

PARDON POWER

HOW THE PARDON SYSTEM WORKS — AND WHY



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FACTS & HISTORY ABOUT THE PARDON

WHAT IS A PARDON? A pardon is the absolution of a person for a crime. For federal crimes, the pardon power rests solely with the president. For state crimes, the pardon power varies — not all governors can wipe away a criminal record with the stroke of a pen.

ARE THERE DIFFERENT TYPES OF PARDONS? Pardons exist in two forms: legitimate pardons that serve their intended purposes of mercy or remedying injustice; and illegitimate pardons that serve as favors for wealthy donors, supporters, and family members that deserve the rule of law.

WHY DOES THE PARDON EVEN EXIST? In theory, pardons exist to enable mercy for individuals who are unjustly treated or amnesty to heal a nation. The framers of the Constitution borrowed the concept from England's monarchy, and exists in every country across the world except China.

WHO CAN BE PARDONED? Presidents can issue pardons for any federal crime with few limits and without explanations. The power is far more constrained in some states than for presidential pardons.

WHY DOES THIS MATTER NOW? WHAT ARE THE IMPLICATIONS FOR THE 2024 ELECTION?

Donald J. Trump is the first president to realistically present the country with the possibility of a self-pardon. He dangled a self-pardon while in office, and if he were to pull one out to challenge the indictments against him for his role in the plot to overturn the 2020 presidential election and his mishandling of classified documents after he left office, it would throw the country into another constitutional crisis. Trump has also repeatedly and publicly promised blanket pardons for those charged with or convicted of crimes committed during the January 6th insurrection (more than 1,265 people).

HOW MANY PARDONS IN HISTORY? For as long as crimes have carried official punishments, leaders have exercised clemency and issued pardons. U.S. Presidents have granted as many as 3,687 pardons during their terms in office (President Franklin D. Roosevelt) and as few as 0 (Presidents William Henry Harrison and James A. Garfield). President Donald J. Trump issued 143 pardons, many of which smacked of self-interest, obstruction of justice, and corruption.

PROSPECTIVE PARDONS: Although Ford pardoned his predecessor of all offenses against the United States before he could be charged, the Supreme Court has never weighed in on prospective pardons. Presidents cannot pardon crimes before they're committed, however.

CONDITIONAL PARDONS: Pardons can also be conditional, where the offender must satisfy criteria in order to receive the pardon.

POSTHUMOUS PARDONS: Pardons issued after a recipient has died are meant to correct past injustices — such as convictions for violating Jim Crow laws or sex offenses associated with homosexuality — or to address changes in our social and legal systems.

AMNESTY: Pardons can be granted to entire categories of offenders, a practice also known as amnesty. President Carter issued a blanket pardon in 1977 to all Americans who evaded the Vietnam War draft.

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WHAT DID PARDONS LOOK LIKE IN THE BIBLE? IN GREEK & ROMAN TIMES? Pontious Pilate effectively pardoned an accused murderer named Barabbas. He and Jesus Christ were both presented to a crowd and asked which of the two should be pardoned. The crowd chose Barabbas, and Jesus Christ was crucified.

In *The Orestesa*, a Greek 5th C BC trilogy, King Atreus's wife committed adultery with his brother, Thyestes. The king took revenge on Thyestes by killing his sons, thus beginning a multigenerational cycle of violence between the two families. As a result, rulers addressed all crimes as being *against the king himself*, thus giving kings the power over the fate of a criminal to be pardoned or punished.

Prisoners in Ancient Rome who were condemned to death would be pardoned if, on their walk to the execution, they passed a Vestal Virgin by chance. Ancient Romans believed the purity of the Vestal Virgins would be transferred to the prisoner upon the chance encounter, thereby spiritually washing away their crimes.

WHAT WAS THE FIRST PARDON IN US HISTORY? In 1795, President George Washington pardoned a group known as the Whiskey Rebels. In an effort to repay debts incurred during the Revolutionary War, Washington signed into law a tax on "distilled spirits" aimed at the producers and distributors. Upset by this tax, farmers and distillers in western Pennsylvania rebelled. All but two insurgents were eventually pardoned. This was the first instance in which the constitutional pardon power was used by a US president, and Washington was widely acclaimed for his action.

WHAT ARE SOME OTHER NOTABLE US PARDONS?

- President John Adams pardoned the leaders of Fries Rebellion, in which hundreds of Pennsylvania farmers took up arms to force the release of a group of prisoners who had protested a federal property tax imposed to raise money for an anticipated war with France..
- President James Madison pardoned deserters from the War of 1812.
- On his way out of office, Trump pardoned a team of felons who rallied around a range of his bad acts that produced impeachments and criminal indictments. They included Roger Stone, Mike Flynn, Steve Bannon, and Paul Manafort.
- In May 2024, Texas Gov. Gregg Abbott pardoned a man convicted of murdering an armed Black Lives Matter protestor at an Austin demonstration in 2020. This was neither mercy nor amnesty -- or even self-interest. It was pure politics, stoking dangerous divisions that are tearing apart the country.

IS THE PARDON POWER ABSOLUTE? No, but it's a powerful myth. Although the Constitution's text only excludes pardons for impeachments, the Supreme Court has held that pardons can't undermine Congress's power of the purse, for example, so there's no obvious reason they can't be constrained by other parts of the Constitution too, such as equal protection and due process. Because it concentrates too much power in one person, a presidential self-pardon should be unconstitutional.