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The Past, Present, and Future of Violent Crime Federalism

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ABSTRACT

The history of the federal involvement in violent crime frequently is told as one of entrepreneurial or opportunistic action by presidential administrations and Congress. The problem with this story, however, is that it treats state and local governments as objects of federal initiatives, not as independent agents. Appreciating that state and local governments courted and benefited from the federal interest is important for understanding the past two decades, but also for understanding the institutional strains created by the absolute priority the feds have given to counterterrorism since September 11, 2001. Intergovernmental relations are at a crossroads. For two decades, the net costs of the federal interaction with state and local governments on crime have been absorbed nationally, with the benefits felt locally. The federal commitment to terrorism prevention and the roles federal authorities envision for state and local agencies portend a very different dynamic, with reduced federal funding for policing and an inherent tension between domestic intelligence collection and street crime enforcement, particularly in urban areas with a high proportion of immigrants.

It has long been a truism that, in our federal system, episodic violent crime (street crime) is the province of state and local authorities. And usually *local* authorities at that, for very few states have integrated law enforcement hierarchies. State governments provide the preconditions of the system: the penal statutes to be enforced and the prisons to be filled. It is the local police, working with local district attorneys, and county sheriffs, working with county attorneys, who have primary re-

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sponsibility for keeping the streets and roads safe and going after rapists, robbers, and murderers.

This responsibility on the part of states and their instrumentalities has been enshrined in Supreme Court rulings such as *United States v. Morrison* (529 U.S. 598, 618 [2000]), where the Court noted that "we can think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims." The point, however, goes far beyond constitutional structure, which has both shaped and been shaped by the expectations of the citizenry. Everybody knows to call the local police when reporting or complaining about violent crime. And those who forget will be reminded by the ever-increasing stream of movies and television programs celebrating the exploits of local police officers and prosecutors.

With this responsibility comes at least the potential for some institutional accountability at the local level (Richman and Stuntz 2005). Not every violent crime is reported to the police, and crime rates are certainly not a simple function of local enforcement efforts. But whether or not a violent crime has occurred is generally undisputable. The conceptual possibility of tracking such crimes, and the nationwide efforts to do so via local and national statistical measures, have put increasing pressure on the police and other local enforcement officials to justify their performance (Stephens 1999).

In contrast, federal law enforcement officials have traditionally faced no such pressure. Few crimes are ineluctably federal. And to the extent that there is a federal "beat," it is one far more elusive than that patrolled by the local cops. Securities frauds, counterfeiting, corruption, tax evasion, or espionage may not even be noticed and, when alleged, may not have even happened. The Federal Bureau of Investigation does yeoman work coordinating the Uniform Crime Reporting (UCR) system. It does not, however, offer any measure of the "federal crime" rate, and few would expect it do so.

One might expect a system that lacks performance measures to revel in its unaccountability and its ability to focus on better-dressed offenders. But like a moth to a flame, the feds have been drawn to street crime (particularly of the urban variety). The operating assumption seemed to be that what citizens can feel and count they will vote on. And so, at least since the 1960s, the UCR crime rate has been a focus of legislative and executive action at the federal level. The drop in the

violent crime rate that began in 1991–92 (FBI 2004*a*) made little difference, and the federal commitment persisted, even intensified (Russell-Einhorn, Ward, and Sheeherman 2000, p. i).

The history of the federal involvement in street crimes has frequently been told as one of entrepreneurial or opportunistic action by presidential administrations and Congress (Marion 1994; Brickey 1995; Gest 2001, pp. 63–81). In quest of the political gains to be garnered by declaring war on "real" crime—the kind that voters actually fear—federal officials strategically reached into what had always been the province of state and local authorities. Passing laws meant to be enforced only infrequently, and cherry-picking only the best cases, these legislative and executive officials, the critique goes, have shown far more interest in reelection than any rational program of crime reduction (Baker 1999, p. 679).

There is some truth in this. The problem with this story, however, is that it treats state and local governments as objects of federal initiatives, not as independent agents. This they certainly were not. The history is not one of intrusion but of codependence. Appreciating the extent to which state, and particularly local, governments courted and benefited from federal activity in the violent crime area is important not just for understanding the past two decades, but also for understanding the institutional strains created by the absolute priority the feds have given to counterterrorism since the September 11, 2001, terrorist attacks.

The goal of this essay, which draws on the deft exploration by William Geller and Norval Morris (1992) of the federal-local dynamic, is to draw on the history of federal, state, and local relations in the law enforcement sphere as a means of understanding present intergovernmental tensions and considering how those tensions might be resolved. For most of the twentieth century, the principal role that federal officials envisioned state and local agencies playing in the violent crime area was that of beneficiary. Sometimes the largesse took the form of cash. Sometimes it came in kind, through the commitment of federal enforcement assets such as agents, prosecutors, and judges. This beneficence may have been politically motivated and have even occasionally been unwelcome. But the limited federal ambitions and the virtual monopoly over local knowledge maintained by local police departments ensured that the costs of federal encroachment were small and the gains to state and local governments substantial.

Since the September 11 attacks, the federal government has been giving less and asking more. Although it is too soon to tell, federal counterterrorism efforts themselves may well be drawing on funds and resources that used to aid local crime-fighting programs. Certainly many localities see it that way. More important, federal counterterrorism efforts threaten to place demands on local police departments that are extraneous to and even inconsistent with their crime-fighting mission. At the heart of advances in policing theory and practice over the past decades has been a recognition that policing will be neither effective nor politically viable without the cultivation of relationships with communities—and especially minority communities. And many local departments have become concerned about the toll that cooperation with federal efforts will place on these relationships.

How these tensions will be resolved remains to be seen, and perhaps they will not be resolved any time soon. It is equally possible that every jurisdiction will arrive at its own peculiar modus vivendi with the federal government. Yet in the desire of the federal government to create an integrated domestic intelligence network lies the seeds of a new, normatively appealing relationship between the feds and state and local governments—one in which the political accountability that comes with local crime fighting becomes a characteristic of the entire network.

What materials does this essay draw on? The legal literature has certainly given considerable (and usually critical) attention to the federal government's movement into the violent crime area over the course of the twentieth century. Yet the attention has generally been restricted to the politics behind the movement and the constitutional issues raised by this extension of federal power into the traditional province of state and local governments. Some scholars with more institutional concerns, such as Geller and Morris and more recently Miller and Eisenstein (2005), have gone beyond the standard speeches, statutes, and judicial decisions, to look at how the feds actually interacted with state and local authorities; but recourse to the broader political science literature and to government and government-sponsored reports is needed for a fuller picture on this score. Some such reports, such as that prepared by Malcolm Russell-Einhorn, Shawn Ward, and Amy Seeherman in 2000, and many by the Government Accountability (formerly General Accounting) Office, are particularly helpful for peering inside agencies and police departments.

The federalization literature rarely intersects with the policing literature, a vast and deep body of scholarship that considers how the local police interact with the communities they protect, how this interaction promotes effective policing, and how one measures police performance. It must, however, if one seeks to understand how the new counterterrorism efforts have strained relations between the feds and local police departments. And to place these counterterrorism efforts in historical context, one also needs to consult the literature on past domestic intelligence programs, and particularly on federal efforts to develop and direct local intelligence capabilities.

One of the challenges, and rewards, of writing a history of the present is watching the story develop and change with daily news accounts. Distinguishing structural change from noise can be quite difficult, especially when one looks from outside at a complex negotiation. When Portland, Oregon, withdraws its police department from the federal Joint Terrorism Task Force, should the move be read as an announcement of local priorities or the opening bid in a bargaining process? Or both? When the FBI promises an unprecedented degree of information sharing with state and local authorities, is it simply pacifying congressional critics? Trying to persuade those authorities to increase a flow that still pretty much goes one way? Or actually moving toward a system that will give state and local officials information that they can use both to secure their communities against terrorism and to fight regular crime? It is too soon to tell. Yet beneath the headlines, the complaints, and the posturing, a new institutional dynamic is emerging in the law enforcement sphere, as intergovernmental relations centered on violent crime are challenged and transformed to meet new threats.

While it is hard for scholars to pin down the underlying realities of a fast-evolving situation, there are some compensating factors with respect to sources. The official actors in this process are well aware of the transformations their world is undergoing and have engaged in wide-ranging conversations about these transformations among themselves and with the legislative and executive authorities that have monitored developments. While the reports, roundtables, legislative advocacy pieces, program guides, and other such publicly available documents sometime need to be read with a grain of salt, they provide valuable windows into the changing world.

Section I of this essay traces the history of the federal government's involvement in violent crime from the founding but gives particular

attention to the intensification of this involvement after 1964. Beyond noting the statutory and programmatic milestones of this history, this section examines the allure of violent crime federalism to (almost) all the institutional entities affected by the influx of federal dollars and enforcement personnel into an area traditionally reserved for state and local activity. Section II tells how the attacks of September 11 challenged and disrupted this system of federal, state, and local interaction, with the federal government reconfiguring both its enforcement and funding priorities and placing new demands on its state and local partners. Section III attempts to predict the longer-term effects of the changed federal priorities. It also highlights the normatively appealing aspects of the domestic intelligence network that is being cobbled together from institutions whose previous interactions were centered on violent crime, not terrorism.

I. Federal Involvement in Violent Crime

To the extent that "violent crime" is understood as simply referring to crime that involves violence, the federal government has never been *un*involved in violent crime. From the earliest days of the republic, even the most minimalist visions of federal law enforcement power have included some violent offenses, such as attacks on federal officials. When used (as it is here) to refer to the murders, robberies, and rapes of ordinary citizens, however, the term defines an enforcement sphere that the federal government had little to do with for over a century (except within federal enclaves). Indeed, it was not until 1964 that such street crimes became the subject of sustained federal policy making. Thereafter, however, federal movement into this area quickly went from a trot to a gallop, with each new administration or congress trying to outdo its predecessor in passing new statutes and committing funds and enforcement resources to the War on Crime.

A. A Whirlwind Tour of Federal Involvement in Violent Crime before 1964

The framers of the Constitution did not envision that the federal government would play much of a role in criminal enforcement. To the extent that they contemplated substantive federal criminal law at all, their discussions centered only on piracy, crimes against the law of nations, treason, and counterfeiting (Kurland 1996, pp. 25–26). The

document they produced made no effort to give the federal government general police powers of the sort states exercised. The only circumstance the Constitution explicitly envisioned as justifying federal measures against "domestic violence" was when a state certified that federal help was needed (U.S. Constitution, art. IV, sec. 4; Bybee 1997). Otherwise, the only criminal justice interests that government would have were those relating to the powers specifically delegated to it. While the Bill of Rights gave considerable attention to the procedural safeguards that would apply in federal prosecutions, the range of prosecutions envisioned was thus quite small. And few were brought. Between 1789 and 1801, by one count, only 426 criminal cases were brought in federal courts, a great many of which related to the Whiskey Rebellion (Henderson 1985, p. 13; Kurland 1996, p. 59 n. 209).

In its early years, Congress was not even quick to address violent crime in those areas in which it could have used its delegated powers. In 1818, presented with a case in which a marine had murdered a cook's mate while on board the *U.S.S. Independence*, anchored in Boston Harbor, the Supreme Court threw out the conviction (*United States v. Bevans*, 16 U.S. [3 Wheat.] 336 [1818]). Writing for the Court, Chief Justice John Marshall explained that while Congress could have passed a murder statute covering federal warships, it had not, and the matter was left to Massachusetts's exclusive jurisdiction. Indeed, exclusive state jurisdiction over putatively criminal offenses was very much the rule during most of the nineteenth century. Congress took care to target activity that injured or interfered with the federal government itself, its property, or its programs. But "except in those areas where federal jurisdiction was exclusive—the District of Columbia and the federal territories—federal law did not reach crimes against individuals." These "were the exclusive concern of the states" (Beale 1996, p. 40).

By the end of the nineteenth century, Congress had begun to look somewhat beyond direct federal interests to the general welfare of citizens, passing civil rights statutes as part of Reconstruction and exercising its postal powers to address crimes committed through the mails. Yet, save in extraordinary situations in which violence threatened these still relatively narrow interests—as occurred when the protection of the mails was asserted as a basis for federal intervention in turn-of-the-century labor wars—the feds left the arrest of violent bad guys to the states, at least where there were well-developed state governments (Brickey 1995, pp. 1138–41; Richman 2000, pp. 83–84). In the terri-

tories, of course, U.S. marshals and their deputies played their now-storied role as keepers of the peace (Traub 1988; Calhoun 1990).

An effect, and a cause, of their limited role was that there were not very many feds during this period. Agents of the postal service protected the mails (Millspaugh 1937, pp. 62–64); U.S. marshals protected judges and performed sundry other duties (Millspaugh 1937, p. 74; Calhoun 1990); Treasury personnel fought smuggling (Millspaugh 1937, pp. 64–68); and after its creation in 1865, the Secret Service targeted counterfeiting (Ansley 1956; Geller and Morris 1992, pp. 241–42; Richman 2002, p. 700). But the federal enforcement establishment was remarkably small. The office of the Attorney General dates back to the founding, but there was no Justice Department until 1870. Until then, the U.S. attorneys brought prosecutions in their respective federal districts, but with little national coordination and with little control over how federal law enforcement personnel were deployed. Even after its creation, the Justice Department had scant resources and had to rely on Treasury's Secret Service agents or Pinkerton Detective Agency operatives for investigative support (Cummings and McFarland 1937, p. 373; Theoharis 1999, pp. 2–3; Powers 2004, pp. 42–61).

In the early part of the twentieth century, Congress's readiness to enlist federal criminal law in the service of national moral crusades—such as those against "white slavery," narcotic drugs, and, in time, alcohol—and its concerns about the challenges that Americans' increased mobility posed to local enforcement efforts (Brickey 1995, p. 1141) led to a substantial extension of federal criminal jurisdiction. The constitutional vehicle of choice for these enactments was the Commerce Clause, and, at least initially, legislators generally paid careful attention to the nexus between interstate commerce and the targeted criminal activity. In 1910, the White Slave Traffic Act (also known as the Mann Act) (ch. 395, 36 Stat. 825) prohibited the transportation of a woman over state lines "for the purpose of prostitution or debauchery, or any other immoral purpose." In 1914, the Harrison Narcotic Drug Act (ch. 1, 38 Stat. 785) established a comprehensive regulatory scheme for narcotic drugs, backed with criminal sanctions. In 1919, the National Motor Vehicle Theft Act (also known as the Dyer Act) (ch. 89, 41 Stat. 324) made it a federal offense to transport a stolen motor vehicle across state lines, and the Volstead Act (National Prohibition Act) (ch. 85, 41 Stat. 305) sent federal agents against bootleggers and moonshiners.

While these enactments, and the agents deployed to enforce them, targeted many of the same bad actors who had hitherto fallen within the exclusive remit of local authorities, the specialized nature of the federal beat, the small size of the federal apparatus, and the alacrity with which locals left morals enforcement (particularly prohibition cases) to the feds kept the friction down (Hoover 1933; Boudin 1943, pp. 261, 273–74; Langum 1994).

The Supreme Court generally accepted these extensions of Commerce Clause authority. Presented with a challenge to the constitutionality of the Mann Act, the Court found no relevant distinction between the long-established ability of the federal government to control the movement of goods over state lines and the ability of the federal government to address criminal conduct that had an interstate dimension. In *Hoke v. United States* (227 U.S. 308 [1913]) the Court noted that "surely 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" (Fellman 1945, p. 21; Abrams and Beale 2000, p. 21). This was a critical analytical move. In an age in which railroads and cars were becoming standard tools of ordinary criminal activity, and indeed of ordinary life, such a reading of the Commerce Clause would in time make the limits of federal criminal enforcement more a matter of legislative policy than of constitutional law.

A snapshot of federal enforcement in 1930 is helpful. Of the 87,305 total federal prosecutions in 1930, about 57,000 were for prohibition violations, 8,000 were District of Columbia cases, 7,000 were immigration cases, and 3,500 were drug cases (Rubin 1934). Of the 4,345 convictions obtained in cases investigated by the 400 agents of the Bureau of Investigation in 1930, 2,452 were for violations of the National Motor Theft Act, and 516 were for White Slave Traffic Act (Mann Act) prosecutions (*Annual Report of the Attorney General* 1930, pp. 80–81; Theoharis 1999, p. 4). The real federal activity in the violent crime area that year came in the provision of infrastructure to local authorities. Just months after creating the UCR system as a way of preventing newspapers from "manufacturing 'crime waves' out of thin air," the International Association of Chiefs of Police (IACP)

handed it over to be administered by the Bureau of Investigation (Geller and Morris 1992, p. 283; Rosen 1995; Maltz 1999, p. 4). The bureau's chief, J. Edgar Hoover, was quite aware of the limitations of a system that relied on self-reporting. But any supervision, he maintained, would have to come from the IACP, not his or any other federal agency (Hoover 1932, p. 451). The bureau's Identification Division, also established under the "auspices" of the IACP as a clearinghouse for fingerprint and other such data, also took care to play only a supporting role (Hoover 1932, p. 442; Theoharis 1999, p. 12).

In 1930, even as violent gangs were garnering national attention, Attorney General Mitchell was able to say that "dealing with organized crime" was "largely a local problem." "The fact that these criminal gangs incidentally violate some federal statute," he noted, "does not place the primary duty and responsibility of punishing them upon the Federal Government, and until state police and magistrates, stimulated by public opinion, take hold of this problem, it will not be solved" (Cummings and McFarland 1937, p. 478). When defending the targeting of Al Capone (in which he played a significant role), President Herbert Hoover explained on November 25, 1930, that "the Federal Government is assisting local authorities to overcome the hideous gangster and corrupt control of some local governments. But I get no satisfaction from the reflection that the only way this can be done is for the Federal Government to convict men for failing to pay income taxes on the financial product of crime against State laws. What we need is an awakening to the failure of local government to protect its citizens from murder, racketeering, corruption, and a host of other crimes" (Calder 1993, p. 144).

Then came the kidnapping of Charles Lindbergh's son in March 1932, which one newspaper called "a challenge to the whole order of the nation" (Powers 1987, p. 175). Moving gingerly into this new area, President Hoover asked Director Hoover to coordinate federal assistance, but his administration stressed that "it was not in favor of using the case as an excuse for extending Federal authority in the area of law enforcement" (Calder 1993, p. 201). National interest in the case must have been hard to bear, however, for in May 1932, a week after the baby's body was found, Congress passed a federal kidnapping statute, invoking its power under the Commerce Clause (Potter 1998, p. 112). Attorney General Mitchell complained to the president: "If this law had been on the statute books at the time the Lindbergh case arose,

there would have been an outcry demanding that the federal government take hold of the case; the local police authorities would have relaxed their activities and been glad to dump the responsibilities on the federal government; we would have spent thousands of dollars with no better results than the state authorities obtained, only to find out at the end that no federal crime had been committed as there had been no interstate transportation" (Cummings and McFarland 1937, p. 479). But the attorney general still recommended that the president not go so far as to veto the bill. And it became law (Cummings and McFarland 1937, p. 479; Calder 1993, p. 203).

The kidnapping statute was just the beginning of what soon became a wave of congressional enactments targeting criminal behavior that had hitherto been the exclusive province of state and local enforcers. As the foreword to a fascinating issue of *Law and Contemporary Problems* devoted to the new federal legislation noted in October 1934:

> So dramatic have been the recent depredations of organized criminal bands, enabled by modern methods of transportation to operate over wide territories, that action has been relatively prompt in forthcoming. The aid of the federal government has first been besought—in part because with respect to certain offenses it alone is competent to act, in part because appeal to Washington affords an outlet for the urge for action without requiring a painstaking—and politically painful—reorganization of state and local law enforcing agencies. (P. 399)

The charge was led by the new president, Franklin Roosevelt, who in his January 3, 1934, address to Congress put crime high on his administration's legislative agenda (O'Reilly 1982, p. 642). "In the short term," Bryan Burrough has noted, this War on Crime "served as powerful evidence of the effectiveness of the Roosevelt administration's New Deal policies, boosting faith in the very idea of an activist central government. On a broader scale, it reassured a demoralized population that American values could overcome anything, even the Depression" (2004, p. 544).

Congress immediately responded, and within six months, 105 crime bills had been introduced (Richman 2000, p. 87). Many passed, including the National Stolen Property Act (ch. 333, 48 Stat. 794) (barring the transportation of stolen property in interstate commerce), the National Firearms Act (ch. 757, 48 Stat. 1236), the Fugitive Felon Act (ch. 302, 48 stat. 782) (prohibiting interstate flight to avoid prosecution

for violent felonies), and the Federal Bank Robbery Act (ch. 304, 48 Stat. 783) (Brickey 1995, pp. 1143–44). That same year, Congress also passed the Anti-Racketeering Act of 1934 (ch. 569, 48 Stat. 979), which was intended to allow federal prosecution of the urban gangsters thought to be flourishing around the country but was written to cover a broad range of robberies and extortions.

Under Director Hoover's savvy leadership, the FBI rode the crest of this legislative wave—and of the perceived "crime wave" that occasioned it—to fame and fortune. Its agents "acquired the popular identity of the G-man: the highly professional and apolitical hero who 'always got his man'" (Theoharis 1999, p. 13; see also Potter 1998; Burrough 2004). Yet while the number of these agents more than doubled, from 388 in 1932 to 713 in 1939 (Theoharis 1999, p. 13), the bureau's "war against the underworld" (Whitehead 1956, p. 103) was quite limited, and indeed was intended to be so: The idea was to go only after those roving gangsters who had proved too big for local enforcement, particularly those whose apprehension made (or could be turned into) headlines. State and local officials may have chafed at a justification for federal activity based on their own inadequacies and at grandstanding by their federal counterparts. But they likely saw Hoover more as an entrepreneur creating a new market than as a source of real competition. After all, while the bureau was not above encouraging local police officers (with monetary rewards) to pass information to it about matters of federal interest (Potter 1998, p. 194), the fact was (and continues to be) that the feds could not venture far into local domains without the cooperation of the local enforcement hierarchy. One study in 1945 could observe, perhaps a bit optimistically, that "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" (Fellman 1945, p. 24). Moreover, the federal law enforcement remained quite small, its numbers in 1936 (excluding the Coast Guard) amounting to about 4 percent of the nation's total police census (Millspaugh 1937, p. 283).

Local authorities got additional assurance from Hoover's oft-repeated opposition to a national police force (Ungar 1976, p. 79; Keller 1989, p. 93)—an opposition born as much from politick modesty as from fear that any move in that direction would impose onerous

new responsibilities on his agency. In 1954, Hoover celebrated his restraint in this regard:

> I am unalterably opposed to a national police force. I have consistently opposed any plan leading to a consolidation of police power, regardless of the source from which it originated. I shall continue to do so, for the following reasons . . .:
>
> 1. Centralization of police power represents a distinct danger to democratic self-government.
> 2. Proposals to centralize law enforcement tend to assume that either the state or federal government can and should do for each community what the people of that city or county will not do for themselves.
> 3. The authority of every peace officer in every community would be reduced, if not eventually broken, in favor of a dominating figure or group on the distant state or national level. (1954, p. 40)

Having increased precipitously in the 1930s, the federal role in prosecuting violent crime (organized or other) held steady in the 1940s and 1950s, in large part because "the overwhelming primacy of internal security and counterintelligence matters diverted FBI resources" (Theoharis 1999, p. 35). While it jumped from just over 13,000 inmates in 1930 (when the Federal Bureau of Prisons was created) to 24,360 inmates in 1940, the federal prison population thereafter "did not change significantly between 1940 and 1980 (when the population was 24,252)" (Federal Bureau of Prisons 2001, p. 3). And for a while, "the crime issue largely disappeared from national politics" (Beckett 1997, p. 30).

A conference on organized crime convened by Attorney General J. Howard McGrath in 1950 and the hearings of the Senate Investigating Committee headed by Estes Kefauver in the early 1950s marked the new (or renewed) interest of federal executive and legislative officials in "organized crime"—usually defined in contrast to ordinary crime but with a vagueness allowing considerable overlap. The flames were fanned by hearings that the Senate Select Committee on Improper Activities in the Labor and Management Field, headed by John McClellan (with special counsel Robert Kennedy), held in 1958 and 1959 (Miller 1963, p. 96; Marion 1994, p. 28). These efforts, coupled with the 1957 discovery, by local police, of the high-level mob meeting in Appalachin, New York, put organized crime at the top of the Kennedy

administration's (and Attorney General Robert Kennedy's) criminal justice agenda. The only sustained efforts the Kennedy administration made to combat violent crime of the less organized (and more prevalent) variety, however, were directed at preventing and controlling juvenile delinquency (Feeley and Sarat 1980, pp. 39–40; Marion 1994, pp. 28). And even its ambitions in the organized crime area were limited. The head of the Kennedy Justice Department's Criminal Division noted that "optimistically viewed . . . , the federal effort against organized crime is not merely a stopgap remedy for ineffective local law enforcement but can serve as a catalyst in activating local officials and encouraging them to do their share in eliminating this menace to our national institutions" (Miller 1963, p. 103).

B. 1964–1980s: The New Federal Funding Role

Barry Goldwater's acceptance speech at the 1964 Republican convention ushered in a new era of federal interest in violent crime. Attributing the recent rise in crime rates to Democratic administrations, Goldwater made the "violence in our streets" a focus of his presidential campaign (Marion 1994, p. 39; Beckett 1997, p. 31). Goldwater lost big to incumbent Lyndon Johnson, but Johnson noted how much mileage Goldwater had gotten out of the issue and soon made crime a priority in his new administration. One response was the traditional blue-ribbon commission—the President's Commission on Law Enforcement and the Administration of Justice (President's Commission on Law Enforcement 1967). Another was the passage of the Law Enforcement Assistance Act of 1965 and the establishment, under its terms, of the Office of Law Enforcement Assistance to fund state and local anticrime projects. Having "anointed himself Washington's main conduit to local police chiefs," the FBI's Hoover looked askance at the office's efforts, however small, to reach out to local authorities. But members of Congress saw the benefit of a program that allowed them to steer federal money to their constituencies (Gest 2001, pp. 18–19). As Malcolm Feeley and Austin Sarat's study of federal crime policy in 1968–78 explains, the Office of Law Enforcement Assistance "legitimized the view that the federal government should provide financial assistance to state and local law enforcement" (Feeley and Sarat 1980, p. 36). And thereafter, the President's Commission "proposed that the federal government become an active partner in combating crime at the state and local levels" (pp. 36–38).

In 1967, anticipating (quite correctly) that street crime would be a critical issue in the 1968 election, the Johnson administration sought to create a larger-scale grants program, to be run out of the Office of Law Enforcement Assistance. As originally envisioned, the program was to involve direct grants-in-aid to local governments—a form of assistance often used in Great Society programs. "Since crime was perceived as essentially a local and not a state problem, the Administration reasoned that federal assistance should go directly to those units of local government most in need of it" (Feeley and Sarat 1980, p. 41). It was probably not a coincidence that the nation's large urban centers—which would be the biggest aid recipients in this scheme—had given Johnson their overwhelming support in 1964, according to Feeley and Sarat. Local leaders, of course, embraced this proposal. As Charles Rogovin (the administrator of the Law Enforcement Assistance Administration [LEAA] from 1969 to 1970) explained, "Anticrime performance was seen by local officials as an increasingly important factor for attracting voters, and new Federal money with local autonomy could be important in shaping positive political images. Most local officials were also concerned about the prospect of a state government awakened or stimulated to take an increased role in crime control and criminal justice activity through the availability of new Federal money" (1973, p. 11).

The administration's proposal ran into stiff opposition in Congress, however. There, hostility to the idea of a new federal bureaucracy administering direct categorical grants—particularly a bureaucracy headed by an attorney general, Ramsey Clark, perceived by many as overly liberal—combined with enthusiasm for New Federalism, which celebrated states as the primary governmental level for addressing social ills, led to the radical reconfiguration of the program into one of block grants to the states (Feeley and Sarat 1980, pp. 42–46; Cronin, Cronin, and Milakovich 1981, pp. 50–53). This block grant program, enacted as part of the Omnibus Crime Control and Safe Streets Act of 1968 (82 Stat. 197), was to be administered by the new LEAA, also created by the act. Distrust of centralized power generally, and of Attorney General Clark specifically, ran so deep that Congress put a "troika" of three directors in charge of the new agency (Rogovin 1973, pp. 12–13).

Without adequate means to target and monitor expenditures, the new, toothless agency became not a force for crime policy innovation

but simply a way of increasing funding to the status quo (Varon 1975). For all the rhetoric of planning and coordination that surrounded the program, the federal government's principal role was simply to write checks (DiIulio, Smith, and Saiger 1995, p. 454).

The LEAA story is usually told as one of policy failure. That it was, from the perspective of those looking for improved crime policies and reduced crime rates (Navasky 1976; Feeley and Sarat 1980, pp. 144–48; Diegelman 1982; DiIuilio, Smith, and Saiger 1995, p. 455). But from the perspective of state and local enforcement agencies eager for federal dollars without federal mandates, the LEAA was a success that only improved with time. Its budget kept increasing, at least until 1977. And the bureaucratic steps that stood between agencies, particularly large police forces, and their money were only reduced over time (Diegelman 1982, pp. 998–99). "Despite the fact that the Safe Streets grant programs were charged with inefficiency, mismanagement, and ineffectiveness, despite the fact that they had not been shown to reduce crime, LEAA monies had become an accepted part of budgets of countless police chiefs, mayors, and governors, who now felt entitled to these funds" (Cronin, Cronin, and Milakovich 1981, pp. 107–8).

The LEAA soon fell out of favor in Washington, attacked by Jimmy Carter for wasting money, and finally phased out by Ronald Reagan in 1982. Reagan's 1983 budget message to Congress noted that "public safety is primarily a state and local responsibility. This administration does not believe that providing criminal assistance in the form of grants or contracts is an appropriate use of federal funds" (DiIulio, Smith, and Saiger 1995, p. 455). Under his administration, "LEAA was declared a failure, its name changed, its authorization narrowed, its appropriations slashed, and its bureaucratic status reduced—the public equivalent of a corporate bankruptcy" (Heymann and Moore 1996, p. 107). Before its demise, the LEAA had spent $8 billion on state and local crime control (McDonald et al. 1999, p. 12). Justice Department components such as the National Institute of Justice, the Bureau of Justice Statistics, and the Office of Justice Assistance, Research, and Statistics—all created in 1979 by the Justice System Improvement Act (93 Stat. 1167)—continued to provide federal support (Diegelman 1982, pp. 999–1000). But the days of large-scale federal funding seemed to be over (Congressional Budget Office 1996, p. 10).

C. 1980s and 1990s—New Operational Role and Continued Funding

Yet President Reagan certainly did not preside over the withdrawal of the federal government from the war on crime. It would have been hard to do so in 1980, when the homicide rate—10.2 per 100,000—was the highest ever recorded in the UCR system (Fox and Zawitz 2002). During his presidential campaign, he "paid particular attention to the problem of street crime and promised to enhance the federal government's role in combating it" (Beckett 1997, p. 44). Moreover, his administration's readiness to give federal agencies a direct operational role in the area suggested that its opposition to the LEAA had more to do with fiscal policy than federalism concerns.

The idea of federal enforcement agencies playing a direct role in combating local violent crime was hardly uncontroversial. Among the many rocks that caused the massive effort to reform the federal criminal code to founder in the early 1970s was opposition from those who thought it "portended the creation of a vast 'federal police'" (Schwartz 1977, p. 10). Such critics saw in the proposals of the National Commission on Reform of Federal Criminal Laws (known as the Brown Commission, after its chairman, Governor Edmund G. Brown of California) "the wholesale destruction of state responsibility and state autonomy in the preservation of public order and the administration of criminal law" (p. 10 n. 32). Even FBI Director William Webster opined in 1980 that fighting street crime "is not our role, it's not our responsibility" (Beckett 1997, p. 52). Yet the idea received powerful support in the 1981 report of the Task Force on Violent Crime created by Reagan's Attorney General, William French Smith, and chaired by former Attorney General Griffen Bell and Governor James R. Thompson of Illinois. That report called for all available enforcement tools to be deployed against violent crime, particularly against urban youth gangs, and called for the increased use of federal firearms prosecutors against violent offenders (Attorney General's Task Force 1981; Specter and Michel 1982, pp. 65–66).

The primary vehicle for this new federal operational role, at least initially, was the enforcement of the federal narcotics laws. Explaining why his agency needed to "assume a larger role" in the area, FBI Director William Webster—whose volte face on this score was "encourag[ed]" by White House Counselor Edwin Meese (Beckett 1997, p. 53)—declared in 1981 that "when we attack the drug problem head on, . . . we are going to make a major dent in attacking violent street

crime" (p. 52). Reflecting this priority, the administration sought and obtained massive increases in funding for the FBI's drug enforcement work and for that of the Drug Enforcement Administration (DEA). J. Edgar Hoover had tried hard to keep the FBI out of the drug enforcement business, for fear of the corrupting influence the work would have on his agents (Theoharis 1999, p. 189). Now the bureau would join the DEA in the fray. And their focus would not be limited to those drug offenders against whom federal enforcement offered a "comparative advantage," such as international traffickers and those involved in multistate operations (Zimring and Hawkins 1992, p. 162). The readiness to target street dealers was in part an inevitable product of investigative tactics that worked up from the most readily arrested offenders, and in part, perhaps, of an also inevitable tendency of all enforcers to go after the most accessible targets (Stuntz 1998). But it also reflected the degree to which drug enforcement priorities intersected with the federal interest in street violence.

Many of the criminal statutes needed to support this new federal operational role were already on the books by 1980: drug trafficking offenses, gun offenses—particularly the statute making it a federal offense for a convicted felon to possess a firearm (18 U.S.C. sec. 922(g))—even racketeering laws such as the Racketeer Influenced and Corrupt Organization (RICO) statute (18 U.S.C. secs. 1961–68), which had been enacted in 1970 (84 Stat. 941). In any event, more were soon passed by legislators eager to show their commitment to the Wars on Crime and Drugs. The primary effect of this legislation, in the drug and violent crime area at least, was to increase the sentences of offenses already covered by federal law (Brickey 1995, p. 1145; Richman 2000). The Comprehensive Crime Control Act of 1984 (98 Stat. 1837) overhauled the federal sentencing system and established a commission to promulgate sentencing guidelines. It also beefed up the RICO forfeiture provisions, increased the penalties for large-scale drug offenses, and established mandatory minimum sentences for the use of a gun during a crime of violence and a fifteen-year mandatory minimum for "armed career criminals." The Firearm Owners' Protection Act of 1986 (100 Stat. 449) extended the mandatory five-year sentence for the use of a gun to uses in the course of narcotics offenses. The Anti–Drug Abuse Act of 1986 (100 Stat. 3207), among other things, established a new regime of nonparolable, mandatory minimum sentences for drug-trafficking offenses that tied the minimum penalty to the amount of

drugs involved in the offense (U.S. Sentencing Commission 1991, p. 9). The Anti–Drug Abuse Act of 1988 (102 Stat. 4181) added more mandatory minimums. Both the 1986 and 1988 acts gave special attention to crack cocaine, which was thought to be responsible for increased violent crime rates. The Comprehensive Crime Control Act of 1990 (104 Stat. 4789) also increased drug penalties. And the Violent Crime Control and Law Enforcement Act of 1994 (108 Stat. 1796) increased the number of federal crimes punishable by death, enacted a "three strikes" provision that required life imprisonment for violent three-time federal offenders, and permitted the prosecution as adults of juvenile offenders (thirteen and older) who committed federal crimes of violence or federal crimes involving a firearm (O'Bryant 2003, pp. 3–4).

To this challenge to traditional notions of distinct federal and state enforcement spheres, the Supreme Court's reaction was primarily one of acquiescence. In cases such as *United States v. Culbert* (435 U.S. 371 [1978]), the Court made clear that the fact that criminal activity—in this case an extortion attempt—was also punishable under state law was of no concern, as long as there was some (often quite slim) connection to "commerce" and particularly where Congress intended such a change in the traditional federal-state balance. Indeed, the limits that the Supreme Court put on the expansion of federal criminal jurisdiction during this period tended to be more of form than substance. Interpreting 1968 legislation that made it illegal for a convicted felon to possess a firearm, the Court read in an element that required prosecutors to prove "some interstate commerce nexus" (*United States v. Bass*, 404 U.S. 336 [1971]). But in a subsequent case the Court soon made clear that all that prosecutors need show was that the firearm had *at some time* traveled in commerce—something that could be easily shown for just about any gun (*Scarborough v. United States*, 431 U.S. 563, 575 [1977]; Richman 2000, p. 89).

The existence of federal jurisdiction over a great deal of regular local crime (or at least, through the use of the gun statutes, over regular local criminals) was already clear. What really changed in the 1980s, however, was the readiness of the federal government to exercise its broad jurisdiction under these statutes, to commit investigative and adjudication resources to street crime, and to pay for the incarceration of convicted offenders. It is hard to quantify the degree to which federal enforcers in the 1980s moved into what hitherto had been local

cases. The number of drug cases certainly climbed, with the number of suspects prosecuted in federal court for drug offenses going from 9,906 in 1982 to 25,094 in 1990 (Bureau of Justice Statistics 1996, p. 2); but that number includes both higher- and lower-level trafficking offenses. And while federal weapons charges can be used against street criminals, the large number of federal weapons prosecutions brought during this period—which went from 1,970 in 1982 to 12,168 in 1990 (Bureau of Justice Statistics 1996, p. 2)—could have had other targets as well. After all, even an enforcement strategy targeting only organized crime or large-scale narcotics enterprises would involve the use of weapons or low-level drug charges as a means of gaining information or pleading out cases. By the 1990s, however, efforts by both the Bush (I) and Clinton administrations to raise the visibility of federal enforcement operations against street criminals made the extent of federal activity quite clear. One compelling political reason to raise this visibility was that the homicide rate, which had somewhat dropped since 1980—down to 7.9 in 1985—had started climbing again, going back up, to 9.8 in 1991 (Fox and Zawitz 2002).

The nouns fly fast and furious here. Project Triggerlock, announced in 1991 by Attorney General Thornburgh, directed federal prosecutors to work with local police forces to identify repeat and violent offenders who used guns and to prosecute them in federal court, if federal law allowed for a higher sentence. The program's motto was "A gun plus a crime equals hard Federal time" (Richman 2001, p. 374; Russell-Einhorn, Ward, and Seeherman 2000, p. 42). In January 1992, the FBI redeployed 300 of its agents from foreign counterintelligence activities as part of its Safe Street Violent Crimes Initiative targeting violent gangs and crimes of violence (Johnston 1992; FBI 2000; Russell-Einhorn, Ward, and Seeherman 2000, p. 45). During the summer of 1992, the chief of the Criminal Division in the FBI's New York office told some agents that terrorism was dead and tried to move them away from investigating the group later responsible for the 1993 World Trade Center bombing and into urban gang investigations (Miller and Stone 2003, p. 84). In August 1992, the Bureau of Alcohol Tobacco and Firearms (ATF)—which would soon become the federal enforcement agency most focused on violent crime—announced Operation Achilles Heel and pledged to work with state and local authorities to round up 600 "of this nation's most violent criminals" (Russell-Einhorn, Ward, and Seeherman 2000, p. 34; Richman 2001, p. 375).

The change in presidential administrations from Bush (I) to Clinton did not significantly alter the trajectory of federal enforcement policy in this area or the desire to highlight it. While there was sustained debate on Capitol Hill about the Clinton administration's approach to gun crimes, the only real issue was whether the federal interest in pursuing these offenses could be served by federally sponsored state prosecutions as well as federal prosecutions (as the Clinton administration wanted) or whether only federal prosecutions would do (as Republican opponents suggested) (Richman 2001). In any event, the priority given to firearms prosecutions continued unabated. Between 1989 and 1998, the number of federal firearms prosecutions went up 61 percent (Walker and Patrick 2000). The number of arrests by the FBI's violent crimes task forces (in which state and local participants—whose overtime was paid by the feds—outnumbered the federal agents) jumped from over 14,000 in fiscal 1992 to over 25,000 in fiscal 1997 (Russell-Einhorn, Ward, and Seeherman 2000, p. 45; FBI 2000, pp. 2–3).

The most important change in federal-local interaction during the 1990s is not fully captured by these statistics, however, since it came in the institutionalized commitment of federal agencies to take cases that would otherwise have been pursued locally (Glazer 1999, p. 581). The precise structure of these programs varied from district to district; indeed such variation was a hallmark of the Clinton administration's approach (Richman 2001, p. 383). But the trend, particularly in large urban areas such as Richmond, Virginia, and Boston, was to formalize collaborative relationships between federal, state, and local agencies through joint task forces and a variety of special programs (McDonald, Finn, and Hoffman 1999, p. 13; Russell-Einhorn, Ward, and Seeherman 2000).

In the flagship program developed in Richmond, dubbed Project Exile, federal prosecutors made an open commitment of federal resources in February 1997: "When a police officer finds a gun during the officer's duties, the officer pages an ATF agent (twenty-four hours a day). They review the circumstances and determine whether a federal statute applies. If so federal criminal prosecution is initiated" (Richman 2001, p. 379). According to the U.S. Attorney's office, the benefits of taking these cases federally flowed from the federal bail statute, which allows pretrial detention on the ground of dangerousness; the federal system of mandatory minimums and sentencing guidelines, which lim-

ited sentencing discretion and resulted in predictable and substantial sentences; and the federal prison system, which made it likely that the sentence would be served far from home (hence the idea of "exile"). By March 1999, 438 federal indictments had been brought, and the U.S. Attorney's office credited the program with helping reduce Richmond's homicide rate by 33 percent. President Clinton extolled Exile's virtues in a radio address, and it was duplicated (in one form or another) around the country (Baker 1999, p. 682; Richman 2001, pp. 379–85). In Boston, a different program, dubbed Operation Ceasefire, targeted youth gangs, getting the message out that violence would no longer be tolerated, backing the deterrent message with prosecutions, and also focusing enforcement attention on gun traffickers (Kennedy et al. 2001).

Lest any violent crime prove beyond the reach of at least one federal statute, Congress was quick to jump in with new ones. Even crimes zealously pursued by local authorities led to new federal legislation. After a widely publicized Maryland case in which Pamela Basu, the victim of an auto theft, was dragged to her death while trying to rescue her daughter from the car, Congress passed a carjacking statute in 1992 (18 U.S.C. sec. 2119). That the Maryland perpetrators were prosecuted in state court and received life prison terms made little difference (Brickey 1995, p. 1162; Zimring and Hawkins 1996, p. 20; Gest 2001, p. 69). Observing the relationship between election years and crime legislation, a former House staffer found especially noteworthy "the amount of floor time spent repeatedly on anecdotal horrific *state* crimes to justify enactment of *federal* law" (Bergman 1998, p. 196).

By the late 1990s, a whole body of scholarly literature condemning the cynical politics behind this tendency to federalize everything had developed (e.g., Scheingold 1984; Marion 1994, 1997; Brickey 1995; Beale 1997; Beckett 1997). Sanford Kadish condemned "creeping and foolish overfederalization," and noted how among its costs were "the needless compromise of the virtues of federalism, the waste of resources with duplicating systems doing much the same thing, and finally, the net increase and nationalization of knee-jerk legislation" (Kadish 1995, pp. 1248, 1251). But it had little or no effect. When, in 1994, a bill was proposed that would have made almost every state crime committed with a gun into a federal offense, it took opposition by FBI Director Louis Freeh and Chief Justice William Rehnquist to block the measure (Richman 1999, p. 767; Gest 2001, pp. 69–70).

The efforts by the Bush (I) and Clinton administrations to deploy federal agents and prosecutors against violent crime (and drug trafficking)—either on their own or in various joint task forces—did not come at the expense of federal grants to state and local governments in this area. Indeed, both in their dollar amounts and in the discretion they gave to state and local enforcers, federal grant programs took off during the 1990s. The LEAA may have been disbanded in 1980, but the Comprehensive Crime Control Act of 1984 reestablished a federal grant program for state anticrime efforts, to be run out of the Office of Justice Programs (Beckett 1997, pp. 94–95). And while federal funding for local crime control in 1986 was only one-fourth of what it had been eight years earlier, it soon took off, quadrupling between 1986 and 1995 in nominal dollars (doubling in real terms) (Congressional Budget Office 1996, p. 36). The Crime Control Act of 1990 (Pub. L. 101–647) authorized $900 million for the Edward Byrne Memorial State and Local Law Enforcement Assistance programs, which funded violence reduction and narcotics enforcement and were administered by the states (Laney 1998; Russell-Einhorn, Ward, and Seeherman 2000, p. 36). Appropriations for these programs ranged from $535 million in fiscal 1996 to $569 million in fiscal 2001 (O'Bryant 2004, p. 3).

With the election of Bill Clinton, and in the wake of his campaign promise to put 100,000 new police officers on the streets, came the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322), which "authorized the spending of a staggering $30 billion to help State and local enforcement agencies fight crime over the 6-year life of the bill's coverage" (Roth et al. 2000, p. 41). The big development here was a readiness—in the form of the COPS (Community Oriented Police Services) programs—to put money directly into the hands of local police departments. Actual appropriations to the COPS program were $1.4 billion for each year between 1996 and 1999. They fell to $595 million in 2000 but were back up to over $1 billion in 2001 (O'Bryant 2004, p. 4).

Big cities' police departments did particularly well under the COPS program. Of all the agencies awarded grants under the COPS program by the end of 1997, "only 4% served core city jurisdictions." But they received 40 percent of COPS dollar awards for all programs combined and 62 percent of all COPS MORE (Making Officer Redeployment Effective) funds (which went to technology, civilians, and overtime) (Roth et al. 2000, p. 10). By 1997, local crime prevention took a bigger

slice of the Justice Department's budget than the FBI, DEA, or Immigration and Naturalization Service. In fact, among all Justice components, only the Bureau of Prisons got more than the units that funneled money to state and local enforcers (Sherman et al. 1997, pp. 1–11).

D. The Allure of Violent Crime Federalism

The degree to which these federal programs achieved their stated goal of crime reduction is still under study. Figuring out whether or to what extent any policing program or approach has affected crime rates will always be hard (Sherman 1992; Levitt 1997; Blumstein and Wallman 2000), and the limited nature of federal operational interventions makes their assessment particularly difficult. One recent study suggests that Project Exile, whose success in reducing the Richmond homicide rate was celebrated by the Clinton and later the Bush (II) administrations, actually had little or no effect on it (Raphael and Ludwig 2003). An examination of Boston's Operation Ceasefire, however, found that it was "likely responsible for a significant reduction in the city's rates of youth homicide and gun violence" (Kennedy et al. 2001, p. 64).

As for the role of federal funding, this is difficult too, in part because it implicates the long-debated question of whether increasing the size of the police decreases crime, and more particularly whether increases in police size played a role in the crime drop in the 1990s. In 2000, John R. Eck and Edward R. McGuire (2000, p. 209) found "little evidence that changes in the number of police officers are responsible for recent changes (in either direction) in violent crime." Yet others such as Steven Levitt (using nationwide data) and Corman and Mocan (focusing on New York City) maintain that they have found just such evidence (Levitt 1997, 2002; Corman and Mocan 2000; McCrary 2002). In 2004, Levitt broadly asserted that the increase in police between 1991 and 2001 "can explain somewhere between one-fifth and one-tenth of the overall decline in crime" during that period (2004, p. 186).

Even were one to conclude that increases in police forces in the 1990s helped cause the decrease in crime, the question of how much credit for this belongs to federal aid would remain. Certainly the increase in police was coincident with and to some extent was funded by the COPS program. One economist would give President Clinton and

the COPS program "credit for engineering more crime reduction through federal policy action than any President since Franklin Roosevelt ushered in the repeal of Prohibition" (Donohue 2004, p. 3). But precisely how much credit should have been given to that program is open to debate (Office of the Inspector General 1999; Roth et al. 2000; Zhao, Scheider, and Thurman 2002; Ekstrand and Kingsbury 2003; Zhao and Thurman 2003; U.S. Government Accountability Office 2005). One needs to figure out how much money localities would independently have spent on a serious crime problem, and how much money actually stuck to the departments it was given to (as opposed to supplanting local funding that ended up being spent outside the criminal justice system [Evans and Owens 2005]). Even in 2005, as the COPS program winds down, the battle about its effectiveness rages (Eisler and Johnson 2005).

From the intergovernmental perspective, however, the important point is that the latter part of the 1990s marked the high-water mark of a federal-state-local relationship based on violent crime enforcement that (surprise, surprise) nicely served the interests of almost all of the governmental actors involved. Presidential administrations of both parties got to tout their commitment to the Fight against Crime and the War on Drugs. Legislators, who readily appropriated large sums of money for these endeavors, could tout their commitment as well, but there was more to it than that. For the essence of the violent crime targeted by the enforcement and funding programs was local. While there was much talk, and perhaps some reality, of coordination, innovation, and "best practices," the thrust of these programs was to dispatch federal dollars and manpower to their constituencies. And with each conspicuous deployment—be it funding grant or enforcement program—a legislator's press release could take some credit. Congressional representatives could also take credit for relieving local enforcers of burdensome grant compliance (Chubb 1985).

The in-kind aid to localities entailed by federal investigations and prosecutions offered certain advantages to the feds over the direct funding alternative: First, in contrast to funding, which all too often had become lost in state bureaucracies or had been diverted to unintended local needs, federal prosecutors and agents could ensure that enforcement assistance reached its intended destination. The long tradition of prosecutorial discretion and the relative opacity of enforcement decision making also allowed federal authorities greater freedom

to steer resources to areas of need—far less fettered by the norm of horizontal equity that bedeviled congressional appropriations (Zimring and Hawkins 1992, p. 166). Moreover, lacking any easy ability to predict and measure the extent of this sort of federal aid, state and local policy makers would presumably be less "inclined to offset increased federal aid through decreases in their expenditures" (O'Hear 2004, p. 850).

The interests of federal enforcement agencies were also well served by the new violent crime priorities (which overlapped with the narcotics enforcement priority). The general public was happy to see the "feds" deployed against local bad guys—street gangs, armed robbers, and murderers. And the championship of these cases by local legislative delegations could only redound to the benefit of agencies at funding time and to field offices in their relations with headquarters. The timing for the FBI was particularly propitious, as the end of the Cold War appeared to allow the redeployment of agents from counterintelligence to antiviolence assignments (Johnston 1992). And ATF had its own incentives: By making a specialty of violent crime, the agency whose unpopular gun control mission had almost led to its elimination gained a mission that even the National Rifle Association could not quarrel with and gained valuable allies in the local law enforcement community (Vizzard 1997; Richman 2001, p. 399). Agents and prosecutors also enjoyed the extent of their discretion in this area. There may have been political pressure to do violent crime cases. But there was little pressure to any particular case. Violent crime was still, after all, primarily a local responsibility. Federal enforcers thus could be quite strategic in their case selection decisions and in the neighborhoods they targeted (Glazer 1999).

The only federal branch that did not support federal intrusion into the street crime area was the judiciary (or at least a significant component thereof). Many judges believed that the burgeoning criminal docket impaired the "quality of justice" in criminal cases and also impaired their "ability to perform their core constitutional function in civil cases" (Miner 1992, p. 681; Wilkenson 1994; Beale 1995, p. 983). These particular criminal cases also demanded an unusual expenditure of judicial resources, in part because the high mandatory minimums led many defendants to go to trial. A study by the Administrative Office of the U.S. Courts noted not just a huge increase in federal firearms cases between 1989 and 1998, but also the costs of that increase: "In

comparison to 1989, a firearms case filed in 1998 was more likely to involve multiple defendants, more likely to take longer between filing and disposition of the case, more likely than other types of crimes to result in a jury trial, and more likely to result in a longer prison sentence for the defendant(s)" (Walker and Patrick 2000, p. 6). Some judges also complained about efforts to turn "garden-variety state law drug offenses into federal offenses" (*United States v. Aguilar*, 779 F.2d 123, 125 [2d Cir. 1985]) or violent crime prosecutions that turned their dignified setting "into a minor-grade police court" (Campbell 1999, p. 1).

Perhaps because the judiciary bridled at the costs the political branches imposed on it, and certainly because of changes in the Supreme Court's composition that increased the number of justices committed to limiting federal power, the nonchalance with which the Court viewed extensions of federal criminal jurisdiction came to a halt in 1995 (Althouse 2001). In *United States v. Lopez* (514 U.S. 549 [1995]), the Court, by a narrow majority, held that Congress had exceeded its Commerce Clause powers when it enacted the Gun-Free School Zones Act of 1990, which made it a federal offense "for any individual knowingly to possess a firearm" in a school zone. Chief Justice Rehnquist, writing for the majority, stressed the need to judicially enforce the "distinction between what is truly national and what is truly local" (*Lopez*, 514 U.S. 549 [1995]; Moulton 1999). Outside the courtroom, Rehnquist and other luminaries of the bar made the point as well, in testimony to Congress, speeches, and reports (Committee on Long Range Planning 1995; Task Force on the Federalization of Criminal Law 1998; Baker 1999, p. 675; Richman 2003, p. 795 n. 216). In his "1998 Year-End Report of the Federal Judiciary," Rehnquist warned:

> The trend to federalize crimes that traditionally have been handled in state courts not only is taxing the Judiciary's resources and affecting its budget needs, but it also threatens to change entirely the nature of our federal system. The pressure in Congress to appear responsive to every highly publicized societal ill or sensational crime needs to be balanced with an inquiry into whether states are doing an adequate job in these particular areas and, ultimately, whether we want most of our legal relationships decided at the national rather than local level. Federal courts were not created to adjudicate local crimes, no matter how sensational or heinous the crimes may be. State courts do, can, and should handle such problems. While there certainly are areas in criminal law in which the

> federal government must act, the vast majority of localized criminal cases should be decided in the state courts which are equipped for such matters. This principle was enunciated by Abraham Lincoln in the 19th century, and Dwight Eisenhower in the 20th century—matters that can be handled adequately by the states should be left to them; matters that cannot be so handled should be undertaken by the federal government. (Rehnquist 1999)

The very intensity of this lobbying effort, however, highlighted the Supreme Court's impotence against the political branches. So did the Court's own case law, which continued to give only light review to statutes that (unlike the one in *Lopez*) made interstate commerce an element of the crime. Once the school gun statute was revised to require a jury to find that a defendant's gun had at some point moved in interstate commerce (18 U.S.C. sec. 922(q)), its constitutionality became unassailable under well-settled precedents, for example, *United States v. Danks*, 221 F.3d 1037, 1038–39 (8th Cir. 1999) (Richman 2000, p. 90; Denning and Reynolds 2003).

For their part, the local officials—particularly police officials—whose sovereign interests the Supreme Court purported to defend against federal encroachment were generally pretty comfortable with federal initiatives (Geller and Morris 1992, pp. 312–13). They liked the direct grants, overtime pay, and the aid-in-kind that federal enforcement activity—and the significant procedural and sentencing advantages flowing therefrom—really amounted to (Geller and Morris 1992, pp. 257–62; Jeffries and Gleeson 1995, pp. 1103–25; GAO 1996; Russell-Einhorn, Ward, and Seeherman 2000, pp. 14–15; Richman 2003, p. 768). In part because of favorable procedural and evidentiary rules, and in part because they had the luxury of lighter dockets, the likelihood of a defendant's conviction was greater in federal court than in state. And because of the federal sentencing scheme—with its high mandatory minimum sentences for certain firearm and narcotics offenses and sentencing guidelines keyed to the facts of the charged conduct (broadly defined) that substantially constrained sentencing judges' ability to consider certain mitigating factors—federal defendants ended up getting more time in prison than they would have in the state system (Clymer 1997; O'Hear 2002; Miller and Eisenstein 2005, p. 248). Not only was each federal street crime defendant someone who otherwise would have been prosecuted in state court, but local enforcers who coordinated their activities with the feds benefited simply from work-

ing in the federal shadow: The large difference between federal and state sentences meant that defendants would quickly plead out in state court to avoid (maybe) having their case taken federally (O'Hear 2004, p. 813).

Turf battles between local and federal enforcers happened from time to time. And local officials often perceived cooperation with federal agencies as "a one-way street" (Russell-Einhorn, Ward, and Seeherman 2000, p. 18). But when it came to violent crime, local police officials were generally in the cat-bird's seat. FBI, ATF, DEA, and other federal agents could not patrol the streets. They rarely infiltrated gangs. Calls to 911 were not routed to them. And citizens generally took their complaints to the police. If a federal agency wanted to work the violent crime area, it would have to do it with the acquiescence and probably the full cooperation of the police. And the police knew that. They also gained some bargaining leverage over local prosecutors, on whom they used to be wholly dependant. Explaining how his department determined whether to take a case to federal or state prosecutors, a Richmond, Virginia, police captain noted, in 1998, that "it's like buying a car: we're going to the place we feel we can get the best deal. We shop around" (Bonner 1998, p. 930). Local agencies also were given institutional mechanisms for coordinating and collaborating with federal agencies through the creation of various joint task forces (Russell-Einhorn, Ward, and Seeherman 2000).

From time to time, one would hear local district attorneys complaining about federal incursion. In 1997, the president of the National District Attorneys Association made clear that his organization had "long opposed the unwarranted federalization of crime in the belief that it works to the detriment of the efficient and effective use of our law enforcement and legal resources" (Baker 1999, p. 677 n. 26). And local prosecutors sometimes complained that federal prosecutors "cherry-picked" the best cases (Miller and Eisenstein 2005, p. 259). But even those complaints were rare, since there certainly was enough street violence to go around, and, as one district attorney put it, the increased federal commitment gave local prosecutors "more flexibility" (Richman 2001, p. 405). Indeed, a Justice Department–sponsored study of federal-local collaboration in San Diego, Memphis, and Detroit reported in 2000 that if local prosecutors were bothered by anything, it was more likely to be by the alacrity with which the feds *declined* cases rather than the greed with which they grabbed them (Russell-Einhorn,

Ward, and Seeherman 2000, p. 116). Moreover, the locals benefited even in the cases they kept. As Miller and Eisenstein found in their study of relations between federal and local authorities in an unnamed large city, local prosecutors could "leverage their cooperative relations with the [U.S. Attorney's office] to pressure defendants to plead guilty to higher than average sentences in state court," and they could also send a message to local judges and legislatures about the insufficiency of local sentences (Miller and Eisenstein 2005, p. 262). In addition, local prosecutors also were placated through the system of "cross-designation," in which U.S. Attorneys' offices cross-deputized local assistant DAs as federal prosecutors, allowing the ADAs to follow a case that might have originated locally into a federal court (Miller and Eisenstein 2005, p. 261).

Just because federal authorities depended on the local police to jump-start their violent crime investigations did not mean that information flowed freely between agencies. Indeed, police officers frequently complained that federal agencies—the FBI in particular—were not very good about sharing (Russell-Einhorn, Ward, and Seeherman 2000, p. 120). The advantages flowing from federal activity in the area, however, outweighed this concern, and there was in fact improvement over time, spurred by formal mechanisms such as joint task forces and informal ones such as personal familiarity (Geller and Morris 1992, pp. 266, 272).

At the state level, officials occasionally went on record expressing concern that "some attempts to expand federal criminal law into traditional state functions . . . could undermine state and local anticrime efforts" (Baker 1999, p. 676; see also Richman 2001, p. 249). Their annoyance is particularly understandable when one thinks about the effects that federal activity had on the balance of power between state and local governments. On the funding side, states saw an increased readiness by the federal government to funnel money directly to localities, in contrast to the LEAA model, in which some money and power stuck to state hands on the way. The COPS program was only the most dramatic example of this policy shift. On the enforcement side, state officials saw their local counterparts working directly with field offices and U.S. Attorneys' offices, not just in big cities but in smaller ones as well, rendering state policy making even less relevant than before (Richman 1999, pp. 786–87; O'Hear 2004, p. 852). Overall though, state officials' resistance was muted, perhaps because of their

appreciation of the relief that federal activity offered to the state criminal justice budget.

This decade of direct grants, block grants, and enforcement assistance from the federal government to state and local authorities did not come to an end with the election of George W. Bush in 2000. With great fanfare, the new president announced an Initiative to Reduce Gun Violence and, as he had in his campaign, embraced a program of maximal federal involvement in gun violence prosecutions (Bush and Ashcroft 2001). In a May 2001 memo to department heads, Attorney General John Ashcroft included, as two of his seven goals, "reducing drug violence and drug trafficking" and "helping states with anti-crime programs." He did not even mention terrorism (Seper 2001; Clymer 2002). The new administration did announce plans to phase out the COPS program—not that surprising, given that Republicans had long questioned the efficacy of this Clinton program that tended to funnel most of its money to big-city Democratic strongholds. But the plan envisioned a reconfiguring of federal aid in the violent crime area, not a transfer away from it (Oliphant 2001).

Then came the attacks on September 11, 2001.

II. The Post-9/11 Dynamic

We are often told that September 11 "changed everything." Although an obvious overstatement in some contexts, it is quite apt when applied to the federal, state, and local law enforcement dynamic. The new pressures on the system were felt immediately: As the feds made the prevention of future attacks their highest priority, they placed new demands on the police for information and for cooperation in immigration enforcement—quite a shift from the days in which the feds' primary role vis-à-vis the police was as provider of enforcement assistance. Many local authorities saw the role that the feds expected them to play in the counterterrorism effort as inconsistent, or at least in tension, with their local crime-fighting responsibilities. They also saw the federal funding for their local crime fighting diverted to the War on Terror. The intergovernmental tensions stemming from these new pressures continue as this essay is written (in July 2005).

Even as the daily newspapers tell of new flare-ups between state, local, and federal authorities, however, they also show signs of a new modus vivendi emerging—one in which violent crime and terrorism

coexist as the focal points of a new domestic intelligence network that is actually the country's first national police system. The cohesiveness and architecture of this network cannot yet be determined. But its emergence as part of the longer-term effects of 9/11 will also be explored here.

A. Immediate Effects of the 9/11 Attacks

The shock that the September 11 attacks gave to the federal enforcement bureaucracy was extraordinary. Before this, there were a few specialized "beats" that the feds had to patrol nationwide—espionage, immigration, federal tax offenses, counterfeiting, maybe organized crime. But the system's defining luxury was the absence of any responsibility to pursue any particular case in most of the areas in which it had jurisdiction (Richman 1999, p. 766). Now, it was suddenly saddled with a politically unavoidable, and all-but-impossible, responsibility: preventing another such attack.

To their credit, federal enforcement officials made a concerted effort to reach out to state and local agencies for intelligence-gathering assistance and diplomatically sought to address long-standing local complaints about the feds' reluctance to share information. FBI Director Mueller made conciliatory speeches and created a new Office of Law Enforcement Coordination, headed by a former police chief, within the FBI (Eggen 2004). Attorney General Ashcroft created new institutional mechanisms for coordinating counterterrorism activities across all levels of government. Prior to September 11, there had been only thirty-five Joint Terrorist Task Forces—operational groups of federal, state, and local agents (912 in all) who conducted field investigations into terrorist activity. After September 11, there would be fifty-six, one for every FBI field office, and, by 2005, 103, with a total of 5,085 members. Ashcroft also created Anti-terrorism Task Forces (later renamed Anti-terrorism Advisory Councils) in every federal district. Their job was to serve as the conduit of information about suspected terrorists between federal and local agencies and to coordinate the district's response to a terrorist attack (U.S. Department of Justice 2002; U.S. Department of Justice. Office of the Inspector General 2005). And the department worked hard to speed up security clearances for state and local officials (GAO 2004*c*).

These moves all testified to the new intergovernmental intelligence dynamic. Given the nature of the perceived terrorist threat—the

sleeper cells waiting to strike again—federal agencies now relied on the intelligence capabilities of local police forces in a way they never did when the primary area of interaction was violent crime. Back then, the feds needed help from the locals; but since they could walk away from any case and could offer many benefits, they had considerable leverage. Now the rush was on to create the semblance of a national intelligence network providing what Philip Heymann has called "untargeted prevention" (1998, p. 82). In this, the participation of local cops was absolutely essential.

What state and local enforcers bring to the counterterrorism intelligence-gathering process is not simply a function of their numbers—708,022 sworn state and local police officers in 2000 (the last count) compared to 93,446 federal law enforcement officers (more than a quarter of whom were in the Federal Bureau of Prisons) in 2002 (Reeves and Bauer 2002, p. 8; Reeves and Hickman 2002, p. 1)—nor even of the many things they learn while on street patrol. It also stems from their involvement in bringing the bulk of serious criminal charges in the United States, because the threat of prosecution (even prosecutions having nothing to do with terrorism) is one of the best tools around for prying loose closely held information. Moreover, their order maintenance and public safety duties give local police a more balanced "portfolio" in dealing with community leaders. The police officer who seeks information from a local Arab-American community leader has probably met and assisted that leader before (Murphy and Plotkin 2003, p. 43; Thacher 2005, pp. 648–49).

The Justice Department quickly went beyond vague talk of "information sharing" and asked for local assistance in a large-scale program to interview thousands of people (mostly young Middle Eastern males) in the country on nonimmigrant visas (GAO 2003*b*). In the spring of 2002, the department went further and announced its plan to place names of certain aliens who had violated their visa requirements into the national database of wanted suspects. It asked state and local police to arrest these "absconders" and (reversing a position it had taken since 1996) noted that, as a legal matter, such assistance was "within the inherent authority of the states" (Ashcroft 2002; Thompson 2002; *National Council of La Raza v. Department of Justice*, 411 F.3d 350 [2d Cir. 2005]).

Police departments rushed to help, and the constant drumbeat from them during 2002 and into 2003 was that the feds were not sharing

information with the locals, were not putting them "in the game" (Murphy and Plotkin 2003, p. 9). That said, conditions were not altogether propitious for police cooperation. In a number of cities and states, officials took stands (pretty symbolic, to be sure) against the administration's counterterrorism efforts. By July 20, 2005, seven states and 386 local governments had passed resolutions condemning (at least in part) the USA Patriot Act (United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001) (115 Stat. 272)—the antiterrorism legislation passed soon after the September 11 attacks—and opposing the involvement of local agencies in federal intelligence initiatives not sanctioned by local law (Bill of Rights Defense Committee 2005) (listing all such resolutions).

Some of this scattered resistance may have arisen from partisan politics or liberal orientation. But there was a historical basis as well, for the federal efforts to recruit local police into a national intelligence network brought back memories of 1968, when, at the behest of the feds, local departments had created intelligence units whose zeal to gather and disseminate information on potential "civil disorders" had led to abuses (Church Committee 1976, pp. 332–33).

Local concerns were not merely partisan, philosophical, or historical. They also grew out of local politics. When the federal-local interaction was centered on violent crime, federal initiatives brought significant positive externalities—credit for local leaders and maybe even improved local safety. To be sure, the feds also claimed credit. But the benefits stayed in the area, and the feds picked up a decent share of the costs. The counterterrorism dynamic has been precisely the reverse, save in some exceptional locations, such as New York City—which, somewhat to the dismay of the FBI, has gone so far as to develop its own overseas intelligence network (Miller 2005; National Academy of Public Administration 2005, p. 39; U.S. Department of Justice. Office of the Inspector General 2005, p. 49). As a general matter, there is no reason to expect that terrorists pose a particular threat to the many places in which they or information about them will be found (Thacher 2005, pp. 637–38). In those areas, the gains from domestic intelligence gathering thus are felt primarily, even exclusively, at the national level. But the costs of gathering fall on the localities—not just the fiscal costs, but the significant negative externalities that

attend any large-scale investigations of immigrant activities in communities that have large numbers of immigrants.

Police departments, of course, do not always share the concerns of their political masters. But police officials have had their own pragmatic concerns about federal counterterrorism initiatives, particularly those involving the use of federal immigration statutes. As the International Association of Chiefs of Police has explained:

> Immigration enforcement by state and local police could have a chilling effect in immigrant communities and could limit cooperation with police by members of those communities. Local police agencies depend on the cooperation of immigrants, legal and illegal, in solving all sorts of crimes and in the maintenance of public order. Without assurances that they will not be subject to an immigration investigation and possible deportation, many immigrants with critical information would not come forward, even when heinous crimes are committed against them or their families. Because many families with undocumented family members also include legal immigrant members, this would drive a potential wedge between police and huge portions of the legal immigrant community as well. (IACP 2004*b*, p. 5; see Badie 2002; Thompson 2002; U.S. House. Judiciary Committee 2003)

(It is worth noting that the FBI may share these concerns. A 2005 report by the National Academy of Public Administration noted that "the FBI is concerned that overly zealous immigration and customs enforcement will undercut its collection operations, which are driven increasingly by prevention, not enforcement" [2005, p. 37]).

The nonfederal officials most disposed to assist in enforcing the immigration laws have come from the state level, not the local. In Maryland, a newspaper reported that "many local police departments . . ., including those in Baltimore and in Anne Arundel and Baltimore counties, generally will not report illegal immigrants unless they have committed crimes." But "state police policy is to inform federal authorities about any suspected of being in the country illegally" (Song 2003, p. 1B). As of June 2005, only Florida and Alabama had formally signed on to the federal initiative, and in Alabama it appears that only state troopers are involved (Orange County, California, may soon sign on too) (U.S. House Judiciary Committee 2003; Swarns 2004; Crummy 2005).

Why the difference between the attitudes of local police departments and their statewide counterparts? Straightforward political differences

may play a part here—Republican governors versus more liberal urban local officials. But institutional obligations (or the lack thereof) likely play a role as well. For it is at the local level, and particularly in big cities, that the costs imposed by the federal enforcement initiative on relationships with immigrant communities would hit hardest (Thacher 2005).

Even had nothing else changed in the relationship between federal and local enforcers, the new federal counterterrorism initiatives would have imposed new intelligence-gathering responsibilities on the police and arguably have made it harder to maintain order in areas with significant immigrant populations, including most big cities. But the costs effectively imposed on the police by the federal counterterrorism focus went beyond that, because that focus threatened to come at the expense of federal enforcement activity in the violent crime area. Certainly this was true with respect to the FBI. A September 2004 audit report by the Justice Department's Inspector General's office found that the number of nonsupervisory field agents allocated to "violent crimes and major offenders" had dropped from 2,004 in fiscal 2000 to 1,006 in fiscal 2002 (U.S. Department of Justice. Office of the Inspector General 2004, p. 17). The bureau significantly reduced its narcotics activity as well. Moreover, a March 2004 GAO report noted that "use of field agent staff resources in . . . traditional criminal investigative programs (such as drug enforcement, violent crime, and white collar crime) has continuously dropped below allocated levels as agents from these programs have been temporarily reassigned to work on counterterrorism-related matters" (2004*b*, p. 25). In consequence, the number of FBI violent crime matters opened went from 9,034 in the second quarter of fiscal 2001 to 4,810 in the last quarter of fiscal 2003 (p. 32). Because ATF increased its violent crime activity during this period, the overall number of violent crime referrals in the federal system actually increased by 29 percent between fiscal 2001 and fiscal 2003 (GAO 2004*a*, p. 18). But it is not yet clear whether the DEA will take up the FBI's burden in the narcotics area. As an August 2004 GAO report found, there is not conclusive evidence as to whether shifts in the FBI's priorities have had an effect on overall federal efforts to combat violent and drug crime (pp. 3–4). Nonetheless, local officials might well see the bureau's assertion of the primacy of terrorism prevention as a harbinger of future shifts by all federal agencies away from the areas in which federal activity had eased their load.

Note that the point here is not that the shift in federal resources was a mistake. Indeed, one of the greatest benefits flowing from the federal enforcement bureaucracy's relative lack of political accountability is its flexibility in responding to changing circumstances. However, the duration and apparent stability of federal agencies' commitment to street crime enforcement during the 1980s and 1990s set a new baseline for local expectations of federal enforcement assistance. And, since September 11, these expectations were at obvious risk of being dashed.

Fiscal expectations were certainly being dashed. During a period in which the economic downturn and the political popularity of tax cuts placed new budget pressure on state and local governments (Multistate Tax Commission 2003; Mattoon 2004), local and state governments also found themselves facing massive homeland security expenditures. In January 2002, the U.S. Conference of Mayors estimated the costs of heightened security for cities in the coming year would be $2.1 billion (U.S. Conference of Mayors 2002*a*). State governments expected their costs would be up to $4 billion (Hobijn 2002, p. 24). Yet particularly in the most populous states, the federal reimbursement formula established by Congress, and reinforced by the new Department of Homeland Security, left these governments bearing a considerable percentage of these costs (U.S. House Select Committee on Homeland Security 2004).

Recapitulating the old debates about how federal crime money was to be distributed, local authorities also complained about the decision to distribute homeland security funds through the states rather than to them directly. One police chief complained in a spring 2003 congressional hearing that homeland security "resources do not go directly to local police departments. They cannot be used to hire new police. They cannot be used to pay overtime expenses that we incur each and every time Secretary Ridge changes the alert level. They can be used to purchase equipment, but not by me. I have to wait for a statewide plan to be developed and then I have to hope that a fair share of those funds will filter to my department" (U.S. Senate. Governmental Affairs Committee 2003*a*, p. 48 [testimony of Jeffrey Horvath, Police Chief, Dover, Delaware]; see also U.S. Conference of Mayors 2002*b*).

The response of state governments to the calls of local units for direct federal funding also echoed the state responses in the days of the LEAA. Speaking for the National Governors Association at a

spring 2003 congressional hearing, Massachusetts Governor Mitt Romney testified that "we believe it critical that homeland security funding and resources be applied against comprehensive and integrated statewide plans." "Without statewide coordination, there is no check on gaps in coverage, incompatible equipment and communications systems, and wasteful duplication" (U.S. Senate. Governmental Affairs Committee 2003*b*, p. 50). As before, there may have been a degree of self-interest behind these state arguments. But they had considerably more power in the homeland security context, given the geographic scale of the catastrophic attacks that were envisioned (Wise and Nader 2002, p. 49; Kettl 2003).

Because they see cities as bearing the brunt (in both fiscal and political costs) of any nationwide intelligence-gathering and security patrolling effort, local officials, particularly from bigger cities, would likely have complained about the very nature of the Bush administration's embrace of the statewide funding model for homeland security. Their sense of grievance has been intensified, however, by their perception that it is "their" violent crime money that is now going to the states.

The fungibility of money makes the link impossible to prove. And, in the Bush administration's defense, it should be noted that the COPS program has long been a Republican target. Yet urban officials have made much of the coincidence that the COPS program is being phased out, and other crime control grants reduced, just as homeland security funding plans are being made. And they have noted the significant reductions in grants under the Local Law Enforcement Block Grant programs, which went from a total of around $400 million in 2001 to $115 million in 2004 (Bureau of Justice Statistics 2004, p. 1). These are the grants that go directly to local government units, and local officials took it hard. One police chief testified that "there is a concern in the law enforcement community, that new assistance programs are being funded at the expense of traditional law enforcement assistance programs such as the COPS program, the Local Law Enforcement Block Grant Program and the Byrne Grant program" (U.S. Senate. Governmental Affairs Committee 2003*a* [testimony of Jeffrey Horvath, Police Chief, Dover, Delaware]). As a report by the U.S. Conference of Mayors noted in 2002, "The Administration is proposing to cut funding for existing law enforcement programs such as the COPS program (80 percent cut) and the Local Law Enforcement Block Grant

(merged and cut 20 percent). If approved by Congress, these cuts would result in a major reduction in the ability of mayors and the police to prevent and respond to both traditional street crime and the new threat of domestic terrorism" (U.S. Conference of Mayors 2002*b*, p. 4).

The fiscal picture remains in flux, as of July 2005 (right after the attacks in London). In November 2004, Congress passed an appropriations bill for fiscal 2005 that cut the three main law enforcement assistance programs by 24.4 percent. And the IACP (2004*a*, p. 1) reported that "the funding levels for these programs have declined by almost $1.24 billion" since 2002, representing "a cut of 50%." In February 2005, the administration's budget request for 2006 proposed further reductions in the COPS program and the elimination of the Justice Assistance Grant Program—the program created in 2005 to replace the Local Law Enforcement Block Grant Program and the Byrne Memorial Grant Program (Reese 2005). The IACP (2005, p. 1) reported that "overall, funding levels for assistance programs that are primarily designed to assist state and local law enforcement agencies were slashed by $1.467 billion when compared to FY 2005." Wrangling continues also over the distribution and designation over homeland security funding as well, with Congress considering cuts in state and local grants, and with representatives from smaller states still preferring pro rata rather than needs-based distribution of federal funds (Gaouette 2005; Mintz 2005).

B. Longer Term Effects

It is hard (although not impossible) to imagine that the federal government's new counterterrorist focus will completely displace its decades-old commitment to assisting state and local governments in controlling violent crime. An insightful report completed in 2000 (before the September 11 attacks) for the National Institute of Justice predicted that, although the level of federal activity in the violent crime area would remain high, the reasons for that level might change:

> Rather than reflecting the original, predominantly Washington-directed impetus for Federal involvement in urban crime, expanded collaborative activities in the coming decade may demonstrate the influence and support of local politicians and law enforcement authorities who—at least in many areas of the country—have grown accustomed to relying on Federal collaboration as a way of dem-

> onstrating heightened commitment to the fight against crime and supplementing what are often scarce local resources in that fight. (Russell-Einhorn, Ward, and Seeherman 2000, p. 125)

These local political influences may lie behind the readiness of the federal government even after September 11 to make conspicuous commitments of resources to the War on Crime. Notwithstanding the continuation of the fall in the national violent crime rate —down 3 percent between 2002 and 2003, down 1.7 percent between 2003 and 2004 (FBI 2004*c*)—and the shift of FBI agents from violent crime to counterterrorism, the Bush administration still announced the Violent Crime Reduction Initiative in June 2004 (Silver 2004; U.S. Department of Justice 2004) and in December 2004 trumpeted the commitment of FBI agents to the fight against violent gangs (Ragavan and Guttman 2004). In April 2005, Attorney General Alberto Gonzales announced the arrest of more than 10,000 fugitives as part of Operation FALCON (Federal and Local Cops Organized Nationally). He explained that "Operation FALCON is an excellent example of President Bush's direction and the Justice Department's dedication to deal both with the terrorist threat and traditional violent crime" (U.S. Department of Justice 2005).

Nonetheless, the current trajectory of the federal enforcement bureaucracy is toward a reduction in its commitment to fighting violent crime. In December 2003, Massachusetts Public Safety Secretary Edward Flynn called terrorism "the monster that ate criminal justice" (*Law Enforcement News* 2003). Perhaps this is a bit of an overstatement. But it is certainly clear that for the foreseeable future, violent crime will not define the relationship between the federal government and state and local governments with respect to criminal justice. Violent crime remains an indefeasible local obligation. Yet instead of being the focus of coordination between the feds and locals, it now threatens to put them at odds.

It is possible that the developing clash of interests between federal and local enforcers will create a zero-sum game in which any improvements in the emerging domestic intelligence network will come at the expense of local efforts against violent crime. Although overriding national security concerns might be offered to justify the wholesale enlistment of local police forces into a federally directed counterterrorist bureaucracy, the constitutional prohibition against federal "commandeering" would likely prevent the feds from simply ordering the police

to cooperate (*Printz v. United States*, 521 U.S. 898 [1997]; *New York v. United States*, 505 U.S. 144 [1992]; Caminker 1995; Hills 1998, 1999). This prohibition, based in part on the Tenth Amendment and more generally on respect for state sovereignty, could be read to preclude Congress from directing state government officials (including law enforcement officers) to implement federal policy. Still, some combination of political pressure and federal conditional funding—which remains largely unregulated by the Supreme Court (Baker 1995)—could push the police in that direction, requiring them to draw down on the community relations capital that they have spent the last decade or more building up.

One could also imagine a scenario in which the police pulled back from cooperating with the federal authorities and the feds tried to develop their own domestic intelligence network that avoided relying too heavily on nonfederal personnel. Any such effort would be hamstrung by the comparative distance of federal agencies from the lives of people in densely populated urban communities. To be sure, federal authorities seem committed to reaching out on their own, and the FBI has worked hard to forge relationships with the Muslim and Arab-American communities (Sullivan 2003; FBI 2004*b*). But one has only to think about the TIPS (Terrorist Information and Prevention System) debacle to recognize how fraught broad-based federal information-gathering initiatives can be. First mentioned by President Bush in his 2002 State of the Union address, the TIPS program was pitched by the Justice Department as a way to enlist the observatory powers of service providers around the nation in the War on Terror. The idea was to create a "national system for reporting suspicious and potentially terrorist-related activity" involving "millions of American workers who, in the daily course of their work, are in a unique position to see potentially unusual or suspicious activity in public places" (Eggen 2002*a*). But reaction from both ends of the political spectrum at this "latest manifestation of Big Brother" was immediate and hostile (Shapiro 2003). Before long, under pressure from Congress and others, the program was reconfigured to "involve only truck workers, dock workers, bus drivers and others who are in positions to monitor places and events that are obviously public" (Eggen 2002*b*, p. 1A). Even this tactical retreat was not enough, and the initiative was soon legislated out of existence (Eggen 2002*a*).

Those who prefer looking further back can recall the American Pro-

tective League, with which the Bureau of Investigation (the FBI's predecessor agency) developed an auxiliary relationship during World War I. By June 1917, the league had around 250,000 members, looking for suspicious activity around the nation and inquiring into the loyalty of government and Red Cross personnel (Cummings and McFarland 1937, p. 421). The league's "free-wheeling" operations against alleged "slackers," "spies," and "saboteurs" remain an embarrassment to any who believes in civil liberties, competent domestic security programs, or some combination thereof (Powers 2004, pp. 87–100).

Or moving forward a bit in time, one can look at COINTELPRO (from "counterintelligence program") and other programs in the 1960s, in which the FBI, as well as other intelligence agencies, sometimes with the help of local police intelligence units, launched a broad campaign to determine whether communist infiltration or some other subversive campaign lay behind the urban riots, antiwar protests, the civil rights movement, and other dissenters of all stripes (Cunningham 2003). The agencies quickly moved beyond conventional investigative tactics and resorted to illegal break-ins, warrantless wiretaps, and campaigns to discredit their targets (Keller 1989, pp. 154–89; O'Reilly 1998; Theoharis 1999, pp. 32–35; Kreimer 2004).

The fact is that domestic intelligence operations historically (and perhaps inherently) pose peculiar risks to democratic society. Domestic intelligence operations have even fewer outcome measures than federal law enforcement, have extremely low visibility because of security sensitivities, and often involve political or potentially political judgments about targeting and methods. The more committed an agency is to these operations, the greater its need for political cover from the White House, which has too often been tempted to extract intelligence targeting power in return and to use that power for inappropriate political ends.

These pessimistic scenarios are not the only possible ones, however. A far more optimistic scenario would recognize that improved counterterrorism efforts need not come at the expense of violent crime enforcement at the local level. And it would have the federal government court the assistance of state and local governments by giving them a greater voice in how the federal government interacts with citizens, and particularly with immigrant communities.

The ability of the local police to mediate between federal needs and community sensitivities was highlighted when the Justice Department's

call for interviews of certain Middle Eastern immigrants went out in the wake of 9/11. As the police chief of Ann Arbor, Michigan, later recounted, local leaders of the Arab-American community asked that an officer from his force be present during these interviews (George 2001). In Dearborn, local police participated in the interviews, but they made clear to the community that this was primarily a federal effort and saw themselves as monitoring the feds (Thacher 2005, p. 659). Later, in March 2003, the director of the American Arab Chamber of Commerce in Dearborn noted how the local police department had worked to win the Arab community's trust and how the FBI and other federal law enforcement agencies had not done enough. He also noted that after the war with Iraq had broken out, the Wayne County sheriff had dispatched his forces to guard mosques (Gorman 2003). The particulars vary, but the point is universal. As a recent report by the Inspectorate of Constabulary in the United Kingdom noted, "One of the key lessons to emerge from the investigation into the 11th September attacks has been the vital importance of extending the reach of the national security agencies by further utilising the close links between local police and the communities in which they work" (H.M.'s Inspectorate of Constabulary 2003, p. 16).

In our optimistic story, state and local agencies—and particularly local police departments—will exact a toll from federal authorities, as the price of gathering and supplying information. Because of current fiscal constraints, the federal government will not pay in cash, but by giving local police a larger voice in federal domestic intelligence policy and in the architecture of what amounts to a new national police system. And that voice will transform the new national network, giving it a far greater measure of accountability to the citizenry than would otherwise be possible.

The touted benefits of federalism often just reflect the virtues of managerial decentralization, and not necessarily of a genuinely federalist and "polycentric" system in which "leaders of the subordinate units draw their power from sources independent of [the] central authority" (Rubin and Feeley 1994, p. 911). This is partly true here. Even officials in a hypothetical monolithic "national police force" that had prime responsibility for pursuing all violent and street crime would think twice about using tactics that risked alienating chunks of the population in their respective patrol sectors (at least to the extent that they cared about enforcing the law in all neighborhoods). These are

crimes that can be and are measured, with police performance judged accordingly. The contribution that local police forces can make to domestic intelligence policy making and collection is thus related to the nature of their "beat."

But the political contribution that police involvement can make to federal counterterrorism efforts stems not just from their "informational accountability"—the obligation to deal with any community from which they will need crime tips. It also reflects their greater electoral accountability. Police chiefs themselves are not generally elected, but the mayors and county executives to whom they report are, as are the chief prosecutors with whom they deal. Scrutiny of police performance by the local electorate, although hardly constant, regularly occurs. Decades of political focus on violent crime, coupled with increasing sophistication in the way crime fighting is assessed have put police departments under an unprecedented degree of pressure to actually achieve results. Although the precise contours of each department's approach will vary, each has made vast strides, with considerable federal encouragement in the 1990s, toward recognizing the essential connection between community relations and effective law enforcement (Kelling 1988; Skolnick and Bayley 1988; Scott 2000; Hickman and Reaves 2001).

To be sure, a lot of the revolution in policing has been rhetorical, and in some departments, "community" or "problem-solving" policing has been more a grants-writing strategy than an operational reality. Still, deployment patterns really have changed, and police commanders now look to community leaders not simply for tips on whom to arrest but increasingly for guidance on how the police can best improve the quality of life within a precinct. In community policing, the emphasis is on establishing partnerships between the police and communities to reduce crime and enhance security; problem-solving policing focuses on the problems that lie behind criminal incidents (Moore 1992). Approaches can vary, with departments that have adopted a community policing style more ready to share decision-making authority with the community than those that, wary of committing themselves to ambitious social objectives, would restrict themselves to problem solving. But either way, the last two decades have seen enormous and accelerating changes in the readiness of urban police forces to solicit and address the concerns of the people they serve (Fridell and Wycoff 2004). And solicitude for the concerns of ethnic or racial minority

groups—which are often majorities within a city or precinct—has increasingly become a nonnegotiable part of a police chief's job description.

To some, the notion of police departments as bulwarks of civil liberties against federal encroachment might sound a bit odd. We are accustomed to the idea that the federal government is responsible for monitoring local abuses—stepping in with civil suits or civil rights prosecutions whenever the locals are derelict in their attention to such matters—not local monitoring of the feds (Livingston 1999). The rejoinder, of course, is that while we all have our idiosyncratic estimations of the skills and predilections of each enforcement level, no level has a monopoly of virtue. The obligation of local police departments to combat violent crime and maintain order can push them toward aggressive and even abusive control tactics. Yet that same obligation causes police departments to be especially attentive to the costs imposed by unsettling (or worse) interactions with the local community that have little to do with their ordinary order maintenance or crime-fighting responsibilities.

There have been signs of friction—particularly in the immigration area—as intergovernmental relationships that used to be based on violent crime are pushed to accommodate the threat of terrorism. As a recent white paper by the Police Executive Research Forum noted, there is considerable room for cooperation between the local police and the Bureau of Immigration and Customs Enforcement (Davis and Murphy 2004, p. 18). The dimensions of this interaction, however, need to be a matter of negotiation, not federal fiat. Broadly tasking the police with immigration work—as envisioned by the Bush administration and pending legislative proposals that would condition federal funding for police departments on their commitment to immigration enforcement (Clear Law Enforcement for Criminal Alien Removal [CLEAR] Act of 2005, H.R. 3137, introduced June 23, 2005)—would in all likelihood result in a net intelligence loss. In the neighborhoods that could be the richest source of terrorist tips, it changes the beat cop from peacekeeper to a potential source of personal ruin.

There also have been signs of real progress. Some have simply emerged out of the recognition that what might previously have been characterized as violent crime programs can be labeled counterterrorism programs, at least for funding purposes, without any disingenuity. In May 2005, the Boston Police Commissioner announced her inten-

tion to use federal homeland security money to train and fund a neighborhood watch network. "There's no bright line between terrorism and ordinary inner-city crime," she explained. "Whether it's guns, gangs, drugs, or terrorism, we're going to build whatever we do on the backbone of community policing" (Smalley 2005, p. B1). The move probably did not catch Washington by surprise. A recent Guide on Law Enforcement Intelligence for State, Local, and Tribal Law Enforcement Agencies, commissioned by the Justice Department's COPS office, maintained that there did not have to be a trade-off between community policing and counterterrorism responsibilities and exhorted that "it is time to maximize the potential for community-policing efforts to serve as a gateway of locally based information, to prevent terrorism, and all other crimes" (Carter 2004, p. 40). And a former COPS official advised police officials to "reinforce the fact that the gathering and sharing of timely and accurate information depend on strong partnerships between community residents and police. Defeating criminals and defeating terrorists is not an either-or situation" (Scrivner 2004, p. 189).

Perhaps more significant, however, have been developments with respect to intelligence sharing, in particular the National Criminal Intelligence Sharing Plan. This initiative was spearheaded by the IACP as a response to the September 11 attacks. From the start, it received strong federal backing. Yet its orientation was not limited to counterterrorism. Instead, the "vision" was one in which "state and local agencies are not merely adjuncts to a national strategy for improving intelligence communication, but founding partners of and driving participants in any organization that helps coordinate the collection, analysis, dissemination and use of criminal intelligence data in the U.S." (IACP 2002, p. 2). Thereafter, planners sought to create "a nationally coordinated criminal intelligence council that would develop and oversee a national intelligence plan" (National Criminal Intelligence Sharing Plan 2003, p. iii). While it is far too early to assess (or even detail) this initiative, the plan—which for now exists as a collection of separate programs—appears to promise a new era of collaboration among federal, state, and local agencies, and an infrastructure within which the diverse political and operational concerns of local departments can be raised and addressed (National Criminal Intelligence Sharing Plan 2004).

It would be churlish to suggest that the police have extracted aid in

their immediate criminal enforcement responsibilities as the price of their counterterrorism efforts. After all, no responsible police official wants to be on the sidelines of the War on Terror. Yet it is also difficult to avoid seeing in this plan an effort by police officials to strategically pivot off the federal interest in counterterrorism to address their own local criminal enforcement responsibilities. Intelligence-led policing is not an abstract concept, just an underdeveloped one, and one that is fast becoming a focus of attention in modern departments (Cope 2004). Even the police commander interested only in drugs and violent crime can appreciate the benefits of sharing intelligence not just within his department (sometimes a challenge enough) but with neighboring departments, and particularly with departments in areas that serious offenders visit, and so on. This is a mammoth job both organizationally and technically, going far beyond the traditional data sharing of criminal records, license plates, and warrants. But the idea marks a return to the federal role in criminal enforcement that a hopeful observer might have envisioned in the early 1930s: as the sponsor, but not the controller, of a platform for broad interjurisdictional cooperation in the service of each participant's respective enforcement priorities.

A pilot program for the new network developed in a way that itself shows the new local role. In late 2003, after the FBI appeared to have pulled out of a counterterrorism information-sharing project in the Puget Sound area, local officials set one up on their own, the Law Enforcement Information Exchange. By May 2005, the Justice Department had thrown its full support behind the project, declaring it a "regional pilot plan" and ordering all its agencies to share their investigative files with local police forces through the Exchange. The goal, according to Deputy Attorney General James Comey, "is to ensure that DOJ [Department of Justice] information is available for users at all levels of government so that they can more effectively investigate, disrupt and deter criminal activity, including terrorism" (Shukovsky and Barber 2003, p. A1; Shukovsky 2005, p. B4).

In another program encompassed by the National Plan (National Criminal Intelligence Sharing Plan 2003, 47), the sequence was quite different, with the feds taking the field first talking terrorism, but soon leaving it for states to pursue under a more general crime-fighting rationale. The Multi-state Anti-terrorism Information Exchange information sharing project (regrettably dubbed Matrix) was funded by the federal government shortly after September 11. Under the aegis of a

private contractor, the Florida Department of Law Enforcement, and the nonprofit Florida-based Institute for Intergovernmental Research, the project sought to establish a massive database from a wide variety of official and commercial sources, which participating states could contribute to and draw on for terrorism and criminal investigations. Initially thirteen states signed up. The program soon came under fire, however, by privacy advocates concerned about the use and misuse of a data repository of this magnitude, and it never got off the ground nationwide (Krouse 2004). By May 2005, the project, and the federal funding, had formally come to an end, with only four states remaining in it. Florida and Ohio, however, continued the program, in part with other federal money (Galnor 2005). And the stories that officials offered to justify their continued participation focused on violent crime: Florida officials told how the system had helped identity a Tampa robbery suspect within hours, assisted in kidnapping investigations, and helped crack a hitherto cold murder case. "Although Matrix was designed as a terrorism tool," the Florida official in charge of it noted, "its main value has been for solving more ordinary crimes" (Galnor 2005; Kalfrin 2005; Royse 2005). An Ohio official noted that Matrix had been used in the investigation of a sniper attacking motorists on an interstate highway (Craig 2005). It remains to be seen whether this program will expand to other states and in what form. Yet (barring an escalation in the pace and scope of terrorist attacks), it seems safe to predict that the primary rationale for it will be regular crime fighting—which, at least outside New York City, remains the gold standard of political justifications in this area.

There will be many kinks to work out as the federal interest in a secure intelligence network is squared with demands for accountability at the local level. One such conflict emerged in 2002–3 in Boise, Idaho. There, the community ombudsman invoked his power, under a city ordinance allowing him access to all police files, to look at files created by a new police intelligence unit. This oversight effort, however, ran afoul of federal intelligence-sharing guidelines that barred access to non–law enforcement officers. Backed by Idaho's congressional delegation and the local U.S. attorney, the city unsuccessfully sought a waiver from the Justice Department. The city council was thus left with the choice of either demanding civilian access and precluding membership in the federal intelligence network or giving up its chosen mechanism for promoting civilian oversight (Orr 2002, 2003). Another

conflict is playing out in Portland, Oregon, which has pulled its police force out of the joint terrorism task force because federal officials would not give city leaders the oversight powers they demanded. Without more oversight, the mayor asserted, he could not "guarantee that Portland officers [would] obey state laws barring them from investigating people strictly because of their political or religious ties" (Griffin 2005, p. A1). How these sorts of issues will be resolved around the country remains to be seen. One can cautiously expect intergovernmental negotiations to proceed fruitfully, however, between the gains to localities of membership in the national network and the federal interest in nationwide domestic intelligence capability, and as local governments use their congressional representatives to exert influence over the feds under the now-sacred banner of "information sharing" (GAO 2003*a*).

Even were localities generally eager to participate in a national intelligence network, there would still need to be coordination at the subnational level. One emerging trend is the readiness of state governments to rise to this challenge and to take on operational responsibilities that they never assumed when violent crime alone lay at the heart of federal-local interaction (Farber 2004; Wickham 2004). In some states, for example, state homeland security task forces have merged with, and even supplanted, the local federal Attorney General Antiterrorism Advisory Council (U.S. Department of Justice, Office of the Inspector General 2005, p. 112). And state intelligence centers have begun to "play an intermediary role, connecting state and local law enforcement officers to the FBI's Terrorist Screening Center, CT Watch, and local Joint Terrorism Task Forces" (National Academy of Public Administration 2005, p. 38). An August 2004 survey by the National Governors Association found that "92 percent of responding states [thirty-eight of the fifty-five states and territories responded] either have completed, or are in the process of developing, a statewide capacity to collect, analyze and disseminate intelligence information, most notably in the form of a state intelligence fusion center" (2005, p. 5).

When states defended their control over LEAA or other block grant programs, their claims to be adding value, in the form of coordination and management, could fairly be challenged by the local governments that shouldered most of the responsibility for policing. In the new post-9/11 information-sharing era, however, states have a far more substan-

tial role to play. If the choice for subnational coordinator lies between regional centers run by the Department of Homeland Security and fusion centers managed by state governments, the latter are more attractive. State views will not fully represent those of their urban instrumentalities, since their needs and burdens can be quite different. The recent tension over immigration law enforcement makes that clear enough. Nonetheless, states—which in any event are politically and constitutionally indispensable—may end up providing ready-made politically accountable platforms to support the new architecture, in a way that a new federal construct could not.

III. Conclusion

Perhaps the coming years will see the threat of terrorism recede and violent crime (regardless of the rate at which it actually occurs) reclaim its place at the heart of intergovernmental relationships in the law enforcement area. Perhaps in the wake of future terrorist attacks, the War on Terror will so dominate all government business that officials at all levels will put aside all other concerns. If we continue on our present trajectory, however, the developing equilibrium will fall far short of either extreme. Spearheaded by the federal government, terrorism prevention efforts will continue and will become more institutionalized. Yet the institutions that develop will have to be largely crafted from a system of federal, state, and local agencies that over the past few decades made violent crime (and drugs) the primary focus of their interactions.

There is a deep irony here: It is not at all clear that the federal government had to commit itself to fighting violent crime in the later part of the twentieth century. That commitment was certainly perceived by the congresses and presidential administrations that pursued it as politically advantageous, and it probably was. Yet whether the federal funding programs and operational initiatives that flourished between 1964 and 2001 actually reduced crime or, more precisely, reduced crime more than a very different allocation of money and enforcement resources would have is open to question. So is whether crime reduction actually ought to be a federal goal. Since the September 11 attacks—followed by the 2004 attacks in the Madrid train station and the 2005 attacks in London—federal spending and enforcement priorities have showed signs of shifting away from violent crime

in favor of counterterrorism efforts. Yet the federal government's need to court state and local participation in these efforts and the threat that such participation poses to those governments' traditional policing responsibilities may bind the feds to violent crime concerns—or at least defer to state and local interests in this regard—to a far greater, and less optional, extent than before. Now, the feds have less of a choice.

The United States has never had a "national police force" and, one suspects, never will. But it does need a national police system. Sparked by the September 11 attacks, one is indeed emerging. And it is emerging both from the top down and the bottom up. The feds are certainly pushing from above under the rubric of counterterrorism. But the progress from below, though it enhances federal counterterrorism efforts, has primarily been in the name of ordinary crime fighting. There is no blinking the inherent tension between counterterrorism and street crime enforcement strategies. With thoughtful consideration of the demands of each priority, however, this tension need not be destructive and can in fact lead to a national intelligence and enforcement network that is true to the political values of the nation it protects.

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