

of contaminated foods or drugs or other such commodities to protect the consumer,⁸⁴⁵ collection of governmental revenues,⁸⁴⁶ and the seizure of enemy property in wartime.⁸⁴⁷ Thus, citing national security interests, the Court upheld an order, issued without notice and an opportunity to be heard, excluding a short-order cook employed by a concessionaire from a Naval Gun Factory, but the basis of the five-to-four decision is unclear.⁸⁴⁸ On the one hand, the Court was ambivalent about a right-privilege distinction;⁸⁴⁹ on the other hand, it contrasted the limited interest of the cook—barred from the base, she was still free to work at a number of the concessionaire's other premises—with the government's interest in conducting a high-security program.⁸⁵⁰

Jurisdiction

Generally.—Jurisdiction may be defined as the power of a government to create legal interests, and the Court has long held that the Due Process Clause limits the abilities of states to exercise this power.⁸⁵¹ In the famous case of *Pennoyer v. Neff*,⁸⁵² the Court enunciated two principles of jurisdiction respecting the states in a federal system⁸⁵³: first, “every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory,” and second, “no State can exercise direct jurisdiction and authority over persons or property without its territory.”⁸⁵⁴ Over a long period of

⁸⁴⁵ *North American Cold Storage Co. v. City of Chicago*, 211 U.S. 306 (1908); *Ewing v. Mytinger & Casselberry*, 339 U.S. 594 (1950). See also *Fahey v. Mallonee*, 332 U.S. 245 (1948). Cf. *Mackey v. Montrym*, 443 U.S. 1, 17–18 (1979).

⁸⁴⁶ *Phillips v. Commissioner*, 283 U.S. 589, 597 (1931).

⁸⁴⁷ *Central Union Trust Co. v. Garvan*, 254 U.S. 554, 566 (1921).

⁸⁴⁸ *Cafeteria & Restaurant Workers v. McElroy*, 367 U.S. 886 (1961).

⁸⁴⁹ 367 U.S. at 894, 895, 896 (1961).

⁸⁵⁰ 367 U.S. at 896–98. See *Goldberg v. Kelly*, 397 U.S. 254, 263 n.10 (1970); *Board of Regents v. Roth*, 408 U.S. 564, 575 (1972); *Arnett v. Kennedy*, 416 U.S. 134, 152 (1974) (plurality opinion), and 416 U.S. at 181–183 (Justice White concurring in part and dissenting in part).

⁸⁵¹ *Scott v. McNeal*, 154 U.S. 34, 64 (1894).

⁸⁵² 95 U.S. 714 (1878).

⁸⁵³ Although these two principles were drawn from the writings of Joseph Story refining the theories of continental jurists, Hazard, *A General Theory of State-Court Jurisdiction*, 1965 SUP. CT. REV. 241, 252–62, the constitutional basis for them was deemed to be in the Due Process Clause of the Fourteenth Amendment. *Pennoyer v. Neff*, 95 U.S. 714, 733–35 (1878). The Due Process Clause and the remainder of the Fourteenth Amendment had not been ratified at the time of the entry of the state-court judgment giving rise to the case. This inconvenient fact does not detract from the subsequent settled use of this constitutional foundation. *Pennoyer* denied full faith and credit to the judgment because the state lacked jurisdiction.

⁸⁵⁴ 95 U.S. at 722. The basis for the territorial concept of jurisdiction promulgated in *Pennoyer* and modified over the years is two-fold: a concern for “fair play and substantial justice” involved in requiring defendants to litigate cases against them far from their “home” or place of business. *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 317 (1945); *Travelers Health Ass’n v. Virginia ex rel. State*