ers.[1794] The clause thus prohibits all legislative acts, "no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial. . . ." [1795] That the Court has applied the clause dynamically is revealed by a consideration of the three cases in which acts of Congress have been struck down as violating it.[1796] In *Ex parte Garland*,[1797] the Court struck down a statute that required attorneys to take an oath that they had taken no part in the Confederate rebellion against the United States before they could practice in federal courts. The statute, and a state constitutional amendment requiring a similar oath of persons before they could practice certain professions,[1798] were struck down as legislative acts inflicting punishment on a specific group the members of which had taken part in the rebellion and therefore could not truthfully take the oath. The clause then lay unused until 1946 when the Court used it to strike down a rider to an appropriations bill forbidding the use of money appropriated in the bill to pay the salaries of three named persons whom the House of Representatives wished discharged because they were deemed to be "subversive." [1799]

Then, in *United States v. Brown*,[1800] a sharply divided Court held void as a bill of attainder a statute making it a crime for a member of the Communist Party to serve as an officer or as an employee of a labor union. Congress could, Chief Justice Warren wrote for the majority, under its commerce power, protect the economy from harm by enacting a prohibition generally applicable to any person who commits certain acts or possesses certain characteristics making him likely in Congress' view to initiate political strikes or other harmful deeds and leaving it to the courts to determine whether a particular person committed the specified acts or possessed the specified characteristics. It was impermissible, however, for Congress to designate a class of persons—members of the Communist Party—as being forbidden to hold union office.[1801] The dissenters viewed the

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[1794] United States v. Brown, 381 U.S. 437, 442–46 (1965). Four dissenting Justices, however, denied that any separation of powers concept underlay the clause. Id. at 472–73.

[1795] United States v. Lovett, 328 U.S. 303, 315 (1946).

[1796] For a rejection of the Court's approach and a plea to adhere to the traditional concept, *see* id. at 318 (Justice Frankfurter concurring).

[1797] 71 U.S. (4 Wall.) 333 (1867).

[1798] Cummings v. Missouri, 71 U.S. (4 Wall.) 277 (1867).

[1799] United States v. Lovett, 328 U.S. 303 (1946).

[1800] 381 U.S. 437 (1965).

[1801] The Court of Appeals had voided the statute as an infringement of First Amendment expression and association rights, but the Court majority did not rely upon this ground. 334 F.2d 488 (9th Cir. 1964). However, in United States v. Robel,