A STUDY IN INTERSTATE COMPACTS

THESIS

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PREFACE

Because of an interest in the subject of interstate compacts aroused in 1926 by an article from the pen of Richard Washburn Childs, the writer began an investigation of the subject for the purpose of answering certain questions which presented themselves. No single source he was able to locate answered all his questions, and feeling the need of something of the sort, he came to a decision to produce such a paper himself as soon as an opportunity presented itself. In the summer of 1938, spurred by the necessity of preparing a thesis to satisfy in part the requirements for a Master's degree, he decided to attempt the paper. Not enough time was available in which to prepare a study of the scope and thoroughness he had contemplated. The study which follows is a compromise with his past intentions. Perhaps at some future date, a more extended effort will be made.

Some of the questions to which the writer has attempted partial answers are: To what extent have interstate compacts been formulated, and for what purposes? Are there definite types, or classifications, of compacts? Just what are the provisions of typical compacts, and what machinery do they bring into existence to administer their provisions? May compacts between states be adjudicated like contracts

between individuals? If so, can a court's decrees against a sovereign state be enforced? Can interstate compacts be utilized to prevent a further encroachment of federal activities into fields of state functions? What, if any, are the objections to interstate coöperation through compacts?

No apologies are offered for any lack of unity or completeness which may be apparent in the pages to follow. They are an attempt to supply in a single convenient source partial answers to the above questions, together with other information, perhaps not wholly related, but at least serviceable for later reference. This will explain the inclusion both in the body of the thesis and in the appendices, of materials that may not be wholly relevant. For a like reason, certain sources are listed which have not been consulted in the preparation of this paper.

The writer is indebted to Vice President John Nance Garner for valuable helps. Mr. Garner furnished materials and references from the Library of Congress, together with a complete bibliography. Honorable Lyndon Johnson had compiled a list of the Acts and Joint Resolutions enacted by Congress for the purpose of giving its consent to interstate compacts, as well as a supplementary bibliography. The Administrative Office of the Council of State Governments supplied me with copies of a few model statutes which that organization recommends as being suitable and desirable for enactment and for preservation through interstate compacts.

I am sincerely grateful for all these helps, without which the paper following could not have been written.

I am particularly obligated to Dr. M. L. Arnold, Dr. E. O. Tanner, and Dr. E. O. Wiley, members of the faculty of the Southwest Texas State Teachers College, San Marcos, for valuable suggestions and for editing the manuscript. If the thesis has any merit, these men deserve much of the credit.

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San Marcos, Texas
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A STUDY IN INTERSTATE COMPACTS

CHAPTER I

ORIGIN OF THE COMPACT CLAUSE

> No state shall, without the consent of Congress ... enter into any agreement or compact with another state, or with a foreign power ...[1]

Article 1, Section 10, of the Constitution places a number of restrictions on the states in their relations one with another, and with the national government. The above clause decidedly restricts the rights of the states with respect to the making of compacts. It is a negative statement, confers no powers, but rather restricts existing powers. For convenience, the quoted words will herein be referred to as the compact clause.

No doubt every single item of the Constitution was placed therein for definite reasons, but few of the items have so interesting a history as does the compact clause. To borrow a trite phrase from biology, it was a product of heredity and environment. It was a literal descendant of the same restriction enforced by England on the Colonies. Clauses of like intent were in previous real and projected plans for unions, the last being the Articles of Confederation.

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1. Constitution of the United States, Article I, Section 10, Paragraph 3.

As to environment, several plans submitted to the Constitutional Convention contained variations of the compact clause. Mutual fears and distrusts among the states of the Confederation, particularly with respect to possible commercial agreements, suggested the necessity of depriving the states of the power to enter into compacts with one another and with foreign powers, without the consent of Congress.

It was no secret in the Constitutional Convention that different Colonies and, later, states had made compacts prior to the Confederation, and also under the Confederation.[2] They dealt with boundary settlements. Colonial compacts were not valid until they received the assent of the British Crown, and state compacts during the Confederation were supposed to receive the consent of the Congress, but this formality was not always observed, as will be shown later. Intercolonial compacts usually contained provisions in the text for submission to England, or else in the instructions to the Commissioners who negotiated them. The instructions to the Commissioners from Massachusetts who met with Commissioners from New York at Albany in 1773, to form a boundary compact, contain these words:

> The line (i.e., the boundary line between New York and Massachusetts) is to be immediately submitted to His Royal Majesty for His Royal approbation and confirmation.[3]

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2. These compacts are listed in the Appendix.

3. Johnson, Ethel, "Labor Compacts in the United States," International Labor Review, Vol. 33 (June, 1936), p. 792.

Records are available of at least nine compacts entered into between English Colonies in America, and in every case they were submitted to England for approval or rejection. Alice Mary Dodd[4] thinks that the power of Congress to give consent to interstate compacts is a continuation of the power which was exercised by the Crown and the Privy Council.

The idea was adopted by various unions, formed and contemplated, in America. In 1643, Connecticut, New Haven, Massachusetts, and New Plymouth formed a loose confederation called "The United Colonies of New England," and adopted a constitution, or charter of powers, for the organization. Among the duties of the Commissioners, two from each Colony, as outlined in the constitution, were:

> To Declare War, make Peace, divide the Spoils of War, and to take measures for the preventions of quarrels among the Colonies.[5]

This was intended to be a definite restriction on the treaty making powers of the four Colonies composing the confederation. The enumerated powers were to be exercised by the Commissioners acting for all. There is evidence that the Colonies recognized that their powers had been circumscribed for the general good, and that they asked for the consent of the Commissioners when an occasion arose calling for a treaty.

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4. Dodd, Alice Mary, "Interstate Compacts," 70 U. S. Law Review, p. 557.

5. Chitwood, Oliver P., A History of Colonial America, p. 170.

A voluminous American History, in giving an account of the dealings of one de la Tour with Massachusetts, says:

> The Massachusetts Authorities were reluctant to abandon de la Tour, but seeing no alternative, they made a treaty for free trade, subject to a confirmation by the federal Commission.[6]

A little more than a century after the formation of the New England Confederation, a plan for a union of the entire group of thirteen Colonies was proposed, but not adopted. An item from the Albany Plan, 1754, reads as follows:

> The President General, with the advice of the Grand Council, shall hold or direct all Indian treaties in which the General Interest of the Colonies is concerned.[7]

This Plan, had it been adopted, would have resulted in a mild restriction on the treaty making powers of the separate Colonies. It would have applied to treaties with the Indians, and apparently would not have applied to compacts between Colonies, or between a Colony and a foreign power. The reason is apparent. At the time, all such compacts and treaties had to be submitted to England for approval.

A more definite source of the compact clause is to be found in the Articles of Confederation. To quote:

> No state, without the consent of the United States in Congress assembled, shall ... enter into any conference, treaty, agreement or Alliance with any king, prince or state.

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6. Plymouth Colonial Records, ix, 59, as cited by Hart, History of the American Nation, Vol. IV, p. 135.

7. Warren, Supreme Court and the Sovereign States, Notes, p. 126.

> No two or more states shall enter into any treaty of confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purpose for which the same is entered, and how long it shall continue.[8]

The similarity of the provisions and language of the above leaves no reasonable doubt that it was the immediate source from which was to come later the compact clause of the Constitution. These provisions in the Articles probably originated with John Dickinson. Indeed, for reasons not necessary to include here, it is thought that Dickinson was the immediate author of the entire Articles, but we are sure he received a letter from Dr. Franklin[9] containing some suggestions to be included in any plan of union which might be adopted. We also know that Dickinson elaborated on these suggestions, and wrote a series of restrictions upon state powers. Among them was the quotation given above, with some variations, which was within a few months to be a part of the Articles of Confederation, and within a few years, with greater modifications, to be a part of the Constitution.

From certain speeches before the Constitutional Convention, which will be cited later, we know that this provision of the Articles of Confederation was ignored at times. The government had no power to enforce it, or any of the other provisions, and it soon became apparent that chaos and

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8. Articles of Confederation, Article vi.

9. Warren, op. cit., p. 126.

perhaps a loss of the independence so hardly won would result if the central government were not made stronger. After two abortive attempts, a convention assembled in Philadelphia with instructions to amend the Articles, but there is reason to believe that the leaders of the movement contemplated a new kind of government entirely.

One reason for believing this is the fact that several plans for a different type of government were prepared in advance of the opening of the Constitutional Convention. Some of the plans contained restrictions on the treaty making powers of the states. Pinckney's Plan,[10] which was a skeleton outline merely, contains these words, "No state to form treaties, compacts, etc., without the consent of Congress."[11] A similar meaning can be read into the original of the Virginia Plan without doing a violence to the text. Quite definitely, the New Jersey plan would have restricted the treaty making powers of the states. No such restrictions are to be found in Hamilton's Plan, probably for the reason that his Plan would have practically destroyed the states as sovereigns.

Aside from historic precedent, there must have existed a felt need for constitutional provisions restricting the

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10. There is some question that Pinckney's Plan was submitted to the Constitutional Convention in the form which we know it today.

11. These various Plans are available in a number of sources; see United States, Formation of the Union, Government Printing Office, Washington, D. C., 1927.

treaty making powers of the states, or they would hardly have been included in the various Plans mentioned above. The need evidently arose from a general fear of possible evil consequences of state compacts and treaties between states and foreign powers. One has but to read the debates of the Constitutional Convention to realize this. Time and again the matter was mentioned, with fears and forebodings. A few citations of typical examples follow.

Alexander Hamilton frequently pointed out the common danger if the states were not restricted in their treaty making powers. Referring to possible treaties between a state and a foreign power, he said:

> Alliances will be formed with different and hostile European nations, who will foment disturbances among us, and make us parties to their quarrels.[12]

This astute statesman's words were more than groundless predictions, for actual threats of foreign alliances were voiced at times. Among others, Bedford of New Jersey made such a threat on one occasion, as reported by Madison:

> They (i.e., the large states) dare not desert the Confederation. If they do dare, the smaller states will find some foreign power to take us by the hand and do us justice.[13]

James Madison frequently referred to the eventualities which could occur, should such alliances be formed, and contended strongly for a government strong enough to prevent them. He

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12. Madison's Notes in Formation of the Union, p. 302.

13. Ibid., p. 316.

pointed out that certain members of the German confederation had made treaties with foreign powers, and that the constitution of their union did not forbid it.[14] He likewise pointed out that certain states in America had made treaties with other states, and with the Indian tribes, although forbidden to do so by the Articles of Confederation. He reports himself as saying:

> By the Federal Articles, transactions with the Indians appertain to Congress, yet in several instances the states had entered into treaties and wars with them. In like manner, no two states can form among themselves treaties, etc., without the consent of Congress. Yet Virginia and Maryland in one instance, Pennsylvania and New Jersey in another, had entered into compacts without previous application or subsequent apology.[15]

Madison was exposing the weaknesses of the Congress, but the Delegates from New Jersey and other small states saw dangers ahead if the large states allied themselves against the smaller. Judge Ellsworth in particular frequently pointed out the perilous situations in which the weaker states would be placed if the strong states should join forces and interests. James Wilson tried to reassure Ellsworth and others by repeating Madison's arguments made a few days before Wilson's speech. Wilson, speaking Saturday, June 30, said in part:

> Much has been said about the three larger states combining to give us a monarchy or an autocracy. Let the probability of this combination be explained, and it will be found that a rivalship rather than a confederacy will exist among them.[16]

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14. Ibid., p. 228.

15. Ibid., p. 864.

16. Ibid., p. 829.

But New Jersey's fears for her safety, should the three large states enter into treaties of alliance, were not easily quieted. We find Paterson of New Jersey, and he was not alone in this, seriously proposing that all the territory be thrown together, and thirteen equal divisions be made of it.[17]

Into such environment, and from the ancestry traced above, the compact clause of the Constitution was born. The need for it is further reflected in the fact that no criticism was offered to it anywhere in the Convention's debates. Item by item, the various sections of the Constitution were proposed, debated, and sometimes amended. Not one sentence of hostile criticism of the compact clause is found in any of the recorded debates in the Convention. Monday, August 6, Rutledge presented the Report of the Committee of Detail, containing the Constitution as it existed on that date. The compact clause was in Article XIII. This Article was debated August 28, and certain alterations were made in it, but the compact clause was not touched. The Article as amended was then agreed to without a record vote.[18]

The next step in the history of the compact clause was the submission of the completed Constitution to the Congress, and to the states for ratification. There is no recorded opposition to it in the debates in Congress, or in the state

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17. Fiske, Critical Period of American History, p. 247.

18. Formation of the Union, p. 631.

legislative bodies. Contemporaneous writings, as the Federalist Papers, neither attack nor defend the compact clause. Surely, had there been any open hostility to it, Hamilton and others would have defended it, as they did other portions of the Constitution which were attacked. The only plausible conclusion is that the compact clause of the Constitution met with unanimous approval.

Having sketched the origin of the compact clause, the conditions in 1787 which were partially responsible for its inclusion in the Constitution, and the apparent unanimity of thought in approval, we should say a word concerning the nature of its provisions. It is in no sense a delegation of power. As Colonies in the British Empire, as states under the Articles of Confederation, these communities had enjoyed the power to make compacts one with another, under restrictions. The restrictions, as well as the powers of the states, are simply continued. It appears to the writer, then, that it is incorrect to refer to compact making under authority of Article I, Section 10, Paragraph 3, of the Constitution. Compacts are made under powers reserved to the states, and not under powers granted to them by the Constitution. Amendment X reserves to the states, or to the people, all powers not forbidden by the Constitution to them, or granted by it to the national government. Power to make compacts is one of

these reserved powers, nowhere granted to the states, but inherent in their sovereignty. When it is exercised by a state today, the action is the nearest approach to an act of sovereignty of which a state is capable.

The sovereign right to make compacts was wisely limited by the Fathers of the Constitution, but their foresight is more discernible from the fact that they did not abolish the right altogether. It is one of only two rights remaining to the states by which they may compose differences which may arise between two or more of them, the other being litigations before the Supreme Court. Without the right to make compacts, it is difficult to see how the states would have endured the Union during the earlier years of experimentation with it. The developments under the reserved right to make compacts, and the use of such compacts for other than the settlement of boundary disputes, will be investigated in the next chapter.

CHAPTER II

COMPACTS AND PRINCIPLES DEVELOPED SINCE 1789

The making of interstate compacts did not begin with the Constitution, as was shown in the previous chapter. As early as 1650, we find Connecticut forming a compact with New Netherlands which was little short of a formal treaty between sovereign states. Eight other compacts are known to have been negotiated prior to the separation from England, and at least four during the Confederation.[1] Compact making has continued under the Constitution, with little change in method. The extent of this development, and certain principles which have been evolved, will be the object of the present chapter.

Compact making under the Constitution had its beginning in the very first year of Washington's first Administration as President of the United States. In 1789, a compact was negotiated, or brought into being, between Virginia and Kentucky. The terms of the compact really set up some of the conditions under which Kentucky was to lose her status as a territory of Virginia and assume statehood. There was no formal consent of Congress to this compact, other than the Act which admitted Kentucky as a state, but a supplementary agreement did receive the consent of Congress, formally.[2]

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1. Frankfurter and Landis, "The Compact Clause and the Constitution," Yale Law Journal, Vol. 34 (May, 1925), Appendix A. These compacts are listed in Appendix of this thesis.

2. U. S. Statutes at Large, p. 189, 1791.

Virginia ratified the supplementary agreement in 1789,[3] and a Kentucky statute[4] of the same year may be interpreted as a ratification of the agreement. See Note 22.

The next step in compact making under the Constitution was taken in 1820, and Kentucky was again involved. The compact of 1820, like the supplementary agreement of 1789, provided for the settlement of a boundary dispute between Kentucky and Tennessee. This method has since been followed in the settlement of boundary disputes in all but a few cases, which were settled by the Supreme Court. The compact of 1820 is sometimes mentioned as the first under the Constitution, due to the fact that the agreement between Virginia and Kentucky was really an agreement between a state and its Territory, but with the admission of Kentucky as a state, the agreement being incorporated into her Constitution, the legality of a formal compact was definitely established. The Tennessee-Kentucky compact was ratified by Kentucky in 1820, Tennessee having ratified it the previous year, and Congress gave its formal consent by an Act in 1820.[5]

Eight years later, Congress gave its consent to a different kind of compact, the only one like it in our History. Virginia and Maryland jointly chartered and incorporated a

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3. Virginia Statutes of 1789, p. 17.

4. 1 Littleton's Statutes at Large, p. 609.

5. 3 U. S. Statutes at Large, p. 609.

firm doing interstate business, the C. & O. Canal, and Pennsylvania also ratified the completed agreement. The consent of Congress to the tri-state compact was given in 1828,[6] after the agreement had been set up and ratified by the three states concerned.

Twenty-five years later, a compact was completed between Massachusetts and New York which concerned more than the defining of a boundary line. Massachusetts ceded the so-called "Boston Corner" to New York. This was the first instance under the Constitution of a cession of territory by a compact. The compact was ratified by both states, and Congress gave official consent two years later.[7] There have been other instances of territorial cession, but none of them involved a great deal of territory except the Virginia-West Virginia compact of 1866. This was something of an aftermath of the formation of the new state of West Virginia. Under the terms of the compact referred to, Virginia ceded two counties, Berkley and Jefferson, to West Virginia. By an Act[8] Congress gave consent to the compact which completed the transfer.

An interesting development of the power of a state to make compacts occurred in 1857. This time the agreement was entered into by a state and a foreign power. New York and Canada provided for concurrent legislation incorporating an international bridge. New York and Canada ratified the

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6. 4 U. S. Statutes at Large, p. 101.

7. 10 U. S. Statutes at Large, p. 602.

8. 14 U. S. Statutes at Large, No. 12, p. 350.

compact and carried out its provisions, but for various reasons, Congress did not grant its official consent to New York until thirteen years later, in 1870.[9] Under the Constitution, a state is as free to compact with a foreign power as with another state, consent of Congress being necessary in both cases.

In all, Congress gave consent to states to form compacts nine times prior to the Civil War. Nine Acts of consent over a space of eighty-two years shows that the compact movement gathered little real headway in this period. In the period between 1861 and 1897, inclusive, a period of thirty-seven years, Congress gave its consent to states for the formation of compacts nine times. That is, as many consents were given in this period of thirty-seven years as in the previous period of eighty-two years. The compact movement was gaining slowly in momentum. From 1897 to the middle of 1936, Congress gave consent to states for compact making fifty-nine times. Let us tabulate these three periods for convenience, and in order that they may be seen at a glance:

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9. Not listed with others in U. S. Law Review, Vol. XX 70-1936; not included in the list prepared for the writer by W. C. Gilbert, Acting Director Legislative Reference Service, Library of Congress. It is listed, however, in a pamphlet "Compacts and Agreements Between States," Committee Report, National Conference of Commissioners on Uniform State Laws. The citation given in this report is 16 U. S. Statutes at Large, p. 173. Canada, 1857, 20 Victoria Statutes, chapter 227.

Period	Dates	Number of Consents	Length of Period
1	1789 to 1861	9	82 years
2	1861 to 1897	9	39 (inc.)
3	1897 to 1936	59	39 years

From this brief table, it is clear that compact making has increased, and all indications point to a sustained increase. While the years have passed in arithmetical ratio, the making of compacts has almost increased by geometric ratio.

It should be noted that the above figures refer to Acts of consent, not to actual compacts. In a few instances, where consent was given, compacts were never formed. In other cases, one or more states ratified the compact, and the others concerned have not ratified as yet, but may do so in the future. Note also, that two or more compacts are possible under a "blanket consent" law. Two compacts are now in process of formation under the Act of consent to Tobacco Growing States, 1936. One is concerned with common tobacco, and the other concerns Burley tobacco. Since 1931, Congress has given its consent for the construction of interstate bridges over navigable streams eighteen times. Some of these bridges will be built under a contract between agencies of the states, and others doubtless will result in the formation of interstate compacts.[10]

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10. For list of consents for interstate bridges, see pamphlet "Compacts and Agreements," supra, n. 9.

A considerable change in the ratio of boundary settlement compacts to all others has occurred since 1897. Counting the South Dakota-Nebraska boundary compact of 1897, there have been only twelve boundary settlement compacts since that date. The reason seems to be that practically no boundary disputes in America remain unsettled. The subject matter of the other compacts deal with such diverse matters as:

criminal jurisdiction,	8 consents
interstate water rights,	7 consents
constructions,	7 consents

Other matters included in one or more of these compacts since 1897 are: oil conservation, tobacco control, fish protection, forest and water conservation, sewage disposal, interstate parks, labor conditions, harbor development, cession of territory, flood control, and other matters. It will be seen that the interstate compact, both from the standpoint of numbers, and diversity of subject matter, is really a twentieth century governmental device, of which much more use will probably be made before the century closes.

In addition to the compacts accounted for above, a host of enactments of parallel legislations have occurred. Some of these statutes may constitute true compacts; many doubtless do not. This matter really belongs in another field, that of Interstate coöperation, and will not be discussed further here.

Having noted the development of interstate compacts from the standpoints of numbers, and objectives, one should give some attention to the motives which have prompted their formation. Few, if any, compacts have come into being for any other reason than to solve an immediate, pressing problem, and a compact seemed the most practical method to approach its solution. For illustration, the increasing demand for water for irrigation in the West naturally brought about conflicting claims to the water of an interstate river. Difficulties of agreement increased when two or more claimants had different theories concerning water rights. Most of the western states, California being an exception, enforce riparian rights in dealing with their own citizens, and claimed riparian rights in their dealings with other states. This doctrine gives the owner of the bank down-stream preferential rights over up-stream owners. California, and a few other Western States, insist on water settlements between states according to the theory of pre-emption, or priority. That is, the first to appropriate the water must have his rights protected from all late comers. To add to the confusion, Supreme Court decisions have limited the rights of Congress to allot the waters as it thinks best. Suits before the Supreme Court for the establishment of a state's rights to water from an interstate source have been slow, and expensive, and the only

matters settled at the time were the immediate question, or questions, involved. If the Court should allot so many acre-feet of water to any given state, and later the flow of water decreased from natural causes or because of appropriations by an upstream state, another problem would be presented, and another suit would probably result. The interstate compact has proved to be the most practical solution of the many problems, and the states, east and west, are resorting to it to adjust their differences.

As a result, no other field has so well been covered by interstate compacts as the field of water rights in interstate streams. Eight such compacts have been set up and are now in operation, dealing with the allocation of interstate waters. It must be remembered that several states are included in a single compact. There are twenty-six states east of the Mississippi River, and ten of them have ratified one or more interstate river compacts. West of the Mississippi, twelve states of the twenty-two have done likewise. The larger per cent of the western states reflects a greater need for water, or to be more exact, a more arid climate.

Given a need sufficiently pressing, within a suitable realm, a compact between states can be established with no great difficulty, as far as the mechanics of the process are concerned. The essentials are few. The text of the compact must be drawn up, the legislatures of the interested states

must ratify it, and Congress must give its consent to the states. The work of drawing up the text of the compact is usually the work of commissioners appointed for the purpose. The legislature of each state may authorize the negotiations and provide for the Commissioners, or they may be appointed by the Governor without legislative authorization. The signatures of the Commissioners in no way bind the states. After being drawn up and signed by the Commissioners, the compact has exactly the same status as a treaty which has been drawn up and signed, but not ratified by the interested Powers. That is to say, it really has no status at all. It is a scrap of paper, nothing more. After the legislatures ratify the compact, and Congress has given its consent, it becomes valid and binding according to its provisions.

Congress may give consent before the states take action, or afterwards, or at any time during the negotiations. Congress gave its consent to the Rhode Island-Connecticut boundary compact in 1886, and the two states ratified it the following year.[11] In the great majority of cases, Congress gives its consent after the compact has been formed. Congressmen naturally want to see the provisions of the compact before they vote to give consent thereto.

Another interesting development is that the consent of Congress may be implied. The Virginia-West Virginia compact

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11. See Appendix for compacts and dates.

of 1862 never received the formal consent of Congress, but the Supreme Court decided, in the case of Virginia vs. West Virginia[12] that the Act which admitted West Virginia into the Union implied the consent of Congress to the compact.

One sometimes encounters the expression that Congress gave its consent to compact, and the meaning is clear enough to any one who has read an Act or Joint Resolution giving consent. The consent, however, is not given to the compact, but to states. Congress gives its consent to two or more states, naming them, to form a compact, or it gives its consent to states, again naming them for what they have already done if the compact has been ratified previously by the states. Congress has even given its consent to "each of the several states," or any two or more of them, to form compacts dealing with specified matters, as crime control, interstate parks, etc.[13]

Contracts entered into between states without the specific consent of Congress range all the way from mutual recognition of professional licenses to boundary settlements. Most writers who have tried to differentiate between compacts which must have the consent of Congress, and those which may dispense with it altogether, have been able to make no finer distinction than: compacts of a "political" nature must have the consent of Congress, while "business" contracts may omit it. An Encyclopedia of the Social Sciences, in

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12. Virginia vs. West Virginia, 246 U. S. 565, 1918.

13. 36 Statutes 961, c. 186, Section 1, Conservation. 48 Statutes, 909, c. 406, crime.

reference to the matter, says:

> The question of how the consent of Congress may be given, and the more important question of when it must be given or when it may be dispended with altogether, remain full of doubt.[14]

There are two ways to look at interstate compacts which have been formulated without the consent of Congress. One view is that they are voidable; the other view is that, in the absence of opposition or objections by Congress, its consent may be implied. The latter view is based on the questionable logic that if Congress does not say "No," then it must mean "Yes." Speaking through the columns of the Minnesota Law Review, Judge Bruce could not be certain which view was the sounder. He said in part:

> Perhaps the true rule is that all compacts and agreements which increase or decrease political power are void, but others are voidable merely, at the option of the national government, and that consent thereto may be inferred from silence and acquiescence.[15]

Any distinction between compacts forbidden by the Constitution altogether, and those which may be made with the consent of Congress, would also be a matter of opinion only. The language of the Constitution in Article 1, Section 10, was not debated in the Constitutional Convention, so we know

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14. Encycylopedia of the Social Sciences, Vol. 4, p. 110, The Macmillan Company, New York, 1931.

15. Bruce, Andrew A., "Compacts and Agreements of States," 2 Minnesota Law Review, 1917-1918, p. 516.

nothing of the construction given it by the makers of the Constitution. With reference to the powers of the states to make compacts, the Yale Law Journal says:

> The distinction which the framers of the Constitution intended to draw between agreements unconditionally prohibited, and those permitted with the consent of Congress is not apparent from the language of the Constitution itself. There was little or no discussion of the clause while the Constitution was in the making, and the question has never been judicially determined.[16]

Perhaps it never will be judicially determined. Again, the Supreme Court may determine the matter with any particular compact in question, if and when a case reaches it. The Court may simply assume that Congress has made the distinction if it has given its consent. By so doing, Congress will have decided that the compact does not fall within the forbidden category.

The power of Congress to grant or withhold its consent to states in the matter of interstate compacts is an implied power. It is nowhere mentioned in the defined powers of Congress. The power is clearly implied, however, in the list of restrictions on the states. It is not surprising that the Constitution failed to grant compact making powers to the states, for it was never intended that the Constitution of the United States should the source of state powers. It is somewhat surprising that no state constitution gives to the state legislature the sovereign power to ratify an interstate compact. The powers of the United States Senate in treaty

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16. See Yale Law Journal, 31, p. 635; 1922.

making are constitutionally delegated, but not so the powers of the Legislature in compact making. By no theory of Government can the making of compacts and agreements between states be included in legislative functions. It is an act of sovereignty, and the Legislature shares in whatever sovereignty a state may have retained when it became a member of the Federal Union.

When the Legislatures of the states concerned in a compact have ratified it, and Congress has consented, the Supreme Court views the results with more leniency than it does Congressional Acts. The Court has time and again invalidated a legislative Act of Congress, but it has never invalidated an interstate compact to which Congress has given its consent. Several attempts have been made to invalidate interstate compacts by court action, but none of them has ever succeeded.[17]

Finally, in the absence of provisions to the contrary, a state may not repudiate its compact. Francis Wilson cites certain decisions to support this conclusion:

> When Congress has consented, compacts between the states will be construed as treaties between sovereign nations according to the canons of International Law, and are obligatory on the citizens thereof, and bind their rights.[18]

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17. From a bulletin, Is the State Compact Coming or Going? p. 702, issued by Public Utilities Reports, Inc. Candler Building, Baltimore.

18. Wilson, Francis C., Reports of American Bar Association, Vol. 57, p. 734.

CHAPTER III

INTERSTATE COMPACTS CLASSIFIED

In a sense, an interstate compact is a contract between states, and the rights and obligations of the parties thereto are comparable to the rights and obligations of private citizens with contract relationships. Just as a great variety of contracts is possible between individuals, so may sovereign states agree to do, or to refrain from doing, many things. Hence, a classification of compacts from a single viewpoint is hardly satisfactory. In the last analysis, any specific compact is a class to itself, just as would be the case if one were to attempt a classification for state constitutions. From the viewpoint of subject matter, or objective, a classification could easily be made, but is open to the objection that sometimes a compact, like a treaty, embraces more than one subject. Below is a suggested classification based on subject matter.

Class.	Subject Matter Example	Date (Consent of Congress)	States, or other designation of compact
1.	Boundary Settlement	1800	Virginia, Kentucky
2.	Harbor improvements	1922	New York, New Jersey
3.	Criminal jurisdiction	1880	New York, Vermont
4.	Financial settlements	1862	Virginia, W. Virginia
5.	Fish Conservation	1915	Oregon, Washington
6.	Water pollution	1935#	New York, New Jersey

7.	Public works	1919	New York, New Jersey
8.	Taxation	1922	Kansas, Missouri
9.	Labor standards	1934	Concord Compact
10.	Oil Conservation	1935	Interstate Oil Compact
11.	Crime prevention	1934	Blanket consent. (1) Mich., Ind. (2) Ill., Mich. (3) Ark., Ind.
12.	Allocation of interstate waters	1929	Colorado River Compact
13.	Construction, operation of toll bridge	1932	Delaware River Joint Commission, Penn., New Jersey
14.	Cession of territory	1855	Boston Corner, Mass. to New York
15.	Conservation of Forest and water	1911	Blanket consent#

#Incomplete

The simplest way to classify interstate compacts is hardly a classification, but a division into two lists. This may be done in a number of ways. To borrow from writers who have classified international treaties, we may say that interstate compacts are either bilateral or multilateral, open or closed. The terminology employed indicates the nature of the classification. A bilateral compact is one to which only two states have adhered, or may adhere. For instance, Congress gave its consent in 1929 to New Mexico and Oklahoma to apportion the waters from the Cimarron River.[1] No other state has consent to join the compact, nor has any reason for joining it. This is a bilateral compact. The Interstate Oil Compact is multilateral, for six states received the

1. 44 U. S. Statutes at Large, p. 1503.

consent of Congress to adhere to the compact.[2] A closed compact contains no provisions for the inclusion of other states than a designated number. The New Mexico-Oklahoma compact given as an example of a bilateral compact is also an example of a closed compact. The Concord Compact is open to any and all states, by its terms. If the consent of Congress is addressed to each of the several states, Congress does not have to act again when a state wishes to adhere to an existing open compact. An open compact may also be open to only a designated list of states, and not open to all of them. The Oil Compact is open to any oil producing state, but should any state other than the six mentioned in the Act giving consent desire to become a member, it could do so only with the consent of Congress.

It is possible to classify interstate compacts as "regional" or as "functional," which is rather a loose classification, but one frequently sees the terms used. A regional compact, as is indicated by the word regional, embraces a group of states in the same geographic area. They may be contiguous, or touch the same river. A functional compact is one with a function to perform which does not necessarily concern any particular section. Texas and Kansas, for instance, are allied in the conservation of oil. Functional compacts could include such matters as a common product like oil or tobacco, supervision of parollees, or extradition of persons charged with a crime.

As to manner of origin, interstate compacts are "treaty" compacts, or "parallel legislation" compacts. A treaty compact is negotiated in the same way as an international treaty, is reduced to a single official document, and deposited in the Archives of the State Department at Washington. The Interstate Oil Compact is a treaty compact. Parallel legislation compacts are set up in this manner; the proper legislation of a state signifies an offer or tender, by the way it is written. It may be addressed to particular states, or each of the several states. Legislation by another state will contain the compact, as did the offer, and will be so written as to be an acceptance of the offer. This completes the compact, but an exchange of ratifications sometimes follows. Some of the model laws designed by the Council of State Governments will become parallel legislation compacts when enacted by two or more states, provided Congress has enacted a blanket consent law covering the subject matter. Otherwise, Congress would have to give special consent.

It would seem at first reading that the Constitution had intended to separate interstate treaties into "compacts" and "agreements." The debates in the Constitutional Convention do not show if one thing or two are meant by the language used. Probably the use of both words was intended to include in the constitutional limitation all possible understandings of a formal nature. In the case of Virginia vs. Tennessee,

the Supreme Court was unable to make any distinction between compacts and agreements. The Court said, in part:

> Compacts and agreements--and we do not see any difference in meaning except that the word compact is generally used with reference to more formal and serious engagements than is usually implied in the word agreement--cover all stipulations affecting the conduct and claims of parties.[3]

A new type, or class, of compact may come into being under legislation enacted by Congress following the failure of certain New Deal Legislation to pass the test of constitutionality. It will be recalled that Congress repealed the Kerr-Smith Tobacco Act directly after the Supreme Court's AAA decision. To provide for the accomplishment of the intent of the Kerr-Smith Act, Congress enacted an Act of April 25, 1936,[4] giving consent to tobacco growing states to regulate and control the production of tobacco. Two compacts, as authorized by this Act, have been initiated, but neither has been completed. If and when they are completed, states by joint action will attempt to control the production of an agricultural product. The same thing is possible for oil, coal, iron, cotton, wheat, or any product, in fact. We may in the future witness the birth and growth of any number of production control compacts, but to date (1938) none have come into being. The writer's private opinion is, that if

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3. Virginia vs. Tennessee, 148 U. S. 520; 1893.

4. 49 U. S. Statutes at Large, p. 1239.

the control of production becomes necessary to save an industry, it should be done through coöperate state action rather than by the national government.

Ernest I. Averill[5] has proposed a classification of interstate compacts which has frequently been quoted. His classification is as follows: (1) A uniform statute preserved by a compact; (2) a statute by each state granting reciprocal jurisdiction or authority to certain officials, but requiring uniform regulations; (3) separate Commissions acting jointly, empowered to make uniform regulations subject to each state's approval and (4) a single administrative Commission empowered to make regulations, subject to each state's approval. To this list, the writer would like to add another class, that of a single regulative and administrative Commission with powers to make regulations within the scope of its designated powers, operative immediately, but subject to nullification by the Legislature of each state. This type seems to possess greater possibilities than any of the others, but the probabilities of setting it up are not great at present.

A few existing compacts hardly fall within any classification yet given. One is a compact between two or more states, jointly incorporating a concern doing an interstate business. The incorporation of the C. & O. Canal mentioned in Chapter II is an example. Another as yet unclassified is a

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5. Averill, Ernest I., as cited in Graves, American State Government, p. 653.

state-nation compact. Under this classification we would include both the compacts which have been made or may be made between a state and the United States, and between a state and a foreign power. Congress gave consent to a compact between New York and Canada,[6] and has provided for a compact between the United States and California.[7]

As to duration of time, interstate compacts may be either temporary or permanent. A temporary compact contains an automatic expiration date, while the permanent compact does not. The Interstate Oil Compact is temporary, while the compact between New Jersey and New York contains no expiration date. Permanent, as here used, does not mean perpetual, for any interstate compact can be ended in the same manner in which it was formed.

It is possible to classify existing compacts into the "finished business" type, or the "unfinished business" type. This terminology is quite unsatisfactory. The intended meaning is easier to express in the slang expressions, compacts which stop something, and those which start something. A compact which defines a boundary, cedes territory, etc., requires no administration. Once negotiated, ratified and consented to, it exists like a deed for a permanent record. It may end a controversy of long standing, and this has been one of the chief

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6. 16 U. S. Statutes at Large, p. 173. Also N. Y. and Canada, Public Bridge Authority, 48 U. S. Statutes at Large, p. 622.

7. 45 U. S. Statutes at Large, p. 1057.

benefits which have accrued from interstate compacts. Other compacts require constant or intermittent supervision and administration of their provisions. Such agreements as provide the machinery to protect fish and game, improve and manage a harbor, operate a toll bridge or tunnel between two states, etc., are included under the heading of "unfinished business."

Classifications of compacts might be multiplied indefinitely, the limit being only the imagination of the classifier. It may be possible to construct a single table, whose column headings would adequately identify and describe the compacts underneath, and the table would include all possible compacts, but the task is beyond the capacities of the writer. Our own interest lies more with possible classes than with existing classes of interstate compacts. We must forego the pleasures of anticipation, however, in a thesis which is supposed to lie wholly within the field of History.

CHAPTER IV

TYPICAL INTERSTATE COMPACTS

A brief analysis of a few interstate compacts, considering particularly their history, machinery, and purpose, will now be attempted. The compacts selected for the discussion were chosen with a view to their diversity, interest, and availability of data. The Interstate Oil Compact will be given more space than the others, both because of its similarity to a great many others, and because of its influence being felt by my neighbors and friends. The Colorado River Compact will receive first consideration.

Writers and speakers fond of figurative language have not inaptly referred to the Colorado River as the Nile of the Southwest, with Colorado as its Sudan. California used its waters for irrigation purposes to make her Imperial Valley produce its annual yields of vegetables, fruits, and flowers. Colorado developed irrigation projects of its own, and Arizona began to draw upon the Colorado River to irrigate her fields. Other states became interested and planned to take a share of the water. Dissensions arose among the states over water rights. To whom does the water belong? Should the irrigation projects already in existence be protected by not allowing other projects to be developed? Should a state be allowed to take all the water it needs from

the River, with no regard to the needs of the states down stream? Who should decide the matter? In the case of Kansas vs. Colorado[1] the United States Attorney General argued that Congress has the power to allocate the waters of an interstate stream. The Court, however, held that each state has full jurisdiction over the land within its borders, including river beds. The Court said that it would do justice to the lower states by seeing that the states upstream did not withdraw more than their share of the water from the Colorado River,[2] but laid down no rule to determine an equitable distribution. This meant that Congress was not in any position to make an allocation, and that each new dispute would involve another suit before the Supreme Court. A further element of confusion, coming from the decision in the above case, arose from these words of the Court:

> In different states recognizing the doctrine of appropriation, the question whether rights under such appropriation should be judged by the rule of priority has uniformly been answered in the affirmative.[2]

The confusion arises from the fact that at least one of these states, California, recognizes the doctrine of riparian rights. In a suit between two states one of which recognized riparian rights and the other the doctrine of priority is the Court to decide?

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1. Kansas vs. Colorado, 206 U. S. 46.

2. Wyoming vs. Colorado, 250 U. S. 419; 1922.

It soon became evident that the only practical method of arriving at a solution of the Colorado River problem was an interstate compact. Under the leadership of the Governor of Utah, a series of conferences was held, participated in by representatives from the Colorado River Basin states, and by Secretary Hoover, representing the United States. A study was made of the available water supply, present and future needs of the states. This series of conferences ended with a resolution favoring an interstate compact. Congress was then asked to give its permission to the states to form a compact, which permission was granted in August, 1921.[3] A second series of conferences followed, wherein the accredited Commissioners worked out the details. The finished document was then submitted to the Legislatures of California, Colorado, Nevada, New Mexico, Utah, Wyoming and Arizona for ratification. All the states save Arizona ratified it, but it could not become effective until all the states acted favorably. In 1925, the Legislatures of the other states waived the requirement for unanimous action, and asked Congress for a new modified Act of Consent. The consent Act was enacted, but Congress also provided the Boulder Dam law,[4] promising to build the dam for the benefit of these western

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3. 42 U. S. Statutes at Large, p. 171.

4. Act of December 21, 1928; 48 Statutes 1058, c. 42. New consent 45 U. S. Statutes at Large, pp. 1057-1066.

states, provided they had all ratified the Colorado River Compact within six months. Six new ratifications quickly followed, but Arizona remained obdurate. The compact was finally completed without Arizona. At one time, the Legislature of that state enacted a bill of ratification, but it was vetoed by the Governor, who later directed the Attorney-General of the State to file a suit in the Supreme Court to disrupt the compact. The suit was dismissed.[5]

A few provisions of the compact will be mentioned. The entire drainage area is divided into an upper and a lower basin, and a division of the available water is made between them. A Commission allocates the waters to the various states. Provisions are made for adaptations to changed conditions, and reservations are made for court action to protect the rights of the states under the compact, and for the enforcement of its provisions. The compact contains no fixed date of expiration, and can only be terminated by the unanimous actions of all the states adhering to it. If and when the United States, as a matter of "international comity," should agree that Mexico is to have a share of the Colorado River water for lower California, each state will reduce its allotment of water, if it is necessary.[6]

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5. The principal facts given here were collected from Yale Law Journal, Vol. 34 (May, 1925), p. 70. Also Wilson, Francis E., "Interstate Compacts," Reports of the American Bar Association, Vol. 57, p. 734.

6. For complete text of the Colorado River Compact, see Matthews and Burdahl, Readings in American Government, p. 542, The Macmillan Company, New York,

The next compact to receive attention is the so-called Concord Compact. The idea for a labor compact originated with the Conference of Governors which met at Albany, January 23, 1931. The Governors discussed labor conditions generally, and more particularly the labor of women and minors. The Conference also noted the difficulty of any single state acting alone to regulate labor conditions, because of a tendency of industrial establishments to "migrate" to states without labor laws. It was agreed that the Labor Departments of the states represented would make a study of conditions and secure the views of laborers and employers. A second Conference was held at Harrisburg, Pennsylvania, in June of the same year. Ten Governors were present in person or by proxy, and a representative from the Department of Labor, Washington, participated in the Conference. A series of Resolutions was adopted, favoring workmen's compensation Acts, public employment agencies, and laws regulating the hours and wages of women and children. In January, 1933, a third Conference met in Boston with Governor Ely as host. The reports from the state Labor Departments, called for in the first Governor's Conference, were put into the records, and a series of resolutions similar in provisions to those of the previous Conference, were adopted. Massachusetts brought matters to a head by Legislative action providing for Commissioners to negotiate a compact. Maine, New Hampshire, Connecticut, New York, Rhode Island and Pennsylvania responded by appointing

Commissioners. These Commissioners held a series of meetings and worked out the terms of a compact which they called a "Compact for Uniform Standards for Conditions of Employment and Minimum Wages for Women and Minors." Governors of eight states met in Concord, May 29, 1934, and signed the compact which has since been known by the shorter title of the Concord Compact. The action by the Governors did not bind the states, however. By August, 1936, three states had ratified the compact, Massachusetts, New Hampshire, and Rhode Island. These three states acted with the consent of Congress, given in August, 1937.[7] The Joint Commission, as the interstate agency is called in the Concord Compact, cannot make any regulations of its own, nor can it supervise the conditions of employment in any state. It has no powers to fix uniform wages and hours for women and children. This is to be done by each state after a Board has held hearings among employers, employees, and other interested parties. Under the circumstances, absolute uniformity of labor conditions among the adhering states will

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7. Public Resolutions 58, 75th Congress, August 12, 1937. The complete text of the Concord Compact may be seen in Monthly Review, U. S. Board of Labor Statistics, Vol. 39, p. 61 ff. Some of its provisions are: Each member state sends two Commissioners to the central Commission, and Labor Department sends one: two reports to the Commission from each state annually; operative when ratified by as many as two states; provisions made for amendment and the voluntary withdrawal of any state; each state agrees to enact maximum hour and minimum wage laws; has the "saving" clause; no state to permit "unfair" or "oppressive" wages to women and minors; each state to require employees to keep records of hours, wages, ages, etc., of employed reservations for Court action for enforcement of terms; member states may require higher standards, but not permit lower.

hardly obtain. Perhaps this is not desirable. A greater uniformity is probable, however, than under the plan of each state acting or failing to act, with no consideration of the standards in other states.

The writer has no late news concerning the doings of the Concord Compact Joint Commission. Its future is problematical, however, in view of the Wages and Hours Law enacted this year (1938) by Congress. If the Supreme Court should invalidate the Wages and Hours Law, the results will probably be a new impetus to the Concord Compact, and other labor compacts.

Joint ownership and operation compacts of two classes may be illustrated by (1) the Palisades Park compact, and (2) a Compact between New Hampshire and Vermont providing for the construction, operation and maintenance of a joint penal institution. The difference between them is that New York and New Jersey made a compact between them as sovereign states, and Congress gave consent. New Hampshire and Vermont made a contract, apparently as two citizens might, for Congress has never given its consent to the joint enterprise. The Supreme Court has taken the sensible position that the consent of Congress is not required if the compact is of a business nature.[8] The writer thinks that the consent

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8. Some writers controvert this view, taking the position that the consent of Congress exists by implication. See Judge Richard Hartshorne, "Intergovernmental Coöperation--the Way Out," New Jersey Law Review, II, 10. He thinks the language of the Court is mere dicta, not a decision. Northcut Ely gives a list of eighteen such arrangements in Oil Conservation through Interstate Agreements (Washington, 1933), pp. 389-393, as cited in Dimock and Benson, Can Interstate Compacts Succeed, p. 8.

of Congress to the New Hampshire-Vermont compact may be inferred from the blanket consent law of 1934. House Resolution 7354, concerning this blanket consent, contains these words:

> Granting the consent of Congress to any two or more states to enter into agreements or compacts for coöperative effort and mutual assistance in the prevention and punishment of crime, and to establish whatever joint agencies may seen desirable to them, to make effective such agreements and compacts.[9]

A reasonable inference from these words is that a penal institution exists for the punishment of crime, and that the particular penitentiary established by the New Hampshire-Vermont compact is a "joint agency" in the meaning of the words quoted above. If our inference is correct, it would have to be admitted that the blanket consent is retroactive, but this also may be inferred from the fact that many Acts of consent are enacted <u>after</u> the compact has been ratified by the states concerned.

The Palisades Park Compact between New York and New Jersey had its beginning in 1899. Separate Commissions of ten members, acting jointly, made recommendations to the separate Legislatures. This arrangement was generally unsatisfactory, so New York, in 1936, enacted legislation providing for a single administrative agency. The compact developed in pursuance of this legislation was ratified by

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9. 73rd Congress, 2nd session, Reports, No. 1137.

New Jersey, but the New York Legislature rejected it. After some missionary activities by the Council of State Governments, the New York Legislature ratified the compact, and Governor Lehman signed the Act of Ratification.[10]

The Palisades Park Compact owes its existence to a desire to preserve and develop scenic and recreational facilities. The Interstate Oil Compact came into being because of the chaotic conditions in the oil industry, and to prevent Federal control. As new petroleum sources were discovered, production in excess of market demands reduced prices. Much oil and gas were allowed to go to waste, and valuable oil bearing strata were ruined through careless and inefficient methods of dealing with underground water. The most pressing need was a reduction in the amount of oil produced. An Oil and Gas Advisory Committee, made up in the beginning of only the Governors of Texas and Oklahoma, agreed upon quotas, and each Governor agreed to do what he could to keep production in his state within the agreed quota. Governors of other oil producing states were invited to coöperate. The agreement could not be enforced, and some of the oil states did not have legislation which would permit limiting their production. Representatives of the oil industry began to look to Washington for help.

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10. The pertinent facts relative to the Palisades Park Compact were gathered from numerous sources, the chief one being Gallagher, Hubert R., "Development of Interstate Government," National Municipal Review, Vol. 26 (July, 1937).

To forestall Federal action, the Governors of Oklahoma and Texas met with representatives of the Governors of Arkansas, California, New Mexico, Colorado, Michigan, and Kansas, at Dallas, Texas, February 16, 1935. At this meeting, the text of a treaty, as it was called, was formulated and signed. Congressmen from some of these states were able to secure the consent of Congress a few months later. The Joint Resolution of August 27, 1935, granted permission to these states, and to any other oil producing state, to adhere to the compact, which was made a part of the Joint Resolution.[11] Colorado, Illinois, Kansas, New Mexico, Oklahoma, and Texas ratified the compact before the close of 1935.[12]

One feature of the Oil Compact is an automatic expiration date. As originally written, the expiration date was fixed at September 1, 1937, but it was later extended two years longer.[13] The expiration at a fixed date is a commendable feature. If the compact fails to accomplish its purposes, it may be abandoned. If it is renewed, opportunity is afforded for amendments and alterations. According to newspaper reports, the next meeting of the Oil Compact Commission will consider the terms of renewal, and

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11. J. R. of August 27, 1935, or 49 U. S. Statutes at Large, p. 939.

12. For Texas' Ratification, see Acts of 44th Legislature, Chapter 81, p. 198. This citation also contains the text of the compact.

13. S. J. 183, August 10, 1937.

also the matter of amending the compact so that the Commission will have authority to fix quotas of production for the member states.

The legal obligations assumed by the states which ratified the Oil Compact are slight. They obligated themselves to prevent the operation of oil wells within their jurisdictions with an efficient oil and gas ratio, to prevent the drowning with water of any stratum capable of producing gas or oil in paying quantities, to prevent the avoidable burning or escape in a wasteful manner of gas from fuel wells, to prevent unnecessary fire hazards, and to deny the facilities of commerce to oil and gas produced in excess of any valid ratio. Each state determines its own daily allowables by its own agencies. Should a state violate any of its obligations under the compact, it does not thereby become financially liable to the other states. The Oil Compact Commission has no authority; it does not attempt to fix the quota for any state. It is a fact finding agency, with powers to recommend measures which may aid in conserving oil and gas by the prevention of physical waste.

The By-laws of the Commission shed further light on its work. One acting Commissioner from each state serves on the Commission, and each takes his turn in rotation as acting Chairman. The Commission has no administrative duties whatever. Its headquarters are the address of its Chairman,

and it has no official seal. Quarterly meetings are held, and called meetings may be had by petition of Commissioners from enough states to constitute a quorem, which is a majority. All its actions must be affirmed by two ballots, one by states and one by "interest." A state's interest is determined by a decimal fraction, the oil which all produced the previous six months divided into each state's production. The officers are: Chairman, First and Second Vice-Chairmen, and a Secretary. The Secretary may not necessarily be a member of the Commission, but all other officers must be. The Chairman may name the Secretary, subject to confirmation by the Commission, but the Chairman's home state must pay the expenses of the Secretary. The Chairman retains the right to vote, and to speak on all questions.

The meetings of the Compact Commission are open, and visitors are present at all meetings. These include producers of oil and gas, representatives of the oil processing industry, of pipe line companies, and representatives of Governors of oil states which do not adhere to the compact. Reports are usually made from the floor by each state, as to its production, sales, fuel in storage, and its allowables. The chief features of the programs are papers read by scientists and economists who have been especially invited for the occasion. All that is said is taken down by a Court Reporter, and later appears in the minutes, copies of which are distributed to each Commissioner.

The Interstate Oil Compact is often spoken of as a "Gentleman's Agreement," because there is nothing that the Commission can do in its official capacity but recommend. It is regarded as a beginning of what may develop into something with more powers and duties, but the men who drafted it felt that what they did was all that the states and Congress would accept at that time. But the moral influence of the Commission has been sufficient to limit the production of oil and gas in the member states, and in states which do not adhere to the compact as well. The acting Commissioners are all members of a state agency which supervises the production and marketing of oil and gas, and his position is somewhat analogous to that of an "interlocking directorate" in private corporations. For instance, the Chairman of the Commission this year (1938) is a member of the Texas Railroad Commission, whose Oil and Gas Division not only administers the state's oil and gas laws, but makes and enforces regulations of its own. So, if the Compact Commissioners decide that something should be done, they are in a position to return home and do it.

The member states carry out their programs, as provided by their own laws and the regulations of the supervising agency, and they have the help of the United States in their efforts. The Conley Act,[15] passed by Congress,

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15. Chapter 15A of Title 15 of the Supplement to the Laws of the United States of America. For this and other U. S. oil and gas laws, and the Texas laws on the same subject, see Texas Oil and Gas Laws issued by the Railroad Commission of Texas, February 5, 1937. A copy may be found in the San Marcos Teachers College Library, or Oil and Gas Division, 1200 Laredo Street, Austin, Texas.

denies the facilities of interstate commerce to oil and gas produced in excess of the quota adopted by any state.

Each state now a member of the Oil Compact determines its allowable production from the estimates of the United States Bureau of Mines. This Bureau issues figures showing the production of oil since the last report, and the figures are so separated that each state's production may be seen. These figures are accepted as the official figures of the Compact Commission. They also estimate the world demand for the following period, and what each oil producing state's fair share would be. The states in the Oil Compact usually set their allowables on or near the Bureau of Mines estimates.

Oil producing states not members of the compact are following the same general practices as the member states.[16] They almost have to do it, for the chief oil and gas operators, the major companies, who operate within the territories of the member states, also control most of the oil in the states. The pipe lines, which purchase most of the oil which they transmit, have agreed not to take the oil produced in excess of a fair quota. How the pipe lines manage to "get by" with this practice is more than the writer can explain, but they are doing it, as the following item from a trades journal will show:

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16. See Notes, 21.

> The basic oil allowable production for Kansas in October was set at 193,800 barrels daily, by the Corporations Commission following a hearing at Wichita Friday. Representatives of some pipe lines indicated they would prorate their purchases unless this were done.[17]

The pipe line companies are employing the same methods to bring outside states into line, according to oil producers interviewed by the writer. The writer is under the impression that the major oil companies are indirectly governing the oil industry, and are securing the coöperation of the state agencies as well as of the Oil Compact Commission. No ulterior motives have appeared, however. The oil industry had to help itself or perish. This is not the place to pursue the thought further.

The coöperation of the oil producers and shippers, and of the oil producing states, enables the Oil Compact to accomplish the purposes for which it came into being. One of these purposes was to help the industry as a whole, and the other was to prevent Federal control of oil production. There is abundant evidence that the Oil Compact is succeeding. At the quarterly meeting of the Compact Commission, Chairman Thompson said in part:

> We are assured that the efforts that have been shown by the Interstate Oil Compact Commission, together with the fine spirit of coöperation shown by the regulatory bodies of the States, have successfully avoided Federal control.[18]

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17. Oil and Gas Journal, p. 27, September 20, 1937.

18. From the Compact Commission Minutes, p. 27, Meeting of October, 1936. On file at the Oil and Gas Division, 100 Laredo Street, Austin, Texas. These minutes also contain the text of the Oil Compact, and the By-Laws of the Commission.

As an indication of Mr. Thompson's opinion of the benefits of the Interstate Oil Compact, he told the American Bar Association at its Kansas City meeting, that the Compact had saved the oil industry in this country. He also said that the Compact had prevented Federal control, and cited proofs to that effect. The Oil Compact, according to Thompson, has accomplished much more than was expected from it.[19]

From the accounts given of a few specimen interstate compacts, it will be seen that as yet no new governmental agency with general powers has been brought into being. There is nothing even remotely approaching municipal, township or county government in any interstate compact yet devised. In all probability, there never will be. Interstate agencies set up by compacts have no general powers. They operate in special fields, and their powers are delegated and strictly limited. Many of the existing compacts have no interstate agency at all. Those that do have, in the great majority of cases, limit them to fact finding and to making recommendations. The Port of New York Authority makes regulations, but the Legislatures of both New York and New Jersey must enact them into law before they have any force. The minutes of each meeting of the Authority must be sent to the Governors of the two states, and the Governors may, either of them, veto the actions of the

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19. Oil and Gas Journal, September 30, 1937, gives a brief summary of Mr. Thompson's address.

Port Authority.[20] Those critics of compacts who fear a loss of state powers should become acquainted with this limitation on the authority of the interstate agency with more powers than possessed by any other created by an interstate compact.

Other specimen compacts than the ones mentioned here could be analyzed, but the results would differ little from what has been given. Each interstate compact has its own peculiar history, and its text differs from all others. They may be found in the Act or Joint Resolution of Congress giving consent to them, and any good library is likely to have the Congressional Record fairly complete.

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20. Clark, Jane Perry, "Interstate Compacts and Social Legislation," Political Science Quarterly, Vol. 50, p. 513; 1935.

CHAPTER V

THE SUPREME COURT AS AN UMPIRE FOR INTERSTATE COMPACTS

Private citizens of all nations have made contracts and agreements since time immemorial. Prior to the advent of stable governments, questions and disputes arising from the interpretation or execution of these contracts were settled by the party of the first part and the party of the second part, and the best man won. Indeed, trial by combat was not unknown in the Middle Ages, and fistic encounters over bargains are no rarity today. But in all civilized nations, courts have been established to hear and adjust contract difficulties, which is one reason for the number and variety of business contracts. The merchants of Nation A hesitate to make contracts with the merchants of Nation B until A and B have entered into a commercial treaty, under which contracts may be interpreted and enforced.

If interstate compacts are to multiply in numbers and in complexity, and serve as instruments or agencies of government, somewhere there must be an umpire with authority to hear and decide controversies between states, for there is a law against states' "fighting it out." If and when an interstate agency, brought into being by a compact, limits a person's right to grow tobacco, produce oil, raise

cotton or market citrus fruits, to whom shall he turn for relief if he feels that the agency has exceeded its powers, or dealt unjustly with him? How were controversies between American Colonies settled? What provisions were made in the Articles of Confederation for the settlement of quarrels between states? Under the Constitution, what has been the attitude of the Supreme Court toward interstate suits? Such questions as these present themselves to any one who advocates an extension of the interstate compact movement.

Judicial remedies in interstate suits are not as accessible, nor as adequate, as in the case with private suits, yet states do have recourse to the United States Supreme Court in many types of cases. It is impossible to cite many cases which have arisen under or because of interstate compacts, for there have been but few such cases. Several suits between states will be cited below, to illustrate the kind of cases the Court will hear. A case similar to each one cited could arise under existing and future compacts. In this way we purpose to show such powers as the Supreme Court possesses to act as an umpire in controversies which may arise under or because of interstate compacts. Before these cases are discussed, however, a brief history of the principle of court action between states will be given.

When the original thirteen states were only English Colonies, difficulties sometimes occurred between them,

boundary disputes being the most common. Sometimes the difficulty could be satisfactorily adjusted by a compact, as was shown in Chapter I. When they could not be so terminated, an appeal was had to the Crown in an action having some of the characteristics of a suit at law. The appeal usually resulted in the appointment of a Royal Commission to hear and decide the matter in dispute. If either Colony was dissatisfied with the decision, an appeal could be made to the Privy Council, whose decision was final.[1]

Appeals were usually in writing, although either Colony could employ an Advocate for oral arguments. It usually required considerable time to reach a decision, which when given, was frequently based on insufficient knowledge of conditions in the Colonies. Benjamin Franklin saw the need of an agency in America to hear boundary disputes, or, "any other matter, if it should arise."[2] (Should a World Court with compulsory jurisdiction over nations ever be created, a statue of Benjamin Franklin should occupy a prominent place about it.) The suggestion was made, with others, in a letter to John Dickinson, more than a year before the separation from England. After the separation, the Articles of Confederation were prepared and adopted. There are many reasons for assuming that Dickinson was

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1. Frankfurter and Landis, op. cit., p. 692.

2. Warren, Charles, op. cit., p. 126.

the real composer of the Articles. At any rate, Franklin's suggestion bore fruit, for the Articles provided a Court to adjust disputes between states.

The first draft of the Articles provided that the Congress should hear and decide all disputes between states.[3] The plan probably suggested itself because the English House of Lords sat as a High Court in some cases. The completed draft changed the plan, and substituted Article IX in its stead. Under Article IX, the Congress was empowered to constitute a court whose judges were to be chosen by lot from a list of names submitted by the states in litigation. If either state were to refuse or fail to submit its list of acceptable names, the Congress was to act for the state. In theory, this amounted to compulsory jurisdiction over sovereign states. Previous History contains nothing like it in all the world. To the writer, this feature of the Articles of Confederation was the one really great contribution to the theoretical science of international relations.

Following the final ratification of the Articles of Confederation, the Congress was called upon to constitute a court under Article IX, in a matter between Pennsylvania and Connecticut. The territory claimed by both states included more than five million acres. Underneath lie rich

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3. Fish, Development of American Nationality, p. 18.

coal deposits, and today three important cities are to be found there, Scranton, Franklin, and Wilkes-Barre. The court was duly constituted, the case was tried, and the territory in its entirety was awarded to Pennsylvania.

Reverberations from this case convinced leading statesmen of the day that the plan was not satisfactory. Charges were freely made that the Congress had influenced the court's decision.[4] Pennsylvania had been more generous in meeting the requisitions of Congress than had any other state, and Connecticut had been negligent, even insolently so. In the Constitutional Convention some years later, James Madison commented on this case more than once, and his utterances seem to indicate that he shared the popular idea that the Congress had "played politics." He said on one occasion:

> In fine, have we not seen the public land dealt out to Connecticut to bribe her acquiesence in the decree constitutionally awarded against her claims on the territory of Pennsylvania?, for by no other possible motive can we account for the policy of Congress in that matter.[5]

Nothing in Madison's speech further explains his allusions to the public lands, and to the policy of Congress, but his remarks convince today's reader that he was not satisfied with the plan of settling disputes between states that was provided in the Articles of Confederation.

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4. Warren, op. cit., Appendix A, reproduces a number of contemporary newspaper comments on the case.

5. Madison's Notes, Formation of the Union, p. 229.

At another time, Madison pointed out that Connecticut had been defiant and it is hardly likely that Congress appreciated it. To quote Madison again:

> Besides the various omissions to perform the stipulated acts, from which no state has been free, the Legislature of the State of Connecticut has by a pretty recent vote positively refused to pass a law for complying with the requisitions of Congress, and transmitted a copy of the vote to Congress.[6]

Other evidences that the plan of settling disputes between states was unsatisfactory are the number of suggestions made to the Constitutional Convention, and to the Delegates, for a different arrangement. It is known that George Washington received a letter, still preserved in the Library of Congress, suggesting that a permanent court be established, with full power to decide on controversies between states, whether boundary disputes or on any other matter.[7] James Wilson, who had argued the Connecticut-Pennsylvania case, proposed to the Convention's Committee of Style, that it write in a clause empowering the Senate to decide all controversies between states. The Committee reported out a plan which embodied both the ideas of Wilson and of Washington's unknown correspondent. This plan would have created a permanent court whose sole duty would be to decide all interstate controversies except boundary questions, and these were to be determined by the Senate. This plan

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6. Ibid., p. 310.

7. Warren, op. cit., p. 40.

was dropped, and Article III, Section 2, Paragraphs 1 and 2 were substituted instead.

The article, section and paragraphs just cited give the Supreme Court jurisdiction over controversies between two or more states, or between a state and a citizen of another state. There can be no doubt that the makers of the Constitution intended to preserve the right of a state to institute court action against another state, but there is doubt that they ever intended to allow a citizen of one state to institute a suit against another state. Alexander Hamilton in the Federalist, No. 81, took the position that a state could not be sued by a private citizen under the Constitution. James Madison and John Marshall took the same view when the Constitution was being debated before the Virginia convention.[8] These gentlemen were mistaken, as events proved. Within two years of the organization of the Court, it took jurisdiction in four such cases. As a result, the eleventh amendment was quickly prepared, submitted and ratified. This Amendment provides that the judicial power shall not extend to any suit at law or equity commenced or prosecuted against one of the United States by a citizen of another state or of a foreign power.

The language of the Constitution does not tell a layman as much about the judicial powers of the United States in

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8. Cushman, Leading Constitutional Decisions, p. 187.

interstate suits as do the actions and decisions of the Court itself, as it has construed its powers from time to time. A few cases will be mentioned to show something of the nature of the matters which have been involved, and the principles enunciated by the Court. The number and variety of interstate suits may well surprise one who has had no occasion to look into the matter.

In the first decade of the Court's history, it was faced with only one suit between states.[9] Seven other cases were decided before the Civil War.[10] Between the end of the War and the turn of the century, nine interstate suits were disposed of by the Supreme Court. Between 1900 and 1923, forty interstate suits were filed in the Court. Twenty-six cases have involved boundary disputes, two were concerned with the recovery of money, and eleven cases alleged direct injury.[11] A few of these cases will be examined briefly.

Beginning in 1830, New Jersey filed three separate suits against New York. The matters involved are of no moment here, but a decision of the Court in one of these cases is important. New York argued that since Congress had not provided the manner and means of bringing a state before the Court, a suit against a state would not lie.

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9. New York vs. Connecticut, 4 Dallas 1; 1799.

10. These cases are listed in Appendix A.

11. Warren, op. cit., p. 38.

New York was rather inconsistent in thus pleading, for she herself had filed the first interstate suit. The Court ruled that if a state failed to respond when cited to appear at the suit of another state, the case could be heard plaintiff vs. defendant ex parte. This ruling was consistent with the theory of compulsory jurisdiction as provided in the Articles of Confederation. For our purpose, the meaning of the ruling is that no interstate suit arising under an interstate compact can be blocked by the defending state's refusal to answer. It should be noted that the Court does not allow a state to win by default in appearing to answer a suit. It intends that the case shall be decided on its merits, after a full examination of all available evidence.

Another important ruling came out of a series of cases between Rhode Island and Massachusetts, from 1833 to 1841. This was a boundary matter, and the political affiliations of over five thousand people were involved. The outcome of the suits would determine whether they were legally citizens of Rhode Island or of Massachusetts, and conceivably could affect the number of Representatives either or both states were entitled to send to Congress. The Court accepted jurisdiction, and ruled that it has the power to hear any and all suits between states involving boundary matters.

The next case to receive attention here is that of Missouri vs. Iowa.[12] Missouri, a slave state, and Iowa, a free state, were asserting jurisdiction over the same five thousand square miles of territory. The outcome of the suit would determine if the disputed territory were to be free, or slave. At one time, Missouri had called out fifteen hundred of her militia, and Iowa had over a thousand men under arms. Both states justified a resort to arms on the grounds of invasion. Iowa claimed that the "Brown" line was the true boundary between the two states, while Missouri contended as strenuously for the "Sullivan" survey.[13] The Court ruled for the Brown line, and the territory is a part of Iowa today. Missouri quietly dismissed her troops and accepted the decision.

The case attracted considerable attention at the time. Senator Cass, of Michigan, remarked in a speech to the Senate that:

> It is a great moral spectacle to see the decisions of the Judges of the Supreme Court obeyed on the most vital questions in such a country as this. They determine questions of boundary between independent States, proud of their character and position, tenacious of their rights, but who yet submit.[14]

Boundary matters have by no means been the only cases which the Supreme Court has been called upon to decide in

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12. Missouri vs. Iowa, 10 Howard 1; 1850.

13. Kantor, MacKinlay, "Honey on the Border," Country Gentleman, Vol. 108 (August, 1938), p. 12. Research for the story is credited to Professor Ericksson.

14. Warren, op. cit., p. 41.

interstate controversies. An interesting case, decided in 1900, arose because a Texas Health Officer placed a quarantine on all shipping from Louisiana, his reason being a single case of Yellow Fever in New Orleans. Louisiana prayed for an injunction against Texas to prevent the enforcement of the quarantine. According to proofs produced by Louisiana, several hundred cases of the disease were known to exist at the time in Mexico, and Texas had not quarantined the shipping from that Republic. Louisiana argued that the real purpose of the quarantine was to divert shipping from New Orleans to Galveston. The Court heard the case, but refused to lift the quarantine on the grounds that it had not been established that the actions of the Health Officer were the actions of the state of Texas. This decision was left open as will be seen later. For the present, the case of Louisiana vs. Texas[15] is mentioned to show the variety of suits decided by the Court in interstate contests.

In the next case to be considered, a state was seeking, as it alleged, to protect the health of its citizens. Illinois was preparing to divert sewage from Lake Michigan to the Mississippi River, and Missouri sought an injunction to prevent it, claiming that her citizens would be endangered because the contaminated waters would be a carrier of typhoid bacteria. In answer to the suit, Illinois argued that one

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15. Louisiana vs. Texas, 176 U. S. 1; 1900.

state could not institute a nuisance proceedings against another. The answer of the Court to this argument is the point to be brought attention here. The Court overruled the objection and assumed jurisdiction in the case. The decision went against Missouri, for want of sufficient proof to satisfy the court of actual danger.[16]

A year later a decision was handed down in the case of Kansas vs. Colorado.[17] This case involved a dispute over water rights in an interstate stream, a non-navigable river. Kansas alleged that the proposed irrigation project in Colorado would ruin an existing irrigation system in Kansas. The Court asserted its jurisdiction in such cases, but did not grant the injunction at the time. It said that at some future time, it might have to protect the rights of Kansas in the matter, but in the case before it, the proof was not sufficient to show that Kansas would be damaged by the diversion of water upstream.

The Supreme Court has heard and decided cases of damage suits between states. In the case of North Dakota vs. Minnesota,[18] it was alleged that an irrigation and ditching project already finished had damaged North Dakota's farm lands, and the injured state was seeking several

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16. Missouri vs. Illinois, 180 U. S. 208; 1901.

17. Kansas vs. Colorado, 185 U. S. 125; 1902.

18. North Dakota vs. Minnesota, 263 U. S.

millions of dollars for the damages. The Court asserted that the alleged facts, if true, constituted a clear case of one state damaging another, and was a proper matter for its jurisdiction. No damages were awarded, however, because North Dakota did not prove actual damage to the Court's satisfaction.

It will be seen from these cases that the Supreme Court is not easily moved to control one state at the suit of another. The time evidently has not arrived when states with compact relations can secure court services as easily and speedily as can individuals who contend over the terms of a contract. In interstate suits, the evidence must be clear and convincing to the point that there is no reasonable doubt concerning the alleged facts. The Supreme Court outlined its position in these words:

> Before this Court can be moved to exercise its extraordinary power under the Constitution to control the conduct of one state at the suit of another, the threatened invasion of rights must be of serious magnitude, and must be established by clear and convincing evidence.[19]

This attitude of the Supreme Court will explain the fact that the defending state has been the victor in a large majority of interstate suits.

Yet the Court has rendered decisions in favor of the plaintiff in interstate contests. In the case of South

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19. New York vs. New Jersey, 256 U. S. 296.

Dakota vs. North Carolina[20] one state brought suit to force another state to pay its bonds. South Dakota had come into the possession of some North Carolina bonds, by outright gift, and North Carolina had repudiated the bonds. South Dakota sued for collection. The Supreme Court decided that the bonds could be collected, and in case of failure to pay, the property pledged as security for the bonds could be seized and sold to satisfy the creditor. Again, in the case of Wyoming vs. Colorado[21] Wyoming was the winner. Wyoming sought an injunction to prevent Colorado from diverting an unfair share of the waters from the Laramie River. The injunction was granted. The case of Kentucky vs. Indiana,[22] is particularly interesting, because the Court ordered the specific performance of a task that a state had contracted to perform. Indiana was ordered to fulfill the contract, and to file semi-annual reports with the Court showing progress. Pursuant to the decision, Indiana renewed her contract with Kentucky, this time by compact. Congress gave consent in 1932,[23] and the Highway Departments of the two states completed the construction contemplated in the original contract.

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20. South Dakota vs. North Carolina, 192 U. S. 286; 1904. See also Cushman, op. cit., p. 188.

21. Wyoming vs. Colorado, 258 U. S. 419; 1922.

22. Kentucky vs. Indiana, 281 U. S. 163, 700; 1930.

23. 47 Statutes 292, c. 224.

The cases cited above illustrate the diversity of matters which have been contained in interstate suits. Actual refusals of states to fulfill their obligations under an interstate compact are few in number. As they may arise in the future, they will probably not differ materially from some case cited herein. Two cases, Virginia vs. West Virginia, which will be discussed in the next chapter, and Greene vs. Biddle,[24] directly involved a state's violation of compact obligations. In both cases, the compact was interpreted by the Supreme Court, and in both cases the conduct of the state at fault was altered as a result of the suits. In the latter case, however, the matter did not originate as a suit between states. We have been unable to locate any other cases involving the non-performance of compact obligations.

In Greene vs. Biddle, the rights of private citizens in their land titles were jeopardized by Kentucky's laws. Conceivably, the rights of a private citizen could be jeopardized by an interstate agency created by compact. If the agency should be a body corporate, as in the case of the Port of New York Authority, the action of the citizen would lie against the agency. This Authority has defended itself several times in the courts, but there would be no point in discussing the cases here. If the rights of a citizen are infringed by his state, acting to fulfill its

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24. Greene vs. Biddle, 8 Wheaton 1; 1923.

compact obligations, the action would lie against the state itself. Most states have now consented to be sued in their own courts. Or, the suit could be levied against the agents of the state.

In the case of Poindexter vs. Greenshaw,[25] the Supreme Court made a distinction between "state" and "government." Government is the agent of the state, and can only act validly within the scope of its authority. If the agent performs an illegal act, or a legal act in an illegal manner, he may be enjoined, or sued. The Supreme Court will enjoin or otherwise control the instrument or agent of a state if acting unconstitutionally, or if acting constitutionally under the authority of an unconstitutional statute.[26] The Court has mandamused or enjoined state agents in the performance of ministerial acts which interfered with the rights of citizens. In some instances, the acts could have been nothing else than state acts. For instance, the Court has ordered the proper officials to levy a tax for the payment of bonds in cases where it was evident that payment was being evaded.[27]

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25. Poindexter vs. Greenshaw, 114 U. S. 270; 1884.

26. This point is pretty thoroughly established in the Yale Law Journal of November 24, 1924, Vol. 34, p. 20.

27. Yale Law Journal, Vol. 34 (November 24, 1924), p. 19. Other cases could be cited; see Appendix, Note 10, quoting from a case where the Supreme Court enjoined the enforcement of an order of the Oklahoma Corporations Commission fixing rates to be charged, on the grounds that the state had not provided a plain, speedy and adequate remedy at law in such cases. See also State Government, Vol. 10 (December, 1938), p. 258.

Perhaps a direct application should be made to show that this phase of the discussion appertains to interstate compacts. In an hypothetical case, suppose the state should limit the production of oil in a particular field in fulfillment of its compact obligations. The operator of the field is of the opinion that unless his wells are allowed to pump more than the assigned quota, the accumulations of underground water will drown the oil bearing strata. In such a case, the operator could sue the state's agent in charge of proration. He might resort to a suit against the state, if the state has consented to be sued. If not, and there is no remedy for the injured party in the laws of his state, the Federal Courts will take jurisdiction. A constitutional question would clearly be involved, that of depriving a citizen of property without due process of law.[28]

We have tried to show by the cases given, and the discussions, that within limits, a court of competent jurisdiction will hear cases involving state against a state, citizen against a state agency, or citizen against his state. In the last case, a constitutional question must be involved. It is difficult to imagine any other type of case arising under or because of an interstate compact.

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28. "If a suit for refund (of taxes) is a suit against the state, and the state has not consented to be sued, then there is no remedy at law, and a federal court of equity will take jurisdiction." See U. S. Law Review, 70, 1936, p. 376.

In a suit between states, the Supreme Court sometimes has no law to apply, and cannot even interpret the Constitution in deciding the matter. It should be remembered that the Supreme Court is not limited to interpreting the Constitution, or to applying statute law. It may apply international law, treaty law, common law, state law, legal principles enunciated by ancient and modern writers, the moral law, or any principle it chooses, to give a just and equitable decision. In the case of Kansas vs. Colorado, Chief Justice Fuller said:

> Sitting as it were an international tribunal, we apply Federal Law, State Law, and International Law, as the exigencies of the case may demand.[29]

In another case, the Court refers to principles of International Law as being applicable to the interpretation of interstate compacts. The Court said, in part:

> In case of compacts between states, the rule of decision is not to be collected from the decisions of either state, but is one, if we may so speak, of an international character.[30]

The principles which the Court will apply in suits growing out of or arising under interstate compacts are of secondary importance for the purposes of this paper. Of primary importance, however, is that the Court does and will apply the principles, and arrive at a decision. So many interstate suits have been before the Court that something

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29. Kansas vs. Colorado, 185 U. S. 146.

30. Lessee of Marlatt vs. Selk, as cited in Warren, op. cit., Note 70, p. 153.

like interstate common law is being built up as a sort of guide for future decisions. The Court does not have to do it, but it does frequently observe the principle of stare decisis in arriving at, or justifying a decision in a case before it. The Court said, obiter dictum, in the case of Kansas vs. Colorado:

> Through the successive disputes and decisions, this Court is building up what may not improperly be called interstate common law.[31]

In conclusion, the Supreme Court is herein represented as the Umpire for states in all matters pertaining to dissentions which may arise because of interstate compacts. This Umpire can apply the rules of the game as they have been so far established, but it can also do something else that an ordinary umpire may not, and that is, make a new rule if necessary. States are beginning to rely upon the Court for the protection of their rights under a compact, and to enforce its obligations. A section of many compacts now in force is similar to this reservation in the Colorado River Compact, Article 9:

> Nothing in this compact shall be construed to limit or prevent any state from initiating or maintaining any action or proceedings, legal or equitable, for the protection of any right under this compact, or the enforcement of any of its provisions.

A moral obligation rests on a state to fulfill its compact obligations, just as there is a moral obligation

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31. Kansas vs. Colorado, 206 U. S. 46, 98; 1907.

resting on a private citizen to execute the provisions of his contracts. But experience has shown that moral obligations are not sufficient protection in either case. Disinterested agencies must exist to hear and decide the inevitable disputes. It is frankly admitted that court remedies for states under compact are not so efficient nor so readily available as in the case of individuals with contract relationships. It should be noted that court action between states is not so old as court action between individuals, and has not evolved so far. The Supreme Court has grown in authority and scope in interstate suits, and will probably not lag far behind the growth of the compact movement. Congress may at any time enlarge the Court's powers in interstate suits. If interstate compacts fail to realize their possibilities, the fault will not lie on the Supreme Court. The services of the Court in the interpretation of a state's rights and obligations under its compacts have not been utilized often in the past, and may not be in the future, but again, they may. It is essential to the success of interstate compacts that an Umpire exist to interpret them, and the Supreme Court is the Umpire provided by the Constitution. The following quotation is given to close the chapter, and meets with the entire approval of the writer:

> Of the thousands of written agreements now existing between national and state authorities, a negligible number have reached the courts even obliquely.

> Such a condition is wholesome. Nevertheless, as increasing weight is put upon compacts, the courts can strengthen and steady the fabric by establishing further the fact of their enforceability.[32]

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32. Encyclopedia of the Social Sciences, Vol. IV, p. 113.

CHAPTER VI

ENFORCING THE COURT'S DECREES AGAINST A SOVEREIGN STATE

An attempt was made in the previous chapter to show that the Supreme Court will umpire disputes between states, in all matters likely to arise concerning a state's rights and obligations under an interstate compact. Another question immediately presents itself: once a judgment is obtained, how can it be enforced against a sovereign state that should be disposed to resist? If there were a clear, unequivocable answer to this question in the Constitution or in any United States statute, there would be no need for any further investigation of the matter. This is not the case, however. Another question: does the power to enforce the Court's decrees violate state rights? The first question will be examined in the light of case history. To the second, the writer can only reply with an opinion, and give his reasons for the same.

Historically, court powers over the states did not begin with the Constitution. Something of the sort was provided in the Articles of Confederation, as was shown in Chapter V. The Congress was given the power to constitute a special court to hear interstate suits, but no provisions were made for the enforcement of the court's decisions. Probably the

Articles never would have been ratified had they contained anything of the sort. Certainly, any provisions for enforcement in the Articles would have been in name only, for the Congress could not have enforced the provisions.

The weaknesses of the central government under the Articles were apparent to the thinking men of that day. They saw the necessity of adding strength to the government if it were to continue. James Madison made an attempt to give to Congress the powers of enforcing its laws on the states. Briefly, he would empower the government to coerce a state. Within six weeks of the final ratification of the Articles, Madison proposed an amendment to "give the United States full authority to employ their forces as well as by sea as by land, to compel any delinquent state to fulfill its federal engagements." Washington favored the proposed amendment, well knowing that the United States could not have successfully employed its forces against a state. He hoped that a knowledge that "such power was lodged in Congress might be the means to prevent its ever being exercised, and the more readily induce obedience."[1] For the proposed amendment to have become a part of the Articles, all thirteen states would have had to ratify it. The writer has been unable to find where a single state ever did so.

It appeared rather evident that no material alterations of the Articles of Confederation could be accomplished by

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1. Fisk, John, op. cit., p. 100.

submitting amendments to the various states. After two abortive attempts, a convention finally assembled with instructions to amend the Articles. This gathering, since known as the Constitutional Convention, was soon persuaded to attempt the task of writing a constitution for a new plan of government. One of the first purposes was to give the new government power over the states. In his opening remarks, Edmund Randolph pointed out that the Congress could not cause the infractions of treaties to be punished, nor prevent quarrels among the states.[2] He then proposed a series of resolutions, to commit the Convention in favor of a stronger national government. The sixth of his Resolutions was:

> Resolved, that the National Legislature ought to be empowered ... to call forth the forces of the Union against any member of the Union failing to fulfill its duty under the articles thereof.[3]

Such a proposal from a Virginia delegate was in keeping with that state's plans for a strong central government, in so far as the delegates had thought through the matter. But Madison came to a different conclusion later, as will presently be shown. The Virginia Plan, probably Madison's own, contained a paragraph 6, providing definitely for federal coercion of a delinquent state, in the matter of federal acts and treaties. The sixth item in the New Jersey also provided for coercion, in somewhat the same language.[4]

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2. Madison's Notes, Formation of the Union, p. 115.

3. Ibid.

4. The similarity of these provisions, and all of them having the number 6, suggests a common origin. We know of no supporting evidence, however.

Pinckney's Plan, as we know it today, contains provisions for forcing a state to pay its federal requisitions, but there is some doubt that his Plan was ever submitted to the Convention in the form that was later given to the public.[5] Hamilton's Plan contained no provisions for coercing a state, for his ideas were almost to destroy the sovereignty of the states, rendering state coercion unnecessary.

Strange enough at first glance, men from New Jersey and other small states who favored a confederated form of government, were stronger contenders for empowering the national government to coerce a state than were men like Madison, or Hamilton, who favored a stronger form of government. Madison evidently came to the conclusion that if such a provision were written into the Constitution, just another confederation would be provided by the Convention. A government such as he hoped to see established would have the power of acting directly on the people, and there would be no need for power to coerce a state. It would need ample powers to enforce its will on the people, with whom it would deal directly, and who would be citizens and subjects of the United States.

So, when Randolph's Resolution 6 came up for consideration, Madison spoke as follows:

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5. These various Plans are available in a number of source books; see Formation of the Union, Government Printing Office, Washington, D. C.

> The more he reflected on the use of force, the more he doubted the practicability, the justice and efficiency of it when applied to a people collectively and not individually. A union of the states containing such an ingredient seemed to provide its own destruction. The use of force against a state would look more like a declaration of war than an infliction of punishment. ... He hoped that such a system would be framed as might render this recourse unnecessary.[6]

Madison's last statement above explains more clearly than anything else his decision against Resolution 6. It may be, also, that he hoped to win over to the Virginia Plan some of Patterson's support away from the New Jersey Plan.

Madison and others defeated the New Jersey Plan, and the Constitution does not contain any specific clause authorizing the employment of the forces against a state. It does contain several other items from which coercion may be implied. Congress is empowered to make provisions for the calling forth of the militia to suppress rebellions, and to execute the laws of the Union.[7] The President is made Commander-in-Chief of the Army and Navy,[8] the better enabling him to take care that all laws are faithfully executed. The Constitution and all laws and treaties made under its authority are made the supreme law of the land[9] and the judges of every state shall be bound thereby, anything

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6. Madison's Notes, Formation of the Union, p. 130.

7. United States Constitution, Article I, Section 8, Paragraph 15.

8. Ibid., Article II, Section 2, Paragraph 1.

9. Ibid., Article VI, Paragraph 2.

in the constitution or laws of any state to the contrary notwithstanding. Finally, Congress was given power to make all laws which may be necessary and proper for carrying into execution "the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or any department or officer thereof."[10]

From these provisions, the Supreme Court has been able to say that it has the implied power to enforce its decisions against a state, meaning to be sure, legal, not physical power. It did not assert this power until it had been functioning more than a century. In the earlier portion of its history, the Court was more hesitant when confronted with the problem of enforcing its decisions against a state. As a matter of fact, the Court to this day has never issued a writ of execution against a state of the Union. In the well known case of Chisholm vs. Georgia, the Court said:

> What if a state is resolved to oppose the execution? This would be an awful question indeed.... He whose lot it should fall to solve it would be impelled to invoke the god of wisdom to illuminate his decision. ... Rather let us hope and pray that not a single star in the American constellation will ever suffer its luster to be dimmed by hostilities against the court itself has adopted.[11]

The case of Chisholm vs. Georgia was not an interstate suit. Chisholm, an executor of English creditors, brought the suit

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10. Ibid., Article I, Section 8, Paragraph 18.

11. Chisholm vs. Georgia, 2 Dallas 419; 1793.

against Georgia. The Court accepted jurisdiction, and gave a judgment against the state. Georgia had no intentions of complying. Suits pending and in prospect against other states about similar matters, claims of Tories for properties confiscated during the Revolution, caused a general alarm. The eleventh Amendment was hastily prepared, submitted, and ratified, so no further Court action in these cases was possible.

Thirty-eight years later, Georgia was again a defendant before the Supreme Court, and again the Court was confronted with the problem of controlling a state. In this suit, Cherokee Nation vs. Georgia,[12] Chief Justice Marshall ruled that the Cherokees were a "domestic, dependent nation," and in that light the suit was proper. It was not a suit of a citizen of a state or of a foreign power. Chief Justice Marshall, speaking for the Court, said:

> (The suit) requires us to control the Legislature of Georgia, and to restrain its physical force. The propriety of such an interposition of the Court may well be questioned.[12]

Judging from his language, Justice Marshall did not question the Court's legal authority to control the Legislature of Georgia; he questioned the propriety of the attempt. He probably knew President Jackson's attitude toward himself, and spared himself and the Court the humiliation of issuing a writ that the Executive Department would not enforce.

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12. Cherokee Nation vs. Georgia, 5 Peters 1; 1831.

Jackson is reported to have said, "John Marshall has made his decision; now let him execute it."[13]

The case arose from an attempt by Georgia to extend her jurisdiction over the Cherokee Indians dwelling within her borders. The Indians went into court, and won a decision to the effect that they were not subject to the state's jurisdiction. They then appealed to President Jackson for aid in resisting the pretentions of Georgia, and received no help. Jackson's attitude in this matter contrasts sharply with his attitude toward South Carolina in the "nullification" controversy. He may have had more respect for a law passed by Congress than for a decision by the Supreme Court. Dr. Arnold, Head of the History Department, Southwest Texas State Teachers College, San Marcos, Texas, suggests that Jackson's propensity for aiding his friends and refusing aid and comfort to his enemies, may account for his different reactions in these matters.

It will be seen from the above that the Supreme Court must depend on the Executive Department of the Federal Government for the execution of its decrees. The Court does not of itself execute any of its decrees, any more than Congress executes its laws. Congress makes the laws, the Court interprets them, and the Executive Department executes them according to the Court's constructions. The marshals who attend upon all Federal courts and serve their papers

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13. Fish, op. cit., p. 191.

are subordinates of the Executive Department, and are appointed by the President. Physically speaking, the Court is the weakest of the three Departments. It controls no purse strings, as does Congress; it commands no armed forces as does the President. Yet the Court boldly sets aside Acts of Congress on constitutional grounds, and overrides officers acting under the orders of the President himself.[14] Mr. Justice Miller, speaking in the case of U. S. vs. Lee, said:

> Shall it be said ... the courts cannot give a remedy when a citizen has been deprived of his property by force, his estates seized and converted to the use of the government without lawful authority, without process of law, because the President has ordered it and his officers are in possession?[15]

By its decision, the Court answered its own rather rhetorical question in the negative. At other times, the Court has mandamused a Post Master General,[16] and asserted its powers, under certain conditions, to control the Secretary of State, but it will not attempt to control the President. Jefferson's disregard of a Supreme Court Subpoena, and Lincoln's ignoring the Court's decision in the matter of suspending the writ of habeas corpus are too well known for comment.

But customarily, Presidents have considered it a part of their duties to enforce the decisions of the Supreme Court

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14. United States vs. Lee, 106 U. S. 196; 1882.

15. Ibid.

16. Cushman, op. cit., p. 126, makes this statement and in support cites Kandall vs. United States, 12 Peters 524, 1838.

just as they enforce the laws of Congress. No President has offered resistance to the efforts of the Court to enforce its decisions. President Madison voiced the orthodox attitude of the Executive Department to the Judicial, upon being appealed to by the Governor of Pennsylvania for aid in resisting a decision of the Supreme Court. Madison wrote:

> The Executive is not only unauthorized to prevent the execution of a decree sanctioned by the Supreme Court, but is especially enjoined by statute to carry into executionary such decrees, where opposition may be made to it.[17]

The Supreme Court has done very well in securing obedience to its decrees in interstate suits, without the necessity of calling upon the President for an expeditionary force. In every case involving a justiciable controversy between states, the decision of the Court has been respected, and has been given force.

No discussion of the Supreme Court's powers to enforce its decisions against a state is complete without including the most noted case of all, Virginia vs. West Virginia. There were several issues involved, but the principal one was an attempt to collect a debt. Upon assuming statehood, West Virginia agreed to take upon herself a just portion of the state debt. The agreement has been recognized as a compact, and a question suggested to the writer apparently was never raised in the suits at all. Our question is the

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17. Warren, op. cit., p. 77.

validity of a compact entered into between a state and a part of that state's domain that hoped to become a state, but was not even an organized Territory, in the sense that Oklahoma was a Territory before becoming a state. The objection was raised, however, that the compact was not valid because Congress had never given consent. The Court said that the Act which admitted West Virginia as a state implied consent to the compact, which made it valid.

The exact amount of the debt was not determined when the compact was formulated. The Supreme Court in 1915 finally fixed the amount due Virginia at something over twelve million dollars, with interest at five per centum, and rendered judgment for that amount. West Virginia made no move toward funding the debt, and Virginia asked the Court for a writ of execution. This presented a troublesome question to the Court. Should the writ be granted, what form should it assume? It might have been a levy on the state's public property, if any; it might have been an order to the Legislature of the state to enact the proper legislation to collect the money through taxation, or it might have been a levy upon the private properties of the citizens of the state. The Court never indicated just which of the three courses it would follow. It delayed action until the Legislature of West Virginia should meet.

The Legislature did meet, and adjourned without doing anything about the matter, and Virginia again asked for a writ of execution. The Court said:

> That the judicial power essentially involves the right to enforce the results of its decision is elementary. ... And this applies to the exertion of such power in controversies between states as as result of the exercise of original jurisdiction conferred upon this Court by the Constitution is also certain. Nor is there room for contending to the contrary because in all the cases cited, the states against which judgments were rendered conformably to their duty under the Constitution, voluntarily respected and gave effect to the same.[18]

The Court here implies its power to issue a writ of execution. Elsewhere in the same case, it said Congress undoubtedly has the power to provide the manner and means of giving force to any writ of execution the Court should issue against a state. The Court did not decide the appropriate remedies under existing legislation, but intimated that it would do so at an early time. The Court reserved the right to appoint a Master to report upon the amount of taxes necessary to liquidate the debt, and give force to its judgment. Hereupon West Virginia relented, made a new compact with her mother state, and began the payment of the debt.

The Court has never approached closely the extreme step of issuing a writ of execution against a state in any other suit before it. Probably it will never have to take the step, for there are other means and remedies. The

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18. Virginia vs. West Virginia, 256 U. S. 565. The quotation given was taken from Cushman, op. cit., p. 196, where a part of the Court's orbiter is reproduced, and the decision rendered in the case.

officers, or agents, of the state can be reached as individuals with appropriate court orders. This was done with the Indiana Highway Department in a case previously cited. The responsibilities of the agents of a state for their actions, or refusals to act, is too well established in American jurisprudence to require further elaboration.

Another force, if we may call it a force, on the side of the Court in its dealings with a state is a combination of patience, respect, and time. The Court has always treated states with the consideration and respect due a sovereign state, and has exercised unlimited patience. When two states contend before the Court, an immediate decision, in the heat of the controversy, might present considerable difficulties of enforcement. After the lapse of years, when the agents originally concerned in the suit, have been replaced with others, and the interest of the state's citizens is concerned with other matters, a decision can be rendered with every prospect of being self-executing. The Rhode Island-Massachusetts suit was in court fourteen years. A suit between Maryland and Virginia was filed in 1891 and the decision was rendered in 1910. Other suits listed in Appendix A were in court from five to fourteen years. One reason for the delay has been to allow the states plenty of time to settle their differences by a compact, and withdraw the suit, which was done in a few cases.

In all discussions of enforcement of the Supreme Court's decrees against a state, the word "power" really has two significations, legal power and physical power. The Court has said that power to decide implies power to enforce decisions. This can mean nothing more than legal power. Any exercise of physical power falls within the province of the President, and of Congress. In speaking of the power of Congress over the enforcement of state compacts, the Court said:

> It follows as a necessary implication that the power of Congress to refuse, or to assent to a contract between states carried with it the right, if the contract was assented to and hence became operative, to see to its enforcement.[19]

With this, we leave the question of enforcing the Supreme Court's decisions against a state. The Court has the power of decision in interstate controversies of a justiciable nature which may arise under interstate compacts. The Court has implied that it also has the judicial power to issue the necessary writs of execution. Beyond question, Congress and the President can enforce any and all of the Supreme Court's decisions in any interstate suit which may arise under or because of a compact. The writer thinks that the unenforceability of compacts argument has been over emphasized, and that the success or failure of interstate compacts depends in a minute degree, if at all, upon the question of their enforcement.

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19. Virginia vs. West Virginia, 246 U. S. 565, at p. 601.

Judicial power over a state is not, in the opinion of the writer, a deplorable infringement of the state's rights. Nations sacrifice a portion of their independence of action when they ratify and abide by arbitration treaties. American States have done the same thing by ratifying the Constitution and accepting the jurisdiction of the Supreme Court, though of course, to a greater degree than nations have done. In Hand vs. Louisiana, the Court said:

> The states waive their exemptions from judicial power as sovereigns by inherent right, by their own grant of its exercise over them.[20]

Having waived their rights to resort to war, the states may resort to the Supreme Court to maintain their rights. The Court maintained the rights of South Dakota when that state asked its help to collect the bonds of North Carolina. The Court maintained Kentucky's rights by compelling Indiana to fulfill its contract with Kentucky. In fact, in any interstate suit, the rights of some state is involved. It is the province of the Court to decide just what the rights of each state are, and to maintain them. The Court will even halt the national government to maintain the rights of the states, and has done so. The position of the Supreme Court as a protector of the rights of the states, and the nation, is best described in the Court's own words:

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20. Hand vs. Louisiana, 134 U. S. 1; 1889.

> In interpreting the Constitution, it must never be forgotten that the nation is made up of states, to which are intrusted the powers of local government. ... This Court has no more important function than that which devolves upon it the obligation to preserve inviolate the constitutional limitations upon the exercise of authority, federal and state, to the end that each may continue to discharge harmoniously with the other, the duties entrusted to it by the Constitution.[21]

In conclusion, the states have the constitutional right to make interstate compacts, and the right to seek judicial aid in defining their rights and obligations thereunder, and the decisions of the Supreme Court will probably always be enforced. If this were not so, state compacts would subsist under the same limitations of interpretation and enforcement as characterized private contracts in an anarchy, or as the limitations under which the contracts of merchants in countries without commercial treaties, must exist. All contracts, private and public, must possess both validity and enforceability, or they are worthless. The writer concludes that interstate compacts are valid when ratified by the states and consented to by Congress, and thereafter they are enforceable. The success, or failure to succeed, of no compact between states of the United States, has hinged upon the question of its enforceability.

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21. Hammer vs. Dagenhart, 247 U. S. 251; 1918, as cited in Cushman, op. cit., p. 231.

CHAPTER VII

INTERSTATE COMPACTS, OR FEDERAL CONTROL: WHICH?

A disinterested historian will probably conclude that many statements in the Declaration of Independence justifying the separation from England are excuses rather than reasons. Our Revolutionary forefathers were indeed revolutionary; they were rebels against an established government, one of the best if not the best, of its day. Some of those who so virgorously denounced English control wanted little or no control at all. They objected to paying taxes to England without the privileges of representation, but at a later time showed little more inclinations to pay taxes to the Congress in which they were represented. They objected to an English government on the grounds of wishing to substitute local government instead. The opposition to government from across the sea crystallized into a love of local, or state government. Born in the New England States, state attachment later took firm root in the South, and is still a force to be reckoned with all over the United States.

Gouverneur Morris seemed a bit provoked with state attachments in the Constitutional Convention. He complained that:

> State attachments and state importance have been the bane of this country. We may not annihilate, but we may perhaps draw the teeth of the serpent.[1]

Morris was right when he said that the love of a citizen for his state can not be annihilated. It should not be annihilated in a federal republic such as ours. There is room in the heart of every loyal American for two great loves, love for his state and love for his country. He must cherish and honor both if the federal system is to continue.

Patriotic state citizens during the period of the Confederation sometimes manifested as much hostility to citizens of a neighboring state as they might have shown to alien enemies. Pennsylvania's treatment of the Connecticut settlers in the strip claimed by both states and later awarded to Pennsylvania, could hardly have been worse had those poor unfortunates been savage Indians. New York levied a tax on all goods imported from New Jersey. New Jersey retaliated by levying a tax of $1800 per year on the Sandy Hook lighthouse, on land held in fee by New York but within the sovereignty of New Jersey. Maryland and Virginia quarreled over the question of navigation and sovereignty on the Potomac. New York concluded that the citizens of neighboring states were being enriched at her expense because large quantities of fire wood were brought from elsewhere and sold to her citizens. To put a stop to it, she

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1. Madison's Notes, Formation of the Union, p. 327.

taxed all fire wood brought from across the state line. Virginia passed three separate laws to prohibit the bringing of tobacco from the Carolinas into her ports for shipment abroad. Trade restrictions and non-intercourse agreements were everywhere rampant.[2] State animosities increased, and conditions were ripe for civil wars.

Before the feeble union under the Articles of Confederation was completely destroyed, able statesmen of the times came to realize that the prosperity of one state could not be promoted at the expense of the other states. Having so recently been the victims of "Merchantilism" as practiced by England, the States should have known better from the beginning, but apparently they did not. They soon learned their lesson again, and sent Delegates to a Convention to amend the Articles of Confederation, so that Congress could control interstate commerce. The Report of the Annapolis Convention which really instigated the movement for the Constitutional Convention, contained these words, quoted from their instructions:

> ... to take into consideration the trade and commerce of the United States, to consider how far an uniform system in their commercial intercourse and regulations might be necessary to their common interest and permanent harmony, and to report to the several States such an Act relative to this great object ... would enable the United States in Congress assembled effectively to provide the same.[3]

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2. Any good Colonial History; see Chitwood, A History of Colonial America, p. 242, ff.

3. Formation of the Union, p. 40.

Pursuant to this Report, a convention was called, and a Constitution was drafted, giving the national government a tremendous increase in powers in comparison with the old government. One of these new powers was general control over interstate and foreign commerce. The powers over commerce given to the national government were surrendered by the states.

What the States under the Confederation would not do for themselves, Congress has done for them. For many years, trade flowed freely from one state to another, unhampered by petty restrictions of petty states, and the entire country enjoyed a new prosperity. Today, however, there are evidences on every hand that History is about to repeat itself. States are today discouraging the importation of goods, and a revival of Mercantilism is appearing among us. Unless the states cease many present practices, the powers and functions of the national government will probably be again greatly increased, with a corresponding loss of power to the states. A few examples of state restrictions on interstate trade will be given, which may or may not be so serious, but will undoubtedly lead to increased restrictions through retaliatory measures, which will be serious indeed.

Our first example will be California. The climate of that state and its fertile soil are admirably suited to grape culture. Growing of grapes and the manufacture of grape products have increased until a considerable industry has

grown up. When the general collapse, or depression, destroyed a large part of the market for grapes and grape products, owners of vineyards came to the conclusion that they could improve their markets by inducing people to drink more wine and less beer. They could not do much about it in the rest of the United States, but they could get something done in California. Harkening to their pleadings, the Legislature of California levied a tax on all imported beer, high enough to stop practically beer importations altogether. The tax could not be called an import duty. Technically, it is a "use" tax. Beer brewed in California is not subject to the tax.[4]

California's use tax on imported beer has not as yet been tested before the Supreme Court, but it will probably be upheld if it should be so tested. Use taxes in other states have been upheld by the Court[5] and another defense of the statute might be found in Amendment XXI of the Constitution, one section of which reads:

> The transportation or importation into any State, Territory or Possession of the United States for delivery or use therein, of intoxicating liquors in violation of the laws thereof, is hereby prohibited.

It would certainly be a violation of California's laws to transport beer into the state for delivery or use without

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4. Flynn, John T., "Shove Thy Neighbor," Collier's, Vol. 101 (April 30, 1938), pp. 14-15.

5. Henneford vs. Silas Mason and Co., 300 U. S. 577; 1937. In this case, a use tax in the State of Washington was declared constitutional.

paying the tax. The Court, of course, could rule that beer is non-intoxicating, which would destroy the effect of Article XXI as a defense of the use tax.

If California were the only state that is shutting off interstate commerce, the total effect on business conditions would be slight. This is not the case, however; Wisconsin is as much interested in defending her markets for dairy products as California is in her market for wine, and is protecting it by similar means. She began by requiring that cheese be served with every meal sold at all restaurants, hotels, etc., but this did not help the producers of butter. The next step was a use tax on oleomargerine. Prior to the use tax law, a considerable item of interstate commerce, as far as Wisconsin was concerned, was the importation of oleomargerine. This product was manufactured in the South, from cotton seed oil. After the tax was levied, there has been no further importations of oleo, for it cannot pay the tax and be sold at a price that people will pay. So the importation of the artificial butter has ceased. This probably benefits Wisconsin's local butter market, but it also reduces the demand for Texas cotton seed. One state's gain is another state's loss, in this case.

The fact that these two states, and all others which pursue the same policy, are reducing the business in other states, is of small moment to them. They are only concerned with efforts to improve markets at home. They have given

little thought to retaliatory measures. If all States in which beer is brewed, for instance, were to place a prohibitive use tax on imported citrus fruits, California's splendid orchards would soon feel the effects. Such a move would be a disaster to the fruit growers there. There seems to be no legal obstacles in the way of this being done.

Other states have enacted laws for which there may be more or less justification, but their total effect is a tremendous reduction in interstate commerce. Kansas, in common with several other states, has a sales tax. Many of her border citizens found it convenient to drive the short distance across the state line, and purchase tax-free goods, and the American people have, since the days of England's taxing experiences with America, dearly loved to circumvent a tax measure. To prevent this practice, Kansas has stationed border police at strategic positions, called "Ports of Entry," with instructions to collect the tax at the border. Motor cars and trucks are halted on all highways, and the drivers must pay the tax on any part of their cargoes liable to the tax. All gasoline and fuel oil is taxed at the border, the gas in the tanks of the cars not being exempt. This gasoline may have paid a sales tax elsewhere, but it must pay again if the automobile enters Kansas. This practice insures that fuel tanks on cars entering the state will arrive almost empty, and will be filled with gas from the first station

encountered within the state. Commercial trucks are subject to further penalties. They must pay for the privilege of entering the state, even for a single trip. This payment at present is one and one-half cents per ton-mile, the total tax depending upon the weight of the cargo and miles necessary to travel before leaving the state. Through shipments, or goods passing through the state for points elsewhere, are not exempt. The fine "Roman Hands" of the railroads may be partially responsible for such legislation. For the enforcement of these and other laws, Kansas maintains sixty Ports of Entry along her borders, which is more than the United States finds necessary along two oceans and a respectable Gulf.[6] Besides the increased revenue, politicians in Kansas explain that the law establishing Ports of Entry creates a hundred and fifty more jobs, which is to be considered during a business recession, to be sure.

Another state which employs the use tax, both for revenue and to reduce imports, is Washington. This state also has a sales tax, but the use tax on imported goods is much higher, for the law permits the sales tax to be deducted from the cost of any goods having to pay the use tax. Goods imported into Washington find it difficult indeed to compete with home made products of the same kind, which of course is one purpose of the use tax. Locally made goods can be sold at a lower price, or at least with a wider margin or profit.

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6. Flynn, op. cit., p. 14.

Either way, importations are lowered, with a loss in revenue for the transportation companies. At times, the Washington use tax is carried to ridiculous extremes, as the following incident will show.

The contractors who built the Grand Coulee Dam in Washington imported several pieces of machinery to be employed on the job. After this machinery was delivered and at work, the contractors were informed that they owed the sovereign state of Washington several hundred dollars for the privilege of using their machinery there. This, too, in the face of the fact that the construction project was supposed to add materially to the general welfare of the state, and doubtless does. Not having allowed for such an item in their estimates of costs, the contractors resisted efforts to collect, and thecase finally reached the Supreme Court. The contractors argued that the tax was an unjustifiable interference with interstate commerce. They were overruled, the Court saying that as long as the machinery was in transit, it was interstate commerce. Upon delivery at the point of destination, it lost that character, and became subject to the laws of the receiving state.[7]

Surprising as it may seem, many states are now collecting taxes on property which lies within other states. One way of doing this is to tax another state's bonds which may be held within the taxing state. The bond is not real property

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7. Flynn, op. cit., p. 48.

itself; the real property lies within the state which issued the bonds. The United States Government cannot tax a state's bonds, but other states are doing it. Another case, more in point, is the progressive chain store tax. The rate per unit depends upon the number of units within the system. It does not matter if many units of the chain lie outside the taxing state. For instance, a chain of eleven units, all within Iowa, would pay a tax of ten dollars each on the first ten units, and eleven dollars on the eleventh, or a total of $111.00. But suppose the chain has eleven units within the state, and four hundred and ninety in all other states. In this case, the eleventh store within the state would be taxed $550.00 per year. The effect of this can be nothing else than an annual tax of $539.00 on property outside the state.

Of course, Iowa does not have eleven units of a chain system which owns four hundred and ninety stores elsewhere, and certainly is not likely to have as long as her progressive tax is in force. The real purpose of all such taxing schemes is not the raising of revenue, but to prevent money from "leaving our state," as the statesmen in the Legislatures explain. It is customary for certain chain stores to send the money taken in each day over the counter to the headquarters of the chain. A check of the express offices in San Antonio will reveal that several mercantile establishments in that city wire their "take" each afternoon to New York.

The following states now have in force progressive chain store taxes: Alabama, California, Delaware, Florida, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Montana, North Carolina, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, West Virginia, Wisconsin, and possibly others.[8]

Another device used by states to keep out certain business establishments which are not wanted is to charge a much higher fee for a permit to do business within the state than is charged firms incorporated within the state. For instance, a corporation chartered outside the state may have to pay as much as five thousand dollars for a permit from the Secretary of the State before it can do business within the state, while a corporation of the same capital stock chartered within the state would pay only a few hundred dollars. Such state laws have been upheld by the Supreme Court.[9]

In the writer's opinion, the most ridiculous interference by a state with interstate commerce is to be found in Rhode Island. Mention was made herein earlier of a Texas Health Officer who shut off commerce from another state, and the Supreme Court refused to enjoin the practice. Rhode Island evidently used this decision to stop the importation of milk from Vermont. At least, she used her Health Department. This Department issued an order that all milk imported from

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8. Editorial in Survey Graphic, Vol. 26 (April, 1937).

9. See State Government, Vol. 10 (December, 1932), p. 258.

Vermont must be first colored before it could be sold. The coloring matter was a harmless vegetable product, and was not even claimed to possess any germicidal qualities. Also, it was never charged that there was contagion in Vermont, or that milk produced there was handled under less sanitary conditions than in Rhode Island. The Rhode Island Health Department said frankly that the sole purpose of the order was to let the consumers of milk know that they were using an imported product at a time when local dairymen had a surplus. It can well be imagined that few people would drink colored milk when uncolored could be obtained easily, and that milk importations would be shut off under such circumstances.

To illustrate the attempts of various states to interfere with truck shipments from other states, a few "Headlines" will be reproduced from certain papers. The imagination of the reader can easily fill in the details of the news items under these captions, for he doubtless has seen many of them in print.

Date	Heading	Paper
11-2-'32	Seven States Hit Back at Penn. Truck License Law	Record
11-3-'32	Pennsylvania Moves to Bar Jersey Trucks	Herald Tribune
11-4-'32	All Jersey Trucks Barred from State. Truce Sought.	Record
11-5-'32	Truck War Off; Jersey and Penn. Agree	Record[10]

10. These headlines were taken from Graves, Uniform State Action as a Possible Substitute for Federalism, University of North Carolina Press, Chappel Hill, North Carolina.

These headlines illustrate what states are doing, and what is possible for states to do to interfere with interstate commerce.

No useful purpose can at this time be served by extending the list further. Two other instances will be mentioned in passing. Oklahoma, in common with seventeen other states, has established Ports of Entry on her borders. Motor vehicles are stopped, and the drivers must "declare" their stocks of gasoline, cigarettes and beer, and are then told the amount of the tax they must pay, and where to pay it. In addition, trucks must purchase a license at a cost of twenty-five dollars, and pay one-twelfth of the annual plate fee. If the load on the truck is not valuable enough to support such fees, the truck simply does not enter the state.[11] The other is an instance of shutting off exports. Maine has a law preventing the production of hydroelectric power for transmission beyond her borders.[12] This law cannot be justified as a conservation measure, for the water will go over the falls and reach the sea, whether it generates electricity on the way or not. Maine cannot use even a small fraction of the power that is possible to produce there, and at low cost. She evidently is unwilling to promote the prosperity of other states by sharing her cheap power with them. The writer can

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11. Flynn, op. cit., p. 15.

12. Maine, Revised Statutes, 1916, Chapter 60, Section 1, p. 985.

interpret the action in no other light than strictly a "dog in the manger" spirit.

The conditions cited, a few among many more, indicate a return to the policy of Mercantilism. The logical end of these attempts would be artificial walls about each state, and each forced to become a self-sufficient area, selling nothing and buying nothing elsewhere. Of course, matters will never reach such an extremity. Long before it does, the national government will enter the picture, and the states will lose many of the rights and powers they now possess, and will have only themselves to blame for it. Similar tactics resulted in a loss of state powers in 1787, and History has been known to repeat itself ere now. It can be said with certainty that the conditions mentioned herein will not be allowed to continue. The only question is, will the states do it themselves, or will they continue their foolish policies until the United States has rendered them impotent to act in such matters? The dollar will not long be halted at an imaginary line, but will find a way across.

It needs no arguments to support this statement; the states can easily provide for the free and unhampered movement of goods, through the means of interstate compacts. Properly formed interstate compacts, to which all the states of a given area adhere, will do much toward tearing down artificial trade barriers, and again permit the free and untrammeled flow of goods, and a gradual return of more prosperous conditions. The writer wholeheartedly recommends

the interstate compact as the most desirable means to end the impossible conditions which now prevail in many of our state relations.

But the action must not be long delayed, or it will be too late for the states to preserve their sovereign rights. For example, four New England states, under the leadership of Governor Aiken of Vermont, have recently negotiated a compact to handle their own flood control problems, and have asked the consent of Congress thereto. A bill was introduced in the last Congress to give consent, but died on the calendar of the Senate. The reason seems to have been opposition by the Federal Power Commission. The text of the compact reserves to the states the water power sites on the upper reaches of the Connecticut River and its tributaries, but the Power Commission has covetous eyes on these sites. The contest between states rights and the extension of the functions of the Federal Government is now definitely increasing in magnitude. The bill to give consent to the Connecticut Valley Compact will come up again in the next Congress. Friends of states rights should support the Congressmen from the New England States, and secure the passage of the bill. Congress has never yet refused its consent to an interstate compact. To do so now will constitute a precedent which bodes no good to future compacts for the preservation of independent state action, and the maintenance of our federal system.

The spirit of the Congress which has just adjourned may be judged from provisions of an omnibus bill which was enacted the day before adjournment. This provision enables the United States to construct dams anywhere in a navigable river, and allocate the water to the states without their consent. If this attitude is allowed to continue, the Connecticut Valley Compact will be defeated, and all other similar compacts also. The following editorial appeared in a Texas daily paper:

> Natural resources belong to the people, and they should have the say as to how these resources are used ... As Governor Aiken of Vermont has pointed out, the issues involved are far broader than power production or flood control. The measure opens the way to extending and controlling other natural resources at the states' expense. As Senator O'Mahoney (Wyoming) warned the Western States, the bill tends to reduce them from their status as sovereign states to mere satraps [sic.] of the Federal Government, depending upon Washington's favors.[13]

The original thirteen states stood shoulder to shoulder in their opposition to the exercise of power by England over them. For the preservation of their sovereign rights, they formed a compact for cooperative action, if we may designate the Articles of Confederation a compact. Likewise, if our federal system of government is to continue as the makers of the Constitution conceived it, a sovereign nation made up of sovereign states, our states must cooperate through many sorts of compacts, and do for themselves what inevitably will be done by the Federal Government if the states fail to act.

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13. San Antonio Evening News, July 25, 1938, Editorial, "States Rights and Flood Control."

We have tried to show some of the conditions existing among states today that must be corrected. We have expressed a belief that unless they are corrected by the states themselves through interstate compacts, which undoubtedly can be done, the Federal Government will extend its functions further into fields which should be preserved as spheres of state activities. We have given one instance to show the states must act now, or it may soon be too late for state action. Whether the states act or not, whether interstate compacts for the preservation of states rights will be formulated, and whether Congress can be induced to consent to these compacts if they are formed, the writer cannot say, He confesses a somewhat gloomy outlook for the future sovereignty and independence of the states. Present events and current trends constitute a tide flowing with accelerated momentum toward centralization of powers at Washington. This may be best for the general welfare. We are not debating that. It will certainly not be the best for a federal system of government of sovereign states in a sovereign nation. Interstate cooperation through compacts can be a potent force in opposition to the drift toward a unified nation like France, with administrative departments instead of sovereign states.

The following extract from a "Declaration of Independence of Governments in the United States," issued by the Council of State Governments in January, 1937, indicates conditions

prevailing among American States today, and the remedies. The italics are the author's own, not found in the Declaration as originally printed:

> In thousands of instances their (the States) laws are in conflict, their practices discordant, their regulations are antagonistic, and their policies are either in conflict or repugnant to one another.
>
> Through established agencies of coöperation, through uniform and reciprocal laws and regulations, through compacts under the Constitution, through informal collaborations, and through all other means possible, our nation, our states and our localities must fuse their activities with a new fervor of national unity.[14]

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14. Christian Science Monitor, May, 1938, pp. 6-7.

CHAPTER VIII

OBJECTIONS TO INTERSTATE COMPACTS[1]

Nothing yet fabricated by the hand and brain of man has ever attained perfection. The delicate precision instruments for the nicest mechanical operations seldom are more accurate than one ten thousandth of an inch. Perfection is not to be expected in instruments of government which have to do with so heterogeneous a thing as human society. Any interstate compact yet formed, and all that may come into being in the future, can be criticized adversely. This does not prevent them from being useful, even necessary, devices in the American scheme of Government. Compact making is yet in the experimental stage, despite the years which have elapsed since the first formal interstate compact received the consent of Congress. A higher degree of perfection will be obtained in the future. The automobile of today is not the same as the "gas buggy" which Selden first patented. The need for compacts has not been so generally felt as has the need for automotive transportation, and the improvements have not been so rapid. Objections and criticisms frequently serve useful purposes. A

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1. Most of these objections are mentioned in a pamphlet Can Interstate Compacts Succeed? by Marshall E. Dimock and George C. S. Benson, Public Policy Pamphlet No. 22, University of Chicago Press.

Shakespearean fool claimed that he was the better because of his enemies. In the pages which follow will be found a few of the objections which have been raised to interstate compacts as instruments of government, and some attempt is made to answer them. The list of objections is far from complete; likewise, the answers given to certain objections are not all the reasons which could be offered to refute the objections.

It has been pointed out many times that interstate compacts are difficult to enforce, should a state stubbornly refuse to conform to its compact obligations. This is a theoretical objection, based on imaginary situations. Only twice have states refused temporarily to execute their compact obligations. Both states were brought into line finally by the Supreme Court. The possibilities of enforcement are discussed at some length in a previous chapter, and a recommendation to make enforcement surer will be made later. The matter is mentioned here only for the purpose of including the objection in the list.

A further objection to interstate compact government is that politics may prevent the harmonious operation of such machinery and procedure as may be provided for in the compact. The illustration frequently cited is the turmoil in Arizona politics which has kept that state out of the Colorado River Compact. A number of well informed citizens of Arizona have admitted that their state's allotted share

of the water is adequate and equitable, but candidates for office have demanded a larger share, and these demands are good "vote-getters."[2] Gubernatorial candidates have been elected on campaign pledges to "save Arizona's water from the greed of grasping California." The writer freely admits that interstate compacts are not, and perhaps never will be, free of politics, but contends that they should not be irrevocably damned because of this fact. What governmental agency is free from politics? One would hesitate to assert that the majestic tribunal which heads the Judicial Department of the United States has never allowed its decisions to be swayed by the political creeds of the Justices.

Existing interstate compacts have been criticized for their lack of success in their objectives. None of them save those which have settled such matters as boundary controversies have been completely successful. Even the Port of New York Authority, created by a compact between New York and New Jersey, which is frequently cited as a splendid example of successful achievement, has failed to accomplish its main purpose. It has borrowed millions of dollars, built the George Washington Bridge, Hudson Tunnel, and other public works. It is funding its debt by service charges, and is now no particular burden on the parent

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2. Dimock and Benson, op. cit., p. 10.

states. As a business organization, the Authority has been prosperous, because it was given the power so to be. But in its governmental or regulatory purpose it has not wholly succeeded, for it has not coördinated the transportation facilities of all interests which use the harbor, because persuasion has failed, and the Authority does not have the power to force these interest into line. Doubtless it can do what it has failed to do, if supplied with adequate authority and power. To do so would be a difficult but not impossible task. It would be unjust to condemn the Port of New York Authority and with it all compacts between states, simply because the Authority has not as yet been given adequate powers for its tasks.

Perhaps the severest criticism which has come to the writer's attention is that compacts have proved to be difficult to set up. A World War was lost and won, and a treaty including the League of Nations, was ratified in less time than was required to complete the Colorado River Compact. Gifford Pinchot[3] has lost his former enthusiasm for interstate compacts because of the time required to set up the Colorado River Compact. Somewhat unjustly he says that it required a dozen years to complete a compact to build one dam in one river. He did not point out the fact that the real difficulty was to agree on an equitable allocation of the water. It must be remembered, too, that nations

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3. Graves, W. Brooks, Uniform State Action, p. 24.

have at hand the machinery for each occasion. The capitals of the powers of the earth are in daily contact through accredited ministers; while the states are not. Several states have already established permanent Committees on Interstate Relations, and others will probably do so in the near future.[4] Certain organizations previously mentioned are now aiding in compact formation. The whole process is becoming easier because of the new machinery and aids, and the time consumed in consummating compacts need not be so great in the future.

Perhaps the chief cause for delay in setting up interstate compacts, as well as a reason that they have failed to delegate broad powers to the interstate agencies brought into being by the compact, is that the states have jealously guarded against a surrender of their immediate powers. It is a strange thing to see such a hesitancy to delegate powers to an interstate agency while the states are supinely submitting to loss of powers to the Federal Government. The writer is not alone in his opinion that interstate compacts will preserve states' rights. Interstate agencies are made up of Commissioners which each state selects. In many cases, these Commissioners are also state officials. Any loss of authority to a state is compensated by an equal gain. New York must submit to what men from New Jersey help to

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4. Massachusetts, Acts and Resolves of 1937, Chapter 404, provides for Commissioners on Interstate Relations.

promulgate, let us say; likewise New York's own appointees help to promulgate regulations for New Jersey. Each state pays its own Commissioners, and may replace them if it chooses. Their activities are local in nature, which is more in keeping with the idea of local government than if the agency, or Bureau, or Commission, sat in Washington, were appointed by Washington and paid by Washington, and yet regulated regional affairs. Those who are familiar with the problems and developments of the oil situation in the United States cannot help but conclude that the Interstate Oil Compact prevented Federal control of the oil industry. There has been no loss of state rights under the Oil Compact. The same thing cannot be said for the bituminous coal producing states under the Guffey Act. Fearing the loss of state powers is a poor argument to use against interstate compacts. If nations of the world hold strenuously to a similar position, arbitration treaties would never be ratified, the sword would be the only arbiter, might would be the only right, and a world of law and order among nations would cease to exist in any degree whatsoever. As the writer views the situation, there are many regional problems which must and will be solved; they are beyond the solution by states acting separately; many of them can be solved by joint action through interstate compacts; if the states refuse to make the necessary concessions, and formulate compacts for the solution

of these problems, the Federal Government will step into the picture, and state powers will be further reduced. If there are defects in this line of reasoning, we are unable to discover them.

Another charge frequently brought against the interstate compact is that it is an inflexible thing. Inflexibility is not a fault, but a virtue with certain compacts. Parallel statute compacts in the field of commercial law, for instance, if flexible, would soon destroy the uniformity so desirable. The same thing is true with respect to the extradition of persons charged with crimes and of fugitive witnesses in criminal cases. A peace officer going to California from Texas for a suspect wanted in Texas should be able to follow the same procedure that he would have to follow in Maine, or in any other state. Another element in inflexibility, as pointed out by critics, is that amendments require unanimous action of all the compacting states. This is true, but the matter may be viewed in this light. If six states are fellow members of a compact, only six states have to act in order to secure an amendment. Thirty-six states must accept an Amendment to the United States Constitution before it becomes valid. Sufficient flexibility in any given compact may be secured if the text is properly written. The Colorado River Compact makes allowances for changing conditions. Also, standards of disinterested agents could be accepted by the interstate

agency. For instance, if the Oil Compact were amended so as to allow the Commission to fix quotas for the compacting states, it could easily figure the quotas on an agreed per cent of the Bureau of Mines estimates of world demand and state allowables. Or a degree of flexibility could be secured by adopting the voting plan of the New York Port Authority. By this plan, each compacting state sends a number of Commissioners to the interstate agency, say six. An affirmative vote requires the unanimous consent of all the member states, but does not have to have a unanimous vote of the Commissioners. In other words, the Commissioners should vote as individuals, and not by states. The vote of the state is recorded if a majority of the Commissioners from that state assent to the proposition. Again, the plan of having a fixed expiration date for the compact forces a consideration of amendments, and presents an opportunity to so modify the compact to meet new needs as they may arise. Periodical revision of a compact, in itself, is sufficient to destroy the force of the charge of inflexibility.

Weaknesses and other faults may be pointed out in any existing interstate compact, but the whole concept should not be condemned therefore. The text of a compact is a constitution in miniature. The agencies are set up by the compact and their powers and duties are delegated and enumerated in the text which is subject to amendment and

revision. The interstate agencies thus set up and instructed can only function within the scope of their authority. Granting the existence of needs to be served, and a compact agency with sufficient powers wholeheartedly seconded by the compacting states, the interstate agency should, in its limited sphere of action, prove to be as successful as are state and municipal governments in their spheres. As the writer sees it, there are only two "ifs" in the way. If the states will bring the interstate compacts into being, and if the powers and duties of the administrative agencies are sufficiently broad in their scope, criticisms and objections will gradually be silenced by the services rendered by interstate compacts.

After all is said, the greatest measure of an organization is the service it renders. The functions of any governmental agency are of more importance than its form. There is an increasing list of services to the people of the United States that should be supplied, services which cannot be rendered by a single state, and should not be attempted by the national government. The interstate compact seems to be the most practical, the most logical way to provide them. It probably is not the ideal plan, but perfect ideals are more often dreamed of than attained. It seems to be the best tool available for many jobs that must be done, and there should be no practical reasons against employing it. Its form is capable of adaptation as its

functions may be altered. The interstate compact should be more generally employed for the solution of interstate and regional problems until something better is evolved. It is noteworthy that those who have most severely criticized the interstate compact have failed to suggest a substitute.

CHAPTER IX

CONCLUSIONS AND RECOMMENDATIONS

The writer has attempted in the preceding pages to call attention to certain facts which probably were responsible for including the compact clause in the Constitution. Similar provisions in earlier plans of government were cited, and conditions in America in 1787 were told. Then it was pointed out that certain Colonies and states formed compacts under English rule and during the period of the Confederation. Compacts of different types and for different purposes have been formed under the limitations of the Constitution, and the rate of formation has increased since 1900. An attempt was made to classify compacts, and the details of a few particular compacts were given. Interstate suits and Supreme Court decisions have been studied in an effort to show that any dissension between states growing out of a compact relationship may be settled by the Supreme Court. The writer has also attempted to show that the Court's decisions will probably be enforced, should enforcement be necessary. He has attempted to indicate some of the regrettable attitudes of states toward one another, particularly in trade matters, and drawn the inference that unless these conditions are corrected by compacts or otherwise, the national government will probably extend its sphere of activity, with a resulting loss of states' rights.

Finally, a few objections to the whole compact movement were mentioned, and some effort was made to answer them. In so far as has been possible, the discussions have been confined to historic materials, or the records of past events. It is now proposed to draw some conclusions and make a few specific and general recommendations which, it is hoped, can be justified from the facts given heretofore, plus a bit of supplementary data.

The similarity of compacts between states to contracts between private citizens has been mentioned. The obligations which a state assumes under a compact bind the state and its citizens. In the absence of provisions to the contrary, a state may not repudiate its compact nor withdraw from it.[1] For this reason, if for no other, the terms, provisions and language of the text of any proposed compact should receive careful study. The rights and obligations of the state should be clearly stated. The Commissioners who negotiate the compact and the Legislators who ratify it should first become acquainted with some existing compacts, as well as with Supreme Court decisions in interstate suits. They should avail themselves of expert information from such sources as the National Conference of Commissioners on Uniform State Laws, the Council of State Governments,[2] and others. The Committee on Compacts and Agreements Between States, set up in 1935 at the Los Angeles meeting of

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1. Clark, Jane Berry, "Interstate Compacts and Social Legislation," Political Science Quarterly, Vol. 51, p. 41; 1936.

2. Both may be reached at Chicago, Drexel Avenue and 58th Street.

the National Conference of Commissioners on Uniform State Laws, and the Commission on Interstate Coöperation, set up by the Council of State Governments, are working harmoniously in drafting and recommending model laws for the establishment of compacts. Either organization will gladly furnish such assistance as it may be able to give, to any state contemplating the formation of a compact.

Some of the Acts already prepared lie in the fields of taxation, crime control, extradition of indicted persons and witnesses, supervision of parolees. Some of these laws will clearly establish compact relations between the ratifying states. The compact status resulting from the enactment of others is doubtful, at least to the writer. Several states have already enacted from one to all of the recommended laws. By August, 1937, seventeen states had enacted the extradition of criminals law, twenty-two the law for removal of witnesses, twenty-two the fresh pursuit law, and nineteen states had enacted the supervision of Parolees law.[3]

Labor compacts should be formed by groups of states within a region of similar industrial conditions. In order that the compacting states may carry out the provisions of labor compacts which obligate them to enact laws fixing minimum wages, maximum hours of employment, etc., an amendment to the national Constitution is recommended. The

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3. State Government, Vol. 10 (September, 1937), p. 17.

interpretations of the fifth and fourteenth Amendments have at times defeated the efforts of states to enforce their labor laws. Decisions of the Court have not followed any consistent line of reasoning. Some labor statutes have been upheld for various reasons and others have been invalidated. In the case of Lochner vs. New York,[4] a statute limiting to ten the hours of work of bakery employees was invalidated on the grounds that the law was an arbitrary and unwarranted interference with the liberty of contract as secured by Article XIV of the Constitution. Later an Oregon statute limiting the hours of employment of women and minors was upheld, being justifiable as a health measure. Wilson's eight-hour day for railroad employees is yet in force. But a law for the District of Columbia fixing maximum hours of employment per day for women and minors was declared unconstitutional, in the case of Adkins vs. Childrens' Hospital.[5] The Court followed the same line of reasoning in the Adkins case as it had in the Lochner case. Finally, in 1937, another law limiting hours and wages was upheld. In this case, West Hotel Company vs. Parrish, the Court reversed its reasoning in the two above cases, and went out of its way to say:

> Our Conclusion is that the case of Adkins vs. Children's Hospital should be, and is, overruled.[6]

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4. Lochner vs. New York, 198 U. S. 45; 1905.

5. Adkins vs. Children's Hospital, 261 U. S. 525; 1925.

6. West Coast Hotel Company vs. Parrish, 300 U. S. 379; 1937.

Possibly the reasoning in the West Coast Hotel Company vs. Parrish will control the Court's decisions in all future cases involving the constitutionality of a state's labor laws fixing maximum hours and minimum wages, but this cannot be known. In order to clarify definitely the situation, an Amendment to the Constitution should be adopted which will prevent the invalidation of state laws which regulate the conditions of employment. A suggested wording for the proposed Amendment follows:

ARTICLE XXII
Nothing in this Constitution shall be interpreted so as to invalidate any law of any state regulating the working conditions of employees.

The success of labor compacts may depend upon a Constitutional Amendment, but other needed compacts can be made to succeed without an Amendment. A factor which will contribute to the success of compacts which may be formulated in the future is to provide an interstate agency with autonomous powers, to have administrative supervision over the work to be done under the terms of the compact. The agency should have power to issue regulatory measures with the authority of law without being enacted by the Legislatures of all the compacting states. The compact should provide that the states reserve the right to negate the agencies rules and regulations. By this plan, the administrative agency could put into effect at once and without delay its rules and regulations, without awaiting the actions

of two or more Legislatures. As an illustration, the Interstate Oil Compact Commission should be empowered to assign quotas, after full hearings, to the various oil producing states. Its orders could be directed, not to the states but to the operators of the oil and gas fields within the states. The nearest approach to an autonomous agency yet brought into being by an interstate compact is the Port of New York Authority, but its rules and regulations must be enacted by both New York and New Jersey before they are valid.

The rights of the compacting states are protected in the above plan by the reserved right to invalidate the interstate administrative agency's rules and regulations. A state should further protect itself by placing in the text of the compact provisions for withdrawal. A good plan is to be found in the Concord Compact, whereby a state may give notice of intentions to all other compacting states, and two years later withdraws if it still desires to do so.

Still another protection for a state is to limit the life of the compact. Prior to the expiration date, the life of the compact can be extended a fixed number of years. The automatic expiration date will also give opportunity to amend the compact. An unsatisfactory one can be abandoned, and a good compact can perhaps be made better. Constant renewals after fixed periods of time will give a flexibility

and an adaptation to changing conditions to the compact structure.

These various recommendations, right to negate the administrative agency's regulations, provisions for a state's withdrawal from a compact, the necessity for periodic renewals, should so reassure states that they will the more willingly agree to the establishment of compact agencies with adequate powers. The Interstate Oil Compact expires in 1939, and plans are now being made for its renewal. The next meeting of the Commission will discuss the text of the new compact, and it is even being proposed that the Compact Commission be given the authority to assign production quotas to the adhering states. This statement is based on Press notices only.[7]

The writer is of the opinion that compacts constructed along the lines indicated above should provide for such matters as flood control instead of having the work done by the Federal government. Adequate flood control programs may involve such requirements as terracing farm lands, and other measures which are more properly within the police powers of a state than in the delegated powers of the United States. Destruction from flood waters is usually the concern of a particular group of states, as the four New England states adjoining the Connecticut River. New Mexico and Arizona may have no fear of floods, and rightly could object to paying

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7. See Austin American, July 31, 1938, p. 1.

taxes to prevent floods in Connecticut. States subject to floods from a common river should attack the problem jointly, coördinating their efforts through an interstate agency set up by compact. The Federal Government could well be admitted as a participating member, but should not finance the project. The United States could contribute the services of Army Engineers, which would probably insure proper engineering and at the same time save the compacting states the cost of employing experts to supervise the job.

Less extensive projects suited to coöperate state action are the establishment and maintenance of public service institutions. For example, two or more states can establish joint penal institutions, reform schools, asylums for handicapped people, hospitals for mental cases, research agencies, Universities, and a host of others. By sharing in the expenses, a state unable to finance adequately a worthy cause alone, can secure the benefits at half or a third the cost. New Hampshire and Vermont are maintaining a joint penal institution. Their example seems worthy of emulation.

The contract between these two states is not a compact in the sense that it must have the consent of Congress. It is a contract, exactly as if it were made by two private citizens. The states are simply business partners, and not compacting sovereigns in the matter of the penitentiary. The writer sees no particular advantages in such a contract over

a compact. In some instances, a simple contract cannot be executed without the consent of Congress, as a contract to construct a bridge over a navigable stream. Past history shows that a compact is more likely to be executed harmoniously than a contract. There are other advantages which will not be enumerated here. Compacts are recommended for all important interstate construction and maintenance projects.

In the past, Congress has given its consent to compacts, and then officially forgotten them. This should not be the case, however. Congress should keep itself informed, particularly with reference to compacts for the control of the production and marketing of products, such as the Tobacco Compact (as yet incomplete) although Congress has given consent.[8] This compact and the proposed Oil Compact conceivably could result in abuses, by forcing prices above a fair and equitable level, but it is unlikely. In order to maintain the confidence of the country at large in particular compacts, Congress should establish a Bureau, or Division, in the State Department with duties to: hold all compacts, collect annual reports from all compact agencies, give information to states contemplating compact formation, and to report to Congress on the activities of all interstate agencies. Congress and the general public would have an authoritative source of information, and would be in a position to repeal its Act of Consent should such an extreme step become necessary.

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8. 49 U. S. Statutes at Large, p. 1239; 1936. North Carolina and South Carolina have ratified; will become effective when Georgia ratifies. Burley compact ratified by North Carolina and Virginia, effective when ratified by Kentucky and Tennessee.

An alternative plan would be to have one or more representatives of the Federal Government on all compact Commissions. This is being done in some instances, at the present time. Representatives from the Departments of War and Interior participated in the formation of the Columbia River Compact, and now serve on its Commission.[9] Congress made this a condition of consent.

There is nothing to prevent the United States, as a sovereign state, from becoming a participating member of an interstate compact on terms of parity with the ratifying states. For instance, the United States and Virginia have taken the preliminary steps to form a boundary settlement compact for the purpose of defining the line between Virginia and the District of Columbia. A Commissioner representing each party and a third selected by these two will locate the line. The report of this Commission must have the approval of both Congress and the Legislature of Virginia to become established and authoritative, exactly like the procedure when two states ratify a compact. Additional compacts with the United States as a party should be formed with individual states and groups of states to deal with many projects in which the nation and separate states participate. Such projects, for example, as Vocational Education, Rehabilitation, highway construction, social insurance, pest and

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9. Clark, Jane Perry, op. cit., December, 1935.

disease control, and a host of others. Such a plan would enable adjustments for individual or sectional differences, while the present arrangements stipulate uniform conditions. The laws of Congress prescribe the conditions, and the states must accept in order to participate in the appropriations. The compact method would also, in a measure, substitute "fraternalism" for the "paternalism" which now characterizes Federal Aid to the states.

This recommendation, or conclusion, is addressed to Congress. In view of the fact that there is still some uncertainty respecting the power to enforce the Supreme Court's decisions against a state, Congress should enact legislation prescribing the manner and means of procedure against a state if it should refuse to permit the execution of the Court's decrees, or refuse to take the necessary steps to carry them out. The need for this legislation has long been felt, and several attempts have been made in the past to supply it. A bill was introduced in Congress in 1814,[10] Four years later, a similar bill was before the Senate but was not passed.[11] Other attempts have been made but none of them have been successful.

The bills mentioned were introduced in the days when boundary disputes between states were common. Probably there

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10. 13th Congress, 2nd Session, S. J., p. 632.

11. 15th Congress, 1st Session, S. J., p. 278.

will not be many more cases before the Court concerning boundary matters, but there may be cases involving compacts. A knowledge that there is a sure and adequate remedy at law, should a state refuse to abide by the terms of its compact, would be an impetus to compact formation, just as was the case with private contracts. Should compacts multiply in numbers and in variety, the need for legislation recommended above will probably become more acute. Many indications point to a growth of the compact movement. Several states now have Committees on Interstate Relations, with power to negotiate compacts without specific authorization. Massachusetts is a good example.

If one of the functions of our public schools is to prepare future citizens for an anticipated environment, then courses of study should include materials on interstate compacts. High schools have done little about it as yet, as far as may be judged from high school civics texts. An examination of some six or eight failed to find any mention of interstate compacts at all. The writer strongly urges that instruction be given to high school boys and girls in the construction, limitations, status and possibilities of interstate compacts.

Men have given their lives for national unity; others have bled for states' rights. If interstate compacts are ever developed to the extent that intermediary agencies between state and nation, state controlled regionalism under

the general supervision of the Federal Government, take over and administer those governmental functions that are broader than a single state's powers, yet regional in nature, perhaps the shades of those who have died for national unity and states' rights may find repose in this happy compromise between two extremes.

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APPENDICES

NOTES

1. Below are the compacts of record which were formulated prior to the separation from England.

   i. Connecticut and New Netherlands, September 19, 1650.
   ii. Connecticut and Rhode Island, Boundary Settlement, 1663.
   iii. Connecticut and New York, Boundary Settlement, 1664.
   iv. Connecticut and New York, Boundary Settlement, 1683.
   v. Connecticut and Rhode Island, Boundary Settlement, 1703.
   vi. Rhode Island and Massachusetts, Boundary Settlement, 1710.
   vii. Rhode Island and Massachusetts, Boundary Settlement, 1719.
   viii. Connecticut and New York, Boundary Settlement, 1725.
   ix. North Carolina and South Carolina: Boundary Settlement, 1735.
   x. New York and Massachusetts, Boundary Settlement, 1773.

2. At least four compacts were formed between states during the period of the Confederation. They are given below:

   i. Pennsylvania and Virginia, Boundary Agreement, 1780.
   ii. Pennsylvania and New York, Ownership and Jurisdiction over certain islands in the Delaware River, 1783.
   iii. Virginia and Maryland, Jurisdiction over Potomac, 1785.
   iv. South Carolina and Georgia, Boundary and navigation, 1788.

3. In 1911, 36 Statutes, 961, may be found the first "blanket consent" law enacted by the United States Congress. These words are taken from the language of the bill:

   > That the consent of Congress is hereby given to each of the several states to enter into any agreement or compact not in conflict with any law of the United States, with any other state or states for the purpose of conserving the forests and water supplies of the states entering into such compact.

4. From the 73rd Congress, 2nd Session H. R. No. 7353; Report No. 1137: Granting the consent of Congress to any two or more states to enter into agreements or compacts for coöperative effort and mutual assistance in the prevention and punishment of crime, and to establish whatever joint agencies may seem desirable to them, to make effective such agreements and compacts.

5. Acts and Joint Resolutions of consent to interstate compacts may be found for these citations:

   3 Statutes 609, v; 4 Statutes 708, 711; 9 Statutes 211, c. 10; 11 Statutes 382, c. 28; 14 Statutes 350, No. 12; 21 Statutes 72, c. 49; 26 Statutes 329, 333; 21 Statutes 351; 25 Statutes 552, c. 1094; 34 Statutes 858-861; 35 Statutes 1161, No. 5; 36 Statutes 961, c. 186; 40 Statutes 266, No. 5; 40 Statutes 266, No. 5; 40 Statutes 515, c.47; 40 Statutes 158, c. 11; 42 Statutes 171, c. 72.

6. From the case of Mackay vs. New York, 1909:

   > Legislation by each of two states authorizing a corporation resident in one state to unite with a corporation resident in the other does not, in the absence of legislation by Congress to the contrary, come within the prohibition of the Constitution, Article I, Section 10.

7. In 1785, South Carolina sued Georgia under Article IX of the Articles of Confederation. Georgia was summoned to appear, June 1. September 4, 1786, both states appeared, represented by agents. A court was constituted to sit in New York June 4, 1787. No decision was rendered, for the states worked out a compromise. News of the compromise action reached Congress on the same day with the news that South Carolina had given the land to the national Government. The Congress accepted the gift, and referred the settlement papers to a Committee that, as it was known, would never sit again. One month later, the Convention completed the Constitution.

8. Maine has prohibited the production of hydroelectric power for transmission beyond her borders. Maine Revised Statutes, 1916, Chapter 60, Section 1, p. 985.

9. Illustrating the giving of consent by Congress in matters not involving a state compact:

   1. Congress grants consent to Pennsylvania to construct, maintain and operate a toll bridge over the Susquehanna River at Millsburg, H. R. No. 9271. (Consent to a single state)

   2. Congress grants consent to Wheeling to construct, maintain and operate a toll bridge over the Ohio River at Wheeling, Va. (To a city)

3. Congress consents that Brownsville Bridge Company may build, maintain and operate a bridge across the Missouri River at Brownsville, Nebraska. (Consent to a business firm).

10. Will the Federal Courts entertain an action by a citizen or firm against a state agency?

Plaintiff sued in a federal court for an injunction restraining enforcement of an order by the Corporation Commission of Oklahoma reducing gas rates. Plaintiff alleged that the new rates were confiscatory, and in violation of due process of law under the 14th Amendment. Held, that in view of the uncertainty of an opportunity for judicial review of the orders of the Commission, there was not a plain, speedy and efficient remedy in the state courts, so the injunction was granted. For the entire decision, see:
Corporation Commission of Oklahoma vs. Cory, 296, U. S. 452, 1935.

11. Illustrative of the lack of uniformity in the states with reference to a single matter, the requisite period of time to live within a state to establish rights of legal settlement:

Time Required	States
3 months	Wyoming
6 months	Alabama, Mississippi, Oklahoma, Washington.
1 year	Colorado, Idaho, Indiana, Iowa, Kansas, Michigan, Minnesota, Nebraska, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, Utah, Virginia, Wisconsin.
2 years	Delaware
3 years	California, Nevada, South Carolina
4 years	Connecticut
5 years	Maine, Massachusetts, New Hampshire, Rhode Island

All other states have no statute: voting laws assumed.

12. At the 46th Annual Conference of Commissioners on Uniform State Laws, Boston, August 17-22, 1936, the Conference adopted an amendment to its constitution, recommended by the Executive Committee, whereby the objectives of the Conference have been enlarged to include model acts on subjects suitable for interstate compacts. Notre Dame Lawyer, 12, 1936-37, p. 127. Ibid., Note, p. 127. The Federal Trade Commission, January 4, recommended the

creation of a Board to promote compacts between contiguous states for milk control, with a view to prevent unfair trade practices.

13. By energetic action and by education of the people as to the ultimate results of the present trends, the states may recover the ground which has been lost the past few years. The assertion of sovereignty by interstate compacts will be the most effective means to that end. Federal bureaucracy will be checked. Wilson, Francis, "Industrial Labor Adjustments by Interstate Compacts," Marquette Law Review, 20, p. 11.

14. The United States may not tax a state's bonds, but one state may tax another state's bonds. Chafee, Zechareah, Yale Law Journal, Vol. 7, p. 685. Ibid., Interstate compacts are the best remedy for business frictions.

15. For the past twenty-five years, each successive President of the United States has recommended the adoption of interstate compacts. No President has ever vetoed an Act giving consent to states to adopt a compact. Dodd, "Interstate Compacts," U. S. Law Review, Vol. 70, p. 557, 1936.

16. Thompson on Allowables:
In Kansas, two large crude purchasers are buying only 75% of the allowable as set by the Corporations Commission in that state. I am glad to see coöperation in other states.
(Texas State House Reports, Vol. 6, No. 6, April 17, 1938)

17. As Chairman of the Interstate Oil Compact Commission, E. O. Thompson Friday addressed Texas Congressmen and the President in a letter, protesting against a bill by Senator Guffey of Pennsylvania proposing a tax of one cent a gallon, 42 cents a barrel, on fuel oil. (Ibid., Vol. 5, No. 236)

18. The authority of the Texas Railroad Commission to make rules ... to conserve the natural resources and enforce the same ... is not an exercise of legislative function, but administrative in its operation and application.
(U. S. vs. Grimaud, 220 U. S. 506)

19. Governor Earle on Guffey Coal Act:
Through the Guffey Act, we are now attempting to apply substantially the same control principles to coal that you (Oil Compact Commission) have applied to oil. Yet we find that the administration of the Act is being jeopardized by the very persons who would gain most in

the long run, the bituminous operators themselves. If it fails, there is no doubt in my mind that the Federal Government will be forced to take over bituminous altogether.
(Transcript of Proceedings of the Interstate Oil Compact Commission, p. 4; Oklahoma City, January 18, 1938)

20. This is the only major industry today which can gather within the states where it is operated and hold a session such as this. Every other industry in America today is being called on by Washington to work oil with the Federal Government whatever ills it may have.
(Charles S. Roeser, addressing Compact Commission, Ibid., p. 19)

21. January 18, 1938:
It was learned by observers at the Oklahoma City meeting of the Oil Compact Commission, that two non-member states will follow whatever lead is set by the compacting states.
(Texas State House Reports, Vol. 5, p. 3)

The State House Reports, mimeographed for limited circulation, are usually referred to as Byram's Reports, because R. W. Byram is the statistician. Van W. Kennedy is Editor, and Paul Belton is Assistant Editor. They are on file at the Oil and Gas Division, Texas Railroad Commission, Austin, Texas. 1200 La Vaca Street.

22. By an act of December 18, 1789, Virginia authorized the erection of the district of Kentucky into a new State. That act provided that "all private rights, and interests of lands within the said District derived from the laws of the proposed State, and shall be determined by the laws now existing in this State." This compact was ratified by the convention which framed the constitution of Kentucky and was incorporated into that constitution. The act of Congress for the admission of Kentucky (February 4, 1791, 1 Statutes 189) contained no express reference to the subject; and in Green vs. Biddle, 8 Wheat. 1 it was argued that the compact was invalid because made without the consent of Congress, contrary to Constitution I, Section 10. But the Supreme Court, after observing that the Constitution "makes no provision respecting the mode or form in which the consent of Congress is to be signified" and that the question in such cases is, "has Congress, by some positive act, in relation to such agreement, signified the consent of that body to its validity?" found in the preamble to the act of 1791, with its reference to the act of Virginia of 1789 and the convention in Kentucky, sufficient indication, under the circumstances, of an assent to the terms of separation set out in the Virginia proposal--including the "compact" in question.
(W. C. Gilbert, Acting Director Legislative Reference Service, Washington, D. C.)

APPENDIX A

Cases in which a state or states have been a party.

1.	New York vs. Connecticut	4 Dallas 1	(1799)
	New York vs. Connecticut	4 Dallas 3	(1799)
	New York vs. Connecticut	4 Dallas 6	(1799)
2.	New Jersey vs. New York	3 Peters 461	(1830)
	New Jersey vs. New York	5 Peters 284	(1831)
	New Jersey vs. New York	6 Peters 323	(1832)
3.	Rhode Island vs. Mass.	7 Peters 651	(1833)
	Rhode Island vs. Mass.	11 Peters 226	(1837)
	Rhode Island vs. Mass.	12 Peters 657	(1838)
	Rhode Island vs. Mass.	13 Peters 23	(1839)
	Rhode Island vs. Mass.	14 Peters 210	(1840)
	Rhode Island vs. Mass.	15 Peters 233	(1841)
4.	Maryland vs. Virginia	Not reported; see 12 Peters 724	(1835)
5.	Missouri vs. Iowa	7 Howard 660	(1849)
	Missouri vs. Iowa	10 Howard 1	(1850)
	Missouri vs. Iowa	160 U. S. 688	(1896)
	Missouri vs. Iowa	165 U. S. 118	(1897)
6.	Florida vs. Georgia	11 Howard 293	(1850)
	Florida vs. Georgia	17 Howard 478	(1854)
7.	Alabama vs. Georgia	23 Howard 509	(1860)
8.	Kentucky vs. Dennison (Governor of Ohio)	24 Howard 66	(1861)
9.	Virginia vs. West Virginia	11 Wallace 39	(1871)
10.	Missouri vs. Kentucky	11 Wallace 395	(1871)
11.	South Carolina vs. Georgia	93 U. S. 4	(1876)
12.	New Hampshire vs. Louisiana	108 U. S. 76	(1883)
13.	New York vs. Louisiana	108 U. S. 76	(1883)
14.	Indiana vs. Kentucky	136 U. S. 479	(1890)
	Indiana vs. Kentucky	159 U. S. 275	(1895)
	Indiana vs. Kentucky	163 U. S. 520	(1896)
	Indiana vs. Kentucky	167 U. S. 270	(1897)

15.	Nebraska vs. Iowa	143 U. S. 359	(1892)
	Nebraska vs. Iowa	145 U. S. 519	(1892)
16.	Iowa vs. Illinois	147 U. S. 1	(1893)
	Iowa vs. Illinois	151 U. S. 238	(1894)
17.	Virginia vs. Tennessee	148 U. S. 503	(1893)
	Virginia vs. Tennessee	158 U. S. 267	(1895)
	Virginia vs. Tennessee	177 U. S. 501	(1900)
	Virginia vs. Tennessee	190 U. S. 64	(1903)
18.	Louisiana vs. Texas	176 U. S. 1	(1900)
19.	Missouri vs. Illinois	180 U. S. 208	(1901)
	Missouri vs. Illinois	200 U. S. 496	(1906)
	Missouri vs. Illinois	202 U. S. 598	(1906)
20.	Kansas vs. Colorado	185 U. S. 125	(1902)
	Kansas vs. Colorado	206 U. S. 46	(1907)
21.	South Dakota vs. North Carolina	192 U. S. 286	(1904)
22.	Missouri vs. Nebraska	196 U. S. 23	(1904)
	Missouri vs. Nebraska	197 U. S. 577	(1905)
23.	Louisiana vs. Mississippi	202 U. S. 1	(1906)
24.	Iowa vs. Illinois	202 U. S. 59	(1906)
25.	Virginia vs. West Virginia	206 U. S. 290	(1907)
	Virginia vs. West Virginia	209 U. S. 514	(1908)
	Virginia vs. West Virginia	220 U. S. 1	(1911)
	Virginia vs. West Virginia	231 U. S. 89	(1913)
	Virginia vs. West Virginia	234 U. S. 117	(1914)
	Virginia vs. West Virginia	238 U. S. 202	(1915)
	Virginia vs. West Virginia	241 U. S. 531	(1916)
	Virginia vs. West Virginia	246 U. S. 565	(1918)
26.	Washington vs. Oregon	211 U. S. 127	(1908)
27.	Missouri vs. Kansas	214 U. S. 205	(1909)
28.	Maryland vs. West Virginia	217 U. S. 1	(1910)
	Maryland vs. West Virginia	217 U. S. 577	(1910)
	Maryland vs. West Virginia	225 U. S. 1	(1912)
29.	North Carolina vs. Tennessee	235 U. S. 1	(1914)
	North Carolina vs. Tennessee	240 U. S. 652	(1916)

30.	Arkansas vs. Tennessee	246 U. S. 158	(1918)
	Arkansas vs. Tennessee	247 U. S. 161	(1918)
31.	Arkansas vs. Mississippi	250 U. S. 39	(1919)
32.	Minnesota vs. Wisconsin	252 U. S. 273	(1920)
33.	New York vs. New Jersey	256 U. S. 296	(1921)
34.	Georgia vs. South Carolina	257 U. S. 516	(1922)
	Georgia vs. South Carolina	259 U. S. 572	(1922)
35.	Oklahoma vs. Texas	256 U. S. 70	(1921)
	Oklahoma vs. Texas	258 U. S. 574	(1922)
36.	Wyoming vs. Colorado	259 U. S. 419	(1922)
37.	Pennsylvania vs. West Virginia	262 U. S. 553	(1923)
38.	Ohio vs. West Virginia	262 U. S. 553	(1923)
39.	North Dakota vs. Minnesota	263 U. S.	(1923)

A study of the above, taken from a compilation in Warren, The Supreme Court and the Sovereign States, pp. 113-116, shows that between 1789 and 1923, 27 different states have appeared as plaintiffs and 23 as defendants, and 81 reported decisions. A further investigation shows that 26 were boundary cases, 2 involved recovery of money due on bonds, eleven involved direct injuries alleged to have been committed. In no single case did the Court decide a lack of jurisdiction.

APPENDIX B

STATUS OF ALL STATE COMPACTS AND AGREEMENTS NOW EXISTING AND COMPACTS ASSENTED TO BY THE CONGRESS OF THE UNITED STATES

1789 Virginia and Kentucky--Boundary settlement
Ratification: Virginia, 1789, Statutes of 1789, p. 17.
Kentucky, 1789, 1 Littleton Statutes, 38.
U. S., 1791, 1 U. S. Statutes at Large, p. 189.

1820 Kentucky and Tennessee--Boundary settlement
Ratification: Kentucky, 1820, Laws of 1819, ch. 546, Vol. 1.
Tennessee, 1819, 2 Scott, ch. 67.
U. S., 1820, 3 U. S. Statutes at Large, p. 609.

1825 Virginia, Maryland and Pennsylvania--Incorporation of the C. and O. Canal with rights of eminent domain clarified.
Ratification: Virginia, 1834, Code of 1834, Title 20.
Maryland, 1825, Vol. 1 of Acts of 1825, ch. 200.
Pennsylvania, 1826, Acts of 1825, Vol. 1, ch. 7.
U. S., 1828, 4 U. S. Statutes at Large, p. 101.

1833 New York and New Jersey--Boundary line on Hudson River.
Ratification: New York, 1834, Vol. 1, Laws of 1834, ch. 8.
New Jersey, 1834, Vol. 1, N. J. Laws of 1834, ch. 118.

1846 Missouri and Arkansas--Boundary settlement.
Ratification: Arkansas, 1846, Digest of 1857, ch. 13.
Missouri, 1847, Vol. 1, Laws of 1847, p. 13.
U. S., 1848, 9 U. S. Statutes at Large, p. 211.

1853 Massachusetts and New York--Cession of Boston Corner to New York.
Ratification: Massachusetts, 1853, Acts and Resolves of 1853, p. 586.
New York, 1853, Vol. 1, Laws of 1853, ch. 586.
U. S., 1855, 10 U. S. Statutes at Large, p. 602.

1857 New York and Canada--Agreement for concurrent legislative agreement as to incorporation of international bridge.
Ratification: New York, 1857, Vol. 1, Laws of 1915, ch. 666, amending Vol. 1, Laws of 1857, ch. 758.
Canada, 1857, 20 Victoria Statutes, ch. 227.
U. S., 1870, 16 U. S. Statutes at Large, p. 173.

1859 Massachusetts and Rhode Island--Boundary line settlement--U. S. Attorney General being given power by Congress to consent.
Ratification: Massachusetts, 1859, Acts and Resolves of 1861, ch. 187.
Rhode Island, 1860, Vol. 1, Public Laws, 1860, ch. 320.
U. S., 1859, 11 U. S. Statutes at Large, p. 382.

1861 Arkansas, Louisiana and Texas--Removal of raft from Red River.
Ratification: No Record of formal state ratification.
U. S., 1861, 12 U. S. Statutes at Large, p. 250.

1862 Virginia and West Virginia--Debt agreement
Ratification: Virginia, 1863, Vol. 1, Virginia Acts (Wheeling) of 1863, ch. 1619.
West Virginia, W. Va. Constitution, Article 8.
U. S., 1862, 12 U. S. Statutes at Large, p. 633.

1866 Virginia and West Virginia--Cession of Berkeley and Jefferson Counties to West Virginia.
Ratification: Virginia, 1863, Vol. 1, Va. Acts of 1862 (Wheeling), ch. 78.
West Virginia, 1863, Acts of W. Va., 1863, No. 12.
U. S., 1866, 14 U. S. Statutes at Large, p. 350.

1879 Virginia and Maryland--Creation of joint commission to adjust boundaries.
Ratification: Maryland, 1876, Vol. 1, Acts of 1876, ch. 148.
Virginia, 1878, Vol. 1, Virginia Acts of 1877, ch. 246.
U. S., 1879, 20 U. S. Statutes at Large, p. 481.

1879 New York and Vermont--Boundary agreement
Ratification: New York, 1879, Vol. 1, Laws of 1879, ch. 93.
Vermont, 1876, Acts of 1876, vol. 1, p. 380.
U. S., 1880, 21 U. S. Statutes at Large, p. 72.

1879 New York and Connecticut--Boundary agreement
Ratification: New York, 1880, Vol. 1, Laws of 1880, ch. 213.
Connecticut, 1880, Vol. 8, Conn. Spec. Laws, p. 1104.
U. S., 1881, 21 U. S. Statutes at Large, p. 351.

1886 Connecticut and Rhode Island--Boundary line.
Ratification: Connecticut, 1887, Vol. 10, Spec. Laws, p. 717.
Rhode Island, 1887, Vol. 1, Public Laws of 1887, p. 146.
U. S., 1886, 25 U. S. Statutes at Large, p. 553.

1886 New York and Pennsylvania--Boundary line agreement
Ratification: New York, 1886, Vol. 1, Laws of 1886, ch. 560.
Pennsylvania, 1887, Pennsylvania Statutes, 20065-80.

1897 South Dakota and Nebraska--Boundary line.
Ratification: South Dakota, 1897, Vol. 1, Session Laws of 1897, p. 787.
Nebraska, 1897, Acts of 1897, ch. 121.
U. S., 1897, 30 U. S. Statutes at Large, p. 214.

1901 Tennessee and Virginia--Boundary line.
Ratification: Tennessee, 1901, Vol. 1, Public Acts of 1901, p. 128.
Virginia, 1901, Vol. 1, Virginia Acts of 1901, ch. 59.
U. S., 1901, 31 U. S. Statutes at Large, p. 1465.

1905 South Dakota and Nebraska--Boundary line agreement.
Ratification: South Dakota, 1905, Acts of 1905, ch. 95.
Nebraska, 1905, Acts of 1905, 234.
U. S., 1905, 33 U. S. Statutes at Large, p. 820.

1905 New Jersey and Delaware--Service of criminal process to opposite side of Delaware River.
Ratification: New Jersey, 1905, Vol. 1, N. J. Laws of 1905, ch. 42.
Delaware, 1905, Vol. 1, Public Laws of 1905, ch. 234.
U. S., 1907, 34 U. S. Statutes at Large, p. 858.

1909 Mississippi and Louisiana--Boundary and penal jurisdiction on Mississippi River.
Ratification: Mississippi, 1918, Vol. 1, Miss. Resolves of 1918, p. 313.
Louisiana, no state action to date.
U. S., 1909, 35 U. S. Statutes at Large, p. 1160.

1909 Mississippi and Arkansas--Boundary line and criminal jurisdiction agreement.
Ratification: Mississippi, 1910, Miss. Resolves of 1910, p. 132.
Arkansas, 1910, Vol. 1, General Laws of 1909, ch. 290.
U. S., 1909, 35 U. S. Statutes at Large, p. 116.

1909 Tennessee and Arkansas--Boundary line and criminal jurisdiction on Mississippi River.
Ratification: Tennessee, 1909, Vol. 1, Pub. Acts of 1915, ch. 123.
Arkansas, 1909, Vol. 1, General Laws of 1909, ch. 290.
U. S., 1909, 35 U. S. Statutes at Large, p. 1163.

1910 Missouri and Kansas--Boundary agreement and criminal jurisdiction on Mississippi River.
Ratification: No record of state action.
U. S., 1910, 36 U. S. Statutes at Large, p. 881.

1910 Oregon and Washington--Boundaries on Columbia River.
Ratification: Oregon, 1915, Acts of 1915, ch. 150.
Washington, no record of state ratification.
U. S., 1910, 36 U. S. Statutes at Large, p. 881.

1911 General consent for the conservation of forests from from fires and water supply of any two or more states joining in a compact.
Ratification: No record of state action.
U. S., 1910, 36 U. S. Statutes at Large, p. 961. Amended in 1925 in 43 U. S. Statutes at Large, p. 1215.

1911 Wisconsin, Illinois, Michigan and Indiana--To enable these states to settle criminal jurisdiction on Lake Michigan.
Ratification: No record of any state agreement.
U. S., 1910, 36 U. S. Statutes at Large, p. 882.

1911 New York and Connecticut--Boundary line.
Ratification: New York, 1912, Vol. 1, Laws of 1912, ch. 18.
Connecticut, 1913, Vol. 16, Spec. Laws, p. 1104.
U. S., 1925, 43 U. S. Statutes at Large, p. 731.

1914 Massachusetts and Connecticut--Boundary line agreement.
Ratification: Massachusetts, 1908, Acts and Resolves of Mass. for 1908, ch. 192.
Connecticut, 1913, Vol. 16, Spec. Laws, p. 365.
U. S., 1914, 38 U. S. Statutes at Large, p. 727.

1915 Oregon and Washington--Protection of fish and concurrent jurisdiction on Columbia River.
Ratification: Oregon, 1915, General Laws, ch. 188, Acts of 1915.
Washington, 1915, General Laws, ch. 31, Acts of 1915.
U. S., 1918, 40 U. S. Statutes at Large, p. 515.

1917 Minnesota, North Dakota and South Dakota--Improvement of navigation and control of floods on boundary waters and tributaries.
Ratification: Minnesota, 1921, Acts of 1921, Vol. 1, ch. 326.
North Dakota, 1919, Acts of 1919, Vol. 1, ch. 115.
South Dakota, 1917, Vol. 1, Acts of 1917, ch. 209.
U. S., 1917, 40 U. S. Statutes at Large, p. 266.

1917 Wisconsin and Minnesota--Boundary lines and cessions.
Ratification: Wisconsin, 1917, Vol. 1, Acts of 1917, ch. 64.
Minnesota, 1917, Acts of 1917, Vol. 1, ch. 116.
U. S., 1918, 40 U. S. Statutes at Large, p. 959.

1919 New York and New Jersey--Construction of tunnel under Hudson River.
Ratification: New York, 1919, Vol. 1, Laws of 1919, ch. 178.
N. J., 1920, Vol. 1, N. J. Laws of 1920, ch. 76.
U. S., 1919, 41 U. S. Statutes at Large, p. 158.

1921 Minnesota and North Dakota--Concurrent criminal jurisdiction on boundary waters.
Ratification: N. D., 1917, Acts of 1917, ch. 248.
Minn., 1917, Vol. 1, Acts of 1917, ch. 505.
U. S., 1921, 41 U. S. Statutes at Large, p. 1447.

1921 Pennsylvania and Delaware--Reestablishment of boundary.
Ratification: Penn., 1897, Penn. Laws of 1897, ch. 152.
Dela., 1921, Vol. 1, Acts of 1921, ch. 121.
U. S., 1921, 42 U. S. Statutes at Large, p. 104.

1921 Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming--Apportionment of waters of the Colorado River and its tributaries, agreement to be made by January 1, 1923, subject to approval of each legislature concerned and by Congress. Failure to agree within given time resulted in lapse of Congressional consent given in 42 U. S. Statutes at Large, p. 171.

1922 Arizona, California, Colorado, Nevada, New Mexico, Wyoming and Utah--Colorado River compact for the equitable distribution of waters of the Colorado River.
Ratification: Utah, 1923, Session Laws of 1923, ch. 5.
Colorado, 1926, Session Laws of 1925, ch. 177.
California, 1929, Acts of 1929, ch. 15.
Nevada, 1925, Session Laws of 1925, ch. 96.
New Mexico, 1929, Acts of 1929, ch. 78.
Wyoming, 1925, Session Laws of 1925, ch. 82.
Arizona, no action to date.
U. S., 1928, 45 U. S. Statutes at Large, pp. 1057-66.

1922 Kansas and Missouri--Development of water works plant at Kansas City.
Ratification: Kansas, 1921, Acts of 1921, ch. 304.
Missouri, 1921, Concurrent resolve, April 15, 1921.
U. S., 1922, 42 U. S. Statutes at Large, p. 1058.

1922 New York and New Jersey--Creation of Port of New York Authority; Development of Port of New York supplements agreement of 1834. Compact of April 30, 1931 supplement by agreement of 1922.
Ratification: New York, 1921, Vol. 1, Laws of 1921, ch. 154, amended by Laws of 1922, ch. 42, and Acts of 1930, ch. 419.
New Jersey, 1921, Vol. 1, Acts of 1921, ch. 151, amended by Acts of 1922, ch. 9, and by Acts of 1930, ch. 244.
U. S., 1921, 42 U. S. Statutes at Large, p. 174. Supplemental agreement in 42 U. S. Statutes at Large, p. 822.

1922 Colorado and New Mexico--Distribution of waters of the La Plata River.
Ratification: Colorado, 1923, Session Laws of 1923, ch. 191.
New Mexico, 1923, Session Laws of 1923, ch. 7.
U. S., 1925, 43 U. S. Statutes at Large, pp. 796, 798.

1925 Washington, Idaho, Montana and Oregon--Apportionment of water supply of the Columbia River.
Ratification: Washington, 1927, Vol. 1, Acts of 1927, ch. 260.
Idaho, 1927, Acts of 1927, p. 193.
Montana and Oregon have not agreed to date.
U. S., 1925, 43 U. S. Statutes at Large, p. 1268. Time extended to Dec. 1, 1927, by 44 U. S. Statutes at Large, p. 247. Time extended to Dec. 31, 1930, by 44 U. S. Statutes at Large, p. 1403. Wyoming made possible party by 47 U. S. Statutes at Large, p. 381.

1926 Colorado and Nebraska--Apportionment of waters of the Platte River.
Ratification: Colorado, 1925, Acts of 1925, ch. 179.
Nebraska, 1923, Session Laws of 1923, ch. 125.
U. S., 1926, 44 U. S. Statutes at Large, pp. 195-201.

1926 Idaho, Wyoming, Washington and Oregon--Apportionment of waters of the Snake River and its tributaries.
Ratification: Idaho, 1927, Session Laws of 1927, p. 183.
Wyoming, 1927, Acts of 1927, ch. 84, permitting representation in the negotiation.
Washington and Oregon have taken no action.
U. S., 1926, 44 U. S. Statutes at Large, p. 831.

1927 South Dakota and Wyoming--Apportionment of the waters of the Belle Fourche and Cheyenne Rivers.
Ratification: No state action to date.
U. S., 1927, 44 U. S. Statutes at Large, p. 1247.

1927 New York and Vermont--Bridge construction over Lake Champlain.
Ratification: Vermont, 1927, Acts of 1927, ch. 139, amended by Acts of 1935, ch. 204.
New York, 1927, Vol. 1, Laws of 1927, amended by Vol. 1, Laws of 1935.
U. S., 1928, 45 U. S. Statutes at Large, pp. 120-128. Amendment consented to by 49 U. S. Statutes at Large, pp. 726, 1472.

1927 Wisconsin and Michigan--Bridge construction over the Menominee River.
Ratification: Wisconsin, 1927, Acts of 1927, ch. 87.
Michigan, 1927, Session Laws of 1927, ch. 98.
U. S., 1928, 45 U. S. Statutes at Large, pp. 300-303.

1928 Florida and Alabama--Bridge over Perdido Bay.
Ratification: No state action to date.
U. S., 1928, 45 U. S. Statutes at Large, p. 771.

1928 Arizona, California and Nevada--Allocation of waters of the California River.
Ratification: Arizona, 1929, Acts of 1927, ch. 32, authorizing committee to negotiate.
California, 1927, Vol. 1, Acts of 1927, ch. 4, authorizing committee to negotiate. Acts of 1927, ch. 596, and Acts of 1929, ch. 4, requesting states to continue attempts to reach an agreement.
U. S., 1928, 45 U. S. Statutes at Large, p. 1057.

1928 United States and California--Limitation on use of water of the California River.
Ratification: California, 1929, Acts of 1929, ch. 16, agreeing to Sec. 4 (a) requiring California to limit use of water to not more than 4,400,000 acre feet of waters allotted to Lower Basin.
U. S., 1928, 45 U. S. Statutes at Large, p. 1057.

1928 Arizona, California, New Mexico, Colorado, Nevada, Utah and Wyoming--For further development of the Colorado River.
Ratification: No state action under this Act.
U. S., 1928, 45 U. S. Statutes at Large, p. 1057, section 19.

1929 New Mexico and Texas--Negotiation by Governors in reference to lands transferred between states lying on the Rio Grande River as result of the decision in 267 U. S. 557.
Ratification: New Mexico, 1929, ch. 42, Acts of 1929. Amended and time extended by ch. 76, Acts of 1935.
Texas, 1930, Revised Civil Statutes, Art. 7466 e. Amended and time extended by ch. 87, Acts of 1935.
U. S., 1929, 45 U. S. Statutes at Large, p. 1444.

1929 Oklahoma and Texas--Negotiation by Governors in reference to titles to transferred lands between states as result of boundary line decision in 272 U. S. 21.
Ratification: Oklahoma, 1929, Session Laws of 1929.
Texas, 1929, General and Special Laws of 1929, p. 727.
U. S., 1929, 45 U. S. Statutes at Large, p. 1444.

1929 Colorado and New Mexico--Water supply of the Rio Grande, San Juan and Las Animas Rivers and their tributaries.
Ratification: No state action.
U. S., 1929, 45 U. S. Statutes at Large, p. 1502.

1929 New Mexico, Oklahoma and Texas--Water supply of the Cimarron River and its tributaries.
Ratification: No record of any state action.
U. S., 1929, 45 U. S. Statutes at Large, p. 1502.

1929 New Mexico and Oklahoma--Apportionment and division of the waters of the Cimarron River and other streams in which the two states are jointly interested.
Ratification: No state action.
U. S., 1929, 44 U. S. Statutes at Large, p. 1503.

1929 New Mexico and Arizona--Water supply of Gila and San Francisco Rivers.
Ratification: No state action.
U. S., 1929, 45 U. S. Statutes at Large, p. 1517.

1929 Colorado, Oklahoma, Texas, Kansas--Water supply of the Arkansas River.
Ratification: Oklahoma, 1927, Acts of 1927, ch. 248.
No other state has joined by legislative action.
U. S., 1929, 45 U. S. Statutes at Large, p. 1517.

1929 Colorado, New Mexico and Texas--Use of Rio Grande River above Fort Quitman, Texas.
Ratification: Colorado, 1929, Session Laws of 1929, ch. 42.
New Mexico, 1929, Acts of 1929, ch. 42.
Texas, 1929, Acts of May 22, 1929.
U. S., 1930, 46 U. S. Statutes at Large, p. 767. Extended by 49 U. S. Statutes at Large, p. 325.

1930 Oklahoma and Texas--Bridge over Red River.
Ratification: No state action.
U. S., 1930, 46 U. S. Statutes at Large, p. 154.

1932 Idaho and Wyoming--Division of the waters of Snake River.
Ratification: No state action.
U. S., 1932, 47 U. S. Statutes at Large, p. 655.

1932 Pennsylvania and New Jersey--Creation of Delaware River Joint Commission to operate toll bridge.
Ratification: Penn., 1919, Public Laws of 1919, ch. 148.
N. J., 1912, N. J. Laws of 1912, ch. 397.
U. S., 1932, 47 U. S. Statutes at Large, p. 308.

1932 Montana and Wyoming--Allocation of waters of the Yellowstone River.
Ratification: No state action to date.
U. S., 1932, 47 U. S. Statutes at Large, p. 306.

1933 Kansas and Missouri--Authorizing acceptance for and in behalf of two states of the title to the bridge across the Missouri River from a point in Platte County, Mo., and one near Kansas City, Kan.
Ratification: Kansas, 1933, Revised Statutes, Article 16, 68-1601-06. Acts of 1933, ch. 68.
Missouri, 1933, Laws of 1933, p. 474.
U. S., 1933, 48 U. S. Statutes at Large, p. 105.

1934 New York and Canada--Maintenance and establishment of the Buffalo, N. Y., - Ft. Erie, Can., Public Bridge Authority.
Ratification: New York. 1933, Laws of New York, 1933, ch. 824.
Canada, 1934, 17th Parliament, 5th Session, 24 George V, 1934.
U. S., 1934, 48 U. S. Statutes at Large, p. 622.

1934 Blanket Consent to all states (Ashurst-Summers Act) for any two states to compact for the prevention of crimes and the enforcement of criminal laws.
Ratification: U. S., 1934, 48 U. S. Statutes at Large, p. 909.
Indiana, Acts of 1935, ch. 289;
and Michigan, Session Laws of 1935.
Illinois, Acts of 1935, Vol. 1;
and Michigan, Laws of 1936, Vol. 1.
New Mexico, Resolve of January 15, 1937;
and Colorado; no action yet;
and Kansas, ch. 165 of 1936 Session Laws. G. S. 62501 to 62503;
and Wyoming; no action to date.
Indiana, Acts of 1935, ch. 289;
and Arkansas, Acts of 1937.

1935 Connecticut, New Jersey and New York--Granting consent to compacts for interstate sanitation district and commission.
Ratification: New Jersey, 1935, N. J. Laws of 1935, ch. 321.
New York, 1934, Laws of 1934, ch. 10.
Connecticut committee still studying.
U. S., 1935, 49 U. S. Statutes at Large, p. 932.

1935 Massachusetts, Rhode Island and New Hampshire--Concord Labor Compact for minimum wages and hours.
Ratification: Mass., 1935, Acts and Resolves of 1935, ch. 315.
New Hampshire, 1935, Acts of 1935, ch. 112.
Rhode Island, 1936, Vol. 1, Public Laws of 1936, Resolution 12H503.
U. S., 1937, Public Resolution 58, 75th Congress, August, 12, 1937.

1935 Colorado, Illinois, Kansas, New Mexico, Oklahoma and Texas--Granted consent for two year compact for the conservation of oil, expiring Sept. 1. 1937.
Ratification: Colorado, 1935, Senate Joint Resolution 18, 1935 Session Laws.
Illinois, 1937, Acts of 1937, H. R. 37.
Kansas, 1935, Acts of 1935, ch. 215.
New Mexico, 1935, Acts of 1935, ch. 28.
Okla., 1935, Acts of 1935, S. 208.
Texas, 1935, Session Laws of 44th Legislature, ch. 81.
U. S., 1935, 49 U. S. Statutes at Large, p. 939. Extended to Sept. 1, 1939, by S. J. 183, August 10, 1937.

1936 Tobacco Growing States--Consent granted to any two or more states to negotiate compacts to regulate and control the production of tobacco.
Ratification: North Carolina, 1937, General Laws of 1937, ch. 22;
and Virginia, 1936, Acts of 1936, Vol. 1, Title 1;
and South Carolina; compact to become effective only when S. C. and Ga. ratify. This compact deals with ordinary tobacco.
and Georgia.
North Carolina, 1937, General Laws of 1937, ch. 22;
and Virginia, 1936, Acts of 1936, Vol. 1, Title 1;
and Kentucky;
and Tennessee. This compact, dealing with burley tobacco, does not become effective until Ky. and Tenn. ratify it.
U. S., 1936, 49 U. S. Statutes at Large, p. 1239.

1936 Any two or more states of Massachusetts, Maine, New Hampshire, New York, Vermont, Rhode Island, Connecticut, Pennsylvania, West Virginia, Kentucky, Indiana, Tennessee and Ohio have the consent of Congress to negotiate agreements for conserving, improving or preventing pollution of streams having interstate drainage.

Ratification: No state action.
U. S., 1936, 49 U. S. Statutes at Large, p. 1490.

1936 Blanket consent to all states. Any two or more states have the consent of Congress to negotiate for flood control upon interstate streams. Any compact must be subject to further ratification by Congress unless all of the work thereunder is to be performed by the War Department.

Ratification: U. S., 1936, 49 U. S. Statutes at Large, p. 1571.

Connecticut River Flood Control Compact.
Massachusetts, 1937, House Resolution, 1774, Acts and Resolves of 1937;
and Vermont, 1937, Acts of 1937, ch. 224.
and New Hampshire, 1937, House Bill 467, Acts of 1937;
and Connecticut, 1937, Session Laws of 1937, House Bill 336.
U. S. Favorably reported to Senate in S. J. 178, but not acted on in 75th Congress.

Merrimack River Flood Control Compact.
New Hampshire, 1937, House Bill 467, Acts of 1937;
and Massachusetts, 1937, House Bill 1774, Acts and Resolves of 1937.
U. S. Favorably reported in S. J. 178, but not acted on in 75th Congress.

1936 Blanket consent to two or more states to negotiate and enter into compacts or agreements with one another with reference to planning, establishing, developing, improving and maintaining any park, parkway or recreational area. No such compact or agreement shall be effective until approved by the legislatures of the several states which are parties thereto and by the Congress.

Ratification: U. S., 1936, 49 U. S. Statutes at Large, p. 1895.

New York and Jersey--amending original 1895 agreement which was never consented to by Congress to permit single body to replace dual governing body controlling Interstate Palisades Park under 49 U. S. Statutes at Large, p. 1895, sec. 3.
New York, 1895, Laws of 1895, ch. 97, amended by Acts of 1937.

New Jersey, 1895, N. J. Laws of 1895, ch. 415, amended by Laws of 1896, ch. 23, later repealed by Laws of 1937.
U. S., 1937, H. J. Resolution 445, passed House August 4, 1937. Favorably reported to Senate in 75th Congress.

1937 Maine and New Hampshire--Creation of Maine-New Hampshire Interstate Bridge Authority.
Ratification: Maine, 1937, HP 1631-LD767.
N. H., 1936, Acts of 1936, ch. 4.
U. S., 1937, S. 2661, 75th Congress.

1937 Montana and Wyoming--Consent given to enter into compact for the diversion of waters of the Yellowstone River.
Ratification: No state action.
U. S., 1937, Public Act 237, 75th Congress.

1937 Pennsylvania and Ohio--Compact relating to flood control, policing, pollution, and fishing rights, on Lake Pymatuning, Pa.
Ratification: Ohio, 1937, Act of May 18, 1937.
Pennsylvania, 1937, Act of June 5, 1937.
U. S., Senate Bill 2831, referred to Committee on Commerce in 75th Congress.

1937 Minnesota, South Dakota and North Dakota--Flood control program for the Red River of the North.
Ratification: No state action.
U. S., Senate Bill 1570, passed Senate and referred to House Committee on Flood Control in 75th Congress.

APPENDIX C

Chronological tabulation of some interstate compacts which have been entered into without Congressional consent.[1]

Date	States	Subject
1780	Pennsylvania, Virginia	Boundary Agreement
1785	Virginia, Maryland	Boundary Agreement
1791	Virginia, North Carolina	Boundary Agreement
1803	Virginia, Tennessee	Boundary Agreement
1815	North Carolina, South Carolina	Boundary Agreement
1818	North Carolina, Georgia	Boundary Agreement
1821	North Carolina, Tennessee	Boundary Agreement
1825	South Carolina, Georgia	Navigation Agreement
1837	Georgia, Tennessee	Right of way for Railroad
1839	Vermont, Canada	Extradition Agreement
1872	Massachusetts, Connecticut	Merger of railway corporation, subjecting it to the laws of each state
1886	Louisiana and Arkansas	Levee Agreement
1894	New Hampshire, Massachusetts	Boundary Agreement
1900	New York, New Jersey	Palisades Interstate Park Agreement
1931	Arkansas, California, Kansas, Louisiana, Oklahoma, Texas, Wyoming	Oil, gas and mineral committee created
1931	Arizona and California	Bridge over Colorado River at Ehrenburg

1. Graves, American State Government, p. 652.

APPENDIX D

The following citations to cases will give opportunity for further study of the possibility of enforcing a decree against a state.

Cherokee Nation vs. Georgia (1831) 5 Peters 1.
Worcester vs. Georgia (1832) 6 Peters 515.
Rhode Island vs. Massachusetts (1838) 12 Peters 657.
Piqua Bank vs. Knoop (1854) 16 Howard 369.
Ableman vs. Booth (1858) 21 Howard 506.
South Dakota vs. North Carolina (1904) 192 U. S. 286.
Virginia vs. West Virginia (1918) 246 U. S. 565.
Kentucky vs. Dennison (1861) 24 Howard 66.

The point in question also receives attention in the following articles:

William C. Coleman, "The State as Defendant," Harvard Law Review, December, 1911.
Power of the Supreme Court to Enforce a Judgment, Michigan Law Review, (1918) XVI.
Coercing a State to Pay a Judgment, Ibid., 1918, XVII.
Enforcement of Judgment, Virginia Law Review (1916) IV.

The above articles are as cited in Warren, Supreme Court and the Sovereign States, Notes, p. 157.

APPENDIX E

BY-LAWS OF THE INTERSTATE OIL COMPACT COMMISSION

ARTICLE I

The Name and Structure of the Commission

Section 1. The Commission created by virtue of the Oil States Compact which is fully set forth in the Resolutions of the House and Senate of the Seventy-Fourth Congress of the United States Consenting thereto, was organized at the first meeting of the signatory States ratifying said compact duly convened and held at Oklahoma City on September 12, 1935. The Commission as presently constituted is composed of one acting representative from each of the following compacting states: Colorado, Illinois, Kansas, New Mexico, Oklahoma and Texas. The Commission shall add to its body the representatives of such other oil producing states as shall ratify the compact and appoint representatives to the Commission. The Commission shall be designated "The Interstate Oil Compact Commission," and will be referred to herein as the "Commission."

Section 2. The Commission shall be a fact finding and deliberative body with the power to make recommendations to the member States. It shall have no official seal. Its official actions shall be taken in accordance with these By-laws and said compact; the verity of its transactions shall be established by written report thereof, certified to be the action of the Commission under the signature of its Chairman and Secretary.

Section 3. The headquarters of the Commission shall be at the place of residence of the Chairman thereof, and communications addressed to it shall be in care of and at the address of the Chairman.

ARTICLE II

Time and Place of Meeting

Section 1. Regular meetings of the Commission shall be held quarterly on the second Friday at ten o'clock, A. M., Standard Time of the month of which the quarter falls, the first of said meetings after the adoptions of these By-laws to be the second Friday in December, 1935.

Section 2. Upon the written request of sufficient representatives of the member states to constitute a quorum, setting forth the purpose, special meetings of the Commission shall be called by the Chairman of the Commission.

Section 3. As a part of its regular order of business the Commission at each regular meeting shall select the time and place of special meetings with a view to the accommodation of all the Commission Members.

ARTICLE III

Section 1. The Chairman shall cause the Secretary to mail to the address of the representatives of each compacting state, by registered mail under the form for the demand of return receipt, notice in writing of the time and place of all regular meetings, and of the time, place, and purpose of all special meetings, said notice to be posted not less than ten days prior to the meeting. Where a compacting State may be represented by its Governor or an alternate, whose name and credentials have been furnished the Commission, notice shall be given both.

Section 2. The giving of notice as herein provided may be waived in writing or by telegram by each several representative of the compacting States, and as to the representative of such State and meeting held in accordance with such waiver shall be valid.

ARTICLE IV

The Power of the Commission and the Purpose of Meetings

Section 1. The powers of the Commission shall be as provided in the Oil Compact. All findings of facts and recommendations by the Commission in accordance therewith shall be evidenced by Resolution duly passed by vote in accordance with these By-laws and said Compact.

ARTICLE V

Section 1. To constitute a quorum at any meeting of the Commission or at any time during such meeting, there shall be present a majority of the members of the Commission. Any number less than a quorum may adjourn the meeting from time to time.

Section 2. All actions taken by the Commission shall be as the members present may elect, either by viva coce or by written ballot, taken in accordance with the following formula:

(1) by the affirmative votes of the majority of the whole number of the compacting States, represented at the meeting, and
(2) by a concurring vote of a majority in interest of the compacting states at said meeting, such interest to be determined as follows:
Such vote of each State shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half-year to the daily average production of the Compacting States during said period.

Section 3. The certificate of the Bureau of Mines of the United States shall be prima facia evidence of the daily average production of each Compacting State during the preceding calendar half-year and of the daily average production of the Compacting States during said period. Other evidence of said facts at the instance of any State shall be received and acted upon by the Commission.

Section 4. Except as provided for otherwise by these By-laws and said compact, all meetings of the Commission shall be conducted in accordance with general parliamentary rules.

Section 5. Each State which is now or may hereafter become a member of the compact shall deposit with the Secretary of the Commission its official certificate and designation of the name of its representative together with his permanent address, and if it have an alternate, then also of his name and address. Notice of meetings and the transmittals of other written communications from the Commission to such State shall be made to said representative, and if there be an alternate, also to the alternate.

ARTICLE VI

Section 1. The officers of the Commission shall consist of a Chairman, First Vice-Chairman and Second Vice-Chairman, each of whom must be a member of the Commission. There shall also be a Secretary and such Assistant Secretaries as may be needed, who shall not be required to be members of the Commission. Said officers shall be elected by the Commission at the quarterly meeting held in September of each year and shall hold office for one year or until their successors are selected in accordance with these By-laws and have assumed office. Provided, the officers of the Commission, serving at the time of the adoption of these By-laws shall serve until their successors are duly elected and qualified as herein provided.

Section 2. The sole duty of the Chairman in his official capacity as such, shall be to preside at all meetings; and to perform such other duties as may be placed on him by Resolution of the Commission. But in his capacity as representative of his state he shall exercise all the powers and duties of a member of the Commission. In case of the absence or inability of the Chairman to act, the First Vice-Chairman shall act, and in the case of his absence or inability to act, the Second Vice-Chairman shall act.

Section 3. The Secretary shall make or cause to be made a record of all transactions taken at each meeting, shall preserve the same, shall keep among such records the official credentials of the representatives, give notice of the meetings as herein required, and otherwise perform the duties customarily performed by the Secretary of a deliberative body.

Section 4. Each state shall compensate and bear the expenses of its own representative in such manner and to such extent as it may provide. The representative of any State who is selected as permanent Chairman shall have the right, subject to the approval of the Commission, to select the Secretary, and shall in such case make provisions for his services without cost to the Commission. The Commission is forbidden to accept the donation of funds for any purpose except such funds as may be provided by member States through their representatives and then only by Resolution of the Commission duly passed wherein provision shall be made for the disposition of such funds.

Section 5. There shall be such temporary and permanent committees created and the membership and chairman thereof appointed by the Chairman of the Commission, subject to confirmation by the Commission, as the Chairman and the Commission shall from time to time determine. Committees which in such manner have become established as permanent committees shall have their membership and chairman named by the Chairman of the Commission at the meeting of his election, which meeting shall confirm or reject such appointments.

ARTICLE VII

Amendments to By-Laws

These By-laws may be altered and amended at any regular meeting upon vote by the Commission as herein provided, upon condition that notice of such change or amendment was first given to the representatives of each compacting state thirty days prior to the meeting.

APPENDIX F

Statement as to the Uniform Act for the Supervision of Out-of-State Parolees

The proposed Uniform Act, which is reciprocal in character, authorizes the states adopting it to enter into compacts whereby under certain circumstances each agrees to supervise parolees from the other. The Act provides for the setting up of a simple administrative procedure to carry out its purpose. It is modelled after the Act upon which the present compact between the states of Indiana and Michigan has been effected and is similar in form to that recently projected between the states of Colorado, Wyoming, New Mexico and Kansas. The Uniform Act has already been enacted by Illinois, Indiana, Maryland, Minnesota, New Jersey, New York, Rhode Island and Virginia, although as now presented it varies slightly in formal verbiage from that in effect in the states mentioned.

The Act is endorsed by the Central States Probation and Parole Conference, which has done pioneer work in this field. Its adoption is recommended by the Interstate Commission on Crime.

An Act Providing That the State of_____May Enter into a Compact with Any of the United States for Mutual Helpfulness in Relation to Persons Convicted of Crime or Offenses Who May Be on Probation or Parole.

(Drafted and recommended by the Interstate Commission on Crime)

Be it enacted, etc. (Use the proper enacting clause for the state.)

SECTION 1

The Governor of this state is hereby authorized and directed to execute a compact on behalf of the State of ..... with any of the United States legally joining therein in the form substantially as follows:

A COMPACT

Entered into by and among the contracting states, signatories hereto, with the consent of the Congress of the United States of America, granted by an Act entitled "An Act Granting the Consent of Congress to any two or more States to enter into Agreements or Compacts for Cooperative Effort and Mutual Assistance in the Prevention of Crime and for other purposes."

The contracting states solemnly agree:

(1) That it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact, (herein called "sending state"), to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact, (herein called "receiving state"), while on probation or parole, if

(a) Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;

(b) Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(3) That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain

extradition of fugitives from justice are hereby expressly waived on the part of states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state: Provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact, without interference.

(5) That the Governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(6) That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

(7) That this compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto.

SECTION 2

If any section, sentence, subdivision or clause of this act is for any reason held invalid or to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

SECTION 3

Whereas an emergency exists for the immediate taking effect of this act, the same shall become effective immediately upon its passage.

SECTION 4

This act may be cited as the Uniform Act for Out-of-State Parolee Supervision.