

PERSONAL JURISDICTION SYMPOSIUM

PERSONAL JURISDICTION SYMPOSIUM: AN INTRODUCTION

by
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The Supreme Court's modern personal jurisdiction jurisprudence has been anything but straightforward. While the authors who contributed to this Personal Jurisdiction Symposium make that abundantly clear, they diverge on what the Court's most recent decisions represent. This introduction first sets the stage for the Supreme Court's October 2013 term by reviewing its landmark decisions, from Pennoyer through Goodyear and Nicastró. Shifting towards modern analysis, Parts II and III present and discuss the Court's most recent decisions—the impetus for this symposium—Daimler AG v. Bauman and Walden v. Fiore. Correspondingly, Part IV briefly introduces the positions and recommendations conveyed in each respective article. Please enjoy these thoughtful contributions to what will surely be an ongoing debate on the nature of personal jurisdiction.

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I. INTRODUCTION

The Due Process Clause of the Fourteenth Amendment restricts a state's power to exercise jurisdiction over a nonresident defendant,¹ by

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¹ See *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 464 (1985). In fact, the

requiring sufficient “minimum contacts” between the defendant and the forum state “such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”² Rather than confining personal jurisdiction to a forum’s physical boundaries and the “mutually exclusive sovereignty” of the states, the “central concern of the inquiry into personal jurisdiction” in the modern era is “the relationship among the defendant, the forum, and the litigation[.]”³ Fair play and substantial justice—and the tripartite relationship among defendant, forum, and litigation—has led to the development of two distinct categories of personal jurisdiction.⁴

First, “specific jurisdiction” describes the exercise of jurisdiction over a suit “arising out of or related to the defendant’s contacts with the forum[.]”⁵ Post-*International Shoe*, specific jurisdiction has come to represent a “considerably more significant part of the [personal jurisdiction] scene,”⁶ as the shift away from *Pennoyer*’s “rigidly territorial focus” has “unleashed a rapid expansion of tribunals’ ability to hear claims against out-of-state defendants when the episode-in-suit occurred in the forum or the defendant purposefully availed itself of the forum.”⁷ Although specific jurisdiction jurisprudence has sometimes struggled to adapt to an era of increasing globalization,⁸ it represents the “centerpiece of modern ju-

“minimum contacts” requirement applies to all exercises of personal jurisdiction, but its application is not monolithic. *See* *Shaffer v. Heitner*, 433 U.S. 186, 212 (1977) (stating that “all assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe*”). *Shaffer* held that a Delaware court could not exercise quasi-in-rem jurisdiction over a nonresident defendant, when the suit was unrelated to the defendant’s property located within the forum. 433 U.S. at 204, 216–17. In contrast, a defendant’s physical presence within the forum (even if wholly transitory), coupled with service of process, satisfies the minimum contacts requirement even when the defendant’s presence in the forum is unrelated to the suit. *Burnham v. Superior Court*, 495 U.S. 604, 621–22 (1990) (opinion of Scalia, J.).

² *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2853 (2011) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). *International Shoe*’s focus on “minimum contacts” represented a sharp break from earlier personal jurisdiction jurisprudence, which limited a tribunal’s jurisdiction to the geographic boundaries of the forum. *See Pennoyer v. Neff*, 95 U.S. 714 (1877).

³ *Shaffer*, 433 U.S. at 204.

⁴ *See* Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136–63 (1966) (examining the two distinct bases of personal jurisdiction).

⁵ *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984).

⁶ Von Mehren & Trautman, *supra* note 4, at 1164.

⁷ *Daimler AG v. Bauman*, 134 S. Ct. 746, 755 (2014). *International Shoe*’s jurisprudential break from territoriality may have been the spark that ignited the expansion of personal jurisdiction, but economic and social modernization have since fanned the flames. *See* *Burnham v. Superior Court*, 495 U.S. 604, 617 (1990) (opinion of Scalia, J.) (noting that “changes in the technology of transportation and communication, and the tremendous growth of interstate business activity” have helped expand the breadth of specific jurisdiction).

⁸ Notably, the Court has recently split over how to best determine when a

risdiction theory,”⁹ and works to subject a variety of nonresident defendants to a state’s adjudicatory authority.¹⁰

Second, “general jurisdiction” allows a state to exercise personal jurisdiction over a nonresident defendant, even if the cause of action “neither arose in [the forum state] nor related to the [defendant’s] activities in that State.”¹¹ Unlike specific jurisdiction, the Court’s “post-*International Shoe* opinions on general jurisdiction . . . are few[.]”¹² and general jurisdiction plays “a less dominant place in the contemporary [personal jurisdiction] scheme.”¹³ In essence, a state may exercise general jurisdiction over a nonresident defendant whose contacts with the forum are so pervasive that the defendant is “essentially at home” in the forum.¹⁴ If the de-

nonresident defendant is properly subject to jurisdiction in a state in which an injury relating to the defendant’s product occurs, where the “stream of commerce” has brought the product into the state. *Compare* *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 112 (1987) (opinion of O’Connor, J.) (arguing that a defendant must do something more than merely place its products into the stream of commerce before a state may obtain jurisdiction), *with id.* at 116–17 (opinion of Brennan, J., concurring in part and concurring in the judgment) (contending that placing a product into the stream of commerce is sufficient to justify personal jurisdiction over the defendant in the forum in which an injury occurs, as long as the defendant is aware that the product will be marketed in the forum state); *see also* *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2788 (2011) (plurality opinion) (endorsing Justice O’Connor’s “stream of commerce plus” test, but further arguing that the “principal inquiry in cases of this sort is whether the defendant’s activities manifest an intention to submit to the power of a sovereign”). The Court has also declined to articulate a standard for determining when a defendant’s virtual “presence” in a forum, perhaps through an internet-marketing and sales campaign, suffices to establish the necessary contacts between the defendant and the forum to support an exercise of jurisdiction. *See* *Walden v. Fiore*, 134 S. Ct. 1115, 1125 n.9 (2014).

⁹ Mary Twitchell, *The Myth of General Jurisdiction*, 101 HARV. L. REV. 610, 628 (1988).

¹⁰ *See, e.g.,* *Calder v. Jones*, 465 U.S. 783, 789–90 (1984) (recognizing California court’s jurisdiction over Florida-based newspaper publisher, where defendant’s newspaper had its largest circulation in California and contained an allegedly defamatory article about a California resident); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 780–81 (1984) (holding that a California-based magazine was subject to libel suit in New Hampshire, where the defendant “continuously and deliberately exploited the New Hampshire market”); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (“[I]f the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others.”); *see also* *McGee v. Int’l Life Ins. Co. v. Woodson*, 355 U.S. 220, 222 (1957) (“[A] trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents.”).

¹¹ *Daimler AG*, 134 S. Ct. at 756.

¹² *Id.* at 755.

¹³ *Id.* at 758.

¹⁴ *See* *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011). Prior to *Goodyear*’s “at home” formulation, due process permitted the exercise of general jurisdiction whenever “there are *sufficient contacts* between the State and

fendant is an individual, “the paradigm forum for the exercise of general jurisdiction is the individual’s domicile.”¹⁵ If the defendant is a corporation, general jurisdiction may be obtained in the defendant’s state of incorporation, principal place of business, or any other forum in which the defendant can be “fairly regarded as at home.”¹⁶ Although general jurisdiction over a corporate defendant is not limited to those forums in which the defendant is incorporated or has its principal place of business, “only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there.”¹⁷ Thus, in a forum that is neither a corporate defendant’s place of incorporation or principal place of business, general jurisdiction will only obtain where the defendant’s “affiliations with the State are so ‘continuous and systematic’ as to render [the defendant] *essentially at home* in the forum State.”¹⁸

The October 2013 term saw the Supreme Court decide two personal jurisdiction cases, one dealing with specific jurisdiction, and one addressing general jurisdiction.¹⁹ While at first blush the two cases may appear to be relatively straightforward applications of prior law,²⁰ each may in fact portend a subtle shift in personal jurisdiction jurisprudence. As a result, plaintiffs face further complications when seeking to hold intentional tortfeasors and multinational corporate defendants responsible for harmful conduct.

II. WALDEN *v.* FIORE

In sharp contrast to the Court’s previous foray into specific jurisdiction,²¹ a unanimous Court explained that “[w]ell-established principles of personal jurisdiction are sufficient to decide [a specific jurisdiction]

the foreign corporation.” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984) (emphasis added). It is considerably easier to characterize a defendant as having “sufficient contacts” with a forum than as being “at home” in that forum, as *Goodyear* and *Daimler* have demonstrated. See Part III, *infra*.

¹⁵ *Goodyear*, 131 S. Ct. at 2853.

¹⁶ *Id.* at 2853–54 (citing Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 TEXAS L. REV. 721, 728 (1988)).

¹⁷ *Daimler AG*, 134 S. Ct. at 760.

¹⁸ *Goodyear*, 131 S. Ct. at 2851 (emphasis added) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945)).

¹⁹ See *Daimler AG*, 134 S. Ct. 746 (addressing general jurisdiction over a multinational conglomerate); *Walden v. Fiore*, 134 S. Ct. 1115 (2014) (dealing with specific jurisdiction in the context of alleged constitutional violations).

²⁰ *Walden* was unanimous. 134 S. Ct. at 1118. While the entire Court agreed on the outcome in *Daimler AG*, Justice Sotomayor employed a different rationale. Compare 134 S. Ct. at 751 (holding that *Daimler* is not “at home” in California), with *id.* at 764–65 (Sotomayor, J., concurring in the judgment) (arguing that subjecting *Daimler* to general jurisdiction in California would be unreasonable).

²¹ See *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2785 (2011) (plurality opinion); *id.* at 2791 (Breyer, J., concurring in the judgment); *id.* at 2794–95 (Ginsburg, J., dissenting).

case.”²² In *Walden v. Fiore*, the Court held that despite the defendant’s contacts with the plaintiffs and the plaintiffs’ contacts with the forum state, a federal court in Nevada could not exercise personal jurisdiction over a defendant who resided in Georgia.²³

In August of 2006, as respondents Gina Fiore and Keith Gipson prepared to board an Atlanta-bound flight leaving San Juan, Puerto Rico, TSA agents found approximately \$97,000 in cash in respondents’ carry-on luggage.²⁴ Fiore explained to DEA agents that she and Gipson had been gambling in San Juan, and maintained residences in California and Nevada. Respondents were allowed to board the flight in San Juan, but a DEA task force in Atlanta was notified of their impending arrival. As respondents disembarked in Atlanta, petitioner Anthony Walden and another task force member questioned respondents about the cash. Fiore explained that she and Gipson were professional gamblers, and the money represented their “‘bank’ and winnings.”²⁵ After a drug-sniffing dog tested the cash for the presence of narcotics,²⁶ petitioner seized the money, explaining that it would be returned if respondents could prove that it came from a legitimate source.²⁷ Respondents then boarded a plane for their home in Nevada. The following day, respondents’ attorney called petitioner, seeking return of the funds, and provided documentation to demonstrate the legitimacy of the funds. “At some point,” petitioner wrote a probable cause affidavit to support the asset forfeiture, and forwarded the affidavit to the United States Attorney’s Office in Georgia.²⁸ In the end, no forfeiture complaint was filed, and the DEA returned the money in March of 2007.²⁹

Respondents then filed a *Bivens* action in federal court in Nevada,³⁰ alleging that petitioner’s conduct violated their Fourth Amendment rights.³¹ The district court dismissed for lack of jurisdiction,³² but the

²² *Walden v. Fiore*, 134 S. Ct. 1115, 1126 (2014).

²³ *Id.* at 1119.

²⁴ *Id.*

²⁵ *Id.*

²⁶ There was “no indication” that drugs or drug residue was found with the cash. *See id.* at 1119 n.1.

²⁷ *Id.* at 1119.

²⁸ *Id.*

²⁹ *Id.* at 1120. In their complaint, respondents alleged that the affidavit was “false and misleading,” as petitioner deliberately misrepresented the encounter at the Atlanta airport and omitted exculpatory information, such as the inconclusive drug test. *See id.* at 1119–20.

³⁰ *See Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 397 (1971) (recognizing a federal cause of action against federal officials for money damages based on an official’s unconstitutional conduct).

³¹ *Walden*, 134 S. Ct. at 1120. Specifically, respondents alleged that petitioner violated the Fourth Amendment by seizing their money, keeping the money without evidence of drug-related activity, drafting a false probable cause affidavit, and withholding exculpatory information. *See id.*

³² *Id.*

Ninth Circuit reversed,³³ holding that the district court could properly exercise jurisdiction over the “false probable cause affidavit aspect of the case,” though not over the search and seizure itself.³⁴ The Court of Appeals reasoned that petitioner “expressly aimed” his allegedly false affidavit at Nevada, because he submitted the affidavit knowing that it would affect people with a “significant connection” to the forum (as respondents resided in the forum), making the exercise of jurisdiction over petitioner in Nevada reasonable.³⁵

The Supreme Court reversed, concluding that “petitioner lack[ed] the ‘minimum contacts’ with Nevada that are a prerequisite to the exercise of jurisdiction over him.”³⁶ The Court began its analysis by noting that the inquiry into the defendant’s contacts with the forum “focuses on ‘the relationship among the defendant, the forum, and the litigation[.]’”³⁷ such that “the defendant’s suit-related conduct . . . create[s] a substantial connection with the forum State.”³⁸ In particular, the Court took the opportunity to further clarify two aspects of a defendant’s relationship with a forum in the specific jurisdiction context. First, “the relationship must arise out of contacts that the ‘defendant *himself* creates with the forum state.”³⁹ Because due process is concerned with protecting the *defendant’s* liberty interests, “not the convenience of plaintiffs or third parties,” the Court has “consistently rejected” exercises of jurisdiction based on contacts between a plaintiff and a forum state.⁴⁰ Thus, “however significant the plaintiff’s contacts with the forum may be,” the plaintiff-forum relationship cannot be used to determine whether a defendant’s due process rights have been violated by the forum’s exercise of jurisdiction.⁴¹ Second, the “minimum contacts” inquiry must look to the defendant’s contacts with the forum itself, not with persons who happen to reside in the forum (whether a plaintiff or another party).⁴² The Court explained that “the plaintiff cannot be the only link between the defendant and the forum.”⁴³ Instead, “the defendant’s conduct . . . must form the necessary connection with the forum State that is the basis for its jurisdiction over him.”⁴⁴ Although the defendant’s contact with the forum

³³ See *Fiore v Walden*, 688 F.3d 558 (9th Cir. 2012).

³⁴ *Id.* at 577, 585.

³⁵ *Id.* at 580–81, 585.

³⁶ *Walden*, 134 S. Ct. at 1124 (citing *Hanson v Denckla*, 357 U.S. 235, 251 (1958)).

³⁷ *Id.* at 1121 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984)).

³⁸ *Id.*

³⁹ *Id.* at 1122 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

“may be intertwined” with the defendant’s relationship to the plaintiff or other parties, this latter relationship, “standing alone, is an insufficient basis for jurisdiction.”⁴⁵

The foregoing principles are equally applicable in cases involving intentional torts.⁴⁶ Under such circumstances, “[a] forum State’s exercise of jurisdiction over an out-of-state intentional tortfeasor must be based on intentional conduct *by the defendant* that creates the necessary contacts *with the forum*.”⁴⁷ The classic personal-jurisdiction-over-intentional-tortfeasors case, *Calder v. Jones*,⁴⁸ further supports this framework, as *Calder* “examined the various contacts the defendants had created with California (and not just with the plaintiff) by writing the allegedly libelous story.”⁴⁹ Further, the “effects” of the defendants’ allegedly tortious conduct connected the defendants to the forum itself, “not just to a plaintiff who lived there.”⁵⁰

Turning to the case at bar, the Court held that the petitioner lacked the requisite minimum contacts with Nevada that could support an exercise of jurisdiction in that forum.⁵¹ Indeed, “no part of petitioner’s course of conduct occurred in Nevada[,]” as he detained, questioned, and searched the respondents in Georgia, seized their cash in Georgia, and drafted the probable cause affidavit in Georgia.⁵² Simply put, the petitioner had “no jurisdictionally relevant contacts with Nevada[,]”⁵³ meaning that the requisite minimum contacts between the petitioner and the forum were nonexistent. The Court of Appeals erred by “shifting the analytical focus from petitioner’s contacts with the forum to his contacts with respondents[,]”⁵⁴ an approach that “impermissibly allows a plaintiff’s contacts with the defendant and forum to drive the jurisdictional analysis.”⁵⁵ Further, even assuming petitioner’s conduct caused the respondents injury while they were residing in Nevada, “mere injury to a forum resident is not a sufficient connection to the forum.”⁵⁶ The harm caused by a defendant’s conduct “is jurisdictionally relevant only insofar as it

⁴⁵ *Id.* at 1123.

⁴⁶ *See id.*

⁴⁷ *Id.* (emphasis added).

⁴⁸ 465 U.S. 783 (1984). In *Calder*, the Court held that a California court could exercise personal jurisdiction in a libel suit against a reporter and editor working at a Florida-based newspaper, as the defendants gleaned information from sources in California, wrote about the plaintiff’s activities in California, and caused the “brunt” of the plaintiff’s injury to occur in California, thus making the forum “the focal point both of the story and of the harm suffered.” *Id.* at 788–89.

⁴⁹ *Fiore*, 134 S. Ct. at 1123.

⁵⁰ *Id.* at 1123–24.

⁵¹ *Id.* at 1124.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 1125.

⁵⁶ *Id.*

shows that the defendant has formed a contact with the forum State.”⁵⁷ Thus, even though the alleged harm caused by petitioner’s conduct may have been felt by respondents in Nevada,⁵⁸ no other contact between the petitioner and the forum could be found to support the exercise of jurisdiction in that forum.

III. *DAIMLER AG v. BAUMAN*

Where is home? As one idiom has it: “Home is where the heart is.”⁵⁹ Simple enough, but in the “rather muddled”⁶⁰ world of general personal jurisdiction, “home” represents a forum in which a corporate defendant may be subject to general jurisdiction, when the defendant’s “continuous corporate operations within a state [are] thought so substantial and of such a nature as to justify suit . . . on causes of action arising from dealings entirely distinct from those activities.”⁶¹ While place of incorporation and principal place of business represent the “paradigm” forums in which the corporate defendant may be “fairly regarded” as being at home,⁶² it is possible that a corporate defendant’s “affiliations with [a] State are so ‘continuous and systematic’ as to render [the defendant] essentially at home in the forum State,”⁶³ even if not the principal place of business or state of incorporation.

Such is the picture of general personal jurisdiction, which the Supreme Court again addressed last term in *Daimler AG v. Bauman*. The Court held that DaimlerChrysler Aktiengesellschaft (“Daimler”), a German public stock company, was not subject to general jurisdiction in California because Daimler could not be considered “at home” in that forum, even assuming that the contacts between Daimler’s U.S. subsidiary and the State of California could be imputed to the parent company.⁶⁴

In 2004, Argentine plaintiffs sued Daimler in the Northern District of California, alleging that Daimler’s subsidiary in Argentina—Mercedes-Benz Argentina—assisted the military dictatorship in carrying out kid-

⁵⁷ *Id.*

⁵⁸ Indeed, even though respondents were unable to access their money while they were in Nevada, they “would have experienced this same lack of access in California, Mississippi, or wherever else they might have traveled and found themselves wanting more money than they had.” *Id.* Thus, unlike the “forum-focused” consequences of the *Calder* defendants’ tortious conduct, the “effects” of petitioner’s conduct in this case bore no connection to Nevada “in a way that makes those effects a proper basis for jurisdiction.” *Id.*

⁵⁹ MCGRAW-HILL’S DICTIONARY OF AMERICAN IDIOMS AND PHRASAL VERBS 309 (Richard A. Spears ed., 2005).

⁶⁰ *Bauman v. DaimlerChrysler Corp.*, 579 F.3d 1088, 1098 (9th Cir. 2009) (Reinhardt, J., dissenting).

⁶¹ *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945).

⁶² *Daimler AG v. Bauman*, 134 S. Ct. 746, 760 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2853–54 (2011)).

⁶³ *Daimler AG*, 134 S. Ct. at 761 (quoting *Goodyear*, 131 S. Ct. at 2851).

⁶⁴ *Id.* at 750–51.

nappings, detentions, torture, and extra-judicial killings during Argentina's "Dirty War" of the late 1970s and early 1980s.⁶⁵ Although none of the alleged conduct occurred in California, plaintiffs maintained that jurisdiction over Daimler could be based on the California contacts of Daimler's U.S. subsidiary, Mercedes-Benz USA ("MBUSA").⁶⁶ The district court dismissed for lack of jurisdiction, holding that an agency theory could not support attributing the contacts between MBUSA and California to Daimler, and that Daimler's own contacts with California were too insubstantial to support the exercise of general jurisdiction.⁶⁷ Although initially affirming the district court, the Ninth Circuit granted plaintiffs' petition for rehearing and held that Daimler was subject to general jurisdiction in California based on an agency relationship with MBUSA.⁶⁸ The Supreme Court granted certiorari,⁶⁹ to decide whether "Daimler is amenable to suit in California courts for claims involving only foreign plaintiffs and conduct occurring entirely abroad."⁷⁰ All nine justices answered in the negative. Justice Ginsburg, writing for seven of her colleagues, explained that because "Daimler is not 'at home' in California, [it] cannot be sued there for injuries plaintiffs attribute to MB Argentina's conduct in Argentina."⁷¹ Justice Sotomayor wrote separately to express her view that the outcome should turn on reasonableness grounds, rather than whether California qualified as Daimler's "home."⁷²

After briefly recounting the jurisprudential development of personal jurisdiction and the distinct trajectories of specific and general jurisdiction, Justice Ginsburg noted that unlike specific jurisdiction, "[the Supreme Court] ha[s] declined to stretch general jurisdiction beyond limits traditionally recognized."⁷³ According to those traditional limits, the gen-

⁶⁵ *Id.* at 751.

⁶⁶ *Id.* at 752.

⁶⁷ *See* *Bauman v. DaimlerChrysler AG*, No. C-04-00194, 2005 WL 3157472, at *9–10 (N.D. Cal., Nov. 22, 2005).

⁶⁸ *See* *Bauman v. DaimlerChrysler Corp.*, 644 F.3d 909 (9th Cir. 2011).

⁶⁹ *DaimlerChrysler AG v. Bauman*, 133 S. Ct. 1995 (2013).

⁷⁰ *Daimler AG v. Bauman*, 134 S. Ct. 746, 753 (2014).

⁷¹ *Id.* at 751 (citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011)).

⁷² *See id.* at 763 (Sotomayor, J., concurring in the judgment); *see also id.* at 765 ("[I]t would be unreasonable for a court in California to subject Daimler to its jurisdiction.").

⁷³ *Id.* at 757–58. These traditional "limits" of general jurisdiction had previously been outlined in a small number of cases, beginning with *Perkins v. Benguet Consolidated Mining Co.*, in which the Court held that an Ohio court could exercise general jurisdiction over a Philippine mining company on a cause of action unrelated to the forum, because Ohio was the company's principal, if temporary, place of business. 342 U.S. 437, 447–48 (1952). In *Helicopteros Nacionales de Colombia, S.A. v. Hall*, the Court held that the regular purchase of goods and services in a forum was insufficient contact with the forum to justify the exercise of jurisdiction in a suit unrelated to those purchases. *See* 466 U.S. 408, 416–18 (1984). Finally, in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, the Court held that North Carolina could not exercise general jurisdiction over Goodyear's European subsidiaries, as they were not

eral jurisdiction inquiry must focus on Daimler's contacts with California in order to determine whether those contacts are sufficient to subject Daimler to suit in California on causes of action unrelated to those contacts.⁷⁴ To begin, the Court assumed that MBUSA itself was subject to general jurisdiction in California.⁷⁵ Second, the Court recognized that MBUSA's contacts with the forum could (perhaps) be imputed to Daimler on an agency theory.⁷⁶ Even with these assumptions going in plaintiffs' favor, however, Daimler's "slim contacts with [California] hardly render it at home there[,]"⁷⁷ making the exercise of general jurisdiction in that forum a violation of due process. The Court acknowledged that a corporate defendant can be subject to general jurisdiction in forums that are neither its state of incorporation or principal place of business, but rejected plaintiffs' proposed test for divining those forums as "unacceptably grasping."⁷⁸ The question is not simply whether a corporate defendant has developed "continuous and systematic" contacts with a forum, but rather whether those contacts have "render[ed the defendant] essentially at home in the forum state."⁷⁹ Were the Court to conclude that Daimler was "at home" in California, allowing plaintiffs to bring causes of action against Daimler having nothing to do with the forum itself, "the same global reach would presumably be available in every other State in which MBUSA's sales are sizable."⁸⁰ To avoid this consequence, courts must take a more holistic view: The general jurisdiction inquiry cannot be limited to a defendant's contacts with the forum in question, but must also account for the defendant's national and global activities, as "[a] corporation that operates in many places can scarcely be deemed at home in all of them."⁸¹ When viewed through this global lens, Daimler's contacts with

"at home" in North Carolina, even though the companies had placed their products into the stream of international commerce and had thus developed continuous contacts with the forum. *See* 131 S. Ct. 2846, 2852, 2857 (2011).

⁷⁴ Emphasizing *Goodyear's* importance to deciding the issue in *Daimler AG*, Justice Ginsburg explained that "general jurisdiction requires affiliations so continuous and systematic as to render the foreign corporation *essentially at home* in the forum State." 134 S. Ct. at 758 n.11 (emphasis added) (internal quotation marks and alterations omitted).

⁷⁵ Daimler failed to object to plaintiffs' contention that MBUSA was subject to general jurisdiction in California. *Id.* at 758.

⁷⁶ The Court declined to decide "whether a foreign corporation may be subjected to a court's general jurisdiction based on the contacts of its in-state subsidiary," because "in no event can the appeals court's analysis [that Daimler was subject to general jurisdiction in California] be sustained." *Id.* at 759.

⁷⁷ *Id.* at 760.

⁷⁸ *Id.* at 760–61. Plaintiffs argued that corporate defendants should be subject to general jurisdiction in any state where the corporation "engages in a substantial, continuous, and systematic course of business." *Id.* at 761.

⁷⁹ *Id.* (citation omitted).

⁸⁰ *Id.*

⁸¹ *Id.* at 762 n.20. Justice Sotomayor argued that the majority's "newly minted proportionality test"—comparing a corporate defendant's in-state and out-of-state contacts—represents a break from prior general jurisdiction law and "casts grave

California are proportionately insufficient to render the corporation “at home” in the forum.⁸²

Justice Sotomayor concurred, but sharply criticized the majority’s reasoning.⁸³ Instead of relying on *Goodyear*’s “at home” language to balance the weight of Daimler’s contacts with various forums around the globe,⁸⁴ Justice Sotomayor would have decided the case on reasonableness grounds,⁸⁵ by applying the factors outlined in *Asahi Metal Industry Co. v. Superior Court*.⁸⁶ Mainly relying on the fourth factor—the interests of other sovereigns in the dispute—Justice Sotomayor argued that “it would be unreasonable for a court in California to subject Daimler to its jurisdiction[,]” considering Germany’s “far greater interest in resolving the dispute.”⁸⁷ Finally, Justice Sotomayor argued that the majority’s holding could give rise to four adverse consequences. First, “the majority’s approach unduly curtails the States’ sovereign authority to adjudicate dis-

doubt on *Perkins*” itself. *Id.* at 769 n.8 (Sotomayor, J., concurring in the judgment).

⁸² *Id.* at 762 (majority opinion).

⁸³ Indeed, Justice Sotomayor chided the majority for making Daimler “too big for general jurisdiction.” *Id.* at 764 (Sotomayor, J., concurring in the judgment).

⁸⁴ Justice Sotomayor argued that *Goodyear*’s “essentially at home” language merely signifies that an out-of-state defendant’s “continuous and substantial contacts with a forum State [are] akin to those of a local enterprise that actually is ‘at home’ in the State.” *Id.* at 769 (citation omitted). At first blush, Justice Ginsburg seems to read “at home” in a similar fashion. *See id.* at 758 n.11 (majority opinion) (explaining that “essentially at home” means that an out-of-state defendant’s contacts are “comparable to a domestic enterprise in that State”). Under Justice Ginsburg’s formulation, however, a defendant could conceivably have a commensurate number of contacts with a forum as a domestic enterprise, yet not be at home in that forum, if the defendant had more (or more *significant*) contacts with a different forum. *See id.* at 762 n.20 (explaining that “[g]eneral jurisdiction . . . calls for an appraisal of 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”). Thus, it may be true that Daimler and a local California enterprise have a similar number of contacts with California, but Daimler’s more numerous and significant contacts with Germany militate against deeming Daimler “at home” in California. *See id.* at 761–62.

⁸⁵ In the specific jurisdiction context, the courts begin by examining a defendant’s contact with the forum. If those contacts are sufficient to satisfy *International Shoe*, the next question is whether the exercise of jurisdiction is reasonable. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475–78 (1985). Justice Sotomayor acknowledged that the Court has never before applied the reasonableness prong in the general jurisdiction context, but argued that the present case could be decided on reasonableness grounds “without foreclosing future consideration of whether that prong should be limited to the specific jurisdiction context.” *Daimler AG*, 134 S. Ct. at 764–65 (Sotomayor, J., concurring in the judgment); *see also id.* at 764 n.1 (pointing out that all of the Courts of Appeals to address the issue have uniformly applied the reasonableness prong in general jurisdiction cases).

⁸⁶ 480 U.S. 102 (1987). Those factors include “the burden on the defendant, the interests of the forum State, and the plaintiff’s interest in obtaining relief” in the forum, *id.* at 113, and the interests other sovereigns may have in resolving the dispute. *See id.* at 115.

⁸⁷ *Daimler AG*, 134 S. Ct. at 765 (Sotomayor, J., concurring in the judgment).

putes against corporate defendants who have engaged in continuous and substantial business operations within their boundaries[,]” especially as corporations increasingly parcel out their corporate operations among various forums.⁸⁸ Second, the majority’s proportionality test will unfairly benefit “national and multinational conglomerates,” as large firms like Daimler will likely have “extensive contacts outside the forum,” and thus escape general jurisdiction, while a much smaller local firm (with many fewer overall contacts) will be subject to general jurisdiction there.⁸⁹ Third, the majority’s approach leads to the “incongruous result” whereby an individual defendant may be subject to general jurisdiction in a forum if served with process during a single visit, while “a large corporation that owns property, employs workers, and does billions of dollars’ worth of business in the State will not be, simply because the corporation has similar contacts elsewhere.”⁹⁰ Finally, Justice Sotomayor contends that the majority’s approach will shift the risk of harm “from multinational corporations to individuals harmed by their actions[,]” as those corporations might very well be free from general jurisdiction in any U.S. forum, and plaintiffs may be unable to obtain relief abroad.⁹¹

IV. CONCLUSION

Our contributors address the Court’s two most recent personal jurisdiction cases and personal jurisdiction more generally, in multiple contexts and from a variety of viewpoints. Professor Erbsen’s article uses *Walden v. Fiore* as a catalyst to revisit the role of horizontal federalism in personal jurisdiction jurisprudence, and explores the distinction between jurisdictions that may be appropriate *in* a given state even though a defendant may not be compelled to appear *by* that state.⁹² Professor Klerman questions the wisdom of Federal Rule of Civil Procedure 4(k)(1)(A), which makes the jurisdiction of a federal court co-extensive with that of a state court of general jurisdiction in the same district. Professor Klerman also connects the outcome in *Walden* with *Stafford v. Briggs*,⁹³ and calls on either the Court or Congress to do away with *Stafford*’s “bad policy.”⁹⁴ Professor Miller tackles personal jurisdiction as “a problem of architecture,” by tracing the evolution of jurisdiction theory

⁸⁸ *Id.* at 772.

⁸⁹ *Id.*

⁹⁰ *Id.* at 772–73.

⁹¹ *Id.* at 773.

⁹² Allan Erbsen, *Reorienting Personal Jurisdiction Doctrine Around Horizontal Federalism Rather than Liberty After Walden v. Fiore*, 19 LEWIS & CLARK L. REV. 769 (2015).

⁹³ 444 U.S. 527 (1980). The Court held that 28 U.S.C. § 1391(e)—which provides that a civil suit against an officer of the United States can be filed in the district in which the plaintiff resides—does not apply to *Bivens* suits for money damages.

⁹⁴ Daniel Klerman, *Walden v. Fiore and the Federal Courts: Rethinking FRCP 4(k)(1)(A) and Stafford v. Briggs*, 19 LEWIS & CLARK L. REV. 713 (2015).

from its linguistic roots to today's spatial justifications.⁹⁵ Professor Miller argues that the linguistic quality of personal jurisdiction is becoming more apparent—and more vital—in an era of widespread computation and “cosmopolitan globalization.”⁹⁶ Professor Parry contends that *Bauman* and *Walden* disposed of the *Nicastro* plurality's focus on sovereignty and returned personal jurisdiction to the “minimum contacts plus reasonableness” inquiry. Although minimum contacts plus reasonableness is better than “no test at all,” Professor Parry argues for a different approach, one that asks whether a state's interests in exercising jurisdiction in a given case are reasonable and legitimate, and whether the costs and burdens placed on the defendant by having to litigate in that forum make the process fundamentally unfair.⁹⁷ Professors Robertson and Rhodes, using a recent trademark infringement case as illustrative of the growing challenges to jurisdiction in the arena of international commerce, argue that jurisdictional doctrine will move to a new equilibrium where the scope of specific and consent-based jurisdiction increases, while general jurisdiction narrows.⁹⁸ Professor Shaughnessy examines the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which allows state courts to enter orders in child custody and parental rights matters based on the child's connection to the state, even though one of the parents may have no connection with the forum.⁹⁹ Professor Shaughnessy argues that the UCCJEA is a more coherent approach to placing limits on state court jurisdiction than recent Supreme Court jurisprudence. Professor Silberman offers a number of insightful observations about the current state of general jurisdiction, post-*Goodyear* and *Daimler AG*, and contends that those two decisions marked the “end of era” in which general jurisdiction over corporate defendants could be justified on the basis of systematic and continuous activities within the forum.¹⁰⁰ Professor Winship identifies a mismatch between the often-complex web of business relationships and the single-entity focus of jurisdictional and substantive rules, and argues that corporate law can play a limited role in determining when a subsidiary's contacts can be imput-

⁹⁵ Ruth Miller, *Personal Jurisdiction: An Architectural Problem?*, 19 LEWIS & CLARK L. REV. 791, 794 (2015).

⁹⁶ *Id.*

⁹⁷ John T. Parry, *Rethinking Personal Jurisdiction After Bauman and Walden*, 19 LEWIS & CLARK L. REV. 607, 610 (2015).

⁹⁸ Cassandra Burke Robertson & Charles “Rocky” Rhodes, *A Shifting Equilibrium: Personal Jurisdiction, Transnational Litigation, and the Problem of Nonparties*, 19 LEWIS & CLARK L. REV. 643 (2015).

⁹⁹ Joan M. Shaughnessy, *The Other Side of the Rabbit Hole: Reconciling Recent Supreme Court Personal Jurisdiction Jurisprudence with Jurisdiction to Terminate Parental Rights*, 19 LEWIS & CLARK L. REV. 811 (2015).

¹⁰⁰ Linda J. Silberman, *The End of Another Era: Reflections on Daimler and Its Implications for Judicial Jurisdiction in the United States*, 19 LEWIS & CLARK L. REV. 675 (2015).

ed to the parent company for jurisdictional purposes.¹⁰¹ Professor Cox contends that effects-based personal jurisdiction can be shaped by the regulatory interest of the forum, and criticizes the *Walden* Court's characterization of *Calder v. Jones*.¹⁰² Professor Cox also addresses the potential problems inherent in determining personal jurisdiction based on a plaintiff's allegations, as opposed to the defendant's factual conduct. Finally, Professor Young reviews the *Calder v. Jones* effects test, how the circuit courts have utilized that test in the context of internet contacts, and how the courts have begun applying *Walden* in that same context. Professor Young then suggests a framework for determining personal jurisdiction in virtual contacts cases, consistent with post-*Walden* practice.¹⁰³ We trust that you will find the following articles insightful and challenging, and an important contribution to the personal jurisdiction literature.

¹⁰¹ Verity Winship, *Corporate Law and the Reach of the Courts*, 19 LEWIS & CLARK L. REV. 693 (2015).

¹⁰² Stanley E. Cox, *Personal Jurisdiction for Alleged Intentional or Negligent Effects, Matched to Forum Regulatory Interest*, 19 LEWIS & CLARK L. REV. 725 (2015).

¹⁰³ Julie Cromer Young, *The Online Contacts Gamble After Walden v. Fiore*, 19 LEWIS & CLARK L. REV. 753 (2015).