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STATE AND LOCAL GOVERNMENT CRIME CONTROL

Eliot H. Lumbard*

I. Introduction

Control of crime is a difficult, complicated task, requiring deep commitment and day-to-day involvement by government. For reasons rooted in their past, states generally have not assumed that full role. For reasons rushing at them, states must assume that role in the future since only they can blend the necessary twentieth century crime control mix: legal power, intimate local knowledge and involvement, financial resources, geographic spread, and political leadership.

Blending that proper "mix" is one of the most important matters in this country. For crime control in America is in trouble, however its performance is measured. Statistics, public opinion, political leadership, official agencies — our antennae — all tell us that. Strengthened state action, including new state agency structures and stronger leadership of local efforts, represents the most promising direction for major improvement of crime control in America. Federal and local government action can offer no similar prospects.

II. The States

Most state capitols are lovely old buildings with a smell of history and located squarely in the middle of a large tree-shaded block. Governors and state legislatures are quartered there, but to resist influence, the state's highest court usually meets elsewhere. Indeed, governors and legislatures are in the middle — caught between today's mushrooming crime problems and their primary responsibility for the system of administering criminal justice. Until the mid-sixties they did not overly concern themselves with the system other than to make state laws defining criminal conduct or delineating system procedures. Today's challenges lie on other ground. If there is to be significant change in crime control, there must be significant change in the understanding, attitudes, and involvement of governors and legislatures regarding the entire criminal justice system in their states. System strength or weakness starts with their motivation and commitment. Some have assumed that role. Their desks properly have become the command posts of crime control in their states.

The primary reason for the importance of the states' involvement in fighting crime is their legal power, which is reflected by the United States Constitution, and which is basic to our federal form of government. Each state is the central repository of all legal power within its borders. The national central government has only those powers specifically delegated to it by the states; to put it another way, those powers not granted in the Constitution are reserved to the states by the tenth amendment.¹ Local police powers or control of criminal justice in the states

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¹ U.S. Const. amend. X.
was never delegated. While generations of court decisions and a greatly expanded concept of federal action have resulted in some confusion about this concept, it remains firm nonetheless. Thus, the federal government is confined to acting only as it is specifically empowered to act by federal constitutional provision or court interpretation; states are free to act except as specifically prohibited by the federal and their own constitutions or court interpretation; and local governments are confined to acting only as they are specifically authorized by their state or court interpretations. The middle of that legal sandwich is the state.

The states in turn have traditionally delegated almost all criminal justice system responsibilities to their subordinate local governments, including villages, towns, cities, or counties. Complex networks of legal authority, varying in detail between states, have established this delegation. Largely they reflect an outmoded system that grew out of rural eighteenth century America. Two centuries ago, locally operated crime control made good sense when crimes were elementary, involved only family or well-known neighbors harming each other, and travel was both a great burden and an unknown luxury. People spent their lives within a locus of a few miles.

More recently, however, a strong trend coinciding with urbanization has seen the states gradually take back many of the powers they earlier had delegated to local governments. It has been a troublesome course all the way. Starting first with corrections, where the sheer impracticality of small local governments trying to incarcerate a handful of long-term prisoners was apparent, a steady and increasing state responsibility has been assumed for criminal justice system functions. That part of the system concerned with convicted offenders is primarily under state control today. Now, with mounting tempo, the trend toward state centralization of crime control functions is embracing district attorneys, the criminal courts and, increasingly, local police (commencing with training and personnel standards).

Although, to be sure, wide variances exist between states in their criminal justice systems, the trend of strengthened state action is everywhere obvious. Moreover, we have only started to understand immense potential benefits to be gained from interstate compacts or other forms of interstate and regional agreement or cooperation. Interstate compacts now exist for supervision of parolees and probationers (including out-of-state confinement arrangements) and juvenile problems. There are formal agreements for clearing detainers lodged against prisoners and for fresh pursuit across government lines. Uniform state acts exist for extradition and for obtaining out-of-state witnesses.²

But another major step is necessarily ahead. The reason is simple: in today's America, local governments cannot do the job. Awareness of this regrettable fact is beginning to sink down to the marrow. Eighty-three percent of reported

² See Council of State Governments, Handbook on Interstate Crime Control (1966). One example of interstate cooperation is the New England State Police Compact, initiated on December 14, 1967, when the attorneys general of five New England states signed an agreement of cooperation to combat organized crime. More than words appear to be involved for a central staff is established, and they will jointly collect and share information.
crime is in the 212 Standard Metropolitan Statistical Areas, but their crime control abilities under present circumstances are shrinking.

III. Local Governments

Why crime control is slipping away from the effective grasp of urban and suburban local governments is not complicated. First, the sheer complexity of current tasks overwhelms their abilities, along with a quickening pace of change through court decisions and the momentum of general urban drift. The complexity is not lessened when well-meaning but ill-informed critics shower the overburdened few who administer the systems with a cascade of suggestions. Rural areas are under far less pressure in this regard.

Second, since local governments are dependent primarily on a local realty tax, they do not have a sufficiently broad tax base, as do the state and federal governments, to support necessary efforts at crime control. Police, incidentally, apparently now receive a smaller proportion of local budgets than sixty years ago. There is little hope for change in this area, since few officials will risk political suicide by expanding local tax powers.

Third, local governments are chronically plagued with questions of jurisdiction over local policing with consequent fragmentation of action and accountability. Tiny police agencies of two, ten, twenty men attempt rather poorly to communicate and cooperate on an operational level. They are usually so weak that modern police service is beyond their capabilities. Information is not shared routinely; services often overlap. While their web is complicated, it is also full of holes.

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5 The machinery of law enforcement in this country is fragmented, complicated and frequently overlapping. America is essentially a nation of small police forces, each operating independently within the limits of its jurisdiction. The boundaries that define and limit police operations do not hinder the movement of criminals, of course. They can and do take advantage of ancient political and geographic boundaries, which often give them sanctuary from effective police activity. Crime Report 119.
6 The President's Commission demonstrates just how widespread this particular problem is: in 1960, almost 117 million people, about 70 percent of our population, resided in America's 18,000 cities. Of these, almost 113 million persons, 63 percent of our population, resided in the 212 areas designated by the Bureau of the Census as Standard Metropolitan Statistical Areas. According to FBI reports, approximately 83 percent of Part I crimes committed in the United States in 1965 were committed in these SMSA's. These 212 sprawling, metropolitan areas comprise 313 counties and 4,144 cities, each of which has its own police force. The majority of these departments are small and have only limited facilities services. Thus, the responsibility for dealing with most of the serious crime in this country is diffused among the multitude of independent agencies that have little contact with neighboring forces. Id.
7 An enormous structure proves Parkinson's Law once again. There are at least five strata of police services in America: (1) police agencies of the federal government; (2) state police forces and criminal investigation agencies; (3) sheriffs and their deputies in over 3,000 counties; plus a few county police forces which either duplicate the sheriff's jurisdiction or displace it; (4) police departments of a thousand cities and over 20,000 townships or New England towns; (5) the police of 15,000 villages, boroughs and incorporated towns. . . . This means that at the present time there are over 40,000 separate law enforcement agencies in the United States with a total personnel of about 420,000. Peterson, Local and State Law Enforcement Today, in Current History, July, 1967, at 8.
Fourth, "people pressures" are increasing. Our population is exploding and forcing new kinds of volume problems on the system. Regrettably new jails follow new schools as a matter of statistical inevitability. Moreover, our population has gained extraordinary mobility. As it moves, so do criminal offenders. While "breakfast in New York and dinner in San Francisco" is an attractive cliché, interstate and large-scale, "white-collar" crimes are not fiction. Mobility on wheels is commonplace; when automobiles whip through many police jurisdictions on limited-access highways at the rate of one every two or three minutes, enforcement efforts cannot react adequately. Only in rural areas is relative stability of population characteristic.

Fifth, personnel in crime control agencies have not been strengthened in number or quality as the agencies' challenges have grown increasingly complex. Current recruiting is very difficult. All too often top brass and middle management — the most important roles — are unable to provide a high order of consistent leadership. They reflect a generation of only haphazard attention to personnel and the fact that tightening civil service strictures, in effect, confine future leadership almost exclusively to those drawn in as recruits. Local political realities straightjacket local governments so as to almost foreclose change.

Thus, our primarily local system of administering criminal justice is coming apart in heavy population areas. The system theory is still idealistic — even romantic — and grand. The old system practice is often so disastrous as to raise a real question of whether it can survive the pressures of enormous volume and loss of individual identity amidst mass system bureaucracy. And what local governments need by way of crime control machinery and finances, they must obtain through state action. Adaptation of our original rural system to present urban challenges, therefore, can only come from governors and legislatures.

IV. The Need for Change and the Resistance Thereto

These forces necessitating change in the crime control system are inexorable and swelling. Even though there is deep concern about the crime problem, these forces are still not now part of the American consciousness. In frustration the public is inclined to seek massive federal involvement or confine their thoughts about remedies to local government agencies. Most do not realize the constitutional limitations to federal action in this area or the threat to their liberty that would be posed by a massive, unified federal crime control apparatus.

By comparison, public education issues are widely understood. This understanding is the foundation of significant and wholehearted public acceptance of strong state direction to local education. Almost universally, the American public education formula consists of (1) state standard-setting, (2) state inspection to insure compliance with those standards, (3) some form of substantial financial aid from the state, while leaving (4) control and (5) administration in local hands sensitive to local conditions. That should be the formula for modern crime control. It evolved in the system of education for much the same reasons that crime control systems need revamping. Several generations ago, the public struggled to the decision that purely local educational efforts simply could not
consistently develop the quality education it deeply desired. Crime control has arrived at the same troubled threshold some eighty years later. It now needs structural overhaul.

Change in the crime control system, however, is resisted for several reasons. Largely, those working in the system resist change under the misguided assumption that they need to protect themselves — and that means protecting the status quo. They say the system has served well in the past, and it has if one looks way back. They say change for change's sake is useless, and of course they are right. They say change is disruptive and raises problems in and of itself, and here too they are right in the abstract. Those working in the criminal justice system rationalize in all manner of means their insecurity, vested interest, or fear of change, although it is obvious that any increased effort will require their services. Their opposition inordinately influences legislators and other government officials to resist change.

These fears of the government employees directly involved lay a dead hand on reform, especially since criminal justice agencies have no tradition of welcoming new ideas and risking new actions. These agencies are security minded by nature and made more conservative by the essence of their daily activities to enforce law. Few believe way down that there can be any big new changes in the system; they accept what is. Yet, as illustrated by a recent example, reform is not impossible. Several recent, and entirely different, developments in New York State were first greeted with astonishment by a sizeable segment of the system. But now they are embraced in the Narcotics Addiction Control Council\(^8\) (which includes a program for up to three-year mandatory civil commitment, among others\(^9\)), and in the State Identification and Intelligence System\(^10\) (a large computer-based information sharing system for all criminal justice agencies, as well as a sizeable research and innovative effort). Studies for these new state agencies showed that today's crime control problems do not fit yesterday's patterns. Only surgery, not band-aids, will do.

Many citizens also object to any state ("outsider") involvement in local government as an interference with "home rule," although their wives could not care less about philosophy if change may result in better protection from crime. Nevertheless, persons in public life do not underestimate the political sock of home rule appeals.

Deep down, the general public may have another and more fundamental uneasiness about changing any aspect of their crime control system. There is a general need, especially in rapidly moving and troubled times, to look on crime control as an essential element of stability in our society. Indeed some feel the whole system apparatus of police, courts and law is government's main stabilizing influence amidst an increasingly secular and turbulent population. Thus, that apparatus must itself be stable; and because it must be stable it should be un-

\(^8\) See, e.g., N.Y. Exec. Law § 483 (b)-(d) (McKinney Supp. 1967).
\(^9\) Crime Report 291.
\(^10\) This commission was created pursuant to N.Y. Mental Hygiene Law § 203 (McKinney Supp. 1967).
\(^11\) Id. § 206(5)(b).
\(^12\) This system was created pursuant to N.Y. Exec. Law § 602 (McKinney Supp. 1967).
changing. Therefore, crime control innovation meets deep emotional resistance. The premise, however, is wrong: while maintenance of stability in society certainly is a prime objective of law and any crime control system, neither the law, the system, nor its agencies have ever been static in and of themselves. What human endeavors are static? Or could be? Recent momentous legal changes should not obscure understanding that system elements also are in flux. This is worthy of exploration.

Even grand juries provide an example of variation and controversy. In some states, including New York, they are thought to be the essence of stability. But only in some fifty percent of American states are grand juries now used to charge defendants with crime. The remainder of the world, including Mother England, functions entirely without them. Ironically, in some localities where grand juries are supported for their superior investigative possibilities, organized crime has become most deeply entrenched. In some cities, corrupt use of grand juries in tandem with corrupt prosecutors provides the most enslaving governmental instrument know in this country.

No better illustration of variety in crime control agencies exists than the unceasing adjustment to different conditions of what we now call "the police function." A brief recollection of the history of criminal law enforcement in the United States also refutes the premise that stability precludes change. Vigilantes and posses have almost disappeared; the importance of sheriffs has decreased substantially in the cities. In short, there is no set way in which criminal justice has been administered.

Consider as well enormous shifts in the very objectives of law as a social control tool. Criminal law before the Revolution was to enforce the morals and religion of the people. Society became more secular, and legal emphasis shifted to protecting its "peace and safety." Government's role thus veered from neutral arbiter of contests between private citizens to active advocate of public order. But the public is almost totally unaware of the rate and nature of change engulfing efforts to maintain law and order. They believe — and they want to believe — that crime control is a stable foundation of government, which it is, and solidly unchanging, which it is not.

V. The States

At all times the only central control point for American police development has been the state capitol. Permission for local police to develop, change, and withdraw was granted, rejected, or taken back in that building. All other criminal justice system elements were similarly controlled. The federal government, due to constitutional limitations, has no power to affect these events in any consequential way.

14 Id. at 462.
15 Id. at 468.
16 Id. at 470-81.
By and large, state governments minimized their crime control responsibilities until the past five years or so. Somewhat earlier, in 1959, the key turn was made without realizing its future significance. Under Governor Nelson Rockefeller’s urging, New York became the first state to order local police training standards. That law was passed to end the practice of giving new policemen guns and arrest powers, without an hour’s instruction about how to use those drastic weapons of force. Actually the law was a breakthrough, for thereafter states throughout the nation began establishing standards for local police and other criminal justice agencies.

Nowhere has the turn been so dramatic as in Florida. While New York State has a tradition of strong government and action to match its deep concern with criminal justice, Florida is an unfortunate example of the opposite tradition. It had the same constitutional provision as New York, mandating that “the Governor shall take care that the laws be faithfully executed,” but Florida’s conception of that duty could hardly have been more different. Florida has been in the grip of two forces: total unbroken domination by one party for 100 years; and such fear of power in a strong Florida state government which might do something that almost no power has been given the state government to do much of anything. For no function was this more true than criminal justice. Basic, reliable statistical information simply is not available; criminal justice system costs, workload, manpower, or effectiveness, for example, cannot be analyzed.

Executive leadership is split among seven officials, elected state-wide, constituting a “Cabinet” whose meetings appear on live television every week. These officials compete politically. Florida has no civil service of any consequence and no informative or program budget process. There is a trained and equipped highway patrol, but until recently it was confined to traffic offenses on Florida’s highways. Outside investigators could enter a county only upon specific invitation from the local sheriff. The governor had no investigative personnel available to him for general criminal investigatory purposes, not even to inquire into corruption charges so he could take care that the laws be faithfully executed. Florida also had enormous fragmentation, including 67 separate county sheriffs and 438 separate police departments, ranging from two to two thousand men.

Between 1950 and 1960 Florida was catapulted into the twentieth century, ready or not. Many retired Northerners moved in. Now Florida has the nation’s fastest growing population, ranking eighth. Industry moved in also. Cape Kennedy brought the space age. Tourism numbers some 19,000,000 annually. Urban areas grew. And crime followed suit, with Florida ranking fourth in the nation during 1966 for its rate of serious crimes per 100,000 population (behind only California, New York, and Nevada).

In 1966 Claude R. Kirk Jr., a Republican, was elected Governor. Shock resulted. His anti-crime campaign had brought him an avalanche of citizen requests for action about inefficiency, suspected local officials, and organized crime. But how were these piles of citizen complaints to be investigated? Florida’s government provided no answer. So with funds contributed by his

18 Florida Const. art. IV, § 6.
supporters to a trust fund, Governor Kirk hired the Wackenhut Corporation, a private Miami guard and investigative service, to investigate the complaints. Troubled voices instantly were raised at mixing public police functions and private contractors.19

When the legislature convened in 1967, Kirk asked for a strong state organization of broad scope — a Florida Department of Criminal Justice — that would enable him to take necessary action within government channels and obviate the need for private expedients. Democrats controlled the legislature and they simply balked at any strong state role for criminal justice administration. They did not want Florida governors with strong executive powers or, particularly, investigative powers regarding local government improprieties or criminal justice officials themselves; nor did the sheriffs, who led opposition to any change they could not control.

After maneuver and struggle, the legislature passed a bill with far less impact than the one Kirk requested. Several days after the legislative session ended Kirk vetoed the bill, precipitating a crisis over the issue, and called a special session with a charge that included action about crime control. Public pressure increased. It was clear some action had to be taken. What emerged was a legislative chameleon establishing a Bureau of Law Enforcement. Nevertheless, the bill definitely was much better than nothing. The new state law enforcement agency now has rudimentary legal tools, jurisdiction to rove the state, and is charged with strengthening and coordinating crime control throughout Florida. Other laws established many related programs, including a police standards council and turning the highway patrol into a state police. A course has been set toward stronger state action. Muscles, money, and know-how are gathering.

What happened in Florida during 1967 is significant of several national trends: mushrooming political pressures to strengthen crime control generated by enormous public concern about crime; the inability — even groping — of most local governments to organize meaningful action; and serious strengthening of state-level concern, authority and efforts. The crime control focus finally has turned to the state capitol.

VI. The Federal Government

But why, many ask, is not creation of an all-powerful federal monolith a more efficient and simpler course to follow? A logical question with a logical answer: the federal government, for various reasons, cannot do what needs to be done.

First, and most directly, federal legal power is so limited as to foreclose any serious proposals for federal supervision or control of state and local criminal justice systems.

Second, there is absolutely no reason to believe the very large bureaucracy

necessary for such purposes would be efficient — or simple. Every lesson from Washington is to the contrary.

Third, almost no one wants to experience the Orwellian “1984” problems sure to arise with the monolith. Other than the military, no units of government represent a greater potential threat to individual liberty than law enforcement agencies. Step one in avoiding such troubles is to keep the nation’s powers diffused according to present constitutional divisions.\textsuperscript{20}

Fourth, federal agencies are minute by comparison with the overall task. Already burdened with their present duties, they could not begin to assume broad supervision without tremendous expansion.\textsuperscript{21}

A fifth reason is that federal agencies offer no glittering potential for aid outside their present limited assignments. Some states do not now have adequate planning expertise, true, yet neither does the federal government except in a few narrow specialty areas within its jurisdiction (especially organized and white-collar crime). Able as those people are, that is the extent of it. No one in Washington is known for competence, for example, to advise San Francisco on prostitution policy problems arising from tides of servicemen flowing out to war in Vietnam and returning with a big binge in mind. Washington, D.C., as a federal jurisdiction, has enormous policing, court, and correctional problems and currently is no one’s guide to crime control success. To administer the small although valuable Federal Law Enforcement Assistance Act grant program, it was necessary for the Department of Justice to set up a new office with new procedures and recruit outsiders to process applications. There are no superior crime control planners in Washington that can best order the affairs of state and local governments. Building from scratch can be done equally well by state and local officials, perhaps better.

Sixth, crime control is most creative today, far and away, on state and the larger local government levels. No wellspring of federal innovation is observable. Conservatism, caution, fear of change, fear to risk failures in research and experimentation — endemic to this field — are more characteristic of federal agencies.

Seventh, the federal government has yet to organize itself adequately. The twenty-six different federal investigative agencies have no communal home,

\textsuperscript{20} The Federal Government must never assume the role of the Nation’s policeman. True the Federal Government has certain direct law enforcement responsibilities. But these are carefully limited to such matters as treason, espionage, counterfeiting, tax evasion and certain interstate crimes.

\textsuperscript{21} Crime is essentially a local matter. Police operations—if they are to be effective and responsible—must likewise remain basically local. This is the fundamental premise of our constitutional structure of our heritage of liberty.\textsuperscript{21} The Challenge of Crime to Our Society, H.R. Doc. No. 250, 90th Cong., 2d Sess. 4 (1968) (remarks of President Johnson).

\textsuperscript{21} For example, nationally, crime control agencies cost taxpayers some $7 billion by my estimate; yet all federal efforts now only total something over $400 million, less than New York’s police department. Federal investigative agents apparently do not number over 20,000 (some 6,500 FBI special agents include many assigned to investigate duties other than law enforcement: internal security, anti-trust, and civil cases such as under the Federal Tort Claims Act). In 1966 there were only 29,729 federal criminal cases filed in all United States District Courts, while New York County District Attorney Frank Hogan’s office alone files some 60,000 cases yearly. Of the 425,000 Americans in custody every day, only some 19,500 are under supervision of the Federal Bureau of Prisons. Crime Report 172.
are not known for brotherly love or any kind of sharing, and do not even assemble at the dinner table to carve the budget (or indeed assemble in any room at any time). Their example provides no leadership for necessary local police consolidation or pooling. But there is hope for improvement in the organization of these agencies. In his 1968 Special Message on Crime Control, President Johnson announced that he had issued an executive order authorizing the Attorney General to “coordinate” federal efforts at crime control. 22 This is only a half-step, however, in the right direction of administrative unity, since it will apply only to narcotics enforcement. In other areas serious agency fragmentation will apparently continue. These problems of coordination and cooperation among the federal agencies are not confined to crime control. Frustration with federal funding approaches is widespread, arising from the status quo mentality (peculiarly applicable to the federal law enforcement establishment), administrative structure, political mires, the impossibility today of obtaining congressional attention to anything other than major national emergencies, and problems in moving the bureaucracy.

Vintage New Deal liberals have added their support to the deep-seated forces around the nation that are now working to strengthen state governments. Their reasons are many; some are outlined above, others are variations. 23

Practical manageability of federal affairs is central to everyone’s concern. Size alone becomes a special bureaucratic problem. A widely supported view holds that states are as close to the people as it is feasible to have major government entities in a population of 200 million and still maintain necessary political strength to negotiate meaningfully with the federal government. Recent experience with actual field results and administrative snarls in all manner of programs, including housing, welfare, poverty, and education, has convinced many that Washington cannot successfully administer or supervise what are the traditional local government services; immediate decisions (distinct from broadest policy making) are too far removed from people and problems, neither of whom can seem to participate in or shape federal decisions often enough. And several thousand local governments cannot inform or be informed by, or successfully grapple with, the mammoth federal disbursing agencies. The average county or city is lost in the federal shuffle and often loses out to lobbying efforts of large cities, whereas states are manageable intermediaries with political power understood and felt in Washington.

Given this context, however, what can the federal government do to improve everyday safety on American streets? Money is the answer. 24 Broad-based

23 An outstanding study was recently published by North Carolina’s former governor, Terry Sanford. SANFORD, STORM OVER THE STATES (1967).
24 They [the American people] recognize that the frontline headquarters against crime is in the home, in the church, in the City Hall, and county courthouse and State house—not in the far-removed National Capital of Washington.

But the people also recognize that the national government can and the national government should help the cities and the States in their war on crime to the full extent of its resources and its constitutional authority. And this we shall do. PRESIDENT JOHNSON, THE STATE OF THE UNION, H.R. Doc. No. 211, 90th Cong., 2d Sess. 7 (1968).
federal tax income can provide desperately needed financial assistance to state and local performance of their tasks.

VII. Federal Funding of State and Local Crime Control

Essential to future understanding of the federal funding approach will be the current history of President Johnson's proposed Safe Streets and Crime Control Act of 1967 and Juvenile Delinquency Prevention Act of 1967. Great issues were raised by these proposals, although not widely recognized as such.

The President's plan was to vastly expand the federal government's role in areas of traditional local police power, tenth amendment or not. New federal funding programs ($50,000,000 and $25,000,000, respectively) for both state and local crime control were to be the mechanical devices. Recommendations by the President's Commission on Law Enforcement and Administration of Justice were to be used as the rationale. The President wanted to give the Attorney General tremendous power to control the money flow and thereby demand compliance by state and local officials with his edicts. It was no secret, for example, that federal funds were to be used as incentives for consolidating police departments.

Significantly, the President's Commission had *not* said how the grants should be made. Nor had it analyzed the political forces and governmental structure absolutely necessary for reforming, supporting, and directing crime control efforts, as the Commission itself stated. These foundations are far more important to improving public protection than sprouting dozens of programs without a seed bed or fertilizer for crime control results only from government action. This omission ranks as the Commission’s greatest failure, along with conveying almost no sense of priorities amidst its mass of over 200 recommendations.

Moreover, no language of the Commission supported the novel federal control aspects in the President's bill. No similar proposal by a major public body or figure comes to mind. Here, an historic change in local police powers and federalism was proposed by surprise and without political preparation or proof that such a turn would either be effective to fight crime in local communities or be so administered as to allay fears of bureaucracy or intrusion. The federal government was coming with more than money.

Specifically, the President's Commission carefully confined its recommendations: "... the Federal Government can make a dramatic new contribution..."

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29 Id. at 279.
30 Indeed, the Crime Report states:

In proposing a major Federal program against crime, the Commission is mindful of the special importance of avoiding any invasion of State and local responsibility for law enforcement and criminal justice, and its recommendation is based on its judgment that Federal support and collaboration of the sort outlined below are consistent with scrupulous respect for—and indeed strengthening of—that responsibility. Id. at 285.
by greatly expanding its support of the agencies of justice in the States and in
the cities."32 In so concluding, the Commission said it "... is mindful of the
special importance of avoiding any invasion of State and local responsi-
bility ... ."32 By establishing this impetus for federal crime control funding, the
Commission realized a great success. It ranks equally with the Commission's
acceptance of the criminal justice system concept, its description of the organized
crime iceberg (which made it politically possible to break a generation-old im-
passe on electronic eavesdropping), and its ordering of a basic mass of valuable
material for common reference.33

Rebellion broke out in state capitols immediately after the President's con-
trary recommendation in the form of the Safe Streets bill was filed. Under state
and local impetus, the rebellion spread to Congress. For reasons never disclosed,
the states had not been consulted by the Administration during bill drafting of
a funding program affecting them. Since there is no tradition of federal funding
in this area, lack of drafting participation in the first effort of consequence was
keenly felt. Anger was stirred among both political parties by the Administra-
tion's attitude regarding the bill's preparation, presentation, and subsequent
"take-it-or-leave-it" rejection of all inquiries.

Moreover, the bill, as a funding device, had two other fatal defects to
states: (1) While direct federal-local relationships would be encouraged accord-
ing to the recent pattern of federal funding programs, they would create chaos
in the special instance of crime control due to strong state legal responsibility.
Responsibility, and the money to satisfy it, cannot be separated. (2) Both state
and local long-term commitments would be encouraged under the bill for plan-
ning, new programs and agency expansion.

In 1967, however, the states were living the financial crisis of the President's
new Medicaid program. Following his inducement formula of matching con-
tributions, New York, for example, extended itself so as to obtain full benefits.
Then rumbles grew that the President would retreat from his promises. That
disaster indeed occurred by 1968, leaving states overly committed to local
agencies. States were extremely wary of building another such edifice, especially
under the name of crime control "planning." In the House Judiciary Committee
and on the House floor, a coalition of Republicans and Southern Democrats were
in command when the Safe Streets bill was debated during the 90th Congress,
first session.34 Their amendments radically changed the President's bill. The
resulting Law Enforcement Assistance and Criminal Justice Assistance Act in-
stead would fund states through direct block grants for crime control purposes,
with funds roughly apportioned to population, and states allocating local grants.55
To a chorus of “amens” the Attorney General was shunted to the side with a relatively mechanical role — and definitely without the control features.

Emphasis changed from federal-local to federal-state-local with minimum federal involvement. Most important, all program funds within each state would be channeled through the governor, who would be responsible for developing a state-wide plan for all state and local government criminal justice system considerations. Money would force a useful self-examination and cohesion at state levels. The general system approach for criminal justice agencies (a major thrust of the President’s Commission) would be fostered to a far greater extent than federal-local relationships would allow. Local agency consolidations, if any, would not be ordered by federal officials.66

President Johnson’s Safe Streets bill37 had an even more torturous course in the Senate Judiciary Committee. Assigned to a subcommittee headed by Senator McClellan, the President’s proposed bill immediately became the vehicle for struggles over many deep-seated emotional criminal justice reforms or retreats, depending on the participant. Among those subjects discussed were electronic surveillance, confessions, speed of arraignment, concern with ghetto riots, and federal court jurisdiction over state criminal convictions.38 A so-called “Christmas tree” bill emerged from committee in December, 1967, with goodies for all committee members.39 In the Senate, then, the bill really became a safety valve for pressures on Congress “to do something” about crime. A similar fate apparently awaits the President’s companion proposal, the Juvenile Delinquency Control Act of 1967, which has passed the House with amendments providing direct block grants for states.40

Now that the second session of the 90th Congress has opened, it seems certain that some kind of federal-state block grant funding bill will pass, and whatever bill passes will be signed by the President. For he called again in his State of the Union41 and 1968 Special Crime Message42 for passage of his Safe Streets (with funding up to $100 million) and Juvenile Delinquency (with funding up to $25 million) bills. Congressional critics were certain they would pass their own versions, with or without Christmas tree ornaments. As amended, this funding program bears promise of truly historic events.

35 This version is contained in 113 CONG. REC. H10105-06 (daily ed. Aug. 8, 1967).
36 Oregon’s Governor Thomas McCall is a former President of the Oregon Prison Association and especially sensitive and knowledgeable about the state crime control “mix.” Last June he expressed the views of the states when he told the National Council on Crime and Delinquency, at its annual meeting in Anaheim, California:

As Governor of Oregon, I heartily endorse both of these pieces of legislation [Safe Streets and Juvenile Control]. But this legislation must give strong and undeniable emphasis to the role of state government in the disbursement and allocation of federal funds. We have sufficient experience with federal programs at this point to realize that the state must have a much more direct role in undertaking the comprehensive planning and implementation for either [of the drafts then pending]. 13 CRIME AND DELINQUENCY 29 (1967).

42 H.R. Doc. No. 250, 90th Cong., 2d Sess. 5-6 (1968).
Demands for adequate crime control plans, and a flow of federal funds that must be allocated, will accelerate growing criminal justice awareness and competence in state capitals. Systems thinking will be accepted. As of today, however, more people, planning agencies, technicians, and know-how must be developed. Perhaps a dozen states have strong capabilities today; twenty-five have some form of planning agency. Force fed through their own government planning efforts, and other federal programs such as the Department of Housing and Urban Development’s state planning impetus, capabilities for state-level planning are mushrooming. Overall they now surpass average large-city competence. Governors and their high priests in budget offices necessarily will become personally involved in new ways to strengthen crime control. They will ask the same kind of questions they now ask about education, health, transportation, and other functions; since answers will be few at first, they will demand the ability to generate answers for policy making. Thus the nexus will grow. Action will follow — if there is meaningful funding.

But meaningful funding is the present problem. Spread nationwide, $125 million budgeted to fund the crime control program is wholly insignificant to force these events or to make the slightest difference in a national strategy for a war on crime. National priorities are badly garbled when the President’s proposed budget for fiscal 1969, on the other hand, would allot $4.4 billion for space exploration, $5.6 billion for aid to farmers, $2.5 billion for atomic energy development, and $574 million for continuing research and development of a model supersonic transport plane (the “SST” project). Moreover, the President’s “program budget” lists ten individual analyses by function, and another for interest on government debt; symbolically, though, there is no major program category for crime, which is tucked away in a last catchall titled “General Government.” Thus, with proposed funding at $125 million the Administration’s crime control program is but a gesture — a cruel illusion of protection and safety. There is no serious relationship between that sum, what is actually needed, and the rhetoric from Washington about solemn commitments to do something meaningful about crime.

VIII. Some Notes on Federal Funding

Radical change of the Safe Streets bill was a significant event in federal-state

44 Id. at 102.
45 Id. at 90.
46 Id. at 119.
47 Id. at 80-167.
48 Id. at 168.
49 Id. at 169.

50 For example, the Safe Streets bill has been called “too little, too late, and too bad.”

51 The Report of the President’s Commission addresses this point:
Every part of the system is undernourished. There is too little manpower and what there is is not well enough trained or well enough paid. Facilities and equipment are inadequate. Research programs that could lead to greater knowledge about crime and justice, and therefore to more effective operations, are almost nonexistent. To lament the increase in crime and at the same time to starve the agencies of law enforcement and justice is to whistle in the wind. Crime Report 15.
relationships. But federal funding of any program must be employed wisely and carefully. In the 1960's a pattern had developed of direct federal grants to local governments. Changing attitudes toward state governments have led to changing attitudes toward inter-governmental financing techniques. There is much at stake: a fantastic variety of federal grant-in-aid programs has almost doubled from 1964 to today. A serious threat to federalism is presented by funds in this order of magnitude. Their pattern and control are of the greatest moment. For decision-making over funds means power over both money and grant regulations, and thus control.

Several months ago the prestigious Advisory Commission on Intergovernmental Relations reported its views on "Fiscal Balance in the American Federal System." Key recommendations were for block grants (to give recipients flexibility in meeting needs) and per capita revenue sharing ("general support") payments. Many, many federal programs directly fund local governments, under severe federal "guidelines" (i.e., regulations and thus controls), priorities, and "a comprehensive plan" covering multi-jurisdictional areas or problems. States may not even know what is happening. This is the routine Great Society funding approach. The new Department of Housing and Urban Development is the archetype of this new governmental technique, burgeoning out of the Bureau of the Budget.

Once started for a new funding program, this road is a one way street for states and local governments and leads to increasing subservience. Congress is hardly a routine action mechanism for their appeals. They have no choice but to go along, and few have the clout to do much about numberless petty decisions, paper work, duplications, and confusion. Pragmatically, they choose to save their clout for the big ones, and thereby default almost absolute power. They cannot allocate the money as they judge their needs; rather "the plan" controls. The end result is great and increasing federal control over local affairs, through funding, where the Constitution has never reached previously. Administrative costs mount and many programs bring precious little result to the life and neighborhoods of Americans.

So more than crime control funding may have rounded the corner with the two crucial Safe Streets amendments: block grants and a change in emphasis from federal-local to federal-state-local funding. This was the first entirely new major federal funding program to be yanked totally out of the Administration's

52 Interestingly, a section of the main report released on Jan. 30, 1968, entitled "State Government—A New Frontier," concludes:

53 "And, whenever you have Federal money, you have Federal control." 113 CONG. REC. 9792 (daily ed. Aug. 2, 1967) (remarks of Representative Hebert).

54 Messrs. Fiven and Cloward, both on the faculty of the Columbia School of Social Work, raise the interesting thesis that in the name of helping inner cities, these funding with guideline techniques actually will have a reverse effect:

[T]he end result of this process is likely to be not "creative federalism" but the demise of local government and the submergence of the minority which now stands to gain most from localism—the Negro. THE NEW REPUBLIC, Oct. 7, 1967, at 19.
mushrooming pattern. Indeed, states should keep the pressure on to consolidate many other specialized federal grant-in-aid programs into simplified block grants to states. Their first task, however, is to make the new pattern serve crime control if the two funding bills become law.

IX. State and Local Priority Directions

The two basic critiques on crime control approaches in America point out the lack of coordination and integration within the crime control field.\textsuperscript{55} While some diffusion is an inescapable price of federalism, there also is immense diffusion within each level of government. The latter is the point for concentration.

Divided command and operations are major weaknesses since the system elements are like a chain. A vast array of individual agencies operate the basic services: police forces, prosecutors' offices, criminal courts, probation offices, local jails and state institutions, parole boards, and additional numbers of auxiliary service agencies (coroners or medical examiners, medical and psychiatric services, and youth programs). Whatever their leadership or financing, all function in sequence; until the first has acted the others do not move. All are concerned with one defendant who passes from one service to another along with his files, for all need to know the same basic information about him (who he is, what he did, his background). All are concerned with his one offense against society. And that system is no stronger than its weakest link. What good is magnificent police work if courts do not function, or vice versa? A disastrous correctional experience can wash out excellence in all prior action.

America's systems on all governmental levels, however, are characterized by a lack of direction, leadership or regulating mechanism. In countless ways, this defect has enormous consequences upon each of the systems. And as systems grow larger and more complex in every sense, this defect becomes more and more important. Attention to structure is so important it should precede what are, by comparison, relatively esoteric program suggestions. Our system organization, developed for other reasons in another day, is wholly diffused.\textsuperscript{56} In no other major governmental function are we so fragmented, uninformed and wandering. Crime control is too important under present challenges in a free society to be left in this condition and unattended at its highest levels. No planning or coordination, however valuable or well meaning, can substitute for focusing responsibility and jurisdiction so as to end the "everybody's business" approach. Of greatest priority, therefore, is development of state entities to serve this purpose. There can be no perfect model. Alaska's needs are not those of California; Vermont's not those of New York. As adapted, however, a state department of criminal justice (or crime control) is the first step. It would fulfill these functions and also serve as the agent for mandatory state-wide planning and federal

\textsuperscript{55} \textit{American Bar Association Report}, Organized Crime and Law Enforcement (1952) and A. C. Millsbaugh, Crime Control by the National Government (1937).

\textsuperscript{56} Crime Report 279.
funding.\textsuperscript{57} Specific organization should follow the state-local public education formula so well accepted by the public.\textsuperscript{58} Thus, the operational scope of local government would remain unchanged to any great degree.

Involvement of such a proposed state agency necessarily would differ with each functional system service: independent criminal courts obviously are one thing (they could hardly object to participating in system information plans), local police another; correction is something else again. Varying forms could serve the important interests, so long as the department is informed of what is going on. Personnel and operating standards would characterize police and prosecution relationships; all services, after guilt is determined, should be mainly rehabilitative, and there are many, many reasons why they should be under one state agency.

Not only higher standards and more uniform quality of service could result from this new entity, but additional objectives could be realized for the whole crime control field. Instead of confining themselves to processing violators after crime has occurred, agencies could begin to work at the larger preventive issues — the most significant of all issues and which are now unattended happenstance. Broad generalities about eliminating slums, ending delinquency, improving education, and providing jobs are not sufficiently specific to be useful; after they are stated, who does what? We need more incisive analyses; they can never come from agencies concerned only with slivers of the whole system. One could read almost any police department annual report at random, for example, and find no specific causation recommendations to its community. And that is what the community most wants to know. How do particular crime problems, for example, relate to the local school, housing project, welfare case load and "problem-families"? Developing practical guidance will be as arduous and intellectually testing as any task in society. New people and new procedures will be needed for that effort. Yet society must try. There is no other way to go. Society cannot afford to give up in fatalism merely because "No single formula, no single theory, no single generalization can explain the vast range of behavior called crime."\textsuperscript{59}

Besides establishing a state crime control department, other steps to modernize the fight against crime should include: (1) Resources, of all kinds (more manpower, facilities, etc.). (2) An end to proliferation of new police agencies. (Indeed, local communities may see their self-interest demands consolidated on, say, a county-wide basis.) (3) A pooling of data about crimes and offenders, thereby broadening the base of everyone’s single raw material. (Regional agencies could serve several states.) (4) Full-time, qualified prosecutors, locally elected as an important check on the system, but also subject to state standards. (Ballots are no remedy in counties where no trials are held and all cases result in pleas to reduced charges.) (5) Large local governments developing an official agency, with status and free inquiry, for local planning and to constantly press for both prevention and quality system action. (6) In terms of causation, jobs and a

\textsuperscript{57} See the functional flow chart of the United States’ crime system graphically set out at CRIME REPORT 8-9.
\textsuperscript{58} Id. at 11.
\textsuperscript{59} Id. at v.
decent place to live, which affect one's life and attitudes so deeply as to be patently obvious.

Whatever leadership, planning or standard-setting approaches are taken by the state, the role of local government will be intense. Over a long period it will diminish somewhat as the states assume stronger leadership. But there is more than plenty to do: major responsibility for policing and prosecution under today's conditions presents challenges enough for anyone.

X. Conclusion

The American people want more effective crime control. To get it, many changes must occur. What to do is complex in the extreme. First, priorities should commence with basics, for the system badly needs money, people, equipment. These priorities also include gathering fragmented agencies into stronger and new types of government structures. Strengthening state-level action, the most important level for crime control direction in today's conditions, should start with establishing state departments of criminal justice that embrace all segments of the state's systems. These departments should truly lead and assist local law enforcement, whose role will remain largely the same, and serve as state recipient for new federal funding programs.

Today it is government which falls between the cracks in our system. It is government which loses its way in the maze, far more often than the violator. It is government which must be reformed if stronger crime control efforts are to be realized. Shoving new programs into the maw, before structural attention, will only compound some present difficulties and create frustrations and illusions of action.

Additional funding under new federal programs coming out of the President's Crime Commission proposals can make a real difference if the President's proposals are amended so as to provide meaningful funds and to give block grants to states. Some sleepy state capitols will be pushed into action. This is what the states want, though, as was made clear when Representative Gerald Ford of Michigan announced in the House of Representatives, February 8, 1968, that 49 governors had notified him of their support for amendments to accomplish those ends. Governors want the money and the responsibility that will go with it.

With those funds, states will have to involve themselves directly with the quality of urban crime control, a task they have not usually assumed in the past, although legal power was no restraint. Past disorderly adjustments will not placate the realities of today's crime pressures from the people upon the politicians. Urban crime is no picnic. Again, those states that have not zeroed in on crime control will have to do so now.

Elected chief executives—governors, mayors, county supervisors—have the key action positions. They have greatest control over the devices of real government power: budget, manpower, policy direction of administrative action. So they are most responsible for what happens. They have impetus in their hands and that is crucial to criminal justice efforts. Previously they have too
often defaulted, by comparison with other governmental activities, to their staff or budget officials. Now crime control has burst out of this neglect and into the center arena. The states are under the spotlight and the proper crime control "mix" is of greatest moment to them.