Policy as an Indicator of "Original Understanding": Executive Clemency in the Early Republic (1789-1817)

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Although the public documents, speeches, and private papers of the "Framers" of the Constitution and (more generally) the "Founding Fathers" are frequently referenced as authoritative sources of 'original' understandings of constitutional ideals and concepts, there are no systematic examinations of the 'original' understanding of clemency powers as exhibited in the policies of our nation's earliest administrations. This omission is particularly glaring given a conflicting portrait of clemency in precedential decisions of Supreme Court and the prominence of clemency in numerous salient political events throughout our nation's history. This study fills a critical gap by examining the specific practices, and overall clemency policies, of the administrations of George Washington, John Adams, Thomas Jefferson, and James Madison as detailed in the clemency warrants issued by each president. While shedding light on the 'original' understandings held by these individuals, the analysis of the data directly speaks to broad constitutional issues, and both classic and current controversies surrounding the practice of this important, but infrequently examined executive power.

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Clemency controversies are a prominent feature of the legal history of English peoples. The topic of presidential pardons prompted a prolonged and heated debate at the constitutional convention, and the clemency actions of our presidents have also been the focus of numerous classic Supreme Court cases.[1] Clemency decisions have, furthermore, been intimately connected with (if not the central feature of) some of the most salient political events in our nation's history including: the Whiskey Rebellion, Fries Rebellion, the *Alien-Sedition Acts*, the presidential election of 1801, the War Between the States and Reconstruction, the Vietnam conflict, the resignation of Richard Nixon, the 1976 presidential campaign, and the so-called Iran-Contra affair (Ruckman, forthcoming).

Clemency has also received its share of scholarly attention. Academic discussions of clemency typically trace its origin and transformation in common law, its brief consideration at the constitutional convention and subsequent development in classic Supreme Court decisions (see, for example, Adler 1989; Boudin 1976; Cowlishaw 1975; Duker 1977; Jorgensen 1993). Other discussions specifically focus on the exercise of executive clemency in particular areas of law, such as the death penalty (Abramowitz and Paget 1964; Bedau 1990; Kobil 1993; Ledewitz and Staples 1993; Radelet and Zsembik 1993), or address more political concerns in highly publicized, controversial cases (Adler 1989; Boudin 1976; Clark 1984; Krajick 1979; Jorgensen 1993; Orman and Rudoni 1979; Rozell 1994; Shichor and Ranish 1980; Smith 1989).

G. Sidney Buchanan's article "The Nature of a Pardon Under the United States *Constitution*" (*Ohio State Law Journal*, 39: 36-65) represents an interesting combination of historical and legal analysis. Professor Buchanan seeks to better understand conflicting views of clemency provided in an 1833 opinion by Chief Justice Marshall and a 1927 opinion by Justice Holmes. Buchanan describes the context of each description of the clemency power and proceeds to discuss five "policy considerations" which, in his opinion, "bear upon the question of which definition should be preferred in the context of our constitutional system" (36-7). The considerations are as follows: (1) fidelity to the text of the *Constitution* (2) fidelity to the historical bases for inclusion of the pardon power in the Constitution (3) fidelity to the structural implications of our constitutional system (4) the preservation of executive capacity to promote the public welfare and (5) the preservation of executive capacity to bestow mercy.

As a result of his analysis, Professor Buchanan maintains "strong preference" for the Holmes definition of a pardon (37; see also general comments at 49 and 65). The first and second considerations exaggerate, however, the conspicuous absence of information routinely sought in historical and legal analyses: original understanding. In fairness, Buchanan addresses the intent of the framers via records of the federal convention and related commentary by Hamilton in the *Federalist* (50-54). The discussion says nothing, however, of the actual exercise of clemency after debate and provision of the indisputably broad language of *Article II, Section 2*. While the omission of "original understanding" may not be fatal to Buchanan's discussion, it is nonetheless a critical component of the overall debate. The determination of the "original understanding" of

[1] See, for example, *Ex Parte Wells*, 59 U.S. (18 How), *Ex Parte Garland*, 71 U.S. (4 Wall) 333 (1866), *Armstrong's Foundry*, 73 U.S. (6 Wall) 766 (1867), *Armstrong v. United States*, 80 (13 Wall) 154 (1871), *United States v. Klein*, 80 U.S. (13 Wall 128 (1871), *Semmes v. United States*, 91 U.S. 21 (1875), Knote v. United States, 95 U.S. 149 (1877), *The Laura*, 114 U.S. 411 (1885), *Illinois Central Railroad v. Bosworth*, 133 U.S. 92 (1890), *Brown v. Walker*, 161 U.S. 591 (1896), *Burdick v. United States*, 236 U.,S. 79 (1915), *Ex Parte Grossman*, 267 U.S. 87 (1925), *Chapman v. Scott*, 10F.2d 156 (D. Conn. 1925), and *Schick v. Reed*, 419 U.S. 265 (1974).

constitutional provisions represents a commonplace starting point in analyses of constitutional provisions. Of course, some scholars view "original understanding" - to the extent that it can be determined - as the guiding standard and ultimate goal of constitutional analysis. Analyses of the "original understanding" of constitutional provisions are, however, rarely relegated to debate at the convention and the language of the *Constitution*. The application of constitutional provisions allows further (and, arguably, better) opportunity to understand the manner(s) in which those closest to the debates and the ratification process understood the language of the text.

In this study, I address two simple but hitherto unanswered questions : What "understanding" of the clemency power (if any) is evident in the clemency policies of our nation's first four presidents? If indeed any particular "understanding" is discernable, is it closer to the clemency power as conceptualized by Chief Justice Marshall or Justice Holmes?[2] In order to research this question, I have systematically examined the 358 individual clemency warrants issued by presidents from 1789-1817. As the methods of my examination are greatly influenced by Humbert's 1941 classic work, *The Pardoning Power of the President*, I present summary data on clemency statements and substantive analysis of policies in each administration. The later analysis focuses on violations addressed in clemency warrants and the justifications which are provided for the extension of clemency. I believe an "understanding" of the *Constitution*'s clemency provision does clearly emerge from these data. This "understanding" more closely resembles the view of Chief Justice Marshall who, before taking the position of Chief Justice of the Supreme Court, signed clemency warrants as Secretary of State in the Adams administration.

INTRODUCTION AND METHOD

The empirical nature of W. H. Humbert's 1941 study, *The Pardoning Power of the President* distinguishes it among analyses of executive clemency. Humbert collected data on clemency from 1860 to 1936 and provides numerous tables and charts, comparing upward trends in the number of clemency statements with the country's population growth and the average daily prison population (96-198, 109-24). Humbert also examined the annual reports of the Attorney General "to find the reasons which the President has generally assigned for awarding clemency" (124). Humbert compiles thirty-eight "principal" and fifty- six "less frequent" explanations cited in clemency statements from 1885 to 1931 (Tables V and VI inserted at 124). With both the strengths and weaknesses of Humbert's work in mind,[3] I am collecting data and undertaking systematic analysis of the clemency policies of our nation's first twenty-three administrations (1789-1893). This study focuses, however, on the first four administrations. Three of the first

[2] It is important to note I am in no way suggesting sloppiness on Professor Buchanan's part. His discussion only reflects the generally low level of scholarly research on the topic at the time (a level which has improved little since). I am unfamiliar with any discussion, before or after 1978, which systematically examines clemency in the early Republic

[3] Humbert's analysis is somewhat problematic in terms of historical import, statistical rigor, design and generalizability of findings. Humbert, for example, offers no explanation or justification for the specific time period covered by the data. The choice was, evidentially, more practical than theoretical (95). Although Humbert summarizes the justifications provided in warrants and the types of clemency decisions, he ignores the number individuals affected by clemency policies and does not address the specific charges/violations of those to who clemency is extended. Thus, we have a less than accurate portrait of the impact of clemency decisions and no "feel" whatsoever for the general direction or content of clemency policy. The later problem is exacerbated by the fact that Humbert discusses the seventy-six year period without reference to the practices and tends within and between administrations.

four presidents served two terms (Washington, Jefferson, and Madison) while the fourth, John Adams, served a single term. These presidents are considered in a separate analysis for several reasons.

Clemency powers created a string of salient controversies in Great Britain (see comments in Adler 1989, Cowlishaw 1975, and Duker 1977) and the colonists generally reacted to these experiences by restricting clemency in the executive branch (Abramowitz and Paget 1964; Adler 1989). In the aftermath of the Revolution, most state governments went further by rejecting the legacy of complete executive control of the clemency power. Eight of the thirteen states vested the authority to remit punishment in an executive legislative counsel and the governor jointly, or in the legislature alone (Kobil 1991). There were no federal clemency powers.[4]

Predictably, fear and mistrust of the potential for abuse in clemency powers also appeared at the Constitutional Convention. Pardons, specifically in the case of treason, were a "particularly troublesome" issue for the framers (Jorgensen 1993, 352). The issue "provoked an impassioned debate" that was not resolved until the last day of the convention (Adler 1989, 216). In the end, the Convention drafted a slightly modified version of language which appeared in neither of the Convention's major plans (the Virginia plan and the New Jersey plan) and did not appear in any of the resolutions submitted by the Convention to the Committee on Detail.[5] The *Article II, Section 2* power of the president "to grant reprieves and pardons for offenses against the United States, except in the cases of impeachment" grew from comments inserted into the margins of the Virginia plan by John Rutledge while serving as a member of the Committee on Detail (Humbert 1941, 15; Ruckman, forthcoming).

In light of the experience of the people of England, the general practice in the colonies and temperaments at the Convention, the *Constitution*'s clemency power is remarkably broad. Through utilization of the power, the nation's early presidents were in a natural, yet extremely critical position to set 'precedent' with respect to the scope and limitations of such powers (if any). Scholars have gleaned the speeches, writings, and even the personal letters of these individuals and judged them important, if not altogether vital, to a proper assessment of the founding father's 'original' understanding of constitutional words, phrases and concepts. No one, however, has examined the 'original' understanding of *Article II*'s broad clemency powers.

The absence of rigorous analysis of the 'original' understanding of clemency powers is remarkable given the frequency in which clemency decisions have found their way into the Supreme Court (see note 1, above). The Court first considered the parameters of clemency in the 1833 case *United States v. Wilson*.[6] Chief Justice Marshall referred to the *Constitution*'s clemency clause, but consulted "that nation whose language is our language" and "their books" for "the rules" prescribing the manner in which it is to be used. With common law as the

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[4] According to Kobil (1991), twenty states currently place the clemency power in the governor alone (though most have established “advisory boards”). In sixteen states, the governor shares the power in clemency decisions with an administrative board or panel. In five states, an administrative board or panel appointed by the governor makes clemency decisions (605).

[5] Charles Pickney’s *Draft of a Federal Government* provided that the executive “shall have power to grant pardons and reprieves, except in impeachments.” Alexander Hamilton’s *Plan of Government* provided “the supreme executive authority [the] power of pardoning all offenses, except in treason, which he shall not pardon, without approbation of the Senate” (Humbert 1941, 15)

[6] 32 U.S. (7 Pet) 150.

standard, Marshall proceeded to describe a pardon as "an act of grace" that is a "private" though "official" act "delivered to the individual for whose benefit it is intended, and not communicated officially to the court." For almost one hundred years, the Court followed Wilson, generously expanding clemency powers on the basis of the actions of the King, common law and its commentators. The policies and practices of previous administrations were only occasionally mentioned in arguments of petitioning parties, and even less emphasized in the opinions of the Court.[7] The agonies of pre-Constitutional abuses and the opinions reflected in subsequent, systematic restrictions found voice occasionally, but only in dissent.[8]

The Court took its first major turn from Wilson in the 1926 case, *Biddle v. Perovich*.[9] Justice Holmes and a unanimous Court avoided the specific policies and practices of previous administrations (as well as the King and common law) by simply declining to "go into history." Holmes submitted a pardon could no longer be considered "a private act." He described a pardon rather as "part of a Constitutional scheme" that is "based on the determination [that] the public welfare will be better served by inflicting less than what [a] judgement fixed."

Professor Buchanan's 1978 comparison of the Marshall and Holmes positions, again, argues the Holmes position exhibits greater "fidelity" to - among other things - the text of the *Constitution* and the historical basis for inclusion of pardoning power in the *Constitution*. Here, however, I seek to determine which portrait of clemency accurately reflects the understanding of those most proximate to ratification of the *Constitution*. In order to facilitate rigorous analysis of clemency practice, I have completed separate code sheets for clemency warrants issued during the first four administrations. During this period, the clemency process was the responsibility of the Department of State.[10] A clerk in the Department was assigned the task of keeping clemency records, which consisted of a longhand copy of each 'warrant' of clemency. Microfilm photographs of each warrant are available in The National Archives.[11] For each warrant, I have coded (1) the president issuing the warrant (2) the date of issuance (3) the name(s) of the individual recipient(s) and/or identification of the group(s) of individuals involved (3) the state where the case originated (4) the form of clemency extended (5) descriptions of the offense, the recipient(s), or other circumstances and (6) the reasons offered for the extension of clemency.

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[7] The Solicitor General noted in *Burdick v. United States* (236 U.S. 79, 1914), presidents “have from the very first [exercised] not only the power to pardon in specific cases before conviction, but even to grant general amnesties” (82), The Court took note of this power accordingly (87). In *Ex Parte Grossman* (267 U.S. 87, 1924), Special Assistant to the Attorney General noted “the power of the President to pardon criminal contempts of court” had been “repeatedly exercised” (104). Records of the Department f Justice proved that Presidents had pardoned twenty-seven cases of criminal contempt, and, “probably,” there were “many others” (104). The Court noted this fact in its opinion (118, 121).

[8] Justice McLean (dissenting in *Ex Parte Wells*, 59 U.S. How (1855) at 321, sharply criticized the Court for failing to look “into the nature of our government, for the true meaning of terms vesting power in the executive.” McLean considered “studying the regalia of the crown of England” a “new rule of construction of the constitutional power of the President,” whim he viewed “a mere instrument of the law” without “the flowers of the crown of England” on his brow.” Justice Thurgood Marshall (dissenting in *Schick v. Reed*, 419 U.S. 265 (1974) at 276, referred to the Court’s numerous references to English statues and cases as “no more than dictum” while emphasizing “the [pardon] power flows from the *Constitution*.” Marshall, echoing McLean ninety-four years earlier, suggested “the primary resource for analyzing the scope of Article II is our own republican system of government.”

[9] 274 U.S. 480, 486 (1927)

[10] Clemency remained in the Department of State until 1854. Today, the primary actors in the pardoning process are the President, the Deputy Attorney General, and the Office of the Pardon Attorney in the Department of Justice. The Office was established by an 1891 Act of Congress (26 Stat. 946) to prep[are cases for the president to consider.

[11] Microfilm Set T967.

I believe an approximation of the original "understanding" of clemency powers can best be obtained by specifically focusing on the frequency of clemency activity, the offenses which are addressed in clemency warrants, and the justifications provided for clemency decisions. Each category of information, while related, provides a significant angle on the attitude and policy orientation of an administration. It easy, for example, to imagine the clemency activity of a president to vary with his view of the causes and/or seriousness of crime. Likewise, a president's views of crime and the scope of clemency powers are likely to be reflected in the types of crimes which he is willing to pardon. It is reasonable to hypothesize presidents who extend clemency with great frequency, and in a wide variety of offenses, have a different view of such powers than those who exercise clemency infrequently, and only in the narrowest of circumstances. Finally, the formal justifications for clemency decisions speak both to the president's perception of the need to publicly justify clemency decisions and his view of what constitutes legitimate grounds for the extension of the power.

In sum, the analysis below provides both an overview of clemency activity from 1789 to 1817, and an in-depth analysis of the clemency policies in the administrations of our nation's first four presidents. Despite the significance of the time period under examination, I do not claim the findings are, more broadly, exempt from 'time-bound' complications. I do, however, maintain the clemency practices of the first four presidents are of particular importance in any assessment of their understanding of such powers, individually, or as a group.

THE DATA - SUMMARY STATISTICS

Figure 1 summarizes clemency activity in our nation's first four administrations as found in the clemency warrants issued by the Department of State (1789-1817). Washington, Adams, Jefferson, and Madison signed a total of three hundred and fifty-eight clemency warrants. In order to also observe trends, or patterns, within each administration, the data in **Figure 1** are arranged by the total number of clemency statements signed in each year of each president's term. There are several notable aspects to the data as presented in **Figure 1**. Interestingly, the Washington administration did not issue a warrant of clemency until the first year of the second term.[12] The remainder of the second term was characterized by increased, yet relatively infrequent, pardoning activity. Overall, the administration averaged two clemency statements per year. It is important to recognize, however, that some of Washington's clemency statements involved multiple recipients.[13] As a result, Washington's sixteen clemency warrants actually affected a total of twenty-six individuals. The decline in statements in the fourth year of the second term thus conceals a relative flurry of pardoning activity. Remarkably, on his last day in office, Washington signed three statements extending clemency to more persons than he had in

[12] Adler (1989) suggests Washington initiate the use of the pardoning authority when he issued a proclamation of amnesty in 1795 to participants in the so-called Whiskey Rebellion (218) State Department records, however, show the firs pardon to have been issued on April 15, 1794. The recipient was one David Blair (of Georgia), whose ship was “condemned as forfeited” for having imported two casks of rum from Barbados. Both the jury and the judge were sympathetic to Blair (on account of “a due want of caution to inform himself of the laws” and a lack of “intention to defraud the public”) and recommended leniency. Seven other warrants appear before the first warrant addressing offense of “high treason” in Pennsylvania (dated June 4, 1795).

[13] Dated June 11, 1794 (2 individuals); December 24, 1794 (2 individuals); November 2, 1795 (2 individuals); March 3, 1797 (10 individuals).

any previous year of his administration, and to almost as many persons as he did in the previous seven years combined.[14]

Figure 1 - about here

In a single term, John Adams (1789-1801) signed a higher number of clemency statements than Washington (21) and extended clemency to a greater number of individuals (37).[15] The patterns in the exercise of clemency bear a close resemblance to those of the Washington administration however. Adams averaged five statements per year, but signed no statements in the first year of the term. As was the case in the second and third year of Washington's second term, the number of statements signed by Adams increased in the second and third year of his administration. Adams, like Washington, left office with a flurry of clemency activity. Adams' fourth year warrants account for sixty-one percent of his total and seventy-three percent of persons to whom he extended clemency.

It is clear from **Figure 1**, that Thomas Jefferson utilized executive clemency to rather distinct proportions. Jefferson signed more than three times the number of statements signed by the administrations of Washington and Adams combined. In his two terms, Jefferson signed a total of one-hundred and nineteen statements and extended clemency to one-hundred and twenty-nine persons.[16] Like his predecessors, Jefferson increased clemency activity significantly in the last year of his first term and increased activity, again, in the fourth year of his second term (after a decline in third year activity).

The Madison administration continued the general increase in pardoning activity across administrations by signing more statements (202) than all of the previous administrations combined. In fact, in his very first year as President, Madison signed more clemency statements (35) than Washington, Adams, and Jefferson had signed in any given year. Madison signed twenty-four clemency statements involving multiple recipients,[17] and extended clemency, at a minimum, to two hundred and fifty-one individuals. The Madison administration also exhibits substantial increases in clemency activity in the fourth and final year of each of the two terms.

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[14] Three separate clemency statistics are dated March 3, 1797. Separate statements were issued for Benjamin Parkinson (convicted of high treason) and Stephan Neilson (convicted of committing a breach of the revenue laws). A third statement extended clemency to David Hamilton, William Miller, Richard Holcroft, Ebenezer Gallagher, William Hannah, Peter Sisle, David Locke, Alexander Fulton, Samuel Hanna and Thomas Spiers (all convicted of treason).

[15] Multiple recipients are involved in six clemency statements dated March 9, 1799 (3 individuals), May 22, 1800 (3 individuals); November 4, 1800 (2 individuals); November 11, 1800 (2 individuals); January 2, 1801 (7 individuals); January 16, 1801 (5 individuals).

[16] Multiple recipients are involved in five clemency statements dated August 25, 1803 (2 individuals); December 16, 1804 (2 individuals); September 16, 1806 (3 individuals); December 28, 1807 (3 individuals): September 16, 1808 (3 individuals).

[17] Dated May 6, 1809 (9 individuals); December 16, 1811 (3 individuals); July 22, 1812 (6 individuals); August 21, 1812 (4 individuals); December 19, 1812 (2 individuals); February 12, 1813 (2 individuals); July 10, 1813 (2 individuals); November 15, 1813 (2 individuals); November 23 1813 (3 individuals); July 13, 1814 (2 individuals); January 18, 1815 (2 individuals); March 4, 1815 (2 individuals); August 1, 1815 (9 individuals); January 26, 1816 (3 individuals); May 10, 1816 (2 individuals); August 12, 1816 (2 individuals); December 17, 1816 (2 individuals); February 10, 1817 (2 individuals); February 12, 1817 (2 individuals); February 26 1817 (2 individuals). Four clemency statements (dated November 5, 1810; November 12, 1810; October 8, 1812, and an undated 1816 statement) were extended by Madison to unnamed and unnumbered “individuals” whop were guilty of “desertion.”

Further attention is given to the rate of clemency activity below, but the data in **Figure 1** encourage three observations with respect to the initial use of clemency. The clear upward trend in warrant issuance suggests each president was increasingly comfortable with the clemency power. While the increase may have been the result of a variety of factors,[18] there is no disputing the fact that each administration also increased its distance from controversies surrounding clemency in England, the colonies, and, more especially, the Constitutional Convention. A decreasing sense of caution, in combination with the seeming breadth of the *Constitution*'s language may, in itself, account for the overall trend in **Figure 1**.

Second, the increases in pardoning activity throughout each term, invite both practical and 'political' speculation concerning clemency activity in the early republic. Increase in warrant issuance may have been facilitated by an increase in the incoming State Department's familiarity with individual cases and the clemency process. 'Last-minute' clemency activity, on the other hand, suggests a possible recognition of decline in accountability by the Chief Executive or, more generously, a desire to leave the office in good will and good favor.

Finally, **Figure 1** may also reflect attitudes of each president (see comments in Ruckman 1994; 1995; n.d). We know, for example, Washington and Adams were substantially different from Jefferson and Madison on one issue: clemency for military deserters. Washington described desertion as a "pernicious vice," "fatal disease," and the "basest principle that can actuate a soldier."[19] His proclamations warned deserters of prosecution with "utmost rigor," and guaranteed punishment "justly due to crimes of such enormity."[20] Ten dollars reward was offered for returned deserters as well as an extra shilling for every mile traveled in the process.[21] Washington, moreover, assumed "lenity" toward deserters only further encouraged soldiers in "villainous undertakings."[22] In 1780, he wrote:

> Indeed I have never found that the offer of pardons to deserters upon voluntary surrender has been attended with any substantial advantage. It may perhaps be politic to try the experiment some time hence, but I should think it had best be deferred until whatever detachments may be ordered [have] gone forward.[23]

Washington thus recommended "detestation" and "the most exemplary punishment" for deserters.[24] He ordered that deserters found within enemy lines at York be "instantly hanged" (Bernath 1967, 87). Others were led around regiments while seated backward on a horse and wearing a coat turned inside-out before being discharged from the army.[25] Some deserters had hair shaved from their heads "without soap" and a "quantity" of tar and feathers "fixed on the place as a substitute for hair" before they were then required to run "the Gauntlope."[26] One

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[18] E.g. an increase in State Department personnel or an increase in applications of requests for clemency.
[19] Letter to Colonel David Mason, September 2, 1777; *General Orders*, June 10, 1777.
[20] *Proclamation*, October 24, 1777; see also *Proclamation*, March 10, 1779.
[21] *General Orders*, November 1, 1777.
[22] Letter to Robert Dinwiddie, September 17, 1757; see also letter to the Board of War (April 9, 1780).
[23] April 9 letter to the Board of War.
[24] *General Orders*, June 10, 1777.
[25] *General Orders*, August 19, 1777.
[26] *General Orders*, September 3, 1777. Bernath (1967) notes some were required to pass the gauntlet while a solider discouraged swift exit by placing a bayonet in front of the chest (89).

deserter was sentenced to two successive days of fifty lashes followed by a "wash" with salt and water (Bernath 1967, 89).

Washington frequently approved the execution of deserters[27] and recommend such be carried out in "the most public manner" the situation would admit.[28] One execution (on gallows forty feet high!) was held up until the arrival of newly drafted recruits (Bernath 1967, 87). In circumstances involving pardons, Washington recommended recipients "be kept in ignorance of any such intention" until "at the place of execution."[29] The "Dead March" might include a freshly dug grave, a coffin, the formal reading of the sentence, the loading of guns, and the criminal kneeling before a coffin. At the moment the criminal was to be shot, a reprieve would be read (Bernath 1967, 91).[30]

Adams, likewise, felt little pity for deserters and "was as ruthless in punishing [them] as Washington himself had been during the Revolutionary War" (Chinard 1964, 287). Adams also viewed the sentence of death as an appropriate response in cases of desertion. The execution of deserters was, in his view, "important" for the "discipline" of the army."[31] Adams, likewise, recommended submission of pardons to recipients under the very shadow of the gallows.[32]

There is little doubt attitudes, like those Washington and Adams held toward military deserters, were relevant in the clemency decisions of each president. Washington's 1780 suggestion that clemency - while legally appropriate (or at least possible) - might be exercised in a more 'politic' manner at some future date further indicates at least one president found it acceptable to base clemency decisions on factors other than mere 'legal' considerations, or the circumstances of a particular case.

SUBSTANTIVE ANALYSIS - CATEGORIZATIONS OF OFFENSES

In **Table 1**, I summarize data on the number of individuals associated with the offenses addressed in each of the three hundred and fifty-eight warrants. All categories of offenses are listed for the administrations of Washington and Adams. All multiple offense categories are listed for the administrations of Jefferson and Madison. While most categories are narrow, "trade violations" and "larceny-theft" encompass numerous particular offenses. Almost half (17) of the individuals represented in the "breach of revenue laws" category were convicted of selling "spirituous liquors" without a license. The remaining offenses committed by individuals in the category are not specified by the clemency petitions. Finally, in cases of desertion, the number

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[27] See, for example, *General Orders* (April 14, 1779, April 22, 1779; November 7, 1779, May 25, 1780; October 13, 1780; June 7, 1781; March 1, 1782) and letters to General Joseph Spencer (April 3, 1777), John Sullivan (July 22, 1777). See Bernath (1967, 88) for interesting discussion with respect to the percentage of death sentences which were actually carried out.

[28] Letter to Major General John Sullivan, July 22, 1777; see also instructions for public whipping (*General Order*, April 14, 1779) and other executions (letter to George Gibson, March 11, 1778; *General Order*, May 25, 1780).

[29] To Major General John Sullivan, July 22, 1777; see also comments in letter to Colonel Lewis Nicola, February 5, 1780.

[30] Interestingly, a very fine study by Bernath (1967) suggests it is “merely moralistic, rather uncritical, and quite unacceptable” for one to suppose Washington aimed “to terrorize his men through severe punishment” (98) Bernath notes (1) British and European forces were disciplined more severely (2) Washington was rarely criticized by his contemporaries and (3) “praise” for Washington “can be found in abundance” (98-9).

[31] Letter to J. Mc Henry (June 5, 1799).

[32] Letter to J McHenry (September 18, 1799).

listed represents a conservative minimum estimate based upon a calculation of '2' for every warrant extended to unnamed groups or individuals (N=4).

The most striking characteristic of **Table 1** is the general expansion in the types of offenses addressed in clemency statements. While the statements of Washington and Adams extended clemency to individuals in only seven and eight categories of offenses respectively, Jefferson issued statements in fourteen multiple offense categories and nine other miscellaneous categories.[33] Madison issued statements in eighteen multiple offense categories and fifteen miscellaneous categories.[34]

A second notable characteristic of **Table 1** is the clearly reactive element in the clemency policies of each administration. That is, while each president may have had particular views with respect to justice, and may have sought to consciously express these views in clemency policy, the pool of potential clemency recipients was also critically shaped by circumstances over which presidents had little or no control. The administrations of Washington and Adams were, for

Table 1 - about here

example, marked by insurrections in Pennsylvania. In 1795, Washington led thirteen thousand troops into the western portion of the state to quell the so-called "Whiskey Rebellion." The uprising quickly disintegrated and subsequent trials resulted in the conviction of only two individuals. Washington pardoned both[35] and, on his last day in office, extended clemency to eleven others in the region charged with "high treason."[36]

In 1799, Adams faced another uprising in the eastern portion of the state. A contingent of militia, army troops and voluntary cavalry sought to retrieve a U.S. Marshall and federal assessors who were captured by Jacob Fries and one hundred armed followers. After a series of controversial trials (conducted by Supreme Court Justices Iredell and Chase), Fries and two others were found guilty of "treason" and sentenced to be hanged. In his final year in office, Adams pardoned the three offenders,[37] and ten others charged with "insurrection."[38] Hamilton had in fact anticipated the specific utility Washington and Adams found in pardoning powers. *Federalist 74* refers to "critical moments" and "golden opportunit[ies]" in seasons of "insurrection or rebellion" when a "well-timed" offer of pardon to insurgents or rebels "may restore the tranquility of the commonwealth."[39]

Less than a month after his second nomination to the presidency, Madison and the country entered the War of 1812. Madison's clemency policies thus reflect associated embargo laws and trade restrictions (e.g., the *Non-Intercourse Act* of 1809-1810, *Macon's Bill 1* and *Macon's Bill*

[33] Including owning an unlicensed billiard table, an unnamed criminal offense, desertion and encouraging desertion, an unnamed felony, gambling, perjury, a recognizance violation and unlawful confederation.
[34] Including aiding and abetting the enemy, owning an unlicensed billiards table, a duty violation, kidnapping, mistreatment of a slave, resisting an officer, spying, stealing a horse, burning a house, violating the militia laws.
[35] Clemency warrants dated June 16 and 17, 1795, and November 2, 1795.
[36] Two clemency warrants dated March 3, 1797.
[37] Clemency warrant dated May 22, 1800.
[38] Clemency warrants dated November 4, 1800; January 2, 1801; February 11, 1801.
[39] The cynic might note the ideas and subsequent programs of Hamilton are, in fact, exactly what caused the Whiskey Rebellion and Fries Rebellion.

No. 2, 1810). Close to three hundred thousand Americans served in the war (Degregorio 1993, 66) and Madison's warrants indicate more than a few chose to desert. Deserters may have benefited from an unusual amount of empathy in a president who knew what it was like to experience an oncoming enemy, flee in great distress to safety, and, afterward, suffer sharp public criticism. The President and Mrs. Madison were forced to flee to Virginia as British forces set fire to the White House and the Capital. Madison returned to find Washington newspapers denouncing him as a "serpent," and a "coward" who hid in the "midnight hovels" and children chanting "Fly, Monroe, fly! Run, Armstrong, run! were the last words of Madison" (Steinberg 1967, 183). Madison's pen flowed with merciful clemency warrants for deserters.[40]

While the categories of violations document a passive or reactive element in clemency policy, they also manifest a positive, or pro-active element. That is, the opinions, perspectives, and personal political struggles of the presidents are also evident in clemency policy. Jefferson was an outspoken opponent of the *Alien-Sedition Acts* of 1798. His secretly authored *Kentucky Resolutions* (1798) declared the *Acts* a violation of state's rights 'altogether void and of no force.' He also described the *Acts* as "an avowed violation of the *Constitution*,"[41] and later compared them to Congress ordering all "to fall down and worship a golden image."[42] Jefferson was denied the opportunity to personally negate the hated law as its 'trial period' expired upon his entry into office.[43]

At the end of his first week, however, Jefferson issued the first two pardons of his presidency to the only two individuals still imprisoned under its penalties and determined he would, at a later date, take action to drop a third prosecution (pending under a resolution of the Senate).[44] Jefferson's first clemency warrant pardoned one David Brown, who pleaded "guilty" to certain "misdemeanors" in "writing, uttering, and publishing" certain "false, scandalous, malicious, and seditious writings" against the Government, Congress, and President of the United States."[45] Justice Samuel Chase handed Brown the most severe sentence ever imposed under the Sedition Act (eighteen months in prison and a four hundred dollar fine) and, as president, Adams had already rejected two petitions for clemency (Malone 1970, 35). Jefferson's second warrant

[40] In 1810 (between late January and early February), two undated clemency warrants were signed for “individuals” who were deserters. Madison also extended clemency to unnamed “individuals” who deserted on three other occasions (January 29, 1810; November 5, 1810 and November 12, 1810. Fourteen additional warrants extended clemency to thirty-six specifically named individuals.

[41] Letter to Stephen Thompson Mason dated October 11, 1798.

[42] Letter to Mrs. John Adams dated July 22, 1804.

[43] A preliminary draft of Jefferson’s first speech to Congress declared the *Sedition Act* “a palpable and unqualified contradiction to the *Constitution*” and announced *Article II* powers would be used to pardon those convicted under the Act. The paragraph was later omitted “as capable of being chicaned, and finishing something to the opposition to make a handle of” (Peterson 1970, 686).

[44] Jefferson is quite commonly – although incorrectly – credited with having pardoned “all” of those convicted under the *Act*. The source most frequently cited for this assertion is his letter to Mrs. John Adams, dated July 22, 1804. Jefferson’s letter describes his earlier clemency decisions in a generalized, sweeping fashion, however, so as to mitigate a feeling of personal insult in Mrs. Adams. His comments in the letter stem, in fact, from Mrs. Adams’ previously stated consternation with respect to his pardon of the newspaper editor, Thomas Callender (see comment in footnote 46, below). Later, or course, Congress itself pronounced the statutes “unconstitutional” and “void,” appropriating funds to reimburse those subjected to fines (Fisher 1990, 620).

[45] Clemency warrant dated March 12, 1801.

pardoned the "malicious writings" of the infamous pamphleteer Thomas Callender which had earned a prison sentence of eight months and a fine of two hundred dollars.[46]

The expansion in categories of offenses so evident in the administrations of Jefferson and Madison also reflects distinct personal attitudes with respect to reform in the administration of justice. Both men were key figures in the revision and clarification of the laws of Virginia (Jefferson as the primary architect of the new code - Madison as its primary legislative proponent), and their efforts became the model for both the revision of laws in the other twelve states and the establishment of laws later in western states (Patterson 1967, 24). The penal code, in particular, was radically reformed by the Committee of Revisors. A requirement of death was removed from twenty-seven felonies and only murder and treason called for the ultimate punishment. The warrants of Jefferson and Madison pardoned those sentenced to be executed, or delayed executions, in at least sixty-six instances and extended clemency in at least forty instances where public whipping was an aspect of sentencing.

Jefferson and Madison opposed slavery and their warrants represent the initial extension of clemency to African-Americans. On April 23, 1805, Jefferson apparently signed the first pardon extended to an African-American. After the initial weeks of his re-election celebration, he paused to pardon a slave named "Charles." Madison appears, interestingly, to have made something of a statement by issuing the first two warrants of his administration to "negroes" convicted of burglary.[47] Previous to his election, one in every seventy-eight warrants extended some form of clemency to an African-American. In his first term, Madison significantly increased clemency activity (see discussion above), yet reduced that ratio to one in every fourteen warrants.

Finally, warrants reveal clemency policy was also a reflection of struggles decidedly more 'personal' in nature. Adams had every indication the electoral votes of New York and Pennsylvania were a critical, yet uncertain factor in his bid for re-election in 1800. Only days before the May 1 election of the New York legislature, Adams pardoned New York publisher William Durell, the first editor arrested after the enactment of the *Sedition Act* and the only Republican pardoned for his offensive remarks.[48] Clemency warrants were extended to Pennsylvania insurgents in March of 1800 (a full year after their conviction) and, once again, on the very eve of the election.[49] Thomas Cooper, imprisoned in Philadelphia for seditious libel, was among many who found the sudden conversion of the administration to 'moderation' quite suspicious. He openly proclaimed he would refuse a pardon and would not be "the voluntary cats-paw of electioneering clemency" (Smith 1956, 330).

Jefferson attempted to employ the pardoning power in his elaborate effort to manipulate George Hay's prosecution of a personal enemy, Aaron Burr. Burr's conspiracy trial featured a rather sensational open-court rejection of a presidential pardon. Dr. Justus Erich Bollmann took the witness stand in extreme duress and was, apparently, the victim of dishonesty on the part of

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[46] Dated March 16, 1801. Callender described Adams as “that strange compound of ignorance and ferocity, of deceit and weakness,” a “hideous hermaphroditical character which has neither the force and firmness of a man, nor the gentleness and sensibility of a woman” (Brodie 1974, 321).

[47] Warrants issued March 7, 1809.

[48] Warrant dated April 22, 1800. Despite the pardon, Republicans enjoyed a clear-cut victory.

[49] Clemency warrants dated May 22, 1800 (Jacob Fries, John Gettman and Frederick Heany) and November 4, 1800 (Phillip Desch and Abraham Schantz).

Jefferson. Bollmann, however, "haughtily refused" a blank pardon extended by the prosecution hoping for an exchange for testimony. The dramatic event was probably a critical turning point in the trial (Abernathy 1954, 233-4).[50]

The substantive analysis of the categorizations of offenses addressed in the clemency warrants of our nation's first four presidents reveals an early trend toward expansion in the scope of executive clemency. This trend, in combination with an exponential increase in the number of warrants issued, again, suggests an increasing comfort in the exercise of such powers as administrations became more removed from the initial founding. While clemency was, to some extent, influenced by 'external' events and circumstances, the individual beliefs and attitudes of the presidents are clearly reflected in warrants. Furthermore, clemency practices reveal a willingness to exercise such powers in relation to matters of interest decidedly 'personal' in nature.

SUBSTANTIVE ANALYSIS - RATIONALES AND JUSTIFICATIONS

Humbert's 1941 study suggests "the motives which prompt the executive in the exercise of the pardoning power are a topic of the greatest importance in clemency" (124). Indeed, the justifications which presidents offer for clemency decisions say much about the president's view of the nature and scope of the power. Humbert took note of thirty-eight "principal" and fifty-six "less frequent" explanations cited in the clemency statements issued from 1885 to 1931 (Tables V and VI inserted at 124). The range of factors cited, from mental infirmity of judges to the desire to save a farmer's crops, is remarkable. Presidents in the study granted clemency as a result of a petitioner's "poverty" or "friendless condition." They were also moved by a petitioner's "respectable" family or "favorable home condition." Pardons were extended on both the basis of "youth" and "old age," and issued to those who were "sincerely penitent" or had engaged in "good conduct" and were "reformed." Clemency was even granted to "encourage reformation" in individuals and "good conduct among other prisoners."

Humbert observes, however, "the brevity of the statements and the failure to distinguish [the] primary and secondary reasons for granting clemency made it very difficult to determine the president's real reason for granting clemency in each case" (124-5). Humbert, furthermore, assumes the difficulty of determining the "actual" reasons why clemency decisions are made since "officials favoring the granting of clemency probably give as their reasons only those which will evoke least opposition to the use of the pardoning power" (124).

Scholars have addressed the numerous normative issues associated with clemency justifications. Kobil (1991) categorizes clemency rationales as either "justice enhancing" or "justice neutral" and considers many explanations reported by Humbert "so unrelated to justice as to border on abuse of power" (601). Similarly, Moore (1993) sees "a significant number" of pardons in Humbert's data granted for reasons that are "clearly unacceptable" (283). Moore contends "pardons best serve the public interest when they serve justice." Thus, "a president abuses the pardoning power when he makes decisions based only on self- interest or narrow partisan

[50] Nine copies of a “full, free and entire pardon” of past and future charges were sent to Richmond in May of 1807. It was addressed to an unnamed recipient.

interests, or when he is moved by pity or concern for the welfare of the accused. A president uses the pardoning power properly when he uses it to prevent or correct a potential injustice" (285).[51]

Despite the considerable difficulties in determining the primary and/or "actual" reasons behind pardons, and normative considerations with respect to their 'legitimacy,' Humbert suggests "fair results [are] perhaps obtained by listing all the reasons presented in each recommendation" (125). Thus, in **Table 2**, I summarize data on the frequency and occurrence of each specific justification in the clemency warrants of the first four presidents. Each rational is placed under one of four larger sub-headings: Legal Considerations, Individual Circumstances, Public Policy Considerations and General Phrases/Miscellaneous. Only one clemency warrant (issued by Jefferson) contained no rationale, and only three explanations were outside the remaining 25 subcategories.

Table 2 - About Here

The influence of Washington's clemency policy is striking. Although he issued only 16 warrants, 19 of the 25 subcategories of explanations used over the eighteen year period were initiated during his administration. The warrants of Washington place a relatively high emphasis on legal considerations (such as criminal intent, the commission of the crime, and features of the case), but legal considerations were not paramount to Washington. He clearly viewed personal characteristics of individual petitioners (e.g. poverty, good character, good conduct, state of contrition) as legitimate considerations in clemency decision making. Almost forty percent of Washington's justifications reference such factors.

While there is some variation among the first three categories of explanation, the most notable trend in the data is the dramatic increase in explanations falling into the "General Phrases" category. General phrases say nothing of the specifics of the case, the crime, or the petitioner. They thus represent the lowest level of explanation. Washington first utilized the phrase "other good causes and considerations" in a 1793 warrant and, in 1795, employed the phrases "for diverse and other causes" and "considering the premises." Adams occasionally utilized Washington's phrases, but also added the phrase, "for considerations me thereunto especially moving" - a phrase which, along with Washington's "diverse good causes," became a staple in clemency warrants issued by Jefferson and Madison. While these phrases reveal nothing specific with respect to the President's reasoning, they are clearly offered in the text as additional justifications for clemency decisions and often stand alone in a warrant.

If the use of general phrases can be interpreted as a sign that the president feels little compulsion to publicly justify his decision, Washington is clearly the most restrained president in **Table 2**, a portrait very consistent with interpretations I have offered for trends in **Figure 1** and **Table 1**. Washington exercised the clemency power in a parsimonious manner, but was careful to offer a range of specific justifications for such actions. Adams, Jefferson, and Madison, on the other hand, increased the frequency and scope of clemency, but increasingly gave little or no specific explanations for their decisions. Over half of the rationales offered by Jefferson and Madison are non specific, and the emphasis in **Table 2** on individual characteristics (27 percent of the population of rationales) and general phrases (41 percent of the population of rationales) by the

[51] For an excellent discussion of the philosophical underpinnings of clemency powers, see Moore (1989) *Pardons: Justice, Mercy and the Public Interest.*

four administrations certainly encourage the conclusion that clemency was considered a "private act." Public policy considerations (which represent the clearest link to Holmes' position in Biddle), constitute the smallest category of rationales offered (10 percent of the population).

DISCUSSION AND CONCLUSION

My examination of the rate of clemency activity, the direction and impact of clemency policy, and the reasoning in clemency warrants strongly suggests our nation's first four presidents did not understand, or interpret, the *Article II* pardoning power in a manner consistent with colonial apprehensions, suspicions in the states (before and after the Revolution), or concerns at the Constitutional Convention. The warrants of these presidents suggest rather a construction of the power much akin to that of the British monarchs.

Summary statistics indicate each president was increasingly comfortable with the exercise of clemency, within the term and across time. The data on the particular offenses addressed in warrants document an accompanying increase in the scope of clemency power. While the expansion in the scope of clemency may be partially explained by factors beyond the control of the president, there is considerable evidence the political attitudes and personal conflicts of each president also contributed to this expansion. The data on rationales and justifications reveal a significant number of warrants issued by Washington, Adams, Jefferson, and Madison give little or no clear explanation for the extension of clemency. When bothering to offer more than blanket, vague rationales for clemency decisions, each generally placed more emphasis on personal qualities or misfortunes of recipients than on judicial considerations, legal principle or explicit concern for the public welfare. Furthermore, the politics of expediency and personal gain are clearly reflected in the clemency warrants of this period. While it is true monarchs admirably tempered the inflexibility of law with broad clemency powers, it is equally true they wielded the pardoning power in pursuit of policy goals and personal advantage. The original understanding of *Article II, Section 2* appears to have encouraged (or at least allowed) a similar pattern of activity in our nation's first four presidents.

In sum, my examination of clemency activity indicates a developing, yet fundamentally continuous understanding of clemency powers corresponding with that of Marshall's proclamation in *United States v. Wilson*. Marshall's analysis, again, looked to the King and common law for "the rules" which guided the exercise of clemency. Clemency proceeded from the "general terms" of the Constitution to "the power entrusted with the execution of the laws." Its exercise was "official," but essentially "private." It is perhaps noteworthy that Marshall himself signed ten clemency warrants, as Secretary of State, during the Adams administration.[52]

Of course, the analysis raises the interesting question of the general value of 'original understanding' in constitutional interpretation, and perhaps exposes a shortcoming of the historical approach in constitutional analysis generally. Even upon the acceptance of the conclusions reached above, one might continue to maintain the position of Justice Holmes in Biddle is a more 'correct' approach for the president of today, operating in today's government, under today's understanding of the *Constitution*. Indeed, even the *Alien-Sedition Laws* appeared 'constitutional' to some of our nation's leaders and, relatively speaking, they stood in the very

[52] Marshall signed his first clemency warrant on June 10, 1800. The last on which his name appears was signed February 18, 1801.

shadow of the ratification of the *Constitution* and the *Bill of Rights*. Why should today's society be inextricably bound to the interpretations of individuals equally prone (evidently) to misinterpretations and/or abuses of constitutional powers, but 'advantaged' only in the sense of time priority? The search for 'original' intent, or understanding, can also preclude the notion that there might be some benefit in simply following the understanding of constitutional provisions, words and phrases throughout our nation's history in order to grasp the various transformations which have led to our current notions about the document. In some circumstances, the understandings which result from our adaptation of the *Constitution* to sweeping societal change may be worth more than the 'original' understanding.

While I do not contend this analysis provides a flawless analytical framework for understanding clemency policy today, or clemency policy throughout the span of our nation's history, several findings appear worthy of consideration in future research. The tendency toward an increase in clemency activity throughout the term of the president has also been observed in a multivariate statistical analysis of clemency decisions from 1900 to 1993 (Ruckman 1994). There is every reason to expect the clemency policies of other presidents are affected by critical environmental factors over which each has little or no control. When, however, individuals take office holding specific views with respect to the substance of laws and/or the function or outcomes of judicial processes, the clemency power clearly represents a potential outlet for those views (Ruckman, forthcoming). Finally, the author will continue to collect data on the clemency decisions of presidents and will pay particular attention to the relationship (if any) between important Supreme Court decisions and patterns in clemency decision making. It is possible, for example, presidents offer even less in the way of specific rationalizations for their decisions after the Wilson decision. On the other hand, the number (and category) of explanations may have changed significantly after the Court's decision in *Biddle*. The cases provide an interesting opportunity to explore the potential impact of judicial decisions on the clemency policies of each administration.

Figure 1

Clemency in the Early Republic
1789-1817

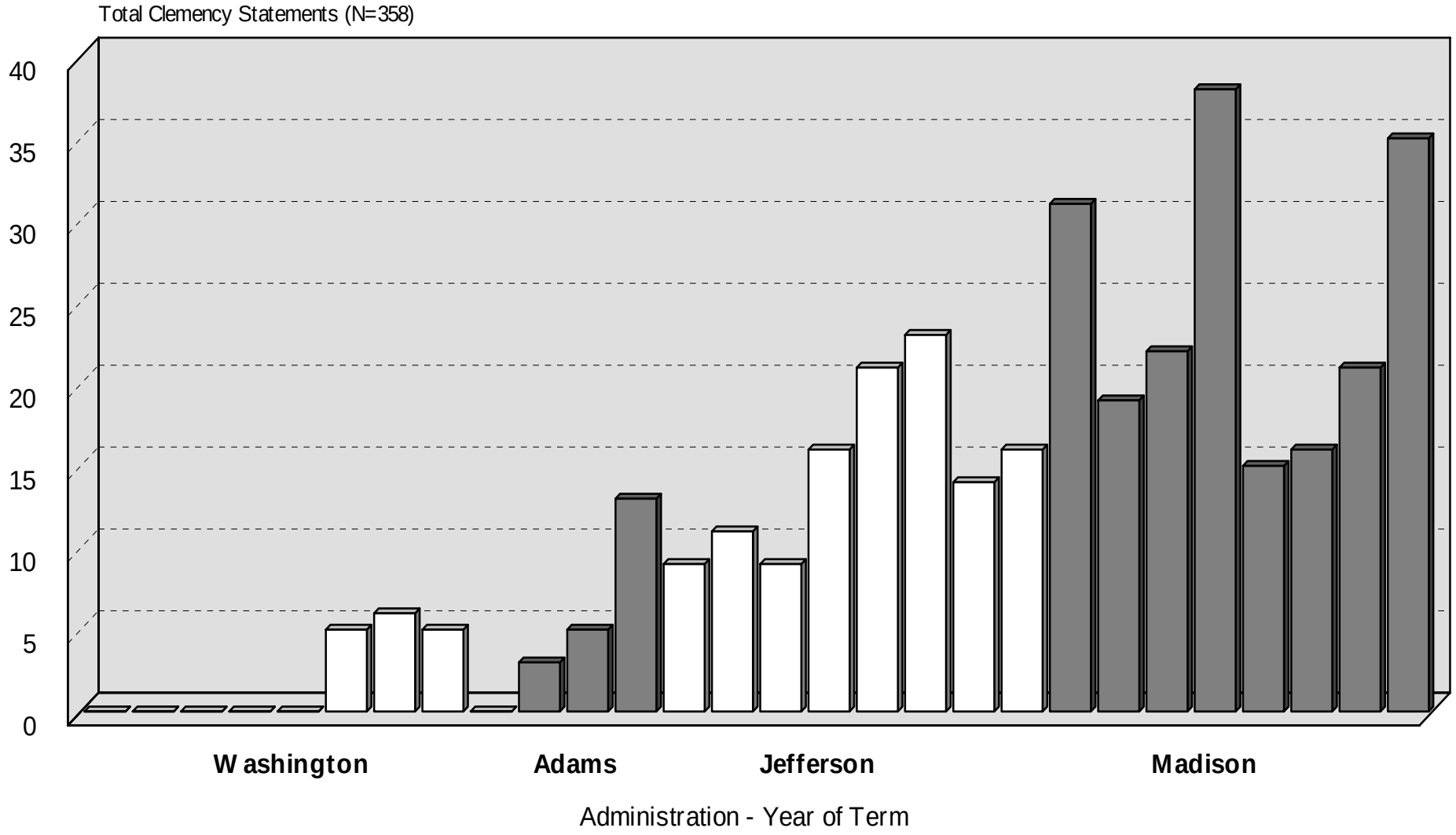

Table 1

Number of Individuals Affected and Violations Addressed In Clemency Statements, 1789-1817

Washington (1789-1797)

16 treason
5 trade violations [1]
1 breach of revenue laws
1 manslaughter
1 larceny-theft
1 misdemeanor
1 anonymous, threatening letter

Adams (1797-1801)

11 insurrection
6 trade violations
3 treason
1 larceny-theft
1 counterfeiting
1 piracy
1 libel
1 misdemeanor

Jefferson (1801-1809)

22 larceny-theft [2]
15 assault and battery
10 breach of revenue laws
9 Counterfeiting
8 post office misdemeanors
8 mutiny
6 unnamed misdemeanors
5 rioting
5 disorderly house
5 trade violations
3 forgery
3 murder-homicide
3 breach of peace
2 sedition
2 embezzlement

Madison (1809-1817)

35 desertion
29 larceny-theft
26 trade-violations
19 assault and battery
9 obstruction of justice
9 breach of revenue laws
8 murder-homicide
8 spirituous liquors
7 counterfeiting
7 piracy
4 mutiny
4 gambling
4 court martial-misconduct
4 post office misdemeanors
4 forgery
3 disorderly house
2 fishing violation
2 smuggling
2 unnamed criminal offense

[1] Includes embargo violations, illegal importations/landings and slave trade violations

[2] Included larceny, burglary, theft, highway robbery, stealing – receiving stolen goods

Source: National Archives, Washington, DC

Table 2

Frequency of Explanations / Justifications in Clemency Statements, 1789-1817

	Washington	**Adams**	**Jefferson**	**Madison**
Legal Considerations	*29%*	*19%*	*20%*	*18%*
Judge's recommendation	1	-	3	6
Not the principal	1	-	-	3
Has served long prison sentences	3	-	23	31
Fulfilled part of sentence	-	2	19	19
Extenuating circumstances	1	1	1	10
Insane, deranged mind	1	-	-	2
Lack of intent	2	2	4	12
Misinformed	1	-	-	-
Ignorance	2	1	1	12
First offense	-	-	-	2
Individual Characteristics	*38%*	*31%*	*17%*	*23%*
A fit object of mercy	-	5	9	30
Contrition	1	2	-	2
Humbly sought pardon	-	-	6	5
Poverty	3	2	23	64
Dependents	2	-	-	5
Good character	4	-	3	7
Good conduct	5	-	-	-
Promise of good conduct	1	-	-	1
Youth	-	-	-	5
Poor health	-	1	3	7
Public Policy Considerations	*14%*	*22%*	*1%*	*3%*
Public welfare	-	2	1	-
Plea of respectable citizens	1	-	-	3
Specific policy goals	4	5	1	13
Foreign relations	1	-	-	-
General Phrases / Misc	*18%*	*28%*	*63%*	*56%*
General phrases	5	9	164	303
Miscellaneous	3	-	-	-
No explanation	-	-	-	1

* (N=358) *Source: National Archives, Washington, DC*

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The executive branch, in the person of the president, reserved the power to withhold or restrict release of information, with proper justification.2 Much about this dynamic has changed since the 1790s, but the fundamental balancing act between the publicâ€™s right to know and the governmentâ€™s responsibility to protect remains at the center of an ongoing and lively exchange. During the early republic period, the legislative and executive branches jostled to establish functional intergovernmental communications procedures.Â Washington even offered to dispatch a clerk to display the original documents so that Representatives could fully satisfy themselves as to the veracity of the records.8. Public opinion in 1938 seemed reasonably in favour of Neville Chamberlain and what was later to be termed appeasement when he returned with â€œpeace in our.Â No opinion: 2%. Is the British government right in following a policy giving guarantees to preserve the independence of small European states? (Asked April 1939). Yes: 83% No: 17%. The Oxford History of the United States is by far the most respected multi-volume history of our nation. The series includes three Pulitzer Prize winners, two New York Times bestsellers, and winners of the Bancroft and Parkman Prizes. Now, in the newest volume in the series, one of America's most esteemed historians, Gordon S. Wood, offers a brilliant account of the early American Republic, ranging from 1789 and the beginning of the national government to the end of the War of 1812. As Wood reveals, the period was marked by tumultuous change in all aspects of American life--in politics, s