

Unbounded Personal Jurisdiction Theory and Foreign Policy Concerns: A Continental View on *Fuld v. Palestine Liberation Organization*

Giurisdizione senza limiti nei confronti di convenuti stranieri e tutela degli interessi di politica estera: una prospettiva continentale su *Fuld v. Palestine Liberation Organization*

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Abstract: The work critically analyses a recent judgment by the US Supreme Court which has clearly interpreted for the first time the due process limits under the Fifth Amendment. By exploring the solution adopted by the court on federal personal jurisdiction in terrorism related claims against out of State defendants, from a continental point of view, it is argued that the judgment reinforces the Lotus principle on territorial adjudicative jurisdiction and constitutes and index that heads of jurisdiction may be justified even when there is little objective connection, but a strong policy interest. Assuming that for some States, policy-oriented heads of jurisdiction express the vision that adjudicative jurisdiction remains a legitimate tool to enforce public policies, the contribution highlights that the subsequent question of the free movement of the decision will impose a moment of reflection on extra-territorial prescriptive and adjudicative jurisdiction.

Keywords: Comparative private international law, Personal jurisdiction, Extra-territorial adjudicative Jurisdiction, EU law approaches.

Riassunto: Il lavoro analizza in prospettiva critica una recente decisione della Corte Suprema statunitense che ha interpretato per la prima volta i limiti costituzionali derivanti dalla due process clause del quinto emendamento. Commentando la soluzione adottata dalla corte in tema di limiti alla giurisdizione nei confronti di convenuti stranieri nell'ambito di azioni connesse al risarcimento del danno derivante da condotte di terrorismo, si nota come la decisione si inserisca nel solo della giurisprudenza Lotus rafforzandone il principio e confermi come, oggi, la giurisdizione possa essere radicata in presenza di collegamenti oggettivi deboli, purché accompagnati da policy interests meritevoli di tutela. Assumendo, dunque, come per alcuni Stati la giurisdizione possa costituire uno strumento di enforcement delle politiche nazionali, il lavoro intende evidenziare come la successiva questione relativa alla circolazione delle decisioni imponga un momento di riflessione tanto sull'adozione di norme extraterritoriali, quanto sulle regole in materia di giurisdizione che le dovrebbero completare.

Parole chiave: Diritto internazionale privato comparato; Giurisdizione; Fori esorbitanti; Approcci di diritto dell'Unione europea.

Summary: I. Introduction. II. Personal jurisdiction in the US: the essentials. III. *Fuld v. PLO*: the reasoning of the Court. IV. A continental view on extra-territorial adjudicative jurisdiction and fair play. V. Conclusions: the changing nature of jurisdiction.

I. Introduction

1. In *Fuld v. Palestine Liberation Organization*¹, the Supreme Court of the United State of America (SCOTUS) has recently decided its first case on the *possible existence* of limits to exercise *federal* jurisdiction over non-US defendants². The decision deals with a core fundamental question of extra-territorial adjudicative jurisdiction, namely whether due process requirements developed to limit the exercise of *State* jurisdiction (Fourteenth Amendment) also apply to federal courts (Fifth Amendment). If in constitutional terms the question is whether limitations on the power of the Federal Government translate in equal limits to the corollary authority of federal courts³, in conflict of laws terms the investigation revolves around whether the Federal Government may establish subject matter jurisdiction, thus authority of courts, without any territorial (personal jurisdiction) limitation. Or, in other words, allow domestic court to hale out of country defendants even when they have no personal significant connection with the country and have not consented to US jurisdiction.

2. The following pages wish to contextualize *Fuld v. PLO* in the broader context of comparative conflict of laws and determine what the decision may add to private international law narratives surrounding conditions and limits to ground and exercise jurisdiction over out of State defendants. Para. 2 will summarise US approaches to jurisdiction⁴. Para. 3 will offer a critical reading of the reasoning in *Fuld v.*

¹ *Fuld v. Palestine Liberation Organization*, 606 U.S. (2025), on which see S. DODSON, “Personal Jurisdiction and the Fifth Amendment”, *ConLawNOW*, 2025, p. 1; the series of blogpost by M. GARDNER on *Transnational Litigation Blog*, and R.H. TRANGSRUD, “Fuld v. PLO and the Ghost of Pennoyer”, *The George Washington Law Review. On the Docket* (Aug. 13, 2025). On the judgment by the United States District Court for the Southern District of New York *Fuld v. Palestine Liberation Org.*, No. 20-CV-3374 (JMF), F.Supp.3d, 2022 WL 62088, 1 (S.D.N.Y. Jan. 6, 2022), see O. CROWLEY, “Fuld v. Palestine Liberation Org.”, *New York International Law Review*, 2022, p. 87, and A.D. SIMOWITZ, “Federal Personal Jurisdiction and Constitutional Authority”, *New York University Journal of International Law and Politics*, 2023, p. 345.

² *Fuld v. Palestine Liberation Organization*, 606 U.S. (2025), 7.

³ *Fuld v. Palestine Liberation Organization*, 606 U.S. (2025), 3.

⁴ *Amplius*, J.H. BEALE, “The Jurisdiction of Courts over Foreigners”, *Harvard Law Review*, 1913, p. 193; *Id.*, *A Treatise on the Conflict of Law, Volume One, Jurisdiction*, New York, Baker, Voorhis & Co., 1935; P.K. BOOKMAN, “Toward the Fifth Restatement of U.S. Foreign Relations Law”, in P.B. STEPHAN/S.H. CLEVELAND (eds.), *The Restatement and Beyond*, Oxford, Oxford University Press, 2020, p. 335; P.J. BORCHERS, “The Death of the Constitutional Law of Personal Jurisdiction: From Pennoyer to Burnham and Back Again”, *University of California Davis Law Review*, 1990, p. 19; R.A. BRAND, “Challenges to Forum Non Conveniens”, *New York University Journal of International Law and Politics*, 2013, p. 1003; L. BRILMAYER, “How Contacts Count: Due Process Limitations on State Court Jurisdiction”, *The Supreme Court Review*, 1980, p. 77; C. BURKE ROBERTSON/C.W.E. RHODES, “A Shifting Equilibrium: Personal Jurisdiction, Transnational Litigation, and the Problem of Nonparties”, *Lewis & Clark Law Review*, 2015, p. 643; R. CAFARI PANICO, “Forum necessitatis: Judicial Discretion in the Exercise of Jurisdiction”, in F. POCAR/I. VIARENGO/F.C. VILLATA (eds.), *Recasting Brussels I*, Milano, Giuffrè, 2012, p. 127; K.M. CLERMONT, “Restating Territorial Jurisdiction and Venue for State and Federal Courts”, *Cornell Law Review*, 1981, p. 411; W. COLLINS PERDUE, “Personal Jurisdiction and the Beetle in the Box”, *Boston College Law Review*, 1991, p. 529; *Id.*, “What’s Sovereignty Got to Do with It?: Due Process, Personal Jurisdiction and the Supreme Court”, *South Carolina Law Review*, 2012, p. 729; R. DE NOVA, *Le concezioni statunitensi dei conflitti di legge viste da un continentale. Cuadernos de la Catedra “Dr. James Brown Scott” – Universidad de Valladolid*, 1964; S.W. DODGE, “Jurisdiction in the Fourth Restatement of Foreign Relations Law”, *Yearbook of Private International Law*, n° 23, 2018, p. 143; S. DODSON, “Personal Jurisdiction in Comparative Context”, *The American Journal of Comparative Law*, 2021, p. 701; S. DOMINELLI, *Regolamento Bruxelles I bis e US jurisdiction in personam. Riflessioni e proposte su condivisioni valoriali, influenze e osmosi di metodi*, Napoli, Editoriale scientifica, 2025; A.A. EHRENZWEIG, “The Transient Rule of Personal Jurisdiction: The “Power” Myth and Forum Conveniens”, *Yale Law Journal*, 1956, p. 289; H.J. FRIENDLY, “The Historic Basis of Diversity Jurisdiction”, *Harvard Law Review*, 1928, p. 483; P. HAY, “Transient Jurisdiction, Especially over International Defendants: Critical Comments on Burnham v. Superior Court of California”, *University of Illinois Law Review*, 1990, p. 593; *Id.*, “Product Liability: Specific Jurisdiction over Out-of-State Defendants in the United States”, *Praxis des Internationalen Privat- und Verfahrensrechts*, 2021, p. 338; *Id.*, “American Judicial Jurisdiction Over Out-of-State Defendants Revisited”, in S. KUBIS/K.-N. PEIFER/B. RAUE/M. STIEPER (eds.), *FS Haimo Schack*, Tübingen, Mohr Siebeck, 2022, p. 422; G.C. Jr. HAZARD, “A General Theory of State-Court Jurisdiction”, *The Supreme Court Review*, 1965, p. 241; F.A. MANN, “The Doctrine of Jurisdiction in International Law”, *Recueil des cours*, T. 111, 1964, p. 9; R. MICHAELS, “Two Paradigms of Jurisdiction”, *Michigan Journal of International Law*, 2006, p. 1004; *Id.*, “Some Fundamental Jurisdictional Conceptions as Applied in Judgments Conventions”, in E. GOTTSCHALK/R. MICHAELS/G. RÜHL/J. VON HEIN (eds.), *Conflict of Laws in a Globalized World*, Cambridge, Cambridge University Press, 2007, p. 36; P. NEUHAUS, “Legal Certainty versus Equity in the Conflict of Laws”, *Law & Contemporary Problems*, 1963, p. 795; A. NUSSBAUM, *Principles of Private International Law*, New York, Oxford University Press, 1943; M. REIMANN, “Jurisdiction in Product Liability Litigation: The US

PLO, and para. 4 will contextualise from a continental's perspective the role policy grounds may have in justifying adjudicative jurisdiction. This will further allow for more general reflections on the changing function and role of (adjudicative) jurisdiction in modern times in para. 5.

II. Personal jurisdiction in the US: the essentials

3. As recognised by SCOTUS in *Pennoyer*⁵, adjudicative jurisdiction is dominated by a territorial understanding of the court's power over persons: the physical presence in the territory of the sovereign sister State (coupled with a valid local service of proceedings) was, and still is, the prime head of jurisdiction (unless the defendant voluntarily appears before the court and accepts its jurisdiction⁶). Further developments are, in the end, an adaptation of such a 'tag' (or 'transient') jurisdiction that seek to cope with the greater mobility of persons in the globalised world⁷. At first, the territorial theory was developed to protect inter-State sovereignty of sovereign sister States *within* their internal relationships⁸. The transient jurisdiction rule would have avoided courts in New Jersey to have jurisdiction over persons in California that had no connection at all with the State of New Jersey. To some extent⁹, transient jurisdiction was also functional to the interests of persons in as much as it gave a degree of certainty over jurisdiction: by entering a State, a person knew that they were going to be exposed to its jurisdiction.

4. Yet, the physical presence requirement soon proved inadequate, and States adopted local legislation (long arm statutes) allowing State courts to exercise jurisdiction over out of State defendants despite the *Pennoyer* formal requirement. According to the latest case law¹⁰, long arm statutes should be divided into two main categories: those that establish jurisdiction based on the relationship (*meaningful contacts*) the defendant may have with the forum¹¹, and those that establish jurisdiction based on an implied consent to jurisdiction.

5. In *International Shoe Co.*¹², the Supreme Court approached the matter of contacts-based jurisdiction under the focal lens of the Fourteenth Amendment, that is – the due process of law. In the Court's eye, reasonable contacts may justify jurisdiction over out of State defendants. What has to be noted, though, is that the Federal Constitution does not *per se* determine rules on jurisdiction; rather, it only sets the limits of such authority¹³. This means, domestic rules determine (with a different degree of

Supreme Court Finally Turns Against Corporate Defendants”, *Praxis des Internationalen Privat- und Verfahrensrechts*, 2022, p. 300; W.L. REYNOLDS., *Judicial Process in a Nutshell*, St. Paul, West Publishing Co., 1991; W.M. RICHMAN/W.L. REYNOLDS, *Understanding Conflict of Laws*, Newark, Lexis Nexis, 2002; C. RYNGAERT, “The Restatement and the Law of Jurisdiction: A Commentary”, *European Journal of International Law*, 2021, p. 1455; H. SCHACK, *Jurisdictional Minimum Contacts Scrutinized*, Heidelberg, C.F. Müller, 1983; A.L. TRAMMEL, “A Tale of Two Jurisdictions”, *Vanderbilt Law Review*, 2015, p. 501; V. VILLA, “«Contatto minimo» e competenza giurisdizionale delle corti statunitensi in materia di commercio elettronico”, *Rivista di diritto internazionale privato e processuale*, 2011, p. 327; A.T. VON MEHREN/D.T. TRAUTMAN, “Jurisdiction to Adjudicate: A Suggested Analysis”, *Harvard Law Review*, 1966, p. 1121; R.J. WEINTRAUB, “Map Out of the Personal Jurisdiction Labyrinth”, *University of California Davis Law Review*, 1995, p. 531.

⁵ See *Pennoyer v. Neff*, 95 U.S. 714 (1878) 722.

⁶ S. DODSON, “Personal Jurisdiction, Comparativism, and Ford”, *Stetson Law Review*, 2002, p. 187, at p. 188.

⁷ P. HAY, *Law of the United States*, München, Beck, 2016, p. 69 f; A.T. VON MEHREN/P.L. MURRAY, *Law in the United States*, Cambridge, Cambridge University Press, 2007, p. 241, qualifying the fairness approach as an ‘*alternative*’ to power theory.

⁸ See *Wedding v. Meyler*, 192 U.S. 573 (1904) 584.

⁹ On the power-based theory and ‘exorbitant’ heads of jurisdiction, see K.M. CLERMONT/J.R.B. PALMER, “Exorbitant Jurisdiction”, *Maine Law Review*, 2006, p. 474.

¹⁰ *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. (2023), on which *amplius*, S. DODSON, “The Complexities of Consent to Personal Jurisdiction”, *California Law Review*, 2025, p. 333, and R. MICHALSKI, “Personal Jurisdiction’s Aberrant theory of Consent”, *American University Law Review*, 2025, p. 1719.

¹¹ However, on the necessity to determine the extent of contacts with the United States in general when the claim is brought before federal courts on the basis of federal law, see *Hardy v. Scandinavian Airlines Sys.*, No. 23-30632 (5th Cir. Aug. 26, 2024).

¹² *International Shoe v. State of Washington*, 326 U.S. 310 (1945).

¹³ For a critique in the identification of limits to jurisdiction based on the Fourteenth Amendment, which in historical perspec-

precision¹⁴) when State courts may have and exercise jurisdiction over non-residents, and the Federal Constitution will act as a limit to such rules¹⁵.

6. These ‘limits’ based on the Fourteenth Amendment have significantly changed over time. In *International Shoe Co.*, it was held that ‘if [a person is] not present within the territory of the forum, he [must] have certain minimum contacts with it such that the maintenance of the suit does not offend «traditional notions of fair play and substantial justice»’¹⁶. In *Helicopteros Nacionales v. Hall*¹⁷ the Supreme Court introduces a fundamental distinction between *general* and *specific* jurisdiction. Albeit excluding that *Helicopteros* was a specific jurisdiction case, it acknowledged that different types of jurisdiction may call for different criteria¹⁸. In that occasion, the Court also argued that ‘*Making purchases, negotiating a contract, or training employees in a state does not render a party automatically subject to general personal jurisdiction there*’¹⁹.

7. In the case law (on stream of commerce²⁰), the ‘minimum contact test’ became a ‘substantial connection test’; here the Court argued that ‘*The “substantial connection,” ... between the defendant and the forum State necessary for a finding of minimum contacts must come about by an action of the defendant purposefully directed toward the forum State. ... The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State*’²¹.

8. Even more recently, both for natural and legal persons, the connection test for general jurisdiction has been interpreted so as to coincide with the place where the defendant is ‘at home’, *i.e.* the State of domicile²² or the State of incorporation²³.

tive would have not had the aim of imposing such limits, see R.U. WHITTEN, “The Constitutional Limitations on State-Court Jurisdiction: A Historical-Interpretative Reexamination of the Full Faith and Credit and Due Process Clauses (Part II)”, *The Creighton Law Review*, 1981, p. 735, in part. p. 807; cf R.J. WEINTRAUB, *Map Out of the Personal Jurisdiction Labyrinth*, cit., p. 531.

¹⁴ See California Civil Procedure Code, rule 410.10, simply providing that ‘*A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States*’.

¹⁵ A. NUYTS, “Due Process and Fair Trial: Jurisdiction in the United States and in Europe Compared”, in R.A. BRAND (ed.), *Private Law, Private International Law & Judicial Cooperation in the EU-US Relationship*, Pittsburgh, Thomson West, 2005, p. 27, at p. 37 ff.

¹⁶ *International Shoe v. State of Washington*, 326 U.S. 310 (1945) 316.

¹⁷ *Helicopteros Nacionales v. Hall*, 466 U.S. 408 (1984).

¹⁸ *Helicopteros Nacionales v. Hall*, 466 U.S. 408 (1984), footnote 10.

¹⁹ *Helicopteros Nacionales v. Hall*, 466 U.S. 408 (1984), *primary holding*.

²⁰ On which see *amplius*, P. HAY, “Product Liability: Specific Jurisdiction over Out-of-State Defendants in the United States”, cit., p. 338.

²¹ *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987) 112; see K. GAULKE TELLIN, “Asahi Metal Industry Co. v. Superior Court: Minimum Contacts in California Become Minimal”, *Willamette Law Review*, 1986, p. 589; E.M. MALTZ, “Unraveling the Conundrum of the Law of Personal Jurisdiction: A Comment on Asahi Metal Industry Co. v. Superior Court of California”, *Duke Law Journal*, 1987, p. 669; E.T. MOE., “Asahi Metal Industry Co. v. Superior Court: The Stream of Commerce Doctrine, Barely Alive but Still Kicking”, *Georgetown Law Journal*, 1987, p. 203; L.J. SILBERMAN, ““Two Cheers” for *International Shoe* (and None for *Asahi*): An Essay on the Fiftieth Anniversary of *International Shoe*”, *University of California Davis Law Review*, 1995, p. 755, and H.B. STRAVITZ, “Sayonara to Minimum Contacts: *Asahi Metal Industry Co. v. Superior Court*”, *South Carolina Law Review*, 1988, p. 729.

²² *Goodyear Dunlop Tires Operations, S. A. v. Brown*, 564 U.S. 915 (2011) II A. See J.N. DROBAK, “Personal Jurisdiction in a Global World: The Impact of the Supreme Court’s Decisions in *Goodyear Dunlop Tires* and *Nicastro*”, *Washington University Law Review*, 2013, p. 1707; M.H. HOFFHEIMER, “General Personal Jurisdiction after *Goodyear Dunlop Tires Operations, S.A. v. Brown*”, *University of Kansas Law Review*, 2012, p. 549, and C.A. PEDDIE, “Mi Casa es Su Casa: Enterprise Theory and General Jurisdiction over Foreign Corporations after *Goodyear Dunlop Tires Operations, S.A. v. Brown*”, *South Carolina Law Review*, 2012, p. 697.

²³ *Daimler AG v. Bauman*, 571 U.S. 117 (2014) IV B. See D.B. ADLER, „Post Daimler: Weiterhin drohende US-Gerichtspflichtigkeit ausländischer Unternehmen“, *Praxis des Internationalen Privat- und Verfahrensrechts*, 2018, p. 286; J.M. CORNETT/M.H. HOFFHEIMER, “Good-Bye Significant Contacts: General Personal Jurisdiction after *Daimler AG v. Bauman*”, *Ohio State Law Journal*, 2015, p. 101; T.J. MONESTIER, “Where Is Home Depot “At Home”? *Daimler v. Bauman* and the End of Doing Business Jurisdiction”, *Hastings Law Journal*, 2014, p. 233; L.J. SILBERMAN, “*Daimler AG v. Bauman*: A New Era for Judicial Jurisdiction in the United States”, *Yearbook of Private International Law*, n. 26, 2014/2015, p. 1; ID, “The End of Another Era: Reflections on *Daimler* and its Implications for Judicial Restrictions in the United States”, *Lewis & Clark Law Review*, 2015,

9. Similarly, for specific jurisdiction cases, ‘some’ relevant contacts must be proven for the court to have jurisdiction, albeit, of course, the threshold cannot be as high as for general jurisdiction. In such circumstances the Court has argued that ‘*A forum may assert specific jurisdiction over a nonresident defendant where an alleged [claim] arises out of or relates to actions by the defendant himself that are purposeful directed toward forum residents, and where jurisdiction would not otherwise offend “fair play and substantial justice”*’²⁴. In other words, even *one* contact, if meaningful, may suffice to ground jurisdiction²⁵.

10. It follows from the above that jurisdiction over out of State / country defendants is grounded *i)* on the physical presence of the defendant who is served a summons to court; *ii)* on the consent to jurisdiction that may even be reconstructed by long arm statutes²⁶; whereas in other cases *iii.a)* general jurisdiction is for the court of the place where the defendant is ‘at home’; and *iii.b)* specific jurisdiction is based on the quantity and quality of the connection the defendant has with the forum, taking stock of all the private and public interests to assess the ‘fair play’.

11. What also follows is as equally fundamental: the US system distinguishes between subject matter jurisdiction, that is the authority of a court to decide a specific type of claims, and personal matter jurisdiction, that is the power of a given court to decide a case involving a specific person²⁷. The due process clause in the Fourteenth Amendment on *State* jurisdiction has consolidated that idea that subject matter jurisdiction alone does not suffice: personal jurisdiction requires a valuable contact between the forum and the defendant for the court to hear the case. Even more importantly, State courts are courts of general jurisdiction, in the sense that they have subject matter jurisdiction unless otherwise provided, while federal courts are courts of limited subject matter jurisdiction, in the sense that if their competence is not expressly to be found in either the federal Constitution or in specific acts, by default they do not have subject matter jurisdiction²⁸.

III. *Fuld v. PLO*: the reasoning of the Court

12. Before *Fuld v. PLO*, SCOTUS²⁹ only investigated the limits of due process on *State jurisdiction* over out of State / country defendants³⁰. Limits for federal courts was a question left open³¹, even though there was a general understanding that the Fifth Amendment also required some degree of connection with the federation for federal jurisdiction to comply with the relevant due process clause³².

p. 675, and V. WINSHIP, “Personal Jurisdiction and Corporate Groups: Daimler Chrysler AG v Bauman”, *Journal of Private International Law*, 2013, p. 431.

²⁴ Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985) 463; Bristol-Myers Squibb Co. v. Superior Court of California, 582 U.S. (2017), II-A.

²⁵ P.J. STEPHENS, “The Single Contract as Minimum Contacts: Justice Brennan “Has it His Way””, *William & Mary Law Review*, 1986, p. 89.

²⁶ See in the previous case law *Hess v. Pawloski*, 274 U.S. 352 (1927), where the domestic legislation inferred consent to jurisdiction (and allowed for substituted local service) based on the use of the highways.

²⁷ L.L. MACDOUGAL III/R.L. FELIX/R.U. WHITTEN, *American Conflicts Law*, 5th ed., Ardsley, Transnational Publishers, 2001, p. 5 f.

²⁸ *Ex multis*, W.M. RICHMAN/W.L. REYNOLDS, *Understanding Conflict of Laws*, cit., p. 17

²⁹ At the lower level on due process and the Fifth Amendment, see *Hardy v. Scandinavian Airlines Sys.*, No. 23-30632 (5th Cir. Aug. 26, 2024), cit.

³⁰ *Fuld v. Palestine Liberation Organization*, 606 U.S. (2025) 7.

³¹ *Bristol-Myers Squibb Co. v. Superior Court of California*, 582 U.S. (2017). See in the case, also avoiding to answer the question of due process limits in the Fifth Amendment, *Stafford v. Briggs*, 444 U.S. 527 (1980). In their dissenting opinion, *JJ Stewart and Brennan*, at 554, however addressed the question ‘importing’ a relaxed reasonability test based on *International Shoe*.

³² See P. HAY/P.J. BORCHERS/S.C. SYMEONIDES/C.A. WHYTOCK, *Conflict of Laws*, St. Paul, West Academic Publishing, 2018, p. 446, noting that often a reference to the Fourteenth Amendment is the assertion of federal jurisdiction was also determined by the fact that usually federal courts have the same jurisdiction reach of State courts (i.e. they have jurisdiction over persons subject to the jurisdiction of a court of general jurisdiction in the State where the district court is located (Federal rule of civil procedure 4(k)(1))). See also W.M. RICHMAN/W.L. REYNOLDS, *Understanding Conflict of Laws*, cit., p. 94. Critical on the point, S.E. SACHS, “The Unlimited Jurisdiction of the Federal Courts”, *Virginia Law Review*, 2020, p. 1703, at p. 1705.

13. In the case hand, whereas the 18 U.S. Code § 2333 recognises that any US national has a right to seek compensation for damages related to terroristic activities, § 2334 provides federal courts with jurisdiction in as much as it establishes that ‘*Any civil action under section 2333 ... against any person may be instituted in the district court of the United States for any district where any plaintiff resides ...*’. Furthermore, ‘*a defendant shall be deemed to have consented to personal jurisdiction in such civil action if ... makes any payment, directly or indirectly*’ to imprisoned terrorist or if they ‘*conduct any activity while physically present in the United States on behalf of the Palestine Liberation Organization or the Palestinian Authority*’. A first reading of the rule already points to a high complexity of the case: the previous case law on State jurisdiction has usually focused on either a general or a specific jurisdiction. However, this dichotomy appears to be unsuited to approach the rules at hand, as they are at the crossroads of general and specific jurisdiction since they ground jurisdiction of US courts on contacts that are not related to a specific claim arising in the forum (that is, a general jurisdiction feature) and allow only claims under the anti-terrorist act (thus paving the way to a specific jurisdiction only)³³.

14. The Court begins by distinguishing the scope (and limits) of the Fifth and Fourteenth Amendments: it is stressed that the last one, upon which the minimum contacts theory absent consent was developed, also aims at the protection of inter-State (federal) interests and constitutional prerogatives³⁴. Such underlying interests are not transposed in the context of the Fifth Amendment, as the Federal Government in its international relations has no such constitutional limits and behaves as a sovereign. In other words, whereas sovereign sister States in their internal relations are limited by the due process clause, the Federal Government is not limited in its extra-territorial powers in the same terms³⁵. Hence, the different underlying interests and policies behind the two provisions do not allow for a transposition of the minimum contacts theory *sic et simpliciter* into the domain of the ‘federal’ due process³⁶.

15. This means, from a conceptual standpoint, the due process test of the Fifth Amendment is still an empty blackboard that has to be entirely designed by the Court. Of course, one would have at this point expected a clear – autonomous – analysis of the due process requirement under the Fifth Amendment. With some degree of disappointment, the Court neither offers a clear theoretical benchmark that could contribute to the development of a general theory, nor does the Court offer a truly autonomous approach in the specific case.

16. Even though the Court has been requested by petitioners to declare that the due process clause in the Fifth Amendment does not impose any territorial limit to personal jurisdiction³⁷, (thus: no consent and no minimum contact theory), following a request by the Federal Government, the Court refuses to give an answer on the matter since ‘*the theory is “not easily confirmed as a historical matter,” and points to “strong policy reasons . . . against reaching” it, including the possibility that other nations might respond in kind by haling Americans into their courts under expansive theories of jurisdiction*’³⁸. To some extent, this approach in the context of the Fifth Amendment seems to diminish the individuals’ rights perspective of the due process clause to reinforce its sovereignty element³⁹.

17. The vagueness of the Court’s answer begins as it argues that it is not necessary to develop a general theory on the outer limits of the Fifth Amendment’s due process since such limits ‘are clearly’ not surpassed by the scrutinized rules⁴⁰. In the Court’s eye, the abovementioned rule ‘*ties federal jurisdiction to conduct closely related to the United States that implicates important foreign policy concern-*

³³ Cf. A.D. SIMOWITZ, “Federal Personal Jurisdiction and Constitutional Authority”, cit., p. 351.

³⁴ Fuld v. Palestine Liberation Organization, 606 U.S. (2025) 10.

³⁵ Fuld v. Palestine Liberation Organization, 606 U.S. (2025) 11.

³⁶ Fuld v. Palestine Liberation Organization, 606 U.S. (2025) 12.

³⁷ Fuld v. Palestine Liberation Organization, 606 U.S. (2025) 14.

³⁸ Fuld v. Palestine Liberation Organization, 606 U.S. (2025) 14.

³⁹ Cf. P. HAY/P.J. BORCHERS/S.C. SYMEONIDES/C.A. WHYTOCK, *Conflict of Laws*, 2018, cit., p. 448 f.

⁴⁰ Fuld v. Palestine Liberation Organization, 606 U.S. (2025) 15.

s'⁴¹. In other words: there are enough ‘minimum contacts’ to simply not deal with the question. In fact, the Court expressly writes that ‘*We agree with the Government that we need not address the private petitioners’ unbounded jurisdictional theory today. The [rule] ties federal jurisdiction to conduct closely related to the United States that implicates important foreign policy concerns*’⁴².

18. In justifying the constitutional validity of the rules at hand, the Court argues that subjecting PLO to US jurisdiction is the result of a reasoned political choice that is part of a wider fight against terrorism which, due to the political value of the choice, deserves special deference by magistrates⁴³. Furthermore, the limited material scope of application of the substantive rule and the associated head of jurisdiction, coupled with their functional nature to protect fundamental national interests, leads the Court to argue that the rules in general are also reasonable⁴⁴. These reasonable ties make a further consent-based investigation unnecessary⁴⁵.

19. So, according to the opinion of Court, *i)* the Fourteenth Amendment test does not apply mechanically in the context of the Fifth Amendment; *ii)* the question whether the Fifth Amendment requires a personal territorial connection remains formally unanswered, as the analysis was unnecessary in the case at hand due to the evident sufficient connections with the United States; *iii)* the question on consent also remains unanswered as jurisdiction is already justified by the existence of significant connection with the US and with US policies.

20. Of course, neither of the above questions truly remains unanswered; the answers may not be clearly framed – but they are surely there.

21. The *International Shoe Co.* progeny dealt with long arm statutes absent consent under the Fourteenth Amendment. *Fuld v. PLO* does exactly the same in the context of the Fifth Amendment. *International Shoe Co.* required the forum to have certain contacts, ties or relations *against an individual*. *Fuld v. PLO* assumes that rules concerning damage actions against terrorists reasonably tie *jurisdiction* to the Nation. In other words, even in the context of the Fifth Amendment, a minimum contact is enough to comply with constitutional requirements.

22. What evidently changes under the hat of the Fifth Amendment is the subjective test in these contacts. In the *International Shoe Co.* progeny, personal jurisdiction based on contacts required an underlying behavioural pattern: the contacts where an objective tool to prove that the defendant had purposefully availed themselves of a State, thus ‘exposing’ themselves to its forum and making it fair for that court to decide a case against the defendant. In *Fuld v. PLO* this individual ‘purposeful availment’ is lost⁴⁶, and the reasonable forum’s interests become predominant.

23. Hence, if the question in *Fuld v. PLO* was whether the ‘*Congress’s power to prescribe and to allocate subject matter jurisdiction is coextensive with the federal courts’ power to exercise personal jurisdiction*’⁴⁷, meaning that subject matter jurisdiction may not necessarily require a strong personal matter jurisdiction, the answer is quite remarkable: the existence of certain reasonable connections strongly focused on the forum’s interests are sufficient to comply with an unspoken constitutional standard of the Fifth Amendment.

⁴¹ *Fuld v. Palestine Liberation Organization*, 606 U.S. (2025) 14.

⁴² *Fuld v. Palestine Liberation Organization*, 606 U.S. (2025) 14.

⁴³ *Fuld v. Palestine Liberation Organization*, 606 U.S. (2025) 15 f.

⁴⁴ *Fuld v. Palestine Liberation Organization*, 606 U.S. (2025) 17.

⁴⁵ *Fuld v. Palestine Liberation Organization*, 606 U.S. (2025) 19 f. Critical on the choice not to deal with an analysis of consent, R. MICHALSKI, “Personal Jurisdiction’s Aberrant theory of Consent”, cit., p. 1722.

⁴⁶ M. GARNDER, “Supreme Court Decides *Fuld v. PLO*”, *Transnational Litigation Blog*, blogpost 20 June 2025.

⁴⁷ M. GARNDER, “Unpacking the Originalist Argument for Maximalist Personal Jurisdiction”, *Transnational Litigation Blog*, blogpost 17 July 2025.

24. Against this background, the concurring position by *J Thomas* is particularly interesting⁴⁸, in as much as he argues that foreign political (both sovereign and non-sovereign) entities – such as foreign States or the PLO – do not enjoy constitutional rights and, thus, are not protected by the Fifth Amendment in the first place⁴⁹. Even more, *J Thomas* argues that the Constitution never intended to limit the powers of the Government in establishing extra-territorial jurisdiction. Such limits, if existing, are to be drawn from public international law, which – in the US system – can be defeated by a clear command of the legislative power⁵⁰. An argument that, at the very least, the Court did not explicitly reject nor approved, plausibly also because of the request by the Federal Government not to take a position on the matter for the time being. Which is something the Court has brilliantly done: it has not ruled out the possibility of arguing for a limitless extra-territorial personal jurisdiction, and has offered legal reasonings to adopt such a theory in the future.

IV. A continental view on extra-territorial adjudicative jurisdiction and fair play

25. Continental civil lawyers are not necessarily accustomed with notions of ‘contacts’ and ‘fair play’⁵¹ as such approaches may lead to arbitrariness⁵² and uncertainty in the determination of the competent court⁵³. EU law rules in the framework of the Brussels I bis Regulation⁵⁴ on jurisdiction are supposedly more rigid, and – as a matter of principle – the exercise of jurisdiction is mandatory and not subject to case-by-case evaluations by the court⁵⁵. Such rigidity, seeking to implement a number of

⁴⁸ M. GARDNER, “Unpacking the Originalist Argument for Maximalist Personal Jurisdiction, Part IV: Picquet v. Swan”, *Transnational Litigation Blog*, blogpost 12 August 2025.

⁴⁹ *Fuld v. Palestine Liberation Organization*, 606 U.S. (2025), per *J Thomas concurring*, 5.

⁵⁰ *Fuld v. Palestine Liberation Organization*, 606 U.S. (2025), per *J Thomas concurring*, 11.

⁵¹ P.J. BORCHERS, “Comparing Personal Jurisdiction in the United States and the European Community: Lessons for American Reform”, *The American Journal of Comparative Law*, 1992, p. 121; TH.M. DE BOER, “Forum Preferences in Contemporary European Conflicts Law: The Myth of a ‘Neutral Choice’”, in H.-P. MANSSEL/T. PFEIFFER/H. KRONKE/C. KOHLER/R. HAUSMANN (eds.) *FS Erik Kayme*, München, Sellier, 2004, p. 39; U. DROBNIG, “Conflict of Laws and the European Economic Community”, *The American Journal of Comparative Law*, 1966, p. 204; P. HAY, “Flexibility versus Predictability and Uniformity in Choice of Law. Reflections on Current European and United States Conflicts Law”, *Recueil des cours*, T. 226, p. 291; F.K. JUENGER, “American and European Conflicts Law”, *The American Journal of Comparative Law*, 1982, p. 117; J.R. MAXEINER, “Legal Certainty: A European Alternative to American Legal Indeterminacy?”, *Tulane Journal of International & Comparative Law*, 2007, p. 541; A. NUYTS, “Due Process and Fair Trial: Jurisdiction in the United States and in Europe Compared”, cit., p. 27; E. VITTA, “The Impact in Europe of the American ‘Conflicts Revolution’”, *The American Journal of Comparative Law*, 1982, p. 1; A.T. VON MEHREN, “Adjudicatory Jurisdiction: General Theories Compared and Evaluated”, *Boston University Law Review*, 1983, p. 279; ID., “Theory and Practice of Adjudicatory Authority in Private International Law: A Comparative Study of the Doctrine, Policies and Practices of Common- and Civil Law Systems”, *Recueil des cours*, T. 295, p. 181.

⁵² *Cf International Shoe v. State of Washington*, 326 U.S. 310 (1945) 326, per *J Black dissenting* (“*For application of this natural law concept, whether under the terms “reasonableness,” “justice,” or “fair play,” makes judges the supreme arbiters of the country’s laws and practices*”).

⁵³ *Ex multis*, G. SCHACK, *Internationales Zivilverfahrensrecht mit internationalem Insolvenzrecht und Schiedsverfahrensrecht*, München, Beck, 2021, p. 190, m. 509.

⁵⁴ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), *OJ L 351* of 20 December 2012, p. 1; in the case law, see Judgment of the Court (Grand Chamber) of 1 March 2005, *Andrew Owusu v N. B. Jackson, trading as “Villa Holidays Bal-Inn Villas” and Others*, Case C-281/02, ECLI:EU:C:2005:120.

⁵⁵ On *forum non convenience*, see A. ARZANDEH, “The Origins of the Scottish *forum non conveniens* Doctrine”, *Journal of Private International Law*, 2017, p. 130; ID., “Should the *Spliada* Test Be Revised?”, *Journal of Private International Law*, 2014, p. 89; E. BALDI, “The Resurgence of the *Forum Non Conveniens* Doctrine in the English (post-Brexit) Jurisprudence with Respect to Transnational Litigation for Corporate Human Rights Violations: The *Dyson* Case”, *Diritti umani e diritto internazionale*, 2024, p. 207; M. BANDERA, “La sentenza *Owusu*, il *forum non conveniens* e i conflitti di giurisdizione tra Stati membri e Stati terzi”, *Rivista di diritto internazionale privato e processuale*, 2007, p. 1025; R.A. BRAND, “Challenges to *Forum Non Conveniens*”, *New York University Journal of International Law & Politics*, 2013, p. 1003; N. BRANNIGAN, “Resolving Conflicts: Establishing *forum non conveniens* in a new Hague Jurisdiction Convention”, *Journal of Private International Law*, 2022, p. 83; A. BRIGGS, “The Death of Harrods: *Forum non conveniens* and the European Court”, *Law Quarterly Review*, 2005, p. 535; C. GONZÁLEZ BEILFUSS, „*Forum non conveniens* auf europäische Art: ein misslungener Dialog“, *Praxis des Internationalen Privat- und Verfahrensrechts*, 2022, p. 345; M.A. LUPOLI, “L’ultima spiaggia del *forum non conveniens* in Europa?”, *Il Corriere Giuridico*, 2006, p. 15; C.M. MARIOTTINI, “The Proposed Recast of the Brussels I Regulation and *forum non conveniens* in the

principles, amongst which predictability of the competent court and justice⁵⁶, translates in the adoption of a main rule inspired by the *actor sequitur forum rei*⁵⁷ doctrine and in a number of alternative or special rules that complement the first.

26. EU rules incorporate a close connection that, in the eye of the EU lawmaker, balances proximity and due process⁵⁸. Yet, as is well known, such rules generally have a limited personal scope of application: the Brussels I bis Regulation mostly does not apply to non-EU defendants (*i.e.*, defendants without their domicile in a Member State) which might thus still be haled before courts based on domestic (even exorbitant) heads of jurisdiction.

27. As is also widely well known, such a regime based on the ‘European domicile’⁵⁹ is showing its weaknesses when approached under the focal lens of (quasi) extra-territorial EU laws or, better yet, rules whose territorial scope of application is expanded⁶⁰. The issue is quite evident: EU law may regu-

European Union Judicial Area”, in F. POCAR/I. VIARENGO/F.C. VILLATA (eds.), *Recasting Brussels I*, Milano, Giuffrè, 2012, p. 285; F. MARONGIU BUONAIUTI, “Forum non conveniens e art. 6 della convenzione europea dei diritti dell’uomo”, *Rivista di diritto internazionale*, 2001, p. 420; I. QUEIROLO, “Forum non conveniens e convenzione di Bruxelles: un rapporto possibile?”, *Rivista di diritto internazionale privato e processuale*, 1996, p. 763; A. REUS, “Judicial Discretion: A Comparative View of the Doctrine of Forum Non Conveniens in the United States, the United Kingdom, and Germany”, *Loyola of Los Angeles International & Comparative Law Review*, 1994, p. 455; see also G. VAN CALSTER, “Lis Pendens and Third States: The Origin, DNA and Early Case-Law on Articles 33 and 34 of the Brussels Ia Regulation and its “forum non conveniens-light” Rules”, *Journal of Private International Law*, 2022, p. 363, and S. MARINO, “Lis pendens and related Actions in European Union Private International Law on Family Property Issues”, *Lex&Forum*, 2024, p. 549.

⁵⁶ Critical as per the principle of procedural equal treatment of the parties, T. PFEIFFER, *Internationale Zuständigkeit und prozessuale Gerechtigkeit: die internationale Zuständigkeit im Zivilprozess zwischen effektivem Rechtsschutz und nationaler Zuständigkeitspolitik*, Frankfurt a.M., Vittorio Klostermann, 1995, p. 596 ff. See also J.P. VERHEUL, *The Forum Actoris and International Law*, in *Essays on International and Comparative Law in Honour of Judge Erades*, The Hague, Springer, 1983, p. 196.

⁵⁷ *Amplius*, J. CARRASCOSA GONZÁLEZ, “Foro del domicilio del demandado y Reglamento Bruselas ‘I-bis 1215/2012’. Análisis crítico de la regla actor sequitur forum rei”, *Cuadernos de Derecho Transnacional*, 2019, p. 112.

⁵⁸ L. FUMAGALLI, “Criteri di giurisdizione in materia civile e commerciale e rispetto dei diritti dell’uomo: il sistema europeo e la garanzia del “due process””, *Diritti umani e diritto internazionale*, 2014, p. 567.

⁵⁹ Specifically on jurisdiction, see A. DUTTA, “Internationale Zuständigkeit für privatrechtliche Klagen gegen transnational tätige Unternehmen wegen Verletzung von Menschenrechten und von Normen zum Schutz der natürlichen Lebensgrundlagen im Ausland”, in A. REINISCH/S. HOBE/E.M. KIENINGER/A. PETERS (eds.), *Unternehmensverantwortung und Internationales Recht*, Heidelberg, C.F. Müller, 2020, p. 39; N. KRISCH, “Entgrenzte Jurisdiktion: Die extraterritoriale Durchsetzung von Unternehmensverantwortung”, in *idem*, p. 11; S. MARINO, “La climate change litigation nella prospettiva del diritto internazionale privato e processuale”, *Rivista di diritto internazionale privato e processuale*, 2021, p. 898; P. MANKOWSKI, “Einleitung (C. Internationales Prozess- und Privatrecht, internationale Zuständigkeit und anwendbares Recht)”, in H. FLEISCHER/P. MANKOWSKI (eds.), *LkSG Kommentar*, München, Beck, 2023, p. 72; F. MARONGIU BUONAIUTI, “L’incidenza della disciplina della giurisdizione nelle azioni nei confronti delle società multinazionali per danni all’ambiente sul diritto di accesso alla giustizia”, *Ordine internazionale e diritti umani*, 2023, p. 634; R. MICHAELS/A. SOMMERFELD, “EU-Lieferketten-Richtlinie und internationale Zuständigkeit”, in C. VON BAR/O.L. KNÖFEL/U. MAGNUS/H.-P. MANSER/A. WUDARSKI (eds.), *GS Peter Mankowski*, München, Mohr Siebeck, 2024, p. 775; N. PERRONE, “Perspectives of Extraterritorial Jurisdiction for Environmental Damage in the Proposal of the European Directive on Corporate Sustainability Due Diligence”, *The Italian Review of International and Comparative Law*, 2023, p. 389; M. LA MANNA, “Residual Jurisdiction under the Brussels I bis Regulation: An Unexpected Avenue to Address Extraterritorial Corporate Human Rights Violations”, in S. FORLATI/P. FRANZINA (eds.), *Universal Civil Jurisdiction. Which Way Forward?*, Leiden, Brill, 2021, p. 140.

⁶⁰ On the topics, see J. SCOTT, “Extraterritoriality and Territorial Extension in EU Law”, *The American Journal of Comparative Law*, 2014, p. 87; A.J. COLANGELO, “What Is Extraterritorial Jurisdiction”, *Cornell Law Review*, 2014, p. 1303; H.L. BUXBAUM/T. FLEURY GRAFF (eds.), *Extraterritoriality*, Leiden, Brill, 2022; A. HEMLER, “Deconstructing Blocking Statutes: Why Extraterritorial Legislation Cannot Violate the Sovereignty of Other States”, *Journal of Private International Law*, 2025, p. 115; H.L. BUXBAUM (ed.), *Extraterritoriality in Comparative Perspective*, Leiden, Brill, 2025; M. CREMONA/J. SCOTT (eds.), *EU Law Beyond EU Borders: The Extraterritorial Reach of EU Law Get access Arrow*, Oxford, Oxford University Press, 2019; F. MAOLI, “Flights Partially Performed Outside the Territory of Member States, Compensation Rights and Customary International Law: The Court of Justice of the European Union in C-561/20 United Airlines”, in B. HEIDERHOFF/I. QUEIROLO (eds.), *EU and Private International Law: Trending Topics in Contracts, Successions, and Civil Liability*, Napoli, Editoriale scientifica, 2023, p. 117; S. DOMINELLI, “Extra-territorialità e diritto dell’Unione europea: lettura e conferme di approcci a margine della sentenza della Corte di giustizia nell’affare United Airlines C-561/20, *Il diritto marittimo*, 2024, p. 846; A. BONFANTI/M. FASCIGLIONE, “La futura direttiva europea sulla corporate sustainability due diligence: un’introduzione”, *Diritti umani e diritto internazionale*, 2023, p. 655; N. BOSCHIERO, “L’extraterritorialità della futura direttiva europea sul dovere di diligenza delle imprese ai fini della

late events located abroad and conducts by non-EU actors that, due to their value chain, may have an impact on the EU market. If no rule on jurisdiction makes it possible to start proceedings in a member State against those entities, it is simply much likely that EU law will not be applied. Not by courts of member States, who may not have jurisdiction over foreign defendants (unless grounded on domestic heads of jurisdiction), nor by foreign courts (who are not bound by EU law and may apply their own laws).

28. From a continental's perspective, *Fuld v. PLO* exactly deals with the relationship between (quasi) extra-territorial *prescriptive* jurisdiction and (quasi) extra-territorial *adjudicative* jurisdiction. Evidently, the proper qualification of what is 'extra' becomes fundamental. It has been argued that extra-territoriality is when '... one country (the regulating country) seeks to control activity that is, in whole or in part, located in another country (the source country) but that nonetheless has important effects within the regulating country'⁶¹. In public international law, the legitimacy benchmark – if any at all – was set by the Permanent Court of International Justice in the *Lotus* case, where it was argued that 'It does not [...] follow that international law prohibits a State from exercising jurisdiction in its own territory, in respect of any case which relates to acts which have taken place abroad ...'⁶².

29. Without doubts, States are allowed to regulate and adjudicate conducts and events that are fully localised within their own borders. At the same time, under international law, it is generally accepted that States are *prohibited* from extra-territorial *enforcement*, whilst are *not prevented* from regulating events and conducts that take place abroad, albeit some argue that this would be inconsistent with the non-interference principle in public international law⁶³. The Permanent Court of International Justice has argued that international law (as it then was) did not lay 'down a general prohibition to the effect that States may not extend the application of their laws and the jurisdiction of their courts to persons, properties and acts outside their territory ... [International law] leaves them in this respect a wide measure of discretion which is only limited in certain cases by prohibitive rules'⁶⁴. A passage that may implicitly require the existence of some sort of connection between the State and the foreign activity for the extra-territorial reach to be acceptable⁶⁵.

30. In light of this benchmark, what is sure is that the greater the connection a legal system has with foreign conducts and events, the easier it will be to escape the box of extra-territoriality and enter that of 'extended territorial application'. *Fuld v. PLO* does exactly this in as much as it argues that there are significant connections with the United States. What is of general interest, is that these connections – which make the exercise of jurisdiction reasonable – strongly rely on foreign policy interests of the United States, *i.e.* the fight against terrorism.

31. In a comparative conflict of laws perspective, the question becomes whether other States (or the EU) could also so strongly rely on policy grounds to justify jurisdiction. Surely enough in *Fuld v. PLO* there were also *some* objective elements, such as the US nationality of the victims. Yet, the

sostenibilità, tra diritto internazionale pubblico e privato", *idem*, p. 661; G. CARELLA, "Art. 19 della risoluzione dell'Institut de Droit International su Human Rights and Private International Law: attuazione della responsabilità sociale d'impresa e diritto internazionale privato", *idem*, p. 169; R. GRECO, "Corporate Human Rights Due Diligence and Civil Liability: Steps Forward Towards Effective Protection?", *idem*, p. 5; O. BOSKOVIC, "Extraterritoriality and the Proposed Directive on Corporate Sustainability Due Diligence. A Recap", *Journal of Private International Law*, 2024, p. 117; G. RÜHL, "Cross-Border Protection of Human Rights: The 2021 German Supply Chain Due Diligence Act", in J. BORG-BARTHET/K. TRIMMINGS/, B. YÜKSEL RIPLEY/P. ZIVKOVIC (eds.), *GS Jonathan Fitchen*, London, Hart, 2024, p. 163; C.E. TUO, "Rimedi per abusi di diritti umani da parte delle imprese: profili di diritto internazionale privato", in F. MARRELLA/C. MASTELLONE (eds.), *International Business Contracts and Sustainability*, Pisa, Pacini, 2024, p. 101.

⁶¹ D.P. WOOD, "Extraterritorial Enforcement of Regulatory Laws", *Recueil des cours*, T. 401, 2019, p. 9, at p. 17 f.

⁶² Permanent Court of International Justice, *The Case of the S.S. "Lotus"*, Series A, N. 10, 7 September 1927, p. 19.

⁶³ J. CRIDDLE, "Extraterritoriality's Empire: How Self-Determination Limits Extraterritorial Law Making", *The American Journal of International Law*, 2024, p. 607.

⁶⁴ Permanent Court of International Justice, *The Case of the S.S. "Lotus"*, Series A, N. 10, 7 September 1927, p. 19.

⁶⁵ M.T. KAMMINGA, "Extraterritoriality", in *The Max Planck Encyclopedia of Public International Law, Volume III*, Oxford, Oxford University Press, 2012, p. 1070, at p. 1072.

question remains: can rules on jurisdiction find their main reason in the desire to implement a highly politically-oriented national legislation? SCOTUS apparently had little doubts about that. If this is true, and if this approach is valid for everyone, the European Union could ‘couple’ (quasi) extra-territorial laws with corresponding heads of jurisdiction (e.g., a *forum actoris*) – the main limit being here a traditional deference to the *actor sequitur forum rei* principle.

V. Conclusions: the changing nature of jurisdiction

32. Setting aside constitutionally relevant questions, in conflict of laws terms *Fuld v. PLO* is a clear indication that subject matter jurisdiction is sufficiently justified when it implements specific policy goals (the fight against terrorism) and is necessary to implement (quasi) extra-territorial laws (the right of US nationals to ask for damages related to terrorism) in matters closely connected with the country.

33. Taking account of the above, *Fuld v. PLO* seems to reinforce the *Lotus* paradigm of territorial jurisdiction and becomes an additional piece of a complex picture of current State practice in whose light it could be argued that post-*Lotus* international law still has not developed clear, express and specific limits on excessively weak connections to ground and exercise adjudicative jurisdiction. Even more so, *Fuld v. PLO* reinforces the idea that (quasi) extra-territorial laws with strong underlying policy goals need to be coupled with heads of jurisdiction so as to ensure domestic courts can hear cases against out of State defendants. A lesson – and a methodological validation – that could be useful to the European Union as well.

34. Additionally, *Fuld v. PLO* seems to confirm that ‘something is changing’. ‘Jurisdiction’ is changing. Or, at least, our most recent conceptualization of its functions is changing – perhaps involving.

35. The rise of party autonomy in contractual and non-contractual matters can be understood as an acceptance, by States, of a specific function for their adjudicative jurisdiction, whose main aim in such areas is to settle disputes, rather than enforce domestic policies⁶⁶. *Fuld v. PLO* seems to confirm the – opposite – idea that States, once again, see adjudicative jurisdiction not as a neutral tool at the disposal of the parties, but as an instrument to promote and pursue public goals. A circumstance which *per se* is not necessarily positive or negative, so long it is accepted that the role and function of adjudicative jurisdiction is not engraved and immutable, but is rather something fluid that adapts over time⁶⁷. What remains to be seen is whether, on the continental side, topics like corporate social responsibility or SLAPPs may weaken or reinforce the conceptualisation of international civil procedure as a tool to

⁶⁶ On a new understanding of jurisdictional functions without the traditional public vision, see I. QUEIROLO, *Gli accordi sulla competenza giurisdizionale*, Padova, CEDAM, 2000, p. 39 ff; S.M. CARBONE, *Gli accordi sulla competenza giurisdizionale: i risultati e le prospettive di sviluppo*”, in V. COLESANTI/C. CONSOLO/G. GAJA, F. TOMMASEO (prom.), *Il diritto processuale civile nell’avvicinamento giuridico internazionale. Omaggio ad Aldo Attardi, Tomo I*, Padova, CLEUP, 2009, p. 361, at p. 363, and F.C. VILLATA, *L’attuazione degli accordi di scelta del foro nel regolamento Bruxelles I bis*, Milano, CEDAM, 2012, p. 3 ff. Also clearly noting a tendency of some legal systems to acknowledge that adjudicative jurisdiction is not necessarily seen as tool that must be exercised in all circumstances, P. FRANZINA, “The Changing Face of Adjudicatory Jurisdiction”, in S. FORLATI/P. FRANZINA (eds.), *Universal Civil Jurisdiction. Which Way Forward?*, Leiden, Brill, 2021, p. 170, at p. 174 f. On the evolution of party autonomy, see also A.E. VON OVERBECK, “L’irrésistible extension de l’autonomie en droit international privé”, in *FS François Rigaux*, Bruxelles, Bruylant, 1993, p. 619.

⁶⁷ See N. PICARDI, “Giurisdizione e sovranità: alle origini della giurisdizione statale”, in V. COLESANTI/C. CONSOLO/G. GAJA/F. TOMMASEO (prom.), *Il diritto processuale civile nell’avvicinamento giuridico internazionale. Omaggio ad Aldo Attardi, Tomo I*, Padova, CLEUP, 2009, p. 3, at p. 5 f writing that: ‘*La giurisdizione, in effetti, ha assunto, nel tempo e nello spazio, significati e valori diversi. Ripercorrendone la storia ci rendiamo conto che tale nozione, come del resto le istituzioni giudiziarie in genere, non sono creazioni arbitrarie, ma il risultato della razionalità umana e delle circostanze particolari nelle quali essa opera in concreto. Per cogliere il senso delle profonde trasformazioni che, soprattutto nella nostra epoca, si sono prodotte al riguardo, occorre, quindi, ripensare i problemi utilizzando dialetticamente il metodo storico e comparativo, metodo che ci consente di mettere in discussione certezze che sembrano definitivamente acquisite [...]*’.

enforce State interests and, consequently, prove that international civil procedure is one of the available instruments which may support and promote social change accordingly⁶⁸.

36. Of course, and to conclude, there is a pressing urgency in determining the causes and consequences of a new (or maybe old) understanding of the judicial function supporting domestic approaches favouring policy-oriented heads of jurisdiction. Such urgency derives from the need to clarify if and to what extent the ‘final product’ – the judgment – may be recognised and enforced in other States. If it is assumed that the court has an excessively weak connection with the defendant, it is also clear that the judgment will have to be enforced in another legal system – most likely at the place of their domicile, where the assets will be located. As is well known, absent specific regimes of strong cooperation (as in the EU), domestic laws⁶⁹ and international⁷⁰ conventions may allow for a revision as to the jurisdiction of the court of origin⁷¹. Evidently, if the requested State disagrees with the conceptualization of the jurisdictional function *lato sensu* and with the heads of jurisdiction *stricto sensu* of the court of origin, the foreign decision will simply not be recognised, leading to a scenario of limping situations and disharmonised solutions from a conflict of laws perspective⁷². Hence, from a pragmatic perspective, it seems that the subsequent question of free movement of decisions may unlock a general debate on heads of jurisdiction, proximity and policy goals – possibly even more so that these topics directly.

⁶⁸ *Ex multis*, on strategic use of litigation P. FRANZINA, “Il contenzioso civile transnazionale sulla “corporate accountability””, *Rivista di diritto internazionale privato e processuale*, 2022, p. 828.

⁶⁹ On the US system, see P. HAY/C.A. KERN, *US-Amerikanisches Recht*, München, Beck, 2024, p. 98; W.M. RICHMAN/W.L. REYNOLDS, *Understanding Conflict of Laws*, cit., p. 16; L.L. MACDOUGAL III/R.L. FELIX/R.U. WHITTEN, *American Conflicts Law*, cit., p. 41 ff. In domestic law, *cf* for Italy *Legge 31 maggio 1995, n. 218 Riforma del sistema italiano di diritto internazionale privato*, in GU n.128 del 03-06-1995 - Suppl. Ordinario n. 68, art. 64, lettera a); in Germany, *cf* § 328 ZPO, and § 109 FamG. In general, see *ex multis* H. SHACK, *Internationales Zivilverfahrensrecht*, München, 9. Auflage, 2025, p. 367 ff.

⁷⁰ *Cf* Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, art. 5.

⁷¹ On prohibition to review the jurisdiction of the court of origin under specific regulations of EU law, *cf* S.M. CARBONE/C.E. TUO, *Il nuovo spazio giudiziario europeo in materia civile e commerciale. Il Regolamento UE n. 1215/2012*, Torino, Giappichelli, 2016, p. 350 ff; F. SALERNO, *Giurisdizione ed efficacia delle decisioni straniere nel regolamento (UE) n.1215/2012 (rifusione)*, Milano, Wolters Kluwer, 2015, p. 334 ff; T. DOMEJ, “Recognition and Enforcement of Judgments (Civil Law)”, in J. BASEDOW/G. RÜHL/P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law, Volume II*, Cheltenham, Edward Elgar, 2017, p. 1471; P. MANKOWSKI, “Article 45”, in U. MAGNUS/P. MANKOWSKI (eds.), *ECPII, Volume I, Brussels Ibis Regulation*, Köln, Otto Schmidt, 2023, p. 842; C.E. TUO, *La rivalutazione della sentenza straniera nel regolamento Bruxelles I: tra divieti e reciproca fiducia*, Milano, CEDAM, 2012; C. RICCI, “Article 39. Prohibition of Review of Jurisdiction of the Court of Origin”, in I. VIARENGO/P. FRANZINA (eds.), *The EU Regulations on the Property Regimes of International Couples*, Cheltenham, Edward Elgar, 2020, p. 360; I. QUEIROLO, S. DOMINELLI, “Article 69”, in U. MAGNUS/P. MANKOWSKI (eds.), *ECPII, Volume IV, Brussels IIter Regulation*, Köln, Otto Schmidt, 2023, p. 507.

⁷² *Mutatis mutandis*, for a colonialist reading of domestic provisions that subordinate the legal value of foreign acts to the circumstance that the foreign authority had to be competent under the rules of the requested State, see A.L. CALVO CARAVACA, “Mutual Recognition as a Method in European Private International Law”, in C. VON BAR/O.L. KNÖFEL/U. MAGNUS/H.-P. MANSSEL/A. WUDARSKI (eds.), *GS Peter Mankowski*, Tübingen, Mohr Siebeck, 2024, p. 101, at p. 105.