the same transaction unless Congress has "spoken in language that is clear and definite" [147] to pronounce its intent that multiple punishments indeed be imposed. The commonly used test in determining whether Congress would have wanted to punish as separate offenses conduct occurring in the same transaction, absent otherwise clearly expressed intent, is the "same evidence" rule. The rule, announced in *Blockburger v. United States*,[148] "is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." Thus, in *Gore v. United States*,[149] the Court held that defendant's one act of selling narcotics had violated three distinct criminal statutes, each of which required proof of a fact not required by the others; prosecuting him on all three counts in the same proceeding was therefore permissible.[150] So too, the same evidence rule does not upset the "established doctrine" that, for double jeopardy purposes, "a conspiracy to commit a crime is a separate offense from the crime itself," [151] or the related principle that Congress may prescribe that predicate offenses and "continuing criminal enterprise" are separate offenses.[152] On the other hand, in *Whalen v. United States*,[153] the Court determined that a defendant could not be separately punished for rape and for killing the same victim in the perpetration of the rape, because it is not

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[147] United States v. Universal C.I.T. Corp., 344 U.S. 218, 221–22 (1952).

[148] 284 U.S. 299, 304 (1932). This case itself was not a double jeopardy case, but it derived the rule from Gavieres v. United States, 220 U.S. 338, 342 (1911), which was a double jeopardy case. *See also* Carter v. McClaughry, 183 U.S. 365 (1902); Morgan v. Devine, 237 U.S. 632 (1915); Albrecht v. United States, 273 U.S. 1 (1927); Pinkerton v. United States, 328 U.S. 640 (1946); American Tobacco Co. v. United States, 328 U.S. 781 (1946); United States v. Michener, 331 U.S. 789 (1947); Pereira v. United States, 347 U.S. 1 (1954); Callanan v. United States, 364 U.S. 587 (1961).

[149] 357 U.S. 386 (1958).

[150] *See also* Albernaz v. United States, 450 U.S. 333 (1981); Iannelli v. United States, 420 U.S. 770 (1975) (defendant convicted on two counts, one of the substantive offense, one of conspiracy to commit the substantive offense; defense raised variation of *Blockburger* test, Wharton's Rule requiring that one may not be punished for conspiracy to commit a crime when the nature of the crime necessitates participation of two or more persons for its commission; Court recognized Wharton's Rule as a double-jeopardy inspired presumption of legislative intent but held that congressional intent in this case was "clear and unmistakable" that both offenses be punished separately).

[151] United States v. Felix, 503 U.S. 378, 391 (1992). *But cf.* Rutledge v. United States, 517 U.S. 292 (1996) (21 U.S.C. § 846, prohibiting conspiracy to commit drug offenses, does not require proof of any fact that is not also a part of the continuing criminal enterprise offense under 21 U.S.C. § 848, so there are not two separate offenses).

[152] Garrett v. United States, 471 U.S. 773 (1985) ("continuing criminal enterprise" is a separate offense under the Comprehensive Drug Abuse Prevention and Control Act of 1970).

[153] 445 U.S. 684 (1980).