

Sec. 10—Powers Denied to the States

Cl. 1—Treaties, Coining Money, Etc.

actment. The Alaska law requires released sex offenders to register with local police and also provides for public notification via the Internet. The Court accords “considerable deference” to legislative intent; if the legislature’s purpose was to enact a civil regulatory scheme, then the law can be *ex post facto* only if there is “the clearest proof” of punitive effect.¹⁹¹⁷ Here, the Court determined, the legislative intent was civil and non-punitive—to promote public safety by “protecting the public from sex offenders.” The Court then identified several “useful guideposts” to aid analysis of whether a law intended to be non-punitive nonetheless has punitive effect. Registration and public notification of sex offenders are of recent origin, and are not viewed as a “traditional means of punishment.”¹⁹¹⁸ The Act does not subject the registrants to an “affirmative disability or restraint”; there is no physical restraint or occupational disbarment, and there is no restraint or supervision of living conditions, as there can be under conditions of probation. The fact that the law might deter future crimes does not make it punitive. All that is required, the Court explained, is a rational connection to a non-punitive purpose, and the statute need not be narrowly tailored to that end.¹⁹¹⁹ Nor is the act “excessive” in relation to its regulatory purpose.¹⁹²⁰ Rather, the “means chosen are reasonable in light of the [state’s] non-punitive objective” of promoting public safety by giving its citizens information about former sex offenders, who, as a group, have an alarmingly high rate of recidivism.¹⁹²¹

There are three categories of *ex post facto* laws: those “which punish[] as a crime an act previously committed, which was innocent when done; which make[] more burdensome the punishment for a crime, after its commission; or which deprive[] one charged with crime of any defense available according to law at the time

¹⁹¹⁷ 538 U.S. at 92.

¹⁹¹⁸ The law’s requirements do not closely resemble punishments of public disgrace imposed in colonial times; the stigma of Megan’s Law results not from public shaming but from the dissemination of information about a criminal record, most of which is already public. 538 U.S. at 98.

¹⁹¹⁹ 538 U.S. at 102.

¹⁹²⁰ Excessiveness was alleged to stem both from the law’s duration (15 years of notification by those convicted of less serious offenses; lifetime registration by serious offenders) and in terms of the widespread (Internet) distribution of the information.

¹⁹²¹ 538 U.S. at 105. Unlike involuntary civil commitment, where “the magnitude of restraint [makes] individual assessment appropriate,” the state may make “reasonable categorical judgments,” and need not provide individualized determinations of dangerousness. *Id.* at 103.