The Undereducation and Overcriminalization of U.S. Latinas/os: A Post-Los Angeles Riots LatCrit Analysis

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At 40.4 million strong (14% of the U.S. population; U.S. Bureau of the Census 2005), Latinas/os are the largest and fastest growing U.S. ethnic minority group. In the last 15 years, since the Los Angeles riots of 1992, Anglo perceptions that the Latina/o population is too large, growing too fast, and too illegal have advanced policies detrimental to Latinas/os in the criminal justice and the education systems.
(Business Week 2004; Newsweek Politics 2006; NPG Fact Sheet 2007). These perceptions have also helped fuel anti-Latina/o policies and laws that are discussed in this article, and that influence how Latinas/os view and experience education, law, and society.

Using the Los Angeles (LA) riots of 1992 as a marker from which to begin to assess the status of urban Latinas/os in education and the criminal justice system, we focus on the following question: What have been the effects of the last 15 years of educational and criminal justice policy on present-day urban Latina/o injustice and inequality? The hypothesis is that events like the LA riots help substantiate and further perpetuate pre-existing images of Latinas/os as criminals, which leads to education and criminal justice policies that advanced these perceptions. Therefore, the intent is to explain the linkage between education and criminal justice systems to understand how these institutions nurture and inhibit Latina/o goals and aspirations. Through this critical analysis, we hope to show how the education and justice systems may conflict with Latina/o culture and perpetuate the Latina/o struggle for social justice and equity.

In society, it is largely understood that that these publicly-funded systems compete for resources—the more money available to build jails, the less money available to fund education (Gangi, Schiraldi, and Ziedenberg 1998; Irwin, Schiraldi, and Ziedenberg 1999; Rizzo 2004). Therefore, it is important to apply an interdisciplinary approach to understand the Latina/o experience within these systems. In the creation of a framework to look at these systems as one, Latino Critical Race Theory (LatCrit) is used to explain the foundation of anti-Latina/o discriminatory policies, laws, movements, and propositions in education and the criminal justice system.

Theoretical Framework

An analysis of the effects of oppressive educational and criminal justice policies and laws requires progressive theory that takes into consideration the inherent and institutional racism that exists in educational institutions and the “justice” system. While Critical Race Theory (CRT) is well-suited for such analysis due to its focus on race, racism, and power, it falls short due to its under-emphasis on ethnic discrimination. That is, CRT does not directly address issues that fall outside of racial discrimination, such as language rights, immigration, and citizenship. To bring light to the Latina/o-specific issues, LatCrit is used.

Although CRT and LatCrit are compatible and not in competition, the latter has been developed to highlight issues that are critical to a pan-Latina/o populace. That is, “LatCrit is supplementary and complementary to critical race theory. And LatCrit at its best should operate as a close cousin—related to critical race
theory in real and lasting ways, but not necessarily living under the same roof” (Valdes 1996, 26). Johnson and Martínez (2000) concur, stating that LatCrit should not be viewed as a challenge to CRT, but as building on its achievements and moving in an independent direction to shed additional light on the subordination of Latinas/os.

In the evolution of LatCrit, it is unique in that it draws from both Chicana/o Studies and the civil rights literature and theoretical bases, so as not to “reinvent the wheel” in our understanding of historical subordination (Johnson and Martínez 2000). In relation to Chicana/o Studies, LatCrit proposes to advance from an emphasis on the Mexican Americans’ experience to a concern for the diverse pan-Latina/o (e.g., Puerto Rican, Cuban American, etc.) experiences that share various commonalities: (a) discrimination, (b) “otherness” in relation to mainstream U.S. culture, and (c) devaluation of culture and language. In relation to the civil rights literature, LatCrit proposes to advance from an emphasis on the black–white binary to a concern for the existing black–white–brown tertiary. In the LatCrit proposition to advance both bases of critical literature and thought, is it primarily concerned with the following issues that affect all Latinas/os: (a) language issues/rights, (b) immigration and citizenship, (c) ethnicity, (d) culture and cultural preservation, (e) identity, (f) phenotype, and (g) sexuality.

To get a sense of the reach, focus, and emphasis of LatCrit, Solorzano and Delgado Bernal (2001) describe it in the following manner, “LatCrit elucidates Latina/Latino’ multidimensional identities and can address the intersectionality of racism, sexism, classism, and other forms of oppression” (312). Furthermore, “LatCrit theory is conceived as an anti-subordination project that attempts to link theory with practice, scholarship with teaching, and the academy with the community” (Solorzano and Delgado Bernal 2001, 312).

Solorzano and Delgado Bernal (2001) describe the five basic LatCrit themes: (a) the centrality of oppression based on race, class, gender, language, and immigration status (i.e., the layers of oppression that are important to understanding the pan-Latina/o experience), (b) the challenge to dominant ideology (i.e., the resistance to educational and societal subordination frameworks that have traditionally been used to “explain” Latina/o educational inequality and cultural inferiority, such as “objectivity,” “meritocracy,” “color-blindness,” and “equal opportunity”), (c) the commitment to social justice (i.e., the responsive measures to the layers of oppression), (d) the centrality of experiential knowledge (i.e., the lived experiences as “legitimate” knowledge to the understanding and advancement of the pan-Latina/o educational and societal condition), and (e) the interdisciplinary perspective (i.e., moving from the traditional disciplinary approach of knowledge construction to a comprehensive multidisciplinary approach in our understanding of the pan-Latina/o educational and societal condition). It is these five themes that build the framework by which to understand the effects of 15 years of educational and criminal justice policy on present-day urban Latinas/os.
Fifteen Years of Undereducation and Overcriminalization: A Look at the Data

Although it has been 15 years since the L.A. Riots, this does not minimize the continued need to understand their effect on the undereducation and overcriminalization of Latinas/os in the United States. One of the ways to comprehend how events like the LA riots may have affected Latinas/os in education and the criminal justice system is through data. The following data provides a glimpse into the Latina/o condition within education and criminal justice systems.

In regard to education, data from the U.S. Bureau of the Census (2006) Figure 1 shows that although the percent of Latinas/os 25 years and over who have completed four years of high school or more since 1990 have progressed, it has been at an alarmingly slow rate. Although this data is informative to understand how events similar to the LA riots may have slowed Latina/o educational advancement, it is also incomplete. First, no data exists to understand the correlation between events like the LA riots and discriminatory policies and practices that have negatively affected Latina/o educational advancement. Second, it is difficult to correlate a relationship between the discriminatory policies, practices, laws, and propositions of the last 15 years aimed at discriminating against Latinas/os, primarily in the Southwest, to these historical data. There are many reasons for Latina/o educational under-achievement, and these data merely allow us the opportunity for surface understandings of historical trends. Third, although the percent of the Latina/o population continues to increase in its completion of four years of high school education, the advancement is at a sluggish pace, and with the U.S. Latina/o population explosion of the last 15 years, this leaves a larger number of Latinas/os without even this low level of formal education. Lastly, over the past 15 years, although Latinas/os have advanced in attainment of 4 years of high school education at a snail’s pace, the high school diploma has lost its importance as most decent middle-class jobs now require a four-year college degree.
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Figure 2. Percent of Latina/o Prisoners Under State or Federal Jurisdiction, From 1992 to 2005. The actual percentage of Latinas/os may be higher than those reported by the U.S. Department of Justice (2005). Some states do not record the number of Latino/a prisoners incarcerated in their jurisdiction while other code them as White, both practices that may produce an under count of Latinas/os incarcerated in federal and state jails.

Similar to Figure 1, data from the U.S. Department of Justice (2005; shown in Figure 2) offers a lens for understanding the effects of events like the LA riots on the criminalization of Latinas/os. This data is also troubling because, although the percent of the Latina/o population with four years of education continues to advance at an alarmingly slow pace, the Latina/o prison population is growing rapidly. Similar to the education policies, it is difficult to correlate a relationship between discriminatory policies and laws of the last 15 years aimed at criminalizing Latinas/os to these historical data. Nevertheless, from Figure 2, it is clear that there is an overrepresentation of Latinas/os in prison. For example, in 2005, Latinas/os were only 14% of the population, but 20.2% of the prison population. In the following, we argue that the patterns of overrepresentation evident since the LA riots are the result of criminal justice policies that were initiated prior to the riots and been amplified since 1992.

Given this dismal data on Latinas/os, it is imperative to explore the root institutional causes of Latina/o success and failure in education and criminal justice policy. Also, a look at oppression in the fields of education and criminal justice are the type of projects that are necessary to advance the LatCrit interdisciplinary analysis that provides insight into the pan-Latina/o educational and societal condition. For the purposes of this article, these data merely provide an overview of the educational attainment and criminalization of Latinas/os, which will serve as a backdrop to the history of education and criminalization of Latinas/os that will be advanced later in this article.

Fifteen Years of Undereducation and Overcriminalization:
A Review of Federal and State Acts, Propositions, and Laws

Since the LA riots, the condition of urban people of color has worsened, as they have been further conceptualized as uneducatable looting criminals. In particular, policies, court cases, and propositions at the federal and state levels have been

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instrumental in worsening the Latina/o social, political, and economic condition. Table 1 provides an overview of the federal and state actions that will be addressed that have impacted and led to a decay of the Latina/o condition in education and the justice system.

**Federal Impact on Education**

Two federal acts and two Supreme Court rulings have had a major impact on the way that Latinas/os navigate through and/or are excluded from the education system nationwide. The first were drastic changes that were made in 1996 to the *Illegal Immigration Reform and Immigrant Responsibility Act* (IRA–IRA; see 104th Congress 1996). Part of the major revisions that were made to exclude Latinas/os were in Section 505 of the act, which made it illegal for undocumented students to receive financial aid or in-state tuition for higher education. Since 1996, some states have moved to counter the act with the creation of legislation to provide financial aid to undocumented students. These state efforts have culminated into the recent U.S. attempt at comprehensive immigration reform with the inclusion of the *Development, Relief, and Education for Alien Minors Act of 2006* (the DREAM Act) in Section C of the *Comprehensive Reform Act of 2006* (see 109th Congress 2006), which has passed the Senate but is tied up in the House of Representatives. In sum, although the IRA–IRA has affected nearly 80,000 undocumented U.S. high school graduates, and the additional 65,000 who are currently enrolled in college and undocumented in 2001 (Passel 2001), there is still hope that federal policy will someday restore financial aid for undocumented Americans. However, this is unlikely without the willingness of the states because in-state tuition is a state benefit, and Congress cannot legally regulate state benefits (Olivas 1995). Perry (2006) argues that, instead of indiscriminately denying all undocumented
high school graduates financial aid just because they are undocumented, we need to establish a more rigorous formula for citizenship that takes into account years of residency, social awareness, reciprocation, investment into their communities, identification with the U.S., destiny, patriotism, and law abidingness.

The second federal act that has affected Latinas/os was No Child Left Behind (NCLB), enacted nationwide by the U.S. Department of Education in 2001 (see 107th Congress 2001). This act reauthorizes a number of federal programs aimed at “improving” the performance of U.S. primary and secondary schools. For example, NCLB proposes to close the achievement gap between White and minority students (Thernstrom and Thernstrom 2003), but in practice it is a vehicle for social mobility for the privileged with resources and power to make choices matter, and a form of social constraint for those who lack such resources (Giroux and Schmidt 2004). The problem lies in the implementation because NCLB was never fully funded to support urban schools that are predominately attended by students of color (Fusarelli 2004). That is, NCLB says that schools fail if they do not count all students, but it does not provide the necessary financial support to schools that have been deemed as “failing” (Reschovsky and Imazeki 2003). Furthermore, testing has always been used as a way to exclude Latinas/os from education, and not only does NCLB extend testing and accountability to all states (Hursh and Martina 2003), but it places greater language demands on non-English speakers (Abedi 2004).

In regard to the Supreme Court cases, two rulings in 2003 that have affected Latinas/os at the national level are associated: Gratz v. Bollinger (2003) and Grutter v. Bollinger (2003). In both of these cases, students sued the University of Michigan over its “race-based” admissions policies. In the Gratz case, the Supreme Court ruled against the use of a point system that is awarded to undergraduate students for being of a minority race/ethnicity, although points are awarded for a variety of criteria. In the Grutter case, a holistic approach to law school admission was approved; one factor being race/ethnic consideration. In the words of the court, “We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today” (Grutter 2003, 31). The immediate effect that this is having at universities nationwide is the abandonment of minority-only programs, such as minority-only scholarships, which are being expanded to all students regardless of race and ethnicity (Elliott and Ewoh 2005; Turner and González 2007). Given the minimal support that universities had to support students before Gratz and Grutter, “Neither decision was seen as a clear victory for access” (Hurtado 2005, 273). And “affirmative action bans and threats of litigation are associated with a widening of the gap in admissions rates in recent years between Whites and students of color nationwide” (Kidder 2003, 3).

From a LatCrit perspective, the IRA–IRA revisions show the unwillingness of policymakers to understand how policy affects Latinas/os. LatCrit’s concern with social justice is the framework by which the Latina/o community has rallied against
IRA–IRA, and has tried to work at the federal and state levels to advance counter measures, such as the DREAM Act. Furthermore, policies like NCLB result in the further oppression of Latinas/os who have particular language needs that are construed as deficits and devalued by dominant society, and completely ignore the lived experiences of Latinas/os as they advance a standards-based education that does not value culture knowledge. Although the *Gratz* and *Grutter* cases allow the use of race as a factor in admissions, in the larger scheme they also serve to advance the collective thinking in society that Latinas/os are “other.” For example, before *Gratz* and *Grutter*, Latinas/os were believed to only exist in the university because of affirmative action, and after they are believed to exist to provide Whites with a diverse college experience.

**Federal Impact on Criminalization**

Many present-day criminal policies that affect Latinas/os can be traced back to the 1960s and 70s, when legislators and policy makers were concerned with a growing social unrest and rising crime rates (Mauer 2001). In response, a war on drugs, gangs, and crime was waged, and these policies help explain the overrepresentation of people of color in prison and jails in the United States (Donzinger 1996; Miller 1996). Further, an ideology of people of color as criminals has led to their criminalization and has legitimized aggressive policing tactics that target communities of color (Russell 1998). In addition, since 9/11, efforts to secure the United States-Mexico border in the name of national security have fueled new policies that further criminalize Latina/o immigrants and nonimmigrants in the United Stated. Although the criminalization of Latinas/os has been documented over the last 45 years, for this article the focus is on key federal and state policies, acts, and cases of the last 15 years. The following are examples that illustrate how the federal government has criminalized Latinas/os.

In 1998, the *Higher Education Act Amendment* (see 105th*Congress* 1998) highlighted the ways in which federal laws that are part of the war on drugs help to stymie access to higher education. Part of the amendments of this act specified that college students over 18 years of age could be denied up to two years of federal financial aid for drug-use and drug-sale convictions, and they could become permanently ineligible for aid. These laws apply to all ethnic/racial groups equally; however, because the federal government has waged a war on drugs mostly in communities of color (Mauer 2001), barriers to Latina/o higher education may be a collateral consequence of the drug war. This amendment clearly affects, disproportionately, the poor and people of color, who are more likely to need financial aid to attend college, but at the same time are also more likely to be policed for drug behavior that will result in incarceration (Coyle 2003; Reiman 2007). The *Higher Education Act Amendment* is similar to the IRA–IRA
(1996), which denies financial aid to illegal immigrants, but both aim to deny financial aid to students for criminal behavior, and this disproportionately affects Latinas/os.

Second, in *Illinois v. Caballes* (2005), the Supreme Court ruling expanded the search powers of law enforcement agencies. *Terry v. Ohio* (1968) already allowed police officers to execute a surface search of an individual if the officer believed the suspect had committed a crime or was about to commit a crime, and could injure police officers or residents. The *Caballes* ruling allows police officers to use a drug sniffing canine during a regular traffic stop, even when there is no probable cause to believe a drug crime had been committed, as long as the search was outside the vehicle and within the time period of a normal police stop. Considering that blacks and Latinas/os are disproportionately subjected to police stops (Cordner, Williams, and Velasco 2002; Lundman 2004) and given the research discussed concerning the likelihood of Latinas/os to be arrested for a drug crime, it is safe to assume that Latinas/os may endure these types of stops more frequently than Whites.

Due to growing concerns of terrorists entering from Mexico into the United States and a recent backlash over distress of the social and economic costs of undocumented immigrants, Latina/o immigrants and Latina/o U.S. citizens are being criminalized in new ways through antiterrorism and related new immigration federal policies. One such approach is the use of National Guard soldiers to police the United States–Mexico border. In 2006, President George W. Bush authorized *Operation Jump Start*, which provided for the use of the National Guard along the United States–Mexico border (see *The Oval Office* 2006; *The White House* 2006). According to the literature, there are concerns that military soldiers are trained differently than border patrol officers, and fears that the use of soldiers is part of a larger effort to militarize the border (Dunn 2001). In addition, the deployment of soldiers along the border is part of the federal government’s efforts to stop drugs from entering the United States and prevent illegal immigration (Dunn 2001). Similar problems are expected with the use of the National Guard along the United States–Mexico border. Rather than viewing immigrants as hard working people who immigrate to provide for their families, the United States government justifies the militarization of the border by socially constructing immigrants as dangerous criminals who sell drugs and may help terrorists enter the country (Kil and Menjivar 2006).

We are concerned that the federal government is working collaboratively with local law enforcement agencies, and these new partnerships may undermine police and community relations in Latino/a communities. In June 2002, the Attorney General secretly adopted a new policy that allows state and local police to detain and arrest individuals whom they believe are in violation of federal immigration laws, but have not committed a criminal act (ACLU 2007). Arguments against the policy have come from law enforcement agencies who contend that they
do not have the resources to enforce federal immigration laws and still keep the community safe, and from critics who argue that this policy goes against the tenants of community policing. Nevertheless, from 2005 to 2007, cities throughout the country have begun to develop partnerships with local offices of Immigration and Customs Enforcement (ICE). One state where this is evident is Arizona, where some cities have partnered with ICE to address citizens’ concerns with undocumented immigrants (see Immigration and Nationality Act 2007). Other cities in Arizona have developed partnerships where police officers can call ICE officials if they suspect that the individuals who are being held by the police are undocumented. ICE officials show up and begin the process of deporting them from the country. Many immigrants already believe that they might be deported prior to the new federal and state approach (Walker 1997). With the new policies in place, the distrust and fear of the police can only grow worse in immigrant communities. Immigrants may not call the police in situations where a neighbor is in distress or aid law enforcement in the investigation of a crime, because of the fear that they may be deported. In addition, the new partnerships may lead to increased racial profiling, where both Latino citizens of the United States and immigrants are stopped and questioned by law enforcement to determine an individual’s citizenship, and could be used as another probable cause reason to stop both groups, leading to the further criminalization of Latinas/os (Romero 2006).

In the last 15 years, it has become evident that the federal government has developed new strategies to criminalize Latinas/os, but very little has been done to help increase the number of Latinas/os who flow through the educational pipeline. According to a LatCrit perspective, the federal government is adding layers of oppression to already existing layers. This oppression is based on assumptions of criminality about Latinas/os that are very much connected to their economic position and also geared toward immigrants.

State Impact on Education

From 1994 to 2000, southwest lawmakers have been busy writing laws to limit educational opportunities for Latinas/os. Three California and one Arizona propositions have had significant impact on how and if Latinas/os acquire a formal education. First, Proposition 187 was passed in 1994 by California voters as a ballot initiative written to deny social services, health care, and public education to illegal immigrants (see Proposition 187 1994). Again, it is important to note that there is no association between being illegal and Latina/o, but due to the high numbers of illegal immigrants in the Latina/o community, propositions like 187 are viewed as negative by a large part of the Latina/o community (Tolbert and Haro 1996). García (1995) argues that propositions like 187 have historically been
intertwined with racial prejudice, and are therefore consistent with the underlying racism that has plagued the history of U.S. immigration law and policy. Although, in 1999, the California governor announced an agreement to end litigation over the proposition and end the state’s efforts to enforce it, the damage has been done in that it created an anti-Latina/o sentiment that has resonated throughout the country (Suarez-Orozco 1996).

The second California proposition is related to and preceded the Gratz and Grutter decisions. In 1996, Proposition 209 amended the state constitution in an effort to end affirmative action programs led by state employers and public universities (see Proposition 209 1996). The immediate state impact was a drop off in racial/ethnic minority admission to the prestigious flagship universities in the state—University of California (UC) Berkeley and UC Los Angeles. The Gratz and Grutter cases only supported the racist and discriminatory policies operating in California. Since Proposition 209, civil rights groups have rallied against it, but research shows that Whites tend to support these types of discriminatory policies when they live amongst large numbers of minorities (Tolbert and Grummel 2003), and because of their racist beliefs (Alvarez and Bedella 2004). In particular, in 1999, a class action suit against the UC Regents and UC Berkeley was filed by highly-qualified minority students that were denied admission, particularly specifying a UC system preference for students with access to AP courses and SAT scores (see Rios v. Regents 1999).

Lastly, California Proposition 227 (1998) and Arizona Proposition 203 (2000) were passed in 1998 and 2000, respectively. They were both financially backed by the same person (conservative millionaire Ron Unz), and aimed at eliminating bilingual education in the schools. Research post-227 shows that when bilingual education came under attack, the Latina/o immigrant community embraced English—parents saw it as a way to improve the academic progress of their children, and children saw it as a way to become “American” (Orellana, Ek, and Hernández 1999). But, in another post-227 study, researchers found that, regardless of the proposition, districts, schools, and classroom teachers continued doing the same things they did pre-227 (Gándara 2000), and more English did not translate into better test results (García and Curry-Rodríguez 2000). Much of why teachers continued with “business as usual” post-227 was due to their deeply ingrained ideology of what was right (Stritikus and García 2000). Proposition 203 was no different, in that it was more political spectacle than policy truly concerned with the benefit and welfare of Spanish-speaking students (Wright 2005).

How does all this apply to LatCrit? First, Garcia’s account of U.S. immigration law and policy is one central reason why a LatCrit analysis is important: to understand the centrality of Latina/o oppression based of ethnicity, class, gender, language, and most important in this case, immigration status. Second, it is cases like Rios that fit the mold of a LatCrit framework that can be used by Latinas/os who are fighting against racist and discriminatory policies in the name of social justice.
Third, for analysis of Propositions like 227 and 203, LatCrit is more appropriate than CRT because it specifically addresses language discrimination issues that oppress Latinas/os. This is not to infer that Propositions 227 and 203 were only about language discrimination, but LatCrit allows us to see how something that is overt language discrimination is intertwined with covert race/ethnic and class discrimination.

**State Impact on Criminalization**

Law enforcement agencies and policymakers throughout the nation were distressed with the growing crime rates in the 1980s and 1990s, particularly violent and gang related crimes committed by youth (Bjerregaard 2006; Sheldon, Tracy, and Brown 2001). Therefore, by the time the LA riots had erupted, most states had implemented policies aimed at curbing violent and gang-related crimes. Since the riots, these policies have been enhanced in an attempt to eradicate crime, especially in communities of color. Policies designed to address gang behavior have taken many forms, but suppression activities are favored by law enforcement (Fearn, Decker, and Curry 2001). Law enforcement strategies used to suppress gangs include arrest, imprisonment, and surveillance (Fearn, Decker, and Curry 2001). These activities have led to longer sentences, which is part of the effort to get tough on violent gang crime. For the purpose of this article, the focus is on suppression activities that were initially implemented in the 1980s, but have been expanded by state legislators and policy makers since the 1992 LA riots. Although all of the examples highlighted in the following are California policies, other states have implemented similar policies.

One gang policy that had been implemented due to concerns with violent crime and is a suppression tool used by law enforcement is a gang injunction (see *The people of the state of California* 2005). The first gang injunction law was used in Santa Ana, California in 1980, and then was widely used by Los Angeles County (see *L.A. City Attorney* 2001). The use of these injunctions has increased since the LA riots. As of March 2007, Los Angeles County had 31 gang injunctions, and there were 15 in North County San Diego. Gang injunctions are civil lawsuits that are “spatially based, neighborhood-level interventions intended to disrupt a gang’s routine activities” (Maxon, Hennigan, and Sloane 2006, 394). The injunctions specify a group of individuals who are viewed as a public nuisance and the civil lawsuit restrictions have included prohibiting gang members from congregating in specific areas of a neighborhood, restricting the use of gang signs or clothing, and preventing gang members from associating with other gang members. Violating the court order could result in a $1,000 fine or six-month jail sentence.

Another policy created by legislators to address the growing violent crime, especially violent gang crime, is the *Three Strikes Law* (1994). This law was
a part of the sentencing reform that resulted in mandatory minimum sentences based on the crime committed, and helps fuel the criminalization of Latinas/os. In 1994, California passed a three strikes law that automatically required third time felons to serve a life sentence (see *Proposition 184* 1994). According to the 1994 California law, the first two strikes had to be serious felonies, but the third could be any conviction for a felony. The research indicates that the Three Strikes Law in California has disproportionately affected people of color, including Latinas/os. In California, although there is not an overrepresentation of Latinas/os who receive a felony strike, they are overrepresented in the prison population. Latinas/os make up 32.6% of the population, and they account for 36% of the prison population, and 32.6% of first, second, and third strikers. Nevertheless, the research indicates Latinas/os are more likely to receive a third strike than are Whites. Ehlers, Schiraldi, and Lotke (2004) report the incarceration rates for blacks and Latinos, as well as the incarceration rate under the three strikes law, is higher than for Whites. These data suggest a White individual is less likely to go to prison and less likely to be sentenced under the three strikes law. The situation is worse in Los Angeles County were prosecutors are six times more likely to use the three strikes law and people of color are more likely to be treated more harshly at each stage of the criminal justice system (Ehlers, Schiraldi, and Lotke 2004).

Another policy created to address gang behavior was the *California Street Terrorism Enforcement and Prevention Act* (STEP Act; 1996), which is legislation that uses existing laws but provided enhanced sentences for gang members who committed crimes to benefit the gang. In 2000, the STEP Act was amended to increase punishments for gang crimes through stiffer enhanced sentences. The enhancement applies to any felony or misdemeanor and the prosecutor does not have to prove that the youth is a gang member. The enhancements can range from two to four years or a life sentence (Jackson 2004). For example, with the enhancements, a maximum penalty for a drive-by where the victim is seriously injured is a life sentence, but 10 years without the enhancements (Jackson 2004). The legislation also helped to expand the use of gang injunctions.

There are several problems with the STEP Act gang legislation and the use of gang injunctions. Bjerregaard (2006) and Sheldon, Tracy, and Brown (2001) argue that the war on gangs has been legitimized by policy makers and law enforcement officials who have created a moral panic about gangs. That is, using the media, gangs have been socially constructed as dangerous and as a serious threat to communities necessitating punitive responses. However, the gang problem may not be as serious as depicted in the media. As part of the moral panic about gangs, certain ethnic/racial groups fit preconceived images of a gang member (Portillos 2006), thus they are targeted more frequently by law enforcement. Another problem with gang legislation is the broad definitions evident in state statutes used to define a gang and gang member. Bjerregaard (2006) argues that law enforcement indicators for defining a gang and gang members are vague
and give law enforcement broad discretion in enforcing gang statutes. Police officers employ the vague indicators for defining a gang for Latinas/os living in impoverished communities. The broad discretion exercised by police officers in defining a gang member where officers may use individual biases based on preexisting images of criminality, opens the door to discrimination in the barrio (Bjerregaard 2006). Moreover, because Latinas/os in the barrio are targeted and more likely to be defined as gang members; they are more likely to be involved in gang statutes that regulate their behavior and, once defined as a gang member, sentence enhancements may be used by district attorneys if the crime was believed to be committed to benefit the gang.

A related tool used to combat crime, drugs, and gangs is prosecuting youth in adult courts, rather than juvenile courts (Moffeit and Simpson 2006). Transferring youth to adult court fits with many state efforts to combat the growing violence committed by youth. In 2000, Proposition 21 was approved by voters and expanded the types of crime for which youth could be tried in adult court, and created new direct file and exclusion mechanisms for initiating such prosecution. The proposition was geared to partly address gang behavior and specifically requires enhanced sentences for gang related crimes. The direct file mechanisms are more likely to affect youth of color than Whites. A report published by the Building Blocks for Youth reported Latinas/os in Los Angeles accounted for 59% of the cases that were waived to adult court. In addition, Latino youth were 7.3 times more likely to be convicted in adult court and then sentenced to California Youth Facility than were Whites (Males and Macalliar 2000). These data indicate that, once again, Latinas/os are criminalized in yet another stage of the criminal justice system.

According to the LatCrit perspective, these state policies that help to further criminalize Latinos/as must be viewed as various forms of oppression. Although the intent of the policies is to punish criminals and protect society, the actual consequence is that Latinas/os and other people of color are disproportionately bearing the brunt of the law. Images of criminality that are tied to race, ethnicity, class, gender, and immigration status help to legitimize criminal justice policies. Unfortunately, in barrios and K–12 schools throughout the nation, Latinos/as are more likely to be the targets of suppression activities that lead to their incarceration.

**Discussion and Implications**

In 1967, as honorary prime minister of the Black Panther Party, Stokely Carmichael coined the term *institutional racism* to describe the collective failure of institutions to provide appropriate and professional services to people because of their color, culture, or ethnicity (Carmichael and Hamilton 1967). This concept applies to present-day federal and state efforts that continue to move toward the
criminalization of Latinas/os. In the 15 years since the LA riots, federal and state policies, acts, cases, and propositions have led to a barrio-ization of Latinas/os, particularly those that are most likely to be in underfunded and overcrowded inner-city classrooms, and in the type of impoverished areas that are targeted by drug dealings, gang legislation, action-seeking police, and law enforcement officials. Racist educational and criminal justice policy are clear culprits in this barrio-ization process that has been more interested in limiting, rather than moving forward, Latina/o educational and societal advancement.

From a LatCrit framework, it becomes clear that it is important to remain critical and vigilant in addressing racist policies within the educational and criminal justice systems. First, from a LatCrit perspective, the multilayered levels of oppression (based on race, class, language, and immigration status) are present in most of the federal and state policies that were addressed (Kil and Menjivar 2006; Romero 2006). Second, the Latina/o challenge to the dominant oppressive ideology of the educational and criminal justice systems remains strong. That is, the Latina/o community finds ways to advance themselves despite suffering racism, discrimination, and criminalization (Escobar 1993, 1999; Ruiz 2002; Villenas and Deyhle 1999; Zuniga 2002). Third, part of the reason some Latinas/os are successful in their fight against institutions is due to their commitment to social justice and equity (Villenas and Deyhle 1999). Fourth, Latinas/os continue to rely on their experiential knowledge to resist institutional racism in education and the society, and they continue to increase in their sophistication of attaining knowledge about how to couple their experiential knowledge with theoretical knowledge (Cammarota 2004; Delgado Bernal 2002). Last, the understanding of Latina/o oppression and institutional racism continues to be advanced by the work of Latina/o activist–scholars that are committed to promote a Latina/o social justice agenda from multiple disciplinary perspectives, as evidenced through the work in this article.

As the United States moves toward a future for Latinas/os, researchers, policymakers, law enforcement officials, educational leaders, and politicians need to understand that although racist educational and criminal justice policies aimed at undereducating and overcriminalizing has detrimental effects on Latinas/os. Nevertheless, civil rights advocates and communities of color will always resist and combat these types of policies in effort to help society comprehend how they affect the Latina/o community. People concerned with and interested in the advancement of Latinas/os in education and society need to be critical of the types of educational and criminal justice policies that have been presented. And as the educational and criminal justice systems construct new ways to oppress Latinas/os through policies, amendments, acts, and injunctions, Latina/o advocates similarly need to find ways to resist and combat not only these policies, but the racist ideologies that create them. Many times, the policies that marginalize Latinas/os in the education arena are, in part, responsible for their criminalization, and this is one
reason where more research on the relationship between these institutions is necessary. Conceptualizing a just and equitable future for Latinas/os requires that those interested in advancing Latinas/os in U.S. society not only respond to racist and discriminatory educational and criminal justice policies, but aggressively demand justice and equity from these key American institutions.

Note
1. The term “Latina/o” (Latina being female, Latino male) will be used throughout this article to connote people that have a cultural association via the Spanish language and reside in the United States. The U.S. Census uses Hispanic to classify people of Latin descent. Because this term is generally associated with “a history of colonialism and continued new-colonist action by the U.S. government” (Rodriguez, Guido-DiBrito, Torres, and Talbot 2000, 511), Latina/o is used to replace Hispanic.

References


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**Developing Urban School Leaders: Building on Solutions 15 Years after the Los Angeles Riots**

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The 15th Anniversary of the Los Angeles riots serves as an impetus to continue efforts in addressing how institutionalized theories, norms, and practices in schools and society lead to social, political, economic, and educational inequalities. The challenges of school inequalities continue to be chronic and remain unresolved through traditional practices, scholarship, theory, and
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