

CL. 3—Oath of Office

will be rendered auxiliary to the enforcement of its laws.”²⁸³ The younger Pinckney had expressed the same idea on the floor of the Philadelphia Convention: “They [the states] are the instruments upon which the Union must frequently depend for the support and execution of their powers. . . .”²⁸⁴ Indeed, the Constitution itself lays many duties, both positive and negative, upon the different organs of state government,²⁸⁵ and Congress may frequently add others, provided it does not require the state authorities to act outside their normal jurisdiction. Early congressional legislation contains many illustrations of such action by Congress.

The Judiciary Act of 1789²⁸⁶ not only left the state courts in sole possession of a large part of the jurisdiction over controversies between citizens of different states and in concurrent possession of the rest, and by other sections state courts were authorized to entertain proceedings by the United States itself to enforce penalties and forfeitures under the revenue laws, examples of the principle that federal law is law to be applied by the state courts, but also any justice of the peace or other magistrates of any of the states were authorized to cause any offender against the United States to be arrested and imprisoned or bailed under the usual mode of process. From the beginning, Congress enacted hundreds of statutes that contained provisions authorizing state officers to enforce and execute federal laws.²⁸⁷ Pursuant to the same idea of treating state governmental organs as available to the national government for administrative purposes, the act of 1793 entrusted the rendition of fugitive slaves in part to national officials and in part to state officials and the rendition of fugitives from justice from one state to another exclusively to the state executives.²⁸⁸

With the rise of the doctrine of states’ rights and of the equal sovereignty of the states with the National Government, the availability of the former as instruments of the latter in the execution

²⁸³ No. 27, (J. Cooke ed. 1961), 175 (emphasis in original). See also, id. at No. 45, 312–313 (Madison).

²⁸⁴ 1 M. FARRAND, *THE RECORDS OF THE FEDERAL CONVENTION OF 1787* 404 (rev. ed. 1937).

²⁸⁵ See Article I, § 3, cl. 1; § 4, cl. 1; 10; Article II, § 1, cl. 2; Article III, 2, cl. 2; Article IV, §§ 1, 2; Article V; Amendments 13, 14, 15, 17, 19, 25, and 26.

²⁸⁶ 1 Stat. 73 (1789).

²⁸⁷ See Warren, *Federal Criminal Laws and the State Courts*, 38 HARV. L. REV. 545 (1925); Holcomb, *The States as Agents of the Nation*, 3 SELECTED ESSAYS ON CONSTITUTIONAL LAW 1187 (1938); Barnett, *Cooperation Between the Federal and State Governments*, 7 ORE. L. REV. 267 (1928). See also J. CLARK, *THE RISE OF A NEW FEDERALISM* (1938); E. CORWIN, *COURT OVER CONSTITUTION* 148–168 (1938).

²⁸⁸ 1 Stat. 302 (1793).