Statutory Reform of Constitutional Doctrine: Fitting *International Shoe* to Family Law

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The deficiencies of *International Shoe*[1] and its progeny have been highlighted by many of the distinguished academics participating in this Symposium, with Professors Goldstein, Morse, and Juenger adding a comparative and international perspective. Most commentators direct their remarks to the judges who traditionally shape the constitutional doctrines of jurisdiction, only occasionally recommending congressional solutions. In doing so, they overlook important opportunities for refining or revising *International Shoe* through legislative enactments at the state level that are inconsistent with announced doctrine, but sufficiently well-grounded to inspire constitutional respect.

There is no need to belabor the deficiencies that others have identified. Professors Goldstein and Juenger each complain that the Supreme Court's jurisdictional tests are in disarray — mixing notions of territoriality, sovereignty, federalism, fairness, and contacts.[2] Professor Morse joins them in pointing out that our jurisprudence reduces itself to divining how the Court, if asked, will apply its broadly stated rules to the next case.[3] Of course,

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[1] International Shoe Co. v. Washington, 326 U.S. 310 (1945).

[2] Stephen Goldstein, *Federalism and Substantive Due Process: A Comparative and Historical Perspective on* International Shoe *and Its Progeny*, 28 U.C. DAVIS L. REV. 965, 981-86 Friedrich K. Juenger, *A* Shoe *Unfit for Globetrotting*, 28 U.C. DAVIS L. REV. 1027, 1030-37 (1995).

[3] C.G.J. Morse, International Shoe *v. Brussels and Lugano: Principles and Pitfalls in the Law of Personal Jurisdiction*, 28 U.C. DAVIS L. REV. 999, 1010-11 (1995):

> [*International Shoe* provides an example of] jurisdictional rules . . . the imprecision or flexibility of which leaves plenty of scope for disagreement as to their proper application.

Professor Morse points out difficulties in the jurisprudence of the European Court of Jus-

this is not a great problem if legislatures or plaintiffs choose to stay comfortably within the confines of prior fact patterns. But pushing the margins is almost inevitable in jurisdictions like California that want to exercise jurisdiction as fully as the federal and state Constitutions will allow.[4]

Juenger and Goldstein yearn instead for the Brussels Convention.[5] Goldstein points out the virtues of separating federalism concerns from those addressed to the defendant's connection with the state,[6] while Juenger contrasts the Convention's treatment by the European Union's Court of Justice with the deficiencies of our Supreme Court's "weasel word[ed]" efforts at deducing jurisdictional bases from the Constitution.[7] Both scholars like the clarity of what resembles a well-drafted long-arm statute.[8]

But Professor Morse reveals that the grass is not necessarily greener abroad — his view of jurisdiction at the hands of the Court of Justice is far from sanguine. Thirty-month delays in resolving jurisdictional disputes that sound good to American ears are distressingly protracted in comparison to English practice under Order 11 (which still applies to non-European Union cases).[9] Even statutory language requires interpretation, Morse

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tice, which interprets the Brussels Convention, that have a distinctively familiar ring to American ears. The European Court is asked to answer

> a question which is normally narrowly drawn. [It] provides an interpretive answer it thinks suitable for that narrow question. The answer is, however, framed in general terms. To the extent that the general terms are dictated by the particular question posed, the answer may not be suitable for other cases. Yet the European Court does not seem to offer the more general guidance which lawyers would surely appreciate. One might . . . point out the obvious implications in terms of cost of such interpretative methodology.

Id. at 1023.

[4] *See* CAL. CIV. PROC. CODE § 410.10 (West 1973) ("A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.").

[5] E.E.C. Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, Sept. 27, 1968, 1968 J.O. (L 299) 32, *amended by* 1978 O.J. (L 285) 1 [hereafter Brussels Convention].

[6] Goldstein, *supra* note 2, at 997-98.

[7] Juenger, *supra* note 2, at 1038-40.

[8] *See* Brussels Convention, *supra* note 5, § 5.

[9] Under Order 11, many kinds of cases require the court's authorization for long-arm jurisdiction. In deciding whether to permit service outside England, the trial court consid-

notes, and the Court of Justice's vaguely worded, broad responses to narrow questions breed confusion reminiscent of our own jurisprudence.[10]

International Shoe does indeed provide less than one ought to expect from our nation's jurisdictional doctrines, but improvement is possible. Using examples drawn from family law, let me make an immodest proposal for domestic reform, emphasizing *how* this reform should be accomplished. It is high time to move our jurisdictional doctrines along, in my view by developing improved *statutory* provisions.

Because we in this country benefit from a shared language and legal tradition, we need not anticipate the linguistic and interpretive difficulties of the European Union. Rather, it should be possible for drafters to shape American jurisdictional rules in concrete ways that the Supreme Court, armed only with *International Shoe*, is unlikely to provide. Indeed, as I will explain, I believe it is possible to reform current constitutional doctrine legislatively without relying on congressional power to implement constitutional provisions. If, as I hope, this technique brings us more closely in line with foreign and international practice, my approach would also facilitate our participation in agreements now apparently barred to us by Supreme Court doctrine — an object of Professor Juenger's concern.[11]

Let me make my points concrete. The bad fit between traditional jurisdictional doctrines and family law has been with us for a long time. But family law has dealt constructively with its jurisdictional difficulties in a highly instructive fashion.

I. JURISDICTION TO DIVORCE

First came the divorce cases. The Supreme Court's emphasis on defendant-forum connections made it difficult for abandoned spouses (the usual petitioners) to end their marriages. A solution was found in in rem jurisdiction — jurisdiction over "a

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ers the merits of the plaintiff's claim as well as the most convenient place for trial. Rules of the Supreme Court, Order 11, Rules 1, 4 (U.K.), promulgated pursuant to the 1875 Judicature Act, 38 & 39 Vict., ch. 77; P.M. NORTH & J.J. FAWCETT, CHESHIRE AND NORTH'S PRIVATE INTERNATIONAL LAW 193, 203-04 (12th ed. 1992).

[10] *See* Morse, *supra* note 3, at 1020-25.

[11] Juenger, *supra* note 2, at 1044-45 & n.105.

thing." All that was needed was the creation (out of the whole cloth) of a "marital res."[12] Once this legal fiction justified divorce jurisdiction and domicile became its test, an in rem forum existed for cases where status (not property) was at issue. The doctrine proved more useful yet once the Supreme Court decided that even an innocent spouse who relocated after separation should be permitted to end a defunct marriage at his or her new home.[13] The Court took its final step by deciding that the domicile of *either* party sustains divorce jurisdiction,[14] no longer pretending that there was a res at all[15] and mooting questions about how a "thing" could be in two places at the same time.

The clear need for some jurisdictional solution, and the solution's clear failure to comport with the jurisdictional doctrines otherwise in vogue, made divorce jurisdiction a simple exception to the rules. Strange as it was, incompatible as it was, it was impervious to the constitutional earthquakes of *Pennoyer* and *Shaffer*.[16]

The Court's reluctance to intrude into this jurisdictional realm was well founded. But divorce was only the first family law matter needing dispensation from otherwise accepted jurisdictional doctrines — even those articulated in the name of due process under *International Shoe*.

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[12] According to Judge Hastie and Professor Ehrenzweig, the American rule can be traced to an 1834 recommendation by Justice Story, who adapted the Continental nationality principle for this purpose. Alton v. Alton, 207 F.2d 667, 681-82 (3d Cir. 1953) (Hastie, J., dissenting); ALBERT A. EHRENZWEIG, A TREATISE ON THE CONFLICT OF LAWS § 71, at 238-42 (1962); *see also* Atherton v. Atherton, 181 U.S. 155 (1901) (holding that matrimonial domicile provides divorce jurisdiction despite one spouse's absence).

[13] Haddock v. Haddock, 201 U.S. 562 (1906), permitted a spouse to obtain an *ex parte* divorce at his or her new domicile that would be recognized under the Full Faith and Credit Clause so long as the relocation did not constitute abandonment.

[14] The *Haddock* prerequisite of justified relocation was discarded in Williams v. Williams [Williams I], 317 U.S. 287 (1942).

[15] *See id.* at 297 ("[I]t does not aid in the solution of the problem . . . to label these proceedings as proceedings *in rem*. . . . Domicil . . . is recognized . . . as essential . . . to give the court jurisdiction . . . .").

[16] The Supreme Court recognized these divorce cases as sui generis, first in Pennoyer v. Neff, 95 U.S. 714, 733 (1878), when it specifically excepted "cases affecting the personal status of the plaintiff" from its holding, and later in *Shaffer*, when it stated that although in personam is required in almost all cases, "We do not suggest that jurisdictional doctrines . . . governing adjudications of status . . . are inconsistent with the standard of fairness [required by our opinion]." Shaffer v. Heitner, 433 U.S. 186, 208 n.30 (1977).

II. CHILD CUSTODY JURISDICTION

In the child custody area, for example, eight years after *International Shoe*, the Court blundered badly in *May v. Anderson* when it suggested that because financial disputes between spouses require personal jurisdiction, so should disputes over their children.[17] Only creativity born of necessity removed custody law from the resulting doctrinal confusion.

Our late U.C. Davis colleague, Professor Brigitte Bodenheimer, was Reporter for the Uniform Child Custody Jurisdiction Act (UCCJA) when the drafters abandoned efforts to find a long-arm in personam solution to the jurisdictional free-for-all in custody litigation.[18] They fixed their eyes instead on the substantive legal question, which required that a court determine the child's best interests. How, they asked, could this be achieved? Certainly not with courts playing tug of war. The solution they developed was to define the *best* possible place to litigate — a place with the most information about the child and possible custodial arrangements.[19] Sometimes this forum conveniens would be a place that would have personal jurisdiction under traditional tests, but often it would not.

Failing to come to terms with in personam rationales, the drafters could have followed the example of divorce law and resorted to a legal fiction. They might have asserted, for example, that the child's home constituted some kind of "custodial res," analogizing to the "marital res" doctrine. But they did not. Instead they simply wrote a law that narrows the jurisdictional options to a place with appropriate information, then maintains exclusive jurisdiction in that place until it makes sense to change.[20]

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[17] *See* May v. Anderson, 345 U.S. 528 (1953) (plurality opinion), which has been criticized as propounding a rule that would leave some cases with no court authorized to hear a child custody dispute. *See* EUGENE F. SCOLES & PETER HAY, CONFLICT OF LAWS 526 (original ed. 1982); Brigitte M. Bodenheimer, *The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws*, 22 VAND. L. REV. 1207, 1232-34 (1969); Leonard G. Ratner, *Procedural Due Process and Jurisdiction to Adjudicate*, 75 NW. U. L. REV. 363, 381-88 (1980).

[18] Bodenheimer, *supra* note 17, at 1207 n.*, 1232-34.

[19] *Id.* at 1221-31.

[20] *See* UNIF. CHILD CUSTODY JURIS. ACT (UCCJA) §§ 1(a)(3), 3, 7, 13, 14 (1968), 9 U.L.A. 123-24, 143-44, 233-34, 276, 292 (1988).

Because of its divergence from standard doctrines of personal jurisdiction, some commentators have wondered whether the Act is entirely constitutional.[21] I think it absolutely clear that this law will withstand any constitutional attack based on jurisdictional doctrines.[22] My constitutional reasoning echoes some of Professor Goldstein's policy arguments as he pleads for more legislative solutions to our jurisdictional woes.[23] First, only through a legislative solution has it been possible to address this substantive area comprehensively and intelligently. Second, the Act provides the legislative statements often invited by the Supreme Court.[24] It articulates both the problems prompting the legisla-

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[21] *See, e.g.*, Russell M. Coombs, *Interstate Child Custody: Jurisdiction, Recognition, and Enforcement*, 66 MINN. L. REV. 711, 735-64 (1982) (discussing due process); Russell M. Coombs, *Custody Conflicts in the Courts: Judicial Resolution of the Old and New Questions Raised by Interstate Child Custody Cases*, 16 FAM. L.Q. 251, 255, 265 (1982) (discussing full faith and credit and due process); Sandra Brown Sherman, *Child Custody Jurisdiction and the Parental Kidnapping [sic] Prevention Act — A Due Process Dilemma?*, 17 TULSA L.J. 713 (1982). *Contra* Brigitte M. Bodenheimer & Janet Neeley-Kvarme, *Jurisdiction Over Child Custody and Adoption After* Shaffer *and* Kulko, 12 U.C. DAVIS L. REV. 229, 240 (1979); Carol S. Bruch, *Interstate Child Custody Law and* Eicke*: A Reply to Professor Coombs*, 16 FAM. L.Q. 277, 285-86 (1982).

[22] Bruch, *supra* note 21, at 285-86. According to Scoles and Hay, "[t]he case law . . . now overwhelmingly assumes or proclaims the constitutionality of the UCCJA." EUGENE F. SCOLES & PETER HAY, CONFLICT OF LAWS § 15.39, at 544 (2d ed. 1992); *see also infra* note 25.

[23] Goldstein, *supra* note 2, at 994-96.

[24] McGee v. International Life Ins. Co., 355 U.S. 220 (1957), is an example of the Court's deference to an expressed legislative desire to authorize long-arm jurisdiction for matters of local concern. In later cases the Court has taken note when no such expressions were present. In Shaffer v. Heitner, 433 U.S. 186, 216 & n.47 (1977), for example, the Court pointed out that Delaware law evidenced no particularized interest in asserting personal jurisdiction over officers of Delaware corporations (contrasting the laws of three sister states). In Kulko v. Superior Court, 436 U.S. 84, 98 (1978), the Court again remarked on the absence of a "particularized [legislative] interest" in long-arm jurisdiction over the defendant (this time in a California child support case). The Delaware legislature, taking the Court's invitation to heart, successfully corrected its omission following *Shaffer*, and Professor Juenger and I have drafted statutory language to provide the legislative statement concerning child support jurisdiction suggested by the Court's opinion in *Kulko*. *See In re* Mid-Atlantic Toyota Antitrust Litig., 525 F. Supp. 1265, 1271 (D. Md. 1981) (agreeing with Delaware Supreme Court that post-*Shaffer* Delaware amendments provide a constitutionally acceptable assertion of jurisdiction); A.B. 3151 (Diane Martinez), 1993-94 Regular Sess., California Legislature (Professor Juenger reports the bill was held in committee because the chair did not understand the *Kulko* invitation); *see also* Carol S. Bruch, *The 1989 Inter-American Convention on Support Obligations*, 40 AM. J. COMP. L. 817, 841-44 (1992) (concluding that creditor-based jurisdictional provisions of Inter-American Convention are constitutional). The legislative efforts described above should not be required; Professors Weintraub and Juenger are entirely correct in criticizing the Court for its reluctance to impute legislative concern in appropriate cases. *See* RUSSELL J. WEINTRAUB, COMMENTARY ON

tion and the legislature's desire to address them by asserting jurisdiction in the provided-for cases.

I believe that the Court would be loathe to overrule such a thoughtful accommodation of substantive and jurisdictional needs, particularly after the scheme has proven popular and successful in practice, even if upholding it requires adjustments to the Court's earlier doctrinal pronouncements.[25] If I am correct, the UCCJA is a fine example of the ways that constitutional doctrine can be shaped through legislation in the service of sound policy, if drafters are prepared to tackle the challenges.

III. JURISDICTION FOR CHILD SUPPORT

My next example is one in which the Supreme Court again got it wrong: child support jurisdiction. But this time we have yet to see whether subsequent drafters will get it entirely right. In *Kulko v. Superior Court*,[26] the Court refused to permit a custodial parent to sue her former husband for child support in a California court after their children moved there from New York to live with her. In doing so, it seriously misunderstood the context in which child support litigation occurs. First, the Court put too much trust in a creative, yet inadequate interstate device known as URESA.[27] It opined that this scheme (which would have permitted the children's mother to file for child support at home in California and have the action forwarded to New York, where their father lived) obviated her need to obtain long-arm jurisdiction in a California court. The Court also wanted family harmony, not jurisdictional consequences, to be the guiding

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THE CONFLICT OF LAWS § 4.16, at 152-53 (2d ed. 1980); Friedrich K. Juenger, *American Jurisdiction: A Story of Comparative Neglect*, 65 U. COLO. L. REV. 1, 14-15 (1993); Juenger, *supra* note 2, at 1033-34.

[25] *Accord* John E. Hall, Jr. et al., Comment, *The UCCJA: Coming of Age*, 34 MERCER L. REV. 861, 896 (1983) ("[T]he question does not seem to be whether or not the Act is constitutional but, rather, under which theory constitutionality will be upheld").

[26] 436 U.S. 84 (1978).

[27] *See id.* at 98-100. The Uniform Reciprocal Enforcement of Support Act's most current version, the Revised Uniform Reciprocal Enforcement of Support Act (RURESA), 9B U.L.A. 393 (1968), provides a two-state court proceeding for support and paternity cases. For a brief description of the Act, see Carol S. Bruch [then Carol B. Myers], Comment, *At the Intersection of Jurisdiction and Choice of Law*, 59 CAL. L. REV. 1514, 1526-28 (1971). URESA has been seriously criticized and a replacement Act, the Uniform Interstate Enforcement of Support Act (UIFSA), has been promulgated. *See infra* notes 29 and 33.

concern of a parent considering whether to send his children to California to live.[28]

Just as the Supreme Court Justices were not sophisticated in family law when they handed down *May v. Anderson*, their family law expertise was lacking when they decided *Kulko*. Access to child support is a truly desperate need for children and their custodial parents in this country, and *Kulko* was very bad news, indeed.[29] Although recognition of this fact may help to explain the Court's deference to transient jurisdiction in *Burnham v. Superior Court*,[30] child support jurisdiction currently remains inadequate in this country, to the detriment of many children.

Unfortunately, drafters sometimes fail to appreciate the opportunities afforded by the Court's deference to the legislature's will.[31] As a result, the legislative response to *Kulko* has been less daring and comprehensive than it was to *May* in the custody area — at least so far.[32] But there is hope. Once again uniform

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[28] *See Kulko*, 436 U.S. at 94, 97-98. For technological advances that can obviate these concerns, see *infra* note 44.

[29] U.S. COMM'N ON INTERSTATE CHILD SUPPORT, REPORT TO CONGRESS, SUPPORTING OUR CHILDREN: A BLUEPRINT FOR REFORM xii (undated; apparently 1992) (ISBN 0-16-038102-9) [hereafter SUPPORTING OUR CHILDREN]:

> [O]ne in four children [in the United States] grows up in a single-parent household. Today, millions of children in the United States fail to receive the financial support they are owed. This child support "deficit" was almost $5 billion in 1989.
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> Children from interstate families — families where the parents live in different states — suffer the most. About three out of every ten child support cases are interstate. Yet, only $1 of every $10 collected is from an interstate case. The current interstate system is plagued by lack of uniform laws and procedures; inadequate resources; insufficient training of caseworkers, attorneys, and judges; multiple, conflicting support orders involving the same parties; and a lack of cooperation and communication among states. It is clear that the interstate child support system is in need of reform.

See generally Bruch, *supra* note 24 (discussing domestic doctrines and international support enforcement); David F. Cavers, *International Enforcement of Family Support*, 81 COLUM. L. REV. 994 (1981) (describing American developments in interstate and international child support enforcement before 1981); *see also* sources cited in note 37 *infra*.

[30] 495 U.S. 604 (1990). *See* Stanley E. Cox, *Would that* Burnham *Had Not Come to Be Done Insane!*, 58 TENN. L. REV. 497, 555-57 (1991) ("Perhaps the half truth that . . . precedents made jurisdiction over Mr. Burnham difficult betrayed the Justices into thinking they should validate transient . . . jurisdiction."). *See generally The Future of Jurisdiction: A Symposium on* Burnham v. Superior Court, 22 RUTGERS L.J. 559 (1991).

[31] Contrast Delaware's reaction to *Shaffer* with California's reaction thus far to *Kulko*, discussed in note 24 *supra*.

[32] Implementing one of the Interstate Commission's recommendations, Congress has

legislation — the Uniform Interstate Enforcement of Support Act (UIFSA) — has been prepared.[33] Its drafters took partial advantage of *Kulko*'s invitation to expand jurisdiction by articulating a special concern for this type of litigation. Given the dire need for more child support for more children, they then provided a long arm that expressly permits litigation in the child's home state if the child is there as a result of the actions or directions of the absent parent, without regard to that parent's other "contacts."[34]

Although UIFSA's long-arm scheme provides a residual authorization for jurisdiction to the extent constitutionally permissible,[35] it does not yet go as far as the Brussels Convention, other existing European models, or the proposed Inter-American Convention on Support Obligations.[36] Professor Juenger and I

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enacted a full faith and credit provision for child support orders that is loosely based on provisions granting full faith and credit to child custody orders. *Compare* SUPPORTING OUR CHILDREN, *supra* note 29, at 383-84 *with* 28 U.S.C.A. §§ 1738A (child custody), 1738B (child support) (West 1994 & Supp. 1995). Neither provision dictates jurisdiction as an initial matter, but both prohibit sister-state modification of a qualifying order unless the child and both parents have left the original jurisdiction. Although preserving exclusive jurisdiction in the original court makes eminently good sense in child custody cases, it defeats convenient access to court by those needing support. Thus far the child support drafters have missed an opportunity to enact the Inter-American Convention's far more sophisticated scheme. That Convention permits modification actions in any place meeting the Convention's jurisdictional tests with one major exception: requests to reduce support must be presented to the court that entered the existing order. The Inter-American rule avoids forum shopping by the obligor, who is presumed to be more affluent, while enhancing jurisdictional opportunities for the dependent party. *See* Bruch, *supra* note 24, at 827.

[33] UNIF. INTERSTATE ENFORCEMENT OF SUPPORT ACT (UIFSA)(1992), 9 U.L.A. Pocket Part 121 (Supp. 1994). *See* John J. Sampson & Paul M. Kurtz, *UIFSA: An Interstate Support Act for the 21st Century*, 27 FAM. L.Q. 85 (1993) (including UIFSA and unofficial comments); Carol S. Bruch, *Family Support Across Frontiers: New Ideas from the Americas, in* FAMILIES ACROSS FRONTIERS __ (Nigel Lowe and Gillian Douglas eds., forthcoming 1995) (discussing UIFSA and the Inter-American Convention on Support Obligations of July 15, 1989).

[34] UIFSA, *supra* note 33, § 201(5).

[35] *Id.* § 201(8).

[36] *See id.* § 201(8); Bruch, *supra* note 24, at 826-28, 841-44; Bruch, *supra* note 33, at n.54. The Interstate Child Support's Commission's recommendations provided the basis for UIFSA drafting. *Compare* SUPPORTING OUR CHILDREN, *supra* note 29, at 85 *with* UIFSA, *supra* note 33, § 201. By a very narrow margin the Interstate Child Support Commission decided not to recommend that states assert jurisdiction whenever a child whose support is the subject of the action resides in the state. SUPPORTING OUR CHILDREN, *supra* note 29, at 84-86. Instead it recommended that Congress require the states to enact UIFSA's long-arm provisions and that, invoking its powers under the General Welfare and Commerce Clauses of Article I of the Constitution, the Fifth Amendment, Section 5 of the Fourteenth Amendment, and the Full Faith and Credit Clause of Article IV, "Congress make a finding that it

have argued in this Symposium and elsewhere that any child living in California and in need of support should be able to seek child support in a California courtroom, without regard to the defendant's other contacts with this state.[37]

In *May v. Anderson*, the plurality thought in personam jurisdiction was needed to ensure that children would be treated with the same jurisdictional care that assets receive. Although that led to the wrong conclusion for custody litigation, the Justices' reasoning makes more sense in the support area. *Dubin v. City of Philadelphia*,[38] cited favorably in *Shaffer v. Heitner*,[39] permitted long-arm jurisdiction over a Pennsylvania landowner in connection with a tort action based upon a faulty sidewalk on the property. Apparently just owning land in Pennsylvania gave the landlord the requisite forum connections to permit local suit. Nothing in *Dubin* suggests that the landlord was amenable to suit because of a choice to invest in Pennsylvania realty. I think it likely that jurisdiction would have been upheld even if the land had been inherited. Far stronger reasons exist, given the dependency of childhood, to permit litigation of matters concerning the child's support at the child's location.

This point is recognized abroad, where jurisdictional solicitude for "weaker parties" is common. The Brussels Convention, for example, which is praised for permitting trial at the home of the consumer,[40] also provides jurisdiction at the home of the

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is appropriate to allow a state where the child resides, and with which the noncustodial parent has not had contact, to assert jurisdiction over the noncustodial parent in parentage and child support cases." *Id.* at 85. If the Supreme Court sustains the provision's constitutionality, the Commission recommended that Congress require that this basis be added to UIFSA's long-arm provisions for Aid to Families with Dependent Children (AFDC) purposes. *Id.* at 86. For the Clinton Administration's more decisive response, see *infra* note 43.

[37] Hearing on Conflict of Laws Issues, United States Commission on Interstate Child Support, Dec. 29, 1990 (written testimony of Carol S. Bruch, Nov. 29, 1990, and of F.K. Juenger, Dec. 4, 1990); *see also supra* note 24; Juenger, *supra* note 2, at 1039. *See generally* Ann Bradford Stevens, *Is Failure to Support a Minor Child in the State Sufficient Contact with that State to Justify* In Personam *Jurisdiction?*, 17 S. ILL. U. L.J. 491 (1993).

[38] 34 Pa. D. & C. 61 (1938).

[39] 433 U.S. 186, 208 & n.29 (1977).

[40] Goldstein, *supra* note 2, at 989; Juenger, *supra* note 2, at 1039. Professor Goldstein suggests lengthening the list of "weaker parties" to include even more especially protected parties. Goldstein, *supra* note 2, at 989. Surely children (already protected under the Brussels Convention) deserve to be included in any American adaptation of the Convention. *Accord* Cavers, *supra* note 29, at 1018: "[N]o hazardous experiment is required to accept a jurisdictional base such as the maintenance creditor's habitual residence. It has done ser-

needy party in any kind of support case, as does the Inter-American Convention.[41]

Professor Juenger and I have drafted legislation that would follow this example in child support cases,[42] and the Clinton Administration has proposed a similar approach at the congressional level.[43] I firmly believe that a balanced jurisdictional statute, authorizing jurisdiction at the obligee's home with appropriate protections for the obligor,[44] will secure broad adoption. I believe further that once it is in place, providing a sensible national response to a serious problem, the likelihood of a successful constitutional challenge will disappear.

CONCLUSION

As this analysis suggests, there are sound reasons for legislatures to assume an active role in the development of refined jurisdictional doctrines, whether in family law or elsewhere. We cannot, after all, expect the Supreme Court to divine the great variety of needs in every substantive area that gives rise to a

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vice in enforcing decisions for the support of minors since 1958 in [a great many countries]."

[41] Bruch, *supra* note 24, at 826, 842-43.

[42] *See supra* note 24.

[43] The Clinton Administration indicated its support for the more expansive child-based jurisdictional standard in its 1994 proposal for welfare reform. That bill (which was not enacted) would have required states seeking federal monetary contributions to their state AFDC programs to adopt UIFSA with an amendment establishing a presumption "that in the case where a child meets the criteria for residence in the State, a tribunal of the State [with] jurisdiction over [the] child has jurisdiction over both parents . . . if parentage has been legally established or acknowledged, or may be presumed under the laws of the State." S. 2224, 103rd Cong., 2d Sess. (as introduced, June 21, 1994).

[44] Where inconvenience to the defendant would otherwise exist, telephone-conference or video-conference trials should be provided to satisfy due process concerns. Models already exist. Delaware and Colorado tested telephone-conference interstate child support hearings in 1988 and 1989, respectively, and Oklahoma began conducting intra-state administrative child support hearings with an interactive satellite delivery system in August 1994. David A. Price, *When One Party Is 3,000 Miles Away: Petitioner Access to Interstate Child Support Cases*, 32 JUDGES' J., Winter 1993, at 16; *Child Support, The Administrative Process and The SATTRN Project: Oklahoma Style, in* MASSACHUSETTS DEP'T REVENUE, DOING MORE, BETTER, FASTER, WITH LESS: REENGINEERING CHILD SUPPORT ENFORCEMENT 541 (Conference Materials, Jan. 18-21, 1995) (available through the ABA Center on Children and the Law). The use of such technology is expressly authorized by UIFSA, *supra* note 33, § 316. Its implications for jurisdictional and choice-of-law doctrine were anticipated and discussed in Bruch [Myers], *supra* note 27.

jurisdictional challenge. Nor can we expect that deciding cases once every few years permits the Court to construct a comprehensive approach to any complex problem. We can, however, shape jurisdictional doctrine (even constitutional doctrine) in useful, creative ways by drafting comprehensive approaches at the state, national, and international levels. And, in this endeavor, we can benefit from an understanding of foreign and international sources. Finally, and most importantly, we can expect the Court to understand and defer to well-thought-out jurisdictional schemes, even when they deviate from announced Supreme Court doctrine.

In other words, when *International Shoe* does not fit, we should not hesitate to design a new, more satisfactory, last.