

Understanding Sovereignty Doctrine

Dual



By Paul Engel

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- Do you understand Dual Sovereignty and the threat it poses to your rights?
- Did you know that the Eighteenth Amendment and prohibition was the basis of this idea of dual sovereignty?
- How has the court taken a limited concurrent jurisdiction clause and turned it into federal oversight of just about every law in the nation?

Most of us are aware of Double Jeopardy, the right to not be tried for the same crime twice, but the courts have adopted a “dual sovereign” doctrine to get around this pesky little problem. Two Supreme Court cases out of Oklahoma show how good intentions often lead to problems, and how the court makes up the rules as they go along. We’ll also look at how this concept of dual sovereignty can be used to violate both your rights and the Constitution of the United States.

Dual Sovereignty

To understand the dual sovereignty doctrine, we need to understand the Double Jeopardy Clause of the Fifth Amendment.

nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb;

U.S. Constitution, Fifth Amendment

The idea of the Double Jeopardy Clause is simple: Government only gets one chance to convict you of a crime. In the United States we have multiple governments. We have the federal government, one for each of the fifty states, and I don't know how many county and city governments. Does the Fifth Amendment apply to all of these governments? Yes. There is nothing in the language of the Fifth Amendment to limit it to just one government. So what happens when a state tries someone, yet doesn't get a conviction? Is it possible to get another chance once "jeopardy has attached", as the legal-eagles would say? Enter the case of United States v. Lanza and the dual sovereignty doctrine.

It follows that an act denounced as a crime by both national and state sovereignties is an offense against the peace and dignity of both and may be punished by each. ... Here the same act was an offense against the state of Washington, because a violation of its law, and also an offense against the United States under the National Prohibition Act. The defendants thus committed two different offenses by the same act, and a conviction by a court of Washington of the offense against that state is not a conviction of the different offense against the United States, and so is not double jeopardy.

United States v. Lanza

This case was somewhat unique. Lanza was charged in 1920 with manufacturing intoxicating liquor, which had been made illegal in 1919 with the ratification of the Eighteenth Amendment:

After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

[U.S. Constitution, Amendment XVIII, Section 1](#)

What makes this unique comes from Section 2.

The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

[U.S. Constitution, Amendment XVIII, Section 2](#)

The language of the Eighteenth Amendment specifically provides for concurrent power held by both the United States. and the Several States. It was the only instance where power was shared between two governments. In no other place under the Constitution of the United States is power shared.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

[U.S. Constitution, Amendment X](#)

So when the Supreme Court found that Lanza had committed offenses against both the State of Washington and the United States, it would seem valid because, under the Eighteenth Amendment, both governments had concurrent jurisdiction. However, as courts often do, they have taken one phrase from this opinion and used it to come to decisions completely divorced from the original opinion. In the Lanza case opinion we find:

We have here two sovereignties, deribing [sp?] power from different sources, capable of dealing with the same subject matter within the same territory.

[United States v. Lanza](#)

The Lanza court made one mistake in this language. While they were dealing with two sovereignties, they both derived their power in this case from the same source: The Eighteenth Amendment. Since this is the only place in the Constitution

that gives concurrent jurisdiction to both the States and the United States, and since the Eighteenth Amendment was repealed in 1933 by the Twenty-First Amendment, this unique situation no longer exists.

Oklahoma v. Castro-Huerta

Which brings us to the case Oklahoma v. Castro-Huerta.

Held: The Federal Government and the State have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country.

Oklahoma v. Castro-Huerta

Victor Manuel Castro-Huerta was charged and convicted by the State of Oklahoma for child neglect. What brought this case to the Supreme Court was the question of jurisdiction. While Mr. Castro-Huerta is not an Indian, his daughter is. Also, the crime took place in the City of Tulsa, which, according to the Supreme Court in the case *McGirt v. Oklahoma*, is mostly part of the Creek Reservation, making it "Indian country" and therefore under the jurisdiction of the United States. This is where the problems with the dual sovereignty doctrine shows up. Was Mr. Castro-Huerta in "Indian country" and subject to federal jurisdiction, or was he in the State of Oklahoma and subject to their jurisdiction? According to the Supreme Court, both the State and Federal government have concurrent jurisdiction. How can that be?

Does it matter that the defendant is not an Indian while the victim is? No. If you, as an American citizen, commit a crime in Canada or Mexico, the United States does not have jurisdiction. If the crime occurred in both Indian and non-Indian jurisdictions, then maybe both governments would have a case, but that is not concurrent jurisdiction, it is a crime committed in multiple jurisdictions. For example, if someone performs a mass shooting crossing state lines, the states can charge the accused with the shootings within their states.

However, because the crime crossed state lines, does that make it a federal crime? The federal courts say yes, but the Constitution does not.

This case is a little different. Crimes like kidnapping and murder are not inherently federal crimes. Congress only has the power:

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

U.S. Constitution, Article 1, Section 8, Clauses 16 & 17

This means that Congress can make laws for “Indian country”, but not for the rest of the city of Tulsa. Remember, under the Sixth Amendment we find:

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,

[U.S. Constitution, Amendment VI](#)

That means that Mr. Castro-Huerta has the right to be tried in both the state and district where the crime was committed. This should determine which government has jurisdiction, but

the court had other ideas.

Conclusion

I have not taken the time to discuss the question of whether or not the United States has the legal authority to own "Indian country". That will have to be a discussion for another day, but by holding that the State of Oklahoma and the United States have concurrent jurisdictions, the court has violated both the Constitution of the United States and the rights of Mr. Castro-Huerta. Since child neglect is not a power delegated to the United States, the only place they have jurisdiction is in Indian country. Since, as far as I can tell from the Court's opinion, the crime occurred in "Indian country", then Mr. Castro-Huerta's appeal should have been upheld, since the crime took place on federal land. By allowing the State of Oklahoma to try him for a crime that took place on federal land, the court has exposed Mr. Castro-Huerta to Double-Jeopardy. If the court is allowed to make up the rules to satisfy the justice's own sense of what is right, then the rule of law has failed. Of course, this would not be such an issue if Congress had not taken over vast tracks of public lands as the price of admission into the union.

The protection against Double Jeopardy is very important to due process. While so far the federal government hasn't attempted to prosecute Mr. Castro-Huerta, think of how many cases where the defendant was found not-guilty in state court only to be charged for the same crime in federal court. That is a violation of Double Jeopardy, but the Supreme Court has given its stamp of approval under the Dual Sovereign doctrine. While I have shown that the Constitution does recognize multiple sovereigns, it does not give them concurrent jurisdictions since the repeal of the Eighteenth Amendment. So when Congress empowers federal law enforcement to enforce laws outside of federal land, it's just one more example of laws of the United States that are not made pursuant to the Constitution and are therefore void (*Marbury v. Madison*). Keep

that in mind the next time you hear of someone being charged in both state and federal court.

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E-Mail Paul Engel: paul@constitutionstudy.com