



RESPONSE

Trump's Theater of Pardoning

Bernadette Meyler*

Introduction

In many ways, President Trump has returned to a performance of pardoning more familiar to early modern England than to contemporary America. Largely eschewing bureaucratic processes, Trump has taken advantage of the political theater that pardoning can provide. Like some of the real-life and fictional kings who appear in my book, *Theaters of Pardoning*, Trump has also called law and legal regimes into question through his pardons, and, in doing so, asserted his own impunity from law. Ignoring the common law restrictions that had accreted around pardoning, Trump has chosen to interpret his power as absolute, unfettered by norms like refraining from judging in one's own case and forgiving but not forgetting. And this is only the story of Trump's formal pardons. As Kenji Yoshino's essay in this Symposium elaborates, Trump's numerous revisions of history represent even more pervasive efforts at enacting amnesty and oblivion.

I. Pardoning as Political Theater

Within Anglo-American history, pardoning has adopted two contrasting forms: one routine and bureaucratic, happening without fanfare, and the other dramatic and subject to popular critique, acclaim, and discussion.¹ Several factors distinguish the two varieties of pardoning, including the process by which a decision to pardon is made, the prominence of the pardoner as a figure within the pardon, and the public reception of the pardon. During the past century, the bureaucratic pardon in America has come to be associated on the federal level with the Office of the Pardon Attorney, which has reviewed

* Carl and Sheila Spaeth Professor of Law and Professor (by courtesy) of English, Stanford Law School.

1. See BERNADETTE MEYLER, *THEATERS OF PARDONING* 3 (2019); see also Jim Phillips, *The Operation of the Royal Pardon in Nova Scotia, 1749-1815*, 42 U. TORONTO L.J. 401, 414-21 (1992) (emphasizing the theatrical aspects of the pardon process in Nova Scotia and their political importance in contrast with earlier arguments for the exclusively legal and bureaucratic functions of pardoning).

pardon applications since the late nineteenth century.² In recent decades, presidents have overwhelmingly relied on the recommendations of the Office in determining whether or not to grant pardons.³

Not so with Donald Trump. Instead, President Trump has revitalized the theatrical version of pardoning that had seemed to atrophy under his predecessors. As Robert Weisberg observes in his essay for this Symposium, many have noted this theatricality in passing, and, in the words of the *Los Angeles Times* editorial board, “It’s as if he were still starring on a reality TV show that ended every week with a climactic ‘You’re pardoned!’”⁴ It is instructive, however, to return to early modernity—including, as Peter Brooks’s contribution to this Symposium demonstrates, European as well as English contexts—to understand the characteristics and significance of theatrical pardoning.⁵ Within that context, pardoning represented “one of the marks of sovereignty,” or a supreme power above the law, and often served to aggrandize the majesty of the King rather than simply omitting punishment for an offender.⁶ Oftentimes, the pardon wasn’t deserved; the recipient had not reformed or repented, and the pardon, whether taking place on the political or theatrical stage, served not justice but the plot.⁷ The timing of the pardon was also crucial; in plays, and sometimes in life, it arrived unexpectedly to shift the scene from tragedy to comedy.⁸ And the theater involved was sometimes of the page rather than the stage.⁹ Finally, the impact of the performance was not

2. For a discussion of the history of the Office of the Pardon Attorney, see JEFFREY CROUCH, *THE PRESIDENTIAL PARDON POWER* 21-23 (2009). Rachel Barkow has associated that office with an endorsement of administrative procedures over the President’s independent power to exercise mercy, arguing that “[t]hose attacking clemency are . . . using key administrative law concepts to frame their critiques.” Rachel E. Barkow, *Essay, The Ascent of the Administrative State and the Demise of Mercy*, 121 *HARV. L. REV.* 1332, 1350 (2008).

3. CROUCH, *supra* note 2, at 21.

4. Editorial, *Trump Is Politicizing (and Personalizing) the Pardon Process*, *L.A. TIMES* (May 18, 2019, 3:10 AM), <https://perma.cc/8V8T-7FS4>; see also Robert Weisberg, *The Drama of the Pardon, the Aesthetics of Governing and Judging*, 72 *STAN. L. REV. ONLINE* 80 (2020).

5. Peter Brooks, *The Ends of Pardoning*, 72 *STAN. L. REV. ONLINE* 73 (2020).

6. MEYLER, *supra* note 1, at 82-84, 262-67.

7. *See id.* at 16, 36-43.

8. *Id.* at 20-25. In Peter Brooks’s words, the “moment of pardoning” in the final act of Pierre Corneille’s *Cinna, ou la clémence*, “irrupts into the play as a kind of gratuitous gesture of the sovereign.” Brooks, *supra* note 5, at 76.

9. See, for example, Michel Foucault’s mention of the letter of pardon, discussed in MEYLER, *supra* note 1, at 15. When researching images for the cover of my book, I realized how few artistic renderings of pardon scenes exist from even the most popular Shakespeare plays. This may reflect the fact that the pardon itself is not as visually arresting as the events leading up to it or the pardon’s reception and aftermath.

localized with the event but reverberated long afterwards through controversy among the audience and citizenry.¹⁰

President Trump's pardons revive many of these elements. While he has pardoned the fewest people of any recent president during his first three years in office, public discussion of and controversy over his pardons have outstripped those of any modern president.¹¹ Rather than continuing in the vein of bureaucratic pardoning produced by the work of the Office of the Pardon Attorney, Trump has instead appeared to select the vast majority of pardon recipients because of their celebrity, his personal connection with them, political ties, or the nature of the law under which they were convicted.¹² As Robert Weisberg elaborates upon the aesthetics of these pardons, Trump has extended his status "as emperor of his shows" on reality TV, where he "made subjective choices of winners and losers," to his role as a presidential "disruptor of rules and norms of government," through, among other devices, pardoning.¹³ In all of these pardons, Trump himself has been front and center and the pardon has served to aggrandize his own power.

Comparing the textual form of President Trump's pardons with those of President Obama visually demonstrates the prominence of Trump and his own power within his clemency grants. President Obama generally pardoned multiple people at a time, prefacing the enumeration of their names with a statement of the processes that led to these pardons, and delegated the power

10. MEYLER, *supra* note 1, at 6-13. As Robert Weisberg describes this phenomenon, in his essay for this Symposium, "[t]he pardons are anticlimaxes that disrupt the usual expectations." Weisberg, *supra* note 4, at 83.

11. Although President Obama commuted many sentences, primarily in drug cases, he did not grant that many outright pardons, fitting within the trend of diminishing presidential pardons. See Margaret Colgate Love, *Obama's Clemency Legacy: An Assessment*, 29 FED. SENT. R. 271, 272 (2017) ("The 142 pardons granted in the final weeks of his term, more than twice the total number granted in the previous seven-plus years, enabled Obama to avoid being labeled the stingiest full-term president in history."). Trump has been even more sparing of his pardon power if one looks numerically at the tally. As of February 21, 2020, he has granted a total of twenty-five pardons. *Pardons Granted by President Donald Trump*, U.S. DEP'T OF JUSTICE, <https://perma.cc/QXW8-CKBE> (last updated Feb. 19, 2020). At the same time, media attention has focused extensively on his use of the pardon power, already resulting in over 100 articles and op-eds in mainstream media by my count. Jeffrey Crouch has even credited Trump with "single-handedly reinvigorat[ing] the clemency power" due to the prominence of his pardons. Jeffrey Crouch, *President Donald J. Trump and the Clemency Power: Is Claiming "Unfair" Treatment for Pardon Recipients the New "Fake News"?*, in *PRESIDENTIAL LEADERSHIP AND THE TRUMP PRESIDENCY: EXECUTIVE POWER AND DEMOCRATIC GOVERNMENT* 91, 91 (Charles M. Lamb & Jacob R. Neiheisel eds., 2020).

12. For articles suggesting these motivations, see Crouch, *supra* note 11, at 91-92; Kevin Liptak, *Trump's Pardons Appear Prompted by TV, Friends and Politics*, CNN (May 21, 2019, 7:53 AM ET), <https://perma.cc/FR3Z-GGQ5>.

13. Weisberg, *supra* note 4, at 80.

to sign specific clemency grants to the Pardon Attorney.¹⁴ By contrast, Trump has announced most of his pardons individually and emphasized his own actions by placing his name in enormous bold letters at the beginning of the document then specifically referring to his constitutional power.¹⁵ In this case, the document furnishes a striking performance of Trump's exercise of sovereignty through pardoning.

In the aftermath of pardoning, Trump has also integrated pardon recipients into his own public performance, highlighting the significance of the pardon as prospective and legal rather than retrospective and pertaining to culpability. Most recently, he staged an appearance of the military officers he had pardoned of war crimes at his own fundraising event.¹⁶

President Trump's performance of pardoning has exalted himself over both pardon recipients and the rule of law. The theatrical foregrounding of pardoning within Trump's regime stages pardoning as a personal and sovereign decision rather than an outcome of routine or bureaucratic processes. The result is an emphasis on Trump himself and his decisions about what is or is not properly sanctioned. The visibility of the theatrical pardon conveys a message, and that message is, as the following Part discusses, the rejection of law.

II. Pardoning as a Rejection of Law

Many of Trump's pardons have seemed to reject law, including constitutional law and the laws of war, and to assert a sovereignty above the law. Jeffrey Crouch has noted that Trump has often accompanied his pardons with a claim that the underlying conviction or sentence was "unfair,"¹⁷ a claim that elevates Trump's evaluation of justice over law as it currently exists. Trump set the pattern through the very first pardon he performed in office, that of former Maricopa County Sheriff Joe Arpaio.¹⁸ Arpaio had been convicted of

14. *See, e.g.*, EXEC. OFFICE OF THE PRESIDENT, EXECUTIVE GRANT OF CLEMENCY (Jan. 17, 2017) <https://perma.cc/7PQG-FANA> ("After considering the applications for executive clemency of the following named persons and a letter from the Department of Justice recommending executive clemency in each case, I hereby grant full and unconditional pardons to the following named persons for those offenses against the United States described in each such recommendation . . .").

15. EXEC. OFFICE OF THE PRESIDENT, EXECUTIVE GRANT OF CLEMENCY OF JOSEPH M. ARPAIO (Aug. 25, 2017), <https://perma.cc/L9CA-6TJ6> ("Donald J. Trump, President of the United States of America, To all to whom these presents shall come, greeting: Be it known that this day, I, Donald J. Trump, President of the United States, pursuant to my powers under Article II, section 2, clause 1 of the Constitution, have granted unto . . .").

16. Maggie Haberman, *Trump Brings 2 Officers He Cleared of War Crimes Onstage at Fund-Raiser*, N.Y. TIMES (Dec. 8, 2019), <https://perma.cc/B5PX-TSVY>.

17. *See* Crouch, *supra* note 11, at 92.

18. Adam Liptak, *Why Trump's Pardon of Arpaio Follows Law, Yet Challenges It*, N.Y. TIMES (Aug. 26, 2017), <https://perma.cc/B2LR-YT7X>.

criminal contempt for failing to stop his practice of unconstitutionally targeting Latinx drivers as part of his immigration enforcement scheme.¹⁹ Prior to the 2016 election, Arpaio had furnished an early endorsement for Trump and Trump had extensively praised his immigration policies.²⁰ Trump's pardon of Arpaio hence assumed an expressive function akin to earlier presidents' use of signing statements to call into question the constitutionality of various laws.²¹ Through pardoning Arpaio, Trump expressed disregard for the constitutional protections against discrimination that the court's contempt conviction had attempted to enforce.

Figure 1: President Trump's Pardon of Joe Arpaio



19. *Id.*

20. Veronica Stracqualursi, *A Look Back at Trump's Praise for Controversial Sheriff Joe Arpaio*, ABC NEWS (Aug. 1, 2017, 1:42 PM), <https://perma.cc/SBC9-QC3T>.

21. For a discussion of President George W. Bush's use of signing statements to express constitutional opinions and the controversy that surrounded this choice, see generally Peter M. Shane, *Presidential Signing Statements and the Rule of Law as an "Unstructured Institution,"* 16 WM. & MARY BILL RIGHTS J. 231 (2007).

President Trump demonstrated similar indifference to the laws of war by pardoning American soldiers who had been accused or convicted of such offenses, including the “command to shoot unarmed villagers.”²² As the *New York Times* reported, emphasizing the significance of these pardons in undermining the rule of law within the military, they “caus[ed] tension with top brass at the Pentagon over the message that such a move sent to troops about the importance of following laws governing military conduct.”²³ According to Trump’s own account, he “stuck up for three great warriors against the deep state” through these pardons.²⁴ Here the “deep state,” or the more bureaucratic agents of government, become synonymous with the rule of law itself. Even Republicans widely criticized another pardon that Trump had contemplated as undermining legal norms.²⁵ Partly because of this pushback, Trump initially held off on pardoning former Illinois Governor Rod Blagojevich, who appeared with Trump on “Celebrity Apprentice,” and was serving a sentence related to his corruption in office.²⁶ As Illinois Republicans had emphasized, pardoning Blagojevich “would send the wrong message to voters about corruption by public officials.”²⁷ Perhaps emboldened by the 2020 Senate vote declining to convict and remove him from office, Trump later decided to commute Blagojevich’s sentence anyway. This act and the other pardons that accompanied it have, predictably, been viewed as generally condoning corruption.²⁸

The use of pardoning to call law itself into question also appears in early modern England, perhaps most notably in Shakespeare’s *Measure for Measure*.²⁹ At the beginning of the play, the sovereign Duke Vincentio departs, leaving in his place the corrupt deputy Angelo. The audience soon learns that Angelo has had the character Claudio arrested for impregnating his lover under a law against fornication that had fallen into desuetude but has been newly revived. The events that subsequently unfold, including Angelo’s efforts to seduce Claudio’s sister, Isabella, all cast a negative light on the revived law and its moral

22. Haberman, *supra* note 16.

23. *Id.*

24. *Id.*

25. Manu Raju et al., *Trump Appears to Back Off Plans to Commute Blagojevich’s Sentence After Pushback from Illinois Republicans*, CNN (Aug. 14, 2019, 6:27 AM ET), <https://perma.cc/N6DK-GG6E>.

26. *Id.*

27. *Id.*

28. Aaron Rugar, *Trump’s Latest Pardons Show How Quickly He’s Normalizing Corruption*, VOX, (Feb. 19, 2020) <https://perma.cc/7BFC-HL46>; James B. Stewart, *Pardon Closes the Book on Michael Milken’s Case but Can’t Rewrite It*, N.Y. TIMES (Feb. 21, 2020), <https://perma.cc/K9MJ-EQYU> (“President Trump has sent two powerful messages: When it comes to justice, money counts. And white-collar crime doesn’t really matter.”).

29. WILLIAM SHAKESPEARE, *MEASURE FOR MEASURE* (J.W. Lever ed. 1994); for a discussion of the relevant issues in the play, see MEYLER, *supra* note 1, at 33-73.

strictures, suggesting that it can only be upheld through hypocrisy. When Claudio is pardoned at the conclusion of the play, the audience is left uncertain as to whether the law remains in force or whether Claudio will be both the first and last object of its recent application. *Measure for Measure* represents Claudio as neither innocent nor particularly sympathetic—his efforts to persuade Isabella to accede to Angelo's demands suggest his self-interest outweighs even familial regard. Pardoning here occurs not because of the worth of its object but rather as a manifestation of sovereign power over the law as well as its applications.

At least some of the views of pardoning at the time of the Founding rejected its employment as a form of sovereign power over law. Influenced by Enlightenment thinkers, Thomas Jefferson, drafter of the Declaration of Independence, expressed skepticism that pardoning would even be needed if a just and more merciful legal regime could be put into place. In his *Legal Commonplace Book*, he wrote that Montesquieu, widely read in late eighteenth-century America, felt the pardon power necessary only under a monarchy.³⁰ Jefferson likewise recorded passages from Beccaria's popular *On Crimes and Punishments* opining that clemency would become obsolete as punishment became less harsh.³¹ For many Enlightenment thinkers, pardoning was too dependent on personal favoritism and the whim of the king and sidestepped a more systematic reform of criminal law. Peter Brooks observes the Enlightenment effort to reform the pardon in Mozart's opera *The Marriage of Figaro*, where the Count—a seemingly sovereign figure—himself kneels to ask for pardon of the Countess rather than the reverse.³² Through this Enlightenment reversal, it is the ruler himself who must be pardoned rather than granting forgiveness.

Under the influence of Enlightenment thinkers, Jefferson explicitly eliminated the power to pardon in his draft constitutions for Virginia. His first and second drafts would have denied to the governor or state executive official the “prerogative[] . . . of pardoning crimes or remitting fines or punishmts [sic].”³³ The third would also have barred the legislature from pardoning.³⁴ At the same time, he rejected capital punishment for all crimes but murder and

30. THOMAS JEFFERSON, *LEGAL COMMONPLACE BOOK* 435 (David Konig & Michael Zuckert eds., 2019).

31. *Id.* at 524.

32. Brooks, *supra* note 5, at 73.

33. Thomas Jefferson, *First Draft by Jefferson*, FOUNDERS ONLINE, <https://perma.cc/3RF5-NQXP>; Thomas Jefferson, *Second Draft by Jefferson*, FOUNDERS ONLINE, <https://perma.cc/U72Z-52NX>.

34. Thomas Jefferson, *Third Draft by Jefferson*, FOUNDERS ONLINE, <https://perma.cc/MN43-XX8H>.

certain military offenses and generally advocated for a milder administration of justice.³⁵

Jefferson's proposal was not adopted and the Virginia Constitution included a provision for pardoning.³⁶ His worries about the pardon power nevertheless indicate the Enlightenment response to fears that the pardon power placed the sovereign above the laws—a response that emphasized ameliorating the laws and taking the sovereign out of the picture.³⁷

The Office of the Pardon Attorney occupies a middle ground between the early modern sovereign exercise of a pardon above the law and the elimination of pardoning in favor of a more merciful legal regime. The procedures of the Office attempt to render pardoning compatible with the rule of law and vest it in an institution rather than the person of the president himself. They call to mind what Robert Weisberg calls the executive's "modern, legitimately merciful mode," by which it pardons "a correctible injustice neglected by the other branches."³⁸ By instead reaching out to pardon those prosecuted under laws or constitutional principles he disagrees with, President Trump has revived the sovereign form of pardoning as a rejection of law.

III. Judging in One's Own Case

In a June, 2018 tweet, President Trump proclaimed: "I have the absolute right to pardon myself."³⁹ One of the most discussed and heretofore unresolved questions pertaining to pardoning in the contemporary American context has been whether this statement is correct.⁴⁰ Here the early modern debates about pardoning that I consider in my book can furnish instructive guidance as well through their treatment of the natural and common law prohibition against judging in one's own case and its application to pardoning. The relevant sources include the report on *Bonham's Case* of Sir Edward Coke—a prominent common law jurist whom the Founders read—and Jean Bodin's sixteenth-century work *Six Books of the Republic*, which we know Coke himself examined from the copy he signed and annotated.

35. LOUIS P. MASUR, RITES OF EXECUTION: CAPITAL PUNISHMENT AND THE TRANSFORMATION OF AMERICAN CULTURE, 1776-1865, 72 (1989).

36. VA. CONST. OF 1776; see also A.E. Dick Howard, "For the Common Benefit": Constitutional History in Virginia as a Casebook for the Modern Constitution-Maker, 54 VA. L. REV. 816, 822 (1968) (explaining that only parts of Jefferson's drafts were adopted).

37. See MEYLER, *supra* note 1, at 249-74.

38. Weisberg, *supra* note 4, at 90-91.

39. Donald Trump (@realDonaldTrump), TWITTER (June 4, 2018, 5:35 AM), <https://perma.cc/8VAB-UYH>; see also Paul F. Eckstein & Mikaela Colby, *Presidential Pardon Power: Are There Limits and, If Not, Should There Be?*, 51 ARIZ. ST. L.J. 71, 97-100 (2019) (discussing this tweet).

40. For a review of many of the arguments on both sides, see Crouch, *supra* note 11, at 108-09.

As *Theaters of Pardoning* contends, pardoning appeared analogous to judging in early seventeenth-century England.⁴¹ Usually, in both contexts, an individual rendered judgment on a dispute between third parties. Complications arose, however, in cases such as treason that involved the king personally, rather than as a representative of his subjects. In those contexts, as Bodin elaborated, the king appeared at risk of judging in his own case. For Bodin, this meant that he should not engage personally in such judgment. As Bodin writes:

For if it bee contrarie unto the law of nature, that the partie should be judge also; & That the king is a partie in all causes which concerne either the publike or his owne proper patrimonie in particular, in which case he cannot be a judge; by a much stronger reason ought the same to take place in the offence of treason, and especially in the chiefe point, where question is, the partie accused to have attempted the honour or life of his prince.⁴²

With respect to pardoning, however, Bodin worries—along lines that would later be followed by philosophers like Immanuel Kant—that the king will do an injustice to his subjects when he pardons offenses committed against them. Hence in the area of pardoning, Bodin opines that “of all the graces and pardons that a prince can give, there is none more commendable, than when he pardoneth the iniurie done against his owne person.”⁴³ For Bodin, pardoning represents a partial exception to judging in one’s own case—but only when the pardon operates *against* the king’s own interest and in order to obviate the other potential injustices associated with pardoning. The prosecution of the king is not within Bodin’s contemplation, but based on the logic of his argument, the king’s self-pardon would both violate the prohibition against judging in one’s own case and further injure his subjects.⁴⁴

Sir Edward Coke was a careful reader of Bodin, as demonstrated by the many copies of Bodin’s treatise in Coke’s library and his extensive annotations of the French edition of the *Six Livres de la République*. It is therefore perhaps not surprising that Coke echoed the suspicion Bodin expressed toward royal pardons affecting the rights of other subjects and affirmed the prohibition against judging in one’s own case.⁴⁵

Elsewhere in the constitutional scheme, the Supreme Court has interpreted constitutional provisions against the backdrop of pre-constitutional common law rules. For example, in the Eleventh Amendment context, the Court has

41. For this argument, see MEYLER, *supra* note 1, at 75-84.

42. JEAN BODIN, *THE SIX BOOKES OF A COMMON-WEALE* 514 (Richard Knolles trans., Impensis G. Bishop 1606) (1577).

43. *Id.* at 175.

44. The precise problem of self-pardon would not have arisen in the early modern period except in revolutionary situations like that of the trial of King Charles I in England because the king was generally understood to be immune from criminal prosecution. See *The Queen and Law*, *THE ROYAL HOUSEHOLD*, <https://perma.cc/9K8Q-DCWY>.

45. MEYLER, *supra* note 1, at 33-74.

understood the Eleventh Amendment to go beyond its text and incorporate more general principles of sovereign immunity.⁴⁶ If President Trump endeavored to pardon himself, it would be reasonable for courts to construe Article II, § 2 of the Constitution, giving the president the “power to grant reprieves and pardons for offenses against the United States,” as limited by the prohibition against judging in one’s own case, a prohibition that would extend to pardoning.⁴⁷

Sheriff Joe Arpaio’s effort to have his contempt conviction vacated and erased rather than simply pardoned, recently rejected by the Ninth Circuit, represents another example of efforts under Trump to expand the concept of pardoning beyond what the common law would have permitted.⁴⁸ Under common law, individual pardons remained distinct from acts of oblivion, which required legislative authorization, because acts of oblivion encouraged forgetting the circumstances underlying the alleged crime instead of remitting punishment for its commission.⁴⁹ Kenji Yoshino’s contribution to this Symposium elaborates upon the extent to which the forgetting encouraged by Arpaio’s motion to vacate his conviction pervades the Trump Administration rather than simply being contained in the formalities of Arpaio’s particular case.⁵⁰ The effort to gaslight by drowning out the truth with false information furnishes its own act of oblivion, conscripting the American people without their consent. Scholar of American pardons Jeffrey Crouch has wondered whether Trump’s claims that the treatment of individuals he pardoned had been “unfair” was its own form of fake news.⁵¹ The answer is both affirmative and disastrous insofar as these pardons have attempted to erase fundamental precepts of constitutional and international law and cause us to forget their underpinnings. Even a self-pardon might not be too much worse.

46. See generally William Baude & Stephen E. Sachs, *The Misunderstood Eleventh Amendment* (Duke Law Sch. Pub. Law & Legal Theory Series, Paper No. 2019-75, Oct. 8, 2019), <https://perma.cc/6CPN-6PLR> (explaining and critiquing this approach to Eleventh Amendment jurisprudence).

47. Brian Kalt has also argued that the presumption against judging in one’s own case militates against the view that the president can pardon himself. See Brian C. Kalt, Note, *Pardon Me?: The Constitutional Case Against Presidential Self-Pardons*, 106 YALE L.J. 779, 805-06 (1996). But see Adrian Vermeule, Essay, *Contra Nemo Iudex in Sua Causa: The Limits of Impartiality*, 122 YALE L.J. 384, 411-13 (2012) (contending that this principle is insufficient to justify a constitutional presupposition against presidential self-pardoning).

48. See *United States v. Arpaio*, No. CR-16-01012-001-PHX-SRB, 2017 WL 4839072 (D. Ariz. Oct. 19, 2017), *aff’d on other grounds by United States v. Arpaio*, No. 17-10448, 2020 WL 946065 (9th Cir. Feb. 27, 2020); see also Bernadette Meyler, *Pardon But Don’t Forget*, TAKE CARE BLOG, (Oct. 4, 2017), <https://perma.cc/Q8GZ-65SJ>; B. Poole, *Arpaio Fights to Vacate Contempt Conviction After Trump Pardon*, TUCSON SENTINEL (Oct. 23, 2019, 3:45 PM), <https://perma.cc/5C8T-YPK5>.

49. MEYLER, *supra* note 1, at 197-248.

50. Kenji Yoshino, *Acts of Oblivion*, 72 STAN. L. REV. ONLINE 65, 68-70 (2020).

51. See Crouch, *supra* note 11.

Conclusion

President Trump's abuse of the pardon power—like President Clinton's eleventh-hour pardon of financier Marc Rich—has occasioned calls for regularizing or cabining presidential pardons. The problem, however, is not the exercise of mercy, which has been in short supply in recent decades, but rather the deployment of pardoning as a form of sovereign power. By reanimating the theatrical variety of pardoning performed by kings in early modern plays and life, Trump has highlighted the reasons for skepticism about pardoning within a democratic society. The only solution, in my view, is to democratize pardoning and eliminate its monarchical vestiges. What that would look like, however, would be the subject of another volume.