AVOIDING THE RACE TO RES JUDICATA: FEDERAL ANTISUIT INJUNCTIONS OF COMPETING STATE CLASS ACTIONS

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Through their redundancy and the "reverse auction" dynamic they engender, competing class actions compromise the efficiency and fairness goals that justify the class action device and impose unnecessary costs on class members, defendants, the courts, and society at large. Yet, the Anti-Injunction Act, federalism, and comity concerns limit the ability of federal courts to enjoin competing state actions. Despite such limitations, some courts have utilized the "in aid of jurisdiction" exception to the Anti-Injunction Act to enjoin state actions that threaten to interfere substantially with the federal litigation. In this Note, Andrew Weinstein argues that, building on these recent cases, federal courts should read the "in aid of jurisdiction" exception more expansively to permit injunctions in order to protect both the litigants and a court's jurisdiction. Reconciling the merits of an injunction with the Anti-Injunction Act and related interests in federalism and comity, Weinstein devises four factors that federal courts should consider in determining whether to enjoin a competing state action.

INTRODUCTION

The problems associated with competing class actions[1] are familiar: forum shopping and manipulation of pleadings to avoid removal and consolidation with existing federal actions, certification of bogus classes by state courts and approval of sham settlements without adequate judicial scrutiny, defendants playing plaintiffs' attorneys off one another, and the sacrifice of settlement value in favor of fee maximization for plaintiffs' attorneys. Nowhere are these problems more evident than in last-minute attempts by state court plaintiffs to derail tentative settlements in federal court.

In response, some federal judges have enjoined such threatening state proceedings, asserting that the injunctions are "in aid of their

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[1] For purposes of this Note, competing class actions are two or more class actions involving substantially similar subject matter that are brought in federal and state courts—usually by different plaintiffs' attorneys—on behalf of overlapping, if not identical, member classes. They may be referred to alternatively as parallel or overlapping class actions.

jurisdiction" and thus comply with the restrictions of the Anti-Injunction Act (AIA).[2] Despite valid justifications, these courts have chosen this remedy reluctantly and usually restrict it to exceptional circumstances.

This Note argues that federal courts need to move beyond this initial reluctance and utilize antisuit injunctions against competing state class actions in a wider range of situations. More specifically, the historical underpinnings of the "in aid of jurisdiction" exception and the dynamics of class action litigation suggest that this exception should be construed more broadly in the class action context.

This argument is justified on two grounds. First, federal courts have a unique responsibility, and concomitant power, to protect absent class members from collusive or negative-value settlements, which often result from competing class action scenarios. By maintaining an exclusive forum, federal courts can reduce the dynamics that threaten vulnerable absent class members. Second, because of the complexity of much class action litigation, federal courts need the flexibility to protect their jurisdiction, as well as the resources of the judicial system and of the parties.

This is not to suggest that federal courts should use their injunctive power indiscriminately. Rather, federal judges should give proper weight to relevant factors—including the presence of exclusively federal claims, the complexity and relative stage of the rival class actions, and the degree of interference posed by the state action—before issuing an injunction.

Part I of this Note discusses in greater detail the problems posed by competing class actions, namely the draining of resources and the short-shrifting of absent class members through "reverse auctions." Part II begins by advocating the need for and effectiveness of antisuit injunctions and describing their authorization under the All Writs Act (AWA)[3] and other sources of federal judicial power. It then surveys the historical construction of the exceptions to the AIA, which limits federal injunctive power. Part III discusses recent developments regarding the AIA in the class action context and articulates factors that courts should consider in determining whether to issue an antisuit injunction.

I

THE PROBLEM OF COMPETING CLASS ACTIONS

The goal of class actions in general, and of Rule 23(b)(3) class actions in particular, is the unitary resolution of numerous common

[2] 28 U.S.C. § 2283 (1994).
[3] 28 U.S.C. § 1651 (1994).

claims in an efficient and fair manner.[4] Class actions achieve efficiency by resolving multiple controversies in one litigation;[5] they achieve fairness by providing the consistent resolution of common claims and the opportunity to resolve claims that would not be viable if litigated on an individual basis.[6] In order to ensure that the use of Rule 23(b)(3) is limited to achieving these ends, the standards by which 23(b)(3) class actions are certified at the federal level are rigorous in design[7] and in application.[8]

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[4] See Fed. R. Civ. P. 23(b)(3) (requiring for class certification "that a class action [be] superior to other available methods for the fair and efficient adjudication of the controversy"). Similarly, the goal of Rule 23(b)(1) class actions is the avoidance of "inconsistent or varying adjudications" or adjudications for certain members that threaten to be "dispositive of the interests of the other members." Fed. R. Civ. P. 23(b)(1). The goal of classes certified under Rule 23(b)(2) is to seek injunctive or declaratory relief that affects the class as a whole. See Fed. R. Civ. P. 23(b)(2). Given these goals, class membership in these two categories is either mandatory, as in 23(b)(1) classes, or effectively mandatory, as in 23(b)(2) classes.

[5] See General Tel. Co. v. Falcon, 457 U.S. 147, 155 (1982) (stating that purpose of class actions is to conserve "the resources of both the courts and the parties by permitting an issue potentially affecting every [class member] to be litigated in an economical fashion" (quoting Califano v. Yamaski, 442 U.S. 682, 701 (1979))).

[6] See In re Federal Skywalk Cases, 680 F.2d 1175, 1185 (8th Cir. 1982) (Heaney, J., dissenting) ("[P]laintiffs seeking less substantial actual damages and punitive damages should not be effectively deprived of their claims. A class suit provides a device by which these smaller claims can be aggregated and litigation costs prorated among numerous claimants, thereby making worthwhile claims that might otherwise not be pursued."); see also Benjamin Kaplan, A Prefatory Note to "The Class Action—A Symposium," 10 B.C. Indus. & Com. L. Rev. 497, 497 (1969) (noting that one mission of class-action device, "even at the expense of increasing litigation, [is] to provide means of vindicating the rights of groups of people who individually would be without effective strength to bring their opponents in to court at all").

[7] First, for a class to be certified, the district court must find that it satisfies the requirements of numerosity, commonality, typicality, and adequacy. See Fed. R. Civ. P. 23(a). Second, for 23(b)(3) class actions, the court further must find that common questions of law or fact predominate over individual issues and that the class action mechanism is superior to any other method of adjudication. See Fed. R. Civ. P. 23(b)(3). In making this latter determination, the court may consider, among other factors, the interest of the class members in individually controlling litigation of the claims, the extent of any preexisting and related claims by or against the parties, the desirability of concentrating the litigation in one forum, and the manageability of the proceedings. See id.

While laying out a strict set of standards intended to limit the use of the class action mechanism, the requirements and factors also make clear that the efficient and just resolution of common claims is the Rule's aim. See Fed. R. Civ. P. 23(b)(3) advisory committee's note ("Subdivision (b)(3) encompasses those cases in which a class action would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.").

[8] See In re American Med. Sys., Inc., 75 F.3d 1069, 1086 (6th Cir. 1996) (decertifying class for failure to meet certification criteria and criticizing district court judge for failure to conduct "rigorous analysis"); see also Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 620 (1997) (requiring that district courts consider all requirements of 23(b)(3), except manageability of litigation, when certifying settlement classes).

The inability of federal courts to preserve their jurisdiction weakens their ability to secure the goals of 23(b)(3) actions. With the exception of actions in rem,[9] there is no across-the-board "first-filed" rule that prohibits a court from exercising jurisdiction in a matter parallel to one over which another court already has jurisdiction.[10] Plaintiffs' attorneys, therefore, may bring state court actions and manipulate their complaints to avoid the risk of removal to federal court.[11] As a result, federal and state courts exercising jurisdiction over parallel actions often find themselves in conflict, whether it be in prejudgment rulings[12] or the final judgment.[13]

Competing class actions undermine the efficiency and fairness goals of the class action mechanism in two ways. First, the proliferation of competing class actions and the resulting duplication of efforts

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9 See Kline v. Burke Constr. Co., 260 U.S. 226, 229 (1922) (stating rule that prohibits court from enjoining parallel actions except when actions are in rem); Erwin Chemerinsky, Federal Jurisdiction § 14.2, at 818 (3d ed. 1999) ("[T]here is a clear rule preventing duplicative proceedings in cases involving real property: the court that acquires jurisdiction first decides the matter."). The in rem rule is predicated on efficiency concerns, the desire to avoid inconsistent judgments regarding the property, and the traditional notion that only one court can "possess" the property at any given time. See id.

10 See *Kline*, 260 U.S. at 230 (stating that "where the action first brought is in personam and seeks only a personal judgment, another action for the same cause in another jurisdiction is not precluded"). But see Ex parte First Nat'l Bank of Jasper, 717 So. 2d 342 (Ala. 1997) (announcing first-filed rule for duplicative actions in Alabama state courts); James C. Rehnquist, Taking Comity Seriously: How to Neutralize the Abstention Doctrine, 46 Stan. L. Rev. 1049, 1068-69 (1994) (arguing that federal courts should adopt a "first filed" rule for all cases). It is still unclear how the rule of *First National Bank* will affect federal actions competing with state actions in Alabama courts. See Linda S. Mullenix, Complex Litigation Dueling Class Actions, Nat'l L.J., Apr. 26, 1999, at B18 (discussing Alabama Supreme Court decision in *First National Bank*).

11 For example, a plaintiff's attorney may add nondiverse plaintiffs to destroy diversity. See Thomas Merton Woods, Note, Wielding the Sledgehammer: Legislative Solutions for Class Action Reform, 75 N.Y.U. L. Rev. 507, 512 n.31 (2000) (discussing legislative and judicial concerns about manipulative joinder); see also 28 U.S.C. §§ 1367, 1441 (1994) (outlining, respectively, rules for supplemental jurisdiction and removal). If a state action were removed, the Judicial Panel on Multidistrict Litigation could transfer the competing class actions in federal courts to a single court for consolidated pretrial proceedings and often for settlement. See id. § 1407 (1994).

12 See, e.g., Winkler v. Eli Lilly & Co., 101 F.3d 1196, 1200 (7th Cir. 1996) (noting that plaintiffs sought discovery order in state court to circumvent federal judge's ruling denying discovery).

13 Under res judicata, "a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action." Black's Law Dictionary 905 (6th ed. 1991). Collateral estoppel prevents future relitigation between the same parties of an issue already determined in a full judgment. See id. at 179. Pursuant to the Full Faith and Credit Clause, a state must give the judgment of a court of another state the same credit that it would give a judgment of one of its own courts. See U.S. Const. art. IV, § 1. This principle applies to federal courts through 28 U.S.C. § 1738 (1994).

waste the resources of defendants and courts and deprives courts of effective jurisdiction over their dockets. Second, plaintiffs' attorneys, in their race to the finish line with its windfall award of fees, can settle the class's claims for a suboptimal price, engaging in a so-called "reverse auction" and thereby compromising their clients' interests and those of society at large.

A. The Cost of Competing Class Actions

Duplicative litigation imposes unnecessary burdens on defendants and the courts. Parallel actions are very expensive for defendants, as they find themselves litigating on several fronts at once. According to one estimate, multitrack litigation has increased the cost of pretrial proceedings by thirty-three percent.[14] Moreover, the proliferation of competing actions only exacerbates the disruption of business associated with the massive discovery involved in such complex litigation. Eventually, defendants may end up seeking a plaintiff's attorney willing to resolve all outstanding claims in one global settlement, with negative ramifications for absent class members.[15]

The imposition on the court system is just as severe. According to one study, federal judges spend on average three times as many hours on class actions as on ordinary civil litigation[16]—a significant demand on an already overburdened system. This considerable investment of judicial resources goes to waste when a competing action settles, as it effectively precludes the instant action.[17] Competing actions may diminish further judicial control over class litigation by interfering with or precluding resolution, or by encouraging plaintiffs' attorneys to move to a more favorable forum when faced with an unwelcome ruling.[18] For instance, in the General Motors Side Impact

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[14] See Bill Kisliuk, Are Two Securities Cases Better Than One?, Recorder, July 14, 1999, at 1, available in Lexis, News Library, Recorder file (discussing costs of competing class actions).

[15] See infra notes 27-33 and accompanying text.

[16] See Thomas E. Willging et al., Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules 23 (Federal Judicial Center 1996) (discussing judicial time and effort spent on class actions).

[17] See Lumen Constr., Inc. v. Brant Constr. Co., 780 F.2d 691, 694 n.2 (7th Cir. 1986) ("In the end, the forum that loses the race will have engaged in a 'grand waste of efforts.'"(quoting Microsoftware Computer Sys., Inc. v. Ontel Corp., 686 F.2d 531, 538 (7th Cir. 1982))).

[18] See Deborah R. Hensler et al., Rand Institute for Civil Justice, Executive Summary of Class Actions Dilemmas: Pursuing Public Goals for Private Gain 15 (1999), available at <http://www.rand.org/centers/icj/pubs.html> (discussing dilution of judicial control by class action forum shopping).

litigation,[19] after the Third Circuit rejected the proposed settlement in the federal action,[20] the plaintiffs' attorneys successfully sought approval of a virtually identical settlement in Louisiana state court.[21] Ultimately, such duplicative actions undermine the very efficiency goals that the class action mechanism was designed to achieve.[22]

B. The Reverse Auction Effect

Due to the sophisticated nature of class actions and the attenuated agency relationships involved, plaintiffs' attorneys wield enormous control over the commencement and direction of complex class litigation.[23] Given that there are as many potential named plaintiffs as there are class members, plaintiffs' attorneys, motivated by the desire to reap huge attorneys' fees, have great flexibility in determining where to file a competing class action and at what level, federal or state.[24] At the same time, the rules of res judicata and collateral estoppel[25] dictate that the parallel action that first reaches final judgment—or, more often than not, settlement—binds the others, regardless of the resources invested or the relative merits of the respective cases. Thus, if the first action is filed in federal district court, a plaintiff's attorney may take advantage of lax class certification standards and the threat of plaintiff-friendly juries in states like Tennessee, Alabama, Louisiana, and Texas,[26] to file a competing action in an effort to settle before the federal action or competing state actions.

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19 Numerous lawsuits were filed against General Motors alleging that its design of pickup trucks with side-saddle fuel tanks increased the chances of fuel fires in the event of a side collision and, therefore, was dangerously defective. See Robert B. Gerard & Scott A. Johnson, The Role of the Objector in Class Action Settlements—A Case Study of the General Motors Truck "Side Saddle" Fuel Tank Litigation, 31 Loy. L.A. L. Rev. 409, 418 (1998). For purposes of this Note, these lawsuits will be collectively referred to as the General Motors Side Impact litigation.

20 See In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768 (3d Cir. 1995).

21 See Gerard & Johnson, supra note 19, at 419-25.

22 Duplicative litigation also may erode public faith in the courts. See *Lumen Construction*, 780 F.2d at 694 ("[J]udicial economy is not the only value that is placed in jeopardy. The legitimacy of the court system in the eyes of the public and fairness to the individual litigants also are endangered by duplicative suits that are the product of gamesmanship or that result in conflicting adjudications.").

23 See generally John C. Coffee, Jr., Understanding the Plaintiff's Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions, 86 Colum. L. Rev. 669, 678-79 (1986) (discussing agent role and entrepreneurial role played by plaintiffs' attorneys).

24 See Hensler et al., supra note 18, at 15.

25 See supra note 13.

26 See Hensler et al., supra note 18, at 7; John C. Coffee, Jr., Class Actions: Interjurisdictional Warfare, N.Y. L.J., Sept. 25, 1997, at 5.

The combination of plaintiffs' attorneys' eagerness to settle first, their flexibility in plaintiff and forum shopping, and the defendant's desire to reach a global settlement creates a collusive environment that sacrifices class members' interests as well as those of society at large. Plaintiffs' attorneys will bring a suit for settlement purposes in state court in order to underbid the team of attorneys actively litigating a similar case in federal court.[27] As a result, defendants can set the terms and play teams of plaintiffs' attorneys off one another, leading to a "reverse auction."[28] Plaintiffs' attorneys, working on contingency fees and knowing that others are in line to settle if they do not, accept the defendant's offered terms in order to ensure a profitable return on their investment in the litigation.[29] In some cases, the plaintiffs' attorneys in the state suit will negotiate an overall smaller settlement than that on the table in the federal suit but, either out of greed or in an effort to buy off class counsel for the objectors in the federal action, will allocate a larger portion of the total for attorneys' fees.[30]

The primary losers in this situation are the absent class members, who receive a suboptimal remedy for their claims, whether in the form of token monetary damages or potentially worthless coupons.[31] Ex post efforts to challenge these settlements on adequacy of representation grounds ultimately have been rejected.[32] Thus, the relentless race for attorneys' fees betrays the fairness objectives of the class action mechanism. Furthermore, by encouraging collusion and minimizing damage awards, competing class actions impact society at large, which relies on effective class litigation to provide deterrence against illegal and tortious corporate behavior.[33]

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27 See John C. Coffee, Jr., Class Wars: The Dilemma of the Mass Tort Class Action, 95 Colum. L. Rev. 1343, 1370-72 (1995) (describing "reverse auction" phenomenon).

28 See id.

29 See id. at 1379 (stating that plaintiffs' attorneys have "little more than a right of first refusal").

30 See, e.g., Gerard & Johnson, supra note 19, at 427-33 (reviewing efforts of plaintiffs' attorneys in General Motors Side Impact litigation to convince objectors to approve settlement by including objector counsel in award of attorneys' fees).

31 See Coffee, supra note 27, at 1367-70 (discussing types of settlements). In the General Motors Side Impact litigation, the settlement included a coupon toward the purchase of a new truck manufactured by the company that had sold the class members the defective vehicles on which the suit was based. Understandably, coupon holders sought to create a secondary market in these coupons, a move that General Motors vehemently opposed, claiming such a secondary market violated the settlement. See Richard B. Schmitt, GM Cries Foul over New Twist in Coupon Plan, Wall St. J., July 16, 1999, at B1.

32 See Epstein v. MCA, Inc., 179 F.3d 641, 649-50 (9th Cir. 1999) (rejecting collateral attack on state court settlement), cert. denied, 120 S. Ct. 497 (1999).

33 See Hensler et al., supra note 18, at 9 (discussing costs to society of "reverse auctions").

The Supreme Court's decision in *Matsushita Electric Industrial Co. v. Epstein*[34] has exacerbated the "reverse auction" problem. In *Matsushita*, the Court allowed state courts to approve settlements that included the release of exclusively federal claims.[35] As a result, suits alleging exclusively federal claims now could be preempted by state court actions alleging related state claims but releasing both state and federal claims in the final settlement.

By expanding the scope of preclusion, the *Matsushita* decision also presented new opportunities for collusion, with adverse consequences for class members. First, because plaintiffs' attorneys cannot litigate the exclusively federal claims in state court, their bargaining power with respect to those claims is significantly reduced, preventing them from realizing the real value of the claims at the settlement table.[36] Second, because state court settlements are now available to preclude federal actions, a defendant has increased options for finding a plaintiff amenable to settlement, bringing more parties to the "auction," and further bidding down the settlement terms.[37] Finally, because state court judges, by the nature of their position, have little experience with exclusively federal claims and have inadequate information regarding the claims, their ability to evaluate the fairness of a settlement is reduced.[38] While effectively exercised procedural safeguards might ameliorate this problem, there is substantial anecdotal evidence that state judges in states such as Alabama, Mississippi, Louisiana, and Texas certify classes[39] and rubber-stamp settlements

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34 516 U.S. 367 (1996).

35 See id. at 386-87.

36 See Marcel Kahan & Linda Silberman, *Matsushita* and Beyond: The Role of State Courts in Class Actions Involving Exclusive Federal Claims, 1996 Sup. Ct. Rev. 219, 235 (1996) ("The fact that the state class attorney may lack the power to litigate the exclusive federal claims can substantially reduce her bargaining power relative to a state class attorney with the power to litigate state and federal claims in state court."). The value of the federal claims is based on their merit as well as on the "extent to which the addition of the federal claim increases defendant's exposure beyond the level of exposure on the state claim alone." Id. at 236-37; see also John C. Coffee, Jr., After *Matsushita*, Litigants Should Focus on the Due Process Limits on a State Court's Authority to Settle Claims Over Which It Lacks Jurisdiction, Nat'l L.J., Apr. 15, 1996, at B5 ("[T]he primary settlement value of [state court plaintiffs'] claims lies in their ability to preclude the more threatening action in federal court.").

37 See Kahan & Silberman, supra note 36, at 238-39.

38 See id. at 242-43. The absence of presettlement adversarial proceedings in state court is one source of the inadequate information problem. See id. at 244-45. Another source is the lack of adequate discovery as to the federal claims. See Richard W. Painter, Responding to a False Alarm: Federal Preemption of State Securities Fraud Causes of Action, 84 Cornell L. Rev. 1, 98 (1998).

39 See Coffee, supra note 26; see, e.g., Ex parte Citicorp Acceptance Co., 715 So. 2d 199, 205-06 (Ala. 1997) (Cook, J., concurring) (describing ex parte certification practice as "almost routine"); Stateside Assocs., Class Actions in State Courts: A Case Study in Ala-

without adequate scrutiny.[40] As a result, class members are at the mercy of plaintiffs' attorneys with an incentive to sell out their clients, defendants with the ability to hold out for a favorable settlement, and state courts ill-equipped, or unwilling, to conduct an adequate fairness inquiry before approving the settlement.[41]

In the federal system, judges have a unique responsibility to protect the interests of absent class members.[42] Rules 23(d) and 23(e) give courts the right of approval over settlements and the administrative power to ensure their fairness.[43] Where the class has been certified as a settlement class, even closer judicial scrutiny of the settlement is required, as many key issues have not been litigated in an adversarial proceeding.[44] This responsibility becomes that much greater when the pressures of a "reverse auction" come into play. The judge needs to protect class members vigilantly from plaintiffs' attorneys looking to settle members' claims at an inadequate price in order to preserve their fees. At the same time, the judge needs to protect against interference from other courts and to ensure an adequate forum for the resolution of the class's claims. Thus, judges need the flexibility to maintain an exclusive forum.

II
ANTISUIT INJUNCTIONS

One primary method for a federal court to avoid duplicative litigation is to enjoin the competing state actions.[45] By using antisuit in-

bama, Feb. 26, 1998, at 255-56, reprinted in Mass Torts and Class Action Lawsuits: Hearings Before the Subcomm. on Courts and Intellectual Property of the House Comm. on the Judiciary, 105th Cong. (1998), available at <http://commdocs.house.gov/committees/judiciary/hju59921.000/hju59921_0.htm> (stating that one judge certified 30 classes ex parte from 1995-97). This practice has been curbed recently in Alabama. See Ex parte Federal Express Corp., 718 So. 2d 13, 15 (Ala. 1998) (noting that in six previous cases, Alabama Supreme Court had "rejected the practice of conditional certification of a class action based solely on the allegations of a complaint and without an evidentiary hearing").

[40] See, e.g., Hoffman v. BancBoston Mortgage Corp., No. 91-1880 (Ala. Cir. Ct. Jan. 24, 1994) (providing almost $20 million in attorneys' fees and *negative* or minimal recovery for most class members), discussed in Susan P. Koniak & George M. Cohen, Under Cloak of Settlement, 82 Va. L. Rev. 1051, 1057-68 (1996); Koniak & Cohen, supra, at 1062 n.29 (citing confidential conversations revealing Alabama settlements providing huge attorneys' fees but negative class recovery).

[41] For an illustration of this dynamic at work in the *Matsushita* case itself, see Kahan & Silberman, supra note 36, at 221-25; see also Prezant v. De Angelis, 636 A.2d 915, 917-20 (Del. 1994) (reversing settlement approval and remanding for further findings as to adequacy of class representation).

[42] See Manual for Complex Litigation, Third § 30, at 211-12 (1995) ("[T]he court bears a residual responsibility to protect the interests of class members . . . .").

[43] See Fed. R. Civ. P. 23(d), (e).

[44] See Manual for Complex Litigation, Third, supra note 42, § 30.45, at 243.

[45] The other primary option for a federal court is to use its removal power to

junctions to achieve an exclusive forum, the court allows for the fair and efficient resolution of the class litigation. In order for the court to enjoin the state action, however, it must comply with the restrictions of the AIA.[46] This Part briefly will address federal court power under the AWA[47] and then will discuss the historical development of the AIA.

A. Antisuit Injunctions Against Competing State Class Actions

Antisuit injunctions issued by a federal court stay proceedings in a state court by enjoining one or more parties from continuing in the state litigation or settlement process.[48] The primary source of authorization for such injunctions is the AWA, which empowers a federal court to issue injunctions when necessary to aid in its jurisdiction.[49] By temporarily restricting the parties to the jurisdiction issuing the

consolidate the actions in federal court. See generally Geoffrey P. Miller, Overlapping Class Actions, 71 N.Y.U. L. Rev. 514, 530-32 (1996) (discussing use of removal power). Under this option, the federal court could remove the state suit and consolidate it, or, if the state action was in another jurisdiction, the federal court could have the suit removed, transferred, and consolidated under the authority of the Judicial Panel on Multidistrict Litigation. See 28 U.S.C. § 1407 (1994). However, plaintiffs' attorneys may employ various tactics, such as manipulation of pleadings, to make the state class action "removal-proof." See Woods, supra note 11, at 510-19 (discussing class counsel's use of such tactics). While some courts have used the All Writs Act (AWA), 28 U.S.C. § 1651 (1994), to remove such otherwise unremovable actions, they have done so primarily to protect their ongoing jurisdiction over the federal litigation in situations where there was already a final judgment, settlement, or consent decree entered. See, e.g., Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 396-97 (1981) (affirming district court judge's removal and dismissal of state antitrust action filed after dismissal of related federal class action); Ryan v. Dow Chem. Co., 781 F. Supp. 902, 917 (E.D.N.Y. 1991) (removing state action alleging state claims virtually identical to those settled in federal Agent Orange litigation), aff'd sub nom. In re "Agent Orange" Prod. Liab. Litig., 996 F.2d 1425 (2d Cir. 1993); Miller, supra, at 536-37 (discussing removal cases). But see generally Lonny Sheinkopf Hoffman, Removal Jurisdiction and the All Writs Act, 148 U. Pa. L. Rev. 401 (1999) (arguing that AWA should not be interpreted to authorize removal); Joan Steinman, The Newest Frontier of Judicial Activism: Removal Under the All Writs Act, 80 B.U. L. Rev. 773 (2000) (same). Moreover, removal may implicate federalism and comity interests. See id. at 816-18 (arguing that removal may be more intrusive, and thus more disruptive of federal-state judicial relations, than injunctions, in that injunctions are merely stays, while removal completely takes class action out of state court's jurisdiction). For a more thorough discussion of federalism and comity concerns, see infra Part III.C.

46 28 U.S.C. § 2283 (1994).

47 28 U.S.C. § 1651 (1994).

48 See, e.g., Guerra v. Texaco Exploration & Prod., Inc. (In re Lease Oil Antitrust Litig. (No. II)), 48 F. Supp. 2d 699, 707 (S.D. Tex. 1998) (enjoining named plaintiffs and defendants from entering into any settlement agreement that released claims in federal action without approval of federal court). The injunction runs against the parties, not the state court itself.

49 28 U.S.C. § 1651(a) (1994).

injunction, the injunction protects the court's jurisdiction against potential interference from competing actions.

1. *Antisuit Injunctions and Federal Class Action Jurisdiction*

A court's ability to maintain jurisdiction over a complex litigation effectively is essential to performing its special role in class actions. Specifically, a court must be able to provide both an opportunity for proper litigation or arms-length negotiation of the claims buffered against outside pressures[50] and protect absent class members from collusive settlements.[51] By giving the court power to stay proceedings or settlements in other jurisdictions, antisuit injunctions allow the court to perform its role appropriately. Similarly, by limiting the litigation to a single forum, injunctions allow the court to conserve the resources of the parties as well as those of the court system itself.[52]

To achieve a single forum and the benefits that accrue, federal courts must exercise their injunctive power. State courts are impotent to enjoin federal actions or actions in other states,[53] and federal courts generally are unable to stay their own proceedings.[54] Also, federal

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50 As John Coffee has written:

> [T]he federal court is only protecting its jurisdiction and slowing the race to the courthouse for the speediest settlement. Plaintiffs in the federal court action could then negotiate with defendants knowing that at least they will not awake one morning to learn that their case was settled the night before in [an] Alabama [state court].

Coffee, supra note 26, at 35. While jurists such as Chief Judge Richard Posner of the Seventh Circuit have argued that defendants are at a disadvantage in the settlement process because they are "under intense pressure to settle" in the face of a potentially bankrupting litigation, see In re Rhone-Poulenc Rorer, Inc., 51 F.3d 1293, 1298 (7th Cir. 1995), such concerns do not justify handicapping plaintiffs by imposing a "take it or leave it" approach to settlement that emerges in a reverse auction. See Coffee, supra note 27, at 1379 (discussing plaintiffs' attorneys having "little more than a right of first refusal").

51 See supra notes 42-44 and accompanying text. Admonishing against the reverse auction problem, the court in *Guerra* stated: "To allow these federal claims to be 'hijacked' by a global settlement in state court—where the claims could not even be adjudicated—would effectively destroy those federal rights and the federal procedures designed to safeguard them and to enable their orderly resolution." 48 F. Supp. 2d at 703.

52 For a discussion of the waste of resources in the absence of an injunction, see supra notes 14-17 and accompanying text.

53 See Donovan v. City of Dallas, 377 U.S. 408, 412-13 (1964) (stating:

> While Congress has seen fit to authorize courts of the United States to restrain state-court proceedings in some special circumstances, it has in no way relaxed the old and well-established judicially declared rule that state courts are completely without power to restrain federal-court proceedings, in *in personam* actions like the one here).

When parallel and overlapping class actions are brought in the courts of different states, each state is powerless to enjoin the other states' courts from asserting jurisdiction, but it may stay the proceeding in its own court. See Miller, supra note 45, at 521-24.

54 See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Co., 460 U.S. 1, 13-16 (1983) (holding that duplicative litigation is insufficient justification for federal court abstention);

class actions are usually "first in time"[55] for two reasons. First, several types of claims that often give rise to class actions—namely securities, antitrust, and civil rights actions—are exclusively federal in nature. Second, nonfederal-question class actions, like products liability and mass tort actions, are often subject to federal diversity jurisdiction. Thus, the federal action typically is commenced first, with the copycat state actions filed later in an effort to preclude the federal action.[56] Accordingly, the federal court is in the position of protecting its jurisdiction against interfering state court actions, not vice versa.

2. *The All Writs Act*

Federal court authority to issue such injunctions derives primarily from the AWA, which provides that "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."[57] The Supreme Court has construed the AWA, which dates to the Judiciary Act of 1793,[58] as authorizing a federal court to issue writs of injunction "'in the performance of its duties, when the use of such historic aids is calculated in its sound

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Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976) (holding that federal courts have obligation to exercise jurisdiction except under exceptional circumstances). See generally Chemerinsky, supra note 9, § 14, at 813-36 (reviewing dynamics of duplicative litigation).

55 See Coffee, supra note 27, at 1370 (discussing typical situation of federal action being filed first).

56 See id. For instance, insofar as a putative class action alleging securities or antitrust violations would want to include as many grounds for relief—state and federal—as possible, such a suit would need to be filed in federal court because federal securities and antitrust claims are exclusively federal. In order to avoid removal, transfer, and consolidation, the copycat class alleges only the related state claims in state court in an effort to preclude the federal class and release the federal claims. See supra note 45.

57 28 U.S.C. § 1651(a) (1994). Despite its prevalence, the AWA does not provide the sole authority for injunctions. Authority for antisuit injunctions may flow from the inherent powers doctrine, which allows a federal court to use its equitable powers to achieve a just resolution. See ITT Community Dev. Corp. v. Barton, 569 F.2d 1351, 1359 (5th Cir. 1978) (stating that doctrine is "rooted in the notion that a federal court, sitting in equity, possesses all of the common law equity tools of a Chancery Court . . . to process litigation to a just and equitable conclusion." (citing Ex parte Peterson, 253 U.S. 300, 312-14 (1920))). In addition, as suggested by the Manual for Complex Litigation, some courts have justified injunctions under Federal Rule of Civil Procedure 16(c)(12), see Manual for Complex Litigation, Third, supra note 42, § 20.1, which authorizes federal judges to adopt "special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems," Fed. R. Civ. P. 16(c)(12); see, e.g., In re Lease Oil Antitrust Litig., 48 F. Supp. 2d 699, 703 (S.D. Tex. 1998) (utilizing this rule).

58 Ch. 22, § 5, 1 Stat. 333, 334-35 (1793).

judgment to achieve the ends of justice entrusted to it.'"[59] The Court further has added that it "has consistently applied the Act flexibly in conformity with these principles."[60] The Second Circuit illustrated this flexibility by affirming injunctions when used in part to "promote judicial economy."[61] In contrast, the Fifth Circuit has taken a slightly narrower view, requiring that the injunction be "directed at conduct which, left unchecked, would have had the practical effect of diminishing the court's power to bring the litigation to a natural conclusion."[62] Even under the Fifth Circuit's stricter analysis, the AWA would authorize injunctions against putative class members in competing state actions that threatened to undermine the federal action.[63]

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59 United States v. New York Tel. Co., 434 U.S. 159, 173 (1977) (quoting Adams v. United States ex rel. McCann, 317 U.S. 269, 273 (1942)).

60 Id.

61 United States v. International Bhd. of Teamsters, 907 F.2d 277, 280 (2d Cir. 1990).

62 *ITT*, 569 F.2d at 1359.

63 At least one commentator has argued that federal courts in interstate class actions cannot enjoin absent class members or putative class members over whom they lack in personam jurisdiction. See, e.g., Coffee, supra note 26, at 35 ("Put simply, short of the judgment stage, the federal court simply lacks personal jurisdiction over the absent class members (or their attorneys)."). However, insofar as jurisdiction is required for class actions, it is satisfied in the antisuit injunction context. In Phillips Petroleum Co. v. Shutts, 472 U.S. 797 (1985), the Supreme Court held that an absent class member's consent through failure to opt out was sufficient for in personam jurisdiction. See id. at 811-12. In other words, the court lacks jurisdiction over the class members until the class is certified, notice is given, and the opt-out period has passed. Nevertheless, in In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig., 134 F.3d 133 (3d Cir. 1998), the Third Circuit, citing a lack of personal jurisdiction, denied an injunction against a competing state class action even though the competing action was poised to approve a preclusive settlement that the Court of Appeals had rejected previously. See id. at 137, 141 (holding that absence of certified class deprived federal court of personal jurisdiction over class members in state forum). Yet, lack of certification need not bar antisuit injunctions. In *New York Telephone*, the Supreme Court held that the AWA authorizes federal courts to enjoin or affirmatively compel the behavior of nonparties "who . . . are in a position to frustrate the implementation of a court order or the proper administration of justice." 434 U.S. at 174 (citations omitted). But see Henry Paul Monaghan, Antisuit Injunctions and Preclusion Against Absent Nonresident Class Members, 98 Colum. L. Rev. 1148, 1190 (1998) (arguing that AWA should not be construed as all-purpose nationwide long-arm statute). Moreover, the AWA empowers federal courts to issue status quo injunctions before jurisdiction is established to ensure that "once its jurisdiction is shown to exist, the court will be in a position to exercise it." *ITT*, 569 F.2d at 1359 n.19 (citing FTC v. Dean Foods Co., 384 U.S. 597, 603-05 (1966)). Even if a federal court is unwilling to exercise its AWA power in this manner, it may still enjoin a defendant subject to its jurisdiction from settling in another forum without the federal court's notice and approval. See Hillman v. Webley, 115 F.3d 1461, 1469 (10th Cir. 1997) (stating that district court "undoubtedly had the authority under the AWA to enjoin parties before it from pursuing conflicting litigation in the state court," but reversing, in part because district court "did not pursue that route").

B. The Anti-Injunction Act

The primary restriction on federal court injunctions of state court proceedings is the AIA.[64] The current AIA, passed in 1948, reads: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."[65] In addition to considerable debate about whether its origins stemmed from federalism concerns, the modern AIA also has engendered controversy regarding inconsistencies in its legislative history and statutory construction. By discussing the current Act, its development, and the Supreme Court's interpretation of it, this section attempts to clarify the features and shortcomings of the current doctrine.

1. Federalism, Comity, and the History of the Statute

The AIA is rooted in principles of federalism and comity. As the Supreme Court stated in *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers*,[66] the Act rests on the "fundamental constitutional independence of the States and their courts."[67] Unwarranted injunctions would undermine this judicial independence and would cause "needless friction between state and federal courts."[68]

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64 28 U.S.C. § 2283 (1994). Federal courts have construed the Anti-Injunction Act (AIA) in tandem with the AWA, viewing the AWA as an affirmative grant of injunctive power and the AIA as a screen on that power. See, e.g., In re Baldwin-United Corp. (Single Premium Deferred Annuities Ins. Litig.), 770 F.2d 328, 335 (2d Cir. 1985) (stating that "cases interpreting . . . the Anti-Injunction Act have been helpful in understanding the meaning of the All-Writs Act"); see also 28 U.S.C. § 2283 note (1994) (stating that "[t]he phrase 'in aid of its jurisdiction' was added [to Anti-Injunction Act] to conform to § 1651 [All Writs Act]"); cf. Kline v. Burke Constr. Co., 260 U.S. 226, 229 (1922) (stating that precursors to modern AIA and AWA should be construed in tandem).

65 28 U.S.C. § 2283 (1994).

66 398 U.S. 281 (1970).

67 Id. at 287.

68 Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co., 309 U.S. 4, 9 (1939). The Supreme Court has bolstered this restriction with several abstention doctrines that compel federal court deference to state courts. In Younger v. Harris, 401 U.S. 37 (1971), the Supreme Court reasoned that state appellate courts must be trusted to make appropriate constitutional determinations and, therefore, held that federal courts may not enjoin pending state criminal prosecutions. See id. at 41. This belief is rooted in principles of comity and in what Justice Black called "Our Federalism"—the notion that "the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." Id. at 44. The Court subsequently extended this doctrine to quasi-criminal civil proceedings, see Huffman v. Pursue, 420 U.S. 592, 605 (1975), to all civil proceedings where the state is a party, see Trainor v. Hernandez, 431 U.S. 434, 444 (1977), and to civil actions in which an important government interest is at stake, see Pennzoil Co. v. Texaco Inc., 481 U.S. 1, 11 (1987). The Supreme Court, though, has not extended the doctrine to civil proceedings between two private parties where no important

However, the statute's grounding in federalism and comity has not always been apparent from its pedigree. The AIA first appeared as a clause in the Judiciary Act of 1793 amidst a hodgepodge of provisions aimed at Supreme Court Justices riding circuit.[69] As originally enacted, the statute read: "[N]or shall a writ of injunction be granted to stay proceedings in any court of a state."[70] Despite its facial clarity, there is evidence to suggest that the statute was not intended as a bulwark of state court independence.[71] As Justice Stewart stated in *Mitchum v. Foster*,[72] "[t]he precise origins of the legislation are shrouded in obscurity."[73]

It seems equally plausible that the anti-injunction provision, like the other provisions of section 5 of the 1793 Act, was intended to reg-

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government interest is at issue. See generally Chemerinsky, supra note 9, § 13, at 769-811 (providing overview of *Younger* doctrine). Finally, the *Pullman* abstention doctrine mandates that federal courts must stay their proceedings to allow for state determinations of uncertain state law issues. See Railroad Comm'n of Tex. v. Pullman Co., 312 U.S. 496, 498 (1941) (holding that where controversy involving sensitive state social policy may be resolved through state court proceedings, federal courts should not pursue adjudication). See generally Chemerinsky, supra note 9, § 12.2.1, at 737-50.

69 See William T. Mayton, Ersatz Federalism Under the Anti-Injunction Statute, 78 Colum. L. Rev. 330, 332-33 (1978).

70 Judiciary Act of 1793, ch. 22, § 5, 1 Stat. 333, 335.

71 See Mayton, supra note 69, at 332-33 (reviewing context of provision in Act and concluding that provision was merely procedural and not "intended to regulate a major problem of federal and state relations"). But see Martin H. Redish, The Anti-Injunction Statute Reconsidered, 44 U. Chi. L. Rev. 717, 719 & n.8 (1977) (suggesting that statute likely was intended to protect established state court domain against new federal courts) (citing and quoting Comment, Anti-Suit Injunctions Between State and Federal Courts, 32 U. Chi. L. Rev. 471, 480 (1965)).

72 407 U.S. 225 (1972).

73 Id. at 232; see also Edgar Noble Durfee & Robert L. Sloss, Federal Injunction Against Proceedings in State Courts: The Life History of a Statute, 30 Mich. L. Rev. 1145, 1145-46, 1145 n.3 (1932) (arguing that political setting at time, from Bill of Rights to Eleventh Amendment, suggests that Congress intended provision as complete bar on federal injunctions against any state court proceeding); Telford Taylor & Everett I. Willis, The Power of Federal Courts to Enjoin Proceedings in State Courts, 42 Yale L.J. 1169, 1170 (1933) (arguing that, in light of limited scope of Act and Chief Justice Jay's report regarding hardships of riding circuit, provision "was not so much designed to correct or forestall abuses of federal jurisdiction as simply to alleviate in some measure the burdensome duties which had been imposed upon the judiciary by the Act of 1789, and to fill certain procedural lacunae of that Act"); Charles Warren, Federal and State Court Interference, 43 Harv. L. Rev. 345, 347 (1930) (arguing that provision was response to report by Attorney General Edmund Randolph warning about effect on litigants of federal court interference with state court proceedings and concluding that "the restriction, thus enacted, was a significant illustration of the strong apprehension felt by early Congresses at the danger of encroachment by federal courts on state jurisdiction"); Comment, Federal Court Stays of State Court Proceedings: A Re-examination of Original Congressional Intent, 38 U. Chi. L. Rev. 612, 613 (1971) (making historical argument that Congress only intended to restrict stays by equitable injunction and that it affirmatively intended to allow stays by writ of certiorari).

ulate circuit-riding Justices and not federal courts in general.[74] While this contention may be controversial, the suggestion that the Second Congress intended the anti-injunction statute as a rule of federalism is contradicted by two facts. First, Congress did not include prohibitions on writs of mandamus and certiorari, which were much more common tools than the writ of injunction itself.[75] Second, despite numerous federal stays of state proceedings in the years after the 1793 Act, the Supreme Court did not employ the anti-injunction statute to prohibit such action until 1849, in *Peck v. Jenness*.[76] Up to that point, the Court employed general principles of federalism, equity, and comity in achieving harmony between the federal and state court systems.[77] In 1874, however, Congress codified the *Peck* understanding of the anti-injunction statute with the revised language that "[t]he writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State."[78] Thus, regardless of its uncertain origins, the statute was firmly established as a bar on federal injunctive power. Insofar as it is predicated on these principles, its restrictions and exceptions provide a contour for compliance with them.

2. *Judicial Interpretation*

The first and third exceptions to the AIA generally are not used to authorize the antisuit injunctions discussed herein. The "expressly authorized" exception is based on the notion that, because Congress enacted the general prohibition on injunctions, it may also create exceptions to that general prohibition.[79] The "protect or effectuate its

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74 See Mayton, supra note 69, at 332-33.

75 See id. at 336.

76 48 U.S. (7 How.) 611, 625 (1849); see John Daniel Reaves & David S. Golden, The Federal Anti-Injunction Statute in the Aftermath of *Atlantic Coast Line Railroad*, 5 Ga. L. Rev. 294, 297-98 (1971) ("That the Supreme Court seemed unable to locate the anti-injunction provision when deciding early cases where federal courts had been asked to enjoin state proceedings supports a contention that its role was very limited." (internal citations omitted)).

77 See Mayton, supra note 69, at 344; Reaves & Golden, supra note 76, at 299.

78 Act to Revise and Consolidate the Statutes of the United States, tit. 13, ch. 12, § 720, 18 Stat., pt. 1, at 1, 136 (1874).

79 See Chemerinsky, supra note 9, § 11.2.2, at 695. Resolving uncertainty over how "express" the statute's authorization of injunctive relief must be, the Supreme Court in Mitchum v. Foster, 407 U.S. 225 (1972), held that a statute need not expressly reference the AIA nor expressly authorize an injunction. See id. at 237-38. Rather, a statute satisfies the exception if the statute creates "a specific and uniquely federal right" and "could be given its intended scope only by the stay of a state court proceeding." Id. The Court found implicit authorization for the injunction in the legislative history of the Civil Rights Act, 42 U.S.C. § 1983 (1994), stating that "[t]he very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights." Id.

judgements" exception is generally referred to as the "relitigation" exception and recognizes that, while the res judicata effect of prior decisions is generally left to determination by the court in the subsequent proceeding, reliance solely on this procedure is inadequate.[80]

The "in aid of its jurisdiction" exception, though, has proven to be the most controversial provision of the AIA because of its broad language[81] and vague scope and intent.[82] As a starting point, the Reviser's Note states that "[t]he phrase 'in aid of its jurisdiction' was added . . . to make clear the recognized power of the Federal courts to stay proceedings in State cases removed to the district courts."[83] Unfortunately, this comment does not serve as a proper guide to interpreting the exception for several reasons. First, restricting the "in aid of jurisdiction" exception to the removal context would be to define the broad language of the exception extremely narrowly.[84] Second, courts prior to 1948 generally considered federal injunctive power to enforce removal as falling under what became the "expressly authorized" exception to the Act,[85] thereby making the "in aid of jurisdiction" exception superfluous if restricted to that context. Third, such a limited power would be potentially insignificant in that a state court ignoring a removal petition is no more likely to comply with an injunction.[86]

Most importantly, the Reviser's Note cannot be regarded as providing the operative meaning because it makes no mention of the his-

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at 242. Against this background, the Fifth Circuit definitively held that Rule 23 cannot be construed as expressly authorizing an antisuit injunction. See Piambino v. Bailey, 610 F.2d 1306, 1331 (5th Cir. 1980) ("Rule 23(d) is a rule of procedure and it creates neither a right nor a remedy enforceable in a federal court of equity.").

80 See Redish, supra note 71, at 723 (describing this argument for inadequacy of res judicata). It was the Court's rejection of the common law precursor to this exception in Toucey v. New York Life Ins. Co., 314 U.S. 118 (1941), that led to Congress's explicit codification of the "relitigation" exception in 1948. See 28 U.S.C. § 2283 note (1994) ("[T]he revised section restores the basic law as generally understood and interpreted prior to the *Toucey* decision.").

81 See Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Eng'rs, 398 U.S. 281, 295 (1970) (calling statutory language of "in aid of jurisdiction" exception "admittedly broad").

82 See Redish, supra note 71, at 722 ("Neither the statutory language nor the Reviser's Note are [sic] entirely clear in scope or intent.").

83 28 U.S.C. § 2283 note.

84 See Redish, supra note 71, at 743 (presenting interpretation of Reviser's Note).

85 See id. at 743-44 (citing French v. Hay, 89 U.S. (22 Wall.) 250 (1874) (recognizing removal exception to anti-injunction statute)); supra note 79 and accompanying text (explaining that Supreme Court in *Mitchum v. Foster* noted that "expressly authorized" exception encompassed, among other things, removal).

86 See Redish, supra note 71, at 744 ("If the state court is determined to ignore a removal petition, what is to assure it will heed an injunction?" (internal quotation marks omitted)).

torical exception for injunctions to protect jurisdiction in rem. This "res" exception reflected a long-standing common law rule of comity that whichever court first asserted jurisdiction in rem had exclusive jurisdiction over the res.[87] The Supreme Court, which first recognized the "res" exception in 1836,[88] reaffirmed the rule in 1922 in *Kline v. Burke Construction Co.*[89] While the Court explicitly rejected the common law "relitigation" exception in 1940 in *Toucey v. New York Life Insurance Co.*,[90] it maintained the "res" exception, holding that it was a "well settled" rule.[91] After Congress created an express "in aid of jurisdiction" exception in the 1948 Revision, which was passed to restore the common law exceptions that *Toucey* had abandoned,[92] the Supreme Court subsequently recognized the explicit "in aid of juris-

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87 See Kline v. Burke Constr. Co., 260 U.S. 226, 229 (1922) (stating:

> It is settled that where a federal court has first acquired jurisdiction of the subject-matter of a cause, it may enjoin the parties from proceeding in a state court of concurrent jurisdiction where the effect of the action would be to defeat or impair the jurisdiction of the federal court);

see also Amalgamated Clothing Workers of Am. v. Richman Bros. Co., 348 U.S. 511, 525 (1955) (Douglas, J., dissenting) ("[I]f the federal court first takes possession of a *res*, it may protect its control over it, even to the extent of enjoining a state court from interfering with the property."); Chemerinsky, supra note 9, § 14.2, at 818 ("[T]here is a clear rule preventing duplicative proceedings in cases involving real property: the court that acquires jurisdiction first decides the matter.").

This rule of comity is predicated on the interest in avoiding inconsistent judgments, see Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 819 (1976), and the traditional notion that only one court can "possess" the property at any given time, see Covell v. Heyman, 111 U.S. 176, 182 (1884) ("[W]hen one [court] takes into its jurisdiction a specific thing, that *res* is as much withdrawn from the judicial power of the other, as if it had been carried physically into a different territorial sovereignty."); American Law Institute, Study of the Division of Jurisdiction Between State and Federal Courts 304 (1969) ("[C]ommencement of an action in one court, be it state or federal, results in the unavailability of the res for control or disposition by a second court." (citations omitted)).

88 See Hagan v. Lucas, 35 U.S. (10 Pet.) 400, 402 (1836) ("A most injurious conflict of jurisdiction would be likely, often, to arise between the federal and the state courts; if the final process of the one could be levied on property which had been taken by the process of the other.").

89 260 U.S. at 229 (stating:

> Where the action is *in rem* the effect is to draw to the federal court the possession or control, actual or potential, of the *res*, and the exercise by the state court of jurisdiction over the same *res* necessarily impairs, and may defeat, the jurisdiction of the federal court already attached. The converse of the rule is equally true, that where the jurisdiction of the state court had first attached, the federal court is precluded from exercising its jurisdiction over the same *res* to defeat or impair the state court's jurisdiction.).

90 314 U.S. 118 (1941).

91 Id. at 135 (holding that anti-injunction statute did not prohibit federal courts from preventing state court interference with jurisdiction over res).

92 28 U.S.C. § 2283 note (1994) ("[T]he revised section restores the basic law as generally understood and interpreted prior to the *Toucey* decision.").

diction" exception in the 1948 Revision as incorporating the historical "res" exception.[93]

The application of the "in aid of jurisdiction" exception, however, is less certain in actions in personam. In *Kline*, the Court held that the exception did not apply "where the action first brought is *in personam* and seeks only a personal judgement," in which case "another action for the same cause in another jurisdiction is not precluded."[94] However, the Court appeared to take a more flexible approach in 1970 in *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers*,[95] its first significant effort at interpreting the "in aid of jurisdiction" exception to the 1948 Revision.

In *Atlantic Coast Line*, the petitioner union successfully petitioned for a federal injunction of a prior state injunction against its picketing.[96] Noting that the AIA expressed "'a clear-cut prohibition qualified only by specifically defined exceptions'"[97] and admonishing against "loose statutory construction" of the exceptions,[98] the Su-

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[93] See Vendo Co. v. Lektro-Vend Corp., 433 U.S. 623, 641 (1977) (holding that "in aid of jurisdiction" exception may be read fairly as incorporating traditional in rem exception).

[94] 260 U.S. at 230.

[95] 398 U.S. 281 (1970). The Court previously had read the "in aid of jurisdiction" exception liberally in Capital Service, Inc. v. NLRB, 347 U.S. 501 (1954), holding that "where Congress, acting within its constitutional authority, has vested a federal agency with exclusive jurisdiction over a subject matter and the intrusion of a state would result in conflict of functions, the federal court may enjoin the state proceeding in order to preserve the federal right." Id. at 504. However, the Court's decision just a year later in Amalgamated Clothing Workers of Am. v. Richman Bros. Co., 348 U.S. 511 (1955), relegated the *Capital Service* decision to the "expressly authorized" exception, and held that the Taft-Hartley Act did not "expressly authorize" private parties to seek injunctive relief but did vest such authority in the NLRB. See id. at 516-17.

[96] See *Atlantic Coast Line*, 398 U.S. at 284. The federal court issued the injunction after the Supreme Court decided that the union in a neighboring railyard had a federally protected right to picket. See Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co., 394 U.S. 369, 384-85 (1969) (holding that Railway Labor Act gave unions federally protected right to picket with which state courts could not interfere).

[97] *Atlantic Coast Line*, 398 U.S. at 287 (citing *Amalgamated*, 348 U.S. at 515-16).

[98] Id. Justice Black's statement was the latest comment in an ongoing debate about how strictly the AIA should be interpreted. Compare Toucey v. New York Life Ins. Co., 314 U.S. 118, 143 (1941) (Reed, J., dissenting) (arguing for "flexibility supplied by judicial interpretation" to "meet the needs of our expanding jurisprudence"), and Reaves & Golden, supra note 76, at 303-04 (arguing that Reviser's Note and Congress's reinstatement of relitigation exception and its explicit codification of other judicially created exceptions suggest that Congress intended to restore judicial flexibility in interpreting statute), with *Amalgamated*, 348 U.S. at 515-16 (holding that Congress's recodification signified its intent that exceptions be limited to those explicitly mentioned). In fact, Justice Black himself wavered on this point, joining in the vigorous dissents to *Amalgamated*'s restrictive interpretation of the AIA. See *Amalgamated*, 348 U.S. at 523 (Warren, C.J., dissenting) (noting that "the express purpose of § 2283 was to contract—not expand—the prohibition [on injunctions]" and that "Congress . . . rejected the *Toucey* decision and its philosophy of judicial inflexibility"); id. at 525 (Douglas, J., dissenting) (stating that "[t]he Court has been

preme Court rejected the union's argument that the federal court retained jurisdiction from the start and that its injunction was thus "in aid of its jurisdiction."[99] Rather, the Court held that because the federal and state courts had concurrent jurisdiction, neither one could prevent a party from proceeding in the other.[100]

Although the Court cited *Kline* in reaching this conclusion, its approach in *Atlantic Coast Line* appeared to divert from the traditional *Kline* analysis. Specifically, the Court stated that the "in aid of jurisdiction" exception—similar to the "relitigation" exception—implied that "some federal injunctive relief may be necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case."[101] By stating that the operative determination turned on a federal court's "flexibility and authority" to decide a particular case,[102] the Court shifted the focus from technical distinctions between in rem and in personam to the practical needs of the court exercising jurisdiction. However, seven years later, a plurality of the Court in *Vendo Co. v. Lektro-Vend Corp.*[103] explicitly reaffirmed *Kline*, holding that the "in aid of jurisdiction" exception incorporated the traditional "res" exception[104] and that the exception

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ready to imply other exceptions to § 2283, where the common sense of the situation required it"). Similarly, Justice Frankfurter, the author of the *Amalgamated* decision, did not take always a strict approach to the AIA. See, e.g., Leiter Minerals, Inc. v. United States, 352 U.S. 220, 225-26 (1957) (holding that AIA is inapplicable when United States is party seeking injunction).

Indeed, a number of decisions after *Amalgamated* permitted injunctions despite the language of the Act. See Frank L. Maraist, Federal Injunctive Relief Against State Court Proceedings: The Significance of *Dombrowski*, 48 Tex. L. Rev. 535, 591-603 (1970) (discussing cases). This variance suggests that Congress's failure to act may have been the result of a lack of clarity in the law as much as an acceptance of the restrictive approach in *Amalgamated*. See Reaves & Golden, supra note 76, at 306 n.98 ("Since the courts have not always been clear as to whether they are inferring judicial 'exceptions' or finding the injunction ban 'inapplicable,' it cannot be said that Congress has accepted the *Amalgamated* view."). Therefore, it may be possible to argue that *Atlantic Coast Line*, while prohibiting new judicially created exceptions, does not prohibit injunctions that may be justified under a facial reading of one of the existing exceptions.

99 *Atlantic Coast Line*, 398 U.S. at 294. The Court also rejected the union's argument that the federal court's initial denial of the railroad's injunction request was res judicata. See id. at 293.

100 See id. at 295 (citing Kline v. Burke Constr. Co., 260 U.S. 226 (1922)).

101 Id. Implicit in this analogy is the notion that reliance solely on a state court's ability to stay its proceedings may be inadequate to protect a federal court's jurisdiction.

102 See id.

103 433 U.S. 623 (1977).

104 See id. at 641 ("[T]he 'necessary in aid of' exception to § 2283 may be fairly read as incorporating this historical *in rem* exception . . . ."). Although the court of appeals had affirmed the injunction under the "expressly authorized" exception, the plurality addressed

did not extend to actions in personam.[105] Even though the plurality's opinion was not binding, it signified that the *Kline* rule still loomed large in the Court's mind.

It is not clear, however, that *Kline* stands for as broad a proposition as the Court has attributed to it. In *Kline*, the Supreme Court distinguished in personam from in rem jurisdiction and held that an injunction was not justified *simply* because the two actions in personam—a federal suit filed by the plaintiff and a state action brought by the defendant—were duplicative.[106] Yet, unlike the Court's later

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the "in aid of jurisdiction" exception because the district court had held that the injunction could be justified under both exceptions. See id.

[105] See id. at 642 ("We have never viewed parallel *in personam* actions as interfering with the jurisdiction of either court . . . . No case of this Court has ever held that an injunction to 'preserve' a case or controversy fits within the 'necessary in aid of its jurisdiction' exception . . . ." (citing *Kline*, 260 U.S. at 230)).

[106] See *Kline*, 260 U.S. at 232. The *Kline* Court may have been overly restrictive in stating that exclusive jurisdiction was the rule only in in rem cases. The notions of comity that justify exclusive court control over property are as relevant when property is attached in an in personam action as in an in rem action. See Durfee & Sloss, supra note 73, at 1164. As William Mayton has written, "[d]uplicative litigation, whether caused by concurrent in personam or concurrent in rem jurisdiction, was abhorrent." Mayton, supra note 69, at 359 n.171 (citing Sharon v. Terry, 36 F. 337, 355-60 (C.C.N.D. Cal. 1888)) (further noting that in rem/in personam distinction in this context rests on "historically infirm" basis as comity rationale applies as well to actions in personam). Moreover, the cases leading up to *Kline* used language that did not restrict the exception to actions in rem. For instance, in Peck v. Jenness, 48 U.S. (7 How.) 611 (1849), the Court stated that the first court to obtain jurisdiction over the "subject-matter of the suit" may maintain exclusive jurisdiction. Id. at 624; accord Harkrader v. Wadley, 172 U.S. 148, 164 (1898) (using similar language). In turn, lower courts relied upon this broad language to justify injunctions in in personam cases. See Donald P. Barrett, Comment, Federal Injunctions Against Proceedings in State Courts, 35 Cal. L. Rev. 545, 548 & n.12 (1947) (citing cases).

The rationales underlying the restriction of the rule of comity to actions in rem are also susceptible to criticism. First, the desire to avoid inconsistent judgments in actions in rem, as in actions in personam, is satisfied by rules of res judicata. See Chemerinsky, supra note 9, § 14.2, at 818; see also supra note 87 (discussing prospect for inconsistent judgments as primary concern of rule of comity). Moreover, a court failing to give full faith and credit to another court's prior determination is no more likely to comply with an injunction. See supra note 86. Second, the traditional notion that only one court can "possess" the property at any given time is merely a legal fiction. Courts do not take possession of property any more than they do of an abstract controversy. See Chemerinsky, supra note 9, § 14.2, at 818. Concurrent jurisdiction in proceedings in rem would present conflicts no more or no less serious than concurrent jurisdiction in proceedings in personam. See Redish, supra note 71, at 747 (stating:

> In most in rem or quasi in rem cases, the major "impairment" of federal court jurisdiction would arise from state court orders prior to judgement respecting the res that might conflict with prejudgment orders entered by the federal court. But a similar conflict of interlocutory orders might be engendered by concurrent state and federal in personam proceedings on the same matter, especially if the actions are equitable in nature.).

Finally, the most solid rationale for the in rem exception may be the efficiencies achieved by an exclusive forum. See Chemerinsky, supra note 9, § 14.2, at 818-19. This argument, too, is as valid in the in personam context as in the in rem context.

decisions citing it, *Kline* was a diversity action in which the plaintiff in the federal action sought to enjoin the state action solely to protect his choice of forum.[107] In fact, the Supreme Court acknowledged the narrow circumstances of *Kline* only two years later, holding that the anti-injunction statute did not prohibit injunctions against harassing and duplicative state actions in personam.[108] A few years later, the Fourth Circuit explicitly rejected a broad reading of *Kline*, stating that the decision did not limit a federal court's right to protect its equity jurisdiction over actions in rem.[109] Limiting *Kline* to situations in which a party in a diversity action seeks an injunction to protect his choice of forum rather than the court's jurisdiction would suggest that the "in aid of jurisdiction" exception is not confined strictly to actions in rem. Thus, in the absence of any clear legislative or judicial authority to the contrary, the "flexibility and authority" test announced in *Atlantic Coast Line* would seem to be an important gloss on the historical reading.

III
Reconsidering the "In Aid of Jurisdiction" Exception in the Class Action Context

The Court's modern AIA doctrine developed in cases in which one party sought to use the federal courts to enjoin an unfavorable ruling or proceeding of a state court—soliciting federal court interference with existing state court jurisdiction.[110] These types of situations raise serious concerns of federalism and comity to which federal courts need to be sensitive. However, the Court's silence in the context of concurrent actions or state interference with federal actions has left an uneasy void in which the lower courts have been left to grapple with abstract principles and novel jurisdictional issues without direction or example from above. In light of the emergence of mass torts and other complex class action litigation, courts have tried to reevaluate and conform the AIA to new circumstances; however,

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107 See Mayton, supra note 69, at 359.

108 See Sovereign Camp Woodmen of the World v. O'Neill, 266 U.S. 292, 298 (1924).

109 See Brown v. Pacific Mut. Life Ins. Co., 62 F.2d 711, 713 (4th Cir. 1933) ("[U]pon further consideration of the Kline Case [sic], we find nothing in it which limits to actions in rem the right of a federal court of equity to protect its jurisdiction."). The court went on to note that *Kline* did not present a situation in which a court needed to protect its jurisdiction, simply one in which there were two related actions seeking a money judgment. See id.

110 Or to put an even finer point on it, "the primary application of the statute . . . has been reduced to the more benign area of state court litigation between private parties where the plaintiff seeks to enforce a right contrary to federal regulatory legislation." Mayton, supra note 69, at 330.

these efforts have not cohered into a clear doctrine. This Part will survey these recent developments and articulate factors a court should consider in determining whether to issue an injunction while allaying federalism and comity concerns.

A. *Recent Developments: Expanding the Notion of Res*

While a number of courts have followed the Supreme Court's historically narrow interpretation of the "in aid of jurisdiction" exception in rejecting efforts to enjoin competing class actions,[111] there has been a growing trend among the lower courts to adopt more flexible approaches in dealing with the unique challenges posed by such actions.[112] In particular, the courts creatively have expanded the "in aid

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[111] See, e.g., In re Federal Skywalk Cases, 680 F.2d 1175, 1182 (8th Cir. 1982) (refusing to enjoin competing state class action despite mandatory nature of federal action and stating that "a pending state suit must truly interfere with the federal court's jurisdiction").

[112] Early signs of flexibility appeared in a series of school desegregation cases in which federal courts issued injunctions against state courts threatening to disrupt schools' compliance with desegregation orders from the federal courts. See Edward F. Sherman, Class Actions and Duplicative Litigation, 62 Ind. L.J. 507, 532 (1987) ("The most expansive use of the *in rem* analogy has been in school desegregation cases where the pendency of an injunctive action has been found sufficient to justify enjoining state suits that would undermine the remedy and effective compliance."). For instance, in Swann v. Charlotte-Mecklenburg Bd. of Educ., 501 F.2d 383 (4th Cir. 1974), the Fourth Circuit affirmed the district court's injunction of a state action filed by the parents of white students alleging that the school had deviated from the desegregation order and was now discriminating against white students. See id. at 383-84. The Fourth Circuit held that the issues involved in the state court proceeding were inseparable from those being litigated in federal court, that the state action might therefore interfere with the school's efforts at compliance with the federal court's orders, and thus that the injunction was necessary in aid of the court's jurisdiction. See id. at 384.

Against this precedential backdrop, in Three J Farms, Inc. v. Plaintiffs' Steering Committee (In re Corrugated Container Antitrust Litig.), 659 F.2d 1332 (5th Cir. 1981), the Fifth Circuit affirmed an injunction of a state action that essentially sought to steal all of the South Carolina members from a federal class action that was in settlement negotiations. See id. at 1333. The federal class action was brought against 37 manufacturers of corrugated containers and sheets, alleging a massive antitrust conspiracy. See id. Several plaintiffs who had brought a federal action in South Carolina before the cases were transferred to the multidistrict court filed a state court complaint on behalf of the South Carolina members of the national class. Represented by the same attorneys who were representing them in the federal action, and filing a complaint in part identical to the original federal complaint, the South Carolina plaintiffs sought to undermine the federal settlement being negotiated. See id. at 1333-34. The state court judge entered a temporary restraining order enjoining the defendants, who were also parties in the federal action, from "preparing, disseminating or utilizing" in any court any settlement document that released South Carolina state antitrust claims without the express permission of the state court. Id. at 1335. This prompted the federal district court to approve an injunction of the state proceedings. Noting that the state restraining order "would clearly interfere with the multidistrict court's ability to dispose of the broader action pending before it," the Fifth Circuit approved the injunction, concluding that "[t]his complicated antitrust action has required a great deal of the district court's time and has necessitated that it maintain a

of jurisdiction" exception by analogizing their proceedings to actions in rem.

1. In re Baldwin-United Corp.

In *In re Baldwin-United Corp. (Single Premium Deferred Annuities Insurance Litigation)*,[113] the federal district court presided over settlement negotiations in the consolidated proceedings of more than 100 federal securities lawsuits representing over 100,000 holders of Baldwin annuities.[114] While the claims were primarily federal, the plaintiffs also raised pendent state law claims in an attempt to increase their recovery.[115] Under the court's supervision, eighteen of the twenty-six broker-dealer defendants had agreed to stipulations of settlement, in which the plaintiffs would release all federal and state claims in exchange for approximately $140 million.[116] In anticipation of ruling on the settlements, the court provisionally certified the plaintiff class.[117] Upon learning of the proposed settlement, several state attorneys general grew concerned that the proposals did not compensate the plaintiffs adequately, particularly with regard to their state law claims.[118] As a result, the attorneys general took preliminary measures to commence suits in their representative capacities to seek monetary recovery for their constituents.[119] The district court granted the defendants' motion to enjoin the impending state civil actions, finding that the state actions "would jeopardize its ability to rule on the settlements, would substantially increase the cost of litigation, would create a risk of conflicting results, and would prevent the plaintiffs from benefiting from any settlement already negotiated or from reaching a new and improved settlement in the federal court."[120]

The Second Circuit approved of the district court's findings, invoking the language of *Atlantic Coast Line* in stating that the "potential for an onslaught of state actions . . . threatened to 'seriously impair

flexible approach in resolving the various claims of the many parties." Id. at 1334-35. Moreover, the court found that any federalism concerns were outweighed by the attorneys' efforts to file "duplicative and harassing" litigation in order to threaten the "court's exercise of its proper jurisdiction." Id. at 1335. Although both the federal and state actions were in personam, the Fifth Circuit interpreted the "in aid of jurisdiction" exception broadly to protect the integrity of the multidistrict court's jurisdiction.

113 770 F.2d 328 (2d Cir. 1985).

114 See id. at 331.

115 See id. at 331-32.

116 See id. at 332.

117 See id.

118 See id.

119 See id at 332-33.

120 Id. at 333. The injunction explicitly did not extend to the commencement of criminal actions against the defendants for violating state regulatory laws. See id.

the federal court's flexibility and authority.'"[121] Further bolstering the district court's authority, the appellate court held that release of the state claims was necessary because the risk of subsequent state actions "would threaten all of the settlement efforts by the district court and destroy the utility of the multidistrict forum otherwise ideally suited to resolving such broad claims."[122] The court held that federalism and comity concerns were allayed by the fact that the threatened state suits were "vexatious and harassing."[123] Distinguishing the instant case from *Kline*, the court concluded that "the district court had before it a class action proceeding so far advanced that it was the virtual equivalent of a res over which the district judge required full control."[124] Thus, the Second Circuit established not only a novel expansion of the in rem analogy but also a more practical analysis of the competing factors.

2. Carlough v. Amchem Products, Inc.

In 1993, the Third Circuit adopted and extended the Second Circuit's standard in *Carlough v. Amchem Products, Inc.*[125] Some members of a nationwide asbestos class action in the Eastern District of Pennsylvania filed and moved for class certification in a related state action in West Virginia.[126] The state action sought to have the tentative federal settlement declared unenforceable and nonbinding on the West Virginia class and to empower the named state plaintiffs to opt out of the federal class on behalf of all West Virginia members of that class.[127] The district court enjoined the state action, stating that the prosecution of the state action could cause the defendants "irrepara-

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121 Id. at 337 (quoting Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Eng'rs, 398 U.S. 281, 295 (1970)).

122 Id.

123 Id.

124 Id. The court defended its holding regarding the eight defendants who had not yet settled, stating:

> Given the extensive involvement of the district court in settlement negotiations to date and in the management of this substantial class action, we perceive a major threat to the federal court's ability to manage and resolve the actions against the remaining defendants should the states be free to harass the defendants through state court actions designed to influence the defendants' choices in the federal litigation. So long as there is a substantially significant prospect that these 8 defendants will settle in the reasonably near future, we conclude that the injunction entered by the district court is not improper.

Id. at 338. Thus, the court sought to protect the district court's jurisdiction not only over the tentative settlements, but also over the advanced negotiations.

125 10 F.3d 189 (3d Cir. 1993).

126 See id. at 193. The plaintiffs filed in state court prior to the commencement of the opt-out period in the federal class. See id.

127 See id. at 195-96.

ble harm" as it would preempt the federal action.[128] In addition, the court noted that the state plaintiffs would be able to opt out of the federal action and file individual state claims if they so chose, thus preserving the interests of federalism.[129] In affirming the injunction as necessary in aid of the court's jurisdiction, the Third Circuit, citing approvingly to the Second Circuit's reasoning,[130] noted that the "prospect of settlement was indeed imminent" and that "the stated purpose of the [state] suit [was] to challenge the propriety of the federal class action."[131] Thus, an en masse opt out of the West Virginia class members would undermine the federal court's settlement efforts.[132] Furthermore, the state action would be unnecessarily duplicative and costly, particularly for the defendants.[133] In so holding, the Third Circuit announced a more flexible and expansive interpretation of the "in aid of jurisdiction" exception in the class action context.

B. Beyond Baldwin-United*: Factors for Issuing Antisuit Injunctions*

While *Baldwin-United* and *Carlough* laid a foundation for reconciling federal antisuit injunctions against state class actions with the AIA, these decisions failed to establish a clear standard for when such injunctions can be issued appropriately. This section attempts to build on these cases in order to articulate a set of factors that federal courts should consider in determining if and when an antisuit injunction against a competing state class action would satisfy the "in aid of jurisdiction" exception.

1. Presence of Exclusively Federal Claims

A threshold factor in determining whether to issue an injunction against a competing state class action is the presence of exclusively federal claims in the federal action. First, federal courts have greater

128 See id. at 196 (stating that defendant "may suffer irreparable harm in the prosecution of the [state] action as the relief prayed for is substantially preemptive in nature as it relates to the present . . . case").

129 See id. at 198.

130 See id. at 197.

131 Id. at 203.

132 See id. ("We find it difficult to imagine a more detrimental effect upon the district court's ability to effectuate the settlement of this complex and far-reaching matter than would occur if the West Virginia state court was permitted to make a determination regarding the validity of the federal settlement."). The court also considered the "likelihood that the members of the West Virginia class will be confused as to their membership status in the dueling lawsuits." Id.

133 See id.

experience and competence dealing with exclusively federal claims.[134] Second, because state courts cannot hear exclusively federal claims in areas such as antitrust and consumer protection, there is a substantial federal interest in maintaining a forum in which plaintiffs can seek relief on such claims.[135] In contrast, exclusively federal claims are often given short shrift when released in state court settlements.[136] As discussed previously, the release of potentially valuable federal claims in state court often may be a sign of collusion.[137] Additionally, while the Court's decision in *Matsushita* permits the release of federal claims,[138] the presence of such claims militates against the state forum.

On the other hand, federal courts should be far more hesitant when the actions involve solely state claims and when litigation is centered in one state or region.[139] In fact, there has been an increasing reluctance among federal courts, led by the Supreme Court, to hear mass tort class actions.[140] Because of the strong state interest in providing a forum for the litigation of such state claims, federal courts should heed federalism concerns and resist enjoining such state actions.

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134 See Sherman, supra note 112, at 551 (discussing increased experience of federal judges with certain classes of claims and resulting familiarity with resolving such disputes); see also Vendo Co. v. Lektro-Vend Corp., 433 U.S. 623, 664 (1977) (Stevens, J., dissenting) ("[S]tate courts do not have the power to award complete relief for an antitrust violation . . . state judges are unfamiliar with the complexities of this area of the law, and . . . state procedures are sometimes unsatisfactory for cases of nationwide scope . . . .").

135 Congress has already federalized almost all securities class actions. See Securities Litigation Uniform Standards Act, Pub. L. No. 105-353, 112 Stat. 3227 (1998) (codified in scattered sections of 15 U.S.C.). For a discussion of the history of the Uniform Standards Act, see generally Painter, supra note 38, at 47-59; Richard H. Walker & J. Gordon Seymour, Recent Judicial and Legislative Developments Affecting the Private Securities Fraud Class Action, 40 Ariz. L. Rev. 1003, 1029-34 (1998); Michael G. Dailey, Comment, Preemption of State Court Class Action Claims for Securities Fraud: Should Federal Law Trump?, 67 U. Cin. L. Rev. 587, 597-600 (1999).

136 See supra notes 36-38 and accompanying text.

137 See id.

138 Matsushita Elec. Indus. Co. v. Epstein, 516 U.S. 367, 386-87 (1996).

139 See Woods, supra note 11, at 526-28 (discussing state interest in deciding state and regional disputes predicated on state law claims); cf. Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 818-19 (1976) (noting that factors such as inconvenience of federal forum, desire to avoid piecemeal litigation, absence of federal question, and policy interests favoring local resolution militate towards deference to state court proceeding).

140 See, e.g., Ortiz v. Fibreboard Corp., 527 U.S. 815 (1999) (reversing certification of settlement class); Amchem Prods., Inc. v. Windsor, 521 U.S. 591 (1997) (affirming circuit court's vacatur of settlement class for lack of commonality and adequacy of representation); Castano v. American Tobacco Co., 84 F.3d 734 (5th Cir. 1996) (decertifying class because of obstacles posed by variations in state law and trial plan).

2. *Complexity of the Litigation*

As the in rem analogy indicates, complexity is a fundamental characteristic of class action litigation.[141] Litigation such as an antitrust action may involve countless parties and a substantial investment of time and money by the parties and the court, all of which are threatened by a competing class action.[142] In order to protect these resources and the interests of absent class members, the federal court needs the flexibility to exercise effectively—and guard jealously—its jurisdiction.[143]

There are numerous reasons why the complexity of interstate class action litigation weighs in favor of federal court jurisdiction. To begin with, federal courts have institutional advantages over state courts. Their staffs are better equipped to deal with complex litigation in an efficient manner.[144] They also have more experience in general with complex litigation and the difficult choice of law issues often presented.[145] Moreover, federal courts employ more rigorous certification and settlement approval procedures and are often more vigilant

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[141] See In re Baldwin-United Corp. (Single Premium Deferred Annuities Ins. Litig.), 770 F.2d 328, 337 (2d Cir. 1985) (discussing "substantial scope" of federal action, number of parties, and judicial time involved).

[142] Because the impetus for filing the state actions is often dissatisfaction with the anticipated resolution of the federal action, see Mullenix, supra note 10, at B18, or a temporary impasse in settlement talks, see Prezant v. De Angelis, 636 A.2d 915, 918 (Del. 1994), it is likely that the parties and the court have already expended significant resources in litigation and/or settlement negotiations.

[143] See Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Eng'rs, 398 U.S. 281, 295 (1970) (recognizing federal courts' need for flexibility to protect jurisdiction). Federal courts also have been more willing to enjoin state class actions that threaten federal litigation that has been consolidated under the Multidistrict Litigation provisions. See, e.g., Three J Farms, Inc. v. Plaintiffs' Steering Comm. (In re Corrugated Container Antitrust Litig.), 659 F.2d 1332, 1335 (5th Cir. 1981) (noting approvingly multidistrict court's injunction to protect of its jurisdiction); Guerra v. Texaco Exploration & Prod., Inc. (In re Lease Oil Antitrust Litig. (No. II)), 48 F. Supp. 2d 699, 705 (S.D. Tex. 1998) (noting multidistrict nature of litigation in justifying injunction). In fact, one commentator has gone so far as to suggest that the Multidistrict Litigation statute "expressly authorizes" such injunctions. See Charles Alan Wright, Law of Federal Courts 304 n.51 (5th ed. 1994).

[144] Federal judges have access to law clerks, support personnel, magistrate judges, and special masters, all of which are not normally as available to state court judges. See The Class Action Fairness Act of 1999: Hearings on S. 353 Before the Subcomm. on Admin. Oversight and the Courts of the Senate Comm. on the Judiciary, 106th Cong. (1999) (statement of Stephen G. Morrison) (noting that state judges typically lack law clerks, magistrate judges, and special masters, which are available to federal judges), available at <http://www.senate.gov/~judiciary/5499sgm.htm>; Sherman, supra note 112, at 551.

[145] See Interstate Class Action Jurisdiction Act of 1999 and Workplace Goods Job Growth and Competitiveness Act of 1999: Hearing on H.R. 1875 and H.R. 2005 Before the House Comm. on the Judiciary, 106th Cong. 107-08 (1999) (prepared statement of former Attorney General Griffin B. Bell) (discussing advantages of federal courts over local state courts in handling complex litigation and choice of law issues), available at <http://www.house.gov/judiciary/1.htm>; see also Burt Neuborne, The Myth of Parity, 90

in protecting the rights of class members.[146] Finally, as discussed above, because many class actions allege exclusively federal claims along with state claims, only the federal courts may be able to adjudicate all the claims. Thus, federal courts are best situated to have sole jurisdiction over complex class actions, thereby preventing the harms associated with such duplicative litigation. In determining whether to enjoin state actions, therefore, federal courts should consider the nature of the claims, the resources invested, and the vulnerability of the absent class members to collusive settlements.

3. *Timing*

Another pivotal factor for the court is the timing of the respective competing class actions—that is, determining what the trigger point is for issuing an antisuit injunction. This factor implicates both the order in which the actions are filed and how far each has proceeded. As discussed, federal class actions typically are filed first, with copycat state actions filed later.[147] If the litigation began first in state court and proceeded apace, with the federal class action brought subsequently, an injunction might not be appropriate. However, situations might arise in which the state action is filed first but stalls, the subsequently filed federal action proceeds apace, and the stalled state action is revived to contest the federal action.[148] In such situations, the federal court still would be justified in acting to protect its jurisdiction.

Another component of timing is the extent to which the litigation in the federal forum has progressed.[149] On this point, the possibilities are numerous. In *Baldwin-United* and *Carlough*, for example, negotiations in the federal court had reached tentative settlements. By comparison, in *In re Silicon Gel Breast Implant Product Liability*

Harv. L. Rev. 1105, 1121-24 (1977) (discussing greater technical competence of federal judges).

146 See supra notes 7-8 and accompanying text.

147 See supra notes 55-56 and accompanying text.

148 See, e.g., Matsushita Elec. Indus. Co. v. Epstein, 516 U.S. 367, 370-71 (1996) (reviewing course of litigation); cf. Gerard & Johnson, supra note 19, at 410 (providing example of how alternative forum can be used to circumvent undesirable results in initial proceeding).

149 It is worth noting that if the federal court can anticipate the commencement of a competing state action, an injunction against the parties before the suit is instituted would not implicate the AIA at all. See Dombrowski v. Pfister, 380 U.S. 479, 484 n.2 (1965) ("This statute and its predecessors do not preclude injunctions against the institution of state court proceedings, but only bar stays of suits already instituted."); In re Baldwin-United Corp. (Single Premium Deferred Annuities Ins. Litig.), 770 F.2d 328, 335 (2d Cir. 1985) (noting that AIA did not apply because injunction was issued before state suits were commenced); Harris v. Wells, 764 F. Supp. 743 (D. Conn. 1991) (enjoining certain plaintiffs from instituting competing action in state court).

Litigation,[150] the federal court injunction was maintained in an effort to hold the settlement class together while alternatives were explored after settlement talks fell apart.[151] Other courts have issued injunctions after preliminary class certification, and one court enjoined a tentative state court settlement reached six months before the federal court settlement was reached.[152]

One could argue that these more recent cases have extended *Baldwin-United*'s in rem analogy too far. However, this criticism ignores the fact that there are both formal and substantive grounds for the analogy. Formally, invoking the historical in rem analogy automatically triggers the "in aid of jurisdiction" exception. But the analogy is also predicated substantively on the need for exclusive jurisdiction that underlies the in rem exception.[153] Thus, if the substantive rationale holds, then the in rem analogy must apply not only when the litigation is on the brink of settlement but also potentially earlier in the litigation—namely, whenever there is the possibility of conflicting orders, preclusive and collusive settlements, or other equally serious threats to the federal court's jurisdiction.[154]

4. Degree of Interference

In addition to the complexity and status of the federal proceedings, federal courts, in determining whether to issue an injunction, should consider the degree to which the state action poses interference with the federal action. Specifically, a federal judge should consider the extent to which the state action threatens the federal court's jurisdiction and its potential preclusive overlap. As evidenced in *Three J Farms, Inc. v. Plaintiffs' Steering Committee (In re Corrugated Container Antitrust Litigation)*,[155] federal courts have been vigilant in protecting defendants against state actions that threaten to subject them to harassing or unnecessarily duplicative litigation.[156] More significantly, courts have reacted firmly to direct challenges to their jurisdiction. In *Three J Farms*, the state court judge attempted to enjoin the defendants from entering any settlement that released state

150 No. CV 92-P-10000-S, Civ. A. No. CV94-P-11558-S, 1994 WL 114580 (N.D. Ala. Apr. 1, 1994).

151 See id. at *7.

152 See Guerra v. Texaco Exploration & Prod., Inc. (In re Lease Oil Antitrust Litig. (No. II)), 48 F. Supp. 2d 699, 701-02, 707 (S.D. Tex. 1998).

153 See supra note 87 and accompanying text (discussing policies underlying in rem exception).

154 See infra notes 172-79 and accompanying text.

155 659 F.2d 1332 (5th Cir. 1981).

156 See id. at 1335 (finding that plaintiffs' attorneys threatened court's exercise of proper jurisdiction by filing duplicative and harassing litigation in order to disrupt proceedings).

claims, an order that would have completely undermined the settlement negotiations.[157] In *Carlough*, the West Virginia state court plaintiffs sought to have the federal class settlement held unenforceable.[158] Similarly, in *Winkler v. Eli Lilly & Co.*,[159] federal class members resorted to the state court to defy a discovery order issued by the federal judge.[160] In all three cases, the federal courts reacted with appropriate vigor in defending their jurisdiction.

Additionally, the federal court should consider the extent to which the state class claims overlap with those alleged by the federal class. Generally, the more significant the overlap, the greater the potential threat for preclusion, and thus the greater the justification for enjoining the state action. Nevertheless, in light of the *Matsushita* decision, it is not clear what limits there are on a state class's ability to release federal and state claims not alleged in the state action. Thus, federal courts are justified in being even more vigilant in defending against collusive and potentially preclusive state class action settlements.

C. Federalism and Comity Concerns

The factors articulated above establish a framework within the bounds of the "in aid of jurisdiction" exception to the AIA for determining whether a federal court should issue an antisuit injunction against a competing state class action. While federalism and comity principles underlie the AIA, they also provide a separate and independent bar to federal interference with state court proceedings.[161] Indeed, starting with *Younger v. Harris*, the Supreme Court has held that principles of federalism dictate that federal courts abstain from interfering with certain state court proceedings.[162] Fortunately, when applied in the context of competing class actions, these principles play out in a way that allays concern.

1. Federalism

Given that duplicative class actions differ in nature from the types of cases in which the Court's anti-injunction doctrine developed, that doctrine should apply differently to antisuit injunctions in the class action context. *Younger* and its progeny were not simply situations involving duplicative litigation. Rather, in each case, one party

157 See id.; see also discussion supra note 112.
158 Carlough v. Amchem Prods., Inc., 10 F.3d 189, 196 (3d Cir. 1993).
159 101 F.3d 1196 (7th Cir. 1996).
160 See id. at 1200-01.
161 See Younger v. Harris, 401 U.S. 37, 44 (1971).
162 See supra note 68.

sought to use the federal courts to enjoin an unfavorable ruling or preexisting proceeding of a state court, thereby soliciting federal court interference with existing court jurisdiction;[163] hence the Supreme Court's great concern for preserving the independence of state court proceedings. By contrast, in the class action context, one action does not derive from another, but simply overlaps it.[164] In addition, the state action is usually filed in reaction to the federal suit.[165] For these reasons, the state's interest in protecting the state court proceedings is diminished, as are the federal court's federalism concerns. This is particularly true when one considers the federal interest in providing a forum for exclusively federal claims that cannot be adequately litigated in state court.[166]

Moreover, the abstention doctrine, which does deal with duplicative actions, highlights the preferability of a single forum and plays down federalism concerns. In *Colorado River Water Conservation District v. United States*,[167] the Supreme Court, speaking favorably of the general principle held by federal courts of avoiding duplicative litigation, stated that, in "the absence of weightier considerations of constitutional adjudication and state-federal relations,"[168] the resolution of duplicative litigation should be governed by principles of "'[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation.'"[169] While the Court ultimately held that federal courts should abstain in certain exceptional circumstances,[170] it nevertheless reaffirmed "the virtually

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163 See cases discussed supra note 68.

164 As discussed earlier, the possibility of such duplication of efforts is inherent in the class action device. See supra notes 14-21 and accompanying text.

165 On a related note, as the court stated in Winkler v. Eli Lilly & Co., 101 F.3d 1196 (7th Cir. 1996), "[t]he principles of federalism and comity which the Anti-Injunction Act is meant to protect include a strong and long-established policy against forum-shopping." Id. at 1202.

166 See supra notes 134-40 and accompanying text.

167 424 U.S. 800 (1976). Despite the United States government's ongoing involvement in state court proceedings resolving water rights in Colorado, the government filed suit in federal court seeking a declaration of its water rights and naming over 1000 defendants. See id. at 805. In light of the preexisting state action, several defendants sought dismissal of the federal action, claiming that the McCarran Amendment, under which the government consented to being sued in state court for resolution of water rights, precluded the district court's jurisdiction. See id. at 806. After the district court stayed its proceedings, the Tenth Circuit reversed, holding that abstention was inappropriate. See id.

168 Id. at 818.

169 Id. at 817 (quoting Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co., 342 U.S. 180, 183 (1952)).

170 See id. at 818 (stating that exceptional circumstances supporting dismissal exist). In this case, the exceptional circumstances were the federal and state interests in furthering the state's system for management and adjudication of water rights, the localized implications of the proceedings, the absence of proceedings in the federal court save the filing of

unflagging obligation of the federal courts to exercise the jurisdiction given them."[171] Thus, in the final analysis, the Court's decision may be read to endorse a single forum in those nonexceptional circumstances where the federal court must retain control. By so elevating the desirability of avoiding piecemeal litigation and conserving judicial resources over federalism concerns, the Court underscored the diminished federalism implications of mandating an exclusive forum.

Finally, insofar as one argument for federalism is to ensure the availability of a state forum for the vindication of citizens' rights, antisuit injunctions do not offend this principle. Injunctions would be appropriate only against competing class actions that threatened to undermine federal jurisdiction and the just resolution of the class claims. Injunctions would not be justified against individual actions brought by class members opting out of the class, as such actions would not threaten to preempt the federal action.[172] Thus, an individual's right to pursue individual litigation in state court and the federal court's need to protect its jurisdiction are reconciled, assuaging federalism concerns.

2. *Comity*

The Supreme Court repeatedly has preached the importance of minimizing friction between federal and state courts.[173] While antisuit injunctions initially might appear to undermine this interest in comity, a more accurate view demonstrates that injunctions in fact promote comity. First, it is worth noting that comity, while often invoked in the abstract, has proven rather hazy in practice.[174] Described alternately by the Court as a mere "notion"[175] and a "fluid" and "ill-defined"

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the initial complaint, the proximity of the state court relative to the federal court to the water site, and the existing participation of the federal government in the state proceedings. See id. at 819-20.

171 Id. at 817.

172 See Carlough v. Amchem Prods., Inc., 10 F.3d 189, 204 (3d Cir. 1993) (enjoining opt-out class action but protecting right of class members to opt out and commence individual actions). At first blush, the suggestion that Rule 23(c)(2) may afford the right to opt out but not to commence an individual suit, see Sherman, supra note 112, at 555, may seem far-fetched. Yet, the conclusion that the opt-out provision anticipates the right to pursue individual litigation but not to undermine the federal class action through commencement of a rival state class action is fair.

173 See, e.g., Younger v. Harris, 401 U.S. 37, 44 (1971) (describing "notion of 'comity'" as "a proper respect for state functions"); Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co., 309 U.S. 4, 9 (1939) (discussing importance of preventing "needless friction between state and federal courts").

174 See Rehnquist, supra note 10, at 1066-67 ("The term itself is a toothless abstraction, not a rule, invoked in an infinite variety of contexts to justify one governmental body's deference to another.").

175 *Younger*, 401 U.S. at 44.

concept,[176] comity has come to mean little more than "good manners rather than rigid rules."[177] Second, regardless of its significance, comity may be served better by staying a competing state action early on, rather than by squandering the substantial resources invested in the precluded action in waiting for the federal and state courts to issue conflicting orders or for one court to preclude the other through settlement.[178]

Just as the in rem exception is grounded in the desire to avoid an "unseemly conflict of authority,"[179] the same potential for conflict arises in duplicative, albeit technically in personam, complex class action litigation. Several courts have held that, where state court orders threaten to conflict with prior federal court orders in duplicative complex litigation, the AWA authorizes—and the AIA does not prevent—injunctions to protect the federal court's orders.[180] Insofar as injunctions do lead to friction, it is often the state courts that provoke the conflict, directly challenging the flexibility and authority of the federal courts to effectively manage their proceedings.[181] That said, it is not entirely clear that state court judges would mind having massive class actions taken off their dockets,[182] assuming they are even aware of the injunction in the first place.[183] As Judge Friendly observed: "Unlike

176 Williams v. North Carolina, 325 U.S. 226, 228 (1945).

177 Rehnquist, supra note 10, at 1067.

178 See id. at 1065 (stating:

> Worse still, perhaps, is requiring courts to manage cases in the shadow of parallel litigation, conscious of their role in a race run by the parties. One court may be asked to accelerate (or delay) its adjudication to thwart (or enhance) the potentially preclusive effect of a result in the other court, a strategy that squarely pits docket against docket, if not court against court. *This* is friction.

(internal citations omitted)).

179 Warren, supra note 73, at 369.

180 See, e.g., Winkler v. Eli Lilly & Co., 101 F.3d 1196, 1203 (7th Cir. 1996) ("[T]he Anti-Injunction Act does not bar courts with jurisdiction over complex multidistrict litigation from issuing injunctions to protect the integrity of their rulings . . . as long as the injunctions are narrowly crafted to prevent specific abuses which threaten the court's ability to manage the litigation effectively and responsibly."); Harris v. Wells, 764 F. Supp. 743, 746 (D. Conn. 1991) (granting preliminary injunction against Delaware state proceeding that threatened to interfere with federal court's prior discovery orders).

181 See, e.g., discussion of *Corrugated Container*, supra note 112, and *Carlough*, supra notes 125-33 and accompanying text; see also *Winkler*, 101 F.3d at 1203 ("Litigants who engage in forum-shopping, or otherwise take advantage of our dual court system for the specific purpose of evading the authority of a federal court, have the potential 'to seriously impair the federal court's flexibility and authority to decide that case.'" (quoting Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Eng'rs, 398 U.S. 281, 295 (1970))).

182 See Chemerinsky, supra note 9, § 13.2, at 779.

183 See Michael Wells, The Role of Comity in the Law of Federal Courts, 60 N.C. L. Rev. 59, 70 n.65 (1981) ("[F]ederal relief will consist of removal of a state case from a list of unheard cases kept in the clerk's office . . . . [S]tate judges may scarcely be aware of the insult visited upon them.").

the Constitution many [federal] statutes are rather technical; probably most state judges would be happy to be relieved of the need to deal, for example, with the occasional case where a defense is predicated on federal securities litigation."[184] Thus, antisuit injunctions can advance rather than derogate from any implicated comity interests.

CONCLUSION

Class actions are an essential mechanism for private enforcement of antitrust and securities laws and for the redress of civil rights and negative value claims. Competing state actions that seek to undermine or preempt federal class action proceedings may threaten the utility, efficiency, and fairness of this important procedural device.

While the Supreme Court historically has construed the exceptions to the AIA narrowly, several courts have taken creative strides to maintain exclusive jurisdiction over advanced class actions by analogizing to the in rem paradigm. By building on this recognition of a broader "in aid of jurisdiction" exception, federal courts will have the much-needed ability to protect their jurisdiction and the parties when their "flexibility and authority to decide that case" is threatened.

[184] Henry J. Friendly, Federal Jurisdiction: A General View 125-26 (1973).