Civil Procedure
Fall 2016
Professor Lonny Hoffman

Section 4
(CM Pages 252 – 349)

Personal Jurisdiction
Questions to Discuss
(Note: these questions cover several classes)

1. Why does a court need personal jurisdiction to render a binding judgment against a defendant?

2. What options does a defendant have if he believes that the court lacks personal jurisdiction over him? What are the potential advantages and disadvantages of pursuing each option?

3. For *Pennoyer*, can you map out a procedural history of the case?

4. What is *Pennoyer*'s holding? How do you read *Pennoyer* after Shoe?

5. Having now read *Gray v. American Radiator*, what is the first step in a jurisdictional amenability analysis?

6. Why do we usually look to state law, rather than federal law, to determine statutory amenability for a court to hear a case? What is the significance of Rule 4(k)(1)(A)?

7. In terms of constitutional amenability, what are some traditional bases for exercising jurisdiction that have been held to be constitutional? Can you explain the rationale for each?

8. If a traditional basis for jurisdiction exists, is it necessary to determine if a defendant has minimum contacts with the forum?

9. Assuming no traditional basis exists, the court says that there are two steps for determining constitutional amenability. What are they?

10. What is the difference between specific jurisdiction and general jurisdiction?

11. When would there be general jurisdiction over an individual defendant?

12. When would there be general jurisdiction over a corporate defendant?

13. What are the factors that the *Burger King* court considered most significant for determining if a defendant has minimum contacts with the forum in a contract case?

14. What is the test that the Court uses in *Calder* and in *Walden* to determine if a defendant has minimum contacts with the forum in an intentional tort case?

15. The justices are divided about what counts as purposeful availment by a distant manufacturer whose product causes injury in the forum. Can you articulate the different standards that have been suggested? Given how *Nicastro* came out, what is the position that likely commands a majority of sitting justices?

Syllabus	Opinion [Field]	Dissent [Hunt]
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FIELD, J., Opinion of the Court

SUPREME COURT OF THE UNITED STATES

95 U.S. 714

Pennoyer v. Neff

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

Argued --- Decided

MR. JUSTICE FIELD delivered the opinion of the court.

This is an action to recover the possession of a tract of land, of the alleged value of $15,000, situated in the State of Oregon. The plaintiff asserts title to the premises by a patent of the United States issued to him in 1866, under the act of Congress of Sept. 27, 1850, usually known as the Donation Law of Oregon. The defendant claims to have acquired the premises under a sheriff's deed, made upon a sale of the property on execution issued upon a judgment recovered against the plaintiff in one of the circuit courts of the State. The case turns upon the validity of this judgment.

It appears from the record that the judgment was rendered in February, 1866, in favor of J. H. Mitchell, for less than $300, including costs, in an action brought by him upon a demand for services as an attorney; that, at the time the action was commenced and the judgment rendered, the defendant therein, the plaintiff here, was a nonresident of the State; [p720] that he was not personally served with process, and did not appear therein; and that the judgment was entered upon his default in not answering the complaint, upon a constructive service of summons by publication.

The Code of Oregon provides for such service when an action is brought against a nonresident and absent defendant who has property within the State. It also provides, where the action is for the recovery of money or damages, for the attachment of the property of the nonresident. And it also declares that no natural person is subject to the jurisdiction of a court of the State

> unless he appear in the court, or be found within the State, or be a resident thereof, or have property therein; and, in the last case, only to the extent of such property at the time the jurisdiction attached.

Construing this latter provision to mean that, in an action for money or damages where a defendant does not appear in the court, and is not found within the State, and is not a resident thereof, but has property therein, the jurisdiction of the court extends only over such property, the declaration expresses a principle of general, if not universal, law. The authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established. Any attempt to exercise authority beyond those limits would be deemed in every other forum, as has been said by this Court, an illegitimate assumption of power, and be resisted as mere abuse. *D'Arcy v. Ketchum et al.*, 11 How. 165. In the case against the plaintiff, the property here in controversy sold under the judgment rendered was not attached, nor in any way brought under the jurisdiction of the court. Its first connection with the case was caused by a levy of the execution. It was not, therefore, disposed of pursuant to any adjudication, but only in enforcement of a personal judgment, having no relation to the property, rendered against a nonresident without service of process upon him in the action or his appearance therein. The court below did not consider that an attachment of the property was essential to its jurisdiction or to the validity of the sale, but held that the judgment was invalid from defects in the affidavit upon which the order of publication was obtained and in the affidavit by which the publication was proved. [p721]

There is some difference of opinion among the members of this Court as to the rulings upon these alleged defects. The majority are of opinion that, inasmuch as the statute requires, for an order of publication, that certain facts shall appear by affidavit to the satisfaction of the court or judge, defects in such affidavit can only be taken advantage of on appeal, or by some other direct proceeding, and cannot be urged to impeach the judgment collaterally. The majority of the court are also of opinion that the provision of the statute requiring proof of the publication in a newspaper to be made by the "affidavit of the printer, or his foreman, or his principal clerk" is satisfied when the affidavit is made by the editor of the paper. The term "printer," in their judgment, is there used not to indicate the person who sets up the type -- he does not usually have a foreman or clerks -- it is rather used as synonymous with publisher. The Supreme Court of New York so held in one case; observing that, for the purpose of making the required proof, publishers were "within the spirit of the statute." *Bunce v. Reed*, 16 Barb. (N. Y.) 350. And, following this ruling, the Supreme Court of California held that an affidavit made by a "publisher and proprietor" was sufficient. *Sharp v. Daugney*, 33 Cal. 512. The term "editor," as used when the statute of New York was passed, from which the Oregon law is borrowed, usually included not only the person who wrote or selected the articles for publication, but the person who published the paper and put it into circulation. Webster, in an early edition of his Dictionary, gives as one of the definitions of an editor, a person "who superintends the publication of a newspaper." It is principally since that time that the business of an editor has been separated from that of a publisher and printer, and has become an independent profession.

If, therefore, we were confined to the rulings of the court below upon the defects in the affidavits mentioned, we should be unable to uphold its decision. But it was also contended in that court, and is insisted upon here, that the judgment in the State court against the plaintiff was void for want of personal service of process on him, or of his appearance in the action in which it was rendered and that the premises in controversy could not be subjected to the payment of the demand [p722] of a resident creditor except by a proceeding *in rem*, that is, by a direct proceeding against the property for that purpose. If these positions are sound, the ruling of the Circuit Court as to the invalidity of that judgment must be sustained notwithstanding our dissent from the reasons upon which it was made. And that they are sound would seem to follow from two well established principles of public law respecting the jurisdiction of an independent State over persons and property. The several States of the Union are not, it is true, in every respect independent, many of the right and powers which originally belonged to them being now vested in the government created by the Constitution. But, except as restrained and limited by that instrument, they possess and exercise the authority of independent States, and the principles of public law to which we have referred are applicable to them. One of these principles is that every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory. As a consequence, every State has the power to determine for itself the civil status and capacities of its inhabitants; to prescribe the subjects upon which they may contract, the forms and solemnities with which their contracts shall be executed, the rights and obligations arising from them, and the mode in which their validity shall be determined and their obligations enforced; and also the regulate the manner and conditions upon which property situated within such territory, both personal and real, may be acquired, enjoyed, and transferred. The other principle of public law referred to follows from the one mentioned; that is, that no State can exercise direct jurisdiction and authority over persons or property without its territory. Story, Confl. Laws, c. 2; Wheat. Int. Law, pt. 2, c. 2. The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others. And so it is laid down by jurists as an elementary principle that the laws of one State have no operation outside of its territory except so far as is allowed by comity, and that no tribunal established by it can extend its process beyond that territory so as to subject either persons or property to its decisions. "Any exertion of authority of this sort beyond this limit," says Story, "is a mere nullity, and incapable of binding [p723] such persons or property in any other tribunals." Story, Confl.Laws, sect. 539.

But as contracts made in one State may be enforceable only in another State, and property may be held by nonresidents, the exercise of the jurisdiction which every State is admitted to possess over persons and property within its own territory will often affect persons and property without it. To any influence exerted in this way by a State affecting persons resident or property situated elsewhere, no objection can be justly taken; whilst any direct exertion of authority upon them, in an attempt to give ex-territorial operation to its laws, or to enforce an ex territorial jurisdiction by its tribunals, would be deemed an encroachment upon the independence of the State in which the persons are domiciled or the property is situated, and be resisted

Thus the State, through its tribunals, may compel persons domiciled within its limits to execute, in pursuance of their contracts respecting property elsewhere situated, instruments in such form and with such solemnities as to transfer the title, so far as such formalities can be complied with; and the exercise of this jurisdiction in no manner interferes with the supreme control over the property by the State within which it is situated. *Penn v. Lord Baltimore*, 1 Ves. 444; *Massie v. Watts*, 6 Cranch 148; *Watkins v. Holman*, 16 Pet. 25; *Corbett v. Nutt*, 10 Wall. 464.

So the State, through its tribunals, may subject property situated within its limits owned by nonresidents to the payment of the demand of its own citizens against them, and the exercise of this jurisdiction in no respect infringes upon the sovereignty of the State where the owners are domiciled. Every State owes protection to its own citizens, and, when nonresidents deal with them, it is a legitimate and just exercise of authority to hold and appropriate any property owned by such nonresidents to satisfy the claims of its citizens. It is in virtue of the State's jurisdiction over the property of the nonresident situated within its limits that its tribunals can inquire into that nonresident's obligations to its own citizens, and the inquiry can then be carried only to the extent necessary to control the disposition of the property. If the nonresident [p724] have no property in the State, there is nothing upon which the tribunals can adjudicate.

The writer of the present opinion considered that some of the objections to the preliminary proceedings in the attachment suit were well taken, and therefore dissented from the judgment of the Court, but, to the doctrine declared in the above citation, he agreed, and he may add that it received the approval of all the judges. It is the only doctrine consistent with proper protection to citizens of other States. If, without personal service, judgments *in personam*, obtained *ex parte* against nonresidents and absent parties, upon mere publication of process, which, in the great majority of cases, would never be seen by the parties interested, could be upheld and enforced, they would be the constant instruments of fraud and oppression. Judgments for all sorts of claims upon contracts and for torts, real or pretended, would be thus obtained, under which property would be seized, when the evidence of the transactions upon [p727] which they were founded, if they ever had any existence, had perished.

Substituted service by publication, or in any other authorized form, may be sufficient to inform parties of the object of proceedings taken where property is once brought under the control of the court by seizure or some equivalent act. The law assumes that property is always in the possession of its owner, in person or by agent, and it proceeds upon the theory that its seizure will inform him not only that it is taken into the custody of the court, but that he must look to any proceedings authorized by law upon such seizure for its condemnation and sale. Such service may also be sufficient in cases where the object of the action is to reach and dispose of property in the State, or of some interest therein, by enforcing a contract or a lien respecting the same, or to partition it among different owners, or, when the public is a party, to condemn and appropriate it for a public purpose. In other words, such service may answer in all actions which are substantially proceedings *in rem*. But where the entire object of the action is to determine the personal rights and obligations of the defendants, that is, where the suit is merely *in personam*, constructive service in this form upon a nonresident is ineffectual for any purpose. Process from the tribunals of one State cannot run into another State, and summon parties there domiciled to leave its territory and respond to proceedings against them. Publication of process or notice within the State where the tribunal sits cannot create any greater obligation upon the nonresident to appear. Process sent to him out of the State, and process published within it, are equally unavailing in proceedings to establish his personal liability.

The want of authority of the tribunals of a State to adjudicate upon the obligations of nonresidents, where they have no property within its limits, is not denied by the court below: but the position is assumed, that, where they have property within the State, it is immaterial whether the property is in the first instance brought under the control of the court by attachment or some other equivalent act, and afterwards applied by its judgment to the satisfaction of demands against its owner; or such demands be first established in a personal action, and [p728] the property of the nonresident be afterwards seized and sold on execution. But the answer to this position has already been given in the statement that the jurisdiction of the court to inquire into and determine his obligations at all is only incidental to its jurisdiction over the property. Its jurisdiction in that respect cannot be made to depend upon facts to be ascertained after it has tried the cause and rendered the judgment. If the judgment be previously void, it will not become valid by the subsequent discovery of property of the defendant, or by his subsequent acquisition of it. The judgment, if void when rendered, will always remain void; it cannot occupy the doubtful position of being valid if property be found, and void if there be none. Even if the position assumed were confined to cases where the nonresident defendant possessed property in the State at the commencement of the action, it would still make the validity of the proceedings and judgment depend upon the question whether, before the levy of the execution, the defendant had or had not disposed of the property. If, before the levy, the property should be sold, then, according to this position, the judgment would not be binding. This doctrine would introduce a new element of uncertainty in judicial proceedings. The contrary is the law: the validity of every judgment depends upon the jurisdiction of the court before it is rendered, not upon what may occur subsequently.

The force and effect of judgments rendered against nonresidents without personal service of process upon them, or their voluntary appearance, have been the subject of frequent consideration in the courts of the United States and of the several States, as attempts have been made to enforce such judgments in States other than those in which they were rendered, under the provision of the Constitution requiring that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State;" and the act of Congress providing for the mode of authenticating such acts, records, and proceedings, and declaring that, when thus authenticated,

> they shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are or shall or taken.

In the earlier cases, it was supposed that the act gave to all judgments the same effect in other States which they had by law in the State where rendered. But this view was afterwards qualified so as to make the act applicable only when the court rendering the judgment had jurisdiction of the parties and of the subject matter, and not to preclude an inquiry into the jurisdiction of the court in which the judgment was rendered, or the right of the State itself to exercise authority over the person or the subject matter.

Be that as it may, the courts of the United States are not required to give effect to judgments of this character when any right is claimed under them. Whilst they are not foreign tribunals in their relations to the State courts, they are tribunals [p733] of a different sovereignty, exercising a distinct and independent jurisdiction, and are bound to give to the judgments of the State courts only the same faith and credit which the courts of another State are bound to give to them.

Since the adoption of the Fourteenth Amendment to the Federal Constitution, the validity of such judgments may be directly ground that proceedings in a court of justice to determine the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law. Whatever difficulty may be experienced in giving to those terms a definition which will embrace every permissible exertion of power affecting private rights, and exclude such as is forbidden, there can be no doubt of their meaning when applied to judicial proceedings. They then mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution -- that is, by the law of its creation -- to pass upon the subject matter of the suit; and if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the State, or his voluntary appearance.

Except in cases affecting the personal status of the plaintiff and cases in which that mode of service may be considered to have been assented to in advance, as hereinafter mentioned, the substituted service of process by publication, allowed by the law of Oregon and by similar laws in other States, where actions are brought against nonresidents, is effectual only where, in connection with process against the person for commencing the action, property in the State is brought under the control of the court, and subjected to its disposition by process adapted to that purpose, or where the judgment is sought as a means of reaching such property or affecting some interest therein; in other words, where the action is in the nature of a proceeding *in rem*. As stated by Cooley in his Treatise on Constitutional Limitations 405, for any other purpose than to subject the property of a nonresident to valid claims against [p734] him in the State, "due process of law would require appearance or personal service before the defendant could be personally bound by any judgment rendered."

It is true that, in a strict sense, a proceeding *in rem* is one taken directly against property, and has for its object the disposition of the property, without reference to the title of individual claimants; but, in a larger and more general sense, the terms are applied to actions between parties where the direct object is to reach and dispose of property owned by them, or of some interest therein. Such are cases commenced by attachment against the property of debtors, or instituted to partition real estate, foreclose a mortgage, or enforce a lien. So far as they affect property in the State, they are substantially proceedings *in rem* in the broader sense which we have mentioned.

It follows from the views expressed that the personal judgment recovered in the State court of Oregon against the plaintiff herein, then a nonresident of the State, was without any validity, and did not authorize a sale of the property in controversy.

To prevent any misapplication of the views expressed in this opinion, it is proper to observe that we do not mean to assert by anything we have said that a State may not authorize proceedings to determine the status of one of its citizens towards a nonresident which would be binding within the State, though made without service of process or personal notice to the nonresident. The jurisdiction which every State possesses to determine the civil status and capacities of all its inhabitants involves authority to prescribe the conditions on which proceedings affecting them may be commenced and carried on within its territory. The State, for example, has absolute [p735] right to prescribe the conditions upon which the marriage relation between its own citizens shall be created, and the causes for which it may be dissolved. One of the parties guilty of acts for which, by the law of the State, a dissolution may be granted may have removed to a State where no dissolution is permitted. The complaining party would, therefore, fail if a divorce were sought in the State of the defendant; and if application could not be made to the tribunals of the complainant's domicile in such case, and proceedings be there instituted without personal service of process or personal notice to the offending party, the injured citizen would be without redress. Bish. Marr. and Div., sect. 156.

Neither do we mean to assert that a State may not require a nonresident entering into a partnership or association within its limits, or making contracts enforceable there, to appoint an agent or representative in the State to receive service of process and notice in legal proceedings instituted with respect to such partnership, association, or contracts, or to designate a place where such service may be made and notice given, and provide, upon their failure, to make such appointment or to designate such place that service may be made upon a public officer designated for that purpose, or in some other prescribed way, and that judgments rendered upon such service may not be binding upon the nonresidents both within and without the State

corporations or other institutions for pecuniary or charitable purposes, may provide a mode in which their conduct may be investigated, their obligations enforced, or their charters revoked, which shall require other than personal service upon their officers or members. Parties becoming members of such corporations or institutions would hold their [p736] interest subject to the conditions prescribed by law. *Copin v. Adamson*, Law Rep. 9 Ex. 345.

In the present case, there is no feature of this kind, and consequently no consideration of what would be the effect of such legislation in enforcing the contract of a nonresident can arise. The question here respects only the validity of a money judgment rendered in one State in an action upon a simple contract against the resident of another without service of process upon him or his appearance therein.

Judgment affirmed.

WHAT'S "SOVEREIGNTY" GOT TO DO WITH IT? DUE PROCESS, PERSONAL JURISDICTION, AND THE SUPREME COURT

Wendy Collins Perdue*

I. BACK TO THE FOUNTAINHEAD: *PENNOYER V. NEFF*

Much of the credit (or blame) for modern personal jurisdiction doctrine dates back to *Pennoyer v. Neff*.[5] It is there that the Court explicitly addressed concerns about sovereignty and, for the first time, introduced the Due Process Clause into personal jurisdiction doctrine.[6] However, these two elements—sovereignty and due process—were approached in *Pennoyer* quite differently than they are described in modern opinions, so it is worth revisiting what *Pennoyer* actually said.

Justice Field's personal jurisdiction analysis began by focusing on states and the scope of their power. He noted that except as limited by the Constitution, states "possess and exercise the authority of independent States," and that the principles of international law concerning personal jurisdiction are applicable to the states.[7] He then laid out what he believed to be universal and undisputed principles of public international law—that "every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory," and that "no State can exercise direct jurisdiction and authority over persons or property without its territory."[8] From these principles, Justice Field concluded that in-state service is a necessary prerequisite for personal jurisdiction.[9]

To the extent that Field believed that in-state service is a necessary corollary of territorial boundaries, the opinion is undeniably wrong. Many territorially defined nations do not agree that in-state service is either necessary or sufficient.[10] Nonetheless, Field's broader analytic approach is significant. In determining the scope of state judicial authority, his analysis focused on the state, not the defendant. Field formulated his jurisdictional inquiry by asking what power a state has over people inside and outside its boundaries, rather than asking when defendants are subject to jurisdiction.[11] Additionally, Field saw nothing in our federal structure that limits our states differently than nations are limited with respect to the substantive scope of their personal jurisdiction

authority.[12] He therefore looked to international law as a source for delineating the scope of sovereign authority that states possess with respect to personal jurisdiction.[13] Whether or not his understanding of international law was correct, this part of the opinion puts states, and the scope of their sovereign authority, at the center of its analysis.

The real innovation of *Pennoyer* was not the focus on sovereignty, but rather the introduction of the Due Process Clause of the Fourteenth Amendment as a basis to refuse to enforce a judgment. Justice Field began this part of the analysis by noting that under the Full Faith and Credit Clause, one state was not required to enforce a judgment from another state that was void under the principles of jurisdiction he had laid out.[14] However, because the Full Faith and Credit Clause is applicable only to judgments where enforcement is sought in another state, Justice Field was concerned that a void judgment might nonetheless be enforceable within the rendering state:

> [I]f the whole proceeding, without service upon him or his appearance, is *coram non judice* and void; if to hold a defendant bound by such a judgment is contrary to the first principles of justice,—it is difficult to see how the judgment can legitimately have any force within the State.[15]

As troubled as he was by the prospect of a state enforcing its own void judgment, Justice Field recognized that the Full Faith and Credit Clause did not provide a basis for challenging an intra-state enforcement of a void judgment and "there was no mode of directly reviewing such judgment or impeaching its validity within the State where rendered."[16] It was at this point that Justice Field turned to the Due Process Clause:

> Since the adoption of the Fourteenth Amendment to the Federal Constitution, the validity of such judgments may be directly questioned, and their enforcement in the State resisted, on the ground that proceedings in a court of justice to determine the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law.[17]

Thus, the Due Process Clause provided a hook to allow an intra-state challenge to a judgment rendered in violation of the principles of sovereignty and international law that he had earlier described.

Significantly, although Justice Field invoked the Fourteenth Amendment as a tool for challenging a judgment rendered without jurisdiction, the Court nowhere suggested that the Due Process Clause provided the substantive criteria for jurisdiction. This is evident in the structure of the opinion. The principles of jurisdiction are found in the beginning of the opinion before the discussion of the Fourteenth Amendment.[18] The Due Process Clause was introduced towards the end of the opinion after Field had already delineated the scope of states' jurisdictional authority. Treating the Due Process Clause as a tool to challenge enforcement of a judgment, but not as a source of the substantive criteria, also allows *Pennoyer* to fit more comfortably within the preexisting Full Faith and Credit Clause cases which had long recognized the existence of limits on personal jurisdiction and which Field cited.[19] Under *Pennoyer*'s approach, the Full Faith and Credit Clause continues to control in the inter-state context and the Due Process Clause simply provides a vehicle to transport the principle developed in the interstate full faith and credit context to the intra-state context.

Using the Due Process Clause as a tool to challenge invalid judgments, but not as the source of the standards for validity, is completely consistent with the principle that the Due Process Clause protects individual rights. Due process requires that a judgment be rendered by a court of competent jurisdiction.[20] The right that is protected by that clause is the right not to have liberty or property taken by a state that is acting "coram non judice"—without legitimate authority.[21]

Thus, from a broad structural perspective, *Pennoyer* established several noteworthy propositions. First, the state and an understanding of the scope of state power is the appropriate starting point for analyzing personal jurisdiction. Second, there is nothing unique in our federal structure that requires substantive limitations on our states that are different from those that exist in the international context. Third, the Due Process Clause provides a basis for resisting in-state enforcement of a judgment that exceeds a state's legitimate authority, but it does not provide the standards for determining the scope of each state's jurisdictional reach. Over the next century and a half, all three of these propositions were altered, although in most cases without explicit reexamination.

II. DUE PROCESS AS A SOURCE OF SUBSTANTIVE STANDARDS

Although *Pennoyer* introduced the Due Process Clause as a mechanism that would allow a direct challenge to excessive exercises of jurisdiction, by the twentieth century the Due Process Clause began to assume a more substantive role. This is apparent in the way the Supreme Court and litigants began to frame and understand the issue presented in personal jurisdiction cases. Consider *Hess v. Pawloski*.[22] In that case, a Massachusetts statute designated a state official to be the agent for service of process for any non-resident who drove a car into Massachusetts and was subsequently sued on a claim arising out of an automobile accident in Massachusetts.[23] If the issue were framed using the structure described in *Pennoyer*, the question presented would have been whether in acting pursuant to this statute, Massachusetts lacked legitimate authority and, as a result, enforcement of any subsequent judgment would have violated the Due Process Clause. Not surprisingly, that awkward formulation was framed instead as "whether the Massachusetts enactment contravenes the due process clause of the Fourteenth Amendment."[24]

While *Hess's* statement of the issue presented might have reflected simply a more streamlined use of language, by the time of *International Shoe*,[25] it was clear that the Due Process Clause was providing substantive criteria. In what is probably the most widely quoted sentence from *International Shoe*, Justice Stone suggests that the substantive criteria for personal jurisdiction derives from due process:

> *[D]ue process requires* only that 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 "traditional notions of fair play and substantial justice."[26]

Under the *Pennoyer* approach, the due process violation consisted of enforcing a judgment rendered by a court that lacked legitimate authority, but the standards for determining legitimacy were derived separately from that clause. In contrast, *International Shoe* suggests that the Due Process Clause itself embodies certain criteria for legitimacy.

In *World-Wide Volkswagen*,[27] the transformation of due process from a mechanism to allow a direct challenge of jurisdiction to the source of substantive standards by which to assess such a challenge was so complete that the Court could, without notice or apparent embarrassment, misstate the actual holding of *Pennoyer*. The majority opinion in *World-Wide Volkswagen*, citing *Pennoyer*, stated: "A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere."[28] However, the more accurate description of *Pennoyer*'s holding would have been: If a judgment is void and not entitled to full faith and credit, then it would violate due process to enforce it in the rendering state.[29] The inversion of the holding is significant because it makes due process the source of the substantive standards for jurisdiction, which in turn facilitated the shift to a defendant-focused approach.

326 U.S. 310 (1945)

INTERNATIONAL SHOE CO.
v.
STATE OF WASHINGTON ET AL.

No. 107.

Supreme Court of United States.

Argued November 14, 1945.
Decided December 3, 1945.

APPEAL FROM THE SUPREME COURT OF WASHINGTON.

311 *311 *Mr. Henry C. Lowenhaupt*, with whom *Messrs. Lawrence J. Bernard, Jacob Chasnoff* and *Abraham Lowenhaupt* were on the brief, for appellant.

George W. Wilkins, Assistant Attorney General of the State of **Washington**, with whom *Smith Troy*, Attorney General, and *Edwin C. Ewing*, Assistant Attorney General, were on the brief, for appellees.

MR. CHIEF JUSTICE STONE delivered the opinion of the Court.

The questions for decision are (1) whether, within the limitations of the due process clause of the Fourteenth Amendment, appellant, a Delaware corporation, has by its activities in the State of **Washington** rendered itself amenable to proceedings in the courts of that state to recover unpaid contributions to the state unemployment compensation fund exacted by state statutes, **Washington** Unemployment Compensation Act, **Washington** Revised Statutes, § 9998-103a through § 9998-123a, 1941 Supp., and (2) whether the state can exact those contributions consistently with the due process clause of the Fourteenth Amendment.

The statutes in question set up a comprehensive scheme of unemployment compensation, the costs of which are
312 defrayed by contributions required to be made by employers to a state unemployment compensation fund. *312 The contributions are a specified percentage of the wages payable annually by each employer for his employees' services in the state. The assessment and collection of the contributions and the fund are administered by appellees. Section 14 (c) of the Act (Wash. Rev. Stat., 1941 Supp., § 9998-114c) authorizes appellee Commissioner to issue an order and notice of assessment of delinquent contributions upon prescribed personal service of the notice upon the employer if found within the state, or, if not so found, by mailing the notice to the employer by registered mail at his last known address. That section also authorizes the Commissioner to collect the assessment by distraint if it is not paid within ten days after service of the notice. By §§ 14e and 6b the order of assessment may be administratively reviewed by an appeal tribunal within the office of unemployment upon petition of the employer, and this determination is by § 6i made subject to judicial review on questions of law by the state Superior Court, with further right of appeal in the state Supreme Court as in other civil cases.

In this case notice of assessment for the years in question was personally served upon a sales solicitor employed by appellant in the State of **Washington**, and a copy of the notice was mailed by registered mail to appellant at its address in St. Louis, Missouri. Appellant appeared specially before the office of unemployment and moved to set aside the order and notice of assessment on the ground that the service upon appellant's salesman was not proper service upon appellant; that appellant was not a corporation of the State of **Washington** and was not doing business within the state; that it had no agent within the state upon whom service could be made; and that appellant is not an employer and does not furnish employment within the meaning of the statute.

313 The motion was heard on evidence and a stipulation of facts by the appeal tribunal which denied the motion *313 and ruled that appellee Commissioner was entitled to recover the unpaid contributions. That action was affirmed by the

Commissioner; both the Superior Court and the Supreme Court affirmed. 22 Wash.2d 146, 154 P.2d 801. Appellant in each of these courts assailed the statute as applied, as a violation of the due process clause of the Fourteenth Amendment, and as imposing a constitutionally prohibited burden on interstate commerce. The cause comes here on appeal under § 237 (a) of the Judicial Code, 28 U.S.C. § 344 (a), appellant assigning as error that the challenged statutes as applied infringe the due process clause of the Fourteenth Amendment and the commerce clause.

The facts as found by the appeal tribunal and accepted by the state Superior Court and Supreme Court, are not in dispute. Appellant is a Delaware corporation, having its principal place of business in St. Louis, Missouri, and is engaged in the manufacture and sale of shoes and other footwear. It maintains places of business in several states, other than **Washington**, at which its manufacturing is carried on and from which its merchandise is distributed interstate through several sales units or branches located outside the State of **Washington**.

Appellant has no office in **Washington** and makes no contracts either for sale or purchase of merchandise there. It maintains no stock of merchandise in that state and makes there no deliveries of goods in intrastate commerce. During the years from 1937 to 1940, now in question, appellant employed eleven to thirteen salesmen under direct supervision and control of sales managers located in St. Louis. These salesmen resided in **Washington**; their principal activities were confined to that state; and they were compensated by commissions based upon the amount of their sales. The commissions for each year totaled more than $31,000. Appellant supplies its salesmen with a line of
314 samples, each consisting of one **shoe** of a pair, which *314 they display to prospective purchasers. On occasion they rent permanent sample rooms, for exhibiting samples, in business buildings, or rent rooms in hotels or business buildings temporarily for that purpose. The cost of such rentals is reimbursed by appellant.

The authority of the salesmen is limited to exhibiting their samples and soliciting orders from prospective buyers, at prices and on terms fixed by appellant. The salesmen transmit the orders to appellant's office in St. Louis for acceptance or rejection, and when accepted the merchandise for filling the orders is shipped f.o.b. from points outside **Washington** to the purchasers within the state. All the merchandise shipped into **Washington** is invoiced at the place of shipment from which collections are made. No salesman has authority to enter into contracts or to make collections.

The Supreme Court of **Washington** was of opinion that the regular and systematic solicitation of orders in the state by appellant's salesmen, resulting in a continuous flow of appellant's product into the state, was sufficient to constitute doing business in the state so as to make appellant amenable to suit in its courts. But it was also of opinion that there were sufficient additional activities shown to bring the case within the rule frequently stated, that solicitation within a state by the agents of a foreign corporation plus some additional activities there are sufficient to render the corporation amenable to suit brought in the courts of the state to enforce an obligation arising out of its activities there. *International Harvester Co. v. Kentucky*, 234 U.S. 579, 587; *People's Tobacco Co. v. American Tobacco Co.*, 246 U.S. 79, 87; *Frene v. Louisville Cement Co.*, 77 U.S. App. D.C. 129, 134 F.2d 511, 516. The court found such additional activities in the salesmen's display of samples sometimes in permanent display rooms, and the salesmen's
315 residence within the state, continued over a period of years, all resulting in a *315 substantial volume of merchandise regularly shipped by appellant to purchasers within the state. The court also held that the statute as applied did not invade the constitutional power of Congress to regulate interstate commerce and did not impose a prohibited burden on such commerce.

Appellant's argument, renewed here, that the statute imposes an unconstitutional burden on interstate commerce need not detain us. For 53 Stat. 1391, 26 U.S.C. § 1606 (a) provides that "No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce." It is no longer debatable that Congress, in the exercise of the commerce power, may authorize the states, in specified ways, to regulate interstate commerce or impose burdens upon it. *Kentucky Whip & Collar Co. v. Illinois Central R. Co.*, 299 U.S. 334; *Perkins v. Pennsylvania*, 314 U.S. 586; *Standard Dredging Corp. v. Murphy*, 319 U.S. 306, 308; *Hooven & Allison Co. v. Evatt*, 324 U.S. 652, 679; *Southern Pacific Co. v. Arizona*, 325 U.S. 761, 769.

Appellant also insists that its activities within the state were not sufficient to manifest its "presence" there and that in its absence the state courts were without jurisdiction, that consequently it was a denial of due process for the state to subject appellant to suit. It refers to those cases in which it was said that the mere solicitation of orders for the purchase of goods within a state, to be accepted without the state and filled by shipment of the purchased goods interstate, does not render the corporation seller amenable to suit within the state. See Green v. Chicago, B. & Q.R. Co., 205 U.S. 530, 533; International Harvester Co. v. Kentucky, supra, 586-587; Philadelphia
316 *316 & Reading R. Co. v. McKibbin, 243 U.S. 264, 268; People's Tobacco Co. v. American Tobacco Co., supra, 87. And appellant further argues that since it was not present within the state, it is a denial of due process to subject it to taxation or other money exaction. It thus denies the power of the state to lay the tax or to subject appellant to a suit for its collection.

Historically the jurisdiction of courts to render judgment *in personam* is grounded on their de facto power over the defendant's person. Hence his presence within the territorial jurisdiction of a court was prerequisite to its rendition of a judgment personally binding him. Pennoyer v. Neff, 95 U.S. 714, 733. But now that the *capias ad respondendum* has given way to personal service of summons or other form of notice, due process requires only that 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 "traditional notions of fair play and substantial justice." Milliken v. Meyer, 311 U.S. 457, 463. See Holmes, J., in McDonald v. Mabee, 243 U.S. 90, 91. Compare Hoopeston Canning Co. v. Cullen, 318 U.S. 313, 316, 319. See Blackmer v. United States, 284 U.S. 421; Hess v. Pawloski, 274 U.S. 352; Young v. Masci, 289 U.S. 253.

Since the corporate personality is a fiction, although a fiction intended to be acted upon as though it were a fact, Klein v. Board of Supervisors, 282 U.S. 19, 24, it is clear that unlike an individual its "presence" without, as well as within, the state of its origin can be manifested only by activities carried on in its behalf by those who are authorized to act for it. To say that the corporation is so far "present" there as to satisfy due process requirements, for purposes of taxation or the maintenance of suits against it in the courts of the state, is to beg the question to be decided. For the terms
317 "present" or "presence" are *317 used merely to symbolize those activities of the corporation's agent within the state which courts will deem to be sufficient to satisfy the demands of due process. L. Hand, J., in Hutchinson v. Chase & Gilbert, 45 F.2d 139, 141. Those demands may be met by such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there. An "estimate of the inconveniences" which would result to the corporation from a trial away from its "home" or principal place of business is relevant in this connection. Hutchinson v. Chase & Gilbert, supra, 141.

"Presence" in the state in this sense has never been doubted when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of process has been given. St. Clair v. Cox, 106 U.S. 350, 355; Connecticut Mutual Co. v. Spratley, 172 U.S. 602, 610-611; Pennsylvania Lumbermen's Ins. Co. v. Meyer, 197 U.S. 407, 414-415; Commercial Mutual Co. v. Davis, 213 U.S. 245, 255-256; International Harvester Co. v. Kentucky, supra; cf. St. Louis S.W.R. Co. v. Alexander, 227 U.S. 218. Conversely it has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporation's behalf are not enough to subject it to suit on causes of action unconnected with the activities there. St. Clair v. Cox, supra, 359, 360; Old Wayne Life Assn. v. McDonough, 204 U.S. 8, 21; Frene v. Louisville Cement Co., supra, 515, and cases cited. To require the corporation in such circumstances to defend the suit away from its home or other jurisdiction where it carries on more substantial activities has been thought to lay too great and unreasonable a burden on the corporation to comport with due process.

318 *318 While it has been held, in cases on which appellant relies, that continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity, Old Wayne Life Assn. v. McDonough, supra; Green v. Chicago, B. & Q.R. Co., supra; Simon v. Southern R. Co., 236 U.S. 115; People's Tobacco Co. v. American Tobacco Co., supra; cf. Davis v. Farmers Co-operative Co., 262 U.S. 312, 317, there have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those

activities. See Missouri, K. & T.R. Co. v. Reynolds, 255 U.S. 565; Tauza v. Susquehanna Coal Co., 220 N.Y. 259, 115 N.E. 915; cf. St. Louis S.W.R. Co. v. Alexander, supra.

Finally, although the commission of some single or occasional acts of the corporate agent in a state sufficient to impose an obligation or liability on the corporation has not been thought to confer upon the state authority to enforce it, Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U.S. 516, other such acts, because of their nature and quality and the circumstances of their commission, may be deemed sufficient to render the corporation liable to suit. Cf. Kane v. New Jersey, 242 U.S. 160; Hess v. Pawloski, supra; Young v. Masci, supra. True, some of the decisions holding the corporation amenable to suit have been supported by resort to the legal fiction that it has given its consent to service and suit, consent being implied from its presence in the state through the acts of its authorized agents. Lafayette Insurance Co. v. French, 18 How. 404, 407; St. Clair v. Cox, supra, 356; Commercial Mutual Co. v. Davis, supra, 254; Washington v. Superior Court, 289 U.S. 361, 364-365. But more realistically it may be said that those authorized acts
319 were of such a nature as to justify the fiction. Smolik v. Philadelphia & *319 Reading Co., 222 F. 148, 151. Henderson, The Position of Foreign Corporations in American Constitutional Law, 94-95.

It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative. The test is not merely, as has sometimes been suggested, whether the activity, which the corporation has seen fit to procure through its agents in another state, is a little more or a little less. St. Louis S.W.R. Co. v. Alexander, supra, 228; International Harvester Co. v. Kentucky, supra, 587. Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations. Cf. Pennoyer v. Neff, supra; Minnesota Commercial Assn. v. Benn, 261 U.S. 140.

But to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue. Compare International Harvester Co. v. Kentucky, supra, with Green v. Chicago, B. & Q.R. Co., supra, and People's Tobacco Co. v. American Tobacco Co., supra. Compare Connecticut Mutual Co. v. Spratley, supra, 619, 620 and Commercial Mutual Co. v. Davis, supra, with Old Wayne Life Assn. v. McDonough, supra. See 29 Columbia Law Review, 187-195.

320 *320 Applying these standards, the activities carried on in behalf of appellant in the State of **Washington** were neither irregular nor casual. They were systematic and continuous throughout the years in question. They resulted in a large volume of interstate business, in the course of which appellant received the benefits and protection of the laws of the state, including the right to resort to the courts for the enforcement of its rights. The obligation which is here sued upon arose out of those very activities. It is evident that these operations establish sufficient contacts or ties with the state of the forum to make it reasonable and just, according to our traditional conception of fair play and substantial justice, to permit the state to enforce the obligations which appellant has incurred there. Hence we cannot say that the maintenance of the present suit in the State of **Washington** involves an unreasonable or undue procedure.

We are likewise unable to conclude that the service of the process within the state upon an agent whose activities establish appellant's "presence" there was not sufficient notice of the suit, or that the suit was so unrelated to those activities as to make the agent an inappropriate vehicle for communicating the notice. It is enough that appellant has established such contacts with the state that the particular form of substituted service adopted there gives reasonable assurance that the notice will be actual. Connecticut Mutual Co. v. Spratley, supra, 618, 619; Board of Trade v. Hammond Elevator Co., 198 U.S. 424, 437-438; Commercial Mutual Co. v. Davis, supra, 254-255. Cf. Riverside Mills v. Menefee, 237 U.S. 189, 194, 195; see Knowles v. Gaslight & Coke Co., 19 Wall. 58, 61; McDonald v. Mabee, supra; Milliken v. Meyer, supra. Nor can we say that the mailing of the notice of suit to appellant by registered mail at its home office was not reasonably calculated to apprise appellant of the suit. Compare Hess v. Pawloski, supra, with McDonald

321 v. Mabee, supra, *321 92, and Wuchter v. Pizzutti, 276 U.S. 13, 19, 24; cf. Becquet v. MacCarthy, 2 B. & Ad. 951; Maubourquet v. Wyse, 1 Ir. Rep. C.L. 471. See Washington v. Superior Court, supra, 365.

Only a word need be said of appellant's liability for the demanded contributions to the state unemployment fund. The Supreme Court of **Washington**, construing and applying the statute, has held that it imposes a tax on the privilege of employing appellant's salesmen within the state measured by a percentage of the wages, here the commissions payable to the salesmen. This construction we accept for purposes of determining the constitutional validity of the statute. The right to employ labor has been deemed an appropriate subject of taxation in this country and England, both before and since the adoption of the Constitution. Steward Machine Co. v. Davis, 301 U.S. 548, 579, *et seq.* And such a tax imposed upon the employer for unemployment benefits is within the constitutional power of the states. Carmichael v. Southern Coal Co., 301 U.S. 495, 508, *et seq.*

Appellant having rendered itself amenable to suit upon obligations arising out of the activities of its salesmen in **Washington**, the state may maintain the present suit *in personam* to collect the tax laid upon the exercise of the privilege of employing appellant's salesmen within the state. For **Washington** has made one of those activities, which taken together establish appellant's "presence" there for purposes of suit, the taxable event by which the state brings appellant within the reach of its taxing power. The state thus has constitutional power to lay the tax and to subject appellant to a suit to recover it. The activities which establish its "presence" subject it alike to taxation by the state and to suit to recover the tax. Equitable Life Society v. Pennsylvania, 238 U.S. 143, 146; cf. International Harvester Co. v.
322 Department of Taxation, 322 U.S. 435, 442, *et seq.*; Hoopeston Canning Co. v. Cullen, *322 supra, 316-319; see General Trading Co. v. Tax Comm'n, 322 U.S. 335.

Affirmed.

MR. JUSTICE JACKSON took no part in the consideration or decision of this case.

MR. JUSTICE BLACK delivered the following opinion.

Congress, pursuant to its constitutional power to regulate commerce, has expressly provided that a State shall not be prohibited from levying the kind of unemployment compensation tax here challenged. 26 U.S.C. 1600. We have twice decided that this Congressional consent is an adequate answer to a claim that imposition of the tax violates the Commerce Clause. Perkins v. Pennsylvania, 314 U.S. 586, affirming 342 Pa. 529; Standard Dredging Corp. v. Murphy, 319 U.S. 306, 308. Two determinations by this Court of an issue so palpably without merit are sufficient. Consequently that part of this appeal which again seeks to raise the question seems so patently frivolous as to make the case a fit candidate for dismissal. Fay v. Crozer, 217 U.S. 455. Nor is the further ground advanced on this appeal, that the State of **Washington** has denied appellant due process of law, any less devoid of substance. It is my view, therefore, that we should dismiss the appeal as unsubstantial,[1] Seaboard Air Line R. Co. v. Watson, 287 U.S. 86, 90, 92, and decline the invitation to formulate broad rules as to the meaning of due process, which here would amount to deciding a constitutional question "in advance of the necessity for its decision." Federation of Labor v. McAdory, 325 U.S. 450, 461.

323 *323 Certainly appellant cannot in the light of our past decisions meritoriously claim that notice by registered mail and by personal service on its sales solicitors in **Washington** did not meet the requirements of procedural due process. And the due process clause is not brought in issue any more by appellant's further conceptualistic contention that **Washington** could not levy a tax or bring suit against the corporation because it did not honor that State with its mystical "presence." For it is unthinkable that the vague due process clause was ever intended to prohibit a State from regulating or taxing a business carried on within its boundaries simply because this is done by agents of a corporation organized and having its headquarters elsewhere. To read this into the due process clause would in fact result in depriving a State's citizens of due process by taking from the State the power to protect them in their business dealings within its boundaries with representatives of a foreign corporation. Nothing could be more irrational or more designed to defeat the function of our federative system of government. Certainly a State, at the very least, has power to tax and sue those dealing with its citizens within its boundaries, as we have held before. Hoopeston Canning Co. v.

Cullen, 318 U.S. 313. Were the Court to follow this principle, it would provide a workable standard for cases where, as here, no other questions are involved. The Court has not chosen to do so, but instead has engaged in an unnecessary discussion in the course of which it has announced vague Constitutional criteria applied for the first time to the issue before us. It has thus introduced uncertain elements confusing the simple pattern and tending to curtail the exercise of State powers to an extent not justified by the Constitution.

The criteria adopted insofar as they can be identified read as follows: Due Process does permit State courts to
324 "enforce the obligations which appellant has incurred" if *324 it be found "reasonable and just according to our traditional conception of fair play and substantial justice." And this in turn means that we will "permit" the State to act if upon "an `estimate of the inconveniences' which would result to the corporation from a trial away from its `home' or principal place of business," we conclude that it is "reasonable" to subject it to suit in a State where it is doing business.

It is true that this Court did use the terms "fair play" and "substantial justice" in explaining the philosophy underlying the holding that it could not be "due process of law" to render a personal judgment against a defendant without notice and an opportunity to be heard. *Milliken v. Meyer*, 311 U.S. 457. In *McDonald v. Mabee*, 243 U.S. 90, 91, cited in the *Milliken* case, Mr. Justice Holmes, speaking for the Court, warned against judicial curtailment of this opportunity to be heard and referred to such a curtailment as a denial of "fair play," which even the common law would have deemed "contrary to natural justice." And previous cases had indicated that the ancient rule against judgments without notice had stemmed from "natural justice" concepts. These cases, while giving additional reasons why notice under particular circumstances is inadequate, did not mean thereby that all legislative enactments which this Court might deem to be contrary to natural justice ought to be held invalid under the due process clause. None of the cases purport to support or could support a holding that a State can tax and sue corporations only if its action comports with this Court's notions of "natural justice." I should have thought the Tenth Amendment settled that.

I believe that the Federal Constitution leaves to each State, without any "ifs" or "buts," a power to tax and to open the doors of its courts for its citizens to sue corporations whose agents do business in those States. Believing that the
325 Constitution gave the States that power, I think it a judicial deprivation to condition its exercise upon this *325 Court's notion of "fair play," however appealing that term may be. Nor can I stretch the meaning of due process so far as to authorize this Court to deprive a State of the right to afford judicial protection to its citizens on the ground that it would be more "convenient" for the corporation to be sued somewhere else.

There is a strong emotional appeal in the words "fair play," "justice," and "reasonableness." But they were not chosen by those who wrote the original Constitution or the Fourteenth Amendment as a measuring rod for this Court to use in invalidating State or Federal laws passed by elected legislative representatives. No one, not even those who most feared a democratic government, ever formally proposed that courts should be given power to invalidate legislation under any such elastic standards. Express prohibitions against certain types of legislation are found in the Constitution, and under the long-settled practice, courts invalidate laws found to conflict with them. This requires interpretation, and interpretation, it is true, may result in extension of the Constitution's purpose. But that is no reason for reading the due process clause so as to restrict a State's power to tax and sue those whose activities affect persons and businesses within the State, provided proper service can be had. Superimposing the natural justice concept on the Constitution's specific prohibitions could operate as a drastic abridgment of democratic safeguards they
326 embody, such as freedom of speech, press and religion,[2] and the right to counsel. This *326 has already happened. *Betts v. Brady*, 316 U.S. 455. Compare *Feldman v. United States*, 322 U.S. 487, 494-503. For application of this natural law concept, whether under the terms "reasonableness," "justice," or "fair play," makes judges the supreme arbiters of the country's laws and practices. *Polk Co. v. Glover*, 305 U.S. 5, 17-18; *Federal Power Commission v. Natural Gas Pipeline Co.*, 315 U.S. 575, 600, n. 4. This result, I believe, alters the form of government our Constitution provides. I cannot agree.

True, the State's power is here upheld. But the rule announced means that tomorrow's judgment may strike down a State or Federal enactment on the ground that it does not conform to this Court's idea of natural justice. I therefore find myself moved by the same fears that caused Mr. Justice Holmes to say in 1930:

"I have not yet adequately expressed the more than anxiety that I feel at the ever increasing scope given to the Fourteenth Amendment in cutting down what I believe to be the constitutional rights of the States. As the decisions now stand, I see hardly any limit but the sky to the invalidating of those rights if they happen to strike a majority of this Court as for any reason undesirable." *Baldwin v. Missouri*, 281 U.S. 586, 595.

[1] This Court has on several occasions pointed out the undesirable consequences of a failure to dismiss frivolous appeals. *Salinger v. United States*, 272 U.S. 542, 544; *United Surety Co. v. American Fruit Product Co.*, 238 U.S. 140; *De Bearn v. Safe Deposit & Trust Co.*, 233 U.S. 24, 33-34.

[2] These First Amendment liberties — freedom of speech, press and religion — provide a graphic illustration of the potential restrictive capacity of a rule under which they are protected at a particular time only because the Court, as then constituted, believes them to be a requirement of fundamental justice. Consequently, under the same rule, another Court, with a different belief as to fundamental justice, could, at least as against State action, completely or partially withdraw Constitutional protection from these basic freedoms, just as though the First Amendment had never been written.

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THE CASE AGAINST VICARIOUS JURISDICTION

LONNY SHEINKOPF HOFFMAN†

A. *Historical Evolution of a Doctrine*

At the time the Court heard oral argument in *Cannon*, the theory on which the Supreme Court predicated American judicial jurisdiction was the principle of territoriality. This theory, most explicitly articulated by Justice Field in *Pennoyer v. Neff*,[74] effectively limited the exercise of judicial power to state borders in virtually all cases.[75]

Primarily, Justice Field's formulations of the power theory made the jurisdictional rules easy to apply but also terribly inflexible. Recognizing the inherent difficulties of a strict territoriality regime, even the *Pennoyer* court did not adhere unwaveringly to the power theory. After articulating a seemingly absolute rule that made jurisdiction coterminous with the state's territorial limits, Justice Field noted that there were exceptions to the rule.[76] One of the exceptions Field articulated ("[t]o prevent any misapplication of the views expressed in this opinion"[77]) was that the power theory should not be read to trump the state's "absolute right to prescribe the conditions upon which the marriage relation between its own citizens shall be created, and the causes for which it may be dissolved."[78] The state's right to define such matters of status as "marriage" was not the only exception to the strict power theory. The other major exception to the power theory of jurisdiction Field articulated in *Pennoyer* concerned corporations.[79]

Subjecting individuals to suit posed (and poses) no challenge for jurisdictional theory. An individual merely need be present in the physical space of the forum, even if only for a fleeting moment in time, for effective in-state service, both as a traditional basis for exercising jurisdiction and to give formal notice of suit.[80] Dealing with corporate defendants, however, proved more problematic for the power theory.[81] Because in-state service was thought necessary to bring the defendant within the power of the court, it was necessary to fix the place where the corporate entity was located, or "present," in order to decide whether it could be served in the forum. The simple expedient of legislative fiat readily resolved that problem for domestic corporations. In exchange for the privilege of incorporating in the state and receiving whatever benefits and rights are attendant to that chartering, the state could (and may still, even today) decree that the domestic corporation expressly consent to suit in the forum. This is accomplished through the practical tool of requiring the corporation to appoint an agent for purposes of in-state service of process[82] or, failing such appointment, to enact a substitute service rule to allow service on a state official in place of personal service on a company representative.[83] In addition to consent, domicile provided another basis on which the power theory could be predicated for domestic corporations since in-state chartering could serve as the corporate analogue to rules that fixed an individual's domicile in the forum.

The sticky wicket for the power theory concerned what to do with the foreign corporation. Unlike the domestic corporation, the foreign corporation's consent (fictional or otherwise) could not be predicated on the grant of a charter, and, for similar reasons, the foreign entity obviously could not be treated as a domiciliary of the forum. The initial notion was to require similar commitments from the foreign corporation by insisting on registration and appointment of an agent in exchange for the right to conduct in-state business (along with an implied-in-law appointment of a state official as agent for service in the event of a failure to comply with these conditions).[84] By at least 1910, however, the state could no longer exclude foreign corporations from conducting interstate business within its borders, thereby invalidating any conditional impositions of express or implied consent to suit.[85]

To fill this gap, the theory of "presence" was developed under which any corporation was deemed to be present, and therefore subject to the court's power, when doing business in the forum.[86] The presence theory, however, proved problematic in practice. How much business must a corporation conduct in a forum in order to be found present within it? The methods of measuring "doing business" proved inexact and uncertain. As Judge Learned Hand once observed, "[i]t is quite impossible to establish any rule from the decided cases; we must step from tuft to tuft across the morass."[87] Even when it could be shown that the necessary quantum of business activity existed, the corporation typically was subject to suit only for claims arising out of the business it conducted in the state and only for so long as the business continued. Once the business ceased, no finding of presence could be sustained.[88]

As the years passed, a growing sense of dissatisfaction with the fictitious nature of the Court's jurisdictional doctrines began to appear both in lower court opinions[89] and academic commentaries.[90] Notwithstanding these concerns, in 1925, the doctrines of consent and presence, though imperfect, provided the only means to avoid the harsh results produced by a strict application of *Pennoyer*'s power theory. A foreign corporation could be compelled to appear in a distant forum only if it had given consent (either express or implied) to suit in the forum or was shown to be present in the forum by virtue of having done business there.

176 N.E.2d 761

22 Ill.2d 432

Phyllis GRAY, Appellant,
v.
AMERICAN RADIATOR & STANDARD SANITARY CORPORATION et al., Appellees.

No. 35872.

Supreme Court of Illinois.

June 14, 1961.
Rehearing Denied Sept. 20, 1961.

[22 Ill.2d 433]

Victor N. Cardosi, Kankakee, and Leo S. Karlin and Daniel Karlin, Chicago (Leo S. Karlin, and Alan D. Katz, Chicago, of counsel), for appellant Phyllis Gray.

Baker, [22 Ill.2d 434] McKenzie & Hightower, Chicago (John C. McKenzie and Francis D. Morrissey, Chicago, of counsel), for appellant American Radiator Standard Corp.

Lord, Bissel & Brook, Chicago (Jay M. Smyser and William P. Butler, Chicago, of counsel), for appellees.

KLINGBIEL, Justice.

Phyllis Gray appeals from a judgment of the circuit court of Cook County dismissing her action for damages. The issues are concerned with the construction and validity of our statute providing for substituted service of process on nonresidents. Since a constitutional question is involved, the appeal is direct to this court.

The suit was brought against the Titan Valve Manufacturing Company and others, on the ground that a certain water heater had exploded and injured the plaintiff. The complaint charges, inter alia, that the Titan company, a foreign corporation, had negligently constructed the safety valve; and that the injuries were suffered as a proximate result thereof. Summons issued and was duly served on Titan's registered agent in Cleveland, Ohio. The corporation appeared specially, filing a motion to quash on the ground that it had not committed a tortious act in Illinois. Its affidavit stated that it does no business here; that it has no agent physically present in Illinois; and that it sells the completed valves to defendant, American Radiator & Standard Sanitary Corporation, outside Illinois. The American Radiator & Standard Sanitary Corporation (also made a defendant) filed an answer in which it set up a cross claim against Titan, alleging that Titan made certain warranties to American Radiator, and that if the latter is held liable to the plaintiff it should be indemnified and held harmless by Titan. The court granted Titan's motion, dismissing both the complaint and the cross claim.

[22 Ill.2d 435] Section 16 of the Civil Practice Act provides that summons may be personally served upon any party outside the State; and that as to nonresidents who have submitted to the jurisdiction of our courts, such service has the force and effect of personal service within Illinois. (Ill.Rev.Stat.1959, chap. 110, par. 16.) Under section 17(1)(b) a nonresident who, either in person or through an agent, commits a tortious act within this State submits to jurisdiction. (Ill.Rev.Stat.1959, chap. 110, par. 17.) The questions in this case are (1) whether a tortious act was committed here, within the meaning of the statute, despite the fact that the Titan corporation

had no agent in Illinois; and (2) whether the statute, if so construed, violates due process of law.

The first aspect to which we must direct our attention is one of statutory construction. Under section 17(1)(b) jurisdiction is predicated on the committing of a tortious act in this State. It is not disputed, for the purpose of this appeal, that a tortious act was committed. The issue depends on whether it was committed in Illinois, so as to warrant the assertion of personal jurisdiction by service of summons in Ohio.

The wrong in the case at bar did not originate in the conduct of a servant physically present here, but arose instead from acts performed at the place of manufacture. Only the consequences occurred in Illinois. It is well established, however, that in law the place of a wrong is where the last event takes place which is necessary

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to render the actor liable. Restatement, Conflict of Laws, sec. 377. A second indication that the place of injury is the determining factor is found in rules governing the time within which an action must be brought. In applying statutes of limitation our court has computed the period from the time when the injury is done. Madison v. Wedron Silica Co., 352 Ill. 60 , 184 N.E. 901 ; Leroy v. City of Springfield, 81 Ill. 114 . We think it is clear that the alleged negligence in manufacturing the valve cannot be separated from the resulting injury; [22 Ill.2d 436] and that for present purposes, like those of liability and limitations, the tort was committed in Illinois.

Titan seeks to avoid this result by arguing that instead of using the word 'tort,' the legislature employed the term 'tortious act'; and that the latter refers only to the act or conduct, separate and apart from any consequences thereof. We cannot accept the argument. To be tortious an act must cause injury. The concept of injury is an inseparable part of the phrase. In determining legislative intention courts will read words in their ordinary and popularly understood sense. Illinois State Toll Highway Comm. v. Einfeldt, 12 Ill.2d 499 , 147 N.E.2d 53 ; Farrand Coal Co. v. Halpin, 10 Ill.2d 507 , 140 N.E.2d 698 . We think the intent should be determined less from technicalities of definition than from considerations of general purpose and effect. To adopt the criteria urged by defendant would tend to promote litigation over extraneous issues concerning the elements of a tort and the territorial incidence of each, whereas the test should be concerned more with those substantial elements of convenience and justice presumably contemplated by the legislature. As we observed in Nelson v. Miller, 11 Ill.2d 378 , 143 N.E.2d 673 , the statute contemplates the exertion of jurisdiction over nonresident defendants to the extent permitted by the due-process clause.

The Titan company contends that if the statute is applied so as to confer jurisdiction in this case it violates the requirement of due process of law. The precise constitutional question thus presented has not heretofore been considered by this court. In the Nelson case the validity of the statute was upheld in an action against a nonresident whose employee, while physically present in Illinois, allegedly caused the injury. The ratio decidendi was that Illinois has an interest in providing relief for injuries caused by persons having 'substantial contacts within the State.' A standard of fairness or reasonableness was announced, within the limitation that defendant be given a realistic opportunity to appear and be heard. The case at bar concerns the extent [22 Ill.2d 437] to which due process permits substituted service where defendant had no agent or employee in the State of the forum.

Under modern doctrine the power of a State court to enter a binding judgment against one not served with process within the State depends upon two questions: first, whether he has certain minimum contacts with the State (see International Shoe Co. v. State of Washington, 326 U.S. 310 , 316, 66 S.Ct. 154 , 90 N.Ed. 95, 102), and second, whether there has been a reasonable method of notification. See International Shoe Co. v. State of Washington, 326 U.S. 310 , 320, 66 S.Ct. 154 , 90 L.Ed. 95 , 104-105; Nelson v. Miller, 11 Ill.2d 378 , 390, 143 N.E.2d 673 . In the case at bar there is no contention that section 16 provides for inadequate notice or that its provisions were not followed. Defendant's argument on constitutionality is confined to the

proposition that applying section 17(1)(b), where the injury is defendant's only contact with the State, would exceed the limits of due process.

A proper determination of the question presented requires analysis of those cases which have dealt with the quantum of contact sufficient to warrant jurisdiction. Since the decision in Pennoyer v. Neff, **95 U.S. 714** , 24 L.Ed. 565 , the power of a State to exert jurisdiction over nonresidents has been greatly expanded, particularly

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with respect to foreign corporations. See Annotations, 2 L.Ed.2d 1664 ; 94 L.Ed. 1167 . International Shoe Co. v. State of Washington, **326 U.S. 310** , 66 S.Ct. 154 , 90 L.Ed. 95 , was a proceeding to collect unpaid contributions to the unemployment compensation fund of the State of Washington. A statute purported to authorize such proceedings, where the employer was not found within the State, by sending notice by registered mail to its last known address. The defendant foreign corporation, a manufacturer of shoes, employed certain salesmen who resided in Washington and who solicited orders there. In holding that maintenance of the suit did not violate due process the court pointed out that the activities of the corporation in Washington were not only continuous and [22 Ill.2d 438] systematic but also gave rise to the liability sued on. It was observed that such operations, which resulted in a large volume of business, established 'sufficient contacts or ties with the state of the forum to make it reasonable and just according to our traditional conception of fair play and substantial justice to permit the state to enforce the obligations which appellant has incurred there.' 326 U.S. at page 320 , 66 S.Ct. at page 160 , 90 L.Ed. at page 104 .

Where the business done by a foreign corporation in the State of the forum is of a sufficiently substantial nature, it has been held permissible for the State to entertain a suit against it even though the cause of action arose from activities entirely distinct from its conduct within the State. Perkins v. Benguet Consolidated Mining Co., **342 U.S. 437** , 72 S.Ct. 413 , 96 L.Ed. 485 . But where such business or other activity is not substantial, the particular act or transaction having no connection with the State of the forum, the requirement of 'contact' is not satisfied. Hanson v. Denckla, 357 U.S. 235 , 253, 78 S.Ct. 1228 , 2 L.Ed.2d 1283 , 1298.

In the case at bar the defendant's only contact with this State is found in the fact that a product manufactured in Ohio was incorporated in Pennsylvania, into a hot water heater which in the course of commerce was sold to an Illinois consumer. The record fails to disclose whether defendant has done any other business in Illinois, either directly or indirectly; and it is argued, in reliance on the International Shoe test, that since a course of business here has not been shown there are no 'minimum contacts' sufficient to support jurisdiction. We do not think, however, that doing a given volume of business is the only way in which a nonresident can form the required connection with this State. Since the International Shoe case was decided the requirements for jurisdiction have been further relaxed, so that at the present time it is sufficient if the act or transaction itself has a substantial connection with the State of the forum.

[22 Ill.2d 439] In McGee v. International Life Insurance Co., **355 U.S. 220** , 78 S.Ct. 199 , 201, 2 L.Ed.2d 223 , suit was brought in California against a foreign insurance company on a policy issued to a resident of California. The defendant was not served with process in that State but was notified by registered mail at its place of business in Texas, pursuant to a statute permitting such service in suits on insurance contracts. The contract in question was delivered in California, the premiums were mailed from there and the insured was a resident of that State when he died, but defendant had no office or agent in California nor did it solicit any business there apart from the policy sued on. After referring briefly to the International Shoe case the court held that 'it is sufficient for purposes of due process that the suit was based on a contract which had substantial connection' with California. (Emphasis supplied.)

In Smyth v. Twin State Improvement Corp., 116 Vt. 569, 80 A.2d 664 , 666, 25 A.L.R.2d 1193 , a Vermont resident engaged a foreign corporation to re-roof his house. While doing the work the

corporation negligently damaged the building, and an action was brought for damages. Service of process was made on the Secretary of State

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and a copy was forwarded to defendant by registered mail at its principal place of business in Massachusetts. A Vermont statute provided for such substituted service on foreign corporations committing a tort in Vermont against a resident of Vermont. In holding that the statute affords due process of law, the court discussed the principal authorities on the question and concluded, inter alia, that 'continuous activity within the state is not necessary as a prerequisite to jurisdiction.'

In Nelson v. Miller, 11 Ill.2d 378 , 143 N.E.2d 673 , the commission of a single tort within this State was held sufficient to sustain jurisdiction under the present statute. The defendant in that case, a resident of Wisconsin, was engaged in the business of selling appliances. It was alleged that in the process of delivering a stove in Illinois, an employee of the defendant [22 Ill.2d 440] negligently caused injury to the plaintiff. In holding that the defendant was not denied due process by being required to defend in Illinois, this court observed at page 390 of 11 Ill.2d, at page 680 of 143 N.E.2d: 'The defendant sent his employee into Illinois in the advancement of his own interests. While he was here, the employee and the defendant enjoyed the benefit and protection of the laws of Illinois, including the right to resort to our courts. In the course of his stay here the employee performed acts that gave rise to an injury. The law of Illinois will govern the substantive rights and duties stemming from the incident. Witnesses, other than the defendant's employee, are likely to be found here, and not in Wisconsin. In such circumstances, it is not unreasonable to require the defendant to make his defense here.'

Whether the type of activity conducted within the State is adequate to satisfy the requirement depends upon the facts in the particular case. Perkins v. Benguet Consolidated Mining Co.,**342 U.S. 437** , 445, 72 S.Ct. 413 , 96 L.Ed. 485 , 492. The question cannot be answered by applying a mechanical formula or rule of thumb but by ascertaining what is fair and reasonable in the circumstances. In the application of this flexible test the relevant inquiry is whether defendant engaged in some act or conduct by which he may be said to have invoked the benefits and protections of the law of the forum. See Hanson v. Denckla, 357 U.S. 235 , 253, 78 S.Ct. 1228 , 2 L.Ed.2d 1283 , 1298; International Shoe Co. v. State of Washington,**326 U.S. 310** , 319, 66 S.Ct. 154 , 90 L.Ed. 95 , 104. The relevant decisions since Pennoyer v. Neff show a development of the concept of personal jurisdiction from one which requires service of process within the State to one which is satisfied either if the act or transaction sued on occurs there or if defendant has engaged in a sufficiently substantial course of activity in the State, provided always that reasonable notice and opportunity to be heard are afforded. As the Vermont court recognized the Smyth case, the [22 Ill.2d 441] trend in defining due process of law is away from the emphasis on territorial limitations and toward emphasis on providing adequate notice and opportunity to be heard: from the court with immediate power over the defendant, toward the court in which both parties can most conveniently settle their dispute.

In the McGee case the court commented on the trend toward expanding State jurisdiction over nonresidents, observing that: 'In part this is attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity.'

It is true that courts cannot 'assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of

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state courts.' Hanson v. Denckla, 357 U.S. 235 , 251, 78 S.Ct. 1228 1238, 2 L.Ed.2d 1283 , 1296. An orderly and fair administration of the law throughout the nation requires protection against being compelled to answer claims brought in distant States with which the defendant has little or no association and in which he would be faced with an undue burden or disadvantage in making his defense. It must be remembered that lawsuits can be brought on frivolous demands or groundless claims as well as on legitimate ones, and that procedural rules must be designed and appraised in the light of what is fair and just to both sides in the dispute. Interpretations of basic rights which consider only those of a claimant are not consonant with the fundamental requisites of due process.

In the case at bar defendant does not claim that the [22 Ill.2d 442] present use of its product in Illinois is an isolated instance. While the record does not disclose the volume of Titan's business or the territory in which appliances incorporating its valves are marketed, it is a reasonable inference that its commercial transactions, like those of other manufacturers, result in substantial use and consumption in this State. To the extent that its business may be directly affected by transactions occurring here it enjoys benefits from the laws of this State, and it has undoubtedly benefited, to a degree, from the protection which our law has given to the marketing of hot water heaters containing its valves. Where the alleged liability arises, as in this case, from the manufacture of products presumably sold in contemplation of use here, it should not matter that the purchase was made from an independent middleman or that someone other than the defendant shipped the product into this State.

With the increasing specialization of commercial activity and the growing interdependence of business enterprises it is seldom that a manufacturer deals directly with consumers in other States. The fact that the benefit he derives from its laws is an indirect one, however, does not make it any the less essential to the conduct of his business; and it is not unreasonable, where a cause of action arises from alleged defects in his product, to say that the use of such products in the ordinary course of commerce is sufficient contact with this State to justify a requirement that he defend here.

As a general proposition, if a corporation elects to sell its products for ultimate use in another State, it is not unjust to hold it answerable there for any damage caused by defects in those products. Advanced means of distribution and other commercial activity have made possible these modern methods of doing business, and have largely effaced the economic significance of State lines. By the same token, today's facilities for transportation and communication have removed much of the difficulty and inconvenience [22 Ill.2d 443] formerly encountered in defending lawsuits brought in other States.

Unless they are applied in recognition of the changes brought about by technological and economic progress, jurisdictional concepts which may have been reasonable enough in a simpler economy lose their relation to reality, and injustice rather than justice is promoted. Our unchanging principles of justice, whether procedural or substantive in nature, should be scrupulously observed by the courts. But the rules of law which grow and develop within those principles must do so in the light of the facts of economic life as it is lived today. Otherwise the need for adaptation may become so great that basic rights are sacrificed in the name of reform, and the principles themselves become impaired.

The principles of due process relevant to the issue in this case support jurisdiction in the court where both parties can most conveniently settle their dispute. The facts show that the plaintiff, an Illinois resident, was injured in Illinois. The law of Illinois will govern the substantive questions, and witnesses on the issues of injury,

damages and other elements relating to the occurrence are most likely to be found here. Under such circumstances the courts of the place of injury usually provide the most convenient forum for trial. See Watson v. Employers Liability Assurance Corp., 348 U.S. 66 , 72, 75 S.Ct. 166 , 99

L.Ed. 74 , 82. In Travelers Health Association v. Commonwealth of Virginia, 339 U.S. 643 , 70 S.Ct. 927 , 94 L.Ed. 1154 , a Nebraska insurance corporation was held subject to the jurisdiction of a Virginia regulatory commission although it had no paid agents within the State and its only contact there was a mail-order business operated from its Omaha office. The court observed, by way of dictum, that 'suits on alleged losses can be more conveniently tried in Virginia where witnesses would most likely live and where claims for losses would presumably be investigated. Such factors have been given great weight in applying the doctrine[22 Ill.2d 444] of forum non conveniens. See Gulf Oil Corp. v. Gilbert, 330 U.S. 501 , 508, 67 S.Ct. 839 , 843, 91 L.Ed. 1055 , 1062. And prior decisions of this Court have referred to the unwisdom, unfairness and injustice of permitting policyholders to seek redress only in some distant state where the insurer is incorporated. The Due Process Clause does not forbid a state to protect its citizens from such injustice.' 339 U.S. at page 649 , 70 S.Ct. at page 930 , 94 L.Ed. 1161-1162 . We think a similar conclusion must follow in the case at bar.

We are aware of decisions, cited by defendant, wherein the opposite result was reached on somewhat similar factual situations. See Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc., 4 Cir., 239 F.2d 502 ; Hellriegel v. Sears Roebuck & Co., D.C.N.D. .E.D., 157 F.Supp. 718 ; Johns v. Bay State Abrasive Products Co., D.C.D.Md., 89 F.Supp. 654 . Little purpose can be served, however, by discussing such cases in detail, since the existence of sufficient 'contact' depends upon the particular facts in each case. In any event we think the better rule supports jurisdiction in cases of the present kind. We conclude accordingly that defendant's association with this State is sufficient to support the exercise of jurisdiction.

We construe section 17(1)(b) as providing for jurisdiction under the circumstances shown in this case, and we hold that as so construed the statute does not violate due process of law.

The trial court erred in quashing service of summons and in dismissing the complaint and cross claim. The judgment is reversed and the cause is remanded to the circuit court of Cook County, with directions to deny the motion to quash.

Reversed and remanded, with directions.

Ohio Long-Arm Statute

Ohio Rev. Code Ann. § 2307.382

§ 2307.382. Personal jurisdiction

(A) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a cause of action arising from the person's:

(1) Transacting any business in this state;

(2) Contracting to supply services or goods in this state;

(3) Causing tortious injury by an act or omission in this state;

(4) Causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

(5) Causing injury in this state to any person by breach of warranty expressly or impliedly made in the sale of goods outside this state when he might reasonably have expected such person to use, consume, or be affected by the goods in this state, provided that he also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

(6) Causing tortious injury in this state to any person by an act outside this state committed with the purpose of injuring persons, when he might reasonably have expected that some person would be injured thereby in this state;

(7) Causing tortious injury to any person by a criminal act, any element of which takes place in this state, which he commits or in the commission of which he is guilty of complicity.

(8) Having an interest in, using, or possessing real property in this state;

(9) Contracting to insure any person, property, or risk located within this state at the time of contracting.

(B) For purposes of this section, a person who enters into an agreement, as a principal, with a sales representative for the solicitation of orders in this state is transacting business in this state. As used in this division, "principal" and "sales representative" have the same meanings as in section 1335.11 of the Revised Code.

(C) When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against him.

Mock Examination Question and Model Answer
Professor Hoffman
University of Houston Law Center

Exam Number _____

Question No. I (50% of grade)
(75 Minutes)

David, born in New York City, went to the University of Houston Conrad N. Hilton College of Hotel and Restaurant Management. After graduating in 2000, he returned to New York and opened a deli on the Upper East Side. The deli was a big success, which he attributed to brilliant marketing, a tasty menu and to the unusual interior design of the store. The interior was specially designed by Polly, a New York interior decorator with lots of energy and "just the right touch." The unusual design was a kalidescope of colors, swirling around continuously from multiple beacons from the ceiling. The design captured the imagination and appetites of New York customers.

Having done well in New York, David invested $500,000 of his profits in residential real estate in Houston, in and around the University of Houston. Because the residential real estate market flourished, within a few years his real estate holdings increased to over five million dollars. All of these properties were single family residential units. Brimming with confidence (and cash), David decided that he could also do well by opening his New York deli in Houston, a city which in his view lacked any decent bagel, pastrami, liver and tomato sandwiches, and other delicious menu items. He decided to call a school chum, Mark, and suggest they go into business together. Mark was thrilled, particularly since he owned a building downtown and thought it the perfect locale for the deli idea. They agreed to enter into an arrangement where David would not own the building, but would share in the profits and losses of the business only.

On April 11, 2015, David flew to Houston and, with Mark, spent the next two weeks making all of the arrangements for opening, including obtaining a line of credit with Southwest Bank of Texas. When he returned to New York at the end of April, David called Polly and retained her to do the interior design for the Houston store. "Just do your thing for me in Houston," David instructed her. On May 1, 2015, he signed a contract, agreeing to pay her professional fee for services rendered. The next day Polly left on a flight to Houston. Over the next three months, she spent considerable time on the project. Approximately half of her time was spent in her New York office, and half in Houston. She made a total of four separate trips to Houston in connection with this project. Busy with running the New York store, David never made it to Houston until the store was complete, relying on Polly and Mark to ensure everything ran smoothly.

Finally, on July 11, the Houston store, with its wild color interior, opened for business. David, who only arrived in Houston on July 6 to see the store for the first time, was very concerned when he discovered that Polly followed the same design as in the New York store. He was worried that Houstonians would not like it.

Sadly, David's fears materialized. Houston customers did not flock to the store. Those that did expressed confusion, amusement, and even downright horror at the look of the new store. One elderly

woman, a native of the Bayou City, was heard to exclaim, "I cain't even see my food with all these darn lights swirlin' about." The store closed three months later, unable to meet revenue expectations. After he returned to New York, David was so upset with Polly that he told everyone he talked to that she was a fraud and that she never even earned an art degree from a legitimate school (his statement is untrue, however; she earned her art degree from New York University in 1997).

David was so upset with Polly that he blamed her for the failure and refused to pay her fee. Polly brought suit against David to recover not only on her contract but also for his defamatory remarks about her. She filed her action in state court in Texas (Harris County District Court). Pursuant to the Texas long arm statute, David was served by mail in New York. For purposes of this question, assume that service of process was effected correctly. David made a special appearance in Texas to object to the exercise of personal jurisdiction over him and moved to dismiss Polly's suit for lack of personal jurisdiction.

Assume the role of the trial judge in this case and analyze whether David's motion to dismiss for lack of personal jurisdiction should succeed or fail. In your answer, assume that the only enabling statute by which service of process was effected is Texas Civil Practice and Remedies Code, § 17.042. Finally, for purposes of answering this question, you are not expected to have any knowledge of any Texas case law interpreting § 17.042. You may make any assumptions that you deem appropriate, therefore, in the absence of any controlling case law in this area.

Texas Civil Practice & Remedies Code 17.042

In addition to other acts that may constitute doing business, a nonresident does business in this state if the nonresident:

(1) contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state;

(2) commits a tort in whole or in part in this state; or

(3) recruits Texas residents, directly or through an intermediary located in this state, for employment inside or outside this state.

Texas Civil Practice & Remedies Code 17.043

In an action arising from a nonresident's business in this state, process may be served on the person in charge, at the time of service, of any business in which the nonresident is engaged in this state if the nonresident is not required by statute to designate or maintain a resident agent for service of process.

SUPREME COURT OF THE UNITED STATES

No. 11–965

DAIMLER AG, PETITIONER *v.* BARBARA BAUMAN ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[January 14, 2014]

JUSTICE GINSBURG delivered the opinion of the Court.

I

In 2004, plaintiffs (respondents here) filed suit in the United States District Court for the Northern District of California, alleging that MB Argentina collaborated with Argentinian state security forces to kidnap, detain, torture, and kill plaintiffs and their relatives during the military dictatorship in place there from 1976 through 1983, a period known as Argentina's "Dirty War." Based on those allegations, plaintiffs asserted claims under the Alien Tort Statute, 28 U. S. C. §1350, and the Torture Victim Protection Act of 1991, 106 Stat. 73, note following 28 U. S. C. §1350, as well as claims for wrongful death and intentional infliction of emotional distress under the laws of California and Argentina. The incidents recounted in the complaint center on MB Argentina's plant in Gonzalez Catan, Argentina; no part of MB Argentina's alleged collaboration with Argentinian authorities took place in California or anywhere else in the United States.

Plaintiffs' operative complaint names only one corporate defendant: Daimler, the petitioner here. Plaintiffs seek to hold Daimler vicariously liable for MB Argentina's alleged malfeasance. Daimler is a German *Aktiengesellschaft* (public stock company) that manufactures Mercedes-Benz vehicles in Germany and has its headquarters in Stuttgart. At times relevant to this case, MB Argentina was a subsidiary wholly owned by Daimler's predecessor in interest.

Daimler moved to dismiss the action for want of personal jurisdiction. Opposing the motion, plaintiffs submitted declarations and exhibits purporting to demonstrate the presence of Daimler itself in California. Alternatively,

plaintiffs maintained that jurisdiction over Daimler could be founded on the California contacts of MBUSA, a distinct corporate entity that, according to plaintiffs, should be treated as Daimler's agent for jurisdictional purposes.

MBUSA, an indirect subsidiary of Daimler, is a Delaware limited liability corporation.[3] MBUSA serves as Daimler's exclusive importer and distributor in the United States, purchasing Mercedes-Benz automobiles from Daimler in Germany, then importing those vehicles, and ultimately distributing them to independent dealerships located throughout the Nation. Although MBUSA's principal place of business is in New Jersey, MBUSA has multiple California-based facilities, including a regional office in Costa Mesa, a Vehicle Preparation Center in Carson, and a Classic Center in Irvine. According to the record developed below, MBUSA is the largest supplier of luxury vehicles to the California market. In particular, over 10% of all sales of new vehicles in the United States take place in California, and MBUSA's California sales account for 2.4% of Daimler's worldwide sales.

The relationship between Daimler and MBUSA is delineated in a General Distributor Agreement, which sets forth requirements for MBUSA's distribution of Mercedes-Benz vehicles in the United States. That agreement established MBUSA as an "independent contracto[r]" that "buy[s] and sell[s] [vehicles] . . . as an independent business for [its] own account." App. 179a. The agreement "does not make [MBUSA] . . . a general or special agent, partner, joint venturer or employee of DAIMLERCHRYSLER or any DaimlerChrysler Group Company"; MBUSA "ha[s] no authority to make binding obligations for or act on behalf of DAIMLERCHRYSLER or any DaimlerChrysler Group Company." *Ibid.*

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[3]At times relevant to this suit, MBUSA was wholly owned by DaimlerChrysler North America Holding Corporation, a Daimler subsidiary.

After allowing jurisdictional discovery on plaintiffs' agency allegations, the District Court granted Daimler's motion to dismiss. Daimler's own affiliations with California, the court first determined, were insufficient to support the exercise of all-purpose jurisdiction over the corporation. *Bauman* v. *DaimlerChrysler AG*, No. C–04–00194 RMW (ND Cal., Nov. 22, 2005), App. to Pet. for Cert. 111a–112a, 2005 WL 3157472, *9–*10. Next, the court declined to attribute MBUSA's California contacts to Daimler on an agency theory, concluding that plaintiffs failed to demonstrate that MBUSA acted as Daimler's agent. *Id.*, at 117a, 133a, 2005 WL 3157472, *12, *19; *Bauman* v. *DaimlerChrysler AG*, No. C–04–00194 RMW (ND Cal., Feb. 12, 2007), App. to Pet. for Cert. 83a–85a, 2007 WL 486389, *2.

The Ninth Circuit at first affirmed the District Court's judgment. Addressing solely the question of agency, the Court of Appeals held that plaintiffs had not shown the existence of an agency relationship of the kind that might warrant attribution of MBUSA's contacts to Daimler. *Bauman* v. *DaimlerChrysler Corp.*, 579 F. 3d 1088, 1096–1097 (2009). Judge Reinhardt dissented. In his view, the agency test was satisfied and considerations of "reasonableness" did not bar the exercise of jurisdiction. *Id.*, at 1098–1106. Granting plaintiffs' petition for rehearing, the panel withdrew its initial opinion and replaced it with one authored by Judge Reinhardt, which elaborated on reasoning he initially expressed in dissent. *Bauman* v. *DaimlerChrysler Corp.*, 644 F. 3d 909 (CA9 2011).

Daimler petitioned for rehearing and rehearing en banc, urging that the exercise of personal jurisdiction over Daimler could not be reconciled with this Court's decision in *Goodyear Dunlop Tires Operations, S. A.* v. *Brown*, 564 U. S. ___ (2011). Over the dissent of eight judges, the Ninth Circuit denied Daimler's petition. See *Bauman* v. *DaimlerChrysler Corp.*, 676 F. 3d 774 (2011) (O'Scannlain,

J., dissenting from denial of rehearing en banc).

We granted certiorari to decide whether, consistent with the Due Process Clause of the Fourteenth Amendment, Daimler is amenable to suit in California courts for claims involving only foreign plaintiffs and conduct occurring entirely abroad. 569 U. S. ___ (2013).

II

Federal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons. See Fed. Rule Civ. Proc. 4(k)(1)(A) (service of process is effective to establish personal jurisdiction over a defendant "who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located"). Under California's long-arm statute, California state courts may exercise personal jurisdiction "on any basis not inconsistent with the Constitution of this state or of the United States." Cal. Civ. Proc. Code Ann. §410.10 (West 2004). California's long-arm statute allows the exercise of personal jurisdiction to the full extent permissible under the U. S. Constitution. We therefore inquire whether the Ninth Circuit's holding comports with the limits imposed by federal due process. See, *e.g.*, *Burger King Corp.* v. *Rudzewicz*, 471 U. S. 462, 464 (1985).

International Shoe distinguished between, on the one hand, exercises of specific jurisdiction, as just described, and on the other, situations where a foreign corporation's "continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." 326 U. S., at 318. As we have since explained, "[a] court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Goodyear*, 564 U. S., at ___ (slip op., at 2); see *id.*, at ___ (slip op., at 7); *Helicopteros*, 466 U. S., at 414, n. 9.[5]

Most recently, in *Goodyear*, we answered the question: "Are foreign subsidiaries of a United States parent corporation amenable to suit in state court on claims unrelated to any activity of the subsidiaries in the forum State?" 564 U. S., at ___ (slip op., at 1). That case arose from a bus accident outside Paris that killed two boys from North Carolina. The boys' parents brought a wrongful-death suit in North Carolina state court alleging that the bus's tire was defectively manufactured. The complaint named as defendants not only The Goodyear Tire and Rubber Company (Goodyear), an Ohio corporation, but also Goodyear's Turkish, French, and Luxembourgian subsidiaries. Those foreign subsidiaries, which manufactured tires for sale in Europe and Asia, lacked any affiliation with North Carolina. A small percentage of tires manufactured by the foreign subsidiaries were distributed in North Carolina, however, and on that ground, the North Carolina Court of Appeals held the subsidiaries amenable to the general jurisdiction of North Carolina courts.

We reversed, observing that the North Carolina court's analysis "elided the essential difference between case-specific and all-purpose (general) jurisdiction." *Id.*, at ___ (slip op., at 10). Although the placement of a product into the stream of commerce "may bolster an affiliation germane to *specific* jurisdiction," we explained, such contacts "do not warrant a determination that, based on those ties, the forum has *general* jurisdiction over a defendant." *Id.*, at ___ (slip op., at 10–11). As *International Shoe* itself teaches, a corporation's "continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity." 326 U. S., at 318. Because Goodyear's foreign subsidiaries were "in no sense at home in North Carolina," we held, those subsidiaries could not be required to submit to the general jurisdiction of that State's courts. 564 U. S., at ___ (slip op., at 13). See also *J. McIntyre Machinery, Ltd.* v. *Nicastro*, 564 U. S. ___, ___ (2011) (GINSBURG, J., dissenting) (slip op., at 7) (noting unanimous agreement that a foreign manufacturer, which engaged an independent U. S.-based distributor to sell its machines throughout the United States, could not be exposed to all-purpose jurisdiction in New Jersey courts based on those contacts).

As is evident from *Perkins*, *Helicopteros*, and *Goodyear*, general and specific jurisdiction have followed markedly different trajectories post-*International Shoe*. Specific jurisdiction has been cut loose from *Pennoyer*'s sway, but we have declined to stretch general jurisdiction beyond limits traditionally recognized.[9] As this Court has increasingly trained on the "relationship among the defendant, the forum, and the litigation," *Shaffer*, 433 U. S., at 204, *i.e.*, specific jurisdiction,[10] general jurisdiction has come to occupy a less dominant place in the contemporary scheme.[11]

B

Even if we were to assume that MBUSA is at home in California, and further to assume MBUSA's contacts are imputable to Daimler, there would still be no basis to subject Daimler to general jurisdiction in California, for Daimler's slim contacts with the State hardly render it at home there.[16]

Goodyear made clear that only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there. "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home." 564 U. S., at ___ (slip op., at 7) (citing Brilmayer et al., A General Look at General Jurisdiction, 66 Texas L. Rev. 721, 728 (1988)). With respect to a corpora-

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[16] By addressing this point, JUSTICE SOTOMAYOR asserts, we have strayed from the question on which we granted certiorari to decide an issue not argued below. *Post*, at 5–6. That assertion is doubly flawed. First, the question on which we granted certiorari, as stated in Daimler's petition, is "whether it violates due process for a court to exercise general personal jurisdiction over a foreign corporation based solely on the fact that an indirect corporate subsidiary performs services on behalf of the defendant in the forum State." Pet. for Cert. i. That question fairly encompasses an inquiry into whether, in light of *Goodyear*, Daimler can be considered at home in California based on MBUSA's in-state activities. See also this Court's Rule 14.1(a) (a party's statement of the question presented "is deemed to comprise every subsidiary question fairly included therein"). Moreover, both in the Ninth Circuit, see, *e.g.*, Brief for Federation of German Industries et al. as *Amici Curiae* in No. 07–15386 (CA9), p. 3, and in this Court, see, *e.g.*, U. S. Brief 13–18; Brief for Chamber of Commerce of United States of America et al. as *Amici Curiae* 6–23; Brief for Lea Brilmayer as *Amica Curiae* 10–12, *amici* in support of Daimler homed in on the insufficiency of Daimler's California contacts for general jurisdiction purposes. In short, and in light of our pathmarking opinion in *Goodyear*, we perceive no unfairness in deciding today that California is not an all-purpose forum for claims against Daimler.

tion, the place of incorporation and principal place of business are "paradig[m] . . . bases for general jurisdiction." *Id.*, at 735. See also Twitchell, 101 Harv. L. Rev., at 633. Those affiliations have the virtue of being unique—that is, each ordinarily indicates only one place—as well as easily ascertainable. Cf. *Hertz Corp.* v. *Friend*, 559 U. S. 77, 94 (2010) ("Simple jurisdictional rules . . . promote greater predictability."). These bases afford plaintiffs recourse to at least one clear and certain forum in which a corporate defendant may be sued on any and all claims.

Goodyear did not hold that a corporation may be subject to general jurisdiction *only* in a forum where it is incorporated or has its principal place of business; it simply typed those places paradigm all-purpose forums. Plaintiffs would have us look beyond the exemplar bases *Goodyear* identified, and approve the exercise of general jurisdiction in every State in which a corporation "engages in a substantial, continuous, and systematic course of business." Brief for Respondents 16–17, and nn. 7–8. That formulation, we hold, is unacceptably grasping.

As noted, see *supra*, at 7–8, the words "continuous and systematic" were used in *International Shoe* to describe instances in which the exercise of *specific* jurisdiction would be appropriate. See 326 U. S., at 317 (jurisdiction can be asserted where a corporation's in-state activities are not only "continuous and systematic, but also give rise to the liabilities sued on").[17] Turning to all-purpose jurisdiction, in contrast, *International Shoe* speaks of "instances in which the continuous corporate operations within a state [are] so substantial and of such a nature as to justify

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[17] *International Shoe* also recognized, as noted above, see *supra*, at 7–8, that "some single or occasional acts of the corporate agent in a state . . . , because of their nature and quality and the circumstances of their commission, may be deemed sufficient to render the corporation liable to suit." 326 U. S., at 318.

suit . . . *on causes of action arising from dealings entirely distinct from those activities.*" *Id.*, at 318 (emphasis added). See also Twitchell, Why We Keep Doing Business With Doing-Business Jurisdiction, 2001 U. Chi. Legal Forum 171, 184 (*International Shoe* "is clearly not saying that dispute-blind jurisdiction exists whenever 'continuous and systematic' contacts are found.").[18] Accordingly, the inquiry under *Goodyear* is not whether a foreign corporation's in-forum contacts can be said to be in some sense "continuous and systematic," it is whether that corporation's "affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State." 564 U. S., at ___ (slip op., at 2).[19]

Here, neither Daimler nor MBUSA is incorporated in

[18] We do not foreclose the possibility that in an exceptional case, see, *e.g.*, *Perkins*, described *supra*, at 10–12, and n. 8, a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State. But this case presents no occasion to explore that question, because Daimler's activities in California plainly do not approach that level. It is one thing to hold a corporation answerable for operations in the forum State, see *infra*, at 23, quite another to expose it to suit on claims having no connection whatever to the forum State.

California, nor does either entity have its principal place of business there. If Daimler's California activities sufficed to allow adjudication of this Argentina-rooted case in California, the same global reach would presumably be available in every other State in which MBUSA's sales are sizable. Such exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants "to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Burger King Corp.*, 471 U. S., at 472 (internal quotation marks omitted).

It was therefore error for the Ninth Circuit to conclude that Daimler, even with MBUSA's contacts attributed to it, was at home in California, and hence subject to suit there on claims by foreign plaintiffs having nothing to do with anything that occurred or had its principal impact in California.[20]

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[20] To clarify in light of JUSTICE SOTOMAYOR's opinion concurring in the judgment, the general jurisdiction inquiry does not "focu[s] solely on the magnitude of the defendant's in-state contacts." *Post*, at 8. General jurisdiction instead calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide. A corporation that operates in many places can scarcely be deemed at home in all of them. Otherwise, "at home" would be synonymous with "doing business" tests framed before specific jurisdiction evolved in the United States. See von Mehren & Trautman 1142–1144. Nothing in *International Shoe* and its progeny suggests that "a particular quantum of local activity" should give a State authority over a "far larger quantum of . . . activity" having no connection to any in-state activity. Feder, *supra*, at 694.

JUSTICE SOTOMAYOR would reach the same result, but for a different reason. Rather than concluding that Daimler is not at home in California, JUSTICE SOTOMAYOR would hold that the exercise of general jurisdiction over Daimler would be unreasonable "in the unique circumstances of this case." *Post*, at 1. In other words, she favors a resolution fit for this day and case only. True, a multipronged reasonableness check was articulated in *Asahi*, 480 U. S., at 113–114, but not as a free-floating test. Instead, the check was to be essayed when *specific* jurisdiction is at issue. See also *Burger King Corp.* v. *Rudzewicz*, 471 U. S. 462, 476–478 (1985). First, a court is to determine whether the

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Finally, the transnational context of this dispute bears attention. The Court of Appeals emphasized, as supportive of the exercise of general jurisdiction, plaintiffs' assertion of claims under the Alien Tort Statute (ATS), 28 U. S. C. §1350, and the Torture Victim Protection Act of 1991 (TVPA), 106 Stat. 73, note following 28 U. S. C. §1350. See 644 F. 3d, at 927 ("American federal courts, be they in California or any other state, have a strong interest in adjudicating and redressing international human rights abuses."). Recent decisions of this Court, however, have rendered plaintiffs' ATS and TVPA claims infirm. See *Kiobel* v. *Royal Dutch Petroleum Co.*, 569 U. S. ___, ___ (2013) (slip op., at 14) (presumption against extraterritorial application controls claims under the ATS); *Mohamad* v. *Palestinian Authority*, 566 U. S. ___, ___ (2012)

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connection between the forum and the episode-in-suit could justify the exercise of specific jurisdiction. Then, in a second step, the court is to consider several additional factors to assess the reasonableness of entertaining the case. When a corporation is genuinely at home in the forum State, however, any second-step inquiry would be superfluous.

JUSTICE SOTOMAYOR fears that our holding will "lead to greater unpredictability by radically expanding the scope of jurisdictional discovery." *Post*, at 14. But it is hard to see why much in the way of discovery would be needed to determine where a corporation is at home. JUSTICE SOTOMAYOR's proposal to import *Asahi*'s "reasonableness" check into the general jurisdiction determination, on the other hand, would indeed compound the jurisdictional inquiry. The reasonableness factors identified in *Asahi* include "the burden on the defendant," "the interests of the forum State," "the plaintiff's interest in obtaining relief," "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," "the shared interest of the several States in furthering fundamental substantive social policies," and, in the international context, "the procedural and substantive policies of other *nations* whose interests are affected by the assertion of jurisdiction." 480 U. S., at 113–115 (some internal quotation marks omitted). Imposing such a checklist in cases of general jurisdiction would hardly promote the efficient disposition of an issue that should be resolved expeditiously at the outset of litigation.

(slip op., at 1) (only natural persons are subject to liability under the TVPA).

The Ninth Circuit, moreover, paid little heed to the risks to international comity its expansive view of general jurisdiction posed. Other nations do not share the uninhibited approach to personal jurisdiction advanced by the Court of Appeals in this case. In the European Union, for example, a corporation may generally be sued in the nation in which it is "domiciled," a term defined to refer only to the location of the corporation's "statutory seat," "central administration," or "principal place of business." European Parliament and Council Reg. 1215/2012, Arts. 4(1), and 63(1), 2012 O. J. (L. 351) 7, 18. See also *id.*, Art. 7(5), 2012 O. J. 7 (as to "a dispute *arising out of the operations of a branch, agency or other establishment*," a corporation may be sued "in the courts for the place where the branch, agency or other establishment is situated" (emphasis added)). The Solicitor General informs us, in this regard, that "foreign governments' objections to some domestic courts' expansive views of general jurisdiction have in the past impeded negotiations of international agreements on the reciprocal recognition and enforcement of judgments." U. S. Brief 2 (citing Juenger, The American Law of General Jurisdiction, 2001 U. Chi. Legal Forum 141, 161–162). See also U. S. Brief 2 (expressing concern that unpredictable applications of general jurisdiction based on activities of U. S.-based subsidiaries could discourage foreign investors); Brief for Respondents 35 (acknowledging that "doing business" basis for general jurisdiction has led to "international friction"). Considerations of international rapport thus reinforce our determination that subjecting Daimler to the general jurisdiction of courts in California would not accord with the "fair play and substantial justice" due process demands. *International Shoe*, 326 U. S., at 316 (quoting *Milliken* v. *Meyer*, 311 U. S. 457, 463 (1940)).

471 U.S. 462 (1985)

BURGER KING CORP.
v.
RUDZEWICZ

No. 83-2097.

Supreme Court of United States.

Argued January 8, 1985
Decided May 20, 1985

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

463 *463 *Joel S. Perwin* argued the cause and filed briefs for appellant.

Thomas H. Oehmke argued the cause and filed a brief for appellee.

JUSTICE BRENNAN delivered the opinion of the Court.

The State of Florida's long-arm statute extends jurisdiction to "[a]ny person, whether or not a citizen or resident of this state," who, *inter alia*, "[b]reach[es] a contract in this state by failing to perform acts required by the contract to be
464 performed in this state," so long as the cause of action *464 arises from the alleged contractual breach. Fla. Stat. § 48.193 (1)(g) (Supp. 1984). The United States District Court for the Southern District of Florida, sitting in diversity, relied on this provision in exercising personal jurisdiction over a Michigan resident who allegedly had breached a franchise agreement with a Florida corporation by failing to make required payments in Florida. The question presented is whether this exercise of long-arm jurisdiction offended "traditional conception[s] of fair play and substantial justice" embodied in the Due Process Clause of the Fourteenth Amendment. *International Shoe Co. v Washington*, 326 U. S. 310, 320 (1945).

I

A

Burger King Corporation is a Florida corporation whose principal offices are in Miami. It is one of the world's largest restaurant organizations, with over 3,000 outlets in the 50 States, the Commonwealth of Puerto Rico, and 8 foreign nations. Burger King conducts approximately 80% of its business through a franchise operation that the company styles the "Burger King System" — "a comprehensive restaurant format and operating system for the sale of uniform and quality food products." App. 46.[1] Burger King licenses its franchisees to use its trademarks and service marks for a period of 20 years and leases standardized restaurant facilities to them for the same term. In addition, franchisees acquire a variety of proprietary information concerning the "standards, specifications, procedures and methods for
465 operating *465 a Burger King Restaurant." *Id.*, at 52. They also receive market research and advertising assistance, ongoing training in restaurant management;[2] and accounting, cost-control, and inventory-control guidance. By permitting franchisees to tap into Burger King's established national reputation and to benefit from proven procedures for dispensing standardized fare, this system enables them to go into the restaurant business with significantly lowered barriers to entry.[3]

In exchange for these benefits, franchisees pay Burger King an initial $40,000 franchise fee and commit themselves to payment of monthly royalties, advertising and sales promotion fees, and rent computed in part from monthly gross sales. Franchisees also agree to submit to the national organization's exacting regulation of virtually every conceivable

aspect of their operations.[4] Burger King imposes these standards and undertakes its rigid regulation out of conviction that "[u]niformity of service, appearance, and quality of product is essential to the preservation of the Burger King image and the benefits accruing therefrom to both Franchisee and Franchisor." *Id.*, at 31.

466 Burger King oversees its franchise system through a two-tiered administrative structure. The governing contracts *466 provide that the franchise relationship is established in Miami and governed by Florida law, and call for payment of all required fees and forwarding of all relevant notices to the Miami headquarters.[5] The Miami headquarters sets policy and works directly with its franchisees in attempting to resolve major problems. See nn. 7, 9, *infra*. Day-to-day monitoring of franchisees, however, is conducted through a network of 10 district offices which in turn report to the Miami headquarters.

The instant litigation grows out of Burger King's termination of one of its franchisees, and is aptly described by the franchisee as "a divorce proceeding among commercial partners." 5 Record 4. The appellee John Rudzewicz, a Michigan citizen and resident, is the senior partner in a Detroit accounting firm. In 1978, he was approached by Brian MacShara, the son of a business acquaintance, who suggested that they jointly apply to Burger King for a franchise in the Detroit area. MacShara proposed to serve as the manager of the restaurant if Rudzewicz would put up the investment capital; in exchange, the two would evenly share the profits. Believing that MacShara's idea offered attractive investment and tax-deferral opportunities, Rudzewicz agreed to the venture. 6 *id.*, at 438-439, 444, 460.

Rudzewicz and MacShara jointly applied for a franchise to Burger King's Birmingham, Michigan, district office in the autumn of 1978. Their application was forwarded to Burger King's Miami headquarters, which entered into a preliminary agreement with them in February 1979. During the ensuing four months it was agreed that Rudzewicz and MacShara would assume operation of an existing facility in Drayton Plains, Michigan. MacShara attended the prescribed management courses in Miami during this period, see n. 2, *supra*, and the franchisees purchased $165,000
467 worth of restaurant equipment from Burger King's Davmor Industries division in *467 Miami. Even before the final agreements were signed, however, the parties began to disagree over site-development fees, building design, computation of monthly rent, and whether the franchisees would be able to assign their liabilities to a corporation they had formed.[6] During these disputes Rudzewicz and MacShara negotiated both with the Birmingham district office and with the Miami headquarters.[7] With some misgivings, Rudzewicz and MacShara finally obtained limited concessions from the Miami headquarters,[8] signed the final agreements, and commenced operations in June 1979. By signing the final agreements, Rudzewicz obligated himself personally to payments exceeding $1 million over the 20-year franchise relationship.

468 *468 The Drayton Plains facility apparently enjoyed steady business during the summer of 1979, but patronage declined after a recession began later that year. Rudzewicz and MacShara soon fell far behind in their monthly payments to Miami. Headquarters sent notices of default, and an extended period of negotiations began among the franchisees, the Birmingham district office, and the Miami headquarters. After several Burger King officials in Miami had engaged in prolonged but ultimately unsuccessful negotiations with the franchisees by mail and by telephone,[9] headquarters terminated the franchise and ordered Rudzewicz and MacShara to vacate the premises. They refused and continued to occupy and operate the facility as a Burger King restaurant.

B

Burger King commenced the instant action in the United States District Court for the Southern District of Florida in May 1981, invoking that court's diversity jurisdiction pursuant to 28 U. S. C. § 1332(a) and its original jurisdiction over federal trademark disputes pursuant to § 1338(a).[10] Burger King alleged that Rudzewicz and MacShara had breached their franchise obligations "within [the jurisdiction of] this district court" by failing to make the required payments "at plaintiff's place of business in Miami, Dade County, Florida," ¶ 6, App. 121, and also charged that they were tortiously
469 infringing *469 its trademarks and service marks through their continued, unauthorized operation as a Burger King restaurant, ¶¶ 35-53, App. 130-135. Burger King sought damages, injunctive relief, and costs and attorney's fees.

Rudzewicz and MacShara entered special appearances and argued, *inter alia*, that because they were Michigan residents and because Burger King's claim did not "arise" within the Southern District of Florida, the District Court lacked personal jurisdiction over them. The District Court denied their motions after a hearing, holding that, pursuant to Florida's long-arm statute, "a non-resident Burger King franchisee is subject to the personal jurisdiction of this Court in actions arising out of its franchise agreements." *Id.*, at 138. Rudzewicz and MacShara then filed an answer and a counterclaim seeking damages for alleged violations by Burger King of Michigan's Franchise Investment Law, Mich. Comp. Laws § 445.1501 *et seq.* (1979).

After a 3-day bench trial, the court again concluded that it had "jurisdiction over the subject matter and the parties to this cause." App. 159. Finding that Rudzewicz and MacShara had breached their franchise agreements with Burger King and had infringed Burger King's trademarks and service marks, the court entered judgment against them, jointly and severally, for $228,875 in contract damages. The court also ordered them "to immediately close Burger King Restaurant Number 775 from continued operation or to immediately give the keys and possession of said restaurant to Burger King Corporation," *id.*, at 163, found that they had failed to prove any of the required elements of their counterclaim, and awarded costs and attorney's fees to Burger King.

Rudzewicz appealed to the Court of Appeals for the Eleventh Circuit.[11] A divided panel of that Circuit reversed the
470 *470 judgment, concluding that the District Court could not properly exercise personal jurisdiction over Rudzewicz pursuant to Fla. Stat. § 48.193(1)(g) (Supp. 1984) because "the circumstances of the Drayton Plains franchise and the negotiations which led to it left Rudzewicz bereft of reasonable notice and financially unprepared for the prospect of franchise litigation in Florida." Burger King Corp. v. MacShara, 724 F. 2d 1505, 1513 (1984). Accordingly, the panel majority concluded that "[j]urisdiction under these circumstances would offend the fundamental fairness which is the touchstone of due process." *Ibid.*

Burger King appealed the Eleventh Circuit's judgment to this Court pursuant to 28 U. S. C. § 1254(2), and we postponed probable jurisdiction. 469 U. S. 814 (1984). Because it is unclear whether the Eleventh Circuit actually held that Fla. Stat. § 48.193(1)(g) (Supp. 1984) *itself* is unconstitutional as applied to the circumstances of this case, we conclude that jurisdiction by appeal does not properly lie and therefore dismiss the appeal.[12] Treating the jurisdictional
471 *471 statement as a petition for a writ of certiorari, see 28 U. S. C. § 2103, we grant the petition and now reverse

II

A

472 The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a *472 forum with which he has established no meaningful "contacts, ties, or relations." International Shoe Co. v. Washington, 326 U. S., at 319.[13] By requiring that individuals have "fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign," Shaffer v. Heitner, 433 U. S. 186, 218 (1977) (STEVENS, J., concurring in judgment), the Due Process Clause "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit," World-Wide Volkswagen Corp. v. Woodson, 444 U. S. 286, 297 (1980).

Where a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there,[14] this "fair warning" requirement is satisfied if the defendant has "purposefully directed" his activities at residents of the forum, Keeton v. Hustler Magazine, Inc., 465 U. S. 770, 774 (1984), and the litigation results from alleged injuries that "arise out of or relate to" those activities, Helicopteros Nacionales de Colombia, S. A. v. Hall, 466 U. S. 408, 414
473 *473 (1984).[15] Thus "[t]he forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State" and those products subsequently injure forum consumers. World-Wide Volkswagen Corp. v. Woodson, supra, at 297-298. Similarly, a publisher who distributes magazines in a

distant State may fairly be held accountable in that forum for damages resulting there from an allegedly defamatory story. Keeton v. Hustler Magazine, Inc., supra; see also Calder v. Jones, 465 U. S. 783 (1984) (suit against author and editor). And with respect to interstate contractual obligations, we have emphasized that parties who "reach out beyond one state and create continuing relationships and obligations with citizens of another state" are subject to regulation and sanctions in the other State for the consequences of their activities. Travelers Health Assn. v. Virginia, 339 U. S. 643, 647 (1950). See also McGee v. International Life Insurance Co., 355 U. S. 220, 222-223 (1957).

We have noted several reasons why a forum legitimately may exercise personal jurisdiction over a nonresident who "purposefully directs" his activities toward forum residents. A State generally has a "manifest interest" in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors. *Id.*, at 223; see also Keeton v. Hustler Magazine, Inc., supra, at 776. Moreover, where individuals "purposefully derive benefit" from their interstate
474 activities, Kulko v. California Superior Court, *474 436 U. S. 84, 96 (1978), it may well be unfair to allow them to escape having to account in other States for consequences that arise proximately from such activities; the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed. And because "modern transportation and communications have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity," it usually will not be unfair to subject him to the burdens of litigating in another forum for disputes relating to such activity. McGee v. International Life Insurance Co., supra, at 223.

Notwithstanding these considerations, the constitutional touchstone remains whether the defendant purposefully established "minimum contacts" in the forum State. International Shoe Co. v. Washington, supra, at 316. Although it has been argued that foreseeability of causing *injury* in another State should be sufficient to establish such contacts there when policy considerations so require,[16] the Court has consistently held that this kind of foreseeability is not a "sufficient benchmark" for exercising personal jurisdiction. World-Wide Volkswagen Corp. v. Woodson, 444 U. S., at 295. Instead, "the foreseeability that is critical to due process analysis . . . is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there " *Id.*, at 297 In defining when it is that a potential defendant should "reasonably anticipate" out-of-state litigation, the Court frequently has drawn from the reasoning of Hanson v. Denckla, 357 U. S. 235, 253 (1958):

> "The unilateral activity of those who claim some relationship with a nonresident defendant cannot
> 475 satisfy the requirement of contact with the forum State. The application *475 of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."

This "purposeful availment" requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts, Keeton v. Hustler Magazine, Inc., 465 U. S., at 774; World-Wide Volkswagen Corp. v. Woodson, supra, at 299, or of the "unilateral activity of another party or a third person," Helicopteros Nacionales de Colombia, S. A. v. Hall, supra, at 417.[17] Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant *himself* that create a "substantial connection" with the forum State. McGee v. International Life Insurance Co., supra, at 223; see also Kulko v. California Superior Court, supra, at
476 94, n. 7.[18] Thus where the defendant "deliberately" has *476 engaged in significant activities within a State, Keeton v. Hustler Magazine, Inc., supra, at 781, or has created "continuing obligations" between himself and residents of the forum, Travelers Health Assn. v. Virginia, 339 U. S., at 648, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by "the benefits and protections" of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

Jurisdiction in these circumstances may not be avoided merely because the defendant did not *physically* enter the forum State. Although territorial presence frequently will enhance a potential defendant's affiliation with a State and reinforce the reasonable foreseeability of suit there, it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating

the need for physical presence within a State in which business is conducted. So long as a commercial actor's efforts are "purposefully directed" toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there. *Keeton v. Hustler Magazine, Inc., supra,* at 774-775; see also *Calder v. Jones,* 465 U. S., at 788-790; *McGee v. International Life Insurance Co.,* 355 U. S., at 222-223. Cf. *Hoopeston Canning Co. v. Cullen,* 318 U. S. 313, 317 (1943).

Once it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would
477 comport with "fair play and substantial justice." *International Shoe Co. v. Washington,* 326 U. S., at 320. Thus *477 courts in "appropriate case[s]" may evaluate "the burden on the defendant," "the forum State's interest in adjudicating the dispute," "the plaintiff's interest in obtaining convenient and effective relief," "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and the "shared interest of the several States in furthering fundamental substantive social policies." *World-Wide Volkswagen Corp. v. Woodson,* 444 U. S., at 292. These considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required. See, *e. g., Keeton v. Hustler Magazine, Inc., supra,* at 780; *Calder v. Jones, supra,* at 788-789; *McGee v. International Life Insurance Co., supra,* at 223-224. On the other hand, where a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable. Most such considerations usually may be accommodated through means short of finding jurisdiction unconstitutional. For example, the potential clash of the forum's law with the "fundamental substantive social policies" of another State may be accommodated through application of the forum's choice-of-law rules.[19] Similarly, a defendant claiming substantial inconvenience may seek a change of venue.[20] Nevertheless, minimum requirements inherent in the concept of "fair
478 play and substantial *478 justice" may defeat the reasonableness of jurisdiction even if the defendant has purposefully engaged in forum activities. *World-Wide Volkswagen Corp. v. Woodson, supra,* at 292; see also Restatement (Second) of Conflict of Laws §§ 36-37 (1971). As we previously have noted, jurisdictional rules may not be employed in such a way as to make litigation "so gravely difficult and inconvenient" that a party unfairly is at a "severe disadvantage" in comparison to his opponent. *The Bremen v. Zapata Off-Shore Co.,* 407 U. S. 1, 18 (1972) (*re* forum-selection provisions); *McGee v. International Life Insurance Co., supra,* at 223-224.

B

(1)

Applying these principles to the case at hand, we believe there is substantial record evidence supporting the District Court's conclusion that the assertion of personal jurisdiction over Rudzewicz in Florida for the alleged breach of his franchise agreement did not offend due process. At the outset, we note a continued division among lower courts respecting whether and to what extent a contract can constitute a "contact" for purposes of due process analysis.[21] If the question is whether an individual's contract with an out-of-state party *alone* can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is that it cannot. The Court long ago rejected the notion that personal jurisdiction might turn on "mechanical" tests, *International Shoe Co. v. Washington, supra,* at 319, or on "conceptualistic . . . theories of the place of contracting or of performance," *Hoopeston Canning*
479 *Co. v. Cullen,* *479 318 U. S., at 316. Instead, we have emphasized the need for a "highly realistic" approach that recognizes that a "contract" is "ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction." *Id.,* at 316-317. It is these factors — prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing — that must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum.

In this case, no physical ties to Florida can be attributed to Rudzewicz other than MacShara's brief training course in Miami.[22] Rudzewicz did not maintain offices in Florida and, for all that appears from the record, has never even visited there. Yet this franchise dispute grew directly out of "a contract which had a *substantial* connection with that State." McGee v. International Life Insurance Co., 355 U. S., at 223 (emphasis added). Eschewing the option of operating an independent local enterprise, Rudzewicz deliberately "reach[ed] out beyond" Michigan and negotiated with a Florida
480 corporation for the purchase of a long-term franchise and *480 the manifold benefits that would derive from affiliation with a nationwide organization. Travelers Health Assn. v. Virginia, 339 U. S., at 647. Upon approval, he entered into a carefully structured 20-year relationship that envisioned continuing and wide-reaching contacts with Burger King in Florida. In light of Rudzewicz' voluntary acceptance of the long-term and exacting regulation of his business from Burger King's Miami headquarters, the "quality and nature" of his relationship to the company in Florida can in no sense be viewed as "random," "fortuitous," or "attenuated." Hanson v. Denckla, 357 U. S., at 253; Keeton v. Hustler Magazine, Inc., 465 U. S., at 774; World-Wide Volkswagen Corp. v. Woodson, 444 U. S., at 299. Rudzewicz' refusal to make the contractually required payments in Miami, and his continued use of Burger King's trademarks and confidential business information after his termination, caused foreseeable injuries to the corporation in Florida. For these reasons it was, at the very least, presumptively reasonable for Rudzewicz to be called to account there for such injuries.

The Court of Appeals concluded, however, that in light of the supervision emanating from Burger King's district office in Birmingham, Rudzewicz reasonably believed that "the Michigan office was for all intents and purposes the embodiment of Burger King" and that he therefore had no "reason to anticipate a Burger King suit outside of Michigan." 724 F. 2d, at 1511. See also *post*, at 488-489 (STEVENS, J., dissenting). This reasoning overlooks substantial record evidence indicating that Rudzewicz most certainly knew that he was affiliating himself with an enterprise based primarily in Florida. The contract documents themselves emphasize that Burger King's operations are conducted and supervised from the Miami headquarters, that all relevant notices and payments must be sent there, and that the agreements were made in and enforced from Miami. See n. 5, *supra*. Moreover, the parties' actual course
481 of dealing repeatedly confirmed that decisionmaking authority was vested in the Miami headquarters *481 and that the district office served largely as an intermediate link between the headquarters and the franchisees. When problems arose over building design, site-development fees, rent computation, and the defaulted payments, Rudzewicz and MacShara learned that the Michigan office was powerless to resolve their disputes and could only channel their communications to Miami. Throughout these disputes, the Miami headquarters and the Michigan franchisees carried on a continuous course of direct communications by mail and by telephone, and it was the Miami headquarters that made the key negotiating decisions out of which the instant litigation arose. See nn. 7, 9, *supra*.

Moreover, we believe the Court of Appeals gave insufficient weight to provisions in the various franchise documents providing that all disputes would be governed by Florida law. The franchise agreement, for example, stated:

> "This Agreement shall become valid when executed and accepted by BKC at Miami, Florida; it shall be deemed made and entered into in the State of Florida and shall be governed and construed under and in accordance with the laws of the State of Florida. The choice of law designation does not require that all suits concerning this Agreement be filed in Florida." App. 72.

See also n. 5, *supra*. The Court of Appeals reasoned that choice-of-law provisions are irrelevant to the question of personal jurisdiction, relying on Hanson v. Denckla for the proposition that "the center of gravity for choice-of-law purposes does not necessarily confer the sovereign prerogative to assert jurisdiction." 724 F. 2d, at 1511-1512, n. 10, citing 357 U. S., at 254. This reasoning misperceives the import of the quoted proposition. The Court in *Hanson* and subsequent cases has emphasized that choice-of-law *analysis* — which focuses on all elements of a transaction, and not simply on the defendant's conduct — is distinct from minimum-contracts jurisdictional analysis — which focuses at
482 the threshold *482 solely on the defendant's purposeful connection to the forum.[23] Nothing in our cases, however, suggests that a choice-of-law *provision* should be ignored in considering whether a defendant has "purposefully invoked the benefits and protections of a State's laws" for jurisdictional purposes. Although such a provision standing alone would be insufficient to confer jurisdiction, we believe that, when combined with the 20-year interdependent

relationship Rudzewicz established with Burger King's Miami headquarters, it reinforced his deliberate affiliation with the forum State and the reasonable foreseeability of possible litigation there. As Judge Johnson argued in his dissent below, Rudzewicz "purposefully availed himself of the benefits and protections of Florida's laws" by entering into contracts expressly providing that those laws would govern franchise disputes. 724 F. 2d, at 1513.[24]

(2)

Nor has Rudzewicz pointed to other factors that can be said persuasively to outweigh the considerations discussed above and to establish the *unconstitutionality* of Florida's assertion of jurisdiction. We cannot conclude that Florida had
483 no "legitimate interest in holding [Rudzewicz] answerable *483 on a claim related to" the contacts he had established in that State. *Keeton v. Hustler Magazine, Inc.*, 465 U. S., at 776; see also *McGee v. International Life Insurance Co.*, 355 U. S., at 223 (noting that State frequently will have a "manifest interest in providing effective means of redress for its residents").[25] Moreover, although Rudzewicz has argued at some length that Michigan's Franchise Investment Law, Mich. Comp. Laws § 445.1501 *et seq.* (1979), governs many aspects of this franchise relationship, he has not demonstrated how Michigan's acknowledged interest might possibly render jurisdiction in Florida *unconstitutional*.[26] Finally, the Court of Appeals' assertion that the Florida litigation "severely impaired [Rudzewicz'] ability to call Michigan witnesses who might be essential to his defense and counterclaim," 724 F. 2d, at 1512-1513, is wholly without support
484 in the record.[27] And even to the extent that it is inconvenient *484 for a party who has minimum contacts with a forum to litigate there, such considerations most frequently can be accommodated through a change of venue. See n. 20, *supra*. Although the Court has suggested that inconvenience may at some point become so substantial as to achieve *constitutional* magnitude, *McGee v. International Life Insurance Co., supra*, at 223, this is not such a case.

The Court of Appeals also concluded, however, that the parties' dealings involved "a characteristic disparity of bargaining power" and "elements of surprise," and that Rudzewicz "lacked fair notice" of the potential for litigation in Florida because the contractual provisions suggesting to the contrary were merely "boilerplate declarations in a lengthy printed contract." 724 F. 2d, at 1511-1512, and n. 10. See also *post*, at 489-490 (STEVENS, J., dissenting) Rudzewicz presented many of these arguments to the District Court, contending that Burger King was guilty of misrepresentation, fraud, and duress; that it gave insufficient notice in its dealings with him; and that the contract was one of adhesion. See 4 Record 687-691. After a 3-day bench trial, the District Court found that Burger King had made no misrepresentations, that Rudzewicz and MacShara "were and are experienced and sophisticated businessmen," and that "at no time" did they "ac[t] under economic duress or disadvantage imposed by" Burger King. App. 157-158. See also 7 Record 648-649. Federal Rule of Civil Procedure 52(a) requires that "[f]indings of fact shall not be set aside unless clearly erroneous," and neither Rudzewicz nor the Court of Appeals has pointed to record evidence that would support a "definite and firm conviction" that the District Court's findings are mistaken. *United States v. United States*
485 *Gypsum Co.*, 333 U. S. 364, 395 (1948). See also *485 *Anderson v. Bessemer City*, 470 U. S. 564, 573-576 (1985). To the contrary, Rudzewicz was represented by counsel throughout these complex transactions and, as Judge Johnson observed in dissent below, was himself an experienced accountant "who for five months conducted negotiations with Burger King over the terms of the franchise and lease agreements, and who obligated himself personally to contracts requiring over time payments that exceeded $1 million." 724 F. 2d, at 1514. Rudzewicz was able to secure a modest reduction in rent and other concessions from Miami headquarters, see nn. 8, 9, *supra*; moreover, to the extent that Burger King's terms were inflexible, Rudzewicz presumably decided that the advantages of affiliating with a national organization provided sufficient commercial benefits to offset the detriments.[28]

III

Notwithstanding these considerations, the Court of Appeals apparently believed that it was necessary to reject jurisdiction in this case as a prophylactic measure, reasoning that an affirmance of the District Court's judgment would result in the exercise of jurisdiction over "out-of-state consumers to collect payments due on modest personal purchases" and would "sow the seeds of default judgments against franchisees owing smaller debts." 724 F. 2d, at

1511. We share the Court of Appeals' broader concerns and therefore reject any talismanic jurisdictional formulas, "the
486 *486 facts of each case must [always] be weighed" in determining whether personal jurisdiction would comport with "fair play and substantial justice." *Kulko v. California Superior Court*, 436 U. S., at 92 [29] The "quality and nature" of an interstate transaction may sometimes be so "random," "fortuitous," or "attenuated"[30] that it cannot fairly be said that the potential defendant "should reasonably anticipate being haled into court" in another jurisdiction. *World-Wide Volkswagen Corp. v. Woodson*, 444 U. S., at 297; see also n. 18, *supra*. We also have emphasized that jurisdiction may not be grounded on a contract whose terms have been obtained through "fraud, undue influence, or overweening bargaining power" and whose application would render litigation "so gravely difficult and inconvenient that [a party] will for all practical purposes be deprived of his day in court." *The Bremen v. Zapata Off-Shore Co.*, 407 U. S., at 12, 18 Cf. *Fuentes v. Shevin*, 407 U. S. 67, 94-96 (1972); *National Equipment Rental, Ltd. v. Szukhent*, 375 U. S. 311, 329 (1964) (Black, J., dissenting) (jurisdictional rules may not be employed against small consumers so as to "crippl[e] their defense") Just as the Due Process Clause allows flexibility in ensuring that commercial actors are not effectively "judgment proof" for the consequences of obligations they voluntarily assume in other States *McGee v. International Life Insurance Co.*, 355 U. S., at 223, so too does it prevent rules that would unfairly enable them to obtain default judgments against unwitting customers Cf. *United States v. Rumely*, 345 U. S. 41, 44 (1953) (courts must not be " 'blind' " to what " '[a]ll others can see and understand' ")

487 *487 For the reasons set forth above, however, these dangers are not present in the instant case. Because Rudzewicz established a substantial and continuing relationship with Burger King's Miami headquarters, received fair notice from the contract documents and the course of dealing that he might be subject to suit in Florida, and has failed to demonstrate how jurisdiction in that forum would otherwise be fundamentally unfair, we conclude that the District Court's exercise of jurisdiction pursuant to Fla. Stat. § 48.193(1)(g) (Supp. 1984) did not offend due process. The judgment of the Court of Appeals is accordingly reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 12–574

ANTHONY WALDEN, PETITIONER v. GINA FIORE ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[February 25, 2014]

JUSTICE THOMAS delivered the opinion of the Court.

This case asks us to decide whether a court in Nevada may exercise personal jurisdiction over a defendant on the basis that he knew his allegedly tortious conduct in Georgia would delay the return of funds to plaintiffs with connections to Nevada. Because the defendant had no other contacts with Nevada, and because a plaintiff's contacts with the forum State cannot be "decisive in determining whether the defendant's due process rights are violated," *Rush* v. *Savchuk*, 444 U. S. 320, 332 (1980), we hold that the court in Nevada may not exercise personal jurisdiction under these circumstances.

I

Petitioner Anthony Walden serves as a police officer for the city of Covington, Georgia. In August 2006, petitioner was working at the Atlanta Hartsfield-Jackson Airport as a deputized agent of the Drug Enforcement Administration (DEA). As part of a task force, petitioner conducted investigative stops and other law enforcement functions in support of the DEA's airport drug interdiction program.

On August 8, 2006, Transportation Security Admin-

istration agents searched respondents Gina Fiore and Keith Gipson and their carry-on bags at the San Juan airport in Puerto Rico. They found almost $97,000 in cash. Fiore explained to DEA agents in San Juan that she and Gipson had been gambling at a casino known as the El San Juan, and that they had residences in both California and Nevada (though they provided only California identification). After respondents were cleared for departure, a law enforcement official at the San Juan airport notified petitioner's task force in Atlanta that respondents had boarded a plane for Atlanta, where they planned to catch a connecting flight to Las Vegas, Nevada.

When respondents arrived in Atlanta, petitioner and another DEA agent approached them at the departure gate for their flight to Las Vegas. In response to petitioner's questioning, Fiore explained that she and Gipson were professional gamblers. Respondents maintained that the cash they were carrying was their gambling "'bank'" and winnings. App. 15, 24. After using a drug-sniffing dog to perform a sniff test, petitioner seized the cash.[1] Petitioner advised respondents that their funds would be returned if they later proved a legitimate source for the cash. Respondents then boarded their plane.

After respondents departed, petitioner moved the cash to a secure location and the matter was forwarded to DEA headquarters. The next day, petitioner received a phone call from respondents' attorney in Nevada seeking return of the funds. On two occasions over the next month, petitioner also received documentation from the attorney regarding the legitimacy of the funds.

At some point after petitioner seized the cash, he helped draft an affidavit to show probable cause for forfeiture of

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[1] Respondents allege that the sniff test was "at best, inconclusive," and there is no indication in the pleadings that drugs or drug residue were ever found on or with the cash. App. 21.

the funds and forwarded that affidavit to a United States Attorney's Office in Georgia.[2] According to respondents, the affidavit was false and misleading because petitioner misrepresented the encounter at the airport and omitted exculpatory information regarding the lack of drug evidence and the legitimate source of the funds. In the end, no forfeiture complaint was filed, and the DEA returned the funds to respondents in March 2007.

Respondents filed suit against petitioner in the United States District Court for the District of Nevada, seeking money damages under *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971). Respondents alleged that petitioner violated their Fourth Amendment rights by (1) seizing the cash without probable cause; (2) keeping the money after concluding it did not come from drug-related activity; (3) drafting and forwarding a probable cause affidavit to support a forfeiture action while knowing the affidavit contained false statements; (4) willfully seeking forfeiture while withholding exculpatory information; and (5) withholding that exculpatory information from the United States Attorney's Office.

The District Court granted petitioner's motion to dismiss. Relying on this Court's decision in *Calder* v. *Jones*, 465 U. S. 783 (1984), the court determined that petitioner's search of respondents and his seizure of the cash in Georgia did not establish a basis to exercise personal jurisdiction in Nevada. The court concluded that even if petitioner caused harm to respondents in Nevada while knowing they lived in Nevada, that fact alone did not confer jurisdiction. Because the court dismissed the complaint for lack of personal jurisdiction, it did not determine

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[2] The alleged affidavit is not in the record. Because this case comes to us at the motion-to-dismiss stage, we take respondents' factual allegations as true, including their allegations regarding the existence and content of the affidavit.

whether venue was proper.

On appeal, a divided panel of the United States Court of Appeals for the Ninth Circuit reversed. The Court of Appeals assumed the District Court had correctly determined that petitioner's search and seizure in Georgia could not support exercise of jurisdiction in Nevada. The court held, however, that the District Court could properly exercise jurisdiction over "the false probable cause affidavit aspect of the case." 688 F. 3d 558, 577 (2011). According to the Court of Appeals, petitioner "expressly aimed" his submission of the allegedly false affidavit at Nevada by submitting the affidavit with knowledge that it would affect persons with a "significant connection" to Nevada.[3] *Id.*, at 581. After determining that the delay in returning the funds to respondents caused them "foreseeable harm" in Nevada and that the exercise of personal jurisdiction over petitioner was otherwise reasonable, the court found the District Court's exercise of personal jurisdiction to be proper.[4] *Id.*, at 582, 585. The Ninth Circuit denied rehearing en banc, with eight judges, in two separate opinions, dissenting. *Id.*, at 562, 568.

We granted certiorari to decide whether due process permits a Nevada court to exercise jurisdiction over petitioner. 568 U. S. ___ (2013). We hold that it does not and

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[3]The allegations in the complaint suggested to the Court of Appeals that petitioner "definitely knew, at some point *after* the seizure but *before* providing the alleged false probable cause affidavit, that [respondents] had a significant connection to Nevada." 688 F. 3d, at 578.

[4]Judge Ikuta dissented. In her view, the "false affidavit/forfeiture proceeding aspect" over which the majority found jurisdiction proper was not raised as a separate claim in the complaint, and she found it "doubtful that such a constitutional tort even exists." *Id.*, at 593. After the court denied rehearing en banc, the majority explained in a postscript that it viewed the filing of the false affidavit, which effected a "continued seizure" of the funds, as a separate Fourth Amendment violation. *Id.*, at 588–589. Petitioner does not dispute that reading here.

therefore reverse.[5]

II

A

"Federal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons." *Daimler AG* v. *Bauman*, 571 U. S. ___, ___ (2014) (slip op., at 6). This is because a federal district court's authority to assert personal jurisdiction in most cases is linked to service of process on a defendant "who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located." Fed. Rule of Civ. Proc. 4(k)(1)(A). Here, Nevada has authorized its courts to exercise jurisdiction over persons "on any basis not inconsistent with . . . the Constitution of the United States." Nev. Rev. Stat. §14.065 (2011). Thus, in order to determine whether the Federal District Court in this case was authorized to exercise jurisdiction over petitioner, we ask whether the exercise of jurisdiction "comports with the limits imposed by federal due process" on the State of Nevada. *Daimler*, *supra*, at ___ (slip op., at 6).

B

1

The Due Process Clause of the Fourteenth Amendment constrains a State's authority to bind a nonresident defendant to a judgment of its courts. *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U. S. 286, 291 (1980). Although a nonresident's physical presence within the territorial jurisdiction of the court is not required, the nonresident generally must have "certain minimum contacts . . . such that the maintenance of the suit does not

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[5] We also granted certiorari on the question whether Nevada is a proper venue for the suit under 28 U. S. C. §1391(b)(2). Because we resolve the case on jurisdictional grounds, we do not decide whether venue was proper in Nevada.

offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co.* v. *Washington*, 326 U. S. 310, 316 (1945) (quoting *Milliken* v. *Meyer*, 311 U. S. 457, 463 (1940)).

This case addresses the "minimum contacts" necessary to create specific jurisdiction.[6] The inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant "focuses on 'the relationship among the defendant, the forum, and the litigation.'" *Keeton* v. *Hustler Magazine, Inc.*, 465 U. S. 770, 775 (1984) (quoting *Shaffer* v. *Heitner*, 433 U. S. 186, 204 (1977)). For a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State. Two related aspects of this necessary relationship are relevant in this case.

First, the relationship must arise out of contacts that the "defendant *himself*" creates with the forum State. *Burger King Corp.* v. *Rudzewicz*, 471 U. S. 462, 475 (1985). Due process limits on the State's adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties. See *World-Wide Volkswagen Corp.*, *supra*, at 291–292. We have consistently rejected attempts to satisfy the defendant-focused "minimum contacts" inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State. See *Helicopteros Nacionales de Colombia, S. A.* v. *Hall*, 466 U. S. 408, 417 (1984) ("[The] unilateral

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[6] "Specific" or "case-linked" jurisdiction "depends on an 'affiliatio[n] between the forum and the underlying controversy'" (*i.e.*, an "activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation"). *Goodyear Dunlop Tires Operations, S. A.* v. *Brown*, 564 U. S. ___, ___ (2011) (slip op., at 2). This is in contrast to "general" or "all purpose" jurisdiction, which permits a court to assert jurisdiction over a defendant based on a forum connection unrelated to the underlying suit (*e.g.*, domicile). Respondents rely on specific jurisdiction only.

activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction"). We have thus rejected a plaintiff's argument that a Florida court could exercise personal jurisdiction over a trustee in Delaware based solely on the contacts of the trust's settlor, who was domiciled in Florida and had executed powers of appointment there. *Hanson* v. *Denckla*, 357 U. S. 235, 253–254 (1958). We have likewise held that Oklahoma courts could not exercise personal jurisdiction over an automobile distributor that supplies New York, New Jersey, and Connecticut dealers based only on an automobile purchaser's act of driving it on Oklahoma highways. *World-Wide Volkswagen Corp.*, *supra*, at 298. Put simply, however significant the plaintiff's contacts with the forum may be, those contacts cannot be "decisive in determining whether the defendant's due process rights are violated." *Rush*, 444 U. S., at 332.

Second, our "minimum contacts" analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there. See, *e.g.*, *International Shoe*, *supra*, at 319 (Due process "does not contemplate that a state may make binding a judgment *in personam* against an individual . . . with which the state has no contacts, ties, or relations"); *Hanson*, *supra*, at 251 ("However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that State that are a prerequisite to its exercise of power over him"). Accordingly, we have upheld the assertion of jurisdiction over defendants who have purposefully "reach[ed] out beyond" their State and into another by, for example, entering a contractual relationship that "envisioned continuing and wide-reaching contacts" in the forum State. *Burger King*, *supra*, at 479–480, or by circulating maga-

zines to "deliberately exploi[t]" a market in the forum State, *Keeton*, *supra*, at 781. And although physical presence in the forum is not a prerequisite to jurisdiction, *Burger King*, *supra*, at 476, physical entry into the State—either by the defendant in person or through an agent, goods, mail, or some other means—is certainly a relevant contact. See, *e.g.*, *Keeton*, *supra*, at 773–774.

But the plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him. See *Burger King*, *supra*, at 478 ("If the question is whether an individual's contract with an out-of-state party *alone* can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is that it cannot"); *Kulko* v. *Superior Court of Cal., City and County of San Francisco*, 436 U. S. 84, 93 (1978) (declining to "find personal jurisdiction in a State . . . merely because [the plaintiff in a child support action] was residing there"). To be sure, a defendant's contacts with the forum State may be intertwined with his transactions or interactions with the plaintiff or other parties. But a defendant's relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction. See *Rush*, *supra*, at 332 ("Naturally, the parties' relationships with each other may be significant in evaluating their ties to the forum. The requirements of *International Shoe*, however, must be met as to each defendant over whom a state court exercises jurisdiction"). Due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the "random, fortuitous, or attenuated" contacts he makes by interacting with other persons affiliated with the State. *Burger King*, 471 U. S., at 475 (internal quotation marks omitted).

These same principles apply when intentional torts are involved. In that context, it is likewise insufficient to rely on a defendant's "random, fortuitous, or attenuated contacts" or on the "unilateral activity" of a plaintiff. *Ibid.* (same). A forum State's exercise of jurisdiction over an out-of-state intentional tortfeasor must be based on intentional conduct by the defendant that creates the necessary contacts with the forum.

Calder v. *Jones*, 465 U. S. 783, illustrates the application of these principles. In *Calder*, a California actress brought a libel suit in California state court against a reporter and an editor, both of whom worked for the National Enquirer at its headquarters in Florida. The plaintiff's libel claims were based on an article written and edited by the defendants in Florida for publication in the National Enquirer, a national weekly newspaper with a California circulation of roughly 600,000.

We held that California's assertion of jurisdiction over the defendants was consistent with due process. Although we recognized that the defendants' activities "focus[ed]" on the plaintiff, our jurisdictional inquiry "focuse[d] on 'the relationship among the defendant, the forum, and the litigation.'" *Id.*, at 788 (quoting *Shaffer*, 433 U. S., at 204). Specifically, we examined the various contacts the defendants had created with California (and not just with the plaintiff) by writing the allegedly libelous story.

We found those forum contacts to be ample: The defendants relied on phone calls to "California sources" for the information in their article; they wrote the story about the plaintiff's activities in California; they caused reputational injury in California by writing an allegedly libelous article that was widely circulated in the State; and the "brunt" of that injury was suffered by the plaintiff in that State. 465 U. S., at 788–789. "In sum, California [wa]s the focal point both of the story and of the harm suffered."

Id., at 789. Jurisdiction over the defendants was "therefore proper in California based on the 'effects' of their Florida conduct in California." *Ibid.*

The crux of *Calder* was that the reputation-based "effects" of the alleged libel connected the defendants to California, not just to the plaintiff. The strength of that connection was largely a function of the nature of the libel tort. However scandalous a newspaper article might be, it can lead to a loss of reputation only if communicated to (and read and understood by) third persons. See Restatement (Second) of Torts §577, Comment *b* (1976); see also *ibid.* ("[R]eputation is the estimation in which one's character is held by his neighbors or associates"). Accordingly, the reputational injury caused by the defendants' story would not have occurred but for the fact that the defendants wrote an article for publication in California that was read by a large number of California citizens. Indeed, because publication to third persons is a necessary element of libel, see *id.*, §558, the defendants' intentional tort actually occurred *in* California. *Keeton*, 465 U. S., at 777 ("The tort of libel is generally held to occur wherever the offending material is circulated"). In this way, the "effects" caused by the defendants' article—*i.e.*, the injury to the plaintiff's reputation in the estimation of the California public—connected the defendants' conduct to *California*, not just to a plaintiff who lived there. That connection, combined with the various facts that gave the article a California focus, sufficed to authorize the California court's exercise of jurisdiction.[7]

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[7]The defendants in *Calder* argued that no contacts they had with California were sufficiently purposeful because their employer was responsible for circulation of the article. See *Calder* v. *Jones*, 465 U. S. 783, 789 (1984). We rejected that argument. Even though the defendants did not circulate the article themselves, they "expressly aimed" "their intentional, and allegedly tortious, actions" at California because they knew the National Enquirer "ha[d] its largest circulation" in

III

Applying the foregoing principles, we conclude that petitioner lacks the "minimal contacts" with Nevada that are a prerequisite to the exercise of jurisdiction over him. *Hanson*, 357 U. S., at 251. It is undisputed that no part of petitioner's course of conduct occurred in Nevada. Petitioner approached, questioned, and searched respondents, and seized the cash at issue, in the Atlanta airport. It is alleged that petitioner later helped draft a "false probable cause affidavit" in Georgia and forwarded that affidavit to a United States Attorney's Office in Georgia to support a potential action for forfeiture of the seized funds. 688 F. 3d, at 563. Petitioner never traveled to, conducted activities within, contacted anyone in, or sent anything or anyone to Nevada. In short, when viewed through the proper lens—whether the *defendant's* actions connect him to the *forum*—petitioner formed no jurisdictionally relevant contacts with Nevada.

The Court of Appeals reached a contrary conclusion by shifting the analytical focus from petitioner's contacts with the forum to his contacts with respondents. See *Rush*, 444 U. S., at 332. Rather than assessing petitioner's own contacts with Nevada, the Court of Appeals looked to petitioner's knowledge of respondents' "strong forum connections." 688 F. 3d, at 577–579, 581. In the court's view, that knowledge, combined with its conclusion that respondents suffered foreseeable harm in Nevada, satisfied the "minimum contacts" inquiry.[8] *Id.*, at 582.

This approach to the "minimum contacts" analysis

California, and that the article would "have a potentially devastating impact" there. *Id.*, at 789–790.

[8] Respondents propose a substantially similar analysis. They suggest that "a defendant creates sufficient minimum contacts with a forum when he (1) intentionally targets (2) a known resident of the forum (3) for imposition of an injury (4) to be suffered by the plaintiff while she is residing in the forum state." Brief for Respondents 26–27.

impermissibly allows a plaintiff's contacts with the defendant and forum to drive the jurisdictional analysis. Petitioner's actions in Georgia did not create sufficient contacts with Nevada simply because he allegedly directed his conduct at plaintiffs whom he knew had Nevada connections. Such reasoning improperly attributes a plaintiff's forum connections to the defendant and makes those connections "decisive" in the jurisdictional analysis. See *Rush*, *supra*, at 332. It also obscures the reality that none of petitioner's challenged conduct had anything to do with Nevada itself.

Relying on *Calder*, respondents emphasize that they suffered the "injury" caused by petitioner's allegedly tortious conduct (*i.e.*, the delayed return of their gambling funds) while they were residing in the forum. Brief for Respondents 14. This emphasis is likewise misplaced. As previously noted, *Calder* made clear that mere injury to a forum resident is not a sufficient connection to the forum. Regardless of where a plaintiff lives or works, an injury is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum State. The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way.

Respondents' claimed injury does not evince a connection between petitioner and Nevada. Even if we consider the continuation of the seizure in Georgia to be a distinct injury, it is not the sort of effect that is tethered to Nevada in any meaningful way. Respondents (and only respondents) lacked access to their funds in Nevada not because anything independently occurred there, but because Nevada is where respondents chose to be at a time when they desired to use the funds seized by petitioner. Respondents would have experienced this same lack of access in California, Mississippi, or wherever else they might have traveled and found themselves wanting more money than

they had. Unlike the broad publication of the forum-focused story in *Calder*, the effects of petitioner's conduct on respondents are not connected to the forum State in a way that makes those effects a proper basis for jurisdiction.[9]

The Court of Appeals pointed to other possible contacts with Nevada, each ultimately unavailing. Respondents' Nevada attorney contacted petitioner in Georgia, but that is precisely the sort of "unilateral activity" of a third party that "cannot satisfy the requirement of contact with the forum State." *Hanson*, 357 U. S., at 253. Respondents allege that some of the cash seized in Georgia "originated" in Nevada, but that attenuated connection was not created by petitioner, and the cash was in Georgia, not Nevada, when petitioner seized it. Finally, the funds were eventually returned to respondents in Nevada, but petitioner had nothing to do with that return (indeed, it seems likely that it was respondents' unilateral decision to have their funds sent to Nevada).

* * *

Well-established principles of personal jurisdiction are sufficient to decide this case. The proper focus of the

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[9] Respondents warn that if we decide petitioner lacks minimum contacts in this case, it will bring about unfairness in cases where intentional torts are committed via the Internet or other electronic means (*e.g.*, fraudulent access of financial accounts or "phishing" schemes). As an initial matter, we reiterate that the "minimum contacts" inquiry principally protects the liberty of the nonresident defendant, not the interests of the plaintiff. *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U. S., 286, 291–292 (1980). In any event, this case does not present the very different questions whether and how a defendant's virtual "presence" and conduct translate into "contacts" with a particular State. To the contrary, there is no question where the conduct giving rise to this litigation took place: Petitioner seized physical cash from respondents in the Atlanta airport, and he later drafted and forwarded an affidavit in Georgia. We leave questions about virtual contacts for another day.

"minimum contacts" inquiry in intentional-tort cases is "'the relationship among the defendant, the forum, and the litigation.'" *Calder*, 465 U. S., at 788. And it is the defendant, not the plaintiff or third parties, who must create contacts with the forum State. In this case, the application of those principles is clear: Petitioner's relevant conduct occurred entirely in Georgia, and the mere fact that his conduct affected plaintiffs with connections to the forum State does not suffice to authorize jurisdiction. We therefore reverse the judgment of the Court of Appeals.

It is so ordered.

444 U.S. 286 (1980)

WORLD-WIDE VOLKSWAGEN CORP. ET AL.
v.
WOODSON, DISTRICT JUDGE OF CREEK COUNTY, OKLAHOMA, ET. AL.

No. 78-1078.

Supreme Court of United States.

Argued October 3, 1979.
Decided January 21, 1980.

CERTIORARI TO THE SUPREME COURT OF OKLAHOMA.

287 *287 *Herbert Rubin* argued the cause for petitioners. With him on the briefs were *Dan A. Rogers, Bernard J. Wald,* and *Ian Ceresney.*

Jefferson G. Greer argued the cause for respondents. With him on the brief was *Charles A. Whitebook.*

MR. JUSTICE WHITE delivered the opinion of the Court.

The issue before us is whether, consistently with the Due Process Clause of the Fourteenth Amendment, an Oklahoma court may exercise *in personam* jurisdiction over a nonresident automobile retailer and its wholesale distributor in a products-liability action, when the defendants' only connection with Oklahoma is the fact that an automobile sold in New York to New York residents became involved in an accident in Oklahoma.

288 *288 I

Respondents Harry and Kay Robinson purchased a new Audi automobile from petitioner Seaway **Volkswagen**, Inc (Seaway), in Massena, N. Y., in 1976. The following year the Robinson family, who resided in New York, left that State for a new home in Arizona. As they passed through the State of Oklahoma, another car struck their Audi in the rear, causing a fire which severely burned Kay Robinson and her two children.[1]

The Robinsons[2] subsequently brought a products-liability action in the District Court for Creek County, Okla., claiming that their injuries resulted from defective design and placement of the Audi's gas tank and fuel system. They joined as defendants the automobile's manufacturer, Audi NSU Auto Union Aktiengesellschaft (Audi); its importer, **Volkswagen** of America, Inc. (**Volkswagen**); its regional distributor, petitioner **World-Wide Volkswagen** Corp. (**World-Wide**); and its retail dealer, petitioner Seaway. Seaway and **World-Wide** entered special appearances,[3] claiming that Oklahoma's exercise of jurisdiction over them would offend the limitations on the State's jurisdiction imposed by the Due Process Clause of the Fourteenth Amendment.[4]

289 The facts presented to the District Court showed that **World-Wide** is incorporated and has its business office in New *289 York. It distributes vehicles, parts, and accessories, under contract with **Volkswagen**, to retail dealers in New York, New Jersey, and Connecticut. Seaway, one of these retail dealers, is incorporated and has its place of business in New York. Insofar as the record reveals, Seaway and **World-Wide** are fully independent corporations whose relations with each other and with **Volkswagen** and Audi are contractual only. Respondents adduced no evidence that either **World-Wide** or Seaway does any business in Oklahoma, ships or sells any products to or in that State, has an agent to receive process there, or purchases advertisements in any media calculated to reach Oklahoma. In fact, as respondents' counsel conceded at oral argument, Tr. of Oral Arg. 32, there was no showing that any automobile sold

by **World-Wide** or Seaway has ever entered Oklahoma with the single exception of the vehicle involved in the present case.

II

The Due Process Clause of the Fourteenth Amendment limits the power of a state court to render a valid personal judgment against a nonresident defendant. *Kulko v. California Superior Court*, 436 U. S. 84, 91 (1978). A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere. *Pennoyer v. Neff*, 95 U. S. 714, 732-733 (1878). Due process requires that the defendant be given adequate notice of the suit, *Mullane v. Central Hanover Trust Co.*, 339 U. S. 306, 313-314 (1950), and be subject to the personal jurisdiction of the court, *International Shoe Co. v. Washington*, 326 U. S. 310 (1945). In the present case, it is not contended that notice was inadequate; the only question is whether these particular petitioners were subject to the jurisdiction of the Oklahoma courts.

As has long been settled, and as we reaffirm today, a state court may exercise personal jurisdiction over a nonresident defendant only so long as there exist "minimum contacts" between the defendant and the forum State. *International Shoe Co. v. Washington, supra*, at 316. The concept of minimum contacts, in turn, can be seen to perform two related,
292 but *292 distinguishable, functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system.

The protection against inconvenient litigation is typically described in terms of "reasonableness" or "fairness." We have said that the defendant's contacts with the forum State must be such that maintenance of the suit "does not offend

'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington, supra*, at 316, quoting *Milliken v. Meyer*, 311 U. S. 457, 463 (1940). The relationship between the defendant and the forum must be such that it is "reasonable . . . to require the corporation to defend the particular suit which is brought there." 326 U. S., at 317. Implicit in this emphasis on reasonableness is the understanding that the burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute, see *McGee v. International Life Ins. Co.*, 355 U. S. 220, 223 (1957); the plaintiff's interest in obtaining convenient and effective relief, see *Kulko v. California Superior Court, supra*, at 92, at least when that interest is not adequately protected by the plaintiff's power to choose the forum, cf. *Shaffer v. Heitner*, 433 U. S. 186, 211, n. 37 (1977); the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies, see *Kulko v. California Superior Court, supra*, at 93, 98.

The limits imposed on state jurisdiction by the Due Process Clause, in its role as a guarantor against inconvenient litigation, have been substantially relaxed over the years. As we noted in *McGee v. International Life Ins. Co., supra*, at
293 222-223 *293 this trend is largely attributable to a fundamental transformation in the American economy:

> "Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity."

The historical developments noted in *McGee*, of course, have only accelerated in the generation since that case was decided.

Nevertheless, we have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we, and remain faithful to the principles of interstate federalism embodied in the Constitution. The economic interdependence of the States was foreseen and desired by the Framers. In the Commerce Clause, they provided that the Nation was to be a common market, a "free trade unit" in which the States are debarred from acting as separable economic entities. *H. P. Hood & Sons, Inc. v. Du Mond*, 336 U. S. 525, 538 (1949). But the Framers also intended that the States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts. The sovereignty of each State, in turn, implied a limitation on the sovereignty of all of its sister States—a limitation express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment.

Hence, even while abandoning the shibboleth that "[t]he authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established," *Pennoyer v. Neff, supra*, at 720, we emphasized that the reasonableness of asserting jurisdiction over the defendant must be assessed "in the context of our federal system of
294 government," *294 *International Shoe Co. v. Washington*, 326 U. S., at 317, and stressed that the Due Process Clause ensures not only fairness, but also the "orderly administration of the laws," *id.*, at 319. As we noted in *Hanson v. Denckla*, 357 U. S. 235, 250-251 (1958):

> "As technological progress has increased the flow of commerce between the States, the need for jurisdiction over nonresidents has undergone a similar increase. At the same time, progress in communications and transportation has made the defense of a suit in a foreign tribunal less burdensome. In response to these changes, the requirements for personal jurisdiction over nonresidents have evolved from the rigid rule of *Pennoyer v. Neff*, 95 U. S. 714, to the flexible standard of *International Shoe Co. v. Washington*, 326 U. S. 310. But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. [Citation omitted.] Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States."

Thus, the Due Process Clause "does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations." *International Shoe Co. v.*

Washington, supra, at 319. Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment. *Hanson v. Denckla, supra*, at 251, 254.

295 *295 III

Applying these principles to the case at hand,[10] we find in the record before us a total absence of those affiliating circumstances that are a necessary predicate to any exercise of state-court jurisdiction. Petitioners carry on no activity whatsoever in Oklahoma. They close no sales and perform no services there. They avail themselves of none of the privileges and benefits of Oklahoma law. They solicit no business there either through salespersons or through advertising reasonably calculated to reach the State. Nor does the record show that they regularly sell cars at wholesale or retail to Oklahoma customers or residents or that they indirectly, through others, serve or seek to serve the Oklahoma market. In short, respondents seek to base jurisdiction on one, isolated occurrence and whatever inferences can be drawn therefrom: the fortuitous circumstance that a single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma.

It is argued, however, that because an automobile is mobile by its very design and purpose it was "foreseeable" that the Robinsons' Audi would cause injury in Oklahoma. Yet "foreseeability" alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause. In *Hanson v. Denckla, supra*, it was no doubt foreseeable that the settlor of a Delaware trust would subsequently move to Florida and seek to exercise a power of appointment there;
296 yet we held that Florida courts could not constitutionally *296 exercise jurisdiction over a Delaware trustee that had no other contacts with the forum State. In *Kulko v. California Superior Court*, 436 U. S. 84 (1978), it was surely "foreseeable" that a divorced wife would move to California from New York, the domicile of the marriage, and that a minor daughter would live with the mother. Yet we held that California could not exercise jurisdiction in a child-support action over the former husband who had remained in New York.

If foreseeability were the criterion, a local California tire retailer could be forced to defend in Pennsylvania when a blowout occurs there, see *Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc.*, 239 F. 2d 502, 507 (CA4 1956); a Wisconsin seller of a defective automobile jack could be haled before a distant court for damage caused in New Jersey, *Reilly v. Phil Tolkan Pontiac, Inc.*, 372 F. Supp. 1205 (NJ 1974); or a Florida soft-drink concessionaire could be summoned to Alaska to account for injuries happening there, see *Uppgren v. Executive Aviation Services, Inc.*, 304 F. Supp. 165, 170-171 (Minn. 1969). Every seller of chattels would in effect appoint the chattel his agent for service of process. His amenability to suit would travel with the chattel. We recently abandoned the outworn rule of *Harris v. Balk*, 198 U. S. 215 (1905), that the interest of a creditor in a debt could be extinguished or otherwise affected by any State having transitory jurisdiction over the debtor. *Shaffer v. Heitner*, 433 U. S. 186 (1977). Having interred the mechanical rule that a creditor's amenability to a *quasi in rem* action travels with his debtor, we are unwilling to endorse an analogous principle in the present case.[11]

297 *297 This is not to say, of course, that foreseeability is wholly irrelevant. But the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there. See *Kulko v. California Superior Court, supra*, at 97-98; *Shaffer v. Heitner*, 433 U. S., at 216; and see *id.*, at 217-219 (STEVENS, J., concurring in judgment). The Due Process Clause, by ensuring the "orderly administration of the laws," *International Shoe Co. v. Washington*, 326 U. S., at 319, gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.

When a corporation "purposefully avails itself of the privilege of conducting activities within the forum State," *Hanson v. Denckla*, 357 U. S., at 253, it has clear notice that it is subject to suit there, and can act to alleviate the risk of

burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State. Hence if the sale of a product of a manufacturer or distributor such as Audi or **Volkswagen** is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The
298 forum State does not *298 exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State. Cf. *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N. E. 2d 761 (1961).

But there is no such or similar basis for Oklahoma jurisdiction over **World-Wide** or Seaway in this case. Seaway's sales are made in Massena, N. Y. **World-Wide's** market, although substantially larger, is limited to dealers in New York, New Jersey, and Connecticut. There is no evidence of record that any automobiles distributed by **World-Wide** are sold to retail customers outside this tristate area. It is foreseeable that the purchasers of automobiles sold by **World-Wide** and Seaway may take them to Oklahoma. But the mere "unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State " *Hanson v. Denckla, supra*, at 253.

In a variant on the previous argument, it is contended that jurisdiction can be supported by the fact that petitioners earn substantial revenue from goods used in Oklahoma. The Oklahoma Supreme Court so found, 585 P. 2d, at 354-355, drawing the inference that because one automobile sold by petitioners had been used in Oklahoma, others might have been used there also. While this inference seems less than compelling on the facts of the instant case, we need not question the court's factual findings in order to reject its reasoning.

This argument seems to make the point that the purchase of automobiles in New York, from which the petitioners earn substantial revenue, would not occur *but for* the fact that the automobiles are capable of use in distant States like Oklahoma. Respondents observe that the very purpose of an automobile is to travel, and that travel of automobiles sold by petitioners is facilitated by an extensive chain of **Volkswagen** service centers throughout the country, including
299 some in Oklahoma.[12] *299 However, financial benefits accruing to the defendant from a collateral relation to the forum State will not support jurisdiction if they do not stem from a constitutionally cognizable contact with that State. See *Kulko v. California Superior Court*, 436 U. S., at 94-95. In our view, whatever marginal revenues petitioners may receive by virtue of the fact that their products are capable of use in Oklahoma is far too attenuated a contact to justify that State's exercise of *in personam* jurisdiction over them.

Because we find that petitioners have no "contacts, ties, or relations" with the State of Oklahoma, *International Shoe Co. v. Washington, supra*, at 319, the judgment of the Supreme Court of Oklahoma is

Reversed.

Questions to Think About in Advance of *J. McIntyre v. Nicastro*

McIntyre is a hard case. I strongly encourage you to read through these questions before reading the opinion. Then, after reading through *McIntyre* at least once, go back and see if you can answer the questions. It may feel like hard slogging to do so, but the pay-off will be great: you will have a much better understanding of the doctrinal issues and stakes involved if you do so.

1. From reading *McIntyre*, see if you can trace the state of the personal jurisdiction doctrine in product liability cases as it existed before *McIntyre*

   A. What was the holding of the Court in *WWV*? When is a defendant amenable to suit in a foreign jurisdiction (that is, outside of its home state) on a product liability claim? (though not necessary, for even more mental gymnastics, how does *WWV* compare to the due process portion of *Gray v. American Radiator*?)

   B. What were the positions of the two plurality opinions in *Asahi*? According to the O'Connor plurality, when is a defendant amenable to suit in a foreign jurisdiction on a product liability claim? According to the Brennan plurality?

   C. Since there was a divide between O'Connor and Brennan in *Asahi*, what was the holding of that case? Why did the exercise of jurisdiction over the foreign defendant in *Asahi* violate due process?

2. According to the Kennedy plurality opinion in *McIntyre*, when is a defendant amenable to suit in a foreign jurisdiction on a product liability claim?

3. According to the Ginsburg plurality opinion in *McIntyre*, when is a defendant amenable to suit in a foreign jurisdiction on a product liability claim?

4. If there was a divide between the Kennedy and Ginsburg plurality opinions in *McIntyre*, what was the holding of the case? Hint: to answer this last question, look closely at the Breyer opinion. On what basis do Breyer and Alito agree with the Kennedy plurality that it would offend due process for New Jersey to exercise jurisdiction over J. McIntyre?

SUPREME COURT OF THE UNITED STATES

No. 09–1343

J. McINTYRE MACHINERY, LTD., PETITIONER *v.* ROBERT NICASTRO, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF ROSEANNE NICASTRO

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

[June 27, 2011]

JUSTICE KENNEDY announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE THOMAS join.

Whether a person or entity is subject to the jurisdiction of a state court despite not having been present in the State either at the time of suit or at the time of the alleged injury, and despite not having consented to the exercise of jurisdiction, is a question that arises with great frequency in the routine course of litigation. The rules and standards for determining when a State does or does not have jurisdiction over an absent party have been unclear because of decades-old questions left open in *Asahi Metal Industry Co.* v. *Superior Court of Cal., Solano Cty.*, 480 U. S. 102 (1987).

Here, the Supreme Court of New Jersey, relying in part on *Asahi*, held that New Jersey's courts can exercise jurisdiction over a foreign manufacturer of a product so long as the manufacturer "knows or reasonably should know that its products are distributed through a nationwide distribu-

tion system that might lead to those products being sold in any of the fifty states." *Nicastro* v. *McIntyre Machinery America, Ltd.*, 201 N. J. 48, 76, 77, 987 A. 2d 575, 591, 592 (2010). Applying that test, the court concluded that a British manufacturer of scrap metal machines was subject to jurisdiction in New Jersey, even though at no time had it advertised in, sent goods to, or in any relevant sense targeted the State.

That decision cannot be sustained. Although the New Jersey Supreme Court issued an extensive opinion with careful attention to this Court's cases and to its own precedent, the "stream of commerce" metaphor carried the decision far afield. Due process protects the defendant's right not to be coerced except by lawful judicial power. As a general rule, the exercise of judicial power is not lawful unless the defendant "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson* v. *Denckla*, 357 U. S. 235, 253 (1958). There may be exceptions, say, for instance, in cases involving an intentional tort. But the general rule is applicable in this products-liability case, and the so-called "stream-of-commerce" doctrine cannot displace it.

I

This case arises from a products-liability suit filed in New Jersey state court. Robert Nicastro seriously injured his hand while using a metal-shearing machine manufactured by J. McIntyre Machinery, Ltd. (J. McIntyre). The accident occurred in New Jersey, but the machine was manufactured in England, where J. McIntyre is incorporated and operates. The question here is whether the New Jersey courts have jurisdiction over J. McIntyre, notwithstanding the fact that the company at no time either marketed goods in the State or shipped them there. Nicastro was a plaintiff in the New Jersey trial court and is

the respondent here; J. McIntyre was a defendant and is now the petitioner.

At oral argument in this Court, Nicastro's counsel stressed three primary facts in defense of New Jersey's assertion of jurisdiction over J. McIntyre. See Tr. of Oral Arg. 29–30.

First, an independent company agreed to sell J. McIntyre's machines in the United States. J. McIntyre itself did not sell its machines to buyers in this country beyond the U. S. distributor, and there is no allegation that the distributor was under J. McIntyre's control.

Second, J. McIntyre officials attended annual conventions for the scrap recycling industry to advertise J. McIntyre's machines alongside the distributor. The conventions took place in various States, but never in New Jersey.

Third, no more than four machines (the record suggests only one, see App. to Pet. for Cert. 130a), including the machine that caused the injuries that are the basis for this suit, ended up in New Jersey.

In addition to these facts emphasized by respondent, the New Jersey Supreme Court noted that J. McIntyre held both United States and European patents on its recycling technology. 201 N. J., at 55, 987 A. 2d, at 579. It also noted that the U. S. distributor "structured [its] advertising and sales efforts in accordance with" J. McIntyre's "direction and guidance whenever possible," and that "at least some of the machines were sold on consignment to" the distributor. *Id.*, at 55, 56, 987 A. 2d, at 579 (internal quotation marks omitted).

In light of these facts, the New Jersey Supreme Court concluded that New Jersey courts could exercise jurisdiction over petitioner without contravention of the Due Process Clause. Jurisdiction was proper, in that court's view, because the injury occurred in New Jersey; because petitioner knew or reasonably should have known "that its

products are distributed through a nationwide distribution system that might lead to those products being sold in any of the fifty states"; and because petitioner failed to "take some reasonable step to prevent the distribution of its products in this State." *Id.*, at 77, 987 A. 2d, at 592.

Both the New Jersey Supreme Court's holding and its account of what it called "[t]he stream-of-commerce doctrine of jurisdiction," *id.*, at 80, 987 A. 2d, at 594, were incorrect, however. This Court's *Asahi* decision may be responsible in part for that court's error regarding the stream of commerce, and this case presents an opportunity to provide greater clarity.

II

The Due Process Clause protects an individual's right to be deprived of life, liberty, or property only by the exercise of lawful power. Cf. *Giaccio* v. *Pennsylvania*, 382 U. S. 399, 403 (1966) (The Clause "protect[s] a person against having the Government impose burdens upon him except in accordance with the valid laws of the land"). This is no less true with respect to the power of a sovereign to resolve disputes through judicial process than with respect to the power of a sovereign to prescribe rules of conduct for those within its sphere. See *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 94 (1998) ("Jurisdiction is power to declare the law"). As a general rule, neither statute nor judicial decree may bind strangers to the State. Cf. *Burnham* v. *Superior Court of Cal., County of Marin*, 495 U. S. 604, 608–609 (1990) (opinion of SCALIA, J.) (invoking "the phrase *coram non judice*, 'before a person not a judge'—meaning, in effect, that the proceeding in question was not a *judicial* proceeding because lawful judicial authority was not present, and could therefore not yield a *judgment*")

A court may subject a defendant to judgment only when the defendant has sufficient contacts with the sovereign

"such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co.* v. *Washington*, 326 U. S. 310, 316 (1945) (quoting *Milliken* v. *Meyer*, 311 U. S. 457, 463 (1940)). Freeform notions of fundamental fairness divorced from traditional practice cannot transform a judgment rendered in the absence of authority into law. As a general rule, the sovereign's exercise of power requires some act by which the defendant "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws," *Hanson*, 357 U. S., at 253, though in some cases, as with an intentional tort, the defendant might well fall within the State's authority by reason of his attempt to obstruct its laws. In products-liability cases like this one, it is the defendant's purposeful availment that makes jurisdiction consistent with "traditional notions of fair play and substantial justice."

A person may submit to a State's authority in a number of ways. There is, of course, explicit consent. *E.g.*, *Insurance Corp. of Ireland* v. *Compagnie des Bauxites de Guinee*, 456 U. S. 694, 703 (1982). Presence within a State at the time suit commences through service of process is another example. See *Burnham*, *supra*. Citizenship or domicile—or, by analogy, incorporation or principal place of business for corporations—also indicates general submission to a State's powers. *Goodyear Dunlop Tires Operations, S. A.* v. *Brown*, *post*, p. __. Each of these examples reveals circumstances, or a course of conduct, from which it is proper to infer an intention to benefit from and thus an intention to submit to the laws of the forum State. Cf. *Burger King Corp.* v. *Rudzewicz*, 471 U. S. 462, 476 (1985). These examples support exercise of the general jurisdiction of the State's courts and allow the State to resolve both matters that originate within the State and those based on activities and events elsewhere. *Helicop-*

teros Nacionales de Colombia, S. A. v. *Hall*, 466 U. S. 408, 414, and n. 9 (1984). By contrast, those who live or operate primarily outside a State have a due process right not to be subjected to judgment in its courts as a general matter.

There is also a more limited form of submission to a State's authority for disputes that "arise out of or are connected with the activities within the state." *International Shoe Co.*, *supra*, at 319. Where a defendant "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws," *Hanson*, *supra*, at 253, it submits to the judicial power of an otherwise foreign sovereign to the extent that power is exercised in connection with the defendant's activities touching on the State. In other words, submission through contact with and activity directed at a sovereign may justify specific jurisdiction "in a suit arising out of or related to the defendant's contacts with the forum." *Helicopteros*, *supra*, at 414, n. 8; see also *Goodyear*, *post*, at 2.

The imprecision arising from *Asahi*, for the most part, results from its statement of the relation between jurisdiction and the "stream of commerce." The stream of commerce, like other metaphors, has its deficiencies as well as its utility. It refers to the movement of goods from manufacturers through distributors to consumers, yet beyond that descriptive purpose its meaning is far from exact. This Court has stated that a defendant's placing goods into the stream of commerce "with the expectation that they will be purchased by consumers within the forum State" may indicate purposeful availment. *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U. S. 286, 298 (1980) (finding that expectation lacking). But that statement does not amend the general rule of personal jurisdiction. It merely observes that a defendant may in an appropriate case be subject to jurisdiction without entering the

forum—itself an unexceptional proposition—as where manufacturers or distributors "seek to serve" a given State's market. *Id.*, at 295. The principal inquiry in cases of this sort is whether the defendant's activities manifest an intention to submit to the power of a sovereign. In other words, the defendant must "purposefully avai[l] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson*, *supra*, at 253; *Insurance Corp.*, *supra*, at 704–705 ("[A]ctions of the defendant may amount to a legal submission to the jurisdiction of the court"). Sometimes a defendant does so by sending its goods rather than its agents. The defendant's transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum; as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State.

In *Asahi*, an opinion by Justice Brennan for four Justices outlined a different approach. It discarded the central concept of sovereign authority in favor of considerations of fairness and foreseeability. As that concurrence contended, "jurisdiction premised on the placement of a product into the stream of commerce [without more] is consistent with the Due Process Clause," for "[a]s long as a participant in this process is aware that the final product is being marketed in the forum State, the possibility of a lawsuit there cannot come as a surprise." 480 U. S., at 117 (opinion concurring in part and concurring in judgment). It was the premise of the concurring opinion that the defendant's ability to anticipate suit renders the assertion of jurisdiction fair. In this way, the opinion made foreseeability the touchstone of jurisdiction.

The standard set forth in Justice Brennan's concurrence was rejected in an opinion written by Justice O'Connor; but the relevant part of that opinion, too, commanded the assent of only four Justices, not a majority of the Court.

That opinion stated: "The 'substantial connection' between the defendant and the forum State necessary for a finding of minimum contacts must come about by an action of the defendant purposefully directed toward the forum State. The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State." *Id.*, at 112 (emphasis deleted; citations omitted).

Since *Asahi* was decided, the courts have sought to reconcile the competing opinions. But Justice Brennan's concurrence, advocating a rule based on general notions of fairness and foreseeability, is inconsistent with the premises of lawful judicial power. This Court's precedents make clear that it is the defendant's actions, not his expectations, that empower a State's courts to subject him to judgment.

The conclusion that jurisdiction is in the first instance a question of authority rather than fairness explains, for example, why the principal opinion in *Burnham* "conducted no independent inquiry into the desirability or fairness" of the rule that service of process within a State suffices to establish jurisdiction over an otherwise foreign defendant. 495 U. S., at 621. As that opinion explained, "[t]he view developed early that each State had the power to hale before its courts any individual who could be found within its borders." *Id.*, at 610. Furthermore, were general fairness considerations the touchstone of jurisdiction, a lack of purposeful availment might be excused where carefully crafted judicial procedures could otherwise protect the defendant's interests, or where the plaintiff would suffer substantial hardship if forced to litigate in a foreign forum. That such considerations have not been deemed controlling is instructive. See, *e.g.*, *World-Wide Volkswagen*, *supra*, at 294.

Two principles are implicit in the foregoing. First, personal jurisdiction requires a forum-by-forum, or sovereign-

by-sovereign, analysis. The question is whether a defendant has followed a course of conduct directed at the society or economy existing within the jurisdiction of a given sovereign, so that the sovereign has the power to subject the defendant to judgment concerning that conduct. Personal jurisdiction, of course, restricts "judicial power not as a matter of sovereignty, but as a matter of individual liberty," for due process protects the individual's right to be subject only to lawful power. *Insurance Corp.*, 456 U. S., at 702. But whether a judicial judgment is lawful depends on whether the sovereign has authority to render it.

The second principle is a corollary of the first. Because the United States is a distinct sovereign, a defendant may in principle be subject to the jurisdiction of the courts of the United States but not of any particular State. This is consistent with the premises and unique genius of our Constitution. Ours is "a legal system unprecedented in form and design, establishing two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it." *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S. 779, 838 (1995) (KENNEDY, J., concurring). For jurisdiction, a litigant may have the requisite relationship with the United States Government but not with the government of any individual State. That would be an exceptional case, however. If the defendant is a domestic domiciliary, the courts of its home State are available and can exercise general jurisdiction. And if another State were to assert jurisdiction in an inappropriate case, it would upset the federal balance, which posits that each State has a sovereignty that is not subject to unlawful intrusion by other States. Furthermore, foreign corporations will often target or concentrate on particular States, subjecting them to specific jurisdiction in those forums.

It must be remembered, however, that although this case and *Asahi* both involve foreign manufacturers, the undesirable consequences of Justice Brennan's approach are no less significant for domestic producers. The owner of a small Florida farm might sell crops to a large nearby distributor, for example, who might then distribute them to grocers across the country. If foreseeability were the controlling criterion, the farmer could be sued in Alaska or any number of other States' courts without ever leaving town. And the issue of foreseeability may itself be contested so that significant expenses are incurred just on the preliminary issue of jurisdiction. Jurisdictional rules should avoid these costs whenever possible.

The conclusion that the authority to subject a defendant to judgment depends on purposeful availment, consistent with Justice O'Connor's opinion in *Asahi*, does not by itself resolve many difficult questions of jurisdiction that will arise in particular cases. The defendant's conduct and the economic realities of the market the defendant seeks to serve will differ across cases, and judicial exposition will, in common-law fashion, clarify the contours of that principle.

III

In this case, petitioner directed marketing and sales efforts at the United States. It may be that, assuming it were otherwise empowered to legislate on the subject, the Congress could authorize the exercise of jurisdiction in appropriate courts. That circumstance is not presented in this case, however, and it is neither necessary nor appropriate to address here any constitutional concerns that might be attendant to that exercise of power. See *Asahi*, 480 U. S., at 113, n. Nor is it necessary to determine what substantive law might apply were Congress to authorize jurisdiction in a federal court in New Jersey. See *Hanson*, 357 U. S., at 254 ("The issue is personal jurisdiction, not

choice of law"). A sovereign's legislative authority to regulate conduct may present considerations different from those presented by its authority to subject a defendant to judgment in its courts. Here the question concerns the authority of a New Jersey state court to exercise jurisdiction, so it is petitioner's purposeful contacts with New Jersey, not with the United States, that alone are relevant.

Respondent has not established that J. McIntyre engaged in conduct purposefully directed at New Jersey. Recall that respondent's claim of jurisdiction centers on three facts: The distributor agreed to sell J. McIntyre's machines in the United States; J. McIntyre officials attended trade shows in several States but not in New Jersey; and up to four machines ended up in New Jersey. The British manufacturer had no office in New Jersey; it neither paid taxes nor owned property there; and it neither advertised in, nor sent any employees to, the State. Indeed, after discovery the trial court found that the "defendant does not have a single contact with New Jersey short of the machine in question ending up in this state." App. to Pet. for Cert. 130a. These facts may reveal an intent to serve the U. S. market, but they do not show that J. McIntyre purposefully availed itself of the New Jersey market.

It is notable that the New Jersey Supreme Court appears to agree, for it could "not find that J. McIntyre had a presence or minimum contacts in this State—in any jurisprudential sense—that would justify a New Jersey court to exercise jurisdiction in this case." 201 N. J., at 61, 987 A. 2d, at 582. The court nonetheless held that petitioner could be sued in New Jersey based on a "stream-of-commerce theory of jurisdiction." *Ibid.* As discussed, however, the stream-of-commerce metaphor cannot supersede either the mandate of the Due Process Clause or the limits on judicial authority that Clause ensures. The New Jersey Supreme Court also cited "significant policy rea-

sons" to justify its holding, including the State's "strong interest in protecting its citizens from defective products." *Id.*, at 75, 987 A. 2d, at 590. That interest is doubtless strong, but the Constitution commands restraint before discarding liberty in the name of expediency.

* * *

Due process protects petitioner's right to be subject only to lawful authority. At no time did petitioner engage in any activities in New Jersey that reveal an intent to invoke or benefit from the protection of its laws. New Jersey is without power to adjudge the rights and liabilities of J. McIntyre, and its exercise of jurisdiction would violate due process. The contrary judgment of the New Jersey Supreme Court is

Reversed.

SUPREME COURT OF THE UNITED STATES

No. 09–1343

J. McINTYRE MACHINERY, LTD., PETITIONER *v.*
ROBERT NICASTRO, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF ROSEANNE NICASTRO

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

[June 27, 2011]

JUSTICE BREYER, with whom JUSTICE ALITO joins, concurring in the judgment.

The Supreme Court of New Jersey adopted a broad understanding of the scope of personal jurisdiction based on its view that "[t]he increasingly fast-paced globalization of the world economy has removed national borders as barriers to trade." *Nicastro* v. *McIntyre Machinery America, Ltd.*, 201 N. J. 48, 52, 987 A. 2d 575, 577 (2010). I do not doubt that there have been many recent changes in commerce and communication, many of which are not anticipated by our precedents. But this case does not present any of those issues. So I think it unwise to announce a rule of broad applicability without full consideration of the modern-day consequences.

In my view, the outcome of this case is determined by our precedents. Based on the facts found by the New Jersey courts, respondent Robert Nicastro failed to meet his burden to demonstrate that it was constitutionally proper to exercise jurisdiction over petitioner J. McIntyre Machinery, Ltd. (British Manufacturer), a British firm that manufactures scrap-metal machines in Great Britain and sells them through an independent distributor in the United States (American Distributor). On that basis, I

agree with the plurality that the contrary judgment of the Supreme Court of New Jersey should be reversed.

I

In asserting jurisdiction over the British Manufacturer, the Supreme Court of New Jersey relied most heavily on three primary facts as providing constitutionally sufficient "contacts" with New Jersey, thereby making it fundamentally fair to hale the British Manufacturer before its courts: (1) The American Distributor on one occasion sold and shipped one machine to a New Jersey customer, namely, Mr. Nicastro's employer, Mr. Curcio; (2) the British Manufacturer permitted, indeed wanted, its independent American Distributor to sell its machines to anyone in America willing to buy them; and (3) representatives of the British Manufacturer attended trade shows in "such cities as Chicago, Las Vegas, New Orleans, Orlando, San Diego, and San Francisco." *Id.*, at 54–55, 987 A. 2d, at 578–579. In my view, these facts do not provide contacts between the British firm and the State of New Jersey constitutionally sufficient to support New Jersey's assertion of jurisdiction in this case.

None of our precedents finds that a single isolated sale, even if accompanied by the kind of sales effort indicated here, is sufficient. Rather, this Court's previous holdings suggest the contrary. The Court has held that a single sale to a customer who takes an accident-causing product to a different State (where the accident takes place) is not a sufficient basis for asserting jurisdiction. See *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U. S. 286 (1980). And the Court, in separate opinions, has strongly suggested that a single sale of a product in a State does not constitute an adequate basis for asserting jurisdiction over an out-of-state defendant, even if that defendant places his goods in the stream of commerce, fully aware (and hoping) that such a sale will take place. See *Asahi Metal*

Industry Co. v. *Superior Court of Cal., Solano Cty.*, 480 U. S. 102, 111, 112 (1987) (opinion of O'Connor, J.) (requiring "something more" than simply placing "a product into the stream of commerce," even if defendant is "awar[e]" that the stream "may or will sweep the product into the forum State"); *id.*, at 117 (Brennan, J., concurring in part and concurring in judgment) (jurisdiction should lie where a sale in a State is part of "the regular and anticipated flow" of commerce into the State, but not where that sale is only an "edd[y]," *i.e.*, an isolated occurrence); *id.*, at 122 (Stevens, J., concurring in part and concurring in judgment) (indicating that "the volume, the value, and the hazardous character" of a good may affect the jurisdictional inquiry and emphasizing Asahi's "regular course of dealing").

Here, the relevant facts found by the New Jersey Supreme Court show no "regular . . . flow" or "regular course" of sales in New Jersey; and there is no "something more," such as special state-related design, advertising, advice, marketing, or anything else. Mr. Nicastro, who here bears the burden of proving jurisdiction, has shown no specific effort by the British Manufacturer to sell in New Jersey. He has introduced no list of potential New Jersey customers who might, for example, have regularly attended trade shows. And he has not otherwise shown that the British Manufacturer "purposefully avail[ed] itself of the privilege of conducting activities" within New Jersey, or that it delivered its goods in the stream of commerce "with the expectation that they will be purchased" by New Jersey users. *World-Wide Volkswagen*, *supra*, at 297–298 (internal quotation marks omitted).

There may well have been other facts that Mr. Nicastro could have demonstrated in support of jurisdiction. And the dissent considers some of those facts. See *post*, at 3 (opinion of GINSBURG, J.) (describing the size and scope of New Jersey's scrap-metal business). But the plaintiff

bears the burden of establishing jurisdiction, and here I would take the facts precisely as the New Jersey Supreme Court stated them. *Insurance Corp. of Ireland* v. *Compagnie des Bauxites de Guinee*, 456 U. S. 694, 709 (1982); *Blakey* v. *Continental Airlines, Inc.*, 164 N. J. 38, 71, 751 A. 2d 538, 557 (2000); see 201 N. J., at 54–56, 987 A. 2d, at 578–579; App. to Pet. for Cert. 128a–137a (trial court's "reasoning and finding(s)").

Accordingly, on the record present here, resolving this case requires no more than adhering to our precedents.

II

I would not go further. Because the incident at issue in this case does not implicate modern concerns, and because the factual record leaves many open questions, this is an unsuitable vehicle for making broad pronouncements that refashion basic jurisdictional rules.

A

The plurality seems to state strict rules that limit jurisdiction where a defendant does not "inten[d] to submit to the power of a sovereign" and cannot "be said to have targeted the forum." *Ante*, at 7. But what do those standards mean when a company targets the world by selling products from its Web site? And does it matter if, instead of shipping the products directly, a company consigns the products through an intermediary (say, Amazon.com) who then receives and fulfills the orders? And what if the company markets its products through popup advertisements that it knows will be viewed in a forum? Those issues have serious commercial consequences but are totally absent in this case.

B

But though I do not agree with the plurality's seemingly strict no-jurisdiction rule, I am not persuaded by the absolute approach adopted by the New Jersey Supreme

Court and urged by respondent and his *amici*. Under that view, a producer is subject to jurisdiction for a products-liability action so long as it "knows or reasonably should know that its products are distributed through a nationwide distribution system that *might* lead to those products being sold in any of the fifty states." 201 N. J., at 76–77, 987 A. 2d, at 592 (emphasis added). In the context of this case, I cannot agree.

For one thing, to adopt this view would abandon the heretofore accepted inquiry of whether, focusing upon the relationship between "the defendant, the *forum*, and the litigation," it is fair, in light of the defendant's contacts *with that forum*, to subject the defendant to suit there. *Shaffer* v. *Heitner*, 433 U. S. 186, 204 (1977) (emphasis added). It would ordinarily rest jurisdiction instead upon no more than the occurrence of a product-based accident in the forum State. But this Court has rejected the notion that a defendant's amenability to suit "travel[s] with the chattel." *World-Wide Volkswagen*, 444 U. S., at 296.

For another, I cannot reconcile so automatic a rule with the constitutional demand for "minimum contacts" and "purposefu[l] avail[ment]," each of which rest upon a particular notion of defendant-focused fairness. *Id.*, at 291, 297 (internal quotation marks omitted). A rule like the New Jersey Supreme Court's would permit every State to assert jurisdiction in a products-liability suit against any domestic manufacturer who sells its products (made anywhere in the United States) to a national distributor, no matter how large or small the manufacturer, no matter how distant the forum, and no matter how few the number of items that end up in the particular forum at issue. What might appear fair in the case of a large manufacturer which specifically seeks, or expects, an equal-sized distributor to sell its product in a distant State might seem unfair in the case of a small manufacturer (say, an Appalachian potter) who sells his product (cups and sau-

cers) exclusively to a large distributor, who resells a single item (a coffee mug) to a buyer from a distant State (Hawaii). I know too little about the range of these or in-between possibilities to abandon in favor of the more absolute rule what has previously been this Court's less absolute approach.

Further, the fact that the defendant is a foreign, rather than a domestic, manufacturer makes the basic fairness of an absolute rule yet more uncertain. I am again less certain than is the New Jersey Supreme Court that the nature of international commerce has changed so significantly as to require a new approach to personal jurisdiction.

It may be that a larger firm can readily "alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State." *World-Wide Volkswagen*, *supra*, at 297. But manufacturers come in many shapes and sizes. It may be fundamentally unfair to require a small Egyptian shirt maker, a Brazilian manufacturing cooperative, or a Kenyan coffee farmer, selling its products through international distributors, to respond to products-liability tort suits in virtually every State in the United States, even those in respect to which the foreign firm has no connection at all but the sale of a single (allegedly defective) good. And a rule like the New Jersey Supreme Court suggests would require every product manufacturer, large or small, selling to American distributors to understand not only the tort law of every State, but also the wide variance in the way courts within different States apply that law. See, *e.g.*, Dept. of Justice, Bureau of Justice Statistics Bulletin, Tort Trials and Verdicts in Large Counties, 2001, p. 11 (reporting percentage of plaintiff winners in tort trials among 46 populous counties, ranging from 17.9% (Worcester, Mass.) to 69.1% (Milwaukee, Wis.)).

C

At a minimum, I would not work such a change to the law in the way either the plurality or the New Jersey Supreme Court suggests without a better understanding of the relevant contemporary commercial circumstances. Insofar as such considerations are relevant to any change in present law, they might be presented in a case (unlike the present one) in which the Solicitor General participates. Cf. Tr. of Oral Arg. in *Goodyear Dunlop Tires Operations, S. A.* v. *Brown*, O. T. 2010, No. 10–76, pp. 20–22 (Government declining invitation at oral argument to give its views with respect to issues in this case).

This case presents no such occasion, and so I again reiterate that I would adhere strictly to our precedents and the limited facts found by the New Jersey Supreme Court. And on those grounds, I do not think we can find jurisdiction in this case. Accordingly, though I agree with the plurality as to the outcome of this case, I concur only in the judgment of that opinion and not its reasoning.

SUPREME COURT OF THE UNITED STATES

No. 09–1343

J. McINTYRE MACHINERY, LTD., PETITIONER *v.*
ROBERT NICASTRO, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF ROSEANNE NICASTRO

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

[June 27, 2011]

JUSTICE GINSBURG, with whom JUSTICE SOTOMAYOR and JUSTICE KAGAN join, dissenting.

A foreign industrialist seeks to develop a market in the United States for machines it manufactures. It hopes to derive substantial revenue from sales it makes to United States purchasers. Where in the United States buyers reside does not matter to this manufacturer. Its goal is simply to sell as much as it can, wherever it can. It excludes no region or State from the market it wishes to reach. But, all things considered, it prefers to avoid products liability litigation in the United States. To that end, it engages a U. S. distributor to ship its machines stateside. Has it succeeded in escaping personal jurisdiction in a State where one of its products is sold and causes injury or even death to a local user?

Under this Court's pathmarking precedent in *International Shoe Co.* v. *Washington*, 326 U. S. 310 (1945), and subsequent decisions, one would expect the answer to be unequivocally, "No." But instead, six Justices of this Court, in divergent opinions, tell us that the manufacturer has avoided the jurisdiction of our state courts, except perhaps in States where its products are sold in sizeable quantities. Inconceivable as it may have seemed yester-

day, the splintered majority today "turn[s] the clock back to the days before modern long-arm statutes when a manufacturer, to avoid being haled into court where a user is injured, need only Pilate-like wash its hands of a product by having independent distributors market it." Weintraub, A Map Out of the Personal Jurisdiction Labyrinth, 28 U. C. Davis L. Rev. 531, 555 (1995).

III

This case is illustrative of marketing arrangements for sales in the United States common in today's commercial world.[6] A foreign-country manufacturer engages a U. S. company to promote and distribute the manufacturer's products, not in any particular State, but anywhere and everywhere in the United States the distributor can attract purchasers. The product proves defective and injures a user in the State where the user lives or works. Often, as here, the manufacturer will have liability insurance covering personal injuries caused by its products. See Cupp, Redesigning Successor Liability, 1999 U. Ill. L. Rev. 845, 870–871 (noting the ready availability of products liability insurance for manufacturers and citing a study showing, "between 1986 and 1996, [such] insurance cost manufacturers, on average, only sixteen cents for each $100 of product sales"); App. 129–130.

In sum, McIntyre UK, by engaging McIntyre America to promote and sell its machines in the United States, "purposefully availed itself" of the United States market nationwide, not a market in a single State or a discrete collection of States. McIntyre UK thereby availed itself of the market of all States in which its products were sold by its exclusive distributor. "Th[e] 'purposeful availment' requirement," this Court has explained, simply "ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts." *Burger King*, 471 U. S., at 475. Adjudicatory authority is appropriately exercised where "actions by the defendant *himself*" give rise to the affiliation with the forum. *Ibid.* How could McIntyre UK not have intended, by its actions targeting a national market, to sell products in the fourth largest destination for imports among all States of the United States and the largest scrap metal market? See *supra*, at 3, 10, n. 6. But see *ante*, at 11 (plurality opinion) (manufacturer's purposeful efforts to sell its products nationwide are "not . . . relevant" to the personal jurisdiction inquiry).

THE LAY OF THE LAND: EXAMINING THE THREE OPINIONS IN *J. MCINTYRE MACHINERY, LTD. V. NICASTRO*

Adam N. Steinman*

It was a long time coming. A quarter-century ago—before most of my current civil procedure students entered this world—the Supreme Court decided *Asahi Metal Industry Co. v. Superior Court.*[1] *Asahi* failed to generate a majority opinion on how to assess whether jurisdiction is proper over a defendant whose products reach a state through the so-called "stream of commerce."[2] Shortly

where the record contains slightly more robust evidence on certain issues relating to actual or potential purchasers in the forum state.[22] Although the Court's ultimate conclusion in *McIntyre* is to reverse the New Jersey court's exercise of jurisdiction,[23] *McIntyre* should not be read to impose more significant restraints on jurisdiction as a general matter.

I. BEFORE *MCINTYRE*

When discussing the modern approach to personal jurisdiction and the stream of commerce, one often begins with *World-Wide Volkswagen*. The plaintiffs in *World-Wide Volkswagen* were injured while driving an automobile through Oklahoma.[25] They had purchased the car from a dealership in New York.[26] They filed a lawsuit in Oklahoma state court against several defendants, including the New York car dealership and a New York distributor that served dealers in New York, New Jersey, and Connecticut.[27] These two defendants argued that personal jurisdiction was improper in Oklahoma.[28]

The Supreme Court held that exercising jurisdiction over these defendants in Oklahoma violated the Due Process Clause.[29] In doing so, however, the Court recognized that it *is* appropriate for a state to "assert[] personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State."[30] It further explained:

> [I]f the sale of a product of a manufacturer or distributor . . . arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly
>
> defective merchandise has there been the source of injury to its owner or to others.[31]

Jurisdiction was ultimately denied in *World-Wide Volkswagen* because these two New York defendants had *not* sought to serve, either directly or indirectly, the market for their product in the forum state of Oklahoma.[32] The local dealer and the regional distributor served the markets in New York and surrounding states.[33] The automobile involved in the accident had been sold to a local New York customer,[34] but it found its way to Oklahoma via the *customer's* "unilateral activity,"[35] not by any effort on the part of the defendants to reach the Oklahoma market with their products.[36] Accordingly, it did not matter whether Oklahoma had a strong interest in adjudicating a dispute arising from an accident that occurred in Oklahoma, or whether Oklahoma would be "the most convenient location for litigation."[37] The defendants' lack of "contacts, ties, or relations" with Oklahoma made jurisdiction unconstitutional.[38]

Thus, *World-Wide Volkswagen* presaged a two-step approach to personal jurisdiction that crystallized during the 1980s. First, the defendant must "purposefully establish[] 'minimum contacts' in the forum State."[39] Second, "[o]nce it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.'"[40] Factors relevant to this second prong—which confirms "the reasonableness of jurisdiction"—include "the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of

controversies, and the shared interest of the several States in furthering fundamental substantive social policies."[41]

The Court's next stream of commerce case was *Asahi*.[42] In this case a California plaintiff was injured, and his wife killed, while riding a motorcycle on a California highway.[43] The plaintiff filed a lawsuit in California state court against several defendants, including the Taiwanese company (Cheng Shin) that manufactured the motorcycle's tire tube.[44] Cheng Shin then filed a claim seeking indemnification from the Japanese company (Asahi) that manufactured the tube's valve assembly but had not been named as a defendant.[45] Asahi objected to jurisdiction.[46] The plaintiff's claims eventually settled, "leaving only Cheng Shin's indemnity action against Asahi."[47]

Asahi was, in one sense, a mirror image of *World-Wide Volkswagen*. In *World-Wide Volkswagen*, the lack of minimum contacts by the defendants made jurisdiction unconstitutional, regardless of whether the reasonableness factors weighed in favor of jurisdiction.[48] In *Asahi*, the reasonableness factors prevented jurisdiction regardless of whether the defendant had established the required minimum contacts.[49] The Court's holding that jurisdiction was unreasonable in *Asahi* was based on that case's fairly unique posture, especially the fact that the original plaintiff—who had been injured in the forum state—had settled and was not seeking any relief from Asahi.[50] A question of more general interest was whether a defendant in Asahi's position had established minimum contacts with the forum state; on that issue, the Court generated no majority opinion.

Four Justices, led by Justice O'Connor, concluded that Asahi had not established minimum contacts with California.[51] Four Justices, led by Justice Brennan, concluded that Asahi had established minimum contacts with California.[52] Justice Stevens joined neither of the four-Justice coalitions in *Asahi*. Given the conclusion "that California's exercise of jurisdiction over Asahi in this case would be 'unreasonable and unfair,'" he saw "no reason" to endorse any particular "test as the nexus between an act of a defendant and the forum State that is necessary to establish minimum contacts."[53]

The different perspectives offered by Justices Brennan and O'Connor in *Asahi* would go on to shape much of the jurisdictional debate in the decades following *Asahi*.[54] Quoting *World-Wide Volkswagen*, Justice Brennan reasoned that "[t]he forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce *with the expectation that they will be purchased by consumers* in the forum State."[55] Justice O'Connor, however, wrote that "placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State."[56] Rather, she would require "[a]dditional conduct" that would,

> [I]ndicate an intent or purpose to serve the market in the forum State, for example, designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State.[57]

Thus, it is often said that Justice Brennan endorsed a "stream of commerce" analysis while Justice O'Connor endorsed a "stream of commerce plus" analysis.[58] It should not be overlooked, however, that both Justices Brennan and O'Connor explicitly embraced the idea that a manufacturer establishes minimum contacts with the forum when it seeks to serve the market in the forum state and its product thereby causes injury in that state.[59]

F. *Empty Rhetoric?*

There are a few parts of Justice Kennedy's opinion that seem more rhetorical than substantive, but they are worth recognizing. One is Justice Kennedy's challenge to what he calls the "the stream-of-commerce metaphor"; he writes that "the stream-of-commerce metaphor cannot supersede either the mandate of the Due Process Clause or the limits on judicial authority that Clause ensures."[146] That may be true, but it sheds no light on the key question of what "the mandate of the Due Process Clause" actually is. As discussed above, Justice Kennedy himself recognizes that due process can be satisfied by a defendant "sending its goods rather than its agents," such as when a defendant "'seek[s] to serve' a given State's market."[147] Labeling the stream of commerce a mere "metaphor" does not dictate any particular answer to what the Due Process Clause requires in cases like *McIntyre*.

Similar in this regard is Justice Kennedy's comment that "it is the defendant's actions, not his expectations, that empower a State's courts to subject him to judgment."[148] Justice Kennedy makes this statement during his critique of Justice Brennan's *Asahi* opinion, but Justice Kennedy's doctrinal point is unclear. The only time Justice Brennan used the word "expectation" in his *Asahi* opinion was when he stated, quoting verbatim from *World-Wide Volkswagen*, that "[t]he forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce *with the expectation that they will be purchased by consumers* in the forum State."[149] Contrary to Justice Kennedy's suggestion, this principle is *not* one that would vest jurisdiction based on a defendant's "expectations" alone.[150] When a defendant "delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State,"[151] jurisdiction is based on an *action* ("deliver[ing] its products into the stream of commerce") that is *taken* with a particular expectation ("that they will be purchased by consumers in the forum State"). Accordingly, Justice Kennedy's quip that jurisdiction must be based on actions rather than expectations does little more than attack a doctrinal straw man; it does not meaningfully clarify his approach to personal jurisdiction.

Finally, Justice Kennedy's plurality opinion asserts that "[f]reeform notions of fundamental fairness divorced from traditional practice cannot transform a judgment rendered in the absence of authority into law."[152] Insofar as this comment fails to clarify the circumstances in which there is such an "absence of authority," it also appears to be mere rhetorical flourish. It would certainly be wrong to say that jurisdiction may never expand beyond "traditional practice." If so, *International Shoe*'s recognition that an absent defendant can be subject to jurisdiction if it establishes "minimum contacts" with the forum state would have failed as contrary to then-traditional practice.[153]

In any event, it is unclear whom Justice Kennedy himself is "target[ing]" with his critique of "[f]reeform notions of fundamental fairness."[154] Justice Ginsburg's dissent does not propose that jurisdiction should be acceptable as long as it comports with freeform notions of fundamental fairness. Justice Ginsburg does recognize that "[t]he modern approach to jurisdiction over corporations and other legal entities, ushered in by *International Shoe*, gave prime place to reason and *fairness*."[155] But it was hardly her view that "fairness" alone (much less "[f]reeform . . . fairness") ought to be the test for jurisdiction. Rather, Justice Ginsburg employs the same "purposeful availment" test that Justice Kennedy insists is the "general rule" for a "sovereign's exercise of power."[156]

V. JUSTICE BREYER'S *MCINTYRE* CONCURRENCE

Justices Breyer and Alito join neither Justice Kennedy's plurality opinion nor Justice Ginsburg's dissenting opinion in *McIntyre*.[182] They do concur in the ultimate result reached by the plurality, thus providing the fifth and sixth votes against allowing the New Jersey court to exercise jurisdiction in *McIntyre*. But Justice Breyer's concurring opinion explicitly rejects the reasoning put forward by Justice Kennedy. In particular, Justice Breyer's opinion challenges Justice Kennedy's use of "strict rules that limit jurisdiction where a defendant does not 'inten[d] to submit to the power of a sovereign' and cannot 'be said to have targeted the forum.'"[183] Rather, Justice Breyer recognizes (quoting *World-Wide Volkswagen*) that jurisdiction would have been proper if J. McIntyre had "delivered its goods in the stream of commerce 'with the expectation that they will be purchased' by New Jersey users."[184]

In concluding that jurisdiction was not proper in *McIntyre*, Justice Breyer emphasizes that J. McIntyre's U.S. distributor "on *one occasion* sold and shipped *one machine* to a New Jersey customer, namely, Mr. Nicastro's employer, Mr. Curcio."[185] He then writes that prior Supreme Court decisions "strongly suggest[] that a single sale of a product in a State does not constitute an adequate basis for asserting jurisdiction over an out-of-state defendant, even if that defendant places his goods in the stream of commerce, fully aware (and hoping) that such a sale will take place."[186] However, Justice Breyer does not acknowledge a significant tension between his "single sale" idea and the Court's decision in *McGee v. International Life Insurance Co.*[187] *McGee* upheld jurisdiction in California even though the defendant had "never solicited or done any insurance business in California *apart from the policy involved here*."[188]

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181. *Id.*

182. *J. McIntyre*, 131 S. Ct. at 2791 (Breyer, J., concurring).

183. *Id.* at 2793 (quoting *id.* at 2788 (plurality opinion)).

184. *Id.* at 2792 (rejecting jurisdiction because Nicastro "has not otherwise shown that the British Manufacturer 'purposefully avail[ed] itself of the privilege of conducting activities' within New Jersey, *or* that it delivered its goods in the stream of commerce 'with the expectation that they will be purchased' by New Jersey users" (alteration in original) (emphasis added) (quoting *World-Wide Volkswagen*, 444 U.S. at 297–98)).

185. *Id.* at 2791 (emphasis added) (citation omitted).

186. *Id.* at 2792.

187. 355 U.S. 220 (1957).

188. *Id.* at 222 (emphasis added). It is puzzling that Justice Breyer relies on *World-Wide Volkswagen* as a "previous holding[]" that "suggest[s]" that a single sale in the forum is insufficient. *J. McIntyre*, 131 S. Ct. at 2792 (Breyer, J., concurring) (citing *World-Wide Volkswagen*, 444 U.S. 286). As Justice Breyer recognizes, *World-Wide Volkswagen* involved "a single sale to a customer who *takes* an accident causing product *to a different State* (where the accident takes place)." *Id.* (emphasis added). It was not a case where the defendant's product was

In addition, Justice Breyer's concurrence fails to make a clear connection between some of the underlying jurisdictional principles and the result he reaches. Again, Justice Breyer accepts that jurisdiction would be proper if J. McIntyre had "delivered its goods in the stream of commerce 'with the expectation that they will be purchased' by New Jersey users."[189] However, he does not explain why such an expectation is lacking when a defendant like J. McIntyre retains a U.S. distributor for the express purpose of accessing the U.S. market as a whole. The purpose of such an arrangement is to make sales within the territory that comprises the United States, territory that includes New Jersey. This idea is at the heart of Justice Ginsburg's dissent,[190] and it is significant that Justice Breyer does not call Justice Ginsburg's legal reasoning into question.[191] His only critique of Justice Ginsburg's approach is that she considers information beyond, as he put it, "the facts precisely as the New Jersey Supreme Court stated them."[192]

These aspects of Justice Breyer's concurring opinion prompt several significant questions, some of which are examined in the following two sections. Section A proposes one understanding of Justice Breyer's opinion that can explain why he reaches Justice Kennedy's result but rejects Justice Kennedy's reasoning, and why he disagrees with Justice Ginsburg's result but does not challenge the legal principles Justice Ginsburg employs. Section B then considers potential implications of Justice Breyer's concurrence going forward.

A. Situating Justice Breyer's Concurrence

One way to make sense of Justice Breyer's opinion is to focus on that single point on which he explicitly disagrees with Justice Ginsburg—the factual record. Justice Breyer's conclusion in *McIntyre* is based on a narrow view of that record. He proceeds on the assumption that the *only* facts offered in support of jurisdiction were these:

> (1) The American Distributor on one occasion sold and shipped one machine to a New Jersey customer, namely, Mr. Nicastro's employer, Mr. Curcio; (2) the British Manufacturer permitted, indeed wanted, its independent American Distributor to sell its machines to anyone in America willing to buy them; and (3) representatives of the British Manufacturer attended trade shows in "such cities as Chicago, Las Vegas, New Orleans, Orlando, San Diego, and San Francisco."[193]

What is so telling about Justice Breyer's recounting of the factual record in *McIntyre* is that it excises J. McIntyre's overarching purpose of accessing the entire U.S. market for its products. Whereas Justice Ginsburg saw a defendant who "engaged" a U.S. distributor in order "to promote and sell its machines in the United States,"[194] and who took "purposeful step[s] to reach customers for its products anywhere in the United States,"[195] Justice Breyer saw a defendant who passively "permitted" and "wanted" such sales to occur.[196] With the record framed as Justice Breyer does, it is hard to see how a jurisdictional standard that hinges on a defendant's "purpose[]"[197] could ever be satisfied.

Justice Breyer's view of the factual record also explains how he is able to reach the conclusion that J. McIntyre had not even "delivered its goods in the stream of commerce 'with the expectation that they will be purchased' by New Jersey users."[198] In this regard, much can be learned from what Justice Breyer notes was *missing* from the factual record. Specifically, Justice Breyer indicates that a different result could be justified if the record contained a "list of potential New Jersey customers who might . . . have regularly attended [the] trade shows" that J. McIntyre officials attended;[199] if the record had contained evidence of "the size and scope of New Jersey's scrap-metal business";[200] or if the record revealed more than a single sale to a single New Jersey customer.[201]

In recognizing that these facts could tip the scale in favor of jurisdiction, Justice Breyer's opinion can be reconciled with Justice Ginsburg's idea that minimum contacts are established when a defendant "seek[s] to exploit a multistate or global market" that includes the forum state.[202] Justice Breyer's logic would merely require a showing that potential customers were likely to exist in the forum state.[203] If the *McIntyre* record had contained (in Justice Breyer's words) a "list of potential New Jersey customers who might . . . have regularly attended [the] trade shows" that J. McIntyre officials attended,[204] or evidence of "the size and scope of New Jersey's scrap-metal business,"[205] then that could create an expectation of purchases by New Jersey consumers. Either fact would confirm—even before any sales were made—that there was a potential market for J. McIntyre's products in New Jersey. Even without such facts, however, the consummation of an actual sale to a New Jersey customer would create that expectation going forward.[206] At that point, J. McIntyre either would know or should know of the potential New Jersey market for its machines.[207] Once an "expectation" of purchases by New Jersey users exists, the act of "delivering its goods in the stream of commerce" could be sufficient to establish minimum contacts if its goods are then purchased in New Jersey and cause injury there.[208] For Justice Breyer, however, no such expectation is created when (1) there is only a single sale of the defendant's product to a customer in the forum state, and (2) there is no other evidence in the record suggesting potential customers in the forum state.

One can envision situations where *some* facts of the sort Justice Breyer identifies would be necessary to create a true expectation of purchases by customers in the forum state. Consider, for example, scenarios where a defendant seeks to access the U.S. market as a whole but, as a practical matter, the market for the defendant's products exists only in some states (and not others). A manufacturer of grapefruit-harvesting equipment might engage a distributor to access the entire U.S. market, but that would not necessarily create an expectation of purchases by users in Alaska, North Dakota, or other states where grapefruit are not harvested. A manufacturer of cross-country skis might engage a distributor to access the entire U.S. market, but that would not necessarily create an expectation of purchases by users in Florida, Hawaii, or other states where cross-country skiing does not take place.

This is not to say that the machinery at issue in *McIntyre* presented such a scenario. But if we accept the premise that the burden is on the plaintiff to establish personal jurisdiction over the defendant,[209] one might need some evidence to confirm that a potential market exists in the particular state *within* the United States that seeks to exercise jurisdiction. Such evidence would support the conclusion that the defendant delivered its goods in the stream of commerce with the expectation that they will be purchased by customers in the forum state.[210] This sort of approach is not fundamentally inconsistent with the approach outlined by Justice Ginsburg in her dissent. It would simply require a slightly more robust factual record than Justice Breyer believed was present in *McIntyre*.

B. Implications of Justice Breyer's Concurrence

This Article examines the potential implications of Justice Breyer's concurrence in two ways. One is what it reveals about how Justices Breyer and Alito would confront jurisdictional issues in future cases. Another is its likely impact on lower courts—state and federal—going forward. On the first issue,

the most significant aspect of Justice Breyer's opinion may be that he and Justice Alito express a willingness, in some future case, to hit the reset button on existing jurisdictional doctrine. Provided they are able to obtain "a better understanding of the relevant contemporary commercial circumstances," they are potentially open to a "change in present law."[211] In particular, they recognize that "there have been many recent changes in commerce and communication"—notably the development of the internet—that "are not anticipated by our precedents."[212] Justices Breyer and Alito are also keen to learn the U.S. government's views on these issues, noting that the U.S. Solicitor General did not participate in *McIntyre*.[213]

It would be a mistake, therefore, to assume that Justices Breyer and Alito would necessarily follow the logic of their *McIntyre* concurrence when the next case on personal jurisdiction reaches the Supreme Court. We do have a sense, however, that Justices Breyer and Alito are concerned about the effect of a more expansive approach to jurisdiction on smaller manufacturers: "[M]anufacturers come in many shapes and sizes. It may be fundamentally unfair to require a small Egyptian shirt maker, a Brazilian manufacturing cooperative, or a Kenyan coffee farmer, selling its products through international distributors, to respond to products-liability tort suits in virtually every State in the United States . . . ."[214] This concern could be vindicated, of course, along the lines that Justice Ginsburg suggests in her *McIntyre* dissent,[215] or more generally by using the reasonableness prong[216] of the Court's jurisdictional doctrine to protect the smaller manufacturers identified by Justice Breyer.

Whatever ultimately transpires in future Supreme Court cases, Justice Breyer's concurrence may play a significant role in state courts and the lower federal courts because of what is known as the *Marks* rule. In *Marks v. United States*,[217] the Supreme Court wrote that "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.'"[218] Although the contours of the *Marks* rule are murky in some regards,[219] *Marks* certainly means that Justice Kennedy's four-Justice plurality would not constitute the Supreme Court's holding in *McIntyre*. If any opinion qualifies under *Marks* as the one "concurr[ing] . . . on the narrowest grounds,"[220] it would seem to be Justice Breyer's concurrence.[221]

If state and lower federal courts look to Justice Breyer's concurrence as the *McIntyre* holding under the *Marks* rule, they should recognize the points described above as crucial features of that holding: (1) Justice Breyer recognizes the principle articulated in *World-Wide Volkswagen*—that jurisdiction is proper when a manufacturer or distributor "deliver[s] its goods in the stream of commerce 'with the expectation that they will be purchased' by [forum-state] users";[222] (2) Justice Breyer rejects Justice Kennedy's "strict rules that limit jurisdiction where a defendant does not 'inten[d] to submit to the power of a sovereign' and cannot 'be said to have targeted the forum'";[223] (3) Justice Breyer premises his conclusion that jurisdiction was not proper in *McIntyre* on a narrow view of the factual record in that case;[224] and (4) Justice Breyer recognizes that exercising jurisdiction would be consistent with Supreme Court precedent if the evidentiary record suggested potential customers in the forum state.[225]

VI. CONCLUSION

The lack of a majority opinion in *McIntyre* is certainly disappointing for those who hoped for "greater clarity" about the permissible scope of jurisdiction in stream of commerce cases,[226] and to resolve the "decades-old questions left open in *Asahi*."[227] Nonetheless, the three opinions in *McIntyre* are likely to play important roles as the debate over personal jurisdiction unfolds in this new millennium. Those opinions merit close examination, even if they fail to conclusively resolve questions that have long lingered about the Supreme Court's doctrine on personal jurisdiction.