

Sec. 2—Powers, Duties of the President

Cl. 1—Commander-In-Chiefship

have his way in such matters, provided the substituted penalty is authorized by law and does not in common understanding exceed the original penalty.²⁵⁶

Scope of the Power

The pardon power embraces all “offences against the United States,” except cases of impeachment, and includes the power to remit fines, penalties, and forfeitures, except as to money covered into the Treasury or paid an informer,²⁵⁷ the power to pardon absolutely or conditionally, and the power to commute sentences, which, as seen above, is effective without the convict’s consent.²⁵⁸ It has been held, moreover, in face of earlier English practice, that indefinite suspension of sentence by a court of the United States is an invasion of the presidential prerogative, amounting as it does to a condonation of the offense.²⁵⁹ It was early assumed that the power included the power to pardon specified classes or communities wholesale, in short, the power to amnesty, which is usually exercised by proclamation. General amnesties were issued by Washington in 1795, by Adams in 1800, by Madison in 1815, by Lincoln in 1863, by Johnson in 1865, 1867, and 1868, and by Theodore Roosevelt—to Aguinaldo’s followers—in 1902.²⁶⁰ Not until after the Civil War, however, was the point adjudicated, when it was decided in favor of presidential prerogative.²⁶¹

²⁵⁶ *Biddle v. Perovich*, 274 U.S. 480, 486 (1927). In *Schick v. Reed*, 419 U.S. 256 (1976), the Court upheld the presidential commutation of a death sentence to imprisonment for life with no possibility of parole, the foreclosure of parole being contrary to the scheme of the Code of Military Justice. “The conclusion is inescapable that the pardoning power was intended to include the power to commute sentences on conditions which do not in themselves offend the Constitution, but which are not specifically provided for by statute.” *Id.* at 264.

²⁵⁷ 23 Ops. Atty. Gen. 360, 363 (1901); *Illinois Cent. R.R. v. Bosworth*, 133 U.S. 92 (1890).

²⁵⁸ *Ex parte William Wells*, 59 U.S. (18 How.) 307 (1856). For the contrary view, see some early opinions of the Attorney General, 1 Ops. Atty. Gen. 341 (1820); 2 Ops. Atty. Gen. 275 (1829); 5 Ops. Atty. Gen. 687 (1795); cf. 4 Ops. Atty. Gen. 458 (1845); *United States v. Wilson*, 32 U.S. (7 Pet.) 150, 161 (1833).

²⁵⁹ *Ex parte United States*, 242 U.S. 27 (1916). Amendment of sentence, however, within the same term of court, by shortening the term of imprisonment, although defendant had already been committed, is a judicial act and no infringement of the pardoning power. *United States v. Benz*, 282 U.S. 304 (1931).

²⁶⁰ See 1 J. Richardson, *supra*, at 173, 293; 2 *id.* at 543; 7 *id.* at 3414, 3508; 8 *id.* at 3853; 14 *id.* at 6690.

²⁶¹ *United States v. Klein*, 80 U.S. (13 Wall.) 128, 147 (1872). See also *United States v. Padelford*, 76 U.S. (9 Wall.) 531 (1870).