bers of the militia, not to members of the regular armed forces. In 1969, in *O'Callahan v. Parker*, the Court held that offenses that are not "service connected" may not be punished under military law, but instead must be tried in the civil courts in the jurisdiction where the acts took place.[34] In 1987, however, this decision was overruled, with the Court emphasizing the "plain language" of Article I, § 8, clause 14,[35] and not directly addressing any possible limitation stemming from the language of the Fifth Amendment.[36] "[T]he requirements of the Constitution are not violated where, as here, a court-martial is convened to try a serviceman who was a member of the armed services at the time of the offense charged."[37] Even under the service connection rule, it was held that offenses against the laws of war, whether committed by citizens or by alien enemy belligerents, could be tried by a military commission.[38]

DOUBLE JEOPARDY

Development and Scope

"The constitutional prohibition against 'double jeopardy' was designed to protect an individual from being subjected to the hazards of trial and possible conviction more than once for an alleged offense. . . . The underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may

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[34] 395 U.S. 258 (1969); *see also* Relford v. Commandant, 401 U.S. 355 (1971) (offense committed on military base against persons lawfully on base was service connected). But courts-martial of civilian dependents and discharged servicemen have been barred. Id. *See* "Trial and Punishment of Offenses: Servicemen, Civilian Employees, and Dependents" under Article I.

[35] This clause confers power on Congress to "make rules for the government and regulation of the land and naval forces."

[36] Solorio v. United States, 483 U.S. 435 (1987). A 5–4 majority favored overruling *O'Callahan*: Chief Justice Rehnquist's opinion for the Court was joined by Justices White, Powell, O'Connor, and Scalia. Justice Stevens concurred in the judgment but thought it unnecessary to reexamine *O'Callahan*. Dissenting Justice Marshall, joined by Justices Brennan and Blackmun, thought the service connection rule justified by the language of the Fifth Amendment's exception, based on the nature of cases (those "*arising in* the land or naval forces") rather than the status of defendants.

[37] 483 U.S. at 450–51.

[38] *Ex parte* Quirin, 317 U.S. 1, 43, 44 (1942).