

Asserting Personal Jurisdiction in Human Rights Cases

My colleague Roger Alford has a fascinating post over at the blog *Opinio Juris* (available [here](#)) detailing a recent decision of the United States Court of Appeals for the Ninth Circuit in the case of *Bauman v. DaimlerChrysler AG*. In that case, a panel of the Ninth Circuit held that a United States federal district court did not have personal jurisdiction over DaimlerChrysler because the corporation did not have continuous and systematic contacts with the forum. The case arose out of the alleged kidnapping, detention, and torture of Argentinian citizens in Argentina by Argentinian state security forces acting at the direction of Mercedes Benz Argentina. The plaintiffs sued the parent company, DaimlerChrysler AG, and the Ninth Circuit concluded that it lacked personal jurisdiction.

As Roger notes, this conclusion is not surprising under current US caselaw. What is perhaps surprising is Judge Stephen Reinhardt's dissent, in which he argues that promoting international human rights is a state interest that should factor into a finding of personal jurisdiction. Reinhardt first concluded that DaimlerChrysler AG had minimum contacts in the forum through its American subsidiary. He then examined whether it was reasonable to assert jurisdiction based on seven factors, including "the state's interest in adjudicating the suit."

As Roger explains, this looks very much like a *forum non conveniens* argument "dressed up as an assertion of personal jurisdiction." On the one hand, such an argument is clearly incorrect in that personal jurisdiction and *forum non conveniens* are different analytical frameworks. In the context of personal jurisdiction, the question is whether the assertion of jurisdiction by a United States court is appropriate under due process. In the context of *forum non conveniens*, the question is whether the forum is a convenient place for resolving the suit in light of various public and private factors. On the other hand, there is a close relationship between the two doctrines. The historical development of the *forum non conveniens* doctrine in the US was closely related to evolving concepts of judicial jurisdiction in the early 1900s. As *Pennoyer's* strict territoriality rules were transformed into a minimum contacts analysis under *International Shoe*, it is arguable that *forum non conveniens* in the US was employed to moderate expansive jurisdiction by US courts. In that the two are connected historically, it

was perhaps appropriate for Reinhardt to conflate the two analyses under a reasonableness approach. Although, there was perhaps no reason to reach the question of reasonableness given the state of the law as to subsidiaries.