



Pardon Does not Forgive Democracy: Econometrical Analysis of Pardons in Spain¹

JUAN LUIS JIMÉNEZ²

JOSÉ ABREU³

Universidad de Las Palmas de Gran Canaria

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Abstract

The pardon is a legal, although controversial, instrument with a long history that persists in many different judicial systems across the world. The juridical literature often considers it to be a perversion in the separation of powers within the State, and the motivations behind it are always under scrutiny. In this paper we seek to establish whether there are specific factors that affect and determine pardons. Using a database of all pardons granted in Spain between 1995 and 2013, including our own elaborated individual data, the econometrical estimations produce the following conclusions: firstly, Spain's right-wing political party processes pardons faster than that of the left; secondly, and due to public concern, pardons are less frequent near elections; and thirdly, the higher the fine, the faster the pardon. These results show that the pardon is used in a discretionary way and in most cases greatly distorts the separation of powers that should provide the basis of any healthy democratic system.

Keywords: Pardons, democracy, politics.

JEL Classification K14, P48, Z18.

1. Introduction

The concept of «pardon» has a long history and still persists in many legal systems across the world, such as the United Kingdom, United States, Italy, Korea, etc. Nowadays it is employed by the executive branch of government as an instrument to totally or partially commute fines and/or prison sentences levied on convicts. Although it can be argued that it enhances fairness and corrects errors within the judicial system (Heise, 2003), it nonetheless remains controversial. As Sarat (2005) states, «pardon» exists in the «barely chartable borderland» of the law.

In the context of Spain this legal element has been used since 1241². A more recent key judicial reference is an 1870 Law (18 June, 1870), which regulated pardons granted in Spain. This law was updated in 1988⁴.

The use of the pardon has generated controversy relating to political interference in judicial questions⁵. This issue recently arose in Spain, where party politics and even politics

itself have been brought into question as a result (see surveys of the Center of Sociological Research, CIS). Consequently some authors consider this legal element to be ambiguous and outdated, and are committed to adapting it to a modern legal, social and democratic state (Pérez and Domínguez, 2002; Llorca, 2003; Sánchez-Vera, 2008). Moreover, the most recent update of the law does not require a reason to be given for a pardon or its denial, which has done nothing to enhance transparency.

Academic literature in this field is divided into two parts: the first relates to juridical aspects of the Pardon and Clemency Act; while the second is linked to the statistical or econometric approach to pardons across the world (see section 2). However, as far as we know, no study in Spain or Europe to date has analysed econometrically the factors that condition pardons.

For the reasons given above, the main aim of this article is to clarify whether there are factors that affect pardons granted in Spain. In order to achieve this we employed a database to analyse the 10,205 pardons granted by Spain's central government in the period December 1995-January 2013. We seek to address whether pardons are influenced by variables that are unrelated to justice, equity and/or public utility; which are precisely the factors that should underpin any pardons. In our study we will estimate whether electoral time, importance of offence, political ideology, etc. affect pardons.

Following this introduction, section two reviews the scarce academic literature on this topic. Section three explains the development of the database. Section four details the empirical strategy employed and the estimations model. Finally section five is devoted to results and policy implications. Our results support the disturbing proposition that pardons are used in a discretionary way and in most cases greatly distort the separation of powers that should underpin a healthy democratic system.

2. Literature review

The academic literature on this topic has focused on two main questions. The first relates to theoretical-juridical studies (Williston, 1915; Fraile, 2005; Eksterowicz and Roberts, 2006; Barkow, 2009; among others); while the second is based on the statistical (Herrero, 2012; Madrid, 2014; among others) or econometric approach (Whitford and Ochs, 2006; Erler, 2007) to pardons across the world.

The countries that have been studied in the academic literature are the United States (Austin and Hummer, 2000; Whitford and Ochs, 2006, Erler, 2007, among others), Italy (Balassone et al, 2008), Korea (Kwon et al, 2012), and Spain (Pérez and Domínguez, 2002; Llorca, 2003; Doval *et al.*, 2012, etc.).

From a juridical perspective, the pardon has long been controversial (for example, Williston, 1915, discussed whether a pardon can eliminate the offence). Humbert (1941) exa-

mined why pardons are granted for the reasons specifically stated in clemency warrants (poverty, old age, «sincerely penitent» or «good conduct», among others). Barkow (2009) argued in his study that the pardon (or clemency⁶) has been erratically employed by some presidents, as they have sometimes offered clemency to offenders who pose a low risk and because they wish to reintegrate them into society. Likewise, Baumgartner and Morris (2001) analysed the case of Russia, contending that pardons can be used as a powerful political tool.

In the Spanish case, García (2004) and Fraile (2005) raised some challenging juridical questions about pardons. The authors ask what can legally justify a government waiving a firm and solid conviction imposed by a judge. Specifically, Fraile postulates «(...) are those who pardon not mocking justice and, in doing so, making a mockery of justice?»⁷. For this reason, some authors argue for a legislative change in order to make this Law more transparent and in line with the Constitution (Pérez and Domínguez, 2002; Llorca, 2003; Sánchez-Vera, 2008).

Table 1 summarises a selection of recent papers on the latter type of studies referred to above, (i.e. those relating to the statistical and econometrical analysis of pardons). These analyses have mainly focused on trends in pardons, the variables that influence the granting of pardons and similar descriptive and causal outcomes.

Table 1
REVIEW OF RECENT STATISTICAL AND ECONOMETRICAL LITERATURE ON PARDONS

Authors	Published	Country	Period	Methodology	Highlights
Ruckman	1997	USA	1900-1993	ARIMA	Executive clemency is exercised with much greater frequency than is commonly supposed. There is great variation among administrations and a general decline in the rate of «positive» clemency decisions.
Ruckman	1998	USA	1934-1994	ARIMA	Administrative and political factors are important when a pardon is granted.
Morris	1998	USA	1900-1996	Descriptive	Democrats had used the power of pardon with greater frequency than Republicans.
Freilich and Rivera	1999	New York (USA)	1935-1963	Logistic regression	Disadvantaged groups (blacks, males, felony murderers, and older offenders) have higher execution rates than «advantaged» groups.
Austin and Hummer	2000	Pennsylvania	1990-1991	Logistic regression	These authors discussed the recommendations of prison boards and the governor's decision to grant or deny a pardon.
Heise	2003	USA	1973-1999	Logistic regression	The clemency system shows a systematic bias in favour of women and it plays down the political factor.
Whitford and Ochs	2006	USA	1954-1994	Prais-Winsten regression	The probability of denials for executive clemency reflects the president's own agenda and ideological position, congressional attention to criminal justice issues, and the homicide rate.
Erler	2007	USA	1953-2000	Negative binomial regression	The power of pardon can be used as an instrument of presidential leadership and broad policy aims.
Balassonne et al	2008	Italy	2003-2005	Stochastic cost frontier	The Italian government grants pardons in order to reduce overcrowding in penitentiaries and their associated budgeting problems.
Drago et al	2009	Italy	2006-2007	Logistic regression	Women have a much lower recidivism rate (0,046) than men (0,118).

Authors	Published	Country	Period	Methodology	Highlights
Harmon <i>et al.</i>	2010	New York	1900-1963	Logistic regression	Governors were more inclined to grant clemency to offenders under 21, when appellate court decisions included dissenting opinions, when mitigating factors outnumbered aggravating factors, and when death sentences were imposed pursuant to mandatory capital punishment provisions.
Doval et al	2012	Spain	2000-2008	Descriptive	Statistical descriptive on pardons in Spain.
Ruckman	2012	USA	XIX-XX	Descriptive	Historical approach to pardons in USA (centuries XIX and XX).
Kwon et al	2012	Korea	1995-2009	Ordinary Least Squares	Traffic violation pardons raised both traffic accidents and their economic costs.
Herrero	2012	Spain	1977-2011	Descriptive	Statistical descriptive on pardons in Spain.
Madrid	2014	Spain	2012	Descriptive	Statistical descriptive on pardons in Spain in 2012.

Source: Own elaboration.

As the above table shows, there are few papers on this topic and the most commonly employed approach to data is descriptive. From these statistical papers we would like to highlight the following findings. Austin and Hummer (2000) studied the variables that might favour clemency in the state of Pennsylvania (USA) using a bivariate analysis and explanatory variables such as gender and type of crime committed. It was found that pardons are more likely when the individual was a woman, a fact that is consistent with the theory of Heise (2003) and Doval *et al.* (2012) in which convicted women, in relative terms, receive more pardons for family reasons (specifically due to their maternal duties). Moreover, according to the latter study, the offence of theft is more often pardoned because it is considered to be a minor misdemeanour.

Ruckman (1997) conducted an econometric analysis for the United States with an ARIMA model by confirming that the Democratic Party is more likely to grant pardons. Later Ruckman (2011), using a descriptive seasonal analysis, concluded that the presidents of the United States tend to grant pardons in December.

Whitford and Ochs (2006) employed a time series approach for the U. S. in order to illustrate the power that the President and ideology can have in this area. Their results showed that the denial or approval of pardons is sensitive to the ideology of the President, and that the Conservatives are more likely to reject pardons. This result is refuted by Ewal (2002), who argues that the more liberal approach favours reintegration into society to deal with crime, and Borja (2011), who argues that «progressive governments» are more lenient than conservative.

Harmon *et al.* (2010) examined the factors explaining New York governors' clemency decisions in capital cases. Their statistical analysis drew on a database of 130 cases of commuted sentences (and a control group of 146 cases of execution). As we highlight in table 1, the analysis suggests that governors were more inclined to grant clemency to offenders under 21, when appellate court decisions included dissenting opinions, when mitigating factors outnumbered aggravating factors, and when death sentences were imposed pursuant to mandatory capital punishment provisions. However the authors did not find any evidence that racial, ethnic, or socioeconomic variables were related to clemency decisions.

Erler (2007) analysed whether U. S. presidents used the pardon as an instrument of political leadership based on their own interests. The author found that the power they can exert in this area is tempered by Department of Justice officials and by the actions of previous presidents.

Studies related to Europe, and specifically the Spanish case, are only descriptive. As far as we know, the area under study here has been not been previously analysed in the academic literature. This paper tries to cover aspects influencing clemency that have not been considered in the analysed literature, such as the fine imposed in the sentence, days until the election, or the professional profile of the individual being pardoned (of those that can be identified). So, the contribution of this paper is to identify whether there are factors that influence the

granting of pardons in the Spanish case. If the pardon was a discretionary act of the judiciary, which is granted for reasons of justice, equity and public utility, and subject to Court reports, then this should not denote an arbitrary act in their concession.

3. Database

In order to test the above hypothesis, we have compiled a database that consists of three main sources: the first relates to public data assembled by the CIVIO Foundation relating to all monthly pardons granted by regions in Spain in the period December 1995 to January 2013; the second source is the Spanish Statistical Office (hereafter INE); and finally (and most relevant) our own elaboration of personal data on each pardon granted in Spain. Our database therefore contains two levels of data: provincial and individual. Our empirical strategy will be based on this disaggregation.

Regarding the latter, and using individual data and correlating our information with CIVIO, we conducted a detailed review of various newspaper archives relating to pardons in Spain, in order to find personal and professional information about each of the 10,205 cases. We identified 2,422 individuals, representing 23.7% of the sample, of which 273 were military (2.67% of total; 11.3% of our sample), and 1,184 *insumisos* (11.6% of total; 48.9% of our sample)⁸; the remaining 965 individuals (9.46% of total; 39.8% of our sample), were distributed among the following areas: civil, business, terrorism, trafficking, public office and politics, among others (Table A.1. shows the sample representativeness by year).

The most relevant variables included in the analysis are (the first two variables are dependent in our empirical strategy):

- (i) *Pardons by month*_{*pmt*}: number of pardons granted by province *p* in the month *m* in the year *t*. Note that judicial authority at provincial level includes pardons requested, which have then been analysed and passed on to central government, which has the final decision. For this reason, we use provincial level data in the estimation of model 1 (see next section). Source: Own elaboration from CIVIO.
- (ii) *Days elapsed between sentencing and pardon*_{*i*}: days elapsed from the time a person *i* is convicted until s/he is pardoned by the government. Source: Own elaboration from CIVIO and State Official Bulletin (BOE).
- (iii) *Ideology*_{*imt*}: binary variable that takes value 1 if the pardon of the person *i* at month *m* and year *t* was granted by a minister of the main right-wing political party in Spain (*Partido Popular*, the Conservative party). We cannot establish *a priori* what influence this variable can have on the granting of pardons and time elapsed, but our hypothesis is that the «progressive party» (PSOE, in its Spanish acronym) is more lenient than the conservative, as papers by Ruckman (1997), Morris (1998), Ewal (2002) or Borja (2011) show. Source: Own elaboration.

- (iv) *Convicts by region_{jt}*: average number of persons older than 18 convicted by region j at year t . We suppose that a positive relationship between this variable and pardons would exist, as Balassone *et al.* (2008) found for the Italian case. Source: INE.
- (v) *Jubilee_{pmt}*: binary variable that takes value 1 if the month in which the pardon was granted was December 2000. In this year, central government granted a number of extraordinary pardons in response to requests from Pope John Paul II, the celebration of the Jubilee (known as Xacobeo in Spain), the 22th anniversary of the Spanish Constitution and the approaching end of the millennium. Source: Hearing of Minister of Justice in session 13-12-2000 Commission Justice and Home Affairs; also cited in Doval *et al.* (2012).
- (vi) *Trend_t*: yearly trend variable, from 1 to 19 (1995-2013). We seek to control for potential time effects on pardons in Spain.
- (vii) *Months until the elections_t*: this variable indicates the number of months from the month of the pardon to the election month. Our hypothesis is that pardons are not good democratic markers for party politics and they diminish in number before election time. Ruckman (1998) determined that the «election year» does not influence the degree of leniency. On the other hand, Mackuen (1983) argued that numerous domestic and foreign events (e.g. scandals or wars) and presidential decisions affect the popularity of presidents. For example, the author notes that the popularity of President Ford decreased as a result of pardons granted by his predecessor, Richard Nixon. Therefore we seek to test these two controversial outcomes. Source: Own elaboration from CIVIO.
- (viii) *Crisis_t*: binary variable that takes value 1 for periods of crisis (in this case, 2008 to 2013). This variable is included in order to control for potential different political behaviour during crises in Spain, when both party politics and politics itself are in social crisis. Source: Own elaboration.
- (ix) *Coincidence PP (or PSOE)_{jt}*: binary variable that takes value 1 if party politics at central and regional (j) governments are the same in the year considered (t), in this case, the Conservative party (PP) (or the left-wing party, PSOE). We have considered these variables to test whether between the central and the autonomous levels of government there may be some kind of «partnership» to grant pardons. This practice may be more evident in the case of specific pardons (politicians, celebrities, bankers, etc.). We expect a positive relationship between this variable and the number of pardons. Source: Own elaboration.
- (x) *Fine_t*: the amount of the fine imposed on the convict (in euros). If clemency is granted for reasons of justice, equity and public utility or similar, as is expected, there should be no relationship between this variable and the speed with which

the pardon is granted. However, Schanzenbach and Yaeger (2006) determined that individuals who commit white-collar offences, and who are white and pay a fine, have a lower sentence. In other words, the higher the fine, the lesser the sentence. Source: Own elaboration from CIVIO.

- (xi) *Population_{jt}*: population per region j at year t . Source: INE.
- (xii) *GDP per capita_{jt}*: Gross Domestic Product per capita (in euros) in region j at year t . Source: INE.
- (xiii) *Politician_i*: binary variable that takes value 1 if the individual pardoned i held a public office and was involved in politics (eg mayor, councillor, etc.). Source: Own elaboration from sample.
- (xiv) *Terrorist_i*: binary variable that takes value 1 if the individual pardoned i was a terrorist, belonged to any terrorist organisation or committed terrorist crimes at the time of the offence. Source. Own elaboration from sample.
- (xv) *Insumiso_i*: binary variable that takes value 1 if the individual pardoned i was an insumiso. Most pardons for insumisos were granted in 1998, so we have to control this year effect in some of our estimations. Source. Own elaboration from sample.
- (xvi) *Gender_i*: binary variable that takes value 1 if the individual pardoned i is a man. As in Austin and Hummer (2000) our hypothesis is that women are pardoned faster than men. Source. Own elaboration from CIVIO.

Descriptive statistics for the database are included in table 2. The average number of monthly pardons by province is 2.8. The average number of days elapsed from conviction to pardon is 1,178 (three years and three months; although this time period shows great variation). Moreover, both main political parties (the PP and PSOE) have granted a similar number of pardons in this period. The average fine is 150,420 (euros). Males represent 86% of those pardoned.

Table 2
DESCRIPTIVE STATISTICS

Variables	Period/Periodicity	Obs.	Mean (Std. Dev.)	Range
Pardons	1995-2013 / Monthly	2,948	2.8 (7.8)	[1, 235]
Days between sentence and pardon	1995-2013 / Individual	9,933	1,178.2 (794.1)	[76, 15,438]
Ideology	1995-2013 / Individual	332	0.51 (-)	[0, 1]
Convicted by region	1998-2012 / Yearly	2,948	12,243.8 (11196.6)	[342, 46,558]
Jubilee	1995-2013 / Individual	10,204	0.13 (-)	[0, 1]
Coincidence PP	1995-2013 / Individual	2,948	0.19 (-)	[0, 1]
Coincidence PSOE	1995-2013 / Individual	2,948	0.27 (-)	[0, 1]
Fine	1995-2013 / Individual	10,204	150,420 (4,318,812)	[0, 2.4e+08]
Population (thousands)	1998-2012 / Yearly	262	2,466.82 (2,246.87)	[64.6, 8,299.1]
GDP per capita	1998-2012/ Yearly	262	19,554.94 (5,089.75)	[8,536, 30,947]
Politician	1995-2013 / Individual	10,205	0.0067 (-)	[0, 1]
Terrorist	1995-2013 / Individual	10,205	0.0024 (-)	[0, 1]
<i>Insumisos</i>	1995-2013 / Individual	10,205	0.12 (-)	[0, 1]
Number of offences	1995-2013 / Individual	9,938	1.24 (1.5)	[1, 98]
Gender	1995-2013 / Individual	10,205	0.86 (-)	[0, 1]

Source: Own elaboration from the CIVIO Foundation and previous sources detailed.

Note: Obs.: Observations; Std. Dev.: Standard deviation.

For a descriptive analysis of data, we have included several charts in the Annex. Figure A.1. shows the number of pardons by year, although no trend or cyclical behaviour can be identified from the data. As we previously illustrated, pardons in 1998 and 2000 are significantly higher than other years due to *insumisos* (in 1998 they represent nearly 51% of all pardons) and Jubilee year (in December 2000 76% of all pardons were granted).

For this reason, figure A.2. includes the numbers of pardons by year without *insumisos* and pardons granted in December 2000. Here we can identify cyclical behaviour. First, there is an upward trend until 1999, at which time the number of pardons fall. As of 2001, the trend is the same as in figure A.1.

Figure A.3. shows the rate of pardons by conviction. Here, the most significant results are similar to the previous table. Figure A.4 shows the pardons that were granted most frequently by type of offence and political party, as well as other pardons that we considered interesting for their relevance.

We can see that the PP has granted a greater number of pardons for all offences considered (note that the PP has been in government 344 days more than the PSOE in our study) and the

most pardoned offences are crimes «against public health» and «robbery». Also note that the PP has pardoned 394 more people than the PSOE in individual offences «against road safety» and 16 more for crimes of «terrorism». The latter outcome is due to the pardon granted for 17 convicts of the Catalanian terrorist organisation *Terra Lliure*; not for ETA's terrorism.

Finally figure A.5. shows relative analysis by electoral period duration, where it should be noted that the PSOE is more likely to grant pardons for offences «against public health» in relative terms.

4. Empirical strategy and results

As mentioned, our main aim is to test whether pardons are induced by any variable (time effect, electoral period, political, etc.); or, alternatively, if no statistical pattern can be deduced. The latter would be the expected outcome if a justice, equity and public utility perspective is the origin of pardons (*i.e.* it should be quite difficult to obtain any statistical pattern).

From this general aim, we have established two detailed questions that lead us to two different empirical strategies. The first question we want to explore is what variables affect monthly pardons by province? Our main hypothesis is that pardons may be affected by both election time, due to the fact that they generate significant public concern; and by some other time effects and trends.

In order to test those questions, our dependent variable is the number of monthly pardons granted by province, and we employ the cluster option in order to reduce deviation among blocks.

Due to the structure of our database count data, a negative binomial regression has been implemented. It is used for modelling count variables, where outcome variables are over-dispersed. Stata software contains this specific option (*nbreg*).

The equation estimated is (equation [1]):

$$\begin{aligned}
 \text{Monthlypardons}_{pmt} = & \beta_0 + \beta_1 \text{Monthsuntilelections}_{pmt} + \beta_2 \left(\text{Monthsuntilelections}_{pmt} \right)^2 \\
 & + \beta_3 \text{Convicted}_{pmt} + \beta_4 \text{CoincidencePP}_{pmt} + \beta_5 \text{CoincidencePSOE}_{pmt} + \\
 & + \beta_6 \text{Jubilee}_i + \beta_7 \text{Year98}_i + \beta_8 \text{Trend}_i + \beta_9 \text{GDPpc}_{pt} + \beta_{10} \text{Population}_{pt} + \sum_{m=11}^{14} \beta_m \text{Legislature}_i \\
 & + \sum_{i=16}^{30} \beta_i \text{Year}_i + \sum_{j=31}^{43} \beta_j \text{Month}_m + \varepsilon_{pmt}
 \end{aligned} \tag{1}$$

Where these monthly estimations (m) are made for all provinces (p) and for each year (t). Binary variables «month» and «year» are included in order to locate potential time effects.

Despite the fact that this is the general equation, a strong positive correlation exists between population and those convicted (0.82), between crisis and trend (0.81), and between yearly effects and legislature binary variables. The latter relates to all legislative periods in our database⁸. For this reason, we do not include them simultaneously.

Results are shown in table 3. We emphasise that our empirical strategy is to progressively add other control factors, in order to test whether our main variables remain both statistical significance and sign. This has been employed for equation [1] and [2].

Table 3
MONTHLY PARDONS BY PROVINCE. NEGATIVE BINOMIAL REGRESSION

Explanatory variables	Model 1	Model 2	Model 3	Model 4
Months until elections	0.03 (0.01)***	0.03 (7e-3)***	0.03 (7e-3)***	0.006 (3e-3)*
(Months until elections) ²	-7e-4 (1e-4)***	-8e-4 (2e-4)***	-8e-4 (2e-4)***	-1e-4 (8e-5)**
Convicted per region		2e-5 (5e-6)***		
Trend	-0.03 (0.02)**	-0.04 (0.02)**	-0.04 (0.02)**	-0.08 (0.02)***
Jubilee	2.43 (0.25)***	2.42 (0.21)***	2.46 (0.22)***	2.80 (0.19)***
Year 1998				0.64 (0.30)**
GDP per capita		8e-5 (2e-5)***	8e-5 (2e-5)***	8e-5 (2e-5)***
Population			9e-5 (3e-5)***	9e-5 (3e-5)***
Coincidence PP		-0.07 (0.22)		
Coincidence PSOE		-0.05 (0.12)		
Legislature 00-04 (PP)				-0.43 (0.11)***
Legislature 04-08 (PSOE)				-0.18 (0.08)**
Legislature 08-11 (PSOE)				-0.16 (0.07)**
Legislature 11-15 (13) (PP)				0.37 (0.11)***
Year effects included	Yes	Yes	Yes	No
Monthly effects included	Yes	Yes	Yes	No
Constant	0.45 (0.26)*	-0.52 (0.25)**	-0.75 (0.26)***	-0.19 (0.22)
Observations	3,637	3,166	3,166	3,166
Wald Chi2	-	1569.67***	1035.8***	503.11***

Note: *** 1%, ** 5%, *10% significance test. Robust standard errors are shown in brackets.

Previous estimations show all conjointly significance. The most important result in these estimations is the relationship between pardons and «months until elections»: this is positive, and a negative coefficient for squared variable is found. This means that both political parties

refuse to grant pardons at election time and a quadratic relationship exists: politicians grant pardons in the middle of their mandate.

However, the hypothesis that «collusive» behaviour may exist when central and regional government are the same party is rejected: coincidence of party political colours shows no statistical significance and they do not explain the number of pardons.

In line with Balassone *et al.* (2008), another result is that the higher the number of convicted by region, the greater the number of pardons. The same relationship is found for population, which can be explained by higher criminal rates (Glaeser *et al.*, 1996).

Time effects are significant in this regard. Firstly, the number of pardons has decreased over time (the trend is negative). Secondly, despite this previous result, the number of pardons was lower in all legislatures (in respect to the reference legislature, in our case finally 1995 and 1996-2000), except the last one. However we have to note that we have data for only two years of this legislature. And finally, when we include monthly effects, we have not found any significant outcome.

After showing that certain specific factors affect the timing of pardons in Spain, the second question we are seeking to respond to is based on an individual analysis. Using economic, political and personal characteristic variables, our aim is to determine whether there is any factor that influences days elapsed from sentence to pardon. Therefore the question we seek to respond to is: are there specific factors that determine the speed of pardon concession? The hypothesis is that no factor should affect this period if pardons are granted for reasons of justice, equity and public utility alone.

In order to meet this objective, we have considered 9,932 pardons¹⁰. Moreover, we also make estimations using the 2,422 pardoned individuals about whom we have obtained personal information (see previous section). The equation has been estimated by an Ordinary Least Squares (OLS) method, and it is (equation [2]):

$$\begin{aligned} \ln(Dayselapsed)_i = & \beta_0 + \beta_1 \ln(Fine)_i + \beta_2 Ideology_i + \beta_3 Politician_i + \beta_4 Terrorist_i + \\ & + \beta_5 Insumiso_i + \beta_6 Gender_i + \beta_7 Jubilee_i + \beta_8 Crisis_i + \beta_9 \ln(NumberOffences)_i + \\ & + \sum_{d=10}^{31} \beta_d Typeoffence_i + \sum_{i=32}^{35} \beta_i Legislature_i + \varepsilon_i \end{aligned} \quad (2)$$

The dependent variable is the logarithmic of the days elapsed, and the two continuous covariates included are in logarithms. In model 4 we control for every type of possible offence (*typeoffence*) by including 21 binary variables (the most important one, «against public health» was used as the reference covariate in this case). Results are detailed in table 4.

Table 4
ESTIMATIONS ON DAYS ELAPSED FROM SENTENCE TO PARDON BY INDIVIDUAL. OLS

Explanatory variables	Model 1	Model 2	Model 3	Model 4	Model 5
Ln(fine)	-0.007 (0.002)***	-0.02 (0.003)***	-0.02 (0.003)***	-0.01 (0.004)***	-0.02 (3e-3)***
Ideology	-0.11 (0.02)***			-0.12 (0.04)**	
Gender	0.06 (0.02)***	0.12 (0.07)*	0.11 (0.07)	0.11 (0.07)	0.12 (0.06)**
Politician	-0.17 (0.2)	-0.25 (0.17)*	-0.26 (0.14)*		-0.23 (0.13)
Terrorist	-0.76 (0.22)***	-0.89 (0.18)***	-0.99 (0.22)***		-0.94 (0.23)***
<i>Insumiso</i>		-0.21 (0.03)***	-0.17 (0.03)***	-0.001 (0.05)	-0.11 (0.04)***
Number of offences			0.18 (0.04)***		0.18 (0.04)***
Jubilee	0.14 (0.02)***	0.24 (0.04)***	0.24 (0.03)***	0.24 (0.04)***	0.17 (0.04)***
Crisis	0.02 (0.02)	-0.03 (0.04)	0.04 (0.03)	-0.03 (0.04)	0.07 (0.06)
Legislature 00-04 (PP)					0.09 (0.05)*
Legislature 04-08 (PSOE)					0.18 (0.05)***
Legislature 08-11 (PSOE)					-6e-3 (0.08)
Legislature 11-15 (13) (PP)					-0.14 (0.08)*
Only identified pardons	No	Yes	Yes	Yes	Yes
Binary variables for Offences	No	No	No	Yes	No
Constant	6.9 (0.02)***	6.9 (0.07)***	6.89 (0.07)***	6.82 (0.1)***	6.81 (0.06)***
Observations	9,915	2,144	2,144	2,144	2,144
F test	17.29***	30.27***	46.31***	.	198***
R ²	0.01	0.08	0.09	0.1	0.1

Note 1: *** 1%, ** 5%, * 10% significance test. Robust standard errors are shown in brackets.

Note 2: Significance test for model 4 is not reported by STATA due to the fact that we use the cluster approach.

Note 3: There is a lag of observations in the estimates as they have not been included because some observations have been pardons granted by foreign courts. Also, the military group has not been included in any of the models because the date of sentence is not available.

Estimations in table 4 show that all conjointly significance and goodness of fit is lower than 0.1. Nevertheless, several important points arise from these data. The most noticeable is that there is a negative relationship between the dependent variable (days elapsed) and the level of fine imposed on the convict. In fact, a 1 per cent increase in the amount of fine decreases the number of days elapsed by around 0.02. So, this means that the higher the fine, the faster the pardon concession. If a pardon were granted for reasons of justice, equity and public utility, the fine should not be a relevant factor. The fine is an indicator of the seriousness of the offence or economic power of the convict. However, this result is consistent with Schanzenbach and Yaeger (2006), who showed that the payment of a fine reduces the sentence.

Regarding ideology, the negative coefficient of this variable implies that pardons granted by the conservative party are processed faster than those by the left-wing party. Regarding the profile of those pardoned: politicians, terrorists and *insumisos* are pardoned faster than those who committed other crimes.

Pardons granted to men are slower than those to women (note that close to 89% of convicts in Spain are men). This outcome is supported by the academic literature, as we have previously detailed (Heise, 2003; Doval *et al.*, 2012; Herrero, 2012). In 2000 more people with longer sentences were pardoned than average, although the crisis was found to have no influence on the days elapsed between sentence and pardon. Finally, pardons in legislatures 00-04 and 04-08 were processed more slowly than the reference legislature, but the last legislature shows that pardons were granted faster.

In short, the results show that pardons have a significant temporal and ideological bias, at least in this study, and that there are other factors that have nothing to do with justice, equity and/or public utility that are influencing the pardons granted. Therefore, these results support the disturbing idea that the pardon is used in a discretionary way and in most cases greatly distorts the separation of powers that should underpin a healthy democratic system.

5. Conclusions

The pardon is a legal instrument used by the executive branch of the government in order to totally or partially commute the fines and/or prison sentences levied on convicts. Although it can be argued that it enhances fairness and correct errors of the judicial system (Heise, 2003), it is a controversial element that persists in many different legal systems across the world (United Kingdom, United States, Italy, Korea, etc.).

This issue has recently been under the spotlight in Spain, where party politics and also occasionally politics itself have been brought into question by certain sections of society. As a result, some authors consider this element of the law to be ambiguous and outdated, and are committed to adapting it to a modern social and democratic state of law (Pérez and Domínguez, 2002; Llorca, 2003; Sánchez-Vera, 2008). Moreover, the most recent update of the law does not require a reason to be given for a pardon or its denial.

In this paper we have tried to shed some light on the factors that affect and determine pardons in Spain. In order to achieve that we have built a database for the period 1995-2013, which consists of three main sources: public data compiled by the CIVIO Foundation (consisting of all monthly pardons granted by Spanish regions in the period); the Spanish Statistical Office; and finally (and most relevant) our own elaboration of specific data on each pardon granted in Spain.

Our econometrical approach yielded several key conclusions. The first is that election periods are not a good time for pardons. In fact, politicians tend to grant most pardons half-way through their mandates, probably due to the public concern that pardons generate.

The second result we highlight is that there is a negative relationship between days elapsed from sentence to pardon and the amount the individual is fined. In fact, a 1 per cent increase in the amount of the fine decreases the number of days elapsed to around 0.02. Therefore, this implies that the higher the fine (and it is therefore supposed the greater the offence), the faster the pardon is conceded. Finally, the Conservative party is more prone to process pardons faster than the left-wing party.

In summary, the results show that pardons are ideologically biased in Spain, and that there are other factors alien to justice, equity and/or public utility that are influencing the granting of pardons. Therefore, these results support the disturbing conclusion that the pardon is employed in a discretionary way and in most cases greatly distorts the separation of powers that should underpin a healthy democratic system.

Notes

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2. Corresponding author: Universidad de Las Palmas de Gran Canaria. Departamento de Análisis Económico Aplicado. Facultad de Economía, Empresa y Turismo. Despacho D. 2-12. Campus de Tafira. 35017. Las Palmas. juanluis.jimenez@ulpgc.es; tel: +34 928 458 191.
3. Universidad de Las Palmas de Gran Canaria. jose.abreu101@alu.ulpgc.es.
4. *Liber Iudiciorum*, edicted by Recesvinto in 654, and adopted by Fernando III.
5. *Ley 1/1988, 14 enero, por la que se modifica la Ley 18 junio 1870, estableciendo reglas para el ejercicio de la gracia de indulto*. See Herrero (2012) for a juridical and historical approach to the pardon system in Spain.
6. See for example the media dissemination of «Caso Marey» (Cobo, 2003), the pardon for judge Gómez de Liaño (Pérez and Domínguez, 2002) or banker Alfredo Sáenz (Madrid, 2014).
7. These terms are used interchangeably in this text.
8. Fraile (2005). This statement was made in the context of a change to the Spanish Law in 1988.
9. An *insumiso* is a man who refuses to do military or community service. Many *insumisos* argue that the discrimination against men inherent in the system is unconstitutional and the exploitation, as they see it, of unpaid labour is unlawful. Penalties for *insumisión* (refusal to do either form of service) can be severe, and may include prison sentences (Collins dictionary).

10. The recent national legislatures in Spain were: 1992-1996, 1996-2000, 2000-2004, 2004-2008, 2008-2011 and 2011-2015.
11. The sample used here does not include soldiers, because it has been impossible to get information regarding the date of sentence.

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Resumen

Los indultos son un instrumento legal, aunque genera controversias, con una dilatada historia que persiste en diferentes sistemas judiciales en el mundo. La literatura académica la considera como una perversión en la separación de poderes dentro del Estado, y sus motivaciones están bajo escrutinio. En este trabajo perseguimos establecer si existen factores específicos que afectan a la concesión de los indultos. A partir de una base de datos que contiene todos los indultos concedidos en España en 1995 y 2013, así como información de elaboración propia, las estimaciones econométricas concluyen que: en primer lugar, el Partido Popular gestiona con mayor celeridad los indultos que el Partido Socialista; en segundo lugar y motivado por la opinión pública, los indultos son menos frecuentes en época de elecciones; y en tercer lugar, cuanto mayor sea la multa impuesta, más rápido es la concesión del indulto. Estos resultados muestran un uso discrecional de los indultos, apoyando la tesis acerca de la distorsión que genera en la separación de poderes que debería ser la base de cualquier sistema democrático saludable.

Palabras clave: Indultos, democracia, política.

Clasificación JEL: K14, P48, Z18.

ANNEX

Table A.1
SAMPLE REPRESENTATIVENESS

Year	Total pardons	Sample pardons	Percentage sample
1995	47	9	19.1
1996	530	87	16.4
1997	738	54	7.3
1998	1.582	865	54.7
1999	741	41	5.5
2000	1744	514	29.5
2001	245	28	11.4
2002	253	30	11.9
2003	299	58	19.4
2004	320	60	18.7
2005	457	47	10.3
2006	517	86	16.6
2007	543	83	15.3
2008	442	86	19.5
2009	438	72	16.4
2010	404	57	14.1
2011	359	102	28.4
2012	534	142	26.6
2013	12	1	8.3

Source: Own elaboration and the CIVIO Foundation.

Note: Data for 1995 and 2013 only contains December and January, respectively.

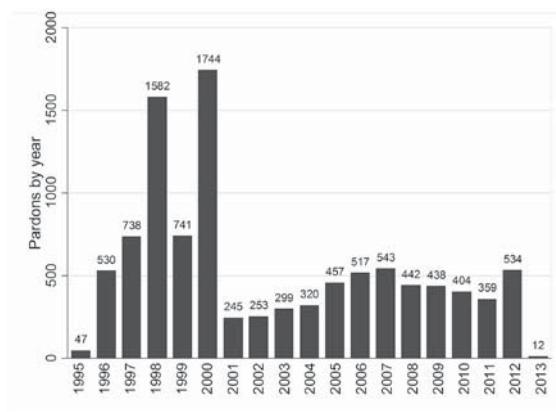


Figure A.1. Pardons by year

Source: Own elaboration from the data provided by the Civio Foundation. *Note:* 1995 and 2013 data only include December and January data respectively.

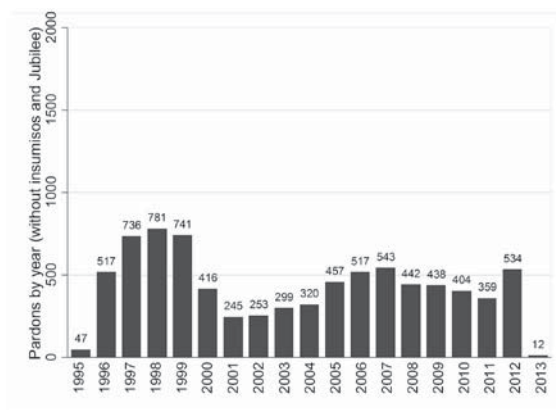


Figure A.2. Pardons by year (without *insumisos* and Jubilee)

Source: Own elaboration from the data provided by the Civio Foundation. *Note:* 1995 and 2013 data only include December and January data respectively.

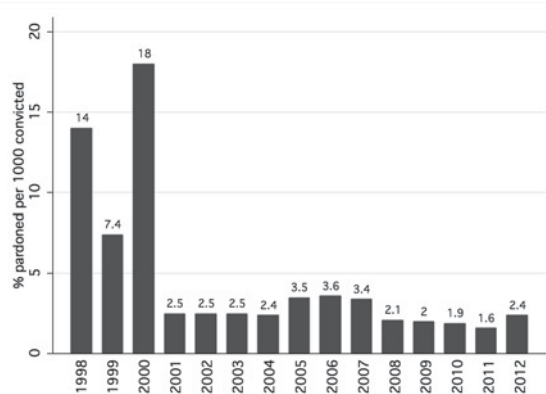


Figure A.3. Pardoned rate

Source: Own elaboration from INE. *Note:* No data available for those convicted before 1998. 2013 data only include January data.

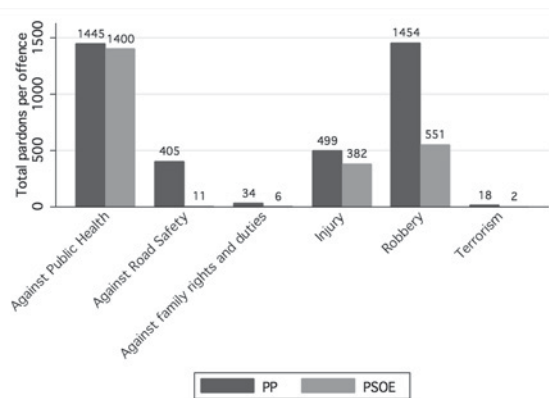


Figure A.4. Total pardons per offence and party

Source: Own elaboration from the data provided by the Civio Foundation. *Note:* In our sample, the PP has been in government 3,298 days, while the PSOE has held office for 2,954 days.

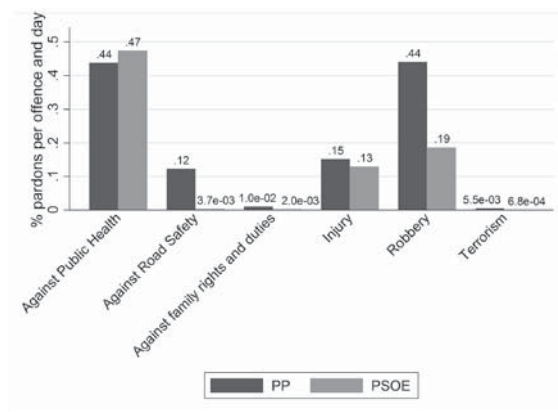


Figure A.5. % pardons per offence and day

Source: Own elaboration from the data provided by the Civio Foundation. Note: In our sample, the PP has been in government 3,298 days, while the PSOE has held office for 2,954 days.