RETROACTIVITY AND THE "LONG ARM" STATUTES

I. INTRODUCTION AND PURPOSE

A basic dislike for applying statutes retroactively is evident throughout history. The Roman Code states the principle that laws should only apply to actions in the future unless it is expressly stated that they should apply also to actions of the past.[1] Such has generally been the rule in Rome, the Greek City States, and the English Common Law.[2] In framing our American Constitution, a specific provision was made to prohibit punishment for acts committed prior to the enactment of a penal statute. Statutes violating this provision were commonly called *ex post facto* laws.[3] Legislators and judges alike did not consider it ethical to attach to an already completed transaction a legal significance different from that which was the rule at the time of the transaction.

While this doctrine has become deeply rooted in our judicial system, there are many statutes which have been allowed to operate retrospectively.[4] The reasons for allowing statutes to operate retrospectively are many and varied. They may be engendered by economic or international emergencies,[5] or there may be a need for retroactive application in order to give meaning and purpose to a statute, or to provide for greater administrative efficiency when applying the statute.[6] In this discussion we are concerned only with a small segment of the problems surrounding retroactive legislation, namely, whether or not "long arm" statutes should be applied retroactively.

It is now well settled

> [T]hat in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "tradi-

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1. CODE 1.14.77.

2. *See* Smead, *The Rule Against Retroactive Legislation: A Basic Principle of Jurisprudence*, 20 MINN. L. REV. 775 (1936).

3. U.S. CONST. art. I, § 9; *See* Calder v. Bull, 3 U.S. (3 Dall.) 386 (1789); *See also* Crosskey, *The True Meaning of the Constitutional Prohibition of Ex Post Facto Laws*, 14 U. CHI. L. REV. 539 (1947); Smead, *supra* note 2, at 792-93.

4. Used interchangeably with retroactively.

5. *See* Lichter v. United States, 334 U.S. 742 (1948); Bowles v. Willingham, 321 U.S. 503 (1944); Anderson v. Mount Clemens Pottery Co., 328 U.S. 680 (1946).

6. *See* Norman v. Baltimore & O.R.R., 294 U.S. 240 (1935); Holyoke Water Power Co. v. American Writing Paper Co., 300 U.S. 324 (1937); *See generally* Smith, *Retroactive Laws and Vested Rights*, 6 TEXAS L. REV. 409 (1928).

tional notions of fair play and substantial justice."[7]

This is the basis upon which a state will allow its courts to reach out beyond their own territorial restrictions and subject a nonresident to their jurisdiction. It is no longer necessary for a plaintiff to journey to the forum of the defendant if these "minimum contacts" are present, provided that such action has been sanctioned by the state's legislature. But the question here under discussion is whether or not a tribunal has power to subject a nonresident to its jurisdiction when it is reaching back and attaching new legal rights and duties to already completed actions. We are concerned here with whether or not such reaching back is constitutional, and, if so, whether all state statutes extend to the maximum limits allowed by the Constitution.

It is the purpose of this article to present those factors which a court may consider when passing on retrospective operation of "long arm" statutes. Also to be considered is whether some or all of the "long arm" statutes, when being considered retrospectively, offend the United States Constitution. Finally, an appraisal of Nebraska's recently enacted statute[8] will be made considering it in relation to those statutes already adjudged to have retroactive application as well as past Nebraska decisions which may influence its retroactive application. It is not the intent here to discuss at length the specific circumstances and situations to which different states apply a "long arm" statute but rather to discuss the legal theory upon which a statute is based.

II. "LONG ARM" STATUTES GENERALLY

Retroactive application of a statute is not dependent upon whether a defendant is "doing business" in a state, or whether or not an injury is the result of negligence committed inside or outside of the state, or any other situation for which a statute will permit service outside of its jurisdiction; rather, it is dependent upon the theory from which the court derives its power over the parties involved. The two prominent theories now in use are both based upon the state's police power but vary in that the earlier doctrine requires the implied consent of the defendant in order to be served in the manner prescribed.

The original rule, based upon the United States Supreme Court's decision in *Pennoyer v. Neff*,[9] was that jurisdiction in per-

7. International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945); Milliken v. Meyer, 311 U.S. 457, 463 (1940).

8. L.B. 756 77th Neb. Leg. Sess. (1967).

9. 95 U.S. 714 (1878). *See also* Ehrenzweig, *Pennoyer is Dead, Long Live Pennoyer*, 30 ROCKY MTN. L. REV. 285 (1958).

sonam could not be acquired by service of process outside of the state in which the forum exists. There has, however, been a gradual erosion of the *Pennoyer* doctrine. The first departure from this doctrine was one based on the theory of implied consent.[10] Under this theory the statutes allowing service of process outside the state provided for a substituted service on a person within the state, usually the Secretary of State. In addition, these statutes also provided for service of summons upon the defendant by some appropriate means. In this manner, the constitutional command requiring a method of service reasonably calculated to give notice to the nonresident defendant was also satisfied.[11] In order for a state to justify the use of this service, it was necessary to secure the consent of the defendant. To accomplish this the statute included an implied agreement, *e.g.*, in exchange for the privilege of driving upon the roads of the state a person would agree to allow service to be made in the manner prescribed for any tort committed while using the state's roads.[12]

This theory was extended to its present limits in the *International Shoe* decision.[13] This ruling abolished the need for the fictional agreement and allowed personal service directly on a nonresident based upon the right of a state to police and regulate activities within its borders. Such regulatory power applied not only to conduct while on the highways but also to actions against former residents,[14] or those transacting business,[15] or those contracting to insure[16] as well as many others.[17] It will be seen that the difference between these theories (implied consent and

10. Hess v. Pawlowski, 274 U.S. 352 (1927); Kane v. New Jersey, 242 U.S. 160 (1916).

11. *See* Wuchter v. Pizzutti, 276 U.S. 13 (1928); Milliken v. Meyer, 311 U.S. 457 (1940).

12. *See* note 10 *supra*.

13. International Shoe Co. v. Washington, 326 U.S. 310 (1945).

14. *See, e.g.*, Myrick v. Superior Court, 256 P.2d 348 (Cal. Dist. Ct. App.), *aff'd*, 41 Cal. 2d 519, 261 P.2d 255 (1953).

15. *See, e.g.*, Lone Star Motor Transport v. Citroen Cars Corp., 185 F. Supp. 48 (S.D. Tex. 1960), *rev'd on other grounds*, 288 F.2d 69 (5th Cir. 1961); McCarty v. Hinman, 342 S.W.2d 29 (Tex. Civ. App. 1960); Boches v. Miami Airlines, Inc., 111 F. Supp. 133 (D.N.J. 1953).

16. *See* Traveler's Health Assoc. v. Virginia *ex rel.* State Corp. Comm'n, 339 U.S. 643 (1950).

17. *See, e.g.*, New York Times Co. v. Sullivan, 273 Ala. 656, 144 So. 2d 25 (1962), *rev'd on other grounds*, 376 U.S. 254 (1964) (libel action—service based on distribution of papers within the state); Shepard v. Rheem Mfg. Co., 249 N.C. 454, 106 S.E.2d 704 (1959) (personal injury action—service based on the distribution of goods in the state); Erlanger Mills, Inc. v. Cohoes Fiber Mills, Inc., 239 F.2d 502 (4th Cir. 1956) (breach of contract action—service based on the delivery of goods and services within the state).

direct service without consent) will have a profound effect upon declaring statutes to operate retrospectively.[18]

III. THE SUPREME COURT

The Supreme Court has not passed judgment on the retroactive operation of "long arm" statutes directly, but there are strong indications that, if given the opportunity, a decision favoring such application would be forthcoming. This would be so, provided that the theory of the statute was based upon the police power of the state rather than the securing of a fictional consent. The Supreme Court has specifically discussed this issue in *McGee v. International Life Insurance Company*[19] and *United States v. First National City Bank*.[20]

The statutes in both cases were based on the state's police power without an implied agreement and both involved actions arising before the statutes were enacted. In *McGee*, however, the transactions continued after the enactment, thus preventing a direct ruling.[21] In the *First National City Bank* decision, the Court merely accepted the validity of the New York statute[22] and apparently accepted the New York court's decision to apply it retroactively without actually questioning it. Again, it was not necessary to directly pass on the issue because the decision could be overturned on other grounds.[23]

There is important dictum in *McGee*, however, in that the Court, in referring to the California statute[24] stated:

> The statute was remedial in the purest sense of the term and neither enlarged nor impaired respondent's substantive rights or obligations under the contract. It did nothing more than to provide petitioner with a California forum to

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18. Many states still retain the consent theory. *See* IOWA CODE ANN. § 617.3 (Supp. 1966); MO. REV. STAT. § 351.633 (Supp. 1965). *See also* Gibbons, *A Survey of Modern Nonresident Motorist Statutes*, 13 U. FLA. L. REV. 257 (1960).

19. 355 U.S. 220 (1957).

20. 379 U.S. 378 (1965).

21. *See* Comment, *Retroactive Expansion of State Court Jurisdiction Over Persons*, 63 COLUM. L. REV. 1105, 1117 (1963).

22. N.Y. CIV. PRAC. ACT § 302(a) (McKinney 1963).

23. Interestingly the Supreme Court italicized when quoting the New York Court of Appeals: "The New York Court of Appeals has, however, indicated that where the suit is instituted *after* the effective date of the statute, the statute will normally apply to transactions occurring *before* the effective date. Simonson v. International Bank, 14 N.Y.2d 281, 290, 200 N.E.2d 427, 432." United States v. First Nat. City Bank, 379 U.S. 378, 382 (1965).

24. CAL. INS. CODE §§ 1610-20 (West 1955).

> enforce whatever substantive rights she might have against the respondent.[25]

This statement, referring to a "long arm" statute based upon the regulatory or police power of the state, is indicative of the trend towards allowing retrospective operation of "long arm" statutes.[26] It should provide persuasive evidence to the state appellate courts that the Supreme Court of the United States does not consider retroactive applications of "long arm" statutes violative of the constitutional guarantees. While, as stated, there is prejudice against retrospective legislation, the Supreme Court, in previous decisions, has been of the opinion that most procedural matters are not prejudicial to constitutionally guaranteed rights.[27] The Court has stated that there is "no substantive right in a procedure,"[28] thus allowing courts great freedom and flexibility in many phases of their judicial administration. Certainly the statement that procedure does not offend constitutional guarantees is too broad. Each procedure must be examined individually and the tests provided by precedent[29] must be applied in order to determine whether such procedure is offensive to the Constitution.

IV. THE STATES' INTERPRETATION

Generally state courts have conformed to the Supreme Court's dictum provided that the basis for their statute is the state police power theory without the implied consent requirement. Those states holding that such enactments will not be applied retroactively have done so because their statutes are based on a theory of implied consent, although two,[30] and possibly three,[31] reject retrospec-

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25. McGee v. International Life Ins. Co., 355 U.S. 220, 224 (1957).

26. *See* Bluff Creek Oil Co. v. Green, 275 F.2d 83 (5th Cir. 1958) (construing law of Illinois); Harrison v. Matthews, 235 Ark. 915, 362 S.W.2d 704 (1962); Owens v. Superior Court, 52 Cal. 2d 822, 345 P.2d 921 (1959); Allen v. Superior Court, 41 Cal. 2d 306, 259 P.2d 905 (1953); Nelson v. Miller, 11 Ill. 2d 378, 143 N.E.2d 673 (1957); Gray v. Armijo, 70 N.M. 245, 372 P.2d 821 (1962); Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc., 15 N.Y.2d 443, 209 N.E.2d 68, 261 N.Y.S.2d 8, *cert. denied*, 382 U.S. 905 (1965).

27. *See* Guaranty Trust Co. v. York, 326 U.S. 99 (1945); Sibbach v. Wilson & Co., 312 U.S. 1 (1941); Home Bldg. & Loan Assoc. v. Blaisdell, 290 U.S. 398 (1934); Luria v. United States, 231 U.S. 9 (1913); Ochoa v. Hernandez Y. Morales, 230 U.S. 139 (1913); Bronson v. Kinzie, 42 U.S. (1 How.) 310 (1843).

28. Sibbach v. Wilson & Co., 312 U.S. 1 (1941).

29. See notes 41-45 *infra* and accompanying text.

30. Majerus v. Walk, 275 F. Supp. 952 (D.C. Minn. 1967). *See* Nevins v. Revlon, Inc., 23 Conn. Supp. 314, 182 A.2d 634 (Conn. Super. Ct. 1962).

31. *See* Mladinich v. Kohn, 186 So. 2d 481 (Miss. 1966), in which it appears that Mississippi will not declare statutes retroactive, even if

tive operation on other grounds.

In most states, the acceptance or rejection of retroactivity hinges upon the battle of the substantive versus the procedural nature of the statute. The Iowa Supreme Court has recently decided two cases[32] involving the commission of torts prior to the enactment of a statute reading in part that "[T]he committing of a tort shall be deemed to be the *agreement*[33] of such corporation . . . that any process or original notice so served shall be of the same legal force and effect as if served personally upon such defendant within the State of Iowa."[34]

The court, in arriving at one of the decisions,[35] cited the *McGee* case and indicated that if the statute were not one based on consent they would be justified in applying it retroactively. Since the legislature had not abandoned the older theory, however, the court believed itself prevented from giving the statute any more effect than that which was manifested in the theory of the statute. Such has been the plight of a court desiring to provide a forum for adjudicating the interests of its citizens against non-residents.

In *Gillioz v. Kincannon*,[36] Arkansas was faced with the same problem and arrived at basically the same result.[37] The Arkansas Supreme Court stated that because of the construction of the statute the basis for its jurisdiction was contractual, thus effecting a substantive right rather than being merely procedural. Subsequent to *Gillioz*, however, Arkansas enacted a new statute.[38] The implied agreement mentioned in the Iowa statute, which is similar to the repealed Arkansas statute, was omitted, and thus the court had the freedom to interpret the statute as one based upon the police power of the state. A mere change in the form of the statute resulted in retroactivity being upheld.[39]

Connecticut, on the other hand, developed a somewhat different approach in rejecting a statute based on the state's regulatory

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remedial, unless the clearest intent of the legislature to declare it such is present.

32. Krueger v. Rheem Mfg. Co., — Iowa —, 149 N.W.2d 142 (1967); Chrischilles v. Griswold, — Iowa —, 150 N.W.2d 94 (1967).

33. Emphasis added.

34. IOWA CODE ANN. § 617.3 (Supp. 1966).

35. Krueger v. Rheem Mfg. Co., — Iowa —, 149 N.W.2d 142 (1967).

36. 213 Ark. 1010, 214 S.W.2d 212 (1948).

37. *Id.*, 214 S.W.2d at 216-17: "The creation of this agency, which agency did not exist at the time the act was done, was not a mere 'procedural matter' but in effect contractual."

38. ARK. STAT. ANN. § 27-339 (1947).

39. Harrison v. Matthews, 235 Ark. 915, 362 S.W.2d 704 (1962).

power.[40] There the right granted by their statute was deemed to be so fundamental and substantial that it could not be applied retroactively. The Connecticut Supreme Court was apparently of the opinion that the statute, by providing a local forum, created a right that was not previously available and that a non-resident should be afforded notice by statutory enactment that he is subject to the jurisdiction of the state's judiciary after he has left its boundaries. New York did not agree,[41] holding, in a decision allowing retroactive application of a "long arm" statute, that the statute was merely a more effective means of enforcing a pre-existing right. The Connecticut decision, as well as those in Minnesota[42] and Mississippi,[43] by refusing to apply a statute retroactively, indicate attempts to avoid the substantive versus procedural dichotomy. Minnesota and Mississippi, in particular, either by precedent[44] or by statute,[45] refuse to make any distinction between substance and procedure and in so doing avoid some of the problems posed by eminent writers.

Justice Holmes points out that:

> However much you disguise or palliate the change by saying that a statute deals merely with a remedy or has no vested right to a technical defense or by adopting any other cloudy phrase . . . such legislation does enact that the property of a person previously free from legal liability shall be given to another who before the statute had no legal claim.[46]

Another writer states that the right and the procedure tend to become so entangled that the change of one cannot help but impair the other. He further states that since every person is presumed to know the law that it would be unjust to restrict transactions that have already occurred.[47] This was the problem raised by *Erie v. Tompkins*,[48] that is, should a federal court give cognizance to a state remedy or be allowed to apply its own remedy after *Erie*

40. *See* Nevins v. Revlon, Inc., 23 Conn. Supp. 314, 182 A.2d 634 (Conn. Super. Ct. 1962) (construing CONN. GEN. STAT. REV. § 33-411 (1962).

41. *See* Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc., 15 N.Y.2d 443, 209 N.E.2d 68, 261 N.Y.S.2d 8 (1965) (construing N.Y. CIV. PRAC. ACT § 302(a) (McKinney 1963)).

42. Majerus v. Walk, 275 F. Supp. 952 (D.C. Minn. 1967).

43. Mladinich v. Kohn, 186 So. 2d 481 (Miss. 1966).

44. *See* Chapman v. Davis, 233 Minn. 62, 45 N.W.2d 822 (1951); Hughes v. Lucker, 233 Minn. 207, 46 N.W.2d 497 (1951); Ogren v. City of Duluth, 219 Minn. 555, 18 N.W.2d 535 (1945).

45. *See* MINN. STAT. §§ 645.21, 645.31 (1965).

46. Dunbar v. Baston & P.R. Corp., 181 Mass. 383, 63 N.E. 916 (1902).

47. CRAWFORD, THE CONSTRUCTION OF STATUTES § 278 at 567 (1940); *See also* Comment, note 21 *supra*, at 1119.

48. 304 U.S. 64 (1938).

compelled federal courts to apply the state's substantive law but allowed the use of federal procedure? While admittedly there are problems in providing a rule capable of ascertaining when a person's right to due process will be protected from retroactive application, any attempt to avoid the distinction, as Minnesota and Mississippi have done, unless the legislature clearly indicates a contrary intent, should be weighed against some of the practical considerations involved. The efficient administration of judicial procedure requires a degree of flexibility in order that procedural and administrative techniques may be changed as the existing situations fluctuate. There is also the question of how much actual consideration an individual gives to some of the procedures, specifically, which forum will be available for any trial in which he may be a participant in the future. Even the Minnesota Supreme Court states that there is no vested right in a procedure.[49]

Those jurisdictions retaining the substantive and procedural distinction have been pressed to establish a workable rule. A review of Supreme Court decisions which provide tests for determining whether or not a procedure should be subjected to a due process test[50] presents persuasive evidence that "long arm" statutes should be applied retroactively. Mr. Justice Frankfurter, in considering the effect of a state statute of limitations, which is considered procedural in some aspects, attempted to distinguish it from the substantive by asking whether or not the statute would significantly affect the result of the litigation.[51] Mr. Justice Roberts would provide a test questioning whether the statute really regulates the procedure for administering the remedy.[52]

Specifically applied to a "long arm" statute, the question then

49. *See* Ogren v. City of Duluth, 219 Minn. 555, 18 N.W.2d 535 (1945). The Minnesota Federal District Court in Majerus v. Walk, 274 F. Supp. 952 (D.C. Minn. 1967), and Dixon v. Northwestern Nat. Bank of Minneapolis, 275 F. Supp. 582 (D.C. Minn. 1967) followed the Minnesota Supreme Court decision of Chapman v. Davis, 233 Minn. 62, 45 N.W.2d 822 (1951) which apparently confused the time from which a purely procedural statute begins to operate retrospectively. In these recent federal district court decisions based on Minnesota precedent that court held that a "long arm" statute could not operate unless the statute was enacted before the *cause of action accrued.* Previous Minnesota precedent, however, indicates that where a procedure is involved it will only operate retrospectively from the time that the action is *asserted.* Ogren v. City of Duluth, *supra.* Thus if this prior precedent should be followed the practical result would be the same as the majority of states, that is, that the statute would have to be declared substantial in order to prevent its use in enforcing a transaction already completed.

50. *See* note 27 *supra.*

51. Guaranty Trust Co. v. York, 326 U.S. 99, 109 (1945).

52. Sibbach v. Wilson & Co., 312 U.S. 1, 14 (1941).

is whether, as Justice Holmes said, the person was previously free from legal liability. Connecticut chooses to say that she is unwilling to look to previously existing remedies available in a different jurisdiction.[53] Most courts, however, as the New York decision[54] implied, are willing to look to the remedy available beyond its boundaries and justify the result by saying that the statute does not directly produce a new remedy but rather allows a new forum for an already existing remedy.[55] Such a result would conform to Justice Frankfurter's test, that is, not significantly effecting the result because it merely produces a new forum. Justice Robert's belief in declaring retroactive only those statutes pertaining to administrative procedures would also be satisfied by merely providing a new forum. Certainly a change in forum is procedural in the "purest sense"[56] and "really regulates procedure."[57]

V. THE NEBRASKA STATUTE

Nebraska has recently enacted a "long arm" statute providing for personal service upon a non-resident.[58] It is not of the type classified as an "implied consent" statute based upon substituted service on the Secretary of State as the Iowa statute previously discussed,[59] but rather it provides for service directly on the defendant by various means.[60]

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53. Nevins v. Revlon, Inc., 23 Conn. Supp. 314, 182 A.2d 634 (Conn. Super. Ct. 1962).

54. Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc., 15 N.Y. 2d 443, 209 N.E.2d 68, 261 N.Y.S.2d 8 (1965).

55. See note 26 *supra* and accompanying text.

56. McGee v. International Life Ins. Co., 355 U.S. 220 (1957).

57. Sibbach v. Wilson & Co., 312 U.S. 1 (1941).

58. L.B. 756 77th Neb. Leg. Sess. (1967).

59. See notes 34-39 *supra* and accompanying text for similar statutes based on consent and regulatory power.

60. L.B. 756, § 6, 77th Neb. Leg. Sess. (1967): (1) When the law of this state authorizes service outside this state, the service, when reasonably calculated to give actual notice, may be made:

(a) By personal delivery in the manner prescribed for service within this state;

(b) In the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction;

(c) By any form of mail addressed to the person to be served and requiring a signed receipt;

(d) As directed by the foreign authority in response to a letter rogatory; or

(e) As directed by the court.

(2) Proof of service outside this state may be made by affidavit of the individual who made the service or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of

Nebraska decisions relating to the problem of retroactive application of statutes which pertain to the judicial process have generally found the court favoring a liberal construction of the statute.[61] There is no precedent, as was present in Connecticut, for a narrow interpretation of statutes relating to the judicial process,[62] nor a statute as found in Minnesota. Nebraska's legal history indicates that liberal construction should be given to statutes that are remedial, for "[I]n construing remedial statutes, the well-known rule should be applied, to consider the old law, the mischief and the remedy and to so construe the law as to suppress the mischief and advance the remedy."[63] More specifically, this state has followed the dichotomy of substance[64] and procedure[65] which, as already shown, has a rather limited effect. It does point out, however, that the means are available to declare the statute retroactive and that the precedent in Nebraska is capable of justifying such a doctrine.

In previous decisions the Nebraska Supreme Court has indicated that remedies and procedures may be altered, provided there is an adequate remedy remaining.[66] They have accepted the general statements of the United States Supreme Court that there is no substantial right in a procedure. Speaking specifically about retroactivity, the Nebraska Supreme Court stated in *Lovelace v. Boatman*,[67] "A litigant has no vested right in a mode of procedure, and an action convened before an enactment changing the

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the place in which the service is made for proof of service in an action in any of its courts of general jurisdiction. When service is made by mail, proof of service shall include a receipt signed by the addressee or other evidence of personal delivery to the addressee satisfactory to the court.

61. See cases cited notes 64, 65, *infra*.

62. See Demarest v. Zoning Comm'n, 134 Conn. 572, 59 A.2d 293 (1948); Loew's Enterprises, Inc. v. International Alliance of Theatrical Stage Employees, 127 Conn. 415, 17 A.2d 525 (1941).

63. Rogers v. The Omaha Hotel Co., 4 Neb. 54, 58 (1875).

64. *See* State *ex rel.* Venango Rural High School Dist. v. Ziegler, 173 Neb. 758, 115 N.W.2d 142 (1962); Dell v. City of Lincoln, 170 Neb. 176, 102 N.W.2d 62 (1960); Aterburn v. Vandemoer, 157 Neb. 68, 58 N.W.2d 606 (1953), *cert. denied*, 346 U.S. 926 (1954); State *ex rel.* City of Grand Island v. Union Pac. R.R., 152 Neb. 772, 42 N.W.2d 867 (1950); School Dist. of Omaha v. Adams, 151 Neb. 741, 39 N.W.2d 550 (1949).

65. *See* Travelers Ins. Co. v. Ohler, 119 Neb. 121, 125, 202 N.W. 449, 450 (1929): "It may be conceded that ordinarily the rules of court procedure alone may at anytime be changed by legislative enactment . . . ."; Lovelace v. Boatman, 113 Neb. 145, 202 N.W. 418 (1925); Norris v. Tower, 102 Neb. 434, 436, 467 N.W. 728, 729 (1918) (laws giving remedy for breach of contract may be modified provided adequate remedy is left).

66. Lovelace v. Boatman, 113 Neb. 145, 202 N.W. 418 (1925); Norris v. Tower, 102 Neb. 434, 167 N.W. 728 (1918).

67. 113 Neb. 145, 202 N.W. 418 (1925).

procedure in the court where the action is pending, after the enactment becomes effective, is properly liable under the changed method."[68] While this holding may not be directly on point, it does provide support for the "long arm" statute which is purely procedural and specifically allows such procedural enactments to be applied retroactively. Thus, because of Nebraska precedent and its acceptance of much of the federal reasoning relating to the rights involved in procedural matters, it is difficult to see how Nebraska's Supreme Court could rule against retrospective operation.

VI. CONCLUSION

There is no apparent reason for a state not to allow a "long arm" statute to operate retroactively. Those states still possessing statutes based on the fiction of implied consent need merely change the theory upon which the statute is based. While it may be said that the possibility of frustrating a person's reliance on existing laws is present, there should be no reason for a person to assume that the process under which a law is administered will not change.[69] Such an assumption is an extension of the right to due process of law, which, in all practicality, cannot be, and has not been accepted. Service of process does not operate to abridge, enlarge, or modify the rules of decision under which a court will adjudicate an individual's rights.[70]

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68. *Id.* at 148, 202 N.W. at 419.

69. *See* COOK, THE LOGICAL AND LEGAL BASIS OF THE CONFLICTS OF LAWS 166 (1942).

70. *See* Mississippi Publishing Corp. v. Murphee, 326 U.S. 438, 445 (1946).