

SIMPLIFYING PERSONAL JURISDICTION
IN COMPLEX LITIGATION

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The doctrine of personal jurisdiction is in a precarious state. The Supreme Court’s most recent attempt to apply its “settled principles” of personal jurisdiction to the evolving world of complex litigation left the law anything but settled. Specifically, in Bristol-Myers Squibb v. Superior Court of California, San Francisco County, the Court held that California courts could not constitutionally exercise personal jurisdiction over claims in a coordinated mass action that were not transactionally related to the state. The potential implications of BMS’s reasoning for class actions are profound: Applying BMS’s logic to absent class members’ claims would severely hinder plaintiffs’ abilities to sue on behalf of nationwide classes. An abundance of scholarship has since sought to divine whether BMS spells the end of nationwide class actions. The lower courts have divided on the question, with both the majority and the minority relying on simple definitions of absent class members as either parties or nonparties. This Note articulates an alternative to the formalistic are-they-parties-or-not inquiry and, instead, resolves the question by returning to personal jurisdiction’s first principles. It begins by tracing the evolution of personal jurisdiction doctrine back to its animating principles of sovereignty and due process. Applying them to the class action context, this Note concludes that adherence to the requirements for class certification inevitably allows courts to resolve absentee claims over which they would otherwise lack personal jurisdiction without running afoul of the sovereignty and due process principles that underlie personal jurisdiction doctrine.

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INTRODUCTION

The doctrine of personal jurisdiction—whether a defendant is “amenable to proceedings in the courts of” a sovereign—is in a precarious state. As it currently stands, the case law has little predictive power and struggles between doctrinal coherence and comporting with intuition.¹ Personal jurisdiction emerged from a legal tradition in which litigation was bipolar, party-controlled, backward-looking, remedy-oriented, and self-contained—imagine one neighbor suing another for property damage.² But this sort of paradigmatic legal dispute is now the exception. Today, goods and people move between jurisdictions more often than ever, and the downstream impacts of actions can and do extend further than they ever have. Consequently, legal wrongs tend to involve numerous parties across multiple jurisdictions with claims arising from related factual circumstances. For many of the same reasons, the American legal system has constructed aggregation mechanisms to adapt to these realities. The advent of “complex litigation” is a response to a complex world: With mass harm comes mass litigation.³

Where the American legal system has dramatically changed to accommodate complex litigation, the law of personal jurisdiction lags behind. The Court most recently grappled with the tension between personal jurisdiction and complex litigation in *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County (BMS)*. The Court held that California’s courts could not constitutionally exercise personal jurisdiction over claims in a coordinated mass action that were not

¹ *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 311 (1945).

² Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 HARV. L. REV. 1281, 1282–83 (1976).

³ See Judith Resnik, *From “Cases” to “Litigation,”* 54 L. & CONTEMP. PROBS. 5, 21–22 (1991) (“Multi-party, multi-claim litigations are increasingly a part of the landscape of litigation and increasingly viewed as fixtures of that landscape.”).

transactionally related to the state.⁴ In other words, plaintiffs who bought the defendant's product in California could sue the defendant there, but plaintiffs who bought the same product in other states could not join the action. They would need to split off and bring separate actions in their home states or else sue on the defendant's home turf.

Justice Sotomayor, *BMS*'s lone dissenter, pointed out in a footnote that, while the case was procedurally distinct from class actions under Federal Rule 23, the majority's reasoning could have monumental implications for class actions.⁵ Class actions, much like the mass action in *BMS*, are complex litigation mechanisms for conclusively resolving the claims of numerous similarly situated claimants. Class actions have long resolved the claims of both in-state and out-of-state claimants. Unlike in California's mass-action procedure, class members in class actions do not affirmatively bring their own suits, opt into the procedure, or retain their own counsel.⁶ Extending *BMS* to class actions would significantly hinder the legal system's ability to redress mass harms. Thus, if *BMS*'s logic applies to absent class members' claims—that is, if they must be transactionally related to the forum state—most courts will not be able to exercise jurisdiction over interstate and nationwide classes.

An abundance of scholarship has since sought to divine whether *BMS* means the end of the nationwide class action. The lower courts, for their part, are divided on the question. The majority have held that nationwide class actions are proper because personal jurisdiction is necessary only for formal parties. Absent class members, they find, are not "parties" for purposes of personal jurisdiction.⁷ Other lower courts have held that *BMS* prohibits them from resolving the claims of absent class members over which the court would otherwise lack personal jurisdiction.⁸ This Note takes the position that while the majority of courts arrive at the correct result by exercising jurisdiction over nationwide classes, their reasoning is often wanting. At worst, they simply declare that absent class members are not parties for personal jurisdiction purposes, relying on thin reasoning that future courts will continue to struggle with. Independent justification is necessary to

⁴ *Bristol-Myers Squibb Co. v. Super. Ct. of Cal.*, 582 U.S. 255, 264 (2017).

⁵ *Id.* at 278 & n.4 (Sotomayor, J., dissenting); see FED. R. CIV. P. 23.

⁶ Compare FED. R. CIV. P. 23 (delineating the features of federal class actions), with CAL. CIV. PROC. CODE § 404 (describing the process for consolidating individual claims into "complex" actions).

⁷ See Daniel Wilf-Townsend, *Did Bristol-Myers Squibb Kill the Nationwide Class Action?*, 129 YALE L.J. F. 205, 217, app. B (2019) (cataloging post-*BMS* cases through 2019 to address whether *BMS* required forum states to have personal jurisdiction as to the claims of absent class members).

⁸ See *id.*

conclusively resolve the question of whether absent class members' claims must arise out of or be related to defendants' contacts with the forum.

This Note advances an alternative justification that avoids the formalistic are-they-parties-or-not inquiry.⁹ Instead, it resolves the question by returning to personal jurisdiction's first principles. The analysis concludes that circumstances that satisfy the class certification requirements will inevitably support the adjudication of absentee claims in any forum with personal jurisdiction over the representative plaintiff's claim. A few recent commentators, most notably Professor Adam Steinman, as well as several district courts, have observed that nationwide class actions are consistent with personal jurisdiction's underlying principles, but each commentator operates primarily within the doctrine's flawed framework.¹⁰ By reframing the question with the language of personal jurisdiction's motivating concepts, this Note offers a constructive way out of the theoretical woods for courts that, faced with a widespread multi-party harm, find the extant doctrine insufficient.

The analysis proceeds in three parts. First, it traces the evolution of the personal jurisdiction doctrine back to its motivating concepts of sovereignty¹¹ and due process. Part I describes how the two distinct concepts became tangled into the single jurisprudential knot that is the general-specific framework for personal jurisdiction. Although

⁹ See generally Abby Porter, Note, *Parties or Not?: The Status of Absent Class Members in Rule 23 Class Actions*, 109 VA. L. REV. 711 (2023) (supporting *Devlin's* approach of allowing absent class members' party status to vary depending on the right being asserted). See also Diane Wood Hutchinson, *Class Actions: Joinder or Representational Device?*, 1983 SUP. CT. REV. 459, 459–60 (introducing the “joinder” and “representation” models for analyzing class actions).

¹⁰ See Adam N. Steinman, *Beyond Bristol-Myers: Personal Jurisdiction Over Class Actions*, 97 N.Y.U. L. REV. 1215, 1235–46 (2022) (analogizing personal jurisdiction to subject matter jurisdiction and venue, issues for which courts do not subject unnamed class members to independent scrutiny because they are not considered parties to the action); see also John Mikuta, Comment, *The Class Action Struggle: Should Bristol-Myers's Limit on Personal Jurisdiction Apply to Class Actions?*, 71 EMORY L.J. 325, 358–61 (2021) (arguing that because applying *BMS* to class actions would impede the goals of class actions, courts should treat class members for personal jurisdiction purposes as they do for subject matter jurisdiction and venue purposes—as non-parties); Grant McLeod, Note, *In a Class of Its Own: Bristol-Myers Squibb's Worrisome Application to Class Actions*, 53 AKRON L. REV. 721, 733–39 (2019) (describing the gradual restrictions placed on specific jurisdiction partly because of interstate federalism concerns).

¹¹ Complete consensus on sovereignty's true meaning does not exist. For the purpose of this analysis, it suffices to associate the term with the commonly accepted thread referring to the irreducible source of a political unit's legitimate legal authority. This Note utilizes the term because of its wide use in the literature, but the analysis is agnostic as to whether states are truly sovereign under the American constitutional framework. See generally Akhil Reed Amar, *Of Sovereignty and Federalism*, 96 YALE L.J. 1425 (1986) (challenging the description of state governments as sovereign within the American constitutional framework).

the Justices continue to reference both sovereignty and due process,¹² Part I concludes that the current tests for personal jurisdiction rely on imperfect proxies that can obscure and fall short of the doctrine's aspirations.

Part II then examines how nationwide class actions that conform to Rule 23's requirements square with the ideals of sovereignty and due process, as they are now understood. It does so by identifying how class actions do and do not change the balance of interests that inform the personal jurisdiction analysis. The analysis primarily contemplates damages classes, but it notes where the argument can adapt to so-called "mandatory" classes certified under Rule 23(b)(1) and (b)(2). Referring to the circumstances that necessitate class actions, Section II.A identifies sovereign interests that justify the adjudication of *all* claims encompassed by a class. Because due process now constitutes the primary constraint on personal jurisdiction and requires considering multiple factors, Section II.B comprises the core of the Note's analysis. Balancing the parties' relative interests in the dispute against the prejudice that the procedure imposes on the adjudication, Section II.B explains that proper application of class certification requirements will typically resolve the legitimate concerns that arise for defendants when claims are aggregated in a forum to which they have no relation.

Part III translates the lessons of the preceding application of personal jurisdiction theory to class actions into workable juridical rules. It discusses the shortcomings of the formalistic approach taken by many courts addressing this issue but finds, nonetheless, that the outcome reached by most courts is consistent with the doctrine's underlying principles. The analysis, however, reveals that personal jurisdiction analysis often overlooks certain qualifying conditions that are necessary to satisfy due process in a nationwide class action. Finally, it identifies the limitations of personal jurisdiction as a vehicle for vindicating sovereignty and due process in complex litigation.

I

PERSONAL JURISDICTION'S SIMULTANEOUS FIRST PRINCIPLES

This Part identifies sovereignty and due process as the animating principles behind the Supreme Court's personal jurisdiction jurisprudence across three stages.¹³ Section I.A begins by examining

¹² See, e.g., *Mallory v. Norfolk S. Ry. Co.*, 143 S. Ct. 2028, 2043 (2023).

¹³ The doctrine's precise contours—already the subject of voluminous recent scholarship—do not necessitate a comprehensive restatement. Rather, the goal is to highlight the concepts that motivated the doctrine's evolution.

the seminal case of *Pennoyer v. Neff*, which took the innovative step of barring states from enforcing judgments of their own courts if the adjudications exceeded the states' sovereign authority.¹⁴ Section I.B then describes how, over the course of the twentieth century, the Due Process Clause came to supply independent, fairness-motivated constraints on the exercise of personal jurisdiction. Finally, the Supreme Court's recently renewed interest in personal jurisdiction, described in Section I.C, reflects an ongoing tension between the dual concerns with sovereignty and fairness, which the Court embedded in the concepts of "general" and "specific" jurisdiction. With a complete view of the doctrine's evolution, Section I.C concludes by sharpening the question the Court addressed in *BMS* and the question it left open.

A. Personal Jurisdiction as a Sovereignty-Based Limitation on Adjudicatory Power

This Section covers the first stage of personal jurisdiction doctrine's history, which commenced shortly after Reconstruction ended and lasted for most of the first half of the twentieth century. The standard version of America's personal jurisdiction story begins with the 1878 case *Pennoyer v. Neff*.¹⁵ *Pennoyer* involved a disputed parcel of land in Oregon acquired by Marcus Neff.¹⁶ John Mitchell sued Neff to recover allegedly unpaid legal fees. But Mitchell could not personally serve Neff, who had moved to California. Following a default judgment against Neff, Mitchell acquired the parcel at auction and assigned it to Sylvester Pennoyer. Neff returned to Oregon and successfully evicted Pennoyer.¹⁷ Pennoyer's subsequent federal suit to recover the land eventually reached the Supreme Court. The Court held, in relevant part, that Mitchell's original default judgment against Neff was unenforceable because Neff (1) did not reside in Oregon, (2) never received service in Oregon, and (3) never consented to Oregon's jurisdiction.¹⁸

The Court's primary concern in *Pennoyer* was the limit of Oregon's sovereignty. Justice Field wrote, "The authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established. Any attempt to exercise authority beyond those limits

¹⁴ 95 U.S. 714, 732–33 (1878).

¹⁵ *Id.*

¹⁶ *Id.* at 719. For a more comprehensive history of the suit, see Wendy Collins Perdue, *Sin, Scandal, and Substantive Due Process: Personal Jurisdiction and Pennoyer Reconsidered*, 62 WASH. L. REV. 479, 480–90 (1987).

¹⁷ Perdue, *supra* note 16, at 480.

¹⁸ *Pennoyer*, 95 U.S. at 734.

would be deemed in every other forum . . . an illegitimate assumption of power, and be resisted as mere abuse.”¹⁹ Highlighting the centrality of sovereignty to the Court’s reasoning, Justice Field relied primarily on international law principles. He cited, for example, Justice Story’s treatise on conflicts of laws, for the proposition that a state’s “exclusive jurisdiction and sovereignty over persons and property within its territory” entails that “no [other] State can exercise direct jurisdiction and authority over persons or property without its territory.”²⁰

To be sure, *Pennoyer* did also cite the Fourteenth Amendment’s Due Process Clause, but it viewed the Due Process Clause as a new vehicle for challenging states’ unlawful exercises of judicial power, not as a source of independent limitations on state authority.²¹ As Professor Perdue aptly summarizes, “[T]he Due Process Clause provided a hook to allow an intra-state challenge to a judgment rendered in violation of the principles of sovereignty and international law that [Justice Field] had earlier described.”²² Earlier cases had reached similar results by finding a lack-of-in-state-service exception to the Full Faith and Credit Clause’s default rule that each state must enforce one another’s judgments.²³ *Pennoyer*’s novel contribution was to introduce the Due Process Clause for the stronger holding that those judgments may be entirely void, even in the state that rendered the initial judgment.²⁴

¹⁹ *Id.* at 720.

²⁰ *Id.* at 722–23 (citing JOSEPH STORY, COMMENTARIES ON THE CONFLICT OF LAWS 19–38 (1834)).

²¹ *Id.* at 733 (“Since the [Fourteenth Amendment’s adoption], the validity of such judgments may be directly questioned, and their enforcement in the State resisted, on the ground that proceedings . . . to determine the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law.”); see also Adrian Tocklin, *Pennoyer v. Neff: The Hidden Agenda of Stephen J. Field*, 28 SETON HALL L. REV. 75, 138 & n.428 (1997) (“*Pennoyer* gave Field a somewhat neutral opportunity to discuss due process, and he was a master at planting seeds that might yield later harvest.”).

²² Wendy Collins Perdue, *What’s “Sovereignty” Got to Do with It? Due Process, Personal Jurisdiction, and the Supreme Court*, 63 S.C. L. REV. 729, 731 (2012) [hereinafter Perdue, *Sovereignty*].

²³ See *D’Arcy v. Ketchum*, 52 U.S. 165, 176 (1850) (holding a prior state court judgment unenforceable in another state if the defendant never received service in the forum state); see also *McElmoyle v. Cohen*, 38 U.S. 312, 329 (1839) (holding that the Full Faith and Credit Clause does not require states to enforce foreign states’ judgments after the state’s own statute of limitations had lapsed).

²⁴ Notwithstanding its orthodox status as the starting point for personal jurisdiction in first-year civil procedure curricula, there is little in *Pennoyer*’s opinion to suggest the Court saw itself as breaking new ground. Indeed, the Court relied heavily on the Full Faith and Credit cases mentioned above. Yet, in the shadow of the Civil War and Reconstruction came an appreciation for the need for greater oversight of the mischiefs occurring in state courts. See Tocklin, *supra* note 21, at 96, 109 (explaining how Justice Field’s view of the Fourteenth Amendment as a “critical bridge to help preserve economic order after the Civil War”

Justice Field's territorial view of sovereignty eventually proved unsustainable,²⁵ and scholars have questioned whether his statement of law was even correct at the time.²⁶ But the opinion leaves little doubt that enforcing sovereignty's limits was *Pennoyer's* animating concern. And so, for the first several decades after its inception, personal jurisdiction operated to control the states' exercises of adjudicatory power vis-à-vis the other states.²⁷ Around the turn of the twentieth century, the Supreme Court began relying on the Due Process Clause as an independent constraint on states' adjudicatory authority. But even when courts found that additional service deficiencies violated a due process right to be heard, courts understood the limit on states' authority to render *in personam* judgments as a feature of interstate federalism.²⁸

As the new century progressed, the Supreme Court began to realize *Pennoyer's* practical shortcomings. In *Hess v. Pawloski*, for example, the Court upheld a Massachusetts statute designating a state official as the agent for service-of-process purposes of all non-residents who drove automobiles into Massachusetts.²⁹ Still, the Court's opinion went to great lengths to squeeze its desired expansion of personal jurisdiction into *Pennoyer's* sovereignty-rooted test of (1) domicile, (2) in-state service, or (3) consent.³⁰ In this way, the Due Process Clause did not define the boundaries of a court's jurisdiction. It policed them.

B. International Shoe Makes Fairness the Touchstone of Personal Jurisdiction

Decades after developing the sovereignty rationale, the Court eventually articulated a new limiting principle on personal jurisdiction: procedural fairness. This Section describes the dramatic change in how

motivated him to give new force to the Due Process Clause, especially after the hamstringing of the Privileges or Immunities Clause in the *Slaughterhouse Cases*).

²⁵ See *infra* Section II.A.

²⁶ See, e.g., Tocklin, *supra* note 21, at 140 ("In *Pennoyer*, Justice Field completely and masterfully shattered Justice Story's first pillar of complete state authority over property within its borders, and he undermined Story's second pillar. Remarkably, Field accomplished this while paying homage to Story and while ostensibly affirming Joseph Story's principles.").

²⁷ See, e.g., *Wetmore v. Karrick*, 205 U.S. 141, 149 (1907) ("[A] judgment rendered *in personam* against a defendant without jurisdiction of his person is not only erroneous but void. . . . And the same case holds that such judgment is not required to be enforced in another State . . . by the due faith and credit clause of the Constitution . . .") (citing *Pennoyer v. Neff*, 95 U.S. 714 (1878)).

²⁸ See, e.g., *De La Montanya v. De La Montanya*, 112 Cal. 101, 110 (1896) ("It is as much an invasion of a foreign jurisdiction to serve a citizen of the state in which the action was brought temporarily resident there, as it would be to summon from its borders a citizen of such foreign state.").

²⁹ 274 U.S. 352, 356–57 (1927).

³⁰ *Id.*

the Supreme Court framed personal jurisdiction over the remainder of the twentieth century, embracing due process as an independent constraint on personal jurisdiction.

The pivotal moment was the Supreme Court's 1945 decision in *International Shoe Co. v. Washington*, which held that Washington courts could render enforceable decisions over a Delaware company, headquartered in Missouri, whose agents marketed products in Washington.³¹ "[D]ue process," wrote the Court, "requires only that [an *in personam* defendant] have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" ³²

In conducting this inquiry, the Court focused entirely on the Defendant. Specifically, it evaluated the Defendant's conduct relating to the forum³³ and the burden on the Defendant of having to defend in the forum.³⁴ It made no reference, by contrast, to any other state's sovereign interests. The question is simply one of fairness to the Defendant. As Professor Perdue summarized, "Under the *Pennoyer* approach, the due process violation consisted of enforcing a judgment rendered by a court that lacked legitimate authority, but the standards for determining legitimacy were derived separately from that clause. In contrast, *International Shoe* suggests that the Due Process Clause itself embodies certain criteria for legitimacy."³⁵ What followed in the decades since was a lurching effort to define "minimum contacts" and "fair play and substantial justice." Each new case announced a new test or list of factors for determining whether a defendant satisfied the previous test.³⁶

If *International Shoe* left any doubt, a slew of Supreme Court cases in the 1980s firmly grounded personal jurisdiction in the language of individual due process rights. In *World-Wide Volkswagen Corp. v. Woodson*, the Supreme Court made vague references to sovereignty and federalism,³⁷ but competing states' interests played

³¹ 326 U.S. 310, 313, 321 (1945).

³² *Id.* at 316 (citations omitted).

³³ *Id.* at 320 ("It is evident that these operations establish sufficient contacts or ties with the state of the forum to make it reasonable and just according to our traditional conception of fair play and substantial justice, to permit the state to enforce the obligations which appellant has incurred there.").

³⁴ *Id.* at 317 ("To require the corporation in such circumstances to defend the suit away from its home or other jurisdiction where it carries on more substantial activities has been thought to lay too great and unreasonable a burden on the corporation to comport with due process.").

³⁵ Perdue, *Sovereignty*, *supra* note 22, at 733.

³⁶ *See, e.g.,* *Hanson v. Denckla*, 357 U.S. 235, 253 (1958) (introducing the "purposeful availment" test); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980) (listing seven factors that would indicate "purposeful availment").

³⁷ 444 U.S. at 293–94.

no role in the analysis.³⁸ Two years later, the Court explicitly stated that personal jurisdiction restricts judicial power “not as a matter of sovereignty, but as a matter of individual liberty.”³⁹ Especially telling was Justice O’Connor’s opinion in *Asahi Metal Industry Co. v. Superior Court of California*, in which eight Justices agreed that “fair play and substantial justice” amounted to a balancing of “the burden on the defendant, the interests of the forum State, and the plaintiff’s interest in obtaining relief,” as well as judicial efficiency and policy.⁴⁰

It was during this period that the Supreme Court first weighed in on the intersection of personal jurisdiction and class actions. The 1985 case *Phillips Petroleum Co. v. Shutts* involved a class action in Kansas state court.⁴¹ The *Shutts* plaintiffs sought to recover royalty payments on behalf of some 28,000 individuals—ninety-seven percent of whom had no connection to Kansas—who held rights to the leases from which Phillips Petroleum produced natural gas.⁴² While the Supreme Court rejected Kansas’s attempt to apply its own substantive law to all of the claims, it allowed Kansas courts to adjudicate the claims of the entire class, so long as the absentees received notice and the ability to opt out of the proceeding.⁴³ *Shutts* seemed to resolve any doubt about a court’s ability to exercise personal jurisdiction over absent out-of-state claimants who received those basic protections.⁴⁴ By the end of the Burger Court, personal jurisdiction had become first and foremost a protection of defendants’ due process rights.

C. *The Modern Doctrine Reflects Both Theories of Personal Jurisdiction*

Originally, sovereignty concerns motivated the Court’s personal jurisdiction jurisprudence. Then, due process did. This Section discusses how personal jurisdiction doctrine now reflects an internal tension

³⁸ See *id.* at 291–99. For a fuller discussion of this transition, see Perdue, *Sovereignty*, *supra* note 22, at 734–39.

³⁹ *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982). The Court continued down this road in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471–72 (1985).

⁴⁰ 480 U.S. 102, 113 (1987). While the Court never explicitly referenced this line of cases, it did not escape notice that *Asahi*’s “fair play and substantial justice” test bears a striking resemblance to the Supreme Court’s test for the fairness of proceedings that deprive individuals of constitutionally protected rights. See Patrick J. Borchers, *Jones v. Flowers: An Essay on a Unified Theory of Procedural Due Process*, 40 CREIGHTON L. REV. 343, 349–50 (2007) (discussing *Mathews v. Eldridge*, 424 U.S. 319 (1976) (“This test is the *Mathews* test recast for the issue of the choice of a state forum.”)).

⁴¹ 472 U.S. 797, 799 (1985).

⁴² *Id.* at 801.

⁴³ *Id.* at 814, 823.

⁴⁴ *Id.* at 811 n.3.

between the two. While certain scholars and Justices continue to advocate for one and not the other, it is sufficient for present purposes to identify both principles' continued doctrinal force. This Section concludes by describing how personal jurisdiction doctrine's uncertain adherence to both sovereignty and due process manifested itself in *BMS* with potentially destabilizing implications for class actions.

When the Roberts Court renewed its interest in personal jurisdiction in the 2010s, it picked up a doctrine facing an identity crisis. Procedural fairness continues to act as the primary limiting force against assertions of personal jurisdiction, but the sovereignty rationale never went away. The doctrine's theoretical strain burst into the open in *J. McIntyre Machinery, Ltd. v. Nicastro*.⁴⁵ A fractured Court diverged over the sufficiency of the defendant's contacts with the forum, but all nine Justices purported to operate within *International Shoe*'s framework.⁴⁶ Yet, in dicta, Justice Kennedy's plurality, which found the defendant's contacts insufficient, invoked *Pennoyer* by affirming states' robust authority to hear any suit on the basis of in-state service, residency, or consent.⁴⁷ Underscoring the tension, Justice Ginsburg's dissent gave the most weight to the relative interests of the forum and competing jurisdictions, yet she criticized the plurality for prioritizing sovereignty over due process.⁴⁸ What *Nicastro* reveals is that the Justices agree on neither the primary principle behind personal jurisdiction doctrine nor how those principles dictate the outcomes in specific cases.

Amidst this discord, the Roberts Court elevated the general-specific framework for evaluating personal jurisdiction, which has only compounded the difficulty. On top of—or, really, cutting across—the *Pennoyer* and *International Shoe* frameworks, the Supreme Court endorsed the taxonomy of “general” and “specific” jurisdiction to describe a state's authority to adjudicate any suit against a defendant and the more limited authority to hear a suit that is causally related to the defendant's interactions with the state, respectively.⁴⁹ General jurisdiction exists wherever the defendant is “at home,” whereas specific jurisdiction requires the claim to arise out of or be related to the defendant's contacts with the forum.⁵⁰ While the terminology is not

⁴⁵ 564 U.S. 873 (2011).

⁴⁶ *Id.*

⁴⁷ *Id.* at 880.

⁴⁸ *Id.* at 899–900 (Ginsburg, J., dissenting); Perdue, *Sovereignty*, *supra* note 22, at 742–43.

⁴⁹ See *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923–24 (2011); see also *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014) (following *Goodyear*'s “distinction between general or all-purpose jurisdiction, and specific or conduct-linked jurisdiction”).

⁵⁰ *Goodyear*, 564 U.S. at 923–24.

new,⁵¹ the general-specific analysis became the primary framework only when the Roberts Court decided *Goodyear Dunlop Tires Operations v. Brown*⁵² and *Daimler AG v. Bauman*.⁵³

The Court's simultaneous aspirations for sovereignty and fairness translated into a tension between the doctrine and its motivating principles. The Court never explained the relationship between the general and specific jurisdiction taxonomy and the *Pennoyer* and *International Shoe* frameworks. Frustratingly, neither general nor specific jurisdiction, as articulated by the Court, lines up with sovereignty or due process one-for-one. Both first principles can justify either heading of jurisdiction. General jurisdiction can be explained as both a recognition of the home state's sovereign authority to determine the status of its residents⁵⁴ or of the inevitability that litigating in their home forums will pose no fairness problems for defendants.⁵⁵ Likewise, specific jurisdiction can be explained with both the theory that actions affecting a sovereign's citizens are subject to its regulatory authority⁵⁶ or that a state's interest in adjudicating a claim overcomes the prejudice to the defendant when the defendant's actions in the state cause the injury and make a lawsuit there foreseeable.⁵⁷ While it is tempting to attribute the category of general jurisdiction to the sovereignty rationale and specific jurisdiction to due process (or vice versa), the general-specific framework's doctrinal distinction does not correspond to the theoretical distinction between the two underlying principles.

Additionally problematic is the doctrine's complex scheme of multi-pronged tests consisting of numerous factors and checklists. Simple balancing tests (including the one described below for Due Process) can be a useful means for the law to account for competing interests.⁵⁸ Personal jurisdiction doctrine, however, obfuscates these interests by setting forth several tests with uncertain relationships to one another and with factors that overlap, rarely apply, or are too specific to account for new circumstances. The result is what many scholars have called

⁵¹ See *Helicopteros Nacionales de Colom. v. Hall*, 466 U.S. 408, 414 nn.8–9 (1984) (citing Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136–44 (1966)).

⁵² 564 U.S. 915.

⁵³ 571 U.S. 117.

⁵⁴ See Lea Brilmayer, Jennifer Haverkamp, Buck Logan, Loretta Lynch, Steve Neuwirth & Jim O'Brien, *A General Look at General Jurisdiction*, 66 TEX. L. REV. 721, 780 (1988).

⁵⁵ See *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 437, 445 (1952).

⁵⁶ See *Goodyear*, 564 U.S. at 919.

⁵⁷ See von Mehren & Trautman, *supra* note 51, at 1172.

⁵⁸ See generally Louis Kaplow, *On the Design of Legal Rules: Balancing Versus Structured Decision Procedures*, 132 HARV. L. REV. 992 (2019) (describing the benefits of balancing tests).

a “mess.”⁵⁹ The reason for the mire, which the Court is only beginning to recognize, is that two different theories are simultaneously guiding the doctrine, and they do not always pull in the same direction.⁶⁰

At first, one might assume that sovereignty and due process are coextensive, i.e., that exercising jurisdiction will be procedurally fair if and only if the forum state acts within its sovereign limits, but counterexamples abound.⁶¹ For example, a state may act within its sovereign right to adjudicate cases but, in doing so, deprive the defendants of due process.⁶² Likewise, a mobile and interconnected world also generates cases in which a forum state may fairly hear a defendant’s case but exceed the limits of its sovereignty while doing so. At first glance, *Bristol-Myers Squibb* appears to be one such case. *BMS* was a coordinated mass action, a peculiar form of aggregation under California law with “no analogue in the Federal Rules of Civil Procedure,” in which all claimants affirmatively joined the litigation and were formally represented by their own counsel.⁶³ The plaintiffs included eighty-six California residents and 592 non-California residents who were allegedly injured by taking Plavix, a drug manufactured by Bristol-Myers Squibb.⁶⁴ In this respect, *BMS* appears no different from

⁵⁹ Christine P. Bartholomew & Anya Bernstein, Ford’s *Underlying Controversy*, 99 WASH. U. L. REV. 1175, 1175 (2022). For additional characterizations of the doctrine’s current state, see Louis J. Capozzi III, Note, *Relationship Problems: Pendent Personal Jurisdiction After Bristol-Myers Squibb*, 11 DREXEL L. REV. 215, 217–18 (2018); Patrick J. Borchers, *Extending Federal Rule of Civil Procedure 4(k)(2): A Way to (Partially) Clean Up The Personal Jurisdiction Mess*, 67 AM. U. L. REV. 413, 414–16 (2018); Cody J. Jacobs, *In Defense of Territorial Jurisdiction*, 85 U. CHI. L. REV. 1589, 1647 (2018); Brooke D. Coleman, *Endangered Claims*, 63 WM. & MARY L. REV. 345, 378 (2021).

⁶⁰ See *Ford Motor Co. v. Mont.* Eighth Jud. Dist. Ct., 592 U.S. 351, 360 (2021) (“These rules derive from and reflect two sets of values—treating defendants fairly and protecting ‘interstate federalism.’”) (citations omitted).

⁶¹ Peter L. Markowitz & Lindsay C. Nash, *Constitutional Venue*, 66 FLA. L. REV. 1153, 1181 (2014).

⁶² Consider, for example, the hotly debated concept of “tag jurisdiction,” endorsed by a plurality of the Supreme Court in *Burnham v. Superior Court of California*, 495 U.S. 604 (1990) (opinion of Scalia, J.). Justice Scalia’s controlling opinion in that case held that personal jurisdiction was proper based on in-state service despite the defendant’s transient presence in the forum having no relation to the dispute. *Id.* at 619. Justice Scalia’s argument amounts to an assertion that jurisdiction based on transient presence in the forum is per se consistent with due process simply because of its historical pedigree dating back to *Pennoyer* and even earlier. *Id.* This position, however, fails to account for the fact that people now regularly travel between states without staying for long periods of time. Jeffrey W. Stempel, *The Irrepressible Myth of Burnham and Its Increasing Indefensibility After Goodyear and Daimler*, 15 NEV. L.J. 1203, 1243 n.157 (2015) (arguing that Scalia’s plurality opinion is neither authoritative nor consistent with the Court’s views on the Due Process Clause).

⁶³ *Mussat v. IQVIA, Inc.*, 953 F.3d 441, 446 (7th Cir. 2020). See CAL. CIV. PROC. CODE § 404.

⁶⁴ *Bristol-Myers Squibb Co. v. Super. Ct. of Cal.*, 582 U.S. 255, 259 (2017).

Shutts.⁶⁵ Both cases applied a personal jurisdiction doctrine whose underlying assumptions are strained by the facts of our modern world: many people with similar claims arising from a defendant's uniform but widespread course of conduct.⁶⁶

The *BMS* Court, however, held that California courts could not exercise personal jurisdiction over Bristol-Myers Squibb with respect to the claims of the non-California plaintiffs.⁶⁷ To use the Court's language, "[i]n order for a court to exercise specific jurisdiction over a claim, there must be an 'affiliation between the forum and the underlying controversy.'" ⁶⁸ Thus, even though Bristol-Myers Squibb's activities in California rendered it amenable to suit in the state, California's authority to render judgments against Bristol-Myers Squibb is limited to claims that are causally related to those in-state activities. In that sense, Justice Alito correctly described *BMS* as a "straightforward application . . . of settled principles," which essentially restated the holdings of *Goodyear* and *Daimler AG*.⁶⁹ Justice Alito was careful to distinguish *Shutts* on the grounds that *Shutts* purported to address the absent claimants' due process rights, not the defendants' rights.⁷⁰

This holding, nevertheless, poses a problem for class actions, which Justice Sotomayor identified in dissent.⁷¹ The plaintiffs in *BMS* strategically chose not to utilize the class action mechanism, instead using a state-level procedural mechanism that allows litigants to avoid removal to federal court under either 28 U.S.C. § 1332 or the Class Action Fairness Act.⁷² Read this way, *BMS* is an example of bad law making bad facts. But Justice Sotomayor's concern is not with the case's outcome but with its implications. While *BMS* might be an oddity because it did not use the class action form, its underlying fact pattern is a common one. For the numerous cases that *are* brought as class actions, the important

⁶⁵ Compare *Bristol-Myers Squibb*, 582 U.S. 255, with *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985).

⁶⁶ See generally *Bristol-Myers Squibb*, 582 U.S. 255 (noting that the group of plaintiffs alleging injury from Plavix consisted of residents from thirty-four states).

⁶⁷ *Id.* at 258.

⁶⁸ *Id.* at 264 (emphasis added) (internal citations omitted).

⁶⁹ *Id.* at 268; see also Haley Palfreyman Jankowski, *The Not-So-Odd Couple: Specific Personal Jurisdiction and Party Joinder*, 89 TENN. L. REV. 261, 265 (2022) ("While this is perhaps true under a general personal jurisdiction theory, as a matter of specific personal jurisdiction, *Bristol-Myers Squibb* did not veer at all from the Court's 'settled principles.'").

⁷⁰ *Shutts*, 582 U.S. at 267 ("Since *Shutts* concerned the due process rights of *plaintiffs*, it has no bearing on the question presented here.").

⁷¹ See *id.* at 278 n.4.

⁷² See CAL. CIV. PROC. CODE § 404; see also Mallory A. Gitt, Note, *Removal Jurisdiction over Mass Actions*, 90 WASH. L. REV. 453, 455 (2015) (discussing how plaintiffs strategically structure their suits to keep them in state courts and avoid the Class Action Fairness Act's federal jurisdiction triggers).

question⁷³ remains: Should courts extend *BMS* to class actions? If the answer is yes, most plaintiffs will be unable to bring class actions in their home states on behalf of nationwide classes. A proliferation of identical statewide class actions might replace some nationwide classes, shift others to defendants' home states, and make others no longer worth bringing. Whatever combination results, *BMS*'s logic threatens to significantly constrain the legal system's ability to redress mass harms.

II

RETURNING TO PERSONAL JURISDICTION'S FIRST PRINCIPLES IN CLASS ACTIONS

This Part answers the question posed at the end of Part I—whether *BMS* should apply to class actions—in the negative. It does so by applying personal jurisdiction's two separate first principles, identified in Part I, to nationwide class actions. The analysis explains how properly certified⁷⁴ class actions satisfy both the sovereignty and

⁷³ The question is as significant for class actions brought in or removed to federal court as it is for class actions in state court, because personal jurisdiction in federal court almost always requires a state-level analysis. While Part II's first principles analysis readily applies to the United States as a whole, it is, in a purely mechanical sense, the Federal Rules' incorporation of state personal jurisdiction into their service requirements that preserves the necessity of conducting the state-level analysis. Rule 4(k)(1)(A) purports to limit personal jurisdiction in federal courts to that of courts of the states in which they sit. See Markowitz & Nash, *supra* note 61, at 1181–82. It is generally accepted that Congress can expand Rule 4(k) beyond its current form, which Congress could not do if the Rule articulated a due process limitation on courts' adjudicatory authority. See Scott Dodson, *Rule 4 and Personal Jurisdiction*, 99 NOTRE DAME L. REV. 1, 5 (2023). Whether Rule 4(k) actually “establishes personal jurisdiction” as the term is generally used or merely “piggy-backs” on the concept for purposes of a different litigation prerequisite, *Miss. Publ'g Corp. v. Murphree*, 326 U.S. 438, 444–45 (1946), litigants in federal court must conduct the same inquiry as if the action were in state court. *Lyngaas v. Curaden AG*, 992 F.3d 412, 438–39 (6th Cir. 2021) (Thapar, J., dissenting); see *Daimler AG v. Bauman*, 571 U.S. 117, 121 (2014) (applying the Fourteenth Amendment to the exercise of jurisdiction by federal district court). The Supreme Court recently held that the Fifth Amendment demands less of the Federal Government than the Fourteenth Amendment does of the states. *Fuld v. Pal. Liberation Org.*, 145 S. Ct. 2090, 2096–97 (2025). It clarified, though, that “[a]ny difference between the Fifth and Fourteenth Amendments is . . . implicated in only a subset of federal cases,” such as where jurisdiction depends not on the Federal Rules of Civil Procedure but on a specific federal statute. *Id.* at 2102.

⁷⁴ The modern federal rule requires putative classes to satisfy four “prerequisites,” listed in Rule 23(a). See FED. R. CIV. P. 23(a). First, the class must be “so numerous that joinder of all members is impracticable.” *Id.* at 23(a)(1). Second, there must be “questions of law or fact common to the class.” *Id.* at 23(a)(2). The Supreme Court's decision in *Wal-Mart v. Dukes*, 564 U.S. 338 (2011), recently tightened the commonality requirement to require something like common *dispositive* questions, though the precise impact of its holding remains contested. See Elizabeth Tippet, *Robbing a Barren Vault: The Implications of Dukes v. Wal-Mart for Cases Challenging Subjective Employment Practices*, 29 HOFSTRA LAB. & EMP. L.J. 433, 435 (2012) (using empirical evidence to challenge the media portrayal

fairness constraints. Section II.A revisits *Pennoyer* to distill its holding into a principle that coheres with modern understandings of sovereign interests and complex litigation. Class actions, it concludes, vindicate sovereign interests sufficient to justify states in adjudicating the claims of absent class members from other states. Section II.B undertakes a similar analysis for personal jurisdiction's due process constraint. It concludes that aggregating claims in a single forum materially changes neither the forum state's nor the defendant's relevant interests. By contrast, resolving claims via representative adjudications significantly improves the likelihood that claims are resolved on their merits, such that properly certified class actions can proceed on a nationwide basis without violating defendants' due process rights.

A. Nationwide Class Actions Advance Forum State Sovereign Interests Without Infringing on Sister States' Sovereign Interests

This Section evaluates nationwide class actions against the sovereignty constraint at the heart of *Pennoyer*. It begins by distilling *Pennoyer*'s strictly territorial conception of sovereignty into an interest-focused principle that comports with modern understandings of sovereign limits. An interest-focused regime, in contrast to a strictly territorial one, looks not to geographic boundaries but to states' policy justifications for exercising authority.⁷⁵ This Section then demonstrates how class actions fulfill forum states' valid sovereign interests without undermining those of other states.

of *Dukes*'s impact). The commonality requirement necessarily overlaps with the remaining requirements, for without common questions, there can be no typicality, for example. WRIGHT & MILLER'S FEDERAL PRACTICE & PROCEDURE § 1763 (4th ed. 2008). Third, the class representative's claims must be typical of the class. FED. R. CIV. P. 23(a)(3). Finally, the class representative must "fairly and adequately protect the interests of the class." *Id.* at 23(a)(4). Proposed classes must also meet the definition of one of the three class types set out in FED. R. CIV. P. 23(b). Most notably, the 1966 Amendments to Rule 23 introduced damages class actions, which are appropriate when common questions of law or fact predominate and when a class action is superior to any other methods for "fairly and efficiently adjudicating the controversy." FED. R. CIV. P. 23(b)(3). Rule 23(b)(3) facilitates economies of scale to enable litigation of claims that would not be economically viable on their own. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997) ("While the text of Rule 23(b)(3) does not exclude from certification cases in which individual damages run high, the Advisory Committee had dominantly in mind vindication of 'the rights of groups of people who individually would be without effective strength to bring their opponents into court at all.'" (citation omitted)). Despite being creatures of efficiency more than necessity, damages classes now dominate annual filings, making them the primary target for opponents of class actions. It is this prevalence and vulnerability that makes damages classes the main concern of this analysis.

⁷⁵ See Katherine Florey, *State Courts, State Territory, State Power: Reflections on the Extraterritoriality Principle in Choice of Law and Legislation*, 84 NOTRE DAME L. REV. 1057, 1069–72 (2009) (describing how modern choice-of-law doctrine shifted focus from territorial contacts to states' policy interests).

Recall that *Pennoyer*'s invalidation of Mitchell's original judgment against Neff was based on the principle that "every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory" and that, consequently, "no State can exercise direct jurisdiction and authority over persons or property without its territory."⁷⁶ Innovative though it was to hold a judgment unenforceable in the rendering state, *Pennoyer*'s rationale for voiding the original judgment is tenuous, to say the least. California's interest in "determin[ing] for itself [Neff's] civil status" cannot tacitly override Oregon's authority to adjudicate the dispute if, at the same time, Neff could consent to Oregon's jurisdiction.⁷⁷ If the power to "determine" its residents' "civil status" truly belonged to California, a lone individual should not be able to unilaterally waive it. Though *Pennoyer*'s statements on sovereignty accorded with contemporaneous views,⁷⁸ modern scholars have observed similar problems with relying exclusively on *Pennoyer*'s territorial conception of sovereignty.⁷⁹

To the extent that *Pennoyer* imposed such strict, territorial limits on states' adjudicatory authority, it is completely incompatible with *International Shoe* and its progeny.⁸⁰ Indeed, the Court has never held that personal jurisdiction in one forum precludes personal jurisdiction in another.⁸¹ Though some scholars have written off *Pennoyer* and its sovereignty principle, the Court and many scholars continue to treat *Pennoyer* as good law.⁸² In light of this tension, a better way to rationalize *Pennoyer* and its sovereignty-motivated constraint is necessary.

The strongest explanation for *Pennoyer*'s continued viability requires construing its sovereignty principle in terms of *interests*, rather

⁷⁶ *Pennoyer v. Neff*, 95 U.S. 714, 722 (1878).

⁷⁷ *Id.* The shadow of slavery may have also contributed to *Pennoyer*'s territorial conception of state power and that conception's eventual decline. See Jeffrey M. Schmitt, *Constitutional Limitations on Extraterritorial State Power: State Regulation, Choice of Law, and Slavery*, 83 Miss. L.J. 59, 70 (2014). See *Pennoyer*, 95 U.S. at 722 (emphasizing the word "status" in its statement of states' sovereign powers).

⁷⁸ See, e.g., *Bonaparte v. Tax Ct.*, 104 U.S. 592, 594 (1881).

⁷⁹ *Perdue*, *Sovereignty*, *supra* note 22, at 730 ("To the extent that Field believed that in-state service is a necessary corollary of territorial boundaries, the opinion is undeniably wrong. Many territorially defined nations do not agree that in-state service is either necessary or sufficient.").

⁸⁰ See *supra* Section I.B.

⁸¹ *Mallory v. Norfolk S. Ry. Co.*, 143 S. Ct. 2028, 2051 (2023) (Alito, J., concurring in part) ("[W]e have never held that a State's assertion of jurisdiction unconstitutionally intruded on the prerogatives of another State when the defendant had consented to jurisdiction in the forum State.").

⁸² See *supra* note 47 and accompanying text (discussing the *Nicastro* plurality's recognition of *Pennoyer*'s three triggers for personal jurisdiction); Jeffrey M. Schmitt, *Rethinking the State Sovereignty Interest in Personal Jurisdiction*, 66 CASE W. RES. L. REV. 769, 771–72 & n.11 (2016).

than *territory*. Recognizing the unsustainability of a strictly territorial regime for resolving interstate conflicts in general, the Supreme Court has moved towards interest-based analyses in other areas of law.⁸³ Doing so in the context of personal jurisdiction would align the sovereignty dimension of adjudication with modern approaches to regulating out-of-state conduct⁸⁴ and choice of law.⁸⁵ On this view, the Oregon courts in *Pennoyer* lacked jurisdiction because Oregon had no sovereign interest whatsoever in deciding the case, not because Oregon encroached on California's turf. This limited view is especially favorable given *Pennoyer's* *quasi in rem* nature in a nineteenth century legal context that viewed "the power of a state to control property within its borders [as] sovereign."⁸⁶ Indeed, no scholar seriously argues that *in personam* jurisdiction in one forum precludes jurisdiction in another. One state providing a forum does not interfere with other states doing the same, even if it cannot justify supplying its own decisional law. Thus, under whatever good law remains of *Pennoyer*, the relevant question for satisfying personal jurisdiction's sovereignty prong is not whether a forum state's adjudication intrudes on another state's sovereign domain but only whether the forum state has a sufficient interest in adjudicating the claim.⁸⁷

What, then, would qualify as such an interest in adjudicating nationwide class actions? The answer lies in the basic rationales that justify class actions in general. Class actions are appropriate when aggregating similar claims is necessary for remedies to be effectively

⁸³ See Florey, *supra* note 75, at 1069–72.

⁸⁴ See Robin Feldman & Gideon Schor, *Lochner Revenant: The Dormant Commerce Clause & Extraterritoriality*, 16 N.Y.U. J.L. & LIBERTY 209, 212 (2022) (rejecting the view that "a state statute may not control commerce occurring wholly outside the enacting state's boundaries, even if the statute treats in-state and out-of-state interests evenhandedly," on the grounds that "[g]iven how economically interconnected the states are, and how frequently each state's laws have out-of-state effects, the principle essentially gives federal courts carte blanche to strike down state laws"). The Supreme Court unanimously agreed in *National Pork Producers Council v. Ross*, 143 S. Ct. 1142, 1146–47, 1155–56 (2023).

⁸⁵ See Brainerd Currie, *Notes on Methods and Objectives in the Conflict of Laws*, 1959 DUKE L.J. 171, 174–77 (arguing for an interest-focused choice-of-law test instead of the earlier territorial regime). The Supreme Court adopted an interest-focused choice-of-law test in *Allstate Insurance Co. v. Hague*, 449 U.S. 302, 312–13 (1981).

⁸⁶ Tocklin, *supra* note 21, at 76, 86 ("Justice Field effectively obliterated generations of law on the right of a sovereign to control property within its territory, all while ostensibly affirming that right.").

⁸⁷ Charles W. Rhodes & Cassandra Burke Robertson, *Toward a New Equilibrium in Personal Jurisdiction*, 48 U.C. DAVIS L. REV. 207, 266 (2014) (arguing that the state interest extends beyond "its legislative adjudicative power, but must also encompass the broader predominant duty of a sovereign—to protect its citizens and other inhabitants" and "[t]he state's interest, of course, could very well include class action and aggregation policies that make litigation possible for low-value individual claims").

available.⁸⁸ To illustrate the point, consider a generalized variation of *BMS's* underlying facts. Plaintiff Pat purchased Plavix, a popular medication manufactured and marketed by the defendant drug company, BMS, a Delaware corporation with headquarters in New York. After taking Plavix, Pat experienced negative health effects about which no one warned her. But proving a causal link between Plavix and Pat's injuries would, if possible at all, be difficult and expensive. For simplicity's sake, imagine that the only relationship between each state and each claim is that the victims all bought Plavix from BMS in their home states. Pat contends that BMS violated the consumer protection laws of thirty-three states, causing damages of roughly ten thousand dollars per victim on average. Pat sues BMS in her home state of California and seeks to represent about six hundred similar consumers across the thirty-three states. The critical question for each claim is whether BMS's marketing would mislead a reasonable consumer.

California has an interest in ensuring its injured citizens can obtain redress without resorting to self-help.⁸⁹ The problem for Pat, however, is that the transaction costs of accessing the judicial remedy that the state offers make her low-value claim economically infeasible: Attorneys' fees, expert witness costs, and up-front capital investments far outweigh the value of her individual claim.⁹⁰ Herein lies the fundamental purpose of the class action device for plaintiffs like Pat. Ordinarily, a state's adjudicatory interest goes only as far as its own citizens.⁹¹ However, the efficiency gains of including out-of-state victims' claims are instrumental to California's ability to offer redress for its citizens. In cases like this, the claims of victims outside California are necessary to an economically viable lawsuit.⁹² Even if California residents could constitute a viable class on their own, the more widely the plaintiffs spread the litigation costs, the closer to whole each claimant can be.

⁸⁸ See Harry Kalven, Jr. & Maurice Rosenfield, *The Contemporary Function of the Class Suit*, 8 U. CHI. L. REV. 684, 686 (1941).

⁸⁹ Rhodes & Robertson, *supra* note 87, at 267–68 (“But the state’s regulatory interest should not define the outermost limits of specific jurisdiction . . . ;” instead, “the state’s other interests in protecting its inhabitants from injury and providing a forum to its citizens should allow a greater expanse of relatedness that encompasses claims sufficiently similar to the defendant’s in-state activities.”).

⁹⁰ See *Thorogood v. Sears, Roebuck & Co.*, 547 F.3d 742, 744 (7th Cir. 2008) (“The class action is an ingenious device for economizing on the expense of litigation and enabling small claims to be litigated.”).

⁹¹ *Connecticut v. Doehr*, 501 U.S. 1, 16 (1991) (“The State’s substantive interest in protecting any rights of the plaintiff cannot be any more weighty than those rights themselves.”).

⁹² See PRINCIPLES OF THE L. OF AGGREGATE LITIG. § 1.03(b) (A.L.I. 2010) (“Efforts to extend the reach of consolidation, of which there are many, can be justified on efficiency grounds.”).

Rule 23's certification requirements—specifically, Rule 23(b)(3)'s predominance and superiority requirements—filter out putative classes that fail to vindicate the sovereign interest states have in adequate redress for their citizens. Rule 23(b)(3) requires that common questions “predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.”⁹³ The core of this determination is whether the intra-group similarities will generate net efficiency gains such that aggregation will make complete redress more attainable. California has an interest in adjudicating the claims of the entire class, and Rule 23(b)(3)'s heightened requirements ensure that no court will certify it unless class treatment achieves these benefits. And, as the discussion of *Pennoyer* above explained, California's doing so does not interfere with other states' interests in providing a court to claimants who might have chosen to sue there instead.⁹⁴

The forum state's interest in allowing aggregation beyond its constituents' claims is even stronger when the basis for proceeding as a class is the need for a consistent, dispositive judgment as to all members' claims—the kinds of classes certified under Federal Rules 23(b)(1) and 23(b)(2). Where a judgment on one class member's claims would be effectively dispositive of the others' or where defendants are obligated to act similarly with respect to all class members, the other claims (both in-state and out-of-state) do not just strengthen the viability of the lead plaintiff's claims. They are indispensably necessary to obtaining complete redress.

The Supreme Court's personal jurisdiction case law does not consider these realities of class action litigation. By focusing exclusively on the relationship between the defendant's actions and the plaintiff's injury, *Daimler AG's* and *Goodyear's* specific jurisdiction analysis ignores the relationship between the plaintiffs' claims and those of other victims. In doing so, it neglects an important element of states' sovereign interest in providing their citizens with an opportunity to achieve redress for legal injuries. In the Court's defense, the standalone claims in those cases did not present additional claim-to-claim relationships to consider. Still, this reasoning means that specific jurisdiction case law will overlook the impact of transaction costs on claims' viability and/or the interdependency of each claim's remedy. Given these relationships, there remains no sound basis in modern understandings of sovereignty's reach for a *Pennoyer*-like invalidation of interstate class actions.

⁹³ FED. R. CIV. P. 23(b)(3).

⁹⁴ See *supra* notes 80–84 and accompanying text.

B. Rule 23's Use of Reliable Substitutes and Safeguards Satisfies Due Process

As the previous Section did with *Pennoyer's* sovereignty principle, this Section explains how properly certified classes necessarily satisfy the basic fairness principle at the heart of *International Shoe* and its progeny. Asserting personal jurisdiction over absentee class members raises due process concerns for defendants who must defend against those claims. A forum state must provide a defendant to a nationwide class action with adequate procedural protections to adjudicate the claims of victims who have no relationship to the forum. The federal class certification requirements establish adequate procedural protection for defendants' interests. Thus, properly certified class actions comport with the due process constraint on personal jurisdiction.

Satisfying due process requires more than merely identifying a valid state interest. It depends on the relative weights of (1) the state's interest in utilizing a procedure; (2) the defendant's interest at stake; and (3) the risk of error, adjusted by the availability of alternative, more accurate procedures.⁹⁵ Important state interests decrease the need for procedure, while substantial private interests increase it. Likewise, due process requires the use of procedures that will cost-effectively increase the likelihood of reaching a judgment that reflects a claim's merits.⁹⁶ Although the Supreme Court has been imprecise about how to conduct this general due process inquiry, it essentially amounts to a weighted cost-benefit analysis of a challenged procedure compared to proposed alternatives.⁹⁷

This Section walks through each prong of the inquiry to explain why including non-resident claimants in class actions does not violate the Due Process Clause. Section II.B.1 begins by articulating states' interests in conducting nationwide class actions. Section II.B.2 then assesses defendants' interests, devoting particular attention to identifying exactly what is at stake for defendants. It argues that, for due process purposes, courts should not consider defendants as having more at stake compared to the relevant alternative of not certifying nationwide classes. Thus, the relative interests of the state and of defendants do not weigh against the permissibility of nationwide classes. On the other hand, Section II.B.3 explains why class-wide adjudications

⁹⁵ *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

⁹⁶ See PRINCIPLES OF THE L. OF AGGREGATE LITIG. § 1.04(f) (A.L.I. 2010) ("Ideally, the amount of compensation a claimant receives should reflect the merits of the claim itself, including the likelihood that the claimant would prevail at trial and the amount the claimant would win.").

⁹⁷ See, e.g., *Sutton v. City of Milwaukee*, 672 F.2d 644, 645 (7th Cir. 1982) (describing *Mathews* as a "simple cost-benefit analysis of general applicability").

significantly improve the likelihood of claims being resolved on their merits. Adjudicating the claims of victims who have no relationship to the forum does raise additional fairness concerns that do not apply to in-state claimants.⁹⁸ These concerns, however, hew closely to the requirements of class certification, themselves, which supply adequate procedural safeguards to protect defendants' interests. Thus, properly certified class actions are unlikely to raise fatal due process concerns based on the adjudication of absentee claims in the forum state.

1. *States' Interests*

As already discussed, states have compelling interests in redressing mass harms through class actions.⁹⁹ A state's interest for due process purposes overlaps substantially with the sovereign interest identified in the previous Section: providing the ability for its citizens to redress harm where complete relief depends on the availability of consolidation. To illustrate the point, recall our simplified *BMS* variation. California derives its interest in the controversy not just from Plaintiff Pat's interest but from those of all its injured citizens.¹⁰⁰ Enabling its injured citizens to fully redress the harms they suffered promotes socially beneficial transactions and allays the desire to resort to self-help. Each claim's need for aggregation—and, therefore, the strength of the state's interest in adjudicating it via a class action—depends not on where the claimants live but on how dispersed the injury is. This standard tracks Rule 23(b)(3)'s superiority and predominance requirements. The prevailing view of damages classes is that certification becomes

⁹⁸ *Shutts* appeared to recognize this point by identifying minimal due process criteria, but, as Justice Alito observed in *BMS*, *Shutts* purported only to evaluate the absent class members' due process rights, not the defendants'. See *supra* note 70; see also Brief for Petitioners at 22, *Adams v. Robertson*, 520 U.S. 83 (1997) (raising a due process challenge to a state class action procedure that does not allow class members to opt out; writ of certiorari dismissed as improvidently granted).

⁹⁹ Framed in the language of *Mathews*'s balancing test, the relevant interest is that of the government, for it is the government that stands to confiscate the defendant's constitutionally cognizable property interest. *Mathews*, 424 U.S. at 335.

¹⁰⁰ See *supra* notes 89–92 and accompanying text. It is tempting to generalize that the more injured citizens a forum has, the greater its interest in opening its courts to the whole class, but this fact cuts both ways, since the more injured citizens a state has, the less an individual victim needs the claims of non-citizen victims to make her own claim economically viable. Viewing class distribution as a wash in evaluating a state's interest tracks Supreme Court dicta speculating that a state's interest in enacting a deprivation of property can, by definition, be no greater than that of the private plaintiffs in the redress they seek. Cf. *Connecticut v. Doehr*, 501 U.S. 1, 16 (1991) ("The State's substantive interest in protecting any rights of the plaintiff cannot be any more weighty than those rights themselves."). The better generalization, then, is that the more clearly a group requires class treatment, the stronger any state's interest in providing it is.

more appropriate as the individual viability of claims decreases.¹⁰¹ Applying the same analysis to non-damages classes leads to analogous conclusions—simply replace the importance of aggregation to any given claim’s economic viability with the importance of coordination to any given plaintiff’s complete relief. Thus, the more clearly a class satisfies Rule 23(b)’s certification criteria, the more justified a forum is in adjudicating the claims of the *whole* group.¹⁰²

2. *Defendants’ Interests*

Defendants, for their part, do not stand to lose more because of aggregation. The Supreme Court has been inconsistent in its Due Process cases in articulating what exactly defendants’ constitutionally protected interests are, but no matter how one conducts the analysis, the result is the same.

At times, the Court has suggested that what is at stake for the defendant is whatever compliance entails, i.e., traveling to an inconvenient forum.¹⁰³ This approach lends no support to extending *BMS* to nationwide class actions. Assuming the lead plaintiff sues in her home state, the defendant must travel to the forum state regardless of whether a class is certified. And, unlike under California’s mass-action

¹⁰¹ See PRINCIPLES OF THE L. OF AGGREGATE LITIG. § 1.04(e) (A.L.I. 2010) (“In representative proceedings and other aggregate lawsuits where representation arises by law, the objective of maximizing net-claim values reflects a policy commitment to mimic market arrangements in contexts where markets are prone to fail.”); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997) (“While the text of Rule 23(b)(3) does not exclude from certification cases in which individual damages run high, the Advisory Committee had dominantly in mind vindication of ‘the rights of groups of people who individually would be without effective strength to bring their opponents into court at all.’”) (citation omitted).

¹⁰² A harm so widespread that it threatens to swamp a state’s judiciary for all litigants might arguably raise the state’s interest in permitting a class action beyond the cumulative interests of its citizen-claimants in redress. But even if one adds the conservation of judicial resources to the state-interest side of the due process balancing test, the claims of out-of-state victims should not impact the analysis, because without aggregation, those claims would not be brought in the forum state. Out-of-staters’ claims, in other words, do not contribute to the threat of a tidal wave that the forum faces, so the threat cannot justify the forum in adjudicating them. The federal court system, on the other hand, cannot reduce the overall amount of litigation it faces by excluding the claims of out-of-staters from the forum in which a class action is brought. See, e.g., *Amchem*, 521 U.S. at 631–33 (Breyer, J., concurring in part and dissenting in part) (summarizing the massive costs and overwhelming impact of asbestos litigation on the federal judiciary). Thus, from a due process standpoint, the conservation of judicial resources leaves the federal government slightly more justified than states are in maintaining nationwide class actions. Again, however, Rule 4(k) generally limits the jurisdictional authority of federal district courts to that of the states in which they sit. See *supra* note 70.

¹⁰³ *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 807 (1985) (“[T]he requirement that a court have personal jurisdiction comes from the Due Process Clause’s protection of the defendant’s personal liberty interest . . .”) (citing *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702–03 & n.10 (1982)) (emphasis added).

mechanism, the defendant in a class action need not pursue any litigation conduct specific to the non-residents in the forum state. Thus, the “liberty interest” in excluding certain claims from the forum does not result in a due process balance more favorable to defendants than in a scenario where all claims are adjudicated there.

In other articulations of the due process inquiry, the Court focuses on whatever is at stake in the litigation.¹⁰⁴ This view treats due process as fundamentally a prejudice-minimization principle.¹⁰⁵ “A defendant,” after all, “is always free to ignore the judicial proceedings, risk a default judgment, and then challenge that judgment on jurisdictional grounds in a collateral proceeding.”¹⁰⁶ As to each claim, a defendant has a specific amount at stake, regardless of where the adjudication occurs.¹⁰⁷ In the class action context, the amount that the same claim contributes to a potential judgment against the defendant is exactly the same. Aggregation, in other words, does not increase defendants’ potential liability.¹⁰⁸ Consequently, the defendant’s interest, measured by the total amount in controversy, cannot tip the due process balance against aggregation in one state as opposed to aggregation in many states or not at all.¹⁰⁹

Why, then, do defendants object so vigorously to the consolidation of claims into one forum in which they are already likely to litigate? In practice, defendants object to personal jurisdiction over absent

¹⁰⁴ See, e.g., *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (“*Mathews* dictates that the process due in any given instance is determined by weighing the private interest that will be affected by the official action against the Government’s asserted interest”) (internal citations omitted)).

¹⁰⁵ See, e.g., *Van Harken v. City of Chicago*, 103 F.3d 1346, 1351–52 (7th Cir. 1997) (evaluating the procedural adequacy of Chicago’s innovative process for adjudicating parking ticket challenges under the *Mathews* cost-benefit framework).

¹⁰⁶ *Ins. Corp. of Ir.*, 456 U.S. at 706.

¹⁰⁷ For this reason, there is no corresponding proxy for the defendant’s interest in the Supreme Court’s specific jurisdiction test. Being a limitation on *how* claims are decided, as opposed to *what* claims are decided, the Due Process Clause cannot support a personal jurisdiction rule that hinges on the value of a claim.

¹⁰⁸ In at least some contexts, the empirical evidence actually suggests that judgments for individual plaintiffs exceed prorated class judgments. See, e.g., John C. Coffee Jr., *Accountability and Competition in Securities Class Actions: Why “Exit” Works Better than “Voice,”* 30 CARDOZO L. REV. 407 (2008) (describing the relative success of claimants who opt out of securities class action litigation). Where attorneys’ fees are available to prevailing plaintiffs, aggregation may also reduce defendants’ overall liability. See Martha Pacold, *Attorneys’ Fees in Class Actions Governed by Fee-Shifting Statutes*, 68 U. CHI. L. REV. 1007, 1030–31 (2001) (explaining aggregation’s corresponding reduction in attorneys’ fees).

¹⁰⁹ One possible exception to this conclusion is in the aggregation of claims for mandatory statutory damages. See generally Sheila B. Scheuerman, *Due Process Forgotten: The Problem of Statutory Damages and Class Actions*, 74 MO. L. REV. 103 (2009) (arguing that the combination of statutory damages and aggregation introduces due process concerns because both aim to capture the lost deterrence of underenforcement of rights, making the combination a sort of double dipping on defendants).

class members for the same reason why they object to certification in general: Claims tend to be unviable on their own, so splitting off plaintiffs will reduce defendants' actual payout. But an advantageous litigation strategy—divide-and-conquer—is not a cognizable legal interest.¹¹⁰ The American Law Institute's Principles of the Law of Aggregate Litigation implicitly recognizes this point in stating, "These proceedings should enforce substantive rights and responsibilities, facilitate binding resolutions of civil disputes, and facilitate accurate resolutions of civil disputes by trial and settlement."¹¹¹ For due process purposes, a defendant's interest is not the value of the judgment that it faces, measured by realistic expected exposure, but the value of the valid claims against it measured on their merits.¹¹² Injunctive classes present a slight twist on the theme, but the conclusion is the same. An employer with factories in fifteen states, from whom workplace safety measures are demanded, faces a cognizable burden in implementing the safety measures. If it must implement them at each factory, the burden remains the same, even though not all factories will have an employee who demands performance. Because aggregation in a single forum does not increase defendants' *liability*—as a matter of law, not as a matter of economic reality—their interests cannot undermine the procedural adequacy of having claims adjudicated in another forum.

Defendants may object that they might end up paying more for claims because the representative claim is uncharacteristically lucrative. Class actions naturally multiply variation among claimants. Continuing with the example from above, BMS may have a higher liability to Plaintiff Pat than to comparable out-of-state victims. (Then again, Pat's damages might be lower, too.) Concern that a defendant might pay more to resolve a claim because it would be adjudicated by proxy has nothing to do with the fairness of adjudication in one forum or another. Ultimately, this concern relates to typicality, and Rule 23(a) provides the necessary safeguard for defendants. Nor will choice-of-law decisions subject defendants to greater liability.¹¹³ Critically, these requirements implicate the fairness of the class action in general. Where the claimants

¹¹⁰ Cf. *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 408–09 (2010) (plurality opinion) (finding that Rule 23 can displace conflicting state law in federal litigation because there is no "substantive right . . . not to be subjected to aggregated class action liability").

¹¹¹ PRINCIPLES OF THE L. OF AGGREGATE LITIG. § 1.03 (A.L.I. 2010).

¹¹² See *Shady Grove*, 559 U.S. at 409 ("As we have said, the *consequence* of excluding certain class actions may be to cap the damages a defendant can face in a single suit, but the law itself alters only procedure.").

¹¹³ *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 822–23 (1985) (citing *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312–13 (1981)) (holding that courts may not expose defendants to greater liability by applying forum law to claims to which it would not otherwise apply).

reside does not bear on the analysis. What matters for due process purposes is that courts do not certify a plaintiff as class representative if her claim places the defendant in greater jeopardy through the class action than it would be in if all claimants sued separately.¹¹⁴

3. *Cost-Effective Error Reduction*

Whereas states' and defendants' interests in maintaining and avoiding nationwide class actions, respectively, do little to tip the due process balance against such suits, the representative nature of the proceedings dramatically *reduces* the risk of prejudice as to covered claims. This final prong of the due process inquiry considers how the adjudicating forum impacts the parties' ability to prevail (or willingness to settle) on the merits of each claim. The prejudice consideration, often labeled "risk of error" in the due process context,¹¹⁵ has long appeared in the Supreme Court's personal jurisdiction jurisprudence,¹¹⁶ where its principal concern is the prejudice that results from having to defend oneself in an inconvenient forum.¹¹⁷ This Subsection identifies the features of class actions that enhance the likelihood of reaching accurate judgments or settlements on each claim. Because the fairness benefits flow from the class certification criteria and exist independently of the claimants' geographic distribution, this Subsection considers how strict application of the Supreme Court's current personal jurisdiction doctrine fails to account for the due process safeguards that class actions incorporate. Finally, this Subsection addresses several concerns and counterarguments that arise specifically in multi-state class actions. It concludes that if a class's certification does not violate the Due Process

¹¹⁴ See generally *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147 (1982) (denying discrimination plaintiff's ability to maintain class actions on behalf of groups who experienced different employment outcomes from the plaintiff).

¹¹⁵ See *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976).

¹¹⁶ It first showed up in *International Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945) ("To require the corporation in such circumstances to defend the suit away from its home or other jurisdiction where it carries on more substantial activities has been thought to lay too great and unreasonable a burden on the corporation to comport with due process."), and it slowly sharpened into the *Asahi* balancing test. See *supra* notes 40–41 and accompanying text. More recently, the Court stressed the prejudice concern in affirming the specific jurisdiction requirement that a claim "arise out of or relate to . . . the forum." *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1025 (2021). This rule, which formed the basis of Justice Alito's *BMS* opinion, is principally concerned with the prejudice that results from having to defend oneself in an inconvenient forum. Markowitz & Nash, *supra* note 61, at 1173 ("[T]he central due process limit on permissible personal jurisdiction is based on notions of fairness to the defendant—protection against being haled into court in a far-off forum, which may significantly burden the defendant and ultimately prejudice the defendant's ability to mount a defense.").

¹¹⁷ Markowitz & Nash, *supra* note 61, at 1173.

Clause, the fact that claimants who reside outside the forum state are among the class will not supply independent reasons to invalidate the proceeding.

Rule 23 supplies several safeguards that improve—rather than impair—the likelihood of resolving claims according to their merits. The numerosity prerequisite accomplishes this by incorporating an explicit preference for joinder.¹¹⁸ In assessing the practicality of joinder, courts may consider class members’ geographic dispersion and the consequences that attend parallel litigation in multiple jurisdictions.¹¹⁹ Commonality also promotes procedural fairness by assuring that the litigation incorporates only claims whose resolutions actually contribute to the accurate resolution of the claims. Quoting Professor Nagareda, the Supreme Court has homed in on this principle by specifying, “[w]hat matters to class certification . . . [is] the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation. Dissimilarities within the proposed class are what have the potential to impede the generation of common answers.”¹²⁰ In damages suits, the predominance requirement prevents the certification of classes that do not realize the viability benefits of aggregation.¹²¹ On the flip side, Rule 23(b)(3) actively contributes to *reducing* “risk of error” by enabling the litigation of claims that would otherwise not be brought.¹²² Even when common questions predominate, the superiority requirement provides additional protection where a class action would equip plaintiffs with undue litigation leverage.¹²³ Finally, Rule 23(a)’s typicality prerequisite reduces the risk that claimants receive greater or

¹¹⁸ See FED. R. CIV. P. 23(a)(1).

¹¹⁹ See, e.g., *In re Modafinil Antitrust Litig.*, 837 F.3d 238, 247 (3d Cir. 2016).

¹²⁰ *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (quoting Richard Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. REV. 97, 132 (2009)). Some have criticized *Wal-Mart’s* apparent elevation of Rule 23(a)’s commonality requirement to Rule 23(b)(3)’s heightened “predominance” standard, but scholars generally agree that commonality requires more than definitionally common questions, such as whether all class members actually bought the defective product.

¹²¹ See *supra* note 101 and accompanying text.

¹²² Forming a useful analogy, a growing body of scholarship argues that filing fees can violate the due process rights of indigent litigants by preventing them from obtaining a judgment on the merits. Due process challenges are typically brought by defendants, but the Supreme Court has given credence to the idea that transaction costs that effectively preclude plaintiffs from pursuing the only available remedy can violate their due process rights too. See *Boddie v. Connecticut*, 401 U.S. 371, 374–77 (1971) (holding that Connecticut violated the due process rights of indigent plaintiffs who could not afford the fees required to file for divorce); see also Henry Rose, *The Constitutionality of Government Fees as Applied to the Poor*, 33 N. ILL. U. L. REV. 293, 297–300 (2013); Christopher E. Austin, Comment, *Due Process, Court Access Fees, and the Right to Litigate*, 57 N.Y.U. L. REV. 768, 779–80 (1982).

¹²³ See PRINCIPLES OF THE L. OF AGGREGATE LITIG. § 1.03(e) (A.L.I. 2010) (explaining why courts might decline to certify classes despite the predominance of common questions).

smaller payments on account of the representative's unique qualities. As the previous Subsection established, the typicality requirement prevents defendants from facing greater liability due to aggregation.¹²⁴ Even claimant-focused requirements, like the adequacy of the representative, contribute to due process for defendants by assuring the litigation's preclusive effect.¹²⁵

At this point, opponents of nationwide class actions may concede that not *all* class actions are inherently flawed but maintain that these requirements do not speak to the specific, additional due process concerns that nationwide aggregation introduces. How do these safeguards—which largely do not contemplate classes' geographic scope¹²⁶—square with the due process concerns behind the Supreme Court's personal jurisdiction doctrine and any potential extension of *BMS* to class actions? Explained in the language of due process, the Court's logic in adopting the general-specific jurisdiction framework is that a state's interest in adjudicating a claim is insufficient to overcome the prejudice to the defendant if the defendant's actions in the state are unrelated to the injury. Underlying this logic is the assumption that mounting a defense where a party is not “essentially at home” would be costly and difficult (thereby making the defendant more likely to lose or willing to pay more money to settle).¹²⁷ Travel demands, lack of local offices and personnel, unfamiliarity with local rules, and the location of witnesses and evidence contribute to this reasoning.¹²⁸ This assumption falls apart in the class action context. Adjudicating a claim that is unrelated to the forum but via a representative claim that *is* related to the forum reduces the marginal cost and difficulty of defending against the absentee claim to essentially nothing. The defendant must conduct the same litigation in the forum anyway. The representative nature of the class action, moreover, eliminates the significance of out-of-state evidence and witnesses to resolving an absentee claim. The general-specific jurisdiction framework provides due process protection against having to defend *all* suits in a forum simply because the defendant rendered itself amenable to *one* suit in that forum.

¹²⁴ See *supra* Section II.B.2.

¹²⁵ See *Hansberry v. Lee*, 311 U.S. 32, 40–42 (1940).

¹²⁶ But see *supra* note 119 and accompanying text (validating a trial court's consideration of geographic dispersion in assessing numerosity).

¹²⁷ Markowitz & Nash, *supra* note 61, at 1173 (“[T]he central due process limit on permissible personal jurisdiction is based on notions of fairness to the defendant—protection against being haled into court in a far-off forum, which may significantly burden the defendant and ultimately prejudice the defendant's ability to mount a defense.”).

¹²⁸ See Walter W. Heiser, *Toward Reasonable Limitations on the Exercise of General Jurisdiction*, 41 S.D. L. REV. 1035, 1043–44 & n.30 (2004) (collecting cases that evaluate the litigation burden on out-of-state defendants).

Consequently, the doctrine should do very little where the adjudication of a claim creates no extra litigation. To the contrary, a nationwide class inevitably reduces the amount of filing, flying, and deposing that defendants would do in inconvenient jurisdictions if they were to defend against every claim individually.

An additional counterargument is that requiring personal jurisdiction as to each class member would not automatically preclude aggregation on a nationwide basis, since a plaintiff seeking to represent a nationwide class can always sue in the defendant's home forum.¹²⁹ In many cases, pursuing a suit where the defendant resides would impose substantial burdens on the plaintiff and their lawyers. Indeed, some actions on the margin would inevitably become unviable if plaintiffs could maintain them on a nationwide basis only in defendants' home forums. If critical evidence and witnesses are located where the victim resides, the impetus for consolidating the litigation there is even greater. In that circumstance, neither the absent class members nor the defendant is burdened with respect to the non-representative claims, because those remaining claims are adjudicated by proxy. Unsurprisingly, the court of appeals that came closest to articulating this rationale for the procedural adequacy of a nationwide class action is the one that reached the question only on appeal of a final judgment after a trial. With the complete course of litigation plainly before it, the Sixth Circuit identified the proceedings' adequacy, stating, "[t]he litigation would not have changed had the absent class members been composed solely of Michiganders or of individuals spanning all fifty states To find, therefore, that the underlying suit changes depending on the diversity of absent class members is to ignore the practical realities of class-action litigation" ¹³⁰ For the non-representative claims, it makes no difference where the evidence and witnesses are, because they will never be examined or deposed.

Neither can defendants raise valid concerns about a different procedure used in the forum state influencing the outcome of the absentee claims. First, the forum state's procedure is constrained by the same Due Process Clause that protects defendants in every state, so the forum state's procedure cannot, on its own, trigger a due process violation. The Due Process Clause cannot guarantee defendants the procedures of one state over those of another. At any rate, nearly all class action defendants will have to conduct their defenses according to the federal rules of procedure, regardless of

¹²⁹ See, e.g., *Lyngaas v. Curaden AG*, 992 F.3d 412, 444 (6th Cir. 2021) (Thapar, J., dissenting).

¹³⁰ *Id.* at 437.

the forum in which they are sued. Thus, none of the procedural differences that govern the adjudication of a class action claim in a different forum substantially burden the defendant. To the contrary, the class action relieves the defendant of much of the potential litigation it would otherwise face.

In sum, properly certified class actions inevitably reduce prejudice irrespective of whether they include claims not otherwise appropriate for the forum. Defendants, for their part, face no additional risk as a consequence of courts resolving claims that are unrelated to the forum state, so long as the claims are adequately represented by a typical plaintiff—as Rule 23(a) requires—whose claim the forum can properly adjudicate.¹³¹ On the flip side, the procedure enables victims who would be unable to achieve complete relief in the absence of coordination—as Rule 23(b) requires—to see their claims resolved on the merits. Moreover, because the class certification requirements ensure that each claim's likelihood of resolution on the merits is unaffected by claims' geographic distribution, courts can maintain properly certified classes on a nationwide basis without triggering additional due process concerns.

III

CLASS ACTIONS' ATTRIBUTES AND LIMITS IN THEORY AND PRACTICE

In light of the conclusion that properly certified class actions do not raise additional sovereignty or due process flaws, this Part begins by assessing how well courts have handled personal jurisdiction challenges to nationwide class actions since *BMS*. It finds that most courts reach the correct results but fail to articulate compelling rationales grounded in personal jurisdiction's underlying principles. This Part concludes with several qualifications and observations that courts should keep in mind when evaluating personal jurisdiction challenges in the class action context.

A. Evaluating Post-BMS Decisions

Since *BMS*, four federal appellate courts and numerous district courts have considered requests to extend *BMS* to nationwide class

¹³¹ Of course, these claims do not need to go to trial more than any other claim does. The point is not to see more trials or more settlements. As with all facets of the judicial process, the goal for class actions should be to minimize the external forces that prejudice parties' expected values from going to trial, which, in turn, informs their negotiating positions and willingness to settle.

actions. Courts presented with challenges to nationwide class actions following *BMS* typically focus on whether absent class members are “parties” for purposes of personal jurisdiction and, if so, at what point they become parties.¹³² According to this logic, jurisdictional requirements apply only to formal parties. So, the logic goes, courts must scrutinize the relationship between the forum state and class members if, and only if, they are parties. To their credit, several district courts have noted that class actions supply additional due process protections for defendants,¹³³ but others limit their discussion merely to establishing that absent class members’ names do not literally appear on the complaint.¹³⁴

By focusing on the formal status of absent class members as parties or not, many lower courts have given short shrift to the first principles underlying personal jurisdiction. Many cite language from a Supreme Court decision that opined on the party status of absent class members in a context unrelated to jurisdiction.¹³⁵ Specifically, in *Devlin v. Scardelletti*, the Supreme Court held that objecting absent class members had a right to appeal a settlement approval on the grounds that “[n]on-named class members . . . may be parties for some purposes and not for others.”¹³⁶ It continued, “[t]he label ‘party’ does not indicate an absolute characteristic, but rather a conclusion about the applicability of various procedural rules that may differ based on context.”¹³⁷ Often relying on this statement, the majority of courts that have heard post-*BMS* jurisdictional challenges have upheld jurisdiction.¹³⁸ Consider, for example, the Seventh Circuit’s decision in *Mussat v. IQVIA, Inc.* After quoting *Devlin*, the court noted that “absent class members are not considered parties for assessing” venue requirements or diversity of citizenship under 28 U.S.C. § 1332. It then summarily concluded, “[w]e see no reason why personal jurisdiction should be

¹³² *E.g.*, *Molock v. Whole Foods Mkt. Grp., Inc.*, 952 F.3d 293, 297–98 (D.C. Cir. 2020).

¹³³ *See, e.g.*, *Jones v. Depuy Synthes Prods., Inc.*, 330 F.R.D. 298, 312 (N.D. Ala. 2018); *Knotts v. Nissan N. Am., Inc.*, 346 F. Supp. 3d 1310, 1333–34 (D. Minn. 2018); *Day v. Air Methods Corp.*, 2017 WL 4781863, at *2 (E.D. Ky. 2017).

¹³⁴ *See, e.g.*, *Tickling Keys, Inc. v. Transamerica Fin. Advisors, Inc.*, 305 F. Supp. 3d 1342, 1350–51 (M.D. Fla. 2018).

¹³⁵ *Roy v. FedEx Ground Package Sys., Inc.*, 353 F. Supp. 3d 43, 59 n.7 (D. Mass. 2018); *e.g.*, *Hines v. Equifax Info. Servs. LLC*, 2024 U.S. Dist. LEXIS 162801, at *5–6 (E.D.N.Y. 2024).

¹³⁶ 536 U.S. 1, 8 (2002).

¹³⁷ *Id.*

¹³⁸ *See* Wilf-Townsend, *supra* note 7, app. B at 229–37 (cataloging post-*BMS* cases through 2019). Subsequent appellate decisions include *Mussat v. IQVIA, Inc.*, 953 F.3d 441, 446–47 (7th Cir. 2020) (reversing motion to strike the proposed class definition) and *Lyngaas v. Curaden AG*, 992 F.3d 412, 437–38 (6th Cir. 2021) (affirming class certification, denial of motion to dismiss, and denial of motion for summary judgment following bench trial and final judgment).

treated any differently from subject-matter jurisdiction and venue: the named representatives must be able to demonstrate either general or specific personal jurisdiction, but the unnamed class members are not required to do so.”¹³⁹

Though it hews closely to other areas of jurisprudence, this logic is unmoored from personal jurisdiction’s motivating principles. Instead of relying on the features of class actions that fulfill sovereign interests and satisfy due process, the Seventh Circuit relies on formal categorizations from non-personal-jurisdiction cases. *Devlin*, itself, treated the “party” label as a purely functional concept; it did not serve as legal evidence but rather as a “conclusion” that sometimes holds and sometimes does not.¹⁴⁰ Phrased most sharply, *Devlin* reduced “party” to an empty vessel whose meaning changes depending on the question at hand. It did not, on its own, intend to prove, one way or another, that any given procedural rule applies to absent class members. By relying exclusively on *Devlin* in this way, the *Mussat* opinion fails to provide a compelling justification for sustaining the nationwide class and, at a minimum, lacks foundation in the principles that animate personal jurisdiction doctrine. Highlighting the potential for confusion that comes from focusing exclusively on party status, two appellate courts have declined to extend *BMS* to putative absent class members but suggested that they become subject to dismissal after certification.¹⁴¹

Divorcing the party-status question from personal jurisdiction’s first principles does not mean judges will necessarily reach bad results, but it does invite the possibility. If courts can simply declare absent class members to be parties or not for purposes of personal jurisdiction, the outcome of jurisdictional challenges will inevitably vary with judges’ views on the prudence and pedigree of nationwide classes. And this result is exactly what has happened in the wake of *BMS*. To conclude that *BMS* should not be extended, proponents of nationwide class actions identify strong normative reasons for defining absent class

¹³⁹ *Mussat*, 953 F.3d at 446–47 (citations omitted).

¹⁴⁰ 536 U.S. at 10. On the inconsistent status of absent class members, see generally Porter, *supra* note 9 (describing the “joinder model” and “representation model” of class actions and arguing that the *Devlin* Court was wise to condone the use of both depending on the normative and practical implications of the procedural question at issue).

¹⁴¹ See *Molock v. Whole Foods Mkt. Grp., Inc.*, 952 F.3d 293, 297–98 (D.C. Cir. 2020) (denying motion to dismiss). The Fifth Circuit, vacating a class certification on interlocutory appeal, held that a defendant “did not waive its personal jurisdiction defense as to [out-of-state] class members,” because the absent class members “were not yet before the court when [Defendant] filed its Rule 12 motions. What brings putative class members before the court is certification.” *Cruson v. Jackson Nat’l Life Ins. Co.*, 954 F.3d 240, 246, 250 (5th Cir. 2020).

members as non-parties for jurisdictional purposes.¹⁴² On top of these normative reasons, courts in the majority point to several recent cases in which the Supreme Court appeared to take no issue with a class's geographic scope.¹⁴³ Compelling as these reasons may be, the minority can produce normative reasons of their own for defining absent class members as parties. Perhaps, for example, having numerous statewide class actions mitigates the risks of outlier verdicts and undue settlement pressure.¹⁴⁴ The minority, moreover, have no difficulty extending *BMS*'s logic to class actions and need not take any analytical leaps to do so.¹⁴⁵ The point here is not to show that the normative benefits of one position outweigh those of the other. Rather, it is to show their inconclusiveness.

By contrast, the analysis in Part II offers a more compelling, independent answer to the question. It does so by returning to personal jurisdiction's animating principles and applying them directly to class action proceedings. Insofar as personal jurisdiction limits states from adjudicating claims over which they have no sovereign interest, the circumstances that justify the use of the class action device supply a sufficient basis for a forum state to maintain the action. To the extent that personal jurisdiction doctrine exists to protect defendants from unfairness as a result of the plaintiff's forum selection, the class action procedure, itself, ensures that claims are more likely to be resolved on their merits.

It turns out, then, that most courts presented with challenges to nationwide class actions reached the correct result. Whether or not one wants to label absent class members as parties at one point in the litigation or another is inconsequential for the principles behind personal jurisdiction. What matters is whether the forum state has a legitimate interest in conducting the proceeding¹⁴⁶ and does so in a way that is not unduly prejudicial.¹⁴⁷ These principles will be satisfied whenever the requirements for class certification are met.¹⁴⁸ Likewise, courts are right to require personal jurisdiction as to the named plaintiff,

¹⁴² See *Bristol-Myers Squibb Co. v. Super. Ct. of Cal.*, 582 U.S. 255, 269 (2017) (Sotomayor, J., dissenting) (invoking the benefits of aggregation).

¹⁴³ See, e.g., *Mussat v. IQVIA, Inc.*, 953 F.3d 441, 445 (7th Cir. 2020) (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), among other cases).

¹⁴⁴ *McReynolds v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 672 F.3d 482, 491 (7th Cir. 2012) ("The kicker is whether the accuracy of the resolution would be 'unlikely to be enhanced by repeated proceedings.'" (internal citations omitted)).

¹⁴⁵ See, e.g., *Lyngaas v. Curaden AG*, 992 F.3d 412, 442 (6th Cir. 2021) (Thapar, J., dissenting); *Chavez v. Church & Dwight Co., Inc.*, No. 17 C 1948, 2018 WL 2238191, at *10 (N.D. Ill. May 16, 2018) ("Nothing in *Bristol-Myers* suggests that its basic holding is inapplicable to class actions.").

¹⁴⁶ See *supra* Section II.A.

¹⁴⁷ See *supra* Section II.B.

¹⁴⁸ See *supra* Part II.

again, not because she is a “party” but because prejudice as to her claim would prejudice the claims of all those she represents too.¹⁴⁹

B. Consequences of Returning to First Principles

Taking personal jurisdiction’s first principles seriously leads to several important conclusions for complex litigation. First, this analysis reveals the limitations of the general-specific framework—strictly applying the tests for specific and general jurisdiction can lead to results that do not align with personal jurisdiction’s dual goals of enforcing the boundaries of state sovereignty and promoting procedural fairness. In the class action context, courts would better vindicate these principles by abandoning the proxies of general and specific jurisdiction. Instead, they can more clearly justify the adjudication of out-of-state class members’ claims by simply asserting a sovereign interest in doing so and explaining why the proceeding satisfies the Due Process Clause.

This conclusion may very well apply beyond the class action context. In theory, replacing proxies with first principles would benefit personal jurisdiction jurisprudence in all types of cases. It is especially necessary, though, in the class action context. In cases of widespread multi-party harms, the doctrine’s tests are ill-suited to capturing personal jurisdiction’s underlying principles. As Section II.A explained, specific jurisdiction’s exclusive focus on the relationship between a claim and the forum leaves no room for considering the relationship between claims in determining whether a forum state has a sovereign interest.¹⁵⁰ And as Section II.B explained, specific jurisdiction’s requirement that a given claim “arise out of or be related to” the defendant’s contacts with the forum is not necessary to satisfy due process.¹⁵¹ The contrary position—that due process *does* require each claim to be causally related to the forum—assumes that the specific claim will actually get litigated in the forum. When a representative sues on behalf of a class, this assumption is necessarily false with respect to the absent class members’ claims. Non-class suits do not expose the doctrine to this exact critique, but it does not follow that the tests *necessarily* advance the doctrine’s first principles. Considering sovereignty and due process directly removes a layer of analysis that can only distort decisions from the doctrine’s ultimate goals.

Second, the conclusion applies with equal force across several variations that some commentators have proposed as potential endpoints

¹⁴⁹ See *supra* Section II.B.2.

¹⁵⁰ See *supra* Section II.A.

¹⁵¹ See *supra* Section II.B.

for limited extensions of *BMS*. Following Part II's first principles analysis, it should not matter for personal jurisdiction purposes whether a class is certified under Rule 23(b)(1), (b)(2), or (b)(3), or under a state law analogue.¹⁵² The reason class treatment is appropriate varies among these different case types, but in each, claimants must consolidate their claims to achieve complete redress.¹⁵³ The justifiability of consolidation also remains the same whether the cause of action is based in federal or state law, despite suggestions that source of law might be an endpoint for extending *BMS*.¹⁵⁴ Nor should it matter (if the suit is in federal court) whether federal subject matter jurisdiction is based on diversity of the parties, a federal question, or the Class Action Fairness Act.¹⁵⁵ In each situation, the critical feature of class actions is that they proceed in a way that raises the likelihood that all claims will be resolved in accordance with the applicable law.

Third, this Note's conclusion does not easily or necessarily apply to other forms of aggregate litigation. It is difficult to imagine sovereignty constraining federal courts in litigation explicitly authorized by federal statute, such as bankruptcy or Multi-District Litigation (MDL) proceedings. In such contexts, the relevant sovereign is the United States, which is not vulnerable to the argument that it lacks an interest in the out-of-state claims. Moreover, bankruptcy and MDL courts are not limited by a state-level analysis in the same way federal district courts are in ordinary civil suits.¹⁵⁶ Still, a class action's consistency with the Due Process Clause depends on its unique features, including its representative nature. It is only because a typical and adequate lead plaintiff represents the other claimants that the claims can all be adjudicated in the forum without running afoul of the Due Process Clause.¹⁵⁷ Thus, it does not follow from Part II's analysis that there are no additional due process constraints on MDL or bankruptcy proceedings that result from the handling of out-of-state claims. The Fair

¹⁵² See Justin A. Stone, Note, *Totally Class-Less?: Examining Bristol-Myers's Applicability to Class Actions*, 87 FORDHAM L. REV. 807, 826–41 (2018) (suggesting a partial extension of *BMS* to class actions depending on the type of class action).

¹⁵³ Less clear is how the analysis can be extended to defendant classes. See generally *Marcera v. Chinlund*, 595 F.2d 1231, 1239 (2d Cir. 1979) (“Rule 23(a)(4) does not require a willing representative but merely an adequate one. . . . [M]erely by protecting his own interests, a named defendant will be protecting the class. Where . . . the legal issues . . . are entirely common to members of the defendant class, there is little reason to fear unfairness to absentees.”); Note, *Defendant Class Actions*, 91 HARV. L. REV. 630 (1978).

¹⁵⁴ See Wilf-Townsend, *supra* note 7, at 222–25; *Sloan v. Gen. Motors LLC*, No. 16-cv-07244, 2019 WL 6612221, at *9 (N.D. Cal. Dec. 5, 2019).

¹⁵⁵ 28 U.S.C. §§ 1331–32.

¹⁵⁶ See *supra* note 73; see also 28 U.S.C. § 1407(a); FED. R. BANKR. P. 7004 (providing for personal jurisdiction in bankruptcy proceedings without requiring a state level analysis).

¹⁵⁷ See *supra* Section II.B.3.

Labor Standards Act (FLSA) offers a “collective action” mechanism that also relies on a representative plaintiff, though the FLSA requires participating employees to affirmatively opt in to the action.¹⁵⁸ Were this difference the only one between FLSA collective actions and Rule 23 class actions, the analysis would suggest that courts should be willing to entertain nationwide collective actions under the FLSA, too.¹⁵⁹ As it happens, the FLSA also imposes looser certification requirements, prompting some federal appellate courts to limit collective actions to employees over whom the forum court has personal jurisdiction.¹⁶⁰ In sum, while other aggregation mechanisms may be appealing in fact patterns similar to those typical of class actions, courts should hesitate before extending conclusions regarding one form of complex litigation to another form.

Fourth, as Section II.B explained, a class action’s ability to fairly represent absentee claims unrelated to the forum depends on strict adherence to the certification requirements. Adjudication via atypical, inadequate, or dissimilar representatives may prejudice defendants as to the absentee claims. Courts should, therefore, be more attentive to factual and legal differences within a putative class that result from the class being spread among many states.¹⁶¹ Cases similar to *BMS* could include claims governed by fifty state laws. If the difference between them is only that some states provide treble damages or have shorter statutes of limitations, a plaintiff should be able to sue in her home state on behalf of all victims. In those cases, the class’s geographic distribution does not impact Rule 23(a)’s prerequisites. And while the single-vs-treble-damages or statute-of-limitations questions are not “common questions,” an ex post claims-processing system can

¹⁵⁸ See 29 U.S.C. § 216(b).

¹⁵⁹ Professor Dodson reaches the same conclusion by arguing that Rule 4(k) limits only service and not personal jurisdiction in federal court. See Dodson, *supra* note 73. It follows from this position that opt-in claims in a collective action (for which a summons is not required) are not limited by the personal jurisdiction requirement applicable to the states. *Id.* at 19–20.

¹⁶⁰ See *Fischer v. Fed. Express Corp.*, 42 F.4th 366, 370 (3d Cir. 2022), *cert. denied*, 143 S. Ct. 1001 (Mar. 6, 2023); *Canaday v. Anthem Cos., Inc.*, 9 F.4th 392, 394 (6th Cir. 2021); *Vallone v. CJS Sols. Grp.*, 9 F.4th 861, 865 (8th Cir. 2021); *Vanegas v. Signet Builders, Inc.*, 113 F.4th 718, 721 (7th Cir. 2024). *But see* *Waters v. Day & Zimmermann NPS, Inc.*, 23 F.4th 84 (1st Cir. 2022) (holding that *BMS* does not apply to FLSA collective actions). See generally Ronahn Clarke, Note, *Collective Disagreement: The Uneasy Interaction of the FLSA and FRCP 4(k) After Bristol-Myers Squibb*, 109 CORNELL L. REV. 735 (2024) (taking the position that FLSA collective actions cannot be categorically exempt from *BMS*).

¹⁶¹ See generally Stephen R. Bough & Andrea G. Bough, *Conflict of Laws and Multi-State Class Actions: How Variations in State Law Affect the Predominance Requirement of Rule 23(b)(3)*, 68 UMKC L. REV. 1, 27 (1999) (recognizing that variation in governing law might defeat the predominance requirement among otherwise similar claims).

mechanically apply the interstate differences.¹⁶² Thus, most interstate variations are unlikely to tip the predominance inquiry against certification. By contrast, if some states require different showings of *mens rea* or apply different standards of care, a nationwide class action may be inappropriate—not for lack of personal jurisdiction but because such a class should not be certified at all.¹⁶³ To be clear, courts cannot create common questions through the decision to certify a class. Because certification requires a finding of questions of law or fact common to each individual claim in the first place, the fact that a court certifies a class cannot justify applying forum law to all claims.¹⁶⁴ This piece of *Shutts*’s holding remains undisturbed.

Fifth and lastly, aggregation devices under state law may or may not trigger personal jurisdiction concerns unaddressed by Rule 23 class actions. The House Report accompanying the Class Action Fairness Act identified instances of state courts certifying classes that federal courts declined to certify because of Due Process concerns.¹⁶⁵ Bringing the analysis full circle, the California mass action procedure at issue in *BMS* does not seem like a close call, for it lacks many of Rule 23’s safeguards. Combined, however, with the California Supreme Court’s “sliding scale” approach to evaluating the reasonableness of adjudicating all claims in one place, the aggregation mechanism in *BMS* comes closer to satisfying due process than one might initially think.¹⁶⁶ In this way, *BMS* illustrates the tension between complex litigation’s fact patterns and personal jurisdiction doctrine’s rigid tests for general and specific jurisdiction. When novel state aggregation devices force courts to consider personal jurisdiction questions anew, they should

¹⁶² See, e.g., *Mejdrech v. Met-Coil Sys. Corp.*, 319 F.3d 910, 911 (7th Cir. 2003) (assuming sufficiently common questions, “[i]t makes good sense . . . to resolve those issues in one fell swoop while leaving the remaining, claimant-specific issues to individual follow-on proceedings”).

¹⁶³ See, e.g., *In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1300–02 (7th Cir. 1995); *Speerly v. Gen. Motors, LLC*, 143 F.4th 306, 320–21 (6th Cir. 2025) (vacating class certification order for twenty-six statewide subclasses on predominance grounds).

¹⁶⁴ Where questions about the appropriate governing law exist, some courts have used the need for aggregation as a reason for holding that an exacting choice-of-law inquiry is not necessary. See, e.g., *In re St. Jude Med., Inc.*, No. 01-1396JRT/FLN, 2006 WL 2943154, at *7 (D. Minn. Oct. 13, 2006), *rev’d on other grounds*, 522 F.3d 836 (8th Cir. 2008); *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 309 (3d Cir. 2011). Whether this practice is consistent with *Shutts* or permissible from a choice-of-law perspective is admittedly debatable, but neither question alters this Note’s conclusion as to personal jurisdiction.

¹⁶⁵ See H.R. Rep. No. 107-370, at 15–16 (2002); Jesse Tiko Smallwood, Note, *Nationwide, State Law Class Actions and the Beauty of Federalism*, 53 DUKE L.J. 1137, 1152 & n.96 (2003).

¹⁶⁶ See generally John V. Fellicia, Note, *Bristol-Myers Squibb Co. v. Superior Court: Reproaching the Sliding Scale Approach for the Fixable Fault of Sliding Too Far*, 77 MD. L. REV. 862 (2018) (explaining that the “sliding scale” approach best comports with fairness).

simply ask whether that mechanism serves the two ideals that personal jurisdiction seeks to vindicate.

CONCLUSION

One may reasonably question whether courts take seriously enough the Constitution's choice-of-law requirements or Rule 23's class certification requirements. But when those requirements are met, state and federal courts are justified in adjudicating claims through class actions in forums with which the claims have no relationship. The evolution of personal jurisdiction doctrine has obscured this conclusion by entangling its dual concerns of sovereignty and procedural fairness in the doctrinal morass of general and specific jurisdiction. Recognizing the shortcomings of the doctrine's proxies in the class action context, the judiciary would be well served by returning to the doctrine's motivating principles. Doing so reveals that properly certified class actions are amenable to nationwide resolution without exceeding a forum jurisdiction's sovereign authority or violating the Due Process Clause's protections.