Chapter 2
PERSONAL JURISDICTION

A. INTRODUCTION AND INTEGRATION

Before a plaintiff can initiate any lawsuit, she must decide where to sue. In deciding where to sue, the plaintiff must first determine which court has jurisdiction, that is, which court has the authority to decide this case.

When we speak of jurisdiction, we usually differentiate between two types—subject matter jurisdiction and personal jurisdiction. Subject matter jurisdiction deals with whether a court has authority to decide a particular type of case. For example, most state court systems have specialized courts such as probate courts, family law courts or small claims courts that can only hear certain types of cases. Similarly, the subject matter jurisdiction of the federal courts is limited to those areas specified in the Constitution and in federal statutes. Subject matter jurisdiction will be dealt with in a later chapter.

Personal jurisdiction is the topic of this chapter. It concerns the circumstances under which a court (state or federal) has authority to make decisions binding on these particular parties. By invoking the authority of the court, the plaintiff has consented to the power of that court to issue binding orders to her. But what about the defendant, who did not invoke or consent to the power of the court? What gives the court the power to enter binding orders against a particular defendant? At their root, concerns about personal jurisdiction are very similar to a question that has occupied political philosophers for centuries—what is it that makes the exercise of government authority legitimate? This chapter addresses this question not as an abstract philosophical one, but in the concrete context of litigation. Specifically, we will be analyzing whether particular judgments are valid or enforceable.

As a preliminary matter, you must know a little about the types of judgments available and how they are enforced. In some cases, the plaintiff gets a judgment in which the defendants are ordered by the court to do or refrain from doing something. This is called injunctive relief. For example, a school system might be ordered to desegregate, a town might be ordered to allow a group to hold a parade, or a party to a contract to sell land might be ordered to transfer the land. In these cases, a defendant who defies the court order may be held in contempt of court and fined or imprisoned until she complies.

Awarding money damages, though, is far more common than injunctive relief. Indeed courts will usually issue an injunction only if money damages are an inadequate remedy. Where the plaintiff secures a money judgment, that award does not actually order the defendant to do anything. If the defendant refuses voluntarily to pay the judgment, she cannot be held in contempt of court or put in jail. Instead, the burden is on the person who secures the judgment to seek enforcement. To enforce or “execute” a judgment, the plaintiff typically “attaches” property owned by the defendant. With respect to physical property other than real estate, the property may literally be seized by the sheriff. Real estate is “attached”
by posting notice on the property and making a notation in the property records. After attachment and notice to the owner, the property is auctioned and the proceeds are given to the judgment holder. If there are any proceeds in excess of the amount of the judgment plus expenses, that amount is returned to the judgment debtor.

In our nation of 50 independent and separate states, a serious problem could arise if states refused to enforce the judgments of other states. The drafters of the Constitution anticipated this problem and addressed it in the Full Faith and Credit Clause in Article IV of the Constitution, which provides that “Full faith and credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.” Congress has by statute extended the requirement of full faith and credit to the federal courts. See 28 U.S.C. §1738. The Full Faith and Credit Clause and Statute have been interpreted to require that every state must enforce the judgments of every other state. The Supreme Court has been extremely rigorous in upholding the requirements of the Full Faith and Credit Clause. For example, a state that makes gambling contracts illegal and unenforceable must nonetheless enforce a judgment entered by a sister state enforcing a gambling contract. See Fauntleroy v. Lum, 210 U.S. 230 (1908). One of the few exceptions to the strict requirement of full faith and credit is where the court that rendered the judgment lacked personal jurisdiction over the defendant.

This brings us back to the question with which we began: when does a court have personal jurisdiction? This chapter sets forth a largely chronological series of Supreme Court cases, in which the Court attempts to delineate the criteria for personal jurisdiction. As you will see, the criteria change over time — sometimes abruptly, sometimes gradually — and the law in this area is still evolving.

B. CONSTITUTIONAL LIMITS ON PERSONAL JURISDICTION

1. The Fountainhead — Pennoyer v. Neff

PENNOYER v. NEFF
95 U.S. 714, 24 L. Ed. 565, 5 Otto 714 (1878)

JUSTICE FIELD delivered the opinion of the Court.

(In 1865, J.H. Mitchell sued Marcus Neff in Oregon state court. Mitchell claimed that Neff owed him $253.14 for legal services Mitchell had performed. Mitchell submitted an affidavit asserting that Neff owned land in Oregon and further stating that Neff was living somewhere in California and could not be found. Notice of the suit was published for six weeks in the Pacific Christian Advocate, a weekly church newspaper. Neff did not answer or appear in the case, and the court entered a default judgment. Six months later, Mitchell secured a writ of execution against Oregon real estate owned by Neff. The land was sold at a sheriff’s sale and purchased by Mitchell himself, presumably in exchange for the amount of the judgment plus costs. Three days later, Mitchell transferred title to Sylvester Pennoyer.)
In September 1874, Neff sued Pennoyer in federal court seeking eviction. The trial court found for Neff, holding that the judgment in Mitchell v. Neff was invalid. Specifically, the judge concluded that Mitchell’s affidavit concerning Neff’s whereabouts did not adequately describe the steps Mitchell had taken to locate Neff and that the affidavit by the newspaper attesting to the publication of the notice was also inadequate. Pennoyer appealed to the Supreme Court of the United States.}

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The Code of Oregon provides for such service [by publication] 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. 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.

[The Court held that the deficiencies in the affidavits upon which the lower court relied could only be a basis for appeal. They were not a basis for a collateral attack, that is, a separate law suit seeking to invalidate the prior judgment.]

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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 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 rights 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 to 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 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 as usurpation.

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.

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 have no property in the State, there is nothing upon which the tribunals can adjudicate.

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* * * 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 which they were founded, if they ever had any existance, 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 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 authentically 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 be 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. ** *

** ** * ** In several of the cases, the decision has been accompanied with the observation that a personal judgment thus recovered has no binding force without the State in which it is rendered, implying that in such State it may be valid and binding. But if the court has no jurisdiction over the person of the defendant by reason of his nonresidence, and, consequently, no authority to pass upon his personal rights and obligations; if 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. The language
used can be justified only on the ground that there was no mode of directly
reviewing such judgment or impeaching its validity within the State where
rendered; and that, therefore, it could be called in question only when its
enforcement was elsewhere attempted. In later cases, this language is repeated
with less frequency than formerly, it beginning to be considered, as it always ought
to have been, that a judgment which can be treated in any State of this Union as
contrary to the first principles of justice, and as an absolute nullity, because
rendered without any jurisdiction of the tribunal over the party, is not entitled to
any respect in the State where rendered.

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 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 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. 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.

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 is hardly necessary to observe, that in all we have said we have had reference to proceedings in courts of first instance, and to their jurisdiction, and not to proceedings in an appellate tribunal to review the action of such courts. The latter may be taken upon such notice, personal or constructive, as the State creating the tribunal may provide. They are considered as rather a continuation of the original litigation than the commencement of a new action.

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 involve 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 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.

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. * * * Nor do we doubt that a State, on creating 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 interest subject to the conditions prescribed by law.

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.*

[The dissenting opinion of Justice Hunt omitted.]

### NOTES AND QUESTIONS

1. Justice Field distinguishes between in rem and in personam jurisdiction. “In rem” is Latin for “against the property” and “in personam” means “against the person.” In an in personam case, because the court exercises jurisdiction over the person of the defendant, it can enter a judgment that creates a personal obligation to pay money or perform some act. A court can enforce an in personam judgment either by attaching and selling any of the defendant’s property or by ordering a defendant to perform some act.

In an in rem case, the court’s jurisdiction extends only to the particular property attached. In rem cases fall into two broad categories. The first category involves cases in which the proceeding concerns the ownership of the attached property. Examples of this type are condemnation or foreclosure proceedings. Suppose Penny and Dot each claim to own the same valuable painting. One might sue the other in personam and proceed to resolve the dispute. In the alternative, the one in possession could tender the painting to the court. The court, having jurisdiction over the property (the “res”), has the power to determine who owns it, even if the other party is not served within the jurisdiction.

This first category of in rem cases is sometimes subdivided to differentiate true in rem cases from what are called quasi-in-rem “of the first type.” True in rem cases are ones which decide ownership as to the whole world. Government condemnation and certain admiralty cases fall into this category. After a condemnation proceeding, the government owns the land and no one else in the world does. Quasi-in-rem type 1 cases adjudicate ownership as between the litigants. For example, if I fail to pay my mortgage, a court may determine that as between the bank and me, the bank now owns the property. However, a third party could come along and prove that she has better title than the bank does.

What is important for our purpose is not the difference between true in rem and quasi-in-rem type 1, but the similarity between the two. In both categories of cases, the court takes jurisdiction over the property so as to adjudicate ownership of that property.

These cases should be distinguished from the second broad category of in rem jurisdiction in which the lawsuit has nothing to do with the property. Instead, the presence of the property is simply the basis upon which the court relies to assert
jurisdiction in the case. This type of in rem proceeding is called quasi-in-rem "of the second type" (or just quasi-in-rem). In Mitchell v. Neff, Mitchell could have used quasi-in-rem jurisdiction by attaching Neff's land at the outset of the lawsuit. If he had done this, then even though Neff was not served in Oregon, the default judgment would have been valid. Following the default judgment, Mitchell would have been entitled to the proceeds from the auction of Neff's land, up to the amount of Mitchell's judgment.

2. Justice Field holds that in rem jurisdiction is available only if the property is attached at the beginning of the litigation. Because that did not occur in Mitchell v. Neff, he holds that there was no valid in rem jurisdiction. Justice Hunt dissented on the grounds that the timing of the attachment was a matter of "municipal regulation," not "constitutional power." According to Justice Field, why is it essential that attachment happen at the beginning of the suit?

3. Justice Field suggests that in an in rem proceeding, "substitute service by publication," plus attachment of the property, provides sufficient notice of the proceeding to the defendant. Do you think Neff in fact would have learned of the case against him if both these steps had in fact occurred? In the next chapter, we will explore in more detail the requirements of notice.

4. In addition to discussing the prerequisites for valid in rem jurisdiction, Justice Field also discusses in personam jurisdiction. In personam jurisdiction is jurisdiction "against the person." Unlike in rem judgments, an in personam judgment is not limited by the value of any property. Field's discussion of why there is no in personam jurisdiction lays important foundations for the future of personal jurisdiction. Interestingly, the discussion was unnecessary to deciding the particular case because both parties appear to have conceded that the judgment was not binding in personam.

5. Review Justice Field's explanation as to why there is no in personam jurisdiction over Neff. How do you think Justice Field would have responded to the following hypotheticals?

(a) Suit was brought in Oregon state court, with Neff served personally in California.

(b) Mitchell learned that Neff was vacationing in Arizona. Mitchell filed suit in Arizona state court, and Neff was served with process in Arizona.

(c) At Mitchell's request, the Oregon sheriff went to California, where he knocked Neff unconscious, took him back to Oregon, and then served him with process.

6. Field's analysis of personal jurisdiction seems to derive from what he describes as "well-established principles of public law," apparently relying on an international law analogy. Does it make sense to apply the rules of international jurisdiction to the states? In what ways are states similar to independent nations? In what ways are they different?
7. Field cites the Fourteenth Amendment as a basis for invalidating a state judgment. This citation apparently refers to the Due Process Clause of that Amendment, which provides: "No State shall * * * deprive any person of life, liberty or property, without due process of law." Why does Field conclude that service in the forum state is part of due process?

8. The Fourteenth Amendment was not ratified until 1868, several years after judgment in Mitchell v. Neff was entered and executed. Is the discussion of the Fourteenth Amendment dicta, or is Field suggesting that the clause should be applied retroactively? Either way, the Fourteenth Amendment has become the basis for challenges to state court jurisdiction. You should note that the standards under the Fourteenth Amendment and the Full Faith and Credit Clause are interconnected. Thus, if a state enters a judgment without jurisdiction, it violates due process and the judgment is not entitled to full faith and credit.

9. In early judicial proceedings, the court's authority, both civil and criminal, was thought to depend on the consent of the litigants. In criminal cases in Medieval England, the court developed an effective though brutal method of persuading defendants to "consent" — the piling of stones on the accused until he either consented or died. In civil cases, the defendant was summoned to appear, and if he refused, the court could levy fines that were enforceable against any of the defendant's property that could be found. Later, the English courts began to base personal jurisdiction on the physical arrest of the defendant using a writ of capias ad respondendum. The defendant would be released only after posting sufficient bond to cover any adverse judgment. This form of civil arrest was not required in all civil cases and was never widely practiced in the United States. See Albert Ehrenzweig, The Transient Rule of Personal Jurisdiction: The "Power" Myth and Forum Conveniens, 65 Yale L.J. 289, 296–98 (1956). Nonetheless, courts and commentators frequently point to this procedure as proof that "[h]istorically the jurisdiction of courts to render judgment in personam is grounded on their de facto power over the defendant's person." International Shoe Co. v. Washington. The classic statement of this view of jurisdiction is that of Justice Holmes:

The foundation of jurisdiction is physical power, although in civilized times it is not necessary to maintain that power throughout proceedings properly begun * * *. We repeat also that the ground for giving subsequent effect to a judgment is that the court rendering it had acquired power to carry it out * * *.

McDonald v. Mabee, 243 U.S. 90, 91–92 (1917).

If the whole purpose of personal jurisdiction is to ensure that the rendering forum will have the physical power over the defendants or their property to enforce any judgment rendered, should that doctrine be applied to states, since states are bound by the Full Faith and Credit Clause? Put differently, isn't the whole purpose of the Full Faith and Credit Clause to ensure that judgments that are not physically enforceable in the rendering states are enforceable elsewhere?

10. Like most judicial opinions, the Supreme Court's opinion in Pennoyer does not begin to tell the full story of the people involved in this famous case. Marcus Neff was an illiterate homesteader and one of the earliest settlers to claim land
under the Oregon Donation Act. Mitchell and Pennoyer were somewhat better known. "J.H. Mitchell" was the Oregon alias of John Hipple, a Pennsylvania lawyer who abandoned his wife and headed west with his paramour and four thousand dollars of client money. He wound up in Portland and quickly established himself as a successful lawyer specializing in land litigation. Scandal was a way of life for Mitchell. He was implicated, though never indicted, in a vote fraud scheme and an attempt to bribe the U.S. Attorney General. His private life was equally sordid. He married his second wife without bothering to divorce his first wife. Later, The Oregonian newspaper published a series of love letters Mitchell had written to his second wife's younger sister. None of this interfered with his political career. He was elected repeatedly to the U.S. Senate. In 1905, while serving in the Senate, he was convicted of a massive land fraud scheme and sentenced to six months in jail. He died while his appeal was pending.

Sylvester Pennoyer went on to be governor of Oregon, but he remained bitter about his defeat in Pennoyer v. Neff. Ten years after the decision, he used his inaugural address as a forum to decry that decision as a usurpation of state power. His attacks on the Supreme Court were so frequent and vociferous that such attacks became known as "Pennoyerism." See Wendy Perdue, Sin, Scandal, and Substantive Due Process: Personal Jurisdiction and Pennoyer Reconsidered, 62 Wash. L. Rev. 479 (1987).

**2. Interim Developments**

Justice Field's approach to jurisdiction had the virtue of being easy to apply, at least as to people and tangible property. Societal changes, however, including changes in the role of corporations, brought this approach under increasing pressure. In the eighteenth and early nineteenth centuries, the prevailing view was that corporations could be sued in personam only in the state of incorporation. A corporation was thought to "exist" only within the boundaries of the state that created it. This view of corporate existence arose from the economic reality at that time. Most corporate activities were confined to local activities such as operating bridges, toll roads, and intrastate railroads.

Industrialization brought with it significant multistate corporate activities and the need for states to be able to assert jurisdiction over out-of-state corporations conducting in-state activities. Pennoyer itself suggested one approach. Field asserts that states can require a corporation to appoint an agent for service of process as a condition for doing business in the state. Service could then be made on the in-state agent. This approach was premised, at least in part, on the understanding that states had the power to exclude out-of-state corporations and therefore had the power to condition entrance on consent to certain conditions. Under the Privileges and Immunities Clause of Article IV of the Constitution, one state could not exclude the citizens of another state. However, the Court held that corporations were not protected by the Privileges and Immunities Clause. See Paul v. Virginia, 75 U.S. 168, 177 (1869). As the Court explained in a pre-Pennoyer case, "A corporation created by Indiana can transact business in Ohio only with the consent, express or implied, of the latter state. This consent may be accompanied by such conditions as Ohio may think fit to impose * * *." Lafayette Ins. Co. v. French, 59 U.S. 404, 407 (1856).
By the early 20th century, the Court began to recognize that although the Privileges and Immunities Clause did not prohibit states from excluding out-of-state corporations, the Commerce Clause prohibited states from excluding corporations engaged solely in interstate commerce. See International Textbook Co. v. Pigg, 217 U.S. 91 (1910). Corporations were quick to exploit this limitation on state power. For example, in International Harvester Co. v. Kentucky, 234 U.S. 579 (1914), the corporation had set up activities in Kentucky very carefully so that those activities would be deemed to be in interstate commerce. The company contended that since Kentucky could not exclude it from the state, Kentucky also could not demand consent as a condition for entering the state. The Supreme Court responded by shifting its focus away from consent and upholding jurisdiction on the ground that regardless of consent, International Harvester was “present” in Kentucky. In a series of cases, the Supreme Court elaborated on what level of activity was necessary to make an out-of-state corporation “present.” See, e.g., People’s Tobacco Co. v. American Tobacco Co., 246 U.S. 79, 87 (1918); International Harvester Co. v. Kentucky, 234 U.S. 579 (1914); Green v. Chicago, B. & Q. Ry., 205 U.S. 530, 533–34 (1907).

The increased mobility of individuals put similar pressure on the jurisdictional doctrine. With increased travel, people were not always easy to locate for purposes of service of process. Moreover, the new mobility increased the ability of individuals to travel to distant locations and cause injuries which left victims who then had to travel to the defendant’s state for any recourse.

One solution was to expand quasi-in Rem to include attachment of an intangible “res” such as a debt. As a result, a defendant was subject to quasi-in rem type 2 jurisdiction wherever his debtors were found. See Harris v. Balk, 198 U.S. 215 (1905). This is discussed infra in Section B.6.

Another solution was to hold that an individual is subject to in personam jurisdiction in her domicile, regardless of whether she is physically served there. The Supreme Court upheld this approach in Milliken v. Meyer, 311 U.S. 457, 462–64 (1940), explaining:

Domicile in the state is alone sufficient to bring an absent defendant within the reach of the state’s jurisdiction. ** [As] in the case of the authority of the United States over its absent citizens, the authority of a state over one of its citizens is not terminated by the mere fact of his absence from the state. The state which accords him privileges and affords protection to him and his property by virtue of his domicile may also exact reciprocal duties. ** One such incident of domicile is amenability to suit within the state ** where the state has provided and employed a reasonable method for apprising such an absent party of the proceedings against him.

This, however, was not a complete solution. States began to enact consent statutes for individuals that were similar to those used against corporations. The following case considers such a statute.
HESS v. PAWLOSKI
274 U.S. 352, 47 S. Ct. 632, 71 L. Ed. 1091 (1927)

JUSTICE BUTLER delivered the opinion of the Court.

This action was brought by defendant in error to recover damages for personal injuries. The declaration alleged that plaintiff in error negligently and wantonly drove a motor vehicle on a public highway in Massachusetts and that by reason thereof the vehicle struck and injured defendant in error. Plaintiff in error is a resident of Pennsylvania. No personal service was made on him and no property belonging to him was attached. The service of process was made in compliance with General Laws of Massachusetts [statutory law], the material parts of which follow:

"The acceptance by a nonresident of the rights and privileges conferred by section three or four, as evidenced by his operating a motor vehicle thereunder, or the operation by a nonresident of a motor vehicle on a public way in the commonwealth other than under said sections, shall be deemed equivalent to an appointment by such nonresident of the registrar or his successor in office, to be his true and lawful attorney upon whom may be served all lawful processes in any action or proceeding against him, growing out of any accident or collision in which said nonresident may be involved while operating a motor vehicle on such a way, and said acceptance or operation shall be a signification of his agreement that any such process against him which is so served shall be of the same legal force and validity as if served on him personally. ***

Plaintiff in error appeared specially for the purpose of contesting jurisdiction and filed an answer in abatement and moved to dismiss on the ground that the service of process, if sustained, would deprive him of his property without due process of law in violation of the Fourteenth Amendment. The court overruled the answer in abatement and denied the motion. ** The jury returned a verdict for defendant in error. The exceptions were overruled by the Supreme Judicial Court. Thereupon the Superior Court entered judgment. **

The question is whether the Massachusetts enactment contravenes the due process clause of the Fourteenth Amendment.

The process of a court of one State cannot run into another and summon a party there domiciled to respond to proceedings against him. Notice sent outside the State to a nonresident is unavailing to give jurisdiction in an action against him personally for money recovery. Pennoyer v. Neff. There must be actual service within the State of notice upon him or upon some one authorized to accept service for him. A personal judgment rendered against a nonresident who has neither been served with process nor appeared in the suit is without validity. The mere transaction of business in a State by nonresident natural persons does not imply consent to be bound by the process of its courts. The power of a State to exclude foreign corporations, although not absolute but qualified, is the ground on which such an implication is supported as to them. But a State may not withhold from nonresident individuals the right of doing business therein. The privileges and immunities clause of the Constitution, §2, Art. IV, safeguards to the citizens of one State the right "to pass through, or to reside in any other state for purposes of
t. i.e., agriculture, professional pursuits, or otherwise.” And it prohibits state legislation discriminating against citizens of other States.

Motor vehicles are dangerous machines; and, even when skillfully and carefully operated, their use is attended by serious dangers to persons and property. In the public interest the State may make and enforce regulations reasonably calculated to promote care on the part of all, residents and nonresidents alike, who use its highways. The measure in question operates to require a nonresident to answer for his conduct in the State where arise causes of action alleged against him, as well as to provide for a claimant a convenient method by which he may sue to enforce his rights. Under the statute the implied consent is limited to proceedings growing out of accidents or collisions on a highway in which the nonresident may be involved. It is required that he shall actually receive a receipt for notice of the service and a copy of the process. And it contemplates such continuances as may be found necessary to give reasonable time and opportunity for defense. It makes no hostile discrimination against nonresidents but tends to put them on the same footing as residents. Literal and precise equality in respect of this matter is not attainable; it is not required. The State’s power to regulate the use of its highways extends to their use by nonresidents as well as by residents. And, in advance of the operation of a motor vehicle on its highway by a nonresident, the State may require him to appoint one of its officials as his agent on whom process may be served in proceedings growing out of such use. Kane v. New Jersey, 242 U.S. 160, 167 [1916].

The case recognizes power of the State to exclude a nonresident until the formal appointment is made. And, having the power so to exclude, the State may declare that the use of the highway by the nonresident is the equivalent of the appointment of the registrar as agent on whom process may be served. The difference between the formal and implied appointment is not substantial so far as concerns the application of the due process clause of the Fourteenth Amendment.

Judgment affirmed.

NOTES AND QUESTIONS

1. The facts state that the defendant “appeared specially.” A special appearance is a procedure that allows the defendant to come forward in a case and contest jurisdiction without thereby consenting to jurisdiction. All states permit defendants to contest personal jurisdiction without waiving the defense. Similarly, under the Federal Rules of Civil Procedure, a defendant may raise a jurisdictional objection without thereby consenting to jurisdiction. In Chapter 6 we will explore in greater detail the procedures for challenging jurisdiction.

2. Is the theory of the Massachusetts statute that by driving into the state, a driver “consented” to the appointment of the Registrar of Motor Vehicles as her agent for service of process? Suppose that before heading to Massachusetts, Mr. Hess had sent a letter to the Registrar indicating in the strongest possible terms that he did not consent to the Registrar or anyone else being his agent. In such a case, could Hess still be sued in Massachusetts without personal service on him in state?
3. Although the Privileges and Immunities Clause clearly precludes a state from keeping out altogether citizens of other states, do *Hess* and *Kane* (discussed in *Hess*) allow them to exclude people who are in cars? What other state interest might justify implied consent theory? See Henry L. Doherty & Co. v. Goodman, 294 U.S. 623 (1935) (upholding jurisdiction over company whose agents were selling securities in forum; Court notes that selling of securities is highly regulated).

3. The Modern Era

In dealing with jurisdiction over corporations, the Court began moving away from the *Pennoyer*-based terms of “presence” and “consent” and focusing instead on whether the corporation was “doing business” in the state. Professor Kurland has explained:

> The law reports became cluttered with decisions as to what constituted “doing business.” * * * The myriad of cases dealing with the question of “doing business” soon substituted that shibboleth for any theory. Without looking back of the words, the courts held that jurisdiction existed if the corporate defendant was “doing business” within the jurisdiction but no jurisdiction existed if the corporate defendant was not “doing business.”

Philip Kurland, *The Supreme Court, the Due Process Clause and the In Personam Jurisdiction of State Courts — From Pennoyer to Denckia: A Review*, 25 U. CHI. L. REV. 569, 584–85 (1958). As you will see in the following case, the language of “doing business” ultimately gave way to another verbal formulation.

**INTERNATIONAL SHOE CO. v. WASHINGTON**

326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945)

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, 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 defrayed by contributions required to be made by employers to a state unemployment compensation fund. 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 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. * * *

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.

The motion was heard on evidence and a stipulation of facts by the appeal tribunal which denied the motion 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. 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 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 nits 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 samples, each consisting of one shoe of a pair, which 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 take 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. The court found such additional activities in the salesmen's display of samples sometimes in permanent display rooms, and the salesmen's residence within the state, continued over a period of years, all resulting in a 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. [The Court rejects this argument, noting that Congress has by statute authorized states to establish such unemployment funds.]

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. 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.* 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 (1940).

Since the corporate personality is a fiction, although a fiction intended to be acted upon as though it were a fact, 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 "present" or "presence" are 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. Those demands may be met by such contacts of the corporation with the state of the
has 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.

“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. 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. 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.

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, 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.

ally, 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 (1923), 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. Hess v. Pouloski. 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. But more realistically it may be said that those authorized acts were of such a nature as to justify the fiction.

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. 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 rev'ons. Cf. Pennoyer v. Neff.

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.

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 these 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. 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.

* * *

Affirmed.

JUSTICE BLACK delivered the following opinion.

* * *

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. 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.

* * *

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. * * * 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 Constitution gave the States that power, I think it a judicial deprivation to condition its exercise upon this 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. * * *

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. * * *

* * *

NOTES AND QUESTIONS

1. After International Shoe, it is no longer necessary to fit the defendant’s activities into a model of consent or presence. The new test focuses on whether the defendant’s activities constitute “minimum contacts” such that jurisdiction is consistent with “traditional notions of fair play and substantial justice.” Justice Stone says of his new formulation that it is not new at all but simply reiterates what courts were doing all along under the old models of consent and presence. But
hasn't the shift in paradigm from presence to fairness fundamentally altered jurisdiction doctrine?

2. *International Shoe* involved a corporate defendant. Later cases made clear that the *International Shoe* test applies as well to individual defendants. See Kalko v. Superior Court, 436 U.S. 84, 92 (1978).

3. The Court differentiates between cases in which the cause of action is related to the contacts and those in which the case is unrelated. Later cases develop this distinction into two categories. See *Helicopteros Nacionales de Columbia, S.A. v. Hall*, which is in Section B.4 below. Suits in which the contacts are related to the claim are referred to as *specific jurisdiction* cases. Those in which the contacts are unrelated are called *general jurisdiction*. Which type of case is *International Shoe*? The Court suggests that if the contacts are unrelated to the claim, then there will be jurisdiction only if the defendant's contacts are "continuous and systematic." At what point do a defendant's contacts move from being "casual" to "continuous and systematic"?

4. Consider the following hypotheticals. How should they come out under the *International Shoe* test?

(a) An *International Shoe* delivery truck carrying shoes from Missouri to Washington drives through Colorado, where it hits a Colorado pedestrian. Can Pedestrian sue *International Shoe* in Colorado? Would it matter if the truck driver had not planned to go through Colorado but got lost and ended up there?

(b) Could Pedestrian sue *International Shoe* in Washington?

(c) Could Pedestrian sue *International Shoe* in Missouri, where the defendant's headquarters were located?

(d) *International Shoe*’s headquarters were located in St. Louis, Missouri, very close to Illinois. Suppose Pedestrian has a vacation home in Illinois and hence thinks it would be very convenient to litigate in Illinois. Can Pedestrian sue *International Shoe* in Illinois?

(e) Suppose *International Shoe* operates retail shoe outlets in Washington. A customer buys a pair of shoes there, but the shoes are defective. Can the customer sue *International Shoe* in Washington?

(f) *International Shoe* operates retail outlets in Washington but not in Oregon. An Oregon citizen visits the Washington store and buys a pair of defective shoes which she takes back to Oregon. Can she sue *International Shoe* in Oregon?

(g) Suppose that the Oregonian had seen the shoes at the Washington store but had returned home. She then contacted *International Shoe* directly and ordered a pair of shoes. The shoes were sent by *International Shoe* to the customer in Oregon. Could she sue *International Shoe* in Oregon?
(h) Suppose that instead of having the shoes shipped to Oregon, the customer picked them up in Missouri while she was vacationing in St. Louis. At the time she picks up the shoes, the customer makes it very clear she is going to take the shoes back to Oregon. Can she sue in Oregon?

(i) Suppose International Shoe makes shoe components such as heels and soles. International Shoe sells its heels to a Pennsylvania company. The Pennsylvania company incorporates the heels into its shoes which it then sells in Oregon. Can a person who buys the shoes in Oregon and is injured by a defective heel sue International Shoe in Oregon?

5. Reconsider Pennoyer v. Neff. Under the test of International Shoe, would there have been in personam jurisdiction over Neff in the underlying suit of Mitchell v. Neff?

6. Note that the Court requires that the defendant have minimum contacts with the forum "if he be not present." Does that mean that defendant's presence in the forum continues to be an independent basis for in personam jurisdiction, even in the absence of other contacts? We will reconsider this issue in connection with Burnham v. Superior Court of California, in Section B.7, below.

7. The shift in approach from Pennoyer to International Shoe can be understood as part of a broader jurisprudential movement from formalism to realism. The formalism of the nineteenth and early twentieth centuries viewed legal analysis as a deductive, almost mathematical process of identifying principles within an area of law and then deducing all the subordinate principles. Formalism relied heavily on classification and proper labeling. The analysis of Pennoyer has formal elements: the Court purports to deduce its conclusion about personal jurisdiction from broad principles about the nature of independent states and it draws sharp distinctions between categories such as in rem and in personam jurisdiction.

Legal realism, which became prominent during the 1930s, challenged the deductive and classification-based approach of formalism. Legal realists argued that law must be understood in functional terms as a means to accomplish social ends. In a famous article, Felix Cohen, a prominent legal realist, criticized the "transcendental nonsense" of trying to determine where a corporation is "present." Felix Cohen, Transcendental Nonsense and the Functional Approach, 35 COLUM. L. REV. 809 (1935). Cohen accused courts of attempting to "thingify" corporations and argued that asking where a corporation "is" is the modern equivalent of asking how many angels can dance on the head of a pin. Notice that Justice Stone in International Shoe similarly rejects presence as a meaningful test. Cohen offered the following analysis of the issue of personal jurisdiction:

If a competent legislature had considered the problem of when a corporation incorporated in another State should be subject to suit, it would probably have made some factual inquiry into the practice of modern corporations in choosing their sovereigns and into the actual significance of the relationship between a corporation and the state of its incorporation. It might have considered the difficulties that injured plaintiffs may encounter if they have to bring suit against corporate defendants in the state of
incorporation. It might have balanced, against such difficulties, the possible hardship to corporations of having to defend actions in many states, considering the legal facilities available to corporate defendants. On the basis of the facts revealed by such an inquiry, and on the basis of certain political or ethical value judgments as to the propriety of putting financial burdens upon corporations, a competent legislature would have attempted to formulate some rule as to when a foreign corporation should be subject to suit.

Id. at 810. Do you think the approach Cohen describes is what the Court had in mind in *International Shoe*? For more on formalism and the realist response, see Joseph Singer, *Legal Realism Now*, 76 CAL. L. REV. 465 (1988).

**Note on McGee, Hanson, and Gray**

During the 1950s, the Court decided a handful of personal jurisdiction cases. Two cases of note were *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957), and *Hanson v. Denckla*, 357 U.S. 235 (1958).

In *McGee*, a California citizen purchased a life insurance policy from an Arizona insurance company. A Texas insurance company later took over the Arizona company. When it took over, the Texas company mailed a reinsurance certificate to the California insured. The insured in turn sent his premiums from California. The insured died in California, and a dispute arose concerning the policy. (The insurance company asserted that the policy was void because the insured had committed suicide.) The beneficiaries sued the Texas insurance company in California state court. Although there was no evidence that the defendant had ever solicited or done any insurance business in California apart from this particular policy, the Supreme Court found that there was jurisdiction. The Court explained:

> Turning to this case we think it apparent that the Due Process Clause did not preclude the California court from entering a judgment binding on respondent. It is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that State. The contract was delivered in California, the premiums were mailed from there and the insured was a resident of that State when he died. It cannot be denied that California has a manifest interest in providing effective means of redress for its residents when their insurers refuse to pay claims. These residents would be at a severe disadvantage if they were forced to follow the insurance company to a distant State in order to hold it legally accountable. When the claims were small or moderate individual claimants frequently could not afford the cost of bringing an action in a foreign forum — thus in effect making the company judgment proof. Often the crucial witnesses — as here on the company’s defense of suicide — will be found in the insured’s locality. Of course there may be inconvenience to the insurer if it is held amenable to suit in California where it had this contract but certainly nothing which amounts to a denial of due process. There is no contention that respondent did not have adequate notice of the suit or sufficient time to prepare its defenses and appear.
B. CONSTITUTIONAL LIMITS ON PERSONAL JURISDICTION

355 U.S. at 223–24.

A year later, Hanson undercut the seemingly expansive approach of McGee. Hanson arose out of a family inheritance dispute. At issue was the validity of a trust. Dora Donner created the trust while she was domiciled in Pennsylvania. The trust instrument was executed in Delaware, naming a Delaware bank as trustee. Mrs. Donner reserved the trust income to herself and retained the power to designate who would receive the principal. Mrs. Donner later moved to Florida and designated the recipients of the trust. Following her death, a dispute developed between those family members who inherited money through Mrs. Donner's will and the trust beneficiaries.

Mrs. Donner's will was probated in Florida, and under Florida law, the Delaware bank was a necessary party to that litigation. The issue then arose whether Florida had personal jurisdiction over the Delaware bank. The Supreme Court held that Florida did not. In reaching this conclusion, the Court noted that when the trust was created, there was no connection with Florida. In addition, the Court found that Mrs. Donner's later move to Florida was not sufficient to create jurisdiction.

The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application 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.

357 U.S. at 253. The Court distinguished McGee explaining: "From Florida Mrs. Donner carried on several bits of trust administration that may be compared to the mailing of premiums in McGee. But the record discloses no instance in which the trustee performed any acts in Florida that bear the same relationship to the agreement as the solicitation in McGee." Id. at 252.

For 18 years following Hanson, the Supreme Court paid little attention to personal jurisdiction. During this period, state courts interpreted McGee expansively and largely ignored Hanson. A typical case is Gray v. American Radiator & Standard Sanitary Corp., 176 N.E.2d 761 (Ill. 1961). In Gray, the plaintiff sued the Titan Valve Co. alleging that it had negligently constructed a safety valve, and as a result of its negligence, a water heater had exploded. Plaintiff sued in Illinois, and Titan, an Ohio corporation, challenged personal jurisdiction. Titan had manufactured the valve in Ohio, then sold it to a Pennsylvania company which had incorporated it into the water heater. The water heater "in the course of commerce" was sold to the Illinois consumer. There was no evidence in the record that Titan had done any other business in Illinois either directly or indirectly. The Supreme Court of Illinois upheld jurisdiction stating:

In the case at bar defendant does not claim that the 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 formerly encountered in defending lawsuits brought in other States.

176 N.E.2d at 766. Notice the court's rationale. You should reconsider this rationale after you have read the next case.

In 1976, the Court began hearing personal jurisdiction cases again. In the fourteen years from 1976 to 1990, the Supreme Court decided twelve personal jurisdiction cases. The Court's major decisions during this period are considered below.

**WORLD-WIDE VOLKSWAGEN v. WOODSON**
444 U.S. 286, 100 S. Ct. 559, 62 L. Ed. 2d 480 (1980)

**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.
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.  

The Robinsons 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, 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.

The facts presented to the District Court showed that World-Wide is incorporated and has its business office in New 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 medium calculated to reach Oklahoma. In fact, as respondents' counsel conceded at oral argument 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.

Despite the apparent paucity of contacts between petitioners and Oklahoma, the District Court rejected their constitutional claim and reaffirmed that ruling in denying petitioners' motion for reconsideration. Petitioners then sought a writ of prohibition in the Supreme Court of Oklahoma to restrain the District Judge, respondent Charles S. Woodson, from exercising in personam jurisdiction over them. They renewed their contention that, because they had no "minimal contacts" with the State of Oklahoma, the actions of the District Judge were in violation of their rights under the Due Process Clause.

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1 The driver of the other automobile does not figure in the present litigation.

2 Volkswagen also entered a special appearance in the District Court, but unlike World-Wide and Seaway did not seek review in the Supreme Court of Oklahoma and is not a petitioner here. Both Volkswagen and Audi remain as defendants in the litigation pending before the District Court in Oklahoma.
The Supreme Court of Oklahoma denied the writ holding that personal jurisdiction over petitioners was authorized by Oklahoma’s “long-arm” statute, OKLA. STAT., Tit. 12, §1701.03(a)(4) (1971). Although the court noted that the proper approach was to test jurisdiction against both statutory and constitutional standards, its analysis did not distinguish these questions, probably because 1701.03(a)(4) has been interpreted as conferring jurisdiction to the limits permitted by the United States Constitution. The court’s rationale was contained in the following paragraph:

“In the case before us, the product being sold and distributed by the petitioners is by its very design and purpose so mobile that petitioners can foresee its possible use in Oklahoma. This is especially true of the distributor, who has the exclusive right to distribute such automobile in New York, New Jersey and Connecticut. The evidence presented below demonstrated that goods sold and distributed by the petitioners were used in the State of Oklahoma, and under the facts we believe it reasonable to infer, given the retail value of the automobile, that the petitioners derive substantial income from automobiles which from time to time are used in the State of Oklahoma. This being the case, we hold that under the facts presented, the trial court was justified in concluding that the petitioners derive substantial revenue from goods used or consumed in this State.”

We granted certiorari to consider an important constitutional question with respect to state-court jurisdiction and to resolve a conflict between the Supreme Court of Oklahoma and the highest courts of at least four other States. We reverse.

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. 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. 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. The concept of minimum contacts, in turn, can be seen to perform two

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7 This subsection provides:

“A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action or claim for relief arising from the person’s . . . 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 . . . “ ** *
related, but 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, 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." 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.; the plaintiff's interest in obtaining convenient and effective relief, see Kulko v. California Superior Court, 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.

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, 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. 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*, we emphasized that the reasonableness of asserting jurisdiction over the defendant must be assessed "in the context of our federal system of government," *International Shoe*, and stressed that the Due Process Clause ensures not only fairness, but also the "orderly administration of the laws." As we noted in *Hanson v. Denckla*:

"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*, to the flexible standard of *International Shoe*. But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. 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*. 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*.

III

Applying these principles to the case at hand, 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.