American War. As originally written Mexican citizens living in the newly transferred territories were entitled to keep their lands and access United States citizenship if desired. What developed, however, was not kind to those Mexicans who stayed and tried to exercise their rights. In order to accept U.S. citizenship one had to renounce Mexican citizenship. Accepting American citizenship at that time meant accepting the limitations on American citizenship, namely that it was available only to white males. (37) This limitation was on full display at the convention called to try and create a constitution for California statehood.

Debating who could and could not vote created a clash since in the original U.S. only white males could vote. Californios who had given up Mexican citizenship expected that the right to vote was part of the package, but debate quickly centered on whether or not they were “white”, and/or whether or not they were “white enough.” An amendment to extend the vote to every male citizen of Mexico created opposition from a delegate originally from Virginia that doing so could compromise the racial tradition of citizenship in the United States. He was concerned “that citizens of Mexico that had become citizen of the United States should be placed on the same footing with ourselves.” (38) Another delegate originally from New York disagreed offering that the former Mexican citizens were acceptable because they were *close enough* to white. Both comments show that citizenship and voting were thought to be linked with, and privileges of, whiteness.

Within a year of the signing of the Treaty of Guadalupe-Hidalgo Federal, State, and territorial courts refused to uphold the law. The lawlessness of the Gold Rush contributed to this climate and ultimately most Californios were stripped of their land, their wealth, and their rights. (39) Though the Gold Rush would not have been successful without the mining technology that the Mexicans brought to California their technological contributions did guarantee acceptance into American society. Hostilities against Mexicans during the Gold Rush took the form of threats, violence, and laws like the Foreign Miners Tax. (40) Life in the region closest to the new border remained mostly unchanged, however.

In the early years after the war there was no physical barrier, those that lived in the border area continued to operate as one economic region. Workers moved from one side to another, as needed, crossing and recrossing the new border to fill changing labor demands without much thought or attention. (41) Further from the border where the adjustment was not as peaceful we still see Latinos filling labor needs in the United States early on. Carrasco notes Mexicans filled low paying and labor intensive jobs, (just as they do today) including ranching, agriculture, laying railroad tracks in the Southwest, and mining. Working conditions then echo those of today. Because the need for labor was so great many employers resorted to extreme tactics to keep workers. In the semi-permanent sugar beet industry, growers would withhold pay during slack periods to guarantee that laborers stayed close and ready. (42) Immediately after the treaty was signed then we see the birth of a pattern that persists today. Racism towards the non-white Latinos even as labor shortages ensure that Latinos are crossing the border to fill labor needs.

Patterns of invitation and exile, once established, continue to the present day. My students will research and demonstrate these patterns. According to Carrasco, Mexican immigrants were generally welcomed into the United States as laborers until the 1930s and the Great Depression. (43) Hing notes that labor shortages were so great during World War I that a provision in the 1917 Immigration Act was set aside just for Mexicans to facilitate their continued participation in the U.S. labor market. This happened even as other immigrant groups that had already supplied cheap labor were being excluded, such as immigrants from China and Japan. White growers preferred Mexicans because they were willing to work for low wages and would work only temporarily, then return home. Because of this pattern it was assumed they would be less troublesome than other groups. (44)

With the start of the Great Depression Mexican workers found themselves out of work and unwanted. Previously available jobs were going to whites now desperate enough to take them. Mexican workers, critical to American business prior to the Depression, became so unpopular that they were driven from the country through a combination of government policy and citizen vigilante action. Some of these were Mexicans that had lived in the United States for decades with established homes and U.S. citizenship. Through a combination of coercion and duplicitousness over 400,000 Latinos returned to Mexico during this period of time, most without any due process, and thousands of them U.S. citizens. (45)

When the end of the Great Depression coincided with the start of World War Two the need for labor again began to rise. In response the Mexican/Latino workers were not only welcomed back into the United States but also actively encouraged to come. Aware of the difficulties faced by Mexicans and Mexican Americans during the Depression years the Mexican government sought to protect its citizens and entered into a formal labor agreement known as the Mexican Labor Program, or Bracero Program. Under this program Mexico agreed to allow workers into the United States on temporary, renewable assignments and had some control over working conditions.

Violating these conditions was supposed to result in suspension from the program, which meant losing valuable workers. Unfortunately for the workers themselves these conditions were almost never enforced. Workers dealt with discrimination, poor food and housing, unauthorized deductions from their wages and exposure to pesticides and other chemicals. My students will observe that these same conditions persist when they begin to look at the struggles of Huerta, Chavez, and the United Farm Workers in the 1960s. The Bracero program initially ran from 1942 until 1947. (46)

Following the end of the official Bracero program economic conditions in Mexico and the U.S. growers continuing need for labor sparked a rising tide of undocumented workers. Concerns about these undocumented workers forced both countries to agree to new Bracero programs in 1951 and 1954, but the undocumented continued to be a part of the labor force. When undocumented workers started branching out from agriculture and taking industrial jobs American labor unions began to protest this as destructive to their workforce (which was mainly 'white' and 'American'). In response to growing complaints the government began a new crackdown on illegal immigration and started to once again deport large numbers of Mexicans.

In a program called Operation Wetback the U.S. combined increased border security with deportation. American citizens of Mexican descent were also sometimes deported and some of those affected were denied the opportunity to try and prove their citizenship. This program routinely denied American citizens their constitutional rights and protections and ultimately was responsible for the deportation of over 3 million people. It also ran concurrently with another Bracero program. This means that the American government, in order to satisfy both agricultural growers and industrial unions, was importing workers and deporting workers

at exactly the same time. (47)

Crimmigration means that immigrants are being incarcerated at high rates, but to what effect? Figures available from 2012 show that over 419,000 people were removed from the United States and that 199,000 of those were labeled criminal aliens. However, there is little evidence that this high rate of deportation is due to any increased criminal activity. Studies show that immigrants are less likely, not more, to commit crime than citizens and that the trend is moving downward. Of the crimes that immigrants are involved with the majority are non-violent including traffic offenses and immigration related offenses. Rates of deportation continue to rise as rates of unauthorized migration fall, including unauthorized migration of Latino populations. Vazquez points out that the Latino rate of entry has fallen twenty-two percent since 2007. (48) Immigration detention and incarceration is a growing problem as well, much like mass incarceration in general.

Vazquez helpfully puts the immigration situation in perspective by offering some comparative data. As mentioned above the number of people detained related to immigration matters exceeded 400,000. As of the 2015 publication of her work the number of immigration related detainees represented twice as many as those housed in the Federal Bureau of Prisons. Along with the largest general prison population in the world the United States also has the largest immigration detention system in the world. (49) A starting point for students to research and compare data would be the website of the Prison Policy Initiative and their Whole Pie reports. (<https://www.prisonpolicy.org/reports/pie2018.html>) Here students can see the numbers for themselves, make comparisons and begin to draw data driven comparisons and conclusions.

Immigrant Rights and Supreme Court Decisions

The foundation of Supreme Court thinking about immigration comes from the late 19th Century. In *Chae Chan Ping v. United States* (1889) the Court decided that Congress had sovereign power to decide matters of immigration, that it could decide those matters based on race, and that those powers were beyond the court's power of judicial review. This doctrine came to be known as plenary power. In *Fong Yue Ting v. United States* (1893) the court upheld a requirement that Chinese immigrants register with the Federal government and that aliens could be returned to their countries based solely on race. (50)

Laws written by Congress after this ruling and subsequent court rulings were all consistent with the idea of plenary power. This ability of Congress to make immigration laws immune from the review powers of the Supreme Court continues with only slight modifications today. As recently as 1982 the court reaffirmed plenary power with the *Landon v. Plascenia* ruling. In its decision the Court stated that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative. (51)

Because immigration and border activity is not standard criminal enforcement (think plenary power) the protections of the 4th and 14th Amendments are applied inconsistently. In *Almeida-Sanchez v. United States* (1973) a Mexican citizen holding a valid work permit was stopped at a roving checkpoint 25 miles from the border. The search of his car, made without probable cause, a warrant, or consent, uncovered marijuana and resulted in his arrest and conviction. The Court decided that the search of the car did in fact violate the 4th Amendment. The court would rule on another case involving a moving car and checkpoints in *United States v. Brignoni-Ponce* (1975). In this case the person's car was stopped solely because the people in the car looked like they were of Mexican descent. Upon learning that the occupants were undocumented they were arrested. In this case the court decided that it violated the 4th Amendment to stop a car simply based on the appearance of its occupants without probable cause.

The court began to reduce 4th Amendment protections in immigration related cases after *Brignoni-Ponce*, however, immediately backing away from the limited protections granted. In the *United States v. Martinez-Furte* in 1976 the court appears to have been swayed by increasing numbers of immigrants and the governments increasing inability to contend with these immigrants. Hing states “the Court was willing to give more latitude to Border Patrol officers because of claims that undocumented Mexican migration was getting out of hand. (52) In *INS v. Lopez-Mendoza* (1984) two men who were Mexican citizens were arrested and then ordered deported. The two men challenged the ruling contending that their arrests violated the 4th Amendment. Here the court did not extend 4th Amendment or other constitutional protections because the case was civil in nature rather than a criminal trial. The court stated that the goal of a deportation proceeding is not to punish, but an attempt to put an end to an ongoing illegal situation.

In the more recent case of *Zadvydas v. Davis* (2001) the Court held that an alien facing deportation (after the hearing and decision to deport) could not be held indefinitely without violating the constitution. Justice Breyer wrote for the majority that “Once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all persons within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent.” (53) Here we see some mitigation of the power of Congress in the area of immigration, but unlike *Brown*, which totally overturned *Plessey*, *Zadvydas* is a fairly narrow ruling applying to one aspect of immigration law. It reduces plenary power somewhat but does not eliminate it. The idea that Congress can and should make immigration law without judicial review getting in the way continues. Immigrants have fewer protections because of several key (and seemingly inconsistent) court decisions and the continuing doctrine of plenary power.

Creating and Communicating Solutions

The final part of this unit is a discussion and project about solutions. What can my students say and do about immigration to change lives in the San Jose area and beyond? Most of my students are Latino so many of them will be touched by this issue directly, either experiencing it themselves or through a family member. I will review with my students the issue of the family separations (see above) to reinforce the need for change. Students will then review various examples of activism , especially student activism, to see what resistance and change could look like to them.

Sanctuary cities and states are one way to show students how change can be created. A good resource for looking at and mapping sanctuary cities is <https://cis.org/Map-Sanctuary-Cities-Counties-and-States>. This site and others like it could be used to create a visual or map activity for the students that would touch on their multiple abilities and demonstrate further what agents for change exist. Most students, however, will not be able to directly affect a sanctuary city, so we will examine other examples.

The primary instrument of personal and direct attempts at change has been the protest march and related activities. In 2006 there were multiple large-scale demonstrations to protest the Sensenbrenner Bill that would have criminalized the offering of assistance to any person in the country illegally and seeking medical attention or food and shelter. Protests arose in several different cities including Chicago and Los Angeles. On the May 1, 2006 “Day Without Immigrants” there were approximately half a million people in the streets protesting and calling for a path to citizenship. The bill itself was defeated but no comprehensive immigration reform developed, so some observers concluded that the marches in 2006 were unproductive. (54)

According to Engler and Engler however the 2006 demonstrations actually created positive results. During those protests a common refrain was “Today we March, Tomorrow we Vote.” In the 2006 mid-term election

the Latino community voting for Democratic candidates in much higher numbers and rejected the Republican Party's immigration attitudes. Those same young people then continued to keep pressure on their elected officials. In June of 2012 Latino activists began a series of sit-ins and hunger strikes at Obama's re-election campaign offices calling attention to immigration issues, specifically the DREAM Act. Roughly two weeks later the President directed the Justice Department to change the manner in which it was enforcing the law, effectively creating the DACA Program. (55) Demonstrations and protest might not yield immediate results but they can affect and inspire a generation of people who will not stop fighting.

Another example took place in Milwaukee, Wisconsin to protest local law enforcement's cooperation with President Trump on deportations. More than 30,000 people participated in another 'Day Without Immigrants'. Roughly 150 businesses in the Milwaukee area were closed down showing the importance and reach of immigrants. The previous year a similar protest was organized in an effort to defeat an anti-sanctuary city bill, which was then defeated. (56)

Examples of student activism abound. A recent example involves the Parkland, Florida school shooting survivors. Students should read about how the March 14th 2018 walkout affected their local community and school. At Hoover and other local Middle and High schools students staged walkouts of varying levels of intensity. A search of local media coverage will provide primary sources in most areas of the country that students can review and discuss.

Another example comes from Sammamish, Washington where two middle school girls arrive early and take their positions at the front door of the school. There, as each student arrives, they offer a greeting for each student including high fives, smiles, compliments and other kind words. The girls stress that these greetings are for everyone regardless of any other status or label at the school. The confident and less confident, popular and less popular, athlete, band kids, etc. (57)

One specific example at Hoover involved a group of students from the Rainbow Community. They wrote letters to community leaders asking them to come out in support of LGBTQ+ students on National Coming Out Day. The County of Santa Clara took notice of this hard work and a County Supervisor came to Hoover to participate in a special ceremony. Students and staff spoke about the importance of embracing diversity on Hoover's campus, and were presented with an official Proclamation. Students could take similar action in support of equitable treatment of immigrants and immigrant families.

Other local student activism, focused on Hurricane Harvey relief. Local schools raised money and supplies to be donated for relief efforts in the Houston area. One local Middle School "adopted" a similar Houston area school to focus their efforts and students demonstrated their activism by raising money, buying gift cards, and writing letters of support.

Students will work together to brainstorm ideas and then choose what they want to try and work on to create positive change for immigrants. Their final task will be to develop a project and then write to our Congresswoman showing what they have learned and communicating their solutions.

Teaching Strategies

Structured Academic Conversations / Pair Work (Speed Dating)

Primary sources will be analyzed with Pair Activities and Structured Academic Conversations (SAC), which prompt pairs of students to look at different sets of primary sources and then share information and develop conclusions or connections between the sources. The SAC has a specific format that involves all students, especially those with confidence or language challenges who are guided through a set of increasingly rigorous steps with the necessary supports. Individual reading is augmented by pair discussion. This allows all students including those identified as ELL the opportunity to practice and clarify their thoughts prior to sharing. A Speed Dating simulation also provides opportunity for collaboration. The last step of both tools is to write a reflection that answers a specific prompt. The pair analysis, sharing, and whole class discussion ensures students arrive at this point well prepared.

S.O.A.P

A S.O.A.P. tool will be used which encourages students to look at **s**ource, **o**ccasion, **a**udience, and **p**urpose and is a more independent activity structure for primary source analysis. Similar tools could accomplish the same goals such as SOAPstone, APPARTS, TACOS. Teachers can substitute these to avoid time spent learning a new tool. The goal the S.O.A.P. tool is to lead the students from specific main idea questions into more critical thinking questions.

Historical Thinking Skills - Evidence and Historical Significance

Evidence - In their writing students will be expected to make a claim about sources and support that claim with evidence/examples.. This is one area where students practice their historical thinking skills. Developing historians need to be able to analyze a source, make a claim about what that source is saying, and support that claim with evidence.

Historical Significance - Another important historical thinking skill is prioritizing and choosing what to include and exclude. Students need practice opportunities in selecting what is most important and communicating those choices. Activities that support this set of skills include presentations, timelines, or other projects that involve creating output from a set of data that requires students to narrow down and choose the most important items to be included.

Student Activity Samples

Activity Number One - Mass Incarceration Timeline (could also be used to show development of Crimmigration)

Objective – Students can discuss the development of mass incarceration by identifying main events and correctly sequencing them.

Standards – CA HI 1 Students explain the central issues and problems from the past, placing people and

events in a matrix of time and place and CA CST 1 Students explain how major events are related to one another in time.

Materials -

Race to Incarcerate: A Graphic Retelling

Access to additional online sources

18 x 24 paper and various art supplies

Overview - The main goal of this activity is to have students selecting the events that they believe are important from a larger list and then explaining and supporting this choices with a reasoned argument. Students will create an annotated timeline that displays at least 5 of the major events. Pass out the student directions below or reword them as necessary for your students' unique needs and circumstances.

Directions -

Part One - Timeline: Working in pairs create an annotated Mass Incarceration timeline. Use at least 5 of the events from the list provided. Your neat and carefully thought out finished product must include:

- Names on the back
- An overall title you create
- 5 correctly sequenced events including dates
- description of each (the annotation)
- a picture or symbol for each event
- use of color to enhance your information
- use Race to Incarcerate and *at least* two other sources

Part Two -Historical Significance: Write a one-paragraph reflection that explains and supports why you choose the items that you did. What was your decision making process like and how did you decide importance? Discuss and share ideas with your partner but create and turn in your own unique paragraph (don't copy theirs!).

Choose From:

1988 Anti-Drug Abuse Act

Rockefeller Drug Laws

Crack Epidemic Begins

Civil Rights Movement backlash

1994 Crime Bill

Heroin

Election of Ronald Reagan

Nixon Campaign and Election

1984 Federal Sentencing Act

1960s Crime Wave

Activity Number Two: - Immigrant Story Speed Dating

Objective – Students can teach each other about the immigrant experience by reading and listening to oral histories in a groupwork setting.

Standards –

Research, Evidence, and Point of View 4: Students assess the credibility of primary and secondary sources and draw sound conclusions from them.

8.8.6 Describe the Texas War for Independence and the Mexican-American War, including territorial settlements, the aftermath of the wars, and the effects the wars had on the lives of Americans, including Mexican Americans today.

Materials –

Immigrant Oral Histories (<https://myimmigrationstory.com>)

Speed Dating Organizer

Overview –

In this activity students will both learn and teach about the immigrant experience by reading oral histories and sharing them with classmates interactively. My class of approximately 30 students will be divided into three sections with each section following the same steps concurrently. A graphic organizer should be used to aid students in their initial research and for note taking during the activity. You can use this basic structure and add a space for additional notes or create your own:

1. Give students one oral history and one graphic organizer (sample below).
2. Students read their history taking notes, preparing to share with classmates. – approx. 10 minutes
3. Seat students so they form pairs directly across.
4. Have students take turns telling their immigrants story in 1st person from their notes. – approx. 2 min each
5. After each round one students moves and one remains, forming new pairs for the next round.
6. As a wrap up/closure activity have students write a one paragraph reflection form the following prompt:
 - *How are the immigrants in these stories both alike and different? Use specific examples to support your answer*

Activity Number Three - Student Solutions

Objective – Students can create and communicate a solution to one of the issues of Crimmigration by identify action steps and presenting those steps to their class and community.

Standards – CCR Anchor Standard 2: Write informative/explanatory texts to examine and convey complex

ideas and information clearly and accurately through the effective selection, organization, and analysis of content.

Materials – Students will use research notes, previous assignments, and ongoing new research into primary and secondary sources. Students should be given graphic organizers that assist in planning, research and note taking, presentation design, and task scheduling as well. Chunking the assignment and providing organizers to help students create and track interim deadlines will contribute greatly to a successful outcome, especially in Middle School.

Overview – Part One - In this final assignment students will work in pairs and use what they have learned, supplemented by additional research, to identify specific problem areas that they want to change in the area of Crimmigration. After identifying the issue they will propose a solution or solutions that will be beneficial. Class time will be used for brainstorming and initial research and discussion; the project will be completed using a combination of class time and homework assignments. The presentations, which will be given in class, will consist of using both visual and text to clearly communicate the problem researched and the solution proposed. Solutions will further be required to specifically include what actions students can take to effect change. Pairs will be given a choice of preparing a poster or creating an electronic presentation, which they will then present in detail to their classmates.

Overview – Part Two – In addition to communicating their information to classmates, students will also be asked to communicate to a larger audience. They will write an action letter to a local representative such as a U.S. Congressperson or Senator. The letter will summarize their class presentation and must additionally state specific actions that the students would encourage their representatives to take on behalf of those adversely affected by Crimmigration.

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Implementing District Standards

Specific California Content Standards

8.1.2 Analyze the philosophy of government expressed in the Declaration of Independence, with an emphasis on government as a means of securing individual rights (e.g., key phrases such as “all men are created equal, that they are endowed by their Creator with certain unalienable Rights”). *My students will look at the idea of all people being created equal as they learn about the race and class issues of both mass incarceration and immigration. They will also examine the government as a protector of rights when they analyze Supreme Court cases.*

8.2.6 Enumerate the powers of government set forth in the Constitution and the fundamental liberties ensured by the Bill of Rights. *Learning will connect to this standard by applying the 4th Amendment (unreasonable search and seizure) and the 14th Amendment (due process and equal protection) to treatment of immigrants in the United States by reviewing Court cases to determine what rights are extended or denied to people in the immigration process.*

8.8.6 Describe the Texas War for Independence and the Mexican-American War, including territorial settlements, the aftermath of the wars, and the effects the wars had on the lives of Americans, including Mexican Americans today. *This standard will come into play as students review the Treaty of Guadalupe-Hidalgo and the promise of citizenship for newly created Mexican-Americans. Students will learn that the war end of the Mexican American War and the broken promises of the subsequent treaty indeed had a lasting effect on the lives of Mexican Americans that continues into the present.*

8.12.7 Identify the new sources of large-scale immigration and the contributions of immigrants to the building of cities and the economy...and discuss the new wave of nativism. *In this unit students will uncover both the historical and ingoing need for cheap labor that continues to fuel cycles of both immigration and nativism.*

California Historical Analysis Skills

Research, Evidence, and Point of View 4: Students assess the credibility of primary and secondary sources and draw sound conclusions from them. *Students will be reviewing and analyzing a number of primary and secondary sources as they travel through this unit including transcripts of Supreme Court cases, newspaper articles and both written and visual texts. At all points students will be actively engaged with these sources, being asked to draw their own conclusions.*

Historical Interpretation 1: Students explain the central issues and problems from the past, placing people and events in a matrix of time and place. *My students will be asked to create several annotated and illustrated timelines and presentations that will generate practice opportunities for the skills in this standard.*

Historical Interpretation 2: Students understand and distinguish cause, effect, sequence, and correlation in historical events, including the long- and short-term causal relations. *Students will be given practice opportunities in making relevant connections between the two central ideas as they relate to individual rights and government protection of those rights which directly touches on the correlation theme in this specific standard.*

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