

The moving finger writes, and having writ,
Moves on : nor all your piety nor wit
Can lure it back to cancel half a line,
Nor all your tears wash out a word of it.

Rubáiyát of Omar Khayyám, translated by Edward Fitzgerald (quoted in Royce 2001, 161)

Annulment

The idea that punishment can annul wrongdoing is familiar—but mostly as a target of philosophical scorn. The suggestion that we can annul past wrongdoing has been called “metaphorical,” “obscure,” and “incoherent.”ⁱ

These reactions are not difficult to understand. There *is* something outlandish about the prospect of changing what has already occurred. THE PAST IS OVER, as graffiti stenciled on the sidewalk outside my office declares. Perhaps it is best to interpret talk of annulment loosely, as a way of referring to other things punishment accomplishes: repaying a debt, perhaps, or condemning the wrongdoer’s action.

I think this reinterpretation is wrongheaded. It seems like a sensible attempt to play it safe, to capture what is morally appealing about annulment without taking on board any metaphysically implausible claims about our capacity to change the past. But in an important sense, the reinterpretation is itself quite risky.

Let me explain. It is obvious that punishment’s impact on the world is complex and highly variable. Philosophical attempts to justify punishment are also tremendously varied—and the moral and philosophical questions to be asked about punishment go far beyond a straightforward question about what justifies such a practice.ⁱⁱ I embrace this messy diversity. I am a pluralist about the justification of punishment: if we are to resolve the many moral

questions surrounding this highly variable practice, we must draw on a complete picture of punishment's moral context and significance.ⁱⁱⁱ

If genuinely retroactive annulment possible, then it is possible for punishment to have a complex relation to wrongful actions: it may *both* be a response to past wrongdoing *and* affect that wrongdoing in some way. Refusing to contemplate punishment's impact on the past by reinterpreting talk of annulment in a deflationary, metaphysically unthreatening way will result in large gaps in our understanding of punishment's normative significance.

But all this is conditional on annulment's being possible. In this paper I argue that annulment is a metaphysical possibility, thus laying the groundwork for a fuller investigation of punishment's annulling impact on wrongdoing. My discussion has three parts. In section I, I clearly identify my target: I distinguish genuine, retroactive annulment from a class of non-retroactive alternatives—involving *restoration*, rather than annulment—that are often treated under the “annulment” label. Annulment and restoration are distinguished by their objects: annulment involves acting on the past, while restoration involves acting on the present or future.

In section II, I argue that genuine, retroactive annulment is sometimes possible: it is sometimes possible to act, now, to change what has already occurred. In the course of this argument, I develop a schema for annulment that makes clear how, and to what extent, this is possible: it is possible to change *temporally relational* facts about the past. Such facts, often labeled “soft facts,”^{iv} obtain in virtue of the temporally later context of an event. Altering that context ipso facto alters the relational fact about the past event. If the relevant context includes events in the present or future relative to the time at which we act, there is no special metaphysical difficulty in altering that context, and thereby altering the past.

The appeal to relational facts is crucial in establishing the possibility of changing the past. But serious doubts can be raised about the robustness of a change to a relational fact. Relational changes to a thing do not seem like *genuine* changes to that thing. As Peter Geach points out in another context, Socrates undergoes a relational change every time a new student comes to admire him; but that does not mean that Socrates *himself* changes in any serious sense. (Geach 1969, 72) We can, then, change relational facts about the past; but the relational nature of that change—which is the very feature that makes it possible—seems to render the change insignificant.

I argue that some relational changes to the past are different. Some relational facts about the past are themselves independently *morally* significant. Changing those relational facts makes a moral difference in the past. Genuine, independently significant annulment is possible within moral contexts.

A moral context is just what is at issue in the case of punishment. We are interested in whether punishment can annul wrongdoing in a morally significant way. In section III I draw on the discussion of section II to describe a temporally relational, morally significant feature of past wrongdoing.

Before I begin, a pair of caveats about my approach to this topic. First, I do not restrict my discussion to state-imposed criminal punishment in particular. Perhaps it will turn out that, e.g., individual interpersonal retaliation can annul wrongdoing. That would be interesting! I do not want to ignore such possibilities just because they do not involve criminal punishment. For this reason I use the term “punishment” to refer to the broad category of hard treatment inflicted

on a wrongdoer in response to wrongdoing; I use the term “criminal punishment” to refer more specifically to state-imposed hard treatment inflicted in response to violation of a law.

Second, I do not aim at establishing that wrongdoing can be entirely annulled. I don’t expect to be able to annul the fact that a murder victim has died, for instance. Nor do I demand that it be annulled *in every morally important respect*. I only aim to establish that punishment can retroactively alter wrongdoing in some morally significant way.

I: Annulment, not Restoration

My first task is to get clear about what is involved in genuinely retroactive annulment. It is important to distinguish the claim that punishment can *annul* wrongdoing from the claim that punishment can serve some *restorative* purpose. The two are often treated together in the philosophical literature on punishment, but they are distinct.

Restorative responses to wrongdoing bring back—they restore—some state of affairs that was altered by wrongdoing. One might, for instance, think that punishment restores a fair distribution of social benefits and burdens by imposing a cost on a criminal wrongdoer. (This is a very rough gloss of Herbert Morris’s well-known proposal that a criminal “has acquired an unfair advantage” and punishment “restores the equilibrium of benefits and burdens by taking from the individual what he owes” (Morris 1968, 478).) On an account of this sort, some balance exists before someone breaks the law; lawbreaking upsets that balance, until punishment puts things back into balance. Although the balance created by restorative punishment is patterned on the balance that obtained in the past, before the wrongdoing occurred, it exists from the time of punishment forward. Restorative punishment alters the present and future state of affairs.

As I indicate below, direct appeals to restoration are a common way of developing talk about annulling wrongdoing. But annulment is different. Annulment operates on *the past*

wrongdoing itself. Annulment does not simply bring back some state of affairs that obtained in the past. Annulment actually has an impact on what took place in the past.

The difference between restoration and annulment is familiar in other contexts. Consider, for instance, the difference between annulling a marriage and ending it through divorce. A marriage annulment brings it about that (from the law's perspective, at least) the parties involved were never married.^v By contrast, a divorce ends a marriage without wiping it from legal history; instead, from the date of the divorce onwards the parties are no longer married.

The difference between justifying punishment as a restorative response to wrongdoing and justifying it as an annulling response might be captured by saying that restorative justifications are forward-looking, because they are concerned with bringing about a good state of affairs now and in the future, while nullification justifications are backward-looking, because they are concerned with affecting an event that occurred in the past. This can be a useful way of marking the difference between annulment and restoration. But restorative accounts are still backward-looking in an important sense: they look back to the wrongdoing to understand what problem there is to be addressed going forward. They are sensitive to—they focus on restoring—a specific good state of affairs that the wrongdoing destroyed. (Or, equivalently, they are sensitive to, and focus on eliminating, a bad state of affairs that has been created by wrongdoing.) This is a natural and important way of being backward-looking.^{vi} (By contrast, deterrent-utilitarian justifications of punishment may pay much less attention to the nature of the wrongdoing itself; they are concerned with using that wrongdoing as an occasion for deterrence.^{vii}) There are many senses in which a justification of punishment may be backward-looking. Since annulment involves having an impact on the past, it is backward-looking in a very

serious way; but I do not wish to deny the (sometimes honorific) label *backward-looking* to other views.

The difference between restoration and annulment is, at bottom, a simple difference in object: annulment's object is in the past, while restoration's object is in the present or future. Of course, making this distinction does not guarantee an end to philosophical neglect of annulment. I have not done anything yet to address the incredulous reaction with which I began. Annulment involves changing the past; and that just seems obviously, metaphysically impossible. Why would anyone think that we can have an impact on what has already happened?

II: How Annulment is Possible

The simplest way to establish the possibility of changing the past is to provide an uncontroversial example of doing so.

Well, what about the example introduced to illustrate the difference between annulment and restoration: what about marriage annulment? A marriage annulment seems to bring it about that a marriage does not *and never did* exist. That's what sets an annulment apart from a divorce. So we seem to have an example of the past being changed.

But this is obviously too quick. One might doubt that marriage annulment really, in the final reckoning, changes the past. And we would like to have some analysis of *how* marriage annulment manages to alter the past, if it does so; that will be useful when we turn to consider the prospects for annulling past wrongdoing with punishment.

The details of the actual legal practice of marriage annulment will illuminate matters a great deal. Let me begin there.

First, consider an incestuous marriage. Suppose that, unbeknownst to everyone involved, two people who get married are siblings. Suppose further that (as is actually the case) marriages between siblings are legally prohibited. The marriage will be annulled if the (putative) spouses' blood relationship is discovered. This annulment is not an alteration of the past. It is simply a *recognition* that these two people weren't legitimately married all along. Someone with legal authority may have performed a ceremony; the state (and everyone else) may have acted as if these two people were married; but they did not satisfy one of the conditions on being married. The purported spouses were mistaken, as was the legal system and its representatives.

Call this recognition annulment: to annul something in this sense is to recognize that it never existed in the first place. There is more variation in state marriage law than I can do justice to here, but this is a common way of treating incestuous and bigamous marriages. Often state laws are explicit about the retroactive dating of this sort of annulment; California law, for instance, describes these marriages as "void from the beginning."^{viii}

Recognition annulment does involve altering our *understanding* of a number of events that occurred in the past. We now recognize, for instance, that when the state accepted a joint tax return from two siblings who were purportedly married, it made a mistake.^{ix} But this alteration in our understanding of the past clearly does not involve actually altering the past. It only involves recognizing what has been true all along.

Bigamous and incestuous marriages are often grouped together in state laws as "void" marriages. They are separated from another group of marriages, often labeled "voidable" marriages.^x These include marriages entered into under duress or because of fraud, and marriages

entered into when one or both parties are underage, have a mental illness, or are incapable of consummating the marriage.

Annuling these marriages is not a matter of recognizing that they never existed in the first place. Instead, these marriages involve conditions which give someone (often only one party—e.g., the one who was subject to duress, or underage) an opportunity to have the marriage eliminated by retracting or refusing her consent to the marriage. That is reflected in the limits on this sort of annulment: in many states, if someone enters into a marriage because of fraud, and then *after discovering the fraud* continues to cohabit as a spouse with the other party, she cannot seek an annulment. The continued cohabitation as a spouse indicates consent to be married in spite of the fraud.^{xi}

There is, again, tremendous variability in state laws here; but this second class of marriage annulment is clearly different from the first. These cases do involve recognition of some feature of the past (duress, for example), but that does *not* mean that we discover that the marriage never existed. Instead, we discover some fact that gives some parties the power to have the marriage eliminated.

Interestingly, many state laws explicitly avoid retroactively dating this second sort of annulment. In New York, for instance, this sort of marriage is null “from the time its nullity is declared by the court.”^{xii} The refusal to retroactively date this second class of annulment is not universal, however. Colorado law, for instance, declares categorically of both sorts of annulment that “Marriages declared invalid...shall be so declared as of the date of the marriage.”^{xiii} (Along with considerations like fraud and duress, Colorado also allows for marriage annulment if “one or both parties entered into the marriage as a jest or dare.”)

Is Colorado really so metaphysically bold as to claim for its courts the power to alter the past? Perhaps not. Here is an alternative explanation of what happens when a voidable marriage is annulled in Colorado: the state (or whomever is suitably labeled the legal agent) is resolving that, *going forward*, the persons in question will be treated by the law and legal institutions *as if* they were never married. Nobody really alters the past. Instead, a group of people and institutions pretend that the past has been changed.

I reject this deflationary account of the metaphysical powers of the state of Colorado. Here is why. A marriage is a legal entity. It exists within a particular conventional, legal framework (in this case, the framework of certain rules and institutions of the state of Colorado).^{xiv} Within such a framework, there need not be a gap between “proceeding as if X did not occur” and “X did not occur.”^{xv} That is, (1) the rules and institutions of this sort of conventional framework can alter what is true of the past from the point of view of the conventional framework; and (2) what is true from the point of view of this sort of conventional framework is a real feature of the world. Together these entail that (3) the rules and institutions of this sort of conventional framework can alter real features of the past.

Thus the rules and institutions of Colorado (and other such states) have the power to retroactively alter real features of the world. This power deserves much more investigation than I can give it here. One might wonder whether it has any limits at all. It is clearly self-limited: our actual legal institutions only declare that a marriage did not take place for certain circumscribed reasons set out in the law. But are there any limits to the power that the law could claim for itself or its institutions? For instance, could the law declare that some one person has the power to annul any marriage arbitrarily, for any reason whatsoever? (Not even Henry VIII was this bold: he found reasons within existing law for both of his annulments.) I suspect that there are some

limits on the power of conventional institutions to control conventionally determined features of the world, grounded in the norms governing the conventions and institutions in question. But I cannot explore those issues further here.

In any event, I take it to be clear that annulling a marriage, because one of the persons entering into the marriage was coerced or underage, is within the power that our legal institutions can and do exercise. A marriage is a real, conventionally constructed feature of our world, one whose existence can be affected by actions taken within that same conventional framework at a later time. In such a case, genuinely changing the past is possible.

This begins to give us insight into how annulment is possible: a conventionally constructed feature of the world can be annulled, if the relevant conventional context includes events that occur at a later time. But that does not seem to matter much if our interest is in annulling wrongdoing! At least in many cases, wrongdoing is not a conventionally constructed feature of the world. Most instances of wrongdoing seem to lack just the feature that makes annulment possible.^{xvi}

Digging a little deeper reveals that there is a broader phenomenon at work in the conventional case. A conventionally constructed entity like a marriage can be annulled because its existence depends on its conventional context, and the relevant context includes events that occur later in time. To retroactively annul a marriage, one only needs to be in a position to alter the relevant later context. The convention does no work in the explanation here: it is dependence-on-later-context, not the specifically conventional nature of the context, that makes retroactive annulment possible.

More generally: if some fact about a past time obtains in part in virtue of what happens at a later time, then it is in principle possible to retroactively affect that fact by affecting the relevant later events. By altering an event's later context, we can retroactively alter contextually dependent facts about that event. In this way, we can alter the past.

This provides a rough explanation of *how* retroactive annulment is possible. Next I want to consider two objections to this picture. Answering these objections will fill in some of its details.

Consider first a broad category of facts about the past that are dependent on later context: facts about **what consequences an event will have**. What consequences an event will have does depend, in an obvious way, on the event's context, including what comes later. For instance, whether or not the assassination of Archduke Ferdinand sets off World War I is a matter of what consequences the assassination has. About a month passed between the assassination and the first declaration of war; it is plausible that, during that month, some of those involved in European politics were in a position to act to prevent war from breaking out. On the present account, acting to prevent war from breaking out would retroactively alter the assassination so that it was not the beginning of a world war.

But this might not look like a case of *changing* the past. It does not seem right to say that the assassination of Archduke Ferdinand has the property of setting off World War I, which is changed when someone intervenes to prevent the war from happening.^{xvii} It seems more natural to say that what consequences the assassination will have is *unsettled*, until some specific consequences actually come to pass. If that is right, acting to prevent the war from breaking out does not *change* the assassination, in the sense of bringing about a change from a contrary. The

assassination did not have a contrary property to be changed! Instead, the preventative action settles a previously unsettled fact about the assassination.

Looming behind this worry is the broader challenge of describing carefully what is accomplished when we alter an event's later context and thereby affect a contextually dependent fact about that event. I do not want to commit to any specific account here. Instead I want to sketch three specific ways of understanding the phenomenon I have described and argue that, however exactly it is understood, this phenomenon does involve genuine retroactivity.

Begin with a strong view about future contingents, on which all propositions are timelessly either true or false. This view seems quite hostile to retroactivity. Consider for instance the marriage case. On this strong view, a proposition asserting that two people are married at a particular point in time—something of the form “David and Tracy are married at t_1 ”—is timelessly either true or false. If that proposition is true at t_1 , it will be true at t_2 and forever after. Nothing we do at a later time can alter the truth value of that proposition.

Well, nothing we do at a later time can *alter* the truth value of that proposition. But what we do at a later time can be *relevant* to its truth value. Suppose that David and Tracy do get an annulment at t_2 . Because of that annulment, “David and Tracy are married at t_1 ” is false—timelessly false. Such a proposition is therefore false at any time before t_2 , including t_1 . What is true at t_1 does, then, depend on what happens at a later time. This is a moderate but genuine sort of retroactivity: what happens at t_2 does not change the facts about t_1 , but it is relevant to those facts. What happens at later times does make a difference to what happens at earlier times.

Consider next a different account, on which the truth-value of propositions can vary over time. On this account, a proposition of the form “David and Tracy are married at t_1 ” can have different truth-values at different times. If David and Tracy get an annulment at t_2 , then this

proposition about t_1 is true at times before t_2 , and false afterwards.^{xviii} With propositions shifting from true to false (or vice versa) over time, this proposal involves a specific, robust sort of retroactivity: what is true of the past changes from its contrary. Before t_2 , it is true that David and Tracy were married at t_1 ; after t_2 , that same proposition about t_1 is false.^{xix}

As I pointed out in the case of Archduke Ferdinand's assassination, it often seems more natural to think that truth values shift from being *unsettled* to being either true or false. Before the war breaks out, it is natural to treat a proposition like "the assassination was the beginning of World War I" as being unsettled, neither true nor false. After the war breaks out, that proposition acquires a truth-value: it becomes true. I will not take a stand on the contentious claim that propositions can have unsettled truth values. I only want to point out that *if* one adopts this analysis, it does involve a robust sort of retroactivity. On this analysis, what we can truly assert of the past is changed. That may not involve a change from a contrary—the assassination does not change from having the property of *not* being the beginning of World War I—but it is a genuine change in what is true of the past.

It is important that the variable-truth-value account (whether it allows true/false or unsettled/settled variation) avoids the flat-out contradiction of holding that a single proposition has different, incompatible truth values at a single time. At t_1 , a proposition of the form "David and Tracy are married at t_1 " is either true or unsettled; at t_2 , the very same proposition is false. At no single time is that proposition both true and false, or both unsettled and false.

This might begin to sound like the deflationary "as-if" account of annulment that I mentioned while discussing marriage annulment. On the as-if account, annulment merely involves proceeding as if the past was different, from the time of annulment onward. The variable-truth-value account involves something superficially similar: it involves altering the

truth of a proposition, from the time of annulment onward. But the variable-truth-value account involves altering the truth value of a single proposition about the past: what is true of the past changes. By contrast, the as-if account does not involve actually altering any proposition's truth value. Instead it takes the propositions asserted to contain (perhaps covert) time indices. On the as-if account, when at t_2 we say something along the lines of "David and Tracy were married at t_1 ," we are actually asserting a proposition of the form "*from the perspective of t_2 , David and Tracy are married at time t_1 ;*" while at t_3 the same utterance asserts a different proposition of the form "*from the perspective of t_3 , David and Tracy are married at t_1 .*" Instead of changing what is *true* of the past, "as-if" annulment changes the content of our assertions of the about the past.

I have described several ways of understanding what happens when we affect an event's context and thereby affect a contextually dependent fact about that event. What I want to insist on is that, on each of these views, there is some significant retroactivity when context-dependent facts about the past are affected. The variable-truth-value accounts describe a strong sort of retroactive change to the past. But if one favors a view of truth and future contingents that rules out variation in truth values, the contextual dependence that I have described nevertheless involves a genuine form of retroactivity—although in that case it may be more accurate to say that the past is affected, rather than changed.^{xx} Because a variable-truth-value analysis seems to me the most natural account of many of the phenomena I discuss, I will continue to talk of changing the past in what follows. If the strong view of future contingents is correct, however, my conclusions about changing the past may be reformulated in terms of "retroactively affecting the past" without altering their content—most importantly, without changing the fact that philosophers have paid little attention to the way that punishment may retroactively affect the past.

One might still be worried about the consequences of accepting any of this. The example of Archduke Ferdinand can be extended to generate an enormous number of changes to the past. As I write, it becomes settled that Archduke Ferdinand's assassination happened ninety-nine years before this sentence was written: I have retroactively affected the assassination! Archduke Ferdinand's assassination happened ninety-nine years before I wrote *this* sentence: more retroactive change! There is something worrying about taking a phenomenon that manifests in so many trivial cases to be an interesting model for understanding the annulling impact of punishment.

To better frame this problem, we need to take a step back. The possibility of annulment rests on there being facts about the past that are contextually determined by context that comes later in time. The facts about the past that can be annulled are thus *temporally relational* facts: they obtain at least in part in virtue of what comes later. Some philosophers call such facts "soft facts" about the past, contrasting them with temporally intrinsic "hard facts" about the past.^{xxi}

Changes to the relational properties of a thing do not seem like genuine changes to the thing itself. In another context, Peter Geach famously objects that the "Cambridge change" account of change, on which any change in the predicates truly ascribable to a thing counts as a change in the thing, is "intuitively quite unsatisfactory," because on this account, "Socrates would change posthumously...every time a fresh schoolboy came to admire him; and numbers would undergo change whenever e.g. five ceased to be the number of somebody's children. ...[These changes,] we wish to protest, are not 'real' changes" (Geach 1969, 71-2).^{xxii} In a similar vein, Keith Campbell writes that "we all feel in our bones that there is a quite radical distinction to be made between the sorts of changes involved in becoming bald and the sorts

involved in becoming a grandfather. The first sort are closer to home. They are intrinsic, whereas the others are in some way derivative, dependent, or secondary” (Campbell 1981, 487).

Similarly: when I write this sentence, it becomes settled that Archduke Ferdinand’s assassination happened ninety-nine years before it was written. That is a way of affecting a temporally relational fact about the assassination; but, as with many changes to relational facts, it seems like an unsatisfying or derivative sort of change. Opening the possibility of changing the past seems to come at the cost of making the change in question illusory or insubstantial.

This is a serious objection, but it can be overcome. Geach and Campbell support their worries about relational change by murky appeals to what is “intuitively quite unsatisfactory” and “feelings in our bones;” but for present purposes a more definite criterion is available. Thinking about punishment, we are interested in what is *morally significant*. A change to a soft, temporally relational fact about the past may count as a *morally* genuine change to the past, if we must appeal to that changed soft fact to capture what is morally significant about acting to alter the context upon which it depends.

Often, changing a soft fact is not independently morally significant in this way. Consider once more the soft fact that the assassination of Archduke Ferdinand sets off World War I. If it would be good to retroactively alter the assassination so that it does not set off World War I, that is only because doing so is also preventing World War I, which is itself a very good thing to accomplish. Changing this soft fact about the past has no independent moral significance. It is a red herring. The moral reasons to avert World War I are located entirely in the future consequences of so acting. Describing that action in terms of its effect on the past contributes nothing to our understanding of its moral significance.

But not all soft facts about the past are red herrings of this sort. Suppose that I am out hiking and recklessly toss a rock that is about to set off a deadly avalanche. Seeing what is about to occur, I scramble to block the rock and prevent the avalanche. I thereby change a soft fact about the past: I change whether my reckless throw sets off a deadly avalanche. The future consequences of my action are surely morally significant (it is a good thing to prevent deadly avalanches). But that is not the only morally significant feature of my action. It is also morally significant that, by averting the deadly avalanche, I change what I am morally responsible for: if I intervene to stop the avalanche, I will not have caused some deaths. (The exact significance of this second fact is likely to be complex. In addition to being a further reason for me to act to prevent the avalanche, it may also make my action look more like a duty than a heroic supererogatory intervention.) Changing what I am responsible for is a matter of changing the soft fact about what consequences my past reckless action had. Changing that soft fact about the past is, in this way, independently morally significant. Fully capturing the moral significance of my acting to prevent the avalanche requires independently identifying *both* the future good consequences brought about *and* the altered soft fact about what I am responsible for.

Consider also the case of a voidable marriage. The existence of a voidable marriage is a soft, temporally relational fact.^{xxiii} And yet the existence of a marriage can be significant independent of the significance of the present and future consequences of annulling the marriage: it can matter to the people involved whether they have a marriage in their past or not, independent of how they are treated by the law from now on. Even if divorces were far easier to obtain than annulments and had identical practical consequences going forward (which is very nearly the case), it would be understandable for someone to pursue an annulment rather than a

divorce. It is reasonable for someone to care about whether she has a marriage in her past, independent of the practical consequences of getting the marriage annulled.

A change to a soft fact about the past is thus sometimes a genuine—a *morally* genuine—change to the past. Some changes to soft facts are morally significant, in a way that cannot be captured if we restrict our attention to temporally intrinsic changes to the present and future.

Putting all this together provides a detailed description of the requirements for genuine, retroactive annulment. What we need to do is identify the right sort of fact about the past. It is possible to annul a fact about the past if (a) it is a soft, temporally relational fact about the past, and (b) this soft fact has moral significance independent of the temporally later consequences of acting to change it.

Now the challenge facing a claim that punishment can annul wrongdoing can be stated clearly.^{xxiv} To make out such a claim, one should identify a fact about wrongdoing that (a) is a soft, temporally relational fact about the past and (b) is independently morally significant in the way sketched above. Further, since we are interested in punishment, (c) it should be possible to annul this fact about wrongdoing by inflicting some hard treatment on the wrongdoer.

In the next section I will identify two facts about wrongdoing: one fact about criminal lawbreaking, and one fact about wrongdoing simpliciter. Each is a soft fact about wrongdoing, and thus satisfies (a); and each can be altered by (c) inflicting hard treatment on the wrongdoer. (In fact, each of these facts can *only* be altered by punishment.) The crucial question, then, is whether these facts are (b) independently morally significant. I will suggest that the answer in each case is yes.

III: Prospects for Punishment

In “The Retributive Idea,” Jean Hampton claims that wrongdoing in general, whether criminal or not, involves a form of domination, defeat, or mastery of the victim.^{xxv} Dominating someone, in the way that Hampton describes, involves intentionally making her experience or do something that she wills not to experience or do.

Wrongdoing often involves *one-sided* domination: the wrongdoer inflicts something on the victim, and the victim does not treat the wrongdoer similarly. This one-sidedness is central to understanding the prospects for annulment here. Hampton describes an annulling response to such one-sided domination:

To inflict on a wrongdoer something comparable to what he inflicted on the victim is to master him in the way that he mastered the victim.... Whatever mastery he can claim, she can also claim. (Hampton and Murphy 1988, 128)

The response Hampton is describing involves the domination of the wrongdoer by the victim (or, perhaps, by the state, acting as the victim’s agent). This turns the wrongful domination into one part of a larger interaction involving *equal, reciprocal* domination. Such response retroactively eliminates—it annuls—the one-sidedness of wrongful domination.

To see this, consider the conditions for genuine, retroactive annulment set out in section II. Condition (a) is satisfied: the one-sidedness of a victim-wrongdoer interaction is a soft fact about the past. An instance of domination is one-sided in virtue of the fact that it does not prompt a reciprocal response at a later time.

Condition (c) is satisfied as well: affecting this feature of the past does require some broadly punitive response. More precisely, it requires that the victim dominate the wrongdoer in a way comparable to the way the wrongdoer dominated the victim. Because this domination involves making the wrongdoer experience or do something against her will, it will be experienced by her as a form of hard treatment. (In addition, if we can identify a sense in which the state can act as the victim’s agent and dominate the wrongdoer on the victim’s behalf, then

state-imposed criminal punishment can accomplish this annulment as well.)

Once again, whether this is a case of genuine, retroactive annulment turns on whether (b) bringing it about that wrongful domination is not one-sided is independently morally significant.

Hampton argues that it is important to react to wrongdoing in the way she describes because the one-sidedness of wrongful domination is a morally problematic form of evidence. It is evidence, Hampton thinks, that the victim actually has lower moral status than the wrongdoer, such that the wrongdoer's actions are appropriate.^{xxvi} If Hampton is correct, then changing the soft fact that the domination was one-sided is independently morally significant: changing that soft fact about the past is eliminating a morally problematic piece of evidence.

There is something intuitively appealing about the thought that wrongdoing can be morally problematic evidence for the wrongdoer's moral superiority. That is a way of capturing something intuitively *threatening* about the fact that someone has treated the victim in that way—and gotten away with it.^{xxvii}

But this idea does not stand up to closer scrutiny. If we are convinced that the wrongdoer's action is wrong, and that the victim and wrongdoer have equal moral standing, it is difficult to see why the wrongdoer's action is morally troubling evidence for their inequality—as opposed to being, say, evidence that the wrongdoer is seriously morally mistaken.^{xxviii}

A more promising route is to focus on the one-sidedness itself, rather than on its possible evidentiary significance. Begin with the fact that the victim and wrongdoer have equal moral status. If two people have equal moral status, I suggest, then their interactions should not involve unequal, one-sided domination. That is just part of what it is for two people to have equal moral status. Unreciprocated wrongful domination is morally problematic in part because it is one-sided in a way that is ruled out by the victim's having equal status with the wrongdoer. If instead

the wrongdoing prompts a reciprocal response, then—whatever else may be morally problematic about it—the wrongdoing is in line with what is required by persons’ equal moral status. We have a strong moral reason, rooted in what is required by equality of moral status, to eliminate the one-sidedness of wrongful domination.

This might seem to require morally problematic responses to certain sorts of wrongdoing. How could a rape victim dominate her rapist as much as she was dominated, without doing something truly horrific to the rapist? It seems likely that any such response would be morally problematic on other grounds, regardless of what it accomplished in terms of annulling the one-sidedness of the rapist’s treatment of the victim. Such a response seems likely to involve inflicting levels of harm on the rapist that are inevitably morally impermissible; inflicting such a response also seems likely to have a corrosive or corrupting influence on the respondent’s character.

I think that is exactly right: sometimes other considerations outweigh the importance of bringing wrongdoing in line with what is required by the victim’s equal status. But not always. Consider a different case: suppose a colleague betrays my trust. Suppose she shares an embarrassing secret that I had told her in confidence, as a way of getting a laugh out of some of our peers. I have been made to suffer some embarrassment, and I have had some fact about me made public against my will. This is problematic in part because of the unequal, one-sided way that my colleague has treated me. It is also problematic because I should not be made to suffer in those ways at all. The unequal, one-sided way I have been treated can be annulled. In order to annul that, I will need to reciprocally dominate my colleague; and in order to do that, I will need to inflict some suffering on her, against her will, that matches the suffering I have endured. I will need to add yet more suffering to our interaction. But in this case the suffering itself is

comparatively mild. It is much more plausible, in this case, that the reason I have to make our interaction equal is stronger than the reason I have to avoid causing more suffering of this mild sort.

Setting aside particular cases, the suggestion is this: one reason that *unreciprocated* wrongdoing is seriously morally problematic is because it is incompatible with the wrongdoer and victim having equal moral status. The victim, or those acting on the victim's behalf, can act to improve wrongdoing—along this one dimension—by reciprocally dominating the wrongdoer. That is true even though some cases of serious wrongdoing involve other factors which weigh against acting to improve the wrongdoing in this way.

This suggestion faces further difficult questions. One might, for instance, worry that even reciprocated domination is one-sided in a sense: considered on its own or in the moment, in isolation from its effects, even reciprocated wrongdoing involves one-sided domination of the victim by the wrongdoer. Why think that reciprocity is an improvement, if this different sort of one-sidedness remains? (This might lead one to think that *all* domination, and not just temporally extended unequal domination, is in conflict with the equal moral status of persons.) A close investigation of the relationship between equal moral status and equality in actual human interactions is required to make progress on these concerns. As with the discussion of lawbreaking above, so it is here: these questions go beyond the scope of the present paper. Further investigation of the proposal sketched here will have to wait for another occasion.

In this final section I have only begun to explore two ways in which a punitive response to wrongdoing may annul past wrongdoing. As I have indicated, those suggestions are tentative and in need of further exploration. But even in this undeveloped state they may prompt a final,

overarching objection to the whole project of appealing to annulment to justify punishment. Both the “annul a gap in the law’s power” proposal and the “annul the one-sidedness of wrongful domination” proposal connect punishment to familiar normative concerns (the justification of the law’s exercise of power over its citizens and the moral equality of persons, respectively). I have identified a novel way in which punishment is connected with those concerns—a novel and *convoluted* connection, an objector might emphasize—but the normative considerations themselves are certainly not new. Why, then, focus on connecting punishment to these considerations in such a convoluted way? It seems likely that there are more direct, more forward-looking ways of connecting punishment to these considerations. E.g., focusing on the law’s power, we might point out that punishment can have a deterrent effect and thereby make it more likely that the law will effectively exercise its power to prevent citizens from infringing each other’s rights. Punishment may be justified in part by this forward-looking contribution to an important function of the law. If this simpler way of connecting punishment to the law’s power is available, why strain to make annulment work?^{xxix}

If one’s concern is simply to establish that we have *some* moral reason to punish wrongdoers, or to answer some specific moral objections to punishment, then this objection has force: there may be ways of accomplishing those limited justificatory goals without appeal to annulment. But, as I indicated at the beginning of this paper, punishment’s complexities require that we adopt the more ambitious goal of fully understanding punishment’s many normative connections. This holistic understanding of punishment’s moral significance requires a full, open exploration of the diverse ways, retroactive and not, that punishment may be connected to important moral considerations.

I have only begun that investigation here. Surely there are many other possibilities to

explore. Like its impact on the future, punishment's impact on the past is surely complex and variable. What we need now is a careful, open-minded investigation of those impacts and their normative significance. Such an investigation is likely to shed light on whether punishment is justified; on when it is justified; on what rational aims it can be used to accomplish; on who ought to be punished; and on how and how much they ought to be punished—to name just a few of the many open and difficult moral questions about punishment.^{xxx}

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ⁱ For "metaphorical," see (Hampton and Murphy 1988, 114) and (Dolinko 1992, 549); for "obscure," (Honderich 2006, 42); for "incoherent," (Mackie 1982, 5).

ⁱⁱ On the many attempts to justify punishment see, for instance, John Cottingham's classic paper "Varieties of Retribution" (Cottingham 1979). Cottingham identifies nine distinct uses of the term "retribution" in philosophical discussions of punishment. For the further moral questions to be asked about punishment, see (Hart 2008, 1-27) and (Dolinko 1991, 539-541).

ⁱⁱⁱ In this respect I take myself to be in good company. Cf. Herbert Morris's belief in "the rich over-determination of goods promoted by the practice of punishment" (Morris 1981, 271), and Jean Hampton's account of the "multiple aims of the punitive response" in (Hampton 1998, 44) (which is a departure from her earlier rejection of a "patchwork approach to punishment" (Hampton 1984, 208-9 n. 2)).

^{iv} See (Pike 1966), (Saunders 1966), (Adams 1967), (Fischer 1983), and (Todd 2012); for further discussion, see section II below.

^v This is a drastic oversimplification of actual legal practice, which varies from state to state, and which I discuss in greater detail in section II below. At the moment I am only drawing on the common understanding of the significance of marriage annulment.

^{vi} To choose an example at random, in "Justice in Reparations" Chris Kutz describes restitutions (in the form of the return of state-confiscated property to residents of post-Communist Czechoslovakia) as backward-looking, apparently because such restitutions aim to restore property to its prior owners. He does so in passing and contrasts that with "forward-looking" aims also active at the time, like quickly bringing about the privatization of state-owned property (Kutz 2004, 290).

^{vii} And yet, as Rawls points out in “Two concepts of rules” (Rawls 1955, 5-6), even within a deterrent-utilitarian framework specific instances of criminal punishment may be backward-looking in a robust sense.

^{viii} California Family Code §§2200, 2201.

^{ix} This does *not* entail that the correct course of action upon recognizing this mistake would be to act as if two unmarried people had filed a joint tax return. Other considerations are surely relevant in the aftermath of this sort of mistake. (Thanks to T. M. Scanlon for pressing me on this point.) Along these lines, annulment law often treats children born or adopted by a couple within a void marriage as being the legitimate children of both parents. That may be driven by concern for the well-being of the children in the aftermath of this sort of mistake. See NY Domestic Relations Code §24 ¶1, Illinois 750 ILCS 5/212, and Colorado Code §14-10-111. California law does not make this presumption. (The distinction between legitimate and illegitimate children is nowadays quite minimal, but it can have some significance for immigration purposes.)

^x Compare NY Domestic Relations Code §§5 (“Incestuous and void marriages”) and 6 (“Void marriages”) to §7 (“Voidable marriages”), and California Family Code §§2200 and 2201 to § 2210.

^{xi} See Cal. Family Code §2210. Similar conditions are attached to annulment of underage marriages and marriages obtained by force.

^{xii} NY Domestic Relations Code §7.

^{xiii} Colorado Code §14-10-111, ¶5. Similarly, in Illinois retroactivity is the default for all forms of annulment “unless the court finds, after a consideration of all relevant circumstances, including the effect of a retroactive judgment on third parties, that the interests of justice would be served by making the judgment not retroactive.” Illinois 750 ILCS 5/304 (titled “Retroactivity”).

^{xiv} Setting aside, for simplicity’s sake, the complexities of the interrelationship between state and federal laws regarding marriage in the United States. (That is, for present purposes I suppose that Colorado is an independent sovereign state.)

^{xv} Of course, in some instances the institution may provide for such a gap. That seems to be what New York does with annulment of voidable marriages.

^{xvi} Ted Honderich (Honderich 2006, 42) and Herbert Fingarette (Fingarette 1977, 506) make similar points.

^{xvii} Although see (Todd 2011) (discussing Geach 1977) for articulation of just this view about prevention.

^{xviii} In (MacFarlane 2003) and (MacFarlane 2012), John MacFarlane distinguishes variation in truth value across changes in context of *utterance* from variation in truth value across changes in context of *assessment*. He argues that the latter is a more extreme sort of variability (and labels it a form of relativism about truth). I deliberately remain neutral about the sort of variation I am discussing in the main text, because either sort of variation opens the door for change that is genuinely retroactive in the sense I describe.

^{xix} I am indebted to Raul Saucedo for suggesting this approach and for helpful conversation about these possibilities. The view that propositions can vary in truth value over time is often discussed in the philosophical literature under the label “temporalism.” For a classic formulation and critique of temporalism, see (Richard 1981); for further discussion, see (Richard 1982), (Aronszajn 1996), and (Brogaard 2012). See also (Zimmerman 2005) for a discussion of variation in the truth value of tensed sentences.

After writing this section, I became aware of a brief discussion of the possibility of appealing to variable truth values to make sense of “changing the past” in the philosophical literature. In the final footnote to his paper “On Retrocausality” (which is mostly concerned with providing a conceptual framework for thinking about certain instances of apparent reverse causation in quantum mechanics, the details of which diverge sharply from the details of the phenomenon I am attempting to capture), John Fitzgerald says:

There is a kind of retrocausality, mentioned by a referee of this paper, which is clearly self-contradictory, viz., that in which a later event “changes the past”. By this is meant that up to a time t_1 it is the case that a state of affairs S obtains at the earlier time t_0 , but at t_1 something happens in virtue of which it is then and henceforth false that S obtains at t_0 ... Interestingly enough, one can envisage adapting one's conceptual scheme to such “changes” in a fashion which enables one to avoid explicit self-contradiction, though it certainly involves a mad conceptual schizophrenia. Simply make all attributions of truth-values relative to place-times. Relative to a given place-time P, each proposition is assigned at most one truth-value. So the “world-story” relative to place-time P is an internally consistent one. (Fitzgerald 1974, 551)

If one is concerned to avoid being labeled a mad conceptual schizophrenic, then the-past-depends-on-the-future alternative can be adopted without giving up on a substantial form of retroactivity.

I should also note that some philosophical discussions of time travel do engage directly with the possibility of changing the past; see, e.g., (GODDU 2011). Those discussions focus on the possibility of enjoying a broad freedom to act in the past, which brings with it the possibility of apparently paradoxical causal loops. The sort of

acting-now-to-change-what-is true-about-the-past that I am describing is less worrisome than that, as this ability need not extend to creating causal loops.

^{xx} Thanks to members of an audience at RoME VI for suggesting this alternative way of describing what annulment involves, and for pressing me on the issues discussed in this section.

^{xxi} The hard/soft fact distinction is often attributed to Ockham; the “soft fact” terminology is introduced by Nelson Pike in (Pike 1966). See also (Saunders 1966), (Adams 1967), (Fischer 1983), and Patrick Todd’s extremely insightful account in (Todd 2012). (Drawing on a suggestion made in (Fischer 1983), Todd emphasizes the importance of “in virtue of” dependence to the temporally relational nature of soft facts; that is missing in many other discussions of soft facthood.)

^{xxii} Geach describes these relational changes as “*mere* ‘Cambridge’ change.” (italics and scare quotes in the original).

^{xxiii} In particular, the existence of a voidable marriage is dependent (in part) on one party’s consent, which may occur in the future relative to a time at which the marriage exists. To see that, consider the following case: suppose that I am the victim of fraud when I marry Tracy in 2006. Suppose further that in 2008 I discover the fraud but consent to being married to her despite the fraud. It is true that in 2007 we were married; and that is true in part in virtue of my consenting to be married, which consent will be given in 2008. Thus our voidable marriage exists in 2007 in part in virtue of something that happens in 2008.

^{xxiv} The account developed in this section has further applications, ones I cannot explore here. Atonement is one phenomenon which may fit into this model for changing the past. (See, e.g., (Royce 2001, Lecture VI) and (Radzik 2009).) Often atonement is described, somewhat apologetically, as “in a way” or “in a sense” changing the past, in the sense of changing the “meaning” of the past (Radzik (Radzik 2009, 60 ff) describes Royce’s analysis of atonement in these terms, for instance). The analysis worked out in this section may provide a way of making such claims more precise and robust.

^{xxv} Ch. 4 of (Hampton and Murphy 1988). Hampton thinks that this is essential to wrongdoing; I am not convinced of that. What I have to say applies to any wrongdoing that involves mastery or domination.

^{xxvi} See, e.g., (Hampton and Murphy 1988, 128-9).

^{xxvii} Cf Pamela Hieronymi’s description of unrepented, unforgiven wrongdoing as “a past action that persists as a present threat” (Hieronymi 2001, 546).

^{xxviii} For more in-depth criticism of Hampton’s attempts to explain the moral significance of the annulment she describes, see (Dolinko 1991, 549 ff).

^{xxix} Thanks to Shelly Kagan for pressing me on this point.

^{xxx} On the many moral questions about punishment that philosophers might hope to answer, see H L A Hart’s “Prolegomenon to the Principles of Punishment,” in (Hart 2008, 1-27); and (Dolinko 1991, 539-541).