may be proceeded against by both because each may have different interests to serve.[143] The same conduct may transgress two or more different statutes, because laws reach lesser and greater parts of one item of conduct, or may violate the same statute more than once, as when one robs several people in a group at the same time.

Legislative Discretion as to Multiple Sentences.—It frequently happens that one activity of a criminal nature will violate one or more laws or that one or more violations may be charged.[144] Although the question is not totally free of doubt, it appears that the Double Jeopardy Clause does not limit the legislative power to split a single transaction into separate crimes so as to give the prosecution a choice of charges that may be tried in one proceeding, thereby making multiple punishments possible for essentially one transaction.[145] "Where . . . a legislature specifically authorizes cumulative punishment under two statutes, regardless of whether those two statutes proscribe the 'same' conduct under *Blockburger*, a court's task of statutory construction is at an end and . . . the trial court or jury may impose cumulative punishment under such statutes in a single trial." [146]

The clause does, however, create a rule of construction—a presumption against the judiciary imposing multiple punishments for

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[143] *See* discussion *supra* under "Development and Scope."

[144] There are essentially two kinds of situations here. There are "double-description" cases in which criminal law contains more than one prohibition for conduct arising out of a single transaction. *E.g.*, Gore v. United States, 357 U.S. 386, 392–93 (1958) (one sale of narcotics resulted in three separate counts: (1) sale of drugs not in pursuance of a written order, (2) sale of drugs not in the original stamped package, and (3) sale of drugs with knowledge that they had been unlawfully imported). And there are "unit-of-prosecution" cases in which the same conduct may violate the same statutory prohibition more than once. *E.g.*, Bell v. United States, 349 U.S. 81 (1955) (defendant who transported two women across state lines for an immoral purpose in one trip in same car indicted on two counts of violating Mann Act). *See* Westen & Drubel, *Toward a General Theory of Double Jeopardy*, 1978 SUP. CT. REV. 81, 111–22.

[145] Albernaz v. United States, 450 U.S. 333, 343–44 (1981) (defendants convicted on separate counts of conspiracy to import marijuana and conspiracy to distribute marijuana, both charges relating to the same marijuana.) The concurrence objected that the clause does preclude multiple punishments for separate statutory offenses unless each requires proof of a fact that the others do not. Id. at 344. Because the case involved separate offenses that met this test, *Albernaz* strictly speaking is not a square holding and previous dicta is otherwise, but *Albernaz's* dicta is well-considered in view of the positions of at least four of its Justices who have objected to the dicta in other cases suggesting a constitutional restraint by the clause. Whalen v. United States, 445 U.S. 684, 695, 696, 699 (1980) (Justices White, Blackmun, Rehnquist, and Chief Justice Burger).

[146] Missouri v. Hunter, 459 U.S. 359, 368–69 (1983) (separate offenses of "first degree robbery," defined to include robbery under threat of violence, and "armed criminal action"). Only Justices Marshall and Stevens dissented, arguing that the legislature should not be totally free to prescribe multiple punishment for the same conduct, and that the same rules should govern multiple prosecutions and multiple punishments.