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# Nonsupport Actions and the Uniform Reciprocal Enforcement Support Act

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# NONSUPPORT ACTIONS AND THE UNIFORM RECIPROCAL ENFORCEMENT SUPPORT ACT†

The increasing mobility of our population, coupled with a growing tendency to disregard familial obligations, has created a new impetus for a so ution to an old problem—forcing a breadwinner to support his or her legal dependents. The present problem of family desertion has reached unprecedented levels with staggering costs to the community. In June, 1953, approximately 564,308 families were receiving some $605,096,000 per year in public assistance throughout the United States.[1] These statistics portray not only a social maladjustment but also the failure of legal techniques to solve the problems created by a system of multiple state sovereignties. Interstate desertion is an aggravated example of the failure of the concepts of personal jurisdiction, full faith and credit, comity and reciprocity to resolve the problem of mobility beyond political boundaries.

If the deserter has not yet acquired legal domicil at his new location, the dependent may, apart from remedies available under the new reciprocal acts to be discussed later, petition the home forum to exercise its personal jurisdiction over the defendant based on domicil.[2] But even if the basis for personal jurisdiction is valid, the court is powerless to enforce its order against an absentee party. Taking this order to the state where the deserter can be found, the petitioner will find it entitled to full faith and credit only on past accrued amounts not subject to modification.[3] Full faith and credit does not offer any supervisory assurance of future payments, without which there is nothing to restrain a man who has already demonstrated his disposition to walk out on his legal obligations

† Portions of this comment are reprinted from Comment, *The New Uniform Support of Dependents Act*, 45 ILL. L. REV. 252 (1950).

[1] BOOK OF THE STATES 312 (1954–55). Compare the figures for 1948, when approximately 223,000 families were receiving some $178.000.000 per year in public assistance throughout the United States. REPORT OF THE FEDERAL SECURITY AGENCY, SOCIAL SECURITY ADMINISTRATION, BUREAU OF PUBLIC ASSISTANCE (June, 1948).

[2] Milliken v. Meyer, 311 U.S. 457 (1940); International Shoe Co. v. Washington, 326 U.S. 310 (1943). GOODRICH, CONFLICT OF LAWS 428 (3d ed. 1949). In addition to judicially declared safeguards relative to the subjecting of a state's own domiciliary to personal jurisdiction upon reasonable notice served outside the boundaries of the state, a number of states have procedural provisions which permit such a course of action. See, *e.g.*, AMENDED ILL. CIV. PRACTICE ACT §§ 16, 17 (1956). For an opinion sustaining the constitutionality of a similar provision, see, Allen v. Superior Court, 41 Cal. 2d 306, 259 P. 2d 905 (1953). A recent commentary on the Illinois Act as amended, cites sections 16 and 17, dealing with personal service on domiciliaries without the state, as being likely to cut relief roles. Chicago Daily Tribune, Aug. 8, 1955, p. 12, col. 3.

[3] Sistaire v. Sistaire, 218 U.S. 1 (1910); Lynde v. Lynde, 181 U.S. 183 (1901); Barber v. Barber, 62 How. 582 (U.S. 1858); *cf.* Yarborough v. Yarborough, 290 U.S. 202 (1933). GOODRICH, CONFLICT OF LAWS 428 (3d ed. 1949).

from doing so again. An alternative to proceeding on a prior judgment is available in the criminal indictment for failure to support followed by a request for extradition of the deserter to the home state of the dependent entitled to support.[4] However, in addition to being a costly burden upon the home state, even if accomplished, extradition might well uproot the deserter from a source of income in the asylum state, and result either in his imprisonment or his return to an environment from which he has already indicated a determination to escape.[5] Any practical prospects of immediate support for dependents may be so negligible as to dissuade the home state from initiating extradition procedures at all. Furthermore, the deserter may have incurred additional obligations of support in the asylum state by reason of a second marriage in which case the authorities in that state might be hard put in making the decision of whether or not to honor the request for extradition.[6]

Two alternatives, also apart from the recent legislation, present possible solutions to the problem. There is hope that the deserter may be found in one of a minority of states which lend continuing equity supervision to the enforcement of foreign support decrees.[7] Or, the deserter may be located in one of the seven states which have enacted the Uniform Enforcement of Foreign Judgments Act,[8] in which case a prior judgment may be registered and enforced. Despite their apparent broadness, remedies previously used for the dilemma of interstate desertion have proved to be woefully inadequate, thus necessitating an enlightened approach by the states.

Confronted with this pressing social problem, fifty-two jurisdictions[9] have, within the past

[4] Extradition for desertion is facilitated by the Uniform Desertion and Nonsupport Act in 21 states. 10 U.L.A. 6 (Supp. 1954). In addition, extradition may be possible under the Uniform Criminal Extradition Act, in force in 40 states. 9 U.L.A. 376 (Supp. 1954). THE UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT, as amended (1952), §§ 5 and 6, provides for "Criminal Enforcement" of support duties designed to supplement the Civil Enforcement procedures available under the Act as a whole. See text at note 50, *infra*.

[5] Comment, *The Uniform Enforcement of Support Act in Massachusetts*, 33 B.U.L. REV. 217 at 218 (1953). "The solution to the problem [of support of dependents] via criminal enforcement runs into a paradox; *viz.*, the punishment, which the runaway husband often merits, greatly intensifies the evil which it is intended to alleviate." *Id.* at 219.

[6] Although in the normal course of events the governor of the responding state will honor a request for extradition without examining the merits of any defense to the criminal indictment sworn out in the initiating state, it is not inconceivable that the governor of the responding state may refuse to surrender a citizen of his state for failure to support dependents in another state if the net result of his action will be to add two or three persons to his own relief rolls.

[7] A growing number of states are now, for reasons based on comity and public policy, meeting the national problem of deserted dependents through equitable enforcement of alimony decrees and support orders. See, *e.g.*, Cummings v. Cummings, 97 Cal. App. 144, 275 Pac. 245 (1929) (ordering payment of weekly sums as they would thereafter come due under New York decree); German v. German, 122 Conn. 155, 188 Atl. 429 (1936) (enforcing equitably a New York decree even without local statutory authority); Rube v. Rube, 313 Ill. App. 108, 39 N.E. 2d 379 (1942) (ordering defendant to continue weekly payments on a Nevada decree with assurance that Illinois would recognize any subsequent modification); Ostrander v. Ostrander, 190 Minn. 547, 252 N.W. 449 (1934) (applying local statute granting equitable remedies for the enforcement of local alimony and support orders to a South Dakota alimony and support order); Shibley v. Shibley, 181 Wash. 166, 42 P.2d 446 (1935) (equitably enforcing of a California decree on the basis of comity). See Scoles, *Enforcement of Foreign "Non-Final" Alimony and Support Orders*, 53 COLUM. L. REV. 817 (1953); Yntema, *The Enforcement of Foreign Judgments in Anglo-American Law*, 33 MICH. L. REV. 1129, 1165 (1935).

[8] Arkansas, Illinois, Missouri, Nebraska, Washington, Wisconsin and Wyoming had passed the UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT as of Dec. 1, 1954. 9 U.L.A. 376 (Supp. 1954).

[9] As of Sept. 1, 1955 all 48 states, Alaska, Hawaii, Puerto Rico and the Virgin Islands had enacted some form of reciprocal legislation pertaining to the interstate enforcement of support duties. The District of Columbia had not as yet passed any reciprocal legislation.

seven years, enacted imaginative and enlightened reciprocal enforcement of support acts.[10] Schematically the reciprocal acts provide a procedural device intended primarily to supplement pre-existing remedies under the common or statutory law of the enacting state.[11] They present, for the enforcement of support duties, an additional remedy not intended to abrogate or affect in any way presently existing remedies within the enacting state.[12]

The Uniform Reciprocal Enforcement of Support Act[13] provides that the action will be initiated either in the state where the obligee is present or in the state which has been furnishing support to an obligee.[14] A simplified petition or complaint[15] is filed in the proper court[16] of the initiating state either by a private attorney or by an official designated to represent persons utilizing the Act.[17] The judge in

[10] There are two basic acts in force throughout the United States. The earliest act is the UNIFORM SUPPORT OF DEPENDENTS LAW (hereafter cited as USDL), originally enacted in New York in 1948 and presently in force in Georgia, Illinois, Iowa, New York and the Virgin Islands. In 1950 the National Conference of Commissioners on Uniform State Laws promulgated the UNIFORM RECIPROCAL ENFORCEMENT ACT (hereafter cited as URES) which was later amended in 1952 (URESA). In December, 1954, twelve jurisdictions still had in force the original Act while thirty-three jurisdictions had adopted the amended version, Nevada enacting the amended Act in March, 1955. All citations to section numbers will refer to URESA, which may be found in 9A U.L.A. 58 *et.seq.* (Supp. 1954).

[11] Considerable confusion is engendered by the question of whether or not sections 2(6), 4 and 7 have effected a change in the substantive law of support. In the form in which originally promulgated, § 7 purported to give the obligee, at the time of the filing of the petition in the initiating state, an election as to whether to invoke the substantive law of the initiating state or the substantive law of the responding state. In effect, if W filed a petition or complaint in state X for transmittal to state Y where H had taken refuge, W would be permitted to elect to proceed either under the substantive law of state X or that of state Y. However, the 1952 amendments then omitted the phrase "at the election of the obligee" together with some other wording under which an election was permitted. The intent of the Commissioners was to insure that the obligee would not be accorded an "absolute right to choose the applicable law as her interest might dictate", but rather, that the obligee have only "the presumptive right to have her own law applied until it is shown that the obligor was in another state, in which case the law of that other state would be applied automatically. . . ." This aspect of URESA is extensively discussed in Ehrenzweig, *Interstate Recognition of Support Duties*, 42 CALIF. L. REV. 382 (1954). See text at note 35, *infra*.

[12] By this it is meant that so long as the obligor remains within his home state, remedies existing there for the enforcement of support duties within that state will normally be used. Should the obligor, however, go beyond the boundaries of the state, the reciprocal Act would then be available to provide for enforcement of support duties.

[13] Since the Uniform Reciprocal Enforcement of Support Act (URESA) is the most widely adopted of the reciprocal statutes, it will be used to illustrate the general procedure under this type of legislation.

[14] Section 9 of URESA provides for the filing of the petition. Section 8 provides that if the state, or a political subdivision thereof, has been providing support to the obligee, it then has the same right as the obligee to invoke the machinery of the Act to obtain reimbursement, or, if need be, continuing support payments.

[15] Section 10 describes the form of the petition. Basically, the petition (or complaint under some Acts, the phraseology varying from state as dictated by the organization of the judiciary) shows the status of the obligee, the alleged basis for entitlement to support, a copy of the Act of the initiating state attached thereto, alleges a failure to support, the location of the obligor or his property insofar as is known and prays for an order support "as shall be deemed to be fair and reasonable." Section 18 requires, in the event the court in the responding state is unable to proceed due to some deficiency in the petition, that the responding court shall inform the initiating court of this fact, proceeding, meanwhile, on its own initiative to trace the obligor or his property without dismissing the pending case.

[16] Each individual state statute designates the court which has jurisdiction over proceedings instituted under the Act. § 2(4).

[17] Again, the petitioner's representative is designated in accordance with local conditions. More often than not he is either the district attorney or the prosecuting attorney. He is empowered to act as the petitioner's representative upon request of the court or any other designated official or agency. §11.

the initiating state examines the petition and if he is reasonably satisfied that a duty of support is owing, he sends to the designated court of the responding state: (1) three copies of the petition; (2) a certificate executed by him stating that the verified petition has been examined, that the obligor is believed to be in the responding state (giving his address), that, in the opinion of the court, the obligee is entitled to support in a certain amount as shown by facts appearing in the petition; and, (3) a copy of the act in force in the initiating state.[18] Upon receipt of the enumerated documents, the responding state court dockets the case, informs the designated official charged with the duty of representing the petitioner, sets a time and place for a hearing, and takes appropriate action to obtain jurisdiction over the person, or property, of the obligor.[19] Should the obligor-defendant refuse to submit to the jurisdiction of the court in the responding state, extradition proceedings may be commenced; however, if the defendant does submit to the jurisdiction of the responding court and complies with its support order, he shall be relieved of extradition.[20]

Assuming that the obligor has submitted to the jurisdiction of the responding court, the actual trial of the case commences. As a practical matter the obligor will more often than not admit the duty of support, contesting primarily, the amount of support requested. The proceedings are either at law or in equity, in accordance with the law of the responding state[21] and the rules of evidence in force in the court of the responding state govern the taking of evidence, save that the husband-wife privilege is inapplicable.[22] Since the obligee is not required to make a personal appearance, all evidence is *ex parte*. If the obligor denies any allegation of the petition, the denial is transmitted back to the initiating state court where proofs are taken for the obligee, after which a certified transcript of the proof is transmitted to the court conducting the hearing. The obligor is then entitled to introduce evidence and cross-examine the obligee and her witnesses by means of deposition, affidavit or oral examination. This process continues until all relevant evidence has been introduced, at which time the court in the responding state renders a decision and enters an appropriate order.[23] A copy of any support order decreed by the responding court is then transmitted to the court in the initiating state.[24] Furthermore, in the enforcement of its order, the responding court is vested with normal supervisory powers, such as requiring the posting of a cash deposit or recognizance bond, specifying the time and place of payments and punishing the obligor for a failure to pay.[25] The mechanical aspects of the actual payments are: (1) payment by the obligor, pursuant to the order, to the designated agency (clerk of court, probation department, welfare agency, etc.); (2) transmittal to the court of the initiating state; and (3) receipt in the initiating state by the designated agency and subsequent disbursement to the obligee.[26]

Despite the fact that the URESA has been in effect in the great majority of states for more than five years, and its forerunner, the

[18] §13. At the time of filing of the petition, whether the court be acting either as the initiating or responding court, the judge may, in his discretion, waive all costs and fees for either one or both of the parties. §14. See text at note 61, *infra*.

[19] §17. See note 15, *supra*, dealing with the further duty of the responding court in the event that jurisdiction over the obligor cannot be readily obtained due to deficiencies in the petition or information contained therein.

If there is reason to believe that the obligor will flee the jurisdiction, the responding court is empowered to obtain jurisdiction over him by appropriate process, *e.g.*, arrest. This action is taken by the responding court, either at the request of the initiating court or of its own volition. § 15.

[20] §§5 and 6. See text at note 50, *infra*.

[21] §19. As to whether the proceedings are at law or in equity, see Warren v. Warren, 204 Md. 467, 105 A.2d 488 (1954).

[22] §§25 and 26.

[23] §20.

[24] §21.

[25] Such punishment is meted out in accordance with local laws dealing with contempt of court. §22

[26] §§23 and 24.

Uniform Support of Dependents Law (USDL), has been in operation since two years prior to that time, there seems to have been a minimum amount of litigation at the appellate level. However, a comparatively recent compilation of facts and figures dealing with the operation of the reciprocal acts at the trial level, discloses that substantial progress is being made as state officials gradually become more familiar with the operation of the two state procedure.[27] However, of utmost importance is the fact that as each state adopted one of the "uniform" acts, more often than not local amendments were introduced prior to passage. Thus it becomes mandatory practice for the local petitioner's representative to familiarize himself not only with his own state's statute, but also with that of the other state.[28] This qualification also applies to this comment, which deals primarily with the URESA unless reference is made to specific legislation other than the URESA.

## Problems Arising under the Reciprocal Acts: Resolved and Unresolved by Recent Decisions[29]

### *URESA Not a Compact*

The United States Supreme Court laid down the test as to whether or not a given act constitutes a compact in violation of the Constitution[30] as follows: "... [T]he formation of any combination tending to the increase of political power in the states [constitutes a compact]...."[31] An examination of any of the recent acts pertaining to non-support reveals the spuriousness of an objection to them on the ground that they are a compact in violation of the Constitution. Each state is free to repeal its act at any time. Initial passage is not contingent upon, nor pursuant to, an agreement with another state, nor does enactment of reciprocal support legislation increase the political power of the state. Furthermore, even if it were assumed that the URESA were impliedly a compact, better reasoned opinions support the conclusion that compacts which do not increase or decrease political power are merely voidable and that

[27] Comment, *The Uniform Reciprocal Enforcement of Support Act*, 3 KAN. L. REV. 44 (1954). For instance, in 1953, $249,068.12 was collected in actions commenced in New York City, and, in the city itself, $224,400.50 was collected pursuant to actions commenced in other states. The total of $473,468.62 compares favorably with a figure of $219,044.26 amassed in 1952. *Id.* at 55. The comment concludes, in effect, that although the consensus of opinion is that the reciprocal legislation is no panacea to the problem of non-support, it does provide an inexpensive and practical means for crossing state lines in pursuit of the wayfaring father.

[28] Local statutes designate the State Information Agency. §16. If the local statute was passed prior to the 1952 amendments to the Act as promulgated by the Commissioners on Uniform State Laws, it may omit this section. If this is the case, then the name of the State Information Agency is available upon request from The Council of State Governments, 1313 East 60th Street, Chicago 37, Illinois, which publishes a Manual of Procedure for the use of local officials, available through State Information Agencies. A new Manual is now being published and will be completed in the Fall of 1955. Since it will be primarily an up-dating of the 1953 edition, it can be expected to contain excerpts from laws of the various states, lists of State Information Agencies, lists of court and Petitioner's Representatives as designated by local acts, sample forms for petitions, certificates and proofs of testimony, and other valuable materials. It is supplemented from time to time by mimeographed materials, including recent decisions throughout the United States. Again, all these materials are made available through State Information Agencies and the Council of State Governments should not be contacted unless the information cannot be obtained at the state level.

[29] In order to facilitate the discussion of the various objections which have been voiced against the reciprocal acts, the remaining portion of the comment will follow, as much as is possible, the normal course of procedure between two states. For a detailed discussion of virtually every relevant case, see Annot. 42 A.L.R.2d 768 (1955).

[30] U.S. CONST. art. I §3 cl. 10.

[31] Virginia v. Tennessee, 148 U.S. 503 (1892).

congress may consent by silence or acquiescence.[32]

*Substantially Similar Reciprocal Law*

In order to prosecute effectively a petition for support under the statute in force in the initiating state, it is necessary that the responding state possess an act "substantially similar" to that of the initiating state.[33] This requirement has given rise to problems primarily where an interplay between the URESA and the USDL occurs. If the acts are not "substantially similar", the obligor is in a position to contest the jurisdiction of the responding court under section 17 of the URESA on the ground that the initiating state does not possess a "substantially similar" act. However, courts have been uniformly liberal in finding that acts of a like nature or kind, whether couched in identical language with the local act or not, qualify as reciprocal laws.[34] It would seem that under any of the statutes presently in force in the several states, this contention would be without merit. Since procedures prescribed are nearly identical, and since the basic intent and purpose of all the acts is the same, it is doubtful whether such an argument would be accepted by any court.

*Duty of Support and Choice of Law*

Foremost among the questions arising at this point is whether the petitioner in the initiating state has a right to the support sought. Understandably, this problem, which may be classified as one of choice of law, appears to engender the greatest amount of confusion over the new reciprocal legislation. Specifically, this is the question of which state law controls. Is it the law of the initiating state where the obligee resides, the law of the responding state where the obligor resides or the law of some third state where the failure to support first occurred? Can prior support decrees be enforced and can they be interposed as a defense to a proceeding under the Act? Does it make any difference if the amount is accrued on the prior decree, or if the decree is subject to modification? These questions illustrate only a portion of the problems in this area, most of which are as yet unresolved and many of which will be answered differently under each state act because of local modifications or because different versions of the act are in force.

Keeping in mind the fact that one of the basic objectives of the URESA is to ease the burden on state welfare funds, it is curious to note that on occasion a public policy of the forum has been invoked to override this objective. For example, the New York courts have taken the position, under their reciprocal legislation (USDL),[35] that whether they are acting as the initiating[36] or the responding[37] state they are without jurisdiction to hear the case unless the petitioner is entitled to support under the substantive law of New York.[38]

[32] Duncan v. Smith, 262 S.W.2d (Ky. 1953); Landes v. Landes, 138 N.Y.S. 2d 442 (N.Y. Dom. Rel.Ct. 1955); Bruce, *The Compacts and Agreements of the States With One Another and With Foreign Powers*, 2 MINN. L. REV. 500 (1939); Frankfurter and Landis *The Compact Clause of the Constitution* 34 YALE L.J. 685 (1925); Lee, *Alabama's Reciprocal Nonsupport Legislation*, 2 ALA. L. REV. 228 (1953).

[33] §2(1).

[34] Commonwealth *ex rel.* Shaffer v. Shaffer, 175 Pa.Super. 100, 103 A.2d 430 (1954); Florence v. Florence, 136 N.Y.S.2d 847 (N.Y. Children's Ct. 1955); Hodges v. Hodges, 202 Misc. 71, 108 N.Y.S. 2d 286 (N.Y.Dom.Rel.Ct. 1951); Smith v. Smith, 281 P. 2d 274 (Cal.App. 1955).

[35] See note 10 *supra*.

[36] Vincenza v. Vincenza, 97 Misc. 1027, 98 N.Y.S. 2d 470 (1950). The court here held that since the *petitioner* (obligee) was not entited to support under the substantive law of New York, that it was without authority to certify the petition to the responding state court.

[37] Ross v. Ross, 136 N.Y.S.2d 23 (N.Y. Children's Ct. 1954). Basing its decision on the *Vincenza* case, the court held that it was without jurisdiction to issue an order of support acting as the *responding* state. See also, Landes v. Landes, 138 N.Y.S. 2d 442 (N.Y. Dom.Rel.Ct. 1955).

[38] Although the decision in the *Vincenza* case is defensible, the position taken by the court in *Ross v. Ross* does not seem to be. The *Vincenza* case is distinguishable from the *Ross* case in that in the

Under the original Uniform Reciprocal Enforcement of Support Act (URES), the law governing the duty of support was to be elected by the obligee, and was defined as being any duty of support imposable under the law of the state where the obligee was residing when the failure to support commenced, without regard to the law prevailing at the respondent-obligor's residence or in the responding state. In *Commonwealth v. Mong*,[39] however, the Ohio Supreme Court held that this provision did not authorize an obligee to proceed under the substantive law of another state when the Ohio court was exercising jurisdiction as the responding state.[40] In jurisdictions where the URESA prevails without modification, the obligor is liable for support under the laws of the state in which he was present during the period for which support is sought—whether the duty of support is presently imposed by the responding state, or is merely imposable, and regardless of how the duty arises.[41] Section 7, as presently worded, will give relief to the obligee if the laws of the responding state recognize a duty of support, *or* if the laws of the state in which the obligor was present for the period for which support is sought impose such a duty.[41a] The basic defect is that such a provision will probably encourage the deserting obligor to seek a jurisdiction which has support laws most favorable to him.

Perhaps the best solution to this problem of choice of law under the reciprocal acts is that set forth in a recent article.[42] It is there submitted, basically, that the rule ought to be that the law of the state of the *obligee's* present domicil control the duty of support, subject to an exception exercisable in the discretion of the responding court that the laws of the initiating (obligee's) state will not be enforced under the reciprocal act where it is shown that the dependent moved there solely for the purpose of obtaining the benefit of these laws.[43]

### *Delegation of Legislative Power: Abdication of Judicial Function*

Several objections have been raised about the interrelationship of the courts of two states

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former it was New York which had the greatest interest in having the petitioner-resident obtain support in order that he might be stricken from the relief rolls. In the *Ross* situation it was an out of state obligee, entitled to support under the laws of that state (California), who was denied relief. Under such circumstances the public policy of the responding forum ought not be permitted to override the duty of support owing under the law of the petitoning state where the obligee is residing.

[39] 160 Ohio St. 455, 117 N.E. 2d 32 (1954). Notes, 67 HARV. L. REV. 1435 (1954); 29 N.Y.U.L. REV. 1480 (1950). See also, Ehrenzweig, *supra* note 11, at 387.

[40] On its face this decision would seem to be manifestly incorrect. However, the facts in the case show that it was the *obligee* who had left the obligor. Thus, insofar as the case turned on the public policy argument advanced by the court, the decision would not seem to be objectionable. But the direct attack by the court upon the URES does not seem justified under the circumstances. A close construction of the clause in effect under the 1950 URES reveals that the duty of support arises at the time the obligor enters into a state recognizing a duty of support. On this basis the *Mong* case can be justified, since Ohio did not recognize a duty of support by a son to a deserting parent.

[41] §2(6). According to the Commissioners on Uniform State Laws, the redrafting of §7 was made in accordance with a recommendation of Dean Stimson based on his analysis of Commonwealth v. Acker, 197 Mass. 91, 83 N.E. 312 (1908), which he interpreted as standing for the proposition that "the applicable law is the law to which the person alleged to be under a duty was subject at the significant time and not the law to which the person claiming the right was subject." Stimson, *Simplifying the Conflict of Laws: A Bill Proposed* for Enactment by the Congress, 36 A.B.A.J. 1003, 1005 (1950).

[41a] See Commonwealth v. Jacobs, 24 U.S.L. Week 2190 (Phila. Mun. Ct. Pa. Oct. 12, 1955).

[42] Ehrenzeig, *supra.* note 11.

[43] This recommended approach appears to follow the basic purposes of the reciprocal laws more closely than any other. Its weakness would seem to lie in its failure to take into account a certain tenacity of each individual state judiciary to cling to local rules governing the choice of law.

participating together in the disposition of a single case in an integrated proceeding. Thus, in *Duncan v. Smith*,[44] it was argued that the URES purported to give Kentucky courts jurisdiction outside the state, and, conversely, gave other state courts jurisdiction within the territorial limits of Kentucky. Or, as was also argued in the *Duncan* case, the objection may be that the Act is invalid on the ground that since it has no effect until another legislature acts, it results, in effect, in the delegation of legislative power by one state to the legislature of a second state. This last objection was convincingly disposed of in the *Duncan* case.[45] The former requires but little analysis to expose its speciousness. Even a cursory examination of the URESA discloses that neither of the two courts involved is acting by virtue of judicial power delegated to it by a foreign legislature; each is acting under the mandate of its own legislative body.[46] That this is true is apparent from the fact that the procedure does not become operative within a jurisdiction until its own legislature has acted.

The most far-reaching complaint that can be made is that the legislation requires the responding *court* to abdicate judicial control over some of the *procedure* in a case before it. But, a deciding court sitting in the responding state with the obligor-defendant before it has the power to decide and dispose of the case and has not abdicated that power. It might be argued that since the evidence-taking body (in this case the initiating court hearing evidence proffered by the obligee) does not serve as an extended arm of the deciding court, any decision based on the evidence adduced before the initiating court is not being taken subject to the laws of the state in which the responding court is sitting. This distinction appears to be one of form rather than substance, since the taking of evidence in a foreign court finds sanction in the time-honored practice of letters rogatory. Here, the law and process utilized is that of the foreign jurisdiction which honors the letters rogatory.[47]

[44] 262 S.W.2d 373 (Ky. 1953).

[45] The court held, in effect, that a state legislature may enact a law to take effect when certain conditions arise. Although these conditions may be created by the legislature of another state, they are prescribed by the local legislature and if they never arise the act remains quiescent. *Duncan v. Smith*, 262 S.W.2d 373 (Ky. 1953).

[46] The tenor of the argument at this juncture is that the legislature of one state purports to give extraterritorial jurisdiction to the courts of both its own state and those of a state having substantially similar reciprocal legislation. Thus, for example, an obligor would contend that the Act in his state State A, purports to give the courts in the initiating state, State B, jurisdiction over him. And that the Act in State B purports to give its courts extraterritorial jurisdiction over him even though he is no longer, or never has been, domiciled in State B. The answer to such an objection is clear. The URESA merely provides for the exercise of powers by the courts of the state in which it is in force. An initiating court merely acts as an agent of convenience for the court of the responding state. It is the responding court which takes jurisdiction over the obligor who is located therein; jurisdiction being exercised under the provisions of the Act in the responding state. Furthermore, there is no constitutional requirement that the obligee-petitioner be physically present in the responding state. Duncan v. Smith, 262 S.W.3d 373 (Ky. 1953). Smith v. Smith, 125 Cal.App.2d 154, 270 P.2d 613 (1954); Whittlesey v. Bellah, 278 P.2d 511 (Cal.App. 1955).

[47] Letters rogatory are issued to a foreign court, asking it to compel a desired witness to appear before it and give testimony necessary for the complete administration of justice in a cause to be decided by the requesting forum. The Signe. 37 F.Supp. 819 (E.D.La. 1941). The law and process used is that of the foreign jurisdiction which honors the letters rogatory. Note, *Reciprocity for Letters Rogatory Under the Judicial Code*, 58 YALE L.J. 1193 (1949). The power of courts to issue, and to honor and execute letters rogatory, is recognized by overwhelming authority as an inherently proper judicial activity. Annots. 9 A.L.R. 966 (1920), 108 A.L.R. 384 (1937). The analogy afforded by reference to the use of letters rogatory not only demonstrates that utilization of a foreign court does not constitute an invalid delegation or abdication of judicial function, but also serves to demonstrate that there is nothing inherently offensive in allowing the courts of two sovereigns to participate in the disposition of a single case.

Yet, as to the initiating court, which has received the petition and evidence accompanying it and forwarded these on to the responding court for decision, it might still be contended that there has been an undesirable abdication of its judicial power to decide a case brought before it. In the majority of cases this will not be true since the initiating court lacks jurisdiction over the obligor-defendant in the first instance. In cases in which jurisdiction over the person of the obligor could have been obtained under concepts of domicil and substituted service,[48] the Act establishes an alternate remedy and expressly reserves existing remedies if resort to them is deemed preferable.[49] No constraint requiring abdication of judicial function is created by giving the obligee the choice of a new remedial procedure.

*Criminal Enforcement via Extradition*

Criminal enforcement provisions included in the URESA are designed to stimulate voluntary submission to the civil enforcement procedures of the Act.[50] Section 5, which constitutes a slight departure from the Uniform Criminal Extradition Act,[51] provides for the extradition of a person for the crime of non-support, notwithstanding the fact that he was not present in the demanding state at the time of the commission of the crime charged. The constitutionality of this provision has been discussed at length, both in relation to the civil enforcement sections of the Act and to its departure from prior statutory rules governing extradition,[52] and has been upheld in a number of state decisions.[53] More difficult questions are encountered, however, in an examination of its companion section (§6). This section purports to relieve an obligor from extradition upon his submission to the jurisdiction of the court of the responding state. As uniformly construed,[54] the section contemplates that a civil proceeding will have been commenced in the initiating state before the obligor can submit to the jurisdiction of the responding court and request that an order of support be entered. The anomaly created by this situation, which permits extradition under the Act in lieu of civil enforcement, is that the practical results sought to be achieved will be frustrated in cases either where the initiating state has not enacted the section or whether the obligee is motivated by a feeling of vindictiveness and refuses to file a petition for support. It is submitted that the Minnesota Act,[55] in effect permitting extradition only upon a failure of the obligor to pay, is the solution to this dilemma and ought to be adopted as a standard.

*Due Process: Equal Protection: Privileges and Immunities*

Any judgment rendered under the URESA is based upon actual notice and personal jurisdiction. There is a fair hearing, and, as has been demonstrated, no denial of due process of law results by the taking of *ex parte* evidence in the initiating court for use in the responding

[48] See note 2 *supra*.

[49] §3.

[50] 9A U.L.A. 63 (Supp. 1954).

[51] 9 U.L.A. 192 §6. As to the constitutionality of this section, see, *Ex parte* Morgan, 78 F.Supp. 756 (S.D.Cal. 1948).

[52] Brockelbank, *Is the Uniform Reciprocal Enforcement of Support Act Constitutional?* 31 ORE. L. REV. 97 (1952); Tasker, *Uniform Reciprocal Enforcement of Support Law Like Reciprocal Enforcement of Support Law*, 1 So. TEXAS L.J. 144 (1954); Lee, *supra* note 31, at 246.

[53] *Ex parte* Floyd, 43 Cal. 2d 379, 273 P.2d 820 (1954); Harrison v. State, 77 S.2d 384 (Ala. App. 1954); *Ex parte* Susman, 116 Cal. App. 2d 798, 254 P.2d 161 (1953). See also, 23 OPS CAL. ATT'Y GEN. 33 (1954); OPS. OHIO ATT'Y GEN. 408 (1953).

[54] *Ex parte* Floyd, 43 Cal. App. 2d 379, 273 P.2d 820 (1954); 23 OPS. CAL. ATT'Y. GEN. 33 (1954); OPS. OHIO ATT'Y. GEN. 408 (1953). See also, NAT'L. ASSOC. OF ATTY'S. GEN., CONFERENCE PROCEEDINGS 140, (1953).

[55] "Subd. 4, SURRENDER. The governor of this state shall neither demand nor grant the surrender of an obligor subject to this section who submits to the jurisdiction of the court of a responding state

(1) so long as the obligor complies with an order of that court for support, or

(2) in the absence of an order for support, while a proceeding for support is pending in that court." MINN. STAT. §§518.41–518 (1953).

court.[56] The determination by the initiating court, that the facts in the petition show a duty of support, does not bind the responding court; the obligor is free to controvert any facts alleged in the petition.[57] Moreover, there is no denial of due process of law by reason of either an alleged withdrawl of the right to cross-examination or confrontration. Cross-examination is provided by an exercise of the court's inherent power to provide appropriate procedures for the performance of its judicial functions; testimony is taken either by affidavit, deposition or oral examination.[58] There is no guarantee of confrontation in a civil proceeding,[59] nor does the due process clause guarantee any particular form of procedure in a civil action before a state court.[60]

The argument that the URESA denies the obligor equal protection of the laws by allowing waiver of costs and fees,[61] either in the initiating or responding court, has been rejected a number of times.[62] The contention that the Act violates the privileges and immunities clause of the Constitution has likewise received short shrift.[63] An additional objection to the Act on the ground that it is a quasi-criminal statute[64] without the attendant safeguards has been rejected on the basis that the power to punish for a failure to comply with the order of the court is vested in every court in order to facilitate enforcement of its decrees and orders.[65]

## Conclusion

To look upon the Uniform Reciprocal Enforcement of Support Act as merely one more attempt to meet the legal problems of family desertion is to interpret its significance too narrowly. In a broader sense, it is a visionary effort to solve the problems of multiple state sovereignties in a highly mobilized society where the general doctrines of personal jurisdiction, full faith and credit and comity have failed to give practical effect to legal rights. Wherever these problems arise the reciprocal machinery herein described offers a hopeful solution. The new Act extends an effective remedy to deserted dependents who have in the past remained hopelessly mired in a morass of inadequate legal remedies. It also lends encouragement to harrassed state welfare officials who face a growing list of dependent children and a growing public impatience toward snowballing tax loads.

Dedicated, as we are, to preserving the system of multiple sovereignties with its

[56] One recent opinion may have gone further than intended. In Whittlesey v. Bellah, 278 P.2d 511 (Cal.App. 1955) it was stated that ". . . the courts of this state do not abdicate any of their judicial power in deciding this sort of a proceeding.

"Therefore, the amount of support money required . . . is entirely at large in this state. *We are not bound* by the recommendation of the New York court, or *by the proof for the minor presented in that court.*" *Id.* at 513. (emphasis added).

[57] Brockelbank, *supra* note 49 at 108.

[58] Smith v. Smith, 125 Cal.App.2d 154, 270 P.613, 623 (1954). Lee, *supra* note 31, at 244.

[59] Smith v. Smith, 125 Cal. App.2d 154, 270 P.2d 613 (1954); Freeman v. Freeman, 266 La.410, 76 S.2d 414 (1954). As to the issue of whether a proceeding under URESA is legal or equitable and whether or not there is a right to a jury trial in the responding court, see, Warren v. Warren, 204 Md. 467, 105 A.2d 488 (1954).

[60] Smith v. Smith, 125 Cal.App.2d 154, 270 P.2d 613 (1954).

[61] §14. See Lee *supra* note 31, at 239. Approximately 42 jurisdictions now permit the waiver of fees in the responding court.

[62] Duncan v. Smith, 262 S.W.2d 373 (Ky. 1954); Smith v. Smith, 125 Cal.App. 2d 154, 270 P.2d 613 (1954); Landes v. Landes, 138 N.Y.S.2d 442 (N.Y. Dom. Rel. Ct. 1955). The argument is to the effect that by permitting the obligee to proceed without paying a fee while requiring the obligor to do so, constitutes a denial of equal protection of the laws. The answer, given in *Smith v. Smith, supra,* is that the Act indulges in a reasonable and unarbitrary classification of parties under which all persons similarly situated are treated alike.

[63] Duncan v. Smith, 262 S.W.2d 373 (Ky. 1954).

[64] The argument is to the effect that inasmuch as the Act permits punishment in the nature of criminal punishment for a failure to comply with a responding court's order of support it constitutes a criminal statute.

[65] Freeman v. Freeman, 266 La. 410 76 S.2d 414 (1954): Duncan v. Smith, 262 S.W.2d 373 (Ky. 1954).