

St. John's Law Review

Volume 10
Number 1 *Volume 10, December 1935, Number*
1

Article 9

Some Aspects of the Concord Interstate Compact on Labor

Thomas Bress

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

This Note is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

SOME ASPECTS OF THE CONCORD INTERSTATE COMPACT
ON LABOR.

During the last decade there has been widespread recognition of the value and feasibility of adopting interstate compacts as a means for adjusting differences between states.¹ Certain physical and jurisdictional problems which are regional in character involving the interests of two or more states have often been the subject of such compacts.² Settlement of boundaries, the control of waterways³ and overlapping jurisdiction in crimes⁴ and in taxation⁵ are typical problems. Recently a new application of compacts has been suggested as a means for attaining uniform minimum standards of labor and industrial laws among the states. The existing disparity in these standards has resulted in frequent migrations of industrial plants and factories from one state to another. Such migrations have been accompanied by serious economic disturbances. To cope with the problem, several regional states have embarked upon a movement to adopt interstate compacts. The movement presents interesting economic and legal questions which will be considered in the following discussion.⁶

¹ Donovan, *State Compacts as a Method of Settling Problems Common to Several States* (1931) 80 U. OF PA. L. REV. 5; Wilson, *Interstate Compacts Under the Constitution—Past Uses and Future Possibilities* (1932) 57 AM. BAR ASSN. REP. 734; ELY, OIL CONSERVATION THROUGH INTERSTATE AGREEMENTS (1933). See also Bruce, *The Compacts and Agreements of States With One Another and With Foreign Powers* (1918) 2 MINN. L. REV. 500; Frankfurter and Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments* (1925) 34 YALE L. J. 685; *Report of Committee on Interstate Compacts*, PROCEEDINGS NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS (1921) 297; Note (1931) 31 YALE L. J. 635. See *Washington v. Oregon*, 214 U. S. 205, 218, 29 Sup. Ct. 631 (1909) and *New York v. New Jersey*, 256 U. S. 296, 313, 41 Sup. Ct. 292 (1921) (In these cases, the Supreme Court recommended interstate cooperation).

² Former Governor Pinchot in his message to a special session of the Pennsylvania legislature (1926) urged competing states in the anthracite coal industry to enter into compacts. See *N. Y. Times*, Jan. 14, 1926. The Guffey Coal Bill enacted in 1935 has put the problem under federal control. See Note (1929) 7 N. Y. U. L. Q. REV. 515; Note (1926) 26 COL. L. REV. 216; Note (1922) 35 HARV. L. REV. 322; Note (1922) 31 YALE L. J. 635; Note (1935) 35 COL. L. REV. 76.

³ See *Appendices I and II* of ELY, *op. cit. supra* note 1.

⁴ Congress has passed resolutions giving blanket consent to states to enter into compacts for efficient control of crime. P. L. No. 293, 73d Cong., 2d Sess. (1934). See recent movement of states to adopt interstate compacts for repression of crime, *N. Y. Times*, Oct. 4, 1935; *cf.* Dean, *The Interstate Compact: A Device for Crime Repression* (1934) 1 LAW AND CONTEMP. PROBLEMS 460. See 36 STAT. 962, c. 186, §7, 16 U. S. C. A. 516 (1911); amended 43 STAT. 1215, c. 473 (1925) (consent for conservation of forests and water supply).

⁵ *Kansas and Missouri*; see 42 STAT. 1058, c. 431 (1922) (reciprocal exemption from taxation). *Held*, *Constitutional, State v. Joslin*, 116 Kan. 615, 227 Pac. 543 (1924).

⁶ In Canada, the divided authority exercised by the Provincial and Dominion Governments has given rise to problems similar to those in the United

Economic Aspect.

The marked differences in the labor laws of the various states have been a vital underlying cause for the failure of progressive labor legislation. Workmen's compensation laws differ among the states.⁷ Laws regulating child and woman labor, industrial homework, unemployment insurance, safety and health protection in industry, hours and wages are either absent in some states or of no moment.⁸ This situation has encouraged numerous manufacturers to migrate to those neighboring states or to the south where the laws are least exacting.⁹ Furthermore, the abusive practice of sending industrial homework to states where the absence or weakness of regulation opens a cheap labor market has also been encouraged. As a result of the migrations, harboring states become the centers of sweated trades, unemployment sections are created and a natural shifting of the labor market follows.¹⁰ The migrations impair the

States. Interprovincial conferences inaugurated in 1887 have been concerned with industrial and other problems. See MINUTES OF THE PROCEEDINGS IN CONFERENCE OF THE REPRESENTATIVES OF THE PROVINCES (1887, 1902, 1906, 1910, 1913), also *Report of National Industrial Conference*, Ottawa, 1919; *Report of the Dominion-Provincial Commission, Uniformity of Labour Laws*, reprinted in *LABOUR GAZETTE*, May, 1920; *Precis of Discussions of Dominion-Provincial Conference*, 1927. See Goldenberg, *Social and Economic Problems in Canadian Federalism* (1934) 12 CAN. B. REV. 422.

We are indebted to Hon. W. M. Dickson, Deputy Minister of Labour, Canada, for this information.

⁷All states now have workmen's compensation laws except Arkansas and Mississippi. *Workmen's Compensation in the United States* (April, 1934) MONTHLY LAB. REV. 840. Interstate compacts to protect workers from deprivation of compensation because of injuries in foreign jurisdictions would be a worthy undertaking. See *Smith v. Aerovane Utilities Corp.*, 259 N. Y. 126, 181 N. E. 72 (1932); *Hartford Acc. etc. Co. v. United States Fidelity etc. Co.*, 209 App. Div. 352, 204 N. Y. Supp. 791 (1st Dept. 1924); Recent Decision (1932) 32 COL. L. REV. 1427.

⁸Sixteen states now have minimum wage laws for women and children—California, Colorado, Connecticut, Illinois, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, and Wisconsin. In Minnesota, however, the attorney-general has ruled that the law is constitutional only as to children, and in Colorado no appropriation has been made to put the law into effect. AM. LAB. LEG. REV., Dec. 1934 at 180, June 1934 at 73, and Sept. 1935, at 140. There are now twenty-eight states with an old-age pension law, AM. LAB. LEG. REV., June 1934 at 74; *Unemployment Insurance Bills in the United States for 1934* (June 1934) AM. LAB. LEG. REV. 63; *Labor Legislation Among the States for 1934* (Dec. 1934) AM. LAB. LEG. REV. 181; Harper, *Due Process of Law in State Labor Legislation* (1928) 26 MICH. L. REV. 599, 763, 888.

⁹"New Jersey is a land teeming with sweatshops. The sweatshops come out from New York in the north and Pennsylvania in the south. They live off the poverty and the weakness of the working people of New Jersey. They do not contribute to the welfare of the state." By Prof. Thomas W. Holland, labor compliance officer of the New Jersey Division of N.R.A. speaking in support of N.R.A. codes. Quoted in N. Y. Times, June 17, 1934, IV, at 7.

¹⁰"The migration of factories and workers from New Hampshire to other states represents a definite loss to this state. Although this may to some extent

collective bargaining power of workers and their unions. Honest businesses competing with these fugitive industries are placed at a distinct disadvantage and are forced to lower wage scales and standards of employment. The instance is related of a Pennsylvania corporation which underbid a New York firm on a contract. It later appeared that the difference between the two bids was a sum of money equal to that which the New York firm paid for a higher workmen's compensation rate.¹¹ Besides endangering the wage-earner by leading to lower wages and long hours of work, the labor law differentials afford occasion for unfair competitive practices. When new legislation is sought in the states, there are often representatives of industry who raise a clamor of opposition by contending that competitors of neighboring states will be given advantages. As a consequence, the legislation is often defeated.¹²

For a time, the temporary N.R.A. codes equalized these differentials by laying down standards of employment for every section of the country.¹³ But even before the inception of the codes, it became apparent to labor leaders and state executives that concerted action by the states themselves was necessary for the maintenance and improvement of labor and industrial standards. To gain such action, Franklin D. Roosevelt, while Governor of New York, called a conference of executives of the northeastern states in 1931.¹⁴ This was the initiation of a series of interstate conferences. Governor Pinchot called one again later in 1931 at Pennsylvania,¹⁵ and at another conference at Boston¹⁶ in 1933, Governor Winant of New Hampshire suggested the use of interstate compacts to attain uniform standards in the state labor laws. Similar regional interstate conferences have been held in the south.¹⁷

be offset by new factories that come here from the outside, the general effect of such shifting of plants and workers is disrupting to the industrial life of the community and the state." REPORT OF THE NEW HAMPSHIRE COMMISSION ON INTERSTATE COMPACTS AFFECTING LABOR AND INDUSTRIES (Jan. 1925) at 21. See N. Y. Times, Nov. 12, 1934 at 1.

¹¹ *Proceedings of National Conference for Labor Legislation* (1934) BUREAU OF LABOR STATISTICS; MONTHLY LABOR REV. (April 1934) at 779.

¹² *Ibid.*

¹³ Schoenfeld, *Analysis of the Labor Provisions of N.R.A. Codes* (March 1935) MONTHLY LABOR REV. 574; Wolman, *Accomplishment of N.R.A. in Labor Legislation* (March 1935) AM. LABOR LEG. REV. 38; LYON, NATIONAL RECOVERY ADMINISTRATION (1935).

¹⁴ Held at Albany and attended by governors of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, and Ohio.

¹⁵ Conference at Harrisburg, Pa., in June, 1931. Attended by representatives of states enumerated *supra* note 14 and those of Delaware, Maryland, and West Virginia. *Interstate Conference on Labor Compacts* (Dec. 1934) PENNSYLVANIA LABOR AND INDUSTRY.

¹⁶ This conference continued the work of the one at Harrisburg.

¹⁷ A Southeastern Interstate Conference was held at Atlanta, Ga., on Dec. 13, 1933. Labor problems of Alabama, Florida, Georgia, South Carolina, and Tennessee considered. A comparative analysis of the labor laws of these five states was made by the U. S. Dept. of Labor. See Bul. No. 603, *Labor Laws of the United States Series*. Another southern regional conference was con-

The proposal to use interstate compacts as a means for attaining uniform minimum standards of employment is an innovation, although the compact method itself, as pointed out above, has often been employed to adjust differences between states.¹⁸

A commission on Interstate Compacts was formed by legislative enactment in Massachusetts;¹⁹ other states including New York²⁰ now have similar bodies. The Massachusetts Commission has issued periodic reports²¹ which contain a complete history of the movement and an analysis of the labor laws of industrial competitive states. Recommendations were made for the application of compacts to various phases of labor and industrial problems. The commission's recommendation for a minimum wage law in Massachusetts similar to those existing in New York, New Hampshire and New Jersey was enacted into law by the legislature of Massachusetts.²² Shortly thereafter, a minimum wage compact was entered into at Concord, by six states.²³ Only the legislatures of Massachusetts and New Hampshire²⁴ have thus far ratified the pact; consent of Congress will be necessary to bind the two and those that may subsequently ratify.

voked by Secretary of Labor Perkins in Jan., 1935; representatives of twelve states attended. (Discussed standards for minimum wages, limitation of hours, nightwork, industrial homework, workmen's compensation, occupational disease legislation, safety, sanitation.) (March 1935) MONTHLY LABOR REV. 670.

¹⁸ The NEW YORK PORT AUTHORITY was created by compact between New York and New Jersey for the port development of the Hudson River. N. Y. Laws of 1930, c. 419, N. J. Laws of 1930, c. 244; 42 STAT. 822, 19 U. S. C. A. 330; Note (1926) 39 HARV. L. REV. 499; *City of New York v. Wilcox*, 189 N. Y. Supp. 724, 115 Misc. 351 (1921). More recently the INTERSTATE SANITATION COMMISSION to control the flow of refuse into the Hudson River was established by a compact between New York, New Jersey, and Connecticut. N. Y. Laws of 1932, c. 499; N. J. Laws of 1935, cc. 321, 322; N. Y. Times, Sept. 6, 1935 at 12; see also Mingos in N. Y. Times, Feb. 8, 1925, VIII, p. 6 for an exposition of the reasons for a TRI-STATE DELAWARE RIVER COMPACT, N. Y. Laws of 1925, c. 177; Carman, *Law of Interstate Waters* (1931) 5 So. CALIF. L. REV. 25; Carman, *Sovereign Rights and Relations in the Control and Use of American Waterways* (1929-30) 3 So. CALIF. L. REV. 84, 152, 266.

¹⁹ Resolves of 1933, c. 44.

²⁰ N. Y. Laws of 1935, c. 186. A commission appointed by Gov. Lehman will report on Jan. 15, 1936.

²¹ MASSACHUSETTS COMMISSION ON INTERSTATE COMPACTS AFFECTING LABOR AND INDUSTRIES, FIRST REPORT (Jan. 1934), SECOND REPORT (June 1934), THIRD REPORT (Jan. 1935).

²² Mass. Acts of 1934, c. 308.

²³ MINIMUM WAGE COMPACT signed in Concord, N. H., May 29, 1934, by representatives of Maine, New Hampshire, New York, Rhode Island, Massachusetts, Pennsylvania, and Connecticut. The compact is a non-binding agreement unless ratified by the state legislatures with the consent of Congress. New Jersey did not sign the compact. See STATE GOVERNMENT, issues for March, July, and August, 1934, July, 1935; AM. LABOR LEG. REV., June, 1934; N. Y. Times, Nov. 11, 1934, VIII, p. 12; AMERICA, Oct. 26, 1935.

²⁴ Mass. Laws of 1934, c. 383; N. H. Laws of 1935, c. —. See H. R. REP. No. 281, 74th Cong., 1st Sess. and S. J. RES. 148; H. R. 1642, July 24, 1935; H. J. RES. 321 (1935).

The provision for a minimum wage states: ²⁵ "No employer shall pay a woman or a minor under 21 years of age, an unfair or oppressive wage." It is proposed that wage boards in the several states shall determine proper wage scales after investigation and public hearings. Men have not been included under the present minimum wage compact although they probably will be in the future.

Interstate compacts will bring the states into closer regional cooperation. A survey of our economic geography indicates that the various industries and agricultural units of the country are grouped within regions ²⁶ and not within the boundary of any one state. For instance, manufacturing centers are located in the northeast, corn and wheat belts are situated in the midwest, cotton in the south. This geographical arrangement of the areas of production brings with it a distribution of large populations in the industrial regions and smaller populations in the agricultural regions. It is apparent that problems relating to labor and industry are often of regional scope and not peculiar to any one state.

A number of points are to be taken into consideration in respect to the present interstate compact movement. It was indicated at a recent conference at Albany ²⁷ that the successful operation of the compacts will require cooperation from southern industrial competitive states. They stand in a keystone position, for their failure to cooperate will still enable competing industries from the north to migrate southward in order to take advantage of backward labor and industrial standards. The speed of modern transportation facilities makes this possibility a prominent factor with which to contend. The compacts would bind the northeastern states while the southern states prospered at their expense. There is also the danger that minimum standards of employment might become maximum standards much to the detriment of labor. While it has been emphasized at the conferences that the compacts are not to be used as obstructions for more progressive state and federal legislation, ²⁸ there nevertheless will be the tendency on the part of unscrupulous industrialists to defeat such legislation by urging the burden to be placed upon the regional states. It is claimed that the regional system of government would be cumbersome and artificial, that its administration would be

²⁵ *Minimum Wage Compact*, quoted in SECOND REPORT, *supra* note 21, tit. III, §1.

²⁶ WHITBECK, *INDUSTRIAL GEOGRAPHY* (1931); BRIGHAM, *UNITED STATES OF AMERICA, Studies in Physical, Regional, Industrial, and Human Geography* (1927).

²⁷ N. Y. Times, Oct. 19, 20, 1935. See mimeographed report of proceedings. The draft of a forty-hour work week compact was submitted to this conference but not acted upon.

²⁸ *Minimum Wage Compact*, quoted in SECOND REPORT, *op. cit. supra* note 21, tit. I. Pres. William Green, A. F. L., made the objection in a letter to this writer, dated July 29, 1935, that the compact movement might divert attention from the ratification of the Child Labor Amendment which requires twelve more states for ratification. He pointed out that New York and Rhode Island, two states active in the movement, have not ratified the amendment.

involved and complex, and that the controlling agencies would be removed from direct responsibility to the people.²⁹ With all these alleged shortcomings it is argued in contravention that the state as a unit of political and economic action is gradually retreating into the background, and that a unit of government to displace it is now a matter of economic, social, and political necessity. The interrelation and interdependence of the states in the growing complexity of the national economy have all but obliterated their arbitrary boundaries. Complete centralization in the national government would offer no solution but instead would lead to a choking bureaucracy.³⁰ Revision of the whole Constitution would be required. The region, it is urged, however, is a logical division of the country based upon economic and geographical factors and is satisfactory to modern requirements. It may very well be that the interstate compact movement will be the first effective stroke aimed to dislodge the State from its tottering throne and make way for a new structure in the pattern of our federal government.³¹

Constitutional Aspect.

The states have authority, by virtue of their sovereignty, to enter into compacts with one another subject to the limitation imposed by the Federal Constitution.³² Article I, Section 10 of the Constitution provides:

"No State shall without the consent of Congress * * * enter into any agreement or compact with another State, or with a foreign power * * *."

The qualified permission to enter into a "compact or agreement" is further limited by another clause in the same Section which prohibits the making of any "treaty, alliance, or confederation." Compacts involving a state's proprietary functions, such as control of waterways and boundary settlement, have definitely been established as

²⁹ N. Y. Evening Post, Oct. 19, 1935, editorial.

³⁰ Wigmore, *Uniformity of Laws—Compacts Between States* (1925) 19 ILL. L. REV. 479; Frankfurter and Landis, *op. cit. supra* note 1, at 707: "The regions are less than the nation and are greater than any one state. * * * National action is the ready alternative. But national action is either unavailable or excessive."

³¹ Vandenbosch, *Regions versus States* (1933) 21 KY. L. J. 432; Turner, *Sections v. Nations* (1922) 12 YALE REV. (N. S.) 1; Prof. Merriam: "The truth is that the state is standing upon slippery ground as a political unit." *Metropolitan Regions* (May 1928) U. OF CHIC. MAGAZINE; Martin, *The Growing Impotency of the States* (1933) AM. BAR ASSN. REP. 222.

³² 1 WILLOUGHBY, THE CONSTITUTION OF THE UNITED STATES (2d ed. 1929) §172; 2 STORY, COMMENTARIES ON THE CONSTITUTION (5th ed. 1891) §1402.

constitutional. In prohibiting "alliances" or "confederations" it would seem that the provision is aimed against political agreements the purposes of which are to compromise the sovereignty of the state or of the United States or which would impair the allegiance existing between the two.³³ Compacts affecting labor and industries would reach far beyond the private rights of sovereignty of the individual states. Indeed their implications may go so deep as to bring them within the prohibited category. Labor compacts have a serious test in overcoming this obstacle.

In some compacts between states questions have arisen as to the necessity of Congressional consent and also as to when such consent must be given. While the decisions indicate that for certain purposes consent is not required or might be implied,³⁴ it is doubtful whether such a rule would apply to pacts involving labor and industries which would extend in their effect to the very roots of the national economy. In labor compacts the time for obtaining Congressional consent would properly be at the conclusion of negotiations among the states, for that would permit study by Congress of the terms and scope of the agreement.³⁵ Generally, the approval of Congress has been in the form of an act, but "consent" alone would not seem to require such formal action. A resolution would probably be sufficient.

*Legal Aspect of Concord Compacts.*³⁶

In the Concord Compact the states have covenanted that, when the requisite number have ratified, the pact shall become effective as to them and the states thereafter ratifying. Any state complying with the provisions for ratification may join in the agreement and upon ratification obligates itself to enact legislation to carry out its terms.³⁷

The Concord Compact further provides that the administration and enforcement of the pact and the state laws relating thereto shall reside with the existing regulatory agencies of the state.³⁸ No change in their composition or in the scope of their powers is provided for, except such as the states may deem proper. This scheme of enforcing a common undertaking by means of the state's own existing agencies avoids objections of delegations of the state's sovereignty to an administrative body not under its control.

³³ For a discussion of the "agreement or compact" clause see *Virginia v. Tennessee*, 148 U. S. 503, 13 Sup. Ct. 728 (1893); *Holmes v. Jennison*, 10 U. S. 540 (1840); *Wharton v. Wise*, 153 U. S. 155, 14 Sup. Ct. 783 (1894); Note (1935) 35 Col. L. Rev. 76.

³⁴ *Ibid.*

³⁵ FIRST REPORT, *op. cit. supra* note 21, at 69.

³⁶ *Supra* note 23.

³⁷ Tit. II, §6 of *Minimum Wage Compact* quoted in SECOND REPORT, *op. cit. supra* note 21.

³⁸ *Supra* note 35, tit. II, §6.

Each state, by the terms of the compact, has agreed to provide for a continuing unpaid commission which is to be appointed by its governor.³⁹ This body has authority to deal with the other ratifying states concerning questions arising under the pact and the operation of the same within its own state. The President of the United States will be requested to send a representative.⁴⁰ No authority is delegated to the commission other than to act as a diplomatic corps in contacting other state commissions and discussing problems that might arise. The legality of the body does not seem to be questionable.

The chairman of each state commission shall be the representative of his state upon an interstate commission which shall consist of all of the chairmen.⁴¹ Any questions raised by any of the states under the compact shall be referred to this commission which shall make an investigation, publish its findings and submit recommendations. It should be observed that this commission has no authority other than to act in a consulting and advisory capacity. It cannot enforce its findings. Any objection, therefore, that the states have delegated sovereign powers to an extra-territorial agency would be eliminated. However, if any of the states should later choose to make the findings of the interstate commission binding upon them, there is precedent for the same in the Port Authority of New York.⁴² This body, established by the states of New York and New Jersey for the development of port harbors on the Hudson River, has complete control over the port, and its findings bind both states. The legislature may constitutionally delegate administrative powers to a board or commission to fill in the details of a general statute, and rules made in exercise of the power are held to have the force of the statute.⁴³

If, after ratification, any state should desire a modification of any provision of the pact or to extend its scope or revise it, application can be made to the interstate commission which shall make recommendations to the other ratifying states. When a revision, modification or extension is so made, consent to the same will then be required again from Congress.⁴⁴

³⁹ *Supra* note 35, tit. II, §2.

⁴⁰ Federal membership in the interstate agency presents no constitutional difficulty. *Railroad Co. v. Lowe*, 114 U. S. 525, 5 Sup. Ct. 995 (1884).

⁴¹ *Supra* note 35, tit. II, §2.

⁴² *Supra* note 18; Cohen, *The New York Harbor Problem and Its Legal Aspect* (1920) 5 CORN. L. Q. 377; Note (1926) 39 HARV. L. REV. 499.

⁴³ *Polinsky v. People*, 77 N. Y. 65 (1878); in the recent cases of *Panama Refining Co. v. Ryan*, 293 U. S. 388, 55 Sup. Ct. 241 (1934) and *Schecter Poultry Corp. v. United States*, 295 U. S. 495, 55 Sup. Ct. 837 (1935) it was in respect to "the limitation of the authority to delegate" and not the act of delegation itself that the Court held Congress to have exceeded its constitutional power.

⁴⁴ *Supra* note 35, tit. II, §4. This provision may justify the charge that regional administration under the pattern of our Federal Constitution would be involved and circuitous.

Each state agrees not to withdraw from the compact until it has reported to the interstate commission the reasons for its desire to withdraw. The commission, after investigation, is bound to submit its recommendations in six months. If at the end of that period the state still wishes to withdraw, it shall defer such action for two years.⁴⁵

The state agencies administering the minimum wage law enacted in conformity with the compact shall have authority to investigate the wages of women and minors and to appoint wage boards for the purpose of recommending minimum fair wage rates. After a public hearing, the state agency will have authority to make the determination effective by such procedure as it sees fit. The decisions of the agency are appealable to the state courts.⁴⁶

The means for enforcing the compact are not stated in its provisions. However, the signatory states, by entering into the agreement, subject themselves to the judicial process of the Supreme Court which has original jurisdiction of controversies between states.⁴⁷ But in order to bring an interstate case within the competency of the Court, it must appear that there is a real controversy between the states as states and the controversy must be justiciable.⁴⁸ The Supreme Court, in its capacity of arbiter between the sovereign states is, in a sense, an international tribunal applying the laws of the land and those of international comity.⁴⁹

There are three accepted types of relief which a complaining state may ask of the Court: ⁵⁰

1. A state may seek a judgment putting it in possession of disputed territory.

⁴⁵ No other compact has been found in which a withdrawal clause has been used. ELY, *op. cit. supra* note 1, at 209. *Virginia v. West Virginia*, 78 U. S. 39 (1870) is the only instance where a case endeavored to withdraw from a compact, *cf. Green v. Biddle*, 21 U. S. 1 (1823).

⁴⁶ *Supra* note 35, tit. II, §7.

⁴⁷ U. S. CONST. Art. III, §2.

⁴⁸ In *Missouri v. Illinois*, 180 U. S. 249 (1900), Chief Justice Fuller said: "It must appear that the States are in direct antagonism as States"; *New Hampshire v. Louisiana*, 108 U. S. 76 (1883) (no proper interest by complaining state in alleged cause of action); *Louisiana v. Texas*, 176 U. S. 19 (1899) (alleged special interest in a matter of federal control; Guthrie, *The Eleventh Amendment* (1908) 8 COL. L. REV. 183.

⁴⁹ BALCH, *A WORLD COURT IN THE LIGHT OF THE UNITED STATES SUPREME COURT* (1918); SMITH, *AMERICAN SUPREME COURT AS AN INTERNATIONAL TRIBUNAL* (1920); SCOTT, *JUDICIAL SETTLEMENT OF CONTROVERSIES BETWEEN STATES* (1923); WARREN, *THE SUPREME COURT AND THE SOVEREIGN STATES* (1924); SCOTT, *SOVEREIGN STATES AND SUITS* (1925); Chief Justice Fuller in *Kansas v. Colorado*, 185 U. S. 146 (1902) said: "Sitting, as it were, as an international tribunal, we apply Federal law, State law, and International law, as the exigencies of a particular case may demand." See Smith, *Supreme Court and the League of Nations* (1920) 20 COL. L. REV. 68.

⁵⁰ WARREN, *op. cit. supra* note 49, at 79.

2. A state may ask for an injunction to restrain another state from committing certain alleged unlawful acts.
3. A state may ask for some affirmative action by the Court in the nature of mandamus.

How far the Supreme Court can go in granting such relief has not been clearly stated. The case of *Virginia v. West Virginia*⁵¹ was the only one in which the Court was faced with the problem of enforcing a compact breached by a signatory thereto. In that case, the plaintiff sought a writ of mandamus directed to the State of West Virginia and the members of her legislature commanding the levy of a tax to satisfy a judgment previously recovered by Virginia. Because of the nature of the controversy and the parties involved, the Court left the matter for private settlement, indicating, however, that it could enforce its judgments against a state. What means it could take for enforcement were not stated.

As the decrees of the Supreme Court are binding upon federal as well as state officers and upon their legislatures, enforcement of compacts could, in a large measure, be obtained by mandamus or injunction directed against the state officers.⁵² In the event of disobedience, they could be held for contempt or for violations of other acts enacted by Congress for the purpose of executing the Court order.⁵³ If a state under a labor compact failed to enact requisite legislation, mandamus against the members of the legislature might lie, and refusal to comply would subject them to personal liability. Similarly, if a state should seek to repudiate the compact by new legislation, injunction against the members of the legislature or the governor would be a remedy of a complaining state.⁵⁴ It would seem, however, that such far-reaching decrees by the Supreme Court would be ill-advised and would probably lead to conflict.⁵⁵

⁵¹ Litigation in this case extended over a period of forty-eight years and was in the Supreme Court ten times. *Virginia v. West Virginia*, 78 U. S. 39 (1870); 206 U. S. 290, 27 Sup. Ct. 732 (1907); 209 U. S. 514, 28 Sup. Ct. 614 (1908); 220 U. S. 1, 31 Sup. Ct. 330 (1911); 222 U. S. 17, 32 Sup. Ct. 4 (1911); 231 U. S. 89, 34 Sup. Ct. 29 (1913); 234 U. S. 117, 34 Sup. Ct. 389 (1914); 238 U. S. 202, 35 Sup. Ct. 795 (1915); 241 U. S. 531, 36 Sup. Ct. 719 (1916); 246 U. S. 565, 38 Sup. Ct. 400 (1918). Compare with *Green v. Biddle*, 21 U. S. 1 (1823). The dispute in the *Virginia v. West Virginia* case was settled by payment of the judgment. See Coleman, *The State as a Defendant Under the Constitution; The Virginia-West Virginia Debt Controversy* (1917) 31 HARV. L. REV. 210; Note (1918) 31 HARV. L. REV. 1158.

⁵² Powell, *Coercing a State to Pay a Judgment* (1918) 17 MICH. L. REV. 1, 5; cf. Snow, *The Execution of Judgments Against States* (1916) PROC. OF AM. SOC. FOR JUDICIAL SETTLEMENT OF INTERNATIONAL DISPUTES 25.

⁵³ WARREN, *op. cit. supra* note 49, at 80; Coleman, *Notes on Suits Between States* (1902) 2 COL. L. REV. 364, 377.

⁵⁴ *Ibid.*

⁵⁵ In defiance of a writ of error addressed to the courts of Georgia, that state executed a Cherokee Indian, see *Cherokee Nation v. Georgia*, 9 U. S. 178 (1831). The Supreme Court of Wisconsin refused once to comply with a

A point worth observing in the Concord Compact is that it creates its own interstate arbitration commission composed of the chairmen of all the state commissions.⁵⁶ Any difficulties which may arise under the compact are to be submitted for settlement to this body. In this manner, many problems might probably be solved without the necessity of resorting to the courts. Another interesting provision of the compact is the one providing for withdrawal by a state two years after the interstate commission has reported upon the request for withdrawal.⁵⁷ The states under this provision are not bound indefinitely to the compact but may free themselves of its obligations within a period that seems to be reasonable. If it should develop that a compact has become unduly oppressive to a state, speedier withdrawal could be obtained by consent of all the signatories.

It is naturally difficult if not impossible to anticipate and particularize the various legal problems which may arise out of the adoption of interstate compacts. Such difficulty should not, it would seem, be reason for not accepting what would otherwise appear to be a progressive experiment to achieve by cooperation a sound status for labor and industry.

THOMAS BRESS.

TAXATION—THE NONRESIDENT ALIEN'S INCOME WITHIN THE UNITED STATES.

No doubt is suggested as to the power of Congress to tax income produced within the United States or arising from sources located therein, even if it be the income of a nonresident alien.¹ Prior to the Sixteenth Amendment the taxation² of the nonresident alien's property was upheld on the theory of *lex situs*,³ which superseded⁴

writ of error directed to it from the Supreme Court of the United States and went so far as to release an offender by *habeas corpus* from the custody of a United States marshal. *Abelman v. Booth*, 62 U. S. 506 (1858); SMITH, THE SUPREME COURT AS AN INTERNATIONAL TRIBUNAL (1920) 89 *et seq.*

⁵⁶ *Supra* note 35, tit. II, §4.

⁵⁷ *Supra* note 35, tit. II, §5.

¹ *Shaffer v. Carter*, 252 U. S. 37, 54, 40 Sup. Ct. 221 (1920). The constitutionality of an Oklahoma statute taxing the income produced from oil leases owned by a non-resident was upheld.

² REV. ACT OF 1913, c. 16, §11, A, subd. 1, 38 STAT. 166.

³ *Pullmans Palace Car Co. v. Pennsylvania*, 141 U. S. 18, 11 Sup. Ct. 876 (1891) deals with a foreign corporation tax. *De Ganay v. Collector of Internal Revenue*, 250 U. S. 376, 39 Sup. Ct. 524 (1918) where a French citizen was taxed on stock in the hands of an active trustee in the United States.

⁴ *New Orleans v. Stemple*, 175 U. S. 309, 20 Sup. Ct. 110 (1899), a separate situs of property is established for purposes of taxation; *Bristol v. Wash-*