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IS THE UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT CONSTITUTIONAL?†

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The Uniform Reciprocal Enforcement of Support Act, approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in September 1950, has already become law in thirty¹ jurisdictions. For the better enforcement of obligations of support the act provides for a two-state suit begun in the state where a family has been deserted and terminated in the state where the one owing a duty of support is found.

The procedure created by the act is new and there is not only some uncertainty as to how to proceed,² but more important, a few officials have taken the position that the act is unconstitutional. "Must not any act that seeks to establish something so new and different as a two-state action be unconstitutional on one ground or another!"

But men and institutions change and "time makes ancient good uncouth."³ The law must evolve. New problems demand new solutions. "The law is neither fixed forever nor changing like a storm . . . as lawyers our duty is to prove all things, hold fast to that which is good and then endeavor . . . to replace that which is bad."⁴

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1. These jurisdictions are: Alabama, Arkansas, California, Colorado, Hawaii, Idaho, Indiana, Kansas, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, Wyoming.

2. Those seeking information on this point will do well to consult the Manual of Procedure for Reciprocal State Legislation to Enforce the Support of Dependents, published by the Council of State Governments, 1313 East Sixtieth Street, Chicago 37, Illinois.

3. From *The Present Crisis* by James Russell Lowell.

4. From a short note on Roscoe Pound by Z. Chafee, Jr., in *Harvard Law School Bulletin*, December 1950, p. 10.

Coming down from these poetic generalities to specific problems of constitutionality, it must first be said that it is impossible at this time to foresee every possible constitutional objection to the act under the forty-nine constitutions under which it must operate. The problem is further complicated by the fact that the text of the uniform act as approved by the National Conference of Commissioners on Uniform State Laws was modified rather extensively in some states⁵ and had to be completed in some particulars in all states before adoption.⁶

But, laying to one side these varying local problems of constitutionality, the purpose of this article is to discuss the more obvious and essential questions that go to the uniform act as a whole and in particular to present the solution that was persuasive in the mind of those who drafted the act.

The most general of the kind of doubts that, so far, have been expressed is the assertion that the act violates Paragraph 3, Section 10 of Article I of the United States Constitution which says that "no state shall, without the consent of Congress . . . enter into any agreement or compact with another state. . . ." The argument is that this is, properly speaking, a compact with other states and since the Congress has not given its consent the act is unconstitutional.

The short answer to this contention is that the Uniform Reciprocal Enforcement of Support Act is not a compact among the states enacting it. The legislatures of the enacting states did not appoint representatives to meet and agree on anything. There is no other form of agreement. Nobody in any one of the enacting states ever wrote to anyone in any other enacting state proposing that any agreement, compact or understanding be reached between the states. There is no part of the text of the act that could be construed as an offer to another state to agree about anything. Each state simply has passed the act in the ordinary way as a part of its own legislation, and each act has gone into effect in accordance with local constitutional provisions.

5. This was true in Minnesota and Washington.

6. The text of the Uniform Act itself as approved by the National Conference contained many sections with alternate wording suitable for synchronization with the variety of language used in the legislation of the several states. Typical alternates are such terms as action, petition, proceeding or complaint. The drafters of this law were also forced to leave blank the name of the court which in each state is to be given jurisdiction of cases under the act. Some states have added provisions relating to who shall bear the burden of paying counsel or who may be called upon to represent the parties. Every one of these variants may give rise to a question under the constitution of the state concerned.

Even if a given court were to disagree with the above statements and, for some reason not now apparent, hold that the Uniform Reciprocal Enforcement of Support Act is "impliedly" a compact, it does not follow that the consent of Congress is necessary. A literal reading of Paragraph 3, Section 10 of Article I of the Constitution might cause one to suppose that the states are thereby placed under Congressional tutelage in respect to all subjects of interstate concern. But a glance at the cases and especially at the dicta of long standing from the Supreme Court will quickly dispel this impression. Careful study of the cases has caused one learned author to conclude: "Perhaps the true rule is that all compacts or agreements which increase or decrease political power are void but that all others are voidable merely, at the option of the national government, and that a consent thereto may be inferred from silence and acquiescence."⁷

This is borne out by more recent studies of the Compact Clause.⁸ Without congressional consent agreements have been made on such subjects as the erection of a bridge over a navigable stream, the construction of a railroad, the selection of parties to run and designate a boundary line between the states or the improvement of drainage. There is a wide range of subjects as to which the states may make a valid compact without the consent of Congress. The field of cooperation among the states has increased many fold during the twentieth century and there are scores of agreements without benefit of congressional consent that our courts and constitutional lawyers take for granted.⁹ Consent becomes important only when the subject matter impinges on the political powers granted to the Congress.

Does the Uniform Reciprocal Enforcement of Support Act offend the constitutional principle against delegated legislation?

The question of what legislation may be delegated has become acute with the growing burden placed upon the modern legislature. Typically the

7. Bruce, *The Compacts and Agreements of the States with One Another and with Foreign Powers*, 2 MINN. L. REV. 500 (1918).

8. The most outstanding ones are: *Report of the Committee on Interstate Compacts*, HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, 1921, p. 299 and Frankfurter and Landis, *The Compact Clause of the Constitution*, 34 YALE L. J. 685 (1925), reprinted in Vol. 3 of SELECTED ESSAYS ON CONSTITUTIONAL LAW, p. 1606 (1938).

9. Frankfurter and Landis, *op. cit. supra* note 8, in 1925 cited a "partial list" of 33 associations of state officials who regularly meet to further cooperative action among the states. A complete list may be checked in the Monthly List of State Publications published by the Library of Congress since 1910. See also Strong, *Co-operative Federalism*, 23 IOWA L. REV. 459 (1937).

problem is to determine how far the legislature must itself discharge its duty by laying down basic policy which may then be put into execution by others: private agencies, the courts, the executive or administrative boards, etc.¹⁰ This typical problem does not arise, however, with reference to our act. There is no express delegation in the act. No board or administrative agency is set up.

However a more subtle problem arises. Is there an unconstitutional delegation of legislative power to the legislatures of other states? The question must be discussed under Sections 4 and 7 of the act which are as follows:

Section 4. *Extent of Duties of Support.* The duty of support imposed by the laws of this state or by the laws of the state where the obligee was present when the failure to support commenced as provided in Section 7 and the remedies provided for enforcement thereof, including any penalty imposed thereby, bind the obligor regardless of the presence or residence of the obligee.

Section 7. *What Duties are Enforceable.* Duties of support enforceable under this law are those imposed or imposable under the laws of any state where the alleged obligor was present during the period for which support is sought or where the obligee was present when the failure to support commenced, at the election of the obligee.

Section 4 determines what duties bind the obligor, and Section 7 establishes the choice of laws which the obligee may use in seeking enforcement. Since more than one law is involved it will add to a clearer understanding if we consider the question of constitutionality from the point of view of the state enacting the law. Such state is the one meant when the term "this state" is used.

First of all, who is an "obligor"? Under Section 2.7 he is a person owing a duty to support but, more important, under Section 12 he is a person with reference to whom the court has taken "such action as is necessary under the laws of this state to obtain jurisdiction." This jurisdiction may be of his property (Section 13) or of his person.

As to the jurisdiction of his property there is no constitutional objection to enforcing personal obligations out of property as to which the court

10. Jaffe, *An Essay on Delegation of Legislative Power*, 47 CAL. L. REV. 358 (1947); Jaffe, *Law-Making by Private Groups*, 51 HARV. L. REV. 201 (1937); Starr, *Reciprocal and Retaliatory Legislation in the United States*, 21 MINN. L. REV. 371 (1937).

has obtained jurisdiction.¹¹ Property here includes choses in action.¹² Although there has been some doctrinal objection to such jurisdiction,¹³ the existence of jurisdiction has long been settled and now must be considered at rest.

As to the jurisdiction of his person, it is here that the question of delegation of legislative power to the legislature of another state comes into play. We return to Section 4. Under that section the laws of two states may bind the obligor. The first one is the laws of "this state." There can be no constitutional objection to *that* for the obligor is personally before the court and everyone agrees that his presence within the state is a sufficient basis for the exercise of jurisdiction, both judicial and legislative. The second is "the laws of the state where the obligee was present when the failure to support commenced as provided in Section 7." The word "laws" here will include not only the laws of the other state in existence at the time of the enactment of the Uniform Reciprocal Enforcement of Support Act but also the laws later to be passed. The expression is progressive and is meant to be such. This being so it must be admitted that if such "laws" were to bind the obligor *in general* there would be a valid constitutional objection because "this state" would thus be allowing such other state to legislate for it. That would be an invalidating delegation of legislative power. But the laws of such other state do not bind the obligor *simpliciter* and Section 4 does not say so.

On the contrary Section 4 says they bind as provided in Section 7. We must turn then to Section 7 to see how they bind. Section 7 speaks of duties that are "enforceable" and solves the problem of conflicts of laws that must inevitably arise when the obligor is in one state and the obligee is in another. The choice before the court is that between the law of the state where the obligor was present during the period for which support is sought and the law of the state where the obligee was present when the failure to support commenced. Conceivably the Commissioners could have chosen either of these laws to the exclusion of the other. Conceivably, too, neither of these laws will be the law of "this state." *W* may have been in Michigan "when the failure to support commenced"; the whereabouts of

11. *Pennoyer v. Neff*, 95 U.S. 714 (1877). STUMBERG, *CONFLICT OF LAWS* 106 (2d ed. 1951).

12. *Harris v. Balk*, 198 U.S. 215 (1905). STUMBERG, *CONFLICT OF LAWS* 107 (2d ed. 1951).

13. Beale, *The Exercise of Jurisdiction in Rem to Compel Payment of a Debt*, 27 HARV. L. REV. 107 (1913).

H may have been unknown. Then *W* may have moved to California to live with relatives. Finally the presence of *H* in Washington may have been discovered two weeks before *W* files her complaint in a California court. The latter of the two alternatives (the law of the state where the obligee was present when the failure to support commenced) was purposely included by the Commissioners in order to take care of the embarrassment the obligee would be under if, during any time, the whereabouts of the obligor was unknown or could not be proved. The thought is that the obligee must not lose her cause of action for failure of a law that will apply to the case when the failure in question is no fault of hers but that of the defendant-obligor. Whatever the merits of this solution as a matter of conflicts of laws, there is no doubt that the solution of Section 7 *is* a solution in the field of conflicts of laws, *is* a direction to the court enforcing the act as to what law it should choose in this embarrassing situation, and hence cannot be attacked as a delegation of legislative power. Points in the conflicts of laws arise every day in our courts, the court must make a choice between two laws that compete for application. No one has ever yet suggested that the court in applying the law of another state has been guilty of unconstitutional action. What the court may do on its own initiative, the statute may direct the court to do.

The Uniform Reciprocal Enforcement of Support Act is new and the statutory solution of a point in conflicts of laws may seem unfamiliar. Yet no reason is perceived why the legislature cannot provide a statutory solution in this field as well as in any other field of the common law. Such statutory solutions of points in conflicts of laws are common in other fields. Of the forty-seven states having workmen's compensation law, thirty-three contain express provision answering one or more important conflict problems.¹⁴ There comes to mind, too, the numerous statutes that provide that the validity of marriage shall be determined by the law of the place where celebrated,¹⁵ or by the law of the domicile.¹⁶ The new Uniform Commercial

14. This count was made in 1943 in a note in 57 HARV. L. REV. 242 (1943). Due to individualization of enforcement through special administrative tribunals only five jurisdictions provide for the local application of foreign acts. See on the general subject DODD, ADMINISTRATION OF WORKMEN'S COMPENSATION (1936); HOROWITZ, INJURY AND DEATH UNDER WORKMEN'S COMPENSATION LAWS, 38-42 (1944); Dwan, *Workmen's Compensation and the Conflict of Laws*, 11 MINN. L. REV. 327 (1927) and 20 MINN. L. REV. 19 (1935).

15. Sixteen states and Hawaii have such statutes. I VERNIER, AMERICAN FAMILY LAWS § 32 (1931).

16. Ten states and the District of Columbia have such statutes. 19 J. COMP. LEG. AND INT'L LAW 23 (1937).

Code contains detailed provisions concerning the application of the act.¹⁷ A number of states have provisions for the local recognition of wills that conform in execution to either the law of the place of execution or the law of the testator's domicile.¹⁸ And so it goes. A survey of statute law in the field of conflicts of laws would undoubtedly show that legislation in many states has given direction to the courts in choice of law problems. No one has yet suggested that such statutes constitute an unconstitutional delegation of legislative power. The same conclusion must be drawn as to Section 7 of the Uniform Reciprocal Enforcement of Support Act.

An analogous problem arises under provisions of some state constitutions which invalidate "laws the taking effect of which shall be made to depend upon any authority, except as provided in this constitution."¹⁹

Such a provision, however, has no application to the Uniform Reciprocal Enforcement of Support Act. That act contains no special provision, making its going into effect dependent on any authority outside of the enacting state. It goes into effect according to local constitutional requirements (passage by both houses of the legislature and signature by the Governor, etc.) precisely as any other statute of the state goes into effect. It is true that the act will be of little or no use until some other state passes a similar reciprocal law. But its usefulness or its uselessness in no way makes it any the less a part of the law of the enacting state. A statute of Oregon provides that "the right of aliens . . . to take personal property . . . in this state . . . is dependent in each case upon the existence of a reciprocal right on the part of citizens of the United States to take personal property . . . in like manner within the countries of which said aliens are inhabitants or citizens . . ." ²⁰ The Supreme Court of Oregon in interpreting this statute gave no hint of its violation of the above quoted Oregon constitutional provision.²¹ One of the most important fields in which reciprocal legislation has developed is in the licensing of trades and professions. One state will provide for

17. Uniform Commercial Code § 1-105 (Spring 1950 edition); Comment, *Choice of Law Under the Uniform Commercial Code*, 10 LA. L. REV. 278 (1950); Rheinstein, *Conflicts of Laws in the Uniform Commercial Code*, 16 LAW AND CONTEMP. PROB. 114 (1951).

18. STUMBERG, *CONFLICT OF LAWS* 413 (2d ed. 1951); Lorenzen, *The Validity of Wills, Deeds and Contracts as Regards Form in the Conflict of Laws*, 20 YALE L. J. 427 (1911).

19. The Oregon Constitution, Article I, Section 21, from which the quoted words are taken, is typical of this provision.

20. ORE. COMP. LAWS ANN. § 61-107 (1940).

21. *In re Braun's Estate*, 161 Ore. 503, 90 P. 2d 484 (1939). See also *Bottomly v. Meagher County*, 133 P. 2d 770 (Mont. 1943).

the licensing within its boundaries of persons holding licenses of any other state provided that the other state concerned maintains equal standards and extends a like privilege to persons licensed in the first state. These statutes have not been held unconstitutional on the ground that they are conditional or contingent legislation.²² The Uniform Reciprocal Enforcement of Support Act is just as unconditional.

Is Section 5 of the Uniform Reciprocal Enforcement of Support Act constitutional? This section puts the crime of non-support on the list of those crimes in the field of extradition for which the Governor may demand or surrender a suspected criminal. It then provides that the provisions for extradition shall apply "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." It is only in regard to the quoted provision that there could be any constitutional doubt.

In limine the reader may ask, how can a person commit a crime when he was not "in the demanding state at the time of the commission of the crime." The Uniform Reciprocal Enforcement of Support Act does not answer that question and has no bearing upon it whatever. All that the act purports to do is to free the extradition procedure from the necessity of stating or showing that the person whose surrender is demanded was in the demanding state or had fled therefrom. Is this contrary to Article IV, Section 2, Paragraph 2 of the United States Constitution which provides that "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 executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime"?

This is a constitutional command to the executive authority of the asylum state. It says to him in effect: "You shall deliver up to the demanding state persons found in your state who are charged with crime in another state and who have fled therefrom." It tells him what he *must* do. It does not prohibit him from doing anything. It is not a limitation either on what he decides to do on his own authority²³ above and beyond the con-

22. Starr, *Reciprocal and Retaliatory Legislation in the American States*, 21 MINN. L. REV. 371 (1936).

23. *Munsey v. Clough*, 196 U.S. 364 (1905); *Hughes v. Pflanz*, 138 Fed. 980 (1905); *State ex rel. Shapiro v. Wall*, 187 Minn. 246, 244 N.W. 811 (1932).

stitutional command or on what a statute²⁴ or an interstate compact²⁵ may compel him to do.

This interpretation of the Federal Constitution has long been accepted by the courts.²⁶ While a statute that imposed additional requirements for extradition would be unconstitutional, a statute that permitted or required extradition on easier terms would be constitutional.²⁷

The matter is today put beyond all doubt by the Uniform Criminal Extradition Act. Section 5 of the Uniform Reciprocal Enforcement of Support Act is nothing more than a special application to non-support of the more general provision in Section 6 of that act. Section 6 of the Uniform Criminal Extradition Act has been declared constitutional by the courts in Maryland,²⁸ New York,²⁹ Ohio³⁰ and more recently in California.³¹ The ground has always been that the Federal Constitution and statute cover only extradition of criminals who flee from justice, that they do not confer immunity from extradition on other state criminals, and that such other state criminals may be surrendered in accordance with statutes that are within the

24. There are numerous statutes to this effect: WIS. STAT. § 57.135 (1947); IDAHO CODE 1948, § 20-503; MD. CODE ANN. ART. 27, §282 (1939).

25. A compact among Colorado, New Mexico and Wyoming provides for the elimination of extradition proceedings in some circumstances. COLO. STAT. ANN. c. 153, § 44(3)-44(5) (Supp. 1947); N. M. STAT. ANN. §§ 42-2001 (Supp. 1947); WYO. COMP. STAT., §§ 10-2701 to 10-2704 (1945). See Wigmore, *State Cooperation for Crime Repression*, 28 J. CRIM. L. AND CRIMINOLOGY, 327-34 (1937), and Dean, *The Interstate Compact—A Device for Crime Repression*, 1 LAW AND CONTEMP. PROB. 460, 466-68 (1934).

26. See notes 27-31, *infra*.

27. *In re Tenner*, 20 Cal. 2d 670, 128 P. 338 (1942); *Culbertson v. Sweeney*, 70 Ohio App. 334, 44 N.E. 2d 807 (1942); *Cassis v. Fair*, 126 W. Va. 557, 29 S.E. 2d 245 (1944).

28. *State ex rel. Gildar v. Kriss*, 62 A. 2d 568 (Md. 1948).

29. *People ex rel. Faulds v. Herberich*, 93 N.Y.S. 2d 272 (2d Dept. 1949) *aff'd*. 301 N.Y. 614, 93 N.E. 2d 913 (1949).

30. *Culbertson v. Sweeney*, 70 Ohio App. 344, 44, N.E. 2d 807, *appeal dismissed*, 140 Ohio St. 426, 45 N.E. 2d 118 (1943); *English v. Matowitz*, 148 Ohio St. 39, 72 N.E. 2d 898 (1947).

31. *Ex parte Morgan*, 78 Fed. Supp. 756 (S.D. Cal. 1948), noted favorably in 22 So. CAL. L. REV. 60 (1948). After arrest the party applied for a writ of habeas corpus to the District Court of Appeal of California. The court discharged the writ and remanded the prisoner to custody. *Ex parte Morgan*, 194 P. 2d 800 (1948), where the court said: "The Federal Statute (18 U.S.C.A. Section 662) [carrying into execution the constitutional provision of Art. IV, Section 2] does not purport to cover the entire field of extradition. It mentions only one class of persons—those who flee from the state. . . . The Uniform Criminal Extradition Act does not provide for the extradition of persons of that class but covers persons of an entirely different category—those who commit an act in one state intentionally resulting in a crime in another state. Since each statute refers to a subject different and distinct from the other, there is no conflict and each is enforceable in its own sphere." *Certiorari* was denied by the Supreme Court, 338 U.S. 827 (1949).

state's reserved powers. We must conclude then that Section 5 is constitutional.

However the old question persists, how can a person commit a crime when he was not "in the demanding state at the time of the commission of the crime"? This does not endanger the constitutionality of any particular section of the Uniform Reciprocal Enforcement of Support Act for no section makes any assertion about it one way or the other. But lest the reader think that Section 5 is an almost useless provision that can be applied only in the rarest of cases, a word of further explanation is in order.

There was a time when all jurisdiction was local in character. This arose out of the composition of the old jury who were but witnesses to prove or disprove the allegations of the parties and hence every case had to be tried by a jury of the vicinage, who were presumed to have personal knowledge of the parties as well as of the facts. As far as civil jurisdiction was concerned, the first breach in this rule came through a fiction, by which a party was permitted to allege, under a *vedelicet*, that the place where the contract was made or the transaction occurred was in any county in England. For cases that the court wished to hold transitory this allegation was held non-traversable, and for cases the court wished to hold local the allegation was held traversable.³² For civil cases the early English decisions seemed to have settled for the rule that an action is transitory when the transaction on which it is founded might have taken place anywhere, but otherwise is local.

As far as criminal jurisdiction is concerned the early law certainly adopted the local principle, the English courts even holding that if a blow is struck in one county and death occurred in another neither county could try the offender.³³ But this was changed by a statute of 1549 to give both counties jurisdiction.³⁴ This principle was extended by a statute of 1828 to cover cases of felonious acts occurring outside England resulting in death in England.³⁵

In the United States there are numerous statutes that have departed from the territorial principle.³⁶ Some expand jurisdiction in relation to

32. *Little v. Chicago, St. P. etc. Ry.*, 65 Minn. 48, 67 N.W. 846, 60 Am. St. Rep. 421 (1896).

33. 1 Hale, P. C. 427 (1847).

34. 2 and 3 EDW. VI, c. 4 (1549).

35. 9 GEO. IV, c. 31, § 8 (1828).

36. They are reviewed in Berge, *Criminal Jurisdiction and the Territorial Principle*, 30 MICH. L. REV. 238 (1931).

specific crimes,³⁷ others in relation to crimes generally.³⁸ In the face of this statutory development it will readily be admitted that Section 5 has a rather wide field of application. The provision is particularly appropriate in the field of non-support. A husband-father leaves his family in state *A*, goes to state *B* where he finds employment but refuses further support. He may have supported his family according to his circumstances in life right up to the moment of leaving state *A*. Even if he did not do so, it is difficult to prove that before he left state *A* he had already formulated an intention to desert and fail to support his family. Many men leave with mixed motives or with no motive more definite than to find work in another state. Yet when the failure to support occurs, this failure occurring wholly outside the state, may, according to the law of the state he left, constitute a crime.

Is the Uniform Reciprocal Enforcement of Support Act unconstitutional because of indefiniteness? This is a broad ground for invalidating a statute and a lot depends on the background and sympathies of the particular judge. The question merits discussion because the act does not spell out completely the procedure of enforcement. The Uniform Law Commissioners have had difficulty in drafting uniform acts that contain provisions of procedural detail. Experience has shown that it is almost impossible to draft a general act covering matters of procedure that can be made to synchronize with the many procedural devices in effect in the forty-eight states. The omission of detailed procedural rules from uniform acts has therefore been the constant practice of the Commissioners for many years.³⁹

Invalidity of a statute for indefiniteness may exist for many reasons—the impossibility of giving it a meaning and carrying it out,⁴⁰ the violation

37. Berge, *op. cit. supra* note 36, cites case enforcing such statutes in 16 states.

38. Berge, *op. cit. supra* note 36, cites cases from eight states holding that the state where the crime is consummated has jurisdiction apart from statute to try the criminal. He cites cases from twelve states and two territories enforcing statutes conferring such jurisdiction.

39. Recommendation 8 on the list of Recommendations as to Character and Consideration of Acts prepared by the Committee on Scope and Program, approved by the Conference at Memphis in 1929, is as follows: "[Every act drafted by the Conference] should deal with the matter of law and not with the matter of administrative procedure." HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, p. 410 (1949).

40. Aigler, *Legislation in Vague and General Terms*, 21 MICH. L. REV. 831 (1923).

of the due process clause,⁴¹ or the use of vague and indefinite words that lack any standard of application.⁴²

The Uniform Reciprocal Enforcement of Support Act creates no new offenses, and employs no vague and indefinite terms lacking a standard of application. If it is invalid on the score of indefiniteness, it must be because it has omitted details of procedure.

Let us examine it from that point of view. We start with the principle that "all duties of support are enforceable by action . . ." (Section 9). The action begins with a verified petition (complaint) stating the name, and so far as known to the plaintiff, the address and circumstances of the defendant and his dependents for whom support is sought and all other pertinent information (Section 10.) This petition of course must conform to the general rules for petitions under the law of the state. The act purposely omitted these details. They vary from state to state. Since they are omitted from the act, the appropriate local rules will come in to fill up the gap. This kind of omission occurs not only in uniform acts but also in all kinds of state statutes. It would be redundant and cumbersome to repeat these details every time a new right is created and a new remedy provided by a state.

When the petition is filed, Section 11 specifies what the court must do about it. It makes a finding. It is required to find whether, from the petition, it may be determined that the defendant owes a duty of support. This is not a finding that the defendant owes the duty. The court of the initiating state at that stage could not so find, for the defendant is not before the court. This is therefore a simple finding that the petition states facts sufficient, if nothing more is known, to determine that defendant owes a duty of support. The court also finds that a court of the responding state may obtain jurisdiction of the defendant or his property. This finding, like the last, is from facts appearing in the petition. The court could not find that a court of the responding state *has* jurisdiction. That would be an invasion of the latter court's prerogative. But the court in the initiating state

41. *Conally v. General Construction Co.*, 269 U.S. 385, 46 S. Ct. 126, 70 L. Ed. 322 (1926), with note on vagueness and indefiniteness of statute as rendering it unconstitutional or inoperative in 70 L. Ed. 322. Note, *Due Process Requirements of Definiteness in Statutes*, 62 HARV. L. REV. 77 (1948). The rule of definiteness is said to be more strict in criminal cases because the courts will not sanction the creation of new offenses unless a man of ordinary intelligence can understand what is meant. *People v. Briggs*, 193 N. Y. 457, 86 N.E. 522 (1908); *Musser v. State of Utah*, 333 U. S. 95 (1948); *Winters v. People*, 333 U. S. 507 (1948).

42. A statute making it an offense to be a "member of any gang" was held invalid in *Lanzetta v. New Jersey*, 306 U. S. 451 (1939).

is simply saying that, the facts in the petition being true, we find that a court of the responding state *may* obtain jurisdiction. The court then certifies these findings, attaches a copy of the act and sends the whole forward to the court of the responding state.

The responding state, having enacted this law, finds itself, upon receipt of the above mentioned papers, under the duties prescribed by Section 12. These are clearly pointed out and refer specifically to the existing law of the state under which the court is to obtain jurisdiction. This jurisdiction may cover the defendant or his property. This appears from both Sections 11 and 13.

From that point the court has the powers given by Sections 15 and 16. These powers are specified in the act because the Commissioners considered them necessary to make the act workable. But they are surely not the only powers the court has. The act does not subtract any powers the court has under existing law. To illustrate: suppose defendant, when brought before the court in the responding state, puts in a general denial. Within a state and apart from the act the case would then, under usual procedure, be ready for trial. It is not ready for judgment. The hearing will be precipitated by the official named in Section 12, usually the attorney for the plaintiff, the prosecuting attorney, the Public Welfare Department agent or the Legal Aid Bureau. When the defendant has given his evidence and has been cross-examined by the agent named in Section 12, the court *might* then make his order but not necessarily so. The transcript might be sent back to the court of the initiating state to allow the plaintiff to offer evidence denying, qualifying or adding to what is in the record. Such action would usually be taken upon motion by the agent named in Section 12. When the more complete record is forwarded to the court of the responding state, a further hearing is had when the court may decide to make his order. It will be seen that the procedure outlined here is an imitation, by sending the record back and forth by mail, of the procedure that prevails when both parties are present in court. In the typical trial the plaintiff and his witnesses testify, then comes the turn of the defendant and his witnesses and finally the plaintiff and his witnesses may reply. Usual practice gives the court discretion to carry on and allow each party to add something further to his case. I conceive that the same practice would be followed under the act, but instead of each party and his witnesses physically going to and coming from the witness stand, the record itself is shuttled back and forth

between the two states until finally the court of the responding state is persuaded one way or the other. He then issues his order.

There are many details here which are not specified in the act. They must come from the existing law of the state. But the act is not unconstitutional for this reason. Statutes are not to be considered as isolated fragments of the law but as part of a system.⁴³

State constitutions, in order to keep their legislation clear and definite, sometimes provide that no act shall be passed which shall enact that any existing law shall be deemed a part of it except by inserting it therein. The Uniform Reciprocal Enforcement of Support Act does not attempt to incorporate *expressly* any existing law as to procedure, and so does not run afoul of the constitutional limitation. Even if the act, in a particular state, were to do so the constitutional limitation would not be exceeded, for an exception exists in favor of subjecting special legislation to the general statutes for the forms of process and procedure necessary to accomplish the purpose of the special act.⁴⁴ If there is no violation of the constitutional limitation when the reference to the general law of procedure for enforcement purposes is express, *a fortiori*, there is none when there is no reference at all and the gap in the act under scrutiny must be filled under general principles.⁴⁵

The necessity of filling in the gaps of procedure from the general law of the state is so common as to be taken for granted. When the legislature creates a new right, of course it is within its power to specify the details of procedure. But if no provision is made, the parties are relegated to the former practice.⁴⁶ In the absence of prohibitive legislation, the courts have the inherent power to provide themselves with appropriate procedures required for the performance of their tasks.⁴⁷ Sometimes the legislature, uncertain of the action of a timid court, has enshrined this principle in statu-

43. *Walgreen Co. v. Gross Income Tax Division*, 225 Ind. 418, 75 N.E. 2d 784, 1 A.L.R. 2d 1014 (1947).

44. *In re Buffalo Traction Co.*, 49 N. Y. Supp. 1052 (4th Dep't. 1898), *aff'd* 155 N. Y. 700, 50 N.E. 1115 (1898); *State v. Pete*, 206 La. 1078, 20 So. 2d 368 (1944); *Humann v. Rivera*, 272 App. Div. 352, 71 N. Y. S. 2d 321 (1st Dep't 1947); *Burke v. Kern*, 287 N. Y. 203, 38 N.E. 2d 500 (1941).

45. *Gerish v. Bergen County Court of Juvenile and Domestic Relations*, 135 N. J. L. 485, 52 A. 2d 836 (1947).

46. *In re Pye*, 21 App. Div. 266, 47 N. Y. Supp. 689 (2d Dep't 1897) *aff'd* 154 N. Y. 773 (1898).

47. *Ex parte United States*, 101 F. 2d 870, 131 A.L.R. 176 (7th cir. 1939).

tory form.⁴⁸ Sometimes courts themselves have gone to great lengths in calling to the aid of an inadequate statute rules of procedure in analogous subjects.⁴⁹ In view of this background, whatever may be thought of the decision to omit procedural detail from uniform statutes, there is no basis for the argument that the act is thereby rendered unconstitutional because of indefiniteness.

48. Statutes in California, Idaho, Montana and Utah provide: "When jurisdiction is, by this code, or by any other statute, conferred on a court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of the jurisdiction if the course of the proceedings be not specially pointed out by this code, or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code." CAL. CODE OF CIVIL PROC. § 187 (1949); IDAHO CODE § 1-1622 (1948); MONT. REV. CODES § 8882 (1935); UTAH CODE § 20-7-25 (1933).

49. *State ex rel. Hughes v. Reusswig*, 110 Minn. 473, 126 N.W. 279 (1910).