

## 28. **Crime**

### ***Congress should***

- respect the Tenth Amendment of the Constitution by leaving the task of crime fighting to state government;
- pending complete federal withdrawal, halt the federal funding of state and local police, courts, and prisons; and
- pending complete federal withdrawal, repeal the federal drug laws and abolish the Drug Enforcement Agency.

In modern political discourse, the distinction between a national problem and a widely publicized local problem is about as clear as mud. It seems as if no area of our lives, no social problem, is beyond the purview of some federal agency. Whether the topic is teenage pregnancy, drug use, literacy, or the price of a gallon of gasoline, Washington's politicians and bureaucrats claim to have an answer. Crime is no different. Despite some tactical differences, the conventional wisdom in both of our major political parties is that the federal government should take a more active role in combatting crime. The conventional wisdom, however, is based on a set of assumptions that are both constitutionally dubious and resistant to empirical evidence.

### ***The Modern Trend: Big-Government Law Enforcement***

The Constitution delegates only a limited set of powers to the federal government. Contrary to popular belief, the Constitution does not authorize the Federal Bureau of Investigation, or any other federal agency, to combat intrastate crimes such as murder, rape, and theft. The Tenth Amendment leaves primary jurisdiction over criminal matters with state government.

In fact, the Constitution specifically mentions only three federal offenses: treason, piracy, and counterfeiting. And we know from the ratification debates that the question of whether Congress could create other federal

offenses was raised more than a few times. Those who opposed the ratification of the Constitution warned that the proposed central government might try to define and enforce an expansive national code of offenses. Proponents of the Constitution responded to those dire predictions by assuring the public that the Constitution vested no such power in the central government. When that point of contention arose in the Virginia ratification debate—to cite just one example—Gov. Edmund Randolph declared that Congress would have no ‘cognizance over any other crime except piracies, felonies committed on the high seas, and offenses against the law of nations.” Because that type of warranty was repeated over and over again by the salesmen of the Constitution, Thomas Jefferson would later maintain that our fundamental legal charter should be interpreted “according to the true sense in which it was adopted by the states, that in which it was advocated by its friends, and not that which its enemies apprehended.”

Unfortunately, our original constitutional arrangement has almost completely unraveled. The contemporary debate among Justice Department officials and legislators revolves largely around the question of which crimes, if any, are *beyond* the authority of Congress. In a 1994 Supreme Court case, *United States v. Lopez*, President Clinton's solicitor general went so far as to attempt to persuade our highest court that Congress has plenary authority to create federal offenses.

The constitutional principle of federalism is easy to proclaim but often hard to uphold in the political arena. In recent years, Congress has yielded to popular pressure to make local offenses, such as carjacking, wife beating, stalking, and church burning, federal crimes. That disturbing trend will only continue unless congressional leaders make a serious effort to defend the Constitution against demagoguery.

While it is true that the state governments continue to handle over 90 percent of the criminal cases in America, the expanding role of the federal government is nonetheless remarkable. Consider the following historical developments:

- When the Constitution was ratified in 1787, there were only three federal crimes. Today there are over 3,000.
- In 1930, at the height of alcohol prohibition, there were about 400 FBI agents. Today the federal government employs over 69,000 full-time personnel who are authorized to make arrests and carry firearms.
- The budget for the Department of Justice has ballooned over the years. Ten years ago its budget was \$3.9 billion. Today its budget

is over \$13.7 billion. That phenomenal growth shows no sign of abating. The Clinton administration has requested \$18.6 billion for 1997.

- An expansive federal criminal code has led to widespread federal electronic surveillance. Nineteen ninety-five marked the first year that federal law enforcement agents conducted more wiretaps than the police in the 50 states combined.
- Federal prisons are overflowing with inmates. In 1980 there were 24,363 federal inmates. By 1995 that number had quadrupled to 100,250. Despite an enormous prison expansion program, the Justice Department's own figures show that the federal prison system is operating at 26 percent over capacity.

Has big-government law enforcement reduced the level of crime in American society? One would think that, with such an enormous deployment of federal resources, the average American family would be feeling safer in their home and neighborhood. Sadly, the opposite is true. Millions and millions of citizens are touched by violent crime every year. A generation ago it was thought to be unwise to take shortcuts down dark alleys in cities. Today it is considered risky in most American cities to leave your own home after nightfall. And well-publicized crimes—such as the killing of Polly Klaas—have shown middle-class suburban residents that they are not as secure as they once believed.

Respected criminologists, such as Princeton professor John J. DiIulio Jr., have acknowledged the ineffectual results of federal intervention:

Since 1968, Washington has spent scores of billions of dollars on crime and corrections, passed many get-tough crime bills, and spent trillions of dollars on anti-poverty programs. Crime rates have been largely unaffected by any of this.

Despite the paltry results, some Washington policymakers insist that the crime rate can be reduced by higher levels of spending and increased coordination between federal and state officials. The 105th Congress should resist that siren song.

Since there is very little evidence about what policies will actually reduce crime, we should *decentralize* decisions on public safety and study the successes and failures in various localities. After all, a crime-fighting strategy like community policing might work in San Francisco, but not in Miami.

Our constitutional system provides a continuous natural policy experiment for the states if the federal government will just respect the boundaries of its **lawmaking** authority. As Justice Louis **Brandeis** observed, "It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." The last thing the federal government should be doing is harmonizing the criminal justice policies of the 50 states through billion-dollar spending schemes. The 105th Congress should put a stop to federal meddling and get the national government back within its limited constitutional sphere without delay.

### ***First Step: End the Federal Drug War***

The single most important law that Congress must repeal is the Controlled Substances Act of 1970. That law is probably the most far-reaching federal statute in American history, since it asserts federal jurisdiction over every drug offense in the United States, no matter how small or local in scope. Once that law is removed from the statute books, Congress should move to abolish the Drug Enforcement Administration and repeal all of the other federal drug laws.

There are a number of reasons why Congress should end the federal **government's** war on drugs. First and foremost, the federal drug laws are constitutionally dubious. As previously noted, the federal government **can** only exercise the powers that have been delegated to it. The Tenth Amendment reserves all other powers to the states or to the people. However misguided the alcohol prohibitionists turned out to be, they deserve credit for honoring our constitutional system by seeking a constitutional amendment that would explicitly authorize a national policy on the sale of alcohol. Congress never asked the American people for additional constitutional powers to declare a war on drug consumers. That usurpation of power is something that few politicians or their court intellectuals wish to discuss.

Second, drug prohibition channels over \$40 billion a year into the criminal underworld. Alcohol prohibition drove reputable companies into other industries or out of business altogether, which paved the way for mobsters to make millions through the black market. If drugs were legal, organized crime would stand to lose billions to legitimate businesses in an open marketplace.

Third, drug prohibition is a classic example of throwing money at a problem. The federal government spends over \$12 billion to enforce the drug laws every year—all to no avail. For years drug war bureaucrats have been tailoring their budget requests to the latest news reports. When drug use goes up, taxpayers are told the government needs more money so that it can redouble its efforts against a rising drug scourge. When drug use goes down, taxpayers are told that it would be a big mistake to curtail spending just when progress is being made. Good news or bad, spending levels must be maintained or increased.

Fourth, the drug laws are responsible for widespread social upheaval. "Law and order" politicians too often fail to recognize that some laws can actually cause societal disorder. A simple example will illustrate that phenomenon. Right now our college campuses are relatively calm and peaceful, but imagine what would happen if Congress were to institute military conscription in order to wage a war in Bosnia or fight a dictator in the Middle East. Campuses across the country would likely erupt in protest—even though Congress did not desire that result. The drug laws happen to have different "disordering" effects. Perhaps the most obvious has been the turning of our cities into battlefields. Because drugs are illegal, participants in the drug trade cannot go to court to settle disputes, whether between buyer and seller or between rival sellers. When black-market contracts are breached, the result is often some form of violent sanction, which usually leads to retaliation and then open warfare in our city streets.

Our capital city, Washington, D.C., has become known as the "murder capital" even though it is the most heavily policed city in the United States. The violence reached such horrific levels in 1993 that Mayor Sharon Pratt Kelly asked President Clinton to deploy National Guard units. The idea of military troops occupying the capital city of the leader of the free world ought to give pause to reasonable people in both of our major political parties. Make no mistake about it, the annual carnage that stands behind America's soaring murder rates has nothing to do with the mind-altering effects of a marijuana cigarette or a crack pipe. It is instead one of the grim and bitter consequences of an ideological crusade whose proponents will not yet admit defeat.

Students of American history will someday ponder the question of how today's elected officials could readily admit to the mistaken policy of alcohol prohibition in the 1920s but recklessly pursue a policy of drug prohibition. Indeed, the only historical lesson that recent presidents and

Congresses seem to have drawn from the period of alcohol prohibition is that government **should** not try to outlaw the sale of booze. One of the broader lessons that they should have learned is this: prohibition laws should be judged according to their real-world effects, not their promised benefits. If the 105th Congress will subject the federal drug laws to that standard, it will recognize that the drug war is not the answer to problems associated with drug use.

## **Conclusion**

The growing role of the federal government in everyday law enforcement is a deeply disturbing development. Fundamental constitutional principles such as federalism, the separation of powers, and the division of authority between the police and the military have been under a sustained attack. Those are the festering problems that Congress should be looking to address. It is imperative that the 105th Congress not only halt unconstitutional encroachment but consciously and deliberately roll it back until our written Constitution is once again the law of the land.

## **Suggested Readings**

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