

Examining Governments' Right to Appeal Through Double Jeopardy Clause

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Abstract

Double Jeopardy Clause is deemed fundamental right in every civilized country on the world. For example, in the United States, Double Jeopardy protection makes a firmly inaccessible fortress, which is a verdict of acquittal is final, and cannot be reviewed, on error or otherwise, without putting the defendant twice in jeopardy, and thereby violating the Constitution. In fact, it is considered that banning government's appeals of acquittals severs some purposes: reducing false convictions, decreasing litigation costs, constraining prosecution acting in self-interest or from political motivation. However, in Taiwan, we allow prosecutors to appeal acquittals in any reason. As a result, prosecutors take this right for granted, and it's never been doubted whether it may against the Double Jeopardy Clause and violate the Constitution. Consequently, it's rarely been discussed permitting prosecutors to appeal acquittals could cause false convictions, increase litigation costs, and bring prosecutors the chance to appeal with vindictive, selfish, or political motives. In light of Double Jeopardy protection, my analysis indicates appeals of government squander lots of litigation costs, and annoys litigants unduly. Most importantly, continuing appeals of government without restriction may make defendants despaired, and force defendants to plead guilty. In order to deal with all these qualms above, we suggest prosecutors could not appeal from convictions or acquittals unless appeals of government never violate Double Jeopardy Clause, including "Sham Exception" and acquittals which is out of evidence and not rational. Moreover, after restricting prosecutors' right of appeal

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from convictions or acquittals, to avoid false acquittals and miscarriage of justice, we propose it is necessary to allow prosecutors appeal suppressions orders. Besides, for the same reason of Double Jeopardy, we suggest prosecutors could not appeal dismiss rulings after jeopardy attached.

Keywords: Double Jeopardy, asymmetric appeal, acquittal, autrefois acquit, autrefois convict, interlocutory appeal, Final Judgment Rule, Cohen Doctrine, excluding evidence, dismiss charge