

## THE FEDERAL GOVERNMENT AND THE CRIME PROBLEM

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Our chairman asked me only a few moments ago to take the place of Mr. Keenan upon this program, and I shall, therefore, of necessity speak to you both informally and briefly. I shall not attempt to impersonate Mr. Keenan for you. His is indeed a distinctive personality. He is known by the underworld as a vigorous, relentless prosecutor; and yet those who know him best realize that, in his point of view and his approach to the problem of crime prevention and criminal law administration, he is as tolerant and farseeing as any one who is working in this field. I am sorry that he could not be here today to explain to you the place of the Federal government in the war against crime.

Let me bring to you also the greetings of Attorney General Cummings. He has been tremendously pleased at the response which has been made to the program announced at his crime conference held in Washington last December, as revealed by this splendidly organized state conference and others which are being held throughout the United States. He is highly appreciative also of the splendid cooperation given by the state and local officials to the representatives of the Federal government in the major offensive which has been undertaken against the menace of crime.

It is perhaps well, by way of introduction, to call your attention to the fact that during the last few years many demands have been made for wide extension of Federal power; as, for example, the suggestion that Federal jurisdiction be extended by the creation of many new Federal crimes, or that the Federal government take over local and state police forces and incorporate them into one large Federal system. Demands of this type are made by people who, though unfamiliar with the division of power between the Federal and state governments, have been nevertheless recently impressed by the fine work which the representatives of the Federal government have done, especially since the development of the Bureau of Investigation of the Department of Justice. Let me assure you that Attorney General Cummings has no intention of asking for such extensions of power or control. He has expressed himself on several occasions positively to the contrary. There is a limited field within which extension of Federal jurisdiction is possible, and perhaps proper. Generally speak-

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ing, however, the Federal government is one of limited power delegated to it by the states, with reservations made on behalf of the states, which include practically the entire field of criminal law. An examination of the Constitution reveals that, in respect of the control of the mails, interstate commerce, the currency, internal revenue, international relations, and in a few other similar fields the Federal government has power to use the criminal law as an agency for working out its purposes. Beyond these fields it is improper for the Federal government to go; and I assure you that no effort will be made by Attorney General Cummings, or by Congress at his request, for such an extension of power.

Another limitation on the power of the Federal government to enforce criminal law is found in the limited desire of a majority of the people for Federal control or supervision. A splendid example of an unsuccessful effort to extend Federal jurisdiction in the field of criminal law occurred a few years ago in the effort to enforce the prohibition laws. The reason why such an enforcement failed is to be found in the fact that large majorities were opposed to such enforcement in particular cities and states. The fact that the Attorney General was engaged in attempting to enforce those laws did not give them any greater virtue in the estimation of such majorities. Thus, we see that as a practical matter the extension of Federal power is closely limited by the willingness of the people that control should be assumed in particular cases. It is for that reason that the enforcement of the Federal kidnaping law can be effectively carried on. Perhaps in a few other cases, of organized crime running over state lines, it may be found desirable to extend the Federal criminal law. But we will quickly reach the limits of popular approval in such cases. As Oliver Wendell Holmes has well said, "the first requirement of a sound body of law is that it shall conform to the actual demands and feelings of the community." In other words, criminal law enforcement must result from a consciousness of the need therefor upon the part of the people of each community, and a deliberately imposed process of self-discipline through the agency thereof. Criminal law enforcement in truth, therefore, in a democracy, becomes a matter of *law observance*, by which society undertakes to protect itself and its members against individual outlaws within the social group.

This brings home with tremendous emphasis the fact that criminal law enforcement is, has been, and will continue to be largely a matter of local concern and local control. The achieving of success in securing better law enforcement lies, therefore, in obtaining a more

realistic appreciation, upon the part of the people of our various communities, of the nature of the problem and a better understanding of methods by which enforcement can be achieved.

You may ask, then: if the problem is one for the localities and the states, what part can the Federal government play or what possibility is there for useful cooperation? That, frankly, is the problem which faces us at the present time. That is the question which the Attorney General asked at his crime conference in Washington last December. Many answers to the question have been suggested. In the first place, in order to secure effective cooperation, it is necessary that there be intelligent personnel in both the Federal and state law-enforcement agencies. Just as, in the case of an automobile, it is necessary that there be clean points of contact in order that the spark plugs shall function efficiently, so also we must have a keen, understanding, and trained personnel to secure that vital spark of cooperation in human contacts.

The great success of the Bureau of Investigation of the Department of Justice, so well known to the people of the United States today, results largely from the fact that a carefully selected and well-trained personnel has been provided for the carrying on of its work. Pre-examination requirements include graduation from an accredited law school or other similar preliminary training; a careful selection by way of examination follows, and thereafter thorough training in the highly specialized work of the bureau. Men of fine intelligence, well-trained, and carefully selected have produced the results so highly commended by the American public during recent months. It is only natural that men of this type should work in effective cooperation, when they come into contact with the officials of a city or state who have been similarly selected and trained with equal thoroughness.

If Mr. Keenan were here he would describe to you the way in which the Federal Department of Justice works in the large program of Federal criminal law enforcement. Most striking, perhaps, in the functioning of that department is the contrast which exists between its work and that of local and state enforcement agencies. From the moment that a criminal commits a crime until the time when he is discharged from the penitentiary or released on parole or pardon, he is under the control of an agency of the Department of Justice. Investigation, prosecution, probation, prison treatment, parole and pardon all head up in this great Federal department. Contrast with this situation the way in which criminal cases are handled by state or local authorities. The first contact with the criminal may be made

by the local constable, the county sheriff, or the city police official. Each one, working in the same territory, is independent of the other and responsible only to the people who have elected him to office. The case proceeds then into the court of the justice of the peace, or of the county, or of the district, or of the circuit; it is prosecuted by an officer representing one of several local or state divisions; each judicial and prosecuting agency is, again, independent of all others and responsible only to the electorate. This is true of every step in the handling of a case; in every state there are thousands of such independent agencies without supervision, direction, or common control. Although the effectiveness of the Federal Department of Justice in the handling of a problem is a matter of common knowledge, the habit of approaching the problem in a disorganized fashion in the various states is so well fixed that, generally speaking, resistance will be made to every proposal for better coordination or reorganization. To the extent that these local and state officials do work in harmony, they do so on a treaty basis or on a basis of friendship. Frequently they are not in harmony, and sometimes they are even working antagonistically to each other. It is only natural that the results should be unsatisfactory and ineffective. Add to these facts the part which is played by the lawyer criminals, recently condemned by Attorney General Cummings on several occasions, and the complexity and confusion of local and state law enforcement can be easily understood.

The effectiveness of criminal law enforcement under the supervision of the United States Department of Justice suggests ways in which state and local enforcement can be made more effective. When evidence is found by the agents of the Bureau of Investigation in a Federal case, it is made available to the Criminal Division, of which Mr. Keenan is the head,—both the bureau and the Criminal Division being under the common supervision of the Attorney General. There are no limitations territorially or otherwise upon the activities of the representatives of the bureau or the Criminal Division. Think of the increased effectiveness which would result in state law enforcement if the same simple, carefully controlled procedure were available in the various states. Under the Federal system, after a man is convicted, he goes into the hands of the Bureau of Prisons, of which Mr. Sanford Bates is the head. Here we find concentrated the work of probation, prison treatment, and parole, all under the common direction of the head of the Bureau of Prisons, who is again directly responsible to the Attorney General. What a contrast in simplicity and efficiency is presented here to the situation which prevails in

the states. Think of the conflicting interests which are usually involved in state administration in the disposition, treatment, rehabilitation, release, control, and supervision of men convicted of crime. Under the Federal system it is entirely possible to work out, as has been done, a coordinated system of penal treatment. The Federal government has several types of prisons, ranging from prison camps in which a large measure of freedom is allowed, through institutions in which a selective process is used for determining capacities and ability to assume responsibility, to the type of prison on Alcatraz Island, where complete isolation and deflation of ego of publicity-seeking prisoners is made possible. It is necessary also for a considerable number of Federal prisoners to be placed in local and county jails; and in this connection it is necessary for Mr. Bates to establish standards which these jails must meet in their operation in order that they may be entrusted with Federal prisoners. The cooperation which has resulted in this connection between Federal and state officials has done more to improve conditions of safety and sanitation of local jails than any other single factor in several preceding decades. In connection with the work of the Bureau of Prisons, we find again the same process of careful selection, examination, and training for specialized service, with again the same logical result of work effectively done. From time to time we hear and read criticism of parole and probation, but it is to be noticed that such criticism is directed at local and state administration of these procedures and not against probation and parole as it is administered by the Federal Bureau of Prisons. At the present time in some of the Federal courts probation is being used in 60 per cent of all of the cases which are being disposed of. Mr. Bates agrees that probation and parole are important parts of the process of punishment and penal treatment. As administered under the Federal Department of Justice, they constitute a vital part of the process of punishment and penal treatment. As administered in the states, they frequently constitute merely an avoidance of punishment and treatment and a cause of criticism and protest upon the part of an outraged citizenry. Such methods can be successful only when administered by properly trained men; they are bound to fail if their administration is attempted by improperly qualified persons. As a consequence probation and parole have often become ineffective agencies in the penal and correctional systems of the states. Only too frequently we have traveled the vicious circle of first hopefully setting up probation and parole, then appointing unqualified persons to administer them, and finally having revolts upon the part of the people because of the maladministration which occurs.

Without going into further details, it is easy to see the contrast between the Federal system and the loosely coordinated work of criminal law enforcement in the states. Of course, I am not suggesting that the Federal system is perfect. There are many points at which it can be and must be improved. These are receiving the attention of the Attorney General and of the heads of the various bureaus and divisions concerned; but already enough has been accomplished to indicate the direction in which similar steps should be taken to secure improvement in state administration.

In order to draw the picture a little more clearly, it is necessary also to point out the fact that, in local and state enforcement, present results are uncertain, sketchy, and lacking in uniformity. In one county there may be a highly trained and effective police department, criminal court, probation department, or other agency. In another county these departments may be weak and poorly organized and others highly organized. In other counties all agencies may be ineffective. Thus it is that in adjoining counties in the same state entirely different types of criminal law administration may be taking place. Of course, under such circumstances it is difficult to secure effective cooperation between counties, between states, or between the states and the Federal government. Throughout the Union the same general situation prevails. The situation might well be compared to a great machine, some of whose wheels are meshing effectively, many others clanking noisily in discord and confusion, with no engineer in charge, but with many amateur wheel-tenders, each concerned with the little orbit of his small section of machinery.

The Attorney General has expressed himself as desiring continuing improvement in Federal administration and is willing to assist in developing more effective local and state administration, in order thus to accomplish better results locally and more effective cooperation between each and all of the various agencies. He is willing to take a large responsibility for securing these results. He has appointed an advisory committee to work on the problem and to suggest ways and means for securing better training of carefully selected personnel for all phases of crime prevention and criminal law administration; for devising more effective rules of procedure and administration; for securing better-organized departments of police, prosecution, judicial determination, and all other agencies for crime control. He has emphasized also the necessity for considering the problems of youth, and for strengthening the resources of home, school, church, and community in order that crime may be prevented at its source. For this purpose he called his Conference on Crime in Washington

last December, and for this purpose he has suggested the holding of conferences in the various states throughout the Union. He has no desire to prejudice any decision which may be made by this conference or any other like it. He wishes to have your most careful consideration of the problems inherent in this great question of social adjustment. He wishes your cooperation and your suggestions. He has no desire to assume control over state and local affairs. He is willing to offer you full cooperation within the legal and practical limits of the authority given to him by the Constitution and by the Congress of the United States.

What the future may bring depends upon the extent to which intelligent cooperative efforts may be made by those representing the Federal government and those representing state and local governments, as well as upon the most conscientious and intelligent efforts on the part of each to solve its own problems and to devise better ways and means of accomplishing the generally recognized objective. We have a long way to go in securing and preserving for society a balanced control of its outlaw members, and in protecting the interests of all in the great social structure which we have inherited from those who have gone before us.