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Balancing Justice and Mercy: A Study of Pardon and Amnesty Practices in the U.S.A.

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Abstract: The United States presidential clemency power, rooted in Article II, Section 2 of the Constitution, grants the executive a broad and multifaceted authority to provide relief from federal criminal penalties through pardons, amnesties, commutations, remission of fines, and reprieves. This article explores the constitutional foundations, historical evolution, and practical application of the U.S. pardon and amnesty mechanism. Drawing on empirical data, judicial precedent, and scholarly analyses, it examines how clemency serves as a tool for mercy, political reconciliation, and social reintegration, while also raising concerns about transparency, fairness, and potential politicization. The study further discusses administrative processes, especially the role of the Department of Justice's Office of the Pardon Attorney, and evaluates ongoing debates on reform. By integrating constitutional doctrine, case law, and policy perspectives, the article offers a comprehensive understanding of the clemency system's legal and social dimensions.

Keywords: presidential clemency, pardon, amnesty, commutation, reprieve, executive power, U.S. Constitution, Article II, Section 2, Office of the Pardon Attorney, administrative law, criminal justice reform, transparency, judicial precedent.

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I. INTRODUCTION

Since the founding of the republic, the United States has endowed its executive with the extraordinary power to alleviate or altogether erase criminal penalties via pardons, commutations, and amnesties. Under Article II of the U.S. Constitution, the President may grant clemency for federal offences — a prerogative rooted in a tradition of mercy and political reconciliation rather than strict legal-formalism.

Over time, this mechanism evolved into a complex institution with both individual (case-by-case) pardons and broad (mass) amnesties, offering an avenue for justice that transcends the rigidities of criminal law. Yet, as recent scholarship argues, this power is a double-edged sword: while it can correct judicial overreach or enable social reintegration, it also raises serious concerns about fairness, transparency, and the rule of law [1].

The Bureau of Justice Statistics and research institutions such as RAND have provided empirical analyses on pardon applications and grants, highlighting patterns in clemency decisions and

examining potential biases in the process. These studies reveal insights into the volume, demographics, and outcomes of clemency petitions, informing debates about fairness and accessibility in the clemency system.

Legal scholars like Albert Alschuler argue that while the pardon power was originally conceived as a tool for mercy and correction, its modern use has sometimes been marred by political favoritism and lack of accountability. Alschuler's work calls attention to the risks of abusing such broad discretion and emphasizes the need for clearer procedural safeguards [2].

Historical analyses, such as those by Graham G. Dodds, explore the role of mass pardons and amnesties in post-conflict reconciliation, particularly in the context of rebellions, civil wars, and political transitions. These studies demonstrate how collective clemency can facilitate national healing but also raise questions about justice for victims and accountability. Philosophers like Adam Perry defend clemency as a necessary exception to the strict application of law, describing it as a "selective deviation" that allows mercy and individualized justice. This perspective highlights the normative justification for executive clemency as part of a humane legal system [3].

Comparative legal scholarship distinguishes between amnesty and pardon, often emphasizing that amnesty usually involves collective forgiveness and the cessation of prosecutions, whereas pardons tend to be individualized post-conviction acts of clemency. These distinctions are important for understanding the legal and political implications of different forms of clemency.

Supporters of the U.S. clemency system emphasize its role in tempering justice with mercy and ensuring flexibility within the criminal justice system. They view clemency as a safeguard against overly harsh punishment and as a vehicle for social reconciliation. Critics, however, highlight the potential for abuse, political influence, and the lack of transparency that can undermine the rule of law. Calls for reform focus on introducing procedural fairness, transparency measures, and mechanisms for accountability to restore public confidence in the clemency process.

This article examines the operation of the United States' pardon and amnesty mechanism, exploring its constitutional foundations, historical evolution, practical application, and the current scholarly discourse surrounding its legitimacy, challenges, and prospects for reform.

II. METHODOLOGY

This study employs a comprehensive doctrinal legal analysis as its primary research method, focusing on the textual interpretation of constitutional provisions and relevant case law to understand the scope and limits of the presidential clemency power. The foundational legal text examined is Article II, Section 2 of the U.S. Constitution, which explicitly grants the President the authority to issue reprieves and pardons for federal offenses. Critical Supreme Court decisions, notably Ex parte Garland and Burdick v. United States, are analyzed to clarify judicial interpretations of this constitutional power, including the extent of executive discretion and the legal prerequisites for clemency to take effect.

Beyond doctrinal analysis, the research incorporates an extensive review of empirical data and administrative materials provided by the Department of Justice's Office of the Pardon Attorney (OPA). This includes statistical reports, historical clemency grant tables, and procedural guidelines that illuminate the practical functioning of the clemency system. By examining these official datasets, the study identifies trends, variations, and potential biases in the grant of pardons, commutations, and other forms of clemency across different presidential administrations. The empirical approach complements the legal analysis by providing a real-world context and measurable patterns that inform debates on transparency, fairness, and politicization.

The study also draws on a broad range of secondary sources, including academic scholarship, historical accounts, and policy critiques, which explore the normative, political, and social dimensions of clemency. These sources provide critical perspectives on the evolution of the

clemency institution, its role in social reconciliation, and the ongoing calls for reform. Philosophical defenses of mercy and critiques of administrative opacity enrich the conceptual framework guiding the analysis.

In addition, a comparative legal methodology is applied to situate the U.S. clemency mechanism within a global context. By reviewing clemency systems and reform initiatives in various other jurisdictions, particularly European countries with more formalized and judicially supervised clemency processes, the study draws lessons and contrasts that highlight unique features and challenges of the American system.

Qualitative legal analysis is further augmented by quantitative assessment, enabling the identification of administrative patterns and political influences shaping clemency outcomes. This interdisciplinary approach, combining legal interpretation, empirical data analysis, and comparative institutional study, allows for a comprehensive and nuanced evaluation of the constitutional, procedural, and societal facets of the United States' pardon and amnesty mechanism.

III. RESULTS

The power to grant clemency in the United States is grounded in Article II, Section 2 of the Constitution, which vests the President with authority "to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment." This text has long been interpreted by courts and scholars as conferring expansive — though not absolute — executive discretion over federal clemency. Early Supreme Court decisions, most notably *Ex parte Garland*, established the broad reach of the pardon as an incident of executive mercy, and subsequent doctrine has generally treated clemency as a political power with limited judicial review [4].

Federal clemency comprises several discrete remedies: **pardons** (full or conditional), **commutations of sentence**, **reprieves**, and **remission** of fines or restitution. A pardon relieves legal disabilities attendant to conviction but does not erase the fact of conviction absent additional processes; a commutation reduces the severity or duration of punishment without nullifying the conviction itself. The Supreme Court's decision in ***Burdick v. United States*** clarifies a further doctrinal point: acceptance by the recipient is necessary for a pardon to take legal effect, meaning clemency operates as an act of grace that still presupposes the recipient's assent [5].

Although the Constitution places clemency power in the **President**, contemporary practice relies heavily on an administrative apparatus centered in the **Department of Justice's Office** of the Pardon Attorney (**OPA**). The OPA performs intake, conducts background investigations, solicits views from U.S. Attorneys and Probation Offices, and prepares reports and recommendations for the President; it also publishes statistics and lists of grants for public inspection. Nevertheless, the OPA's role is *advisory*: nothing in the statutory or constitutional scheme binds the President to follow OPA recommendations, and presidents have frequently acted outside the conventional OPA pathway — by issuing direct grants, mass proclamations, or politically salient pardons. For authoritative procedural descriptions and the official data series, researchers should rely on DOJ/OPA materials [6].

Scholarly literature highlights **three** interlocking themes that shape contemporary debates about U.S. clemency. ***First***, commentators critique the system's opacity and the absence of procedural safeguards: petitions may languish for years, OPA resources are limited, and the criteria guiding presidential action are not formalized, producing inequality and unpredictability in outcomes. ***Second***, scholars such as Rachel Barkow situate this opacity within a deeper administrative paradox: a constitutional power of mercy has been routinized within the administrative state, thereby dampening both the political responsiveness and normative accountability of clemency. Barkow's influential analysis argues that the rise of administrative law and bureaucratic processing has altered the cultural and legal architecture of mercy in ways that diminish its

practical availability [7]. ***Third***, political scientists and legal commentators emphasize the politicization of pardon power. High-profile and partisan clemency actions—ranging from President Ford's post-Watergate consideration of Nixon-era issues to later controversial individual pardons—have generated calls for procedural reform and legislative oversight, and have illustrated the reputational risks associated with unreviewed executive mercy. Empirical work confirms pronounced variation in clemency activity across administrations; DOJ's historical grant tables and fiscal-year statistics demonstrate episodic surges in grants under particular presidents and near-silence under others, underscoring the extent to which clemency patterns reflect presidential priorities rather than consistent legal standards.

Official analyses and policy reports converge on a narrower set of practical observations. Nonpartisan overviews by the Congressional Research Service synthesize the constitutional baseline, catalog the formal types of relief, and note the purely advisory character of OPA procedures — a point that frames most policy prescriptions for reform. DOJ materials, for their part, emphasize process and the OPA's investigatory role while also disclosing statistical trends useful for quantitative analysis. Together, these sources provide the empirical backbone for any evidence-based treatment of the U.S. system [8].

Policy proposals in the literature aim to reconcile constitutional discretion with demands for fairness, transparency, and administrative efficiency. Prominent recommendations include creation of independent clemency commissions or statutory criteria to standardize review, mandated disclosure of OPA recommendations and case processing times, greater resourcing of the OPA to reduce backlog, and experimental reforms to test whether independent review bodies can depoliticize routine petitions while preserving presidential prerogative. Comparative scholarship suggests these reforms draw inspiration from practices in several European systems, where distinct institutional designs often combine greater procedural formality with judicial or quasi-judicial review mechanisms [9].

Finally, important empirical gaps remain, providing fruitful directions for original research:

- rigorous evaluation of clemency's effects on reintegration and recidivism;
- comparative assessment of independent vs. DOJ-administered review models;
- measurement of how politicized pardons affect public trust and administrative legitimacy;
- constitutional analysis of whether statutory constraints can be designed to survive judicial scrutiny. Addressing these gaps will require combining archival work with quantitative methods and comparative institutional analysis anchored in the official datasets produced by DOJ and CRS.

IV. DISCUSSION

In light of references in scholarship and the popular press to the President's "pardon power" [10], a casual observer might think that Article II, Section 2 of the Constitution authorizes only one form of relief from criminal punishment. That is not the case, however: the text of the Constitution speaks of "Reprieves and Pardons" [11], and the Supreme Court has explained that the "language of the [provision] is general, that is, common to the class of pardons, or extending the power to pardon to all kinds of pardons known in the law as such, whatever may be their denomination" [12]. As such, the President has "plenary" constitutional authority under the pardon provision "to 'forgive'" an accused or convicted person "in part or entirely, to reduce a penalty in terms of a specified number of years, or to alter it with conditions which are in themselves constitutionally unobjectionable" [13].

As mentioned above, at least five forms of clemency fall under this authority:

1. pardon;

2. amnesty;
3. commutation;
4. remission of fines and forfeitures;
5. reprieve.

A full pardon is the most expansive form of clemency; it "releases the wrongdoer from punishment and restores the offender's civil rights without qualification" [14]. A pardon may be granted at any time prior to charge, prior to conviction, or following conviction [15], but it appears that it must be accepted to be effective or at least may be refused [16]. For instance, President Woodrow Wilson issued a pardon to George Burdick, an editor at the New York Tribune, for any federal offenses he "may have committed" in connection with the publication of an article regarding alleged customs fraud, despite the fact that Burdick had not been charged with any crime at the time of the pardon [17]. The apparent motivation for the pardon was that Burdick had refused to testify before a grand jury investigating the involvement of Treasury Department officials in leaks concerning the wrongdoing, asserting his Fifth Amendment right not to provide testimony that would tend to incriminate him [18]. Despite President Wilson's issuance of the pardon, Burdick "refused to accept" it and continued to refuse to answer certain questions put to him before the grand jury [19]. In Burdick v. United States, the Supreme Court assumed that the pardon was within the President's power to issue and concluded that "it was Burdick's right to refuse it" and stand on his Fifth Amendment objection [20].

Amnesty is essentially identical to a pardon in practical effect, with the principal distinction between the two being that amnesty typically "is extended to whole classes or communities, instead of individuals" [21]. As an example, President Jimmy Carter granted amnesty to many who violated the Selective Service Act by evading the draft during the Vietnam War [22].

In contrast to pardons and amnesty, which obviate criminal punishments in their entirety, **commutation** merely substitutes the punishment imposed by a federal court for a less severe punishment, such as by reducing a sentence of imprisonment [23]. To take a well-known example, President Richard Nixon conditionally commuted to six and a half years the 13-year sentence of famed labor union leader Jimmy Hoffa, who had been convicted of mail fraud, wire fraud, and obstruction of justice [24]. Along the same lines, the President "may remit [criminal] fines, penalties, and forfeitures of every description arising under the laws of [C]ongress" [25], and, apparently in contrast to a pardon, a commutation or remission is valid even in the absence of the consent of the offender whose punishment is reduced [26].

Finally, a **reprieve** merely "produces delay in the execution of a sentence" for a period of time "when the President shall think the merits of the case, or some cause connected with the offender, may require it," such as "where a female after conviction is found to be [pregnant], or where a convict becomes insane, or is alleged to be so" [27]. President Bill Clinton, for instance, issued a reprieve delaying by six months the execution date of Juan Raul Garza, who had been convicted.

The President's clemency powers under Article II, Section 2 of the U.S. Constitution are broad and multifaceted, encompassing several distinct forms of relief from criminal punishment, including pardons, amnesties, commutations, remission of fines, and reprieves. Each form serves a unique purpose, ranging from fully forgiving an offense and restoring civil rights, as with pardons, to temporarily delaying punishment, as with reprieves. The Supreme Court's recognition of the President's plenary authority affirms the constitutional foundation for this expansive discretion. Historical examples, such as the pardons issued by Presidents Wilson and Carter, and commutations by President Nixon, demonstrate the practical application of these powers in various contexts. Together, these forms of clemency reflect the executive's role in tempering

justice with mercy, addressing individual and collective circumstances, and ensuring flexibility within the federal criminal justice system.

V. CONCLUSION

The presidential clemency power in the United States is a constitutionally sanctioned, plenary authority that encompasses multiple forms of relief from federal criminal penalties, including pardons, amnesties, commutations, remission of fines, and reprieves. These mechanisms collectively reflect the executive's ability to temper the rigidity of the criminal justice system with mercy and flexibility, serving both individual and broader social purposes such as political reconciliation and social reintegration. Judicial precedent affirms that clemency is an act of grace requiring the recipient's assent in certain forms, while administrative structures, notably the Office of the Pardon Attorney, facilitate the petition and review process without limiting presidential discretion. Despite its historic and ongoing importance, the clemency system faces challenges related to transparency, procedural fairness, and politicization, which have prompted scholarly and policy calls for reform. Future efforts to improve the clemency process may benefit from introducing formal procedural criteria, independent review mechanisms, and enhanced accountability measures, thereby preserving the constitutional prerogative while ensuring equitable and transparent administration of mercy within the U.S. criminal justice framework.

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11. U.S. CONST. art. II, § 2, cl. 1.
12. Ex parte Wells, 59 U.S. 307, 314 (1855).
13. Schick v. Reed, 419 U.S. 256, 266 (1974).
14. Absolute Pardon, BLACK'S LAW DICTIONARY (11th ed. 2019); United States v. Arpaio, No. 16-01012, 2017 WL 4839072, at *1 (D. Ariz. Oct. 19, 2017), appeal docketed, No. 17-10448 (9th Cir. Oct. 20, 2017).
15. Ex parte Garland, 71 U.S. 333, 380 (1866) ("The power . . . may be exercised at any time after [an offense's] commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment.")

16. Burdick v. United States, 236 U.S. 79, 94 (1915) ("Granting, then, that the pardon was legally issued and was sufficient for immunity, it was Burdick's right to refuse it[.]"). As noted infra, the Supreme Court subsequently departed from Burdick in the context of commutations.
17. Burdick v. United States, 236 U.S. 85-86 p. (1915) ("Granting, then, that the pardon was legally issued and was sufficient for immunity, it was Burdick's right to refuse it[.]"). As noted infra, the Supreme Court subsequently departed from Burdick in the context of commutations.
18. Burdick v. United States, 236 U.S. 85-86 p. (1915) ("Granting, then, that the pardon was legally issued and was sufficient for immunity, it was Burdick's right to refuse it[.]"). As noted infra, the Supreme Court subsequently departed from Burdick in the context of commutations.
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21. Knote v. United States, 95 U.S. 149, 153 (1877); see id. (indicating that "the distinction between" the two terms "is one rather of philological interest than of legal importance"); Reed Cozart, Clemency Under the Federal System, 23 FED. PROBATION, Issue No. 3, at 3 (Sept. 1959) (noting that "the terms are sometimes used interchangeably," but amnesty is normally "extended by proclamation to grant clemency to groups of persons who have committed offenses but who have not been convicted"). In a case subsequent to Knote, the Supreme Court suggested that there are some other "incidental differences of importance" between pardon and amnesty, including that amnesty "is usually addressed to crimes against the sovereignty of the state, to political offenses, forgiveness being deemed more expedient for the public welfare than prosecution and punishment." Burdick, 236 U.S. at 95.
22. Exec. Order No. 11967, 42 Fed. Reg. 4393 (Jan. 21, 1977); Andrew Glass, President Carter Pardons Draft Dodgers, Jan. 21, 1977, POLITICO (Jan. 21, 2018).
23. Hoffa v. Saxbe, 378 F. Supp. 1221, 1231–32 (D.D.C. 1974) ("Both the Federal and state cases have practically universally upheld the executive's power to commute as part of the power to pardon."); Frequently Asked Questions, U.S. DEP'T OF JUSTICE, supra note 2 ("A commutation of sentence reduces a sentence, either totally or partially, that is then being served[.]"). As discussed infra, commutation does not remove the civil disabilities attendant to a criminal conviction.
24. Hoffa, 378 F. Supp. at 1223–25.
25. The Laura, 114 U.S. 411, 413–14 (1885).
26. Biddle v. Perovich, 274 U.S. 480, 486–87 (1927) ("No one doubts that a reduction of the term of an imprisonment or the amount of a fine would limit the sentence effectively on the one side and on the other would leave the reduced term or fine valid and to be enforced, and that the convict's consent is not required."). This decision is in some tension with the Supreme Court's earlier holding in Burdick v. United States that a full pardon must be accepted to be effective. See Haugen v. Kitzhaber, 306 P.3d 592, 605 (Or. 2013) (recognizing that Burdick "squarely held that a pardon must be accepted by the recipient to be effective," but the Supreme Court "backed away from the acceptance requirement" in Biddle). At least one piece of legal scholarship has argued that the differing treatment of acceptance in Burdick and

Biddle is justified by the different ostensible legal effects of a full pardon and a commutation. See Zachary J. Broughton, Constitutional Law—I Beg Your Pardon: Ex Parte Garland Overruled; the Presidential Pardon is No Longer Unlimited, 41 W. NEW ENG. L. REV. 183, 205–06 (2019) (asserting that acceptance of a pardon also entails acceptance of "the implication of a confession of guilt," whereas "acceptance of a commutation involves no such admittance, so a commutation cannot be refused"). The legal effects of clemency are discussed in more detail infra, "Legal Effect of Clemency."

27. Ex parte Wells, 59 U.S. 307, 314–15 (1855).