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Obama's Unpardonable Record on Pardons

By Walter Olson

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In the same news cycle Russian President [Vladimir Putin said](#) he would free more than 20,000 inmates from his country's prisons, President [Barack Obama announced](#) a rather less grand gesture of clemency. He commuted the sentences of eight people convicted of crack-cocaine offenses -- all of whom have served at least 15 years -- and used his pardon power to erase the criminal records of 13 miscellaneous ex-offenders.

Even this mingy and belated use of presidential clemency power was enough to make news. The [American Civil Liberties Union noted](#) that until then, "Obama had only pardoned 39 people and commuted only one sentence, which is the fewest by any president in recent history."

According to the Washington Post, one of the administration's [motives](#) was, oddly, its wish to help "eliminate overcrowding in federal prisons."

If that's the case, Obama is trying to bail out [Lake Michigan](#) with a paint can. The federal prison population [has increased](#) by more than 700 percent since 1980 and the number of inmates now [exceeds](#) the Bureau of Prisons bed capacity by 35 percent to 40 percent, requiring the use of contract prisons, halfway houses and other makeshifts.

Even if the president could free another batch of eight prisoners every week for a year, his mercy will still have touched only about one-fifth of 1 percent of the inmates in federal prisons. The 2 million serving time at the state level will need to look to their governors for relief.

The War on Drugs is the single biggest driver of our bloated prison population, especially at the federal level, where thousands are serving sentences under mandatory-minimum laws that put low-level nonviolent offenders behind bars for decades, or even life. Although Congress [finally acted](#) in 2010 to reduce the notorious crack/cocaine disparity responsible for many insanely long sentences -- in part because of years of complaint from judges loath to be parties to injustice -- it declined to apply the changes retroactively to sentences already handed down.

Continuing to hold prisoners such as [Clarence Aaron](#) of Mobile, [Alabama](#), one of those on Obama's list, would be unjust even if prison spaces were available. Aaron was sentenced to three life sentences

without parole for his role on the periphery of a drug deal when he was a college student. A model inmate, Aaron saw the fight for his freedom taken up by journalists, lawyers and others for more than a decade. Millions of words were expended and thousands of calls made on his behalf. But not every deserving case can command such a campaign.

With one notorious exception -- former President [Bill Clinton's binge of pardons](#) as he left office in 2000, including one for mega-donor financier [Marc Rich](#) -- [the drought](#) of presidential clemency can be traced back 25 years. Yet, there is no shortage of prisoners being held long after they have met reasonable objectives of deterrence, rehabilitation and incapacitation.

It's baffling that over a quarter-century in which presidents of both parties have relentlessly sought to assert powers the Constitution never granted them they should be so meek about using the pardon powers that our constitutional system unquestionably gives them. Although it might be politically unwise for presidents to use this power, hardly anyone denies that pardons lie within their constitutional authority, even in the most controversial cases, such as President [Gerald Ford's pardon](#) of former President [Richard Nixon](#) and Clinton's pardon of Rich.

Critics, including a team of journalists that [investigated](#) presidential pardons for ProPublica, say the shortage of clemency reflects a structural problem. In a well-meaning reaction to the Clinton pardon scandal, and in hopes of removing political gamesmanship from the process, President [George W. Bush](#) entrusted great discretion to a newly created Office of the Pardon Attorney within the [Department of Justice](#).

That office has functioned less as a neutral referee than as a goalie that hardly ever lets a shot through. Since 2008, the office has been headed by a former drug prosecutor and military judge who was [sharply criticized](#) in an inspector general's report last winter for inaccurately relaying the circumstances of Aaron's case, reducing his chances for clemency.

Another shake-up of pardon procedures is overdue. The initiative needs to come from the White House, and commuting eight sentences barely counts as a start.