

## Victory of Liberty vis-à-vis Juror Unanimity: RAMOS v. LOUISIANA written by Gaurav Singh Gaur | June 23, 2020



### Juror Unanimity and the Bill of Rights

Amidst the outbreak of COVID-19 and the plethora of news content relating to the pandemic surfacing nowadays, a recent landmark judgment passed by the Hon'ble Supreme Court of the United States went rather inconspicuous. In its judgment dated 20<sup>th</sup> April 2020 in *Ramos v. Louisiana*[1], the judgment of conviction passed by Louisiana, Fourth Circuit was reversed and it was held that a unanimous jury verdict is required to convict a defendant of a serious offense.

### Concept of 'Juror Unanimity'

The Bill of Rights[2] was derived and premised on the principles from the Magna Carta (1215), the English Bill of Rights (1689), the writings of Enlightenment, and the Virginia Declaration of Rights, chiefly drafted by George Mason.

James Madison, one of the founding fathers of the USA, introduced 12 amendments to the First Congress in 1789. Ten of these went on to become what we now know as the 'Bill of Rights' which guaranteed essential rights and civil liberties. These ten amendments were adopted as a single unit and ratified on 15<sup>th</sup> December 1791. The Bill of Rights still stands as a symbol and strong foundation of American ideals of individual liberty, limited governance, and the rule of law. Many of these amendments were pertaining to the legal protections for those accused of crimes.

One of these amendments, i.e. the 6<sup>th</sup> Amendment effectively laid down the governing procedures of the criminal courts. The Sixth Amendment states as hereunder:

*"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."*

The prerequisite of juror unanimity emerged in England in the 14<sup>th</sup> century and the same was accepted as a vital right protected and guaranteed by the common law. In accordance with the common law, state courts of the USA regarded juror unanimity as an essential feature of the jury trial.

The Bills of Rights nowhere mentions that the jury must be unanimous, however, the Supreme Court of the USA as early as 1898 in *Thompson v. Utah* observed that a defendant enjoys a “constitutional right to demand that his liberty should not be taken from him except by the joint action of the court and the unanimous verdict of a jury of twelve persons.” [3]

The “incorporation doctrine”

The decision in *Thompson v. Utah*[4] was applied to only federal criminal trials since the constitution of the USA originally applied to the federal government. States were intended to be completely sovereign and they could apply their own principles. But the end of the Civil War gave way to the 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> Amendments and redefined the relationship between the federal and the state governments. One amongst these amendments was the 14<sup>th</sup> Amendment stating that “...nor shall any State deprive any person of life, liberty, or property, without due process of law...”

After the 14<sup>th</sup> Amendment, in the following years, the Supreme Court in several instances has used this “due process” clause to incorporate a number of protections from the Bill of Rights to the state governments. This practice became a constitutional doctrine whereby the first ten amendments of the US constitution were made applicable to the states through the due process clause of the 14<sup>th</sup> Amendment. The incorporation came to be applied both substantively and procedurally.

Non-unanimous jury rule

The general right of trial by jury was one that was “incorporated”. The Supreme Court of the US in *Duncan v. Louisiana*[5] ruled that the guarantee of trial by jury under the 6<sup>th</sup> Amendment was fundamental to the American scheme of justice and that the states were obligated by the mandate of the 14<sup>th</sup> Amendment to provide such trials.

The decision of juror unanimity in *Thompson v. Utah*[6] failed to get incorporated against the states in state trials. It is pertinent to note that in 48 states and the Federal Court of the United States of America, a single juror’s vote for acquittal is sufficient to prevent any conviction. However, for many years, the states of Louisiana and Oregon have been convicting the accused based on 10-to-2 verdicts.

In *Apodaca v. Oregon*[7], out of 9 justices of the Supreme Court of US, 4 justices ruled in favor and 4 justices ruled against the non-unanimous jury verdict. Finally, Justice Powell’s swing vote decided the fate of the case. It was held that the most important function of the jury is to provide “common sense judgment” in evaluating the respective arguments of the accused and the accuser.

The requirement of unanimity would not necessarily contribute to this function. Justice Powell in the said case adopted a dual-track incorporation approach; the idea that a single right can mean two different things depending on whether it is being invoked against the federal or state government. He agreed that the 6<sup>th</sup> Amendment requires unanimity but believed that the 14<sup>th</sup> Amendment does not render this guarantee fully applicable against the States.

Factual Matrix in *Ramos v. Louisiana*

In this case, Evangelisto Ramos (petitioner) was convicted of a serious offence in Louisiana Court by a 10-to-2 jury verdict. Due to a non-unanimous verdict, it would have been declared as a mistrial anywhere else, instead, Ramos was convicted and sentenced for life in Louisiana without parole. The

petitioner contested his conviction by such a non-unanimous jury as an unconstitutional denial of the 6<sup>th</sup> Amendment right to a jury trial.

#### Issue involved

The issue involved in the present case was whether the 6<sup>th</sup> Amendment right to a jury trial, as incorporated against the States by way of the 14<sup>th</sup> Amendment, requires a unanimous verdict to convict a defendant of a serious offence.

#### Ramos' contentions

According to Ramos, the historic origin of the non-unanimous convictions followed by Louisiana and Oregon hinted of racial discrimination. According to him, the unanimity of jury is the only way to ensure fairness and trial since defendants particularly belonging to the minority races may only find one or two jury members who would not unfairly judge them.

He contended that the 9-of-12 jury rule (the predecessor of 10-of-12 jury rule) endorsing non-unanimous verdicts for serious crimes was adopted by Louisiana at a constitutional convention in 1898. With an intention to undermine the African-American jurors, the convention delegates carved out a facially race-neutral rule permitting 10-to-2 juror verdicts to ensure that African-American juror service would be meaningless.

Similarly, according to him, Oregon's rule permitting non-unanimous verdicts which were adopted in the 1930s could be traced back to the rise of the Ku Klux Klan and efforts to dilute the influence of racial, ethnic and religious minorities in Oregon juries.

He contended that the Supreme Court had already held that federal criminal cases must have the unanimous verdict and hence the same must be applicable for state trials as well.

#### Louisiana's contentions

In its opposition to certiorari, Louisiana argued that the right to a unanimous verdict is not a constitutional right and that the 6<sup>th</sup> Amendment is silent about it. Louisiana further argued that the omission of an express unanimity requirement in the 6<sup>th</sup> Amendment reflects a deliberate choice. It was also contended that the right of unanimous verdict is not a fundamental trial procedure and hence it does not justify defiance of *stare decisis*. It was further argued that overturning *Apodaca* would provoke a "crushing tsunami of follow-on litigations."

#### Judgment

Justice Gorsuch delivered the judgment of the Court in which 5 justices affirmed that the right of jury unanimity, guaranteed by the 6<sup>th</sup> Amendment, is incorporated in state criminal trials by the 14<sup>th</sup> Amendment.

Justices Gorsuch, Ginsburg and Breyer further concluded that *Apodaca* lacks precedential force. Relying upon the decision in *Pearson v. Callahan*[\[8\]](#), Justice Gorsuch observed that *stare decisis* has never been treated as "an inexorable command. Further, placing his reliance on the decisions in *Agostini v. Felton*,[\[9\]](#) he held that the doctrine is at its weakest when we interpret the constitution.

Justice Gorsuch firmly placed his reliance on *United States v. Booker*[\[10\]](#) wherein it was held that Federal Sentencing Guidelines must be advisory rather than mandatory. Similarly, the same approach was followed in *Crawford v. Washington*[\[11\]](#) which overturned the interpretation of the Confrontation Clause and *Arizona v. Gant*[\[12\]](#) which changed the law for searches incident to arrest.

Justice Sotomayor, concurring in part, further held that *“While overruling precedent must be rare, this Court should not shy away from correcting its errors where the right to avoid imprisonment pursuant to unconstitutional procedures hangs in the balance.”*

Justice Thomas concluded that Ramos’ felony conviction by nonunanimous jury is unconstitutional because the *“Sixth Amendment’s protection against nonunanimous felony guilty verdicts applies against the States through the Privileges or Immunities Clause of the 14<sup>th</sup> Amendment, not the Due Process Clause.”*

#### Dissenting opinion

Justice Alito along with Chief Justice John G. Roberts Jr. and Justice Elena Kagan filed a dissent. They held that there are some circumstances when the Court decides to overturn a past decision and while doing that it has an obligation to provide an explanation for its decision. The doctrine should not be transformed into a tool that favors particular outcomes. According to the dissenting justices, the reliance weighed heavily in favour of precedent simply because the warnings in *Miranda v. Arizona*<sup>[13]</sup> had become “part of our national culture” and according to Justice Alito, it weighs decisively against overruling *Apodaca*.

#### Conclusion

The Supreme Court of the United States in this case rightfully overturned the precedent laid down in *Apodaca v. Oregon*. It is highly unimaginable that even after 243 years, the right to a unanimous jury guaranteed under the 6<sup>th</sup> Amendment had not been upheld for state defendants. Historically, individual liberty had been suppressed to a great extent for a long time in the states of Louisiana and Oregon on account of overt discrimination against African-Americans.

This judgment with a majority of 6 to 3, fairly held that the right to a jury trial under the 6<sup>th</sup> Amendment as incorporated against the States by way of the 14<sup>th</sup> Amendment requires a unanimous jury verdict to convict a defendant of a serious offence. By upholding the principle of juror unanimity, the Court attempted to remedy the historic racial animus against the African-Americans.

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- <sup>[1]</sup> 206 L.Ed.2d 583 (U.S.2020).
  - <sup>[2]</sup> <https://www.archives.gov/founding-docs/bill-of-rights-transcript>
  - <sup>[3]</sup> 170 U.S.343, 351 (1898)
  - <sup>[4]</sup> Id
  - <sup>[5]</sup> 391 U.S. 145 (1968)
  - <sup>[6]</sup> Id
  - <sup>[7]</sup> 406 U.S. 404 (1972)
  - <sup>[8]</sup> 555 U.S. 223 (2009)
  - <sup>[9]</sup> 521 U.S. 203, 235 (1997)
  - <sup>[10]</sup> 543 U.S. 220 (2005)
  - <sup>[11]</sup> 541 U.S. 36 (2004)
  - <sup>[12]</sup> 556 U.S. 332 (2009)
  - <sup>[13]</sup> 384 U.S. 436

Contributed By - Gaurav Singh Gaur

Designation - Associate

King Stubb & Kasiva,

Advocates & Attorneys

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New Delhi | Mumbai | Bangalore | Chennai | Hyderabad | Kochi  
Tel: +91 11 41032969 | Email: info@ksandk.com