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INTERSTATE JURISDICTIONAL COMPACTS:
A NEW THEORY OF PERSONAL JURISDICTION

INTRODUCTION

The Interstate Compact Clause of the Constitution permits states, subject to congressional consent, to enter into agreements on a

1. The Clause provides that, "[n]o State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State." U.S. Const. art. I, § 10, cl. 3. Although stated in the negative, the clause is not a "denial of the power of two States to enter into a compact . . . with one another, but only [places] a condition [of the consent of Congress] upon the exercise of such power." Stearns v. Minnesota, 179 U.S. 223, 245 (1900); accord, West Virginia ex rel. Dyer v. Sims, 341 U.S. 22, 27 (1951); Rhode Island v. Massachusetts, 37 U.S. (12 Pet.) 657, 724 (1838); see Celler, Congress, Compacts, and Interstate Authorities, 26 Law & Contemp. Prob. 682, 683 (1961); Note, Legal Problems Relating to Interstate Compacts, 23 Iowa L. Rev. 618, 618 (1938) [hereinafter cited as Legal Problems]; Note, The Interstate Compact—A Survey, 27 Temp. L.Q. 320, 322 (1953) [hereinafter cited as A Survey]; 37 Mich. L. Rev. 129, 130 (1938). The flexibility of the Compact Clause, the growth of our nation and the consequent increase in regional problems, and the judicial favor accorded the Compact Clause have all resulted in a steady increase in the use of compacts throughout the history of the United States. Between 1783 and 1920, 36 compacts were adopted; between 1921 and 1940, 20 additional compacts were adopted; and between 1941 and 1975, over 100 compacts were adopted. F. Zimmerman & M. Wendell, The Law and Use of Interstate Compacts ix (1976) [hereinafter cited as Law and Use]. The Supreme Court has suggested on more than one occasion that litigating states should attempt to resolve their differences by compact. E.g., New York v. New Jersey, 256 U.S. 296, 313 (1921); Minnesota v. Wisconsin, 252 U.S. 273, 283 (1920); Washington v. Oregon, 214 U.S. 205, 217-18 (1909); see A Survey, supra, at 327. Moreover, the Interstate Compact Clause is often touted as a cure-all for regional problems. "The imaginative adaptation of the compact idea should add considerably to the resources available to statesmen in the solution of problems presented by the growing interdependence, social and economic, of groups of States forming distinct regions." Frankfurter & Landis, The Compact Clause of the Constitution—A Study in Interstate Adjustments, 34 Yale L.J. 685, 707-08, 729 (1925); see In re Waterfront Comm’n, 39 N.J. Super. 33, 42, 120 A.2d 504, 508-09 (Super. Ct. Law Div. 1955); R. Leach & R. Sugg, Jr., The Administration of Interstate Compacts 5-6, 213 (1959); F. Zimmerman & M. Wendell, The Interstate Compact Since 1925, at 11 (1951) [hereinafter cited as Since 1925]; Celler, supra, at 683; Leach, The Federal Government and Interstate Compacts, 29 Fordham L. Rev. 421, 423-25 (1961) [hereinafter cited as The Federal Government]; Leach, Interstate Authorities in the United States, 26 Law & Contemp. Prob. 666, 678 (1961) [hereinafter cited as Interstate Authorities]. See generally W. Barton, Interstate Compacts in the Political Process (1965).

2. See note 1 supra. Not all interstate agreements, however, require congressional consent. Only compacts that result in a "combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States" require such consent. Virginia v. Tennessee, 148 U.S. 503, 519 (1893) (dicta). Although this dicta was not formally accepted by the Supreme Court until 1976, see New Hampshire v. Maine, 426 U.S. 363, 369 (1976), it was cited with approval on many occasions. E.g., North Carolina v. Tennessee, 235 U.S. 1, 15-16 (1914); Stearns v. Minnesota, 179 U.S. 223, 246-48 (1900); see Since 1925, supra note 1, at 34; Legal Problems, supra note 1, at 620-21 & n.15; A Survey, supra note 1, at 322; Note, Some Legal and Practical Problems of the Interstate Compact, 45 Yale L.J. 324, 327 (1935) [hereinafter cited as Practical Problems].
variety of topics. The Constitution does not specifically define the nature and scope of the Compact Clause. The power it gives to the states, however, is often analogized to the treaty-making power of


4. "The records of the Constitutional Convention, however, are barren of any clue as to the precise contours of the agreements and compacts governed by the Compact Clause." United States Steel Corp. v. Multistate Tax Comm'n, 434 U.S. 452, 460-61 (1978) (footnote omitted). The Framers of the Constitution took the virtually identical compact provision contained in the Articles of Confederation and inserted it into the new Constitution. R. Leach & R. Sugg, Jr., supra note 1, at 4-5; The Federal Government, supra note 1, at 421. On July 25, 1787, the Constitutional Convention created a Committee of Detail composed of John Rutledge, James Wilson, Edmund Randolph, Nathaniel Gorham and Oliver Elsworth. The Convention then adjourned until August 6 to allow the Committee to prepare a draft. 2 M. Farrand, Records of the Federal Convention of 1787, at 97, 128 (2d ed. 1937). Section 10 of the Committee's first draft provided that "[n]o State shall enter into any Treaty, Alliance (or) Confederation with any foreign Power nor witht. Const. Of U.S. into any agreemt. or compact wh . . . another State or Power." Id. at 169 (abbreviations in original). On August 6, the Committee submitted a second draft to the Convention providing in pertinent part that "[n]o State, without the consent of the Legislature of the United States, shall . . . enter into any agreement or compact with another state . . . ." Id. at 187. The Committee of Style, created to revise the draft, reported on September 12, id. at 590, but nothing was said about Art. I, § 10, which contained the Compact Clause and was incorporated into the Constitution as approved on September 17. The records of the ratification debates also shed very little light. James Madison declared only that the portion of Art. I, § 10 containing the Compact Clause fell "within reasonings which are either so obvious, or have been so fully developed, that they may be passed over without remark." The Federalist No. 44, at 302 (J. Madison) (J. Cooke ed. 1961). See generally Weinfeld, What Did the Framers of the Federal Constitution Mean by "Agreements or Compacts"?, 3 U. Chi. L. Rev. 453 (1936).
independent nations, which allows sovereign states to make agreements on virtually any subject.\footnote{5}

Recently, in Intermeat, Inc. v. American Poultry Inc.,\footnote{7} the Second Circuit implied that Interstate Compacts could be used to expand jurisdictional boundaries.\footnote{8} In Intermeat, the plaintiff sequestered the defendant's debt pursuant to New York's jurisdictional attachment statute.\footnote{9} Arguing that he lacked the requisite contacts with New York, the defendant moved to dismiss for lack of personal jurisdiction.\footnote{10} The court denied the defendant's motion, deeming the shipping of goods into Port Newark, New Jersey a contact with New York State because, although Port Newark is outside the territorial boundaries of the forum state, it is under the jurisdiction of the Port of New York Authority,\footnote{11} a bi-state agency created by interstate


\footnote{6}{For example, in the United States the treaty power is without any express constitutional limitations. Asakura v. Seattle, 265 U.S. 332, 341 (1924); \textit{see} B. Schwartz, \textit{Constitutional Law} \S 3.16, at 102 (2d ed. 1979). The Supreme Court, however, has stated that "a treaty cannot change the Constitution or be held valid if it be in violation of that instrument." The Cherokee Tobacco, 78 U.S. (11 Wall.) 616, 620-21 (1870); \textit{accord}, Reid v. Covert, 354 U.S. 1, 16-17 (1957); \textit{see} B. Schwartz, \textit{supra}, \S 3.16, at 102; L. Tribe, \textit{American Constitutional Law} \S 4-4, at 169-70 (1978).}

\footnote{7}{575 F.2d at 1017 (2d Cir. 1978). In \textit{Intermeat}, the court considered the effect of \textit{Shaffer} v. Heitner, 433 U.S. 186 (1977), an on quasi-in-rem jurisdiction in New York. 575 F.2d at 1021-22. In \textit{Shaffer}, the Supreme Court held that the "minimum contacts" standard of due process established in \textit{International Shoe Co. v. Washington}, 326 U.S. 310, 316 (1945), should also be used to determine whether jurisdiction based on the attachment of property is constitutionally acceptable. 433 U.S. at 211-12.}

\footnote{8}{575 F.2d at 1019 n.1, 1023.}

\footnote{9}{N.Y. Civ. Prac. Law \S\S 314, 315, 5201, 6202 (McKinney 1972). These statutes authorize the exercise of quasi-in-rem jurisdiction over a nonresident defendant based on the attachment of a debt owed to the defendant from a debtor found in New York. \textit{Id.} \S\S 314, 315, 5201, 6202.}

\footnote{10}{575 F.2d at 1018-19.}

\footnote{11}{\textit{Id.} at 1019 n.1, 1023. The court's analysis contravenes an earlier holding of a New York County Civil Court. In Bunge v. C & N Truck Leasing, Inc., 69 Misc. 2d 143, 329 N.Y.S.2d 458 (Civ. Ct. 1972), the plaintiff's car was struck by the defendant's vehicle while at the toll plaza on the New Jersey side of the George Washington Bridge, which is owned and operated by the Port of New York Authority. Plaintiff sued in New York. Defendant raised the affirmative defense that the court lacked personal jurisdiction. \textit{Id.} at 144, 329 N.Y.S.2d at 459. Alleging that the compact creating the Port Authority vested both New York and New Jersey with jurisdiction
A logical extension of this rationale would enable states to enact compacts specifically providing courts of both states with jurisdiction over individuals present and acts occurring within the other's territory.

This concept of a jurisdictional "bulge" created by interstate compact is especially interesting in light of the Supreme Court's recent decision in *World-Wide Volkswagen Corp. v. Woodson,* in which the Court limited the utility of long-arm statutes by restrictively interpreting the nature of the minimum contacts constitutionally necessary to allow courts to exercise personal jurisdiction over nonresident defendants. Because interstate jurisdictional compacts might pro-

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over the Bridge, plaintiff moved to dismiss this defense. The court dismissed the complaint against the defendant for want of personal jurisdiction. In doing so, the court noted that plaintiff's theory, "while novel, is not without appeal but the plaintiff has not submitted any authority to support it." *Id.* at 144, 329 N.Y.S.2d at 460. See also Clarke v. Ackerman, 243 A.D. 446, 450, 278 N.Y.S. 75, 79-80 (1st Dept. 1935) (New York-New Jersey Compact of 1834 does not vest New York State courts with jurisdiction over accident occurring on the New Jersey side of the George Washington Bridge); Preisler v. Velasquez, 65 Misc. 2d 703, 704-05, 318 N.Y.S.2d 977, 979 (Sup. Ct. 1971) (same).


13. 444 U.S. 286 (1980). *World-Wide Volkswagen* arose out of an automobile accident in Tulsa, Oklahoma. The plaintiffs had bought a new Audi from the petitioners in Massena, New York. *Id.* at 288. The respondents subsequently drove their Audi to their new home in Arizona. While traveling through Oklahoma, the plaintiff's wife and children were severely burned when the Audi's gas tank exploded after being struck from behind. The plaintiff brought a products liability action in an Oklahoma state court. *Id.* Defendants entered special appearances, seeking to defeat the exercise of jurisdiction over them. *Id.* The case was appealed to the Supreme Court of Oklahoma, *World-Wide Volkswagen Corp. v. Woodson,* 585 P.2d 351 (Okla. 1978), which held that the exercise of personal jurisdiction over the defendants was authorized by Oklahoma's long-arm statute. Okla. Stat. tit. 12, §1701.03(a)(4)(1980). The United States Supreme Court reversed, holding that Oklahoma did not have jurisdiction over the defendants. *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. at 299 (1980). The parameters of this decision are unclear. Some commentators have attacked the decision as unduly restrictive of state court jurisdiction, while others feel the Court's reevaluation of jurisdiction was long overdue. Compare Kamp, *Beyond Minimum Contacts: The Supreme Court's New Jurisdictional Theory,* 15 Ga. L. Rev. 19, 53 (1980) ("The Court's present system of jurisdiction . . . ignores present economic and social reality") with Louis, *The Grasp of Long Arm Jurisdiction Finally Exceeds its Reach: A Comment on World-Wide Volkswagen Corp. v. Woodson* and *Rush v. Savchuk,* 58 N.C.L. Rev. 407, 409 (1980) ("The Court's new approach is a fair and workable one").

14. Louis, supra note 13, at 428. ("In effect, what the Court has done . . . is to turn the clock back to an earlier time when jurisdiction . . . was concerned more with the defendant's conduct and less with notions of social welfare and convenient risk allocation"); see Kamp, supra note 13, at 45, 47, 51; Ripple & Murphy, *World-
vide a partial solution to some of the problems engendered by the Court's restrictive stance on long-arm jurisdiction, this Note contends that contiguous states can, and should, provide for concurrent jurisdiction through interstate compacts.

I. THE PROBLEM OF THE NONRESIDENT DEFENDANT

The United States is an economically open, highly mobile, industrial society. It is also a federation of fifty distinct polities, each with its own judicial system. Thus, although the federal system allows people to move freely about the country, it also restricts the state's exercise of jurisdiction over them.

The inability of state courts to exercise jurisdiction over nonresident defendants has plagued our federal system since its inception.


15. See notes 50-59 infra and accompanying text.

16. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 293 (1980). "The economic interdependence of the States was foreseen and desired by the Framers [of the Constitution]. In the Commerce Clause, they provided that the Nation was to be a common market, a 'free trade unit' in which the States are debarred from acting as separable economic entities." H.P. Hood & Sons, Inc. v. DuMond, 336 U.S. 525, 538 (1949); Hazard, A General Theory of State Court Jurisdiction, 1965 Sup. Ct. Rev. 241, 246-47. A result of the social and economic unity of the United States is the vast amount of travel and business occurring across state lines. See World-Wide Volkswagen Corp. v. Woodson, 444 U.S. at 293 (1980); Hanson v. Denckla, 357 U.S. 525, 538 (1958); McGee v. International Life Ins. Co., 355 U.S. 220, 222-23 (1957); Hazard, supra, at 246. Americans also have a constitutional right to travel from state to state, Shapiro v. Thompson, 394 U.S. 618, 630-31 (1969); Edwards v. California, 314 U.S. 160, 174 (1941), and a legal right to project themselves commercially into all parts of the nation. Toomer v. Witsell, 334 U.S. 385, 409 (1948) (Frankfurter, J., concurring).

17. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 293 (1980) ("[T]he Framers [of the Constitution] . . . intended that the States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try [cases] in their courts"); Hazard, supra note 16, at 246-47. ("politically [the United States is . . . a federation of distinct polities . . . requiring] rules for choice of law and jurisdictional rules as among separate sovereigns").

18. See notes 16-17 supra and accompanying text.

19. See LaRue, supra note 3, at 8. "The jurisdictional problem in the United States is distinctive because, while the country is socially and economically
Part of the problem was that the traditional presence theory of jurisdiction made no allowance for the open, mobile nature of the United States. Under the presence theory, articulated in *Pennoyer v. Neff*, jurisdiction was premised upon the defendant's physical presence within the territorial boundaries of the state. A state court could not exercise personal jurisdiction over a defendant unless that defendant was served with process while within the territorial boundaries of the forum state.

As the United States developed, state boundaries diminished in commercial importance, and the fictional corporate entity became the predominant form of business organization. The Supreme Court took the view that a corporation existed as a legal person only in the state of its incorporation and, therefore, could be sued only in that state. As the nation's economy developed, however, it became apparent that corporations would not confine their activities to the state of their incorporation. Consequently, the presence theory was essentially a unitary state, legally and politically it is in many respects a federation of distinct polities. It is this conjunction of circumstances that is peculiar. The peculiar features of the jurisdictional problem in the United States, then, is that our national economic and social unity is conducive to the full panoply of substantive transactions found internally in a unitary state but our political plurality requires jurisdictional rules as among separate sovereigns.” Hazard, *supra* note 16, at 246-47.

“The jurisdictional problem exists precisely because there is no single tribunal that has exclusive jurisdiction in the territorial sense.” *Id.* at 265.


21. *See* notes 25-32 infra and accompanying text.

22. 95 U.S. 714 (1877).

23. 95 U.S. at 722.


unable to reflect the reality of interstate business. Nonetheless, it also precluded states from obtaining jurisdiction over individuals whose actions within the state gave rise to a cause of action, but who were beyond the territorial boundaries of the state at the time of suit.

These problems were aggravated by the economic and technological advances of the twentieth century. As technological progress increased the flow of commerce between States, the need for jurisdiction over nonresidents underwent a similar increase. In response, the Supreme Court, in International Shoe Co. v. Washington, replaced the antiquated Pennoyer test with a standard that permits states to exert jurisdiction over those not physically present within its boundaries. The Court held that

29. 4 C. Wright & A. Miller, supra note 24, §§ 1065-1066, at 211-24; Hazard, supra note 16, at 272; Developments in the Law—State-Court Jurisdiction, 73 Harv. L. Rev. 909, 917 (1960) [hereinafter cited as Developments]. To inject flexibility into jurisdictional standards the courts turned to legal fictions. 4 C. Wright & A. Miller, supra note 24, §§ 1065-66, at 211-24; Forde, The Emergence of Metropolitan Centers as Litigation Centers for the "Big Case": New Concepts in Federal and State Court Jurisdiction, 2 J. Mar. J. Prac. & Proc. 1, 4-5 (1968); Hazard, supra note 16, at 272-73; Kurland, supra note 20, at 574-86; Ripple & Murphy, supra note 14, at 70. One such fiction was that a corporation doing business in a state was "present" in the state and therefore subject to that state's jurisdiction. See, e.g., Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U.S. 516, 517 (1923); Philadelphia & Reading Ry. v. McKibbin, 243 U.S. 264, 265 (1917); International Harvester Co. v. Kentucky, 234 U.S. 579, 583 (1914). Another fiction involved automobile consent statutes, under which a nonresident motorist, by using a state's highways, was deemed to have appointed a particular state official as his agent for receipt of legal process, thereby meeting the presence standard of Pennoyer. See, e.g., Wuchter v. Pizzutti, 276 U.S. 13, 15 (1928); Hess v. Pawloski, 274 U.S. 352, 356-57 (1927).

30. 4 C. Wright & A. Miller, supra note 24, § 1065, at 213.


33. 326 U.S. 310 (1945).

34. See notes 35-39 infra and accompanying text. In International Shoe, a Delaware corporation challenged the power of a Washington state court to hear a suit against the corporation involving unpaid contributions to the state's unemployment compensation fund. The Supreme Court held that although the defendant corporation had no office in Washington and did not deliver goods or stockpile merchandise there, the defendant had sufficient contacts with Washington to justify the exercise of jurisdiction because its salesmen's activities in the state were "systematic and continuous." Id. at 320.
due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." 35

International Shoe's liberalization of jurisdictional standards resulted in the enactment of many long-arm statutes. 36 These statutes typically permit the exercise of jurisdiction over nonresidents who

35. Id. at 316 (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)). The Court, however, did not indicate what activity constitutes minimum contacts. The jurisdictional cases decided subsequent to International Shoe, McGee v. International Life Ins. Co., 355 U.S. 220 (1957), and Hanson v. Denckla, 357 U.S. 235 (1958), shed very little light on the precise meaning of minimum contacts. See Nordenberg, supra note 31, at 613; Ripple & Murphy, supra note 14, at 72; An Effect Test, supra note 14, at 184 n.30. Hanson has been severely criticized by commentators. E.g., Hazard, supra note 16, at 244; see Kamp, supra note 13, at 34; Louis, supra note 13, at 408, 412; Nordenberg, supra note 31, at 616; An Effect Test, supra note 14, at 184 n.30.

In retrospect, Hanson was notable for its anticipation of the Court's current concern with the territorial limitations on state court jurisdiction. See World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 294 (1980). Hanson held that a defendant, to be subject to the jurisdiction of a court, must have "purposefully avail[ed] itself of the privilege of conducting activities within the forum State." 357 U.S. at 253. The Hanson court noted that the "restrictions [on the personal jurisdiction of state courts] 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." Id. at 251.

36. 4 C. Wright & A. Miller, supra note 24, § 1068, at 243. See generally Currie, The Growth of the Long-Arm: Eight Years of Extended Jurisdiction in Illinois, 1963 U. Ill. L.F. 533. Because the Supreme Court has not clearly defined the scope of the requisite minimum contacts, see note 31 supra, it was left to state courts and legislatures to set the parameters. Not surprisingly, they tended toward a liberal construction. See, e.g., Ladd v. KLM Royal Dutch Airlines, 456 F. Supp. 422, 424-25 (S.D.N.Y. 1978) (jurisdiction over a foreign corporation upheld on the basis of the defendant's maintenance of toll free telephone number listings in directories of six Tennessee cities, the defendant's advertisements in publications circulated in Tennessee, regular calls to Tennessee by defendant's sales personnel, and sale of defendant's tickets by independent travel agents); Phillips v. Anchor Hocking Glass Corp., 100 Ariz. 251, 253, 413 P.2d 732, 733 (1966) (jurisdiction upheld when foreign corporation's only contact with forum state was injury caused by product); Buckeye Boiler Co. v. Superior Court, 71 Cal. 2d 893, 897-98, 458 P.2d 57, 60-61, 80 Cal. Rptr. 113, 116-17 (1969) (same); Gray v. American Radiator and Standard Sanitary Corp., 22 Ill. 2d 432, 435, 176 N.E.2d 761, 762 (1961) (same). "By 1975, state long arm jurisdiction . . . had enjoyed three decades of unimpeded growth towards, and arguably sometimes beyond, the limits of due process. Furthermore, this inexorable growth process was one the states inherently favored and were, therefore, unlikely to stunt voluntarily." Louis, supra note 13, at 409 (footnotes omitted); see 4 C. Wright & A. Miller, supra note 24, § 1068, at 248; Payne, Jurisdiction In Personam: World-Wide Volkswagen v. Woodson, 15 Forum 1023, 1023 (1980); Ripple & Murphy, supra note 14, at 72; 49 U. Mo.-K.C. L. Rev. 78, 80-81 (1980). See generally Silberman, Shaffer v. Heitner: The End of an Era, 53 N.Y.U. L. Rev. 33, 79-90 (1978).
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conduct business within the state,37 or who engage in specifically defined activities within38 or without the state39 that have consequences within the state. This statutory expansion of jurisdiction was regarded as a "healthy and natural [trend] in a mobile, industrialized society."40 Long-arm statutes encourage the joinder of all parties to a dispute, an invaluable aid in multi-party litigation.41 They also provide plaintiffs with a convenient forum, thereby allowing many injuries to be redressed that had previously been uneconomical to litigate.42 Although the Court never expressly validated all aspects of comprehensive long-arm jurisdiction, commentators viewed the Court's silence as approval.43

Although the developments that encouraged the liberalization of jurisdictional standards have accelerated in the last three decades,44 the ability to exercise long-arm jurisdiction has been curtailed by recent decisions of the Supreme Court.45 In World-Wide Volkswagen

40. 4 C. Wright & A. Miller, supra note 24, § 1068, at 243.
41. Id. at 244; D. Siegel, supra note 24, § 85, at 98. Long-arm statutes increase the jurisdictional reach of the courts, thereby increasing the number of individuals and corporations potentially subject to the jurisdiction of such courts. Hence, long-arm statutes make it easier to obtain jurisdiction over joined parties.
42. 4 C. Wright & A. Miller, supra note 24, § 1068, at 244; Comment, Personal Jurisdiction in Nebraska: The Need for a Long Arm Statute, 45 Neb. L. Rev. 166, 167 (1966); 18 Wayne L. Rev. 1585, 1598 (1972).
43. 4 C. Wright & A. Miller, supra note 24, § 1068, at 248-49. "[S]tates . . . enact[ed] and extend[ed] their long arm statutes under the Court's silent but seemingly approving gaze." Louis, supra note 13, at 403.
44. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292-93 (1980); see Roger N. Joyce & Assocs. v. Paoli Steel Corp., 491 F. Supp. 1095, 1098 (E.D. Ark. 1980). "Statistics help illustrate the amazing expansion in mobility since International Shoe. The number of revenue passenger-miles flown on domestic and international flights increased by nearly three orders of magnitude between 1945 (450 million) and 1976 (179 billion). Automobile vehicle-miles (including passenger cars, buses, and trucks) driven in the United States increased by a relatively modest 500% during the same period, growing from 250 billion in 1945 to 1,409 billion in 1976." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. at 308 n.13 (Brennan, J., dissenting) (citations omitted).
45. E.g., Rush v. Savchuk, 444 U.S. 320 (1980); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980); Kulko v. Superior Court, 436 U.S. 84 (1978); Shaffer v. Heitner, 433 U.S. 186 (1977). "The Supreme Court's four most recent cases on . . . jurisdiction . . . have created a new analytical structure for the deter-
Corp. v. Woodson, the Court restrictively defined the scope of minimum contacts necessary for jurisdictional statutes to comport with due process. Under the Court's new analysis, the traditional due process concerns of convenience and fairness to the defendant are subordinated to the "principles of interstate federalism embodied in the Constitution." The Court noted that

[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 judgement.]

According to Justice Brennan, "[t]he Court's analysis . . . excludes jurisdiction in a contiguous State . . . as surely as in more distant States." If Justice Brennan is correct in his evaluation of World-Wide Volkswagen, state courts will find it more difficult to acquire jurisdiction over individuals not present within the state and businesses not doing business within the boundaries of the state. By forcing plaintiffs to

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47. See note 4 supra.
48. 444 U.S. at 293. This analysis has been sharply criticized. E.g., Kamp, supra note 13, at 53 (The Court's analysis "ignores present economic and social reality."); An Effect Test, supra note 14, at 204 (The Court's analysis "disregards its own characterization of the nation as a common market . . . and it ignores . . . commercial realities.") (footnote omitted); 49 U. Cin. L. Rev. 531, 539 (1980) ("The Court's espousal of principles of federalism to deny jurisdiction rests upon previously discarded nineteenth century legal thought and emphasizes form at the expense of individual rights.").
50. 444 U.S. at 306 n.10 (Brennan, J., dissenting). "Under the Court's new analysis, state lines can become barriers to jurisdiction in situations where jurisdiction could be obtained under an analysis based solely on questions of convenience.
51. See note 14 supra and accompanying text.
travel to the defendant, *World-Wide Volkswagen* will, in many cases, result in many injuries remaining uncompensated because the litigation expenses are too great.\(^{52}\) For example, this will have a significant impact in products liability actions.\(^{53}\) Arguably, *World-Wide Volkswagen* requires that a retailer or distributor, sued under a theory of products liability, actually have sold the defective goods in the forum state to be subject to its jurisdiction.\(^{54}\) Thus, corporations will be encouraged to limit their physical and economic presence in as many jurisdictions as feasible, thereby causing "an attendant decline in the attractiveness of the products liability approach."\(^{55}\)


53. One rationale for the enactment of long-arm statutes was to provide a convenient forum for the state's citizens in product liability actions. Note, *In Personam Jurisdiction Over Nonresident Manufacturers in Product Liability Actions*, 63 Mich. L. Rev. 1028, 1028 (1965); *An Effect Test*, *supra* note 14, at 197. "This need has certainly not abated; if anything it has increased." *Id.* at 197 (footnote omitted). This need prompted Congress to enact the Consumer Product Safety Act, 15 U.S.C. §§ 2051-2081 (1976).

54. *World-Wide Volkswagen* was a products liability action. See note 13 *supra*. The Court rejected the assertion of jurisdiction based upon "the fortuitous circumstance that a single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma." *World-Wide Volkswagen* Corp. v. Woodson, 444 U.S. at 295. The Court stated that, to be subject to a State's jurisdiction, a defendant must have "purposefully avail[ed] itself of the privilege of conducting activities within the forum State." *Id.* at 297 (quoting *Hanson* v. Denckla, 357 U.S. 235, 253 (1958)). Therefore, "if the sale of a [defendant's] product . . . arises from [its] efforts . . . to serve . . . the market . . . in other States, it is not unreasonable to subject it to suit in one of those States." *Id.* at 297. (emphasis added). Hence, the forum state will no longer be able to exert jurisdiction over a nonresident defendant retailer or distributor on the basis of an accident occurring within the forum state, caused by a defective product sold by the defendant outside the forum state. See *Donnelly* v. *Copeland Intra Lenses*, Inc., 87 F.R.D. 80, 85 (E.D.N.Y. 1980); *Long* v. *The Vessel "Miss Ida Ann,"* 490 F. Supp. 210, 213 n.1 (S.D. Tex. 1980); Gertler v. *Gondola Ski Shop*, Inc., 384 So. 2d 856, 859 (La. Ct. App. 1980); State *ex rel. Caine* v. *Richardson*, 600 S.W.2d 82, 85 (Mo. Ct. App. 1980); *An Effect Test*, *supra* note 14, at 196; *Federalism*, *supra* note 14, at 1360 n.146. "In short, the Court has significantly limited jurisdiction over nonresident dealers and distributors and has raised serious questions about jurisdiction over nonresident manufacturers." Kamp, *supra* note 13, at 51; see Payne, *supra* note 36, at 1030; 14 Suffolk U.L. Rev. 1169, 1184 (1980).

World-Wide Volkswagen will also impede multi-party litigation.\textsuperscript{56} It is a policy of our judicial system to dispose of multi-party disputes in one suit,\textsuperscript{57} an objective facilitated by long-arm statutes.\textsuperscript{58} World-Wide Volkswagen's limitation on long-arm statutes will exacerbate the difficulties encountered in attempting to obtain jurisdiction over nonresident third parties because it will

create many situations in which all the persons who should be made parties to the lawsuit cannot be joined. This defeats economical administration of the judicial process and can lead to inconsistent results. It will also, in some instances, lead to dismissals of actions for failure to join an indispensable party.\textsuperscript{59}

The problems caused by multi-party, interstate lawsuits are encountered in federal courts as well.\textsuperscript{60} Prior to 1963, a federal court could exercise jurisdiction only over defendants present within the state in which the court sat.\textsuperscript{61} Due to the increased incidence of multi-party litigation, eased communication and travel, and the prob-

56. Kamp, supra note 13, at 53-54. "In actions where the plaintiff must obtain personal jurisdiction over two or more parties, he may find that there is no single state in which they are all subject to in personam jurisdiction . . . . If, however, the potential defendants are 'indispensable,' the plaintiff may not proceed against them separately; if no state can exercise personal jurisdiction over all of them the plaintiff can not obtain legal relief." Comment, In Personam Jurisdiction in Multiple-Party Suits, 26 U. Chi. L. Rev. 643, 643-44 (1959) (footnotes omitted).

57. "To permit a situation in which two cases involving precisely the same issues are simultaneously pending in different . . . [c]ourts leads to . . . wastefulness in time, energy and money." Continental Grain Co. v. Barge FBL-585, 364 U.S. 19, 26 (1960); 4 C. Wright & A. Miller, supra note 24, § 1068, at 244; Forde, supra note 29, at 1-2; Kamp, The Shrinking Forum: The Supreme Court's Limitation of Jurisdiction—An Argument for a Federal Forum in Multi-Party, Multi-State Litigation, 21 Wm. & Mary L. Rev. 161, 161 (1979).

58. See note 41 supra.

59. Kamp, supra note 13, at 53 (footnotes omitted). "The Court's heavy reliance on the minimum contacts test obviated consideration of judicial economy [because] consolidating the cases in one court would conserve judicial time . . . . The [plaintiffs] will be deprived of the tactical advantages that come from having all the defendants in the litigation at one time." 49 U. Cin. L. Rev. 531, 538 n.52, 539 (1980) (footnote omitted); see Woods, Pennoyer's Demise: Personal Jurisdiction after Shaffer and Kulko and a Modest Prediction Regarding World-Wide Volkswagen Corp. v. Woodsom, 20 Ariz. L. Rev. 861, 911 (1978).

60. "Modern transactions tend to involve more than the standard two parties and refuse to confine themselves to a single state or to any narrow area. Multiparty litigation is ever becoming more common in the federal courts, and it is clear that existing law imposing territorial limits on effective service . . . will have to be thoroughly overhauled if this litigation is to be handled effectively." Kaplan, Amendments of the Federal Rules of Civil Procedure, 1961-1963(1), 77 Harv. L. Rev. 601, 629 (1964).

61. As originally promulgated, Rule 4(f) of the Federal Rules of Civil Procedure provided that "[a]ll process . . . 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." See Vestal, Expanding
lems inherent in multi-state metropolitan districts, however, the Supreme Court chose to expand the jurisdiction of the federal courts. In 1963, it amended Rule 4(f) of the Federal Rules of Civil Procedure to allow service of process upon certain joined parties outside the forum state, as long as service occurs less than 100 miles from the place of trial. Thus, in shaping the jurisdiction of federal courts, the problem engendered by jurisdictional boundaries was recognized and Rule 4(f) was enacted to remedy it. Although state courts face similar problems, they have no such jurisdictional supplement.

II. The Interstate Compact Clause: A Supplement for State Court Jurisdiction

A. Interstate Compacts and Jurisdiction

The problem of obtaining jurisdiction over absent defendants can be partially alleviated if contiguous states enact compacts providing that, for jurisdictional purposes, the territorial boundaries of each state will be deemed to encompass all of the territory of the other. This would increase the jurisdictional reach of each of the compacting states by widening the boundaries of the geographic area in which the requisite minimum contacts could occur. Although the Compact Clause has never been used to create concurrent jurisdiction on such a large scale, there is no prohibition against using the clause in this manner.

Interstate compacts have already been used on a limited scale to create areas of concurrent jurisdiction between contiguous states. For example, at the federal level, Rule 4(f) of the Federal Rules of Civil Procedure was amended to allow service of process upon certain joined parties outside the forum state, as long as service occurs less than 100 miles from the place of trial. This provision was enacted to remedy the problem of obtaining jurisdiction over absent defendants. Although state courts face similar problems, they have no such jurisdictional supplement.

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62. Fed. R. Civ. P. 4(f), Advisory Committee Notes. "In the light of present-day facilities for communication and travel, the territorial range of the service allowed . . . can hardly work hardship on the parties summoned. The provision will be especially useful in metropolitan areas spanning more than one State." Id.

63. Currently, Fed. R. Civ. P. 4(f) provides, in pertinent part, that "[a]ll process other than a subpoena may be served anywhere within the territorial limits of the state in which the district court is held . . . . In addition, persons who are brought in . . . pursuant to Rule 14, or as additional parties to a pending action or a counter-claim or cross-claim therein pursuant to Rule 19, may be served . . . at all places outside the state but within the United States that are not more than 100 miles from the place in which the action is commenced, or to which it is assigned or transferred for trial." Id.; see 4 C. Wright & A. Miller, supra note 24, § 1124, at 517. See generally Kaplan, supra note 60, at 629-35; Vestal, supra note 54, at 1059-71.

64. For such a proposal to become law, two states would have to agree to the compact, which would then be submitted to their respective legislatures for approval. The legislatures could also consent in advance to any compact the designated negotiators might agree on. If the legislatures both ratified the compact, it would then be submitted to Congress. When Congress assented, the compact would be law. See Since 1925, supra note 1, at 35; A Survey, supra note 1, at 326.
example, the Virginia Compact of 1789 provided that the jurisdiction of Kentucky would be concurrent with that of any state that might be created on the opposite shore.\textsuperscript{65} Similarly, in 1834, New York and New Jersey agreed by interstate compact to extend New York's criminal jurisdiction into that part of New Jersey that included the Hudson River and New York Harbor and also to make service of process by either state effective anywhere on the Harbor.\textsuperscript{66} These compacts create areas of concurrent jurisdiction by literally extending the boundaries of the party states so as to include a small parcel of the other state's territory.\textsuperscript{67}

Although these instances of concurrent jurisdiction have been limited to boundary waters between adjoining states, it does not necessarily follow that the concept must be so limited. In fact, states, through interstate compacts, have projected their judicial power into the territory of another state. In 1953, following public exposure of


racketeering activity on the waterfront, New York and New Jersey agreed to the Waterfront Commission Compact. The Compact provided the Commission with the power to subpoena witnesses. The Commission, which sat in New York, subpoenaed two New Jersey residents, who failed to appear. These residents maintained that it was a denial of due process to force a person to go beyond the limits of his own state to testify in another jurisdiction. Rejecting this argument, the court in *In re Waterfront Commission of New York Harbor* upheld the constitutionality of the compact, noting that such a jurisdictional extension is permissible upon agreement of the party states.

Another such compact is the Interstate Compact for the Supervision of Parolees and Probationers. This compact, adopted by all 50 states, provides for the supervision of parolees and probationers in states outside the state of conviction. The power of a state over these individuals is derived solely from the jurisdiction of the sentencing court. The compact extends the jurisdiction of the sentenc-

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71. Id. at 42, 120 A.2d at 509.


73. “It is, therefore, manifest that the two states have been joined by agreement to eliminate the territorial and jurisdictional boundary between them . . . .” *Id.* at 41, 120 A.2d at 508.

74. Congress consented in advance to compacts between states “for cooperative effort and mutual assistance in the prevention of crime” in 1934. 4 U.S.C. § 112(a) (1976). Pursuant to this authority all 50 states eventually ratified the Interstate Compact for the Supervision of Parolees and Probationers. Burkhart, *Interstate Cooperation in Probation and Parole*, Fed. Probation, June 1989, at 24. The Compact was conceived in 1935 by the Interstate Commission on Crime and was promulgated in recognition of the interstate character of crime and crime control. *Id*. The Compact was created so that parolees could move to another state where “due to family relationships . . . better opportunities for work and a more conducive atmosphere for rehabilitation will be found. . . . But the rehabilitative value of such a move would often be lost unless there is adequate supervision, advice, and assistance to accompany the released person when he crosses the state line.” Crihfield, *The Interstate Parole and Probation Compact*, Fed. Probation, June 1953, at 3. The Compact has been upheld on constitutional grounds numerous times. Gulley v. Apple, 213 Ark. 350, 356, 210 S.W.2d 514, 519 (1948); *In re Tenner*, 20 Cal. 2d 670, 674, 128 P.2d 338, 343 (1942) (en banc); Pierce v. Smith, 31 Wash. 2d 52, 58-59, 195 P.2d 112, 116, cert. denied, 335 U.S. 834 (1948).


76. *Id*.
ing court and thus makes it possible for supervision to proceed outside the state of conviction.\textsuperscript{77}

In 1957, the New York legislature enacted the Interstate Interpleader Compact,\textsuperscript{78} which was subsequently adopted by four other states.\textsuperscript{79} The compact provides that, in interstate interpleader actions, "[s]ervice of process sufficient to acquire personal jurisdiction may be made within a state party to this compact, by a person who institutes an interpleader proceeding . . . in another state, party to this compact."\textsuperscript{80} The compact was designed to eliminate the problem of obtaining jurisdiction over nonresident claimants in state interpleader actions.\textsuperscript{81} Although this compact was never consented to by Congress, and hence, never became effective,\textsuperscript{82} there was no question as to its constitutional validity.\textsuperscript{83} It was not approved because the enactment of long-arm statutes, as well as the availability of federal interpleader procedures, made the compact "less necessary than it might have been formerly."\textsuperscript{84}

The Interstate Interpleader Compact, the Waterfront Commission Compact, and the Interstate Compact for the Supervision of Parolees and Probationers operate on the same basic principles. Pursuant to such compacts, and with the consent of Congress, states can subject their citizens and businesses to the judicial authority of another state.\textsuperscript{85} Territorial constraints on the exercise of judicial power do

\textsuperscript{77} Id.


\textsuperscript{81} Interpleader is a technique developed to solve the problem of a stakeholder who is subject to multiple claims for an obligation that is rightfully owed to just one of the claimants. Effective Interpleader, supra note 67, at 56. See generally Rogers, \textit{Historical Origins of Interpleader}, 51 Yale L.J. 924 (1942). If the stakeholder is unable to obtain jurisdiction over all the claimants, however, he may be subject to multiple liability. 105 Cong. Rec. 12547 (1959) (remarks of Sen. Keating); 58 Mich. L. Rev. 612, 612 n.3 (1960); see New York Life Ins. Co. v. Dunleavy, 241 U.S. 518 (1916).

\textsuperscript{82} J. Weinstein, H. Korn, & A. Miller, supra note 78, ¶ 1006.07; McLaughlin, Practice Commentaries to N.Y. Civ. Prac. Law § 1006, at C1006.8 (McKinney 1976); 58 Mich. L. Rev. 612, 612 (1960).

\textsuperscript{83} L. Prashker & S. Trapani, supra note 78, § 291, at 541-43; J. Weinstein, H. Korn & A. Miller, supra note 78, ¶ 1006.07; McLaughlin, supra note 82, at C1006.8; Effective Interpleader, supra note 67, at 56-71; 58 Mich. L. Rev. 612, 612-14 (1960).

\textsuperscript{84} J. Weinstein, H. Korn & A. Miller, supra note 78, ¶ 1006.07.

\textsuperscript{85} L. Prashker & S. Trapani, supra note 78, at 542; Effective Interpleader, supra note 67, at 62; Legal Problems, supra note 1, at 625-26.
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not apply to the "joint action of two or more states taken by interstate compact." This rationale clearly establishes that states can compact to share their jurisdiction with other states.

B. Due Process Considerations

Although Article I, § 10 lists congressional consent as the sole limitation on interstate compacts, compacts must still satisfy the requirements of the Constitution, including the Due Process Clause of the Fourteenth Amendment. It might be posited that a jurisdictional compact would be unconstitutional because a defendant could be subjected to the jurisdiction of a state with which he has had absolutely no contacts. Jurisdiction under such a compact, however, would still have to fulfill the minimum contacts requirement, but the boundaries of the area in which the contacts could occur would be greatly increased. In this respect, the effect of a jurisdictional compact would be analogous to the effect of the 100-mile bulge provision of the Federal Rules of Civil Procedure. Under Rule 4(f), if a third-party defendant has meaningful contacts within the 100-mile bulge, the court can exercise jurisdiction over him, even if he had no contacts whatsoever with the forum state.

Moreover, the analysis of the underlying rationale for the minimum contacts standard articulated by the Court in World-Wide Volkswagen indicates that properly drafted jurisdictional compacts could comport with due process. In World-Wide Volkswagen, the Court held that the minimum contacts requirement serves to protect two due process concerns. "It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal

86. Effective Interpleader, supra note 67, at 62.
87. See note 2 supra.
system.” 91 A jurisdictional compact could comply with the convenience factor underlying minimum contacts by limiting the compact to adjoining states. Certainly, traveling to a contiguous state is not much of a burden in many cases. “In fact, a courtroom just across the state line from a defendant may be far more convenient for the defendant than a courtroom in a distant corner of his own State.” 92 To further minimize the inconvenience created by being forced to defend an out of state lawsuit, jurisdictional compacts should include venue provisions. These would differ with the geographic characteristics of the compacting states. For example, a typical venue provision could require a plaintiff, seeking jurisdiction under the compact, to bring his suit in specified judicial districts located near the state line, thereby minimizing the inconvenience to the out of state defendant.

The second rationale underlying minimum contacts protects the status of the states as “coequal sovereigns in a federal system.” 93 The Court stressed that the Framers of the Constitution “intended that the States retain many essential attributes of sovereignty,” 94 including the power to try cases. The sovereignty of one state requires a limitation on the sovereignty of all the other states. Consequently, when one state exercises long arm jurisdiction over a defendant present in another state, it infringes the latter’s sovereignty by unilaterally subjecting that defendant to its judicial authority. Jurisdictional compacts, however, would be consensual arrangements. Each of the compacting states would agree to share its jurisdictional authority with the other.

Moreover, another attribute of state sovereignty is the constitutionally provided right to compact with other states. 95 In upholding a multistate tax compact, the Supreme Court noted that

[t]he Constitution did not purport to exhaust imagination and resourcefulness in devising fruitful interstate relationships. It is not

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94. Id. at 293.

95. The right to compact is "a power inherent in sovereignty limited only to the extent that congressional consent is required." West Virginia ex rel. Dyer v. Sims, 341 U.S. 22, 35 (1951) (Jackson, J., concurring); Rhode Island v. Massachusetts, 37 U.S. (12 Pet.) 657, 725 (1838); Poole v. Fleege, 36 U.S. (11 Pet.) 185, 209 (1837). "As a matter of political theory, the compact is an ideal compromise with the doctrinal pattern of the Constitution, for it offers a technique for satisfying certain generally
to be construed to limit the variety of arrangements which are possible through the voluntary and cooperative actions of individual States with a view to increasing harmony within the federalism created by the Constitution.96

Jurisdictional compacts, by furthering legitimate state interests such as the forum state's interest in adjudicating disputes,97 and the plaintiff's interest in obtaining convenient and effective relief,98 would also promote harmony among the states without damaging the federal structure created by the Constitution.

CONCLUSION

Jurisdictional compacts cannot replace long arm statutes. Compacts between contiguous states, however, would enable courts to exercise jurisdiction over nonresident defendants who would not have been subject to conventional long-arm jurisdiction. By erasing arbitrary barriers to state judicial authority, jurisdictional compacts would enhance the efficient operation of our judicial system.

Mark C. Smith

shared social ambitions without distorting the federal structure of multiple sovereignty." Practical Problems, supra note 2, at 326-27.

