

Sec. 10—Powers Denied to the States

Cl. 1—Treaties, Coining Money, Etc.

duties, but rather was a punishment for past offenses.¹⁹³⁰ A similar oath required of suitors in the courts also was held void.¹⁹³¹

Changes in Punishment.—Justice Chase in *Calder v. Bull* gave an alternative description of the four categories of *ex post facto* laws, two of which related to punishment. One such category was laws that inflict punishment “where the party was not, by law, liable to any punishment”; the other was laws that inflict greater punishment than was authorized when the crime was committed.¹⁹³²

Illustrative of the first of these punishment categories is “a law enacted after expiration of a previously applicable statute of limitations period [as] applied to revive a previously time-barred prosecution.” Such a law, the Court ruled in *Stogner v. California*,¹⁹³³ is prohibited as *ex post facto*. Courts that had upheld extension of unexpired statutes of limitation had been careful to distinguish situations in which the limitations periods have expired. The Court viewed revival of criminal liability after the law had granted a person “effective amnesty” as being “unfair” in the sense addressed by the *Ex Post Facto* Clause.

Illustrative of the second punishment category are statutes, all applicable to offenses committed prior to their enactment, that changed an indeterminate sentence law to require a judge to impose the maximum sentence,¹⁹³⁴ that required solitary confinement for prisoners previously sentenced to death,¹⁹³⁵ and that allowed a warden to fix, within limits of one week, and keep secret the time of execution.¹⁹³⁶ Because it made more onerous the punishment for crimes committed before its enactment, a law that altered sentencing guidelines to make it more likely that the sentencing authority would impose on a defendant a more severe sentence than was previously likely and making it impossible for the defendant to challenge the sentence was *ex post facto* as to one who had committed the offense prior to the change.¹⁹³⁷ The Court adopted similar reasoning as regards changes in the U.S. Sentencing Guidelines: even though the

¹⁹³⁰ *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 316 (1867).

¹⁹³¹ *Pierce v. Carskadon*, 83 U.S. (16 Wall.) 234, 237–39 (1873).

¹⁹³² 3 U.S. (3 Dall.) 386, 389 (1798).

¹⁹³³ 539 U.S. 607, 632–33 (2003) (invalidating application of California’s law to revive child abuse charges 22 years after the limitations period had run for the alleged crimes).

¹⁹³⁴ *Lindsey v. Washington*, 301 U.S. 397 (1937). But note the limitation of *Lindsey* in *Dobbett v. Florida*, 432 U.S. 282, 298–301 (1977).

¹⁹³⁵ *Holden v. Minnesota*, 137 U.S. 483, 491 (1890).

¹⁹³⁶ *Medley, Petitioner*, 134 U.S. 160, 171 (1890).

¹⁹³⁷ *Miller v. Florida*, 482 U.S. 423 (1987). But see *California Dep’t of Corrections v. Morales*, 514 U.S. 499 (1995) (a law amending parole procedures to decrease frequency of parole-suitability hearings is not *ex post facto* as applied to prisoners who committed offenses before enactment). The opinion modifies previous opinions that had held some laws impermissible because they operated to the disadvantage