when the act was committed."[1922] The bar is directed only against legislative action and does not touch erroneous or inconsistent decisions by the courts.[1923]

The fact that a law is *ex post facto* and invalid as to crimes committed prior to its enactment does not affect its validity as to subsequent offenses.[1924] A statute that mitigates the rigor of the law in force at the time the crime was committed,[1925] or merely penalizes the continuance of conduct lawfully begun before its passage, is not *ex post facto*. Thus, measures penalizing the failure of a railroad to cut drains through existing embankments[1926] or making illegal the continued possession of intoxicating liquors which were lawfully acquired[1927] have been held valid.

Denial of Future Privileges to Past Offenders.—The right to practice a profession may be denied to one who was convicted of an offense before the statute was enacted if the offense reasonably may be regarded as a continuing disqualification for the profession. Without offending the Constitution, statutes barring a person from practicing medicine after conviction of a felony,[1928] or excluding convicted felons from waterfront union offices unless pardoned or in receipt of a parole board's good conduct certificate,[1929] may be enforced against a person convicted before the measures were passed. But the test oath prescribed after the Civil War, under which office holders, attorneys, teachers, clergymen, and others were required to swear that they had not participated in the rebellion or expressed sympathy for it, was held invalid on the ground that it had no reasonable relation to fitness to perform official or professional

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[1922] Collins v. Youngblood, 497 U.S. 37, 42 (1990) (quoting Beazell v. Ohio, 269 U.S. 167, 169–70 (1925)). Alternatively, the Court described the reach of the clause as extending to laws that "alter the definition of crimes or increase the punishment for criminal acts." Id. at 43. Justice Chase's oft-cited formulation has a fourth category: "every law that aggravates a crime, or makes it greater than it was, when committed." Calder v. Bull, 3 U.S. (3 Dall.) 386, 390 (1798), *cited in*, *e.g.*, Carmell v. Texas, 529 U.S. 513, 522 (2000).

[1923] Frank v. Mangum, 237 U.S. 309, 344 (1915); Ross v. Oregon, 227 U.S. 150, 161 (1913). However, an unforeseeable judicial enlargement of a criminal statute so as to encompass conduct not covered on the face of the statute operates like an *ex post facto* law if it is applied retroactively and violates due process in that event. Bouie v. City of Columbia, 378 U.S. 347 (1964). *See* Marks v. United States, 430 U.S. 188 (1977) (applying *Bouie* in context of § 9, cl. 3). *But see* Splawn v. California, 431 U.S. 595 (1977) (rejecting application of *Bouie*). The Court itself has not always adhered to this standard. *See* Ginzburg v. United States, 383 U.S. 463 (1966).

[1924] Jaehne v. New York, 128 U.S. 189, 194 (1888).

[1925] Rooney v. North Dakota, 196 U.S. 319, 325 (1905).

[1926] Chicago & Alton R.R. v. Tranbarger, 238 U.S. 67 (1915).

[1927] Samuels v. McCurdy, 267 U.S. 188 (1925).

[1928] Hawker v. New York, 170 U.S. 189, 190 (1898). *See also* Reetz v. Michigan, 188 U.S. 505, 509 (1903); Lehmann v. State Board of Public Accountancy, 263 U.S. 394 (1923).

[1929] DeVeau v. Braisted, 363 U.S. 144, 160 (1960).