Who Deserves Mercy? State Pardons, Commutations, and the Determinants of Clemency[*]

Anna Gunderson
Department of Political Science
Louisiana State University
agunderson@lsu.edu

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Abstract

Though nearly 1.5 million people were incarcerated in prisons and jails in 2019, the number of clemency petitions granted by the president or state governors remains exceedingly rare, in the dozens to hundreds. Political science has largely focused on presidential pardons, but this paper looks to the states for variation in pardoning practices and outcomes. I collect original data on the frequency and identity of recipients of clemency (pardons and commutations) in the states and analyze the determinants of these powers. Who is the most likely to receive mercy? I consider both state- and individual-level predictors to illuminate patterns in clemency across the states. I find governors facing election years are more likely to grant mercy, and that white, female, and non-violent offenders are overrepresented in clemency grantees. This paper provides essential insight into a rare but consequential practice, a matter of literal life and death for millions across the country.

During the Black Lives Matter protests in 2020, one St. Louis couple gained infamy after standing outside their luxury home and pointing guns at social justice demonstrators marching through their neighborhood. Mark and Patricia McCloskey pled guilty to misdemeanors in 2021 but a few months afterward, they were pardoned by Missouri governor Mike Parson[1] even while Parson continued to have a backlog of other clemency requests, including a convicted murderer that prosecutors now say is innocent. The McCloskeys' case is unique in its nationwide media attention, but it lays bare a system that is largely without checks or attention: state clemency procedures, pardons or commutations.

States, like the federal government, possess the power of clemency, a category which includes both pardons (i.e. complete forgiveness of a crime and restoration of rights) and commutations (i.e. reduction or elimination of a remaining sentence). Though the federal government releases regular statistics on their use of pardons and commutations, data that scholars have used in studies to analyze the predictors of clemency (e.g., Baumgartner and Morris 2001, Landes and Posner 2009), information at the state-level is much more sparse and not easily available to the public. Some information exists, however, on the relative use of clemency across the states: while some states (like Alabama, Idaho, and Nevada) exercise their pardon power frequently, with a significant number of applications ultimately granted clemency, others like Massachusetts, New Jersey, or West Virginia use this power sparingly, with few or no pardons in the last twenty years.[2] This variation is important, and points to a need to study the clemency processes in the states to understand why some states, and not others, levy mercy and others do not considering governors' and parole boards' virtually unfettered use of this power. Who should exercise this power? What limitations should be placed on this power (e.g., Dinan 2003)? This paper aims to provide essential context in the discussion around the clemency process in the states.

Analyzing clemency is vital for several reasons. First, while a growing scholarly literature aims to understand the growth of the carceral state over the last few decades (e.g., Beckett 1997, Gunderson 2020, Murakawa 2014, Simon 2007), relatively less attention has been paid to mercy, or grants of clemency. This is especially important as the incarceration rate has skyrocketed, with millions in prison or jails in modern years (Carson 2020) with no commensurate increase

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[1] See https://apnews.com/article/michael-brown-st-louis-20062ccc6593bd91757ad1ea4a190db5.

[2] See https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisoncharacteristics-of-pardon-author

in the granting of pardons or commutations. Second, the consequences of clemency are severe, particularly for those that are innocent of the crimes they have been convicted of. In the most severe instances, clemency is an innocent person's last chance at relief. The Supreme Court called clemency the "fail safe" of the criminal justice system — though it continues to be an opaque and inaccessible system for most (Cooper and Gough 2014). Since 1973, 185 former death-row inmates that were ultimately executed were exonerated after their deaths.[3] While not all applicants for clemency are innocent or on death row, the consequences for that type of applicant highlight the life-and-death nature of this process. For those convicted of lesser offenses, imprisonment still carries with it the physical costs of incarceration and the collateral consequences to families and communities (Turanovic, Rodriguez and Pratt 2012), and the convicted themselves with lack of access to programs like food stamps, restrictions on employment, voting or gun rights, among many other legal restrictions (Ewald 2012).

I scoured state websites and annual reports, and filed open records requests with each state agency or office responsible for granting clemency. As of this draft, I have inputted data from 39 states to create a dataset of applications and clemency petitions granted across the states. While this data collection effort is still ongoing — and slow! — it allows us to see some preliminary patterns in the determinants of clemency petitions granted. I consider both state-level characteristics and individual-level characteristics (i.e., an applicant's race, gender, and/or crime) and find that gubernatorial partisanship, but not citizen ideology, contributes to more petitions granted. Gubernatorial election years are also associated with more mercy. When considering individual-level characteristics, non-white men and women are overall less likely to receive clemency. These results are tentative, however, so I investigate the degree to which non-white, female, or violent offenders are over- or under-represented in clemency recipients. I find a significant and troubling racial gap in grants — non-white applicants are much less likely to receive relief — and that female and non-violent offenders were more likely than their overall percentages in prison would suggest to receive relief. These tentative analyses provide support for the main contentions here, that clemency is a political process, one that merits close scholarly attention.

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[3]See https://deathpenaltyinfo.org/policy-issues/innocence.

1 State Predictors of Mercy

As with other policies, there is much heterogeneity in the ways in which states use their pardon power (Dorne and Gewerth 1999). Typically, this power is vested in the executive branch under the purview of the governor and some kind of administrative board, whose members also preside over the granting of *parole* and in 44 states, are appointed by the governor. There are a few rough categories of pardon administration, however: an independent parole board, shared power[4] between a governor and a board, permissive consultation with board, or no statutory advisory process on the matter. Either way, though, governors are intimately involved in the process, whereby they either exclusively control the board or the overall process or they share that power with a board that they either sit on or appoint members of (Ridolfi and Gordon 2009).

Typically, these procedures involve little public involvement or scrutiny as boards are usually under no obligation to provide reasons for their decisions, may not even track the number of petitions they receive or grant (see more below), and many do not know that these hearings happen at all. This paper aims to introduce this data in an effort to demystify and make public the efforts of these parole boards, alongside evidence that these decisions may be at least partially driven by politics and not necessarily practical considerations.

Why would clemency be granted? Though many parole boards do not have to provide any justification for their decisions, clemency is granted to correct excessively severe sentences, for innocence or dubious guilt, to restore civil rights, for services to the state, or to correct hard cases, among other reasons (Ridolfi and Gordon 2009). Here, I am agnostic about the reasons behind clemency, only that it is ultimately granted.

To analyze the clemency process, I first consider state-level factors that determine the ultimate number of grants. Studies of state decisionmaking often focus on the initial *adoption* of particular policies, like Three-Strikes Laws that require specific and deliberate implementation (Karch and Cravens 2014). What makes certain states adopt policies and certain others not? Here, I focus on pardons and commutations not necessarily as a specific policy implemented at one point in time, but as yearly opportunities for state policymakers to exercise discretion to levy mercy, or not. Nevertheless, here I use insights from policy adoption to inform hypotheses about

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[4]This can either have the governor on the board, a gatekeeper board, or that the governor must consult with board.

correlates of more or fewer pardons granted. The determinants of state policy often take two distinct forms: the first is an external focus on external factors contributing to policy adoption, whether it be through diffusion or social learning (Berry and Berry 1990, Boehmke and Witmer 2004). Others instead look internally, on institutional predictors of policymaking, like partisanship, electoral competition, or demographic or social contributors to policy (Walker 1969). Here, since clemency is a process exercised annually, I primarily focus on institutional contributors to variation in pardons or commutations.

Perhaps the most important single determinant of state policy is the ideology of elected officials, the governor and/or state legislators. Democratic states, in general, are theorized to institute more liberal outcomes in a variety of policy areas (Alt and Lowry 1994, Caughey, Xu and Warshaw 2017, Dynes and Holbein 2020, Potrafke 2018). Though some of these studies use combined measures of partisan control of the governor and the state legislature, others focus specifically on governors (Gunderson 2021, Kousser and Phillips 2012) or state legislatures or legislators (Parinandi 2020, Yates and Fording 2005). We might expect, then, from this literature that Democratic states will be more likely to levy mercy. Despite this consistent research, however, important variation remains in the determinants of state policy. For instance, partisanship may matter in some areas and not others (Besley and Case 2003, Grumbach 2018, Kreitzer 2015, Leigh 2008) and there is some evidence that partisanship may not be associated with punitive measures (Ybarra, Sanchez and Sanchez 2016) *or* that Democratic states may be *more* punitive than their Republican counterparts (Gunderson 2021).

This relationship is even further complicated by the complex institutional arrangements surrounding the clemency process (as described in more detail above). In some places, governors may have a more instrumental role in who receives clemency than in others. Broadly, these different approaches invest more power in the governor *or* an administrative board (though, even the administrative model receives input from the governor or the governor sits on the board; Heise 2003). Nevertheless, here I consider the governor the important institutional actor that determines the overall priorities of the parole board as there is nearly *no* public information about parole boards and governors are the consistent actors across the states that are involved in the clemency process: whether to grant it, to whom, and the relative frequency of these grants.

There is some reason to believe that Republican and Democratic officials alike face scrutiny

in their choices to parole or pardon anyone, with parole board members that are appointed by the governor in fear of losing their position if they make an unpopular decision (Schwartzapfel 2015). Here, I use gubernatorial ideology as a proxy for the ideology of the parole board, since governors often either directly control or can somehow influence the make-up of the board and who gets appointed and unfortunately, little is known systematically about parole board members. I expect that Republican governors will appoint and support more conservative nominees that are less likely to grant mercy than Democratic governors. This follows some evidence that suggests Democratic presidents, for example, are more likely to grant mercy (Landes and Posner 2009).

Hypothesis 1: States with Republican governors will be associated with fewer clemency petitions granted than states with Democratic governors.

Though partisanship is often a key explanatory variable in the creation of state policy, I expect external electoral pressures to also play a role in the administration of state mercy. Governors (of all political parties) may want to appear "tough on crime" in an effort to curry favor with voters (Gunderson 2021, Pridemore 2000). This may be particularly important with regard to death penalty cases, for instance (Kubik and Moran 2003). As a result, I expect these electoral pressures to move states in a more punitive direction, therefore granting fewer clemency petitions overall.

Hypothesis 2: States in gubernatorial election years will be associated with fewer clemency petitions granted than states in years with no gubernatorial election.

Another important piece in the creation of state criminal justice policy is the concern about crime in the wider public. Though scholars disagree about the precise direction of how punitive impulses shape policy — whether it be the political elites that influence the mass public, or vice versa (Beckett 1997, Cullen, Fisher and Applegate 2000, Enns 2016) — either way, policy about crime appears to track public[5] and/or elite *concern* about crime. The tough-on-crime era, and the War on Drugs, slowed the granting of pardons as governors sought to avoid critiques of being soft on crime (Kaplan and Mayhew 2019). This fear was solidified with the Willie Horton incident, an inmate that received a furlough from prison and subsequently murdered and sexually assaulted

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[5]Of course, important variation remains between white and Black Americans' views on crime, for example (Bobo and Johnson 2004, Peffley and Hurwitz 2010, Soss and Weaver 2017).

a couple. The infamous Horton ad aired against the governor at the time Horton was furloughed, Michael Dukakis, tanked his 1988 presidential bid and highlighted to politicians nationwide the costs of seeming weak on crime (Hurwitz and Peffley 2005).

Because of this, I expect pardons to fluctuate in response to this concern about crime, as governors and/or parole boards may not pardon individuals if they would receive public backlash for doing so. In particular, concerns about violent crime can activate and motivate a particularly powerful political force in victims' rights groups: a former Pennsylvania parole board member remarked, "The heavy pressure for being super-conservative is from your victims' groups" (quoted in Schwartzapfel 2015). And, in some instances, victims can mobilize after an unpopular parole decision and even change the law around this process, a movement that occurred in Alaska (Everett and Periman 2011).

However, it is unclear whether this public concern will *follow* rising patterns of crime, or simply perceptions of increasing crime, whether or not crime is actually increasing. Below I consider two separate hypotheses that account for these differences: first, that pardons will decrease in response to rising violent crime and second, that pardons will decrease in response to public concern about crime.

Hypothesis 3: States with more public concern about violent crime will be associated with fewer clemency petitions granted than states with less public concern about violent crime.

Hypothesis 4: States with more violent crime will be associated with fewer clemency petitions granted than states with less violent crime.

2 Data and Methodology

Evaluating *state* pardons is a difficult task largely because there is no comprehensive data source for this information. At the federal level, clemency statistics and information extending back a century are available[6] and are used in other studies of presidential pardons (Baumgartner and Morris 2001, Landes and Posner 2009). However, no comprehensive data exists at the state-level, a significant oversight considering that states held over 1.2 million inmates in 2018, compared to just under 100,000 in the federal system (Carson 2020). Though some papers look at individual

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[6]See https://www.justice.gov/pardon.

states' clemency processes and statistics (e.g., Freilich and Rivera 1999) or focus on just death penalty cases (e.g., Heise 2003), there is not a comprehensive dataset of these variables for all (or most) states. This paper aims to address this gap by submitting dozens of public records requests to state agencies (details in the appendix) in an effort to develop a dataset of pardons and commutations granted by states from the 1980s to the present.

To do this, I sent requests for information on people who had their sentence pardoned or commuted in the last four decades. All of these grants comprise *clemency*, whether people had their sentence **pardoned** (i.e. complete forgiveness of a crime and restoration of rights) or **commuted** (i.e. reduction or elimination of a remaining sentence). This was a considerable effort with much difficulty and delay from state officials: some suggested that they do not even keep track of these procedures or results and others denied my requests because they would take too long. I consider both of these below and aggregate the information on these clemency petitions by state in each year of available data — see Table 1 for the available aggregated state-level data (see below for information on individual recipients).[7]

State	Model	Min. Year	Max Year	Number Years
Alabama	independent board	2005	2020	16
Alaska	shared power with mandatory consultation with board	1966	2019	54
Arizona	shared power with gatekeeper board	1978	2019	42
Arkansas	shared power with mandatory consultation with board	2015	2020	6
California	permissive consultation with board	1991	2019	20
Connecticut	independent board	2008	2019	12
Delaware	shared power with gatekeeper board	1988	2020	33
Georgia	independent board	2001	2021	21
Hawaii	permissive consultation with board	2015	2020	6
Idaho	independent board	2015	2019	5
Illinois	permissive consultation with board	2004	2019	16
Indiana	permissive consultation with board	2005	2021	17
Iowa	permissive consultation with board	2010	2021	12
Kansas	shared power with mandatory consultation with board	2015	2018	4
Kentucky	permissive consultation with board	1991	2020	17
Louisiana	shared power with gatekeeper board	1996	2021	25
Maine	no statutory advisory process	2011	2019	9
Maryland	permissive consultation with board	2005	2019	15
Massachusetts	shared power with gatekeeper board	1989	2019	31
Michigan	shared power with mandatory consultation with board	1969	2020	52
Minnesota	shared power with gov on board	1983	2020	38
Mississippi	permissive consultation with board	1968	2021	53
Montana	shared power with mandatory consultation with board	1984	2018	35
Nevada	shared power with gov on board	1996	2020	25
New Hampshire	shared power with gatekeeper board	1967	2021	55
New Jersey	permissive consultation with board	1992	2019	28
New York	permissive consultation with board	1989	2020	32
North Carolina	permissive consultation with board	1977	2020	46
North Dakota	permissive consultation with board	2000	2019	20
Ohio	shared power with mandatory consultation with board	2001	2020	20
Oregon	no statutory advisory process	1989	2021	26
Pennsylvania	shared power with gatekeeper board	1999	2020	22
South Carolina	independent board	1999	2019	21
Texas	shared power with gatekeeper board	1989	2019	28
Virginia	permissive consultation with board	2016	2022	4
Washington	permissive consultation with board	2013	2021	9
West Virginia	permissive consultation with board	2002	2019	18
Wisconsin	no statutory advisory process	2019	2020	2
Wyoming	permissive consultation with board	2017	2020	4

Table 1: Available State Data

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[7]Twenty-one requests to states are still outstanding as of this draft date.

Figure 1 shows the logged number of clemency petitions granted by state, the main dependent variable considered below. While some states — like Michigan or Alaska — contain information on clemency petitions granted from the 1960s to the present, others (like Arkansas or Hawaii) only contain this information from 2015 to the present and still others did not respond to requests for information. Here, I use all the available data gathered to analyze the effect of a variety of variables on the logged number of petitions granted by states annually.
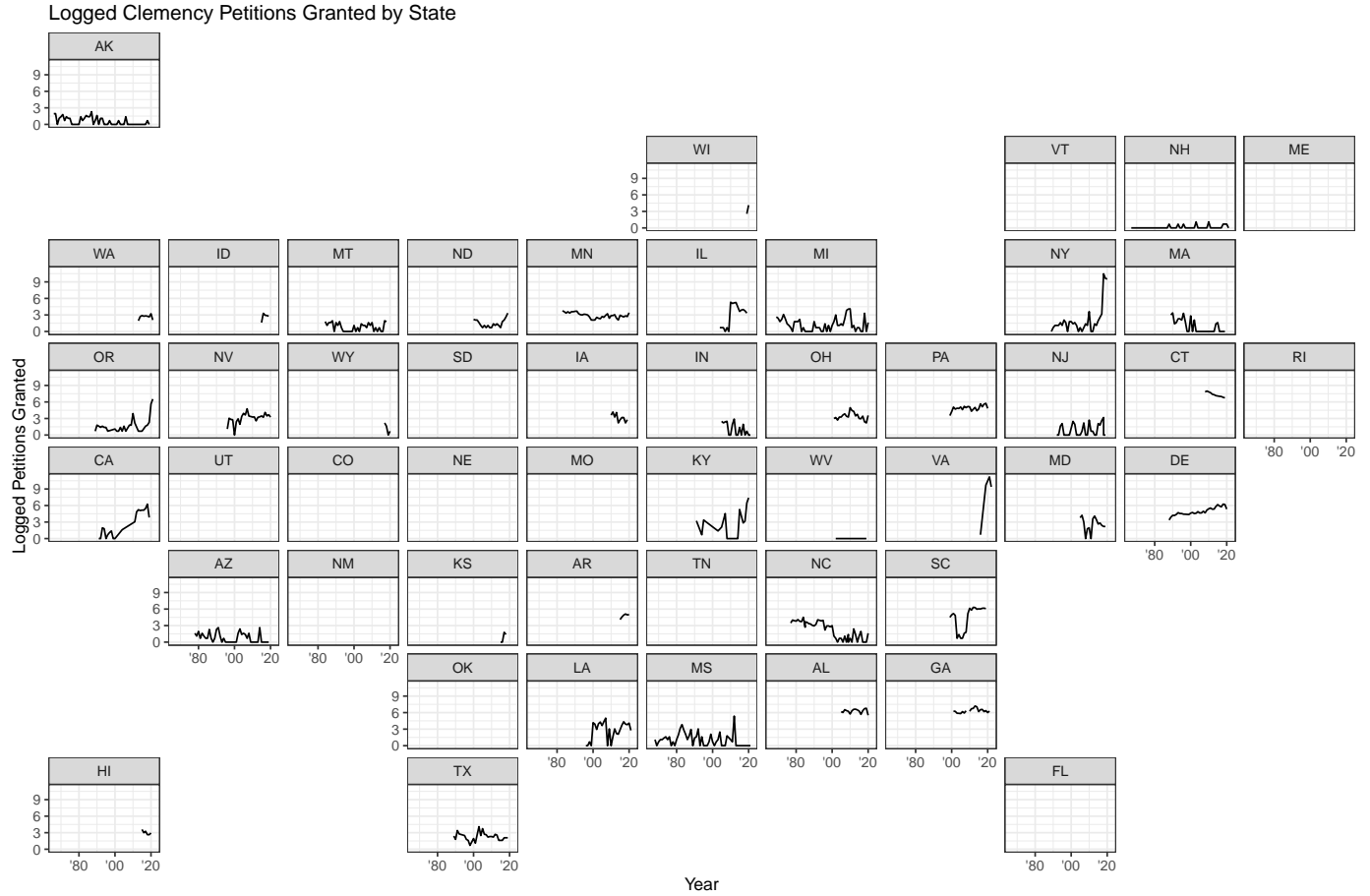

Figure 1

The logged number of clemency petitions granted by state is the main dependent variable considered in my analysis, $y_{i,t}$ in Equation 1 below.

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\begin{aligned}
y_{i,t} = & \alpha_i + \delta_t + \beta_1(Dem.Gov.)_{i,t} + \beta_2(GovernorElectionYear)_{i,t} + \beta_3(CitizenIdeology)_{i,t} + \\
& \beta_4(ViolentCrimeRate)_{i,t} + \beta_5(DemGov * ElectionYear)_{i,t} + X_{it} + \epsilon_{i,t}
\end{aligned} \tag{1}
$$

I consider four main independent variables, following Hypotheses 1-4. First, to evaluate the influence of ideology on petitions granted, I include a dummy variable for whether the governor is a Democrat or not from Kaplan (2021). Recall that this proxies for the ideology of the parole board. Second, I code for gubernatorial election year from Klarner (2013). Next, I include a measure of citizen ideology from Berry et al. (2010) to proxy for the overall citizen concern about crime, that as state citizens get more liberal (higher levels of citizen ideology), they should be less concerned about crime and thus, clemency petitions increase. I test Hypothesis 4 using the violent crime rate[8], to see if petitions are granted at a lower rate when the actual level of crime is high. I also estimate some specifications with an interaction term of Democratic governor and gubernatorial election year, to see if these electoral pressures are distinct for politicians of different parties. I include several control variables in X_{it}, namely the logged number of incarcerated people in the state and the percent of the state population that is non-white. Finally, I include α_i and δ_t, fixed effects for state and year, and I cluster the standard errors by state.

Table 2 estimates Equation 1. I find little support for Hypothesis 1. States with Democratic governors are not associated with more clemency petitions granted than states with Republican governors. Interestingly, I find evidence contrary to expectations of Hypothesis 2. Gubernatorial election years prompt *more* mercy, contrasting other findings that governors get more punitive regarding clemency and/or the death penalty in election years (Kubik and Moran 2003, Pridemore 2000). Column 3 adds an interaction term between partisanship and election year and the increased mercy seems driven by *Republican* governors. Perhaps Republican governors seek to provide more mercy under the assumption that it is popular with constituents — or they may potentially be motivated by concerns related to religion and forgiveness (Barkow 2009). On the other hand, I find little support for Hypothesis 3. Citizen ideology does not appear to be associated with differences in the number of clemency petitions granted. This may be a product of the proxy I use here: perhaps a more fine-grained measure of public concern about *crime* and not just public ideology in general would find a result. Nevertheless, Hypothesis 3 is not supported. However, I find some (albeit weak) support for Hypothesis 4. An increase in violent crime is associated with a decrease in the logged number of petitions granted, suggestive of a hesitance on the part of parole boards to grant clemency when state citizens are experiencing higher levels of

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[8]Data from `https://www.kaggle.com/tunguz/us-estimated-crimes`.

Table 2: Clemency Petitions Granted and State Determinants of Mercy

	Dependent variable:		
	Logged Petitions Granted		
	(1)	(2)	(3)
Democrat Governor	0.199	0.154	0.103
	(0.123)	(0.116)	(0.114)
Citizen Ideology (Berry)	0.007	0.002	0.002
	(0.011)	(0.013)	(0.013)
Violent Crime Rate	−0.002*	−0.001	−0.001
	(0.001)	(0.001)	(0.001)
Logged Prisoners		0.919*	0.922*
		(0.452)	(0.453)
Percent Non-White		0.017	0.014
		(0.043)	(0.043)
Dem Gov * Election Year			0.200
			(0.175)
Governor Election Year		0.381**	0.293*
		(0.160)	(0.147)
Observations	807	697	697
R^2	0.731	0.737	0.738
Adjusted R^2	0.706	0.709	0.709
Residual Std. Error	1.058 (df = 738)	0.987 (df = 629)	0.987 (df = 628)

Note: *p<0.1; **p<0.05; ***p<0.01
State and year fixed effects included. SEs clustered by state.

crime (although only in some specifications). Finally, the logged number of prisoners is associated with more clemency petitions granted, but the percent of the state population that is non-white is not. Overall, Table 2 paints a complicated picture of the determinants of mercy: ideology does not appear to be a significant driver of mercy, but electoral pressures (particularly for Republicans) may play a bigger role than partisanship.

In the supplementary materials, I explore other potential contributors to clemency petitions granted. First, I use the alternative variable of policy mood from Enns and Koch (2013) in place of citizen ideology. I do not use the Enns and Koch (2013) data here, as it is more temporally limited, but the results are similarly insignificant. I also add a measure of racial resentment from Smith, Kreitzer and Suo (2020) and the scores are not significantly associated with the logged number of petitions granted. Gubernatorial margin of victory from Gunderson (2021) is similarly insignificant. Altogether, these additional tests suggest that ideology and some institutional arrangements are associated with changes in mercy, but not racial resentment or other measures of citizen or public attitudes.

3 Individual Predictors of Mercy

Broad state-level variables appear to influence some parts of the clemency process, but what about individual determinants of the decision? A subset of the states that provided data above also provided individual-level information about each clemency recipient — their name and sometimes the offense that they are being pardoned for. Alabama, Arizona, Arkansas, Louisiana, Massachusetts, Nevada, New Hampshire, Oklahoma, and Washington all provided at least partial data on the identity of those provided clemency (and importantly, those who were not as well). Here, I consider and extend others' research on the determinants of processes like parole to analyze whether and to what degree race, gender, and crime type influences first, the likelihood of being granted a pardon (Argys and Mocan 2004, Austin and Hummer 2000, Henry 2021, Lin, Grattet and Petersilia 2010) and second, how the demographic makeup of clemency recipients compares to the overall demographics of the prison system.

A key task here is to code the race and gender of clemency recipients. There is no easy way to do this, as often the records of those that are granted clemency are expunged and it is difficult

to track down individual criminal records. I therefore rely on a proxy to do this using gender and rethnicity in R. These packages use Social Security Administration and machine learning techniques[9] to predict the sex and race of names, respectively (Mullen 2018, Xie 2022). Mullen (2018) codes a binary gender variable for male or female and Xie (2022) uses first and last names to predict the race of applicants into one of four categories: white, Black, Asian, or Hispanic (I reference this as Latinx below). I also create a binary indicator for whether the clemency recipient was convicted of a violent crime — broadly, assault, murder or manslaughter, rape or sexual assault, or robbery. Table 3 shows the distribution of the data of those states that provided information on individuals both denied and given clemency.

Table 3: Summary Statistics

Statistic	N	Mean	St. Dev.	Min	Pctl(25)	Pctl(75)	Max
Clemency Granted	4,802	0.58	0.49	0.00	0.00	1.00	1.00
White Applicant	5,236	0.34	0.48	0	0	1	1
Black Applicant	5,236	0.24	0.43	0	0	0	1
Asian Applicant	5,236	0.36	0.48	0	0	1	1
Latinx Applicant	5,236	0.06	0.23	0	0	0	1
Female Applicant	5,121	0.20	0.40	0.00	0.00	0.00	1.00
Applicant Convicted of VC	2,367	0.22	0.42	0.00	0.00	0.00	1.00

Over 50% of clemency applicants are granted, though this variable has significant skew. Non-white applicants make up about 66% of all applicants (mostly Black and Asian applicants) and women constitute about 20% of those who apply. Finally, for the subset of data in which I also have data on the offense, about 22% of those who applied were convicted of violent crimes (as opposed to drug or property crimes).

I next estimate an OLS model using Equation 2 using observations from those states that report *both* individuals that were granted and denied clemency data to analyze the predictors of clemency.

$$Granted_{i,t} = \alpha_i + \delta_t + \beta_1(Black)_{i,t} + \beta_2(Asian)_{i,t} + \beta_3(Latinx)_{i,t} +$$

$$\beta_4(Female)_{i,t} + \beta_5(BlackFemale)_{i,t} + \beta_6(AsianFemale)_{i,t} + \tag{2}$$

$$\beta_7(LatinaFemale)_{i,t} + \beta_8(Violent)_{i,t} + \epsilon_{i,t}$$

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[9]wru is another package that could be used to impute race, but largely these predictions are made only using surnames. Xie (2022) is able to use first and last names to predict the race of the clemency applicant.

The independent variable is $Granted_{i,t}$, whether individual i was granted clemency in year t. The main independent variables of interest are β_1, β_2, β_3, β_4, and β_8 — Black, Asian, Latinx, or female applicant, and whether the applicant was convicted of a violent crime (white applicants are the excluded category). I also interact race and sex, to see if women of color are more or less likely to be granted clemency. Finally, as in Equation 1 I include state and year fixed effects and cluster standard errors by state. Table 4 shows the results of Equation 2.

Table 4: Individual Determinants of Mercy by Race, Gender, and Crime Type

	Dependent variable:			
	Clemency Petition Granted			
	(1)	(2)	(3)	(4)
Black Applicant	−0.048**	−0.057**	−0.046	−0.056
	(0.017)	(0.021)	(0.023)	(0.027)
Asian Applicant	0.009	0.004	−0.003	−0.015**
	(0.011)	(0.013)	(0.006)	(0.005)
Latinx Applicant	−0.036	−0.040	−0.073**	−0.083**
	(0.020)	(0.026)	(0.018)	(0.021)
Female Applicant	0.030	0.010	−0.016	−0.050
	(0.019)	(0.023)	(0.012)	(0.023)
Black Female		0.042*		0.047
		(0.021)		(0.024)
Asian Female		0.025		0.058
		(0.025)		(0.025)
Latina Female		0.016		0.057
		(0.053)		(0.030)
Violent Applicant			−0.119*	−0.119*
			(0.047)	(0.047)
Observations	4,686	4,686	2,184	2,184
R^2	0.614	0.614	0.154	0.155
Adjusted R^2	0.609	0.608	0.141	0.141
Residual Std. Error	0.309 (df = 4621)	0.309 (df = 4618)	0.269 (df = 2149)	0.269 (df = 2146)

Note: *p<0.1; **p<0.05; ***p<0.01

State and year fixed effects included. SEs clustered by state. Reference category is white clemency applicants.

Broadly, these patterns mirror other findings of parole grants or revocations. In general, non-white men and women, along with those convicted of a violent offense, are less likely to be granted a pardon. In particular, relative to white applicants, Black applicants are much less likely to be granted clemency. There are negative coefficients for Asian or Latinx applicants as well. In general, nonwhite applicants of different races are less likely to be granted clemency than white applicants. The intersectional interaction terms are largely insignificant — though there is some evidence that Black women are *more* likely to be granted clemency. These results are not to suggest that there are not intersecting pressures of sex and race, but perhaps the small number of female applicants of color partially explain these null results. Table 2 provides some initial evidence that race, gender, and crime type are associated with clemency, it is tentative. More individual data

from states would likely further illuminate those patterns.

Next, I explore whether and to what degree three kinds of applicants are over- or under-represented in clemency recipients: women, white, and those convicted of non-violent crimes. First, I look at the summary statistics and characteristics of clemency guarantees. Table 5 shows the characteristics of all those provided clemency in the data. The vast majority of grantees are nonwhite and men, though women approximate a quarter of clemency recipients. Of the individuals listed with their convictions, about one-fifth of those are convicted of violent crimes. Are these percentages disproportionate to their overall percentage in the population, however? I next consider this possibility.

Table 5: Summary Statistics of Clemency Grantees

Statistic	N	Mean	St. Dev.	Min	Pctl(25)	Pctl(75)	Max
White Grantee	116,886	0.41	0.49	0	0	1	1
Black Grantee	116,886	0.46	0.50	0	0	1	1
Asian Grantee	116,886	0.08	0.27	0	0	0	1
Latinx Grantee	116,886	0.04	0.21	0	0	0	1
Female Grantee	111,902	0.25	0.43	0.00	0.00	0.00	1.00
Grantee Convicted of VC	8,148	0.22	0.41	0.00	0.00	0.00	1.00

I first calculate the existing percentage of those groups in prisons. I use National Prisoner Statistics[10] data from the Bureau of Justice Statistics and calculate first, the percent of Black prisoners in each state-year. Second, I calculate the percent of the prison population that is female from the data source. Finally, though it is difficult to calculate the exact percentage of inmates by crime type, I use a rough distribution from the Sourcebook of Criminal Justice Statistics[11] that shows people convicted of violent crimes comprise approximately 52% of prisoners. I then compare these percentages to the percent of clemency recipients that are non-white, female, and convicted of violent crimes, respectively, in each state-year. Table 6 shows the results of a t-test comparing the means of these groups.

The magnitude of some of these differences are striking. Only about one-fifth of clemency recipients are Black when they comprise about a third of the prison population. Similar results

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[10]See https://bjs.ojp.gov/data-collection/national-prisoner-statistics-nps-program.

[11]See https://www.albany.edu/sourcebook/tost_6.html#6_bg. This variable ranges from 50.2 to 53.2 from 2002 to 2010.

	Variable	t.statistic	Confidence.Interval	p.value
t	Black	-7.00	-14.81, -8.32	0.00
t1	Female	14.98	14.5, 18.89	0.00
t2	Violent	-11.66	-25.45, -18.09	0.00

Table 6: Results from a Welch Two Sample t-test. Approximately 19.81 percent of clemency recipients are Black when they make up approximately 31.37 percent of prisoners. Approximately 23.22 percent of clemency recipients are female when they make up approximately 6.53 percent of prisoners. Approximately 30.23 percent of clemency recipients were convicted of violent crimes when when they make up approximately 52 percent of prisoners.

emerge when we consider gender: female applicants are overrepresented in clemency recipients. While they only make up about 6.5% of prisoners, they comprise almost a quarter of clemency recipients. This follows other research that finds female death row inmates are more likely to have their sentences commuted (Argys and Mocan 2004). Perhaps this is due to the perception that women are inherently gentle and nonviolent, and that incarcerating (or putting to death) female offenders is considered "unseemly" (Freilich and Rivera 1999). And finally, violent offenders are underrepresented among clemency recipients. About 52% of inmates are incarcerated for these kinds of crimes, but only about 30% of recipients were convicted of a violent crime. This follows other research that finds inmates on death row are less likely to leave it if they are Black or male (Argys and Mocan 2004).

While the results presented in Table 6 are tentative, they highlight potentially troubling patterns in the likelihood of being granted mercy on the basis of your race, gender, or crime. We may not be surprised — or troubled — by the disparity between violent offenders in prison and those granted clemency, but it at minimum highlights that the process of clemency and mercy appears to be concentrated among certain incarcerated populations and not others. Of course, this cannot take into account who is applying for clemency, but it does at the very least point to discrepancies in granting rates that we would not expect given the overall demographic profile in American prisons. These differences could be partially attributable to both lower application rates *and* lower granting rates if an application is filed. Either way, it suggests that mercy is not equally distributed among the incarcerated population.

4 Discussion and Conclusion

Taken together, the state- and individual-level analyses suggest that the process of levying mercy is not an equal one. Partisanship does not appear to play a strong role in clemency petitions granted, but electoral pressures do. Citizen ideology and violent crime are not associated with changes in clemency petitions. Non-white applicants are, in general, less likely to be granted relief and women are slightly more likely to be granted clemency. Black and violent offenders are underrepresented in clemency grantees, but female applicants are overrepresented.

Though the suggestion that politics plays an important role in the administration of justice is not a new one — many other scholars have posited this in other contexts — the application to the clemency process in the states is a new one and a key area of study. We would expect clemency petitions to swell as the incarceration rate has ballooned over the last few decades, but this is far from the case. Results from the analyses here suggest that both aggregate state dynamics and individual characteristics play an important role in clemency grants. It appears, then, that mercy is not solely a product of worth, but instead individual and state characteristics that may be out of the applicant's control.

The results here have a few implications for further study. First and foremost, extensions to other states will help further to refine the relationships found here. Second, in the continuing conversations around criminal legal reform, it is important to consider the potential role of the pardon power in that process — to pardon certain kinds of non-violent or drug offenders, for example, or to use this power strategically to limit prison overcrowding (Kaplan and Mayhew 2019, Simon 2015). Going forward, commitment to reducing the population in prisons requires us to consider these questions.

Finally, this paper points to the importance of studying not only the institutions that are created around the administration of justice, but those that surround *mercy* as well. Clemency is largely a process that happens in secret, with little public oversight and attention, yet it holds severe implications for applicants. It is therefore incumbent upon scholars of the carceral state to understand this process, just as we have explored determinants of punitive policies, in an effort to understand the full scope of the carceral state.

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Appendix

Contents

1 Data Collection

As a first step in collecting data on gubernatorial clemency petitions granted and denied, a research assistant emailed or submitted requests online to the state agencies in charge of these policies. A copy of the request is below (emphasis in original emails):

Hello Mr./Mrs. NAME,

My name is XX and I am a doctoral student and research assistant for Dr. Anna Gunderson, an assistant professor of political science at Louisiana State University. I am assisting her in a project on state pardons and commutations and hope you may be able to help me.

Specifically, I am looking for a list the names of **all** persons who were pardoned or had their sentence commutated in the last 30 years, from 1989 to 2019. In addition to those names, we are hopeful you can also provide us with the crime the person was convicted of, their race, their gender, the potential reason for their pardon or commutation (possible innocence or unfair trials, for example) and any other information in your formal records. Finally, we are also interested in information on how many **total** petitions were received for pardons or commutations. If you can only provide some data from that time period (say, 2010 to 2020), only for death row inmates (or inmates convicted of particular crimes), or only in the aggregate (total pardons by year), please send that along, as any information will help Dr. Gunderson in her research.

Thanks so much for your time – and I'm looking forward to hearing from you.

Best, XX

From that initial contact, we received some form of data from 16 states, with some states responding that I needed to submit an open records request for that information (which I then did).

In total, we received data from 34 states through direct correspondence, open records requests, or available data online, though the format of that data was different across states. Namely, we received both aggregate data and individual-level data on people who were granted or denied pardons. Because of these two sources of data are fundamentally different, we used it to construct two data sources.

1.1 Individual-Level Data

First, some states provided information on the individuals who were granted clemency and, in some cases, those that were denied clemency. Though my request was for *all* those that requested clemency (even for those denied), often states do not keep track of those that requested clemency but did not receive it. Therefore, I created an individual-level dataset that lists each person that I received information on along with a barrage of additional information on them if provided (race, gender, crime, age, date of crime).

1.2 Aggregate State Data

Some states did not provide individual-level data, but instead provided aggregate statistics by year, showing the number of petitions granted (and in some cases, denied) for each particular state. I next used these data along with the aggregate information from the individual-level dataset above to create a state-year dataset of clemency petitions received, granted, and denied.

An important source of variation among the states is in *how* the states go about granting pardons, whether they be through participation and approval of an independent parole board and the governor, or if the governor has unilateral control over this process. I use the following categorization following Restoration of Rights Project (2020):

- **Independent board**[1]: Alabama*, Connecticut, Georgia*, Idaho, South Carolina, Utah
- **Shared power with governor on board**: Florida*, Minnesota*, Nebraska, Nevada*
- **Shared power with gatekeeper board**: Arizona*, Delaware*, Louisiana, Massachusetts*, New Hampshire, Oklahoma*, Pennsylvania, Rhode Island[2], South Dakota*[3], Texas
- **Shared power with mandatory consultation with board**: Alaska, Arkansas*, Kansas*, Michigan*, Missouri, Montana*, Ohio*
- **Permissive consultation with board**: California*[4], Colorado*, Hawaii, Illinois, Indiana*, Iowa*, Kentucky*, Maryland*, Mississippi, New Jersey*, New Mexico, New York*, North Carolina, North Dakota, Tennessee*, Vermont, Virginia*, Washington*, West Virginia*, Wyoming*
- **No statutory advisory process**: Maine, Oregon*, Wisconsin*

Governor required to report annually to the legislature, often with reasons for each decision to grant.

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[1] "In Alabama and South Carolina, the governor remains responsible for clemency in capital cases, and in Idaho, the governor must approve the board's decision to pardon certain serious crimes" (Restoration of Rights Project 2020).

[2] In Rhode Island, the senate must advise and consent to each pardon.

[3] From Restoration of Rights Project (2020): "In South Dakota, the governor has constitutional authority to pardon without consultation with the board, but sealing is unavailable to a grantee if the statutory procedure requiring board approval is not followed. The result is that in recent years all pardons have been granted after board approval."

[4] The governor is required to consult with the parole board and seek support of the state supreme court in recidivist cases only.

2 Alternative Independent Variables

Here, I replace the Berry et al. (2010) measure with policy mood from Enns and Koch (2013). It is similarly insignificant to the main specification.

Table 1: Clemency Petitions Granted and State Determinants of Mercy

	Dependent variable:	
	Logged Petitions Granted	
	(1)	(2)
Democrat Governor	0.169	0.183
	(0.127)	(0.122)
Policy Mood (Enns and Koch)	0.044	0.038
	(0.031)	(0.030)
Violent Crime Rate	−0.001	−0.001
	(0.001)	(0.001)
Logged Prisoners		0.919**
		(0.446)
Percent Non-White		0.002
		(0.045)
Governor Election Year		0.410**
		(0.169)
Observations	656	656
R^2	0.720	0.731
Adjusted R^2	0.690	0.701
Residual Std. Error	0.984 (df = 592)	0.966 (df = 589)

Note: $^*p<0.1$; $^{**}p<0.05$; $^{***}p<0.01$
State and year fixed effects included. SEs clustered by state.

3 Alternate Control Variables

Here, I add the measure of racial resentment for each state from Smith, Kreitzer and Suo (2020).

Table 2: Clemency Petitions Granted and State Determinants of Mercy, Adding Alternate Control Variables

	Dependent variable:	
	Logged Petitions Granted	
	(1)	(2)
Democrat Governor	0.199	0.231
	(0.123)	(0.151)
Citizen Ideology (Berry)	0.007	0.021
	(0.011)	(0.024)
Violent Crime Rate	−0.002*	−0.0002
	(0.001)	(0.001)
Logged Prisoners		−0.309
		(0.913)
Racial Resentment Score		17.294
		(23.472)
Percent Non-White		0.183
		(0.130)
Governor Election Year		0.213
		(0.251)
Observations	807	135
R^2	0.731	0.768
Adjusted R^2	0.706	0.666
Residual Std. Error	1.058 (df = 738)	0.979 (df = 93)

Note: *p<0.1; **p<0.05; ***p<0.01
State and year fixed effects included. SEs clustered by state.

Next, I add a measure of gubernatorial margin of victory (as a proportion) to Table!3.

Table 3: Clemency Petitions Granted and State Determinants of Mercy, Adding Alternate Control Variables

	Dependent variable:	
	Logged Petitions Granted	
	(1)	(2)
Democrat Governor	0.199	0.118
	(0.123)	(0.258)
Citizen Ideology (Berry)	0.007	0.046**
	(0.011)	(0.020)
Violent Crime Rate	−0.002*	0.004
	(0.001)	(0.003)
Logged Prisoners		0.164
		(1.100)
Gubernatorial Margin of Victory		2.754*
		(1.498)
Percent Non-White		−0.006
		(0.083)
Governor Election Year		0.625
		(0.560)
Observations	807	160
R^2	0.731	0.842
Adjusted R^2	0.706	0.791
Residual Std. Error	1.058 (df = 738)	0.916 (df = 120)

Note: *p<0.1; **p<0.05; ***p<0.01
State and year fixed effects included. SEs clustered by state.

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