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SOME CONSEQUENCES OF INCREASED FEDERAL ACTIVITY IN LAW ENFORCEMENT

David Fellman

(The writer, Associate Professor of Political Science at the University of Nebraska, considers in this article the impact of our expanding national criminal jurisdiction upon American federalism, public law, constitutional morality, and standards of criminal justice.—EDITOR.)

The Growth of the Federal Criminal Code

The First Congress, in its second session, adopted "An Act for the Punishment of certain Crimes against the United States."¹ It was a modest statute of thirty-three sections, dealing with treason, misprision of treason, felonies in places within the exclusive jurisdiction of the United States and upon the high seas, forgery or counterfeiting of federal paper, the stealing or falsifying of records of the federal courts, perjury, bribery and obstruction of process in the courts, suits involving the public ministers of foreign states, and procedure. On October 9, 1942, seven dangerous, long-term convicts, the most illustrious of whom was Roger Touhy, escaped from the Illinois penitentiary at Stateville. Several days later the Federal Bureau of Investigation joined in the search for the men declaring that federal jurisdiction arose from the fact that these case-hardened outlaws had been out of prison more than five days without registering with their draft boards. What transpired between the enactment of the simple forthright statute of 1790 and the slick sophistry of 1942 is an important chapter in the long story of an evolving constitutional federalism.

Since the national government has implied as well as specifically enumerated constitutional powers, there has never been any serious doubt of the power of Congress to enact criminal legislation. Indeed, in the great case in which the principle of implied powers was nailed down, John Marshall cited the penal code of the United States as an unchallengeable illustration of the doctrine, declaring that "the good sense of the public has pronounced, without hesitation, that the power of punishment appertains to sovereignty, and may be exercised whenever the sovereign has a right to act, as incidental to his constitutional powers."² Thus, thrice-blessed, by Congress, John Marshall, and the good sense of the public, the federal criminal jurisdiction has steadily expanded from humble beginnings into the vast complex of power it is today.³ Since it was decided, at an early date, that there are no federal

¹Act of April 30, 1790, c. 9, 1 Stat. 112.

²McCulloch v. Maryland, 4 Wheat. 316, 418 (1819).

³See: A. C. Millsbaugh, *Crime Control by the National Government* (Washington, 1937); Martin Conboy, "Federal Criminal Law," in *Law: A Century of Progress, 1835-1935* (New York, 1937), Vol. I, pp. 295-346; *Extending Federal Powers over Crime, Law and Contemporary Problems*, Vol. I, No. 4 (Oct. 1934). For the text of federal criminal legislation see: E. A. Lewis, ed., *Crime, Kidnaping and Prison Laws* (Washington, 1941).

common law crimes,⁴ this expansion has been accomplished by means of legislation.

How great this expansion has been is seen in the fact that Title LXX of the Revision of 1873, dealing with federal crimes, embraced 227 sections out of a total 5,601 sections.⁵ The Penal Code of 1909, including new sections on offenses against the postal service and against foreign and interstate commerce, included 345 sections.⁶ As of January 3, 1941, Title 18 of the United States Code included 540 sections on crimes.⁷ A tabulation of recent items of legislation increasing the investigative functions of the F. B. I. alone shows that there were eight such items in 1934, four in 1936, four in 1938, one in 1939, nine in 1940, eight in 1941, and ten in 1942.⁸

The Expansion of Federal Facilities

The growth of federal criminal legislation has affected in many ways the institutional makeup of the national government. It has necessitated the creation of additional judgeships, and has added materially to the burdens of the judges and of the host of officials—commissioners, prosecutors, marshals, clerks, parole officers—whose activities are geared in with those of the courts. In fact, the number of criminal cases heard annually in the federal district courts is almost equal to the number of civil cases. During 1940, 34,200 civil cases were commenced in these courts as compared with 33,221 criminal cases;⁹ during 1941, there were 38,477 civil cases and 31,823 criminal cases.¹⁰ The number of federal probation officers has increased from 63 in 1932 to 239 in 1941.¹¹ Similarly, with the steady growth in the average daily population of federal penal institutions from 301 in 1896 to 18,282 in 1941, it has been necessary to provide more and more detention facilities.¹²

The impact of an enlarged criminal jurisdiction upon the administrative side of the national government has been even more striking. It has resulted in the creation of a considerable number of federal agencies which are of an essentially police character, the most important of which are the F. B. I., the Secret Service, the Post Office Inspection Service, the Bureau of Narcotics, the Enforcement Division of the Alcohol Tax Unit, the Intelligence

⁴U.S. v. Hudson, 7 Cranch (U.S.) 32 (1812); U.S. v. Coolidge, 1 Wheat. (U.S.) 415 (1816). This rule does not apply to the District of Columbia, *Tyner v. United States*, 23 D.C. App. 324, 358 (1904).

⁵Sections 5323-5550.

⁶Act of March 4, 1909, c. 321, 35 Stat. 1088.

⁷U. S. Code, 1940 Edition, Title 18, Part 1.

⁸Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, 77th Congress, 2nd Session, Department of Justice Appropriation Bill for 1943, pp. 115-118.

⁹Annual Report, Administrative Office of the U. S. Courts, 1940, p. 41.

¹⁰*Ibid.*, 1941, p. 50. It is to be noted, in this connection, that the district courts tend to fall behind in the disposition of civil cases because of their practice of giving precedence to criminal cases. *Ibid.*, 1940, p. 29.

¹¹*Ibid.*, 1941, p. 150.

¹²Bureau of Prisons, *Federal Offenders, 1941*, p. 27.

Unit of the Bureau of Internal Revenue, the Coast Guard, and the Immigration Border Control.¹³ In addition to these police services, there are scattered throughout the federal administrative system a host of agencies many of whose routine activities touch upon the enforcement of criminal laws, such as the Fish and Wildlife Service in the Department of the Interior, the Law Enforcement and Review Division in the Bureau of Marine Inspection and Navigation, the Legal Section of the Division of Public Contracts and the Wage and Hour Division, both in the Department of Labor, the Public Health Service, the Office of the Solicitor in the Veterans' Administration, the Investigations Division of the Civil Service Commission, and the newly-created Civil Rights Section in the Department of Justice.¹⁴ New criminal legislation either adds to the burdens and size of existing agencies, or leads to the creation of new ones. The exigencies of national defense, for example, have increased the work of the F. B. I. and have led to the establishment of a Special Defense Section in the Department of Justice.¹⁵ The passage of the Alien Registration Act of 1940¹⁶ resulted in the establishment of a Special Inspection Unit in the Immigration and Naturalization Service, with a present staff of 195 inspectors.¹⁷

That these administrative agencies are growing larger and larger, and more and more expensive is suggested by the story of the principal federal police agency. The total staff of the F. B. I. during 1934 was 772; in January, 1941, it was 4,370; a year later it included 7,910 persons.¹⁸ Total appropriations for the Bureau in 1934 amounted to \$3,022,348, in 1937 to \$5,925,000, in 1940 to \$8,775,000, whereas in 1942 the appropriations added up to the sum of \$24,100,000. The Budget Bureau approved a request for appropriations amounting to \$29,636,787 for 1943.¹⁹ Similarly, the staff of the Postal Inspection Service increased from 664 in 1932 to 846 in 1941, and its appropriations from \$2,359,656 in 1932 to \$2,804,631 in 1941.²⁰ It was reported in January of 1942

¹³See: A. Langeluttig, "Federal Police," 146 *Annals of the American Academy*, 41-54 (Nov., 1929); Bruce Smith, *Police Systems in the United States* (N.Y., 1940), pp. 205-220; Brookings Institution, Preliminary Report of the Select Committee (Senate) to Investigate the Executive Agencies of the Government, 75th Congress, 1st Session, Report No. 1275 (1937), pp. 817-954.

¹⁴Annual Report, Secretary of the Interior, 1941, pp. 394-5; Annual Report, Secretary of Commerce, 1941, pp. 108-9; Annual Report, Secretary of Labor, 1941, pp. 36-8, 146-165; Annual Report, Surgeon General of the Public Health Service, 1941; Annual Report, Administrator of Veterans' Affairs, 1941, p. 34; Annual Report, U. S. Civil Service Commission, 1940, pp. 12-14; Annual Report, Attorney-General, 1941, pp. 98-100.

¹⁵Annual Report, Attorney-General, 1941, pp. 266-9.

¹⁶Act of June 28, 1940, c. 439, 54 Stat. 670.

¹⁷Hearings, cited *supra*, note 8, p. 145.

¹⁸Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, 73rd Congress, 2nd Session, Department of Justice Appropriation Bill for 1935, pp. 51, 70; Hearings, cited *supra*, note 8, p. 101.

¹⁹Hearings, cited *supra*, note 8, pp. 115-118.

²⁰Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, 77th Congress, 2nd Session, Post Office Department Appropriation Bill for 1943, pp. 11-13.

that there were then 1,492 patrolmen in the Immigration Border Patrol.²¹ During 1941 there were 224 officers in the Bureau of Narcotics.²² The total permanent personnel of the Alcohol Tax Unit, on November 30, 1941, was 4,283.²³ Nevertheless, in spite of this steady growth in the size of national police forces, it is to be noted that the bulk of the police of the country are non-federal; for example, as of April 30, 1942, New York City had 17,784 police officers, Chicago, 6,354, Philadelphia, 4,604.²⁴

The Impact upon American Constitutional Doctrine

The enactment of a large body of federal criminal legislation and its validation by court decision have made a substantial contribution to American constitutional doctrine. The idea that the national government has inherent powers of self-preservation is the basis of a great deal of criminal legislation dealing with offenses against the operations of the government. These offenses include the forging of governmental records, the impersonation or bribery of federal officers, the presentation of false claims to the government, the stealing or damaging of government property, the obstruction of justice, inciting to rebellion, engaging in subversive or pernicious political activities, and that great catch-all of offenses, conspiring to commit an offense against the United States. The courts have had no difficulty in upholding such legislation.²⁵ This sort of criminal jurisdiction grows out of the very fact that we have a national government capable of doing anything at all.

The effort to use federal power, however, in order to suppress criminal acts not related *per se* to the very existence of governmental agencies has involved a heavy reliance upon the process of constitutional implication. Many criminal laws have been enacted prohibiting the misuse of the facilities of interstate commerce since the first statute was adopted in 1866, which forbade the transportation of explosives on passenger carriers.²⁶ Among the earlier statutes were those prohibiting the shipment in interstate commerce of lottery tickets,²⁷ obscene literature,²⁸ adulterated and misbranded foods and drugs,²⁹ immoral women,³⁰ articles under

²¹Hearings, cited *supra*, note 8, p. 141.

²²Annual Report, Bureau of Narcotics, 1942, p. 13.

²³Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, 77th Congress, 2nd Session, Treasury Department Appropriation Bill for 1943, p. 357.

²⁴13 Uniform Crime Reports, No. 1, 1942, p. 19.

²⁵See U. S. Code Ann., Title 18, cc. 1-7.

²⁶Act of July 3, 1866, c. 162, 14 Stat. 81.

²⁷Act of March 3, 1895, c. 191, 28 Stat. 963.

²⁸Act of February 8, 1897, c. 172, 29 Stat. 512.

²⁹Act of June 30, 1906, c. 3915, 34 Stat. 768, as amended, Act of June 25, 1938, c. 675, 52 Stat. 1040. An earlier statute forbade importation from abroad, Act of August 30, 1890, c. 839, 26 Stat. 415.

³⁰Act of June 25, 1910, c. 395, 36 Stat. 825. Earlier statutes forbade the entrance into the country of women for the purpose of prostitution, Act of March 3, 1875, c. 141, 18 Stat. 477, Act of March 3, 1903, c. 1012, 32 Stat. 1221, "or for any other immoral purpose," Act of February 20, 1907, c. 1134, 34 Stat. 898.

quarantine,³¹ stolen automobiles,³² even prize-fight films.³³ Before the adoption of the Twenty-first Amendment, there was a great deal of legislation seeking to aid the states in the enforcement of their liquor policies through the federal control of the channels of interstate commerce.³⁴ There has been a rash of police legislation under the commerce power since the enactment of the first federal anti-kidnaping statute in 1932.³⁵ The recent legislation brings within the ambit of national authority the transporters and receivers of stolen property,³⁶ extortionists,³⁷ fugitive felons and witnesses in felony cases,³⁸ cattle thieves,³⁹ racketeers,⁴⁰ strike-breakers,⁴¹ and manufacturers or dealers in firearms and ammunition.⁴² In like fashion, the taxing power has been pushed into new regulatory fields by the enactment of statutes dealing with narcotics⁴³ and firearms.⁴⁴ The postal power has been extended to punish those who send lottery tickets,⁴⁵ obscene literature,⁴⁶ threatening communications⁴⁷ or concealable guns⁴⁸ through the mails, or who use the mails to defraud,⁴⁹ or to promote the fraudulent sale of securities.⁵⁰ Congress has recently passed legislation making it

³¹Act of February 15, 1893, c. 114, 27 Stat. 349.

³²Act of Oct. 29, 1919, c. 89, 41 Stat. 324 (Dyer Act).

³³Act of July 31, 1912, c. 263, 37 Stat. 240. Repealed by the Act of June 29, 1940, c. 443, 54 Stat. 686, which at the same time divested prize-fight films of their character as subjects of interstate and foreign commerce.

³⁴Act of Aug. 8, 1890, c. 728, 26 Stat. 313 (Wilson Act); Act of Mar. 1, 1913, c. 90, 37 Stat. 699 (Webb-Kenyon Act); Act of Mar. 3, 1917, c. 162, sec. 5, 39 Stat. 1202 (Reed Amendment). For recent statutes see: Act of Aug. 29, 1935, c. 814, 49 Stat. 977 (Federal Alcohol Administration Act); Act of June 25, 1936, c. 815, 49 Stat. 1928 (Liquor Enforcement Act).

³⁵Act of June 22, 1932, c. 271, 47 Stat. 326, as amended, Act of May 18, 1934, c. 101, 48 Stat. 781.

³⁶Act of May 22, 1934, c. 246, 48 Stat. 794 (National Stolen Property Act). See: J. Hall, "Federal Anti-Theft Legislation," 1 *Law and Contemp. Problems*, 424-434 (Oct. 1934).

³⁷Act of May 18, 1934, c. 300, 48 Stat. 781.

³⁸Act of May 18, 1934, c. 302, 48 Stat. 782. See: H. S. Toy and E. S. Shepherd, "The Problem of Fugitive Felons and Witnesses," 1 *Law and Contemp. Problems*, 415-423 (Oct. 1934).

³⁹Act of Aug. 18, 1941, c. 366, 55 Stat. 631 (National Cattle Theft Act).

⁴⁰Act of June 18, 1934, c. 569, 48 Stat. 979.

⁴¹Act of June 24, 1936, c. 746, 49 Stat. 1899.

⁴²Act of June 30, 1938, c. 850, 52 Stat. 1250 (Federal Firearms Act).

⁴³Act of Jan. 17, 1914, c. 1, 38 Stat. 785 (Harrison Act). See also, Act of Aug. 2, 1937, c. 553, 50 Stat. 551 (Marihuana Tax Act). The first narcotics law, Act of February 8, 1909, c. 100, 35 Stat. 614, was adopted under the commerce power. See: R. E. Cushman, "Social and Economic Control Through Federal Taxation," 18 *Minn. L. Rev.* 757-783 (1934).

⁴⁴Act of June 26, 1934, c. 757, 48 Stat. 1236 (National Firearms Act.) See: J. Brabner-Smith, "Firearm Regulation," 1 *Law and Contemp. Problems*, 400-414 (Oct. 1934).

⁴⁵Act of July 27, 1868, c. 246, 15 Stat. 194. See: R. E. Cushman, "National Police Power under the Postal Clause of the Constitution," 4 *Minn. L. Rev.* 402-440 (1920).

⁴⁶Act of Mar. 3, 1865, c. 89, 13 Stat. 504; Act of Mar. 3, 1873, c. 258, 17 Stat. 598.

⁴⁷Act of July 8, 1932, c. 464, 47 Stat. 649, as amended, Act of June 28, 1935, c. 326, 49 Stat. 427, Act of May 15, 1939, c. 133, 53 Stat. 742.

⁴⁸Act of Feb. 8, 1927, c. 75, 44 Stat. 1059, as amended, Act of May 15, 1939, c. 134, 53 Stat. 744.

⁴⁹Act of June 8, 1872, c. 335, 17 Stat. 283, as amended, Act of Mar. 2, 1889, c. 393, 25 Stat. 873, Act of Mar. 2, 1895, c. 191, 28 Stat. 963.

⁵⁰Act of May 27, 1933, c. 38, 48 Stat. 74 (Securities Act of 1933).

a federal crime to rob a federally-chartered bank or a member bank of the federal reserve system.⁵¹

In sustaining this body of criminal legislation, the Supreme Court has in consequence registered its approval of the fuller exploitation of national powers which has come to be such a significant feature of American government today. Thus, in the leading Mann Act case,⁵² Justice McKenna wrote:

"Our dual form of government has its perplexities, State and Nation having different spheres of jurisdiction . . . but it must be kept in mind that we are one people; and the powers reserved to the States and those conferred on the Nation are adapted to be exercised, whether independently or concurrently, to promote the general welfare, material and moral."

In upholding the Pure Food and Drugs Act, Justice Day asserted that Congress "has full power to keep the channels of such commerce free from the transportation of illicit or harmful articles, to make such as are injurious to the public health outlaws of such commerce and to bar them from the facilities and privileges thereof."⁵³ In a mail fraud case, Justice Holmes wrote:⁵⁴

"The overt act of putting a letter into the postoffice of the United States is a matter that Congress may regulate. *Ex parte Jackson*, 96 U. S. 727. Whatever the limits of its power, it may forbid any such acts done in furtherance of a scheme that it regards as contrary to public policy, whether it can forbid the scheme or not."

In sustaining the Harrison Narcotic Drug Act, Justice Day stated that

"from an early day the court has held that the fact that other motives may impel the exercise of federal taxing power does not authorize the courts to inquire into that subject. If the legislation enacted has some reasonable relation to the exercise of the taxing authority conferred by the Constitution, it cannot be invalidated because of the supposed motives which induced it."⁵⁵

The general inclination of the courts to approve of federal criminal legislation is reflected in decisions upholding statutes which have been adopted very recently in an effort to stamp out crime through the use of national power.⁵⁶ In fact, there have been rela-

⁵¹Act of May 18, 1934, c. 304, 48 stat. 783.

⁵²*Hoke v. United States*, 227 U. S. 308, 322 (1913).

⁵³*McDermott v. Wisconsin*, 228 U. S. 115, 128 (1913).

⁵⁴*Badders v. United States*, 240 U. S. 391, 393 (1916). In the case of *In re Raper*, 143 U. S. 110 (1892) at 134, the Court declared: "It is not necessary that Congress should have the power to deal with crime or immorality within the States in order to maintain that it possesses the power to forbid the use of the mails in aid of the perpetration of crime or immorality."

⁵⁵*United States v. Doremus*, 249 U. S. 86, 93 (1919).

⁵⁶*Sonzinsky v. United States*, 300 U.S. 506 (1937) (National Firearms Act); *United States v. Miller*, 307 U.S. 174 (1939) (National Firearms Act); *Jameson & Co. v. Morgenthau* 307 U.S. 171 (1939) (Federal Alcohol Administration Act of 1935); *Gooch v. United States*, 297 U.S. 124 (1936) (Anti-Kidnaping Act); *Hayes v. United States* 112 Fed. (2nd) 417 (C.C.A., 10th, 1940) (Liquor Enforcement Act of 1936); *Weir v. U.S.*, 92 Fed. (2nd) 634 (C.C.A., 7th, 1937), cert. den., 302 U.S. 761, 781 (1937) (F.D.I.C. Act); *Barrett v. United States*, 82 Fed. (2nd) 528 (C.C.A., 7th, 1936) (killing of federal officer); *Barrow v. Owen*, 89 Fed. (2nd) 476 (C.C.A., 5th, 1937) (Fugitive Felon Act); *United States v. Miller*, 17 F. Supp. 65 (D.C.W.D. Ky., 1936) (Fugitive Felon and Stolen Property Act); *White v. United States*, 85 Fed. (2d) 268 (Crt. of App.,

tively few instances where the Supreme Court has invalidated a federal criminal statute on constitutional grounds.⁵⁷ Whatever the legalistic considerations may have been, it is clear that the Court has been strongly influenced by a grave concern for the social evils which fresh exertions of federal power are designed to cope with. Thus, in upholding the Mann Act, the Court asserted that

"if the facility of interstate transportation can be taken away from the demoralization of lotteries, the debasement of obscene literature, the contagion of diseased cattle or persons, the impurity of food and drugs, the like facility can be taken away from the systematic enticement to and the enslavement in prostitution and debauchery of women, and, more insistently, of girls."⁵⁸

In sustaining the Harrison Narcotic Act, the Court stated that it may be assumed that the statute has a moral end as well as revenue in view, and that its purpose is to keep the traffic in narcotics "aboveboard and subject to inspection," and "to diminish the opportunity of unauthorized persons to obtain the drugs and sell them clandestinely."⁵⁹ In ruling that the National Motor Vehicle Theft Act was a proper exercise of the commerce power, the Court took note of the fact that

"It is known of all men that the radical change in transportation of persons and goods effected by the introduction of the automobile, the speed with which it moves, and the ease with which evil-minded persons can avoid capture, have greatly encouraged and increased crimes."⁶⁰

The cumulative effect of the many decisions of the Court validating criminal laws has been to expand the constitutional powers of Congress in the exercise of which they were originally enacted. Whether the Court was led to sustaining these laws because of its preference for a broad construction of federal powers or because of its eagerness to promote the apprehension of white slavers, drug addicts, dealers in harmful foods and drugs, lotteries and socially harmful printed matter, thieves, fences, kidnapers, racketeers and gunmen, the net result has been a considerable expansion of the base of federal authority. The cases dealing with crimes serve very well as precedents in cases dealing with social and economic legislation. For example, in the opinion which sustained the Fair Labor Standards Act of 1938, the Court cited as authority most

D. of C., 1936) (Bank Robbery Act); *Sutton v. United States*, 79 Fed. (2nd) 863 (C.C.A., 9th, 1935) (Extortion Act of 1932); *Bogy v. United States*, 96 Fed. (2nd) 734 (C.C.A., 6th, 1938), cert. den., 305 U.S. 608 (1938) (use of mails for fraudulent sale of securities); *United States v. Gramlich*, 19 F. Supp. 422 (D.C.S.D. Ill., 1937) (Anti-racketeering Act); *United States v. McClure*, 15 F. Supp. 931 (D.C.E.D. Tenn., 1936) (Fugitive Felon Act).

⁵⁷*United States v. Keller*, 213 U.S. 138 (1909); *United States v. Reese*, 92 U.S. 214 (1876); *Hodges v. United States*, 203 U.S. 1 (1906); *United States v. Dewitt*, 9 Wall. (U.S.) 41 (1870); *Trade Mark Cases*, 100 U.S. 82 (1879); *United States v. Fox*, 95 U.S. 670 (1878); *James v. Bowman*, 190 U.S. 127 (1903); *Baldwin v. Franks*, 120 U.S. 678 (1887); *Civil Rights Cases*, 109 U.S. 3 (1883); *Kirby v. United States*, 174 U.S. 47 (1899); *United States v. Cohen Grocery Co.*, 255 U.S. 81 (1921); *U.S. v. Constantine*, 296 U.S. 287 (1935).

⁵⁸*Hoke v. United States* 227 U.S. 308, 322 (1913).

⁵⁹*United States v. Doremus*, 249 U.S. 86, 94 (1919).

⁶⁰*Brooks v. United States*, 267 U.S. 432, 438 (1925).

of the leading decisions dealing with federal criminal laws.⁶¹

The Effect Upon Constitutional Morality

There are practical limits, however, beyond which constitutional implications may be pushed only at a certain cost and risk. It ought to be noted that in the eagerness to enlist the agencies of the national government for the fight against crime, a very considerable price has been paid in terms of a demoralization of what may well be called our constitutional morality. It has not escaped popular attention that federal prosecutions of notorious criminals and corrupt political bosses for evasion of income taxes were not designed primarily to protect the Treasury. Every one knows that the real purpose has been to catch criminals and dishonest bosses, and that the federal government is thus accomplishing purposes by elaborate indirection which it cannot carry through directly. No one believed that Roger Touhy was merely a home-sick boy who was reluctant to register for the draft when the F. B. I. joined in the hunt. Everyone knows that the revenue purposes of the narcotics and firearms laws are incidental in character, and that their true purpose is to control very pernicious kinds of traffic.⁶²

Indeed, federal agencies direct attention, in their annual reports, to the apprehension of persons whose offenses are essentially state offenses, and federal only by drawing one inference from another inference. A case in point is found in the prosecution of corrupt election commissioners in Louisiana under the mail fraud laws in 1940. The chief of the Post Office Inspection Service wrote in his report for that year:

"They certified the results of the election and deposited the papers in the mails for transmission to the Secretary of State of Louisiana. The U. S. attorney decided to prosecute under the mail fraud law *because it appeared impossible to obtain results under any other statute.*"⁶³

In other words, the important, all-consuming end was to "get" these people, and it did not seem to matter as to just which constitutional implication happened to be available.

The doctrine that the end always justifies the means is bad ethically; it is also bad in terms of constitutional morality. If you can catch criminals under the guise of taxation, then you can build electricity plants under the guise of improving navigation, when neither taxation nor navigation are the real purposes in view. This tendency, if pushed much farther, will make a mockery

⁶¹United States v. Darby, 312 U.S. 100 (1941).

⁶²Total collections during 1941 under the narcotics law amounted to \$684,198, and under the firearms act to \$15,898; under these statutes hundreds of thousands of licenses and registration papers were handled. Annual Report of the Commissioner of Internal Revenue, June 30, 1941, pp. 29-30.

⁶³Resume of the Work of the Post Office Inspection Service, Fiscal Year 1940 (mimeo.), p. 18. (Italics supplied.) For a comparable story, see the Annual Report of the Attorney General for 1941, pp. 84-5, for a summary of prosecutions, under the guise of an evasion of taxes, of E. L. ("Nucky") Johnson, a public official in Atlantic County, N. J., M. L. Annenberg, publisher of racing sheets, and George Scalise, labor racketeer.

of the whole notion of constitutional limitations, if not of the very concept of constitutional law itself. If the national government can escape from the basic fact that it is a government of delegated powers within the framework of a federal system, by the process of implication, then it is no longer, in truth, a government of delegated powers. This whole tendency has had the effect of encouraging "slick" government, according to which an end deemed desirable can be reached by overcoming constitutional restraints through skillful dialectic. Constitutional government must be conducted according to its pre-determined rules; those who regard the rules as being meaningless imperil the very idea of constitutional government itself. The difficulty in this whole area of activity arises from the fact that it is desirable to catch criminals, but the price that is paid, the debasement of constitutional morality, should always be reckoned with.

Cooperative Federalism in Law Enforcement

One of the most important consequences of the expanding interest of the national government in law enforcement has been in the direction of strengthening the tendency towards the evolution of a form of "cooperative federalism" which has become such a distinctive feature of the contemporary American governmental scene.⁶⁴ It is becoming increasingly clear that the state and national governments are not necessarily antagonistic entities, and that they can co-operate to their mutual advantage, within the ambit of American constitutionalism, in many fields of activity. Indeed, it is becoming evident that they must cooperate with each other in respect to certain social and economic problems where cooperation offers the only hope of attaining satisfactory results. The police agencies of the central government lean strongly in the direction of cooperation with state and local officials, and in doing so have done much to underscore the possibilities of a cooperative federalism in this country.

Abundant illustrations of this fact are found in the activities of the F. B. I., many of which are designed to serve primarily the needs of local law enforcement. The F. B. I. does not devote all of its energies to the direct enforcement of federal penal laws; it is equally interested in the general improvement of the skill and efficiency of the peace officers of the whole country, and it is well equipped to cooperate with and assist local law-enforcement agencies. The important cooperative activities of the Bureau include the Police Academy, which to date has given advanced specialized

⁶⁴See: J. P. Clark, *The Rise of a New Federalism* (N.Y., 1938); J. E. Kallenbach, *Federal Co-operation with the States under the Commerce Clause* (Ann Arbor, 1942); F. R. Strong, "Co-operative Federalism," 23 *Iowa Law Review*, 459-518 (1938); L. W. Koenig, "Federal and State Cooperation under the Constitution," 36 *Michigan Law Review*, 752-785 (1938); E. S. Corwin, "National-State Cooperation—Its Present Possibilities," 46 *Yale L. J.*, 599-623 (1937).

training to 627 men drawn from every state in the Union,⁶⁵ informational services dealing with modern training procedures, the current Law Enforcement Officers Mobilization Plan for National Defense, initiated in 1939,⁶⁶ the fingerprint file, which now includes 21,741,008 cards,⁶⁷ the Technical Laboratory,⁶⁸ and many publications, including "Uniform Crime Reports,"⁶⁹ a "Manual of Police Records," a "Uniform Crime Reporting Handbook," and the Law Enforcement Bulletin. Furthermore, a great deal of aid is given to local law-enforcement agencies in the administration of federal penal laws which deal with offenses which are traditionally local in character, and which therefore come as well under the jurisdiction of local officials. The Bureau, in dealing with bank robbery, kidnaping, extortion, white slavery, car thefts, blackmail and larcenies, makes a very substantial contribution to the solution of crimes which are among the responsibilities of local officials.

Every police agency of the national government cooperates with local officials in some degree, great or small, formally or informally, with or without statutory authorization. The Enforcement Division of the Alcohol Tax Unit, in the Bureau of Internal Revenue, in administering the Liquor Enforcement Act of 1936, dealing with the illegal introduction of tax-paid spirits into dry states, cooperates with local officers.⁷⁰ The success of this Unit, it has been reported, "is largely dependent upon the assistance that it receives from State and local police authorities. Enforcement officers of the Alcohol Tax Unit are expected to cooperate with such authorities. The policy of the Unit is to encourage such officers to handle violations of State liquor or revenue laws which are also minor violations of Federal laws and to encourage State and local officers to turn over to the Unit for investigation major cases under State laws which are also major violations of Federal laws."⁷¹ The Criminal Division of the Department of Justice is also concerned with

⁶⁵Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, 77th Congress, 2nd Session, Department of Justice Appropriation Bill for 1943, p. 104.

⁶⁶The plan includes quarterly conferences and short courses which during 1941 reached some 30,000 men, and during 1942 about 35,000. See Annual Report, Attorney-General, 1941, pp. 178-9; Hearings, cited *supra*, note 65, pp. 106-9.

⁶⁷It was reported that during 1941 the F. B. I. located 7,102 fugitives from justice for state, county, and municipal law-enforcement agencies through the use of the fingerprint files. Annual Report, Attorney-General, 1941, p. 178.

⁶⁸The Laboratory gave assistance during 1941 to local agencies in 1,670 instances. Report, *supra*, p. 190.

⁶⁹During 1940, 4,369 agencies contributed to the Crime Reports. Report, *supra*, p. 197.

⁷⁰In the enforcement of this Act during 1941, 215 cars and 12,150 gallons of liquor were seized, and 332 persons were arrested; during this year there were 273 indictments and 196 persons were convicted. Annual Report, Commissioner of Internal Revenue, 1941, p. 37.

⁷¹Brookings Institution, Preliminary Report to the Select Committee (Senate) to Investigate the Executive Agencies of the Government, 75th Congress, 1st Session, Senate Report No. 1275 (1937), p. 915.

the administration of this Act.⁷² The Intelligence Unit of the Bureau of Internal Revenue,⁷³ in prosecuting racketeers and criminals for income tax evasion, works to some extent with local officials.

The services of the Post Office Inspection Service to state and local agencies are very considerable. The Service enforces statutes dealing with many aspects of criminality which also fall within local jurisdiction, such as fraud, robbery, embezzlement, forgery, lotteries, extortion, liquor and obscenity. Thus, during the fiscal year 1940, 6,755 investigations were completed in fraud and lottery cases; 1,122 arrests were made, and 870 persons were convicted. These cases included Coster-Musica in New York, a former governor of Louisiana, the President of the Louisiana State University, election commissioners in Louisiana, the Philadelphia publisher M. L. Annenberg, and several persons engaged in medical frauds.⁷⁴ The Service also helps locate fugitives from justice for state and local agencies. It was recently asserted that the Inspection Service has "special facilities and sources of information that are helpful to . . . State and local officials."⁷⁵

Another example of federal-state cooperation in law-enforcement work is found in the activities of the Bureau of Narcotics, located in the Treasury Department. The parent statute creating the present Bureau in 1930 specifically requires such cooperation.⁷⁶ The administrative regulations of the Bureau provide for giving information to local officials, for the attendance of agents of the Bureau as witnesses in local courts, and for the giving of pertinent information to licensing boards and other state agencies having the power to suspend or revoke licenses.⁷⁷ Under these regulations, as the Bureau stated in its last published report, "many state and local enforcement officers collaborate with Federal officers in the investigation of the illicit narcotic traffic . . ."⁷⁸ For example, during 1941, the Bureau apprehended three narcotic violators and delivered them to New York authorities to be tried for murder in connection with the notorious "Murder, Inc." gang. During the eleven years since 1930, 2,067 physicians were reported to state licensing boards; in 906 cases some disciplinary action was taken; 877 cases were closed without action; and as of December 31, 1941, some 23,300 acres. During the year, there were 2,040 federal cases

⁷²Annual Report, Attorney-General, 1941, p. 109.

⁷³L. F. Schmeckebier and F. X. A. Eble, *The Bureau of Internal Revenue* (Baltimore, 1923), p. 133.

⁷⁴Resume of the Work of the Post Office Inspection Service, Fiscal Year 1940 (mimeo.) pp. 16-20. See also the statement of Mr. K. P. Aldrich, the Chief Inspector, in Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, 77th Congress, 2nd Session, Post Office Department Appropriation Bill for 1943, p. 359.

⁷⁵Annual Report, Postmaster-General, 1941, p. 52.

⁷⁶Act of June 14, 1930, c. 488, Sec. 8, 46 Stat. 585.

⁷⁷Bureau of Narcotics, Regulations No. 4, June 1, 1938, c. 2.

⁷⁸Annual Report, Bureau of Narcotics, 1942, p. 14.

284 cases were still pending. During 1941 the Bureau also cooperated with state and municipal agencies in a program for the eradication of marihuana, the estimated area destroyed coming to and 427 joint cases; 1,011 federal cases were tried in federal courts, 213 federal cases in state courts, 155 joint cases in federal courts, and 129 joint cases in state courts.⁷⁹ The Bureau of Narcotics is interested in pushing the enactment of the Uniform Narcotic Drug Act, sponsored by the National Conference of Commissioners on Uniform State Laws; it also reports on the progress of state legislation in this field generally.⁸⁰ It is engaged actively in research work dealing with problems of drug addiction, maintaining a considerable laboratory for that purpose.

Similar facts appear in examining the activities of the Secret Service, whose work requires a great deal of cooperation, on an informal basis, from local police officers. A Brookings Institution report in 1937 made the following observations on this point:

"The Division states that it depends materially on the continuous co-operation of the police departments and other local law-enforcement agencies throughout the country in its work of apprehending criminals, making raids on counterfeiting plants, protecting the President of the United States, and enforcement work of an emergency nature. In the large cities of the country, and, indeed, in many small cities, police detectives are reported to be in daily attendance at the district headquarters offices of the Secret Service; and in some cities police officers are detailed to give their entire time to the work of the Secret Service operatives in charge. This co-operation is not the result of any formal co-operative agreement, but it is said to be accorded to Secret Service agents everywhere whenever requested. The Division could not function effectively without the full co-operation of State and local law-enforcement agencies."⁸¹

It has been asserted that "its officials believe that it would require a field personnel ten times as great as the present Secret Service force if it were to operate without the assistance rendered by local agencies."⁸² The Alcohol Tax Unit receives many of its complaints as to unlawful practices from state officials.⁸³ It is officially stated that the Immigration Border Control cooperates with state and local agencies in apprehending criminals and fugitives from justice as activities incidental to its direct law-enforcement responsibilities.⁸⁴ The Coast Guard is required by statute to help the states in enforcing their health laws,⁸⁵ and while it has no extensive or significant relations with local agencies, it is reported that "nevertheless, cooperation with such agencies exists in almost every port

⁷⁹*Ibid.*, pp. 16-23, 38, 32.

⁸⁰*Ibid.*, p. 1. See H. J. Anslinger, "The Narcotic Problem." Proceedings of the Attorney Generals' Conference on Crime, 1934, pp. 351-357.

⁸¹Report, cited *supra*, note 71, p. 914.

⁸²Millsbaugh, *Crime Control by the National Government*, pp. 118-119.

⁸³Administrative Procedure in Government Agencies, Monograph of the Attorney General's Committee on Administrative Procedure, Part 5 (1940), 76th Congress, 3rd Session, Senate Document No. 186, p. 8.

⁸⁴U. S. Department of Justice, *The Immigration Border Control* (Washington, 1941), p. 7.

⁸⁵U. S. Code, Title 42, Sec. 97.

where Coast Guard personnel are stationed.”⁸⁶ The small force of agents in the Fish and Wildlife Service of the Department of Interior works regularly with state officers and deputy game wardens.⁸⁷ A recent illustration of federal-state cooperation in law-enforcement is found in a section of the Fair Labor Standards Act of 1938 which authorizes the making of agreements with state agencies by which they are utilized in making compliance inspections.⁸⁸ Agreements were made under this provision of the statute with North Carolina in 1939, with Connecticut in 1940, and with Minnesota in 1941.⁸⁹

There are many earlier examples of the use of state officials for the enforcement of federal laws. Thus, an executive order of the President as of May 8, 1926, authorized the commissioning of state police officers as federal agents to aid in the enforcement of the National Prohibition Act.⁹⁰ The very first Congress passed a statute authorizing state judges to issue warrants of arrest for offenses against national laws,⁹¹ and this provision was specifically included in the National Prohibition Act.⁹² The Supreme Court approved of the conferring of authority upon state magistrates to enforce the federal fugitive slave law⁹³ and to apprehend and return deserting seamen.⁹⁴ Some game wardens are deputized to aid in the administration of the Lacey and Migratory Bird Treaty Acts,⁹⁵ and local officials may be commissioned to help enforce federal pure food and drug acts,⁹⁶ public health laws,⁹⁷ and the Plant Quarantine Act.⁹⁸

⁸⁶Brookings Report, cited *supra*, note 71, p. 916.

⁸⁷Annual Report, Secretary of the Interior, 1941, pp. 394-5.

⁸⁸Act of June 25, 1938, c. 676, Sec. 11 (b), 52 Stat. 1060.

⁸⁹Annual Report, Secretary of Labor, 1941, p. 154.

⁹⁰Executive Order No. 4439. See: W. B. Wheeler, "Use of State Agencies in Aid of Discharge of Federal Functions," 99 Cent. L. J., 222-5 (1926); J. Hart, "Some Legal Questions Growing out of the President's Executive Order for Prohibition Enforcement," 13 Va. L. Rev., 86-107 (1926).

⁹¹Act of Sept. 24, 1789, c. 21, 1 Stat. 91, now Sec. 1014 of the Revised Statutes.

⁹²Act of Oct. 28, 1919, c. 85, 41 Stat. 305, Title II, Sec. 2. Held valid in *Goulis v. Stone*, 140 N. E. 294 (Mass., 1923).

⁹³*Prigg v. Pennsylvania*, 16 Pet. (U.S.) 539 (1842).

⁹⁴*Robertson v. Baldwin*, 165 U.S. 275 (1897); *Dallemagne v. Moisan*, 197 U.S. 169 (1905). It should be noted that state courts may be authorized to perform other federal functions, such as the holding of naturalization proceedings, *Holmgren v. United States*, 217 U.S. 509 (1910), approving conveyances by restricted Indian heirs, *Parker v. Richard*, 250 U.S. 235 (1919), and condemning property for the federal government, *United States v. Jones*, 109 U.S. 513 (1883).

⁹⁵Act of May 25, 1900, c. 553, 31 Stat. 187; Act of July 3, 1918, c. 128, 40 Stat. 755. See: R. H. Connery, *Governmental Problems in Wild Life Conservation* (N.Y. 1935), cc. 3-9.

⁹⁶Act of June 30, 1906, c. 3915, 34 Stat. 768; Act of June 25, 1938, c. 675, sec. 702 (a), 52 Stat. 1040; G. A. Weber, *The Food, Drug, and Insecticide Administration* (Baltimore, 1928), pp. 22-26, 45-46. There is a Division of State Cooperation in the Food and Drug Administration. Federal Security Agency, *The Food and Drug Administration* (Miscel. Publ. No. 1, 1941), p. 6.

⁹⁷Act of Feb. 15, 1893, c. 114, 27 Stat. 449, sec. 3; U. S. Public Health Service, *Interstate Quarantine Regulations* (May, 1921), pp. 13-14; L. F. Schmeckebier, *The Public Health Service* (Baltimore, 1923), pp. 99-195.

⁹⁸Act of Aug. 20, 1912, c. 308, 37 Stat. 315. See: G. A. Weber, *The Plant*

Still another federal-state relationship is found in the Ashurst-Sumners Resolution of 1934,⁹⁹ according to which Congress gave its consent in advance "to any two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts." Since this date, the device of the interstate compact, already used in the fields of oil production, double taxation and labor problems, has been resorted to increasingly by the states in seeking to deal with law-enforcement problems. Four model statutes are being urged upon the states, having to do with the pursuit and arrest of fugitives, the waiver of formal rendition proceedings, the detention and return of witnesses, and the supervision of paroled criminals. This legislation is being sponsored by the Department of Justice, the National Conference of Commissioners on Uniform State Laws, the Interstate Commission on Crime, the Council of State Governments, and the American Legislators' Association.¹⁰⁰

In other ways, too, the federal government exerts a great deal of influence upon the states in the field of criminal law and the administration of justice. The enactment of federal legislation on such subjects as alcohol control, foods and drugs, firearms and narcotics has unquestionably stimulated the adoption of similar legislation by the states.¹⁰¹ Informal conferences, such as the National Crime Conference of 1934, which was sponsored by the Department of Justice, have played a considerable part in shaping thought and policy. An illustration of incidental federal influence is found in the duty of the Director of the Bureau of Prisons to inspect local jails to determine their fitness for the housing of federal prisoners. The Director reported that during 1941 the Bureau inspected 1,391 local jails in 44 states, and that many were found to be sub-standard, including all the county jails of Iowa, Florida and West Virginia. He added: "Since these surveys, a few jails in each of these States have made some definite improve-

Quarantine and Control Administration (Baltimore, 1930), pp. 23, 125. It is clear that the federal government cannot compel state officers to perform federal functions. *Wayman v. Southard*, 10 Wheat. (U.S.) 1, 39 (1825); *Prigg v. Pennsylvania*, 16 Pet. (U.S.) 539, 621 (1842); *Kentucky v. Dennison*, 24 How. (U.S.) 66, 107 (1860); *Dallemagne v. Moisan*, 197 U.S. 169, 174 (1905).

⁹⁹Act of June 6, 1934, c. 406, 48 Stat. 909.

¹⁰⁰See: J. H. Wigmore, "State Cooperation for Crime-Repression," 28 J. of Crim. Law and Criminology, 327-334 (1937). Eight compacts in the crime field were approved separately by Congress between 1833 and 1921. For citations see: G. Dean, "The Interstate Compact—A Device for Crime Repression," 1 Law and Contemp. Problems, 460-471 (1934).

¹⁰¹See: W. Brooke Graves, "Federal Leadership in State Legislation," 10 Temple L. Q., 385-405 (1936), "Influence of Congressional Legislation on Legislation in the States," 23 Iowa L. Rev., 519-538 (1938).

ments."¹⁰²

*Influence of Federal Activity Upon Standards of
Criminal Justice*

The very considerable participation of the national government in law-enforcement has had a significant effect upon the development of American standards of criminal justice. Decisions of the United States Supreme Court in criminal cases have established or strengthened certain legal principles with reference to criminal law procedure. In this branch of the law the federal courts have a great deal of latitude in the search for the better rule. It has been declared that they have the power

"in the complete absence of congressional legislation on the subject to declare and effectuate, upon common law principles, what is the present rule upon a given subject in the light of fundamentally altered conditions, without regard to what has previously been declared and practised. It has been said so often as to have become axiomatic that the common law is not immutable but flexible, and by its own principles adapts itself to varying conditions."¹⁰³

Thus, it has been held that the defendant may waive trial by jury,¹⁰⁴ even without the benefit of advice of counsel if he is capable of making a free and intelligent choice.¹⁰⁵ It is also held that it is competent for either a husband or wife to testify in a trial in which either is the defendant.¹⁰⁶ That the court must be uncoerced,¹⁰⁷ and the judge impartial,¹⁰⁸ have been given renewed emphasis by decisions of the highest court of the land.

Many statutes of Congress have also contributed ideas and practices to American criminal law procedure. They permit the use of alternate jurors,¹⁰⁹ and require the foreman of a grand jury to keep a record of the number of jurors concurring in the finding of any indictment.¹¹⁰ An important step was taken in the adoption of the Criminal Appeals Act of 1907, by which the government was given a direct appeal to the Supreme Court in cases where the defendant had not been put in jeopardy.¹¹¹ Of great significance is a provision that the repeal of a criminal statute does not extinguish any penalty, forfeiture or liability already incurred, unless the repealing statute shall so expressly provide.¹¹² It has long been established by legislation that the defendant in a criminal case is competent to appear, at his own request, as a witness in his

¹⁰²Annual Report, Attorney-General, 1941, p. 215. Only 507 jails are approved for federal use.

¹⁰³Funk v. United States, 290 U.S. 371, 383 (1933).

¹⁰⁴Schick v. United States, 195 U.S. 65 (1904); Patton v. United States, 281 U.S. 276 (1930); Johnson v. Zerbst, 304 U.S. 458 (1938).

¹⁰⁵Adams v. United States, 317 U.S. 269 (1942).

¹⁰⁶Funk v. United States, 290 U.S. 371 (1933).

¹⁰⁷Moore v. Dempsey, 261 U.S. 86 (1923).

¹⁰⁸Tumey v. Ohio, 273 U.S. 510 (1927).

¹⁰⁹Act of June 29, 1932, c. 309, 47 Stat. 380.

¹¹⁰Act of April 30, 1934, c. 170, 48 Stat. 648.

¹¹¹Act of March 2, 1907, c. 2564, 34 Stat. 1246.

¹¹²Act of Feb. 25, 1871, c. 71, 16 Stat. 431, sec. 4; U.S.C.A., Title I, sec. 29.

own behalf.¹¹³ A citizen of the United States who is outside the country may participate in a criminal trial as a witness through an American consul, and penalties may be imposed for refusing to do so.¹¹⁴ Similarly, a recent statute of Congress declared that any writing or record made in the regular course of any business is admissible as evidence, as well as properly authenticated foreign documents.¹¹⁵ Another recent statute provides that whenever an indictment is found defective or insufficient for any cause, after the period prescribed by the applicable statute of limitations has expired, a new indictment may be returned at any time during the next succeeding term of court.¹¹⁶ Federal legislation has from time to time given the court rule-making powers, as in the case of a 1933 statute giving the Supreme Court the power to prescribe rules of practice and procedure with respect to proceedings after verdict in criminal cases.¹¹⁷ The rules adopted by the Court in 1934 are designed to prod the trial courts into acting more promptly and to establish strict time limits at many procedural points.¹¹⁸ A statute enacted in 1940 gave the Supreme Court authority to prescribe rules of pleading, practice, and procedure with respect to proceedings in criminal cases prior to and including verdict, or finding or plea of guilty.¹¹⁹

In other ways, too, the activities of the national government in recent years have contributed to the development of an improved administration of justice embodying the fruits of modern knowledge and moral taste. The federal agencies have done much to put police work on an efficient, professional basis.¹²⁰ "The Attorney General's office," Sheldon Glueck recently stated, "is becoming the symbol of efficiency in the apprehension and prosecution of criminals."¹²¹ There is a healthy emphasis, in most of the national law-enforcement agencies, upon the possession of certain desirable qualifications and upon the proper training of investigative personnel.¹²² Significant aspects of progress in police work, such as

¹¹³Act of March 16, 1878, c. 37, 20 Stat. 30; U.S.C.A., Title 28, sec. 632.

¹¹⁴Act of July 3, 1926, c. 762, 44 Stat. 835. Upheld in *Blackmer v. United States*, 284 U.S. 421 (1932).

¹¹⁵Act of June 20, 1936, c. 640, 49 Stat. 1561.

¹¹⁶Act of May 10, 1934, c. 273, 48 Stat. 772.

¹¹⁷Act of Feb. 24, 1933, c. 119, 47 Stat. 904, as amended by Act of March 8, 1934, c. 49, 48 Stat. 399.

¹¹⁸Rules of Practice and Procedure, 222 U.S. 661 (1934), as amended, 301 U.S. 717 (1937), 304 U.S. 592 (1938), 311 U.S. 731 (1940), and 312 U.S. 721 (1941). See Note, 52 Harv. L. Rev. 983-992 (1939).

¹¹⁹Act of June 29, 1940, c. 445, 54 Stat. 688. An Advisory Committee was appointed by the Supreme Court on February 3, 1941, to prepare a draft of rules under this statute. 312 U.S. 717 (1941).

¹²⁰See: Homer Cummings, "Progress toward a Modern Administration of Criminal Justice in United States," 22 A.B.A.J. 345-9 (1936); J. Edgar Hoover, "Fifty Years of Crime in America," 16 Tenn. L. Rev. 171-180 (1940).

¹²¹Proceedings of the Attorney General's Conference on Crime, 1934, p. 63.

¹²²For a convenient summary of the nature of these qualifications and training programs see: Brookings Report, cited *supra*, note 71, at pp. 941-951.

criminal identification and the use of modern means of transport and communication, have been immensely stimulated by federal examples. It is important to note also, that the national police agencies give a great deal of attention to promotional, informational, hortatory and research work. Thus, it is estimated for the Bureau of Narcotics that at least twenty per cent of the volume of its work is of this character,¹²³ and of the Inspection Service of the Post Office Department it has been authoritatively asserted that criminal work occupies only about one-third of its time.¹²⁴

A good illustration of the shifting emphasis in federal police work is found in the "Know Your Money" campaign currently conducted by the Secret Service. This program was adopted in 1938 in an effort to combat counterfeiting through an educational program which is designed to put the public on its guard. Motion pictures are shown in schools, business organizations and other groups, lectures are given by its agents, specimens of counterfeit notes are displayed, warning notices numbering in the millions are distributed, as well as short books in tens of thousands. Late in 1941, the Chief of the Service indicated that since 1938 there had been a reduction of 69% in losses due to counterfeiting.¹²⁵

Notable progress has also been made in the handling of criminals. There is a growing practice of having pre-sentence investigations by probation officers of convicted persons for the guidance of the federal courts. Accordingly, while 49.6% of all persons placed on probation in 1936 had first received pre-sentence investigation, the proportion steadily increased to 58.3% in 1940.¹²⁶ The Administrative Office of the United States Courts recently pointed out that "the district judges have discovered that more exact justice can be done in imposing sentences when complete social information about offenders is available."¹²⁷ Similarly, there has been a steady growth in the number of federal probation officers, from 63 in 1930 to 239 in 1941, and in the number of persons under their supervision, from 25,213 in 1932 to 35,187 in 1941, while the average case load has declined from 400 in 1932 to 147 in 1941.¹²⁸

The last available report of Mr. James V. Bennett, Director of the Bureau of Prisons, suggests the drift of federal policy with

¹²³Brookings Report, cited *supra*, note 71, p. 924.

¹²⁴Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, 77th Congress, 1st Session, Post Office Department Appropriation Bill for 1942, p. 475.

¹²⁵Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, 77th Congress, 2nd Session, Treasury Department Appropriation Bill for 1943, p. 186. See also, Annual Report, Secretary of Treasury, 1941, p. 269.

¹²⁶Annual Report, Director of the Administrative Office of the United States Courts, 1940, p. 31.

¹²⁷*Ibid.* p. 81.

¹²⁸*Ibid.* p. 150.

respect to the handling of prisoners: all but certain classes of ex-prisoners are now eligible for military service, in accordance with the principle of rehabilitation; prisoners do useful work and are given individualized treatment; they are given adequate medical care, educational opportunities, and religious services; prison camps are provided for certain classes; juvenile offenders are put through specialized procedures; parole is available under careful control.¹²⁹

Conclusions

The increased federal activity in law enforcement, then, has had important consequences.

1. Federal governmental facilities, administrative and judicial, have been expanded considerably.

2. A large number of agencies have come into being which are predominantly police in character, and which are being given more and more powers and increasingly larger staffs.

3. The validation of federal criminal legislation by the courts has contributed heavily to the development of federal power as a whole along the avenue of implied powers.

4. The process of implication has been pushed to such a point as to put a severe strain upon our constitutional morality, for the attainment of desirable ends has tended to obscure the consequences resulting from the means employed.

5. There is a strong tendency, in federal law-enforcement activity, to encourage cooperation with state and local officials, and thus the current swing towards "cooperative federalism" has been strengthened in a significant degree.

6. Through court decisions, statutes and administrative practices, American standards of criminal justice through the country have been affected, particularly in respect to procedure, and with regard to the use of professional and scientific methods in recruitment, training, organization and investigation.

The interests of the national government in criminal law enforcement are important and permanent. They represent a slow accretion over a long period of time, and are likely to continue to grow in the future. They arise from the compulsions of a complicated, interdependent, mechanized society which is steadily growing smaller and which requires more and more direction from a central point.

¹²⁹Annual Report, Attorney General, 1941, pp. 204-222. For detailed statistical data see Bureau of Prisons, Federal Offenders: 1941.