

# The Engineer as Progressive: The Wickersham Commission in the Arc of Herbert Hoover's Life and Work

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# THE ENGINEER AS PROGRESSIVE: THE WICKERSHAM COMMISSION IN THE ARC OF HERBERT HOOVER'S LIFE AND WORK

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## I. INTRODUCTION

The Wickersham Commission, the first national crime commission in American history, has never received much attention in biographies of President Herbert Hoover or histories of his presidential

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administration.<sup>1</sup> In many respects, this is understandable. Only one of the fourteen reports of the Commission gained any significant public attention when it was published, which was mainly because of its perceived failure, while three others had some long-term impact on public policy that was subtle and difficult to pinpoint conclusively. Accounts of Hoover's presidency have understandably been dominated by the economic calamity of the Great Depression that struck only months after he was sworn into office.<sup>2</sup> Hoover himself assigned little significance to the Wickersham Commission in his later years. In his three-volume *Memoirs* he devotes exactly a page and a half to it, and his comments are confined to the issue of prohibition.<sup>3</sup>

Nonetheless, the Wickersham Commission, officially the National Commission on Law Observance and Enforcement,<sup>4</sup> deserves serious attention, as it amplifies important themes in Hoover's life and work and occupies an important place in the history of American criminal justice. With regard to Hoover this Article argues that the Wickersham Commission was fully consistent with his public career before and during his presidency and his belief in the need for facts to guide public policy making. With regard to criminal justice, the Wickersham Commission is a link between the neglected but important crime commission movement in the 1920s and subsequent crime commissions from the late 1930s to the 1960s.<sup>5</sup>

This Article has two goals. First, it seeks to place the Wickersham Commission in the context of Herbert Hoover's life and work. Second, it seeks to place the Commission in the context of criminal justice reform and the history of national crime commissions. Section II discusses how Hoover's public life was guided by his training as an

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1. The exception is James D. Calder's book on Herbert Hoover. See JAMES D. CALDER, *THE ORIGINS AND DEVELOPMENT OF FEDERAL CRIME CONTROL POLICY: HERBERT HOOVER'S INITIATIVES* (1993). For another discussion of the Wickersham Commission, see SAMUEL WALKER, *POPULAR JUSTICE: A HISTORY OF AMERICAN CRIMINAL JUSTICE* 154-70 (2d ed. 1998).

2. See, e.g., MARTIN L. FAUSOLD, *THE PRESIDENCY OF HERBERT C. HOOVER* (1985); EDGAR EUGENE ROBINSON & VAUGHN DAVIS BORNET, *HERBERT HOOVER, PRESIDENT OF THE UNITED STATES* (1975).

3. HERBERT HOOVER, *THE MEMOIRS OF HERBERT HOOVER: THE CABINET AND THE PRESIDENCY, 1920-1933*, at 277-78 (2d ed. 1952).

4. The official records of the Commission consist of twenty-six reels of microfilm. *RECORDS OF THE WICKERSHAM COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT: PART 1* (1997) (containing fifteen reels); *RECORDS OF THE WICKERSHAM COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT: PART 2* (1999) (containing eleven reels).

5. WALKER, *supra* note 1, at 154, 178-79.

engineer, his political ideology as a moderate Republican progressive, and to a limited extent, his religious background as a Quaker. Section III examines Herbert Hoover's pre-presidential career and argues that the Wickersham Commission was a natural extension of his political views and actions as a public official. Section IV covers selected aspects of Hoover's presidency other than the Wickersham Commission by establishing the connection between his reform ambitions as President and the Commission. Section V first examines the crime commission movement of the 1920s, which set a precedent for the Wickersham Commission, and second examines the more important Commission reports that have lasting relevance. Section VI gives brief attention to the various post-Wickersham crime commissions and their relationship to the Wickersham Commission. Section VII offers a brief comment on the Hoover Commission, Hoover's last important contribution as a public servant.

## II. HERBERT HOOVER: ENGINEER AND PROGRESSIVE<sup>6</sup>

There is an arc to the life and work of Herbert Hoover, marked by a strong consistency with regard to his professional training as an engineer and the political ideology that shaped his career as a public servant. The Wickersham Commission links his pre-presidential achievements, his efforts at domestic reform while President (apart from the Depression and his response to it), and his one major activity in his post-presidential years.<sup>7</sup> In all of his public activities, Hoover was the consummate engineer, dedicated to problem solving through practical solutions based on a careful study of the facts. As both Secretary of Commerce and as President he sponsored numerous commissions and conferences addressing particular social and economic needs. His commitment was always "investigation before action."<sup>8</sup>

Politically, Hoover was a moderate Republican and political progressive, arguably the last of that breed to hold major political

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6. The phrase "The Engineer as Progressive" is the title of Chapter II of JOAN HOFF WILSON, *HERBERT HOOVER: FORGOTTEN PROGRESSIVE* 31-53 (Oscar Handlin ed., 1975), and is the source of the interpretation of Hoover in this Article.

7. See *THE HOOVER COMMISSION REPORT ON ORGANIZATION OF THE EXECUTIVE BRANCH OF THE GOVERNMENT* v-vi (1949) [hereinafter *REPORT ON ORGANIZATION OF THE EXECUTIVE BRANCH*].

8. See RAY LYMAN WILBUR & ARTHUR MASTICK HYDE, *THE HOOVER POLICIES* 41 (1937).

office.<sup>9</sup> Biographer David Burner summed up Hoover's combination of engineering and progressivism as "technical proficiency, turned to humane needs."<sup>10</sup> Historian Joan Hoff Wilson aptly subtitled her short but insightful biography of Hoover, "Forgotten Progressive."<sup>11</sup> He resembled the two famous progressive presidents, Theodore Roosevelt and Woodrow Wilson, in that he believed in the promise of America for the individual and for business enterprise. None of the three presidents was a radical who challenged the fundamental institutions of society and the underlying values of individualism and the free enterprise system. Their goal was to eliminate obstacles to progress, particularly the trusts, political machines, and inhumane working conditions. Biographers have also detected the influence Hoover's Quaker background had throughout his career, in his humanitarian undertakings in World War I, his long concern for child welfare, and his broader emphasis on voluntary cooperation rather than government coercion.<sup>12</sup> Hoover's short 1922 political testament, *American Individualism*, was a thoroughly conventional political tract, expressing pieties about individualism, social and economic progress, and small government. As this Article will argue, however, it did not truly reflect his policies as Secretary of Commerce or as President where he pursued an activist, albeit limited, role for government.<sup>13</sup> Although Hoover is commonly linked with his two Republican predecessors, Warren G. Harding and Calvin Coolidge, as President, he rejected their vision of a small and passive federal government in favor of government activism. The standard cliché about the Republican Party being beholden to laissez-faire economic policies applies to his predecessors but not at all to Hoover. In fact, Hoover was not entirely certain which party he would commit to in the 1920 presidential election until late March of that year.<sup>14</sup>

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9. HOFF WILSON, *supra* note 6, at 73–76.

10. DAVID BURNER, *HERBERT HOOVER: A PUBLIC LIFE* 212 (1978).

11. HOFF WILSON, *supra* note 6.

12. *See, e.g.*, BURNER, *supra* note 10, at 8–9, 212–14; DAVID HINSHAW, *HERBERT HOOVER: AMERICAN QUAKER* 34–58 (1950).

13. *See* GARY DEAN BEST, *THE POLITICS OF AMERICAN INDIVIDUALISM: HERBERT HOOVER IN TRANSITION, 1918–1921*, at 91–94 (1975). *See generally* HERBERT HOOVER, *AMERICAN INDIVIDUALISM* (1922).

14. BURNER, *supra* note 10, at 150–52.

### III. HOOVER'S PRE-PRESIDENTIAL YEARS

In his pre-presidential years, Herbert Hoover was one of the great success stories in American public life, as he achieved success and public renown in every venture.<sup>15</sup> Before entering public life he was a highly successful professional engineer, achieving significant financial wealth and establishing a reputation as an extremely capable executive. In early 1920 he was briefly considered as a possible candidate for President, and was even considered a possibility by some leading Democrats.<sup>16</sup>

#### A. *The World War I Years*

Engaged in international engineering enterprises, Hoover was living in London in August 1914 when World War I broke out.<sup>17</sup> Americans living in England, along with tourists and others who fled the continent, found themselves stranded and in many cases without financial resources. To provide assistance, and at the request of the British government, the American embassy created the Committee of American Residents in London for Assistance of American Travelers, with Hoover as chair.<sup>18</sup> The project was a great success and helped provide short-term financial help to stranded Americans and eventually arranged the return to the United States of an estimated 100,000 people.<sup>19</sup> With this effort, Hoover's career as a private businessman ended and his career as a public servant began.<sup>20</sup>

The success of the stranded Americans effort led the American Ambassador to England, Walter Hines Page, to ask Hoover to chair the Committee for Relief in Belgium (CRB).<sup>21</sup> Famine among the Belgian and French people under German occupation was a major crisis, and in the United States their suffering became one of the major items in the

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15. See generally 2 GEORGE H. NASH, *THE LIFE OF HERBERT HOOVER: THE HUMANITARIAN 1914–1917* (1988) [hereinafter 2 NASH]; 3 GEORGE H. NASH, *THE LIFE OF HERBERT HOOVER: MASTER OF EMERGENCIES 1917–1918* (1996) [hereinafter 3 NASH].

16. BURNER, *supra* note 10, at 151.

17. 2 NASH, *supra* note 15, at 4.

18. *Id.* at 4, 7.

19. See *id.* at 12.

20. *Id.* at 14. More information can be found in the first three volumes of a four volume series which is devoted entirely to Hoover's World War I relief efforts. See generally 1 HERBERT HOOVER, *AN AMERICAN EPIC* (1959); 2 HERBERT HOOVER, *AN AMERICAN EPIC* (1960); 3 HERBERT HOOVER, *AN AMERICAN EPIC* (1961).

21. 2 NASH, *supra* note 15, at 32.

government's propaganda campaign of demonizing Germany.<sup>22</sup> Under Hoover's leadership, which included not just coping with the logistics of food transport but also navigating complex political conflicts among the Allies, the CRB was extremely successful. The committee oversaw the delivery of 2.5 million tons of food, which fed an estimated 9 million people.<sup>23</sup>

On the basis of his two successes in England, when the United States entered the European war in August 1917, President Woodrow Wilson asked Hoover to head the U.S. Food Administration.<sup>24</sup> This was a major undertaking as the American economy almost ground to a halt under the demands of mobilizing the country for the national war effort.<sup>25</sup> Mobilizing for an international war was the first truly national emergency since the United States had spread across the continent and been transformed by industrialization. The country had no prior experience and the then very small federal government was completely unequipped for the challenge. The effort included drafting, training, and feeding an army; getting that force to Europe; coordinating agricultural and industrial production; mobilizing public opinion through a propaganda effort;<sup>26</sup> and suppressing virtually all dissent.<sup>27</sup> By the end of 1917, severe food and fuel shortages existed in many cities.<sup>28</sup> Congress had responded in August 1917 by giving President Wilson extraordinary power over the economy, including all aspects of the food industry with the Lever Act (officially the Food and Fuel Conservation Act).<sup>29</sup>

Hoover accepted Wilson's offer (there is evidence that he actually eagerly sought the position), declined a salary, and as with every venture in his life, he took complete charge of the situation.<sup>30</sup> While the Lever Act granted the administration extraordinary power, Hoover chose to exercise it largely indirectly, preferring a policy of voluntary

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22. See GEORGE CREEL, *HOW WE ADVERTISED AMERICA: THE FIRST TELLING OF THE AMAZING STORY OF THE COMMITTEE ON PUBLIC INFORMATION THAT CARRIED THE GOSPEL OF AMERICANISM TO EVERY CORNER OF THE GLOBE* 420-21 (1920).

23. 2 NASH, *supra* note 15, at 362.

24. See 3 NASH, *supra* note 15, at 71-72.

25. *Id.*

26. See generally CREEL, *supra* note 22.

27. See PAUL L. MURPHY, *WORLD WAR I AND THE ORIGIN OF CIVIL LIBERTIES IN THE UNITED STATES* 51-53 (1979).

28. 3 NASH, *supra* note 15, at 219-20.

29. *Id.* at 71-72.

30. *Id.* at 21, 35.

cooperation. With a combination of exhortation and the threat of penalties, Hoover managed food production and distribution through voluntary trade associations that managed prices. The public exhortation effort was considerable, as Hoover aggressively promoted the slogan “Food will win the war.”<sup>31</sup>

His record as head of the Food Administration was almost universally regarded as an enormous success. The war ended in November 1918 with Hoover enjoying a reputation as one of the heroes of the war effort, an enormously capable public official, and a promising political future. Although reluctantly, he allowed a committee to work for his nomination as the Republican candidate for President in 1920, while some prominent Democrats seriously considered him as their nominee.<sup>32</sup>

### *B. Hoover as Secretary of Commerce*

Hoover served eight years as Secretary of Commerce under Presidents Warren G. Harding and Calvin Coolidge. In that position he promoted an activist role for the government that was out of step with the presidents he served and the reputation of the Republican Party in the 1920s as beholden to a laissez-faire policy on the role of government and the economy. His many commissions, conferences, and task forces addressing problems that inhibited social and economic progress clearly marked him as a progressive and not a conservative. Historian Hoff Wilson characterizes his role as Secretary of Commerce as “Domestic Dynamo,”<sup>33</sup> and one political cartoon depicted a “traffic problem” in the nation’s capital caused by a parade of Hoover’s many commissions.<sup>34</sup>

Hoover departed from 1920s Republican orthodoxy on several issues. Most notably, when asked by President Harding to be Secretary of Commerce, Hoover insisted on having “a voice on major policies involving labor,” believing that “commerce and industry could [not] make progress unless labor advanced with them.”<sup>35</sup> (This was a reason many conservative Republicans opposed his nomination.)<sup>36</sup> He supported passage of the 1926 Railway Labor Act, a forerunner of the

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31. BURNER, *supra* note 10, at 102; 3 NASH, *supra* note 15, at 153.

32. HOFF WILSON, *supra* note 6, at 73–78.

33. *See generally id.* at 79–121.

34. *Id.* at 119.

35. HOFF WILSON, *supra* note 6, at 94–95; HOOVER, *supra* note 3, at 101.

36. Hoover’s nomination as Secretary of Commerce was opposed by many conservative Republicans. HOFF WILSON, *supra* note 6, at 79–80.

1935 National Labor Relations Act (known popularly as the Wagner Act), as a means of providing orderly resolution of labor disputes.<sup>37</sup> His many articles and speeches while Secretary covered the business-related subjects one would expect of a Secretary of Commerce, but Hoover also gave considerable attention to social problems such as home ownership, education, the welfare of children, illiteracy, and the status of African-Americans.

His concern for the welfare of children was particularly notable. In 1920, even before entering the Cabinet, he was active in child welfare issues; for example, he consolidated several private agencies into the American Child Welfare Association, of which he was president.<sup>38</sup> In his memoirs he devoted a short chapter to “Better Children,” covering his activities in this area while Secretary of Commerce.<sup>39</sup> He proclaimed May Day in 1923 to be Children’s Health and Protection Day and repeated the proclamation annually while President.<sup>40</sup> Two years later he suggested a Bill of Rights for Children.<sup>41</sup> This novel idea anticipated the children’s rights movement of the late 1960s by four decades.<sup>42</sup>

On other social issues one of Hoover’s greatest achievements as Secretary of Commerce was in handling relief for the victims of the 1927 Mississippi Flood, which still stands as one of the greatest natural disasters to strike the United States. The flood inundated an estimated 16,570,627 acres in seven states, displaced an estimated 325,000 persons, and killed between 250 and 500 people.<sup>43</sup> The federal government was

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37. See IRVING BERNSTEIN, *THE LEAN YEARS: A HISTORY OF THE AMERICAN WORKER 1920–1933*, at 215–16, 272–73 (1960). In fact, however, the decade of the 1920s witnessed a devastating decline in unionism, as the federal courts willingly granted injunctions that prohibited virtually all forms of union organizing. See *id.* at 190, 195–96. Hoover’s efforts at cooperation and conciliation had little impact on the broader trend of events. See *id.* at 252.

38. HOOVER, *supra* note 3, at 97.

39. See generally *id.* at 97–100. A guide to the papers from Hoover’s Commerce Department years is available at the Herbert Hoover Presidential Library. *The Papers of Herbert Hoover*, available at <http://www.ecommcode2.com/hoover/research/hooverpapers/hoover/commerce/hcomsubj.htm> (last visited Mar. 7, 2013).

40. WILBUR & HYDE, *supra* note 8, at 55.

41. *Id.* at 55–56.

42. As President, Hoover expressed some concern about certain civil liberties issues, notably the status of persons still in prison for World War I violations of the Espionage Act, but he never articulated these concerns publicly and never took any bold action on them. See SAMUEL WALKER, *PRESIDENTS AND CIVIL LIBERTIES FROM WILSON TO OBAMA: A STORY OF POOR CUSTODIANS* 52, 62 (2012).

43. PETE DANIEL, *DEEP’N AS IT COME: THE 1927 MISSISSIPPI RIVER FLOOD* 10 (1977). Unfortunately, there are wildly varying estimates on numbers of acres flooded,

very small in those years and had essentially no institutional capacity for responding to a disaster of such proportions.<sup>44</sup> President Coolidge asked Hoover to coordinate relief efforts, with the Red Cross serving as the principal agency.<sup>45</sup> In addition to public appeals that raised millions of dollars, Hoover was able to generate several millions more in federal assistance.<sup>46</sup> This represented a significant departure from orthodox Republican policy of limited government in the decade. He also played a major role in designing and supporting the 1928 Mississippi Flood Control Bill that gave the federal government responsibility for rebuilding levees and preventing floods.<sup>47</sup> The law more closely resembled the New Deal rather than 1920s Republicanism.<sup>48</sup> His only misstep in the flood relief effort was his attempt to cover up widespread discrimination against African-Americans among flood victims. He created the Colored Advisory Commission to advise him on the matter, but when its report confirmed the worst allegations he persuaded its chair not to publicize it, promising to aid African-Americans once he was President. He failed to follow through on that promise and alienated African-American leaders as a result.<sup>49</sup>

#### IV. HOOVER AS PRESIDENT

As President, Hoover continued the pattern he had established as

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displaced persons, and deaths. See, e.g., Stephen Ambrose, *Great Flood*, NATIONALGEOGRAPHIC.COM (May 1, 2001), [http://news.nationalgeographic.com/news/2001/05/0501\\_river4.html](http://news.nationalgeographic.com/news/2001/05/0501_river4.html) (“Twenty-seven thousand square miles were inundated. This was about equal to the combined size of Massachusetts, Connecticut, New Hampshire, and Vermont. By July 1, even as the flood began to recede, 1.5 million acres were under water.”); *Mississippi River Flood of 1927*, BRITANNICA.COM, <http://www.britannica.com/EBchecked/topic/1481633/Mississippi-River-flood-of-1927> (last visited Apr. 6, 2013) (“More than 23,000 square miles (60,000 square km) of land was submerged, hundreds of thousands of people were displaced, and around 250 people died.”). These disparities are, at least in part, because of the evolving nature of the river, and flood basin, and the inability to accurately determine all flooding at one point in time.

44. See JOHN M. BARRY, *RISE AND FALL: THE GREAT MISSISSIPPI FLOOD OF 1927 AND HOW IT CHANGED AMERICA* 371–72 (1997).

45. *Id.* at 240–41.

46. *Id.* at 367, 369.

47. See *id.* at 401–07.

48. *Id.* at 407; DANIEL, *supra* note 43, at 150 (explaining the details of the law).

49. See DONALD J. LISIO, *HOOVER, BLACKS, & LILY-WHITES: A STUDY OF SOUTHERN STRATEGIES* 6–7, 14, 70–71 (1985). Hoover did not mention this embarrassing aspect of the Mississippi flood story in his 1952 *Memoirs*. See generally HOOVER, *supra* note 3, at 125–31. Although there is some mention in the memoir, there are no entries in the Index to “negroes” or “race” in this volume of his *Memoirs*. *Id.* at 518–19.

Secretary of Commerce by creating a seemingly endless array of commissions and conferences. His responsibilities as President, in fact, only gave him a wider field for such activities. Nine months into his presidency he jokingly told an audience, “[y]ou have been misled into the impression that I shall soon appoint [a commission] every day. That is wrong—I shall probably need to appoint two a day.”<sup>50</sup> One historian counted thirty presidential sponsored conferences and commissions by mid-1932; another historian estimated there were 3,000 conferences on various issues during Hoover’s twelve years as Secretary of Commerce and President.<sup>51</sup> Biographer David Burner titles his first chapter on Hoover as President “The Reform Presidency”; in the months before the Depression overtook the country his presidency represented “a remarkable experiment in developing new approaches to old problems.”<sup>52</sup> In the context of this active engagement with social problems, the Wickersham Commission was simply business as usual for the Hoover Administration.

The range of issues covered clearly refutes any suggestion that he was a business-oriented Republican committed to laissez-faire ideology. Instead, the issues mark him as a progressive, more in tune with the concerns of the Democratic Party presidents who preceded and followed him as President, Woodrow Wilson and Franklin D. Roosevelt.<sup>53</sup> A sampling of these efforts include the President’s Commission for the Study and Review of Conditions in Haiti (1929–1930), the President’s Committee on the Conservation and Administration of the Public Domain (1929–1933), the Advisory Committee on Education; the National Advisory Committee for Aeronautics; the White House Conference on Home Building and Ownership; the Child Health & Protection Conference; the Conference on the Crisis in Education (1932) (which prompted Hoover to consider creating a Department of Education); a National Advisory Council on Illiteracy; and more.<sup>54</sup>

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50. WILBUR & HYDE, *supra* note 8, at 41.

51. HOFF WILSON, *supra* note 6, at 82. The claim of 3,000 events is not documented in specific detail.

52. BURNER, *supra* note 10, at 212.

53. See generally WILBUR & HYDE, *supra* note 8 (providing the best overview of the scope of Hoover’s reform activities). Materials on the various reform activities are available at the Herbert Hoover Presidential Library, West Branch, Iowa. *Historical Materials*, HERBERT HOOVER PRESIDENTIAL LIBRARY AND MUSEUM, [www.ecommcode2.com/hoover/research/historicalmaterials/hmfed.html](http://www.ecommcode2.com/hoover/research/historicalmaterials/hmfed.html) (last visited Mar. 2, 2013).

54. See *The Herbert Hoover Papers*, HERBERT HOOVER PRESIDENTIAL LIBRARY AND

Hoover's concern with the welfare of children, which was strong while he was Secretary of Commerce, continued through his presidency. He spoke and wrote every year on the subject, and annually he proclaimed May 1st as Children's Health and Protection Day.<sup>55</sup> For the White House Conference on Children in late 1930<sup>56</sup> he translated his earlier idea of a Children's Bill of Rights into a "Children's Charter."<sup>57</sup> Truly remarkable for its time, it called for a right to "parental, natal and postnatal care" for mothers, "periodic health examinations" and dental care for "every child"; diagnosis and training for disabled children, and an "adequate standard of living" for all families.<sup>58</sup> The proposal anticipated by four decades the idea of children's rights and was radical even by later standards.

Perhaps the most comprehensive and academically weighty commission report was *Recent Social Trends in the United States* (1933),<sup>59</sup> which involved contributions from many of the nation's leading social scientists, was accompanied by thirteen separate monographs, and, in twenty-nine chapters, covered virtually every important area of American life.<sup>60</sup> The report was evidently very well received and went through several printings in the first seven months.<sup>61</sup> One suspects, however, that the report had more impact among academics, who found it a valuable resource at the time and today use it as a historical benchmark on the various issues, than on immediate public policy. *Recent Social Trends* most closely resembles the Wickersham Commission as a detailed discussion of the topics covered.

If Hoover sought to be a reform president, the great tragedy of his presidency was the Great Depression, which devastated the economy and shattered all his dreams of social and economic progress through enlightened leadership and gradual, government-encouraged reform. The Wickersham Commission inevitably suffered the same fate.

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MUSEUM, <http://www.ecommcode2.com/hoover/research/hooverpapers/index.html> (last visited Mar. 2, 2013).

55. WILBUR & HYDE, *supra* note 8, at 55; *Hoover Proclaims Child Health Day*, N.Y. TIMES, Mar. 27, 1929, at 5 (Presidential Proclamation printed in the N.Y. Times with a foreword by Frank. B., Kellogg, Secretary of State).

56. *See generally* WILBUR & HYDE, *supra* note 8, at 58-71.

57. *Id.* at 64-67.

58. *Id.* at 65-66.

59. *See* 1 PRESIDENT'S RESEARCH COMM. ON SOC. TRENDS, RECENT SOCIAL TRENDS IN THE UNITED STATES (1933) [Hereinafter RECENT SOCIAL TRENDS].

60. *Id.*

61. *See id.* at iv.

## V. THE WICKERSHAM COMMISSION

Herbert Hoover turned his attention to the problem of crime and criminal justice from the moment he took office as President. In his Inaugural Address on March 4, 1929, he declared: “Justice must not fail because the agencies of enforcement are either delinquent or inefficiently organized. To consider these evils, to find their remedy, is the most sore necessity of our times.”<sup>62</sup> He followed up with another comment on the need for a commission to study law enforcement at his first press conference the next day.<sup>63</sup>

The Wickersham Commission reflected the principles and practices that characterized all of Hoover’s previous life and work. It was simply one of the many commissions he appointed as Secretary of Commerce or President that engaged recognized experts to develop practical recommendations that would address inefficiencies and other problems in the subject under study (in this case, the administration of criminal justice). As this Article argues below, the *Report on Prohibition*, which received most of the public comment upon publication, is a special case because the subject was quite different from all but one of the other commission reports—the *Report on Lawlessness in Law Enforcement*.

Before turning to the work of the Wickersham Commission itself,<sup>64</sup> however, it is important to set the context for its work by examining the crime commission movement of the 1920s.

### A. *The Crime Commission Movement of the 1920s*

Not only was the Wickersham Commission fully consistent with Herbert Hoover’s pre-presidential career, but it was also a logical and, one might argue, inevitable outgrowth of the city and state-level crime commission movement of the 1920s. There were innumerable studies of the administration of criminal justice in that decade, many of which were short, focused on a particular aspect of the criminal justice system,

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62. Herbert Hoover, Inaugural Address (Mar. 4, 1929), available at <http://www.presidency.ucsb.edu/ws/print.php?pid=21804>.

63. Herbert Hoover, The President’s News Conference (Mar. 5, 1929), available at <http://www.presidency.ucsb.edu/ws/print.php?pid=21915>. At that press conference he said,

One other question relates to the time I shall appoint the commission that I mentioned yesterday. I notice it is referred to as a prohibition matter. It is not. It is a question of the whole problem of law enforcement. I shall confer with the new Attorney General at an early date as to the constitution of that body.

*Id.*

64. See generally *supra* note 4 and accompanying text.

and of little interest today.<sup>65</sup> Three crime commissions, however, were substantial undertakings and served as models for the Wickersham Commission.<sup>66</sup> The Cleveland [Ohio] Survey (1922),<sup>67</sup> the Missouri Crime Survey (1926),<sup>68</sup> and the Illinois Crime Survey (1929)<sup>69</sup> were comprehensive studies of the administration of justice that employed recognized experts, adopted a self-conscious scientific approach, and produced lengthy reports with substantive conclusions and recommendations.<sup>70</sup> Many of the authors of particular chapters were also involved in the Wickersham Commission.<sup>71</sup> In retrospect, it seems almost inevitable that these city and state investigations would lead to suggestions for a national study of crime and criminal justice.

Investigations of criminal justice agencies were nothing new in the 1920s. There had been a long history of investigations, particularly of the police and prisons throughout the nineteenth and early twentieth century.<sup>72</sup> These earlier efforts, however, were largely politically driven exposés, often with an ill-disguised goal of embarrassing those in power.<sup>73</sup> Many were also highly moralistic in orientation, driven by outrage at, for example, the failure of authorities to enforce law limiting

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65. See VIRGIL W. PETERSON, CRIME COMMISSIONS IN THE UNITED STATES 3–4 (1945).

66. The best bibliography of the crime commissions is found in NAT'L COMM'N ON LAW OBSERVANCE & ENFORCEMENT, REPORT ON PROSECUTION 258–65 (1931) [hereinafter REPORT ON PROSECUTION]; see also PETERSON, *supra* note 65 (summarizing crime commissions, authored by the Director of the Chicago Crime Commission). The National Crime Commission of 1926–1927 focused on crime control, rather than the administration of justice in the manner of the major crime commissions discussed here or the Wickersham Commission. See generally SAMUEL WALKER, A CRITICAL HISTORY OF POLICE REFORM: THE EMERGENCE OF PROFESSIONALISM 130–31 (1977).

67. RAYMOND FOSDICK ET AL., CRIMINAL JUSTICE IN CLEVELAND: REPORTS OF THE CLEVELAND FOUNDATION SURVEY OF THE ADMINISTRATION OF CRIMINAL JUSTICE IN CLEVELAND, OHIO (Roscoe Pound & Felix Frankfurter eds., 1922) [hereinafter CRIMINAL JUSTICE IN CLEVELAND]. A history of the survey is provided as well. See *id.* at 655–62.

68. JESSE W. BARRETT ET AL., THE MO. ASS'N FOR CRIMINAL JUSTICE, THE MISSOURI CRIME SURVEY (1926).

69. THE ILL. ASS'N FOR CRIMINAL JUSTICE, THE ILLINOIS CRIME SURVEY (1929) [hereinafter THE ILLINOIS CRIME SURVEY]. The Illinois Crime Survey was dominated by its investigation of organized crime in Chicago, which covered 272 pages and was the focus of the final recommendations. See *id.* at xxii–xxvi, 815–1087, 1092–1100.

70. See WALKER, *supra* note 1, at 132, 152–54.

71. See, e.g., *id.* at 132, 154 (noting that August Vollmer participated in the *Illinois Crime Survey* and the Wickersham Commission).

72. *Id.* at 127–29, 132, 134.

73. *Id.* at 114.

the consumption of alcoholic beverages.<sup>74</sup> The most famous investigation in this latter category was the 1894–1895 Lexow Committee investigation of the New York City Police Department,<sup>75</sup> which was triggered by an 1892 sermon<sup>76</sup> by the Rev. Charles H. Parkhurst, a crusading Protestant minister.

The criminal justice investigations of the 1920s broke with this tradition by adopting a self-conscious scientific approach that utilized recognized experts to gather and analyze the facts and by making recommendations based on those facts.<sup>77</sup> This, of course, was an approach to social problems that Herbert Hoover took for granted and pursued throughout his public career. The 1922 Cleveland Survey established the model for the best of the subsequent crime commissions. Roscoe Pound, Dean of Harvard Law School, served as co-director with his law school colleague Felix Frankfurter.<sup>78</sup> Pound was the dominant intellectual influence over the Cleveland Survey, writing the ninety-three-page final chapter of the report, “Criminal Justice in the American City—A Summary,”<sup>79</sup> and has been characterized as the dominant intellectual influence over the Wickersham Commission.<sup>80</sup>

Most notably, the three 1920s crime commissions began to discover, very haltingly, aspects of the administration of justice that the Wickersham Commission noted, and which in the 1960s were finally recognized as the dominant characteristics of the process. The most important issue was the flow of cases through the criminal justice system (a term that was not conceptualized until the 1960s) and the exit of many cases from the system. The Cleveland Survey noted the “mortality” of cases in the administration of justice.<sup>81</sup> This judgment reflected the naïve assumption that most arrests should necessarily lead to conviction and punishment. From this perspective, the “mortality” of

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74. *Id.* at 158.

75. SPECIAL COMM. APPOINTED TO INVESTIGATE THE POLICE DEP'T OF THE CITY OF N.Y., REPORT (1895) (Senator Clarence Lexow chaired the committee).

76. See CHARLES H. PARKHURST, OUR FIGHT WITH TAMMANY 8, 240–52 (1895); WALKER, *supra* note 66, at 44–45.

77. WALKER, *supra* note 1, at 152.

78. *Id.*

79. See Roscoe Pound, *Criminal Justice in the American City—A Summary*, in CRIMINAL JUSTICE IN CLEVELAND, *supra* note 67, at 559–650. The chapter was similar to another of Pound's books. See generally ROSCOE POUND, CRIMINAL JUSTICE IN AMERICA (1930).

80. See CALDER, *supra* note 1, at 59–60 (discussing the roles of Pound and Frankfurter).

81. See FOSDICK ET AL., *supra* note 67, at 89–96.

cases suggested serious inefficiencies or other obstacles that needed to be identified and corrected. The Illinois Crime Survey, meanwhile, noted that, on average, out of 100 arrests, only 15 defendants were sentenced to prison.<sup>82</sup> The Wickersham Commission *Report on Prosecution* would also note these phenomena. As is argued later in the Article, the crime commissions of the period were groping toward a recognition of the administration of justice as a “criminal justice system” in which a variety of organizational and legal factors affected the progress of cases through that system.

We now turn our attention to the various Wickersham Commission reports, which vary considerably in terms of their subject, political implications, and relevance for future criminal justice studies. The majority of the reports followed the model of the earlier crime commissions, addressing administrative problems that affected the efficiency of various agencies. The *Report on Prohibition* was unique in addressing what was essentially a political question. The *Report on Lawlessness in Law Enforcement* was unique in bringing a forceful civil liberties perspective to the subject at hand. Finally, the *Report on Prosecution* touched on issues that would become part of the conventional wisdom in criminal justice studies in the 1960s.

### B. The Wickersham Commission Reports

#### 1. The *Report on Prohibition*

Of all the Wickersham Commission reports, the *Report on Prohibition* received most of the public attention, mainly because it failed to recommend repeal of Prohibition. The report actually consists of two documents, the *Preliminary Report on Observance and Enforcement of Prohibition* and the *Report on the Enforcement of the Prohibition Laws of the United States*.<sup>83</sup> Prohibition had become increasingly unpopular by the late 1920s and was seen as not only a failure with respect to controlling alcohol consumption but also as the source of several serious problems, including: pervasive non-compliance by ordinary citizens who wanted to drink; loss of public confidence in

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82. See THE ILLINOIS CRIME SURVEY, *supra* note 69, at 295.

83. The two documents were formally Reports No. 1 and No. 2 of the Commission. See H.R. DOC. NO. 71-252, at 5–12 (1930) (PRELIMINARY REPORT ON OBSERVANCE AND ENFORCEMENT OF PROHIBITION); H.R. DOC. NO. 71-722 (1931) [hereinafter PROHIBITION ENFORCEMENT REPORT] (Report on the Enforcement of the Prohibition Laws of the United States).

the law and criminal justice system; the corruption of law enforcement agencies; abuses in enforcement of the law; and the growth of organized crime, which delivered the alcohol that the public clearly wanted.<sup>84</sup> Many critics noted the glaring contradiction between the Commission's evidence on the failure of both observance of Prohibition and enforcement of the law and the report's recommendations.<sup>85</sup>

The *Report on Prohibition* was unequivocal in its defense of Prohibition, declaring that "[t]he Commission is opposed to repeal of the Eighteenth Amendment."<sup>86</sup> Recommendation seven conceded that "there is yet no adequate observance or enforcement," and this was followed by a series of recommendations seeking to improve the effectiveness of enforcement.<sup>87</sup> The report addressed the civil liberties violations associated with enforcement only by opposing any "legislation allowing more latitude for federal searches and seizures."<sup>88</sup> In this respect the report was in sharp contrast with the *Report on Lawlessness in Law Enforcement*, which documented and condemned illegal police behavior and offered some concrete recommendations to end it.<sup>89</sup>

The failure of the Wickersham Commission to provide a satisfactory response to the problem of Prohibition is readily explained. The controversy over the attempt to prohibit the manufacture, sale and consumption of alcohol was a *political* problem, rather than a *technical* one, which could be addressed through adjustments to the existing machinery of justice. The latter approach represented the basic orientation of all of Hoover's many commissions and conferences and the crime commissions of the 1920s. The Prohibition controversy, however, was of a different order altogether, representing a deep social and cultural divide over the place of alcohol in society that touched on deep-seated values. It can be usefully seen as another chapter in the long-running "culture wars" that mark American history.<sup>90</sup> There were

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84. See, e.g., THE ILLINOIS CRIME SURVEY, *supra* note 69, at xxii–xxvi, 815–1087, 1092–1100 (providing a lengthy treatment of organized crime).

85. CALDER, *supra* note 1, at 85–87 (labeling the problem as the "Prohibition Albatross").

86. PROHIBITION ENFORCEMENT REPORT, *supra* note 83, at 83.

87. *Id.*

88. *Id.* at 84.

89. See NAT'L COMM'N ON LAW OBSERVANCE & ENFORCEMENT, REPORT ON LAWLESSNESS IN LAW ENFORCEMENT 1 340–47 (1931) [hereinafter REPORT ON LAWLESSNESS] (providing several conclusions and recommendations).

90. See generally JAMES DAVIDSON HUNTER, CULTURE WARS: THE STRUGGLE TO DEFINE AMERICA (1991); IRENE TAVISS THOMSON, CULTURE WARS AND ENDURING

no adjustments that would resolve the issue of Prohibition, however. A solution required confronting the values underlying it as social policy in the first place.

## 2. The *Report on Lawlessness in Law Enforcement*

The only other Wickersham Commission report to gain any public attention upon release, and the only other one to be out of step with the orientation of the remaining reports, was the *Report on Lawlessness in Law Enforcement*.<sup>91</sup> In blunt and provocative language, the report declared that “the third degree—that is, the use of physical brutality, or other forms of cruelty, to obtain involuntary confessions or admissions—is widespread.”<sup>92</sup> The abuses included “[p]rotracted questioning,” “[t]hreats” and “intimidation,” “[p]hysical brutality,” “illegal detention,” denial of access to counsel, and delay in producing a prisoner before a magistrate.<sup>93</sup> Local officials were unashamed about their methods. The Commissioner of Police in Buffalo said “[i]f I have to violate the Constitution or my oath of office, I’ll violate the Constitution.”<sup>94</sup> Beatings of suspects were widespread across the country.<sup>95</sup> A suspect in Cleveland was forced to lie naked on the floor and then lifted several times by his sex organs.<sup>96</sup> The Detroit police used a practice called “around the loop,” which involved moving arrestees from one of the fifteen precinct stations to another to keep him from family, friends, and legal representation.<sup>97</sup>

The existence of the third degree was well known among local criminal justice officials, and at least some other members of the general public,<sup>98</sup> but the *Report on Lawlessness in Law Enforcement* was the first time an authoritative government body had ever recognized and condemned it in print, with thorough documentation, gathered through field research and a national review of relevant court cases.<sup>99</sup>

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AMERICAN DILEMMAS (2010).

91. See REPORT ON LAWLESSNESS, *supra* note 89.

92. *Id.* at 4.

93. *Id.*

94. *Id.* at 102–03.

95. *Id. passim.*

96. *Id.* at 118.

97. *Id.* at 121.

98. The third degree had been a public controversy early in the twentieth century. WALKER, *supra* note 66, at 125–26, 132–34.

99. Methods of the investigation are described in REPORT ON LAWLESSNESS, *supra* note 89, at 22–24.

The report concluded with an evident attempt at balance by summarizing the “excuses” and “evils” of the third degree.<sup>100</sup> The excuses included that it “is necessary to get at the facts,” and “is used only against the guilty”; that various “obstacles . . . make it almost impossible to obtain convictions” any other way; that it is “inevitable and . . . an excusable reaction to the brutality of criminals”; that restricting the third degree would “impair the morale of the police”; and that organized crime “renders traditional legal limitations outworn.”<sup>101</sup> The evils, meanwhile, included that the third degree creates the “danger of false confession”; that it “impairs police efficiency” by discouraging professional police practices; that it impairs the efficiency of the courts; and finally that it “brutalizes the police, hardens the prisoner,” and lowers public confidence in the criminal justice system.<sup>102</sup>

The report recommended some significant changes in criminal procedure, some of which anticipated changes in the law by several decades, although it is not clear how they would address the third degree problem directly. The recommendations included establishing legal representation for defendants “in all cases” (which the Supreme Court would not require until the 1960s), requiring the prosecution to provide the defense with a list of its witnesses, eliminating race discrimination in jury lists (an issue that would wait until the civil rights movement of the 1960s), simplifying and clarifying the law on the admissibility of evidence, and others.<sup>103</sup> The recommendation to end race discrimination in jury lists, it might be noted, was one of only two occasions where a Wickersham Commission report addressed discrimination based on race, ethnicity, or national origins (the other being the *Report on the Enforcement of the Deportation Laws of the United States*, discussed below).<sup>104</sup> Earlier observations in the report, however, undercut the likely effectiveness of the recommended changes in criminal procedure with respect to the enormous problem of police lawlessness. Changing the law of criminal procedure, it had previously argued, would have only minimal impact because officials either do not enforce existing law or deliberately disobey it. “Statutes can not [sic]

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100. *Id.* at 173.

101. *Id.* at 174–80.

102. *Id.* at 180–90.

103. *See id.* at 341–43.

104. *See* NAT’L COMM’N ON LAW OBSERVANCE & ENFORCEMENT, REPORT ON THE ENFORCEMENT OF THE DEPORTATION LAWS OF THE UNITED STATES (1931) [hereinafter REPORT ON DEPORTATION].

cope with the third degree nor can police regulations. Without the will to enforce them, these become words upon a printed page. The real remedy lies in the will of the community.”<sup>105</sup> For this problem, however, the Wickersham Commission report had no recommendation.

Other Wickersham Commission reports also noted the overriding importance of public attitudes, meaning specifically serious problems in the administration of justice. This was most evident in the *Report on Prohibition*, which noted the pervasive violation of the law and indifference to enforcement abuses.<sup>106</sup> The *Report on Crime and the Foreign Born*, meanwhile, noted the persistent public belief that immigrants committed crime at a disproportionate rate compared with native-born Americans, despite evidence to the contrary.<sup>107</sup> Citing public opinion as the fundamental problem was essentially a fatalistic conclusion, an admission that they had no immediate, practical reforms to recommend, and that they had no real answer to the question of how to change public attitudes.<sup>108</sup>

The *Report on Lawlessness in Law Enforcement* stands out among the various Wickersham reports because of its explosive conclusions and its civil liberties orientation. No other report so bluntly accused public officials of pervasive wrongdoing. Other reports blamed problems on unqualified personnel, the influence of “politics,” or sheer public indifference. There is, in fact, some mystery surrounding how the *Report on Lawlessness in Law Enforcement* was initiated and how its three co-authors were selected in the first place.

Co-author Walter Pollak was the ACLU’s premier Supreme Court litigator in the 1920s and 1930s,<sup>109</sup> arguing several landmark cases that marked the beginnings of the revolution in the law of individual rights. Most important, he argued *Gitlow v. New York* (1925), where the Court established the principle that the Fourteenth Amendment incorporated the First Amendment.<sup>110</sup> He also argued two Scottsboro cases, notably

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105. REPORT ON LAWLESSNESS, *supra* note 89, at 191.

106. PROHIBITION ENFORCEMENT REPORT, *supra* note 83, at 22.

107. NAT’L COMM’N ON LAW OBSERVANCE & ENFORCEMENT, REPORT ON CRIME AND THE FOREIGN BORN 23, 195 (1931) [hereinafter CRIME AND FOREIGN BORN].

108. *See id.* at 195–96 (concluding and recommending that the Commission failed to suggest ways to attempt to sway public opinion).

109. SAMUEL WALKER, IN DEFENSE OF AMERICAN LIBERTIES: A HISTORY OF THE ACLU 79, 81–82 (1990). *See generally* Louis H. Pollak, *Advocating Civil Liberties: A Young Lawyer Before the Old Court*, 17 HARV. C.R.-C.L. L. REV. 1 (1982).

110. *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

*Powell v. Alabama* (1932) where the Court held that Powell, facing a possible death penalty, had been denied due process of law because he had not had legal representation.<sup>111</sup> The Scottsboro affair, where nine young African-American men were accused of raping two white women near the small Alabama town of that name, and which involved numerous court proceedings over many years, became a national cause célèbre in the 1930s, and arguably the first great national civil rights case.<sup>112</sup> In addition to extending the principle of incorporation of the Bill of Rights into the Fourteenth Amendment, the Scottsboro cases marked the Court's growing attention to issues of racial justice. Co-author Zechariah Chafee of Harvard Law School was the reigning authority on freedom of speech, based on his 1919 law review article and 1920 book on freedom of speech in wartime.<sup>113</sup> His views played a major role in shaping public opinion and the course of constitutional law in the direction of greater protection of freedom of speech in the years between the first and second world wars. He was also one of twelve prominent attorneys (including Felix Frankfurter and Roscoe Pound) who co-authored the report *Illegal Practices of the United States Department of Justice*, a stinging critique of the famous "Palmer Raids" of late 1919 and early 1920, where federal authorities arrested hundreds of alleged radicals.<sup>114</sup> Given the background and concerns of its authors, one could easily predict what kind of report they would write. No other Wickersham Commission report nor any of the crime commission reports of the 1920s involved the civil liberties perspective of the *Report on Lawlessness in Law Enforcement*. The surviving documents do not help to explain how these three individuals were selected for the report.<sup>115</sup> The most likely explanation for the origins of the *Report on Lawlessness in Law Enforcement* was the fact that Chafee was a Harvard

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111. *Powell v. Alabama*, 287 U.S. 45, 71 (1932).

112. See generally DAN T. CARTER, *SCOTTSBORO: A TRAGEDY OF THE AMERICAN SOUTH* (1969).

113. See ZECHARIAH CHAFEE, *FREEDOM OF SPEECH* (1920); Zechariah Chafee, Jr., *Freedom of Speech in War Time*, 32 HARV. L. REV. 932 (1919). Professor Chafee also wrote another book on free speech in 1941. See ZECHARIAH CHAFEE, *FREE SPEECH IN THE UNITED STATES* (1941).

114. NAT'L POPULAR GOV'T LEAGUE, *REPORT UPON THE ILLEGAL PRACTICES OF THE UNITED STATES DEPARTMENT OF JUSTICE* 3-4 (1920); WALKER, *supra* note 109, at 44-45 (arguing that the report had a significant impact on public opinion, particularly as it served as a valuable documentation of abuses associated with the Red Scare for future generations). Carl Stern, the third co-author, was a civil libertarian attorney, although not as well-known as the other two.

115. The Papers of the Wickersham Commission provide no help on this question.

Law School colleague of Roscoe Pound, the intellectual guiding force behind the Wickersham Commission, and also that Felix Frankfurter, a major figure in the crime commission movement and a founding member of the ACLU.<sup>116</sup>

The nature of the lawlessness study did provoke some controversy within the Wickersham Commission, with some commissioners arguing over whether to continue it or publish a final report. Oddly, some evidence suggests that Commission Chairperson George W. Wickersham was not fully aware of what the report really involved.<sup>117</sup> Some commissioners adamantly objected to the entire enterprise and wanted the Commission not to publish any part of it.<sup>118</sup> Nonetheless, the report survived with its explosive evidence intact.

The report arrived at a propitious moment in the history of police reform. In the 1930s, a new generation of reform police chiefs was coming to the fore and began taking the police professionalization movement to a new level.<sup>119</sup> The leader of this movement was O.W. Wilson. He began writing on the subject of police administration in the mid-1930s.<sup>120</sup> His book *Police Administration*, first published in 1950,<sup>121</sup> eventually became the unofficial “bible” on the subject and shaped police thinking through the 1970s. To be sure, the Wickersham *Report on Lawlessness in Law Enforcement* hardly ended police misconduct. Police brutality erupted into a national controversy in the 1960s<sup>122</sup> and misconduct continues today. But for the reform-minded police chiefs who emerged in the 1930s, the report served as a valuable point of reference and support.

The *Report on Lawlessness in Law Enforcement* (the report discussing the use of the third degree) completely overshadowed the

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116. WALKER, *supra* note 109, at 44–45, 66; see *Harvard Law School Deans Throughout History*, HARVARD LAW SCHOOL, <http://www.law.harvard.edu/news/spotlight/classroom/related/hls-deans.html> (last visited Apr. 14, 2013.).

117. See CALDER, *supra* note 1, at 97.

118. *Id.* at 96–97 (discussing this controversy).

119. See generally WALKER, *supra* note 66, at 53–54, 56–57.

120. See WILLIAM J. BOPP, “O.W.”: O.W. WILSON AND THE SEARCH FOR A POLICE PROFESSION 152 (1977); WALKER, POPULAR JUSTICE: A HISTORY OF CRIMINAL JUSTICE, *supra* note 1, at 172.

121. O.W. WILSON, POLICE ADMINISTRATION (1st ed. 1950). Throughout the years several versions of the book were released. See, e.g., O.W. WILSON, POLICE ADMINISTRATION (2d ed. 1963); O.W. WILSON & ROY CLINTON MCLAREN, POLICE ADMINISTRATION (3d ed. 1972).

122. WALKER, *supra* note 66, at 132–33.

modest *Report on Police*,<sup>123</sup> written by August Vollmer, then near the end of his career as the leader of the first era of the police professionalization movement.<sup>124</sup> It closely resembled other police investigations of the 1920s, including the relevant chapters of the various crime commissions, and reiterated what had developed as the standard prescription for police professionalization: the elimination of “politics,” the hiring of experienced managers as police chiefs, and the improvement of police officer recruitment and training standards.<sup>125</sup>

### 3. The *Report on Prosecution* and the Administration of Criminal Justice as a System

The curious aspect of the *Report on Prosecution* is the contrast between the 38-page report itself and the 298 pages of supplemental “Criminal Justice Surveys and Analysis,” which includes a still-useful 104-page bibliography on studies of the administration of justice. The supplemental report was written by Alfred Bettman who had previously written the chapter on prosecution for the pioneering survey.<sup>126</sup> Most important, the supplemental materials included a discussion of the interrelationships among criminal justice agencies, which was grounded in the analysis of the “Mortality Statistics” of criminal cases as they proceeded from arrest through final disposition.<sup>127</sup> The mortality issue had been first noted but not analyzed by the Cleveland Survey.<sup>128</sup> The Wickersham Report found “striking” the number of ways “a prosecution may be terminated,” which included a “large number of different steps or stages” in the criminal process.<sup>129</sup> It also noted the “interrelationships between the various parts of the administration of criminal cases and their reflex effects upon each other.”<sup>130</sup> Although the authors of the report did not fully understand the significance of what they had found, they had in fact stumbled upon a phenomenon that

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123. NAT’L COMM’N ON LAW OBSERVANCE & ENFORCEMENT, REPORT ON POLICE (1931) [hereinafter REPORT ON POLICE].

124. WALKER, *supra* note 1, at 154.

125. REPORT ON POLICE, *supra* note 123, at 140; WALKER, *supra* note 66, at 70–71, 129–30.

126. See REPORT ON PROSECUTION, *supra* note 66, at v. The chapter on prosecution is in FOSDICK ET AL., *supra* note 67, at xii–xiii (showing the Chapter on Prosecution, written by Alfred Bettman, beginning on page eighty-five in the Table of Contents).

127. REPORT ON PROSECUTION, *supra* note 66, at 52–53.

128. See FOSDICK ET AL., *supra* note 67, at 89–96.

129. REPORT ON PROSECUTION, *supra* note 66, at 55.

130. *Id.* at 58.

thirty-six years later the President's Crime Commission would identify as the "systems" model of the administration of justice.<sup>131</sup> As discussed later in this Article, the systems model would dominate professional thinking about criminal justice, making the phrase "criminal justice system" commonplace, and would shape research and policy making in the field from that time to the present.<sup>132</sup> It is interesting to speculate on the course of criminal justice studies, and the subsequent impact on policy, had the work of the Wickersham Commission, and the *Report on Prosecution*, in particular, not been short-circuited by the Great Depression. Had the systems approach to the administration of justice been developed in the 1930s, it is quite possible that the research and reform efforts that emerged in the 1960s might have been advanced by decades.

The recommendations of the *Report on Prosecution* were a mixture of modest proposals that were similar to those of previous crime commissions and some very far-reaching proposals. In the conventional mode, the report recommended the "[e]limination . . . of political considerations" in the selection and appointment of federal prosecutors; the better "selection and tenure of [state] prosecutors"; and improvements in the "organization of the legal profession" in order to provide a higher quality of criminal justice personnel.<sup>133</sup> The report also recommended the "systematized control of prosecutions in each State under a director of public prosecutions," which was clearly a strategy for eliminating what was considered improper local political influence on the justice system.<sup>134</sup> The fifth and last recommendation was more far reaching than the others, calling for the "[p]rovision for legal interrogation of accused persons under suitable safeguards."<sup>135</sup> With its attention to the deprivation of individual rights, the recommendation paralleled the attention to civil liberties in both the Wickersham *Report on Lawlessness in Law Enforcement* and the *Report on the Enforcement of the Deportation Laws of the United States*.<sup>136</sup>

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131. See PRESIDENT'S COMM'N ON LAW ENFORCEMENT & ADMIN. OF JUSTICE, TASK FORCE REPORT: SCIENCE AND TECHNOLOGY 53-67 (1967) [hereinafter SCIENCE AND TECHNOLOGY].

132. See *id.*; *infra* Part VI.

133. REPORT ON PROSECUTION, *supra* note 66, at 37-38.

134. *Id.* at 38.

135. *Id.*

136. Compare *id.* 37-38, with REPORT ON LAWLESSNESS, *supra* note 89, at 340-47, and REPORT ON DEPORTATION, *supra* note 104, at 133-49.

4. *The Report on the Enforcement of the Deportation Laws of the United States*

The *Report on the Enforcement of the Deportation Laws of the United States* resembles the *Report on Lawlessness in Law Enforcement* in its concern for the deprivation of individual rights of defendants.<sup>137</sup> In general, the report is a fairly strong indictment of the deportation process. The “[o]bjectionable [f]eatures” of the process involved the “[i]nvasion of [p]ersonal [r]ights,”<sup>138</sup> which included illegal searches and seizures, inquisitorial examinations, the lack of representation by legal counsel (which it labeled “[o]ne of the most striking features” of the process),<sup>139</sup> the “despotic powers” of the administrative agency, and other related problems.<sup>140</sup>

The causes of the abuses in the deportation process, the report argued, included the low social status of most of the suspects as foreign-born immigrants and public indifference to personal rights in general, and for low status people in particular.<sup>141</sup> It took special note of the impact of the deportation process on the families of suspects and deportees, and called for exceptions in cases of hardship.<sup>142</sup> Such concern for the plight of the powerless was expressed only in the Wickersham *Report on Lawlessness in Law Enforcement*. Additionally, the report expressed concern for deportees whose “lives may be in danger because of their political opinions” if they were returned to their native lands, and recommended that they should be allowed to go to a different country at their own expense.<sup>143</sup> Concern about the status of immigrants and associated civil liberties issues was rare in the political atmosphere of the 1920s, a decade marked by the notoriously discriminatory “national origins” quota system of the 1924 Immigration Act.<sup>144</sup>

The *Report on the Enforcement of the Deportation Laws of the United States*’s Conclusions and Recommendations were mixed. On the

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137. See REPORT ON DEPORTATION, *supra* note 104, at 133–49.

138. See *id.* at 133.

139. *Id.* at 135, 137–38, 143.

140. See *id.* at 144–49.

141. See *id.* at 154–55.

142. *Id.* at 128–30, 179.

143. *Id.* at 179.

144. See generally JOHN HIGHAM, STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM 1860–1925 (1955) (providing the classic account of American Nativism for the time period).

one hand, it declared that vigorous enforcement of existing deportation laws was “necessary” in order “to rid the country of undesirable residents unlawfully here” and it was necessary to strengthen agencies to prevent unlawful entry.<sup>145</sup> Nonetheless, the “apprehension and examination” of suspects was “often characterized by methods unconstitutional, tyrannic [sic], and oppressive,” which resulted in some people being wrongfully deported.<sup>146</sup> It added that there had not been a “proper study” of the deportation process, and it suggested the need for “public findings” that would build up “a consistent body of administrative law.”<sup>147</sup>

The recommendations of the *Report on the Enforcement of the Deportation Laws of the United States* addressed some of the problems it had identified. Most important the report called for separating the functions of investigation and prosecution of deportation cases and the creation of an independent tribunal for hearings.<sup>148</sup> Separating the functions was needed because the agency sits in “judgment on the cases which itself has prosecuted.”<sup>149</sup> More far reaching was the recommendation regarding the lack of competent counsel for defendants. To remedy this, the report recommended utilizing legal aid societies to provide attorneys for criminal defendants.<sup>150</sup> The idea of legal aid for the poor was still relatively new in the United States and only a few cities had even minimal programs, so implementation of the recommendation was uncertain at best. Nonetheless, this was a bold idea at a time when the requirement of legal representation for all felony defendants in criminal cases was three decades in the future.

## 5. Other Wickersham Reports

The other Wickersham Commission reports were a mixed bag. The most influential over the long term was Volume Two of the *Report on the Causes of Crime*,<sup>151</sup> which devoted nearly 400 pages to the work of criminologists Clifford Shaw and Henry D. McKay on “Social Factors in

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145. REPORT ON DEPORTATION, *supra* note 104, at 177, 179.

146. *Id.* at 177.

147. *Id.* at 177–78.

148. *See id.* at 178.

148. *See id.*

149. *Id.*

150. *Id.* at 179.

151. *See 2 NAT'L COMM'N ON LAW OBSERVANCE & ENFORCEMENT, REPORT ON THE CAUSES OF CRIME (1931) [hereinafter 2 CAUSES OF CRIME].*

Juvenile Delinquency.”<sup>152</sup> The authority of the Commission gave Shaw and McKay’s approach to the study of crime considerable validity, and the study of social factors and crime eventually dominated the field of academic criminology, eclipsing physiological and psychological approaches. Shaw and McKay argued that the impact of various social factors resulted in “social disorganization,” which included peer group influence and the failure of the immediate community in high crime neighborhoods as an agency of social control.<sup>153</sup> By the time of the President’s Crime Commission in 1967, the sociological approach was virtually unchallenged.<sup>154</sup>

Volume I of the *Report on the Causes of Crime* reinforced Volume II, concluding that “social influences” represented the “soundest data” on criminal behavior.<sup>155</sup> Volume I is notable for shying away from one of its own insights about criminal behavior in America. It noted the problem that a large volume of “crime” involved behavior that many people regarded as legitimate private recreation that had been criminalized. The most important, of course, involved drinking alcoholic beverages and gambling.<sup>156</sup> The result was an over-burdened criminal justice system, which impeded effective response to more serious crimes about which there was a broad social consensus. This problem would draw attention in the 1960s, when it was labeled the “[c]risis of [o]ver-criminalization,”<sup>157</sup> and attention was given to decriminalizing alcohol-related and mental health-related behaviors. Recognition of this problem by the *Report on the Causes of Crime*, in short, was decades ahead of its times.

Also influential over the long term was the *Report on Penal Institutions: Probation and Parole* for its strong endorsement of these institutions, and its principles of the indeterminate sentence and individualized sentences that underlay them.<sup>158</sup> These practices had

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152. *See id.* at ix.

153. *Id.* at 387, 390–91.

154. *See* SCIENCE AND TECHNOLOGY, *supra* note 131; PRESIDENT’S COMM’N ON LAW ENFORCEMENT & ADMIN. OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 5–6 (1967) [hereinafter CRIME IN A FREE SOCIETY].

155. 1 NAT’L COMM’N ON LAW OBSERVANCE & ENFORCEMENT, REPORT ON THE CAUSES OF CRIME 139 (1931) [hereinafter 1 CAUSES OF CRIME].

156. *See id.* at 12–13.

157. *See generally* Sanford H. Kadish, *The Crisis of Overcriminalization*, 374 ANNALS AM. ACAD. POL. & SOC. SCI. 157 (1967).

158. *See* NAT’L COMM’N ON LAW OBSERVANCE & ENFORCEMENT, REPORT ON PENAL INSTITUTIONS: PROBATION AND PAROLE 172 (1931) [hereinafter PENAL INSTITUTIONS].

become nearly universal in the United States by the 1920s, but authorities were still in the process of developing a set of professional practices.<sup>159</sup> The Wickersham Commission endorsement was reinforced by the 1939–1940 *Attorney General's Survey of Release Procedures*,<sup>160</sup> and by the mid-1960s these practices had become virtually unquestioned as the proper approach to criminal sentencing and the release of offenders.<sup>161</sup>

The *Report on the Cost of Crime* was an ambitious effort that concluded that the “ultimate economic cost of crime to the community . . . can not [sic] be ascertained.”<sup>162</sup> It added that it was also not possible to determine the cost of crime to individual victims.<sup>163</sup> The *Report on Crime and Foreign Born*, meanwhile, reached the politically unpopular conclusion that immigrants actually committed fewer crimes than native-born Americans.<sup>164</sup> It noted that the idea that immigrants were responsible for a high proportion of the crime in America had prevailed since the earliest days of the United States.<sup>165</sup> The conclusion was particularly courageous because the 1920s were a time of strong anti-immigrant feelings, marked by the 1924 Immigration Act, which imposed a notorious national origins quota system that discriminated against southern and eastern Europeans.<sup>166</sup>

The *Report on Criminal Procedure*<sup>167</sup> and the *Progress Report on the Study of the Federal Courts*<sup>168</sup> were particularly disappointing. The *Report on Criminal Procedure* ignored issues that were dramatically

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159. See *id.* The report actually consisted of two separate documents, the formal *Report on Penal Institutions: Probation and Parole* and an equally long (about 170 pages long) *Report of the Advisory Committee on Penal Institutions: Probation and Parole*. See *id.* at v–vi.

160. See 1 ATTORNEY GENERAL'S SURVEY OF RELEASE PROCEDURES (1939).

161. See CRIME IN A FREE SOCIETY, *supra* note 154, at 141–46. In the late 1960s, however, the indeterminate sentence and parole would come under sharp attack by both conservatives and liberals, and these attacks would spark a vigorous debate over criminal sentencing in the 1970s that led to the adoption of sentencing guidelines as the most popular alternative. See WALKER, *supra* note 1, at 218–19.

162. NAT'L COMM'N ON LAW OBSERVANCE & ENFORCEMENT, REPORT ON THE COST OF CRIME 69 (1931) [hereinafter COST OF CRIME].

163. *Id.*

164. CRIME AND FOREIGN BORN, *supra* note 107, at 195.

165. *Id.* at 23.

166. See generally HIGHAM, *supra* note 144 (discussing discrimination at that time).

167. NAT'L COMM'N ON LAW OBSERVANCE & ENFORCEMENT, REPORT ON CRIMINAL PROCEDURE (1931) [hereinafter REPORT ON CRIMINAL PROCEDURE].

168. See NAT'L COMM'N ON LAW OBSERVANCE & ENFORCEMENT, PROGRESS REPORT ON THE STUDY OF THE FEDERAL COURTS (1931) [hereinafter FEDERAL COURTS].

raised by the *Report on Lawlessness in Law Enforcement* and, consistent with the *Report on Prosecution*, confined its recommendations to changing public and professional attitudes on the selection of judges and improving the quality of the lower criminal courts. The *Report on Criminal Procedure* did include some thoughtful suggestions on alternatives to formal arrest procedures, including citations, administrative adjustment, and summons<sup>169</sup>—ideas that became popular in the 1960s. The *Report on the Study of Federal Courts* was officially a “Progress Report” and consists of data from an ambitious study of case processing in the federal system, but with no findings or conclusions.<sup>170</sup>

#### VI. AFTER WICKERSHAM: SUBSEQUENT CRIME COMMISSIONS

The Depression and World War II prevented the recommendations of the Wickersham Commission from having much immediate impact on public policy. The reports on *Lawlessness in Law Enforcement*; *the Causes of Crime*; and *Penal Institutions: Probation and Parole* had a significant, long-term impact in shaping developments in their respective fields—although it is difficult to assess the process of that impact. There were two national-level events on crime policy in the 1930s, though only one should be seen as a follow-up to the Wickersham Commission. The 1934 Attorney General’s Conference on Crime focused entirely on crime control, in response to fears of a national crime wave,<sup>171</sup> and gave no attention to the reform of criminal justice agencies, which was the focus of many of the Wickersham Commission reports.<sup>172</sup> The now largely forgotten Attorney General’s Survey of Release Procedures (1939–1940) was a direct follow-up to the Wickersham Commission, focusing on sentencing, probation, and parole.<sup>173</sup> Reiterating the Wickersham Commission’s endorsement of these practices, it furthered the work of the Wickersham Commission in establishing a national consensus on those practices. More significant with respect to the administration of justice was the American Bar Foundation (ABF) Survey of the Administration of Criminal Justice in the United States (1953–1969). This privately sponsored effort conducted pioneering field

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169. See REPORT ON CRIMINAL PROCEDURE, *supra* note 167, at 46–47 (1931).

170. See FEDERAL COURTS, *supra* note 168, at iii, v.

171. See PROCEEDINGS OF THE ATTORNEY GENERAL’S CONFERENCE ON CRIME (1936) [hereinafter CONFERENCE ON CRIME]; WALKER, *supra* note 1, at 157–58.

172. See CONFERENCE ON CRIME, *supra* note 171.

173. See *id.* at XV–XVII.

research on policing, prosecution, and sentencing.<sup>174</sup> It was particularly influential in identifying the issue of police discretion, including all of its attendant problems, and the practice of plea bargaining. The survey's reports were delayed, but at least two, *Arrest*<sup>175</sup> (addressing police discretion) and *Conviction*<sup>176</sup> (examining plea bargaining), immediately became classic works on their respective subjects.<sup>177</sup> Most important, the ABF survey field research discovered the many social, legal, and organizational factors that affect decision making in the administration of justice. In that respect, the ABF survey picked up the tentative insights of the crime commissions of the 1920s and the Wickersham Commission about the causes of the "mortality" of criminal cases and explored them more fully.

The 1965–1967 President's Commission on Law Enforcement and Administration of Criminal Justice, popularly known as the President's Crime Commission, was the true follow-up to the Wickersham Commission, as an attempt to survey the entire administration of justice.<sup>178</sup> It proved to be the transformative event in the history of American criminal justice, with ramifications that continue to influence the research, policy, and both professional and public understanding of the subject. The Commission's final report, *The Challenge of Crime in a Free Society*,<sup>179</sup> and the accompanying nine Task Force Reports, Research Studies and Consultant's Papers, brought unprecedented public and professional attention to the issues of crime and criminal justice, and was accompanied by the first significant infusion of federal financial assistance to criminal justice. The Commission sponsored

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174. Samuel Walker, *Origins of the Contemporary Criminal Justice Paradigm: The American Bar Foundation Survey, 1953–1969*, 9 JUST. Q. 47, 54 (1992).

175. WAYNE R. LAFAVE, *ARREST: THE DECISION TO TAKE A SUSPECT INTO CUSTODY* 63–82 (Frank J. Remington ed., 1965).

176. See DONALD J. NEWMAN, *CONVICTION: THE DETERMINATION OF GUILT OR INNOCENCE WITHOUT TRIAL* 49, 68 (Frank J. Remington ed., 1966).

177. See Walker, *supra* note 174, at 49 ("*Arrest* is universally regarded as a classic."). The results of the ABF survey were published in a five volume series. See ROBERT O. DAWSON, *SENTENCING: THE DECISION AS TO TYPE, LENGTH, AND CONDITIONS OF SENTENCE* (Frank J. Remington ed., 1969); LAFAVE, *supra* note 175; FRANK W. MILLER, *PROSECUTION: THE DECISION TO CHARGE A SUSPECT WITH A CRIME* (Frank J. Remington ed., 1970); NEWMAN, *supra* note 176; LAWRENCE P. TIFFANY ET AL., *DETECTION OF CRIME: STOPPING AND QUESTIONING, SEARCH AND SEIZURE, ENCOURAGEMENT AND ENTRAPMENT* (Frank J. Remington ed., 1967).

178. See Nicholas deB. Katzenbach, *Foreword* to *CRIME IN A FREE SOCIETY*, *supra* note 154.

179. *CRIME IN A FREE SOCIETY*, *supra* note 154.

pioneering field research, the most important of which resulted in scholarly books and articles by Albert J. Reiss and Donald Black<sup>180</sup> that continue to influence police research. The Commission's work also marked the advent of federal funding for, and in that respect gave a powerful and lasting boost to, social science research on criminal justice. A decade later, one could say that a genuine "research revolution" was under way, and it continued unabated in the following decades.<sup>181</sup>

The most important contribution of the President's Crime Commission was the *Task Force Report: Science and Technology*, which followed up on the Wickersham Commission's *Report on Prosecution's* tentative insights into the interrelationships of the various justice agencies and the many ways a criminal case could exit the process. It formulated a comprehensive model of the administration of justice and gave birth to the concept of a "criminal justice system," which immediately became commonplace. The Task Force's graphic model of the system appeared in virtually every text on criminal justice. The "systems" approach continues to guide research and policy making to this day, focusing attention on the overall functioning of the system, the various exit points for criminal cases, and the discretionary decisions each one involves.<sup>182</sup> As noted earlier, the impact of the systems model has been so profound and lasting that one cannot avoid speculating on how the course of American criminal justice might have been different had circumstances permitted serious pursuit of the Wickersham's initial insights in the decade of the 1930s.

The *Task Force Report: Science and Technology* gives no evidence, however, of an influence of the Wickersham Commission's earlier work. Nor is there any evidence in the other volumes of any reference to the specific work of its predecessor. The indeterminate sentence, the principle of individualized sentences, probation, and parole had become so thoroughly institutionalized over the intervening three decades that there was evidently no perceived need to look back to one of the

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180. See DONALD BLACK, *THE MANNERS AND CUSTOMS OF THE POLICE*, xi-xii (1980) (basing the study on original field research); ALBERT J. REISS, JR., *THE POLICE AND THE PUBLIC* x-xi (1971) (basing the study on original field research); see also SCIENCE AND TECHNOLOGY, *supra* note 131, at 7-10 (providing the factors related to clearing crimes by arrest). The larger study inspired by the Task Force's report is PETER W. GREENWOOD ET AL., *THE CRIMINAL INVESTIGATION PROCESS* (1977).

181. See WALKER, *supra* note 1, at 206; see also NATIONAL RESEARCH COUNCIL, *FAIRNESS AND EFFECTIVENESS IN POLICING: THE EVIDENCE* 20-21 (Wesley Skogan & Kathleen Frydl eds., 2004).

182. Walker, *supra* note 174, at 71-72.

milestones in their development. Field studies of the police sponsored by the President's Commission did explore the dynamics of police-citizen interactions and produced the first quantitative data on police use of force and excessive force. In this respect, the Wickersham *Report on Lawlessness in Law Enforcement* did have some indirect influence. In general, though, it is safe to conclude that the Wickersham Commission had little direct influence on the later and more important national crime commission.

#### VII. A BRIEF NOTE ON HERBERT HOOVER'S POST-PRESIDENTIAL YEARS

Herbert Hoover's post-presidential years are relevant to his Article in one respect only: the so-called Hoover Commission.<sup>183</sup> Hoover spent the last three decades of his life as the grand old man of the Republican Party, the living embodiment of pre-Franklin D. Roosevelt and pre-New Deal America. He strongly opposed the vast expansion of the size and scope of the federal government and its involvement in virtually every phase of American life, and as a result he projected a public image of conservatism that was not representative of his career as a public servant.<sup>184</sup> Bitter over the criticisms of his "failure" as President, he contributed to the near-complete eclipse of his pre-war record as a moderate and progressive Republican.<sup>185</sup>

Hoover's one notable public activity in his post-presidential years was chairing the Hoover Commission. Congress created the Commission on Organization of Executive Branch of Government in 1947 and President Harry Truman appointed Hoover to chair it.<sup>186</sup> With a list of luminaries as members of the Commission, a large staff the Commission published nineteen reports with 273 separate recommendations.<sup>187</sup> It completed its work in June 1949, and Congress

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183. See generally REPORT ON ORGANIZATION OF THE EXECUTIVE BRANCH, *supra* note 7, at v; GARY DEAN BEST, HERBERT HOOVER: THE POSTPRESIDENTIAL YEARS 1933–1964 (1983); BURNER, *supra* note 10, at 336–37.

184. BEST, *supra* note 183, at xv–xvi.

185. HOFF WILSON, *supra* note 6, at 209–31. Hoover's reputation was also permanently stained by his order for the army to roust the Bonus Army in the summer of 1932. DONALD J. LISIO, THE PRESIDENT AND PROTEST: HOOVER, MACARTHUR, AND THE BONUS RIOT 297–98 (2nd ed. 1994). Although hardly representative of his public career, he bears direct responsibility for the unnecessary tragedy. *Id.*

186. BEST, *supra* note 183, at 312.

187. *Id.* at 327. See generally REPORT ON ORGANIZATION OF THE EXECUTIVE BRANCH, *supra* note 7.

passed the Government Reorganization Act that year.<sup>188</sup> The Commission was a fitting coda to Hoover's career as a public servant, as it embodied his commitment to address an important social problem through the careful gathering of facts. In this instance the problem was the enormous expansion of the Executive Branch as a result of the New Deal and World War II, and in keeping with his previous commission efforts, he did not challenge the institutions under review but sought only to make them more efficient. The Commission was so highly regarded that his name became the standard shorthand term for it ("Hoover Commission"). Some Republicans hoped that the Hoover Commission would scale back the power of the Executive Branch, but they were sorely disappointed.<sup>189</sup> In fact, some observers argue that the Commission only strengthened the Executive Branch by helping to make it more efficient.<sup>190</sup> The Hoover Commission's work was honored by imitation. Congress created a second Hoover Commission in 1955, with the then 80-year-old Hoover as its chair.<sup>191</sup> The state of California, meanwhile, created a "Little Hoover Commission" that was eventually transformed into a permanent government body to study its various government agencies that continues today.<sup>192</sup>

#### VIII. CONCLUSION

Herbert Hoover's career as a public servant began with fifteen years of enormous success and then ended with a disaster that was beyond his control and, which for the remaining thirty-one years of his life, overshadowed all of his previous accomplishments. Hoover was arguably the most competent executive ever to serve as President of the United States, with a clear vision of moderate social reform. Far from being a narrow pro-business adherent of laissez-faire doctrine, as popular stereotypes hold, he was concerned about a broad range of

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188. BEST, *supra* note 183, at 409.

189. See BURNER, *supra* note 10, at 337.

190. *Id.* at 336-37; see Peri E. Arnold, *The First Hoover Commission and the Managerial Presidency*, 38 J. POL. 46, 70 (1976).

191. Hoover himself estimated that 72% of the first Hoover Commission recommendations were adopted during the Truman Administration, compared with 64% of the second commission's recommendations under the Eisenhower Administration. HOFF WILSON, *supra* note 6, at 225.

192. The Milton Marks Commission on California State Government Organization and Economy was created in 1962 and refers to itself at the "Little Hoover Commission." *About Us*, LITTLE HOOVER COMMISSION, <http://www.lhc.ca.gov/about/about.html> (last visited Mar. 7, 2013).

social and economic problems. To all of them he brought his training as an engineer and a commitment to the gathering and analysis of facts that would guide moderate, practical reforms. The Wickersham Commission, the first national study of crime and criminal justice, was a natural expression of his approach to the improvement of American life.

Largely because of the tragedy of the Great Depression that descended on the country within months after Hoover became President, the Wickersham Commission has largely disappeared from history. It is mainly remembered for its *Report on Prohibition*, which refused to call for repeal of the experiment in outlawing alcoholic beverages. The neglect of the Commission is unfortunate, however, because it has important relevance for understanding both Hoover's public career and the history of American criminal justice. With respect to Hoover's public career, because the Wickersham Commission is consistent with his approach to addressing social problems, it helps to illuminate his long overshadowed efforts and accomplishments apart from the Great Depression. And in that regard, it helps restore his reputation as a moderate progressive reformer. With respect to the history of American criminal justice, the Wickersham Commission was an important link between the vigorous crime commission movement of the 1920s and subsequent studies of the American criminal justice system. Two Wickersham Commission reports, the *Report on Lawlessness in Law Enforcement* and the *Report on the Enforcement of the Deportation Laws of the United States*, touched on issues of due process and equal protection, which would become major controversies in the 1960s. Two other reports, the *Report on the Causes of Crime* and the *Report on Penal Institutions: Probation and Parole*, gave a strong boost to ideas and practices that became unchallenged in American criminal justice. A third report, the *Report on Prosecution*, tentatively identified but did not pursue phenomena that would later become part of the accepted model of the criminal justice system. In the end, both Herbert Hoover and the Wickersham Commission deserve better fates at the hands of historians and criminal justice scholars.