

**HISPANICS IN THE  
U.S. CRIMINAL JUSTICE SYSTEM**



**Second Edition**

**HISPANICS IN THE U.S.  
CRIMINAL JUSTICE SYSTEM**

**Ethnicity, Ideology, and Social Control**

*By*

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(2017); “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.

*In our quest for knowledge, discovery, and positive transformation, we dedicate this book to all the “crusaders” who devote their careers and lives promoting social change, empowerment, and a universal message of understanding, compassion, equality, justice, and human dignity. We also dedicate this volume to our family, friends, professors, and mentors, who (as noted in the acknowledgement page) have guided, encouraged, and supported us during difficult and uncertain moments.*

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



## PREFACE

*Men fear thought as they fear nothing else on earth—more than ruin—even more than death. . . . Thought is subversive and revolutionary, destructive and terrible, thought is merciless to privilege, established institutions, and comfortable habit. Thought looks into the pit of hell and is not afraid. Thought is great and swift and free, the light of the world, and the chief glory of [people].*

—Bertrand Russell

**P**redating the Constitution, the United States has characterized itself as a country grounded in essential elements, like civility, stability, freedom, democracy, civil and human rights, equality, tolerance, and justice, always progressing, while avoiding ruptures and discontinuities. 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, social change, and justice. In effect, while there has been gross inequality and injustice in all major United States institutions, some of the most fundamental discontinuities, inefficiencies, inequalities, and injustices have been generated by the very system, the criminal justice system, that has been 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 are taking place, while strategically and aggressively targeting certain segments of society, particularly Latinos, blacks, and poor whites.

As in the past, today people tend to blindly accept criminal justice policies, especially social control policies and immigration laws, without truly questioning the very essence of American criminal law, beginning with its foundation and the forces driving criminal justice policies. Most notably, in the context of race and ethnicity, 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 settle and limited by positive laws so that the slaves may be kept in due subjection and obedience (cited in Hall, Wiecek, & Finkelman, 1996:37),

resulting in a legacy of manipulation, marginalization, oppression, and silencing of minorities, while allowing whites absolute control of America's main institutions, to include the economic, educational, and political systems.

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 blacks. Normally left out from the *pages of history*, Latinos, like blacks, have in fact suffered the indignities of conquest 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," 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; Urbina, Vela, & Sanchez, 2014). Clearly, as documented by legal scholar 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 dominant 'White' social structure."

Towards the end of the twentieth century, Jonathan Simon (1997:173) charged that advanced industrial societies were 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 (Dowling & India, 2013; Simon, 2007; Urbina & Álvarez, 2016). 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, 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, and most recently, under the Trump administration, the war on immigrants (Alexander, 2012; Salinas, 2015; Urbina & Álvarez, 2017), as documented by Álvarez and Urbina in *Immigration and the Law: Race, Citizenship, and Social Control* (2018). With crime and criminal justice systems becoming increasingly transnational, assisted by advanced technological innovations and a highly charged American media, "at once totalizing and individualizing," such social control strategies congeal in appealing political formations that can govern "all and each" with stealthy precision (Gordon, 1991:3; Simon, 2014; Urbina & Álvarez, 2016, 2017), giving the state a notion of absolute control, legitimacy, and justice, and to a feared and misinformed society, an appearance of global power and solidarity.

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, to the war on immigrants, with its corresponding elements, like racial profiling, public space housing sweeps, police surveillance cameras, and drug/prostitution-free zones, such movements clearly reveal that the U.S. obsession with law and order is just as much about race and ethnicity, as it is about safety, equality, progress, and justice. For instance, as reported by renowned legal scholar 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 in the latter part of the twentieth century (1971 to 2001), Latinos experienced a tenfold increase (Bonczar, 2003), with similar trends in the early part of the twenty-first century (Urbina & Álvarez, 2016, 2017). 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.”

In all, as we witnessed during the 2015/2016 presidential elections and now under the Trump administration, 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* (Álvarez & Urbina, 2018), their ideas about race, ethnicity, gender, and social life are under attack by the intertwining forces of diversity and multiculturalism (Urbina, 2014) as well as political and economic uncertainty (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 (Nielsing & Urbina, 2008:233),

making the criminal justice system the prime apparatus for suppression, control, and silencing of those who threaten the dominant social structure.

Though, while the disproportionate representation of minorities, particularly blacks and Latinos, in the criminal justice system is well documented, much less analyzed are the historical and contemporary mechanisms, beliefs, and ideologies that govern the minority experience. As such, considering the strategically selective and aggressive tactics of policing minority communities, the punitive movement of the judicial system, and the grossly disproportionate number of Latinos under the con-

trol of the legal system, or as some critics characterize it, the *era of mass incarceration* (Alexander, 2012; Hinton, 2016; Ríos, 2006; Simon, 2014; Urbina & Álvarez, 2017; Vallas, 2016), it is of utmost importance that the ways in which ideas of ethnicity, race, gender, and class uphold the supposed “legitimacy” of the criminal justice system be demystified and exposed in the pages of academic literature, a central objective of this revised 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 ethnic experience in policing, the courts, the penal system, and society in general, this updated second edition presents a variety of studies that illustrate alternative ways of interpreting crime, social control, equality, justice, social change, and progress. As in the first edition of this book, the findings reveal that race, ethnicity, gender, class, and several other variables continue to play a significant and consequential role in the legal decision-making process. In short, the authors report sound evidence that testifies to a historical legacy of manipulation, brutality, marginalization, oppression, prejudice, discrimination, power, and control, and to white America’s continued fear about racial and ethnic minorities, a movement exacerbated in the twenty-first century with Trump’s highly charged anti-immigrant and anti-Mexican political rhetoric. As such, this book presents a variety of studies and perspectives that offer a pathway toward addressing long-neglected but vital topics in the discourse on criminal justice policy and reform.

Martin Guevara Urbina  
Sofia Espinoza Álvarez



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**HISPANICS IN THE  
U.S. CRIMINAL JUSTICE SYSTEM**



## Chapter 1

# THE LATINO CONDITION IN THE AGE OF MASS INCARCERATION: ETHNICITY, 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. People are 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 mono-

lithic 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. 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. 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 Americans and other ethnic/racial minorities, like Asians and Native Americans. For instance, generally, historians, political scientists, sociologists, psychol-

ogists, 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 overrepresentation 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 Republican 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,” 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 17 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. By focusing primarily (but not exclusively) on the Latino experience, and paying particular attention to the Mexican American experience as the largest Latino subgroup, 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 United States 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. United States law has also been influenced by the Spanish legal tradition, as symbolized by the carving of Castilian monarch Alfonso X, King of Castile, in the United States House of Representatives. The U.S. dollar, a powerful symbol of Americanism, also has Spanish roots. In fact, illustrating the historical ethnic influence, from 1500 until the mid-19th century, the Spanish dollar, commonly known as "pieces of eight," was the de facto currency of international commerce, and it was legal tender in the United States before

Congress approved the Coinage Act of 1857—thus serving as a model for national currencies ranging from the U.S. dollar to the Chinese yuan. Even the dollar sign (\$) is widely believed to have derived from symbols connected to the Spanish currency circulating in the American colonies, and stock prices were quoted on the New York Stock Exchange in *eighths* until 1997 (Nadeau & Barlow, 2012).

As for demographic shifts and trends, despite historical mechanisms for population control, and the long legacy of prejudice, racism, manipulation, intimidation, oppression, and hate against Latinos, particularly Mexicans, the Mexican American and overall Latino population continues to grow. This leads to significant demographic changes across the country, with corresponding elements of cultural diversity and multiculturalism, along with changes in America's main institutions. Reviewing figures for the first decade of the twenty-first century, in 2000, 50 percent of Latinos lived in Texas and California alone, but dropped to 46.5 percent in 2010 (Passel, Cohn, & López, 2011). Nationally, 76 percent of Latinos resided in nine states (Arizona, California, Colorado, Florida, Illinois, New México, New Jersey, New York, and Texas) in 2010, in comparison with 81 percent in 2000 and 86 percent in 1990, revealing a significant shifting trend. Narrowing in on the Latino population by region, the West and South were home to the majority of Latinos, along with an increase in the South and Midwest. According to Jeffrey Passel, D'Vera Cohn, and Mark Hugo López (2011), in 2010, 20.6 million Latinos resided in the West, 18.2 million in the South, 7 million in the Northeast, and 4.7 million resided in the Midwest, with rapidly shifting trends across the country.

In effect, a decade into the twenty-first century, Latinos, now the largest minority group and the second largest ethnic/racial group (second only to whites), constituted ap-