CONSTITUTIONAL ASPECTS OF STATE EXTRADITION LEGISLATION

Flexibility has long been an acclaimed virtue of the United States Constitution. If such is the case, then the extradition clause is an exception.[1] Framed in explicit language and couched in terms of *state* jurisdiction, this provision does not appear to permit federal legislation to provide procedures for the return of criminals in situations not within its precise scope. Accordingly, the states, in cooperation, have enacted uniform measures to close this constitutional lacuna. The validity of these measures is still in question, but it is manifest that the solution hinges upon the existence of state power to legislate in this area; this, in turn, depends upon an interpretation of the constitutional provision.

Undoubtedly the purpose of the extradition clause was to obligate each state to return fugitives—the matter was not to be subject to the states' sole discretion. But writings contemporary to the constitutional convention shed no light as to who was to effectuate the directive, how it was to operate, or when it would operate.[2] Edmund Randolph, Attorney General under President George Washington, instigated congressional action by voicing the opinion that the constitutional provision was not self-executing and that Congress was empowered to give it effect.[3] Following this interpretation, Congress enacted a statute in 1793 the terms of which are substantially operative today.[4] Written in mandatory language, it requires the governor of the state where the crime was com-

1. U.S. CONST. Art. IV, § 2. "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."

2. SCOTT, U.S. CONSTITUTIONAL CONVENTION 1787 624 (1893). The convention adopted the provision of the Articles of Confederation Art. IV relating to the rendition of fugitives except that "and high misdemeanor" under the Articles was changed to "and other Crime" in the Constitution. Neither the *Madison Papers* nor *The Federalist* shed any enlightenment on this clause.

3. 2 MOORE, EXTRADITION 842-845 (1891).

4. REV. STAT. § 5278, 18 U.S.C. § 3182 (1951), formerly § 662. "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. . . ." See also, 2 MOORE, *op. cit. supra* note 3, at 845.

mitted to demand the fugitive's return by the executive authority of the asylum state. In addition, the alleged fugitive must have been charged with a crime in the demanding state and must have fled from justice.[5]

If the governor of the asylum state signs the rendition papers, the alleged criminal may challenge the propriety of such action in the asylum state's courts upon two grounds: first, he must prove that he was not substantially charged with a crime under the demanding state's laws; second, he must show that he was not a fugitive from justice from the demanding state. It is of importance that this latter requirement has been construed to mean that the person must have been physically present in the demanding state when the crime was committed and must have subsequently fled.[6]

The cases have, therefore, clearly interpreted the federal act and the procedures to be followed in respect to it. Since the congressional measure fails to provide a method for a fugitive's arrest and return, much state legislation has been directed to this end;[7] and it has been held constitutional.[8] Other enactments intended to supplement the federal provision, however, present debatable constitutional questions thus far unanswered. Included in this category are the Uniform Extradition Act, Section 6, the Uniform Reciprocal Enforcement of Support Act, Section 5, and the Uniform Out-of-State Parolee Compact, Section 1.[9] All of these acts go beyond the constitutional provision in the sense that they provide for rendition in situations not contemplated therein.

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5. In Kentucky v. Dennison, 24 How. 66 (U.S. 1860), the Supreme Court upheld the power of Congress to legislate regarding extradition. The Court further held that the Constitution as well as the act of Congress contemplated a demand on the executive authority of the asylum state for the return of fugitives but that the governor was under only a moral obligation to comply with such proper demand, and the courts could not mandate the governor to extradite.

6. Biddinger v. Commissioner of Police of N.Y., 245 U.S. 128 (1917); Roberts v. Reilly, 116 U.S. 80 (1885).

7. UNIFORM EXTRADITION ACT §§ 12-28 (1936), establish the procedures of arrest and return which shall govern in extradition of criminals. COUNCIL OF STATE GOVERNMENTS, THE HANDBOOK ON INTERSTATE CRIME CONTROL 8-30 (1949).

8. Innes v. Tobin, 240 U.S. 127 (1915). The petitioner had been extradited from Oregon to Texas to stand trial for a crime. Upon acquittal, Georgia demanded the return of the petitioner for trial on another crime. Petitioner argued that since she was involuntarily taken into Texas and had not fled to that state she was not subject to rendition to Georgia. Since petitioner did not allege that she had never been in Georgia the Supreme Court assumed this fact to be true, and found that allowing the return to the demanding state of a fugitive who is involuntarily brought into the asylum state was valid. The failure of the federal government to provide for this situation left it in the hands of state authority.

9. See discussions by COUNCIL OF STATE GOVERNMENTS, *op.cit. supra* note 7.

For background facts concerning the Uniform Extradition Act and the Parolee Compact see Note, 31 MINN. L. REV. 699 (1947).

For example, when a crime is committed in the demanding state by a person not present in the state, neither the constitutional provision nor federal legislation enacted pursuant to it furnish a means of extradition. The phrase "to flee from justice and be found in another state"[10] has been interpreted by the Supreme Court to mean that the alleged criminal must have been in the demanding state at the time the crime was committed and subsequently fled.[11] Thus, a person standing in state X and shooting B in state Y could not be extradited under congressional authority; the accessory in state A to a crime committed in state B is similarly shielded from justice; the runaway father who fails to support his family would also be immune from criminal prosecution in the demanding state. Therefore, geographical location, obviously irrelevant in determining whether a crime has been committed, would prevent extradition under applicable federal legislation. It was to bridge this gap in the Constitution and the congressional act that the Uniform Criminal Extradition Act, Section 6, and the Uniform Reciprocal Enforcement of Support Act, Section 5 were passed.[12] Manifestly, the Constitution was not intended to serve as a shield to criminals; consequently an interpretation of the extradition clause which supports the validity of these uniform acts would rest upon firm foundation.[13]

The Parolee Compact,[14] approved by all of the states, was adopted

10. U.S. CONST. Art. IV, § 2.

11. Hogan v. O'Neill, 225 U.S. 52 (1920); Hyatt v. New York *ex rel.* Cockran, 188 U.S. 691 (1902); Roberts v. Reilly, 116 U.S. 80 (1885).

12. Thirty-five states have adopted the Uniform Extradition Act. *E.g.,* CAL. PEN. CODE §§ 1548-1556.2 (1949); FLA. STAT. §§ 941.01-941.29 (1951); IND. ANN. STAT. §§ 9-403—9-417 (Burns 1942); IOWA CODE ANN. c. 759, § 1 *et seq.* (1951); N. Y. CODE CRIM. PROC. § 829; TEX. CODE CRIM. PROC. ANN. art. 1008a, (Supp. 1952). See THE COUNCIL OF STATE GOVERNMENTS, THE BOOK OF THE STATES 137 (1952-53), for an up-to-date list of the states which have adopted this legislation.

Thirty-nine states have adopted the Uniform Reciprocal Enforcement of Support Act. *E.g.,* IND. ANN. STAT. §§ 3-3102 *et seq.* (Burns Supp. 1951); KY. REV. STAT. §§ 407-010 *et seq.* (Legis. Supp. 1950); OHIO GEN. CODE ANN. §§ 8007-1 *et seq.* (1951). See THE COUNCIL OF STATE GOVERNMENTS, RECIPROCAL STATE LEGISLATION TO ENFORCE THE SUPPORT OF DEPENDENTS (1951), for other states which have adopted this legislation.

13. Doubt is expressed as to the constitutionality of the UNIFORM EXTRADITION ACT § 6 in Green, *Duties of the Asylum State Under the Uniform Criminal Extradition Act,* 30 J. CRIM. L. & CRIMINOLOGY 295, 323 (1939-40).

14. States are prohibited from entering into compacts without the consent of Congress by U.S. CONST. Art. 1, § 10. Compacts are actually contracts between the states by which boundary disputes may be settled, or through which the cost of a bridge between the states may be shared. Usually states enter into their compacts and then look to Congress for its approval; however, in 1934 Congress passed a statute giving its advance consent to two or more states to enter into compacts to aid in the mutual enforcement of their criminal laws. 4 U.S.C. § 111 (Supp. 1952), formerly 18 U.S.C. § 420. Under this authority from the federal government all states have entered the Parolee Compact. The method used by the states in adopting this compact was through passage of an enabling act by the various legislatures allowing

to solve a somewhat different problem than that dealt with by the Uniform Extradition Act.[15] Often parole officials found it desirable to permit a parolee to serve the terms of his parole in a foreign state. Since no methods were available to supervise the parolee, it was necessary to utilize extradition procedure to achieve return of a man who had been only conditionally released from incarceration for the commission of a crime. Following this procedure enabled the parolee to challenge his return in a habeas corpus action on the technical grounds that, since he was permitted to leave the demanding state, he was not a fugitive from justice within the meaning of the federal statute.[16] If the state relied upon the Uniform Extradition Act, the parolee based his opposition to return upon the constitutional invalidity of that Act.[17] Although these arguments have been ineffective in state courts,[18] the litigious nature of the extradition procedure rendered this machinery unwieldly and undesirable. As a practical matter these defenses may be anticipated by restricting the parolee to the demanding state as a term of parole. If a parolee breaches this term, he then has no standing to question extradition.[19] The undesirability of this method of return is evident, however, upon even a slight consideration of the influences which make out-of-state parole desirable for society.

To alleviate this situation, the Parolee Compact provides for supervision of an out-of-state parolee by officials of the foreign state and also stipulates that upon breach of parole the officers of the paroling state may return the violator without resort to extradition proceedings.[20] Thus, the Extradition Act, Section 6, permits rendition in circumstances not sufficient to invoke extradition under the federal enactment, while the Parolee Compact avoids its restrictive provisions by the simple expedient of ignoring established extradition procedures. Nevertheless, similar influential policy considerations support an interpretation of the

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the governors of the states to compact with all the United States on the terms set down in the enactment. See the discussion by THE COUNCIL OF STATE GOVERNMENTS, *op. cit. supra* note 7, at 46-84.

15. *E.g.*, COLO. STAT. ANN. c. 153, §§ 44(7)-44(25) (1935); IND. ANN. STAT. § 9-3001 (Burns Supp. 1951); MICH. COMP. LAWS § 7801. et seq (1948); MINN. STAT. § 637.16 (1947). For an up-to-date list of states which have adopted this compact, see THE COUNCIL OF STATE GOVERNMENTS, *op. cit. supra* note 12, at 23.

16. *Ex parte* Kabrich, 343 Mo. 196, 120 S.W.2d 42 (1942).

17. Culbertson v. Sweeney, 70 Ohio App. 334, 44 N.E.2d 807 (1942).

18. In *Ex parte* Garvey, 133 Tex. Cr. 500, 112 S.W.2d 747 (1938), the court held that an out-of-state parolee was subject to extradition as a fugitive from justice.

19. Reed v. Colpoys, 69 App. D.C. 163, 99 F.2d 396 (D.C. Cir. 1938); Ross v. Becher, 382 Ill. 404, 47 N.E.2d 475 (1943); *Ex parte* Summers, 40 Wash. 2d 419, 243 P.2d 494 (1953).

20. UNIFORM PAROLEE COMPACT, IND. ANN. STAT. § 9-3001 (Burns Supp. 1951).

United States Constitution which would validate the Compact. Particularly persuasive is the flexibility thus imparted to the parole system, thereby permitting the parolee to be readjusted to society in an environment most conducive to that end.[21] Geographic location arbitrarily fixed by state boundary lines should not be permitted to encase the parole system in a straitjacket. To the extent that regular extradition proceedings would have this effect, the Parolee Compact attains added desirability.

Despite the obvious advantages of these state enactments, a holding that Congress has the exclusive power to legislate regarding extradition is possible. In fact early writers upon the subject assumed that this was true.[22] Although the Supreme Court, in *Innes v. Tobin,* upheld extradition of a person who was involuntarily moved to the asylum state, stating that federal legislation was not exclusive, other language in the case indicates that the Court felt the states may legislate only within the limits of the constitutional provision.[23] Circumscribing state legislative power to those fact situations in which the person committed the crime while in the demanding state would render Section 6 of the Uniform Extradition Act unconstitutional. Similarly, the constitutionality of the Parolee Compact would be open to serious question. The Constitution, as interpreted, requires a demand upon the governor of the asylum state by the executive authority of the demanding state.[24] The complete absence of extradition procedures in the machinery of the Parolee Compact obviously does not accord with the constitutional provision.

Since the language of *Innes v. Tobin* is dicta, however, its import should not be exaggerated.[25] Moreover, the context of the Court's decision did not include state legislation which had been uniformly adopted to meet everyday actualities in the administration of criminal justice. The presence of such legislation, supported as it is by sound

21. Other factors which would seem to support the constitutionality of the Parolee Compact are: first, convicted criminals subject to confinement are being dealt with; second, as terms of their parole to another state the parolee consents to return without extradition; and third, if normal extradition proceedings were followed and the parolee sought review on habeas corpus there are no important questions which he might raise, for whether or not there is a parol violation is determined by the laws of the paroling state. People v. Ruthazer, 98 N.Y.S.2d 104, 107 N.E.2d 458 (1952).

22. 2 MOORE, *op.cit. supra* note 3, at 863-64. The language in early cases also indicates this view. Kentucky v. Dennison, 24 How. 66 (U.S. 1860); Prigg v. Commonwealth, 16 Pet. 539 (U.S. 1842).

23. Innes v. Tobin, 240 U.S. 127 (1915). See note 8 *supra.*

24. Kentucky v. Dennison, 24 How. 66 (U.S. 1860).

25. 240 U.S. 127 (1915). The Supreme Court in this case did not precisely decide the question of whether state legislation may go beyond the limits of the Constitution.

social policy, increases the probability that the constitutional provision will not be construed so as to frustrate cooperative efforts by the states to meet a problem which possibly could not be constitutionally solved by federal action.

At least two possible interpretations of the constitutional provision could be utilized to sustain the state legislation and compacts—one is analogous to the approach to the affirmative powers of Congress as exemplified by the commerce clause, the other merely advances the thesis that the states are free to provide rendition in situations other than the one provided for and contemplated by the Constitution. Although the practical effect of the two propositions is substantially the same, the gauge by which state techniques would be measured upon judicial review materially differs.

Following the commerce clause type of approach the rendition clause of the Constitution would be treated as an affirmative power of Congress, the latter body having exclusive power to act within the limits delineated by the Constitution. Then, state legislation would be permissible insofar as federal action was not intended to be exclusive and if state enactments did not interfere with federal policy. Beyond the bounds of the power conferred upon Congress, state legislation would be proper.[26] Consequently, it could be argued that since the Constitution does not provide for the rendition of persons not in the state when the crime was committed, for Congress to legislate regarding this matter would violate its constitutional grant of power. Hence, a state's legislation with respect to this situation would be a valid exercise of its reserved power. Likewise, the proposition would seem valid that a parolee who is allowed to serve his parole in a foreign state is not a fugitive from justice within the meaning of the Constitution and thus the power to regulate the means of return does not fall within the power of Congress but may properly be exercised by the states.

Though this view would sustain the constitutionality of the state enactments, sound objections may be offered against it. As a technical matter it should be noted that the extradition clause is not included as part of the affirmative powers granted to Congress.[27] Of more importance, however, is the realization that the extent of review implied by imputing some kind of negative implication to the extradition clause

26. This commerce clause approach is demonstrated in Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945); South Carolina State Highway Dep't v. Barnwell Bros., 303 U.S. 177 (1938); Cooley v. Board of Wardens, 12 How. 299 (U.S. 1851).

27. The affirmative powers of Congress are set forth in U.S. CONST. Art. 1, § 8, while the extradition clause is in Art. 4, § 2.

is highly inconsistent with the relative state and national interests concerned. Since the infractions concerned are committed against state law and since the state is the authority seeking return, the sole national interest would seem to extend no further than provision for a uniform method of rendition in order to effectuate the executory extradition clause. The absence of strong national concern is further emphasized by the fact that, despite an apparent need for revision, the federal extradition statute has been unchanged in substance since its original passage in 1793.[28] In addition, the commerce clause analogy has little basis in fact since the clause deals with a subject matter of such national concern that even in the absence of federal legislation, state enactments which affect interstate commerce may sometimes be invalidated.[29] Thus, in establishing the meaning of the commerce clause, the Supreme Court has played a major role in determining the extent of federal power and of permissible encroachment by state law. Such review by the Supreme Court seems unwarranted with reference to interstate rendition where the state concern is so strong and the national interest so minimal.

For this reason, therefore, merit exists in an alternative interpretation of the extradition clause. Adopted by several state appellate courts in upholding the propriety of the uniform state legislation, the Constitution, in this view, empowers Congress to provide a procedure for the return of fugitives. But the states, although always able to utilize the means which Congress furnishes, are free in the exercise of their own power to employ new methods of rendition for law violators and new classes of persons who may be returned to a demanding state.[30] Under this approach the Supreme Court would merely interpret federal

28. The original federal law was passed in 1793. For discussion see 2 MOORE, *op.cit. supra* note 3, at 845-8.

29. Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945).

30. In *Ex parte* Tenner, 20 Cal.2d 670, 128 P.2d 338 (1942), the California Supreme Court dealt with the constitutionality of the return of an out-of-state parolee without following extradition proceedings. The court concluded that the Constitution and federal statute provided an alternative method of return, but the states had power to allow a return of a parolee without following these proceedings. The court also injected into the opinion the fact that the parolee as terms of his parol had consented to such a return. See also, Gulley v. Apple, 213 Ark. 350, 210 S.W.2d 514 (1948); People v. Ruthazer, 98 N.Y.S.2d 104, 107 N.E.2d 458 (1952); Pierce v. Smith, 31 Wash.2d 52, 195 P.2d 112 (1948). In Culbertson v. Sweeney, 70 Ohio App. 334, 44 N.E.2d 807 (1942), the court held that the Uniform Extradition Act § 6, allowing rendition of a person not in the demanding state when the crime was committed, was constitutional. This was said to be a valid exercise of the state's police power. See also, *Ex parte* Morgan, 86 Cal. App.2d 217, 194 P.2d 800 (1948); McLarnan v. Hasson, 242 Iowa 1192, 48 N.W.2d 887 (1951); *Ex parte* Dalton, 56 N.M. 407, 244 P.2d 790 (1952).

For discussion of Ex parte *Tenner* see Note, 43 COL. L. REV. 379 (1943); see 91 U. of PA. L. REV. 669 (1943) for comment on *Culbertson v. Sweeney.*

legislation, thus avoiding the necessity to define the limits of national power, the extent to which it has been exercised, and the determination as to whether state legislation conflicts. In other words, no limitation upon state power would be implied from the extradition clause of the Constitution.

Superficially, such an interpretation seems radical for it apparently gives the states unrestricted authority to legislate in this field, including the power to replace a well-established system of extradition. But no grounds may be posited which support an implication that the states would abuse this power; existing uniform state laws have been of material benefit. Moreover, merely because the extradition clause places no limitation on the states, it does not follow that the states have unfettered power. The due process clause of the Constitution could feasibly be used to check the use of questionable rendition legislation. Though no Supreme Court decisions establish this function of due process, its possible application has been recognized, at least, by state courts.[31] Should state legislation result in grave injustice, the due process concept could be utilized to prevent its operation, for it is well established that state action not consonant with basic standards of justice is a denial of due process of law.[32] That some states might so act is not mere conjecture.

A compact entered into by Kansas, New Mexico, Colorado, and Wyoming[33] stipulates that the officers of any of these states in pursuit of an alleged criminal may cross the borders of any other member state to arrest and return him without resorting to extradition proceedings.[34] If the effect of this agreement is to legalize the removal of a supposed

31. People v. Ruthazer, 98 N.Y.S.2d 104, 107 N.E.2d 458 (1952); Pierce v. Smith, 31 Wash.2d 52, 195 P.2d 112 (1948).

32. Gibbs v. Burke, 337 U.S. 773 (1949); Ashcraft v. Tennessee, 322 U.S. 143 (1943).

33. COLO. STAT. ANN. c. 153, §§44(1)-(5) (1935). Officers of member states are allowed to arrest:

"(a) While in pursuit of any person who has committed a felony in said state; or

(b) While in pursuit of any person who had been charged with the commission of a felony in said state; or

(c) While in pursuit of any person who escaped from custody of any penitentiary, jail. . . ."

Under these situations extradition is waived and officers of the compacting states are authorized to make an arrest and removal of a person. See discussion by THE COUNCIL OF STATE GOVERNMENTS, *op. cit. supra* note 7, at 4-6.

34. The UNIFORM FRESH PURSUIT ACT § 2, allows arrest by officers, but requires that a magistrate determine the lawfulness of the arrest, and that the alleged criminal be held for extradition. See discussion by THE COUNCIL OF STATE GOVERNMENTS, *op. cit. supra* note 7, at 1-7. Examples of the Uniform Fresh Pursuit Act may be found in CAL. PEN. CODE §§ 852-852.4 (1949); IND. ANN. STAT. §§ 9-451—9-458 (Burns Supp. 1951); IOWA CODE ANN. c. 756, § 1 (1951); MICH. COMP. LAWS §§ 780.101-780.108 (1948).

criminal without affording him an opportunity to secure a writ of habeas corpus to determine if the compact has been complied with, successful objection might be made that due process has not been accorded.[35] The Supreme Court has held that one has no right to extradition proceedings, hence if a person is illegally removed from a jurisdiction his sole remedy is a civil action against the removing officers. No question concerning the illegal return may be raised at the criminal trial in the demanding state's courts.[36] It does not by necessity follow, that a state has power to *authorize* the return of a person by local officers or by officers of the demanding state without giving him an opportunity to challenge the removal in court.

Law enforcement officers possess no authority to arrest except upon a reasonable belief that a crime has been committed and that the suspect committed the crime. But when the officer of one state is empowered by the laws of another state to make arrests in the latter state while in pursuit, he has thus been permitted to determine whether he is in pursuit within the statute's meaning and whether there are substantial grounds to support a valid return. Such wide discretion could easily be abused, resulting in the arrest and return of the innocent as well as the guilty.[37]

Despite the fact that these four states may waive the requirement of technical extradition procedures, it may be contended that due process requires a hearing in the asylum state to determine whether the suspect has been charged with a crime, or, at least, whether reasonable grounds exist upon which a crime may be charged, before his return is legal.[38]

35. The compact makes no provision for a hearing. If the officers arrest and return a man without giving him an opportunity to sue out a writ of habeas corpus or go before a magistrate to determine if the terms of the statute of the asylum state are complied with, the return may be questioned as illegal under due process subjecting the officers to civil liability and existing criminal measures.

36. Pettibone v. Nichols, 203 U.S. 217 (1906).

37. In Austjford v. Guthner, 109 Colo. 47, 121 P.2d 891 (1942), the petitioner was allowed to go into the courts of Colorado, and the Supreme Court of that state found that he could not be returned under the compact, COLO. STAT. ANN. c. 153, §§ 44(1)-(5) (1935), since the arresting officers were not in pursuit.

This case emphasizes the abuse which could result if the officers of a member state could make a legal return without first giving the alleged criminal a hearing.

38. A state official transporting a person illegally into another state for trial is, of course, subject to a civil action for false imprisonment and criminal action for kidnapping. Now he would also be subject to prosecution under the Federal Kidnapping Act, 18 U.S.C. § 1201 (1950).

In Collins v. Frisbie, 189 F.2d 464 (6th Cir. 1951), it was held that if officials violated the Kidnapping Act in transporting one for trial in another state, the injured person could obtain relief against prosecution by securing a writ of habeas corpus in a federal court. If sustained this case would in effect reverse Pettibone v. Nichols, 203 U.S. 217 (1906), *supra* note 34. For discussion, see Note, 27 IND. L.J. 292 (1952).

Requiring the arresting officers to appear before a magistrate would not impose an undue burden, but it would afford some protection against unjustifiable rendition.

But stipulating that such a hearing is always necessary is unwarranted. Under the Parolee Compact, for example, the parolee as a condition of his release must agree to be returned without extradition proceedings in the event of a breach.[39] Failure to require a hearing in such a situation would hardly be a grave injustice since the only question is whether he violated parole. This, of course, is decided by the proper agency in the parolling state. The pursuit compact materially differs in that no consent has been given nor is there an uncompleted sentence to be served, *i.e.,* the person has not been convicted of a crime.

Conclusion

The constitutional validity of state legislation relating to extradition has not yet been decided by the United States Supreme Court. Since the policy underlying these measures is to aid the process of criminal justice by bringing alleged law violators to trial and by providing for the readjustment of past offenders to society, substantial grounds exist for sustaining their validity. Furthermore, no realistic considerations require Article 4, Section 2, to be so construed as to foreclose the states from providing for rendition in circumstances obviously not anticipated in the 18th century. Measuring state enactments against the traditional due process concept of justice and decency would effectively correct any injustices which may result should the states furnish other less rigid rendition procedures. In this fashion the extradition clause of the Constitution would not stand as an obstacle to realistic solution of problems which are national in origin, but not subject to Congressional treatment within the mandate of the Constitution.

39. *Ex parte* Tenner, 20 Cal.2d 670, 128 P.2d 338 (1942).