

SWORD DANCE: A COMPARATIVE LOOK AT THE PARDON POWER
AND ITS POTENTIAL FOR ABUSE IN THE KINGDOM OF SAUDI ARABIA
AND THE UNITED STATES OF AMERICA

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ABSTRACT

This Article reviews the text and jurisprudence of the Presidential Pardon Power of the United States Constitution, as well as the pardoning power in Saudi Arabia which includes, when pardons may be issued, and how pardons are granted. The remainder of the Article analyzes the differences and similarities between the pardoning power of the United States and Saudi Arabia and the place where a potential for abuse lies. This Article also discusses international laws and whether they will apply to the pardoning powers. Lastly, the Article explores alternative methods for approaching a better legal standard towards pardoning powers.

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I. INTRODUCTION

Over one hundred people were expected to be pardoned by Donald J. Trump before he left office.¹ Historically President Trump’s use of clemency has been controversial throughout his Presidency.² The actual final hours of President Trump’s Presidency gave way to 143 pardons and commuted sentences to his friends and allies as power was transferred to his Democratic successor Joseph R. Biden.³ President Trump decided to pardon Steve Bannon, a chief strategist, who was investigated for defrauding “hundreds of thousands of people” out of funds for the border wall for Mexico.⁴ Infamously, the list also included the rapper Dwayne Michael Carter Jr. (“Lil Wayne”), who was pardoned after being charged with “possession of a firearm and ammunition by a felon.”⁵ It is not uncommon for a President to issue Presidential pardons on their way out of office; however, President Trump’s

¹ Carol D. Leonnig et al., *Trump Prepares to Offer Clemency to more than 100 People in his Final Hours in Office*, WASH. POST (Jan. 18, 2021, 8:10 PM), https://www.washingtonpost.com/politics/trump-pardons-final-days/2021/01/17/7a57969c-5905-11eb-a976-bad6431e03e2_story.html.

² Seren Morris, *Donald Trump Pardon List—Every Person Granted Clemency by the President*, NEWSWEEK (Jan. 20, 2021, 12:23 PM), <https://www.newsweek.com/donald-trump-pardon-list-every-person-granted-clemency-president-1562668>.

³ Gino Spocchia & Joe Sommerland, *Trump’s Pardons: The List, from Steve Bannon to Lil Wayne*, INDEPENDENT (Jan. 21, 2021, 11:19), <https://www.independent.co.uk/news/world/americas/us-election-2020/trump-pardon-list-who-biden-russia-b1789966.html>.

⁴ Ryan Lucas & Ayesha Rascoe, *Trump Pardons Steve Bannon, Lil Wayne in Final Clemency Flurry*, NAT’L PUB. RADIO (Jan. 20, 2021, 2:30 AM), <https://www.npr.org/2021/01/20/934139723/trump-pardons-steve-bannon-lil-wayne-in-final-clemency-flurry>.

⁵ *Id.*; see also Ryan Parker & Abid Rahman, *Donald Trump Pardons Lil Wayne, Commutes Sentence of Kodak Black*, BILLBOARD (Jan. 1, 2021), <https://www.billboard.com/articles/news/politics/9513592/lil-wayne-kodak-black-pardoned-donald-trump> (mentioning Lil Wayne’s endorsement of President Trump in October 2020, and his commutation of sentence).

granting of pardons to friends, allies, and rappers was a surprise to the general public.

Chief Justice John Marshall of the United States (“U.S.”) Supreme Court opined that a Presidential pardon is an “act of grace, proceeding from the power entrusted with the exception of laws, which, exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed.”⁶ Since its existence, the Presidential pardon power was to be used wisely and in the best interest of the public.⁷ On the other side of the world, the Kingdom of Saudi Arabia (“Saudi Arabia”) is “a wealthy Arab state located in the Arabian Peninsula,” with a King and religious teachings that provide the foundations of political, social, and cultural support for the Kingdom.⁸ Saudi Arabia, which was formally declared by King Abd al-Aziz of the central Arabian Al Saud clan in 1932, created a system of personal patronage, distribution, and favoritism controlled by the Al Saud family.⁹ Although it may seem like the U.S. and Saudi Arabia are different, both countries do share the power of arbitrarily releasing individuals charged with crimes.¹⁰ This Article examines the potential for pardoning abuse in each country in order to identify commonalities between the two.

Part I of this Article briefly summarizes the history and operation of the pardoning power in the U.S. Part II sets out the background of Saudi Arabia law and the pardon power in Saudi Arabia. Part III asserts that there are distinct similarities and differences between the pardon power in the U.S. and Saudi Arabia. Part IV discusses the applicability of international law on the subject. Further, this part alludes to what should be done about the matter. Part V asserts that there may be a better way to manage power, and perhaps a better approach to creating new legal standards.

II. THE UNITED STATES OF AMERICA: THE HISTORY AND OPERATION OF THE PARDONING POWER

Article II of the U.S. Constitution (“Constitution”) vests the President with the “power to grant reprieves and pardons for offences [sic] against the

⁶ *United States v. Wilson*, 32 U.S. (7 Pet.) 150, 160–61 (1833).

⁷ See Margaret Colgate Love, *Of Pardons, Politics and Collar Buttons: Reflections on the President’s Duty to be Merciful*, 27 *FORDHAM URB. L. J.* 1482, 1487 (2000) (suggesting that it is important to reassure the public that the pardon power is being used wisely and for the general welfare of the public).

⁸ BERTELSMANN STIFTUNG, *BTI 2020 COUNTRY REPORT: SAUDI ARABIA* (2020); see also CIA, *Saudi Arabia*, *THE WORLD FACTBOOK* (Mar. 30, 2021), <https://www.cia.gov/the-world-factbook/countries/saudi-arabia/>.

⁹ See ALEXEI VASSILIEV, *THE HISTORY OF SAUDI ARABIA* 255–74 (Jana Gough ed., 2000 ed. 2013).

¹⁰ See e.g., U.S. CONST. art. II, § 2, cl. 1.

United States, except in cases of impeachment.”¹¹ On September 17, 1787, Alexander Hamilton, in the Federalist Papers, concluded that the President should have the control to “temper” the results of “harsh” or unfair laws and be able “to defuse a politically inflammatory situation.”¹² However, in 1788, George Mason stood on the floor of the Virginia Ratifying Convention concerned that the President might not always be someone of sound mind and intelligence.¹³ George Mason spoke to his delegates, stating there might even be a President who would try to change the form of government.¹⁴ George Mason famously said, “the President ought not to have the power of pardoning, because he may frequently pardon crimes which were advised by himself may happen, at some future day, that he will establish a monarchy, and destroy the republic.”¹⁵ It was George Washington who issued the first pardon in 1794, so that farmers could overcome the challenges of the federal government’s taxation of whiskey.¹⁶ This shows that the early years of the pardon were used to benefit ordinary people from harsh or unfair laws.

The pardon power is part of a larger idea of clemency, which is the umbrella that encompasses pardons, amnesty, commutations, remissions of fines, and reprieves.¹⁷ The pardon power and its use has expanded significantly in the U.S. over the years and is becoming an ever-present picture in the eyes of the public. “Since the pardoning power derives from the Constitution alone, it cannot be modified, abridged, or diminished by any statute.”¹⁸ Any person who is interested in having an executive clemency granted can do so by way of “pardon, reprieve, commutation of sentence, or remission of fine” but must file a “formal petition.”¹⁹ Historically, the executive pardoning power under the Constitution includes the ability to commute sentences on conditions that do not need to be specifically authorized by any statute.²⁰ However, the general public is seeing a greater use of commute sentences that do not meet the standards of the Department

¹¹ See *id.* (granting power to the president to grant pardons).

¹² See Margaret Colgate Love, *The Twilight of the Pardon Power*, 100 J. CRIM. L. & CRIMINOLOGY 1169, 1172 (2010).

¹³ See JONATHAN ELLIOT, THE DEBATES OF THE STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION, AS RECOMMENDED BY THE GENERAL CONVENTION AT PHILADELPHIA IN 1787, at 496–97 (1836) (explaining that these debates were called the “Elliot’s Debates” and were published first in five volumes in 1830, but then a second edition was published six years later, with further additions).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Love, *supra* note 12, at 1173.

¹⁷ See Daniel T. Kobil, *The Quality of Mercy Strained: Wresting the Pardoning Power from the King*, 69 TEX. L. REV. 569, 575–78 (1991) (defining the term “clemency” as a legal term that encompasses various forms of state-sanctioned mercy and forgiveness).

¹⁸ *Schick v. Reed*, 419 U.S. 256, 263 (1974).

¹⁹ 28 C.F.R. § 1.1 (2021).

²⁰ *Schick*, 419 U.S. at 256.

of Justice (“DOJ”). If other forms of judicial or administrative relief are available, a petition for commutation of sentence should not be filed, except in exceptional circumstances.²¹ The Constitution details that “[the] President has virtually unlimited discretion to grant clemency by way of pardon, reprieve, remission of fine, or commutation of sentence.”²² The President has the power to exercise this authority for any reason; however, the commutation is supposed to be a “last opportunity to achieve a more just result in extraordinary cases,” meaning that the justice system has failed.²³ Due to the Constitution, modern presidents believe they can use this power to pardon “for any reason” they choose.²⁴

Although a President may exercise the pardon power for any reason, the Office of the Pardon Attorney within the DOJ is charged with accepting and reviewing applications for clemency.²⁵ Once an application for clemency is received, the Pardon Attorney conducts an investigation through appropriate government agencies, such as the Federal Bureau of Investigation (“FBI”).²⁶ These materials are then presented to the Attorney General for review.²⁷ The Attorney General then reviews the application with all relevant information to determine whether or not the petition deserves approval by the President.²⁸ At the end of this process, the Attorney General provides a written recommendation to the President.²⁹ The above process is merely used as guidance, and its requirements do not affect the President’s plenary authority to grant pardons and reprieves under the Constitution.³⁰

The DOJ’s regulations on considering pardon petitions do not appear to impose rigid restrictions on the Pardon Attorney; however, the way the DOJ decides whether or not to recommend granting clemency consists of five factors: (1) post-conviction conduct, character, and reputation; (2) seriousness and relative recentness of the offense; (3) acceptance of responsibility, remorse and atonement; (4) need for relief; and (5) official recommendations

²¹ 28 C.F.R. § 1.3.

²² John R. Steer & Paula K. Biderman, *Impact of the Federal Sentencing Guidelines on the President’s Power to Commute Sentences*, 13 FED. SENT’G REP. 154, 154 (2001), <https://online.ucpress.edu/fsr/article-abstract/13/3-4/154/42559/Impact-of-the-Federal-Sentencing-Guidelines-on-the?redirectedFrom=fulltext>.

²³ *Id.*

²⁴ *E.g.*, *President Clinton’s Eleventh Hour Pardons Before the H. Comm. on the Judiciary*, 107th Cong. 107–94 (2001).

²⁵ *See* Lauren Schorr, *Breaking into the Pardon Power: Congress and the Office of the Pardon Attorney*, 46 AM. CRIM. L. REV. 1535, 1542–46 (2009).

²⁶ 28 C.F.R. § 1.6(a).

²⁷ *See id.*

²⁸ *Id.* § 1.6(c).

²⁹ *Id.* (“The Attorney General shall report in writing his or her recommendation to the President, stating whether in his or her judgment if the President should grant or deny the petition.”).

³⁰ *Id.* § 1.11.

and reports.³¹ However, in April 2014, a new clemency initiative was announced by the DOJ where six new criteria would be added to aid in considering whether to grant clemency.³² Under the new initiative, the DOJ focuses and prioritizes their recommendations for clemency for federal inmates who meet the following:

(1) is currently serving a federal sentence in prison and, by operation of law, likely would have received a substantially lower sentence if convicted of the same offense(s) today; (2) is a nonviolent, low-level offender without significant ties to large-scale criminal organizations, gangs, or cartels; (3) has served at least 10 years of his or her prison sentence; (4) does not have a significant criminal history; (5) has demonstrated good conduct in prison; and (6) has no history of violence prior to or during his or her current term of imprisonment.³³

It is clear that a pardon should not be issued unless it is absolutely necessary.

When considering the full power of the Presidential pardon, the U.S. Supreme Court (“the Court”) declared “the pardon does not merely release the offender from the punishment prescribed for the offense, but...it obliterates the legal contemplation of the offense itself.”³⁴ In 1915, the Court decided that the full pardon, had the petitioner accepted, would have “absolved him from the consequences of every such criminal act.”³⁵ This demonstrates the power of the Presidential pardon power, because the individual would have been absolved from his criminal act. However, it is worth noting the Court’s famous opinion in 1993, where it was stated that the granting of a pardon is in no sense an overturning of a judgment of a conviction by some other tribunal; “it is an executive action that mitigates or sets aside punishment for a crime.”³⁶ From this opinion it can be seen that the Court shifted away from the old view of the pardon power in *Burdick*, and is now suggesting that a pardon does not wipe away all guilt from its recipient.³⁷

There may be some debate as to whether a full pardon eliminates an individual’s guilt for having committed the pardoned crime. However, courts generally agree that a full presidential pardon restores both state and federal

³¹ U.S. Dep’t of Just., U.S. Att’ys’ Manual §1-2.112 (1997).

³² Off. of Pub. Affs., *Announcing New Clemency Initiative, Deputy Attorney General James M. Cole Details Broad New Criteria for Applicants*, U.S. DEP’T OF JUST., <https://www.justice.gov/opa/pr/announcing-new-clemency-initiative-deputy-attorney-general-james-m-cole-details-broad-new> (Apr. 28, 2016).

³³ *Id.*

³⁴ *Carlisle v. United States*, 83 U.S. 147, 151 (1872).

³⁵ *Burdick v. United States*, 236 U.S. 79, 86 (1915).

³⁶ *Nixon v. United States*, 506 U.S. 224, 232 (1993).

³⁷ See Ashley M. Steiner, *Remission of Guilt or Removal of Punishment? The Effects of a Presidential Pardon*, 46 EMORY L. J. 959, 972 (1997).

civil rights to remove consequences that legally attach as a result of a federal conviction.³⁸ For example, a state and federal firearm disability does not apply to a person who has received a full and unconditional pardon.³⁹ A convicted felon, for the purposes of the statute, who has been pardoned, has had their civil rights restored, “unless the pardon, expungement, or restoration of civil rights expressly provides that one may not possess or receive firearms.”⁴⁰ The Presidential pardon is, in a sense, the best and the only method for restoring rights under federal law.⁴¹ That being said, “a pardon will not preclude a court or other entity from considering the pardoned offense for certain eligibility purposes.”⁴² For example, federal law authorizes the Attorney General to consider past drug-related convictions as a relevant factor in deciding whether or not to issue a license to a manufacturer of controlled substances.⁴³ The courts have taken the position that even if the recipient of a pardon were to regain eligibility for a position or program from a pardon, it is possible that one may still be disqualified if their character is a necessary qualification for eligibility purposes.⁴⁴

It may be difficult for Congress to change how the pardon power works in the current judicial interpretation because the power stems directly from the Constitution.⁴⁵ This power is considered absolute because a Presidential pardon can erase both the underlying guilt and the existence of the federal offense.⁴⁶ For example, “[the] President’s power, if any, to issue an order of expunction of a criminal record must stem from an act of Congress or from the Constitution itself.”⁴⁷ In 2015, President Obama announced that he directed the Office of Personnel Management (“OPM”) to “take action where it can by modifying its rules to delay inquiries into criminal history until later in the hiring process.”⁴⁸

³⁸ See *Bjerkan v. United States*, 529 F.2d 125, 129 (7th Cir. 1975).

³⁹ See *Harbert v. Deukmejian*, 173 Cal. Rptr. 89 (Ct. App. 1981) (holding that if an individual is prevented under state and federal law from possessing a firearm due to a felony conviction, a full and unconditional pardon for the federal conviction would remove the firearm disability).

⁴⁰ 18 U.S.C. § 921(a)(20).

⁴¹ RICHARD M. THOMPSON, CONG. RSCH. SERV., R44571, *THE PRESIDENT’S PARDON POWER AND LEGAL EFFECTS ON COLLATERAL CONSEQUENCES* 14 (2016).

⁴² *Id.* at 11.

⁴³ 21 U.S.C. § 823(a)(4).

⁴⁴ See *United States v. McMichael*, 358 F. Supp. 2d 644, 648 (E.D. Mich. 2005).

⁴⁵ THOMPSON, *supra* note 41, at 16.

⁴⁶ *United States v. Noonan*, 906 F.3d 925, 956 (3d Cir. 1990) (illustrating how the President having the ability through the pardon power vested under Article II, § 2 to tamper with judicial records is a concept jurisprudentially hard to swallow).

⁴⁷ *Id.* at 955.

⁴⁸ Off. of the Press Sec’y, *FACT SHEET: President Obama Announces New Actions to Promote Rehabilitation and Reintegration for the Formerly-Incarcerated*, THE WHITE HOUSE

As the pardon power continues to expand, it is unclear what the future holds. The Constitution has made it clear that the President has the plenary power to use and exercise their pardon authority for any reason.⁴⁹

III. THE KINGDOM OF SAUDI ARABIA: THE HISTORY OF SAUDI LAW AND THE PARDONING POWER

“Politically, the State is an absolute monarchy ruled by the sons of King Abd al-Aziz, who died in 1953.”⁵⁰ The Saudi national system has been expanding over the past few decades, and the Saudi State is now, more than ever, playing an “increasingly strong and direct role in people’s lives.”⁵¹ The Saudi monarchy enforces the tightest restrictions on most, if not all, political and civil liberties, while maintaining that there are “no officials at the national level being elected.”⁵² It can be seen that the Saudi regime currently relies mostly on strict surveillance, the heavy criminalization of dissent, appeals in large part to sectarianism and ethnicity, and “public spending supported by oil revenues to maintain power.”⁵³

The ability to reform the Saudi government and start anew is in large part due to the discovery of oil in the 1930s.⁵⁴ This new discovery of oil gave the country the ability to rapidly change, create legislation, and transform Saudi Arabia into a “modern nation-state.”⁵⁵ From the 1930s until the present, many specialized tribunals or “committees” were created to adjudicate matters in certain areas, the most notable of which was the creation of the Board of Grievances in 1955.⁵⁶ The “Board heard and investigated complaints filed by Saudi citizens against government officials and agencies, and directly reported to the King, who took the final decision on the complaint.”⁵⁷ Following King Abdulaziz’s death in 1953, his five sons succeeded him in rule: “Saud (1953-1964), Faisal (1964-1975), Khalid (1975-1982), Fahd (1982-2005), and Abdullah (2005-present).”⁵⁸ In 1992, the King introduced

(Nov. 2, 2015), <https://obamawhitehouse.archives.gov/the-press-office/2015/11/02/fact-sheet-president-obama-announces-new-actions-promote-rehabilitation>.

⁴⁹ U.S. CONST. art. II, § 2.

⁵⁰ BERTELSMANN STIFTUNG, *supra* note 8, at 4.

⁵¹ *Id.*

⁵² *Saudi Arabia*, FREEDOM HOUSE, <https://freedomhouse.org/country/saudi-arabia/freedom-world/2019> (last visited Oct. 15, 2021).

⁵³ *Id.*

⁵⁴ Esther Van Eijk, *Sharia and National Law in Saudi Arabia*, in SHARIA INCORPORATED: A COMPARATIVE OVERVIEW OF THE LEGAL SYSTEMS OF TWELVE MUSLIM COUNTRIES IN PAST AND PRESENT 139, 140 (Jan Michiel Otto ed., 2010).

⁵⁵ *Id.* at 146.

⁵⁶ *Id.* at 147.

⁵⁷ *Id.*

⁵⁸ *Id.*

major reforms and changes in the State's organic institutions, thus creating a new era in Saudi law and politics.⁵⁹

The Basic Ordinance of Saudi Arabia ("Ordinance") is a document that is a subordinate to the Qur'an and the Sunna, sources which have the highest authority for all Saudi legislation.⁶⁰ According to the Ordinance, succession to the throne shall be limited to male descendants of the founding King, but the King shall have the final say in choosing his heir.⁶¹ The King is not subject to any separation of powers—unlike the legislative, executive, and judicial powers—due to the King being "their" final authority, creating no need for a constitutional court.⁶² The King of Saudi Arabia is also the Prime Minister, making the King the head of the Executive Branch of government.⁶³ The King appoints and relieves ministers and other high-ranking civil servants by royal decree.⁶⁴ The King shall appoint and dismiss judges upon recommendation of the Supreme Judicial Council, and acts as the highest instance of appeal and has the power to pardon anyone.⁶⁵ This Council, besides the King, is the highest authority in the Saudi Judicial System.⁶⁶ "The Supreme Judicial Council is composed of eleven members and carries out several administrative, legislative, consultative, and judicial functions."⁶⁷ Although this Council exists, the King is the highest authority of the land and may use his power any way he deems fit.⁶⁸

The King's power, as set out in the basic system of rules described above is, in fact, tremendous. The real extent of the King's power can be seen through the history of using the pardon power. For example, in January 2003, affluent members of the Saudi elite submitted a document calling for an independent judiciary, the need for more advanced human rights, the elevation of the rights of all women, and a "popular election of the Consultative Council."⁶⁹ By 2004, this petition caused several petitioners, political activists, lawyers, and other affluent members of the Saudi elite to be arrested

⁵⁹ Rashed Aba-Namay, *The Recent Constitutional Reforms in Saudi Arabia*, 42 INT'L & COMPAR. L. Q. 295, 295–96 (1993).

⁶⁰ See Basic Law of Governance (1992), art. 7 (Saudi Arabia).

⁶¹ See *id.* art. 5.

⁶² *Id.* art. 44.

⁶³ *Id.* art. 56.

⁶⁴ *Id.* art. 57.

⁶⁵ *Id.* art. 50.

⁶⁶ Abdullah F. Ansary, *A Brief Overview of the Saudi Arabian Legal System*, HAUSER GLOB. L. SCH. PROGRAM: GLOBALEX (July 2008), https://www.nyulawglobal.org/globalex/Saudi_Arabia.html#_Toc200894568.

⁶⁷ *Id.*

⁶⁸ See Basic Law of Governance (1992), art. 5 (Saudi Arabia).

⁶⁹ Abdulaziz H. Al-Fahad, *Ornamental Constitutionalism: The Saudi Basic Law of Governance*, 30 YALE J. OF INT'L L. 375, 393 n.74 (2005).

and put into prison.⁷⁰ One individual, Abdullah al-Hamid, was imprisoned for seventeen months before ultimately being charged with a seven-year punishable sentence for his involvement in the petition.⁷¹ The King made it clear that his power would not be challenged and that these demonstrations went against the basic laws and power of the current King. While the King had the ultimate power to put these individuals in jail, a new King could ultimately pardon them. After King Fahd's death in August 2005, King Abdullah immediately pardoned the above-mentioned petitioners.⁷² Here, King Abdullah's authority to use the pardon power to overturn what King Fahd did, saved the lives of these individuals.

The King has free reign to use the pardon power and particularly likes to use this power during celebrations; "On his seventieth birthday, King Hassan II of Saudi Arabia granted various pardons to over 1,800 people."⁷³ These pardons show that the King can and will grant such multiple pardons, as do other heads of state with some regularity, typically to mark national or religious holidays. A holiday or birthday may be a reason for a celebratory pardon in Saudi Arabia, but rape is still criminalized under Sharia law, and discretion is often left to the judge to punish the victim.⁷⁴

In Sharia law, the act of rape is punishable by lashing, imprisonment, and potentially the death penalty if a judge finds that the rape "resulted from the woman mingling with men."⁷⁵ In October 2006, the General Qatif Court initially sentenced a 19-year-old victim, who was gang raped by seven men, to 90 lashes and six months in prison.⁷⁶ The Saudi Supreme Court reviewed the case on appeal and decided that increasing the number of lashes to 200 was proper.⁷⁷ King Abdullah issued a royal pardon for the girl, only after pressure from the world community, based on a previous pardon.⁷⁸ However,

⁷⁰ See *id.* at 375, 392.

⁷¹ *Saudi Arabia: Two Leading Reformers Arrested*, HUM. RTS. WATCH (July 23, 2007, 8:00 PM), <https://www.hrw.org/news/2007/07/23/saudi-arabia-two-leading-reformers-arrested>.

⁷² AMNESTY INT'L, SUDAN: "THE TEARS OF ORPHANS": NO FUTURE WITHOUT HUMAN RIGHTS (1995); see also Steve Coll, *Saudi King Pardons Jailed Activists*, THE IRISH TIMES (Aug. 10, 2005, 1:00), <https://www.irishtimes.com/news/saudi-king-pardons-jailed-activists-1.478334>.

⁷³ Jody C. Baumgartner & Mark H. Morris, *Presidential Power Unbound: A Comparative Look at Presidential Pardon Power*, 29 POL. & POL'Y 210, 213 (2001).

⁷⁴ AMS. FOR DEMOCRACY & HUM. RTS. IN BAHR., THE EVASION OF EQUALITY: A REPORT ON THE IMPLEMENTATION OF SAUDI ARABIA'S RECOMMENDATIONS FROM THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN AND ITS CAUSES (2015).

⁷⁵ *Id.*

⁷⁶ Vicky Baker, *Rape Victim Sentenced to 200 Lashes and Six Months in Jail*, GUARDIAN (Nov. 17, 2007, 6:44 PM), <https://www.theguardian.com/world/2007/nov/17/saudi-arabia.international>.

⁷⁷ *Id.*

⁷⁸ Katherine Zoepf, *Saudi King Pardons Gang Rape Victim*, GUARDIAN (Dec. 17, 2007, 11:01 AM), <https://www.theguardian.com/world/2007/dec/17/saudi-arabia.allegestratton>.

the King emphasized that he believed the verdict was fair, and that he had faith in the integrity of the justice system.⁷⁹ Shown here, the pardoning power is powerful because the King does not need a reason when deciding whether or not to pardon someone. It is clear in this case that the pardon allows the King to arbitrarily release anyone he wishes or condemn them by not using the pardon power at all.

This idea of absolute power can be seen where the pardon will only be granted if prisoners do as they are told. For some prisoners, a pardon will only be granted if a document is signed for the King.⁸⁰ In 1974, forty political prisoners received life imprisonment for politically motivated offenses, which included those from Morocco who were peacefully protesting the Western Sahara occupation.⁸¹ It may have occurred to the King that after years of imprisonment, there might be a solution. As such, the King held that these prisoners would only be granted a pardon if they signed a document stating, “[after] having strayed from the national consensus, [they] had recognized that the regained Western Sahara was Moroccan, and asked the King to bestow upon them his general benevolence and blessing.”⁸² Being strong-armed into a pardon is a common theme for Kings in Saudi Arabia. In 1991, Abraham Serfaty was sentenced to life in prison due to his peaceful expressions against the King, and was considered to be “plotting the monarchy’s overthrow.”⁸³ The King resisted international pressure to pardon Serfaty because the King’s letter to Serfaty, which declared that the Western Sahara was Moroccan territory, would not be signed by Serfaty.⁸⁴ In July 1991, just two months before Serfaty changed his mind, the King told a French television interviewer, “As long as this man does not recognize that the Western Sahara is Moroccan, there will be no royal pardon for him.”⁸⁵

It is evident that the King of Saudi Arabia has a great deal of power, including the unlimited or even unchecked use of the pardon power.

⁷⁹ *Id.*

⁸⁰ See HUMAN RIGHTS WATCH, HUMAN RIGHTS WATCH WORLD REPORT 1992: MOROCCO AND WESTERN SAHARA (1992), <https://www.hrw.org/reports/1992/WR92/MEW2-01.htm>.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*; see also Adel Abdel Ghafar & Anna L. Jacobs, *Morocco-Saudi Relations: Trouble Amongst Royals?* (Mar. 1, 2019), BROOKINGS, <https://www.brookings.edu/blog/order-from-chaos/2019/03/01/morocco-saudi-relations-trouble-amongst-royals/> (showing that in 1975, Spain agreed to withdraw from the territory and permit Morocco and Mauritania to occupy it, igniting a war between those two countries. The Moroccan-Saudi Arabia tension reflects the ongoing concern about “Saudi Arabia’s aggressive policies across the region which includes the Western Sahara.”).

⁸⁵ HUMAN RIGHTS WATCH, *supra* note 80.

IV. A COMPARATIVE LOOK AT THE PARDONING POWER IN THE UNITED STATES AND IN SAUDI ARABIA

Although there are various types of other religious views in Saudi Arabia, Sharia is the most common and is the “sole system of law...[for] Saudi Arabia.”⁸⁶ Article I of the U.S. Constitution explains how the legislative branch carries out the separation of powers principle between the legislative and executive branches of government. It outlines examples such as the checking and balancing power, the election of senators and representatives, the way legislation is enacted, and the powers bestowed on Congress by the U.S. Constitution.⁸⁷ The Constitution vests the federal pardon power exclusively with the President under Article II Section 2, which provides, “he [the President] shall have the power to grant Reprieves and Pardons for Offences [sic] against the United States, except in Cases of Impeachment.”⁸⁸

Saudi Arabia may have a King and the U.S. may have a Republic, but what both countries do share is the powerful use of the pardon power. This comparative look should be viewed since the pardon power is one of the last powers left of a king in the U.S.⁸⁹ These royal prerogatives can be seen in the U.S. Supreme Court, stating that:

If the King pardons a felon and it is shown to the court, and yet the felon pleads guilty and waives the pardon, he shall not be hanged, for it is the King’s will that he shall not, and the King has an interest in the life of his subject.⁹⁰

Here, just as in Saudi Arabia, the Court is agreeing that the pardon power in the U.S. is absolute. In *United States v. Klein*, the Court ruled that the President grants the pardon power with omniscient powers.⁹¹ Furthermore, *Biddle v. Perovich* illustrates that the Court agrees that the President may determine pardons as the ultimate authority.⁹² Just like the King in Saudi Arabia, the President may, depending on the case outcome, enforce direct changes if the President believes the lower representatives of power wrongly handled the case.⁹³ Also like the King, the President may forcibly voice opinions to subordinates regarding how they would like the relevant laws to

⁸⁶ WORLD FACTBOOK, *Field Listing—Legal System*, CIA (Sept. 24, 2021), <https://www.cia.gov/the-world-factbook/field/legal-system>; see also RAJ BHALA, UNDERSTANDING ISLAMIC LAW (SHAR’A) (2d ed. 2016).

⁸⁷ U.S. CONST. art. I, § 1.

⁸⁸ *Id.* art. II, § 2.

⁸⁹ See Paul J. Larkin, Jr., *Guiding Presidential Clemency Decision Making*, 18 GEO. J. L. & PUB. POL’Y 451 (2020).

⁹⁰ *United States v. Wilson*, 32 U.S. (7 Pet.) 150, 160–61 (1833).

⁹¹ *United States v. Klein*, 80 U.S. (13 Wall.) 128, 147 (1871).

⁹² *Biddle v. Perovich*, 274 U.S. 480, 486 (1927).

⁹³ Love, *supra* note 6, at 1507.

be enforced with the particular manner that the enforced laws would be exercised.⁹⁴

Generally, Congress and the President should reach a consensus through their regular legislative process on a pardon; however, President Bill Clinton will be remembered not for what he did with Congress, but for what he did without them.⁹⁵ President Clinton, before leaving the White House counsel, contacted the Pardon Attorney's office with individuals for pardon consideration, including Marc Rich ("Rich").⁹⁶ Marc Rich was charged with tax evasion and making oil deals with Iran during the Iran hostage crisis.⁹⁷ The Pardon Attorney had to conduct its FBI background check on all of the names in a rush, with no time to make a formal recommendation on the Rich case.⁹⁸ Rich should have been denied a pardon because he was abroad when he was charged and was never convicted, making his pardon unusual.⁹⁹ The President had to be aware of Rich's crimes and knew that the U.S. Attorney for the Southern District of New York did not support his pardon.¹⁰⁰ In Clinton's New York Times article, the former President denied that he pardoned Mr. Rich because of Denise Rich's political contributions, by saying those reasons for the pardon are "utterly false."¹⁰¹ Just as the King of Saudi Arabia, who has the absolute power to pardon, the President of the U.S. has similar powers of a King to arbitrarily pardon anyone he desires. This power to stop a King or a President from using the pardon power is completely non-existent whether in a Republic or in an absolute monarchy.

This commonality is also reflected in the fact that the common people lack the power to command a pardon for those who deserve it. Most capital crimes in Saudi Arabia are punished through beheadings, with those individuals being beheaded and then having their bodies on display, "execution, or crucifixion, or the cutting off of hands and feet from opposite

⁹⁴ *Id.* at 1507–08.

⁹⁵ Louis Fisher, "The Law: When Presidential Power Backfires: Clinton's Use of Clemency," 32 PRESIDENTIAL STUD. Q. 586 (Sept. 2002).

⁹⁶ *See id.* at 594.

⁹⁷ *The Controversial Pardon of International Fugitive Marc Rich: Hearing Before the H.R. Comm. on Gov. Reform*, 107th Cong. 107–11 (2001).

⁹⁸ *See id.*

⁹⁹ Saul S. Le Vine, *Presidential Pardons and Fugitives of United States – Marc Rich and Pincus Green*, 9 N.E. J. OF LEGAL STUD. 1, 1 (2001).

¹⁰⁰ *Id.*; *see also supra* *The Controversial Pardon of International Fugitive Marc Rich: Hearing Before the H.R. Comm. on Gov. Reform*, note 97 (showing that the facts are limited as to what Eric Holder actually did with the pardon information, but the government says Eric Holder did his job representing the views of the Justice Department in being responsive to the White House).

¹⁰¹ William Jefferson Clinton, *Opinion, My Reasons for the Pardons*, N.Y. TIMES (Feb. 18, 2001), <https://www.nytimes.com/2001/02/18/opinion/my-reasons-for-the-pardons.html>. *But see* Carter Calls Pardon of Rich 'Disgraceful,' L.A. TIMES (Feb. 21, 2001, 12:00 AM), <https://www.latimes.com/archives/la-xpm-2001-feb-21-mn-28265-story.html>.

sides.”¹⁰² The Qur’an reflects this Islamic law, “[those] who wage war against God and His Messenger and strive to spread corruption in the land should be punished by death, crucifixion, the amputation of an alternate hand and foot or banishment from the land.”¹⁰³ Saudi Arabia executed a record number of 184 people in 2019, which marks the highest number of executions within the country’s given year.¹⁰⁴ In 2015, a group of United Nations experts advocated for the halt of Ali al-Nimr’s (“al-Nimr”) execution.¹⁰⁵ The Saudi government arrested and convicted 17-year-old al-Nimr for being a part of the 2012 Spring-inspired protest.¹⁰⁶ These protests advocated for social and political reforms within the Shiite province of Qatiuring.¹⁰⁷ After losing his appeal in the high court in Saudi Arabia, al-Nimr faced the highest execution penalty by beheading and “crucifixion,” or publicly displaying his body.¹⁰⁸ The Royal Pardon may be al-Nimr’s only hope in avoiding this death sentence. However, as of December 20, 2019, al-Nimr, after spending eight birthdays on death row, is still in the same place he was after his arrest in February 2012.¹⁰⁹ Although groups are calling on the Saudi monarchy to release Ali, repeal his criminal record, and provide him with appropriate compensation for his human rights violation, the King has continued to withhold a pardon.¹¹⁰ Here, just as a King or a President has the power to arbitrarily pardon someone, the same power exists to withhold the pardon power from anyone. The power can be seen as absolute because although people, groups, and the world may demand a pardon, only the King or a President can decide whether or not to grant clemency.

Saudi Arabia and the United States have long shared commonalities, as U.S. Presidents have long visited Saudi Arabia. The U.S. and Saudi Arabia in 1931 exchanged a diplomatic relationship and sent U.S. ambassadors to Jeddah, in 1940.¹¹¹ The common goal both countries share is having stability

¹⁰² See QUR’AN, Surah Al-Ma’idah 5:32–34.

¹⁰³ *Id.*

¹⁰⁴ *Death Penalty 2019: Saudi Arabia Executed Record Number of People Last Year Amid Decline in Global Executions*, AMNESTY INT’L (Apr. 21, 2020, 1:01 AM), <https://www.amnesty.org/en/latest/news/2020/04/death-penalty-2019-saudi-arabia-executed-record-number-of-people-last-year-amid-decline-in-global-executions/>.

¹⁰⁵ Schams Elwazer, *U.N., Rights Groups Call on Saudi Arabia to Spare Man from Beheading, Crucifixion*, CNN (Sept. 23, 2015, 3:33 PM), <https://www.cnn.com/2015/09/23/middleeast/saudi-arabia-ali-al-nimr-execution/>.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Adhrb Admin, *Ali al-Nimr Turns 25 on Death Row in Saudi Arabia*, AM. FOR DEMOCRACY & HUM. RTS. IN BAHR. (Dec. 19, 2019), <https://www.adhrb.org/2019/12/ali-al-nimr-turns-25-on-death-row-in-saudi-arabia/>.

¹¹⁰ *Id.*

¹¹¹ Bureau of Near E. Affs., *U.S. Relations with Saudi Arabia*, U.S. DEP’T OF STATE (Dec. 15, 2020), <https://www.state.gov/u-s-relations-with-saudi-arabia/>.

within their countries and remaining close when global issues arise.¹¹² Having these common interests also seem to extend to absolute power used by both the King and the President: the pardon power. The pardon power is laid out in the U.S. Constitution and in the Basic Ordinance of Saudi Arabia, and there seems to be no sign of these powers being repealed.¹¹³

V. THE APPLICABILITY OF INTERNATIONAL LAW ON PARDONS

Does international law have a place when decisions on domestic law are being enforced or abused? In *Roper v. Simmons*, Justice Antonin Scalia argues that international law does not have a place in decision-making in one's own country.¹¹⁴ He further goes on to say that if a country has not reached a consensus, the country is not ready to move past an issue and judges should not legislate from the bench.¹¹⁵ The idea that some rules are "unique to American Jurisprudence," such as the exclusion rule and the idea of having to follow other laws of other countries, should be ignored.¹¹⁶ His final point is to invoke other countries' laws when it fits a narrative but to disregard them otherwise when it does not fit a narrative that is neither logical nor intelligent.¹¹⁷

This Article suggests that international law should be within a country's jurisprudence, but only with regard to the regulation of pardons, and that not looking at the rest of the world's ideas on laws would be unreasonably imprudent. However, the U.S. Constitution does not speak to pardons with respect to violations of international law.¹¹⁸ Under the Constitution, the President is given the power to "grant reprieves and pardons which is expressly limited to offenses against the United States."¹¹⁹ The U.S. follows the international law community standard where it is encouraged to "prosecute or extradite" individuals who have violated international law.¹²⁰ When persecuting a violation of international law, it is well known that "the pardon of a wrongdoer can implicate a state's responsibility under

¹¹² *Id.*

¹¹³ See U.S. CONST. art. II, § 2, cl. 1.; see also Basic Law of Governance (1992), art. 61 (Saudi Arabia).

¹¹⁴ See *Roper v. Simmons*, 543 U.S. 551, 624 (2005) (Scalia, J., dissenting).

¹¹⁵ *Id.* at 616.

¹¹⁶ *Id.* at 625.

¹¹⁷ *Id.* at 627.

¹¹⁸ U.S. CONST.

¹¹⁹ Jordan J. Paust, *Contragate and the Invalidity of Pardons for Violations of International Law*, 10 HOUS. J. INT'L L. 51, 52 (1987); see also U.S. CONST. art. II, § 2, cl. 1.

¹²⁰ Paust, *supra* note 120, at 54; see generally U.S. DEP'T OF STATE, *International Extradition and Related Matters*, (Apr. 2018), <https://www.justice.gov/jm/jm-9-15000-international-extradition-and-related-matters>.

international law for a ‘denial of justice.’”¹²¹ It is clear, however, that there have been practically no rulings in the U.S. on any level where there has been a pardon or even attempted pardon for a violation of international law.¹²² In *United States v. Smith*, individuals were accused of violating international neutrality laws, but the case ended with an acquittal by a grand jury.¹²³ The Pardon power is limited to “offenses against the United States,” the relevant domestic and international legal policies at stake, the precedential prohibitions under international law, and the lack of approval in judicial opinions of a pardon of international crime,” meaning the President’s power should not extend to international law violations.¹²⁴

International views should be considered when regulating or altering the pardon power, since international regimes can reinforce human rights, particularly in strong human rights-motivated democratic nations.¹²⁵ Some countries, like Saudi Arabia, which hold low regard for international human rights, may even evade punishment with the irrational belief that “the nominal gesture of treaty ratification will shield them somewhat from pressure.”¹²⁶ This Article suggests that if the world can come together to sign treaties for serious issues, then the pardon power should be no different. A potential approach is to look to the International Covenant on Civil and Political Rights (“ICCPR”), which is a multilateral treaty that was adopted by the United Nations General Assembly on December 16, 1966.¹²⁷ The treaty commits its State parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights, and rights to due process and a fair trial.¹²⁸ As of September 2019, the Covenant has 113 parties and six more signatories, although this is without ratification.¹²⁹ The ICCPR is monitored by the United Nations Human Rights Committee (a separate body to the United Nations Human Rights Council), which reviews regular reports of States Parties on the success of rights implementation.¹³⁰

¹²¹ *Id.* at 55.

¹²² *Id.*

¹²³ *Id.* at 55–56; *U.S. v. Smith*, 27 F. Cas. 1192, 1229–30 (1806).

¹²⁴ Paust, *supra* note 120, at 56.

¹²⁵ Eric Neumayer, *Do International Human Rights Treaties Improve Respect for Human Rights?*, 49 J. OF CONFLICT RESOL. 925, 925 (2005).

¹²⁶ *Id.* at 927.

¹²⁷ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

¹²⁸ *Id.*

¹²⁹ U.N. Treaty Collection, *International Covenant on Civil and Political Rights*, Subpage under *Chapter IV, Human Rights*, U.N. TREATY CONVENTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en (Dec. 23, 2021, 10:15 AM).

¹³⁰ *See id.*

VI. AN APPROACH TO BETTER MANAGE POWER AND ADOPT LEGAL STANDARDS

This Article suggests that there may be a few issues with how the pardon power is used, and that there may be better ways to manage the pardon power in the U.S. and Saudi Arabia. Within the U.S., the idea of evolving standards could be adopted as a new legal standard to help manage the pardon power. “Evolving standards” is the method used and cited by the U.S. Supreme Court in *Roper v. Simmons*.¹³¹ Christopher Simmons was sentenced to death in 1993, when he was only eighteen years old.¹³² A series of appeals to state and federal courts lasted until 2002, but each appeal was rejected.¹³³ When the U.S. Supreme Court decided to review the case, the Court viewed the case through the lenses of evolving standards.¹³⁴ The Court discussed whether the execution of minors violated the prohibition of “cruel and unusual punishment” found in the Eighth Amendment as applied to the states through the Fourteenth Amendment.¹³⁵ This Article suggests that the pardon power can be considered just as unfair and cruel because of the lack of control when power is abused. The Court ruled that standards of decency, as well as the way that the legal system is being run has evolved, and so legal standards should be changed.¹³⁶ The Court pointed to “overwhelming weight of international opinion against the juvenile death penalty,” with only seven countries other than the U.S. having executed someone under the age of eighteen since the 1990’s, including Saudi Arabia.¹³⁷ Therefore, just as in *Simmons*, there has been “overwhelming weight of international opinions” when considering the use and the abuse of the pardon power.¹³⁸ This idea of evolving standards of decency involves the Court believing the Constitution needs to change from time to time.

To adopt this idea of evolving standards, the people and the government must also make a change to the Constitution. The Constitution defines the fundamental law of the federal government, and Article V of the Constitution provides two ways to propose amendments to the document.¹³⁹ The first way is to propose an amendment by obtaining the approval of two-thirds of both

¹³¹ *Roper v. Simmons*, 543 U.S. 551, 561 (2005).

¹³² *Id.* at 557.

¹³³ *See id.* at 554; *see also* STEPHEN BREYER, *THE COURT AND THE WORLD: AMERICAN LAW AND THE NEW GLOBAL REALITIES* (Vintage Books 2016) (2015) (examining the work of the Supreme Court of the U.S. and revealing an emergent reality few Americans observe directly but one that affects the life of every one of us).

¹³⁴ *Roper*, 543 U.S. at 561.

¹³⁵ *Id.*

¹³⁶ *Id.* at 563.

¹³⁷ *Id.* at 604.

¹³⁸ *AMS. FOR DEMOCRACY & HUM. RTS. IN BAHR.*, *supra* note 74.

¹³⁹ U.S. CONST. art. V.

houses of Congress.¹⁴⁰ While there are two ways to amend the U.S. Constitution, only this first method has ever been used.¹⁴¹ Twenty-seven amendments have been ratified under this method.¹⁴² Using the evolving standards idea, additional amendments could be made for the pardon power to be used. The second method of passing an amendment requires a Constitutional Convention (“Convention”) to be called by two-thirds of the legislatures of the States.¹⁴³ The Convention can propose as many amendments as it deems appropriate and those amendments must then be approved by three-fourths of the states.¹⁴⁴ Although this method has not been used, this type of amendment process could be a viable option to have the pardon power be called into question given its historical misuse of power.¹⁴⁵ Article V of the Constitution provides:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.¹⁴⁶

This Article shows that if people in the U.S. wish to enact change to the pardon power, it is well within their rights. While an amendment to the Constitution may be proposed, the Supreme Court has said that ratification must be within “some reasonable time after the proposal.”¹⁴⁷ Beginning with the Eighteenth amendment, Congress traditionally has set a definite period for ratification to seven years, but there has been no determination as to just how long a reasonable time might be.¹⁴⁸ Based on the evolving standards view,

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *See id.*

¹⁴³ *Id.*

¹⁴⁴ *See id.*

¹⁴⁵ Larkin, *supra* note 89, at 463 n.60.

¹⁴⁶ U.S. CONST. art. V.

¹⁴⁷ *Ratification*, LEGAL INFO. INST., <https://www.law.cornell.edu/constitution-conan/article-5/ratification-by-state-legislatures> (last visited Dec. 24, 2021).

¹⁴⁸ *See* U.S. CONST. amend. XVIII, § 3.

after seven years of proposing an amendment to the pardon power, the majority of the country may begin to support the amendment.

Although changes may be seen as an uphill battle, this Article suggests that to remain as free and fair as possible, it is necessary for a country to be consistent with the evolving standards of belief.¹⁴⁹ The last five decades have shaped the U.S. Supreme Court's view on what cases constitute a need for the evolving standards belief.¹⁵⁰ If a country does not adapt and change with an evolving standards belief, it will enter a period of isolationism.¹⁵¹ In 2020, Saudi Arabia is rated "not free" based on Freedom House's annual study of political rights and civil liberties worldwide. Under "Political Rights" and "Electoral Process," Saudi Arabia ranks near the minimum standard.¹⁵² Saudi Arabia, with their consistent low rankings in freedom, should consider the evolving standards of the world to avoid entering a period of isolationism.

Although the King rules almost all aspects of life in Saudi Arabia, there are a few ways in which changes to the pardon power could be proposed. The "High Court" in Saudi Arabia acts even higher than the Supreme Judicial Council's and their decisions are considered the law of the land.¹⁵³ The High Court in Saudi Arabia consists of a "president-who possesses the qualifications required of the Chief Appellate Judge and is appointed by a Royal Order."¹⁵⁴ The president works with judges that hold the title of "Chief of the Appellate Court."¹⁵⁵ The High Court exercises its jurisdiction through specialized circuits consisting of three other judges involved in the Criminal Circuit, who advise judgments on violations of crimes involving "major punishments, such as the death sentence."¹⁵⁶ This council, in deciding critical issues regarding the law of the land, also has a General Council, where the Head of the high council oversees their actions.¹⁵⁷ The role of the General Council is to establish general guidelines and precedents which the lower courts must follow.¹⁵⁸ Decisions of the General Council will be rendered by a vote of the majority of members in attendance, and the Chief Judge will cast the deciding vote in the event of a tie.¹⁵⁹ Once the vote has been conducted,

¹⁴⁹ James Cooper, *Commentary: In Praise of Justice Kennedy and his Legacy of International Engagement*, SAN DIEGO UNION-TRIB. (July 13, 2018, 4:30 PM), <http://www.sandiegouniontribune.com/opinion/commentary/sd-utbg-justice-kennedy-legacy-20180713-story.html>.

¹⁵⁰ *See e.g., id.*

¹⁵¹ *Saudi Arabia, supra* note 52.

¹⁵² *Id.*

¹⁵³ Ansary, *supra* note 66.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

all of the decisions that the High Court's General Council adopted will be deemed final.¹⁶⁰ Here, the High Court has the power to review a violation of the Islamic Shari'ah provisions to ensure that regulations issued by the King do not contradict with Shari'ah rules.¹⁶¹ The High Court could bring certain issues to the King's attention and suggest that the use of the pardon power be handled similarly to the High Court.¹⁶² If the King followed their suggestions, the High Court could vote on pardons, and in case of a tie, the Chief Judge would be the deciding vote.¹⁶³

In general, the adoption of modern statutory provisions is lawful and enforceable as long as they do not contravene divine law. Article 67 of the Basic System states that [t]he regulatory authority lays down regulations and motions to meet the interests of the state or remove what is bad in its affairs, in accordance with the Islamic Shari'ah.¹⁶⁴ The adoption of a regulated use of the pardon power could be passed by the King himself, and the King can enact rules or regulations independently by issuing Royal Orders and possesses this essential regulatory role in support of Shari'ah rule.¹⁶⁵ The King has the absolute power to rule for the best welfare for his people and should directly or indirectly address public interests, concerns, and the growing needs of the people.¹⁶⁶ It has been within the King's legislative authority to "supervise the implementation of the Sharia, the general policy of the State, and the defense and protection of the country."¹⁶⁷ This Article suggests that the King can and should use his legislative authority to reform the pardon power because there are growing social needs and developmental concerns that involve the Saudi people.

In summary, this Article illustrates that the abuse and the use of the pardon power is a serious issue that should be addressed. The use and abuse of the pardon power is just as serious as the ICCPR and should be treated as such. Saudi Arabia and the U.S. should look into the ICCPR and allow the pardon power to be discussed since an international consensus can be achieved. Further, this Article suggests that if multiple minds around the world can agree on a particular treaty, then the same type of document can be used to regulate the use and abuse of the pardon power. Likewise, this Article shows the seriousness of abusing the pardon power, which supports the idea that the pardon power should be regulated on the international level in a similar way to the serious issues discussed in the treaty. Finally, this Article

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ See Basic Law of Governance (1992), art. 67 (Saudi Arabia).

¹⁶⁵ Ansary, *supra* note 66.

¹⁶⁶ *Id.*

¹⁶⁷ See Basic Law of Governance (1992), art. 55 (Saudi Arabia).

illustrates multiple ways of approaching and adopting new legal standards for pardons. As time goes on, public interests and needs evolve, and thus so should the use and regulation of the pardon power under the idea of evolving standards.