Ethnicity and Criminal Justice in the Era of Mass Incarceration

A Critical Reader on the Latino Experience

Martin Guevara Urbina
Sofía Espinoza Álvarez

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A Critical Reader on the Latino Experience

By

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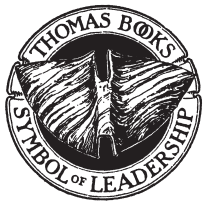
(With Eight Other Contributors)



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ABOUT THE EDITORS AND CONTRIBUTORS

Editors

Martin Guevara Urbina, PhD, a native of San Miguel de Allende, Guanajuato, México, is a Mexican American author, writer, researcher, professor, and speaker who, as a sociologist and criminologist, has engaged in an intensive academic research, publication, and discourse agenda designed to provide readers with evidence-based information of ethnic and racial minorities in the United States, with an emphasis on the exploration of the Latino experience.

Dr. Urbina is Professor of Criminal Justice in the Department of Natural & Behavioral Sciences at Sul Ross State University–Rio Grande College, and an adjunct instructor of Sociology for Southwest Texas Junior College. Professor Urbina has taught at New Mexico State University, Western Michigan University, University of Wisconsin–Milwaukee, Howard College, and Texas A&M University–Central Texas. Professor Urbina was awarded a *Certificate of Recognition for Outstanding Teaching* by Western Michigan University in 1999, and he was nominated for the 2002-2003 UWM Distinguished Undergraduate Teaching Award by the University of Wisconsin–Milwaukee.

Professor Urbina is author, coauthor, or editor of over 60 scholarly publications on a wide range of topics, including several academic books: *Immigration and the Law: Race, Citizenship, and Social Control Over Time* (forthcoming); *Ethnicity and Criminal Justice in the Era of Mass Incarceration: A Critical Reader on the Latino Experience* (2017); *Latino Access to Higher Education: Ethnic Realities and New Directions for the Twenty-First Century* (2016); *Latino Police Officers in the United States: An Examination of Emerging Trends and Issues* (2015); *Twenty-First Century Dynamics of Multiculturalism: Beyond Post-Racial America* (2014); *Ethnic Realities of Mexican Americans: From Colonialism to 21st Century Globalization* (2014); *Capital Punishment in America: Race and the Death Penalty Over Time* (2012); *Hispanics in the U.S. Criminal Justice System: The New American Demography* (2012); *A Comprehensive Study of Female Offenders: Life Before, During, and After Incarceration* (2008); and *Capital Punishment and Latino Offenders: Racial and Ethnic Differences in Death Sentences* (2003, 2011). Currently, Urbina is

working on three new academic books: *Making Sense of the American Juvenile Justice System; Latinos and the U.S. Legal System: Laws that Wound–A Call for a Balanced System*; and *The Color of Justice–The Price of Injustice: Racism in the Age of Colorblindness*. His work has been published in national and international academic journals, to include *Justice Quarterly*; *Critical Criminology*; *Social Justice*; *Latino Studies*; and *Criminal Law Bulletin*.

Along with his academic endeavors, he is also writing other literary works: *An Adventure in Time: A Journey Without Boundaries* (fiction); *Mi Vida: Between the Wind and the Rain, I Looked up and Wept* (nonfiction); and *Kylor's Adventure Through the Rainforest: A Journey of Courage and Faith* (a children's book). Most recently, Dr. Urbina has also opted to venture into the world of poetry, with the illusion of writing a book of poems: *Cincuenta Poemas de Amor Para el Alma y el Corazon: Fifty Love Poems for the Soul and the Heart*.

During his spare time, Urbina loves evening walks. His biggest delight: *la lluvia* (rain)! For a complete list of Urbina's research and publications, visit his website at: http://faculty.sulross.edu/wp/murbina/.

Sofía Espinoza Álvarez is an author, researcher, legal scholar, and advocate. She received a law degree from Universidad de León, San Miguel de Allende, Guanajuato, México, and holds a Bachelor of Science (B.S.) degree in criminal justice (Texas, United States). Her areas of interest include Mexican and U.S. jurisprudence, philosophy of law, constitutional law, immigration law, law and society, and penology. Álvarez has maintained an active professional career and an intense research and publication agenda, publishing various academic book chapters, journal articles, and books. Her research has been published in national as well as leading, international peer-reviewed journals, including "Capital Punishment on Trial: Who Lives, Who Dies, Who Decides–A Question of Justice?" (*Criminal Law Bulletin*, 2014); and "Neoliberalism, Criminal Justice, and Latinos: The Contours of Neoliberal Economic Thought and Policy on Criminalization" (*Latino Studies*, 2016). Her books include, *Immigration and the Law: Race, Citizenship, and Social Control Over Time* (forthcoming); *Ethnicity and Criminal Justice in the Era of Mass Incarceration: A Critical Reader on the Latino Experience* (2017); and *Latino Police Officers in the United States: An Examination of Emerging Trends and Issues* (2015).

Currently, Álvarez is researching the utility, implications, and ramifications of twenty-first century transnational social control movements, like the war on drugs and the war on terrorism; delineating the contours of U.S. and Mexican criminal laws. In her upcoming book, *Latinos and the U.S. Legal System: Laws that Wound–A Call for a Balanced System*, Álvarez and her coauthor will explore and delineate the ethnic realities of Latinos and the American legal system, illustrating the significance of fundamental issues like representation.

Vested in positive social transformation, since 2013, Álvarez have been working with migrant children, women, and men traveling to the U.S. through México, seeing first-hand the global dynamics of immigration, and thus prompting her to start a non-profit organization–Empower México Foundation. With a global mission, Empower México is focused in empowering, habilitating, and creating awareness; seeking equality, justice, respect, and human dignity to vanquish universal consensus. The foundation endeavors rigorously in various activities of social projects and research, promoting an image of social and cultural integration, and striving for understanding, tolerance, and universal unity. "For the Progression of México," Empower México seeks to potentiate the skills of Mexicans, empowering communities, and generating proposals to benefit the most vulnerable, like migrant children, teenage mothers, indigent people, and elderly people.

In addition to her work as a legal scholar and academic endeavors in research, publication, and social activism, Álvarez is currently working and assisting people with immigration related issues, including visa requirements, judicial and legal translations, and procedures for obtaining different types of visas for legal residence. During her spare time, Álvarez is actively involved in various community activities–propagating an image of social and cultural inclusivity, empowerment, and unity. Visit her website at: http://www.sofiaalva.com/.

Contributors

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David V. Baker, JD, PhD, teaches at the University of South Carolina at Wilmington. He holds a bachelor's degree in political science from California State University at Northridge, a master's degree and doctorate in sociology

from the University of California at Riverside, and a juris doctorate in law from California Southern Law School. He has received two National Endowment for the Humanities fellowships for advanced study in American slavery at the University of California at Irvine and immigration policy at the University of California at Los Angeles. He has held visiting lectureships at the University of California at Riverside and California State University at Fullerton and San Bernardino. He has also taught graduate seminars in law and justice studies at Chapman University. His research and teaching interests are in race and ethnic relations with an emphasis on systemic racism in the capital justice system. He has contributed several works to social science journals, law reviews, and coauthored books on the death penalty, structured social inequality, and American social problems. His books include: *Women and Capital Punishment in the United States: An Analytical History* (2016); *Structured Inequality in the United States: Discussions on the Continuing Significance of Race, Ethnicity, and Gender* (2007); *Social Problems: A Critical Power-Conflict Perspective* (2005); S*ources: Notable Selections in Race and Ethnicity* (2001); *Perspectives on Race and Ethnicity in American Criminal Justice* (1994); and *Race, Racism and the Death Penalty in the U.S.* (1992). Professor Baker is an associate editor of *Criminal Justice Studies: A Critical Journal of Crime, Law and Society.*

Charles Ramírez Berg, PhD, is University Distinguished Teaching Professor at the University of Texas at Austin as well as Joe M. Dealey, Sr. Professor in Media Studies and Board of Regents' Outstanding Teacher. He is author of numerous books, including: *The Classical Mexican Cinema: The Poetics of the Exceptional Golden Age Films* (2015); *Latino Images in Film: Stereotypes, Subversion, and Resistance* (2002); *Posters from the Golden Age of Mexican Cinema* (1997); and *Cinema of Solitude: A Critical Study of Mexican Film, 1967–1983* (1992). In addition, Berg has written numerous articles on Latinos in U.S. film, Mexican cinema, film history, and narratology that have appeared in journals such as *Jump Cut*, *Film Criticism*, *Aztlán*, and *CineACTION*, as well as anthologies like *Film Genre Reader IV*, *A Companion to Film Theory*, *The Latino Condition*, *John Ford Made Westerns*, and *A Little Solitaire: John Frankenheimer* and *American Film.* He has also written essays for Criterion DVD releases of the classic Chicano film *!Alambrista!* (2012) and the pioneering Mexican Golden Age film *Redes* (2013) and has contributed entries to the *World Film Encyclopedia, The International Dictionary of Films and Filmmakers*, and *The Oxford Encyclopedia of Latinos and Latinas in the United States.*

Daniel Justino Delgado, PhD, is an Assistant Professor of Sociology at Salem State University. His research focuses on the processes of racialization experienced by Latinos and other racialized groups in the United States. Professor Delgado has published various academic articles in diverse journals.

Recently, Dr. Delgado published an article, "'And you need me to be the Token Mexican?': Examining Racial Hierarchies and the Complexities of Racial Identities for Middle Class Mexican Americans" (2014), in *Critical Sociology* discussing how middleclass Latinos experience their racial identities, and an article (coauthored with David Brunsma and Kerry Ann Rockquemore) titled "Liminality in the Multiracial Experience: Towards a Concept of Identity Matrix" (2013) in the journal *Identities: Global Studies in Culture and Power*. His current project explores the discourse used by the Maricopa County Sheriff's Office regarding Latinos living in Arizona, gathered data will then be delineated in a book.

Robert J. Durán, PhD, is an Associate Professor of Sociology at the University of Tennessee, Knoxville. He earned his doctorate in sociology from the University of Colorado. As an urban ethnographer, his major research interests include supporting various forms of empowerment for marginalized groups, improving race and ethnic relations, critiquing punitive forms of social control, and discouraging colonial and colonized forms of violence. His current research projects have focused on the states of Colorado, New Mexico, Texas, Utah, and the United States-Mexico border. Dr. Durán has published numerous book chapters and refereed journal articles, appearing in scholarly journals like *Aztlán: A Journal of Chicano Studies; Journal of Contemporary Ethnography; Journal of Ethnicity in Criminal Justice; Latino Studie*s; and *Social Justice: A Journal of Crime, Conflict and World Order*. He recently published a book, *Gang Life in Two Cities: An Insider's Journey* (2013), and has a forthcoming book, *The Gang Paradox: Miracles and Inequality on the U.S.-Mexico Border*, both with Columbia University Press. Dr. Durán is the recipient of the 2011 New Scholar Award from the American Society of Criminology Division on People of Color and Crime.

Joe R. Feagin, PhD, Ella C. McFadden Professor of Liberal Arts at Texas A&M University, has previously taught at the University of Massachusetts, University of California, University of Texas, and University of Florida. He has done much research on racism and sexism issues and served as Scholar-in-Residence at the U.S. Commission on Civil Rights. Dr. Feagin has published 63 scholarly books and 200-plus scholarly articles and monographs in his research areas. One of his books (*Ghetto Revolts*) was nominated for a Pulitzer Prize. Among his recent books are *Racial Theories in Social Science: A Systemic Racism Critique* (2016); *How Blacks Built America: Labor, Culture, Freedom, and Democracy* (2016); *Racist America: Roots, Current Realities and Future Reparations* (2014); *The White Racial Frame: Centuries of Racial Framing and Counter-Framing* (2013); *Latinos Facing Racism: Discrimination, Resistance, and Endurance* (2013, with José A. Cobas); *White Party, White Government: Race,*

Class, and U.S. Politics (2012); *Two-Faced Racism: Whites in the Backstage and Frontstage* (2007, with Leslie Picca); and *Systemic Racism: A Theory of Oppression* (2006). He is co-founder of the social science blog, www.RacismReview.com. Dr. Feagin is also the recipient of a 2006 Harvard alumni lifetime achievement award, the 2012 Soka Gakkai International-USA Social Justice Award, the 2013 American Association for Affirmative Action's Arthur Fletcher Lifetime Achievement Award, and the American Sociological Association's 2013 W.E.B. Du Bois Career of Distinguished Scholarship Award. He was the 1999–2000 president of the American Sociological Association. Dr. Feagin can be contacted at jrfeagin@yahoo.com.

Marcos Pizarro, PhD, has been a Professor and Chair of Mexican American Studies at San José State University since 1999. He is the proud son of Leonard and Helena, partner to Esther, and father of Xóchitl and Citlali. Dr. Pizarro works with Chicana/o students at various stages in their schooling and tries to understand how interventions can help these students develop strategies that might aid them in their efforts to succeed in school and create social justice in their communities. In his *Chicanas and Chicanos in School: Racial Profiling, Identity Battle, and Empowerment* (2005), Dr. Pizarro reports his research with Chicana/o youth in East Los Angeles and the Yakima Valley of Washington State. In this particular book, he explores the relationship between the identities of Chicana/o students and their academic performance with a focus on lessons that will aid those interested in enhancing the educational performance of these youth. Currently, Dr. Pizarro coordinates MAESTR@S, a Movement for Raza Liberation through Educación, a social justice organization developing and implementing a transformative education model with raza communities. Dr. Pizarro also works with schools on the development and implementation of Raza Studies curricula to enhance Latina/o student engagement, and he is co-coordinator of the Institute for Teachers of Color Committed to Racial Justice.

Claudio G. Vera Sánchez, PhD, is an Associate Professor in the Criminal Justice Department at Roosevelt University, Chicago. He earned his doctorate from the University of Illinois at Chicago. His areas of research center on youth justice, policing, and ethnic/racial minorities in the United States. His studies have explored the experiences of young minorities (e.g., Latinos and African Americans) with the police, the perceived legitimacy of the police in underprivileged neighborhoods, and how officers negotiate police work within inner-city neighborhoods. Dr. Vera Sánchez's recent publications analyze diverse topics, including "Latino Officers, Policy, and Practice" (2015); "Sacrificed on the Altar of Public Safety: The Policing of Latino and African American Youth" (2011); and "Racialized Policing: Officers' Voices on

Policing Latino and African American Neighborhoods" (2011). Professor Vera Sánchez is also committed to transformative learning, and he has worked collaboratively with university students to redirect students with previous involvement with the legal system from a "path of prison" to college.

Today, Sunday, August 28, 2016, as we are making final edits to send off this book to the Publisher, we hear the disheartening news that Juan Gabriel, Alberto Aguilera Valadez, a superstar Mexican songwriter and singer passed away this morning. Juan Gabriel, an icon in the Latin music world, was Mexico's leading singer-songwriter and top-selling artist. Through his ballads about love, peace, and unity not only did he enlighten and enrich the lives of people, but he inspired people to pursue their dreams.

In memory of Juan Gabriel, who has left us an immortal legacy and thus he will always remain with us. We also dedicate this book to all individuals who devote their careers and lives promoting social change, empowerment, and a universal message of understanding, compassion, love, peace, equality, and justice.

M.G.U.
S.E.A.

PREFACE

> Until lions have their own historians, histories of the hunt will glorify the hunter.
>
> –African proverb

Predating the Constitution, the United States has characterized itself as a country grounded in essential elements, like democracy, freedom, civil liberties, civility, tolerance, stability, representation, equality, and justice, always progressing, while avoiding ruptures, discontinuities, and social insecurity. In truth, contrary to *conventional wisdom*, the United States is more reflective of continued political, economic, and social chaos in the historical fight for expansion, wealth, power, and control than a unified movement for universal freedom, equality, justice, representation, or public safety. In fact, while there has been gross inequality and injustice in all major U.S. institutions, some of the most detrimental discontinuities, inefficiencies, inequalities, and injustices have been generated by the very system, the criminal justice system, that has been supposedly designed to govern safety, order, and positive social change. Worse, in the very arena where the machinery of justice is operating and thus efficiency, equality, and justice is supposed to prevail, some of the most catastrophic events and movements have been taking place since the early days in America, while strategically targeting certain segments of society.

Today, as in the past, people tend to blindly accept (sometimes consciously and conveniently) criminal justice policies without truly questioning the very essence of the criminal justice system–particularly American criminal law and its enforcement agents, the police. Contrary to the notion that "all men are created equal," as early as 1740, the South Carolina Slave Code, for example, identified "the people commonly called negroes, Indians, mulattos and mestizos have [been] deemed absolute slaves, and the subjects of property in the hands of particular persons the extent of whose power over slaves ought to be settled and limited by positive laws so that the slaves may be kept in due subjection and obedience" (cited in Hall, Wiecek, & Finkelman, 1996:37), setting the *foundation* for ethnic identity formation and ethnic/race

variation; and subsequently resulting in a historical legacy of hate, manipulation, marginalization, oppression, and silencing of minorities.

Starting with the Declaration of Independence (1776), race has played a central role in defining U.S. laws and how criminal justice policies are applied to people, in all stages of the legal process, including arrest, prosecution, conviction, sentencing, imprisonment, and even executions. In the context of ethnicity and the criminal justice system, normally left out from the *pages of history*, Latinos, like blacks, have in fact suffered the indignities of conquest, colonialism, and *de jure* segregation. In the case of Mexican Americans, under the rationale of Anglo-Saxon expansion and Manifest Destiny, premised on the ideology of racial, ethnic, religious, and cultural superiority of white Americans, the Treaty of Guadalupe Hidalgo ended the Mexican-American War in 1848, granting the United States 55 percent of Mexico's territory, an area that now comprises about one-third of the continental United States. Soon after, the 1855 "Greaser Act" (almost a century after the Declaration of Independence that all men are created equal), an anti-vagrancy law enacted in California defining vagrants as "all persons who are commonly known as 'Greasers' or the issue [children] of Spanish and Indian blood," was a deliberate use of criminal law to specifically target Mexicans based on race and ethnicity (Morín, 2009:16). Clearly, as documented by José Luis Morín (2009:15), "This history is instructive as to how Latinas/os would be regarded in later years, since persons of mixed racial backgrounds, as many Latinas/os are, have been and often continue to be viewed with disdain, and subject to discrimination by the dominant 'White' social structure."

To be sure, the law has been strategically used to create or inforce social control movements to secure intended political, economic, or social objectives. Towards the end of the twentieth century, Jonathan Simon (1997:173) proposed that advanced industrial societies are actually "governed through crime," with the overdeveloped societies of the West and North Atlantic "experiencing not a crisis of crime and punishment but a crises of governance that has led [them] to prioritize crime and punishment as the preferred contexts of governance," redefining the limits of criminal laws, while socially reconstructing the confines of race and ethnicity. Then, at the turn of the century, Tony Fitzpatrick (2001:220) argued that as "global capital becomes apparently unmanageable" and "as the polity and the economic detached after a century of alignment," the state must give itself, particularly its agents (i.e., police officers, correctional officers, prosecutors, judges), something to do, and so the state "socially and discursively constructs threats that only it can address through . . . punitive responses to the chaos it has [helped facilitate]," as in the case of the war on drugs, the war on terrorism, the war on immigrants, and various other aggressive social control movements (Urbina & Álvarez, 2016). With crime and criminal justice systems becoming

increasingly transnational, assisted by advanced technological innovations, a highly charged American conservative media, high ranking politicians, and others, "at once totalizing and individualizing," such strategies congeal in appealing political formations that can govern "all and each" with stealthy precision (Gordon, 1991:3), giving the state a notion of absolute control, legitimacy, and justice, and to a feared and misinformed society, an appearance of solidarity and global power–a symbol of Americanism.

In effect, from the early conquest of Native Americans, to slavery, to the conquest of Mexicans, to the conquest and colonization of Puerto Ricans, to the war on terrorism, with its corresponding elements, like racial profiling, public space housing sweeps, drug/prostitution-free zones, police surveillance cameras, deportations, the militarization of the U.S.-Mexico border, the school-to-prison pipeline, and mass incarceration, such movements clearly reveal that the U.S. obsession with law and order is just as much about race, ethnicity, and gender as it is about safety, equality, and justice. For instance, as reported by Law Professor David Cole (2001:248), "racial profiling studies . . . make clear that the war on drugs has largely been a war on minorities. It is, after all, drug enforcement that motivates most racial profiling." Invariably, while the overall rate of the inmate population in state and federal prisons increased dramatically from 1971 to 2001, Latinos experienced a tenfold increase (Bonczar, 2003; Urbina & Álvarez, 2016). In fact, by 2004, the rate of Latino incarceration in state and federal prisons was 2.6 times greater than for whites (1,220 per 100,000 compared to 463 per 100,000), according to Paige Harrison and Allen Beck (2005) of the Bureau of Justice Statistics, with the Sentencing Project (2003:1) reporting that "Hispanics are the fastest growing group being imprisoned." Quickly, the ramifications of redefining race, ethnicity, crime, and punishment became gravely pressing in imprisonment rates, as reported by Loic Wacquant (2001:82), "turning over from 70 percent white at the mid-century point to nearly 70 percent black and Latino today, although the ethnic patterns of criminal activity have not been fundamentally altered during that period," with execution rates also disproportionately impacting Latinos, especially Mexican defendants (Álvarez & Urbina, 2014; Urbina, 2012a).

Together, as delineated in this volume, these figures illustrate not only the twist and turns of social control, but also the shifting trends of the criminal justice system, from the specific roles of the police, judicial system, and corrections, to expectations, to the overall social control mission. In all, possibly as in no other time in U.S. history is the dominant majority experiencing a more significant "cultural crisis" in that after centuries of *total control*, their ideas about race, ethnicity, gender, and social life are under attack by the intertwining forces of diversity and multiculturalism as well as political and economic uncertainty (Álvarez & Urbina, 2017; Urbina, 2014; Urbina & Álvarez, 2016). In effect, in part

> because the United States considers itself a 'moral' and 'law-and-order' society, the US has a phobia of the *outsider*, the *different*, and the *stranger*. As an institutionalized state of feeling and thinking, such phobia has manifested itself into ignorance, which in turn has resulted in viciousness and vindictiveness [and] fear of those who threaten our interests or the status quo has manifested itself into low levels of tolerance (Nieling & Urbina, 2008:233),

making the criminal justice system–through the passage of punitive laws, heavy police enforcement, and mass imprisonment–the prime apparatus for suppression, control, and silencing of those who threaten the dominant social structure.

Though, while the disproportionate representation of minorities, particularly Latinos and blacks, in the criminal justice system is well documented, much less analyzed are the historical and contemporary mechanisms and beliefs that govern the minority experience. As such, considering the selective and aggressive tactics of policing minority communities, the punitive movement of the judicial system, and the grossly disproportionate number of Latinos under the control of the penal system, it is of utmost importance that the ways in which ideas of ethnicity, race, gender, and class uphold the functioning, wetwidening, and "legitimacy" of the criminal justice system be demystified and exposed in the pages of academic literature and public discourse, a central objective of this book, undertaken by some of the most prominent authors from around the country. In this mission, rather than attempting to develop a single explanation for the Latino experience in policing, the courts, and the penal system, this book presents a variety of studies and perspectives that illustrate alternative ways of interpreting crime, punishment, safety, equality, and justice. The findings reveal that race, ethnicity, gender, class, and several other variables continue to play a significant role in the legal decision-making process. In short, the authors report sound evidence that testifies to a historical legacy of violence, brutality, manipulation, oppression, marginalization, prejudice, discrimination, power, and control, and to white America's continued fear about ethnic and racial minorities, a movement that continues in the twenty-first century–as we have been witnessing during the 2015-2016 presidential race, highly charged with anti-immigrant and anti-Mexican political rhetoric.

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We like to acknowledge Dr. Adalberto Aguirre, Jr. (University of California–Riverside), Dr. Tomas Almaguer (San Francisco State University), Dr. David V. Baker (University of South Carolina at Wilmington), Dr. David E. Barlow (Fayetteville State University), Dr. Melissa H. Barlow (Fayetteville State University), Professor Steven W. Bender (Seattle University School of Law), Dr. Charles Ramirez Berg (University of Texas at Austin), Dr. Leo R. Chávez (University of California, Irvine), Dr. Charles Crawford (Western Michigan University), Dr. Arnoldo De León (Angelo State University), Dr. Joe R. Feagin (Texas A&M University, College Station), Dr. Ruth Gomberg-Muñoz (Loyola University, Chicago), Dr. Ramon A. Gutierrez (University of Chicago), Dr. Peter Laufer (University of Oregon), Dr. Rubén Martínez (Michigan State University), Dr. Alfredo Mirandé (University of California, Riverside), Dr. Felipe de Ortego y Gasca (Western New Mexico University), Dr. Marcos Pizarro (San Jose State University), Dr. Mary Romero (Arizona State University), Dr. Rick Ruddell (University of Regina, Canada), Professor Lupe S. Salinas (Thurgood Marshall School of Law), Dr. L. Thomas Winfree (Arizona State University), and Dr. Jorge Castaneda Gutman (New York University) for their words of wisdom, compassion, and support during difficult, uncertain, or tearful moments. We are forever indebted to you for never losing confidence in us and encouraging us to continue with our research and publications.

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S.E.A.
M.G.U.

CONTENTS

ETHNICITY AND CRIMINAL JUSTICE IN THE ERA OF MASS INCARCERATION

Chapter 1

THE LATINO CONDITION: DIVERSITY, CHANGE, AND SOCIAL CONTROL

Martin Guevara Urbina and Sofía Espinoza Álvarez

> [Our] knowledge of everyday life has the quality of an instrument that cuts a path through a forest and, as it does so, projects a narrow cone of light on what lies just ahead and immediately around; on all sides of the path there continues to be darkness.
>
> –Peter L. Berger and Thomas Luckmann

Around the globe, for over 200,000 years, human mobility has been a landmark of social existence and transformation, with people voluntarily leaving, forced to leave, or taken out of their area of origin to different geographical areas, normally with specific objectives, like the relocation of criminals from one country to another, the transportation of slaves to different countries, and the importation or exportation of "immigrants" around the world. In modern times, though, no country in the world has possibly experienced more human mobility, migration, and social transformation than the United States, particularly with the advent of globalization, with its multiple corresponding elements, like the governing dynamics of the educational, economic, political, and criminal justice systems; technology; cultural diversity, and multiculturalism.

Yet while human mobility, expansion, migration, and societal transformation have been historical inner elements of the American experience since the days of the conquistadors, and subsequent conquest, colonialism, slavery, and imperialism, the focus of academic discourse, investigations, and publications has been on Caucasians (whites) and African Americans (blacks), with much less academic dialogue of other ethnic and racial minorities, even though Latinos now constitute the largest minority group in the United States and thus the second largest ethnic/racial group in the country, right behind the white population. In fact, historically ethnic minorities, along with certain

racial minorities, like Native Americans and Asians, have either been excluded from the *pages of history*, or all Latinos of various national origins have been treated as a monolithic group. Consequently, over the years, there has been gravely scant discourse on Latinos, particularly Mexican Americans, who have historically constituted the high majority of Latinos in the United States, with a similar pattern of neglect experienced by other ethnic/racial minorities. Similarly, as in everyday life, in their engagement with America's institutions, particularly the criminal justice system, as the largest ethnic minority and, overall, as the largest minority group, Mexican Americans and Latinos have not only been less studied, documented, and discussed in academic settings, to include research, publication, and dialogue, but, in essence, they have been historically manipulated, intimidated, marginalized, oppressed, and silenced.

Therefore, without exploring both the ethnic and racial experience in its totality, from conquest and colonialism to twenty-first-century globalization, the truths and realities of the American experience remain skewed, as Latinos and other racial minorities remain in the shadows of the past, keeping the ethnic realities of Mexican Americans and other Latinos hidden from the academic literature and, for undocumented minorities currently living in the United States, in a state of manipulation, intimidation, oppression, marginalization, and silence.

This chapter shows that significant research gaps remain to be bridged if we are in fact going to be more inclusive in academic investigations, and thus generating and disseminating more representative, sound, and objective information, projecting the historical realities of the entire American experience, to include not only whites and blacks, which historically have "represented" the so-called American multicultural society, but also Mexican Mexicans and other ethnic/racial minorities, like Asians and Native Americans. For instance, generally, historians, political scientists, sociologists, psychologists, criminologists, and other social scientists tend to focus on certain issues, events, or situations while documenting the minority experience, without historically delineating the ethnic experience over time and either minimizing or excluding historical movements that have governed the ethnic (Latino) experience for centuries–providing a story of the Latino, particularly Mexican American, experience without unearthing the historical roots, which originally set in motion the forces that would ultimately shape and reshape the everyday experience for Mexican Americans, other ethnic/racial minorities, and poor whites. For instance, as recently documented by Martin Guevara Urbina, Joel Vela, and Juan Sánchez in *Ethnic Realities of Mexican Americans: From Colonialism to 21st Century Globalization* (2014), one of the most detrimental social movements against Mexican Americans and other Latinos, along with African Americans, for over one and a half centuries has been the

criminalization of Mexican identity. However, while scholars have been documenting the over-representation of minorities, especially African Americans and, more recently, Latinos, throughout the American criminal justice system, they have failed to analyze not only the Mexican American experience but the overall ethnic experience by the totality of intertwining historical factors, events, issues, circumstances, cultural diversity, and, most critical, ideologies, which in fact structure the institutional foundations.

This kind of historical, theoretical, and methodological approach is not, on its own, sufficient to fully capture the ethnic realities of Mexican Americans and other ethnic/racial minorities over the years in everyday life or in their engagement with America's main institutions, beginning with the educational system and subsequently in their encounters with the criminal justice system. Consequently, it fails to delineate, in their totality, the forces, contours, and governing dynamics of social control, cultural diversity, and multiculturalism over time. In essence, the ethnic experience begins to rapidly unfold when Mexicans were first joined by whites in then Mexican territory, soon after Mexicans became foreigners in their own land, subsequently beginning a migration cycle that continued for decades and quickly exacerbated a legacy of struggle, brutality, and hate that remains highly charged in the new millennium—exacerbated or bluntly exposed by Republication presidential candidate Donald Trump's anti-Mexican comments on June 16, 2015 when he officially began his presidential race, anti-Mexican rhetoric that we have been hearing daily.

In effect, in modern times, the ethnic experience begins when Mexicans, along with other ethnic/racial minorities, first enter the United States, at times, even before they arrive in the land of the "free," as the United States tends to influence people beyond its national borders, especially now with the advent of a modernized form of globalization, a kind of migration in itself, shaping the confines of transnational immigration, diversity, multiculturalism, and social control. Therefore, researchers, critics, and commentators need to place contemporary ideas, practices, and experiences in the context of the past and of broader ideas about ethnicity, race, cultural diversity, and historical ideologies, which continue to shape and reshape not only the realities of Mexican Americans but also other ethnic and racial groups, including African Americans, Asian Americans, whites, and Native Americans in the twenty-first century. As such, by delineating the historical significance of the Latino experience over the years, providing a critical examination of prior race and ethnic investigations, and introducing the subsequent chapters, followed by 13 detailed chapters, the contributing authors demonstrate a different approach to the contemporary study of race and ethnicity, cultural diversity, multiculturalism, and social control in the United States, focusing primarily (but not exclusively) on the Latino experience, paying particular

attention to the Mexican American experience as the largest Latino subgroup, as we seek to better understand the overall American experience, while trying to provide a *balance* to the existing literature.

THE ETHNIC EXPERIENCE OVER TIME: EMERGING TRENDS AND ISSUES

Contrary to conventional wisdom that ethnic minorities are *new* to America, Latinos were some of the first immigrants in the United States and thus Mexican Americans and other Latinos have been in the U.S. for centuries. Before the English came to America in 1609, there was a Latino presence in the Southwest, including Texas, and they have been in the present-day U.S. since 1565 in Florida and 1598 in New Mexico, centuries before the Treaty of Guadalupe Hidalgo that ended the Mexican-American War in 1848, in which Mexico lost over half (55%) of its territory to the United States, and, subsequently, further fueling the notion of conquest, expansion, privilege, power, control, and, ultimately, reformulating white supremacy and dominance over ethnic and racial minorities–redefining and solidifying the parameters of cultural diversity, the dynamics of multiculturalism, and law and society, along with social control, over time.

Invariably, normally excluded from popular discourse, *Latino culture has been part of "America" longer than the United States has existed.* Therefore, understanding the Latino experience and the Mexican American heritage is essential for understanding the roots of America's ethnic and racial minorities and their everyday stories, whether it is the cowboy icon, mustangs, barbecue, dollar sign, law, or Texas chili, which is as old as the U.S. Constitution (1787). Contrary to arguments that Latinos are *infiltrating* the supposed Anglo heritage, Spanish culture and language became part of the national fabric when the United States expanded west of the Mississippi River and south of the Carolinas. Mexicans, officially the first Latinos of the United States, joined the American populace through the conquest of Mexico by the United States in 1848. Geographically, Latinos lived in what is now the western and the southwestern United States decades before the first arrivals of non-Latino Europeans at Plymouth Rock in 1620. The area known today as Santa Fe, New Mexico was founded in 1610, and St. Augustine, Florida was founded in 1565 (Weber, 2004). In fact, the oldest records of European explorers and settlers on U.S. territory were actually written in Spanish. The oldest European town, St. Augustine, Florida, was founded by Spain in 1565, 42 years before the founding of Jamestown in the Colony of Virginia. U.S. law has also been influenced by the Spanish legal tradition, as symbolized by the carving of Castillian monarch Alfonso X, King of Castile, in the United States House of