for the same conduct,[58] and to permit a federal prosecution after a conviction in an Indian tribal court for an offense stemming from the same conduct.[59] Of course, when in fact two different units of the government are subject to the same sovereign, the Double Jeopardy Clause does bar separate prosecutions by them for the same offense.[60]

The clause speaks of being put in "jeopardy of life or limb," which as derived from the common law, generally referred to the possibility of capital punishment upon conviction, but it is now settled that the clause protects with regard "to every indictment or information charging a party with a known and defined crime or misdemeanor, whether at the common law or by statute."[61] Despite the clause's literal language, it can apply as well to sanctions that are civil in form if they clearly are applied in a manner that constitutes "punishment."[62] Ordinarily, however, civil *in rem* forfeiture proceedings

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[58] Heath v. Alabama, 474 U.S. 82 (1985) (defendant who crossed state line in the course of a kidnap and murder was prosecuted for murder in both states).

[59] United States v. Lara, 541 U.S. 193 (2004) (federal prosecution for assaulting a federal officer after tribal conviction for "violence to a policeman"). The Court concluded that Congress has power to recognize tribal sovereignty to prosecute nonmember Indians, that Congress had done so, and that consequently the tribal prosecution was an exercise of tribal sovereignty, not an exercise of delegated federal power on which a finding of double jeopardy could be based.

[60] Grafton v. United States, 206 U.S. 333 (1907) (trial by military court-martial precluded subsequent trial in territorial court); Waller v. Florida, 397 U.S. 387 (1970) (trial by municipal court precluded trial for same offense by state court). It was assumed in an early case that refusal to answer questions before one House of Congress could be punished as a contempt by that body and by prosecution by the United States under a misdemeanor statute, *In re* Chapman, 166 U.S. 661, 672 (1897), but there had been no dual proceedings in that case and it seems highly unlikely that the case would now be followed. *Cf.* Colombo v. New York, 405 U.S. 9 (1972).

[61] *Ex parte* Lange, 85 U.S. (18 Wall.) 163, 169 (1874). The clause generally has no application in noncriminal proceedings. Helvering v. Mitchell, 303 U.S. 391 (1938).

[62] The clause applies in juvenile court proceedings that are formally civil. Breed v. Jones, 421 U.S. 519 (1975). *See also* United States v. One Assortment of 89 Firearms, 465 U.S. 354 (1984); United States v. Halper, 490 U.S. 435 (1989) (civil penalty under the False Claims Act constitutes punishment if it is overwhelmingly disproportionate to compensating the government for its loss, and if it can be explained only as serving retributive or deterrent purposes); Montana Dep't of Revenue v. Kurth Ranch, 511 U.S. 767 (1994) (tax on possession of illegal drugs, "to be collected only after any state or federal fines or forfeitures have been satisfied," constitutes punishment for purposes of double jeopardy). *But see* Seling v. Young, 531 U.S. 250 (2001) (a statute that has been held to be civil and not criminal in nature cannot be deemed punitive "as applied" to a single individual). The issue of whether a law is civil or punitive in nature is essentially the same for *ex post facto* and for double jeopardy analysis. 531 U.S. at 263.