

**LATINO/A RIGHTS AND JUSTICE
IN THE UNITED STATES**

SECOND EDITION

LATINO/A RIGHTS AND JUSTICE IN THE UNITED STATES

PERSPECTIVES AND APPROACHES

SECOND EDITION

José Luis Morín

JOHN JAY COLLEGE OF CRIMINAL JUSTICE
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Sin dignidad no hay vida.

Without dignity there is no life.

—Eugenio María de Hostos

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FOREWORD

You are about to encounter a fine book on a much-neglected topic. *Latino/a Rights and Justice in the United States* brings history, theory, and case analysis to bear on the story of Latinos' efforts to obtain fair treatment from the American judicial system. With coverage of all the large national-origin groups, including Mexican Americans, Puerto Ricans, and Cubans, as well as each of the main areas in which they have come into contact with the justice system—immigration, media stereotypes, police profiling, and international law—it also considers issues that few other books do, such as economic, social, and political rights. It shows where and how Latino people have made gains and what remains to be done if they are to enjoy full legal recognition and respect. And it offers what few other books do, an entire chapter on how to achieve these goals through concrete action both at the domestic and the international levels.

THE BLACK-WHITE BINARY PARADIGM OF RACE

One obstacle confronting Latinos in their search for justice is the black-white binary paradigm of race. [See Juan Perea, *The Black-White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 75 *Calif. L. Rev.* 1213 (1997)]. A common feature of mainstream civil rights thought, the binary paradigm selects two groups, generally blacks and whites, and pronounces their experiences and relations with each other central. Other groups, such as Latinos or Asian Americans, enter into the analysis only insofar as they succeed in analogizing their experience to that of one of the two key sets of actors.

For example, a Latino or Asian American beaten in a parking lot by a thug shouting obscenities would be able to draw upon a host of civil rights remedies in seeking relief. Authorities might even prosecute the perpetrator under a state or federal hate-crime law. Because an African American treated in similar fashion would be entitled to seek redress, most authorities would permit the Asian American or Latino to do so, as well.

But suppose that the Latino or Asian American instead suffers discrimination on account of a foreign-sounding name or accent, or because the attacker mistakenly believes him or her an unlawful alien or a member of a group that is responsible for destroying the American automobile industry?

Discrimination of these other kinds, based on language, accent, perceived foreignness, or even religion, rarely visits blacks. Consequently, legal remedies crafted with them in mind and based on the Reconstruction Amendments of the United States Constitution are of little use to the nonblack, even though his injury may be just as severe as that of a black family that awakens to find a cross burning in its front yard.

These incidents may not even strike us as civil rights problems, but as cases of patriotism carried to excess. Black and nonblack minorities, as this book shows, have different histories. For blacks, the formative event was slavery. For Latinos, it has been Conquest and, later, immigration. Because nonblack groups' search for justice has taken a different course from that of African Americans, understanding their current situation and remedying their wrongs must proceed in different terms. This book explains why.

THE DOUBLE PROXY PROBLEM

This book will also help the justice system avoid what one might call the "double proxy" trap. Deeply engrained in the American consciousness, the reigning black-white binary paradigm predisposes us to think of Latinos in terms of the black experience, as though they were blacks with slightly lighter skins. This approach makes it difficult to see many injuries to Latinos as discrimination at all. Latinos emerge as, at best, proxies or stand-ins for blacks, the central actors in civil rights discourse, sometimes able to secure relief, and sometimes not.

Our familiarity with African American history equips us with an appropriate degree of suspicion about many of the types of mistreatment they suffer. We stand ready to reject the most common disguises and excuses that racists use to cover their tracks, such as claiming that a hiring decision was based on a black applicant's discomfort during an interview or her inability to "communicate," not her dark skin.

With Latinos, rules requiring that employees speak only English at the job site, even during their lunch break, may not ring the same warning bells. Or a zoning ordinance, enacted in the wake of a surge in Latino immigration, forbidding more than five unrelated persons from occupying the same apart-

ment, may not seem like discrimination, but a simple land-use measure. Or a school board's decision not to provide bilingual education may seem no more problematic than one not to offer wood shop.

In a 1991 decision (*Hernandez v. New York*, 500 U.S. 352), the United States Supreme Court saw no discrimination in a prosecutor's dismissal of jurors who spoke Spanish and hence could not be trusted to listen to the official, translated version of events. A rule that fell heavily on native Spanish speakers triggered no suspicion; Spanish speaking was not a sufficiently close proxy for race or national origin.

Could it be because the Supreme Court was not sufficiently attuned to discrimination against Latinos and found it difficult to think of them as objects of it in the same way the Court can easily think of blacks in that role? And when *Hernandez*, a decision nearly as perversely formalistic as *Plessy v. Ferguson*, caused little outcry, might it be because the public shared the Court's ignorance?

This book will make such mistakes more glaring. It paints in stark relief a social and legal history complete with Conquest, stolen lands, suppressed language and culture, lynching, and brutal or dismissive treatment at the hands of the justice system. Judges, law professors, and legislators ignorant of that history will now have little excuse.

Just as important, the book will contribute to a generation of students and readers equipped to recognize and understand examples of discrimination like those set out in the pages of this book. With effort and the kind of legal creativity contained in these pages, this generation will help bring justice for a group that has enjoyed precious little of it in a land that prides itself on the quality of it for all.

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