World-Wide Volkswagen Corp. v. Woodson: A Limit to the Expansion of Long-Arm Jurisdiction

For nearly seventy years the landmark holding in Pennoyer v. Neff\(^1\) remained a major force in the American law of jurisdiction. Pennoyer disallowed state court exercises of jurisdiction over nonresident defendants unless they were present within the state or voluntarily appeared before the court.\(^2\) Beginning with International Shoe Co. v. Washington,\(^3\) this concept of physical power over property yielded to an expanded view of the ability of the states to exercise personal jurisdiction through the adoption of the "minimum contacts" standard.\(^4\) Cases such as McGee v. International Life Insurance Co.,\(^5\) construed this standard liberally and continued to expand the ability of the state courts to exercise jurisdiction.\(^6\) In Hanson v. Denckla,\(^7\) and more recently in Shaffer v. Heitner,\(^8\) however, the Supreme Court interpreted the minimum contacts standard narrowly to deny state court exercises of jurisdiction over nonresident defendants. In World-Wide Volkswagen Corp. v. Woodson,\(^9\) the Supreme Court adopted a more restrictive position and further limited the ability of the state courts to exercise jurisdiction. While World-Wide Volkswagen does not represent a return to the physical presence or consent requirements of Pennoyer, the new restrictive approach reaffirms the Supreme Court's commitment to the integrity of state boundaries.

After a brief summary of the Supreme Court's decision in World-Wide Volkswagen Corp. v. Woodson, the court will proceed to analyze the implications of this decision for the future of American law of jurisdiction.

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1. 95 U.S. 714 (1877).
2. Id. at 720.
4. Under the "minimum contacts" test, a forum state could not subject a nonresident defendant to the jurisdiction of its courts unless the defendant had "certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" Id. at 316 (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)).
Wide Volkswagen and the relevant legal background, this Note critically analyzes the Court's ruling and its possible effect on state court assertions of jurisdiction over nonresident defendants. This Note specifically examines the jurisdictional test applied in World-Wide Volkswagen and the implications of the test's "interstate federalism" foundation. The Note concludes by positing a jurisdictional analysis which deemphasizes defendant-forum contacts.

I

THE CASE

A. The Facts

In 1976, Harry and Kay Robinson purchased a new Audi automobile from Seaway Volkswagen, Inc. in Massena, N.Y. While driving the Audi through Oklahoma, Mrs. Robinson was struck from behind by another automobile. The gasoline tank ruptured and Mrs. Robinson and her two children were severely burned.

The Robinsons filed a products liability suit in Oklahoma against: (1) the manufacturer of the automobile, (2) the United States importer of the automobile, World-Wide Volkswagen Corp. (World-Wide), and (4) the retail dealer, Seaway Volkswagen, Inc. (Seaway). Mrs. Robinson asserted jurisdiction over the nonresident defendants under Oklahoma's long-arm statute, which conferred jurisdiction limited primarily by federal constitutional standards. Seaway and World-Wide entered special appearances to contest Oklahoma's exercise of jurisdiction, but the Oklahoma Supreme Court rejected their claims.

B. The Decision

The United States Supreme Court granted certiorari and re-

10. The Robinsons were in the process of moving from New York to Arizona.
11. The driver of the other automobile was not involved in the present litigation.
12. Both Seaway and World-Wide are New York corporations; neither had conducted business in Oklahoma. Seaway's dealership is located in New York, and World-Wide distributes Audis in Connecticut, New York, and New Jersey. 444 U.S. at 298.
13. Oklahoma courts have jurisdiction over a person:
   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 . . . .
14. World-Wide Volkswagen Corp. v. Woodson, 585 P.2d 351, 355 (Okla. 1978), rev'd, 444 U.S. 286 (1980). The court based its decision on the fact that the defendants could foresee the automobile's possible use in Oklahoma and that substantial revenue was derived by the petitioner from automobiles that were occasionally used in the forum state. 585 P.2d at 354.
versed the state supreme court’s ruling. The Court held that the Oklahoma court may not exercise personal jurisdiction over World-Wide or Seaway, since neither defendant sold or distributed cars in Oklahoma.

In his majority opinion, Justice White reasoned that subjecting the defendants to jurisdiction in Oklahoma would have been unreasonable, since they could not “reasonably anticipate being haled into court there.” The Court found that the defendants had no contact with Oklahoma and did not purposefully avail themselves of the privileges and benefits of Oklahoma law. The Court also refused to accord any special jurisdictional status to automobiles by rejecting the argument that automobiles should be subject to broader jurisdictional liability due to their uniquely mobile nature.

In his dissenting opinion, Justice Brennan argued that the majority interpreted the minimum contacts requirement too narrowly. He reasoned that the defendants reasonably could have been subject to suit in Oklahoma, since the sale of the automobile purposefully injected the vehicle into the stream of interstate commerce, enabling it to travel to distant states. He then evaluated Oklahoma’s interest in the litigation and the availability of evidence and witnesses, and concluded that these considerations required allowing Oklahoma to exercise jurisdiction over the defendants.

Justices Marshall and Blackmun, in their dissenting opinions, reasoned that the defendants had purposefully availed themselves of the rights and privileges of conducting business in Oklahoma, since they participated in a nationwide service network. In addition, the defendants sold products whose value was directly related to their mobility and it was foreseeable that their automobiles would travel to distant states.

II
LEGAL BACKGROUND

The evolution of personal jurisdiction over nonresidents during the period beginning with Pennoyer and ending with the recent deci-

17. Id. at 298. See also note 12 supra.
18. 444 U.S. at 297.
19. Id. at 295.
20. Id. at 296 n.11.
21. Id. at 299 (Brennan, J., dissenting).
22. Id. at 306 (Brennan, J., dissenting).
23. Id. at 305 (Brennan, J., dissenting).
24. Id. at 314 (Marshall, J., dissenting).
25. Id.
sions in *Shaffer v. Heitner* and *Kulko v. California Superior Court* has received extensive coverage in the legal literature. Jurisdiction under *Pennoyer* was grounded in notions of physical power. The Court in *Pennoyer* established two jurisdictional principles: First, every state possesses exclusive jurisdiction over persons and property within its territory; and, second, no state can exercise direct jurisdiction over persons or property outside its boundaries.

In *International Shoe Co. v. Washington*, the United States Supreme Court significantly deemphasized the importance of the principles established in *Pennoyer*. In an action to collect tax obligations incurred through the defendant's sales activities in Washington, the Supreme Court held that the Washington court could exercise jurisdiction over a Delaware corporation with its principal place of business in Missouri. Due process considerations allowed personal jurisdiction over out-of-state defendants if they had minimum contacts with the forum such that maintenance of the suit did not offend "traditional notions of fair play and substantial justice." Thus, a constitutional standard of fairness, as opposed to physical power, determined the validity of a state's exercise of personal jurisdiction over a nonresident defendant. The minimum contacts test supplemented *Pennoyer*'s physical power analysis, providing an alternative means of establishing jurisdiction over nonresident defendants.

After *International Shoe*, the Supreme Court faced the difficult
task of defining the contacts necessary to support the exercise of personal jurisdiction. *McGee v. International Life Insurance Co.* interpreted the minimum contacts standard expansively, and held that a California court had jurisdiction over a Texas insurer whose only business within the state was the single sale by mail of the insurance policy involved in the suit. *McGee* is noteworthy because it appeared to establish a rule that even one minor contact with the forum state could satisfy “traditional notions of fair play and substantial justice.” Due process requirements were satisfied by the disputed contract’s substantial connection with California. The defendant’s solicitation in the state was sufficient to confer jurisdiction. One year later in *Hanson v. Denckla*, the Court backtracked from the jurisdictionally expansive reasoning adopted in *McGee*. Reemphasizing the importance of the defendant’s ties to the forum, the Court denied a Florida court jurisdiction over a Delaware trust company in a case testing the validity of a power of appointment under a trust. Although at the time of the appointment the settlor was a Florida resident, when the trust was created she was a Pennsylvania resident. The Court held that minimum contacts could not exist unless there was “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.” The Court stressed that the defendant’s activities within the state, as opposed to the inconvenience of having to litigate in the forum, were determinative.

The conflicting decisions in *McGee* and *Hanson* confused the already perplexing minimum contacts standard. To further complicate the problem, the United States Supreme Court remained noticeably silent regarding state jurisdiction for nearly twenty years after deciding

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36. Id. at 222-23.
37. It could be argued that since the single contact was directly related to the litigation, *McGee* should not be characterized as requiring only “minimal” contacts. While this argument has some appeal, *McGee* still can be reasonably characterized as jurisdictionally expansive, since it was the first Supreme Court case allowing jurisdiction over a nonresident defendant based on the existence of a single contact.
39. 355 U.S. at 223.
41. Id. at 253 (citing International Shoe Co. v. Washington, 326 U.S. 310 (1945)).
42. See 357 U.S. at 254.
43. Factual distinctions between *McGee* and *Hanson* prevent an actual clash of their results. The real conflict lies in their descriptions of the jurisdictional tests to be applied and the importance attributed to state boundaries. *McGee* required very minimal defendant-forum contacts and attributed little or no importance to state boundaries.
International Shoe, McGee, and Hanson. As a result, state courts reached inconsistent results.\textsuperscript{44}

In \textit{Shaffer v. Heitner},\textsuperscript{45} the Court again attempted to clarify the contacts necessary to support state court jurisdiction. In \textit{Shaffer} a non-resident shareholder brought a derivative suit in Delaware against a corporation incorporated in Delaware and twenty-eight present or former corporate officials. None of the individual defendants were residents of Delaware and the corporation's principal place of business was outside of Delaware. The United States Supreme Court struck down Delaware's exercise of jurisdiction and affirmed the standards established in \textit{International Shoe} and its progeny.\textsuperscript{46} \textit{Shaffer} construed these cases as requiring a nexus among the forum, the litigation, and the defendant to establish the necessary minimum contacts.\textsuperscript{47} While the discussion of this tripartite nexus provides some guidance in defining minimum contacts, the test remains ambiguous.

Although \textit{Shaffer}'s reasoning generally is consistent with the analysis in \textit{Hanson}, \textit{Shaffer} reverted to emphasizing fundamental fairness to the defendant over state sovereignty.\textsuperscript{48} The Court explained that since \textit{International Shoe}, the relationship among the defendant, the forum, and the litigation has become the critical jurisdictional concern.\textsuperscript{49}


\textsuperscript{45} \textit{Id.} at 212, 216-17. \textit{Shaffer} extended the requirement of minimum contacts from in personam jurisdiction—jurisdiction directly over the defendant, as was involved in \textit{International Shoe}—to all assertions of jurisdiction, including quasi-in-rem—jurisdiction over a defendant to the extent of the value of the property attached, as was involved in \textit{Shaffer}. As a result of \textit{Shaffer}, the distinction between quasi-in-rem and in personam jurisdiction has become much less important. See, e.g., Marketing Showcase, Inc. v. Alberto-Culver Co., 445 F. Supp. 755 (S.D.N.Y. 1978); Caroline Power & Light Co. v. Uranex, 451 F. Supp. 1044 (N.D. Cal. 1977).

\textsuperscript{46} \textit{Id.} at 204. The requirement of a nexus among the forum, the litigation, and the defendant did not actually modify previous precedent; however, it did serve to clarify what was necessary to support a finding of minimum contacts. Both the plaintiff and the defendant must have contact with the forum. The Court did, however, note two exceptions to this nexus requirement: (1) Attachments are permissible in a state in which the defendant does not have the requisite minimum contacts “as security for a judgment being sought in a forum where the litigation can be maintained consistently with \textit{International Shoe},” \textit{Id.} at 210; and (2) “Once it has been determined by a court of competent jurisdiction that the defendant is a debtor of the plaintiff, there would seem to be no unfairness in allowing an action to realize on that debt in a State where the defendant has property, whether or not that State would have jurisdiction to determine the existence of the debt as an original matter,” \textit{Id.} at 210 n.36.

\textsuperscript{48} \textit{See id.} at 204-06.

\textsuperscript{49} \textit{Id.} at 204.
This contrasts with Pennoyer's concentration on state sovereignty and physical presence within the state.

Shortly after Shaffer, the Supreme Court reaffirmed the necessity of defendant-forum contacts in Kulko v. California Superior Court.\textsuperscript{50} The Kulkos and their two children were New York residents.\textsuperscript{51} After the couple's divorce, Mrs. Kulko moved to California and the two children eventually joined her. Mrs. Kulko brought an action in a California court to increase her child support. On appeal, the Supreme Court struck down the state court's assertion of jurisdiction over Mr. Kulko as violative of the due process clause of the fourteenth amendment. The Court held that Mr. Kulko did not have sufficient personal contact with California. Simply allowing a child to leave New York to live in California, the Court reasoned, is not the type of purposeful conduct sufficient to establish minimum contacts.\textsuperscript{52} Nor did Mr. Kulko take advantage of the benefits and protections of California law. In the Court's opinion, the defendant's conduct, and not merely the effects of his conduct in the forum state, was the determinative consideration.\textsuperscript{53}

III

CASE ANALYSIS

A. The Jurisdictional Test Under World-Wide Volkswagen

World-Wide Volkswagen provided the United States Supreme Court with another opportunity to clarify the type of contacts necessary for a state court to assert jurisdiction over a nonresident defendant. The Court stated that the minimum contacts test performs two related, but distinguishable functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to assure 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.\textsuperscript{54}

While this statement seems to indicate that any jurisdictional question involves distinct due process and federalism considerations, the Court's opinion tends to ignore this distinction. Despite this confusion, the opinion sheds some light on what factors are necessary to support a finding of minimum contacts.

\textsuperscript{50} 436 U.S. 84 (1978).
\textsuperscript{51} Id. at 86-88.
\textsuperscript{52} See id. at 94. Mr. Kulko's only contacts with California occurred when he married Mrs. Kulko in that state on a military stopover and when he visited during two other brief military stopovers. Id. at 92-93.
\textsuperscript{53} See id. at 96-98.
\textsuperscript{54} 444 U.S. at 291-92.
1. A Preliminary Finding of Defendant-Forum Contacts

*World-Wide Volkswagen* firmly held that a finding of sufficient defendant contacts with the forum must still be established before any other factors can be considered.\(^5\) Although this preliminary requirement is not new,\(^5^6\) *World-Wide Volkswagen* provides a clear example that convenience and state interest factors can only be considered after a finding of minimum contacts has been made. In this case, these “secondary” factors strongly favored allowing jurisdiction to be exercised in Oklahoma. The first of these factors is the convenience to the parties. Since the plaintiffs were hospitalized in Oklahoma at the time the suit was brought,\(^5^7\) requiring them to prosecute the action in New York would have been a great burden. In contrast, neither Seaway nor World-Wide would have faced a similar hardship in having to litigate in Oklahoma.\(^5^8\) Other convenience considerations also favored Oklahoma, since the evidence and the witnesses were more readily available there.\(^5^9\) Moreover, a denial of jurisdiction in Oklahoma could result in an incomplete judicial resolution of the dispute. Although Oklahoma had uncontested jurisdiction over the other two defendants\(^6^0\)—the manufacturer and the importer—a denial of jurisdiction over Seaway and World-Wide in Oklahoma could have forced the plaintiffs to abandon their valid cause of action in that state. To ensure a complete and consistent resolution of the case against all defendants, they would have had to file the entire suit in New York or be forced to prosecute two separate actions.\(^6^1\)

State interest considerations also favored allowing jurisdiction in

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\(^{5^5}\) *Id.* at 294. The Court indicated that to hold otherwise would be a denial of due process.

\(^{5^6}\) *Id.*

\(^{5^7}\) *World-Wide Volkswagen’s* defendant-forum contacts prerequisite may appear to be a recitation of the requirement previously established in *International Shoe*, 326 U.S. 310, 316 (1945). Note, however, that *International Shoe* has been construed by some dissenting Justices as requiring a balancing of defendant-forum contacts with other fairness factors. *See* text accompanying notes 115-40 infra.

\(^{5^8}\) *See* 444 U.S. at 305 (Brennan, J., dissenting).

\(^{5^9}\) Although it may be burdensome for Seaway and World-Wide to litigate in Oklahoma, this burden is equivalent to the burden that the plaintiffs would have to bear if they were healthy and had to litigate in New York. Since the plaintiffs are hospitalized, they face an added burden which tilts the convenience factor toward Oklahoma. It is of no consequence that the plaintiffs were still technically New York residents, *cf.* H. Goodrich & E. Scoles, *Conflict of Laws* § 26 (4th ed. 1964) (change of residence requires both an intent to move to the new state and physical presence within that state), since they had already moved all their belongings from that state.

\(^{5^7}\) 444 U.S. at 305 (Brennan, J., dissenting).

\(^{6^0}\) Both the manufacturer and the United States importer directly distributed automobiles in Oklahoma. Thus, they had the minimum contacts to confer jurisdiction on the Oklahoma court under virtually any formulation of that test. *See* text accompanying notes 78-81 infra.

\(^{6^1}\) It is unclear why the plaintiffs insisted on including Seaway and World-Wide in the litigation. The manufacturer and the United States importer were subject to suit in Oklahoma,
Oklahoma. Oklahoma has an interest in promoting safe highways and in providing a forum for persons injured within its boundaries. This interest should outweigh New York's interest in protecting its citizens from suits in distant and inconvenient forums. Nevertheless, despite these considerations of convenience and state interest favoring jurisdiction in Oklahoma, the message from World-Wide Volkswagen is clear—the existence of sufficient defendant-forum contacts is a necessary prerequisite to any other jurisdictional considerations.

World-Wide Volkswagen also illustrates the Court's commitment to the jurisdictionally restrictive interpretation of the minimum contacts test adopted in Hanson, rather than the more liberal interpretation used in McGee. Although all cases have required a showing of some contact, cases such as McGee suggested that fewer contacts would suffice if they were balanced by heavily one-sided convenience considerations. The reasoning in World-Wide Volkswagen demonstrates that the United States Supreme Court no longer supports such an expansive jurisdictional approach.

2. Defining the Requirement of "Purposefully Availing" Activity

Hanson v. Denckla held that "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 note 60 supra, and they were probably not judgment proof. See generally 444 U.S. at 317-18 (Blackmun, J., dissenting).

62. Oklahoma would seem to have at least some interest in asserting jurisdiction in cases involving allegedly defective automobiles which burst into flames on their highways, since such autos may endanger the lives of Oklahoma's own citizens. See 444 U.S. at 305 (Brennan, J., dissenting).

63. It is also worth noting that there were no choice of law problems. The basic rules of strict liability in New York and Oklahoma are roughly the same. See generally [1979] 1 PROD. LIAB. REP. (CCH) 4060.

64. See text accompanying notes 40-42 supra.

65. The reasoning in World-Wide Volkswagen is actually not inconsistent with McGee's holding. Even under World-Wide Volkswagen's more restrictive interpretation of the minimum contacts test, the Court might have found that the Texas insurer's single contact with California was sufficient to confer jurisdiction in California, since the contact was directly related to the litigation. Such a result would have been consistent with World-Wide Volkswagen's analysis of the stream of commerce theory. See text accompanying notes 78-81 infra. The conflict between World-Wide Volkswagen and McGee can be found by comparing World-Wide Volkswagen's reasoning with the jurisdictionally expansive dicta of McGee. The Court in World-Wide Volkswagen would disagree with McGee to the extent that McGee implies that extremely favorable convenience and state interest considerations can support jurisdiction in a forum which has virtually no contacts (perhaps even fewer contacts than those found in McGee) with the forum.

66. See 355 U.S. at 223. Even in Kulko, the Court weighed state interest and convenience considerations after making a finding that there were insufficient defendant-forum contacts. While this weighing may be dictum, it does cloud the issue of whether state interest and convenience considerations alone, without the prerequisite defendant-forum contacts, would be enough to support the exercise of jurisdiction over a nonresident defendant. See 436 U.S. at 96-101.
the benefits and protections of its laws.\textsuperscript{67} The vague\textsuperscript{68} requirement of "purposefully availing" activity has caused tremendous confusion among the lower courts. Some responded to the confusion by attempting to redefine the \textit{Hanson} standard,\textsuperscript{69} while other courts chose to ignore it completely.\textsuperscript{70}

In \textit{World-Wide Volkswagen}, the Court concluded that neither Seaway nor World-Wide purposefully availed themselves of the privileges and benefits of Oklahoma law. The first factor in this conclusion was that the defendants carried on no activity in Oklahoma. The fortuitous circumstance that a single automobile, sold in New York to New York residents, suffered an accident while passing through Oklahoma was not sufficient to justify a finding of purposeful availment.\textsuperscript{71} Moreover, the Court decided that any marginal revenue that the defendants derived from having their car driven on Oklahoma's highways was inadequate to show that Seaway or World-Wide purposefully availed itself of the benefits of the laws of the forum state.\textsuperscript{72}

The Court then turned to the question of whether foreseeability of the product doing injury in the forum state could satisfy the purposefully availing activity requirement.\textsuperscript{73} \textit{Shaffer v. Heitner} and \textit{Kulko v. Superior Court} had earlier attempted to clarify this issue. \textit{Shaffer

\begin{itemize}
\item \textsuperscript{67} 357 U.S. at 253.
\item \textsuperscript{68} The vagueness results from the failure of the Court in \textit{Hanson} to describe what "purposeful availment" means. It was unclear whether the defendant should have foreseen that its transaction would subject it to litigation in the forum state or simply that the product purchased was likely to be used in the forum state. In addition, it was unclear whether a commercial transaction is required for there to be "purposeful availment."
\item \textsuperscript{69} See, e.g., \textit{Charia v. Cigarette Racing Team, Inc.}, 583 F.2d 184, 186 (5th Cir. 1978); \textit{Coulter v. Sears, Roebuck & Co.}, 426 F.2d 1315, 1317 (5th Cir. 1970); \textit{Buckeye Boiler Co. v. Superior Court}, 71 Cal. 2d 893, 900-02, 458 P.2d 57, 63-64, 80 Cal. Rptr. 113, 121-22 (1969).
\item \textsuperscript{71} Cf. \textit{Buckeye Boiler v. Superior Court}, 71 Cal. 2d 893, 902, 458 P.2d 57, 64, 80 Cal. Rptr. 113, 120 (1969) (indicating that the arrival of the defendant's product in the forum state in a fortuitous manner is not decisive in determining the existence or nonexistence of the requisite jurisdictional activity); \textit{Gray v. American Radiator & Standard Sanitary Corp.}, 22 Ill. 2d 432, 442, 176 N.E.2d 761, 766 (1961) (noting that jurisdiction is presumed unless the defendant can prove that the presence of the product in the forum was an unforeseeable event).
\item \textsuperscript{72} See 444 U.S. at 298-99. Compare Justice Brennan's dissent:
\begin{quote}
[A]n automobile seller derives substantial benefits from States other than its own. A large part of the value of automobiles is the extensive, nationwide network of highways. Significant portions of that network have been constructed by and are maintained by the individual States, including Oklahoma. The States, through their highway programs, contribute in a very direct and important way to the value of petitioners' businesses. Additionally, a network of other related dealerships with their service departments operate throughout the country under the protection of the laws of the various States, including Oklahoma, and enhance the value of petitioners' businesses by facilitating their customers' traveling.
\end{quote}
\textit{Id.} at 307.
\item \textsuperscript{73} 444 U.S. at 295-99.
broadened the purposefully availing activity requirement to include an inquiry into whether the defendant’s activities created “reasonable anticipation” of his future amenability to suit in the forum.\textsuperscript{74} \textit{Kulko} also defined purposefully availing activity in terms of foreseeability of submission to suit in the forum. It was not enough that the defendant knew that his children would move to California and could foresee an effect there. It must also be shown the defendant could foresee that allowing his children to move to California would subject him to the jurisdiction of the California courts.\textsuperscript{75} \textit{World-Wide Volkswagen} reaffirmed this resolution of the issue by explaining that the critical foreseeability is not whether the product is likely to find its way into the forum state and do damage there, but whether the defendant’s activity and connection with the forum state are such that the defendant should reasonably foresee being “hauled into court there.”\textsuperscript{76}

Such a test of purposefully availing activity is not particularly helpful, since the test is circular. The test attempts to determine a result—whether the defendant is subject to the court’s jurisdiction—by reference to the existence of that result, \textit{i.e.}, whether the defendant can foresee being subject to the court’s jurisdiction. In essence, the court’s jurisdiction is dependent on a finding that the court has jurisdiction. Consequently, the test provides no new objective guidance, but only incorporates the holdings of previously decided cases where jurisdiction was found.

An attempt to apply \textit{World-Wide Volkswagen}’s foreseeability test reveals its circular nature. A defendant cannot know whether he is subject to jurisdiction unless courts have held defendants in similar situations subject to jurisdiction; but courts could not have held similar defendants subject to jurisdiction unless these defendants could have foreseen that they could be subject to jurisdiction. Although such a standard may be functional in cases with fact situations similar to previously decided cases, its circular nature makes it useless in unique fact situations which have not yet been faced by the courts. Since a defendant generally could not foresee being subject to jurisdiction unless previous defendants in similar situations were held subject to jurisdiction, this foreseeability standard will also make future jurisdictional expansion difficult, if not impossible.\textsuperscript{77}

\textsuperscript{74} See 433 U.S. at 216. For other cases imposing the requirement of reasonable foreseeability of suit in the forum, see, \textit{e.g.}, Gardner Eng’t Corp. \textit{v.} Page Eng’t Co., 484 F.2d 27 (8th Cir. 1973); In-Flight Devices Corp. \textit{v.} Van Dusen Air, Inc., 466 F.2d 220 (6th Cir. 1972).

\textsuperscript{75} 436 U.S. at 97-98.

\textsuperscript{76} 444 U.S. at 297. Note that the Court concluded that it was foreseeable that purchasers of automobiles sold by Seaway and World-Wide may drive them to Oklahoma. \textit{Id.} at 298.

\textsuperscript{77} Of course, the parties may still argue by analogy to establish foreseeability of submission to suit; however, novel situations will probably arise that are not reasonably similar to previous
In conjunction with its application of a restrictive foreseeability standard, *World-Wide Volkswagen* unnecessarily restricted the use of the "stream of commerce" theory as a means of exercising jurisdiction. This theory generally provides that a forum state may constitutionally assert jurisdiction over a nonresident defendant who has injected a product into the stream of commerce knowing that the product will likely be used in the forum state. The Court restricted the theory's application to instances where the defendant directly, or indirectly through a wholesaler, distributed the product to the forum state. Thus, the theory could not apply to Seaway or World-Wide since the automobile arrived in Oklahoma due to the plaintiffs' unilateral activity. The Court justified its requirement of direct or indirect distribution on the ground that this restriction produces a greater degree of predictability in the judicial system. Potential defendants can structure their activities so as to avoid the jurisdictional reach of certain forums.

Although predictability may be a desirable goal, it does not justify the artificial distinctions perpetuated by *World-Wide Volkswagen*. It is illogical to treat defendants who directly, or through a wholesaler, distribute a product to the forum state differently from defendants who sell products knowing that they will be used in that state. In each of these cases, use of the product in the forum is foreseeable. Perhaps courts should require a lesser showing of state interest and convenience favoring the forum when direct, or even indirect, distribution is involved; however, a blanket refusal to allow jurisdiction where there is neither direct nor indirect distribution is unjustified.

While a restrictive jurisdictional approach may have been justified during the *Pennoyer* era of limited transportation and communication networks, these restrictions are no longer warranted. Commerce has become increasingly nationalized. In addition, modern transportation and communication systems have made it much less burdensome for defendants to litigate in distant forums. Those who place their prod-

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78. See 444 U.S. at 298.
79. See id. at 297-98.
80. See id. at 297.
81. The stream of commerce theory as applied by *World-Wide Volkswagen* is likely to promote absurd results. For example, a potential defendant who sells his product directly to an ultimate consumer, knowing that the consumer will use the product in another state, cannot be subject to jurisdiction in that state. In contrast, a potential defendant who sells his product to a wholesaler knowing that the wholesaler is likely to sell that product in a particular state can be subject to that state's jurisdiction.
82. See Justice Black's discussion in *McGee v. International Life Ins. Co.*:
products on the market knowing that the products are likely to be used throughout the country should not escape jurisdiction simply because they did not directly or indirectly distribute the product to a particular forum and, therefore, could not foresee being subject to suit there. If a defendant suspects that his products will be used in a particular state, jurisdiction over him should not be denied simply due to a technical finding that he could not foresee being sued there. The defendant has purposefully availed himself of the benefits and privileges of that state's laws, to the same degree as a defendant who has directly or indirectly distributed his products in the forum. In both cases jurisdiction should be based on the foreseeability of the products' use in the state rather than a superficial determination of how the product arrived there.

The Court in *World-Wide Volkswagen* also rejected the unique mobility of the automobile as a factor in deciding the foreseeability question. This "unique mobility" theory was used by the Oklahoma Supreme Court in *World-Wide Volkswagen* to demonstrate sufficient defendant-forum contacts. That court reasoned that, since automobiles are by their very design and purpose intended to travel to other states, Seaway and World-Wide should have been able to foresee use of their products in Oklahoma. The United States Supreme Court expressly rejected this argument. The Court's rejection of the unique mobility theory, however, was mainly conclusory and lacked a full analysis of why automobiles should not be treated differently from other products.

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.


83. See 444 U.S. at 306 (Brennan, J., dissenting).

84. See id. at 306-07. There may be many instances where a defendant who did not directly or indirectly distribute his product to the forum state could not reasonably foresee that the product would be used in the forum; however, this does not justify a blanket refusal to allow jurisdiction in every case where the defendant did not directly or indirectly distribute his product to the forum.

85. Id. at 296 n.11. In addition to rejecting the mobility argument, the Court also rejected a "dangerous instrumentality" argument, which was also used in an attempt to justify treating automobiles differently for jurisdictional purposes. The Court rejected this concept since it "apparently was never used to support personal jurisdiction; and to the extent it has relevance today it bears not on jurisdiction but on the possible desirability of imposing substantive principles of tort law such as strict liability." *Id.*


87. 585 P.2d at 354.

88. See note 85 and accompanying text supra.

89. The Court does make a confusing analogy to Harris v. Balk, 198 U.S. 215 (1905).
Although the Court failed to justify adequately its rejection of the unique mobility theory, its position can be persuasively supported. While automobiles are undeniably more mobile than many products, this difference is not great enough to justify according special jurisdictional status to the automobile. An examination of various jurisdictional cases reveals that many products are extremely mobile. An automobile’s self-mobility does not necessarily make it significantly more likely to be used in other jurisdictions. In many cases, products that are not self-mobile may be equally or more likely to end up in another jurisdiction. The particular facts of each case should be determinative in deciding foreseeability questions. While the self-mobility argument retains some intuitive appeal, the distinction is unwarranted due to the high mobility of most products.

B. The Resurgence of State Sovereignty

Over a century ago, the importance of state boundaries was stressed by the United States Supreme Court in *Pennoyer v. Neff*. The Court stressed that the jurisdictional power of every court was necessarily restricted by the territorial limits of the state in which it was located. After *Pennoyer*, however, the importance of state sovereignty gradually diminished. Decisions such as *McGee* reasoned that the continuing national expansion of communication and transportation networks required a concomitant expansion in state court jurisdiction.

*Hanson v. Denckla*, however, clearly indicated that some restrictions on state court jurisdiction must remain. *Hanson* stressed that every state’s power is subject to certain territorial limitations. The cases that followed *Hanson* only served to confuse the balancing of these two opposing forces. Although *Shaffer* expressly repudiated the physical presence concepts of *Pennoyer* by subjecting all state court as-

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91. For example, many products that are sold at airports or other locations where nonresidents generally frequent are just as likely to be used in other jurisdictions.

92. 95 U.S. at 720.

93. See text accompanying note 82 supra.

94. 357 U.S. at 250.

95. Id. at 251.
sertions of jurisdiction to the minimum contacts test established in *International Shoe*, the Court adopted a very restrictive interpretation in its application of the test. *Kulko* similarly applied the test quite restrictively. *Shaffer* and *Kulko* can reasonably be viewed as countering *McGee*'s move toward expanding state court jurisdiction.

*World-Wide Volkswagen* signifies another attempt to restore some of the importance once attributed to state boundaries by stressing that the judiciary must respect the importance of those state boundaries and remain faithful to the principles of interstate federalism. Although the Court does not define the phrase “interstate federalism,” it apparently refers to the principle that states should function, at least to some extent, as independent governmental units. Jurisdictional determinations should respect the rights of the states as sovereigns within a federal system. Thus, the Court has altered the rationale for its commitment to state sovereignty. *World-Wide Volkswagen*'s justification of interstate federalism has replaced *Pennoyer*'s international law justification.

The Court’s application of its own principle, however, is not particularly convincing. Although the Court provides a vague idea of what interstate federalism means, the opinion never satisfactorily explains how this principle justifies denying jurisdiction in Oklahoma. Any jurisdictional determination based on federalism would seem to

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96. 433 U.S. at 212.
97. While the minimum contacts test established in *International Shoe* was viewed by many as a strong move away from notions of state sovereignty, the test can be applied in such a restrictive manner that the end result may be a return to the increased importance of state boundaries. In both *Shaffer* and *Kulko* a very restrictive interpretation of the necessary level of defendant-forum contacts denied jurisdiction.
98. See also note 5 and accompanying text supra.
99. It is interesting to note that the majority opinion in *Shaffer* did not cite *McGee* even once, but did make numerous references to *Hanson*. This focus on *Hanson* continued in *Kulko*, although some references to *McGee* were made. These facts may reasonably be viewed as a resolution by the United States Supreme Court of the conflict between the jurisdictionally restrictive analysis of *Hanson* and the jurisdictionally expansive analysis of *McGee* in favor of *Hanson*. See text accompanying notes 34-44 supra.
100. 444 U.S. at 293.
101. Although expressly not intending to return to the territorial limitations established in *Pennoyer*, id. at 293-94, much of the Court’s analysis supports similar territorial principles.
102. See text accompanying note 54 supra.
103. See 95 U.S. at 729-30. In discussing jurisdictional questions, *Pennoyer* explained that the states should be treated as independent nations, and principles of international law should be used to resolve jurisdictional conflicts. When *Pennoyer* was decided, a foreign nation would not recognize a judgment by the courts of another nation against one of its citizens, unless that individual was present and had been served with process within the nation rendering the judgment. Therefore, *Pennoyer* reasoned that physical presence or consent by the defendant was required for a state court to render a valid judgment against a nonresident defendant. Id. at 730.
require a weighing of state interests; however, the Court completely neglected the state interests involved. It is certainly not obvious that New York’s rights in shielding its residents from litigation in an out-of-state forum are more important than Oklahoma’s rights in promoting safe highways and providing a forum for parties injured within its boundaries.

The absence of any consideration of state interests might be explained by the Court’s failure to distinguish between due process guarantees and interstate federalism. The Court confused the concepts by linking the two principles together, stating that the due process clause, as an instrument of interstate federalism, may sometimes act to divest the state of its power to render a valid judgment. How the due process clause acts as an instrument of interstate federalism is never clarified. The Court seems to equate unfairness to the defendant with principles of federalism. While this unfairness may justify denying jurisdiction in Oklahoma on due process grounds, it is unclear how this unfairness relates to interstate federalism. Although the inconvenience faced by the defendants may be viewed as representative of the interests of the defendant’s state of residence, it is only one of the factors to consider in weighing the sovereign states’ interests. Proper use of a federalism justification mandates inquiry into each state’s interests.

The Court’s use of the minimum contacts test in *World-Wide Volkswagen* also presents an interesting paradox. The minimum contacts test, originally intended to justify expansion of state jurisdiction, is now used to promote principles of state sovereignty and to restrict state court jurisdiction. Thus, the Court explained, not only does the minimum contacts concept protect a defendant from the burden of litigating in a distant or inconvenient forum, but it also prevents states from expanding their jurisdiction beyond the limits imposed upon them by their status as “coequal sovereigns in a federal system.”

The vagueness and uncertainty of the interstate federalism justifi-

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105. 444 U.S. at 294.


107. Another link between due process and federalism occurs when the Court states that the “Due Process Clause ensures not only fairness, but also the ‘orderly administration of the laws.’” 444 U.S. at 294 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)). The Court’s interpretation of “orderly administration of the laws” might be read as requiring foreseeable forums and respect for the territorial limitations on the powers of the states. This interpretation, however, tenuously stretches the due process clause.

108. The minimum contacts test could be viewed as a self-limiting doctrine. However, this did not appear to be the intent of the Court when the test was first discussed in *International Shoe*.

109. 444 U.S. at 292.
cation will likely lead to confusion in the lower courts. Their task of applying this jurisdictional justification has been made unnecessarily difficult by the Supreme Court's failure to provide them with adequate guidance. The Court must clarify whether interstate federalism requires a weighing of state interests or whether an evaluation of fairness to the defendant is sufficient.  

*World-Wide Volkswagen*’s shift from *Pennoyer*’s natural justice and international law justifications to an interstate federalism and due process rationale may have another unanticipated effect. Under *Pennoyer*’s international law formulation, jurisdiction over non-United States residents could be determined consistently with jurisdiction over United States residents, since the international law justification applied equally well to both groups of defendants. The international law justification could be used to protect a foreign country’s sovereignty. In fact, prior to *World-Wide Volkswagen*, cases involving non-United States residents applied the same minimum contacts test used to determine jurisdiction over United States residents.

After *World-Wide Volkswagen*, jurisdictional determinations are based on two justifications: due process and interstate federalism. Where these determinations concern United States residents, a minimum contacts test based on both of these justifications can be employed. However, jurisdictional determinations over non-United States residents can be based only on due process considerations, since principles of interstate federalism have no relevance to interests of foreign nations. Since the principles of federalism, which restrict the ability of state courts to exercise jurisdiction over defendants, are applicable only to United States residents, a less restrictive minimum contacts test should apply to non-United States residents. This mini-

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110. *World-Wide Volkswagen*’s reasoning appears to imply that simply evaluating fairness to the defendant would be sufficient to satisfy principles of interstate federalism. *See id.* at 295.

111. *See, e.g.*, Hutson v. Fehr Brothers, 584 F.2d 833 (8th Cir. 1978); Honeywell v. Metz Apparatewerke, 509 F.2d 1137 (7th Cir. 1975); Duple Motor Bodies, Ltd. v. Hollingsworth, 417 F.2d 231 (9th Cir. 1969); Latimer v. S/A Industrias Reunidas F. Matarazzo, 175 F.2d 184 (2d Cir. 1949); Holt v. Klosters Reder, 355 F. Supp. 354 (W.D. Mich. 1973); Alco Standard v. Benalal, 345 F. Supp. 14 (E.D. Penn. 1972); Edward J. Moriarty & Co. v. General Tire & Rubber Co., 289 F. Supp. 381 (S.D. Ohio 1967). One technical distinction is that in cases involving defendants who are not United States residents the courts apply the due process clause of the fifth amendment as opposed to the fourteenth amendment.

112. *See text accompanying note 54 supra.*

113. An alternative interpretation is that *World-Wide Volkswagen*’s interstate federalism rationale incorporates *Pennoyer*’s international justice notions. Since *World-Wide Volkswagen* does not expressly repudiate those international justice principles, the interstate federalism rationale might supplement rather than supplant the international justice rationale. This interpretation, however, is inconsistent with much of the Court’s reasoning. The Court expressly stated that the minimum contacts test serves two distinct functions: First, it preserves due process guarantees and, second, it promotes interstate federalism. 444 U.S. at 291-92. The Court’s concise language leaves little room for a third, international justice rationale.
mum contacts test would only be determined by due process requirements. The need for a different standard may, therefore, be viewed as opening the door to jurisdictional expansion over defendants who are not United States residents.

Since this less restrictive minimum contacts test would be quite difficult to establish, the lower courts might continue to apply the same minimum contacts test to both classes of defendants. If the courts react in this fashion, the effect of _World-Wide Volkswagen_ will be to weaken the lower courts’ basis for applying their minimum contacts test to non-United States residents, since there will no longer exist an international law rationale to justify equal treatment.

C. A More Equitable Jurisdictional Analysis

What is needed is not a new test, but rather a change in emphasis. The current preoccupation with finding a specified level of defendant-forum contacts should be abandoned. The balancing test originally adopted by Justice Black and subsequently applied by Justice Brennan should be adopted. Rather than focusing solely on minimum contacts as an initial matter to the exclusion of the fairness consideration, the balancing approach of Justices Black and Brennan integrates the “traditional notions of fair play and substantial justice” language of _International Shoe_ into the minimum contacts analysis. This mandates inquiry into three distinct interests: fairness to the defendant, to the plaintiff, and to the states involved. Contrary to the present approach, the interests of the forum state and the plaintiff should be balanced along with the defendant’s interests as an initial matter. Each interest should be accorded equal weight.

The opinions of Justices Black and Brennan provide much guidance in determining what factors should be considered in evaluating each of the three interests. Fairness to the defendant entails evaluating the actual burden the defendant must bear in defending the suit in the forum. This includes considering the hardship involved in traveling to the forum, as well as the mobility of the defendant’s witnesses and legal representatives.

114. For a discussion of what is actually required to satisfy the minimum contacts test after _World-Wide Volkswagen_, see text accompanying notes 55-91 supra.


118. While neither Justice Black nor Justice Brennan uses this exact terminology, their opinions indicate that these are the factors which are being balanced. 357 U.S. at 258-59 (Black, J., dissenting); 444 U.S. at 300 (Brennan, J., dissenting).

119. See 444 U.S. at 309.

other evidence.\textsuperscript{121} The Court should also consider the defendant's expectations and his contacts with the forum.\textsuperscript{122} The amount of contact required by the balancing approach differs significantly from that required by the majority in \textit{World-Wide Volkswagen}. While the balancing approach does not require a specific amount of defendant-forum contact, being satisfied with merely \textit{some} contact,\textsuperscript{123} the majority opinion was concerned with the sufficiency of such contact.\textsuperscript{124} For example, Justice Brennan indicated that the requirement of the balancing test was satisfied in \textit{World-Wide Volkswagen} simply by the fact that the defendants' product had caused injury in Oklahoma.\textsuperscript{125} Once it is established that the defendant has at least some contact with the forum, the sufficiency of the contacts is only one of many factors in considering fairness to the defendant.\textsuperscript{126} Finally, the balancing approach also considers the foreseeability of the defendant's product being used in the forum state,\textsuperscript{127} rather than relying on \textit{World-Wide Volkswagen}'s circular requirement of the foreseeability of suit.\textsuperscript{128}

The primary consideration in evaluating fairness to the plaintiff is the potential burden upon the plaintiff if jurisdiction in the forum state is denied. The location and mobility of the plaintiff's witnesses and evidence must be evaluated. In \textit{World-Wide Volkswagen}, for example, Justice Brennan pointed out that essential witnesses and evidence were located in Oklahoma.\textsuperscript{129} The mobility of the plaintiff may also be a consideration.\textsuperscript{130} Finally, the availability of an alternative forum should be considered to the extent that jurisdiction should rarely be denied if no alternative forum exists. The existence of alternative forums, however, does not alone justify denying jurisdiction. The bal-

\textsuperscript{121} 444 U.S. at 301 (Brennan, J., dissenting).
\textsuperscript{123} Even Justice Brennan conceded that due process considerations require a nonresident defendant to have some contact with a forum state for the court to assert jurisdiction over him. 444 U.S. at 312 n.20 (Brennan, J., dissenting). However, once some defendant-forum contacts have been established, the amount of contact is only one of many considerations in evaluating fairness. Id. at 300.
\textsuperscript{124} Although the Court said that there were no defendant-forum contacts, many courts have found defendant-forum contacts when the defendant's product causes an injury in the forum state. See, e.g., Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961). It appears, therefore, that the Court's decision is based on a finding of insufficient defendant-forum contacts, as opposed to no contacts.
\textsuperscript{125} See 444 U.S. at 305-07 (Brennan, J., dissenting).
\textsuperscript{126} See Shaffer v. Heitner, 433 U.S. at 225 (Brennan, J., concurring in part and dissenting in part).
\textsuperscript{127} See 444 U.S. at 311 (Brennan, J., dissenting).
\textsuperscript{128} See text accompanying notes 76-77 supra.
\textsuperscript{129} 444 U.S. at 305 (Brennan, J., dissenting).
\textsuperscript{130} In \textit{World-Wide Volkswagen}, the plaintiffs were hospitalized in Oklahoma when they brought suit. \textit{Id.}
ancing test is only intended to determine the existence of a suitable forum, not necessarily the best forum.\textsuperscript{131} Under the balancing test, more than one suitable forum is likely to exist.\textsuperscript{132}

An evaluation of fairness to the states should include a consideration of the forum state's interests along with a consideration of the interests of the plaintiff's and defendant's state of residence, if different from the forum state. These factors may include "manifest regulatory interests,"\textsuperscript{133} such as Oklahoma's interest in enforcing its laws to keep its highways safe and in providing a forum for persons injured within its boundaries.\textsuperscript{134} A state also has an interest in protecting its citizens from litigation in distant forums.\textsuperscript{135} The courts should evaluate these and other state interests that are relevant to the particular case.

One cannot deny that the balancing approach grants the courts a great deal of discretion. In addition, it creates a sizeable amount of uncertainty due to the inconsistencies that are liable to result from a court's balancing of various considerations. These weaknesses, however, are not unique to the balancing approach. The standards established in \textit{World-Wide Volkswagen} are similarly subject to varying interpretations, leaving the resolution of jurisdictional questions unclear and discretionary. The Court's use of such technical distinctions as "stream of commerce" or "foreseeability" leaves similar fact situations subject to very different jurisdictional resolutions.\textsuperscript{136} Moreover, the necessary level of minimum contacts under \textit{World-Wide Volkswagen} is still not clear.

Even if the balancing test does lead to more discretionary decisions, this is not necessarily an undesirable effect. Jurisdictional determinations should not be based on mechanical and/or administrable distinctions simply for the sake of judicial expediency, particularly when the results are inconsistent and unprincipled. Courts deciding jurisdictional questions should view the case in its entirety. They

\textsuperscript{131} See Shaffer v. Heitner, 433 U.S. 186, 228 (1977) (Brennan, J., concurring in part and dissenting in part). If a significantly better forum existed, such a problem could be dealt with under the doctrine of forum non conveniens. \textit{See id.} at 228 n.8.

\textsuperscript{132} The existence of more than one suitable forum is possible even under \textit{World-Wide Volkswagen}'s more restrictive jurisdictional analysis, since a defendant could have sufficient minimum contacts with more than one potential forum.

\textsuperscript{133} 433 U.S. at 223 (1977) (Brennan, J., concurring in part and dissenting in part).

\textsuperscript{134} 444 U.S. at 305 (Brennan, J., dissenting).

\textsuperscript{135} \textit{See} text accompanying note 106 \textit{supra}.

\textsuperscript{136} In \textit{World-Wide Volkswagen}, for example, the Court could have found sufficient defendant-forum contacts if a less restrictive foreseeability test or stream of commerce theory had been applied. A foreseeable use within the forum test, rather than foreseeability of litigation, could have been used to allow jurisdiction in Oklahoma. Alternatively (or perhaps in conjunction with the above analysis), the Court could have reasoned that the defendant had placed the automobile in the national stream of commerce by selling the auto with knowledge that it was likely to be used in other states.
should focus on the actual burdens on the parties and on the relevant state interests involved, rather than on technical sufficiency-of-contacts standards. The fine distinctions being drawn in applying the foreseeability and stream of commerce theories detract from their utility as testing devices. A more equitable analysis evaluates the state interests and actual burdens faced by the parties.

Nor should the balancing test violate any due process guarantees. The existence of some defendant-forum contacts should preserve these guarantees. The key to the due process protections, however, lies in the foundation of the balancing approach. The focus of the balancing approach is on fairness, "which is the essence of due process." Where a defendant will not be significantly burdened and has some contact with the forum, he should not be able to claim a due process violation, since no unfairness results. In fact, in some instances a de-emphasis of defendant-forum contacts may actually result in a denial of jurisdiction in an otherwise allowable forum. Where state interest and convenience considerations favor denying jurisdiction, the balancing test can have a restrictive effect. Adopting the balancing approach should promote a rational analysis of the interests of the states and of the parties, thereby implementing both the federalism and due process principles.

Conclusion

World-Wide Volkswagen is noteworthy both for its reliance on principles of interstate federalism and for its heavy emphasis on finding sufficient defendant-forum contacts. While the restrictive jurisdictional analysis in World-Wide Volkswagen does not represent a return to the pure physical power concepts of Pennoyer, it does illustrate the Court's commitment to maintaining the integrity of state boundaries. In a period of continuing expansion of national commerce, however, such a restrictive jurisdictional approach is unjustified. In light of the artificial distinctions used by the Court in finding insufficient defendant-forum contacts, a jurisdictional analysis de-emphasizing defendant-forum contacts in favor of the interests of the states and of the parties would

137. One might argue that considerations of convenience and state interest are more properly suited to choice of law inquiries. While jurisdictional and choice of law questions do not involve identical considerations, the two are often closely related and involve similar considerations. See Hanson v. Denckla, 357 U.S. 235, 258 (1958) (Black, J., dissenting). Merely because convenience and state interest factors are considered in deciding choice of law questions, however, does not justify excluding these factors from consideration when addressing jurisdictional issues.

138. See text accompanying notes 73-84 supra.


140. A court could conceivably spend so much of the opinion finding defendant-forum contacts that little or no analysis is devoted to consideration of state interest and convenience factors. Cf. Cornelison v. Chaney, 16 Cal. 3d 143, 545 P.2d 264, 127 Cal. Rptr. 352 (1976) (bulk of discussion devoted to developing defendant-forum contacts).
provide a superior alternative. Such an approach would better satisfy due process and principles of interstate federalism, both of which, as the Court stated in *World-Wide Volkswagen*, are essential to any constitutional analysis of jurisdiction over nonresident defendants.\(^{141}\)

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