

Presidential Character and Executive Clemency: A Re-Examination*

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Objective. Pederson (1977) examines the relationship between categorizations of character constructed for thirty-three of our nation's presidents and the exercise of executive clemency. He finds, among other things, that active presidents are more likely than passive presidents to utilize clemency powers and active-positive presidents represent the categorization of presidents most likely to exercise such powers. This study aims to provide a more direct test of the relationship between executive clemency policy and Barber's typology of presidential character. Methods. While Pederson employs a data set of 40 formal acts of amnesty, this study utilizes bivariate frequency analysis to examine the relationship between presidential personality and clemency policy in a data set comprising 19,899 grants of clemency made by seventeen presidents, from 1900 to 1993. Findings. The analysis shows active presidents account for 73 percent of the population of clemency warrants - including 76 percent of the pardons, 65 percent of the commutations and 78 percent of the remissions. Active-positive presidents, furthermore, show a willingness to utilize clemency in a more broad manner than their counterparts. Conclusion. The data thus provide evidence that presidential character is a critical factor in clemency policy which should not be ignored in substantive and/or statistical analyses.

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In an interesting 1977 study, William D. Pederson examines the relationship between psychological profiles of thirty-three presidents of the United States and executive clemency activity ("Amnesty and Presidential Behavior: A 'Barberian' Test," *Presidential Studies Quarterly*, 7: 175-85). Pederson's analysis is unique for several reasons, but is particularly so because it conducts an empirical test of the impact of presidential character and it examines an area of the presidency (clemency policy) which receives remarkably little attention in social science analyses.¹

Pederson places each of our nation's first thirty-three presidents in the four categories of character types explicated in James David Barber's now classic work, *The Presidential Character. Predicting Performance in the White House* (4th edition, 1992). Barber, of course, argues presidential personality is an important "shaper" of presidential behavior and is "patterned." A president's character, world view, and style fit together in a "dynamic package" which interacts with the "power situation" he faces and the national "climate of expectations" (4). The "core" of Barber's thesis, however, is presidential character "comes in four varieties" and the "most important" thing to know about presidents (or candidates) is where they fit among these types (4). The first "baseline" in categorizing character types is "*activity-passivity*," which focuses on how much energy an individual invests in the presidency. The second baseline is "*positive-negative affect*" and focuses on how individuals feel about what they do - do they seem to experience their political life as happy or sad, enjoyable or discouraging (8)? On these premises, Barber explicates a fourfold categorization of character types: active-positive, active-negative, passive-positive, and passive-negative (9-11).

As Barber's categorization scheme formally begins with the administration of William Howard Taft, Pederson's categorization process is necessarily facilitated by social psychological scaling methods employed in Gary M. Maranell's questionnaire study of nearly six hundred American historians ("The Evaluation of Presidents: An Expansion of the Schlesinger Polls," *Journal of American History*, 57: 104-13). Maranell employs dimensions of "activeness" and "flexibility" and Pederson juxtaposes Maranell's rankings to create a new fourfold typology.²

Noting "strong agreement" between the categorization schemes of Barber, the rankings of Maranell, and rankings in a study by Erwin C. Hargrove (*Presidential Leadership. Personality and Political Style*, 1966), Pederson then presents data comparing each "presidential type" with the "amnesty record" (Table 2, 179).

Pederson reports that while forty "formal" amnesties were granted, by executive order or public proclamation, roughly half of the thirty-three presidents in the study granted no amnesties. Eleven presidents granted one (179). Pederson reports, furthermore, only nine amnesties were issued by presidents in the twentieth century while thirty-one were issued by presidents in the nineteenth and late eighteenth centuries (179). Two presidents, in fact, granted nearly 40 percent of the total number (Abraham Lincoln and Andrew Johnson).

Despite the skew in the data, Pederson does not conclude amnesty "is not part of the American tradition," but instead suggests it is an American tradition that "depends on presidential character" (179). Pederson reports active presidents (both positive and negative) granted 90 percent of the amnesties and active-positive presidents granted a higher percentage of the population of amnesties (55 percent) than presidents in remaining categories (179).³ Expanding the analysis, Pederson also concludes active-positive presidents "seem to show more willingness to use their clemency power in broader ways" (180). Pederson, finally, submits "an additional effort" was made to "supplement" the formal record by "exploring less public presidential behavior toward the power of executive clemency" (177-9). While Pederson does not fully explain this effort, he reports that, "as far as can be determined," both the formal and informal behavior of presidents toward amnesty "seems consistent with each other" (179).

In this study, I provide an additional effort at verification of the central findings of Pederson's study. I have obtained data on executive clemency from the Office of the Pardon Attorney, U.S. Department of Justice.⁴ The data consist of 71,205 clemency requests in the administrations of seventeen presidents, from 1900 to 1993. 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.⁵ Finally, the data do not include clemency actions on draft resisters, or military deserters and absentees during the Vietnam era.

Below, I examine the relationship between clemency activity and the presidential typologies submitted by Barber, and amended by Pederson. The results indicate active and positive presidents account for a slightly higher proportion of 'positive' clemency activity and, on average, are also more likely to grant clemency in a higher proportion of requests for which some action is taken. Active-positive presidents, alone, account for a significant proportion of the population of 'positive' clemency actions in the ninety-four year period, and, on average, represent the category of presidents most likely to have a high rate of 'positive' clemency decisions.

Overview of the Data - Analysis

An examination of clemency data from 1900 to 1993, reveals presidents do indeed exercise clemency with much greater frequency than the average American might commonly assume. Gerald Ford's pardon of Richard Nixon created quite a stir, but few heard much about the 409 other clemency actions taken by Ford (382 pardons and 27 commutations). Similarly, the 406 clemency actions of the Reagan administration (393 pardons and 13 commutations) were virtually stealth. Further calculations reveal the clemency policies of the twentieth century's first seventeen presidents have resulted in close to twenty thousand acts of clemency (including 13,593 pardons, 5,223 commutations, and 1,083 remissions of fines).⁶ Presidents have, in fact, averaged over 200 acts of clemency per year.⁷

The data are particularly interesting from the standpoint of the percentage of *total requests* that result in 'positive' or 'negative' action taken by the president (the granting of some form of clemency or complete denial of the application), or no action whatsoever. On average, the seventeen administrations granted some form of clemency in 17 percent of the total number of applications per

fiscal year unit.⁸ The administration of William Howard Taft (covering portions of four fiscal year units) has the highest average percentage of 'positive' actions per fiscal year unit - 33 percent. The administration of George Bush (covering portions of five fiscal year units) has the lowest average - 2 percent.

While the average denial rate is 42 percent, the administrations of William McKinley, Theodore Roosevelt, Calvin Coolidge and Herbert Hoover denied, on average, more than sixty percent of the requests they received in each fiscal year unit. More recent presidents have, however, exhibited the tendency to take no action on clemency requests. John F. Kennedy, Lyndon Johnson, Jimmy Carter, Ronald Reagan, and George Bush typically took no action on 55 percent or more of the clemency requests received in each fiscal year unit.

While there is a distinct possibility that the failure to act on clemency applications might itself indirectly reflect the policy preferences of an administration, it is equally true that many applications receive no official action for reasons which are purely 'technical' in nature. The Office of the Pardon Attorney discontinues consideration of applications, for example, when petitioners are no longer living. Such applications are included in the "no action" category of the Pardon Attorney's statistics. In some instances, the lines of communication are interrupted, or broken, as a result of changes in address by petitioners. Other petitioner's fail to provide the Office with important information necessary for the successful processing of a petition in a timely fashion. Furthermore, a petitioner's request for clemency may become moot as the result of his/her release from confinement, or unnecessary as the result of procurement of an analogous desired result via the decision making of a separate actor (such as a parole board).

Multiple explanations for lack of action on clemency requests and a general desire to judge administrations on the basis of action (contra inaction) thus encourage the selection of a more informative approach utilized in a previous discussion by another author. As did Clark (1984), I have examined the data in terms of *the population of requests for which some action was taken*. Actions were categorized, again, as being either 'positive' (those granting some form of clemency) or

'negative' (those involving denial of the application). This perspective reveals the seventeen presidents, on average, granted clemency in 27 percent of the decisions made per fiscal year unit. William Howard Taft and Harry Truman are notable for an average 'positive' decision rate of at least 40 percent. Ronald Reagan and George Bush are notable as the only two presidents with an average 'positive' decision rate of less than 15 percent.

Table 1 presents summary data on the total number of pardons, commutations and remissions granted by each president. Column four presents the total 'positive' clemency actions taken by each administration (the sum of columns 1 through 3) whereas columns five and six present the overall term averages for the population of 'positive' and 'negative' actions in each fiscal year unit of an administration. This study provides a more direct test of the relationship between Barber's typology and clemency policy as the categorization of each president - with only two exceptions - is based upon his work (1992). Barber currently considers the positive dimension of his categorization of Jimmy Carter tentative in nature, "pending intimate revelations yet to come" (447), and does not categorize Theodore Roosevelt and William McKinley. The categorizations for the latter presidents are thus based upon Pederson's adaptation of the Maranell data (1977 at 178, see discussion above).

It is clear from the first four columns of Table 1 that executive clemency policy, from a more broad perspective, is (like amnesty) "based on presidential character" (Pederson 1977). Active presidents, alone, account for a significant portion of executive clemency activity. A full 73 percent of the population of 'positive' clemency actions have been taken

Table 1 - About Here

by active presidents including 76 percent of the pardons, 65 percent of the commutations and 78 percent of the remissions. The skew in the proportions of 'positive' actions is, furthermore, not simply an artifact of a higher number of presidents in the active category. The eleven active presidents have an average of 1,321 'positive' clemency actions while the six passive presidents have an average of 894 'positive' clemency actions. Active presidents include the category with the highest total number of 'positive' clemency decisions (8,306 -for active-positive presidents) and the

highest average number of 'positive' clemency decisions (1,557 - for the four active-negative presidents). Passive presidents include the category with the lowest total number of 'positive' clemency decisions (2,480 - for passive-negative presidents) and lowest average number of 'positive' decisions (721 - for the four passive-positive presidents).

Columns five and six, again, indicate the overall term averages for percentage of 'positive' clemency decisions (among those applications for which some action was taken) are slightly higher for presidents in the active category. Active presidents include the category of presidents with the highest average 'positive' clemency rate (32 percent, for active-positive presidents) while passive presidents include the category with the lowest average 'positive' clemency rate (24 percent, for the passive-negative presidents). Furthermore, the three highest 'positive' clemency rates (associated with the administrations of Jimmy Carter, Harry Truman and John F. Kennedy) appear among active presidents and six of the eight highest rates appear among such presidents (Jimmy Carter, Harry Truman, John F. Kennedy, Woodrow Wilson, Gerald Ford, and Lyndon Johnson).

The data in Table 1 also reveal executive clemency is sensitive to the positive / negative component of the Barber typology. Positive presidents account for 56 percent of the population of clemency warrants (including 60 percent of the pardons, 44 percent of the commutations and 63 percent of the remissions). The terms of active and passive presidents who are positive produce average 'positive' clemency rates of 32 percent and 31 percent respectively. The terms of active and passive presidents who are negative have average 'positive' clemency rates of 30 percent and 24 percent respectively. The four highest 'positive' clemency rates appear among the terms of positive presidents (Jimmy Carter, Harry Truman, John F. Kennedy, and William Howard Taft) and the terms of positive presidents account for eight of ten highest 'positive' clemency rates in column five (Warren Harding, Gerald Ford, William McKinley, and Franklin Roosevelt in addition to the four highest scores).

Finally, Pederson notes active-positive presidents "seem to show more willingness to use clemency power in a broader way" (Pederson 1977, 180). The data in Table 1, however, more

strongly support the generalization that active presidents use clemency powers in a broader way. While almost 70 percent of the population of clemency grants involve presidential pardons, active presidents have granted 65 percent of the total number of commutations and 78 percent of the remissions. Active-positive presidents account for the highest number of remissions granted (542, or 42 percent of the population), but are third in the highest percentage of commutations granted (1,092, or 21 percent of the population).⁹

Conclusion

Pederson concludes active-positive presidents "produce better clemency records than other types of president" (1977, 181). If "active" participation in the clemency process - as measured by the number of 'positive' clemency actions - is a sufficient condition for a "better" record, the data presented in this study strongly support Pederson's conclusion. The data also provide, in my view, a more rigorous and direct test of the relationship between executive clemency activity and Barber's typology of presidential character. Pederson's analysis utilized forty amnesty decisions issued across thirty-three administrations, but almost half of the presidents in the study were not specifically categorized (at the time) in Barber's work. Seventeen of the presidents, furthermore, granted no amnesties and ten additional presidents granted only one (1977, 179). This study, while covering only seventeen administrations, involves close to twenty thousand grants of clemency and an average of over one thousand acts of clemency per president. Fifteen of the seventeen presidents in this study are, furthermore, specifically covered by Barber's current analysis. As such, the findings in this study should be considered in combination with the theoretical and empirical readings found in *The Barberian Presidency* (1989, William D. Pederson, ed.).

While this study does provide further evidence that presidential character is a critical factor in the clemency process, there is little doubt more rigorous tests of the hypothesis are both desirable and possible. Thus, I stress that this research note does not argue that presidential character - as operationalized in this study - is the sole, or even 'primary' influence on clemency decision making.

Indeed, the voluminous general literature on clemency provides a wealth of evidence that clemency decision making can be affected by a host of legal, political, and personal factors (see, for example, Clark 1984; Humbert 1941; Ruckman, *n.d.*).

Multivariate, time-series models of executive clemency policy would provide an excellent outlet for tests of rival clemency hypotheses, but no such models exist in the literature to date (see note 1 above). Despite recent controversies surrounding clemency activity (e.g., Nixon's commutation of James R. Hoffa, Ford's pardon of Richard Nixon, Carter's Vietnam amnesties and commutation of the sentence of Patricia Hearst, the Iran-Contra affair) and the critical role clemency decisions have played in salient political events in the history of our nation (e.g., the Whiskey Rebellion, Fries Rebellion, the Alien-Sedition Acts, the presidential election of 1800, post-war Reconstruction), political scientists have yet to develop hypotheses - much less theories - with respect to clemency policy. The bivariate frequency analyses supplied by Pederson and this study are, from a social science standpoint, 'state of the art' analyses of executive clemency.

References

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Table 1

Comparison of Presidential Type with Clemency Activity: 1900 - 1993^a

Presidential Type	Pardons	Commutations	Remissions	Positive Actions	Term Averages:	
					<u>Positive</u>	<u>Negative</u>
Active Positive	6,672	1,092	542	8,306		
T. Roosevelt ^b	578	319	51	948	24%	76%
F. Roosevelt	2,721	491	475	3,687	28%	72%
Truman	1,911	120	13	2,044	42%	58%
Kennedy	472	100	3	575	39%	61%
Ford	382	27	0	409	35%	65%
Carter	534	32	0	566	22%	78%
Bush	74	3	0	77	5%	95%
Active Negative	3,649	2,277	303	6,229		
Wilson	995	1,403	152	2,550	37%	63%
Hoover	832	585	149	1,566	26%	74%
L. Johnson	959	227	1	1,187	25%	75%
Nixon	863	62	1	926	21%	79%

Passive Positive	1,549	1,194	141	2,884		
McKinley ^b	291	129	26	446	31%	69%
Taft	391	319	64	774	40%	60%
Harding	474	733	51	1,258	34%	66%
Reagan	393	13	0	406	13%	87%
Passive Negative	1,723	660	97	2,480		
Coolidge	613	613	97	1,323	21%	79%
Eisenhower	1,110	47	0	1,157	27%	73%

^a Source : Office of the Pardon Attorney, Department of Justice

^b Categorization based on Maranell (1970). All other categorizations based on Barber (1992).

1. See, generally, *The "Barberian" Presidency: Theoretical and Empirical Readings* (1989, William D. Pederson, ed.). My extensive review of the literature uncovered a mere four articles in social science journals related to executive clemency (including Pederson's). Each appears in *Presidential Studies Quarterly*.
2. Maranell's questionnaire (1970) examined "the approach taken by each president toward his administration, an active or a passive approach" and "an evaluation of the flexibility or inflexibility of the approach each president took in implementing his program or policies." William Henry Harrison and James A. Garfield were excluded since both served less than a year in office (Pederson 1977, 178).
3. Active-negatives granted 35 percent of the amnesties. Passive-positive presidents granted 7.5 percent and passive-negatives granted 2.5 percent (Table 2, 179).
4. The Office was created by an Act of Congress, March 3, 1891, in order to prepare cases for the president to consider.
5. 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 his/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 him/her immediately eligible for parole." The clemency power also embraces "*remissions* of fines and forfeitures" (575-8).
6. In the data, the administration of Warren Harding (covering portions of three fiscal years) is distinguished by granting, on average, the highest number of clemency warrants per fiscal year unit

(419). The Wilson administration (covering portions of eight fiscal years) has the second highest average (319).

7. The average number of requests per president is 4,189 (758 per year - 691 per fiscal year unit). If we factor in the number of requests pending from previous years, the average per president rises to 6,842 (1,238 per year - 1,129 per fiscal year unit).

8. The data contain a total of one hundred and three fiscal year units. Eighty-six of the units represent a period of time equivalent to a full calendar year. In twelve instances, however, more than one president served in the fiscal year as the result of the election of a new president (1953, 1961, 1969, 1977, 1981, and 1989). In six additional instances, multiple presidents served in the fiscal year unit as a result of presidential death or resignation (1954, 1964, and 1975).

9. The remaining distributions for the population of remissions are: active-negative (31 percent) passive-positive (14 percent) passive negative (12 percent). The remaining distributions for commutations are : active-negative (44 percent) passive-positive (23 percent) passive-negative (13 percent).