Brigham Young University Prelaw Review

Volume 22 Article 8

4-1-2008

"No Mexicans Served": Redefining Race as a Social Construct in Hernandez v. Texas

Scott Jensen

"No Mexicans Served": Redefining Race as a Social Construct in *Hernandez v. Texas*

by Scott Jensen[1]

I. Introduction

Since May 17, 1954, *Brown v. The Board of Education* has been praised as the landmark case in the advancement of civil rights. In the minds of many it marks the beginning of a new era of social reform. But few know that just two weeks earlier on May 4, the same court handed down a ruling in a now often overlooked case, *Hernandez v. Texas*. This oversight is unfortunate as *Hernandez v. Texas* was so revolutionary in both its scope and ideals. Where *Brown v. Board* did little to challenge racism per se (it was in essence an administrative act, enforcing a constitutional amendment which the South had refused to respect), *Hernandez v. Texas* took great steps to look at the real heart of the race issue—that race is a social perception, not a question of skin color. Although initially the case was praised as a landmark victory, over fifty years later few have ever heard of *Hernandez v. Texas*. Despite its unique ruling and potential to redefine the civil rights movement, *Hernandez v. Texas* was largely ineffective because of the both the narrow language and the limited application of the ruling. Instead, the case should be viewed as a missed opportunity. So why mention it at all? The case set forth a unique legal philosophy, whenever a group is discriminated against, they constitute a body worthy of constitutional protection under the Fourteenth Amendment. This applies regardless of

---

1 Scott Jensen is a senior majoring in economics. Upon graduation, he plans to continue his education in the field of law or public policy. He is from Sandy, Utah.

whether or not they are part of a distinct race. In other words, race is a social construct, not a matter of biology. This idea has not yet been fully integrated into our legal system. It is extremely important that the concept of race as a social perception be implemented today in the treatment of not only Mexican-Americans, but all racial and ethnic groups in America.

II. Historical Background

In 1951 Pedro Hernandez known as "Pete" walked into a crowded bar and shot Joe Espinoza in the chest. Both men were Mexican-Americans. Although his case appeared hopeless, a brilliant legal team consisting entirely of Mexican-Americans decided that Pete Hernandez would make a perfect test case to take before the Supreme Court. Their purpose was to expand the rights of jury selection to all qualified persons of Mexican descent in the state of Texas, but they also sought to define once and for all the status of Mexican-Americans in American society. Over twenty-five years had passed since a person of Mexican descent had served on a jury in Jackson County, Texas where Hernandez would be tried. The racially charged environment of Texas in the 1950s was a harsh environment for the Mexican-American legal team. Michael A. Olivas, professor of law at the University of Houston, illustrated the team's difficulties. After speaking with James deAnda, an attorney for the defense, Olivas noted that "they did not even feel safe enough to stay the night in Edna, Texas [where Hernandez was tried], and as a result retreated every night to their homes in Houston and San Antonio."[2]

The jury selected for the *Hernandez* case was, as expected, entirely white. The attorneys for the defendant protested this homogeneous jury first during the trial and later on appeal to higher courts, but were denied time and again. In a ruling handed down from the Texas Supreme Court, it was stated that Pete Hernandez was white, and thus he *had* been tried before a jury of his peers. Of course the classification of Mexicans as whites did little to protect them against

2 Michael A. Olivas, *Commemorating the 50th Anniversary of Hernandez v. Texas,* 25 Chicano-Latino L. Rev. 1, 7 (2005).

discrimination tantamount to that against blacks. This technicality was a legal loophole Texas had been using to segregate Mexican-Americans for years. On this point Mexican-Americans had fallen into an ambiguous "other" category. For years people in the United States had debated the definition of race. The "one-drop" policy (one drop of African blood and you were considered black) turned race into an issue of color or heredity.[3] To conform to this view, Mexicans had called themselves Americans of Spanish descent and attempted to fit in that way. Because of this tradition, *Hernandez v. Texas* represented an opportunity for the Latino community to establish an identity which had been long in question, even among themselves. Although Texas legally recognized Mexicans as white, a sign in a Texas restaurant, which declared "No Mexicans Served," showed an attitude that went beyond the law.

The case was accepted by the Supreme Court of the United States and argued in January of 1954. Earl Warren, Chief Justice of the court at that time, had previously been given wide exposure to the problems of discrimination in the Latino community as an attorney, and later as governor of California.[4] The attorneys for Hernandez decided that Gus Garcia would make the oral arguments along with Carlos Cadena. In May of 1954 the Warren Court ruled in favor of Hernandez, marking one of the first civil rights victories for Latinos in the highest court.

III. Argument for Hernandez

The attorneys for Hernandez sought to distance themselves from a question of race. Mexicans as a rule were reluctant to give up their classification as whites. Because many of the more fair skinned Mexican-Americans could pass as whites, they found that they could enjoy many of the same protections under the law. Of course this did little for those whose skin color revealed their Mexican identity. The

3 F. James Davis, Who is Black?: One Nation's Definition 5 (University Park, Pennsylvania State University Press 1991).

4 Kevin R. Johnson, *Hernandez v. Texas: Legacies of Justice and Injustice,* 25 Chicano-Latino L. Rev. 153, 161 (2005).

claim to whiteness was not the best method of ensuring their civil rights, but because the alternative was to be put in the same category as blacks and considering the explicit discrimination against blacks at the time, this would unambiguously leave them worse off. Attorneys at that time would typically argue that while Mexicans were white (allowing them to claim rights as Caucasians) they needed additional protection under the law because of the obvious racial discrimination. This approach, know as the "other white" strategy, had been used for years by those arguing for Mexican-American rights, and it was used again in the case of Hernandez. In the brief written by Carlos C. Cadena and Gus C. Garcia, race was rarely mentioned. Instead they sought to argue discrimination because of national origin. In so doing they could argue the need for minority protection and, in the true spirit of the other white approach, maintain their status as whites. As legal precedent they cited several instances where courts had protected white groups such as Irish-Catholics from discrimination.[5] The brief submitted to the Supreme Court provided impressive evidence that jury discrimination was pervasive in Jackson County, Texas. They showed that in twenty-five years not one person of Mexican-American descent had served on a jury even though there was a pool of Mexican-Americans eligible for jury duty in the county.[6] Of course the number of potential Mexicans jurors was much smaller than the number of eligible white jurors, but it was still hard to believe that of all those qualified, not one had been selected in twenty-five years.

Although they never distanced themselves from the other white philosophy, the petitioners did much to argue that Mexican-Americans were indeed a separate class. Many times the term "class apart" was used to describe the status of Mexican-Americans as an identifiable group worthy of protection. They attacked the notion that there were but two constitutionally protected groups—blacks and whites—and asserted that Mexican-Americans constituted another class altogether worthy of constitutional protection. The attorneys for Hernandez showed that Mexicans, being neither black nor fully

5 Brief for the Petitioner, Hernandez v. Texas, 347 U.S. 475, 4 (1953).

6 *Id.*

white, were largely overlooked. They stated in their brief that "[t]he Texas court requires a person of Mexican descent to show express discrimination, and it states frankly that persons of Mexican descent must bear a more onerous burden of proof solely and simply because they are not Negroes."[7] In other words, they were not entitled to the implicit protection provided in the constitution for whites, and were not entitled to the explicit protections of the Fourteenth Amendment for the blacks. Thus Mexican-Americans faced the same discrimination the blacks did, without the ability to legally challenge it. The lawyers for Hernandez sought to change this longstanding ambiguity by establishing Mexicans as an autonomous group, entitled to the full protection of the Fourteenth Amendment.

IV. Argument for the State of Texas

The State of Texas also avoided any real question of race, and focused on attacking the other white argument. First of all they claimed that no jury discrimination could have occurred because the jury was white and so was Pete Hernandez. This exploited the greatest weakness of the other white approach. For years Texans had used the whiteness of Mexicans to effectively discriminate against them. Because they were "equals," treating them unequally was not discrimination. Where blacks had the advantage of being an identifiable racial group, Mexicans could be called whites and then be discriminated against as if they were blacks. Pete Hernandez, under this reasoning, had indeed been tried before a jury of his peers. If Hernandez then wanted to consider himself a unique class of white, then Texas envisioned a scenario in which "the white race [is divided] into small segments such as blondes and brunettes, or redheads and others."[8] Their idea was that if you gave Mexicans special treatment under the law, you would have to give all groups special protection until the divisions became so numerous as to "utterly ruin [the jury system] and nullify any good which might be expected from

7 *Id.*

8 Brief for the Respondent, Hernandez v. Texas, 347 U.S. 475, 4 (1953).

it."[9] Here we can see the real danger of the class apart or other white argument. By maintaining their status as other white the attorneys for Hernandez risked not being able to show sufficient necessity for constitutional protection. Either they were as white as anyone else, and Hernandez had no *prima facie* case or their differences were as insignificant as hair color, and they had no reason to expect a special designation as a class apart.

V. RULING OF THE WARREN COURT

On May 4, 1954, the Warren Court ruled unanimously in favor of Pete Hernandez. The statement issued by Chief Justice Warren can be divided into two parts. The first dealt with the actual facts of the case and states that jury discrimination did indeed take place while the second actually seeks to redefine the scope and definition of racism. In the first part of the ruling, the court refuted the claims of Texas that there had been no jury discrimination. They referred to the overwhelming evidence presented by the petitioner which showed a long history of exclusion. In the actual decision is a scathing rebuttal stating that Texas

> . . . taxes our credulity to say that mere chance resulted in there being no members of this class among the over six thousand jurors called in the past 25 years. The result bespeaks discrimination, whether or not it was a conscious decision on the part of any individual jury commissioner. The judgment of conviction must be reversed.[10]

The court also stated, "The constitutional guarantee of equal protection of the laws is not directed solely against discrimination between whites and Negroes."[11] Since discrimination was not limited to a question of white or black, and because the evidence showed that discrimination had taken place, Hernandez was entitled to protection under the constitution.

9 *Id.*

10 Hernandez v. Texas, 347 U.S. 475 (1954).

11 *Id.*

But the most important part of the ruling came in the more philosophical second part. Here the court actually defined race as a social construct. Race is deeper than skin color or nationality; race is a perception. The court said, "When the existence of a distinct class is demonstrated, and it is shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated."[12] Whenever a group is being unfairly discriminated against, it is evidence that they constitute a distinct class worthy of protection under the constitution of the United States. Also the court stated that "[t]he evidence in this case was sufficient to prove that, in the county in question, persons of Mexican descent constitute a separate class, distinct from 'whites.'"[13]

The definition of race as a perception rather than a color was revolutionary. The idea that the laws must match the perceptions of the people opens the door for an almost unlimited protection of all groups, regardless of skin color. Although the differences of Mexicans could be as insignificant as hair color, it did not matter. What made them a group worthy of protection was the fact that they were unfairly discriminated against. But the all-inclusive scope of the ruling was also its biggest weakness. The danger of defining race as something made apparent by discrimination was that the court then placed the burden of proof back on Mexican-Americans to prove their racial identity. The phrase qualifying the decision as applying to "the county in question," was especially problematic in the way that it apparently limited the ruling to a single location.

What was happening in Texas in the 1950s was a national problem that both the Supreme Court and the American people had largely chosen to ignore. Up to this point civil rights laws were based on the commonly accepted black vs. white distinction. This overly simplistic view of race was the real origin of the problems surrounding the *Hernandez* case. The law was static, protecting only those proven to be of a different race and not taking into consideration the actual perceptions of the people. This oversimplification allowed

12 *Id.*

13 *Id.*

the people of Texas to say one thing and do another. The attorneys for Hernandez pointed out this glaring discrepancy and the court referred to it in the decision stating, "At least one restaurant in town prominently displayed a sign announcing 'No Mexicans Served.' On the courthouse grounds at the time of the hearing, there were two men's toilets, one unmarked, and the other marked "'Colored Men' and 'Hombres Aqui' ('Men Here')."[14] In the legal eyes of the state of Texas, Mexicans were called whites, but they were perceived to be another race to be segregated along with the blacks.

VI. WEAKNESS IN THE RULING

There are differing views on the effectiveness of *Hernandez v. Texas*. Many claim that the ruling was a moral victory, but did little to change the status quo. Others have recently praised the profound and insightful nature of the decision. The obvious disparity in opinions merits some explanation. In fact *Hernandez v. Texas* was both ineffective and groundbreaking at the same time. The ruling had enormous potential in its underlying ideas, but because the case has been largely neglected in practice, many wonder if it mattered at all. Interestingly, *Brown v. Board* played a role in rendering the ruling in *Hernandez v. Texas* ineffective, as demonstrated by two common criticisms of the *Hernandez* ruling.

First and foremost, the wording was notably specific to the case of Hernandez. Phrases such as "the county in question" and "when the existence . . . is demonstrated" limited the application to Jackson County. Many felt that the Supreme Court did not go far enough by not defining all Mexican-Americans as a class apart. In order to expand protections, further litigation was required—litigation that many in the Mexican-American community could scarcely afford. This was a primary distinction between *Brown v. Board* and *Hernandez v. Texas*. In the former, resources were fully available to follow up on the Supreme Court decision, which was in fact done in *Brown II* and even later in *Brown III*. The NAACP had the resources to ensure that the decision of the court was fully administered across

14 *Id.*

the US. In the latter case of *Hernandez* there was no ability to follow up and guarantee that the spirit of the Supreme Court decision would be enforced.[15] There simply was not enough money or organization within the Mexican-American population to pursue each and every case. It was as if the Warren Court had given the Mexican-American community the legal right to freedom, but no way of getting there. As Steven Wilson, professor of History at Prairie View A&M University said, "In the absence of follow-on litigation, Mexican-American ethnic identity has remained fluid, and as a result, slippery."[16]

A second criticism is that *Hernandez* furthered the other white strategy which came to adversely affect their position after *Brown v. Board*. Up to that point Mexican-Americans felt that they had a better chance of having their rights protected if they could be perceived by the law as whites. They recognized that, despite the Fourteenth Amendment, blacks received little protection from the Constitution. With *Brown v. Board* however, the court ruled segregation of any type to be unconstitutional and began to dismantle Jim Crow laws throughout the South. But the full protection of *Brown* was only given to non-whites. In other words, as James A. Ferg-Cadima of the Mexican-American Legal Defense and Education Fund (MALDEF) has said "'*Hernandez*' committed Mexican-Americans to defending their whiteness in further litigation, [leading] them to discount the utility of *Brown*, and kept them too long on what proved to be an unfruitful constitutional path."[17] Mexican-Americans could claim no protection under *Brown v. Board* because they had now legally established themselves as a separate class of whites, a direct result of

15 Steven H. Wilson, *Some Are Born White, Some Achieve Whiteness, and Some Have Whiteness Thrust Upon Them: Mexican Americans and the Politics of Racial Classification in the Federal Judicial Bereaucracy, Twenty-Five Years after Hernandez v. Texas, in* "Colored Men" and "Hombres Aqui" 123, 127 (Michael A. Olivas ed., 2006).

16 *Id.*

17 James A. Ferg-Cadima, *Black, White, Brown: Latino School Desegregation Efforts in the Pre- and Post- Brown v. Board of Education Era,* Mexican-American Legal Defense and Education Fund 1, 24 (2005) *available at* http://www.maldef.org/publications/pdf/LatinoDesegregation-Paper2004.pdf.

the *Hernandez v. Texas* ruling. *Hernandez* only provided protection when the discrimination could be proved, and as was said earlier, the Mexican-Americans discriminated against rarely had the resources to win a case.

VII. A MISSED OPPORTUNITY

The potential in the case lies in the definition of race as a social perception. According to Ian Haney Lopez, Professor of Law at Berkeley, the court ruled that "race is ultimately a question of norms and practices—that is, a social construction."[18] Racism and discrimination were no longer bound by a particular color, class or location. It could occur anywhere or at any time that one group looks down on another. Lopez called this "race as subordination, rather than race per se."[19] *Hernandez* opened the door for a new perception of race. But it appears that little has changed since the ruling.

What the Mexican-American community desperately needed was a legal identity. They were neither black nor white, but a separate group somewhere in between. Often they were called white, but frequently they were treated in the same unjust way as blacks at the time. The court never explicitly gave this identity. They did not come out and explicitly define Mexican-Americans as a legally recognizable and distinct group. Perhaps they reasoned that by making such a strong statement on behalf of Mexican-Americans the case would lose its relevance to racism in general. But there was no reason that the court could not have done both. In their profound view of civil rights, the court opened the door to any group facing discrimination, but they stopped short of giving the Mexican-American community a legal identity.

Sadly, in the years immediately following, *Hernandez* would prove to be legally ineffective. Texans continued to find ways around allowing Mexicans to serve on juries. They often used citizenship requirements, language requirements, or peremptory challenges to

18 See Ian Haney Lopez, *Race and Colorblindness After Hernandez and Brown* 25 Chicano-Latino L. Rev. 61, 67 (2005).

19 *Id.* at 62.

exclude Mexican-Americans.[20] This has changed very little today, as the number of Mexican-Americans serving on juries is disproportionately small. Some even say that the number is less today then in the years immediately following *Hernandez v. Texas*.[21] Texas also used *Hernandez* to circumvent *Brown v. Board*. In what has been called Texas-style integration, the state put Mexicans and blacks in the same schools and then declared the schools "integrated."[22] In the years following *Hernandez*, Carlos C. Cadena tried to put together a string of litigation to develop the ruling further. He met with some limited success, but Hernandez failed to produce lasting changes.[23] One study looked at Grand Jury selection in Los Angeles County, California. It found that from 1959 to 1969 there were only 4 jurors selected with Spanish surnames out of 233 total selected.[24] Despite the failure of *Hernandez* to bring about any sort of lasting change, the case still has the potential to shape the future of race relations in America.

VIII. Current Applications

Today more than ever the principles of the *Hernandez* ruling could be used to mold a legal view of the Mexican-American community. The case is relevant in at least a few areas. First, *Hernandez* still has the potential to continue to influence race relations today. As of 2006 *Hernandez* had been cited only 38 times in cases argued before the Supreme Court, and in only four of those cases was it used to defend civil rights. In law reviews *Hernandez* was cited 392 times. Contrast this with *Brown v. Board* which has been cited in Supreme Court cases 176 times and been mentioned in over three thousand

20 Johnson, *supra* note 4, at 186-196.

21 *Id.* at 196.

22 Ferg-Cadima, *supra* note 17, at 26.

23 Johnson, *supra* note 4, at 184.

24 Lorenzo Arredondo & Donato Tapia, *El Chicano y the Constitution: The Legacy of Hernandez v. Texas Grand Jury Discrimination,* 6 U.S.F.L. Rev. 129, 136 (1971).

law reviews.[25] This implies that either *Hernandez* is insignificant in and of itself, or the case has been largely unused and overlooked. However it would be difficult to argue that the ruling is insignificant. The flaws in the ruling have already been discussed, but because the legal theory behind race as a social construct is so powerful, Ian Haney Lopez stated that *Hernandez* was "the single most insightful Supreme Court opinion on race ever handed down."[26] *Hernandez* must be looked at again and applied today. The primary weakness of the ruling was that it required that discrimination be proved in every occurrence. This does nothing to change the underlying philosophy of race as a social construct developed in the ruling. If *Brown v. Board* changed the way races interact, *Hernandez* changed the way they are defined. Unfortunately, the classification of race remains largely a black and white binary.

A clear racial or ethnic identity is essential to any group seeking protection under the Fourteenth Amendment, but particularly in the case of Mexican-Americans. Never has the definition of their civil rights been more crucial. With the current debate over illegal immigration and the rising Mexican-American population across the country, it is vital that the principles of *Hernandez* be applied. As the *Hernandez* case established, wherever a group is unfairly discriminated against, they constitute a group worthy of constitutional protection under the Fourteenth Amendment. FBI statistics from 2007 show that crimes motivated by an anti-Hispanic bias account for 62.8 percent of all hate crimes stemming from nationality or ethnic discrimination.[27] This is up 25 percent since 2004.[28] Clearly this is a group that meets the *Hernandez* standard for Fourteenth

25 Richard Delgado, *Rodrigo's Roundelay: Hernandez v. Texas and the Interest-Convergence Dilemma,* 41 Harv. C.R.-C.L. L. Rev. 23, 36-38 (2006).

26 Ian Haney Lopez, *Race and Colorblindness After Hernandez and Brown,* 25 Chicano-Latino L. Rev. 61, 67 (2005).

27 2006 Hate Crimes Statistics (Nov. 2007), http://www.fbi.gov/ucr/hc2006/victims.html.

28 FBI Report Documents Hate Crimes Against Latinos at Record Levels (Nov. 19, 2007), http://maldef.org/news/press.cfm?ID=444.

Amendment protection. The study does not make a distinction between those Mexicans who are American citizens, and those who are illegal immigrants, but the Mexican-American Legal Defense and Educational Fund (MALDEF) suggests that the increase is due in part to the rising anti-immigrant sentiment.

One major obstacle facing the Mexican-American community today is that their position in society remains ambiguous. Recent census records show that this lack of an identifiable position extends to Mexican-Americans' own self-image. Steven Wilson noted: "Indeed, on the 2000 census, 47.9% of Hispanics identified their race as 'white,' and 42.2% declined to provide a racial categorization at all."[29] If Mexican-Americans are not in accord concerning their racial and ethnic identity, one asks how they can be treated as a legally identifiable group protected under the Fourteenth Amendment. This lack of consensus is similar to the attitudes of Mexican-Americans in Texas at the time of the *Hernandez* ruling. Whereas in the 1950s, this reluctance to identify themselves as something other than white was driven by the fear of facing the same racial discrimination against blacks, today it is driven by a fear of being associated with illegal immigrants. As Johnson pointed out, "immigration status in modern times serves as a rough proxy for race."[30] The raging debate over illegal immigration has amplified the problem of finding an identity.

Some anti-immigration groups take advantage of the unclear racial standing of Mexicans Americans to discriminate against all people of Mexican ancestry in the United States. Their very standing as United States citizens is called into question. One of the results of the *Hernandez v. Texas* ruling should have been the establishment of Mexican-Americans as legal citizens of the United States. This is even more important in a country where some are suspected of having immigrated illegally. Although some arguments against illegal immigration are certainly grounded in legitimate concerns for the welfare of the United States, many are thinly veiled racism. Racist statements are able to hide behind a nationalistic rhetorical cover. A recent statement from Julie L. Myers, assistant secretary of

29 Wilson, *supra* note 15, at 142.

30 Johnson, *supra* note 4, at 187.

Immigration and Customs Enforcement reflects these undertones: "Violent foreign-born gang members and their associates have more than worn out their welcome, and to them I have one message: Good riddance."[31] A statement such as this directed at any other racial or ethnic group would be entirely unacceptable. Referring to Mexicans it is patriotic. This further illustrates the need for the Mexican-American community to obtain cogent legal identity and protection under the Fourteenth Amendment. *Hernandez v. Texas* has the potential to provide this in the same way *Brown v. Board* helped to define the rights of blacks.

Regardless of the debate over illegal immigration, the question of how to better protect Mexican-Americans under the constitution will persist. Before the law can begin to recognize their rights, there must be an identifiable group to protect. Juan F. Perea in the California Law review noted that "Full membership in society for Latinos/as will require a paradigm shift away from the binary paradigm and towards a new and evolving understanding of race and race relations."[32] This is precisely what *Hernandez v. Texas* has the potential to provide. It allows the issue of discrimination to transcend biology, and apply to race, ethnicity, or nationality. Ariela J. Gross, professor of law and history at the University of Southern California has said "For as long as we equate race with biology, and racism with the crudest forms of pseudo-science, as American courts have done, discrimination on the basis of cultural and linguistic difference will appear neutral and respectable and racial hierarchy will continue to flourish."[33]

As a society it is vital that we move towards the vision of *Hernandez v. Texas* to provide constitutional protection to whatever

31 Nina Bernstein, *Immigrant Workers Caught in Net Cast for Gangs,* N.Y. Times, Nov. 25, 2007, *available at* http://www.nytimes.com/2007/11/25/nyregion/25raid.html.

32 Juan F. Perea, The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought 85 Cal. L. Rev. 1213, 1215 (1997).

33 Ariela J. Gross, *"The Caucasian Cloak": Mexican-Americans and the Politics of Whiteness in the Twentieth-Century Southwest,* 95 Geo. L.J. 337, 391-392 (2007).

groups are discriminated against. This protection should supersede whatever perceptions we have about a certain group's racial or ethnic identity. Ian Haney Lopez recently said in an article for the New York Times, "After 50 years, the time has come for courts and scholars to install *Hernandez* where it belongs: at the center, with Brown, of a robust Fourteenth Amendment law committed to ending racial subordination."[34] No longer can *Hernandez* be set aside as a minor civil rights case from the 1950s. The legal philosophy developed in the ruling must be applied to whatever groups are seeking protection. Indeed, the underlying principles of *Hernandez* could be used in cases of religious or gender based discrimination. Discrimination against homosexuals should also be protected under the Fourteenth Amendment if the principles of *Hernandez* are correctly applied.[35] This can be done by removing the focus on race, and instead emphasizing discrimination.

IX. Conclusion

The fact that Mexican-Americans would be permitted by the Supreme Court to serve as jurors after the *Hernandez* ruling cannot be described as anything less than an enormous victory. Even if Texas still found ways to exclude, to have a ruling from the Supreme Court was an incredible help to the self-image of Mexican-Americans. As Lopez pointed out "Trial by jury rests on the idea of peers being judged by peers. In the context of Texas race politics, however, to put Mexican-Americans on juries was tantamount to elevating them to equal status with whites."[36] It was *Hernandez v. Texas* that philosophically defined discrimination as the subordination of one group by another, and the Mexican-American community that provided

34 Ian Haney Lopez, *Hernandez v. Brown,* N.Y. Times, May 22, 2004, at A17.

35 Michael J. Perry, We the People the Fourteenth Amendment and the Supreme Court 149 (New York, Oxford University Press 1999).

36 Ian Haney Lopez, *Race and Colorblindness After Hernandez and Brown* 25 Chicano-Latino L. Rev. 61, 63 (2005).

both the brain power and the persistence to see the case through. It is impossible to quantify the impact of the *Hernandez* ruling as a moral victory for the Mexican-American community. *Hernandez v. Texas* was not the landmark case that Garcia, Cadena, deAnda and the other attorneys for the petitioner expected, but any victory was a large victory considering the odds against the all Mexican-American legal team. What they did was unprecedented. They showed that Mexican-Americans are capable, articulate, and meaningful members of society. Now what remains is for that same reasoning to be developed through further litigation. The potential remains for *Hernandez* to change race relations not just for Mexican-Americans, but also for any group which faces discrimination. *Hernandez v. Texas* is best thought of not as an end in itself, but as a stepping stone.