THE WICKERSHAM COMMISSION, 1929-1931

A Thesis

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by

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INTRODUCTION

The National Commission on Law Observance and Enforcement, popularly known as the Wickersham Commission, has been called the most famous of President Hoover's "scientific study groups." From its initial meeting on May 28, 1929, until June 30, 1931, when it formally passed into history, the Wickersham Commission undoubtedly received more public attention than any other commission of the Hoover administration. On March 4, 1929, when Mr. Hoover moved into the Executive Mansion, the prohibition dilemma and the crime and lawlessness that surrounded it were of the greatest concern to the American people. The new President made it plain that he considered the problem of lawlessness and crime to be the greatest challenge facing his administration.

Even the stock market crash of October, 1929, which marked the beginning of the Great Depression, failed to push aside the people's pre-eminent concern with the problems of prohibition and lawlessness. Members of the National Economic League, an organization composed of many well-informed and notable citizens, were asked in January, 1930, what they considered the chief problems of the United States were for that year. They put unemployment in eighteenth place while at the top of the list they put
administration of justice, prohibition, lawlessness, crime and law enforcement. These were the problems the Wickersham Commission was asked to study.

The purpose of this paper is to examine the development and work of the Wickersham Commission from Mr. Hoover's first suggestion of such an investigation in 1928 to the final adjournment of the Commission on June 30, 1931. The paper reviews and summarizes the findings and recommendations of the Commission as recorded in the fourteen reports which embody the fruit of nearly two years labor.

Minutes of the Meetings of the Wickersham Commission as well as general correspondence, working papers, research data and the reports of several sub-committees are filed in the National Archives. The records in the National Archives also include that of the chairman's office and part of the research staff. Some of the records of the Commission, however, are believed to be in the possession of former members of the research staffs of the various committees. The writer did not have the opportunity to make use of these records in the writing of this paper.

1Frederick Lewis Allen, Since Yesterday (New York, 1940), p. 31.
CHAPTER I

THE BACKGROUND PERIOD, 1920-1928

"John Barleycorn died peacefully at the Toll of 12—Dry
America is born." The American people picked up their newspapers
on the morning of January 16, 1920, to find what they had been
anticipating for over a year had become a reality. On December 18,
1917, Congress had given its approval to an amendment to the
Constitution prohibiting the "manufacture, sale or transportation"
of alcoholic beverages. The states completed ratification of
this, the Eighteenth Amendment, on January 16, 1919. On October 28,
1919, the National Prohibition Enforcement Act, better known as
the Volstead Act, was passed, over the veto of President Wilson,
for the purpose of providing the enforcement machinery for the
Eighteenth Amendment. Thus from midnight January 16, 1920, until
December 5, 1933, a period of nearly fourteen years, Americans
were forbidden by Federal law and the Constitution to participate
in the liquor traffic. 2

Prohibition was not an immediate outgrowth of the First
World War. Movements for liquor reform had been a constantly

2Richard B. Morris, Encyclopedia of American History (New
recurring theme in American history. Maneuvers to prohibit the liquor traffic, however, seem to have gained new energy during the Progressive Era. The Anti-Saloon League, the champion of State prohibition laws, turned towards prohibition on the national level at its convention in Columbus, Ohio, in November 1913, when for the first time it called for a prohibition amendment to the Constitution. Then came the War. It played a part in the movement for national prohibition, but how large a part is a question wets and drys long debated. Here, certainly, was a call for self-denial and sacrifice for the war effort and the movement for prohibition capitalized on this growing spirit of patriotism. These patriotic exponents of prohibition, however, saw it as only a temporary war measure "necessary for the saving of food and manpower..."³ On the other hand there were numerous Americans who viewed this adventure in social democracy as part of a much larger and more enduring purpose. Now Americans would no longer be shackled to the liquor habit. According to some proponents of the Amendment the greatest of social diseases had been eradicated.

On the eve of January 15, 1919, enthusiasm among the drys unquestionably ran high. Reformers from all over the country

gathered in watch night services to greet the dawn of a new age. In Washington an eager group gathered to hear the avid dry William Jennings Bryan speak of the coming millennium. And at the same time Billy Sunday, always an expert at pageantry, conducted a John Barleycorn funeral service at his Norfolk, Virginia, tabernacle. The corpse of old John "arrived on a special train from Milwaukee" in a casket twenty feet long. The funeral procession, including twenty pall bearers, marched through the streets from the Norfolk railroad station to the scene of the funeral at Sunday's tabernacle. "'Goodbye, John,' said the evangelist at the end of his sermon. 'You were God's worst enemy; you were Hell's best friend. I hate you with a perfect hatred.'" It soon became apparent, however, that "Old John" had been buried alive. Widespread disregard of prohibition, and the lawlessness and crime that kept company with it, became one of the greatest challenges to orderly government throughout the age of normalcy. Even a cursory examination of contemporary newspapers and periodicals evidences the many factors that thwarted enforcement of the Volstead Act. The problems of enforcement appeared in miniature form at an early date in the history of prohibition and continued to expand throughout the dry decade. The American consumer persisted in demanding his liquor and private enterprise never showed greater initiative.

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or ability in meeting a consumer demand. Bootlegging became a big business. It was during this period that Al Capone, the King of Bootleggers in Chicago, became known as "Public Enemy #1," and Chicago became infamous as the "Crime Capitol of the World." "The entire country since 1920 has been suffering from a crime wave comparable to nothing seen before in the civilized world," United States Senator Millard E. Tydings wrote apprehensively in 1930. The opinion was widely held that a crime wave of unequaled proportions was threatening the entire country.5

One student of the prohibition era observes that

in its practical effects national prohibition transferred two billion dollars a year from the hands of brewers, distillers, and shareholders to the hands of murderers, crooks, and illiterates. ...In politics and in business, in labor unions and employer's associations, in public services and private industries, prohibition was the golden grease through which organized crime insinuated itself a position of incredible power in the nation.6

The wets pointed to the facts of organized crime and corruption and then exaggerated them. Arguments could be heard that prohibition

5 Millard E. Tydings, Before and After Prohibition (New York, 1930), pp. 64-65; Members of President Hoover's Research Committee on Social Trends were not in complete accord with this widely held view. In Recent Social Trends in the United States, I (New York, 1933), lvii, they hesitated to say that there had been a crime wave. According to their report, crime statistics indicated an increase in crime "but hardly a crime wave, if by that is meant an extraordinary rise in the number of criminal acts committed."

6 Andrew Sinclair, Prohibition; The Era of Excess (Boston, 1962), pp. 222-23.
was the sole cause for the rise of organized crime and corruption. A case in point is the contention of Congressman Schneider of Wisconsin that "Vice, crime, immorality, disease, insanity, corruption, and a general disregard for law, directly traceable to the unenforceability of the Volstead Act, are increasing with alarming rapidity." The research director of the American Institute of Criminal Law and Criminology, writing in 1932, agreed that there had been an apparent increase in crime during the period since the enactment of prohibition, but he noted that other factors were involved, and concluded that it was not possible to determine the precise role of prohibition. The President's Research Committee on Social Trends pointed out in 1933 that gangs and other forms of organized crime did not begin in the 1920's. Nevertheless, the committee admitted that organized crime had grown to unprecedented proportions since the passage of the Eighteenth Amendment. Although a combination of circumstances caused the rise in organized crime and the prevailing spirit of lawlessness, popular indifference to the Eighteenth

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7 Quoted in Merz, The Dry Decade, p. 158.
9 Recent Social Trends, I, lix.
Amendment seems to have resulted in a general spirit of disregard for all law.  

James Truslow Adams wrote in 1929: "To any American citizen profoundly interested in the welfare of this country, it is all too obvious that the one fundamental question transcending all others is that of law and the observance of law." Frederick Lewis Allen, looking back on the year 1929, said that "the Prohibition laws were being flouted more generally and more openly than ever before..."  

It was on May 29, 1929, in the midst of this national plight that the Wickersham Commission came into existence.

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CHAPTER II

ORIGIN AND SELECTION OF THE COMMISSION, 1928-1929

The champions of prohibition had little to cheer about on "dry" America's eighth birthday, January 16, 1928. Numerous Americans were coming to believe that Federal law and the Constitution could not be constantly violated with impunity. There had never been a wholehearted attempt to enforce the Eighteenth Amendment, and it was felt by many that the prohibition laws should either be revised or repealed or a conscious effort to enforce them should be undertaken. One authority has observed that the prohibition controversy split the country to a greater extent than any national issue had done since the abolition crusade of the period prior to the Civil War.\(^\text{12}\)

It was into this situation that Herbert Clark Hoover was thrust, in August, 1928, when he received his party's nomination for the Presidency. Mr. Hoover was not classed as a rigid


\(^{13}\) Warren, *Herbert Hoover*, p. 209.

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member of either group in the prohibition controversy. In 1917, shortly before he was appointed Food Administrator, Hoover had argued for prohibition as a means of conserving food for the war effort. He admitted, however, that it might be difficult to apply with justice. Hoover contended in his Memoirs that when the Eighteenth Amendment was adopted "I had expressed to my friends the reverse of enthusiasm for that method of advancing temperance, saying that I did not believe that the Constitution was the place for symptomatic legislation." Although he called alcohol "one of the curses of the human race," Hoover asserted that he did not, in the 1928 campaign, commit himself to prohibition "as a fixture of American life."\(^{14}\) In a letter to Senator Borah of Idaho dated February 23, 1928, Mr. Hoover expressed his position on prohibition.

\[...I \text{ do not favor the repeal of the Eighteenth Amendment. I stand, of course, for the efficient, vigorous and sincere enforcement of the laws enacted thereunder....}
\]

\[...Our country has deliberately undertaken a great social and economic experiment, noble in motive and far reaching in purpose. It must be worked out constructively.\(^{15}\)\]

Hoover repeatedly returned to these words during his campaign, and they were frequently quoted and misinterpreted. He viewed prohibition

\(^{14}\text{The New York Times, May 10, 1917; Hoover, Memoirs, II, 201.}\)

\(^{15}\text{Quoted in Claudius O. Johnson, Borah of Idaho (New York, 1936), p. 420.}\)
as an experiment rather than an irrevocable law; yet, he wanted to see if it could be enforced and he committed himself to this task.\textsuperscript{16}

In his Acceptance speech as the Republican party candidate for President, Hoover again recited these words of the Borah letter. Speaking before a crowd of 70,000 people at Stanford University, he insisted that the "experiment, noble in motive . . . must be worked out constructively." He noted, however, the corruption and lawlessness that had grown up around the prohibition laws, and for the first time called attention to the method by which he proposed to approach the enforcement problem. Hoover advanced the idea that the prohibition abuses should be made the object of "an organized searching investigation of fact and cause [which] alone can determine the wise method of correcting them."\textsuperscript{17} In the same speech he also enumerated several important problems demanding attention, one being need for

\begin{itemize}
\item \textsuperscript{16} Hoover in his \textit{Memoirs}, III, 318, writes that "We had done our best to enforce the Prohibition law" in spite of the fact that even the "fanatically dry states" would not cooperate. William Starr Myers and Walter H. Newton, in \textit{The Hoover Administration} (New York, 1936), pp. 421-22, 536-37, also argue that, under Hoover prohibition was given "a full trial of enforcement by the Federal Authorities." As evidence of vigorous action they note that in 1929 there were 21,602 jail sentences for prohibition violation, while in 1932 there were 44,678 such sentences, more than double the number three years earlier. See also Hicks, \textit{Republican Ascendancy}, p. 263, and Sinclair, \textit{Prohibition}, p. 357, for concurring opinions. For a contrary viewpoint see Warren, Herbert Hoover, p. 210, and Fletcher Dolyns, \textit{The Amazing Story of Repeal; An Expose' of the Power of Propaganda} (New York, 1940), p. 350.
\item \textsuperscript{17} \textit{The New York Times}, August 12, 1928.
\end{itemize}
improvement in the administration of criminal laws, but he did not call for an investigation of this problem. The investigation Hoover proposed was to be solely concerned with the prohibition abuses, and was to go into the question of cause as well as fact. This remained Hoover's position throughout the 1928 campaign. 18

Opponents of prohibition cheered Hoover's statement, believing that an investigation of the causes behind the failures of enforcement would result in a move toward changes in the Volstead Act. Many declared that Hoover's attitude towards this question was open-minded. The drys were likewise encouraged for Hoover had stated that he did not favor the repeal of the Eighteenth Amendment and had emphasized that it was the duty of the Chief Executive to secure efficient enforcement. The drys were further heartened when, on October 6, 1928, in a campaign speech in Elizabethton, Tennessee, Mr. Hoover declared that "the purpose of the Eighteenth Amendment is to protect the American home. A sacred obligation is imposed on the President to secure its

18David Hixahav, in his biography Herbert Hoover (New York, 1950), p. 210, writes that Hoover "stated that if elected he would appoint a commission to (a) study the entire question of enforcement of this prohibition and other laws and to secure all pertinent facts concerning it; and (b) to recommend improvements of the nation's law enforcement machinery." This statement, however, does not square with the facts. It was believed that the study would be concerned solely with prohibition and Mr. Hoover did not publicly change his statement of August 11, 1928, which had explicitly stated this, until after his election.
honest enforcement and to eliminate the abuses which have grown up around it; I wish it to succeed." ¹⁹

In the interval between Mr. Hoover's acceptance speech and his Inauguration as President on March 4, 1929, he considered further his recommendation for a "scientific investigation." This earlier suggestion of a searching study of prohibition was given an enlarged scope by Mr. Hoover in his Inaugural address. By devoting one-fourth of his address to lawlessness and criminal justice, Mr. Hoover emphasized his belief that disrespect for law was the greatest danger confronting our system of self-government. He argued, however, that it was "only in part due to the additional burdens imposed upon our judicial system by the eighteenth amendment." He thus contended that the whole Federal system of justice and law enforcement should be reformed to the end that it would be made stronger and more efficient. He noted that for years members of the United States Supreme Court, Federal judges, and bar associations had advocated such reform and reorganization. Hoover expressed the opinion that this was the "most sore necessity of our times," and that "first steps toward that end should no longer be delayed." With this object in view, he proposed

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to appoint a national commission for a searching investigation of the whole structure of our Federal system of jurisprudence, to include the method of
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enforcement of the eighteenth amendment and the causes and abuses under it. Its purpose will be to make such recommendations for reorganization of the administration of Federal laws and court procedure as may be found desirable.20

At a press conference on March 8, 1929, the new President was more specific. He stated that "the first step in law enforcement is adequate organization of our judicial system." Hoover emphasized that the proposed law enforcement commission would have as its task an investigation covering "the entire Federal machinery of justice," and would include "the entire question of law enforcement and organization of justice." He added:

It will also naturally include consideration of the method of enforcement of the 18th Amendment and abuses which have grown up together with the enforcement of the laws in respect to narcotics, to immigration, to trade restraint and every other branch of Federal Government law enforcement. The whole constitutes one problem of better and more effective organization and enforcement.21

In his speeches and pronouncements, President Hoover frequently returned to the problems of law enforcement. In an address entitled "Respect for Law A National Duty," delivered to an Associated Press luncheon in New York City on April 22, 1929, President Hoover reiterated his earlier statements concerning the prevailing mood of lawlessness and his plan to appoint a study commission.

20 William Starr Myers, ed., The State Papers and Other Public Writings of Herbert Hoover, I (New York, 1934), 4-6.
He again emphasized that it was not to be considered as primarily an investigation of prohibition.

In order to dispel certain illusions in the public mind on this subject, let me say at once that while violations of law have been increased by inclusion of crimes under the eighteenth amendment and by the vast sums that are poured into the hands of the criminal classes by the patronage of illicit liquor by otherwise responsible citizens, yet this is but one segment of our problem...of the total number of convictions for felony last year, less than 6 per cent came from that source....

"No President," in the opinion of one observer, "ever spoke to the people on a problem of domestic policy more passionately than did Mr. Hoover at the Associated Press Luncheon."

The enlarged task of the proposed commission, originally aimed at a study of one law--prohibition--and now changed to a study of all laws, was both criticized and praised. It was less satisfactory to many of the opponents of prohibition for it seemed to be based on the assumption that the existing prohibition laws could be enforced if the enforcement machinery could be reformed to operate more vigorously. The vets held that the real question was whether the laws were enforceable. They believed that the prohibition laws were different than other laws; therefore, they should not be studied as just another law. On the other hand many observers were gratified that Mr. Hoover's perception

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22 Ibid., p. 43.

23 "The 'New Hoover's' War-Cry Against Crime," The Literary Digest, CI (May 4, 1929), 5.
of lawlessness extended beyond the Prohibition question. An editorial writer in the American Bar Association Journal held that the value of the proposed commission was greatly increased by its enlarged purpose. 24

Did the President enlarge the scope of the proposed commission because he wished to submerge the prohibition question in a general study of law enforcement? Or did he really believe the problem was of much greater magnitude than the lawlessness surrounding prohibition? Or was it possible that he had trouble securing personnel for the proposed commission as long as it was to be solely concerned with such an emotionally charged question as prohibition? Each of these views has been advanced. From all sides Hoover's partisan critics accused him of trying to avoid coming to grips with the prohibition question. The whole situation was so politically charged that it may have appeared politically expedient to submerge prohibition in a prolonged study of the

24 "President Hoover's Legal Engineers," XV (July, 1929), p. 418.
system of law enforcement. There is little evidence, however, to support the assertion that this was his paramount objective. 25

In any event President Hoover's decision to initiate a study of the entire Federal machinery of justice was a product not only of his own observations but also of advice given him by various authorities in the field of jurisprudence. Hoover's closest advisor in these matters was United States Supreme Court Justice Harlan Fiske Stone. 26 As Attorney General in Coolidge's Cabinet in the years 1924-25, Stone and Secretary of Commerce Herbert Hoover discovered, according to Stone's biographer, a mutually invigorating moral and intellectual kinship. Because of his position Justice Stone was not able to take an open part in the 1928 campaign; nevertheless, he had pushed for Mr. Hoover's election. Shortly after Hoover's victory Stone had offered his

25 Hinshaw, Herbert Hoover, p. 169, holds that Hoover, not a professional politician, "was open and above board in his dealings...devoid of tricks which long have been the professional politicians stock in trade." "Mr. Hoover dealt in principles...not compromise." And a New York Times editorial, May 29, 1929, maintained that no one charges that the motive behind the Commission is to bury an explosive matter. This was admitted, however, to be a possible result. Yet the writer agreed with Hoover's interpretation that law enforcement was a larger problem. On the other hand, Clinton W. Gilbert, "Out of Commission," Collier's, December 6, 1930, p. 56, argues that Hoover feared the consequences of a thorough probe of the prohibition question. For this reason he broadened the scope of his proposed study. In Gilbert's words: "Prohibition, charged with political dynamite, was to be made secondary."

assistance. It was Stone to whom Hoover turned for assistance in the selection of his cabinet members, and at Hoover's request Justice Stone often went over his speeches with him. 27

The Hoover and Stone families were also close socially. Stone went on a Florida fishing trip with Hoover in January 1929. He wrote to his wife, who had been unable to go, "we have spent the entire day talking with Mr. H. about appointments, policies, and what not, and in going over his inaugural address. I think I have been of some help. . . ." 28 Stone was of some help. Hoover had accorded one-fourth of his inaugural address to consideration of the problem of law enforcement and reform, including the plan for establishing a law enforcement commission, and Stone had contributed a substantial part of the ideas and words for this subject. 29

In his address to the Associated Press on April 22, President Hoover had said that he was establishing a national law enforce-
ment commission "with a view to enlisting public understanding,

27Chief Justice William Howard Taft wrote to Robert A. Taft in March 17, 1929, that Hoover "has one lawyer to whom he looks for his judgement." He was referring to Justice Stone. Quoted in Mason, Stone, p. 273.

28Quoted in Mason, Stone, p. 266.

29William Howard Taft to Samuel H. Fischer, May 2, 1929, quoted in Mason, Stone, p. 271.
public support, accurate determination of the facts, and constructive conclusions...." He also remarked:

That proposal has met with gratifying support.... I do not propose to be hasty in the selection of this commission. I want time and advice, in order that I may select high-minded men, impartial in their judgement, skilled in the science of law and our judicial system, clear in their conceptions of our institutions. Such a commission can perform the greatest service to our generation.\(^3^0\)

Hoover had some difficulty in obtaining the personnel for the proposed commission. Shortly after his Inauguration he asked Justice Stone to head the commission. Stone's assistance was not secured for he felt that such a position would not befit one who held a seat on the Supreme Court. His colleagues on the bench also reached the decision that "such service would not be compatible with Stone's position."\(^3^1\)

The President was reluctant to accept the decision of Justice Stone and the Court. Although he continued to look elsewhere, Hoover did not give up easily in his attempt to

\(^3^0\) Myers, ed., State Papers, I, 45.

\(^3^1\) Mason, Stone, pp. 272-73. Reminiscing to his son a decade later, Stone set forth a different version of the story. He asserted that he had refused to serve because he felt a political question of the nature of prohibition could not be settled by a commission, and also because he believed the President would not accept any conclusions of the commission that might hurt him politically. "I was not...disposed to hazard such little reputation and public standing as I had by monkeying with the prohibition buzzsaw." Mason, Stone, p. 272.
secure Stone as chairman of the proposed commission. He wrote to Chief Justice William Howard Taft:

I have again this week with the assistance of several of our best members of the bar...traversed the personnel of the bench and the bar of the whole country, and I have not received a single suggestion of a man who, in the view of these helpers, can adequately undertake the job with any hope of its successful consummation, and the necessary support of its conclusions by the public, except Justice Stone.32

The Chief Justice, however, felt that Stone lacked the administrative ability to put the job across. He reiterated the decision that Stone was not in a position to accept the task, and that he would not retire to do so. Taft highly recommended Justice Van Devanter and also suggested Justice Brandeis, both of whom had reached retirement age. The President, however, declined to accept any Justice but Stone.33

Hoover turned away from the Supreme Court for his second choice for the Commission chairman. In a letter to Charles Evans Hughes dated March 25, 1929, the President requested Mr. Hughes' help in organizing the Commission. "I have again canvassed the entire possible personnel and I am most despondent about the whole enterprise," he wrote to Hughes. Asserting that the proposed study was "the outstanding necessity of the next four years," he requested that Hughes consider the leadership of the commission.

32 Hoover to Taft, April 7, 1929, quoted in Mason, Stone, p. 272.

33 Ibid., p. 273.
I am led to write to you in this vein... Hoover added because the opposition of Chief Justice Taft is such that it seems hopeless to secure Justice Stone, who would be willing to undertake the work if the Chief Justice approved.... Outside of yourself and Justice Stone there is no man in the country who could adequately undertake this work.34

Hughes, having just assumed his position at the World Court, replied that his responsibilities there would not allow him to accept the undertaking.35

Justice Owen J. Roberts also declined the task.36 Finally on May 21, 1929, the responsibility to head the commission went to Hoover's fourth choice, George W. Wickersham. The names of the ten other members of the National Commission on Law Observance and Enforcement (Wickersham Commission) were also made public at this time. Mr. Hoover had gone to great length to choose capable personnel who would be acceptable with all sides. All geographical sections of the country were represented.

The Commissioners came from ten states and included three Federal judges, a state supreme court judge, five practicing lawyers, the president of a woman's college, and a law school


35 Ibid., p. 650. It is interesting to note that Stone and Hughes, Hoover's first and second choice to head the Commission, were declared vets. Both, however, advocated strong enforcement of prohibition because it was law.

36 Ibid.
dean. Three of the Commissioners were Democrats and three had experience in crime investigation. Earlier the *New Republic* had commented on Hoover's policy in selecting personnel for his administration. "Efficiency and 'the best available man for the job' regardless of his politics, or how he lined up last spring. That is the Chief's idea—and a noble one it is." Hoover did not change his policy in the appointment of these Commissioners.

In a letter to Robert A. Taft, Chief Justice Taft expressed his approval of Wickersham as Mr. Hoover's choice to head the commission.

I think it is an admirable appointment and that it is far and away the best he could do,...and he is so much better adapted to such a position than Stone that I rejoice, although it is greatly to the disappointment of Mr. Hoover. George has more administrative ability in two minutes than Stone has in a much longer time, and then George's judgement is so much better than Stone's that I think Hoover is really to be congratulated, although he grumbles his teeth over the result.

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39 Quoted in Mason, *Stone*, pp. 273-74. Chief Justice Taft added that Hoover's hesitancy in accepting Wickersham was caused by more than just his eagerness to secure Stone's services. "My impression is that Hoover is so much under the Progressive influence that it would be enough to be against George on account of his relation to me in the past...." The personal connection between Chief Justice Taft and Wickersham should be noted. In 1887 Wickersham was made a partner in the law firm of Strong and Cadwalder. In 1899 Henry W. Taft, brother of the Chief Justice, became a partner in the same firm. In 1914 the name of the firm was changed to Cadwalder, Wickersham and Taft. Wickersham and Henry W. Taft were partners until Wickersham's death in 1936. In 1919, William Howard Taft, Henry W. Taft and Wickersham collaborated in the writing of a publication entitled "The Convenenter," for a bimonthly periodical called *The League of Nations*. See *The National Cyclopedia of American Biography*, XXXIV, 318-19, and *Dictionary of American Biography*, XXII, 713-15.
At the time of his appointment Wickersham was one of the leading corporation experts of the New York State bar. A list of his accomplishments and activities is impressive. His foremost appointment had been as President Taft's Attorney-General. Widely recognized as among the most able of Taft's "official family," and one of his closest advisors, Wickersham had been noted for the initiation of numerous anti-trust suits while serving in this position. As an ardent internationalist, he had supported the League of Nations and the World Court. Wickersham had been honored by the American Bar Association for outstanding service, and was the recipient of honorary degrees from Harvard and the University of Michigan. His devotion to the cause of justice was well known. Wickersham had spoken in favor of law enforcement but had suggested that the Volstead Act was difficult to

40 A recent evaluation of Wickersham's anti-trust activities by Gabriel Kolko in The Triumph of Conservatism (New York, 1963), pp. 169-70, has thrown a different light on at least one of his important anti-trust suits. In their handling of the American Tobacco Company Suit of 1911, Kolko argues that President Taft and Wickersham were trying to stop the growing business hostility toward the Administration. Wickersham accepted the tobacco company plan and announced that a settlement had been reached which broke the tobacco monopoly into "fourteen competitive units." The plan really created "three giants" which took over 91 per cent of the market. Kolko concludes that "...it is certain that he tried to deceive the public."

41 Wickersham was President of the American Law Institute at the time of his death in January, 1936. In a speech made before that body on May 7, 1936, Chief Justice Charles Evans Hughes eulogized Wickersham. "The highest award that can come to a lawyer is the esteem of his professional brethren....It is an esteem commanded solely by integrity of character and by brains and skill in the honorable performances of professional duty. No subservient 'yes men' can win it....It is essentially a tribute to a rugged independence of thought and intellectual honesty which shines forth amid the clouds of controversy....George Wickersham has won that esteem." "The Supreme Court is Still Functioning," Vital Speeches, II (June 1, 1936), 543.
enforce. He was originally against the prohibition amendment, but as long as it was law he was in favor of enforcement.

Wickersham's colleagues on the Commission were also distinguished individuals. Newton D. Baker, an active Democrat and a former reform mayor of Cleveland, Ohio, had been President Wilson's Secretary of War for eight years. For several years he had been a member of the executive committee of the National Crime Commission and from 1930 to 1936 he served as President of the American Bar association. At the time he was chosen to serve on the Commission Mr. Baker was a Cleveland lawyer. Baker had never believed that prohibition could be legislated, and he had been opposed to "constitutional Prohibition" during the 1928 Presidential campaign.

William S. Kenyon, a Republican from Iowa, had a long record of public service. He had served as a State district judge and

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42 The National Crime Commission was organized by a group of prominent political and business leaders on August 12, 1925. The practical work of the Commission was delegated to an executive committee which included such men as Newton D. Baker, Charles Evans Hughes and Franklin D. Roosevelt. One of the original purposes of the Commission was to undertake a national survey of the crime situation. The work of the Commission received little public attention and evidence seems to indicate that very little was accomplished in this regard. The National Crime Commission did, however, direct the establishment of numerous state and local commissions. In November, 1927, a two day national conference was held in which twenty-six crime commissions were represented, most of which had been established at the request of the National Crime Commission. Baker told the assembled group that the function of the National Crime Commission had changed and their task in the future would be to aid and support the state and local commissions where the real work would be done. Thus the work of the Wickersham Commission did not overlap that of the National Crime Commission. See Fred C. Haynes, Criminology (New York, 1930), pp. 136-37; Peterson, Crime Commissions, p. 5 et seq.
a county prosecuting attorney prior to his appointment by President Taft in 1910 as assistant to Attorney-General Wickersham. In 1911 Kenyon gained a seat in the United States Senate. Although one of the youngest men ever elected to the Senate, he soon became the leader of the liberal Republican element of that body. He was successful in securing the passage of two pieces of dry legislation, the Kenyon Freight Bill and the Webb-Kenyon Act, both designed to prevent the transportation of liquor into dry territories. In 1922 Kenyon resigned from the Senate to become a Federal judge, the position he held at the time of his appointment to the Commission. In 1926 he had balked at a move of the liberal Republicans to make him a candidate for President. Mr. Kenyon was a declared dry.

Roscoe Pound, dean of the Harvard Law School, 1916-1936, was widely recognized as one of the most eminent students of jurisprudence in the country. Dean Pound, a Republican, does not appear to have been a great friend of prohibition, but he stood for enforcement of the prohibition laws. He was an ardent advocate of a thorough study of the whole law enforcement apparatus.

Frank J. Loesch, a Republican and a distinguished Chicago lawyer, was an active crusader against crime and corruption, especially in politics. He was well known as a leader in the war on Chicago crime. One of the organizers of the Chicago Crime Commission in 1920, Loesch had been its guiding force and was its President from 1928-1938. It was Loesch who coined the phrase
"public enemy" and named "Al" Capone "Public Enemy No. 1." He did not have a public record on the prohibition question.

Another member, Monte M. Lemann, an independent in politics, was a New Orleans lawyer and a Professor of Law at Tulane University Law School. Lemann had not been in favor of the adoption of the Eighteenth Amendment; however, he fought for strong enforcement of prohibition once it became law.

Miss Ada L. Comstock, President of Radcliffe College, was the only woman member of the Commission. She had a long record of success as a university professor, dean, and administrator. Her views on prohibition were not known.

Henry W. Anderson, an able Virginia lawyer, had been a special assistant to the United States Attorney-General during the years 1921-23, and also had been the United States agent on the Mexican Claims Commission, 1924-26. Anderson, the Republican nominee for Governor of Virginia in 1921, was active in Republican party politics. Although he was in favor of enforcement of the prohibition laws, Anderson was not considered a rigid dry.

The other members, all eminent men, were William J. Grubb, a United States District Judge from Alabama and a Democrat; Kenneth Mackintosh, a Republican and a Justice of the Washington State Supreme Court; and Paul J. McCormick, a United States District
Judge from California and a Republican. These three judges were generally considered drys.43

No extended reading of contemporary newspapers and magazines is required to show that, in spite of Mr. Hoover's frequent pronouncements to the contrary, the press and the general public continued to see the Commission's task as primarily, if not solely, to investigate the prohibition problem and make recommendations for its solution. Almost every journal of opinion viewed the Commissioners in the light of their past record on prohibition. Hoover's announcement of the Commission personnel brought praise from many areas. The Outlook and Independent, a journal whose editorial opinion was generally wet, called the Commission "a highly competent body," and concluded that "political expediency can have little . . . affect on their findings and conclusions." The Richmond News Leader noted that "on the whole there is not a rip-roaring wet or a single Saharan dry." The New York Times reported that the wet and dry leaders in Congress generally voiced approval of the personnel and the feeling seemed to be that an

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impartial survey would be assured. It called the Commission "a most significant step in Hoover's administration." 44

There were those, however, who voiced criticism of Hoover's choice of Commissioners. Wayne L. Morse, who was shortly to become one of the most noted young scholars of law in the country, admitted that the ability of the personnel was not open to question; yet, ten of the eleven members were drawn from the legal profession, while the other social sciences had no representatives on the Commission. He felt that the problems facing the Commission needed "the conscientious co-operation of the sociologist, criminologist, psychologist, psychiatrist, economist and social worker as well as the other social scientists." Morse admitted that the Commissioners would turn to the social scientists for assistance; yet, the legal attitude would prevail in the interpretation and conclusions. Other critics expressed the opinion that Hoover should have appointed people who were specialists or who were active in law enforcement, in particular, those who knew the difficulties of prohibition enforcement from first hand experience. 45


The appointment of the Wickersham Commission also furnished ammunition for a general criticism of Hoover's policies. His critics, were extremely vocal in their opposition to what they considered his resort to government by commission. It was charged that he did not have the courage to make decisions and therefore relegated all difficult problems to a study group for prolonged investigation. A chief source of this criticism was the United States Congress. Senator George W. Norris of Nebraska, for example, parodied the President:

Once to every man and nation
    Comes the moment to decide,
In the strife of truth with falsehood
    for the good or evil side.
But the case presents no problem
    To the White House engineer;
He appoints a big commission
    To report some time next year. 46

One contemporary observer commented that members of Congress "intuitively shy away from 'experts,' perhaps because Congressmen as a rule are inexpert..." 47

The President noted this criticism that was being leveled against his use of commissions, and he explained his position.

You have been misled into the impression that I shall appoint one [commission] every day. That is wrong— I shall probably need to appoint two a day. My conception of government leads me to the firm conviction that we have arrived at a time

47 Ibid.
in our history...when we must make doubly certain
that we have discovered the truth. It is necessary
that we make the fullest use of the best brains and
the best judgement of the best leadership in our
country before we determine upon policies which
affect the welfare of a hundred and twenty million
people.\textsuperscript{48}

Herbert Hoover was trained as a mining engineer and he had
reached the top as a scientist in that field. He brought a
scientific approach and an interest in ideas and facts into the
realm of social and political science. He "required that each
problem be adequately investigated as to fact and method before
action." In calling attention to Hoover's "craftsmenlike
concern for technique," one scholar has noted that "economy and
efficiency became ends in themselves. To him it mattered dearly
not only what goals were adopted but exactly how a job was done."
Even in 1917 when prohibition was being advocated as an emergency
measure to preserve food for the war effort, Mr. Hoover had
suggested a committee to make an impartial study of the liquor
question.\textsuperscript{49}

\textsuperscript{48} Myers, ed., \textit{State Papers}, I, 188-89.

\textsuperscript{49} Hinshaw, \textit{Herbert Hoover}, p. 170; Ray Lyman Wilber and
Arthur Mastick Hyde, \textit{The Hoover Policies} (New York, 1937),
p. 42; Richard Hofstadter, \textit{The American Political Tradition}
Warren, \textit{Herbert Hoover}, p. 299, believes "a good case can be
made for the assertion that Hoover had a grasp of social
problems unexcelled by any of his predecessors in the White
House...His observations on law enforcement...reveal a depth
of interest and knowledge expected only from experts."
In spite of Hoover's admitted fondness for government by commissions, he contends in his Memoirs that he was "fairly moderate" in the appointment of such study groups. In his words "Theodore Roosevelt, Woodrow Wilson, and Calvin Coolidge all showed a far larger score in their first four years."\(^{50}\)

Many observers, however, anticipated some notable results from this probe into the problems of law observance and enforcement. The Journal of the American Bar Association called the commission "timely" as it was the best method of focusing public attention on "specific causes and specific remedies."

...It can secure for its conclusions an attention which no other body at present functioning in the field of law improvement can hope to attract.... The problem of bringing popular pressure to bear to secure needed improvements will thus be rendered much less difficult.\(^{51}\)

Wayne L. Morse also approved of the "vigorous way" Mr. Hoover had chosen to call attention to the need for reform in the Federal system of law enforcement. He expected much of value from the Commission but regretted that it was a politically appointed body whose findings would necessarily be subject to the dangers of

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\(^{50}\) Hoover, Memoirs, II, 218. A document entitled "Statement on Commissions and Committees" was published early in April 1932. It announced that Wilson had established 75 commissions in his eight years as President, Coolidge had established 44 commissions in four years and President Hoover had established 20 commissions in his first three years. See Myers, ed., State Papers, p. 158.

\(^{51}\) "President Hoover's Legal Engineers," p. 418.
partisan politics. Morse believed that if the President had turned the task over to some independent research body like the Carnegie Foundation this possibility would not have existed, and at the same time the study would have the prestige that only the Chief Executive could give it. 52

At any event, the Commission was established and the American people were looking to it for a solution to the prohibition problem and the prevailing spirit of lawlessness. In a Commencement Address in June of 1929, William E. Dodd, Professor of History at the University of Chicago, compared the task facing the Commission to the problem of peacemaking at the end of the Great War. 53


CHAPTER III

THE COMMISSION AT WORK, MAY 28, 1929-JUNE 30, 1931

To allow President Hoover to carry out his oft-discussed investigation, the Seventieth Congress, on March 4, 1929, had made available $250,000 for the purpose of a thorough inquiry into the problem of the enforcement of prohibition under the provisions of the eighteenth amendment of the Constitution and laws enacted in pursuance thereof, together with the enforcement of other laws. 54

There is an obvious disparity between the Congressional emphasis on a study of prohibition and Hoover's frequent assertion that the Commission would study prohibition only as one aspect of the general problem of law enforcement.

With the Congressional appropriation at its disposal, the initial meeting of the Wickersham Commission took place on May 28, 1929. After a luncheon at the White House, the Commissioners met with Hoover. The President directed his statements toward the problem of lawlessness:

It is my hope that the Commission shall secure an accurate determination of fact and cause, following them with constructive, courageous conclusions which

\[5^{th} U.S., Statutes at Large, XXXV, Part I, p. 1613.\]
will bring public understanding and command public support of its solutions. The general public approval of the necessity for the creation of this commission and the extraordinary universality of approval of its membership—are in themselves evidences of the responsibility that lies upon you and of the great public concern in your task and of the hopes that you may succeed...by such success you will have performed one of the greatest services to our generation.55

Chairman Wickersham responded for the commission. "We approach our task with a profound realization of its importance and with minds open to consider on their merits all intelligent suggestions from unprejudiced sources."56

At the close of the first meeting Wickersham was questioned by newspaperman. He said the study would last at least a year, possibly two, and reports would be issued "from time to time." Asked if the Commission might recommend changes in the Volstead Act, Wickersham replied, "It is intellectually possible, but not probable." He echoed the opinion of Hoover that the investigation was not to be limited to any single law. The problem was rather "to ascertain the attitude of the people toward all laws and having determined the causes of disobedience, to recommend constructive and courageous conclusions." When asked if the Commission would recommend a change if it found prohibition unenforceable, Wickersham declared,"the commission will not

55 Myers, ed., State Papers, II, 63-64.
be afraid to report that a law is unenforceable if it finds that
is true." He was careful, however, to make the scope of the
study clear.

It should be understood...that prohibition is only
one angle of our survey. The attitude of the
American people toward law enforcement is not bounded
by prohibition. This Commission is not to be the
arbiter between the vets and drys, and I want to
emphasize that it was not appointed to decide that
question.57

At the outset Wickersham stated that the Commissioners
would not define their task specifically until the various
subjects before them were thoroughly discussed. On May 31,
a request was made that all existing law enforcement agencies
submit data that might be helpful in the Commission's study.
The Commissioners also divided into two groups, one dealing
with the causes and the second with the remedies of crime. Each
group was to determine the subjects which they felt needed
thorough study. At this meeting Max Lowenthal of New York City
was elected secretary of the Commission, and Leonard V. Harrison
of the Bureau of Social Hygiene was chosen statistician.
Harrison had wide experience in several city-wide crime
surveys.58

The Bureau of the Census, reporting on criminal statistics
in 1929, had noted that there was an "absolute need for reliable

57 Ibid.
58 Ibid., May 31, 1929.
statistics, expertly analyzed, before an intelligent diagnosis of the crime situation could be properly undertaken. Consequently, the first problem facing the Commission was a lack of reliable nation-wide or even state-wide statistics which would indicate the existing amount of crime, the increase or decrease of crime in recent years, and the problems of criminal justice. The Commission adjourned for several days while a staff of experts endeavored to gather such data from throughout the country. They could find few reliable statistics, however, and a comprehensive survey of criminal statistics was not completed until several months later. To undertake this work the Commission secured Samuel Bass Warner of Harvard University. Warner collected every printed report of any substance issued by police departments, courts, probation officers, penal institutions and parole boards, and this material became the basis for one of the final Commission reports.  

On July 15, 1929, less than seven weeks after Wickersham asserted that the Commission was not going to become involved in the prohibition controversy, he made a public statement that thrust the Commission into the heat of the debate. Governor Franklin D. Roosevelt of New York, in preparing an address to be presented before the approaching Governors’ Conference, asked

Wickersham if he would like to use the opportunity to request assistance from the nation's Governors. Mr. Wickersham's reply was read before the assembled Governors in New London, Connecticut, on July 16, 1929. The most notable statement of the letter concerned prohibition. Wickersham, as spokesman for the Commission, said that "one of the most serious subjects we must deal with is the enforcement of the Eighteenth Amendment."

He pointed out that for the most part the Federal government had undertaken enforcement of the prohibition laws and he suggested that the states should take more responsibility in enforcement.

If the National Government were to attend to preventing importation, manufacture and shipment in interstate commerce of intoxicants, the State undertaking the internal police regulations to prevent saloons, speakeasies, and so forth, national and state laws might be modified so as to become reasonably enforceable.

This statement became the center of discussion among the assembled Governors. Although the suggestion was not clearly phrased most observers believed that Wickersham wished to give the States more freedom to choose the kind of prohibition they wanted in return for more State responsibility in enforcement.

The plan split the Governor's Conference and they forbear taking definite action in order to prevent complete disruption of the proceedings.

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61. Roseman, Roosevelt, I, 375-76.

Congressional leaders were also aroused by the Wickersham Letter. Many believed that Wickersham was suggesting that the Volstead Act was unenforceable. Senator Caraway of Arkansas, a dry Democrat, attacked the statement as "one of the worst blows" that Federal prohibition had received since its enactment. He said Wickersham could no longer be useful as Chairman of the Commission and should resign. Such a periodical as the Nation saw in the statement a plain suggestion of the replacement of Federal prohibition by State option relative to the sale of liquor. If this be true it was clearly a concession to the wets. One dry critic expressed the feeling of his colleagues when he charged that the people were not willing to have their Constitution Wickershamed into a squatter sovereignty hodge-podge which means in effect that the Constitution of the United States will operate only in those States which may approve it, and become null and void in those States which choose to exercise their concurrent power to enforce as power to nullify and defy.64

The controversy that accompanied Wickersham's statement did not, however, appear to disrupt the work of the Commission. The first several weeks were spent consulting numerous authorities in the field of criminology and jurisprudence in order to determine the specific abuses that needed study. On August 7 the Commission announced that it had organized its work into

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subcommittees and had designated eleven fields of study, each: of the eleven Commissioners heading one of the sections. One division, Prohibition, was set up under the Chairmanship of Wickersham. This subcommittee on prohibition also included Newton D. Baker, Judge Kenyon and Miss Comstock. An editor of the New York Times observed that "the committee is a guarantee, by those very names, of sagacity and fairmindedness." The other Divisions were: Causes of Crime; Statistics of Crime and Criminal Justice; Police; Prosecution; Courts; Penal Institutions, Probation and Parole; Juvenile Delinquency; Criminal Justice and the Foreign Born; Lawlessness by Government Enforcing Officers; and Cost of Crime. 65

President Hoover's request for a scientific investigation set the pace for the Commission's work. Wickersham pointed out that the study was "conducted like any other scientific study, through the aid of experts and research scholars in the different fields of investigation." To secure fact rather than opinion as the basis for their conclusions, the Commissioners endeavored to obtain all available information that dealt with their designated studies. They secured source material as the result of conscious, organized study projects as well as through Congressional hearings and volunteer informers. Hearings were held in various cities to uncover useful information. 66

65 Ibid., August 8, 1929, August 10, 1929.
The study projects, however, were one of the primary sources of information. Numerous research experts and scholars were employed to make these fact-finding surveys. Among the many scholars who made notable contributions to the final reports of the Commission were Mr. Alfred Bettman, well known for his work with the Cleveland Crime Survey, Dr. Mariam Van Walters, a leader in the field of juvenile problems, Dr. Herman Adler, who was to make a study of the psychiatric problems of criminality, and Professor Edith Abbot, Dean of the Graduate School of Social Service Administration of the University of Chicago. Professor Abbot directed a staff of research experts in an investigation of criminal justice and the foreign born, and this study became the basis for one of the final reports of the Commission.67

At the same time an inquiry was made into the cost of crime in the United States. It was hoped that if Congress was shown the "bill America has to pay for crime" action might be undertaken to improve the law enforcement apparatus. The Committee on Probation, Prisons and Parole also secured the assistance of twenty-five authorities in the field of penology to make a nation-wide survey of penal institutions. The other committees had likewise obtained the assistance of experts in their

designated fields of investigation, and by the beginning of 1930 a large working force was busy carrying on various phases of the Commission's investigation. 68

With the exception of scattered references, very little data has been found by the writer concerning the specific contributions of the various Commissioners. Professor Sayre, in his biography of Pound, asserts that Wickersham did not take a very active part in the Commission's work on the final reports. According to Sayre, the Commissioners agreed early in their work that Wickersham alone should be the spokesman for the group. He calls attention to the "dignified and impressive way" Wickersham presented the ideas and work of the Commission to the public. 69

The report on prohibition was, according to one commentator, written by Pound. 70 Sayre contends that Pound's work on the Commission was "truly monumental."

In a very real sense he did the actual work of the entire Commission. Throughout all the reports anyone can see the Pound use of language and the Pound pattern of analyzing a legal or sociological problem. Quite frankly and very generously, all the members of the Commission were using the methods and moving to the measure of his thought where, indeed he himself was not actually doing the work. 71


70 Gordon, Wrecking of the Eighteenth Amendment, p. 56.

71 Sayre, Pound, p. 254
He adds that all the other Commissioners spent only part of their
time on the work of the Commission while continuing with their
regular jobs. Pound, however, gave almost all of his time to
the Commission during the first year, and during the second
year he spent half of each week on the Commission's work. Miss
Comstock's duties as college president apparently did not
leave her much time for extensive work on the Commission. Loesch,
however, with a wide background in crime investigation, appears
to have contributed much to the work. Data regarding the contri-
butions of the other Commissioners has been elusive. 72

Throughout the period that the Commission was at work
there were frequent charges of dissention among the Commissioners.
At times it was predicted that the whole project would blow up.
Information to corroborate these charges is, however, nonexistent
or based on questionable evidence. The drys as well as the wets
seem to have feared that the Commission would develop a case
against their side in the prohibition controversy, and this
was apparently the factor that motivated many of the critics. 73

72 Ibi^, p. 253.

73 Gordon, Wrecking of the Eighteenth Amendment, p. 58,
contends that Judge Kenyon resigned from the Commission and
was persuaded to reconsider only at the urging of President
Hoover. According to Gordon, a close friend of Kenyon told
him that Kenyon resigned because the Commission refused to
follow the path of corruption and lawlessness when it led
to the "higher-ups."
It was anticipated by many that the Commission would hold public hearings. Wickersham, however, appears to have been, from the start, against such public sessions. Early in the Commission's work it was suggested that public hearings would not come until the later stages of the study, after all relevant data had been collected and evaluated. It was subsequently decided, however, that the work was of such a nature that it should not be carried on in public. This decision gave rise to extensive criticism. One critic noted that the Commission was established to be a fact finding body and secrecy could only result in public suspicion and indignation. Senator Harris of Georgia, in a speech before the Senate, called the Commission "the only star-chamber commission of which I know in this country." He wanted President Hoover to intervene and suggest to the Commissioners that the sessions be opened to the public. There is no indication that any action was taken in this regard.\(^7^4\)

Political agitation from both Houses of Congress, as well as criticism from numerous editorial writers, seems, however, to have driven the Commissioners to make some public statement of their findings. In December, 1929, the dry members of Congress demanded that the Commission report its findings on prohibition. Senator Jones of Washington, leader of the Republican prohibition forces in Congress, admitted that he saw no planned

\(^7^4\)"Committee Rule or Rumors," The Commonweal, XIII (December 3, 1930), 118; U.S., Congressional Record, 71st Cong., 2d Sess., 1929, LXXII, Part 1, 999.
attempt to withhold the information on prohibition; however, he felt that a report should be forthcoming. The President was also approached with this need. It was suggested that this information should be made available before further funds were appropriated.\(^{75}\)

On January 13, 1930, in the eighth month of its work, the Wickersham Commission again stepped into the prohibition controversy. From the July, 1929, letter of Wickersham to Governor Roosevelt until that date no judgements or conclusions had been issued by the Commission relative to any aspect of the investigation. Although they were studying the whole realm of law enforcement and criminal justice, this first report on January 13 was a preliminary report on prohibition enforcement.\(^{76}\)

This report was small, about twenty pages, and presented few facts, these being reserved for the final report on prohibition. Neither did the report go into the question of enforceability. The complete inability of the existing Federal agencies to adequately enforce the prohibition laws was, however, pointed out. The report called attention to the administrative problems as well as the legal difficulties of prohibition enforcement.

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These problems, according to the report, were due to the division of enforcement between the Treasury Department and the Department of Justice, the lack of order in Federal enforcement legislation, congestion in the Federal courts, and the frequent violation of padlock injunctions. 77

The Commissioners recommended that "the whole task of enforcement through the Courts" be centralized in the Department of Justice. Thus the investigation and prosecution of prohibition violators would be coordinated in one central Bureau of Prohibition. 78 This idea had been suggested by other agencies and President Hoover was in accord with the recommendation. Congressional action was taken and the Prohibition Reorganization Act, consolidating prohibition enforcement in the Department of Justice, became effective on July 1, 1930. 79 Critics, however, felt that this was a futile move. The question was not how to improve enforcement, rather it was whether the prohibition laws were enforceable. Will Rogers expressed it this way:

Changing prohibition enforcement from the Treasury to the Department of Justice is just like a dog

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77 Ibid., p. 7. A padlock injunction was the practice of closing, by legal injunction, any building where liquor was manufactured, stored or sold.
78 Ibid., p. 6.
scratching his fleas from one part of his body to another. He has relocated 'em, but as long as he is a dog they are going to bother him some place. 80

The preliminary report also suggested a provision to make the padlock injunction more effective and a revision and unification of all Federal legislation relating to prohibition. The most controversial recommendation dealt with the problem of congestion in the Federal courts. The Commissioners proposed a procedure of trial of "casual violaters" before United States commissioners. This proposal to try petty offences without a jury was criticised by some as a dangerous short-circuiting of traditional criminal procedure. 81

Meanwhile, opposition was encountered in the Senate to the appropriation of funds for the continuing work of the Commission in the fiscal year 1930-31. The feeling ran high that the Commission should confine its investigation solely to the prohibition question. The point was made that the whole discussion of law enforcement during the presidential campaign of 1928 was concerned with the prohibition laws and it was for


a study of such laws that the original appropriation was made.
The Senate voted, on June 27, 1930, to reduce the $250,000
appropriation, that had been provided by the House Bill, to
$50,000. It also restricted the use of this limited appro-
priation to an investigation of the prohibition laws.\textsuperscript{82}

In a press conference statement on the same day, President
Hoover expressed his strong displeasure with the Senate's course
of action.

\ldots the enforcement of any one criminal law necessarily
involves the machinery by which all criminal laws are
enforced, and the country is concerned over the cause
of increasing crime in general.\ldots

\ldots With insistent recommendations from every Bar
Association and public body concerned that we should
have an accurate study of the reforms necessary in our
whole judicial and administrative machinery, that we
should have some constructive program for decrease
and control of crime as a whole, I cannot abandon the
question for one moment or allow the work of this
Commission to cease. I have asked the Commission to
proceed with its full program of work, and it has
consented to do so.\textsuperscript{83}

Hoover noted that the Commissioners served without pay and only
out of concern for the public interest, and he was certain that
private citizens were interested enough in the larger investi-
gation to provide the necessary funds for its completion. This

\textsuperscript{82} U.S., Congressional Record, 71st Cong., 2d Sess., 1930,
LXXII, Part II, 11811-11816. Senator Carter Glass of Virginia,
the author of the proposal to limit the scope of the Commission's
study, stated that only $8,025.69 had been spent by the Commission
for a study of prohibition while it was for this purpose that
the original $250,000 appropriation had been made. According to
Glass, the Commission had spent "twice as much for the subsistence
of its members as it has applied to the task of investigating
prohibition."\textsuperscript{Ibid.}, p. 11816.

\textsuperscript{83} Myers, ed., State Papers, I, 344-45.
was not necessary, however, as the Senate restored the original $250,000 appropriation for the larger purpose.

The Commission was, nevertheless, drawn into a full probe of the prohibition question. As previously noted, the Deficiency Act of 1929 appropriated funds for a "thorough inquiry" into the prohibition question. This purpose was restated in the appropriation for the 1930 fiscal year. The President had asked the Commission to "secure an accurate determination of fact and cause, following them with constructive courageous conclusions." With this stated purpose and Hoover's charge, the Commissioners observed that the scope of their task was not left open to question.

In such a connection it is impossible to divorce the problem of enforcement from that of enforceability. Hence in order to conduct a thorough inquiry, so as to lead to constructive conclusions, we have felt bound to go into the whole subject of enforcement of the Eighteenth Amendment and the National Prohibition Act....

It is difficult to determine whether this decision to make a full inquiry into the prohibition laws, including their enforceability, was made during the early laying out of the Commission's agenda or whether it developed during the later

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84 Ibid., p. 345.

stages of the investigation.\textsuperscript{86} In the preliminary report on prohibition the Commissioners had indicated that a subsequent report would treat the question in more detail; however, they did not suggest that the question of its enforceability was being considered. At any rate there seems to be no evidence that Hoover voiced a dissent in this decision to make a thorough probe of the prohibition problem. One observer has argued, however, that this decision was a great source of embarrassment to Hoover, who had tried to restrict the Commissioners in such a way that he could adopt their recommendations without seeming to endorse or oppose National prohibition itself.\textsuperscript{87}

\textsuperscript{86} Gilbert, "Out of Commission," p. 56, contends that a conflict developed in the Commission concerning the place prohibition was to occupy. The argument runs that Kenyon and Pound pushed for a full report on prohibition and this combined with public opinion and Congressional pressure to bring about the full inquiry. Other evidence to support or refute this conclusion has, however, not been found.

\textsuperscript{87} Sinclair, Prohibition, p. 374.
CHAPTER IV

THE FRUITS OF LABOR -- THE COMMISSION REPORTS

The Wickersham Commission was in existence slightly more than two years, the official end of its study coming on June 30, 1931. The findings and recommendations of the Commission are recorded in thirteen final reports containing approximately 4,000 printed pages. One contemporary writer called the Commission "one of the big adventures of this generation," and it was a successful adventure according to the Journal of Criminal Law and Criminology which maintained that the reports represent "the most extensive single survey of crime ever undertaken." Nevertheless, public interest and public controversy centered around one report, the second report on prohibition. "There is one issue," Representative Andrews of Massachusetts asserted in February, 1931, "which overshadows all others in the minds of the public and politicians....That is the issue of the great experiment . . . which today, . . . absorbs more attention and provokes more bitter debate than all of the other issues."

combined." Fredrick Lewis Allen rightly observed that "to the general public nothing in the Commission's program really matters except Prohibition."89

The Report on the Enforcement of the Prohibition Laws of the United States,90 dated January 7, 1931, was the first of the final reports to be made public, and the subsequent reports, whose contributions were of a more enduring nature, were obscured in the controversy that this report produced. Much of the public and the press expected that the Commission would reach a conclusive verdict on the prohibition question and would identify itself with either the wets or the drys. When it did not do so the wets said the Commissioners did not go far enough and the drys said they went too far. The report became the whipping-boy for both sides in the prohibition controversy. Some critics, after a few remarks of vilification, denunciation, and derision, tagged the report as merely the result of an academic exercise and relegated it to the historian.91 Others, however, saw that the report could be used as a weapon for their partisan advantage.

89 Congressional Record, 71st Cong., 3d Sess., 1931, IXXIV, Part V, 5298; Allen, Since Yesterday, p. 17.

90 U.S. National Commission on Law Observance and Enforcement (Washington, 1931). The following discussion is based on this report and unless otherwise indicated all quotations are taken from it.

91 D. Z. Wolf, "The United States," Current History, XXXIII (March, 1931), 915. Its inconclusiveness, Wolf wrote, "does not impair the value of the great body of factual material which should be a gold mine for future historians." The report is undoubtedly an indispensable source for all students of prohibition.
"There was something in the report for everybody," one has noted, "and both the wets and drys used it according to their lights." It became so distorted and falsified that few knew what it really said. The Commissioners, however, probed into nearly every aspect of the prohibition question and the report, in spite of its apparent inconsistencies, is a summary of much of the best thinking of the time.

The Commissioner's conclusions were based on a critical study of reports and surveys made for them by a research staff of experts, as well as on the statements of Federal prohibition officials; the statements of agents and other personnel active in prohibition enforcement, social work, or general law enforce-
ment; answers to questionnaires; reports from foreign countries; reports of Congressional hearings; volunteer statements and suggestions; government memoranda; interviews with well-informed citizens in every part of the country; and books and scholarly studies of every sort. From this large amount of material they produced an eighty-two page summary of the history and existing conditions of prohibition. In signing the joint report the right was reserved to each Commissioner to express his own views concerning the conclusions of the report and the matters discussed therein. Following two pages of conclusions and recommendations,

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signed by all the Commissioners except Monte M. Lemann, are seventy-three pages devoted to the individual statements of the Commissioners. Each Commissioner signed the report with the knowledge that he could qualify his opinions in his personal statement. It is the alleged contradictions between the joint report and the individual statements that have been one of the chief causes of criticism of the report. As later discussion will indicate, it is the opinion of the writer that much less contradiction exists than has been frequently charged.

The report began with a critique of the enforcement of prohibition before 1927 and the changes adopted to improve enforcement after 1927. The Commissioners concluded that the Eighteenth Amendment was

An experiment, the extent and difficulty of which was probably not appreciated. The government was without organization for or experience in the enforcement of a law of this character. In creating an organization for this purpose it was necessary to proceed by the process of trial and error. The effect was subject to those limitations which are inseparable from all human and especially governmental activities. (20)

They did not, however, discuss the failure of the Harding and Coolidge administrations to take adequate measures for enforcement, nor did they expose the corruption that had crept into all levels of the enforcement apparatus during the decade of the 20's. 93

93 See Dobyns, Repose, pp. 353-54, for a criticism of this failure to expose the abuses of enforcement in the 20's.
The second section of the report surveyed the existing conditions of observance and enforcement. The observation that there were a large number of people who quite frankly disregarded the prohibition laws was news to no one.

Not the least demoralizing feature of enforcement of national prohibition is the development of open or hardly disguised drinking winked at by those in charge in respectable places where respectable people gather...on the whole it goes on throughout the country....The pressure from patrons, the state of public opinion, and the difficulty of obtaining proof make it almost impossible to reach these things. (39)

The difficulties of enforcement in several areas were pointed out. Illicit importation of liquor, the control of industrial alcohol, illicit distilling of alcohol, the production of illicit beer which evolved out of the legal cereal beverage business, home production of intoxicants, the control of medicinal liquor and the bootlegging business were all discussed as areas where enforcement was difficult. The illicit distilling of alcohol, the chief source of supply, "has become established to an extent," according to the Commissioners, "which makes it very difficult to put to an end." (30) Moreover, the production of home brew was seen as a stimulant to general lawlessness.

Adults living in such an atmosphere of evasion of law and law breaking and children brought up in it are an obstruction to the present enforcement of the law and a serious threat to law and order in the future. (33)
The Commissioners, aware of the need to preserve the constitutional safeguards of private property and individual rights, concluded that as far as home brewing was concerned

necessity seemed to compel the virtual abandonment of efforts for effective enforcement at this point, but it must be recognized that this is done at the price of nullification to that extent...the purpose of the law needs must be accomplished by less direct means...[campaign of education must constitute the means.] (33)

In the third section they discussed the bad features of the existing situation. The Commissioners concluded that corruption in connection with the liquor traffic was widespread. One cause of the prohibition lawlessness that existed, the Commissioners maintained, was the "bad start which has affected enforcement ever since." (45) Among the factors pointed out as causes of this bad start was an underrating of the enforcement task, political interference, administrative failures, and a lack of public support. The Commissioners noted that only since 1927 had the selection of enforcement personnel and the operation of enforcement machinery been divorced from politics. They also noted that education against the liquor evils died out after the passage of the prohibition laws; yet, this was the very thing that was needed to secure public support.

The greatest factor that obstructed enforcement was shown to be an indifferent and antagonistic public opinion. The Commissioners noted this unwillingness of public opinion in many parts of the country to support prohibition, and concluded that the injury to our legal and political institutions from such a situation must be weighed against the
gains achieved by national prohibition. Means should be found of conserving the gains while adopting, or making possible to adopt, legislation under the Amendment to conditions and views of particular states. (49)

The Commissioners pointed out that a law would be observed and could be enforced only where it achieved public approval. In their words:

From its inception to the present time the law has been to a constantly increasing degree deprived of that support in public opinion which was and is essential for its general observation or effective enforcement. (51)

The Commissioners added:

A considerable part of the public were irritated at a constitutional “don’t” in a matter where they saw no moral question....In consequence many of the best citizens in every community, on whom we rely habitually for the upholding of law and order are at most lukewarm as to the National Prohibition Act. (55)

The great strain which national prohibition had put on the courts, prosecuting machinery and penal institutions was also discussed. They concluded that "there has been a general bad effect upon the whole administration of justice." (57)

Thus in their joint report the Commissioners agreed that the Eighteenth Amendment would not be observed and could not be enforced without the support of public opinion. (48-49) They agreed that there was a very real lack of support in public

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Gordon, Wrecking of the Eighteenth Amendment, p. 56, argues that "the reason why support for the law was waning was because enforcement was deliberately sabotaged." He believes that the real problem, which the Commissioners failed to point out, was that inadequate enforcement was the cause not the product of an indifferent or antagonistic public opinion.
opinion in many areas of the country. (54) They believed that public support had grown weaker as the years passed, (51) and such support in public opinion could not be gained by police enforcement methods. (49)

They also agreed that the Eighteenth Amendment could succeed only with the cooperation of the States. (59) They noted, however, that State responsibility had been decreasing rather than increasing. (39, 59) They agreed that no effective enforcement could result until home brewing was controlled; however, it was virtually impossible to enforce such observance without police state methods. (33) They likewise agreed that the Amendment could not be adequately enforced as long as the illicit trade in liquor was able to produce large profits. (51, 52) They thus concluded that as long as these obstacles stood in the way "satisfactory enforcement will continue to be beyond the reach of improved organization [sic] personnel and equipment and tightened statutory and administrative provisions". (80)

The report thus far appears to be a thoroughgoing indictment of national prohibition.95 The Commissioners went on, however, to point out the gains that had resulted from the Eighteenth Amendment. They argued that these gains should be preserved; therefore, some Federal control of liquor was necessary.

95 The vets read this and called it a complete repudiation of national prohibition. The drays read it and said it only proved that prohibition had never been adequately enforced.
"In our judgement," they wrote, "it is impossible to recede wholly from the Eighteenth Amendment."(70) To the frequent assertion that there had been an increase in the production and efficiency of labor, they stated, "we are satisfied that a real and significant gain following National Prohibition has been established."(71) "In an industrial country, in an industrial age," they argued, "this established fact must be of great weight."(72)

Likewise, social workers agreed generally that there had been an improvement in living standards which could only be traced to prohibition. "Upon weighing all evidence," the Commissioners stated, "there is a clear preponderance to establish a gain." They thus concluded that

any program of liquor control should go forward from these economic and social gains. It should begin by conserving these benefits...[however] they are due not so much to the attempt at federally enforced prevention of the use of intoxicating liquor as to the closing or substantial closing of the old time saloon. Hence the first desideratum in any constructive plan is to keep closed the saloon and its substantial equivalents.(73)

The Commissioners declared in the joint report that they were opposed to repeal of the Eighteenth Amendment.

We are convinced that it would be a step backward, that it would not conserve the achieved benefits of national prohibition, and that it would be likely to lead to conditions quite as bad as those we are seeking to escape.(76)
They were also opposed to repeal of the Prohibition Enforcement Act.

Repeal of the National Prohibition Act would amount to nullification of a constitutional provision.... In our opinion it is even less to be thought of than repeal of the Amendment. It would not be honest. (76)

Neither were they in favor of modification of the National Prohibition Act to permit the sale of light wines and beer. Likewise, they opposed the suggestion that the government go into the liquor business. Although they admitted that enforcement had improved since 1927, they concluded that there was still no adequate enforcement of Federal prohibition. (83) "In a number of particulars," the Commissioners stated, "it must be pronounced that there has not been the kind of test of enforceability of national prohibition which would have been desirable." (78)

It was pointed out in the joint report that some of the Commissioners felt a need for immediate revision of the Eighteenth Amendment. They all agreed on the wording of a new amendment if it should be revised. They were aware, however, that revision was time consuming and until or if such revision was undertaken they suggested measures that should be adapted to improve enforcement. At the end of the report there was a statement acknowledging that

there are differences of view among the members of the Commission as to certain of the conclusions stated...The joint report is signed subject to individual reservation of the right to express these individual views in separate or supplemental reports to be annexed here to. (84)
An examination of the individual statements of the Commissioners shows these judgements:

Anderson was "unqualifiedly opposed to . . . repeal."(98)

He argued that "we must not lose what has been gained by the abolition of the saloon." He could not, however, ignore the existing conditions and he outlined a plan for the revision of the Eighteenth Amendment.

Baker, the only Commissioner who really contradicted himself, called for repeal of the amendment and the discharge of the whole question to the states. He explained,

I have signed the report of the Commission because it is a fair finding of the facts disclosed to us by such evidence as was available and because it is clear that so long as the Constitution and law remain as they now are, the recommendations of the report should be carried out....(111)

Constock wrote, "I favor revision of the amendment rather than its repeal."(113)

Grubb believed that "prohibition under the Eighteenth Amendment is entitled to a further trial. . . ."(115)

Kenyon stated, "It seems to me the evidence before us is sufficient to demonstrate that at least up to the creation of a Bureau of Prohibition in the Department of Justice the enforceability of the prohibition laws had never been subjected to any thorough and convincing test."(117) He concluded that "the enforceability of the prohibition laws should have further trial. . . ."(137)
Lemann did not sign the joint statement because he saw "no alternative but repeal of the Amendment." (148)

Loesch stated that "steps should be taken immediately to revise the Amendment." (149)

Mackintosh argued for Federal control as well as state responsibility. He called for revision to preserve the benefits and correct the evils. (152)

McCormick wrote, "I am not entirely convinced that complete and irreparable failure has been shown... [or] that the law has had... fair trial..." (155) He called for further trial.

Pound wrote, "Federal control of what had become a nation-wide traffic, and abolition of the saloon are great steps forward which should be maintained." (160) He called for a revision of the Amendment to preserve these gains while allowing more local control.

Wickersham stated, "I cannot believe that an experiment of such far reaching and momentous consequences... should be abandoned after seven years of such imperfect enforcement and only three years of reorganization and effort to repair the mistakes of the earlier period." (161) He concluded that "a further trial should be made of the enforceability of the Eighteenth Amendment..." (161)

Thus, in their individual statements, two Commissioners argued for outright repeal, five called for revision of the Eighteenth Amendment and four believed that Federal prohibition
should have further trial. The frequent charge that the individual statements made nonsense of the joint report and that the Commissioners denied in their joint statements what they affirmed individually -- that the Eighteenth Amendment was unenforceable -- can not be wholly accepted by this writer.\footnote{For this viewpoint see William L. Cherney, "An Open Letter to the Honorable George W. Wickersham," Colliers, March 21, 1931, p. 66, and Sinclair, Prohibition, pp. 364-65. The opposing view is held by Dobyns, Repeal, pp. 91-92.} Although it is true that the joint report was inconclusive as to what action should be undertaken, the whole report spelled revision of the Eighteenth Amendment. When the Commissioners said in the joint report that they did not favor repeal, they seem to have meant that they did not want a return to the saloon and the conditions which had existed before Federal prohibition. They did not want the Federal government to take its hands off the liquor traffic altogether. The individual statements, except for those of Baker and Lemann, who did not sign, are not at variance with the spirit or conclusions of the joint report. In their individual statements nine of the eleven Commissioners, a clear majority, did not want the Federal government to abandon control of the liquor traffic.

Differences between the opinions of the Commissioners was, however, inevitable, and the conclusions and recommendations of
the joint report appear to be the result of a compromise.97

"The main thing that stands out about the report," President
Hoover's Secretary Theodore Joslin observed, "is that every
shade of opinion found some part . . . as a matter of fact,
the report represented the confused views then dominant through-
out the country." As one noted it was neither an entirely wet
or dry document, "in truth it is a Yea and Nay document, blowing
hot and cold, wet and dry."98

The manner of releasing the report to the press only
intensified the public misinterpretation of its contents. It
was made public in sections and some New York newspapers changed
their headlines in each new edition as a different part of the
report was read. After several such changes, the New York
Telegram printed this heading: "Figure It Out For Yourselves--
We Can't--Editors."99 On that seventh day of January, 1931,
editorial writers sharpened their pencils and presses hummed as
all sorts of contradictory interpretations were thrust upon the
perplexed public. Such a dry periodical as the Christian Century
held that the Commissioners had put their stamp of approval upon

97 See Howard Lee McBeain, "Amending the 18th Amendment,"
The American Mercury, XXIII (June, 1931), 227.

98 Theodore G. Joslin, Hoover Off The Record (New York, 1934),
p. 74; "Editorial Comment," The Catholic World, April, 1931,
p. 102.

99 Quoted in "Confusion Worse Confounded," The Nation, CXXXII
(February 4, 1931), 116.
Federal Prohibition. And at the same time the New Republic was arguing that the report "disproves many of the assumptions of the Drys so overwhelmingly . . . that they cannot maintain their position." "The report as a whole," the editorial concluded, "is undoubtedly the heaviest blow prohibition has ever experienced." 100

Many commentators were aroused by the failure of the joint report to come out for revision of the Eighteenth Amendment when the evidence that was presented led in that direction. A contemporary columnist ably expressed this widely held feeling in a satirical commentary.

Prohibition is an awful flop.
  We like it.
It can't stop what it's meant to stop.
  We like it.
It's left a trail of graft and slime,
It's filled our land with vice and crime,
It don't prohibit worth a dime,
  Nevertheless, we're for it. 101

The New Republic argued that the conclusions of the joint report were "dictated by political pressure, and that this came, directly or indirectly from Mr. Hoover." The Outlook and Independent, although not as strong in its charge of Presidential intervention, held that the Commissioners "acted out of deference


to President Hoover . . . who carefully refrained from asking them to report whether they believed the dry laws to be wise or unwise. 102 Numerous other commentators seized upon this argument that Hoover had put his finger in the Commission's pie. One has observed, however, that this charge was immediately branded as 'absolutely untrue and without foundation' by the chairman; it was denied with heat by Dean Pound; . . . Judge Kenyon declared it 'absolutely untrue'; Judge Mackintosh in San Francisco, January 23, stated that 'the President never in any way, interfered with the framing of the Report nor did he ever hint in the slightest manner to any member what his wishes were in regard to the Commission's findings.' 103

In his Memoirs, Hoover noted that the Commissioners were "mentally divided" on the prohibition question. He believed that this situation was caused in part by the same problem that bothered him. "My personal difficulty," he wrote, "was something that did not appear on the surface." Hoover recalled a conversation he had with former Secretary of State Elihu Root concerning the President's oath-bound duty to enforce Federal law. "If you were to recommend repeal," Hoover remembered Root as saying, "you

102 "Four Aspects of the Wickersham Report," New Republic, p. 312; "The Wickersham Report," Outlook and Independent, January 26, 1931, p. 130; Irvin Hood Hoover, Forty-Two Years in the White House. (New York, 1934), p. 219, also contends that the President interfered. "The conclusions of the Wickersham Report," the chief White House usher wrote, "were, I believe, influenced by President Hoover. He had various members of the Commission in to see him separately, at the White House proper." This statement, however, must be evaluated in the light of the writer's general condemnatory attitude toward President Hoover.

would be nullifying the Constitution because from that day no jury and no judge would convict." The President adopted this Elihu Root formula and he believed that the Wickersham Commission was faced with this same decision. "The nullification problem," according to Hoover, "accounts partly for their indirect damnation of the law and, at the same time, their recommendations against repeal."104

Public criticism of the prohibition report was summed up by Will Rogers. "I was down in Texas last week," he commented, "and they are feeding goats the Wickersham report."105 There were those, however, who had high praise for the report. Representative Andrews of Massachusetts held that it was "one of the most fair and dispassionate presentations that has ever been made of a burning problem." "I consider the report itself," he added, "the most masterful and scholarly contribution that has

104 Hoover, Memoirs, II, 278. In transmitting the report to Congress, Hoover called it a "temperate and judicial presentation." He wrote: "The Commission by a large majority does not favor the repeal of the eighteenth amendment....I am in accord with this view....I do, however, see serious objection to, and therefore must not be understood as recommending, the commission's proposed revision of the eighteenth amendment which is suggested by them for possible consideration at some future time....My main duty and that of all executive officials is clear—to enforce the laws with all the means at our disposal without equivocation or reservation." In Nyera, ed., State Papers, I, 493-94.

105 Quoted in "Wickersham's Service," Current History, XXXIII (March, 1936), 669. At another time he called the report "the only possible thing you could think of that we don't need right now outside the Einstein theory. If you could butter that report and put it between two loaves of bread it would be welcome now." In Day, ed., Sanity is Where You Find It," p. 141.
ever been made to our most discussed problem." And H. L. Mencken declared that "as far as State Papers go in the United States, the report is a document of manifold and unusual merits." Mencken agreed with Hoover that the Commissioners had to contend with the nullification problem. Nevertheless, he called the report "an excellent job—in fact a job so good as to be almost brilliant."106

The trouble with the Wickersham Commission's study of prohibition seems to lie in two areas. First, the very heat of the "national dog-fight" over prohibition precluded the hope of obtaining a reasoned evaluation of the Commission's conclusions, and resulted in much public and political pressure on the Commissioners, not only to solve the prohibition problem but to solve it in order to support a particular viewpoint. William Allen White noted this problem.

As a footnote to history some historians of this day may refer to the Wickersham report as an example of the futility of trying in a crisis to effect government by experts.

Experts have their place in government. In the early stages of every cause, it needs experts, ...But when the issues are made, when causes are crucially at stake, when the public mind begins to take on heat and to crystallize on the two sides of an issue, the expert and all his works and ways are useless.108


107 See Strout, ibid.

The second trouble with the study was one of method. As one critic has noted: "Its testimony was given behind closed doors and afterwards the vital facts were neither published nor made accessible to investigators. The public was offered conclusions without a chance to test them." Judge Kenyon wrote in his separate statement:

...it is unfortunate that the hearings of the Commission on prohibition have been in secret, which compels us to file a report based in part on secret evidence. If the evidence produced before us could have been made public, I think it would have given to the country a true picture of why reasonable enforcement of the prohibition laws could not have been expected.\(^{109}\)

The prohibition report did, however, have a lasting influence. First, it focused public attention on the grievous conditions created by prohibition and served as a basis for more intelligent public discussion. Second, it was, as one has phrased it, "the death blow to prohibition" and "the turning point toward repeal."\(^{110}\)

Although the Seventy-first Congress both praised and denounced the

\(^{109}\) Gordon, The Wrecking of the Eighteenth Amendment, p. 57. According to this proponent of Federal prohibition, "If all the facts assembled...had been released it would unquestionably have strengthened Prohibition sentiment and helped enforcement, for it would have uncovered the cause and presumably the men responsible for defective enforcement." p. 61.

Wickersham prohibition report, it did not carry through any significant changes in regard to the existing prohibition scheme. A New York Republican, Fredrick R. Lehlbech, did, however, offer a resolution in the House based on the Wickersham report, which, although not adopted, was almost the same as the Twenty-First or Repeal Amendment adopted over two years later. 111

It was unfortunate that the other twelve reports were given much less attention by the press and the general public. Some of the most noteworthy contributions of the Commission were lost sight of in the storm that broke over the prohibition report. Even under the most favorable circumstances, however, it would not be expected that documents on subjects such as criminal procedure and criminal statistics would arouse much public interest.

The Report on Criminal Statistics (pp. 205) found little to praise in the existing system of criminal statistics in the United States. Accompanying the Commissioner's critique and recommendations are the reports of two research studies: a "Survey of Criminal Statistics in the United States," by Professor Sam Bess Warner of the Harvard Law School, and "A Critique of Federal Criminal Statistics," by Morris Ploscowe who had recently returned from two years of study in European criminological institutes. Warner's findings relative to state and municipal

criminal statistics and Floscowe's findings concerning Federal statistics were the primary working data from which the Commissioners developed their conclusions and recommendations. Warner concluded that crime statistics "are for practical purposes non-existent in the United States." (87) His findings indicated that no State compiled comprehensive crime statistics and they existed for only fourteen cities, although even their accuracy was questionable. The situation relative to Federal statistics was little better, according to Floscowe. He asserted that "for 60 years the Federal Government has been publishing criminal statistics which are inadequate." (198)

The Commissioners commended the accurate picture presented by these surveys. The report emphasized the importance of accurate, systematic, nation-wide statistics as the first step toward improved enforcement of Federal laws. Accurate statistics, the Commissioners argued, were the "beginning of wisdom" in the areas of criminal justice and penal administration. This data was needed not only as a basis for determining the trends of criminality, but also as a guide for constructive criticism of existing agencies and policies of Federal law enforcement, and as a measure of what needed to be done to improve the Federal law enforcement machinery.

The Commissioners pointed out that, to the extent that they were collected, national criminal statistics were assembled and published by three different Federal agencies. Prison
statistics were in the Bureau of the Census, police statistics were in the Bureau of Investigation of the Department of Justice, and the Children's Bureau of the Department of Labor collected statistics on juvenile delinquency. There was complete unanimity in the Commission's recommendation that the compiling and publishing of all national criminal statistics be centralized in the Department of Justice. The Commissioner's also emphasized the need to establish state-wide bureaus of criminal statistics as a requisite to the development of adequate nation-wide statistics. As soon as accurate state-wide statistics were available, the recommendation was made that a nation-wide bureau of criminal statistics be established in the Bureau of the Census to receive and correlate the Federal and State statistics.

One area in which this report tried to break the ground for reform was in its criticism of the way the Federal Bureau of Investigation compiled and published its monthly crime reports. The Commissioners pointed out inaccuracies in the F.B.I.'s statistical data, and added that there was a danger in placing the responsibility for compiling and publishing statistics in an agency that also administered the law. Max Lowenthal wrote in 1950 that since the Wickersham Commission's Report on Criminal
Statistics was published, the F.B.I. notes in its publications of statistical data that it does not vouch for their complete accuracy. 112

The Report on Prosecution (pp. 337), signed by the whole Commission, was primarily a summary of the existing knowledge concerning criminal prosecution rather than an account of new findings. It was based largely on a research study, "An Analysis of the Surveys of the Administration of Criminal Justice Relating to the Subjects of Prosecution and Courts," made by Alfred Bettman, a lawyer from Cincinnati, Ohio, who had wide experience in criminal law research. A 134 page report of his findings is attached to the 38 page critique written by the Commission. Bettman's interpretation of the findings and recommendations of prior surveys was, according to the Commissioners, "a thorough and keen analysis of the existing learning in the field covered by the report. . . ."(4) The Commissioners were in accord with Bettman's conclusions and their critique and recommendations largely reaffirm the suggestions made by him.

Bettman pointed out that criminal cases were to a large degree handled by methods other than jury trial and thus more

attention should be given to these other methods of administering justice. The Commissioners traced the development of the office of the public prosecutor in England and the United States, described the existing systems of prosecution in federal and state governments, and called attention to deficiencies in these systems as well as the problems which faced the prosecutor in the fulfillment of his task. The problems created by the "professional" defender, the public defender and the grand jury were also considered by the Commissioners.

Juvenile delinquency was the most important aspect of the problem of crime prevention according to Bettman. The Commissioners maintained that the chief goal of reform in the several agencies dealing with crime should be to increase the likelihood of discovering and transforming the young offender. This conversion of the young offender could only be done, it was noted, by increased individualization of treatment. "The effectiveness of criminal justice as a reducer, preventive or deterrent of crime," the Commissioners wrote, "will turn mainly upon the intelligence with which the principles governing the punishment, disposition or treatment of the convicted offender are determined and carried out."(5)

Many of the abuses and shortcomings in the administration of criminal justice, the Commissioners observed, were due to the interference of politics. They recommended that political factors be eliminated in the selection of Federal district attorneys and
prosecuting officers. Others recommendations of the Commission included the development of a better selection policy in regard to the public prosecutor, a change in tenure policy and better organization of the prosecutors office, some centralized control of prosecution in each state, and the development of "such an organization of the legal profession in each State as shall insure competency, character and discipline among those who are engaged in the criminal courts." (38)

A well indexed bibliography of some 500 titles relating to prosecution, compiled by Mr. Julian Leavitt, research consultant for the Commission, was appended to the report.

The Enforcement of the Deportation Laws of the United States (pp. 179) is an interesting and valuable study of an area which demanded increased legal attention. It was noted that during the decade of the Twenties over 90,000 aliens had been deported from the United States under warrant proceedings. In addition, in the last six years of the decade, 95,000 aliens had left voluntarily, before warrant proceedings were completed. Each year the right of approximately 100,000 persons to remain in the United States was questioned. Thus the responsibility of administering a law that directly touched the lives of so many people was great.

The Commission did not attempt to assess the extent to which the enforcement of the deportation laws affected the crime rate. The Commissioners noted, however, that foreign groups
would certainly not be pleased with a body of laws that was aimed at them and that could be evoked without the legal safeguards characteristic of most other laws.

This apprehension is constant, for no foreign-born resident of the United States, whether he be naturalized or not, can ever be sure that he will not suddenly be made the subject of an administrative process...which will find some irregularity in his entry or in his conduct...and return him to the country from which he came....(3)

Nevertheless, the Commissioners admitted that deportation laws were necessary to protect the United States "from being inundated by defective, diseased, delinquent, and incorrigible persons."(4)

At the request of the Committee on Criminal Justice and the Foreign Born, Mr. Ruben Oppenheimer, a member of the Baltimore bar who had a broad background in legal and sociological research, undertook a study of the methods by which "warrant proceedings"--the processes of deportation--were conducted and their results. Affixed to the Commissioner's report is an account of Oppenheimer's findings and conclusions entitled "The Administration of the Deportation Laws of the United States." He condemned the existing process of deportation as inherently defective and too frequently surrounded with abuses.

The policy of deportation that existed had begun in 1917 when the Bureau of Immigration of the Department of Labor had been entrusted with various aspects of administration relative to the deportation laws. As the responsibilities of the Bureau expanded the function of detecting, prosecuting and judging the
alien was thus centered in one agency and the immigration agent had "three functions which we have found it safe, in no other phase of life, to entrust in any one individual." Although Oppenheimer admitted that the Bureau of Immigration had been generally fair, he argued that grave abuses and hardships had resulted.

Following a historical survey of the laws relating to deportation and a comprehensive examination of the deportation system in operation, Oppenheimer pointed out the shortcomings of the existing system. "The apprehension and examination of supposed aliens," he concluded, "are often characterized by methods unconstitutional, tyrannic and oppressive."(177) He noted other evils: there was reason to believe that aliens were often deported when further investigation would have established their right to remain, there was no consideration of human factors and families were too often permanently separated, and overcentralization of the administrative machinery handicapped the working of the law.

To correct these objectionable features, Oppenheimer made several recommendations. The Department of Labor should be charged solely with the power of investigation and prosecution. For judicial functions an independent board should be established, with members appointed by the President, to decide when warrants of deportation should be issued and to conduct hearings on the warrants. The board should also have the authority to waive a warrant if extreme hardship would result from deportation.
The Commissioners, except for Anderson and Mackintosh, adopted the recommendations made by Oppenheimer. Anderson believed that Oppenheimer's charge that the Immigration Bureau was guilty of "lawless invasion of the deportation laws" was unwarranted. Because of this and because he could not accept all of Oppenheimer's recommendations, Anderson did not sign the report. He admitted, however, that Oppenheimer's study was thorough and of some importance.

Mackintosh believed that on insufficient evidence Oppenheimer had overemphasized the abuses of the deportation laws, and he could not concur in this criticism, nor could he accept the recommendation that a board be established to administer the judicial functions. Mackintosh believed that such a board would grow into "another large governmental body with its usual concomitants of expense, delay, and growth of technicalities."(13)

An editor of the Yale Law Review was, however, in accord with the report's "convincing analysis of the present ill conceived machinery..." "By its practical and definite proposals for change," the writer added, "this report points the way to the correction of evils long persistent in the enforcement of the deportation laws."113

The thesis of the Report on the Child Offender in the Federal System of Justice (pp. 175) was that the Federal courts were not

equipped to deal with the child offender while the State courts met the most important test of competency -- recognition of the concept of juvenile delinquency.

The evidence to support this assertion was presented by Dr. Miriam Van Waters, consultant to the Harvard Law School Crime Survey and a leader in the attack on juvenile delinquency. Dr. Van Waters directed an investigation into the problems which the child offender created for the state and Federal governments. The study dealing with the problems of the juvenile offender in the States was to be completed at a later date and published by the White House Conference on Child Health and Protection. The 168-page report entitled "Problems Presented to the Federal System of Justice By the Child Offender" was, however, published with the Commissioner's critique. This report was the basis for the Commission's statements.

Dr. Van Water's recommendations were based on two assumptions: that the child offender should be treated as a ward of the state rather than as a criminal, and that his care was primarily the responsibility of local communities. She pointed out that Federal laws did not distinguish in any way between the juvenile offender and the hardened criminal. The unnecessary transportation of the child long distances to be tried in Federal courts, and if convicted placed in Federal prisons which took few steps to redeem the offender, were noted as further evils of the Federal system.
Dr. Van Waters pointed out, however, that the States had begun to recognize the child offender as different from the adult criminal and State programs of rehabilitation were numerous. The recommendation was thus made that the Federal law relative to juvenile offenders be changed to extend the jurisdiction of the State courts over such cases. The proposal that the Federal government set up juvenile courts was considered, but was not recommended.

The Commissioners were all in accord with the findings and recommendations of Dr. Van Waters. They recommended the passage of legislation which would withdraw the Federal government from the prosecution of juveniles. This recommendation was written into law on June 11, 1932, when President Hoover signed a bill transferring the cases of juvenile delinquents from the Federal system of criminal justice to juvenile courts in their local communities.11h

The Progress Report on the Study of the Federal Courts (pp. 123) is an account of a projected study of law administration in the Federal courts. Before the establishment of the Wickersham Commission, an outline for a comprehensive national study of this sort had been presented to President Hoover by Dean Hutchins, of the Yale Law School and Professor Charles E. Clark. This plan was considered by the Commission and a committee was appointed.

to direct the work, which began in October, 1930. The investigation, it was estimated, would require two years. The Wickersham Commission, however, was only covered by an appropriation until June 30, 1931, and the decision was made not to apply for a new appropriation to continue work on the study after that date. Thus the work was not completed by the Commission and the seventh report is an account of the progress made up to June 30, 1931. About half of the report's 123 pages sets forth a manual which had been prepared solely for the field workers in this investigation.

A majority of the Commissioners had extensive personal experience with various aspects of criminal procedure; therefore, experts were not employed to undertake research for the Report on Criminal Procedure (pp. 51). They did, however, make use of a considerable amount of literature including several extant law reports that had a bearing on certain aspects of the subject.

The Commissioners called attention to the fact that criminal justice demanded "a somewhat elaborate, refined, and even technical procedure."(4) In its simplest form, they pointed out, criminal procedure including bringing the offender before the courts, conducting an inquiry to ascertain that the particular case should be undertaken, informing the accused of the specific charges against him, giving the accused a chance to undertake preparation for the trial, providing him with a fair trial before an impartial tribunal and without unnecessary delay, and permitting
the whole case to be reviewed by an appellate court. Criminal procedure in action, however, involved much more than these minimum terms.

American criminal procedure had its roots in the colonial past and, according to the Commissioners, it had never been completely reshaped to conform to the conditions of lawlessness and law enforcement in the twentieth century. The irregular and often confused procedure of the inferior courts -- municipal courts and police and magistrate courts -- as well as the corrupting influence of politics was leaving the public with a bad conception of the whole process of criminal justice. It was in the inferior courts that the public had its most frequent contact with American criminal justice, and the abuses that existed in criminal procedure could well contribute, the Commissioners believed, to a disrespect for law in general. For this reason a sound criminal procedure was of cardinal importance to insure public confidence and support of the existing system of criminal justice.

The Commissioners maintained, however, that most of the shortcomings in the system of criminal procedure could be traced to the personnel who operated it rather than to the machinery itself. One of the most needed reforms, the Commissioners asserted, was "a change of attitude both in the legal profession and in the public as to the mode of choice, tenure, and personnel of the bench."(45) The administration of justice, too much in
politics, had to be removed from political influences and judicial appointments had to be made on the basis of individual competence before the system of criminal procedure could be operated soundly.

The old-time system of justice, where the country squire acted as chief magistrate for the community, had largely vanished; however, the Commissioners observed that the fee system, by which the magistrate had been compensated for his services, still existed in the inferior courts in some areas of the country. They recommended the complete abolition of this system of fees and its replacement with salaried magistrates. They also directed attention to the many antiquated and ill-conducted inferior courts and advised that they be reorganized.

Nevertheless, the Commissioners made no recommendations as to the details of procedure. "Procedural details," they declared, "should be governed by rules of court, not by rigid legislation drawn up by one set of men and interpreted by another."(46) They did, however, make several general recommendations. The abuses and the cost in time and money that were involved in jury trials was noted and the Commissioners concluded that jury trial should be used more rationally. Where it had not already been affected, they advised that laws be passed to allow jury trials to be set aside in criminal cases. They recommended that action be taken to allow only one review of convictions in inferior courts and also that summons rather than arrests be used in beginning petty prosecutions.
Research for the report on *Penal Institutions, Probation and Parole* (pp. 344) was undertaken with the belief that no substantial progress could be made in the effort to reduce the crime rate without developing "ways and means sharply to modify the organization and administration of penal and correctional institutions."(6) The Commissioners called attention to the fact that while nearly 400,000 offenders passed through the gates into 300 different penal institutions each year, the number that passed out into society was approximately the same. This fact, however, was frequently not considered in penal organization and administration. The thesis of this report is that the existing prison system was oriented toward the punishment of the offender when its chief objective should have been his reclamation.

For this study the Commission obtained the assistance of a twenty-four member advisory committee whose membership included some of the foremost penologists and penal administrators in the country. Dr. Hastings E. Hart, consultant in penology of the Russell Sage Foundation, directed the committee's study of penal institutions, probation, and parole and a 115 page report of their findings was published with the Commissioner's report.

The Advisory Committee found that, for the most part, American penal institutions were not fulfilling the task of reforming the prisoner. The offender was treated not as an individual but rather on masse — a classification system to fit the treatment to the offense was virtually non-existent. The
recommendations of the Committee were largely directed toward the goal of individualized treatment for the offender and the development of specialized institutions to give treatment in line with the varying offences and needs of the individual delinquent.

The Commissioners endorsed the recommendations of the Advisory Committee with the single exception of the Committee's recommendation that called for "an absolutely indeterminate sentence." The recommendation was made that a classifying board composed of a group of properly trained experts be set up to examine the personnel record of each convicted offender. The progress of the offender would be checked frequently by the board and the time of his release would be determined by the board's decision concerning his ability to assume a place in society. The Commissioners noted the value of such a policy; however, they could not endorse it as a procedure to be set up at once. Because it would put great power in the hands of the prison administrators, the Commissioners argued that it would not be utilized until the entire prison system was reformed and then only with extensive safeguards for protection of individual justice.

The Commissioners critique was based on the belief that:

it is the function of the prison to find the means so to reshape the interests, attitudes, habits, the total character of the individual as to release him both competent and willing to find a way of adjusting himself to the community without further law violation. (7)
They called attention to the factors that obstruct this objective. The overcrowded, unsanitary conditions of American prisons and the undue confinement in cells that were dark, damp and without sufficient ventilation was found to be all too common. These factors combined with idleness among the prisoners, a breakdown in prison discipline, and the absence of a substantial program of education within the prisons to produce an antiquated and inefficient prison system. This only added to the increase of crime by hardening the prisoner. The Commissioners recommended a new type of penal institution which would be "new in spirit, in method and in objective."(170) Until a classification system was adopted to separate the offenders into different problem groups, the Commissioners maintained that there could be no real solution to many of the prison problems. The policy of segregation was also seen as a first step toward reforming the "traditional, antiquated, unintelligent, and not infrequently cruel and inhuman" system of prison discipline.(171) The Commissioners further recommended that prisoners be employed on State public work projects and paid some wage to help promote individual self-respect.

Parole, defined as "a method by which prisoners who have served a portion of their sentences are released from penal institutions under the continued custody of the state," is distinguished from probation which provides "like parole, for freedom under supervision, but which, unlike parole, is granted
before, rather than after, a period of imprisonment."(127)
The Commissioners endorsed the parole system; however, they
noted that it had not consistently achieved the results for
which it was devised. The recommendation was made that all
States establish permanent central boards of parole to administer
the system. The Commissioners saw more importance, however, in
the recommendation that adequately trained personnel be employed
to supervise the parolees, for only then could it become a
positive good.

The Commissioners also concluded that the probation system
was beneficial. They called it "the most important step we have
taken in the individualization of treatment of the offender."(173)
The recommendation was made that the offender on probation be
given more careful supervision and probation officers be better
trained for this task. The Commissioners further recommended
that the probation system be broadened to include more offenders
so that no offender would be imprisoned who could be just as
well put on probation.

Arthur E. Woods, a professor of Sociology at the University
of Michigan, called the report "a new landmark in American
penology."115

115 "Report on Penal Institutions, Probation and Parole,"
The Report on Crime and The Foreign Born (pp. 416) represented an effort to determine the amount of criminal activity among the foreign born element of the population. Although popular opinion had developed many suspicions about the relationship between crime and the foreign born, the difficulty of securing reliable statistics had thwarted attempts to make a trustworthy judgement of the situation. The Commission employed Dr. Edith Abbott, dean of the Graduate School of Social Service Administration of the University of Chicago, to direct an inquiry into this problem. The account of her research committee's findings became the basis for this report.

In the first section of her report Dr. Abbott made a critical and historical survey of public opinion, regarding crime and the foreign born, from colonial times to 1930. In the second section one of her associates, Miss Alida C. Bowler, former secretary to the chief of police of Los Angeles and at the time a research assistant at the University of Chicago, reviewed the available statistics on crime and the foreign born and drew what conclusions she believed were warranted from the admittedly incomplete data. The third section is an account of studies undertaken to determine the Mexican immigrant's relation to crime and criminal justice. Dr. Abbott's associates Dr. Paul S. Taylor, associate professor of Economics at the University of California, Professor Max S. Handman of the University of Texas and Dr. Paul Livingston Wernhuis, who had
an intimate knowledge of the Mexican immigrant through his work with the Presbyterian Board of National Missions, undertook the studies on the Mexican immigrant. The fourth section of Dr. Abbott's report related the findings of three local studies of crime and the foreign born -- in New Orleans, San Francisco and Stockton, California. The Commissioners all endorsed the conclusions that Dr. Abbott and her associates drew from their findings.

On the basis of nearly 5,000,000 cases of arrests tabulated from records throughout the country, and including police arrests from thirty-four cities, Miss Bowler concluded that "in proportion to their respective numbers the foreign born commit considerably fewer crimes than the native born."(195) She found that the foreign born were closest to the native white in the number of crimes committed involving personal violence, but theft offenses were committed much less frequently by the foreign born. Her findings also showed that there were measurable differences of the kind of crimes committed by different nationalities, but insufficient data precluded any final conclusions relative to the amount of offenses among particular groups. Information was inadequate to permit any trustworthy judgment on the amount of crime committed by native born descendants of foreign born parents. It was pointed out, however, that

practically every law-enforcement officer who was interviewed in the course of this study, whether
be were a police officer, a prosecutor, a probation officer, or a judge, expressed the opinions that it was not the immigrants themselves but their sons that constituted the big crime problem at the present time. (157)

In his study of the Mexican immigrants in Texas, Professor Handman did not find any evidence to indicate that Mexicans were any less law abiding than the native white. He thus concluded that "the Mexican's nationality is no cause of delinquent behavior..." (258) This contention that the Mexican was not inherently criminal was confirmed by the other two studies.

Dr. Taylor studied the Mexicans in California, Colorado, the Chicago-Gary region and Texas. He found the records of law violations for Mexicans "on the whole, and in varying degrees, somewhat unfavorable to Mexicans;" however, in some areas they had very favorable records. (242) Taylor admitted that the statistics would well be inaccurate because of the obvious racial aversion in some areas of Mexican settlement. He also noted that the economic and political weakness of the Mexicans and the conflict between Mexican and American codes tended to increase the numbers that were ostensibly criminals. Taylor thus concluded that "while the United States sustains some shock from this conflict with the code brought with him by the immigrant, it is not to be concluded therefrom that the immigrant is of an inherently criminal breed." (242) He added:

It is clear that Mexicans in the United States, both aliens and citizens, are frequently subjected to severe and unequal treatment by those who
administer the laws. But severe treatment is not the lot of Mexicans alone; nor is their treatment always unfair, by any means. (243)

Paul L. Warnshuis, following his Illinois study, concluded that the Mexican was no more inherently criminal than any other nationality or race. The Mexican's problem, he agreed with Taylor, lay in other areas.

Along with others who fall afoul of the law, the Mexican suffers from certain well-known faults in our system of law enforcement and criminal justice. He is arrested many times for trivial cases. He is detained in jail unnecessarily long. He is mistreated by the police. In court, his case suffers many times for want of legal assistance, an interpreter, and witnesses. Often he finds that the easiest way out is to plead guilty to a lesser offense. His financial straits, as well as his frequent inability to communicate with friends, often result in his being imprisoned for non-payment of fines. While numerous arrests and frequent convictions of Mexicans tend to make it appear that they are inclined to be delinquent, it is quite likely that such things rather point to misfortune, the lack of ingenuity and resources, and, in some instances, perhaps some discrimination against them. (326)

The three community studies upheld the conclusions reached by Miss Bowler. Dr. Abbott thus concluded that "charging our high crime rates against the foreign born is merely evading the real difficulties of life instead of trying to solve them." (416)

And the Commissioners declared that the future immigration policy of the United States could be determined on economic and social factors without excluding the immigrant because of a fear of his inherent criminality.

The methods that were being widely used by the police to administer justice came under severe indictment in the Report
on lawlessness in law enforcement (pp. 347). "Misguided zeal" and the wish to "win applause by producing a victim when popular clamor demands the solution of a crime" led to abuses of power on the part of the law enforcement officer. Charges had frequently been made that the "due process of law" was being bypassed and the fundamental principle of the law that one was innocent until proven guilty of an offense was too commonly violated in the administration of criminal justice. Evidence seemed to indicate that confessions of guilt were being forced by unlawful means, commonly called the third degree. As used in this report, the "third degree" was defined as "the employment of methods which inflict suffering, physical or mental, upon a person, in order to obtain from that person information about crime." (19)

To undertake a thorough investigation of the prevalence of this illegal practice, the commission employed Zechariah Chafee, Jr., of the Harvard Law School, and Walter W. Pollak and Carl S. Stern of the New York bar. Their methods of investigation included an analysis of about eighty books and articles on the subject of the third degree, a probe into adjudicated cases in the period following 1920, a canvass of the existing legislation of various states that was designed to prevent the third degree, an examination of newspaper accounts which helped point up the problem, questionnaires and field work in fifteen representative cities.
After analyzing their findings and allowing for all areas of uncertainty, the investigators concluded that the third degree was used extensively throughout the country. In their words:

> Physical brutality is extensively practiced. The methods are various. They range from beating to harsher forms of torture. The commoner forms are beating with the fists or with some implement, especially the rubber hose, that inflicts pain but is not likely to leave permanent visible scars. (153)

They also called attention to the common use of protracted questioning. In this procedure the offender was kept without food or sleep for hours while he was questioned, often by relays of interrogators. Furthermore, threats of bodily injury, illegal detention and brutality in making arrests were all too commonly practiced, according to the investigators.

These practices, the field investigators reported, were found without doubt in ten of the fifteen cities studied during a twelve month period. It was further noted that these practices were not confined to the cities for one-third of the cases since 1920 had occurred in places with a population of less than 10,000. On the other hand, little evidence was found to indicate the use of third degree methods on the part of Federal officers. They did not, however, study the area of Federal prohibition enforcement. "When all allowances are made," Chafee and his associates concluded, "it remains beyond doubt that the practice is shocking in its character and extent, violative of American traditions and
institutions, and not to be tolerated."(155) Numerous recommendations were made to correct this evil.

Denials from police officials, according to one observer, "burned up the press wires." Law enforcement officers resented the charges and quickly defended police methods. When acting District Attorney Thomas F. Kane of New York City was asked his opinion of the report, he is reported to have said: "What are we supposed to do--give baby-killers ice-cream?" Nevertheless, the report led to investigations of the use of third degree methods in numerous cities such as Washington and Cleveland. In Washington several policemen were convicted as a result of the inquiry. 116

One authority called the report "the result of the first worthwhile effort to investigate and state the facts." He added, "Within the chosen field . . . the report will be the standard book of reference and should have a lasting effectiveness." 117


The Commissioners state that they had been urged to report on the Mooney-Billings Case. This study, it is noted, would most appropriately fall under the Report on Lawlessness in Law Enforcement. The Commission, however, decided at an early date that it was beyond the scope of their study to make recommendations on individual cases, especially when they were cases from state courts where the Commission had no authority to examine witnesses and probe into the trials themselves. "The Commission," they argued, "was not appointed to sit in review upon the judgement of the courts of any state."(9) The Commissioners also pointed out that Mooney's pardon plea was then before California Governor Rolph and this only added strength to their decision not to report on the case. None of the Commissioners voiced a dissent in this decision.

Nevertheless, at some time during the Commission's study, a probe was made into the Mooney-Billings Case by Cheeke, Pollak and Stern. When the findings did not accompany the Commission's Report on Lawlessness in Law Enforcement critics charged that the Commissioner's had muffled the study. A group of Senators passed a resolution calling upon President Hoover to release the findings.

118 In 1916 Thomas J. Mooney and Warren K. Billings, two radical labor leaders, were accused of planting a bomb that killed a number of people during a Preparedness parade in San Francisco. They were convicted on what proved to be false testimony but California Courts did not set aside the decision. Their sentence was changed from death to life sentence but not until 1939 did a governor pardon them. The case attracted wide interest and even became an international scandal.
The President submitted them to the Senate but efforts there blocked the publication of the report. Finally, late in 1932, The Mooney-Billings Report was published by Gotham House of New York. Conspicuous for their absence were the names of the authors, and in their place were the words "suppressed by the Wickersham Commission." Senator Burton K. Wheeler noted in the Introduction to the volume that as far as the public was concerned the report had been suppressed. Evidence to indicate that the Commissioners withheld the report for reasons other than those which they declared publicly has not, however, been found by the writer.

The effect of crime on the nation's pocketbook as mirrored in the cost of crime and criminal justice was dealt with in the comprehensive Report on The Cost of Crime (pp. 657). Data on the cost of crime and criminal justice in dollars and cents was significant, the Commissioners pointed out, because it served to call attention to the economic loss crime entailed, it was one measure of the concern a community had to see crime controlled, it was an evidence of the comparative efficiency of various organizations and policies of the law enforcement machinery and it stimulated action to reduce crime.

Early in their work the Commissioners found that no comprehensive study had been made of the cost of crime in the United States. Believing that a thorough inquiry into law enforcement demanded such statistics, Goldthwaite H. Dorr and Sidney P. Simpson
of the New York bar were employed to make a scientific study. The record of their findings comprise 650 pages of the final report. Their study covered the cost of administration of criminal justice of the Federal government, State police forces, State penal institutions and parole agencies, and more than 80% of the cities in the United States over 25,000 population.

The investigators did not attempt to make an accurate estimate of the total cost of crime in the United States, although, the study indicated it was much in excess of $350,000,000. They did, however, set forth approximations for several areas. They concluded that the total cost of Federal criminal justice was approximately $52,786,000 annually. Sixty-six percent of this was charged to prohibition enforcement. The average per capita cost of criminal justice in cities over 25,000 was approximately $5.39 annually and State penal and correctional institutions and parole agencies cost about $51,000,000 each year.

Several recommendations were made by Dorr and Simpson and adopted by the Commission. They called attention to steps which should be taken to reduce the financial burden on jurors and witnesses in criminal cases. It was also recommended that action be taken to develop annual comprehensive statistics of the cost of administering criminal justice at the Federal, State and municipal levels.
The *Report on the Causes of Crime* is a large two volume document totaling 791 pages. At the very beginning of this voluminous account the Commissioners wrote, "we find it impossible comprehensively to discuss the causes of crime or factors in nonobservance of law."(VII) They could see no value in laying down new theories of criminality since they would represent only one aspect of the thought of the time and with the transitional state of psychology and social philosophy they would soon be antiquated.

Neither were they able, with limited time and finances, to carry out in depth investigations of the subject. Thus the decision was made to "conduct a certain number of studies of limited scope but with possibilities of general application."(VII) In addition, critical reviews of the existing theories of criminality were undertaken. Morris Floscoe, who also undertook the study of Federal criminal statistics for the Commission, was employed to make a critical examination of the existing literature on the cause of crime. His report entitled "Some Causative Factors in Criminality" (pp. 161) is part of volume I of the report. Mary van Kleek, director of the Department of Industrial Studies of the Russell Sage Foundation, was employed to direct a study of the relationship between unemployment and crime. She was assisted by numerous other experts including Dr. Emma A. Winslow and Mr. Ira daA Reid, director of research for the national Urban League. Miss van Kleek's study of the "Histories
of Men in Sing Sing Prison," Dr. Winelow's study of the
"Relationships Between Employment and Crime Fluctuations,
as Shown by Massachusetts Statistics," and Mr. Reid's "Notes
on the Negro's Relation to Work and Law Observance," are
published as a report entitled "Work and Law Observance"
(pp. 237) which is included in Volume I.

Volume II is devoted to a study entitled "Social Factors
in Juvenile Delinquency" (pp. 400). Clifford R. Shaw, head of
the Department of Research Sociology, and Henry D. McKay,
associate research criminologist of the Institute of Juvenile
Research and the Behavior Research Foundation of Chicago made
this investigation into the social factors that influenced the
fruition of crime and its subsequent development in the
juvenile offender.

The Commissioner's called attention to the "high order of
excellence" of these studies. After his comprehensive investi-
gation of the literature dealing with the causes of crime,
Ploscowe concluded that "the soundest data on crime causation
seems to have been contributed by the literature which has
studied the criminal in terms of the demoralizing social influences
which have acted upon him." (139) On the basis of a study of the
records of over 1,000 admissions to Sing Sing during a twelve
month period, Miss Van Kleek concluded that "the ranks of the
unemployed yield more material in proportion to their numbers for
penal institutions than do the ranks of the employed. . . ." (217)
Dr. Winslow, on the basis of her findings in the Massachusetts study, declared that there was a positive correlation between unemployment and crimes against property and vagrancy. "The conclusion seems inescapable," Winslow maintained, "that the assurance of economic security might be expected to bring with it an appreciable reduction in the volume of crime."(312)

Shaw and McKay made an interesting study of certain definite areas with distinguishing characteristics in the city of Chicago. Their object was to determine the influence of these specific sections on the production of delinquency. They concluded, among other things, that juvenile delinquents were not found in equal numbers throughout the city. Rather there were specific zones that produced a high rate of delinquency. The zones were characterized by certain anti-social factors, physical blight and a high percentage of Negro and foreign population. The study showed that the areas where a high rate of delinquency was found had been characterized by a background of high rates and in these areas of extensive juvenile delinquency the community failed to act as an effective influence for social good.

Commissioner Anderson was not in accord with the way the Commission handled the problem of the cause of crime, and he submitted a separate report expressing his opinions. Anderson maintained that "the broad underlying causes for existing attitudes and conduct" must be probed if any solution of the crime problem was
to be achieved. He argued that the Commission failed to carry
out such an investigation. Anderson saw slum conditions as
one of the prime causes of crime; however, he was optimistic
about the results that could be achieved through the application
of human intelligence. Dean Roscoe Pound directed the work on
this report. Although he refused to assume a particular
philosophy concerning the cause of crime, his biographer, Sayre,
maintains that the report contained "in a sense . . . really the
critical findings of the entire Commission on everything."\textsuperscript{119}

The last report released, the \textit{Report on Police} (pp. 140),
has been called the most critical report submitted by the
Commission. "The general failure of the police to detect and
arrest criminals," the Commissioners posited, "has caused a loss
of public confidence in the police of our country."\textsuperscript{(1)} The
purpose of this report was to set forth the chief underlying
causes of the widespread failure of the police force "which too
generally leave the citizen helpless in the hands of the criminal
class."

The Commissioners devoted a large part of the report to a
study entitled "Police Conditions in the United States," which
was prepared by David C. Monroe and Earle W. Garrett, research
assistants from the University of Chicago. The study was
directed by August Vollmer, Professor of Police Administration,

\textsuperscript{119} Sayre, \textit{Pound}, p. 254.
University of Chicago, who had been the chief of Police of Berkeley, California, for over 25 years. Although the Commissioners had no authority to intervene in municipal affairs, they did suggest that the antiquated city police forces throughout the country be remodeled along the lines laid down by Vollmer's study.

The Commissioners mentioned six evils which they considered the chief causes of inefficient police forces. The greatest evil, they agreed, was the insecure, short term of service of the police chief and his subjection to political pressure while in office. Attention was called to the fact that the chief usually owed his position to the mayor or some group of politicians and often had to overlook criminal activity that was in alliance with his patrons. Frequently the police chief was incompetent as his principal qualification was too often merely a personal friendship with the mayor. A classic example was cited from Vollmer's findings. A mayor of a large city appointed his tailor as chief of police, as he publically announced, "because he had been his tailor for 20 years and he knew he was a good tailor and so necessarily would make a good chief of police."(3)

The second evil noted by the Commission was the "lack of competent, efficient, and honest patrolmen and subordinate officers."(3) In spite of civil service examinations, the report noted extensive favoritism in the selection and promotion of patrolmen. The Commissioners were convinced that "the personnel
of the police force at its inception and in its continuance has not the character and qualifications which its responsible duties require."(4)

The other prime causes for failure of police administration, the Commissioners maintained, were the lack of efficient police communication systems and modern equipment, the rapid growth of urban centers with a great influx of immigrants who often remained segregated and frequently impeded the apprehension of criminals of their own race, an unreasonable burden of duties on the individual officer, and "the well-known and oft proven alliance between criminals and corrupt politicians which controls in part . . . the police force of our large cities. . . ."(5-6)

The Commissioner's recommended, among other things, that municipal police departments be taken out of politics, that a division of labor and specialization of duty be undertaken within the police force, that minimum standards be established for policemen, and that the machinery of police administration be modernized.
CHAPTER V

CONCLUSION

During the three decades from 1900 to 1930 upwards of fifty crime commissions were established in the United States, but the Wickersham Commission, the first well-defined national study, headed the list. The fact that a national Commission of eleven noted individuals, functioning with all the prestige that the Chief Executive’s office could give it, spent over two years conducting a study of law observance and enforcement was in itself of great significance. It was the first time the crime problem had been so dramatically emphasized as a national problem, and with the Commission’s work the battle against crime on a national scale had its substantial beginnings. "Indirectly, the Wickersham report played an important part in shaping the future of the FBI," one writer holds, "because it emphasized the national

120 Presidents Committee, Recent Social Trends, II, 1522.

121 One writer holds that Hoover’s understanding of social problems was “unexcelled by any of his predecessors in the White House.” His “observations on law enforcement...reveal a depth of interest and knowledge expected only from experts.” Warren, Herbert Hoover, p. 299.
character of crime. And when the people's revulsion against crime and gangsterism finally boiled over, it was the FBI to which Congress turned for the cleanup.122

It is difficult to determine what specific reforms in the machinery of criminal justice were direct products of the Wickersham report. Myers and Newton in The Hoover Administration called attention to reforms that were affected relative to criminal procedure in the courts. They noted that these reforms were enacted at the recommendation of the Commission. The whole Federal prison system was reformed during the latter part of Hoover's administration. It is not clear, however, whether this was a direct product of the Commission's recommendations, although the reforms affected were similar to those recommended by the Commission.

Ray Lyman Wilbur, who had been Hoover's Secretary of the Interior, and Arthur Mastick Hyde, who had been his Secretary of Agriculture, asserted that the reports had a great effect in "directing public and legislative attitudes . . . upon police and preventive measures in respect to crime repression." It was also reported that the Department of Labor, as a result of the report on deportations, had stopped raiding certain aliens and reserved itself in the case of at least two aliens whose lives were undoubtedly saved by the action.124

123 Pp. 335-36.
Seyre calls the Commission "the significant positive achievement of the entire administration." Writing in 1948, he held that the Commission's work "as a factual study . . . is perhaps to this day . . . by far the most extensive and influential sociological study and dependable factfinding survey ever made in this country or in any other country." The work of the Commission, however, was not final. One authority observed that "its true significance lies in its usefulness as a focus for continuing discussion of the problems of criminal law enforcement." 125

Various reports were given special attention by police departments, State Legislatures, the Chamber of Commerce, the American Bar Association and numerous social and correctional organizations. By 1932 material from the reports was being used in classroom work in numerous universities such as the University of Chicago and New York University. 126 Scholars in the field of criminal law also utilized the reports extensively as source material for their writings. A case in point is a textbook by Harry Elmer Barnes and Negley K. Teeters entitled New Horizons in Criminology, which in its ninth edition in 1950 was still making extensive use of the Wickersham reports.


On June 30, 1931, the Wickersham Commission drifted out of the stream of history. For twenty-five months it had attracted public attention to a degree that no other crime study had ever done, and its inquiry into the problems of law enforcement was the most comprehensive ever undertaken. The heritage it left, although diminished by the temporary nature of the study, cannot be measured solely by the fourteen reports that record its work, for these found a premature resting place on the shelves of college libraries. Whether for good or bad, national prohibition had been scoured beyond all hopes of renovation, and although crime continued to flourish, the Commission did influence legislative attitudes, and reforms were effected in court procedures and police policies as well as in the handling of juvenile delinquency cases. The Commission also undoubtedly stirred some well-informed citizens to action and its work served as a foundation and guide for further intelligent study and discussion of the problems of law enforcement.

Perhaps the lesson of the Commission may have an even wider application and offer a guideline for today. It shattered the myth that crime was a simple problem which could be solved by some panaceas such as driving the foreign born out of the country or simply tightening up the law enforcement machinery. The Commission was apparently hampered in many ways—by political pressure, limited appropriations, and lack of time—nevertheless,
the problems with which it dealt were by their very nature ones which no group, however intelligent and determined, could hope to obtain final answers.\footnote{See "Reports," \textit{Michigan Law Review}, pp. 2-3; Scott M. Loftin, "Opening Address," The Attorney Generals Conference on Crime, \textit{Proceedings} (December, 1934), p. 200, contends that the results of the Wickersham Commission's study were largely lost because the Commission had no permanence.}
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