the laws of more than one unit.[52] Although the Court had long accepted in dictum the principle that prosecution by two governments of the same defendant for the same conduct would not constitute double jeopardy, it was not until *United States v. Lanza*[53] that the conviction in federal court of a person previously convicted in a state court for performing the same acts was sustained. "We have here two sovereignties, deriving power from different sources, capable of dealing with the same subject-matter within the same territory. . . . Each government in determining what shall be an offense against its peace and dignity is exercising its own sovereignty, not that of the other."[54] The "dual sovereignty" doctrine is not only tied into the existence of two sets of laws often serving different federal-state purposes and the now overruled principle that the Double Jeopardy Clause restricts only the national government and not the states,[55] but it also reflects practical considerations that undesirable consequences could follow an overruling of the doctrine. Thus, a state might preempt federal authority by first prosecuting and providing for a lenient sentence (as compared to the possible federal sentence) or acquitting defendants who had the sympathy of state authorities as against federal law enforcement.[56] The application of the clause to the states has therefore worked no change in the "dual sovereign" doctrine.[57] The dual sovereignty doctrine has also been applied to permit successive prosecutions by two states

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[52] The problem was recognized as early as Houston v. Moore, 18 U.S. (5 Wheat.) 1 (1820), and the rationale of the doctrine was confirmed within thirty years. Fox v. Ohio, 46 U.S. (5 How.) 410 (1847); United States v. Marigold, 50 U.S. (9 How.) 560 (1850); Moore v. Illinois, 55 U.S. (14 How.) 13 (1852).

[53] 260 U.S. 377 (1922).

[54] 260 U.S. at 382. *See also* Hebert v. Louisiana, 272 U.S. 312 (1924); Screws v. United States, 325 U.S. 91, 108 (1945); Jerome v. United States, 318 U.S. 101 (1943).

[55] Benton v. Maryland, 395 U.S. 784 (1969), extended the clause to the states.

[56] Reaffirmation of the doctrine against double jeopardy claims as to the Federal Government and against due process claims as to the states occurred in Abbate v. United States, 359 U.S. 187 (1959), and Bartkus v. Illinois, 359 U.S. 121 (1959), both cases containing extensive discussion and policy analyses. The Justice Department follows a policy of generally not duplicating a state prosecution brought and carried out in good faith, *see* Petite v. United States, 361 U.S. 529, 531 (1960); Rinaldi v. United States, 434 U.S. 22 (1977), and several provisions of federal law forbid a federal prosecution following a state prosecution. *E.g.*, 18 U.S.C. §§ 659, 660, 1992, 2117. The Brown Commission recommended a general statute to this effect, preserving discretion in federal authorities to proceed upon certification by the Attorney General that a United States interest would be unduly harmed if there were no federal prosecution. National Commission on Reform of Federal Criminal Laws, Final Report 707 (1971).

[57] United States v. Wheeler, 435 U.S. 313 (1978) (dual sovereignty doctrine permits federal prosecution of an Indian for statutory rape following his plea of guilty in a tribal court to contributing to the delinquency of a minor, both charges involving the same conduct; tribal law stemmed from the retained sovereignty of the tribe and did not flow from the Federal Government).