

Capital Punishment in America: Ethnicity, Crime, and Social Justice

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Abstract

As we progress in the 21st Century, the influence of race and ethnicity in crime and punishment continues to be a pressing issue. In effect, with various anti-social control movements, the nature of crime and punishment is once again being redefined. As in the past, this new punitive cycle of social control has revived what seems to be the sanction of last resort when all things fail: executions. A closer analysis, though, reveals that capital punishment is in fact not governed by crime trends, but by the simultaneous interaction of historical legacies, conflictive race and ethnic relations, and the influence of extra legal factors, like skin color and economics. In fact, the history of the death penalty in the U.S. is a story shaped and re-shaped by the race and ethnicity of the offender and victim, and further fused by various other factors at different points in time and geography. However, as a result of traditionally adopting a dichotomous approach of investigation, little is actually known about the ethnic realities of executed Latinos. This article, then, seeks to determine the exact ethnicity of Latinos executed in the U.S. from 1996 to 2012, while focusing on all Latino executions, post-Gregg (1976-2012), to better understand the ethnic experience in the current punitive anti-social control movement.

Key Words: Capital Punishment, Death Penalty, Executions, Commutations, False Convictions, Latinos, Mexicans, Identity, Citizenship, National Origin, Discrimination, Social Justice

Introduction

The influence of ethnicity in crime and punishment continues to be a pressing issue in America. With various anti-social control movements, like the anti-narcotics movement, the anti-terrorism movement, the anti-gangs movement, and the anti-immigration movement, the nature and dynamics of crime and punishment are once again being redefined. As in previous years, the contemporary punitive cycle of social control has revived what seems to be the sanction of last resort when all things fail: executions. A closer analysis, of course, reveals that capital punishment is in fact not governed by crime trends, but by the simultaneous interaction of historical legacies, conflictive race and ethnic relations as well as the influence of *skin color* and *economics* (Urbina, 2011, 2012a). In fact, the history of capital punishment in the U.S. is a story shaped and re-shaped by race and ethnicity of the offender and victim, and further fused by various other factors at different points in time and geography (Urbina, 2003, 2004a).

However, for a more holistic examination of capital punishment in America, particularly as we seek to provide a sound interpretation of executions, one needs to look beyond the traditional “black/white” approach, which excludes not only Latinos (now the largest minority group in the U.S.), but also Mexicans (the largest ethnic group) and the specifics of the various other ethnic groups, like Cubans and Puerto Ricans, that constitute the Latina/o community. Consequently, as a result of adopting a dichotomous approach of theorizing, investigating, and publishing, little is actually known about executed Mexicans and Latinos in general in the U.S. since states started executing under the 1976 *Gregg* decision (Urbina, 2007, 2011, 2012a).

Of what ethnic group, for instance, were those Latinos who were executed from 1976 to 2012? What were the experiences and characteristics of the individuals executed during this time period, the most crucial death penalty era in modern times? In a 2004 article, Urbina explored the ethnic profile from 1975 to 1995, detailing the experience of 19 executed Latinos during this 20-year period. Crucially, corresponding with the various anti-social control movements, some of which started in the 1990s, the death row population and actual executions drastically increased, creating another death penalty trend (Urbina, 2012a).

As such, to debunk historical myths about the effects of ethnicity in capital punishment in the United States, one needs to document the Latino experience, which for the most part, has been averted by academic investigations. Premised on capital punishment studies and the brutal history of ethnic and race relations between Caucasians and Mexicans (Urbina, 2012a), we would expect that most, if not all, of the Latinos executed from 1996 to 2012 were of Mexican heritage. Further, considering the historical legacy of hate in Texas, the “capitol” of capital punishment, we would predict that the majority of post-*Gregg* executions took place in Texas. Therefore, the main objective of this article is to go beyond the black/white traditional approach by disaggregating the group of Latinos who were executed from 1996 to 2012 in the United States, focusing primarily (but not exclusively) on Mexicans and selected issues that tend to influence the dynamics of capital punishment.

The next section will begin by discussing the process and the various sources that were utilized to determine the exact ethnicity of Latinos executed in the U.S. from 1996 to 2012, while focusing on all Latino executions, post-*Gregg* (1976-2012), to better understand the ethnic experience in the current punitive anti-social control movement. After describing the techniques used to collect evidence of ethnic identity, an examination of the information on ethnic profiles will follow. Such investigation will provide insight into the existence of ethnic differences in executions, revealing a more realistic picture of the influence of ethnicity in capital punishment. Further, if differential treatment exists, as predicted, the data will enhance our understanding of when, how, and why Mexicans are more likely to be executed. After an analysis of the data, the impact of ethnicity in commutations will be explored, as such examination will provide insight into the struggle that some individuals experience in the hope of being granted a commutation, and thus not executed. A critical analysis of the *Price of American Justice* will be provided, followed by an argument that capital punishment in America is highly symbolic, and then a call is made for people to consider the underlying motive of executions, *Underneath it All*. The article concludes by making predictions as to whether similar ethnic trends would apply to other death sentence outcomes, like sentences or convictions being overturned by appellate courts, including the U.S. Supreme Court.

The Present Study

Along with the application of proper methodologies, a major challenge in this study has been delineating the exact ethnicity of all Latinos executed in the U.S. from 1996 to 2012. To begin, not all states keep race and ethnicity information of inmates under a sentence of death (death row) other than “white” and “black,” and the majority of states do not differentiate between the different Latino groups, with record keeping methods varying widely across states (Urbina, 2002, 2007). As a result, capital punishment information on Latinos, especially for specific Latino groups, is scant or unreliable (Urbina, 2004a, 2007). In effect, even state and national data sets either include Latinos with whites or treat all Latinos as a unitary group; or, exclude them altogether. Given this set of circumstances, multiple procedures were used to gather evidence of ethnicity in order to reduce possible sources of error, as we aim to establish data sets that will be utilized in future investigations.

Specifically, with the objective of obtaining valid and reliable information, multiple sources of information were utilized in determining the ethnicity of Latinos executed during the time-frame under study. In addition to published sources, numerous e-mail messages were sent, multiple phone calls were made, and several letters were dispatched via U.S. mail to various government agencies (e.g., state offices of the attorney general, departments of corrections, departments of criminal justice, and police departments), political and professional organizations (e.g., League of Latin American Citizens or LULAC, National Association for the Advancement of Color People or NAACP, Amnesty International, Hispanic National Bar Association, American Civil Liberties Union, Mexican American Legal Defense and Educational Fund), individuals (e.g., attorneys, judges, authors), newspapers (both national and international), magazines (both Spanish and English), radio stations (Spanish), television stations (Spanish), among others, in the hope of not only obtaining the needed information, but also reliable information.

In some cases, relevant information was obtained, but in most cases the information was not available, clearly showing the difficulty of conducting research on specific Latino groups. The combination of several sources of information, though, served to confirm the identity of executed Latinos. In effect, overall the use of triangulated methods proved to be an efficient research approach, as the findings of one method reinforced and validated the findings of another, which is essential as we try to develop reliable and valid qualitative data that can eventually be used in quantitative research. As such, when investigating the Mexican experience, or any other ethnic or racial group, it is particularly important to utilize multiple procedures in gathering evidence to reduce possible sources of error, while avoiding problems that might arise, and more importantly, avoid generating flawed or skewed results.

The Historical Contours of Crime and Punishment

While sensitive and provoking, to better capture the essence of crime and punishment in modern America, one must obtain an appreciation for the transformations of the U.S., which have in one way or another influenced the nature of crime and punishment. After conquest in 1848, for example, violence and brutality against Mexicans eventually escalated into ethnic oppression comparable to that of African Americans in the Jim Crow South (Baker, 2012; Urbina, 2012a). However, although widely known in the Mexican community and among some scholars, the history of mob violence and lynching, or so-called “illegal” executions, of Mexicans remains relatively unknown to the general public (Allen, Lewis, Litwack, and Als, 2000; Baker, 2012; Dray, 2002). In fact, despite the recent flourishing of academic investigation, publication, and dialogue on lynching, scholars continue to overlook anti-Mexican violence, with the majority of information focusing on lynching against African Americans. More globally, while people normally tend to hear or associate historical brutality with African Americans, the realities of Mexicans and Latinos in general have been twisted or omitted in both public dialogue and academic discourse, sometimes releasing outright lies (Noboa, 2005; Pizarro, 2005; Urbina, 2003, 2012b), eloquently explored by University of California-Riverside Professor Alfredo Mirande in *The Stanford Law Chronicles: Doin’ Time in the Farm* (2005), Texas A&M University Professor Wendy Leo Moore in *Reproducing Racism: White Space, Elite Law Schools, and Racial Inequality* (2007), and University of Pennsylvania Professor Tukufu Zuberi and Duke University Professor Eduardo Bonilla-Silva in *White Logic, White Methods: Racism and Methodology* (2008).

Though, some elements of ethnicity in crime and punishment have been traced by some scholars. In one of the few early studies exploring the lynching of Mexicans, Tony Dunbar and Linda Kravitz (1976) found that “For a Mexican living in America from 1882 to 1930, the chance of being a victim of mob violence was equal to those of an African American living in the South.” In a provoking study, “The Lynching of Persons of Mexican Origin or Descent in the U.S., 1848-1929” (2003), William D. Carrigan and Clive Webb document “that the danger of lynching for a Mexican resident in the United States was nearly as great, and in some stances greater, than the specter of mob violence for a black person in the American South.” More recently, David V. Baker (2012) details the “repressive practices against persons of Mexican descent in the borderlands of the American Southwest, 1848-1929.”

Exploring the impact of race and ethnicity in executions from the late 19th Century to the later part of the 20th Century (1890 to 1986), Aguirre and Baker (1989; 1997) found that 773 prisoners were executed in the Southwest, with 105 (14%) of the executed people being of Mexican heritage. Then, documenting the role of race and ethnicity in capital punishment for a large part of the 20th Century, reporter Don Reid (1973:109), who witnessed some 190 executions in Texas between 1923 and 1972, the year *Furman* was decided by the U.S. Supreme Court and thus temporally stopping executions, until *Gregg* was decided in 1976, cited:

It took no study for me to accept that simple, ignorant men committed more crimes of violence than did sophisticated men of means. And, it took but little time to realize that when sophisticated men of means did commit crimes of violence, they seldom were executed for them. Those who were electrocuted were the blacks, Mexican-Americans, the poor whites and whites out of favor in their communities for one reason or another, having nothing to do with the criminal allegations for which they died.

This observation regarding the influence of race and ethnicity in crime and punishment is consistent with Giardini and Farrow (1952), who found that Mexicans constituted the third largest group of individuals under the sentence of death in Texas from 1924 to 1952.

In effect, of the 506 men who were placed on death row in Texas between 1924 and 1964, 361 eventually died in the electric chair: 229 African Americans, 108 Caucasians, and 23 Mexicans (*San Antonio Express News*, 1999). Culver (1992:59) reports that “Texas is the only state to have executed Hispanics” between 1977 and 1990. Together, these investigations reveal the influence of race and ethnicity in capital punishment up until the *Furman* (1972) and *Gregg* (1976) decisions, which set a new era of capital punishment, with Latino executions being examined in this article.

Latinos Executed, 1977-2012

First, as noted above, Urbina (2004a) delineated the ethnic identity of executed Latinos between 1975 and 1995. However, to capture the entire post-*Gregg* death penalty era, we explore ethnic executions from 1977 to 2012. Specifically, the focus of this article on executed Latinos from 1977 to 2012 in the U.S. is because no one was actually executed between 1973 and 1976 as a result of the *Furman* (1972) decision by the Supreme Court. In fact, the first post-*Gregg* (1976) execution took place on January 17, 1977, with the last on March 28, 2012, during the time-frame of this study.

Second, of the 1,289 individuals who have been executed in the U.S. since *Gregg* (1976), 481 (37%) were executed in Texas, constituting a high percentage of executions nationwide. Of the 1,289 nationwide executions from *Gregg* to 2012 (as of April 1, 2012), 100 were Latino executions, identified as “white” or “black” Latino men. As noted in Table 1, of the 100 Latino executions nationwide, the majority (85) of Latinos were executed in Texas. As such, of the 100 executed Latinos in the U.S. from 1977 to 2012, 95 were executed in states (Texas, Florida, and Arizona) containing a high concentration of Latinos, and thus accounting for the majority of Latino executions nationwide. As for the exact ethnicity of Latinos executed from 1977 to 2012, the great majority were of Mexican heritage, as predicted. Specifically, of the 100 Latinos executed during this era, 84 were Mexican, 4 Cuban, 2 Honduran, 2 Puerto Rican, 1 Dominican, and 1 Paraguayan, as reported in Table 1. For a complete listing of all post-*Furman* executions; that is, all executed people in the United States from 1977 to 2012, see Urbina (2012a).

Table 1: Latinos Executed in the United States, 1977-2012^a

#	Name	Date of Execution	State of Execution	Defendant/Victim Race-Ethnicity	Method of Execution
1.	Jesse de la Rosa	May 15, 1985	Texas	Mexican/Asian	Lethal Injection
2.	Henry Martinez Porter	Jul. 09, 1985	Texas	Mexican/White	Lethal Injection
3.	Rudy Esquivel	Jun. 09, 1986	Texas	Mexican/White	Lethal Injection
4.	Richard Andrade	Dec. 18, 1986	Texas	Mexican/Latino	Lethal Injection
5.	Ramon Hernandez	Jan. 30, 1987	Texas	Mexican/Latino	Lethal Injection
6.	Elisio Moreno	Mar. 04, 1987	Texas	Mexican/White	Lethal Injection
7.	Dale Pierre Selby*	Aug. 28, 1987	Utah	Unknown/3White	Lethal Injection
8.	Aubrey Adams*	May 04, 1989	Florida	Unknown/White	Electrocution
9.	Carlos de Luna	Dec. 07, 1989	Texas	Mexican/Latino	Lethal Injection
10.	Ignacio Cuevas	May 23, 1991	Texas	Mexican/2White	Lethal Injection
11.	Joe Angel Cordova	Jan. 22, 1992	Texas	Mexican/White	Lethal Injection
12.	Jesus Romero	May 20, 1992	Texas	Mexican/Latino	Lethal Injection
13.	Carlos Santana	Mar. 23, 1993	Texas	Dominican/Latino	Lethal Injection
14.	Ramon Montoya Facunda	Mar. 25, 1993	Texas	Mexican/White	Lethal Injection
15.	Leonel Torres Herrera	May 12, 1993	Texas	Mexican/Latino	Lethal Injection
16.	Ruben Cantu	Aug. 24, 1993	Texas	Mexican/Latino	Lethal Injection
17.	Jessie Gutierrez	Sep. 16, 1994	Texas	Mexican/White	Lethal Injection
18.	Mario S. Marquez	Jan. 17, 1995	Texas	Mexican/Latino	Lethal Injection
19.	Esequel Banda	Dec. 11, 1995	Texas	Mexican/White	Lethal Injection
20.	Luis Mata	Aug. 22, 1996	Arizona	Mexican /Latino	Lethal Injection
21.	Joe Gonzales	Sep. 18, 1996	Texas	Mexican/White	Lethal Injection
22.	Pedro Medina	Mar. 25, 1997	Florida	Cuban/Black	Electrocution
23.	Davis Losada	Jun. 04, 1997	Texas	Mexican/Latino	Lethal Injection
24.	Irineo Tristan Montoya	Jun. 18, 1997	Texas	Mexican/White	Lethal Injection

#	Name	Date of Execution	State of Execution	Defendant/Victim Race-Ethnicity	Method of Execution
25.	Mario Benjamin Murphy	Sep. 17, 1997	Virginia	Mexican/White	Lethal Injection
26.	Jose Jesus Ceja	Jan. 21, 1998	Arizona	Mexican/Latino, White	Lethal Injection
27.	Angel Francisco Breard	Apr. 14, 1998	Virginia	Paraguayan /White	Lethal Injection
28.	Jose Villafuerte	Apr. 22, 1998	Arizona	Honduran/Latino	Lethal Injection
29.	Pedro Cruz Muniz	May 19, 1998	Texas	Mexican/White	Lethal Injection
30.	Leopoldo Narvaiz	Jun. 26, 1998	Texas	Mexican/4White	Lethal Injection
31.	Genaro Ruiz Camacho	Aug. 26, 1998	Texas	Mexican/Black	Lethal Injection
32.	David Castillo	Sep. 23, 1998	Texas	Mexican/Latino	Lethal Injection
33.	Javier Cruz	Oct. 01, 1998	Texas	Mexican/2White	Lethal Injection
34.	Roderick Abeyta*	Oct. 05, 1998	Nevada	Unknown/White	Lethal Injection
35.	Martin Vega	Jan. 26, 1999	Texas	Mexican/Latino	Lethal Injection
36.	George Cordova	Feb. 10, 1999	Texas	Mexican /Latino	Lethal Injection
37.	Andrew Cantu	Feb. 16, 1999	Texas	Mexican/3White	Lethal Injection
38.	Jose De La Cruz	May 04, 1999	Texas	Mexican/Latino	Lethal Injection
39.	Joseph Trevino	Aug. 18, 1999	Texas	Mexican/Latino	Lethal Injection
40.	Ignacio Ortiz	Oct. 27, 1999	Arizona	Mexican/Latino	Lethal Injection
41.	Jose Gutierrez	Nov. 18, 1999	Texas	Mexican/White	Lethal Injection
42.	Paul Selso Nuncio	Jun. 15, 2000	Texas	Mexican/White	Lethal Injection
43.	Jesse San Miguel	Jun. 29, 2000	Texas	Mexican/White	Lethal Injection
44.	Juan Soria	Jul. 26, 2000	Texas	Mexican/White	Lethal Injection
45.	Oliver Cruz	Aug. 09, 2000	Texas	Mexican/White	Lethal Injection
46.	Miguel Flores	Nov. 09, 2000	Texas	Mexican/White	Lethal Injection
47.	Edward Castro	Dec. 07, 2000	Florida	Mexican/White	Lethal Injection
48.	Adolph Hernandez	Feb. 08, 2001	Texas	Mexican/Latino	Lethal Injection
49.	Juan Raul Garza	Jun. 19, 2001	Federal	Mexican/3Latino	Lethal Injection
50.	Jose Santellan	Apr. 10, 2002	Texas	Mexican/Latino	Lethal Injection
51.	Rodolfo Hernandez	Apr. 30, 2002	Texas	Mexican/Latino	Lethal Injection
52.	Johnny Martinez	May 22, 2002	Texas	Mexican/White	Lethal Injection
53.	Javier Suarez Medina	Aug. 14, 2002	Texas	Mexican/Latino	Lethal Injection
54.	Rigoberto Sanchez –Velasco	Oct. 02, 2002	Florida	Cuban/Latino	Lethal Injection
55.	Leonard Rojas	Dec. 04, 2002	Texas	Mexican/1White, 1Latino	Lethal Injection
56.	John Baltazar	Jan. 15, 2003	Texas	Mexican/Latino	Lethal Injection
57.	John William Elliott*	Feb. 04, 2003	Texas	Unknown/Latino	Lethal Injection
58.	Juan Chavez	Apr. 22, 2003	Texas	Mexican/Latino	Lethal Injection
59.	Andrew Flores	Sep. 21, 2004	Texas	Mexican/Latino	Lethal Injection
60.	Peter Miniel*	Oct. 06, 2004	Texas	Unknown/White	Lethal Injection
61.	Anthony Fuentes	Nov. 17, 2004	Texas	Mexican/White	Lethal Injection
62.	Alexander Martinez	Jun. 07, 2005	Texas	Mexican/Latino	Lethal Injection
63.	David Aaron Martinez	Jul. 28, 2005	Texas	Mexican/White	Lethal Injection
64.	Luis Ramirez	Oct. 20, 2005	Texas	Mexican/Latino	Lethal Injection
65.	Jaime Elizalde	Jan. 31, 2006	Texas	Mexican/2Latino	Lethal Injection
66.	Robert Salazar Jr.	Mar. 22, 2006	Texas	Mexican/Latino	Lethal Injection
67.	Jackie Barron Wilson*	May 04, 2006	Texas	Unknown/White	Lethal Injection
68.	Jesus Aguilar	May 24, 2006	Texas	Mexican/2Latino	Lethal Injection
69.	Angel Maturino Resendiz	Jun. 27, 2006	Texas	Mexican/Latino	Lethal Injection
70.	Richard Hinojosa	Aug. 17, 2006	Texas	Mexican/White	Lethal Injection
71.	Angel Diaz	Dec. 13, 2006	Florida	Puerto Rican/White	Lethal Injection
72.	Carlos Granados	Jan. 10, 2007	Texas	Mexican/Latino	Lethal Injection
73.	Robert Perez	Mar 06, 2007	Texas	Mexican/2Latino	Lethal Injection
74.	Vincent Gutierrez	Mar. 28, 2007	Texas	Mexican/Latino	Lethal Injection
75.	Lionell Rodriguez	Jun. 20, 2007	Texas	Mexican/Asian	Lethal Injection

#	Name	Date of Execution	State of Execution	Defendant/Victim Race-Ethnicity	Method of Execution
76.	Gilberto Reyes	Jun. 21, 2007	Texas	Mexican/White, Latino	Lethal Injection
77.	John Joe Amador	Aug. 29, 2007	Texas	Mexican/White	Lethal Injection
78.	Jose Ernesto Medellin	Aug. 05, 2008	Texas	Mexican/1White, 1Latino	Lethal Injection
79.	Heliberto Chi	Aug. 07, 2008	Texas	Honduran/White	Lethal Injection
80.	Michael Rodriguez	Aug. 14, 2008	Texas	Mexican/White	Lethal Injection
81.	Virgil Martinez	Jan. 28, 2009	Texas	Mexican/4Latino	Lethal Injection
82.	Ricardo Ortiz	Jun. 29, 2009	Texas	Mexican/Latino	Lethal Injection
83.	David Martinez	Feb. 04, 2009	Texas	Mexican/2Latino	Lethal Injection
84.	James Edgard Martinez	Mar. 10, 2009	Texas	Puerto Rican/2White	Lethal Injection
85.	Luis Cervantes Salazar	Mar. 11, 2009	Texas	Mexican/Latino	Lethal Injection
86.	Michael Rosales	Apr.15, 2009	Texas	Mexican/Black	Lethal Injection
87.	Yosvanis Valle	Nov. 10, 2009	Texas	Cuban/Latino	Lethal Injection
88.	Michael Sigala	Mar. 2, 2010	Texas	Mexican/2Latino	Lethal Injection
89.	Samuel Bustamante	Apr. 27, 2010	Texas	Mexican/Latino	Lethal Injection
90.	Rogelio Cannady	May 19, 2010	Texas	Mexican/Latino	Lethal Injection
91.	John Alba	May 25, 2010	Texas	Mexican/Latino	Lethal Injection
92.	Peter Cantu	Aug. 17, 2010	Texas	Mexican/2 White	Lethal Injection
93.	Humberto Leal	July 7, 2011	Texas	Mexican/Latino	Lethal Injection
94.	Martin Robles	Aug. 10, 2011	Texas	Mexican/2Latino	Lethal Injection
95.	Manuel Valle	Sep. 28, 2011	Florida	Cuban/Latino	Lethal Injection
96.	Frank Martinez Garcia	Oct. 27, 2011	Texas	Mexican/2Latino	Lethal Injection
97.	Guadalupe Esparza	Nov. 16, 2011	Texas	Mexican/Latino	Lethal Injection
98.	Rodrigo Hernandez	Jan. 26, 2012	Texas	Mexican/White	Lethal Injection
99.	George Rivas	Feb. 29, 2012	Texas	Mexican/White	Lethal Injection
100.	Jesse Joe Hernandez	Mar. 28, 2012	Texas	Mexican/Latino	Lethal Injection

*As of April 1, 2012

Latino executions by state and jurisdiction: Texas (85), Florida (6), Arizona (4), Virginia (2), Nevada (1), Utah (1), and Federal (1).

Mexican:	84	Puerto Rican:	2	Unknown:	6
Cuban:	4	Dominican:	1		
Honduran:	2	Paraguayan:	1		

*Classified as unknown because it was not possible to trace them to Latino heritage, or trace their exact ethnicity.

Ethnic Identity, Citizenship, and National Origin

Unlike African Americans and Caucasians, establishing ethnic identity, citizenship, or national origin is complicated because of how information is collected and compiled (Urbina, 2007), combined with social changes, like diversity and multiculturalism, as documented by Urbina's forthcoming book, *Latinas y Latinos in the United States: 21st Century Dynamics of Multiculturalism*. Among the various issues, we will make note of some of the more pressing issues in the data gathering process, utilizing a few selected death penalty stories to illustrate the complexity of delineating ethnic information; that is, discovering the exact ethnicity of executed Latinos, as we seek to better understand the role of ethnicity in capital punishment, and, by extension, punishment in general.

As for ethnic identity, one of the Mexican defendants, for instance, executed on December 11, 1995, was once identified by a Yaqui-Mexican as part Yaqui Indian and part Mexican (Hayes, 1999a), making it difficult to determine if indeed Esequel Banda was Mexican.

As for citizenship, some of the Mexican defendants could have been U.S. citizens, but actually classified themselves as “Mexican” in formal documents or verbal communication (Crocker, 1999; *New York Times*, 1985; Office of the Attorney General of Texas, 1999; Texas Department of Criminal Justice, 1999), resulting in possible confusion as to whether they were U.S. citizens or foreign nationals. In regards to national origin, some of the executed Mexicans were in fact Mexican nationals (Amnesty International, 1999; Bentele, 1993; *Courier-Journal*, 1993; Halperin, 1997; *Houston Chronicle*, 1993a; *Los Angeles Times*, 1994; *New York Times*, 1993a, 1993b; *Sacramento Bee*, 1994; *San Francisco Chronicle*, 1993a).

In all, while the task of locating the exact ethnicity of executed Latinos from 1977 to 2012 was tedious and laborious, only 6 had to be classified as unknown because of the inability to locate their ethnicity. Again, as reported in Table 1, of the 100 executed Latinos, 84 were Mexican, 4 Cuban, 2 Honduran, 2 Puerto Rican, 1 Dominican, 1 Paraguayan, and 6 of unknown ethnicity.

Characteristics of Executed Latinos

The experience of African Americans, Caucasians, Mexicans, and other racial and ethnic groups tends to be shaped and re-shaped by various historical forces (Urbina, 2007, 2011, 2012a, 2012b). In the area of crime and punishment, here are some of the more pressing characteristics of executed Latinos from 1977 to 2012, which are consistent with observations made by other investigators. Or, more precisely, we focus on the characteristics of Mexican death row inmates since the great majority of executed Latinos were of Mexican heritage. First, considering the often cited fear by white America, the majority of victims were actually not white but Latino, with the rest being non-Latino, African American, Asian, or Caucasian, indicating that most homicides were Latino-on-Latino, as reported in Table 1. Second, most death row inmates had prior criminal records, which, of course, is part of the typical profile of people who get arrested, indicted, prosecuted, convicted, sentenced, sent to jail or prison, and, in capital punishment cases, executed. Third, while some defendants remained under the sentence of death for only a few months before the execution was carried out, most stayed on death row for several years before they were executed, which is also typical of the majority of all executions in America, putting the utility of executions in question (Urbina, 2011, 2012a).

Fourth, every executed Latino, especially the Mexican defendants, had non-professional jobs, if they were employed prior to their arrest, with the majority of defendants being young at the time of the crime, uneducated, and sometimes their income was “just barely enough to get by” (*Atlanta Journal and Constitution*, 1991; *Courier-Journal*, 1993; Halperin, 1997; *Houston Chronicle*, 1992a, 1992b; 1993b, 1993c; *Los Angeles Times*, 1985a; 1994; *New York Times*, 1985; 1987; 1993b; 1995a; *Phoenix Gazette*, 1995; Office of the Attorney General of Texas, 1999; *Sacramento Bee*, 1994; *San Diego Union-Tribune*, 1985a, 1985b; 1986; Texas Department of Criminal Justice, 1999; *Washington Post*, 1994), revealing that if defendants were not indigent at the time of their arrest, they were soon indigent due to resource considerations, as documented by Urbina in *Hispanics in the U.S. Criminal Justice System: The New American Demography* (2012b). In effect, according to an attorney who witnessed one of the executions: “I think it [capital punishment] is at best extremely arbitrary, at worst extremely discriminatory against the poor” (*New York Times*, 1995b:24).

Fifth, in American jurisprudence, an essential legal element in judicial proceedings is the defendant’s ability to be “competent” to stand trial. Yet, based on social history, where information was available, some of the defendants were “mildly mentally retarded” or suffered from “severe [cognitive] impairment” (*Baltimore Sun*, 1995; *Houston Chronicle*, 1992a; 1995; *Independent*, 1995; *New York Times*, 1995a; *Phoenix Gazette*, 1995; Office of the Attorney General of Texas, 1999), a common element found among the incarcerated population, as documented by Urbina in *A Comprehensive Study of Female Offenders: Life Before, During, and After Incarceration* (2008). For instance, Mario Marquez, Mexican executed in Texas for killing his 18-year-old wife and 14-year-old niece, had an IQ below 70, which is considered mentally retarded (*Baltimore Sun*, 1995; *Independent*, 1995; *Houston Chronicle*, 1995; *Phoenix Gazette*, 1995). In fact, Keyes, Edwards, and Perske (1999:3) found that Marquez “had an IQ estimated at 65, with adaptive skills of a 7 year old.” Charged with rape and murder, Miguel Angel Flores, another Mexican, was represented by a court-appointed lawyer who was unable to speak Spanish, with the defense final argument at the sentencing phase taking less than ten minutes (when normally it can take up to three hours).

The defense attorney actually argued against Miguel's only hope of avoiding a death sentence, and the jury never learned of Miguel's mental impairments. Critically, even the prosecution objected to the defense "speech" as a misstatement of American jurisprudence.

Sixth, executed Latinos tend to have a lengthy history of chronic alcohol abuse and extensive drug use (*Houston Chronicle*, 1992b; 1993b; 1993c; *New York Times*, 1985; 1987; Office of the Attorney General of Texas, 1999; *San Diego Union-Tribune*, 1985a, 1985b; 1986; 1987), also a common trait among incarcerated people, situations that seem to worsen stress and depression, which in turn led to suicidal thoughts and even suicide (Urbina, 2008).

Seventh, some Latino defendants did not show signs of remorse, which in part contributed to the execution (*New York Times*, 1986; Urbina, 2004a, 2012a). Though, perhaps more than a sign of viciousness, lack of remorse could be due in part to the very nature of Latino criminality and punishment, as in the case of Henry Martinez Porter, Mexican executed in Texas for the slaying of Fort Worth police officer Henry Mailloux: ". . . I shot a man who shot me first" (*San Diego Union-Tribune*, 1985a:4). More globally, "acceptance of criminal responsibility," or remorse, varies by race and ethnicity. In effect, considering powerful historical forces, including American criminal law, combined with various other factors, like cultural standards of appropriate behavior, quality of legal representation, and intercultural and legal miscommunication (Urbina, 2004b), African American and Latino defendants are thought to be less likely to express remorse than Caucasian defendants. For instance, in a state-wide study, "Language Barriers in the Wisconsin Court System: The Latino/a Experience," Urbina (2004b:91) reports that "equal access to the law is being denied to non-English speaking Latinos/as in our nation's courts due to poor (or lack of) interpretation."

Eighth, of the 100 Latinos executed from 1977 to 2012, several death row inmates claimed innocence. For example, the final words of Lionel Herrera, Mexican executed in Texas for killing a police officer, were: "I am innocent, innocent, innocent. Make no mistake about this. I owe society nothing. I am an innocent man and something very wrong is taking place tonight" (*Houston Chronicle*, 1993c:1), not an unrealistic claim in that a significant number of death row inmates have now been found innocent through the application of DNA and other investigative techniques (as in the case of Illinois during the last few years), not to mention the number of innocent people who have been executed. In this regard, several Mexican nationals currently on death row in Texas claim innocence (Urbina, 2012a). As such, Mexico and some other countries have not extradited fugitives on some occasions unless the death sentence was waived in the United States (*Phoenix Gazette*, 1993; Urbina, 2011, 2012a), as illustrated by the highly publicized Florida case involving Jose Luis Del Toro, who fled to Mexico after committing a murder in Florida.

Finally, some of the executed Mexicans were not only represented by inadequate counsel, but at times no Mexican American or other minority jurors served on the petitioner's trial jury (*Houston Chronicle*, 1992a; *New York Times*, 1986; Office of the Attorney General of Texas, 1999; *Sacramento Bee*, 1994; *Washington Post*, 1994), an historical situation significantly influencing the role of race and ethnicity in crime and punishment (Lopez, 2003). For instance, Rudy Esquivel was sentenced to death by an all-white jury and executed in Texas in 1986, and Ramon Mata died on death row in Texas in 2000 after 15 years under a death sentence imposed by an all-white jury. Their frustration was summed up by Henry Porter of San Antonio, Texas, executed in 1985 after being on death row for nearly eight years: "They call it equal justice, but it's your justice . . . a Mexican life is worth nothing" (*New York Times*, 1985:11). More globally, Pat Clark, executive director of Death Penalty Focus, made the following observation: "it's interesting that many folks consider the U.S. a more civilized country than Mexico and yet Mexico doesn't have such a barbaric penalty" (*San Francisco Chronicle*, 1993a:15). In all, even though it's difficult to mathematically quantify the role of race and ethnicity in crime and punishment based on this descriptive information, executed Mexicans (and the other executed Latinos) seem to have defining characteristics, distinguishing them from both African American and Caucasian death row inmates facing execution or receiving a commutation.

The Significance of Commutations in Capital Punishment

As in executions, the possible influence of race and ethnicity in commutation decisions ought to be examined to control for possible race and ethnic effects.

Indeed, in a battle against time, and the government, to avoid execution, commutations have been viewed by some as “hope,” as a last “possibility” of not losing an additional life, or as some would say, another murder in the hands of the state. However, while there was widespread pressure for the commutation of several Latino defendants, especially Mexican nationals, based largely on claims of ethnic discrimination, violations of civil rights, violations of international treaties, innocence, lack of adequate financial or legal representation, mental illness, youth at the time of the offense, irreversibility of mistakes, or a history of chronic drug abuse and neglect of the defendants, the executions were carried out, particularly in Texas.

In exploring the significance of race and ethnicity from an international context, it seems that the majority of foreign nationals, most of them being Mexican (Urbina, 2011, 2012a), sentenced to death in the United States from 1977 to 2012 have been convicted in violation of their rights (Article 36) under the Vienna Convention of 1963 (*Amnesty International*, 1999; *National Law Journal*, 1998; Urbina, 2004a; Vandiver, 1999; Warren, 1999). Article 36, which requires authorities in the country where people are arrested to notify their country (e.g., consulate, State Department) within 12 hours of the arrest, of the Vienna Convention on Consular Relations is an international treaty that became U.S. law in 1969.

However, some legal experts claim that the U.S. has followed a double-standard in the application of international law. For instance, Robert Brooks, a Virginia attorney who represented Mario Benjamin Murphy, Mexican national executed in Virginia for the murder-for-hire slaying of a U.S. Navy cook, reports that “the State Department maintains a double standard when applying Article 36” (Halperin, 1997:6). According to Brooks, while the

State Department insists on being notified whenever Americans are jailed abroad and that while failure to comply with Article 36 within 12 hours of an arrest is grounds for diplomatic protest, it allows the law to go unheeded when foreign nationals are arrested in the United States (Halperin, 1997:6),

An issue that tends to bring out the passion, hatred, and hypocrisy of some people when the situation involves Mexico and the U.S. (Urbina, 2012b; Urbina and Smith, 2007). In effect, critics report that “People are going to death in violation of every article . . . in every case; Mexican consulates were not notified until after their citizens had been convicted and given the death sentence” (Halperin, 1997:6). Contrast this with the 1994 caning of Michael Fay, an 18-year-old male from Ohio who was lashed four times on his bare buttocks with a rattan cane in Singapore for vandalizing cars. Before the sentence was carried out, there was an enormous outcry from Americans expressed in the U.S. media; again, a common reaction in the U.S. when something happens to Americans in Mexico, while thousands of abuses are routinely taking place against Mexicans in the U.S., with many of such abuses by the very agents of the law (Urbina, 2012a, 2012b).

Notably, during the 35 years under study, 1977-2012, when Mexican nationals approached their execution date, particularly in Texas, the Mexican government (including the President and state governors), protestors on both sides of the border, organizations like the League of Latin American Citizens, religious groups, and international organizations called on the governor to commute the sentences (*Los Angeles Times*, 1994; *Sacramento Bee*, 1994; *Phoenix Gazette*, 1993; Urbina, 2004a), often citing the effect of race and ethnicity in capital punishment.

Consider, for instance, the story of three Mexican nationals on death row. Ramon Montoya Facunda, executed in Texas in 1993 for killing a Dallas police officer, was the first Mexican citizen executed in the U.S. post-Gregg (1976). Montoya spent more than a decade on death row without any contact with the Mexican consulate. When Mexican authorities finally learned of his case, Montoya’s legal appeals were nearly over and the only remaining option was to appeal for clemency. Being the first Mexican national to be executed in Texas in 51 years, there were worldwide protestations, as cited by various news stories. On behalf of Montoya, the Mexican National Human Rights Commission, the Vatican, as well as the National Network of Civil Rights Organizations made up of more than 30 Mexican groups, called for a reprieve, not challenging his guilt, but only objecting to the death sentence, which was viewed as prejudiced, racist, repugnant, and barbarous (Bentele, 1993; *Courier-Journal*, 1993; *Houston Chronicle*, 1993a; *Sacramento Bee*, 1994; *San Diego Union-Tribune*, 1994; Tierney, 1992). Irineo Tristan Montoya, executed in 1997 for apparently killing South Padre Island businessman John Kilheffer, was the second Mexican citizen executed in the U.S. since Ramon Montoya was put to death in 1993.

Notably, “after a lengthy police interrogation conducted without the benefit of counsel,” Tristan, who was 18 at the time of the crime, “reportedly signed a four-page confession in English, a language he did not speak, read, or write.” As such, a director of Comité Nacional de La Raza expressed his concerns about the mechanics of capital punishment in America:

This is the global aspect—not only are we trying to save the life of an innocent man and how he was used as a scapegoat—but it’s also a protest of the justice system that is discriminatorily used against people of color (Dieter, 1997; Edwards, 1993; *Los Angeles Times*, 1994; *New York Times*, 1993a; *Sacramento Bee*, 1994; Zuniga, 1993).

Reporting Tristan’s execution, “Today, They Killed Him,” reported a Mexico City newspaper, while the headline in *La Jornada*, a leading Mexico City daily newspaper, read: “Indignation!”

In the case of a third Mexican national, Jose Ernesto Medellin, executed in 2008 for the murder of Jennifer Ertman and Elizabeth Pena, Medellin gained international notoriety when Mexico sued the U.S. in the International Court of Justice on behalf of 51 Mexican nationals indicating that the U.S. had violated Article 36. Originally, the U.S. government argued that Mexico’s suit was “an unjustified, unwise and ultimately unacceptable intrusion in the United States criminal justice system,” but reversed its position shortly. The U.S. Supreme Court agreed to hear the case on May 1, 2007, but dismissed the case to allow Texas to comply with the U.S. government directive. The Texas Court of Criminal Appeals refused to change its decision, with one judge accusing the White House of an “unprecedented, unnecessary and intrusive exercise of power over the Texas court system.” In response, the George W. Bush administration (2001-2009) asked the U.S. Supreme Court to overturn the Texas court’s decision, with the U.S. government telling the justices that the Texas court’s decision, if not reversed, “will place the United States in breach of its international law obligation” to comply with the International Court of Justice’s decision and that it would “frustrate the president’s judgment that foreign policy interests are best served by giving effect to that decision.” The Court rejected the Bush Administration’s arguments, and on July 16, 2008, the International Court of Justice asked for a stay of execution on behalf of Medellin and four other Mexican nationals whom they claimed did not receive a fair trial. However, on July 17, 2008, a spokesperson for Texas Governor Rick Perry said that the state would continue with the execution and that

The world court has no standing in Texas and Texas is not bound by a ruling or edict from a foreign court. It is easy to get caught up in discussions of international law and justice and treaties. It’s very important to remember that these individuals are on death row for killing our citizens.

Again, these cases not only illustrate the complexity of executions and the global nature of capital punishment, but also defined elements and characteristics of Mexican inmates.

Of course, such characterizations are not only related to the situation of Mexican nationals, but also Mexican Americans and Latinos in general. For instance, the case of Leonel Herrera, Mexican American executed in 1993, also brought national and international protestations on the grounds of innocence (Dieter, 1997; Edwards, 1993; *Houston Chronicle*, 1993c; *New York Times*, 1993b), with elements paralleling cases involving Mexican nationals.

Together, independent of nationality and over the protestations of the Mexican government and national and international organizations, Mexican citizens and Mexican Americans have been executed, often under extremely questionable circumstances, with some cases receiving wide publicity, while in others, total silence (Dieter, 1997; Edwards, 1993; Halperin, 1997; *Houston Chronicle*, 1993a, 1993b, 1993c; *Los Angeles Times*, 1985a, 1985b; 1994; *New York Times*, 1993b; *Phoenix Gazette*, 1993; *Sacramento Bee*, 1994; *San Diego Union-Tribune*, 1985a, 1993, 1994; *San Francisco Chronicle*, 1993a; *Washington Post*, 1993; 1994). In the case of Ramon Montoya, for example, outside the Texas’ prison unit where the execution took place, protestors held candles and chanted in Spanish, “Justice! And “Life, not death!” The demonstration was the largest in several years for a Texas execution (*Houston Chronicle*, 1993a). At other times, though, “there were no conferences . . . no Hollywood stars speaking out for [death row inmates] . . . no international attention riveted on [their] case . . . no speeches . . . no rallies” (Urbina, 2004a; *Washington Post*, 1993:9).

At the end, for some death row inmates of Mexican heritage, the bold headline across the front page of *La Jornada* summarized the end result after the death sentence of Ramon Montoya, for instance, was carried out in one word: “**EXECUTED.**” Other Mexico City newspapers, like *El Nacional*, made similar statements and criticized the execution on various grounds, but, primarily, the influence of race and ethnicity in crime and punishment. In the U.S., Ramon Montoya’s lawyer made the following observation of the action by the Mexican government on behalf of Montoya and other Mexicans on death row: “they have done everything you could ask a Government to do . . . unfortunately, to use the vernacular of Texas, Mr. Montoya is a wetback who killed a white cop” (*Los Angeles Times*, 1994; *New York Times*, 1993b:19), resonating the role of ethnicity in capital punishment in America.

Deadly Mistakes in Capital Punishment

In the 35 years (1977-2012) since the U.S. Supreme Court reinstated executions under *Gregg*, 1,289 people have been executed (as of April 1, 2012) and the number of death row inmates has drastically increased into the thousands (Urbina, 2012a). A focal question, then: How many death penalty cases end in false convictions? And, by extension, does ethnicity play a role in cases resulting in false convictions, or, worse, executions? In truth, nobody knows how many may be innocent, but research, through forensic science like DNA, strongly indicates that some death row inmates are innocent. Some critics claim that at least eight innocent people have been executed since *Gregg*, others estimate that about 1% of death row inmates who are executed are innocent, while still others cite that the figure is much higher because once a person is executed the case is normally closed, and the majority of cases are never reviewed for possible error once the person is convicted and given the sentence of death. In fact, one study found that from 1976 to 1998 at least 75 people were wrongly sentenced to die (McCormick, 1998). Invariably, contrary to the popular legal standard of guilty beyond a reasonable doubt, at least 39 people have been executed in the face of strong evidence of innocence or grave doubt about being guilty of the charges, as in the case of some inmates of Mexican heritage.

The next question, then, would be: how do innocent people get wrongfully convicted and executed? The list of factors is long and complicated, but a possible factor is the influence of ethnicity, governed by police officers and court officials, like judges, prosecutors, juries, and even defense attorneys (Urbina, 2011, 2012a). A second driving force of wrongful convictions is inexperienced, incompetent, or unprepared lawyers for the defendants, as judges tend to assign death penalty cases to inexperienced lawyers (Urbina, 2012c). As cited by Urbina (2012a), not only is capital punishment one of the most complicated legal sanctions, but also one of the most expensive. Yet, just a few years ago, Alabama was paying lawyers \$20 an hour, up to a cap of \$1,000, to prepare for a death penalty case, and \$40 an hour to litigate in court. In Texas, one lawyer delivered a 26-word statement at the sentencing trial: “You are an extremely intelligent jury. You’ve got that man’s life in your hands. You can take it or not. That’s all I have to say,” and Jesus Romero, Mexican, was executed in 1992 (McCormick, 1998).

More recently, an investigation by the *Chicago Tribune* found that of 131 death row inmates executed in Texas under George W. Bush, who claimed fair trials throughout his tenure as governor (1995-2000), 43 included defense attorneys publicly punished for misconduct, either before or after their work on the given death penalty cases; 40 involved trials where defense attorneys presented no evidence or had only one witness during the sentencing phase of the two-stage trial; 29 included a psychiatrist who gave testimony that the American Psychiatric Association condemned as unethical and untrustworthy; 23 included jailhouse informants, consider to be among the least credible witnesses; and 23 included visual hair analysis, which has been proven to be unreliable. Finally, suggesting the possible role of race and ethnicity in capital punishment judicial proceedings, “expert” witnesses for the state have actually told jurors in several trials that African Americans and Mexicans are more likely to be dangerous in the future than Caucasians.

The Story of Clarence, Ricardo, and Christopher

For the betterment of the criminal justice system, defendants, and society at large, the current capital punishment era is being redefined with modern technological advances. As for the possible influence of race, Clarence Brandley, an African American janitor, was accused of killing a white girl in Texas in 1980. A police officer, apparently, told Brandley and a fellow white janitor that one of them would be executed for the crime then looked at Brandley, saying: “Since you’re the nigger, you’re elected.” Later, it was discovered that prosecutors suppressed evidence, and Brandley was freed after 10 years in prison.

As for the possible role of ethnicity, Ricardo Aldape Guerra, Mexican national wrongfully convicted and sentenced to death in 1982 for the murder of a Houston police officer, was released on April 15, 1997, after spending nearly 15 years on death row in Texas. Soon after his arrest, Mexican consular officers worked closely with volunteer lawyers representing Aldape, obtained affidavits from witnesses in Mexico in 1991-1992, and continued working closely with the defense counsel in state post-conviction proceedings. During this time, the Mexican government funded travel expenses for two of Aldape's lawyers, who traveled to Mexico to obtain previously undiscovered evidence. Then, in 1992, the Houston Consul General was instrumental in obtaining new counsel for Aldape from the prestigious law firm of Vinson & Elkins. After spending millions of dollars on Aldape's defense, lawyers convinced a federal judge that Aldape was innocent of all charges, with an appellate court judge upholding a federal court ruling that cited police and prosecutorial misconduct in the homicide investigation (Ampudia, 2010). After Aldape's release, the attorney who led the law firm's efforts stated that he would have never represented Aldape had it not been for the involvement of Mexican consular officers and the Mexican government.

At the turn of the century, Christopher Ochoa, Mexican American, was released from prison in 2001 after serving 12 years on death row in Texas for a rape/murder he did not commit. In his defense, Ochoa was assisted by the Wisconsin Innocence Project, housed at the University of Wisconsin Law School and run by law professors and students. Headed by well-known criminal defense lawyers Barry Scheck and John Pray of the Wisconsin Innocence Project, the defense, using DNA testing, showed that Ochoa could not have murdered an Austin woman during a Pizza Hut robbery in 1988. In effect, in this new era of capital punishment, for innocent people on death row across the U.S., the Wisconsin Innocence Project has become one of the most sophisticated and leading *defenders* of those who are presumed innocent, a symbol of hope for those who may have been wrongfully convicted.

Discussion

Understanding the role of ethnicity in capital punishment in its totality also requires acknowledgement of the global nature of crime and punishment, and, while polemic, the price of American justice. To begin, while the presumed "dangerousness" of offenders has been a focal point of discourse, especially in anti-criminal movements, like the war on drugs, anti-terrorism, and anti-immigrants, the actual dangerousness has been far from the truth of the unspoken motives of social control policies (Lynch, 2007; Reiman and Leighton, 2009; Welch, 2006, 2007). As for the influence of ethnicity, from the advent of the war on drugs, Mexicans have been a prime target of politicians, government officials, law enforcement, and immigration hawks (Bender, 2005; Kong, 2010; Posadas and Medina, 2012; Romero and Sanchez, 2012). In fact, around the time that people were talking about the introduction of crack cocaine into the ghetto, and thus the criminalization of African American ghettos in the mid-1980s, Zatz (1984:165) found that prior record, suggesting dangerousness, was "used primarily against Chicanos, perhaps because they are seen as specializing in drug trafficking from Mexico," a trend that extends into 2012 (Kong, 2010; Urbina, 2012b), with *dangerousness simply serving as rationalization and legitimization for expansion and control* (Duran, 2009a, 2009b, 2009c; Romero, 2001; 2008).

Other critics report that beyond the presumed dangerousness that characterizes Mexicans, Latinos in general, and, of course, African Americans and poor Caucasians have limited financial resources to defend themselves in criminal proceedings (Reiman and Leighton, 2009, Urbina, 2012c; Urbina and Byxbe, 2011), particularly in death penalty cases, which are extremely complicated, lengthy, and expensive (Robinson, 2008; Urbina, 2011). For instance, with limited resources, it is difficult for defendants to hire a private attorney, especially experienced and competent lawyers, and thus some defendants must depend on public defenders or court-appointed attorneys, who may not be highly skilled in death penalty cases (Urbina, 2012c). In reality, with the majority of public defenders trying their respected death penalty case for the first time, the great majority of defendants find themselves represented by attorneys that are learning the logistics of capital cases for the first time in their career, putting into question the very essence of American criminal law; that is, equality under the law. As such, there might be some truth to the saying, "if you do not have the capital you will get the capital punishment."

Symbolic Justice

In exploring the role of ethnicity in crime and punishment, including executions, we question whether the *expansion, power, and control thesis* is more symbolic than pragmatic.

That is, arguably, executions serve as a symbol of insult not only toward executed Mexicans, but to all Mejjicanos of the world, especially when Mexicans are executed close to major Mexican holidays, or, as in the case of Jessie Gutierrez, actually executed (or, perhaps, sacrificed) on Diez y Seis de Septiembre (Mexico's Independence Day, September 16). In fact, to some observers, the execution of a Mexican is not only an act against the individual, but the execution is carried out against Mexico, its people, its culture, and Mexico's governmental policy that forbids executions (Mexico abolished the death penalty in 1929). According to anthropologist Tony Zavaleta, for example, whichever way one puts it, the end result is clear: when executions take place, especially when race-ethnicity is influential, in violation of international law, or possibly of innocent people, the state is "shedding Mexican blood on American soil . . . [it is] like slitting the throat of a sacrificial lamb" (Halperin, 1997:4-5).

Capital Punishment: Underneath it All

Probably more polemical than the influence of race, ethnicity, or economics, lies what could possibly be *underneath it all*, the things we would rather not hear or write about. To begin, executioners no longer wear sheets and hoods to hide their identities, but hide behind a curtain, with three prison guards administering the lethal chemicals comprising Sodium Thiopental, Pavulon, and Potassium Chloride to stop the heart. Showing the brutal attitude of executioners, in an April 1998 Texas execution, Joseph Cannon, white, was strapped down to a gurney awaiting death with needles in his arm, but then the executioners pumped up the injection apparatus to a degree that the deathly chemicals were released with such a force that Cannon's vein blew and formed a hematoma, requiring 15 minutes before another vein could be found. Witnessing the barbaric spectacle, his mother reportedly collapsed. In another Texas execution, the parents of inmate Pedro Cruz Muniz, Mexican, were told that they would be allowed in the viewing room to see Muniz die by lethal injection. Upon noticing that Muniz's family was of mixed race and ethnicity, apparently Mexican, black, and a red haired white skinned person, the rules suddenly changed and Pedro's family members were told that they would have to wait out in the street while Pedro was being killed, indicating that the influence of race and ethnicity in Texas extends to family members of inmates. When Pedro's death was announced, Texas Department of Corrections guards who were congregating in the streets were reported to be laughing boisterously within sight of Pedro's family, in a sense, showing gross disrespect for human dignity.

At a more profound level, in *Capital Punishment in America: Race and the Death Penalty over Time* (2012a) and in *Capital Punishment and Latino Offenders: Racial and Ethnic Differences in Death Sentences* (2011), Urbina argues that the historical demon of discrimination is not only deeply rooted in American history and culture, but that it's in the inner core of the American psyche. Once capital punishment in America is analyzed in its totality over time, Urbina (2008:179) bluntly states:

Capital punishment in the United States persists mostly for historical, political, ideological, religious, economical, and social reasons—having little to do with safety or practicality. Fundamentally, capital punishment is one of the biggest demons that the world has ever invented. Now, what is the driving force behind this demon? The most powerful single driving force is *indifference*.

Executions are brutal, vicious, expensive, irreversible, like an everlasting struggle against cancer that continues to get worse and worse. And, at the very bottom of its motive, there lies an historical mystery. As the harshest criminal sanction, capital punishment has been promoted by promising political language, which is designed to make lies sound truthful, government action logical and honorable, murder by the state legal (with a notion of legitimacy and justice), and to a fragile, feared, and mal-informed society, an appearance of global power and solidarity.

The executioners are part of the legal system and its laws, which are assumed to be unalterable, like the word of God. The executioners are serving the state, which has the power to absolve them from this elusive demon. Yet, they do not even know why they are executing. But, of course, they are *not* supposed to. The executioners accept the law almost as they accept the weather, which is, of course, unpredictable by nature. When questioned, the executioners are likely to reply with: "respect for constitutionalism and legality!" No one would support capital punishment if one were not psychologically and emotionally driven on by some powerful demon whom s/he can neither resist nor understand its truth and reality.

Conclusion

The evidence shows that 84 of the 100 Latinos executed from 1977 to 2012 were of Mexican heritage, with 85 of the 100 Latino executions taking place in Texas. In Texas, the distribution of executions from 1977 to 2012 shows an *ethnic trend*, a growing number of Latino, mostly Mexican, inmates are being executed. In effect, although the number of executions of African Americans has declined, the number for Latino inmates has risen. In fact, in 2010 and 2011, more Latino inmates were executed in Texas than African American inmates.

Based on the results, it appears that while Mexicans have been classified as “white,” through the give and take of treaty making in *In re Rodriguez* (1897), final outcomes are quite different, with ethnicity continuing to play a role in crime and punishment. In the case of capital punishment, it seems that Mexicans have received the worst of both worlds: punishment without due process, putting in question the legitimacy of American criminal laws, with *equality under the law* becoming more pressing when Mexican nationals are executed. On numerous occasions, the Mexican government’s call for “fair trials” and formal requests, like “Mexico would like the sentences of . . . Mexicans condemned to death in the United States to be commuted to life imprisonment,” were to no avail (*Los Angeles Times*, 1994; *Phoenix Gazette*, 1993; *Sacramento Bee*, 1994; *San Francisco Chronicle*, 1993b:4).

Notably, for Mexicans on death row, protestations do not seem to be entirely the byproduct of the release of one Mexican on death row or the execution of another. According to Tony Garza, former Texas Secretary of State, “. . . from the sense of the left and right, Mexico was being scapegoated” (Halperin, 1997:3). Today, in 2012, we could possibly say that the war between Mexico and the United States ended 164 years ago, but the long legacy of hate and vindictiveness seems to remain. Internationally, as reported in cross-national studies, in this new era of crime and punishment, capital punishment has truly become a legal sanction that transcends borders and justice systems, with ethnicity being a central element in the judicial process (Ruddell and Urbina, 2004, 2007). In effect, with the globalization of crime and punishment and thus newly defined borders, “it is easier to rationalize the harsh treatment of persons who are essentially ‘outsiders’” (Blalock, 1967:206). To Nieling and Urbina (2008:233), in part

Because the United States considers itself a ‘moral’ and ‘law-and-order’ society, the U.S. 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. Likewise, fear of those who threaten our interests or the status quo, has manifested itself into low levels of tolerance.

In sum, the data show that the experiences of Mexicans on death row differ from the experiences of African Americans and Caucasians. Ultimately, then, the central objective of this article would be that this information will facilitate the development of data sets that will eventually enable us to quantitatively test the effects of race (African Americans, Caucasians, and other racial groups) and ethnicity (Mexicans and other ethnic groups) in capital punishment. More globally, Mexicans and the various ethnic groups within the Latina and Latino community constitute a separate group, distinct from African Americans and Caucasians, and thus must be treated accordingly in academic research, publication, and dialogue.

References

- Aguirre, A. and Baker, D. (1997). A descriptive profile of Mexican American executions in the Southwest. *The Social Science Journal*, 34: 389-402.
- Aguirre, A. and Baker, D. (1989). The execution of Mexican American prisoners in the Southwest. *Social Justice*, 16: 150-161.
- Allen, J., J. Lewis, L. Litwack and H. Als (2000). *Without sanctuary: Lynching photography in America*. Santa Fe, NM: Twin Palms Publishers.
- Amnesty International (1999). Execution of foreign nationals. At: www.amnesty-usa.org/abolish/fnnat.html.
- Ampudia, R. (2010). *Mexicans on death row*. Houston: Arte Publico Press.
- Atlanta Journal and Constitution* (1991). Man executed for role in prison siege. May 23: A13.
- Baker, D. (2012). Historical forces governing Hispanic criminal justice. In M. Urbina (ed.), *Hispanics in the U.S. criminal justice system: The new American demography*. Springfield, IL: Charles C Thomas, Publisher, Ltd.

- Baltimore Sun* (1995). Man with 65 IQ executed of Texas rape, killing. January 18: A9.
- Bender, S. (2005). *Greasers and Gringos: Latinos, law, and the American imagination*. New York: New York University Press.
- Bentele, U. (1993). Race and capital punishment in the United States and South Africa. *Brooklyn Journal of Internal Law*, 19: 235-271.
- Blalock, H. (1979). *Social statistics*. 2th edition. New York: McGraw-Hill.
- Carrigan, W. and Webb, C. (2003). The lynching of persons of Mexican origin or descent in the US, 1848-1929. *Journal of Social History*, 37: 411-438.
- Courier-Journal* (1993). Mexican executed for Texas slaying. March 26: A4.
- Crocker, P. (1999). Personal communication with author via e-mail. May 3, 1999.
- Culver, J. (1992). Capital punishment, 1977-1990: Characteristics of the 143 executed. *Sociology and Social Research*, 76: 59-61.
- Dieter, R. (1997). Innocence and the death penalty: The increasing danger of executing the innocent. At: www.essential.org/dpic/inn.html.
- Dray, P. (2002). *At the hands of persons unknown: The lynching of black America*. New York: Modern Library.
- Dunbar, T. and Kravitz, L. (1976). *Hard traveling*. Pensacola: Ballinger Publishers.
- Duran, R. (2009a). Legitimated oppression: Inner-city Mexican American experiences with police gang enforcement. *Journal of Contemporary Ethnography*, 38: 143-168.
- Duran, R. (2009b). Over-inclusive gang enforcement and urban resistance: A comparison between two cities. *Social Justice*, 36: 82-101.
- Duran, R. (2009c). The core ideals of the Mexican American gang. *Aztlan: A Journal of Chicano Studies*, 34: 99-134.
- Edwards, D. (1993). Innocence and the death penalty: Assessing the danger of mistaken execution. At: www.essential.org/dpic/dpic.r06.html.
- Giardini, G. and Farrow, R. (1952). The paroling of capital offenders. *The Annals of the American Academy of Political and Social Sciences*, 284: 85-94.
- Halperin, R. (1997). Death penalty news. At: [//venus.soci.niu.edu/~archives/ABOLISH/sep97/0226.html](http://venus.soci.niu.edu/~archives/ABOLISH/sep97/0226.html).
- Hayes, K.W. (1999a). Personal communication with author via e-mail. May 7, 1999.
- Hayes, K.W. (1999b). Personal communication with author via e-mail. May 27, 1999.
- Houston Chronicle* (1995). Execution cleared; no stay given retarded child-killer. January 17: A13.
- Houston Chronicle* (1993a). Mexican national's execution draws angry remarks, protests. March 26: A34.
- Houston Chronicle* (1993b). No stars for Ruben Cantu. September 4: A37.
- Houston Chronicle* (1993c). I am innocent, innocent. May 12: A1.
- Houston Chronicle* (1992a). Ex-migrant worker executed in teen's rape-murder. May 20: A18.
- Houston Chronicle* (1992b). Three-time loser is put to death. January 22: A13.
- Independent* (1995). Man with IQ of 65 is executed. January 18: 13.
- Keyes, D., W. Edwards and R. Perske (1999). Defendants with mental retardation executed in the United States since the death penalty was reinstated in 1976. At www.essential.org/dpic/dpicmr.html.
- Kong, L. (2010). Immigration, racial profiling, and white privilege: Community-based challenges and practices for adult educators. *New Directions for Adult and Continuing Education*, 125: 65-77.
- Lopez, I.F. (2003). *Racism on trial: The Chicano fight for justice*. Cambridge: Belknap Press of Harvard University Press.
- Los Angeles Times* (1994). Unexpected friend on death row. January 2: A1.
- Los Angeles Times* (1985a). Texas executes man who killed policeman. July 9: A19.
- Los Angeles Times* (1985b). Texan executed after assailing society as 'a bunch of cold-blooded murderers.' July 10: 11.
- Lynch, M. (2007). *Big prison, big dreams: Crime and the failure of America's penal system*. New Brunswick, NJ: Rutgers University Press
- McCormick, J. (1998). The wrongly condemned. *Newsweek*, 132.
- Mirande, A. (2005). *The Stanford law chronicles: Doin' time on the farm*. Notre Dame: University of Notre Dame Press.
- Moore, W. (2007). *Reproducing racism: White space, elite law schools, and racial inequality*. Lanham, MD: Rowman & Littlefield Publishers.
- National Law Journal* (1998). Are 65 illegally on death row in U.S.? April 27: A16.

- New York Times* (1995a). Texan who killed ex-wife and her niece is executed. January 18: A16.
- New York Times* (1995b). Ghoulish murderer is executed in Texas. December 12: A24.
- New York Times* (1993a). Texas executes a Mexican killer, raising a furor across the border. March 26: A15.
- New York Times* (1993b). Mexico fights to stop U.S. execution. January 26: A19.
- New York Times* (1987). Texan who killed 6 in 1983 is executed by lethal injection. March 5: A9.
- New York Times* (1986). Texan executed by injection for killing of a drug agent. June 9: A19.
- New York Times* (1985). Killer put to death in Texas. July 10: A11.
- Nieling, S. and Urbina, M. (2008). Epilogue: Thoughts for the future. In M. Urbina, *A comprehensive study of female offenders: Life before, during, and after incarceration*. Springfield, IL: Charles C Thomas, Publisher, Ltd.
- Noboa, J. (2005). *Leaving Latinos out of history: Teaching U.S. history in Texas*. New York: Routledge.
- Office of the Attorney General of Texas (1999). Defendants' information was provided to the author by Douglas Danzeiser, Assistant Attorney General. May 2, 1999.
- Phoenix Gazette* (1995). Inmate with low IQ is executed in Texas. January 17: A9.
- Phoenix Gazette* (1993). Execution of Mexican in Texas spurs protests. March 26: B5.
- Pizarro, M. (2005). *Chicanas and Chicanos in school: Racial profiling, identity battles, and empowerment*. Austin: University of Texas Press.
- Posadas, C. and Medina, C. (2012). Immigration lockdown: The exclusion of Mexican immigrants through legislation. In M. Urbina (ed.), *Hispanics in the U.S. criminal justice system: The new American demography*. Springfield, IL: Charles C Thomas, Publisher, Ltd.
- Reid, D. (1973). *Eyewitness: I saw 189 men die in the electric chair*. Houston: Cordovan Press.
- Reiman, J. and Leighton, P. (2009). *The rich get richer and the poor get prison*. 9th edition. Upper Saddle River: Prentice Hall.
- Robinson, M. (2008). *Death nation: The experts explain American capital punishment*. Saddle River: Prentice Hall.
- Romero, M. (2008). Crossing the immigration and race border: A critical race theory approach to immigration studies. *Contemporary Justice Review*, 11: 23-37.
- Romero, M. (2001). State violence and the social and legal construction of Latino criminality: From El Bandido to gang member. *Denver University Law Review*, 78: 1081-1118.
- Romero, M. and Sanchez, G. (2012). Critical issues facing Hispanic defendants: From detection to arrest. In M. Urbina (ed.), *Hispanics in the U.S. criminal justice system: The new American demography*. Springfield, IL: Charles C Thomas, Publisher, Ltd.
- Ruddell, R. and Urbina, M. (2007). Weak nations, political repression, and punishment. *International Criminal Justice Review*, 17: 84-107.
- Ruddell, R. and Urbina, M. (2004). Minority threat and punishment: A cross-national analysis. *Justice Quarterly*, 21: 903-931.
- Sacramento Bee* (1994). Foes of death penalty have a friend: Mexico. June 26: A1.
- San Antonio Express News* (1999). Death row: Death row history. At <http://express-news.com/news/deathrow/history.shtml>.
- San Diego Union-Tribune* (1994). A binational dance with death Mexicans on U.S. death row stir a growing furor. August 18: B11, 13, 15.
- San Diego Union-Tribune* (1993). Mexico's influence growing in U.S. political, fiscal clout now felt. August 22: A1.
- San Diego Union-Tribune* (1987). Texas executes murderer called jail-house lawyer. January 30: A20.
- San Diego Union-Tribune* (1986). Killer-rapist is executed by injection; 10th put to death in Texas this year. December 18: A14.
- San Diego Union-Tribune* (1985a). Texas man put to death for slaying. July 9: A4, 8.
- San Diego Union-Tribune* (1985b). Texas executes man for 1979 six-pack' murder. May 15: A3.
- San Francisco Chronicle* (1993a). Mexican officials visit San Quentin death row. August 7: B4.
- San Francisco Chronicle* (1993b). Mexico to fight California executions. August 5: A15.
- Texas Department of Criminal Justice (1999). Defendant's information was provided to the author by Christina Wooderson, administrative assistant for public information. June 10, 1999.
- Tierney, C. (1992). Mexicans view U.S. death penalty as barbaric. Reuters, September 23: Available in LEXIS.

- Urbina, M., ed. (forthcoming). *Latinas y Latinos in the United States: 21st Century dynamics of multiculturalism*. Springfield, IL: Charles C Thomas, Publisher, Ltd.
- Urbina, M. (2012a). *Capital punishment in America: Race and the death penalty over time*. El Paso, TX: LFB Scholarly Publishing.
- Urbina, M., ed. (2012b). *Hispanics in the U.S. criminal justice system: The new American demography*. Springfield, IL: Charles C Thomas, Publisher, Ltd.
- Urbina, M. (2012c). Indigent defendants and the barriers they face in the U.S. court system. In M. Urbina (ed.), *Hispanics in the U.S. criminal justice system: The new American demography*. Springfield, IL: Charles C Thomas, Publisher, Ltd.
- Urbina, M. (2011). *Capital punishment and Latino offenders: Racial and ethnic differences in death sentences*. New York: LFB Scholarly Publishing.
- Urbina, M. (2008). *A comprehensive study of female offenders: Life before, during, and after incarceration*. Springfield, IL: Charles C Thomas, Publisher, Ltd.
- Urbina, M. (2007). Latinas/os in the criminal and juvenile justice systems. *Critical Criminology: An International Journal*, 15: 41-99.
- Urbina, M. (2004a). A qualitative analysis of Latinos executed in the United States between 1975 and 1995: Who were they? *Social Justice*, 31: 242-267.
- Urbina, M. (2004b). Language barriers in the Wisconsin court system: The Latino/a experience. *Journal of Ethnicity in Criminal Justice*, 2: 91-118.
- Urbina, M. (2003). Race and ethnic differences in punishment and death sentence outcomes: Empirical analysis of data on California, Florida and Texas, 1975-1995. *Journal of Ethnicity in Criminal Justice*, 1: 5-35.
- Urbina, M. (2002). Furman and Gregg exit death row?: Un-weaving an old controversy. *The Justice Professional*, 15: 105-125.
- Urbina, M. and Byxbe, F. (2011). Interacting forces in the judicial system: A case study in American criminal law. *International Journal of Humanities and Social Science*, 1: 141-154.
- Urbina, M. and Smith, L. (2007). Colonialism and its impact on Mexicans' experience of punishment in the United States. In M. Bosworth and J. Flavin (eds.), *Race, gender, and punishment: From colonialism to the war on terror*. Piscataway, NJ: Rutgers University Press.
- Vandiver, M. (1999). An apology does not assist the accused: Foreign nationals and the death penalty in the United States. *The Justice Professional*, 12: 223-245.
- Warren, M. (1999). Foreign nationals and the death penalty in the United States. At www.essential.org/dpic/foreignnatl.html.
- Washington Post* (1994). For the road. July 8: A22.
- Washington Post* (1993). Texas, California executions. August 25: A9.
- Welch, M. (2007). Immigration lockdown before and after 9/11: Ethnic constructions and their consequences. In M. Bosworth and J. Flavin (eds.), *Race, gender, and punishment: From colonialism to the war on terror*. Piscataway, NJ: Rutgers University Press.
- Welch, M. (2006). *Scapegoats of September 11th: Hate crimes and state crimes in the war on terror*. New Brunswick, NJ: Rutgers University Press.
- Zatz, M. (1984). Race, ethnicity, and determinate sentencing: A new dimension to an old controversy. *Criminology*, 22: 147-171.
- Zuberi, T. and Bonilla-Silva, E., eds. (2008). *White logic, white methods: Racism and methodology*. Lanham, MD: Rowman & Littlefield Publishers.
- Zuniga, J. (1993). The wrong man? *Houston Chronicle*, January 10: A1.