

LEGAL PARDON, TENSED TIME, AND THE EXPIATION OF GUILT

In this paper I wish to explore the relation between legal pardon, tensed time, and the expiation of guilt. The distinction between personal forgiveness and legal pardon is well-known and widely recognized in the literature on forgiveness.¹ The philosophical literature typically treats forgiveness as a subjective change of attitude or judgement on the part of the person wronged, a determination to put away feelings of resentment, bitterness, or anger, a relinquishing of the desire for revenge or a claim to requital. By contrast, the issuing of a pardon by an executive authority effects an objective change in the legal status of the pardonee, regardless of the subjective attitudes of the governing authority toward the person accused of a crime.

Divine Forgiveness as Legal Pardon

Theologians have a stake in this matter because divine forgiveness is in some respects much more akin to legal pardon than to personal forgiveness. There are at least two reasons for thinking that divine forgiveness implies a legal pardon of sinners on God's part.

First, *God stands in a governmental relationship to human beings*. In his classic *A Defence of the Catholic Faith concerning the Satisfaction of Christ, against Faustus Socinus* (1617) the famed international jurist Hugo Grotius identified Socinus' "fundamental error" in his critique of traditional atonement theories as his assumption that God is to be construed on the model of an offended party in a personal dispute, such as between a creditor and a debtor (II). For such a private person has no right to punish another. Certainly, God is offended by sin, but He does not act as merely the offended party in punishing it. Rather God should be considered to act as a Ruler. "For to inflict punishment, or to liberate any one from punishment. . . is only the prerogative of the ruler as such, primarily and *per se*; as, for example, of a father in a

family, of a king in a state, of God in the universe” (II). God as Supreme Ruler is responsible for the administration of justice in the universe and so has the right of punishing and the right of forgiving wrongdoing. Although God has the right to forgive sins, Grotius thinks it would be unjust of God to let certain sins go unpunished, such as sins of the unrepentant. Therefore, it would be inconsistent with the justice of God that He should remit all punishment whatsoever.

On the contemporary scene legal philosopher Jeffrie Murphy has made a similar distinction between the private and public spheres in an effort to carve out conceptual space for exercises of mercy consistent with the demands of retributive justice. Distinguishing between a creditor in a civil lawsuit and a judge in a criminal case, Murphy maintains that as a litigant in a civil lawsuit, the creditor occupies a “private role” and so does not have “an antecedent obligation, required by the rules of justice, to impose harsh treatment” by demanding repayment of the debt owed (Murphy, 1988, pp. 175-6). He is therefore free to show mercy without prejudice to justice. By contrast a judge in a criminal case “has an *obligation* to do justice—which means, at a minimum, an obligation to uphold the rule of law. Thus if he is moved, even by love or compassion, to act contrary to the rule of law—to the rules of justice—he acts wrongly” (Ibid., p. 175). Murphy thinks that the judge *qua* judge cannot, like the creditor, act mercifully without prejudice to the demands of justice. Like Grotius Murphy thinks that the executive power can exercise mercy but only within the limits of individualized justice.

Given God’s status as Judge and Ruler of the world, it is more accurate to think of divine forgiveness on the analogy of a legal pardon by a Ruler rather than on the analogy of the forgiveness extended by a private person. Kathleen Moore has made the point forcefully by observing that when people ask God to forgive their sins, they are clearly hoping that God will not inflict the full measure of punishment they know they deserve. “These people would discover the seriousness

of their conceptual confusion if God forgave their sins and punished them nevertheless—which is always an option for God” (Moore, 1989, p. 184). God’s forgiving sins should have the character of a legal pardon by the executive power of the state.

Second, *the consequences of divine forgiveness as described in biblical revelation imply God’s pardon of sinners*. The Levitical system of sacrificial offerings in the Tabernacle and Temple, offerings which New Testament writers took to prefigure Christ’s own death as the ultimate sacrificial offering (Rom 3:21-26; 8.3; Eph 5:2; Heb 9.6-14; 10.1-18), aimed, not merely at the cleansing of consecrated objects from impurity, but more fundamentally at the expiation of the sins of the people and their forgiveness. Repeatedly the promise is given, “the priest shall make atonement on your behalf for the sin that you have committed, and you shall be forgiven” (Lev 4.35; *cf.* 4.20, 26, 31, *etc.*). At the heart of the new covenant prophesied by Jeremiah lay the forgiveness of sins: “I will forgive their iniquity, and remember their sin no more” (Jer 31.34). Christians considered Jesus, by his sacrificial death, to have inaugurated that new covenant (Mt 26.28; Mk 14:22-24). So in the Acts the consistent apostolic proclamation is that “everyone who believes in him receives forgiveness of sins through his name” (Acts 10.43; *cf.* 2.38; 5.31; 13.38; 26.18). In short, in Christ “we have redemption, the forgiveness of sins” (Col 1.14; *cf.* Eph 1.7).

It is noteworthy that the object of divine forgiveness is just as often said to be sins as sinners. Not only are people forgiven for their sins, but their sins are forgiven. God is said to “take away” (*aphaireō*) our sins (Rom 11.27). This fact makes it evident that divine forgiveness is not (merely) a change of attitude on God’s part toward sinners.² Divine forgiveness has as its effect, not (merely) God’s laying aside feelings of resentment or bitterness or anger (or what have you, according to one’s favorite analysis of forgiveness), but rather the removal of the liability to punishment that attends sin. As a result of divine forgiveness, a person

who formerly deserved punishment now no longer does so. Because of the forgiveness that is to be found in Christ, one is no longer held accountable for one's sins. "There is therefore now no condemnation for those who are in Christ Jesus" (Rom 8.1). On the contrary, they are now reckoned by God to be righteous in His sight (Rom 4.5-8). The biblical concept of forgiveness thus entails God's pardoning people for their sins, freeing them of liability to punishment and constituting them righteous before God.³

On the basis of God's role in the government of the world and the biblical consequences of God's forgiveness of sins, we ought to think of divine forgiveness, at least in part, on the analogy of a legal pardon. Now, of course, there will be significant disanalogies between divine pardon and the pardoning power as it exists in human justice systems—for example, the U.S. President may issue pardons for personal political advantage—but, still, given the similarities between divine forgiveness and legal pardon, we may expect to gain a good deal of insight into divine forgiveness by exploring the pardoning power vested in heads of government.

Pardon and Its Effects

From ancient times, heads of state have exercised the power to pardon crimes. So when the framers of the U.S. Constitution met in Philadelphia in 1787 they naturally included in the Constitution the pardoning power. Since this power is not defined in the Constitution, U.S. courts have interpreted the presidential power to pardon on the model of the pardoning power of English monarchs, which the framers doubtless presupposed. The power of English monarchs to pardon was, in turn, understood as a divine right, an act of grace reflecting God's ability to pardon sins. In Kathleen Moore's pithy conclusion, "Presidents used pardons as they chose, having been given a pardoning power patterned after that of the English Kings, which was patterned

after God's" (Moore, 1989, p. 51).

Chief Justice John Marshall, in a landmark decision, describes a pardon as follows:

A pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed (*United States v. Wilson*, 32 U.S. 150 (1833)).

Marshall's description was later cited by the Supreme Court as a correct characterization in *Burdick v. United States*, 236 U.S. 79, 89 (1915). According to this characterization a pardon is an act of mercy, coming from the person(s) possessing the power of the executive, which removes a criminal's liability to punishment for a specific crime he has committed.

Marshall's description seems an apt characterization of a divine pardon as well. God is the power Who executes His divine *torah*, and His pardon is an act of grace by which He exempts elect sinners, who have violated His law, from the punishment they deserve. Every element of Marshall's definition finds a theological analogue. No wonder Daniel Kobil characterizes Marshall's vision of a pardon as "something akin to divine forgiveness" (Kobil, 1991, p. 594)!

What are the effects of a pardon? Marshall says that it exempts the individual from the punishment prescribed by the law for his crime. This much is uncontroversial. But pardons do much more than merely exempt a convicted criminal from punishment for his crime. A pardon removes *all* the legal consequences of the criminal's conviction. A pardon thus restores to a person any civil rights which were restricted as a result of his conviction, such as the right to vote, to serve on a jury, or

to obtain a business license (*Knote v. United States* 95 U.S. 153 (1877)). We shall return to the effect of a pardon in restoring a person's civil rights, a feature of pardons which is also uncontroversial, even if in some cases difficult to adjudicate.

The truly controversial question is whether a pardon serves to remove the criminal's guilt. Following the English model, the U.S. courts were at first emphatic as to the effect of a pardon in expiating guilt. In *Ex parte Garland* (1866) the Supreme Court famously declared:

. . . the inquiry arises as to the effect and operation of a pardon, and on this point all the authorities concur. A pardon reaches both the punishment prescribed for the offence and the guilt of the offender; and when the pardon is full, 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 offence. If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching; if granted after conviction, 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 (*Ex parte Garland*, 71 U.S. 333, 380-1 (1866)).

Like Marshall's description of a pardon, this characterization of the effects of a full pardon is an apt description of a divine pardon. God in His mercy is similarly said to "blot out my transgressions. . . and blot out mine iniquities" (Ps 51. 1, 9 KJV). Paul exults, "If anyone is in Christ, he is a new creation; the old has passed away, behold, the new has come" (II Cor 5.17). The pardoned sinner's guilt is expiated, so that he is legally innocent before God.

But as a description of the effects of human pardons, *Garland's* sweeping assertions have been eroded by subsequent court decisions.⁴ In the *Harvard Law Review* of 1915 Samuel Williston published what has been called a “seminal” and “landmark” article, “Does a Pardon Blot Out Guilt?,” in which he criticized *Garland* and its judicial progeny and which has been frequently cited by the courts. Williston complained, “Everybody. . . knows that the vast majority of pardoned convicts were in fact guilty; and when it is said that in the eye of the law they are as innocent as if they have never committed an offense, the natural rejoinder is, then the eyesight of the law is very bad” (Williston, 1915, p. 648). The truth, says Williston, is rather as Lord Coke wrote: *Poenamori potest, culpa perennis erit.*⁵ A moment’s reflection suggests that Williston must understand by “guilt” simply the property or fact of having committed the crime. On this understanding, to be guilty of a crime is just to have committed the crime.

That this is how Williston understands guilt is evident from the remainder of his article. He blames the verdict of the English Court in *Cuddington v. Wilkins* (80 Eng. Rep. 231 (K.B. 1615)) as laying the main foundation for the view that after a pardon the law could not see the criminal’s guilt. Cuddington had brought an action against Wilkins for calling him a thief. Wilkins justified this appellation because Cuddington had once been convicted of theft. But Cuddington replied that he had been pardoned by the king for the alleged felony. The Court decided for Cuddington, “for the whole court were of opinion that though he was a thief once, yet when the pardon came it took away, not only *poenam*, but *reatum*.”⁶

Williston disagrees. According to Williston,

The true line of distinction seems to be this: 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 the 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 anymore eligible (Williston, 1915, p. 653).

The point is this: a pardon removes the legal disqualifications (abridgement of civil rights) resulting from the fact of conviction; but a pardon does not affect any disqualifications resulting from the commission of the crime. The fact that a crime has been committed cannot be erased. It is this fact that Williston identifies as guilt. Though pardoned, the person still stole or lied or acted recklessly and so remains guilty of the crime he committed. As such he may, despite his pardon, be disqualified from certain activities, such as giving testimony or practicing law.

Henry Weihofen in a later review, citing Williston's criticism, complains 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." (Wiehofen, 1939, p. 181; cf. pp. 189-90). The effect of a pardon (other than on grounds of innocence) is "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" (Ibid., my emphasis).

An examination of various district, state, and appellate court cases walking back the assertions of *Garland* reveals that the courts in such cases tend to presuppose this same understanding of guilt as the property of having committed a crime.⁷ These cases have typically to do with whether a pardon serves to expunge one's criminal record or to remove a

particular disqualification (such as disbarment, banishment from the trading floor, or denial of veteran's benefits) suffered by the pardonee as a consequence of his being convicted of the crime for which he received a pardon. In holding that *Garland* overstepped in asserting that a pardon blots out guilt because a pardon does not blot out the past conduct leading to the conviction, these courts equate guilt with having carried out the conduct which led to the conviction.

While such an understanding of the word "guilt" may accord with much of ordinary language, a little reflection reveals that, given standard retributive theories of justice, such a conception of guilt has bizarre consequences. For on this view a person's guilt could never be expunged, whether by pardon or punishment. Even if a person has served his full sentence and so satisfied the demands of justice, he remains guilty, since it will be ineradicably and forever the case that once upon a time he did commit the crime. But then on standard theories of retributive justice,⁸ he still deserves punishment! For it is an axiom of retributive theories of justice that the guilty deserve punishment. Such an understanding of guilt would thus, in effect, sentence everyone to hell, even for the most minor of crimes, since guilt could never be eradicated and, hence, the demands of justice satisfied. Indeed, even a divine pardon would not serve to remove guilt and save us from punishment, since even God cannot change the past. But such a conclusion is incoherent, since it is the function of pardon to cancel one's liability to punishment. Therefore, this understanding of guilt is incompatible with standard theories of retributive justice.

The *Garland* court and its progeny should not be thought to consider a pardon to be a sort of judicial time machine, capable of erasing the past.⁹ It is logically incoherent to bring it about that an event which has occurred has not occurred, and it would ungracious to attribute to our courts the absurd opinion that a pardon can erase from the past a person's wrongdoing or conviction for a crime. Rather what

the *Garland* court was doing, and what its detractors have failed to do, is what contemporary philosophers of time call “taking tense seriously.”¹⁰ When the Supreme Court declared that a pardon “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 offence,” it takes seriously the tenses of the verbs involved. It recognizes that the offender *was* guilty, but as a result of his pardon he *is now* innocent in the law’s eyes. Moreover, the counterfactual conditional “as if . . .” reveals that the law is not blind to his offense. The law can see his offense, but as a result of the pardon the offender is now as innocent as he would have been if he had never committed the offense.

From the beginning courts which held that a pardon expunges a person’s guilt recognized the importance of tense. In *Cuddington v. Wilkins*, for example, the court opined that while Cuddington was once rightly called a thief, as a result of the king’s pardon he should no longer be called a thief. In Hobart’s report on the case, we read, “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 manumised, but that he had been a thief or villain he might say.”¹¹ The court’s decision turns upon taking tense seriously.

Moreover, contrary to the opinions of several lower courts,¹² *Garland* is wholly consistent with the Supreme Court’s opinion in *Burdick v. U.S.* that the pardon of an accused person, if accepted, actually implies his guilt (otherwise there would be nothing to be pardoned), for *Garland* has no interest in denying that the offender *was* guilty, so that the pardon, in taking away his guilt, implies that he was guilty. A pardon does not have an “appellate” function, as the courts have recognized, in that it does not imply a miscarriage of justice; the correctness of the guilty verdict rendered is not undermined. But now the person is pardoned, and so the effect of that verdict is canceled: though once guilty, the pardonee no longer is.¹³

The opinion in *Garland* was properly explicated in *In re Spenser* (1878) as follows:

This is probably as strong and unqualified a statement of the scope and efficacy of a pardon as can be found in the books. 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 innocence. But it does not change the past and cannot annihilate the established fact that he was guilty of the offence (*In re Spenser*, 22 F. Cas. 921, 922 (1878)).

The opinion in *Garland* is thus fully in accord with the prevailing view that a pardon has no effect upon the criminal conduct and conviction of the person pardoned. *Garland* is thus in accord with the prevailing opinion that a pardon serves to release a person from all the legal consequences of his conviction, including punishment, taken in abstraction from the wrongdoing itself.

It is obvious that the *Garland* court has a very different conception of guilt than lower courts which see themselves as departing from *Garland*. Rather than assume the incoherent understanding which equates guilt with the facticity of a past event, *Garland* assumes that guilt is a property which can be temporarily exemplified and then lost through pardon or appropriate punishment. So what is this property? In criminal law guilt is typically determined by establishing that someone has committed a wrongful act (*actus reus*) while possessing a blameworthy mental state (*mens rea*).¹⁴ Perhaps guilt is the property of being a culpable wrongdoer, a property which can be temporarily

exemplified but lost through sufficient punishment or pardon. But wrongdoing and culpability are merely sufficient, not necessary, conditions for guilt. Guilty verdicts in cases of strict liability (in which there may be neither wrongdoing nor culpability) show that guilt cannot be equated merely with being a culpable wrongdoer.¹⁵ So what is guilt? It may be convenient to think of guilt just as *liability to punishment*. A verdict of “Guilty” is plausibly a declaration that the person is liable to punishment. To be guilty of a crime is to be liable to punishment for that crime. Such an understanding of guilt makes it perspicuous why punishment or pardon serves to expiate guilt. A person who has served his sentence has “paid his debt to society” and so is now no longer guilty, that is to say, no longer liable to punishment. Similarly, a person who has been pardoned is by all accounts no longer liable to punishment for the crime he committed. In any case, however we define guilt, if at all, given a retributive theory of justice, guilt entails liability to punishment. It follows logically that if a pardon removes one’s liability to punishment, then it also blots out guilt. It is impossible that a person be pardoned and yet remain guilty.

Theological Application

To return, then, to the concerns of theology, it seems to me that *Garland’s* statement of the effects of a pardon is a marvelous description of the effects of a divine pardon of a person’s sins. By taking tense seriously, we understand how a person who was once guilty may, in virtue of a pardon, be no longer guilty, despite the ineradicable fact that he did commit the sin for which he was justly condemned. The decisions of certain lower U.S. courts do not compromise *Garland*, for they are assuming a different understanding of guilt which equates guilt with the facticity of the past offense, which *Garland* would not think to deny. Like punishment, pardon expiates a person’s legal guilt, so that he is no longer condemned and liable to punishment.

While an advocate of tenseless time might also hold to the insight of those who take tense seriously that guilt is a property that may be temporarily exemplified and then lost, what he cannot say (with A. N. Prior) is “Thank goodness I’m forgiven!” For the relief and gratitude expressed by those words concern a tensed fact which cannot be captured in any tenseless idiom.

These debates over the effects of a pardon provide insight into the nature of divine justification. Our legal pardon by God no more transforms our character and makes us virtuous people than does a human pardon a convicted criminal. Again and again, the courts have insisted that a person may suffer various disabilities, despite his pardon, because of the flawed character that led to his conviction. The conviction alone, now pardoned, may not serve as grounds of disability, but it may serve as evidence of a corrupt character and conduct that are disabling. So, for example, in the case *In re Abrams* Elliott Abrams was deemed unfit to practice law despite his pardon because a pardon did nothing to restore the moral character necessary for him to continue to practice law. Such cases nicely illustrate Williston’s point that “while pardon dispenses with punishment, it cannot change character, and where character is a qualification for an office, a pardoned offence as much as an unpardoned offence is evidence of a lack of the necessary qualification” (Williston, 1915, p. 657).

Similarly, while a divine pardon makes us legally innocent before God, free of liability to punishment, it is powerless of itself to effect moral transformation of character. To that end we need regeneration through the Holy Spirit and His sanctifying influence to make us over time into the men and women that God wants us to be. Sanctification is not a forensic transaction but a moral transformation of character and is not therefore wrought by divine pardon alone.

In conclusion, I think we can see that matters of time and tense

have important and perhaps unexpected application in the philosophy of law and theology.

¹ See, e.g., Hughes, 2014, §3.1.

² We encounter here the debate over whether the Levitical sacrifices and Christ's sacrificial death served to propitiate God, to change His attitude toward sinners from wrath to acceptance. It has become conventional wisdom among contemporary theologians that because the New Testament authors use *katalassō* ("reconcile") and its cognates only with respect to human beings, not God, God does not need to be reconciled to humanity, but only humanity to a welcoming God. I leave aside whether such an argument from silence is cogent. But if God does not need to be reconciled to sinners, that fact shows all the more that divine forgiveness is not a change of attitude on God's part, in the way that forgiveness is usually understood by contemporary philosophers analyzing human relationships.

³ The characterization of divine forgiveness as legal pardon does not prejudice the question of the basis of divine forgiveness. In the New Testament, God's forgiving us our sins is based upon Christ's satisfying for us the demands of divine justice. Grotius was a strong defender of a penal substitutionary theory of the atonement and argued against Socinus that the satisfaction of God's retributive justice by Christ was not inconsistent with God's issuing a pardon to us on those grounds (*Defence of the Catholic Faith concerning the Satisfaction of Christ* VI).

⁴ For a thorough review of the relevant judicial decisions see *In re Sang Man Shin*, 125 Nev. 100, 104-9 (2009); *Robertson v. Shinseki*, 26 Vet. App. 169, 176-9 (2013).

⁵ "Punishment may expire, but guilt will last forever."

⁶ Hob. 67, 81, cited by Williston, 1915, p. 651.

⁷ See, e.g., *Groseclose v. Plummer* 106 F.2d 311, 313 (9th Cir.1939); *People ex rel. Prisament v. Brophy* 287 N.Y. 132, 137-8 (1941); *State Ex Rel. Wier v. Peterson*, 369 A.2d.1076, 1080, 1081 (Del.1976); *Dixon v. McMullen* 527 F. Supp. 711, 717-18 (N.D.Tex.1981); *In re Abrams*, 689 A.2d 6, 7, 10-11 (D.C. 1997); *R.J.L. v. State*, 887 So.2d 1268, 1280-81(Fla.2004); *Hirschberg v. Commodity Futures Trading Com'n*, 414 F.3d 679, 682, 683 (2005); *Fletcher v. Graham*, 192 S.W.3d 350, 362-363 (Ky.2006); *In re Sang Man Shin*, 125 Nev. 100, 110 (2009); *Robertson v. Shinseki*, 26 Vet. App. 169, 179 (2013)). For discussion of some of these cases see Steiner (1997), who makes the same equation.

⁸ Theories of justice may be classified as broadly retributive or consequentialist. Retributive theories of justice hold that punishment is justified because the guilty deserve to be punished. Consequentialist theories of justice hold that punishment is justified because of the extrinsic goods that may be realized thereby, such as deterrence of crime, sequestration of dangerous persons, and reformation of wrong-doers. Retributivism may be either positive (“the guilty deserve punishment”) or negative (“the innocent ought not to be punished”). There has been over the last half-century or so a renaissance of theories of retributive justice, accompanied by a fading of consequentialist theories.

⁹ Incredibly, the Polish logician Jan Łukasiewicz actually proposed a view according to which the past, like the future, has a branching structure, so that the past could be undone and thus guilt expiated. He wrote, “In the life of each of us there occur grievous times of suffering and even more grievous times of guilt. We should be glad to wipe out these times not only from our memories but from reality. Now we are at liberty to believe that when all the consequences of those fatal times are exhausted, even if this happened only *after* our death, then they too will be erased from the world of reality and pass over to the domain of possibility” (Jan Łukasiewicz, *Z Zagadnień Logiki i Filozofii* [*Problems of Logic and Philosophy*]: “O Determinizmie,” p. 126). I am indebted to Per Hasle for this reference. For a critical discussion of Łukasiewicz’s view see Ulrich Meyer, “Double Time,” paper presented at the conference “The Metaphysics of Time,” University of Aalborg, Denmark, March 19-21, 2019.

¹⁰ The phrase was apparently inspired by the great Oxford tense logician A. N. Prior, who, in reaction to W.V. O. Quine’s extolling the tenselessness of modern logic, praised medieval logic because it “took tenses far more seriously than our own common logic does” (Prior (1958), 117). I’m grateful to Prior scholar David Jakobsen for alerting me to Prior’s article, which was originally Prior’s presidential address to the New Zealand Congress of Philosophy in 1954.

¹¹ Hob. 81, 82 (1615), cited in Williston, 1915, p. 652. Williston notes that “The principal case was followed in *Leyman v. Latimer*, 3 Ex. D. 15 (1877), on very similar facts, and the court upheld the validity of the distinction taken in *Cuddington v. Wilkins*, between the legality of using the present and the past tense” and yet fails himself to appreciate the importance of this distinction.

¹² *E.g.*, *In re Sang Man Shin*, 125 Nev. 100, 105 (2009).

¹³ A number of scholars have noted that pardons differ from other forms of executive clemency in that the latter, unlike pardons, do not negate the criminal’s conviction but leave intact the judgement of guilt. For example, President Carter, in proclaiming an amnesty for Vietnam War draft-dodgers, said poignantly that their crimes have been forgotten, not forgiven. Similarly, recipients of commutations and reprieves remain guilty (Kobil, 1991, p. 577; Stacy

Caplow, 2013, p. 299; Messing, 2016, p. 672; Schoenburg, 2016, p. 924). This distinction seems to make sense only if a pardon annuls the guilt of the offender.

¹⁴ These just are the conditions Moore identifies as just desert (1997, pp. 33, 91, 168, 403–4).

¹⁵ On strict liability see L. H. Leigh, *Strict and Vicarious Liability: A Study in Administrative Criminal Law*, Modern Legal Studies (London: Sweet and Maxwell, 1982); David Ormerod, *Smith and Hogan's Criminal Law*, 13th ed. (Oxford: Oxford University Press, 2011), chap.7.