

DOUBLE JEOPARDY RULE; A PROTECTIONIST CLAUSE AGAINST INJUSTICE

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Abstract:

The principle of double jeopardy is a monumental clause in jurisprudence, its aim is of colossal importance. The principle operates as a proscription against retrials for the same criminal offence following a trial on the merits by a court of competent criminal jurisdiction concluding in an acquittal or conviction. The principle developed at common law in respect for the draconian punishment traditionally imposed on defendants and the deficiencies in medieval criminal procedure to the advantage of prosecution.⁹ The common law immunity from re-prosecution gradually developed in response to the injustice in permitting retrials for the same offence following an acquittal or conviction.¹⁰ The principle was also designed to prevent the imposition of multiple punishment for the same criminal transgression in separate proceedings.¹¹ Another importance embodied in the double jeopardy clause is the preservation of the finality of judgment. At this point, a careful reader will understand the position of double jeopardy in unambiguous manner.

Hence this article aims at appraising the protectionist clause of double jeopardy against injustice and not to dig into the history of the principle. It also aims at advocating the continuous enforcement of the principle through a constructive conclusion.

INTRODUCTION

This fundamental principle of criminal justice and procedure (double jeopardy) has been elevated to constitutional status in most common law jurisdiction including the United States, Canada, New

⁹ Jill Hunter, "THE DEVELOPMENT OF THE RULE AGAINST DOUBLE JEOPARDY" (1984)

¹⁰ <https://www.researchgate.net/publication/279846856-The-Constitutional-Status-of-the-Double-Jeopardy-Principle> accessed 31st October, 2020.

¹¹ *ibid*

Zealand, India, South Africa and Nigeria.¹² The doctrine appears to have originated in Roman law in the principle of *non bis in idem* (an issue once decided must not be raised). This is recognized by 72 signatories and 166 parties to the **International Covenant on Civil and Political Rights under Article 14 (7)**.

Similarly, the Fifth Amendment to the US Constitution provides: “no person shall be subjected for the same offence to be twice put in jeopardy of life or limb”¹³ The underlying idea, one that is deeply ingrained in at least the Anglo-American system or jurisprudence, is that the state with all its resources and powers should not be allowed to make repeated attempt to convict an individual for an alleged offence, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty

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As the title of this Article suggest, the writer canvasses the view that double jeopardy clause is put in place to protect citizens against the following:

➤ **Protection against Re-Prosecution Following Mistrial:** the common law generally required that the previous trial must have ended in a judgement of conviction or acquittal, but the constitutional rule is that jeopardy attaches much earlier, in jury trials when the jury is sworn, and in trials before a judge without a jury, when the first evidence is presented. Therefore, if after jeopardy attaches, the trial is terminated in some reason, it may be that a second trial, even if the termination was erroneous is barred. This implies that, where there is an error at first trial, a second trial cannot surface due to the principle of double jeopardy.

¹² <https://www.researchgate.net/publication/279846856-The-Constitutional-Status-of-the-Double-Jeopardy-Principle> accessed 31st October, 2020.

¹³ Fifth Amendment to the United States Constitution (1791)

➤ **Protection against Re-Prosecution Following Acquittal:** that a defendant may not be retried following an acquittal is the most fundamental rule in the history of double jeopardy jurisprudence.¹⁴

The law attaches particular significance to an acquittal. To permit a second trial after an acquittal, however mistaken the acquittal may have been, would present an unacceptably high risk that the Government with its vastly superior resources, might wear down the defendant so that even though innocent he may be found guilty.¹⁵

➤ **Acquittal by Jury:** little or no controversy accompanies the rule that once a jury has acquitted a defendant, government may not through appeal of the verdict or institution of a new prosecution, place the defendant on trial again. Thus the court early held that, when the results of a trial are set aside because the first indictment was invalid or for some reason the trial's result were voidable, a judgment of acquittal must nevertheless remain undisturbed.¹⁶

➤ **Acquittal by the Trial Judge:** when a trial judge acquits a defendant, that action concludes the matter to the same extent that acquittal by jury verdict does. There is no possibility of retrial for the same offense.

➤ **Protection against Re-Prosecution Following Conviction:** a basic purpose of the double jeopardy clause is to protect a defendant “*against a second prosecution for the same offense after conviction*” it is settled that “*no man can be twice lawfully punished for the same offense*”.¹⁷

➤ **Protection against Sentence Increases:** the double jeopardy clause protects against imposition of multiple punishment for the same offense.¹⁸ The application of the principle leads, however, to a number of complexities. In a simple case, it was held

¹⁴ United States V Martin Linen Supply Co., 430 U.S. 564, 571 (1977)

¹⁵ <https://www.law.cornell.edu/constitution-conan/amendment-5/doublejeopardy> accessed 31st October, 2020.

¹⁶ UNITED STATES V BALL, 163 U.S. 662 (1896)

¹⁷ *Ex Parte Lange*, 85 U.S. (18 Wall) 163 (1873)

¹⁸ *Ex Parte Lange*, 85 U.S. (18 Wall.) 163, 173 (1874); *North Carolina V. Pearce*, 395 U.S. 711, 717 (1969).

where a court inadvertently imposed both a fine and imprisonment for a crime for which the law authorized one or the other but not both, it could not, after the fine had been paid and the defendant had entered his short-term confinement, recall the defendant and change its judgement by sentencing him to imprisonment only.

➤ **Protection against Legislative Discretion as to Multiple Sentences:** it frequently happens that one activity of a criminal nature will violate one or more laws or that one or more violations may be charged. Although the question is not totally free of doubt, it appears that the double jeopardy clause does not limit the legislative power to split a single transaction into separate crimes so as to give the prosecution a choice of charges that may be tried in one proceeding, thereby making multiple punishments possible for essentially one transaction. This explains that one cannot serve multiple punishments for a crime in a situation where there are different legislative provision for a crime.

➤ **Protection against Successive Prosecutions for the Same Offense:** successive prosecution raise fundamental double jeopardy concerns extending beyond those raised by enhanced and multiple punishments. At the same time, multiple prosecutions allow the state to hone its trial strategies through successive attempts at conviction.¹⁹ In *BROWN V. OHIO*,²⁰ the Court, apparently for the first time, applied the same evidence test to bar successive prosecutions in state court for different statutory offenses involving the same conduct. In this case, a second trial was quashed in respect of the application of the double jeopardy principle.

Specifically, double jeopardy provides:

- ✓ A protection for the same offense after an acquittal
- ✓ A protection for the same offense after a conviction and
- ✓ A protection against more than one punishment for the same offense

¹⁹ *GRADY V. CORBIN*, 495 U.S. 508, 518-19 (1990)

²⁰ 432 U.S. 161 (1977)

CONCLUSION

The double jeopardy clause is an activist clause, it is a clause that encourages judicial activism in different ways while interpreting the law. It smoothens and correct the inconsistencies in our statutes as well as judicial precedents. In a more important function, double jeopardy principle checkmates the power of the executive and limits the powers of state prosecution to some extent. The clause protects citizens against state machineries, government functionaries who may want to abuse their powers in the exercise of their functions. It is true that “*power corrupt and absolute power corrupts absolutely*” a despotic leader may want to render vulnerable those who checkmates him deploying state machineries to that effect, however, the strict application of the principle will definitely serve as a strong limitation. Double jeopardy principle as explain herein restrains the state from retrying one who is previously acquitted of a crime, it restrains the retrial of a convict who is done with his punishment. The enshrinement of the principle in our constitution serve as a watershed in our jurisprudence. A person cannot be tried for the same offense based on the same conduct. The law maintains that if a person robs a bank or murder a person that individual cannot twice be tried for same offense. Similar position is maintained in section 36 (9) of the 1999 CFRN as amended 2011 which provide thus: ‘*no person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence having the same ingredients as that offence save upon the order of a superior court*’.²¹

²¹ Constitution of the Federal Republic of Nigeria 1999 as Amended 2011.