President-centered and Presidency-centered Explanations of Federal Clemency Policy

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This study revisits President-centered and Presidency-centered perspectives of Presidential behavior through an empirical analysis of federal executive clemency policy in the United States. A review of the extant literature provides a framework within which to develop and test hypotheses. Specific variables are then tested in a multivariate model of clemency policy from 1934 to 1994. The dependent variable (which measures degrees of leniency) is derived from a data set consisting of over 41,000 clemency applications and over 11,000 'positive' clemency decisions made in eleven administrations. ARIMA models of clemency policy suggest that while some personal background characteristics of the president may be important considerations, the clemency policy of administrations is best understood by the political environment and more administrative factors. Thus, with respect to clemency, the Presidency-centered orientation appears to be more appropriate.

In what was easily one of the more tense moments of the first presidential debate of 1996, Republican challenger Bob Dole rebuked Bill Clinton for comments the President made in an interview with respect to the potential exercise of the pardoning power. The President's response was a brief, but witty, "no comment." Executive clemency\(^1\) has been directly related to, if not the critical feature of, some of the most salient political events in our nation's history. The clemency power has also played a major role in the development of criminal law's recognition of insanity, self-defense, compulsion, and more lenient treatment of juvenile offenders. Acts of clemency have been the focus of numerous decisions of the Supreme Court. Presidents typically average over two hundred acts of clemency per year (Ruckman 1995), yet the exercise of clemency generates little comment in social science scholarship. One might continue to agree with the conclusion of a 1939 survey by the U.S. Attorney General, "there has never been an adequate treatment of the subject of pardon. [It] has been a neglected orphan, allowed to grow without benefit of careful grooming which has been accorded other branches of law" (Survey, vii.ix).

A majority of the extant literature on executive clemency appears in the law review or editorial format. Examinations of clemency powers typically trace their interesting origins and early development, their transformation in common law, their brief consideration at the constitutional convention and subsequent developments in classic Supreme Court decisions. Other scholars examine clemency in particular areas of law, such as the death penalty, or note political issues in

\(^{1}\) Clemency includes a variety of acts. Kobil (1991) notes a pardon "provides the most sweeping remission of the consequences that normally attend violation of the law." It may be granted either before or after conviction and is normally used "to restore the reputation and civil rights of an individual who has completed her designated punishment and demonstrated rehabilitation by leading an exemplary life upon release." A commutation, on the other hand, is a more limited form of clemency which is "the substitution of a milder punishment for the one imposed by the court." A commutation "in no way relieves the offender of most of the legal consequences of an offense" and is often granted "to shorten the offender's sentence to time already served or to make her immediately eligible for parole." The clemency power also embraces remissions of fines and forfeitures (575-8).
highly publicized, controversial cases (Ruckman 1997). Although examinations of clemency rarely involve analysis, or even presentation of data, two studies employ frequency analysis in examinations of the relationship between presidential character and the exercise of federal executive clemency (Pederson 1977; Ruckman 1995). In sum, the study of clemency needs to move "from anecdotal observation to systematic description" (King and Ragsdale 1988, 2).

A recent review of clemency literature examines data on federal executive clemency and suggests an administration's overall policy (or general willingness to grant acts of clemency) is shaped by at least three broad sets of factors: characteristics of individual presidents, political and administrative factors (Ruckman 1997). While encouraging multivariate tests of individual hypotheses, the review's framework clearly revisits a classic theoretical quarrel of Presidential research: how can we best understand presidential decision making? "Should we focus attention on the characteristics of individual presidents or groups of presidents? Or should we concentrate on institutional constraints to the decision making process" (Hager and Sullivan 1994)? The intensity of this debate is considerable (see selections in Edwards, Kessel and Rockman 1993; Rockman 1986; Thomas and Pika 1996), but Cohen and Krause note a "relative dearth" of empirical research on the topic (1997).

This study briefly reviews empirical research on clemency in the United States. The thrust of this literature is then placed in the context of conflicting theoretical perspectives of presidential behavior. In a significant departure from the extant literature, a multivariate test of president-centered and presidency-centered hypotheses is provided in a data set of the 41,879 clemency applications. The dependent variable gauges levels of leniency, or the general willingness of administrations to utilize clemency. It is believed that this measure of policy from eleven administrations provides an acceptable "baseline against which to assess competing explanations of presidential behavior" (Light 1993, 162). The review of the literature and the process of hypotheses building provide the first clear bridge between this topic and social science analysis.

**Empirical Analyses of Federal Executive Clemency Policy**

Examinations of executive clemency rarely involve the analysis, or even presentation of data, although two studies note moderate relationships between the exercise of clemency and James David Barber's typology of presidential character (1992). Pederson (1977) examines the relationship between presidential "character" and formal amnesties granted by executive order or public proclamation. Categorizing thirty-three presidents as "active-positive," "active-negative," "passive-positive," or "passive-negative," Pederson notes active presidents have granted 90 percent of the population of amnesties and active-positive presidents have granted more amnesties (55 percent of the population) than any other categorization of presidents.

Ruckman (1995) also employs frequency analysis in an examination of clemency and presidential character, but focuses on individual acts of clemency (pardons, commutations, and remissions) from 1900-1993. Ruckman finds active presidents have issued 73 percent of the

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2 In order to complete categorization of each president, Pederson utilizes Maranell's 1970 questionnaire study of nearly 600 American historians. Maranell employed dimensions of "activeness" and "flexibility" in his own study and Pederson juxtaposes Maranell's rankings to create a new fourfold typology (Table 1 at 178). Pederson notes "strong agreement" between the categorization schemes of Barber (1992), the rankings of Maranell and rankings in a 1966 study by Erwin C. Hargrove (177).

3 "Active-negatives" granted 35 percent of the amnesties. "Passive-positive" presidents granted 7.5 percent and "passive-negatives" granted 2.5 percent.
population of "positive" clemency actions. Active-positive presidents have issued the highest total number of "positive" decisions among the four types (8,306), and have the highest average "positive" clemency rate (32 percent).

As interesting as character-clemency studies may be, "a substantial amount of work done from a variety of research traditions concludes that the president is frequently confined by environmental constraints, profoundly limiting his latitude to make a difference as an individual" (Edwards, Kessel and Rockman 1993, 7). Indeed, Ruckman (1997) provides an extensive review of the clemency literature and discussion of federal clemency data which notes the importance of a distinct set of political and administrative factors which - in addition to individual characteristics of presidents - influence an administration's overall clemency "policy" (or general level of leniency). In the clemency policy environment, political factors include public opinion, foreign policy concerns, the social status of petitioners and their supporters, and the outbreak of war (1997, 259). Clark (1984) agrees the pardon process "is never totally immune from political winds" (2879). Warren Harding supported amnesty for political prisoners in his campaign for the presidency, but there is little doubt three hundred thousand signatures and seven hundred organizational endorsements encouraged his simultaneous release of Eugene Debs and twenty-three others (Adler 1989). Lyndon Johnson, on the other hand, received so much criticism for his clemency actions, he reduced pardons and commutations significantly in 1968 (Clark 1984; Krajick 1979). Foreign policy considerations and the out-break of war can affect clemency policy (Ruckman 1997, 259). George Washington, for example, signed the first pardon issued to a non-US citizen, and gave no specific reason for the action other than "sentiments of respect" for the Republic of Geneva. Jimmy Carter viewed the opinion of the "international community" a factor more critical than lack of remorse in an individual who attempted to assassinate President Truman, and in three others who sprayed bullets throughout the House of Representatives. Carter, in explaining the commutations, cited pressure from Puerto Ricans in and outside the United States and pressure from Third World countries (Clark 1984). Humbert suggests wars "have perhaps occasioned the most distinctive increases and decreases in the use of the pardoning power" (1941, 122).

Ruckman also categorizes a set of influences on clemency policy as administrative in nature (1997, 259-60). The Office of the Pardon Attorney is a central actor in the clemency process, but its decision making is affected by structural developments in the legal system, procedural

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4 Ruckman employs Barber (1992) for the categorization of each president, although Barber considers his own categorization of Carter tentative in nature, "pending intimate revelations yet to come" (447). Ruckman's categorizations for T. Roosevelt and McKinley are obtained from Maranell (1970) and Pederson (1977).

5 Judith Bartnoff (former associate deputy attorney general) agrees "clemency is unavoidably in some ways a political act." John Stanish (former U.S. Pardon Attorney) generally agrees, but holds it is unfair to say that all notorious cases are the result of publicity or 'political' influence (Krajick 1979, 52). A plausible combination of legal and 'political' influences is expressed rather well by Edward Hammock (former chairman of the New York State Board of Parole) who hypothesizes, "it's not the individual case [the governor] is looking at. He picks from that pool of eligible individuals on the basis of a political statement he wants to make" (Krajick 1979, 50).

6 Warrant signed April 5, 1793.

7 created by an Act of Congress (26 Stat. 946), March 3, 1891, in order to prepare cases for the president to consider. The Office, in effect, receives and reviews all applications for clemency and manages the paper flow throughout the remaining stages of the process: investigation, preparation, consideration and action, and notification. Investigations include a detailed background analysis by the Federal Bureau of Investigation, consultation with relevant parties (including sentencing judges, the prosecuting attorney, probation personnel, employers and friends) and an examination of all pertinent documents and records. The pardon attorney's recommendation is then made to the president via the deputy attorney general and White House counsel (Clark 1983; Ruckman forthcoming).
modifications and changes in administration. Major reforms in the federal system have provided alternative release mechanisms which have transformed the role of the Office. In 1910, for example, the Federal Parole Act was enacted into law. The first Federal Probation Act followed fifteen years later in 1925. Scholars routinely note acts of clemency were more necessary before the federal system's institutionalization of mechanisms which provide alternative forms of release (see, for example, Goldfarb and Singer 1973, 319; Moore 1989, 61; Stoke 1927; Survey 1939; 296-300).

More narrowly, the work of the Pardon Attorney is affected by factors idiosyncratic to particular administrations including: changes in personnel, specific policies, and perceptions of the administration held by potential petitioners. The commonly noted pattern of an increase in clemency activity as an administration ages is undoubtedly due (in part) to an adjustment period for members of the incoming Justice Department (Humbert 1941, 123; Ruckman 1994; 1997; Ruckman and Kincaid, forthcoming). Clark (1984) notes, however, that the Reagan Justice Department "tightened" the rules in May of 1983, "by increasing the time that pardon applicants must wait to become eligible after completing a prison term, or after a conviction in cases where the sentence did not involve prison." Applicants were required to wait five years for lesser crimes and seven years for serious crimes ("the longest period ever") and the department "expanded list of crimes considered serious enough to require the longer waiting period" (2878). Reagan granted fewer pardons and commutations than any president in twentieth century president before him.

Ruckman encourages the development of multivariate models of clemency policy which, at a minimum, would provide a more rigorous test of the character-clemency hypothesis (1997, 265). Ruckman's contrast between private-personal factors and political and administrative factors also mirrors a major theoretical divide in presidential studies. President-centered models of presidential behavior "suggest [that] the personal attributes of presidents, which may vary from president to president, better explain presidential behavior. In contrast, presidency-centered theories of behavior [emphasize] the impact of the institution and the environment surrounding the president" (Cohen and Krause 1997). Tests of president-centered and presidency-centered hypotheses are also quite appropriate in Ruckman's clemency data. Light (1993) observes that besides being "one of the most important products of the presidency," policy is a useful "baseline against which to assess competing explanations of presidential behavior" (161-2). For "whether policy is narrowly defined as legislative requests clears by the Office of Management and Budget as in accord with the president's philosophy or more broadly interpreted as other executive maneuvers, invasions, orders, and associated exercise of presidential power," policy is one of the most stable "products" for purposes of "studying different presidents in different eras" (161).

Data

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8 36 Stat 819-21.
9 43 Stat 1259.
10 The waiting period was changed back to five years for all offense in October 1993, by President Clinton (personal correspondence with the Office of the Pardon Attorney, 1993).
11 Interestingly, the Office of the Pardon Attorney has also noted prison populations react to the varying practices of particular administrations (Goldfärb and Singer 1973, 337). George Bush issued even fewer pardons and commutations than Reagan, and the number of yearly requests continued to generally decline throughout his administration. The election of Bill Clinton appears to have raised expectations however. Yearly requests increased significantly in 1993. The 808 requests received by the Clinton administration in fiscal year 1994 were the highest number received by the Office since 1967.
In order to investigate the levels of leniency in clemency policy, I have obtained data from the Office of the Pardon Attorney, U.S. Department of Justice. The data consist of 41,879 clemency requests in the administrations of eleven presidents, from 1934 to 1994. The data include the number of clemency requests per fiscal year as well as the number of pardons, commutations and remissions granted, the number of requests denied, and the number of requests pending.

A casual review of the data immediately alerts one to the fact that presidents exercise clemency with much greater frequency than the average citizen might assume. Few would guess, for example, that the pardon of Richard Nixon was but one of 409 clemency actions by the Ford administration (including 382 pardons and 27 commutations of sentence). Similarly, few are probably aware that the Reagan administration issued 406 clemency warrants (including 393 pardons and 13 commutations). Further calculations indicate the clemency policies of the eleven presidents in this study have resulted in over 11,000 acts of clemency (including 9,419 pardons, 1,122 commutations and 493 remissions of fines). Presidents have, in fact, averaged over one hundred and eighty acts of clemency per year, in the sixty-one-year period.

While the failure to act can itself possibly be viewed as a reflection of a political actor's attitude or stance toward an issue, or an administration's attitude toward the implementation of a policy, there are at least six major reasons why such an approach is less informative - if not entirely inappropriate - in this context. First, some of the clemency applications in the data which received "no action" are the direct result of petitioners being placed on parole. Parole placement is not a function of executive clemency. Additional cases received "no action" because the prison term of the applicant expired. A third class of "no action" cases were the simple result of premature application. Likewise, "no action" was taken when applicants lost contact with the Office of the Pardon Attorney and/or failed to provide additional information required for a successful petition. Finally, no further action is required on applications when a petitioner dies (Ruckman 1995).

The varied and substantial number of explanations for lack of action on clemency requests, and a general desire to judge administrations on the basis of action (contra inaction), have encouraged Clark (1984) and Ruckman (1995; 1997), to examine clemency data in terms of the population of requests for which some action was taken. Actions are thus routinely categorized as being either "positive" (those granting some form of clemency) or "negative" (those involving explicit denial or 'closing' of an application) and the percentage of the total actions per fiscal year which were "positive" are calculated. This transformation results in an overall measure of leniency in an administration's clemency policy. Figure 1 presents these data from 1934-1994.

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12 The Office of the Pardon Attorney currently works from a data set that extends as far back as 1900. In the period 1900 to 1933, however, the data are aggregated for fiscal year units in which more than one president served (1901, 1908, 1912, 1920, 1923, 1928, and 1933). The Annual Reports of the Attorney General allow one to disaggregate the data for clemency actions in these years, but it is presently impossible to determine the appropriate number of requests that would be associated with presidents in each new unit.

13 The fiscal year period covers July 1 to June 30 through June 30, 1976. July 1, 1976, through September 30, 1976, was a transition quarter. Thereafter the fiscal year covers the period October 1 through September 30.

14 The data do not include clemency actions on draft resisters, or military deserters and absentees during the Vietnam era.

15 Franklin D. Roosevelt (1934-1945) issued the largest number of pardons (2,721), commutations (491) and remissions (475).

16 The administration of Franklin D. Roosevelt (covering portions of twelve fiscal years in the data) is distinguished by granting, on average, the highest number of clemency requests per fiscal year unit (307). The Truman administration (covering portions of nine fiscal years) is second in this category (227).
Breaks occur in the time-series when multiple presidents served in the same fiscal year unit.\(^\text{17}\) A break does not appear in fiscal year 1969, however, as the last six months of the administration of Lyndon Johnson (1969) and the first six months of Richard Nixon's administration (1969) resulted in no grants of clemency. It should also be noted that President Clinton granted no requests for clemency in fiscal years 1993 and 1994. The data reveal the eleven presidents, on average, granted clemency in 25 percent of actions taken per fiscal year unit. The most lenient period in the data appears to be the last six months of the Eisenhower administration (1961). Eisenhower's "positive" clemency rate in this period was a full 59 percent. The highest levels of leniency for complete fiscal years appear in the administration of Harry S. Truman (55 percent in 1950, 48 percent in 1952, and 47 percent in 1951). The lowest "positive" clemency rate for a fiscal year unit is '0' and the mark is shared by four presidents. Johnson and Nixon granted no clemency in fiscal year 1969. The final months of Nixon's presidency (fiscal year 1975) were also marked by a complete halt in clemency activity. George Bush and Bill Clinton, however, are the only presidents in the data to issue no clemency warrants in a complete fiscal year unit. Bush granted no requests in either fiscal year 1990 or 1992. President Clinton granted no requests in fiscal year 1994. The administrations of Harry Truman (1946-1953), John F. Kennedy (1961-1964) and Gerald Ford (1975-1977) are notable for general leniency, each having an average "positive" clemency rate of at least 35 percent. The administrations of Ronald Reagan (1981-1989), George Bush (1989-1993) and Bill Clinton (1993-1994) are notable as the least lenient administrations in the data, each having an average "positive" decision rate of less than 15 percent. It quite evident from Figure 1 that there are short-term trends in "positive" clemency rates, but there is also an apparent overall decline in levels of leniency.

**Independent Variables**

In order to revisit the presidential character hypothesis in a multivariate context, the models below employ nine substantive variables and one control variable. While each of the variables was chosen on the basis of considerations in the extant clemency literature, the models were also designed with an interest in exploring president-centered and presidency-centered hypotheses. Admittedly, not all of the variables employed fit perfectly into one perspective or the other. The models do however represent the first multivariate tests of individual hypotheses. The categories of independent variables are based upon Ruckman (1997): Characteristics of the President, Administrative Factors, and Political factors.

*Characteristics of the President* \(^\text{18}\)

\(^\text{17}\) Fifty-one of the 71 fiscal year units in the data represent lengths of time equivalent to a full calendar year (see note 5 above). In seven instances, more than one president served in the fiscal year unit as a result of the election of a new president (1953, 1961, 1969, 1977, 1981, 1989, 1993). In three additional instances, multiple presidents served in the fiscal year unit as a result of presidential death or resignation (1945, 1964, and 1975).

\(^\text{18}\) In preliminary tests, estimations of the model included separate tests of dummy variables representing each of the eleven presidents. Ten of the eleven dummy variables representing presidents failed to attain statistical significance at the .05 level. The coefficient for the Clinton administration was statistically significant at the .05 level, but represents a short space of time (two fiscal year units) prior to the administration's first use of the clemency power. Furthermore,
First, a variable is included in each model which represents Barber's classification of presidential character. Consistent with the findings of Pederson (1977) and Ruckman (1995), the model hypothesizes active-positive presidents will be more lenient (and therefore associated with higher "positive" clemency rates). It is also expected, more generally, that active presidents will be associated with higher positive clemency rates than negative presidents.\(^{19}\)

A second variable revisits the relationship between the partisan identification of the president and leniency in clemency. The recent rhetorical emphasis of the Republican party on 'law and order' and getting 'tough' on crime, in combination with the Democratic party's emphasis on due process and civil rights, encourage the hypothesis that Republican presidents should be less generous with the clemency power and, therefore, associated with a reduction in "positive" clemency rates (Clark 1984). Indeed, in a frequency analysis of clemency from 1900-1993, Ruckman (1997) notes an average difference of ten percentage points between the "positive" clemency rates of Republican and Democratic administrations per fiscal year unit.

While correlations between policy and social background characteristics might also support the president-centered perspective, marked recruitment patterns leave little to distinguish between the individuals who have served as president. Each has been white and male. Each has typically been born in a relatively prosperous family, and can trace his ancestry to the British Isles. Presidents have also generally been members of high-status Protestant denominations and have received their education at prestigious private institutions (Watson and Thomas 1988, 133; Thomas and Pika 1997, 152-159). In terms of qualifications, or previous experience, most presidents served a long apprenticeship in public office before reaching the presidency. Approximately two-thirds have served in either the House or the Senate, or both (Watson and Thomas 1988, 119; Thomas and Pika 1997, 158). In most instances where social backgrounds and/or experiences do vary among presidents, the variations are slight and there is little theoretical cause to expect an accompanying variation in clemency policy. There are, however, two types of background experiences which might be relevant to clemency decision making: gubernatorial experience and experience as an attorney.

Governors play a central and, in most instances, critical role in state clemency decisions.\(^{20}\) Unlike the president, a governor is not "remote" from the scene of crimes and more often must make clemency decisions "amid intense feelings" (Humbert 1941, 5; see also Abramowitz and Paget 1964: 172-5; Kobil 1991: 606-11; Scott 1952: 98). Clemency decisions are, moreover, a "significant factor" in the political lives of governors (Kobil 1991: 607) and any decision(s) in the 'wrong' direction, can mean "political suicide" (Bedau 1990: 268; see also Kobil 1991: 607-8; Krajick 1979). The models thus contain a variable controlling for the effects of gubernatorial experience and predicts individuals with such experience will approach clemency decisions with reticence resulting in a decrease in the "positive" clemency rate.

On the other hand, experience as an attorney might well be associated with an increase in a...
president's clemency activity. Watson and Thomas note many people enter law because they consider it a "natural preparation" for public life (1988, 131). Indeed, twenty-five of our nation's first forty-one chief executives practiced law at some time in their lives (Thomas and Pika 1997). Individuals with legal experience are less likely to be baffled, or intimidated, by the technical nature of criminal law, the clemency process, or the host of legal considerations present in individual cases. In contrast to the non-lawyer, practicing lawyers enter the presidency with an understanding of legal processes and skills which are the direct result of the training and practice.

"Political" Factors

The current literature lends itself to few hypotheses related to "political" factors which can be tested at the aggregate level. The first variable in this category will control for those years in which the nation is at war. The following years are coded '1' to denote the presence of this factor: 1939 to 1945; 1950 to 1953; 1965 to 1973. Consistent with Humbert's analysis, there is an expectation that war will contribute to an increase in "positive" clemency rates (1941: 122).

A second variable controls for fiscal years in which a presidential election occurs. The literature, again, gives little information that would guide one as to the expected direction of an hypothesized relationship (Ruckman, 1994). The model will simply test whether clemency practices are sensitive to the occurrence of presidential elections. A third variable, however, distinguishes between elections before and after the "law and order" campaigns of Richard Nixon. Issues related to crime have been a prominent feature of elections since 1968, and the model will hypothesize "positive" clemency rates decreased as a result of this significant change in the landscape of campaign issues (Adler 1989; Bedau 1990; Ruckman 1997).

A fourth and final variable controls for the crisis in the presidency which eventually resulted in the resignation of Richard Nixon. Although 207 pardon and 49 commutation petitions were "pending" at the beginning of fiscal year 1975, the Justice Department received no new petitions and processed no acts of clemency in the short period of time Nixon remained in office. Complete inaction by the Justice Department on both fronts appears in no other fiscal year unit in the data. A variable controls for the observed negative effects of the "crisis."

Administrative Considerations

Three variables control for factors which are administrative in character, two represent major policy interventions. Humbert notes "the periodic shifting of administrative personnel also contributes to the increases and decreases in the use of the pardoning power" (1941: 123). Indeed, there is little reason to believe administrations will enter office with clemency policy as a top priority and, again, it is reasonable to assume incoming members of the Department of Justice will require a period of adjustment. Noting "positive" clemency action presupposes familiarity with both the process and individual cases, Ruckman (1997) finds presidents typically appear to become more lenient as the term progresses (see also Ruckman 1994; Ruckman and Kincaid, forthcoming). An increase in tenure of office should be associated with an increase in "positive" clemency decisions.

Finally, two variables control for major policy changes which occurred in the time period covered by the data. The first tests the intervention effect of a policy change which took place in the Office of the Pardon Attorney during the Kennedy administration. Prior to 1962, the Office sent only those petitions to the president which, in the opinion of the Pardon Attorney, deserved "positive" action and those petitions involving the death penalty. Beginning in 1963, however, the
Office began also sending petitions to the president for which it recommended denial (28 C.F.R. '1.3). While it is somewhat difficult to hypothesize with respect to the impact of this change in procedure, the more lenient presidents should be affected the most. Such presidents are now given the opportunity to suggest review, or make additional positive recommendations from the negative recommendation pool. On the other hand, the procedural change merely affords the less lenient president (who could already deny applications from the positive recommendation pool) to view the specific reasons for denial of petitions he would might otherwise deny.

A second variable tests the effect of the Reagan administration's 1983 increase in the waiting period for pardon applicants. Clark (1984) notes the Reagan Justice Department "tightened" the rules "by increasing the time that pardon applicants must wait to become eligible after completing a prison term, or after a conviction in cases where the sentence did not involve prison." Applicants were required to wait five years for lesser crimes and seven years for serious crimes ("the longest period ever") and the department "expanded list of crimes considered serious enough to require the longer waiting period" (2878). A step function is utilized to test the hypothesis that each of these major changes in policy resulted in a decrease in "positive" clemency rates.

The complete model thus employed is as follows:

\[ Y_t = \% \text{ of } '\text{positive}' \text{ clemency actions per fiscal year unit, 1900-1993} \]
\[ \beta_1 = \text{an } '\text{active-positive}' \text{ president (1=active positive, 0=other)} \]
\[ \beta_2 = \text{partisan identification of the president (1=Dem, 0=Rep)} \]
\[ \beta_3 = \text{president with previous experience as lawyer (1=yes, 0=no)} \]
\[ \beta_4 = \text{president with previous experience as governor (1=yes, 0=no)} \]
\[ \beta_5 = \text{election year (1=yes, 0=no)} \]
\[ \beta_6 = \text{war year (1=yes, 0=no)} \]
\[ \omega_1 = \text{intervention, 1968 law/order campaign (0=pre 1968, 1=1968 post)} \]
\[ \beta_7 = \text{control for Nixon crises (1=1975, 0=other)} \]
\[ \omega_2 = \text{intervention, 1962 policy (0=before 1962, 1=1962 and after)} \]
\[ \omega_3 = \text{intervention, 1983 policy (0=before 1984, 1=1984 and after)} \]
\[ \beta_8 = \text{counter, fiscal year units covered by each administration} \]

Analysis and Discussion

In order to test each of the hypotheses in a multivariate context, I have employed Box-Jenkins, or ARIMA (AutoRegressive Integrated Moving Average) techniques. ARIMA models are particularly appropriate for this type of analysis since they account for components or "causes" of the variation in a time series that depend on time (including drifts, trend, and seasonal change). The removal of these stochastic processes allows one to appropriately assess the hypothesized impact of the independent variables on the series. The Box-Jenkins model is typically denoted as:

\[ Y_t = f(I_t) = N_t \]

where the dependent time series (\( Y_t \)) is the result of the deterministic component or intervention(s)

\[ \text{21 The waiting period was changed back to five years for all offense in October 1993, by President Clinton (personal correspondence with the Office of the Pardon Attorney, 1993).} \]
(I) and the stochastic noise component (Nt). The initial "identification" of a time series model includes specification of the order of differencing necessary to produce stationarity, estimation of the order of autoregressive effects, and estimation of the order of moving average effects that influence the series.22

A casual glance at Figure 1 indicates the series is nonstationary. A 'dampening' effect in the autocorrelations and 'truncation' of the partial autocorrelations was noted and the probabilities associated with Box-Ljung Q (or modified Box-Pierce) statistics indicated a significant level of autocorrelation in the series. After differencing, the autocorrelation functions and partial autocorrelation functions were, again, characterized by a truncation effect, suggesting the appropriateness of an Integrated Moving Average, or (0,1,1) model.23 As the residuals of the tentative model were independent at the first and second lag and Box-Ljung Q statistics were non-significant, the results of the (0,1,1,) transformation indicated the residual distribution properly characterized as "white noise." 24

Table 1 presents the results of two (0,1,1) models. Clemency policy is clearly affected - to some degree - by personal, political and administrative factors. However, the models generally support the view that leniency in clemency policy is best understood from the standpoint of presidency-centered explanations of presidential behavior. The first major finding of the models concerns the impact of variables representing Barber's classification of presidential character. The coefficient representing active-positive presidents [β1 in Model 1] suggests presidential character sheds little light on the dynamics of clemency policy. Again, the model represents the first multivariate test of the hypothesis. In an additional analysis, a variable representing all active presidents was tested in Model 1. The estimate for the second variable also failed to attain statistical significance.

On the other hand, the coefficients in Model 1 which represent more specific social background characteristics and experiences of the president (previous experience as a lawyer [β3] and governor [β4]) are in the expected direction and statistically significant. Previous experience as a lawyer is associated with a 14 percent increase in the "positive" clemency rate (significant at .001) while previous experience as a governor is associated with a 10 percent decrease in the "positive" clemency rate (significant at .05). The model suggests future clemency models might benefit more from a focus on specific background characteristics and life experiences of the president which might affect his view of clemency and the clemency process.

The president-centered hypotheses in Table lead to a second major finding. Partisan identification is often a strong predictor of political behavior (e.g. vote choice, congressional voting, judicial decision making) and the literature on clemency routinely suggests Republican presidents are less lenient that Democratic presidents (see discussion above). The coefficient for the variable

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22 More specifically, one must properly determine three parameters (p, d, q) that describe the appropriate noise model. The p parameter indicates the number of autoregressive (AR) parameters necessary to fit the time series, d the number of times the series must be differenced or "integrated" (I), and q the number of moving average parameters (MA) required to fit the time series, i.e., to turn it into "white noise."

23 This is the most common method of transformation. Each value in the series is replaced by the difference between that value and the preceding value. The estimated moving average parameter for the series (e=.734910) is statistically significant (T-Ratio=9.1277, Approx Prob=.0000000) and lies within the bounds of stationarity and invertibility.

24 A "white noise" time series is one that exhibits both mean and variance stationarity. Mean stationarity requires that the individual time series points not be statistically significantly different from the mean of the time series. Variance stationarity is homoscedasticity, the failure of the variance to differ to a statistically significant degree across the various ranges of the time series.
representing the partisan identification of the president ($\beta_2$) in Model 1 fails however to attain statistical significance. It is possible that the coefficient for the step function representing fiscal years after 1967 ($\omega_0$ in Model 1) may shed substantive light on why there is no significant difference between levels of leniency for Democratic and Republican administrations. The "law and order" campaign of 1968 and subsequent salience of issues related to crime in presidential campaigns have had a dramatic effect on clemency policy. The period from 1968 to 1994 is associated with a 33 percent drop in "positive" rates (significant at .001). The rhetoric of presidential campaigns and concerns of the electorate have, evidently, placed parameters on the clemency decisions of administrations, regardless of the character classification or party identification of the president.

Results for the two remaining substantive "political" variables are mixed. The pulse function $\alpha_5$ indicates fiscal years in which an election takes place are associated with a 3 percent increase in "positive" clemency rates. The relationship fails to attain statistical significance however. The pulse function $\beta_6$ indicates (unexpectedly) fiscal years in which the nation is at war are associated with an 11 percent decrease in "positive" clemency rates. It is possible that the unexpected negative effect of war may reflect the president's preoccupation with other matters, or suggest an important separation between clemency policy which is domestic in focus and impact and clemency decisions which are related to broader, international policy goals. The relationship between war and clemency should certainly be explored in future analyses.

Both of the step functions representing major policy changes ($\omega_2$ and $\omega_3$ in Model 1) are significant at the .05 level. The 1962 policy is associated with an 18 percent increase in "positive" clemency rates while the 1983 policy is associated with a 17 percent decrease in "positive" clemency rates. Each coefficient is in the expected direction. Finally, the estimate for 'counter' variable representing the fiscal year unit of the administration ($\beta_8$) is in the expected direction and its value indicates increases in "positive" clemency ratios are, in fact, associated with an increase of tenure in office. The average "positive" clemency rate for administrations in the first fiscal year unit is 17 percent. In second and third fiscal year units, administrations have average "positive" rates of 20 and 27 percent. The average for the last fiscal year unit of each administration (excluding the Clinton administration) is 32 percent. When controlling for the effects of other variables in the model, an increase of one fiscal year unit is associated with a 3 percentage point increase in the "positive" clemency rate (statistically significant at .001).

A examination of the regressor correlation matrix revealed the "active-positive" variable was highly correlated with the party identification variable. The control for presidential elections was, of course, also highly correlated with the counter for the fiscal year. As the "active-positive" and election year variables did not attain statistical significance, they were removed in a second analysis (Model 2). A glance at each model reveals little difference between the two. The estimate for the governor variable (associated with a 12 percentage point decrease in "positive" clemency rates) is now significant at the .01 level. The coefficient for party identification (1.6583) is now in the predicted direction, but again fails to attain statistical significance.

Discussion and Conclusion

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25 Two other variables representing policy changes (which were not clearly "major") were also tested. Goldfarb and Singer (1973) note petitioners who were pardoned for previous federal offenses have not been allowed a "second helping" since 1949. In August of 1956, the Attorney General decided the president had no legal power to issue a pardon posthumously. Step functions were entered for each variable. Neither coefficient attained statistical significance.
While there is a sizeable literature which addresses the topic of clemency, there is precious little systematic analysis of the clemency policies of our nation's presidents. Current discussions of clemency policy typically rely upon broad, untested generalizations about the exercise of clemency, or note moderate relationships while utilizing uncontrolled frequency analysis. Discussions of clemency also generally fail to address leading theories of presidential behavior. This study however provides tests of multivariate models of clemency policy in the context of president-centered and presidency-centered hypotheses.

Hargrove (1993) notes a "task" of presidential scholarship is to "integrate the study of individuals with the social and institutional forces that move them and that they, in turn, may influence" (70). The findings in this study certainly reaffirm Ruckman's suggestion that clemency policy is affected by a wide range of factors (personal, political and administrative), but the models above also suggest presidency-centered explanations are especially appropriate for understanding variations in levels of leniency in clemency policy. In the models above, variables representing characteristics of the president most clearly reflect the president-centered perspective. This perspective is also a feature of two frequency analyses of clemency (Pederson 1977; Ruckman 1995). The multivariate analyses provided here, however, do not support the view that presidential character (as operationalized by Barber) has an impact on clemency policy. Active-positive presidents are not more likely to be lenient with clemency. Active presidents are also indistinguishable from their counterparts. Likewise, the partisan identification of the president appears to matter little when explaining trends in positive clemency rates. Even separate controls for individual presidents and pardon attorneys were unsuccessful (see notes 18 and 26) in the models.

At best, the models employed here offer support for the view that future analyses should explore more specific background characteristics and experiences of individual presidents which might have an impact on clemency policy. The trick, of course, will be to find significant variation among presidents and to develop plausible theories of associated behavior. The marked patterns of recruitment in the presidency and the anecdotal, non-theoretical nature of the extant clemency literature will indeed make these tasks quite difficult.

The models presented above do provide more convincing support for presidency-centered explanations of leniency in clemency policy. While election years have no impact per se, executive clemency is clearly affected by administrative turnover. The accumulation of experience in office provides knowledge of the technicalities of the clemency process and characteristics of individual cases. Such knowledge is a prerequisite to positive action (or leniency), especially in a political environment where law and order are a major feature of campaigns and a concern of the electorate. The appearance of being "too soft" on crime can attract criticism and harm one's chances for re-election. Lyndon Johnson met criticism by becoming much less lenient in his clemency decision making. Gerald Ford, on the other hand, issued one of the most famous acts of clemency in history in the face of criticism. Famous individual acts of clemency notwithstanding, the models presented here suggest more recent presidents are taking cues from the political environment and have generally learned to be less lenient with clemency. Changes in rules and procedure that stretch across administrations also have an impact on overall trends in leniency.

The models (and variables) provided here certainly do not exhaust the avenues of research. Nor are they offered as a definitive (much less the last) word on the president-centered and presidency-centered perspectives. This study explores one area of presidential activity and there is every reason to suspect analyses of other areas of presidential behavior might yield different results. President-centered and presidency-centered models might also be sensitive to the time period under examination (Cohen and Krause 1997). In addition, the multivariate models above do not provide
significant insight into the decision making process in specific acts of clemency. Individual level data on clemency petitions (and requests) are clearly needed in order to provide a rich analysis which could result in such insights.

The models do provide significant evidence of important, broad influences on the overall trends in clemency policy outputs. For this reason, it is hoped that this study will encourage further empirical research on the generally ignored clemency power and perhaps lead toward a more general theory of clemency policy. Indeed, the discussion above suggests the need to explore the possible effects of presidential approval ratings, or crime rates, upon federal clemency policy. Likewise, the significant effects of specific policy changes in the models above suggests the need to further explore the impact of such changes on the outputs of the Office of the Pardon Attorney. In sum, the models provide a solid base upon which future models of clemency policy can be built.

Clemency is, of course, a critical part of the system of checks and balances in our governmental framework and clemency decisions have been directly related to (if not the central feature of) some of the most controversial political events in our nation's history. It is somewhat remarkable that scholars have provided so little systematic research in this area, given the existence of clemency powers in national legislature and in the fifty states. The inattention of social scientists is all the more remarkable given the wealth of research on the various failures, abuses and malfunctions of the criminal justice system - problems which the clemency power can potentially counteract or minimize.

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26 Separate tests of dummy variables representing the tenure of the ten individuals that served as Pardon Attorney were conducted (James A. Finch [1934-1935], Robert H. Turner [1936], Daniel M. Lyons [1937-1953], Kenneth V. Harvey [1954-1955, 1957], Reed Cozart [1956, 1958-1968], T. Oscar Smith [1969], Lawrence M. Traylor [1970-1976], John R. Stanish [1977-1979], David C. Stephenson [1980-1990], and Margaret Colgate Love [1991-1994]). Although two of the ten dummy variables (those representing Smith and Stephenson) were significant at .05, in each case the standard errors in each model were untrustworthy and close to the bounds of invertibility. Smith, furthermore, only served in the period already controlled for in the model by the Nixon Crisis variable.
### Table 1

**Box Jenkins Model of Executive Clemency Grant Ratios (1934 - 1994)**

<table>
<thead>
<tr>
<th>Predictors</th>
<th>Model 1</th>
<th></th>
<th></th>
<th>Model 2</th>
<th></th>
<th></th>
</tr>
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<tbody>
<tr>
<td></td>
<td>Estimate</td>
<td>T-Ratio</td>
<td></td>
<td>Estimate</td>
<td>T-Ratio</td>
<td></td>
</tr>
<tr>
<td><strong>Characteristics of President</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td>&quot;Active-Positive&quot;</td>
<td>β₁</td>
<td>1.9973</td>
<td>.4719</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<tr>
<td>Party of President</td>
<td>β₂</td>
<td>-.1033</td>
<td>-.0225</td>
<td>1.6583</td>
<td>.4783</td>
<td></td>
</tr>
<tr>
<td>Former Lawyer</td>
<td>β₃</td>
<td>14.1463</td>
<td>3.6977 ***</td>
<td>14.6510</td>
<td>3.9484 ***</td>
<td></td>
</tr>
<tr>
<td>Former Governor</td>
<td>β₄</td>
<td>-10.0941</td>
<td>-2.2444 *</td>
<td>-12.0707</td>
<td>-2.9187 **</td>
<td></td>
</tr>
<tr>
<td><strong>&quot;Political&quot; Factors</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Election Year</td>
<td>β₅</td>
<td>2.9843</td>
<td>1.1112</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>War Years</td>
<td>β₆</td>
<td>-11.2344</td>
<td>-3.2260 **</td>
<td>-11.4744</td>
<td>-3.3894 **</td>
<td></td>
</tr>
<tr>
<td>Law/Order Issue</td>
<td>ω₁</td>
<td>-33.8703</td>
<td>-4.7411 ***</td>
<td>-34.0088</td>
<td>-4.6984 ***</td>
<td></td>
</tr>
<tr>
<td>Nixon Crises</td>
<td>β₇</td>
<td>-46.1644</td>
<td>-4.6607 ***</td>
<td>-48.8502</td>
<td>-5.2234 ***</td>
<td></td>
</tr>
<tr>
<td><strong>Administrative Factors</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1962 Policy Change</td>
<td>ω₂</td>
<td>18.3803</td>
<td>2.5673 *</td>
<td>17.5282</td>
<td>2.4036 *</td>
<td></td>
</tr>
<tr>
<td>1983 Policy Change</td>
<td>ω₃</td>
<td>-17.0851</td>
<td>-2.5497 *</td>
<td>-17.0589</td>
<td>-2.4792 *</td>
<td></td>
</tr>
<tr>
<td>FY of Admin.</td>
<td>β₈</td>
<td>3.0358</td>
<td>5.4531 ***</td>
<td>3.2772</td>
<td>6.4117 ***</td>
<td></td>
</tr>
<tr>
<td>Moving Average&lt;sup&gt;a&lt;/sup&gt;</td>
<td>θ₁</td>
<td>.7349</td>
<td>9.1277 ***</td>
<td>.7126</td>
<td>8.6597 ***</td>
<td></td>
</tr>
</tbody>
</table>

Type of Noise Structure (0,1,1)

<sup>a</sup> coefficient of è is within the invertibility-stationarity criteria

* significant at .05
** significant at .01
*** significant at .001
References


