tiple punishment for the "same" prior offense, but instead is a stiffened penalty for the later crime.[165]

The "Same Transaction" Problem.—The same conduct may also give rise to multiple offenses in a way that would satisfy the *Blockburger* test if that conduct victimizes two or more individuals, and therefore constitutes a separate offense as to each of them. In *Hoag v. New Jersey*,[166] before the Double Jeopardy Clause was applied to the states, the Court found no due process problem in successive trials arising out of a tavern hold-up in which five customers were robbed. *Ashe v. Swenson*,[167] however, presented the Court with the *Hoag* fact situation directly under the Double Jeopardy Clause. The defendant had been acquitted at trial of robbing one player in a poker game; the defense offered no testimony and did not contest evidence that a robbery had taken place and that each of the players had lost money. A second trial was held on a charge that the defendant had robbed a second of the seven poker players, and on the basis of stronger identification testimony the defendant was convicted. Reversing the conviction, the Court held that the doctrine of collateral estoppel[168] was a constitutional rule made applicable to the states through the Double Jeopardy Clause. Because the only basis upon which the jury could have acquitted the defendant at his first trial was a finding that he was not present at the robbery, hence was not one of the robbers, the state could not relitigate that issue; with that issue settled, there could be no conviction.[169]

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[165] Monge v. California, 524 U.S. 721, 728 (1998).

[166] 356 U.S. 464 (1958). *See also* Ciucci v. Illinois, 356 U.S. 571 (1958).

[167] 397 U.S. 436 (1970).

[168] "'Collateral estoppel' is an awkward phrase . . . [which] means simply that when an issue of ultimate fact has once been determined by a final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." Id. at 443. First developed in civil litigation, the doctrine was applied in a criminal case in United States v. Oppenheimer, 242 U.S. 85 (1916). *See also* Sealfon v. United States, 332 U.S. 575 (1948). The term "collateral estoppel" has been replaced by "issue preclusion," which also includes the doctrine formerly known as "direct estoppel." Taylor v. Sturgell, 553 U.S. ___, No. 07–371, slip op. at 9, n.5 (2008), quoted in Bobby v. Bies, 556 U.S. ___, No. 08–598, slip op. at 2 n.1 (2009).

[169] Ashe v. Swenson, 397 U.S. 436, 466 (1970). *See also* Harris v. Washington, 404 U.S. 55 (1971); Turner v. Arkansas, 407 U.S. 366 (1972). *Cf.* Dowling v. United States, 493 U.S. 342 (1990), in which the Court concluded that the defendant's presence at an earlier crime for which he had been acquitted had not necessarily been decided in his acquittal. *Dowling* is distinguishable from *Ashe*, however, because in *Dowling* the evidence relating to the first conviction was not a necessary element of the second offense. In Bobby v. Bies, 556 U.S. ___, No. 08–598 (2009), the Court noted that "issue preclusion is a plea available to prevailing parties. The doctrine bars relitigation of determinations necessary to the ultimate outcome of a prior proceeding." Slip op. at 2–3. "In addition, even where the core requirements of issue preclusion are met, an exception to the general rule may apply when a 'change in [the] applicable legal context' intervenes." Slip op. at 8, quoting Restatement (Second) of Judgments, § 28, Comment c.