

Trust in Democratic Institutions and the Presidential Pardon Power:

A Comparative Analysis of the Abuse of the Pardon Power in Australia, India, and the United States, and Its Impact on Trust in Democratic Institutions

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Washington Intern, 2025



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About Preston

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Preface

In January 2025, two months after the 2024 presidential election, I started a congressional internship in Congressman Steve Cohen's (D-TN-09) office. This opportunity was the result of many years of hard work and late nights studying. As an Australian student at Flinders University, more than 16,000 kilometres from the United States Capitol, I recognised the significance of what I was undertaking. It's an experience I was, and will always be, deeply grateful for.

During my first week of the internship, Congressman Cohen reintroduced, for the fifth consecutive Congress since 2017, a Constitutional Amendment aimed at clarifying and limiting the presidential pardon power. The abuse of the pardon power has long been a concern for Congressman Cohen, dating back to his time in the Tennessee State Senate during the 1970s, when Governor Ray Blanton issued a series of pardons to violent offenders in what became known as the “cash-for-clemency” scandal (Ebert, 2019). These pardons were granted to 52 state prisoners, including 20 convicted murderers, and were reportedly linked to bribes and cash rewards (Indiana Evening Gazette, 1979). To prevent further pardons in his final days in office, state officials removed him early by finding a loophole in the State Constitution and swearing in the newly elected Governor ahead of schedule (Wildstein, 2018).

A highlight of my recent congressional internship was the opportunity to have a sit-down interview with Congressman Cohen and ask him about his time served as the vice president of the Tennessee Constitutional Convention of 1977. In our interview, he reflected on the scandal, stating that “we had to do something about Blanton”, leading to proposed structural and accountability reforms, particularly around the governor's pardon power (Cohen, 2025b).

This interview was just one of many highlights from my internship experience, and its combination with the reintroduction of his constitutional amendment was the catalyst for this paper. It sparked my interest in how constitutional mechanisms and executive power can be vulnerable to abuse, as well as being equally inspired by the Congressman's unwavering commitment to addressing this very issue throughout his fifty years of public service.

This paper would not have been possible without the support of my family, friends, Flinders University, and Congressman Cohen and his dedicated staff. I am deeply grateful to everyone who contributed to this journey and helped make both this paper and the entire experience a reality.

Introduction

The presidential pardon power, as written in Article II, Section 2, Clause 1 of the U.S. Constitution, allows the President of the United States to grant pardons in all cases, except those of impeachment. The pardon power is controversial because the abuse of this power for personal or political gain erodes public trust and violates principles of political equality, equal treatment, and the rule of law. This paper will look to answer the question:

To what extent does the abuse of the presidential pardon power erode people's trust in democratic institutions?

This research will begin by examining the constitutional origins of the pardon power, then trace its historical use in the United States, with Ford's pardon of Nixon marking a key turning point in its abuse. Legal perspectives, theoretical frameworks, and key concepts will follow, leading into a comparative analysis of executive clemency powers in Australia, India, and the United States. This will highlight major differences in procedural safeguards against abuse, further illustrated through case studies of controversial pardons in each country.

A direct link between trust in government and abuse of the pardon power will be shown through polling data and qualitative research from the past 50 years. The findings reveal that the abuse of the presidential pardon for political purposes undermines the rule of law and fuels polarisation. This, in turn, erodes public trust, creating a self-reinforcing cycle that has contributed to democratic backsliding in the United States.

Based on these findings, the next section outlines reform proposals to strengthen the authority, accountability, and transparency of the presidential pardon system. This is aimed at mitigating democratic backsliding by reinforcing checks and restoring public trust in executive restraint. Rooted in institutionalism, the recommendations include creating an independent clemency board, introducing limited judicial review, and requiring Senate confirmation of controversial pardons. These proposals draw on academic literature, the comparative analysis of Australia, India, and the United States, and Congressman Steve Cohen's 2025 Constitutional Amendment. To ground the need for reform, the origins and evolution of the pardon power must first be examined.

Origin of the Pardon Power

The origin of the presidential pardon power in the United States can be traced back to the Constitutional Convention in 1787, where it was written into the Constitution as a part of the executive powers in Article II, Section 2, Clause 1 of the U.S. Constitution. This clause gives the president the power and authority to "grant reprieves and pardons for offences against the United States, except in cases of impeachment".

The pardon power in the United States has roots in British legal tradition, where the King's royal prerogative of mercy symbolised divine authority (Crouch, 2008, p. 723). Many Founders, including Alexander Hamilton, supported a broad pardon power. In *Federalist No. 74*, Hamilton argued it should rest solely with the president to enable swift mercy, serve as a check on judicial harshness, and aid national healing. He described it as a humane and necessary power to temper the law's severity, writing that without "exceptions in favour of unfortunate guilt, justice would wear a countenance too sanguinary and cruel" (Hamilton, 1788, p. 447).

The framers also had many discussions about which branch of government should hold the pardon power, and what limitations should be put on it. While one proposal argued that any pardon given by a President would require Senate approval, this idea ultimately failed as many believed the Senate was already "delegated too much power among the three branches of government" (Eckstein and Colby, 2019, p. 78).

Hamilton and the other framers noted that there was a need to reconcile this broad power with the values of republican governance, particularly accountability, separation of powers, and the rule of law (Burns, 2022). This was done by placing the power in a single, elected executive, who would have to answer to the people through elections, and to Congress through impeachments (HumanitiesND, 2024). This decision reflected the Founding Fathers' broader challenge at the Constitutional Convention of preserving the essential powers of governance while preventing their abuse through democratic legitimacy and institutional oversight.

Despite this, the biggest concerns around the pardon power revolved around its potential for abuse and corruption. George Mason was particularly concerned around the executive shielding co-conspirators in treason, claiming that “The President of the United States has the power to grant reprieves and pardons for treason; which may be sometimes exercised to screen from punishment those whom he had secretly instigated to commit the crime, and thereby prevent a discovery of his guilt” (American Law Register, 1869, p. 580).

Many contemporary experts reject Hamilton’s justification of the pardon power, arguing that reliance on executive virtue is an outdated and inadequate safeguard against abuse (Rozenstein, 2023; Grcic, 2006; Tudor and Florence, 2024). Hamilton assumed the presidency would be held by individuals of exceptional character and supported the Electoral College to ensure such leaders were chosen (Bretgoltz, 2021, p. 8). He believed a single individual was best suited to make clemency decisions, stating that “a single man of prudence and good sense is better fitted... than any numerous body” (Hamilton, 1788, p. 447). However, critics argue this assumption is untenable in today’s polarised, media-driven environment. Love (2007) contends that neither electoral backlash nor historical judgment has meaningfully restrained misuse, contributing to the pardon power’s “disuse and disrepute in the last century” (pp. 5–6).

While recent decades have demonstrated how the pardon power can be abused, early uses of the executive power appeared to validate Hamilton’s original justification, demonstrating how it could be used responsibly to promote unity and the public good.

Historical Use of the Pardon Power

Pre-Turning Point

Early uses of the pardon power aligned with Hamilton’s vision in *Federalist Paper No. 74*, allowing the executive to act swiftly and humanely during national crises. In 1795, George Washington pardoned two men sentenced to death for treason in the Whisky Rebellion, emphasising mercy and reconciliation over retribution (Love, 2007, p. 13; Kobil, 1991, p. 592). Similarly, during the Civil War, Abraham Lincoln pardoned Confederate soldiers and Union draft dodgers to promote national healing (Love, 2007, p. 6). These actions reinforced democratic legitimacy and reflected a collective, rather than personal, use of power. This reflects how Hamilton originally intended the power to be used in *Federalist Paper No. 74*, with scholars viewing these pardons as the gold standard for clemency (Hays, 2022).

Turning Point

While the standard for using the pardon power gradually eroded over a century¹, the most significant shift came in the aftermath of the Watergate scandal. In 1972, five men were arrested for breaking into the Democratic National Committee headquarters at the Watergate complex in Washington, DC. They were caught trying to steal documents and wiretap phones, with these burglars being traced back to President Nixon and other senior officials (Kutler, 2009, p. 31). Despite denying involvement, the attempted cover-up

¹ In 1929, President Calvin Coolidge granted a pardon to Edward L. Doheny, an oil tycoon convicted of bribery in the Teapot Dome scandal. The scandal involved the secret leasing of federal oil reserves to private companies in exchange for personal gifts and loans. Doheny’s pardon raised early concerns about political influence and the use of presidential pardons to protect elite allies.

was discovered with Nixon authorising hush money payments and instructing the FBI to halt the investigation. The fallout of this saw Nixon facing impeachment by the House of Representatives for obstruction of justice, abuse of power, and contempt of Congress, with him resigning on August 9, 1974 (Kutler, 2009, pp. 199-200). He became the first President to ever resign, with his Vice President, Gerald Ford, replacing him. A month later, on the 8th of September 1974, President Ford issued Nixon a “full, free, and absolute pardon” (Kutler, 2009, pp. 206) for any crimes he may have committed while in office.

This pardon was justified by Ford, claiming that the nation needed to move on and put an end to the long national nightmare of Watergate. In an official statement, Ford stated that “the tranquillity to which this nation has been restored by the events of recent weeks could be irreparably lost by the prospects of bringing to trial a former President” (Ford, 1974, para. 21). This logic from Ford, attempted to echo the idea of reconciliation first proposed by Hamilton in the Federalist Paper no.74, and continued by Washington and Lincoln. However, his actions were not seen this way. Instead, the pardons were viewed as self-serving and politically motivated, considering that he had been appointed by Nixon as VP less than a year earlier, with Chotiner (2021) arguing that the pardon set a precedent for elite immunity.

The Watergate pardon is widely viewed as the first instance of a modern political pardon, which was not done for justice or mercy purposes, but to protect a political actor from the legal system. Scholars like Jeffrey Crouch have argued that this pardon redefined the political function of clemency and transformed it from a tool of nation-building and reconciliation into an instrument for partisan interest and institutional protection. Crouch (2008) states that “the Nixon pardon ... exposed a weakness in the framers’ plan to check the pardon power”, and because Ford was not impeached for pardoning his predecessor, then “future presidents would be safe to (pardon) their executive officials” (p. 729). This demonstrates how the Watergate pardon was the turning point. From this point on, pardons carried a heavier political cost, came under greater media and public scrutiny, and most importantly, set a precedent for future presidents to abuse.

Post-Turning Point

In the decades that followed, this precedent set by Ford’s pardon of Nixon soon evolved into a tool routinely used by Presidents to reward allies, protect personal interests, and navigate scandals.

On his last day in office, President Bill Clinton controversially pardoned billionaire financier Marc Rich, who had fled the U.S. after being indicted on 65 counts, including trading oil with Iran during the hostage crisis² and what was then the largest tax fraud case in U.S. history (Kettle, 2001; Alschuler, 2010, p. 1137). The pardon bypassed standard procedures through the DOJ and Office of the Pardon Attorney (Kettle, 2001) and was further criticised due to large donations made by Rich’s ex-wife to the Clinton Library, the Democratic Party, and Hillary Clinton’s Senate campaign. Bell (2024) notes a dip in public trust in government following this episode, reflecting perceptions that wealth and political ties could influence clemency.³

Clinton’s pardons were long viewed as the most politically controversial until both Biden and Trump used clemency as a tool of partisan loyalty and self-protection. In his final days as President, Biden issued pre-emptive pardons to family members, including an unconditional pardon to his son, Hunter Biden, who faced tax and firearms charges (Ferreira Santos, 2024). Despite earlier pledging never to pardon his son, Biden defended the decision by alleging “selective, and unfair” prosecution (BBC News, 2024, para. 5). The move drew criticism for conflicts of interest, with many arguing it elevated personal loyalty over the rule of law and breached ethical standards (Miller and Long, 2024). More broadly, the pardon contributed to declining public trust in institutions, especially concerning fairness and accountability (Stratton, 2024).

² Following the 1979 Iranian Revolution, and subsequent hostage crisis, the U.S. imposed an oil embargo and economic sanctions against Iran. This included prohibitions on U.S. companies engaging in trade with Iran.

³ This data can be found in Figure 3 and is further analysed in “Quantitative and Qualitative Data – Measuring Public Trust in Government”.

A month later, on his first day back in office, President Trump pardoned over 1,500 individuals convicted of January 6, 2021, Capitol-related offences (The White House, 2025). These pardons faced strong legal and democratic criticism, seen as loyalty rewards for violent supporters (Jones III, 2025). They also severely damaged the Department of Justice's credibility by overruling 1,200 cases from four years of work, undermining prosecutors, law enforcement, and courts (Jones III, 2025).

Hamilton originally envisioned the pardon power as a tool for mercy, healing, and justice, which early presidents correctly applied. Ford's pardon of Nixon marked a turning point toward abuse. Subsequent pardons by Clinton, Biden, and Trump fuelled concerns of favouritism overriding the rule of law and eroding public trust. These abuses highlight the increasing political polarisation of the pardon power, damaging democratic institutions and the rule of law. Given this, it is crucial to examine scholarly and theoretical responses to the constitutional and political challenges of clemency powers. The next section analyses these debates in legal and political science literature.

Literature Review and Theoretical Framework

To understand the risks posed by unchecked clemency powers, this section engages with key legal perspectives and political science theory. These perspectives provide the foundation for addressing the central question of this paper: *to what extent does the abuse of the presidential pardon power erode people's trust in democratic institutions?*

Legal Perspectives

Legal scholars examining the pardon power focus on its limits, accountability, and potential for abuse. Limits and constraints on the pardon power largely vary depending on the country, but for this literature review's purpose, just the United States will be focused on, with a comparative analysis later in the paper.

In the United States, the most significant constraint on the pardon power is the inability to grant pardons in cases of impeachment, with Article II, Section 2 of the United States Constitution stating, "the President... shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment". The courts have consistently upheld the wide scope of the pardon power, establishing that it "extends to every known offence to the law" in *Ex parte Garland* (1866), and that Congress cannot restrict the effect of a pardon in *United States v Klein* (1871).

These cases are often cited in the literature as the establishing principles for the legal tradition of judicial deference, where the courts avoid interfering with the discretionary powers of another branch of government (Smithers, 1910, pp. 549-550). Many academics criticise this, arguing that it undermines the principles of checks and balances by removing all levels of accountability for misuse. Daniel T. Kobil, in his 1991 journal article *Quality of Mercy Strained: Wresting the Pardoning Power from the King*, argues that judicial deference has resulted in a virtually unchecked power that can be used for political or self-protective ends, stating that "unbridled discretion in pardoning threatens to permit the President to shield himself and his subordinates from criminal prosecution" (p. 573)

Many scholars raise serious concerns about the lack of structural and procedural constraints on the presidential pardon power, warning of its potential for abuse. This was a concern also acknowledged by the Founding Fathers during the Constitutional Convention but largely ignored due to the idea that the presidency would be held by individuals of exceptional character and judgment (Bretgoltz, 2021, p. 8). Eckstein and Colby (2019, p. 108) argue that, unlike other executive powers, the presidential pardon power lacks procedural safeguards and judicial review, making it a constitutional anomaly that undermines checks and balances. Barkow and Osler (2024, p. 315) agree, contending that this absence of oversight invites misuse and threatens democratic accountability and the rule of law. They warn that pardons may be used to shield allies, reward loyalty, or obstruct justice, turning a tool meant for mercy into one of impunity. They also argue that the politicisation of pardons erodes public trust in legal and democratic institutions, with scholars such as Eckstein and Barkow calling for institutional reforms, a position explored further in this paper's reform recommendations.

While most of the existing literature critiques the pardon power in the United States, few studies engage in a comparative analysis of clemency structures across democracies. This paper addresses that gap by examining how the institutional design in Australia and India may offer more accountable models.

Theoretical Framework and Key Concepts

Before beginning the comparative analysis, some key concepts and theoretical frameworks must first be introduced. The first key concept is the rule of law, which states “all persons and authorities within the state ... should be bound by and entitled to the benefit of laws publicly and prospectively promulgated and publicly administered in the courts” (Bingham, 2007, p. 69). The rule of law ensures that the law is applied equally to all and enforced fairly by the courts (Bingham, 2007, p. 69). This is particularly relevant for this paper, as the abuse of the pardon power undermines the rule of law by allowing some individuals to escape punishment and evade accountability without legal justification.

A key political science theory relevant to this paper is institutionalism. Institutionalism looks to explain how the structures, rules, and norms of a political system shape behaviour, and most importantly for this paper, affect the public trust in government (Lecours, 2005, pp. 27-28). Institutionalism is directly relevant to this paper as the theory looks to explain how the design of the pardon system as an institution influences how people perceive the fairness and legitimacy of the system. This theory will be woven throughout this paper, as the impact the presidential pardon power has on public trust in democratic institutions is examined.

First introduced in their book *How Democracies Die* (2018), Steven Levitsky and Daniel Ziblatt popularised the concept of constitutional hardball. They define this term as “playing by the rules but pushing against their bounds” (p. 109). In practice, this can look like the use of legal, technically constitutional tactics that violate democratic norms and the spirit of the law, to gain or maintain partisan advantage (Levitsky and Ziblatt, 2018, p.126). This is relevant to this paper as the abuse of the pardon power to shield political allies or interfere with investigations is strongly considered a legal action that breaks democratic norms, known as constitutional hardball. Levitsky and Ziblatt emphasise that once one side engages in hardball, others often follow, setting a dangerous precedent over time, contributing to democratic backsliding (p. 109)

Democratic backsliding, at its most basic definition, denotes “the state-led debilitation or elimination of any of the political institutions that sustain an existing democracy” (Bermeo, 2016, p. 5). This process includes the gradual erosion of democratic norms, institutions, and practices, often perpetrated by democratically elected leaders (Levitsky and Ziblatt, 2018, pp. 77-83). This directly ties in with constitutional hardball, as democratic decay often occurs due to the legal but norm-violating behaviour of elected officials who undermine the checks and balances of the system and weaken the rule of law. This lens will be used throughout the paper to assess where the institutional design in Australia or India limits the risk of constitutional hardball and, therefore, democratic backsliding, in clemency decisions.

These legal and theoretical perspectives provide the foundation for a comparative analysis of how the pardon powers in the United States, Australia, and India are structured and constrained. The lessons drawn from this analysis will inform the reform recommendations aimed at enhancing accountability and restoring democratic trust.

Comparative Analysis

To assess the risks of an unchecked pardon power, this section compares how executive clemency is structured, regulated, and perceived in the United States, Australia, and India. This comparative analysis highlights how different democracies balance mercy with accountability and what safeguards they employ to prevent abuse. By contrasting the United States model with more procedurally constrained systems in Australia and India, this section illustrates the consequences of concentrated executive clemency and identifies alternative frameworks that promote transparency, oversight, and public trust. This, in turn,

supports the central argument that reforming the pardon power is essential to uphold democratic legitimacy and the rule of law in the United States.

Table Summarising Comparative Analysis Between Australia, India, and the United States

Figure 1

Feature	Australia	India	United States
Constitutional Basis	Section 61 (executive power), Section 62 (Executive Council)	Article 72 (President's power), Article 74 (Council of Ministers)	Article II, Section 2, Clause 1
Statutory Basis	Section 19P of the <i>Crimes Act 1914 (Cth)</i>	Process routed through Ministry of Home Affairs	Office of the Pardon Attorney (DOJ, non-binding)
Who Holds the Power?	Governor-General	President	President
Who Exercises It in Practice?	On advice of Federal Executive Council (ministers, especially Attorney-General)	On advice of Council of Ministers headed by Prime Minister	Unilaterally by the President
Is Advice Binding?	Yes – Governor-General must act on ministerial advice	Yes – President must act on ministerial advice	No – President can act independently of DOJ advice
Review Process	Applications reviewed by Attorney-General's Department; procedural accountability through Parliament	Applications reviewed by Ministry of Home Affairs; procedural accountability through Cabinet	Optional DOJ review; not required, can be bypassed
Judicial Review Allowed?	Yes – limited to procedural legality (<i>Horwitz v Connor</i> , 1908)	Yes – to ensure compliance with constitutional principles (<i>Maru Ram v Union of India</i> , 1980)	No – Supreme Court has upheld non-reviewability (<i>Ex parte Garland</i> , 1866)
Safeguards Against Abuse	Ministerial advice, administrative procedures, limited judicial review	Cabinet oversight, judicial review, ministerial accountability	Informal norms, public scrutiny; no formal oversight
Notable Court Cases	<i>Horvath v Australia</i> (1999) – court can intervene on legal/procedural grounds	<i>Maru Ram v Union of India</i> (1980) – clemency must align with constitutional values	<i>Ex parte Garland</i> (1866); <i>United States v. Klein</i> (1871) – pardon power is broad and not subject to legislative/judicial control
Level of Constraint	High – institutional and procedural constraints	High – executive and judicial oversight	Low – broad, unilateral power with minimal formal checks

Note. Information in Figure 1 was gathered from (Morandin, 2023; Office of the Pardon Attorney, 2015; Sebba, 1977; The Law Institute, 2023).

Comparative Evaluation

The above comparative analysis of clemency powers in Australia, India, and the United States reveals significant differences in how these three democracies balance executive power and executive discretion with institutional safeguards. In both Australia and India, the pardon power is embedded within a broad framework centred around ministerial accountability. This places significant limits on the head of state's discretion. The review process, safeguards against abuse, and judicial review demonstrated above, ensure that clemency in Australia and India functions as a tool for mercy, which occurs legally and within a politically accountable system. As these systems limit executive discretion and require transparency, the public has greater confidence in the system and that the pardons are granted fairly, and not politically. These structured processes uphold the rule of law, and even in controversial cases, make clemency appear just, impartial, and legitimate. These arguments will be further demonstrated in the case studies below.

In contrast, the United States is a large outlier, with the President operating unilaterally with no constitutional requirement for oversight, review, or justification when administering pardons. This absence

of formal accountability mechanisms makes it easier for the pardon power to become politicised or used for self-interest (Eckstein and Colby, 2019, p. 108). With no constitutional safeguards, McKechnie (2021) argues that the informal constraints, like democratic norms and public scrutiny, that once structured the pardon use, have recently significantly weakened (p. 24). These informal constraints are the same ones Hamilton believed to be enough to prevent the abuse of the pardon power, with Love (2007) arguing that Hamilton overestimated the strength and impact of political norms and public accountability (p. 6).

Another key difference between the three nations is the concept of judicial deference and how it is applied in the clemency process. In the United States, the judiciary exercises a high degree of deference to the executive, holding that the presidential pardon power is nearly absolute and beyond judicial review, meaning there are no legal or judicial checks on how or why a pardon is issued. In contrast, Australia allows judicial oversight focused on procedural fairness, while India permits reviews to ensure pardons align with constitutional principles. These differences demonstrate how judicial deference and constitutional design shape the extent clemency powers are subject to accountability under the rule of law.

This lack of formal and informal constraints allows the executive to use the pardon power with minimal accountability. From an institutionalist perspective, this reflects a structural imbalance in institutional design, where executive dominance over the clemency process erodes the separation of powers and removes any constraints on abuse of power (Sternstein, 2023, p. 616). In the United States, where the safeguards are absent or weak, the potential for abuse increases. This creates perceptions of unfairness and impunity, and signals to the public that those close to the executive power can escape accountability. This perception undermines equal justice for all under the rule of law, therefore fuelling cynicism, polarisation, and reduced confidence in democratic norms and institutions.

The following case studies from Australia, India, and the United States illustrate how different clemency frameworks operate in practice and how their design influences public trust in democratic institutions.

Case Studies

The case studies – Lindy Chamberlain, Rajiv Gandhi’s assassination, and Watergate – were chosen for their political and social controversy, illustrating how pardons, politics, and public trust intersect. The Australian and Indian cases were selected deliberately to examine clemency’s impact on public trust beyond political pardons, including wrongful convictions, scandals, and state violence.

Australia - Lindy Chamberlain

In 1980, Lindy Chamberlain’s 9-week-old daughter disappeared while the family was camping in the Northern Territory. Lindy claimed that a dingo took her baby; however, police and prosecutors dismissed this story and charged her with murder in 1982 (Staines, 2006, p. 154). Four years later, new evidence was found that supported Chamberlain’s case. After significant public and scientific pressure, the Northern Territory government issued a full pardon, and Lindy was released from prison (Staines, 2006, p. 156). Importantly, this pardon did not include a formal acquittal, meaning while the Government acknowledged a miscarriage of justice, her record was not cleared by the courts until many years later (National Museum of Australia, 2025).

This pardon is significant to analyse because it demonstrates how the executive pardon can correct a systematic injustice when new evidence emerges. Accountability and transparency of the pardon process were upheld, with multiple institutional layers (Royal Commission and judicial overturning of convictions) working together to correct justice and strengthen trust.

This case highlights the role clemency plays in shaping public trust in democratic institutions. At Chamberlain’s conviction, 77% of Australians believed she was guilty (Latson, 2014). However, after new evidence was found and her pardon was eventually given, over 131,000 Australians petitioned for judicial

review of her conviction (Staines, 2006, p. 156). Additionally, the media apologised, and public support for capital punishment declined (Malone, 2023). This shift shows how correcting a wrong can restore public confidence and re-legitimise the justice system after institutional failure.

India - Rajiv Gandhi Assassination Case

In 1991, Former Indian Prime Minister Rajiv Gandhi was assassinated by a suicide bomber during an election rally in Tamil Nadu (Raju and Raju, 2008, pp. 15-18). 26 individuals were convicted, with four sentenced to death, and the rest given life imprisonment. In 2015, one of the main convicts, A.G. Perarivalan, submitted a mercy petition to the Tamil Nadu Governor under Article 161 of the Indian Constitution, which allows state governors to grant pardons for state offences (Maturu, 2022, p. 1). This application was not acted upon until 2018, when the Governor of Tamil Nadu referred the clemency recommendation to the President of India, rather than acting on it directly (Maturu, 2022, pp. 1-3). This created a significant constitutional controversy.

While Article 161 gives the power to Governors to grant pardons for state offences, the Constitution requires the Governor to act on the advice of the state's Council of Minister (Maturu, 2022, pp. 1-3). As this process was bypassed, the Governor both delayed justices, and created a constitutional crisis that led to the Supreme Court's intervention in 2022. The Supreme Court found that because of this constitutional breach, Perarivalan was to be released as the Governor had "no authority" to delay or redirect the matter (Maturu, 2022, pp. 1-3). Critics and legal scholars believed that the referral to the President by the Governor was a delaying tactic to avoid making a politically unpopular decision (Jayarajan, 2021).

This case demonstrates that while clemency powers are intended as instruments of mercy, they can become either politicised or misused when actors don't complete their constitutional duties. Even in a multi-layered, structured system like India's democratic legitimacy depends on strict adherence to constitutional norms. However, most importantly, this case demonstrates the effective and important role judicial oversight can play in a corrective role, reinforcing trust in institutions, even when executive actors compromise the fairness of the constitutional procedures.

United States – Watergate (The Turning Point)

While Ford's pardon of Nixon for the Watergate scandal was discussed previously in 'Historical Use of the Pardon Power', the fallout in public trust following this incident is important to examine. A Gallup poll conducted immediately after the pardon showed that only 38% of Americans agreed with the pardon decision, while 53% disapproved (Roper Centre, 2014). Additionally, in the month following Nixon's pardon, Ford's approval rating dropped from 66% to 50% (Rozell, 1994, p. 122), with many historians arguing that the pardon strongly contributed to Ford's election loss in 1976 to Jimmy Carter (Roberts, 2006).

The Watergate pardon is critical to examine because it is the foundational case of how unchecked executive clemency can undermine public trust in democratic institutions. This case illustrates the risks of concentrated executive power without any formal safeguards like judicial review, congressional input, or any form of transparency mechanisms. The response by the American public demonstrates how the lack of procedural constraints allows clemency to be both used and perceived as elite protection.

Case Study Analysis

These three cases illustrate how executive clemency can either uphold or erode democratic legitimacy and public trust. In Australia and India, institutional layers and judicial review helped ensure clemency serves as a corrective tool, even when power is misused, as in the Perarivalan case. These checks help preserve legitimacy in the democratic systems and institutions. Judicial deference also plays a key role in shaping clemency outcomes. In contrast, the Nixon case highlights the dangers of unchecked executive power and its corrosive effect on institutional credibility. From an institutionalist perspective, these outcomes reflect the

extent to which constitutional design constrains executive discretion and upholds the rule of law. These cases show that the abuse of clemency power stems not from the form of government but the strength of institutional safeguards. This distinction becomes clearer when comparing a similar system with differing outcomes.

Institutional Design vs Form of Government: A Brief Note on Republican Systems

While the comparative analysis above contrasts the United States, a constitutional republic with a presidential system, with two parliamentary democracies in Australia and India, it is important to note that the vulnerability for abuse of the pardon power is not inherent to the republican form of government. Rather, the issue lies in the absence of institutional checks and oversight mechanisms in the United States. This will be illustrated by briefly analysing the pardon power in another constitutional republic, South Africa.

Table Summarising Comparison of Republican Systems – South Africa and the United States

Figure 2

Feature	South Africa	United States
Head of State	President (elected by Parliament)	President (elected by the people via Electoral College)
Constitutional Basis for Pardon Power	Section 84 of the Constitution: “The President is responsible for pardoning or reprieving offenders and remitting any fines, penalties or forfeitures”	Article II, Section 2 of the Constitution: “...he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.”
Nature of Pardon Power	Vested solely in the President, but exercised on the advice of the Minister of Justice or relevant departments	Vested solely in the President and considered plenary — full and unreviewable
Institutional Constraints	Executive actions must conform to principles of legality, rationality, and procedural fairness (Section 33)	Few formal constraints; lacks built-in constitutional or statutory checks
Judicial Review of Pardons	Subject to judicial review if exercised contrary to constitutional values (<i>President of the Republic of South Africa v Hugo</i> , 1997)	Courts have consistently ruled that the pardon power is not subject to judicial review (<i>Ex parte Garland</i> , <i>Schick v. Reed</i>)
Safeguards Against Abuse	- Advice from Minister of Justice required in practice - Subject to judicial review on constitutional grounds - Bound by legality and rationality principles	- Political costs (impeachment or electoral consequences) - No formal legal or judicial safeguards - Relies on norms and public opinion
Implication for Democratic Accountability	Stronger procedural safeguards and constitutional oversight promote accountability and constrain abuse	Weak institutional checks contribute to risk of misuse and democratic backsliding

The summary table above and analysis of the South African constitutional clemency system demonstrate that a republic does not tolerate unchecked executive clemency powers. Rather, it is the presence or absence of institutional safeguards against abuse that determines whether executive clemency strengthens or erodes democratic legitimacy. Building on this understanding of institutional safeguards, it is crucial to examine how executive clemency, and its potential abuse, affect public trust in government.⁴

Public Trust in Government

Before analysing public trust in democratic institutions, the terms public trust and executive abuse must first be discussed.

Public trust, particularly in democratic institutions, refers to “an indicator of legitimacy” that determines “the subjective probability of a citizen believing that the political system, or parts of it, will produce preferred outcomes even if this citizen takes no part in its production” (Campbell, 2019, p. 90). This reference to the political system includes all branches of the government, from the executive, legislative, judiciary, and those working in public service. Public trust directly reflects the belief that these institutions work in the best interests of their citizens by following the rule of law, upholding democratic norms, and being responsible to the people they serve (Campbell, 2019, p. 90).

The abuse of executive power refers to the President using “their official powers to interfere in the administration of justice to protect themselves, place themselves above the law, or target their political opponents” (Allen, 2021, para. 12). These actions can look like, but are not limited to bypassing legal limits, evading checks and balances, and exploiting constitutional norms (Gaziano, 2001, para. 3-8). Grover (2021) contends that this abuse of power by the executive branch fundamentally involves a violation of the public’s trust. The focus of this paper, the abuse of the presidential pardon power, is one of the most frequently abused constitutional norms (Harvard Law Review, 2021, pp. 2833-2835). All these various actions directly undermine democratic norms and institutions.

⁴ It should be noted that South Africa’s clemency system operates within a distinct post-apartheid context with emphasis on national reconciliation and restorative justice. These factors influence the design and exercise of executive clemency, making direct comparisons with the United States challenging.

Quantitative and Qualitative Data – Measuring Trust in Government

Polling and other quantitative data can be used to demonstrate how controversial pardons by United States presidents correlate with a decline in public trust of democratic institutions. The chart below demonstrates public trust in government from 1958 to 2024 (Bell, 2024).

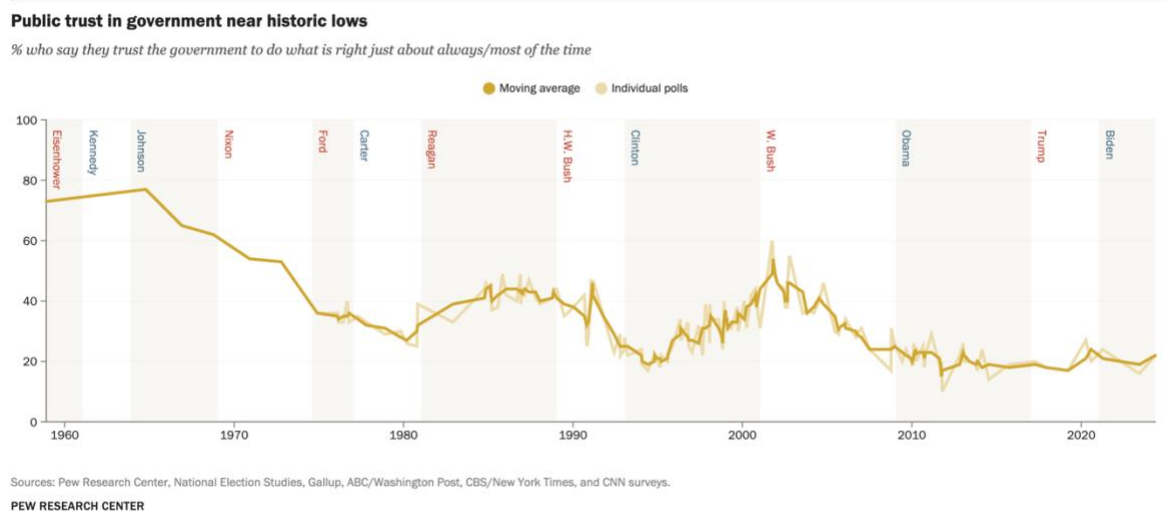


Figure 3

This chart highlights several key historical moments where abuses of the pardon power have significantly impacted public trust in democratic institutions.

Trust in government dropped sharply to 36% in 1974 following the Watergate scandal and Nixon’s pardon “for all offences against the United States” (Kutler, 2009, p. 206; Rosenberg, 2010), a 17% decline from 1972. Although trust improved during the 1980s and 90s due to economic growth, confidence in political leaders, and particularly Bill Clinton, remained low. In April 1998, amid Clinton’s impeachment, only 35% of Americans found him honest and trustworthy, and just 29% rated his ethics highly (Renshon, 2002, p. 170). His 2001 pardon of Marc Rich further eroded public trust, with 62% of people disapproving and 58% believing it was motivated by financial contributions (Polling Report, 2001). Two weeks after, 55% viewed it as an abuse of power (Polling Report, 2001). As shown in Figure 3, trust declined sharply at the end of Clinton’s term (Bell, 2024).

The first Trump administration continued the trend of having a corrosive effect on public confidence in government. The Centre for American Progress did a report in 2018 that found Americans are deeply divided across party lines in how they view the Trump administration, and how this directly affects trust and confidence in government.

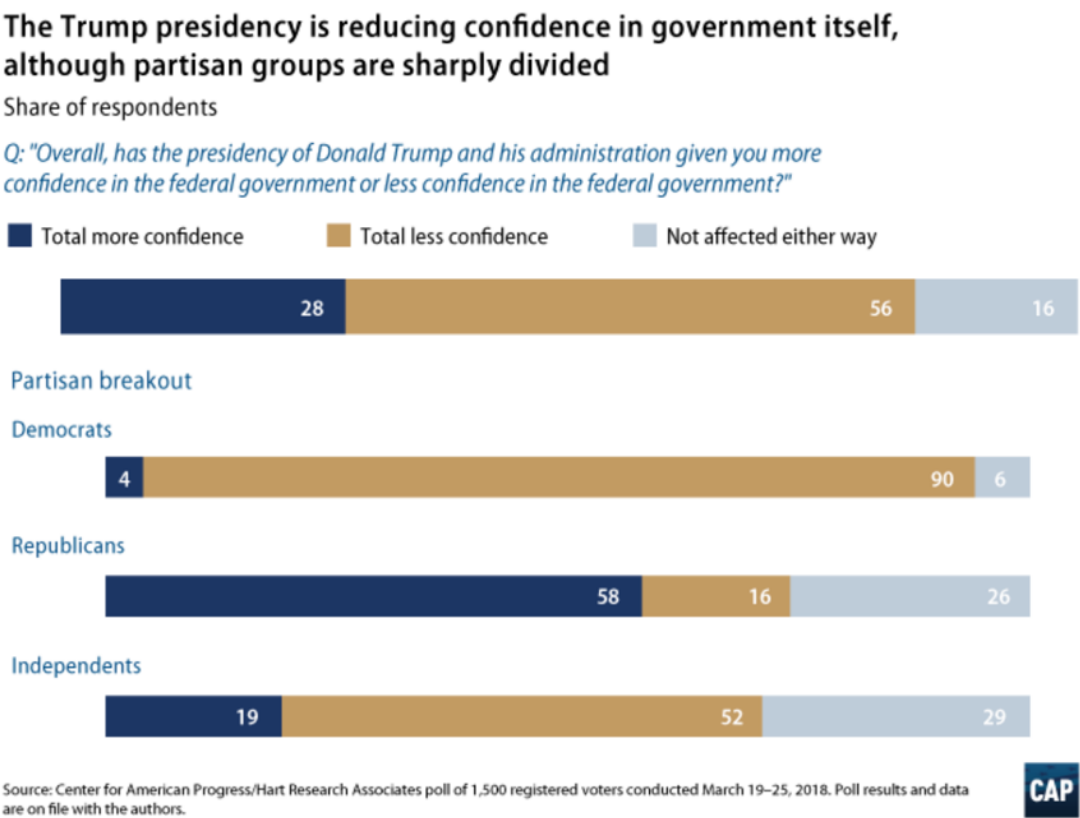


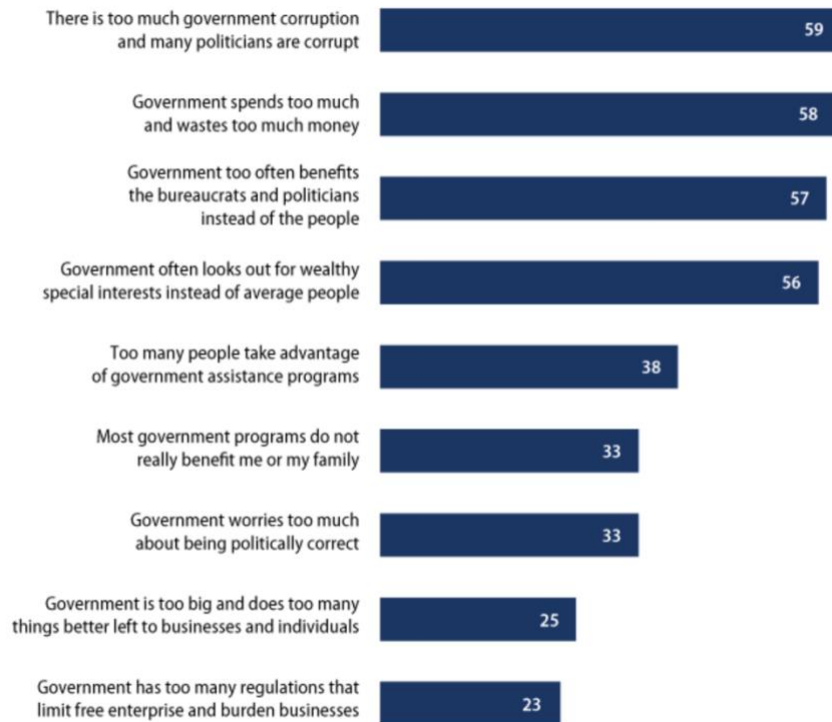
Figure 4

Figure 4, taken from Halpin et al. (2018), demonstrates how, across the first two years of the Trump administration, 56% of respondents had less confidence in the federal government. Of this 56% of voters, 23% believed that Trump was “incapable of doing the job”, with other comments including that they “can’t believe anything he says” considering that his administration is constantly “under investigation” (Halpin et al., 2018, p. 19). A common thread in this survey was that Trump, using the federal government as a tool, only “looks out for his interests” (Halpin et al., 2018, p. 19). This sentiment can be seen below in Figure 5.

Voters are very concerned about corruption and government serving special interests

Total percentage that is concerned a great deal

Q: "Please indicate how much each of these concerns you using a 0–10 scale, on which a 0 means it does not concern you at all, and 10 means that it concerns you a great deal."



Note: "Concerned a great deal" includes all voters who responded with a 9 or 10.

Source: Center for American Progress/Hart Research Associates poll of 1,500 registered voters conducted March 19–25, 2018. Poll results and data are on file with the authors.



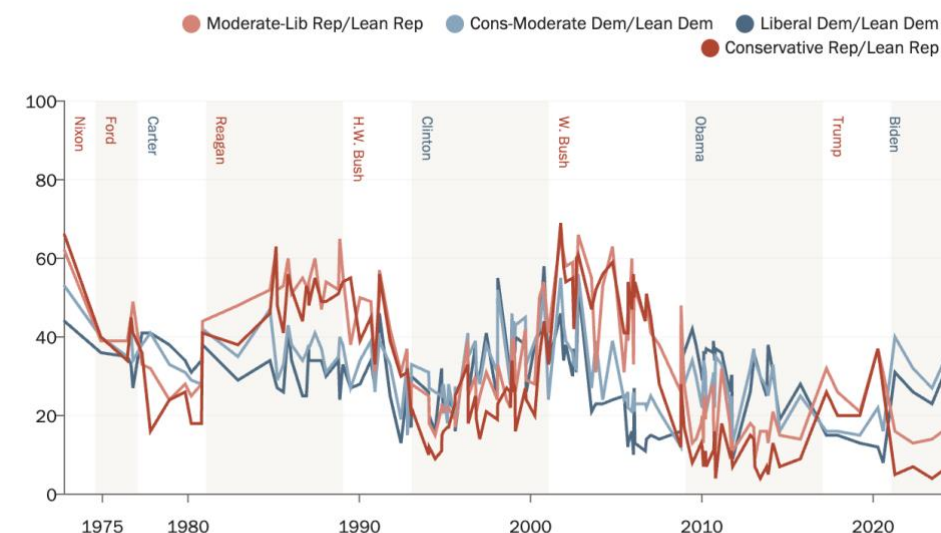
Figure 5

In a 2018 *Centre for American Progress* poll, 59% of voters said there is too much government corruption, and 57% believed the government benefits bureaucrats and politicians over the people. As seen in Figure 3, trust declined steadily during Trump's first two years, when several controversial pardons raised concerns over corruption and institutional trust. One such case was Joe Arpaio, a former sheriff convicted of criminal contempt for defying a court order to stop racial profiling of Latino drivers (Sterling & Joffe-Block, 2021). Trump's pardon bypassed the DOJ clemency process and ignored findings from its civil rights division that Arpaio had violated the Constitution (Gerstein, 2017). The ACLU called it a "presidential endorsement of racism," stating Trump "chose lawlessness over justice, division over unity, hurt over healing" (Wang, 2017, para. 4).

Also of note is the deepening polarisation demonstrated in Figure 4, where 58% of republican voters had more confidence in government after the first two terms of the Trump administration, compared to only 4% of democrat voters.

Trust in government by party and ideology

% who say they trust the government to do what is right just about always/most of the time



Sources: Pew Research Center, National Election Studies, Gallup, ABC/Washington Post, CBS/New York Times, and CNN surveys.

Figure 6

This gap in trust of government by party and ideology throughout the Trump administration can also be seen in Figure 6, taken from Pew Research Centre (2024). Figure 6 above demonstrates that since the early 1990's trust in government was relatively steady across parties, with no significant difference based on ideological leanings. This began to change following Bush's 'War on Terror' in the mid-2000s before the two metrics significantly split at the beginning of the first Trump administration, with this trend continuing into the Biden administration post-2021. A summary of Republican versus Democratic trust in government can be seen below, centred around the turning point of Watergate and other significant moments in American history around executive power.

Republican versus Democratic trust in government

Figure 7

Period	GOP Trust (%)	Dem Trust (%)	Gap (pp)
Oct 1974 – Post Watergate Pardon	40	36	4
Jan 2001 – Post Marc Rich Pardon	41	33	8
Oct 2001 – Post 9/11	66	61	5
Aug 2020 – Trump Presidency	37	12	25
Jun 2023 – Biden Presidency	4	23	19

Note. Data from Pew Research Centre (2024).

Figure 7 above highlights how trust in government has become increasingly polarised across party lines, with the partisan gaps continuously widening since 2001. Before this, controversial pardons, such as those issued by Ford and Clinton, occurred in an environment of bipartisan trust. In these cases, trust in government went down, across party lines. However, as pardons have become more politically motivated, trust becomes partisan, and institutions are no longer seen as neutral. Rather, citizens only trust these institutions when their party is in power.

Researchers at the Democratic Erosion Consortium have also noted that as political polarisation deepens, the public's faith in government institutions declines (Draughton, 2022). Under this "us vs them" mentality of

polarisation, government supporters may become more accepting of illiberal actions, while opposition groups are more likely to use undemocratic ways to express their dissatisfaction (McCoy and Somer, 2019).

This had created a situation where, because of the politically motivated pardons, eroded trust in government fuels political polarisation, whilst at the same time, political polarisation further fuels an eroded trust in government, resulting in a never-ending cycle. This has resulted in record lows of trust in democratic institutions across all three branches of Government. A 2022 Gallup poll found that only 25% of Americans have confidence in the Supreme Court, with 23% trusting the Presidency, and only 7% having trust in Congress (Saad, 2023). This is concerning because, as Mitchell (2025) suggests, sustained partisan distrust suggests a decline in democratic health that aligns with a broader phenomenon known as democratic backsliding.

Constitutional Hardball and Democratic Backsliding

The growing mistrust in democratic institutions, in part driven by abuses of executive power, aligns with a broader phenomenon seen across the world, known as democratic backsliding. Bermeo (2016) describes democratic backsliding as “the state-led debilitation or elimination of any of the political institutions that sustain an existing democracy” (p. 5). Bermeo also notes that today, backsliding doesn’t occur through coups or revolutions; rather, backsliding is legitimised through “the very institutions that democracy promoters have prioritised” (p. 6). This is often done through constitutional hardball and the illiberal use of legal tools such as the pardon power.

When the pardon power shields political allies or obstructs accountability, it becomes a form of constitutional hardball – a legal but norm-breaking conduct that erodes democratic norms and institutional legitimacy (Tudor & Florence, 2024). This blurs the line between executive discretion and self-protection, weakening the principle of equality under law. Notable examples include Trump’s pardons of Roger Stone (convicted of obstruction and witness tampering) and Michael Flynn, who pleaded guilty to lying to the FBI (Gambino, 2020; Pengelly, 2020). Scholars argue these pardons lacked traditional justifications like mercy, instead serving political loyalty and self-interest (Marcus, 2020; Sarat, 2020; Citron, 2025).

This use of the presidential pardon power as a form of constitutional hardball has resulted in a loss of faith in the fairness and impartiality of democratic institutions from the public, fuelling political polarisation, and speeding up democratic backsliding occurring in the United States. This can be seen in the United States’ Freedom House score, which dropped 11 points between 2010-2020, with an “accelerated deterioration” of 6 points during Donald Trump’s first term in office (Repucci, 2022). Other democracy indicators, including the Varieties of Democracy, have found that the United States has “autocratized to a significant degree” in the last decade (Gordon-Rogers, 2024, para. 4).

These trends signal not just democratic decline, but the potential for lasting institutional damage. Addressing the abuse of the pardon power is therefore both urgent and essential to restoring democratic accountability in the United States.

Looking Towards the Path Forward

The sections above on public trust in government and democratic backsliding highlight the need for significant changes to the clemency process and presidential pardon power in the United States. Recently proposed legislation by Congressman Steve Cohen looks to limit the presidential pardon power and the scope of the subjects of pardons.

Congressman Cohen’s Constitutional Amendment

Congressman Steve Cohen, representing Tennessee’s 9th Congressional District of Memphis and Shelby County, has proposed various constitutional amendments that have looked to reduce the scope of the pardon

power. Most recently reintroduced in 2025, Congressman Cohen’s constitutional amendment stated that “The President shall not have the power to grant pardons to:

- The President’s self
- Any person, up to a third-degree relation, of the President, or a spouse thereof
- Any current or former member of the President’s administration
- Any person who worked on the President’s presidential campaign as a paid employee
- Any person or entity for an offence that was at the direction of, or in coordination with, the President” (Cohen, 2025a).

The Amendment also stated that “no pardon issued for a corrupt purpose – past, present, or future – is valid” (Cohen, 2025a). This Amendment looks to ensure the pardon power is not abused for purposes of corruption or self-protection, with it looking to limit unilateral, executive clemency power.

In a recent interview conducted for this paper, an anonymous Capitol Hill staffer expressed optimism about the amendment, citing “the momentum of the moment” (Anonymous staffer, 2025). At the time, Republicans opposed Biden’s pardons of family members, while Democrats opposed Trump’s pardons of January 6 rioters. This optimism reflected Kingdon’s ‘Multiple Streams Framework’, where a problem, solution, and favourable political climate must align to create a window for controversial reform (Kingdon, 1995).

For Congressman Cohen, “party has never been a factor; it’s a matter of principle” (Cohen, 2025a), reflecting a bipartisan intent behind clemency reform, echoed by the anonymous Capitol Hill staffer interview. Yet, as shown earlier, politically motivated pardons have created a cycle where distrust fuels polarisation, and vice versa. In this context, even principled reforms are likely to be seen through a partisan lens, underscoring the challenge of restoring institutional legitimacy after repeated democratic erosion.

On top of this political environment, the legal and political feasibility of passing a constitutional amendment is challenging. Article V in the US Constitution requires a supermajority of two-thirds of Congress (290 of 435 in the House and 67 of 100 in the Senate) as well as being ratified by three-fourths of the states (38 out of 50).

Given these substantial constitutional hurdles, on top of the current politically polarised environment, institutional reforms may offer a more realistic pathway to restoring the accountability of the pardon power. Reform recommendations such as an independent clemency board, judicial review, and Senate confirmations aim to create procedural safeguards that promote transparency and offer a way to reduce the abuse of executive power, all whilst navigating the deeply polarised political climate.

Reform Recommendations

The comparative analysis and public trust in government sections above demonstrate how institutional safeguards on the pardon power prevent abuse. In systems where the power is limited procedurally, and held accountable politically, clemency can be used for its original purpose of a last-resort tool for mercy. This idea will set the precedent for the following reform recommendations that are centred around Margaret Love’s three recommendations for reforming the federal pardon power:

- **Authority:** The process must be administered by individuals who are independent and authoritative.
- **Accountability:** The process must be accessible to people of all walks of life.
- **Transparency:** The process must be guided by clear standards that are applied consistently. (Love, 2011, p. 751)

The following reform recommendations will also be grounded in institutionalist thinking, aiming to create mechanisms that reinforce accountability and constrain executive overreach by strengthening formal checks within the clemency process.

The three characteristics found in Love (2011) alongside institutionalist thinking will guide the reform recommendations that aim to prevent the abuse of the pardon power, hence restoring trust in democratic institutions.

Independent Board Model

The first key reform recommendation to prevent the abuse of the pardon power is the implementation of an independent, bipartisan clemency board. In this model, the clemency evaluation power shifts from the Department of Justice to a bipartisan expert panel, including former prosecutors, defenders, and specialists in criminology, psychology, and criminal justice. This can ensure credible decision-making, whilst signalling to the public that “a decision for clemency is reasonable across a range of viewpoints” (Barkow and Osler, 2024, p. 323). To remain in line with the Constitution, this panel would be chosen by, report to, and serve the President. This reform is supported by key scholars in the literature, such as Rachel Barkow, and former U.S. pardon attorney, and Margaret Love.

The key to this recommendation is taking the evaluation process for pardons out of the Department of Justice’s hands, to ensure more efficient, productive, and fair pardons that remove the endless bureaucracy from the whole process. This is to ensure swift and fair pardons, as originally intended by the constitutional framers (Hamilton, 1788). Taking the power out of the DOJ is a consensus so broad that it includes both the Heritage Foundation and the American Constitution Society (Barkow and Osler, 2024, p. 322).

In her 2011 journal article, *Reinvigorating the Federal Pardon Process: What the President Can Learn from the States*, Love proposes the idea of an independent pardoning board that is heavily regulated in their procedures. This idea is modelled off the state system, where the Governor plays almost no part in the pardon process, but is required to recommend pardons by an independent, bipartisan board that is required to “hold a full and public hearing before granting a pardon” (Love, 2011, p. 744). This system very closely mirrors that in Australia and India, where the Head of State acts on the advice of a council of ministers.

This system would also line up with Love’s (2011) framework of authority, accountability, and transparency. By transferring all the clemency power away from the executive and to a bipartisan and expert-led panel, the reform ensures that clemency decisions are made by individuals with the credibility to do so. It also further enhances accountability by making the process accessible to all applicants, not just political allies or wealthy individuals with power connections. Most critically, it introduces transparency into a system that for decades has been criticised for its secrecy and inconsistency. This model would help improve the administrative fairness and contribute to rebuilding public trust in democratic institutions by ensuring that clemency is exercised as a tool for justice, as originally intended by the founding fathers.

Judicial Review

The second reform proposes a narrow judicial review mechanism to assess the procedural legality and constitutionality of clemency decisions. Unlike Australia and India, the U.S. lacks any judicial scrutiny of presidential pardons, due largely to judicial deference (see legal perspectives). This absence enables potential political or corrupt misuse of the pardon power.

Landmark cases like *Ex parte Garland* (1866), *United States v. Klein* (1871), and *Schick v. Reed* (1974) affirm judicial deference and limit congressional interference in clemency decisions, but do not preclude Congress from enacting laws enabling judicial review of their procedural and constitutional validity. These three cases and their findings are summarised below.

Case	Congress Involvement	Court Involvement
<i>Ex parte Garland</i> (1866)	Congress cannot restrict or modify the president's pardon power. Attempting to override a pardon by barring recipients from professions (e.g., law) was ruled unconstitutional. The pardon power is exclusive to the executive.	Courts must recognize the president's pardons as final and cannot question their legitimacy. Judicial review of the merits of a pardon is not permitted.
<i>United States v. Klein</i> (1871)	Congress cannot dictate how courts treat the legal effect of a pardon. A statute making pardons evidence of disloyalty was struck down as violating separation of powers.	The Court affirmed that once a pardon is issued, courts must honour it. Congress cannot instruct courts to undermine or reinterpret its effect.
<i>Schick v. Reed</i> (1974)	Reaffirmed that the pardon power comes directly from the Constitution. Congress cannot impose limits or conditions on how the president grants clemency, including conditional pardons.	The Court upheld a conditional commutation, reinforcing that courts have no role in reviewing the substance or fairness of clemency decisions unless a separate constitutional violation is at stake.

Note. Information above gathered from (United States v. Klein, 1871; Ex parte Garland, 1866; Schick v. Reed, 1974; Kobil, 1991).

Figure 8 demonstrates how current constitutional interpretation prevents Congress or courts from limiting or reviewing presidential pardons on merits or motives, but it's not specified if limited judicial review on procedural or constitutional grounds is possible. Legislative reform could introduce judicial review to ensure clemency decisions comply with constitutional protections like equal protection, due process, and prohibitions on corrupt intent, without undermining presidential authority. This would assess procedural legality, consistency, fairness, and transparency. Implementing such reform requires federal legislation authorising courts to hear claims of constitutional violations in clemency decisions.⁵

This recommendation is rooted in the previous comparative analysis with Australia and India, where both countries maintain mechanisms that allow limited judicial scrutiny of executive clemency decisions. In India, especially, the Supreme Court has upheld that despite the president's broad power to grant pardons, it is not immune from judicial review where decisions are not made in compliance with constitutional principles (Maru Ram v Union of India, 1980).

Legal scholars have increasingly argued for judicial review over the presidential pardon power. Brian Kalt, in his book *Constitutional Cliffhangers* (2012), argues that despite the broad nature of the pardon power in the Constitution, it was never intended to shield the president from legal accountability. He argues that in cases of politically motivated clemency, the courts may have a constitutional and ethical responsibility to intervene if the pardon undermines the rule of law and other constitutional principles (pp. 41-60).

Introducing judicial review that is designed to assess the procedural legality and constitutional compliance of pardons aligns closely with the principles of authority, accountability, and transparency as highlighted in Love (2011). By giving the courts the power to assess the constitutionality of pardons, it reinforces the

⁵ It should be noted that the legislation should be carefully crafted to not infringe on the core elements of the pardon power as recognised in existing case law.

authority of constitutional norms. This creates a path for increased institutional accountability while also enhancing transparency by subjecting clemency to legal reasoning and public scrutiny.

Senate Confirmations

At the 1788 Constitutional Convention, the framers rejected requiring Senate approval for pardons to avoid excessive delegation to the upper house (Eckstein & Colby, 2019, p. 78). Nonetheless, the final reform of this paper recommends Senate confirmation for pardons involving family, administration officials, campaign staff, or those acting on the President's behalf. This mirrors Congressman Cohen's 2025 Constitutional Amendment. While this recommendation departs from the framers' intent to preserve executive autonomy, it introduces a modern safeguard, acknowledging that reliance on executive virtue is now insufficient (Rozenstein, 2023; Grcic, 2006; Tudor & Florence, 2024). The reform retains clemency power but introduces another safeguard against potential abuse in high-risk cases.

Senate confirmations would help prevent controversial pardons that bypass internal checks and benefit the President's allies or donors. Modelled on confirmations for judges and cabinet members, this reform targets only pardons involving clear conflicts of interest. While critics may argue it limits clemency's speed and flexibility, it's important to note that this reform wouldn't apply to all pardons, just those where there is a clear conflict of interest.

This recommendation would strengthen the authority of democratic institutions by reinforcing checks across branches of government. It would enhance accountability by ensuring that clemency decisions are subject to broader institutional scrutiny, while promoting transparency by making the decision-making process more public and subject to procedural oversight.

While introducing an independent clemency board, judicial review, and Senate confirmation may enhance transparency, some argue these reforms risk politicising what should remain an impartial act of mercy (Madar, 2015). Others caution that limiting executive discretion could delay swift interventions in cases of miscarriage of justice. However, these concerns must be weighed against the dangers of unchecked power and its erosion of trust in democratic institutions. These reforms do not eliminate executive flexibility but instead channel it through transparent, rule-bound processes that preserve the pardon's original purpose while reinforcing democratic norms and public confidence.

These three reform recommendations all look to prevent the abuse of the pardon power in the United States by increasing the authority, accountability, and transparency of the clemency process. This would, in turn, look to remove the politicisation of the pardon power in the United States, increasing trust in democratic institutions, and help prevent the continuous democratic backsliding.

Conclusion

This paper has demonstrated that the unchecked scope of the presidential pardon power in the United States poses significant risks to democratic legitimacy, the rule of law, and public trust in government institutions. Through a detailed legal and theoretical framework, combined with a comparative analysis of Australia, India, and the United States, structural safeguards such as procedural constraints and judicial review are essential to prevent abuses of executive clemency.

The case studies of Lindy Chamberlain, the Rajiv Gandhi assassination clemency controversy, and the Watergate pardon illustrate how different institutional designs directly impact public perceptions of fairness, trust, and legitimacy. While Australia and India demonstrate that layered processes and oversight mechanisms can uphold mercy without sacrificing democratic norms, the U.S. model of a broad unilateral power risks politicisation and erodes trust in democratic institutions.

Furthermore, the analysis of public trust data reveals a troubling correlation between controversial, politically motivated pardons and declining trust in government, especially as partisan polarisation deepens.

This erosion of trust not only undermines the rule of law but also fuels democratic backsliding by normalising constitutional hardball tactics.

Congressman Cohen's proposed constitutional amendment, while ambitious and facing substantial political hurdles, highlights the urgent need for reform. However, considering today's politically polarised climate, incremental reform changes, such as establishing an independent clemency board, introducing judicial review, and requiring Senate confirmations for high-risk pardons, offer viable paths to restore authority, accountability, and transparency to the pardon process.

Ultimately, preserving the legitimacy of the pardon power requires balancing mercy with robust institutional checks. Only through thoughtful reform can the United States safeguard democratic norms, rebuild public trust, and ensure that clemency serves justice rather than a tool for political favouritism or corruption.

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