to a state; nor does a state have standing to invoke the clause for its citizens against the Federal Government.[1812]

EX POST FACTO LAWS

Definition

Both federal and state governments are prohibited from enacting *ex post facto* laws,[1813] and the Court applies the same analysis whether the law in question is a federal or a state enactment. When these prohibitions were adopted as part of the original Constitution, many persons understood the term *ex post facto* laws to "embrace all retrospective laws, or laws governing or controlling past transactions, whether . . . of a civil or a criminal nature." [1814] But in the early case of *Calder v. Bull*,[1815] the Supreme Court decided that the phrase, as used in the Constitution, was a term of art that applied only to penal and criminal statutes. But, although it is inapplicable to retroactive legislation of any other kind,[1816] the constitutional prohibition may not be evaded by giving a civil form to a measure that is essentially criminal.[1817] Every law that makes criminal an act that was innocent when done, or that inflicts a greater punishment than the law annexed to the crime when committed, is an *ex post facto* law within the prohibition of the Constitution.[1818] A prosecution under a temporary statute that was extended before the date originally set for its expiration does not offend this provision even though it is instituted subsequent to the extension of the statute's duration for a violation committed prior thereto.[1819] Because this provision does not apply to crimes committed outside the jurisdiction of the United States against the laws of a foreign country, it is immaterial in extradition proceedings whether the foreign law is *ex post facto* or not.[1820]

What Constitutes Punishment

The issue of whether a law is civil or punitive in nature is essentially the same for *ex post facto* and for double jeopardy analy-

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[1812] South Carolina v. Katzenbach, 383 U.S. 301, 324 (1966).

[1813] The prohibition on state *ex post facto* legislation appears in Art. I, § 10, cl. 1.

[1814] 3 J. Story, Commentaries on the Constitution of the United States 1339 (1833).

[1815] 3 U.S. (3 Dall.) 386, 393 (1798).

[1816] Bankers Trust Co. v. Blodgett, 260 U.S. 647, 652 (1923).

[1817] Burgess v. Salmon, 97 U.S. 381 (1878).

[1818] Calder v. Bull, 3 U.S. (3 Dall.) 386, 390 (1798); *Ex parte* Garland, 71 U.S. (4 Wall.) 333, 377 (1867); Burgess v. Salmon, 97 U.S. 381, 384 (1878).

[1819] United States v. Powers, 307 U.S. 214 (1939).

[1820] Neely v. Henkel, 180 U.S. 109, 123 (1901). *Cf. In re* Yamashita, 327 U.S. 1, 26 (1946) (dissenting opinion of Justice Murphy); Hirota v. MacArthur, 338 U.S. 197, 199 (1948) (concurring opinion of Justice Douglas).