

Legal Sidebar

Supreme Court Says Dual Prosecutions by the Federal Government and Puerto Rico Violate Double Jeopardy

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A case recently decided by the Supreme Court considered the legal nature of the relationship between Puerto Rico and the United States in a unique context. In *Puerto Rico v. Sanchez Valle*, the Court examined whether defendants in a criminal case can be prosecuted under the local laws of Puerto Rico if they have been previously convicted under federal criminal law for the same conduct. The [Double Jeopardy Clause of the Fifth Amendment](#) provides that no person shall “for the same offense ... be twice put in jeopardy of life or limb.” Under the [dual sovereignty doctrine](#), however, if two separate sovereigns (e.g., the federal government and a state) were to prosecute a person for the same offense, the constitutional protection against double jeopardy would not be triggered. Thus, if the Puerto Rican government were considered to be a separate sovereign from the United States for purposes of the Double Jeopardy Clause, dual prosecutions by the federal government and Puerto Rico would be allowed. The Court in *Sanchez Valle*, however, held that, because Puerto Rico operates under power delegated to it by Congress, it is not to be treated as a separate sovereign for purposes of the Double Jeopardy Clause.

The nature of the relationship between Puerto Rico and the federal government has been a subject of long-standing [legal and political dispute](#). Acquired by treaty after the Spanish-American War of 1898, Puerto Rico’s evolution into a constitutional democracy exercising local rule developed over a number of years. Congress, acting pursuant to its [Article IV](#) constitutional authority to “dispose of and make all needful Rules and Regulations respecting the Territory ... belonging to the United States,” passed the [Foraker Act of 1900](#), providing local elections for Members of the lower house of the Puerto Rican legislature, but requiring presidential appointment (with the advice and consent of the U.S. Senate) of Puerto Rico’s Governor, Supreme Court Justices, and Members of the upper house. The [Jones Act of 1917](#) replaced the upper house of the Puerto Rican legislature with a [popularly elected Senate](#) and gave the island’s inhabitants [U.S. citizenship](#), while a [1947](#) amendment to that law empowered the Puerto Rican people to elect their own Governor. Finally, under the [Puerto Rico Federal Relations Act of 1950](#), a law self-described as “in the nature of a compact,” Congress authorized Puerto Rico to organize a government “pursuant to a constitution of their own adoption,” a constitution that was subsequently [adopted by popular referendum and approved by Congress](#).

The Court in *Sanchez Valle*, while noting the progression of local rule in Puerto Rico, focused on a historical question: is the authority to prosecute federal criminal laws and local Puerto Rican criminal laws derived from the same “[ultimate source](#)” of power? (This historical test, the Court explained, avoids more difficult questions that an alternative, functional test would create.) Historically, after Puerto Rico was acquired by the United States, local Puerto Rican prosecutors’ power to prosecute was delegated by Congress, as only federal criminal laws [were applicable](#) in the territory. Although Puerto Rico’s power to enact and enforce criminal law is now derived from the Puerto Rico Constitution, which was approved by the people of Puerto Rico, the Court determined that this present situation does not change the “ultimate source” of prosecutorial power, which remains with Congress. The Court stated that, although Congress has broad power over the territories, it does not have the authority to eliminate its own role in having conferred political authority to Puerto Rico. Thus, the Double Jeopardy Clause bars successive criminal prosecutions by Puerto Rico and the United States for the same offenses.

Justice Breyer, in a [dissent](#) joined by Justice Sotomayor, disputed the notion that identifying the historical source of prosecutorial power resolves the question of double jeopardy. For instance, Justice Breyer noted that the “ultimate source” of power to enact criminal laws in now independent former territories (e.g., the Philippines) or in states admitted to the United States after the original thirteen (e.g., New Mexico) could arguably be traced back to [actions taken by Congress](#), respectively, to confer independence or statehood. Yet, successive prosecutions by either independent nations or states and the federal government are not treated as double jeopardy violations under the dual sovereignty doctrine. Ultimately, Justice Breyer argued, congressional activity and historical circumstance can combine to establish a *new* source of power. Furthermore, according to Justice Breyer, Congress, by, among other things, [authorizing and affirming](#) a Puerto Rico Constitution, created the independent authority for Puerto Rico to legislate regarding criminal laws. Consequently, the dissent would have held that successive prosecutions by the federal government and Puerto Rico would not violate the Double Jeopardy Clause.

The Court’s holding in the [Sanchez Valle](#) case was limited, and the Court did not address broader issues of Puerto Rico’s sovereignty. Instead, [Sanchez Valle](#) serves as a reminder of the unique role Congress has in legislating with respect to the territories. Thus, when Congress passes legislation affecting Puerto Rico’s government, as it did recently with the passage of the Puerto Rico Oversight, Management, and Economic Stability Act or [PROMESA](#), [Sanchez Valle](#) would not appear to suggest a limit on Congress’s constitutional authority over Puerto Rico.

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