

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



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On his spare time, Urbina loves evening walks, and he is currently learning how to play classical guitar. His biggest delight: *la lluvia* (rain)!

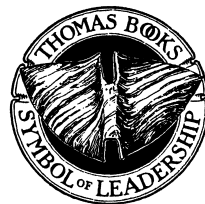
# HISPANICS IN THE U.S. CRIMINAL JUSTICE SYSTEM

The New American Demography

*By*

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*Quien Diría*

*Quien diría que un ángel a mi vida llegaría.  
Y que con su alegría y su sonrisa;  
Mi mundo de un momento a otro lo trasformaría.*

*Quien diría que toda mi atención se robaría.  
Y que poco a poco suspiro a suspiro;  
Mi corazón al de ella se mudaría*

*Quien diría que sus labios tentación provocarían.  
Y que por besarlos de ser necesario;  
Sin pensarlo dos veces mi vida se la daría.*

*Quien diría que mi pluma ya dormida despertaría.  
Y que a escribir versos en honor a su belleza;  
Una vez más me inspiraría.*

*Quien diría que a pedirme un verso se atrevería.  
Y que yo sin que me pidiese si me inspiraría;  
No solamente uno sino hasta un millón le escribiría.*

*Quien diría que sus alas rotas ya traía.  
Y que aun sin sanarle la herida;  
A buscar amor se atrevería.*

*Quien diría que en mi camino te encontraría.  
Y que siendo yo demonio y ella un ángel;  
Aun así en mi se fijaría y en cuenta me tomaría;  
Y en su vida por capricho o por despecho me aceptaría.*

*Mary*

*Mil gracias por ser mi bendición!*

*-Martin*



## FOREWORD

*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, 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, 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 targeting certain segments of society.

As in the past, today people tend to blindly accept criminal justice policies, without truly questioning the very essence of American criminal law. 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 settled

and limited by positive laws so that the slaves may be kept in due subjection and obedience (cited in Hall, Wiecek, and Finkelman, 1996:37),

resulting in a legacy of 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 African Americans. Normally left out from the *pages of history*, Latinas and Latinos, like African Americans, 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). 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 dominant 'White' social structure."

Towards the end of the Twentieth Century, Jonathan Simon (1997:173) proposed 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. 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 various other aggressive social control movements. 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 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 malinformed 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, 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, 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, Latinas and Latinos experienced a tenfold increase (Bonczar, 2003). In fact, in 2004, the rate of Latina/o 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, 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. 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 and 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 African Americans and Latinos, 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 legal system, it is of utmost importance that the ways in which ideas of ethnicity, race, gender, and class uphold the “legitimacy” of the criminal justice system be demystified and exposed in the pages of academic literature, 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 ethnic experience in policing, the courts, and the penal system, this book presents a variety of studies 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 brutality, manipulation, oppression, marginalization, prejudice, discrimination, power, and control, and to white America’s continued fear about racial and ethnic minorities, a movement extending into the twenty-first century.

Martin Guevara Urbina, Ph.D.



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Martin Guevara Urbina, Ph.D.

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



## Chapter 1

# ETHNIC CONSTRUCTIONS: THE MAKING OF THE UPCOMING MAJORITY, LATINAS AND LATINOS

MARTIN GUEVARA URBINA

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

For thousands of years, human mobility has been a landmark of social existence, with people voluntarily leaving, forced to leave, or taken out of their area of origin to different geographical areas. No country in the world, though, has possibly experienced more human mobility and migration than the United States. Yet, while human mobility and migration have been an historical inner element of the American experience since the days of the conquistadors, the focus of academic investigations has been on Caucasians (whites) and African Americans (blacks), with less academic dialogue over other racial groups, like Asians and Middle Easterns, and limited discourse on Latinas and Latinos. In the context of the criminal justice system, the Latina and Latino experience has been even less studied, documented, or discussed in academic settings.

As such, without exploring the ethnic experience in its totality, the truth and reality of Latina and Latino defendants in the U.S. criminal justice system remains untold, keeping ethnic minorities hidden from the pages of history and in a state of *silence*. In effect, this chapter shows that significant research gaps remain to be bridged, if we are to be more inclusive in academic investigations, and thus generating and disseminating more representative, sound, and objective knowledge. For instance, generally, criminologists, sociologists, political scientists, historians, psychologists, and other social sci-

entists focus on documenting the overrepresentation of minorities throughout the American criminal justice system, but fail to analyze the ethnic experience by the totality of intertwining historical factors, events, issues, and circumstances. This kind of theoretical and methodological approach is not, on its own; sufficient to fully capture the realities of ethnic minorities from the time they are detected by the police to when they are released from prison, or, in the case of capital punishment, executed. In essence, the ethnic experience begins to unfold when Latinas/os first enter the United States, at times, even before they arrive in America, as the United States tends to influence people beyond its national borders, especially now with the advent of yet another form of globalization, a kind of migration in itself. Therefore, investigators need to place contemporary ideas, practices, and experiences in the context of the past and of broader ideas about race, ethnicity, gender, class, and the various factors that shape and reshape the criminal justice experience. As such, by providing an examination of prior race and ethnic investigations, explaining the format of this book, and introducing the subsequent chapters, followed by 16 original chapters by some of the most renowned authors across the United States, the editor and contributing authors demonstrate a different approach to the contemporary study of Latinas and Latinos in the context of the American criminal justice system and beyond.

## THE UPCOMING MAJORITY

Contrary to conventional wisdom that ethnic minorities are *new* to America, Latinas and Latinos have been in the United States since 1565 in Florida and 1598 in New Mexico, many years 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 thus further fueling the notion of conquest, expansion, and control. Though, despite historical mechanisms for population control, and the long legacy of hate against Latinas and Latinos, particularly undocumented people, the Latina/o population continues to grow, leading to significant changes in the race and ethnic landscape. As of 2010, Latinas and Latinos, now the largest minority group and the second largest racial/ethnic group (second only to Caucasians), constitute approximately 16.3 percent (50.5 million) of the total general population (308.7 million in 2010) and they are the fastest growing segment of the population. Today, Latinas and Latinos live in every state of the nation and in every major city of the country. In 2010, Los Angeles, the second largest city in the United States (3.8 million in 2010), was 48.5 per-

cent (1,838,822) Hispanic and 29.4 percent Caucasian (in 2009), making the city's racial composition a "minority-majority," when all racial groups are included. As for the Hispanic subgroups, 31.9 percent was of Mexican origin in 2010, making Los Angeles the second largest Mexican city in the world, after Mexico City. At the state level, California, New Mexico, and Texas are already minority-majority states (all racial/ethnic groups included). In fact, New Mexico, having the highest percentage of Hispanics (46% in 2010), not including other racial/ethnic minorities, is already approaching 50 percent Latina/o. It has been projected that by the year 2050, 30 percent (about 133 million) of the U.S. population will be Hispanic, and Latino children will become the largest youth population by mid-century, surpassing Caucasian children, possibly the *upcoming majority*, with, of course, corresponding implications and ramifications, as reported in a forthcoming book by Martin Guevara Urbina, *Latinas y Latinos in the United States: 21st Century Dynamics of Multiculturalism*.

Yet, as reported by Professor Felipe de Ortego y Gasca, who taught the first course in Chicano literature in the United States at the University of New Mexico in 1969, Latinas and Latinos who are not newcomers to the United States lack recognition and respect in the privileged world of higher education, public discussion, documentaries, media, and in American textbooks. Regarded as the founder of Chicano literary history and theory, Ortego (2007) reports that American textbooks have provide a very limited and unrealistic picture of both Latinas and Latinos. Worse, according to Ortego, "TV network media and a majority of mainstream newspapers don't have a clue about American Hispanics." In the context of law and society, much of the truths and realities of Latina/o adults and juveniles have been omitted from the *pages of history* and remain hidden in the shadows of the past, as noted in this chapter and detailed in the following 16 chapters.

## THE NATURE OF PRIOR INVESTIGATIONS

Again, even though ethnic minorities have been in the United States since 1565, bypassing African Americans in the general population in 2000, making them the largest minority group in the United States, the academic literature on Latinas and Latinos, whose experiences with the criminal justice system differ from those of African Americans and Caucasians, remains limited and inconclusive. To this day, most studies that have analyzed the experiences of male or female offenders in the criminal justice system, whether it's in the area of policing, courts, or corrections, have focused almost exclusively on race, following a dichotomous "black-white" approach; that is,