

## THE EFFECT OF A PARDON

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On January 7, 1939, Governor Olson of California pardoned Tom Mooney, the labor leader convicted more than twenty years ago for perpetration of the San Francisco Preparedness Day bombing of July 22, 1916. "I am convinced", Governor Olson said, "that Mooney is innocent, that he was convicted on perjured testimony and is entitled to pardon."

What are the effects of this pardon? That it releases Mooney from prison and relieves him from further punishment for the offense is clear; but what is its effect upon his right to vote, his credibility as a witness, his record as a first or second offender if he is ever again charged with crime, and most important of all, his "guilt"?

In the leading case of *Ex parte Garland*, the United States Supreme Court said:

"A pardon reaches both the punishment prescribed for the offense and the guilt of the offender . . . it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense . . . it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity."<sup>1</sup>

This statement has been often repeated in other cases, both by the Supreme Court and by state courts.<sup>2</sup> It would seem, from this, that Tom Mooney is as fully innocent as if he had never been convicted, or as if he had been acquitted by the court.

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<sup>1</sup> 71 U. S. 333, 380 (1866).

<sup>2</sup> *Illinois Central Ry. v. Bosworth*, 133 U. S. 92, 103 (1889); *Ex parte Hunt*, 10 Ark. 284, 288 (1850); *People v. Hale*, 64 Cal. App. 523, 533, 222 Pac. 148, 152 (1923); *In re Emmons*, 29 Cal. App. 121, 123, 154 Pac. 619, 620 (1915); *In the Matter of Executive Communication*, 14 Fla. 318, 319 (1872); *Dade Coal Co. v. Haslett*, 83 Ga. 549, 551, 10 S. E. 435 (1889); *United States v. Athens Armory*, 35 Ga. 344, 363 (1868); *Kelley v. State*, 204 Ind. 612, 625, 185 N. E. 453, 458 (1933); *Cowan v. Prowse*, 93 Ky. 156, 172, 19 S. W. 407, 411 (1892); *State v. Baptiste and Martini*, 26 La. Ann. 134, 137 (1874); *Penobscot Bar v. Kimball*, 64 Me. 140, 146 (1875); *Jones v. Board of Registrars*, 56 Miss. 766, 768 (1879); *People v. Court of Sessions*, 141 N. Y. 288, 294, 36 N. E. 386, 388 (1894); *State v. Keith*, 63 N. C. 140, 143 (1868); *Knapp v. Thomas*, 39 Ohio St. 377, 381 (1883); *Wood v. Fitzgerald*, 3 Ore. 568, 577 (1870); *Diehl v. Rodgers*, 169 Pa. 316, 322, 32 Atl. 424, 426 (1895); *Carr v. State*, 19 Tex. App. 635, 661 (1885); *In re Conditional Discharge of Convicts*, 73 Vt. 414, 428, 51 Atl. 10, 14 (1901); *Edwards v. Commonwealth*, 78 Va. 39, 43 (1883). In addition see 4 BL. COMM. \*402; 7 BACON, ABRIDGMENT (1860) 415; STEPHEN, COMMENTARIES ON THE LAWS OF ENGLAND (14th ed. 1903) 4, 422.

In another case, however, the United States Supreme Court spoke of the "confession of guilt implied in the acceptance of a pardon . . ." <sup>3</sup> And the Virginia and West Virginia courts have said: "Pardon may rescue him from the penitentiary or a halter, but it cannot redeem him from the infamy of conviction." <sup>4</sup>

Which is correct? Has Mr. Mooney been cleared of guilt, or merely relieved of further punishment for his crime?

Almost twenty-five years ago, Professor Williston discussed the confused state of the cases, and suggested that the correct rule was as follows:

"The pardon removes all legal punishment for the offense. Therefore if the mere conviction involves certain disqualifications which would not follow from the commission of the crime without conviction, the pardon removes such disqualifications. On the other hand, if character is a necessary qualification and the commission of a crime would disqualify even though there had been no criminal prosecution for the crime, the fact that the criminal has been convicted and pardoned does not make him any more eligible." <sup>5</sup>

The objection to this rule is that it makes no distinction between pardons granted for innocence and pardons granted for other reasons. It is submitted that Professor Williston's rule is correct as applied to pardons *not granted for innocence*, but that pardons granted for this reason should have much broader effect; pardons for innocence should, in the words of the United States Supreme Court, reach both the punishment and the guilt of the offender, and should blot out the guilt as effectively as if he had never committed the offense.

Indeed, to pardon a man for being innocent is a paradox at best. Such a person is entitled to a reversal of the erroneous conviction, and a judicial decision of acquittal (not to mention compensation for the wrong the state has done him). Probably we should liberalize our rules of criminal procedure so as to permit judicial correction of such mistaken convictions at any time. Continental codes are much more liberal in this respect than Anglo-American law. <sup>6</sup>

But while lack of more logical remedy forces us to rely upon the pardoning power to correct such mistakes, justice requires that a pardon granted for this reason be given broader effects than a pardon granted for preventing a prison-break, for example. It may be that

3. *Burdick v. United States*, 236 U. S. 79, 91 (1914).

4. *Ball v. Commonwealth*, 8 Leigh 726, 728 (Va. 1837), quoted in *Younger v. State*, 2 W. Va. 579, 584 (1868).

5. Williston, *Does a Pardon Blot Out Guilt?* 28 HARV. L. REV. 647, 653 (1915).

6. See, for example, the German STRAFPROZESS-ORDNUNG, § 359 ff.

the real perpetrator of the crime has later confessed, and his confession proved true. If it is too late for the courts to reverse the erroneous conviction, are we to say that the governor by pardon can only relieve the unfortunate victim of the mistake from the punishment, but must leave him to carry to the grave the stigma of guilt for a crime of which he has been officially and even conclusively proved innocent? Surely no one would argue for such an outrageous rule. A pardon granted for innocence, if it is to serve its purpose, must be given the same effect as a judicial acquittal.

It is equally clear, however, that no such broad effect should be given to pardons granted for other reasons. A prisoner pardoned for good behavior in prison, or one given a pardon after service of his sentence, in order to restore his civil rights, should not thereupon resume the position of an innocent man, but should continue to be regarded as a convicted criminal who has served time in the penitentiary for his crime. If again convicted of a new crime, he should be treated as a second offender; if offered as a witness in court, his credibility should be subject to the same suspicion as that of any other convicted criminal.

In short, no rational rule as to the effect of a pardon can be stated without distinguishing clearly between pardons granted for innocence and pardons granted for other reasons. A pardon for innocence is an acquittal, and must be given all the effects of an acquittal. A pardon for other reasons is not an acquittal; it leaves the determination of the convict's guilt stand, and only relieves him from the legal consequences of that guilt.

With this distinction in mind, we can review the cases on the subject, and perhaps reduce them to order.

Since, as already said, it is generally agreed that even a pardon not granted for innocence has the effect of relieving from all the legal consequences of conviction, there is no difficulty as to any effect which is clearly a "legal consequence" of conviction. This includes not only freedom from any further incarceration or other legal punishment for the crime, but also such other effects as the loss of civil rights. "The doctrine has generally been accepted by the courts that a pardon, unless limited, restores one to the customary civil rights which ordinarily belong to a citizen of a state."<sup>7</sup> In some states the constitution or statutes specifically so provide;<sup>8</sup> but the courts have generally

7. *State v. Hazzard*, 139 Wash. 487, 492, 247 Pac. 957, 959 (1926). See also *Jones v. Board of Registrars*, 56 Miss. 766, 768 (1879); *Wood v. Fitzgerald*, 3 Ore. 568, 577 (1870).

8. CAL. GEN. LAWS (Deering, Supp. 1933) Act 1908a, § 1, p. 1299; COLO. CONST. Art. VII, § 10; GA. CONST. Art. II, §§ 2, 4; KAN. GEN. STAT. ANN. (1935) § 21-122; LA. CODE CRIM. PROC. ANN. (Dart, 1932) § 736; 4 Mo. STAT. ANN. (Vernon, 1932)

held this to be true even without such specific provision.<sup>9</sup> The right to vote,<sup>10</sup> to serve on a jury,<sup>11</sup> and to testify as a witness,<sup>12</sup> are among the civil rights restored by an unconditional pardon, no matter on what ground it was granted.

Probably the majority of pardons granted throughout the country are for the purpose of restoring these civil rights, after service of sentence. In England and in Pennsylvania, pardons for this purpose are unnecessary, for statutes provide that service of the sentence shall have the same effect as a pardon.<sup>13</sup> The courts have construed these statutes rather literally, to give all the effects of an actual pardon.<sup>14</sup> To hold that such a "pardon" absolves from guilt and makes the ex-convict

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§ 4172; MONT. REV. CODES ANN. (Anderson and McFarland, 1935) § 12263; OHIO CODE ANN. (Throckmorton, 1936) § 13458-1; NEB. COMP. STAT. (1929) § 29-113 *semble*.

9. *Werner v. State*, 44 Ark. 122, 40 S. W. 374 (1884). There was a similar holding in *Yarborough v. State*, 41 Ala. 405 (1868), but the rule in Alabama has since been changed by constitutional amendment. ALA. CONST. ART. V, § 124.

Indeed, a full pardon restored such rights even though the governor adds a proviso that it should not relieve from legal disabilities. *People v. Pease*, 3 Johns. 333 (N. Y. 1803). This is not true in Alabama or Nevada, however. In these states, restoration to citizenship must be specifically expressed in the pardon. ALA. CONST. ART. V, § 124; ALA. CODE ANN. (Michie, 1928) § 365; NEV. COMP. LAWS (1930) § 11557.

10. In the Matter of Executive Communication, 14 Fla. 318 (1872); *Wood v. Fitzgerald*, 3 Ore. 568 (1870); OP. ATT'Y GEN. OF WIS. (1908) 293. In Maryland the constitution provides that a pardon restores the right to vote to anyone who has lost this privilege by virtue of having been convicted of an infamous crime after reaching the age of 21. MD. CONST. ART. I, § 2. This has been construed to mean that if the person was under 21 at the time of conviction, a pardon is not necessary to restore the voting privilege. 15 REP. & OP. ATT'Y GEN. OF MD. (1930) 109; 20 REP. & OP. ATT'Y GEN. OF MD. (1935) 618.

In Connecticut and Rhode Island, the right to vote can be restored only by an act of the legislature. CONN. CONST. AMEND. XVII; CONN. GEN. STAT. (Supp. 1935) § 787c; R. I. CONST. ART. II, § 4. Under the Rhode Island constitution, an executive pardon restores all privileges except that of voting. Opinion of the Judges, 4 R. I. 583 (1858). *Foreman v. Baldwin*, 24 Ill. 298 (1860), holds that a governor's pardon cannot restore competency where the statute provides that a person convicted of certain named offenses shall be deemed infamous and shall forever after be rendered incapable of holding any office of honor, trust, or profit, or of voting at any general election or serving as a juror or giving testimony. But the case seems wrong. The pardoning power is conferred by the constitution and cannot be limited by the legislature. Cf. *People v. Pease*, 3 Johns. 333 (N. Y. 1803).

In North Carolina, restoration of the right to vote is by court order. N. C. CODE ANN. (Michie, 1935) § 385. See also *id.* § 390.

A person convicted of a Federal offense and pardoned by the President is restored to the right to vote in state elections. *Cowan v. Prowse*, 93 Ky. 156, 19 S. W. 407 (1892); *Jones v. Board of Registrars*, 56 Miss. 766 (1879). And apparently this is the only way the right can be restored in such cases. REP. ATT'Y GEN. OF MINN. (1933) § 399.

11. *Easterwood v. State*, 34 Tex. Cr. R. 400, 31 S. W. 294 (1895); *Puryear v. Commonwealth*, 83 Va. 51, 1 S. E. 512 (1887); *State ex rel. Collins, v. Lewis*, 111 La. 693, 35 So. 816 (1904) (right to serve on a grand jury).

12. But the fact of conviction may be shown to impeach credibility. See notes 21-24 *infra*.

13. 9 GEO. IV, c. 32, § 3 (1828); PA. STAT. ANN. (Purdon, 1930) tit. 19, § 893. The English act excepts capital crimes; Pennsylvania excepts first degree murder and perjury. In Nebraska, the discharge warrant granted on expiration of sentence restores civil rights. NEB. COMP. STAT. (1929) § 29-2634; see *Turley v. State*, 74 Neb. 471, 476, 104 N. W. 934, 936 (1905).

14. *Leyman v. Latimer*, 3 Ex. D. 15 (1877), *aff'd*, 3 Ex. D. 352 (1877); *United States ex rel. Malesevic v. Perkins*, 17 F. Supp. 851 (W. D. Pa. 1936).

"as innocent as if he had never committed the crime" would be absurd. Yet that absurd result has actually been reached under the Pennsylvania act. Under the immigration law, providing for deportation of aliens convicted of a felony involving moral turpitude, a federal court has held that an alien convicted in Pennsylvania who has served his sentence cannot be deported because he has been "pardoned".<sup>15</sup>

This case is an extreme example of the mischief that results when a court applies literally the unfounded dictum of *Ex parte Garland* that a pardon "blots out" guilt, and makes the offender a "new man", etc. The case demonstrates also the necessity of distinguishing between pardons for innocence and pardons for other reasons. Service of sentence under these statutes should certainly not be given the effect of a pardon for innocence, but only that of a pardon for reasons other than innocence, i. e., to absolve from further punishment and restore civil rights, but not to undo what is past or blot out of existence a fact, namely, that the person has committed a crime and been sentenced and punished for it.<sup>16</sup>

Although restoration of the right to vote and the right to hold office are usually mentioned together among the effects of a pardon, there is more room for doubt in the latter case. According to the distinction suggested by Professor Williston, it would seem that if good moral character is one of the required qualifications for the office, it should be held that conviction for crime proves lack of such moral character, even though the crime itself has been pardoned, *unless* the pardon was granted on the ground of innocence. What little authority there is on the question seems to agree, however, that even a pardon granted for other reasons restores the right to hold office.<sup>17</sup> Offices forfeited by the conviction, of course, are not automatically restored by a pardon.<sup>18</sup>

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15. United States *ex rel.* Malesevic v. Perkins, 17 F. Supp. 851 (W. D. Pa. 1936).

16. Cf. United States *ex rel.* Palermo v. Smith, 17 F. (2d) 534 (C. C. A. 2d, 1927) and Weedin v. Hempel, 28 F. (2d) 603 (C. C. A. 9th, 1928), both holding that under the provision for deportation of aliens who have been guilty of felonies involving moral turpitude, the fact that the offense has been pardoned is immaterial.

17. See Hildreth v. Heath, 1 Ill. App. 82, 87 (1878), where the court said that a Presidential pardon for a federal offense would remove the disqualification, if any, to hold the office of alderman, although the city charter declared that persons convicted of malfeasance, bribery, etc., shall be ineligible. See also general dicta to the effect that a pardon restores one to all civil rights, including the right to hold office. See State v. Hazzard, 139 Wash. 487, 492, 247 Pac. 957, 959 (1926); OP. ATT'Y GEN. OF COLO. (1933-34) 159. In California, a "restoration to citizenship" is distinguished from a full pardon. The latter restores the right to hold office, but the former does not. Donham v. Gross, 210 Cal. 190, 290 Pac. 884 (1930).

18. State v. Carson, 27 Ark. 469 (1872); State *ex rel.* Webb v. Parks, 122 Tenn. 230, 122 S. W. 977 (1909). A Florida statute expressly states that a pardon does not restore offices forfeited. FLA. COMP. GEN. LAWS ANN. (Skillman, 1927) § 8495. See King v. Turvil, 1 Freem. 197, 198, 89 Eng. Rep. R. 140 (K. B. 1675), where it was said, "In case of simony, though the King doth pardon the simony, yet the disability remains still upon the person and renders him incapable of the benefice"; Smith v. Shel-

The question of the competency of a pardoned criminal to testify as a witness is complicated by a number of factors. At common law, persons who had been convicted of infamous crimes or *crimen falsi* were held incompetent to testify, on the theory that a man who has been guilty of a heinous crime cannot be trusted.<sup>19</sup> And Coke said this was true even though the offense had been pardoned.<sup>20</sup> (But if the reason for the pardon was that the person was in fact innocent of the crime, should he not be competent? Coke does not consider this, but seems to have in mind only pardons granted for other reasons.) But Coke's rule did not prevail. The law soon adopted the rule that a pardon gives a person a "new credit" and restores his capacity to testify, although the fact of conviction might still be shown to affect his credibility.<sup>21</sup> But this rule too seems unsound. If the law is cor-

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bourn, Cro. Eliz. 685, 686 (1598). *But cf.* Bennet v. Easedale, Cro. Car. 55 (1626), where it was held that a pardon of a sentence in the spiritual court of fine, imprisonment, and deprivation, for bribery in the office of chancellor of the archbishop of York, discharged not only the sentence but the consequent disabilities, and enabled the person to continue in the office. And Coke cites the case of a parson convicted of adultery and later pardoned, who was held to be reinstated in his living, even though another had meanwhile been admitted and inducted. 6 Co. 14, 77 Eng. Rep. R. 273.

19. 1 WIGMORE, EVIDENCE (2d ed. 1923) § 519.

20. Brown v. Crashaw, 2 Bulst. 154, 80 Eng. Rep. R. 1028 (1614).

21. Boyd v. United States, 142 U. S. 450 (1892); Yarborough v. State, 41 Ala. 405 (1868) (but this apparently is not the rule today under ALA. CONST. ART. V, § 124); Werner v. State, 44 Ark. 122 (1884); People v. Bowen, 43 Cal. 439 (1872); Trackman v. People, 22 Colo. 83, 43 Pac. 662 (1896); State v. Timmons, 2 Harr. 528 (Del. 1833); State v. Grant, 33 Del. 195, 133 Atl. 790 (1926); Singleton v. State, 38 Fla. 297, 21 So. 21 (1896); Roberson v. Woodfork, 155 Ky. 206, 159 S. W. 793 (1913); State v. Baptiste and Martini, 26 La. Ann. 134 (1874); State v. Kirchner, 23 Mo. App. 349 (1886); State v. Blaisdell, 33 N. H. 388 (1856); Curtis v. Cochran, 50 N. H. 242 (1870); Territory of New Mexico v. Chavez, 8 N. M. 528, 45 Pac. 1107 (1896); People v. Pease, 3 Johns. 333 (N. Y. 1803); United States v. Jones, 2 Wheel. Cr. C. 451 (N. Y. 1824); Diehl v. Rodgers, 169 Pa. 316, 32 Atl. 424 (1895); Jones v. Harris, 1 Strob. L. 160 (S. C. 1846); State v. Dodson, 16 S. C. 453 (1881); Watson v. State, 90 Tex. Cr. R. 576, 237 S. W. 298 (1922); Hunnicutt v. State, 18 Tex. App. 498 (1885); Bennett v. State, 24 Tex. App. 73, 5 S. W. 527 (1887); Crosby's Case, Skinner 578, 90 Eng. Rep. R. 259 (1695); Rookwood's Case, Holt K. B. 683, 685, 90 Eng. Rep. R. 1277 (1696).

Where a person convicted of two offenses is granted a pardon for one of them, he remains under the disability. State v. Foley, 15 Nev. 64 (1880); Miller v. State, 46 Tex. Cr. R. 59, 79 S. W. 567 (1904).

In the older cases, there was some disagreement as to whether a perjurer who had been pardoned was competent. See 2 HAWKINS, PLEAS OF THE CROWN, c. 37, § 52, where the question is said to be "not clearly settled". In Thompson v. United States, 202 Fed. 401 (C. C. A. 9th, 1913) it was held that a pardoned perjurer was competent. *But see* Anglea v. Commonwealth, 10 Gratt. 696, 699 (Va. 1853).

The old English cases also disagreed on the question whether there must be a burning in the hand as well as a pardon, to remove the disqualification. See cases cited in 1 WIGMORE, EVIDENCE (2d ed. 1923) § 523, n. 2.

It was held in some cases that where the disability rested not upon common law, but upon express words of a statute, it could not be removed by a pardon, the pardoning prerogative of the sovereign being controlled by the authority of the express law. Thus, it was held in England that while a pardon will restore to competency a person indicted at common law for perjury, if he is indicted under the statute of 5 ELIZ. c. 9, which expressly declares that no person convicted and attainted of perjury or subornation of perjury shall be received as a witness, he will not be rendered competent by a pardon. Rex v. Ford, 2 Salk. 690, 91 Eng. Rep. R. 585 (1700); Dover v. Maestaer, 5 Esp. 92, 94, 170 Eng. Rep. R. 749 (1803); 3 RUSSELL, CRIMES (9th Am. ed. 1877) 621. This rule was followed in a few American cases governed by state statutes. Foreman v. Baldwin,

rect in its assumption that a convicted felon is not to be trusted, does he become more trustworthy for having been pardoned? Here again, the only logical approach to the problem must be based on the distinction between a pardon for innocence and other pardons. If the pardon was granted because the prisoner had political influence, or was a model prisoner, or behaved bravely in a prison fire, the pardon should not affect his credibility at all. The damage to his credibility, to follow Professor Williston's distinction, is not a legal consequence of the conviction; the conviction is merely evidence that he is untrustworthy, a fact not wiped out by the pardon. On the other hand, if the pardon was granted for innocence, the whole presumption falls. It is only the man guilty of crime who is presumed untrustworthy; if he was not guilty, he has no blot on his credibility. In other words, this rule is wrong as to both kinds of pardons. It is wrong in giving a pardon not for innocence any effect whatever as to the competency of the witness; and it is wrong in holding (if indeed it was ever intended to hold) that a person wrongly convicted and later pardoned on the express ground that he was innocent and wrongly convicted, may still have his credibility impeached because of this erroneous conviction!

Probably the reason why this illogical rule arose is that it was felt that the entire presumption that conviction of a heinous crime wholly disqualified a witness was unsound. Bentham in the 1600's lucidly exposed the fallacies of the assumption,<sup>22</sup> and legislation today has almost everywhere abolished the rule, although it remains in force in a few jurisdictions and in others it is retained for the crime of perjury.<sup>23</sup> In most states, statutes now make the testimony of convicted persons admissible, even without a pardon, but the fact of conviction may be shown to affect credibility. That the offense has been pardoned is immaterial.<sup>24</sup> As applied to pardons not granted for inno-

24 Ill. 298 (1860); *Houghtaling v. Kelderhouse*, 1 Park. Cr. R. 241 (N. Y. 1851); *Evans v. State*, 7 Baxt. 12 (Tenn. 1872). *Contra*: *Diehl v. Rodgers*, 169 Pa. 316, 32 Atl. 424 (1895). But while this rule may have been sound in England, it seems inapplicable here. In England, Parliament is supreme, and the prerogatives of the crown may be limited by statute; whereas in this country, the pardoning power of the executive is usually defined by the constitution, and may not be restricted by legislation. If a pardon, in the absence of legislation, has the effect of restoring competency, no legislation should be able to deny this effect.

22. 5 BENTHAM, RATIONALE OF JUDICIAL EVIDENCE (1827) bk. IX, pt. III, c. IV.

23. See statutes summarized in 1 WIGMORE, EVIDENCE (2d ed. 1923) § 488.

24. *Vedin v. McConnell*, 22 F. (2d) 753 (C. C. A. 9th, 1927); *Terry v. State*, 25 Ala. App. 135, 148 So. 157 (1932), *cert. denied*, 226 Ala. 685, 148 So. 159 (1933); *State v. Serfling*, 131 Wash. 605, 230 Pac. 847 (1924); cases cited in 59 A. L. R. 1489; 47 L. R. A. (N. S.) 206, 215. *But see* *State v. Taylor*, 172 La. 20, 26, 133 So. 349, 351 (1931), where the court held that a pardon "blots out" guilt, and so re-establishes the witness's credibility; and *People v. Hardwick*, 204 Cal. 582, 588, 269 Pac. 427, 430 (1928), where the court seemed to say the same.

Even though the pardon does not itself restore credibility, most courts agree that proof of the pardon is admissible. *State v. Serfling*, *supra*, and other cases cited above.

cence, this is a sound rule. Insofar as conviction of crime is evidence bearing upon a witness' truthfulness, it is not affected by such a pardon. Where the pardon was granted for innocence, however, this is a legal determination that he was not actually guilty of crime, and so is not in fact a convicted criminal, and the erroneous conviction should not be used to impeach his credibility.

Whether a pardon so far "blots out" an offense that it cannot be counted as a previous conviction under second offender laws is the subject of a sharp conflict of authority. The courts of Indiana, Louisiana, Ohio, Texas and Virginia, applying the broad dictum that a pardon completely blots out the offense, hold that a pardoned offense cannot be counted as a previous conviction, if the person is later convicted of a new crime.<sup>25</sup> But we have already pointed out that as to pardons not granted for innocence, this generality is incorrect.

The question remains, however, whether increased punishment for a subsequent offense is a legal consequence of the prior conviction. That it is has been forcefully argued by the Texas Court of Criminal Appeals:

"To hold on the one hand that a full pardon absolves its grantee from *all legal consequences* of the conviction, and on the other that by virtue of the law, and with its sanction, the fact of such conviction may be thereafter pleaded and proved in order to increase such grantee's punishment in a subsequent case, and that such holdings are not in conflict, seems to us but a play on words, a sort of fraud on reason and logic. The enhancement of the punishment in the second prosecution depends on the former conviction; and of stark necessity, such enhancement is in consequence of such former conviction, and in strict legal consequence thereof."<sup>26</sup>

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This seems to be all that is properly held in *People v. Hardwick*, *supra*, and the court's discussion of the "blotting out" effect of a pardon may be regarded as dictum. Thus where the credibility of a witness was attacked by proof of conviction for felony, it was held admissible to show that a pardon had been promptly granted and the reasons therefor. *Sisson v. Yost*, 58 Hun 609, 12 N. Y. Supp. 373 (1890).

In two cases, however, proof of the pardon was held inadmissible. *Gallagher v. People*, 211 Ill. 158, 71 N. E. 842 (1904); *Martin v. Commonwealth*, 25 Ky. L. Rep. 1928 (1904). In the former case, the court said: "Under the statute, the guilt or innocence of the defendant of the crime for which he had been convicted, his punishment, his term of service, etc., are wholly immaterial and incompetent. That he may have been pardoned proves nothing as to his credibility, and to permit evidence of that fact would simply be to introduce into the case a collateral issue." *Gallagher v. People*, *supra*, at 169, 71 N. E. at 847.

25. *Kelley v. State*, 204 Ind. 612, 185 N. E. 453 (1933); *State v. Lee*, 171 La. 744, 132 So. 219 (1931); *State v. Martin*, 59 Ohio St. 212, 52 N. E. 188 (1898); *State v. Anderson*, 7 Ohio N. P. 562 (1806); *Scrivnor v. State*, 113 Tex. Cr. R. 194, 20 S. W. (2d) 416 (1928), 14 MINN. L. REV. 293, 3 So. CALIF. L. REV. 438 (1930); *Edwards v. Commonwealth*, 78 Va. 39 (1883); see *Tucker v. State*, 14 Okla. Cr. R. 54, 64, 167 Pac. 637, 640 (1917); *Freeman v. State*, 118 Tex. Cr. R. 67, 39 S. W. (2d) 895 (1931) *semble*.

26. *Scrivnor v. State*, 113 Tex. Cr. R. 194, 196, 20 S. W. (2d) 416, 417 (1928).



The opposite view has been taken by the courts of Kentucky, New York and Washington.<sup>27</sup> These courts hold that although an unconditional pardon prevents further punishment and cancels all other legal consequences of the conviction, the fact of conviction remains; and to take this fact into account in determining the proper penalty for a subsequent offense is not a legal consequence of the former conviction, but is merely giving due weight to material evidence indicating the defendant's character, namely, that he is a recidivist or habitual criminal. The punishment under the habitual offender laws is solely for the last offense, and the fact that the defendant has been convicted before is used merely to determine the proper punishment.

This seems the sounder view. When the question has arisen in other connections, the courts—including the Texas court—have agreed in holding that the increased punishment under habitual criminal acts is inflicted not for prior offenses but solely for the last one. Therefore, such a statute enacted after the first offense is not *ex post facto*;<sup>28</sup> nor does it place the defendant twice in jeopardy for the same offense;<sup>29</sup> therefore also the legislature may provide that a prior conviction in another state shall be counted.<sup>30</sup> Not only in legal theory, but also as a matter of policy, there seems no reason why all previous convictions, including those pardoned (unless for innocence), should not be counted in determining whether the defendant is a repeater, deserving the stiffer penalty provided by the law for such offenders. In England, this rule is adopted by statute.<sup>31</sup>

Of course, pardons for innocence, as we have insisted throughout this article, must be treated differently. To punish a man as a second offender, when his first conviction has been pardoned on the ground

27. *Mount v. Commonwealth*, 2 Duv. 93 (Ky. 1865); *Herndon v. Commonwealth*, 105 Ky. 197, 48 S. W. 989 (1899); *People v. Carlesi*, 154 App. Div. 481, 139 N. Y. Supp. 309 (1st Dep't 1913), *aff'd*, 208 N. Y. 547, 101 N. E. 1114 (1913), *aff'd*, 233 U. S. 51 (1914); *People v. McIntyre*, 99 Misc. 17, 163 N. Y. Supp. 528 (Sup. Ct. 1917); *People ex rel. Malstrom v. Kaiser*, 135 Misc. 67, 236 N. Y. Supp. 619 (Sup. Ct. 1929); *Commonwealth v. Vitale*, 35 Lack. Jur. 85 (Pa. 1933); *State v. Edelstein*, 146 Wash. 221, 262 Pac. 622 (1927); see *State v. Webb*, 36 N. D. 235, 243, 162 N. W. 358, 361 (1917); 19 OP. ATT'Y GEN. OF WIS. (1930) 139; 22 OP. ATT'Y GEN. OF WIS. (1933) 1009.

28. *State v. Norris*, 203 Iowa 327, 210 N. W. 922 (1926), 12 IOWA L. REV. 299 (1927); *Jones v. State*, 9 Okla. Cr. R. 646, 133 Pac. 249 (1913), 48 L. R. A. (N. S.) 204; cases cited in Notes (1929) 58 A. L. R. 20, 21, (1933) 82 A. L. R. 345, 347.

29. *Kinney v. State*, 45 Tex. Cr. R. 500, 78 S. W. 225, 79 S. W. 570 (1904) ("He is not again punished for the first offense, but that is used as evidence, in the second and subsequent offenses, in order to increase his punishment", *id.* at 503, 79 S. W. at 571); and cases cited in Note (1929) 58 A. L. R. 20, 23.

30. *Arnold v. State*, 127 Tex. Cr. R. 89, 74 S. W. (2d) 997 (1934) (prior conviction in a Federal court, though for a crime committed within Texas); and cases cited in Notes (1929) 58 A. L. R. 20, 39, (1933) 82 A. L. R. 345, 357.

31. The Criminal Law Act of 1827, 7 & 8 GEO. IV, c. 28, § 13, providing that a royal warrant under the sign manual has the effect of a pardon under the great seal, expressly provides that no such warrant shall affect the punishment to which the offender might be liable on a subsequent conviction for felony. 4 STEPHEN, COMMENTARIES ON THE LAWS OF ENGLAND (15th ed. 1908) 415.

that he was in fact innocent, would be the rankest injustice. None of the cases cited above in fact involved pardons granted for reasons of innocence. Probably no court would apply the rule in such cases. In Iowa, the matter is expressly covered by statute, providing that a pardon for any of the previous convictions will not preclude a sentence for habitual criminality, *unless* the defendant can show to the satisfaction of the court that the pardon was granted for reasons of innocence.<sup>32</sup>

A similar question arises under statutes such as that of Texas, providing that a suspended sentence should not be granted to any criminal defendant previously convicted of felony. Suppose the defendant had been previously convicted but pardoned; can he now say that he has not been previously convicted, and so is eligible for a suspended sentence? There is no express decision on the question,<sup>33</sup> but what has been said above would apply here. Such a person should not be allowed to deny that he has been previously convicted, unless the pardon was for innocence. Pardons granted for other reasons do not "blot out" the fact of conviction.

Similar also is the question involved in the following situation: a defendant convicted of crime is given a parole or a suspended sentence, revocable if he should commit another crime. He is later convicted of a new crime, but is pardoned. Is this pardoned crime ground for revoking the suspension or parole? Again, the same principle should apply; and presumably courts holding that a pardoned offense may be counted in administering habitual criminal acts would also hold that a pardoned offense constitutes grounds for revoking suspension of a sentence of parole.<sup>34</sup> Only if the pardon has been granted for innocence should it prevent the conviction from constituting ground for revocation.

Conviction of a crime involving moral turpitude is made a ground for divorce in many states. It has been held that a pardon does not destroy this ground, even though the divorce action is not brought until after the pardon has been granted.<sup>35</sup> The pardon in this case

32. IOWA CODE (1935) § 13402.

33. In *Warren v. State*, 127 Tex. Cr. R. 71, 74 S. W. (2d) 1006 (1934), the question was raised, but the court found it unnecessary to decide it, because the pardon was held to be a conditional one merely, which concededly did not have the effect of blotting out the offense.

34. In Texas, where it is held that a pardoned offense may not be counted in applying the habitual criminal act, the court has held that a pardoned offense is not a ground for revocation of suspension of sentence. *Sanders v. State*, 108 Tex. Cr. R. 467, 1 S. W. (2d) 901 (1928), 41 HARV. L. REV. 918; *accord*: OP. ATT'Y GEN. OF PA., 27 Dist. 830 (Pa. 1918).

35. *Holloway v. Holloway*, 126 Ga. 459, 55 S. E. 191 (1906). Where the pardon is granted after divorce proceedings are begun, it does not destroy the statutory ground. *Davidson v. Davidson*, 23 Dist. 578 (Pa. 1914).

does not seem to have been granted on the ground of innocence, and so the result seems correct. But a pardon for innocence should, as we have said, wipe out the conviction for all purposes, and so should destroy its effect as a ground for divorce also. Where the divorce has already been made final before the pardon is granted, the matter is more difficult. Divorce, like marriage, should not be easily annulled. The spouse obtaining the divorce may have remarried. Public policy may require that the divorce should be allowed to stand, even though by executive action the divorced spouse is later declared innocent of the crime and pardoned, and the ground upon which the divorce was obtained thereby nullified.<sup>36</sup>

The effect of a pardon upon one's qualification under various licensing laws is governed by general principles already laid down. Where the licensing provision is designed to restrict certain occupations or privileges to persons having certain moral qualifications, and for that reason disqualify persons convicted of crime, a pardon should not remove the disability, unless granted for innocence.

Two cases illustrate the confusion of thinking which results from failure to distinguish between pardons for innocence and other pardons in determining the effect upon eligibility under license laws. In a New York case, under a rule of the city licensing commissioner that applicants for taxi licenses who had been convicted of felony should be rejected, it was held proper to deny a license to an applicant whose crime had been pardoned. The court said that "A pardon proceeds not upon the theory of innocence, but implies guilt", and that "the executive act did not obliterate the fact of the conviction".<sup>37</sup> That a pardon "implies guilt" is true of *some* pardons, of course, but to say this of all pardons requires ignoring the fact that pardons are sometimes granted for innocence. Since there is nothing to indicate that this was the ground for the pardon involved in this case, the result is correct, however.

In an English case,<sup>38</sup> it was held that under a statute which read, "Every person convicted of felony shall for ever be disqualified from selling spirits by retail, and no license to sell spirits by retail shall be granted to any person who shall have been so convicted. . . .", a pardon removes the disqualification. Pollock, B., reached this result

36. Statutes sometimes expressly provide that where a pardon is obtained after a divorce on this ground, the pardon does not vitiate the divorce or restore marital rights. NEB. COMP. STAT. (1929) c. 42, § 301; WIS. STAT. (1935) § 247.07 (3). See also S. D. COMP. LAWS (1929) § 109. These statutes seem to apply to pardons granted for innocence as well as others.

37. *Baldi v. Gilchrist*, 204 App. Div. 425, 427-428, 198 N. Y. Supp. 493, 495 (1st Dep't 1923). The first quotation given is quoted from *Roberts v. State*, 160 N. Y. 217, 221, 54 N. E. 678, 679 (1899).

38. *Hay v. Justices*, 24 Q. B. D. 561 (1890).

by taking at face value dicta of previous cases and writers that a pardon takes away "not only poenam, but reatum. . . ." Hawkins, J., concurring, was impressed by the fact that a pardon *might* be granted to a person wrongly convicted (although that apparently was not the case before the court), and argued that it would be a bad result if a pardon under those conditions should not restore the innocent person to the right to follow his avocation.

Thus, one court reaches one result by positing the proposition that a pardon "implies guilt"—which is usually true, but not always. The other court reaches the opposite result by pointing out that *sometimes* a pardon implies innocence—and then seems to feel bound to give the same effect to the pardon in the case before it, although that was *not* granted for innocence. Hawkins, J. was obviously influenced by the thought that unless this pardon were held to re-establish the applicant's qualification, no pardon, even one granted for innocence, could have that effect. Recognition that pardons granted for reasons which imply guilt need not be given the same effect as pardons for innocence would have solved the dilemma.

What has been said of licenses generally applies to the license to practice law. Under the power of the courts to disbar attorneys found to lack the moral character required for that office, the court may, of course, disbar for professional misconduct which culminated in a conviction for crime. A pardon for such crime will not prevent the disbarment proceedings,<sup>39</sup> nor will a pardon after disbarment entitle one to reinstatement.<sup>40</sup> However, if the pardon was granted for the rea-

39. *People ex rel. Deneen v. Gilmore*, 214 Ill. 569, 73 N. E. 737, 69 L. R. A. 701 (1905); *People ex rel. Johnson v. George*, 186 Ill. 122, 57 N. E. 804 (1900); *Nelson v. Commonwealth*, 128 Ky. 779, 109 S. W. 337 (1908); *In the Matter of \_\_\_\_\_*, an Attorney, 86 N. Y. 563 (1881); *Wolfe's Disbarment*, 288 Pa. 331, 135 Atl. 732, 50 A. L. R. 380 (1927); *see People ex rel. Colorado Bar Ass'n v. Weeber*, 26 Colo. 229, 231, 57 Pac. 1079, 1080 (1899).

An attorney convicted of crime and pardoned in one state may nevertheless be disbarred in another state on the ground of such crime. *People ex rel. Deneen v. Gilmore*, *supra*; *People ex rel. Colorado Bar Ass'n v. Burton*, 39 Colo. 164, 88 Pac. 1063 (1907) *semble*. Since a conditional pardon admittedly does not have the effect of blotting out guilt, it is agreed that a conditional pardon cannot prevent disbarment. *In Re Sutton*, 50 Mont. 88, 145 Pac. 6, Ann. Cas. 1917A, 1226 (1914); *State ex rel. McLean v. Johnson*, 174 N. C. 345, 93 S. E. 847 (1917).

40. *In the Matter of the Application of Riccardi*, 64 Cal. App. 791, 222 Pac. 625 (1923); *Branch v. State*, 120 Fla. 666, 163 So. 48 (1935); *Commonwealth ex rel. Harris v. Porter*, 257 Ky. 563, 78 S. W. (2d) 800 (1935); *Matter of E*, 65 How. Pr. 171 (N. Y. 1879); *see Cohen v. Wright*, 22 Cal. 293, 323 (1863). The right to practice law is not a right of citizenship, and restoration to citizenship therefore does not restore the right to practice. *People ex rel. Colorado Bar Ass'n v. Monroe*, 26 Colo. 232, 57 Pac. 606 (1899).

"While the effect of the pardon was to relieve him of the penal consequences of his act, it could not restore his character. It did not reinvest him with those qualities which are absolutely essential for an attorney at law to possess. It could not rehabilitate him in the trust and confidence of the court. Lawyers are officers of the court. They are agents through whom justice must be administered. They should always be worthy instruments of justice. Courts should never hesitate to disbar those who are morally unfit to act as such agents." *Commonwealth v. Porter*, 257 Ky. 563, 567, 78 S. W.

son that the conviction was a mistake, and that the defendant was in fact innocent, the court ought to accept this finding and not allow such wrongful conviction to serve as a basis for disbarment.<sup>41</sup>

There are some cases in which the courts, misled by the dictum that a pardon (not restricted to pardons for innocence) "blots out the offense" and makes the offender "a new man", have found it difficult to avoid the result that a pardon granted for whatever reason is a complete defense to disbarment proceedings based on a pardoned offense. Indeed, the case of *Ex parte Garland*<sup>42</sup> itself, which we have cited as the leading case, in which this "blotting-out" dictum was laid down,<sup>43</sup> involved the right of a pardoned offender to practice law before the Supreme Court of the United States, and though the decision on its own facts may be correct,<sup>44</sup> the broad dictum and some of the reasoning in the case support the notion that a pardon so completely wipes out the crime that it cannot thereafter be the basis for disbarment. At least one later case seems actually to reach that result,<sup>45</sup> and in several others a court avoided the same conclusion only by finding other facts<sup>46</sup> or by resorting to dubious logic.<sup>47</sup> The New York Court of Appeals, for example, in one case did disbar a convicted attorney notwithstanding a pardon, but in order to do so felt obliged itself to adopt what Professor Williston called unpardonable reasoning. "The pardon," said the court, "does reach the offense for which he was convicted, and does blot it out, so that he may not now be looked upon as guilty of it. But it cannot wipe out the act that he did, which was adjudged an offense. It was done and will remain a fact for all time."<sup>48</sup> How a crime can be said to have been blotted out, so that the person cannot be looked upon as guilty of it, and yet leave the act

(2d) 800, 802 (1935), quoting from *Nelson v. Commonwealth*, 128 Ky. 779, 789, 109 S. W. 337, 340 (1908). See Williston, *supra* note 5, at 655-7; (1937) 21 MINN. L. REV. 837.

41. See, for example, *In the Matter of Petition of Kaufman*, 245 N. Y. 423, 157 N. E. 730 (1927).

42. 4 Wall. 333 (U. S. 1866).

43. See *supra* p. 177.

44. The only ground for holding that taking part in the rebellion (the offense in question) would involve disbarment as a consequence was a statute which imposed as a penalty disability to practice before the court.

45. *In the Matter of Petition for Disbarment of Emmons*, 29 Cal. App. 121, 154 Pac. 619 (1915).

46. Thus, in a Maine case, the court indicated it would have held the pardon sufficient to prevent disbarment, but it found that the attorney had been guilty of another crime, which had not been pardoned. *Penobscot Bar v. Kimball*, 64 Me. 140 (1875). The defendant had forged a deposition, been convicted of forgery, and pardoned. The court found that the pardon did not excuse his guilt in offering the deposition in evidence, and disbarred him for the latter offense.

47. See, for example, *Nelson v. Commonwealth*, 128 Ky. 779, 109 S. W. 337 (1908).

48. *In the Matter of* ———, an Attorney, 86 N. Y. 563, 569 (1881).

remaining as a fact so that he may be disbarred for it, comments Professor Williston, is difficult to imagine.<sup>49</sup>

In some states, disbarment is by statute made one of the penalties imposed upon an attorney convicted of a felony, and in such states it has been held that since disbarment is specifically made a part of the legal punishment for the crime, a pardon wipes out such legal consequences, and is, therefore, a defense to a disbarment proceeding based upon the conviction.<sup>50</sup> Even under such statutes, however, the better rule would seem to be that the disbarment is not based *ipso facto* upon the conviction, but upon the lack of moral character revealed by the conviction, a fact not wiped out by the pardon, unless it is a pardon granted upon a finding of innocence.

One of the most important of the early cases upon which the dictum that a pardon "blots out" guilt rests was a defamation case, *Cuddington v. Wilkins*,<sup>51</sup> decided in 1615. The defendant in that case had said of the plaintiff, "he is a thief". Upon being sued for slander, the defendant undertook to justify his statement by alleging that the plaintiff had stolen six sheep several years before. The plaintiff replied that since the supposed theft, a general pardon had been issued and made the usual averments to bring himself within the pardon. On demurrer, judgment was given for the plaintiff. The court said the felony was by pardon extinct; and though the plaintiff was a thief once, "yet when the pardon came it took away, not only *poenam* but *reatum*".<sup>52</sup>

The opinion makes it fairly clear, however, that the court meant only that the legal infamy of the conviction was removed, not that the offender was "as innocent as if he had never committed the offense". The report states: "And it was said, that he could no more call him thief, in the present tense, than to say a man hath the pox, or is a villain after he be cured or manumitted, but that he had been a thief or villain he might say."<sup>53</sup>

This distinction has been followed in later cases both in England and in this country. In a New York case decided in 1893, it was held not actionable for one person to say of another that he had stolen an axe several years before, where this statement was true and the guilty man had been convicted but later pardoned.<sup>54</sup> So in England it has

49. Williston, *supra* note 5, at 656.

50. *Ex Parte Crisler*, 159 Miss. 247, 132 So. 103 (1931); *J. L. Scott v. Texas*, 6 Tex. Civ. App. 343, 25 S. W. 337 (1894).

51. Hobart 67, 80 Eng. Rep. R. 216 (K. B. 1625), same case, Hobart 81, 80 Eng. Rep. R. 231 (K. B. 1625).

52. *Id.* at 81, 80 Eng. Rep. R. at 231.

53. *Id.* at 82, 80 Eng. Rep. R. 232.

54. *Baum v. Clause*, 5 Hill 196 (N. Y. 1843).

been held that for an editor to call a rival editor a "convicted felon" was not actionable, where the rival had in fact been convicted of felony but later pardoned; but to call him a "felon editor" was libel.<sup>55</sup>

It should be obvious that the rule of these cases in no way supports the statement that a pardon makes a man "as innocent as if he had never committed the offense". On the contrary, it recognizes the fact that he had committed the offense, and holds statements of this truth not to constitute defamation.

Suppose, however, that the pardon had been granted because the person convicted was in fact innocent? None of the defamation cases involved a pardon for that reason, and none discusses the question. It would seem that such a pardon should not merely make a man "as innocent as if he had never committed the offense", but should be a legal and binding determination that he did not in fact commit it, and for any person to say that one whose name has been cleared in this manner "had been a thief" should be just as actionable as if he had said the same about a person who had been tried for the crime but acquitted.

The immigration laws exclude from admission into this country aliens "who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude", and provide that if such aliens are admitted without immediate detection, they should be deported. It has been held in two cases that the fact that the alien was pardoned of the crime does not wipe out his disqualification.<sup>56</sup> Neither of these cases, however, involved a pardon granted for innocence, in which case it is submitted that he should not be considered disqualified.

Provisions of the naturalization laws, that an alien seeking naturalization must prove that he has behaved as a man of good moral character during his residence in the United States, have been held to make a pardoned convict ineligible. One court, after quoting the dictum in *Ex parte Garland*, that a pardon blots out the offense and makes the offender a new man, nevertheless concluded: "And yet I do not suppose the opinion is to be understood as going the length of holding that while the party is to be deemed innocent of the crime by reason of the pardon from and after the taking effect thereof, that it is also to be deemed that he never did commit the crime or was convicted of it. The effect of the pardon is prospective and not retrospective. It removes the guilt and restores the party to a state of

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55. *Leyman v. Latimer*, 3 Ex. D. 15 (1877), 3 Ex. D. 352 (1878), (1877) 5 CENT. L. J. 74, (1878) 6 CENT. L. J. 181.

56. *United States ex rel. Palermo v. Smith*, 17 F. (2d) 534 (C. C. A. 2d, 1927); *Weedin v. Hampel*, 28 F. (2d) 603 (C. C. A. 9th, 1928).

innocence. But it does not change the past and cannot annihilate the established fact that he was guilty of the offense.”<sup>57</sup>

Allowing for the court's attempt to reconcile the dictum of the Supreme Court with its holding, the decision seems correct. Here again the question in issue is not conviction, but character. But again the court obviously had in mind only pardons granted for reasons other than innocence. Pardons granted for this latter reason certainly should “annihilate the established fact that he was guilty of the offense”, and should re-establish eligibility for citizenship.

To summarize: The conflict in judicial pronouncements regarding the effect of a pardon are attributable largely to the fact that no distinction has ever been made by the courts between pardons granted for innocence, and pardons for other reasons. Yet this distinction seems fundamental. Most pardons are granted for considerations of clemency, mercy, or a miscellany of motivations. Pardons granted for innocence, however, are granted in strict justice. The innocent person who has been wrongly convicted has been done a great injustice. Properly, the legal system should provide him a remedy in the courts. It has been felt, however, that judicial decisions should not forever remain open to repeated review. After a certain length of time, they are final, and cannot be reopened. However, we have probably been too strict in this respect. Anglo-American law has been peculiarly indifferent to the problem of the person wrongfully convicted and later found to be innocent, after the time for judicial review has elapsed. Continental law has gone much further in permitting judicial reconsideration of such cases. This is obviously the logical and the only really satisfactory solution.

It is only because the judicial remedy is no longer available that we are forced to extend the flexible pardoning power to cover the situation. But this is a makeshift remedy at best. To pardon a man for being innocent is irony. Nevertheless, until and unless we can liberalize our criminal procedure so as to allow judicial review when newly discovered evidence shows that the wrong man has been convicted, we must rely upon the pardoning power. It has been the purpose of this paper to show that if pardon is to be used as a substitute for reversal of the conviction in such cases, the pardon must be given the full effect of a judicial reversal, and not the more limited effect of ordinary pardons, which merely put an end to punishment and all other legal consequences of the conviction but do not affect the established fact of guilt. To give pardons for innocence no greater effect than this would work injustice in various respects. If we concede the

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57. *In re William Spenser*, 22 Fed. Cas. No. 13234 at 922 (C. C. D. Ore. 1878).



governor power to grant a pardon on the ground that he is convinced that the person is innocent, then his decision in such a case should be as legally binding as a judicial decision to the same effect. The convicted person has been found innocent by an official constitutionally empowered to make such a decision, and he should be held to be innocent for all purposes, in whatever connection the question may arise.

The courts should be able to evolve this rule for themselves; there is not a single case which denies the proposition. It may, however, be helpful in clarifying the matter for the legislatures to declare by statute that every pardon should state on the face of the document the reason for which it is granted; and that a pardon should have the effect of relieving the convicted person from further punishment and from all other legal consequences of the crime but should not absolve from guilt, unless the pardon was granted on the ground of innocence. Such a statute would not be an unconstitutional interference with the governor's pardoning power, but would only be part of the rules and regulations for the expeditious exercise of the power which the legislature is in every state authorized to enact.