

CHOICE OF LAW: INTERSTATE ENFORCEMENT OF DUTIES OF SUPPORT

DIVORCES and illegitimate births in increasing numbers have imposed a heavy financial burden on state welfare programs. Where an obligor and obligee¹ are in the same state, courts have experienced little difficulty in shifting burdens of support to husbands and fathers under a state-created statutory duty of support. However, where the obligor is either in a different state for the period during which support is sought, or has fled from the obligee's state subsequent to such period, the interstate enforcement of duties of support has presented an acute problem² intensified by divergent rules of support³ and conflicting choice of law rules. This comment will explore the impact of these choice of law rules upon the measure of relief afforded by recently adopted uniform reciprocal acts.

CHOICE OF LAW PRIOR TO THE UNIFORM ACTS: THE FORUM RULE

Yarborough v. Yarborough,⁴ decided in 1933, is the only case wherein the Supreme Court has considered the choice of law question involved in interstate enforcement of duties of support. In a prior divorce proceeding, a Georgia court had relieved a father of liability for continuing support of his minor child by requiring him to make a single lump-sum payment. While subsequently residing with her grandparents in South Carolina, the child sought further support in a South Carolina court. The Supreme Court denied relief, holding that the obligor's duty in an action for support is to be determined by the law of the state where the obligor is domiciled.⁵ Thus, even though the child may have been entitled

¹ The following general definitions will apply in this comment: an *obligee* is a person to whom a duty of support is owed; an *obligor* is a person owing a duty of support; the *demanding state* is that in which a proceeding pursuant to one of the reciprocal laws is commenced, and is usually the state where the obligee is present; the *asylum state* is that state responding to a proceeding in the demanding state, and is usually the state where the obligor is found.

² See Brockelbank, *The Problem of Family Support: A New Uniform Act Offers a Solution*, 37 A.B.A.J. 93 (1951).

³ For a comprehensive listing of the duties of support prescribed by the various states, see 9C UNIF. LAWS ANN. 10-12 (Supp. 1964).

⁴ 290 U.S. 202 (1933).

⁵ The opinion has been limited by the commentators as applying only to judgments and as mere dictum lacking judicial precedent. CURRIE, *SELECTED ESSAYS ON THE CON-*

to additional support under South Carolina law, Georgia law was held to control in South Carolina courts and to preclude further recovery.

The Restatement of Conflict of Laws, drafted in 1934, incorporated and extended the *Yarborough* rule by specifying that no state could impose a statutory duty of support upon any person who was neither domiciled within the state nor subject to the jurisdiction of the state at the time suit was commenced.⁶ Furthermore, under the Restatement no state could "directly enforce a duty of support created by the law of another state."⁷ In essence, therefore, the Restatement provided that a duty of support could be imposed only by the *lex fori* of the state in which personal jurisdiction over the obligor could be obtained by virtue of his domicile or physical presence.

Under the forum rule an obligee who resides in a state without personal jurisdiction of the obligor has three possible courses of action. First, he may wait for the obligor to subject himself to the jurisdiction of the obligee's state. Here the hope for recovery is negligible.

Secondly, the obligee may pursue the obligor to any state in which the latter is subject to the personal jurisdiction of local courts and there sue to enforce the duty of support provided by the local *lex fori*.⁸ Many state courts will assume jurisdiction of such actions, regardless of the residence of the obligee,⁹ on the theory that they are

FLICT OF LAWS 737 (1963); STUMBERG, PRINCIPLES OF CONFLICT OF LAWS 331 (3d ed. 1963); Ehrenzweig, *Interstate Recognition of Support Duties*, 42 CALIF. L. REV. 382, 385 nn.25 & 26 (1954). Nonetheless, a Texas court recently cited *Yarborough* in refusing to enforce the law of California against an obligor who had moved to Texas after incurring a statutory duty to support an indigent relative in California. *California v. Copus*, 158 Tex. 196, 200, 309 S.W.2d 227, 230, *cert. denied*, 356 U.S. 967 (1958), 37 TEXAS L. REV. 773 (1959). See also *Berkley v. Berkley*, 246 S.W.2d 804, 806 (Mo. 1952).

⁶"A state has legislative jurisdiction to impose upon one person a duty to support another person if (a) the person to be supported is domiciled within the state and the person to support is subject to the jurisdiction of the state, or (b) the person to support is domiciled within the state although the person to be supported is not subject to the jurisdiction of the state, or (c) both parties are subject to the jurisdiction of the state, though neither is domiciled there." RESTATEMENT, CONFLICT OF LAWS § 457 (1934).

⁷*Id.* at § 458. This is based on the assumption that "whether the duty is criminal or civil in character, its enforcement is of no special interest to other states and since the duty is not imposed primarily for the benefit of an individual, it is not enforceable elsewhere under principles of the Conflict of Laws." *Id.* at § 458, comment a.

⁸See, e.g., *Commonwealth v. Acker*, 197 Mass. 91, 83 N.E. 312 (1908); Annot., 57 A.L.R.2d 689 (1958).

⁹"The present tendency seems to be to emphasize the moral duty of the father to

furthering a valid policy of preventing the state from becoming a haven for deserting providers.¹⁰ Nevertheless, if the forum state would not have imposed a duty of support under the particular circumstances of the case, no duty will be recognized under the forum rule even if the obligee and the obligor resided in another state which recognized a duty for the period in which support is requested.¹¹ Moreover, even if a duty of support is recognized by the forum state, the remedy may be unavailable because of the prohibitive expense of pursuing the obligor, or ineffective due to the obligor's ability to flee the forum state, thereby starting the entire process anew.¹²

If the duty to support in the obligee's state carries criminal sanctions, a third alternative permits that state to extradite the obligor as a fugitive from justice under the extradition provisions of the federal constitution and statutes.¹³ Federal extradition provisions, however, are applicable only to criminal acts of non-support committed while the obligor was within the demanding state.¹⁴ If the act of non-support was committed outside the demanding state,

support, with, as a consequence, an increasing tendency to permit the nonresident mother and child to sue the local father under the local statute." STUMBERG, *op. cit. supra* note 5, at 333.

¹⁰ See, e.g., *State v. Tetreault*, 97 N.H. 260, 85 A.2d 386 (1952); *Conwell v. Conwell*, 3 N.J. 266, 273, 69 A.2d 712, 716 (1949); *Dimon v. Dimon*, 40 Cal. 2d 516, 540, 254 P.2d 528, 541 (1953) (Traynor, J., dissenting in part).

¹¹ Thus where a duty of support exists in the state from which the obligor has fled, but is not recognized by the asylum state, the obligor will escape liability at the hands of courts which, adhering to traditional territorial concepts, refuse to apply the law of another jurisdiction in an action initiated in their state. See note 7 *supra*.

¹² See *Brockelbank*, *supra* note 2, at 94. The cost to the taxpayers of supporting destitute families of obligors who had evaded their duty by fleeing to another state was estimated in 1950 at about \$205,000,000 a year. BROCKELBANK, INTERSTATE ENFORCEMENT OF FAMILY SUPPORT 4 (1960); see 9C UNIF. LAWS ANN. 3-5 (1957); 45 ILL. L. REV. 252 (1950).

¹³ "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." U.S. CONST. art. IV, § 2, cl. 2.

The federal statute implementing this constitutional provision provides that whenever the executive authority of the state demands any person as a fugitive from justice, and produces an authenticated copy of an indictment found against such person, it shall be the duty of the executive authority of the responding state to cause such person to be arrested and delivered to the agent of the demanding state. 18 U.S.C. §§ 3182, 3194, 3195 (1958).

¹⁴ Federal and state courts have interpreted the Constitution and subsequent statutes as applicable only to persons who were physically present in the demanding state at the time of the crime and then fled from that state. *Hyatt v. People ex. rel. Corkran*, 188 U.S. 691 (1903); *State v. Hall*, 115 N.C. 811, 20 S.E. 729 (1894).

the obligor is not a fugitive from that state and federal extradition law will not apply. Moreover, extradition is generally an inadequate remedy because of its prohibitive expense and technical requirements which often cannot be satisfied.¹⁵

Under the traditional forum rule, therefore, it is relatively difficult for an obligee to enforce duties of support. The obligor could evade liability by fleeing to a state which does not impose a duty of support, or select a state without criminal sanctions and flee that jurisdiction when pursued by the obligee.

RECIPROCAL SUPPORT ACTS

Since deserted obligees frequently become charges of the state in which they reside,¹⁶ it was recognized that the traditional choice of law rule would not effectively shift the burden of providing support to the rightful obligors. In order to minimize expense and otherwise facilitate the interstate enforcement of duties of support, all states have adopted support acts which provide for reciprocal civil enforcement procedures. An obligee entitled to support under the reciprocal act of the demanding state¹⁷ is permitted to file a petition in a local court which is forwarded by mail to the asylum state.¹⁸ After granting the obligor a hearing, the asylum state applies the duty of support determined to be applicable under a choice of law rule¹⁹ in the asylum state's reciprocal act, collects any amount due, and remits the funds to the obligee.²⁰ Most acts also contain crim-

¹⁵ *Vincenza v. Vincenza*, 197 Misc. 1027, 1028, 98 N.Y.S.2d 470, 473 (Dom. Rel. Ct. 1950) (dictum).

¹⁶ See note 12 *supra*.

¹⁷ See definitions note 1 *supra*. In essence, the courts of both the demanding and asylum states must find a duty of support under the appropriate choice of law as designated by their own reciprocal act. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT, §§ 13, 20, 9C UNIF. LAWS ANN. 41, 56 (1957). *Cobbe v. Cobbe*, 163 A.2d 333 (D.C. Mun. App. 1960); *In re Duncan*, 172 N.E.2d 478 (Ohio Ct. App. 1961); *cf.* *Ross v. Ross*, 206 Misc. 1073, 136 N.Y.S.2d 23 (Child. Ct. 1954).

¹⁸ See definitions note 1 *supra*.

¹⁹ The purpose of these statutes was twofold: first, to combat the apathy expressed in the RESTATEMENT, CONFLICT OF LAWS § 457 (1934) of the states having no interest in enforcing the support duties of other states. Commissioners' Prefatory Note, HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 171, 172 (1950). The second purpose was to provide a relatively low cost and effective method of obtaining assistance from the deserting husband. See Commissioners' Prefatory Note, HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 291-92 (1952).

²⁰ The asylum state, of course, must obtain jurisdiction of the obligor. This procedure or a similar form thereof is found in both the Uniform Reciprocal Enforcement of Support Act (URESAs) and the Uniform Support of Dependents Act (USDA). 9C

inal extradition provisions.²¹ Enforcement of these acts is based merely upon a common interest in uniformity and cooperation; consequently, conflict between state policies may result in a court refusing to apply a reciprocal act.²²

Civil Liability Under the Uniform Support of Dependents Act (USDA)

The USDA, in force only in New York,²³ contains a choice of law provision precluding the state from enforcing another jurisdiction's duty of support unless, under the circumstances, a similar duty exists in the asylum state as well.²⁴ In essence, the USDA is merely a reiteration of the traditional forum rule: it provides no remedy where the asylum state (the forum state) would itself impose no duty of support.

UNIF. LAWS ANN. §§ 7-28 (1957, Supp. 1964) (URESA); N.Y. DOM. REL. LAW §§ 34, 37 (Supp. 1964) (USDA); Kelso, *Reciprocal Enforcement of Support: 1958 Dimensions*, 43 MINN. L. REV. 875 (1959). Reciprocity between the USDA and URESA is discussed in Landes v. Landes, 1 N.Y.2d 358, 135 N.E.2d 562, 153 N.Y.S.2d 14 (1956).

²¹ See, e.g., 19 CAL. CIV. PROC. CODE § 1660; 2A N.J. STAT. ANN. § 4:30-35 (1951); 9 TEX. STAT. ANN. art. 2328 (b)-2 (1963). The criminal enforcement procedure normally provides for extradition upon the demand of the executive authority of the demanding state. It applies no matter whether the obligor was in the demanding state, the asylum state, or a third state at the time he committed the crime. See Annot., 81 A.L.R. 552, 580 (1932). This procedure was included in the URESA because it was a traditional method of solving the problem, and because the drafters were not certain that the civil procedure would apply in all cases. BROCKELBANK, *op. cit. supra* note 12, at 15. Professor Brockelbank was the Chairman of the Committee which drafted the 1950 URESA and the 1952 URESA.

The USDA does not contain a criminal enforcement procedure.

²² E.g., *Vincenza v. Vincenza*, 197 Misc. 1027, 98 N.Y.S.2d 470 (Dom. Rel. Ct. 1950); *California v. Copus*, 158 Tex. 196, 309 S.W.2d 227, *cert. denied*, 356 U.S. 967 (1958).

Enforcement may also be frustrated by judicial refusal to apply the laws of a state outside that state's territorial jurisdiction. See text accompanying notes 35, 50-51 *infra*. In certain cases, however, the territorial concept may serve merely as an excuse for dismissing a case because of conflicting local policy. See *Pennsylvania ex rel. Dep't of Pub. Assistance v. Mong*, 160 Ohio St. 455, 117 N.E.2d 32 (1954), 29 N.Y.U.L. REV. 1480, 102 U. PA. L. REV. 938, 939. Both casenotes were critical of the *Mong* decision.

²³ N.Y. DOM. REL. LAW §§ 30-43 (Supp. 1964); see Annot., 42 A.L.R.2d 768, 773-75 (1955).

²⁴ N.Y. DOM. REL. LAW § 35 (2)-(4) (Supp. 1964). Since the obligee must be entitled to recovery under the law of the demanding state, see note 17 *supra* and accompanying text, under the USDA the support law of both the demanding and asylum states must be identical. Cf. *Ross v. Ross*, 206 Misc. 1073, 136 N.Y.S.2d 23 (Child. Ct. 1954).

Civil Liability Under the Uniform Reciprocal Enforcement of Support Act (URESA): The Election Rule versus the Presence Rule

The civil enforcement provisions of the original URESA²⁵ enable the *obligee to elect* either the law of the state where the alleged *obligor* was present during the period for which support is sought, or the law of the state where the *obligee* was present when the failure to support commenced.²⁶ Although the latter alternative may have been adopted to provide a solution only when the whereabouts of the obligor were unknown,²⁷ literal construction of the original URESA in effect created a new choice of law rule under which the obligee could demand application of the law of his own state in a civil action initiated in the courts of the obligor's state.²⁸ The election rule thus enables courts of the asylum state to apply the obligee's state law in the absence of an overriding local public policy.²⁹ Relatively few jurisdictions have retained the election rule of the original URESA.³⁰

The Commission on Uniform State Laws eliminated the election rule of the original URESA in 1952³¹ and provided for determination of the existence and extent of a duty of support by the law of

²⁵ The purposes of the act are explained in Commissioners' Prefatory Note to 1950 Act, 9C UNIF. LAWS ANN. 3-5 (1957).

²⁶ See, e.g., CAL. CIV. PROC. CODE § 1670; TEX. REV. CIV. STAT. art. 2328b-3 (1964). The purpose of this section was to guard against the attitude expressed in the RESTATEMENT, CONFLICT OF LAWS § 258, comment *a* (1934) that the enforcement of a duty of support is of no special interest to other states and that the duty is not imposed for the benefit of the individual but for the state. This theory, however, appears to have been losing favor even without the URESA. BROCKELBANK, *op. cit. supra* note 12, at 26; see *State v. Echavarría*, 101 N.H. 458, 146 A.2d 256 (1958).

²⁷ See Commissioners' Note to § 7 of the URESA, 9C UNIF. LAWS ANN. 27 (1957); see Brockelbank, *Is The Uniform Reciprocal Enforcement of Support Act Constitutional?*, 31 ORE. L. REV. 97, 99-102 (1952). *But see* Ehrenzweig, *supra* note 5, at 382.

But despite any intended limitations, the election rule on its face accorded complete discretion to the obligee. See text accompanying note 26 *supra*.

²⁸ Ehrenzweig, *supra* note 5, at 388-89.

²⁹ Although § 7 of the URESA was originally criticized as an unconstitutional delegation of judicial power, courts have generally ignored the criticism. Comment, 45 ILL. L. REV. 252 (1950); see, e.g., *Duncan v. Smith*, 262 S.W.2d 373 (Ky. 1953).

³⁰ Every state except New York has adopted the URESA in one form or another. 9C UNIF. LAWS ANN. 1-2 (1957, Supp. 1964). A minority of jurisdictions have retained the election provision. See CAL. CIV. PROC. CODE § 1670; MISS. CODE ANN. § 456-07 (1956); TEX. REV. CIV. STAT. art. 2328b-3 (1964); W. VA. CODE ANN. § 4782 (7) (1961). One state has an election provision, but it gives the election to the court of that state rather than the obligee. MINN. STAT. ANN. § 518.48 (4) (Supp. 1964).

³¹ The author of the presence test argued that the amendment was necessary to conform to the territorial concept that statutory laws of one state cannot control conduct outside that state's boundaries. Stimson, *Simplifying the Conflict of Laws*; *A*

the state where the obligor was present during the period for which support is sought.³² Thus, according to the plain meaning of the presence rule, if an obligor flees from the obligee's state *A* in 1962 to state *B*, and from state *B* in 1964 to state *C*, assuming that state *C* had adopted the amended URESA, a suit by the obligee in state *C* to recover support for the years 1960-1965 would appear to result in the application of three distinct bodies of law: state *A*'s law would control for the period from 1960-1962, *B*'s law for the period from 1962-1964, and *C*'s law for 1964-1965.³³ The Commissioners complemented this presence test by incorporating a rebuttable presumption that the obligor was present in the forum state during the period for which support is sought.³⁴

Nevertheless, the purpose of the amendment was to *limit* the applicable law to that of the *forum*; in drafting this amended provision the Commissioners were strongly influenced by the traditional territorial concept that the statutory laws of one state cannot govern conduct outside that state's territorial boundaries.³⁵ Thus, if courts faced with the presence rule decide to effectuate the intent of the Commissioners, they would be precluded from applying any law but that of the forum and if the presumption of presence is rebutted by

Bill Proposed for Enactment by Congress, 36 A.B.A.J. 1003, 1004-05 (1950). *But see* Ehrenzweig, *supra* note 5, at 383-90; 37 TEXAS L. REV. 772 (1959). Stimson's recommendations were the basis for the amendment to § 7 of the URESA. Commissioners' Note to § 7 of the URESA, 9C UNIF. LAWS ANN. 27 (1957).

³² "Duties of support applicable under this law are those imposed or imposable under the laws of any state where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown." UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 7, 9C UNIF. LAWS ANN. 26 (1957).

The URESA was again amended in 1958, 9C UNIF. LAWS ANN. 37-53 (Supp. 1964), but this revision retained the 1952 presence test. 9C UNIF. LAWS ANN. 42 (Supp. 1964).

³³ "One of the most extensively discussed questions was that of the applicable duty of support. . . . Professor Brockelbank explained that the [1952] Uniform Act contemplates *presence* of the obligor as the controlling factor. In other words, if the obligor is present in the asylum state and a prospective support order is sought, then the support duties set forth in the asylum state shall control. On the other hand if the obligor was present in the demanding state in the past, and an order for arrearages is sought, then the demanding state's support requirements would control." State of New York Joint Legislative Committee on Interstate Cooperation, Summary of Conference on Social Welfare and Non-Support 3, item 71 (July 1953).

³⁴ See note 32 *supra*. The Commissioners rejected any requirement that the law of the obligor's domicile must govern, since the fact of domicile depends on the intention of the obligor to remain within the state for an indefinite period of time as well as actual physical presence. Simplicity and ease of application were thought to be promoted by substituting the presumption for the necessity of proof of the obligor's domicile by the obligee. See generally BROCKELBANK, *op. cit. supra* note 12, at 26-28.

³⁵ See note 31 *supra*.

the obligor, even the law of the forum could not impose a duty of support for that period during which the obligor was not actually subject to the jurisdiction of the asylum state. The only notable advantage over the forum rule of the choice of law rule contained in the presence test, therefore, is a shifting of the burden of proving personal jurisdiction of the forum state for the period in which support was sought from the obligee to the obligor.³⁶

Uniform Criminal Extradition Act (UCEA)

If an obligee is precluded from recovery under the civil procedure in the asylum state due to the controlling choice of law rule, he may nevertheless seek to extradite the obligor to a demanding state if the duty of support in the latter state carries criminal sanctions. The URESA contains a criminal extradition provision which is substantially similar to section 6 of the UCEA.³⁷ Section 6 of the UCEA permits the asylum state to surrender to the demanding state an obligor charged with intentionally committing an act in *any* state which results in a crime in the demanding state.³⁸ This provision is more extensive than the federal extradition procedures³⁹ in that the obligor is not required to have committed the act of non-support in the demanding state.⁴⁰ Unlike the federal provisions, however,

³⁶ *Daly v. Daly*, 21 N.J. 599, 608-09, 123 A.2d 3, 8 (1956).

³⁷ Section 5 of the URESA is merely a specific application to non-support of the more general provision in § 6 of the UCEA. *Brockelbank*, *supra* note 27, at 106.

Tradition and lack of certainty that the civil enforcement procedures would cover all cases motivated inclusion of this method of enforcement. Moreover, it was felt that the threat of extradition would tend to deter desertion by the obligor. *BROCKELBANK*, *op. cit. supra* note 12, at 15. Colorado, Connecticut and the District of Columbia have omitted the criminal enforcement section of the act. The Uniform Support of Dependents Act of New York also omitted this section. *Id.* at 15 n.21.

³⁸ "INTERSTATE RENDITION—The Governor of this state (1) may demand from the Governor of any other state the surrender of any person found in such other state who is charged in this state with the crime of failing to provide for the support of any person in this state and (2) may surrender on demand by the Governor of any other state any person found in this state who is charged in such other state with the crime of failing to provide for the support of a person in such other state. The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding of other state." UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 5, 9C UNIF. LAWS ANN. 23 (1957) See Annot., 42 A.L.R.2d 768 (1955).

³⁹ See notes 13 & 14 *supra* and accompanying text.

⁴⁰ This extension of the power to extradite was in recognition of the inadequacy of federal extradition law which required that the obligor have fled from justice and

section 6 of the UCEA is not a constitutional mandate, but merely an exercise of the asylum state's retained powers to enact reciprocal laws. Consequently, its enforcement rests within the judicial discretion of the asylum state.⁴¹

INEFFECTIVENESS OF THE RECIPROCAL ACTS

A recent New Hampshire decision illustrates the difficulties with which obligees are still confronted despite the purported aid of reciprocal statutes. In *Hardy v. Betz*,⁴² a New Hampshire resident allegedly fathered a child in New Hampshire which was subsequently born in Massachusetts. After the child obtained welfare benefits from the state, Massachusetts sought support from the putative father in a civil action. While Massachusetts retained the election provision of the original URESA,⁴³ New Hampshire had adopted the presence test of the amended act⁴⁴ requiring the application of New Hampshire law. Since New Hampshire's statute of limitations for determination of paternity had expired,⁴⁵ no civil duty of support was recognized.

The failure to support an illegitimate child, however, is a misdemeanor under Massachusetts law;⁴⁶ thus Massachusetts subsequently attempted to extradite the putative father under section 6 of the UCEA, effective in both the demanding and asylum states.⁴⁷ In a decision which contravenes the only precedent squarely on point⁴⁸ and the express purpose of section 6,⁴⁹ New Hampshire

fed from the state seeking extradition. Commissioners' Prefatory Note to 1950 Act, 9C UNIF. LAWS ANN. 4 (1957). Thus it recognized the need for reciprocity to prevent offending parties escaping duties of support. See Comment, 31 MINN. L. REV. 699 (1947).

⁴¹ See note 22 *supra* and accompanying text.

⁴² 105 N.H. 169, 195 A.2d 582 (1963).

⁴³ MASS. GEN. LAWS ANN. ch. 273A, § 4 (1956).

⁴⁴ N.H. REV. STAT. ANN. § 546:7 (Supp. 1964).

⁴⁵ N.H. REV. STAT. ANN. § 168:1 (Supp. 1964) provides a one year limitation on paternity actions.

⁴⁶ MASS. GEN. LAWS ch. 273 § 15 (1956).

⁴⁷ MASS. GEN. LAWS ANN. ch. 276, §§ 11-20R (1956); N.H. REV. STAT. ANN. § 612:1-30 (1955).

⁴⁸ The Ohio Supreme Court considered a similar fact situation in 1959 and allowed extradition upon determining that the failure to provide support was the commission of an act as required by the UCEA. *In re Harris*, 170 Ohio St. 151, 163 N.E.2d 762 (1959). The only possible distinction between *Harris* and *Hardy v. Betz* is that Ohio had no law limiting the time a putative father could be sued for support.

⁴⁹ See *In re Cooper*, 53 Cal. 2d 772, 776, 349 P.2d 956, 958, 3 Cal. Rptr. 140, 142, *cert. denied*, 364 U.S. 294 (1960); note 40 *supra*. For cases in which the UCEA has been liberally applied, see *In re Cooper*, *supra*; *State ex rel. Gildar v. Kriss*, 191 Md.

denied extradition on the ground that Massachusetts could not constitutionally pass legislation attaching criminal sanctions to conduct outside its own territorial limits.⁵⁰

This territorial concept⁵¹ constitutes the greatest obstacle to interstate enforcement of duties of support. Application of this concept in *Hardy v. Betz* vitiated section 6 of the UCEA and effectively limited extradition powers to those granted by federal authority. The forum rule of *Yarborough*, the Restatement, the USDA, and the presence test of the amended URESA are infested with territorialism.^{51a} Under all of these rules only the law of the forum can be applied. Nevertheless, the status of the territorial concept as a purported constitutional limitation on choice of law has been questioned with increasing vigor by commentators⁵² and courts alike.⁵³ For instance, the Supreme Court has applied the antitrust laws to conduct of citizens outside the territorial limits of the United States.⁵⁴ As early as 1941, the Court upheld the application of substantive state criminal law to conduct occurring outside its territorial limits.⁵⁵ No court has yet held that the election rule of the URESA violates the federal constitution.⁵⁶ In several cases, California courts have recognized the need to enforce the demanding state's law where California, the asylum state, has no policy in con-

568, 62 A.2d 568 (1948); *People ex rel. Faulds v. Herberich*, 93 N.Y.S.2d 272 (App. Div. 1949), *aff'd*, 301 N.Y. 614, 93 N.E.2d 913 (1950). See generally Annot., 151 A.L.R. 239 (1944).

⁵⁰ 195 A.2d at 584-85 (105 N.H. 169). In July 1964 the Reporter for the Restatement suggested that the section upon which the New Hampshire court relied was "of little significance." RESTATEMENT (SECOND), CONFLICT OF LAWS 105-06 (Tent. Draft No. 10, 1964). Thus, it is arguable that New Hampshire was invoking a territorial concept with regard to a criminal statute to prevent frustration of local policy. See note 22 *supra*.

⁵¹ See BEALE, THE CONFLICT OF LAWS 52 (1935); STIMSON, CONFLICT OF CRIMINAL LAWS 3-7 (1936); *cf.* *American Banana Co. v. United Fruit Co.*, 213 U.S. 347, 355-57 (1909).

^{51a} See generally CURRIE, SELECTED ESSAYS ON THE CONFLICT OF LAWS 1-76 (1963).

⁵² See COOK, THE LOGICAL AND LEGAL BASES OF THE CONFLICTS OF LAWS 13, 14 (1942); CURRIE, *op. cit. supra* note 51a, at 655-59; Berge, *Criminal Jurisdiction and the Territorial Principle*, 30 MICH. L. REV. 238 (1931).

⁵³ See cases cited notes 54, 55, 57, 58 *infra*.

⁵⁴ Compare *American Banana Co. v. United Fruit Co.*, 213 U.S. 347, 355-57 (1909) (adhering to the territorial concept), with *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 704-06 (1962) (applying the Sherman Antitrust Act to conduct outside the United States territorial limits) and *Steele v. Bulova Watch Co.*, 344 U.S. 280, 285-86 (1952).

⁵⁵ *Skiriotes v. Florida*, 313 U.S. 69 (1941), 15 So. CAL. L. REV. 93.

⁵⁶ *But cf.* *Pennsylvania ex rel. Dep't of Pub. Assistance v. Mong*, 160 Ohio St. 455, 117 N.E.2d 32 (1954).

flict with such enforcement.⁵⁷ Nevertheless, the rationale of *Hardy v. Betz* permits an obligor to escape civil and criminal liability for support merely by fleeing to a state which would not impose a duty. By perpetuating the territorial concept, both the forum and presence rules tend to defeat the interests of the demanding state without permitting a determination of whether those of the asylum state are thereby advanced.⁵⁸

Moreover, it is questionable whether the election rule of the original URESA is a desirable substitute. Although the application of this rule vitiates the territorial concept by requiring the forum state to apply another state's law if such is elected, the inflexibility of the rule renders it undesirable.⁵⁹ The election rule simply accords the obligee, rather than the obligor, an opportunity to forum-shop.⁶⁰ If the state where the obligee is present does not recognize a duty of

⁵⁷ *Lewis v. Lewis*, 49 Cal. 2d 389, 317 P.2d 987 (1957); *Hopkins v. Hopkins*, 46 Cal. 2d 313, 294 P.2d 1 (1956); *Worthley v. Worthley*, 44 Cal. 2d 465, 283 P.2d 19 (1955).

⁵⁸ As such, the territorial concept is justifiable primarily on the ground that it relieves the courts of the problem of determining the applicable law. In recognition of the hardship imposed by such a strict rule, many criminal statutes in the United States have departed from the territorial principal. See *Berge*, *supra* note 52. Some courts have disregarded the principle in criminal cases without the aid of statute. Compare *People v. Buffum*, 40 Cal. 2d 709, 256 P.2d 317 (1953), with *People v. Burt*, 45 Cal. 2d 311, 288 P.2d 503, 51 A.L.R.2d 948 (1955), 7 HASTINGS L.J. 206 (1956), 29 So. CAL. L. REV. 363 (1956). For a succinct discussion of these cases and a possible limitation on the courts disregarding the territorial concept, see *CURRIE, op. cit. supra* note 51a, at 655-59. If a person violates a valid state law by conduct outside its boundaries and that state, having a valid reason for enforcing its law, gains jurisdiction over the offender, there appears to be no barrier to enforcement of that law. *COOK, op. cit. supra* note 52, at 14. See also 9 Geo. 4, c. 31, § 8 (English courts to hear cases of felonious acts occurring outside England and resulting in death in England).

Various constitutional arguments have been unsuccessfully raised against the uniform acts. *Smith v. Smith*, 125 Cal. App. 2d 154, 270 P.2d 613 (Dist. Ct. App. 1954) (due process); *Landes v. Landes*, 1 N.Y.2d 358, 135 N.E.2d 562, 153 N.Y.S.2d 14 (1956); *Duncan v. Smith*, 262 S.W.2d 373 (Ky. 1953) (equal protection). It seems that in a support situation the state of the obligee would have enough incidents occurring within its borders to give it legislative jurisdiction. See *Simonds v. Simonds*, 154 F.2d 326 (D.C. Cir. 1946); *Starr v. Starr*, 263 P.2d 675 (Cal. Dist. Ct. App. 1963); *State ex rel. Sherwood v. Sherwood*, 13 Ohio App. 403 (1921); RESTATEMENT, CONFLICT OF LAWS § 457 (1934).

⁵⁹ Before the rule will be applied, however, it should be subject to the universal limitation that no cause of action will be enforced which is contrary to public policy of the forum. See cases cited note 22 *supra*; *Loucks v. Standard Oil Co.*, 224 N.Y. 99, 120 N.E. 198 (1918); *cf. George v. George*, 20 N.J. Misc. 41, 23 A.2d 599 (1942).

⁶⁰ Special Committee on Review of Uniform Desertion and Non-Support Act, National Conference of Commissioners on Uniform State Laws, First Tentative Draft, p. 2 (mimeo), Sept. 8, 1952. In rejecting the election rule for the presence test of the amended URESA, the Commissioners stated: "It was never intended [by the election rule] that [the obligee] . . . should have an absolute right to choose the applicable law as her interest might dictate." Commissioners' Note, 9C UNIF. LAWS ANN. 27 (1957).

support, he may establish actual residence in a state according liberal duties of support and then request application of that state's laws. On the other hand, if the state where the obligee is present recognizes a duty of support, he may bring an action there and elect that the law of that state apply in the asylum state.

ALTERNATIVE SOLUTIONS

Although the uniform acts have facilitated interstate enforcement of support duties in certain cases, their effectiveness is diminished by the varied choice of law provisions⁶¹ and by frequent judicial refusal to apply the acts when to do so would conflict with a policy of the forum state.⁶² Each of these inhibitions is in some measure traceable to the territorial concept. Upon recognition that the territorial concept has little if any basis in modern law,⁶³ the states should take steps to stabilize the interstate enforcement of support duties. One alternative to that end is adoption of the Uniform Civil Liability for Support Act⁶⁴ by all states. Thereby, substantive duties of support would be synchronized and the choice of law problem obviated altogether. However, since present support laws reflect divergent state policies, it is unrealistic to expect substantive uniformity.⁶⁵ The more practical solution would entail departure from the present choice of law rules in favor of a new theory of enforcement.⁶⁶

In an interstate situation, the demanding state is interested in the welfare of the obligee and in preventing unnecessary depletion of its welfare funds, while the asylum state is interested in applying its own laws of support for the protection of its citizens. In cases in which these two interests clash, the court, rather than the obligee, should be given the discretionary power to determine the law which

⁶¹ See *Manis v. Genest*, 210 Ga. 16, 77 S.E.2d 525 (1953) (required proof of reciprocity); *State ex rel. Lyon v. Lyon*, 75 Nev. 495, 346 P.2d 709 (1959); EHRENZWEIG, *op. cit. supra* note 30, at 406; Note, 13 STAN. L. REV. 901, 907-11 (1961).

⁶² See cases cited note 22 *supra*.

⁶³ See notes 52-58 *supra* and accompanying text.

⁶⁴ 9 UNIF. LAWS ANN. 217-22 (1957).

⁶⁵ The original draft of the URESA contained uniform duties of support, but the representatives from the states rejected the proposals. They sought only interstate enforcement of support duties as they exist in various state legislation. BROCKELBANK, *op. cit. supra* note 12, at 32 n.60.

⁶⁶ See CURRIE, *op. cit. supra* note 51a, at 177-87, 727-42; STUMBERG, CONFLICT OF LAWS 54-58 (2d ed. 1951); Summer, *The Status of Public Acts in Sister States*, 3 U.C.L.A.L. REV. 1, 12 (1955).

should govern.⁶⁷ Under the governmental interest analysis approach of one commentator, however, the courts' discretionary power in choice of law situations would be significantly limited since weighing competing state policies is not a proper judicial function.⁶⁸ Under this view, a court of the asylum state would be restricted to determining whether its own state has a legitimate interest in the application of its laws.⁶⁹ In the absence of a compelling local policy, the law of the demanding state should apply. An approach such as this would provide some measure of reciprocity and uniformity where mechanical choice of law rules have failed.

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⁶⁷ One state appears to have effected this change in the election rule. MINN. STAT. ANN. § 518.48 (Supp. 1964) provides: "The district court shall, at *its discretion*, enforce the duties of support owed under the law of (1) the state where the obligee resided when the obligor failed to support the obligee, or (2) this state...." (Emphasis added.)

⁶⁸ See CURRIE, *op. cit. supra* note 51a, at 182-83.

⁶⁹ See CURRIE, *op. cit. supra* note 51a, at 177-87.