THE INTERSTATE COMPACT—A DEVICE FOR CRIME REPRESSION

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Certain legal concepts have quite naturally grown out of the employment of boundary lines between private tracts of land and between political sovereignties. Along with these concepts corollary notions have also developed which may be likened to the rules by which the old game of "cop and robber" was kept within bounds—rules which guarantee to the fugitive criminal, in certain instances, complete immunity and sanctuary in the midst of a feverish chase. The claim of the child which finds expression in "You can't tag me here," is not unlike the claim of the criminal who takes advantage of the boundaries which separate villages, townships, cities, counties, states, and nations.

The interstate compact in no way involves the eradication of boundaries. It does, however, offer a simple method for discarding those incidents of boundaries which have no justification except from the standpoint of the criminal who profits by their retention.

Boundary rivers have always been a favorite gathering point for criminals; and this was particularly true of the territorial boundary line between the States of Mississippi and Arkansas, which, for many miles, is the center of the main channel of the Mississippi River. If one state forbade gambling, for instance, and the other sanctioned it, a river boat would leave the former's shore, cross the middle of the main channel, and suddenly become transformed into a gala gambling ship. The sanctity of that narrow thread in the main channel rendered impotent the enforcement officials of the state whose laws were being so ingeniously circumvented. If the state which permitted gambling passed a liquor law and the state which forbade gambling did not, the river boat turned on its motors, crossed back to the other side of the main channel, and opened up its saloon. Even where both states had identical laws relating to gambling, liquor control and other subjects, criminals, by operating close to the middle of the channel, made it difficult for a prosecutor in either state to establish exactly in which jurisdiction the offense was committed. In other words,

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identical substantive criminal laws would not solve the problem which the proof of venue raised.

When it was suggested by some that there was no reason why the laws of both states should not be made effective over the entire river, even when such laws conflicted, others pointed to the territorial boundary which seemed, according to traditional boundary concepts, an insurmountable barrier to concurrent jurisdiction. It was evident that coöperative effort on the part of both states was needed. Mississippi and Arkansas, therefore, entered into a compact[1] which literally, at least for the purpose of enforcing the laws of the respective states, extended the western boundary of Mississippi to the western shore of the Mississippi River, and the eastern boundary of Arkansas to the eastern shore of the same river.

These two states had few precedents for their action. In all the years since the insertion in the Constitution of the United States of a provision which declared that "No State shall, without the consent of Congress . . . enter into any Agreement or Compact with another State . . ."[2] only eight such compacts have been approved by Congress in the field of criminal law and procedure,[3] and only two of these preceded the compact just described. Many compacts have been entered into in other fields, such as the control and improvement of navigation, conservation of natural resources, utility regulation, taxation, boundaries and cessions of territories, etc.[4] All of the compacts in the crime field have been restricted to the service of criminal process on, or the jurisdiction over, boundary waters. Most of these compacts have provided for concurrent jurisdiction over such boundary waters. Similar grants of concurrent jurisdiction over boundary waters are also to be found in a number of congressional acts which admits states to the Union and which at the same time establish the boundaries for such states.[5] The legal problems which have arisen out

[1] 35 STAT. 1161 (1909).

[2] U. S. CONST., art. 1, §10, cl. 3.

[3] Compacts in the crime field which have been approved by Congress under the compact clause of the Constitution:

(1) New York and New Jersey (1833). *Re:* jurisdiction over the Hudson River. 4 STAT. 708.
(2) New Jersey and Delaware (1907). *Re:* jurisdiction and service of penal process on the Delaware River. 34 STAT. 858.
(3) Mississippi and Louisiana (1909). *Re:* penal jurisdiction over the boundary waters of the Mississippi river. 35 STAT. 1161.
(4) Mississippi and Arkansas (1909). *Re:* penal jurisdiction over the boundary waters of the Mississippi river. 35 STAT. 1161.
(5) Arkansas and Tennessee (1909). Same as above. 35 STAT. 1163.
(6) Missouri and Kansas (1910). Same as above. 35 STAT. 1163.
(7) Wisconsin, Illinois, Indiana and Michigan (1910). *Re:* criminal jurisdiction over the waters of Lake Michigan. 36 STAT. 882.
(8) South Dakota, North Dakota, Minnesota, Wisconsin, Iowa, Nebraska (1921). 41 STAT. 1447.

[4] See Frankfurter & Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments* (1925) 34 YALE L. J. 685.

[5] (1) The Act to admit Iowa as a state (1845). 5 STAT. 743.
(2) The Act to admit Wisconsin as a state (1846). 9 STAT. 57.
(3) The Act to admit Minnesota as a state (1857). 11 STAT. 166.
(4) The Act to admit Oregon as a state (1859). 11 STAT. 383.
(5) The Act to admit Missouri as a state (1820). 3 STAT. 545.
(6) The Act to admit Illinois as a state (1818). 3 STAT. 428, at 429.

of these grants of concurrent jurisdiction, whether the grant appears in a compact or whether it appears in the act admitting a state to the Union, have not been many,[6] and apparently the exercise of concurrent criminal jurisdiction by bordering states, with one possible exception,[7] has not brought on any major clashes between the states. A short discussion of these problems is relegated to the footnotes.[8] It has only been in very recent years that persons have become aware that there is a large body of problems in the criminal law field which are non-local in character and which at the same time do not justify federal intervention or control—problems that are beyond the power of a single state to control. In the Seventy-third Congress the so-called Interstate Compact Bill was enacted. This statute[9] provides:

That the consent of Congress is hereby given to any two or more States to enter into agreements or compacts for coöperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts.

In the report of the House Judiciary Committee which accompanied this Bill[10] it was stated:

This bill seeks to remove the obstruction imposed by the Federal Constitution and allow the states coöperatively and by mutual agreement to work out their problems of law enforcement.

[6] See note 8, *infra.*

[7] The States of Washington and Oregon have indulged in considerable litigation concerning the Columbia River, which is the boundary line between the two states. In one case involving a dispute between these states, which reached the United States Supreme Court, Washington v. Oregon, 214 U. S. 205, 29 Sup. Ct. 631 (1909), the Court deviated from the question at hand long enough to set forth in full in its opinion the compact between the States of Arkansas and Mississippi, and suggested at p. 633: "We submit to the States of Oregon and Washington whether it would not be wise for them to pursue the same course."

[8] Two situations have given rise to appellate court interpretations of such statutes.

1. Where the laws of State B definitely sanction conduct punishable by the neighboring State A, across the river, and an arrest is made by officers of A on the B side of the river.

2. Where State A attempts to prosecute for crime committed on an object on the B side of the river, which object is attached to the bed of the river or to the B shore.

It has been held in a number of cases that where the middle of the main channel of the river has been fixed as the territorial boundary and where concurrent jurisdiction was granted with reference to the apprehensions of criminals "on the waters of the river" that State A might prosecute for conduct condemned by its laws although committed by defendant on State B's side of the river. Brown v. State, 109 Ark. 373, 159 S. W. 1132 (1913); State v. Moyers, 155 Iowa 678, 136 N. W. 896 (1912); Lemore v. Commonwealth, 127 Ky. 480, 105 S. W. 930 (1907); State v. Cunningham, 102 Miss. 237, 59 So. 76 (1912); State v. Kurtz, 317 Mo. 380, 295 S. W. 747 (1927); State v. Metcalf, 65 Mo. App. 681 (1896); State v. Seagraves, 111 Mo. App. 353, 85 S. W. 925 (1905). The holdings of the cases construing these compacts and admissive Acts turn for the most part on what is meant by jurisdiction "over the river" or "on the river," and discussion of them is not justified in this article. The leading cases, other than those cited immediately above, are: Wedding v. Meyler, 192 U. S. 573, 24 Sup. Ct. 322 (1904); Nielson v. Oregon, 212 U. S. 315, 29 Sup. Ct. 383 (1909); McGowan v. Columbia River Packers Ass'n, 245 U. S. 352, 38 Sup. Ct. 129 (1917); Miller v. McLaughlin, 281 U. S. 261, 50 Sup. Ct. 296 (1930); State v. Mullen, 35 Iowa 199 (1872); State v. George, 60 Minn. 503, 63 N. W. 100 (1895); People v. C. R. R. of N. J., 42 N. Y. 283 (1870); Ferguson v. Ross, 126 N. Y. 459, 27 N. E. 954 (1891); Roberts v. Fullerton, 117 Wis. 222, 93 N. W. 1111 (1903).

[9] Public, No. 293, 73rd Cong., 2nd Sess. (1934), 18 U. S. C. A. (Supp. 1934) §420.

[10] H. R. Rep. 1137, accompanying H. R. 7353, 73rd Cong., 2nd Sess. (1934).

It has been intimated by some that this statute gives to the states no more power than they already had before its enactment, and that, under this Act, Congress contemplated that whatever agreements were entered into between the states in the form of compacts would have to be subsequently approved by separate resolutions of Congress before they would become effective. It is difficult to see how such an interpretation can be placed upon the Act. The Constitution makes valid an interstate compact only with the consent of Congress. Heretofore that consent has been given through a resolution approving a usually specific, but sometimes a very broad, proposal of the states. It would seem that the only interpretation which would give the present Act any significance whatever is one which regards the Act as a blanket endorsement in advance by Congress of any compact into which the states might enter in the field specified by the Act, *viz.*: "the prevention of crime and the enforcement of their respective criminal laws and policies"; and that as soon as the contracting states, through their legislatures, approve the agreement it becomes, from the date of the second state's approval, a binding compact. If otherwise interpreted, the Act is nothing more than a polite invitation on the part of Congress to the states to agree on compacts and submit them later to Congress for approval—something the states have been doing occasionally over a period of many years. A blanket consent statute is not a new idea. Such a statute was contemplated in 1921 by the Commissioners on Uniform State Laws;[11] and the Compact Act, as here interpreted, has a direct precedent in a resolution of the Congress[12] which is a broad advance endorsement of any compacts subsequently entered into by any states in the fields of conservation of forests and water supply and the protection of forests from fire.

The following subjects for compacts under the Interstate Compact Act have been suggested:

1. A compact giving authority to the officers of the enacting state to cross the state line, continue pursuit in the coöperating state, and there arrest a suspected criminal.

2. A compact giving authority to the officers of the enacting state to serve criminal process (not hot pursuit cases) issued by the enacting state, and directing its officers to arrest, in the coöperating state, one who has committed crime in the former.

3. A compact giving authority to the officers of the enacting state to return a fugitive, after he has been arrested in the coöperating state, to the enacting state, without following the customary rendition procedure, or

4. A compact giving to the coöperating state authority to expel to the enacting state, a person arrested in the former's jurisdiction, without the necessity of following the customary rendition procedure.

[11] Committee on Inter-State Compacts, *Report*, NAT. CONF. COMM. UN. STATE LAWS, HANDBOOK AND PROCEEDINGS, 1921, 297, at 334 (§19, par. 3).

[12] 36 STAT. 961 (1911).

5. A compact (or better, perhaps, a uniform reciprocal statute) providing for the securing of out-of-state witnesses for attendance at criminal trials.

6. A compact giving authority to the enacting state to try persons for certain offenses which are committed in the coöperating state but which take effect in the enacting state, or are partly committed in the latter, or are committed so close to a boundary line that it is impossible to tell in which jurisdiction the offense was actually committed.

7. A compact authorizing a state to expel, or the demanding state to retake, parole violators, escapees, or persons on probation who either do not come within the "fugitive from justice" classification under the rendition laws, or who should be retaken by a procedure simpler than that afforded by such laws.

8. A compact giving authority to States A and B to maintain jointly a bureau of identification and investigation, a crime laboratory, a joint police unit or border patrol.

9. A compact giving authority to the enacting state to return persons wanted in the coöperating state who have committed crime in the former but who are not "fugitives" under the judicial interpretation of the rendition laws.

10. A compact whereby one state would agree to supervise parolees released by another state upon the latter's agreement to supervise parolees released from the first state.

There are probably many other possible and justifiable uses for compacts in aid of law enforcement. The remainder of this article, however, will be devoted to a discussion of certain fields concerning which compacts will, in all probability, be made use of in the very near future.

Compacts Providing for the Arrest of Persons Who Have Fled Across State Lines

It seems to be generally assumed by laymen, as well as by many lawyers and police officials, that when a peace officer of one state, in pursuit of a fleeing criminal, arrives at the state line, he is entirely without authority to cross the line and make an arrest in a neighboring state. The assumption, for the most part, is not justified. A policeman of one jurisdiction who crosses the line into another jurisdiction does not thereby lose all legal right to make an arrest. "He sheds his uniform and badge, figuratively speaking, and becomes a private person with the same right to make arrests as any other private individual."[13] In over thirty states a private person may lawfully arrest if he knows that a felony has been committed and has reasonable ground to believe that the man he arrests has committed it.[14] In all of the states[15] except Texas,[16] which permits arrest without warrant only when the offense is committed in the

[13] WAITE, THE CRIMINAL LAW IN ACTION (1934), 267, 268.
[14] MODEL CODE CRIM. PROC. (Am. L. Inst., 1930) pp. 238 *et seq.* (annotation to §22).
[15] *Id.*
[16] TEX. CODE CRIM. PROC. (Vernon, 1925) art. 212; Lacey v. State, 7 Tex. Crim. App. 403 (1879).

person's presence, a private individual may arrest if he has reasonable ground to believe that the person arrested is guilty, and if such person is in fact guilty, of a felony. "The only privilege the state policeman loses when he crosses the line is the privilege of making a reasonable mistake. And in two-thirds of the states he is still allowed a reasonable mistake"[17] as to who committed the crime, if he is right in believing that a crime was in fact committed. "Indeed the Pennsylvania State policeman, for instance, who pursues a supposed robber into Ohio has the same authority to arrest him there as though the state line had not been crossed. . . . There is no need for a state policeman in hot pursuit to stop at a State boundary."[18]

While this right on the part of officers of a foreign state to arrest without warrant in the foreign state undoubtedly exists, it is not customarily exercised, either because of the popular assumption above referred to that all of the officer's rights cease at the boundary, or because in thirty states he loses the right to make a bad guess whether a felony has in fact been committed, or because in all states if the act committed should turn out to be a misdemeanor he would have no right to arrest unless the act was committed in his presence.

It has been suggested, therefore, that an effective administration of justice requires some provision whereby the officers of the state from which a suspect has fled could, either with or without the authority and coöperation of the officers of the asylum state, be granted the same right to arrest that they would have if the arrest were made in their own state. The following statute proposed in 1921 by the Commissioners on Uniform State Laws,[19] while not dealing strictly with the hot pursuit situation, is interesting in this connection:

Section 1. *Serving Process without the State for Offence Committed within it.* Criminal process issued under the authority of the State of [enacting State] against any person accused of an offense committed within the State may be served in any county within the State of [coöperating State], unless such person shall be under arrest by virtue of process or authority of the State of [coöperating] State.

Section 2. *Same.* Criminal process issued under the authority of the State of [coöperating State] against any person accused of an offense committed within that State may be served in any county within the State of [enacting State], unless such person shall be under arrest by virtue of process or authority of the State of [enacting State.]

An interstate treaty which contains provisions along this line is the one first enacted in 1882 between the United States and Mexico and renewed periodically thereafter.[20] The problem of providing by compact some procedure for arrest of a fugitive in a neighbor state is comparatively simple from the legal standpoint. The real difficulties arise in establishing a workable administrative system in which frictions and jealousies will be reduced to a minimum. A procedure for arrest which might be inserted in compacts is suggested later on in this article.[21] A problem closely linked with arrest procedure is that of the *return* of the person after arrest.

[17] WAITE, *op. cit. supra* note 13.
[18] *Id.*
[19] Committee on Inter-State Compacts, *supra* note 11, at 342.
[20] *Id.* at 319.
[21] See *infra* p. 468.

Compacts For the Return of Criminals Found in Another State

We may safely assume that an officer of one state who makes an arrest in a neighboring state is not empowered, under existing laws, to return his captive to the state from which he has fled if the fugitive is unwilling to return, without first obtaining authorization from the governor of the asylum state, such authorization being granted only after a showing, required by the congressional enactment relating to interstate rendition, that the person is a fugitive from justice, that he is charged with a crime in the demanding state, and that a demand has been made by the executive of that state for his return. The Constitution of the United States[22] provides that

> A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the crime.

Since this provision is not self-executing, Congress, in 1793, enacted an interstate rendition statute which elaborates slightly upon the constitutional provision.[23]

It is important to note, in connection with interstate compacts designed to set up a simpler and more effective method for the return of persons fleeing across state lines, that both the constitutional provision and the congressional act passed in pursuance thereof do nothing more than establish a duty on the part of the asylum state to comply with the demand of the executive of the demanding state for the return of the fugitive. The constitutional provision and the federal statute merely state when the asylum state *must* act but leave untouched the question when it *may* act. One reason perhaps why no less formal machinery has been developed in the various states is that the courts have regarded the authority of the governor to surrender a person as commensurate with the duty imposed upon him by the constitutional provision, the congressional act, and the state laws relating to rendition.[24] If the governor has no authority to act with reference to the surrender of a fugitive, that is, where no statute has been passed giving him such authority, the arrest of a fugitive would be beyond his power. A large body of state legislation has been enacted in aid of the present federal law.[25] Some of this legislation has gone beyond the federal law in providing for arrest of the fugitive prior to any requisition.[26] With reference to such legislation, Justice Brandeis has said:[27]

> These provisions of the Constitution and federal statutes [relating to interstate rendition] do not deal with arrest in advance of a requisition. They do not limit the power of a State to arrest, within its borders, a citizen of another State for a crime committed elsewhere; nor do they prescribe the manner in which such arrest may be made. These are

[22] U. S. CONST. art. 4, §2, cl. 2.

[23] 1 STAT. 302 (1793), 18 U. S. C. A. §662.

[24] Note (1927) 41 HARV. L. REV. 74, 75.

[25] Probably every state now has some law relating to interstate rendition.

[26] WIS. STAT. (1929) §§364.06-364.07; TEX. CODE CRIM. PROC. (Vernon, 1925) 999-1003; VA. CODE ANN. (Michie, 1930) §§5062-65. Note (1932) 32 COLUM. L. REV. 1411, at 1414.

[27] Burton v. N. Y. Central R. R., 245 U. S. 315, 318, 38 Sup. Ct. 108, 109 (1917).

matters left wholly to the individual States. Whether the asylum State shall make an arrest in advance of requisition; and if so, whether it may be made without a warrant, are matters which each State decides for itself. Such has been the uniform practice, sanctioned by a long line of decisions and regulated by legislation in many of the States. . . .

It must be conceded that state enactments which are inconsistent with the federal rendition law would be unconstitutional. On the other hand, the enactment of the federal rendition law in no way prevented the states from either enacting auxiliary legislation whereby the federal rendition machinery might more easily function or enacting laws which set up a simpler system of interstate rendition, provided that such laws in no way interfere with the duty constitutionally imposed upon asylum states to honor requisitions where certain prerequisites are met by demanding executives. It is submitted that the only instance in which a state law could be regarded as inconsistent with the constitutional provision would be where such state law lessened or detracted from this constitutional duty. If, by compact, two states provided for some simple unconventional procedure for the return of fugitives, such compact could not be said to interfere in any way with the duty of the governor of an asylum state to return a fugitive in the event that such fugitive is demanded, as under traditional rendition machinery, by the governor of the demanding state. A rule to the effect that food may be passed without command from the head of the table is not inconsistent with a rule that it must be passed when so commanded.

Again, inasmuch as the Constitution speaks in terms of one who has fled from justice, it is submitted that the states, retaining as they do all powers not granted away and embodied in the United States Constitution, would have the right to set up a procedure for the return of persons who have committed crime in one jurisdiction and are found in another but who are not strictly "fugitives from justice" within the meaning of the judicial decisions construing the congressional statute. This argument is well developed by Judge A. H. Reid in an address before the American Bar Association in 1920.[28]

If the intent of the framers of the constitutional provision is persuasive, it may be said that the history of the constitutional provision indicates that demand by the executive was not intended to be exclusive. In fact, rendition between executives seems to have been a new procedure when it first appeared in the Articles of Confederation.[29] In 1789, for instance, Chief Justice Brearly of New Jersey wrote to Governor Mifflin of Pennsylvania that the powers given by the Articles of Confederation to the state executive were "not necessary to be exercised in ordinary cases."[30]

A simple reading of the constitutional provision, taken together with the history of interstate rendition, indicates that the provision was inserted in the Constitution simply to assure each state that (regardless of what other methods for the return

[28] *Interstate Extradition for Extra-territorial Crimes* (1920) 45 A. B. A. REP. 432, at 440-442.

[29] 2 MOORE, EXTRADITION (1891) 821; 2 WINTHROP, HISTORY OF NEW ENGLAND (Hosmer's ed. 1908) 126; Hoague, *Extradition Between States* (1878) 13 AM. L. REV. 181, 210.

[30] MOORE, *op. cit., supra* note 29, 824.

of fugitives might be used) if demand were made by an executive upon another state for the return of a fugitive, the demand would be honored. It was not intended as a pronouncement that fugitives could be returned only upon executive demand. The congressional statute simply fills in the details showing when the duty exists and what showing should be made by the demanding executive before the duty arises on the part of the asylum state. It seems clear that the states still retain their right to set up any procedure for the return of persons wanted for crime, so long as it in no way detracts from the duty imposed upon a state when a demand does happen to be made by an executive for the return of a fugitive, and so long as such procedure does not conflict with the requirements of due process of law.

Various simpler methods for the return of persons wanted for crime have been suggested. Canadian practice whereby a warrant of one province, when endorsed by a magistrate of another, is a valid instrument in the second province for arrest and removal,[31] has been recommended. A procedure, similar to that under the federal removal statute,[32] has also been suggested.

A method for the arrest and return of wanted criminals, which might be inserted in interstate compacts, is suggested here in outline form.

1. An officer of enacting state in hot pursuit or armed with a warrant of arrest issued by the enacting state should have the authority to arrest a person wanted for a crime committed in the enacting state who has fled to the coöperating state, and should have power to make that arrest either

(a) alone and without the knowledge of the coöperating state or its officials, or

(b) (perhaps a better alternative) in coöperation with some official (from a class to be designated in the compact, such as sheriffs), or

(c) (perhaps even a better alternative) on the authorization of an officer or other official (from a class of officials to be designated in the compact), such an authorization to be almost an automatic one and communicable orally as by telephone, or otherwise.

2. Under such compact the officers of the enacting state should be required to take the arrested person before the nearest magistrate, (or, better perhaps, before the nearest judge having original jurisdiction over major felony cases), and

3. On a showing before such magistrate that either

(a) the arrest was made in hot or continuous pursuit and that the officer of the enacting state had reasonable grounds to believe that a crime under the laws of the enacting state had been committed in such state, and reasonable ground to believe that the apprehended person committed it, or

(b) that the officers of the enacting state possess a warrant valid on its face for the arrest of the person apprehended,

4. Then the court, on such showing, should order the apprehended person placed in the custody of the officers of the enacting state to be returned to such state without further proceedings.

[31] CAN. CRIM. CODE §662.

[32] 1 STAT. 91 (1789) as amended, 18 U. S. C. A. §591.

Of course, provisions as to the arrest of escapees, persons jumping bail following conviction and pending appeal, persons on probation, and parole violators (all persons who have already been tried and convicted) should require ample proof identifying the fugitive (such as fingerprints) and proof of his conviction and escape from confinement, or in the case of a parolee or probationer that his parole or probation has been revoked. The more simple the method of return the more subject to abuse it is likely to become, and this must be constantly kept in mind in the drawing up of state compacts in this field.

Compacts to Secure the Attendance of Non-Resident Witnesses in Criminal Cases

The problem presented by the absence of any legal procedure whereby non-resident witness may be required to attend criminal trials is a challenge to those persons anxious to establish substantial improvement in our criminal procedure by the compact device. A witness as such cannot be extradited. In 1931 the Commissioners on Uniform State Laws approved a "Uniform Act to Secure the Attendance of Witnesses From Without the State in Criminal Cases." This important law is digested in the footnote below.[33] Since 1931 six states[34] have adopted this Uniform Act, which was modeled in part after a New York statute enacted in 1902.[35] Similar legislation of much earlier origin had been enacted in the New England states.[36] Up to the time of the promulgation of the Uniform Act ten states[37] had adopted

[33] Section 1, entitled "Summoning Witness in this State to Testify in Another State," provides for the issuance of a summons by a court in the enacting state requiring a person certified to be a material witness in a criminal prosecution in another state (if it also has made provision for the return of witnesses) to attend and testify in the latter state on pain of contempt. Such summons shall issue only after a hearing at which it is shown that the witness is material and necessary, that the distance to the place of trial does not exceed 1000 miles, and that the states through and to which the witness must travel will give him protection from civil and criminal process. The witness thus summoned must be paid in advance mileage of ten cents per mile and five dollars for each day he is required to travel and attend as a witness.

Section 2, entitled "Witness from Another State summoned to Testify in this State," authorizes the issuance of a certificate by a court of the enacting state in which a criminal prosecution is pending stating that a person then in another state (which also has made provision for the return of witnesses) is wanted as a material witness in such prosecution for a specified number of days. Such certificate is to be presented to a court of record in the county where the witness then is. The witness must be tendered the same mileage and compensation as is provided above and shall not be required to remain within the enacting state beyond the period of time stated in the certificate.

Section 3, entitled "Exemption from Arrest and Service of Process," exempts a witness summoned to the enacting state or passing through that state in obedience to a summons from another state from service of criminal or criminal process in connection with matters which arose before his entrance as witness.

Section 4 enjoins interpretation of the Act in the interests of uniformity. Sections 5, 6, and 7 are formal in character.

In *The Problem of the Fugitive Felon and Witness* by Messrs. Toy and Shepherd, the authors question the adequacy of a statute of this character where the only sanction is contempt proceedings. See p. 420 *supra*.

[34] Maine, Nevada, New York, North Dakota, South Dakota, Wisconsin. See 9 UN. LAWS ANN. (Supp. 1933) 6.

[35] N. Y. CODE CRIM. PROC. (Gilbert, 1933) §618a.

[36] For a discussion of these statutes, see *Interstate Extradition of Witnesses* (1902) 6 LAW NOTES (N. Y.) 159.

[37] Connecticut, Iowa, Maine, Massachusetts, New Hampshire, New York, Rhode Island, South Dakota, Vermont and Wisconsin. See 9 UN. LAWS ANN. (Supp. 1933) 7.

statutes somewhat similar to the New York law of 1902. Both the New York statute and the Uniform Act are reciprocal in their nature. They are not compacts in the sense that there is a mutual agreement between any two or more states to adopt a particular procedure. The only case which has construed any of these statutes is the case of *Commonwealth of Massachusetts v. Klaus.*[38] In this case the majority of the court sustained the constitutionality of the New York statute of 1902, most of the argument being directed to the right of a state to require its citizens to go out of the state to testify in criminal trials in other states. A strong dissenting opinion,[39] however, insisted that a reciprocal law of this type is the equivalent of, if not, a compact, within the meaning of the United States Constitution, and that inasmuch as the consent of Congress had not been obtained the statute was invalid. This argument of the dissenting judge was not rebutted or even touched upon in the majority opinion, yet it is submitted that there is much to be said for this view. The legislation is reciprocal and operative only if another state also acts. It is an agreement by the state to do certain things which, apart from the statute, it is not compelled to do and which are to the benefit, in part, of another jurisdiction. It is fairly conceivable, therefore, that the courts will regard such uniform legislation as coming within the meaning of the word "compact." If such legislation is a compact, it is unconstitutional unless congressional approval is secured. The Interstate Compact Act of the Seventy-third Congress would certainly not give retroactive approval to such statutes, although it would sanction similar statutes which may be enacted in the future.

But it is submitted that uniform legislation rather than separate compacts would be much more likely to accomplish results in this field. The procedure would be more simple; interpretations of the Uniform Act would be persuasive authority in all jurisdictions which had adopted it; and scores of independent treaties, differing perhaps in their terminology, could thus be avoided.[40]

The absence of state laws providing for the rendition of witnesses in criminal cases was, in part, responsible for the so-called Fugitive Felon Law[41] of the last Congress which declared it a federal crime for a person to cross state lines in order to avoid giving testimony in a felony case. This Act, in effect, makes available federal removal machinery where interstate rendition is not available. But such a statute can be regarded only as a temporary expedient, to be used until such time as the states, by compact or uniform law, shall provide for the return of witnesses who have left the trial jurisdiction. This is a duty which clearly devolves upon the states.

[38] 145 App. Div. 798, 130 N. Y. Supp. 713 (1911).

[39] Commonwealth of Massachusetts v. Klaus, 130 N. Y. Supp. at 718.

[40] The late Professor Freund, formerly Commissioner of Illinois on Uniform State Laws, said (Committee on Inter-State Compacts, *supra* note 11, at 359): ". . . Where reciprocity is to operate between a great many of the states the compact method is so cumbersome that the method now prevailing [uniform reciprocal legislation] though theoretically less perfect, is more convenient."

[41] Public, No. 233, 73rd Cong., 2nd Sess. (1934), 18 U. S. C. A. (Supp. 1934) §408c. This statute is discussed in Toy and Shepherd, *The Problem of the Fugitive Felon and Witness, supra,* p. 415.

Compacts for the Supervision of Parolees and Probationers

The success of a parolee or probationer is dependent largely upon his surroundings. If he can be returned to his home where sympathetic friends can give him the needed encouragement and employment, there is a greater likelihood of his rehabilitation. But if he is convicted in one jurisdiction, and his home is in another, the problem of supervision arises; and an intelligent supervision is likewise an essential factor in rehabilitation. In many parts of the country this problem has been met by informal agreements between various municipalities and states. Such agreements have not, however, assumed the form of compacts or treaties.

It is now being urged that this is an appropriate field for interstate compacts, under which State A would agree to place its supervisory agencies at the disposal of State B's parolees or probationers, provided that State B would undertake the same with reference to parolees or probationers of State A. Under the compact, a basis for apportioning costs could easily be worked out to meet the situation where the number of persons sent by one state exceeds the number sent by the other. In a field such as this where much detail would be involved it is likely that the establishment by compact of a permanent joint commission by the states interested would prove most satisfactory. Such a compact might first be entered into by a very limited number of states which now possess high standards of supervision. The compact might provide that additional states could become parties thereto by meeting the standards set by the joint commission. This would undoubtedly tend to raise standards in the various states.

Whether the subjects for compacts discussed herein represent fields in which compacts are most needed is, of course, debatable. At least, these are the fields in which the compact device is most apt to be employed in the near future. These fields certainly present problems which are beyond a single state's power to meet, and yet they are problems which, for reasons of policy, or because of constitutional limitations, the federal government alone should not assume. When a problem can be said to fall in this intermediate category the likelihood is strong that it may be effectively met by the instrumentality of an interstate compact.