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Hearing on
The Constitutional Role of the Pardon Power

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Chairman Cohen, Ranking Member Johnson and distinguished members of the Committee, thank you for inviting me to offer my views on the President's constitutional power to grant pardons.

The text of the Constitutional provision on pardons seems straightforward: Article II, Sec. 2 provides that, the President "shall have the Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment." Aside from the exception for impeachment, the statement seems unqualified and plenary. And indeed, the pardon power is one of the most unquestioned powers of the president. There is no ready check or limit from the other branches, as there are with most other powers of the president. Supreme Court decisions have affirmed the president's pardon power and protected it from congressional interference, yet the jurisprudence on pardons is not simple.

This analysis will examine the origins of the pardon power in Anglo-American jurisprudence, examine the scope of the pardon power, explore its limitations, assess its potential for abuse, and take up the possibility of presidential self pardons.¹

Origins and Purpose of the Pardon Power

The roots of the president's pardon power are found in medieval English history and jurisprudence.² The Framers of the Constitution adapted the pardon provision from the royal English Prerogative of Kings, which dated from before the Norman conquest. The royal power was absolute, and the king often granted a pardon in exchange for money or military service. A number of times, Parliament tried unsuccessfully to limit the king's pardon power. It finally succeeded to some degree in 1701 when it passed the Act of Settlement, which exempted impeachment from the royal pardon power.

During the period of the Articles of Confederation, the state constitutions conferred pardon powers of varying scopes on their governors, but neither the New Jersey Plan nor the Virginia Plan presented at the Constitutional Convention included a pardon power for the chief executive. Charles Pinckney, in conjunction with the support of Alexander Hamilton and John Rutledge,

introduced a proposal to give the chief executive the same pardon power as enjoyed by English monarchs, that is, complete power with the exception of impeachment.³

George Mason argued that treason ought also to be excepted and warned of the possibility of presidential abuse of the pardon power, which "may be sometimes exercised to screen from punishment those whom he had secretly instigated to commit the crime and thereby prevent a discovery of his own guilt."⁴ James Wilson, however, argued that pardons for treason should be available and successfully argued that the power would be "best be placed in the hands of the Executive. If he be himself a party to the guilt he can be impeached and prosecuted."⁵ A proposal for Senate approval of presidential pardons was also defeated in the Convention.

In debates over the ratification of the Constitution, Alexander Hamilton in Federalist 74 defended the pardon power and argued that the judicial process might occasionally err and that at times justice should be tempered by mercy. "The criminal code of every country partakes so much of necessary severity that without an easy access to exceptions in favor of unfortunate guilt, justice would wear a countenance too sanguinary and cruel." In 1833, Chief Justice John Marshall in *United States v. Wilson* commented on the benign aspects of the pardon power: "A pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual, on whom it is bestowed from the punishment the law inflicts for a crime he has committed. It is the private, though official act of the executive magistrate."⁶

Another purpose of the pardon power focused not on obtaining justice or forgiveness for the person pardoned, but on the public good. During the debates in 1787, Luther Martin argued that any pardon should be considered only after a crime had been prosecuted, and moved to insert the words "after conviction" after "reprieves and pardons." But James Wilson countered that "pardon before conviction might be necessary in order to obtain the testimony of accomplices," and Martin withdrew his motion.⁷ In addition, Hamilton argued in Federalist 74 that in cases of "insurrection or rebellion there are critical moments when a well-timed offer of pardon to the insurgents or rebels may restore the tranquility of the commonwealth." The pardon power may be exercised at any time after the commission of a crime, even before indictment or conviction.

Thus the original purposes of the pardon power, as argued by the Framers of the Constitution were the tempering of justice with mercy with respect to individuals and the broader purposes of the public good.

Scope of the Pardon Power

Due to the straightforward constitutional provision, the scope of the pardon power is sweeping. In *Ex Parte Garland*, Justice Field wrote, "A pardon reaches both the punishment prescribed for the offence and the guilt of the offender; and when the pardon is full, it released 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 offence . . . [a pardon] restores him all his civil rights; it makes him as it were, a new man, and gives him a new credit and capacity."⁸

The power to pardon also includes more limited acts of clemency, such as reprieves (delay of sentencing) and commutation (reducing) of sentences or penalties. The scope of a commutation

merely reduces the penalty but does not negate or expunge the conviction itself. Pardons may be conditional on specific actions by the pardoned, such as taking a rehabilitation course or public service; the conditions, however, may not be harsher than the imposed sentence.

The pardon power also extends to amnesties for classes of people. For instance in 1795, George Washington pardoned participants in the Whisky Rebellion, in part because the rebellion had already been defeated. After the Civil War, Presidents Lincoln pardoned “all persons who have, directly or by implication, participated in the existing rebellion.”⁹ Lincoln’s and Andrew Johnson pardons included about 200,000 people who had participated in the Confederate rebellion.¹⁰ After the World War II, President Truman, restored civil rights to 9,000 of those convicted of desertion during peacetime. President Ford granted amnesty to those who avoided service in the Vietnam War, conditional on them turning themselves in and serving two years in public service job. President Carter later pardoned draft evaders, but not deserters, with no requirement of public service.¹¹

Although Congress cannot limit the president’s pardon power, it can protect individual witnesses from prosecution for information given in Congressional testimony and pass amnesty laws.¹² It can also reduce penalties, as it did in Fair Sentencing Act of 2010, reducing sentences for those convicted of using of crack cocaine, which were harsher than for users of powder cocaine.¹³

Pardons can be limited, conditional, or sweeping, as was President Ford’s pardon of Richard Nixon. Ford granted “a full, free and absolute pardon unto Richard Nixon for all offenses against the United States which he, Richard Nixon, *has committed or may have committed* or taken part in during the period from January 20, 1969 through August 9, 1974” (emphasis added).¹⁴ Thus the pardon was not limited to Watergate related matters, but also included any other crimes, such as Nixon’s backdating of his tax declarations, which were considered by the House Judiciary Committee as a possible article of impeachment.¹⁵

Limits on the Pardon Power

The only explicit limits in the constitutional text are with respect to impeachment and that the law broken must be a federal law. The crime must already have been committed, or the pardon power would amount to presidential authority to suspend the law, a practice of British absolute monarchs, which was rejected by the Framers of the Constitution.

At the Constitutional Convention Roger Sherman suggested conditioning the pardon power on Senate approval and moved “to grant reprieves until the ensuing session of the Senate, and pardons with consent of the Senate.” But the motion was defeated by a vote of 8 to 1.¹⁶ Edmund Randolph wanted to “except cases of Treason” from the pardon power, because “The President may himself be guilty. The Traytors my be his own instruments.” But James Wilson countered that the power should remain the president’s prerogative and, “If he be himself a party to the guilt he can be impeached and prosecuted.”¹⁷

Though pardons have been litigated, the Court has consistently refused to limit the President's discretion. Chief Justice Warren Berger in *Shick v. Reed*, wrote that “that the power flows from

the Constitution alone, not from any legislative enactments, and that it cannot be modified, abridged, or diminished by the Congress.”¹⁸

The Constitution limits the pardon power to federal offences, so violations of state laws can be prosecuted, despite a presidential pardon for the same crime. Some have argued that this violates the protections against double jeopardy in the Fifth Amendment. Thus far, the Supreme Court has adhered to the dual sovereignty doctrine, according to which the states are separate governments with their own sovereignty and thus can try persons for violations of state law. Federal prosecutors have used this doctrine to try civil rights crimes for which local juries would not convict.¹⁹

The answer to the question of whether a person must accept a pardon in order for it to take effect is – probably, or at least that a pardon can be rejected (though not a commutation). Justice John Marshall in *US v. Wilson* in 1833 ruled that a pardon must be accepted in order for it to become official. “A pardon is an act of grace” for the “individual for whose benefit it is intended and not communicated officially to the court. . . . A pardon is a deed to the validity of which delivery is essential, and delivery is not complete without acceptance. It may then be rejected by the person to whom it is tendered, and if it be rejected, we have discovered no power in a court to force it on him” (emphasis in original).²⁰

But in 1915 Justice McKenna, writing for the Court in *Burdick v. US*, ruled that a pardon can be rejected by the intended recipient.²¹ Burdick was accused of a crime and was called to testify before a grand jury. He refused on the grounds that his testimony might incriminate himself. President Wilson, wanting to obtain his testimony regarding his confederates, offered him a full pardon if he would testify, but Burdick refused to accept the pardon because, he argued, it would imply his guilt. The Court ruled that since acceptance of the pardon might lead to the “confession of guilt implied in the acceptance of a pardon [it] may be rejected.” Thus Burdick did not have to accept the pardon because it imperiled his Fifth Amendment protection. (The court distinguished amnesty from pardons, noting the recipients of amnesties do not need to accept pardons.)

On the other hand, a commutation or remission of a sentence cannot be refused by the recipient of leniency. In *Biddle v. Perovich* President Coolidge commuted a federal death sentence, and he was transferred to the State of Connecticut, which convicted him of the murder and sentenced him to hang. Biddle appealed by arguing that he had not accepted the president’s commutation of his sentence and thus it was not valid. Justice Oliver Wendel Holmes wrote that the commutation of a sentence did not have to be accepted by the recipient in order to be valid. “A pardon in our days is not a private act of grace,” rather “it is a part of the constitutional scheme” and the public welfare is more important than a criminal’s wishes. He concluded “Just as the original punishment would be imposed without regard to the prisoner's consent and in the teeth of his will, whether he liked it or not, the public welfare, not his consent, determines what shall be done.”²²

Does acceptance of a pardon amount to an admission of guilt? From Judge McKenna’s ruling in *Burdick*, it would seem that there is a strong implication that “by confession of guilt implied in the acceptance of a pardon [it] may be rejected.” On the other hand, a president may pardon a

person whom he believes to be completely innocent and was wrongfully convicted. Acceptance in such a case would not seem to be an admission of guilt.

Although a pardon of an individual removes all legal effects of his conviction, it does not expunge the record of conviction. Thus if a prior conviction of a felony would prevent a person from being admitted to the bar in a state, the conviction can be taken into account regarding the character of the person.²³

Abuse of the Pardon Power?

English Kings often exercised their pardon prerogative arbitrarily, and often to enrich themselves or to conscript soldiers, promising a pardon in exchange for military service. Parliament tried to limit the royal prerogative a number of times, but it was not successful until the Settlement Act of 1700, which disallowed pardons in cases of impeachment. Since the King or Queen had absolute authority, the monarch could not be impeached, but impeachment was a useful tool for the parliament to use against the crown by removing ministers from office.²⁴

The Framers, particularly the Anti-Federalists, were aware of the abuse of the pardon power in English history, and were wary of granting too much power to the executive of the new republic. During the deliberations over executive power in the Constitution, George Mason objected to an unrestricted power to pardon, particularly the exception to treason. “The President of the United States has the unrestricted power of granting pardons for treason, which may be some sometimes exercised to screen from punishment those whom he had secretly instigated to commit the crime, and thereby prevent a discovery of his own guilt.”²⁵

Later, during the Virginia debates over ratifying the Constitution, Mason continued his arguments against the pardon power. “[T]he President ought not to have the power of pardoning, because he may frequently pardon crimes which were advised by himself. . . . If he has the power of granting pardons before indictment, or conviction, may he not stop inquiry and prevent detection?”²⁶ James Madison addressed Mason’s objection to the president’s pardon power by arguing that abuse of the pardon power could be remedied by impeachment: “If the president be connected in any suspicious manner with any persons, and there be grounds to believe he will shelter himself; the house of representatives can impeach him. . . . This is a great security.”²⁷

Hamilton in Federalist 74 also addressed the issue of allowing the president to issue pardons before indictment or conviction, by making the point that a “well-timed offer of pardon to the insurgents or rebels may restore the tranquility of the commonwealth.” He also argued that the executive would possess a “sense of responsibility” that “would naturally inspire scrupulousness and caution” lest he risk impeachment.

For most of the more than 30,000 pardons presidents have made, pardons have been handled by the Office of the Pardon Attorney in the Department of Justice, which was created by Congress in 1891.²⁸ In the normal course of pardon applications, they are not considered until five years after a sentence has been served, and they entail assiduous research on the background of each individual case. If the Pardon Attorney concludes that a pardon is warranted, the

recommendation is sent to the Attorney General, who then forwards the recommendation to the president, if he or she agrees with the pardon office.

The most contentious pardons, however, are often made by the president without the full participation of the Pardon Attorney. Jeffrey Crouch argues that before Watergate, president used the pardon power for the traditional purposes of mercy and the public good. But after Watergate, presidents have occasionally used the pardon power for their own political advantage or to shut down investigations. He mentions particularly President George H.W. Bush who, after the election in 1992, pardoned Iran-Contra figures Elliot Abrams, Duane Claridge, Robert MacFarlane, and Clair George, all former Reagan administration officials in 1992. Bush also pardoned Caspar Weinberger, who might have called the former president to testify at his trial.²⁹ Crouch also argues that some of President Clinton's pardons and commutations at the end of his term were inspired by his personal interests, for example his pardons of his brother, Roger Clinton, and fugitive Marc Rich, whose ex-wife had contributed significantly to Clinton's presidential library.

President George W. Bush commuted Scooter Libby's 30 month prison sentence stemming from his conviction for perjury and obstruction of justice regarding the public revelation of Valerie Plame's status as a CIA officer. Crouch notes that a full pardon would preclude a refusal by Libby to testify about the matter because of the Fifth Amendment prohibition of forced self incrimination. Granting only a commutation of his sentence would have allowed Libby to refuse to testify.³⁰

In a recent paper Crouch criticized President Trump's use of the pardon for what Crouch believes are political purposes rather than reasons of mercy or the public good.³¹ Unlike most presidential pardons, Trump's pardons seemed to be intended to send political messages and were issued early in his presidency and not after the usual Pardon Attorney process.

Regardless of one's judgment about or disapproval of presidential pardons that seem to be motivated by personal political advantage rather than the public good, presidential pardons are the president's constitutional prerogative. Whether any one of these instances is an abuse of the pardon power is a matter of political judgment, not of law or the Constitution. The only remedies for bad presidential judgment about pardons are political, not constitutional.

But could a presidential pardon run afoul of the law or Constitution? A pardon might be legally questioned if there were an explicit quid pro quo, e.g. an offer of a pardon in exchange for lying to a law enforcement officer or to Congress. This could be judged to be bribery or obstruction of justice. This is why President Ford was so careful about insisting that there was no prior agreement that he would pardon President Nixon after he resigned from office. Ford testified to Congress that there was no deal or agreement. If there were, it could have been considered bribery. Nixon would resign and give Ford the Presidency, if Ford agreed to pardon Nixon. Bribery is explicitly listed as an impeachable offense.³²

Some have argued that Congress cannot impeach the president for exercising his constitutional powers, such as the pardoning power. But Justice Warren Berger in *Schick v. Reed* argued that any limitation on the pardon power, if such limit exists, "must be found in the Constitution

itself.” Bribery is specifically mentioned in the impeachment clause of Article II. The Federal Bribery Statute (18 USC prec. Sec. 201(b) states that “whoever directly or indirectly, corruptly gives, offers or promises anything of value to any public official . . . with intent to influence any official act” is guilty of bribery. So if it were proven that a president granted a pardon (clearly something of value) in exchange for the silence of a witness in court or before Congress, an impeachment charge of bribery could be considered. Thus bribery could be considered to be a constitutional limit to the president’s pardon power.

Presidential Self Pardons

A self pardon was never considered in the Constitutional Convention or the Federalist Papers; no president has attempted it; and there are no Supreme Court discussions of the possibility. Although President Nixon is reported to have considered a self pardon for his crimes during Watergate, no president has publicly considered a self pardon until President Trump tweeted, “As has been stated by numerous legal scholars, I have the absolute right to PARDON myself.”

Although at first glance, a self pardon may seem implausible, constitutional scholars are split on the legitimacy of presidential self-pardons. The strongest argument in favor of self-pardons is the fact that the Constitution does not explicitly forbid self pardons.³³ The Framers did forbid pardons in cases of impeachment, and they explicitly rejected excepting treason from the pardon power or requiring Senate concurrence. The argument proceeds that if the Framers had wanted to exclude self pardons, they would have said so in the Constitution. In addition, they considered impeachment to be an effective preventative and remedy for any presidential abuse of power.

The Court in *Ex parte Garland* (1866) declared that the pardon power is “unlimited” (except for impeachment) and “may be exercised at any time after [the crime’s] commission.” More recently, Chief Justice Berger in *Schick v. Reed* (1974) declared the pardon power to be “plenary,” and thus not limitable by Congress or the courts. Scholars Nida and Spiro conclude that “the power is plenary and may be exercised at any time.” They conclude by recommending a constitutional amendment to preclude self pardons.³⁴

The arguments against self pardons begin with generally recognized principles of justice in the United States. In Federalist 10, James Madison echoed the long accepted principle of Anglo-American jurisprudence that self judgment presents an unacceptable conflict of interest. “No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity.” A presidential self pardon clearly violates this principle.

Chief Justice John Marshall declared in *Marbury vs. Madison* a core principle of US justice. [The] “government of the United States has been emphatically termed a government of laws, and not of men.” One of the pillars of the rule of law is that no one is above the law. A self pardon would allow the president to place himself above the law by committing crimes and then pardoning himself.

In writing the Constitution, the Framers did not forbid pardons before a crime was committed, presumably because such a provision was superfluous and it would amount to granting the

president the power to suspend the laws. The issue never came up at the Constitutional Convention. The same point might apply to a self pardon; the Framers may not have debated it because a self pardon was tantamount to the doctrine of sovereign immunity (that the king can do no wrong) in an absolute monarchy, a system of government they reviled.

Although Justice Berger in *Schick* called the pardon power “plenary,” he also said that “that the pardoning power is an enumerated power of the Constitution and that its limitations, if any, must be found in the Constitution itself.” There is an explicit constitutional provision that also pertains to the pardon power. Article I, Section 3 provides that impeachment cannot extend beyond removal from office and prohibition from holding any further office in the U.S. government. If the president could pardon himself, why would the Framers have explicitly provided for post-removal “Indictment, Trial, Judgment and Punishment, according to Law”?

A self pardon could vitiate this provision of the Constitution by allowing a president threatened by impeachment to wait until the Senate was poised to vote on removing him from office, and then pardon himself from any crime he may have committed. Such an action would make the Article I provision for possible prosecution after removal from office meaningless. Given the post-impeachment and removal provision in the Constitution, it is entirely plausible that the idea of a self pardon did not occur to the Framers.

In 1973 the Office of Legal Counsel issued a three page memorandum stating, “Under the fundamental rule that no one may be a judge in his own case, the President cannot pardon himself.” However, the OLC memo also suggested that a president could take advantage of the 25th Amendment: “If the President declared that he was temporally unable to perform the duties of his office the Vice President would become Acting President and as such he could pardon the President. Thereafter the President could resign or resume the duties of his office.”³⁵ In such a case the issue of conspiracy and possible bribery would arise. Would a president be offering something of value (i.e. the presidency, though for a short period of time) for an official act (i.e. a pardon)?

Self pardons also present an anomaly. A president could embezzle money in secret (or even commit murder), and then in his last days in office pardon himself for any crimes he may have committed as president (per President Ford’s formulation). In such a case would the president be faithfully executing the law? Some might argue that impeachment would be a deterrent for self pardons, but a shrewd president could wait until the end of his term and proclaim a self pardon; in such a case impeachment would provide no deterrent or remedy because there would not be sufficient time for House and Senate consideration.

Though the issue of self pardons has not been legally or constitutionally settled, the arguments against allowing self pardons seem to outweigh the arguments in favor.

Conclusion

This statement has argued that the president’s pardon power, is in many ways, plenary. The Framers of the Constitution intended the power to be broad and did not provide for any explicit check on this presidential prerogative. At times, they seemed to think that impeachment would

be a ready remedy for abuses of presidential power related to the issuance of pardons. Nevertheless, US jurisprudence and experience have shown that the ramifications of the pardon power are complex. Though legal limits are few, presidents may abuse their power by issuing pardons for offences in order to protect themselves from possible legal jeopardy or embarrassment. The judgments about presidential abuse of the pardon power, however, are primarily political and cannot be easily adjudicated by laws or the Constitution. Finally, though no one can predict what the Supreme Court might rule, the arguments against presidential self pardons seem compelling.

ENDNOTES

¹ This statement is partially based on my entry on the pardon power in *The Heritage Guide to the Constitution* edited by Matthew Spalding and David Forte (Washington: Regnery, 2005, 2014).

² See William F. Duker, "The President's Power to Pardon: A Constitutional History," *William and Mary Law Review*, Vol. 18, No. 3 (1977).

³ Duker, "President's Power to Pardon," p. 501.

⁴ *The Records of the Federal Convention of 1787*, edited by Max Farrand (New Haven: Yale University Press, 1966), Vol. II, p. 639.

⁵ Farrand, Vol. II, p. 626.

⁶ John Marshall, *US v. Wilson* 1833, p. 160.

⁷ *The Records of the Federal Convention of 1787*, edited by Max Farrand (New Haven: Yale University Press, 1966), (hereinafter Farrand), Vol. II, pp. 422, 426.

⁸ *Ex Parte Garland* 4 Wall 333, 380 (1866). Edward Corwin, however, argued that Field's statement is "much too sweeping." Edward S. Corwin, *The President: Office and Powers, 1787-1984* (New York University Press, 1984), p. 183.

⁹ Duker, "President's Power to Pardon," p. 511.

¹⁰ Other amnesties by Presidents Adams, Madison, and Theodore Roosevelt are listed in Edward S. Corwin, *The President: Office and Powers, 1787-1984* (New York University Press, 1984), p. 181.

¹¹ David Gray Adler, "The President's Pardon Power," in Thomas E. Cronin, ed. *Inventing the American Presidency* (University Press of Kansas, 1989), pp. 218-219.

¹² Such as the Amnesty Act of 1872, which lifted penalties imposed on former Confederates.

¹³ Public Law 111-220.

¹⁴ Some scholars argue that a pardon can only be issued after a process of adjudication. See Mark J. Rozell, "The Presidential Pardon Power: A Bibliographic Essay," *Journal of Law & Politics*, Vol. V, 549, p.460.

¹⁵ *Federal Register*, Vol. 39, pp. 32601-2 (1974).

¹⁶ Farrand, Vol. II, p. 419.

¹⁷ Farrand, Vol. II, p. 626.

¹⁸ *Schick v. Reed*, 410 US 256.

¹⁹ In 2018 the Supreme Court heard argument in *Gamble v. United States* challenging the double sovereignty doctrine, though most justices seemed disinclined to overturn it. New York State also considered changing its law that prohibits prosecution of a person who is being prosecuted or has pleaded guilty in federal court. See Garrett Epps, "There's an Exception to the Double-Jeopardy Rule," *The Atlantic* (December 5, 2018); and Richard Wolf, "Supreme Court justices defend 'double jeopardy' exception," *USA Today* (December 6, 2018).

²⁰ *United States v. Wilson*, 32 US 150 (1833).

²¹ *Burdick v. US*, 236 US 79 (1915). For a discussion of Budick, see Corwin, *The President*, p.182.

²² *Biddle v. Perovich* (274 US 480) 1927.

²³ Corwin, *The President*, pp. 188-189.

²⁴ David Gray Adler, "The President's Pardon Power," in Thomas E. Cronin, ed. *Inventing the American Presidency* University Press of Kansas, 1989), pp. 209-235.

²⁵ Farrand, Vol. II, p. 639.

²⁶ The Founders' Constitution, Debate in Virginia Ratifying Convention, 18 June 1788, Elliot 3:496-498. Volume 4, Article 2, Section 2, Clause 1, Document 6

http://press-pubs.uchicago.edu/founders/documents/a2_2_1s6.html

The University of Chicago Press. Elliot, Jonathan, ed. *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787*. . . . 5 vols. 2d ed. 1888. Reprint. New York: Burt Franklin, n.d.

²⁷ Powers of the President, [18 June] 1788, Robertson, Virginia Debates, pp. 353–54.

<https://founders.archives.gov/documents/Madison/01-11-02-0097>.

²⁸ Jeffrey Crouch, "President Donald J. Trump and the Clemency Power," paper presented at the 2018 Annual Meeting of the American Political Science Association, Boston, MA. For a detailed, historical analysis, see Crouch, *The Presidential Pardon Power* (University Press of Kansas, 2009).

²⁹ Jeffrey Crouch, "Presidential Misuse of the Pardon Power, *Presidential Studies Quarterly*, Vol. 38, No. 4 (December 2008), p.730.

³⁰ Jeffrey Crouch, "Presidential Misuse of the Pardon Power, *Presidential Studies Quarterly*, Vol. 38, No. 4 (December 2008), p. 731.

³¹ Jeffrey Crouch, "President Donald J. Trump and the Clemency Power," paper presented at the 2018 Annual Meeting of the American Political Science Association, Boston, MA.

³² On the Ford pardon, see Mark J. Rozell, "President Ford's Pardon of Richard M. Nixon: Constitutional and Political Considerations," *Presidential Studies Quarterly* (Vol. 24, No. 1 (Winter 1994), pp. 121-137.

³³ For an argument that the president may constitutionally pardon him/herself, see Robert Nida and Rebecca L. Spiro, "The President as his own Judge and Jury: A Legal Analysis of the Presidential Self-Pardon Power, *Oklahoma Law Review*, Vol. 52, p. 197. Jeffrey Crouch also agrees, "President Donald J. Trump and the Clemency Power," paper presented at the 2018 Annual Meeting of the American Political Science Association, Boston, MA. For an argument that a self pardon would be unconstitutional, see Brian C. Kalt, "Pardon Me? The Constitutional Case against Presidential Self-Pardons," *Yale Law Journal*, Vol. 106, 779 (1996).

³⁴ Robert Nida and Rebecca L. Spiro, "The President as his own Judge and Jury: A Legal Analysis of the Presidential Self-Pardon Power, *Oklahoma Law Review*, Vol. 52, p. 222.

³⁵ Department of Justice, Office of Legal Counsel, "Presidential or Legislative Pardon of the President," Mary C. Lawton, 1973, pp. 370372.