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ARTICLE

REINVIGORATING THE FEDERAL PARDON PROCESS: WHAT THE PRESIDENT CAN LEARN FROM THE STATES

MARGARET COLGATE LOVE*

ABSTRACT

In the past thirty years the president has been increasingly reluctant to use his constitutional power to pardon, although the demand for pardon has also increased, to restore rights and shorten sentences. The primary reason is that the process for the administration of the power has lost its vigor, its integrity, and its sense of purpose. The attorney general, steward of the power since the Civil War, has allowed a parochial institutional agenda to inform pardon recommendations instead of broadly defined presidential policy goals. The three most recent presidents have been willing to live with a dysfunctional pardon process, evidently because they did not regard pardoning as a duty of office and perceived its risks to outweigh its rewards. Without a plan for using the power, and without a reliable system for executing it, pardoning has become a dangerous activity for any president, and a useless vestigial appendage of the presidency. The failure of the pardon process during the 1990s explains why President Clinton's final days in office were marred by pardon-related scandal, a fate only narrowly averted by his successor, George W. Bush. It appears that President Obama believes he can avoid scandal by not pardoning at all, or by making only token use of the power.

State pardon procedures suggest ways that presidential pardoning could be restored to a useful place in the federal justice system. While states follow a variety of different administrative models, most have procedures that are more transparent, accountable, and authoritative than the federal process. Some states mandate consultation with elected or appointed boards, some require pre-pardon publication of applications or in-

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tended executive action, and some require public hearings and consultation with responsible justice officials. In thirty-two of the forty-four states where the governor is responsible for pardoning, the state constitution requires an annual report to the legislature on pardon grants for that year. Experience in the states that have a sound administrative structure suggests that even if a reliable process does not guarantee vigorous pardoning, it at least discourages the sort of irresponsible use (or disuse) of the power that has become the norm in the federal system.

Three reforms could reinvigorate the federal pardon process and restore its moral force. First, the process should be guided by clear standards that are applied consistently, and grants should be reasoned and defensible. Second, the process must be administered by individuals who are independent and authoritative, who have the confidence of the president, and who are given the necessary resources to carry out the president's pardoning agenda. Third, the process must be accessible and responsive to people of all walks of life, and take into account the likelihood that many deserving pardon applicants will not have skilled counsel or well-connected supporters to advocate on their behalf.

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INTRODUCTION

Pardon has fallen into disuse in the American criminal justice system and yet there has never been a greater need for it. A power to pardon was included in the federal Constitution because its framers understood that legislative punishments tend to be harsh and courts strict about imposing them, so that there must be some power in the executive to make "exceptions in favor of unfortunate guilt" lest justice "wear a countenance too sanguinary

and cruel."[1] From the earliest years of our nation's history, the power to pardon was used routinely by the president, as it was by state governors under their own constitutions, to correct unjust or unpopular results of a legal system whose procedural protections were crude and punishments harsh, supplementing (or curbing) the power of other actors in the justice system.[2] For a time during the middle of the twentieth century, it seemed that pardon had "outlived its usefulness" because of better procedural protections for the criminally charged and flexible alternative early release mechanisms like parole.[3] By that time, most states had dismantled the old apparatus of civil death in favor of a new emphasis on rehabilitation and restoration of rights.[4] With the abolition of federal parole in 1984 and the growth of a punitive regime of collateral consequences, some predicted that pardon would reclaim a useful role as an instrument of justice.[5] That this has not happened is largely because of the way the pardon power is presently administered by the Justice Department.

As originally conceived by Lincoln's Attorney General, Edward Bates, during the Civil War, the federal pardon process was intended to protect the president from his own generous impulses and the power of his office from those with special access. As elaborated by Bates' successors to meet operational needs of the federal justice system, the federal pardon process served

1. THE FEDERALIST NO. 74, at 447 (Alexander Hamilton) (Clinton Rossiter ed., 1961) (Hamilton also justified giving the president exclusive control of the "benign prerogative of pardoning" for reasons of statecraft, to defuse a politically inflammatory situation.). *See also* Douglas Hay, *Property, Authority and the Criminal Law, in* ALBION'S FATAL TREE: CRIME AND SOCIETY IN 18TH CENTURY ENGLAND 44 (Douglas Hay et al. eds., 1975) (describing how pardon in eighteenth-century England "moderated the barbarity of the criminal law in the interests of humanity. It was erratic and capricious, but a useful palliative until Parliament reformed the law in the nineteenth century."). For a recent exegesis of the thinking of the framers about the pardon power, see Paul Rosenzweig, *Reflections on the Atrophying Pardon Power*, 102 J. CRIM. L. & CRIMINOLOGY 593, 595–603 (2012).

2. *See* W.H. HUMBERT, THE PARDONING POWER OF THE PRESIDENT 95–133 (1941) (describing the Justice Department's administration of the pardon power through the administration of Franklin Roosevelt (1860–1936)); Margaret Colgate Love, *The Twilight of the Pardon Power*, 100 J. CRIM. L. & CRIMINOLOGY 1169, 1175–93 (2010) (describing the administration of the president's pardon power from the earliest years of the Republic through 1980). The president's intervention to ameliorate harsh sentencing laws at the request of judges in the earliest years of the Republic is described in George Lardner, Jr. & Margaret Colgate Love, *Mandatory Sentences and Presidential Mercy: The Role of Judges in Pardon Cases, 1790–1850*, 16 FED. SENT'G REP. 212 (2004).

3. *See* U.S. DEP'T OF JUSTICE, 3 THE ATTORNEY GENERAL'S SURVEY OF RELEASE PROCEDURES: PARDON 296 (1939) [hereinafter ATTORNEY GENERAL'S SURVEY]. *See also* KATHLEEN DEAN MOORE, PARDONS: JUSTICE, MERCY, AND THE PUBLIC INTEREST 84 (1989) (noting that the prevalent view was that "the time [has come] for 'pardons silently to fade away—like collar buttons, their usefulness at an end'").

4. Gabriel J. Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, 160 U. PA. L. REV. 1789, 1793–1803 (2012).

5. *See* MOORE, *supra* note 3, at 86 (speculating that the abolition of federal parole could lead to "an expanded and crucial role for pardon").

both objectives because it was transparent, authoritative, and accountable.[6] But federal pardoning lost its transparency under Franklin Roosevelt, its authority under Ronald Reagan, and its accountability under Bill Clinton, setting the stage for an end-of-term scramble for mercy that "disgusted" George W. Bush and engulfed Bill Clinton in scandal.[7] Unrepaired and neglected by President Obama, and evidently "drained of its moral force,"[8] the federal pardon process began to generate mini-scandals of its own.[9] Perhaps as a result, by the end of his first term President Obama had pardoned less generously than any president since John Adams.[10]

A new administrative paradigm must be developed if President Obama is to use his constitutional power with the courage and capacity the framers intended. Useful models for a restructured and reinvigorated federal pardon process can be found in the states, which have experimented with various arrangements for managing their own pardon power that are conducive to transparency, authority, and accountability.[11] While a sound administrative structure does not guarantee vigorous pardoning, at least it discourages the

6. *See* Love, *supra* note 2, at 1172–93, for an overview of presidential pardoning from 1789 until 1980. *See also* P.S. Ruckman, Jr., *Federal Executive Clemency in the United States, 1789–1995*, Paper presented at the annual meeting of the Southern Political Science Association: Tampa, Florida (November 1995), *available at* http://pardonresearch.com/papers/4.pdf (providing an overview of presidential pardoning from 1789 to 1995).

7. *See* GEORGE W. BUSH, DECISION POINTS 104 (2010) ("One of the biggest surprises of my presidency was the flood of pardon requests at the end. I could not believe the number of people who pulled me aside to suggest that a friend or former colleague deserved a pardon. At first I was frustrated. Then I was disgusted. I came to see the massive injustice in the system. If you had connections to the president, you could insert your case into the last-minute frenzy."). *See also* Margaret Colgate Love, *The Pardon Paradox: Lessons from Clinton's Last Pardons*, 31 CAP. U. L. REV. 185, 196 n.38 (2003) [hereinafter *Paradox*] (describing the breakdown of the federal pardon process at the end of the Clinton presidency).

8. Anthony M. Kennedy, Associate Justice, U.S. Supreme Court, Speech at the American Bar Association (Aug. 9, 2003), *in* 16 FED. SENT'G REP. 126, 128 (2003) ("The pardon process, of late, seems to have been drained of its moral force. Pardons have become infrequent. A people confident in its laws and institutions should not be ashamed of mercy.").

9. *See infra* Part II. *See, e.g.*, Dafna Linzer, *IG Criticizes Justice Pardon Attorney over His Handling of Inmate*'s Plea for Release, WASH. POST, Dec. 18, 2012, http://www.washingtonpost.com/politics/ig-criticizes-justice-pardon-attorney-over-his-handling-of-inmates-plea-for-release/2012/12/18/a6440c6a-495d-11e2-820e-17eefac2f939_story.html (describing one scandal regarding Pardon Attorney Ronald L. Rodgers' handling of a pardon denied at the end of President George W. Bush's administration).

10. P.S. Ruckman, Jr., *SHOCK: Obama's Pardon Disaster. The Merciless Term*, PARDON POWER (Jan. 20, 2013), http://www.pardonpower.com/2013/01/shock-obamas-pardon-disaster-merciless.html (containing data collected by P.S. Ruckman, Jr. from copies of State Department clemency warrants found on Microfilm Set T969, National Archives, the *Annual Report* of the U.S. Attorney General and a CD set of clemency warrants issued by the Office of the Pardon Attorney, U.S. Department of Justice). As of January 20, 2013, President Obama had pardoned twenty-two people, commuted one sentence, and denied 4,812 petitions. The president closest to his record in modern times was George W. Bush, who by the end of his first term had issued twenty-nine pardons, commuted two sentences, and denied 3,595 petitions. *Clemency Statistics*, U.S. DEP'T OF JUSTICE, http://www.justice.gov/pardon/statistics.htm (last visited Jan. 25, 2013).

11. A chart summarizing pardoning practices and frequency of grants in each U.S. jurisdiction is appended to this article. For more detailed state-by-state summaries of pardoning policy

sort of irresponsible use (or disuse) of the power that has marred the federal experience in the three most recent presidencies.

Part I of this article explains how the process for administering the presidential pardon power has lost both its vigor and its integrity, frustrating the power's responsible exercise. Part II describes the transparency, authority, and accountability features that encourage responsible pardoning in many of the states. Part III makes specific recommendations for restoring integrity and vigor to the federal pardon process.

I. The Least Respected Power

Pardon is the least respected and most misunderstood of presidential powers. The public associates pardoning with holiday gift-giving and end-of-term scandals,[12] and periodic pardon-related controversies seem to confirm this skepticism.[13] A pardon seems to most people like a winning lottery ticket or a lightning strike, not something one can earn or deserve like other benefits in a democracy. Scholars treat pardon as a constitutional anomaly, a remnant of tribal kingship that is not part of the checks-and-balances package.[14] Practitioners rarely account for pardon in discussions

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and practice, see Margaret Colgate Love, *Restoration of Rights Project*, NACDL, www.nacdl.org/rightsrestoration (last visited Jan. 25, 2013).

12. Sixty years ago, when pardoning was far more frequent, the introduction to a study of the federal pardon power noted that "the vast majority of people have a very hazy idea of the meaning and of the implications of the President's pardoning power. The persistence of erroneous ideas, the lack of exact information, and the absence of publicity concerning the acts of the pardoning authority envelop the power in a veil of mystery." Humbert, *supra* note 2, at 5–6.

13. In January 2012, Mississippi Governor Haley Barbour granted clemency to 222 individuals, some, but apparently not all of whom had applied for pardon through the established procedure. Himanshu Ojha, Marcus Stern & Robbie Ward, *Insight: Mississippi Pardons Benefited Whites by Big Margin*, Reuters, Jan. 20, 2012, http://www.reuters.com/article/2012/01/20/us-usa-mississippi-pardons-idUSTRE80J25K20120120. *See also In re* Hooker, 87 So. 3d 401 (Miss. 2012) (upholding the validity of pardons whose beneficiaries had failed to comply with the notice requirement in the Mississippi Constitution).

14. The legal scholars who have written about the pardon power can be counted on the fingers of one hand, and constitutional texts mention it only as an afterthought. *See, e.g.*, Akhil Reed Amar, America's Constitution: A Biography 61, 131, 179, 187, 189, 226, 239, 316 (2012) (referencing without discussion the president's pardon power on eight of 672 pages of text); Peter M. Shane & Harold H. Bruff, The Law of Presidential Power 439–43 (1988) (referencing the pardon power on five of 811 pages of text). *See also* Daniel T. Kobil, *The Quality of Mercy Strained: Wresting the Pardoning Power from the King*, 69 Tex. L. Rev. 569, 604, 611 (1991) (explaining that the clemency power has been "trivialized," having "failed to evolve with the rest of the judicial system").

about doing justice,[15] notwithstanding the occasional hat-tip from the Supreme Court.[16]

Few know that for the first 180 years of our nation's history presidents made liberal and regular use of their constitutional power, as governors did in the states.[17] Indeed, the earliest presidents pardoned routinely, sometimes at the request of federal judges and prosecutors, to correct unjust or unpopular results of a legal system that had few built-in correctives.[18] Before there was a federal prison system and the possibility of early release on parole, when prison sentences were mandatory and served in squalid county jails, hundreds of federal prisoners were freed by presidential fiat every year.[19] When conviction of a felony resulted in civil death in many states, full pardons restored repentant federal criminals to their rights and status.[20] From time to time, the president was criticized for granting particular pardons, but the ordinary business of pardoning went on month after month, year after year, out of the public eye and without fanfare or controversy, until the 1980s.[21] What Alexander Hamilton called the "benign prerogative" also played a critical role in resolving political crises, from the Whis-

15. Capital cases are a significant exception, where clemency has continued to play an important role. *See Clemency*, DEATH PENALTY INFO. CENTER (2012), http://www.deathpenaltyinfo.org/clemency (comprehensive listing of clemency grants in capital cases since the reinstatement of the death penalty in 1976).

16. *See, e.g.*, Herrera v. Collins, 506 U.S. 390, 411–12 (1993) ("Clemency is deeply rooted in our Anglo-American tradition of law, and is the historic remedy for preventing miscarriages of justice where judicial process has been exhausted.").

17. ATTORNEY GENERAL'S SURVEY, *supra* note 3, at 44–52, 155–85 (describing the role of pardon in the American colonies, and the regularization of pardoning procedures in the late nineteenth century); U.S. DEP'T OF JUSTICE, 4 THE ATTORNEY GENERAL'S SURVEY OF RELEASE PROCEDURES: PAROLE 41–54 (1939) (describing evolution of parole from pardon in the early twentieth century). Parole apparently was originally introduced in some states not for any new interest in encouraging rehabilitation, but for a simple desire to relieve administrative burdens on the governor. *See*, *e.g.*, Sheldon L. Messinger et al., *The Foundations of Parole in California*, 19 LAW & SOC'Y REV. 69, 69 (1985) ("Parole was introduced in California, and used for over a decade, primarily to relieve governors of part of the burden of exercising clemency to reduce the excessive sentences of selected state prisoners.").

18. George Lardner, Jr. & Margaret Colgate Love, *Mandatory Sentences and Presidential Mercy: The Role of Judges in Pardon Cases, 1790–1850*, 16 FED. SENT'G REP. 1, 1–2 (2004).

19. *See* P.S. Ruckman, Jr., *Presidential Pardons/Commutations by Term, 1789–2009*, PARDONRESEARCH.COM, http://pardonresearch.com/prescomp/pardcommTerm.htm (last visited Jan. 25, 2013) (providing a graph displaying the number of pardons by each president). *See also* Love, *supra* note 2, at 1175–87 (describing the early process for granting pardons).

20. *See* HUMBERT, *supra* note 2, at 100–01 (noting an increase of pardons "to restore civil rights" after 1895).

21. *See* Samuel T. Morison, *The Politics of Grace: On the Moral Justification of Executive Clemency*, 9 BUFF. CRIM. L. REV. 1, 2 (2005) ("For most of this country's history, the practice of executive clemency has quietly functioned as an ancillary feature of the criminal justice system, without attracting much attention or generating much controversy in the vast majority of cases.").

key Rebellion to the Vietnam War and even President Nixon's resignation.[22]

Pardon played a constructive and varied role in the federal justice system largely because of the attorney general's central role in administering the power.[23] Lincoln's Attorney General, Edward Bates, was the first to see the institutional advantages of controlling access to the president and harnessing the pardon power to the needs of the justice system.[24] Before that time, pardoning took place on an ad hoc basis, either because some official recommended it or because some interested party had personal access to the president.[25] Lincoln's inclination to be merciful and his sensitivity to pardon's symbolic value were the sources of some frustration to his generals, though his pardoning apparently inspired the troops.[26] White House Secretary John Hay reported that the president spent long hours reviewing clemency requests from soldiers and their families and famously entertained pardon petitioners at the White House.[27] This was all too much for Lincoln's rather stern attorney general, who opined that his chief was "unfit to be trusted with the pardoning power" because he was too susceptible to women's tears.[28] Convinced that discipline and regularity needed to be brought to pardoning, Bates persuaded Lincoln that pardon petitions should be submitted first to him. Edmund Stedman, the Attorney General's personal secretary, was given the job of managing the flow of pardon petitions and the title of "clerk of pardons." Stedman later recalled that "I soon discovered that my most important duty was to keep all but the most deserving

22. THE FEDERALIST NO. 74, *supra* note 1, at 446. The pardon power was used as a tool of statecraft to "restore the tranquility of the commonwealth." *Id.* at 449. *See* JEFFREY CROUCH, THE PRESIDENTIAL PARDON POWER 53–85 (2009); Love, *supra* note 2, at 1173–75.

23. *See* Love, *supra* note 2, at 1175–95 (describing the administration of the president's pardon power from the earliest years of the Republic through 1980); HUMBERT, *supra* note 2, at 95–136 (describing the Justice Department's administration of the pardon power through the Administration of Franklin Roosevelt).

24. Bates declared that President Lincoln was "unfit to be trusted with the pardoning power" because he was too susceptible to women's tears. RICHARD N. CURRENT, THE LINCOLN NOBODY KNOWS 169 (1958). Pardon Clerk Edmund Stedman reported, "My chief, Attorney General Bates, soon discovered that my most important duty was to keep all but the most deserving cases from coming before the kind Mr. Lincoln at all; since there was nothing harder for him to do than put aside a prisoner's application . . . ." J. T. Dorris, *President Lincoln's Clemency*, 20 J. ILL. ST. HIST. SOC'Y 547, 550 (1953) (citing 1 LAURA STEDMAN & GEORGE M. GOULD, LIFE AND LETTERS OF EDMUND CLARENCE STEDMAN 265 (1910)).

25. *See* Love, *supra* note 2, at 1175–78 (describing the administration of the pardon power before 1870).

26. Dorris, *supra* note 24, at 553.

27. *See* INSIDE LINCOLN'S WHITE HOUSE: THE COMPLETE CIVIL WAR DIARY OF JOHN HAY 64 (Michael Burlingame & John R. Turner eds., 1997) (describing a six-hour session in which Lincoln eagerly "caught at any fact which would justify him in saving the life of a condemned soldier").

28. CURRENT, *supra* note 24, at 169. People joked that enterprising merchants in the District of Columbia rented weeping children and widow's weeds to the mothers of condemned soldiers before their audiences with the President. WILLIAM E. BARTON, THE LIFE OF ABRAHAM LINCOLN 255 (1925).

cases from coming before the kind Mr. Lincoln at all, since there was nothing harder for him to do than put aside a prisoner's application . . . ."[29] If a regime based on personal influence made it too hard for the president to say no, it also made it too easy for individuals with a personal or political agenda to adversely affect the more accountable functions of government.

Thus began the president's practice of referring all pardon petitions to the attorney general for investigation and recommendation. It soon became apparent that this practice made sense not only to avoid compromising the president or wasting his time, but also to ensure that the pardon power would function as an efficient adjunct to the justice system. After the establishment of the Justice Department in 1870, the attorney general also became responsible for the proper care of federal prisoners, then mostly housed in state facilities, and he made it a priority to ensure their access to the clemency process.[30] In 1893, President Cleveland formally transferred all administrative duties in pardon matters from the secretary of state to the attorney general,[31] who in turn delegated this responsibility to a department official known thenceforth as the pardon attorney. In 1898, the first clemency regulations jointly signed by President McKinley and Attorney General John Griggs formalized a system whereby all seekers of a presidential pardon were required to call at the Justice Department rather than at the White House.[32]

In this fashion, the president's constitutional power became part and parcel of the more general transformation of the federal justice system to a centralized administrative state.[33] And because the pardon power was ad-

29. Dorris, *supra* note 24, at 550. Edmund Clarence Stedman (1833–1908) is primarily renowned for his later contributions to poetry and literary criticism. In 1904, Stedman was one of the first seven chosen for membership in the American Academy of Arts and Letters. In addition to his literary achievements, Stedman pursued scientific and technical endeavors, and his design for an airship inspired by the anatomy of a fish foreshadowed the dirigibles of the early twentieth century. *See* ENCYCLOPEDIA BRITTANICA 861 (Hugh Chisholm ed., 11th ed., 1911) (entry on the life of Edmund Clarence Stedman).

30. The Annual Report of the Attorney General for 1880–1881 describes a system of regular inspections of state and local prisons and jails where federal prisoners were housed, through which deserving cases of "sick and friendless prisoners who might otherwise have no means of communicating with the pardoning power" would be "[brought], through this department, to the attention of the President" for consideration of clemency. 1880–1881 ATT'Y GEN. ANN. REP. 20. *See* Love, *supra* note 2, at 1178–87 (describing the system for handling pardons between 1870 and 1930).

31. *See* Exec. Order of June 16, 1893 (on file with author). *See also* Reed Cozart, *Clemency under the Federal System*, 13 FED. PROBATION 3, 3 n.1 (1959).

32. *See* Rules Relating to Applications for Pardon, 1, 3, 4 (Feb. 3, 1898) [hereinafter 1898 Clemency Rules] (containing rules signed by President William McKinley and Attorney General John Griggs). A complete set of clemency regulations, from the 1898 McKinley regulations to the current regulations approved by President Clinton in 1993, is on file with the author.

33. *See* Love, *supra* note 2, at 1179 ("The administrative system formalized after the Department of Justice was established in 1870 made the unruly power part of the more general transformation of the justice system to an administrative state, steering most clemency suitors away from the president's door for over 100 years."). *See also* HUMBERT, *supra* note 2, at 82–94 (describing its operation between 1870 and 1940); Morison, *supra* note 21, at 28–47 (describing the operation of the federal pardon process in recent years).

ministered and to some extent controlled by the Justice Department, its exercise necessarily reflected the values and policy preferences of those responsible for prosecuting crime and administering punishment.[34] At the same time, the advisory role of a member of the president's cabinet ensured that political as well as law enforcement considerations would dictate pardon's role in the justice system, and that it would operate with authority. Each year, between 1885 and 1932, the annual report of the attorney general detailed (sometimes extensively) his reasons for recommending each of the hundreds of annual clemency grants, providing an unparalleled basis for holding publicly accountable an otherwise unrestrained power of government.[35]

Until quite recently this administrative system did what it was designed to do. While over the years there have been controversial grants, there were no genuine pardon-related scandals in the federal system until the process broke down in the Clinton Administration. The story of that breakdown has been told elsewhere, but suffice it to say that the Clinton Justice Department failed to develop a responsible pardoning policy or educate President Clinton on his pardoning responsibilities, ignored his requests at the end of his term for more favorable pardon recommendations, and stood by while the president indulged in an unprecedented orgy of final pardoning that scandalized the nation.[36]

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34. This means that the president did not always take the rather stern advice that came to him from the Justice Department. For example, in 1932, Attorney General William Mitchell commented in a speech to the American Bar Association on the tension that sometimes arose between Justice Department prosecutors, determined to enforce the criminal laws severely, and President Hoover, a veteran practitioner of humanitarian relief:

> Reviewing the past three years, I believe that it is in respect to pardons that President Hoover has most often shown an inclination to disagree with the Department of Justice. I suspect he thinks we are too rigid. The pitiful result of criminal misconduct is that the burden of misery falls most heavily on the women and children. If executive clemency were granted in all cases of suffering families, the result would be a general jail delivery, so we have to steel ourselves against such appeals. President Hoover, with a human sympathy born of his great experiences in the relief of human misery, has now and again, not for great malefactors but for humble persons in cases you never heard of, been inclined to disagree with the prosecutor's viewpoint and extend mercy. We have been glad when such incidents occurred.

HUMBERT, *supra* note 2, at 121 (quoting Attorney General William D. Mitchell, Address at Annual American Bar Association: Reform in Criminal Procedure (Oct. 13, 1932)).

35. *See* Love, *supra* note 2, at 1180 n.43, 1191.

36. *See The Controversial Pardon of International Fugitive Marc Rich: Hearings before the H. Comm. on Government Reform*, 107th Cong., 1st Sess. 342–43 (2001) [hereinafter *The Controversial Pardon of International Fugitive Marc Rich*] (containing testimony of Beth Nolan, Counsel to former President Clinton, describing the unresponsive Justice Department pardon process at the conclusion of the Clinton Administration, and the ensuing frantic effort at the White House in the final weeks to process the hundreds of clemency requests coming directly to the White House). *See also* Love, *supra* note 7, at 188–202 (describing run-up to final Clinton pardons, the failure of the Justice Department pardon process, staffing of pardons in the White House, and the grants themselves). For a colorful account by a member of the loyal opposition, including a representative sampling of the extensive contemporary press coverage, see BARBARA OLSON, THE FINAL DAYS 113–93 (2001).

After the tidal wave of irregular grants on Clinton's final day in office, some urged that responsibility for administering the president's power be removed from the Justice Department,[37] while others thought the Justice Department process could be reformed.[38] But the problems in the Justice Department's pardon process persisted into the presidency of George W. Bush. Requests from the White House for more favorable recommendations were once again ignored by the Justice Department,[39] and once again White House officials found themselves unable to count on support from the Justice Department when they were deluged with applications from well-connected favor-seekers at the end of President Bush's second term.[40] In 2007, the pardon attorney was forced to resign as a result of an internal investigation into mismanagement of the pardon program.[41] Three years later, the Justice Department's Inspector General reported that the new pardon attorney (a former military judge and narcotics prosecutor) was personally processing and sending forward to the White House hundreds of recom-

37. *See, e.g.*, Daniel T. Kobil, *Reviving Presidential Clemency in Cases of "Unfortunate Guilt"*, 21 FED. SENT'G REP. 160, 163 (2009) ("Given the prosecutorial responsibilities of the Justice Department, there is a conflict of interest present when its attorneys must also serve as the gatekeepers for clemency."); Evan P. Schultz, *Does the Fox Control Pardons in the Henhouse?*, 13 FED. SENT'G REP. 177, 177–78 (2001) ("[A]n organization with a vested interest in prosecuting and convicting people is in charge of recommending whether those convictions should be put aside . . . . The real solution is removal of the process from Justice.").

38. *See* Brian M. Hoffstadt, *Guarding the Integrity of the Clemency Power*, 13 FED. SENT'G REP. 180, 181–82 (2001) (discussing ways the clemency review process could remain within the Justice Department without being unduly influenced by the perspective of prosecutors).

39. *See* Dafna Linzer & Jennifer LaFleur, *ProPublica Review of Pardons in Past Decade Shows Process Heavily Favored Whites*, WASH. POST, Dec. 3, 2011, http://www.washingtonpost.com/investigations/propublica-review-of-pardons-in-past-decade-shows-process-heavily-favored-whites/2011/11/23/gIQAElnVQO_story.html:

> In 2006, White House Counsel Harriet Miers became so frustrated with the paucity of recommended candidates that she met with Adams and his boss, Deputy Attorney General Paul McNulty. Adams said he told Miers that if she wanted more recommendations, he would need more staff. Adams said he did not get any extra help. Nothing changed. "It became very frustrating, because we repeatedly asked the office for more favorable recommendations for the president to consider," said Fielding, who was Bush's last White House counsel. "But all we got were more recommendations for denials."

40. *See, e.g.*, *Hearing before the H. Comm. on Government Reform on the Pardon of Marc Rich*, 107th Cong., 1st Sess. 316–437 (2001) (containing testimony of Beth Nolan, White House Counsel during President Clinton's final days in office); Love, *supra* note 7, at 198 n.41 (confirming that the Justice Department informed the White House in the fall of 2000 that "they couldn't take any more pardon applications and that they weren't going to be able to review them or get the information to the White House." (internal quotations omitted)); Charlie Savage, *On Clemency Fast Track, Via Oval Office*, N.Y. TIMES, Jan. 1, 2009, http://www.nytimes.com/2009/01/01/washington/01pardon.html?pagewanted=all&_r=0 (discussing pardon granted to Isaac Toussie without a recommendation from the Justice Department that was later revoked after the White House became aware of his controversial reputation in the community).

41. *See* George Lardner, Jr., *Begging Bush's Pardon*, N.Y. TIMES, Feb. 4, 2008, http://www.nytimes.com/2008/02/04/opinion/04lardner.html (describing the backlog of clemency applications in the Justice Department, and the charges that resulted in the pardon attorney Roger Adams' resignation). A more recent scandal regarding racial disparity in pardon recipients and inmate Clarence Aaron's plea for release has involved his successor, Ronald L. Rogers. *See* Linzer, *supra* note 9.

mendations in commutation cases, assisted only by unpaid law-student interns, establishing that most prisoner petitions were getting short shrift.[42] The pardon process was described as a "bottomless black box" where applications lingered for years before finally being denied without explanation.[43] In 2011, investigative reporting published in the *Washington Post* documented outcomes of pardon cases evidently disfavoring racial minorities, undue influence by members of Congress in favor of wealthy constituents,[44] and misleading advice to the White House in a case involving a prisoner serving three life sentences for distributing crack cocaine.[45] In the wake of these revelations, the White House asked the Bureau of Justice Statistics to report on how pardons were processed,[46] members of Congress and advocacy organizations called for an investigation of the pardon attorney's office,[47] and the Department's Inspector General recommended that the pardon attorney be disciplined.[48] The *New York Times* editorialized how the

42. *See* AUDIT REPORT 11-45, OFFICE OF THE INSPECTOR GEN., AUDIT OF THE DEPARTMENT OF JUSTICE PROCESSING OF CLEMENCY RECOMMENDATIONS 31–32 (Sept. 2011) (providing that in the past it took more time to process petitions but now that the pardon attorney has gained more staff, including law students, the turnaround time on these petitions has gone down).

43. *See* Molly Gill, *Into the Bottomless Black Box: The Prisoner's Perspective on the Commutation Process*, 20 FED. SENT'G REP. 16, 16 (2007) ("The process is a black box because it gives applicants no meaningful guidance and few updates as their applications are reviewed by the Office of the Pardon Attorney and the Deputy Attorney General and granted or denied by the president."). The federal pardon process is described in detail in Morison, *supra* note 21, at 35–46.

44. *See* Dafna Linzer, *Presidential Pardons: A Lawmaker's Support Improves Criminals' Odds for Mercy*, WASH. POST, Dec. 4, 2011, http://www.washingtonpost.com/investigations/presidential-pardons-a-lawmakers-support-improves-criminals-odds-for-mercy/2011/11/23/gIQA61bVUO_story.html.

45. *See* Dafna Linzer, *Clarence Aaron Was Denied Commutation, but Bush Team Wasn't Told All the Facts*, WASH. POST, May 3, 2012, http://www.washingtonpost.com/investigations/clarence-aaron-was-denied-commutation-but-bush-team-wasnt-told-all-the-facts/2012/05/13/gIQAEZLRNU_story.html. *See also* Dafna Linzer, *Obama Administration Seeks New Review of Commutation Request from Clarence Aaron*, WASH. POST, July 18, 2012, http://www.washingtonpost.com/politics/obama-seeks-fresh-review-of-federal-prisoners-commutation-request/2012/07/18/gJQApDm6tW_story.html (recounting the story of Clarence Aaron discussing President Obama's approach to pardoning).

46. The Department of Justice inquiry is intended to test the conclusion of the investigative series described in notes 39 and 60 that whites are favored in the pardon process. *See* Dafna Linzer, *Details Emerge on Government Study of Presidential Pardons*, PROPUBLICA (Aug. 8, 2012), http://www.propublica.org/article/details-emerge-on-government-study-of-presidential-pardons. A contract to conduct this study has been awarded to the Rand Corporation. *Detailed Information for Award 2012-MU-CX-K045*, U.S. DEP'T. JUSTICE., http://grants.ojp.usdoj.gov:85/selector/awardDetail?awardNumber=2012-MU-CX-K045&fiscalYear=2012&applicationNumber=2012-30210-CA-BJ&programOffice=BJS&po=BJS (last visited Feb. 19, 2013).

47. *See* Dafna Linzer, *Congressional Leader Calls for Investigation of the Pardon Office*, PROPUBLICA (May 23, 2012), http://www.propublica.org/article/congressional-leader-calls-for-investigation-of-the-pardon-office.

48. *See* OFFICE OF THE INSPECTOR GEN., OVERSIGHT AND REVIEW DIV., A REVIEW OF THE PARDON ATTORNEY'S RECONSIDERATION OF CLARENCE AARON'S PETITION FOR CLEMENCY 21 (Dec. 2012) ("[Pardon Attorney Ronald] Rodgers did not represent [the United States Attorney's] position accurately, and his conduct fell substantially short of the high standards to be expected of Department of Justice employees and of the duty that he owed to the President of the United States.").

Justice Department's "prosecutorial mindset" had "undermined the process with huge backlogs and delays."[49] Meanwhile, by the end of his first term in office President Obama had issued even fewer pardons than his two predecessors,[50] perhaps hoping to avoid scandal by making only token use of his power. Reports from inside the Obama Administration suggested that only a fraction of the favorable recommendations received from the Justice Department had been acted on favorably, with many left pending or returned for a different recommendation, seeming to confirm President Obama's lack of confidence in the pardon process.

The disintegration of the federal pardon process, which began in earnest in the Clinton Administration and has continued to the present, can be traced to three fateful decisions. The first was Franklin Roosevelt's decision, in 1933, to have the Justice Department stop publishing the reasons for its favorable clemency recommendations.[51] This decision deprived the public of the factual predicate necessary to hold pardon decision-makers accountable; reinforced the impression that pardoning was mysterious, capricious, and possibly corrupt; and encouraged the president in thinking that he did not need to be accountable to the public for his pardoning.

The second decision came half a century later when Ronald Reagan agreed to a delegation of responsibility for making pardon recommendations within the Justice Department from the attorney general to a career civil servant who reported to officials responsible for overseeing the day-to-

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49. *See* Editorial, *The Quality of Mercy, Strained*, N.Y. TIMES, Jan. 5, 2013, http://www.nytimes.com/2013/01/06/opinion/sunday/the-quality-of-mercy-strained.html?ref=opinion&_r=0:

> Presumably, the president is willing to use acts of clemency to right the wrongs of the sentencing and judicial systems. Yet the same cannot be said of the Justice Department, which has a prosecutorial mind-set. It has undermined the process with huge backlogs and delays, and sometimes views pardons as an affront to federal efforts to fight crime.

See also Samuel T. Morison, *A no-pardon Justice Department*, L.A. TIMES, Nov. 6, 2010, http://articles.latimes.com/2010/nov/06/opinion/la-oew-morison-pardon-20101106 ("[T]he bureaucratic managers of the Justice Department's clemency program continue to churn out a steady stream of almost uniformly negative advice, in a politically calculated attempt to restrain (rather than inform) the president's exercise of discretion.").

50. *See* Linzer, *supra* note 9 and accompanying text ("President Obama has granted clemency at a lower rate than any modern president.").

51. The practice of publishing reasons for pardon recommendations began in the first Cleveland Administration, and for almost half a century opened a fascinating window into the operation of the post-Civil War federal justice system. Each year, between 1885 and 1932, the annual report of the attorney general detailed (sometimes extensively) his reasons for recommending each of the hundreds of annual clemency grants, providing an unparalleled basis for holding publicly accountable an otherwise unrestrained power of government. But in 1933 this practice ceased, reportedly at the direction of President Roosevelt himself, and the Justice Department's annual report on the pardon program thereafter contained little more than opaque case processing statistics. *See* Love, *supra* note 2, at 1191 (noting that for the twenty-five years after 1932, "published reports of the pardon attorney contained only bare case statistics, and between 1941 and 1955 no reports were published at all"). Between 1958 and 1963 the reports of the pardon attorney detailed policy aspects of the pardon program, as well as President Kennedy's decision to commute dozens of mandatory minimum drug sentences, but thereafter the reports returned to being generally uninformative.

day work of federal prosecutors.[52] This delegation deprived the president of authoritative and accountable advice from a Senate-confirmed member of his Cabinet, and marginalized the pardon program within the Justice Department.

The third fateful decision was President Clinton's unprecedented public distancing from the Justice Department's pardon process in several high profile cases,[53] which together with his long-running neglect of the routine pardon caseload[54] set the stage for the undisciplined orgy of pardoning on the final day of his term.[55] The loss of public confidence in the pardon process that resulted from the blatant cronyism of Clinton's final grants has never been acknowledged or addressed. Then, as now, the pardon process was seen to favor the wealthy and well-connected, and not ordinary people with garden-variety cases. Then, as now, the Justice Department process produced few favorable recommendations,[56] gave undue advantage to applicants with influential advocates,[57] and generally appeared to operate in a random and unfair fashion.[58] Over the past fifteen years the pardon process has become so compromised in the public mind, and so unfriendly to anyone outside the Justice Department, that the president himself no longer relies on it.

Many doubt that the Justice Department process is capable of the kind of reform necessary to restore what Supreme Court Justice Anthony Ken-

52. *See* 28 C.F.R. § 0 (1983). The 1982 revision of Part I of 28 C.F.R. formalized the attorney general's responsibility for making clemency recommendations to the president, but at the same time it authorized the delegation of this responsibility within the Justice Department to a career official who at the time did not even enjoy executive status. That official's recommendations were to be communicated to the White House through subordinate political appointees in the Justice Department whose primary management responsibilities involved oversight of federal prosecution policy and practice.

53. *See, e.g.*, THE PARDON ATTORNEY REFORM AND INTEGRITY ACT, S. REP. NO. 106-231, at 8 (2000) (allowing for commutation of sixteen Puerto Rican terrorists without Justice Department advice). *See also* Darryl W. Jackson et al., *Bending toward Justice: The Posthumous Pardon of Lieutenant Henry Ossian Flipper*, 74 IND. L.J. 1251 (1999) (describing the pardon attorney's refusal to docket posthumous pardon application on behalf of first Black West Point graduate).

54. *See* Love, *supra* note 7, at 196 n.38 (2003) (describing irregular consideration of pardons at the White House throughout the Clinton presidency).

55. *See The Controversial Pardon of International Fugitive Marc Rich*, *supra* note 36, at 342–43 (containing testimony of Beth Nolan, Counsel to former President Clinton, describing unresponsive Justice Department pardon process at the conclusion of the Clinton Administration, and the ensuing frantic effort at the White House in the final weeks to process the hundreds of clemency requests coming directly to the White House). *See also* Love, *supra* note 7, at 191–97 (describing run-up to final Clinton pardons, the failure of the Justice Department pardon process, staffing of pardons in the White House, and the grants themselves).

56. *See* Dafna Linzer, *Obama Has Granted Clemency More Rarely Than Any Modern President*, PROPUBLICA (Nov. 4, 2012), http://www.propublica.org/article/obama-has-granted-clemency-more-rarely-than-any-modern-president.

57. *See* Linzer, *supra* note 44 (chronicling the pardon of Dale Critz Jr. whose pardon was secured with the assistance of a congressman).

58. *See, e.g.*, Gill, *supra* note 43, at 16 (juxtaposing the pardon of Scooter Libby with the experience of a nonviolent drug offender serving a long prison sentence).

nedy called its "moral force."[59] But whether or not the Justice Department remains in its stewardship role, it is clear that major reforms are necessary to restore the pardon process to something that protects and serves both the president and the justice system. State pardon procedures discussed in the following section suggest ways that the federal pardon process could regain the transparency, authority, and accountability that are conducive to more frequent and responsible use of the power. While the president could not constitutionally be compelled to adopt such procedures, he could do so voluntarily, adapting elements of functional state systems to the federal context.

II. What the President Can Learn from the States About Using His Pardon Power

The constitutions of most states provide for regulation of the pardon power at least to some extent. Even where the governor's constitutional power is unlimited, creative legislatures have found ways to introduce a degree of accountability and transparency into the pardon process that is foreign to the federal system. In some states no pardon may issue without a public hearing, and in others pardon applications must be published in the newspaper or tacked on the courthouse door. Frequently the governor is happy to cede some of his power as a way of avoiding unwanted favor-seekers and the controversy that frequently follows an irregular grant. Even in those states where the constitution contemplates no legislative control over the pardon process, the state constitution may require the governor to report after the fact about the pardons he or she has granted, including the reasons for each grant. This modest degree of legislative and popular oversight does not guarantee that the governor will grant many pardons, but it does seem to ensure that the pardons that are granted will be defensible. It seems noteworthy that none of the states in which pardon-related scandals have recently engulfed the governor insist that the governor share the power or report to the legislature.[60]

There are three basic administrative models that govern pardoning in the United States. In six states, the governor plays almost no part in the

59. *See* Kennedy, *supra* note 8, at 128.

60. *See, e.g.*, *In re* Hooker, 87 So. 3d 401, 414 (Miss. 2012) (upholding Mississippi Governor Haley Barbour's controversial final grants despite applicants' failure to comply with constitutional notice provisions); Doe v. Nelson, 680 N.W.2d 302, 313 (S.D. 2004) (unsealing pardons granted by South Dakota Governor Bill Janklow that did not comply with statutory process). In 1991, the departing Ohio governor, Richard F. Celeste, drew protests with clemency orders for a number of individuals on death row, including a man who had raped and killed a seven-year-old girl. After that, Ohio amended the state constitution to require the governor to obtain a nonbinding recommendation from the parole board before making a clemency decision. William Glaberson, *States' Pardons Now Looked at in a Starker Light*, N.Y. Times, Feb. 16, 2001, http://www.nytimes.com/2001/02/16/us/states-pardons-now-looked-at-in-starker-light.html (reporting on a number of pardon controversies in states whose laws place few controls on the governor's pardon power).

pardon process, and the pardon power resides in a governor-appointed independent board. In twenty-one states, the governor shares power with other elected or appointed officials. In twenty-three states, the governor is authorized to pardon by law but is not required to consult with other officials before doing so. The wide variety in pardoning policies and practices from jurisdiction to jurisdiction makes it hard to generalize about the effectiveness of any particular administrative model, though some generally tend to produce more pardon grants and fewer pardon-related controversies than others. Based on the frequency of pardon grants over time and the regularity of the pardon process, it would appear that the jurisdictions in which pardon plays the most functional role are those in which the decision-making authority is exercised by or shared with other executive officials.[61]

A. Independent Board Model

In six states, the governor has little or no role in pardoning, and the pardon power is exercised by a governor-appointed board that is also responsible for prison releases.[62] These independent pardoning boards are heavily regulated in terms of their procedures and conduct most of their business in public. The boards in Alabama, Connecticut, Idaho, South Carolina, and Utah are each required by statute to hold a full public hearing before granting a pardon and to notify concerned state officials and victims beforehand to enable them to attend the hearing and state their reasons for or against the pardon on the record. The Georgia board reviews all cases on a paper record, issues a written opinion in each case, and is required to report annually to the legislature, the attorney general, and the governor. The Alabama board is required to report annually to the governor.

The twin requirements of transparency and accountability enforced on all of these six independent boards are conducive to issuing numerous pardons at regular intervals (although the fact that the pardon process involves no elected officials is at least equally important to their effective operation). Each year more than 400 pardons are granted by the boards in Alabama, Connecticut, and Georgia, and 200 pardons are granted each year in South Carolina, with an approval rate that ranges in these states from 30% to 60% of all applications received. While the Idaho board grants only thirty to forty pardons each year, this represents more than half of all applications filed, and grants are issued at regular intervals. These boards accept applica-

61. Specific constitutional or statutory sources of authority for the statements made in this section can be found in the chart appended to this article, reprinted from Love, *supra* note 11. See also the state-specific profiles at id.

62. *See* ALA. CONST. amend. 38 (amending art. V § 124); GA. CONST. art. IV, § 2, para. II; IDAHO CONST. art. IV, § 7; S.C. CONST. art. IV, § 14; UTAH CONST. art. VII, § 12; CONN. GEN. STAT. § 54-124a(f) (2010). In Alabama and South Carolina, the governor retains clemency power in capital cases; in Idaho, pardons of some serious offenses must be approved by the governor. The pardon procedures that apply in each of these states are detailed in the state-specific profiles at Love, *supra* note 11.

tions as soon as a person's sentence is completed or after a brief additional eligibility period, and most of their business comes from people seeking to avoid employment bars or firearms disabilities. None takes more than a year to process a typical pardon request.

B. Shared Power Model

In twenty-one of the forty-four states where the governor exercises most or all of the pardon power, the governor's power is limited, either by specific constraints spelled out in the state constitution or by statutory conditions enacted pursuant to specific constitutional authority to regulate the practice of pardoning.[63] In some of these states, the constitution itself provides for a sharing of the power to pardon, sometimes with other elected or appointed officials and sometimes with an administrative board that is also responsible for prison releases. In every one of these "shared power" states, there is a degree of transparency and accountability that seems to encourage responsible (if not reliably generous) pardoning.

There are three basic variations on the "shared power" model. In four states, a pardon may not be granted except with the consent of other high officials sitting with the governor as a board of pardon.[64] In nine states, the governor may not grant a pardon without an affirmative recommendation from a body of elected or appointed officials.[65] In Rhode Island, the governor may not pardon except with the advice and consent of the state legislature.[66] In six states, the governor is required to seek an advisory recommendation from an appointed administrative board before a pardon may issue, though the board's advice is not binding.[67] California's system is a hybrid that places constraints on the governor only if the person seeking clemency has more than one conviction, in which case the governor must obtain a recommendation from the parole board and approval from a majority of the justices of the state supreme court.[68]

Most of the administrative boards that have constitutional status in this "shared power" model are required by law to hold public hearings at which the prosecutor and victim are allowed to speak, and to make public their

63. A summary of the states that have implemented the "shared power" model can be found in the chart in the Appendix. *See* Love, *supra* note 11.

64. *See* FLA. CONST. art. IV, § 8(a); MINN. CONST. art. V, § 7; NEB. CONST. art. IV, § 13; NEV. CONST. art. 5, § 14. For further details, see Love, *supra* note 11.

65. ARIZ. CONST. art. V, § 5; DEL. CONST. art. VII, § 1; LA. CONST. art. IV, § 5(E)(1); MASS. CONST. pt. 2, ch. II, sec. I, art. VIII; MONT. CONST. art. VI, § 12; N.H. CONST. pt. 2, art. 52; OKLA. CONST. art. VI, § 10; PA. CONST. art. IV, § 9(a); TEX. CONST. art. 4, § 11(b). For further details see Love, *supra* note 11.

66. R.I. CONST. art. IX, § 13.

67. ALASKA CONST. art. III, § 21; ARK. CONST. art. 6, § 18; MICH. CONST. art. 5, § 14; MO. CONST. art. IV, § 7; OHIO CONST. art. III, § 11; KAN. STAT. ANN. § 22-3701(4) (2012). For further details on each of these state specific profiles see Love, *supra* note 11.

68. CAL. CONST. art. V, § 8; CAL. PENAL CODE 4803 (2012).

recommendations to the governor. Most of these boards clearly set forth the standards they expect a successful pardon applicant to meet. Some of the "shared power" states impose additional transparency and accountability constraints on the governor over and above those that apply to the administrative board, such as a requirement of advance public notice of an intention to grant a pardon. The governor is required under the constitution in a majority of these "shared power" states to make regular periodic reports to the legislature about the pardons he or she has issued, including the reasons for each grant.

Sharing the power with other officials or an administrative board does not guarantee gubernatorial enthusiasm for pardoning, and the experience of the twenty-one states in the "shared power" model is much more mixed than the "independent board" model. Within each of the three basic variations on the shared power model, there are some states where pardoning is regular and generous, and some where it is infrequent or rare. For example, of the four states that follow the "governor-on-the-board" model, two produce quite a few pardons (Nevada and Nebraska) and two do not (Florida and Minnesota). The "governor-on-the-board" model has resulted in particular mischief in Florida, a state where felony offenders cannot even regain the right to vote unless they are personally approved through a complex clemency procedure that usually involves a public hearing before the governor and three of his cabinet appointees.[69] Of the nine "gatekeeper board" states, three (Delaware, Pennsylvania, and Oklahoma) produce a regular stream of pardon grants, while pardons in the other six states in this group are infrequent (Texas, Montana, and Louisiana) or vanishingly rare (Arizona, Massachusetts, and New Hampshire).[70] There has not been a pardon in Rhode Island for many years, which is hardly surprising considering its requirement of legislative advice and consent. Of the six states where the constitution requires the governor to consult with an administrative board, only Ohio and Arkansas have a lively tradition of pardoning.

It is hard to draw any general conclusions about why pardoning thrives in some of these "shared power" states and is either ineffectual or moribund in others. It may be that in some states, there is strong cultural as well as institutional support for pardoning, and few alternative relief mechanisms. This could explain why the governors of Oklahoma and Arkansas have continued to pardon generously while just slightly to the north, the governors of Kansas and Missouri have not.[71] Custom and expectation could explain why pardoning thrives in Delaware and Nebraska while there has not been a pardon in Arizona and Rhode Island in years.[72] These factors could also

69. *See* FLA. CONST. art. IV, § 8; FLA. STAT. §§ 940.01, 940.05 (2012) (stating that the governor may restore civil rights of a convicted felon if that person has met certain requirements).

70. For a summary of the frequency of pardoning in all 50 states see Love, *supra* note 11.

71. *See* Love, *supra* note 11.

72. *Id.*

explain why progressive governors in Minnesota and Massachusetts appear uninterested in pardoning while conservative governors in Nevada and Pennsylvania continue to approve dozens of grants each year.[73] Pardoning is simply a fact of life in some states, a part of the routine housekeeping business of government as opposed to a perk of office or an alien presence in the justice system. Finally, the influence of personal inclinations and political ambition cannot be discounted, even in states where the governor shares power with a board, which may account for the waxing and waning fortunes of the pardon power in Ohio and Florida. There are numerous variables—for example, a recent politically costly mistake by a predecessor[74]—that may disincline a governor to pardon even in states where institutional arrangements seem to expect it. The one thing that seems fairly clear and constant in the otherwise decidedly mixed experience of these "shared power" states is that even if institutional support does not guarantee vigorous pardoning, it seems to forestall irresponsible pardoning—unless of course a failure to pardon at all, in the face of compelling circumstances, can be so characterized.

C. Optional Consultation Model

In twenty-three states, the constitution imposes no prior restrictions on the governor's pardon power, though some constitutions permit a degree of legislative regulation of the "manner of applying,"[75] and some require the governor to report to the legislature about pardons granted after the fact.[76]

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73. *Id.*

74. *See, e.g.*, Adam Liptak, *To More Inmates, Life Term Means Dying Behind Bars*, N.Y. TIMES, Oct. 2, 2005, http://www.nytimes.com/2005/10/02/national/02life.web.html?pagewanted=all&_r=0 (describing the 1992 release of convicted murderer Reginald McFadden on recommendation of the Pennsylvania Board of Pardons as "the reason lifers no longer get pardons in Pennsylvania").

75. *See, e.g.*, COLO. CONST. art. IV, § 7 (governor pardons "subject to such regulation as may be prescribed by law relative to the manner of applying"); ILL. CONST. art. V, § 12 (same); ME. CONST. art. V, pt. 1, § 11 (same); MO. CONST. art. IV, § 7 (same); N.Y. CONST. art. IV, § 4 (same); N.C. CONST. art. III, § 5(6) (same); WYO. CONST. art. 4, § 5 (same). Some state constitutions give the legislature a broader authority to regulate the pardon power. *See, e.g.*, IND. CONST. art. 5, § 17 (governor may pardon "subject to such regulations as may be provided by law"); IOWA CONST. art. IV, § 16 (same); KAN. CONST. art. I, § 7 (same); N.M. CONST. art. V, § 6 (same); WASH. CONST. art. III, § 9 (same).

76. *See, e.g.*, CAL. CONST. art. V, § 8 (governor must report to legislature each pardon, stating the facts of the case and giving reasons for grant); COLO. CONST. art. IV, § 7 (governor must report to legislature "a transcript of the petition, all proceedings, and the reasons for his action"); IND. CONST. art. 5, § 17 (governor must report to legislature at next scheduled meeting); IOWA CONST. art. IV, § 16 (governor must report to the legislature every two years on pardons issued and the reasons therefor); KY. CONST. § 77 (governor must file with legislature a statement of reasons with each pardon grant, which must be available to the public); MD. CONST. art. II, § 20 (governor must report to the legislature each grant and reasons therefor); N.Y. CONST. art. IV, § 4 (governor must report annually on the particulars of each grant but not his reasons for granting them); VA. CONST. art. V, § 12 (governor must report annually to the legislature setting forth "the particulars of every case" of pardon granted, with reasons); WIS. CONST. art. V, § 6 (governor must communicate annually with legislature each case of clemency and the reasons); WYO.

In eighteen of these states, the legislature has attempted to impose a degree of discipline on the pardon process by authorizing an administrative agency to investigate pardon applicants, hold public hearings, notify concerned officials and victims, and make public recommendations to the governor.[77] While the governor is not constitutionally required to avail himself of the assistance offered, in most cases he does. The Tennessee Constitution does not give the state legislature power to regulate the governor's pardon power, but it has asserted this power nonetheless, requiring the governor to keep a record of the reasons for each clemency grant and to "submit the same to the general assembly when requested."[78] In California, the courts are the first stop for residents seeking pardon, with the parole board constituting a second level review process.[79]

In almost every one of these "optional consultation" states, there is some provision for informing the public about who has applied for a pardon, either before or after the governor acts. Some states impose this notice obligation on pardon applicants themselves, requiring them to publish their applications in a newspaper and notify concerned officials and victims.[80] In this fashion, legislatures impose a degree of transparency and accountability on the pardon process even where the constitution does not. While courts have resisted arguments that these legislative restrictions are anything more

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CONST. art. 4, § 5 (governor must report every two years to legislature on pardons granted, with the reasons for each one); N.J. STAT. ANN. § 2A:167-3.1 (2012) (governor must report annually to the legislature the particulars of each grant, with the reasons); TENN. CODE ANN. § 40-27-107 (2012) (governor must report to the legislature the reasons for each clemency grant "when requested"); W. VA. CODE § 5-1-16 (2012) (governor required to report the particulars of every clemency grant to the legislature, with reasons for the grant). The states whose governors are not required to report to the legislature are Hawaii, Illinois, Mississippi, New Mexico, North Carolina, North Dakota, Oregon, South Dakota, and Vermont.

77. Of the states in this group, Illinois, Indiana, South Dakota, and Washington are required by law to hold public hearings on all pardon cases they intend to recommend to the governor and to invite participation by the district attorney and victim. *See* 730 ILL. COMP. STAT. ANN. 5/3-3-13(b) (West 2012); IND. CODE § 11-9-2-2(b) (2012); S.D. CODIFIED LAWS § 24-14-3 (2012); WASH. REV. CODE § 9.94A.885(3) (2012).

78. TENN. CODE ANN. §§ 40-27-101, 40-27-107 (2012). The governor is also required to notify the attorney general and relevant district attorney before any grant of executive clemency is made public, and they in turn are required to notify the victim. *Id.* § 40-27-110. The Tennessee parole board conducts a review of every case. TENN. COMP. R. & REGS. § 1100-01-01-.16(1)(b)2, (c)1 (2012).

79. The California pardon process is unique in involving the courts in the pardon process. It begins with a recommendation from the court in the county of an individual's residence. It then proceeds to the parole board which reviews the case and makes a second recommendation to the governor. *See* CAL. PENAL CODE §§ 4852.06, 4852.19 (2012). Most of the pardons granted by Governor Jerry Brown to California residents in 2011–2012 were first considered by the California courts, with those residing out of state filing their applications directly with the parole board. *See* Margaret Colgate Love, Op-Ed., *Governor's Pardon Power Used Too Rarely*, S.F. CHRON. Dec. 28, 2012, http://www.sfgate.com/opinion/openforum/article/Governor-s-pardon-power-used-too-rarely-4153130.php#page-1.

80. *See, e.g.*, WIS. STAT. §§ 304.09, 304.10 (2012) (applicant required to publish notice of application in county paper, or posted on courthouse door, deliver it to district attorney, judge, and victim).

than simply an effort to be helpful to the governor, they do appear to encourage governors to exercise their power responsibly.

Governors in these "optional consultation" states appear to have concluded that they are on politically firmer ground, and are likely to be more efficient in exercising their pardon power, if they rely voluntarily upon experienced professionals even where they are not required to do so. Thus, for example, all of the 825 pardons granted by Governor Pat Quinn of Illinois between April 2009 and November 2012 were recommended to him by the Prisoner Review Board after hearing from each applicant at one of its regular quarterly hearings. The governor of Iowa issues several dozen pardons annually, pursuant to recommendations he receives from his parole board, and the governors of Indiana and Washington consider granting a pardon only after a public hearing process that enables anyone who has a view about a case to express it. Almost all of the 144 grants issued by California Governor Jerry Brown in his first two years in office were first considered by the California courts and parole board.[81]

There is good reason to abide by the process established by law since governors who issue pardons without doing so frequently find themselves in political hot water over ill-advised grants. For example, Governor Haley Barbour of Mississippi was pilloried in the press and by crime victims after he bypassed the regularly established review process in many of the pardons granted at the conclusion of his term, or else disregarded the advice he got pursuant to that process.[82]

The South Dakota legislature has been particularly creative in managing the governor's pardon power since its constitutional role in the pardon process was eliminated in 1972. The forced deregulation of the pardon power in South Dakota meant that pardon applicants could petition the governor directly without going through the Board of Pardons and Paroles and that the governor was no longer required to report his pardons to the legislature. Undaunted by this executive power grab, the South Dakota legislature proceeded to replicate the constitutional transparency and accountability safeguards lost in 1972 in a new statute.[83] Thus, in addition to petitioning the governor directly, people interested in obtaining a pardon may file a petition with the Board of Pardons and Paroles seeking its favorable recommendation; publish their petition in a newspaper of general circulation in the county where the crime was committed once a week for three weeks;[84] and come before the Board for a public hearing in which the district attor-

81. *See* Love, *supra* note 79 and accompanying text.

82. *See In re* Hooker, 87 So. 3d 401, 403 (Miss. 2012) (noting that the Mississippi Attorney General filed a civil action alleging that Governor Barbour's pardons during his last days in office violated the state constitution).

83. *See* S.D. CODIFIED LAWS ch. 24-14 (2012).

84. *Id.* § 24-14-4.

ney, sentencing judge,[85] and victim may all participate.[86] The legislature cleverly made this alternative statutory route to obtaining a pardon more appealing to petitioners by authorizing courts to seal the record of conviction and the pardon itself.[87] Equally clever, it divided responsibility for appointing the nine-member Board between the governor, the attorney general, and the state supreme court, thereby avoiding any suggestion of undue gubernatorial influence over Board recommendations.[88] The South Dakota Supreme Court confirmed in 2004 that sealing is available only for pardons vetted through this public process,[89] and since then the governors of South Dakota have refused to grant a pardon except upon the Board's recommendation. The public pardon process turns out to be a very efficient one: between sixty and seventy people apply for a pardon each year, the Board recommends more than half of them to the governor, and the governor customarily accepts the Board's recommendations. The entire process takes less than six months from beginning to end.

With the exception of South Dakota, however, the pardon power in the "optional consultation" states has, for the most part, ceased to play a reliably vital role in the justice system, primarily because it depends so heavily upon the personal predilections of the incumbent governor. Thus, for example, the immediate past governors of Maryland, Michigan, Virginia, and Wisconsin were enthusiastic about using their pardon power, but the incumbents have been parsimonious in the extreme.[90] Conversely, the current governors of Illinois and California have revitalized pardoning in their states after decades of neglect and abuse.[91]

While the sort of institutional support for pardoning represented by the "shared power" model does not guarantee a regular stream of pardon grants, it is far more likely to lead to productive pardoning than the personality-driven "consultation" model. Because "shared power" systems generally tend to function with greater transparency and accountability, they inspire public confidence and avoid the kind of scandal that has paralyzed the par-

85. *Id.* § 24-14-3.

86. *Id.* § 24-14-4.1.

87. *Id.* § 24-14-11.

88. *Id.* § 24-13-1.

89. *See* Doe v. Nelson, 680 N.W.2d 302, 313 (S.D. 2004) (holding that the governor had no authority to order the sealing of 279 pardons granted between 1995 and 2002 without consultation with the board). The history of the pardon power in South Dakota, including the involvement of the legislature, is reviewed in Eric R. Johnson, Doe v. Nelson*: The Wrongful Assumption of Gubernatorial Plenary Authority Over the Pardoning Process,* 50 S.D. L. REV. 156 (2005).

90. *See* Love, *supra* note 11.

91. *See* Chris Wetterich, *Gov. Quinn Makes Dent in Clemency Backlog*, ST. J.-REG., July 7, 2012, http://www.sj-r.com/top-stories/x537697530/Quinn-makes-dent-in-clemency-backlog (Governor Quinn spent his first three years in office dealing with a 2,500-case backlog of recommendations from the state parole board); Love, *supra* note 79 (California Governor Jerry Brown pardons 144 in two years, reviving pardon process abused and neglected by his three predecessors); *see also* Love, *supra* note 11 (Illinois and California profiles).

don power in jurisdictions where the power is subject to fewer constraints. The bottom line is that while constraints on the exercise of the pardon power do not guarantee its responsible and constructive use, they certainly seem conducive to that end.

III. Recommendations for Reforming the Federal Pardon Process

State pardoning procedures suggest ways in which the federal pardon process could be restored to its former healthy state so as to make it easier for the president to use his power in a constructive manner. The three characteristics that are keys to this restoration are:

- ***Authority***: The process must be administered by individuals who are independent and authoritative, who have the confidence of the president, and who are given the necessary resources to carry out the president's pardoning agenda.
- ***Accountability***: The process must be accessible and responsive to people of all walks of life, and account for the likelihood that many deserving pardon applicants will not have skilled counsel or well-connected supporters to advocate on their behalf.
- ***Transparency***: The process must be guided by clear standards that are applied consistently, producing grants that are publicly defensible.

A. Authority

A degree of authority must be restored to the federal pardon process, whether or not it remains housed in the Justice Department. This benefits both the institution of the presidency and the justice system, as well as those who seek and deserve the forgiveness. The delegation of responsibility for making pardon recommendations during the Reagan Administration to a subordinate career civil servant in the Justice Department went hand-in-hand with a devaluation of pardon as a tool of justice, and produced a prosecutor-controlled pardon process that neither serves nor protects the president. That decision should be reversed.

The president must be able to rely on a process that serves his interests above all, one that functions independent of other actors in a justice system in which it is expected to play an integral role. The person or persons responsible for administering such a system must have the confidence of the president, and the necessary resources to carry out the president's pardoning agenda. For example,

> One simple and immediate way for the president to reinvigorate the pardons process is to choose a person of stature and energy—say, a federal judge—to steward his administration's pardon duties. At the same time, he can end the department's conflict of

> interest by replacing the pardons office with a new bipartisan commission under the White House's aegis, giving it ample resources and real independence.[92]

Ideally, making pardon recommendations should remain a responsibility of the attorney general, underscoring the relationship of pardon to the justice system on the one hand and to the political process on the other.

But it is essential that control of the process be removed from the dead hand of federal prosecutors who have come to view pardon as "an affront to federal efforts to fight crime."[93] Establishing a panel of distinguished citizens to advise on pardon policy and make recommendations in particular cases would be one way to do this.[94] Giving the courts responsibility for making pardon recommendations, as they do in California, would be another.[95] The first could be accomplished by unilateral presidential action, though the second would require congressional action.

B. Accountability

The president should publicly announce a pardoning policy and standards for considering particular cases, and commit himself to abide by the recommendations of the attorney general. If those recommendations are made public once a grant has been made, whether for or against pardon, a degree of accountability will have been restored to the process.

In addition, the pardon process must at least appear to operate fairly and regularly in order to command the kind of public confidence necessary to enable the president to pardon confidently. It cannot be seen to favor the wealthy, the famous, or the well-connected. It must be made accessible and responsive to all who apply, taking into account the likelihood that many deserving applicants will not have skilled counsel or well-connected supporters to advocate on their behalf.

Those responsible for administering the process should welcome applicants, and not penalize them for failing to make a full and polished presentation on their own behalf, or subject them to an investigative process that is burdensome and unwelcoming. While it is perfectly reasonable to inquire into a pardon applicant's background, to ensure that the president has all the information he needs to make a decision to bestow the sort of mark of favor represented by a pardon, it is not reasonable or fair to disadvantage appli-

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92. *The Quality of Mercy, Strained*, *supra* note 49.

93. *Id.*; *see also* Morison, *supra* note 21.

94. *See* Rachel E. Barkow, *The Politics of Forgiveness: Reconceptualizing Clemency*, 21 FED. SENT'G REP. 153, 157 (2009) (stating that administrative clemency boards can "take the heat for decisions that turn out badly"); Kobil, *supra* note 14, at 622–23 (urging the president to "look for advice from either a body of professionals charged with the sole task of reviewing clemency requests, or to a group of volunteers appointed because of their expertise"). A catalogue of past uses of specialized clemency panels to handle large-scale amnesties in the federal system can be found at Love, *supra* note 2, at 1173–74 n.16.

95. *See* Love, *supra* note 79 and accompanying text.

cants without education and resources by subjecting them to extensive inquiries even before the customary FBI investigation has been authorized.

As to prisoner petitions, the federal courts should permit federal defenders to represent their former clients in clemency proceedings. In recent years it has been possible to evade and manipulate the federal pardon process precisely because the process was not an open one that gave a fair hearing to all. It would be sensible to restore efficiency to the process so that applicants did not have to wait years for a decision. It would also be sensible to apply a presumption in favor of pardon in cases where the applicant had a record of law-abiding conduct and a sensible reason for seeking a pardon.

C. Transparency

The standards that now guide the Justice Department in deciding whether to recommend that the president grant a pardon or commute a sentence are set forth on the pardon attorney's website, and are generally clear and unexceptionable. Circumstances that might warrant sentence commutations are: "disparity or undue severity of sentence, critical illness or old age, and meritorious service rendered to the government by the petitioner."[96] The inquiry for those seeking post-sentence pardon will look at post-conviction conduct, character, and reputation; seriousness and relative recentness of the offense; acceptance of responsibility, remorse, and atonement; need for relief; and official recommendations and reports.[97]

While these criteria appear reasonable enough on paper, in practice their very subjectivity invites abuse. Because the process itself is not open for public inspection, the only way to monitor how the criteria are applied in practice is to study its results. Until recently, the only results that were publicly available were cases in which a pardon was granted. However, the names of those denied pardon are now also available through the Freedom of Information Act.[98] An investigation conducted by ProPublica compared cases in which pardon was granted with cases in which pardon was denied during the administration of George W. Bush, and concluded that the published criteria were not applied consistently to cases with similar characteristics.[99]

The key to restoring a degree of transparency in the pardon process is for the Justice Department to return to the practice, abandoned in FDR's

96. *Standards for Considering Pardon Petitions*, U.S. DEP'T OF JUSTICE, § 1-2.113 (Sept. 1997), http://www.justice.gov/usao/eousa/foia_reading_room/usam/title1/2mdoj.htm#1-2.110.

97. *Id.* § 1-2.112.

98. *See* Lardner v. Dep't of Justice, 638 F. Supp. 2d 14 (D.D.C. 2009), *aff'd* 398 F. App'x 609 (D.C. Cir. 2010) (Justice Department obliged to release existing lists of the names of persons who have been denied executive clemency by the President to anyone who requests such records pursuant to the Freedom of Information Act).

99. *See* Linzer & LaFleur, *supra* note 39.

Administration, of publishing an annual report explaining the president's pardon policy and practice, and setting forth the reasons for each grant. While publication of pardon applications and public hearings would also go some way to establishing the necessary transparency, they would also burden applicants and discourage pardons in controversial cases. Defending a grant after the fact best balances considerations of efficiency with the need to ensure that subjective standards are being applied fairly. The requirement in many state constitutions of providing an annual report to the legislature on pardon grants, including the reasons for each one, could be transposed into the federal process to considerable advantage.

It is true that the president could not be compelled to adopt any of these reforms, short of an amendment to the Constitution. But there is no reason why the president should not impose a degree of discipline on the way he uses his power, even if the other branches of government could not require him to do so. Congress might encourage the president to issue grants through a regular accountable process (as the South Dakota legislature has encouraged the governor) by offering a premium legal effect for a pardon obtained through a more functional process (perhaps a vacatur of the conviction record). It might also create a process by which the federal courts could funnel meritorious cases to the president, accompanied by a recommendation for pardon, like the "certificate of rehabilitation" process that constitutes the first step in California's pardon process.

Conclusion

There is not a single state where the governor is as completely unrestricted and unprotected in pardoning as the president. There is not a single state whose pardon process is as poorly conceived and managed as the federal government's, which has failed to evolve with the changing needs of the presidency and the justice system over the past one hundred years. The Justice Department's program is hard to understand and even harder to penetrate, operating in secret and accountable to no one. Three successive presidents have been willing to live with this dysfunction, perhaps because they did not regard pardoning as a duty of office, and perhaps because they perceived its risks to far outweigh its rewards. But inaction as a strategy has proved to have risks of its own, as both Presidents Clinton and Bush could attest. Without a plan for using the power, and without a reliable system for carrying it out, pardoning will remain a dangerous activity for the president, and Hamilton's "benign prerogative" consigned to a useless vestigial appendage.

State pardon systems suggest ways that federal pardoning could regain its moral force and be reinvigorated, through the articulation of a purposeful pardoning philosophy and a strategy for putting it into practice, including: clear standards, a transparent investigative process, the participation of rep-

utable advisors, and disclosure of the reasons for particular grants. While the president could not constitutionally be compelled to adopt such provisions, he could do so voluntarily by adapting elements of functional state systems to the federal context. In the end, it is important to restore "moral force" to the pardon process for the institution of the presidency, the president's personal reputation, and the integrity of the justice system itself.

APPENDIX

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Chart # 3 - CHARACTERISTICS OF PARDON AUTHORITIES

Note: The information in this chart is summarized on "Models for the Administration of the Pardon Power," and "Pardoning Practices in the States." In states where pardoning is characterized as "frequent and regular," there is a regular pardon process with a high percentage of applications granted (30% or more); where pardoning is "sparing," that there is a regular pardon process but only a small percentage of applications granted; where pardons are infrequent, uneven, or rare, the chart will generally indicate numbers. In all cases readers wishing additional information may refer to the state profiles at www.nacdl.org/rightsrestoration.

State	Type Of Administration	Type Of Process	Eligibility Requirements	Effect	Frequency of Grants	Alternative Restoration
AL	Independent board appointed by governor exercises pardon power, except governor has authority in capital cases. Ala. Const. amend. 38 (amending Art. V § 124); Ala. Code §§ 15-22-20 through 15-22-40. The board must make a full annual report to the governor. *Id.* § 15-22-24(b).	Public hearings at regular intervals; 30 days' notice must be given to the attorney general, prosecutor, sentencing judge, chief of police and the county sheriff, and the victim. Ala. Code § 15-22-23l. Each board member gives reasons for vote. Process takes about one year.	Following completion of sentence, incl. fine, no pending charges, or after 3 years "permanent parole" unless pardon sought for actual innocence. Ala. Code § 15-22-36(c). Federal and out-of-state offenders eligible.	Only as specified in grant (full pardons rare); predicate unless expressly provided. Ala. Code § 15-22-36.	**Frequent and Regular:** More than 500 pardons granted annually; 2000+ restoration of rights.	None.
AK	Governor decides, parole board must be consulted but advice not binding. Alaska Const. art. III, § 21; Alaska Stat. § 33.20.080.	No formal regulations, no public hearing. Parole board staff investigates, consults with DA and court, prepares confidential recommendation to governor. Alaska Stat. § 33.20.080.	Parole board staff must find a person eligible to apply on merits.	Conviction set aside may not serve as predicate or be used by licensing board.	**Rare:** Only three pardons since 1995.	Judicial set aside after deferred sentencing. Alaska Stat. § 12.55.085 *et seq.*
AZ	Governor decides, may not act without affirmative clemency board recommendation. Ariz. Const. art. V, § 5; Ariz. Rev. Stat. § 31-402(A). Governor must publish reasons for each grant, and report regularly to legislature. Ariz. Rev. Stat. §§ 31-445, 31-446.	Board meets monthly; must publish application, hold public hearing, publish recommendation to governor with reasons. Ariz. Rev. Stat. §§ 31-401, 31-402.	Any Arizona felony offender. Ariz. Rev. Stat. § 31-402.	Pardon relieves legal consequences, but conviction must still be reported and is given predicate effect. 68 Ariz. Op. Att'y Gen. 17.	**Infrequent:** Pardons increasingly rare since 1990; Gov. Brewer has issued no pardons.	Judicial set-aside for non-serious offenders; court restores firearms. Ariz. Rev. Stat. §§ 13-905 through 13-907.

AR	Governor decides, parole board must be consulted but advice not binding. Ark. Const. art. VI, § 18; Ark. Code Ann. § 16-93-204(a). Governor must report to legislature on all grants with reasons. Ark. Const. art. VI, § 18.	No public hearing. Parole board must give 30 days' prior notice of favorable recommendation, and governor must give 30 days' public-notice (including statement of reasons) to prosecutor and victim. Ark. Code Ann. §§ 5-4-607(d)(1); 16-93-204(c)(1), 16-93-207(a).	No restrictions. Federal and out-of-state offenders are eligible to apply. Ark. Const. art. VI, § 18; Ark. Code Ann. § 16-93-204.	Relieves legal disabilities, grounds for expungement in most cases; firearms separately restored. No predicate or enhancement. Ark. Code Ann. §§ 16-93-301 to 16-93-303.	**Frequent and Regular:** About 100 grants each year, 300–500 applications annually.	Deferred adjudication and expungement for first offenders and probationers. Ark. Code Ann. §§ 5-4-311, 16-93-1201 *et seq.*
CA	Governor decides, parole board may be consulted. For recidivists, board must be consulted, majority of supreme justices must recommend. Cal. Const. art. V, § 8; Cal. Penal §§ 4800, 4812-4813, 4852.16. Governor report grants to legislature, including facts and reasons for grants. Cal. Const. art. V, § 8; Cal. Penal § 4852.16.	No provision for public hearing. Certificate of rehabilitation from court (PD representation), or direct application to board if nonresident or misdemeanant. Cal. Penal Code § 4852 *et seq.*	10 years after completion of sentence.	Described as "an honor," restores civil rights and removes occupational bars, but no expungement; guns separately restored. Maybe used as predicate. Cal. Penal Code §§ 4852.15, 4853.	**Infrequent/Uneven:** Very few pardons between 1990 and 2011. Jerry Brown granted 144 in first two years.	Set-aside for probationers; certificate of relief. Cal. Penal Code § 1203.4(a).
CO	Governor decides ("subject to such regulation as may be prescribed by law relative to the manner of applying"). Colo. Const. art. IV, § 7. Non-statutory advisory scheme; Governor sends legislature "a transcript of the petition, all proceedings, and the reasons for his action." Colo. Const. art. IV, § 7.	No hearing, governor as a matter of policy seeks views of corrections authorities, DA and judge. Colo. Rev. Stat. §§ 16-17-101, 16-17-102.	No eligibility restrictions.	Restores civil rights and firearms privileges, assists with licensing and employment, recognizes meritorious achievement and rewards exceptional citizenship.	**Infrequent:** Pardons infrequent since 1990s, although Governor Bill Ritter issued almost 30 pardons at the end of his term.	Sealing of minor drug convictions. Colo. Rev. Stat. § 24-72-308.
CT	Independent board appointed by governor exercises pardon power. Conn. Gen. Stat. § 54-124a(f).	Public hearings at regular intervals at which applicant must be present, with reasons for denial given. Board may dispense with hearing in certain classes of cases. Process takes about one year. Conn. Gen. Stat. § 54-124a(e)–(k).	5 years following completion of sentence; misdemeanants may apply. Provisional pardon may be sought any time after sentencing. Conn. Gen. Stat. § 54-130e(b).	Relieves all legal disabilities, court may "erase" conviction; "erased;" may be predicate unless records destroyed. Provisional pardon relieves one or more "barriers and forfeitures." Conn. Gen. Stat. § 54-142a(d).	**Frequent and Regular:** About 400 pardon grants annually, including provisional pardons (about 30% of applicants get hearing, most of those granted); more than half to misdemeanants.	None; law prohibits discrimination in licensing and employment. Conn. Gen. Stat. § 46a-80.

State	Type Of Administration	Type Of Process	Eligibility Requirements	Effect	Frequency of Grants	Alternative Restoration
DE	Governor decides, may not act without affirmative clemency board recommendation. Del. Const. art. VII, § 1. Governor must report periodically to legislature. *Id.*	Pardon board, chaired by lieutenant governor, public hearings at regular intervals, recommendations and reasons announced. Favorable recommendations sent to governor. Process takes about six months. Del. Const. art. VII; Del. Code. Ann. tit. 11, § 4362.	3–5 years following completion of sentence, absent hardship; misdemeanants may apply.	Relieves disabilities ex. constitutional prohibition against holding state office or employment. May be used as predicate and to enhance subsequent sentence. Del. Code. Ann. tit. 11, § 4364.	**Frequent and Regular:** Over 200 pardons annually in recent years, (about 75% of applications received are granted). Applications have tripled since 2005.	Expungement for deferred adjudication and diversion, pardoned misdemeanor convictions. Del. Code Ann. tit. 11, §§ 4371–4375.
DC	President decides under a non-statutory advisory scheme. U.S. Const. art. II, § 2.	Informal process described in 28 C.F.R. Part 1 and United States Attorneys Manual. No time limit, and applications may remain pending for years.	5 years after sentence or release from confinement. 28 C.F.R. Part 1.	Relieves legal disabilities and signifies rehabilitation and good character. May be used as predicate. 1995 WL 861618 (1995).	**Rare:** Only a handful of DC offenders pardoned since 1980.	Expungement of minor D.C. Code offenses. D.C. Code § 16-801 *et seq.*
FL	Governor decides with concurrence of two cabinet officials. The governor and three cabinet officials act as pardon board. Fla. Const. art. IV, §8 (a); Fla. Stat. ch. 940.01, 940.05. Governor reports to legislature each restoration and pardon. Fla. Stat. ch. 940.01.	Public hearing for pardon, and for restoration of rights for many offenders (offenses specified in clemency rules). Hearings are held on a quarterly basis, DA and victims notified. Separate process for firearms restoration.	Eligibility immediately following completion of sentence. Out-of-state and federal offenders eligible for ROR but not pardon (R. 9D).	ROR restores vote and other basic civil rights. (R. 4F). Pardon "unconditionally releases the person from punishment and forgives guilt." *Id.* Restores firearms rights. *Id.* at 4A. May be used as predicate.	**Sparing:** 20–40 pardon grants annually between 2006 and 2010; 20–30 firearms restoration grants annually (about half of applications). Restorations of rights number in thousands.	Sealing and expungement for misdemeanors and minor felonies. Fla. Stat. ch. 943.0585. Deferred adjudication. Fla. Stat. ch. 948.01(2).
GA	Independent board appointed by governor exercises pardon power. Ga. Const. art. IV, § 2, para. II. Board must report annually to legislature, the Attorney General and the Governor. Ga. Code Ann. § 42-9-19.	Paper review, no public hearing. Board decides cases by majority vote, and in a written opinion. Ga. Code Ann. §§ 42-9-42(a) and (b), 42-9-43.	5 years following discharge; out-of-state offenses eligible for restoration of rights but not pardon. Drug and violent offenses ineligible to apply by Board policy.	Relieves all legal disabilities except return to public office. May be used as predicate. Ga. Code Ann. § 42-9-54; *Morris v. Hartsfield*, 197 S.E. 251 (Ga. 1938).	**Frequent and Regular:** Between 300-400 pardons w/o gun rights; 100 pardons w/ gun rights, several hundred "restoration of rights" (approx. 35% of applicants); immigration pardons.	Deferred adjudication and 'exoneration' for first offenders. Ga. Code Ann. § 42-8-60 *et seq.*

HI	Governor decides, parole board may be consulted. Haw. Const. art. V, § 5; Haw. Rev. Stat. § 353-72.	No public hearing; parole board interviews applicant, recommends to AG's office, which conducts independent investigation and makes recommendation to governor. Process takes 8 months. Haw. Rev. Stat. § 353-72.	No eligibility requirements.	A pardon will state that the person has been rehabilitated, relieves legal disabilities and prohibitions. No expungement, may be used as predicate. Haw. Rev. Stat. §§ 353-62, 353-72.	**Sparing:** Gov. Lingle granted 132 pardons in 8 years, 55 in her last year (2010). About 50 applications filed per year.	Deferred adjudication and expungement; state FEP laws include conviction. Haw. Rev. Stat. §§ 853-1, -3.
ID	Independent board appointed by governor decides for all but most serious offenses, which must be approved by governor. Idaho Const. art. IV, § 7; Idaho Code Ann. §§ 20-210, 20-240.	Public hearing at regular intervals; reasons for each action must be filed with Secretary of State. Idaho Code §§ 20-210, 20-240; *see* IDAPA § 50.01.01.	Three years for non-violent offenses, five years for violent. Idaho Code § 18-310(3).	Relieves certain legal disabilities, including firearms. Idaho Code § 18-310.	**Frequent and Regular:** In recent years 30-40 grants annually, about half of applications filed**.**	Deferred adjudication but no expungement; ex. for some juvenile offenses. Idaho Code § 19-2601 *et seq.*
IL	Pardon power is vested in the governor, although "the manner of applying therefore may be regulated by law." Ill. Const. art. V, § 12. Prisoner Review Board authorized to provide advice to governor. 730 Ill. Comp. Stat. Ann. 5/3-3-1(a)(3).	Public hearings at regular intervals before the Prisoner Review Board, which makes confidential recommendations to governor. 730 Ill. Comp. Stat. 5/3-3-1 *et seq.*	No eligibility requirements.	Relieves legal disabilities; expungement may be authorized by the grant. *People v. Glisson*, 358 N.E.2d 35 (Ill. App. Ct. 1976).	**Frequent and Regular:** Between 2009 and July 2012, Gov. Quinn granted 744 pardons, denied 1,307. Board hears 800 applications each year.	Judicial certificates; sealing for certain misdemeanors and minor felonies. 730 Ill. Comp. Stat. 5/5-5.5-5 *et seq.*; 20 Ill. Comp. Stat. 2630/5 *et seq.*
IN	Pardon power resides in governor, "subject to such regulations as may be provided by law." Ind. Const. art. 5, § 17. Parole board makes advisory recommendations to governor. Ind. Const. art. 5, § 17; Ind. Code §§ 11-9-2-1 to -3. Governor reports to legislature. Ind. Const. art. 5, § 17.	Public hearing; parole board notifies victim, court, and DA; conducts investigation and holds hearing at which petitioner and other interested parties may present their position. Ind. Code § 11-9 *et seq.*	Recent governors have required a 5-year waiting period and evidence of rehabilitation. 15 years for firearms restoration.	Pardon wipes out both the punishment and the guilt, basis for expungement. *Kelley v. State*, 185 N.E. 453 (Ind. 1933). *See also State v. Bergman*, 558 N.E.2d 1111 (Ind. Ct. App. 1990); Ind. Code §§ 35-47-2-20(a), 11-9-2-4.	**Sparing:** Gov. Daniels granted 45 pardons during his more than seven years in office, acting favorably on about half of those recommended favorably by board.	Sealing for misdemeanors and Class D felonies; deferred adjudication but no expungement. Ind. Code §§ 35-38-5-5, 10-13-3-27(a).

State	Type Of Administration	Type Of Process	Eligibility Requirements	Effect	Frequency of Grants	Alternative Restoration
IA	Governor decides "subject to such regulations as may be provided by law." Iowa Const. art. IV, § 16. Parole board authorized to provide advice. Iowa Code §§ 914.1-914.7. Governor reports to legislature on pardons issued and reasons therefor. Iowa Const. art. IV, § 16.	Paper review, no public hearing for pardon and restoration of rights. Separate firearms restoration procedure. Iowa Code § 914 *et seq.*	10 years for pardon, 5 years for firearms; no waiting period for restoration of rights. Out-of-state and federal eligible for ROR. Iowa Code § 914.2.	Pardon relieves of all legal disabilities (incl. public employment disabilities). *See Slater v. Olson*, 299 N.W. 879 (Iowa 1941). Restoration of rights restores right to vote and hold public office, may also restore firearms rights.	**Frequent and Regular:** Average of 35 full pardons each year between 2005 and 2011 (fewer since 2009), with another 30-60 grants to restore civil rights and firearms privileges.	Restoration of gun rights by governor; Deferred adjudication and expungement for some first offenders. Iowa Code §§ 907.3, 914.7.
KS	Governor decides, subject to regulations and restrictions by law. Kan. Const. art. I, § 7. The governor required to seek the advice of the prisoner review board, though not bound to follow it, Kan. Stat. Ann. § 22-3701(4). Reports to legislature on each pardon application but need not give reasons. Kan. Stat. Ann. § 22-3703.	Paper review. Applicant must publish a copy of the application in a newspaper in county of conviction at least 30 days before grant or pardon is void. Applicant must also provide notice of application to DA, judge and victim. Kan. Stat. Ann. § 22-3701 *et seq.*	No eligibility requirements, except that only Kansas state convictions are eligible to be pardoned or commuted. Kan. Stat. Ann. § 22-3701.	Pardon removes disabilities imposed under state law, but does not expunge conviction or lift bar to service as a law enforcement officer. *Cf.* Kan. Att'y Gen. Op. No. 85-165 (1985). May be used as predicate.	**Rare:** Pardons very rare, primarily for miscarriage of justice.	Expungement for many felony offenses. Kan. Stat. Ann. § 21-4619 *et seq.*
KY	Governor decides, parole board may be consulted. Ky. Const. § 77. Governor may also restore rights of citizenship, office. *Id.* §§ 145, 150. Governor reports to legislature reasons for each grant. *Id.* § 77.	No public hearing. Pardon applications sent directly to the governor with reasons for seeking relief and letters of recommendation. Simplified ROR process administered by DOC. Ky. Rev. Stat. Ann. § 439 *et seq.*	For restoration of rights, expiration of sentence with no pending charges. For pardon 7-year waiting period. Federal and out-of-state offenders eligible for restoration of rights. *Arnett v. Stumbo*, 153 S.W.2d 889 (1941).	Restoration of citizenship restores a person's right to vote and eligibility for jury service. A full pardon relieves additional legal disabilities. May be used as predicate. Ky. Const. § 145(1).	**Rare:** Pardons during term rare; ROR frequent.	Misdemeanor expungement. Ky. Rev. Stat. Ann. § 431.078.
LA	"Upon favorable recommendation of the Board of Pardons," the governor may pardon "those convicted of offenses against the state." La. Const. art. IV, § 5(E)(1); La. Rev. Stat. Ann. § 15:572(A).	Regular public hearings, approval by four of five board members; DA and victim notified by board, and by applicant through publication of application in newspaper. La. Const. art. IV, § 5(E)(2); La. Rev. Stat. Ann. § 15:572.1.	Completion of sentence, plus payment of costs. La. Const. art. IV, § 5(E)(1); La. Rev. Stat. Ann. § 15:572(A); *see* Op. La. Att'y Gen. No. 04-0080 (2005).	Full pardon restores to "status of innocence," conviction cannot be used to enhance punishment. *State v. Riser*, 30-201 (La. App. 2 Cir. 12/12/97).	**Infrequent/uneven:** In 4 years, Gov. Jindal issued 23 pardons. Previous governors granted 331 (in 4 years) and 476 (in 8 years). Edwin Edwards granted over 3,000 in 16 years.	Deferred adjudication and expungement. La. Const. art. IV, § 5(E)(1); La. Rev. Stat. Ann. § 15:572(B)(1).

ME	Governor decides, subject to regulation "relative to the manner of applying." Non-statutory advisory scheme. Me. Const. art. V, pt. 1, § 11.	Public hearings at regular intervals; board makes confidential recommendations to governor. Parole board conducts investigation. Applicant notifies DA, publishes notice of hearing in a newspaper 4 weeks beforehand. Me. Rev. Stat. Ann. tit. 34-A, § 5210(4), tit. 15, § 2161.	5 years following completion of sentence.	Relieves legal disabilities. Me. Rev. Stat. Ann. tit. 16, §§ 611–622.	**Infrequent/uneven:** As of April 2012, Gov. Lepage had granted no pardons. Between 2002 and 2010, Governor Baldacci granted 131 pardons, 51 in his final year. In past about 50 hearings each year, 25% result in pardon.	No other relief provided.
MD	Governor decides, parole board may be consulted. Md. Const. art. II, § 20; Md. Code Ann., Correctional Services § 7-206(3)(ii). Constitution requires governor to publish notice of intention to grant, and to report grants to legislature with reasons. Md. Const. art. II, § 20.	Paper review by Parole Commission, whose recommendations to the governor are not binding. Md. Code Ann. § 7-206(3)(ii).	Felony convictions must have 10 crime-free years to be eligible (seven if Parole Commission waiver granted); misdemeanants must have 5 crime-free years. 20-year wait for crimes of violence and drugs (or 15 if waiver granted).	Pardon lifts all disabilities and penalties imposed. Firearms privileges must be specifically restored in pardon document.	**Infrequent/uneven:** Governor O'Malley granted eight pardons in his first two years in office, Ehrlich (2003-2007) granted 228 pardons out of a total of 439 applications.	Probation before judgment and expungement. Md. Code Ann., Crim. Proc. §§ 6-220(b)(1), 10-105(a)(8).
MA	Governor may not act without affirmative recommendation of Governor's Council. Mass. Const. pt. 2, ch. II, sec. I, art. VIII. Governor must report to legislature annually with a list of pardons granted, but not required to give reasons. Mass. Gen. Laws ch. 127, § 152 (2011).	Petitions filed with Parole Board, which recommends to Governor and Council. Mass. Gen. Laws ch. 127, § 152 (2011). Public hearing, referral to AG, DA, court, notice to victim. 120 Mass. Code Regs. 902.02–.12 (2011). Public report to governor and Council. Mass. Gen. Laws ch. 127, § 154 (2011).	15 years after conviction or release from prison for felonies, 10 years for misdemeanors. Governor's Executive Clemency Guidelines (April 22, 2003) at 2.	The governor, upon granting a pardon, orders the records of a state conviction sealed; thereafter, the records of the conviction may not be accessed by the public, and existence may be denied. Mass. Gen. Laws ch. 127, § 152 (2011). May be used as predicate.	**Rare:** Pardons infrequent since early 1990s, none at all under Govs. Patrick and Romney.	Sealing available for felonies after 5 years, misdemeanors after 10. Mass. Gen. Laws ch. 276, § 100A.
MI	Governor decides, parole board must be consulted but advice not binding. Mich. Const. Art. 5, § 14; Mich. Comp. Laws §§ 791.243, 791.244. Must inform the legislature annually of pardons and reasons. const. art. 5, § 14.	All applications referred to the board; if board decides to hold hearing, relevant officials must be notified. Recommendation of the board is a matter of public record. Mich. Comp. Laws § 791.244.	No eligibility criteria.	Pardon "releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense." *People v. Van Heck*, 651 N.W.2d 174, 179 (Mich. App. 2002).	**Rare:** Post-sentence pardons rare in recent years (only 34 pardons between 1969 and 2006). Gov. Granholm granted 20 pardons, 100 commutations; no indication of successor's policy.	First offender set-aside; probation before judgment for drug offenders. Mich. Comp. Laws §§ 780.621l, 333.7411.

State	Type Of Administration	Type Of Process	Eligibility Requirements	Effect	Frequency of Grants	Alternative Restoration
MN	Governor and high officials (attorney general, chief justice) act as board exercising power. Minn. Const. art. V, § 7. Board required to report to legislature by February 15 each year. Minn. Stat. § 638.075.	Commissioner of corrections screens applications, decides which cases should be heard by board. Minn. Stat. § 638.07. Public hearing, notice to officials and victim, decision announced at conclusion of hearing.	For "pardon extraordinary," 5 crime-free years from final discharge for nonviolent crimes, or 10 crime-free years from final discharge for "violent" offenses. Minn. Stat. § 638.02.	A "pardon extraordinary" restores all rights, including firearms rights, and has "the effect of setting aside and nullifying the conviction," so that it need not be disclosed. Minn. Stat. § 638.02. Does not seal or expunge the record, may be used as predicate.	**Sparing:** 10–25 pardons each year, about half of those whose cases are heard. Many more apply than get hearings.	Common law and (narrow) statutory expungement. Minn. Stat. § 609A.
MS	Governor decides, parole board may be consulted. Miss. Const. art. 5, § 124. Miss. Code Ann. § 47-7-5(3).	Applicants publish notice 30 days before applying, stating reasons. Miss. Const. art. 5, § 124. Facially meritorious cases sent to the parole board, which investigates and holds hearing. Board reports to governor and legislature annually. Miss. Code Ann. § 47-7-15.	Seven years since completion of sentence by governor's office policy.	Pardon restores civil rights and removes employment disabilities, gun restrictions, obligation to register. No expungement.	**Infrequent/uneven:** No regular process. Almost 200 post-sentence pardons at end of Barbour's term considered irregular and unusual.	First misdemeanor and a few minor felony convictions may be expunged. Miss. Code Ann. § 99-19-71.
MO	Governor grants pardons subject to rules prescribing "the manner of applying." Mo. Const. art. IV, § 7. Parole board must be consulted, but advice not binding. Mo. Rev. Stat. § 217.800.2.	Applications referred to board for investigation and recommendation. *See* Mo. Rev. Stat. § 217.800.2. No provision for public hearing. Board meetings on clemency matters may be closed to public. Mo. Rev. Stat. § 217.670.5.	If still in jail, apply at any time. If out, eligible three years from discharge.	Pardon "obliterates" conviction, relieves of all obligations associated with the conviction (including obligation to register as sex offender). No predicate effect. No expungement.	**Infrequent:** Very few in recent years, although the number of applications has increased dramatically, in part because of extension of firearms restrictions to long guns in 2008.	Expungement for first-time minor alcohol offense, sealing for deferred adjudication. Mo. Rev. Stat. § 311.326.
MT	Governor may not act without affirmative recommendation of board of pardons and paroles, except in capital cases. Mont. Const. art. VI, § 12; Mont. Code Ann. §§ 46-23-104(1), 46-23-301(3). Must report grants to legislature including reasons. Mont. Code Ann. § 46-23-316.	Board may hold a hearing in meritorious cases where all sides are heard and a record made, but is not required to do so. *See* Mont. Code Ann. § 46-23-302.	No eligibility criteria.	Pardon removes "all legal consequences" of conviction, including licensing bars, and is grounds for expungement.	**Infrequent:** Between 2005 and 2011, 22 individuals pardoned (although none in 2010 or 2011), while 119 have been denied.	Deferred adjudication and expungement. Mont. Code Ann. § 46-18-201.

NE	Governor and high officials (secretary of state and attorney general) act as board of pardon which exercises power. Neb. Const. art. IV, § 13. Governor chairs board.	Public hearings held quarterly, victims notified. No reasons given. Board of Parole may advise the Board of Pardon "on the merits of any application . . . but such advice shall not be binding on them." Neb. Const. art. IV, § 13. Process takes about one year.	Informal rule of 10 years following completion of sentence for felonies, 3 years for misdemeanors.	Restores civil rights other than vote; gun rights must be separately restored. Neb. Rev. Stat. § 83-1,130.	**Frequent and Regular:** An average of 84 pardons granted each year between 2002 and 2011. About 70% of grantees also regained firearms. 55% of applicants are granted, 1/3 misdemeanants.	Set-aside for probationers, no sealing.
NV	Governor and high officials (justices of state supreme court, and attorney general) act as board exercising power. Nev. Const. art. 5, § 14. Governor must report to the legislature at the beginning of each session every clemency action (no reasons necessary). Nev. Const. art. 5, § 13.	Public hearings at regular intervals, at which applicant must attend; ex. non-violent first offenders may be considered on a paper record. County attorney, court and victim notified 30 days before hearing. Decision by majority (must include governor). One-year process. Nev. Rev. Stat. §§ 213.010, 213.020.	Variable, between five and twelve years from release from prison or discharge from parole. Waivable with consent of a board member. Nev. Admin. Code § 213.065.	Removes all disabilities, including gun disabilities and licensing bars, but does not "erase conviction" and licensing boards may condition licensure on finding of good moral character. May serve as predicate. Nev. Rev. Stat. § 213.090.	**Frequent and Regular:** An average of 20 grants each year since 2005, about half of those that apply.	Sealing for most convictions after eligibility period of 7–15 years.
NH	Governor acts upon the advice of the Executive Council. N.H. Const. pt. 2, art. 52. Governor traditionally will not act without majority recommendation from Council.	Notice to state's attorney. N.H. Rev. Stat. Ann. § 4:21. Hearing at direction of governor. N.H. Rev. Stat. Ann. § 4:28.	Persons eligible for "annulment" under N.H. Rev. Stat. Ann. § 651:5 will generally not be considered for a pardon.	A pardon eliminates all consequences of conviction, but it does not expunge record. *Doe v. State*, 328 A.2d 784 (N.H. 1974).	**Rare:** The Attorney General's office receives about 25 applications for clemency per year, but only two pardons and two sentence commutations since 1996.	Annulment available for most felony convictions. N.H. Rev. Stat. Ann. § 651:5.
NJ	Governor decides, parole board may be consulted. N.J. Const. art. V, § 2, ¶ 1. Governor must report annually to the legislature the particulars of each grant, with the reasons. N.J. Stat. Ann. § 2A:167-3.1.	The governor may refer applications for pardon to the Parole Board for recommendation. N.J. Stat. Ann. § 2A:167-7, but the recommendation does not bind governor.	No eligibility criteria.	Restores rights and make eligible for expungement. *In the Matter of the Petition of L.B.*, 848 A.2d 899, 900 (N.J. Super. 2004).	**Infrequent:** Recent governors have granted relatively few pardons, and generally only at end of their terms.	First offender set-aside. N.J. Stat. Ann. §§ 2C: 52-1 to -32.

State	Type Of Administration	Type Of Process	Eligibility Requirements	Effect	Frequency of Grants	Alternative Restoration
NM	Governor decides, ("[s]ubject to such regulations as may be prescribed by law"). N.M. Const. art. V, § 6. Parole board may be consulted. N.M. Stat. Ann. § 31-21-17.	Governor may send application to parole board for investigation. N.M. Stat. Ann. § 31-21-17. Board seeks recommendation from attorney general, judge, prosecuting attorney, and/or the corrections secretary. The victim must be notified.	Completion of sentence (by statute). Gov. guidelines require lengthy waiting periods depending on offense; no first degree felonies, DV or sex offenses, or multiple convictions.	Restores rights of citizenship and relieves other legal disabilities under state law, but does not expunge records, or preclude use of conviction as predicate offense and to enhance subsequent sentence.	**Infrequent:** Pardons granted only in "extraordinary circumstances." Relatively infrequent (Gov. Richardson issued 80 pardons in 10 years).	Expungement for first offender drug possession; deferred adjudication but conviction remains on record. N.M. Stat. Ann. § 30-31-28.
NY	Governor decides, subject to regulation in "the manner of applying for pardons." N.Y. Const. art. IV, § 4. Governor must report annually to legislature on pardons but not his reasons for granting them. *Id.*	Board of Parole must advise the governor on clemency cases if requested. N.Y. Exec. Law § 259-c (8). Absent exceptional or compelling circumstances, a pardon will not be considered if there is an adequate administrative remedy available.	No eligibility criteria.	A pardon addresses unusual circumstances when adequate relief cannot be obtained by certificate; effect to "exempt from further punishment." May serve as predicate.	**Rare:** Other than 34 immigration pardons issued by Governor Paterson in 2010, pardons are rarely given.	Certificates of relief from disabilities and certificates of good conduct.
NC	Governor's power unlimited, subject only to regulation in the manner of applying. N.C. Const. art. III, § 5(6). Post Release Supervision and Parole Commission has authority to assist the governor in exercising his power. N.C. Gen. Stat. § 143B-720(a).	Applications must be submitted to the governor in writing, with statement of reasons. Governor's office of executive clemency (OEC) processes requests, oversees investigations by Parole Commission, and prepares reports. Victim may present a written statement. N.C. Gen. Stat. § 15A-838. DA must also be notified.	General waiting period of 5 years after completion of sentence, per executive policy.	3 types of pardon: pardon of forgiveness (useful in seeking employment); pardon of innocence; and unconditional pardon ("granted primarily to restore an individual's right to own or possess a firearm").	**Rare:** Pardons in recent years have been rare—only six pardons since 2001, all granted for innocence. Pardon applications average about 150 annually.	Minor nonviolent felonies and misdemeanors eligible for expungement after 15 years. N.C. Gen. Stat. § 15A-145.5.
ND	Governor decides, N.D. Const. art. V, § 7, and may appoint a "pardon advisory board," consisting of the state attorney general, two members of the parole board, and two citizens. N.D. Cent. Code § 12-55.1-02.	No public hearing; board meets twice a year, applications must be filed 90 days in advance; DA notified.	Inmates who are not eligible for parole can apply to the pardon board; as may non-incarcerated offenders or others who demonstrate "compelling need."	Relieves collateral penalties, but no expungement; may serve as predicate. N.D. Cent. Code § 12-55.1-01.	**Infrequent:** Between 2005 and 2009, 163 applications received but only six pardons granted.	Deferred sentencing; reduction of minor felony offenses to misdemeanors. N.D. Cent. Code § 12.1-32-07.

OH	Governor decides in consultation with parole board. Ohio Const. art. III, § 11; Ohio Rev. Code Ann. § 2967.07. Must report to legislature each reprieve, commutation, and pardon granted. Ohio Const. art. III, § 11.	Application to parole board, which conducts investigation. Ohio Rev. Code Ann. § 2967.07. Prior notice to court, prosecutor, victim. Ohio Rev. Code Ann. § 2967.12. Meritorious cases may be granted a hearing, and a recommendation made to governor.	Eligibility at any time.	Pardon "erases" the conviction, and entitles recipient to have court records sealed. Ohio Rev. Code Ann. § 2967.04.	**Infrequent/uneven:** Gov. Kasich has granted few pardons to date. Gov. Strickland granted 290 pardons in four years, mostly to minor non-violent offenses.	First offender sealing.
OK	Governor decides, may not act without affirmative recommendation of board of pardons and parole. Okla. Const. art. VI, § 10. The governor must report to the legislature on each grant at regular session, though not required to give reasons. *Id.*	Public hearings at regular intervals, but applicant generally does not appear; favorable recommendations announced publicly and sent to governor; no reasons given. Process generally takes about six months.	Following completion of sentence or 5 years under supervision; misdemeanants eligible.	Relieves legal disabilities, including firearms. Okla. Stat. tit. 21, § 1283A. Grounds for expungement for non-violent first offenders 10 years after conviction. Okla. Stat. tit. 22, § 18.	**Frequent and Regular:** About 100 pardon grants annually (80% of those that apply).	Judicial sealing for first offender misdemeanants after 10 years. Okla. Stat. tit. 22, § 18.
OR	Governor decides under an informal advisory scheme. Or. Const. art. V, § 14. Governor must report to the legislature each grant of clemency, including the reasons for the grant. Or. Rev. Stat. § 144.660.	Applications filed with governor's office, copy to DA and correctional officials; review by governor's legal staff. By statute, governor may not act for 30 days after receipt of application. Or. Rev. Stat. § 144.650(4).	Generally governor will not consider misdemeanors and minor felonies, for which set-aside is available.	Relieves legal disabilities.	**Infrequent:** Between 2005 and January 2011, Gov. Kulongoski granted 20 pardons out of several hundred applications.	Set-aside for misdemeanor and minor felonies. Or. Rev. Stat. § 137.225.
PA	Governor decides, may not act without affirmative recommendation of pardon board chaired by lieutenant governor. Pa. Const. art. IV, § 9(a).	Public hearings at regular intervals; notice published prior to hearing. 37 Pa. Cons. Stat. § 81.233. Favorable recommendations are announced publicly and sent to governor; no reasons given. 37 Pa. Cons. Stat. § 81.301.	No eligibility requirements.	Relieves all legal disabilities, including employment and licensing bars; provides grounds for expungement. *Commonwealth v. C.S.*, 534 A.2d 1053 (Pa. 1987).	**Frequent and Regular:** Of 500–600 applications, Board recommends about 150 favorably each year, most of which are granted; 20% to misdemeanors and summary offenses.	Expungement for "violations;" law prohibits discrimination in employment and licensing. 18 Pa. Cons. Stat. § 9124.

State	Type Of Administration	Type Of Process	Eligibility Requirements	Effect	Frequency of Grants	Alternative Restoration
RI	Governor pardons "by and with the advice and consent of the senate." R.I. Const. art. IX, § 13.	No process specified.	No requirements.	Restores right to hold public office and lifts occupational and licensing bars.	**Rare:** No pardon issued to a living person in ten years.	First offender expungement after 10 years for felonies, 5 for misdemeanors. R.I. Gen. Laws § 12-1.3-3.
SC	Independent board appointed by governor exercises pardon power except in capital cases (where governor retains power). S.C. Const. art. IV, § 14; S.C. Code Ann. § 24-21-920.	Board required to hold hearings at least four times a year, and in recent years every two months, at which it is required to allow the applicant to appear.	Following completion for sentence, or after 5 years under supervision, payment of restitution in full; state offenders only. S.C. Code Ann. § 24-21-950.	Erases legal effect of conviction, including obligation to register and use as predicate offense. S.C. Code Ann. §§ 24-21-990, -1000. Does not expunge, and conviction must be reported on applications.	**Frequent and Regular:** Board issues about 300 grants per year, and hears 60–80 every two months; granting 60% of applicants. Few misdemeanants.	Various expungement authorities for minor offenses.
SD	Governor decides, Board of Pardons and Paroles may be consulted. S.D. Const. art. IV, § 3. Board must recommend pardon in order to obtain sealing relief. S.D. Codified Laws § 24-14-11.	Public hearings at regular intervals, recommendations sent to governor. Applicant must notify DA and sentencing judge, and must publish notice of application in a newspaper once a week for three weeks. Typically, six months to process a case. S.D. Codified Laws §§ 24-14-3, 4.	No eligibility period except 5-year waiting period after release for first offenders to apply for "exceptional pardon." S.D. Codified Laws § 24-14-8.	Persons released from all disabilities, including firearms if specified. Record sealed and conviction denied, unless pardon was issued by governor alone. S.D. Codified Laws § 24-14-11. No predicate effect.	**Frequent and Regular:** Between 60 and 70 applications filed annually, about 60% recommended to the governor, who grants most of those recommended.	Deferred adjudication and judicial sealing for first offenders.
TN	Governor has the power to pardon. Tenn. Const. art. III, § 6. Governor advised by the parole board. Tenn. Code Ann. § 40-28-104. Must report grants and reasons to legislature "when requested." Tenn. Code Ann. §§ 40-27-101, 107.	Public hearing and notice to prosecutor is required. Board must send names of those it is recommending and those it is not to legislative committees. Governor must notify AG and DA before grant is made public; they notify victim. Tenn. Code Ann. § 40-27-110.	Completion of sentence; additional period of good conduct and demonstration of rehabilitation and need.	Pardon has limited legal effect, and does not restore civil or other rights, for which one must go to court. Tenn. Code Ann. § 40-29-105(c).	**Infrequent:** From 2003 to August 2010 board received 221 applications, granted 16 hearings, and recommended 15 cases favorably. 22 pardons granted in January 2011, 16 with recommendation of the Board.	Judicial restoration of rights, expungement for minor offenses; deferred adjudication.

TX	Governor decides, may not act without affirmative recommendation of Board of Pardons and Paroles. Tex. Const. art. IV, § 11(b).	No public hearing, informal review process.	Upon completion of sentence, including misdemeanants. Tex. Admin. Code §§ 143.2, 143.10. First offender restoration to federal and foreign offenders. Tex. Admin. Code § 143.7.	Restores civil rights, and removes barriers "to some, but not all, types of employment and professional licensing." Basis for expungement. Predicate effect.	**Sparing:** Eight to ten pardons annually most years since 2001. 200 applications are received annually, of which about 25% are recommended favorably.	Expungement of pardoned convictions; deferred adjudication and nondisclosure.
UT	Independent board appointed by the governor. Utah Const. art. VII, § 12; Utah Code Ann. § 77-27-5(1).	Public hearing at regular intervals, notice to DA and victim, majority vote, with reasons given. Utah Code Ann. § 77-27-5(2).	Five years after expiration of sentence; offenses for which expungement not available. Utah Admin. Code r. 671-315.	Restores civil rights.	**Infrequent:** Board receives only three to five requests for pardon a year, and only about 10 pardons have been granted in the past decade (availability of expungement makes less necessary).	Expungement for many offenses.
VT	Governor decides, parole board may be consulted. Vt. Const. ch. II, § 20.	No hearing; parole board investigates and recommends. Vt. Stat. Ann. tit. 28, § 453.	Generally 10 years, must show rehabilitation and employment-related need, benefit to society.	Restores rights, relieves disabilities, including firearms.	**Infrequent:** In his nearly 8 years in office (2003-2011), Governor Douglas granted thirteen pardons, fewer than two a year.	Deferred adjudication and expungement.
VA	Governor decides, parole board may be consulted. Va. Const. art. V, § 12. Constitution also requires governor to make annual report to the legislature setting forth "the particulars of every case" of pardon or commutation granted, with reasons. *Id.*	No hearing, paper review by parole board. Restoration of rights applications processed in 60 days by Secretary of the Commonwealth.	5-yr eligibility waiting period for restoration of rights after violent or drug crime, 2-yr for non-violent crime; ROR available for out-of-state and federal offenders.	"Simple" pardon does not expunge the record, but helps with employment, education, and self-esteem. No expungement, has predicate effect.	**Infrequent/uneven:** Gov. McConnell has restored rights generously, but pardoned sparingly. Through 2010, only one pardon.	Deferred adjudication but no expungement; judicial restoration of firearms.
WA	Governor decides "under such regulations and restrictions as may be prescribed by law." Wash. Const. art. III, § 9. Clemency board may be consulted. Wash. Rev. Code §§ 9.94A.885 (1), 10.01.120. Governor reports to legislature with reasons. Wash. Const. art. III, § 11.	Public hearing, DA and victims must be notified. Wash. Rev. Code § 9.94A.885 (3).	None.	Vacates conviction, relieves all legal disabilities; conviction need not be reported, no predicate effect. Wash. Rev. Code § 994A.030 (11)(b).	**Sparing:** About 35 petitions each year, 8-10 of which go to hearing. From 2006 through January 2011, Gov. Gregoire granted 27 pardons, two conditional, and two to avoid deportation.	Judicial vacatur for most convictions; separate firearms restoration procedure.

State	Type Of Administration	Type Of Process	Eligibility Requirements	Effect	Frequency of Grants	Alternative Restoration
WV	Governor decides, may seek advice from parole board. W. Va. Const. art. 7, § 11; W. Va. Code § 5-1-16. Governor reports facts of grants with reasons. W. Va. Const. art. 7, § 11; W. Va. Code § 5-1-16.	No public hearing; board must notify DA and judge 10 days before making recommendation to governor. As a matter of policy, governor always seeks recommendation from board.	None.	Lifts most legal barriers, but does not restore firearms rights. *Perito v. County of Brooke*, 597 S.E.2d 311, 321 (W. Va. 2004). May be given predicate effect.	**Rare:** Governor receives from 50–100 applications each year, but pardon grants are rare (only 121 in 36 years, by nine governors).	Misdemeanor first offender expungements.
WI	Governor decides under a non-statutory pardon advisory board. Wis. Const. art. V, § 6. Governor must communicate annually with legislature each case of clemency and the reasons. Wis. Const. art. V, § 6.	Public hearings at regular intervals for those applicants that show "a demonstrated need for a pardon." Applicant must publish notice in county paper or on courthouse door, and deliver to DA, judge and victim. Wis. Stat. §§ 304.09–.10.	Five-year eligibility waiting period; misdemeanants ineligible unless waiver granted.	Relieves legal disabilities and signals rehabilitation, but does not expunge or seal the conviction. May be given predicate effect.	**Infrequent/uneven:** Governor Walker has granted no pardons to date. Doyle granted 293 pardons overall, 176 in his final year, mainly for dated minor offenses, representing 15% of applicants, all with Board recommendation. Few misdemeanants.	Expungement or sealing of certain adult misdemeanor convictions. Wis. Stat. § 973.015.
WY	Governor decides, subject to legislative controls on the manner of applying. Wyo. Const. art. 4, § 5. Governor must report every two years to legislature on grants, with the reasons for each one. *Id.*	Statutory application process involves review by governor's staff. Process takes 4–6 weeks. Notice to DA three weeks prior to acting, and DA must provide details of offense. Wyo. Stat. Ann. § 7-13-801 *et seq.*	10 years after sentence for pardon, 5 years for restoration of rights. Excludes sex offenses.	Relieves legal disabilities but does not expunge. May be given predicate effect.	**Sparing:** From 2005 to 2010, 22 pardons and 28 restorations of rights (25% of applications filed).	Governor also grants restoration of rights upon recommendation of parole board. Federal and state offenders eligible.
Fed.	President decides under a non-statutory advisory scheme. U.S. Const. art. II, § 2; 28 C.F.R. Part 1. No reporting requirement, no notice.	Informal process described in 28 C.F.R. Part 1 and United States Attorneys Manual. No time limit, and applications may remain pending for years.	5 years after sentence or release from confinement. 28 C.F.R. § 1.2. Generally not eligible if on parole. *Id.*	Relieves legal disabilities signifies rehabilitation. Does not expunge, has predicate effect.	**Infrequent:** only about 10–15 pardons per year over the past twenty years, representing less than 5% of those who apply.	None.