THE MUDDY-BOOTED, DISINGENUOUS REVOLUTION IN PERSONAL JURISDICTION

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When the editors of the *Florida Law Review* offered me the opportunity to comment on Professor Michael Hoffheimer's wonderfully insightful article,[1] I almost declined. The reason is that I agree with pretty much everything of substance he says. I agree with him that the dramatic shortening of long-arm jurisdiction is unjustly depriving some plaintiffs of any rational forum in which to file civil cases.[2] I agree with him that the purportedly narrow holdings, unexplained rationales, and avoided, difficult questions leave lower courts and the bar in a quandary over what ought to be an elementary threshold issue in which the rules are relatively clear.[3] I agree with him that the Supreme Court is dissembling when it insists that its holdings in the six personal jurisdiction cases decided in the last seven years are unremarkable applications of existing law.[4] In short, a subject that is a staple of nearly every first year law student's education, and of great practical import, has become more irrational and confused—a state of affairs which seemed nearly impossible before the Supreme Court in 2011 broke its two-decades-long silence on personal jurisdiction.

So, I'm left to pick a nit on the title and then offer a possible explanation for why, as he puts it: "[T]he Court is implementing radical law reform without the hard work of constructing persuasive explanations that ground a new vision of personal jurisdiction in firm constitutional principle and appropriate social policy analysis."[5] As to the title: "stealth" connotes at least a modest chance of avoiding detection. B-52 pilots might earnestly hope to avoid radar detection, but that does not make their airplane a stealth bomber. Even if the Court has convinced itself that it is not changing existing law, it is not fooling anyone else, and now Justice Sotomayor is vigorously dissenting.[6] As Professor Hoffheimer notes, every commentator paying the slightest bit of attention has not been tricked into thinking that not much has changed[7]—hence the title of this brief commentary.

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1. Michael H. Hoffheimer, *The Stealth Revolution in Personal Jurisdiction*, 70 FLA. L. REV. 499 (2018).
2. *Id.* at 501.
3. *Id.* at 524–40.
4. *Id.* at 504.
5. *Id.* at 505.
6. *See* Bristol-Myers Squibb Co. v. Superior Court, 137 S. Ct. 1773, 1784 (2017) (Sotomayor, J., dissenting); BNSF Ry. v. Tyrell, 137 S. Ct. 1549, 1560 (2017) (Sotomayor, J., dissenting).
7. Hoffheimer, *supra* note 1, at 502–04.

But to the more critical question of why the Court is not offering any constitutional justification for its radical contraction of personal jurisdiction, the Court is not doing so because it knows or intuits that such a project is impossible. The problem is that the Court doesn't *have* a clear rationale for why it closely regulates state court jurisdiction (and by extension federal court personal jurisdiction).[8] True, the Court has set constitutional limits on state court jurisdiction since at least 1915[9] and has used the verbal formula of "minimum contacts" since 1945.[10] But, the whole notion that due process principles require significant limitations on state court jurisdiction might be a giant misunderstanding.[11] As a result, jurisdictional due process is a constitutional outcast, isolated from the application of the Due Process Clause in any other context.

The case thought to link the Due Process Clause of the Fourteenth Amendment to constraints on state court territorial reach is the venerable *Pennoyer v. Neff*.[12] But *Pennoyer*, as beleaguered Civil Procedure students can tell you, is a messy opinion. It is possible that *Pennoyer* meant to set direct limits on state court jurisdiction (forcing them to not stretch beyond the common law bases of *in personam* and *in rem*), but if so it was in dictum. The Oregon state court judgment being attacked was rendered in 1866; the Fourteenth Amendment was not ratified until two years later.[13] It is also possible that all the Court was saying is that the Due Process Clause gives the defendant a right to attack a judgment for lack of jurisdiction (either collaterally or directly), not that the Constitution requires a state to adhere to any particular rules of jurisdiction.[14] Important state courts (post-*Pennoyer*), such as New York's, applied rules of jurisdiction that clearly exceeded those which the Supreme Court believed were allowed by the common law.[15] It was not until 1915 that the Supreme Court directly invalidated an exercise of state court jurisdiction on due process grounds.[16] The nearly four decades of

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8. FED. R. CIV. P. 4(k)(1)(a) (establishing that federal district courts generally adopt their home state's long-arm statute).

9. *See* Riverside & Dan River Cotton Mills v. Menefee, 237 U.S. 189, 194 (1915).

10. Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

11. *See* Patrick J. Borchers, *The Death of the Constitutional Law of Personal Jurisdiction: From* Pennoyer *to* Burnham *and Back Again*, 24 U.C. DAVIS L. REV. 19, 43–51 (1990).

12. 95 U.S. 714, 733 (1877).

13. Borchers, *supra* note 11, at 37.

14. *Id.* at 40–43.

15. *Compare* Pope v. Terre Haute Car & Mfg. Co., 87 N.Y. 137, 139–40 (N.Y. 1881) (holding that service of corporate president while in forum state on personal business confers jurisdiction over corporation), *and* Jester v. Balt. Steam Packet Co. 42 S.E. 447, 447 (N.C. 1902) (following *Pope*), *with* Goldey v. Morning News, 156 U.S. 518, 522 (1895) (ruling that transient service in forum state on corporate officer does not confer jurisdiction over corporation).

16. *See* Riverside & Dan River Cotton Mills v. Menefee, 237 U.S. 189, 196–97 (1915).

uncertainty as to whether the Due Process Clause directly limits state court jurisdiction precluded an explanation of why it does so.

I concur with Professor Hoffheimer that the Supreme Court's opinion in *International Shoe Co. v. Washington*,[17] which gave us the minimum contacts test, was not revolutionary.[18] It was a modest effort to bring the fictions of corporate "presence" and implied consent under one roof, and end the confusion being generated by the so-called "solicitation plus" test for whether corporate activity in the forum state justified jurisdiction.[19] In fact, it may be that—with the recent shortening of long-arm jurisdiction—state court reach is more limited now than it was under the pre-*International Shoe* fictions.[20]

This casual injection of the Due Process Clause into state court jurisdictional law, and the elevation of the minimum contacts test to become the constitutional touchstone for nearly all assertions of state court jurisdiction,[21] has led to wild vacillations in the theoretical underpinnings of jurisdictional opinions. *International Shoe* was an opinion in which fairness was the central theme. The sometimes-forgotten coda to the minimum contacts test is consistent with "traditional notions of fair play and substantial justice."[22] The Court referred to an "estimate of the inconveniences" as being part of the calculus.[23] Although fairness alone cannot explain all aspects of *International Shoe*, particularly the greater import of contacts that are related to or connected with the causes of action,[24] at its heart *International Shoe* said that once a defendant passes a threshold of beneficial activity in the forum it becomes fair to impose the burden of being subject to jurisdiction there.[25]

But, early in the minimum contacts era, in *Hanson v. Denckla*,[26] the Court emphasized the importance of state boundaries and held that Florida could not obtain jurisdiction over a Delaware trustee, even though the settlor of the trust had moved to Florida and continued to administer

17. 326 U.S. 310 (1945).

18. Patrick J. Borchers, *The Twilight of the Minimum Contacts Test*, 11 SETON HALL CIR. REV. 1, 3 (2014).

19. *Id.* at 14–15, 27–28.

20. *Id.* at 27–28.

21. *See* Shaffer v. Heitner, 433 U.S. 186, 212 (1977) ("[A]ll assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny."). The plurality opinion in Burnham v. Superior Court, 495 U.S. 604, 622 (1990) purported to limit this language to *in rem* jurisdiction.

22. *Int'l Shoe*, 326 U.S. at 316 (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)).

23. *Id.* at 317.

24. *Id*. at 317–18.

25. *See* Harold S. Lewis, Jr., *A Brave New World for Personal Jurisdiction: Flexible Tests Under Uniform Standards*, 37 VAND. L. REV. 1, 4 (1984) (concluding that jurisdiction is based on defendant benefits received through forum-state activity).

26. 357 U.S. 235 (1958).

the trust from there.[27] Later, in *World-Wide Volkswagen Corp. v. Woodson*,[28] the Court held that the plaintiffs could not obtain jurisdiction in Oklahoma over two out-of-state defendants in the chain of distribution in a products liability action involving an automobile, even though the injuries occurred in Oklahoma and a car is obviously intended to be mobile.[29] In a nearly incomprehensible rationale, the Court said concerns of "interstate federalism" could defeat jurisdiction in the forum, even though it was the most convenient place for the litigation.[30]

But the Court has been far from consistent on this score. Less than two years after *World-Wide Volkswagen*, the Court seemed to repudiate its federalism holding in a footnote.[31] In a later products liability action, the

27. *Id*. at 251 ("But it is a mistake to assume that this trend [toward broader jurisdictional reach] heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States." (citations omitted)).

28. 444 U.S. 286 (1980).

29. *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.").

30. *Id.* Part of the difficulty is that the Supreme Court has taken personal jurisdiction cases in which the parties did not care about the locus of the forum. In *Hanson*, the case was really about unfairness to the minor children who would be left without anything were the trust invalidated under Florida law. *See Hanson*, 357 U.S. at 240 ("Residuary legatees Denckla and Stewart, already the recipients of over $500,000 each, urge that the power of appointment over the $400,000 appointed to sister Elizabeth's children was not 'effectively exercised' and that the property should accordingly pass to them."). An interesting recounting of the back story to this case appears in MICHAEL VITIELLO, ANIMATING CIVIL PROCEDURE 27 (2017). The *World-Wide* petitioners cared nothing about Oklahoma *vel non* as the forum. The defendants were attempting to dismiss the non-diverse defendants so that the case could be removed from a plaintiff-friendly state court venue to a more defense-friendly federal forum. *See* Charles W. Adams, World-Wide Volkswagen—*The Rest of the Story*, 72 NEB. L. REV. 1122, 1131 (1993). A sensible solution in that case would have been to dismiss the grant of certiorari as improvidently granted. In *Bristol-Myers*, as Professor Hoffheimer convincingly demonstrates, the real issue was joinder of claims. Hoffheimer, *supra* note 1, at 526–33. The defendant would not have suffered any material inconvenience from litigating all the claims in California. Rather, it was attempting to create inconvenience for the plaintiffs. *Id.* at 523. Again, simply denying or dismissing the certiorari petition would have been more just and sensible.

31. *See* Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 n.10 (1982) ("The restriction on state sovereign power described in *World-Wide Volkswagen Corp*., however, must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause. That Clause is the only source of the personal jurisdiction requirement and the Clause itself makes no mention of federalism concerns. Furthermore, if the federalism concept operated as an independent restriction on the sovereign power of the court, it would not be possible to waive the personal jurisdiction requirement: Individual actions cannot change the powers of sovereignty, although the individual can subject himself to powers from which he may otherwise be protected.").

Court held that independent considerations of fairness—apart from whether the minimum contacts test was satisfied—could deny jurisdiction.[32] But in one of the products liability cases of the six recent decisions, *J. McIntyre Machinery, Ltd. v. Nicastro*,[33] the Court could not produce a majority opinion. The four-Justice plurality invoked a sovereignty rationale to deny a forum to a plaintiff injured in his home state by an industrial machine purchased there by his employer in the ordinary course of business.[34] The three dissenting Justices emphasized the unfairness to the plaintiff and the lack of unfairness to the defendant in litigating in the forum.[35] Two Justices concurred in the plurality's denial of jurisdiction, saying little more than they were constrained by earlier precedents.[36] Small wonder why lower courts are left rubbing their eyes before attempting to traverse a moonscape.[37]

I might do more to pick apart the Court's decisions, but I could do no better than Professor Hoffheimer.[38] My point, however, is slightly different. Wild oscillations in rationale bespeak a lack of clarity as to the constitutional underpinnings. The Court says that the Due Process Clause is the only source of constitutional limitations on state court jurisdiction.[39] But left unexplained (and inexplicable) is how a clause in the Constitution that guarantees a person a right to "due process of law" before being deprived of "life, liberty, or property"[40] could be a vehicle for importing perceived concerns about limiting state sovereignty. One might imagine that a choice of forum which presents no material inconvenience to any party—and indeed may be the most convenient forum—must be constitutional, but this is not so. In *Bristol-Myers Squibb v. Superior Court*,[41] all Justices agreed that the defendant drug manufacturer was not prejudiced in any meaningful way by allowing the claims of non-residents to proceed in California alongside the residents' claims.[42] The obvious motive of moving to dismiss the non-resident claims was to cause inconvenience and the loss of economies of scale to

32. *See* Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102, 113 (1987) (plurality opinion).

33. 564 U.S. 873 (2011).

34. *Id.* at 879 (plurality opinion).

35. *Id.* at 893 (Ginsburg, J., dissenting).

36. *Id.* at 887 (Breyer, J., concurring in the judgment).

37. *See, e.g.*, Simmons v. Big #1 Motor Sports, Inc., 908 F. Supp. 2d 1224, 1228–29 (N.D. Ala. 2012).

38. *See* Hoffheimer, *supra* note 1, at 541–51.

39. *See* Ins. Corp. of Ir., Ltd. v. Compagniee des Bauxites de Guinee, 456 U.S. 694, 702 n.10 (1982).

40. U.S. CONST. amend. XIV.

41. 137 S. Ct. 1773 (2017).

42. *Id*. at 1786 (Sotomayor, J., dissenting).

the plaintiffs and their lawyers.[43]

If one examines the Due Process Clause in operation in other contexts, it becomes clear just how estranged this sovereignty-infused, defendant-focused doctrine of jurisdictional due process is from its doctrinal family members. So-called substantive due process generally requires governmental action to be rationally related to some legitimate governmental objective.[44] This test, if modified for assertions of jurisdiction, would invalidate very few.[45] Almost all cases involve plaintiffs suing at home or in a forum that affords judicial and litigant economies.[46] As the California Supreme Court majority pointed out below in *Bristol-Myers*, net judicial economy favored aggregating the claims in California.[47] In *World-Wide* and *J. McIntyre*, the plaintiffs sought to sue where the injury occurred and the bulk of the evidence was located.[48] It would be the rare case in which a plaintiff's choice of forum could be said to be wholly irrational.[49]

If we turn to the procedural branches of due process jurisprudence, we find a similar disconnect from jurisdictional due process. The "fair notice" branch of due process requires only that the adverse party be given notice "reasonably calculated" to apprise it of the pendency of the proceedings.[50] This sets only a loose outer boundary on service statutes and rules. In *Jones v. Flowers*,[51] the Court invalidated a tax sale in which the county officials had reason to know that their efforts to inform the tax debtor of the sale, by registered mail, had failed to reach him. But the mandated change to the relevant statutes was simply to require a follow-up first class mail notice addressed to "occupant."[52] Thus, service rules

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43. *See* Hoffheimer, *supra* note 1, at 536.

44. *See, e.g.*, FCC v. Beach Commc'ns., 508 U.S. 307, 309 (1993).

45. *See* Adam N. Steinman, *Access to Justice, Rationality, and Personal Jurisdiction*, 71 VAND. L. REV. 1403, 1447–48 (2018). For commentary on this article arguing that the Court would have to considerably re-conceptualize jurisdiction to create such a test, see generally Richard D. Freer, *Personal Jurisdiction: The Walls Blocking an Appeal to Rationality*, 72 VAND. L. REV. EN BANC 99 (2018).

46. *See, e.g.*, *Bristol-Myers*, 137 S. Ct. at 1777 (analyzing a situation with all the plaintiffs being aggregated in one forum); J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 878 (detailing a suit brought in the plaintiff's home state and location of injury); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 288 (reviewing a suit brought in state of automobile accident and location of most of the evidence).

47. *See* Bristol-Myers Squibb v. Superior Court, 377 P.3d 877, 893 (Cal. 2016), *rev'd* 137 S. Ct. 1773 (2017).

48. *See World-Wide*, 444 U.S. at 288.

49. *Cf.* Allstate Ins. Co. v. Hague, 449 U.S. 302, 326 (1981) (Stevens, J., concurring in the result) ("I question whether a judge's decision to apply the law of his own State could ever be described as wholly irrational.").

50. *See* Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 318 (1950).

51. 547 U.S. 220 (2006).

52. *Id.* at 235.

and statutes are usually found to be constitutional, with the Due Process Clause acting only as a loose check.[53]

As to what one might call the "fair procedures" branch, the Supreme Court has shown a tolerance for a wide variety of procedures if they provide a reasonable chance of an accurate resolution of a dispute relative to the stakes to the parties. The leading case of *Mathews v. Eldridge*[54] involved Social Security disability benefits. Although the claimant insisted he had a right to an oral hearing before the termination of benefits, the Supreme Court disagreed.[55] It held that a preliminary determination revoking his benefits could be made primarily on the medical records.[56] The Court reasoned that given the high probative value of medical records in making a disability determination, a pre-termination oral hearing would come at too high of a cost in relation to improved accuracy in the determination.[57] As a result, procedures can be designed with substantial flexibility to suit the context of the dispute.[58]

The Due Process Clause also acts as a modest check on choice of the applicable law. Due process principles will not allow a court to apply forum law if the connection with the parties and the dispute is so slight that the affected parties could not reasonably anticipate its application.[59] In the modern incarnation of the test, set forth by the plurality in *Allstate Insurance Co. v. Hague*,[60] the Supreme Court has held that there need only be enough of a connection that the forum has a substantial state interest in applying its own law.[61] In the *Allstate* case, a dispute over interpretation of an insurance policy, two of the crucial contacts were that the beneficiary of the policy moved to the forum state after the accident giving rise to the claim, and the insured worked (but did not live) there.[62]

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53. *See, e.g.*, Dusenbery v. United States, 534 U.S. 161, 167, 172 (2002) (finding that certified letters to prisoner was adequate notice of property forfeiture).

54. 424 U.S. 319 (1976).

55. *Id.* at 344–45.

56. *Id.*

57. *Id.*

58. *See, e.g.*, Wilkinson v. Austin, 545 U.S. 209, 213 (2005) (finding that prison's in-house process for determining placement of inmate in "SuperMax" confinement for up to 30 days met due process).

59. *See, e.g.*, Home Ins. Co. v. Dick, 281 U.S. 397, 408 (1930) (holding that plaintiff's nominal residence in the forum state was not sufficient to allow application of forum state law).

60. 449 U.S. 302 (1981).

61. *Id.* at 313.

62. *Id.* at 313–18. This case could be added to Professor Hoffheimer's list of famous cases that could not be litigated under current law. *See* Hoffheimer, *supra* note 1, at 502 n.9. The only jurisdictionally significant contact that the defendant Allstate Insurance Co. had with the forum state of Minnesota was that it did business there. While such a contact was at one time widely thought to give general jurisdiction over large companies such as Allstate, the "essentially at home" test for assertions of general jurisdiction would surely not be met. *See, e.g.*, BNSF Ry. v.

These slight connections obviously would not satisfy the minimum contacts test but allowed application of forum law. Thus, the due process check on choice-of-law doctrine prevents application of forum law only in cases in which the dispute has almost nothing to do with the forum,[63] unlike jurisdictional due process which sometimes invalidates forum choices even though nearly all the relevant events took place in the forum.[64]

The unifying theme of the non-jurisdictional branches of due process is their focus on fairness to the parties. At no point do ill-defined concerns such as "interstate federalism"[65] or "submit[ting] to a State's authority"[66] enter the picture. Nor are they almost exclusively defendant-focused, as is the minimum contacts test.[67] One of the most stunning things about the plurality and concurring opinions in *J. McIntyre* is that they do not voice a word of concern about the obvious unfairness to the plaintiff, who sued in his home state after being injured at work there by an expensive industrial machine sold to the plaintiff's employer in the ordinary course of business.[68] But the plurality opinion, in particular, worried at length about the consequences of requiring the English manufacturing defendant to answer in the plaintiff's home state. Even though the corporation was clearly exploiting the U.S. market[69] and would have been subject to jurisdiction in another European Union nation had the injury occurred there.[70]

In contrast to jurisdictional law, the other branches of due process do not pay homage to amorphous notions of sovereignty divorced from fairness.[71] Nor do they focus on one party to the exclusion of the others. For example, in the "fair notice" branch of due process jurisprudence, the test compares the cost of giving notice with the probability that the notice will inform the affected party.[72] The "fair procedures" branch balances the increased accuracy of the process against the cost of providing more

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Tyrell, 137 S. Ct. 1549, 1554 (2017) (holding that railroad's thousands of miles of track and hundreds of employees in the forum state insufficient to confer general jurisdiction).

63. *See, e.g.*, Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 823 (1985) (ruling that forum could not apply its own law to determine interest rate on gas royalties on gas wells located outside the forum state if dispute had no other connection to the forum).

64. *See, e.g.*, J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 878 (2011); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 288 (1980).

65. *World-Wide*, 444 U.S. at 293.

66. *J. McIntyre*, 564 U.S. at 880 (plurality opinion).

67. *See, e.g.*, *id.* at 891 (Breyer, J., concurring in the judgment) (characterizing the minimum contacts test as "rest[ing] upon a particular notion of defendant-focused fairness").

68. *See id.* at 877 (plurality opinion); *id.* at 887 (Breyer, J., concurring in the judgment).

69. *Id.* at 885–86 (plurality opinion).

70. *Id.* at 909 (Ginsburg, J., dissenting).

71. *Cf. id.* at 899 (Ginsburg, J., dissenting) ("[T]he constitutional limits on a state court's adjudicatory authority derive from considerations of due process, not state sovereignty.").

72. Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 318–19 (1950).

procedural safeguards.[73]

This global vision is lacking from jurisdictional due process. For example, in two interstate divorce cases, the Court has ignored the reality that the proceedings would be in one party's home state or the other, and bypassed the question of why the Constitution should prefer one to the other.[74] In the products liability cases, the Court has focused almost exclusively on the degree to which the defendant purposefully connected itself with the forum state, all the while ignoring the impracticality (or impossibility)—or at the very least the inefficiency—of litigating the case any place *other than* the forum state.[75]

A jurisdictional due process doctrine consistent with the rest of due process law would only invalidate a forum choice if it were wholly irrational, or placed a burden on the defendant out of proportion to the benefit to the plaintiff.[76] Undoubtedly, this would give states far broader jurisdictional reach than they have now. But states, fearful of over-burdening their courts, would surely enact detailed long-arm statutes, as opposed to the common empty vessel statutes that import the constitutional test.[77] While detailed long-arm statutes like New York's are not free from interpretive difficulties,[78] they are inevitably more predictable in their operation than the Supreme Court's Delphic and episodic pronouncements on the minimum contacts test.

Of course, this won't happen. The Supreme Court will not roll out of its proverbial bed tomorrow and decide that more than seven decades of minimum contacts jurisprudence should be discarded. Authors have made proposals for federal statutes[79] and amendments to the Federal

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73. *See, e.g.*, Van Harken v. City of Chicago, 103 F.3d 1346, 1351 (7th Cir. 1997) (finding that the *Mathews* considerations are essentially a "cost-benefit analysis").

74. *See* Burnham v. Superior Court, 495 U.S. 604, 625–26 (1990) (plurality opinion) (holding that fairness to parties is not an independent consideration when defendant is served with process in the forum); Kulko v. Superior Court, 436 U.S. 84, 97 (1978) (discussing only fairness to defendant–appellant).

75. *See, e.g.*, *J. McIntyre*, 564 U.S. at 882 (plurality opinion).

76. *See* Patrick J. Borchers, Jones v. Flowers: *An Essay on a Unified Theory of Procedural Due Process*, 40 CREIGHTON L. REV. 343, 350 (2007).

77. *See, e.g.*, CAL. CIV. PROC. CODE § 410.10 (West 2019) (allowing jurisdiction "on any basis not inconsistent" with the Constitution).

78. *See, e.g.*, Ingraham v. Carroll, 687 N.E.2d 1293, 1295 (N.Y. 1997) (holding that a Vermont doctor with a substantial number of New York patients was not subject to jurisdiction in New York on a malpractice claim brought by one of his New York patients because the doctor did not derive substantial revenue from interstate commerce within the meaning of N.Y. CIV. PRAC. L. & R. 302(a)(3)(ii)).

79. *See* Stephen E. Sachs, *How Congress Should Fix Personal Jurisdiction*, 108 NW. U. L. REV. 1301, 1303–04 (2014) (arguing for a comprehensive statute enacted by Congress and subject to the more relaxed constrains of the Due Process Clause of the Fifth Amendment).

Rules of Civil Procedure[80] to partially undo some of the damage done in the last seven years, but these are long-run solutions. However, as Professor Hoffheimer notes, one of the costs of the recent Supreme Court decisions has been to devalue the work of lower courts.[81] Perhaps the Supreme Court will tiptoe away and let lower courts begin to repair the damage that the high court has wrought on jurisdictional law.

80. *See* Patrick J. Borchers, *Extending Federal Rule of Civil Procedure 4(k)(2): A Way to (Partially) Clean up the Personal Jurisdiction Mess*, 67 AM. U. L. REV. 413, 417 (2017) (proposing extension of the Federal Rules of Civil Procedure to allow nationwide personal jurisdiction in diversity and alienage cases in which the plaintiff would not otherwise have a U.S. forum).

81. Hoffheimer, *supra* note 1, at 549.