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THE POWER OF MERCY: AN EXAMINATION OF
PRESIDENTIAL PARDON PATTERNS

by

Stewart Ulrich

A thesis submitted in partial fulfillment
of the requirements for the degree

of

MASTER OF SCIENCE

in

Political Science

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ABSTRACT

The Power of Mercy: An Examination of Presidential Pardon Patterns

by

Stewart Ulrich, Master of Arts

Utah State University, 2020

Major Professor: Josh M. Ryan

Department: Political Science

The Constitution gives the president the unilateral power of clemency, with no checks from other branches of government. What explains variation in the number of pardons issued by each president? After an examination of presidential clemency, certain patterns emerge. Using Stephen Skowronek's types of presidents, I contend that the political situation when a president is elected helps determine their use of the pardon power. Generally, presidents who come into office with the confidence of the people use the pardon power more, due to an emboldening effect of their election. Presidents who come into office with weak support do not use the pardon power as frequently. Furthermore, a downward trend of clemency across time is attributed to the explosion of media in recent years. By dividing presidents into different types, we can better understand their use of the pardon power. Although presidents are individuals, I find that their use of formal powers follows general patterns.

(53 pages)

PUBLIC ABSTRACT

The Power of Mercy: An Examination of Presidential Pardon Powers

Stewart Ulrich

The Constitution gives the president the power of clemency, the ability to forgive crimes and release individuals from prison. There are no checks on this power, giving the president unilateral power. Are there any factors that constrain this power or affect it? I claim that the electoral manner in which a president comes into office helps determine how they will use the power. Presidents coming into power with enthusiasm and confidence of the people will issue more clemency, while those who come into power with less will have decreased levels of clemency. Additionally, with more media outlets to scrutinize their every action, more recent presidents also issue less clemency.

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Stewart Ulrich

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Introduction

On the evening on November 15, 2019, President Donald Trump issued three acts of clemency: full pardons of First Lieutenant Clint Lorance and Major Mathew Golsteyn and a reversal of the demotion of Chief Petty Officer Edward Gallagher (Statement from the Press Secretary 2019). All three were military service members accused of committing war crimes in Iraq and Afghanistan. The previous summer had been the high profile and contentious military trial of Gallagher. All three had been featured on conservative media outlets, with Gallagher's wife openly calling on the president to intervene in her husband's case. These acts of clemency were issued against the advice of senior military leaders and caused some to question whether the president damaged the military justice system (Philipps 2019). The aftermath of the Gallagher episode led to the resignation of the Navy Secretary (Morgan 2019).

The reaction to these pardons was widespread, and many were shocked at the powerlessness of members of Congress, left only with the ability to criticize. Senator Jack Reed, the chairman of the Senate Armed Services Committee, stated at a hearing "the president has the power to pardon, but he has the responsibility to use that power wisely, not recklessly" (Barnes 2019). The president has the sole and final word on acts of clemency with no options for Congress to check that power. As one writer wrote, "the Presidential power to pardon is plenary and cannot be limited by Congress absent a constitutional amendment giving Congress that power" (Strasser 2003). President Trump, by issuing acts of clemency to controversial figures such as Joe Arpaio and Dinesh D'Souza, has followed his predecessors' example of controversial acts of clemency. Gerald Ford's pardon of Richard Nixon and Bill Clinton's pardon of Marc Rich are some

that have caused furor, though all were decisions within the president's constitutional power. There are no built-in checks to this power, giving the chief executive this virtually unlimited power. Thus, apart from the extreme step of impeachment, members of Congress have no institutional recourse against a presidential pardon, no matter how controversial or ill-advised they may be.

The Constitution of the United States is based upon the principle of separation of powers with checks and balances ensuring no one person or entity holds too much power. The framers of the Constitution were especially wary of giving the executive unchecked power, having broken away from a king to set up a republic. Presidents since then have expanded the scope of some powers and diminished the scope of others. But how do they use those powers? What constrains presidents from using the pardon power? I claim that the political situation when a president comes into office helps determine their use of the pardon power. The manner of election of a president has an effect on their use of presidential power.

There have been 44 different people hold the office of the president, each one has certainly used their power uniquely. Though we think of presidents as individuals, we can think of them as following general patterns. By looking at one power in specific, the pardon power, we can find patterns in how presidents use their formal powers. I use both qualitative and quantitative methods to analyze the frequency of presidential clemency. By using Skowronek's framework of presidents, I claim that presidents classified as reconstruction and articulation pardon more, while presidents classified as preemptive and disjunction pardon less. Using a regression to predict the number of pardons, I find evidence for these claims. A downward trend in clemency occurs across time, attributed

to the changing media environment. Republicans also pardon more than Democrats, which I attribute to ideological views on criminal justice.

Views on Presidential Leadership

The framers of the United States Constitution were wary of concentrating too much power in the national executive, after breaking away from what they viewed as a tyrannical monarch, and conscious in creating a separation of powers. Indeed, one scholar wrote “we know that the Founders wished to scale back the executive powers of a monarch but also intended the executive to be a counterweight to legislative powers that many believed had expanded dangerously in the years following the Revolutionary War” (Krent 2005). As James Madison wrote in *Federalist 47*, “the several departments of power are distributed and blended in such a manner as at once to destroy all symmetry and beauty of form, and to expose some of the essential parts of the edifice to the danger of being crushed by the disproportionate weight of other parts”(Hamilton, Madison, and Jay 1961). He “consistently favored a high degree of executive independence from improper legislative meddling, Madison was too much the republican to suggest that major decisions about policy should be taken anywhere else than the legislative arena” (Rakove and Zlomke 1987).

We find in statements of the framers their desire to avoid creating an all-powerful monarch and limiting the power of the executive with checks and balances. Thomas Paine wrote in *Common Sense* “there is something exceedingly ridiculous in the compost of the Monarchy” and the crown “swallowed up the power and eaten out the virtue of the House of Commons” (Paine 1776). Alexander Hamilton shared in *Federalist 69* the distinction between the executive that was created and the monarch, writing “The

President of the United States would be an officer elected by the people for four years; the king of Great Britain is a perpetual and hereditary prince. The one would be amenable to personal punishment and disgrace; the person of the other is sacred and inviolable.” The method and length of office is what distinguishes the two, and the president is “re-eligible as often as the people of the United States shall think him worthy of their confidence” (Hamilton, Madison, and Jay 1961). John Adams noted the “duration of our president is neither perpetual nor for life; it is only for four years; but his power during those four years is much greater than that of an avoyer, a consul, a doge, a stadtholder, nay, than a king of Poland; nay, than a king of Sparta.” Though Adams opposed an unlimited executive, “he believed that in a balanced government a ‘monarchical’ figure was indispensable, for it was this figure who would ultimately uphold the balance” (Miroff 1987). James Madison noted the precarious nature of creating a powerful executive, writing in *Federalist 48* that “a government where numerous and extensive prerogatives are placed in the hands of an hereditary monarch, the executive department is very justly regarded as a source of danger...”(Hamilton, Madison, and Jay 1961). The resulting solution was “an executive strong enough to be effective but checked enough to prevent tyranny” (Hurowitz 2018).

While the executive could be dangerous, it was determined that a single person capable of making decisive actions was superior to a multi-member executive. Hamilton wrote about the “necessity of an energetic executive” and “energy in the executive is a leading character in the definition of good government.” He argued that the politicians celebrated for their judgement and just governance “declared in favor of a single executive and a numerous legislature” (Hamilton, Madison, and Jay 1961). Adams

concurrent, writing “the attention of the whole nation should be fixed upon one point” and “the unity, the secrecy, the dispatch of one man has no equal” (Miroff 1987). At the Pennsylvania ratifying convention, James Wilson stated “we well know what numerous executives are. We know there is neither vigor, decision, nor responsibility in them” (Kaminski and Saladino 1984a). At a different state ratifying convention, in Virginia, Edmund Randolph stated that “all the enlightened part of mankind agree that the superior dispatch, secrecy, and energy with which one man can act, renders it more politic to vest the power of executing the laws in one man” (Kaminski and Saladino 1984b).

Modern presidential scholars have disagreed on the source and focus of informal presidential power. In his seminal work *Presidential Power*, Richard Neustadt states that presidential power is the power to persuade and the individual in the office of the presidency matters. He writes that “a reasonable President would need no power other than the logic of his argument” and a “President’s authority and status give him great advantages in dealing with the men he would persuade.” The sources of presidential power come from both the president’s professional reputation and public prestige, which combined give the president an effective position to bargain from. Using that reputation, “a President’s ability to ‘appeal to the people’ may be chief among his vantage points...” Neustadt emphasizes the importance of the individual in setting the reputation by stating it is “made or altered by the man himself” and “everything he personally says and does (or fails to say, omits to do), becomes significant in everyone’s appraisals...” The president’s public prestige, defined as “a jumble of imprecise impressions held by relatively inattentive men,” also helps the president bargain to achieve policy goals (Neustadt 1980). In this view of presidential power, informal powers of the president are

seen as more important than formal powers enumerated in the Constitution. Informal powers of prestige, reputation, and persuasion are what makes the president effective and are the true source of the power of the office.

In a similar view of the importance of informal power, Robert Dahl and Charles Lindblom write in *Politics, Economics, and Welfare* that presidential power is the power to bargain. The president is someone “whose career depends upon the successful negotiation of bargains.” Winning and maintaining office is all about negotiating alliances and “most of his time is consumed in bargaining.” Navigating these relationships equals success and is a skill that “distinguishes the master-politician from the political failure” (Dahl and Lindblom 1953). Similarly, another scholar argued that how successful a president is at governing “is not a fault of the system but a matter of the personal capacity of the President.” (Patterson 1947). Another argues that since John F. Kennedy, presidents have led their own way and governed alone, without the political party and establishment. The top priority for presidents is and has been to protect their power and stay on top. Since the time of Franklin D. Roosevelt, “Americans have come to expect more from their presidents, from the only leaders elected by the whole nation, leaders who operate from the widest political base, with all the legitimacy that base offers.” (Burns 2006).

However, not all scholars agree the informal power of persuasion is important to a president. In contrast to Neustadt, Stephen Skowronek argues that presidents are successful depending on the situation in which they come to power. More influential is the political situation presidents find themselves in, not the individual president and personality. He characterizes presidents as formidable political actors that are continually

remaking politics. He describes this as “critical agents interpreting the meaning of elections and translating electoral opportunities into new forms of politics.” Individual personality and persuasion are not what move presidential power, rather the times in which presidents find themselves and the political factors surrounding them are the key to their success. He calls the presidency a “battering ram” and the most successful presidents are “those who have been best situated to use it forthrightly as such.” Emphasizing the different situation in which each president finds themselves, he states that “the test of leadership varies widely from one incumbent to the next and that what presidents do to American politics turn in large measure on which test they are taking” (Skowronek 1993b). He does acknowledge, though, that presidents are historical actors and driven by a concern for their reputations.

Also agreeing is George C. Edwards, who holds the view that presidents cannot create opportunities for change by persuading others. He argues that presidents “cannot reshape the contours of the political landscape to pave the way for change by establishing an agenda and persuading the public, Congress, and others to support their policies.” The answer for presidents is “recognizing opportunities in their environments and fashioning strategies and tactics to exploit them.” Presidents, a position he characterizes as the “most prominent focus of political leadership in the United States,” are unlikely to change public opinion and “cannot reliably persuade the public to support their policies.” One reason for this is the crowded media environment, where presidents have to compete with many different sources for the public’s attention. The executive’s relationship with Congress is important due to Congress being an important agenda setter, “perhaps the

central one,” and the strength of the president’s party in Congress is an important leadership resource (Edwards 2009).

Modern scholars have also viewed the media landscape and current situation and how presidents operate in that environment. One scholar shows how presidents take their fight to the people in *Going Public*. This is a strategy where “a president promotes himself and his policies in Washington by appealing directly to the American public for support.” Instead of working with members of Congress and other members of the government, a president forces “compliance from fellow Washingtonians by going over their heads to enlist constituents’ pressure” for the action they desire. Using the public as a tool for pressure is a relatively new idea. Theodore Roosevelt famously dubbed the president the “bully pulpit” while Woodrow Wilson and Franklin D. Roosevelt campaigned the public for support of their League of Nations and New Deal ideas, respectively. These examples are the exception and not the norm for most of the 20th Century; this strategy was not widely used. However, with the advent and popularity of media and technology, more presidents take part in this endeavor. The strategy “should be appreciated as a strategic adaptation to the information age” (Kernell 2007).

As a result of this public posturing, the legitimacy of other politicians is undermined. This strategy is not bargaining, in a departure from earlier scholars, but actually the opposite and incompatible with that style of governing. One major reason so many recent presidents have gone public is due to the regularity of divided party control of the government. Kernell points out that every president since Jimmy Carter has at some time had to work with a Congress where the opposition party controlled one or both chambers. Due to this conflict with Congress, the president sees it necessary to get out of

Washington to see what the citizenry thinks. While this may seem advantageous to a president, it can have adverse effects on relationships with lawmakers. Members of Congress may “find themselves ill disposed toward a president who prefers to deal indirectly with them through what they may interpret as coercion rather than face-to-face in the spirit of mutual accommodation” (Polsby 1978).

Another scholar agrees that presidents “still go public, but now they emphasize a different mix of going public activities compared with a generation ago.” Jeffrey E. Cohen wrote in *Going Local* that instead of going national, presidents go narrow. “They focus on mobilizing support from their party base, interest groups, and select localities.” Presidents are rational actors, and they “adapt to changing circumstances or context.” In the post-broadcast age, he writes, the most effective appeals are targeted presidential appeals. Presidents affect local news coverage, which in turn affects the public opinion of the president. Similar to Skowronek’s view that presidents adapt to the politics they find themselves in, Cohen states that presidential leadership styles adapt to the changes in context. The reason presidents have gone narrow instead of national is due to increased party polarization and news media fragmentation. In disagreeing with Neustadt, he states that “context may be a more powerful influence over presidential leadership style than presidential personality, without denying that personality also has a role to play in presidential selection of a leadership style” (Cohen 2010).

The Formal Power of Clemency

Informal presidential power is one aspect of the executive’s power. Of course, presidents also have formal powers enumerated in the Constitution, including ones as unilateral as the pardon power. This power is one of only a few specifically granted the

president in Article II of the Constitution, along with commanding the armed forces and appointing ambassadors and judges. The pardon clause, in Section 2 of Article II, gives power to the president to “grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.” Apart from the qualification that cases must be against the United States, meaning federal offenses, and the exception of cases of impeachment, there are no built-in checks to this power. The president even has different options for clemency: a pardon, commutation, or remission. Each mean a different outcome for the person granted clemency. The Department of Justice defines a commutation as an act that “reduces a sentence, either totally or partially, that is then being served, but it does not change the fact of conviction” while a remission applies “only to the part of the financial obligation that has not already been paid.” A pardon is “an expression of the President’s forgiveness and ordinarily is granted in recognition of the applicant’s acceptance of responsibility for the crime and established good conduct for a significant period of time after conviction or completion of sentence” (Department of Justice 2019).

While the Constitution did not set up a formal structure for presidents to pardon, an infrastructure has been established in subsequent years. Within the Department of Justice is the Office of the Pardon Attorney, which was created on March 3, 1865. This office receives and reviews all petitions for executive clemency and does any necessary investigations into those applications. Recommendations are then prepared and sent to the president who makes the final call. The president does not need to accept the recommendations and can issue a pardon to someone outside of the structure, as the power is “unlimited and unqualified” (Stanish 1978).

The Supreme Court has interpreted the pardon clause in the Constitution and shaped the power into our modern conception of the power. In the case *U.S. v. Wilson*, Chief Justice John Marshall defended the president's power, by stating pardons come from an executive "whose language is our language, and to whose judicial institutions ours bear a close resemblance." He also stated "we adopt their principles respecting the operation and effect of a pardon" (UNITED STATES v. GEORGE WILSON). Pardon scholar P.S. Ruckman, Jr. wrote that since the *Wilson* ruling, the court has given the president the right to remit fines, pardon criminal contempt of court, give conditional pardons, commute sentences (1997), as well as declaring the pardon power conferred to the president in the Constitution as "unlimited" and that it "extends to every offence known to the law" (Ex Parte Garland).

One could wonder why the Founders vested such an unchecked power in one institution. Some of the Founders were wary of the power, as exhibited by Constitutional Convention delegate Luther Martin who called the pardon power "extremely dangerous" (Farrand 1911). Why give such a dangerous power to one person? One view stated by some of the Framers is the ability of the president to act decisively and unilaterally on issues of clemency for the sake of mercy. One proponent of this argument was Alexander Hamilton, who stated in *Federalist No. 74*, "one man appears to be more eligible dispenser of mercy of the government than a body of men." He also argued that in cases of rebellions and insurrection, a well-timed pardon to rebels would restore tranquility. Having to convene a body such as the legislature would cost precious time and not be as effective (Hamilton, Madison, and Jay 1961). This view is shared by pardon scholar Mark Rozell, who stated "only one person—the president—should be responsible for

weighing the needs of justice and the national interest against the partisan passions of the day, and make the final determination as to the proper course of action” (Rozell 1994).

Another proponent of this view was St. George Tucker, who wrote in *Blackstone’s Commentaries* that the pardon power in the Constitution was monarchical and giving the power to the president was advantageous. His reasoning was that the president could act according to the “dictates of his own bosom” and not be constrained to the advice of a council (1803).

Another view of the pardon power during the creation of the Constitution was that it was not an unchecked power, but as a check and balance itself. Congress makes laws and creates the statutes and the judiciary interprets them and hands down sentences. The president can check their power by using the pardon power to give reprieve to those who have been unfairly treated by the judicial system. Pardon scholar Jeffrey Crouch stated the Framers believed the presidency was the best place to put the power to excuse federal crimes. He points out that although the pardon power is an unlimited constitutional power, it has been used less and less over time. This is especially notable as modern presidents have expanded the power of the presidency. He notes that Congress has two checks on the pardon power: amending the Constitution and impeaching the president. He also noted that the Framers of the Constitution did not put term limits on the presidency so that presidents could be accountable electorally for their actions (2009). The pardon power is meant to be a “broad, final check on the entire legal and judicial system” (Carannanate 2003).

The Founders believed that although laws should be followed, there were some cases that warranted mercy to the offender. This view was espoused by James Iredell at

the North Carolina Ratifying Convention, who argued that putting in a pardon power as an exception to the rule of law would be a “great part of America.” He also argued that the presidency was the ideal place to vest this power as the president has the highest confidence of the people due to national elections (Elliot 1888).

More modern scholars have upheld the early view that clemency was an act of mercy by the president. James Barnett wrote in 1910 the pardon power was “an act of grace” and a “work of mercy” (1910). Similarly Mark J. Rozell, in his exploration of the Nixon pardon, wrote that “the pardon is primarily an act of mercy and must therefore be left in the hands of one person...” (1994). The pre-Watergate pardons followed the traditional and established principles of pardons as acts of mercy and in the public interest (Crouch 2009). In a review of clemency after President Clinton’s controversial last-minute pardons, the *Federal Sentencing Reporter* noted that “throughout history, kings, princes, popes, and presidents have been vested with power to grant clemency—for reasons of mercy, forgiveness, compassion, justice—to persons previously punished by the state.” It also noted clemency is “an honorable tradition” to the people given a second chance (Freed and Chanenson 2000).

In *The Federalist Papers* Alexander Hamilton argues for the pardon power and how re-election holds presidents accountable. In *No. 72*, Hamilton argues that allowing a president to be re-elected creates an incentive to work for and is a check on bad behavior. In *No. 69* it is argued that the president is re-eligible as often as the people “think him worthy of their confidence.” That aspect makes the office different from the monarch of England (1961). Skrowronek supports this view, stating that Hamilton was comforted by the idea that periodic elections would serve to hold a sitting incumbent president to a high

standard of duty (1993). George C. Edwards states that “as the most central figure in American politics the President is the object of a constant stream of comment and evaluation by all segments of society including those who are unlikely to articulate specific policy preferences” (1976).

Recent scholars have noted that while the pardon power was intended to be used as an act of mercy, it has evolved in recent years away from that intended purpose. Even the check of reelection has not been as effective in preventing inappropriate pardons, especially since the institution of the 22nd Amendment limiting presidents to two terms. As Jeffrey Crouch argues, three modern presidents—George H.W. Bush, Bill Clinton, and George W. Bush—have abused the clemency power, using it to protect themselves or supporters instead of for acts of mercy. The argument is that when a president uses clemency in this manner, the president is acting in contrary to the Founders’ intent. He also suggests that this type of behavior is becoming more common (2009). Eksterowicz and Roberts also agree, pointing out that due to partisan battles, controversial pardons will continue in the future (2006).

The presidential pardon power is unique because, “unlike with the exercise of the power to remove inferior officers or withhold documents, the pardon power as a textual matter appears beyond the reach of congressional revision or judicial oversight.” Further, “the Constitution vests the president with broad discretion in determining when and why to grant pardons.” As presidents “must be accountable to the public” (Krent 2005) for their actions, how they use their constitutional power is important.

Patterns of Presidential Power

Since the clemency power granted to the president is virtually limitless, how it is used is up to individual presidents. Previous scholarly work points out the individual power of presidents to determine their use of power and the importance of individual differences. Indeed, each president has used the pardon power in different ways, issuing clemency to different types of people, including draft dodgers and low-level drug offenders. Yet while each president has certainly had different ideas of using the pardon power, I hold that patterns of presidential power can be traced. By placing presidents into categories we can chart their use of their powers and understand better their behavior.

To track patterns of presidential power and politics, Stephen Skowronek outlined four types of presidents based on the circumstances under which they were elected and governed. The types are based on two criteria: the strength of the incumbent president's administration and the political identity of the president who comes in to office. The established political regime of the incumbent president is either vulnerable or resilient while the political identity of the president is either opposed or affiliated to the previous regime. Presidents "either come to power from the opposition to the pre-established regime, or they come to power affiliated with its basic commitments." Whether a president is opposed or affiliated with the regime determines the behavior to get elected, as the goal of the opposition leader is "to challenge the received agenda, perhaps to displace it completely with another; the leadership project of the affiliated leader is to continue, perhaps to complete, the work on that agenda" (1993).

Skowronek's first type is when a president comes to power opposed to a vulnerable regime. Among these types of presidents who came to power this way are

Thomas Jefferson, Andrew Jackson, Abraham Lincoln, and Franklin D. Roosevelt. These situations presented “the most promising of all situations for the exercise of political leadership.” These are opportunities for political actors to expand their authority and forsake the established administration. These presidents remake the government, but it does not guarantee effective governing. “As each of these presidencies attests, reconstructing political order is a process that joins party building to an assault on the residual institutional infrastructure of the old order.” These presidents are good party leaders by standing apart from the previous party and creating an opposition movement (1993).

The second type is called the politics of disjunction, which is when a president comes to power affiliated with a vulnerable existing regime. Among those of this type include John Adams, John Quincy Adams, Franklin Pierce, James Buchanan, and Herbert Hoover. Skowronek describes these presidents as “saddled with a suddenly vulnerable regime, these presidents have less authority than any others over the terms of national political debate, and they are the most severely handicapped in penetrating extant governmental arrangements.” This does not mean they do not accomplish anything of significance, though they often become foils for reconstructive presidents. By becoming inadequate to sustain legitimacy of innovation of new ideas, this presidency creates a crisis of legitimacy and gives an opening to a radical change.

The third type of presidential leadership is named the politics of articulation, where a president comes to power affiliated with a strong established regime. Presidents of this type include James Monroe, Theodore Roosevelt, Harry S. Truman, Lyndon B. Johnson, and George H.W. Bush. Due to their position as a leader aligned with the

previous one, these presidents “stand in national politics as ministers to the faithful.” These presidents continue and build upon the policies of the previous president and represent continuity instead of change. They “galvanize political action with promises to continue the good work of the past and demonstrate the vitality of the established order in changing times.” The task of these presidents is to “fit the existing parts of the regime together in a new and more relevant way.” This comes with the challenge of holding together all parts of the establishment, as fissures will certainly come within the party. Skowronek notes that most presidents fall into this category than any other.

The fourth type of presidential leadership is what Skowronek calls the politics of preemption. Presidents of this final type come to power as a leader opposed to a resilient establishment. Examples of this type include John Tyler, Andrew Johnson, Woodrow Wilson, Richard Nixon, and Dwight D. Eisenhower. This is the most peculiar situation of leadership, “intruding into an ongoing polity as an alien force, they interrupt a still vital political discourse and try to preempt its agenda by playing upon the political divisions within the establishment that affiliated presidents instinctively seek to assuage.” These presidents are searching for reconstructive politics without a good reason to break from the past. However, if they go too far, they could be caught up in a constitutional showdown. These presidents use their powers aggressively for political purposes. As such, these presidents also tend to get impeached (1993).

Given these types of presidential leadership, inferences about how each of these types of presidents would dispense clemency can be made. The first, presidents in the politics of reconstruction, will use the constitutional clemency power more freely and

Table 1: Types of Presidential Authority

	President opposed to regime	President affiliated to regime
Vulnerable established regime	Politics of reconstruction	Politics of disjunction
Resilient established regime	Politics of preemption	Politics of articulation

Source: Stephen Skowronek, 1993

will see more pardons under them. There are several reasons for this pattern, chief among them is the manner in which they come into office. By riding into office opposed to a weak regime, they come in with a rush of excitement to replace that previous regime. These presidents have fresh ideas, often vastly different if not completely opposite of the president they replaced. These presidents will have a vision of the country and policies to put into practice. As well, these presidents want to prove themselves and will be anxious to use their presidential powers, what Skowronek called an “expansive authority to repudiate the established governing formulas” (1993). After breaking with the previous regime and coming in to establish their own, these presidents will feel they have a mandate from the people to move forward with their plans.

This confidence in their election will embolden them to pursue an agenda and use their new powers to do just that. Having the certainty of the people and in their own ability to lead will cause these presidents to want to use presidential powers, especially one as unilateral as the pardon power. This option in the presidential toolkit offers them the place to affect positive change and undo perceived wrongdoings. They can use this power to make the world a better place, what that this depends on their ideological

leanings. Either way, these presidents are anxious to use presidential power as their ascension to office is about change and taking the country in a different course from the previous office holder. The pardon power is a logical choice for them to use, given the free reign it allows presidents, free from other influences. While the legislative route may be long and clunky, this unilateral power allows them to shape the country in their vision, which is why we would expect more pardons under these presidents.

The other type of presidents that will have an increased use of the clemency power are the politics of articulation. These presidents often follow reconstruction presidents, as leaders supportive of a strong established administration. Following a strong regime, the expectation and pressure is to keep up the momentum and policy agenda. As they “uphold the gospel and deliver the expected services” (Skowronek 1993b), they continue their predecessor’s approach to clemency. Articulation presidents can often be the same party as the previous president and are a continuation of the party in the presidency. These consecutive terms of the same party in office, as with reconstruction presidents, show the public’s confidence in the party to hold the country’s highest office. With this public trust in the party and the policies, it will embolden this type of president to continue and improve on the current path. They will use that confidence when issuing pardons and other acts of clemency that the public is behind them. Due to this, we would expect to see an increase in acts of clemency as the number of consecutive terms in office for the same party increase.

By being elected affiliated to a strong regime, these presidents will have continued confidence to keep up the regime’s policies and procedures. Since an election has taken place, the public was given the opportunity to elect a new president and a new

direction and yet goes with a continuation of the present administration. This allows for articulation presidents to use the pardon power in the same way as reconstruction presidents. They will use the power to continue with the regime's philosophy and views towards the pardon power. How and who they pardon depends on their ideology, who they feel was wronged and can use the pardon power to help change it. It could be a certain law or sentencing guidelines they feel is unfair and while changing the law is cumbersome, pardoning people unfairly affected by it is an alternative. These could be low-level drug offenders or individuals sentenced under decades-old mandatory minimums.

While those two types of presidents will see increased use of the pardon power, the others will not. Presidents in the politics of disjunction will issue less clemency than the previous types of presidents. Leaders in this position would use the clemency power for several reasons; these leaders are in a situation of chaos and disunion. These leaders can neither "affirm the integrity of governmental commitments nor forthrightly repudiate them," and this leads to their ability "to control the political definition of the moment is completely eclipsed" (Skowronek 1993b) which in turns leads to diminished credibility. Presidents with lowered credibility will not take any gambles or do anything that would risk alienating the public. These presidents do not have much political capital to spend and using it up on a potentially controversial clemency decision would be a strategically unwise decision.

An example of a clemency decision becoming controversial is Gerald Ford's pardon of resigned President Richard Nixon. Although Ford's intent was to heal the country and move past the scourge of the Watergate era, it came with a large backlash.

As a public reaction, Ford's approval rating dropped 21 points (Daniel 1974) and it came to define his subsequent term. Some scholars even attribute the pardon as a factor in his reelection loss (Crouch 2009). This approach to using presidential powers is the opposite of reconstruction and articulation presidents; these leaders are not confident in using their powers. These leaders feel less of a mandate and authority from the people, becoming a vulnerable regime themselves. Without this confidence and authority, these presidents are less inclined to wield such presidential powers as unchecked as the pardon power.

The fourth and final type of presidential leadership is the politics of preemption, which will also have lower rates of clemency. These presidents, as coming on to the scene as opposed to a strong establishment, are intruding as an "alien force" (Skowronek 1993b) and do not have a groundswell of support. Although these leaders win elections opposed to a current regime, similar to reconstruction presidents, they do not come in with a complete political remake, unlike reconstruction presidents. Reconstruction leaders have strong support and a mandate by disrupting a weak establishment that engenders credibility; preemption presidents disrupt a strong establishment in a manner that does not invite such support. This type of politics is without a mandate, especially one for a completely new vision and policy agenda. Using unilateral power, including the clemency power, would not be ideal in such a situation. Personal desire to use the pardon power is not relevant as the political situation takes precedent. These presidents might want to pardon more but their political situation does not allow for it. Especially if before their reelection, they do not want to upset the electorate with a controversial clemency move. This is particularly a concern after Ford's Nixon pardon hurt his reelection effort.

Modern presidential power

Modern presidents have a different playing field due as “secular time,” how Skowronek categorized it, has progressed. As time has moved across American history, the resources available to presidents from era to era has changed dramatically. Presidents in later periods, he noted, “exercise more power with more independence than their earlier counterparts...” (1993). Given the increase in technology and communication methods, the presidency at the end of the 20th Century had more tools at its disposal than it did at the beginning. We have seen the explosion of media outlets in the past few decades, including three new cable news networks by the mid-1990s. CNN was established in 1980 (Doepker 2009) and really became important during the Gulf War in the early 1990s (Rosenberg 2002), while Fox News and MSNBC were both established in 1996 (Folkenflik 2013). In addition to the explosion of TV news, online news sites and social media have also grown rapidly in recent years. The rise of these entities created the 24-hour news cycle (Bucy, Gantz, and Wang 2007), where political reporters can literally tweet every action the president does in real time. More than ever, Americans can know exactly what their president is doing and saying. Seconds after a president issues a clemency decision, news articles can appear giving a comprehensive list of each individual given clemency and their background.

These tools give presidents a new megaphone to amplify their message and agenda. The bully pulpit, now more than ever, has a larger audience from which to spread information. Some presidents have mastered the effectiveness of these tools, including Franklin D. Roosevelt’s fireside chats and Donald Trump’s Twitter feed. While this can be a blessing for presidents, it can also be a curse. The speed of information and

dissemination also allows news about them to spread far and wide, whether it be good or bad. This news environment has led administrations to use the “Friday news dump,” releasing potentially damaging information on Friday evenings when most Americans are busy going off for the weekend in hopes it goes unnoticed (O’Connor 2008). Earlier presidents could try and release information under the radar; at the beginning of the 20th Century the major news source was newspapers. Citizens might not take notice of one article in a newspaper.

Press access to the president and White House grounds has also increased throughout the 20th Century. Earlier presidents would often meet with journalists and speak with them, but in recent decades journalists have followed the president around in a dedicated press pool, allowing them to ask the president questions at several times during the day. With the advent of television, presidential news conferences were perfected, and citizens could watch live as reporters asked questions of the president. With this much access, presidents know they will be asked about the news of the day, including any clemency decisions.

Given the evolving media landscape, I would expect to see a decrease in clemency in more recent presidents. With the media telegraphing every action, these leaders have to justify their decisions in the public arena and endure the public commentary on their decisions. As Samuel Kernell noted, this strategy of “going public should be appreciated as a strategic adaptation to the information age” (2007). There might be acts of clemency that could gain positive press for the president, but “the country’s Founders did not intend for the clemency power to be used as a prize. Article II of the Constitution allows the president to forgive any federal crime, but just because he

can does not mean he should” (Crouch 2020). Presidents and their advisers in the modern age need to be prepared to explain every clemency decision in the public arena, should it be picked up by the media and talked about on every channel 24 hours a day. Even one pardon could see a lifetime of several days on cable news, given the channels dedicated to discussing the news of the day. One scholar noted that “the fear of bad press and low public opinion ratings have given post-Watergate presidents strong disincentives to pardon” (Crouch 2009). Since 1980, pardons have decreased due to “politicians’ fear of making a mistake, and subverted by unfairness in the way pardons are granted” (Love 2010). This risk aversion is compounded by the added dimension of social media, as the public has a greater opportunity to learn about and comment on the president’s actions.

The decrease in use of clemency is curious given the expansion of presidential power in past decades. In the wake of Richard Nixon’s power-hoarding presidency, Arthur M. Schlesinger Jr. called it the “crisis of the imperial presidency” and wrote about “reigning in the runaway presidency.” The presidency in the 20th Century has certainly grown in power and scope, and Schlesinger encapsulated this by stating that “Nixon’s presidency is not an aberration but a culmination” (1973). Presidents midcentury started to gain power and the trend has continued ever since. From Franklin D. Roosevelt’s court-packing and other emergency powers during the Great Depression, to the Vietnam era and Nixon’s presidency, all the way through the post-9/11 counter-terrorism powers, we have seen increased power in the presidency, especially with war powers and budgeting (Fisher 2000).

This creates a “pardon paradox,” where presidents have a nearly unlimited constitutional power yet have used it less and less (Love 2002). Jeffrey Crouch points out

why this paradox occurs. The clemency power is unique in that the president has an unlimited prerogative and does not present a president with much motivation to use it. “A president’s overall public standing is not usually increased by pardoning, and in granting a pardon, he runs the risk that his decision might backfire. Thus, he does not pardon much: Inactivity actually protects the president from making a mistake with the clemency power” (2009). This is especially applicable to modern presidents due to the media landscape.

One last factor that also affects how presidents use the pardon power is the political party of the president. The two main political parties in the United States, Republican and Democratic, certainly have different views on the justice system and incarceration. Given the different clemency tools available to presidents, Republican presidents will issue more pardons while Democratic presidents will issue more commutations and remissions. Though Republicans are a “party of law and order,” they affirm that “every human life matters.” The party, in their 2016 official party platform, bemoaned over-criminalization and over-federalization of the justice system (Republican National Committee 2016). Thus, presidents of this party will use the powers of their office to offer clemency to those affected by the over-federalized of the judicial system, crimes that have been taken out of states’ hands. Their acts of clemency would be as a statement of states’ rights and what they view as an unfair system. The Democratic party, their 2016 party platform, committed to “reforming our criminal justice system and ending mass incarceration” and will prioritize “prevention and treatment over incarceration when tackling addiction and substance use disorder” (Democratic National Committee 2016). By using that framework, as well as looking at acts of clemency by

past Democratic presidents, we would see these presidents offering clemency to individuals such as nonviolent drug offenders and draft dodgers.

Data and Methods

Data was collected of all acts of clemency from William McKinley to Barack Obama, spanning 1900 to 2017; Earlier data is not readily available. In addition to total acts of clemency, each president has totals for pardons, commutations, and remissions.

Table 2: List of presidents with total number of clemency issued

President	Total acts of clemency
William McKinley	446
Theodore Roosevelt	1,091
William Howard Taft	831
Woodrow Wilson	2,827
Warren G. Harding	773
Calvin Coolidge	1,691
Herbert Hoover	1,198
Franklin D. Roosevelt	3,796
Harry S. Truman	2,044
Dwight D. Eisenhower	1,157
John F. Kennedy	574
Lyndon B. Johnson	1,155
Richard Nixon	926
Gerald Ford	409
Jimmy Carter	566
Ronald Reagan	406
George H. W. Bush	77
Bill Clinton	459
George W. Bush	200
Barack Obama	1,927

Source: Department of Justice, Clemency Statistics

Comparing presidents against each other can be difficult due to many circumstances. Presidents take office during times and under different circumstances. Of the presidents included, some died during their terms, and some were their vice presidents who took office during the middle of a term. The length of time in office

varied: Warren G. Harding served just under two and a half years while Franklin D. Roosevelt served for 12 years after being elected four times. Given this wide spread of length, the total number of clemency can be difficult to compare due to some presidents having longer in office. To help compare presidents against each other, the average number of clemency issued per year is also added.

Table 3: List of presidents with average number of clemency issued per year

President	Average number of clemency per year
William McKinley	223
Theodore Roosevelt	136.4
William Howard Taft	207.8
Woodrow Wilson	353.4
Warren G. Harding	386.5
Calvin Coolidge	281.8
Herbert Hoover	299.5
Franklin D. Roosevelt	316.3
Harry S. Truman	227.1
Dwight D. Eisenhower	128.5
John F. Kennedy	143.5
Lyndon B. Johnson	192.5
Richard Nixon	132.3
Gerald Ford	136.3
Jimmy Carter	113.2
Ronald Reagan	45.1
George H. W. Bush	15.4
Bill Clinton	51
George W. Bush	22.2
Barack Obama	214.1

Source: Department of Justice, Clemency Statistics

To analyze these acts of clemency, a linear regression model was employed. The dependent variable is acts of clemency issued by president per year, also split into the different types of clemency: pardons, commutations, and remissions. Independent variables include presidential election year, presidential reelection year, midterm election year, consecutive terms in office by someone of the president's party, the president's

party in the majority in the House of Representatives and Senate, number of members of the president's party in the House and Senate, whether the country is at war, whether the president is in the midst of a scandal, vote share in the previous election, the president's party, the percent of Supreme Court justices appointed by Republicans, and change in GDP. Interactions of the majority and number of members of the president's party in the House and Senate are included to test for the conditional relationship. Whether the president served after the 22nd Amendment was instituted and if the president is in the second term were also included to test for a lame duck effect on clemency.

Results

After running four models for each type of clemency— total grants, pardons, commutations, and remissions— which factors had a significant effect became apparent. The results are show in Table 4. No one factor affects all types of clemency across the board, however each type of clemency is constrained by different factors, which could be explained by the different types of presidents and their approaches to clemency.

One of the largest effects is the consecutive number of terms in office by someone in the same party. As consecutive terms increase, pardons increase. When the number of consecutive terms increases by one, pardons increase by 18, as well as increasing remissions by about 3. As was expected with articulation presidents, the longer the president's party is in office the larger the number of pardons granted.

Holding the majority party in the House of Representatives has a positive effect on commutations, increasing them by 36.5. Another significant factor is the president's party, which had significant results for totals grants of clemency. As Republican was coded as 1 and Democrat as 0, being a Republican means clemency increases by about

85. Republicans issue more grants of clemency than Democrats. It appears on the face of the data that Democrats issue more. Of the data included in this project, Republican presidents issued a total of 9,205 acts of clemency while Democratic presidents issued a total of 13,348 acts of clemency. Yet when holding all other factors constant in a regression, Republicans issue more acts of clemency at a statistically significant level. Vote share in the previous election was also significant on total grants of clemency and pardons issued. As vote share increases by one percent, total grants increase by about 5, and pardons increase by about 3. As vote share increases, total grants of clemency and pardons increase. The predicted values of vote share on pardons is modeled in Figure 1. This outcome also confirms the situation of reconstruction and articulation presidents, who come into office with a confidence vote of the people and thus feel emboldened in their clemency decisions.

Another significant election factor is a presidential reelection year, which increases pardons by 64.39 and remissions by 2.65, which would help dispel a theory of wariness of presidents to issue clemency during an election year. The final significant factor is the percent of Supreme Court justices appointed by Republican presidents. The Supreme Court is, of course, the third branch of government and can constrain the executive branch. The ideological balance of the court has marginal effects, when the percent of the court appointed by Republican presidents increases by one percent, pardons decrease by 1.3 while commutations increase by 0.8 and remissions increase by 0.11.

Two interactions were included to test the relationship between the party majority in Congress and the number of members in each house. The first tested the interaction

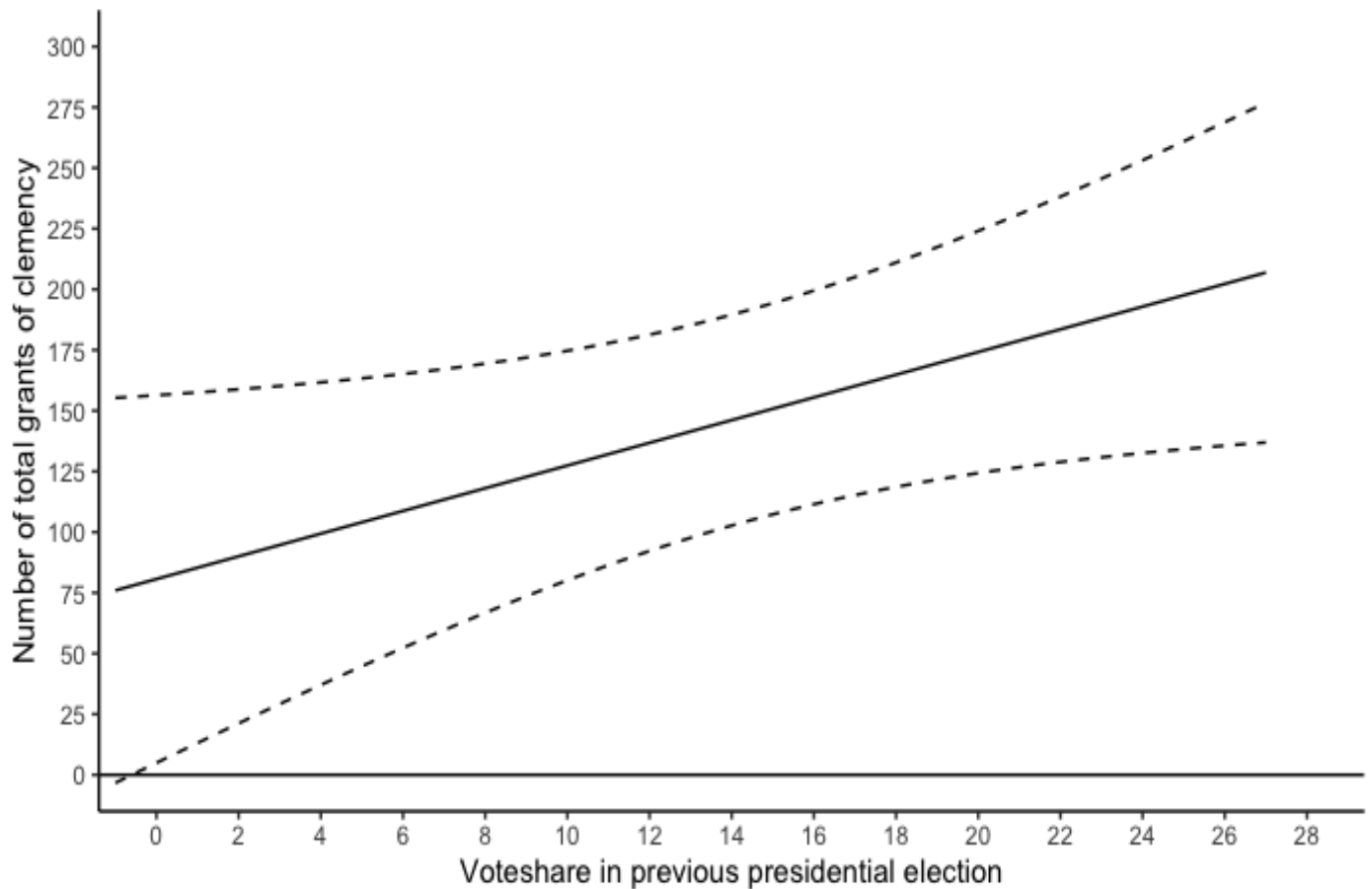
Table 4: Regression results by type of clemency

Independent Variable	Models			
	1: Total Grants	2: Pardons	3: Commutations	4: Remissions
Presidential Election Year	22.92 (51.41)	-29.41 (21.03)	50.03 (36.80)	0.64 (5.07)
Consecutive Terms of President's Party in Office	6.25 (17.60)	18.38 ** (8.52)	0.88 (7.07)	2.65 * (1.42)
Presidential Reelection Year	26.31 (64.00)	64.39 * (32.91)	-49.12 (47.25)	3.81 (6.36)
Midterm Election Year	3.77 (21.47)	9.42 (13.32)	-5.35 (12.44)	0.36 (2.05)
Country at War	-2.55 (35.78)	-6.79 (24.48)	13.00 (32.29)	-2.79 (4.86)
President's Party Majority in the House of Reps.	-286.30 (230.42)	----	36.54 ** (13.33).	1.08 (5.33)
President's Party Majority in the Senate	94.18 (224.09)	-107.08 (115.45)	-25.41 (29.58)	-5.63 (3.80)
Members of President's Party in House of Reps.	-1.44 (0.91)	----	-0.34 (0.34)	0.08 (0.09)
Members of President's Party in Senate	1.80 (1.89)	0.97 (0.88)	-0.85 (1.43)	0.48 (0.42)
Interaction: Majority and Members in House of Reps.	1.77 (1.12)	----	----	----
Interaction: Majority and Members in Senate	-2.97 (4.15)	1.83 (2.00)	----	----
Change in GDP	-1.32 (2.10)	-0.87 (1.21)	----	-0.14 (0.21)
Scandal	-56.49 (43.51)	-17.31 (19.51)	----	----
President's Party	84.96 * (45.37)	19.91 (23.92)	-65.78 (42.12)	-2.46 (4.23)
Vote Share in Previous Election	4.67 ** (2.09)	2.72 ** (0.78)	1.65 (1.48)	0.61 (0.36)
Percent Supreme Court Justices appointed by GOP	-0.52 (0.57)	-1.30 ** (0.37)	0.80 ** (0.37)	0.11 ** (0.04)
Post-22 nd Amendment	-20.68 33.69	----	----	----
Second Term	59.82 (49.24)	----	----	----
Observations	128	128	130	128
Adjusted R ²	0.11	0.33	-0.01	0.32

standard errors in parentheses; using robust standard errors clustered around presidents
significance values: * p < 0.1, ** p < 0.05

between having the president's party in majority of the House of Representatives and the total number of members of the president's party in that chamber. This resulted in a small increase of 1.77 in the total number of grants. The second tested the interaction between having the president's party in majority in the Senate and the total number of members of the president's party in that chamber. This resulted in a small decrease of 2.97 total grants of clemency and a small increase of 1.83 pardons. While neither of these interactions were statistically significant it is notable to see these variables interact.

Figure 1: Predicted values of vote share on pardons



The lame duck test did not yield any significant results. The Post-22nd Amendment variable, testing to see if presidents after that amendment was put in place use clemency differently, showed a decrease in acts of clemency near 20. If presidents were in their second term showed an increase by nearly 60 acts of clemency. Given these divergent results, more research and testing should go it to whether being a lame duck president affects how they issue clemency.

These results support the theory of clemency patterns of Skowronek's types of presidents. By looking closely at the rates of clemency of presidents, patterns emerge, and case studies can be taken to help illustrate those patterns. Holding two presidents of different types up next to each other is a useful exercise to compare their clemency numbers.

Barack Obama is classified as a reconstruction president and Bill Clinton is classified as a preemptive president. Both are two-term Democrats and served within eight years of each other. And yet, their clemency numbers tell a different story. Obama issued a total number of 1,927 acts of clemency during his presidency. This was part of a concerted effort to commute the sentences of low-level, non-violent drug offenders that was announced in 2014 by the administration (Office of Public Affairs 2014). In comparison, Clinton issued a much smaller number of clemency, a total of 459. By comparing the average number of clemency issued per year also shows a great difference, with Obama at 214.1 per year and Clinton at 51 per year. Both of Obama's immediate predecessors were two-term preemption presidents and George W. Bush's clemency is also useful is illustrating the difference between reconstruction and preemptive

presidents. Bush issued a total number of 200 acts of clemency with an average of 22.2 per year.

Table 5: List of presidents by Skowronek's types

Reconstruction
Franklin D. Roosevelt
Ronald Reagan
Barack Obama
Articulation
Theodore Roosevelt
Warren G. Harding
Calvin Coolidge
Harry S. Truman
Lyndon B. Johnson
Gerald Ford
George H.W. Bush
Disjunction
William Howard Taft
Herbert Hoover
Jimmy Carter
Preemption
Woodrow Wilson
Dwight D. Eisenhower
Richard Nixon
Bill Clinton
George W. Bush

Source: Skowronek 1993, 2011

When comparing disjunction and articulation presidents, Jimmy Carter and Lyndon B. Johnson are good examples. Carter is classified as a disjunction president, who issued a total of 566 acts of clemency with an average of 113.2 per year. Johnson issued a total number of 1,155 clemency acts with an average number of 192.5 per year. Both are comparable as Democratic presidents in the 1960s and 1970s; Carter is the next Democratic president after Johnson. While Johnson served more years in office than

Carter did, comparing Johnson's four-year full-term numbers is helpful. Johnson's total acts of clemency for his complete four-year term in 981, still greater than Carter's.

Richard Nixon and Gerald Ford are an interesting case, given the unique nature of Nixon's resignation and Ford's completion of the term, not the mention one of the most infamous pardons between them. They also did not serve the same number of years, making it difficult to compare. However, the average number of clemency can be used. Nixon, a preemptive president, issued an average of 132.3 per year. Ford, an articulation president, issued an average of 136.3 per year. More helpful is comparing Nixon's first three years, where he issued 269 total, to Ford's three years, where he issued 409 total.

Looking at reconstruction presidents as a whole shows a pattern of increased clemency. Franklin D. Roosevelt issued a total of 3,796 acts of clemency, making him the president with the largest number issued in the years studied. This large number could be attributed to his 12 years in office, though his average rate also shows a high level of clemency at 316.3 per year. Obama's average, another reconstruction president, had an average rate of 214.1.

The curious exception here is Ronald Reagan, who as a reconstruction president has clemency numbers vastly lower than those of other the other presidents of this type, Roosevelt and Obama. Looking at the politics of the time might give us an insight into the numbers. Reagan and his administration came out hard on crime, declaring in 1982 a "War on Drugs" and later creating an Office of National Drug Control Policy (Glass 2010). Indeed, in 1986 Reagan signed the Anti-Drug Abuse Act that, among other drug policies, created mandatory minimum sentences (John 2014). Thus, Reagan and his administration were trying to be hard on crime and drugs and issuing clemency and

allowing people out of prison early would be disadvantageous. Obama, in creating his clemency initiative, was largely seen as undoing that tough-on-crime stance. In helping to announce the initiative, the White House counsel wrote the president was committed to “using all the tools at his disposal to bring greater fairness and equity to our justice system. Further, they demonstrate how exercising this important authority can remedy imbalances and rectify errors in sentencing” (Eggleston 2015). Obama used his authority to undo the damage done by mandatory minimums and the aftermath of the “war on drugs” (Pilkington and Mathieu-Léger 2017).

Articulation presidents also had levels of clemency, even across time of the 20th Century. The earliest articulation president, Theodore Roosevelt, issued a total of 1,091 acts of clemency with an average of 136.4 per year. He was followed by Warren G. Harding who issued 773 total during his two years in office, with an average of 386.5 and Calvin Coolidge issued 1,691 total with an average of 281.8 per year. Later, Harry S. Truman issued a total of 2,044 with an average of 227.1 a year and Lyndon B. Johnson issued a total of 1,155 and had an average of 192.5 per year. Gerald Ford and George H.W. Bush are the only articulation presidents with lower levels of clemency. Bush’s numbers can be explained as a continuation of the Reagan-era pattern of lower clemency levels to be hard on crime, as articulation presidents do.

Disjunction presidents, on a whole, have lower levels of clemency. Carter has a lower average per year than his immediate three predecessors: 113.2 per year versus 136.3, 132.3, and 192.5 for Ford, Nixon, and Johnson respectively. In fact, Carter’s average was lower than every president before him, going back to William McKinley. Herbert Hoover has a lower average, at 299.5 per year, than Franklin D. Roosevelt, with

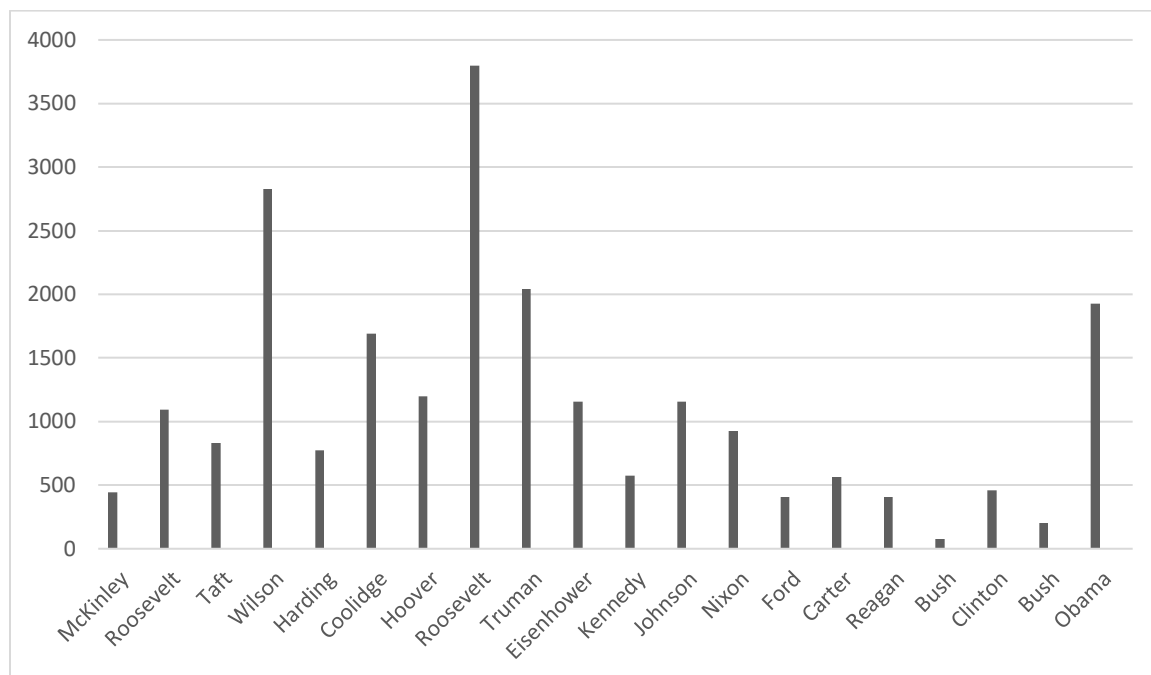
316.3 per year, and Harding, with an average of 386.5. William Howard Taft, with a total of 831 issued, has a lower rate than many of his era, including his immediate predecessor and successor.

Preemption presidents also show a pattern of lower pardons. Dwight D. Eisenhower had a lower level of his two predecessors, who were reconstruction and articulation presidents, respectively. Eisenhower issued a total of 1,157 acts of clemency while Roosevelt issued 3,796 acts and Truman issued 2,044 acts of clemency. Looking at the averages is also helpful, given the different lengths of terms, especially Roosevelt's unprecedented four terms. Eisenhower issued an average 128.5 acts of clemency per year, while Roosevelt issued 316.3 per year and Truman 227.1 per year. Both Bill Clinton and George W. Bush, classified as back-to-back preemptive presidents (Skowronek 2011), have much lower rates of clemency compared to their reconstructive successor Obama. Separating the different types of clemency is also instructive, as Bush only issued 11 commutations during his two terms in office.

Apart from looking at the presidents by type, the recent presidents theory and "pardon paradox" appears to have support as well. Every president since Nixon, except Obama, issued less than 1,000 acts of clemency. The three largest issuers of clemency, the only to issue more than 2,000, are not recent presidents: Wilson, Franklin D. Roosevelt, and Truman. What these presidents have in common is all three presided over major world wars. This is not surprising, given the research that shows wartime increases the president's power and that war "may ignite the unilateral powers of the presidency" (Howell, Jackman, and Rogowski 2013).

There is a similar trend with averages per year. Every president since Eisenhower,

Figure 2: Total number of acts of clemency issued per president



Source: Department of Justice, Clemency Statistics

except Obama, has an average that is less than 200 per year. The four presidents with the lowest average of clemency acts per year all served after 1980: Reagan, Bush, Clinton, and Bush. Taking the numbers collectively of the 20 presidents whose data is included in this work is also a helpful and different way to compare. The first ten presidents, McKinley through Eisenhower, account for a combined total of 15,854 acts of clemency. The average number of clemency of those ten presidents is 1,585.4. The second ten presidents, Kennedy through Obama, account for a combined total of 6,699 acts of clemency and have an average of 669.9. The downward trend of the “pardon paradox” is evident: presidents are using the power less and less over time.

Conclusion

In his next address to Congress after granting pardons to those involved in the Whiskey Rebellion, George Washington stated he was motivated by mercy and serving

the public interest. “For though I shall always think it a sacred duty to exercise with firmness and energy the constitutional powers with which I am vested, yet it appears to me no less consistent with the public than it is with my personal feelings to mingle in the operations of Government every degree of moderation and tenderness which the national justice, dignity, and safety may permit” (Miller Center). Every president since has had to weigh justice versus mercy when using the clemency power, a unilateral action granted by the Constitution to the president. Each successor has used that power in different ways and yet some patterns have emerged.

By separating presidents into Skowronek’s four types, we see some patterns in their approach to clemency. Reconstruction and articulation presidents have generally granted more clemency, due to their new politics and continuation that emboldens them to a liberal use of presidential power. Preemptive and disjunction presidents have generally granted less clemency, due to their weak political standing and limited capital to expend. These presidents do want to rock the boat with an expansive use of presidential power.

Certain factors were shown to increase presidential clemency. The number of consecutive terms of the same party in office had a significant increase clemency, as did the party of the president. Republican presidents granted more acts of clemency than Democrats. Acts of clemency increased during a presidential reelection year, and the larger amount of vote share a president won an election by also increased clemency.

The other branches of government can also have an effect on presidential clemency, helping to show that the executive branch is responsive to other branches. If the president’s party held the majority in the House of Representatives, commutations

increase by 36.54. In the third branch, the ideological makeup of Supreme Court justices also increased presidential clemency. As the percentage of justices appointed by Republican presidents increase, pardons decrease while commutations and remissions increase.

No one factor affects and constrains all types of presidential clemency, suggesting that factors affect presidential actions differently. Each type of clemency has its own constraints and checks on those powers. Further research would be needed to fine tune the results of this study. As mentioned, data limitations and availability shaped the nature of this analysis. Data on acts of clemency is available only on a year-by-year basis for the vast majority of the scope of this study. More recent presidents have readily available data on when acts of clemency were issued. With information on when these acts were issued for all presidents covered, better checks can be made on the relationship between presidents and clemency.

Data on the current president is not included as his presidency is still ongoing and the picture of his clemency patterns as not complete. Donald Trump could be categorized as a preemptive president, his loss of the popular vote showing his position as coming into the office weak and certainly opposed to the Obama administration. This explains his low level of clemency: as of April 22, 2020, he has issued a total of 35 acts of clemency. Thus, he follows the patterns outlined in this project by issuing a lower number of clemency. And yet, Trump does not seem to follow any preconceive notions or rules. Risk aversion is not what motivates his clemency issues, as many of his pardons and commutations have been deemed controversial and angered many. How he chooses to use his presidential power could help prove or disprove this theory. Future presidents will

also help prove whether the electoral circumstances of coming to power affects the use of the pardon power.

Though we think of presidents as individuals who wield presidential power in their own way, we can put presidents into categories for common behavior. By doing so, we find that presidents can and do follow general patterns. This can help us explain what seems like random numbers and account for how presidents have used their powers and understand more as to why they behave the way they do. More data is needed to better understand if these pardon patterns hold. By applying this framework to all presidents across American history, we will be able to see if these categories and patterns hold.

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