
Personal Jurisdiction — General Jurisdiction —
Daimler AG v. Bauman

The law of personal jurisdiction, often regarded as “rather muddled,”¹ was clarified in recent years with respect to general jurisdiction by Justice Ginsburg’s pathbreaking decision in *Goodyear Dunlop Tires Operations, S.A. v. Brown*.² That decision declared that a court may only assert general jurisdiction over out-of-state corporations where “their affiliations with the [forum] State are so ‘continuous and systematic’ as to render them essentially at home” there.³ Last Term, in *Daimler AG v. Bauman*,⁴ the Supreme Court clarified *Goodyear* by holding that Daimler AG (Daimler), a German public stock company, could not be subject to California’s general jurisdiction in a suit filed by Argentine plaintiffs over events occurring on Argentine soil because Daimler was not “at home” in California,⁵ even assuming that the contacts of its U.S. subsidiary could be imputed to it on an agency theory. Although some have viewed *Daimler* as in keeping with a series of recent Court decisions limiting plaintiffs’ access to the courts, closer examination reveals that Justice Ginsburg continues to apply a theory of personal jurisdiction, derived from the seminal work of Professors Arthur von Mehren and Donald Trautman⁶ and initially introduced in *Goodyear* and her dissent in *J. McIntyre Machinery, Ltd. v. Nicastro*,⁷ that focuses fundamentally on fairness to both litigants.

In 2004, twenty-two Argentine residents filed suit in the United States District Court for the Northern District of California against Daimler, a German company headquartered in Stuttgart, which manufactures Mercedes-Benz vehicles in Germany.⁸ The plaintiffs were former workers and relatives of former workers at the Gonzalez-Catan plant of Mercedes-Benz Argentina (MB Argentina), a wholly owned subsidiary of Daimler’s predecessor in interest.⁹ The complaint alleged that during Argentina’s 1976–1983 “Dirty War,” MB Argentina collab-

¹ *Bauman v. DaimlerChrysler Corp.*, 579 F.3d 1088, 1098 (9th Cir. 2009) (Reinhardt, J., dissenting); see also Adam N. Steinman, *The Lay of the Land: Examining the Three Opinions in J. McIntyre Mach., Ltd. v. Nicastro*, 63 S.C. L. REV. 481, 482 (2012) (describing the Court’s personal jurisdiction jurisprudence as “inconclusive”).

² 131 S. Ct. 2846 (2011).

³ *Id.* at 2851.

⁴ 134 S. Ct. 746 (2014).

⁵ *Id.* at 751 (quoting *Goodyear*, 131 S. Ct. at 2851).

⁶ See Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121 (1966); see also A. VON MEHREN & D. TRAUTMAN, *THE LAW OF MULTISTATE PROBLEMS* (1965).

⁷ 131 S. Ct. 2780 (2011); see *id.* at 2794 (Ginsburg, J., dissenting).

⁸ *Daimler*, 134 S. Ct. at 750–51.

⁹ *Bauman v. DaimlerChrysler Corp.*, 644 F.3d 909, 911 & n.2, 912 (9th Cir. 2011).

orated with state security forces to kidnap, detain, torture, and kill plant workers, including the plaintiffs and their relatives, whom MB Argentina suspected of being union agitators.¹⁰ The plaintiffs brought suit under various state, federal, and international laws.¹¹

Daimler moved to dismiss for lack of personal jurisdiction.¹² The plaintiffs conceded that the District Court lacked specific jurisdiction over Daimler since the plaintiffs' claims did not arise out of or relate to Daimler's purported activity in California but argued that general jurisdiction could be exercised because of the California contacts of either Daimler or Mercedes-Benz USA (MBUSA), a wholly owned subsidiary of Daimler.¹³

The District Court granted Daimler's motion to dismiss.¹⁴ Judge Whyte first confirmed his tentative ruling¹⁵ that Daimler itself lacked sufficient contacts with California for the court to exercise general jurisdiction.¹⁶ He next found that under the "agency" test,¹⁷ MBUSA's activities could not be imputed to Daimler for the purpose of establishing personal jurisdiction over Daimler.¹⁸ However, Judge Whyte "[did] not need to reach this conclusion": personal jurisdiction could not be exercised in any case because Argentina and Germany were adequate alternative fora.¹⁹

The Ninth Circuit initially affirmed²⁰ with Judge Reinhardt dissenting.²¹ The same Ninth Circuit panel granted rehearing and vacat-

¹⁰ *Id.* at 911–12. The "Dirty War" was a period of domestic conflict during which Argentina's military dictatorship "disappeared," tortured, and killed tens of thousands of Argentine citizens and residents suspected of being left-wing political opponents of the regime. *Dirty War*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/165129/Dirty-War> (last visited Sept. 28, 2014) [<http://perma.cc/HAQ8-7VV5>].

¹¹ *See Daimler*, 134 S. Ct. at 751.

¹² *Bauman v. DaimlerChrysler AG*, No. C-04-00194 RMW, 2005 WL 3157472, at *1 (N.D. Cal. Nov. 22, 2005).

¹³ *See id.* at *2, *5. MBUSA served as Daimler's exclusive Mercedes-Benz importer and sales agent in the United States. *See id.* at *10. MBUSA was incorporated in Delaware with its principal place of business in New Jersey. *Daimler*, 134 S. Ct. at 751.

¹⁴ *Bauman v. DaimlerChrysler AG*, No. C-04-00194 RMW, 2007 WL 486389, at *1 (N.D. Cal. Feb. 12, 2007).

¹⁵ *Bauman*, 2005 WL 3157472, at *1.

¹⁶ *See id.*

¹⁷ Circuits were split regarding whether the agency test or the more rigorous "alter ego" test controls. *Daimler*, 134 S. Ct. at 759.

¹⁸ *Bauman*, 2007 WL 486389, at *2. The parties agreed that MBUSA would be subject to general jurisdiction in California. *See Bauman v. DaimlerChrysler Corp.*, 579 F.3d 1088, 1102 (9th Cir. 2009) (Reinhardt, J., dissenting).

¹⁹ *Bauman*, 2007 WL 486389, at *2.

²⁰ *Bauman*, 579 F.3d at 1098. Judge Nelson, joined by Judge Schroeder, found that MBUSA's California contacts could not be imputed to Daimler under the agency test. *Id.* at 1096–97.

²¹ Judge Reinhardt contended that the agency test is "predicated upon a showing of the special importance of the services performed by the subsidiary," *id.* at 1098 (Reinhardt, J., dissenting), and that under this test, MBUSA should be considered Daimler's agent, *id.* at 1098, 1100. Judge

ed its opinion nine months later.²² The panel then reversed.²³ Writing for a unanimous panel, Judge Reinhardt expounded on the reasoning of his previous dissent.²⁴ One of the key factors motivating Judge Reinhardt’s analysis seemed to be a desire to hold multinational companies responsible for human rights abuses.²⁵ The Ninth Circuit denied rehearing en banc over the dissent of eight judges.²⁶

The Supreme Court reversed.²⁷ Writing for the Court, Justice Ginsburg²⁸ ruled that California could not exercise personal jurisdiction over Daimler.²⁹ Justice Ginsburg did not rule on the agency question that had preoccupied the lower courts.³⁰ Instead, assuming arguendo that California courts could exercise general jurisdiction over MBUSA and that MBUSA’s contacts could be imputed to Daimler, Justice Ginsburg held that, nevertheless, California could not exercise general jurisdiction over Daimler itself because Daimler was not “at home” in California.³¹

Justice Ginsburg began her analysis with an extensive discussion of the history of personal jurisdiction.³² She argued that as “specific jurisdiction has become the centerpiece of modern jurisdiction theory,”³³ “general jurisdiction has come to occupy a less dominant place in the contemporary scheme”³⁴ as the Court has “declined to stretch [it] beyond limits traditionally recognized.”³⁵ Justice Ginsburg then cited her opinion in *Goodyear* for the proposition that general jurisdiction over a

Reinhardt then argued that assertion of jurisdiction would be reasonable under the second prong of the personal jurisdiction analysis. *Id.* at 1103–06 (finding jurisdiction reasonable based on “[Daimler’s] pervasive contacts with the forum state through its agent MBUSA, . . . the interest of California and the federal courts in adjudicating important questions of human rights, and [the] substantial doubt as to the adequacy of . . . alternative for[a]”).

²² See *Bauman v. DaimlerChrysler Corp.*, 603 F.3d 1141, 1141 (9th Cir. 2010).

²³ See *Bauman v. DaimlerChrysler Corp.*, 644 F.3d 909, 912 (9th Cir. 2011).

²⁴ See *id.* at 921–31.

²⁵ See *id.* at 927 (“American federal courts . . . have a strong interest in adjudicating and redressing international human rights abuses.”).

²⁶ *Bauman v. DaimlerChrysler Corp.*, 676 F.3d 774, 774 (9th Cir. 2011); *id.* at 774–79 (O’Scannlain, J., dissenting from denial of rehearing en banc).

²⁷ *Daimler*, 134 S. Ct. at 746.

²⁸ Justice Ginsburg was joined by Chief Justice Roberts and Justices Scalia, Kennedy, Thomas, Breyer, Alito, and Kagan.

²⁹ *Daimler*, 134 S. Ct. at 751.

³⁰ *Id.* at 759 (“[W]e need not pass judgment on invocation of an agency theory in the context of general jurisdiction, for in no event can the appeals court’s analysis be sustained.”).

³¹ *Id.* at 751, 758–60. Justice Ginsburg did, however, express disapproval of the Ninth Circuit’s framing of the agency test, suggesting that it “stacks the deck” because it will “always yield a pro-jurisdiction answer.” *Id.* at 759.

³² See *id.* at 753–58 (citing cases).

³³ *Id.* at 755 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2854 (2011)) (internal quotation mark omitted).

³⁴ *Id.* at 758.

³⁵ *Id.* at 757–58.

corporation can only be found where the corporation's "affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State."³⁶ The "paradigm" places where a corporation can be "fairly regarded" as at home are its place of incorporation and its principal place of business.³⁷ Since Daimler neither was incorporated in California nor had its principal place of business there, California could not exercise general jurisdiction over it.³⁸

Justice Ginsburg characterized the plaintiffs' argument that general jurisdiction obtains in any state in which a corporation "engages in a substantial, continuous, and systematic course of business"³⁹ (the "doing business" theory of general jurisdiction⁴⁰) as not only "unacceptably grasping" but also "exorbitant" in its consequences.⁴¹ The general jurisdiction inquiry "calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide."⁴² If general jurisdiction were permitted in California in *Daimler*, "the same global reach would presumably be available in [any state where a subsidiary's] sales are sizable,"⁴³ making it difficult for an out-of-state corporation to predict where it might be liable to suit.⁴⁴ Conversely, a corporation's place of incorporation and principal place of business both are "unique . . . as well as easily ascertainable[,] . . . afford[ing] plaintiffs recourse to at least one clear and certain forum in which a corporate defendant may be sued on any and all claims."⁴⁵

³⁶ *Id.* at 761 (alteration in original) (quoting *Goodyear*, 131 S. Ct. at 2851) (internal quotation marks omitted).

³⁷ *Id.* at 760 (quoting *Goodyear*, 131 S. Ct. at 2853, 2854). Justice Ginsburg suggested there might be "exceptional case[s]" in which a corporation's operations in a forum other than its place of incorporation and principal place of business are "so substantial and of such a nature as to render the corporation at home in that State." *Id.* at 761 n.19 (citing *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952)). However, Daimler's activities "plainly [did] not approach that level." *Id.*

³⁸ *Id.* at 760–61, 761 n.18.

³⁹ *Id.* at 761 (quoting Brief for the Respondents at 17, *Daimler*, 134 S. Ct. 746 (No. 11-965)).

⁴⁰ *See id.* at 761 n.18 (internal quotation marks omitted).

⁴¹ *Id.* at 761. Justice Ginsburg also argued that the "doing business" theory rested on a fundamental misreading of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). *See Daimler*, 134 S. Ct. at 761. The "continuous and systematic" contacts language in that case described instances in which specific jurisdiction would be appropriate; in reference to general jurisdiction, *International Shoe* spoke instead of "instances in which the continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit . . . on causes of action arising from dealings entirely distinct from those activities." *Id.* (alterations in original) (quoting *Int'l Shoe*, 326 U.S. at 318 (emphasis added)) (internal quotation marks omitted).

⁴² *Daimler*, 134 S. Ct. at 762 n.20.

⁴³ *Id.* at 761.

⁴⁴ *Id.* at 761–62.

⁴⁵ *Id.* at 760; accord *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1193 (2010) ("Simple jurisdictional rules . . . promote greater predictability.").

Justice Ginsburg also pointed to the case’s “transnational context.”⁴⁶ While the Ninth Circuit had described the plaintiffs’ Alien Tort Statute⁴⁷ (ATS) and Torture Victim Protection Act of 1991⁴⁸ (TVPA) claims “as supportive . . . of general jurisdiction,”⁴⁹ the Court’s recent decisions had rendered those claims “infirm.”⁵⁰ Moreover, finding jurisdiction would threaten “international comity” by being inconsistent with the European Union’s and other international entities’ more restrictive approaches to personal jurisdiction.⁵¹

Justice Sotomayor concurred in the judgment.⁵² She would have held that exercising jurisdiction was unreasonable because the plaintiffs had not shown that California was an appropriate forum.⁵³ She argued that the majority was imposing a new “proportionality requirement”⁵⁴ by also examining the magnitude of Daimler’s out-of-state contacts.⁵⁵ Given the ruling’s damaging consequences for plaintiffs injured by multinational corporations, the majority was allowing an “unadorned concern” for defendants to take precedence over maintaining fairness for both parties.⁵⁶

In recent years, scholars have expressed concern that the Court has systematically restricted plaintiffs’ access to courts in a number of ways, such as by implementing higher pleading standards,⁵⁷ requiring higher class certification standards,⁵⁸ and barring class-wide arbitra-

⁴⁶ *Daimler*, 134 S. Ct. at 762.

⁴⁷ 28 U.S.C. § 1350 (2012).

⁴⁸ *Id.* § 1350 note.

⁴⁹ *Daimler*, 134 S. Ct. at 762.

⁵⁰ *Id.* at 762–63 (citing *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1669 (2013) (holding that the presumption against extraterritoriality applies to ATS claims); and *Mohamad v. Palestinian Auth.*, 132 S. Ct. 1702, 1705 (2012) (holding that TVPA liability extends only to natural persons)).

⁵¹ *Id.* at 763.

⁵² *Id.* (Sotomayor, J., concurring in the judgment).

⁵³ *Id.* at 763–65. Justice Sotomayor acknowledged that the Court had never decided whether the reasonableness prong applies to general jurisdiction but noted the courts of appeals had uniformly so held. *Id.* at 764 & n.1. She also objected that the majority addressed a question “neither argued nor decided below.” *Id.* at 765.

⁵⁴ *Id.* at 770.

⁵⁵ See *id.* at 767, 770. Justice Sotomayor argued Daimler’s in-state contacts should have been the sole focus because the “touchstone principle” of jurisdictional due process is a “reciprocal fairness” under which the State acquires adjudicatory authority when a corporation invokes the State’s protections by operating within it. *Id.* at 767–68.

⁵⁶ See *id.* at 771–73 (providing cautionary examples).

⁵⁷ See *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1942–43 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); Arthur R. Miller, *From Conley to Twombly to Iqbal: A Double Play on the Federal Rules of Civil Procedure*, 60 DUKE L.J. 1, 17–18 (2010).

⁵⁸ See Robert H. Klonoff, *The Decline of Class Actions*, 90 WASH. U. L. REV. 729, 731 (2013); A. Benjamin Spencer, *Class Actions, Heightened Commonality, and Declining Access to Justice*, 93 B.U. L. REV. 441, 443–44 (2013).

tions.⁵⁹ These scholars have viewed the Court's recent personal jurisdiction decisions as part of that access-restrictive trend.⁶⁰ While few dispute that jurisdiction should not have obtained on the facts of *Daimler*,⁶¹ many scholars — and courts — have resisted the implications of Justice Ginsburg's "at home" test for general jurisdiction, conceiving of such a "rigid" and "categorical" approach as unduly straitening general jurisdiction to the disadvantage of plaintiffs.⁶² Closer examination of *Daimler*, however, reveals that Justice Ginsburg is not operating from formalist or ideological conceptions of when jurisdiction ought to be exercised. Rather, she has adopted a different philosophical framework, drawn from the pioneering work of von Mehren and Trautman, that focuses fundamentally on fairness to both parties. Starting with her opinions in *Goodyear* and *Nicastro*, Justice Ginsburg has consistently applied this framework.

Von Mehren and Trautman argued that one of the considerations that plays a "pervasive" role when constructing a jurisdictional scheme is "whether . . . jurisdictional thinking should embody a bias in favor of the defendant or . . . the plaintiff."⁶³ Jurisdictional rules customarily favored the defendant because, "at least when the parties enjoy[ed] relatively equal economic strength and social standing," the burden was on the plaintiff to change the "status quo" between the parties.⁶⁴ Indeed, the traditional rule was that "*actor forum rei sequitur* (the plain-

⁵⁹ See *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740, 1748, 1753 (2011).

⁶⁰ See, e.g., Arthur R. Miller, *Simplified Pleading, Meaningful Days in Court, and Trials on the Merits: Reflections on the Deformation of Federal Procedure*, 88 N.Y.U. L. REV. 286, 286–87, 347–54 (2013) (arguing that "there is no secret about what is happening, or frankly why, and whom it all benefits," *id.* at 357: "business and governmental interests," *id.* at 366).

⁶¹ See, e.g., Linda J. Silberman, *Some Reactions to the DaimlerChrysler v. Bauman Roundtable*, 66 VAND. L. REV. EN BANC 191, 191 (2013) (noting the "striking" unanimity among all five contributors that California should not have exercised jurisdiction over *Daimler*).

⁶² See Collyn A. Peddie, *Mi Casa Es Su Casa: Enterprise Theory and General Jurisdiction over Foreign Corporations After Goodyear Dunlop Tires Operations, S.A. v. Brown*, 63 S.C. L. REV. 697, 717 (2012) (arguing, post-*Goodyear*, that to understand the "at home" test as Justice Ginsburg would later describe it in *Daimler* would be "rigid" and nonsensical); Charles W. "Rocky" Rhodes, *Nineteenth Century Personal Jurisdiction Doctrine in a Twenty-First Century World*, 64 FLA. L. REV. 387, 426–28 (2012) (same); see also *Barriere v. Juluca*, No. 12-23510-CIV, 2014 WL 652831, at *9 (S.D. Fla. Feb. 19, 2014) ("[Reading *Daimler*] as mandating the complete casting off of ["doing business" jurisdiction] . . . 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 [there.]; Camilla Cohen, Case Comment, *Goodyear Dunlop's Failed Attempt to Refine the Scope of General Personal Jurisdiction*, 65 FLA. L. REV. 1405, 1414–15 (2013) (surveying lower court attempts to "limit *Goodyear* to its facts," *id.* at 1414).

⁶³ Von Mehren & Trautman, *supra* note 6, at 1127. One other consideration is the impact on "the relation between jurisdiction to adjudicate and recognition of foreign judgments." *Id.* at 1126.

⁶⁴ *Id.* at 1127–28, 1127 n.13, 1128 n.14 (italics omitted).

tiff must pursue the defendant in his forum).⁶⁵ Accordingly, traditional bases of jurisdiction — “in personam,” “quasi in rem,” and “in rem” — predicated adjudicatory authority on the sovereign’s physical power over the defendant or their property, expecting the plaintiff to come to sue where one or the other could be found.⁶⁶ However, post-*International Shoe*, courts increasingly recognized that the “growing mobility and complexity of modern life” and corporations’ “increasing[] dominat[ion]” of “commercial and economic life” argued for an “increasingly functional” approach where the plaintiff ought sometimes be permitted to compel a corporate defendant to come to them.⁶⁷

Accordingly, exercises of personal jurisdiction should be conceptualized as falling into two categories: what von Mehren and Trautman termed “general” jurisdiction, which arises out of the relationship between a forum and the party whose legal rights are to be affected, and what they termed “specific” jurisdiction, which arises out of the relationship between a forum and the underlying controversy.⁶⁸ As a category, general jurisdiction encompasses the traditional bases of jurisdiction that require the plaintiff to come to the defendant and are thus predicated on the forum’s adjudicatory authority over the defendant or their property.⁶⁹ By contrast, specific jurisdiction encompasses the new bases of jurisdiction that were developed in response to the rise of multistate corporations.⁷⁰ Specific jurisdiction’s “characteristic feature” is that it permits the plaintiff to reverse the roles and require the defendant to “come . . . to him” by predicating the adjudicatory authority of the forum on its relation to the underlying controversy.⁷¹

Von Mehren and Trautman argued that reasons of “fairness,” “rationality,” and “litigational convenience”⁷² urged the continued expansion of plaintiff-friendly specific jurisdiction to all “cases in which the controversy arises out of conduct that is essentially multistate on the part of the defendant, and essentially local on the part of the plaintiff.”⁷³ In such cases, “the defendant’s activity foreseeably involved the risk of serious harm to individuals in communities other than his own,” whereas the plaintiff, whose activities were localized, could not have foreseen involvement in an out-of-state suit.⁷⁴ Were specific jurisdiction to so expand, the scope of general jurisdiction should, and

⁶⁵ *Id.* at 1127 n.13.

⁶⁶ *See id.* at 1173.

⁶⁷ *Id.* at 1146–47, 1167–73, 1178.

⁶⁸ *Id.* at 1136.

⁶⁹ *See id.* at 1127–28, 1127 n.13, 1128 n.14, 1137–39.

⁷⁰ *See id.* at 1146–47, 1167–73, 1178.

⁷¹ *Id.* at 1167.

⁷² *Id.* at 1164, 1167.

⁷³ *See id.* at 1167–68.

⁷⁴ *Id.* at 1167.

likely would, shrink.⁷⁵ While the law should preserve “some place where the defendant can be sued on any cause of action,” “only the common arena of the defendant’s activities should be such a place”: for a corporation, its corporate headquarters, defined as both its place of incorporation and its principal place of business.⁷⁶ Exercises of general jurisdiction on other grounds would overlap with exercises of an expanded specific jurisdiction, producing not only redundancy but also unfairness to defendants, who would then be required “to litigate any and every question wherever [their] assets [could] be found.”⁷⁷

The notion that von Mehren and Trautman’s thinking influenced Justice Ginsburg’s view of personal jurisdiction is not merely speculative. Their article is the most cited source in her opinions in *Goodyear*, *Nicastro*, and *Daimler*.⁷⁸ Moreover, Justice Ginsburg’s views on the historical trajectories and appropriate roles of specific and general jurisdiction closely track those of von Mehren and Trautman: specific jurisdiction ought to take the primary role over time, expanding in scope to adapt to the realities of a globalized economy,⁷⁹ with general jurisdiction correspondingly shrinking in scope to act merely as a “safety valve that sometimes allows plaintiffs access to a reasonable forum in cases when specific jurisdiction would deny it.”⁸⁰ Justice Ginsburg’s views on the importance of international comity in jurisdictional matters also echo those of von Mehren and Trautman.⁸¹

Furthermore, as articulated in *Goodyear* and *Daimler*, Justice Ginsburg’s conception of the “at home” test for general jurisdiction mirrors von Mehren and Trautman’s view of general jurisdiction.⁸² In *Daimler*, Justice Ginsburg cited to the article directly for the proposition that a general jurisdiction appraisal necessarily involves taking in-

⁷⁵ *Id.* at 1166, 1178–79 (“[W]e believe that future development in the field of general jurisdiction will turn largely on what takes place in the area of specific jurisdiction” *Id.* at 1166.).

⁷⁶ *Id.* at 1179.

⁷⁷ *Id.* at 1178; *see also id.* at 1164.

⁷⁸ The article is cited five times in *Daimler*, five times in *Nicastro*, and four times in *Goodyear*.

⁷⁹ *See* J. McIntyre Machinery, Ltd. v. Nicastro, 131 S. Ct. 2780, 2800 n.9 (2011) (Ginsburg, J., dissenting).

⁸⁰ *Daimler*, 134 S. Ct. at 758 n.9 (quoting Patrick J. Borchers, *The Problem with General Jurisdiction*, 2001 U. CHI. LEGAL F. 119, 139) (internal quotation mark omitted); *see also* *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2854 (2011) (“[S]pecific jurisdiction has become the centerpiece of modern jurisdiction theory, while general jurisdiction plays a reduced role.” (quoting Mary Twitchell, *The Myth of General Jurisdiction*, 101 HARV. L. REV. 610, 628 (1988)) (internal quotation marks omitted)).

⁸¹ *Compare Daimler*, 134 S. Ct. at 763 (discussing adverse foreign policy implications of expansive general jurisdiction), *with* von Mehren & Trautman, *supra* note 6, at 1127 (“[A] legal system . . . must take into account the views of other communities concerned. Conduct that is overly self-regarding . . . can disturb the international order and produce political, legal, and economic reprisals.”).

⁸² *Compare Daimler*, 134 S. Ct. at 760–61, 761 n.19, and *Goodyear*, 131 S. Ct. at 2853–54, *with* von Mehren & Trautman, *supra* note 6, at 1179.

to account a corporation's wider activities, lest that corporation be subject to suit in every state in which it does business.⁸³ In *Nicastro*, Justice Ginsburg's dissent argued that a court should be able to exercise specific jurisdiction over a foreign manufacturer where the manufacturer distributed its products using an independent distributor and where the injury to the plaintiff occurred in the forum state.⁸⁴ The opinion closely applied von Mehren and Trautman's theory of specific jurisdiction, arguing that the facts of the case closely fit into the category of cases that they proposed: those "involving a substantially local plaintiff . . . injured by the activity of a defendant engaged in interstate or international trade."⁸⁵ Echoing their reasoning, Justice Ginsburg argued that although such an approach represented an "enlargement of 'the permissible scope of state jurisdiction over foreign corporations and other nonresidents,'" this enlargement was warranted by "the fundamental transformation of our national economy."⁸⁶

An evaluation of von Mehren and Trautman's influence on Justice Ginsburg, then, demonstrates that the core values animating her conception of the "at home" test appear to be the same as those undergirding von Mehren and Trautman's jurisdictional scheme. Fairness to plaintiffs is only one dimension of this framework; Justice Ginsburg also seems concerned with fairness to defendants, as well as the international implications of adopting a given jurisdictional rule.

One can see the balancing of these interests in Justice Ginsburg's assessment of the "doing business" theory of general jurisdiction. On the one hand, making clear that the "doing business" theory is no longer viable arguably does not do a great deal of damage to the plaintiffs' bar. Some scholars have argued that courts should retain the "doing business" theory of general jurisdiction as a "specific jurisdiction catchall" that courts can use when they feel that justice demands a finding of jurisdiction.⁸⁷ But the restrictions that *Nicastro* placed upon jurisdictional access could only ever have been "imperfect[ly]"⁸⁸ remedied by retaining the "doing business" theory. Although the facts of *Nicastro* did leave open the possibility that in a narrow class of

⁸³ See *Daimler*, 134 S. Ct. at 762 n.20 (citing von Mehren & Trautman, *supra* note 6, at 1142–44).

⁸⁴ *Nicastro*, 131 S. Ct. at 2804 (Ginsburg, J., dissenting).

⁸⁵ See *id.* (citing von Mehren & Trautman, *supra* note 6, at 1167–69). Justice Ginsburg also demonstrated awareness that von Mehren and Trautman invented the terms "specific" and "general" jurisdiction. See *id.*

⁸⁶ *Id.* at 2800 n.9 (quoting *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 222–23 (1957)) (internal quotation marks omitted).

⁸⁷ See Mary Twitchell, *Why We Keep Doing Business with Doing-Business Jurisdiction*, 2001 U. CHI. LEGAL F. 171, 196–97 (emphasis removed); accord Borchers, *supra* note 80, at 129–30 ("[C]urrent specific jurisdiction doctrine contains several irrational elements, some of which make general jurisdiction an unpleasant necessity.")

⁸⁸ See *Daimler*, 134 S. Ct. at 758 n.9 (quoting Borchers, *supra* note 80, at 139).

cases, a foreign corporation that did have a lot of contacts with a particular state could still be subject to general jurisdiction there under the “doing business” theory, the “doing business” theory would not have covered cases in which the foreign defendant’s distributing subsidiary was also located abroad. And even without that theory, plaintiffs can still sue domestic defendants in at least one U.S. jurisdiction under the “at home” test.⁸⁹ Thus, eliminating the “doing business” theory imposes relatively little unfairness on plaintiffs because it creates very few new situations where plaintiffs cannot sue.

On the other hand, Justice Ginsburg seemed to feel that retaining the “doing business” theory would have done measurable damage to defendants. The “doing business” theory allowed states to hale defendants into their courts even when the injury occurred in another forum, permitting the plaintiff not just to call the defendant to them, but also to another arena of the plaintiff’s choosing.⁹⁰ Moreover, the “doing business” theory was inconsistent with international approaches to general jurisdiction, incurring risk to ongoing “reciprocal recognition and enforcement of judgments.”⁹¹

Justice Ginsburg’s reinforcement of the “at home” test for general jurisdiction in *Daimler* demonstrates internal congruence with her overall theory of personal jurisdiction. Under *Daimler*’s facts, Justice Ginsburg’s approach did limit plaintiffs’ access to the courts. But the consistency with which Justice Ginsburg has adhered to von Mehren and Trautman’s overall framework suggests that this result is a coincidence of the case, rather than a shift in direction in Justice Ginsburg’s jurisprudence, and that, instead, she will continue to focus on achieving fairness for both parties.

⁸⁹ *Id.* at 760.

⁹⁰ *See id.* at 760–62; *see also* Donald Earl Childress III, *General Jurisdiction and the Transnational Law Market*, 66 VAND. L. REV. EN BANC 67, 72–74 (2013) (discussing the phenomenon of “transnational forum shopping”).

⁹¹ *Daimler*, 134 S. Ct. at 763 (quoting Brief for the United States as Amicus Curiae Supporting Petitioner, No. 11-965, 2013 WL 3377321, at *2) (internal quotation mark omitted).