Why the Time to Start Thinking about Capital Clemency is Now

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The CCRI is a Joint ABA Project of the:

Death Penalty Due Process Review Project
Death Penalty Representation Project
Commission on Disability Rights
Forms of Clemency

“EXTRA-JUDICIAL” POWER

LAST DITCH EFFORT TO SECURE RELIEF FROM SENTENCE OR CONVICTION:

Pardon: “undoes” the conviction and its consequences

Commutation: converts a sentence to a lesser sentence

Reprieve: offers temporary relief from the imposition of sentence
“This is indeed one of the great advantages of monarchy in general,...that there is a magistrate, who has it in his power to extend mercy, wherever he thinks it is deserved: holding a court of equity in his own breast, to soften the rigour of the general law, in such criminal cases as merit an exemption from punishment.”

- William Blackstone, 1769
“Humanity and good policy conspire to dictate, that the **benign prerogative of pardoning should be as little as possible fettered** or embarrased. The criminal code of every country partakes so much of necessary severity, that **without an easy access to exceptions in favor of unfortunate guilt**, justice would wear a countenance too sanguinary and cruel.”

- Alexander Hamilton, 1788
“Until I can be sure that everyone sentenced to death in Illinois is truly guilty, until I can be sure with moral certainty that no innocent man or woman is facing lethal injection, no one will meet that fate. We must ensure the public safety of our citizens but, in doing so, we must ensure that the ends of justice are served.”


Modern Exercises in Sovereignty: the Clemency Power
Capital Commutations Before 1976

“In the first half of the twentieth century, 1 out of every 4-5 death sentences was commuted”

EXECUTIONS 1932-1972: $N=3,581$
CLEMENCY RATE 1900-1950: ~20-25%
Capital Commutations After 1976

EXECUTIONS: 1,431
Clemency from Mass Grant: 213
Clemency from Individual Grant: 67
Today’s Individual Clemency Rate: ~4%
Why Have Individual Commutations Ground to a Halt?

- **GREGG WAS SEEN TO ADDRESS OVERLY ARBITRARY/HARSH SENTENCES**

Troy Leon Gregg
Why Have Individual Commutations Ground to a Halt?

“Tough on Crime” Policies
Why Have Individual Commutations Ground to a Halt?

Fears of “Political Suicide”

Willie Horton
Why Regain Hope?

New Social Movements & Support for Reform

The New Jim Crow

Reconsideration of the Death Penalty

Public Opinion and Death Sentences

[Graph showing trends in public opinion and death sentences from 1975 to 2015]

SUPREME COURT OF THE UNITED STATES

Syllabus

GLOSSIP ET AL. v. GROSS ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
New Effort to Resuscitate Capital Clemency

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• WWW.CAPITALCLEMENCY.ORG