

Acts of Congress, as well as the constitution, must generally unite to give jurisdiction to a particular court.<sup>3</sup>

The Federal Courts only have jurisdiction in matters involving an "offense against the United States," and nothing can be an offense against the United States unless it is made so by Congressional act pursuant to the U.S. Constitution. There is no other source from which Congress can get authority to make law, including the Common Law. Thus it has been said that, "There is no Federal Common Law." But the better way of stating this is to say, "There are no common law offenses (or crimes) against the United States,"<sup>4</sup> In other words, the common law is not a source for criminal jurisdiction as it is in the states.

There is no federal common law. There are no offenses against the United States, save those declared to be such by Congress. \* \* \* Only those offenses are to be proceeded against by information or are indictable in the federal courts which are specifically made so by acts of Congress, since the common law crime of itself has no existence in the federal jurisdiction.<sup>5</sup>

By "jurisdiction" is meant the authority of the Federal courts to hear and decide a matter. Thus it is even more correct to say that, "The federal courts have no jurisdiction of common law offenses, and there is no abstract pervading principle of the common law of the Union under which we (the Federal courts) can take jurisdiction."<sup>6</sup> Thus where one was charged for libel on the President and Congress of the United States, it was held that the Federal

Circuit Court had no common law jurisdiction in the case and the act was not a crime.<sup>7</sup>

If Congress tries to make a common law offense a crime (such as libel, theft, burglary, murder, kidnapping, arson, rape, sodomy, abortion, assault, fraud, etc.), having no relation to an enumerated power, it would simply be an "unconstitutional" act. Congress can declare nothing to be a crime except where it is based upon a delegated power. Thus the only thing that can be a crime against the United States (a Federal crime) is that which comes from the U.S. Constitution. These concepts were early stated by the U.S. Supreme Court:

In relation to crimes and punishments, the objects of the delegated power of the United States are enumerated and fixed. Congress may provide for the punishment of counterfeiting the securities and current coin of the United States, and may define and punish piracies and felonies committed on the high seas, and offenses against the law of nations. Art. s. 8. \* \* \* But there is no reference to a common law authority: Every power is [a] matter of definite and positive grant; and the very powers that are granted cannot take effect until they are exercised through the medium of a law.<sup>8</sup>

The United States courts are governed in the administration of the criminal law by the rules of the common law.<sup>9</sup> Thus the common law is not a source of power, but is the means or instrument through which it is exercised. In civil matters where general common law rights of an individual are concerned, the federal courts are to apply the common law in the state in which the controversy originated.<sup>10</sup>

3 *U.S. v. Bedford*, 27 Fed. Cas., page 91, 103, Case No. 15,867 (1847).

4 *United States v. Britton*, 108 U.S. 199, 206 (1882); *United States v. Eaton*, 144 U.S. 677, 687 (1891); *United States v. Gradwell*, 243 U.S. 476, 485 (1916); *Donnelley v. United States*, 276 U.S. 505, 511 (1927); *Jerome v. United States*, 318 U.S. 101, 104 (1942); *Norton v. United States*, 92 Fed.2d 753756 (1937).

5 *United States v. Grossman*, 1 Fed.2d 941, 950, 951 (1924).

6 *State of Pennsylvania v. The Wheeling &c. Bridge Co.*, 13 Howard (54 U.S.) 518, 563 (1851).

7 *United States v. Hudson*, 7 Cranch (11 U.S.) 32 (1812).

8 *The United States versus Worrall*, 2 Dallas (2 U.S.) 384, 391 (1798).

9 *Howard v. U.S.*, 75 Fed. 986 (1896).

10 *Wheaton v. Peters*, 8 Peters (33 U.S.) 591, 658 (1834); *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1937).