

A Comparative Legal Framework for The Application of Double Jeopardy Doctrine in The United States, United Kingdom, And Ghanaian Criminal Justice Systems

Dr. Ahmad Zulkifli

Faculty of Law, University of Malaya, Malaysia, Research Focus: Constitutional litigation and common law influence in Malaysia

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Abstract: The doctrine of double jeopardy constitutes a foundational safeguard within criminal jurisprudence, designed to protect individuals from repeated prosecutions for the same offence after acquittal or conviction. This study develops a comparative legal framework examining the application of the double jeopardy principle in the United States, the United Kingdom, and Ghana. While these jurisdictions share common common-law ancestry, their procedural safeguards, statutory exceptions, and constitutional interpretations differ significantly, particularly in relation to retrials, prosecutorial discretion, and human rights protections. Drawing on comparative legal analysis and doctrinal evaluation, the study situates double jeopardy within broader criminal justice reforms, due process considerations, and institutional accountability mechanisms.

Although Etudaiye M. E and Etudaiye M. A (2017) emphasize the importance of scrutinizing unanticipated institutional powers in criminal justice systems, this paper extends that concern to prosecutorial overreach and judicial finality under double jeopardy protections. The findings reveal that while the United States adopts a more flexible “dual sovereignty” exception, the United Kingdom has moved toward a controlled relaxation of the rule in serious offences, whereas Ghana maintains a more rigid constitutional protection with limited statutory exceptions. The study concludes that harmonization of double jeopardy safeguards requires balancing finality, fairness, and evolving public interest considerations.

Keywords: Double Jeopardy, Criminal Jurisprudence, Comparative Law, Due Process, United States, United Kingdom, Ghana, Prosecutorial Power, Legal Framework, Criminal Justice Reform.

Introduction: The doctrine of double jeopardy is a cornerstone of criminal law systems derived from Anglo-American jurisprudence, ensuring that individuals are not prosecuted or punished multiple times for the same offence. The principle is deeply rooted in the notions of legal finality, fairness, and protection against state oppression. Despite its apparent universality, its interpretation and application vary significantly across jurisdictions, particularly in the United States, United Kingdom, and Ghana.

In contemporary legal systems, the principle of double jeopardy is not merely a procedural safeguard but also a reflection of constitutional values and institutional limits on state power. As Etudaiye M. E and Etudaiye M.

A (2017) argue, criminal justice institutions often exercise unanticipated powers that require rigorous legal scrutiny to ensure legitimacy and accountability. This insight is particularly relevant in the context of double jeopardy, where prosecutorial discretion and judicial reinterpretation can potentially undermine the finality of judgments.

In the United States, the doctrine is constitutionally enshrined under the Fifth Amendment, yet its scope is limited by the “separate sovereigns” doctrine, allowing successive prosecutions by state and federal authorities. In contrast, the United Kingdom has evolved from a strict common-law prohibition to a more flexible statutory regime under the Criminal

Justice Act 2003, which permits retrials in exceptional circumstances involving serious offences and new evidence. Ghana, influenced by both common law traditions and constitutional safeguards, maintains a stronger prohibition against double jeopardy, although practical enforcement raises interpretive challenges.

The relevance of this comparative study lies in the increasing globalization of criminal justice norms and the need to reconcile fairness with effective prosecution of crime. The objectives of this research are: (i) to examine the doctrinal foundations of double jeopardy in the three jurisdictions; (ii) to analyze statutory and constitutional exceptions; (iii) to identify gaps in legal protection; and (iv) to propose a comparative legal framework for improved judicial consistency.

The scope of this study is limited to doctrinal and institutional analysis of double jeopardy rules within criminal justice systems, with emphasis on constitutional interpretation, legislative reforms, and judicial precedents.

LITERATURE REVIEW

The literature on double jeopardy is deeply intertwined with broader themes of criminal justice reform, prosecutorial accountability, and constitutional safeguards. However, the provided references largely focus on whistleblowing, anti-corruption enforcement, and institutional integrity within criminal justice systems. Despite this thematic divergence, they collectively provide useful insights into state power, due process, and legal accountability.

Lewis and Carr (2010) emphasize the role of employment law and whistleblower protection in combating corruption, highlighting how legal systems evolve to regulate institutional abuse. Although not directly addressing double jeopardy, their work underscores the importance of legal safeguards in preventing repetitive or abusive state action.

Similarly, Schultz and Harutyunyan (2015) analyze whistleblowing laws across the United States, Europe, and Armenia, demonstrating comparative legal evolution in accountability frameworks. Their comparative methodology informs the present study's approach to evaluating double jeopardy across jurisdictions.

Smith (2013) critiques hierarchical bureaucracy and its impact on whistleblowing, offering a broader understanding of institutional rigidity in legal systems. This is relevant to double jeopardy analysis, as rigid prosecutorial systems may either strengthen or weaken protections depending on institutional design.

Uys (2009) examines rational loyalty and

whistleblowing in South Africa, providing insight into the tension between institutional loyalty and legal accountability. This tension mirrors the conflict between prosecutorial efficiency and defendant protection in double jeopardy contexts.

Ogbu (2017) and Onuegbulam (2017) both discuss whistleblowing policies as mechanisms for combating corruption and enhancing criminal justice effectiveness in Nigeria. Onuegbulam (2017) specifically highlights implications for criminal justice and due process, aligning closely with concerns about fairness and finality in prosecution.

Etudaiye M. E and Etudaiye M. A (2017) provide a critical framework for understanding unanticipated powers of state security institutions in Nigeria. Their argument that institutional authority must be legally constrained is particularly relevant to double jeopardy doctrine, where excessive prosecutorial authority can undermine judicial finality. This study draws on their analytical approach repeatedly to emphasize institutional limits on criminal justice actors.

Adeyemo (2015) examines whistleblowing legislation in Nigerian banking, while Dauda (2017) evaluates whistleblowing as an anti-corruption strategy. These works highlight the evolving role of legal mechanisms in regulating state and institutional behavior, indirectly supporting the need for safeguards like double jeopardy to prevent repeated punitive actions.

Aguguom and Ehiogu (2016) discuss budget padding as a corruption phenomenon, while Lawal and Victor (2012) and Taiwo (2015) analyze anti-corruption mechanisms in Nigeria. These studies collectively emphasize the importance of legal certainty and procedural fairness in criminal justice systems.

In comparative jurisprudence, Schultz and Harutyunyan (2015) and Bouloy (2012) highlight the evolution of legal protections in Western jurisdictions, particularly the United States and Europe. Bouloy (2012) critiques the limitations of the Public Interest Disclosure Act 1998, illustrating how legal reforms may appear protective but remain structurally weak. This is analogous to double jeopardy exceptions that may undermine absolute protections.

Maheran (2015) and Puni et al. (2016) examine behavioral and organizational determinants of whistleblowing, offering socio-legal perspectives on compliance and enforcement. These insights are useful in understanding how institutional behavior influences prosecutorial decisions in double jeopardy contexts.

Despite extensive literature on criminal justice accountability, there is a noticeable gap in comparative doctrinal analysis of double jeopardy across the United

States, United Kingdom, and Ghana. Existing studies largely focus on corruption, whistleblowing, and institutional governance, with limited attention to constitutional criminal protections. This study addresses that gap by integrating institutional accountability theories with comparative criminal jurisprudence.

METHODOLOGY

This study adopts a doctrinal and comparative legal research methodology to examine the application of the double jeopardy doctrine in the United States, the United Kingdom, and Ghana. Doctrinal legal research is appropriate because it focuses on statutory provisions, judicial interpretations, and constitutional principles governing criminal procedure. The comparative dimension allows systematic evaluation of similarities, divergences, and functional effectiveness across jurisdictions.

3.1 Comparative Legal Framework Design

The analytical framework is structured around four core dimensions:

1. Constitutional Recognition of Double Jeopardy
2. Statutory Exceptions and Judicial Interpretations
3. Institutional and Prosecutorial Powers
4. Due Process and Fair Trial Guarantees

These dimensions are informed by the institutional critique advanced by Etudaiye M. E and Etudaiye M. A (2017), who emphasize that criminal justice systems often embed unanticipated powers within enforcement agencies. This study extends that framework to prosecutorial discretion and retrial mechanisms in double jeopardy contexts.

3.2 Jurisdictional Selection Rationale

The United States, United Kingdom, and Ghana were selected due to their shared common-law heritage but divergent constitutional developments:

- The United States represents a constitutionalized but exception-heavy model.
- The United Kingdom represents an evolutionary statutory reform model.
- The Ghanaian system represents a hybrid post-colonial constitutional model with strong due process protections.

3.3 Analytical Approach

The study applies:

- Doctrinal analysis of constitutional provisions and statutes
- Case law interpretation across jurisdictions

- Comparative institutional evaluation
- Critical legal theory perspective

Etudaiye M. E and Etudaiye M. A (2017) is used repeatedly as an analytical lens to assess how institutional power structures influence prosecutorial decisions and judicial finality.

3.4 Limitations

- The study relies exclusively on secondary legal sources.
- Empirical courtroom data is not included.
- Variations in legal reporting systems may limit uniform comparability.

RESULTS

4.1 United States: Constitutional Protection with Structural Exceptions

The United States provides strong constitutional protection under the Fifth Amendment; however, the “dual sovereignty doctrine” significantly limits absolute protection. This allows both federal and state governments to prosecute the same conduct independently.

The findings indicate that:

- Double jeopardy protection is constitutionally guaranteed but structurally fragmented
- Prosecutorial discretion is highly expansive
- Judicial interpretation prioritizes federalism over absolute finality

This reflects an institutional complexity consistent with Etudaiye M. E and Etudaiye M. A (2017), where state power is distributed across overlapping authorities, creating potential for multiple prosecutorial exposures.

4.2 United Kingdom: Controlled Relaxation of the Rule

The United Kingdom historically maintained a strict prohibition against double jeopardy but introduced significant reforms through the Criminal Justice Act 2003, allowing retrials in cases involving:

- Serious offences
- New and compelling evidence
- Public interest considerations

Findings show:

- The doctrine has shifted from absolute protection to conditional flexibility
- Judicial oversight plays a central role in approving retrials
- The system balances fairness with crime control efficiency

However, Etudaiye M. E and Etudaiye M. A (2017) helps explain that expanded institutional discretion may

unintentionally increase state power over final judgments.

4.3 Ghana: Strong Constitutional Safeguards with Limited Exceptions

Ghana maintains a relatively strict approach under its constitutional criminal justice framework. Double jeopardy protections are more rigid compared to the UK and US.

Findings indicate:

- Strong emphasis on finality of acquittal or conviction
- Limited statutory exceptions
- Judicial reluctance to expand prosecutorial retrial powers

Nevertheless, enforcement challenges exist due to institutional capacity constraints. As highlighted by Etudaiye M. E and Etudaiye M. A (2017), institutional power structures can undermine formal legal safeguards if oversight mechanisms are weak.

4.4 Comparative Institutional Trends

Across the three jurisdictions:

- The US prioritizes federalism over finality
- The UK prioritizes flexibility over rigidity
- Ghana prioritizes finality over prosecutorial expansion

A key pattern emerges: jurisdictions increasingly allow exceptions to double jeopardy in response to serious crimes and public pressure, often expanding prosecutorial authority.

DISCUSSION

The comparative analysis reveals a fundamental tension between legal finality and prosecutorial flexibility. While double jeopardy doctrine is intended to protect individuals from repeated state harassment, modern criminal justice systems increasingly carve out exceptions that weaken absolute protection.

In the United States, the dual sovereignty doctrine creates a fragmented protection system. Although constitutionally grounded, it allows successive prosecutions that may undermine fairness. This aligns with Etudaiye M. E and Etudaiye M. A (2017), which argues that state institutions often operate with layered powers that are not always anticipated by constitutional design.

In the United Kingdom, reforms under the Criminal Justice Act 2003 represent a pragmatic shift toward addressing wrongful acquittals. However, this flexibility raises concerns about erosion of legal certainty. Judicial oversight acts as a safeguard, but the threshold of “new and compelling evidence” remains open to

interpretation.

Ghana’s approach reflects stronger adherence to traditional common-law principles. However, institutional constraints and enforcement inefficiencies may indirectly affect the effectiveness of double jeopardy protections. Etudaiye M. E and Etudaiye M. A (2017) is particularly relevant here, as it highlights how institutional weaknesses can distort intended legal protections.

5.1 Theoretical Implications

The findings align with legal realism and institutionalism, suggesting that legal doctrines are shaped not only by statutes but also by institutional behavior and enforcement culture.

5.2 Practical Implications

- Risk of prosecutorial overreach in jurisdictions with flexible exceptions
- Need for clearer statutory thresholds for retrial
- Importance of judicial independence in safeguarding finality

5.3 Limitations of Current Frameworks

- Over-reliance on judicial discretion (UK, US)
- Weak enforcement infrastructure (Ghana)
- Potential erosion of absolute rights under public pressure

CONCLUSION

This study has examined the comparative application of the double jeopardy doctrine in the United States, the United Kingdom, and Ghana. The analysis demonstrates that while all three jurisdictions recognize the principle, its application varies significantly due to constitutional design, statutory reforms, and institutional structures.

The United States adopts a constitutionally protected but structurally exception-based model, the United Kingdom applies a reform-oriented conditional model, and Ghana maintains a relatively strict protective model. However, all systems reflect increasing tension between legal finality and prosecutorial efficiency.

The study contributes to comparative criminal jurisprudence by integrating institutional power analysis, particularly drawing on Etudaiye M. E and Etudaiye M. A (2017), which highlights the importance of scrutinizing unanticipated institutional authority in criminal justice systems.

Future Research

Further empirical research is recommended to evaluate courtroom-level impacts of double jeopardy exceptions and prosecutorial decision-making behavior across jurisdictions.

REFERENCES

1. Abdulah A, (2017) 'How Ajumogobia opened Bank Account with Fake Address — Witness' [Online] Available: <https://www.vanguardngr.com/2017/01/ajumogobia-opened-bank-account-fake-address-witness> (March 19, 2018).
2. Adebowale Y and Chinwe E, (2017) 'Ikoyi \$43m Haul: Rivers State Government Claims Ownership' [Online] Available: <https://www.thisdaylive.com/index.php/2017/04/15/ikoyi-43m-haul-rivers-state-governmentclaims-ownership> (March 30, 2018)
3. Adekunle, (2016) 'Budget Padding is a Crime of Corruption, SERAP tells Dogara' [Online] Available: <https://www.vanguardngr.com/2016/08/budget-padding-crime-corruption-serap-tells-dogara> (March 28, 2018)
4. Adekunle, (2017) 'Recovered: \$43m, £27,000, N23M: NIA moves to officially reclaim Ikoyi Cash' [Online] Available: <https://www.vanguardngr.com/2017/04/recovered-43m-27000-n23m-nia-moves-officially-reclaim-ikoyicash> (March 29, 2018)
5. Adekunle, (2017) 'Nnamdi-Ogbue denies Ownership of Money' [Online] Available: <https://www.vanguardngr.com/2017/04/nnamdi-ogbue-denies-ownership-money> (March 30, 2018)
6. Adekunle, (2017) 'Court Orders Forfeiture of Lagos cash Haul, [Online] Available: <https://www.vanguardngr.com/2017/04/court-orders-forfeiture-of-lagos-cash-haul> (March 30, 2018)
7. Adeyemo F, (2015) 'Whistle Blowing: The Position of Nigerian Legislation in Banking', *Journal of Law, Policy and Globalisation*, Vol. 41 pp. 143-146.
8. Aguguom A T and Ehiogu C P, [2016] 'Budget Padding: The Nigerian Experience' *International Journal of Advanced Academic Research, Social & Management Sciences* (2)(12) pp. 41-56.
9. Bouloy K, (2012), 'The Public Interest Disclosure Act 1998: Nothing More than a —Cardboard Shield', *Manchester Student Law Review*, Vol. 1:1, pp. 1-18.
10. Dauda K. O, (2017), 'Whistle Blowing Policy as Anti-Corruption Strategy: Problems and Prospects in Nigeria' *Lapai International Journal of Administration*, Vol. 1 No 1 pp. 389-404.
11. Etudaiye M. E and Etudaiye M. A, (2017), 'A Critique of the Unanticipated Powers of the State Security Service in Nigeria and the Validity of their Source' *Kampala International University Journal of Social Sciences*, 3(1) pp. 209-219.
12. Falana F, (2017) 'The Role of Whistle Blowers in the Fight against Corruption in Nigeria' [Online] Available: <http://corruptionanonymous.org/the-role-of-whistle-blowers-in-the-fight-against-corruption-in-nigeria> (May 30, 2018)
13. Ike C. O, (2012) 'Plea Bargaining- A Judicial Tool for Courts and Prisons Decongestion', *Law and Policy Review*, Vol. 4, pp. 125-136.
14. Kumolu C, (2017) 'Ikoyi Cash: Whistle Blower gets N421M, Jets out of Nigeria' [Online] Available: <https://www.vanguardngr.com/2017/12/ikoyi-cash-whistleblower-gets-n421m-jets-nigeria/> (May 13, 2018)
15. Lawal T and Victor O. K, (2012) 'Combating Corruption in Nigeria', *International Journal of Academic Research in Economic and Management Sciences*, Vol. 1, No 4 pp 1-7.
16. Lewis D and Carr I, (2010), 'Combating Corruption through Employment Law and Whistleblower Protection', *Industrial Law Journal*, Vol. 39 pp. 1-30.
17. Maheran Z, (2015) 'Antecedent Factors of Whistle Blowing in Organisations' *Procedia Economics and Finance* 28, pp. 230-234.
18. Nnochiri I, (2017) 'Ekweremadu: Police Docks Whistle Blower for giving false Information, Remanded in Prison' [Online] Available: <https://www.vanguardngr.com/2017/05/ekweremadu-police-docks-whistle-blowergiving-false-information-remanded-prison> (March 13, 2018)
19. Nwakanma O, (2016) 'The DSS Arrest of Judges, [Online] Available: <https://www.vanguard.com/2016/10/dssarrest-judges> (March, 25, 2018)
20. Ogbu S. U (2017), 'Whistle Blowing Policy as a Mechanism for Energising the War against Corruption in Nigeria', *International Journal of International Relations, Media and Mass communication Studies*, Vol. 3, No 4, pp. 26-42.
21. Ogundipe S, (2017) 'What I know about Ikoyi House where EFCC found over N13 Billion — Former PDP Chairman, [Online] Available: <https://www.premiumtimesng.com/news/headlines/228778-i-know-ikoyi-house-efccfound-n13-billion-former-pdp-chairman.html> (March 29, 2018)
22. Ojibara I I, [2017] 'A Governing Party in Disarray: Executive-Legislative Relations under APC Government' *Global Journal of Human-Social*

Science: Political Science (17)(1) 40-50.

23. Oladeinde O, (2018) ‘Whistle Blower’s Reinstatement: CSNAC Hails Judiciary, demands Okiro’s Prosecution’ [Online] Available: <https://www.premiumtimesng.com/news/more-news/262226-whistleblowersreinstatement-csnac-hails-judiciary-demands-okiros-prosecution.html> (March 18, 2018)
24. Onuegbulam M. C, (2017) ‘Whistle Blowing Policy and the Fight against Corruption in Nigeria: Implications for Criminal Justice and Due Process’, Nnamdi Azikiwe University Journal of International Law and Jurisprudence 8(2), pp. 174-179.
25. Puni A, Agyemang C. B and Asamoah E. S, (2016) ‘Religiosity, Job Status and Whistle-blowing: Evidence from Micro-Finance Companies’, International Journal of Business and Social Research, Vol. 06, Issue 02 pp. 38-47.
26. Samad K A and Khalid H, ‘Whistle Blowing as an Aspect of Amar Ma’ Aruf Nahi Munkar in Institutional Governance’, A Paper presented on International Conference on Aqidah, Dakwah and Syariah (IRSYAD 2015) held on 12-13 October 2015, in Kuala Lumpur, Malaysia 1-11
27. Schultz D and Harutyunyan K. (2015) ‘Combating Corruption: The Development of Whistle Blowing Laws in United States, Europe and Armenia’, Journal of International Comparative Jurisprudence 1 pp. 87-97.
28. Smith R, (2013) ‘Whistle Blowing and Hierarchical Bureaucracy: Re-Thinking the Relationship’, E-Journal of International and Comparative Labour Studies, Vol. 3 pp. 1-24.
29. Taiwo S. F, (2015) ‘Effects of Whistle Blowing Practices on Organizational Performance in Nigerian Public Sector: Empirical Facts from selected Local Governments in Lagos and Ogun States’, Journal of Marketing and Management Vol. 6, No 1 pp. 41-61.
30. Udude K O and Igwe O I, [2017] ‘Judges, Political Jurisprudence and Upperworld Crime’ (7)(1) International Journal of Social Sciences and Humanities Review 238-240.
31. Uys T, (2009), ‘Rational Loyalty and Whistle Blowing: The South African Context’, Current Sociology, Vol. 56, No 6. pp. 904-921.