

INTERSTATE COMPACTS—STATE CONSTITUTIONS AS LIMITATIONS ON STATES' POWER TO RATIFY FEDERALLY APPROVED COMPACTS

The Ohio River Valley Water Sanitation Compact,¹ recently ratified by the states of that region,² is a notable departure from the older means of coping with the political and legal aspects of interstate pollution problems. Since interstate water controversies involve a political admixture of states' rights and federal power, none of the legal means adopted to solve them have been entirely satisfactory. In the pollution field the Federal Government has acted primarily in an advisory capacity.³ And Congress has done very little under the commerce power to regulate even such navigable waters as the Ohio and Mississippi rivers.⁴ Traditionally, cumbersome litigation by one state against another has been frequently resorted to in settling disputes.⁵

The Compact provides for the creation of a Commission, composed of three commissioners from each of the signatory states and three from the United States,⁶ which is to make rules and enforce orders for the prevention

1. 54 STAT. 752 (1936). Several compacts of a similar nature have recently been approved by Congress. Tri-State Compact (Conn., N.J., and N.Y.) 49 STAT. 932 (1935); Red River of the North Compact (Minn., N. Dak., and S. Dak.) 52 STAT. 150 (1938); Potomac River Compact (D.C., Md., Pa., Va., and W. Va.) 54 STAT. 748 (1940); New England Interstate Water Pollution Compact (Conn., Mass., N.Y., R.I., and Vt.) 61 STAT. 682 (1947).

2. W. VA. ACTS 1939, c. 38, § 1; IND. ACTS 1939, c. 35, § 1; ILL. LAWS 1939, § 1, p. 310; KY. ACTS 1940, c. 150, § 1; N.Y. LAWS 1939, c. 776, § 1; OHIO LAWS 1939, § 14881, § 1; PA. LAWS 1945, No. 50, § 1; VA. ACTS 1948, c. 117, § 1. Though Tennessee took part in the original negotiations and has the permission of Congress and of the other states to become a party, it has failed to do so.

3. Enacting the Water Pollution Control Act in 1948, Congress said: ". . . [It is] the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of the States in controlling water pollution, to support and aid technical research, to devise and perfect methods of treatment of industrial wastes . . . and to provide Federal technical services to State and interstate agencies and to municipalities . . ." 62 STAT. 1155 (1948), 33 U.S.C. § 466 (Supp. 1950). Responsibility for administration rests with the Surgeon General, who must encourage cooperative state action, enactment of uniform state laws, and compacts between states. *Id.* at § 466a. After fulfilling certain requirements, the Surgeon General may request the Attorney General to initiate suit to secure abatement of pollution causing harm in a state other than that in which the discharge originates. But the Act makes no provision for enforcement action if consent is not forthcoming from the water-pollution agency of the state where the pollution originates. *Id.* at § 466a (d). For a more complete discussion of the Act, see Pollution Control, *The Report of the President's Water Resources Policy Commission*, 3 WATER RESOURCES LAW 388 (1950).

4. Legislation regulating the use of navigable waters as depositories of refuse has been confined to preventing impediments to navigation. As the statute applies to refuse "other than that flowing from streets and sewers and passing therefrom in a liquid state," it does not prohibit pollution as it is commonly understood. 24 STAT. 329 (1886), 33 U.S.C. § 407 (1946).

5. *Wisconsin v. Illinois*, 278 U.S. 367 (1928); *New Jersey v. New York*, 265 U.S. 296 (1920); *Missouri v. Illinois*, 180 U.S. 241 (1900). See also *Nebraska v. Wyoming*, 325 U.S. 589 (1944); *North Dakota v. Minnesota*, 263 U.S. 365 (1923); *Kansas v. Colorado*, 206 U.S. 46 (1907).

6. The Ohio River Valley Water Sanitation Compact, Art. IV, 54 STAT. 752 (1936).

of pollution by municipalities, corporations, and individuals.⁷ The orders of the Commission in particular instances can be enforced in the state or federal courts;⁸ but no action can be taken against an offender in any state without the approval of the commissioners representing that state.⁹ Each state is to make periodic appropriations to defray its share of the expenses of the Commission.¹⁰

The legality of the financial and police-power aspects of the Compact was challenged in *State ex rel. Sims v. Dyer*, 58 S.E.2d 766 (W. Va. 1950), as contravening the West Virginia Constitution. Pursuant to the Compact the state legislature made its first appropriation of funds so that the Com-

7. Article VI of the Compact provides: "All sewage from municipalities or other political subdivision, public or private institutions, or corporations, discharged or permitted to flow into . . . the Ohio River and its tributary waters . . . shall be so treated . . . as to provide for substantially complete removal of settleable solids, and the removal of not less than forty-five percent (45%) of the total suspended solids . . . [but] such higher degree of treatment shall be used as may be determined to be necessary by the Commission after investigation, due notice and hearing. . . . The Commission is hereby authorized to adopt, prescribe and promulgate rules, regulations and standards for enforcing the provision of this article. The Commission may from time to time, after investigation and after a hearing, issue an order or orders upon any municipality, corporation, person or other entity discharging sewage or industrial waste into the Ohio River or any other river . . . which constitutes any part of the boundary line between any two or more of the signatory States, or into any stream any part of which flows from any portion of one signatory State through any portion of another signatory State. . . . The Commission shall give reasonable notice of the time and place of the hearing to the . . . entity . . . against which such order is proposed." Ohio River Valley Water Sanitation Compact, 54 STAT. 752 (1936).

8. "It shall be the duty of the municipality, corporation, person or other entity to comply with any such order issued against it or him by the Commission, and any court of general jurisdiction or any United States district court in any of the signatory States shall have the jurisdiction, by mandamus, injunction, specific performance or other form of remedy, to enforce any such order against any municipality, corporation or other entity domiciled or located within such State or whose discharge of waste takes place within or adjoining such State, or against any employee, department or subdivision of such municipality, corporation, person or other entity; provided, however, such court may review the order and affirm, reverse or modify the same upon any of the grounds customarily applicable in proceedings for court review of administrative decisions. The Commission or, at its request, the Attorney General or other law enforcing official, shall have power to institute in such court any action for the enforcement of such order." The Ohio River Valley Water Sanitation Compact, Art. IX, 54 STAT. 752 (1936).

9. "No . . . order shall go into effect unless and until it receives the assent of at least a majority of the commissioners from each of not less than a majority of the signatory States; and no . . . order upon a municipality, corporation, person or entity in any State shall go into effect unless and until it receives the assent of not less than a majority of the commissioners from such State." *Ibid.* The Compact makes no provision for action against a state in case of pollution offenses.

10. "The Commission shall submit to the Governor of each State, at such time as he may request, a budget of its estimated expenditures for such period as may be required by the laws of such state for presentation to the legislature thereof." *Id.* at Art. V. "The signatory States agree to appropriate for the salaries, office and other administrative expenses, their proper proportion of the annual budget as determined by the Commission and approved by the Governors of the signatory States in proportion to their population within the District at the last preceding federal census, the other half to be prorated in proportion to their land area within the District." *Id.* at Art. X.

mission could make a study of water-purification methods.¹¹ The state auditor refused to sign the warrant, and the commissioners from West Virginia sought a writ of mandamus against him in the state supreme court.

The West Virginia Supreme Court refused the writ on the ground that by ratifying the Compact the legislature attempted to incur an unconstitutional debt¹² and to make improper delegations of the police power—a delegation binding future legislatures and an extraterritorial delegation to foreign commissioners.¹³

This decision was reversed by the United States Supreme Court.¹⁴ In the majority opinion Mr. Justice Frankfurter, holding that there was no improper delegation of police power, stated :

What is involved is [a] conventional grant of legislative power. . . . [T]his court [could] enter a decree requiring West Virginia to abate pollution of interstate streams . . . [and the] legislature would have no part in determining the State's obligation. . . . Nothing in its Constitution suggests that . . . West Virginia must wait for the answer to be dictated by this court after harrassing and unsatisfactory litigation.¹⁵

In regard to the debt problem, the Court held that the obligation of the state under the Compact was not in conflict with the state constitution.

The compact clause of the United States Constitution, which provides that states shall not enter into compacts without the consent of Congress,¹⁶ is a limitation on the *exercise* of state power rather than a grant of power to the states. Since the totality of a state's power is derived from its own sovereignty, Congress cannot grant a state the power to act in contravention of the state constitution.¹⁷ Recognizing this fact, the Supreme Court rejected

11. W. VA. ACTS 1949, c. 9, § 93.

12. "No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion or defend the State in time of war. . . ." W. VA. CONST. Art X, § 4.

13. The auditor argued that the "Legislature was without power to delegate to persons and agencies, outside the State, and beyond the control of the Legislature, the police powers of the State." State *ex rel.* Dyer v. Sims, 58 S.E.2d 771 (W. Va. 1950). As to the state debt limitation, he argued that the Compact purported to be a binding contract between the signatory states and the United States and could, therefore, be enforced against the state by one of the other states. In such event, he contended, the obligation to pay would exist for the life of the Compact and would be an unconstitutional debt.

14. West Virginia *ex rel.* Dyer v. Sims, 19 U.S.L. WEEK 4195 (April 10, 1951).

15. *Id.* at 4198.

16. U.S. CONST. Art. I, § 10. This Clause also provides that no state shall enter into a treaty. Actually, there is no distinction between treaties, which are proscribed, and compacts, which are allowed with the consent of Congress. "The considerations that led the Supreme Court to leave to Congress the determination of what constitutes a republican form of Government . . . are equally controlling in leaving to Congress to circumscribe the area of agreement open to the States." Frankfurter and Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments*, 34 HARV. L. REV. 685 n. 35 (1925).

17. Montana *ex rel.* Haire v. Rice, 204 U.S. 291 (1906); Rhode Island v. Massachusetts, 12 Pet. 657 (U.S. 1838).

the argument that a state could not limit its own power to make a compact consented to by Congress.¹⁸ Mr. Justice Reed, in his concurring opinion, reached a contrary conclusion on the ground that federally approved compacts transcend state law by reason of the supremacy clause.¹⁹ This idea has been advanced in compact litigation on numerous occasions with varying results. But the modern and best-reasoned view is that the consent of Congress, though an "act of Congress" for purposes of conferring jurisdiction on the Supreme Court, does not make the compact supreme over state law.²⁰

18. This argument was made by *amici*, the other signatory states. U.S.L. WEEK 4195 at 4196 (April 10, 1951).

19. Mr. Justice Reed disagreed with the Court's assertion of power to interpret the West Virginia Constitution. He distinguished contract clause cases, in which the Supreme Court decides whether there is, under state law, a contract and whether it is impaired, from compact clause cases, in which execution, validity, and meaning of federally approved compacts are all federal questions by virtue of the supremacy clause. State law, in other words, is immaterial in compact cases. But no case has gone this far. *Hinderlider v. La Plata Co.*, 304 U.S. 92 (1937), relied on by Mr. Justice Reed, does not support his position. In that case a water company sought to enjoin state officers from closing the company's headgate under the authority of a New Mexico-Colorado compact, which provided for rotation between the states of the right to divert water from the La Plata River, on the ground that such action would destroy the company's vested rights under the Colorado constitution. The court upheld the state officers' action under the Compact but carefully avoided interpreting the state constitution. The basis of the opinion, written by Mr. Justice Brandeis, was that the federal common law of equitable apportionment of interstate water prevented Colorado, and the company, from taking more than an equitable share of water in the first place. The Court did not decide that congressional approval of the Compact invoked the supremacy clause.

20. The supremacy clause argument, *ibid.*, advanced by Mr. Justice Reed, is related to the idea that compacts are "acts of Congress" by virtue of the congressional consent. The latter concept has frequently been advanced as grounds for Supreme Court jurisdiction.

One line of cases holds that the consent of Congress makes every compact an act of Congress. See *Pennsylvania v. The Wheeling Bridge Co.*, 13 How. 518 (U.S. 1851); *Green v. Biddle*, 8 Wheat. 1 (U.S. 1823); *accord*, *Missouri v. Illinois*, 200 U.S. 496 (1906). Another line of authority holds that consent does not make a compact an act of Congress. See *Hamburg-American Steamship Co. v. Brube*, 196 U.S. 407 (1905) and *New York v. Central R.R.*, 12 Wall. 455 (U.S. 1872), where the Court said ". . . the question arose under the compact and not under any Act of Congress. The assent of Congress did not make the Act giving it a statute within the meaning of the . . . Judiciary Act." 1 STAT. 85 (1789), as amended, 28 U.S.C. § 1257 (Supp. 1949).

It should be apparent that compacts are not "acts of Congress." They are agreements between states. Most compacts are not federal statutes in content, form, or administration. In many instances a federal statute in the field would be unconstitutional, *e.g.*, an adjustment of a state boundary. Note, *Some Legal and Practical Problems of the Interstate Compact*, 45 YALE L.J. 324 (1935). The "act of Congress" theory is incompatible with the concept that the consent is merely a limitation on state power, see *Rhode Island v. Massachusetts*, 12 Pet. 1 (U.S. 1838), and with the rule that state constitutions are limitations on the compacting power of the states.

Recent cases have rejected the "act of Congress" grounds for jurisdiction in favor of the federal-question basis. 28 U.S.C. § 1257 (Supp. 1949). See *Hinderlider v. La Plata Co.*, 304 U.S. 92 (1937) and *Delaware River Comm. v. Colburn*, 310 U.S. 419 (1939). This was the theory of jurisdiction used in the present case.

However, in some cases the "act of Congress" theory, with all of its implications, might properly be used. For example, if the dispute is between two states over which of two interpretations, both proper under the respective state constitutions, should be placed on the agreement, the supremacy clause might properly be invoked on the theory

Whatever the ultimate decision on a state's power to restrict its authority to compact and the authority of state courts to finally interpret state constitutions,²¹ a state which violates a compact may violate the contract clause of the Federal Constitution. And the final interpreter of state statutes and constitutional provisions alleged to have prohibited a state from entering a binding contract is the United States Supreme Court.²² Under the supremacy clause rationale the Court would hold state law immaterial.

A state may escape contract liability where its constitution or statutes give prior notice of invalidity,²³ but no such notice as to police power is contained in the West Virginia Constitution. However, police power limitations of the type considered here are not customarily contained in written constitutions. It is inherent in state sovereignty that the legislature cannot divest itself of the police power though it can make temporary grants or delegations.²⁴ The Supreme Court, speaking of this Compact, was correct in saying that a conventional grant of legislative power was involved. No foreign commissioners exercise final authority over any West Virginia pollution offense,²⁵ and each state has the power to remove its own commissioners.²⁶

that Congress intended to consent only to a particular interpretation. See *Lessee of Marlott v. Silk*, 11 Pet. 1 (U.S. 1837). And in some compacts there exists congressional action more positive than mere consent. Such is the case with this compact, which confers jurisdiction on the federal district courts and provides for the appointment of commissioners by the Federal Government. Should either of these two elements of the compact be the subject of litigation, the Court might be justified in invoking the supremacy clause. But it should not be applicable where the issue is whether the state legislature has power, under the state constitution, to ratify the compact. See note 19 *supra*.

21. *Kentucky v. Indiana*, 281 U.S. 163 (1929); *Covington Bridge Co. v. Kentucky*, 154 U.S. 204 (1894); *Green v. Biddle*, 8 Wheat. 1 (U.S. 1823); *Chesapeake and Ohio Canal Co. v. Baltimore and Ohio R.R.*, 4 Gill. & J. 1 (Md. 1832).

22. *Dodge v. Board of Education*, 320 U.S. 74 (1937); *Larson v. South Dakota*, 278 U.S. 429 (1929); *Virginia v. West Virginia*, 206 U.S. 290 (1907).

23. There can be no impairment at all unless there was a valid contract initially under state law. *Seaboard Air Line Ry. v. Alabama R.R. Comm'n.*, 155 Fed. 792 (C.C.M.D. Ala. 1907); *East Jersey Water Co. v. Newark*, 96 N.J. Eq. 231, 125 A. 578, *aff'd.*, 98 N.J. Eq. 672, 130 A. 557 (1925). See also *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 100 (1938), *reversing State ex rel. Anderson v. Brand*, 214 Ind. 347, 5 N.E.2d 531 (1937); *Solomons v. Graham*, 15 Wall. 208 (U.S. 1872).

24. *Texas & N.O. R.R. v. Miller*, 221 U.S. 408 (1911); *Griffith v. Connecticut*, 218 U.S. 563 (1910); *West Chicago Street Ry. v. People*, 201 U.S. 506 (1906); *Douglas v. Kentucky*, 168 U.S. 488 (1897); *Stone v. Mississippi*, 101 U.S. 814 (1897); *State v. Meek*, 112 Ia. 338, 84 N.W. 3 (1900); *Board of Excise v. Barrie*, 34 N.Y. 657 (1866).

25. ". . . no . . . order . . . shall go into effect unless and until it receives the assent of not less than a majority of the Commissioners from the State in which the offense is committed." *Ohio River Valley Water Sanitation Compact*, Art. IX, 54 STAT. 752 (1936).

26. "[A]ny commissioner may be removed or suspended from office as provided by the law of the State from which he shall be appointed." *Id.* at Art. III. The West Virginia commissioners "may be removed from office by the governor." W. VA. ACTS 1939, c. 38, § 2. Since no action can be taken against an offender in any state without the approval of two of the three commissioners from the state, see note 9 *supra*, apparently no action could be taken in that state if the state failed to appoint commissioners.

The only uncommon delegation of police power involved in this compact is the grant of authority to commissioners from one state to deal with pollution offenses committed in another. Since each state has a legitimate interest in the acts committed in upstream states, the advisory power vested in those officers is not unwarranted. State-appointed officers have long exercised official duties elsewhere than within their own state.²⁷ Compacts have occasionally provided for such action.²⁸ The power of states to compact in regard to problems in other states is readily understood if it is recalled that the states once had full treaty-making power, the exercise of which is now restricted only by the compact clause. The power itself is limited by the state constitution, and the Supreme Court should continue to recognize this principle.

Article X of the West Virginia Constitution plainly states that only certain classes of debts may be created. The state courts have construed this article rather strictly.²⁹ But, assuming that the debt limitation does reach the compacting power, the provision would cover any debts possibly imposed by this Compact. Either the Compact exacts future appropriations or it does not. If it does not, the Compact is not a binding contract. If it does, a default by the legislature would be grounds for a judgment against the state and would subject the state's property to execution. A judgment could be entered against the state even though the amount of the debt is presently uncertain.³⁰

27. Recall the extraterritorial aspects of extradition. But there, as with this compact, the laws of a state are not given extraterritorial effect. See, *e.g.*, *Von Walden v. Geddes*, 105 Conn. 374, 135 A. 396 (1926).

28. New England Interstate Water Pollution Compact, 61 STAT. 682 (1947); Port of New York Authority Compact, 42 STAT. 174 (1921); Virginia Compact, 1 STAT. 189 (1791) (providing for the exercise of concurrent jurisdiction on the Ohio River by Kentucky and other states). See *Wedding v. Meyler*, 192 U.S. 573 (1904).

29. Revenue bonds do not create debts within the constitutional inhibition. *Bates v. State Bridge Commission*, 109 W.Va. 186, 153 S.E. 305 (1930). When the legislature has determined that a casual deficit exists within the meaning of the constitution, the courts will not disturb that action unless it is evident that contingencies did not exist to support the ascertainment. *Dickinson v. Talbott*, 114 W. Va. 1, 170 S.E. 425 (1933); *Barry v. Fox*, 114 W. Va. 513, 172 S.E. 896 (1934). If there is any doubt in the mind of the court as to the constitutionality, the doubt must be resolved in favor of the act. *Bates v. State Bridge Commission*, *supra*; *Slack v. Jacob*, 8 W. Va. 612 (1875).

30. *Virginia v. West Virginia*, 246 U.S. 565 (1918). When West Virginia became a separate state an agreement was entered into between that state (WEST VA. CONST. ART VIII, § 8) and the "Restored State of Virginia" (VA. ACTS (Wheeling) 1861-1862, 16, 19) whereby West Virginia promised to pay its "equitable portion" of the then existing debts of Virginia. Congressional consent was given in the act admitting West Virginia to the Union. 12 STAT. 633 (1862). The Supreme Court held that the obligation could be enforced and suggested several remedies for enforcement: 1. Mandamus against the legislature after judgment in the Supreme Court. 2. Collection of a tax levied by the United States Supreme Court. 3. Other appropriate "equitable" remedies by "dealing" with the funds or taxable property of West Virginia. However, the Court decided to wait until Congress had a chance to act in the matter. Before either the Court or Congress acted, West Virginia paid its share. See *Frankfurter and Landis, The Compact Clause of the Constitution—A Study in Interstate Adjustments*, App. A, 34 YALE L.J. 685, 738 (1925). The Court has repeatedly stated that it has the power to enter money judgments against states, but execution has never been carried out. See *South Dakota v.*

But the theory of recovery would be that the state was *indebted*, and such indebtedness is prohibited by the West Virginia Constitution.

Mr. Justice Frankfurter found no conflict between the Compact and the debt provision of the state constitution. In support of this position he cited Articles X and V of the Compact. Article X states that the annual budget must be approved by the governors. If a governor's approval constitutes acceptance of fixed liability, the doctrine of separation of powers is violated in that the legislative function is purely ministerial.³¹ However, if his approval is merely a step in the state budget-and-appropriation procedure, it does not differ from his approval of a strictly local budget recommendation and is constitutional because final discretion remains in the legislature.³²

Article V of the Compact states: "The Commission shall not incur any obligation of any kind prior to the making of appropriations adequate to meet the same; nor shall the Commission pledge the credit of any of the signatory states, except by and with the authority of the legislature thereof." This article puts it beyond the power of the Commission to bind the states by becoming indebted to third parties. But it has no relevancy in regard to any liability of the states to the Commission; and it is that liability which the state auditor questioned. His premise was that the compact-ratification statute created a debt and that the appropriation was made to pay it. Actually the appropriation was made to finance a present operation of the police power.³³

So long as the legislatures continue to favor the Compact by making requested appropriations, the Commission will operate smoothly. But if some of the states become dissatisfied, it will not be difficult for them to destroy the effectiveness of the Compact. Refusal to appropriate funds will be only one of the devices employed. The veto power of the commissioners from

North Carolina, 192 U.S. 286 (1903); *United States v. Michigan*, 190 U.S. 379 (1903); *United States v. North Carolina*, 136 U.S. 211 (1890); *Crisholm v. Georgia*, 2 Dall. 419 (U.S. 1792); Note, 31 HARV. L. REV. 1158 (1918).

31. "The Legislative, Executive, and Judicial Departments shall be separate and distinct so that neither shall exercise the powers properly belonging to either of the others . . ." WEST VA. CONST., Art. V, § 1. This article forbids the exercise of legislative powers by the governor. *State v. Mounts*, 36 W. Va. 179, 14 S.E. 407 (1892). "No money shall be drawn from the treasury but in pursuance of an appropriation made by law . . ." WEST VA. CONST. Art. 10, § 3. Making appropriations is a legislative function. See *Slack v. Jacob*, 8 W. Va. 612, 631 (1875).

32. WEST VA. CONST. Art. 6, § 51, provides for substantially the same budget procedure as does the compact.

33. "Ordinarily, the creation of a State board or commission which requires an appropriation of public funds to carry out its purposes is not treated as the creation of a debt, although its generally contemplated continuation from year to year and for an indefinite period must necessarily involve future appropriations." *State ex rel. Dyer v. Sims*, 58 S.E.2d 766, 773 (W. Va. 1950). The expenditure in this case "does not call for any further appropriation by the present or any future Legislature. Such further appropriations may become advisable, but that is a question that the future alone must determine." *State ex rel. Dyer v. Sims*, *supra*, at 779 (dissenting opinion).

each state could be just as devastating. Thus, any apparent binding effect of the Compact is illusory.

The Compact should be viewed as a statement of policy³⁴ which the signatory states, in their own interest, are not likely to abandon. The primary legal effect of each state's formal ratification of the Compact is to give the Commission power to act within that state and to make it a duly constituted arm of the state government.

Until the twentieth century, compacts were not expressions of a desire for regional control. All of them dealt with boundary controversies and similar matters beyond the constitutional power of the national government to manage.³⁵ Now, with the prospect of federal control resulting from lack of interstate cooperation, the states are willing to follow the policy of Congress by utilizing compacts as a device to enable regions larger than single states to solve their local problems without interference from the distant majority.³⁶ The fate of the movement depends upon the Supreme Court. The Court can end states' willingness to compact by holding them rigidly bound when they intend, as in this case, only loose association. At the other extreme, the Court can allow easy escape on questionable state constitutional grounds that would be invalid in a strictly domestic case. Either course will destroy the compact trend; the moderation exhibited by the Supreme Court in this case will promote it.

34. Illustrative of the fact that the Compact is intended as a statement of policy is Compact Article I, which provides that each state "agrees to enact any necessary legislation to enable each such State to place and maintain the waters . . . in a satisfactory sanitary condition . . ." The veto power of the commissioners from each state should dispell any doubt that the Compact is something more than a policy statement.

35. Frankfurter and Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments*, App. A, 34 YALE L.J. 685, 738 (1925).

36 "To the advocates of decentralization [compacts] are a kind of intermediate arrangement which avoids the centralization tendencies of federal regulation, whereas the advocates of centralization consider compacts a basis for possible evolution of control from the state to the region and then from the region to the nation. It has even been suggested that if the potentialities of the compact continue to be developed 'it may result in a finer balance of power between the states and the nation.'" Clark, *Interstate Compacts and Social Legislation*, 50 POL. SCI. Q. 502, 503 (1935).