that the development of the jurisdiction of the *Conseil d'Etat* in France and of similar specialized courts in other European countries is to some extent the result of historical accident rather than of preconceived plans. It would be incorrect, however, to oppose creation of administrative courts on the ground that as a rule they are more subservient to the administration than courts of general jurisdiction. The contrary is often true, at least in Europe. Being more familiar with the administrative machinery and its shortcomings, judges of administrative tribunals are less inclined than other judges to be awed by the prestige of the government.

These criticisms of Professor Street's book are matters of opinion, and in any event are minor ones. They cannot detract from the great value of his work. The book deals effectively with some of the more difficult problems of administrative law. It is clear, concise and convincing. It conclusively shows that a careful and intelligent analysis of the provisions of foreign legal systems may be of considerable assistance in improving corresponding provisions of domestic law. This is comparative law at it best.

ANGELO PIERO SERENI†

INTERSTATE COOPERATION: A STUDY OF THE INTERSTATE COMPACT. By Vincent V. Thursby. Washington, D.C.: Public Affairs Press, 1953. Pp. vi, 150. $3.25.

THIS modest volume concerns itself with the "Compact Clause of the Constitution in public law."[1] Works in this field of compact endeavor have been rather few.[2] This book, therefore, is a welcome addition.

In contrast with discussions of the compact device which have tended to discount if not discourage its practice, Mr. Thursby's account might properly be viewed as lending some encouragement to the use of compacts. Generally, however, his work contemplates the field and renders a status report; those in search of a method to deal with a particular problem of interstate cooperation must still decide whether or not their problem can best be solved through compacting.

The Founding Fathers, in a negative way, included in the Constitution the authority to compact. Subsection 3, Section 10, Article I of that document provides: "No State shall, without the consent of Congress, . . . enter into any agreement or compact with another State, or with a foreign power. . . ." This bare authorization, or perhaps more properly recognition, of compacts

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1. P. 1.

2. Law review consideration was stimulated by the landmark article of Frankfurter & Landis, *The Compact Clause of the Constitution*, 34 YALE L.J. 691 (1925). Treatises, however, are few. See ELY, OIL CONSERVATION THROUGH INTERSTATE AGREEMENT (1933); NATIONAL RESOURCES COMMITTEE, REGIONAL FACTORS IN NATIONAL PLANNING (1935); REPORT OF THE NEW YORK JOINT LEGISLATIVE COMMITTEE ON INTERSTATE COOPERATION (1948); ZIMMERMAN & WENDELL, THE INTERSTATE COMPACT SINCE 1925 (1951).

is all the legislation there is. The Constitution provided no procedure nor has any statute attempted to prescribe any guideposts.

The problems of recognizing areas lending themselves to compact, and of forging procedures to permit the ultimate realization of a compact have only recently received adequate attention. But what was once a little known, or at best a relatively unused, device has within the past thirty years outstripped the unusual. Prior to 1920 states had entered into some thirty-four compacts.[3] In the main, these involved only two states compacting in settlement of a boundary dispute. Since 1920 more than twice that number of compacts have been negotiated and ratified, and more are in the making. Now it is not unusual for six or more states having a common problem to enter into a compact. One effort—a reciprocal program for supervising parolees and probationers—has all forty-eight states as signatories. And crime control is not the only field which has taken its place with boundary disputes as subject matter for compacts. Compacts of the Twentieth Century have lent themselves to the reinforcement of uniform state laws. The contract obligation of a compact assures one state that another will not unilaterally destroy the benefits of uniform legislation on conservation and use of natural resources, such as fish and marine life, oil, and forests; on apportionment of waters of interstate streams for reclamation and other uses, and the related problem of pollution control; on control and improvement of navigation; on communications and utilities, such as bridges, tunnels and waterworks; on regional education; and most recently, on civil defense.

Mr. Thursby notes that the possibilities of resorting to the compact clause are apparently "unlimited."[4] Among fields he suggests for its application are interstate transportation (motor trucks and air traffic); child labor; the standardization of commodities, taxes (such as those on corporations, income, inheritance, gasoline, and liquor), and legislation (such as divorce laws); and the institution of programs for relief, public works, social security, unemployment insurance, drought and flood control, pest eradication, timber and game preservation, migratory farm labor, and the administration of unemployment compensation in our fluid labor market. The reader will recognize that federal action has been taken in some of these fields, and that agencies such as the Federal Power Commission, the Interstate Commerce Commission and the Civil Aeronautics Board, have authority and responsibility in others. Some discussion by the author of the conflict of overlapping areas in supra-state, sub-national problems would have increased the worth of his book.

What states may or may not compact about is usually a matter for Congress, because the Constitution admonishes that a state shall not enter into any agreement or compact with another state or with a foreign power without congressional assent. Mr. Thursby notes that the Constitution, in addition, absolutely prohibits states from entering into any treaty, alliance, or confederation, and speculates how an "agreement or compact" may be distin-

3. P. 124, n.3. See list set forth in 9 STATE GOVERNMENT 118-21 (1936).
4. P. 123.

guished from this prohibited category. He concludes that if the document is "political" in nature it might be categorized as a "treaty, alliance or confederation" and thus subject to the constitutional ban. Mr. Thursby also finds that certain compacts or agreements may not need the consent of Congress at all. In making a determination here, "political" once again appears crucial. If the proposal is "minor" or "local," that is, not "tending to the increase of political power in the states, which may encroach upon or interfere with the just supremacy of the United States,"[5] then it may not require congressional approval. For example, if in connection with a boundary dispute, states enter into formal bilateral or multilateral arrangements containing stipulations affecting the conduct or claims of the parties, it would appear that such arrangements would require congressional assent, express or implied, unless no important or valuable territory changes hands—territory which if transferred would alter the political potency of the parties.

Experience indicates that placing an interstate agreement before Congress entails little risk of rejection.[6] This procedure will obviate a possible future embarrassment of having a compact declared invalid for want of congressional assent required by the Constitution. If it is not submitted to Congress and its validity on that score is subsequently attacked, then one can only argue that it is not a "compact or agreement." If it is not either of these, and bearing in mind that States may not enter into treaties, alliances or confederations, even with congressional assent, then what label can one affix? Since they cannot count on labels, states would appear best advised to submit their formal "arrangements" to Congress.

The procedures by which compacts are evolved are left to the sponsors. The only guide is precedent, and it shows two chief methods of compacting. The first is by legislation enacted by one state which constitutes an offer to one or more other states to enact the same law. This method contemplates a later exchange of formal ratifications, and a submittal of the matter to Congress. The second method involves congressional authorization to negotiate as a first step, following which a federal representative is appointed to meet with state commissioners appointed by the respective states. Their work is then submitted to the state legislatures for ratification and, finally, to Congress. Authorization by the Congress to negotiate may not be essential, nor is the participation of a federal representative, but both features probably make the path of ultimate congressional consent an easier one. To encourage regional action, Congress has given blanket approval in advance to compacts relating to the control of crime, flood control, forest conservation, and tobacco production. Policywise, the matter of prior consent has been attacked; one such

5. Virginia v. Tennessee, 148 U.S. 503, 519 (1893).

6. Apparently the only compacts presented to the Federal Government which did not secure congressional consent were the Connecticut and Merrimac River valley flood control compacts of 1937. President Roosevelt threatened a veto on the ground that the proposals would deprive the Federal Government of primary authority over hydroelectric development on interstate streams. See ZIMMERMAN & WENDELL, *op. cit. supra* note 2, at 122-3.

effort by Congress in 1939 to authorize compacts among Atlantic Coast States with respect to fishing, without reserving to itself final approval, was vetoed.[7]

Congressional action notwithstanding, Mr. Thursby's research indicates little doubt that the federal courts may pass judgment on the meaning and validity of a compact. Original suits between states are of course exclusively within the jurisdiction of the Supreme Court. If states are not litigants, the authorities cited by the author[8] show that the compact, if not becoming a matter of federal law by virtue of express congressional assent, may involve a federal "title, right, privilege or immunity"; or may contain a question under the constitutional prohibition against the impairment of contracts; or bring in issue the rights of other states and the United States—all of which may qualify to put the matter eventually before the Supreme Court. With respect to lower courts, Mr. Thursby feels that removal to federal courts may be had on the ground that a state court, as an instrumentality of a compacting state, could be said to have an interest in the outcome of compact litigation sufficient to disqualify it. It would be interesting to see a test of this last conclusion.

As there are no rules as to how compacts shall be made, so there are no rules as to what they must contain. The author finds that several elements are commonly included: the legal basis of the compact, statement of purposes, goals sought to be achieved, the obligations assumed, definitions of terms, possibly a mode for alteration, and the method of termination or a termination date. Some compacts create supervisory commissions, *e.g.*, the Port of New York Authority. If a commission is not established, provision may be made for the settlement of disputes arising out of the compact. Mr. Thursby maintains that "[f]ailure to provide some means for development, revision, and continuing adjustment may well mean that the compact contains the seeds of its own destruction."[9]

Failure to make provision for adjustment, and the fact that state legislatures have been wary about compacting away a review by them of compact changes, have led some commentators to charge that the compact device, as the solution for any problem or dispute which cannot be settled "once and for all," is inflexible and therefore undesirable. The author feels that this obstacle can be surmounted by a provision for a termination or revision date.[10] But he tends to agree that the compact device "should be confined to appropriate subject matter" inasmuch as it "has proved unsatisfactory as a medium for continuous and progressive planning activity."[11] Compact negotiation may be a "slow and cumbersome process at best,"[12] and local political overtones may operate to make the forging of a workable compact difficult. On the other hand, as Mr. Thursby notes,[13] present day compacts are recognizing and providing for

7. P. 12.
8. Pp. 40-55.
9. P. 14.
10. P. 140.
11. *Ibid.*
12. P. 138.
13. P. 14.

continuing and flexible adjustment. Further imaginative developments in this area can be expected.

One should also realize that modern supra-state, sub-national problems are somewhat more involved than the old boundary disputes. Study, debate, and passage of time can be expected in the hammering out of an effective agreement which will serve the best interests of all concerned.

Mr. Thursby states that "the United States may become a party to a compact with one or more of its member States."[14] Although there may be little available information on this point, present or future compact participants would undoubtedly like to see some informed speculation on the rights and duties of the United States as a party, and on the question of compact enforcement as against the Federal Government. Mr. Thursby shows that states may not unilaterally impair the contractual obligation of a compact by executive or legislative action. But, could Congress "reverse" an unfavorable court ruling by legislating the destruction of a compact to which the United States was a party?

This reviewer hopes for continued scholarly inquiry into the compact field, such as that conducted by Mr. Thursby. Certainly the compact device is no panacea, but it is definitely established as a vehicle of state cooperation which has the desirable attributes of lasting quality and federal blessing. It gives states having common problems the opportunity to combine to resolve them, either once and for all or under the direction of an agency established by the states. As the confidence of states grows with their ability to solve their problems by compact, so will the number and the ingenuity of the compacts they produce.

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THE FEDERAL LOYALTY-SECURITY PROGRAM. By Eleanor Bontecou. Ithaca: Cornell University Press, 1953. Pp. xi, 377. $5.00.

UNDER the auspices of a grant from the Rockefeller Foundation to Cornell University, Miss Eleanor Bontecou has written an exhaustive study of the entire Federal Government's Loyalty-Security Program. I introduce her book in these words, since, in a way, they seem to give an apt idea of its content; and in conjunction with Miss Bontecou's own commendably frank statement that her study is not, and could not be an unbiased one, they also strike the keynote of her presentation.

Primarily, and in its best expression, the book is documentary. With meticulous and almost unerring accuracy, it traces the genesis, development, mechanism, purposes, and prognosticated results of the Program. It is replete with appendices, footnote references to court decisions as well as to Loyalty Board cases, articles, speeches, congressional reports, and most other available sources of information. The book traces the development of the program

14. P. 51.

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