the prosecution had failed to rebut defendant's proof of insanity. In directing that the defendant could not be retried, the Court observed that if the trial court "had so held in the first instance, as the reviewing court said it should have done, a judgment of acquittal would have been entered and, of course, petitioner could not be retried for the same offense. . . . [I]t should make no difference that the reviewing court, rather than the trial court, determined the evidence to be insufficient."[132] The policy underlying the clause of not allowing the prosecution to make repeated efforts to convict forecloses giving the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding. On the other hand, if a reviewing court reverses a jury conviction because of its disagreement on the *weight* rather than the *sufficiency* of the evidence, retrial is permitted; the appellate court's decision does not mean that acquittal was the only proper course, hence the deference required for acquittals is not merited.[133] Also, the *Burks* rule does not bar reprosecution following a reversal based on erroneous admission of evidence, even if the remaining properly admitted evidence would be insufficient to convict.[134]

Sentence Increases.—The Double Jeopardy Clause protects against imposition of multiple punishment for the same offense.[135] The application of the principle leads, however, to a number of complexities. In a simple case, it was held that where a court inadvertently imposed both a fine and imprisonment for a crime for which the law authorized one or the other but not both, it could not, after the fine had been paid and the defendant had entered his short term of confinement, recall the defendant and change its judgment by

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[132] Id. at 10–11. *See also* Greene v. Massey, 437 U.S. 19 (1978) (remanding for determination whether appellate majority had reversed for insufficient evidence or whether some of the majority had based decision on trial error); Hudson v. Louisiana, 450 U.S. 40 (1981) (*Burks* applies where appellate court finds some but insufficient evidence adduced, not only where it finds no evidence). *Burks* was distinguished in Justices of Boston Mun. Court v. Lydon, 466 U.S. 294 (1984), which held that a defendant who had elected to undergo a bench trial with no appellate review but with the right of trial *de novo* before a jury (and with appellate review available) could not bar trial *de novo* and reverse his bench trial conviction by asserting that the conviction had been based on insufficient evidence. The two-tiered system in effect gave the defendant two chances at acquittal; under those circumstances jeopardy was not terminated by completion of the first entirely optional stage.

[133] Tibbs v. Florida, 457 U.S. 31 (1982). The decision was 5-to-4, the dissent arguing that weight and insufficiency determinations should be given identical Double Jeopardy Clause treatment. Id. at 47 (Justices White, Brennan, Marshall, and Blackmun).

[134] Lockhart v. Nelson, 488 U.S. 33 (1988) (state may reprosecute under habitual offender statute even though evidence of a prior conviction was improperly admitted; at retrial, state may attempt to establish other prior convictions as to which no proof was offered at prior trial).

[135] *Ex parte* Lange, 85 U.S. (18 Wall.) 163, 173 (1874); North Carolina v. Pearce, 395 U.S. 711, 717 (1969).