

# PERSONAL JURISDICTION, COMPARATIVISM, AND *FORD*

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## I. INTRODUCTION

The March 2021 decision of *Ford Motor Co. v. Montana Eighth Judicial District*<sup>1</sup> completes the triangulation of specific personal jurisdiction under the U.S. Constitution.<sup>2</sup> Combined with the Court's recent narrowing of general jurisdiction and longstanding adherence to tag and consent-based jurisdiction, personal jurisdiction in the United States is beginning to exhibit contours that are more defined and concrete.<sup>3</sup> What does this state of personal jurisdiction mean for future developments? And how does it compare to the way other countries have structured personal jurisdiction? This Article offers answers to those questions.

## II. PERSONAL JURISDICTION UNTIL *FORD*

The doctrinal development of personal jurisdiction in the United States through 2014 is well-trodden ground, so it will be summarized only briefly to set up *Ford* and comparisons to other countries' regimes.

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1. 141 S. Ct. 1017, 1032 (2021).

2. U.S. CONST. amend. XIV, § 1; *see* *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702-03 n.10 (1982) (determining that personal jurisdiction constraints are a "function of the individual liberty interest preserved by the Due Process Clause.")

3. *Ford*, 141 S. Ct. at 1032.

Until 1945, notions of physical presence and territorial sovereignty governed U.S. personal jurisdiction.<sup>4</sup> Under this regime, individual defendants could be sued in the states where they resided, where they were personally served, and where they consented to personal jurisdiction through voluntary appearance in the forum court.<sup>5</sup> Those justifications for personal jurisdiction persist to this day.<sup>6</sup> The consent basis for jurisdiction has even expanded beyond voluntary appearance in the forum court to include *ex ante* consent by contract.<sup>7</sup>

The case of *International Shoe Co. v. Washington*,<sup>8</sup> in 1945, marked a dramatic expansion of the doctrine to allow personal jurisdiction over nonresidents—especially business entities—when they had sufficient “minimum contacts” with the forum state, such that personal jurisdiction in the forum would not offend “traditional notions of fair play and substantial justice.”<sup>9</sup> The Court thus loosened personal jurisdiction from moorings anchored solely on physical presence in the forum state, and adopted an additional “minimum contacts” test for personal jurisdiction founded on activities, effects, and fairness.<sup>10</sup>

Subsequent opinions distilled this standard into two species of personal jurisdiction: general (or, all-purpose) jurisdiction and specific (or, case-linked) jurisdiction.<sup>11</sup> For many years, general jurisdiction was thought to subject business entities to jurisdiction in all states where they did “continuous and systematic” business, even if unrelated to the cause of action, and even if the cause of action arose elsewhere.<sup>12</sup> In 2011, however, the Court disavowed that test and imposed a far narrower test for general jurisdiction, where the defendant’s contacts were “so constant and pervasive”<sup>13</sup> as to render the defendant

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4. See *Pennoyer v. Neff*, 95 U.S. 714, 720 (1878) (“The authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established.”); *id.* at 722 (“[N]o State can exercise direct jurisdiction and authority over persons or property without its territory.”).

5. See *Milliken v. Meyer*, 311 U.S. 457, 463 (1940) (residency); *Pennoyer*, 95 U.S. at 729 (residency, consent, and tag).

6. See *Burnham v. Superior Ct. of Cal.*, 495 U.S. 604, 617–18 (1990) (tag); *Adam v. Saenger*, 303 U.S. 59, 67–68 (1938) (voluntary appearance).

7. See *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 593–94 (1991).

8. 326 U.S. 310, 321 (1945).

9. *Id.* at 316 (internal quotation marks omitted).

10. *Id.*

11. See Scott Dodson, *Personal Jurisdiction and Aggregation*, 113 NW. U. L. REV. 1, 7 (2018).

12. See *Daimler AG v. Bauman*, 571 U.S. 117, 134 (2014) (Sotomayor, J., concurring) (stating that the language had been “taught to generations of first-year law students”); Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 TEX. L. REV. 721, 767 (1988) (“Courts currently measure the sufficiency of unrelated business contacts between the forum state and the defendant with the continuous and systematic test.”); Scott Dodson, *Jurisdiction in the Trump Era*, 87 FORDHAM L. REV. 73, 75 (2018) (explaining the broad reach of such a test).

13. *Daimler AG*, 571 U.S. at 122 (citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)).

essentially “at home” in the forum state.<sup>14</sup> The Court illustrated this test with “paradigm” examples: domicile for an individual and place of incorporation and principal place of business for a corporation.<sup>15</sup> Subsequent cases confirmed the narrowness of this test.<sup>16</sup> Absent extraordinary circumstances in which the functional home of the defendant is different from the formal home,<sup>17</sup> general jurisdiction today essentially expands upon the pre-1945 concept of residency.

Until 2014, the courts employed specific jurisdiction episodically and ad hoc. The Court required that the defendant’s forum contacts had to give rise to or be related to the plaintiff’s cause of action, but the Court did not establish how directly connected to the forum the defendant’s conduct had to be,<sup>18</sup> nor did the Court define how related to the cause of action the defendant’s forum contacts had to be.<sup>19</sup> The Court articulated catchphrases as guideposts: the defendant had to “purposefully avail[]”<sup>20</sup> itself of the forum state, such that it would be “reasonably foreseeable” that its activities could cause harm there.<sup>21</sup> The Court also noted, in specific-jurisdiction cases, that personal jurisdiction encompassed five factors, sometimes referred to as the five “fairness factors,” which could raise or lower the minimum level of contacts needed to justify the exercise of personal jurisdiction.<sup>22</sup>

In 2014, the Court decided a series of cases that attempted to clarify the contours of specific jurisdiction’s minimum-contacts test. These cases have elevated the importance of the Court’s earlier statement that specific jurisdiction depends upon the “relationship among the defendant, the forum, and the litigation.”<sup>23</sup> Geometrically, the contours of this formulation are triangular, with the claim, the forum, and the defendant’s conduct at the apex of each triangle point, as shown in Figure 1:

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14. *Id.* (quoting *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at 919).

15. *Id.*

16. See *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1559 (2017); *Daimler AG*, 571 U.S. at 142.

17. See *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 447–48 (1952).

18. See *Asahi Metal Indus. Co. v. Superior Ct. of Cal.*, 480 U.S. 102, 112 (1987).

19. See *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 418 (1984).

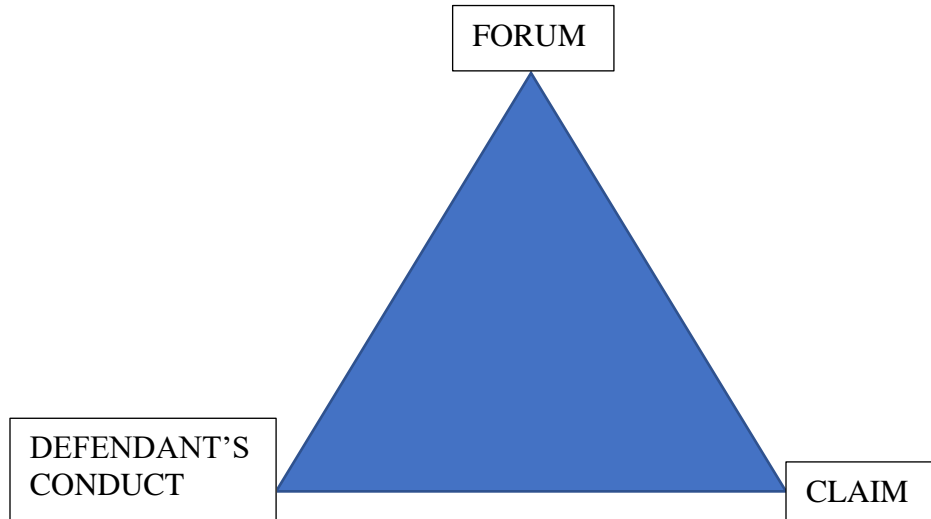
20. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

21. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (alternating between use of the phrase “reasonably foreseeable” and “reasonably calculated” to describe the same standard).

22. See *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476–77 (1985). The five fairness factors are the burden on the defendant, the plaintiff’s interest in obtaining effective relief, the interest of the forum state, the policies of other states or nations, and the judicial system’s interest in efficiency. *Id.* (quoting *World-Wide Volkswagen Corp.*, 444 U.S. at 292); see also *Asahi*, 480 U.S. at 113–15.

23. *Helicopteros*, 466 U.S. at 414.

FIGURE 1:



Starting in 2014, the Court began to supply more concrete legal tests for each of the triangle's sides. In *Walden v. Fiore*,<sup>24</sup> the Court considered the left side of the triangle: the connection between the defendant's conduct and the forum. There, the defendant, a Georgia police officer, seized cash from Las Vegas poker players when the players arrived at the Atlanta airport on a layover stop during a flight from Puerto Rico to Nevada.<sup>25</sup> The players sued the officer in Nevada for wrongfully seizing their cash.<sup>26</sup> The Court held that even though the officer may have known that the poker players were from Nevada, and would have suffered harm in Nevada of not having access to their cash, Nevada could not exercise personal jurisdiction over them because their conduct was not sufficiently connected to Nevada.<sup>27</sup> The Court stated that the defendant's conduct must be connected to the forum state by more than just the plaintiffs' connections.<sup>28</sup> Rather, the "contacts that the 'defendant *himself*' creates with the forum" establish the connection

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24. 571 U.S. 277, 285 (2014).

25. *Id.* at 279–80.

26. *Id.* at 281.

27. *Id.* at 288–89.

28. *Id.* at 291.

between the defendant and the forum.<sup>29</sup> *Walden* thus refines the more generalized “purposeful availment” test.<sup>30</sup>

In *Bristol-Myers Squibb Co. v. Superior Court of California*,<sup>31</sup> the Court tackled the right side of the triangle: the relationship between the forum and the claim. Plaintiffs from around the country sued Bristol-Myers Squibb in California state court for injuries resulting from their ingestion of the drug Plavix, which Bristol-Myers Squibb sold nationwide through a distributor.<sup>32</sup> The plaintiffs all claimed to have obtained, taken, and been injured by the drug in their home states.<sup>33</sup> The non-Californian plaintiffs argued that California had personal jurisdiction over Bristol-Myers Squibb for their claims because Bristol-Myers Squibb had significant contacts involving Plavix in California.<sup>34</sup>

The Supreme Court rejected that argument.<sup>35</sup> Although the California court clearly had personal jurisdiction over Bristol-Myers Squibb for the California plaintiffs’ claims, the non-Californian plaintiffs’ claims were different: “[t]he mere fact that *other* plaintiffs were prescribed, obtained, and ingested Plavix in California—and allegedly sustained the same injuries as did the nonresidents—does not allow the State to assert specific jurisdiction over the nonresidents’ claims.”<sup>36</sup> In the Court’s words, “[w]hat is needed—and what is missing here—is a connection between the forum and the specific claims at issue.”<sup>37</sup>

As observed after *Bristol-Myers Squibb*, “specific jurisdiction requires a direct link between not only the forum and the defendant but also between the forum and the claim.”<sup>38</sup> *Walden* and *Bristol-Myers Squibb* helped solidify the two sides of the triangle.

The base of the triangle was left. Previously, the Court had set out the legal test for the relationship between defendant conduct and the plaintiff’s claim: that the claim “must arise out of or relate to” the

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29. *Id.* at 284 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985)).

30. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021) (citing *Burger King Corp.*, 471 U.S. at 462, 475). A key older case that supplies foundational gloss on “purposeful availment” is *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

31. 137 S. Ct. 1773, 1787 (2017).

32. *Id.* at 1777–78.

33. *Id.* at 1778.

34. Brief for Petitioner at 18–20, *Bristol-Myers Squibb v. Superior Ct. of Cal.*, 137 S. Ct. 1773 (2017) (No. 16-466).

35. *Bristol-Myers Squibb*, 137 S. Ct. at 1783–84.

36. *Id.* at 1781.

37. *Id.*

38. Dodson, *supra* note 11, at 17.

defendant's contacts.<sup>39</sup> "Arise out of" suggests causality, which many of the prior specific-jurisdiction cases easily satisfied. But the Court had never decided what other kinds of contacts might also meet the conduct-claim-connection requirements of this part of the triangle.

### III. FORD AND THE TRIANGULATION OF SPECIFIC JURISDICTION

In March 2021, the Court completed the triangulation of specific jurisdiction. In *Ford Motor Co. v. Montana Eighth Judicial District*,<sup>40</sup> the Supreme Court considered what contacts were related enough to the cause of action to count for purposes of minimum contacts.<sup>41</sup> *Ford* resolved two separate cases. In one case, a Montana resident died after an accident while driving her 1996 Ford Explorer in Montana.<sup>42</sup> In the other, a Minnesota resident riding in a 1994 Ford Crown Victoria sustained serious injuries in an accident in Minnesota.<sup>43</sup> Both plaintiffs sued Ford in their home states for state-law claims under specific jurisdiction.<sup>44</sup> Because Ford is incorporated in Delaware and headquartered in Michigan,<sup>45</sup> Ford moved to dismiss both complaints for lack of personal jurisdiction under the Fourteenth Amendment.<sup>46</sup>

The evidence revealed that Ford directly targeted Montana with marketing efforts for Explorers through its advertising in the state; its thirty-six dealerships in the state; its sales of Explorers and their parts in the state; and its repair, replacement, and recall services for Explorers in the state.<sup>47</sup> The evidence revealed that Ford directly targeted Minnesota with marketing efforts related to Crown Victorias through its marketing and advertising in Minnesota, its eighty-four dealerships in Minnesota, and its sale of thousands of 1994 Crown Victorias in Minnesota.<sup>48</sup> With respect to both states, Ford both encouraged owners to keep their Fords for many years after purchase, and encouraged a robust resale market for its vehicles in those states.<sup>49</sup> Thus, it was

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39. *Bristol-Myers Squibb*, 137 S. Ct. at 1786 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)); see also *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985); *Helicopteros*, 466 U.S. at 414.

40. 141 S. Ct. 1017, 1032 (2021).

41. *Id.*

42. *Id.* at 1023.

43. *Id.*

44. *Id.*

45. *Id.* at 1022.

46. *Id.* at 1023, 1030.

47. *Id.* at 1023, 1028.

48. *Id.* at 1022, 1024, 1028.

49. *Id.* at 1028–29.

undisputed that Ford did substantial business in both Montana and Minnesota related to the types of vehicles at issue.<sup>50</sup>

Nevertheless, Ford argued that the courts hearing these cases lacked specific jurisdiction over Ford because Ford did not design, manufacture, or sell, in the forum states, the *particular* cars involved in the accidents.<sup>51</sup> Ford designed that particular Explorer in Michigan, manufactured it in Kentucky, and sold it in Washington.<sup>52</sup> Ford designed that particular Crown Victoria in Michigan, manufactured it in Canada, and sold it in North Dakota.<sup>53</sup> Ford had no direct involvement in bringing those particular cars into Montana and Minnesota.<sup>54</sup> According to Ford, therefore, those states' courts could not exercise specific jurisdiction over Ford in those lawsuits.<sup>55</sup> All of the state courts rejected Ford's argument, and Ford sought certiorari in the U.S. Supreme Court, which granted review in 2020.<sup>56</sup>

The Supreme Court also rejected Ford's argument and held that the Montana and Minnesota courts could exercise specific jurisdiction over Ford in those cases.<sup>57</sup> Justice Kagan, writing for four other justices, reiterated the modern triumvirate: personal jurisdiction depends upon the connections between the claims, the defendant's conduct, and the forum state.<sup>58</sup> She quickly dispensed with the left and right sides of the triangle.<sup>59</sup> The claims were connected to the forum states because, unlike the nonresident claims in *Bristol-Myers Squibb*, the *Ford* plaintiffs were residents of the forum states, and the cars caused injuries there.<sup>60</sup> Further, Ford's conduct had substantial connections with the forum states because, unlike in *Walden*, Ford purposefully availed itself of the privilege of conducting business activities in both states.<sup>61</sup>

The Court then turned to the base of the specific-jurisdiction triangle. Was Ford's conduct sufficiently related to the particular claim at issue?<sup>62</sup> Ford argued no, because its forum activities did not contribute to the causes of action arising in those forums.<sup>63</sup>

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50. *Id.* at 1026.

51. *Id.*

52. *Id.* at 1023.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.* at 1023–24.

57. *Id.* at 1032.

58. *Id.* at 1024.

59. *Id.* at 1026.

60. *Id.* at 1031.

61. *Id.* at 1026, 1031.

62. *Id.* at 1026.

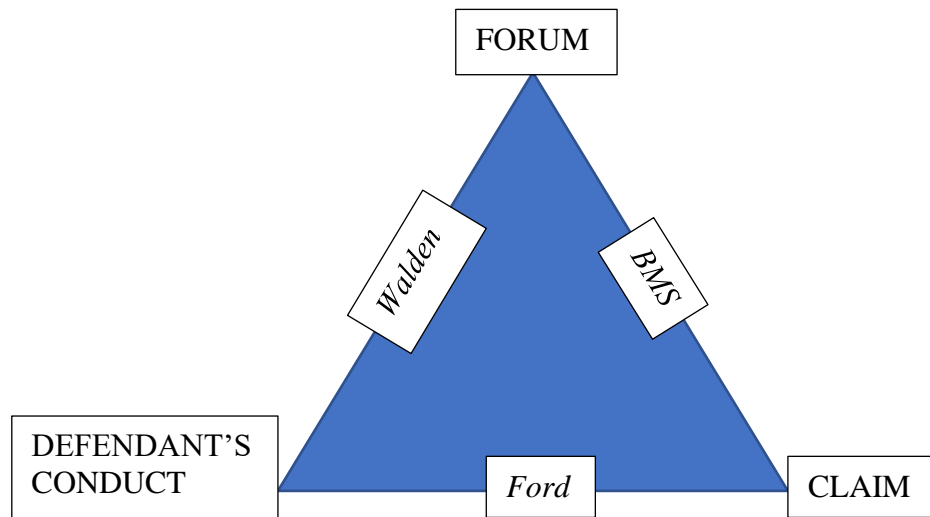
63. *Id.*

The Court rejected Ford’s argument.<sup>64</sup> Personal jurisdiction does require a connection between the defendant’s forum contacts and the cause of action, but the required connection need not be strict causality.<sup>65</sup> The forum contacts must give rise to, “or relate to,” the cause of action.<sup>66</sup> Relatedness has limits, but it is not limited only to contacts that give rise to the suit.<sup>67</sup>

And here, the Court reasoned, Ford’s contacts with the forum states were related to the causes of action: “Ford had systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned and injured them in those States.”<sup>68</sup> Accordingly, Ford’s substantial conduct in the forum states pertaining to the types of cars at issue in the accidents were related to the claims.<sup>69</sup>

*Ford* thus completes the triangle. Each modern case—*Walden*, *Bristol-Myers Squibb*, and *Ford*—supplies clearer standards for each of the triangle’s sides, as depicted below in Figure 2.

FIGURE 2:



64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.* at 1028.

69. *Id.* at 1032.



## IV. AFTER FORD

This Article offers six observations about *Ford* and the future of specific jurisdiction. First, *Ford* does little to clarify whether the five fairness factors are still good law and, if so, how they operate within the specific-jurisdiction framework. In *Burger King* and *Asahi*, the Court treated the fairness factors as a bifurcated analysis that could raise or lower the minimum-contacts bar.<sup>70</sup> *Bristol-Myers Squibb* took a different track by referring to “a variety of interests,” including the plaintiff’s choice of forum and the forum’s interests. *Bristol-Myers Squibb* focused, however, on the “burden on the defendant,” which it phrased in terms of “the practical problems resulting from litigating in the forum, but it also encompasses the more abstract matter of submitting to the coercive power of a State that may have little legitimate interest in the claims in question.”<sup>71</sup> *Bristol-Myers Squibb* then focused on that latter point, which it equated with the side of the triangle connecting the forum to the claim.<sup>72</sup>

*Ford* is even more vague about the fairness factors. It does not mention them by name, nor does it analyze them as a separate group.<sup>73</sup> In the course of its discussion, *Ford* does obliquely refer to three of them in ways scattered throughout the opinion. First, as for the burden on the defendant, the Court says, “allowing jurisdiction in these cases treats Ford fairly. . . .”<sup>74</sup> Second, as for the interest of the plaintiff, “the plaintiffs brought suit in the most natural State.”<sup>75</sup> Finally, as for the forum states’ interests, “[t]hose States have significant interests at stake.”<sup>76</sup> After *Ford*, it is unclear whether the fairness factors retain their status as a discrete inquiry, what work they do in the test, and whether all of them remain good law.

Second, because *Ford* did not implicate nettlesome issues of virtual contacts and the complications of technology, the majority did not consider whether current doctrine meets the challenges of the technology age.<sup>77</sup> The Internet remains the elephant in the room, and the

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70. See *supra* text accompanying note 22.

71. *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773, 1780 (2017) (internal quotations omitted).

72. *Id.* at 1781.

73. *Ford*, 141 S. Ct. at 1024–25.

74. *Id.* at 1029.

75. *Id.* at 1031.

76. *Id.* at 1030.

77. *Id.* at 1028 n.4 (“[W]e do not here consider internet transactions, which may raise doctrinal questions of their own.”).

doctrine will not truly be settled until the Court considers how it applies to virtual contacts.

Third, the Court backed away from the debate aired in *J. McIntyre Machinery v. Nicastro*<sup>78</sup> between a consent-based theory of personal jurisdiction and a fairness-based theory of personal jurisdiction.<sup>79</sup> *Ford* sidestepped both theories and instead framed personal jurisdiction in terms of reciprocity (purposeful availment) and notice (reasonable foreseeability):

Our decision in *International Shoe* founded specific jurisdiction on an idea of reciprocity between a defendant and a State: When (but only when) a company “exercises the privilege of conducting activities within a state”—thus “enjoying the benefits and protection of its laws”—the State may hold the company to account for related misconduct. Later decisions have added that our doctrine similarly provides defendants with “fair warning”—knowledge that a “particular activity may subject it to the jurisdiction of a foreign sovereign.” A defendant can thus structure its primary conduct to lessen or avoid exposure to a given State’s courts.<sup>80</sup>

Fourth, the Court reaffirmed personal jurisdiction’s connection to interstate federalism, a principle seemingly dormant since 1982<sup>81</sup> before its revival in *Bristol-Myers Squibb*.<sup>82</sup> As the Court in *Ford* put it:

And this Court has considered alongside defendants’ interests those of the States in relation to each other. One State’s “sovereign power to try” a suit, we have recognized, may prevent “sister States” from exercising their like authority. The law of specific jurisdiction thus

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78. *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 880 (2011).

79. *Compare id.* at 880 (Kennedy, J.) (dispensing with “[f]reeform notions of fundamental fairness” in favor of acts that manifest an intention to “submit to a State’s authority”), *with id.* at 901–02 (Ginsburg, J., dissenting) (stating that “the plurality’s notion that consent is the animating concept draws no support from controlling decisions of this Court” and instead interpreting precedent to “g[i]ve prime place to reason and fairness”).

80. *Ford*, 141 S. Ct. at 1025 (internal citations omitted).

81. *See Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 n.10 (1982) (“The restriction on state sovereign power described in *World-Wide Volkswagen Corp.* . . . 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.”).

82. *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1780–81 (2017).

seeks to ensure that States with “little legitimate interest” in a suit do not encroach on States more affected by the controversy.<sup>83</sup>

Fifth, Justice Gorsuch penned a concurring opinion, decrying the current test as divorced from an originalist view of personal jurisdiction, as prone to vagaries in application and providing special treatment to artificial business entities.<sup>84</sup> Justice Gorsuch even seems willing to support reviving the old “doing business” heuristic as a proxy for corporate “presence.”<sup>85</sup> The Court rejected that proposition as inconsistent with the limits of specific jurisdiction,<sup>86</sup> but Justice Gorsuch’s point more so invited a rethinking of the entire doctrine in line with originalism rather than precedent.<sup>87</sup> It remains to be seen just how many justices are willing to embark on a course that would jettison seventy-five years of precedent (even if *International Shoe*<sup>88</sup> did just that).

Sixth, the most important takeaway was what the Court *didn’t* do. *Ford* was an easy case. Ford’s contacts in the forum state were significant; no unfairness in terms of burdens or expectations could possibly be argued.<sup>89</sup> And the cause of action arose there.<sup>90</sup> As Justice Alito suggested, Ford’s contacts may even have given rise to the cause of action there because of Ford’s efforts to make sure people, like the plaintiffs, drove their Ford vehicles in those states.<sup>91</sup> So the Court’s rejection of Ford’s argument against personal jurisdiction was, if not surprising, of profound importance. Had Ford’s argument succeeded, specific jurisdiction would have been dramatically narrowed.<sup>92</sup> Few cases would meet all three sides of the triangle. Companies could game the market by selling into only one state while advertising and promoting in all of them, thereby reaping the benefits of those many states’ markets without subjecting themselves to suit there. Ultimately,

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83. *Ford*, 141 S. Ct. at 1025 (internal citations omitted).

84. *Id.* at 1035, 1038 (Gorsuch, J., concurring).

85. *Id.* at 1036.

86. *Id.* at 1027 n.3 (majority opinion).

87. Justice Alito hinted that he might have the same willingness. *Id.* at 1032 (Alito, J., concurring) (“[T]here are grounds for questioning the standard that the Court adopted in *International Shoe*. And there are also reasons to wonder whether the case law we have developed since that time is well suited for the way in which business is now conducted.”) (internal citation omitted).

88. *Int’l Shoe Co. v. Washington*, 326 U.S. 310 (1945).

89. *Ford*, 141 S. Ct. at 1022.

90. *Id.*

91. *Id.* at 1032 (Alito, J., concurring).

92. See Linda Sandstrom Simard, Cassandra Burke Robertson & Charles W. “Rocky” Rhodes, *Ford’s Hidden Fairness Defect*, 106 CORNELL L. REV. ONLINE 45, 50 (2020).

the biggest effect of *Ford* may end up being its rejection of the restrictions on specific jurisdiction Ford advanced.<sup>93</sup>

#### V. REFLECTIONS FROM AROUND THE GLOBE

Where does *Ford* put the United States on the global map? Elsewhere, I have argued that recent decisions indicated that the Court might be paying closer attention to the way other countries address personal jurisdiction (or, jurisdiction to adjudicate, as often styled in other countries).<sup>94</sup> In the doctrine, general jurisdiction moves since 2011 in the United States appear to converge with personal jurisdiction in the rest of the world.<sup>95</sup> The vast majority of other countries have long considered “doing business” jurisdiction exorbitant.<sup>96</sup> By contrast, the “at home” test, with its paradigm manifestations, is consonant with the domicile basis for personal jurisdiction largely followed in other countries.<sup>97</sup> These convergences of U.S. general jurisdiction with the norms of other countries has made joining international conventions on judgment recognition and enforcement a real possibility.<sup>98</sup>

But there is little reference to comparativism in *Ford*. The opinion itself tends to entrench certain differences between the United States and other countries. For example, *Ford* reaffirms *Bristol-Myers Squibb*'s rejection of pendent personal jurisdiction in the single-defendant case,<sup>99</sup> which is inconsistent with EU law and many individual European countries' laws.<sup>100</sup> *Ford* also reaffirms *Walden*'s holding that specific jurisdiction requires something more than just the cause of action arising in the forum state,<sup>101</sup> which is in tension with the European

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93. *Ford*, 141 S. Ct. at 1026.

94. Scott Dodson, *Personal Jurisdiction in Comparative Context*, 68 AM. J. COMP. L. 702 (2020); e.g., *Daimler AG v. Bauman*, 571 U.S. 117, 141–42 (2014) (noting the consistency between the “at home” test of general jurisdiction and the domicile-based foundation of judicial jurisdiction elsewhere); see also *J. McIntyre Machinery, Ltd. v. Nicaastro*, 564 U.S. 873, 909, 909 n.16 (2011) (Ginsburg, J., dissenting) (noting tension between the lack of personal jurisdiction at the place of tort injury in *Nicaastro* and the grant of jurisdiction at the place of tort injury supplied in other countries).

95. Dodson, *supra* note 94, at 711.

96. OSCAR CHASE ET AL., *CIVIL LITIGATION IN COMPARATIVE CONTEXT* 672–73 (2d ed. 2017).

97. Dodson, *supra* note 94, at 715–16; Linda J. Silberman, *Goodyear and Nicaastro: Observations from a Transnational and Comparative Perspective*, 63 S.C. L. REV. 591, 608 (2012).

98. Dodson, *supra* note 94, at 715–16.

99. *Ford Motor Co. v. Mont.* Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1030–31 (2021).

100. Dodson, *supra* note 94, at 717.

101. *Ford*, 141 S. Ct. at 1030–31.

custom of allowing specific jurisdiction in the country where a manufacturer's product causes harm.<sup>102</sup>

And Justice Gorsuch's concurring opinion even suggests a willingness to move personal jurisdiction in ways without regard to—and diametrically opposed to—the jurisdictional norms in other countries. In particular, Justice Gorsuch's invitation to return to a style of the old “doing business” jurisdiction for corporations and other organizations would be a significant break from the global norm.<sup>103</sup> Justice Gorsuch also hints at expanding tag jurisdiction to business organizations whose agents were served in the forum state while on corporate business,<sup>104</sup> a significant expansion of a basis for personal jurisdiction long deemed exorbitant by most of the rest of the world.<sup>105</sup>

It is not surprising that *Ford* largely ignores the jurisdictional laws of other countries. The federal structure of the United States—with separate state sovereignties and separate state courts—infuses U.S. personal jurisdiction with concerns for interstate federalism that few other countries share.<sup>106</sup> Equally important, U.S. personal jurisdiction is a judicially-created doctrine generated primarily by just two words—“due process”—in the U.S. Constitution, burdening the Supreme Court with the difficult task of developing rules under this faintest of guideposts in an ad hoc and fact-bound way.<sup>107</sup> By contrast, most other countries codify, in some detail, the limits on their courts' adjudicatory authority.<sup>108</sup>

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102. Dodson, *supra* note 94, at 713–14. Some other countries allow personal jurisdiction in the plaintiff's home state in consumer claims or internet-based torts. *Id.*

103. Justice Gorsuch also might open the door to greater willingness to extend consent-based personal jurisdiction to state business-registration statutes. *Ford*, 141 S. Ct. at 1036, 1038–39 (Gorsuch, J., concurring). For commentary on the issue, see 4A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1069.2 n.25 (4th ed. 2017); Charles W. “Rocky” Rhodes & Cassandra Burke Robertson, *A New State Registration Act: Legislating a Longer Arm for Personal Jurisdiction*, 57 HARV. J. LEGIS. 377, 388–94 (2020).

104. *Ford*, 141 S. Ct. at 1038, 1038 n.9 (Gorsuch, J., concurring).

105. Dodson, *supra* note 94, at 711–12.

106. *Id.* at 710. This concern is directly implicated when a state's own courts attempt to assert personal jurisdiction, and it is indirectly implicated through Rule 4 of the Federal Rules of Civil Procedure when a federal court attempts to assert personal jurisdiction, though there are some exceptions. See Scott Dodson, *Plaintiff Personal Jurisdiction and Venue Transfer*, 117 MICH. L. REV. 1463, 1474 n.67 (2019) (identifying instances in which Congress has supplied federal courts with nationwide personal jurisdiction). For the argument that interstate federalism should be far less concerning for U.S. lawsuits against foreign parties, see William S. Dodge & Scott Dodson, *Personal Jurisdiction and Aliens*, 116 MICH. L. REV. 1205, 1209 (2018).

107. See *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 701–03 n.10 (1982) (identifying the Due Process Clauses as the source of constitutional constraints on personal jurisdiction).

108. *E.g.*, European Regulation No. 1215/2012 of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, 2012 O.J. (L 351) 1 (codifying limits on EU nations' jurisdiction).

On that latter point, *Ford's* concurring opinions provide an interesting characterization of the majority's interpretation of the "related to" prong of specific jurisdiction as akin to statutory interpretation, even though the "related to" standard is grounded in case precedent rather than a statute.<sup>109</sup> Codification of adjudicatory jurisdiction, rampant in the rest of the world, helps avoid the difficulties inherent in judge-developed doctrine.<sup>110</sup> In the United States, codification is eminently feasible; after all, state long-arm "statutes"<sup>111</sup> and Rule 4 supply codified limits on the jurisdictional reach of both state courts and federal courts.<sup>112</sup> The Constitution's Due Process Clauses and the Supreme Court's interpretation of them have taken on an outsized leadership role in defining U.S. personal jurisdiction, but that need not be the case.<sup>113</sup> If personal jurisdiction were driven by sub-constitutional codifications, the Court could take a back seat and allow the principles of due process to guard against overreach in unique cases rather than do all the work of perfecting personal jurisdiction in the first instance.

## VI. CONCLUSION

*Ford*, the newest casebook-worthy opinion on personal jurisdiction from the Supreme Court, completes the triangulation of specific jurisdiction and offers some clarity in the doctrine going forward.<sup>114</sup> Its impact on the looming collision of personal jurisdiction and the Internet, and its implications for the development of global norms of personal jurisdiction, remain unclear.

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109. *Ford*, 141 S. Ct. at 1033 (Alito, J., concurring); *id.* at 1034 (Gorsuch, J., concurring).

110. *See, e.g.*, Dodson, *supra* note 94, at 720 (stating that the judge-developed doctrine is "likely to evolve in unpredictable ways in the near term"). *Cf.* Daimler AG v. Bauman, 571 U.S. 117, 134 (2014) (Sotomayor, J., concurring) (stating that the Court's new standard for general jurisdiction would upset what had been "taught to generations of first-year law students").

111. *See* Zachary D. Clopton, *Long Arm "Statutes,"* 23 GREEN BAG 2D 89, 90 (2020).

112. FED. R. CIV. P. 4.

113. *See* Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702-03 n.10 (1982).

114. *See Ford*, 141 S. Ct. at 1026-27, 1032.