

## Editorial

# “VIVIENDO EN EL OLVIDO”: BEHIND BARS, LATINOS AND PRISON

Before I built a wall I'd ask to know,  
What I was walling in or walling out.

(Robert Frost, 1914)

The worst thing about being in prison isn't even the loss of my freedom.  
Es saber que estoy viviendo en el olvido...<sup>1</sup>

1 “It is knowing  
that I am alive  
but forgotten.”

These are the words of an incarcerated Latino, currently in a prison in upstate New York: words that echo throughout the penal system of the United States, whether it is the jails, the state and federal prisons, the immigrant detention centers, the high-security facilities, the private incarceration buildings, the military prison in Guantanamo.... This special issue of *Latino Studies* is a direct response to those words – an effort to say to that incarcerated Latino, and to all the men and women in the US criminal justice system: “No! You are not living ‘*en el olvido*.’ You, your lives, your presence as part of both our community and our society – behind walls, or otherwise – are important to us. You have not been forgotten.”

The struggle of incarcerated Latino/as – indeed, of all incarcerated people in the United States – for dignity, for their humanity, is the struggle that Latino/as and this society as a whole must engage, today, now, as a firm response to our government's insistence on using incarceration to deal with the nation's minority populations. We must engage it lest our own dignity and humanity dissipate in the use of incarceration as a method of controlling the presence of minority and poor populations in this country and, in the process, of providing jobs for all the small towns currently housing private, federal and state prisons in regions depleted from their previous sources of economic well-being.

What is being “walled in” – to use the words penned by Robert Frost in a different context – through these prisons? What histories, what life stories, what justifications, what violations and abuses, what secret methods of breaking the human spirit? And, similarly, what part of our society's role in ensuring justice, equality, respect and human dignity for all, indeed, what part of our humanity is being “walled out”?



The authors of these articles, and of the essays in our VIVENCIAS: Reports from the field section, seek to address these questions in various ways. Undoubtedly, the fact that Latinos are, as José Luis Morín's essay notes, the fastest growing group in the US prison system accounting by the end of 2004, for 19.2% of the total population in US state and federal jurisdictions, is also an underlying cause for the urgency of our journal's publication of this Special Issue. Providing an overview of the US criminal justice system and its implications for US society, Morín goes on to explain that although "differences between Latino/as and African Americans also exist, most notably that Latino/as are subject to myths linking criminality to immigrant status," there are several reasons why Latinos, like African Americans, are increasingly "trapped" by the phenomenon of "mass imprisonment."<sup>2</sup> Thus, he retells key moments in the history and experiences of Latino/as in the United States, focusing on various prominent trends that feed into this society's penal system, including the racialization of crime, the manner in which criminal justice policy is formulated and justified around the fear of crime, how the courts and the criminal justice system operate, and the role of the media in promoting negative images of Latino/as.

Indeed the current increase in the incarceration rates of Latino/as, whether in state or federal prisons or in immigrant detention facilities; the rush to control the borders, to build fences, to demand national identity cards – like the current inhumanity of mainstream politicians and the media toward immigrants – not only demeans us all, but is also undoubtedly reducing citizenship rights and the freedom of movement and of human creativity that the ideals of this society's democratic traditions guarantee to all who live in this country. In their place, what seems to be emerging is an impermeable barrier of complacency and indifference grounded in social insecurity, fear, and even terror, of one another. Public anxieties are creating new policies and methods of addressing these fears that are challenging the basic premises and traditional practice of the nation's constitutional history and laws, including the very requirements of criminal law curricula in the Law schools of the United States. As one prominent law professor recently wrote:

I am a criminal law professor. I know about penal codes, police practices, sentencing, and the use of incarceration to punish criminals. Like most criminal law professors, I know precious little about American immigration law. I have always considered it to be a different part of the law school curriculum, and one that had little, if anything, to do with criminal law. Even in my federal criminal law course, immigration law played no part in the curriculum. Lately, however, it has become evident that things have changed. In today's world, immigration enforcement and criminal law enforcement activities are two sides of the same coin, at least for non-citizens. What criminal law professors and practitioners alike are discovering is that immigration law – including the practices of detention and deportation, as

2 According to Mauer and King (2007), African Americans are incarcerated at nearly six (5.6) times the rate of whites; and Hispanics are incarcerated at nearly double (1.8) the rate of whites.

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well as prosecution for re-entry and document fraud – has emerged as a key missing chapter in American criminal law. (Guerra-Thompson, 2007)

It is almost a cliché today to state that immigration has traditionally been one of the key foundational pillars of this nation's self-image and development. Yet at a time of renewed concern and, indeed, of widespread hysteria about the presence of immigrants, particularly Latino/as in this society; at a time when there is an equally widespread, albeit unfounded perception of the threat (curiously, detached from the nation's political economy) that Latino/as supposedly pose to US life and society, we have been treated to an unrelenting racialization and demonization of immigrants – again, most specifically of Latin American immigrants, and of Mexicans in particular although not exclusively, living and working in this country.

The result has been a prevailing perception that Latino/as in US society are primarily undocumented immigrants born in other parts of the hemisphere and, as such, permanently “illegal,” “aliens,” foreigners in the United States. Homogenizing the Latino/a population in these terms and, in this sense, separating them from the general population has in turn allowed for the development of laws and policies ostensibly aimed at protecting “us” from “them,” but in fact overtly or otherwise negatively impacting the constitutional rights of all US residents, citizens and non-citizens alike.

Thus, despite the fact that more than half of all Latinos (59.8%) in the United States today are native born citizens (Fry and Hakimzadeh, 2006), the perception of Latinos as inherently foreign to the very image and idea of “being an American” has now become deeply ingrained, to such an extent that from the beginning of the 2008 presidential campaign, several of the prospective presidential candidates have seen fit to base their respective “platforms” and “debate points” primarily and, in at least one case, exclusively on immigration and border control.

As David Hernández makes clear, it is worth recalling that historically, borders, like border controls, in the United States have marched in time with detentions, deportations and the criminalization of the “other,” often under the guise of the imperative to increase “national security” as well as of (re)constructing and/or creating new notions of who is “illegal” (Ngai, 2005; De Genova, 2006). Equally important is the historical recourse to xenophobic and racializing responses to “otherness,” including linguistic, social, gendered and sexual. For these responses in turn ensure the approval, tacit or otherwise – if not the indifference – of mainstream public opinion to the fate of those who, like the majority of the ancestors of US citizens of European descent, were forced to leave their homelands for a variety of reasons, crossing this country's borders in search of a better life for themselves and their children. Particularly in the last decades, societal responses to otherness have reinforced in a fundamental way the perception of Latino/as as “criminal,” as

disposable people, as unworthy of benefiting from the democratic and moral values that are presumed to underlie our society's insistence on fairness and justice for all.

Indeed, as José Luis Morín states, "Latinas/os, like African Americans, are perceived as a poor class of people of color that pose a threat to the social order, and thus must be controlled and dominated." Thus, Victor Rios' discussion of the juvenile justice system, for example, provides a case study of the way in which the politics underlying the introduction of tougher sanctions against both Latino and African American youth, increasingly rely and play on public anxieties about race and crime, hence reinforcing the public perception of an inherent connection between them. Morín's point is also amply exemplified by Mercedes Castillo, in her essay describing the LAPD's disregard for Latino/as' basic constitutional and human rights and the treatment and indignities to which Latino/as are consequently subjected whenever they demand the very right to uphold their rights.

As several of the authors emphasize, although Latinos have long been part of the history, society, culture and economic development of this country, it is still regrettably the case that they are too often consigned to a collective space of non-belonging, regardless of their citizenship status and, again, largely as a result of racial, language, social and xenophobic discrimination. At the same time, the simultaneous "inclusion/exclusion" swings in public attitudes, like the articulations about "what is to be done" about "them," continues apace with the complicated history of the relations of the United States to the rest of this hemisphere. As a result, the country and polity is deprived of a sustained discussion free of intermittent sensationalisms about the ongoing exclusion of US-born Latino/as from full citizenship rights, as well as of the issues related to the latest wave of immigrants, and their undeniable, multiple and ongoing contributions to this society.

As is often noted, history repeats itself, although as Marx aptly stated – first as a tragedy then as a farce. Therefore, historical examples are essential both as records of past injustices and as a measure of how far a nation has moved, or not, towards reconstituting itself as a more humane and just society. Alan Eladio Gómez tells the story of Chicanos and Puerto Rican *Independentistas* incarcerated during the 1970s in the Leavenworth Federal Penitentiary in Kansas, both through his article on the period and his interview with Raúl Salinas, the prominent Chicano activist-poet incarcerated at the time first in Leavenworth and later in the Marion Correctional Facilities. Gómez discusses the efforts of the Latinos at Leavenworth to create alliances with others, particularly African Americans, to educate themselves about the US criminal justice system; to understand and address the society that creates it; and to make the connections and comparisons to the practices and implications of carceral institutions in other parts of the world, particularly Latin America and Africa. In the process, he describes the ways in which this acquired self-education

“armed” those like Raúl Salinas “with knowledge and truth”, hence leaving the poet-activist “with his dignity intact”. Gómez also narrates the ways in which this empowering knowledge, education, affirmation of their human dignity, contributed to their efforts to reform the system, whether through the prison newsletter, through informing those on the outside about the conditions within, or through court cases challenging the system’s brutality and inhumanity. Noting that between 1972 and the mid-1990s, there was a 500% increase in the US carceral system (including a 2,800% increase in the number of women in state and federal prison or local jails), Gómez concludes that

The political analysis of Latino prison activists uncovered how the intricate calibrations of violence within the prison regime were related to law, race, and social control outside prison, an important theoretical understanding when trying to untangle the political ideology of law and order as it relates to race, incarceration, and white supremacy (Rodríguez, 2006). Incarceration functioning as “incapacitation” for a surplus army of labor of women, men, and immigrants criminalized by their mere existence, is directly implicated in the acceptance of preventative detention with regard to racial and, in a post 9-11 world, national and religious minorities.

Collectively, these articles seek to exemplify in various ways *why* it is imperative today for more attention to be devoted to the connections between Latino/as and the rest of US society, specifically from the perspective of the causes and implications of the rising rates of their imprisonment, the conditions under which they survive inside the prisons, and their subsequent lifestyles as both private individuals and citizens once they are released. Looking inside the conditions of Latino/as incarceration, including their pre- and post-incarceration experience, can serve to bring to light key moments in their historical and present experiences, the socio-economic, political and cultural contexts from which they come, as well as the role of society’s passivity and indifference to the injustices of social and economic deprivation in Latino/a communities throughout the country.

Latino/as’ struggle for survival within the confines of the prison walls, their efforts at self- and group education, the construction of alliances and group solidarities across national lines and under extremely adverse conditions, for their part, serve to refocus attention on their lives and thoughts far beyond the confines of specific prisons and their impact both on themselves and on their families and communities.

Several of the authors in this issue draw specifically on their own daily professional lives and experiences working with Latino/as caught in the labyrinth of the criminal justice system, and in so doing provide valuable insight into Latino/as’ pre- and post-incarceration experience. Laura Garcia, for example, points out the irony of the self-incriminating implications of Latino/as’ reliance on a common language and cultural background, as they seek to

communicate and explain their predicament to Spanish-speaking officers at the time of their arrest; Juan Cartagena provides detailed case studies from various parts of the nation, of the obstacles that Latino/a ex-felons confront as they struggle to reintegrate into the society upon their release. He argues that what is undoubtedly at stake, in both the unprecedented increase in Latino/as' incarceration, as well as their loss of citizen rights and, hence, disenfranchisement once they are released, is "civic engagement," that is "the ability of communities to exercise political strength and economic self-determination... in our *barrios*." Dixon Valderruten focuses on his work in the prisons as both a health education facilitator and as a mentor to incarcerated men in upstate New York. He discusses the ways that in addition to their educational value, the use of health and, particularly, of AIDS education programs can serve to empower the men within the prisons and to prepare them in a variety of ways to confront the difficulties of recreating their lives once on the outside.

As Valderruten's essay clearly shows, the existence and role of mentors who help Latino/as once they leave prison has become essential in Latino/as' process of reintegration. Indeed, in her essay on the pedagogical and personal issues she had to address, Marcia Esparza discusses the need to develop and stress mentors' own individual and cultural strengths and self-awareness, in the process of preparing her students to mentor recently released Latinas.

Together with the collective solidarities and alliances they create among themselves, Latino/as draw upon their culture and language background, their ongoing learning, the experiences of their past, and the endless creativity of the human spirit behind bars, exemplifying some of the ways in which Latino/as adapt and resist the violent and brutal experience of the US system of incarceration. Laurie Schaffner focuses on the ways in which juvenile delinquent Latinas use language and culture as a way of both establishing a sense of solidarity and belonging in prison, as well as of unsettling what Schaffner refers to as "the orderly flow of the punitive surveillance." Thus, Schaffner notes that her findings run counter to traditional narratives of juvenile delinquency, which often reinforce notions of juvenile delinquents as alienated.

There is no doubt whatsoever that further research is much needed on Latino/as in prison – indeed, there is a serious dearth in available accounts of their experiences, as these pertain to the penal system in the United States. Juanita Díaz Cotto's essay provides an in-depth analysis of the available literature, and reviews researchers' motivations for conducting their studies, the major questions they pose, their research methods, findings and conclusions, and their interrelationship. She concludes that different methods and approaches specific to prison research can yield quite different findings, results and conclusions. She thus makes several suggestions for various future research directions, specifically from the perspective of prison research methodology aimed at ensuring a more comprehensive and specific understanding of the

Latino/a experience of the prison system, including comparative analyses with other incarcerated populations and criminal justice institutions in both the United States and other parts of the world.

Indeed, there is a pressing need for further exploration of the relationship of the United States to the larger global community, in terms of mass incarceration and its impact on the fundamental rights of Latino/as as members of the national and international communities. The authors' discussion of the long and multiple struggles of Latino/as against injustice and incarceration, as well as of issues such as border control, the workings of the prison system, its relation to efforts to control and subvert the rights of people of Latin American descent – like their narratives of Latino/as' experiences of incarceration and struggles to maintain their dignity and humanity – thus ultimately aim to inform and to contextualize recent international political developments within a broader national and transnational sphere.

Finally, these articles collectively underscore the fact that prison writings did not come to an end somewhere in the late 1960s and the early 1970s, but rather continue to reveal specific aspects of the interconnections among nations, societies, citizens, non-citizens, and human rights, which can no longer be ignored. Together, they drive home the point that incarceration has a significant impact on many levels of life, society and community, and for millions of people beyond the individuals immediately involved.

The political rhetoric associated with immigrants, with crime, with national security, with fear, today provides much of the mainstream's justifications for the increased "warehousing" of Latino/as and other racialized poor populations in this country. At the same time, the shameful indifference towards those who are less fortunate in our society – the richest and most powerful in the world – and the willful neglect of the ravages of poverty, and of the long-term consequences of the inadequate housing, unacceptable educational and recreational facilities, and deteriorating neighborhoods in which large sectors of the Latino/a population grow up and live, account for much of the lack of societal and institutional support. The latter could easily prevent the growing incarceration of large numbers of young Latino/as, the inhumane treatment and suffering of those in prisons. Indeed, as Yolanda Martín documents through the responses of the recently released men and women she interviewed, this support could and, where it exists, does contribute instead to empower and redirect their lives, as well as the lives of those who are released.

There is no easy solution to the issues highlighted by the incarceration of what Gómez estimates to be 2.5 million people (including immigrant detainees), over 60% of whom are blacks and Latino/as in US federal and state prisons alone (Harrison and Beck, 2006).<sup>3</sup> To the extent that today, as Ben Olguín points out in his article, "the War on Crime has converged with the War on Terror through the deliberate subversions of international treaties and protocols

3 On 5 December 2007, a press release by the US Department

of Justice Bureau of Statistics highlighted that at the end of 2006, “one in every 31 US adults was in a prison or jail or on probation or parole.” <http://www.ojp.usdoj.gov/bjs/pub/press/p06ppus06pr.htm> (accessed 1/9/08)

to which the United States is a signatory,” it is essential that a two-prong struggle against this practice of the government’s willful incarceration of Latino/as be initiated. The first involves the restoration of the US government’s respect for the rule of law both at home and abroad, clearly fundamental to the claim and well-being of this society’s democracy. In this respect, the various laws enacted since 9/11/2001 have served, as Olguín succinctly states, to

collectively curtail constitutional freedoms of speech, association and information; infringe constitutional rights to legal representation, a timely public trial and protection from unreasonable searches; and also allow for the use of extrajudicial imprisonment and secret military tribunals for citizens and non-citizens accused of aiding or abetting terrorism.

More importantly, the War on Terror has introduced the category of “enemy combatant,” a classification unique in American jurisprudence because it situates its designee in the interstices of domestic and international law.

It is this infringement of both US constitutional traditions and the Geneva conventions, as Olguín’s article demonstrates, that justifies the second approach to addressing the issues discussed above: that is, the relocation of the debates on incarceration in the United States, firmly in the international sphere, and specifically under the jurisdiction of international human rights law. Olguín focuses on the incarceration primarily of Latino/as as well as of other people of color to draw attention to and address the full implications of the rejection by the United States of international human rights protocols; of its insistence that as the only super power, it reserves the exclusive right to choose to adhere to or ignore international agreements; and of the responses by international organizations such as Amnesty International to the human rights abuses and violations of the United States, both at home and abroad. Arguing that the issue at hand is “the treatment of human beings not simply prisoners per se,” Olguín calls for the use of the courts, mass mobilizations, and the simultaneous internationalization of local prisoner campaigns. “We must,” he argues, “show that the new US Carceral is in fact inhumane and in regular and deliberate violation of international treaties and norms.”

Ultimately then, the focus on Latino/as and prisons invites careful and nuanced analyses and discussions that call into question the current rhetorical, opportunistic and problematic responses to the pressing problem of an unjust and inhumane criminal justice system, which for so long has violated the human rights of those it incarcerates, often with full impunity, as raúsalinas attests in his interview. Moreover, as these authors suggest, the full import of the arguments and data they present can only be comprehended within a framework that conceptualizes and questions the social and political institutions

and polity of the United States, together with the government's current emphasis on national security, immigration, the militarization of border controls, and the policing of Latino/as and other sectors of the population.

The demonization of individuals and groups, specifically of Latino/as, is intimately related to the inescapable fact that the United States of America as a nation and polity is today choosing injustice over justice, inhumanity over compassion, xenophobic enclosure over its traditional ideals and insistence both on human dignity and on human beings' right to have rights. How to deal with an enemy is the cornerstone of all human legal systems – ancient, primitive or the most modern variety. It is therefore the *sine qua non* condition for the continued existence of any and all human societies. For, the definition and treatment of the “enemy” or of “guilt” and “blame” are but the corollaries of our understanding and experience of humans living together. It is in view of this that Aristotle (1983) – the eternal foreigner in the most celebrated of all democracies, Athens, from which he was exiled in old age – claimed justice to be “what holds the city together,” a quintessentially human task.

Today, we are confronted with the very disturbing reality that this country is indeed building walls, with no consideration for what it is walling in and what it is walling out. This double issue seeks to highlight that recognition. For, once this reality is fully acknowledged, and its implications better understood, we then must mobilize to tear them down. The only “wall” that a genuine democracy must build, and one that guarantees its true existence, is justice in all its dimensions and for all the people, including Latinas and Latinos in the United States.

The articles and most of the Vivencias essays in this Special Issue were first presented at the conference, “Behind Bars: Latino/as and Prisons,” organized by this journal and held at the University of Illinois, Chicago, in October 2006. In addition to thanking UIC, I would like to say a special thanks to Karen Benita Reyes and Marta E. Ayala for their invaluable support and enthusiasm both in the weeks before the conference and during the conference itself.

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*Latino Studies* (2008) 6, 1-10. doi:10.1057/lst.2008.18