ment of an intelligible standard had been met. Cases involving the power to impose criminal penalties, described below, further illustrate the difference between delegating the underlying power to set basic policy—whether it be the decision to impose taxes or the decision to declare that certain activities are crimes—and the authority to exercise discretion in implementing the policy.

Crime and Punishment.—The Court has confessed that its "cases are not entirely clear as to whether more specific guidance is in fact required" for delegations relating to the imposition of criminal sanctions.[177] It is clear, however, that some essence of the power to define crimes and set a range of punishments is not delegable, but must be exercised by Congress. This conclusion derives in part from the time-honored principle that penal statutes are to be strictly construed, and that no one should be "subjected to a penalty unless the words of the statute plainly impose it." [178] Both *Schechter* [179] and *Panama Refining* [180]—the only two cases in which the Court has invalidated delegations—involved broad delegations of power to "make federal crimes of acts that never had been such before." [181] Thus, Congress must provide by statute that violation of the statute's terms—or of valid regulations issued pursuant thereto—shall constitute a crime, and the statute must also specify a permissible range of penalties. Punishment in addition to that authorized in the statute may not be imposed by administrative action.[182]

However, once Congress has exercised its power to declare certain acts criminal, and has set a range of punishment for violations, authority to flesh out the details may be delegated. Congress may provide that violation of valid administrative regulations shall be punished as a crime.[183] For example, the Court has upheld a delegation of authority to classify drugs as "controlled substances,"

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[177] Touby v. United States, 500 U.S. 160, 166 (1991).

[178] Tiffany v. National Bank of Missouri, 85 U.S. (18 Wall.) 409, 410 (1873).

[179] A. L. A. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935).

[180] Panama Refining Co. v. Ryan, 293 U.S. 388 (1935).

[181] Fahey v. Mallonee, 332 U.S. 245, 249 (1947).

[182] L. P. Steuart & Bro. v. Bowles, 322 U.S. 398, 404 (1944) ("[I]t is for Congress to prescribe the penalties for the laws which it writes. It would transcend both the judicial and the administrative function to make additions to those which Congress has placed behind a statute").

[183] United States v. Grimaud, 220 U.S. 506 (1911). The Forest Reserve Act at issue in *Grimaud* clearly provided for punishment for violation of "rules and regulations of the Secretary." The Court in *Grimaud* distinguished United States v. Eaton, 144 U.S. 677 (1892), which had held that authority to punish for violation of a regulation was lacking in more general language authorizing punishment for failure to do what was "required by law." 220 U.S. at 519. Extension of the principle that penal statutes should be strictly construed requires that the prohibited acts be clearly identified in the regulation. M. Kraus & Bros. v. United States, 327 U.S. 614, 621