Twitter Thread by Rachel Barkow

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This is terrible weighing of the costs and benefits of the pardon power. I think Senator Murphy woefully undervalues its utility. /1

> Once one party allows the pardon power to become a tool of criminal enterprise, its danger to democracy outweighs its utility as an instrument of justice.
>
> It\u2019s time to remove the pardon power from the Constitution.
>
> — Chris Murphy (@ChrisMurphyCT) December 24, 2020

In part because the Congress of which he is a part has established no functioning second-look mechanisms for shortening sentences or expunging convictions, commutations and pardons are the only mechanisms for correcting injustices in the federal system. /2

And it's not as if those injustices are rare. Go to any federal correctional facility, and take time to learn who is there and about their cases, and you find literally thousands of people whose sentences were grossly excessive given their offenses. /3

Those people need commutations as a corrective because there is no parole or other second look in place to address that. Some have tried to use compassionate release under the First Step Act, but DOJ tries to block those efforts at every turn and it's a limited option. /4

Presidential commutations are thus the only avenue for these folks. And under President Obama, more than 1,700 regular people (not his cronies) received relief. It was woefully inadequate for the need, but it shows the value of the power. /5

Pardons are essential as well because the collateral consequences of convictions can be devastating for people trying to get housing, employment, and education after being convicted. There is no other way to clear a federal conviction than a pardon. /6

So before Senator Murphy immediately argues for stripping the one tool in place to address all this -- and all because we have someone with no moral compass exercising the power -- he should first set out to enact needed substitutes for what the power is doing. /7

Congress lacks the power to remove the pardon power from the Constitution, so his tweet is empty symbolism. (Though it is dangerous because it will make people think the pardon power is the problem instead of the person currently exercising it.) /8

But he could be pushing for real change through legislation -- second looks of sentencing, expungement options, removing collateral consequences of convictions, eliminating the mandatory minimums that cause so many of the excessive sentences in the first place. /9

As a legislator, that should be his focus. Not this ill-advised tweet that gets the balance of interests wrong precisely because he's not remotely well versed in the utility of the pardon power. If he was, he would never have concluded it's worth getting rid of. /10

Even if Congress had mechanisms in place that served similar functions as the pardon power, inevitably they would be flawed and there would still be instances of injustices that need correction. Thankfully the framers of the Constitution recognized that. /11

That's why the power has such a place of prominence -- right alongside the commander in chief powers. /12

We wouldn't say the president should no longer have those powers simply because a particular president did a terrible job using those powers, and we shouldn't gut the pardon power because the current officeholder is corrupt and has twisted values. /13

The solution to what's happening now is to get a better leader, which we've done. And my hope is that leader will see that the pardon power's utility is critical, and he'll show everyone what a real leader does when wielding it. /end