

Serrano v. Priest: A Cultural Perspective

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Though we take horrible steps backward into the Dark Ages periodically, we move inextricably toward a more humane world.¹

Introduction

This commentary examines the *Serrano v. Priest* decisions, *Serrano I*² and *Serrano II*,³ as a dynamic element of American culture. The legal significance of these decisions is not discussed, but rather their "justice" within our emergent culture.⁴ In the author's opinion, legal actions may be just or unjust depending upon the nature of the society and the state of the culture at a given time. Law is an integral part of the culture; it is not superordinate to it. Whenever the law and its application are out of step with a society's values, the system will necessarily alter its statutes or their application to restore the balance between law and culture.

Two ways to change the law without revolution are (1) by new or amended legislation, and (2) by judicial interpretation of existing statutes. The drawback of the legislative process is that it is political. Legislators, often courting re-election, attempt to make the code reflect the norms, values, and mores of their constituencies. Although this process is congruent with American democratic principles, it nevertheless invites the self-serving motives of politicians and political parties. Consequently, legislation does not reflect the highest form of justice. In contrast, federal and state supreme court justices are reasonably removed from the politics of survival in office. When such courts act to redress societal inequities by reversing long-standing practices mandated by statute, they act within the highest

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1. SCHOOL DESEGREGATION: SHADOW AND SUBSTANCE 4 (F. Levinsohn & B. Wright eds. 1976).

2. 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

3. 18 Cal. 3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1976).

4. The term "emergent culture" does not refer to the values held by the majority of the society; rather, it refers to the cultural trend which appears to be on the rise and will in the future describe the majority. In the author's opinion, the Warren Court appeared to be attuned to the emerging cultural trend of redressing societal inequalities. The Burger Court, on the other hand, seems to be out of step with that trend at times. See text accompanying notes 13-19 *infra*.

form of justice. As a result, law usually achieves a closer congruence to our society and its culture. In this manner the *Serrano* courts updated the law in view of the emergent culture, while the California legislature lagged behind.

Part I of this commentary discusses the fundamental role of public education in our society. In Part II, *San Antonio Independent School District v. Rodriguez*⁵ and the *Serrano* decisions are analyzed in terms of their recognition that the law should alter school financing systems so that they will be in conformity with the emergent culture. Finally, Part III discusses the merits of two schemes, vouchers and full state funding, either one of which the California legislature may implement in order to comply with *Serrano II*.

I. The Importance of Public Education in the American Culture

To view *Serrano I* and *II* in cultural perspective, one must consider the roles law and public education play in contemporary American culture. The current trend in anthropology is to reject the theories that culture and human behavior are determined by the environment, or that culture is superorganistic and determines the required behavior of humans.⁶ Instead most modern anthropologists agree that culture is formed by the individuals within the society, and that this culture in turn shapes future generations of individuals.⁷ Yet if culture is "a set of control mechanisms—plans, recipes, rules, instructions . . . for the governing of behavior,"⁸ then law that regulates conduct cannot long remain at odds with the culture of the society.

Education has been an important aspect of American culture since the founding of the New England colonies. At that time education was considered essential to reading and studying the scriptures. Although it was not specifically mentioned in the Constitution, James Madison reported in his Journal that public education was often mentioned during the Constitutional Convention and, with numerous other concerns, resulted in the Framers' concept of the "general welfare."⁹ As culture within the United States evolved, education as an element of culture evolved as well.

Thomas Jefferson and his political followers believed that an educated and informed citizenry was the basis of sound government.¹⁰ Competing with Jefferson's beliefs were those espoused by Alexander Hamilton and the

5. 411 U.S. 1 (1973).

6. See generally M. HARRIS, *THE RISE OF ANTHROPOLOGICAL THEORY* (1968).

7. "Undirected by culture patterns . . . man's behavior would be virtually ungovernable, a mere chaos of pointless acts and exploding emotions, his experience virtually shapeless. Culture, the accumulated totality of such patterns, is not just an ornament of human existence but . . . an essential condition for it." C. GEERTZ, *THE INTERPRETATION OF CULTURES* 46 (1973) [hereinafter cited as GEERTZ]. "Most bluntly [this] suggests that there is no such thing as human nature independent of culture. . . . Without men, no culture, certainly; but equally, and more significantly, without culture, no men." *Id.* at 49.

8. *Id.* at 44.

9. See *THE COMPLETE WORKS OF MADISON* (S. Padover ed. 1973).

10. See *JEFFERSON: A REVEALING BIOGRAPHY* (P. Smith ed. 1976).

Federalists, who characterized the "people" as unsuited to self-government, incapable of benefiting from a liberal education, in need of the leadership of an intellectual aristocracy, and essentially dangerous without such benevolent direction.¹¹ Hamiltonian values still recur in some proposals for educational reform, and in particular in attempts to resegregate the public schools along class lines. For example, although usually couched in more egalitarian terms, some of the "back to basics" and vocational programs advocated today appear to be thinly disguised Hamiltonian proposals of a socio-economic elite, who avail themselves of alternative—usually private—education in order to prepare for leadership roles. But in practice the Jeffersonian point of view seems to have dominated the culture, and has had a profound influence on public education.¹² In fact, the very notion of "public" education is the result of Jeffersonian values at work in the United States.

In our public schools, students from different socio-economic, religious, and ethnic backgrounds can learn to accept, if not appreciate, the cultures and values of others. It is the hope of our society that through public education anyone, no matter how poor, can qualify for leadership roles in both public and private areas of the culture. Although by no means perfect, our public schools have in fact functioned in this fashion for many of our citizens, and this success has perpetuated the belief that public education can and should be the elixir for all our societal ills. Perhaps in fulfillment of that belief the Warren Court delivered its historic decision of *Brown v. Board of Education*,¹³ mandating integration of public schools. In that opinion the Supreme Court emphasized the important role of education in our culture:

Today, education is perhaps the most important function of state and local governments. . . . It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. . . . Such an opportunity . . . is a right which must be made available to all on equal terms.¹⁴

If education is fundamental to our society, and if culture governs behavior,¹⁵ a law providing funds for public education cannot endure unless it establishes equal educational opportunity for all students. In the author's opinion, the *Serrano* decisions confirm this thesis.

II. *Rodriguez* and *Serrano*: Evidence of a Cultural Evolution

To fully appreciate the cultural significance of *Serrano*, it is valuable to examine the United States Supreme Court's recent decision in another

11. See THE WORKS OF ALEXANDER HAMILTON (H. Lodge ed. 1904).

12. In contrast, the school system in England is heirarchically structured. Such a system, in the author's opinion, has created a privileged class of educated citizens.

13. 347 U.S. 483 (1954).

14. *Id.* at 493.

15. See GEERTZ, *supra* note 7, at 44.

school finance case, *San Antonio Independent School District v. Rodriguez*.¹⁶ In that case, the Court addressed the issue of whether a Texas public school financing program based on district wealth violated the right to equal protection of pupils residing in property-poor school districts. Finding that wealth is not a suspect classification mandating strict scrutiny equal protection analysis,¹⁷ and finding that education is not a fundamental interest explicitly or implicitly protected by the federal Constitution,¹⁸ the Court held that Texas' school finance system bore a rational relationship to the legitimate state purpose of local fiscal control.¹⁹ At first glance, it would seem that the Court's decision to uphold this form of wealth discrimination cannot be squared with the proposition that the trend of the emergent culture in the United States is directed toward greater social equality. But closer analysis of the *Rodriguez* decision reveals that the Court neither minimized the role of education in the American culture,²⁰ nor denied that each individual is entitled to an equal opportunity to participate in the educative process.²¹ The focus of *Rodriguez* was rather on the equal protection test to be used in examining discriminatory classifications not based on race. By applying the rational relationship test, the Supreme Court maintained the status quo in educational funding. Although it did not seize the opportunity to move the law closer to the emergent culture, neither did it reverse the trend. Most importantly, the Supreme Court did not deny that great differences and inequalities exist when educational funding is based on the property wealth of individual school districts.²² Consequently, the *Serrano II* court was able to find that education is a fundamental interest under the California Constitution,²³ and that a school finance scheme based on district property valuation violates the equal protection sections of the California Constitution.²⁴

The California Supreme Court's resort to independent state grounds in order to find the school funding mechanism unconstitutional demonstrates that a cultural evolution is under way. No longer will California tolerate unequal educational opportunity for students based only on the accident of their residence. Other state Supreme Courts may now also find that relying on local school district property taxes to finance public education is unlaw-

16. 411 U.S. 1 (1973).

17. *Id.* at 18-28.

18. *Id.* at 29-39.

19. *Id.* at 48-55.

20. To the contrary, the court reaffirmed its historic dedication to public education. *Id.* at 30-32.

21. However, the court stressed that public education should strive toward "both a higher level of quality and greater uniformity of opportunity." *Id.* at 58-59.

22. The court emphasized that its lack of familiarity with and expertise in the local problems associated with school financing counseled against interference with the decisionmaking process at the state and local levels. *Id.* at 40-41.

23. 18 Cal. 3d at 765-66, 557 P.2d at 951, 135 Cal. Rptr. at 367.

24. *Id.* at 768-69, 557 P.2d at 952-53, 135 Cal. Rptr. at 368-69.

ful under their own state constitutions. The law should be brought into line with the culture that it safeguards, and *Serrano II* presages nationwide change.

III. Legislative Compliance with *Serrano*

Even though the California Supreme Court has struck down an illegal school finance program, the state legislature has not yet passed alternative legislation to fund public education in a manner compatible with emergent cultural norms. Because the court found that a regressive tax (property tax) based on an inequitable tax base (local property assessment) results in unequal educational opportunities for children in different school districts, this funding scheme must be abandoned. Yet what will take its place? The California legislature will most likely opt for one of two alternative schemes. First, the legislature could allocate money directly to parents of school age children, allowing those citizens to purchase education from whatever public or private source they choose. Through the use of such educational "vouchers,"²⁵ both public and private schools would be supported by tuition. But such a plan might destroy public education as we know it. To take an extreme example of the detrimental effect schooling paid by voucher could have, consider what would happen if all students were schooled in conformity with their religious, ethnic, or socio-economic backgrounds. Although every school would be totally or largely supported by public funds, each would focus on a narrow range of values. The result would be resegregation of our public schools. Thus, instead of providing a solution, voucher-financed education could rekindle the same type of problem dealt with in *Brown v. Board of Education*: segregated schools providing unequal educational opportunity.

Second, the California legislature could enact a statewide tax as the sole basis for funding education, *i.e.*, a full state funding plan. The state has the power to establish a minimum level of educational opportunity and to define this minimum in terms of tax dollars per pupil. Opponents of centralized school finance object to the loss of local control. Yet total state funding of public education does not demand citizens to relinquish local control. There can be little argument that education *is* a local enterprise which belongs to the people and should be governed locally. For that reason, school funds should be computed by a formula which includes municipal overburden, pupil density, and scarcity factors to compensate for local fiscal problems. These funds could be given directly to school districts, without additional constraints on local decisionmaking. The only real change would thus be in the process by which revenue for education is obtained. Innovative and creative experiments in education, at the option of local governments, could be encouraged by use of local income, sales,

25. Vouchers are specifically mentioned by the *Serrano II* court. *Id.* at 747, 557 P.2d at 939, 135 Cal. Rptr. at 355.

business, excise, or other taxes. In this manner, state funds would provide all students with an adequate minimum education, and local revenue could be used to sponsor extra educational endeavors. Full state funding is, for these reasons, a more preferable scheme for legislative compliance with *Serrano*.

Conclusion

The purpose of this commentary was to examine the *Serrano v. Priest* decisions as an element of American culture. In the past few decades, the high courts of our nation have made great strides in bringing laws related to education more in line with the emergent culture. The United States Supreme Court has mandated integrated education, and now the California Supreme Court has acknowledged that unequal educational opportunity exists when state public schools are financed by local district property taxes. The *Serrano II* holding that education is a constitutionally protected interest in California and that wealth-based differences in educational funding are unlawful is predictably the beginning of a trend toward equal educational opportunity throughout the United States. Although competing elements in the culture may restrain progress, the author hopes that the trend will continue and accelerate until equal education becomes a reality for all.