

PERSONAL JURISDICTIONAL LINKS

DONALD EARL CHILDRESS III*

*The Supreme Court's recent interest in personal jurisdiction raises a fundamental question: What is personal jurisdiction doctrine designed to do in light of modern-day litigation realities? This Essay, in honor of Professor Linda J. Silberman, attempts to answer that question by configuring the modern test for personal jurisdiction around the idea of jurisdictional links, an approach that Professor Silberman has advanced in her scholarship and submissions before the United States Supreme Court. Such a focus on jurisdictional links, which can be grounded in the Court's traditional understanding of personal jurisdiction leading up to its pathmarking decision in *International Shoe*, uncovers the different tasks for personal jurisdiction as a test focused on defendant interests, state regulatory interests, and fairness. Approaching personal jurisdiction doctrine in this way offers a path forward for courts, litigants, and commentators analyzing personal jurisdiction doctrine.*

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I. INTRODUCTION

The Supreme Court's recent interest in personal jurisdiction is nothing short of remarkable, and one is hard pressed to find any other area of substantive or procedural law that has

* Professor of Law, Pepperdine University Caruso School of Law. This Essay benefitted from questions and comments offered at a conference in honor of Professor Linda J. Silberman hosted at the New York University School of Law in April 2023. I thank the organizers of the conference for their kind invitation. A special note of thanks is due to Professor Silberman for her friendship and scholarly inspiration.

occupied so much of the Roberts Court's attention. Until 2011, when the Court decided on the same day *J. McIntyre Machinery, Ltd. v. Nicastro*¹ and *Goodyear Dunlop Tires Operations, S.A. v. Brown*,² the Court had waited twenty years to weigh in on personal jurisdiction doctrine.³ Following those decisions, the Court has decided six more personal jurisdiction cases⁴ that, taken together with the 2011 duo, have set into motion clarifications and transformations in the understanding of personal jurisdiction. The Court's recent decision in *Mallory v. Norfolk Southern Railway Co.*, holding that a Pennsylvania statute requiring out-of-state corporations to consent to general jurisdiction as a condition of registering to do business in the state was consistent with due process,⁵ may tell us even more about the doctrine in future cases.

In honor of Professor Linda J. Silberman, the goal of this Essay is to take stock of the Supreme Court's recent interest in personal jurisdiction doctrine and to identify the issues, especially concerning specific jurisdiction, that remain unresolved. In so doing, this Essay proposes a view of personal jurisdiction that is focused on two sets of jurisdictional links: (1) the link between the defendant and the forum and (2) the link between the claim and the forum. Focusing more concretely on these personal jurisdictional links presents an opportunity to clarify the *International Shoe*⁶ test in light of modern-day litigation realities. It also provides an opportunity to connect *International Shoe* to decisions predating that decision.

1. *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011).

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

3. Before these decisions, the Court last considered personal jurisdiction doctrine in the case of *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991), which involved consent to personal jurisdiction through a forum-selection clause. Other decisions around that time that were more comprehensively concerned with the personal jurisdiction doctrine included *Burnham v. Superior Ct. of Cal.*, 495 U.S. 604 (1990) (concerning tag jurisdiction) and *Asahi Metal Industry Co. v. Superior Ct. of Cal.*, 480 U.S. 102 (1987) (concerning specific jurisdiction over foreign corporations).

4. *Daimler AG v. Bauman*, 571 U.S. 117 (2014); *Walden v. Fiore*, 571 U.S. 277 (2014); *BNSF Ry. Co. v. Tyrrell*, 581 U.S. 402 (2017); *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 582 U.S. 255 (2017); *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017 (2021); *Mallory v. Norfolk S. Ry. Co.*, 143 S. Ct. 2028 (2023).

5. 143 S. Ct. 2028 (2023).

6. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

This Essay is divided into two parts. The first part explores the basics of personal jurisdiction doctrine before *International Shoe*. It next identifies the relatively clear rules of general jurisdiction and the somewhat more contested rules of specific jurisdiction after *International Shoe*. After explaining that a court's exercise of specific jurisdiction requires a "relationship among the defendant, the forum, and the litigation,"⁷ this Essay explores the Supreme Court's cases by focusing on the connection between the defendant and the forum and also between the forum and the litigation. This part concludes by considering the Court's most recent specific jurisdiction decision, *Ford Motor Company*, in light of these connections.

The next part explains that personal jurisdictional links matter and offers a suggested approach to personal jurisdiction doctrine. It develops how Professor Silberman explained the importance of conceiving of personal jurisdiction doctrine in this way, and it offers some thoughts on how that approach might be connected to cases preceding *International Shoe*. The Essay closes with some observations on personal jurisdiction doctrine going forward.

II. PERSONAL JURISDICTION BASICS

This part explores the limits that the Supreme Court's caselaw places on personal jurisdiction. It first offers a view of the doctrinal landscape before *International Shoe*, and it then examines the state of the law after that decision. It next outlines the state of the doctrine after the Court's recent decision in *Ford Motor Company*.

A. *Personal Jurisdiction Before International Shoe*

Before *International Shoe*, the basis for a court's personal jurisdiction was the defendant's presence in the forum or consent to the jurisdiction of the forum court.⁸ The defendant's

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

8. *Pennoyer v. Neff*, 95 U.S. 714 (1878). The Supreme Court grounded its analysis in the Fourteenth Amendment, which provides that no State may "deprive any person of life, liberty, or property without due process of law." As such, a state court denies due process by entering a judgment against a defendant over whom it does not have personal jurisdiction. *Id.* at 733. Under

physical presence in the forum (or consent) gave a forum court power to adjudicate any and all claims against the defendant.⁹ Under this understanding, there was no need for notions of general and specific jurisdiction, which were not developed until much later in academic commentary,¹⁰ because a forum court's jurisdiction was plenary once power over the defendant was established.

Such an approach worked relatively well in the late-1800s landscape where corporate activities and interstate and transnational trade were just developing. Generally speaking, a plaintiff was likely injured in the forum by a forum domiciliary (over whom the forum court would always have adjudicatory power) or, in cases where a plaintiff was injured by a foreign defendant, there were ways, such as effecting service of process on the defendant in the forum, to establish jurisdiction.¹¹ In many transnational cases, the basis for suit was admiralty, and personal jurisdiction rested on the seizure or the security of a ship in a U.S. port.¹²

Grounded in notions of sovereignty, territoriality, and physical power over individuals, the *Pennoyer* "presence" rule very quickly faced challenges in keeping up with commercial developments. Personal jurisdiction over foreign corporations proved most troublesome. A foreign corporation might operate outside the forum, and yet send its agents and products

this approach, the Fifth Amendment's due process clause might similarly constrain a federal court's assertion of personal jurisdiction, although it is unclear whether it does so in the same way. See *Bristol-Myers Squibb Co.*, 582 U.S. at 269 ("[W]e leave open the question whether the Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction by a federal court."). For the purposes of this Essay, I take no view on whether the Court correctly constitutionalized the personal jurisdiction analysis or whether the Fourteenth and Fifth Amendments similarly constrain a court's personal jurisdiction. What matters at present is that the Court continues to follow this due process approach. See *Ford Motor Co.*, 141 S. Ct. at 1018.

9. *Pennoyer*, 95 U.S. at 733.

10. See *infra* note 40 and accompanying text (discussing the notions of "general" and "specific jurisdiction").

11. For examples of the role of service of process, see *Pennoyer*, 95 U.S. at 733, and *Burnham v. Superior Ct. of Cal.*, 495 U.S. 604, 610–11 (1990).

12. See, e.g., George Rutherglen, *The Contemporary Justification for Maritime Arrest and Attachment*, 30 WM. & MARY L. R. 541, 542 (1989) (explaining that a "seizure, or the security posted in lieu of a seizure, confers limited personal jurisdiction over the owner and provides a source for satisfying any judgment obtained by the plaintiff").

into the forum, thus benefiting from the privilege of doing business in the forum. At the same time, a foreign corporation might cause harm in the forum, and yet the corporation might organize its affairs in such a way so as not to be subject to personal jurisdiction in the forum. The *Pennoyer* “presence” rule, which was developed in a case involving natural persons, thus required reasoning by analogy to account for cases involving corporations.

Sensitive to commercial realities as they existed in 1917, and following the approach outlined in *Pennoyer*, the Supreme Court held that an out-of-state corporation is subject to personal jurisdiction when it “is doing business within the state in such a manner and to such extent to warrant the inference that it is present there.”¹³ As explained by Judge Cardozo, “if in fact [a corporation] is here, if it is here, not occasionally or casually, but with a fair measure of permanence or continuity, . . . it is within the jurisdiction of our courts.”¹⁴ Of course, what would a “fair measure of permanence and continuity” look like? The test for corporate presence could be satisfied, for example, by a corporation’s maintenance of a “branch office” with “eleven desks, and other suitable equipment.”¹⁵ But, what if there were only five desks and more limited equipment?

Just as in the case of individuals, the flexibility of the “presence” analogy led some state courts to conclude that corporate presence creates jurisdiction over any and all claims against a corporation.¹⁶ Other state courts resisted such a broad approach to personal jurisdiction.¹⁷ By about 1900, it appears that most state courts limited personal jurisdiction to cases in which the State had a significant regulatory interest, with the

13. *Philadelphia & Reading Ry. Co. v. McKibbin*, 243 U.S. 264, 265 (1917); *cf. Goldey v. Morning News of New Haven*, 156 U.S. 518, 521–22 (1895) (finding that a judgment “against a corporation neither incorporated nor doing business within the state” is not entitled to full faith and credit).

14. *Tauza v. Susquehanna Coal Co.*, 115 N.E. 915, 917 (N.Y. 1917).

15. *Id.* at 916–17.

16. *Id.* at 918 (citing additional authority for the notion of corporate presence creating jurisdiction).

17. *See, e.g., Sawyer v. North Am. Life Ins. Co.*, 46 Vt. 697, 706 (1874) (holding that the State’s intention was not to extend jurisdiction to causes of action that “accrued out of state in favour of persons not citizens of the state, against a corporation existing out of the state”).

most common test limiting jurisdiction to “causes of action arising within the domestic jurisdiction.”¹⁸

It is important to recognize that much of the development of the personal jurisdiction doctrine between *Pennoyer* and *International Shoe* was uniquely concerned with jurisdiction over corporations. In 1915, for example, the Court explained that every State had an “undoubted right” to “provide for service of process upon any foreign corporation doing business therein.”¹⁹ And service of process equaled personal jurisdiction. As the Court noted, “in view of the fact that much of the business of the country is done by corporations having foreign charters and principal offices remote from States wherein they transact business, it has been found necessary . . . to give jurisdiction to try controversies which have originated in such States.”²⁰ Importantly, the Court recognized that there were concerns of “manifest inconvenience and hardship” to “claims on contracts wherever made and suits for torts wherever committed.”²¹

Providing guardrails to exorbitant assertions of personal jurisdiction over corporations led the Court to formulate different tests to limit “manifest inconvenience and hardship.” The Court explained that jurisdiction “does not extend to causes of action arising in other states.”²² The Court also suggested that a State “may” also have the power to hear “suits in which the cause of action arose elsewhere, if the transaction out of which it arose had been entered upon within the state.”²³ Another suggestion, this time offered in an opinion by Justice Stone, the eventual author of the majority opinion in *International Shoe*, was that a corporation may be sued on “a cause of action arising outside th[e] state” if the case “ar[ose] out of business conducted within the state.”²⁴ The Court went on to explain, however, that “a cause of action arising wholly outside

18. Edward Q. Keasbey, *Jurisdiction Over Foreign Corporations*, 12 HARV. L. REV. 1, 22 (1898); see also *Central R.R. & Banking Co. v. Carr*, 76 Ala. 388, 393 (1884) (describing this test as “well settled”).

19. *Simon v. Southern Ry. Co.*, 236 U.S. 115, 130 (1915).

20. *Com. Mut. Accident Co. v. Davis*, 213 U.S. 245, 253 (1909).

21. *Simon*, 236 U.S. at 130.

22. *Id.*

23. *Davis v. Farmers Coop. Equity Co.*, 262 U.S. 312, 316–17 (1923).

24. *Louisville & Nashville R.R. Co. v. Chatters*, 279 U.S. 320, 324–25 (1929).

and wholly unconnected with any act or business of the corporation within the state may not be sued upon there.”²⁵

Under even the traditional “presence” conception of personal jurisdiction, the Court had already begun to outline an approach concerned with personal jurisdictional links. One link—the corporation’s continuous “presence” in the State—established the forum’s power over the defendant. A separate link—whether the cause of action arose out of or related to the corporation’s business in the State—served as a freestanding check on the forum’s regulatory interest in the assertion of jurisdiction that was designed to prevent the “importation” of controversies that “would not serve any [regulatory] interest of [the State].”²⁶ Under this formulation, it is not clear the Court ever asked whether a specific act of the corporation in the State caused, gave rise to, or even related to a particular claim. The Court’s concern with a State’s regulatory interest in hearing a claim looked elsewhere.

The Court’s decision in *St. Louis Railway Co. v. Alexander*²⁷ illustrates that point. In that case, the Court held that a New York court could hear a claim against a railway company for failing to ice a shipment of poultry in Texas.²⁸ The corporation maintained a freight office in New York (presence in New York); a bill of lading called for the delivery of the poultry in New York (a connection of the claim with New York); so there was jurisdiction in New York.²⁹ The freight office had nothing to do with the failure to ice the poultry, but that was beside the point. The corporation was “there” and the cause of action was connected with the regulatory interests of New York; so, the case could be heard there.

The Court’s decision in *Louisville & Nashville R. Co. v. Chatters*³⁰ makes a similar point. There, a citizen of Louisiana bought a train ticket in Louisiana, suffered injuries in Virginia while on the train, and sued the train company in Louisiana.³¹ In ruling that a Louisiana court could hear the case, the Court first concluded that the corporation was continuously “present” in Louisiana because it “maintain[ed] its own office there for the

25. *Id.*

26. *Morris & Co. v. Skandinavia Ins. Co.*, 279 U.S. 405, 408 (1929).

27. 227 U.S. 218 (1913).

28. *Id.* at 222.

29. *Id.* at 226–28.

30. 279 U.S. 320.

31. *Id.* at 322–23.

sale of tickets.”³² The Court then separately held that the passenger’s purchase of the ticket in Louisiana allowed a Louisiana court to hear the case.³³ The train company objected that the specific ticket at issue had not been sold at the ticket office; that the ticket had instead been sold by an agent as part of a distinct and isolated transaction; and that the Court should therefore ask whether that “transaction alone” would “of itself” create jurisdiction.³⁴

The Court rejected that contention: “Since the [railroad] was present and subject to suit in Louisiana, we are concerned, not with the question whether the sale of the ticket was sufficient to bring it there, but only with the question whether, being there, its liability extended to [the claim at issue].”³⁵ These cases were hardly anomalies. In *New York, Lake Erie & Western R.R. Co. v. Estill*,³⁶ a railroad’s business office in Missouri permitted a Missouri court to hear a case about the unrelated negligent transportation of cattle through Ohio, where the cattle were “intended for the Missouri market.”³⁷ Here again, the regulatory interests of the State played a pronounced role to support jurisdiction.

The upshot of this caselaw is that the Supreme Court had already begun to develop a “traditional conception of fair play and substantial justice”³⁸ rooted in personal jurisdictional links, at least as to jurisdiction over corporations, by the time of the Court’s pathmarking decision in *International Shoe*.

B. *Personal Jurisdiction After International Shoe*

The Supreme Court further developed the modern principles governing personal jurisdiction in a line of cases starting with *International Shoe Company v. Washington*.³⁹ From these cases, the Court, relying on academic commentary, has identified two types of personal jurisdiction: general jurisdiction and

32. *Id.* at 326.

33. *Id.* at 328.

34. *Id.* at 327–28.

35. *Id.* at 328.

36. 147 U.S. 591 (1893).

37. *Id.* at 593, 608; see also *Due Process, Jurisdiction over Corporations, and the Commerce Clause*, 42 HARV. L. REV. 1062, 1063 n.8 (1929) (citing other holdings in this line of cases).

38. *International Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945).

39. See generally *id.*

specific jurisdiction.⁴⁰ A court may assert general jurisdiction over a defendant who is “at home” in the forum—for instance, an individual is generally at home in their place of domicile and a corporation is generally at home in its state of incorporation or principal place of business.⁴¹ General jurisdiction permits a forum court to hear any and all claims against the defendant, even if the claims arise outside the forum and have nothing to do with the defendant’s forum contacts. This is because a State has regulatory interests in hearing claims against defendants who have affiliated themselves with the forum state. Thus, a corporation incorporated in Virginia can be sued in Virginia (either in state or federal court depending on questions of subject matter jurisdiction and venue) for harms occurring entirely in California, and even as to a plaintiff who has no connection to Virginia.

Another way to establish personal jurisdiction is to show that a defendant has purposeful contacts with the forum, such as through acting in the forum or by directing its activities towards the forum.⁴² Unlike general jurisdiction, specific jurisdiction requires that the events on which the claim is based “arise out of or relate to” the defendant’s purposeful contacts with the forum.⁴³ As Professor Silberman has explained, “[i]n order to establish specific jurisdiction, the claim must arise out of the activity or event that creates the contact with the forum—i.e. the nexus requirement.”⁴⁴ Thus, the Virginia corporation discussed above would be subject to specific jurisdiction in California so long as the plaintiff’s claim arises out of or relates to the defendant’s purposeful contacts with California and the assertion of jurisdiction would be reasonable under the circumstances. This would be the case where, for instance, the Virginia corporation engaged in sales in California and the plaintiff was injured by the sales in California.

While the basics of general and specific jurisdiction are easy to state, there are difficulties in applying the doctrine, especially in specific jurisdiction cases. As the Supreme Court has

40. The terms were actually coined in a law review article exploring the Court’s case law. See Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1135–36 (1966) (defining and arguing for the utility of the terms “specific” and “general jurisdiction”).

41. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011).

42. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985).

43. *Id.*

44. Linda J. Silberman, Hague Lecture on Judicial Jurisdiction 16 (July 21, 2021) (transcript on file with author).

explained, a court's exercise of specific jurisdiction requires a "relationship among the defendant, the forum, and the litigation."⁴⁵ One can understand this relationship, as Professor Silberman has encouraged,⁴⁶ by focusing on the connection between the defendant and the forum and also between the forum and the litigation.

The personal jurisdiction test is concerned with the relationship between the defendant and the forum because, at its core, the personal jurisdiction doctrine protects a defendant's liberty interests in not being subject to the coercive power of a forum court without appropriate contacts giving the State a regulatory interest. The costs to a defendant in hiring counsel, traveling to the forum, participating in discovery, defending itself at trial, and ultimately facing "the full powers of the forum State to render a judgment against him" cannot be understated.⁴⁷ As such, personal jurisdiction, especially the purposeful contacts prong, protects a defendant from such burdens unless the "contacts with the forum make it just to force him to defend there."⁴⁸ What is "just" depends on a State's regulatory interests as to the claim advanced by the plaintiff.

Going back to *International Shoe*, the Court has required for specific jurisdiction "certain minimum contacts" between the defendant and the forum, whether they be a "continuous and systematic" course of activities in the forum or "the commission of some single or occasional acts."⁴⁹ Without such purposeful contacts by the defendant, the forum has no power to enter judgment against the defendant even if the forum is "the 'center of gravity' of the controversy, or the most convenient location for litigation."⁵⁰ Thus, even in a case where a plaintiff is injured in a forum, if the defendant has "no 'contacts, ties, or relations'" with the forum, then the forum lacks jurisdiction.⁵¹ Here again, the Court's caselaw is concerned with the regulatory interests of the forum.

Even though personal jurisdiction may be principally concerned with the due process rights of the defendant, the

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

46. *See infra* note 80 and accompanying text.

47. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 808 (1985).

48. *Id.* at 807.

49. *International Shoe Co. v. Washington*, 326 U.S. 316–18 (1945).

50. *Hanson v. Denckla*, 357 U.S. 235, 254 (1958).

51. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 299 (1980) (citation omitted).

doctrine is also concerned with the “territorial limitations on the power of the respective States.”⁵² Because a forum State has sovereignty only over its own territory,⁵³ the doctrine requires “‘an affiliation between the forum and the underlying controversy,’ principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation.”⁵⁴ Without such an affiliation, principles of “interstate federalism” will “divest the State of its power to render a valid judgment”—“[e]ven if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of [the] State” and “even if the forum State is the most convenient location for litigation.”⁵⁵

The Court’s decision in *Bristol-Myers Squibb v. Superior Court of California*⁵⁶ is illustrative. In that case, plaintiffs brought a mass action against Bristol-Myers in California alleging that the drug Plavix was defective.⁵⁷ Bristol-Myers’ contacts with California were that it advertised Plavix in California, “sold almost 187 million Plavix pills” in California, and “took in more than \$900 million” from sales of Plavix in California.⁵⁸ But many of the plaintiffs did not reside in California, “were not prescribed Plavix in California, did not purchase Plavix in California, and were not injured by Plavix in California.”⁵⁹ Because of these facts, the Court found principles of “interstate federalism” to be “decisive.”⁶⁰ As the Court explained, “[i]n order for a court to exercise specific jurisdiction over a claim, there must be an ‘affiliation between the forum and the underlying controversy.’”⁶¹ As such, a California court could not hear the case because there was no “adequate link between the State and the nonresidents’ claims and the forum,” “no harm in California and no harm to California residents,” and “no in-state injury and no injury

52. *Hanson*, 357 U.S. at 251.

53. *See id.* (reasoning that a State may not exert jurisdiction over a defendant that lacks minimal contacts with the State).

54. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

55. *World-Wide Volkswagen*, 444 U.S. at 294.

56. 582 U.S. 255 (2017).

57. *Id.* at 258.

58. *Id.* at 259, 268.

59. *Id.* at 264.

60. *See id.* at 263–265 (explaining that the interest of federalism outweighed the lacking minimal contacts as asserted by respondents).

61. *Id.* at 264 (citation omitted).

to residents of the forum State.”⁶² The lack of regulatory interests of the forum state over claims by non-forum plaintiffs thus proved decisive in the Court’s reasoning.

C. *Personal Jurisdiction After Ford Motor Company*

Thus far, we have only been detailing the personal jurisdictional link required between the defendant and the forum—purposeful contacts—and the link between the forum and the underlying claim—for instance, some harm occurring in the forum that gives the forum State a regulatory interest in hearing the claim. The Court has also required a showing that the “controversy is related to or ‘arises out of’ a defendant’s contacts with the forum.”⁶³ As to this prong, the Court had previously reserved judgment as to “what sort of tie between a cause of action and a defendant’s contacts with the forum is necessary” to support jurisdiction.⁶⁴ The Court granted certiorari in two recent cases to resolve a circuit split as to this issue.

The first case, *Ford Motor Company v. Montana Eighth Judicial District*, involved injuries sustained in a fatal accident involving a 1996 Ford Explorer. The car had been assembled in Kentucky and sold to a dealer in Washington who sold it to a resident of Montana in 2007, who later resold the car again to a resident of Montana in 2009. In May 2015, the daughter of the most recent owner died in an accident while driving the car in Montana when the tread of one of the tires separated from the body of the tire and the car rolled into a ditch. The personal representative of the decedent’s estate sued Ford and several tire companies in Montana state court and asserted claims against Ford for design defect, failure to warn, and negligence. Ford moved to dismiss the case for lack of personal jurisdiction, but the state trial court denied the motion.⁶⁵

On appeal, the Montana Supreme Court affirmed, holding that the exercise of personal jurisdiction comported with due process. Specifically, the court reasoned that Ford had

62. *Id.* at 264–66.

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

64. *Id.* at 415 n.10.

65. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1023–24 (2021).

purposeful contacts with Montana because it “delivers its vehicles and parts into the stream of commerce with the expectation that Montana consumers will purchase them,” “advertises in Montana,” “is registered to do business in Montana,” “operates subsidiary companies in Montana,” “has thirty-six dealerships in Montana,” “has employees in Montana,” “sells automobiles in Montana,” and provides “repair, replacement and recall services in Montana.” As to relatedness, the court reasoned that the claims related to Ford’s Montana activities because the “the use of the Explorer in Montana is tied to Ford’s activities of selling, maintaining, and repairing vehicles in Montana” and because “Ford could have reasonably foreseen in the Explorer—a product built to travel—being used in Montana.” The court went on to conclude that the exercise of jurisdiction was reasonable because Ford’s contacts with Montana “are extensive,” the accident “involved a Montana resident,” and “the accident occurred in Montana.”⁶⁶

The second case, *Ford Motor Company v. Bandemer*, involved a 1994 Ford Crown Victoria that was designed in Michigan, assembled in Ontario, and sold to a dealer in North Dakota in 1994. The car was bought and sold multiple times, with the fourth owner registering the car in Minnesota in 2011 and the fifth owner registering it in Minnesota in 2013. In January 2015, the son of the fifth owner was killed while driving the car in Minnesota and the passenger, Bandemer, was injured when the passenger-side airbag did not deploy, leaving him with a severe brain injury.⁶⁷

Bandemer sued Ford, the owner, and the driver in Minnesota state court, asserting claims against Ford for products liability, breach of warranty, and negligence. Ford moved to dismiss for lack of personal jurisdiction, but the state trial court denied the motion.⁶⁸

On appeal, the Minnesota Supreme Court affirmed in a 5-2 decision. As to purposeful contacts, the court reasoned that Ford “collected data on how its vehicles perform through Ford

66. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 2019 MT 115, ¶¶ 17–30, 443 P.3d 407, 415–18 (Mont. 2019).

67. *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 748 (Minn. 2019). This case was consolidated with *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.* following the grant of writ of certiorari. *Ford Motor Co. v. Bandemer*, 140 S. Ct. 916 (2020).

68. *Bandemer*, 931 N.W.2d 744.

dealerships in Minnesota and used that data to inform improvements to its designs,” “sold more than 2,000 1994 Crown Victoria vehicles in Minnesota,” “sold about 200,000 vehicles of all types in Minnesota during a three-year period,” and “conducted direct-mail advertising in Minnesota.” As to relatedness, the court concluded that because Ford “has sold thousands of [1994] Crown Victoria cars in Minnesota and the Crown Victoria is the very type of car that Bandemer alleges was defective” that Ford’s contacts with Minnesota relate to the claims at issue. The court also found that the exercise of personal jurisdiction was reasonable because the accident “occurred on a Minnesota road, between a Minnesota resident as plaintiff and both Ford—a corporation that does business regularly in Minnesota—and two Minnesota residents as defendants.” Two justices dissented, reasoning that Ford’s Minnesota contacts were unrelated to the claims.⁶⁹

In deciding that Ford was subject to personal jurisdiction, the Supreme Court explained that a resident plaintiff who suffers an injury in her home state can assert personal jurisdiction over the manufacturer of a product even if the manufacturer did not sell that specific item to the plaintiff in that state.⁷⁰ The Court also observed that specific jurisdiction is focused both on the defendant’s contacts with the forum state and also the relationship between the plaintiff’s claim and the forum that makes the claim subject to the State’s regulation.⁷¹ According to the Court, these rules are based in fairness and interstate federalism.⁷² And the Court connected these values to *International Shoe* and the founding of “specific jurisdiction on an idea of reciprocity between a defendant and a State.”⁷³ As noted above, however, there is reason to believe that these values were of concern to the Court years before *International Shoe*. More importantly, the Court’s explanation of the doctrine would have benefited from additional clarity, as explained in the next part.

69. *Id.* at 751–55.

70. *See Ford Motor Co.*, 141 S. Ct. at 1024–25 (2021) (“We granted certiorari to consider if Ford is subject to the jurisdiction in these cases. We hold that it is.”).

71. *See id.* (“[T]here must be ‘an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation.’”).

72. *Id.* at 1025.

73. *Id.*

III. A SUGGESTED APPROACH

The Supreme Court's recent approach to personal jurisdiction would have been better had the Court followed Professor Silberman's suggested analysis, which reflects a desire to provide more predictable rules for the exercise of personal jurisdiction.⁷⁴ In an amicus brief,⁷⁵ she and others explained that following *International Shoe*, "the Court developed a three-part test, with each part serving a distinct jurisprudential purpose."⁷⁶ First, there is the purposeful availment prong. Second, there is the relatedness prong. Third, there is the reasonableness prong. Each of these prongs is concerned with specific links between the defendant the forum and the claim. Each of these prongs has separate concerns.⁷⁷

According to Professor Silberman and the other amici, "the *first* part of the specific-jurisdiction test homes in on the defendant's contacts with the forum" and "the *second* part of the test does not focus at all on the defendant's purposeful availment of forum state benefits."⁷⁸ Rather, "[t]he only question is whether the forum state has a 'legitimate' interest' sufficient to justify the exercise of its 'coercive power' to resolve the dispute."⁷⁹ More concretely, Professor Silberman has explained that her "own view is that the 'arising out of' prong of due process is a proxy for (a) the forum's regulatory interest in the matter and (b) its litigational convenience in hearing the case—i.e. there must be a connection between the forum and the claim. Thus, the 'arising out of' prong should be satisfied when the claim is based on an injury in the forum state," and purposeful availment provides the "connection between the defendant and the forum."⁸⁰

74. See Linda J. Silberman, Hague Lecture on Judicial Jurisdiction 1 (July 21, 2021) (transcript on file with author) (arguing that "the Supreme Court has recently attempted to articulate a more rule-oriented analysis as to the constitutional limits on judicial jurisdiction," despite the outcome of *Ford Motor Co.* suggesting "a more ambivalent trend").

75. Brief for Mont. Eighth Judicial Dist. Court et al. as Amici Curiae Supporting Respondents, *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 141 S. Ct. 1017 (2021) (No. 19-368).

76. *Id.* at 3.

77. *Id.*

78. *Id.* at 4.

79. *Id.* (quoting *Bristol-Myers Squibb*, 582 U.S. at 263).

80. Linda J. Silberman, Hague Lecture on Judicial Jurisdiction 23 n.39 (July 21, 2021) (transcript on file with author).

While Professor Silberman and the other amici connected this approach to *International Shoe*, under even the traditional “presence” conception of personal jurisdiction, the Court had already outlined such an approach concerned with jurisdictional links before that decision. One link—the corporation’s continuous “presence” in the State—established the forum’s power over the defendant. A separate link—whether the cause of action arose out of or related to the corporation’s business in the State—served as a freestanding check on the forum’s assertion of jurisdiction that was designed to prevent the “importation” of controversies that “would not serve any [regulatory] interest of [the State].”⁸¹ The reasonableness prong permits a court to regulate exorbitant assertions of jurisdiction when for some reason the other prongs do not take account of other interests, such as the interests of a foreign defendant in not being haled before a U.S. court for harms occurring primarily abroad or the interests of the international community.⁸²

Going forward, the Supreme Court should more clearly conceptualize specific personal jurisdiction doctrine around these jurisdictional links and perhaps should connect the analysis to cases preceding *International Shoe*. Doing so would hopefully provide courts, litigants, and commentators with greater clarity on personal jurisdiction doctrine and what it is designed to do.

IV. CONCLUSION

This Essay has advanced the view that courts and commentators should pay closer attention to the question of jurisdictional links in personal jurisdiction analysis, an approach that Professor Silberman has advanced in her scholarship and submissions before the Supreme Court. Doing so helps uncover the questions the different prongs of personal jurisdiction analysis are designed to answer, especially in specific jurisdiction cases. Following Professor Silberman’s lead provides much needed doctrinal and theoretical clarity to an area of law still in much need of it.

81. *Morris & Co. v. Scandinavia Ins. Co.*, 279 U.S. 405, 408 (1929).

82. See generally Linda J. Silberman & Nathan D. Yaffe, *The Transnational Case in Conflict of Laws: Two Suggestions for the New Restatement Third of Conflict of Laws—Judicial Jurisdiction over Foreign Defendants and Party Autonomy in International Contracts*, 27 DUKE J. COMP. & INT’L L. 405 (2017).