Pardoning Corporations

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In 1977, a company convicted of conspiring with the mob asked President Jimmy Carter for a pardon. Government officials speculated that the President could grant the request, but ultimately the President decided that the company did not deserve clemency. Nearly fifty years later, President Donald Trump pardoned a company and commuted the sentence of another. People are again wondering whether the pardon power covers companies, but no one can offer evidence either way.

History shows that the pardon power covers companies. Before the Founding, the King would often pardon corporations. Both the City of London and the Massachusetts Bay Company were pardoned before the Founders were even born. The Pardon Clause and many of its state analogues were drafted against that backdrop.

That the President can pardon companies might feel surprising or even unsettling. But the prerogative fits comfortably into the nation's separation of powers. Congress can make pardoning corporations less attractive by refusing to appropriate refunds for pardoned fines or replacing crimes with civil infractions.

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INTRODUCTION

The Emprise Corporation ran national athletics ventures before it was convicted of "a scheme in which mobsters used $712,498 of the company's funds to buy into a Las Vegas casino."[1] Then Emprise cleaned up its act.[2] Promising "that it was no longer the same organization that had taken part in the felony," the company asked President Jimmy Carter for a pardon.[3]

The Office of the Pardon Attorney did not know whether the President could pardon companies. The President had never done so before, and it is unclear whether any other company had ever thought to apply. So the Office solicited views from others in the executive branch. The Director of the FBI "express[ed] the view that a corporation is not within the scope of the Constitutional pardon power."[4] The Department of Justice disagreed.[5] Neither side offered historical evidence.[6] The two agencies simply disagreed about how to read the text of the Pardon Clause. In the end, the White House concluded that "Emprise was eligible" for a pardon.[7] After all that, though, President Carter decided that Emprise was "[un]deserving" of clemency.[8]

Since then, people have assumed in passing that the President of the United States can pardon companies, based only on the Department of Justice's say-so.[9] Five decades later, "research

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1 Bill Richards, *Corporation Seeks Compassion*, WASH. POST (Aug. 29, 1977), https://www.washingtonpost.com/archive/politics/1977/08/29/corporation-seeks-compassion/13cc2301-04ba-4630-875d-8c24ec74b3e3/.

2 Anthony Marro, *Emprise Corp, Loses Plea for U.S. Pardon*, N.Y. TIMES (Sept. 29, 1977), https://www.nytimes.com/1977/09/29/archives/emprise-corp-loses-plea-for-us-pardon-sports-conglomerate.html.

3 *Id.*

4 *See* Memorandum from Rudolph W. Guliani, Associate Deputy Attorney General, to Lawrence M. Traylor, Pardon Attorney 1 (Jan. 13, 1976) [hereinafter Emprise Memo] (on file with author).

5 *Id.* at 1–2.

6 *Id.*

7 Marro, *supra* note 2.

8 *Id.*

9 *See* Noah A. Messing, *A New Power? Civil Offenses and Presidential Clemency*, 64 BUFF. L. REV. 661, 741 (2016) (assuming that "the [P]resident could promise to pardon people or companies"); Frank O. Bowman, *Presidential Pardons and the Problem of Impunity*, 23 N.Y.U. J. LEGIS. & PUB. POL'Y 425, 510 (2021) ("Corporations can be prosecuted criminally. Although the question is not free of doubt, the Justice Department seems to have concluded that a corporation can be awarded a pardon."); Philip Ebosetale Oamen, *Grant of Presidential Pardon in the United States and Nigeria: Posthumousness, Corporateness and Other Matters*, 47 COMMONWEALTH L. BULL. 417, 448 (2021) (finding "no known caselaw, either in Nigeria or the US, where pardon has been granted to a corporate body" but arguing that it is "possible" because the Department of Justice thought so).

has not revealed an express extension" of the pardon power to corporations.[10]

The pardon power does not dominate the academy's research agenda. Not long after the Emprise incident, the pardon power "went into a decline."[11] Less than ten years ago, scholars were complaining that pardons had "become as rare as a blue moon."[12] For the most part, people did not wonder how far the power could stretch.

Self-restraint no longer characterizes the pardon power's exercise. Now people focus on its potential for abuse.[13] Even so, no one has made the case that the President can pardon companies.[14] That gap is filled here, not long after President Donald Trump pardoned HDR Global Trading Ltd.,[15] a company that had pleaded guilty to a violation of the Bank Secrecy Act,[16] and commuted the sentence of Ozy Media, Inc.,[17] a company found guilty of securities and wire fraud.[18]

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[10] Kenya J.H. Smith, *Pardon My Stat(e)us: Exploring Applicability of the Gubernatorial Pardon Power to Corporations*, 53 STETSON L. REV. 341, 358 (2024) (considering whether states can pardon companies); *see also* Emprise Memo, *supra* note 4, at 2 ("[L]imited research has not disclosed any cases dealing with the question presented either under Federal or state constitutional provisions.").

[11] Margaret Colgate Love, *The Twilight of the Pardon Power*, 100 J. CRIM. L. & CRIMINOLOGY 1169, 1193 (2010).

[12] Paul J. Larkin, Jr., *Revitalizing the Clemency Process*, 39 HARV. J.L. & PUB. POL'Y 833, 854–55 (2016); *accord* Love, *supra* note 11, at 1194–95. For example, President Barack Obama "through his first term . . . granted fewer clemency applications than any full-term President since George Washington." Larkin, *supra*, at 854–55.

[13] *See, e.g.*, Kyle Cheney, *There's Reason to Be Worried About the Plethora of Pardons from Trump and Biden*, POLITICO (Jan. 21, 2025), https://www.politico.com/news/2025/01/21/trump-biden-pardon-peril-00199816.

[14] Professor Kenya Smith has implied, but not defended, that the Governors of California, Florida, New York, and Texas can pardon corporations. *See* Smith, *supra* note 10, at 358–59. He analogized posthumous pardons to pardoning corporations. Neither the dead nor the company are animate, after all. *Id.* at 359–65. Yet such pardons do not necessarily suggest that the Governor can forgive a corporation's crime. The original meaning of the word "pardon" might not stretch beyond the individual. *See infra* Part I.A. And posthumous pardons apply to individuals, only after they are dead. Estates would be a better analogy, but estates do not commit crimes.

[15] *See generally* Full and Unconditional Pardon, United States v. HDR Glob. Trading Ltd., No. 1:24-cr-00424 (S.D.N.Y. Mar. 27, 2025), Dkt. No. 60 [hereinafter HDR Pardon].

[16] *See generally* Criminal Judgment, United States v. HDR Glob. Trading Ltd., No. 1:24-cr-00424 (S.D.N.Y. Jan. 27, 2025), Dkt. No. 57 [hereinafter HDR Judgment].

[17] *See generally* Exhibit A to Motion to Terminate Proceedings Against Ozy Media, Inc., United States v. Watson, No. 1:23-cr-00082 (E.D.N.Y. Apr. 4, 2025), Dkt. No. 403-1 [hereinafter Ozy Commutation].

[18] *See generally* Motion to Terminate Proceedings Against Ozy Media, Inc., United States v. Watson, No. 1:23-cr-00082 (E.D.N.Y. Apr. 4, 2025), Dkt. No. 403.

Part I argues that the pardon power covers companies. Though the power could be interpreted to exclude artificial persons, overlooked history suggests that pardons can forgive a corporation's crimes.[19] The Pardon Clause codified the power as it existed before the Constitution was ratified. Back in England, corporations were often pardoned, including the Massachusetts Bay Company. All this history is legally relevant today.

Part II spells out why the President of the United States might want to pardon companies. He could condition forgiveness on corporate compliance programs or on donations to his political campaign. He could offer pardons to foreign companies to sweeten relations with other countries. He could effectively abolish corporate criminal liability at the federal level during his terms, even in prosecutions initiated by independent agencies. He could pardon his own companies to protect them from prosecution. Or he might even pardon companies that bribed him. Given the sweeping pardon power in Article II, all these decisions fall within the President's discretion. He does not even need to wait for a company to apply.[20]

Part III admits that some of these consequences are startling, but it adds that Congress can limit the pardon power's effects in two ways. First, Congress can refuse to appropriate refunds of pardoned fines. As of today, Congress has not appropriated such refunds for individuals or for companies. That decision denies companies a reprieve from the most common, and often most consequential, punishment imposed on them. Second, Congress can repeal statutes that impose corporate criminal liability and replace them with unpardonable civil infractions, depriving the President of offenses to pardon.

Finally, Part IV speculates that some state constitutions also include powers to pardon companies. Though this account is more tentative, some attorneys could be more effective advocates if they encouraged their corporate clients to apply for pardons. In most states, there is little authority either way, which creates

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[19] *Contra* Kimberly Wehle, *Trump Makes History by Pardoning a Corporation*, THE HILL (Apr. 1, 2025), https://thehill.com/opinion/criminal-justice/5224229-trump-makes-history-by-pardoning-a-corporation/ ("The historical reasons for pardons have no bearing on corporations, either.").

[20] *See, e.g.*, Presidential Proclamation on Dec. 25, 1868, *reprinted in* 8 JAMES D. RICHARDSON, A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS 3906 (New York, Bureau of Nat'l Literature, Inc. 1897) [hereinafter General Pardon on Dec. 25, 1868] (pardoning "every person who directly or indirectly participated in the late insurrection or rebellion" regardless of whether he or she applied for a pardon).

opportunities for good lawyering. Part IV is important because, even if the President never pardons a company again, some state governments might consider doing so, as Alaska has.

I. INTERPRETING THE PARDON CLAUSE

The Pardon Clause empowers the President to grant "Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment."[21] Courts have, "from the beginning,"[22] interpreted this language "with reference to its meaning at the time of adoption."[23] That trend has continued to the present,[24] and it is likely to continue in the future.[25]

The Pardon Clause does not explicitly say who can be pardoned. But history resolves any uncertainty. The Crown had long exercised the pardon power to forgive corporations for their crimes. Because the Pardon Clause incorporated the power as it was exercised in England,[26] it applies to natural persons and companies alike.

A. Text

Start with "Offences against the United States."[27] The original meaning of "Offences" encompasses all crimes and misdemeanors,[28] and there is no doubt that companies are convicted of

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21 U.S. CONST. art. II, § 2, cl. 1.

22 W.H. HUMBERT, THE PARDONING POWER OF THE PRESIDENT 134 (1941).

23 *Ex parte* Wells, 59 U.S. (18 How.) 307, 311 (1855); *accord* United States v. Wilson, 32 U.S. (7 Pet.) 150, 160 (1833):

> As this power had been exercised from time immemorial by the executive of that nation whose language is our language, and to whose judicial institutions ours bear a close resemblance; we adopt their principles respecting the operation and effect of a pardon, and look into their books for the rules prescribing the manner in which it is to be used.

24 *See* Schick v. Reed, 419 U.S. 256, 262 (1974) ("The history of our executive pardoning power reveals a consistent pattern of adherence to the English common-law practice.").

25 *See* William Baude, *Is Originalism Our Law?*, 115 COLUM. L. REV. 2349, 2366 (2015).

26 *See Wells*, 59 U.S. (18 How.) at 311 ("At that time both Englishmen and Americans attached the same meaning to the word pardon. In the convention which framed the constitution, no effort was made to define or change its meaning.").

27 U.S. CONST. art. II, § 2, cl. 1. "Offences against the United States" is not a term of art. The noun "Offences" is separate from the preposition "against the United States." *See Ex parte* Grossman, 267 U.S. 87, 113 (1925).

28 *See, e.g.*, *Offence*, 2 TIMOTHY CUNNINGHAM, A NEW AND COMPLETE LAW-DICTIONARY (London, S. Crowder & J. Coote 1764) (defining an offense as "an act committed against law," either "capital" offenses such as "high treason, petit treason, and felony" "for which the offender shall lose his life," or "Misdemeanors" under "the pleas of the

crimes today, even if courts have not always accepted corporate criminal liability.[29] Moreover, the Pardon Clause has a single express exception: "Cases of Impeachment."[30] From that exception, most would infer that the Clause includes all other crimes.[31]

Now turn to the word "Pardons."[32] The word could be interpreted two ways. Either all legal persons, including corporations, can be pardoned. Or only individuals can be pardoned, similar to how only natural persons can exercise the right against self-incrimination.[33] No one has offered much evidence for either side.[34]

Some evidence limits "Pardons" to individuals. One Founding Era dictionary defined the word in terms referring solely to human beings,[35] which could exclude companies by implication. *United States v. Wilson*[36] implied as much too. In that case, the Court defined a "pardon" as "an act of grace . . . which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed."[37] This sentence, which some regard as the "classic definition of a pardon,"[38] would

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crown" "where an offender may forfeit his lands and goods, be fined or suffer corporal punishment, or both").

29 *See* N.Y. Cent. & Hudson River R.R. v. United States, 212 U.S. 481, 494–95 (1909); *see also* Parole & Probation—Governor May Pardon Corporation Convicted of Criminal Offense, 43 Op. Md. Att'y Gen. 258, 258–60 (1958) [hereinafter Maryland Attorney General Opinion].

30 U.S. CONST. art. II, § 2, cl. 1.

31 *See* Emprise Memo, *supra* note 4, at 1; *see also* Pauley v. BethEnergy Mines, Inc., 501 U.S. 680, 719 (1991) (Scalia, J., dissenting) ("When a provision sets forth a general rule followed by specific exceptions to that rule, one must assume—absent other evidence—that no further exceptions are intended.").

32 U.S. CONST. art. II, § 2, cl. 1.

33 *See* Braswell v. United States, 487 U.S. 99, 104–05 (1988) (explaining the collective entity rule).

34 *See generally* Emprise Memo, *supra* note 4; Maryland Attorney General Memo, *supra* note 29; Oamen, *supra* note 9.

35 *See Pardon*, THOMAS DYCHE & WILLIAM PARDON, A NEW GENERAL ENGLISH DICTIONARY (London, Toplis & Bunney, 18th ed. 1781) (defining pardon as "free and voluntary act of forgiving a person some great fault or crime . . . against the publick laws of God or his country"); *Person*, DYCHE & PARDON, *supra* (defining "person" as approximately a human being). *But see Reprieve*, DYCHE & PARDON, *supra* (defining a reprieve as "a pardoning, forgiving, or suspending of a *punishment*" without reference to who or what is being punished (emphasis added)).

36 32 U.S. (7 Pet.) 150 (1833).

37 *Id.* at 160.

38 James N. Jorgensen, *Federal Executive Clemency Power: The President's Prerogative to Escape Accountability*, 27 U. RICH. L. REV. 345, 370 n.68 (1993).

exclude companies, which are not individuals.[39] Though the sentence is dictum,[40] it is probative of the Pardon Clause's meaning.

Similar evidence suggests that companies are pardonable. Other contemporary definitions implied that a pardon acts upon an offense, no matter who or what committed it.[41] Plus, in the words of the Court, the Pardon Clause is an "unqualified grant of power" to "remit fines, penalties, and forfeitures of every description,"[42] covering "every offence known to law" and "class of offenders."[43] Dictionaries and dicta cut both ways.

So far, the evidence for each side has been so weak that the interpretive debate might as well be a tie. History breaks this tie. The Founders codified the prerogative exercised by "the English crown" and "its representatives in the colonies"[44] using "language [ ] drawn" from "the English common law."[45] They did not attempt "to define or change its meaning."[46] To the extent that the Pardon Clause is ambiguous, that ambiguity is attributable to the now unknown scope of the pardon power at common law—not ordinary usage.

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39 Pembina Consol. Silver Mining & Milling Co. v. Pennsylvania, 125 U.S. 181, 189 (1888); *accord* Mohamad v. Palestinian Auth., 566 U.S. 449, 454 (2012) ("[T]his Court routinely uses 'individual' to denote a natural person, and in particular to distinguish between a natural person and a corporation.").

40 The case was about a man named George Wilson, so the Court had no opportunity to decide whether corporations could be pardoned. *See generally Wilson*, 32 U.S. (7 Pet.) 150.

41 *See, e.g.*, Cunningham, *supra* note 28 (defining "pardon" as "the remitting or forfeiting of a felony, or other offence committed against the king" and finding that "the King may pardon *any* offense" (emphasis added)); United States v. Morris, 23 U.S. (10 Wheat.) 246, 255–56 (1825) (argument of attorney) ("'Pardon' is defined to be 'a work of mercy, whereby the king forgiveth *any* offence, [ ] right, title, debt, or duty.'"(emphasis added and omitted) (quoting EDWARD COKE, THE THIRD PART OF THE INSTITUTES OF THE LAWS OF ENGLAND CONCERNING HIGH TREASON, AND OTHER PLEAS OF THE CROWN, AND CRIMINAL CAUSES 233 (London, M. Flesher 1644))). Other definitions are essentially agnostic about whether companies can be pardoned, defining pardons in reference to offenses, penalties, and offenders, but not necessarily human beings. *See, e.g.*, *Pardon*, 2 NOAH WEBSTER, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (New York, S. Converse 1828) (defining "pardon" as "the release of an offense or of the obligation of the offender to suffer a penalty" or as "remission of a penalty"); *Offender*, WEBSTER, *supra* (defining "offender" as "[o]ne that offends; one that violates any law, divine or human").

42 The Laura, 114 U.S. 411, 413 (1885). *But see id.* (". . . except in cases of impeachment, and where fines are imposed by a co-ordinate department of the government for contempt of its authority.").

43 *Ex parte* Garland, 71 U.S. (4 Wall.) 333, 380 (1866).

44 *Grossman*, 267 U.S. at 110.

45 *Schick*, 419 U.S. at 256.

46 *Wells*, 59 U.S. (18 How.) at 311.

B. History

History can clarify the scope of the pardon power.[47] Legally relevant history includes, but is not limited to, English practice.[48] An "unbroken line of common-law precedent" is "likely to be part" of American law,[49] and for centuries, the Crown pardoned corporations.[50]

1. English statutes and corporate form.

The story begins in 1461. As King Edward IV prepared to take the throne, he believed that his predecessors were illegitimate.[51] Still, it would have been chaotic to govern from a blank slate. So, Parliament ratified the acts of other kings. Included were pardons "to any Body or Persons Corporate."[52] Going forward, those pardons had "Force" as if "granted by any King in this Realm lawfully reigning."[53] Parliament would write general pardons with similarly broad language for the next two hundred years.[54]

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47 William Baude & Stephen E. Sachs, *Originalism and the Law of the Past*, 37 LAW & HIST. REV. 809, 814 (2019) ("[L]awyers are not seeking internalist explanations of change over time, but rather internalist conclusions about the substance of past law, which is what current law happens to make relevant." (emphasis omitted)).

48 *Wilson*, 32 U.S. at 160.

49 N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2136 (2022).

50 *See infra* Part I.B.1–3.

51 1 WILLIAM BLACKSTONE, COMMENTARIES *197.

52 Acts Done in Times of Other Kings 1461, 1 Edw. 4 c. 1, § 4; *see also id.* (listing "Fraternit[ies], Guild[s], Compan[ies], [and] Fellowship[s]" as examples of "Persons Corporate").

53 *Id.*

54 *See* General Pardon 1515, 7 Hen. 8 c. 11 (enacting that "[a]ll & evy of his Subjects . . . and all & synguler bodies in any maner wise corporate . . . shallbe . . . pdoned"); *see also* General Pardon 1523, 14 Hen. 8 c. 16, § 2; General Pardon 1529, 21 Hen. 8 c. 1, § 2; Pardon Granted to the King's Spiritual Subjects of the Province of Canterbury for the Premunire 1530, 22 Hen. 8 c. 15, § 2; Pardon Granted unto Spiritual Subjects of the Province of York 1531, 23 Hen. 8 c. 19, § 2; General Pardon 1534, 26 Hen. 8, § 2; General Pardon 1540, 32 Hen. 8 c. 49, § 2; General Pardon 1543, 35 Hen. 8 c. 18, § 2; General Pardon 1547, 1 Edw. 6 c. 15, § 2; General Pardon 1548, 2 Edw. 6 c. 39, § 2; General Pardon 1549, 3 Edw. 6 c. 24, § 2; General Pardon 1553, 7 Edw. 6 c. 14, § 2; General Pardon 1562, 5 Eliz. 1 c. 30, § 2; General Pardon 1566, 8 Eliz. 1 c. 19, § 2; General Pardon 1570, 13 Eliz. 1 c. 28, § 2; General Pardon 1575, 18 Eliz. 1 c. 24, § 2; General Pardon 1580, 23 Eliz. 1 c. 16, § 2; General Pardon 1584, 27 Eliz. 1 c. 30, § 2; General Pardon 1586, 29 Eliz. 1 c. 9, § 2; General Pardon 1588, 31 Eliz. 1 c. 16, § 2; General Pardon 1592, 35 Eliz. 1 c. 14, § 2; General Pardon 1597, 39 Eliz. 1 c. 28, § 2; General Pardon 1601, 43 Eliz. 1 c. 19, § 2; General Pardon 1605, 3 Jac. 1 c. 27, § 2; General Pardon 1609, 7 Jac. 1 c. 24, § 2; General Pardon 1623, 21 Jac. 1 c. 35, § 2; An Act of General Pardon and Oblivion of 1652, *reprinted in* C.H. FIRTH & R.S. RAIT, ACTS AND ORDINANCES OF THE INTERREGNUM 556 (1911); General Pardon 1689, 2 W. & M. c. 10, § 2; General Pardon 1689, 7 W. & M. c. 20, § 2; General Pardon

General pardons were an important political tool. They pardoned anyone, or anything, that could have committed a list of crimes.[55] With general pardons, kings could "present themselves as merciful despite an increasingly severe set of laws."[56] The broader public understood general pardons as tokens of goodwill from the Crown and "elements of festivity" during celebratory times.[57] Meanwhile, "the political and religious elite" extracted general pardons as a reward "for various forms of cooperation" with the Crown.[58]

Take King Charles II, who had to secure the support of the "governing elite" after the English Civil War.[59] Charles II promised that, if he became King, he would offer a general pardon.[60] He kept that promise, and Parliament enacted the Oblivion Act of 1660.[61] The Act made the King's pardon "good and effectuall in the Law" to all his subjects and "Bodyes Corporate."[62] It excluded no "Bodyes in any manner of wise corporated,"[63] listing "Citties Burroughs Shires Ridings Hundreds Lathes Rapes Wappentakes Townes Villages Hamlets and Tythings."[64] Notice the general terms. If any of the entities had committed offenses, they were pardoned.

Cities might feel like an odd fit for the modern pardon power. Today, juries vote to convict companies, yet "would never dream of criminally punishing a city."[65] At the time, though, there was no legal distinction between municipalities and for-profit companies. Both were corporations.[66] They might have pursued different

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1708, 7 Ann. c. 22, § 2 ("Her free Pardon shall be as good and effectual in law to every of her said Subjects Bodies Corporate and others.").

55 K.J. KESSELRING, MERCY AND AUTHORITY IN THE TUDOR STATE 57 (2003).

56 *Id.* at 57–58.

57 *Id.* at 72.

58 *Id.*

59 *Id.* at 61.

60 *See* The Declaration of Breda (April 1660), *reprinted in* SAMUEL R. GARDINER, THE CONSTITUTIONAL DOCUMENTS OF THE PURITAN REVOLUTION 465, 465 (1906).

61 12 Car. 2 c. 11.

62 *Id.* § 7. Excluded were the people who killed the previous King. *Id*.

63 *Id.* § 5.

64 *Id.*

65 Miriam H. Baer, *Propping Up Corporate Crime with Corporate Character*, 103 IOWA L. REV. ONLINE 88, 98 (2018).

66 David B. Guenther, *Of Bodies Politic and Pecuniary: A Brief History of Corporate Purpose*, 9 MICH. BUS. & ENTREPRENEURIAL L. REV. 1, 11, 15 (2019).

goals, but the law treated them similarly. "In the eye of the law a corporation was a corporation—that was all there was to it."[67]

Each example of the King pardoning a city, or a church, or a guild, speaks to a tradition that would have also applied to for-profit companies. Had the King pardoned S corporations, no one would have said that turning a profit excludes a person from being eligible for a pardon, whether natural or incorporated. Maybe people would have objected that corporations could not commit crimes or that the King could not pardon any kind of corporation.[68] Those lines would have been normal ones to draw. But it would have been strange to accept the King's pardon of a city and not a for-profit company. The English "developed rules that purported to apply to all corporations alike."[69]

2. The *City of London Case* and aftermath.

Back to the reign of Charles II. The next relevant event was twenty years later. The King was less powerful than he had previously been.[70] To consolidate control, he threatened to seize municipal corporations from their officials.[71] His "aim was to control the personnel and therefore the government of the borough and city corporations."[72] With a grip on local government, he could rig "the election of Members of Parliament" and direct national policy.[73]

London was the most important city to control.[74] And it had defied the King's orders by illegally taxing a market that was supposed to be free[75] and circulating seditious petitions.[76] Though city officials committed the crimes, the Crown saw an opportunity[77] and issued a writ to seize the city itself.[78]

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67 4 JOSEPH STANCLIFFE DAVIS, ESSAYS IN THE EARLIER HISTORY OF AMERICAN CORPORATIONS 3–4 (1917).

68 *See, e.g.*, *infra* notes 81–84.

69 Guenther, *supra* note 66, at 12.

70 JENNIFER LEVIN, CHARTER CONTROVERSY IN THE CITY OF LONDON, 1660–1688, AND ITS CONSEQUENCES 3 (1969).

71 *Id.* at 2.

72 *Id.*

73 *Id.* at 5.

74 *Id.* at 2, 7.

75 LEVIN, *supra* note 70, at 46.

76 *Id.* at 47.

77 *Id.* at 41.

78 *Id.* at 1. The writ was a quo warranto, which issues on behalf of "the king, against him who claims or usurps any office, franchise, or liberty, to inquire by what authority he supports his claim." 3 WILLIAM BLACKSTONE, COMMENTARIES *262. In other words, Charles II issued a writ to seize London's charter.

Most cities would have buckled under the threat of criminal prosecution. "Out of over 240 boroughs and other corporations" threatened with seizure "between 1680 and October 1688, only London defended its case up to final judgement."[79] So began the *City of London Case*.[80]

At trial, London argued that the case had "no Defendant" because a corporation could not "sue and be sued."[81] Nor could a city be punished for a crime. The city asked, "Will the political body be suspended by its neck?"[82] Or must the citizens "hang up the Common Seal?"[83] London instructed the court to instead prosecute city citizens, who were potentially "liable in their private several Capacities."[84]

The Crown rebutted London's points. It cited statutes making corporations liable for crimes.[85] Then it explained that the problem was the city government's "power of offending and misgoverning," not the citizens who made those decisions.[86] Besides, if the Crown could not seize London, "mischiefs [ ] would follow."[87] Emboldened by a decision for the city, "independent commonwealths" like the Colonies might "overthrow [ ] the common law, and the crown."[88] The Crown was warning of an American Revolution.[89]

The court sided with the King.[90] To prove that a city could be liable in its own name, the court cited some statutes. One statute

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79 LEVIN, *supra* note 70, at 2.

80 HENRY POLLEXFEN, THE CASE OF THE QUO WARRANTO AGAINST THE CITY OF LONDON WHEREIN THE JUDGMENT IN THAT CASE, AND THE ARGUMENTS IN LAW TOUCHING THE FORFEITURES AND SURRENDERS OF CHARTERS ARE REPORTED (London, George Grafton 1690).

81 *Id.* at 37, 66.

82 *See id.* at 46 ("What? it shall be that *Suspendatur per collum Corpus politicum*.").

83 *Id.* at 46.

84 *Id.* at 47.

85 LEVIN, *supra* note 70, at 44–45. The Crown had seized corporations for generations. *See* POLLEXFEN, *supra* note 80, at 54–56; LEVIN, *supra* note 70, at 61–62 (listing "direct criminal" charges against corporations).

86 POLLEXFEN, *supra* note 80, at 14.

87 *Id.*

88 W.S. Holdsworth, *English Corporation Law in the 16th and 17th Centuries*, 31 YALE L.J. 382, 383 (1922).

89 *See infra* Part II.B.3.

90 LEVIN, *supra* note 70, at 24. Though corporate law was "in a state of flux," "all the important points put forward by the Crown in the Case have subsequently been accepted by lawyers." *Id.* at 64, 80; *see also* Holdsworth, *supra* note 88, at 403 ("[I]t may be that the arguments in the City of London Case, and the subsequent discussions of that case, have had something to do with fixing the modern law."). That said, the King may have won only because he packed the King's Bench. *See* LEVIN, *supra* note 70, at 27 ("That the King would be victorious was made very probable by the changes he then made in the judiciary.").

imposed liability on corporations.[91] Another suggested that the King could seize a city.[92] Though those two statutes were probably enough authority to show that cities could be convicted of crimes, the court's analysis did not end there.

Most relevant here, the court inferred that cities could commit crimes from the Oblivion Act of 1660. If "Bodies Politick" can "be pardoned," the court reasoned, they must be able to commit crimes.[93] Exhibit A was "the general article of pardon," the Oblivion Act, under which "corporations" had been "pardoned all Crimes and Offences."[94] That pardon would have been pointless if cities had not committed offenses already. This opinion shows that English courts accepted that corporations could be pardoned.[95]

London took the opinion at its word and requested clemency.[96] The King conditionally pardoned London: either permit the Crown to veto some of London's elected officials or lose the charter.[97] Had the city accepted this deal, the King could have effectively controlled the city. After debate, London's government refused to accept the pardon.[98] Then London lost its charter.[99] In short order, "the majority of the boroughs and cities in England and Wales hastily capitulated and were induced to surrender theirs."[100] London's experience confirmed that the King could pardon corporations. It was no longer a hypothetical listed in the acts of Parliament.[101]

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91 *See* Holdsworth, *supra* note 88 at 387 n.26 ("[T]he Act for regulating corporations . . . provides that no corporation shall be avoided for anything by them misdone or omitted to be done, shows also that their charters may be avoided for things by them misdone, or omitted to be done.").

92 *See* POLLEXFEN, *supra* note 80, at 119 ("[T]he Stat[ute] . . . is express, that the Franchises and Liberties of the City, upon such Defaults, shall be taken into the King's hands.").

93 *See id.* ("[T]hat Bodies Politick may offend and be pardoned, appears by the general Article of Pardon . . . whereby Corporations are pardoned all Crimes and Offences.").

94 *Id.*

95 *But see* JAMES L. HIGH, A TREATISE ON EXTRAORDINARY LEGAL REMEDIES, EMBRACING MANDAMUS, QUO WARRANTO, AND PROHIBITION 540–41 (Chicago, Callaghan & Co., 2d ed. 1884) ("The case has never been regarded as a precedent in England, and the judgment was reversed by a subsequent act of parliament.").

96 LEVIN, *supra* note 70, at 50.

97 *Id.* at 50–51. The King would have the power to veto elected officials. *Id.* There was a complex procedure proposed if the City and King could not agree on the ultimate pick. *Id.* at 50.

98 *Id.* at 54.

99 LEVIN, *supra* note 70, at 55.

100 *Id.* at 2.

101 *See supra* note 54.

After the *City of London Case*, the English knew that the King could pardon corporations. In *The King v. Bowerbank*,[102] the court mentioned that the King had "granted fines to the corporation" and "pardoned" its offense.[103] Legal treatises made similar points. "Perhaps the first English treatise devoted specifically to corporation law"[104] described how the "the charter of pardon and restitution" authorized "return[ing]" corporations back "to a condition to exercise their liberties."[105] Another treatise said that "[c]orporations" could be "pardon[ed] of the[ir] offences" to "restor[e] [ ] the body politic."[106] Yet another treatise mentioned that the King could "dispense" with punishments for "even a Corporation aggregate."[107] All these sources acknowledged that the King could pardon corporations.

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[102] (1728) 90 Eng. Rep. 302.

[103] *Id.* at 302 ("[T]he offence is pardoned, for though the King has granted fines to the corporation, he might however pardon the offence; and the King in this case has pardoned all that he can pardon.").

[104] Guenther, *supra* note 66, at 13.

[105] 2 STEWART KYD, TREATISE ON THE LAW OF CORPORATIONS 511 (London, J. Butterworth 1794) ("[B]y virtue of the charter of pardon and restitution, the King's hands were removed: they returned to a condition to exercise their liberties; the power of the new corporation, as *custos*, necessarily ceased, and to every other purpose the letters patent became void and no effect." (emphasis in original)).

[106] J.W. WILLCOCK, LAW OF MUNICIPAL CORPORATIONS; TOGETHER WITH A BRIEF SKETCH OF THEIR HISTORY, AND A TREATISE ON MANDAMUS AND QUO WARRANTO 186 (Philadelphia, J.S. Littell 1836) ("While judgments in quo warranto have been standing against Corporations, it has been the practice for the king to appoint a custos of the franchises, whose authority ipso facto determines upon a restoration of the body politic, by reversal of the judgment, or a pardon of the offenses."). He repeated this point elsewhere. *See id.* at 12 ("[A] corporation on final judgment on an information in the nature of quo warranto . . . remains in the king's hands, and may be replevied by the members of the body, or restored on a pardon by the king."); *see also id.* at 264:

> In proceedings against a Corporation for usurpation of a franchise, if they be in default, there may be a judgment of seizure of the franchise into the King's hands or in the king's right quousque: but as the existence of the Corporation is not affected, it may come in and fine and reply, or the King may pardon the default by proclamation or charter, upon which the body are entitled to repossess themselves to their franchises.

This treatise was variously cited around when it was published. *See, e.g.*, State v. Ashley, 1 Ark. 513, 553 (1839).

[107] 2 WILLIAM HAWKINS, TREATISE OF THE PLEAS OF THE CROWN: OR A SYSTEM OF THE PRINCIPAL MATTERS RELATING TO THAT SUBJECT, DIGESTED UNDER THEIR PROPER HEADS 389–90 (London, E. Nutt et al., 2d ed. 1726) ("[G]enerally the King might dispense with it"—that is, "a Thing, which is . . . made unlawful by the Prohibition of an Act of Parliament"—"as to a particular Time, or Place, or Person, or even a Corporation aggregate."). William Hawkins was an "influential English commentator." Saul Cornell, *The Right to Keep and Carry Arms in Anglo-American Law: Preserving Liberty and Keeping the Peace*, 80 LAW & CONTEMP. PROBS. 11, 16 (2017).

3. Shared understanding.

For three centuries, then, the English pardoned corporations and understood that practice as part of their law. The next question is whether the Founding generation shared that understanding. The answer is yes.

Back in North America, the Massachusetts Bay Company had its own problems.[108] In the 1630s, the Crown sued the company for "[il]legally transferr[ing]" its government to the people inhabiting the colony—essentially, for letting the people self-govern.[109] The lawsuit ended with a "default judgment ordering the charter to be 'Seized into the Kings hands.'"[110] But the colony never handed over its charter.[111] Massachusetts evaded enforcement long enough for the Oblivion Act of 1660 to pardon its crimes, along with all other corporations. To make the pardon's effect clear, Parliament reaffirmed one year later that "no Charter of any Corporation" could be seized for "any act or thing done" before Parliament's first day.[112] Not only were corporations forgiven, but the King also could not seize them for their offenses. Based on these laws, the colony believed it had been pardoned. Massachusetts asked the King to confirm that he had intended to forgive it, and King Charles II "responded affirmatively, asking in return only that the company stop hanging Quakers."[113]

Fast forward to the 1680s. The King no longer intended to let Massachusetts govern itself. So "the day the City of London opinion came down," the King ordered that the company be seized.[114] The company had no opportunity to defend itself before the charter was "vacated."[115] Though this procedure "amazed" the colonists,[116] they continued governing as if the charter was still effective, even though the King would not recognize its legal validity.[117] And in 1691, after the Glorious Revolution, King William and

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[108] *See* Nikolas Bowie, *Why the Constitution Was Written Down*, 71 STAN. L. REV. 1397, 1419 (2019).

[109] *Id.* at 1419, 1429.

[110] *Id.* at 1429.

[111] *Id.* at 1439.

[112] An Act for the Well Governing and Regulating of Corporations 1461, 13 Car. 2 c. 1, § 2.

[113] Bowie, *supra* note 108, at 1440.

[114] *Id.* at 1454.

[115] *Id.* at 1455.

[116] *Id.* (alteration in original) (quotation marks omitted) (quoting 1 RECORDS OF THE GOVERNOR AND COMPANY OF THE MASSACHUSETTS BAY IN NEW ENGLAND 451 (Nathaniel B. Shurtleff ed., Boston, William White 1853)).

[117] *Id.* at 1456 (alteration omitted).

Queen Mary vested Massachusetts with a new charter.[118] That charter was nullified, too, by one of the Coercive Acts, which sparked the Revolutionary War.[119]

The colonists never forgot the original charter. Even with a new charter,[120] "[t]he threat" of seizure "never left."[121] It became "a major source of inspiration" for colonists.[122] When Massachusetts ratified its own constitution, it looked "strikingly like the charter of 1629."[123] That constitution "set the template for the U.S. Constitution of 1787 and the dozens of state constitutions that followed."[124] And when the Constitution was ratified, people probably would have kept these historical events in mind, including when the King had pardoned London and Massachusetts.

Much later, "the first American legal treatise dedicated to corporate law"[125] mentioned that the King could "pardon the default" of a "corporation."[126] The treatise was "the standard work on corporate law" when it was published in 1832.[127] Twenty years after that, an "influential"[128] criminal law treatise explained that corporations could be pardoned. Although "a county" is not "deemed a private person" like "a private corporation," a county can still "have penalties, vested in it, divested by the executive pardon."[129] When the treatise explained that counties could be pardoned, it took for granted that private corporations could be pardoned.

Attorneys would reference this history in passing. Consider the arguments of the Attorney General of Texas as he defended the state's seizure of a private railroad company in 1859.

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118 Bowie, *supra* note 108, at 1475.

119 *Id.* at 1489.

120 *See id.* at 1463–76.

121 *Id.* at 1505 (emphasis omitted).

122 *Id.* at 1458.

123 Bowie, *supra* note 108, at 1502.

124 *Id.* at 1498.

125 Guenther, *supra* note 66, at 64.

126 JOSEPH K. ANGELL & SAMUEL AMES, TREATISE ON THE LAW OF PRIVATE CORPORATIONS AGGREGATE 635 (Boston, Hilliard, Gray, Little & Wilkins 1832) ("[T]he corporation might be restored, on paying a fine to the king, or that the king might pardon the default by proclamation or charter.").

127 R.K. Newmyer, *Justice Joseph Story's Doctrine of "Public and Private Corporations" and the Rise of the American Business Corporation*, 25 DEPAUL L. REV. 825, 838 (1976).

128 Eric A. Johnson, *Cause-in-Fact After* Burrage v. United States, 68 FLA. L. REV. 1727, 1759 (2016). Joel Prentiss Bishop was once cast as "the foremost law writer of his time." Stephen A. Siegel, *Joel Bishop's Orthodoxy*, 13 LAW & HIST. 215, 215 (1995).

129 1 JOEL PRENTISS BISHOP, COMMENTARIES ON THE CRIMINAL LAW 727 (Boston, Little, Brown & Co., 2d ed. 1858).

His arguments should now feel familiar. Companies can be seized because they are similar to natural persons.[130] Given they are treated so similarly by the law, they can likewise be pardoned.[131] Though the Texas Supreme Court did not ultimately decide whether the railroad company could be pardoned, Texas nevertheless convinced the court that the seizure was lawful.[132] And while the Attorney General's arguments postdate the ratification of the Constitution by fifty years, they show that Americans interpreted the pardon power similarly to the King's Bench.[133]

Put together, these examples show that the Founding generation understood that the pardon power stretched to a corporation's crimes.[134] And this power and its rules, the Court has decided, are "exactly what" the Pardon Clause codified.[135]

II. REASONS TO PARDON COMPANIES

The discussion is not an academic exercise. President Trump recently pardoned a company and commuted the sentence of another.[136] Still, it is worth asking why different presidents might

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[130] *See* State v. S. Pac. R.R., 24 Tex. 80, 84 (1859) (citations omitted) ("They all agree, that a corporation is an artificial being, created by the government, existing only in contemplation of law, and possessing many of the properties and attributes of a natural person. The franchise is to the corporation, what the soul is to the natural man.").

[131] *See id.* at 85–86 (citing ANGELL & AMES, *supra* note 126) ("[A]s in the case of a natural person who had committed a capital offense, the sovereign power might grant a pardon, so in that of a corporation, it might forgive the forfeiture, and waive the enforcement of the penalty.").

[132] *Id.* at 130–31. The Texas Supreme Court never decided whether the Governor could pardon corporations, but Attorney General Asa Willie later joined the court himself. *See Willie, Asa Hoxie*, U.S. HOUSE OF REPS., https://perma.cc/CK74-UU53.

[133] *Cf.* United States v. Rahimi, 144 S. Ct. 1889, 1925 (2024) (Barrett, J., concurring) (discussing the role of postratification history in interpreting the Constitution).

[134] One of Edmund Burke's speeches could be depicted as questioning the King's power to pardon private corporations. *See* CELEBRATED SPEECHES OF CHATHAM, BURKE, AND ERSKINE: TO WHICH IS ADDED, THE ARGUMENT OF MR. MACKINTOSH IN THE CASE OF PELTIER 267 (Philadelphia, E.C. & J. Biddle 1847) ("[A] pardon from the crown is not pleadable here . . . much less a pardon of the East India company, though it may involve them in guilt."). This depiction would be divorced from context. Burke was speaking to impeach the Governor of India, and impeachments evaded pardons from the King. *See id.* ("[T]he crown . . . cannot bar the impeachment of the Commons."); *see also* HUMBERT, *supra* note 22, at 62 ("Parliament enacted that no pardon under the Great Seal could be pleaded in bar of an impeachment," which "prevented the King from interrupting impeachment proceedings."). If anything, Burke's speech suggests that the King *could* pardon corporations, other than in impeachments.

[135] *Grossman*, 267 U.S. at 112.

[136] *See generally* HDR Pardon, *supra* note 15; Ozy Commutation, *supra* note 17.

want to pardon companies.[137] The first president wants to make deals with companies and other countries to further the national interest. The second president protests the idea that companies can commit crimes, or at least thinks a company was wrongfully prosecuted. The third president wants to pardon companies to benefit himself. It is hard to know whether any of these reasons motivated President Trump to exercise the pardon power, nor are they an exhaustive list. Because presidents could pardon another company in the future, however, it is important to clarify why they might do so.

A. The Transactional President

One President might wield the pardon power to make deals. The President can add "any condition[ ]"[138] to a pardon, and if the company violates the conditions, the company will suffer "the original sentence."[139] Pardons can therefore effectively "legislat[e] a new punishment into existence, and sentenc[e] the convict to suffer it"[140] without "legislative authorization."[141] The company

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[137] In its memo, the Department of Justice claimed that "President Nixon on December 23, 1971 remitted the fine of the Bituminous Concrete Association, Inc." Emprise Memo, *supra* note 4, at 2. This claim is hard to verify. *See Commutations Granted By President Richard Nixon (1969–1974)*, OFF. OF THE PARDON ATT'Y, https://perma.cc/3JFA-MU4L (never listing the company); *see also Pardons Granted by President Richard Nixon (1969–1974)*, OFF. OF THE PARDON ATT'Y, https://perma.cc/W2QN-MCG5 (same). But the claim has been repeated elsewhere. *See* Matt Sledge, *Trump Just Pardoned . . . A Corporation*, THE INTERCEPT (Apr. 2, 2025), https://perma.cc/9PHU-N7N8 ("'There have been plenty of cases where presidents have remitted fines or forfeitures, or something else like that,' said Margaret Love, who served as U.S. pardon attorney from 1990 to 1997.").

[138] United States v. Klein, 80 U.S. (13 Wall.) 128, 142 (1871); *see also* Semmes v. United States, 91 U.S. 21, 27 (1875) ("Authorities to show that a pardon may be . . . subject to conditions . . . are quite unnecessary, as they are very numerous, and all are one way.").

[139] *Ex parte* Wells, 59 U.S. (18 How.) 307, 314 (1855); *accord* Lehmann v. U.S. *ex rel.* Carson, 353 U.S. 685, 686 n.1 (1957).

[140] *Wells*, 59 U.S. (18 How.) at 309. It is unclear whether the constitutional conditions doctrine limits the exercise of the pardon power. According to this line of cases, "the government may not require a person to give up a constitutional right" in exchange for something that "has little or no relationship" with that right. Dolan v. City of Tigard, 512 U.S. 374, 385 (1994). Many people, including Supreme Court Justices, "find th[e] [ ] unconstitutional conditions doctrine very difficult." Transcript of Oral Argument at 25, Mallory v. Norfolk S. Ry., 143 S. Ct. 2028 (2023) (No. 21-1168). Still, dictum probably supports applying the doctrine to the pardon power. *See* Schick v. Reed, 419 U.S. 256, 264 (1974) ("[T]he pardoning power was intended to include the power to commute sentences on conditions which do not in themselves offend the Constitution."). And at the state level, legislation might be another source of superseding law. *See infra* Part IV.

[141] *Schick*, 419 U.S. at 262. Conditional pardons can achieve astonishing results, especially given they can apply generally to all convicts at once. *See Ex parte* Garland, 71 U.S. (4 Wall.) 333, 351 (1866) (finding that the Pardon Clause authorizes "every species of

decides whether to accept, even if the new punishment is "more objectionable" than the original sentence.[142]

Companies are unlikely to agree to a pardon with conditions more punitive than the original sentence, and a pardon has no effect if it is not accepted.[143] The pardon power thus trends toward leniency, at least from the perspective of the recipient. Even respecting that practical limit, though, the President has good reason to conditionally pardon companies.

Conditional pardons could encourage corporate compliance. A conviction can result in "delicensing, exclusion from government contracts,"[144] and "$50,000,000 fines."[145] Such consequences can be "fatal."[146] In dire straits, a company might ask for forgiveness. Then the President might instruct the company to earn it. Instead of paying billions of dollars, the company can invest millions in compliance programs.[147] That kind of deal might be attractive to both the company and the government.[148]

Pardons could also ease relations with other countries. The United States is unusual for "imposing massive criminal fines" on

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pardon, individual as well as general"). And in practice, the President has not used the pardon power to reshape the criminal code. That restraint might result from political pressure. *See* John Yoo, *Unitary, Executive, or Both?*, 76 U. CHI. L. REV. 1935, 1984 (2009) ("[T]he main check on abuse is public opinion.").

142 *Wilson*, 32 U.S. (7 Pet.) at 161.

143 *See* Burdick v. United States, 236 U.S. 79, 90–91 (1915):

> [T]he grace of a pardon, though good its intention, may . . . involve[e] consequences of even greater disgrace than those from which it purports to relieve. . . . [T]he acceptance of a pardon may be rejected,—preferring to be the victim of the law rather than its acknowledged transgressor—preferring death even to such certain infamy.

144 Assaf Hamdani & Alon Klement, *Corporate Crime and Deterrence*, 61 STAN. L. REV. 271, 274 (2008).

145 Steven M. Kowal, *Corporate Compliance Programs: A Shield Against Criminal Liability*, 53 FOOD & DRUG L.J. 517, 519 (1999); *see also Quick Facts on Sentenced Organizations*, U.S. SENTENCING COMM'N 2 (2023) [hereinafter *Sentenced Organizations*], https://perma.cc/KZ4E-G6ZW.

146 Hamdani & Klement, *supra* note 144, at 279.

147 The President can pick the amount by which to reduce fines. *See* Biddle v. Perovich, 274 U.S. 480, 486–87 (1927).

148 Companies already accept deferred prosecution and nonprosecution agreements, but such agreements can only work *before* conviction. *See generally* Wulf A. Kaal & Timothy A. Lacine, *The Effect of Deferred and Non-Prosecution Agreements on Corporate Governance: Evidence from 1993–2013*, 70 BUS. LAW. 61 (2014). It is unclear what effect, if any, the possibility of a pardon will have on these agreements going forward.

foreign companies.[149] At some point, countries might retaliate.[150] To stop the bleeding, the President could offer to pardon foreign companies as a bargaining chip. The pardon power is just another option in his diplomatic toolkit, but it is one that few have considered so far.

B. The Sympathetic President

Another President might be more sympathetic to companies. He objects to prosecuting them. In the "voluminous literature" about corporate criminal liability, the "majority view" holds "that the doctrine is ill-considered,"[151] despite its acceptance by courts. Little empirical evidence suggests that the doctrine deters corporate crime.[152] In fact, the "strongest support" for a deterrent effect "comes from perhaps the weakest of research designs."[153]

The President's objections might extend beyond simply whether corporate liability works as a deterrent. As others have argued, criminal liability might also be too lenient or too harsh, depending on who is asked.[154] It might perversely discourage corporations from adopting and enforcing compliance programs.[155] It might miss bad apples and punish unwitting shareholders instead.[156] And it might be too harsh of a punishment for violations

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[149] John DeQ Briggs & Daniel S. Bitton, *Heisenberg's Uncertainty Principle, Extraterritoriality and Comity*, 16 SEDONA CONF. J. 327, 356, 368–69 (2015).

[150] *See* RJR Nabisco, Inc. v. Eur. Cmty., 579 U.S. 325, 335 (2016) (describing "the international discord that can result" from prosecuting foreign companies); *see also* Briggs & Bitton, *supra* note 149, at 369 (warning that fines might "start running the other way"); *id.* at 355 (warning that countries might refuse to respect U.S. judgments or effectively fund corporate crime).

[151] Gilbert Geis & Joseph F.C. DiMento, *Empirical Evidence and the Legal Doctrine of Corporate Criminal Liability*, 29 AM. J. CRIM. L. 341, 343–44 (2002).

[152] *See* Geis & DiMento, *supra* note 151, at 375 (arguing that "corporate criminal liability has suffered from the failure . . . to use empirical utensils"); *accord* Daniel R. Fischel & Alan O. Sykes, *Corporate Crime*, 25 J. LEGAL STUD. 319, 320 & n.3 (1996); Dorothy S. Lund & Natasha Sarin, *Corporate Crime and Punishment: An Empirical Study*, 100 TEX. L. REV. 285, 303, 352 (2021).

[153] SALLY S. SIMPSON, CORPORATE CRIME, LAW, AND SOCIAL CONTROL 42 (2002); Lawrence M. Friedman, *In Defense of Corporate Criminal Liability*, 23 HARV. J.L. & PUB. POL'Y 833, 838 (2000) (admitting that the economic defense "fares poorly").

[154] *Compare* Edward B. Diskant, *Comparative Corporate Criminal Liability: Exploring the Uniquely American Doctrine Through Comparative Criminal Procedure*, 118 YALE L.J. 126, 128 (2008), *with* Mihailis E. Diamantis & W. Robert Thomas, *But We Haven't Got Corporate Criminal Law!*, 47 J. CORP. L. 991, 1002 (2022).

[155] Hamdani & Klement, *supra* note 144, at 294–98; Jennifer Arlen, *The Potentially Perverse Effects of Corporate Criminal Liability*, 23 J. LEGAL STUD. 833, 843 (1994).

[156] *See* John Hasnas, *The Centenary of a Mistake: One Hundred Years of Corporate Criminal Liability*, 46 AM. CRIM. L. REV. 1329, 1341 (2009); *accord* Albert W. Alschuler,

of vague and broad laws.[157] Meanwhile, civil fines might be an apt substitute.[158] If the President believes all this, he could offer a pardon that adjusts a company's liability or absolves it altogether.

Not every President would be motivated only by efficiency and deterrence. Criminal liability might express condemnation in a way that civil liability cannot.[159] Still, the President might not find this rationale all that convincing or might not want to express such condemnation against a particular company.

Pardoning a company might be his only option in a few circumstances.

First, the company might have been convicted during a previous administration. The President cannot rewind the clock and undo the previous administration's prosecution. But his pardon can counteract a conviction's effects.[160]

Second, an agency might prosecute a company without the President's permission. People debate whether the President has directive authority over agencies.[161] If he does not, then conventionally he can only stop agency actions by removing officials.[162] Yet removal is a nuclear option. The President might disagree with a prosecution, but not enough to justify removing the prosecutors. For example, the prosecution might be the only blemish

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Two Ways to Think About the Punishment of Corporations, 46 AM. CRIM. L. REV. 1359, 1359 (2009).

[157] *See* Kathleen F. Brickey, *Corporate Criminal Accountability: A Brief History and an Observation*, 60 WASH. U. L.Q. 393, 393 n.2 (1992) (collecting statutes). "[F]ull enforcement of the law is unthinkable" because every company has "at least one employee who violated a federal criminal law while carrying out his duties." Alschuler, *supra* note 156, at 1382. *But see* Sara Sun Beale, *Is Corporate Criminal Liability Unique?*, 44 AM. CRIM. L. REV. 1503, 1510 (2007) ("[T]he overbreadth of the federal criminal code as it applies to corporations . . . is not unique or even unusual.").

[158] Fischel & Sykes, *supra* note 152, at 321 ("[C]orporate criminal liability is often heaped on top of substantial civil liability in circumstances where there is no reason to believe that civil liability alone would not produce appropriate deterrence.").

[159] Friedman, *supra* note 153, at 857–58.

[160] *Garland*, 71 U.S. (4 Wall.) at 380. But the pardon probably does not entitle the company to a refund of the fines it has already paid. *See infra* Part III.A.

[161] *Compare* Saikrishna Prakash, *The Chief Prosecutor*, 73 GEO. WASH. L. REV. 521, 521, 596 (2005), *with* Bruce A. Green & Rebecca Roiphe, *Can the President Control the Department of Justice?*, 70 ALA. L. REV. 1, 75 (2018). Even if the president has the power to direct the Department of Justice, there might be normative reasons to respect its decisions. Todd David Peterson, *Federal Prosecutorial Independence*, 15 DUKE J. CONST. L. & PUB. POL'Y 217, 261–83 (2020).

[162] Green & Roiphe, *supra* note 161, at 26 ("[F]ederal officials may be subject to removal by the President for performing their work incompetently, but not to the President's direction.").

on the officials' record, or the officials might enjoy for-cause removal protections.[163]

In either case, the President could pardon corporations as a compromise, neither undermining the officials nor yielding to them. Without the pardon power, the President must rely on the other branches. The courts could overturn the companies' convictions, or Congress could repeal criminal statutes and enact a law wiping out the effects of companies' convictions.[164] In contrast to these delayed and uncertain options, the President could unilaterally decide to pardon every company. Such general pardons are rare today. But they are not without precedent.[165]

C. The Self-Interested President

Yet another President might be out for his own gain. He would pardon corporations for cynical reasons. Consider a few scenarios.

The President could improve his public image by pressuring companies into embarrassing deals. For example, the President might remit a company's fines by 30% if the CEO agrees to write handwritten notes to every victim. Such a deal might seem fanciful, but remember: the President can choose to conditionally pardon companies.[166] Today, the country is increasingly populist,[167] and companies make for exceptional scapegoats,[168] in part because they are soulless entities for which few feel sympathy.[169]

Or the President could further improve his public image among key demographics. Why bother asking Congress to

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163 *See, e.g.*, Humphrey's Executor v. United States, 295 U.S. 602, 629 (1935).

164 Hasnas, *supra* note 156, at 1329; Alschuler, *supra* note 156, at 1387–88.

165 *See, e.g.*, Knote v. United States, 95 U.S. 149, 152 (1877) (emphasis added) ("The proclamation of the President extended . . . a full pardon . . . to *all* persons.").

166 *See supra* Part II.A.

167 *See* Amina Dunn & Andy Cerda, *Anti-Corporate Sentiment in U.S. Is Now Widespread in Both Parties*, PEW RSCH. CTR. (Nov. 17, 2022), https://perma.cc/CK7P-JHS2.

168 Brandon L. Garrett, *The Corporate Criminal as Scapegoat*, 101 VA. L. REV. 1789, 1790 (2015) (describing corporations as "impossible to actually jail—yet capable of receiving the brunt of blame and punishment, while the individual culprits go free.").

169 People assume that convicting a corporation hurts its reputation. *See, e.g.*, Alschuler, *supra* note 156, at 1373 ("[C]orporate punishment . . . can stigmatize . . . reputation in ways that civil liability cannot."). But this assumption has "no empirical studies" supporting it. Hamdani & Klement, *supra* note 144, at 280. And settling with the government might hurt a corporation's reputation about as much as being convicted. *See generally* Cindy R. Alexander & Jennifer Arlen, *Does Conviction Matter? The Reputational and Collateral Effects of Corporate Crime*, *in* RESEARCH HANDBOOK ON CORPORATE CRIME AND FINANCIAL MISDEALING 139 (Jennifer Arlen ed., 2018).

subsidize Iowan farmers?[170] The President can pardon antitrust convictions on the condition that the companies transfer money to farms in swing states. Transferring fines is a normal punishment. About a third of convicted companies are ordered to pay restitution to their victims, paying to the tune of almost $96 million in the average case.[171] It is not the principle of transferring fines, but the motive of exercising the pardon power for political advantage, that could strike people as distasteful. If the President were especially cynical, he might prosecute corporations to set up later opportunities for his political machine.

Next, imagine the President is unconcerned with public opinion. He might pardon his own companies. Though people debate whether the President can pardon himself,[172] the President can pardon anyone else, including friends and family.[173] The same goes for companies he owns, which are legal persons separate from their owners.[174] If the President knew that his companies had at some point committed a crime, he could pardon them.

Finally, the President might condition his pardon on a bribe.[175] This possibility is perhaps the least likely of any offered so far, but it shows just how far the pardon power can stretch. Such pardons might be bad for the country, and the President might face subsequent criminal liability under federal antibribery statutes,[176] but there is no question that the pardon itself would

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170 *See, e.g.*, Scott Lincicome, *Examining America's Farm Subsidy Problem*, CATO INST. (Dec. 18, 2020), https://www.cato.org/commentary/examining-americas-farm-subsidy-problem.

171 *Sentenced Organizations*, *supra* note 145, at 2.

172 *Compare* Robert Nida & Rebecca L. Spiro, *The President as His Own Judge and Jury: A Legal Analysis of the Presidential Self-Pardon Power*, 52 OKLA. L. REV. 197, 216 (1999), *with* Brian C. Kalt, *Pardon Me: The Constitutional Case Against Presidential Self-Pardons*, 106 YALE L.J. 779, 797 (1996).

173 *E.g.*, *Pardons Granted by President Joseph Biden (2021–2025)*, OFF. OF THE PARDON ATT'Y, https://perma.cc/VSS9-99EX (providing full and unconditional pardons to James B. Biden, Sara Jones Biden, Valerie Biden Owens, John T. Owens, and Francis W. Biden).

174 *See* First Nat'l City Bank v. Banco para el Comercio Exterior de Cuba, 462 U.S. 611, 625 (1983) ("Separate legal personality has been described as 'an almost indispensable aspect of the public corporation.'").

175 *See supra* Part II.A.

176 Precedent does not make clear whether the President would be immune from criminal prosecutions in this circumstance. *Compare* Trump v. United States, 144 S. Ct. 2312, 2328 (2024) ("The President's authority to pardon, in other words, is 'conclusive and preclusive,' 'disabling the Congress from acting upon the subject.'") (quoting Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 637–38 (1952) (Jackson, J., concurring)), *with* Transcript of Oral Argument at 7, *id.* (No. 23-939) (Roberts, C.J.) ("[A]ccepting a bribe isn't

be effective.[177] No word of the Pardon Clause disables clemency granted with a detestable motive.[178]

Such creative and aggressive uses of the pardon power may lead some to wonder whether it can be limited consistent with the Constitution. Of course, the President cannot pardon state crimes,[179] which are the business of state governments.[180] That limit on the pardon power is probably not enough to allay the concerns of those who believe that the President's prerogative is too broad.

III. CONGRESSIONAL RESPONSES

Imagine a Congress with an appetite to rein in a President who has pardoned companies. Congress has been advised by the Supreme Court that the pardon power cannot be "interrupted, abridged, or limited by any legislative enactment."[181]

That statement misses some nuance. Congress must appropriate money before fines deposited in the Treasury can be refunded, even if the President pardons those fines. And Congress can choose to replace corporate criminal liability with civil liability. Without a crime, the President would have no offense to pardon.

A. Refusing to Appropriate Refunds

Money cannot leave the Treasury "but in Consequence of Appropriations made by Law."[182] The appropriations process prevents the President from using the Treasury "as his own piggy bank."[183] Whenever a payment leaves the Treasury, it must first be appropriated, including refunds for pardoned fines.[184]

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an official act, but appointing an ambassador is certainly within the official responsibilities of the president.").

177 *See supra* Part II.A.

178 *See* U.S. CONST. art. II, § 2, cl. 1.

179 *See Ex parte* Grossman, 267 U.S. 87, 113 (1925) ("[T]he pardon of the President was to operate upon offenses against the United States as distinguished from offenses against the States.").

180 *See infra* Part IV.

181 The Laura, 114 U.S. 411, 414 (1885); *accord Ex parte* Garland, 71 U.S. (4 Wall.) 333, 380 (1866) (asserting that the pardon power is not "subject to legislative control" and cannot "be fettered by *any* legislative restrictions" (emphasis added)).

182 U.S. CONST. art. I, § 9, cl. 7.

183 Paul J. Larkin, Jr., *Guiding Presidential Clemency Decision Making*, 18 GEO. J.L. & PUB. POL'Y 451, 468 (2020). The Anti-Deficiency Act does the same for officials and employees. *See* 31 U.S.C. § 1341.

184 *See generally* Knote v. United States, 95 U.S. 149 (1877).

The Court recognized this rule during Reconstruction. During the Civil War, the United States liquidated the property of enemy combatants and then deposited the proceeds into the Treasury.[185] After the war, President Andrew Johnson pardoned "every person who, directly or indirectly, participated in the late insurrection or rebellion."[186] One pardon recipient whose property had been liquidated, John Knote, sued the United States.[187]

Knote had a pardon, but he could not sue for the return of his property. The pardon power cannot, the Court decided, "affect any rights which have vested in others."[188] Nor could Knote recover the property's value from the Treasury. "However large" the pardon power might be, "it cannot touch moneys in the Treasury of the United States, except expressly authorized by act of Congress."[189]

Knote's situation is not unusual today. Even for human beings, the pardon power is not "money-mandating."[190] A pardon is "a badge of forgiveness," not an entitlement to "recoup property."[191] When people have sued for refunded fines, they have lost.[192] They are successful only when they ask for refunds before fines deposit in the Treasury, during the brief period in which courts and executive officials hold onto the money.[193]

Most of the time, fines must be quickly deposited, and the Appropriations Clause prevents the Treasury from issuing a refund. Indeed, some later-pardoned individuals have no chance to recover their money. Some people are ordered to pay fines directly to the Treasury.[194] Alternatively, when some hand over money to executive officials, statutes require those officials to "deposit" the

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185 *Id.* at 149.

186 *See generally* General Pardon on Dec. 25, 1868, *supra* note 20.

187 *Knote*, 95 U.S. at 149–50. Someone had bought his property, but Knote did not sue for its return. At common law, pardons could not "affect any rights which have vested in others." *Id.* at 154.

188 *Id.*; *accord* Ill. Cent. R.R. v. Bosworth, 133 U.S. 92, 105 (1890).

189 *Knote*, 95 U.S. at 154; *accord* Off. of Pers. Mgmt. v. Richmond, 496 U.S. 414, 426 (1990).

190 Boultbee v. United States, 2024 WL 3220261, at *5 (Fed. Cl. June 27, 2024), *aff'd*, 2025 WL 1077679 (Fed. Cir. 2025).

191 Fordham v. Ga. Dep't of Admin. Servs., 2023 WL 5747709, at *2 (11th Cir. Sept. 6, 2023), *cert. denied*, 144 S. Ct. 808 (2024).

192 *See generally Boultbee*, 2024 WL 3220261; *Fordham*, 2023 WL 5747709.

193 *See Knote*, 95 U.S. at 154 ("Where, however, property condemned, or its proceeds, have not thus vested, but remain under control of the Executive . . . or are in the custody of the judicial tribunals, the property will be restored or its proceeds delivered to the original owner, upon his full pardon."); *accord* Osborn v. United States, 91 U.S. 474, 477 (1875).

194 *See, e.g.*, NLRB v. United Slate, Tile & Composition Roofers, Damp & Waterproof Workers Ass'n, Loc. 30, 1992 WL 372381, at *2 (3d Cir. Aug. 10, 1992).

individual's fines "as soon as practicable,"[195] usually in three days.[196] After that point, pardoned people must point to an appropriation authorizing the return of their money.

That said, clemency might come before corporations pay. HDR's pardon might be an example. Final judgment was entered in the company's case on January 27, 2025.[197] Its sentence included paying to the government $400 "immediately" and $100 million "60 days from the date of entry of the judgment."[198] President Trump pardoned HDR on March 27, 2025, which was 60 days after final judgment was entered.[199] There is no press release about whether HDR paid the fine, but if it did not, the pardon excused the company from doing so.[200]

The Appropriations Clause is not as dramatic a limit on presidential power as it might seem. In 1870, Congress appropriated money for the Court of Claims on the condition that "no pardon" could be "admissible" evidence when former confederates sued the United States.[201] In practice, Congress's condition would have forced courts to treat a pardoned individual as if he were guilty, else courts would lose their funding. Because the appropriation required courts to ignore pardons and "deny them their legal effect," it was unconstitutional.[202]

Failing to appropriate refunds does not rise to the level of denying pardons their legal effect.[203] No one would say a pardon was legally ineffective after the recipients had already served their prison sentences, even if the pardon might seem pointless. Regardless of whether recipients already completed their

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195 31 U.S.C. § 3302(b); *see also* Paul J. Larkin, Jr., *The Congressional Review Act and Judicial Review*, 39 YALE L. & POL'Y REV. 1, 12 n.63 (2021) ("The Miscellaneous Receipts Act directs federal officers and employees to pay into the treasury any money, including fines, that they receive in the course of their official duties." (citation omitted)).

196 31 U.S.C. § 3302(c)(1), (2) (ordering "deposit[s] not later than the third day after the custodian receives the money" unless the Secretary of the Treasury "prescribe[s]" a different deadline).

197 *See* HDR Judgment, *supra* note 16, at 2.

198 *Id.* at 4–5.

199 *See* HDR Pardon, *supra* note 15, at 2.

200 It is similarly unclear whether Ozy Media had paid at the time of commutation. If not, the commutation saved the company millions of dollars. *See* Post-Trial Order at 39–46, United States v. Watson, No. 1:23-cr-00082 (E.D.N.Y. Feb. 16, 2025), Dkt. No. 388.

201 Act of July 12, 1870, ch. 251, 16 Stat. 230, 235; *see also* United States v. Klein, 80 U.S. (13 Wall.) 128, 143 (1871).

202 *Klein*, 80 U.S. (13 Wall.) at 148.

203 *See Knote*, 95 U.S. at 154.

sentences by serving time or paying money, courts treat pardons as legally valid.[204]

Besides, pardons might benefit companies in ways other than refunded fines. Recall the Emprise anecdote. A pardon might not have refunded the company's fines, but the company faced another problem: state laws that prohibited felons from possessing and selling liquor.[205] A pardon would have "close[d] the eyes of the courts to the offending acts, or, perhaps more properly, furnishe[d] conclusive evidence that they never existed."[206] After a pardon, Emprise could have sold alcohol. These kinds of collateral consequences can be forgiven even as collected fines continue to sit in the Treasury.

Of course, Congress could choose to appropriate refunds. During the Civil War, for example, Congress appropriated the return of "captured property" when people could show the Court of Claims that they had not "given any aid or comfort to the present rebellion."[207] They could make that showing by producing pardons.[208] That statute has expired, and its replacement is not so generous. The Tucker Act[209] empowers the Court of Federal Claims to hear cases in which people sue the federal government for damages.[210] Nevertheless, the Tucker Act does not "create any substantive right enforceable against the United States."[211] If a pardoned company sued the federal government under the Tucker Act, the company would have to point to another source of law promising a refund.[212] The question is whether such a source of law exists.

No statute promises companies refunds for pardoned fines. One option, the Judgment Fund,[213] only pays out when a judgment or another identifiable legal right would require doing so.[214]

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204 Even so, Congress probably could not "impair the President's pardon power by denying him appropriations for pen and paper." *Richmond*, 496 U.S. at 435 (White, J., concurring).

205 Marro, *supra* note 2.

206 Young v. United States, 97 U.S. 39, 68 (1878); *accord* Carlisle v. United States, 83 U.S. (16 Wall.) 147, 151 (1872).

207 Act of Mar. 3, 1863, ch. 120, § 3, 12 Stat. 820, 820.

208 *See* United States v. Padelford, 76 U.S. (9 Wall.) 531, 543 (1869) ("[T]he law makes the proof of pardon a complete substitute for proof that he gave no aid or comfort to the rebellion.").

209 Ch. 359, 24 Stat. 505 (1887) (codified as amended in scattered sections of 28 U.S.C.).

210 E. Enters. v. Apfel, 524 U.S. 498, 520 (1998).

211 United States v. Testan, 424 U.S. 392, 398 (1976).

212 *E.g.*, 28 U.S.C. § 1491.

213 31 U.S.C. § 1304.

214 *Id.*

And when pardoned people bring illegal exactions claims on the theory that they are owed money, they lose.[215] Another potential option applies to only people who have been "imprisoned" at some point.[216] Corporations will not satisfy that requirement due to their incorporated nature, nor are they likely to meet the other onerous requirements that have prevented all but a few people from collecting.[217]

To repay pardoned people, presidents can turn to budgetary authority that they believe to be discretionary. Though attempts to redirect funds do not always hold up in court,[218] an appropriation could lawfully stretch to refunding pardoned people. Suppose Congress appropriates money for warfighting, and the President pardons a military contractor who was sentenced to pay fines. The President would have a plausible argument that a refund will help the military contractor rejoin the war effort. The point of this hypothetical is that the President might sometimes locate a law "authorizing expenditure from a source of public funds for [the] designated purpose[ ]."[219] In some cases, an appropriation will fit in both "source and purpose."[220] In others, the President will come up short.

Even if somewhere in the Statutes at Large is an appropriation for pardoned fines, Congress can repeal it. What Congress gives, it can take away. Yet if Congress does not appropriate refunds, it might encourage companies to be delinquent on their fines, at least if they are willing to risk contempt sanctions.[221]

In sum, Congress can refuse to appropriate refunds for pardoned fines. Without an appropriation on the books, companies have fewer reasons to ask for a refund, so presidents are probably less likely to exercise their power. But there is a less subtle option

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215 *See generally, e.g.*, *Boultbee*, 2024 WL 3220261.

216 28 U.S.C. § 1495; *see also id.* § 2513.

217 *See* Jeffrey S. Gutman, *Are Federal Exonerees Paid?: Lessons for the Drafting and Interpretation of Wrongful Conviction Compensation Statutes*, 69 CLEV. ST. L. REV. 219, 223 (2021) ("[O]nly two federal exonerees listed in the National Registry have received compensation under the statute.").

218 *See, e.g.*, California v. Trump, 963 F.3d 926, 950 (9th Cir. 2020) ("[T]he Federal Defendants violated [the statute by] transferring DoD appropriations to fund the El Centro and El Paso Sectors of the proposed border wall."). *But see id.* at 976 (Collins, J., dissenting) ("[T]he transfers complied with the limitations in [the statutes].")

219 Consumer Fin. Prot. Bureau v. Cmty. Fin. Servs. Ass'n of Am., 144 S. Ct. 1474, 1482 (2024).

220 *Id.*

221 *See infra* note 235.

available to a Congress intending to prevent the policy consequences made likely by the pardon power.

B. Replacing Criminal Liability

Congress could remove crimes and replace them with unpardonable civil offenses. The pardon power does not cover civil infractions. Chief Justice John Marshall said as much in *Wilson*, offhandedly limiting pardons to "crime[s]."[222] Though the limit began as dictum, it was eventually adopted in *Ex parte Grossman*.[223] There, the Court extended pardons to contempt of court in criminal cases, explaining that pardons exist "to afford relief from undue hardship or evident mistake in the operation or enforcement of the criminal law."[224]

Civil liability might be an apt replacement. One of the "most important" purposes of criminal law is "imprisoning high-risk offenders" so that they do not commit "further crimes against the public."[225] That goal cannot explain corporate criminal liability because companies are not jailed.[226] Instead, they are punished through fines or business restrictions. Civil law can impose those same punishments. Another purpose of criminal law is retribution. Civil law might accomplish that purpose too. Companies often face larger fines under civil liability than criminal liability.[227] The reason to prefer corporate criminal liability to civil liability is to express condemnation.[228] If Congress is willing to give up on that goal, it can deprive the President of opportunities to pardon companies.

If Congress wanted companies' punishments to stick, it would have to commit to repealing corporate criminal laws. Layering civil liability on top of criminal liability, as Congress often does, would not restrain the President. When companies face both

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[222] *Wilson*, 32 U.S. (7 Pet.) at 160.

[223] 267 U.S. 87 (1925).

[224] *Id.* at 120. That might be wrong as a matter of law. *See* Messing, *supra* note 9, at 667. But it is doubtful the Supreme Court will reopen the issue.

[225] Richard S. Frase, *Punishment Purposes*, 58 STAN. L. REV. 67, 70–71 (2005).

[226] *See, e.g.*, Stephen F. Smith, *Corporate Criminal Liability: End It, Don't Mend It*, 47 J. CORP. L. 1089, 1097 (2022).

[227] Sometimes civil fines are harsher than criminal fines. *See* John C. Coffee Jr., *Crime and the Corporation: Making the Punishment Fit the Corporation*, 47 J. CORP. L. 963, 970–71 (2022) (asserting that "civil law" is, on average, "imposing significantly higher penalties than the criminal law"). Yet other purposes are deterrence and rehabilitation. As discussed earlier, though, civil liability is probably competitive with criminal liability at accomplishing those purposes. *See supra* Part II.B.

[228] Coffee, *supra* note 227, at 970–71.

criminal and civil liability, the executive branch chooses which one of the two they will face.[229] If the executive branch wants to retain the ability to end companies' punishments by granting pardons, it might opt for criminal rather than civil liability when both options are available. Civil law offers the only punishments durable against later presidents' whims.

True, Congress might not have the will to restructure corporate law. This solution prevents the President from pardoning corporations, but it means throwing out the baby with the bathwater.[230] Yet the separation of powers often relies on political branches exercising political will. Those who think the President was given too much power should check if Congress is the one ceding it.

IV. STATE LAW

Since the Founding, only two companies have been pardoned. The first was the Whitewater Engineering Corporation. Whitewater was convicted in Alaska for the criminally negligent homicide of Gary Stone.[231] It then applied for a pardon,[232] and state politicians got the ball rolling. One politician wrote to Governor Frank Murkowski that the criminal penalties were "excessive" for "a tragic accident" and "[i]f ever compassion and common sense should prevail, this is such a case."[233] Another warned that the conviction sent a "chilling message" to companies across the state.[234] Neither told the Governor that the company owed the state around $250,000.[235]

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229 *See* TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2207 (2021) ("[T]he choice of how to prioritize and how aggressively to pursue legal actions against defendants who violate the law falls within the discretion of the Executive Branch.").

230 A President who opposes corporate criminal liability might aggressively pardon companies in hopes that Congress will have the incentive to delete federal crimes.

231 Liz Ruskin, *Business Convicted in Death Avalanche Owner Enters No-Contest Plea by Telephone to Criminally Negligent Homicide*, ANCHORAGE DAILY NEWS, Mar. 14, 2001, at B1.

232 Editorial, *Pardon Erases Debt: Murkowski's Decision Saves Company from Court-Ordered Fine*, TRIBUNE BUS. NEWS, Jan. 10, 2007, at 1 [hereinafter *Pardon Erases Debt*].

233 *Id.* at 1.

234 Pat Forgey, *How Controversial Pardon Made It Through*, JUNEAU EMPIRE, Feb. 21, 2007, at 1.

235 *Pardon Erases Debt*, *supra* note 232, at 1. Had Whitewater already paid its fines, it might have struggled to get a refund, at least if the state legislature had not appropriated it. *See* ALASKA CONST. art. IX, § 13 ("No money shall be withdrawn from the treasury except in accordance with appropriations made by law."). In other words, Whitewater might have benefited from being delinquent on its debts.

The Governor pardoned Whitewater with just four days remaining in his term.[236] Though the pardon was unpopular, no one challenged its constitutionality.[237] Everyone seemed to think Alaska empowered its Governor to make this kind of decision.[238]

In other states, some lawyers might wonder whether a company they represent should apply for pardons of state convictions. The answer depends on the details of state law. A full dive into state law would be too ambitious here, but a short survey can provide lawyers with a starting point.

All fifty states have a pardon clause.[239] These provisions incorporate the King's prerogative, like the federal analogue.[240] Still, only a few state constitutions include language identical to the Pardon Clause.[241] A "majority of the states have chosen [ ] to deviate in some fashion from the federal model" on pardons.[242]

For example, most state constitutions permit the state legislature to regulate pardons "by law." In the states with this kind of constitutional language,[243] legislatures can enact statutes that make companies ineligible for clemency. In contrast, the constitutions of Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, New Hampshire,

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[236] *Pardon Erases Debt*, *supra* note 232, at 1.

[237] *See id.* at 2 ("The entire episode is shameful. It's too bad there is no provision in state law to revoke a pardon and require Whitewater to complete its sentence in the case.").

[238] *Id.*

[239] *See generally 50-State Comparison: Pardon Policy & Practice*, RESTORATION OF RIGHTS PROJECT https://perma.cc/CUF3-YUTL (noting the differences between state-level pardon powers, including who can exercise the power and under what conditions it can be exercised).

[240] *See, e.g.*, McDowell v. Couch, 6 La. Ann. 365, 370 (1851) ("The term being derived from the Common Law of England, must have the same import in our Constitution and laws which belongs to it in England.").

[241] *See* S.D. CONST. art. IV, § 3; TENN. CONST. art. III, § 6.

[242] John Dinan, *The Pardon Power and the American State Constitutional Tradition*, 35 POLITY 389, 403 (2003).

[243] ALASKA CONST. art. III, § 21; ARK. CONST. art. VI, § 18; ARIZ. CONST. tit. V, § 5; COLO. CONST. art. IV, § 7; HAW. CONST. art. V, § 5; ILL. CONST. art. V, § 12; IND. CONST. art. V, § 17; IOWA CONST. art. IV, § 16; KAN. CONST. art. I, § 7; ME. CONST. art. V, pt. 1, § 11; MICH. CONST. art. V, § 14; MINN. CONST. art. V, § 7; MO. CONST. art. IV, § 7; MONT. CONST. art. VI, § 12; NEB. CONST. art. IV, § 13; NEV. CONST. art. V, § 14; N.M. CONST. art. V, § 6; N.Y. CONST. art. IV, § 4; N.C. CONST. art. III, § 5; OHIO CONST. art. III, § 11; OKLA. CONST. art. VI, § 10; OR. CONST. art. V, § 14; S.C. CONST. art. IV, § 14; TEX. CONST. art. IV, § 11; VA. CONST. art. V, § 12; WASH. CONST. art. III, § 9; W. VA. CONST. art. VII, § 11; WIS. CONST. art. V, § 6; WYO. CONST. art. IV, § 5; *accord* ALA. CONST., art. V, § 124; CAL. CONST. art. V, § 8; IDAHO CONST. art. IV, § 7; UTAH CONST. art. VII, § 12.

New Jersey, North Dakota, Pennsylvania, Rhode Island, South Dakota, and Vermont include no such qualification.[244]

Only one statute contemplates corporate pardons. Florida law makes clear that "any corporation [that] has received a full pardon" is not "absolute[ly] bar[red]" from obtaining an alcohol license.[245] Otherwise, statutes include or exclude corporations only by implication.

Various terms in statutes might exclude companies. Some statutes refer to "individual[s]" as eligible for pardons,[246] which typically does not include companies.[247] Other statutes mention a "him" or a "her,"[248] pronouns that do not fit with an incorporated entity. And finally, statutes that refer to imprisoned offenders likely exclude companies,[249] which are never held in custody.

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[244] *See* CONN. CONST. art. IV, § 13; DEL. CONST. art. 7, § 1; FLA. CONST. art. IV, § 8; GA. CONST. art. IV, § 2; KY. CONST. § 77; LA. CONST. art. IV, § 5; MD. CONST. art. II, § 20; MASS. CONST. pt. 2, ch. 2, § 1, art. VIII; MISS. CONST. § 124; N.H. CONST. pt. 2, art. LII; N.J. CONST. art. V, § 2, ¶ 1; N.D. CONST. art. V, § 7, cl. 7; PA. CONST. art. IV, § 9; R.I. CONST. art. IX, § 13; S.D. CONST. art. IV, § 3, cl. 7; VT. CONST. ch. II, § 20.

[245] FLA. STAT. § 561.15 (2025); *see also* Smith, *supra* note 10, at 358–59, 359 n.108.

[246] MINN. STAT. § 638.12 (2024); MONT. CODE ANN. § 46-23-301 (2023); S.C. CODE ANN. § 24-21-940 (2024).

[247] Pembina Consol. Silver Mining & Milling Co. v. Pennsylvania, 125 U.S. 181, 189 (1888); Mohamad v. Palestinian Auth., 566 U.S. 449, 454 (2012).

[248] *See* NEV. REV. STAT. § 213.020 (2024); *see also* IND. CODE § 11-9-2-1 (2025); *but see id.* § 11-9-2-3 (making clear that the law "does not limit the constitutional power of the governor to grant pardons"); N.C. GEN. STAT. §§ 13-4, 147-24 (2024); WYO. STAT. ANN. § 7-13-804 (2025). For instance, when London argued that it could not be punished, it pointed out that penal statutes refer to a "he" or "she," language which could not apply to a corporation. *See* POLLEXFEN, *supra* note 80, at 46 ("Is a Corporation Male or Female?"); *see also* Thaler v. Vidal, 43 F.4th 1207, 1211 (Fed. Cir. 2022) (arguing that Congress excluded "non-human[s]" like artificial intelligence by referring to "himself" and "herself," rather than "itself."). That argument did not win the case for the city at the time, but the law regulating corporations provided that normal crimes applied to corporations. *See supra* note 91.

[249] GA. CODE ANN. § 42-9-20 (2024); MICH. COMP. LAWS §§ 791.244, 791.244a (2025); 730 ILL. COMP. STAT. 5/3-3-2 (2024). Corporations are not imprisoned. *See, e.g.*, John C. Coffee, Jr., *"No Soul to Damn: No Body to Kick": An Unscandalized Inquiry into the Problem of Corporate Punishment*, 79 MICH. L. REV. 386, 409 (1981).

Other state laws are more inclusive. They describe pardons in relation to a "person," an "applicant," or an "offender,"[250] terms that likely include companies.[251]

Putting all these laws together, it appears that there is a plausible argument that companies cannot be pardoned in Indiana, Michigan, Montana, North Carolina, Nevada, South Carolina, or Wyoming. These states permit the legislature to regulate the pardon power "by law" and have statutes that imply corporations are unpardonable. In other states, corporations would likely have better luck.

Some state officials believe that the pardon power covers companies. Take Maryland Attorney General Ferdinand Sybert.[252] Sybert searched Maryland law for any "restriction . . . imposed on the Governor" to pardon corporations[253] but could not find one. To the contrary, state law defined "person" to include a corporation, unless that definition would be "unreasonable."[254] The Maryland Constitution said that the Governor "may pardon any person."[255] And it became "unreasonable" to exclude corporations once the state made corporations liable under "criminal laws . . . to the same extent as an individual person, . . . the same as any individual defendant."[256] But Sybert's opinion has not yet been put to practice because Maryland's Governor has not pardoned a corporation.

Finally, most state constitutions prevent people from withdrawing money from the state treasuries without an appropriation.[257] Some of those analogues even direct money straight into the state treasury.[258] In turn, some states have also recognized

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[250] *See* ALA. CODE § 15-22-36 (2024); ALASKA STAT. § 33.20.080 (2024); CAL. PENAL CODE §§ 4804, 4852.01, 4852.17, 4853 (West 2024); COLO. REV. STAT. §§ 16-17-102, 16-17-103 (2024); CONN. GEN. STAT. §§ 54-124a, 54-130a (2024); DEL. CODE ANN. tit. 11, § 4364 (2025); GA. CODE ANN. § 42-9-39 (2024); IDAHO CODE § 20-1017 (2025); IOWA CODE § 914.2 (2024); KAN. STAT. ANN. § 22-3703 (2024); ME. STAT. tit. 34-A, § 5210 (2025); NEB. REV. STAT. § 83-1,129 (2024); OKLA. STAT. tit. 57, §§ 332, 332.19 (2024); UTAH CODE ANN. § 77-27-5 (2025).

[251] *See, e.g.*, *Pembina*, 125 U.S. at 189 (having "no doubt that a private corporation is included" in the definition of "person").

[252] Maryland Attorney General Opinion, *supra* note 29, at 258.

[253] *Id.*

[254] *Id.* at 259 (quotation marks omitted) (quoting MD. CODE ANN., art. I, § 15 (1957)).

[255] *Id.* (emphasis and quotation marks omitted) (quoting MD. CODE ANN., art. XLI, § 120 (1957)).

[256] *Id.* at 260.

[257] *See* Michael E. Libonati, *The Legislative Branch*, *in* 3 STATE CONSTITUTIONS FOR THE TWENTY-FIRST CENTURY 37, 41 (G. Alan Tarr & Robert F. Williams eds., 2006).

[258] *See* MO. CONST. art. III, § 36; VA. CONST. art. X, § 7.

their appropriations clauses as limits upon the pardon power.[259] And it is unclear whether many of these states have appropriated the refunds of pardoned fines. Of course, states do not have to interpret their constitutions in lockstep,[260] and many do not have case law on the subject. Only time will tell whether state courts will interpret the pardon power as exclusive to human beings or interpret it to mandate refunds for companies' fines.

CONCLUSION

Not all corporations that apply for clemency will have been convicted of homicide or mob-related activities, like Whitewater and Emprise. Many corporations, like Ozy Media, have been convicted of fraud, monopolization, conspiracy, pollution, and other nonviolent offenses. When these corporations apply for a pardon, they might get one.

Their requests will be supported by history. At the beginning of corporate law, back before limited liability,[261] the English were pardoning corporations. Today, it is up to the President and the states to choose whether to follow this tradition. If they do, they will be on firm constitutional footing, as long as they respect the modest limits on their powers.

Presidents who aggressively use the pardon power could change the world. They could wheel and deal with pardons to extract corporate compliance, political concessions, or better trade terms. Or presidents could unwind corporate criminal liability altogether. The question is whether they will follow one of these paths, regardless of whether doing so is wise.

Lawyers can also benefit from knowing that their corporate clients could request clemency. It is unusual for a company to ask the President for a pardon. But it could become less unusual over time. If lawyers know that their clients have a shot at receiving a

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[259] *See, e.g.*, Cook v. Bd. of Chosen Freeholders, 27 N.J.L. 637, 640 (1858) (finding it "fully established" in common law that a pardon does not "restore a fine actually collected"); Byrum v. Turner, 171 N.C. 86, 86 (1916) ("If a fine . . . has been paid into the treasury of the state . . . before the pardon is granted, the money cannot be recovered back."); Commonwealth v. Denniston, 9 Watts 142, 143 (Pa. 1839) (noting that "until the money reaches the treasury, the governor has the power to remit"), *superseded by constitutional convention*, PA. CONST. art. III, § 24 (permitting "cash refunds of . . . fees . . . paid or collected, but not legally due . . . without appropriation[s]").

[260] *See* JEFFREY S. SUTTON, WHO DECIDES? STATES AS LABORATORIES OF CONSTITUTIONAL EXPERIMENTATION 121–43 (2021) (collecting examples).

[261] *See* Oscar Handlin & Mary F. Handlin, *Origins of the American Business Corporation*, 5 J. ECON. HIST. 1, 11 (1945).

pardon, then their time might be well spent asking for one. A couple of companies have succeeded with the strategy.

That said, the pardon power is not unlimited. Though the conventional story is that Congress cannot interfere with the power's exercise, Congress has a series of tools to limit the pardon power's effects. Congress can wield the Appropriations Clause to block corporations from collecting refunds, or Congress can restructure corporate law to make infractions unpardonable. Maybe that day will never come. The story of a powerless Congress, though, is not quite right.