

The Effect of Legal and Extra-Legal Variables on the Recommending and Granting of a Pardon*

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A familiar but little studied area of criminal justice is that of pardons. Using data from the Pennsylvania Board of Pardons, the decision-making process is examined to determine the degree of correspondence between the board's recommendation and the governor's decision to grant or deny a pardon. Included in the analysis is an assessment of the relative impact of legal and extra-legal variables on the decision-making process. The paper concludes with a discussion on the dynamics of the process, including why some individuals are more likely than others to be granted a pardon, and the implications the findings have for both policy and theory development.

I. INTRODUCTION

A generally recognized but little studied area in criminal justice is that of pardons. Like commutations and remissions, pardons represents one of the three major forms of clemency. It is surprising that the topic of pardons, along with its close cousins, commutations and remissions, have not received wider attention. "Pardons were an important topic for most of the great Enlightenment philosophers. But until recently, pardons have proceeded in relative philosophical obscurity in the nineteenth and twentieth centuries" (Moore 1989:6-7). To philosophical might be added empirical obscurity as well, since research on the topic and notably the process is almost nonexistent.

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Pardons are more important than is often recognized. Because they are usually granted quietly, pardons occur with a far greater frequency than most people would expect. They exert some influence on the course of human events, an influence that can only increase as anticipated changes in criminal law take place (*ibid.* 6–7). Most notable is the trend towards curtailment of judicial discretion and with it individualized sentences due to sentencing guidelines. Within this context is the possible elimination of parole as well. Thus, pardons may end up as the only means of individualizing sentences.

Pardons can also have profound effects on the lives of the people who receive them (*ibid.*). They can mean new or expanded employment opportunities, the lifting of a lifetime of embarrassment and shame, the recapturing of one's good name and reputation, and even the elimination of the social stigma and civil disabilities that accompany a criminal conviction. Moreover, the effects are not just limited to the individual. Pardons can alleviate familial problems, as members of one's family, in some cases, may have been angry and hostile, especially when attempts have been made to keep the conviction a secret.

There are several possible explanations for the paucity of scholarly attention devoted to the topic of pardons at both the philosophical and empirical level. First, pardoning is an executive function and is not subject to review by the courts, so it seldom comes up for judicial discussion. A pardon cannot be overturned by the legislative branch, and, once granted, cannot be revoked by the executive branch. Perhaps the topic is of little interest to scholars as they believe their ideas will make no difference. However, such reasoning seems misguided. As stated in a recent scholarly treatment of the topic, "That pardons cannot be reviewed by the courts is a good reason why they *should* be reviewed by scholars; a free-ranging debate about the proper use of a presidential executive power is useful just because the power is absolute" (*ibid.*:8).

Second, executive pardons take place quietly for the most part, with some obvious exceptions such as Gerald Ford's pardon of Richard Nixon. Interesting details in the pardons application are generally concealed due to privacy rights which, intentionally or not, diminish the scrutiny the process might otherwise receive. Most pardons are rather routine, and, although they raise interesting philosophical and policy questions, they make poor press. In a typical case an individual is convicted of a crime, a sanction is imposed, and a debt to society is paid, followed by an exemplary life style of several years culminating in an application for a pardon with the hope that the action will remove the civil disabilities resulting from a conviction or restore the admiration of family, friends, and neighbors. As noted, "Pardons like this attract little attention. But again, the very quietness of the pardoning process is a reason for more, rather than less, attention" (*ibid.*).

While there seems to be ample justification for studying the topic of pardons, it has been examined more from a philosophical than an empirical

perspective, both historically as well as contemporarily, although it seems pardons were of greater interest to past philosophers than current ones (Moore 1989). Empirical research on the topic is historically nonexistent and contemporarily sparse, and with respect to the process itself nonexistent. Ironically, the one study we located had been undertaken in Pennsylvania over a decade ago (Renninger 1982). Completed in 1982, it examined the recidivism rate of individuals granted executive clemency for the years 1968 through 1981. Compared to other forms of clemency, those granted a pardon had the lowest rearrest rates, approximately 7 percent compared to 24 percent for those who had life sentences commuted, 26 percent for those who had maximum sentences commuted, and 35 percent for those who had minimum sentences commuted. Persons granted a pardon who subsequently recidivated were primarily rearrested for non-Part 1 offenses (69 percent), the most frequent being drunk driving (*ibid.*). Conversely, rearrest for commutation was more likely a Part 1 offense, with aggravated assault, burglary, and theft being the most common crimes (*ibid.*).

This study arose out of interest by the Board of Pardons on whether requests for a pardon involving the offense of retail theft are more likely to be recommended for a pardon than nonretail theft offenses. Although that issue is addressed in this paper, it is only one of several being examined. The purpose of the present research is threefold: (1) to determine whether individuals who are convicted of retail theft and apply for a pardon are more likely to be recommended for a pardon by the board, and subsequently granted a pardon by the governor, than are individuals convicted of nonretail theft offenses; (2) to ascertain if the governor grants pardons forwarded by the board and, more specifically, which factors most affect the board's recommendation and whether these factors differ from those affecting the governor's decisions; and (3) to assess what effects, if any, race and gender have on the board's recommendations and the governor's decisions. Given the scant attention the pardoning process has received both theoretically and empirically, our study can be characterized as exploratory in nature. Thus, it tends to be guided more by speculations and assumptions than by theoretical and empirically based considerations. However an attempt is made at developing a conceptual framework for the study.

II. THE PARDONS PROCESS IN PENNSYLVANIA

There are few restrictions in Pennsylvania on *applying* for a pardon. Persons who want a governor's pardon must submit an application to the Pennsylvania Board of Pardons. The application is screened by the secretary of the board to ensure that requisite documents are included and that preparation format has been followed. Copies of the application are then forwarded to the five-member board, including the current lieutenant governor and attorney general, the former serving as *de facto* chair, a

penologist, an attorney (since our study replaced by a crime victim pursuant to a recent constitutional amendment), and a doctor of medicine, psychiatry, or psychology. At an open public hearing, called a “merit review,” the members of the board vote to determine whether a formal public hearing should be granted. Providing two members of the board agree the case is scheduled for a hearing, normally within a month, as the board holds monthly hearings. If accepted, copies of the application are forwarded to other relevant parties including judges, prosecutors, and victims, either for their written input and/or to invite them to the formal public hearing. At the hearing these interested parties as well as the petitioner and/or his or her representative(s) address the board. A majority of the board must recommend a pardon; otherwise the petitioner’s request is denied. A petitioner who is denied by the board at any stage must wait at least one year to reapply. Recommended cases are forwarded to the governor. At his discretion the governor reaches a decision, usually within a few months of receiving the board’s recommendation. When the board is informed of the governor’s decision, a public announcement of the final disposition is made. See Figure 1 for a schematic diagram of the process.

The governor’s decision is free from appeal, and the only recourse the denied petitioner has is to repeat the process after a wait of one year. If the petitioner does reapply and is again denied at any stage, any subsequent applications must wait two years.

III. CONCEPTUAL FRAMEWORK

Unlike other decision-making points in the criminal justice process that have been examined extensively, such as arrest, prosecution, determination of

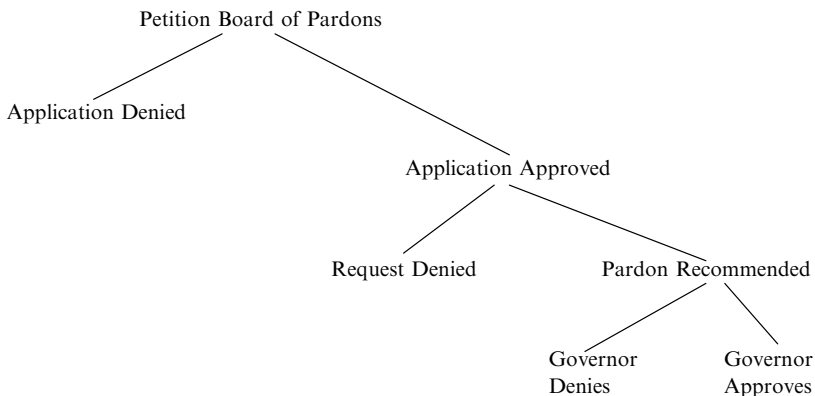


Figure 1. Steps/Stages Characterizing the Pardon Process in Pennsylvania

guilt (including type and length of sentence), and parole, the pardons process has not. Since we could not locate prior studies of the pardons process in any state, we have no empirical research on which to base our assumptions of the influence of legal or extra-legal factors upon the final decisions of either a board of pardons or the governor. As mentioned previously, it is not possible to make any concrete assertions under these circumstances. Thus, our assertions are guided by conjecture and speculation. However, with respect to the influence of race and gender on pardons' decisions, it may be helpful to utilize the vast literature pertaining to sentencing in developing a coherent framework. Of course, the extant literature on the influence of race and gender on sentencing decisions is voluminous and far from consensus. Perhaps the most comprehensive examination of past research on this topic comes from William Wilbanks in his book, *The Myth of a Racist Criminal Justice System* (1987). In this very thorough work, which examines numerous studies on the effects of race upon sentencing outcomes, Wilbanks concludes that, while racial discrimination was pervasive systemically in past decades, it does seem to be declining and that, presently, extra-legal variables are not as important as legal variables in determining sentence outcomes (ibid.:121).

This conclusion, however, is not shared by all researchers. Several writers (e.g., Daly 1989; Burnett 1994; Nelson 1994; Williams 1995) concluded that, to varying degrees and under certain circumstances, extra-legal factors including race, gender, and national origin were significant in determining outcomes during initial sentencing and appellant stages. Although in several instances race and gender interacted with a legal variable in determining outcomes, the extra-legal factors nevertheless played a role, where theoretically and legally they should not have.

This is not to say that all research has uncovered widespread discrimination, based on the influence of extra-legal variables, on the part of courts at various levels. Indeed, an examination by David Neubauer (1991:99) on "winners and losers" in appeals before the Louisiana Supreme Court revealed that legal factors such as length of sentence and the presence or absence of violence during the commission of the crime were the factors most influential upon an appeals court outcome. Unfortunately, Neubauer's (1991) study did not control for either race or gender, so it is impossible to determine what effect, if any, these extra-legal factors would have had on his results.

Further, and perhaps more germane to this research, Wilbanks (1987:122) states that, while prior research has not confirmed systemic racial bias in sentencing, "[t]he possibility remains that racial discrimination both for and against blacks may exist on a large scale when individual judges are considered. . . ." As previously noted, the pardons' process is relatively quiet and routine, and not subject to judicial review. Therefore, it does not seem implausible to reason that the individual biases that may become manifest in judges could also appear within individual members of a pardons board or even the governor.

As a note of caution, it must be emphasized that, while the framework being employed here is grounded in research undertaken on sentencing and appeals decisions in state courts, the pardons process remains distinct and separate from these proceedings. Thus, we make no attempt to equate pardons with sentencing; rather, we are simply pointing out factors that affect (or do not affect) decision making at one stage of the criminal justice process. Whether or not these same factors will influence decision making in a distinct and separate phase of the justice system is the purpose of the present research.

IV. METHODOLOGY

Data for the study were collected in May of 1992 from files maintained by the Pennsylvania Board of Pardons in Harrisburg, Pennsylvania. Files available for selection were limited to the prior two years. Thus cases available for selection reflected persons who applied for a pardon between 1 January 1990 and 31 December 1991.

Cases were selected by randomly pulling files maintained in the Board of Pardons' Records Room. Since files are maintained by year, the selection process was relatively straightforward. Half the cases selected were from 1990, the remaining half from 1991. For cases where the file indicated the individual was applying for either a commutation of sentence or remission of fine or penalty, the file was returned and another selected until one requesting a pardon was located.

There was one other criterion in the selection process. Cases involving the offense of retail theft were intentionally oversampled so they constituted half the total sample of cases. This was due to the original focus of the study and the Board of Pardons interest in this type of offense. Cases for the remaining half of the sample were comprised of a mixture of offenses encountered during the selection of cases.

A coding sheet was developed and used to collect data from information contained in the applicants' files. Data was collected on 150 cases for the following nine variables: sex, race, age of the offender at the time of the offense, the offense itself, the value of the merchandise stolen if the offense involved retail theft, the reason for wanting a pardon, the lapse in time between the committed offense and the application for a board hearing, the status of the pardon request, and whether another offense had been committed in addition to the one for which the applicant was requesting a pardon.

V. ANALYSIS AND FINDINGS

Table 1 contains a frequency distribution of the variables. Two variables, age at the time of the most recent conviction and number of years between

Table 1. Sample Characteristics (N = 150)

Variable	Code	Value	%	N
Sex	0	male	57	(86)
	1	female	43	(64)
Race	0	white	91	(136)
	1	black	9	(14)
Age at Most Recent Conviction	0	18–24	59	(88)
	1	25–62	41	(62)
		X = 26.6	M = 22.0	SD = 9.2
Type of Offense Most Recent Conviction	0	other offense	47	(70)
	1	retail theft	53	(80)
Number of Years Between Most Recent Conviction and Pardons Hearing	0	1 to 9	60	(90)
	1	10 to 36	40	(60)
		X = 9.6	M = 8.0	SD = 6.9
Prior Conviction(s) Other Than Most Recent Offence	0	yes	37	(56)
	1	no	63	(94)
Reason For Wanting Pardon	0	personal/family/other	20	(30)
	1	employment/job	80	(120)
Outcome of Pardon Request		denied by board	45	(68)
		board recom–gov deny	12	(18)
		board recom–gov approve	35	(52)
		awaiting gov decision	8	(12)

the most recent conviction and the application for a hearing, have been dichotomized in order to include them in the table. The dichotomized values are presented here but in the multivariate analyses they are treated as ratio variables.

Most of the variables including their attributes or categories are self-explanatory; however, some do require additional clarification. The category “other offense” for the variable type of offense most recent conviction involves a wide variety of acts including: liquor law violations (6 cases); drugs and controlled substance violations (8); motor vehicle violations (18); disorderly conduct (6); burglary (6); larceny (2); robbery (2); simple assault (5); buying, receiving or possessing stolen property (2); statutory rape, prostitution, and other sex offenses (4); indecent exposure (2); firearms violations (2); fraud (2); and other offenses such as embezzlement, vandalism, and

gambling, each accounting for one offense. The category "personal/family/other" for the variable reason for wanting a pardon includes personal pride and embarrassment, regaining one's reputation, and clearing one's good name. The category "employment/job" includes such job fields as: education, primarily public schools (40); criminal justice including private security (34); government including federal, state, and local, but noncriminal justice (14); banking, business, and finance (18); and various other occupations (14). The category "yes" under Prior Convictions indicates that the applicant had at least one other conviction in addition to the conviction for the most recent offense. Of the fifty-six with prior convictions most (48) had only one, five had two, and the remaining three, three. The variable outcome of request for a pardon indicates the following: 12 cases are awaiting the governor's decision and are thus excluded from further analysis; of the 138 cases used in the analysis 68, or 48 percent, were *not* recommended by the board for a pardon while the remaining seventy, or 52 percent, were; of these remaining 70 cases, the governor granted 52, or 74 percent, while denying 18, or 26 percent.

A. BOARD RECOMMENDATION

Table 2 presents a bivariate analysis between the seven independent variables and the board's decisions. Only the top half of the bivariate table is presented as all variables are dichotomous and the full tables can readily be reconstructed from the data presented. Other than the variable age at the time of the offense and perhaps race, the remaining five variables all had a significant influence on the board's decision to recommend a pardon. The likelihood of a recommendation for a pardon was greater when the applicant was female, the offense was retail theft, the reason for wanting the pardon was employment, some time had elapsed between the conviction and the request, and the petitioner had no prior convictions other than for the

Table 2. Board Recommends Pardon (No = 68 Yes = 70)
by Independent Variables (n = 138)

Variable	% Recommended for Pardon		Phi	Chi sq
Type Of Recent Convict	other off = 17% (12)	retail theft = 85% (58)	.68	.00
Reason Wanting Pardon	personal = 7% (2)	employment = 63% (68)	.46	.00
Prior Conviction(s)	yes = 11% (6)	no = 78% (64)	.66	.00
Sex	male = 34% (28)	female = 75% (42)	.40	.00
Race	white = 48% (60)	black = 71% (10)	.14	.11
Age Recent Conviction	18 to 24 = 53% (42)	25 to 62 = 48% (28)	.04	.62
Yrs - Convict to Request	1 to 9 = 60% (50)	10 to 36 = 37% (20)	.22	.01

current offense. Based on the phi coefficient, a measure of statistical association, type of offense and prior convictions had the greatest influence on the board, followed by the reason for wanting the pardon and the gender of the petitioner. Of less importance was the elapsed time between the most recent conviction and the request and the race of the petitioner. Age at the time of the most recent conviction was of minimal importance.

To assess the simultaneous effect of the independent variables on the board's decision, they were examined under a multivariate context since findings at the bivariate level may change with the introduction of additional variables. Because the dependent variable is dichotomous, logistic regression is used. Analyzed first was a full logistic model of the probability of the board recommending a pardon. Included were all of the independent variables in Table 1. In the full model only three variables, type of offense, prior convictions, and reason requesting pardon had significant coefficients, that is, less than .10.

Because more than half of the variables in the full model did not contribute significantly to the board's decision, a more parsimonious model using stepwise procedures was constructed. Forward and backward solutions produced similar results with the same three variables significant in the full model being retained in the reduced model (chi-square=99.92 with 3 degrees of freedom, $p < .01$). The signs and magnitudes of the coefficients in the reduced model are similar to the corresponding coefficients in the full model. The statistic for testing the significance of the terms not included in the reduced model is chi-square=105.90-99.92=5.99 with 4 df, $p > .10$. Results from both the full and reduced model are contained in Table 3.

Results for the reduced model, shown in Table 3, reveal that prior convictions had a significant negative effect on the recommendation of a

Table 3. Logistic Analysis of Legal and Extra-legal Variables on Board's Recommendation of a Pardon Including Full and Reduced Models (n=138)

Independent Variables	Full Model			Reduced Model		
	Logit(B)	t	Prob	Logit(B)	t	Prob
Type Offense Most Recent Conviction	2.10	2.51	.01	1.85	3.13	.00
Reason For Wanting A Pardon	3.02	3.10	.00	2.97	3.35	.00
Prior Conviction(s)	2.57	3.72	.00	2.44	3.86	.00
Sex	.36	.49	.62			
Race	1.18	1.41	.17			
Age Most Recent Conviction	-.01	.46	.66			
Years Conviction to Request	.02	.34	.73			
Constant	-15.23	5.04	.00	-12.18	5.68	.00

Chi Square = 105.90 ChiSquare = 99.92
df = 7, Prob = .00 df = 3, Prob = .00

pardon. Petitioners with more than one prior conviction were less likely to be recommended by the board. The reason for wanting a pardon was also important. Petitioners seeking to qualify for certain jobs were more likely to be granted a pardon than those interested in clearing their name. Finally, petitioners whose most recent conviction was retail theft were more likely to be recommended than those convicted of other offenses.

Although logistic regression is appropriate for the problem examined here, the coefficients cannot be interpreted in the same manner as ordinary least squares coefficients. Unlike the linear model, the logit estimates do not represent a constant effect but rather the change in the log of the odds associated with a unit change in the independent variable. To interpret the effect of the variables, probability estimates derived from the coefficients in the reduced model were calculated, see Table 3. The estimates, based on the formula, $P(\text{recommendation}) = \frac{e^Z}{1 + e^Z}$ where $Z = a + b_1 \times 1 + b_2 \times 2 + \dots + b_n \times n$, show the effect of changes in the probability of the board's recommendation across various combinations of the independent variables.

Recall that the overall probability of a recommendation is 52 percent. If a petitioner's most recent conviction was retail theft and there was no prior conviction and the reason for seeking a pardon was job related, then the probability increases to 91 percent. Conversely, the probability of a recommendation is 1 percent or almost unlikely, if the petitioner was convicted of an offense other than retail theft, had prior convictions, and the reason for seeking a pardon was to clear her/his name. These two estimates reflect the most extreme probabilities, and they along with the other combinations that fall in-between are presented in Table 4.

Table 4. Probability Estimates for Combinations of the Reduced Model

Independent Variable Combinations	Probability Recommendation (%)
Retail Theft, Employment, No Priors	91
Retail Theft, Employment, Priors	47
Retail Theft, Clear Name, No Priors	35
Retail Theft, Clear Name, Priors	5
Other Offense, Employment, No Priors	62
Other Offense, Employment, Priors	12
Other Offense, Clear Name, No Priors	8
Other Offense, Clear Name, Priors	1

B. GOVERNOR'S DECISION

Attention now shifts to the governor's decision and the extent to which the board's recommendation is followed. Recall that the governor followed the board's recommendation 75 percent of the time and granted a pardon. Of

interest is whether those 25 percent not granted a pardon (eighteen of seventy cases) are associated with one or more of the independent variables. Logistic regression was again employed but results from the full model, as well as forward and backward solutions, yielded highly distorted coefficients and error terms (not shown but available from the first author on request). Why this occurred is discernable in Table 5, which shows the bivariate association between the governor's decision and the seven independent variables. Like Table 2, only the top half of the bivariate table is presented as all variables are dichotomous and the full four cell tables can readily be reconstructed from the data.

Table 5. Governor Grants Pardon (No = 18 Yes = 52) by Independent Variables (n = 70)*

Variable	% Recommended for Pardon		Phi	Chi sq
Type Off Recent Convict	other off = 0% (0)	retail theft = 90% (52)	.77	.00
Reason Wanting Pardon	personal = 100% (2)	employment = 74% (50)	.10	.40
Prior Conviction(s)	yes = 0% (0)	no = 81% (52)	.52	.00
Sex	male = 64% (18)	female = 81% (34)	.19	.12
Race	white = 77% (46)	black = 60% (6)	.13	.26
Age Recent Conviction	18 to 24 = 71% (30)	25 to 62 = 79% (22)	.08	.50
Yrs - Convict to Request	1 to 9 = 76% (38)	10 to 36 = 70% (14)	.06	.60

* Due to several cells having no or to few case in the first three analyses, the statistics for phi, the measure of statistical association and Chi-Square, the measure of statistical significance, need to be viewed as suggestive at best.

Because some cells have no cases in three of the tables, namely, type of offense at most recent conviction, number of prior convictions, and reason for wanting a pardon, the co-joint distributions in each of the three are extremely skewed. For example, only two cases characterize those wanting a pardon for personal, family, or other reasons and both were granted a pardon. Conversely, no one was granted a pardon if his or her most recent conviction involved an offense other than retail theft, and a pardon was not granted if the petitioner had more than one prior conviction. Parameter estimates derived from multivariate techniques involving severely skewed distributions are generally unreliable. This is especially true when several predictors, as is the case with this data, exhibit this characteristic. Although none of the remaining four co-joint distributions are similarly affected, none of the four are significantly associated with the governor's decision ($p > .10$).

As a result, an alternative strategy based on a composite measure of the three skewed variables was developed since these three variables are the ones

that appear to guide the governor's decision, rather than the four remaining independent variables. The composite measure or three variable typology yields eight potential combinations since each of the three variables is dichotomous. These eight combinations are identical to those shown in Table 4. However, of the eight possible combinations only four actually occurred. Table 6 shows the bivariate association between the typology and the governor's decision for these four combinations.

Table 6. Three Variable Typology by Governor's Decision to Grant Pardon (n = 70)*

GOVERNOR DECISION	THREE VARIABLE TYPOLOGY							
	Retail Theft Clear Name No Priors		Retail Theft Employment No Priors		Other Offense Employment No Priors		Other Offense Employment 1 + Priors	
	%	N	%	N	%	N	%	N
Grant	100	(2)	89	(50)	0	(0)	0	(0)
Deny	0	(0)	11	(6)	100	(6)	100	(6)

* Significance test based on Chi Square not undertaken due to the number of cells that have no cases.

As noted previously, the overall probability of the governor granting a pardon is 75 percent. Table 5 reveals that the most certain combination for being granted a pardon is where the conviction was for retail theft, it was the only prior conviction, and the reason is clearing one's name (i.e., personal/family/other reason). Both petitions were granted. When the first two conditions are the same as the above but the reason for the pardon being requested was employment, the pardon was granted 89 percent of the time. Conversely, no pardon is granted in the two remaining combinations. Denial is certain if conviction was for an offense other than retail theft and the reason was employment, regardless of prior convictions.

One final analysis was undertaken to assess the simultaneous effect of the four remaining extra-legal variable on the governor's decision. This was done in order to see if one or more of them affect the decision when combined. Logistic regression was again employed and results from the full four-variable model, including forward and backward solutions (the latter two not shown but available from the first author on request), yielded undistorted but insignificant results (chi-square = 6.94 with 4 df, $p = .14$). Table 7 reveals that the governor's decision was unaffected by petitioner's sex, race, age at most recent conviction and years between most recent conviction, and request for a pardon.

Table 7. Logistic Analysis of Four Extra-legal Variable on Governor's Decision to Grant a Pardon (N = 70)

Independent Variables	Logit(B)	t	Prob
Sex	.65	1.10	.27
Race	.04	.05	.96
Age at Most Recent Conviction	.05	1.23	.22
Years Between Conviction and Request	-.06	1.09	.28
Constant	-.61	.32	.75

Chi Square = 6.94
df = 4, Prob = .14

C. COMPARISON BETWEEN BOARD AND GOVERNOR

To provide a direct comparison with the governor's decision, the three-variable typology was reconstructed for the board's recommendation since only those three variables significantly affected their decision as well. Table 8 shows that the most likely combination for receiving a pardon is "Retail Theft, Employment, No Priors." The board recommended 93 percent of these cases to the governor who in turn granted 89 percent a pardon. The only other combination granted a pardon is identical to the above with the exception that the reason is to clear one's name rather than employment. However, the board only recommended half of these petitions (2 of 4), and the governor granted both. Although wanting to clear one's name in combination with retail theft and no priors guarantees a pardon once it reaches the governor, this combination is based on only two cases. Coupled with the fact that the board only dealt with four such cases, rejecting two, the more likely and reliable combination was when the reason was employment, as this combination is based on fifty-six cases.

In granting a pardon the governor appears to place more weight on offense and priors than reason, since a pardon is granted for either employment reasons or to clear one's name, but only when the offense was retail theft and there are no priors. Having either been convicted of an offense other than retail theft or having a prior record guarantees the denial of a pardon.

Compared to the governor, the board was more flexible as it recommended more combinations including offenses other than retail theft and cases that included more than one prior conviction. However, the board, like the governor, also appears to place more weight on type of offense and prior convictions than reason, but not quite as much.

VI. SUMMARY AND DISCUSSION

The analysis presented here suggests that the response to a request for a pardon is conditioned by legal rather than extra-legal variables and that the

Table 8. Three Variable Typology by Board's Recommendation (n = 138) and by Governor's Decision to Grant a Pardon (n = 70)

THREE VARIABLE TYPOLOGY	Board's Recommendation				Governor's Decision			
	Yes		No		Grant		Deny	
	%	N	%	N	%	N	%	N
Retail Theft, Employment, No Priors	93	(56)	7	(4)	89	(50)	11	(6)
Retail Theft, Employment, Priors	0	(0)	100	(4)				
Retail Theft, Clear Name, No Priors	50	(2)	50	(2)	100	(2)	0	(0)
Retail Theft, Clear Name, Priors	–	–	–	–	–	–	–	–
Other Offense, Employment, No Priors	50	(6)	50	(6)	0	(0)	100	(6)
Other Offense, Employment, Priors	19	(6)	81	(26)	0	(0)	100	(6)
Other Offense, Clear Name, No Priors	0	(0)	100	(6)	–	–	–	–
Other Offense, Clear Name, Priors	0	(0)	100	(20)	–	–	–	–

recommendation of the board is based on an individualized model of decision making, whereas the governor's decision follows a more standardized one. For the governor, deciding whom to pardon seems to involve a straightforward process that focuses on a relatively simple set of criteria; any offense other than retail theft or any prior conviction guarantees the denial of a pardon, whereas the offense of retail theft coupled with no prior conviction, regardless of the reason for wanting a pardon, almost guarantees one. Were it not for the few retail theft cases denied a pardon the governor's decision would be perfectly predictable. On the other hand the board, although circumspect in that they too favor retail theft cases as well as those with no priors and those seeking employment, do recommend petitioners with offenses other than retail theft as well as those with prior convictions and in addition to those seeking to clear their name. Where just one condition is sufficient for the governor to deny a pardon, the board requires three to withhold a recommendation. This suggests that the board's recommendation encompasses a more complex set of factors that delve deeper into the petitioner request than does the governor's decision. No doubt this is due to the role of the board. Part of its function is to act as a screening device for the governor, weeding out those cases that lack merit and recommending those that do. In doing so the board, unlike the governor, has an opportunity to actually listen to and question the petitioner at a formal hearing. The governor, much like an appellate court, works solely from documents in reaching a decision. Thus, the board has an opportunity to assess intangible and qualitative aspects about the individual that may impact on their recommendation. On the other hand, the governor's decision is as much a political as humane one. Unlike the board, whose recommendation is advisory and shared by five individuals, responsibility

for the actual decision to grant a pardon rests solely with the governor. The decision to grant a pardon may win the governor the strong support of the petitioner, his family, and friends, but the advantage is slight and far outweighed if the pardon gains some notoriety, attracts the attention of media, and is publicly unfavorable. Gerald Ford's pardoning of Richard Nixon is a classic example and another is the commutation of Richard McFadden's life sentence in Pennsylvania, believed by many political analysts to have affected the outcome of the last gubernatorial election. Thus, the governor has little to gain and much to lose by pardoning cases other than those involving a slight, but once only, indiscretion for shoplifting. These cases are unlikely to be objected to by the victim, are of little interest to the media, and are unlikely to raise a public outcry. At the same time, they serve to uphold the spirit of the law by rewarding otherwise "model citizens."

Unlike in prior research where extra-legal variable such as age, race, and sex have been shown to affect discretionary decision making at other points in the criminal justice process, pardons are not. Most of the variability in both the board's recommendation and the governor's decision is attributable to offense and priors, two recognized justifications, as well as the reason for wanting a pardon. Some might object to reason being viewed as a legitimate consideration given its lack of visibility in prior research on discretionary decision making including criminal sentencing and parole granting. However, in the context of pardons it is an important factor and at a minimum should be regarded as a quasi legal variable. This is due to the reason most petitioners give for wanting a pardon; that they cannot qualify for the job they want because of a criminal record. From theirs as well as society's perspective the denial of employment due to a criminal record makes the reason for wanting a pardon legally relevant. Although the other reason for wanting a pardon (i.e., clearing one's name) lacks the objective justification of seeking employment, this should neither diminish its importance nor the importance of reason itself as a legitimate consideration. The real or imagined stigma that a criminal record has for the petitioner and her or his family is probably as much of a burden to them as denial of desired employment is to the job-seeking petitioner. Moreover, valuing employment over restoring one's name may overlook the broader intent of the pardons process which includes serving as a balance between the spirit and letter of the law. By providing relief from the shame and embarrassment of a minor transgression committed some time ago, both the board and governor acknowledge the less recognized, but more compassionate, side of the concept of justice. Regardless of which consideration is more meritorious, the reason for wanting a pardon should be viewed as legitimate in and of itself since it provides the board and governor with the opportunity to evaluate the sincerity and merit of the petitioner's request. Absent such an opportunity, part of the rationale for granting a pardon becomes blurred or perhaps even lost. Having the process rest solely on type of offense and prior

convictions has the potential of it becoming nothing more than a routine and sterilized undertaking since a good portion of the essence of the concept itself is derived from the need to convince the board and governor of one's worthiness in seeking a pardon.

As noted earlier, the board recommends just over half of all petitions and the governor pardons almost three-quarters of these. Whether these percentages compare favorably with past practice in the state or existing norms in other jurisdictions is unknown and requires historical and comparative data. Unknown as well is why the governor choose not to pardon six of the fifty-six petitioners who committed retail theft, had no priors, and were seeking employment, but did pardon the other fifty. There are several possible explanations. Unfortunately, all require data not available to this study. The governor may deny a pardon if the value of the merchandise taken in the retail theft exceeded \$150, since the offense is then elevated to a second degree misdemeanor rather than a summary offense in Pennsylvania. A pardon may also be denied if the board's recommendation is less than unanimous or, if the vote is close (i.e., 3 to 2). The governor also may be influenced by a guilty plea rather than the petitioner having opted for a jury trial. Similarly, if the conviction was based on circumstantial rather than direct evidence or if there was some doubt regarding the petitioner's guilt, the governor may be more inclined to grant a pardon.

Several other questions remain unresolved due to sample size limitations. A larger sample might overcome the problem of having few or no cases in several of the analyses that may affect the reliability of the findings. The absence of cases is especially troublesome in the analysis of the governor's decision as several of the variables border on being constants. A larger sample would answer the question of whether the absence of cases is a function of sample size or whether outcomes are reflective of the actual decision-making process. In addition a larger sample might provide for a closer look at any nuances associated with specific categories or attributes of several of the variables. For example, employment, under the reason for wanting a pardon is made up of several different occupational areas including criminal justice, education, business, etc. A larger sample would answer the question of whether a recommendation and/or granting of a pardon is more likely to be associated with different employment endeavors and, similarly, with a specific type of offense within the category of nonretail theft.

In addition to the above considerations future studies should include data that spans more than one administration. Doing so would address the issue of whether different boards and governors are consistent in both the quantity and quality of cases that are recommended for and granted a pardon. Indirectly, such results might provide an indication of any linkage between political orientation and the pardon process. Finally, and in much the same way that comparative studies on criminal sentencing have provided greater insight into the dynamics of that process, studies involving other

jurisdictions should be undertaken to shed more light on the dynamics of the pardon process.

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