

FEDERAL ANTI-THEFT LEGISLATION

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INTRODUCTION

Two principal points of view dominate interpretations of social phenomena. On the one hand emphasis is placed upon impersonal, dynamic forces—the “conditions” of life, which, at any particular moment, appear to be unmodifiable by human design in any appreciable degree. Many aspects of the environment, the needs of the biological organism, and a whole congeries of habitual, general and standardized human behavior (the “institutions”)—all seem to hold us in a vise from which there is no immediate escape.

On the other hand, one may emphasize the efforts of man to control, to direct, and to modify his course of life, and the immediately recognizable effect of such behavior. The relative importance given to each type of phenomena depends upon many factors. The nature of the issues insures their survival into the indefinite future.

Laws, like other social phenomena, fall into these two molds. Thus we can regard any enactment as a “normal” manifestation of a particular culture. Existing conditions and institutions—social, political, economic, religious, and so forth—produce certain expected forms of law. These institutions must be conceived of as operating according to universal laws of causation; any phenomenon, viewed in this light, is a necessary effect. Contemporary penal legislation in this country will, accordingly, be the result (and reflection) of beliefs in freedom of the will arising from prevalent religious and philosophic views, of assumptions regarding deterrence by punishment, of our social and economic organization, and so forth.

The other interpretation requires an evaluation of any law as an instrument of *policy*, a deliberate effort to direct certain aspects of human affairs wisely. Obviously, certain standards must exist, avowed or implicit, by reference to which a judgment can be made regarding the wisdom or unwisdom of any particular law. Unfortunately, however, in the field of law, the necessary standards are, for the most part,

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either unknown, or so general and amorphous that it is impossible to arrive at judgments which are sufficiently specific to assist in actual legislation.¹

Since legislation can be viewed as purposeful conduct, evaluation of any enactment must be in terms of its accomplishment of a designated end. The sound objectives of any law may, I think, be determined by reference to *the social problem*² to which it relates. By a study of both enactment and social problem it should be possible to determine (within the limits of certain assumptions and of the nature of the data) whether a law represents (a) understanding of the social problem to be solved, and (b) an intelligent use of means to achieve necessary (or desired) ends.

THEFT AS A SOCIAL PROBLEM

Many social problems arise from the commission of so-called crimes "against property." We center upon those of greatest importance for federal criminal law. The interests affected are important. While, in the individual case, loss of property is not as serious as loss of life, the damage caused by the first type of criminality is so widespread and so frequent that it is impossible to state which is the more destructive socially.

This predominance of crimes against property is not new. Certainly since the 18th century in England (and we may well suspect this is true in other countries whose economic structures have shown accelerated expansion in modern times) this criminality (especially theft) has been by far the most frequent.³

A glance at the Uniform Crime Reports reveals the overwhelming importance of these offenses in the United States. For example, in 1931, larceny alone (including auto theft) accounted for more than 70 per cent of all the major (Part I) offenses. If robbery is considered a crime against property, then this type of offense constituted more than 96 per cent of the Part I category. Even if robbery is classified as a crime against the person, these latter offenses constituted only 9 per cent of the group; and without robbery (5.2 per cent), crimes against the person were less than 4 per cent of these major offenses. These figures appear to be typical not only for many American states⁴ but also for highly industrialized European countries. In England, for example, during 1930, the crimes of larceny, fraud, and receiving stolen goods constituted almost 83 per cent of all of the indictable offenses of that year; and

¹ Broad generalizations may be adequate for some purposes; the legislator (or the specialist who advises him) needs sharper tools.

² I pass over any attempt to discuss "social problem." Mere dictionary definition will not suffice; more than that is impossible here, and I do not know of any discussion in the many books on social pathology, disorganization, etc., that is worth reading in this connection.

³ See, e.g., STATEMENTS OF THE NUMBER OF CRIMINAL OFFENDERS COMMITTED TO THE DIFFERENT GAOLS IN ENGLAND AND WALES, etc. (1819) showing statistics for 1812-1818.

⁴ See ILL. CRIME SURVEY (1929) 59-61; REPORT OF CRIME COMM. OF N. Y. FOR 1925, 330.

For 1933, offenses known to the police, rates per 100,000 population: Murder and Non-negligent Manslaughter—7.1; Manslaughter by Negligence—4.8; Rape—5.9; Aggravated Assault—50.7; Robbery—102.5; Burglary, Breaking or Entering—379.2; Larceny, Theft—762.0; Auto-theft—320.4. 4 UNIFORM CRIME REP. (1933) No. 4, p. 4.

larceny, alone, accounted for over 75 per cent.⁵ We have, therefore, to deal with large numbers of offenders, large numbers of victims and large losses—both financially and in those many other aspects of social life which cannot be measured but are none the less perceptible and important.

The nature of the social problems arising from crimes against property is further indicated by the typical forms of behavior characterizing the offenses. These types may for the present discussion be limited to (1) offenses committed to secure goods for immediate consumption, and (2) offenses committed as a business.⁶

The first form of criminality may be a direct reaction to the biological demands of the organism to survive. Frequently more than mere subsistence is involved. Thus the criminal receiving of property which is consumed by the recipient is also non-professional behavior. The conditions surrounding it may be quite different from those concomitant with crimes caused by poverty or mental disease.⁷

Theft as a business (represented chiefly by the criminal receiver) has become especially important since the rise of modern technology and commerce. It is a major industry with transactions running into millions of dollars annually. In some respects dealing in stolen goods is indistinguishable from legitimate business. It requires an organization which functions along typical patterns of behavior. Motivation and the essential activities involved in the conduct of any business are common in both types of enterprise. By this set of characteristics, dealing in stolen property as a business must be distinguished from offenses committed to obtain goods for immediate consumption. On the other hand it is equally necessary to distinguish dealing in stolen goods from the operation of legitimate enterprises. The necessary characteristics are numerous.⁸ The nature and importance of this aspect of the social problem as well as the limitations and quality of federal control—consisting solely of legal instrumentalities, operating within a narrow boundary—clearly indicate the principal objective to be attained, namely, restriction of the business of dealing in stolen goods.

INTERSTATE ASPECTS OF THE SOCIAL AND LEGAL PROBLEMS

Recent hysteria brought on by a number of sensational crimes has given rise to insistent demands for vastly increased federal activity in criminal law administration. The problem requires an analysis of the facts, of the relevant legal sanctions and of the feasibility of modifying the latter. The bare outline of such an inquiry, as it applies to the problem under consideration, may be briefly indicated.

⁵ CRIMINAL STATISTICS, ENGLAND AND WALES, 1930 (1932) table E, p. 10; and see table D, p. 16, giving statistics for theft from 1900-1930.

⁶ Limitation of space prevents discussion of the many social problems here involved. I can only warn that the above represents enormous simplification. The discussion is being pointed at *federal* control with recognition of the limitations of that control, as constituted.

⁷ Obviously the means required to prevent each will differ. The above discussion is restricted in order to isolate the professional offender. Cf. the writer's forthcoming book, *THEFT, LAW AND SOCIETY* (Little, Brown & Co., Boston).

⁸ *Ibid.*; also PRISON COM., ASSN. GRAND JURORS OF N. Y. COUNTY, CRIMINAL RECEIVERS IN THE UNITED STATES (1928) 76-79.

A sensational crime has importance for many communities other than that within the legal jurisdiction of its occurrence. A Lindbergh kidnaping profoundly affects the behavior of numerous persons throughout the country. But it does not do so by any acts which are at present *legally* significant. Quite aside from the technicalities arising from dual government, the relationship between the initial criminal behavior and that stimulated in other states is psychic rather than physical. As legal science is now constituted, such subtle effects are beyond its ken.

Next, we find a number of situations, the essentials of which are found within one state, but which include behavior that provides a technically sound basis for federal intervention. The classic example is prosecution of notorious offenders for violation of the national income tax laws. Al Capone and "Waxey" Gordon are outstanding cases. Any United States district attorney in a large city can cite numerous other instances of federal prosecution of offenders whose *principal* criminality is entirely within the jurisdiction and against the laws of a single state.

Finally, there is that area of criminality which is directly and essentially within the scope of federal law. This is probably true within the normal operation of the federal criminal law, *i. e.*, where the indictment sets forth the principal offense and is not used as an indirect method of eliminating an offender for other, generally more serious crimes.

Several types of theft and related offenses have been the subjects of national legislation.⁹ Theft of property from trains operating in interstate commerce is directly within the scope of federal jurisdiction.¹⁰ More closely related to the latest federal legislation is the National Motor Vehicle Theft Act,¹¹ passed in 1919. Representative Dyer, who sponsored this Act,¹² pointed out that there was very wide demand for the law; that state laws were inadequate to meet the evil because thieves took automobiles across state lines where they had associates who received and sold them; that the losses resulting from this theft of automobiles were very large and that the situation was getting worse; that rates were advancing so rapidly that it was difficult for owners of cheaper cars to obtain theft insurance; and that the cost of insurance had increased 100 per cent on the cheaper cars within one year. He stated that the purpose of the law was to suppress crime in interstate commerce, and he pointed out

⁹ "Approximately half of the sections in the present federal penal code are concerned with various forms of dishonesty (larceny, embezzlement, counterfeiting, bribery, false pretenses, etc.) but of the sections which have been added since 1900 about one-third are concerned with dishonesty." Sutherland and Gehlke, *Crime and Punishment*, 2 RECENT SOCIAL TRENDS (1932) 1119.

¹⁰ 37 STAT. 670 (1913), amended by 43 STAT. 793 (1925), 18 U. S. C. A. §409. "An act to punish the unlawful breaking of seals of railroad cars containing interstate or foreign shipments, the unlawful entering of such cars, the stealing of freight," etc.

¹¹ 41 STAT. 324 (1919), 18 U. S. C. A. §408. "Whoever shall transport . . . in interstate or foreign commerce a motor vehicle, knowing the same to have been stolen, shall be punished by a fine of not more than \$5,000, or . . . imprisonment of not more than five years, or both. Whoever shall receive, conceal, store, barter, sell, or dispose of any motor vehicle," etc.

¹² Report of the Committee on the Judiciary, H. R. REP. No. 312 (1919), to accompany H. R. 9203, 66th Cong., 1st Sess.

that the power granted Congress under the Commerce Clause was adequate to sustain the proposed statute.¹³

The bill was adopted October 29, 1919. In 1925 the Supreme Court, in the case of *Brooks v. United States*, held the Act (the Dyer Act, as it came to be known) to be constitutional.¹⁴ Eleven years after the passage of the law, Representative Dyer stated that he was very dissatisfied with its administration by the courts, particularly because young boys were being sentenced to the federal prisons; and he threatened to submit a bill to repeal the Act entirely unless it was administered more humanely.¹⁵

Even if the above laws did cope adequately with the relevant social problems, they would barely touch the area of professional theft which operates interstate. Bonds stolen in Chicago are marketed in Los Angeles. Furs seized in New York are shipped into many states. Automobiles and jewels are not only transported interstate, but are also exported on a large scale. Clearly the business of dealing in stolen merchandise does not merely affect interstate commerce. *It is interstate commerce* on a very large scale.

Several attempts were made to secure passage of federal legislation designed to

¹³In support he quoted the United States Supreme Court in the case of *Pensacola Telegraph Co. v. Western Union Telegraph Co.*, 96 U. S. 1 (1877).

¹⁴267 U. S. 432, 45 Sup. Ct. 345 (1924). Chief Justice Taft stated:

"It is known to all men that the radical change in transportation of persons and goods effected by the introduction of the automobile, the speed with which it moves, and the ease with which evil-minded persons can avoid capture, have greatly encouraged and increased crimes. One of the crimes which has been encouraged is the theft of the automobiles themselves and their immediate transportation to places remote from homes of the owners. Elaborately organized conspiracies for the theft of automobiles and the spiriting them away into some other state, and their sale or other disposition far away from the owner and his neighborhood, have roused Congress to devise some method for defeating the success of these widely spread schemes of larceny. The quick passage of the machines into another state helps to conceal the trail of the thieves, gets the stolen property into another police jurisdiction and facilitates the finding of a safe place in which to dispose of the booty at a good price. This is a gross misuse of interstate commerce." (267 U. S. at 438-439). See also *Kelly v. U. S.*, 277 Fed. 405 (C. C. A. 4th, 1921); *Whitaker v. Hitt*, 285 Fed. 797 (Ct. of App. D. C. 1922); *Katz v. U. S.*, 281 Fed. 129 (C. C. A. 6th, 1922); *U. S. v. Winkler*, 299 Fed. 832 (W. D. Tex. 1924); *Hughes v. U. S.*, 4 F. (2d) 387 (C. C. A. 8th, 1925).

The report of the Attorney General of the United States for the fiscal year 1932 shows that during that year the federal government operating under the Dyer Act recovered 3322 stolen motor vehicles valued at \$416,644.75. From the enactment of this law in October, 1919, to 1932, 31,343 stolen motor vehicles, valued at \$21,716,836.20 have been recovered in cases in which the Bureau of Investigation participated. REP. ATT'Y GEN. 1932, at 107.

¹⁵"The district attorneys and the courts have been sending many of these young men to the penitentiary, and I want to call your attention to this letter which I have received from the superintendent of prisons of date January 24:

'Out of the 450 Federal boys in the National Training School here in Washington, nearly 200 are violators of the Dyer Act, with the ages distributed as follows: .

'Two boys 12 years of age, 6 boys 13 years of age, 19 boys 14 years of age, 31 boys 15 years of age, 64 boys 16 years of age, 48 boys 17 years of age, 19 boys 18 years of age, 1 boy 19 years of age, and 1 boy 22 years of age.

'I have before me now for parole consideration the cases of four youngsters sent from the middle district of Tennessee to the Missouri Reformatory at Boonville, ages, respectively, 12, 13, 14 and 15 years of age.'" 72 CONG. REC. 2494 (1930).

Cf. "Arrests and prosecutions under the Dyer Act, however, include a surprisingly large number of youthful joy-riders who take cars for temporary use. From 29 cities the reports show an average of 34.9% of automobiles stolen by habitual thieves." REPORT TO THE SECTION OF CRIMINAL LAW AND CRIMINOLOGY OF THE AMERICAN BAR ASSOCIATION, 1928, at 4.

cope with the problem of interstate theft, which culminated in the enactment of the law approved May twenty-second of this year.¹⁶ An examination of the Congressional hearing on an earlier bill will be helpful in understanding the enacted law.

THE LA GUARDIA BILL OF 1929

The bill¹⁷ which was most discussed was that introduced on January 31, 1929 by Representative LaGuardia.¹⁸ Its proponents emphasized the following points:

1. "With the growth of transportation in this country there has come into existence the interstate fence; so that goods which are stolen from railroad cars, transportation companies, or are stolen in great cities and gotten into railroads and sent over State lines are received and with relative safety disposed of by criminals in other places than the scene of the crime . . . the use of an interstate transportation agency practically puts these stolen goods into interstate commerce."¹⁹

2. The chief virtue of the bill would be "*in terrorem*," that is, "it serves notice on the maintainers of interstate fences that they have the Federal Government to deal with and can no longer count upon the difficulties with which States are embarrassed."²⁰

3. Related somewhat to the above, was the suggestion that there was little interest in prosecuting a local receiver in cases where the theft was committed outside of the state because in such cases there was no injured complainant on hand to press the case upon the prosecuting officials.

¹⁶ Public, No. 246, 73rd Cong. 2d Sess. (1934). "An Act to extend the provisions of the National Motor Vehicle Theft Act to other stolen property." For the provisions of this Act, see p. 433, *infra*.

¹⁷ A similar bill was the Yates-Cummings (H. R. 7472, 69th Cong., 1st Sess.) introduced January 12, 1926. Next came H. R. 96, 70th Cong., 1st Sess., introduced on December 5, 1927. This bill was opposed by the Department of Justice and other government officials. Attorney-General Sargent and H. W. Lord of the Treasury Department opposed it because it was "in conflict with the financial program of the President" (Letters published in connection with the debate, February 5, 1930, on H. R. 10287, 72 Cong. Rec. 3229). Mr. J. Edgar Hoover, head of the Bureau of Investigation, opposed the passage of the bill because it "would make a veritable police force of federal investigating agents throughout the country"; it "would require a large number of special agents to properly enforce it"; substantially increased appropriations would be required to enforce the law; and said that, in any event, a minimum of \$1,000 should be involved before federal jurisdiction should attach. *Id.* at 3229-3230.

¹⁸ H. R. 10287, 70th Cong. 1st Sess., "A bill to prohibit the sending and receipt of stolen property through interstate and foreign commerce." The LaGuardia bill was referred to the House Committee on the Judiciary which held hearings on April 3 and 4, 1928.

As preliminary persuasive information, the Committee was told that the National Crime Commission was "earnestly in favor of the bill" (p. 21); that it was the only bill before Congress which the Commission thus actively favored; that it was in strict analogy to the interstate automobile law (Dyer Act); that it probably had the "widest publicity and the most favorable reception of any piece of proposed legislation for a long time of anything like the same character" (p. 8). Two hundred and fifty editorials appearing in newspapers in all the states were filed along with letters from prosecuting attorneys, attorneys general, and numerous representatives of business interests (p. 14). William Green, President of the American Federation of Labor, stated that in supporting the proposed bill he was "but reflecting the sentiment and the feelings of millions of working men and women in this country" (p. 15). He said that labor was injured by the sale of stolen goods in competition with merchandise manufactured and sold legitimately. Dean Justin Miller reported that the members of the American Bar Association committee were unanimously in favor of the bill, and he filed letters from a number of judges and leading attorneys (p. 56). Hearing before Committee on the Judiciary (House of Representatives) on H. R. 10287, 70th Cong. 2d Sess. (Ser. No. 19) (1928).

¹⁹ Statement of Newton D. Baker, *id.* at 3.

²⁰ *Ibid.*

4. Considerable advantage, it was said, would result from the ability of the national government to subpoena witnesses from all parts of the country. At present, if the receiver is located in New York and the thief in California, it is impossible for the State of New York to compel attendance of witnesses located in California; yet proof of the theft is indispensable to conviction of the receiver in New York. Similarly, California cannot extradite witnesses from New York, or any other state, to give testimony in a prosecution for the theft.²¹

5. Frequently receivers and thieves who participate in one transaction are located in several states. Under the present laws, a number of prosecutions are required because each state can proceed only against those individuals who have committed a crime within its jurisdiction. Accordingly, a multiplicity of prosecutions would be avoided by the adoption of a federal law.

6. Related to the above point was the recommendation stressed especially by several prosecutors, that the conspiracy law could be utilized to great advantage in the prosecution of receivers and thieves.²² Not only could all the receivers who had collaborated in one transaction be tried together, but all the thieves, agents, and other participants could also be joined in one prosecution. The conspiracy law would provide the necessary substantive law for joining all of the offenders and the recommended jurisdictional reforms would eliminate existing procedural difficulties.²³ It was urged that the presentation of a complete picture of this type of criminality would result in more certain conviction than is now secured when the transaction must be split up, and only a part of the criminal behavior is presented.²⁴

The chief concern of some of the Committee members was the opposition anticipated to the placing of additional burdens upon the federal government. It was suggested that it might be preferable to have the individual states extradite witnesses, even if it were necessary to amend the Constitution to do this.²⁵

Another difficulty was the possibility that the right to initiate prosecutions might be abused. A Californian who received stolen goods from a thief who was in New York might be tried in any state through which the merchandise had been carried. The Committee was divided on this point; underlying this division in viewpoint were the usual diverse *assumptions* regarding the guilt or innocence of the persons who might be accused of the crime.

The problem that aroused greatest discussion arose from the omission to make

²¹ Cf. J. P. Chamberlain, *Anti-Fence Legislation* (1928) 14 A. B. A. J. 520.

²² "Assistant District Attorney Carstarphen expresses the opinion that 'Fences' could be convicted for the crime of conspiracy more readily than that of receiving stolen goods, but conspiracy is a misdemeanor and not a felony under our [N. Y.] law." (Apr. 1927) 5 THE PANEL 1.

²³ Hearing on H. R. 10287, *supra* note 18, at 10, 44.

²⁴ It was apparently—and curiously—assumed by all parties throughout the hearings and debates on the proposed bill that there were no difficulties in the substantive law to complicate prosecution by states. But cf. Part V of the *Report of the Special Committee*, etc. (1925) 11 A. B. A. J. 738, 739-40.

²⁵ Hearing on H. R. 10287, *supra* note 18, at 29. Cf. CODE OF CRIMINAL PROCEDURE (Am. L. Inst., Official Draft, 1930) §§56-8, and *id.* (Proposed Final Draft, April 1, 1930) §§320-1.

guilty knowledge an essential element of the crime.²⁶ Dean Justin Miller, summoned to enlighten the Committee on the proposed requirement to make reasonable inquiry, suggested that "the bill might well be amended to provide that . . . the defendant so received or came into possession of the same under such circumstances as to put a reasonable man upon inquiry; and then a failure on his part to inquire."²⁷ The proposed bill already contained the words "notwithstanding good reason to believe" and so forth, but these words were deemed too broad. Mr. J. Weston Allen, representing the American Bar Association, supplemented Dean Miller's analysis by pointing out that the rule would "require the establishment of the fact that the defendant believed that there was necessity for inquiry."²⁸ Mr. Allen made the suggestion, which was subsequently adopted,²⁹ that the capacity of the particular defendant and not that of "a reasonable man" should be the standard employed.³⁰

Representatives of the railroads and other carriers and of the banking interests were on hand to urge two amendments to the bill. They desired to except common carriers from the operation of the bill; and they requested a special provision regarding negotiable instruments acquired in due course. Both of these suggested amendments were subsequently adopted.³¹ The other change made in the proposed bill was to increase the punishment from not more than a fine of \$5,000 or imprisonment for not more than two years, or both, to a fine of not more than \$10,000, or imprisonment for not more than ten years or both.

The proposed bill, with the changes noted above, was introduced into the House at various times. The proponents of the bill marshalled their forces. With its Judi-

²⁶ Thus, Mr. Lewis Hahn, Manager-Director of the National Retail Dry Goods Association, had serious apprehensions regarding the possibility of honest tradesmen being brought within the terms of the bill as proposed. He pointed out that a large department store might have 750,000 separate items of merchandise, some of which were purchased in small quantities. Said he: "I should like to see this bill so worded that it would be impossible for a man who, amid all those thousands or hundreds of thousands of transactions, might happen to buy something, not knowing that there was anything the matter with it, to be put in an embarrassing situation.

"If we are going to put the burden of making diligent or reasonable inquiry upon every buyer in every large store, I think it would result in being a well-nigh intolerable burden." Hearings on H. R. 10287, *supra* note 18.

²⁷ *Id.* at 58.

²⁸ *Id.* at 73.

²⁹ "Whoever shall buy, receive, possess, conceal, sell or dispose of any property or thing of value, which is moving as, or which is part of, or which constitutes, interstate or foreign commerce, or commerce between the District of Columbia and some State or foreign nation, and which theretofore or while so moving or constituting such part, had been stolen or taken feloniously by fraud or with intent to steal or purloin, knowing the same to have been stolen or taken, or whoever shall buy, receive, possess, conceal, sell, or dispose of any such property or thing of value *under such circumstances as should put him upon inquiry whether the same had been so stolen or taken, without making reasonable inquiry in good faith to ascertain the fact*, shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than ten years, or both." (Italics added.) H. R. 119, §3, 71st Cong. 2nd Sess. (1930).

³⁰ "I think there is very sound reason for saying that the test should not be whether an ordinary man would have been put on inquiry." Hearing on H. R. 10287, *supra* note 18, at 75.

Cf. Dean Miller: "Personally I do not agree with General Allen on that point. I believe the bill should put this man on inquiry, under such circumstances that an ordinary man would be put on inquiry, regardless of whether or not you could prove that he knew or believed that he should make inquiry. Of course that is a matter of policy for you to determine." *Id.* at 82.

³¹ See the revised bill, H. R. 119, *supra* note 29, §§2, 5.

ciary Committee strongly supporting the bill, debate took place in the House on February 5, 1930.³² The bill was adopted by the House and sent to the Senate where it was referred to the Committee on the Judiciary. The federal administration took active steps to defeat the measure. Attorney General Mitchell vigorously opposed the bill;³³ and it was defeated in the Senate Judiciary Committee.

Thus even the powerful interests which supported this bill were unable to secure its passage in the face of opposition by the national administration—a fact which demonstrates that the theory of class legislation is not quite the simple affair that it is sometimes alleged to be. It should be said, however, that, in the opinion of competent observers, the bill would have passed had its advocates been more skillfully organized. Beneath much of the expressed opposition from representatives of rural districts was the thought that the proposed bill was a “big city” interest, and that the country at large should not pay for the solution of what was deemed to be a metropolitan problem.³⁴

There are, indeed, objective data to support the claim that the passage of the bill in 1930 would have placed too great a burden upon the federal government. During the last twenty-five years there has been an enormous increase in federal criminal litigation. Thus we are told by Professors Sutherland and Gehlke in *Recent Social Trends* that:

“Four federal laws enacted since 1910 have added immensely to the work of the federal agencies and also of some local agencies. These are the laws in regard to white slavery,

³² The objections raised by the opponents of this bill were as follows: (1) conferring jurisdiction upon the federal courts in petty larceny cases was an invasion of the States' powers; (2) that the passage of the bill would cause further congestion in the already too crowded federal courts and, in addition, cause crowded conditions in the federal jails; (3) that the bill was too inclusive in its scope (a) in that the punishment for the theft of a nickel was the same as that for the theft of a million dollars (the bill was later amended by making it apply only to property of a value in excess of \$300) and (b) that the bill, as drawn, was not limited to the fence, *i.e.*, those making it a business to buy stolen property; (4) that the punishment was too severe; and finally (5) that the bill had not been submitted by the Judiciary Committee to the Department of Justice in order that the latter's opinion might be obtained.

³³ Attorney General Mitchell stated:

“There are two serious objections to this measure: In the first place, I am opposed on principle to extending the activities of the Federal Government into fields heretofore occupied by the States unless there are very cogent reasons for so doing, and I am not satisfied that there is any urgent reason at the present time why the Federal Government should take on this additional function and increase its activities accordingly.

“In the next place, even though this measure may ultimately be found to be justified, this is not a proper time for its enactment. The machinery now provided by the Federal Government for the prosecution and punishment of crime is overtaxed.

“Earnest efforts are being made to devise methods for the relief of those Federal courts which are congested, and to increase the capacity of our prisons to satisfy present requirements.

“Until we have dealt adequately with the troubles which now confront us we ought not to be adding to the burden of the law enforcement machinery by enacting legislation of this kind.

“Experience has shown that when Congress enacts criminal legislation of this type the tendency is for the State authorities to cease their efforts towards punishing the offenders and to leave it to the Federal authorities and the Federal courts. That has been the experience under the Dyer Act.” *United States Daily*, April 1, 1930, p. 2.

Cf. President Hoover's remarks, 57 A. B. A. REP. (1932) 287-8.

³⁴ Thus one representative stated: “We cannot consider this bill from the point of view of New York or a few other large centers that are troubled by this particular evil.” 72 CONG. REC. 3233 (1930).

narcotic drugs, national prohibition and interstate transportation of stolen automobiles. In 1910 the federal courts had no prosecutions for the offenses above mentioned. In 1920 these four contributed 27.3 percent of all federal prosecutions and in 1930 72.2 percent. In 1910 they accounted for none of the commitments to federal prisons, in 1920 for 15.2 percent of such commitments and in 1930 for 82.9 percent.”³⁵

THE ENACTED LAW

The repeal of the prohibition amendment was followed by a series of kidnappings and other sensational crimes which aroused the country. The movement towards centralization of government had by 1934 gained considerable momentum. The elimination of prohibition cases removed a great burden from federal officials.

Several laws were enacted enlarging the boundaries of the federal criminal law. Among them was the law extending the provisions of the National Motor Vehicle Theft Act to other stolen property, which provided as follows:

Sec. 3. Whoever shall transport or cause to be transported in interstate or foreign commerce any goods, wares, or merchandise, securities, or money, of the value of \$5,000 or more theretofore stolen or taken feloniously by fraud or with intent to steal or purloin, knowing the same to have been so stolen or taken, shall be punished by a fine of not more than \$10,000 or by imprisonment of not more than ten years, or both.³⁶

Sec. 4. Whoever shall receive, conceal, store, barter, sell, or dispose of any goods, wares, or merchandise, securities, or money, of the value of \$5,000 or more, or whoever shall pledge or accept as security for a loan any goods, wares, or merchandise, or securities of the value of \$500 or more which, while moving in or constituting a part of interstate or foreign commerce, has been stolen or taken feloniously by fraud or with intent to steal or purloin, knowing the same to have been stolen or taken, shall be punished by a fine of not more than \$10,000 or by imprisonment of not more than ten years, or both.³⁶

The statute, great advance though it is, follows the traditional lines of criminal legislation. No attempt is made to distinguish professional theft from theft for immediate consumption. The law concerns itself neither with those characteristics which distinguish *business* transactions from others, nor does it build upon those irregular features which differentiate the business of dealing in *stolen* goods from legitimate commerce.

The offense is limited to cases involving goods worth at least \$5,000. This was intended, no doubt, to prevent clogging the federal machinery. The limits of any particular organization to do work must necessarily be considered. There is no evidence, however, that the above limitation will facilitate the conviction of *professional* offenders. The difficulty arising from limitations of the federal machinery could have been met by intelligent administration, left free to select the most important cases. Undoubtedly the need to limit the federal jurisdiction was deemed to be great.

Very unfortunate, however, is the further limitation that the defendant acted

³⁵ Sutherland and Gehlke, *op. cit. supra* note 9, at 1121.

³⁶ Public, No. 246, 73rd Cong. 1st Sess. (1934), 18 U. S. C. A. (Supp. 1934) §§414-419. Section 2 (b) of the Act contains an elaborate definition of the term “securities”; Section 2 (c) defines “money.”

"*knowing* the same [goods, etc.] to have been stolen." This clause is *identical* with the very first English legislation of nearly two and a half centuries ago.³⁷ Congress could have eliminated entirely the need to establish any criminal intent. Or it could have required proof of belief. Or it could have required proof of circumstances which should have put the defendant (or "a reasonable person," etc.) on inquiry, and failure to make any inquiry.³⁸ Yet despite the enormous difficulties that beset the prosecution in these cases, it is made necessary to prove actual knowledge beyond any reasonable doubt.

The discussion on the LaGuardia bill shows that its sponsors considered this problem. The retreat in the 1934 law from the more modern position taken in the advocacy of the earlier measure indicates that the fears of business men were allowed to prevail. Yet thorough analysis of the relevant social problem would have revealed numerous differences between dealing in stolen merchandise and legitimate business.

Related to the above weakness in the existing law is the fact that it does not state whether it is necessary to prove that the particular defendant on trial knew that the goods in question were stolen, or whether it is sufficient to prove that "a person of ordinary understanding" would have had such knowledge under the circumstances. It is probable that the former rule will prevail since that is the more general one in the criminal law.

It would seem *a priori* to be easier to convict under the objective rule. The professional receivers are shrewd, experienced business men who are difficult to convict under any system of law. Their financial and political resources are numerous and far-reaching. The entire social situation in these cases indicates the weakness of throwing safeguards, which are ordinarily justifiable, around these particular offenders.

On the other hand the 1934 law undoubtedly relates to a proper sphere for federal action. To the limited extent to which it brings federal agencies to bear upon those aspects of the social problem which are operative interstate, the law is a step in the necessary direction. Furthermore, the elimination of *sensational* offenders will have a salutary effect both upon public standards in general, and upon the administration of state laws. This special function of federal administration is very important. It is a partial justification for limiting federal jurisdiction rigorously. It is ground for denying the insistent demands that the national government do the entire job—a concession which would not only be impossible to fulfill in any event, but which, if made in any large measure, would seriously threaten the effectiveness and prestige of federal administration within its present sphere of operation. Although the 1934 law has limited application, nevertheless skillful administration, which may be expected from federal enforcement agencies, should make it a valuable instrument of government.

³⁷ "That if any person or persons shall buy or receive any goods or chattel that shall be feloniously taken or stolen from any other person, knowing the same to be stolen," etc. 3 & 4 WILL. & MAR. c. 9, IV. (1691).

³⁸ See N. Y. CONS. LAWS (Cahill, 1930) c. 41, §1308.