

Keywords

of the federal government from continuously engaging in illegal and egregious misconduct.

This paper then examines the possible establishment of the system for direct civic oversight of the federal government and calls for a serious dialogue about the possible establishment of a federal civil grand jury system in America. Just like the civil investigations of local government by California's civil grand jury, the federal civil grand jury would be empowered to investigate the operation, accounts, and registers of officers, departments, or agencies of the federal government. Hereby, the federal civil grand jury would function as a "fourth branch of government," acting autonomously as an important system of checks and balances in the name of the public.

Part I of the paper examines the history of the civil function of the grand jury system. Part II then reviews the history and the civic investigative role of the California civil grand jury. Lastly, Part III attempts to elucidate possible socio-political strategies necessary for the establishment of the civil investigative function of the federal civil grand jury.

## Part I: History of the Civil Investigative Function of the Grand Jury

### England

The roots of the first grand jury may be traced back to Ancient Greece, Scandinavia, and/or the Saxons [11]. The earliest forerunner of the modern grand jury was established by King Henry II in the form of the Assize of Clarendon in 1166 in order to exert his political influence while reducing simultaneously the power of the church or local barons [12]. The Assize of Clarendon and the later Assize of Northampton in 1176 established an early judicial system in which judges traveled to different regions to select twelve knights of the hundred or twelve free and lawful men to identify potential criminal suspects "by their oath" [13]. The indictment was tantamount to conviction and death of the accused because the petit jury trial was not in existence and the defendant faced trial by ordeal [14]. The Assize's investigative function was only initiated at the request of King Henry II who devised the institution to wrest prosecutorial power away from the Church and its ecclesiastical courts. A division of courtly spoils was also involved. As the Church generated revenues from fines levied in its courts, so too did the King receive all fines and forfeitures as a result of grand jury accusations [15]. The grand jury institution was thus used to generate revenue for the Crown and was firmly under the control of the king who also imposed heavy fines on those who failed to respond to a summons and grand jurors who failed to make sufficient numbers of accusations necessary to maintain revenue for the royal treasury [16].

The original criminal function of the grand jury was then gradually modified by the development of new and related institutions. The origins of the grand jury's civil watchdog function first appeared during the fourteenth century England [17]. Grand juries were empowered to inquire into the duties of government officials to repair roads and bridges and to issue a report as to any neglect of these responsibilities, obligations, and duties. Grand juries also investigated and reported on prison escapes and any prisoners who failed to appear before a court [18].

### American colonies

The grand jury institution was also transplanted to the American colonies. The first formal grand jury was impaneled in the Massachusetts Bay Colony in 1635 and performed its traditional indictment function

in 1719. The early colonial grand jury also performed a civil watchdog and investigatory function. They publicly criticized officials for failing to maintain roads, bridges, public buildings, and jails [20]. The grand jury report also developed as a means to address and publicize the grand jury's concerns, compelling public officials to correct perceived wrongs, inefficiencies, or injustices. Similarly, the grand juries exposed governmental abuses, determined tax rates, and suggested price controls for essential goods and commodities [21].

Building up to the American Revolution, the grand jury also became antagonistic to the British Crown. They frustrated British authorities by continually refusing to indict individuals who opposed British rules, and grand jury members issued investigative reports charging the British with oppression when the climate turned toward war [22].

British sympathizers also became disqualified from grand jury service [23]. As the grand jury began to act as a judicial body that protected citizens from monarchical oppression, then, the civic institution of the grand jury emerged from the American Revolutionary War with greater prestige, public respect, trust, and support.

After the Revolution, the grand jury continued to perform its civil watchdog role in local government. Grand jury members suggested policies and regulations to improve the welfare of the local community and they became the only voice available to people in the new frontier areas lacking Congressional representation and governed by nonresident political appointees [24].

By the late 19th century, however, a strong movement to abolish the grand jury as a legal institution had emerged. Many opponents of the grand jury believed that the system had outlived its original purpose and usefulness and became inefficient and outdated [25]. Idaho, Montana, Washington, North Dakota, South Dakota, and Wyoming discontinued the use of the grand jury system [26]. But in California, a proposal to amend the state constitution to abolish grand jury inquests was rejected in 1902, mainly due to the fact that the grand jury had gained the popular respect for previously exposing municipal corruptions, governmental abuses, and wrongdoing [27].

At the federal level, Congress never has attempted to deprive grand juries of the power to inquire into civil matters and to issue reports on their findings. It still remains technically a part of juror obligations, but the last reported use of the civil reporting power occurred in 1895, where a grand jury issued a report, at the request of the federal judge who impaneled it, calling attention to inadequate facilities, lack of stenographers and bailiffs, and insufficient material supplies to the federal court [28].

The refusal of courts and prosecutors to mobilize civil reporting power has effectively eliminated the civil role of the grand jury over time. Similarly, the rise of administrative agencies contributed to the elimination of the need for civil duties by ordinary citizens, as those agencies began to perform the oversight function that was once consigned to grand juries [29]. In other words, the direct civic oversight function of and by ordinary citizens, and the expression of a proactive community voice, have been effectively replaced by governmental oversight through administrative agencies and elected political officials.

## Part II: The Civil Grand Jury in California

The first penal code in California specified provisions for the creation of the grand jury [30]. The civil investigative capacity of the California grand jury can be traced back to early statehood. The 1851 state statute gave the grand jury the power to inquire into "the condition and

management of public prisons” [31]. Early grand juries also promoted legislation designed to improve public accounting procedures [32]. In 1880, the grand jury was given statutory authorization to conduct civil investigations of county government [33]. is civil function was then extended to allow for the grand jury investigation of local governments and special districts [34].

While the same grand jury devoted their time in performing both

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considered an important tool in exposing corruptions, misconduct and mismanagement of federal agencies and departments. However, the grand jury's annual report, even though they may contain similar investigative findings like the congressional committee report, will have much greater ramifications and carry a far stronger message to the public because the grand jury's investigation is viewed as the "voice of the community."

As the California grand jury has successfully performed its civil watchdog duty for more than one hundred years, ordinary citizens in the federal civil grand jury are also equally capable of carrying out an effective, non-professional analysis and objective assessment of various agencies of the federal government and submitting an annual report of their civil investigations. Similarly all-citizen federal jurors are also empowered to offer their own suggestions and policy recommendations in their reports. Indeed, the grand jury is asked to review matters within the understanding of ordinary citizens, not professional experts or political elites with special governmental knowledge and expertise. Whether or not federal agencies and departments acknowledge and follow grand jury's findings and recommendations remains secondary and not important, because the direct civic watchdog role of the federal civil grand jury should heighten its appeals to the larger community and attract far greater attention to its investigative report, findings, and recommendations.

### Conclusions

The grand jury has played an important political role in England and the U.S. Today, however, only a few states including California and Nevada maintain the system of the grand jury that investigates all aspects of governmental affairs. At the federal level, the grand jury lost its ability to inquire into civil matters and no longer investigates political corruption, misfeasance, and inefficiency of the government, nor issues an official report on the findings of their investigations.

This paper examined the possible establishment of the system of the federal civil grand jury as people's direct oversight of the federal government. Similar to the investigations of local government by California's civil grand jury, the federal civil grand jury should be empowered to investigate all operations of officers, institutions, and agencies of the federal government. Furthermore, the federal civil grand jury can function as a "fourth branch of government," thereby operating autonomously as an important system of governmental checks and balances by the citizenry. While grand jury service may require a strong commitment on the part of civic participants, it also provides citizens with direct civic oversight of the federal government. And such public oversight of the government, not political supervision by elected officials, is especially crucial to prevent a recurrence of serious governmental misconduct and mismanagement in today's globally interconnected world.

### The Grand Jury Legal Advisor

While a lack of technical expertise may possibly hamper the effectiveness of the investigative function of the federal civil grand jury, some legal scholar argues that a grand jury legal advisor or expert consultant will expedite the process with more efficiency and better coordination [50].

The state criminal grand jury, for example, is concerned with criminal offenses familiar to lay persons including homicide, arson, the rape, sexual offenses, among others. The federal criminal grand juries, on the other hand, are asked to examine complex crimes and criminal offenses such as racketeering, money laundering, bank fraud, mail fraud, and environmental offenses.

One path for reform already exists. The criminal grand jury in Hawaii is now provided by the independent counsel, called the grand jury legal advisor. This requirement was introduced by a constitutional provision adopted in 1978 [51]. Providing grand juries a legal advisor was intended to increase their independence by eliminating the influence from the prosecutors who, otherwise, can wield as the grand jury's own legal counsel and advisor.

A similar advisor may be introduced in the federal civil grand jury in the investigation of various federal agencies and departments. For example, giving the civil grand jury their own special financial expert such as tax consultant or administrative accountant can facilitate their independent investigation and evaluation of documents, testimony, and other relevant materials.

Another option is to devise a number of specialized bodies of federal civil grand juries imbedded with a specific task. Such specialized federal civil grand juries were impaneled to investigate each of specific agencies and departments in the federal judicial district, such as offices of the Internal Revenue Service (IRS), and grand jurors may need the special assistance from the legal advisor, such as tax attorneys, accountants, or financial experts.

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