GEOMETRIC FEDERALISM

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The geometry of overlapping federal and state sovereigns raises largely unexamined federalism concerns. Because Federal Rule of Civil Procedure 4(k)(1)(A), for example, restricts federal court personal jurisdiction to the same limits as courts of the state in which it sits, state legislatures can control federal court personal jurisdiction limits more restrictively than what the Due Process Clause demands. While the federal government can defer to state restrictions, that does not mean it should.

The failure to justify federal court deference to state territorial boundaries has always been a problem in need of a solution. But this need grows urgent as polarized state legislatures have grown more active in the culture wars. The Supreme Court's recent resurrection of consent-based jurisdiction—which effectively immunized states with properly worded registration statutes from due process challenges—calls for a deep and historical analysis of federal deference to state territorialism. To undertake that analysis, this Article offers a new insight into how overlapping governments approach questions of personal jurisdiction. That fresh analytic perspective is "geometric federalism," the principle that a larger, superior sovereign's jurisdiction should not be limited by more restrictive laws adopted by smaller, encompassed sovereigns. This principle derives from structural federalism and a normative evaluation of the risks of federal deference. Geometric federalism is a useful tool for justifying an eventual departure from Rule 4(k)(1)(A), both as a prism for evaluating other questions of overlapping territorial jurisdiction and as a guardrail for overeager state legislatures.

INTRODUCTION

"The word geometry used to mean 'land measurement.' Today it refers to the mathematical insights that inform the measuring of almost anything."[1]

The fact that the federal government is a larger and superior political entity to individual states has been undervalued in the context of personal jurisdiction, where state law and boundaries have significant control over the reach of federal district courts.[2] The geometric dynamic that states are physically smaller and contained within the larger federal sovereign matters when federal court personal jurisdiction is subject to state law and state boundaries.[3] This Article examines that dynamic by expressing a new doctrine called "geometric

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1. FRANCIS SU, MATHEMATICS FOR HUMAN FLOURISHING, 37 (Yale Univ. Press 2020).

2. Federalism is "[t]he legal relationship and distribution of power between the national and regional governments within a federal system of government." *Federalism*, BLACK'S LAW DICTIONARY (9th ed. 2009). Federalism means different things, however, to different people. *See, e.g.*, Albert M. Rosenblatt, *Always in the Direction of Liberty the Rule of Law and the (Re)emergence of State Constitutional Jurisprudence*, N.Y. ST. B.J. 25, 29 n.1 (Jan. 2018) (listing no fewer than twenty-one different kinds of "federalism," of which "geometric federalism" is not one).

3. *See, e.g.*, Geoffrey C. Hazard, Jr., *A General Theory of State-Court Jurisdiction*, 1965 SUP. CT. REV. 241, 245–47 (1965) (characterizing the tension between federal and state jurisdictional rules as "in a real sense territorial").

federalism."[4] Geometric federalism is the prudential principle that the jurisdictional reach of superior and larger entities should not be constrained by smaller or inferior sovereigns.[5] More specifically, while *state boundaries* might be an appropriate limit on federal court personal jurisdiction, *state law* is not.

Outside of the *Erie* Doctrine, federal courts rarely subject themselves to state law.[6] When the jurisdiction of federal courts is constrained, it usually involves subject matter jurisdiction, as when Congress limits what kinds of cases federal courts can hear, or prudential, as when federal courts decline to exercise subject matter jurisdiction because state courts are better equipped to resolve the dispute.[7] To the extent these doctrines ask questions that federalism answers, there is an agreed-upon structure in place. But when the question is personal jurisdiction, which focuses on the physical geographies of the respective sovereigns, federalism goes into hiding.[8] It is rare that courts or commentators express federalism concerns about federal courts' personal jurisdiction limits.[9] Despite opportunity and the need to explore the

4. Other scholars have employed mathematical or scientific metaphors to help clarify important constitutional principles. *See, e.g.*, Lawrence H. Tribe, *The Curvature of Constitutional Space: What Lawyers Can Learn from Modern Physics*, 103 HARV. L. REV. 1, 1–2 (1989) (employing the analogy of quantum mechanics and classical physics to illustrate the importance of developing constitutional law understandings); Kathleen M. Sullivan, *Law and Topology*, 42 TULSA L. REV. 949, 953 (2007) ("Rather than see law through the lens of economics or positive political science, [Professor Tribe] sees it through the lens of his first academic love: algebraic geometry."); Allan Erbsen, *Constitutional Spaces*, 95 MINN. L. REV. 1168, 1169 (2011) (naming as an "overlooked dimension" in constitutional analysis "the Constitution's identification, definition, and integration of the physical spaces in which it applies").

5. *See e.g.*, ANTHONY J. BELLIA, JR., FEDERALISM, 5–7 (Wolters Kluwer eds., 2d ed. 2017) (discussing the primal tension between state and federal power during the constitutional debates).

6. Erie R.R. Co. v. Tompkins, 304 U.S. 64, 78 (1938) ("Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state."); *see also* Scott Dodson, *When Does State Law Affect Federal Jurisdiction*, 43 REV. LITIG. 117, 119–20 (emphasizing that federal law controls federal subject matter jurisdiction, even while state law may have a role to play).

7. Two examples are *Pullman* and *Younger* abstention. *See* R.R. Comm'n of Tex. v. Pullman Co., 312 U.S. 496, 501 (1941) (referring to a "doctrine of abstention appropriate to our federal system whereby the federal courts, 'exercising a wise discretion', restrain their authority because of 'scrupulous regard for the rightful independence of the state governments' and for the smooth working of the federal judiciary" (first quoting Cavanaugh v. Looney, 248 U.S. 453, 467 (1919); and then quoting Di Giovanni v. Camden Fire Ins. Ass'n, 296 U.S. 64, 73 (1935))); Younger v. Harris, 401 U.S. 37, 54 (1971) ("[T]he possible unconstitutionality of a [state] statute 'on its face' does not in itself justify [a federal] injunction against good-faith attempts to enforce it . . . .").

8. Horizontal federalism influences the interstate federalism principle that the Supreme Court has referred to as supporting some of the sovereign limitations between states, but vertical federalism is less in evidence.

9. Several influential scholars are asking different but important questions about personal jurisdiction and Rule 4. *See, e.g.*, Scott Dodson, *Rule 4 and Personal Jurisdiction*, 99 NOTRE DAME L. REV. 1, 25 (2023) (arguing for a more limited interpretation of Rule 4 as only setting "the scope of *service*, not personal jurisdiction"); Stephen E. Sachs, *The Unlimited Jurisdiction of the Federal Courts*, 106 VA. L. REV. 1703, 1706–08 (2020) (arguing that state and federal jurisdiction should not be assumed to operate the same way); Patrick Woolley, *Rediscovering the Limited Role of the Federal Rules in Regulating Personal Jurisdiction*, 56 HOUS. L. REV. 565, 607 (2019) (arguing that the federal rules should not impose "territorial limits on the effectiveness of notice through service of process"). For an older but important article, see John N. Drobak, *The Federalism Theme in Personal Jurisdiction*, 68 IOWA L. REV. 1015, 1039 (1983) ("By judging the adequacy of the contacts with a

juxtapositions of federalism and personal jurisdiction, such analysis is hard to find.[10]

One peculiar limit on federal court jurisdiction is found in the Federal Rules of Civil Procedure.[11] Pursuant to Rule 4(k)(1)(A), the personal jurisdiction of a federal court reaches a defendant served with process who "is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located."[12] This means that plaintiffs in federal court who serve process on a defendant are subject to the geographic limits as if they had sued in state court.[13] Ergo, a state legislature's view on the reach of its own courts—expressed through its long-arm statute—also limits a federal court's personal jurisdiction.[14] Whenever a state limits federal power, even when it is done by proxy, we should take note.

While some scholars have criticized Rule 4(k)(1)(A), most do so from a statutory perspective.[15] Very few scholars have considered the territorial concerns; none have considered its jarring federalism implications.[16] Why not? Is it a false dichotomy, too esoteric, or simply unimportant?

This Article explains why none of these explanations are satisfactory. The Supremacy Clause makes federal lawmaking power supreme over states when so allotted, and the Tenth Amendment leaves to the states everything else, except certain powers retained by the People, which are protected by the Due Process Clause.[17] And, under *Erie*, federal courts adopt state substantive, but not procedural, law.[18] But the notion that federal courts must acquiesce to state

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standard of fairness, *International Shoe* tied the federalism and individual rights branches of personal jurisdiction together.").

10. *See* BELLIA, *supra* note 5. Bellia's comprehensive treatise devotes no chapter, or even an index entry, to federalism and personal jurisdiction.

11. *See* Daimler AG v. Bauman, 571 U.S. 117, 125 (2014) (following California's long-arm statute when exercising personal jurisdiction).

12. FED. R. CIV. P. 4(k)(1)(A).

13. 4 CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1068 (West Group 4th ed. 2024) ("[I]f a state court would have personal jurisdiction pursuant to that state's long-arm statute, a federal district court located in that state may exercise personal jurisdiction as well.").

14. *See id.*

15. *See* Dodson, *supra* note 9 (arguing that Rule 4(k) cannot survive scrutiny under the Rules Enabling Act if it creates or limits personal jurisdiction and, therefore, it should be read in a more limited manner as only pertaining to service of process).

16. *See* Daniel Klerman, Walden v. Fiore *and the Federal Courts: Rethinking FRCP 4(k)(1)(A) and* Stafford v. Briggs, 19 LEWIS & CLARK L. REV. 713, 715, 717 (2015) (recognizing that personal jurisdiction in a state court depends on the constitutional limits on a state court's power, which, because of Rule 4(k)(1)(A), causes personal jurisdiction in a federal court to also depend on the limits of state court power).

17. U.S. CONST. art. VI, cl. 2; U.S. CONST. amend. X; New York v. United States, 505 U.S. 144, 156 (1992) ("If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States; if a power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has not conferred on Congress.").

18. Hanna v. Plumer, 380 U.S. 460, 465 (1965) ("[F]ederal courts are to apply state substantive law and federal procedural law."); Omni Cap. Int'l, Ltd. v. Rudolf Wolff & Co., 484 U.S. 97, 105 (1987) ("[A] federal court normally looks either to a federal statute or to the long-arm statute of the State in which it sits

statutory schemes to determine the limits of their own personal jurisdiction violates the core of structural federalism.[19] Where did this principle of deference to state legislatures come from? Debate in Congress or the rules committee? Was it extensively vetted in the lower courts and enshrined in Supreme Court authority after 1934?

Not so. The first time the Supreme Court raised the question of a federal court's personal jurisdiction limits as constrained by Rule 4(k)(1)(A) was in 2013 in *Walden v. Fiore* and *Daimler AG v. Bauman*.[20] Each case quoted Rule 4(k)(1)(A), and *Walden* quoted *Daimler*.[21] But neither decision cited a single constitutional provision, case, or principle to support Rule 4(k)(1)(A)'s upside-down design.[22] The Supreme Court has increasingly venerated historical antecedents as guideposts to modern issues—just not, apparently, for Rule 4(k).[23]

To be clear, federal courts *should* defer to state court interpretation of state law.[24] Federal courts should *not* attempt to overrule state court interpretations of their own long-arm statutes.[25] An originalist might double down on these two principles by pointing out that the Judiciary Act and the Process Acts deliberately asked federal courts to defer to state procedural law.[26] But federal courts being directed to confine their jurisdiction by state law is a different issue entirely.

The problem is not a choice of law or a venue problem.[27] State boundaries are important for purposes of personal jurisdiction because any other measure

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to determine whether a defendant is amenable to service, a prerequisite to its exercise of personal jurisdiction.").

19. Black's Law Dictionary defines "territory" as the "geographical area included within a particular government's jurisdiction; the portion of the earth's surface that is in a state's exclusive possession and control." *Territory*, BLACK'S LAW DICTIONARY (8th ed. 2004).

20. Walden v. Fiore, 571 U.S. 277, 283 (2014) (first citing Daimler AG v. Bauman, 571 U.S. 117, 139 (2014); and then citing FED. R. CIV. P. 4(k)(1)(A)); *Daimler*, 571 U.S. at 125 (citing FED. R. CIV. P. 4(k)(1)(A)). But let's be fair, Rule 4(k)(1)(A) has not existed in its present form all that long either. As we'll see, however, courts hardly confronted the predecessor rules either.

21. *Walden*, 571 U.S. at 283; *Daimler*, 571 U.S. at 125.

22. The notes of the rules committee that promulgated Rule 4(k)(1)(A) do not confront this issue. *See infra* Section II.F.

23. *See, e.g.*, N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen, 142 S. Ct. 2111, 2130 (2022) (instructing Second Amendment inquiries to focus on the "historical tradition" and noting that "our focus on history also comports with how we assess many other constitutional claims").

24. Gurley v. Rhoden, 421 U.S. 200, 208 (1975) (explaining that state courts are the "final judicial arbiter[s]" as to the meaning of state statutes).

25. *See* Patrick Woolley, *The Role of State Law in Determining the Construction and Validity of Federal Rules of Civil Procedure*, 35 REV. LITIG. 207, 210 (2016).

26. *See infra* Section II.B.

27. The Supreme Court in *Keeton v. Hustler Magazine, Inc.* emphasized the importance of addressing personal jurisdiction separate and apart from substantive choice of law principles. *See* 465 U.S. 770, 778 (1984) (rejecting the idea that personal jurisdiction questions are choice of law questions because state law applicability is determined "only after jurisdiction over respondent is established, and we do not think that such choice of law concerns should complicate or distort the jurisdictional inquiry" (quoting Hanson v. Denckla, 357 U.S. 235, 254 (1958), which stated that "[t]he issue is personal jurisdiction, not choice of law")). Much like this is not a choice of law issue, the equation is also not solved by conversion to a venue problem. The argument goes like this: even if one district court cannot hear a case, another theoretically can, so who

of personal jurisdiction would be either too abstract or arbitrary. While state boundaries may be the best proxy for limiting a federal district court's territory, what a state says about how far its own courts of general jurisdiction can reach within those boundaries should not also restrain the reach of federal courts, who are subject to state substantive, but not procedural, law.[28]

Procedural rules have not often been evaluated through the prism of federalism, despite the fact that the overlapping territorial reach of the federal and state sovereigns goes to the very heart of federalism.[29] Enabling irregular treatment of defendants based on individual states' laws turns the notion of federalism on its head. Yet even if the federal courts must defer to their respective state legislatures' views on the territorial reach of jurisdiction, to continue borrowing from the language of mathematics, the Supreme Court should have "shown its work." This Article's first contribution is to show the work.

Aside from the primary impetus that violating federalism principles is worthy of examination alone, a simmering problem is the increased attention that polarized state legislatures pay to business-facing statutes in the partisan culture wars.[30] States are pushing back on federal power in newly aggressive ways.[31] Given the relatively recent expansion of state legislature activism, it is not surprising that courts and scholars did not previously take a deeper look into the policy and fairness issues that ignoring federalism presents. Understanding federalism's effect on personal jurisdiction in all its forms is, therefore, particularly pressing.

Grounded in legal history and recent precedent, this Article examines federalism's effects on personal jurisdiction through the prism of geometric

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cares if the first court cannot hear the case? This argument, which sidesteps the fundamental problem by calling it moot, also misapprehends the issue. Without personal jurisdiction over a defendant, *defendants* would not seek a venue transfer—it would be *plaintiffs* doing so. And a plaintiff should not have to seek a different venue because an individual state purports to limit federal jurisdiction. Moreover, defendants should have certainty about where they are and are not subject to personal jurisdiction.

28. More than twenty years ago, Dora Corby argued that federal courts should not be constrained to state long-arm statutes when they seek to enforce violations *of federal law*. Dora A. Corby, *Putting Personal Jurisdiction Within Reach: Just What Has Rule 4(k)(2) Done for the Personal Jurisdiction of Federal Courts?*, 30 MCGEORGE L. REV. 167, 168 (1998) ("An anomaly seems to arise when a federal court, asserting personal jurisdiction over a defendant who violated *federal* law, must use a *state* long-arm statute to assert personal jurisdiction.").

29. There are, of course, exceptions. *See* Allan Erbsen, *Reorienting Personal Jurisdiction Doctrine Around Horizontal Federalism Rather than Liberty After* Walden v. Fiore, 19 LEWIS & CLARK L. REV. 769, 772, 787 (2015) (arguing for "horizontal" federalism, the principles of which "govern relationships between [the fifty] states in a federal system," to guide personal jurisdiction by recognizing individual interests rather than liberty); Scott Dodson, *Vectoral Federalism*, 20 GA. STATE UNIV. L. REV. 393, 402 (2003) ("The Constitution provides for the physical territory of the states and gives the states a voice in determining their boundaries . . . .").

30. *See, e.g.*, Jon D. Michaels & David L. Noll, *Vigilante Federalism*, 108 CORNELL L. REV. 1187 (2023) (identifying numerous states attempting to remove from federal jurisdiction enforcement of highly polarizing social partisan issues).

31. Consider the radical resistance of progressive states to federal immigration policy under the Trump administration and conservative states' resistance to federal immigration policy under the Biden administration, in particular Texas's recent sovereign-defense arguments.

federalism. Following the Introduction, this Article proceeds in three parts. Part I summarizes the Western legal tradition's antecedents to the American vision of federalism in an attempt to source the Framers' concept of overlapping territorial jurisdiction, thereafter tracing the history of territorial tension between the state and federal courts through to the present day.

Having established the history and stated the problem, this Article makes its second major contribution in Part II, defining and applying the principle of geometric federalism.[32] To do so, it relies on a mathematical metaphor to illustrate the problem that occurs when subject or lesser sovereigns purport to control superior sovereigns' jurisdictional reach.[33] This Part then confronts geometric federalism's implications for specific jurisdiction, waiver, tag jurisdiction, and consent-based jurisdiction. Consent-based jurisdiction, in particular, demonstrates the possibility of states restricting or expanding federal jurisdiction, an unwanted side effect of increased polarization. After revisiting Rule 4(k)(1)(A) through the prism of geometric federalism, the Article addresses some principal objections to geometric federalism before concluding with a proposed amendment that would be consistent with geometric federalism, insulate federal courts from increasingly activist legislatures, and give litigants more certainty and fairness.

I. TERRITORIAL SOVEREIGNTY AND PERSONAL JURISDICTION

A. The History of Overlapping Territorial Jurisdiction Establishes the Underpinnings of Geometric Federalism

The historical record of what modern American law would call "personal jurisdiction" is relatively short.[34] Analyzing personal jurisdiction's ancestral heritage is important for geometric federalism, however, because it reveals a persistent theme of superior sovereigns refusing to limit themselves to smaller-contained geometric entities.[35] English law in the second millennium provides the most direct lineage through its multiple kinds of courts.[36]

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32. *See infra* Part III.

33. *See infra* Section III.B.

34. *See* Drobak, *supra* note 9, at 1019–21 ("The first cases in the United States to consider personal jurisdiction, decided in the late eighteenth and early nineteenth centuries, involved attempts to enforce judgments rendered in other states."). Professor Drobak analyzes the early personal jurisdiction cases but emphasizes that *Pennoyer v. Neff* is the "apogee" of the doctrine. *Id.* at 1026; *see* Pennoyer v. Neff, 95 U.S. 714, 724 (1877) (requiring personal presence).

35. The first acknowledgment of how sovereign territories handled overlapping jurisdiction in the Western legal tradition appears in the Roman Empire. *See* John Richardson, *Roman Law in the Provinces*, *in* THE CAMBRIDGE COMPANION TO ROMAN LAW 45, 49–50, 52 (David Johnston ed., 2015). Governors used Roman procedural law but local substantive law, and Roman citizens were famously subject to Roman law before local law. *See id.* at 52–53.

36. For a good summary of the development of the English courts, see Robert J. Pushaw, Jr., *The Inherent Powers of Federal Courts and the Structural Constitution*, 86 IOWA L. REV. 735, 799–810 (2001).

The Court of Common Pleas was established as an outgrowth of the King's Court, and it heard all complaints between private citizens of the kingdom.[37] Henry II's legislation added wide jurisdictional discretion to the King's Court, having the power to hear criminal and civil cases while also having supervisory powers "over the conduct of all the local courts and officials."[38] The Common Pleas remained part of the King's Court and traveled with it until the Magna Carta,[39] which required that civil jurisdiction be assigned to Westminster Hall.[40] Under the Norman Kings and before the Court of Common Pleas, there were sheriffs and baronial courts.[41] Henry II sought consolidated royal jurisdiction through "circuits" to ensure primacy over local courts.[42] These centralized circuit courts followed local procedural rules, such as relying on the sheriff to issue writs and a declaration of outlawries, but none of those procedural rules purported to limit the reach of the central or royal courts.[43]

Blackstone commented on the courts inferior to the King's Bench and, in particular, the sheriff's court.[44] These inferior courts were developed in "favour of the crown to" certain districts to ensure inhabitants may receive "justice at home."[45] However, "for the most part, the courts at Westminster-hall have a concurrent-jurisdiction with these, or else a super-intendency over them."[46]

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37. Cecil Mead Draper, *The Court of Common Pleas*, 21 DICTA 105, 105–06 (1944) (dating the establishment of the King's Court as early as 1158–1163); Bernard F. Scherer, *The Supreme Court of Pennsylvania and the Origins of King's Bench Power*, 32 DUQ. L. REV. 525, 526 (1994).

38. *See* Draper, *supra* note 37, at 107; Scherer, *supra* note 37, at 527 ("The King's Bench obtained some superintendency over the Common Pleas, the Chancery and the Exchequer, however Blackstone indicated that all four courts were equally subject to direction by the 'baronial court,' presaging the House of Peers.").

39. The Magna Carta famously provides an inspirational historical antecedent to procedural due process in Chapter 39. *See Magna Carta, 1215*, THE NAT'L ARCHIVES, https://www.nationalarchives.gov.uk/education/resources/magna-carta/british-library-magna-carta-1215-runnymede/ [https://perma.cc/YU62-BJ7C]. Less famously, Chapters 17 and 18 state a principle later reflected in English law: that "ordinary lawsuits" "not follow the royal court around." *Id.* More intriguingly, when the royal court was not available, "[the] chief justice, w[ould] send two justices to each county four times a year, and these justices, with four knights of the county elected by the county itself, [would] hold the assizes in the county court, on the day and in the place where the court [met]." *Id.* There is little evidence that the localized county or baronial courts had *competing* power at this time, and none that the King would have restrained himself by such power.

40. *See id.*; Draper, *supra* note 37, at 113.

41. *See* George A. Bonner, *The History of the Court of King's Bench*, 11 BELL YARD 3, 3–5 (1933). It is important to resist the urge to draw too strong of an analogy from the King's courts in medieval England to our modern American model. The King was not the federal government. County or baronial courts do not equal state courts. The value, however, is that the English judicial system circa 1787 and before provided a model for the colonial courts and the Framers of the Constitution, and that English system had a long history of overlapping sovereign court systems where the larger superior sovereign *never* limited its reach based on smaller inferior sovereigns' laws.

42. Michael Nicholas, *King Henry II and His Legal Reforms*, 6 HISTORIES, no. 2, at 13; *see* Bonner, *supra* note 41, at 3–4.

43. *See Local Distribution of Tribunals. More Assizes.*, 21 L. REV. & Q.J. BRIT. & FOREIGN JURIS. 300, 300 (1855).

44. *See* 3 WILLIAM BLACKSTONE, COMMENTARIES *71–85.

45. *Id.* at *81.

46. *Id.* After 1689 the King was acknowledged as the ultimate sovereign over Parliament (albeit through veto power) yet returned some prerogative power to Parliament, making it somewhat unclear how

Blackstone's acknowledgment of overlapping territorial jurisdiction—without any reference to a limitation by the inferior geographic region over the superior—is important because most lawyers in the colonial era would have considered Blackstone's Commentaries authoritative.[47] Thus, the concept that different courts may have not only overlapping subject matter jurisdiction but also power over individuals was likely deeply entrenched in American legal thought at the time of the constitutional debates and ratification.

From this disparate history, we can infer two principles.[48] First, colonial—and then state and federal—courts would have been well aware of the concept of an overarching sovereign with broader geographic reach than the smaller divisions, counties, and other distinguished geographies.[49] Second, such sovereigns withheld to themselves authority except as to local law.[50]

B. The Founders' Federalism and the Territorial Limits of Federal Courts

Federal courts have existed since the Judiciary Act of 1789, but state courts had preconstitutional procedural rules.[51] At the time of the adoption of the Constitution, all thirteen states adhered to the English common law.[52] The common law "forms of proceeding . . . defined the cause[] of action available to [a] plaintiff[] and the procedures . . . for adjudicating [it]."[53] Modern procedural law no longer assumes "process" equals "cause of action."[54] At the time of the Founding, however, there were predetermined forms of action that authorized certain remedies through an appropriately pleaded "writ," which was synonymous with "form of action" or "form of proceeding."[55]

The records of the constitutional debates are inconclusive as to personal-jurisdiction-related themes. For the Supremacy Clause, for example, debate did not center specifically on the corresponding limits of state and federal jurisdiction, but focused generally on whether the Clause would allow federal

much power Parliament had over court jurisdiction, which tended to defer to the judiciary anyway. *See* Pushaw, Jr., *supra* note 36, at 807, 815–16.

47. *See, e.g.*, *In re* Est. of Doughtie, 70 Va. Cir. 329, 332 (Va. Cir. Ct. 2006) ("In 1818, every lawyer or judge would have recognized Blackstone's words.").

48. *See, e.g.*, Mallory v. Norfolk S. Ry. Co., 600 U.S. 122, 128 (2023) ("Both at the time of the founding and the Fourteenth Amendment's adoption, the Anglo-American legal tradition recognized that a tribunal's competence was generally constrained only by the 'territorial limits' *of the sovereign that created it*." (emphasis added) (quoting JOSEPH STORY, COMMENTARIES ON THE CONFLICT OF LAWS 450–51 (1834))).

49. Anthony J. Bellia, Jr. & Bradford R. Clark, *The Original Source of the Cause of Action in Federal Courts: The Example of the Alien Tort Statute*, 101 VA. L. REV. 609, 613 (2015).

50. *See infra* notes 52–54 and accompanying text.

51. *See* JULIUS GOEBEL, JR., 1 HISTORY OF THE SUPREME COURT OF THE UNITED STATES, at xv (Paul A. Freund ed., 1971) (noting that colonial structural and procedural rules existed even "before the Crown instituted an effective watch and ward over colonial enactments").

52. Bellia & Clark, *supra* note 49.

53. *Id.*

54. *Id.* at 631.

55. *Id.*

power to eclipse state sovereignty.[56] The Anti-Federalists contended that the Clause would effectuate "one large system of lordly government"[57] and cause "a complete consolidation of all the states into one, however diverse the parts of it may be."[58]

For the "cases" and "controversies" requirements, Anti-Federalists feared that the language of the Clause would embolden federal judges to enlarge the sphere of their power without bounds.[59] Regardless, the Framers had explicitly rejected several proposals for broader powers which would authorize judges to review pending legislation and issue advisory opinions.[60] Concern over federal court jurisdiction was limited to the kinds of cases federal courts could hear rather than their territorial limits.[61] Federalists prevailed in designating interpretation of federal law to federal courts, rather than leaving it up to state court interpretation.[62]

For the Bill of Rights and the Tenth Amendment, there was no specific discussion of jurisdiction, but the Founders disagreed about whether individual rights needed to be expressly protected or if the Constitution's inherent limitations on national power would suffice.[63] The Founders' concerns regarding the limits of state and national courts were disparate and focused more on subject matter rather than personal jurisdiction issues.[64]

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56. *See generally* THE RECORDS OF THE FEDERAL CONVENTION OF 1787 (Max Farrand ed., rev. ed. in four vols., vol. I 1937)*; see also* THE FEDERALIST NO. 33, at 207 (Alexander Hamilton) (Jacob E. Cooke ed., 1961) ("If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers entrusted to it by its constitution, must necessarily be supreme over those societies, and the individuals of whom they are composed. . . . But it will not follow from this doctrine that acts of the larger society which are *not pursuant* to its constitutional powers but which are invasions of the residuary authorities of the smaller societies will become the supreme law of the land. These will be merely acts of usurpation . . . .").

57. A Federal Republican, *A Review of the Constitution, 28 November*, *in* 14 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 255, 269 (John P. Kaminski et al. eds., 1983).

58. Agrippa X, *Massachusetts Gazette, 1 January*, *in* 5 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 576, 576 (John P. Kaminski et al. eds., 1998); *see also* Erbsen, *supra* note 4, at 1173 ("Rather than thinking through the 'where' component of federalism holistically, the Framers addressed the issue [of different spaces] in a piecemeal fashion throughout the Constitution.").

59. *See, e.g.*, Town of Chester, N.Y. v. Laroe Ests., Inc., 581 U.S. 433, 438 (2017) ("Article III of the Constitution limits the exercise of the judicial power to 'Cases' and 'Controversies'" (first quoting U.S. CONST. art. III, § 2, cl. 1; then citing Spokeo, Inc. v. Robins*,* 578 U.S. 330, 337–38 (2016); and then citing DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 341 (2006))).

60. THE RECORDS OF THE FEDERAL CONVENTION OF 1787, *supra* note 56, at 21, 140, 298.

61. *See, e.g.*, THE FEDERALIST NO. 82, at 553 (Alexander Hamilton) (Jacob E. Cooke ed., 1961) ("[T]he states will retain all *pre-existing* authorities, which may not be exclusively delegated to the federal head . . . .").

62. *See, e.g.*, THE FEDERALIST NO. 81, at 547 (Alexander Hamilton) (Jacob E. Cooke ed., 1961) ("To confer the power of determining such [federal] causes upon the existing courts of the several states, would perhaps be as much 'to constitute tribunals,' as to create new courts with the like power. But ought not a more direct and explicit provision to have been made in favour of the state courts? There are, in my opinion, substantial reasons against such a provision: The most discerning cannot foresee how far the prevalency of a local spirit may be found to disqualify the local tribunals for the jurisdiction of national causes . . . .").

63. *See infra* Section III.B.

64. *See generally* THE RECORDS OF THE FEDERAL CONVENTION OF 1787, *supra* note 56, at 21, 140, 298.

Members of the First Congress recognized the need for uniform forms of proceeding for federal courts but were reluctant to direct federal courts to adopt the common law for the nation as a whole.[65] The Judiciary Act of 1789 outlined the structure and jurisdiction of the federal courts.[66] Section 34 directed federal courts to apply local state law rules of decision absent preemption by the Constitution, laws, or treaties of the United States,[67] and Section 14 specifically authorized federal courts to employ recognized legal causes of action (writs) in cases within their jurisdiction.[68] These writs defined not only remedies and the right to sue, but also some "procedural matters."[69] However, Section 14 did not provide comprehensive rules of practice governing federal courts, and Section 17 filled this gap by authorizing federal courts to make general rules of practice.[70]

Just five days after the signing of the Judiciary Act, Congress enacted the first Process Act, which clarified that federal courts should use "the forms of writs and executions, except their style, and modes of process and rates of fees . . . shall be the same in each state respectively as are now used or allowed in the supreme courts of the same."[71]

In the second Process Act, enacted in 1792, Congress replaced the phrase "mode of process" with the phrase "forms and modes of proceeding," strengthening the mandate that federal courts apply state causes of action.[72] Diverging from the first Process Act, the second Process Act directed "federal courts to make 'such alterations and additions as the said courts respectively shall in their discretion deem expedient,'" or "to make 'such regulations as [the

65. Bellia & Clark, *supra* note 49 ("[T]he traditional forms of proceeding adopted by the states defined the causes of action available to plaintiffs and the procedures to be used for adjudicating them. Over time, individual states molded these forms of proceeding in response to local circumstances, resulting in variations among state causes of action.").

66. *Id.* at 643.

67. Judiciary Act of 1789, ch. 20, § 34, 1 Stat. 73, 92 (codified as amended in scattered sections of 28 U.S.C.).

68. *See* GOEBEL, JR., *supra* note 51, at 509; *see also* CHARLES E. CLARK, HANDBOOK OF THE LAW OF CODE PLEADING 11 (1928) ("Whenever a litigant desired to sue in the king's court, he was required to procure a writ from the king . . . directing the sheriff to summon the defendant before one of the king's courts . . . serv[ing] the . . . purpose of giving jurisdiction to the court named in it.").

69. § 14, 1 Stat. at 81–82; *see also* Paul D. Halliday & G. Edward White, *The Suspension Clause: English Text, Imperial Contexts, and American Implications*, 94 VA. L. REV. 575, 679 (2008) (explaining that, at the time § 14 was enacted, "[English and American jurists] believed that a writ—an individual's means of access to a court—was also the equivalent of a substantive legal doctrine").

70. § 17, 1 Stat. at 83. At the time, service of process rules created personal jurisdiction over defendants, but the reach of federal (and especially state) courts was limited to physical presence.

71. An Act to Regulate Processes in the Courts of the United States, ch. 21, § 2, 1 Stat. 93, 93–94 (1789).

72. 4 DOCUMENTARY HISTORY OF THE SUPREME COURT OF THE UNITED STATES, 1789-1800, at 178 (Maeva Marcus et al. eds., 1992); *see also* D'Arcy v. Ketchum, 52 U.S. (11 How.) 165, 176 (1851) ("[I]nternational law as it existed among the States in 1790 was, that a judgment rendered in one State, assuming to bind the person of a citizen of another, was void within the foreign State, when the defendant had not been served with process or voluntarily made defence, because neither the legislative jurisdiction, nor that of courts of justice, had binding force.").

Supreme Court of the United States] shall think proper,'" thus "grant[ing] federal courts some discretion to alter or amend state forms of proceeding at law."[73] Over time, federal courts deviated from these "outdated state forms of proceeding" when their application appeared "inconvenient or unfair."[74] In sum, the Process Acts established the procedures and causes of action in federal courts and clarified that federal courts could use their own procedures rather than always deferring to and relying on state procedures.

The first half of the nineteenth century saw an increasing acknowledgment of federal superiority.[75] Joseph Story explained that there must be some head of judicial power to "enforce the powers of the Union."[76] If not, he feared, the laws of the whole would be in continual danger of being contravened by the laws of the parts, and "[t]he national government would be reduced to a servile dependence upon the states."[77]

In 1871, the Supreme Court reemphasized these principles in *Tarble's Case*.[78] The issue in that case was whether a state court could issue a writ of habeas corpus to release a minor from federal military service (no), but the Court's reasoning demonstrated nineteenth-century understanding of territorial federalism and federal supremacy.[79] While "the powers of the [g]eneral government and of the [s]tate . . . both exist and are exercised within the same territorial limits, [they] are yet separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres."[80] The Court went on to explain that federal superiority is established "by the Constitution itself" and that the relative sovereigns of the states and federal

73. Bellia & Clark, *supra* note 49, at 654 (citing Act of May 8, 1792, ch. 36, § 2, 1 Stat. 275, 276 (repealed 1872)); *see also id.* at 652 (clarifying that "[i]n the eighteenth century, courts in England and America routinely used the phrases 'form of proceeding' and 'mode of proceeding' to define not only what we think of today as 'procedure,' but also the causes of action that gave plaintiffs a right to a legal remedy"); Wayman v. Southard, 23 U.S. (10 Wheat.) 1, 14–18 (1825) (describing the history of the Process Act).

74. Bellia & Clark, *supra* note 49, at 655.

75. At the same time, the growing territory of the United States presented further opportunities for sovereign jurisdiction to be extended beyond the federal and state limits. *See, e.g.*, JOHN A. BORRON, JR., MISSOURI PROBATE LAW & PRACTICE § 481 (David English ed., 3d ed. 2024) (describing the federal government's withholding of jurisdictional power over the territories covered by the Louisiana Purchase). Further, Congress had plenary power over the territories the national government acquired through treaty. *See* Sarah H. Cleveland, *Powers Inherent in Sovereignty: Indians, Aliens, Territories, and the Nineteenth Century Origins of Plenary Power over Foreign Affairs*, 81 TEX. L. REV. 1, 191 (2002) (noting that "early cases had recognized that in the territories Congress exercised the powers of both the state and national governments").

76. 3 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 427–28 (1833).

77. *Id.* at 427. "The idea of uniformity of decision by thirteen independent and co-ordinate tribunals (and the number is now advanced to twenty-four) is absolutely visionary, if not absurd. The consequence would necessarily be, that neither the constitution, nor the laws, neither the rights and powers of the Union, nor those of the states, would be the same in any two states." *Id.* This theme is important to geometric federalism because it helps establish the first principle—that the federal government is geometrically superior.

78. *In re* Tarble, 80 U.S. (13 Wall.) 397 (1872).

79. *See id.* at 406–07.

80. *Id.* at 406.

government can exist contemporaneously, but conflicts are resolved by federal supremacy.[81]

The Process Act of 1792 remained in effect until 1872, when Congress replaced it with the first Conformity Act.[82] With the rise of Code pleading in the late nineteenth century and early twentieth century, the source of the causes of action available in state and federal courts began to shift from the realm of "procedure" to the realm of "substance."[83] This shift was important because it highlights how, prior to the nineteenth century, forms of proceedings, writs, service of process, and other rules modern litigants consider purely procedural were then considered more closely aligned with causes of action; the deference historically given to state courts by federal courts was, therefore, more substantive in nature than related to their jurisdictional reach over remote defendants.

C. The Development of the Federal Rules of Civil Procedure

The Rules Enabling Act of 1934 ascribed authority to the Supreme Court to "prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure of the district courts and courts of appeals."[84] Congress limited this power by stating that "[s]uch rules shall not abridge, enlarge or modify any substantive right."[85] In 1938, the Federal Rules of Civil Procedure were approved by the Supreme Court.[86] The history of the Rules reflects a near obsession with the mechanics of service of process[87] but less concern for the structural issues raised by federal courts sitting within the territorial boundaries of the states.[88]

For instance, Rule 4(f)—the 1938 predecessor to Rule 4(k)(1)(A)—stated, "All process other than a subpoena may be served anywhere within the territorial limits of the state in which the district court is held and, when a statute of the United States so provides, beyond the territorial limits of that state."[89]

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81. *Id.*

82. An Act to Further the Administration of Justice, ch. 255, § 5, 17 Stat. 196, 197 (1872).

83. *See* Anthony J. Bellia, Jr., *Article III and the Cause of Action*, 89 IOWA L. REV. 777, 792–99 (2004) (explaining the development of modern understandings of causes of action).

84. *See* Alexander Holtzoff, *Origin and Sources of the Federal Rules of Civil Procedure*, 30 N.Y.U. L. REV. 1057, 1057–58 (1955); 28 U.S.C. § 2072(a).

85. 28 U.S.C. § 2072(b).

86. *See* Holtzoff, *supra* note 84, at 1057.

87. The tendency to think of service of process as mere administrative "box checking" in the litigation process is more understandable in a modern context, which better separates subject matter and personal jurisdiction from each other, and each jurisdictional concept from the merits.

88. The first Supreme Court decision to consider Rule 4(f), *Mississippi Publishing Corp. v. Murphree*, 326 U.S. 438, 440 (1946), considered whether personal jurisdiction (or at least venue) over a remote defendant was proper following service of process. It did not confront federalism concerns, but at that time federal district courts' personal jurisdiction was not limited by state law.

89. 1 JAMES W. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 4App.01 (3d ed. 2023).

Rule 4(f) was amended in 1963 by adding the phrases "authorized by" and "or by these rules" and deleting "so provides."[90] The analytic overlap between Rules 4(f) and 4(e) (providing the rules for issuance and service of summons) reflected a conflation of territorial boundaries and state law restrictions, something the Court in *Omni Capital* wrestled with, ultimately helping spark the 1993 Amendments to the Federal Rules.[91]

D. The Development of Long-Arm Statutes in Territorial Context

The historical overlap of service of process and causes of action is one piece of the puzzle. Another piece is how personal jurisdiction started as confined to defendants who were actually within the judicial district or who consented to suit there.[92] Following the principle expressed in *Pennoyer v. Neff* that a plaintiff must serve a defendant within state boundaries for the service to be effective, *International Shoe* eventually reflected the change that "presence" could be constructive rather than only literal.[93] The period from the 1938 adoption of the Federal Rules to 1955 saw states begin to adopt long-arm statutes to confirm constructive presence.[94] Eventually, in most states, exercising personal jurisdiction would require a two-step analysis: (1) whether jurisdiction is constitutional in light of the Due Process Clause and (2) whether service was effective under statutory long-arm statutes.[95]

Illinois became the first state to adopt a comprehensive long-arm statute in 1955, based on the principle that one should be amenable to suit in Illinois on

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90. *Id.* § 4App.03. Thus, the 1963 version of Rule 4(f) stated in relevant part: "All process other than a subpoena may be served anywhere within the territorial limits of the state in which the district court is held, and, when *authorized by* a statute of the United States *or by these rules*, . . . beyond the territorial limits of that state. . . . [Effective July 1, 1963; *see* 31 F.R.D. 587, 594.]." *Id.* (emphasis added). Rule 4(f) was amended in 1966 as well, but that amendment related to joinder rules not relevant here. *See id.* § 4App.04.

91. *See* Omni Cap. Int'l v. Rudolf Wolff & Co., 484 U.S. 97, 104–05 (1987); FED. R. CIV. P. 4(e) (amended 1993); 1 MOORE ET AL., *supra* note 89, at § 4App.09.

92. Judiciary Act of 1789, ch. 20, § 11, 1 Stat. 73, 79 (codified as amended in scattered sections of 28 U.S.C.) ("But no person shall be arrested in one district for trial in another, in any civil action before a circuit or district court. . . . And no civil suit shall be brought before either of said courts against an inhabitant of the United States, by any original process in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving the writ . . . .").

93. Pennoyer v. Neff, 95 U.S. 714, 733 (1877) (holding that only "service of process within the State, or his voluntary appearance" can bring a defendant within the jurisdiction of the state for personal liability cases); Int'l Shoe Co. v. Wash. Off. Unemployment Comp. & Placement, 326 U.S. 310, 316 (1945).

94. Pursuant to a Westlaw search, 247 cases cited *International Shoe* from its date of decision to January 1, 1955. But the law remained extremely uncertain until long-arm statutes came into greater use. *See, e.g.*, Dane Reed Ullian, Note, *Retroactive Application of State Long-Arm Statutes*, 65 FLA. L. REV. 1653, 1659 (2013) ("For the first ten years after *International Shoe*, states took a piecemeal approach, adopting statutes that authorized long-arm jurisdiction in isolated instances.").

95. Zachary D. Clopton, *Long Arm "Statutes"*, 23 GREEN BAG 2D 89, 91 (2020). Many states' long-arm statutes simply reach to the extent of the Due Process Clause, collapsing this two-step inquiry into one. *Id.* at 91–92.

any cause of action only arising out of certain activities within the state.[96] Illinois focused on single acts that would establish jurisdiction over out-of-state defendants and set the stage for what would develop into the infamous long-arm statute.[97] After Illinois, a second pattern of long-arm statutes emerged. Rhode Island was the first state to enact a long-arm statute replicating the limits of due process.[98] California followed suit with an expanded version of its original long-arm statute in 1969.[99] Other states followed, and most eventually fell into one of two camps.[100]

The first camp holds states with statutes that extend to the full limit of due process; the second camp is for states with statutes that purport to enumerate specific acts conferring personal jurisdiction.[101] For the former, long-arm statutes that go to the limits of due process allow a court to exercise jurisdiction so long as the constitutional due process standard is met.[102] The latter long-arm statutes list specific acts that subject a nonresident to the jurisdiction of a court in the state as to causes of action arising out of those enumerated acts.[103] Some states initially enacted enumerated single-act statutes and then later amended them to include a catchall to the full extent of the Due Process Clause.[104] Despite having enumerated-act statutes, some courts have interpreted their own state's single-act long-arm statute to extend to the limits of due process.[105]

These distinctions matter to federal courts because, except when federal law applies, federal courts must abide by their local state long-arm statutes for

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96. Act of July 19, 1955, sec. 1, § 17, 1955 Ill. Laws 2238, 2245 (codified as amended at 735 ILL. COMP. STAT. 5/2-209 (2024)) (extending the jurisdiction of Illinois state courts to nonresidents who engaged in "transaction of any business," "commission of a tortious act," "ownership, use, or possession of any real estate," or "[c]ontracting to insure" within the boundaries of Illinois); Nelson v. Miller, 143 N.E.2d 673, 676 (Ill. 1957) ("The foundations of jurisdiction include the interest that a State has in providing redress in its own courts against persons who inflict injuries upon, or otherwise incur obligations to, those within the ambit of the State's legitimate protective policy.").

97. James P. Rooney, *Rethinking the Long-Arm Statute*, 100 MASS. L. REV. 57, 58 (2019).

98. Act of May 6, 1960, ch. 124, sec. 1, 1960 R.I. Pub. Laws 453, 453–54 (codified as amended at 9 R.I. GEN. LAWS § 9-5-33 (2003)).

99. Act of Sept. 6, 1969, ch. 1610, sec. 3, § 410.10, 1969 Cal. Stat. 3362, 3363 (codified at CAL. CIV. PROC. CODE § 410.10 (West, Westlaw with Ch. 1 of 2023-24 2nd Ex.Sess, and all laws through Ch. 1017 of 2024 Reg. Sess.)). The prior version was adopted in 1951 and read, "Where jurisdiction is acquired over a person who is outside of this State by publication of summons in accordance with Sections 412 and 413, the court shall have the power to render a personal judgment against such person only if he was personally served with a copy of the summons and complaint, and was a resident of this State at the time of the commencement of the action or at the time of service." *See* Allen v. Superior Ct., 251 P.2d 358, 360 (Cal. Ct. App. 1952).

100. It is not always straightforward to place state long-arm statutes into the two camps. *See infra* text accompanying notes 105–08.

101. Ullian, *supra* note 94, at 1659.

102. *Id.* at 1659–60.

103. *Id.* at 1659.

104. Douglas D. McFarland, *Dictum Run Wild: How Long-Arm Statutes Extended to the Limits of Due Process*, 84 B.U. L. REV. 491, 497 (2004).

105. Nelson v. Miller, 143 N.E.2d 673, 679 (Ill. 1957). Wright & Miller's *Federal Practice and Procedure* collects all fifty states' long-arm statutes. 4 WRIGHT & MILLER, *supra* note 13, at § 1068 n.19.

the limits of personal jurisdiction.[106] Even when legislatures have enacted specific enumerated jurisdictional statutes, some federal courts misinterpret the statutes in a way that extends their scope to the full extent permitted by due process,[107] despite their attempts to comply with state courts' interpretations of their own long-arm statutes.[108] If a state's courts have not interpreted its long-arm statute, federal courts must predict how the state would interpret the statute.[109] As a result, a federal district court must interpret and is bound by state law to establish the limits of its own personal jurisdiction, sometimes in ways that do not match due process limitations.

For example, a few states require their long-arm statutes to be used *only by residents*, a requirement missing from the Supreme Court's Due Process Clause jurisprudence.[110] Other state long-arm statutes require that the alleged tortious act occur *within the forum state*, another requirement that does not exist under due process.[111] Some states shift burdens differently and in ways that are not consonant with due process.[112] In Ohio, courts are instructed to grant plaintiffs the benefit of the doubt,[113] but in Florida, the long-arm statute is to be "strictly construed" against finding personal jurisdiction.[114] This dichotomy exists even

106. FED. R. CIV. P. 4(k)(1)(A).

107. *See* Dustin E. Buehler, *Jurisdictional Incentives*, 20 GEO. MASON L. REV. 105, 141 (2012); Heins v. Wilhelm Loh Wetzlar Optical Mach. GmbH & Co. KG., 522 N.E.2d 989, 992 n.3 (Mass. App. Ct. 1988) ("[T]he statutory standard has not always been clearly and separately defined.").

108. *See, e.g.*, Yamashita v. LG Chem, Ltd., 48 F.4th 993, 995 (9th Cir. 2022), *certifying questions*, 518 P.3d 1169, 1171–72 (Haw. 2022), *opinion after certified questions answered*, 62 F.4th 496, 502 (9th Cir. 2023) (attempting to clarify the scope of Hawaii's long-arm statute); Sullivan v. LG Chem, Ltd., 79 F.4th 651, 661–70 (6th Cir. 2023) (examining whether Michigan's long-arm statute reaches the extent of due process).

109. McFarland, *supra* note 104, at 517–20 (listing seven states where the first opinion to interpret state long-arm statutes came from a federal court—Colorado, Texas, Kentucky, Tennessee, Indiana, New Hampshire, and South Carolina).

110. *See, e.g.*, Mizell v. Prism Comput. Corp., 27 F. Supp. 2d 708, 711 (S.D. Miss. 1998) (Mississippi); Mountain States Sports, Inc. v. Sharman, 353 F. Supp. 613, 615 (D. Utah 1972) (Utah); Sun-X Glass Tinting of Mid-Wis., Inc. v. Sun-X Int'l, Inc., 227 F. Supp. 365, 371 (W.D. Wis. 1964) (Wisconsin); *cf.* Seymour v. Parke, Davis & Co., 294 F. Supp. 1257, 1263 (D.N.H. 1969) (explaining that nonresidence of the plaintiff is a factor to consider in applying long-arm statute and due process analyses).

111. *See, e.g.*, Dragor Shipping Corp. v. Union Tank Car Co., 361 F.2d 43, 49 (9th Cir. 1966) (Arizona); Singer v. Piaggio & C. (s.p.a.), 420 F.2d 679, 681 (1st Cir. 1970) (Massachusetts); Chulchian v. Franklin, 392 F. Supp. 203, 205 (S.D. Ind. 1975) (Indiana). This is not to say that citizenship or location are irrelevant; they are just not as determinative as they are in the respective long-arm statutes.

112. *See infra* Section III.C.

113. Douglas v. Mod. Aero, Inc., 954 F. Supp. 1206, 1210 (N.D. Ohio 1997) (explaining the need to consider pleadings and affidavits in the light more favorable to plaintiff on a 12(b)(2) motion).

114. Bell N. Rsch., LLC v. HMD Am., Inc., No. 22-22706-CIV, 2023 U.S. Dist. LEXIS 39359, *7–8 (S.D. Fla. Mar. 8, 2023) ("Florida's long-arm statute 'must be strictly construed, and any doubts about the applicability of the statute are resolved in favor of the defendant and against a conclusion that personal jurisdiction exists.'" (quoting Interim Healthcare, Inc. v. Interim Healthcare of Se. La., Inc., No. 19-cv-62412, 2020 WL 3078531, at *8 (S.D. Fla. June 10, 2020))).

in states that interpret their long-arm statute to reach to the full extent of the Due Process Clause, such as when the *Calder*[115] "effects" test is at issue.[116]

One developing long-arm statute issue with geometric-federalism ramifications is the uncertain effect of *Ford Motor Co. v. Superior Court*.[117] The Ninth Circuit's decision in *Yamashita v. LG Chem, Ltd.*, presented the issue.[118] There, after finding Hawaii's long-arm statute to be uncertain following *Ford Motor Co.*, the court certified two questions to the Hawaii Supreme Court.[119] First, did the Hawaii Supreme Court consider the long-arm statute to be coextensive with the Due Process Clause? And second, if so, does that mean its reach is now broader following *Ford Motor Co.*?[120]

Hawaii is not the only state that must confront *Ford Motor Co.* Florida's long-arm statute identifies specific types of causes of action and uses "arising out of" language in introducing them.[121] Under the New York long-arm statute, defendants are subject to jurisdiction for "a cause of action arising from any of the acts enumerated in this section."[122] While Florida and New York's long-arm statutes do not extend to the full limits of the Due Process Clause[123]—and

115. Calder v. Jones, 465 U.S. 783, 787 (1984).

116. *See* IMO Indus., Inc. v. Kiekert AG, 155 F.3d 254, 261 (3d Cir. 1998) ("In applying *Calder* outside the defamation context, courts have adopted varying versions of these factors as the 'effects test,' yielding a mixture of broad and narrow interpretations."). *Compare* Dole Food Co. v. Watts, 303 F.3d 1104, 1111 (9th Cir. 2002) (exercising jurisdiction broadly by stating, "*Calder* stands for the proposition that purposeful availment is satisfied even by a defendant 'whose only "contact" with the forum state is the "purposeful direction" of a *foreign* act having *effect* in the forum state.'" (emphasis added) (quoting Haisten v. Grass Valley Med. Reimbursement Fund, 784 F.2d 1392, 1397 (9th Cir. 1986))), *with* Johnson v. Arden, 614 F.3d 785, 796–97 (8th Cir. 2010) ("Additionally, even if the effect of [defendant's] alleged statement was felt in Missouri, we have used the *Calder* test merely as an additional factor to consider when evaluating a defendant's relevant contacts with the forum state. . . . We therefore construe the *Calder* effects test narrowly, and hold that, absent additional contacts, mere effects in the forum state are insufficient to confer personal jurisdiction.").

117. Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 592 U.S. 351 (2021). In *Ford Motor Co.*, the Court clarified that the standard minimum-contacts test that a plaintiff's claim must "arise out of or relate to" defendant's wrongful conduct is disjunctive. *Id.* at 1026–27 (emphasis omitted) (quoting Bristol-Myers Squibb Co. v. Superior Ct. of Cal., 582 U.S. 255, 262 (2017)). In other words, the claim can arise out of *or* relate to the defendant's minimum contacts.

118. Yamashita v. LG Chem, Ltd., 48 F.4th 993 (9th Cir. 2022).

119. *See id.* at 997.

120. *Id.* at 997–98 ("We cannot determine whether the Hawaii legislature expanded the state's long-arm statute on a one-time basis—to match its understanding of the Due Process Clause at the time, employing the then-current causal test—or whether the legislature intended indefinitely to tie the long-arm statute to the U.S. Supreme Court's evolving interpretation of the Due Process Clause, effectively 'incorporating' any future developments[, particularly *Ford Motor Co.*,] in case law.").

121. FLA. STAT. § 48.193 (2016); McCullough v. Royal Caribbean Cruises, Ltd., 268 F. Supp. 3d 1336, 1343 (S.D. Fla. 2017) ("Under Florida's long-arm statute, a defendant can be subject to either specific personal jurisdiction (jurisdiction in suits arising out of or relating to the defendant's contacts with Florida) or general personal jurisdiction . . . .").

122. N.Y. C.P.L.R. 302(a) (MCKINNEY 2008).

123. Anderson v. Ind. Black Expo, Inc., 81 F. Supp. 2d 494, 501 (S.D.N.Y. 2000) ("[S]ection 302(a) does not extend New York's long-arm jurisdiction to the full extent permitted by the Constitution." (quoting Levisohn, Lerner, Berger & Langsam v. Med. Taping Sys., Inc., 10 F. Supp. 2d 334, 339 (S.D.N.Y. 1998))); Venetian Salami Co. v. Parthenais, 554 So. 2d 499, 500–02 (Fla. 1989) (holding that the federal due process analysis is not built into Florida's long-arm statute).

therefore the issue does not arise as cleanly as in Hawaii—no New York or Florida case has yet interpreted its long-arm statute differently based on *Ford Motor Co.*[124]

Missouri uses similar language to New York,[125] but its courts have collapsed the "arising out of [] or relating to" language so distinguished in *Ford Motor Co.* into one fluid standard.[126] Massachusetts was ahead of the curve by calling into question the direct causal link that *Ford Motor Co.* weakened, but its prescient analysis leaves unclear whether federal courts in the Commonwealth have a more limited reach under *Ford Motor Co.*[127] State long-arm statutes that do not mirror due process are confusing and disparate, even more so in the last few years, a fact that should trouble admirers of comity and interstate federalism.

E. State Sovereignty and Minimum Contacts

Long-arm statutes evoke critical issues of territorial federalism, and sovereignty and minimum contacts provide another piece of the puzzle. Prior to the expansion of jurisdictional reach that came with *International Shoe* and minimum contacts,[128] courts tended to hold fast to territorial jurisdiction through the concept of state sovereignty.[129] States were the ultimate entity in a jurisdictional sense, permitting all nonstate individuals coming within its boundaries to be subject to the absolute exercise of that state's authority.[130] This

124. At this time no court has considered whether *Ford Motor Co.*'s emphasis on the disjunctive between "aris[ing] out of or relat[ing] to" necessarily or even impliedly alters the meaning of New York's or Florida's long-arm statutes. Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 592 U.S. 351, 359 (2021) (quoting Bristol-Myers Squibb Co. v. Superior Ct. of Cal., 582 U.S. 255, 262 (2017)). Perhaps they never will because they are not coextensive with the Due Process Clause. *But see In re* Takata Airbag Prod. Liab. Litig., No. 15-MD-02599, 2021 WL 8566509, at *2 (S.D. Fla. May 6, 2021) (noting that *Ford Motor Co.* has something to say for Florida courts interpreting Florida's long-arm statute). Federal district and circuit courts trying to presage how state courts might reinterpret their long-arm statutes following a due-process-based Supreme Court decision, in order to confirm the reach of their own personal jurisdiction, is a bizarre situation. It neither supports state autonomy nor reflects the breadth of federal geographic supremacy. It's just a mess.

125. MO. REV. STAT. § 506.500 (2024) (specifying that jurisdiction extends over causes of action "arising from the doing of [enumerated acts]").

126. Ristesund v. Johnson & Johnson, 558 S.W.3d 77, 80 (Mo. Ct. App. 2018) ("Missouri courts may exercise specific personal jurisdiction over a defendant for claims *arising out of, or relating to*, the defendant's activities in Missouri covered by the long-arm statute." (emphasis added)). To be fair, *Ristesund* was decided before *Ford Motor Co.*

127. *See, e.g.*, Systemation, Inc. v. Engel Indus., Inc., 992 F. Supp. 58, 61 (D. Mass. 1997) ("The constitutional analysis of 'arising out of or relating to' has been distinguished, at great length, from the 'arising from' analysis of the Massachusetts long-arm statute.").

128. Int'l Shoe Co. v. Washington, 326 U.S. 310 (1945).

129. Andrew L. Strauss, *Where America Ends and the International Order Begins: Interpreting the Jurisdictional Reach of the U.S. Constitution in Light of a Proposed Hague Convention on Jurisdiction and Satisfaction of Judgments*, 61 ALB. L. REV. 1237, 1251 (1998); Rhode Island v. Massachusetts, 37 U.S. (12 Pet.) 657, 673–74 (1838) ("The grand object of its framers was to establish a common government for sovereign states, and to have that sovereignty unimpaired, wherever it could so be left; without impairing the government of the Union.").

130. Strauss, *supra* note 129, at 1251 ("The hallmark of the territorial era was an understanding that nation-states possessed absolute sovereignty over their territories and conversely were excluded from exercising sovereign powers in the territories of other nation-states."); *Ex parte* Graham, 10 F. Cas. 911, 912

perspective—complex and nuanced—is best attributed to the Framers having been inspired by the general common law and international law.[131] That perspective made sense because courts viewed each state as an independent sovereign and, accordingly, treated their jurisdictional independence like that of foreign nations.[132]

In the 1828 case *Picquet v. Swan*, the federal court in Massachusetts rooted its territorial outlook of jurisdiction in English law by stating, "Even the court of king's bench in England, though a court of general jurisdiction, never imagined, that it could serve process in Scotland, Ireland, or the colonies, to compel an appearance, or justify a judgment against persons residing therein at the time of the commencement of the suit."[133] In turn, a court created within a certain territory is bound in its exercise of power by the limits of the state.[134] To declare otherwise would represent a "usurpation of general sovereignty over independent nations and their subjects."[135]

Pennoyer v. Neff was not a radical decision, but it helps solidify nineteenth-century views on territorial personal jurisdiction.[136] *Pennoyer* established two important principles: first, states possess exclusive jurisdiction over persons and property within their state; second, the inverse, states lack personal jurisdiction over persons or property outside of their territory.[137] In *Pennoyer*, the Court justified a territorial approach to jurisdiction based on allocating judicial powers among the "sovereign" states and the "well-established principles of public [international] law respecting the jurisdiction of an independent [nation-]State over persons and property."[138]

(C.C.E.D. Pa. 1818) (No. 5,657) ("This division and appointment of particular courts, for each district, necessarily confines the jurisdiction of the local tribunals, within the bounds of the respective districts, within which they are directed to be holden.").

131. Sachs, *supra* note 9, at 1718; Drobak, *supra* note 9, at 1022.

132. Sachs, *supra* note 9, at 1718; Drobak, *supra* note 9, at 1022; Flower v. Parker, 9 F. Cas. 323, 324–25 (C.C.D. Mass. 1823) (No. 4,891) ("[T]he principle seems universal, and is consonant with the general principles of justice, that the legislature of a state can bind no more than the persons and property within its territorial jurisdiction.").

133. Picquet v. Swan, 19 F. Cas. 609, 611 (C.C.D. Mass. 1828) (No. 11,134).

134. *Id.* ("It matters not, whether it be a kingdom, a state, a county, or a city, or other local district. If it be the former, it is necessarily bounded and limited by the sovereignty of the government itself, which cannot be extra-territorial; if the latter, then the judicial interpretation is, that the sovereign has chosen to assign this special limit, short of his general authority."); *see* Toland v. Sprague, 37 U.S. (12 Pet.) 300, 329–30 (1838) (interpreting the Judiciary Act of 1789 to prohibit federal service of process under the Process Acts if it was issued beyond the limits of the district in which the federal court sat, even if the state permitted its courts to issue extraterritorial service in certain cases).

135. *Picquet*, 19 F. Cas. at 612; *see also* Dearing v. Bank of Charleston, 5 Ga. 497, 515 (1848) ("[T]he rule is firmly fixed, that no sovereignty can extend its process beyond its territorial limits, to subject either persons or property to its judicial decisions. This is the rule, by the laws of nations—by the Common Law, and [it] is recognized by the American Courts." (emphasis omitted)).

136. Pennoyer v. Neff, 95 U.S. 714 (1877).

137. *See id.* at 722.

138. *Id.*

International Shoe Co. v. Washington later established personal jurisdiction over remote defendants so long as they have "minimum contacts" with the state.[139] Together, *Pennoyer* and *International Shoe* established that states have jurisdiction over anyone found within their territory plus anyone outside their territory as long as they had sufficient contacts with the state.[140]

F. The 1993 Revisions to Federal Rule 4(k)

In *Omni Capital*, two foreign defendants argued that they were not subject to personal jurisdiction because, even if due process were satisfied, they were "not amenable to service of summons in the absence of a statute or rule authorizing such service."[141] Highlighting the difference between the predecessor Rule 4(e) and former Rule 4(f), the Court noted that Rule 4(e) provides for service when "a federal statute authorizes such service" or "'under the circumstances' prescribed in a state statute or rule."[142] Because the plaintiff conceded—and the Court appeared to agree—that the Louisiana long-arm statute did not reach the defendants, the Court held that it did not authorize service and, as a result, personal jurisdiction did not exist.[143]

Roughly six years after *Omni Capital*, the Rules were broadened and simplified.[144] Before the 1993 amendment, Rule 4(f) provided, generally, that "service of process could be made 'within the territorial limits of the state in which the district court' was located."[145] Service of process outside of the territorial limits of the forum state was governed by the former Rule 4(e), which provided that, "absent a specific federal service statute, service outside of the state could be made only 'under the circumstances and in the manner prescribed' by the [state] statute."[146] Some federal courts interpreted "under the circumstances and in the manner prescribed" as imposing on federal courts the state's restrictions on service and personal jurisdiction and "the Fourteenth Amendment requirements of minimum contacts," which mirrors the problem Rule 4(k)(1)(A) created.[147]

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139. Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945); *see also* McGee v. Int'l Life Ins. Co., 355 U.S. 220, 223 (1957) (finding there was a "substantial connection" between the corporation and the forum state when there was a single insurance policy with a California resident).

140. Later, in *Shaffer v. Heitner*, 433 U.S. 186, 211–12 (1977), the Supreme Court rejected the notion that property within a territory was dispositive as to personal jurisdiction.

141. Omni Cap. Int'l, Ltd. v. Rudolf Wolff & Co., 484 U.S. 97, 103 (1987). Defendants' argument was based on Rule 4(e). *Id.* at 105–06.

142. *Id.* at 105.

143. *See id.* at 107–10.

144. Leslie M. Kelleher, *The December 1993 Amendments to the Federal Rules of Civil Procedure—A Critical Analysis*, 12 TOURO L. REV. 7, 31–32 (1995).

145. *Id.* at 31 (quoting FED. R. CIV. P. 4(f)).

146. *Id.* (quoting FED. R. CIV. P. 4(e)).

147. *Id.*

Rule 4(e)'s language, "under the circumstances and in the manner prescribed in the statute or rule," was shortened to Rule (4)(k)(1)(A)'s present form.[148] The Rule now permits federal courts to exercise personal jurisdiction over defendants as long as a court of general jurisdiction in their state can do so.[149] One way the Rule was broadened was in response to courts and commentators who had suggested that, for federal-question cases, courts should look to the territory of the entire country—not just the forum state.[150] The Advisory Committee Notes claimed that the substance of the former Rule 4(f) was retained in the new Rule 4(k)(1) paragraph by authorizing the exercise of personal jurisdiction over persons who can be reached under state long-arm law, the "100-mile bulge" provision, or the federal interpleader act.[151]

Arguably the most notable effect of the 1993 revisions was an explicit separation of jurisdictional reach from the issue of how service is performed.[152] In a sense, this marked the first official recognition that the federal courts were no longer beholden to the merged-writs approach of process and cause of action.[153]

Scholars have criticized the text and application of Rule 4(k)(1), although they differ in their approaches. Some scholars argue that Congress should grant nationwide jurisdiction to all federal courts,[154] suggesting that venue statutes be modified to accommodate the risk of forum shopping.[155]

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148. 1 MOORE ET AL., *supra* note 89, at § 4App.09; *see* FED. R. CIV. P. 4(k)(1)(A).

149. Kelleher, *supra* note 144, at 33.

150. *Id.* at 35–36 (explaining how Rule 4(k)(2), along with the provisions for worldwide service of process, were in response to the *Omni* Court's invitation to correct the issue of a defendant escaping jurisdiction when he lacked sufficient minimum contacts with any one state); A. Benjamin Spencer, *Nationwide Personal Jurisdiction for Our Federal Courts*, 87 DENV. U. L. REV. 325, 329–30 (2010) (proposing a revision to Rule 4(k) which would authorize nationwide service of process for all civil cases in federal district court, regardless of whether the case arose as a federal question or under diversity jurisdiction).

151. FED. R. CIV. P. 4(k) advisory committee's note to 1993 amendment. *But see* A. Benjamin Spencer, *The Territorial Reach of Federal Courts*, 71 FLA. L. REV. 979, 984 (acknowledging that to be consistent with the Rules Enabling Act, Rule 4(k) could create a region within which service of process would be effective like the prior Rule 4(f) did).

152. *See* Omni Cap. Int'l, Ltd. v. Rudolf Wolff & Co., 484 U.S. 97, 111 (1987) (applying Rule 4 before the 1993 amendments); FED. R. CIV. P. 4 advisory committee's note to 1993 amendment ("The general purpose of this revision is to facilitate the service of the summons and complaint. The revised rule explicitly authorizes a means for service of the summons and complaint on any defendant. While the methods of service so authorized always provide appropriate notice to persons against whom claims are made, effective service under this rule does not assure that personal jurisdiction has been established over the defendant served."). *But see* Spencer, *supra* note 151, at 983–84 (explaining how Rule 4(k) is clearly a rule of jurisdiction rather than mere procedure because it identifies when service of process "establishes personal jurisdiction over a defendant" (quoting FED. R. CIV. P. 4(k)(1)–(2))).

153. *See supra* Section II.B.

154. *See generally* Stephen E. Sachs, *How Congress Should Fix Personal Jurisdiction*, 108 NW. U. L. REV. 1301 (2014); A. Benjamin Spencer, *supra* note 150; Jonathan Remy Nash, *National Personal Jurisdiction*, 68 EMORY L.J. 509 (2019).

155. *See* Sachs, *supra* note 9, at 1704–06 (asserting that today's law mistakenly asks where a case may be heard rather than who may hear it, thus creating unnecessary confusion by obliging federal courts to follow state jurisdiction rules).

Others take issue with the changes made in the 1993 Rule amendments that saw the absorption of former Rule 4(f) into the present Rule 4(k), arguing that before the 1993 amendments, Rule 4(f) governed only the methods and reach of service of process and procedural matters within the scope of the Court's authority under the Rules Enabling Act.[156] They observe that the current Rule 4(k) now governs not only procedure but also amenability to jurisdiction and thus impermissibly affects a substantive right.[157] A third group takes issue from a constitutional standpoint, arguing that the jurisdictional limits imposed on federal courts by the Fifth Amendment should not be conflated with those imposed on states by the Fourteenth Amendment.[158] Beyond agreeing on the problematic outcomes resulting from the current system,[159] however, scholars have not explored the flaws of Rule 4(k)(1)(A) from a federalism standpoint[160] or emphasized restoring federalist ideals as one of the goals of their proposed solutions.[161] Nor, critically, have they addressed the deference of a federal court to a state's view of the reach of its own courts, even when it is more limited than a state's geographic borders.[162]

156. Leslie M. Kelleher, *Amenability to Jurisdiction as a "Substantive Right": The Invalidity of Rule 4(k) Under the Rules Enabling Act*, 75 IND. L.J. 1191, 1207–09, 1214–15 (2000).

157. *See id.* at 1214–15, 1230 (arguing that, as amended, Rule 4(k) governs not only service but now also explicitly purports to govern amenability to jurisdiction). Kelleher proposes a repeal of Rule 4(k) and a recommendation to Congress that a standard of nationwide amenability to jurisdiction for federal questions be provided by the legislature. *Id.*

158. *See* Nash, *supra* note 154, at 523–24 (demonstrating by analogy that just as the Fourteenth Amendment does not restrict personal jurisdiction within the states, the Fifth Amendment should not restrict personal jurisdiction within the United States or impose any obstacle to nationwide personal jurisdiction in federal courts); Sachs, *supra* note 9, at 1764–65 (arguing that the real problem is a conflation of federal and state personal jurisdiction with the Due Process Clauses of the Fourteenth and Fifth Amendments); Spencer, *supra* note 151, at 983–84 (arguing that Rule 4(k) violates the mandate of the Rules Enabling Act because it is undoubtedly a rule concerning jurisdiction rather than just procedure). *But see generally* Woolley, *supra* note 9 (explaining that Rule 4(k)(1)(A) is "undoubtedly valid" even though it governs amenability because it originates in the Rules of Decision Act rather than the Rules Enabling Act).

159. Not all scholars believe that Rule 4(k)(1)(A) is problematic, of course. *See generally* Woolley, *supra* note 9.

160. *But see* Sachs, *supra* note 9, at 1708.

161. *See* Kelleher, *supra* note 156, at 1197 (arguing for a repeal of Rule 4(k) and nationwide amenability to jurisdiction, yet recognizing that "even in diversity cases, in which state substantive law governs, Congress has a great deal of power to regulate procedural matters, regardless of their substantive impact, subject, perhaps, to largely undefined federalism limits").

162. Kelleher, *supra* note 144, at 33. In her important summary of changes to the 1993 amendments, Professor Kelleher acknowledges the logical and mechanical issues but not the federalism problem: "[A]ny potential advantage [of broader service rules] to the plaintiff is limited by the requirement that the defendant still must be within the jurisdiction granted by the forum state's long-arm jurisdictional statute. . . . If the defendant would not be subject to the jurisdiction of the courts of the state, it will not be amendable to jurisdiction in a federal court in the state. For causes of action created by federal statute, however, having the jurisdiction of the court depends on the vagaries of the forum state's long-arm statutes has no such logic to commend it." *Id.*

G. Federalism's Implications for Modern Personal Jurisdiction

The modern approach to personal jurisdiction starts with asking whether a defendant is either "at home" in a state or has "minimum contacts" such that exercising personal jurisdiction is fair under the Due Process Clause.[163] Many courts characterize this latter question as two-pronged: one, does the state set forth a long-arm statute sufficient to reach defendants located outside the physical territorial boundaries of the state; two, does a defendant have such minimum contacts that exercising jurisdiction would not violate "traditional notions of fair play and substantial justice."[164]

Although the concern for federal authority has been largely ignored, the interests of *other states* to adjudicate a matter have long been considered in a court's minimum-contacts analysis to determine whether the sovereign has a strong enough interest to adjudicate the matter.[165] Indeed, interstate federalism has been a part of the Court's personal jurisdiction analysis since *International Shoe*, as a brief summary of its personal jurisdiction cases shows.[166]

In 1958, the Court emphasized in *Hanson v. Denckla* that although jurisdiction has strayed from the territorial perspective of *Pennoyer v. Neff*, it "is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts."[167] These restrictions are more than a guarantee of immunity from inconvenient litigation but are instead the consequence of territorial limitations on the power of each State.[168] To be clear,

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163. *See* Int'l. Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) ("[D]ue process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" (emphasis added) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940))).

164. *See, e.g.*, Madara v. Hall, 916 F.2d 1510, 1514 (11th Cir. 1990) ("The determination of personal jurisdiction over a nonresident defendant requires a two-part analysis. First, we consider the jurisdictional question under the state long-arm statute. . . . [W]e next determine whether sufficient minimum contacts exist to satisfy the Due Process Clause of the Fourteenth Amendment so that 'maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" (citations omitted) (quoting *Int'l Shoe Co.*, 326 U.S. at 316)).

165. Chattanooga Corp. v. Klingler, 528 F. Supp. 372, 378 (E.D. Tenn. 1981) ("It is suggested that a state has a greater interest in personal injury cases, the physical welfare of its inhabitants, than in economic injury. And also a greater interest in protecting the economic reliance interests of its residents than the expectation interests." (citation omitted)).

166. *See, e.g.*, Hanson v. Denckla, 357 U.S. 235, 251 (1958) (noting that the limits of a state's personal jurisdiction are constrained in part by "territorial limitations"); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 294 (1958) (acknowledging the limitations on otherwise valid exercises of jurisdiction where principles of "interstate federalism" militate against jurisdiction).

167. *Hanson*, 357 U.S. at 251.

168. *Id.*; *see also* Bristol-Myers Squibb Co. v. Superior Ct. of Cal., 582 U.S. 255, 263 (2017) (emphasizing that the "primary concern" is "the burden on the defendant," and to assess this burden, the court must consider the practicality of litigating in the forum while also submitting to the coercive power of a state that may have little legitimate interest in the claims (quoting *World-Wide Volkswagen*, 444 U.S. 286 at 292)); Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477 (1985) (outlining how a nonresident defendant who purposefully directed his activities at a forum must present compelling considerations that outweigh the exercise of jurisdiction). The Court offered the example that the potential clash of the forum's law with the "fundamental

whether the exercise of personal jurisdiction over a remote defendant is reasonable does not depend on whether the defendant is haled into federal or state court.[169]

In 1980, *Worldwide Volkswagen* seconded the importance of the state's sovereign authority. Specific personal jurisdiction requires minimum contacts because "[i]t 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."[170] The Court emphasized sovereignty because "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."[171] In light of the minimum-contact requirement, states must retain a level of sovereignty, and asserting jurisdiction must be reasonable "in the context of our federal system."[172]

In *Burnham v. Superior Court of California*, the Court held that the defendant was subject to personal jurisdiction because he was served with process while physically present in California on a trip.[173] When the defendant visited California for a work trip and to visit the children who lived with his estranged wife, she served him with the summons and divorce petition.[174] Mr. Burnham

substantive social policies" of another state may be accommodated through application of the forum's choice of law rules. *Id.* (quoting *World-Wide Volkswagen*, 444 U.S. at 292).

169. Despite the doctrinal and common-sense appeal of this statement, surprisingly few courts or commentators acknowledge it. A few who have include: Jonathan Stephenson, *Mass Inaction: An Analysis of Personal Jurisdiction in Mass Actions in Federal Court*, 59 SANTA CLARA L. REV. 453, 461 (2019) ("Thus, when federal statutes do not authorize federal personal jurisdiction, the federal court must analyze the issue in the same way as the relevant state court would, which 'leads to the prospect of a federal court refusing to adjudicate a federal claim because the courts of the state in which it sits could not accept jurisdiction.'" (quoting Max Daetwyler Corp. v. R. Meyer, 762 F.2d 290 (3d Cir. 1985))); Nolan L. Reichl, *Something Erie This Way Comes: The Dueling State and Federal Law Governing Personal Jurisdiction*, 32 ME. B.J. 13, 14 (2017) ("Just as federal courts must consider whether the application of Maine's long-arm statute under a given set of facts comports with the Due Process Clause, Maine state courts apply the same analysis in state court cases."); Kevin M. Faulkner, *Personal Jurisdiction in Texas and Internet Web-Sites*, 4 TEX. WESLEYAN L. REV. 31, 36 (1997) ("The Fifth Circuit has determined that it must use the same analysis as Texas state courts use in acquiring personal jurisdiction.").

170. *World-Wide Volkswagen*, 444 U.S. at 292.

171. *Id.* at 293.

172. *Id.* (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 317 (1945)); *see also id.* ("[T]he 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."); *id.* at 294 ("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." (citing *Hanson*, 357 U.S. at 235)).

173. Burnham v. Superior. Ct. of Cal., 495 U.S. 604, 619 (1990).

174. *Id.* at 607–08.

moved to quash service.[175] Writing for the plurality, Justice Scalia observed that "[a]mong the most firmly established principles of personal jurisdiction in American tradition is that the courts of a State have jurisdiction over nonresidents who are physically present in the State."[176] Every state has the power to bring before its courts any individual found within its borders, and if that person was properly served within that state's border, the plurality held, the state has jurisdiction sufficient to support judgment.[177]

English common law, Justice Scalia noted, sometimes allowed "transitory" actions against nonresidents who were present in England, even when the events arose outside of England.[178] Based on this principle, he maintained that courts have continuously held that a noncitizen, passing through a state, can be sued if he is physically present in said state at the time he is served.[179] In fact, Justice Scalia pointed out this principle was "so well settled that it went unlitigated."[180]

Later, in *Walden v. Fiore*, the Court held that the Nevada courts lacked specific jurisdiction even though the plaintiffs were Nevada residents and "suffered foreseeable harm in Nevada."[181] The out-of-state defendant must "have purposefully 'reach[ed] out beyond' their State and into another by, for example, entering a contractual relationship that 'envisioned continuing and wide-reaching contacts' in the forum State," which did not occur in that case.[182] *Walden* emphasized how federal courts follow state law in determining the bounds of their jurisdiction because a federal district court's authority to assert personal jurisdiction in most cases is linked to service of process on a defendant "who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located."[183]

During the same term as *Walden*, the Court decided *Daimler AG v. Bauman*.[184] The plaintiffs were Argentinian residents who filed a complaint in California against Daimler AG, claiming the company's subsidiary, Mercedes-

175. *Id.* at 608.

176. *Id.* at 610.

177. *Id.* at 619, 628–29.

178. *See id.* at 611 (citing Mostyn v. Fabrigas, 98 ENG. REP. 1021 (K.B. 1774); Cartwright v. Pettus, 22 ENG. REP. 916 (Ch. 1675)); *supra* Section II.A (providing further historical background of jurisdiction in early English history).

179. *See* Murphy v. John S. Winter & Co., 18 Ga. 690, 691–92 (1855) (holding that a citizen of Alabama could be sued in Georgia as he was passing through the state); Peabody v. Hamilton, 106 Mass. 217, 220 (1870) ("Personal actions, of a transitory nature, may be maintained in any jurisdiction within which the defendant is found . . . ."); Alley v. Caspari, 14 A. 12, 12 (Me. 1888) (finding personal jurisdiction when the defendant was personally present in the state, even though he did not have a permanent home or residence in the state).

180. *Burnham*, 495 U.S. at 620.

181. Walden v. Fiore, 571 U.S. 277, 289 (2014); *see also* Daimler AG v. Bauman, 571 U.S. 117, 139 (2014).

182. *Walden*, 571 U.S. at 285 (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 479–80 (1985)).

183. *Id.* at 283 (citing FED. R. CIV. P. 4(k)(1)(A)).

184. *Daimler*, 571 U.S. at 139.

Benz, had committed human rights violations against them in Argentina during Argentina's "Dirty War" from 1976–1983.[185] The plaintiffs alleged that Mercedes-Benz had sufficient contacts in California to justify the extension of general jurisdiction over these claims because the car dealership "distributes . . . vehicles to independent dealerships throughout the United States, including California."[186] But the Court held that such an exercise of jurisdiction would violate due process because the "sufficient contacts" analysis was only proper where there is *specific* jurisdiction, not *general*.[187]

Walden and *Daimler* are the first time the Supreme Court cited Rule 4(k)(1)(A), but the Supreme Court neither justified nor criticized the proposition that a federal court's personal jurisdiction reaches only as far as a state legislature's view allows.[188] The Court noted at the outset of its opinion in *Daimler* that "[f]ederal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons."[189] The sentence is so dreary no wonder it has attracted so little attention. *Walden* extends the analysis to two sentences, but mostly because it quotes the dreary sentence from *Daimler* and then goes on to assert that the principle exists "because a federal district court's authority to assert personal jurisdiction in most cases is linked to service of process on a defendant 'who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located.'"[190] The Supreme Court's lack of interest in the federalism issues raised by Rule 4(k)(1)(A) was clear.[191]

Prior to *Daimler* and *Walden*, Rule 4(k)(1)(A)'s predecessors were cited forty times by the Supreme Court.[192] The first time Rule 4(k)(1)(A)'s progenitor, Rule 4(f), was cited was in the 1946 case of *Mississippi Publishing Corp. v. Murphree*.[193] *Murphree* is famous for its approval of the Federal Rules of Civil Procedure, but it is also instructive for Rule 4(f) specifically.[194]

In *Murphree*, a resident of Mississippi sued a Delaware corporation with an office and place of business in the southern district of Mississippi, even though

185. *Id.* at 120–21.

186. *Id.* at 121.

187. *Id.* at 139.

188. *Walden*, 571 U.S. at 283 (first citing *Daimler*, 571 U.S. at 139; and then citing FED. R. CIV. P. 4(k)(1)(A)); *Daimler*, 571 U.S. at 125 (citing FED. R. CIV. P. 4(k)(1)(A)).

189. *Daimler*, 571 U.S. at 125.

190. *Walden*, 571 U.S. at 283 (quoting FED. R. CIV. P. 4(k)(1)(A)).

191. There is no indication that the parties raised an issue with Rule 4(k)(1)(A). *See generally id.*; *Daimler*, 571 U.S. at 117.

192. According to a Westlaw "citing references" search as of November 2, 2023, which ties Rule 4(k)(1)(A) to its predecessor statute, Rule 4(f) (and to other subdivisions of Rule 4 as well). The majority of the early cases make cursory mention of the statute and always in relation to venue or the service of subpoenas within territorial limits (as Rule 4(f) read at the time). The exception, ironically, was the first case.

193. Miss. Publ'g Corp. v. Murphree, 326 U.S. 438, 444 (1946) (analyzing Rule 4(f), Rule 4(k)(1)(A)'s predecessor).

194. *See, e.g.*, Sachs, *supra* note 9, at 1744 ("[T]here's a fair deal of evidence that the Supreme Court got it right when it upheld the 1938 Rules in *Mississippi Publishing Corp. v. Murphree*.").

the resident lived in the northern district, "to recover damages for libel published in the southern district."[195] The primary issue in the case was whether venue was proper in the northern district despite the corporation and injury being in the southern district of Mississippi.[196] The Supreme Court's review of the purpose of then-Rule 4(f) is compelling:

> Rule 4(f), as explained by the authorized spokesmen for the Advisory Committee, was devised so as to permit service of process anywhere within a state in which the district court issuing the process is held and where the state embraces two or more districts. It was adopted with particular reference to suits against a foreign corporation having an agent to receive service of process resident in a district within the state other than that in which the suit is brought. It was pointed out that the rule did not affect the jurisdiction or venue of the district court as fixed by the statute, but was intended among other things to provide a procedural means of bringing the corporation defendant before the court in conformity to its consent, by serving the agent wherever he might be found within the state.[197]

In sum, at the time the rule came into being, the focus was service of process on the agent, and the rule was not intended to change the jurisdiction of the district court.[198] There was no reference to the territorial overlap and no acknowledgement of the federalism concerns that that overlap presents.[199] Later, when the Court resolved the issue of whether clashing federal procedural law trumps state procedural law in *Hanna v. Plumer*,[200] the Court concluded, "To hold that a Federal Rule of Civil Procedure must cease to function whenever it alters the mode of enforcing state-created rights would be to disembowel either the Constitution's grant of power over federal procedure or Congress' attempt to exercise that power in the Enabling Act."[201] During the period of time from *Murphree* to *Daimler*/*Walden* in 2014, there was little discussion of territorial federalism, interrupted occasionally by modest interest in the *Erie* implications of conflicting service-of-process procedures and a brief recognition of federal supremacy.[202] Since *Daimler* and *Walden*, the Supreme Court has not revisited

195. *Murphree*, 326 U.S. at 439–40.

196. *Id.* at 440.

197. *Id.* at 444 (citations omitted).

198. *Id.* at 445 ("Rule 4(f) serves only to implement the jurisdiction over the subject matter which Congress has conferred, by providing a procedure by which the defendant may be brought into court at the place where Congress has declared that the suit may be maintained.").

199. The first time the Supreme Court impliedly referenced the jurisdictional power of Rule 4(f) was in United States v. First Nat'l City Bank, 379 U.S. 378, 381 (1965). There, the Court noted, "The Federal Rules of Civil Procedure by Rule 4(e) and Rule 4(f) allow a party not an inhabitant of the State or found therein to be served with a summons in a federal court in the manner and under the circumstances prescribed by a state statute." *Id.*

200. Hanna v. Plumer, 380 U.S. 460, 470 (1965).

201. *Id.* at 473–74.

202. *See, e.g.*, *id.*

the Rule specifically, but it has analyzed the question of how sovereignty otherwise affects personal jurisdiction.

For example, in *J. McIntyre Machinery, Ltd. v. Nicastro*,[203] the Court explained that "personal jurisdiction requires a forum-by-forum, or sovereign-by-sovereign, analysis . . . [W]hether a judicial judgment is lawful depends on whether the sovereign has authority to render it."[204] However, the Court also explained the bigger picture that "[b]ecause the United States is a distinct sovereign, a defendant may in principle be subject to the jurisdiction of the courts of the United States but not of any particular State."[205] If another state were to assert jurisdiction inappropriately, "it would upset the federal balance, which posits that each State has a sovereignty that is not subject to unlawful intrusion by other States."[206] Interestingly, Justice Ginsburg, the author of *Daimler*, noted in her dissent in *McIntrye* that "the constitutional limits on a state court's adjudicatory authority derive from considerations of due process, not state sovereignty."[207]

Ford Motor Co. discussed how the requirement of "minimum contacts" is derived from two values inherent in the United States: "treating defendants fairly and protecting 'interstate federalism.'"[208] The Court reasoned that a state's power to try a suit may prevent other states from exercising their similar authority.[209] This is because the overall notion behind specific jurisdiction is to ensure that states with "little legitimate interest" do not encroach on states more affected by the controversy.[210] In that case, Ford argued that jurisdiction only attached if the defendant's in-forum conduct gave rise to the plaintiff's claim.[211] The Court disagreed, emphasizing that the inquiry is not over whether a causal test would put jurisdiction elsewhere.[212] Moreover, the Court explained how interstate federalism supported the assertion of jurisdiction because certain states have significant interests at stake to enforce their own safety regulations and to provide their residents with a convenient forum to litigate injuries suffered due to out-of-state actors' conduct.[213]

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203. J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 884 (2011).

204. *Id.* at 884.

205. *Id.*

206. *Id.*

207. *Id.* at 899 (Ginsburg, J., dissenting). This is particularly interesting because Justice Ginsburg was often considered the Court's civil procedure expert and not often given to exaggeration or political expediency.

208. Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 592 U.S. 351, 360 (2021) (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 293 (1980)).

209. *Id.*

210. *Id.* (quoting Bristol-Myers Squibb Co. v. Superior Ct. of Cal., 582 U.S. 255, 263 (2017)).

211. *Id.* at 352.

212. *Id.* at 362.

213. *Id.* at 363.

Recently, the Court decided *Mallory v. Norfolk Southern Railway Co.*,[214] holding expressly for the first time since 1917 that out-of-state corporations who register to do business in Pennsylvania must "agree to appear in its courts on 'any cause of action' against them."[215] The plurality in *Mallory* concluded that Norfolk Southern was subject to general jurisdiction based on consent to do business, effectively resurrecting a one-hundred-year-old case named *Pennsylvania Fire Insurance Co. of Philadelphia v. Gold Issue Mining & Milling Co*.[216] For geometric-federalism ramifications to personal jurisdiction, the plurality opinion in *Mallory* did not grapple with federalism or geography.[217] Justice Alito's concurring opinion, however, did.[218]

Justice Alito criticized broadly the Court's general use of the Due Process Clause because "it has become a refuge of sorts for constitutional principles that are not 'procedural' but would otherwise be homeless as the result of having been exiled from the provisions in which they may have originally been intended to reside."[219] After identifying references to interstate federalism in the Court's personal jurisdiction jurisprudence,[220] Justice Alito then moved on from federalism to the Commerce Clause, arguing that the consent statute likely violated the Dormant Commerce Clause.[221] As with prior cases, Justice Alito called out the silent federalism concerns inherent in *Mallory* and expressed in prior cases as ultimately best rooted in the Dormant Commerce Clause rather than in structural or geometric federalism.[222]

The dissent offered no more than Justice Alito or the plurality in terms of federal territorial supremacy.[223] Justice Barrett referred to interstate federalism, which the imposition of Pennsylvania's consent statute violates as to its sister

214. Mallory v. Norfolk S. Ry. Co., 600 U.S. 122 (2023).

215. *Id.* at 127 (quoting 42 PA. CONS. STAT. §§ 5301(a)(2)(i), (b)).

216. *Id.* at 137–36 (citing Pa. Fire Ins. Co. of Phila. v. Gold Issue Mining & Milling Co., 243 U.S. 93 (1917)).

217. In reversing the decision below that rejected jurisdiction, the majority resurrected a 100-year-old case which "remains the law" and also concluded that *Norfolk Southern* did not present a "new question." *Id.* at 146. By holding that consent alone—and not due process—can provide jurisdiction, it did not reach the questions of sovereignty, federalism, or fairness. *Id.*

218. *Id.* at 150 (Alito, J., concurring).

219. *Id.* at 155. Justice Alito asserted that "our due process decisions regarding personal jurisdiction have often invoked respect for federalism as a factor in their analyses." *Id.*

220. Justice Alito reviewed some of the Court's personal jurisdiction jurisprudence where references were made to state "independence," "territorial limitations," and "sovereigns in a federal system" where overreaching can "upset the federal balance." *Id.* at 156 (containing cases cited for assertion).

221. *Id.* at 157–63. ("The federalism concerns that this case presents fall more naturally within the scope of the Commerce Clause."). *Id.* at 157. While Justice Alito's careful and helpful reference to interstate federalism did match up well with the Commerce Clause analysis he provided, no other Justice joined his opinion.

222. *See id.* at 163.

223. *See id.* at 163–64 (Barrett, J., dissenting).

states.[224] Like Justice Alito, the dissent's federalism concerns were confined to interstate federalism.[225] Justice Barrett's dissent is critical because it raised a troubling possibility with direct implications for Rule 4(k)(1)(A) that "[b]y relabeling their long-arm statutes, States may now manufacture 'consent' to personal jurisdiction."[226]

Accordingly, while the Roberts Court in particular has resolved several personal jurisdiction cases in which it mentions interstate federalism, it has not grappled conceptually with what it means to have a federal court's personal jurisdiction confined by state legislature pronouncements. That failure was most acute in *Walden* and *Daimler* when it had the opportunity to explain the grounds for Rule 4(k)(1)(A).[227] To be fair, federalism was not at issue in those cases. And enough years have now passed since *Daimler* and *Walden* that it might appear persnickety for the Court to criticize the rule now. But for *Mallory* and the recent explosion of activist state legislatures, that criticism might be dispositive of the concerns raised in this Article.

II. GEOMETRIC FEDERALISM AND PERSONAL JURISDICTION

A. The Constitutional Underpinnings of Geometric Federalism

Two clauses best support geometric federalism: the Supremacy Clause and the Tenth Amendment.[228] The Supremacy Clause reads:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the

224. *Id.* at 169 ("Pennsylvania's effort to assert general jurisdiction over every company doing business within its borders infringes on the sovereignty of its sister States in a way no less 'exorbitant' and 'grasping' than attempts we have previously rejected.").

225. *See id.* at 169–70.

226. *Id.* at 164. This concern is discussed further in the Conclusion, *infra*.

227. *See* Walden v. Fiore, 571 U.S. 277 (2014); Daimler AG v. Bauman, 571 U.S. 117 (2014); Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 406–07 (2010) ("In the Rules Enabling Act, Congress authorized this Court to promulgate rules of procedure subject to its review, 28 U.S.C. § 2072(a), but with the limitation that those rules 'shall not abridge, enlarge or modify any substantive right.'" (quoting 28 U.S.C. § 2072(b))).

228. While the Supremacy Clause most clearly signposts federal preeminence, other clauses support that understanding, including Congress's enumerated powers, U.S. CONST. art I, § 8, the Necessary and Proper Clause, *id.* art. I, § 8, cl. 18, and the Guarantee Clause, *id.* art. IV, § 4, in the sense that they delineate an important role for the federal government in the protection and maintenance of the order and republican nature of state governments. For a discussion of the federalism implications of the Guarantee Clause specifically, see Deborah Jones Merritt, *The Guarantee Clause and State Autonomy: Federalism for a Third Century*, 88 COLUM. L. REV. 1, 2 (1988) ("[T]he states cannot enjoy republican governments unless they retain sufficient autonomy to establish and maintain their own forms of government. The guarantee clause, therefore, implies a modest restraint on federal power to interfere with state autonomy."). On the other hand, the Fourteenth Amendment arguably limits state powers by protecting individual rights against state infringements and expanding federal power in Section 5 by granting Congress power to enact federal legislation to ensure states were not violating the guarantees in Section 1. U.S. CONST. amend. XIV, § 5.

> Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.[229]

"Supremacy" in this context does not mean that states must always follow conflicting federal law; states must follow those laws only if the federal law relates back to the Constitution.[230] While this may seem like a narrow definition, the line between constitutional issues and regular federal power can be blurry. In *McCulloch v. Maryland*, the State of Maryland attempted to tax a federal bank that was within its state.[231] While nothing in the text of the Constitution explicitly forbids a state from taxing a federal bank, Chief Justice Marshall, writing for the majority, stated: "This great principle is, that the constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective States, and cannot be controlled by them."[232] For an instrumentality of the federal government

> to operate effectually, it must be under the direction of a single head. It cannot be interfered with, or controlled in any manner, by the states, without putting at hazard the accomplishment of the end, of which it is but a means. . . . If this power really exists in the states, its natural and direct tendency is to annihilate any power which belongs to congress, whether express or implied.[233]

Since *McCulloch*, the Supreme Court has consistently held that the "interests of the nation are more important than those of any State."[234]

The Supremacy Clause is the Constitution's fundamental recognition that the federal government is the superior sovereign.[235] For a variety of complex political reasons at the time of the Convention and during ratification, different forces—such as the Federalists and Anti-Federalists—were at odds regarding the development of the national government.[236] Scholars do not necessarily

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229. U.S. CONST. art. VI, cl 2.

230. Bradford R. Clark, *The Supremacy Clause as a Constraint on Federal Power*, 71 GEO. WASH. L. REV. 91, 100–01 (2003).

231. McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 317–19 (1819).

232. *Id.* at 426.

233. *Id.* at 361. This concept that state power over federal instrumentalities is fundamental to federalism has particular relevance to geometric federalism, where not only is the political and legal substantive interest of the federal entity supreme, but its physical geographic dimensions. *See also infra* Section IV.E.

234. Sanitary Dist. of Chi. v. United States, 266 U.S. 405, 426 (1925); *see also* Hudson Cnty. Water Co. v. McCarter, 209 U.S. 349, 356 (1908); Georgia v. Tenn. Copper Co., 206 U.S. 230, 237 (1907); Marshall Dental Mfg. Co. v. Iowa, 226 U.S. 460, 462 (1913).

235. Gregory v. Ashcroft, 501 U.S. 452, 460 (1991) ("The Federal Government holds a decided advantage in this delicate balance [with the states]: the Supremacy Clause." (citing U.S. CONST., art. VI, cl. 2)); *see also* Michael D. Ramsey, *The Supremacy Clause, Original Meaning, and Modern Law*, 71 OHIO STATE L. REV. 559, 572 (2013) ("The [Supremacy] Clause is part of an integrated design that permeates the Constitution's structure as a whole, and in particular arises from the grants of power in the text's initial three articles.").

236. *See* Henry Paul Monaghan, *Supremacy Clause Textualism*, 110 COLUM. L. REV. 731, 743–45, 753 (2010) ("[T]he Supremacy Clause was designed to protect national, not state, interests . . . ."). For a contrary view, see Bradford R. Clark, *Constitutional Compromise and the Supremacy Clause*, 83 NOTRE DAME L. REV. 1421,

agree on those forces nor exactly on how the text of the Clause was intended.[237] However, the traditional view seems most compelling: the Supremacy Clause "was proudly nationalistic . . . creating a true national government that would prevail in contests with the states—and indeed enlisting state judges as enforcers of national power."[238]

Most examples of the Supremacy Clause in action are substantive rather than structural. Recently, for example, in *Espinoza v. Montana Department of Revenue*, the Supreme Court decided whether a state could pass a law that excluded religious private schools from receiving taxpayer-funded grants.[239] The State argued that it made this policy in furtherance of its own state constitution, which forbade the State from giving taxpayer money to religious institutions, whether directly or indirectly.[240] Regardless of state constitutions, the Supreme Court held, the law was invalid under the Supremacy Clause as "the Judges in every State shall be bound" by the Constitution.[241]

The Tenth Amendment also helps frame the circumference of geometric federalism. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."[242] The seminal modern case is *New York v. United States*.[243] There, the Court described the Tenth Amendment as "essentially a tautology" but still relied on it structurally as grounds for determining "whether an incident of state sovereignty is protected by a limitation on an Article I power."[244] In *Murphy v. NCAA*, the Court recognized that the Tenth Amendment protected states from federal commandeering (although it started its careful analysis with a powerful list of ways in which the federal government is supreme).[245] The Tenth

1434–35 (2008) (describing the state-centric compromises that led to the adoption of the Clause and defense in favor of its ratification).

237. *Compare* Ramsey, *supra* note 235 *and* Monaghan, *supra* note 236, *with* Clark, *supra* note 236.

238. Ramsey, *supra* note 235, at 575 (citing Monahan, *supra* note 236, at 742–55). Professor Ramsey argues that this is an oversimplification, but it seems to remain the standard understanding and is supported not only by the text but, as he argues, by the constitutional structure. *See id.* For an excellent discussion of the directional tensions between the Supremacy Clause and state authority, see generally Dodson, *supra* note 29.

239. Espinoza v. Mont. Dep't of Revenue, 591 U.S. 464, 468 (2020).

240. *Id.* at 469.

241. *Id.* at 488.

242. U.S. CONST. amend. X; *see also* Gregory Hall, *Constitutional Law—United We Stand: The Further Compartmentalization of Power Under the Tenth Amendment*—Printz v. United States*, 521 U.S. 98 (1997)*, 32 SUFFOLK U. L. REV. 169, 171–76 (1998) (describing the historical push and pull of the Supreme Court's appraisal of the Tenth Amendment's power).

243. New York v. United States, 505 U.S. 144 (1992).

244. *Id.* at 156–57.

245. Murphy v. Nat'l Collegiate Athletic Ass'n, 584 U.S. 453, 470–71 (2018) ("The Constitution limits state sovereignty in several ways. It directly prohibits the States from exercising some attributes of sovereignty. Some grants of power to the Federal Government have been held to impose implicit restrictions on the States. And the Constitution indirectly restricts the States by granting certain legislative powers to Congress, while providing in the Supremacy Clause that federal law is the 'supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding . . . .' This means that when federal and state law conflict, federal law prevails and state law is preempted." (citations omitted)).

Amendment is a counterbalance to the Supremacy Clause and has been wielded as a tool for states' rights.[246] For geometric federalism, the Tenth Amendment's contribution is best thought of as a gap-filler, not a border.[247] This Article now turns to its primary contribution: the definition of a new paradigm for federalism governed by the respective geometries of overlapping sovereigns.

B. Geometric Federalism Defined and Described

The term "geometric federalism" derives "geometric" from sovereigns' overlapping geographies, and "federalism" from the structural constitutional principles that govern those relationships. It embodies the notion that when sovereign judicial systems share physical space, the larger or superior sovereigns have primacy over smaller or inferior sovereigns' laws that purport to restrict their ability to function. In this context, "larger" and "smaller" are objective concepts literally based on size.[248] "Superior" versus "inferior" are more subjective but still useful descriptions when relevant structural realities define control parameters.[249] The term encompasses *more* than the Supremacy Clause of the Constitution. The Supremacy Clause focuses on conflicting substantive areas of law and federal displacement for purposes of consistency.[250] Geometric federalism, by contrast, informs interactions that are not expressly in conflict. But it is also narrower in scope than the Supremacy Clause because its concern is with overlapping geographies, not broader concerns of government structure or law. Mathematics—specifically geometry—helps illustrate the point visually, a conceptualization not often employed in legal analysis.[251] Such a diagrammatic explanation is useful here because for personal jurisdiction, the geographic limits of the sovereign matter.

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246. *See, e.g.*, Casey L. Westover, *Structural Interpretation and the New Federalism: Finding the Proper Balance Between State Sovereignty and Federal Supremacy*, 88 MARQ. L. REV. 693, 720 (2005) (contrasting the Supreme Court Justices' views, where on the one hand, certain Justices apply "a state sovereignty principle to reach pro-state outcomes," and on the other hand, other Justices "turn to a federal supremacy theme and come out the other way"); *see* Elizabeth Anne Reese, *Or to the People: Popular Sovereignty and the Power to Choose a Government,* 39 CARDOZO L. REV. 2051, 2071 (2018) (describing the twentieth century "as a battleground for debating the lines between state and federal power" through the Tenth Amendment).

247. The "States" and "the People" *fill in* the boundaries of federal reach but do not *exceed federal* boundaries. In other words, the Tenth Amendment does not limit federal reach; it plugs gaps. *See infra* Section III.B.

248. Geometric federalism is particularly important for questions of personal jurisdiction because the jurisdictional reach of a sovereign is so closely tied to the "dirt" on which the courthouse sits.

249. As an equation or algorithm it is: /J/ Y < A/X, where /J/ is the jurisdiction, Y is the lesser sovereign, A is the geographic area of X, which is the superior sovereign. In other words, the jurisdiction of Y cannot exceed the geography of X, where X is a superior sovereign. Furthermore, the jurisdiction of X should not be constrained by Y.

250. *Murphy*, 584 U.S. at 478–80.

251. *But see, e.g.*, Tribe, *supra* note 4, at 1.

Geometric federalism also fills a gap between personal jurisdiction and territorial supremacy.[252] In its broadest application, geometric federalism asks lawmakers and courts to explicitly consider relative size and shape (geometry) when evaluating the interplay between federal and state sovereigns. This interplay directly implicates personal jurisdiction because that is the concept most tied to the geometry of a sovereign.[253]

Geometric federalism should not be controversial—or even necessary—except that it is, because courts and lawmakers intuitively understand it while failing to acknowledge it explicitly, which leads to anomalies like Rule 4(k)(1)(A). The simple but powerful concept of physical space has been neglected. It is jarring when a larger sovereign with smaller constituent states is constrained by the smaller sovereign. Courts should not approve of this dynamic without careful deliberation. Federal courts sitting in a given state's territorial boundaries might be limited by shared geographic *boundaries*, but not inferior sovereigns' *laws*.[254] To do otherwise countenances the wrongly inverted structure of a smaller "geometric shape" constraining the larger.[255] A simple visual helps illustrate the point.[256]

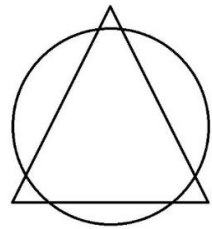

Figure 1

Figure 1 demonstrates the basic geometric overlay of two sovereigns with overlapping geography: the United States is the circle, and individual states are represented by the triangle.[257] Onto this basic figure, overlapping personal

252. This Article obviously does not ignore originalist structural federalism views (which were not uniformly held anyway), but following the Rules Enabling Act, the Federal Rules of Civil Procedure, and the development of modern long-arm statutes and personal jurisdiction jurisprudence from the 1930s–1950s, modern rules of procedure should be evaluated in their modern contexts.

253. Whether geometric federalism has anything to offer as to subject matter jurisdiction or preemption doctrine more generally will be explored in future work.

254. Geometric geographic boundaries matter not only as a reflection of federal supremacy but also as a reasonable limit on personal jurisdiction.

255. It also creates pernicious incentives for state legislatures.

256. There is no particular need to use a circle and a triangle to illustrate the point, but they are simple and intuitive geometric shapes connected by a shared radius and side length of an isosceles triangle.

257. In this figure, assume the federal system contains within it the state's geographic limits—the hash-marked area is a graphical representation of the limits of their personal jurisdiction. The space outside the circle represents the reach of federal law beyond state borders—either internationally or throughout the federal system.

jurisdiction is demonstrated through hashmarks, where federal jurisdiction is represented by diagonals upper left to lower right and state limits by upper right to lower left.[258]

In *Figure 2*, we see that because the federal geography is greater than the state, and the state is mostly contained within the federal, federal jurisdiction reaches farther than the triangle.[259] If this was how personal jurisdiction always worked, it would be consonant with geometric federalism and common sense.

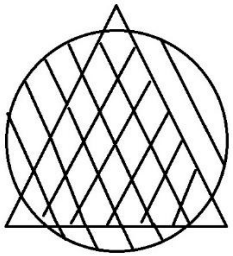

Figure 2

Now consider *Figure 3*, where state definitions of personal jurisdiction bind federal courts, as in Rule 4(k)(1)(A):

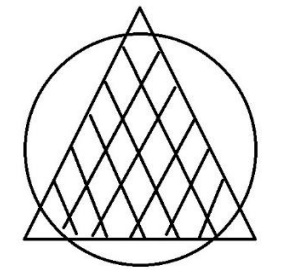

Figure 3

In *Figure 3*, which represents Rule 4(k)(1)(A), the federal court's personal jurisdiction reach, represented by the circle, is limited to the extent of the state

258. Civil procedure treatises sometimes use diagrams like this to explain to first-year law students how long-arm statutes work within the boundaries of constitutional due process. *See, e.g.*, JOSEPH GLANNON ET AL., CIVIL PROCEDURE, A COURSEBOOK 308 fig.9–1 (3d ed. 2017).

259. This is how most people intuitively think of federal-state relations in omnibus federalism doctrines. In the beginning of my civil procedure course, I take an informal poll about how students think of the limits of federal versus state jurisdiction, and almost all students assume federal courts have far broader reach.

court's reach, even though its total geometric area[260] is larger.[261] The purpose of these figures is to visualize how narrower state geometry might limit broader federal reach.[262]

State territorial boundaries remain a logical geographic restriction on federal court personal jurisdiction, but legislatively restricted jurisdiction is not the same thing as a state's geographic boundary. The simple but powerful concept of physical space has been neglected. As part of the larger and superior sovereign, federal courts should not be constrained by state legislature pronouncements on personal jurisdiction limits. A state's reach is less than a federal court only when there is a federal claim and personal jurisdiction is possible pursuant to federal statute with a federal service-of-process rule or where there is an international actor without a domestic nexus.[263] This limitation makes sense and is consonant with principles of federalism as well as the lengthy historical record.[264]

As shown in Part I, there is a subtle but important tradition of not only respecting geographic boundaries but also deferring to the superior sovereign in doing so.[265] Most interactions between the state and federal jurisdictional systems are described in terms of case law, legislative jurisdiction, or regulatory power cabined by the Constitution. There have been, however, a few notable scholarly forays into federalism and personal jurisdiction.[266] What does exist primarily arose in response to *Erie*[267] or as a survey of federalism concerns

260. "Area" in the technical mathematical meaning is "the two-dimensional extent of the surface of a solid, or of some part thereof, esp[ecially] one bounded by a closed curve." *Word List: Mathematical Terms*, COLLINS, https://www.collinsdictionary.com/us/word-lists/mathematics-mathematical-terms [https://perma.cc/UF7A-PQQV].

261. To use specific numbers, the area of a 2' diameter circle, for example, is 3.145 (πr^2). Assuming a 2' diameter and 2' triangle sides, the area of the shaded triangle restricted by the circle is 1.8699. The full area of an equilateral triangle with 2' sides is 1.73205. ($A=\sqrt{3}/4=a^2==\sqrt{3}/4.2^2\approx 1.73205$). The area of the shaded area is 1.68 (r^2 where r=radius of circle and 2r = side of triangle). The use of the same diameter and equilateral sides is intentional because it reflects the fact both sovereigns should be measured against the same geographic boundary lines. The use of the circle and triangle is deliberate too because a circle maximizes area and a triangle does not, which better reflects the larger size and superior position of the federal government.

262. Another geometric concept that illustrates the problem is that the sum of the angles of a triangle is 180 degrees, and the sum of the angles of a circle is 360 degrees. So even though the geographic area of the circle is only slightly larger than a triangle with the same length sides as the circle's diameter, the circle's angles are twice that of the triangle.

263. FED. R. CIV. P. 4(k)(2).

264. *See, e.g.*, *In re* Tarble, 80 U.S. (13 Wall.) 397, 406 (1871) ("[T]he sphere of action appropriated to the United States, is as far beyond the reach of the judicial process issued by a State judge or a State court, as if the line of division was traced by landmarks and monuments visible to the eye.").

265. *See supra* Section II.B.

266. Bellia's excellent treatise on federalism—an entire textbook—does not discuss federalism's influence on the Federal Rules of Civil Procedure. And, as shown above, other scholars have tended to focus on *Erie*-related questions or the Rules Enabling Act, Professor Drobak's work in 1983 being a lone exception. Drobak, *supra* note 9, at 1016.

267. *See, e.g.*, John Hart Ely, *The Irrepressible Myth of Erie*, 87 HARV. L. REV. 693, 695 (1974) (referring to *Erie* as implicating "the very essence of our federalism" (citing Hanna v. Plumer, 380 U.S. 460, 474 (1965) (Harlan, J., concurring))).

where state procedural rules differ from the federal rules.[268] These articles address the difficulty in determining when a rule is substantive or procedural and the possibility for federal courts to enlarge a substantive right contrary to the Rules Enabling Act.[269] Some scholars trace the Court's departure from a territorial perspective to a due process concern when analyzing whether exercising jurisdiction is appropriate and how these changing emphases have impacted federalism.[270] This Article takes a different approach—focusing on the geometric relationship between state and federal sovereigns that federalism governs.

The next Part of this Article further conceptualizes geometric federalism by examining the personal jurisdiction doctrines before it applies the theory to the Rule 4(k)(1)(A) problem.

C. Geometric Federalism and the Five Major Personal Jurisdiction Doctrines

There are five ways a defendant may be subject to jurisdiction in the courts within a particular jurisdiction[271]: (1) General jurisdiction, where defendants may be sued for anything because they are at home there;[272] (2) Specific jurisdiction, where defendants may be sued for specific claims because they have contacts which relate to the claims;[273] (3) Transient jurisdiction, which is physical but temporary presence (as distinguished from permanent presence)

268. Thomas D. Rowe, Jr., *A Comment on the Federalism of the Federal Rules*, 1979 DUKE L.J. 843, 844 (1979) (discussing certain distinct rule provisions which are or should be subject to a "federalist influence").

269. *See* Margaret S. Thomas, *Constraining the Federal Rules of Civil Procedure through the Federalism Canons of Statutory Interpretation*, 16 N.Y.U. J. LEGIS. & PUB. POL'Y 187, 189, 193, 227 (2013) (acknowledging how separating substance from procedure has been complex and although the Federal Rules must be followed even when they displace state commands in diversity, the Supreme Court left a gray area to determine when such displacement is required).

270. Drobak, *supra* note 9, at 1039. Professor Drobak acknowledged how the personal jurisdiction doctrine gives litigants the individual right to be free from unwarranted litigation and also protects sovereignty interests through the minimum contacts' inherent impact on federalism. *Id.* ("By judging the adequacy of the contacts with a standard of fairness, *International Shoe* tied the federalism and individual rights branches of personal jurisdiction together. This express joinder of the two branches showed that it is unnecessary to consider federalism in deciding jurisdictional issues. A defendant has a right to be free from a court's authority unless there exist minimum contacts with the forum state. If there are sufficient contacts, judged by a standard of fairness to the defendant, the concern for federalism is satisfied.").

271. *See, e.g.*, Mallory v. Norfolk S. Ry. Co., 600 U.S. 122, 164 (2023) (Barrett, J., dissenting) (summarizing personal jurisdiction as "the authority of a court to issue a judgment that binds a defendant" and going on to identify the various ways this can occur).

272. Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011) ("A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State.").

273. Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 592 U.S. 351, 363–64 (2021) (explaining that specific jurisdiction can be exercised in a forum state, for example, where a plaintiff is injured by a defendant's product in the forum state).

combined with service of process;[274] (4) Waiver, where the defendant gives up his right to be subject to personal jurisdiction;[275] and (5) Consent, as distinct from waiver where a defendant has agreed in advance by complying with statutory requirements.[276] Geometric federalism's implications for these avenues vary greatly.

We dispense first with *general jurisdiction*. While the structural framework of a larger federal sovereign with smaller contained sovereigns affects all personal jurisdiction, geometric federalism plays the smallest role in the imposition of general jurisdiction because no principle of overlapping geography curtails either coextensive sovereign's reach over a defendant who is essentially "at home" in an entire forum state that encompasses two sovereigns' court systems.[277] The size or superiority of the federal government is irrelevant for general jurisdiction because (1) for applicable federal claims, Rule 4(k)(2) applies, and (2) for state law claims, defendants at home are subject to all such claims.[278]

Specific jurisdiction is more closely linked with Rule 4(k)(1)(A). There, the concerns of geometric federalism are greater because specific jurisdiction implicates long-arm statutes, and long-arm statutes are where we might see state law restricting federal reach beyond what due process would require.[279] While there is a difference between state statutory limits on jurisdiction and due process, few cases demonstrate times where a court's jurisdiction is proper under due process but not a long-arm statute.[280] In the situation where the state long-arm statute does not authorize jurisdiction even though the exercise of jurisdiction would not violate due process, courts rarely reach the constitutional question.[281] Even if all fifty states had long-arm statutes that were coextensive

274. Burnham v. Superior Ct. of Cal., 495 U.S. 604, 607 (1990). One could argue that transient jurisdiction is another form of general jurisdiction, but I think it is better to keep them separate for analytical purposes because the cases usually do so.

275. *See, e.g.*, Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 704 (1982) ("[T]he requirement of personal jurisdiction may be intentionally waived, or for various reasons a defendant may be estopped from raising the issue."). Some may describe this kind of waiver as "forfeiture" or even estoppel.

276. *Mallory*, 600 U.S. at 127–28 (holding that personal jurisdiction is proper if a defendant consents through a statutory requirement for doing business in a forum state).

277. Daimler AG v. Bauman, 571 U.S. 117, 139 (2014) (rejecting general jurisdiction over Daimler because neither it nor its related subsidiary are "incorporated in California, nor does either entity have its principal place of business there").

278. A state could condition not only doing business (i.e., consent under *Mallory*) but incorporation or holding a principal place of business on personal jurisdiction for all claims, but this would be unnecessary based on precedent, or it would convert to a consent-based doctrine. For a criticism of coercive jurisdiction, see Jason J. Jarvis, *Coerced Corporate Consent*, 75 EMORY L.J. __ (forthcoming 2026).

279. *See supra* Section II.D.

280. 4 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1068 (4th ed. 2024) ("[I]f there is no basis in state law for exercising personal jurisdiction over a nonresident defendant, a federal court applying Rule 4(k)(1)(A) need not—and, indeed, should not—consider the constitutional due process question.").

281. *See, e.g.*, Viasystems, Inc. v. EBM-Papst St. Georgen GmbH & Co., KG, 646 F.3d 589, 594 (8th Cir. 2011) ("We need not decide whether these actions by [defendant] suffice to place it within the bounds

with the Due Process Clause, geometric federalism's most important contribution—a mandate to consider geography and physical space in particular for questions of specific personal jurisdiction—would still be persuasive. But they do not, and although cases discussing this situation are rare, there are a few exemplars.[282]

For instance, in *Petroleum Helicopters, Inc. v. Avco Corp.*, the Fifth Circuit held that the defendant would not be deprived of due process by asserting specific jurisdiction in Louisiana because, among other things, it "deliver[ed] its [floats] into the stream of commerce with the expectation that Louisianans would purchase them."[283] However, the court explicitly noted that Louisiana's long-arm statute may have a narrower interpretation, which would preclude jurisdiction.[284] In attempting to interpret whether jurisdiction would be adequate under Louisiana's long-arm statute, the court noted that prior to 1986, Louisiana's long-arm statute was intended to reach the full extent of jurisdiction permitted by due process.[285] Recently, however, two intermediate appellate courts and the Fifth Circuit had interpreted the long-arm statute more narrowly than due process.[286] As such, in interpreting Louisiana statutes, the court was required to follow the state courts' more narrow interpretation.[287] Unsure of its reach, the federal court certified the controlling question of Louisiana law to the Louisiana Supreme Court.[288]

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of Missouri's long-arm statute, because it is clear that the cited activities are not sufficient to surmount the due-process threshold."); *see* United Techs. Corp. v. Mazer, 556 F.3d 1260, 1274 n.15 (11th Cir. 2009) ("Because we conclude, as discussed below, that UTC has failed to establish through its allegations or competent evidence that APM is subject to personal jurisdiction under Florida's long-arm statute, we do not reach the due process inquiry."). *But see* Schuster v. Carnival Corp., No. 10-21879, 2011 U.S. Dist. LEXIS 126455, at *37 (S.D. Fla. Feb. 3, 2011) (completing the due process analysis after rejecting personal jurisdiction on the basis of Florida's long-arm statute).

282. *See e.g.*, Henriquez v. El Pais Q'Hubocali.com, 500 F. App'x 824, 829 (11th Cir. 2012) ("Because [plaintiff] failed to demonstrate jurisdiction under Georgia's long-arm statute, [this Court] need not decide whether jurisdiction [is] proper under the Due Process Clause."). The other reason there are few of these cases is that, at this time, most states' long-arm statutes reach to the extent of due process.

283. Petroleum Helicopters, Inc. v. Avco Corp., 804 F.2d 1367, 1370 (5th Cir. 1986) (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 298 (1980)), *supplemented by* 811 F.2d 922 (5th Cir. 1987), *certifying question to* 503 So. 2d 1010 (La. 1987).

284. *Id.* at 1371.

285. *Id.*

286. *Id.* at 1371–72 (noting how the narrower approach has required a direct nexus between the business transacted in Louisiana by the nonresident defendant and the plaintiff's cause of action based on a literal application of the statutory language: "A court may exercise personal jurisdiction over a nonresident . . . as to a cause of action *arising from* the nonresident's transacting any business in this state" (quoting LA. STAT. ANN. § 13:3201 (1984))).

287. *Id.* at 1372. ("Because in diversity cases, as well as federal question cases, service of process may be based on Louisiana statutes, and the long-arm statute is frequently utilized, in federal courts as well as in state courts, it is important that this significant question of law be clarified. We have decided, therefore, to certify the controlling question of Louisiana law in this case to the Louisiana Supreme Court.").

288. *Id.* at 1372. The Louisiana Supreme Court decided that the Louisiana long-arm statute extended to the limits of the Due Process Clause and thus, jurisdiction would be appropriate. Petroleum Helicopters, Inc. v. Avco Corp., 513 So. 2d 1188, 1189 (La. 1987) ("Since we conclude that the limits of the amended statute and the limits of due process are coextensive and that the amendment applies to pending actions, we

In another illustrative case, *Jordan Outdoor Enterprises, Ltd. v. That 70's Store, LLC*, the district court analyzed Georgia's long-arm statute, which is more limiting than the Due Process Clause.[289] The plaintiff made arguments under different elements of the Georgia long-arm statute, including the "transaction of business" element,[290] the "tortious act" element,[291] and the "tortious injury" element.[292] Finding that none of these elements were adequately alleged by the plaintiff, the district court then rejected personal jurisdiction.[293] The court referenced its prior order "that the exercise of personal jurisdiction over Defendants would not likely violate their constitutional right to due process, [but] the Court does not need to decide this issue given its finding that Defendants' conduct fails to meet the independent requirements imposed by the Georgia long-arm statute."[294]

The Federal Circuit in *Hildebrand v. Steck Manufacturing Co., Inc.* identified a similar problem under Ohio law.[295] There, a patent-infringement and related business-torts case required the Federal Circuit to look to Ohio's long-arm statute,[296] which "does not grant Ohio courts jurisdiction to the limits of the due process clause of the Fourteenth Amendment."[297] The Federal Circuit reversed the district court's conclusion that the Ohio long-arm statute was satisfied because the defendant "was not transacting any business in the forum per section (A)(1)," "did not cause tortious injury by an act in the state per section (A)(3)," and did not "cause tortious injury in the state by an act outside

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determine that the federal court's decision on constitutional due process also decided that the state statute authorized the exercise of jurisdiction over the nonresident in this litigation."); *see Petroleum Helicopters, Inc.*, 834 F.2d at 511 (relying on *Petroleum Helicopters*, 513 So. 2d at 1191) ("In these decisions, the defendant's conduct fell beyond the reach of the long-arm statute, although possibly within due process limitations for exercise of personal jurisdiction.").

289. Jordan Outdoor Enter. v. That 70's Store, LLC, 819 F. Supp. 2d 1338 (M.D. Ga. 2011).

290. *Id.* at 1343–44.

291. *Id.* at 1344.

292. *Id.* at 1345.

293. *Id.* at 1346.

294. *Id.* at 1345–46. This is close to as good at it gets, with an express allowance that due process was satisfied but not a limited state long-arm statute, which highlights how unusual it is that courts make the holding at issue. *See also, e.g.*, FisherBroyles, LLP v. Juris L. Grp., No. 1:14-CV-1101, 2015 WL 630436, at *5 n.4 (N.D. Ga. Feb. 12, 2015) ("The fact that a defendant's conduct might have an effect on a Georgia plaintiff does not automatically satisfy the Long–Arm Statute, even if it would satisfy the requirements of Due Process.").

295. Hildebrand v. Steck Mfg. Co., 279 F.3d 1351, 1354–56 (Fed. Cir. 2002).

296. OHIO REV. CODE ANN. § 2307.382 (West, Westlaw through all laws of the 135th General Assembly (2023-2024)). The relevant portions state: "(A) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a cause of action arising from the person's: (1) Transacting any business in this state; . . . (3) Causing tortious injury by an act or omission in this state; (4) Causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state." *Id.*

297. *Hildebrand*, 279 F.3d at 1354 (citing Goldstein v. Christiansen, 638 N.E.2d 541, 545 n.1 (Ohio 1994)).

the state per section (A)(4)."[298] In an unusual second step, the Federal Circuit proceeded to the due process issue as well.[299] After applying the minimum-contacts standard and referring to a related case, the court concluded that due process *would* have been satisfied based on the similarity of that case to Federal Circuit precedent.[300]

Other cases have acknowledged the issue that the courts in *Jordan Outdoor* and *Hildebrand* actually resolved: due process can be satisfied where long-arm statutes are not.[301] Thus, geometric federalism comes into play for specific jurisdiction most particularly when Rule 4(k)(1)(A) operates in states with limiting long-arm statutes. There, an as-applied constitutional federalism challenge should render the state statutes preempted or Rule 4(k)(1)(A) unconstitutional.[302]

Tag jurisdiction demonstrates a brief but important opportunity to rely on geometric federalism. The implications of *Burnham* and the rationale of the plurality (which has not seriously been challenged since) reflect the importance

298. *Id.* at 1354–55.

299. *Id.* at 1355–56.

300. *Id.* at 1356 (citing Akro Corp. v. Luker, 45 F.3d 1541, 1549 (Fed. Cir. 1995)) (reaching the due process issue because the "transacting business" element of the long-arm statute was sufficient for jurisdiction in that case because that element alone reaches the due process ceiling).

301. *See, e.g.*, *In re* Takata Airbag Prod. Liab. Litig., No. 15-MD-02599, 2021 WL 8566509, at *2 (S.D. Fla. May 6, 2021) ("[T]his Court previously based its dismissal of certain defendants on the Florida Long - Arm statute rather than the 14th Amendment (which is what *Ford Motor Co.* addresses)."); JPS Cap. Partners, LLC v. Silo Point Holding LLC, No. 0603721, 2009 WL 2462252, at *5 n.5 (N.Y. Sup. Ct. July 30, 2009) ("[W]hile it is possible for a defendants' contacts to satisfy due process, but not the long-arm statute, *see id.*, it is not possible for a defendants' contacts to satisfy the long-arm statute, but not due process."); Dring v. Sullivan, 423 F. Supp. 2d 540, 545 (D. Md. 2006) ("Moreover, the Court of Appeals has recognized that there may be cases in which the facts satisfy constitutional due process but do not satisfy Maryland's long-arm statute."); Initiatives Inc. v. Korea Trading Corp., 991 F. Supp. 476, 480 (E.D. Va. 1997) ("[T]he possibility that a defendant's contacts with Virginia could satisfy due process but not the long-arm statute remains."); DeSantis v. Hafner Creations, Inc., 949 F. Supp. 419, 423 (E.D. Va. 1996) ("[I]t is possible that a non-resident defendant's contacts with Virginia could fulfill the dictates of due process, yet escape the literal grasp of Virginia's long-arm statute."); United States v. Hammad, 858 F.2d 834, 839 (2d Cir. 1988) ("The Constitution defines only the 'minimal historic safeguards' which defendants must receive rather than the outer bounds of those we may afford them. In other words, the Constitution prescribes a floor below which protections may not fall, rather than a ceiling beyond which they may not rise." (citation omitted)); Banco Ambrosiano, S.P.A. v. Artoc Bank & Tr. Ltd., 464 N.E.2d 432, 435 (1984) ("[A] situation can occur in which the necessary contacts to satisfy due process are present, but in personam jurisdiction will not be obtained in this State because the statute does not authorize it.").

302. Again, one might argue that, because Congress has already authorized this unnatural limitation on federal court jurisdiction and is empowered to do so by separation of powers principles, Rule 4(k)(1)(A) is by definition not unconstitutional. This is a fair separation of powers point without a single definitive answer, but there are two important responses. First, the fact that Congress is empowered to do something does not mean everything it does is constitutional, of course. There are legion examples of Congress attempting to manipulate the courts where such attempts have been struck down. That's why, in my view, the problem is actually with the courts and not Congress. Second, even if that were not the case, as a prudential policy matter, Rule 4(k)(1)(A) is bad policy, and part of the point of this Article is to request its revision for that reason alone.

of physical presence within a state.[303] "[J]urisdiction based on physical presence alone constitutes due process because it is one of the continuing traditions of our legal system that define the due process standard of 'traditional notions of fair play and substantial justice.'" "That standard was developed by *analogy* to 'physical presence,' and it would be perverse to say it could now be turned against that touchstone of jurisdiction."[304] Service of process satisfies due process but does not otherwise affect the federalism principles inherent in the overlapping geographic sovereign situations.[305] *Burnham* therefore illustrates the importance of the physical territorial boundaries in the state as opposed to the reach of courts based on a statute. Due process protects defendants, but federalism protects structure.[306] Geographic boundaries matter—a principle that figured prominently in *Burnham*.[307]

Jurisdiction by waiver presents an interesting fulcrum for geometric federalism. Waiver permits any court—federal or state—to exercise personal jurisdiction over a defendant who waives its right to challenge the reach of the court.[308] In *Insurance Corp. of Ireland*, the Supreme Court held that a defendant could suffer a discovery sanction by a court finding a waiver of personal jurisdiction.[309] In response to the defendant's conflation of personal and subject matter jurisdiction, the Court distinguished the two concepts, explaining that the Constitution sets forth the structural and express conditions of federal subject matter jurisdiction.[310] According to the Court, subject matter jurisdiction "functions as a restriction on federal power, and contributes to the characterization of the federal sovereign."[311] What the Court did not acknowledge in *Insurance Corp. of Ireland* is that there is a sovereignty and federalist component to personal jurisdiction as well.[312]

303. Burnham v. Superior Ct. of Cal., 495 U.S. 604, 609 (1990) ("American courts invalidated, or denied recognition to, judgments that violated this common-law principle [that judgments by courts lacking jurisdiction were void] long before the Fourteenth Amendment was adopted.").

304. *Id.* at 619.

305. *See* Sachs, *supra* note 9, at 1709–10 ("Due process may still require that defendants receive adequate notice, that the forum not be so burdensome as to render the proceedings a sham, and so on. But as to the scope of the courts' territorial jurisdiction, the Clause has nothing to say.").

306. *See id.*

307. *See Burnham*, 495 U.S. at 610–11 (discussing the historical significance of presence in a territory for jurisdiction).

308. Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 703–04 (1982) ("[T]he requirement of personal jurisdiction represents first of all an individual right, it can, like other such rights, be waived.").

309. *See id.* at 704–05. Federal jurisdiction in federal court is governed by federal law.

310. *See id.* at 701–02.

311. *Id.* at 702.

312. *See id.* The Court's line of personal jurisdiction cases acknowledges this from an interstate federalism perspective. *See supra* notes 184–281 and accompanying text. Likely to emphasize its rejection of the defendant's broadly stated "jurisdiction" argument, the *Insurance Corp. of Ireland* Court chose not to discuss federalism concerns as they apply to personal jurisdiction.

The most interesting aspect of the Court's waiver jurisprudence in light of geometric federalism, however, is that this is the best place to see how service of process (historically a concept by which a court acquired jurisdiction over a defendant) continues to influence a court's power to hear a case over a particular defendant.[313] In *McDonald v. Mabee*, for example, the Court emphasized that Article III and the limited subject matter jurisdiction of federal courts are functions of federalism, and they constrain federal court power to hear certain kinds of cases.[314] "The foundation of jurisdiction is physical power, although in civilized times it is not necessary to maintain that power throughout proceedings properly begun, and although submission to the jurisdiction by appearance may take the place of service upon the person."[315] Likewise, the *Insurance Corp. of Ireland* Court distinguished sharply between personal jurisdiction as acquired by service and subject matter jurisdiction because the former is grounded in the liberty protections afforded defendants and the latter in the structural and statutory power of federal courts.[316]

Distinguishing personal jurisdiction's focus on the individual liberty interest of the defendant from subject matter jurisdiction's emphasis on structural-based jurisdiction is important because hundreds of years of Western legal tradition conflated these concepts.[317] From a theoretical standpoint, it is not correct that personal jurisdiction is purely an individual due process consideration.[318] Defendants' rights are guarded by due process, but a court itself needs power irrespective of the individual due process rights of defendants.[319]

Waiver nicely illustrates the complexity of the dual grounds for personal jurisdiction, an area for which geometric federalism would offer a clearer view: (1) for defendants who do not waive their rights to contest personal jurisdiction, a court requires both *granted* authority and confirmation that the exercise of such granted authority does not violate due process; (2) for defendants who waive their due process rights, the court's power extends at least over that defendant in that situation. The former is a question of individual rights; the latter still requires that geometric federalism be satisfied.

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313. *See* McDonald v. Mabee, 243 U.S. 90, 91 (1917) ("No doubt there may be some extension of the means of acquiring jurisdiction beyond service or appearance, but the foundation should be borne in mind.").

314. *Id.*

315. *Id.*

316. *Ins. Corp. of Ir.*, 456 U.S. at 702–03.

317. *See* BLACKSTONE, *supra* note 44 (discussing the jurisdiction of English courts without distinguishing between personal and subject matter jurisdiction); *see also* Wayman v. Southard, 23 U.S. (1 Wheat.) 1 (1825); *see also* Pennoyer v. Neff, 95 U.S. 714 (1877).

318. Service brings the defendant within the power of the court. *See, e.g.*, *Pennoyer*, 95 U.S. at 725.

319. Without Federal Rules of Civil Procedure 4(k)(1)(A) and 4(k)(2), a defendant's due process rights would be irrelevant because there would be no grant of authority for courts—federal or state—to reach remote defendants in the first place.

Geometric federalism is also implicated in *consent jurisdiction*, a hot topic in the context of today's increasingly polarized state legislatures.[320] As discussed earlier in Section I.G, the Supreme Court recently resurrected the concept that a statute by which out-of-state corporations receive permission to do business in a given state, which includes consent to be sued on any cause of action, satisfies due process.[321] Consent by itself does not implicate geometric federalism any more (or differently) than waiver as far as due process is concerned.[322] Consent-based statutes and the plurality's encouragement to state legislatures are problematic, however, when states wield outsized bargaining power against foreign corporations with little choice but to do business.[323]

There is an undeniable proliferation of polarized state legislatures attempting to wield restrictive state statutes in the culture wars against companies or positions that the state legislature disagrees with at that time.[324] The inspiration and ability will inevitably grow in the aftermath of the *Mallory* decision,[325] especially in high-profile areas like gun control, abortion, environmental and social governance (ESG),[326] or diversity, equity, and inclusion (DEI).[327] Assuming Justice Barrett is correct that states will relabel long-arm statutes to "manufacture consent,"[328] the next logical step will be for

320. *See, e.g.*, Robert Axelrod et al., *Preventing Extreme Polarization of Political Attitudes*, PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES, Dec. 2021, at 1, 1 ("Democracies require compromise. But compromise becomes almost impossible when voters are divided into diametrically opposed camps. The danger is that intolerance will grow, democratic norms will be undermined, and winners will be reluctant to let the losers ever regain power.").

321. Mallory v. Norfolk S. Ry. Co., 600 U.S. 122, 137–38 (2023).

322. *See supra* notes 279–62 and accompanying text.

323. *See* Jason J. Jarvis, *Coerced Corporate Consent*, 75 EMORY L.J. __ (forthcoming 2026).

324. A full summary of the ways partisan legislatures have wielded business statutes in the culture wars is beyond the scope of this Article, but a few current examples include: (1) Florida's "Stop WOKE" law, which prohibits businesses, universities, and elementary schools from providing training on certain concepts such as critical race theory, *see* FLA. STAT. § 760.10 (2022); 2022 Fla. Sess. Law Serv. Ch. 2022-72 (C.S.H.B. 7); and (2) New York has adopted a series of aggressive gun-control laws designed to subject gun makers to suit in New York, *see* N.Y. GEN. BUS. LAW § 896 (McKinney 2023); N.Y. GEN. BUS. LAW § 898-e (McKinney 2021); N.Y. GEN. BUS. LAW § 898-b (McKinney 2021).

325. *Mallory*, 600 U.S. at 164 (Barrett, J., dissenting).

326. *See, e.g.*, Mark R. Kubisch, *ESG, Public Pensions, and Compelled Speech*, 11 TEX. A&M L. REV. 71, 81–82 (2023) (describing Texas's divestment efforts toward ESG-aligned companies to alter corporate behavior).

327. *See, e.g.*, Leah Malone, Emily Holland & Carolyn Houston, *ESG Battlegrounds: How the States Are Shaping the Regulatory Landscape in the U.S.*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Mar. 11, 2023), https://corpgov.law.harvard.edu/2023/03/11/esg-battlegrounds-how-the-states-are-shaping-the-regulatory-landscape-in-the-u-s/ [https://perma.cc/V5GB-XU4R] ("We expect more states to propose or adopt anti- (and pro-) ESG state laws, particularly as the 2024 U.S. presidential election approaches and political agendas solidify, and as the global ESG regulatory framework, including a growing web of EU-related ESG measures, comes into greater focus."); *see also* Mitchell F. Crusto, *Blackness as State Property: Valuing Critical Race Theory*, 57 HARV. C.R.-C.L. L. REV. 577, 612–13 n.211 (2022) ("Arkansas, Idaho, Iowa, Oklahoma, Tennessee and Texas have passed anti-CRT laws; Florida, Georgia and Utah have passed resolutions; and in 2021, twenty-two states have introduced bills seeking to limit the teaching of CRT.").

328. *Mallory*, 600 U.S. at 164 (Barrett, J., dissenting). Professor Clopton, for instance, has argued that this is much ado about nothing; states will not be able or want to relabel long-arm statutes. *See* Clopton, *supra* note 95, at 96–98. But labeling is semantics; what matters is whether state legislatures will attempt to wield their power over federal court jurisdiction improperly. Whether that is by consent statutes or long-arm

states to wield their long-arm statutes to create *or limit* personal jurisdiction as a weapon in the culture wars.[329]

New York, for example, has advanced some of the strongest gun-control measures in the country and seeks to provide a forum for suit against gun and ammunition manufacturers.[330] Currently, those measures create a private right of action to enforce violations of "a condition in New York state that endangers the safety or health of the public through the sale, manufacturing, importing or marketing of [guns or ammunition]."[331] Although it does not reference the New York long-arm statute, arguably this provision creates another separate avenue for the exercise of long-arm jurisdiction, broadening the reach of New York and federal courts.[332] New York could more affirmatively make part of its long-arm statute a substantive focus on specific partisan areas of concern.[333]

Texas has advanced reactive legislation against progressive ESG-based corporate policies,[334] banning its municipalities from doing business with banks that have ESG policies against fossil fuels and firearms.[335] Following *Mallory*, Texas could modify its long-arm statute to make it consent-based for corporations that have ESG policies.[336] Texas's long-arm statute is currently

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statutes does not matter to geometric federalism; the contribution of geometric federalism is that it is constitutionally infirm for state law to control the reach of federal courts any further than their own physical boundaries.

329. *Cf.* New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (offering a view of disseminating interstate federalism where individual, "courageous" states may adopt "novel" approaches that end up percolating through the rest of the country).

330. *See supra* note 324.

331. *See* N.Y. GEN. BUS. LAW § 898-b (McKinney 2021).

332. The geometric federalism concerns raised by the state-based expansions or restrictions are not eliminated by Commerce Clause arguments or concerns of interstate federalism because the fact that one state cannot violate another state's better interest in commerce does not alleviate the problem of any individual state's laws constraining superior federal court personal jurisdiction.

333. The Supreme Court in *Mallory* acknowledged Pennsylvania and Georgia's conflicting resolution of their consent-based statutes, but Iowa, Kansas, and Minnesota have similar statutes, GA. CODE ANN. § 14-2-1505(b) (LexisNexis through 2024 Regular and Extraordinary Session of the General Assembly); IOWA CODE § 505.28 (2023); KAN. STAT. ANN. § 17-7931 (2023); MINN. STAT. § 303.06 (2010), although their application has not always been consistent. *See, e.g.*, Knowlton v. Allied Van Lines, Inc., 900 F.2d 1196, 1200 (8th Cir. 1990) (finding pre-*Daimler* that appointing an agent for service of process creates general jurisdiction over remote corporations).

334. *See* S.B. 13, 87th Leg., Reg. Sess. (Tex. 2021); Angie Basiouny, *Texas Fought Against ESG. Here's What It Cost*, KNOWLEDGE AT WHARTON (July 12, 2022), https://knowledge.wharton.upenn.edu/podcast/knowledge-at-wharton-podcast/texas-fought-against-esg-heres-what-it-cost/ [https://perma.cc/JW4S-4326].

335. *See* Daniel Garrett & Ivan Ivanov, *Gas, Guns, and Governments: Financial Costs of Anti-ESG Policies*, JACOBS LEVY EQUITY MGMT. CTR. FOR QUANTITATIVE FIN. RSCH. (Mar. 14, 2024), https://ssrn.com/abstract=4123366.

336. TEX. CIV. PRAC. & REM. CODE ANN. § 17.042 (West, Westlaw through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election) ("In addition to other acts that may constitute doing business, a nonresident does business in this state if the nonresident: (1) contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state; (2) commits a tort in whole or in part in this state; or (3) recruits Texas residents, directly or through an intermediary located in this state, for employment inside or outside this state.").

expressly or impliedly identical to the Due Process Clause.[337] But it could narrow the reach of its long-arm statute to make foreign corporations that do not ascribe to progressive ESG restrictions unsusceptible to lawsuits in Texas.[338] It could condition doing business on consent to suit by domestic (Texas) shareholders that object to ESG-based speech. Texas could also change its long-arm statute beyond what it currently states to something less than due process by adding ESG-based advocacy as "doing business" pursuant to Section 17.042.[339]

Consider how the state of Florida has waged war on DEI.[340] Although its attempts to eliminate DEI training in employment have been stopped by a district court,[341] Florida could elect to make conditions in the state more favorable for businesses that share its view of DEI and harsher for those that do not. To accomplish this goal, rather than seeking to ban speech—which the district court found to be an impermissible prior restraint—it could create a more favorable forum for suing businesses that embrace DEI programming and less favorable for those that do not. The Florida long-arm statute provides a long list of possible ways defendants can be subject to jurisdiction in the state, but what it does not currently reference are any acts in affirmation or rejection of DEI principles.[342] Nothing currently stops Florida from adopting a law that would make businesses that use one of the "eight forbidden concepts" of DEI subject to jurisdiction. The concept that Florida could manipulate not only its own state courts but the jurisdiction of federal courts to achieve its current anti-DEI goals should be deeply troubling, as it violates both the spirit and the structure of geometric federalism.

D. Geometric Federalism and Rule 4(k)(1)(A)

Having considered the history of Rule 4(k)(1)(A) as well as the various personal jurisdiction doctrines, the problem with Rule 4(k)(1)(A) comes into

337. Michiana Easy Livin' Country, Inc. v. Holten, 168 S.W.3d 777, 788 (Tex. 2005) ("Allegations that a tort was committed in Texas satisfy the Texas Long-Arm Statute, but not necessarily the U.S. Constitution . . . .").

338. In the model of TEX. CIV. PRAC. & REM. CODE ANN. § 17.042, for example, a statute might write: "it shall not be considered 'doing business in this state' if the nonresident adopts [anti-ESG] policies."

339. For example, Texas could amend its long-arm statute to include "or (4) adopts [ESG-based policies] with effects felt in Texas" to be an act constituting business in the state. *See, e.g.*, TEX. CIV. PRAC. & REM. CODE ANN. § 17.042 (West, Westlaw through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election).

340. *See, e.g.*, FLA. STAT. § 760.10(8) (2024); *see also* Honeyfund.com, Inc. v. DeSantis, 622 F. Supp. 3d 1159, 1168 (N.D. Fla. 2022) ("In 2022, the Florida Legislature passed the 'Individual Freedom Act,' [which] amends the FCRA by expanding the definition of unlawful employment practice to include requiring employees to attend a training—or any other 'required activity'—that promotes any of eight forbidden concepts.").

341. *See Honeyfund.com*, 622 F. Supp. 3d at 1187 (granting preliminary injunction enjoining Florida from enforcing the IFA).

342. *See* FLA. STAT. § 48.193 (2024).

sharper focus. A sovereign, superior in size and nature, should not be constrained by a physically smaller, overlapping sovereign, especially when that smaller sovereign is structurally inferior, but that is precisely what Rule 4(k)(1)(A) does. The primordial importance of the relative geographic boundaries of the federal and state sovereigns *means something*, including when the same constitutional limitations apply, and it is a problem to proceed otherwise.[343]

If the Supreme Court intends to refute federalism principles in continuing to approve of Rule 4(k)(1)(A), then it should confront that fact. The Court should expressly admit that Congress has purported to limit federal court personal jurisdiction on a state-by-state basis and grapple with the policy implications, unfairness to litigants, and interstate federalism problems that creates.[344]

Finally, geometric federalism suggests that Rule 4(k)(1)(A) is inconsistent with the constitutional structure.[345] Whether that conclusion flows from a principle of state autonomy, stare decisis, or something else, before deviating from such a fundamental truism of federal–state interaction, the Court should explain why applying the Rule's current text is more important than the federalism principles its use violates.

Geometric federalism does not demand all that much from Rule 4(k)(1)(A)—it just requests an acknowledgment of the geometric realities of a federal system that are constrained by state boundaries but not state law. Whether countervailing interests trump those principles is a reasonable question—but one way or the other the question should be asked and answered.

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343. Another concern is that allowing different jurisdictional reach for federal and state courts will create pernicious motivations to forum shop in diversity cases. But since geometric federalism suggests the reach of federal courts would be broader, this would hypothetically lead to plaintiffs seeking to file in federal court, historically an unusual posture, but possibly affording justice to plaintiffs who would otherwise be thwarted by narrow state long-arm statutes.

344. Justice Alito may be particularly concerned with this given his concurring opinion in *Mallory* and its foreshadowing of Commerce Clause and interstate federalism concerns. *See* Mallory v. Norfolk S. Ry. Co., 600 U.S. 122, 150 (2023) (Alito, J., concurring).

345. *See, e.g.*, Printz v. United States, 521 U.S. 898, 907 (1997) (finding that the federal government could not make the states enact stricter gun policies through the Brady Act); *see also* David J. Barron, *Fighting Federalism with Federalism: If It's Not Just a Battle Between Federalists and Nationalists, What Is It?*, 74 FORDHAM L. REV. 2081, 2092 (2006) (describing the majority opinion in *Printz* as a "second federalism revival" where a then-majority of the Court focused on protecting state law from federal overreach). Consider how the Court described the balancing taking place in the Brady Act's implementation: "[T]he whole object of the law to direct the functioning of the state executive, and hence to compromise the structural framework of dual sovereignty, such a 'balancing' analysis is inappropriate. It is the very principle of separate state sovereignty that such a law offends, and no comparative assessment of the various interests can overcome that fundamental defect." *Printz*, 521 U.S. at 932 (emphasis omitted) (footnote omitted).

E. Potential Criticisms of Geometric Federalism

This Section discusses major objections to this Article's premise. The first is that it is normatively false that the states are "inferior" to the federal government.[346] Thus, the idea that state personal jurisdiction limits restrict federal courts is both unsurprising and reasonable.[347] To start, this Article does not take the position that states have no sovereignty or rights.[348] The tension between federal and state sovereigns is valuable and important.[349] Many of the most eloquent defenses of this structure were made before ratification, and they persist.[350] But the normative argument that states are equal sovereigns who should be empowered to limit federal courts is empirically false by almost any measure. The practical, political, and geographic reality of federal and state relations is one of smaller inferior sovereigns resisting federal overreach *because* the federal government is supreme[351]—it is not the tension of equal partners.[352] Putting aside the massive geographic disparity,[353] which is an objectively unassailable fact and the focus of much of this Article, consider too the

346. *See* Alden v. Maine, 527 U.S. 706, 715 (1999) ("The States thus retain 'a residuary and inviolable sovereignty.' They are not relegated to the role of mere provinces or political corporations, but retain the dignity, though not the full authority, of sovereignty." (quoting THE FEDERALIST NO. 39, at 245 (James Madison) (Jacob E. Cooke ed., 1961))).

347. Critics would point to a lack of developed counterarguments in case law and to a dearth of scholarship criticizing Rule 4(k)(1)(A) on this particular ground, although they would have to admit there has been ample criticism of Rule 4(k)(1)(A) in general.

348. *See supra* Section II.E, note 129 and accompanying text.

349. *See, e.g.*, Gregory v. Ashcroft, 501 U.S. 452, 459 (1991).

350. *See, e.g.*, McCulloch v. Maryland, 17 U.S. (1 Wheat.) 316, 363 (1819) ("We admit, that the 10th amendment to the constitution is merely declaratory; that it was adopted *ex abundanti cautela*; and that with it nothing more is reserved than would have been reserved without it. But it is contended, on the other side, that not only the direct powers, but all incidental powers, partake of the supreme power, which is sovereign.").

351. Richard E. Levy, New York v. United States*: An Essay on the Uses and Misuses of Precedent, History, and Policy in Determining the Scope of Federal Power*, 41 KAN. L. REV. 493, 496 (1993) ("The federal government is omnipresent and all powerful, regulating virtually every aspect of our social and economic life.").

352. *McCulloch*, 17 U.S. at 424 ("No trace is to be found in the constitution of an intention to create a dependence of the government of the Union on those of the States, for the execution of the great powers assigned to it.").

353. Even the largest state, Alaska, is only 17% of the total land area of the United States. The next two largest states of Texas and California together comprise only about 11%. *See Size of US States by Area*, NATIONS ONLINE, https://www.nationsonline.org/oneworld/US-states-by-area.htm [https://perma.cc/FPM6-J9MX].

importance of various constitutional provisions,[354] political influence,[355] economic power,[356] and international presence.[357]

From a judicial perspective, the Supreme Court has been emphatic that the federal and state systems "form one system of jurisprudence, which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent."[358] Federal and state courts can and should hear the same *kinds* of cases except in two limited circumstances: federal preemption and what are "neutral jurisdictional rule[s]."[359] However, despite the fact that state courts are ostensibly courts of general jurisdiction and federal courts are of limited jurisdiction,[360] federal courts are empowered by Congress to hear certain cases that state courts cannot hear.[361] Diversity jurisdiction cases draw larger, more complex cases to the federal docket,[362] and the United States Supreme Court is the "final arbiter" of constitutional questions, whether they arise from federal

354. Aside from the Supremacy Clause, consider Article IV, Section 3, Clause 1, which gives Congress the power to admit new states into the Union. Although Clause 1 does not define the boundaries of new states, the implication is that Congress establishes state boundaries. Clause 2 (the Property Clause) gives Congress authority to manage and dispose of federal property and territories. While it also does not define state boundaries, it establishes federal control over territories that are not part of any state. *See* U.S. CONST. art. IV, § 3, cl. 1, 2.

355. *See, e.g.*, U.S. CONST. arts. I, II. The United States presidential election demonstrates too that while an electoral college process is state by state, this is the process for selecting a chief executive over the entire country, not individual states.

356. California is the largest state economy and, depending on who you ask, is either the fourth or fifth largest in the world. *See* Marc Joffe, *No, California Is Not the World's Fourth Largest Economy*, CATO INST. (Apr. 5, 2023), https://www.cato.org/commentary/no-california-not-worlds-fourth-largest-economy [https://perma.cc/USF6-S9FG]. But the United States is still *seven times* larger than California; *see* Marc J. Perry, *Putting America's Enormous $21.5T Economy into Perspective by Comparing US State GDPs to Entire Countries*, AM. ENTER. INST. (Feb. 5, 2020), https://www.aei.org/carpe-diem/putting-americas-huge-21-5t-economy-into-perspective-by-comparing-us-state-gdps-to-entire-countries/ [https://perma.cc/6DF7-58EM].

357. The United States is a signatory to major world-defining treaties such as NATO. *See The United States and Nato*, NATO, https://www.nato.int/cps/en/natohq/declassified_162350.htm [https://perma.cc/34B3-DEA9].

358. Claflin v. Houseman, 93 U.S. 130, 137 (1876).

359. Haywood v. Drown, 556 U.S. 729, 735 (2009).

360. These terms have persisted for a very long time and continue to be important in subject matter jurisdiction issues, but the distinction breaks down in all cases outside the diversity jurisdiction context and are flatly irrelevant to personal jurisdiction questions. *See generally* 28 U.S.C. § 1332.

361. *See* 28 U.S.C. § 1333. However, state and federal courts may have concurrent jurisdiction in interpleader cases.

362. *See* Jack B. Weinstein, *After Fifty Years of the Federal Rules of Civil Procedure: Are the Barriers to Justice Being Raised?*, 137 U. PA. L. REV. 1901, 1918 (1989) ("[M]any federal courts are much better able than many state courts to handle the larger more complex cases that often arrive on diversity grounds.").

or state courts.[363] By any measure, at least when its powers are enumerated,[364] the federal government is superior to individual state governments.[365]

A related criticism is that deference to state process is not only permissible but appropriate from an originalist perspective.[366] Two facts undercut this argument: First, it relies on an overly deferential view of the Anti-Federalist position at the time of the Founding—it was the Federalists who won the day in the constitutional debates, and the Process Acts were eventually interpreted by the Court to allow federal courts to follow federal procedure.[367] Second, the concept of personal jurisdiction had not developed into the remote-defendant scenario so prevalent in modern litigation at the time of the Founding. At the time, service of process was highly fixated on physical presence within a state, not the limits of due process.[368] Accordingly, an originalist objection to geometric federalism is unpersuasive.

A second objection is that, even if it is superior, the federal government ceded the limits of its own Article III courts to states.[369] But it should not have done so, and knowingly doing wrong is no insulation from criticism.[370] Even if district courts should defer to state law, we ought to grapple with the federalism problems such a deferral creates and attempt to justify it on policy grounds.[371] Moreover, this is a court problem—not a Congress problem—because the Court is in charge of the Rules, and instead of promoting uniformity in the law,

363. Johnson v. Muelberger, 340 U.S. 581, 585 (1951) (considering limitations on the Full Faith and Credit Clause). To an originalist, the Court may be the final arbiter of the constitutional rights of the parties, but it does not bind the Congress or President. For purposes of geometric federalism, however, this distinction is less important because the friction is between the federal entity and the smaller state entities not among the three federal branches.

364. Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 534 (2012) ("[R]ather than granting general authority to perform all the conceivable functions of government, the Constitution lists, or enumerates, the Federal Government's powers.").

365. There is a related and more meta criticism: that all this historical record of territoriality and state boundaries is outdated in today's global internet age of commerce. Businesses today operate online and across borders—why continue to base the reach of personal jurisdiction on something as simplistic as state boundaries? After all, many transactions happen digitally, and complex corporate structures exist beyond traditional borders. The answer is because there needs to be some limit, and due process protects defendants with a degree of foreseeability and fairness.

366. *See supra* notes 51–64 and accompanying text.

367. *See supra* notes 127–38 and accompanying text.

368. *See supra* notes 127–38 and accompanying text.

369. *See supra* notes 313–94 and accompanying text.

370. *See supra* Part I, notes 25–26 and accompanying text.

371. *See* Flemming v. Nestor, 363 U.S. 603, 611 (1960) (articulating a legislative deference principle); *see* Stephen G. Masciocchi, *What Amici Curiae Can and Cannot Do with Amicus Briefs*, COLO. LAW, Apr. 2017, at 23, 24 ("[T]he core role of an amicus is to make policy arguments that explain how adopting a new rule or rendering a particular decision will benefit or harm those who are not before the court, including other litigants and society as a whole. Policy arguments thus educate courts about practical considerations that courts may decide to factor into their legal analysis. Perhaps the most impactful—yet controversial—role of an amicus is to file a so-called Brandeis brief, in which the amicus supports its policy arguments with reliable, outside-the-record evidence to influence the court's decision." (footnotes omitted)).

the Court is fashioning inconsistencies and unfairness by ceding its personal jurisdiction determinations to state law.[372]

One final criticism of geometric federalism is that the problem is so limited in scope that, even if everything else is correct, it is an unnecessary new formulation of federalism and its metaphor.[373] This argument fails because if there had been an adequate record in the Court's jurisprudence demonstrating respect for structural federalism and the realities of a superior sovereign's limitations, the formulation would have been unnecessary (if still convenient).[374] But that is not the record. Furthermore, the problem is currently narrow, but the door is open to a host of deeply problematic avenues for legislatures run amok to exploit without a careful examination of geometric federalism principles.[375]

372. What about Congress? Is the problem congressional overreach rather than judicial disinterest? Congress can and does limit the subject matter jurisdiction of the federal courts, which it accomplishes through Title 28 of the United States Code. But the Rules of Procedure have been delegated to the judiciary through the Rules Committee—with Supreme Court oversight. There is something more primal at play here as well: personal jurisdiction is a concept about an individual court's power over an individual defendant, and that raises constitutional concerns in the form of due process and of federalism. Judges are ultimately responsible for protecting constitutional principles, and courts are responsible for protecting their own jurisdictional reach.

373. According to Professor McFarland, as of 2004 there were eighteen states that interpreted their long-arm statutes as "enumerated"—meaning they applied in a more limited sense than the broader strictures of due process. *See* McFarland, *supra* note 104, at 541. At a bare minimum, federal courts sitting in those states are at risk of having principles of geometric federalism violated.

374. Some courts have acknowledged that due process may *limit state* long-arm statutes, which purport to be broader than the Constitution allows. *See, e.g.*, Internet Sols. Corp. v. Marshall, 39 So. 3d 1201, 1215 (Fla. 2010) (noting that the Fourteenth Amendment may impose a "more restrictive requirement" than the Florida long-arm statute). From a geometric federalism standpoint, this is correct both constitutionally and analytically.

375. The tension has come from both sides of the aisle, with progressive states resisting federal immigration policy, advancing more restrictive gun laws, or adopting shield laws for doctors who provide the abortion-drug Mifepristone. On the other side, traditional "states' rights" conservatives have widely employed business and educational laws in their culture war against critical race theory, diversity, equity, and inclusion, and gay rights. *See, e.g.*, Ann Morse et al., *What's a Sanctuary Policy? FAQ on Federal, State and Local Action on Immigration Enforcement*, NAT'L CONF. STATE LEGISLATURES, https://www.ncsl.org/immigration/sanctuary-policy-faq [https://perma.cc/RS2N-KKC5] (June 20, 2019); *see also* Alek LaShomb, *New Gun Law Targeting Ammo Stirs Controversy in New York's North Country*, WCAX (Sept. 18, 2023), https://www.wcax.com/2023/09/18/new-gun-law-targeting-ammo-stirs-controversy-new-yorks-north-country/ [https://perma.cc/K62T-YNDY]. *But cf.* Matt Papaycik & Forrest Saunders, *Florida's Governor Signs Controversial Bill Banning Critical Race Theory in Schools*, WPTV, https://www.wptv.com/news/education/floridas-governor-to-sign-critical-race-theory-education-bill-into-law [https://perma.cc/WLW4-PNW6] (Apr. 22, 2022, 2:29 PM); Monique Welch, *Explainer: Texas' DEI Ban Is in Full Effect. Here's How It Impacts Colleges, Universities*, HOUS. LANDING (Aug. 24, 2023), https://houstonlanding.org/texas-anti-dei-law-is-wreaking-havoc-before-it-takes-effect-next-year-heres-what-to-know/ [https://perma.cc/6HPM-VABX]; Sarah McCammon, *Judges' Dueling Decisions Put Access to a Key Abortion Drug in Jeopardy Nationwide*, NAT'L PUB. RADIO, https://www.npr.org/2023/04/07/1159220452/abortion-pill-drug-mifepristone-judge-texas-amarillo [https://perma.cc/4J9M-XX7N] (Apr. 7, 2023, 7:41 PM).

CONCLUSION

Geometric federalism puts words to the intuitive concept that larger, dominant sovereigns' physical reach should not be limited by inferior, smaller sovereigns any more than the Constitution requires. Beyond the challenge it presents to Rule 4(k)(1)(A)—which warrants revisiting the language and application of that Rule—geometric federalism is critical in cabining overeager state legislatures that may attempt to condition doing business on jurisdictional blackmail for out-of-state persons. This is particularly urgent because, whatever its other long-term ramifications may be, the Court's decision in *Mallory* immunizes consent-based jurisdiction from due process challenges. Finally, I renew the chorus of voices asking the rules committee to revisit Rule 4(k)(1)(A), now in light of the *Mallory* decision to ensure that state legislatures do not attempt to constrain a federal court's personal jurisdiction through reframed consent-based long-arm statutes. Specifically, Rule 4(k)(1)(A) should be amended to read: "Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant . . . over whom the exercise of jurisdiction does not offend due process."

Geometric federalism ties together the fundamental structural principles of federalism with the reality of overlapping sovereigns' geographies and applies it to personal jurisdiction. It honors the delicate balance between federal constitutional supremacy and geographic dominance while preserving the territorial integrity of individual states. In personal jurisdiction, where most federalism concerns have been regarding respect between the states, it is a new but simple acknowledgment that federal–state geographies matter and should be considered when jurisdictional concerns arise between state and federal sovereigns.