

Sec. 2—Powers, Duties of the President

Cl. 1—Commander-In-Chiefship

Justice Miller, speaking for the minority, protested that the act of Congress involved was not penal in character, but merely laid down an appropriate test of fitness to practice law. "The man who, by counterfeiting, by theft, by murder, or by treason, is rendered unfit to exercise the functions of an attorney or counselor-at-law, may be saved by the executive pardon from the penitentiary or the gallows, but he is not thereby restored to the qualifications which are essential to admission to the bar."²⁷⁰ Justice Field's language must today be regarded as too sweeping in light of the 1914 decision in *Carlesi v. New York*.²⁷¹ Carlesi had been convicted several years before of committing a federal offense. In the instant case, he was being tried for a subsequent offense committed in New York. He was convicted as a second offender, although the President had pardoned him for the earlier federal offense. In other words, the fact of prior conviction by a federal court was considered in determining the punishment for a subsequent state offense. This conviction and sentence were upheld by the Supreme Court. Although this case involved offenses against different sovereignties, the Court declared in dictum that its decision "must not be understood as in the slightest degree intimating that a pardon would operate to limit the power of the United States in punishing crimes against its authority to provide for taking into consideration past offenses committed by the accused as a circumstance of aggravation even although for such past offenses there had been a pardon granted."²⁷²

Limits to the Efficacy of a Pardon.—But Justice Field's latitudinarian view of the effect of a pardon undoubtedly still applies ordinarily where the pardon is issued *before conviction*. He is also correct in saying that a full pardon restores a convict to his "civil rights," and this is so even though simple completion of the convict's sentence would not have had that effect. One such right is the right to testify in court, and in *Boyd v. United States*, the Court held that "[t]he disability to testify being a consequence, according to the principles of the common law, of the judgment of conviction, the pardon obliterated that effect."²⁷³ But a pardon "does not make amends for the past. It affords no relief for what has been suffered by the offender in his person by imprisonment, forced labor, or otherwise; it does not give compensation for what has been done or suffered, nor does it impose upon the government any obligation to give it. The offence being established by judicial proceedings, that which has been done or suffered while they were in force is pre-

²⁷⁰ 71 U.S. at 397.

²⁷¹ 233 U.S. 51 (1914).

²⁷² 233 U.S. at 59.

²⁷³ 142 U.S. 450, 453–54 (1892).