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pardons and commutations in iowa, 1915 - 62



BY

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BOARD OF CONTROL
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DES MOINES, IOWA

EXECUTIVE CLEMENCY IN IOWA, 1915 to 1962

The nature, meaning, and effect of executive clemency presents a number of problems to the public, the lawyer, the judge, the governor, and last, but not least to the prisoner. Certain confusion and issues have arisen because of the variations in the procedures and usages of pardon in the several states. In addition, there is the larger problem inherent in the principle of checks and balances between the executive, the judicial, and the legislative branches of government.

Executive clemency or pardon in the majority of the states rests with the governor. Recently, however, many states have moved toward placing the authority of pardon in the hands of a board. At present the power of pardon in the several states falls into three general procedures:

1. In about one-fourth of the states the power of pardon is in the hands of the governor. In a small number of states there is a pardon attorney to assist the governor.
2. In about half the states the statute creates a board of pardons which processes applications and in turn recommends to the governor who makes the final decision.
3. In about one-fourth of the states the board of pardons has full authority to grant pardons. In these states the governor is usually a member of the board.

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TYPES OF CLEMENCY

Since executive clemency deals in the main with major or capital crimes, only three types of clemency will be considered.

1.A. FULL PARDON. Pardon terminates criminal liability and exemption from punishment but does not exonerate the person unless the facts clearly show complete innocence. A pardon rectifies or corrects a judicial decision not as a matter of judgement but more in the nature of clemency. Pardon implies guilt from which there is forgiveness but does not remove the record of conviction. With few exceptions pardon restores the civil liberties, i.e., the right to hold office, serve on juries, act as a witness, but it does not restore the loss of property or position as the result of the conviction. Because of the nature of pardon, an executive act, some few have maintained that it has been used for political purposes. They refer to the extreme situation where Mrs. M. A. Ferguson, the Governor of Texas (1925-27), pardoned 3,500 persons in two years, 1925-26. Such action has caused authorities to consider pardon as gubernatorial leniency and expediency rather than clemency.

An example of pardon in Iowa:

LEWCHUCK, NICK, Cerro Gordo County. Convicted at the October, 1915 term of the District Court of the crime of Murder in the First Degree and sentenced to the term of Life at the Penitentiary at Fort Madison, Iowa. Sentence was commuted to 90 years on January 10, 1955. This pardon was granted because of the illness of the prisoner and was recommended by the Board of Parole, Warden Percy Lainson, and Deputy Warden, Bernard Nelson and A. Vander Leest, Farm Superintendent. This order was issued on November 25, 1955.*

* "Report of the Governor of Iowa of Pardons, Suspensions and Commutations and Remissions of Fine, 1955-57." p. 3

1.B.CONDITIONAL PARDON. In some cases pardons have been granted to prisoners with the stipulation that the offender leave the state or the country. In other cases if the offender remains in the state he becomes subject to supervision. This type of conditional pardon is similiar to parole but in Iowa it is classified as "Suspension." The following cases illustrate "Suspensions."

Conditional pardon in Iowa with deportation.

CHOI, DUK SUNG, Dubuque County. Convicted at the January, 1950 term for the offense of murder second degree. This suspension is granted upon the recommendation of the Board of Parole and subject delivered to authorized agent of the U.S. Department of Justice, Immigration and Naturalization Service for the purpose of deportation to Korea. This suspension was granted to aid the U.S. Department of Justice in the deportation of an undesirable alien. Suspension granted February 24, 1956. *

Conditional pardon in Iowa with supervision.

OSTBY, RAYMOND, Black Hawk County. Convicted at the September, 1955 term for an OMVI, 3rd offense, and sentenced to three years at the penitentiary. This suspension was granted because he is the sole support of seven small children all of whom would become wards of the state if he were to be imprisoned. He shall be paroled to Sheriff H. T. Wagner of Waterloo, Iowa and make regular monthly reports to said parole supervisor. It is recommended that the drivers license of subject be suspended for a period of 4 months. *

* Ibid, p. 8

2. COMMUTATION. Commutation is an act of clemency by which an executive act changes a heavier sentence to a less serious one or a long term to a shorter term. It may alter a death or life sentence to a term of years. Commutation does not forgive the offender but merely reduces the penalty pronounced by the court. In almost all instances commutation has been used to substitute a death penalty or a life sentence for a term of years. In some states with capital punishment the governor has granted a commutation to circumvent the execution.

An example of commutation in Iowa:

PACE, RODNEY, Buchanan County. Committed to the Iowa State Penitentiary at Fort Madison, Iowa on the 2nd day of June, 1936, for the crime of Murder. Commutation was issued on July 19, 1956 commuting sentence to ninety (90) years in said penitentiary. *

3. REPRIEVE. A reprieve implies a delay or postponement of a sentence usually where the death sentence has been given. Reprieve has no affect on the decision of the court except to change the date of the execution. A governor may issue a reprieve in order to allow more time for the presentation of material evidence in a case.

An example of reprieve in Iowa.

ELMER BREWER, Black Hawk County. Convicted at the January term, 1933, for the crime of murder and sentenced to be hanged, January 26, 1934. By reason of appeal to the Iowa Supreme Court, the date of execution was suspended, and on February 4, 1935, I set the date of execution, as of April 5, 1935. By subsequent order on April 2, 1935, I issued a further reprieve to June 5, 1935, when the said, Elmer Brewer, was executed. **

* Ibid, p. 5

** Report by the Governor of Pardons, Suspensions and Commutations, 1935-36. p. 4

TRENDS IN EXECUTIVE CLEMENCY IN THE UNITED STATES
1947 to 1961

Table 1 and Chart 1 show the number of pardons and commutations granted in the United States from 1947 to 1961. In this 15 year period 1274 pardons have been granted by various governors, or an average of almost 85 each year. Of the total, 1216 or 95 percent have been men and five percent to women. In the same period governors have issued 38,593 commutations or an average of 2573 each year. Of the total, 91 percent (35,298) have been to men and 2550 or nine percent to women.

Within the 15 year period the annual number of pardons has passed through a cycle with but 46 cases in 1947, then increasing to 178 in 1951 with a sharp drop in 1953 only to rise again to 132 in 1957 and then finally to decrease to the lowest number of 14 in 1961.

In contrast to pardons, the number of commutations has been increasing rapidly from the lowest number of 815 in 1947 to the highest number of 3484 in 1961.

The increase in the use of commutations is related to the number of death sentences in the various states. About 20 to 25 percent of all persons sentenced to death have later received a commutation of sentence to life imprisonment.

Table 1

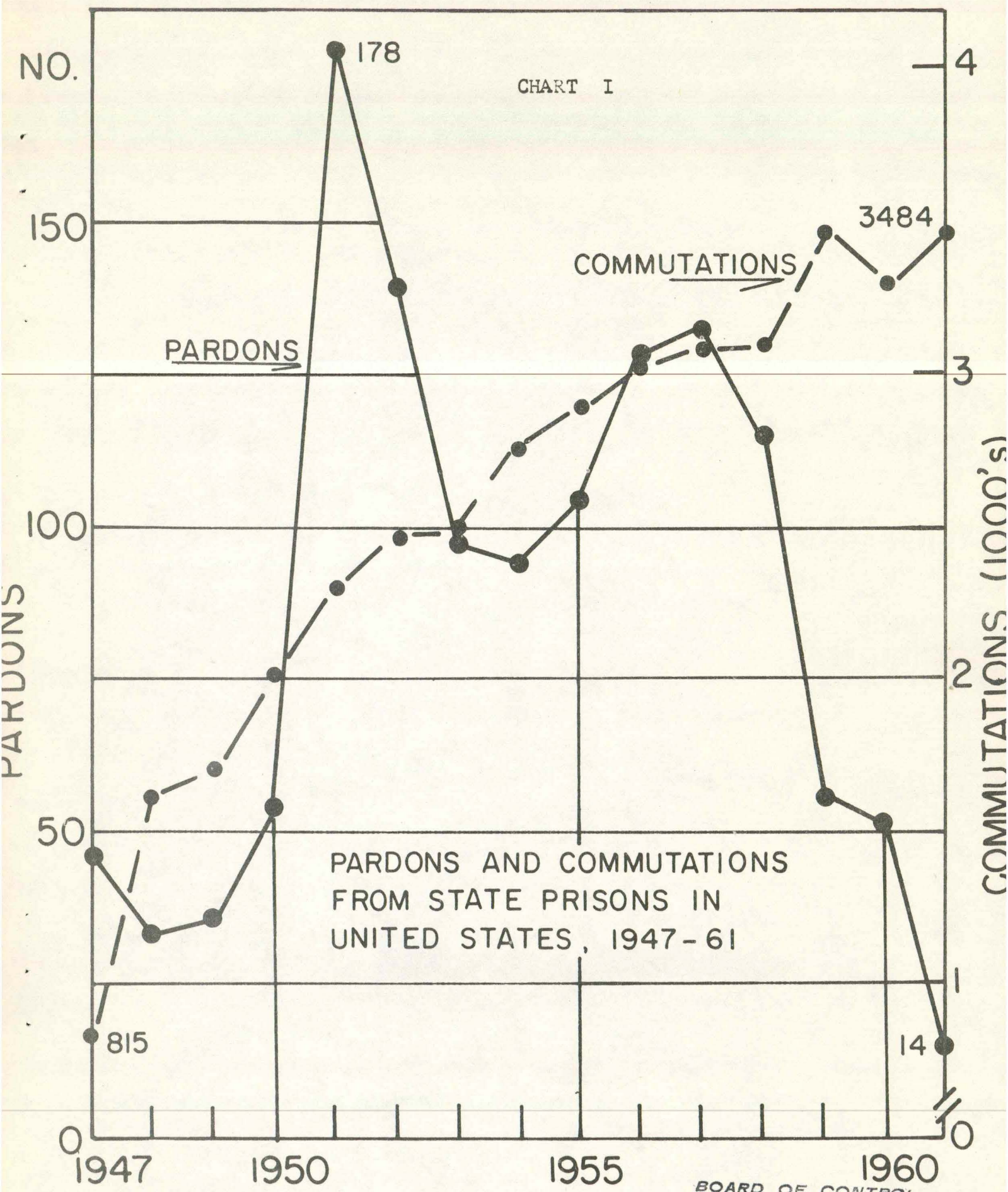
Prisoners Discharged From State Prisons By
Pardons and Commutations in United States 1947-1961

Year	Pardons			Commutations		
	Men	Women	Total	Men	Women	Total
1947	42	4	46	645	170	815
1948	30	3	33	1422	214	1636
1949	33	2	35	1600	192	1792
1950	51	3	54	1922	99	2021
1951	176	2	178	2214	105	2319
1952	130	8	138	2392	78	2470
1953	97	0	97	2433	56	2489
1954	94	0	94	2655	86	2741
1955	102	2	104	2059	89	2893
1956	117	11	128	2911	110	3021
1957	128	4	132	2798	249	3047
1958	112	3	115	2849	250	3099
1959	47	8	55	3204	277	3481
1960	43	8	51	2983	302	3285
1961	14	-	14	3211	273	3484
Total	1216	58	1274	35298	2550	38593
15 Year Average	81.07	3.87	84.93	2353.20	170.00	2572.87

Source: National Prisoner Statistics
U.S. Department of Justice, Bureau of Prisons, Reports
for respective year.

Above figures are for persons discharged from State
Institutions as a result of pardons or commutations.
In Iowa data on pardons and commutations do not
constitute discharge.

CHART I



PARDONS AND COMMUTATIONS FROM STATE PRISONS IN UNITED STATES, 1947-61

EXECUTIVE CLEMENCY IN IOWA

According to the Iowa Code, a pardon may be granted to the following:

1. A person given a suspended sentence after conviction of a felony. (248.2)
2. Persons serving time, more than 12 months, in prison or reformatory who have given satisfactory evidence that they will continue to be law abiding citizens. (248.3)
3. Persons discharged or paroled from prisons who subsequently serve in the Armed Forces in any war who have been honorably discharged. (248.4)

Procedures. The governor is required to present cases of pardon and commutation to the Board of Parole which in return gives advice in each case. However, the governor may commute a death sentence to imprisonment without the advice of the Board of Parole. Except in such cases the Board shall, under the direction of the governor, make a careful investigation of each application and file same with the governor. Upon application for pardon, reprieve or commutation the governor may request a copy of the details of the trial from the judge, the county attorney or the clerk of court. In addition the governor may take testimony from authorized persons. Prior to the application to the Board of Parole, notice of the pardon must be published in the newspaper where the conviction took place and in the capital newspaper. (248.6-10)

ACTS OF CLEMENCY BY GOVERNORS OF IOWA, 1915-1962

In the 48 years from 1915 to 1962 the fifteen governors have issued 674 acts of clemency; 256 pardons, 410 commutations and 8 reprieves (See Table 2 and Chart 2). The number of pardons for each governor is somewhat related to the length of time in office but not entirely. In some cases one governor issued more pardons because few or none had been issued by the predecessor. In addition, much depends on the social conditions, whether during or after a war or modification of laws.

In the 48 years from 1915 through 1962, commutations and pardons were highest in 1933 to 1938 (See Table 3, Chart 3 and 4). In this six year period Governor Herring and Governor Kraschel granted 190 acts of clemency; 64 pardons, 122 commutations and 4 reprieves. Of the 41 pardons granted in 1933-34, 33 were granted to persons sentenced for violations of the liquor laws under the Prohibition Act. The remaining nine pardons were issued to persons (8) sentenced for receiving stolen goods, and one for rape.

The relatively large number of pardons granted in 1945-48 is due to the circumstances of World War II. Under Iowa law if a man obtains a parole, enters the military services and then receives an honorable discharge, he may be granted a pardon. Of eight pardons granted in 1947-48, five were granted to parolees who had served honorably in the military forces of World War II.

Of the five reprieves issued for the year 1937 to 1950 all involved a stay of execution. Subsequently three of the men were executed and two obtained a commutation of sentence from death to life imprisonment.

Table 2

Executive Acts of Clemency by
Fifteen Governors in Iowa, 1915-1962*

Governor	Term	Years	Pardons	Reprieves	Commutations	Total
1 G.W. Clarke	1913-16 (a) (1915-16)	4 (2)	5	0	22	27
2 W.L. Harding	1917-20	4	30	0	41	71
3 N.E. Kendall	1921-24	4	13	0	8	21
4 J. Hammill	1925-30	6	5	0	50	55
5 D.W. Turner	1931-32	2	0	0	15	15
6 C.L. Herring	1933-36	4	44	3	91	138
7 N.G. Kraschel	1937-38	2	20	1	31	52
8 G.A. Wilson	1939-42	4	15	0	7	22
9 B.B. Hickenlooper	1943-44	2	12	0	19	31
10 R.D. Blue	1945-48	4	41	0	16	57
11 W.S. Beardsley	1949-54	6	27	2	26	55
12 (b) (Leo Elthon)						
13 L.A. Hoegh	1955-56	2	12	0	30	42
14 H.C. Loveless	1957-60	4	21	2	44	67
15 N.A. Erbe	1961-62	2	11	0	10	21
Total			256	8	410	674

* Terminations are based on even years although the governor serves to January of the next year.

(a) For 1915-16 only, data not available for 1913-14.

(b) Gov. Beardsley died Nov. 21, 1954 and Lt. Gov. Elthon completed the term.

CHART 2

PARDONS, REPRIEVES, AND COMMUTATIONS IN IOWA, 1915-1962 (PER BIENNIUM)

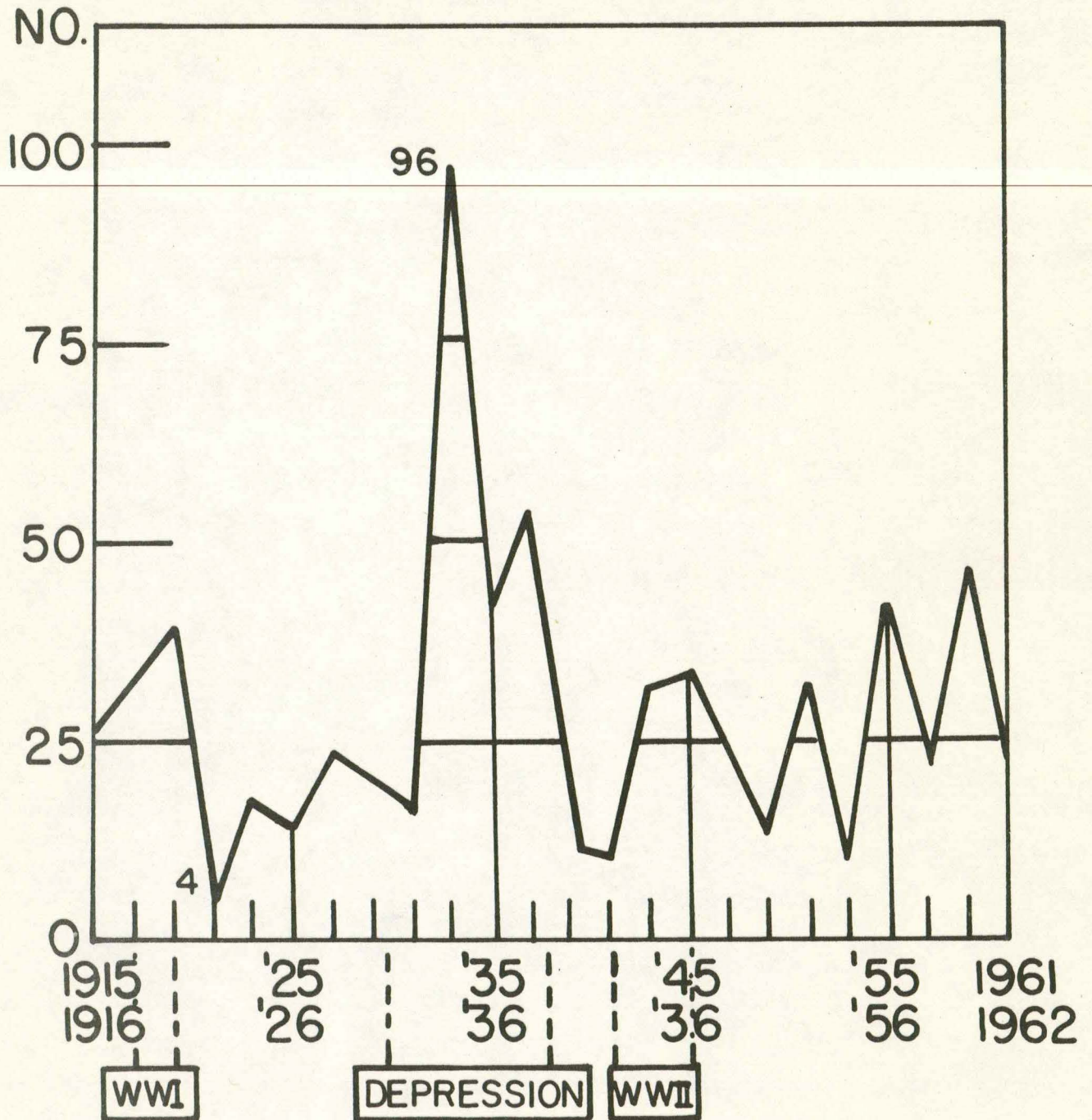


Table 3

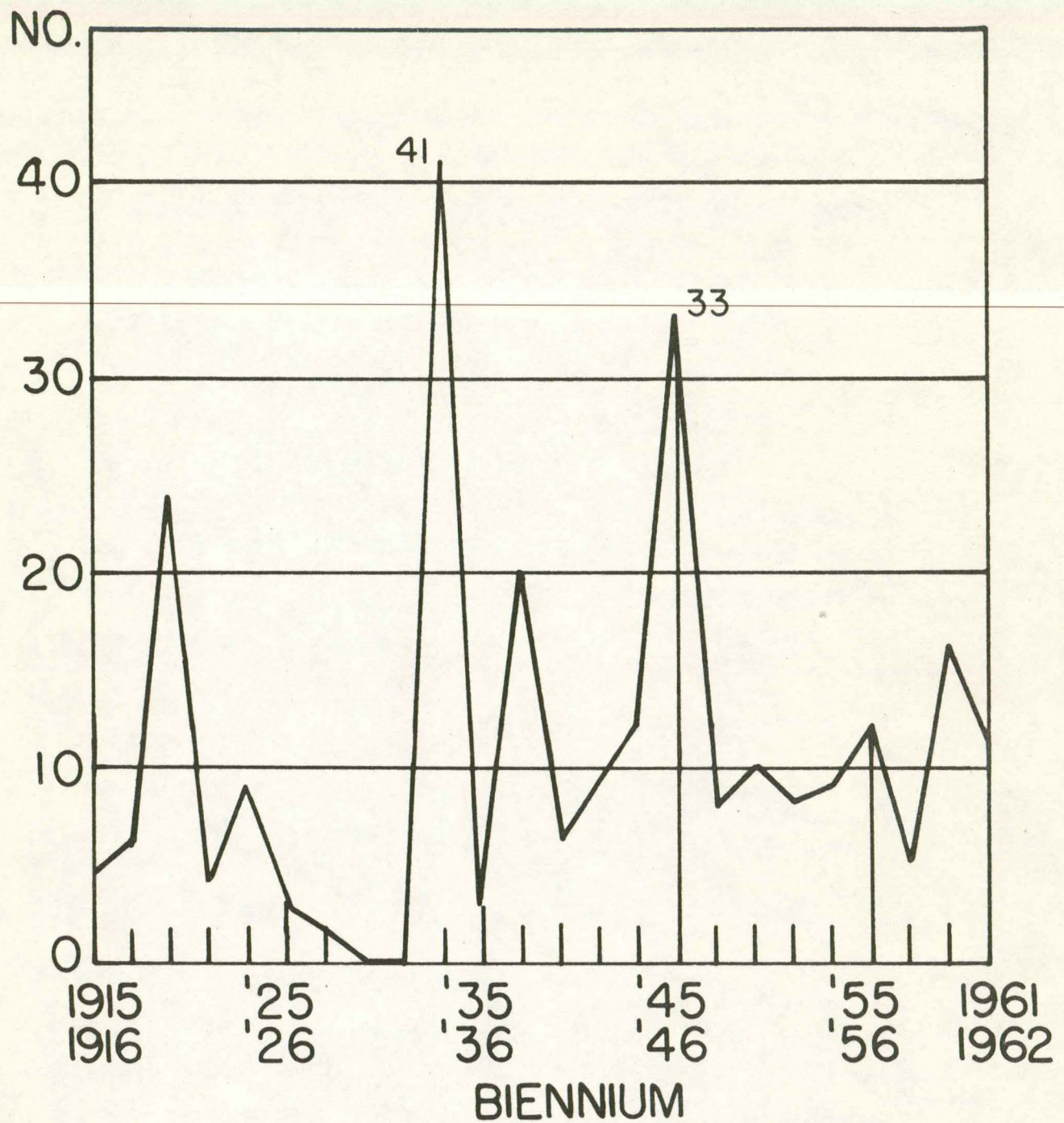
PARDONS, REPRIEVES AND COMMUTATIONS IN IOWA 1915-62

Biennium	Pardons	Reprives	Commutations	Total
1915-16	5	0	22	27
1917-18	6	0	27	33
1919-20	24	0	14	38
	35	0	63	98
1921-22	4	0	0	4
1923-24	9	0	8	17
1925-26	3	0	11	14
1927-28	2	0	21	23
1929-30	0	0	18	18
	18	0	58	76
1931-32	0	0	15	15
1933-34	41	0	55	96
1935-36	3	3	36	42
1937-38	20	1	31	52
1939-40	6	0	6	12
	70	4	143	217
1941-42	9	0	1	10
1943-44	12	0	19	31
1945-46	33	0	0	33
1947-48	8	0	16	24
1949-50	10	1	2	13
	72	1	38	111
1951-52	8	1	23	32
1953-54	9	0	1	10
1955-56	12	0	30	42
1957-58	5	1	16	22
1959-60	16	1	28	45
	50	3	98	151
1961-62	11	0	10	21
Total	256	8	410	674

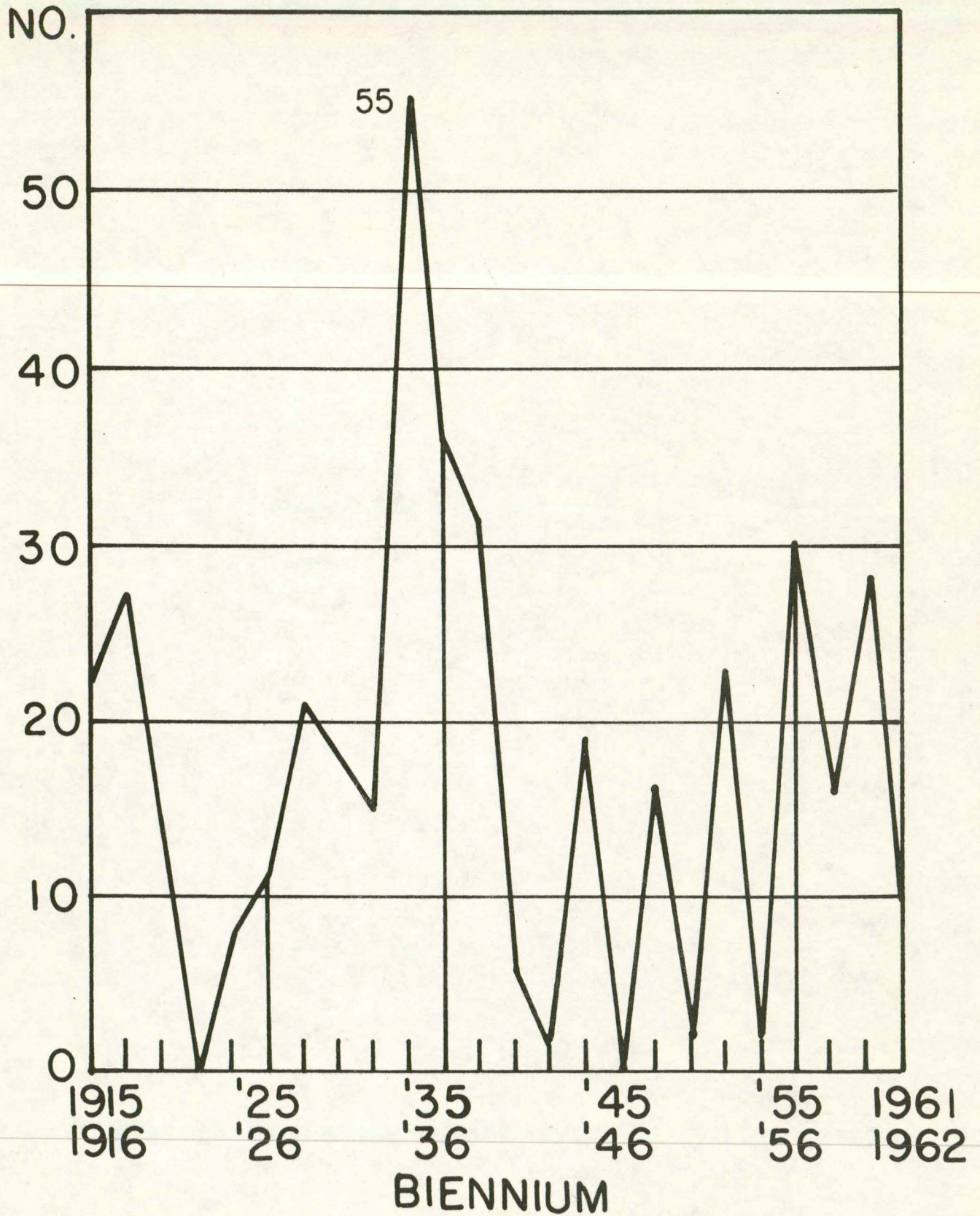
Sources from Records in the Office of
the Governor of Iowa

CHART 3

PARDONS GRANTED IN IOWA, 1915-1962



COMMUTATIONS GRANTED IN IOWA, 1915-62



The duty involved in the granting of a pardon or in the commutation of a sentence is a most difficult responsibility because it lies within the discretionary power of a governor. In examining the record from 1915 to 1962 it becomes evident that acts of clemency display a wide range from four in 1921-22 to 96 in 1933-34 or an average of about 15 a year (30 per biennium). In cases where a pardon has been granted because of a change of the law, as in the cases after the repeal of the Prohibition Act, the issues were not seriously involved. However, when an appeal arises in a case where a murderer is concerned issues are not as clear. One single factor in considering clemency is that it should not be exercised against public interest. The question which an executive must consider is whether under peculiar circumstances of hardship he can grant clemency without disturbing the effects of punishment in deterring others from committing crimes. Ultimately an act of clemency involves a deep sense of rightness or justice which goes beyond the judicial wisdom of the court which condemned the man.

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