33 years ago.[6] In New York, where the privilege of recovering taxes has been extended to foreign states by statute,[7] the courts are still citing *Colorado v. Harbeck*[8] and announcing that "the policy of this state denies access to its courts for this purpose."[9]

It is submitted that despite the dogmatic language of the American Law Institute[10] and of a text writer,[11] there is a fighting chance for a courageous tax collector who is willing to cast his lot with those who think that the *Milwaukee County* dictum foreshadows a future Supreme Court decision requiring extraterritorial enforcement of state revenue laws. The present state of the authorities was perhaps best summed up by Mr. Justice Stone in the *Milwaukee County* case when he said that it remains an open question in this court[12] whether one state must enforce the revenue laws of another.

F. S.

CRIMINAL LAW—HABITUAL CRIMINALS—EFFECT OF PARDONED OFFENSE—[California].—Defendant was convicted of grand theft in California and with two prior convictions of felonies in Texas, was sentenced to life imprisonment under the California Habitual Criminal Act. The defendant had been granted a pardon for these prior offenses in Texas. Did these pardons relieve him from the increased punishment prescribed for habitual criminals? *Held,* The California statute is general in nature and therefore is all inclusive. Since there is no special provision excluding persons who were pardoned after conviction, such persons are necessarily included in the general provisions of the statute.[2]

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6. Holshouser v. Gold Hill Copper Co. (1905) 138 N. C. 248, 50 S. E. 650, 70 L. R. A. 183.

7. N. Y. Laws (1932) ch. 333.

8. (1922) 232 N. Y. 71, 133 N. E. 357.

9. In re Cornell's Estate (1933) 149 Misc. 553, 267 N. Y. S. 649, 652. See also Moscow Fire Ins. Co. v. Trust Co. (1937) 161 Misc. 903, 294 N. Y. S. 648, 673.

10. Restatement, *Conflicts* (1934) sec. 610: "No action can be maintained on a right created by the law of a foreign state as a method of furthering its own governmental interests." This is declared by comment (c) to refer to claims for taxes. Restatement, *Conflicts* (1934) sec. 443 declares: "A valid foreign judgment for the payment of money which has been obtained in favor of a state, a state agency, or a private person, on a cause of action created by the laws of the foreign state as a method of furthering its own governmental interests will not be enforced." Comment (b) states that the enforcement of such a judgment is not required by the full faith and credit clause. But cf. Milwaukee County v. White (1935) 296 U. S. 268, 275, 56 S. Ct. 229, 233, 80 L. ed. 220, 226.

11. "No court will give effect to the fiscal law of another state." Stumberg, *Conflict of Laws* (1937) 153.

12. (1935) 296 U. S. 268, 275, 56 S. Ct. 229, 233, 80 L. ed. 220, 226.

1. Cal. Penal Code (1931) sec. 644.

2. People v. Biggs (Cal. 1937) 71 P. (2d) 215.

Most courts agree that the pardoning power is an executive function and that no legislative act can limit the effect of an unconditional pardon, which relieves the offender from all legal consequences.[3] The authorities both legislative and judicial are in conflict as to the effect of a pardon on the liability of a defendant to suffer an increased penalty for a subsequent conviction. The weight of authority is that the pardon is immaterial and that the defendant may be adjudged a prior offender and given the increased punishment as such.[4] The rationale of the courts is that a pardon relieves the convict of the entire penalty incurred by the offense, but cannot relieve him from any penal consequence resulting from a different offense committed after the pardon. The legislative power has provided in these statutes for a severe punishment for repeated crimes. The increased penalty is not a new or additional punishment for a prior offense.[5]

The statutory provisions for increased punishment for habitual criminals differ in the various states. In a considerable number of the states the statutes expressly provide for the increased punishment for a crime committed after conviction of a prior offense, and a discharge therefrom by *pardon* or otherwise.[6] Most states, however, which have adopted habitual criminal acts are silent as to the effect of pardon. They refer simply to "prior convictions" or to persons "previously convicted" making no other qualification or explanation save that the defendant must have served a term of imprisonment therefor.[7]

The statutory provisions concerning the locality of the prior convictions in foreign states have also differed. Some jurisdictions, notably New York, provide that previous convictions must be in the same state, and will not recognize convictions obtained in other jurisdictions.[8] Nevertheless, most

3. Ex parte Garland (1867) 4 Wall. 333, 32 How. Prac. 241; Easterwood v. State (1895) 34 Tex. Crim. 400, 31 S. W. 294.

4. People v. Carlesi (1913) 154 App. Div. 481, 139 N. Y. S. 309, aff'd (1913) 208 N. Y. 547, 101 N. E. 1114, aff'd (1914) 233 U. S. 51, 34 S. Ct. 576, 58 L. ed. 843; Mount v. Commonwealth (Ky. 1865) 2 Duv. 94; Herndon v. Commonwealth (1899) 105 Ky. 197, 88 Am. St. Rep. 303, 48 S. W. 988; William v. People (1902) 196 Ill. 173, 63 N. E. 681; State v. Austin (1893) 113 Mo. 538, 21 S. W. 31; State v. Christup (1935) 337 Mo. 776, 85 S. W. (2d) 1024; Samuel Williston, Does a Pardon Blot Out Guilt (1915) 28 Harv. L. Rev. 647; Comment (1931) 22 J. Crim. L. 122; Comment (1930) 14 Minn. L. Rev. 293; Comment (1930) 3 So. Cal. L. Rev. 438.

5. Mount v. Commonwealth (Ky. 1865) 2 Duv. 94.

6. N. Y. Cahill's Crim. Code (1928) art. 90, sec. 1020-22; R. S. Mo. (1929) sec. 4461; Kan. Gen. Stats. (1935) sec. 21-107, 21-108; Okl. Stats. Ann. (1936) Penal Code ch. 15, art 6, secs. 1817-1820.

7. Ill. Smith-Hurd Rev. Stats. (1935) ch. 38, sec. 601; Ind. Burns Stats. Ann. (1938) vol. 4, sec. 9-2207, is silent as to effect of pardon but court held in Kelley v. State (Ind., 1933) 185 N. E. 453, that the legislature must be deemed to have had in mind the effect of a pardon at common law in absolving an offender of all legal consequences of conviction when it enacted the Habitual Criminal Act. Likewise, Ky. Carroll's Stats. Ann. (1936) sec. 1130, is silent as to effect of pardon on prior offense, but court held in Mount v. Commonwealth (Ky., 1865) 2 Duv. 94, and Herndon v. Commonwealth (1899) 105 Ky. 197, 48 S. W. 989, 88 Am. St. Rep. 303, that such a pardon had no effect on this act.

8. People v. Caesar (N. Y. 1823) Park Cr. 645.

jurisdictions provide in their statutes that convictions had in other states for offenses punishable in the state where the offense is perpetrated shall on conviction for any subsequent offense within that state be subject to the same punishment as though such first conviction had taken place in that state.[9]

A minority of states hold that a pardon reaches both the punishment prescribed for the offense and the guilt of the offender thus releasing the punishment and blotting out the existence of the guilt so that, in the eyes of the law, the offender is as innocent as if he had never committed the offense.[10] It has been explained [11] that the minority rule grew out of a misinterpretation of the statement by Bracton in giving the English law of pardon.[12] Upon closer examination of Bracton's treatise it is seen that his views do not support decisions of the minority group. He only intended a pardoned man to be entitled to restoration of his citizenship, to the right to testify, and to the rights of suffrage.

Nebraska has provided in its habitual criminal act that if the convicted person had been previously convicted and pardoned for the reason that he was found innocent then he shall not come under the provisions of the statute.[13] This provision places Nebraska on middle ground and would seem to be the most just and equitable method of handling the situation. Both the majority and the minority rule work an injustice to a fairly great extent, the majority rule in not taking cognizance of the fact that there are pardons granted to people found completely innocent, and the minority rule in being too liberal with hardened criminals.

L. R. K.

TAXATION—DEDUCTIONS FROM FEDERAL ESTATE TAX—USE OF MORTALITY TABLES—[Federal].—Deceased devised the residue of his estate to his nephew to be held in trust until he was 29 years of age. If the nephew died before reaching that age the trust fund was to be used for the erection

9. R. S. Mo. (1929) sec. 4462; Ky. Carroll's Stats. Ann. (1936) sec. 1130; Neb. Comp. Stats. (1929) sec. 29-2217; Okl. Stats. Ann. (1936) Penal Code ch. 15, art. 6, sec. 1817-1820; State v. Christup (1935) 337 Mo. 776, 18 S. W. (2d) 1024; McDonald v. Commonwealth of Mass. (1901) 180 U. S. 311, 21 S. Ct. 389 45 L. ed. 542; Kan. Gen. Stats. (1935) sec. 21-107, 21-108; Cross v. State (1928) 96 Fla. 768, 119 So. 380.

10. Ex Parte Garland (1867) 4 Wall 33, 32 How. Prac. 241; Ex Parte Collins (1925) 32 Okl. Crim. App. 6, 239 Pac. 693; State v. Martin (1898) 59 Ohio St. 212, 52 N. E. 188, 43 L. R. A. 94; Edward v. Commonwealth (1883) 78 Va. 39; Kelley v. State (Ind. 1933) 185 N. E. 453.

11. Samuel Williston, Does a Pardon Blot Out Guilt? (1915) 28 Harv. L. Rev. 647.

12. Zwess' Translation, Vol. 2, p. 371: "Pardoned man is like a new born infant and a man as it were lately born."

13. See Neb. Comp. Stats. (1929) sec. 29-2217, where an habitual criminal is defined and it is said that "if person so convicted shall show to the satisfaction of the court before whom such conviction was had, that he was released from imprisonment upon either of said sentences, upon a pardon granted for the reason that he was innocent, such conviction and sentence shall not be considered as such under this act."