Journal of Criminal Law and Criminology

Volume 42
Issue 5 *January-February*

Article 2

Winter 1952

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CRIME CONTROL AND UNIFORMITY OF CRIMINAL LAWS

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The following is a "request" contribution in recognition of the Centennial of Northwestern University.

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Despite the growing body of federal criminal law, our states remain the primary units for crime control. Their legislatures enact the overwhelming bulk of the penal codes. They maintain the police forces, in some areas alone and in others in conjunction with their political subdivisions; they maintain judicial machinery for the trial of accused persons, and operate the correctional institutions in which most convicted offenders are punished or rehabilitated. Under these circumstances, it is only natural that the states should encounter virtually every problem known to the usual administration of criminal justice. There is, however, an additional set of problems peculiar to a federal system like our own. These challenges to the smooth operation of crime control programs arise principally from the division of jurisdiction among the several states and between state and national governments. It is with these special problems that we shall concern ourselves in this article.

Instances of intergovernmental cooperation in crime control are becoming numerous and varied but virtually all of them may be placed within one of several overlapping but distinguishable categories:

1. Cooperation made necessary or advisable because the physical jurisdiction of each state is limited by its territorial boundaries.
2. Cooperation looking toward the uniformity of substantive state law.
3. Cooperation in gathering of information or in the establishment and operation of common or joint services and facilities.

In addition to these problems, whose incidence is primarily interstate, there are a number of federal-state relationships which are also important in crime control, and which will be reviewed in this article.

PHYSICAL LIMITATIONS ON JURISDICTION

A man may have committed murder in the State of Indiana but even if this is well known, he may not be prosecuted for the crime by Illinois. The reason is so well settled that we seldom stop to recite it. Reduced to its simplest terms, the governing proposition is that a state may punish only offenses against its own laws[1] and those laws have no force beyond the territorial limits of the state.[2] Criminals have always sought to benefit from this feature of our federal system by seeking safety across jurisdictional lines. Such conduct has in turn forced law enforcement authorities to devise means for minimizing the effect of political boundaries on crime control.

The jurisdictional loopholes in our law-enforcement structure were emphasized at the Attorney General's Conference on Crime held in Washington during the month of December, 1934. An immediate surge of interest in the problem was evinced by state officials throughout the country, and effective action was taken through the means of the Interstate Commission on Crime which was brought into being in Trenton, New Jersey, on October 12, 1935.[3] Composed of state Attorneys General, legislators and law enforcement officials, and under the leadership of Judge Richard Hartshorne of Essex County, New Jereey, the Commission spearheaded a program of uniform crime control legislation that had far-reaching effects. Many of the proposals were revisions of uniform acts originally promulgated by the National Conference of Commissioners on Uniform State Laws, but which had not theretofore been widely enacted among the states. Others were entirely new acts conceived by the Interstate Commission on Crime. Among the subjects covered by the Commission's legislative proposals were uniform acts on fresh pursuit, extradition, interstate rendition of witnesses, interstate supervision of parolees and probationers, arrest, firearms, and narcotic drugs. In addition, attention was given to the extension of federal criminal law, the development of criminal statistics, and the establishment of state and local crime commissions.

Since 1942, the activities of the Interstate Commission on Crime have been integrated with those of the Council of State Governments, the general service agency of all the states.[4] In addition, the Council also

1. United States v. Constantine, 296 U.S. 287 (1935).
2. Allgeyer v. Louisiana, 165 U.S. 578 (1897). *Cf.* Blackmer v. United States, 284 U.S. 421 (1932).
3. INTERSTATE COMMISSION ON CRIME, THE HANDBOOK ON INTERSTATE CRIME CONTROL (Fourth Printing, November 1, 1942), pp. 7-13.
4. COUNCIL OF STATE GOVERNMENTS, THE HANDBOOK ON INTERSTATE CRIME CONTROL (Revised Edition, September, 1949), p. V.

serves as the secretariat of the administrators' association which implements the Interstate Compact for the Supervision of Parolees and Probationers.

Generally speaking, a state may exercise criminal jurisdiction only within its own territory. Consequently, it is necessary that suspects be found and prosecuted within the state whose penal code has been violated. When persons seek to avoid enforcement efforts, the problem becomes one of securing their physical presence. The two most familiar methods for achieving this objective are fresh pursuit and extradition.

FRESH PURSUIT

Fresh pursuit is obviously the most expeditious manner of securing the physical presence of a suspected criminal, especially where he is literally "caught in the act." However, at one time the most desperate and cunning criminals headed straight across the state line after the commission of a crime, knowing full well that comparative safety lay just across the boundary. For, in general, the pursuing officer from the state in which the offense occurred was no longer an officer in the foreign state. The Interstate Commission on Crime sought to remedy this situation by its uniform act on the fresh pursuit of criminals across state lines.[5] Now enacted by over three-fourths of the states,[6] this legislation contains the following basic provisions:

1. Gives authority to peace officers from another state to enter the enacting state in fresh pursuit of a person "in order to arrest him on the ground that he is believed to have committed a felony in such other state" and to hold him in custody.
2. Provides that such peace officers shall, without unnecessary delay, take the person before a magistrate of the county in which the arrest was made. The magistrate may commit the person so arrested to await extradition, or may admit him to bail. If the magistrate "determines that the arrest was unlawful," he is required to discharge the person arrested.
3. Defines fresh pursuit to include its common law meaning as well as the pursuit of felons or suspected felons, and also to include pursuit where no felony has actually been committed if there is reasonable ground for believing that a felony has been committed. Fresh pursuit, as used in the uniform act, "shall not necessarily imply instant pursuit, but pursuit without unreasonable delay."

The practical operation of this brief but effective act has shown on numerous occasions that state boundaries need not in themselves provide a loophole through which criminals may extricate themselves from justice.

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5. For text see *ibid,* p. 2.
6. In addition, the uniform fresh pursuit act has been enacted in the District of Columbia. The following states have not yet enacted the uniform act: Alabama, Georgia, Illinois, Kentucky, Mississippi, Nevada, North Carolina, South Carolina, Texas, Washington and Wyoming.

EXTRADITION

Even though a considerable number of persons are apprehended immediately after the commission of crime, it is inevitable that the identity of most suspects should become known only after some period of time has elapsed. This means that fresh pursuit, although useful, is addressed to but a portion of the interstate crime control problem. In order to secure the return of persons already ensconced across a boundary, it is usually necessary to resort to extradition proceedings.

The Constitution provides for the return of fugitives from justice by one state to sister states[7] and in the overwhelming number of cases, there is cooperation in effecting such return.[8] However, a proper regard for individual liberty has hedged extradition with a number of restrictions. If a proceeding is to succeed, a demanding state has traditionally been required to establish four propositions:[9]

1. That the person sought has been duly charged with substantial crime against the laws of the demanding state.
2. That such person was physically present within the demanding state when the alleged crime was committed.
3. That such person is a fugitive from justice.
4. That the person demanded is actually the person charged with the commission of the crime.

In particular circumstances, the proof of any one of these propositions may be difficult. But those which have raised special problems for interstate law enforcement have been numbers two and three.

At first glance, it would ordinarily be assumed that a man must be in a state in order to commit a crime there. There are, however, a number of situations wherein this supposition may be incorrect. Take first the somewhat bizarre events presented in *State v. Hall*.[10] In that case, a man standing in North Carolina shot and killed a man standing in Tennessee. Attempted extradiction to Tennessee failed because the offender was not present within that state when the crime was committed.

Its striking set of facts has made the Hall Case famous but if the only difficulties were occasioned by such instances, there would be comparatively little cause for concern. More numerous are those crimes which can be committed without physical presence. Provisions of penal codes are voluminous and any attempt to canvass crimes of this type

7. U.S. Constit., Art. IV, sec. 2.
8. Despite the seemingly mandatory language of the Extradition Clause, the leading case of Kentucky v. Dennison, 24 How. 66 (1861) holds that there is only a moral duty placed upon a state to afford extradition. Consequently the return of fugitives is sometimes considered to be an exercise of comity.
9. DE GRUFFENIED, *The Law of Extradition*, 2 ALA. L. REV. 207, 216 (1950); for a collection of the leading authorities see Note, *Criminal Law*, 31 MINN. L. REV. 699 (1947).
10. 115 N.C. 811, 20 S.E. 729 (1894).

would be far beyond the scope of the present article. However, two illustrations may serve to indicate the possibilities. State laws quite commonly make conspiracy to engage in various types of illegal conduct crime in itself. Since the conspiracy may consist in the planning or preparation of a crime, it may be done anywhere. So, as in a recent case, persons in Los Angeles may conspire to commit robbery in Denver.[11] The conspiracy constituted a crime against the laws of Colorado but the suspects were not in Colorado.

Another kind of crime that can be committed while outside the jurisdiction of a state is that of non support. State laws often make it a crime for husbands to refuse support to their families.[12] Such a neglect of family obligations may well commence when a man is absent from home and in another state.

Indeed, cases such as the one just presented also illustrate difficulties which may arise when a state attempts to establish the third proposition required for successful extradition—namely, that the person sought is a fugitive from justice. In order to be a fugitive, it is necessary that the individual have fled the jurisdiction after committing a crime there.[13] But where a man refuses support after he is already in another state, he cannot technically be a fugitive even though he has committed an offense and is being sought for prosecution.[14]

Many of the problems of extradition have been solved by the widespread enactment of the uniform extradition act, originally proposed by the National Conference of Commissioners on Uniform State Laws in 1926 and extensively revised by the Interstate Commission on Crime

11. *Ex Parte Morgan,* 78 F. Supp. 756 (S.D. Cal. 1948). Commented on in 22 So. Cal. L. Rev. 60 (1948).

12. ZUCKERMAN, *Some Legal Aspects of Matrimonial Discord,* p. 2 (paper presented before the National Conference of Jewish Social Welfare, Cleveland, Ohio, June 9, 1949).

13. See note 10, *supra.*

14. It should be noted in passing that criminal extradition is not a very satisfactory method of enforcing the support of dependents. It has been found that the criminal process is usually impractical because of expensive extradition costs, the limited nature of criminal statutes in this field, and the fact that arrest and rendition destroy the very earning power that can provide support. For this reason, the past two years have seen an immense amount of activity in the field of reciprocal state legislation to provide an effective *civil* remedy to enforce support of abandoned wives or children where a father absconds to another state. Legislation of this nature was first enacted by the State of New York (Laws of 1949 c. 807), and during the 1949-50 legislative sessions there were thirteen states, plus Puerto Rico and the Virgin Islands, which enacted bills patterned after New York's pioneering measure. In the meantime the National Conference of Commissioners on Uniform State Laws had the problem under analysis, and in the latter part of 1950 that body promulgated its "Uniform Reciprocal Enforcement of Support Act" (for text of uniform act and descriptive material see COUNCIL OF STATE GOVERNMENTS, SUGGESTED STATE LEGISLATION—PROGRAM FOR 1951 (November, 1950), pp. 58-64. As this article is being written, forty-one jurisdictions report having enacted substantially similar reciprocal legislation to enforce by civil process the support of dependents. A manual of procedure describing the acts of the various states in this field is available from the Council of State Governments.

during the mid-thirties.[15] The extradition act brings uniformity in a great many procedural aspects of the law, such as the form of requisition and the documents to accompany it; the arrest pending requisition as well as after requisition; habeas corpus proceedings; and confinement in transit. The act preserves the right to withhold extradition while a criminal prosecution is pending in the asylum state or while the person sought is serving a sentence there. It empowers the governor to extradite a person who has entered the state involuntarily. In addition, the uniform extradition act permits use of a waiver of extradition through which the assent of the person sought makes formal procedures unnecessary. In actual practice, extradition is very frequently waived with a consequent saving in time, money and effort.

Most important from the point of view of the present analysis, the uniform extradition act goes to the heart of the problems raised under the propositions that a person sought by extradition must have been within the demanding state when the alleged crime was committed and must be a fugitive from justice. Section 6 of the uniform act permits an accused person to be delivered to a demanding state even though he is not a "fugitive from justice"; i.e., where the accused has committed an act in one state which constitutes a crime in another state—even though he never physically enters the demanding state and consequently cannot flee therefrom.[16] When the present-day ramifications of organized crime are contemplated, the importance of this provision becomes apparent. For unless the demanding state—the state such as Colorado, to use our previous example—can have the cooperation of other states in securing the accused person for trial, that person (or criminal syndicate) is largely immune from successful prosecution.

RENDITION OF WITNESSES

Assuming that a criminal has been tracked down, arrested, and brought to trial in a given state—with or without the help of the uniform fresh pursuit act and the uniform extradition act—it may still be necessary to enlist interstate cooperation to surmount the problems of territorial jurisdiction. This is the case when an important witness

15. For text see THE HANDBOOK ON INTERSTATE CRIME CONTROL, *supra* note 4, pp. 10-15. The following states have not enacted uniform extradition legislation: Illinois, Kentucky, Louisiana, Mississippi, Missouri, Nevada, North Dakota, South Carolina, and Washington.

16. Care must be used in pleading under Section 6. Because extradition proceedings have generally required a showing that a person is a "fugitive from justice," warrants sometimes inadvertently make this allegation even where the uniform act is being used. If made, the allegation must be proved even though such proof would otherwise be unnecessary due to the language of Section 6. *Ex Parte King,* 139 Me. 203, 28 A.2d 562 (1942); Buck v. Britt, 187 Misc. 217, 62 N.Y.S. 2d 479 (1946). For discussion see Note, *Habeas Corpus—Extradition Cases,* 10 O. St. L. J. 362, 364 (1949).

is located in another state either because he resides there or because he has fled there. Virtually all of the states have cooperated in this regard by enacting the uniform act "to secure the attendance of witnesses from within or without a state in criminal proceedings."[17] This measure, as sponsored by the Interstate Commission on Crime in 1936, contains the following provisions:

1. The judge of a court of record in the enacting state is authorized to order that a material witness be taken into custody, if necessary, and delivered to an officer of the requesting state to be transported to that state to attend and testify in a criminal prosecution pending in that state.

2. The judge of a court of record in the enacting state is also authorized to issue a certificate to a court in another state enacting a similar law requesting the presence of the desired witness.

3. A witness entering the state under the act shall not "be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons." The same holds true if the witness is passing through the enacting state en route to a third state to testify.

CONSTITUTIONALITY

The three uniform acts just discussed present problems of constitutionality in varying degree. The fresh pursuit statute occasions virtually no difficulty. Of courses, it is true that no state may confer powers on officers acting beyond her territorial limits but this is not the effect of the legislation. When in a foreign state, a peace officer operates under the authority conferred by the statute of the jurisdiction in which he finds himself. Accordingly, there is no attempt to give a state statute extraterritorial application.

The uniform extradition act did raise a point of some substance, particularly in regard to Section 6. That part of the statute makes it unnecessary for a person to be a "fugitive from justice" in order to be a subject of extradition. Since the federal extradition statute does require that a person be a "fugitive from justice,"[18] it was argued that the uniform act conflicted with a statute of Congress and with the underlying provision of the Constitution.[19] However, it has been held that neither the Constitution nor the federal legislation occupies the entire field and that states may provide supplementary procedures which broaden the extent of permissible extradition. Specifically, Section 6 of the Uniform Act has been held constitutional.[20]

17. For text see THE HANDBOOK ON INTERSTATE CRIME CONTROL, *supra* note 4, pp. 31-33. The following states have not enacted uniform legislation in this field: Alabama, Georgia, Illinois, Kentucky, and Missouri.
18. 18 U.S.C.A. sec. 662.
19. See Note, 5 FORDHAM L. REV. 489 (November, 1936).
20. *Ex Parte Morgan, supra* note 11. See also Note, 35 VA. L. REV. 116 (1949).

The uniform rendition of witnesses Act raises the most difficult question. The persons whom it seeks to reach are not charged with any offense. Their forcible removal to another jurisdiction is to meet no claim which the requesting state can legally enforce upon them particularly if the prospective witness is not a citizen of the state wherein testimony is desired. Accordingly, the constitutionality of the statute must depend on the power of a state to compel persons located within its borders to aid the judicial processes of another jurisdiction. Litigation under the uniform rendition of witnesses Act is not extensive. However, one court has held that a state may require persons to give testimony in another jurisdiction as a matter of its own public policy.[21] No doubt the element of reciprocity is vital here because it permits a state to expect like assistance from other jurisdictions in return, thereby indirectly but substantially promoting the domestic administration of justice.

Thus it may be seen that the states have taken long steps to provide, by means of interstate cooperation and through uniform legislation, that physical jurisdiction as limited by territorial boundaries shall not be a major loophole for the benefit of the criminal element. Some few states, it is true, have not as yet joined in the movement toward uniformity in this regard, but their number is gradually diminishing to zero.

VALUES OF UNIFORMITY

In one way or another, most approaches to the problems of interstate crime control are related to uniformity of laws. Efficient extradition, fresh pursuit, and rendition of witnesses require uniformity because no state is likely to offer maximum cooperation unless arrangements are reciprocal and because the interstate contacts involved are increasingly more difficult to maintain if a multiplicity of unfamiliar procedures must be followed. Indeed where a common pattern of administrative behavior is necessary, as with the interstate supervision of parolees and probationers, operations would be virtually impossible without the adherence of states to a single basic compact.[22]

In some other fields of criminal law, there are different reasons for promoting uniformity of state laws. For example, it is inevitable that events in sister jurisdictions should have an effect upon the incidence of particular types of crime in a particular state. This is especially

21. Commonwealth of Massachusetts v. Klaus, 145 App. Div. 798, 130 N.Y.S. 713 (1911) [construing an early rendition of witnesses statute].

22. See discussion of the Interstate Compact for the Supervision of Parolees and Probationers, *infra*.

true where equipment or supplies of some sort are useful in the doing of an antisocial act. Narcotics may play a part in crime no matter where they are secured. Accordingly, the states have attempted to control the acquisition, sale and possession of narcotics for many years. But where there are wide differences in regulatory legislation, some jurisdictions are likely to be less effective than others in keeping drugs away from prospective dope peddlers and addicts. As a result, criminals will secure narcotics in one state for use in another. In order to prevent this shopping for the instruments of crime and to provide an effective system of regulation, the uniform narcotic drug act came into being and has received wide adoption.[23] The heart of the act is to be found in its system of licensing of buyers, sellers, and users of those narcotic drugs most suited to criminal activity.[24] A similar problem exists in the small arms field and is dealt with by the uniform pistol act whose key provisions also call for licensing.[25] Unfortunately, almost none of the states have seen fit to enact this uniform legislation.[26]

However, it should not be assumed that it is either necessary or desirable to bring uniformity into all areas of the criminal law. One of the virtues of our federal system is that it permits wide latitude for the expression of divergent local policies. The states need restrain their individuality only where insistence upon it is likely to have unfortunate consequences in their own or sister jurisdictions. In the commercial field, uniformity in almost all phases of the law is a desirable goal because of the convenience to persons engaged in interstate transactions. But there is no corresponding advantage to be gained from promoting the convenience of law breakers. Of course, all persons should have reasonable notice of the law. But this presents little difficulty because the outlines of antisocial conduct are well known. What varies most is the definition of particular crimes. Whether something is petit larceny in one state and grand larceny in another, or arson in the first degree in one jurisdiction and arson in the second degree in another is of little significance to the enforcement officials because they administer only the laws of their own jurisdiction. Nor is it of

23. All states have enacted uniform legislation in this field except California, Kansas, Mississippi, New Hampshire, Pennsylvania, Texas and Washington. National Conference of Commissioners on Uniform State Laws, HANDBOOK (1950), p. 284.

24. For text see UNIFORM NARCOTIC DRUG ACT AS AMENDED, promulgated by the National Conference of Commissioners on Uniform State Laws on August 27, 1942.

25. For a comprehensive discussion of this subject see WARNER, *The Uniform Pistol Act*, 29 JOUR. CRIM. LAW AND CRIMINOL. 529 (1938).

26. For text see HANDBOOK ON INTERSTATE CRIME CONTROL, *supra* note 3, pp. 111-114. Only New Hampshire and North Dakota enacted the uniform pistol act. The earlier uniform firearms act had been enacted by four states, and with modifications by six additional jurisdictions. Neither of these acts is now being carried in the program of the National Conference of Commissioners on Uniform State Laws.

substantial importance to the public at large because no state sets as its objective the encouragement of petit larceny as opposed to its bigger brother. The objective is to prevent them both.

Of course, this is not to say that uniformity is to be discouraged in any phase of the law where the states themselves want it. It may be that a particular approach to some problem commends itself as better than any of the available alternatives. This may be the case with regard to the law of arrest. Some years ago, it was generally observable that the law in this field was archaic in most states.[27] Accordingly, the Interstate Commission on Crime prepared a uniform arrest act, the provisions of which were deemed to be especially desirable. However, it has so far received only limited acceptance among state legislatures.[28]

It seems possible that the future will bring other instances wherein the need for common adherence to a cooperative plan of action or wide acceptance of a single legislative solution to a given problem will lead to the increase of uniformity in the criminal law.

An Example of Cooperative Interstate Administration

An excellent example of interstate cooperation in crime control is to be found in the Interstate Compact for the Supervision of Parolees and Probationers.[29] This cooperative vehicle does not, however, lend itself to discussion under any single one of the categories set forth at the beginning of this article. Indeed, it cuts clear across all three of them. An analysis of the compact may logically be set forth at this point, since probation or parole are the rehabilitative aspects of a sequence which includes apprehension, extradition, and trial.

Rehabilitation of those convicted of crime is essential to community wellbeing. State parole and probation officials long have recognized that such rehabilitation can be furthered by transfer of a parolee or probationer to another jurisdiction, because of family ties in another state or because of better employment opportunities there. The problem formerly lay in the fact that, without a binding interstate agreement, literally thousands of such persons lived outside of the state of their offense, free from the slightest enforceable control or supervision. This was the jurisdictional problem requiring interstate cooperation.

To answer this need, the Interstate Compact for the Supervision of Parolees and Probationers was drafted and signed by the first

27. Warner, *The Uniform Arrest Act*, 28 Va. L. Rev. 315 (1942).
28. N. H. Laws of 1941 c. 982; R.I.P.L. of 1941 c. 163; Del. Laws of 1951 c. 304.
29. 48 Stat. 909 (1934). For text see The Handbook on Interstate Crime Control, *supra* note 4, pp. 46-48.

group of states in 1937. Gradually the number of states signatory to the compact has increased, and by virtue of the action taken by Georgia, North Carolina and Texas during 1950 and 1951, every state is now a full, legal member of this interstate agreement.[30] Because of the contractual nature of the agreement, it was vital that there be absolute uniformity of the language ratified by each of the states.

The compact is not a self executing instrument. It contemplates an administrative arrangement which must be carried into effect by the cooperative efforts of all the states. That it has worked well is evidenced by the fact that some ten thousand cases are being handled under the aegis of the compact at all times. To further the smooth operation of the compact, the official compact administrators who have been named by their governors have banded together into the Compact Administrators' Association for the interchange of information and the establishment of joint services and facilities. This is the third category of interstate cooperation in crime control that was mentioned at the outset of this article. As an administrative arrangement between and among the states, the compact serves many practical purposes. Broadly and briefly stated, it renders the negative function of capturing criminals who have violated the terms of their conditional freedom; on the other hand, it performs the positive function of encouraging rehabilitation by permitting transfer to a receptive environment where the chance for success is greatest.

How the Compact Works

This agreement among the states involves the following steps:

1. Any state will permit a parolee or probationer from another compacting state to return on parole or probation if he is a resident (defined as an inhabitant for more than a year and not absent for more than six continuous months immediately preceding the commission of his offense), if his family resides in the state, and if he can secure employment. If residence can not be shown, transfer of supervision from state to state may be obtained through mutual consent of the compacting states.

2. The state consenting to a transfer of an out-of-state parolee or probationer to its supervisory charge agrees to exercise the same care and treatment as its state standards permit for supervising its own probationers or parolees.

30. N. C. Laws of 1951 c. 1137; Texas Laws of 1951, H.B. 658; Ga. Act 796 (1950). For citations to the other state ratifications see THE HANDBOOK ON INTERSTATE CRIME CONTROL, *supra* note 4, p. 49.

3. If a state desires to retake a probationer or parolee who has left its immediate jurisdiction under provisions of the compact, an accredited officer of the state may apprehend and retake the person in another compacting state without formalities other than establishing his authority and proving the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are expressly waived by the states under the compact, and by the individual parolee or probationer whose grant of liberty is made conditional upon his signing a waiver of extradition.

Rules, regulations, and forms designed to standardize operations and to facilitate smooth administration have been agreed upon and are in daily use by the compacting states. From time to time, new or amended forms and regulations are developed by the administrators.

COURT DECISIONS

The compact has on a number of occasions been subjected to attack on constitutional grounds, but it has always withstood the scrutiny of the courts.[31] It is perhaps unfortunate that no definitive ruling has ever been laid down by the United States Supreme Court, but this is only because no person who contested the compact unsuccessfully in any state court has ever seen fit to carry the case further. This means, of course, that there may be sporadic state-by-state testing of the compact where no state supreme court has yet handed down a decision.

The leading case on the constitutionality of the compact is generally considered to be *Ex Parte Joseph Tenner*.[32] In that case the petitioner contended that the compact was repugnant to the Extradition, Compact, and Due Process Clauses of the Constitution and also to federal extradition statutes. The California court declared that the only serious question presented by the petitioner was the one dealing with extradition under the United States Constitution and federal acts, and this contention was answered by the court in the following language:

> The existence of an independent method of securing the return of out-of-state parolees does not conflict with nor render ineffectual the federal laws with relation to extradition. The federal method of extradition is always present and may be invoked when necessary to secure the right to return of the fugitive to the demanding state. Also states not party to the interstate compact are free to invoke that procedure to secure the return of fugitive parolees. And if a state has elected to follow the federal procedure and claim the constitutional guarantee, the fugitive of course has the right to insist, on habeas corpus, that the procedure conform to the federal law. Similarly the parolee detained under the interstate compact has the right to

31. Gulley v. Apple, 213 Ark. 350, 210 S.W. 2d 514 (1948); Pierce v. Smith, 31 Wash. 2d 52, 195 P2d 112; Rankin v. Ruthazer, 98 N.Y.S. 2d 104 (1950).

32. 20 Ca 2d 670, 128 P2d 338 (1942).

complain, by means of habeas corpus, if that law is not complied with by the authorities. But no right exists on the part of the parolee, whose parole has been revoked, to claim that he may only be removed by the method of his choosing. And since the statute applies uniformly to all parolees from states party to the compact, the petitioner may not complain that the statute deprives him of the equal protection of the laws.[33]

A Compact Amendment

What to do with parole and probation violators has been a problem of some seriousness. When other measures fail, the final recourse is to incarcerate the violator for the balance of his sentence or for whatever other period is determined upon pursuant to law. But persons being supervised under the compact are in states other than the sending state. Accordingly, there have been only two alternatives available. Either the violator could be left free of effective control or he could be brought back to the sending state. The former course is obviously unsatisfactory while the latter can be both inconvenient and expensive, especially where the distance between sending and receiving states is great.

In order to meet this problem, an amendment to the compact was prepared and suggested to the state legislatures. At the 1951 sessions (the first opportunity for state action) the amendment was adopted by Idaho, Utah, and Connecticut.[34] It provides for incarceration in the receiving state at the option of the sending state. Since states do not enforce the penal laws of other jurisdictions,[35] the amendment makes the receiving state the agent of the sending state for purposes of such incarceration and provides for the retention of jurisdiction over the prisoner by the sending state.

Since there has not yet been time for many states to adopt the amendment or for those states which have adopted it to commence operations under its provisions, there is no record of experience to report at this time. In addition, it should be pointed out that states which do not adopt the amendment will continue to operate under the basic compact. The amendment provides an additional instrument for the effective supervision of parolees and probationers in states adopting it and does not supersede the original compact.

Federal-State Aspects of Crime Control

Although the primary purpose of this article has been to survey

33. *Ibid.*
34. Conn. Laws of 1951, H.B. 259; Id. Laws of 1951 c. 101; Ut. Laws of 1951, S.B. 210.
35. Huntington v. Attrill, 146 U.S. 657 (1892); United States v. Constantine, 296 U.S. 287 (1935).

developments in the field of interstate crime control, there are certain national-state relationships that require notice because they more or less directly affect the success of interstate action. It is important to remember that the national government, unlike any of the states, asserts its jurisdiction throughout the country. It is thereby enabled to render substantial assistance in dealing with interstate crime problems. Also, the United States Constitution as interpreted by the courts has placed some restrictions on intergovernmental cooperation in the interest of individual liberty.

We have already seen that the states' limited territorial jurisdiction has led to a movement for certain types of uniform legislation. But even before the states themselves became active in the promotion of cooperative crime control activity, the national government had undertaken to aid state law enforcement. A principal difficulty, however, was that the power to protect health, safety, morals, and general welfare (usually referred to as the police power) is reserved to the states.[36] It was therefore necessary for Congress to adapt other powers to the desired purpose, particularly the commerce power.

Federal Supplementary Legislation

Starting at about the turn of the century, Congress began to prohibit the interstate movement of persons and commodities in limited situations related to crime. One statute first enacted at that time forbids the interstate transportation of game killed in violation of state law,[37] a later law forbids the interstate transportation of kidnapped persons;[38] and still another prohibits the transportation of stolen motor vehicles across state lines.[39] These and similar statutes make such transportation criminal under federal law. The proscribed conduct is prosecuted as a federal offense even though transportation is only incidental to the real evil whose control is sought. Practically speaking, the goal is to prevent or to punish acts like kidnapping and larceny—crimes cognizable in the state courts—whenever jurisdictional difficulties make it impossible for local authorities to reach the criminal.

A recent statute of the type just discussed makes it a crime knowingly to ship or transport gambling devices in interstate commerce.[40] In most respects this law is not unusual except in so far as recent awareness of interstate gambling problems may make it very timely. However, one

36. U. S. Constit., Amendment X.
37. 31 Stat. 188 (1900).
38. 47 Stat. 326 (1932).
39. 41 Stat. 324 (1919).
40. P.L. 906, 81st Congress, 2d Session; Approved January 2, 1951.

provision of the act is notable. It is to the effect that the prohibitions contained in the law shall not apply to a state which has legislated to exempt itself from its application. Nor shall the law apply to a political subdivision where the state in which it is located has legislated to provide for the exemption of that subdivision. In other words, the extent to which this federal law will be operative depends on the crime control policy of individual states. "Local option" arrangements are not entirely new,[41] but this statute marks their first application to the crime control field.

A statute that also employs the national commerce power but is unique in its closeness of contemplated cooperation with the states is the Fugitive Felon Act,[42] originally passed by Congress in 1934. In its early form, this law provided that it should be a crime against the United States for any person to use the channels of interstate commerce to avoid prosecution for a crime or to avoid testifying in a criminal case. It was further provided that prosecution of this federal crime could be had only in the judicial district where the prosecution for the original offense would be had. It was clear that this law was intended to serve much the same purpose as the uniform extradition and uniform witnesses acts but as these statutes had not yet become significant instruments of law enforcement, the legislation was doubly useful. However, it was limited in scope. The only legal proceedings to which it applied were those for murder, kidnapping, burglary, robbery, mayhem, rape, assault with a dangerous weapon, and extortion accompanied by threats of violence, or attempts to commit any of the foregoing crimes. But even more limiting was the decision in *United States* v. *Brandenburg*[43] where the act was held applicable only to these crimes as defined at common law. Since the criminal law of all the states is codified and since the penal codes quite commonly define even the enumerated crimes differently than they were defined at common law, the usefulness of the law was substantially impaired.

In order to meet the Brandenburg Decision and so that the general effectiveness of the act might be increased, it was extensively amended in 1946.[44] As the law now stands, it applies to the named crimes as defined either at common law or by statute. In addition, the entire scope

41. For application in the field of insurance see 59 Stat. 34 (1945), upheld in Prudential Ins. Co. v. Benjamin, 328 U.S. 408 (1946); rent control, 62 Stat. 96 (1948), upheld in Woods v. Shoreline Cooperative Apartments, 84 F. Supp. 660 (1948) [held the act unconstitutional], reversed in Woods v. Miller, 333 U.S. 138 (1948); United States v. Bize, 86 F. Supp. 939 (1949).

42. 48 Stat. 782 (1934).

43. 144 F.2d 656 (C.C.A. 3d 1944).

44. 60 Stat. 789 (1946), 18 U.S.C.A. sec. 1073.

of the legislation is enlarged by making it an offense against the United States to use the channels of interstate commerce to escape from custody or from enforcement after conviction. Indeed, in its present form, it may even be that the statute is capable of use as a supplement to the ordinary processes of state law where a parolee or probationer evades supervision whether under the Interstate Compact for the Supervision of Parolees and Probationers or otherwise.

There appears to have been very little litigation under the statute since it was amended in 1946. However, it has been held that a person returned to the judicial district where the original crime would be prosecuted is not immune from the service of state process and prosecution for the original crime.[45] It would appear then that there is no judicial barrier to the accomplishment of the clear purpose of the statute.

At the present time, the act is being used on an average of approximately fifty cases a year. Whether these cases actually involve close cooperation with state law enforcement officers is difficult to say. The Fugitive Felon Act is not well known to many police departments and prosecutor's offices; and perhaps more important, the ever increasing adoption by the states of the uniform extradition and witnesses acts usually makes it possible for states to place primary reliance on interstate rather than on national-state cooperation. Nevertheless, the statute remains a valuable supplement to the more frequently used procedures. In fact, it might be more useful still if broadened to include proceedings related to all felonies and perhaps the more serious misdemeanors.

Procedural Problems

The Fourteenth Amendment can also present problems of coordination in the enforcement of criminal laws. By a now familiar process of judicial construction, the Due Process Clause of this amendment has come to embody most of the guarantees found in the Bill of Rights.[46] Often a defendant who believes that state procedures do not live up to these requirements of due process seeks collateral relief in the federal courts while the state proceeding is still in progress or in order to escape the effect of a state court ruling. This is most commonly attempted by an application for a writ of habeas corpus.

The usual rule in such cases is that the federal courts will not take jurisdiction unless the defendant has exhausted all his remedies at state law or unless the remedy at state law is not plain, speedy, and efficient.[47]

45. United States v. Conley, 80 F. Supp. 700 (D.C. Mass. 1948).
46. Palko v. Connecticut, 302 U.S. 319 (1937).
47. *Ex Parte Hawk*, 321 U.S. 114 (1944); Robb v. Connolly, 111 U.S. 624 (1884).

Although a judicious application of this rule serves to keep confusion at a minimum, difficulties sometimes arise. In *Dye* v. *Johnson*,[48] a convicted felon had escaped from a Georgia prison and fled to Pennsylvania. When his whereabouts became known, Georgia requested extradition. The Pennsylvania Supreme Court ordered the prisoner's return to Georgia, but Johnson petitioned a United States district court for a writ of habeas corpus.

In the proceedings to obtain the writ, the petitioner argued that return to Georgia would violate his constitutional rights because it would expose him to serious danger of violence and would invite the resumption of alleged cruel treatment practiced upon him before his escape.

The Court of Appeals for the Third Circuit held that extradition had been improperly ordered by the Pennsylvania courts and asserted that in cases of this sort, it was possible to examine into the actual situation in order to see whether the fugitive would really be in danger if returned.[49]

If this holding had stood, it would have presented a case wherein a state would have been prevented from cooperating with a sister state. However, the United States Supreme Court reversed the holding. Unfortunately there was no opinion. It is therefore impossible to say with any degree of assurance what the ground of the reversal was. However, the most likely possibility appears to be that the Supreme Court was of the opinion that if substantive questions touching upon Johnson's treatment in Georgia were to be examined, they should be dealt with either in the Georgia courts or by a federal district court in that state.[50] The state tribunals are also obligated to enforce the Federal Constitution and the Federal District Court in Georgia would be in a better position to get at the facts.

Even though *Johnson* v. *Dye* presents the problem in an oblique fashion, there is a procedural point of some importance involved. On a number of occasions, the Supreme Court has upset state decisions or sanctioned the intervention of lower federal courts on the ground that the procedural law of a state was so intricate or vague that it did not assure a defendant due process of law.[51] It may be that this is a field in which similarity, if not uniformity accompanied by simplification of

48. 70 S. Ct. 146 (1949), reh. denied 345 U.S. 128 (1951).
49. Johnson v. Dye, 175 F.2d 250 (C.C.A. 3d 1949).
50. All the Court did was to cite *Ex Parte Hawk, supra* note 47. It may be that the doctrine of forum non conveniens is properly applied here. For the view of the Attorney General of Georgia see Cook, *Interstate Extradition and State Sovereignty*, 1 MERCER L. REV. 147 (1950).
51. Marino v. Ragen, 332 U.S. 561 (1947) and cases cited therein.

criminal procedure is desirable. Although the problem is much larger than its interstate aspects it is none the less important to effective co-operation among the states, particularly where extradition is involved. The danger is that so long as some state codes of criminal procedure are inadequate, the courts of sister states will be forced to so declare and to refuse extradition. A determination by the judicial arm of one state government that another state is denying rights safeguarded by the United States Constitution is not a pleasant prospect from the policy point of view even though it is a judicial possibility.