PUERTO RICO v. SÁNCHEZ VALLE

136 S.Ct. 1863 (2016)

Justice Kagan delivered the opinion of the Court.

The Double Jeopardy Clause of the Fifth Amendment prohibits more than one prosecution for the "same offence." But under what is known as the dual-sovereignty doctrine, a single act gives rise to distinct offenses—and thus may subject a person to successive prosecutions—if it violates the laws of separate sovereigns. To determine whether two prosecuting authorities are different sovereigns for double jeopardy purposes, this Court asks a narrow, historically focused question. The inquiry does not turn, as the term "sovereignty" sometimes suggests, on the degree to which the second entity is autonomous from the first or sets its own political course. Rather, the issue is only whether the prosecutorial powers of the two jurisdictions have independent origins—or, said conversely, whether those powers derive from the same "ultimate source." *United States v. Wheeler*, 435 U.S. 313, 320 (1978).

In this case, we must decide if, under that test, Puerto Rico and the United States may successively prosecute a single defendant for the same criminal conduct. We hold they may not, because the oldest roots of Puerto Rico's power to prosecute lie in federal soil.

I.A. Puerto Rico became a territory of the United States in 1898, as a result of the Spanish–American War. The treaty concluding that conflict ceded the island, then a Spanish colony, to the United States, and tasked Congress with determining "[t]he civil rights and political status" of its inhabitants. Treaty of Paris, Art. 9. In the ensuing hundred-plus years, the United States and Puerto Rico have forged a unique political relationship, built on the island's evolution into a constitutional democracy exercising local self-rule.

Acting pursuant to the U.S. Constitution's Territory Clause, Congress initially established a "civil government" for Puerto Rico possessing significant authority over internal affairs. Organic Act of 1900.... The U.S. President, with the advice and consent of the Senate, appointed the governor, supreme court, and upper house of the legislature; the Puerto Rican people elected the lower house themselves. Federal statutes generally applied (as they still do) in Puerto Rico, but the newly constituted legislature could enact local laws in much the same way as the then–45 States.

Over time, Congress granted Puerto Rico additional autonomy. A federal statute passed in 1917, in addition to giving the island's inhabitants U.S. citizenship, replaced the upper house of the legislature with a popularly elected senate. And in 1947, an amendment to that law empowered the Puerto Rican people to elect their own governor, a right never before accorded in a U.S. territory.

Three years later, Congress enabled Puerto Rico to embark on the project of constitutional self-governance. Public Law 600, "recognizing the principle of government by consent," authorized the island's people to "organize a government pursuant to a constitution of their own adoption." Describing itself as "in the nature of a compact," the statute submitted its own terms to an up-or-down referendum of Puerto Rico's voters. According to those terms, the eventual constitution had to "provide a republican form of government" and "include a bill of rights"; all else would be hashed out in a constitutional convention. The people of Puerto Rico would be the first to decide, in still another referendum, whether to adopt that convention's proposed charter. But Congress would cast the dispositive vote: The constitution, Public Law 600 declared, would become effective only "[u]pon approval by the Congress."

Thus began two years of constitution-making for the island. The Puerto Rican people first voted to accept Public Law 600, thereby triggering a constitutional convention. And once that body completed its work, the island's voters ratified the draft constitution. Congress then took its turn on the document: Before giving its approval, Congress removed a provision recognizing various social welfare rights (including entitlements to food, housing, medical care, and employment); added a sentence prohibiting certain constitutional amendments, including any that would restore the welfare-rights section; and inserted language guaranteeing children's freedom to attend private schools. Finally, the constitution became law, in the manner Congress had specified, when the convention formally accepted those conditions and the governor "issue [d] a proclamation to that effect."

The Puerto Rico Constitution created a new political entity, the Commonwealth of Puerto Rico—or, in

Spanish, Estado Libre Asociado de Puerto Rico.... The Commonwealth's power, the Constitution proclaims, "emanates from the people and shall be exercised in accordance with their will, within the terms of the compact agreed upon between the people of Puerto Rico and the United States."Art. I, § 1.

[The two defendants were charged in the Puerto Rico courts and in federal court for selling a gun to an undercover agent, in violation both of the Puerto Rico and federal laws. They pleaded guilty to the federal charges and moved to dismiss the Puerto Rico prosecutions under the U.S. double jeopardy clause.]

The Supreme Court of Puerto Rico ... held that Puerto Rico's gun sale prosecutions violated the Double Jeopardy Clause. The majority reasoned that, under this Court's dual-sovereignty doctrine, "what is crucial" is "[t]he ultimate source" of Puerto Rico's power to prosecute. ("The use of the word 'sovereignty' in other contexts and for other purposes is irrelevant"). Because that power originally "derived from the United States Congress"—i.e., the same source on which federal prosecutors rely—the Commonwealth could not retry [the defendants for the same act]. Three justices disagreed, believing that the Commonwealth and the United States are separate sovereigns.***

II.A. This case involves the dual-sovereignty carve-out from the Double Jeopardy Clause. The ordinary rule under that Clause is that a person cannot be prosecuted twice for the same offense.... But two prosecutions, this Court has long held, are not for the same offense if brought by different sovereigns—even when those actions target the identical criminal conduct through equivalent criminal laws. See, *e.g., United States v. Lanza*, 260 U.S. 377, 382 (1922)....

[H]owever, "sovereignty" in this context does not bear its ordinary meaning. For whatever reason, the test we have devised to decide whether two governments are distinct for double jeopardy purposes overtly disregards common indicia of sovereignty. Under that standard, we do not examine the "extent of control" that "one prosecuting authority [wields] over the other." *Wheeler*, 435 U.S., at 320. The degree to which an entity exercises self-governance—whether autonomously managing its own affairs or continually submitting to outside direction—plays no role in the analysis. See [*Puerto Rico v.*] *Shell Co.*, 302 U.S., at 261–262, 264–266. Nor do we care about a government's more particular ability to enact and enforce its own criminal laws. See *Waller v. Florida*, 397 U.S. 387, 391–395 (1970). In short, the inquiry (despite its label) does not probe whether a government possesses the usual attributes, or acts in the common manner, of a sovereign entity.[2]

Rather, as Puerto Rico itself acknowledges, our test hinges on a single criterion: the "ultimate source" of the power undergirding the respective prosecutions. Whether two prosecuting entities are dual sovereigns in the double jeopardy context, we have stated, depends on "whether [they] draw their authority to punish the offender from distinct sources of power." *Heath*, 474 U.S., at 88. The inquiry is thus historical, not functional—looking at the deepest wellsprings, not the current exercise, of prosecutorial authority. If two entities derive their power to punish from wholly independent sources (imagine here a pair of parallel lines), then they may bring successive prosecutions. Conversely, if those entities draw their power from the same ultimate source (imagine now two lines emerging from a common point, even if later diverging), then they may not.[3]

Under that approach, the States are separate sovereigns from the Federal Government (and from one

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[2] The dissent, ignoring our longstanding precedent to the contrary, advances an approach of just this stripe: Its seven considerations all go to the question whether the Commonwealth, by virtue of Public Law 600, gained "the sovereign authority to enact and enforce" its own criminal laws. Our disagreement with the dissent arises entirely from its use of this test. If the question is whether, after the events of 1950–1952, Puerto Rico had authority to enact and enforce its own criminal laws (or, slightly differently phrased, whether Congress then decided that it should have such autonomy), the answer (all can and do agree) is yes. But as we now show, that is not the inquiry our double jeopardy law has made relevant: To the contrary, we have rejected that approach again and again....

[3] The Court has never explained its reasons for adopting this historical approach to the dual-sovereignty doctrine. It may appear counter-intuitive, even legalistic, as compared to an inquiry focused on a governmental entity's functional autonomy. But that alternative would raise serious problems of application. It would require deciding exactly how much autonomy is sufficient for separate sovereignty and whether a given entity's exercise of self-rule exceeds that level. The results, we suspect, would often be uncertain, introducing error and inconsistency into our double jeopardy law. By contrast, as we go on to show, the Court has easily applied the "ultimate source" test to classify broad classes of governments as either sovereign or not for purposes of barring retrials.

another). The States' "powers to undertake criminal prosecutions," we have explained, do not "derive[ ] ... from the Federal Government." *Id.*, at 89. Instead, the States rely on "authority originally belonging to them before admission to the Union and preserved to them by the Tenth Amendment." *Ibid.*... Prior to forming the Union, the States possessed "separate and independent sources of power and authority," which they continue to draw upon in enacting and enforcing criminal laws. [*Ibid.*] State prosecutions therefore have their most ancient roots in an "inherent sovereignty" unconnected to, and indeed pre-existing, the U.S. Congress.[4]

For similar reasons, Indian tribes also count as separate sovereigns under the Double Jeopardy Clause. Originally, this Court has noted, "the tribes were self-governing sovereign political communities," possessing (among other capacities) the "inherent power to prescribe laws for their members and to punish infractions of those laws." *Wheeler*, 435 U.S., at 322–323. After the formation of the United States, the tribes became "domestic dependent nations," subject to plenary control by Congress—so hardly "sovereign" in one common sense.... But unless and until Congress withdraws a tribal power—including the power to prosecute—the Indian community retains that authority in its earliest form. [*Id.*], at 323. The "ultimate source" of a tribe's "power to punish tribal offenders" thus lies in its "primeval" or, at any rate, "pre-existing" sovereignty: A tribal prosecution, like a State's, is "attributable in no way to any delegation ... of federal authority." *Id.*, at 320, 322, 328. And that alone is what matters for the double jeopardy inquiry.

Conversely, this Court has held that a municipality cannot qualify as a sovereign distinct from a State—no matter how much autonomy over criminal punishment the city maintains. See *Waller*, 397 U.S., at 395.... Because the municipality, in the first instance, had received its power from the State, those two entities could not bring successive prosecutions for a like offense.

And most pertinent here, this Court concluded in the early decades of the last century that U.S. territories—including an earlier incarnation of Puerto Rico itself—are not sovereigns distinct from the United States. [*Grafton v. United States*, 206 U.S. 333, 355 (1907) (Philippine Islands).] We reasoned that whereas "a State does not derive its powers from the United States," a territory does.... And then, in *Shell Co.*, we stated that "[t]he situation [in Puerto Rico] was, in all essentials, the same." 302 U.S., at 265....[5]

B... Following 1952, Puerto Rico became a new kind of political entity, still closely associated with the United States but governed in accordance with, and exercising self-rule through, a popularly ratified constitution. The magnitude of that change requires us to consider the dual-sovereignty question anew. And yet the result we reach, given the legal test we apply, ends up the same. Puerto Rico today has a distinctive, indeed exceptional, status as a self-governing Commonwealth. But our approach is historical. And if we go back as far as our doctrine demands—to the "ultimate source" of Puerto Rico's prosecutorial power, we once again discover the U.S. Congress.

Recall here the events of the mid–20th century—when Puerto Rico, just as petitioner contends, underwent a profound change in its political system....

Those constitutional developments were of great significance—and, indeed, made Puerto Rico "sovereign" in one commonly understood sense of that term. As this Court has recognized, Congress in 1952 "relinquished its control over [the Commonwealth's] local affairs[,] grant[ing] Puerto Rico a measure of autonomy comparable to that possessed by the States." [*Flores de Otero*], 426 U.S. 572, 597 (1976).... [I]f

[4] Literalists might object that only the original 13 States can claim such an independent source of authority; for the other 37, Congress played some role in establishing them as territories, authorizing or approving their constitutions, or (at the least) admitting them to the Union.... And indeed, that is the tack the dissent takes.... But this Court long ago made clear that a new State, upon entry, necessarily becomes vested with all the legal characteristics and capabilities of the first 13. See *Coyle v. Smith*, 221 U.S. 559, 566 (1911).... That principle of "equal footing," we have held, is essential to ensure that the nation remains "a union of States[alike] in power, dignity and authority, each competent to exert that residuum of sovereignty not delegated to the United States." *Id.*, at 567.... Thus, each later-admitted State exercises its authority to enact and enforce criminal laws by virtue not of congressional grace, but of the independent powers that its earliest counterparts both brought to the Union and chose to maintain.... The dissent's contrary view ... contradicts the most fundamental conceptual premises of our constitutional order, indeed the very bedrock of our Union.

[5] The dissent's theory cannot explain any of these (many) decisions, whether involving States, Indian tribes, cities, or territories.... As an independent nation, the Philippines wields prosecutorial power that is not traceable to any congressional conferral of authority. And that, to repeat, is what matters: If an entity's capacity to make and enforce criminal law ultimately comes from another government, then the two are not separate sovereigns for double jeopardy purposes.

our double jeopardy decisions hinged on measuring an entity's self-governance, the emergence of the Commonwealth would have resulted as well in the capacity to bring the kind of successive prosecutions attempted here.

But as already explained, the dual-sovereignty test we have adopted focuses on a different question: not on the fact of self-rule, but on where it came from.... And in identifying a prosecuting entity's wellspring of authority, we have insisted on going all the way back—beyond the immediate, or even an intermediate, locus of power to what we have termed the "ultimate source." *Wheeler*, 435 U.S., at 320. That is why we have emphasized the "inherent," "primeval," and "pre-existing" capacities of the tribes and States—the power they enjoyed prior to the Union's formation. *Id.*, at 322–323, 328....

On this settled approach, Puerto Rico cannot benefit from our dual-sovereignty doctrine. For starters, no one argues that when the United States gained possession of Puerto Rico, its people possessed independent prosecutorial power, in the way that the States or tribes did upon becoming part of this country. Puerto Rico was until then a colony "under Spanish sovereignty." And local prosecutors in the ensuing decades, as petitioner itself acknowledges, exercised only such power as was "delegated by Congress" through federal statutes. Their authority derived from, rather than pre-existed association with, the Federal Government.

And contrary to petitioner's claim, Puerto Rico's transformative constitutional moment does not lead to a different conclusion. True enough, that the Commonwealth's power to enact and enforce criminal law now proceeds, just as petitioner says, from the Puerto Rico Constitution as "ordain[ed] and establish[ed]" by "the people." P.R. Const., Preamble. But that makes the Puerto Rican populace only the most immediate source of such authority—and that is not what our dual-sovereignty decisions make relevant. Back of the Puerto Rican people and their Constitution, the "ultimate" source of prosecutorial power remains the U.S. Congress, just as back of a city's charter lies a state government. Congress, in Public Law 600, authorized Puerto Rico's constitution-making process in the first instance; the people of a territory could not legally have initiated that process on their own. And Congress, in later legislation, both amended the draft charter and gave it the indispensable stamp of approval; popular ratification, however meaningful, could not have turned the convention's handiwork into law. Put simply, Congress conferred the authority to create the Puerto Rico Constitution, which in turn confers the authority to bring criminal charges. That makes Congress the original source of power for Puerto Rico's prosecutors—as it is for the Federal Government's. The island's Constitution, significant though it is, does not break the chain.***

...We agree that Congress has broad latitude to develop innovative approaches to territorial governance; that Congress may thus enable a territory's people to make large-scale choices about their own political institutions; and that Congress did exactly that in enacting Public Law 600 and approving the Puerto Rico Constitution.... But ... Congress ... has no capacity ... to erase or otherwise rewrite its own foundational role in conferring political authority. Or otherwise said, the delegator cannot make itself any less so—no matter how much authority it opts to hand over. And our dual-sovereignty test makes this historical fact dispositive: If an entity's authority to enact and enforce criminal law ultimately comes from Congress, then it cannot follow a federal prosecution with its own. That is true of Puerto Rico, because Congress authorized and approved its Constitution, from which prosecutorial power now flows. So the Double Jeopardy Clause bars both Puerto Rico and the United States from prosecuting a single person for the same conduct under equivalent criminal laws.***

[*Affirmed.*]

[Se omiten las opiniones concurrentes de la jueza Ginsburg (con el juez Thomas) y del juez Thomas]. La primera concurre con la opinión pero sugiere que en un caso apropiado debe reconsiderarse la doctrina de doble soberanía, como contraria a la cláusula contra la doble exposición. La segunda reitera su oposición a extender la doctrina de doble soberanía a las tribus indias.]

Justice Breyer, with whom Justice Sotomayor joins, dissenting.

I agree with the Court that this case poses a special, not a general, question about Puerto Rico's sovereignty.... I do not agree, however, with the majority's answer to that question. I do not believe that "if

we go back [through history] as far as our doctrine demands" (i.e., "all the way back" to the "furthest-back source of prosecutorial power"), we will "discover" that Puerto Rico and the Federal Government share the same source of power, namely, "the U.S. Congress." My reasons for disagreeing with the majority are in part conceptual and in part historical.

I.***...I do not believe, as the majority seems to believe, that the double jeopardy question can be answered simply by tracing Puerto Rico's current legislative powers back to Congress' enactment of Public Law 600 and calling the Congress that enacted that law the "source" of the island's criminal-enforcement authority. That is because—as with the Philippines, new States, and the Indian tribes—congressional activity and other historic circumstances can combine to establish a new source of power. We therefore must consider Public Law 600 in the broader context of Puerto Rico's history. Only through that lens can we decide whether the Commonwealth, between the years 1950 and 1952, gained sufficient sovereign authority to become the "source" of power behind its own criminal laws.

II. The Treaty of Paris ... said that "[t]he civil rights and political status" of Puerto Rico's "inhabitants ... shall be determined by the Congress." In my view, Congress, in enacting the Puerto Rican Federal Relations Act (i.e., Public Law 600), determined that the "political status" of Puerto Rico would for double jeopardy purposes subsequently encompass the sovereign authority to enact and enforce—pursuant to its *own* powers—its own criminal laws. Several considerations support this conclusion.

First, the timing of Public Law 600's enactment suggests that Congress intended it to work a significant change in the nature of Puerto Rico's political status.... In 1945 the United States, when signing the United Nations Charter, promised change. It told the world that it would "develop self-government" in its Territories....

Second, Public Law 600 uses language that says or implies a significant shift in the legitimacy-conferring source of many local laws. The Act points out that the United States "has progressively recognized the right of self-government of the people of Puerto Rico." It "[f]ully recogniz[es] the principle of government by consent." It describes itself as being "in the nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption."...

Third, Public Law 600 ... led Puerto Rico to ... write a constitution that ... specifies that the legitimacy-conferring source of much local lawmaking shall henceforth be the "people of Puerto Rico."...

Fourth, both Puerto Rico and the United States ratified Puerto Rico's Constitution....

Fifth, all three branches of the Federal Government subsequently recognized that Public Law 600, the Puerto Rican Constitution, and related congressional actions granted Puerto Rico considerable autonomy in local matters, sometimes akin to that of a State....

Sixth, Puerto Rico's Supreme Court has consistently held, over a period of more than 50 years, that Puerto Rico's people (and not Congress) are the "source" of Puerto Rico's local criminal laws....

Seventh, insofar as Public Law 600 (and related events) grants Puerto Rico local legislative autonomy, it is particularly likely to have done so in respect to local criminal law. That is because Puerto Rico's legal system arises out of, and reflects, not traditional British common law (which underlies the criminal law in 49 of our 50 States), but a tradition stemming from European civil codes and Roman law....

I would add that the practices, actions, statements, and attitudes just described are highly relevant here, for this Court has long made clear that, when we face difficult questions of the Constitution's structural requirements, longstanding customs and practices can make a difference.... Here, longstanding customs, actions, and attitudes, both in Puerto Rico and on the mainland, uniformly favor Puerto Rico's position (*i.e.,* that it is sovereign—and has been since 1952—for purposes of the Double Jeopardy Clause).

This history of statutes, language, organic acts, traditions, statements, and other actions, taken by all three branches of the Federal Government and by Puerto Rico, convinces me that the United States has entered into a compact one of the terms of which is that the "source" of Puerto Rico's criminal law ceased to be the U.S. Congress and became Puerto Rico itself, its people, and its constitution. The evidence of that grant of authority is far stronger than the evidence of congressional silence that led this Court to conclude that Indian tribes maintained a similar sovereign authority. Indeed, it is difficult to see how we can conclude that the tribes do possess this authority but Puerto Rico does not. Regardless, for the reasons given, I would hold for

Double Jeopardy Clause purposes that the criminal law of Puerto Rico and the criminal law of the Federal Government do not find their legitimacy-conferring origin in the same "source."

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