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*United States Board of Tax Appeals*

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## CRIME CONTROL AS AN INTERSTATE PROBLEM\*

JUSTIN MILLER†

During the early years of our existence as a nation, problems of crime were largely local in character and the machinery of criminal law administration was fashioned to meet the needs of the day. Even then, however, the problem presented by the fugitive from justice was recognized by the Constitution makers and found expression in the Constitutional provision providing for extradition. In Article 4, Section 2, Clause 2, it is provided that:

“A person charged in any State with treason, felony, or other crime, who shall flee from Justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.”

Thereafter, Congress enacted legislation designed to carry out the provision of the Constitution.<sup>2</sup>

In the early days of our country, the rendition of fugitives was

\* An address delivered at the Southwestern States Probation and Parole Conference on Dec. 3, 1936, at New Orleans, La.

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1. That Statute as now in force reads as follows:

U. S. Revised Statutes 1875, Section 5278-9.

“The Federal interstate rendition statute, now in force, is as follows:

“Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or Chief Magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory.

“Any agent so appointed who receives the fugitive into his custody shall be empowered to transport him to the State or Territory from which he has fled. And every person who, by force, sets at liberty or rescues the fugitive from such agent while so transporting him, shall be fined not more than five hundred dollars, or imprisoned not more than one year.”

accomplished without unreasonable difficulties. Occasionally unreasonable demands were made by one state upon another and occasionally one state refused, more or less arbitrarily, to honor a request for rendition. However, as the political, social and industrial scene became more complex; as means and methods of communication became more highly developed—in fact as interstate commerce increased in volume and in importance—so, too, the interstate character of crime became more difficult until today as President Roosevelt has recently said:

“The regulation of the illicit traffic in drugs, the prevention of commerce in stolen goods, and generally, the interstate character of offenses attributable to the roving criminal have presented national problems against which primitive forms of law enforcement are relatively powerless.”<sup>2</sup>

A similar statement has been made by Attorney General Homer Cummings as follows:

“Between Federal and State jurisdictions there existed a kind of twilight zone, a sort of neutral corridor, unpoliced and unprotected, in which criminals of the most desperate character found an area of relative safety. It was the unholy sanctuary of predatory vice. Here the instructed criminal sought and found refuge.”<sup>3</sup>

During the recent depression, the situation referred to by President Roosevelt and described by Attorney General Cummings became evident to all, not merely in the form of major crimes, such as kidnapping, racketeering and other forms of organized criminality, but also in the multiplicity of criminal offenses occasioned by the guerrilla armies of transients roving from place to place throughout the country entirely without regard to state lines. This phenomenon had become increasingly pronounced as the years went by, each year witnessing a movement from north to south and from east to west, each fall and winter, and back again from south to north and from west to east each spring which paralleled closely the movements of migratory birds. With the coming of railroads there came a tremendous increase in the volume of migratory vagrants and an increasing police problem developed; which was met by a

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2. *Proceedings of the Attorney General's Conference on Crime* (1934) 18.

3. Homer Cummings, “Progress Toward a Modern Administration of Criminal Justice in the United States.” *North Carolina Conference of Social Service* (April 27, 1936) 5.

program of strict surveillance of railway stations and moving trains, in cooperation with railway police. Vagrants were removed from such trains and subjected to minor penalties in the jails and calaboses of the states through which traveled these main line trains. These seasonal migrations were in fact contributed to by the police method of exile or as it is perhaps more familiarly known "sun-down parole."

Of course exile is an old method of solving the crime problem. It has been used by the European countries for many years. No doubt the present orderly government in England, and the stable citizenry upon which that orderly government depends, has been contributed to in large measure by the process of selection which was involved in the use of the method of exile. Incidentally, no doubt the sending of large numbers of unconventional, unorthodox, free-thinking, and free-acting people to American colonies contributed in large measure to the development of those colonies as well as to the problem of crime which harassed them from the beginning. So long as there were available vast unsettled tracts of country; so long as there was a wilderness to tame; so long as primitive forms of government—or even absence of government—lent themselves to the expenditure of energy, courage, initiative and rugged individualism of such people, the method of exile was a practical one. As the frontier gradually disappeared; as the territory available for settlement became substantially reduced; the method of exile became, less and less valuable until today little, if anything, is accomplished by driving a man out of a city, out of a county or out of a state; except perhaps on the one hand, that it makes it more easy for such a person to prey upon the innocent people of another community and, perhaps in an occasional case, makes it possible for the individual to get a new start in life. To a very large extent, however, those persons who are now being subjected to the process of exile are not persons of sufficient courage and initiative to carve out places for themselves in the more or less stable communities to which they are forced to go and, moreover, American communities are becoming more and more resistant to the entry and readjustment of such migrants.

Today, we are coming necessarily to a realization of the fact that the solution of our crime problem, and of the larger problem

of social disorder of which crime is perhaps the most serious manifestation, cannot be solved by this method, but instead that a new program of cooperation must be devised between the states by which each will contribute to the solution of its own crime problem, to the adjustment of its own inadequate people and to the return of migrants to their points of origin.

The problem to which I have just alluded has been complicated in considerable measure, also, by immigration from foreign countries, induced in large measure by industrialists and agriculturists, who are ever anxious to secure a cheap supply of labor. It is not necessary to enumerate particular racial groups which have been thus introduced into various sections of the United States, and which, after serving the purpose for which they were originally introduced, have remained to constitute a continuing problem of inadequacy and crime. Every section of the country provides its own examples.

Even during the earlier years of settlement, and later with the spread of population over the Alleghanies into the Ohio Valley, then on to the Mississippi Valley, and on to the Rocky Mountains and the far west, there came recognition from time to time of the need for interstate cooperation. This found expression in the form of reciprocal legislation—and occasionally—interstate compacts for the control of boundary-line rivers and lakes. A number of such instances can be found in the case of states bordering the great water-ways. It is doubtful whether the interstate compact clause of the Constitution<sup>4</sup> was originally intended to effectuate treaties for the regulation of crime; although the earliest compact, that between Virginia and Kentucky in 1789 provided, among other things, for concurrent jurisdiction over the Ohio River. Shortly after the turn of the 19th century compacts relating to criminal jurisdiction became more or less frequent; one between Mississippi and Louisiana being effected in 1909, another between Mississippi and Arkansas in 1909, between Tennessee and Arkansas in 1909, between Missouri and Kansas in 1910 and between Wisconsin, Illinois, Indiana and Michigan in 1910.

Another evidence of the growing realization of the need for interstate action is to be found in the work of the Commissioners

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4. U. S. Constitution, article I, sec. 10, cl. 3.

on Uniform State Laws. Over a period of years that body has prepared and, at its national conference has approved, for adoption by the states, a criminal extradition act;<sup>5</sup> an act to secure the attendance of witnesses from without the state in criminal cases;<sup>6</sup> a fire-arms act;<sup>7</sup> a machine gun act;<sup>8</sup> a motor vehicle anti-theft act;<sup>9</sup> together with a number of other acts which contain provisions for criminal law penalties in case of violation. While these constitute examples of reciprocal legislation rather than compacts, they are nevertheless definitely a part of the program of interstate action for crime control, and an attempt to solve the interstate problem involved.

Another recent manifestation of similar character is to be found in cooperative action upon the part of several states in the operation of radio and teletype systems of police communication for the discovery and apprehension of fugitives.

In 1934, Congress provided, as a part of Attorney General Cummings' program, for consent to be given in advance by Congress to compacts entered into by the states concerning crime and its control.<sup>10</sup>

There followed almost immediately a great interest in making use of that permissive statute and in working out ways and means for achieving its objective. Several states initiated programs looking toward formation of compacts with other states. Other direct results of the adoption of the act referred to were the formation of the Interstate Commission on Crime at Trenton, New Jersey, on October 11, 1935, and the initiating of a new program of compact making and of reciprocal legislation. That Commission undertook the drafting—and within a short space of time adopted for recommendation to the states—of four major proposals concerning a uniform act on close pursuit, a criminal extradition act, out of state parolee supervision and a uniform

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5. 9 U. L. A. 107 (1932).

6. 9 U. L. A. 6 (1935) Supp.

7. 9 U. L. A. 48 (1935) Supp.

8. 9 U. L. A. 85 (1935) Supp.

9. 9 U. L. A. 305 (1932).

10. 48 Stat. 909, 18 U. S. C. A., sec. 420.

*"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby given to any two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts."*

act to secure the attendance of witnesses from without the state in criminal cases. Within a year several states had already adopted one or more of the proposed acts. Moreover, the Interstate Commission on Crime has outlined a more extended program covering the following subjects: extension of communication systems; establishment of bureaus of investigation; compulsory self-incrimination and third degree; crime prevention in the schools; study of firearms regulations; better identification of motor vehicles; extension of Department of Justice activities; extradition and removal of witnesses.

More recently the Interstate Commission on Crime has become a constituent unit in the structure set up by the Council on State Governments, which is undertaking a broad program of cooperative action between the states in a number of directions.

There has grown up also during the last few years a group of organizations such as the Association of Attorneys General; the National Probation Association; the American Public Welfare Association; the American Parole Association and various similar bodies which, although not specifically designed to accomplish interstate action are, nevertheless, seriously concerned with the securing of that end as one of their major objectives.

We should not be content with minor achievements. Let us use all agencies which are available and let us direct them most purposefully toward a process of analysis which will reveal the major difficulties and which will make possible the most effective means of combating them. In order to do this we must face frankly the obstacles which stand in our way and we must be willing to look beyond conventional forms of action to discover methods which can be of the greatest use to us. As I see it, our greatest needs may be expressed in the following terms, first discovering the real facts with which we must deal, and then taking appropriate action. This involves the setting up of fact-finding bodies and of research facilities, equally effective as those which have been accepted as a matter of course in the fields of science and industry. The Survey which is being conducted under the direction of Attorney General Cummings as to the whole field of release procedures is an example of this type of investigation. Those of us who are engaged in that Survey are fully conscious of the fact that it is highly exploratory in character and that one of its greatest values will be its revelation of further needs

for research along many lines. At a conference recently held in Washington, at which were discussed the scope, objectives, present developments and future course of the Survey, the most frequent observations made by various members of the conference group related to the limitations of the Survey and the need for its extension in many directions. In fact, we contemplate that the report of our Survey will establish foundations upon which legislators, administrators, university research agencies and other bodies and individuals may expand a new large field of investigation.

This is only one field in which such work must be done. The fields of prosecution, of police administration, of judicial determination, of juvenile delinquency and several others present equally great needs and equally great opportunities. In order that such fact-finding may be useful, it must be done objectively and scientifically by trained investigators who are qualified both as to the technical methods of research work and also to point such investigations toward practical ends.

It is not necessary, however, for us to await the results of such investigations in order to project improved methods of administration. Our trial and error methods of past years have already revealed needs which can be attacked by immediate action. One of the most important of these is the provision of trained personnel in all branches of work. This is particularly true, not only as applied to probation and parole but as applied to many other fields of cooperative endeavor, necessitated by interstate complications of the problem of crime. The time has passed when we can be longer satisfied with a personnel, politically selected without regard for innate ability, training, experience, personality and capacity for the performance of the highly skilled and particularized work which is involved in the solution of these problems. There is no more reason why we should trust untrained operatives in any of the various fields of law enforcement than that we should entrust the building or the repairing of an automobile or airplane to persons selected by popular vote, nominated by petition, by political convention, or appointed by one whose major consideration is that of settling political debts or granting political favors.

Equally important as the selection and training of proper personnel is the provision of facilities and equipment for the use

of such personnel. Such equipment must conform to present day conditions and present day needs. It is absurd to expect a group of enforcement officers and administrators to cope with criminals who have available all modern resources for the commission of crime. This requires that laboratories and schools shall be established in which may be provided training of personnel, development of equipment and supervision of research and investigation.

A further requirement—in order that effective action may take place between state agencies—involves the coordination of state and interstate governmental agencies, or, if necessary, the creation of new ones. This can be accomplished in several ways; as by enacting legislation giving power to the officers of one state to exercise their official functions in adjoining states, as in making arrests, supervising parolees and probationers or returning them to the state of origin; by setting up new agencies of administration upon a regional or sectional basis, thus extending and legalizing such methods as those previously described of radio and teletype communication. The possibilities in this direction for regional or sectional agencies for parole and probation supervision are quite possible and highly promising; particularly in areas in which there is a normal flow of laborers from one state to another, from season to season; as well as for the establishment of regional systems of identification, treatment, police supervision, and highway or construction camps for the carrying on of public works. Regional or sectional action between groups of states would make possible the setting up of training schools, the establishing of standards of selection and training of officers of all kinds; and research bodies for the carrying on of necessary investigations in order to lay foundations for further joint action.

Examples of this type of action and of the need therefor are to be found in the work of the Association of States Signatory to the Prison Compact. The problem of providing work for prisoners, of regulating prison industries, and of disposing of prison-made goods is one problem, the solution of which by each individual state is becoming increasingly difficult. Joint action seems obviously necessary.

Moreover, it would seem highly desirable that methods of cooperation should be established whereby the states may act intelligently and speedily if necessary in determining the relation

which should exist between the states and their various component subdivisions on the one hand and of the agencies of the federal government on the other. Is it desirable that there be any further wide expansion of federal criminal jurisdiction, of federal police and investigatory work, of federal probation and parole? What shall be done as regards joint action upon the part of the federal and state governments concerning juvenile delinquency? Is it desirable that there be established in the field of crime control a system of federal subsidy and standard-setting such as is already in operation in the construction of highways, in military training, in the field of education, agriculture and many other interrelated governmental fields? These are questions which must be answered in the near future. They can be answered by properly trained personnel representing each of the various governmental groups. That there is immediate need for intelligent interaction, no sane person can deny. That there is need for a concerted attack upon crime is equally obvious. Until such united action takes place the criminal has the advantage; even as to the emergency problem of combating the ever present menace of violent criminality.

When we step beyond the point of this emergency and think of the solution of the crime problem in terms of long-range planning for crime prevention, then the need for intelligent joint action becomes even more apparent. Some of these days we shall see a nation-wide program of crime prevention similar to that of our present program of public health, involving widespread educational programs, research for the discovery of causes and conditioning factors and for the prevention of these conditions; by anticipating them and providing measures for their relief.

It is perhaps beyond the proper scope of this paper to inquire into the field of prevention except to suggest that it is a field of even greater importance than the emergency to which we have been giving most of our attention. In fact the possibilities of prevention are so little understood that many people are not even aware of the need or of available methods. Out of such groups as are met in this conference, must come the leadership, the vision and the action necessary to achieve the wider vision and the far-flung attack which is to give us relief from the waste and the menace of crime.