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Sovereignty, Territoriality, and the Enforcement of Foreign Judgments

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Foreign Court Judgments and the United States Legal System

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Sovereignty, Territoriality, and the Enforcement of Foreign Judgments

George Rutherglen and James Y. Stern

Over the course of the twentieth century, the effect of state boundaries as hard-and-fast limits on judicial and legislative jurisdiction steadily eroded. *International Shoe Co. v. Washington*¹ stands as a landmark precedent, replacing traditional requirements that the defendant or the defendant's property be present in the forum state at the outset of litigation with a regime requiring only that the defendant have certain "minimum contacts" with the forum.² That case, concerned with personal jurisdiction over a corporation, was consistent with similar transformations elsewhere: personal jurisdiction over natural persons,³ choice of law,⁴ and extraterritorial application of forum statutory law.⁵ Altogether, these developments are part of a wider revolution in jurisdictional practices, which began before World War II with Legal Realism and continued into the last decades of the twentieth century.

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1 326 U.S. 310, 316 (1945) (state can exercise jurisdiction over a nonresident defendant which has "certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice").

2 *Id.* at 316.

3 *Shaffer v. Heitner*, 433 U.S. 186, 212 (1977) (nonresident of Delaware did not have the necessary "minimum contacts" merely by holding stock in a Delaware company unrelated to the litigation because "all assertions of state court jurisdiction must be evaluated according to the standards set forth in *International Shoe*").

4 *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312–13 (1981) (permitting a state to apply its own law to resolve a dispute so long as the has "a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair."); *Babcock v. Jackson*, 12 N.Y. 2d at 481, 191 N.E. 2d 279 (1963) (New York law applied based on the "center of gravity" or "grouping of contacts" approach); see generally SYMEON C. SYMEONIDES, *THE AMERICAN CHOICE-OF-LAW REVOLUTION: PAST, PRESENT AND FUTURE* (2006).

5 *United States v. Aluminum Co. of America*, 148 F.2d 416, 445–447 (2d Cir. 1945).

To be sure, this revolution produced its own reactionary impulses, reflected in efforts to salvage various traditional rules confining sovereign power to national borders and to impose qualifications upon the broadly stated standards set out in opinions like *International Shoe*. In widely noted decisions, for example, the Supreme Court upheld personal jurisdiction based on presence of the defendant within the forum state⁶ and recognized a strong presumption against extra-territorial application of American law.⁷ Yet the reaction has remained essentially defensive, limiting the expansion of jurisdiction rather than forcing it back. These recent decisions do not question the vitality of *International Shoe*, but instead confine themselves to working out its implications.⁸

It may therefore come as something of a shock to discover that strict territorial limits on sovereign power have never been abandoned—in fact, never seem to have been questioned—as an absolute prerequisite for enforcement of judgments. Enforcement of a judgment, and especially a foreign judgment, does not become possible until the defendant or the defendant's property can be found within the enforcing forum at the onset of enforcement proceedings. The original adjudicating court (conventionally designated F1) might be able to invoke liberal and flexible concepts of judicial and legislative jurisdiction and so reach a wider range of matters than would have traditionally been possible, but the enforcing court (F2) cannot. Put differently, F1 cannot also serve as F2 unless it meets standards of presence and territoriality. Presence of the defendant or the defendant's property within F2 remains a prerequisite for enforcement of judgments there. Despite a century of erosion and decay in F1, the strict territorial theory remains alive and well in F2.

Explanations for this discrepancy nevertheless appear to be readily at hand. Enforcement of a judgment against property, or against the person of

6 *Burnham v. Superior Court*, 495 U.S. 604 (1990) (finding personal jurisdiction over a non-resident who was personally served with process while temporarily in the state, even if his presence was unrelated to the litigation).

7 *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1664 (2013) (presumption against extra-territorial application provides that “[w]hen a statute gives no clear indication of an extraterritorial application, it has none”).

8 *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2856–2857 (2011) (defendant did not have “continuous and systematic general business contacts” necessary to support personal jurisdiction with respect to claim that neither arose out of nor related to the defendant’s activities”); *J. McIntyre Machinery Ltd. v. Nicastro*, 131 S. Ct. 2780, 2788 (2011) (opinion of Kennedy, J.) (defendant did not “purposefully avail[] itself of the privilege of conducting activities within the forum State” even though it might have predicted that its goods would reach there).

the defendant, presupposes something or someone within the jurisdiction that can be seized in order to satisfy the judgment. And only the officers of F2 ordinarily have the authority, or the effective power, to act within the territorial confines of the state, especially in the face of resistance or evasion by the defendant. The officers of F1 have no such power and any attempt to grant it to them in F2 requires the latter's consent, seldom forthcoming except on the most *ad hoc* basis. The sovereign independence of separate states, and the territorial allocation of power between them, dictates the exclusive control of F2 over the enforcement of judgments within its territory.

The only disquieting note in this seemingly ineluctable reasoning comes from its disturbing similarity to the rationale in the venerable decision in *Pennoyer v. Neff*,⁹ which represents the classic statement of the strict territorial theory of personal jurisdiction that governed before *International Shoe*. From the perspective of today's jurisdictional practices, *Pennoyer* seems to be mistaken only in transposing the strict requirements of territorial presence from issues of execution at the end of the lawsuit to those of personal jurisdiction at the beginning. As Chief Justice Stone pointed out in *International Shoe*, the jurisdiction of courts was historically "grounded on their de facto power over the defendant's person. . . . But now that the *capias ad respondendum* has given way to personal service of summons or other form of notice, 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 suit does not offend 'traditional notions of fair play and substantial justice.'"¹⁰ Arresting the defendant or seizing the defendant's property can await the conclusion of the lawsuit, and if necessary, enforcement proceedings in F2; these steps are not necessary at the outset to obtain personal jurisdiction in F1.

Yet the persistence of the strict territorial theory at the remedial stage of litigation demonstrates just how robust it is. The deeply embedded nature of territorial limits on jurisdiction is reflected not only in the nature of execution itself, which perforce must be carried out within the territory of a state where the object or means of execution is located, but in the processes leading up to it. In particular, a foreign judgment has to be "domesticated" before

9 95 U.S. 714, 723 (1877) ("Every State owes protection to its own citizens; and, when non-residents deal with them, it is a legitimate and just exercise of authority to hold and appropriate any property owned by such non-residents to satisfy the claims of its citizens.").

10 326 U.S. at 316. The common law writ of *capias ad respondendum* authorized the sheriff to capture the defendant and bring him to court.

execution can take place. Absent a treaty or legislation that binds F2, a successful plaintiff in F1 cannot just take the resulting judgment from F1 into F2 for enforcement. The plaintiff must, instead, commence a separate lawsuit in F2's courts, which then determines the authenticity and the consequences of the judgment from F1.¹¹ It is the judgment resulting from such a proceeding in F2 that will then be enforced. This system could have dramatic consequences, potentially transforming enforcement into the tail of litigation, so to speak, that wags the dog of jurisdiction. If enforcement requires judicial proceedings in a state where the defendant or the defendant's property is situated, then the expansion of adjudicative jurisdiction authorized by *International Shoe* amounts to practically nothing—unless the enforcing state either chooses to or is compelled to treat the adjudicating state's judgment as conclusive.

Nowhere is the survival of territoriality more apparent than with respect to judgments from foreign nations, where both sovereignty and territoriality matter far more than in purely domestic cases. This chapter explores the differences between domestic and foreign judgments in three sections. Section 1 distinguishes the special rules applicable to recognition of judgments from sister states from those applicable to judgments of foreign states. As states within a strong federal union defined by the Constitution, sister states are bound by the Full Faith and Credit Clause.¹² This clause, and supporting legislation, have been interpreted to require F2 to give F1 judgments the preclusive effect F1 would give them, almost without exception. This exacting rule of recognition has direct practical implications for the invocation of flexible standards of personal jurisdiction in F1. It makes those standards in F1 nearly always dispositive in F2, and it correspondingly diminishes the force of the strict territorial theory applied in F2 to enforcement of judgments of F1. If F2 is bound by an F1 judgment, including F1's determination of the propriety of its own jurisdiction, F2's restrictions on jurisdiction to enforce judgments make little practical difference. The plaintiff can always go to F1, invoke the flexible territorial theory there, and then take the resulting judgment to F2 where the defendant's property is located. Here the dog wags the tail.

11 States may enact statutes allowing foreign judgments to take effect upon registration, rather than a full-blown suit on the judgment, but even these statutes still require some form of domestication and they are in any event for the enacting state to adopt, or not, as it sees fit. An example of such expedited procedure for enforcement is the Uniform Enforcement of Foreign Judgments Act, discussed in the text accompanying notes 51–52 *infra*.

12 U.S. Const. art. IV, § 1; “Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.”

Section 2 reviews the standard exceptions for recognition of foreign international judgments and how they open the door to the invocation of F2's sovereign power based on its territorial control over the defendant and the defendant's property. The exclusive control that F2 exercises over enforcement within its boundaries gives its courts the power to engage in review of the judgments of F1. This implication follows from the principle, given its canonical statement by Justice Story, that "whatever force and obligation the laws of one country have in another depends solely upon the laws, and municipal regulations of the latter, that is to say, upon its own proper jurisprudence and polity and upon its own express or tacit consent."¹³ Even though recognition of foreign judgments is the rule rather than the exception, it is a considerably weaker rule than that applicable between sister states. It gives F2 the opportunity to re-examine the process and the policy underlying the judgment of F1 for consistency with the principles embodied in the law of F2.

Section 3 then offers a justification for this regime of limited recognition of foreign judgments derived from the external effects, both detrimental and beneficial, that result from the judgment of F1. In a world without strong rules of international law regulating judicial proceedings, independent sovereigns have strong reasons to re-examine the balance between the costs and benefits of enforcing foreign judgments as they have effects within their own territory. Sovereignty and territoriality determine the need for exceptions to the recognition of foreign judgments, even if they do not determine their precise form and content. Indeed, the exceptions need not have precise form and content and may better serve their purpose by generally deterring overenforcement of foreign judgments by an indefinite threat of nonrecognition.

1 Interstate Versus International Recognition of Judgments

Despite some similarities, recognition of sister-state judgments looks very different from the enforcement of foreign-country judgments, particularly in the narrow range of exceptions that allow nonrecognition. By longstanding interpretation, the Full Faith and Credit Clause imposes a nearly absolute rule of interstate recognition of judgments. The leading case is *Fauntleroy v. Lum*,¹⁴ in

13 Joseph Story, *Commentaries on the Conflict of Laws: Foreign and Domestic, in REGARD TO CONTRACTS, RIGHTS, AND REMEDIES, AND ESPECIALLY IN REGARD TO MARRIAGES, DIVORCES, WILLS, SUCCESSIONS, AND JUDGMENTS* § 23 at 24 (1st ed. 1834).)

14 210 U.S. 230 (1908) (Missouri judgment entitled to full faith and credit "as the jurisdiction of the Missouri court is not open to dispute the judgment cannot be impeached in Mississippi even if it went upon a misapprehension of the Mississippi law").

which the Supreme Court required Mississippi to enforce a Missouri judgment over the objection that the judgment itself was unconstitutional: that Missouri had failed to apply Mississippi law to the underlying transaction, in violation of the Full Faith and Credit Clause. Mississippi's position had considerable force: the dispute that led to the judgment was for gambling debts incurred in Mississippi in violation of Mississippi law. The Court, however, rejected Mississippi's attempt to go behind the judgment. Writing for the majority, Justice Holmes reasoned that the original judgment "cannot be impeached either in or out of the State by showing that it was based upon a mistake of law."¹⁵ To paraphrase another of his opinions, "there sometimes has been an air of benevolent gratuity" in the enforcement of judgments from other states, but "of course there is no gratuity about it."¹⁶ F2 must treat the judgment of F1 just as F1 would.

A few exceptions to this Full Faith and Credit rule stand out, but the narrow terms in which they are cast just prove how strong the rule is. There are the limits on enforcement of judgments concerning penal, tax, and property issues. Collateral attack for lack of personal jurisdiction allows a defendant to avoid the effect of a default judgment.¹⁷ Yet that exception—which, as it happens, comes from *Pennoyer v. Neff*¹⁸—depends upon the defendant's failure to appear in F1. A defendant cannot just attack a judgment for misapplication of *International Shoe*. Another flash point for recognition of judgments has to do with marriage, divorce, and child custody, where a complicated system of rules has broadened personal jurisdiction to determine marital status but limited the effects of such judgments with respect to related issues, such as property settlements, support payments, and child custody.¹⁹ The current controversy over recognition of same-sex marriage, legitimated in one state but challenged in another, is only the most recent example of the special rules for full faith and credit in domestic relations and "status" cases. Legislation under the Full

¹⁵ *Id.* at 237.

¹⁶ *Southern Pacific Company v. Jensen*, 244 U.S. 205, 220 (1917) (Holmes, J., dissenting) (arguing that admiralty courts should apply state law to tort claims arising on navigable waters).

¹⁷ In some circumstances, a judgment can also be attacked based on a lack of subject-matter jurisdiction. See *Kalb v. Feuerstein*, 308 U.S. 433 (1940). For the exception for penal, tax, and property judgments, see notes 70–71 *infra* and accompanying text.

¹⁸ 95 U.S. at 728–729.

¹⁹ E.g., *Williams v. North Carolina*, 317 U.S. 287, 297 (1942) (marital status can be determined by a forum that is the marital domicile of one of the parties); *Vanderbilt v. Vanderbilt*, 354 U.S. 416, 420 (1957) (wife's right to support cannot be determined without personal jurisdiction over her).

Faith and Credit Clause has solved many of these problems (as in litigation over child custody),²⁰ and it has raised constitutional questions in others (as in the litigation over the Defense of Marriage Act).²¹

Whatever the scope of these exceptions, they pale beside the dominant rule of respect for and enforcement of the judgments of sister states articulated in *Fauntleroy*. Like several other provisions in Article IV, the Full Faith and Credit Clause was designed “to form a more perfect Union” of the states,²² in the particular sense of strengthening their bonds beyond those among foreign nations.²³ As it has been interpreted, this clause supplies a binding rule of law superior to any rule derived solely from state law, with no analogue in the international context, and that rule is a broad one.²⁴ To the very considerable extent F1’s judgment must be given preclusive effect in F2, it is F1’s adjudication that

20 See Parental Kidnapping Prevention Act, 28 U.S.C. §1738A (2012) (requiring interstate recognition of custody and visitation determinations).

21 28 U.S.C. § 1738C (2012) (“No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.”) Other provisions of the act limited the meaning of “marriage” in federal law to marriage between a man and a woman and were declared unconstitutional in *United States v. Windsor*, 133 S. Ct. 2675 (2013).

22 U.S. Const. preamble.

23 Recent scholarship would limit the binding effect of the clause to matters of authentication, rather than recognition (and the preclusive effect), of sister-state judgments. See Ann Woolhandler & Michael Collins, *Jurisdictional Discrimination and Full Faith and Credit*, 63 EMORY L.J. 1023, 1029 nn. 16, 17 (2014); Stephen E. Sachs, *Full Faith and Credit in the Early Congress*, 95 VA. L. REV. 1201, 1206–07 (2009). Yet this revisionist interpretation only calls attention to the difference between interstate and international judgment recognition, which was appreciated as early as Justice Story’s *Commentaries on the Conflict of Laws*. See Story, *supra* note 13, § 609 at 509. On the prevailing interpretation, the two situations are treated as entirely different because the Constitution deprives F2 of the freedom to decide how much effect, if any, to give to the judgment of F1. Even on the revisionist interpretation, moreover, F2 has a far more limited power to inquire into the authenticity of F1 judgments from other U.S. states compared with those from other nations. And its ability to deny recognition to sister-state judgments is in any event subject to whatever restrictions are imposed from above by Congress under the Full Faith and Credit Clause and perhaps by federal common law as well.

24 28 U.S.C. § 1738 (2012) (“Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.”).

is decisive. Regardless of where the defendant or the defendant's property is situated, F1's adjudication will carry the day, as long as F1 can satisfy the minimal requirements of *International Shoe*.

In the international setting, by contrast, enforcing states enjoy significantly more flexibility and discretion. This latitude is usually described in terms of "comity," which was given its classic formulation in *Hilton v. Guyot*,²⁵ a decision that refused recognition of a French judgment. The Court defined comity in the following terms:

"Comity," in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.²⁶

Comity reserves to each nation the discretion to recognize judgments from another nation. Even if those judgments typically are enforced, they need not be. No source of law superior to F2 requires it to recognize the judgments of F1. F2 might subject itself to such requirements and dispense with the rule of comity, for instance, by acceding to a treaty on recognition of foreign judgments. A treaty brings the international situation closer to the interstate model.²⁷ Even then, the possibility of unilateral abrogation of the treaty remains, as does the role of the courts in the enforcing state as the final arbiter of the effect of a foreign judgment, typically without review by any other tribunal. In the absence of a treaty, comity serves as a residual source of power in F2 to reexamine the judgments of F1. Even if those judgments typically are enforced by F2, they need not be.

The difference between interstate and international recognition of judgments has immediate consequences for the effect of F1's own standards for exercising jurisdiction. In the interstate situation, so long as F1 exercises jurisdiction within wide constitutional boundaries, it does not matter where in the United States a prevailing party seeks to enforce the resulting judgment. F1's finding of personal jurisdiction and subject-matter jurisdiction, not to say its

25 *Hilton v. Guyot*, 159 U.S. 113 (1895).

26 *Id.* at 164.

27 Hague Convention on Choice of Court Agreements [official compilation]; Convention on the Recognition and Enforcement of Foreign Arbitral Awards [official compilation].

decision on the merits, must itself be given “full faith and credit” by F2.²⁸ Any money judgment can be enforced in any state in which the judgment debtor’s property can be found. It does not matter that the enforcement action in F2 remains subject to the strict territorial restraints of *Pennoyer v. Neff*.²⁹ The generous and open-ended standards of *International Shoe* determine the jurisdiction of F1,³⁰ and with it, the enforceability of F1’s judgment.

No such simple consequences, however, follow from issuance of a foreign judgment or from a foreign court’s determination that it has jurisdiction. F2 can re-examine these determinations, indirectly giving effect to the territorial limits on enforcement of judgments as a restraint on F1’s exercise of jurisdiction. The current version of the Uniform Foreign-Country Money Judgments Recognition Act (UF-CMJRA) makes such re-examination central to recognition of foreign judgments.³¹ Section 5 of the Act identifies several situations in which F2 must accept the personal jurisdiction of F1, but F1’s conclusion that its exercise of jurisdiction was proper is conspicuously absent from the list.³² There is no bar to relitigating the question of personal jurisdiction, even if F1 and F2 apply the same standards to assess personal jurisdiction.³³ Nor is F2’s ability to review F1’s judgment limited to the issue of personal jurisdiction. F2 can go further and re-examine other procedural and jurisdictional issues raised in F1 and, to a considerable extent, the substance of F1’s judgment.³⁴ All of these grounds for nonrecognition create further doubt and uncertainty over the plaintiff’s initial choice of F1 as a court with jurisdiction over the defendant.

28 *Durfee v. Duke*, 375 U.S. 106, 115 (1963) (judgment must be given full faith and credit on issue of subject-matter jurisdiction if it was fully and fairly litigated and finally decided by the court that rendered the original judgment); *Baldwin v. Iowa State Travelling Men’s Ass’n*, 283 U.S. 522, 526 (1931) (same for issue of personal jurisdiction).

29 95 U.S. at 720. (“The authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established. Any attempt to exercise authority beyond those limits would be deemed in every other forum, as has been said by this court, an illegitimate assumption of power, and be resisted as mere abuse.”).

30 326 U.S. at 317 (observing that “the terms ‘present’ or ‘presence’ are used merely to symbolize those activities of the corporation’s agent within the state which courts will deem to be sufficient to satisfy the demands of due process”).

31 Uniform Foreign-Country Money Judgments Recognition Act of 2005 § 4(b)(2), (3). The earlier version of the Act contained nearly identical provisions. Uniform Foreign Money-Judgments Recognition Act of 1962 § 4.

32 UF-CMJRA § 5.

33 *Agnitsch v. Process Specialists, Inc.*, 318 F. Supp. 2d 812, 821 (S.D. Iowa 2004) (re-examining foreign judgment to determine if F1 had personal jurisdiction under F2’s five-factor test for minimum contacts).

34 *Id.* § 4(b)(1), (c).

The holder of a judgment from a foreign nation stands in what appears to be a significantly weaker position than the holder of a judgment from a sister state.

2 The Distinctive Features of Foreign Judgments

The difference between the enforcement of domestic and foreign judgments are, at the same time, fundamental and elusive—fundamental because they reflect enduring limits on national sovereignty, but elusive because American law follows a presumption in favor of recognition of foreign judgments. The formal difference between full faith and credit as a constitutional requirement and the exercise of discretion as a matter of comity goes back to the seminal decision in *Hilton v. Guyot*³⁵ and is carried forward in modern statutes, like the Uniform Foreign-Country Money Judgments Recognition Act (UF-CMJRA).³⁶ The presumption in favor of recognition of foreign judgments can be overcome when a case falls within any of several exceptions, most of them inapplicable to interstate judgments under the Full Faith and Credit Clause.³⁷ Yet these exceptions make a difference only in comparatively few cases, which raises the question why they should be retained at all. Why not treat international cases just like interstate cases? A look at the nature of the exceptions—theoretically broad, if practically limited—provides an answer to this question.

The most prominent exception is for judgments inconsistent with the enforcing forum's public policy. That exception can become a serious irritant in relations with foreign countries, as illustrated in the United States by the SPEECH Act of 2010,³⁸ which forbids enforcement of defamation judgments from nations, notoriously, the United Kingdom, which view rights to freedom of speech more narrowly than American law. Yet for all their intensity, the

35 *Hilton v. Guyot*, 159 U.S. 113, 163–164 (1895) (French judgment not recognized because France did not grant reciprocal recognition to American judgments) “‘Comity,’ in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other.” Unless provided for by a treaty “there is no obligation, recognized by legislators, public authorities, and publicists, to regard foreign laws; but their application is admitted only from considerations of utility and the mutual convenience of States. . . .” *Id.* at 214.

36 See UF-CMJRA § 4(c)(3) (“a court of this state need not recognize a foreign-country judgment if the foreign-country judgment or the [claim] on which the foreign-country judgment is based is repugnant to the public policy of this state or of the United States.”).

37 See *supra* note 14.

38 28 U.S.C. §§ 4101–05.

occasions for invoking the public policy exception are surprisingly narrow.³⁹ Differences in public policy have to rise to the level of severe inconsistency to trigger this exception. It stands less as a regularly invoked exception and more for the general vulnerability of foreign judgments to re-examination under the discretionary regime of comity.

The discretion evident in the public policy exception reappears in the variety and open texture of the other exceptions to recognition, which generate more litigation. Lack of personal jurisdiction in F1 is prominent among them, and it blends imperceptibly into general procedural concerns, most accommodated comfortably under the general heading of “due process.” So, for instance, American courts tend to re-examine the exercise of personal jurisdiction by a foreign court—even if, in the end, they seldom refuse recognition of a foreign judgment on this ground, typically finding sufficient contacts for jurisdiction under a combination of foreign, domestic, and international law.⁴⁰

A quick survey of the UF-CMJRA reveals the range and flexibility of the other exceptions to recognition, which constitute standards rather than rules, and which empower as much as they circumscribe judicial discretion. Almost all the remaining exceptions concern issues of procedure: denial of due process, lack of personal jurisdiction or subject-matter jurisdiction, inadequate notice, fraud in obtaining the judgment, inconsistency with another final judgment, failure to adhere to a forum selection clause, or forum non conveniens.⁴¹ The Uniform Act departs from these general categories of nonrecognition, all of which depend heavily upon prior judicial decisions, only in specifying several grounds sufficient for finding personal jurisdiction. These, too, however, have their source in judicial decisions recognizing presence or consent as a basis for personal jurisdiction.⁴² In effect, as well as in form, these provisions operate more as a restatement of existing law rather than as a freestanding statutory innovation. To the extent they make changes, these are variations

39 RONALD A. BRAND, *RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS* 21 (Federal Judicial Center) (2012) (courts “seldom deny” recognition of judgments on this ground); see *Loucks v. Standard Oil Co.*, 224 N.Y. 99, 111 (1918) (courts refuse to recognize claims based on law of another jurisdiction only when “help would violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal”).

40 See, e.g., *Evans Cabinet Corp. v. Kitchen Int’l, Inc.*, 593 F.3d 135, 141–48 (1st Cir. 2010) (applying Massachusetts version of UF-CMJRA and both foreign law and Massachusetts law of personal jurisdiction).

41 See UF-CMJRA § 4(a) (mandatory grounds for nonrecognition); *id.* § 4(b) (discretionary grounds for nonrecognition).

42 *Id.* at § 5(a).

on themes already sounded in judicial decisions. The same can be said of the federal statute proposed by the American Law Institute.⁴³ The ALI statute, for instance, differs from the uniform act in reinstating the requirement of reciprocity first articulated in American law in *Hilton v. Guyot*⁴⁴ and in requiring more than the defendant's transitory presence within the forum as a basis for personal jurisdiction,⁴⁵ thus going beyond what is required under *Burnham v. Superior Court*.⁴⁶

Both the legislation and the case law defy efforts at simple summary or analysis, since several different grounds are specified that either require nonrecognition, permit nonrecognition, or are insufficient for either. Sections 4(a), 4(b), and 5(a) of the UF-CMJRA deal respectively with each of these issues, by subdividing them into more specific grounds for recognition or nonrecognition. The rationale for all these separate provisions is best captured in one subdivision of the ALI's proposed statute: it states that a judgment cannot be recognized if it "was rendered in circumstances that raise substantial and justifiable doubt about the integrity of the rendering court with respect to the judgment in question."⁴⁷ This provision serves as a kind of catch-all and reflects the overall degree of suspicion that must attach to a foreign judgment to prevent it from being recognized. When F1 is foreign, F2 has considerable discretion to deny recognition and enforcement of F1's judgment, even if it seldom does so.

There are some ways in which F2's power of re-examination might be avoided. F1 might issue an injunction concerning a defendant's behavior in F2, but its enforceability will depend on the defendant at some point being present in F1; sanctions for contempt invariably are issued only by F1 and can take effect only within its boundaries.⁴⁸ The academic literature offers a theory that supplies another possible means to circumvent F2's discretion to deny recognition. In this view, a judgment creditor can work around states that are more reluctant to recognize foreign judgments by going to states that are less reluctant, and then taking the resulting state judgment and arguing that it is entitled to full faith and credit under the Constitution and under the state

43 AMERICAN LAW INSTITUTE, RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS: ANALYSIS AND PROPOSED FEDERAL STATUTE § 7(a) (2005) (ALI Proposal).

44 See *supra* note 26.

45 ALI Proposal § 6(a)(iv).

46 See *supra* note 6.

47 ALI Proposal § 4(a)(ii).

48 *Baker v. General Motors Corp.*, 522 U.S. 222, 238–40 (1998).

and federal laws facilitating recognition of judgments from other states.⁴⁹ In schematic terms, F1 is a foreign nation; its judgment is taken to F2, a state that liberally recognizes foreign judgments; and then F2's judgment is taken to F3, a state that has a more restrictive policy but is bound by the Full Faith and Credit Clause. Only the step from F1 to F2 requires resort to the UF-CMJRA (or in states without the model statute, to related common law doctrines). The step from F2 to F3 can rely on the Full Faith and Credit Clause and implementing statutes.

This argument depends upon the crucial assumption that the applicable law allows this form of "judgment-laundering," not just as a matter of theory but as a matter of practice. At the federal level, so the argument goes, a statute restates and extends the requirements of the Full Faith and Credit Clause⁵⁰ and a related statute provides for registration of federal judgments from any federal district in any other,⁵¹ enabling a prevailing plaintiff in federal court to obtain a form of nationwide enforcement. At the state level, another uniform act, the Uniform Enforcement of Foreign Judgments Act (UEFJA),⁵² provides for expedited enforcement of judgments from one state in another state. In theory, these statutes support the step from F2—a federal or state court that recognizes a genuinely foreign judgment—to F3 for enforcement—in another federal district or another state. As a matter of full faith and credit, F3 must recognize the judgment from F2 despite the origins of that judgment in the foreign country of F1.

This is a formally valid line of reasoning, and it has been widely recommended as a tactic for enforcing judgment from other nations.⁵³ Yet this practice has few reported decisions to support it, and the same hesitation that attaches to recognition of a foreign judgment in F2 would also attach to recognition in F3. Much more common has been the resort to the federal registration statute or the UEFJA to provide procedures for authenticating judgments from foreign nations and specifying the means, once recognized, by which they might be enforced, either in F2 or F3.⁵⁴ Wholesale departures from the

49 Gregory H. Shill, *Ending Judgment Arbitrage: Jurisdictional Competition and the Enforcement of Foreign Money Judgments in the United States*, 54 HARV. INT'L L.J. 459, 470 & n. 43 (2013); John P. Bellinger, III, *Recognition of Foreign Judgments: Balancing International, Federal, State, and Commercial Interests* at 6 (2012).

50 28 U.S.C. § 1738 (2006).

51 *Id.* § 1963.

52 13 U.L.A. 261 (1981). Notwithstanding its name, this act applies only to sister-state judgments, which are "foreign" only in the sense that they come from another state. It has no application as an initial matter to foreign judgments.

53 Shill, *supra* note 49, at 470.

54 Brand, *supra* note 39, at 5 & n. 19.

traditional exceptions to recognition of judgments from foreign nations have yet to be thoroughly documented.

A third way in which the territorial restrictions on enforcement might be skirted is to avoid going after the defendant's person or property. It is possible for recognition of a judgment, as opposed to enforcement, to be sought without any prospect of enforcement (assuming F2 satisfies the requirements of personal jurisdiction). A defendant, for instance, could seek recognition of a judgment in F2, in order to bar further litigation after prevailing on the merits in F1. But the usefulness of such proceedings is very limited. Sooner or later, collecting on a judgment requires property which can be seized and sold in satisfaction of the judgment. Only the officers of the state where the property is located have this authority. There is one reported case, from New York, allowing an enforcement action in anticipation of the defendant bringing property into the state, but its reasoning still depends upon presence of property within the state, albeit at a future point in time.⁵⁵ If the property were never to arrive, the New York judgment would be of little use. The opportunity for plaintiffs to engage in foreign shopping for purposes of enforcement remains circumscribed by the location of the defendant's assets. Unlike judgments from another state, those from a foreign nation do not automatically receive faith and credit to gain enforcement wherever the defendant's property might be found. They must both satisfy the requirement that the defendant's property be present and avoid coming within any exception to enforcement provided by local law.

The real question is not whether F2's role in the enforcement process can somehow be evaded, but just what the effects of the exceptions to recognition in F2 are. How high are the hurdles that they pose to enforcement of foreign judgments? The answer appears to be, not prohibitively, so that most plaintiffs can take precautions to assure enforcement of a foreign judgment in the United States.⁵⁶ The plaintiff has to exercise some care in choosing F1 to make sure that its judgments regularly are recognized in F2; that the grounds for personal and subject-matter jurisdiction are not too exorbitant, that the relevant public policies of F1 and F2 are not completely at odds; and in general, that F2 can trust the reliability of the judgment of F1. The plaintiff must still bear the costs resulting from the uncertainty of enforcement and from complicating a collection action into a form of international civil litigation. No matter

55 *Lenchyshyn v. Pelko Elec., Inc.*, 281 A.D.2d 42, 50, 723 N.Y.S.2d 285, 291 (4th Dep't 2001).

56 Linda J. Silberman & Andreas F. Lowenfeld, *A Different Challenge for the ALI: Herein of Foreign Country Judgments, an International Treaty, and an American Statute*, 75 IND. L.J. 635, 638-397 (2000).

how liberal the attitude that F2 takes towards recognition of judgments from other nations, it can still insist on re-examining the substance and procedure of the judgment from F1. Countries concede the power to give unexamined effect to a foreign judgment only by way of treaty or by joining a federal union. The case-by-case review of foreign judgments encouraged by the concept of comity allows them to preserve the sovereign power that otherwise might be ceded to the courts of another country.

Ohno v. Yasuma,⁵⁷ a recent decision, is representative in terms of both process and result. The case concerned a plaintiff who brought an action in Japan against a church, alleging that it defrauded her of assets worth half a million dollars. The Japanese court issued a judgment in her favor, which she then sought to enforce in federal court in California. Because federal jurisdiction was based on diversity of citizenship, the court applied the California version of the UF-CMJRA. The defendants argued against recognition on grounds of public policy and because the judgment violated the Free Exercise Clause. The court rejected both arguments, but only after a close comparison of Japanese law with California law and the requirements of the First Amendment. Neither of these grounds for challenging the judgment would have been available if the judgment had come from a sister state.

The costs of re-examination vary with the location of the defendant's assets, since that determines which nation or which state can serve as a forum for enforcement. Within the United States, state law determines the enforceability of judgments from other countries in the absence of a treaty or a federal statute.⁵⁸ The presence of the judgment debtor's property within a state's territory remains an unquestioned prerequisite to enforcement in F2, and for that reason, it determines which state's law supplies the exceptions to the presumption in favor of enforcing F1's judgment. State boundaries therefore set definite limits that, in turn, set upper and lower bounds to the indefinite costs of uncertainty and complexity borne by the plaintiff. Other definite restrictions on enforcement also come into play. Only money judgments, and only those that do not involve penal or tax claims, are entitled to recognition. These restrictions, too, determine the plaintiff's strategy in framing the underlying claims in F1.

These barriers are not insignificant, but they are less than overwhelming for litigants in the mine run of cases. The prevailing regime for the enforcement

⁵⁷ 723 F.3d 984 (9th Cir. 2013).

⁵⁸ Another possible exception concerns the existence of a federal claim in F2, which would rarely be made in an action solely to enforce a foreign judgment. See RUSSELL J. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS 746–47 (5th ed. 2006).

of foreign judgments is nuanced and its effects must, it seems, be subtle. The question that remains, then, is just what role territorial restrictions play in the judgment enforcement context and whether that role can be justified.

3 The System of Territorial Sovereignty

In this section, we seek to uncover the theoretical underpinnings of the approach to enforcement of judgments followed in both domestic and international cases. This approach is founded, we believe, on widely shared concepts of territorial sovereignty, deeply embedded in the conception of the modern nation state as the ultimate arbiter of the use of force within its boundaries. Our purpose is not to defend what we believe to be a very familiar regime, but to describe it and to draw out its implications for enforcement of judgments.

Since the middle of the twentieth century, attempts to minimize the role of territorial thinking have been inspired by frustration with formal modes of legal analysis, belief in social progress, and cosmopolitan impulses. Yet territorialism proved to be more resilient than many evidently expected and still remains a cornerstone of legal ordering. Consider *International Shoe*, sometimes interpreted as a case replacing territorialism with a “functional approach”⁵⁹ *International Shoe* did away with the requirement that a defendant be present within the territory of the adjudicating state at the time litigation commences, but its alternative requirement—that the defendant have minimum contacts with the state—is still an essentially territorial principle. A defendant must interact or have interacted with the state in some fashion, typically by having been present or causing something to enter or occur *within the territory of the state* in the course of the events giving rise to the suit. Territory defines both the state as an entity and the scope of the interests that support its coercive actions. The Supreme Court subsequently made this clear by emphasizing, as it had in *International Shoe*, that the Due Process Clause “does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations.”⁶⁰

And even when the defendant has contacts with the state, it is hard to avoid the conclusion that some are more salient in the mind and more significant in the law than others. The many decisions elaborating on the standards of

59 ARTHUR VON MEHREN AND DONALD TRAUTMAN, *THE LAW OF MULTISTATE PROBLEMS: CASES AND MATERIALS ON CONFLICT OF LAWS* 651 (1965).

60 326 U.S. at 319; *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 294 (1980).

International Shoe make this clear. Thus the movement of the defendant's customer or the defendant's product into the forum state does not, by itself, provide a constitutionally sufficient contact to justify the assertion of personal jurisdiction.⁶¹ On matters of enforcement, one state cannot send its officers into another with authority to enforce its judgments without the consent of the second state. Once they cross state lines, they become no more than private citizens within the territory of the second state. It is the place where the officer acts, not the ultimate purpose of the officer's actions, that counts. Similarly, to take an example from the criminal side, apprehension and extradition by the officers of another state, rather than kidnapping by the officers of the forum state, provides the usual basis for acquiring jurisdiction over the defendant and bringing him across state lines.⁶²

All of this is to say that territorial sovereignty matters a great deal in litigation and it matters most when a court exercises its coercive power to enforce a judgment. If "[t]he foundation of jurisdiction is physical power," as Holmes observed, then execution of judgments is the exercise of physical power itself.⁶³ At that point in litigation, the state's monopoly on the use of coercion and force becomes most important, excluding both private opposition and the interference of other states. For intensely practical reasons—not just as a matter of logic or formalism—the domain in which one state enforces judgments must not be allowed to overlap with the domain of another. In theory, those domains might not be defined territorially, but for the modern state, they almost invariably are. Even in federal systems, in which two levels of government exercise power over the same territory, rules of priority and supremacy dictate that enforcement efforts remain consistent with one another. State and federal courts within the United States, for instance, basically follow the rules of state law in enforcing money judgments, and where there are conflicting enforcement efforts by state and federal courts, federal law generally gives priority to the court first asserting power over a res.⁶⁴ By a combination of deference to state law and its own inherent supremacy, federal law yields a single, consistent resolution of any questions over enforcement of judgments within the territory of the United States.

The principles that govern enforcement of foreign judgments are part and parcel of this system. Start with the requirement that a judgment be domesticated before it can be enforced. Simply put, within a system of territorially

61 *World-Wide Volkswagen*, *supra*, 444 U.S. at 295–96.

62 U.S. Const. art. IV, § 2.

63 *McDonald v. Mabee*, 243 U.S. 90, 91 (1917).

64 Fed. R. Civ. P. 69; *Donovan v. Dallas*, 377 U.S. 408, 412 (1964).

defined states, a state has a paramount interest in the operation of law within its borders. Viewed in formal terms, one might say—as Justice Story did—that one sovereign’s judgment cannot itself have any effect within the territory of another; it is foreign law and inapplicable of its own force. Framed in more pragmatic terms, a state’s interest in its own territory takes precedence over the interest of any other state, and it must therefore have the opportunity to review legal edicts to be given effect within its boundaries or recognized as authority that its officers must obey.

Similar thinking helps explain the reluctance to punish violations of injunctions issued by other states.⁶⁵ Several different arguments support the refusal to enforce injunctions, but they all revolve around the need to coerce the defendant by means of a citation for contempt. According to a longstanding maxim, equity acts only upon the person of the defendant;⁶⁶ the issuing court’s authority is limited to citations for contempt against the defendant within its own territory (even if the defendant’s violation of the injunction occurred elsewhere); and equitable decrees remain subject to amendment, so that they never achieve the degree of finality of money judgments.⁶⁷ Even the ALI Proposal, which generally supports recognition of foreign injunctions, allows only that they “may be entitled to recognition or enforcement under such procedures as the recognizing court deems appropriate.”⁶⁸ Continuing supervision of the defendant’s compliance with the injunction exacts costs upon the courts of F2 that they might not be willing to bear and a citation for contempt can lead directly to the exercise of physical coercion against the defendant. Instead of a presumption in favor of enforcement of F2, injunctions face the nearly universal practice of not being enforced at all outside of F1. Hence statutes like the Uniform Foreign Money-Judgments Recognition Act, as its name implies, covers only money judgments.⁶⁹

A similar reluctance underlies the well-established, if often-criticized, exceptions to the enforcement of foreign tax, penal, and criminal laws, and to recognition of judgments based upon those laws. The closer the adjudication

65 *Baker v. General Motors Corp.*, 522 U.S. 222, 238–40 (1998).

66 Douglas Laycock, *Modern American Remedies: Cases and Materials* 275, 819 (4th ed. 2010) (equitable remedies can be used to coerce defendant within the forum to do acts outside it).

67 *Id.* at 342–46 (summarizing grounds for modification of injunctions).

68 ALI Proposal, *supra* note 45, § 2(a)(ii).

69 The enforcement of federal injunctions in any federal judicial district under Federal Rule of Civil Procedure 4(1)(b) does constitute a counterexample to this proposition. It instead confirms it because each such district is within the territorial limits of the same sovereign.

of another state or nation comes to core issues of sovereignty, the less likely it is to receive enforcement or recognition elsewhere, not only because reflexively enforcing the acts of another government threatens to reduce the sovereign independence of the enforcer, but also because it may appear as a usurpation of the sovereign prerogatives of the government whose act is to be enforced by another.⁷⁰ These hard-and-fast restrictions on the effect of foreign judgments reveal in their stark terms the rationale that underlies the other, open-ended exceptions to recognition: nations remain reluctant to concede the essential attributes of sovereignty for fear that they might be lost forever. Case-by-case re-examination of foreign judgments protects against the loss of sovereignty by attrition.

Rules restricting jurisdiction over property coincide with and reinforce the territorial limits on enforcement of judgments, partly because of the special importance of property in the context of recovering money damages, but also because of the multifaceted way in which authority over property relates to jurisdiction. There are really three separate justifications for the long-standing doctrinal proposition that a state cannot affect title to property situated elsewhere. First, the ability to adjudicate interests in property elsewhere would enable F1 to take a large step in the direction of actual enforcement in F2. Sooner or later, a plaintiff seeking to recover money damages must identify specific assets of the defendant to be liquidated, so that the proceeds may then be transferred to the plaintiff in satisfaction of the obligation created by the judgment against the defendant. F1 can only declare its judgments as generalized, personal obligations, but cannot reduce them to the physical transfer of property by the use of force in F2, which would create the risk of outright conflict between the officers of two sovereign states. Preserving exclusive jurisdiction over property also preserves each state's monopoly over the use of force.

The second set of arguments for F2's exclusive authority over property rests on the wide array of weighty interests a state has in property situated locally. For a territorially defined state, local property is something close to the sum total of whatever happens to be within its territory—the contents of the territory. The relationship between property and sovereignty is especially strong for real property, which resembles territorial sovereignty to the extent it, too, is a system for the allocation of physical space.⁷¹ Not surprisingly, control

70 See Von Mehren & Trautman, *supra* note 59, at 793–804, 886–89 (1965) (discussing extensions and limitations of refusal to enforce foreign penal laws and judgments).

71 Indeed the territorial nature of the state itself has been traced by some political theorists to property. See A. John Simmons, *On the Territorial Rights of States*, 11 PHIL. ISSUES 300, 312–13 (2001).

over domestic property has profound practical consequences for states. The use of property typically affects the local community, rules governing the transfer and scope of property rights affect local markets, and the way ownership of property is held within a given jurisdiction affects both the distribution of wealth and the tax base that helps sustain the government. The brevity of this description should not obscure the significance of the concerns described, which are genuinely fundamental. This is not to say a singular incursion in which one state acts on property within another will always jeopardize these interests in a serious way, but the overall picture is clear enough: the principle of territorially exclusive jurisdiction over property can be justified as a general matter in terms of a state's interests as a sovereign and thus in the preservation of its sovereignty.

A distinct and final way in which territorial sovereignty supports non-recognition of foreign judgments concerning property is the way in which this territorial limitation furthers the state's separate interest in maintaining a stable and effective system of property law. We refer here not to the state's role in protecting against the violation of property rights—protection against trespass, theft, and the like—but to the state's role in titling property, in keeping track of who has what claims on which assets. Entitlements within a property system are mutually exclusive, in the sense that if Alice owns Blackacre, Bill cannot also do so, unless he acquires it from her. This structure presents special complexities not faced in other branches of basic private law. To secure property in the face of these complications, a government must, at the very least, maintain a system of property law offering a reasonably clear set of rules that allow title to be determined, and with valuable, mobile, or intangible assets, it is frequently necessary either to establish a system to store evidence of title or maintain an actual registry that conclusively determines rights in a given asset at any point in time. Providing the means to keep track of property rights is a vital sovereign function. Indeed, the economist Hernando de Soto lays much of the blame for stagnation in the developing world on the failure of governments there to support formal titling of property; in his account, titling is *the* key to the prosperity of Western economies.⁷²

Because one person's property rights come at the expense of all other legal actors, secure titling depends on exclusive jurisdiction. Having multiple states declare title to the same asset threatens serious confusion and uncertainty and, indeed, potentially conflicts with the very idea of title itself, in the sense of a definitive resolution of mutually exclusive claims. In consequence, observes

72 See HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* 10, 33 (2000).

Benito Arruñada, “[a]ll kinds of recorders and registries are therefore organized as territorial public monopolies when they produce evidence or directly decide on property rights.”⁷³ Arruñada notes the ubiquity of single title registries, in contexts ranging from ownership of stock shares to internet domains.⁷⁴ The point is that for any given asset, one and only source of title can be in place. For a system of territorially organized sovereigns charged with overseeing these questions of title, the natural point of departure is the location of the asset to be titled. One would not imagine that the deed to a house situated in Essex County, Massachusetts, would be found at the courthouse in Okmulgee County, Oklahoma. By the same token, judgments operating directly on title to the property should not issue from a court in Okmulgee County. In this way, sovereignty, territorialism and property are again linked in a way that helps account for limitations on the recognition of foreign judgments.

Finally, we turn to the collection of general exceptions to judgment recognition discussed in Section 2. Quite apart from the considerations supporting the specific limitations on judgment enforcement for core sovereign concerns like penal legislation and property titles, a system of territorial sovereignty lends support for something like the system of retail-level scrutiny of foreign judgments that current law establishes. In particular, the territorial basis for enforcement in F2 offers a general check on the abusive exercise of jurisdiction—and of decisions on the merits—in F1. For the same reason, it also provides a check on the plaintiff’s initial choice of forum whenever the plaintiff’s property cannot be found there. No matter how likely it is that the plaintiff will obtain a judgment in F1, the plaintiff can recover on the judgment only if F2 is willing to enforce it. In either case, territorial limits on enforcement exercise a powerful influence over the plaintiff’s choice of forum.

These territorial limits have theoretical, as well as practical implications. In particular, they shed some light on the similarities and differences between recognition of judgments in the interstate and international contexts. So long as recognition of judgments operates within the boundaries of a single national sovereign, as it does in interstate cases, the rule of recognition functions with a minimum of judicial discretion. Territoriality defines both the scope of jurisdiction for enforcement and the scope of the Full Faith and Credit Clause. National sovereignty supports supervening national law that governs the proceedings of courts in component states. That law might be more flexible

73 Benito Arruñada, *Property Enforcement as Organized Consent*, 19 J.L. ECON. & ORG. 401, 426 (2003).

74 *Id.*; see also James Y. Stern, *Property, Exclusivity, and Jurisdiction*, 100 VA. L. REV. 111, 175–79 (2014) (noting importance to status determinations and corporations law).

than existing American law, as it is in the European Union, which forbids recognition of a judgment "manifestly contrary to public policy in the Member State in which recognition is sought."⁷⁵ Yet it operates in the same way to limit the discretion of the enforcing court to refuse recognition. Comity has little place in the internal relations between sister states subject to a single national sovereign. To the extent that the European Union approaches the status of a single sovereign, its provisions for recognition of judgments become comparably strict. This consequence results from the desirability both of reducing friction between member states and imposing a degree of uniformity upon proceedings within them. It serves the general purpose of bringing the separate states within a federal union into conformity with the requirements of a single national sovereign.

4 Conclusion

For domestic judgments, it is national law produced by the formation of single sovereignty that determines the rules of recognition of judgments, the minimum standards for asserting personal jurisdiction, and the power of a national supreme court to assure conformity with those standards. All these rules apply of their own force only within the boundaries of the nation state, and each reinforces the effectiveness of the other. Rules of personal jurisdiction supply the necessary prerequisite for the enforcement of judgments; recognition of judgments from other states supports their exercise of personal jurisdiction; and review by a supreme court with national jurisdiction enforces both sets of standards. The need for internal conformity within a federal union gives greater significance to its external boundaries. Judgments rendered outside those boundaries can be enforced within it only as a matter of comity or by the obligations of a treaty. Enforcement of a foreign judgment has no effect, in and of itself, within the boundaries of another sovereign where the property or the person of the defendant may be found. In this respect, territoriality is inescapable, and will remain so as long as the power of courts depends upon the power of the nation state.

75 Council of the European Union Regulation 44/2001/EC art. 34(1) (on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) 2000 O.J. L. 012, 16/01/2001 P.