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Honorable Samuel J. Roberts

University of Wyoming
College of Law

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In our federal system, there is a constant tension regarding the power and authority of state courts vis a vis federal courts. In this article, the author discusses the importance of adequate and independent state grounds as rules of decision. Specifically, the author considers the disposition by the United States Supreme Court of state cases which grant relief under federal law and the ability of state courts to reinstate their judgments upon adequate and independent state grounds.

THE ADEQUATE AND INDEPENDENT STATE GROUND: SOME PRACTICAL CONSIDERATIONS*

*Honorable Samuel J. Roberts***

Thank you for the honor of the invitation to join you this evening. I must say that after more than 30 years in the arena of constant controversies, I am delighted to be at this center of learning, and have greatly enjoyed this academic atmosphere of scholarly peace.

* * *

Perhaps the most significant development in federal-state relations over the last decade has been state court reliance on "adequate and independent state grounds" for decision in cases which twenty years ago probably would have been decided under federal constitutional law instead. The state grounds used have, of course, included not only state constitutional law but also state statutory and common law, the latter of which has enormous potential because of its inherent flexibility, and has virtually no federal counterpart.

Just a little over a decade ago, there were only a handful of jurisdictions—California, Pennsylvania, New York, and Hawaii—which had

* This article is based upon an address delivered by Chief Justice Roberts on March 23, 1984, in Laramie, Wyoming before members of the Wyoming Bar and representatives of the University of Wyoming College of Law. Chief Justice Roberts was the College of Law's Burlington Northern Foundation distinguished Speaker.

** Honorable Samuel J. Roberts is Chief Justice of Pennsylvania, Retired, and the Distinguished Professor of Constitutional Democracy, Gannon University.

utilized an "adequate and independent state ground." Wyoming deserves *at least* an honorable mention for being *ahead* of that handful: Back in 1950, the Wyoming Supreme Court held that women have the same right to serve on juries as do men, in part because your state was the first state to grant women the right to vote.[1] The Supreme Court of the United States did not reach the same conclusion until 1975, *twenty-five* years later.[2]

Today, *all* jurisdictions have utilized the adequate and independent state ground. In some jurisdictions the reliance on state law has been limited to granting counsel to an indigent on a discretionary appeal, thus providing more relief under state law than is required by the United States Supreme Court's decision in *Ross v. Moffitt.*[3] In other jurisdictions, state law has been relied upon in a wide variety of contexts; for example, the Wyoming Supreme Court has relied on state grounds in cases involving a less-than-unanimous jury,[4] and in the area of public school financing.[5] In some instances, state courts have relied on state law in cases on remand from the Supreme Court of the United States to reinstate their previous judgments granting relief.

Why has the use of the adequate and independent state ground become so popular among state courts in recent years? From the standpoint of operating a state court system, there are several practical reasons for using state grounds as a basis for decision. Traditionally, such a state-law based decision is neither reviewable nor reversible by the Supreme Court of the United States, provided of course that the state ground is at least coextensive with, or broader than, any similar federal right. More important, however, the use of state grounds, where appropriate, lends *stability, integrity,* and *finality* to state court decisions, and thus makes for a better state court system—a system governed, controlled, and supervised by state court adjudications, for state judges, practitioners, and litigants. And, to the extent that state court adjudications are properly rested exclusively on state-law grounds, the burden of our federal courts is reduced.

The adequate and independent state ground also improves the efficiency and effectiveness of a state court system by avoiding the impact of future changes in Supreme Court decisional law. Especially in areas where the case law of the United States Supreme Court is somewhat unsettled or is in transition, there is all the more reason for state courts to utilize state law grounds for their decisions. For example, in *Commonwealth v. Story*[6] the Pennsylvania Supreme Court adopted the federal harmless error standard of *Chapman v. California*[7] as a state standard, and in *Commonwealth v. Ware*[8] the Pennsylvania Supreme Court adopted the federal rule of *Johnson v. New Jersey*[9] concerning the effective date of *Miranda* as a

1. State v. Yazzie, 67 Wyo. 256, 218 P.2d 482 (1950).
2. Taylor v. Louisiana, 419 U.S. 522 (1975).
3. 417 U.S. 600 (1974).
4. Taylor v. State, 612 P.2d 851 (Wyo. 1980).
5. Washakie County School District v. Herschler, 606 P.2d 310 (Wyo. 1980).
6. 476 Pa. 391, 383 A.2d 155 (1978).
7. 386 U.S. 18 (1967).
8. 446 Pa. 52, 284 A.2d 700 (1971), *cert. granted,* 405 U.S. 987 (1972), *cert. vacated and denied,* 406 U.S. 910 (1972) ("Certiorari denied, it appearing that the judgment below rests upon an adequate state ground.")
9. 384 U.S. 719 (1966).

matter of state law. The result is that these state court decisions will not be affected by a subsequent narrowing of federal decisional law. They will be affected only if the United States Supreme Court expands these federal constitutional rights.

The articulation of a state ground for decision used to be a relatively easy task. For example, in *Commonwealth v. Platou* the Pennsylvania Supreme Court simply said in a footnote, "[o]ur discussion of the Fourth Amendment is equally applicable to the state constitutional provision."[10] The Commonwealth's petition for a writ of certiorari was denied with the Supreme Court noting that "it appear[s] that the judgment below rests upon an adequate state ground."[11] Now, however, as a result of *Michigan v. Long,*[12] where a state court intends to rest a decision on state law, the state court in its opinion must clearly and specifically articulate that its decision is based exclusively on state law, and must disclaim even the citation to analogous federal cases.

In *Long,* the state court's opinion states expressly that relief was required under both the fourth amendment to the United States Constitution *and* article 1, § 11 of the Michigan Constitution. Should not the state court's reliance on a specific state constitutional provision be a sufficiently clear indication of the state court's intent to rest its decision on state law? Certainly if the standard utilized in *Platou* had been utilized in *Long,* the Supreme Court would have assumed that the decision was controlled by state law. In any event, it would appear that a state court of last resort could, by decision or rule, mandate that all cases in its courts rest on state law grounds unless specified otherwise—in effect, reverse the presumption of *Michigan v. Long.*

Should the Supreme Court take cases such as *Michigan v. Long* in the first instance? It was not until the Judiciary Act of 1914 that Congress gave the Court authority to review state court judgments *granting* relief under

10. 455 Pa. 258, 312 A.2d 29, 31 n.2 (1973).

11. 417 U.S. 976 (1974).

12. 103 S.Ct. 3469 (1983). Police officers conducted a warrantless search of the defendant's vehicle while investigating a one-car accident. The search yielded marijuana and the defendant moved to suppress the evidence on the ground that a *Terry v. Ohio* pat-down is limited to the defendant's person. The prosecutor argued that a *Terry* pat-down of the defendant was justified by the presence of a knife in the car and that the further search of the car fell within the scope of the protective purpose of *Terry.*

The Michigan Court of Appeals affirmed the trial court's conviction. However, the Michigan Supreme Court reversed the conviction, stating that the "search of the vehicle was proscribed by the Fourth Amendment to the United States Constitution and art. 1, § 11 of the Michigan Constitution." People v. Long, 413 Mich. 461, 320 N.W.2d 866, 870 (1982).

The United States Supreme Court reversed and remanded on the ground that the Michigan Supreme Court had misinterpreted *Terry.* In presuming that the state ground alluded to by the Michigan Supreme Court was not independent, the Court stated:

> [I]t fairly appears in this case that the Michigan Supreme Court rested its decision primarily on federal law.
>
> Rather than dismissing the case, or requiring that the state court reconsider its decision on our behalf solely because of a mere possibility that an adequate and independent ground supports the judgment, we find that we have jurisdiction in the absence of a *plain statement* that the decision below rested on an adequate and independent state ground.

Michigan v. Long, 103 S.Ct. 3469, 3477-78 (1978) (emphasis added).

federal law. Before 1914, the Court could consider *only* those cases in which a state court rejected a federal constitutional claim.

In *Stone v. Powell,* decided in 1976, the Supreme Court held that, so long as a prisoner had a full and fair opportunity to litigate his unsuccessful fourth amendment claim in the state courts, the federal district court on habeas corpus is not to interfere with his conviction even if the state court has decided the fourth amendment claim erroneously.[13] If the federal district courts under *Stone v. Powell* are not to disturb erroneous state court *denials* of relief, should the Supreme Court entertain requests for review in cases where relief has been *granted*? The Act of 1914 merely authorizes—it does not direct or require the Court to take cases like *Michigan v. Long.*

As a practical matter, if a state court decision provides greater protection under federal law than the federal constitution requires, and the decision is set aside by the United States Supreme Court, the original state decision may nevertheless be reinstated on an independent state ground. The most recent example is *Washington v. Chrisman,* in which the Supreme Court decided that the Washington Supreme Court erroneously granted relief under federal law, but the Washington Supreme Court on remand simply reinstated its judgment as a matter of state law.[14]

Surely the United States Supreme Court's huge workload would be reduced if the Court did not review state court decisions granting relief under federal law. In the 1982-83 Term alone, eleven of the Court's 152 signed opinions involved cases such as *Michigan v. Long,* in which the Supreme Court set aside a state court's grant of relief under federal law.[15]

13. 428 U.S. 465 (1976).

14. Washington v. Chrisman, 455 U.S. 1 1982), *judgment reinstated on remand,* 676 P.2d 419 (Wash. 1984) (search and seizure invalid under state constitution). *See also* South Dakota v. Neville, 103 S.Ct. 916 (1983), *judgment reinstated on remand,* 35 Crim. L. Rptr. 2021 (S.D. Jan. 14, 1984) (evidence of refusal to submit to drunk-driving tests suppressed as violation of state due process clause).

Other examples of state courts granting relief on remand: South Dakota v. Opperman, 428 U.S. 364 (Fourth Amendment), *judgment reinstated on remand,* 247 N.W.2d 673 (S.D. 1976) (relief granted under state constitution); Michigan v. Mosley, 423 U.S. 96 (1975) (*Miranda*), *relief granted on another ground on remand,* 400 Mich. 181, 254 N.W.2d 29 (1977); Pennsylvania v. Mimms, 434 U.S. 106 (1977) (*Terry* pat-down), *relief granted on another ground on remand,* 477 Pa. 553, 385 A.2d 334 (1978). *See also* Pennsylvania v. Henderson, 446 U.S. 905 (1980) (remanded for further consideration in light of Fare v. Michael C, 442 U.S. 707 (1978) (request for probation officer does not constitute invocation of *Miranda* rights)), *judgment reinstated on remand,* 496 Pa. 349, 437 A.2d 387 (1981) (Pennsylvania "interested adult" rule has *always* been a matter of state law).

15. State court criminal cases from 1982-83 in which a grant of relief under federal law was set aside: Missouri v. Hunter, 103 S.Ct. 673 (1983) (double jeopardy); South Dakota v. Neville, 103 S.Ct. 916 (1983) (self-incrimination); Texas v. Brown, 103 S.Ct. 1535 (1983) (fourth amendment); Illinois v. Gates, 103 S.Ct. 2317 (1983) (fourth amendment); Illinois v. Lafayette, 103 S.Ct. 2605 (1983) (fourth amendment); Oregon v. Bradshaw, 103 S.Ct. 2830 (1983) (*Miranda*); Illinois v. Andreas, 103 S.Ct. 3319 (1983) (fourth amendment); Califonia v. Ramos, 103 S.Ct. 3446 (1983) (death penalty); Michigan v. Long, 103 S.Ct. 3469 (1983) (fourth amendment). Similar non-criminal cases from 1982-83: White v. Massachusetts Council of Const. Employers, 103 S.Ct. 1042 (1983) (commerce clause claim rejected); City of Revere v. Massachusetts Gen. Hosp., 103 S.Ct. 2979 (1983) (city not required under federal law to pay for medical care provided to person injured while being apprehended by police).

(Six was the previous high and that was in the 1975-76 Term.) Moreover, in previous years, the vast majority of cases in which state court judgments were set aside were corrections of erroneous *denials* of relief, whereas in 1982-83 the majority of such cases were corrections of erroneous *grants*.

Of additional interest to state court systems is *Colorado v. Nunez*, decided just last February. There, the Court unanimously agreed in a per curiam order that it had erroneously issued a writ of certiorari to the Colorado Supreme Court, in light of the "adequate and independent ground" for the state court's decision.[16] Notwithstanding the dismissal of the writ of certiorari (an indication of the Court's lack of jurisdiction to decide the merits), three members of the Court proceeded to disclaim the result reached by the Colorado Supreme Court and to offer their views on why federal law did *not* require the result reached by the state court as a matter of state law.

What jurisprudential principle or aspect of federalism is advanced by such an opinion? Does not good calendar control suggest that cases such as *Colorado v. Nunez* and *Michigan v. Long* should be denied discretionary review, so that already scarce and costly professional resources may be more effectively utilized?

In an increasing number of cases, the Supreme Court's mandate to a state court is a "reversal," without an accompanying remand to the state court. I have always been intrigued by the Court's mandates, particularly those issued to state courts. One especially interesting case is *City of Pittsburgh v. Alco Parking Corp.*, decided in 1973.[17] There the Supreme Court's opinion stated that the judgment of the Pennsylvania Supreme Court was reversed, but no mention was made of a remand "for proceedings *not inconsistent* with the Court's opinion." (This is the mandate customarily entered in cases where a state court judgment is disturbed; remands to the federal courts are for "proceedings consistent.") Yet the official judgment order in *Alco Parking* specifically directed a remand for proceedings "not inconsistent" with the Court's opinion. Mandates of reversal on at least four other occasions since 1972 have been so supplemented.[18]

A mandate of reversal without a remand leaves the impression that the state court is without an opportunity to reinstate its judgment as a matter of state law. Such a mandate was issued in *Oregon v. Hass*,[19] and it apparently dissuaded the Oregon Supreme Court from reinstating its earlier decision. Similar mandates of reversal without a remand were issued three times in the 1980-81 Term,[20] twice in the 1982-83 Term,[21] and twice thus

16. 103 S.Ct. 1257 (1984).
17. 417 U.S. 369 (1974), *reversing*, 453 Pa. 245, 307 A.2d 851 (1973).
18. Mandates of reversal supplemented by remands: Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562 (1977) (first amendment privilege rejected); Windward Shipping v. American Radio Ass'n., 415 U.S. 104 (1974) (preemption claim rejected); Lehnhausen v. Lake Shore Auto Parts, 410 U.S. 356 (1973) (equal protection claim rejected); Evansville Airport v. Delta Airlines, 405 U.S. 707 (1972) (preemption claim rejected).
19. 420 U.S. 714 (1975).
20. Minnesota v. Clover Leaf Creamery Co., 449 U.S. 446 (1981) (ban on use of plastic milk cartons upheld); New York v. Belton, 453 U.S. 454 (1981) (car search upheld); Michigan v. Summers, 452 U.S. 692 (1981) (detention incident to house search).
21. Illinois v. Gates, 103 S.Ct. 2317 (1983) (informant's credibility); City of Revere v. Massachusetts Gen. Hosp., 103 S.Ct. 2979 (1983) (city not required under federal law to pay for medical care provided to person injured while being apprehended by police).

far in the current Term.[22] It should be noted that in *New York v. Belton,* a case decided in the 1980-81 Term, the New York Court of Appeals treated the reversal as a remand, and proceeded to reach the same result reached by the Supreme Court as a matter of state law.[23] It should also be noted that *Press-Enterprise Co. v. Superior Ct.,* the Supreme Court began its opinion by announcing, "we reverse"[24] yet the Court ended its opinion by *vacating* the state court judgment *and* remanding for proceedings "not inconsistent" with the opinion.[25]

In *Herb v. Pitcairn,* a case decided in 1945 which contains perhaps *the* classic statement on the relationship between state courts and the Supreme Court of the United States, Justice Jackson observed that the only power of the Supreme Court over state court judgments

> is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its view of federal laws, our review could amount to nothing more than an advisory opinion.[26]

One hopes that the Court's more recent mandates of reversals without remands may be nothing more than technical errors of a busy Court. However, as was suggested by the dissenting opinion of Justice Marshall in *Oregon v. Hass,* these mandates may also indicate an attempt to "correct" state court judgments in any respect, and not merely to the extent that federal rights have been incorrectly decided.[27]

In light of the decisions in *Colorado v. Nunez,*[28] and *Michigan v. Long,*[29] it may be expected that state courts will now, more than ever, utilize state law grounds as bases for decision. In doing so, state courts will be seeking all the help they can obtain from all components of the legal community. At the same time, all elements of legal education must prepare to meet the needs of state courts with appropriate professional responses, including, for example, scrutiny of law school courses with an eye toward the ever growing importance of state constitutions, state statutes, state regulations, and state rules of decision.

I am confident that all state court systems, with the able assistance of fine law schools such as yours, will meet the challenges which face them. As they do, we will all move ever closer to the fulfillment of James Madison's vision of federalism, in which state *and* federal courts are "independent tribunals of justice who will consider themselves in a peculiar manner the guardians of [individual] rights."[30]

22. Michigan v. Clifford, 104 S.Ct. 641 (1984) (fuel can discovered in plain view during post-arson search should not have been excluded); Minnesota v. Murphy, 104 S.Ct. 1136 (1984) (statement to probation officer admissible).
23. 453 U.S. 454 (1981).
24. 104 S.Ct. 819, 821 (1984).
25. *Id.* at 826.
26. 324 U.S. 117 (1945).
27. 420 U.S. 714, 726 (1975) (Marshall, J., dissenting).
28. *See supra* text accompanying note 17.
29. *See supra* text accompanying note 12.
30. W. Brennan, *State Constitutions and the Protection of Individual Rights,* 90 HARV. L. REV. 489, 504 (1977), *quoting* I. Annals of Congress 439.

I thank you for your gracious hospitality, and for the kindness and warmth which you have shown me throughout my visit.