

# Biden pardons Biden

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**Abstract:** *Il presidente Biden grazia il figlio* - The scope of this investigation is to evaluate the pardon granted by President Biden to his son. The analysis showed that the pardon is not only constitutionally correct but also opportune in view of the incoming Administration. In the process, the circumstances, the opportuneness and the institutional consequences of such a pardon are also investigated. President Biden has been a consequential president also in granting clemency for minor crimes and relief from ethnic and cultural preconceptions resulting at the time of writing, with 25 more days in office, the most generous of presidents.

**Keywords:** Executive power; Clemency; Pardons; Political; Oversight

## 1. Introduction

In a world of uncertainties and confusion the power to pardon and to exercise clemency is one of the rare certainties. There are no doubts in fact, that the power to pardon is a wide and exclusive presidential power and there are no doubts that inevitably there is an awareness time for the “screaming media” over the political repercussions and/or opportuneness of the exercise of the said power that inevitably occurs every four years towards the end of a presidential mandate since it is towards the end of each administration that pardons flow more abundantly while the shared powers actions trickle in the lame-duck sessions. Thus, this paper is provoked by the announcement, in the evening of December 1, 2024 - at the end of the long Thanksgiving weekend- that President Biden had issued a pardon in favor of his son Hunter Biden. Immediately the media, as it has been doing for far too long, shouted at a scandalous action and accused Biden of lying and not keeping his word and/or of disregarding rather than honoring the Department of Justice; Likewise Trump immediately cried against Biden for pardoning his son and not the J6ers; Republican party members accused Biden of abuse of power; Some Democrats blamed Biden of paving the way for Trump pardoning all J6ers (a Trump campaign promise he will anyway keep); Other Democrats faulted Biden of “modern day nepotism” by preferring family over country and thus tainting his long-standing reputation of statesmanship; Many Democrats keeping silent while few voices were raised in defense of Biden’s decision. This paper aims to give answers to questions that are simple while the responses themselves could be complex since they involve institutional processes and correct institutional behavior entangled with political timing and advisability at a

moment and time of great uncertainty and fear for the continuance of the rule of law.

This researcher hopes to make some clarity or at least, help future researchers to make clarity on this already famous pardon.

## 2. Pardoning Power

The power to pardon is one enumerated power in Article II of the Constitution<sup>1</sup> and its origin can be found in the “prerogatives of mercy” of the British Crown. At the Constitutional Convention in Philadelphia, Alexander Hamilton introduced it as an amendment, since pardon was missing in both the Virginia and the New Jersey plans. The amendment provided for a very wide and discretionary power to be exercised solely by the executive, except in cases of treason where a supporting vote of the Senate would be required.<sup>2</sup> Treason appeared to be a concern of many Founding Fathers who perceived it as a threat to the survival of the “experiment” they were to implement. And treason, as an exception to a discretionary power vested solely in the president, was overwhelmingly on the minds also of Edmund Randolph and George Mason as they feared the eventuality of a president pardoning either himself or his accomplices in an attempt to “stop inquiry of crimes which were advised by himself and prevent (their) detection” aimed at “establishing a monarchy and destroying the republic.”<sup>3</sup> Notwithstanding these fears, the debate over the pardoning power at the Convention was limited to how broad the power should be and whether the Senate should have a role in the exercise of it. Eventually “treason” was replaced by “impeachment” and the power was vested solely upon the President.<sup>4</sup> While the discussions were done in plenary, the actual written rendition was drafted by the Committee on Style whose work was to choose the words and verbs to make sure the final written version of the Constitution would reflect the debates and the intentions, and the deliberations taken by the founding Fathers as a whole. The text of the Constitution specifically indicates “Reprieves and Pardons,” and in 1855 the Supreme Court clarified that the “language of the [provision] is general, that is, common to the class of pardons, or extending the power to pardon to all kinds of pardons known in the law as such, whatever may be their denomination.”<sup>5</sup> Thus, it can be affirmed without doubt that a plenary

<sup>1</sup> Article II, Section 2.1 “... and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.”

<sup>2</sup> The Records of the Federal Convention of 1787, at 20–23 (Max Farrant ed.1911) cited in M.A. Foster, *Presidential pardons: Overview and Selected Legal Issues*, Congressional Research Service, January 14, 2020, Footnote 15, p.2.

<sup>3</sup> J. Elliot ed.1836. *The Debates in the several State Conventions, on the adoption of the Federal Constitution, as recommended by the General Convention at Philadelphia in 1787*. Ibid, footnote 17, p. 2.

<sup>4</sup> According to Jordan Cash, an Assistant Professor in James Madison College at Michigan State University, “the lack of a readily evident check on the pardon power was a major concern for many Anti-Federalists who opposed the Constitution. George Mason—who had attended the Constitutional Convention but refused to sign the final document listed the pardon as one of his major objections to the new government.” In *The Constitutionalist*, December 17, 2024.

<sup>5</sup> *Ex parte Wells*, 59 U.S. 307, 314 (1855)

constitutional power is vested upon the President by the pardon provision, and as such, the President can forgive an accused or convicted person “in part or entirely, to reduce a penalty in terms of a specified number of years, or to alter it with conditions which are in themselves constitutionally unobjectionable.”<sup>6</sup>

Several practical questions about the clemency power have been raised during the centuries, and the courts have answered to all of them, whether they were on the range of the pardon or on the legal effects that a pardon produces, or on the timing (before, during or after sentencing) of a pardon being granted, or whether a pardon should be accepted by the recipient to produce its curative function. Some questions were repeated over time, to verify the standing of the previous interpretations of the power to pardon and the federal courts either confirmed or altered in part or in whole the precedent providing us today with a clear representation of the various forms of clemency that are available to presidents. In fact, while the most renowned, and at times the most scandalous, is the pardon, presidents have an array of at least five options when exercising their acts of clemency choosing on a spectrum that goes from reprieve and remission of fines and forfeitures to commutation, amnesty and pardon. While the reprieve is only a delay in the execution of a sentence and commutation substitutes the punishment with a reduced sentence, amnesty and pardons consist in relieving the “wrongdoer from punishment”.<sup>7</sup> Moreover, a pardon does not only relieve the wrongdoer from punishment, but it also restores the offender’s civil rights<sup>8</sup>; it can be granted at any time after the commission of an offense<sup>9</sup> and last but not least, it must be accepted or it may be refused.<sup>10</sup> Just as the courts helped define the scope and nature of the pardon so it helped to identify a further connotation of it. In fact, Chief Justice Taft described the pardon as a tool offered to the president to check the judiciary<sup>11</sup> analogous to the veto power as a check on the legislature<sup>12</sup> and some constitutional scholars even see it as a reinforcement of the rule of law “for when the impartial and strict application of the law veers into becoming unjust—and by extension threatens the core reputation of the rule of law—then the pardon may be used as a kind of safety valve, providing the necessary mercy to prevent the injustice and preserve popular respect for the law generally.”<sup>13</sup>

<sup>6</sup> Schick v. Reed, 419 U.S. 256, 266 (1974)

<sup>7</sup> Ibid. Schick v. Reed “The plain purpose of the broad power conferred by s 2, cl. 1, was to allow plenary authority in the President to ‘forgive’ the convicted person in part or entirely, to reduce a penalty in terms of a specified number of years, or to alter it with conditions which are in themselves constitutionally unobjectionable.”

<sup>8</sup> *Absolute Pardon*, in *Black’s Law Dictionary* (11th ed. 2019)

<sup>9</sup> *Ex parte Garland*, 71 U.S. 333, 380 (1866) “The power . . . may be exercised at any time after [an offense’s] commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment.”

<sup>10</sup> *Burdick v. United States*, 236 U.S. 79, 94 (1915)

<sup>11</sup> *Ex parte Grossman*, 267 U.S. 87 (1925) “...executive clemency exists to afford relief from undue harshness or evident mistake in the operation or enforcement of the criminal law. The administration of justice is not necessarily always wise or certainly considerate of circumstances which may properly mitigate guilt.”

<sup>12</sup> J. Cash, *Is Hunter Biden’s pardon Constitutional?* cit.

<sup>13</sup> Ibid.

### 3. Administrative Issues

Although there have never been doubts about the pardon being a plenary power vested solely upon the president, an administrative procedure and an office within the Department of Justice were established.<sup>14</sup> In accordance with the process instituted by Federal Regulations, the president (the White House legal counsel) and the Office of Pardon Attorney at the Department of Justice cooperate in the selection of the beneficiaries of a presidential clemency. In fact, the Pardon Attorney will verify the eligibility of the individual petitioners based on an evaluation of their personal behavioral records while in federal jails, the length of time they have already served (which must be of at least five years) and the other prerequisites enumerated in the regulation itself. Upon completion of the evaluation, a recommendations report will be sent to the Attorney General who in turn, if in agreement, will transmit in writing, the Department of Justice's advice to the president. Furthermore, the Office of the Pardon Attorney verifies the eligibility of individuals and/or communities of individuals that the president intends to pardon. The Office of the Pardon Attorney may also participate in "clemency initiatives" that will result in submitting to the president and recommending him to act positively on a vast number of cases that respond to certain requisites established by the Codes of Federal Regulations. The last such initiative was taken by the Department of Justice at the beginning of President Obama's second term, and it was activated by a call to "encourage qualified federal inmates to petition to have their sentences commuted".<sup>15</sup> The Office of the Pardon Attorney established a list of qualifications that spanned from being non violent or low level offenders to having served at least ten years of their sentence. The applications of those who met "most if not all" the conditions were prioritized, and the Department of Justice send recommendations for several thousand petitions to President Obama. Not all of them received the commutations by the time the president's second term was over and the initiative was terminated on January 20, 2017.<sup>16</sup>

It is worth repeating that although an administrative procedure has been introduced by Title 28 of the Code of Federal Regulations providing for a shared responsibility in the vetting of the meritorious inmates, nothing prevents the president to act unilaterally and without consulting with the Department of Justice as confirmed by the Supreme Court upon multiple occasions following the 1866 decision in *ex parte* Garland.<sup>17</sup> Once again it is not superfluous to reiterate that the only unquestionable part of the

<sup>14</sup> The Office of the Pardon Attorney was created 129 years ago, in 1895, with the intention to protect the president from the reality and perception of politicized pardons and Title 28 of the Code of Federal Regulations in fact, regulates the administrative checks of those petitioning presidential clemency. This process, however, and the Regulations governing the cooperation between the Department of Justice and the White House are purely advisory in nature and do not affect the President's ultimate authority to grant relief. M.A. Foster, *Presidential pardons: Overview and Selected Legal Issues*, cit. p.10

<sup>15</sup> *Clemency Initiative*, Department of Justice, Office of the Pardon Attorney, (last updated Dec. 11, 2018) [www.justice.gov/pardon/clemency-initiative](http://www.justice.gov/pardon/clemency-initiative).

<sup>16</sup> Ibid.

<sup>17</sup> *Ex parte* Garland, cit.

pardoning power is that it is a plenary power vested solely upon the president. Not all presidents have exercised this power in the same manner, and while some have exceeded in largesse others have been more moderate. President Obama certainly falls in the former category with 1.927 between pardons (212) and commutations (1.715) out of 36.544 petitions, resulting in the highest total of any president going back to Harry Truman, while presidents George H. Bush, George W. Bush and Donald J. Trump fall into the latter category. In fact, President George H.W. Bush received 1.466 petitions and only granted 74 pardons and 3 commutations; President George W. Bush who received over 11.000 petitions only granted clemency to 200 petitioners; and President Trump who only granted 143 pardons and 94 commutations out of a total of 11.611 petitions.<sup>18</sup> The latter three mentioned presidents also hold the record of being the three presidents who granted the fewest acts of clemency since 1900.

#### 4. Controversial precedents

Not all presidents' clemency measures have received the same reactions from society at large. In fact, most of the time, pardons announced by the White House and/or the Department of Justice go unnoticed, some pardons have been more famously remembered because of the fame of the recipient, and some raise more controversies and thus shall be remembered more than the less controversial and famous. To illustrate the point, before the recent pardon of Hunter Biden nobody had noticed that President Biden had already pardoned 25 individuals and commuted 132 sentences in addition to granting clemencies to individuals and "communities of individuals" such as the more than 6.500 people convicted of marijuana possession or the "blanket pardon" for service members who had been expelled from the military over their sexuality. Amongst those remembered because of the fame of the recipient, is Jimmy Hoffa, who had been the head of the Teamsters Union sentenced to 13 years for jury tampering and pension fund fraud. In 1971 he was pardoned by President Nixon even though Hoffa had only served three years of his sentence.

Amongst the presidents who granted the most controversial pardons, the record breaker is Trump whose majority of the recipients (29 out of 34) were personal friends or had political connection to the president.<sup>19</sup> It is fair to say that his pardons and commutations unquestionably fit a pattern of abuse of power<sup>20</sup> and although no president in American history comes close

<sup>18</sup> J. Gramlich, *Trump used his clemency power sparingly despite a raft of late pardons and commutations*, in *Pew Research Center*, January 22, 2021.

<sup>19</sup> "Trump pardoned close associates as a reward for refusing to testify against him before Special Counsel Robert Mueller. He pardoned defendants because they were friends, or friends of friends, or had been prosecuted by people whom he disliked. He pardoned former service members charged with war crimes and military contractors convicted of the violent murder of civilians." Q. Jurecic, *The Pardon is About More Than Hunter Biden*, in *Lawfare blog*. Published by the Lawfare Institute in cooperations with Brookings. December 4, 2024.

<sup>20</sup> A study conducted on those recipients, in fact, shows that *of the 34 people who received pardons or commutations (or both) from President Trump, 29 of them fit at least one (and often more than one) of the following criteria*: "(1) Did it advance a clear political goal of the



to matching Trump's systematically self-serving use of the pardon power;<sup>21</sup> he is not the only president who has faced scrutiny over the use of clemency. Carter pardoned approximately 200.000 Vietnam War draft resister on his first day in office in 1977. George H. W. Bush pardoned Defense Secretary Caspar Weinberger and other five members of the Cabinet in the Reagan Administration, who had been indicted for their role in the Iran-Contras scandal. On his last day in office in 2001, Bill Clinton pardoned his half-brother Roger, and Marc Rich, a fugitive trader and billionaire who had been indicted for evading \$48 million of taxes and for making illegal deals with Iran; In 2017 Obama commuted all but four month of the remaining time of Chelsea Manning, a former U.S. Army intelligence analyst who had been convicted of leaking military information to WikiLeaks. Lastly but certainly not least relevant to the objective of this paper, is the pardon granted by President Ford to President Nixon just a few weeks after Nixon was forced to resign because of the Watergate scandal. Ford granted Nixon "a full, free and absolute" pardon "for all federal crimes committed or (that he) may have committed or taken part in, while he was president". Since Nixon had not been indicted and obviously not tried yet for his crimes, this pardon should be considered as the first modern era "pre-emptive" pardon in US history.<sup>22</sup> In fact, the only prosecution Nixon had been subjected to, was the impeachment investigation by the House of Representatives but he had resigned the day before the articles of impeachment would be voted upon thus avoiding facing the Senate for the impeachment trial proper. Although many questions could have been raised about a pre-emptive pardon, that went against conventions, barring the ex-president from trial and a very plausible conviction, the sternest objections came from the people who, having not appreciated Ford's act of clemency towards the man he had briefly served as Vice President, showed their disappointment (as never before or after) at the ballot box contributing to his loss in his re-election bid in 1976.

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## 5. The judicial cases of Hunter Biden

Having then outlined the legal framework of the clemency power it is appropriate to look at the specifics of the Hunter Biden's case before addressing the opportuneness of this specific pardon at this specific time.

It all started immediately after the 2018 mid-term election and the Democratic Party gaining back control of the House of Representatives and it brewed to a boil until it exploded during the 2020 presidential campaign (in October) just weeks before the election, when the FBI became interested in a portable computer (the famous laptop) supposed to belong to Hunter

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president?; (2) Did the person who was pardoned or the person who supported the pardon have a personal connection to Trump or someone Trump knows well?; (3) Was the person who was pardoned brought to the president's attention by television or a television commentator?; (4) Was the pardon based on Trump's admiration for celebrity?" For more See, J. Goldsmith, M. Gluck. *Trump's aberrant Pardons and Commutations*, in *Lawfare blog*. Published by the Lawfare Institute in cooperations with Brookings. July 11, 2020.

<sup>21</sup> Ibid.

<sup>22</sup> Before Ford, only Washington and Lincoln and after Ford only Carter and George H. W. Bush granted pre-emptive pardons.

Biden that had been dropped for servicing in a repair shop in Delaware and never recovered by its owner. The laptop purportedly contained emails, documents, and personal material suggesting Hunter Biden had engaged in business deals with foreign entities (Ukraine and China). Immediately, by order of President Trump, Hunter Biden was subjected (for the following four years) to investigations by the Department of Justice through the Trump-appointed US attorney in Delaware, David Weiss. Trump hoped that enough damaging evidence would be uncovered on the ex-toxic and ex-alcoholic son of the then Democratic Party's candidate running against him and, that enough negative media coverage would harm Biden's chances of beating him at the polls, in a sort of reiteration of the Clinton's email scandal that had "killed" her candidacy in the last few weeks of the 2016 presidential campaign. As we all know repetitions are not always successful and, despite Trump's efforts, 2020 resulted different than 2016. Notwithstanding the mudslinging and the multiple infringements of Hunter Biden's privacy by giving publicity to information related to the private sphere of his life, and certainly not relevant to the investigation, thus unnecessarily and cruelly exposing him to public pillory, the investigators found not much to charge him with, indeed they found so little that the U.S. attorney in Delaware offered a non-prosecution agreement.

In the meantime, Republicans, who had won the House majority in the 2022 midterm election, decided to retaliate on Democrats for having dared initiate two impeachments on Trump. Thus, the House Judiciary Committee chaired by Jim Jordan and the House Oversight Committee chaired by James Comer were charged to investigate the family, businesses and relations of Biden's son and with their findings, prepare articles of impeachment against President Biden.<sup>23</sup> The strategy behind the congressional inquiries was one of accusing the father through the actions and/or misconduct of the troubled son. Once again Hunter's life was exposed to public humiliation and his character was disgraced by both the social and the legacy media. He was subpoenaed by Congress where he went to testify under oath on his behalf managing to keep his business activities separate from his father political and institutional career that was under congressional investigation for an improbable impeachment.

It is at this point in time, that encouraged by the political harassment that Congress and Trump were exercising on the Bidens, and collapsing under the pressure exercised on him by Trump<sup>24</sup>, the Republican Party and the MAGA loyalists, Weiss backed stepped on the agreement and demanded

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<sup>23</sup> Just recently (December 12, 2024) FBI informant Alexander Smirnov, who had claimed President Biden took millions in bribes from Burisma, pleaded guilty to a felony charge for lying about a scheme of false bribery involving the Bidens and admitted in federal court that he invented the whole narrative and that he started spinning new lies after meeting with Russian intelligence. [www.cbsnews.com/news/fbi-informant-lied-investigators-about-bidens-business-dealings-special-counsel-says/](https://www.cbsnews.com/news/fbi-informant-lied-investigators-about-bidens-business-dealings-special-counsel-says/)

<sup>24</sup> "At this time, Trump and his team went after Weiss full bore. Weiss was publicly attacked and criticized. At one point, Trump posted on social media: "Weiss is a COWARD, a smaller version of Bill Barr, who never had the courage to do what everyone knows should have been done", in K. S. Fang. *The unfair prosecution of Hunter Biden is over- finally*. MSNBC, December 2, 2024. [hwww.msnbc.com/opinion/msnbc-opinion/hunter-biden-pardon-cases-trump-rcna182437](https://www.msnbc.com/opinion/msnbc-opinion/hunter-biden-pardon-cases-trump-rcna182437).

that Hunter instead plead guilty to two tax misdemeanors<sup>25</sup> and that he enter into pretrial diversion<sup>26</sup> for one gun charge. To put an end to the investigations and the harassments, ultimately the lawyers for Hunter Biden and prosecutor Weiss reached an agreement in June 2023. In exchange for an immunity provision, Hunter Biden would plead guilty as Weiss demanded, despite having fully paid in 2020 (more than two years before any criminal charges were filed) his past due taxes including interest and penalties. At the hearing, the federal judge asked for clarification on the immunity, affording the parties a reasonable time to present written clarifications. It is at this late juncture in the now long judicial battle, that Weiss “once again, caved to the political pressure by Trump and his Republican supporters including members of Congress, and failed to honor the original plea agreement... and instead in a surprising about-face, indicted Hunter Biden on three felony gun counts in Delaware and nine tax counts in California.”<sup>27</sup>

An objective review of the facts and circumstances surrounding the two indictments against Hunter Biden has unquestionably proven that were he not Biden’s son he would have not been charged as severely as he was.<sup>28</sup> In fact, records show that in the history of the district in Delaware where he was indicted, no individual has ever been charged under the same facts as Hunter Biden has; furthermore, Hunter Biden was also charged with nine tax counts in California, despite having fully paid his past-due taxes; and, finally, Weiss’ appointment as special counsel is problematic, to say the least. In fact, special counsel is supposed to be appointed from outside of the U.S. government and, instead, Weiss was and remains, the U.S. attorney for the District of Delaware. Thus, he should not have been allowed to serve as special counsel in Hunter Biden’s cases.<sup>29</sup>

In June 2024, Hunter Biden was convicted by a jury in Delaware on the gun counts finding that he had violated laws intended to keep drug addicts from owning guns, but according to legal experts, those charges are rarely brought to trial unless part of some larger crime. Hunter was still awaiting sentence when his father granted him a full pardon. Whereas on 5 September 2024 he pleaded guilty in California on the nine tax counts for failing to pay \$ 1,4 million in taxes between 2014 and 2019 which, as already mentioned, he had paid in full, and for which all legal experts confirm that

<sup>25</sup> Weiss, in fact, insisted to charge Hunter for omitting to pay taxes for two years (2017 and 2018) -a misdemeanor for which the culprit usually pays his debt with sanctions – even though Hunter had already paid his fiscal debt. Weiss also wanted to charge Hunter for lying on a federal government form when buying a gun.

<sup>26</sup> A diversion program, also known as a pretrial diversion program or pretrial intervention program, in the criminal justice system is a form of pretrial sentencing that helps remedy the behavior leading to the arrest and deals mainly with first-time offenders, allowing them to avoid a criminal record and conviction, and includes a rehabilitation program.

<sup>27</sup> K. S. Fang. *The unfair prosecution of Hunter Biden is over- finally*, cit.

<sup>28</sup> In this sense, see also J. Paul, interviewed by Cody Mello-Klein, *Where does Hunter Biden’s Pardon Rank in The History of presidential pardons? Pretty Low, Says a Constitutional Law Expert*, in *Northeastern Global News*, December 2, 2024.

<sup>29</sup> Ibid.



criminal prosecutions for such offenses are very rare. Hunter Biden was to be sentenced in California on 16 December 2024.

## 6. The backdrop to the pardon

The legal ordeals of Hunter Biden and the timeline just outlined above, can be fully appreciated in great part by reviewing the timeline of the ascension and decline of the first Trump Administration. In effect, Trump came down the famous golden escalator in the New York Trump Tower on June 16, 2015, to announce his intention to run for the 2016 Republican Party nomination to the presidency which he won on July 19, 2016.<sup>30</sup> The election was held on November 8, 2016, and while Hillary Clinton won the popular vote by more than 2.8 million votes, Trump won the electoral college with 304 electoral votes to Clinton's 227. The campaign had been marked and smeared by FBI and Congressional investigations and by a strong Russian interference. Under prompting from Democrats, a large spectrum investigation was initiated by all 17 different U.S. intelligence agencies whose heads eventually agreed that Russia had indeed engaged in a systematic effort to influence the election in Trump's favor, including the hacking incidents. These revelations prompted demands for an investigation by the new Congress in 2017 and by December of that same year, the first impeachment resolution was voted by the House but failed.<sup>31</sup> Following the 2018 mid-term elections and the Democrats gaining a majority in the House, multiple investigations into Trump's actions and finances were launched. Similar aims and same timing were at the heart of the FBI investigation on suspicious activity reports (SARs) involving funds from foreign countries that saw an interest of the FBI in the business activities of Hunter Biden in China. More investigations were initiated by various House Congressional Committees and a formal impeachment investigation into Trump's campaign began in July 2019 and voted by the House on December 18 of that same year. In the meantime, on April 25, 2019, Joseph R. Biden announced his candidacy in the 2020 presidential primaries and the FBI showed a sudden interest in the laptop purportedly belonging to Hunter by subpoenaing it. As the House increased its investigations on the president and his dealings with Ukraine that eventually became the focus of the first impeachment, so did the investigations on Hunter increase. In fact, Hunter Biden's business dealings were also, simultaneously, being investigated by Sen. Chuck Grassley, R-Iowa, and Sen. Ron Johnson, R-Wisconsin. Specifically, the senators were investigating Hunter Biden's business dealings with Ukrainian natural gas firm Burisma Holdings.<sup>32</sup> The set-up and timeframes of both these investigations, the one against Hunter Biden, the other against Trump are disconcertedly similar, in fact, just as the Trump–Ukraine scandal had

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<sup>30</sup> Trump won on the first ballot with 69.8% of the delegates, the lowest percentage of delegates won by the Republican nominee since the 1976 Republican National Convention.

<sup>31</sup> The vote margin in the House on that first impeachment resolution was of 58 to 364.

<sup>32</sup> S. Brooke. *Hunter Biden: A look at how the saga spanning over six years unfolded*. Fox News, December 9, 2024. [www.foxnews.com/politics/hunter-biden-look-how-saga-spanning-over-six-years-unfolded](https://www.foxnews.com/politics/hunter-biden-look-how-saga-spanning-over-six-years-unfolded)

revolved around efforts by Trump to coerce Ukraine and other countries into providing damaging information about Joe Biden and about the origins of the “political attacks” against him and investigated by Robert Mueller, so was the alleged Biden’ business in Ukraine investigated.

And then, Biden won the election, but Trump refused to concede. While rejecting the peaceful transfer of powers he incited a violent assault of the Capitol building on January 6, 2021, aimed at interrupting the constitutionally mandated counting of the electoral votes and subsequent proclamation of the winner of the presidential election. And then, Biden was sworn in and made all efforts and took every step possible to bring back normalcy where chaos had reigned, including first and foremost respecting the independence of the Department of Justice and the work of its attorneys and prosecutors. So much so, that he appointed Attorney General, Federalist Society’s member Merrick Garland, a moderate institutionalist, with the express intent of ensuring the independence of the Department of Justice. Garland, in turn, appointed special counsels to investigate both Hunter and Joe Biden, yet Republicans still claim Garland is a leftist radical who has “weaponized” the Department of Justice against Biden’s political opponents.<sup>33</sup> Many have held President Biden responsible for the slow pace of the investigations of the events leading to January 6 and the consequent delay of the charges against Trump. And in fact, unlike the prevailing standard during the Trump Administration, Biden certainly did not pressure the Attorney General nor did he interfere with the Department of Justice’s priorities; Biden did not ask for accelerated trials against his predecessor that would have resulted in a political lynching of Trump; Biden instead, patiently and, I might add in vain, awaited for the slow pace of Justice to make its course strongly believing in the rule of law and in the fairness of the system; Biden did not inhibit the functions of the Department of Justice in the exercise of justice “in the name of and for the people” and did not intervene for the removal of prosecutors and judges nor for the appointing of others on specific cases. Thus, by acting in a manner that was institutionally correct, and by not obstructing and by not intervening in the sphere of the Department of Justice, in the long-run Biden did in fact hurt himself, his son, the nation and perhaps the world. As Biden quietly went about solving and repairing the damage caused by Trump’s dereliction of duties, from his Floridian White House- Mar-a-Lago- Trump was threatening, smearing and pressuring Congress, Judges and even Justices in preparation for what he called his “revenge” on his “enemies”.<sup>34</sup> The contrast between the man who believed that being elected to office meant to serve

<sup>33</sup> L. Needham, *The Wreckage Merrick Garland Left Behind*, in Public Notice, November 9, 2024.

<sup>34</sup> Amongst Trump’s enemies there is Biden-of course- along with Nancy Pelosi, Liz Cheney, Adam Schiff, and all the members of the Jan6 Congressional Committee; General Mark Milley, General Jim Mattis and General John Kelly and the other Generals who- having worked with him- came out publicly against Trump in the 2024 campaign; journalists like Rachael Maddow, Nicole Wallace; legacy media in print and/or on cable such as “60 minutes”, ABC and The Des Moines Register; lawyers like Marc Elias and Michael Cohen ; White House official of his Administration who dared testify against him like Cassidy Hutchinson, Alissa Farah, Sarah Matthews, Sarah Longwell and Stephanie Grisham just to name a few, but there are many more.

the people and the country, and the man who believed that the power of office is for personal aggrandizement and revenges could not be more stunning and revealing.

To further complicate and entangle the political scenario, during the 2024 presidential campaign, Mr. Trump, and his most loyalist MAGA friends and supporters, threatened their own personal revenges, in the event their leader was to successfully win a second term in office. Regrettably, these “enemies lists” are credible and dangerous, and everybody can easily identify Mr. Trump’s enemies as he repeatedly mentioned most of them during the campaign. In fact, Trump was very open about the fact that he ran for president to inflict retribution on his enemies.<sup>35</sup> It was much more difficult to identify those on other’s lists because they were related to personal occurrences such as different opinions terminated with fall-outs, or promotions vs demotions in their workplaces, but also because these other people were not necessarily in the limelight before the election. In the last few weeks, it has become much easier to identify some of the other “enemies” now that some of Trump’s loyalist friends have been selected by the president-elect to receive appointments in the next Cabinet.<sup>36</sup> Some amongst the targeted people are, in fact, also present in the “enemy list” of one or more appointees and this is certainly the case for the Bidens, both father and son, who happen to be on Trump’s, Patel’s (FBI), and Bondi’s (Attorney General) enemy lists.<sup>37</sup> The editor in chief of an independent Network, Ron Filipkowski, monitored hundreds of Patel’s media appearances in recent years and reports that he “ranted and raved for the past four years on every right-wing podcast in America that he was going to get Hunter Biden for things he has never been prosecuted for.”<sup>38</sup> And Patel’s book even included more than 60 potential targets.<sup>39</sup>

Furthermore, Trump’s new Attorney General nominee, Pam Bondi, is a well-known loyal supporter of Trump since 2016 when she was amongst those chanting “lock her up” against Hillary Clinton at the Republican National Convention but also served as the Trump impeachment team’s

<sup>35</sup> According to National Public Radio, he threatened to prosecute his political enemies at least one hundred times on the campaign trail.

<sup>36</sup> Some of the nominees benefitted of pardons granted by Trump in the last weeks of his first term and a few served also time in prison.

<sup>37</sup> Ibid. Mr. Trump has mentioned on several occasions that he wishes to have the five stars Generals who worked for him during his first Administration, to be court martialed and just recently during an interview for Time Magazine’s cover story he repeated his conviction that Liz Cheney should be publicly executed to set an example for all those who were thinking of betraying him and his leadership. He has also claimed that all the other members of the Jan6’s Congressional Committee should be jailed for treason.

<sup>38</sup> Ron Filipkowski, *The Big reason Why Hunter’s Pardon is Justified: Kash Patel*, in MeidasTouch Network, December 2, 2024.

<sup>39</sup> Kash Patel, who was a former top official in the White House, the Department of Defense, the Intelligence Community, and the Department of Justice has written two books since 2020 and the end of the first Trump Administration. In the first book (*The Plot against the King*, 2000. Brave Books, 2022) he claims the Democratic Party (and Biden as its leader) cheated in the elections of 2020 to remove Mr. Trump from office. In Patel’s book *Government Gangsters, The Deep State, the Truth and the Battle for our Democracy* (Post Hill Press, 2024) appendix B includes a list of 60 people he considers enemies, amongst which Joe Biden, Bill Barr, Hillary Clinton, Merrick Garland, Kamala Harris, Robert Mueller, and Andrew Weissman.

“Hunter Biden specialist” during his early 2020 impeachment trial.<sup>40</sup> It’s easy to see why Biden was suddenly concerned about his son being persecuted by the new administration and why Hunter’s pardon covers any potential federal crimes he may have committed in the past decade: It prevents a never-ending fishing expedition. In fact, “one way to read the broad language of the Hunter Biden pardon is that Biden is seeking to shield his son from the abusive investigations he suspects will be coming.”<sup>41</sup>

To many the idea of lists of enemies being prepared in the United States of America filled with American citizens, as well as the idea that those included on the lists could realistically be persecuted by government officials despite the rule of law, sounds like anathema, and frankly understandably so, since the most recent occurrence of this sort goes back to McCarthyism and the “blacklisted alleged communist supporters” In the period between 1950 and 1954. And yet, just in the few weeks since 118<sup>th</sup> Congress was back in Session after the November elections, Republican Representatives were able to “produce” the results of a (new) investigation into the events of January 6 concluding that Liz Cheney -not Trump- broke the law. It is, unfortunately, very realistic to imagine that, if confirmed at the head of the FBI, Kash Patel will most certainly use the findings of the above-mentioned investigation to arrest Cheney who is on both his and Trump’s enemies’ list. And Cheney would be a perfect “first head to drop” in a promised season of political prosecutions.

One must sadly recognize that the United States of America (institutional and political) is no longer fully operating as it did for the previous 248 years. Trump is the watershed between the American way of governing and the new populist and personalized way of running “an enterprise”. He is the breaking point between serving and taking personal advantage. He is the dividing line between “of the people and for the people” and “for me, for my interest and for myself”. Thus, in analysing an event, or by expressing an opinion on an act undertaken by the president, or by any elected official as well as by an appointed officer, the observer has to remind him/herself that it is fundamental to divest oneself of the “old” criteria and parameters and try, as difficult as it could be, to garb the post-Trump lenses in evaluating actions and reactions.

## 7. Biden pardons Biden

When on 1 December 2024, the White House announced that President Biden had pardoned his son Hunter, both the legacy media and elected officials on both sides of the aisle, questioned immediately the president’s manner of exercising his clemency power, some accusing him of abuse of power while others of having undertaken a norm breaking behaviour.

However, in the opinion of most experts interviewed on the matter, the pardon granted to Hunter Biden was not abusive, corrupt or in violation of the rule of law. To the contrary, in the opinion of one expert, it is Mr.

<sup>40</sup> A. Rugar, *Pam Bondi’s been a punchline during the impeachment trial. But her role speaks to something important. The shamelessness is the point*, in *Vox*- an independent Network- January 30, 2020.

<sup>41</sup> Q. Jurecic, *The Pardon is About More Than Hunter Biden*, cit.

Trump -not President Biden - who initiated “the norm-violating behavior” by pledging to use the Justice Department to prosecute his enemies.<sup>42</sup> The unquestionable nature of the pardon as a plenary power vested solely upon the president and, the various forms the acts of clemency can assume, have already been considered *supra*<sup>43</sup> along with the specification that clemency can be granted at any time after a crime is committed, and it can be addressed to a single or to multiple recipients. Furthermore, the recipient may or may not petition the clemency and the recipient may or may not accept the act of clemency. Clemency powers usually invite abuse, but not in this case according to professor K. Wehle who excluded the possibility that it could be seen as a corrupt pardon rather, this pardon “it’s about taking care of a family member knowing what Trump will do otherwise.”<sup>44</sup> This interpretation however, according to Quinta Jurecic, does not fully justify President Biden’s act of clemency towards his son, in fact, “it was also an expression of patrimonial favor that is generally frowned upon in a nominally egalitarian society. In this sense, it fits well with the nature of the pardon as an emotive, even atavistic action outside more regulated legal structures.”<sup>45</sup> Still, this pardon falls within the three known categories of suitability for pardons: 1. When the “understanding of criminality” has changed; 2. If there is a “desire for mercy; and 3. When the person being pardoned was subjected to what you would call selective prosecution. Professor Jeremy Paul believes this is the pardon’s category Biden is alluding to in the motivation.<sup>46</sup>

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For his son, President Biden chose then the “full and unconditional” pardon which releases him from punishment and preserves his civil liberties including his right to vote. The pardon is intended to cover an unusually long period of time of 11 years, raising some criticism for a sweeping pardon. In fact, the pardon is intended “For those offenses against the United States which he has committed or may have committed or taken part in during the period from January 1, 2014, through December 1, 2024, including but not limited to all offenses charged or prosecuted (including any that have resulted in convictions) by Special Counsel David C. Weiss ...”. The wording also indicates the intention of President Biden to grant a “blanket” pardon by avoiding specifying the crime, or crimes eventually committed by Hunter or to Hunter eventually attributable by the next administration. The formulation adopted by the White House is very similar to the one chosen by President Ford to pardon Richard Nixon although that pardon was never challenged in court and there could only be speculations on if and how the Supreme Court would have regarded it. Today most experts see no problem

<sup>42</sup> Kimberly Wehle, a law professor at the University of Baltimore, was interviewed by email correspondence and quoted in K. P. Vogel, *Broad Pardon for Hunter Biden Troubles Experts*, in *The New York Times*, December 3, 2024.

<sup>43</sup> Paragraph 2, p.2

<sup>44</sup> Ibid.

<sup>45</sup> Q. Jurecic, *The Pardon is About More Than Hunter Biden*, cit.

<sup>46</sup> Jeremy Paul, a Northeastern professor of law, “Meaning, the crime this person committed was committed by lots of people, but this was the only person who got prosecuted, for political reasons.” Interviewed by C. Mello-Klein, *Where does Hunter Biden’s pardon rank in the history of presidential pardons? Pretty low, says a constitutional law expert*, cit.



in the lack of specificity with the notable exception of Aaron J. Rappaport, a law professor at University of California, San Francisco, who is doubtful of a favorable ruling by the today's Supreme Court if this pardon were to be challenged.<sup>47</sup> Finally, this pardon is construed to hopefully pre-empt the incoming Justice Department from acting on Mr. Trump's pledge to prosecute the Bidens and could be followed by more of this nature in an attempt to pre-empt the prosecution of the others on the enemies' lists.<sup>48</sup> It is appropriate to recognize that on the probability of pre-emptive pardons for a large group of possible "enemies", scholars and academia are known to have expressed various levels of concern. In fact, there are those who claim that, were President Biden to proceed "with issuing preemptive pardons (...)" with the explicit goal of hindering his predecessor, it would constitute an aggressive and unprecedented use of the pardon power on explicitly political and partisan grounds",<sup>49</sup> in agreement with this objection, others have raised doubts on this form of clemency that, by such use, could evolve "into a catch-all provision for shielding political cronies or critics. This is far from what the framers of the constitution had in mind for presidential pardons".<sup>50</sup> While for others such a wide sweeping use of the pardon power could be accepted because of the historical precedents and "because" of the incoming Administration and its proclaimed and reaffirmed determination to use the Department of Justice for personal revenges.<sup>51</sup> There is overwhelming agreement moreover, that were Biden to decide on granting this form of pre-emptive clemency, this would not be the springing source for Trump to pardon the over 1.000 J6ers who, having pleaded guilty, are now serving their sentences or, any other personal friend, or friend of a friend. Lastly but certainly not least relevant, if such a pardon were to be challenged in court, the Supreme Court would find itself ironically, bound by its own determination, in fact, President Biden would be protected by the effects of the so called "presidential immunity opinion".<sup>52</sup> All told, as much as a pre-emptive blanket pardon would undoubtedly hold an aura of negativity to many, it would be accepted by most.

<sup>47</sup> Aaron J. Rappaport, interviewed by email correspondence and quoted in K. P. Vogel, *Broad Pardon for Hunter Biden Troubles Experts*, in *The New York Times*, December 3, 2024: "It is hard to know how the Supreme Court would rule on the issue of a blanket pardon," Mr. Rappaport wrote in an email. "However, I do think that there are serious legal questions about whether such a pardon would be deemed valid if it is extended to non-specified crimes."

<sup>48</sup> If not for all those who can expect Trump's revenge as of January 21, 2025, maybe - yet less probable - for a selected few like Dr Anthony Fauci, retired general Mark Milley or former Wyoming Rep. Liz Cheney.

<sup>49</sup> J. Cash, *Is Hunter Biden's pardon Constitutional?* cit.

<sup>50</sup> Jeffrey Crouch, assistant professor of American politics at American University and author of the book *The Presidential Pardon Power*, Kansas, 2009, in an interview by B. Hutchinson *Experts say Biden has a constitutional right to issue preemptive pardons* December 9, 2024, at [abcnews.go.com/Politics/biden-considers-preemptive-pardons-experts-constitutional/story?id=116505853](https://abcnews.go.com/Politics/biden-considers-preemptive-pardons-experts-constitutional/story?id=116505853)

<sup>51</sup> In this sense, Norman Ornstein, senior fellow emeritus at the American Enterprise Institute, a public policy think tank in Washington, told ABC News in B. Hutchinson, *Experts say Biden has a constitutional right to issue preemptive pardons*, *ibid.* and Q. Jurecic, *The Pardon is About More Than Hunter Biden*, cit.

<sup>52</sup> *Trump v. United States* 603 U.S. 593 (2024).

The pardon of Hunter Biden raises many easy and clear-cut questions that for the most part, can be answered with equally easy and short replies.

Could Biden have granted the full pardon? The answer is in the positive because of the plenary power vested upon the president by the Constitution.

Could Biden have granted a blanket pardon? The answer is in the positive since there are no limitations on the exercise of the pardon and presidents have full discretionary freedom in determining the terms of the pardon.

Was the blanket pardon excessive, exceptional or rare? As discussed *supra*, it is neither exceptional and excessive, nor it is rare.<sup>53</sup>

Could Biden have pardoned his son? Legally, the answer is in the positive although this is the first time that such a close relative has been granted clemency.<sup>54</sup> And being the first time for a son to be pardoned, there is no precedent, and therefore it has not been tested in court. If the legal answer can easily fall in the positive column, it must be recognized that the answer may be less certain in general when taking into consideration the moral implications and even though the abundance of mitigating factors in favor of President Biden, allows leaning towards a positive response the optics remain negative.<sup>55</sup>

To many Americans the most scrutinized aspect about this pardon is that the president lied to the country when he had declared on multiple occasions that he would honor the verdict of the courts and juries regarding Hunter's pending trials. Furthermore, many felt he had lied again when he had declared multiple times, even while campaigning and even most recently, a short time after the election of 5 November, that he would not pardon his son. Once again in American history, occasionally lying to the people proves to be a serious crime as the Nixon, Clinton, George H. W. Bush and George W. Bush's lying and their political consequences have demonstrated. The only exception, the one confirming the norm, is Mr. Trump who, in his first term was caught lying 30.573 times and was always forgiven by the people.<sup>56</sup>

To many foreign observers the most scrutinized aspect of this pardon is the negative optics of an american president shielding his offspring from Justice in a typically authoritarian regime fashion. In the eyes of these beholders, the president who, for the last two years had been repeating that he himself and then, later in the campaign, that Kamala Harris, would be the only guardrail to defend democracy from an authoritarian leader who would

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<sup>53</sup> Paragraph 2, p. 2

<sup>54</sup> Ibid. In the same article, Aziz Z. Huq, a professor at the University of Chicago Law School, wrote: "It is extraordinarily hazardous to use the pardon power in a case where the person is an intimate of the president". And in effect, the only other two cases of pardons granted to close relations are Clinton's half-brother and Trump's son-in-law's father.

<sup>55</sup> Ibid. In the same article, Frank O. Bowman III, a professor at the University of Missouri School of Law, said "if we had anyone other than Trump coming in, I would think this is inexcusable."

<sup>56</sup> G. Kessler, S. Rizzo and M. Kelly, *Trump's false and misleading claims total 30.573 in 4 years*, in *The Washington Post*, January 24, 2021.

establish an authoritarian regime and abolish the rule of law, “that” president had granted a full and unconditional pardon to his own son.

To this researcher, one hypothetical sign of weakness by an otherwise consequential and impactful president who, amongst other great enterprises and accomplishments has granted the most clemency acts in American History, and that by December 12, 2024, had already granted 64 pardons to individuals and to several communities of individuals, for a total of 8064 various forms of clemency recipients,<sup>57</sup> excluding the 37 individuals on death row who on December 23, 2024 were commuted to life without the possibility of parole,<sup>58</sup> is not a deadly sin for which accuse him of erosion of the rule of law<sup>59</sup> or detriment to the country.

## 8. Conclusions

Although the information above has been conveyed in a sketchy manner, the purpose of it was to provide enough related information to allow the reader to appreciate the state of facts related to Hunter Biden’s troubles with justice, and the state of mind of President Biden when he decided to pardon his son. Throughout these 248 years not all presidents, such as William Henry Harrison and James A. Garfield, have exercised this power and, most of those acts of clemency were rarely questioned or scrutinized as Biden’s pardon of his son was. Only a few presidents- Clinton and Trump- before Biden, have pardoned relatives and certainly Biden is the first to pardon an offspring. A few presidents have pardoned questionable recipients under far shadier circumstances and for far more serious crimes as the Trump’s pardons have demonstrated. All presidents and all their acts of clemency, whether subjected to scrutiny or not, all served and all occurred in times, I would define, of “institutional correctness” meaning by it, that they all occurred before the first Trump Administration and before the rise of extreme political polarization. While Biden is being criticized for pardoning his son, the fact of the matter is, that he is gone above and beyond in defense of norms, and probably to the detriment of the country.

Those who object to Hunter Biden’s pardon by claiming that the next president could use Biden’s pardon of his son as a precedent to erode the rule of law, are either not arguing in good faith or have not fully understood that Trump’s nomination of appointees has already eroded the rule of law. In full

<sup>57</sup> [www.justice.gov/pardon/pardons-granted-president-joseph-biden-2021-present](https://www.justice.gov/pardon/pardons-granted-president-joseph-biden-2021-present)

<sup>58</sup> “President Biden believes that America must stop the use of death penalty at the federal level, except in cases of terrorism and hate-motivated mass murder- which is why today’s actions apply to all but those 3 cases. When President Biden came into office, his Administration imposed a moratorium on federal executions, and his actions today will prevent the next Administration from carrying out the execution sentences that would not be handed down under current policy and practice.” *The White House: Fact Sheet*, December 23, 2024. [www.whitehouse.gov/briefing-room/statements-releases/2024/12/23/fact-sheet-president-biden-commutes-the-sentences-of-37-individuals-on-death-row/](https://www.whitehouse.gov/briefing-room/statements-releases/2024/12/23/fact-sheet-president-biden-commutes-the-sentences-of-37-individuals-on-death-row/)

<sup>59</sup> A. Rupar, *Biden pardoned his son for good reasons*, in Public Notice, December 10, 2024. Rupar claims that the norms (and thus the respect of the rule of law) cannot save us because the rule of law has been broken by Trump, and particularly by the choices he made in nominating fellow felons to the Cabinet.

accordance with Aaron Rugar, I too say, Biden's clemency towards his son will not erode the rule of law, because the rule of law has already been eroded in advance of the inauguration and worse is undoubtedly in store.

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