take jurisdiction of it to the exclusion of the other. The United States had declared the killing to be murder or manslaughter, according to the circumstances of the case, and provided for the punishment of the persons guilty of it in its own courts. The state also had a law providing for the punishment of persons guilty of such crimes, when committed within its geographical limits, not excluding this reservation. And while the latter comprehends the unlawful killing of any human being within the peace of the state, the former only extends to such killing of a human being known as a tribal Indian by a white man, and *vice versa*. But the crimes defined by these laws, however similar in circumstance or origin, are legally distinct. They are offenses against different sovereignties and triable in different courts.

In *U. S.* v. *Martin, supra*, 478, it is "conceded that the admission of Oregon into the Union upon an equality with the other states, without any special reservation of jurisdiction over the place then known and occupied as the Umatilla Indian reservation, extended the jurisdiction of the state thereover as to all subjects constitutionally within its power of legislation, such as a crime committed thereon by one white man upon another, and it may be by one Indian upon another." But as this subject of the intercourse between the white man and the Indian is committed by the constitution to the government of the United States, and as congress has provided for the punishment of a white man for the felonious killing of an Indian upon this reservation, and *vice versa*, it is not admitted that the state has any authority over such killing, or power to punish or absolve the person committing the same. Local interference in such cases generally results in the punishment of the Indian and the acquittal of the white man.

Most of the Indian wars which have desolated the frontier of this country, in the last 30 years, have been the direct result of crimes committed by a few lawless and savage white men upon Indians, which the local authorities were powerless or indisposed to punish. As a rule, the proceedings in these tribunals have resulted in one judgment for the white man and another for the red one. No white man was ever hung for killing an Indian, and no Indian tried for killing a white man ever escaped the gallows. But it may be that the state can punish acts growing out of the intercourse between the whites and Indians, until congress vests the jurisdiction thereof exclusively in the national courts. See *Coleman* v. *Tennessee*, 97 U. S. 514. But be this as it may, and assuming for the present that the state has authority to provide for the trial and punishment or acquittal of a white person charged with the commission of a wrong upon the person or property of an Indian, on this reservation, still the pleas of a former acquittal are not good. The crime set forth in these pleas, of which it thereby appears the defendants were acquitted in the state court, is not the same crime charged in this indictment. The former is a

crime committed by the doing of an act which violated a law of the state of Oregon, while the latter is a crime arising out of a violation of a law of the United States.

A person living under two governments or jurisdictions, as does every inhabitant of the states of this Union, may commit two crimes by doing or omitting one act—one against the state and the other against the United States. And in such case the conviction or acquittal of the one crime, in a forum of the state, is no bar to a prosecution for the other, in a forum of the United States. The maxim, *nemo debet bis puniri pro uno delicto*, now improved and incorporated into the constitution of the United States (fifth amendment) in the words, "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb," does not apply, for the offenses are not the same. This inhibition is a limitation upon the power of the government of the United States, and not that of the state, (*Barron* v. *Mayor, etc.*, 7 Pet. 247; *Twitchell* v. *Com.* 7 Wall. 325,) and its only effect is to restrain the former from putting any person in jeopardy twice for the same offense; that is, an offense defined by its laws and triable in its courts. It matters not how often a person has been put in jeopardy elsewhere or otherwise on account of the act or conduct constituting such crime; it is no defense to a prosecution, therefore, in the courts of the United States.

In *Fox* v. *Ohio*, 5 How. 432, the supreme court held that the state of Ohio could punish a person for passing a counterfeit coin, though made in the similitude of a dollar of the coinage of the United States. In *U. S.* v. *Marigold*, 9 How. 565, the same court held that the United States had authority to punish the same act, as incident to its power to coin money and regulate the value thereof. In this case Mr. Justice DANIEL, speaking for the court, (page 569,) said:

"This court, in the case of *Fox* v. *Ohio*, have taken care to point out that the same act might, as to its character and tendencies, and the consequences it involved, constitute an offense against both the state and the federal governments, and might draw to its commission the penalties denounced by either as appropriate to its character in reference to each."

In *Moore* v. *People*, 14 How. 17, it was held that the act of Illinois making it an offense to harbor or secrete a fugitive from labor was not in conflict with the constitution or any law of the United States, and that an act may be an offense both against the law of the state and another of the United States. Mr. Justice GRIER, in delivering the opinion of the court, (page 20,) said:

"Every citizen of the United States is also a citizen of a state or territory. He may be said to owe allegiance to two sovereigns, and may be liable to punishment for an infraction of the law of either. The same act may be an offense or transgression of the laws of both. Thus, an assault upon the marshal of the United States, and hindering him in the execution of legal process, is a high offense against the United States, for which the perpetrator is liable to punishment; and the same act may also be a gross breach of the peace of the state, a riot, assault, or a murder, and subject the same person to a pun-

ishment, under the state laws, for a misdemeanor or felony. That either or both may, if they see fit, punish such an offender, cannot be doubted. Yet it cannot be truly avowed that the offender has been twice punished for the same offense, but only that by one act he has committed two offenses, for each of which he is justly punishable. He could not plead the punishment of one in bar to a conviction of the other."

In *U. S.* v. *Cruikshank*, 92 U. S. 542, Mr. Chief Justice WAITE, in discussing the subject of citizenship of the state and the United States, disposes of this question in the following clear statement, that amounts, I think, to demonstration:

"The people of the United States resident within any state are subject to two governments: one state and the other national; but there need be no conflict between the two. The power which the one possesses the other does not. They are established for different purposes, and have separate jurisdictions. Together they make one whole, and furnish the people of the United States with a complete government, ample for the protection of all their rights at home and abroad. True, it may sometimes happen that a person is amenable to both jurisdictions for one and the same act. Thus, if a marshal of the United States is unlawfully resisted while executing the process of the courts within a state, and the resistance is accompanied by an assault upon the officer, the sovereignty of the United States is violated by the resistance, and that of the state by the breach of the peace in the assault. So, too, if one passes counterfeited coin of the United States within a state, it may be an offense against the United States and the state: the United States, because it discredits the coin; and the state, because of the fraud upon him to whom it is passed. This does not, however, necessarily imply that the two governments possess powers in common, or bring them into conflict with each other. It is the natural consequence of a citizenship which owes allegiance to two sovereigns and claims protection from both. The citizen cannot complain, because he has voluntarily submitted himself to such form of government. He owes allegiance to the two departments, so to speak, and, within their respective spheres, must pay the penalties which each exacts for disobedience to its laws. In return, he can demand protection from each within its own jurisdiction."

Upon these authorities and on principle it is clear that the pleas are bad. The defendants have never been tried for the offense charged in this indictment. For either, the state court before which they were tried had no jurisdiction in the premises, and then the proceeding set forth in the pleas was a nullity; or if it had, it was of an offense against the law of the state and not the United States. But, after all, the most serious argument in support of this defense has been the hardship of being compelled to submit to two trials for one act. But that is no defense to the indictment, however much, in a proper case, it might operate to prevent the finding or prosecution of a second one therefor. As was said by Mr. Justice DANIEL in *Fox* v. *Ohio*, *supra*, 435, in reply to the same suggestion:

"It is almost certain that in the benignant spirit in which the institutions both of the state and federal systems are administered, an offender, who should have suffered the penalties denounced by the one, would not be subjected a second time to punishment by the other, for acts essentially the same, unless, indeed, this might occur in instances of peculiar enormity, or when the public safety demanded extraordinary rigor."