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The Necessary Narrowing of General Personal Jurisdiction

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THE NECESSARY NARROWING OF GENERAL PERSONAL JURISDICTION

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ABSTRACT

General personal jurisdiction allows a court to issue a binding judgment against a defendant in any case, even if the facts giving rise to the case are unrelated to that forum. In the six decades after International Shoe v. Washington*, courts held that general jurisdiction existed whenever a defendant had substantial continuous and systemic contacts with the forum. This rule was narrowed significantly in 2011, however, when the Supreme Court in* Goodyear Dunlop Tires Operations, S.A. v. Brown *held that general jurisdiction was properly exercised only when a defendant had sufficient contacts to be "at home" in the forum.*

This "at home" rule has been criticized by many scholars for a variety of reasons, most of which focus on the results that they contend the rule produces. This Article offers a strong defense of the "at home" rule as a positive doctrinal development in personal jurisdiction jurisprudence because the rule is both clear and internally consistent. As a clear rule, it provides simplicity and predictability on this jurisdictional question that should reduce litigation on a nonmerits issue.

As an internally consistent rule, it creates more logically coherent results. Courts and scholars have never agreed on a single theory of why personal jurisdiction is limited to certain forums in the first place; indeed, the Supreme Court has offered many competing (and at times incompatible) theories, including the territorial reach of the forum, fairness, whether the defendant consented to suit in the forum, the foreseeability of being sued in the forum, the convenience to the defendant of litigating in the forum, the forum's interest in exercising jurisdiction, and the defendant's liberty interest. The "at home" rule fits logically with each of these justifications—and far better than the old rule. Thus, no matter which justification for personal jurisdiction one prefers, this new rule provides a more solid foundation for the doctrine of general jurisdiction and is a welcome change in personal jurisdiction.

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I. INTRODUCTION

When the wheel on a bus bound for Charles de Gaulle Airport in France failed and the resulting crash killed two thirteen-year-old North Carolina boys, no one could have predicted that another wheel would be set in motion—one that would redefine general personal jurisdiction. That accident led to a lawsuit against Goodyear USA and three foreign subsidiaries in North Carolina state

court, based on allegations that the Goodyear tire on the bus was defective.[1] Rejecting the North Carolina Court of Appeals' conclusion that the foreign Goodyear defendants were subject to general personal jurisdiction in North Carolina because they had purposefully availed themselves of that state by putting their tires into the stream of commerce,[2] the United States Supreme Court held that these defendants were not subject to general personal jurisdiction because they lacked contacts "so 'continuous and systematic' as to render them essentially *at home*" in the Tar Heel state.[3]

Scholars quickly recognized that the Court's 2011 decision in *Goodyear Dunlop Tires Operations, S.A. v. Brown*[4] marked a significant change for general jurisdiction,[5] as the Court's *Daimler AG v. Bauman*[6] decision further did three years later.[7] In reacting to these decisions, some scholarship has been largely descriptive,[8] and some has been theory-propounding.[9] Some has considered the implications of the decisions for general jurisdiction and the open questions that remain.[10] And some has analyzed how these new changes to general jurisdiction affect specific personal jurisdiction.[11] On the whole, much

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1. Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 918 (2011).

2. *See* Brown v. Meter, 681 S.E.2d 382, 395 (N.C. Ct. App. 2009) *rev'd sub nom. Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at 926.

3. *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at 919 (emphasis added) (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 317 (1945)).

4. *Id.* at 915.

5. *See, e.g.*, Michael H. Hoffheimer, *General Personal Jurisdiction After* Goodyear Dunlop Tires Operations, S.A. v. Brown, 60 U. KAN. L. REV. 549, 549–50 (2012); Allan R. Stein, *The Meaning of "Essentially at Home" in* Goodyear Dunlop, 63 S.C. L. REV. 527 (2012).

6. 134 S. Ct. 746 (2014).

7. *See, e.g.*, Judy M. Cornett & Michael H. Hoffheimer, *Good-Bye Significant Contacts: General Personal Jurisdiction After* Daimler AG v. Bauman, 76 OHIO ST. L.J. 101, 103 (2015); Bernadette Bollas Genetin, *The Supreme Court's New Approach to Personal Jurisdiction*, 68 SMU L. REV. 107 (2015).

8. *See generally Personal Jurisdiction—General Jurisdiction—*Daimler AG v. Bauman, 128 HARV. L. REV. 311 (2014) (summarizing and analyzing *Daimler AG*).

9. *See generally* Carol Andrews, *Another Look at General Personal Jurisdiction*, 47 WAKE FOREST L. REV. 999 (2012) (considering what *Goodyear* means for the doctrine of personal jurisdiction).

10. *See, e.g.*, Hoffheimer, *supra* note 5, at 592–609 (considering *Goodyear*'s implications for practice).

11. *See generally* Alan M. Trammell, *A Tale of Two Jurisdictions*, 68 VAND. L. REV. 501 (2015) (exploring the implications for specific personal jurisdiction in light of the Court's decisions on general jurisdiction).Even a cursory review of this scholarship reveals the tensions in personal jurisdiction jurisprudence. Professor Stephen E. Sachs has written that "[t]he field is widely described as a mess, an irrational and unpredictable due process morass." Stephen E. Sachs, *How Congress Should Fix Personal Jurisdiction*, 108 NW. U. L. REV. 1301, 1302 (2014). Given this confusion, Professor Sachs

of this scholarship has been critical.[12]

Contrary to the weight of this body of scholarship on the "at home" rule of *Goodyear* and *Daimler AG*, I argue that this new rule is a welcome change to general personal jurisdiction for two reasons. First, the "at home" rule is clear. It provides an easy-to-apply rule that will minimize resources expended litigating an issue other than the merits of a case. Second, the "at home" rule is more logically coherent because it promotes internal consistency in personal jurisdiction decisions. No matter which justification of personal jurisdiction one adopts from among the myriad justifications that the Supreme Court has offered, the "at home" rule fits neatly within that framework.

That the "at home" rule is a positive development for personal jurisdiction does not mean that it resolves every case perfectly or is flawless. Indeed, the rule is not perfect, and personal jurisdiction generally still has many warts. But until a massive overhaul of the doctrine comes, we should be pleased that general jurisdiction will, in the meantime, make more sense than it did previously.

This Article proceeds in four additional Parts. It begins in Part II with an analysis of general jurisdiction before *Goodyear*. It first traces the *Pennoyer v. Neff*[13] era, in which a defendant's presence in a forum was typically required for a court to exercise personal jurisdiction. It then turns to *International Shoe v. Washington*,[14] which in many ways revolutionized personal jurisdiction by focusing on the scope of a defendant's contacts with a forum through the lens of due process to determine whether the exercise of personal jurisdiction was constitutional. Finally, Part II assesses the Supreme Court's two general-jurisdiction cases between *International Shoe* and *Goodyear*, as well as the scope of general jurisdiction in the lower courts during these decades.

Part III focuses on the narrowing of general jurisdiction that took place in *Goodyear* and in *Daimler AG*. This Part assesses each of these decisions, before turning to case law in the lower courts since these two decisions.

Next, Part IV delves into various justifications of personal jurisdiction, focusing on justifications offered by Supreme Court Justices. This Part analyzes

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argues that Congress should adopt "a system of nationwide federal personal jurisdiction, relieving federal courts of their dependence on state borders." *Id.* at 1303. His article raises provocative arguments that challenge American jurisprudence to reshape its approach to personal jurisdiction. Ultimately, Congress may adopt such a nationwide system of personal jurisdiction. But for now, Congress has not indicated that this significant reformation is coming. Thus, courts and scholars must continue to wrestle with the current framework, to which this Article seeks to add clarity regarding general jurisdiction.

12. *See generally* Cornett & Hoffheimer, *supra* note 7, at 106–07 (criticizing the "at home" rule for a variety of reasons); Kaitlin Hanigan, Comment, *A Blunder of Supreme Propositions: General Jurisdiction After* Daimler AG v. Bauman, 48 LOY. L.A. L. REV. 291 (2014) (arguing that general jurisdiction jurisprudence is ambiguous and inconsistent).

13. 95 U.S. 714 (1877).

14. 326 U.S. 310 (1945).

the theories of territoriality, fairness, consent, foreseeability, convenience of the defendant, the forum's interest, and the defendant's liberty interest for imposing limits on personal jurisdiction. All of these theories are competing justifications for how due process protects a defendant from being sued in particular jurisdictions.

Finally, Part V explains why the narrowing of general jurisdiction in *Goodyear* and *Daimler AG* was a positive jurisprudential development for when a defendant is subject to this type of personal jurisdiction. First, this Part shows why it is a clear rule, as applying it is simple and straightforward. Second, this Part demonstrates why it is an internally consistent rule: regardless of which justification one adopts, the "at home" rule more logically fits with that theory than the old rule of continuous and systematic contacts. This Part concludes by discussing how prominent criticisms of the "at home" rule miss their mark and provide no reason to reject this new rule.

II. GENERAL PERSONAL JURISDICTION BEFORE *GOODYEAR*

Personal jurisdiction is essential in any lawsuit, for it is "the power of a court over a defendant."[15] If a court enters a judgment against a defendant over whom the court lacks personal jurisdiction, the judgment is void and has no effect.[16] Modern personal jurisdiction exists in two forms: general and specific. General jurisdiction allows a defendant to be sued about any dispute in a forum, while specific jurisdiction permits a defendant to be sued only about disputes connected to that forum.[17]

The term "general jurisdiction" is a relatively new addition to American legal lexicon. It was introduced by Professors Arthur T. von Mehren and Donald T. Trautman in their influential 1966 *Harvard Law Review* article, which coined the terms "general jurisdiction" and "specific jurisdiction" in light of the Supreme Court's description of types of personal jurisdiction in *International*

15. Foster-Miller, Inc. v. Babcock & Wilcox Can., 46 F.3d 138, 143 (1st Cir. 1995).

16. *See, e.g.*, Armco, Inc. v. Penrod-Stauffer Bldg. Sys., Inc., 733 F.2d 1087 (4th Cir. 1984) ("We conclude that the judgment was void for lack of personal jurisdiction of the defendant, and reverse.").

17. *See* Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 924 (2011) (describing the difference in general and specific jurisdiction).Another division of personal jurisdiction is *in personam* and *in rem* jurisdiction: that is, jurisdiction over a person or over property. *See In Personam Jurisdiction, In Rem Jurisdiction* BLACK'S LAW DICTIONARY (9th ed. 2009) (defining *in personam* jurisdiction and *in rem* jurisdiction). Because *in personam* jurisdiction is far more common today, this Article limits its focus to personal jurisdiction as it applies to people and entities.

Shoe two decades earlier.[18] Professors von Mehren and Trautman defined general jurisdiction as the "power to adjudicate any kind of controversy when jurisdiction is based on relationships, direct or indirect, between the forum and the person or persons whose legal rights are to be affected,"[19] which remains a perfectly suitable definition today.

The idea of general personal jurisdiction, however, has been present in American jurisprudence for far longer, as a defendant could typically always be sued in his home state. Indeed, this idea has been present since the nation's earliest days.[20] This Part traces general jurisdiction prior to the Court's decision in *Goodyear*, briefly discussing the pre-*International Shoe* era before focusing on the development of the doctrine since that seminal decision.

A. The Pennoyer *Era*

When the subject of personal jurisdiction prior to *International Shoe* is raised, most legal scholars and law students immediately think of *Pennoyer v. Neff*, a staple of civil procedure casebooks.[21] This case has become the paradigm example of an era in which personal jurisdiction was "justified . . . in terms of the sovereign's relationship with the defendant or his property, rather than in terms of the character of the suit itself."[22]

Pennoyer arose when Neff sued Pennoyer to recover possession of a tract of land in Oregon.[23] Neff claimed title under a grant from the United States,

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18. Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136 (1966); *see also* Genetin, *supra* note 7, at 113 (referring to the article by Professors von Mehren and Trautman as a "germinal work").

19. von Mehren & Trautman, *supra* note 18, at 1136; *see also* Lea Brilmayer, Jennifer Haverkamp, & Buck Logan, *A General Look at General Jurisdiction*, 66 TEX. L. REV. 721, 727 (1988) ("General jurisdiction rests upon a direct relationship between the defendant and the forum and does not differentiate between the various causes of action that the plaintiff may assert against the defendant. Once shown, general jurisdiction establishes forum adjudicative power over any controversy involving that defendant.").

20. *See, e.g.*, The Betsey, 3 U.S. (3 Dall.) 6, 11 (1794) ("The rule authorising the exercise of jurisdiction over persons coming within the limits of a country, has been narrowed down, by the voluntary law of nations, to cases where there is either *a local allegiance*, or *voluntary submission*." (emphasis added)).

21. *See, e.g.*, STEPHEN C. YEAZELL, CIVIL PROCEDURE 61–74 (7th ed. 2008).

22. Mary Twitchell, *The Myth of General Jurisdiction*, 101 HARV. L. REV. 610, 614 (1988); *see* Trammell, *supra* note 11, at 505 ("Until relatively recently, personal jurisdiction was grounded in territorial theories of judicial power. The centuries-old idea found expression in the canonical case of *Pennoyer v. Neff* . . . ."); Twitchell, *supra* at 619 (calling *Pennoyer* "the Supreme Court's most ambitious attempt to outline the contours of a power-based theory of jurisdiction for the American federal system").

23. Pennoyer v. Neff, 95 U.S. 714, 719 (1877).

while Pennoyer claimed title based on a sheriff's deed.[24] In that state court action that ultimately led to the sheriff's deed, Neff, who was not a resident of Oregon, was not served with the summons in Oregon and never appeared in the action.[25] Neff claimed that the judgment against him was invalid because the state court did not have jurisdiction over him, which meant that Pennoyer's sheriff's deed was also invalid.[26]

The Supreme Court agreed with Neff.[27] The Court based its decision on two principles.[28] The first was that a state exercised "exclusive jurisdiction" over the people and property within its borders.[29] And the second was that a state had no jurisdiction over people or property outside of its borders.[30] The Court tied its authority to enforce these principles to the Due Process Clause of the then-recently adopted Fourteenth Amendment,[31] writing:

> Since the adoption of the Fourteenth Amendment to the Federal Constitution, the validity of such judgments may be directly questioned, and their enforcement in the State resisted, on the ground that proceedings in a court of justice to determine the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law.[32]

In this case, Neff was never properly brought under the state court's jurisdiction, so the judgment against him that led to the sheriff's deed was not valid,

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24. *Id.*

25. *Id.* at 719–20.

26. *Id.* at 719, 721–22.

27. *Id.* at 734.

28. *Id.* at 722; *see also* Hoffheimer, *supra* note 5, at 553 ("The [*Pennoyer*] opinion committed the Court to imposing due process restrictions on state court jurisdiction and introduced a territorial theory of jurisdiction grounded on the[se] twin propositions . . . .").

29. *Pennoyer*, 95 U.S. at 722; *see also id.* at 720 ("The authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established.").

30. *Id.* at 722 ("The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others.").

31. U.S. CONST. amend XIV, § 1 ("All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.").

32. *Pennoyer*, 95 U.S. at 733.Although the Court cited the Due Process Clause in its decision, the case is based primarily on the Full Faith and Credit Clause, U.S. CONST. art. IV, § 1, and international law. *See* Allan R. Stein, *Styles of Argument and Interstate Federalism in the Law of Personal Jurisdiction*, 65 TEX. L. REV. 689, 709 (1987) (discussing the role of these ideas in *Pennoyer*).

which meant that Pennoyer's title to the property was void.[33]

The Court's decision has been widely recognized as adopting a "territorial approach" to personal jurisdiction.[34] It approved of jurisdiction over people residing in a state, people who consented to jurisdiction, people who were personally served in the state, and corporations created by the state.[35] This approach to personal jurisdiction has its origins in the law of nations, as nations had come to recognize that they could not exercise authority over people in another country.[36]

The personal jurisdiction rules of this era reflected an older world with less mobility and cross-border commerce. In this era, defendants typically lived in the jurisdiction where the lawsuit was filed.[37] Without the development of railroads, much less automobiles and airplanes, distant travel was rare, with most people never going far from home.[38] Because travel was rare, most disputes

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33. *Pennoyer*, 95 U.S. at 734.The Court spent much its opinion discussing the distinction between *in personam* jurisdiction and *in rem* jurisdiction. *See id.* at 723–32; *see also* sources cited *supra* note 17. This discussion raises the interesting question of whether, consistent with the then-prevailing view of personal jurisdiction, Mitchell could have prevailed in having his state court judgment treated as valid and Pennoyer been declared to have title to the property had Mitchell had the state court attach Neff's property *before* judgment was entered.

34. Stanley E. Cox, *The Missing "Why" of General Jurisdiction*, 76 U. PITT. L. REV. 153, 177 (2014).For an argument that the *Pennoyer* decision was actually unfaithful to the territorial approach it claimed to espouse, see Harold S. Lewis, Jr., *The Three Deaths of "State Sovereignty" and the Curse of Abstraction in the Jurisprudence of Personal Jurisdiction*, 58 NOTRE DAME L. REV. 699, 704–08 (1983).

35. *See* Hoffheimer, *supra* note 5, at 553–54 (citing *Pennoyer*, 95 U.S. at 733–35).The court recognized several other categories of people subject to jurisdiction that, while not explicitly within a forum's borders, have a constructive presence there, including nonresidents sued by residents to determine the legal status of the resident and nonresident (such as whether they were married), and nonresidents who made contracts enforceable in the state. *See id.*

36. *See* Ellen E. Sward, *Justification and Doctrinal Evolution*, 37 CONN. L. REV. 389, 437 (2004) ("The concept of limits on the exercise of personal jurisdiction originated in relationships between nations." (citing 4 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1064 (3d ed. 2002))).

37. *See* Twitchell, *supra* note 22, at 615 (observing that a defendant typically "could be found where the dispute arose").Professor Twitchell notes that this limited mobility meant that "courts rarely had to confront the fact that their jurisdiction theory gave them great power to decide claims that arose elsewhere, but little power to decide claims arising locally, if the defendant could not be found within the forum." *Id.*

38. *See, e.g.*, JOSEPH J. ELLIS, THE QUARTET xii (2015) (noting that most Americans during the Revolution era were born, lived, and died within a thirty-mile radius and that a letter took three weeks to get from Boston to Philadelphia); Veronica Hernandez, Note, J. Mcintyre Machinery, Ltd. v. Nicastro*, 131 S. Ct. 2780 (2011): Personal Jurisdiction and the Stream of Commerce Doctrine*, 44 U. TOL. L. REV. 431, 433 (2013) ("Before public investment in transcontinental-transportation infrastructure, such as railroad and highways, commerce was generally conducted locally, and disputes tended to be local as well.").

were local, with the parties often living in the same town, or at least county.

But the late nineteenth and early twentieth century saw major changes in American society.[39] The growth of more efficient and faster modes of travel and the development of large corporations that engaged in business throughout the country raised new challenges for when a state could exercise jurisdiction over a defendant[40] and led to increased debate over the limits of personal jurisdiction.[41]

B. The New Framework of International Shoe

This new world had readily taken hold by the time the Supreme Court took up *International Shoe* in 1945.[42] The basic facts are well known,[43] but as a brief review, International Shoe Co. was a Delaware corporation headquartered in Missouri that manufactured and sold (unsurprisingly) shoes.[44] The company had carefully structured its operations to avoid having any "presence" in the State of Washington: it employed between eleven and thirteen salesmen in that state, who received samples of shoes and solicited orders from prospective buyers, but who had no authority to enter into contracts on the company's behalf.[45] The State of Washington sued International Shoe, seeking to force the company to contribute to the state's unemployment fund to which all employers in the

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39. *See generally* CHARLES R. MORRIS, THE TYCOONS (2005) (exploring how business leaders such as Andrew Carnegie, John D. Rockefeller, and J.P. Morgan helped revolutionize the American economy).

40. *See, e.g.*, Twitchell, *supra* note 22, at 619–23 (discussing how changes in American society affected personal jurisdiction jurisprudence); *see also* Daimler AG v. Bauman, 134 S. Ct. 746, 753 (2014) ("In time, however, that strict territorial approach yielded to a less rigid understanding, spurred by 'changes in the technology of transportation and communication, and the tremendous growth of interstate business activity.'" (quoting Burnham v. Super. Ct., 495 U.S. 604, 617 (1990))).Of course, society is always changing, and technology is always developing. Such ongoing evolutions continue to raise questions about rules for personal jurisdiction. *See* J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 887 (2011) (Breyer, J., concurring in the judgment) ("I do not doubt that there have been many recent changes in commerce and communication, many of which are not anticipated by our precedents. But this case does not present any of those issues. So I think it unwise to announce a rule of broad applicability without full consideration of the modern-day consequences.").

41. *See* Sward, *supra* note 36, at 437–41 (discussing this debate).

42. Indeed, by the time *International Shoe* was decided on December 3, 1945, the world had changed dramatically since *Pennoyer* was handed down, as the world had fought—and survived—two world wars and the Cold War was just beginning, global communication was virtually instantaneous, and people could travel around the world at speeds unimagined just decades before.

43. *See, e.g.*, YEAZELL, *supra* note 21, at 61–67 (using *Pennoyer* as the lead case in discussing the origins of personal jurisdiction).

44. Int'l Shoe Co. v. Washington, 326 U.S. 310, 313 (1945).

45. *Id.* at 314; *see also* Hoffheimer, *supra* note 5, at 556 (noting the company's effort to structure its legal relations so as to avoid having a legal presence in the State of Washington).

state were required to contribute.[46] The company challenged the state courts' determination that Washington courts had personal jurisdiction over it.[47]

The Court began its analysis with a historical review of personal jurisdiction, first noting the territorial regime of *Pennoyer*.[48] This rule had changed, however, with the advent of "personal service of summons or other forms of notice," so that now,

> due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."[49]

The Court explained that because a corporation can act only through its agents, the necessary inquiry is not whether a corporation's agents are "present" in a jurisdiction, but rather, whether the corporation's agents within a state engage in activities that are "sufficient to satisfy the demands of due process."[50]

The Court then set forth four examples of personal jurisdiction.[51] Two of these examples are easy cases. First, when a defendant has continuous and systematic contacts in a state and the dispute arose there, the state can exercise jurisdiction over the defendant.[52] Next, when a defendant lacks such contacts and the dispute arose elsewhere, a state may not exercise jurisdiction.[53] The Court explained this conclusion in terms of fairness to the defendant: "To require the corporation in such circumstances to defend the suit away from its home or other jurisdiction where it carries on more substantial activities has been thought to lay too great and unreasonable a burden on the corporation to comport with due process."[54] In these examples, both specific and general jurisdiction would exist (in the first case) or would not exist (in the second case).

The other two examples are potentially more difficult. The third example involved general jurisdiction, although the Court did not use that terminology.[55] The Court recognized that "there have been instances in which the continuous

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46. *Int'l Shoe Co.*, 326 U.S. at 311–12.

47. *Id.* at 315.

48. *Id.* at 316.

49. *Id.* (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)).

50. *Id.* at 316–17.

51. *See* Hoffheimer, *supra* note 5, at 558–60 (describing the framework of the Court's examples).

52. *Int'l Shoe Co.*, 326 U.S. at 317.

53. *Id.*

54. *Id.*

55. The Court would first use the language of general and specific jurisdiction in Helicopteros Nacionales de Colom., S.A. v. Hall, 466 U.S. 408, 414 (1984). *See* Hoffheimer, *supra* note 5, at 568.

corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities."[56] Although the Court did not provide any bright lines or specific tests, it did clearly approve of general jurisdiction here.

The fourth and final example was one of specific jurisdiction. It involved cases in which a defendant is not regularly present in a state, but the defendant's acts, "because of their nature and quality and the circumstances," may warrant the exercise of jurisdiction.[57] Part of this inquiry includes whether the defendant "enjoys the benefits and protection of the laws of that state."[58] The Court was quick to observe that "the boundary line between those activities which justify the subjection of a [defendant] to suit, and those which do not, cannot be simply mechanical or quantitative."[59]

In light of these principles, the Court determined that International Shoe was subject to personal jurisdiction in Washington.[60] It had engaged in a large volume of business, during which it had "received the benefits and protection of the laws of the state."[61] Moreover, this suit arose out of the company's activities in the state.[62]

So what can be said for general jurisdiction in light of *International Shoe*? First, Chief Justice Stone's opinion affirmed that general jurisdiction is consistent with due process.[63] This may seem an obvious point, but it is one worth making. Without it, an entire line of jurisprudence would be untenable.

Second, concepts of fairness appeared in personal jurisdiction jurisprudence. Whereas older decisions like *Pennoyer* were based on sovereignty and power, the thrust of the analysis in *International Shoe* was whether requiring a person or corporation to defend a suit in a particular jurisdiction "lay too great

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56. *Int'l Shoe Co.*, 326 U.S. at 318 (citing Mo., K & T R Co. v. Reynolds, 255 U.S. 565 (1921); St. Louis Sw. Ry. Co. v. Alexander, 227 U.S. 218, 228 (1913); Tauza v. Susquehanna Coal Co., 115 N.E. 915, 918 (N.Y. 1917)).

57. *Int'l Shoe Co.*, 326 U.S. at 318.

58. *Id.* at 319.

59. *Id.*

60. *Id.* at 320.This holding has been recognized as one based on what is now known as specific jurisdiction. *See, e.g.*, James R. Pielemeier, Goodyear Dunlop*: A Welcome Refinement of the Language of General Personal Jurisdiction*, 16 LEWIS & CLARK L. REV. 969, 976 (2012) ("The ultimate result in *International Shoe* was that the defendant was subject to jurisdiction, but under today's terminology it was specific, not general jurisdiction.").

61. *Int'l Shoe Co.*, 326 U.S. at 320.

62. *Id.*

63. *See, e.g.*, Trammell, *supra* note 11, at 510 ("*International Shoe* recognized the continuing salience of true general jurisdiction, in the sense that such jurisdiction is dispute-blind.").

and unreasonable a burden" on that defendant.[64]

Third, and despite this second point, the idea of sovereignty that pervaded the Court's opinion in *Pennoyer* did not disappear entirely in *International Shoe*. In fact, the Court explained that the requirements of due process were met only when the "contacts of the corporation with the state of the forum as make it reasonable, *in the context of our federal system of government*, to require the corporation to defend the particular suit which is brought there."[65] Thus, ideas of federalism and borders continued to lurk in the Court's thinking.

Given these competing ideas, scholars have observed that *International Shoe* can be interpreted in significantly different ways.[66] On the one hand, *International Shoe* is typically credited with fundamentally shifting the focus of personal jurisdiction to fairness, with the inquiry being on the relationship between the defendant, the forum, and the particular cause of action.[67] But on the other hand, *International Shoe* retained sovereignty-based considerations, maintaining some continuity with the past.[68]

C. The Supreme Court's Two General Jurisdiction Cases Between International Shoe *and* Goodyear

In the more than sixty-five years between *International Shoe* and *Goodyear*, the Supreme Court decided many specific jurisdiction cases, but it decided only two cases on general jurisdiction.[69] And neither of these two cases provided

64. *Int'l Shoe Co.*, 326 U.S. at 317.

65. *Id.* (emphasis added).Justice Black's dissent made clear that even if the majority held to some notions of sovereignty, he disliked using fairness as a test for personal jurisdiction. He argued that phrases like "fair play," "justice," and "reasonableness" had "strong emotional appeal" yet were too "elastic" and stood to limit the power of the states to regulate and tax those individuals whose activities affected what happened within its borders. *Id.* at 325–26 (Black, J., dissenting).

66. *See* Genetin, *supra* note 7, at 119 (observing that the case is "capable of competing constructions").

67. *See, e.g.*, Edwin A. Naylor, Comment, *The Constitutionality of the Seider Practice After* Shaffer v. Heitner, 49 U. COLO. L. REV. 321, 324 (1978) ("In *International Shoe*, the court shifted the inquiry from the central concern of 'power' over a defendant to the interrelationship between the defendant, the litigation, and the forum."); Charles W. "Rocky" Rhodes, *Clarifying General Jurisdiction*, 34 SETON HALL L. REV. 807, 812–13 (2004) ("In the mid-twentieth century, *International Shoe Co. v. Washington* reformulated the jurisdictional touchstone from a state's power over those present within its territory to an analysis of the fairness or reasonableness of an exercise of jurisdiction premised on the defendant's forum contacts.").

68. *See* Genetin, *supra* note 7, at 119 (observing "a second, narrower approach" in *International Shoe* is one "that privileges state territorial authority in a manner akin to *Pennoyer v. Neff*"); Rhodes, *supra* note 67, at 813 ("Yet *International Shoe*'s new conception still incorporated elements of the preexisting American jurisdictional theories.").

69. *See* Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 925 (2011) (observing that the Court had decided only two general jurisdiction cases since *International Shoe*).

great insight into the doctrine because the outcome in both cases was so obvious.[70]

1. *The First Decision*: Perkins v. Benguet Consolidated Mining Co.

The first case came less than a decade after *International Shoe*, when the reframed jurisprudence of personal jurisdiction was still in its infancy. *Perkins v. Benguet Consolidated Mining Co.*[71] involved a silver and gold mining company, which had relocated its operations from the Philippines to Ohio during World War II, that was sued by Idonah Perkins on claims arising under Philippine law involving dividends and stock certificates.[72] The Ohio Supreme Court had determined that its state's courts lacked personal jurisdiction over the company.[73]

After dispensing with some preliminary issues, the Court reached the critical question: whether the Fourteenth Amendment's Due Process Clause prohibited Ohio from issuing a judgment against the mining company on claims arising out of events that did not take place in Ohio. The Court framed the issue as "one of general fairness to the corporation."[74] The Court explained that simply registering to do business in the state was not conclusive that personal jurisdiction existed.[75] What really mattered were "continuous and systematic corporate activities" that "make it fair and reasonable to subject that corporation" to personal jurisdiction in Ohio.[76] The Court recognized that this case "takes [the Court] one step further" in that the subject matter of the lawsuit involved out-of-state activities.[77] But this extra step gave the Court no pause, as it pointed to *International Shoe* to conclude that due process permitted the exercise of personal jurisdiction over claims arising from out-of-state conduct against a defendant whose in-state activities were sufficiently substantial.[78]

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70. *See* Trammell, *supra* note 11, at 510 ("Because both [*Perkins* and *Helicopteros*] seemed so easy on their facts, they offered only limited guidance to lower courts.").

71. 342 U.S. 437 (1952).Although the Court did not use the language of general jurisdiction, *see* sources cited *supra* note 55, its framing of the issue makes clear that it considered this case one of general jurisdiction, *see Perkins*, 342 U.S. at 438 ("The corporation has been carrying on in Ohio a continuous and systematic, but limited, part of its general business. Its president, while engaged in doing such business in Ohio, has been served with summons in this proceeding. The cause of action sued upon did not arise in Ohio and does not relate to the corporation's activities there.").

72. *Id.* at 438–39.

73. *Id.* at 439.

74. *Id.* at 445.

75. *Id.*

76. *Id.*

77. *Id.* at 446.

78. *Id.* at 446–47.

Applying this rule to the facts of this case, the Court held that Ohio could exercise personal jurisdiction over the mining company and decide Perkins's claims.[79] The Court drew on the description of the facts offered by the Ohio Court of Appeals: After the Japanese conquered the Philippines early in World War II, the president and general manager of the mining company returned to his home in Ohio.[80] From this new location, he "did many things on behalf of the company," including keeping files, carrying on correspondence, handling the company's payroll, holding directors' meetings, and supervising activities in the Philippines.[81] All of this activity amounted to "continuous and systematic supervision of the necessarily limited wartime activities of the company."[82]

The Court's decision in *Perkins* warrants several observations. First is the Court's reliance on general jurisdiction. Although another seemingly obvious point, the Court in this case expressly approved of general jurisdiction, in a way that it had not done in *International Shoe*.[83] *International Shoe* had implicitly recognized the doctrine, but that decision had not relied on general jurisdiction for its holding.[84] In *Perkins*, the Court based its decision on general jurisdiction, leaving no doubt that this concept remained viable in the *International Shoe* world.[85]

Of equal importance is the Court's invocation of fairness to the defendant.[86] In other words, the Court (at least in this case) viewed fairness as the "why" that justified the "what" of general jurisdiction.[87] This articulation of the due process test for personal jurisdiction embraced *International Shoe*'s dominant theme.[88] *Perkins* did not, however, ever touch upon any sovereignty-based justification for personal jurisdiction, which was present in *International Shoe*.[89] The Court's silence on this justification does not necessarily mean the Court viewed that justification as illegitimate, as its silence cannot be treated as akin to disavowing all sovereignty-based justifications for personal jurisdiction. Still, the Court's singular reliance on fairness represents, at the very least, a

79. *Id.* at 447–48.

80. *Id.* at 447.

81. *Id.* at 448.

82. *Id.*

83. *See* Brilmayer, Haverkamp, & Logan, *supra* note 19, at 724 (noting that the Court "voiced its approval of general jurisdiction" in *Perkins*).

84. Int'l Shoe Co. v. Washington, 326 U.S. 310, 320 (1945).

85. *Perkins*, 342 U.S. at 447–49.

86. *See id.* at 445 (explaining that the issue was "one of general fairness to the corporation").

87. *Id.*

88. *Id.*

89. *See generally id.* at 437.

shift in the justification for personal jurisdiction.

Perkins is also noteworthy for its "extreme facts."[90] This case is the only time that the Court has upheld the exercise of general jurisdiction.[91] The outcome of this case is, even upon cursory reflection, unsurprising. Justice Ginsburg went so far in *Goodyear* as to call *Perkins* the "textbook case of general jurisdiction."[92] In essence, the headquarters of the mining company had been moved from the Philippines to Ohio as a result of the Japanese occupation,[93] meaning that Ohio was now a place where the company could be considered "at home," to use the Court's more recent metaphor for general jurisdiction.[94]

Finally, the Court's language of "continuous and systematic" to describe the mining company's activities was largely adopted by lower courts as the standard for whether a defendant was subject to general jurisdiction.[95] Federal courts began employing this language to determine whether they could exercise general personal jurisdiction over defendants.[96]

2. *The Second Decision:* Helicopteros Nacionales de Colombia, S.A. v. Hall

The Court's only other general jurisdiction case in between *International Shoe* and *Goodyear* was *Helicopteros Nacionales de Colombia, S.A. v. Hall*.[97] If *Perkins* was an easy case in which general jurisdiction did exist, *Helicopteros* was an easy case in which general jurisdiction did not exist.

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90. Hoffheimer, *supra* note 5, at 566.

91. *Id.* at 565.

92. Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 928 (2011) (quoting Donahue v. Far E. Air Transport Corp., 652 F.2d 1032, 1037 (D.C. Cir. 1981)).

93. *See* WILLIAMSON MURRAY & ALLAN R. MILLET, A WAR TO BE WON 181–88 (2000) (describing the Japanese conquest of the Philippines early in World War II).

94. *See* Daimler AG v. Bauman, 134 S. Ct. 746, 761 n.19 (2014).

95. *See* Brilmayer, Haverkamp, & Logan, *supra* note 19, at 724 (observing that this language "became the test used by lower courts to evaluate assertions of general jurisdiction"); Cornett & Hoffheimer, *supra* note 7, at 112 ("Before *Daimler*, courts accepted the theory that sufficiently significant and continuous contacts could support general jurisdiction.").

96. *See, e.g.*, Allison v. Lomas, 387 F. Supp. 2d 516, 519–20, 521 (M.D.N.C. 2005) (applying the "continuous and systematic" language for general jurisdiction in holding that it lacked personal jurisdiction over a defendant-lawyer who lived in Maryland and maintained his law office in Washington, D.C.); CEM Corp. v. Pers. Chemistry AB, 192 F. Supp. 2d 438, 442 (W.D.N.C. 2002) (holding that "untargeted advertising and solicitation in national trade journals and at national industry trade shows and via a passive website, responding to requests initiated by [the plaintiff], and de minimus sales activities, are wholly insufficient to support the exercise of general personal jurisdiction" over an out-of-state defendant).

97. 466 U.S. 408 (1984).

Helicopteros was a Colombian company that provided helicopter transportation for oil and construction companies in South America.[98] In January 1976, one of the company's helicopters crashed, killing four Americans who were on board.[99] These four people worked for a Peruvian consortium whose alter ego was a joint venture based in Houston, known as Consorcio.[100] Consorcio had contracted with Helicopteros to provide services for its construction of a pipeline in Peru, and the negotiations for the contract took place in Houston, to which the Helicopteros CEO travelled at the request of Consorcio.[101]

Helicopteros had a few other contacts with Texas as well. It purchased eighty percent of its helicopters from a Texas-based company between 1970 and 1977, along with spare parts and accessories, totaling more than $4 million.[102] Helicopteros sent pilots to Texas to train and retrieve helicopters.[103] It also received payments from Consorcio's bank located in Texas.[104] Helicopteros, however, had no real or personal property in Texas, did not solicit business in the state, and was not registered to do business there.[105]

Based on these contacts, the representatives of the four Americans killed in the 1976 crash sued Helicopteros in Texas state court.[106] The Texas Supreme Court ultimately concluded that the Due Process Clause permitted the exercise of personal jurisdiction over Helicopteros.[107]

The Supreme Court disagreed. The Court began its analysis by quoting *International Shoe*'s language of "minimum contacts" and "traditional notions of fair play and substantial justice."[108] The Court reaffirmed the validity of general jurisdiction:

> Even when the cause of action does not arise out of or relate to the foreign corporation's activities in the forum State, due process is not offended by a State's subjecting the corporation to its *in personam* jurisdiction when there are sufficient contacts between the State and the foreign corporation.[109]

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98. *Id.* at 409.
99. *Id.* at 409–10.
100. *Id.* at 410.
101. *Id.*
102. *Id.* at 411.
103. *Id.*
104. *Id.*
105. *Id.* at 411–12.
106. *Id.* at 412.
107. *Id.* at 412–13.
108. *Id.* at 414 (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)).
109. *Id.* (internal footnote omitted).Note how this articulation of general jurisdiction—"sufficient contacts between the State and the *foreign* corporation"—sweeps far more broadly than the "at home"

Recognizing that the plaintiffs had not sought to invoke specific jurisdiction, the Court framed the issue in this case as "whether [Helicopteros's contacts with Texas] constitute the kind of continuous and systematic general business contacts" that existed in *Perkins*.[110] The Court gave little weight to the CEO's single trip to the Lone Star state, and the Court counted as "negligible" the fact that Consorcio's payments were drawn on a Texas-based bank.[111] The Court was equally unpersuaded by the purchase of helicopters and training of pilots in Texas, relying on its 1923 decision in *Rosenberg Brothers & Co. v. Curtis Brown Co.*[112] (an opinion cited approvingly in *International Shoe*)[113] to reject the idea that regular purchases in a state make a corporation subject to general jurisdiction in that state.[114]

As with *Perkins*, *Helicopteros* merits several observations. First, this case seems as straightforward as *Perkins*, just in the opposite direction. Although Justice Brennan argued in his dissent that specific jurisdiction should exist here,[115] the majority opinion made clear that the parties agreed that specific jurisdiction did not exist and that this case involved only general jurisdiction.[116] Focusing therefore on only general jurisdiction, this case cannot be difficult. Indeed, if a Texas court were to have general jurisdiction over Helicopteros, then general jurisdiction would amount to nothing more than "doing business" jurisdiction. In other words, simply doing any business in a state beyond an isolated transaction could give rise to jurisdiction in that state for any unrelated claim.

Second, the Court's reliance on its 1923 decision in *Rosenberg* indicates that *International Shoe* did not implicitly overrule all of the Court's earlier decisions on personal jurisdiction, despite Justice Brennan's protestations to the contrary.[117] Much of the Court's analysis in *International Shoe* itself should

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rule.

110. *Id.* at 416.

111. *Id.* at 416–17.

112. 260 U.S. 516 (1923).

113. *See* Int'l Shoe Co. v. Washington, 326 U.S. 310, 318 (1945).

114. *Helicopteros*, 466 U.S. at 417–18.Justice Brennan's dissent in *Helicopteros* challenged the continuing validity of *Rosenberg*, based on the fact that it was decided before *International Shoe* and argued that this case was one in which specific jurisdiction should exist because, according to Justice Brennan, Helicopteros's contacts with Texas were related to the accident. *See id.* at 420–28 (Brennan, J., dissenting).

115. *See id.* at 427–28.

116. *See id.* at 415 (Opinion of the Court).

117. *See id.* at 421–23 (Brennan, J., dissenting).In later years, however, the Court would put less weight on these pre-*International Shoe* decisions. *See* Daimler AG v. Bauman, 134 S. Ct. 746, 761

have made this clear. There, the Court discussed a plethora of earlier personal jurisdiction cases without ever suggesting those cases were no longer good law.[118] The continuing validity of these cases is significant because it underscores that the ideas underlying those decisions still continue to have some impact on the theories of personal jurisdiction.

3. *General Jurisdiction in Light of* Perkins *and* Helicopteros

The fact that *Perkins* and *Helicopteros* were easy cases may have been nice for the Justices deciding those cases, but it was unfortunate for district judges, circuit judges, and state court judges. Because the cases were so straightforward, the Court's resolution of them did not necessarily provide clear guidance for lower courts.[119] Without such guidance, courts' approach to general jurisdiction was inconsistent, and they thus "often reach[ed] discordant results."[120]

For example, on some occasions, courts refused to stretch general jurisdiction when a defendant's activities in a state were limited.[121] These decisions required a "substantial" connection between the defendant and the forum state.[122] But on other occasions, courts seemingly lowered the bar, relying on merely volume of sales and the presence of a sales representative in the state to hold that general jurisdiction existed.[123]

Ultimately, the state of general personal jurisdiction after *International Shoe* (or really, after *Perkins*) was inconsistent, but it centered on a defendant's continuous and systematic contacts with the forum.[124] This standard meant that

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n.18 (2014) ("*Perkins*' unadorned citations to these cases, both decided in the era dominated by *Pennoyer*'s territorial thinking, should not attract heavy reliance today." (internal citation omitted)).

118. *See Int'l Shoe Co.*, 326 U.S. at 317–19.

119. *See* Twitchell, *supra* note 22, at 612 (stating that the Court's general jurisdiction decisions provide little guidance for "how courts are to determine the scope of general jurisdiction in the future").

120. Brilmayer, Haverkamp, & Logan, *supra* note 19, at 724; *see also* Pielemeier, *supra* note 60, at 980–84 (describing the confusion and inconsistency in how federal courts approached general jurisdiction after *Helicopteros*).

121. *See, e.g.*, Accu-Sport Int'l, Inc. v. Swing Dynamics, Inc., 367 F. Supp. 2d 923, 927–28 (M.D.N.C. 2005) (holding that general jurisdiction did not exist based on limited transactions in the forum state).

122. Zuffa, LLC v. Showtime Networks, Inc., No. 2:07-CV-00369RLHPAL00369-RLH-PAL, 2007 WL 2406812, at *2 (D. Nev. Aug. 17, 2007).

123. *See, e.g.*, S. Pride, Inc. v. Turbo Tek Enters., Inc., 117 F.R.D. 566, 575–76 (M.D.N.C. 1987) (pointing to sales, a sales representative in the state, and local advertisements to hold "without hesitation" that general jurisdiction existed).Still, this decision was not as lax in interpreting general jurisdiction as decisions from other courts. *See* Trammell, *supra* note 11, at 512 ("Other courts set the bar even lower, holding that defendants could be subject to general jurisdiction based only on a high volume of sales in the forum (despite a lack of physical presence there).").

124. *See supra* notes 95–96 and accompanying text (describing the use of "continuous and systematic" as the standard for general jurisdiction after *Perkins*).

general jurisdiction required a more stringent showing than specific jurisdiction,[125] but general jurisdiction was often treated as meaning "that national corporations with substantial operations in all fifty states (such as McDonalds or WalMart) would likely be subject to general personal jurisdiction in all fifty states."[126]

III. THE SUPREME COURT'S REARTICULATION OF GENERAL JURISDICTION

After general jurisdiction remained mired in this haze for decades, the Supreme Court finally offered "needed guidance" for courts and litigants.[127] The Court's new focus on general jurisdiction began in 2011 in *Goodyear*, and it continued three years later in *Daimler AG*.[128] This Part explores those two decisions and how lower federal courts have interpreted the Court's newly announced rule.

A. The Narrowing Begins: Goodyear

The facts of *Goodyear* are heartbreaking. Two thirteen-year-old boys from North Carolina, Julian Brown and Matthew Helms, were in France on a trip with other young soccer players.[129] The boys "were once considered among the best young soccer players in their home state of North Carolina. . . . [and] were invited to play on [an] Olympic development team at European tournaments."[130] On the bus ride to Charles de Gaulle Airport outside of Paris to begin their trip home, a tire blew, and the bus overturned.[131] Both Brown and Helms were killed.[132]

Their parents sued various Goodyear entities, including Goodyear USA and

125. *See, e.g.*, Worldwide Ins. Network, Inc. v. Trustway Ins. Agencies, LLC, No. 1:04CV00906, 2006 WL 288422, at *6 (M.D.N.C. Feb. 6, 2006) (observing that general jurisdiction imposes a "more stringent" analysis than specific jurisdiction does); 4 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1067.5 (3d ed. 2002) (recognizing the difference between standards of general and specific jurisdiction).

126. Charles W. "Rocky" Rhodes & Cassandra Burke Robertson, *Toward a New Equilibrium in Personal Jurisdiction*, 48 U.C. DAVIS L. REV. 207, 214 (2014).

127. Hoffheimer, *supra* note 5, at 551.

128. *See* Genetin, *supra* note 7, at 107–08 ("[I]n *Goodyear Dunlop Tires Operations, S.A. v. Brown*, the Supreme Court began the move toward its new doctrinal approach.").

129. Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 920 (2011).

130. Brief for Respondents at 3, Goodyear Luxembourg Tires, S.A. v. Brown, 564 U.S. 915 (2011) (No. 10-76).

131. *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at 920.

132. *Id.*

Goodyear affiliates in France, Turkey, and Luxembourg.[133] The tire was allegedly manufactured by the Turkish subsidiary,[134] and the claims against the foreign subsidiaries were based on theories of negligent design, construction, testing, and inspection.[135] The foreign subsidiaries had no place of business or employees in North Carolina, and they did not design, manufacture, or advertise their tires in the state.[136] They did, however, have a small percentage of their tires distributed in North Carolina by other Goodyear affiliates.[137]

The North Carolina Court of Appeals held that the foreign subsidiaries were subject to general jurisdiction in the state.[138] That court's analysis focused on a stream-of-commerce theory that had developed in the Supreme Court's specific jurisdiction cases.[139] The court of appeals concluded that the foreign subsidiaries "have, without question, purposefully and intentionally manufactured tires and placed them in the stream of interstate commerce without any limitation on the extent to which those tires could be sold in North Carolina."[140]

The Supreme Court rejected this analysis. The Court, in an opinion by Justice Ginsburg, began with the Due Process Clause and the "canonical opinion" of *International Shoe*.[141] The Court explained the difference between general and specific jurisdiction and observed that its decisions since *International Shoe* focused primarily on specific, not general, jurisdiction.[142]

Criticizing the North Carolina Court of Appeals for blurring these concepts, the Court explained that "[a] corporation's 'continuous activity of some sorts within a state . . . is not enough to support the demand that the corporation be

133. *Id.* at 920–21.Unlike the foreign subsidiaries, Goodyear USA did not challenge North Carolina's exercise of personal jurisdiction over it. *Id.* at 921.

134. *Id.*

135. Brown v. Meter, 681 S.E.2d 382, 384 (N.C. Ct. App. 2009) *rev'd sub nom. Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. 915.

136. *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at 921.

137. *Id.* The Court stated that the foreign subsidiaries had "tens of thousands out of tens of millions manufactured between 2004 and 2007" distributed in North Carolina. *Id.*

138. *Id.* at 921–22.

139. *See, e.g.*, World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297–98 (1980) ("The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.").How broad this concept stretches is unclear in light of the Court's decision *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 876, 877 (2011). Decided the same day as *Goodyear*, *Nicastro* casts doubt on this theory, but *Goodyear* discussed the stream-of-commerce analysis not unfavorably. *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at 927.

140. *Brown*, 681 S.E.2d at 394.

141. *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at 923.

142. *Id.* at 924.

amenable to suits unrelated to that activity.'"[143] Instead, the contacts must be sufficiently continuous and systematic "as to render [the defendant] essentially *at home* in the forum State."[144] The Court reviewed *Perkins* and *Helicopteros* to illustrate the nature of general jurisdiction and then compared this case to those earlier decisions, holding that general jurisdiction did not exist in this case.[145]

In many ways, *Goodyear* was an even easier case than *Perkins* or *Helicopteros*. One scholar has gone so far as claiming that "[i]t is hard to imagine a more egregious example of a lower court's abuse of general jurisdiction possibilities than what occurred in *Goodyear*."[146] Despite the ease of determining the correct outcome, the Court did take the affirmative step of laying out a specific test for general jurisdiction that addressed the doctrine more concretely than earlier cases.

In that vein, *Goodyear*'s most impactful holding was its "clos[ing] the door on the most expansive applications of general jurisdiction."[147] In the words of one commentator, the decision "represented a dramatic shift" in general jurisdiction.[148] The Court embraced explicitly the "continuous and systematic" language from *Perkins*, but the Court limited those types of contacts to ones that are so strong as to make a defendant "at home" in the forum.[149] Thus, the broader conceptions of general jurisdiction that had developed over previous decades are no longer valid.[150] Indeed, virtually immediately after *Goodyear*, scholars recognized this change.[151]

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143. *Id.* at 927 (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 318 (1945)).

144. *Id.* at 919 (emphasis added).

145. *Id.* at 929 ("Measured against *Helicopteros* and *Perkins*, North Carolina is not a forum in which it would be permissible to subject petitioners to general jurisdiction.").

146. Cox, *supra* note 34, at 162; *see also* Stein, *supra* note 5, at 528, 530 (calling the decision "deeply flawed" and noting that "[i]f a first-year law student had written that answer on my Civil Procedure final exam, I would have had a hard time giving it a passing grade"); Trammell, *supra* note 11, at 513 (stating that "the Supreme Court expeditiously corrected a convoluted—perhaps even specious—jurisdictional analysis by the North Carolina courts" (internal footnote omitted)).

147. Cornett & Hoffheimer, *supra* note 7, at 114.

148. Trammell, *supra* note 11, at 515.

149. *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at 919.

150. *See* sources cited *supra* note 123; *see also* Pielemeier, *supra* note 60, at 989 ("One fairly clear consequence of the case is that general jurisdiction based on regular sales in the forum is clearly dead.").

151. *See, e.g.*, Meir Feder, Goodyear*, "Home," and the Uncertain Future of Doing Business Jurisdiction*, 63 S.C. L. REV. 671, 678 (2012); Todd David Peterson, *The Timing of Minimum Contacts After* Goodyear *and* McIntyre, 80 Geo. WASH. L. REV. 202, 216 (2011); Charles W. "Rocky" Rhodes, *Nineteenth Century Personal Jurisdiction Doctrine in A Twenty-First Century World*, 64 FLA. L. REV.

Yet the Court offered little detail on exactly what this narrowed view of general jurisdiction meant or why it was necessary. The use of "at home" was a new analogy in personal jurisdiction jurisprudence—"a neologism lacking any fixed legal meaning," as one scholar puts it.[152] In addition to the lack of a full explanation of the scope of the term "at home," the Court's reasoning in *Goodyear* also left unanswered the question of *why* general jurisdiction should be narrowed.[153] Despite these open questions and criticisms,[154] *Goodyear* was seen by at least one commentator as "a highly positive development" for a doctrine that had seen scant attention from the Supreme Court.[155]

B. The Narrowing Continues: Daimler AG

If *Goodyear* was the opening volley in restricting general jurisdiction, *Daimler AG* was the full assault. The Court's analysis and language solidified—even if not completely clarified—the new, narrower limits of general jurisdiction.

The case arose when the plaintiffs sued Daimler AG, the German manufacturer of Mercedes-Benz cars, in federal court in California, alleging that Daimler AG's Argentinian subsidiary "collaborated with state security forces to kidnap, detain, torture, and kill certain MB Argentina workers" during Argentina's Dirty War between 1976 and 1983,[156] in violation of the Alien Tort Statute[157]

387, 430 (2012).At least one scholar, however, has observed that the *Goodyear* decision can be interpreted in vastly different ways. Potentially, it could be a sweeping revision to general jurisdiction; alternatively, it could simply be extending the reasoning of *Helicopteros* to apply to sporadic sales in a jurisdiction. *See* Hoffheimer, *supra* note 5, at 573–90 (analyzing these two potential interpretations of *Goodyear*).

152. Hoffheimer, *supra* note 5, at 583.Professor Hoffheimer criticized the introduction of "at home" as resulting in too many metaphors in personal jurisdiction jurisprudence. *See id.* at 594–95. But notably, the idea of "at home" as a concept of general jurisdiction existed long before *Goodyear*. *See, e.g.*, Twitchell, *supra* note 22, at 633 (observing that "general jurisdiction is almost always available at a defendant's 'home base'"). Plus, most of the metaphors involve specific jurisdiction, not general jurisdiction, so "at home" should not be particularly confusing, as long as courts keep the lines of specific and general jurisdiction separate. *See infra* notes 337–46 and accompanying text.

153. *See* Cox, *supra* note 34, at 165 ("The *Goodyear* opinion Justice Ginsburg wrote for a unanimous Court did not provide any underlying general jurisdiction rationales that would lead ineluctably to Justice Ginsburg's restrictive preferences. The missing 'why' for general jurisdiction continued to be missing.").

154. *See* Hoffheimer, *supra* note 5, at 595–602 (discussing the questions that remain open); Rhodes & Robertson, *supra* note 126, at 227 ("[T]he Court's rulings probably raised more questions than they settled, and the opinions certainly raised new grounds for fights over personal jurisdiction.").

155. Pielemeier, *supra* note 60, at 989.

156. Daimler AG v. Bauman, 134 S. Ct. 746, 751 (2014).

157. 28 U.S.C. § 1350 (1948).

and the Torture Victim Protection Act.[158] The plaintiffs sought to hold Daimler AG liable for the acts of its Argentinian subsidiary, and their theory of jurisdiction was that Daimler AG was subject to general jurisdiction in California based on either Daimler AG's own contacts in the state, or alternatively, based on the contacts of MBUSA, its American subsidiary.[159] The district court dismissed the complaint based on a lack of personal jurisdiction.[160] The Ninth Circuit initially affirmed that decision,[161] but it subsequently granted the plaintiffs' petition for rehearing[162] and reversed the district court's decision, holding that MBUSA's contacts with California could be imputed to Daimler AG.[163]

In another opinion by Justice Ginsburg, the Supreme Court held that general jurisdiction did not exist over Daimler AG. The Court again offered a historical review of its personal jurisdiction jurisprudence, beginning with *Pennoyer*, moving to *International Shoe*, *Perkins*, and *Helicopteros*, and finally focusing on *Goodyear*.[164]

Against this backdrop, the Court focused on the facts of this case specifically.[165] It rejected the Ninth Circuit's agency theory of jurisdiction because exercising personal jurisdiction over a corporation whenever its subsidiary provided "important" services to the parent corporation and had sufficient contacts with a state for personal jurisdiction would "subject foreign corporations to general jurisdiction whenever they have an in-state subsidiary or affiliate, an outcome that would sweep beyond even the 'sprawling view of general jurisdiction' [the Court] rejected in *Goodyear*."[166]

Instead of a "sprawling" rule of general jurisdiction, the Court explained that "only a limited set of affiliations with a forum" give rise to general jurisdiction.[167] The Court observed that "[f]or an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile."[168] For a

158. Torture Victim Protection Act of 1991, Pub. L. 102-256, 106 Stat. 73 (1992).

159. *Daimler AG*, 134 S. Ct. at 752.

160. *See* Bauman v. Daimlerchrysler AG, No. C-04-00194 RMW, 2007 WL 486389 (N.D. Cal. Feb. 12, 2007).

161. *See* Bauman v. DaimlerChrysler Corp., 579 F.3d 1088, 1098 (9th Cir. 2009).

162. *See* Bauman v. DaimlerChrysler Corp., 603 F.3d 1141 (9th Cir. 2010).

163. *See* Bauman v. DaimlerChrysler Corp., 644 F.3d 909, 931 (9th Cir. 2011).

164. *Daimler AG*, 134 S. Ct. at 753–58.

165. The Court made several initial observations. First, it noted that the plaintiffs never argued that specific jurisdiction could apply. *Id.* at 758. Second, it stated that Daimler AG never contended that MBUSA was not subject to personal jurisdiction in California. *Id.*

166. *Id.* at 759–60 (quoting Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 929 (2011)).

167. *Id.* at 760.

168. *Id.* (quoting *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at 924).

corporation, "the place of incorporation and principal place of business are 'paradigm bases for general jurisdiction.'"[169] These examples "have the virtue of being unique," which makes them "easily ascertainable."[170]

The Court did note that these examples are not necessarily exclusive.[171] Yet the Court was quick to disabuse courts and litigants of the idea that this nonexclusivity meant general jurisdiction was not still particularly narrow, rejecting the plaintiffs' theory that would "approve the exercise of general jurisdiction in every State in which a corporation engages in a substantial, continuous, and systematic course of business."[172] The Court stated that the stand-alone "continuous and systematic" language from *International Shoe* was relevant to specific jurisdiction, not general jurisdiction.[173] Instead, the proper test "is whether that corporation's 'affiliations with the State are so "continuous and systematic" as to render it essentially at home in the forum State.'"[174] In conducting this analysis, a court must "apprais[e] . . . a corporation's activities in their entirety, nationwide and worldwide [because a] corporation that operates in many places can scarcely be deemed at home in all of them."[175]

Under these rules, the Court needed only a paragraph to explain that personal jurisdiction did not exist in this case. Essentially, the Court's holding turned on the fact that neither Daimler AG nor MBUSA had its principal place of business in California.[176]

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169. *Id.* (internal alterations omitted) (quoting Brilmayer, Haverkamp, & Logan, *supra* note 19, at 735).

170. *Id.*

171. *Id.*

172. *Id.* at 761 (internal quotation marks omitted).

173. *Id.*

174. *Id.* (internal alteration omitted) (quoting Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011)).

175. *Id.* at 762 n.20; *see also* Cornett & Hoffheimer, *supra* note 7, at 140 ("*Daimler* requires a comparative evaluation of a corporation's interstate or international activity.").

176. *Daimler AG*, 134 S. Ct. at 762.Justice Sotomayor concurred in the judgment only. She first contended that the majority opinion swept more broadly than the case required. *See id.* at 764, 766–67 (Sotomayor, J., concurring in the judgment). She then argued that substance of the majority's opinion was wrong and that the touchstone of personal jurisdiction since *International Shoe* had always been reasonableness. *See id.* at 765. She rejected the idea that a corporation being subject to general jurisdiction in a multitude of jurisdictions is unfair or unpredictable. *See id.* at 770. To the extent having to litigate in a particular forum would be unfair, a defendant could invoke a doctrine like *forum non conveniens*. *See id.* at 771. Justice Sotomayor argued that the majority's decision resulted in four "deep injustice[s]": (1) "unduly curtail[ing] the States' sovereign authority to adjudicate disputes against corporate defendants who have engaged in continuous and substantial business operations within their boundaries," *id.* at 772; (2) "treat[ing] small businesses unfairly in comparison to national and multinational conglomerates," *id.*; (3) "creat[ing] the incongruous result that an individual defendant whose only contact with a forum State is a one-time visit will be subject to general jurisdiction if

This most recent general jurisdiction case leads to several conclusions. First, like the prior general jurisdiction cases, *Daimler AG* is also an easy case. Consider the way the Court introduced the case: "This case concerns the authority of a court in the United States to entertain a claim brought by foreign plaintiffs against a foreign defendant based on events occurring entirely outside the United States."[177] Framed this way, the case's outcome can hardly be debated.[178] But unlike *Perkins* and *Helicopteros* and like *Goodyear*, the Court used this case as an opportunity to delve more deeply into the doctrine of general jurisdiction.

Second, the decision elucidated—and perhaps even further narrowed—the holding in *Goodyear*.[179] The Court left no doubt that a defendant is subject to general jurisdiction in only a limited number of places, as illustrated by the paradigm examples of an individual's domicile and a corporation's principal place of business or state of incorporation.[180] The question no longer is one of "continuous and systematic" contacts as *Perkins* had framed it, but now is whether those contacts make the defendant "at home" in the forum.[181] This point is further illustrated by the Court's instruction that a defendant's contacts with a forum must be compared to its contacts elsewhere because looking at contacts with the forum alone can be insufficient to determine where a defendant is "at home."[182] This required analysis stands in stark contrast with Justice Sotomayor's concurrence, which took no issue with the possibility of a defendant being subject to general jurisdiction in virtually limitless forums.[183]

Third, although *Daimler AG* does not prohibit the exercise of general juris-

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served with process during that visit, but a large corporation that owns property, employs workers, and does billions of dollars' worth of business in the State will not be," *id.* at 772–73 (internal citation omitted); and (4) "shift[ing] the risk of loss from multinational corporations to the individuals harmed by their actions," *id.* at 773.

177. *Id.* at 750 (Opinion of the Court).

178. Indeed, the majority and Justice Sotomayor had no quibble about the correct result.

179. *See* Trammell, *supra* note 11, at 518 ("*Daimler* reaffirmed the 'at home' test for general jurisdiction. Without explicitly saying so, it also moved ever closer to the most restrictive interpretation of that standard.").

180. *Daimler AG*, 134 S. Ct. at 757–58.

181. *See* Hoffheimer, *supra* note 5, at 582 ("The Court breaks new ground, however, with the announcement that the continuous and systematic affiliations required for general jurisdiction must be tantamount to establishing a legal home."); Pielemeier, *supra* note 60, at 991 ("[A] limitation of general jurisdiction over corporations to places where they are 'at home,' appears clearly to envision fewer places than one could envision under tests of 'presence,' 'doing business,' and 'continuous and systematic general business contacts.'").

182. *Daimler AG*, 134 S. Ct. at 757, 762.

183. *Id.* at 764, 769–70.

diction by a forum that does not fit into one of the paradigm examples, conceiving of such a forum is difficult.[184] The Court cited *Perkins* as an example,[185] but actually, the mining company in *Perkins* had made Ohio its temporary principal place of business during the war, meaning that *Perkins* still fit within the Court's paradigm examples.

Unsurprisingly, a rule that so sharply narrowed general jurisdiction is not without its critics. Some have argued that the Court ignored historical trends that were inconsistent with its argument.[186] The rule has also been viewed as pro-business, allowing corporations to avoid general jurisdiction in most forums at the expense of individual plaintiffs.[187] Others have criticized the rule as being unfair to smaller litigants.[188] A theme in these criticisms is the focus more on the outcomes of cases under the "at home" rule,[189] rather than on doctrinal considerations.[190]

C. The Narrowing Is Being Applied

In response to *Goodyear* and *Daimler AG*, lower federal courts generally began applying a stricter test to determine whether a defendant was subject to general personal jurisdiction.[191] Even a quick survey of lower federal court

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184. *See* Trammell, *supra* note 11, at 520 ("At various points throughout the opinion [in *Daimler*], though, the Court signaled how little room there is for deviation from the paradigm examples.").

185. *Id.* (citing *Daimler AG*, 134 S. Ct. at 761 n.19).

186. Cornett & Hoffheimer, *supra* note 7, at 107 (arguing that the Court's historical review "omits inconsistent trends and neglects the actual scope of judicial power exercised by state courts in the past" (internal footnote omitted)); *see also* Cox, *supra* note 34, at 171 ("The *Daimler* Court asserted that it was only being faithful to prior case law in imposing its restrictive test. A restrictive approach to general jurisdiction, however, was not justified solely on what had been said or ruled in prior cases." (internal footnote omitted)).

187. *See, e.g.*, Cornett & Hoffheimer, *supra* note 7, at 105–06 ("*Daimler* is a game changer. In advancing the policy goal of giving corporations the power to limit states where they must answer legal claims, the Court shrinks the places of general jurisdiction against many large corporations to one or two states.").

188. *See, e.g.*, Hanigan, *supra* note 12, at 301 ("The Court's test breeds unfair results and undermines notions of 'fair play and substantial justice.'").

189. *See, e.g.*, Cornett & Hoffheimer, *supra* note 7, at 162 ("The Court's formal rules, coupled with its novel metaphors, do not just prevent consideration of appropriate facts. They tend to conceal the Court's movement towards bad rules: rules that generate undesirable results for many cases.").

190. *See, e.g.*, Cox, *supra* note 34, at 173 ("The most disappointing aspects of the *Daimler* Court's approach to general jurisdiction relate to its lack of any foundational explanation for the doctrine, and its unwillingness to address tensions between its assumptions and personal jurisdiction case law more generally.").

191. State courts have also taken heed, including those in North Carolina after the Supreme Court's criticism of the North Carolina Court of Appeals' analysis in *Goodyear*. *See, e.g.*, Weisman v. Blue Mountain Organics Distribution, LLC, No. 13 CVS 3490, 2014 WL 4403105, at *5 (N.C. Super. Ct. Sept. 5, 2014) (applying *Daimler AG* and *Goodyear* and holding that general personal jurisdiction

decisions since *Goodyear* and *Daimler* shows that the "at home" rule is taking hold.

For example, the Middle District of North Carolina "appl[ied] the stringent principles" of these new cases to hold that an Ohio corporation was not subject to general jurisdiction in North Carolina.[192] The court focused on the defendant's contacts within the forum state compared to its contacts elsewhere, heeding the Court's instruction in *Daimler AG*.[193]

Other courts around the country have similarly been applying the "at home" rule. The Eastern District of Pennsylvania noted that the rule was "more stringent" than the "continuous and systematic" language of *Perkins* in holding that general jurisdiction did not exist.[194] The Southern District of New York has made the same observation.[195] Indeed, since *Goodyear*, courts are more frequently holding that general jurisdiction does not exist.[196]

Although many courts are now restricting the scope of general jurisdiction, some courts continue to find ways to exercise their authority over out-of-state defendants based on general jurisdiction.[197] The Southern District of Florida, for instance, strained to distinguish *Daimler AG* because finding that general jurisdiction did not exist "would effectively deprive American citizens from litigating in the United States for virtually all injuries that occur at foreign resorts maintained by foreign defendants even where, as here, the corporations themselves maintain an American sales office in Florida and heavily market in the jurisdiction."[198] The Northern District of Illinois similarly used factual distinctions with *Goodyear* to exercise general jurisdiction over a defendant who was not based in that state but that "maintained regular, continuous business

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did not exist); Danius v. Sun TV Network Ltd., No. 09 CVS 18696, 2012 WL 987856, at *5 (N.C. Super. Ct. Mar. 22, 2012) (applying *Goodyear* and holding that general personal jurisdiction did not exist).

192. Estate of Thompson v. Mission Essential Pers., LLC, No. 1:11CV547, 2014 WL 4745947, at *2 (M.D.N.C. Sept. 23, 2014).

193. *Id.* at *3 (explaining that "the inquiry does not rest on [d]efendant's activity relative to the activity of other businesses in the state, but rather the inquiry focuses on [d]efendant's in-state activity compared with the whole of [d]efendant's own business activities").

194. Farber v. Tennant Truck Lines, Inc., 84 F. Supp. 3d 421, 430–33 (E.D. Pa. 2015).

195. *See* SPV OSUS Ltd. v. UBS AG, 114 F. Supp. 3d 161, 167 (S.D.N.Y. 2015) (noting that in *Daimler*, "the Supreme Court announced a more stringent standard for finding a corporation to be 'essentially at home' in a foreign jurisdiction").

196. *See* NExTT Sols., LLC v. XOS Techs., Inc., 71 F. Supp. 3d 857, 862 (N.D. Ind. 2014) ("It is easier to locate examples of post-*Goodyear* cases finding the absence of general jurisdiction.").

197. *See* Genetin, *supra* note 7, at 108 ("Some lower courts, nevertheless, interpreted *Goodyear* broadly and continued to permit general jurisdiction based on a defendant's continuous and systematic forum contact.").

198. Barriere v. Juluca, No. 12-23510-CIV, 2014 WL 652831, at *9 (S.D. Fla. Feb. 19, 2014).

contacts" and "solicit[ed] business, s[old] and market[ed] products" there.[199] Cases such as these, however, appear to be in the minority, with most courts now applying stricter standards for general jurisdiction.[200]

The Supreme Court's decisions have also led to other changes in general jurisdiction. Perhaps the most noticeable is the trend away from treating a corporation's compliance with state registration statutes (that is, statutes requiring a business to designate an agent for service of process in a state to do business in that state) as a basis for exercising general jurisdiction on a theory of consent.[201]

IV. THE MYRIAD JUSTIFICATIONS FOR PERSONAL JURISDICTION

Any analysis of why general jurisdiction was properly narrowed in *Goodyear* and *Daimler AG* necessarily requires a justification for why personal jurisdiction exists at all. In other words, there must be a reason why a defendant can be sued in only certain courts. Indeed, virtually everyone agrees that a person who lives in Ohio and causes a car accident in Michigan cannot be sued about that accident in Indiana. But *why* that person cannot be sued in Indiana is a question without such a simple answer.

Unsurprisingly yet unfortunately, the Supreme Court has never agreed on a single theory—or even necessarily compatible theories—to justify limitations on personal jurisdiction.[202] Likewise, legal scholars are divided on this issue.[203] This section examines these competing justifications for personal jurisdiction. The goal here is not to canvass every proffered justification (indeed, that would

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199. J.B. *ex rel*. Benjamin v. Abbott Labs. Inc., No. 12-CV-385, 2013 WL 452807, at *3 (N.D. Ill. Feb. 6, 2013).

200. *See, e.g.*, Vision Motor Cars, Inc. v. Valor Motor Co., 981 F. Supp. 2d 464, 473–74 (M.D.N.C. 2013) (holding that general personal jurisdiction did not exist); Gilbarco Inc. v. Tronitec, Inc., No. 1:11-CV-352, 2012 WL 1020244, at *4 (M.D.N.C. Mar. 26, 2012) (same).

201. *See* Pub. Impact, LLC v. Boston Consulting Grp., Inc., 117 F. Supp. 3d 732, 739 (M.D.N.C. 2015) ("At least some courts have interpreted *Daimler* to mean that a defendant's mere conformance with a State's business registration statute 'cannot constitute consent to jurisdiction' and therefore is not sufficient for general jurisdiction." (quoting AstraZeneca AB v. Mylan Pharm., Inc., 72 F. Supp. 3d 549, 556 (D. Del. 2014))).

202. *Cf.* Cox, *supra* note 34, at 173 ("The most disappointing aspects of the *Daimler* Court's approach to general jurisdiction relate to its lack of any foundational explanation for the doctrine [of general personal jurisdiction] . . . .").

203. *Compare* Roger H. Trangsrud, *The Federal Common Law of Personal Jurisdiction*, 57 GEO. WASH. L. REV. 849, 853 (1989) (arguing that consent is the basis for personal jurisdiction), *with* Martin H. Redish, *Due Process, Federalism, and Personal Jurisdiction: A Theoretical Evaluation*, 75 NW. U. L. REV. 1112, 1115–17 (1981) (arguing that fairness and convenience is the proper basis for personal jurisdiction).

take a large book).[204] Instead, this Article seeks to lay out some of the most common justifications in Supreme Court case law.

I have canvassed the Supreme Court's personal jurisdiction decisions (both specific and general) and have distilled from these cases the theories that have served as the basis for limiting personal jurisdiction. The Court has not always identified these theories as theories *per se*. Rather, these are often the concerns underlying the Court's decision or articulation of a test for personal jurisdiction, and in some cases, multiple theories are invoked. But even if not explicitly announced as theories, they can be readily identified as reasons why we have personal jurisdiction.

The first three theories discussed here—territoriality, fairness, and consent—are the most prevalent in the Court's case law. Thus, they receive the primary attention here. But these are not the only justifications for personal jurisdiction that Justices have put forth. Four other theories have appeared prominently enough to warrant consideration: foreseeability, convenience of the defendant, the forum's interest, and a defendant's liberty interest.

These justifications are not all equal. Some are more persuasive than others, and some have more support in case law than others.[205] Fully exploring the relative merits of these justifications, however, is beyond the scope of this Article. The goal here is not to determine which justification provides the most solid foundation for limiting personal jurisdiction. Rather, this Article analyzes these justifications to provide a sufficient understanding of each justification to study general jurisdiction more closely in Part V.

A. Territoriality

The first of the Court's three primary justifications for personal jurisdiction is territoriality. As *Pennoyer* and even earlier cases made clear,[206] limitations

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204. *See generally* Patrick J. Borchers, *Jurisdictional Pragmatism:* International Shoe*'s Half-Buried Legacy*, 28 U.C. DAVIS L. REV. 561 (1995) (proposing a utilitarian view of personal jurisdiction); Walter W. Heiser, *A "Minimum Interest" Approach to Personal Jurisdiction*, 35 WAKE FOREST L. REV. 915, 961 (2000) (proposing an approach to personal jurisdiction that is similar to the principles of the RESTATEMENT (SECOND) OF CONFLICT OF LAWS (1971)).

205. One of these justifications, however, may not be sufficient by itself. *See* Sachs, *supra* note 11, at 1314 ("The concerns listed above—convenience, fairness, and political authority—are all perfectly reasonable. We want personal jurisdiction doctrines, whatever they might be, to allow suit in a convenient forum. We want the burden of litigation on the defendant to be fair. And we want the tribunal to have legitimate authority to decide the case. These aren't unusual or improper wants, but they are incompatible. There's simply no way that a single doctrine of personal jurisdiction can achieve all these things at once.").

206. *See, e.g.*, Lafayette Ins. Co. v. French, 59 U.S. (18 How.) 404, 407–08 (1855); Mills v. Duryee, 11 U.S. (7 Cranch) 481, 484 (1813); The Betsey, 3 U.S. (3 Dall.) 6 (1794).

on personal jurisdiction can be based on a sovereign's power over its territory.[207] On some level, "presence" may be a better way to conceive of this justification. A state's boundary lines will affect its authority under any theory; what really is at issue in this justification is a defendant's presence (whether actual or constructive) in a state. Personal jurisdiction originally developed based on this rationale, but since *International Shoe*, the territorial-based justification has been discounted by some Justices[208] and rejected by others.[209]

Despite *International Shoe* and academic criticism,[210] the idea has not completely disappeared. Just over a decade after *International Shoe*, Chief Justice Warren cautioned that, even in light of the "flexible standard" announced in that case,

> it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States.[211]

And in *J. McIntyre Machinery, Ltd. v. Nicastro*[212] (a case decided the same day as *Goodyear*), Justice Kennedy emphasized a sovereign's right to exercise power "within its sphere."[213] Often, this concept is now framed in terms of federalism, ensuring that one state does not encroach too much on other states.[214] These cases show how ideas of territoriality and presence still pervade personal jurisdiction. That territoriality still appears in personal jurisdiction

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207. *See, e.g.*, Pennoyer v. Neff, 95 U.S. 714, 720 (1877) ("The authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established."); *see also supra* notes 28–30 and accompanying text.

208. *See* Linda S. Mullenix, *Personal Jurisdiction Stops Here: Cabining the Extraterritorial Reach of American Courts*, 45 U. TOL. L. REV. 705, 723 (2014) (referring to *Pennoyer* as "a theory somewhat discredited after" *International Shoe*); Sward, *supra* note 36, at 443–44 ("While remnants of the territorial theory of jurisdiction are present in the *International Shoe* requirement of 'minimum contacts' with the state, territorial boundaries are no longer the end of the analysis.").

209. *See* Cox, *supra* note 34, at 180 ("If jurisdiction was found to be legitimate without such territorial power, as *Shoe* expressly approved, then jurisdiction was not based on power but on something else. In short, repudiating one of the inevitable results of *Pennoyer*'s foundational postulate meant that the postulate itself had been repudiated.").

210. *See, e.g.*, Lea Brilmayer, *Jurisdictional Due Process and Political Theory*, 39 U. FLA. L. REV. 293, 308 (1987) (critiquing territoriality as a justification for personal jurisdiction).

211. Hanson v. Denckla, 357 U.S. 235, 251 (1958) (internal citation omitted).

212. 564 U.S. 873 (2011).

213. *Id.* at 879.

214. *See, e.g.*, World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980) (observing that personal jurisdiction "acts to ensure that the States through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system").

jurisprudence is unsurprising, given the role of both originalism[215] and inertia[216] in legal thought.

Other Justices, however, sought to limit the impact of territoriality. Justice Marshall, for instance, tried to minimize Chief Justice Warren's language from *Hanson v. Denckla*[217] on the role of territoriality in justifying jurisdiction by characterizing that language as "simply mak[ing] the point that the States are defined by their geographical territory."[218] And as recently as *Daimler AG*, Justice Ginsburg gave little weight to cases that relied on "*Pennoyer*'s territorial thinking."[219]

B. Fairness

The Court's second major theory of personal jurisdiction is fairness, a view first announced by Chief Justice Stone in *International Shoe*. The now-famous language of ensuring sufficient contacts that "the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'" encapsulates this concept.[220] At its core, this rule is about a court's belief that the exercise of jurisdiction is reasonable.[221] It requires a "defendant-focused" analysis of the contacts between the defendant and the forum to determine if those contacts are sufficient to permit the forum to issue a binding judgment against the defendant.[222]

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215. Originalism has really developed as a legal movement since the late twentieth century. *See* Stephen E. Sachs, *Originalism As A Theory of Legal Change*, 38 HARV. J.L. & PUB. POL'Y 817, 822–38 (2015) (discussing various forms of originalism). But looking to the original meaning of legal rules is far older than this current movement. *Cf.* Reagan v. United States, 157 U.S. 301, 303 (1895) (going back to English law to determine the meaning of the word "felonies").

216. *See, e.g.*, William J. Stuntz, *Local Policing After the Terror*, 111 YALE L.J. 2137, 2148 (2002) (observing that "[c]onstitutional law changes slowly").

217. 357 U.S. 235 (1958).

218. Shaffer v. Heitner, 433 U.S. 186, 204 (1977).

219. Daimler AG v. Bauman, 134 S. Ct. 746, 761 n.18 (2014).

220. Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)).

221. *See, e.g.*, J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 903 (2011) (Ginsburg, J., dissenting) ("The modern approach to jurisdiction over corporations and other legal entities, ushered in by *International Shoe*, gave prime place to reason and fairness."); Patrick J. Borchers, J. McIntyre Machinery*,* Goodyear*, and the Incoherence of the Minimum Contacts Test*, 44 CREIGHTON L. REV. 1245, 1264 (2011) (arguing that "*International Shoe* was an opinion entirely about fairness and not state sovereignty").

222. Peter L. Markowitz & Lindsay C. Nash, *Constitutional Venue*, 66 FLA. L. REV. 1153, 1194 (2014); *see also* Davis v. St. Paul-Mercury Indem. Co., 294 F.2d 641, 647 (4th Cir. 1961) (analyzing personal jurisdiction by focusing on the Texas-based defendant being required to litigate in North Carolina).

The minimum contacts test that represents this concept of fairness is ubiquitous in the Court's case law since 1945. Virtually every Justice who has written a personal jurisdiction opinion has quoted or cited this portion of *International Shoe*, from those like Justice Brennan[223] and Justice Marshall[224] who emphatically rejected ideas from the Court's pre-*International Shoe* decisions to those like Justice Scalia who readily embraced the relevance of *Pennoyer*'s teaching for modern jurisprudence.[225] Regardless of the esteem in which these Justices held older cases, they recognized that the minimum contacts test provided greater flexibility for courts to exercise personal jurisdiction over defendants located outside of the forum, a necessity in an increasingly mobile society.[226]

This idea often serves as the starting point for the analysis in each case, even when Justices reach opposite conclusions. For instance, in *World-Wide Volkswagen Corp. v. Woodson*,[227] Justice White wrote for the Court, holding that an automobile distributor and retailer from New York was not subject to personal jurisdiction in Oklahoma.[228] Justice Marshall and Justice Brennan both dissented, arguing that personal jurisdiction should exist.[229] All three Justices, however, based their decision on *International Shoe*'s minimum contacts test.[230] *Helicopteros* saw a similar pattern: Justice Blackmun's opinion for the

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223. *See, e.g.*, Burnham v. Super. Ct., 495 U.S. 604, 630 (1990) (Brennan, J., concurring in the judgment) (quoting *International Shoe*'s minimum contact language and rejecting *Pennoyer*).

224. *See generally* Shaffer v. Heitner, 433 U.S. 186 (1977) (relying on *International Shoe*'s language to reject the reasoning of *Pennoyer* for *in rem* jurisdiction).

225. *See Burnham*, 495 U.S. at 616–18 (Opinion of the Court) (relying on *Pennoyer* in interpreting the meaning of minimum contacts).

226. *See, e.g.*, Daimler AG v. Bauman, 134 S. Ct. 746, 753 (2014) ("In time, however, that strict territorial approach yielded to a less rigid understanding, spurred by 'changes in the technology of transportation and communication, and the tremendous growth of interstate business activity.'" (quoting *Burnham*, 495 U.S. at 617).

227. 444 U.S. 286 (1980).

228. *Id.* at 299.

229. *Id.* at 312–13 (Brennan, J., dissenting); *id.* at 317 (Marshall, J., dissenting).

230. *See id.* at 291 (Opinion of the Court); *id.* at 299 (Brennan, J., dissenting); *id.* at 313 (Marshall, J., dissenting).The fact that Justices routinely start with the minimum contacts test yet regularly reach different results is an undeniable problem with the Court's framework for personal jurisdiction. Justice Black actually predicted that confusion would follow the Court's decision in *International Shoe*. *See* case cited *supra* note 65.This lack of clarity has serious consequences for litigants. *See, e.g.*, Winton D. Woods, Burnham v. Superior Court*: New Wine, Old Bottles*, 13 GEO. MASON U. L. REV. 199, 203 (1990); *cf.* Wm. Grayson Lambert, *Focusing on Fulfilling the Goals: Rethinking How Choice-of-Law Regimes Approach Statutes of Limitations*, 65 SYRACUSE L. REV. 491, 531 (2015) ("By having a clear rule about which statute of limitations applies, a potential defendant knows with certainty that either the defendant can be sued for some action or cannot be sued for that action—a clear rule leaves no doubt. If a defendant knows that a statute of limitations has run, the defendant can therefore move forward with various affairs, confident that a plaintiff could bring suit. But if the statute of limitations

Court and Justice Brennan's dissent both started with *International Shoe*, but they reached different conclusions on whether jurisdiction existed.[231]

C. Consent

The third common justification for personal jurisdiction in the Court's jurisprudence is consent. Consent-based theories are at the core of American political thought, serving as the foundation of political theories that culminated in the Constitution and that continue to influence how Americans conceive of their political life, so that these ideas appear in the Court's reasoning is unsurprising.[232]

Justice Kennedy's plurality opinion in *Nicastro* provides a classic example of consent in personal jurisdiction cases. As that was a specific jurisdiction case, Justice Kennedy used language from that line of jurisprudence, writing: "As a general rule, the sovereign's exercise of power requires some act by which the defendant 'purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.'"[233] On a most basic level, this idea of consent asks "whether the defendant's activities manifest an intention to submit to the power of a sovereign."[234] Various ways a defendant could consent to personal jurisdiction include express consent, being physically served with process in the forum, and

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has not run, the defendant can know that the possibility of a lawsuit remains and must plan accordingly.").

231. *Compare* Helicopteros Nacionales de Colom., S.A. v. Hall, 466 U.S. 408, 414–18 (1984) (holding, based on *International Shoe*, that jurisdiction did not exist), *with id.* at 420 (Brennan, J., dissenting) (arguing, based on *International Shoe*, that jurisdiction did exist).

232. *See, e.g.*, Trangsrud, *supra* note 203, at 885 (1989) (discussing the consent-based nature of the American Constitution). For an example of influential pre-Revolution social-contract thinking, see generally JOHN LOCKE, TWO TREATISES OF GOVERNMENT (Peter Laslett ed., Cambridge Univ. Press 1988) (1690). As one illustration of how consent and the social contract influence the Founders, John Adams wrote in 1776, "It is certain, in theory, that the only moral foundation of government is, the consent of the people." Letter from John Adams to James Sullivan (May 26, 1776), reprinted in 9 CHARLES FRANCIS ADAMS, THE WORKS OF JOHN ADAMS 375 (1854).Consent has generated substantial debates among legal scholars. For examples of scholars who argue that consent is a legitimate basis for exercising personal jurisdiction, see generally Richard A. Epstein, *Consent, Not Power, as the Basis for Jurisdiction*, 2001 U. CHI. L. F. 1, 1–3 and Trangsrud, *supra* note 203. For examples of those scholars who fervently disagree, see generally Lea Brilmayer, *Consent, Contract, and Territory*, 74 MINN. L. REV. 1 (1989), and Pamela J. Stephens, *Sovereignty and Personal Jurisdiction Doctrine: Up the Stream of Commerce Without A Paddle*, 19 FLA. ST. U. L. REV. 105 (1991).

233. J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 880 (2011) (quoting Hanson v. Denckla, 357 U.S. 235, 253 (1958)).

234. *Id.* at 882.Justice Ginsburg's dissent in *Nicastro* criticized this theory, calling it "unnecessary and unhelpful." *Id.* at 901 (Ginsburg, J., dissenting).

citizenship in the forum.[235]

Consent, however, is nothing new to the Court's personal jurisdiction jurisprudence. It appears in much earlier cases, such as *Lafayette Insurance Co. v. French*,[236] in which the Court held that an Indiana-based insurance company had consented to jurisdiction in Ohio by registering to do business in the state.[237]

Often, consent appears in the Court's decisions as an exchange-based concept, including in *International Shoe* itself.[238] This expression of consent was perhaps most plainly stated in Justice Brennan's concurrence in *Burnham*. In that opinion, Justice Brennan argued that the defendant had implicitly consented to personal jurisdiction in the forum by being present there and taking advantage of the state's protections: "[The defendant's] health and safety are guaranteed by the State's police, fire, and emergency medical services; he is free to travel on the State's roads and waterways; he likely enjoys the fruits of the State's economy as well."[239]

Consent also serves as the reason that the Court has held that defendants can waive personal jurisdiction as a defense. In *Burger King Corp. v. Rudzewicz*,[240] for example, Justice Brennan noted that parties can voluntarily submit their disputes to a decisionmaker.[241] This idea repeatedly appears in the Court's decisions.[242]

D. Foreseeability

I now turn to justifications that have appeared with some regularity in the Court's jurisprudence but that have not been as prominent as territoriality, fairness, or consent.

The first theory in this second tier is foreseeability. Like fairness, this justification is also rooted in reasonableness.[243] This justification focuses less on

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235. *Id.* at 880 (Opinion of the Court).

236. 59 U.S. (18 How.) 404 (1855).

237. *Id.* at 407–08.

238. *See* Int'l Shoe Co. v. Washington, 326 U.S. 310, 319 (1945) (noting the protections and benefits that a defendant may enjoy from its activities in a forum).

239. Burnham v. Super. Ct., 495 U.S. 604, 637–38 (1990) (Brennan, J., concurring in the judgment).

240. 471 U.S. 462 (1985).

241. *Id.* at 472 n.14.

242. *See, e.g.*, Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 704 (1982) (noting that the Court had previously "upheld the personal jurisdiction of a District Court on the basis of a stipulation entered into by the defendant"); *cf.* Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co., 484 U.S. 97, 104 (1987) (discussing consent in the context of service of process).

243. *See* J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 882 (2011) ("In *Asahi*, an opinion

the defendant's contacts with the forum and more on whether the defendant "should reasonably anticipate being haled into court there."[244] This focus on expectations, rather than relationships, is what fundamentally distinguishes this theory from the fairness justification.

Foreseeability has been championed most vigorously by Justice Brennan,[245] who had a very broad conception of when jurisdiction was foreseeable.[246] Justice Brennan focused heavily on this concept in his majority opinion in *Burger King*,[247] as well as in his concurring opinion in *Asahi Metal Industry Co. v. Superior Court*,[248] in which he argued that the majority was retreating from its earlier views on foreseeability.[249]

Despite Justice Brennan's best efforts,[250] foreseeability has never taken hold as a central theory for personal jurisdiction. Even before Justice Brennan's most vigorous arguments on this concept, the Court had held that "'foreseeability' alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause."[251] And in *Nicastro*, Justice Kennedy confirmed that foreseeability was a test that the Court had never adopted.[252]

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by Justice Brennan for four Justices outlined a different approach. It discarded the central concept of sovereign authority in favor of considerations of fairness and foreseeability.").

244. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).

245. *See, e.g.*, Asahi Metal Indus. Co. v. Super. Ct., 480 U.S. 102, 116–21 (1987) (Brennan, J., concurring in part and concurring in the judgment).

246. *See* Cox, *supra* note 34, at 194 ("Justice Brennan's version of equating choice-of-law and personal jurisdiction meant that he never saw a case where he did not want to assert personal jurisdiction and seldom found unconstitutional any application of forum law." (internal footnote omitted)).

247. *See* Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 (1985) (discussing the role of foreseeability in the due process analysis).

248. 480 U.S. 102 (1987).

249. *Id.* at 118–19 (Brennan, J. concurring in the judgment).

250. As a careful reading of this Part shows, Justice Brennan was often on the losing end of personal jurisdiction cases, leading one scholar to call him "the great dissenter" in these cases. Howard B. Stravitz, *Sayonara to Fair Play and Substantial Justice?*, 63 S.C. L. REV. 745, 751 (2012).

251. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 295 (1980).This was a point Justice Brennan himself had to concede as much in his opinion in *Burger King*. *See Burger King Corp.*, 471 U.S. at 474 ("Although it has been argued that foreseeability of causing *injury* in another State should be sufficient to establish such contacts there when policy considerations so require, the Court has consistently held that this kind of foreseeability is not a 'sufficient benchmark' for exercising personal jurisdiction." (internal footnote omitted)).

252. *See* J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 883 (2011) ("But Justice Brennan's concurrence, advocating a rule based on general notions of fairness and foreseeability, is inconsistent with the premises of lawful judicial power. This Court's precedents make clear that it is the defendant's actions, not his expectations, that empower a State's courts to subject him to judgment.").

E. Convenience of the Defendant

Another less prominent justification from the Court is the convenience of the defendant. The Supreme Court has held that "jurisdictional rules may not be employed in such a way as to make litigation 'so gravely difficult and inconvenient' that a party unfairly is at a 'severe disadvantage' in comparison to his opponent."[253] The Court tied this rule to *International Shoe*, explaining that "even if the defendant has purposefully engaged in forum activities," forcing the defendant to litigate in a distant forum may still violate due process.[254]

Typically this theory is invoked as a secondary or additional reason in an opinion.[255] For example, in *Asahi Metal Industry Co.*, Justice O'Connor spent the bulk of the plurality opinion focused on minimum contacts, as explained by the idea of a purposeful availment.[256] Yet at the end, in the concluding summary of the Court's analysis, Justice O'Connor referred to the burden of the Japanese-based defendant litigating this case in a California court as an additional reason that personal jurisdiction did not exist.[257]

This idea received greater weight from Justice White in *World-Wide Volkswagen*. He pointed to protecting a defendant from "the burdens of litigating in a distant or inconvenient forum" as one of the functions of personal jurisdiction.[258] He actually framed this burden argument as a part of the minimum-contacts test, connecting these ideas through *International Shoe*'s language of "fair play."[259] Still, litigating in an inconvenient forum was not the

253. *Burger King Corp.*, 471 U.S. at 478 (quoting Mcgee v. Int'l Life Ins. Co., 355 U.S. 220, 223 (1957) and M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 18 (1972)).

254. *Id.* at 477–78; *see also* United States v. Morton, 467 U.S. 822, 828 (1984) (stating that "personal jurisdiction protects the individual interest that is implicated when a nonresident defendant is haled into a distant and possibly inconvenient forum"); Davis v. St. Paul-Mercury Indem. Co., 294 F.2d 641, 647 (4th Cir. 1961) (considering the burden on an out-of-state defendant to litigate in the forum).

255. Some scholars have advocated this justification. For instance, Professor Redish has argued that it should be the basis of determining when personal jurisdiction exists. *See* Redish, *supra* note 203, at 1115. But as Professor Stein notes, the idea "has had relatively little traction" in the Court's decisions. Stein, *supra* note 5, at 535.

256. *See* Asahi Metal Indus. Co. v. Super. Ct., 480 U.S. 102, 111–13 (1987).

257. *See id.* at 116 (noting "the heavy burden on the alien defendant" of litigating in California).For other examples of the Court relying on the convenience of the defendant, see *Burger King Corp.*, 471 U.S. at 477 (noting that one factor a court may consider in its due process analysis for personal jurisdiction is the "burden on the defendant"), and *Morton*, 467 U.S. at 828 (explaining that "personal jurisdiction protects the individual interest that is implicated when a nonresident defendant is haled into a distant and possibly inconvenient forum").

258. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980).

259. *Id.*

core of this opinion, and it was subsumed under the concept of fairness.[260] And even when the burden on a defendant was separately considered as something that could potentially defeat personal jurisdiction despite a defendant's minimum contacts with the forum,[261] this consideration was still secondary to minimum contacts, and it is clear that such a case would be the exception.

Moreover, the idea of an inconvenient forum has been minimized—or flatly rejected—in other cases as the focus of personal jurisdiction. Chief Justice Warren in *Hanson* took the view that personal jurisdiction is "more than a guarantee of immunity from inconvenient or distant litigation" and represents a limit on the power of a court.[262] As Chief Justice Warren's position shows, convenience of the defendant has never been fully embraced by the Court as a significant justification for personal jurisdiction,[263] but its role in influencing the Court's decision-making is undeniable.

F. The Forum's Interest

Another secondary justification that the Court has offered at times is the forum's interest in exercising jurisdiction.[264] This justification is rooted in the idea that a state, as a sovereign with a duty to protect its citizens and promote justice, has a need to ensure that injured individuals have recourse, guilty individuals are forced to right their wrongs, and not guilty individuals are not unfairly required to pay for someone else's wrongdoing.[265]

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260. *Id.* at 291–99.

261. *See Burger King Corp*., 471 U.S. at 477–78.Some scholars have interpreted the Court's decisions in *World-Wide Volkswagen* and *Burger King* as adopting a two-branch approach to personal jurisdiction: first, whether the defendant has minimum contacts with the forum; and second, if so, whether the presumption of personal jurisdiction is overcome by convenience and burden factors. *See* Stravitz, *supra* note 250, at 750–55.

262. Hanson v. Denckla, 357 U.S. 235, 251 (1958).

263. The three most prominent theories have certainly been limited or deemphasized by Justices in various cases, but these opinions recognize the significant role that these theories have played in the case law. Chief Justice Warren's point was different: convenience had simply never played such a significant role in personal jurisdiction cases. *Id.* at 251.

264. Rhodes & Robertson, *supra* note 126, at 265 ("The state's interest in protecting its citizens lies at the heart of the adjudicatory system; jurisdictional limits that counteract the state's ability to enforce its legislative priorities necessarily erode the judicial safeguards within our federal system.").

265. *See Burger King Corp.*, 471 U.S. at 473 ("We have noted several reasons why a forum legitimately may exercise personal jurisdiction over a nonresident who 'purposefully directs' his activities toward forum residents. A State generally has a 'manifest interest' in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors."); *cf.* U.S. CONST. pmbl. ("We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.").

The unique aspect of this theory is that Justices have generally agreed on the limited role that it can play in determining whether personal jurisdiction exists, whereas Justices have heatedly debated what role, if any, other justifications should have.[266] The Court has repeatedly recognized the circumscribed role for the forum's interest in personal jurisdiction analysis. For example, in *Kulko v. Superior Court*,[267] Justice Marshall stated that the forum's interest in exercising jurisdiction was "to be considered," but he indicated that it was less important than the "essential criterion" of whether the exercise of jurisdiction was fair to the defendant.[268] And in *World-Wide Volkswagen*, the Court noted that the burden on the defendant must be "considered in light of other relevant factors," including the forum's interest in deciding the case.[269] Although the Court has noted that the weight of the forum's interest in the jurisdictional analysis may vary depending on the facts of the case, it has consistently given this theory a minor role in its analysis.[270]

The limitations on this justification were shown most clearly in *Nicastro*. In that case, the plaintiff injured his hand in a metal-shearing machine manufactured by the defendant, an English company, and he sued that manufacturer in New Jersey state court.[271] In holding that the defendant was not subject to personal jurisdiction in New Jersey, the Court acknowledged the New Jersey Supreme Court's argument that the state claimed a "strong interest in protecting its citizens from defective products."[272] This interest alone, however, was insufficient to permit the exercise of personal jurisdiction.[273] This case thus illustrates how the forum's interest can support a conclusion about whether personal jurisdiction exists, but it is not sufficient for the exercise of personal jurisdiction.

G. A Defendant's Liberty Interest

The last of the second-tier theories of personal jurisdiction—a defendant's liberty interest—is different than the preceding three. For the first three, the

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266. *Burger King Corp*., 471 U.S. at 478; Kulko v. Super. Ct., 436 U.S. 84, 92 (1978).

267. 436 U.S. 84 (1978).

268. *Id.* at 92.

269. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980).

270. *See* Asahi Metal Indus. Co. v. Super. Ct., 480 U.S. 102, 114 (1987) ("When minimum contacts have been established, often the interests of the plaintiff and the forum in the exercise of jurisdiction will justify even the serious burdens placed on the alien defendant.").

271. J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 878 (2011).

272. *Id.* at 887 (quoting Nicastro v. McIntyre Mach. Am., Ltd., 987 A.2d 575, 590 (N.J. 2010)).

273. *Id.*

ideas were ones that the Court had never fully embraced as the core of an opinion. Some Justices had advocated for the idea, or the idea was a secondary consideration. But for this last justification, the Court has, in one decision, based its decision squarely on that justification.

The Court relied on this rationale as the core of its reasoning in *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*.[274] The Court there, in an opinion by Justice White, contrasted personal jurisdiction with subject-matter jurisdiction, noting that while subject-matter jurisdiction is a restriction on judicial power, personal jurisdiction "recognizes and protects an individual liberty interest."[275] This difference was highlighted by the fact that personal jurisdiction is tied to the Due Process Clause, rather than to Article III.[276]

This case was the first time that the Court invoked this liberty theory of personal jurisdiction. Since that time, the idea has appeared in other decisions but never again as the central piece of the Court's analysis. In *Burger King Corp.*, the Court introduced its analysis with this liberty point, but it never returned to it.[277] The idea appeared in Justice Kennedy's opinion in *Nicastro* but only in a small role in the latter part of the Court's analysis.[278]

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These seven theories, each of which is based on due process,[279] represent the most prominent ideas for justifying limits on personal jurisdiction.[280] The

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274. 456 U.S. 694, 702–04 (1982).

275. *Id.* at 702.

276. *Id.* ("The requirement that a court have personal jurisdiction flows not from Art. III, but from the Due Process Clause.").

277. *See* Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 & n.13 (1985).

278. *See J. McIntyre Mach., Ltd.*, 564 U.S. at 884.The Court has pointed to the language from *Insurance Corp. of Ireland* in other contexts outside of personal jurisdiction, including in deciding whether a federal court may determine personal jurisdiction before subject-matter jurisdiction, *see* Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 584 (1999), and in choice-of-law issues, *see* Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 807 (1985).

279. Given the existence of personal jurisdiction prior to the Fourteenth Amendment's adoption, as well as other problems in personal jurisdiction jurisprudence, we must recognize that the personal jurisdiction is actually rooted in something other than the Due Process Clause. Ever since *International Shoe*, however, courts have treated as gospel the idea that personal jurisdiction is a due process-based concept. Challenging that concept is beyond the scope of this Article, but it is an issue I will tackle in a forthcoming article.

280. One concept not discussed here is the idea that general jurisdiction always ensures that the plaintiff has a forum in which to bring a lawsuit. *See, e.g.*, Hoffheimer, *supra* note 5, at 592 ("In some cases, however, where specific jurisdiction is not available, general jurisdiction provides the only form of jurisdiction."); Twitchell, *supra* note 22, at 631 ("First, and most important, its provision of a place where a defendant may be sued on any cause of action may serve a legitimate societal need not met by other jurisdiction theories."); *see also* Tire Eng'g & Distribution, LLC v. Shandong Linglong Rubber Co., 682 F.3d 292, 303 (4th Cir. 2012) ("The burden on the defendant, interests of the forum state, and

theories often lead to similar conclusions, but that is not always the case. The Court has never fully settled on one of these theories for why we have personal jurisdiction, and its most recent cases offer little hope that a consensus is imminent.[281] Accordingly, each of the justifications discussed in this Part may well play a role in subsequent personal jurisdiction cases, which means that the impact of the "at home" rule on each of them must be considered.

V. JUSTIFYING THE NARROWING OF GENERAL JURISDICTION

Having observed the narrowing of general personal jurisdiction in *Goodyear* and *Daimler AG* and considered the justifications for limiting personal jurisdiction at all, this Part explains why the "at home" rule is a positive jurisprudential development for personal jurisdiction. First, it is a clear rule that can be easily applied. Second, it is a logically coherent rule that promotes more consistent results: regardless of which justification for personal jurisdiction one prefers, the "at home" rule fits nicely into that framework as a logical limitation on where a defendant may be sued. In other words, the "at home" rule ensures that general jurisdiction is built on a foundation of rock, rather than sand, and is better able to withstand close scrutiny.[282]

A. The Necessary Narrowing of General Jurisdiction

As the doctrine had developed after *Perkins* and *Helicopteros*, general jurisdiction permitted a defendant to be haled into a court about any matter—even

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the plaintiff's interest in obtaining relief guide our inquiry [regarding personal jurisdiction]." (emphasis added)). This plaintiff-centric focus stands in stark contrast with the every other theory, which is defendant-focused. Moreover, this plaintiff-centric idea has never played a significant role in the Court's decisionmaking, particularly with regard to general jurisdiction. *See* Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 929–30 n.5 (2011) (explaining that "[g]eneral jurisdiction to adjudicate has in [United States] practice never been based on the plaintiff's relationship to the forum" (alterations in original) (quoting von Mehren & Donald T. Trautman, *supra* note 18, at 1137)); Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 779 (1984) (explaining the minimal role that the plaintiff's connection with the forum has in the jurisdictional analysis); Twitchell, *supra* note 22, at 633 ("If general jurisdiction is truly dispute-blind, its sole focus should be the nature of a defendant's forum contacts. Whether general jurisdiction can be exercised in a particular case should turn on the nature of those contacts and their relevance to the underlying concern of due process.").

281. Hoffheimer, supra note 5, at 594.

282. *Cf. Matthew* 7:24–27 ("Everyone then who hears these words of mine and does them will be like a wise man who built his house on the rock. And the rain fell, and the floods came, and the winds blew and beat on that house, but it did not fall, because it had been founded on the rock. And everyone who hears these words of mine and does not do them will be like a foolish man who built his house on the sand. And the rain fell, and the floods came, and the winds blew and beat against that house, and it fell, and great was the fall of it.").

those completely unrelated to that forum—as long as the defendant had sufficient continuous and systematic contacts with that forum.[283] No longer is that possible under *Goodyear* and *Daimler AG*; instead, the defendant must be "at home" in the forum.[284] This Section explains why, regardless of one's preferred justification for limiting personal jurisdiction, this "at home" requirement is a positive development for personal jurisdiction.

1. *The "At Home" Rule Is Clear*

Given the continuing relevance and the power of general jurisdiction,[285] courts and litigants need and deserve a sound doctrine. One part of a sound doctrine is ensuring that it is clear and predictable. Such a rule allows individuals and businesses to order their affairs and have rational expectations about where potential disputes could be resolved.[286] It also helps minimize expensive litigation over non-merits issues.[287]

The need for clear rules for jurisdictional issues is particularly acute. It is a point that the Supreme Court has made repeatedly in a variety of contexts.[288]

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283. *See, e.g.*, Drive Fin. Servs., LP v. Ginsburg, No. 3:06 CV 1288 G, 2007 WL 2084113, at *7 (N.D. Tex. July 19, 2007) (noting the "sweeping exercise of jurisdiction" permitted by general jurisdiction).

284. Daimler AG v. Bauman, 134 S. Ct. 746, 751 (2014); *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at 929.

285. Some scholars predicted that "general jurisdiction would diminish in importance as the Supreme Court embraced a more robust role for specific jurisdiction." Trammell, *supra* note 11, at 507 (citing von Mehren & Donald T. Trautman, *supra* note 18, at 1144; Twitchell, *supra* note 22, at 628, 676). Even if it is not as prominent as specific jurisdiction, it remains significant, as *Goodyear* and *Daimler AG* show. And even if specific jurisdiction is more commonly invoked, that does not have any bearing the doctrine of general jurisdiction itself. *See* Cox, *supra* note 34, at 174 ("A dramatic rise in the number of specific jurisdiction cases does not automatically explain why there should be a shortening of general jurisdiction reach.").

286. *See* Twitchell, *supra* note 22, at 676 ("If certainty is a valid goal, the most important characteristic of dispute-blind jurisdiction should be clarity. The parties need clear and precise criteria for determining when such jurisdiction is available, both before and after a claim arises."); *cf.* Lambert, *supra* note 230, at 530–34 (arguing that a clear, predictable rule is best for determining which state's statute of limitations applies).

287. *See, e.g.*, Patrick J. Borchers, *The Death of the Constitutional Law of Personal Jurisdiction: From* Pennoyer *to* Burnham *and Back Again*, 24 U.C. DAVIS L. REV. 19, 103 (1990) ("The real social costs are a consequence of the convoluted doctrine that engenders expensive litigation before the parties even get to the starting gate.").

288. *See, e.g.*, Direct Mktg. Ass'n v. Brohl, 135 S. Ct. 1124, 1133 (2015) (noting "the rule that '[j]urisdictional rules should be clear'" (alteration in original) (quoting Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg., 545 U.S. 308, 321 (2005) (Thomas, J., concurring))).Perhaps this point was most colorfully made in a concurring opinion by Justice Thomas, who lamented the blurring of admiralty jurisdiction this way:

> It is especially unfortunate that this has occurred in admiralty, an area that once

And it is a point that scholars have noted with regularity.[289] Ironically, the Court has recognized that the "fair play and substantial justice" standard "preclude[s] clear-cut jurisdictional rules."[290] Bringing clarity to personal jurisdiction would therefore be a significant improvement.

Typically, a clear rule is a straightforward rule. As one federal court has observed, a "bright-line rule serves important jurisdictional and procedural purposes [because] it brings certainty and predictability."[291] The best bright-line, straightforward rules are "[s]imple" ones that are easily interpreted and applied.[292]

The "at home" test checks this box. Indeed, establishing this fact is as easy as applying the rule itself. Although the rule may require some litigation in rare instances,[293] it will provide a clear answer in the vast majority of cases, in light of the Supreme Court's "paradigm" examples of an individual's domicile and a corporation's principal place of business or state of incorporation as the limits of when a defendant is subject to general jurisdiction.[294] These are, as the Court noted, unique locations that should be easy to identify.[295] Little time and few resources should therefore be spent on resolving whether a defendant is at home, and thus, subject to general jurisdiction in a particular forum. This is in stark contrast with the former rule for general jurisdiction, which required an evaluation of how substantial a defendant's contacts were with the forum with

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> provided a jurisdictional rule almost as clear as the 9th and 10th verses of Genesis: "And God said, Let the waters under the heaven be gathered together unto one place, and let the dry land appear: and it was so. And God called the dry land Earth; and the gathering together of the waters called the Seas: and God saw that it was good."

Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 549–50 (1995) (quoting *Genesis* 1:9–10).

289. *See, e.g.*, Elizabeth Y. McCuskey, *Clarity and Clarification:* Grable *Federal Questions in the Eyes of Their Beholders*, 91 NEB. L. REV. 387, 388 (2012) ("Jurists and commentators have repeated for centuries the refrain that jurisdictional rules should be clear.").

290. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 486 n.29 (1985).

291. Reyes v. CVS Pharmacy, Inc., No. 1:14-CV-00964 MJS, 2014 WL 3938865, at *3 (E.D. Cal. Aug. 11, 2014).

292. Hertz Corp. v. Friend, 559 U.S. 77, 94 (2010) ("Simple jurisdictional rules . . . promote greater predictability.").

293. *See, e.g.*, Kinsman v. Fla. St. Univ. Bd. of Trs., No. 6:15-CV-16-Orl-31KRS, 2015 WL 11110542, at *4–5 (M.D. Fla. Apr. 27, 2015) (holding that the university was not "at home" in the Middle District of Florida and transferring the case under 28 U.S.C. § 1406 to the Northern District of Florida, which encompasses Tallahassee).

294. Daimler AG v. Bauman, 134 S. Ct. 746, 760 (2014); *see also id.* ("These bases afford plaintiffs recourse to at least one clear and certain forum in which a corporate defendant may be sued on any and all claims.").

295. *Id.*

no bright-line test for when those contacts were substantial enough for general jurisdiction to exist.

2. *The "At Home" Rule Is Logically Coherent*

A logically coherent rule is also important as part of a sound doctrine. Such a rule produces internally consistent results that comport with the theory that justifies limitations on personal jurisdiction in the first place. This type of rule is important both to ensure that litigants in a particular case get an equitable result[296] and to promote courts as legitimate dispute-resolution systems for society generally.[297] The "at home" rule is internally consistent under any theoretical foundation of personal jurisdiction.

Significantly, this Part does not make any normative evaluations of any of these theories; it does not seek to determine whether each theory is better than the others. The focus then is whether the "at home" rule makes each justification more logically sound, regardless of whether it is ultimately more persuasive than other justifications.

First, starting with territoriality, any consideration of this justification must recall the era in which the justification was most prominent. People typically traveled only short distances, and many never left their home state.[298] Thus, the common understanding was that people would be sued on any matter in the state where they resided. In some sense, the "at home" test thus reaches back to the effect of personal jurisdiction rules as they existed before *International Shoe*, limiting general jurisdiction to its original scope (at least in the vast majority of cases).

Of course, under this justification, a person historically can be sued wherever the person is found,[299] which is in conflict with the "at home" test: under this justification, a person served within the state (while stopped at an Interstate rest stop, for example) is subject to general jurisdiction in the state, even if that state is not the person's domicile. Whether this historical vestige of *Pennoyer*

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296. *See* Lambert, *supra* note 230, at 501 (discussing the importance of deciding cases accurately).Reaching a fair result is especially important with general jurisdiction because of the doctrine's "deep bite." Genetin, *supra* note 7, at 113 (citing von Mehren & Donald T. Trautman, *supra* note 18, at 1143–44, 1177–79).

297. *Cf.* Wm. Grayson Lambert, Note, *The Real Debate over the Senate's Role in the Confirmation Process*, 61 DUKE L.J. 1283, 1317 (2012) ("The rule of law embodies values such as consistency, stability, predictability, and transparency.").

298. *See supra* notes 37–39 and accompanying text.

299. *See* Burnham v. Super. Ct., 495 U.S. 604, 628 (1990) (holding that "the Due Process Clause does not prohibit the California courts from exercising jurisdiction over petitioner based on the fact of in-state service of process").

remains valid is debatable,[300] but the core of the territorial justification aligns nicely with the "at home" test, as it ties general jurisdiction to a defendant's home forum and prevents other forums from exercising this tremendous power over the defendant that the "continuous and systematic" framework permitted.

Second, turning to fairness, this justification also supports limiting the scope of general jurisdiction to a defendant's home forum. From one perspective (such as Justice Sotomayor's concurrence in *Daimler AG*), this analysis should focus "solely on the magnitude of the defendant's in-state contacts."[301] Under this view, a defendant that operates significant business throughout the country could be sued about anything anywhere. According to Justice Sotomayor, this result is simply "the nature of the global economy."[302] It means that a customer in a McDonald's restaurant in Vermont who spilt hot coffee on himself can sue in Iowa about that incident, or a child running through a Home Depot in Oregon who has a display door fall on him can sue for his injuries in a Georgia court.

But this view is not necessarily consistent with *International Shoe*. As an initial matter, treating such suits that more logically belong in another state as merely a question of venue is insufficient. For one, venue and personal jurisdiction are different concepts, with venue being relevant only after personal jurisdiction is established.[303] And for another, treating this issue as one of venue significantly reduces a defendant's protections.[304] Even if such a case could be transferred under 28 U.S.C. § 1404,[305] a decision whether to transfer a case is reviewed on appeal for abuse of discretion rather than *de novo*,[306] and it could result in different state's law applying to the case.[307]

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300. *See* Cox, *supra* note 34, at 187–92 (arguing that *Burnham* was wrongly decided in light of *International Shoe*). Even if *Burnham* was rightly decided at the time, it is unclear whether that decision survives *Goodyear* and *Daimler AG*. *See, e.g.*, Stein, *supra* note 5, at 548–49.

301. Daimler AG v. Bauman, 134 S. Ct. 746, 767 (2014) (Sotomayor, J., concurring in the judgment).

302. *Id.* at 771.

303. *See* Twitchell, *supra* note 22, at 666–67.

304. *Id.* at 667.

305. 28 U.S.C. § 1404(a) (2011) ("For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.").

306. *Compare* Trs. of the Plumbers & Pipefitters Nat'l Pension Fund v. Plumbing Servs., Inc., 791 F.3d 436, 443 (4th Cir. 2015) ("We review decisions on whether to transfer venue under 28 U.S.C. § 1404 for abuse of discretion."), *with* CFA Inst. v. Inst. of Chartered Fin. Analysts of India, 551 F.3d 285, 292 (4th Cir. 2009) ("We assess de novo whether the district court possessed personal jurisdiction over the defendant in this proceeding.").

307. *See* Ferens v. John Deere Co., 494 U.S. 516, 519 (1990) (requiring a transferee court to apply the law of the transferor court when a case is transferred under § 1404(a), even when the plaintiff

More fundamentally, too broad a view of when exercising general jurisdiction is fair threatens to obliterate the distinction between general and specific jurisdiction. In adopting the minimum contacts standard in *International Shoe*, the Court contemplated roles for both general and specific jurisdiction.[308] But if general jurisdiction is nothing more than having more (even many more) contacts than specific jurisdiction, the two concepts are different only in degree, rather than in kind. The "at home" rule makes these concepts truly distinct by recognizing their different functions. Specific jurisdiction makes the judicial system more functional in a cross-border society, and general jurisdiction recognizes the unique relationship between a defendant and its home or headquarters.

Third, if consent is used to justify personal jurisdiction, the issue is in which state an individual or a corporation agrees to be sued about anything. Although individuals and corporations would presumably want not to have to consent to suit anywhere, that is unrealistic. Because the Supreme Court has recognized the validity of general jurisdiction, we have to assume that a U.S.-based defendant must consent to general jurisdiction in at least one jurisdiction.

As a theoretical matter, one can safely assume that anyone would want to limit the places where he could be sued on any matter; after all, why would anyone agree to have more places to defend litigation? Practical experience reinforces this theory: defendants routinely fight personal jurisdiction in distant, inconvenient, or unfriendly forums, despite the fact that litigating a non-merits issue can be expensive.[309] This idea is illustrated by *Goodyear*, when the U.S.-based defendant did not fight jurisdiction, while the European-based defendants did.[310]

The next question is in what state an individual or corporation would choose to consent to general jurisdiction. The logical answer is the state where the individual or corporation is based, or in other words, is at home. It would be the most convenient forum for the individual or for corporate officers, as less travel would be typically involved. It is the forum in which a defendant is most likely to be able to find a lawyer without a struggle, either from personal relationships or from recommendations of friends or colleagues. It is also the forum

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seeks the transfer).

308. *See* Int'l Shoe Co. v. Washington, 326 U.S. 310, 317–18 (1945) (discussing two types of specific jurisdiction cases and two types of general jurisdiction cases).

309. *See* Wendy Collins Perdue, *Personal Jurisdiction and the Beetle in the Box*, 32 B.C. L. REV. 529, 561 (1991) ("[Litigants] care [about personal jurisdiction] not because of abstract philosophical reasons, but because the place where the litigation is conducted has a number of practical consequences: choice of law; convenience or inconvenience for one party; and local bias or perception that judges or juries in particular locales are more or less generous.").

310. *See supra* note 133 and accompanying text.

with which the defendant is most familiar; even if the defendant has never been to court before, he at least probably knows where the courthouse is. And it is the forum in which the defendant feels the least likely to be hurt by local prejudice. Thus, the "at home" test comports with where a potential defendant would consent to general jurisdiction.

Fourth, and turning to the secondary justifications from Supreme Court decisions, the "at home" rule guarantees that the results of general jurisdiction analysis are foreseeable. This justification is premised on limiting personal jurisdiction to states in which a defendant could reasonably anticipate being sued.[311] One potential drawback of this theory is its lack of predictability.[312] For instance, Justice Brennan thought personal jurisdiction anywhere a corporation sent its products was foreseeable.[313] But Justice Kennedy clearly thought this view of personal jurisdiction swept too broadly.[314]

The "at home" rule provides much greater clarity to foreseeability: a defendant is subject to general jurisdiction in one (or perhaps two) easily identifiable forums. Additionally, this clarity should limit plaintiffs from using an ambiguous standard about substantial contacts to shop for the most favorable forum.[315] Ultimately, the "at home" rule is internally consistent under the foreseeability justification because it yields the very result the justification seeks to create—a readily identifiable forum in which a defendant may anticipate being sued.

Fifth, the convenience of the defendant also fits nicely with the "at home" test. Although litigation may never be easy, litigating in one's home forum is as easy as it could be, for the same reasons that a defendant's home forum is the place where he would logically consent to general jurisdiction. It requires less travel, is more familiar, often has evidence nearby, and allows for easier

311. *See* Twitchell, *supra* note 22, at 631–32.

312. *Cf. id.* at 674 ("As with every jurisdiction question, the more ad hoc it becomes, the more costly and less predictable it is.").

313. *See* Cox, *supra* note 34, at 194 ("Justice Brennan's version of equating choice-of-law and personal jurisdiction meant that he never saw a case where he did not want to assert personal jurisdiction and seldom found unconstitutional any application of forum law." (internal footnote omitted)).

314. *See* J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 886–87 (2011) (holding that personal jurisdiction did not exist).One could almost apply Justice Stewart's classic definition of pornography to foreseeability without the limitation of the "at home" rule: "I know it when I see it." Jacobellis v. Ohio, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

315. *See* Pielemeier, *supra* note 60, at 991 ("Permitting numerous jurisdictions to assert general jurisdiction over defendants only exacerbates the ability to forum shop, raising choice of law issues, which can be expensive to litigate and difficult to resolve."); *cf.* Genetin, *supra* note 7, at 108 ("Broadly permitting general jurisdiction when a defendant has continuous and systematic forum contacts multiplies the forums in which a defendant may be sued on claims unrelated to its in-state activity, may permit a plaintiff unwarranted forum choice, and has impeded U.S. entry into international treaties.").

access to a lawyer.[316] In addition to making the litigation logistically easier, these factors should also drive down the cost of litigation.[317]

The "at home" test guarantees that general jurisdiction is exercised only in this convenient forum. With specific jurisdiction, there is a connection between the forum and the litigation, so even if that forum is not as convenient as the defendant's home forum, it is not necessarily inconvenient because some witnesses or evidence must be in the forum where the lawsuit was filed.

But an expansive view of general jurisdiction could result in very inconvenient forums. Consider the example of the McDonald's customer who spilt hot coffee on himself in Vermont yet sues in Iowa. In that case, the employees and other customers who witnessed the accident and any physical evidence[318] would be in Vermont, but these people and the evidence would have to travel more than 1,000 miles for trial in Iowa.[319] The "at home" rule ensures that this cannot happen and that the forum for general jurisdiction is convenient.

Sixth, a forum's interest in exercising general jurisdiction is strong only when the forum has a special relationship with a defendant.[320] Issuing a binding judgment against a defendant is a significant power. And issuing a binding judgment against a defendant on a dispute unrelated to the forum is an even greater power.[321] To be able to exercise this power, a forum ought to have a

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316. *See* Twitchell, *supra* note 22, at 667 ("One of the risks associated with broader general jurisdiction is the risk of an inconvenient forum. If the defendant is forced to defend a claim that is not related to its forum activities in a forum other than its home base, the lack of litigational support and the difficulty in procuring witnesses and proof may make it much harder to defend the claim.").

317. Keeping costs down is becoming an increasingly important consideration, and it is at the core of the Federal Rules of Civil Procedure. *See* FED. R. CIV. P. 1 (stating that the Rules should be interpreted to "secure the just, speedy, and *inexpensive* determination of every action and proceeding" (emphasis added)).

318. Admittedly, technology makes transporting evidence less difficult, particularly with documents. But for some physical evidence, transportation will always be necessary.

319. Professor Stravitz offers an even more extreme example of this situtation. *See* Stravitz, *supra* note 250, at 759 ("Hypothetically, if a South Carolinian is injured by the negligence of an Exxon-Mobil employee in Alaska, a suit may be brought on this claim in a South Carolina court because Exxon-Mobil engages in substantially systematic and continuous business activity in South Carolina. This theoretical assertion of general jurisdiction may be fundamentally unfair. Witnesses, if any, public safety (police and fire department) official reports, if any, records of initial medical treatment by doctors and hospitals, if any, all are located in Alaska.").Of course, in this example, witnesses and evidence would also have to travel to Illinois, if this lawsuit were filed in the state of McDonald's headquarters. That would still create inconvenience, but the defendant would still enjoy the benefits of litigating in its home forum.

320. *Cf.* Brilmayer, Haverkamp, & Logan, *supra* note 19, at 728–29 ("A state has a special relationship with its domiciliaries that justifies the state's exercise of judicial and regulatory authority over these residents." (internal footnote omitted)).

321. *See id.* at 771 ("By hypothesis, general jurisdiction involves the adjudication of a controversy that is centered outside the forum. For such controversies, only a direct relationship between the

clear reason that it can do so. The fact that a defendant resides in the forum is a clear reason, and one that is much stronger than the fact that a defendant simply does a lot of business in the state.[322] The difference in being at home and merely doing business is not one of degree, but rather, one of kind: a defendant can only be at home in one state (or for a corporation, maybe two states), whereas a defendant can do significant amounts of business in all fifty states.[323]

This type of special relationship can be analogized to the parent-child relationship.[324] A parent may discipline a child in any context, even when the parent did not witness the child's actions. Similarly, a home forum may enter a judgment against a resident defendant for any conduct. But another adult is like a foreign jurisdiction: that adult may often act to help or rebuke a child if that adult sees the child's actions, but that adult generally does not discipline the child for unobserved conduct. The foreign jurisdiction likewise has authority only over a defendant's actions that impacted that forum, or to complete the analogy, that the foreign forum "witnessed."

Seventh, a defendant's liberty interest is based on the idea that a defendant has a right not to be bound by the judgments of courts of certain states in particular cases. This is basically the other side of the coin that is the forum's interest. Just as a forum state needs a special relationship with a defendant to issue a judgment in any case, a defendant needs a special relationship with a forum to be bound by a judgment in any case.

The parent-child analogy again applies here. Every child has been disciplined by a parent for something that the parent learns about only after the fact, such as misbehavior at school or at the park. That punishment is reasonable because the parent has ultimate oversight over the child. And so a defendant should expect his home forum to do the same thing, as the state that has a unique relationship with him.

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forum and the defendant justifies the imposition of the state's coercive power. That relationship does not rest upon the state's right to regulate the outside activities, but on its power over the individual directly.").

322. *Cf.* Stein, *supra* note 5, at 527 ("Dorothy had it mostly right: There are few places like home.").

323. This justification and the relationship between a state and a defendant underlie Professor Cox's theory of general jurisdiction, which connects a state's regulatory and adjudicatory authority over a defendant. *See generally* Cox, *supra* note 34, at 195.

324. Courts have recognized in a variety of contexts the special relationship between parents and children. *See, e.g.*, Doering *ex rel*. Barrett v. Copper Mountain, Inc., 259 F.3d 1202, 1216 (10th Cir. 2001) (discussing the parental-immunity doctrine); *In re* Air Crash Disaster Near Chicago, Illinois, on May 15, 1979, 771 F.2d 338, 339 (7th Cir. 1985) (discussing who may collect damages in a wrongful-death suit); Doe v. MySpace, Inc., 474 F. Supp. 2d 843, 850 (W.D. Tex. 2007) (recognizing a parent's duty to a control a child's conduct).

Every child has also been scolded by a friend's parent or some other adult, typically being told to stop some behavior going on at that moment. But no child should expect that other adult to be the one to punish him for the behavior at the park or at school that the adult did not see. The child expects to be free from that exercise of authority, just as a defendant who does not live in a particular forum does not expect that forum to enter judgment against him in a case unrelated to that jurisdiction.

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Ultimately, regardless of which justification is used for personal jurisdiction, the "at home" test is a positive jurisdictional development. It is simple and easy to apply. And it fits logically into the framework of each justification far better than the older rule of substantial continuous and systematic contacts.

B. Criticisms of Goodyear *and* Daimler AG *Do Not Make Narrowing Unnecessary*

As can be expected with any major Supreme Court decision, *Goodyear* and *Daimler* provoked much criticism.[325] This criticism found a variety of voices and bases, but upon closer inspection, none of this criticism provides any basis to reject the narrowing of general jurisdiction in *Goodyear* and *Daimler AG*. Rather than canvassing all of the attacks on the "at home" rule, this Article focuses only on five of the most prominent critiques, drawn from both Justice Sotomayor's objections in *Daimler AG* and from scholars, starting with the more common critiques.

A first line of attack on the "at home" rule is that it favors large corporate defendants over individual defendants.[326] This criticism argues that it is wrong to subject a defendant who does some business in a state to general jurisdiction there while not to subject major corporation that does more business (in absolute terms) but is not based in the state to general jurisdiction there.[327]

This criticism, however, ignores that this larger defendant is subject to general jurisdiction somewhere else. It treats general jurisdiction as simply a more powerful version of specific jurisdiction. Indeed, the fact that a small defendant

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325. Although decisions on subjects like personal jurisdiction may excite the litigants themselves, a few lawyers, and some academics, these decisions admittedly do not attract the same level of attention as cases like *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). *See, e.g.*, Andrew Hamm, *Afternoon round-up: Today's decision in Obergefell v. Hodges*, SCOTUSblog (June 26, 2015, 4:30 PM), http://www.scotusblog.com/2015/06/afternoon-round-up-todays-decision-in-obergefell-v-hodges/ [https://perma.cc/25JJ-S552] (collecting approximately three dozen media stories about *Obergefell* published within hours of the Court's release of the decision).

326. *See, e.g.*, Daimler AG v. Bauman, 134 S. Ct. 746, 772 (2014) (Sotomayor, J., concurring in the judgment).

327. *Id.*

may be subject to general jurisdiction in one state (from which its business is run) while a larger defendant is not subject to general jurisdiction there (and from which its business is not run) is not inherently unfair, if general and specific jurisdiction are different in kind. The large defendant may still be subject to specific jurisdiction, and if that large defendant is not subject to specific jurisdiction in a particular case, then the lack of a connection between the litigation and the forum strongly suggests that a particular lawsuit more logically belongs in a different forum.

A second complaint is that the "at home" rule shifts the burden of litigating to plaintiffs.[328] This attack fears that plaintiffs, many of whom lack the resources of larger defendants, will face costs that discourage them from bringing cases.[329]

This fear, however, provides no basis to reject the "at home" rule. First, costs and burdens to plaintiffs should not drive any constitutional analysis for personal jurisdiction. That doctrine, after all, is about protecting *defendants*. Relative burden is more appropriately considered through the statutory framework of venue, if there are multiple forums in which a defendant could be sued.[330] Second, even if costs and burdens to plaintiffs are a legitimate concern, these can be accounted for by awarding costs to a successful plaintiff. Although the American rule requires litigants to pay their own legal fees unless a statute or contract provides otherwise,[331] prevailing litigants can be awarded their costs.[332] Thus, any extra costs from litigating in a less convenient forum may be recovered. Perhaps some plaintiffs might balk at the risk of not having those costs covered if their claims did not prevail, but a plaintiff who is confident in his claim (or that a defendant would settle the case before trial) is still likely to bring a claim.

A third criticism is that protecting the due process rights of defendants undermines other constitutional rights of plaintiffs.[333] This criticism attacks

328. *See id.* at 773.

329. *Id.*

330. *See, e.g.*, Irwin v. Zila, Inc., 168 F. Supp. 2d 1294, 1298 (M.D. Ala. 2001) (considering the relative burden on parties when deciding whether to grant a motion to transfer venue).

331. *See, e.g.*, Hardt v. Reliance Standard Life Ins. Co., 560 U.S. 242, 252–53 (2010) ("Our basic point of reference when considering the award of attorney's fees is the bedrock principle known as the 'American Rule': Each litigant pays his own attorney's fees, win or lose, unless a statute or contract provides otherwise." (internal quotation marks omitted)).

332. *See* Fed. R. Civ. P. 54(d)(1) ("Unless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing party.").

333. *See* Cornett & Hoffheimer, *supra* note 7, at 164 ("[T]he Court's exclusive concern with due process protections for defendants continues a troubling pattern of neglecting or undervaluing other constitutional rights and interests. The focus on due process has prevented consideration of rights

Goodyear and *Daimler AG* for protecting defendants' right not to litigate in a distant forum at the expense of plaintiffs' rights under other constitutional provisions like the First Amendment or Commerce Clause.[334]

Ensuring that jurisdictional rules carefully balance constitutional rights is important.[335] But this criticism of the "at home" rule does what it accuses *Goodyear* and *Daimler AG* of doing: focusing on some constitutional rights at the expense of others. A plaintiff can bring a claim based on any constitutional, statutory, or common-law right against a defendant anywhere a defendant is subject to personal jurisdiction. Thus, that right can be vindicated. But a plaintiff's ability to vindicate this right does not mean that the plaintiff can vindicate it in any forum he chooses, or even that a plaintiff is entitled to an array of forums from which he may choose. A defendant has a right to be bound by a judgment only in a court that has personal jurisdiction over the defendant. Specific jurisdiction provides a plaintiff some flexibility in where a suit is filed and may permit suit in a distant forum. General jurisdiction, meanwhile, provides a location where the plaintiff knows a suit can be filed, even if the plaintiff may have to travel. In either case, the plaintiff has a place to vindicate his rights. Limiting general jurisdiction, therefore, does not undermine other constitutional rights. It simply protects a defendant's right not to be bound by judgments from the courts of certain states in certain cases.[336]

Another criticism of *Goodyear* and *Daimler AG* is that the "at home" rule fails to provide sufficient guidance for general jurisdiction. These critiques object to the use of a new metaphor[337] and express the frustration with the fact that the decisions leave open questions.[338]

"At home" may in fact be new terminology, but it is not a problem. For

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protected by and powers regulated under the Commerce Clause and the First Amendment. It also neglects residual rights including meaningful access to courts implied by a Constitution establishing justice and expressly protected by due process." (internal footnotes omitted)).

334. *Id.* at 164–65.

335. *Cf.* Wm. Grayson Lambert, *Toward A Better Understanding of Ripeness and Free Speech Claims*, 65 S.C. L. REV. 411, 447–52 (2013) (arguing that First Amendment claims do not merit a special ripeness test because other constitutional rights are equally important).

336. Granted, in some rare cases, a defendant may not be subject to personal jurisdiction in the United States. *See, e.g.*, J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 887 (2011). But this is a truly exceptional case. And a plaintiff could (albeit with more trouble) still sue in a foreign country.

337. *See* Cornett & Hoffheimer, *supra* note 7, at 161 ("The new rules are also bad theory to the extent they substitute new metaphors ('at home') for old terminology ('substantial contacts'), old terminology that was itself an attempt to avoid unhelpful metaphors ('presence').").

338. *See id.* at 149 (noting the open questions that remain regarding general jurisdiction).

one, most of the Court's confusing metaphors have appeared in specific jurisdictions cases.[339] Additionally, it is not simply another way of saying "presence" or "sufficient contacts." Rather, it is a new concept that focuses on whether a defendant is (to use another neologism) "based in" the forum. Under the "at home" analysis, a defendant is subject to general jurisdiction in only one forum (or maybe two), requiring a holistic view of general jurisdiction across all forums that brings simplicity and clarity.[340] By contrast, the old rule asked, for each jurisdiction, whether a defendant had substantial contacts to warrant the exercise of general jurisdiction, requiring a court to decide "yes" or "no" for each jurisdiction individually.[341] That analysis is less predictable because the "yes" or "no" analysis for each jurisdiction is independent of the analysis for every other jurisdiction. Thus, the new terminology should lead to far less confusion than the old metaphors.

As for the second part of this critique, the "at home" rule offers as much of an answer to general jurisdiction as these decisions can reasonably be expected to provide early in the life of this rule. First, *Daimler AG* made clear that the "at home" rule should resolve the overwhelming majority of cases because only "exceptional" cases could result in general jurisdiction when the defendant was sued somewhere other than the defendant's domicile, place of incorporation, or principal place of business.[342] Any litigation over whether a defendant is "at home" in another state will therefore be uncommon.[343] Second, and more fundamentally, virtually every judicial decision requires further refinement down the road.[344] At this stage, the "at home" rule provides clear guidance, unlike

339. *See, e.g.*, Asahi Metal Indus. Co. v. Super. Ct., 480 U.S. 102, 109 (1987) (using the language of "purposeful availment"); McGee v. Int'l Life Ins. Co., 355 U.S. 220, 223 (1957) (using the language of "substantial connection").

340. *Cf.* Daimler AG v. Bauman, 134 S. Ct. 746, 762 n.20 (2014) ("General jurisdiction instead calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide. A corporation that operates in many places can scarcely be deemed at home in all of them.").

341. Hoffheimer, supra note 5, at 595.

342. *Daimler AG*, 134 S. Ct. at 761 n.19.

343. *See supra* Part IV.A.1 (discussing the clarity of the "at home" rule).

344. This is more common with high-profile social issues, such as abortion, *compare* Roe v. Wade, 410 U.S. 113, 164, 166 (1973) (holding that a state ban on abortions was unconstitutional), *with* Gonzales v. Carhart, 550 U.S. 124, 168 (2007) (holding that a federal partial-birth abortion ban was constitutional), but still present with questions involving less attention from the public at large, such as procedural rules, *compare* Conley v. Gibson, 355 U.S. 41, 45–46 (1957) (holding that a complaint was sufficient "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief"), *with* Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (holding that a complaint must have "facial plausibility" to survive a motion to dismiss). In some instances, future litigation attacks a previous holding directly, while in others, future litigation seeks only refinement of the earlier holding. Whatever the scope of the relief sought, what is evident is that jurisprudence is always evolving.

the older rule of substantial continuous and systematic contacts[345] or less bright-line alternatives, like the one pushed by the plaintiffs in *Goodyear*.[346]

A fifth and final (for purposes of this Article) criticism is that the "at home" rule is too antiquated for a global economy.[347] The rule is only antiquated, however, if one ignores the "special relationship" that a state has with the individuals and businesses based there.[348] A global economy may lead to defendants being subject to specific personal jurisdiction in an array of states in which they could not have conceived of being sued a century ago. But as for binding a defendant—whether to pay money or to take or refrain from taking certain actions—in any case whatsoever, the fact that the defendant does business around the country (or even around the world) does not mean that any of those places where the defendant does business ought to have the power to so broadly control the defendant. Indeed, that special power should be narrow in scope and belong only to the state where the defendant is at home.

VI. CONCLUSION

When that bus tire blew on a French road, little could anyone have predicted that a case filed in North Carolina state court would be the genesis in a revolution of general jurisdiction. But often significant legal changes—particularly procedural or jurisdictional ones—come without the litigants intending to bring about such changes. In *Goodyear* and then in *Daimler AG*, the Supreme Court narrowed the scope of the general jurisdiction, requiring a defendant to be "at home" for a court to exercise general jurisdiction over that defendant.

This narrowing of general jurisdiction has been maligned by many scholars. These attacks, however, miss their mark. *Goodyear*'s "at home" test is a welcome change to personal jurisdiction jurisprudence. It is a clear and an internally consistent rule that makes the doctrine more coherent with the justifications for personal jurisdiction—whichever justification one chooses.

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345. *See* Stravitz, *supra* note 250, at 759 (noting that "the 'essentially at home' standard may serve as a limiting factor on the ambiguous substantially systematic and continuous standard").

346. The plaintiffs there did not necessarily advocate a break with the standard adopted in *Perkins*, but they certainly pushed a broad version of it regarding jurisdiction over related corporations. *See* Brief of Respondents at 44–50, Goodyear Luxembourg Tires, SA v. Brown, 564 U.S. 915 (2011) (No. 10-76).

347. *See Daimler AG*, 134 S. Ct. at 771; *see also* Cornett & Hoffheimer, *supra* note 7, at 133 (discussing Justice Sotomayor's opinion).

348. Brilmayer, Haverkamp, & Logan, *supra* note 19, at 726.