10-1978

Nevada v. Hall

Lewis F. Powell Jr.

Inclined to Grant
(Have Legal Office determine whether immunity issue remains in case

Respr., Calif. residents injured by Petr's automobile & driver on a Calif. highway, sued in Calif Ct.

Petr. moved to dismiss on ground that it - a state university - claimed sovereign immunity. It also claimed in any event, that Nev. limitation on recovery applied.

When Petr. lost on motion to dismiss it sought Cert. here in 1973. We denied.

PRELIMINARY MEMORANDUM Now case has been tried. Imp issue.

May 25, 1978, Conference
List 1, Sheet 3

No. 77-1337-CSX — Cert to Cal. CA (Rattigan, Christian, Emerson)

UNIVERSITY OF NEVADA

v.

HALL — State/Civil — Timely

SUMMARY. This is the second cert petn arising from a lawsuit brought in California state court by California residents who were injured in an automobile accident allegedly caused by the negligent driving of an employee of the petr. The accident occurred in California. The petr contends that Nevada's sovereign immunity should protect it from suit in California courts. In the alternative, it argues that the Nevada statutory limitation on liability (Nev. Rev. Stat. § 41.035; petn at xxii-xxiii) should

Discuss - see back. Nancy

apply in the California proceedings.

FACTS AND DECISIONS BELOW. The accident on a California highway killed the petr's employee, inflicted permanent brain damage on one resp, and caused serious physical and psychological injury to another resp. The first resp, who was a child at the time of the accident, is permanently retarded and cannot provided for himself. The resps sued the petr and the estate of the driver for damages. The petr moved to quash service of process on the grounds that sovereig immunity protected it from suit and that it had not consented to be sued in California courts. The trial court overruled the motion and the petr appealed. The Cal. S.Ct. affirmed the trial court judgment. 105 Cal. Rptr. 355 (1972). It said that the State of Nevada had no rights of sovereignty over California citizens and therefore that the state was subject to suit to remedy wrongdoing that occurred in California. The court refused to bar the suit on the ground of federalism/comity. It said any potential for embarassment to Nevada was more than outweighed by California's interests in highway safety and in providing a forum to redress wrongs against its citizens. This Court denied a petn for cert. No. 72-1449, 414 U.S. 820 (1973).

At trial the petr moved to limit the potential damage liability to $25,000, the amount specified in section 41.035 at that time. The trial court refused, and the jury eventually returned a verdict against the petr for $1,150,000. The Cal. CA affirmed. After recounting the history of the case, it said the only issue on appeal was whether the trial court had correctly refused to limit liability. Despite this assertion, however, the CA noted that the petr continued to argue that its sovereign immunity should

protect it from litigation altogether. The CA said further discussion of this contention was barred by the original decision of the Cal. S.Ct. The S.Ct. opinion also disposed of the argument about the applicability of section 41.035, according to the CA. It said the petr's argument was based on the notion that the Cal. S.Ct. had ruled earlier that the State of Nevada had waived immunity to permit the suit to proceed in California. The CA said this misread the earlier decision, which had held that Nevada's immunity did not extend into California against California citizens. Therefore, the limitation of liability statute, which in effect was a partial waiver of sovereign immunity, was basically irrelevant. The CA also held that the Full Faith and Credit Clause did not require the California courts to apply the Nevada statute because the Clause did not mandate extraterritorial application of statutes. 5 Witkin, Summary of California Law § 16, p. 3260 (8th ed. 1974). Instead, the CA said it could refuse to apply the law of another state where, as here, application would be contrary to California public policy. The Cal. S.Ct. denied a petn for cert.

CONTENTIONS. First, the petr repeats the arguments presented in its first cert petn. It contends that as a matter of federal law a state may not be sued without its consent. Hans v. Louisiana, 134 U.S. 1 (1890). The constitutional source of this principle is not clear. The primary cases on the amenability of states to suit are 11th amendment cases concerning suits in federal rather than state court. The petr is therefore left with arguments about the vindication of federalism generally, and about a violation of the Full Faith and Credit Clause. In particular, the petr distinguishes Parden v. Terminal R. of Ala. Docks Dept., 377 U.S. 184

(1964), in which this Court upheld federal court jurisdiction over a state agency. The petr correctly points out that the Court found an implied waiver of immunity in Parden. But distinguishing that case does not provide a constitutional basis for the petr's contention

Second, the petr contends that its sovereign immunity argument is important because states need the cloak of immunity outside their boundaries. As interstate compacts expand and intergovernmental meetings proliferate, many governmental functions occur beyond each state's state lines. Immunity is necessary to promote the full and vigorous performance of these governmental duties.

Third, the petr says the Full Faith and Credit Clause does require California to give effect to the Nevada statute limiting liability. As the CA pointed out, however, this contention proceeds from the assumption that Nevada is immune from suit in California absent any waiver.

Fourth, the petr says the Court should hear this case because it is basically a conflict between two states. Nevada should not have its rights finally determined in the California courts; this Court should resolve the dispute.

The resps also rely on arguments presented in 1973. First, they submit that the Court lacks jurisdiction under 28 U.S.C. § 1257(3) because no statute has been held repugnant to the United States Constitution. Instead, the resps see this case as one involving only the application of California's conflict of laws rules.

Second, the resps say the petr has an unduly narrow view of the Full Faith and Credit Clause. Rather than requiring the application of the Nevada statute, the Clause should force Nevada

to give full faith and credit to the judgment of the California courts.[1/] Furthermore, this Court has held that a forum state can ignore the legal rules of other states if those rules offend the public policy of the forum. Pacific Emp. Ins.Co. v. Comm'n, 306 U.S. 493 (1939); Bradford Electric Co. v. Clapper, 286 U.S. 145 (1932).

Third, the resps suggest that an implied waiver of immunity exists in this case. California has provided by statute that any nonresident motorist on California roads impliedly appoints the Director of Motor Vehicles as his agent for service of process. Cal. Veh. Code § 17451. Therefore, by sending its agent to California, the petr accepted the conditions upon the use of California highways and consented to suit. In addition, Nev. Rev. Stat. § 13.025 waives immunity for tort suits against the state.

DISCUSSION. The case is as certworthy today as it was in 1973 when the pool memo recommended a grant but the Conference denied. Regarding that denial, it should be noted that the resps argued in 1973 that the decision of the Cal. S.Ct. was interlocutory and that review should await final judgment. Now final judgment has occurred, imposing liability upon the petr in excess of the statutory maximum.

Regarding the application of sovereign immunity, the case seems to present an issue of first impression--or actually several issues: Does the Full Faith and Credit Clause require one state to accept the sovereign immunity asserted by a second state? Does

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1. It should be noted, however, that the resps can collect their judgment out of assets held by the State of Nevada, a co-petr, in California. Nevada courts will probably never consider this case.

the tenth amendment require such acceptance? How about the penumbras of federalism? If these questions intrigue the Conference, then a grant may be in order. Despite the resps' assertion to the contrary, the case does not appear to be limited to the question of the effect of the Full Faith and Credit Clause on the Nevada statute limiting liability. The petr raised the basic sovereign immunity argument in the CA, and the CA resolved it on the merits by applying the earlier decision of the Cal. S.Ct. Furthermore, consideration of the limitation of liability issue could be considered to encompass the sovereign immunity question. Therefore, if the Conference would like to address the foundation of state sovereign immunity outside the eleventh amendment, the issue is presented here.

On the other hand, the reasoning of Bradford Elec. Light Co. v. Clapper, 286 U.S. ~~131~~ 115 (1932), supports the decision of the Cal S.Ct. and may have sufficiently settled the pertinent questions. There, a lineman died in New Hampshire while working for Bradford, a Vermont company. The deceased was a Vermont resident and had been hired in Vermont. The administratrix of the estate brought a suit in New Hampshire for damages under the New Hampshire workmen's compensation statute. Bradford pleaded provisions of the Vermont comp. statute in defense. This Court held that the Full Faith and Credit Clause required application of the Vermont statute in the New Hampshire courts. First, the Court said that a statute can be a "public act" within the meaning of the Clause. Second, the Clause required the application only of those public acts within the legislative jurisdiction of the nonforum state. Third, legislative jurisdiction was not strictly limited by a state's boundaries. Fourth, the application of the Vermont provisions in this case would not be

impermissibly extra-territorial because the workmen's comp. statute merely created rights and liabilities between two parties, the company and the worker. It did not create new statutory tort liability.

If Bradford Electric is still good law, the question facing the Cal. CA was whether Nevada had legislative jurisdiction to implement by statute its common law sovereign immunity. In contrast to the relationship between Bradford and the deceased, Nevada had no relationship with the resps before the accident. Common law sovereign immunity and the Nevada statutes do not purport to create rights and liabilities between individuals; they announce principles of general application--nonconsensual rules of law. They therefore would not seem to fall within Nevada's legislative jurisdiction when applied outside the state to a nonresident. They resemble laws creating general tort liability, which Bradford said could be imposed only within a state's territory. Therefore, the Cal. CA correctly refused to apply the Nevada statutes.

In summary, if the Conference thinks Bradford Electric establishe a sensible approach, the case may not be certworthy because the CA correctly applied Bradford. If the Conference questions the reasoning of Bradford or would like to examine the area again, a grant may be in order because of implications of the CA holding for interstate relations. There is a response.

5/16/78 Sundermeyer

opinions included; 1973 pool memo att'd addressing several add'l issues.

No. 72-1449

University and State of Nevada v. Hall , cert. to Calif. Sup. Ct. (Peters for a unanimous ct) Dec. 21, 1972, 8 Cal.3d 522; Pet. for rehear. denied, Jan.24, 1973; stay of judgment granted pending cert, April 26, 1973.

No. 62, Original

Nevada v. California, Motion for Leaveto File Complaint, April 23, 1973.

Timely

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an employee of the
two car collision
:he employee was
.s agency. Plaintiff-
:ought suit in
:he Northern District
L Francisco Superior
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atutes are attached

An automobile owned by the University of Nevada and being operated by an employee of the University was involved in a two car collision on a highway in California. The employee was acting within the scope of his agency. Plaintiff occupants of the other car brought suit in the U.S. District Court for the Northern District of California and the the San Francisco Superior Court. The federal action was not actively pursued, presumably for Eleventh Amendment reasons ("The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state...").

The action in the California court sought to recover damages for personal injuries. Service of process and jurisdiction was based on the California long arm statute dealing with motor vehicles.

Pertinent California (and Nevada) statutes are attached to this memo.

Decision Below

The State of Nevada, representing the university, moved to quash service of summons and complaint on grounds that California courts do not have jurisdiction over the State of Nevada and its governmental agencies. The motion was granted. Plaintiffs appealed to the California Court of Appeal for the First District which affirmed the lower court ruling, holding that Nevada enjoyed sovereign immunity and had not waived it, either by statute or by implied consent in operating the vehicle in California. Plaintiffs appealed this ruling to the California Supreme Court. The Court reversed.

The Supreme Court found that Nevada was not exercising its sovereign power in this instance and therefore had no immunity unless it were granted by California by law or as a matter of comity. "(S)tate sovereignty ends at the state boundary," the Court declared, because the possible embarrassment to Nevada is counterbalanced by the interests of California in sustaining such suits. These interests are 1) the State may make and enforce regulations reasonably calculated to promote care on the part of all who use its highways;

2) the State must provide a forum where residents may seek whatever redress is due him for wrongs done in California; 3) the State must protect itself in the orderly administration of its laws in assuming jurisdiction over disputes where the evidence is within its borders and where a refusal to take jurisdiction may result in multiple litigation; 4) the State cannot grant greater immunity to a sister state than that which is bestowed upon California; and 5) the doctrine of sovereign immunity must be deemed suspect when it conflicts with individual dignity and the role of government as an instrument to secure individual rights.

Original Action in this Court

Subsequent to the above ruling of the California Supreme Court, The State of Nevada requested leave of this court to file a complaint in equity against the State of California. Jurisdiction is based on Art. III, §2, cl. 2. Nevada urges that the action of the California court will cause immediate and irreparable harm to the State of Nevada in that Nevada will be forced to defend itself outside its borders under threat of unlimited liability, in violation of its own statutes and decisions of its courts. Nevada prays for a decree

declaring that the several states are possessed of sovereign immunity in courts of sister states and that use of ——> state highways by a sister state does not constitute consent to suit in courts of the sister state. Nevada requests that California be enjoined and prohibited from exercising personal jurisdiction over the State of Nevada.

Contentions in No. 72-1449 (Hall)

1) Whether the controversy raises a federal question as to accord this Court jurisdiction under 28 U.S.C. §1257(3)?

2) Whether the courts of one state can constitutionally exercise jurisdiction over a sister state without its consent?

3) Whether in this case Nevada did in fact consent to suit in California's courts?

4) Whether California's refusal to apply Nevada's statutory limitations of liability violates full faith and credit?

Discussion of No. 72-1449

1) It would seem to me that this court does rightfully possess jurisdiction under

28 U.S.C. § 1257(3) in that the California court's ruling concerned "any title, right privilege or immunity...specially set up or claimed under the Constitution," namely, the Tenth Amendment reservation to the States of all powers not delegated to the United States by the Constitution. This Court recently reaffirmed the existence of an immunity reservation to the States in Employees of Missouri v. Dept. of Health of Missouri, 41 U.S.L.W. 4493, 4495, where the majority opinion by Mr. Justice Douglas stated that States may not easily be deprived "of an immunity they have long enjoyed under another part of the Constitution." A thorough discussion of the sovereign immunity of a State is found in Hans v. Louisiana, 134 U.S. 1 (1889).

2) Aside from the suggestion in the Missouri case, supra, there is little precedent on the status of a State appearing in the courts of a sister state. The cases relate primarily to the immunity which states are granted in (appearing in) federal courts. The best that petitioner could find is Sullivan v. State of Sao Paulo, 122 F.2d 355 (CA2 1941) in which a citizen of the United States sued two states in the federation of Brazil. The court compared

the situation to a suit against states of the American Union and held that "(i)t is well settled that the latter are immune from su on general principles of international law in cases not covered by the 11th Amendment."

There is a great deal of historical matter (e.g. Federalist papers) suggesting that states are immune from suit and recognizing the sovereignty to be accorded each of the states of our Union.

The California court relied on Parden v. Terminal Ry. Co., 377 U.S. 184 (1964), People v. Streeper, 12 Ill. 2d 204 (1957), and State v. Holcomb, 85 Kan. 178 (1911). To my mind, the cases are all distinguishable. Parden involved the interstate operation of a State railroad. The Court found that the state could not be immune from suit under the FELA which was enacte (pursuant to) congressional authority to regulate interstate commerce. Federal supremacy counter-vailed against state immunity in federal courts. It might be suggested that states could be free from federal regulation in Parden by not operating in interstate commerce. The parall to this case is thus drawn, i.e., Nevada could have avoided being subject to suit in California by not operating motor vehicles in California. The difference, of course, is

that Congress had Constitutional authority in Parden to abrogate state immunity. A similar authority does not exist for California. Thus, Parden is not all that helpful.

The Streeper and Holcomb cases both concerned property in the sister state owned by the other state. The fact that no immunity was granted is explained by the nature of the case. It concerned part of the corpus, if you will, of the other state and is thus materially different from the in personam power sought in this instance.

Essentially, the California court decided not to accord comity to Nevada in the immunity area on the basis of an "interest analysis." The interests are set forth in the statement of facts. Certainly, California and every state has a legitimate interest in promoting safety on its highways. The question is whether that interest is furthered by procedures for civil recovery or by penal laws. I would opt for the latter. As for the court's concern that its citizens have a forum to redress wrongs, it is noted in the briefs that respondents have a right of action against the driver of the vehicle (which is now pending) and of course, the Nevada forum is not all that

inconvenient, in light of the conflicting state interests. California's interest in the orderly administration of its laws is an important one, especially since the evidence is largely California-related and also because of the chance of multiple litigation.

It is important to note that the California court did not base its ruling on the fact that Nevada had by statute waived its immunity (which it has). The court found that fact immaterial in light of its view that "state sovereignty ends at the state boundary." Thus, it would appear that this ruling stands for the broad proposition that a state court may determine the immunity status of another state for actions committed within the first state. The ramifications for contract law are not inviting, at least, not without a clearer delineation of what this ruling actually means.

It would also seem that states could in some instances be prejudiced. For example, if I were a California juror and heard the present case, why not sock it to the Nevada treasury? It is also interesting that Nevada has a $25,000 judgment limitation whereas California's is apparently unlimited. Which law applies? Since the California court did not go off on statutory grounds, California law would presuambly apply.

Numerous other questions could be raised

hearing and further inquiry.

Discussion of No. 62, Original

The California Attorney General urges that equity is an inappropriate ground for this Court to exercise its original jurisdiction sin an adequate remedy exists at law in the certior process. He further urges that a showing has not been made of irreparable injury since the California court stayed its judgment pending determination of certiorari. It does seem to me that Nevada is protected at law and is pursuing that remedy. Practically, I see no difference in the cases except that California, which has substantial interests in the outcome, is not represented in the Hall case. No doubt it could file an amicus brief in that case, were certiorari granted. Since they would then be identical, I see no reason for maintaining a separate action under this Court's Original Jurisdiction.

72-1449 GRANT
62 DENY MOTION FOR LEAVE TO FILE COMPLAINT

JJK J. 73

May 25, 1978

Court .....
Argued ....., 19...
Submitted ....., 19...

Voted on ....., 19...
Assigned ....., 19...
Announced ....., 19...

No. 77-1337

UNIVERSITY OF NEVADA

vs.

HALL

Novel questions!
Bradford Electric
did'nt decide
this case

Grant

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.		✓	✓										
Brennan, J.		✓	✓										
Stewart, J.		✓											
White, J.		✓											
Marshall, J.			✓										
Blackmun, J.			✓										
Powell, J.		✓											
Rehnquist, J.		✓											
Stevens, J.			✓										

DW 11/3/78

BENCH MEMORANDUM

To: Justice Powell

Re: University of Nevada v. Hall--No. 77-1337 (Cert to Cal. Sup.Ct.)(Peters, J.)

I. FACTS

In the spring of 1968 an employee of petitioner, a state university, was driving the school's van on official business in Placer County, California, when the van jumped the median and struck respondents' auto head on. The university employee was killed, respondent Patricia Hall was injured, and John Michael, a child, sustained serious, permanent brain injuries. Soon after the accident, respondents filed suit in California court against the estate of the man who had been driving the van and the petitioners. The university and

the State were served under California's long arm statute; the driver's estate was served in person, as an estate proceeding had been commenced in California.

Petitioner moved in the California courts to quash service, arguing that Nevada's sovereign immunity barred suit against the state or its university. After initial success before the trial court, petitioner lost in the California Supreme Court, which ruled that a state's sovereign immunity does not extend beyond the state's borders. Thus, Nevada could be sued outside of Nevada for actions performed outside of Nevada. This Court denied certiorari in 1973.

By statute Nevada has consented to be sued for tort claims in its own courts, but has limited its liability to $25,000 for each incident. At the trial in the instant case, petitioner argued that this statutory limitation of liability should constrain its liability to the respondents. The California trial court disagreed, ruling that the statutory limitation would apply only if the petitioner had been haled into California courts because of Nevada's partial waiver of sovereign immunity; since the California Supreme Court had ruled that petitioner had no sovereign immunity protection outside of its borders, Nevada's limitations on its consent to be sued within its borders were

irrelevant. The jury awarded respondents $1,150,000 in damages. The California Court of Appeals affirmed the trial court's refusal to limit petitioner's liability to $25,000, and the California Supreme Court declined to review the case further.

This Court granted certiorari on May 25, 1978.

II. CONTENTIONS

Petitioner makes two basic claims. First, petitioner argues that sovereign immunity, a protection guaranteed by the tenth amendment to the Constitution, prohibits suits against a state unless the state has consented to suit. Petitioner asserts that it has not consented to the instant suit, and therefore that California's assertion of jurisdiction violated its sovereign immunity (and implicitly the tenth amendment). Second, petitioner argues that, even if it is subject to suit in California, the full faith and credit clause of the Constitution requires that California enforce the $25,000 limitation on Nevada's liability. Beyond this, petitioner contends that as a policy matter the California courts' decisions will be disastrous, as they will undermine cooperative federalism as we know it.

Respondents make three contentions in favor of affirmance. First, they argue that a state's sovereign immunity is coextensive with the state's sovereign power, and that sovereign power extends only to the borders of a state. Indeed, California's sovereign power (begat by its strong interests) in regulating tortious conduct on its highways precludes assertion

of any immunity from suit for activities performed on its highways. Second, respondents contend that the tenth amendment does not embody implicitly states' sovereign immunity; rather, it merely reemphasizes that the federal government is limited to its enumerated powers. Thus, California's ruling concerning Nevada's immunity does not arguably conflict with the federal constitution, and the Court is without jurisdiction under 28 U.S.C. §1257. Third, respondents argue that the full faith and credit clause does not apply to give state legislation effect outside state borders. Finally, respondents reject the petitioners' policy arguments concerning federalism, noting that the only result of the California decisions will be that states now will add to their insurance policies coverage for tortious acts of their employees performed outside of the state.

Calif says no fed. Q

III. DISCUSSION

As I see it, petitioners' sovereign immunity claim involves four questions:

A. Is the sovereign immunity claim properly before the Court even though certiorari was denied with respect to the same claim in this case in 1973?

B. Does the full faith and credit clause require California courts to extend to Nevada the same sovereign immunity that Nevada courts recognize?

C. Does the tenth amendment (or federalism otherwise implicit in the Constitution) prohibit Californian courts from entertaining suit against Nevada?

D. If the Constitution requires California to extend sovereign immunity to Nevada, what are the limits on that immunity?

A. Final Judgment

A preliminary question is whether petitioner's sovereign immunity challenge to California's jurisdiction is properly before the Court, since the same claim was raised in the previous petition in 1973. Although the question has not often arisen, the authorities that have addressed the question agree that the Court may consider all "substantial federal questions determined in the earlier stages of the litigation." Reece v. Georgia, 350 U.S. 85, 87 (1955).

Thus, in Mercer v. Theriot, 377 U.S. 152 (1963)(per curiam), a wrongful death action, the fifth circuit had reversed an initial verdict for the plaintiffs, ordering that the case be remanded for dismissal unless the plaintiffs showed that on retrial they could present a stronger case. The plaintiffs sought review in this Court of the fifth circuit's initial decision, and certiorari was denied. The district court dismissed the remanded case, finding that additional evidence indicated by the plaintiffs would be inadmissible at trial. After the fifth circuit affirmed, this Court granted certiorari and considered the propriety of the original reversal, as well as that of the subsequent affirmance, saying that "it is settled that we may consider questions raised on the first appeal, as well as 'those that were before the Court of Appeals upon the second appeal'."[1]

1/ Indeed there is some room for doubt whether the California Supreme Court's initial judgment was final under §1257. Compare Mercantile Nat'l Bank v. Langdeau, 371 U.S. 555 (1963), with Cohen v. New York, 385 U.S. 976 (1966)(per curiam). If the first ruling was not final, the instant petitionrpresents petitioner's sole opportunity for review by this Court of its sovereign immunity claim.

Although the Court in Mercer did not state explicitly whether it considered the fifth circuit's first ruling to have been a final judgment for purposes of §1257, others have understood such a statement to be implicit in the Court's opinion. See Dyk, Supreme Court Review of Interlocutory State Court Decisions: "The Twilight Zone of Finality," 19 Stan.L.Rev. 907, 930 n. 145 (1967). Moreover, this rule makes sense, for if the Court allowed petitions to review interlocutory rulings only within 90 days of the ruling, it would encourage piecemeal litigation and an increased deluge of certiorari petitions--no one would await final disposition of their entire case if they would thereby risk losing the opportunity to challenge various rulings.

Finally, petitioners have not lost their right to assert sovereign immunity here because they did not assert it on their second trek through the California courts. See Urie v. Thompson, 337 U.S. 163, 171 (1949).

B. Full Faith and Credit

Petitioners base their claim to sovereign immunity upon the tenth amendment and the constitutional penumbra of federalism of which that amendment is the hallmark. Before jumping into consideration of an amorphous penumbra and a largely unexamined amendment, however, it would be best first to turn to those provisions in the Constitution specifically addressing problems of the conflicting jurisdiction of the states. There are three constitutional provisions directly concerning interstate affairs: the interstate privileges and immunities clause of Art. IV, §2, the extradition clause of the same section, and the full faith and credit clause of Art. IV, §1. As the privileges and

immunities and extradition clauses govern only state dealings with individuals and citizens, they have no application to disputes, such as the instant one, between the states themselves. One could argue, however (although the petitioners fail to do so), that the full faith and credit clause requires California courts to apply the Nevada law of sovereign immunity in cases involving the State of Nevada.

Art. IV, §1 of the Constitution provides that,

> Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State.[2]

By statute Congress has reaffirmed the command of Art. IV, §1, mandating that "acts, public records and proceedings" of a state must be given full faith and credit by sister states. 28 U.S.C. §1738. Although the statute as originally enacted did not include "acts," the Court consistently has indicated that Art. IV, §1 is self-executing, and therefore that full faith and credit must be extended to sister states' statutes as well as

2/ As an aside, I was surprised to learn that the terms of art "full faith and credit" apparently originated with Chaucer. Thus, in the Legend of Good Women (Prologue) we find:

> And as for me, though that I konne but lyte,
> On bokes for to rede I me delyte,
> And to hem yive I feyth and ful credence,
> And in myn herte have hem in reverence.

their judgments. See, e.g., Alaska Packers Ass'n v. Industrial Accident Comm'n, 294 U.S. 532 (1935)(reviewing under the full faith and credit clause the California courts' refusal to apply Alaskan workmen's compensation statute).

A somewhat more difficult question, however, is whether the full faith and credit clause requires the courts of one state to apply the common law of a sister state in some circumstances. Although Art. IV, §1 does not mention common law decisions, the Court has indicated that full faith and credit must be extended to "local common law and statutory law." Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, 436 (1943). But see A. Ehrenzweig, A Treatise on the Conflict of Laws §9, at 33 n. 34 (1962)("It seems doubtful whether the dictum in Magnolia...can be taken as more than a casual remark"). The majority of commentators agree that common law decisions ought to be included within the scope of the full faith and credit clause. See, e.g., Ehrenzweig, supra, §4, at 9 n. 6; B. Currie, Selected Essays on the Conflict of Laws, 196 & nn. 26-29 (1963), and sources cited therein; Cheatham, Federal Control of Conflict of Laws, 6 Vand.L.Rev. 581, 602-03 (1953). As others have suggested, there is no reason why the application of a sister state's law should depend on whether the law is in statutory or common law form. Thus, I conclude that Nevada's law of sovereign immunity should not be denied full faith and credit in California merely because it is a common law

But obligation to apply sister state's laws (common & statutory)

doctrine.[3]

The strength of a state's obligation to apply sister states' laws has been the subject of disagreement and substantial confusion--both in this Court and in the secondary literature. Certainly the obligation is not nearly so strict as the duty to enforce final judgments of sister states' courts. See R. Weintraub, Commentary on the Conflict of Laws, 414 & n.41 (1971). This confusion is largely caused by the apparent conflict between two lines of

not as strong as to recognize judgments

cases in which this Court has applied the full faith and credit clause: The first line involves claims for workmen's compensation where two states' statutes conflict and one state applies its statute to the exclusion of another state which has a substantial interest in the case; the second line of cases involves claims brought in one state's courts against fraternal

3/ Indeed, one could argue that Nevada's law of sovereign immunity is statutorily based. Thus, in Nev. Rev. Stat. §41.031 Nevada waived its sovereign immunity, subject to certain limitations. One of those limitations, found in Nev. Rev. Stat. §41.035, restricts Nevada's tort liability to $35,000 per incident. (The statutory limit was increased from $25,000 to $35,000 in 1977.) Thus, it would not strain the statutory language too greatly to interpret §§41.031 and 41.035 as a statutory reservation of sovereign immunity with respect to claims for more than $35,000. Such a statutory provision plainly is within the letter and spirit of Art. IV, §1 and 28 U.S.C. §1738.

note

organizations founded under another state's laws. In the reconciliation of these cases lies the standard to be applied to Nevada's claim for full faith and credit concerning its law of sovereign immunity.

In Bradford Electric Co. v. Clapper, 286 U.S. 145 (1932), a resident of Vermont was employed in Vermont by a Vermont company. While the employee was working temporarily on his employer's equipment in New Hampshire, he was killed. The employee's executrix exercised her right under New Hampshire law and sued the employer for negligence. This Court ruled that the lower courts improperly entertained jurisdiction over the suit, as the law of Vermont by its terms made recovery under the Vermont Workmen's Compensation Act the exclusive remedy. Justice Brandeis, writing for the Court, observed that the Vermont state was a "public act" and as such had to be given full faith and credit by New Hampshire under Art. IV, §1. The Court was careful to note, however, that there was no reason to believe that New Hampshire's application of the Vermont statute would be obnoxious to the public policy of New Hampshire. The rule that emerges from Clapper, then, is that a state mut apply a sister state's laws unless to do so would be obnoxious to the forum state's public policy--at least where the sister state has a substantial interest in the suit, as where its residents are involved or a contract made in the sister state is at issue.

The authority of Clapper, however, has been severely undermined by subsequent Court decisions. Thus, only seven years after Clapper the Court decided that California constitutionally could refuse to apply Massachusetts' workmen's compensation law on facts virtually identical to those in Clapper. Pacific Employers Insurance Co. v. Industrial Accident Comm'n, 306 U.S. 493 (1939). In doing so, the Court read liberally Justice Brandeis' caveat with respect to obnoxiousness to the forum state's public policy. Under Pacific Employers, the forum state may apply its workmen's compensation law to the exclusion of a sister state's law if the forum state's law "is the expression of domestic policy, in terms declared to be exclusive in its application to persons and events within the state." 306 U.S., at 503. Since Pacific Employers the Court routinely has allowed states to apply their own workmen's compensation laws if doing so will promote some significant policy of the forum state. See, e.g., Crider v. Zurich Insurance Co., 380 U.S. 39, 40 (1965)("Alaska Packers Ass'n v. Commission, 294 U.S. 532, and Pacific Employers...mark a breack with the Clapper philosophy").

The weak obligation Pacific Employers imposes upon states to apply their sisters' laws appears to be at odds with the Court's requirement that state courts, in entertaining suits against fraternal organizations established under a sister state's law, must apply the law of the state of establishement rather than their own law. In Order of United Commercial Travelers of America v. Wolfe, 331 U.S. 586 (1947), the most

recent of the fraternal society cases, the Court ruled that South Dakota had to give full faith and credit to a constitutional provision of an Ohio fraternal benefit society that actions against the society had to be brought within six months after the society's executive committee had disallowed the claim. Although the six-month limitation was appropriate under Ohio law, it was specifically prohibited by the law of South Dakota, where the action against the society was brought. The basis for the Court's opinion that South Dakota constitutionally was compelled to apply Ohio law is three-fold. First, the Court emphasized that the right being sued upon was the creation of Ohio law, as it depended upon the constitution of the society--a document plainly conceived under Ohio law. Second, the Court took great pains to demonstrate that the rights of a member of the society were inextricably interwoven with the responsibilities of membership--a package defined by Ohio law. Third, the Court found that the interest of South Dakota in protecting its residents was outweighed by the interest of Ohio in assuring its fraternal organizations that they would not be subject to very different obligations to their beneficiaries depending upon the latter's location. Thus, the Court concluded that South Dakota could not apply its own law, even though the decedent was a resident of and died in South Dakota.

The question, therefore, is how strong an interest the forum state must have before it may disregard a sister state's law, and whether the sister state's interests must be weighed

against the interests of the forum state. There are at least three distinct approaches to this problem: (1) the courts could try to weigh the interests of the forum state against those of its sister; (2) the courts could look solely to the interest of the forum state--if it is substantial, then the law of the forum constitutionally can be applied; and (3) the courts could weigh the interests of the forum state against the effect application of forum law would have on the cooperation necessary for federalism to work.

The most unsatisfactory of these approaches would require a balancing of the competing states' interests in the outcome of the litigation; indeed, often they have the same interest. Thus, for example, in Pacific Employers Massachusetts sought to protect its residents by applying its workmen's compensation law to its residents whether they were injured within or without the state. At the same time, California sought to protect its residents by applying its law to injuries occurring within its borders--injuries that likely would lead to medical and other debts owed to its residents.

Beyond the difficulty of weighing the competing states' interests, this approach would involve in the Court in a highly controverrsial endeavor. No state will appreciate a federal court deciding, for example, whether this protection of its residents is less important than a sister's protection of hers.

A second approach is suggested by Professor Currie: If the forum state has a substantial interest in the dispute, it constitutionally may apply its own law. See B. Currie, supra, at 188-89. Thus, Professor Currie seizes upon the liberal doctrine of the Court's workmen's compensation cases and extols the virtues of Justice Black's dissenting opinion in Order of United Commercial Travelers. His argument that the fraternal organization cases are no longer the law is supported by the Court's long silence on the question and by its apparent willingness to limit these cases to their particular facts. See Clay v. Sun Insurance Office, Ltd., 377 U.S. 179, 183 (1963) (Order of United Commercial Travelers "is a highly specialized decision dealing with unique facts..."). Moreover, Currie's general approach has the advantage of easy application: Whether a forum state has a substantial interest in a dispute will, in most cases, be easily ascertainable. The drawback to this approach, however, is that states seldom--if ever--will be required to apply a sister state's laws. Such a narrow reading of the full faith and credit clause could subvert the very federalism the full faith and credit clause was meant to preserve.

Applying Professor Currie's test to the instant case, there is no question but that California acted constitutionally in refusing to apply Nevada's sovereign immunity law. California residents were injured in California and required care in California; indeed, the boy will require care for the rest of his life. As Currie would not consider the competing interests of

another state, California's substantial interest in the Halls' suit justifies the refusal to apply Nevada law.

The *third approach* to giving sister states' laws full faith and credit would require that states apply other states' laws only where applying the forum's laws would do substantially more damage to cooperative federalism than applying the sister's laws would do to the forum's public policy. See R. Weintraub, Supra, at 408-19. Professor Weintraub argues that the workmen's compensation cases are entirely consistent with the fraternal organizations cases if one focuses on the extent to which application of the forum's laws would impair the federal scheme. Thus, for example, the effect on Massachusetts workmen's compensation system is minimal if the system is not extended to cover accidents occurring outside the state; the heart of the system--coverage of Massachusetts residents for accidents occurring in Massachusetts--is left intact. Allowing states to impose disparate obligations on fraternal benefits organizations, on the other hand, might frustrate Ohio's desire to allow such organizations to exist.[4]

4/ One difficulty with Professor Weintraub's theory is its failure to explain why the Court has allowed application of the forum state's law to regular insurance company contracts--that is, why the impact on federalism is different with respect to insurance companies than it is with respect to fraternal organizations. See, e.g., Clay v. Sun Insurance Office, Ltd., 377 U.S. 179 (1963)(Florida can apply Florida law to insurance policy bought by Illinois resident in Illinois). Professor Weintraub's only attempt to reconcile the fraternal benefit cases with other cases involving insurance contracts is his suggestion that the former were wrongly decided. R. Weintraub, supra, at 410.

Professor Weintraub's approach has the advantage of giving federalism the protection envisioned by those who drafted the full faith and credit clause; its disadvantage is the difficulty the courts would have in using the approach.

Applying this third approach to the instant case, one must weigh the extent of California's interest in protecting its residents (both the respondents who were injured by the petitioner's agent's acts and those who have had to provide medical and other services to the respondents and to petitioner's agent) against the extent to which our federal fabric would be torn if California were allowed to hold Nevada accountable. California's interest is powerful: A California resident was injured on a California highway and will continue to require care indefinitely in California. California's interest in this dispute is stronger than that presented in any of the numerous cases in which the Court has allowed a state to apply its own law. See, e.g., Carroll v. Lanza, 349 U.S. 408 (1955) (Missouri resident employed in Missouri is injured in Arkansas and allowed to collect under Arkansas law). California's entertaining of this suit, on the other hand, does not pose a serious threat to "Our Federalism." It is easy to imagine cases in which unbridled suit against sister states seriously would disrupt governmental functions. This is not such a case, however. The California Supreme Court ruling limited its courts' jurisdiction to suits involving actions of a sister state outside her borders.

Nevada's liability for acts of its agents performed entirely outside of her borders is unlikely seriously to interfere with Nevada's ability to carry on her business. As the respondents argue, the actual result of the California Supreme Court's holding is that states will increase their insurance to cover such liability.[5]

In sum, I conclude that--whether Professor Currie or Professor Weintraub is correct concerning the scope of full faith and credit--California is not constitutionally required to give full faith and credit to Nevada's law of sovereign immunity merely because Nevada is a party to the action. As California has a substantial public interest in the respondents' case and entertainment of such suits as this is not likely seriously to damage the federal fabric of our nation, California was constitutionally entitled to apply its own law, which denies states immunity from tort liability.[5a]

5/ Of course, the clear implication of my analysis is that, if Professor Weintraub is correct concerning the content of the full faith and credit clause, then there will be cases in which one state will have to defer to a sister state's law of sovereign immunity. Specifically, states will have to defer to others' immunity where entertainment of the suit is likely seriously to disrupt a sister's functioning as a separate sovereign. Cf. National League of Cities v. Usery, 426 U.S. 833 (1976).

5a/ Annot. Calif. Codes--Gov't §815.2 provides that public entities shall be liable for tort injuries such as those involved here. As this provision applies to California subdivisions, there is no difficulty here with California applying to a sister state provisions more stringent than those applying to California.

C. Tenth Amendment

Petitioners argue that the tenth amendment forbids California to allow its courts to adjudicate Nevada's tort liability. Petitioners correctly point out that the Constitution does not specifically authorize suit against a state. On the other hand, however, they can point to no specific prohibition on such suits. Rather, petitioners claim that immunity from suit in a sister state's courts was one of the rights enjoyed by the states at the time of the drafting of the Constitution in 1789. Thus, they invoke the tenth amendment, which provides that,

> Powers not delegated to the United States, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

In effect, petitioners argue that this constitutional reservation of states' powers made constitutional the states' right not to be sued in a sister states' courts. Respondents, on the other hand, argue that California's interest as a sovereign in giving relief for injuries inflicted on its residents within its borders allows it to adjudicate Nevada's liability.

1. History of Sovereign Immunity

There is some indication that at the time the Constitution was framed states were immune from suit in sister states' courts. Thus, in Nathan v. Virginia, 1 U.S. (1 Dall.) 77 (Ct. of Common Pleas, Philadelphia County 1781), the Supreme Executive Council of Pennsylvania quashed the attachment of property belonging to Virginia, ruling that Virginia was immune from suit

in Pennsylvania courts. It is impossible to know what weight to give this ruling, however, as it was based upon a long-outdated aspect of the "law of nations" and assumed a degree of sovereignty for individual states that likely is at odds with the Constitution as adopted eight years later.

Some of the Framers argued that states were immune from suit. Thus, in the Federalist Papers, Alexander Hamilton claimed that no state could be sued in either state or federal court without its consent. See The Federalist No. 81, at 455 (1826)(A. Hamilton). Similarly, John Marshall urged during the Virginia debates on ratification that it was irrational "to suppose that the sovereign power should be dragged before a court." J. Elliot, Debates 555 (1836). See also id. at 533 (James Madison's similar argument). Each of these affirmations of sovereign immunity, however, was made during the defense of Art. III, §2, which extended the federal judicial power to controversies between a state and citizens of another state. Thus, the Framers' arguments, though broad in their terms, were directed toward convincing an audience that in federal court states could sue but never could be sued.

It is difficult, then, to find a definitive statement concerning the right of states not to be sued in sister state courts as of the time the Constitution was drafted. This is largely due, no doubt, to the uniform refusal of states to assert jurisdiction over their sisters. Whether this refusal is attributable to a perceived right incident to sovereignty,

however, or to the difficulty of enforcing judgments once entered, is impossible to discern. Moreover, even if there was a generally perceived right of sovereign immunity before 1789, the ceding of some sovereignty incident to joining the Union may have altered that right.

Petitioners also attempt to use general language in opinions of this Court to establish that there is a generally recognized constitutional right of sovereign immunity. Close examination of these cases, however, reveals that each dealt with suit against a state in federal court--something that is explicitly forbidden by the eleventh amendment. See, e.g., Parden v. Terminal Railroad of Alabama Docks Dept., 377 U.S. 184 (1964). So far as I can tell, it has never been suggested that the plain language of the eleventh amendment should be strained so as to forbid suits against the states in state courts. See Field, The Eleventh Amendment and Other Sovereign Immunity Doctrines: Part One, 126 Pa.L.Rev. 515, 546-49 (1978), semble. In one case the Court did suggest that state courts would be without power to consider a state's claim for escheat of intangibles. See Western Union Telegraph Co. v. Pennsylvania, 368 U.S. 71, 80 (1961). The Court's suggestion, however, was dictum, and may have been prompted by a belief that the dispute actually was between two states and therefore properly the subject of the Court's original jurisdiction.

2. Application of National League of Cities v. Usery to Interstate Disputes

Assuming that the states enjoyed the right in 1789 not to be sued in the courts of a sister state, there is nonetheless good reason not to extend the tenth amendment to preserve this right. Prior to 1976, most commentators believed that the tenth amendment had no substantive content whatsoever--that it did no more than re-emphasize that ours is a federal government of enumerated powers. Indeed, the Court itself had said as much. See United States v. Darby, 312 U.S. 100, 124 (1941). In 1976, however, the Court in National League of Cities v. Usery, 426 U.S. 833 (1976) struck down a federal statute imposing minimum wage and maximum hours limitations on state governments. In doing so, the Court stated that the tenth amendment prohibits such interference with a state's conduct of its affairs as would substantially impair the state's sovereign integrity or would allow the destruction of the state as a sovereign entity. Thus, it appears that the tenth amendment, beyond limiting the federal government's powers to those expressly given, also gives affirmative protection against destruction of the sovereignty of th individual states.

Petitioners would have us believe that the tenth amendment, as interpreted in National League of Cities, prohibits California from exercising jurisdiction over Nevada, because otherwise Nevada's essential governmental operations would be substantially interfered with. There are two difficulties with

this argument. First, National League of Cities dealt solely with Congressional intrusion into the affairs of the states; nowhere in the opinion did the Court intimate that the tenth amendment should extend to interstate rivalries as well. This limitation is well founded in the history of the tenth amendment. The national debate from which the amendment arose centered solely upon the concern of some that the federal government constitutionally could usurp the powers of the states. See, e.g., 3 J. Elliot, Debates 449-50 (2d ed. 1836)(delegates to Virginia ratification convention express concern over the lack of a "clause declaring expressly that every power and right not given up was retained by the states"). Similarly, Justice Story unequivocally opined that the tenth amendment's sole concern was with delimiting the powers of the federal government vis a vis the states. See 2 J. Story, Commentaries on the Constitution §§1907-08.

Second, even if National League of Cities extends to interstate affairs, there is no reason to believe that the tenth amendment's limitation on interference in state affairs depends upon the states' rights against interference in 1789. Thus, the Court's opinion in National League of Cities, does not look to states' rights when the Constitution was framed. Rather, the Court opined that the tenth amendment's content is determined by what interference would undermine substantially a state's ability to operate as an independent sovereign.

Third, and most important, the tenth amendment should not be extended beyond federal/state disputes because, as I have already argued, there are specific clauses in the Constitution dealing with interstate rivalries. If Professor Weintraub

is correct that

interests in cooperative federalism must be taken into account in applying the full faith and credit clause, then states would have to apply their sisters' sovereign immunity law in cases jeopardizing the federal system. Thus, the very same interests are protected by the full faith and credit clause as would be protected under the petitioners' expanded view of the tenth

amendment. Where there is a specific constitutional provision dealing with a problem, I would not stretch an amorphous provision to do the same.

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In a nutshell, then, I would reach the question of sovereign immunity, rule that the judgment below passes constitutional muster under the full faith and credit, and rule that the tenth amendment is inapplicable in cases such as this.[6]

11/3/78 David

6/ At the outset I posed a fourth question: What limitations would be imposed upon California's authority to hale Nevada into its courts? I can see no grounds for distinguishing between the fact of sovereign immunity and the scope of sovereign immunity. Thus, if Nevada is not constitutionally entitled to avoid any liability in California, I see nothing in the Constitution entitling it to limit its liability.

77-1337 UNIV. OF NEVADA v. HALL Argued 11/7/78

Sovereign immunity may be viewed as a "law" of Nev. (implicit from statutes imposing limits on recoveries as well as common law)

Q is whether Calif. must give full faith to this "law" of Nev.?

The Full Faith & Credit clause may apply to another state's common law & statutory law, but the obligation to recognize is not absolute. It is different from a judgment.

Since recognition is not absolute, we look to interest of the forum state (Calif) to determine how strong it is.

Calif's interest here is strong: accident occurred there, citizens injured, they will have to be supported by Calif. Thus, Calif may be justified in applying its own law.

Nev. has bank a/c in Calif that can be attached.

Resp argues that a state has no sovereign status outside of its boundaries

Dyer (Dep A/G of Nev)

P. S. asks what fed. Q. is present?

Rowe (Resp)

Affirm 6
Reverse 2
Part 1

77-1337 Univ. of Nevada v. Hall Conf. 11/10/78

The Chief Justice Passed

Nev. consented to be sued subject to $25,000 limitation.

CJ read at length to op. by Brandeis in Bradford Electric 286 U.S. 145 (See p 40 Dave's memo)
(I'm not sure C.J. reads Bradford Electric the way I did)

Mr. Justice Brennan Affirm

State can't carry its sovereignty beyond its own borders.

Mr. Justice Stewart Affirm

Surprising Q has not arisen before.

If Calif. refused to allow itself to be sued there would be lit. case.

Calif is sovereign state as well as Nevada. This case, brought in Calif., must be decided by Calif law.

F. F. & Credit Clause doesn't apply to this situation.

Mr. Justice White Affirm

Nothing in Court. that requires Calif to recognize Nev. law of sov. immunity.

Calif law governs.

The jurisdictional questions are not involved in case before. But to extent long-arm statute doesn't

I did'nt follow Byron on this discussion

When the plaintiffs tried to collect judg by attaching bank bal. in Calif, a F+C case arises.

Mr. Justice Marshall Affirm

(no discussion)

Mr. Justice Blackmun Reverse

Sovereignty follows State where used - as here - as a shield

Mr. Justice Powell Affirm

Clause refers to "public Acts, records & jud. proceedings"

Full F. & C. Clause does not compel one state to recognize the laws — as distinguished from the legal judgments — of another state.

Forum state's own interests may outweigh the interests of harmony and ~~mutual~~ mutual support furthered by the Clause, nor will federalism suffer.

But the Clause does request a rational weighing of these interests.

Here Calif's interests are strong.

Mr. Justice Rehnquist Reverse

Bradford applies F F & C to laws but other cases have gone back & forth.

Calif. can do this unless FF & C or Const prohibits.

Monico v Miss (Hughes) & Bradford felt balance in favor of requiring recognition of Nev.'s law. P would have to go to Nev. & be limited by $25,000

Mr. Justice Stevens Affirm

Must find something in Const. to deny Calif right to apply its own law.

Difficult to justify holding that a state is sovereign beyond its own borders.

Calif should apply its own law.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

November 11, 1978

Memorandum to the Conference

Re: 77-1337 U. of Nevada v. Hall

I vote to affirm.

Regards,

WEB

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: JAN 11 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1337

University of Nevada et al., Petitioners, v. John Michael Hall, Etc., et al. | On Writ of Certiorari to the Court of Appeal of California, First Appellate District.

[January —, 1979]

MR. JUSTICE STEVENS delivered the opinion of the Court.

In this tort action arising out of an automoble collision in California, a California court has entered a judgment against the State of Nevada that Nevada's own courts could not have entered. We granted certiorari to decide whether federal law prohibits the California courts from entering such a judgment or, indeed, from asserting any jurisdiction over another sovereign State.

The respondents are California residents. They suffered severe injuries in an automoble collision on a California highway on May 13, 1968. The driver of the other vehicle, an employee of the University of Nevada, was killed in the collision. It is conceded that he was driving a car owned by the State, that he was engaged in official business, and that the University is an instrumentality of the State itself.

Respondents filed this suit for damages in the Superior Court for the City of San Francisco, naming the administrator of the driver's estate, the University, and the State of Nevada as defendants. Process was served on the State and the University pursuant to the provisions of the California Code authorizing service of process on nonresident motorists.[1]

[1] Section 17451 of the California Code provides:

"The acceptance by a nonresident of the rights and privileges conferred upon him by this code or any operation by himself or agent of a motor

LFP

Reviewed LFP 1/14

Extremely well written — though language is sweeping I agree with basic analysis

See my letters to John. If he doesn't include something along line of my Note, I'll write a brief concur.

The trial court granted a motion to quash service on the State, but its order was reversed on appeal. The California Supreme Court held, as a matter of California law, that the State of Nevada was amenable to suit in California courts and remanded the case for trial. *Hall* v. *University of Nevada*, 8 Cal. 3d 522, 503 P. 2d 1363. We denied certiorari. 414 U. S. 820.

On remand, Nevada filed a pretrial motion to limit the amount of damages that might be recovered. A Nevada statute places a limit of $25,000 on any award in a tort action against the State pursuant to its statutory waiver of sovereign immunity.[2] Nevada argued that the Full Faith and Credit

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vehicle anywhere within this state, or in the event the nonresident is the owner of a motor vehicle then by the operation of the vehicle anywhere within this state by any person with his express or implied permission, is equivalent to an appointment by the nonresident of the director or his successor in office to be his true and lawful attorney upon whom may be served all lawful processes in any action or proceeding against the nonresident operator or nonresident owner growing out of any accident or collision resulting from the operation of any motor vehicle anywhere within this state by himself or agent, which appointment shall also be irrevocable and binding upon his executor or administrator." Cal. Code § 17451 (West 1971).

An administrator of the decedent's estate was appointed in California and was served personally.

[2] Nevada Revised Statutes 41.035 (1) as it existed in 1968, found in official edition, Statutes of Nevada 1965, p. 1414, [later amended by Statutes of Nevada 1968, p. 44, Statutes of Nevada 1973, 1532, and Statutes of Nevada 1977, 985, 1539]:

"1. No award for damages in an action sounding in tort brought under NRS 41.031 may exceed the sum of $25,000 to or for the benefit of any claimant. No such award may include any amount as exemplary or punitive damages or as interest prior to judgment."

Nevada Revised Statutes 41.031, found in official edition, Statutes of Nevada, 1965, p. 1413, as amended by Statutes of Nevada, 1975, 209, 421 and Statutes of Nevada 1977, 275:

"1. The State of Nevada hereby waives its immunity from liability and action and hereby consents to have its liability determined in accordance

Clause of the United States Constitution [3] required the California courts to enforce that statute. Nevada's motion was denied, and the case went to trial.

The jury concluded that the Nevada driver was negligent and awarded damages of $1,150,000.[4] The Superior Court entered judgment on the verdict and the Court of Appeal affirmed. After the California Supreme Court denied review, the State of Nevada and its University successfully sought a writ of certiorari. — U. S. —.

Despite its importance, the question whether a State may claim immunity from suit in the courts of another State

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with the same rules of law as are applied to civil actions against natural persons and corporations, except as otherwise provided in NRS 41.032 to 41.038, inclusive, and subsection 3 of this section, if the claimant complies with the limitations of NRS 41.032 to 41.036, inclusive, or the limitations of the NRS 41.010. The State of Nevada further waives the immunity from liability and action of all political subdivisions of the state, and their liability shall be determined in the same manner, except as otherwise provided in NRS 41.032 to 41.038, inclusive, and subsection 3 of this section, if the claimant complies with the limitations of NRS 41.032 to 41.036, inclusive.

"2. An action may be brought under this section, in a court of competent jurisdiction of this state, against the State of Nevada, any agency of the state, or any political subdivision of the state. In an action against the state or any agency of the state, the State of Nevada shall be named as defendant, and the summons and a copy of the complaint shall be served upon the secretary of state."

[3] Article IV, § 1 provides:

"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may be general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

[4] The evidence indicated that respondent, John Hall, a minor at the time of the accident, sustained severe head injuries resulting in permanent brain damage which left him severely retarded and unable to care for himself, and that respondent Patricia Hall, his mother, suffered severe physical and emotional injuries.

has never been addressed by this Court. The question is not expressly answered by any provision of the Constitution; Nevada argues that it is implicitly answered by reference to the common understanding that no sovereign is amenable to suit without its consent—an understanding prevalent when the Constitution was framed and repeatedly reflected in this Court's opinions. In order to determine whether that understanding is embodied in the Constitution, as Nevada claims,[5] it is necessary to consider (1) the source and scope of the traditional doctrine of sovereign immunity; (2) the impact of the doctrine on the framing of the Constitution; (3) the Full Faith and Credit Clause; and (4) other aspects of the Constitution that qualify the sovereignty of the several States.

I

The doctrine of sovereign immunity is an amalgam of two quite different concepts, one applicable to suits in the sovereign's own courts and the other to suits in the courts of another sovereign.

The immunity of a truly independent sovereign from suit in its own courts has been enjoyed as a matter of absolute right for centuries. Only the sovereign's own consent could qualify the absolute character of that immunity.

The doctrine, as it developed at common law, had its origins in the feudal system. Describing those origins, Pollock and Maitland noted that no lord could be sued by a vassal in his own court, but each petty lord was subject to suit in the courts of a higher lord. Since the King was at the apex of the feudal pyramid, there was no higher court in which he

[5] No one claims that any federal statute places any relevant restriction on California's jurisdiction or lends any support to Nevada's claim of immunity. If there is a federal rule that restricts California's exercise of jurisdiction in this case, that restriction must be a part of the United States Constitution.

could be sued.[6] The King's immunity rested primarily on the structure of the feudal system and secondarily on a fiction that the King could do no wrong.[7]

We must, of course, reject the fiction. It was rejected by the colonists when they declared their independence from the Crown,[8] and the record in this case discloses an actual wrong committed by Nevada. But the notion that immunity from suit is an attribute of sovereignty is reflected in our cases.

It is indeed

Chief Justice Jay described sovereignty as the "right to govern"; [9] that kind of right would necessarily encompass the right to determine what suits may be brought in the sovereign's own courts. Thus, Justice Holmes explained sovereign immunity as based "on the logical and practical ground that

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[6] See 1 F. Pollock & F. Maitland, History of English Law 518 (2d ed. 1898) ("He can not be compelled to answer in his own court, but this is true of ever petty lord of every petty manor; that there happens to be in this world no court above his court is, we may say, an accident."); Engdahl, Immunity and Accountability for Positive Governmental Wrongs, 44 U. Colo. L. Rev. 1, 2–5 (1972).

[7] See 1 W. Blackstone, Commentaries on the Laws of England 239 (1765) ("The king, moreover, is not only incapable of doing wrong, but of thinking wrong: he can never mean to do an improper thing.") In fact, however, effective mechanisms developed early in England to redress injuries resulting from the wrongs of the King. See Jaffe, Suits Against Governments and Officers: Sovereign Immunity, 77 Harv. L. Rev. 1, 3–5 (1963).

[8] The Declaration of Independence provides:

"That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government . . . and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States."

See generally B. Bailyn, The Ideological Origins of the American Revolution 198–229 (1967).

[9] See *Chisholm* v *Georgia*, 2 Dall. 419, 472.

there can be no legal right as against the authority that makes the law on which the right depends." [10]

This explanation adequately supports the conclusion that no sovereign may be sued in its own courts without its consent, but it affords no support for a claim of immunity in another sovereign's courts. Such a claim necessarily implicates the power and authority of a second sovereign; its source must be found either in an agreement, express or implied, between the two sovereigns, or in the voluntary decision of the second to respect the dignity of the first as a matter of comity.

This point was plainly stated by Chief Justice Marshall in *The Schooner Exchange* v. *McFaddon*, 7 Cranch 116, which held that an American court could not assert jurisdiction over a vessel in which Napoleon, the reigning emperor of France, claimed a sovereign right. In that case, The Chief Justice observed:

> "The jurisdiction of courts is a branch of that which is possessed by the nation as an independent sovereign power.
>
> "The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction.
>
> "All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source." 7 Cranch 116, 136.

[10] See *Kawananakoa* v. *Polybank*, 295 U. S. 349, 353.

After noting that the source of any immunity for the French vessel must be found in American law, The Chief Justice interpreted that law as recognizing the common usage among nations in which every sovereign was understood to have waived its exclusive territorial jurisdiction over visiting sovereigns, or their representatives, in certain classes of cases.[11]

The opinion in *The Schooner Exchange* makes clear that if California and Nevada were independent and completely sovereign nations, Nevada's claim of immunity from suit in California's courts would be answered by reference to the law of California.[12] It is fair to infer that if the immunity defense

Calif law would control who may sue & be sued in its courts if it were an independent sovereign state

[11] The opinion describes the exemption of the person of the sovereign from arrest or detention in a foreign territory, the immunity allowed to foreign ministers, and the passage of troops through a country with its permission. 7 Cranch, at 137–140.

[12] As an independent sovereign Nevada might choose to withdraw its money from California banks, or to readjust its own rules as to California's amenability to suit in the Nevada courts. And it might refuse to allow this judgment to be enforced in its courts. But it could not, absent California's consent and absent whatever protection is conferred by the United States Constitution, invoke any higher authority to enforce rules of interstate comity and to stop California from asserting jurisdiction. For to do so would be wholly at odds with the sovereignty of California.

[13] The States' practice of waiving sovereign immunity in their own courts is a relatively recent development; it was only last year, for example, that Pennsylvania concluded that the defense would no longer be recognized, at least in certain circumstances, in that State. Act. No. 1978–152, H. B. No. 2437, § 42 Pa. C. S. A. §§ 5101, 5110 (Sept. 28, 1978). But as States have begun to waive their rights to immunity in their own courts, it was only to be expected that the privilege of immunity afforded to other States as a matter of comity would be subject to question.

Similarly, as concern for redress of individual injuries has enhanced, so too have moves toward the reappraisal of the practices of sovereign nations according absolute immunity to foreign sovereigns. The governing rule today, in many nations, is one of restrictive rather than absolute immunity. See 26 Dept. State Bull. 984 (1952); Note, The Jurisdictional Immunity of Foreign Sovereigns, 63 Yale L. J. 1148 (1954); Mareniak, Hall v. Nevada: State Court Jurisdiction Over Sister States v. American State Sovereign Immunity, 63 Calif. L. Rev. 1144, 1155–1157 (1975).

Nevada asserts today had been raised in 1812 when *The Schooner Exchange* was decided, or earlier when the Constitution was being framed, the defense would have been sustained by the California courts.[13] By rejecting the defense in this very case, however, the California courts have told us that whatever California law may have been in the past, it no longer extends immunity to Nevada as a matter of comity.

Calif no longer extends immunity as matter of comity

Nevada does not ask us to review the California courts' interpretation of California law. Rather, it argues that California is not free, as a sovereign, to apply its own law, but is bound instead by a federal rule of law implicit in the Constitution that requires all of the States to adhere to the sovereign immunity doctrine as it prevailed when the Constitution was adopted. Unless such a federal rule exists, we of course have no power to disturb the judgment of the California court.

II

Unquestionably the doctrine of sovereign immunity was a matter of importance in the early days of independence.[14] Many of the States were heavily indebted as a result of the Revolutionary War. They were vitally interested in the question whether the creation of a new federal sovereign, with courts of its own, would automatically subject them, like lower English lords, to suits in the courts of the "higher" sovereign.

But the question whether one State might be subject to suit in the courts of another State was apparently not a matter of concern when the new Constitution was being drafted and ratified. Regardless of whether the Framers were correct in assuming, as presumably they did, that prevailing notions of comity would provide adequate protection against the unlikely prospect of an attempt by the courts of one State to

[13] See generally C. Jacobs, The Eleventh Amendment and Sovereign Immunity 1-40 (1972).

assert jurisdiction over another, the need for constitutional protection against that contingency was not discussed at Constitutional Convention.

The debate about the suability of the States focussed on the scope of the judicial power of the United States authorized by Art. III.[15] In The Federalist, Hamilton took the position that this authorization did not extend to suits brought by an individual against a nonconsenting State.[16] The contrary position was also advocated [17] and actually prevailed in this Court's decision in *Chisholm* v. *Georgia*, 2 Dall. 419.

The *Chisholm* decision led to the prompt adoption of the

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[15] Article III provides, in relevant part:

"Section 1. The judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish . . . .

"Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . . to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

[16] The Federalist No. 81, p. 547 (Heritage Press 1945) (A. Hamilton) ("[it] is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent"); see 2 J. Elliot, The Debates in the Several State Conventions on the Adoption of the Federal Constitution 555 (John Marshall) ("I hope that no gentleman will think that a state will be called at the bar of the federal court . . . . The intent is to enable states to recover claims of individuals residing in other states. I contend this construction is warranted by the words.") *Id.*, at 533 (James Madison).

[17] See 2 *id.*, at 491 (James Wilson). ("When a citizen has a controversy with another state, there ought to be a tribunal where both parties may stand on a just and equal footing."); C. Jacobs, *supra*, at 40 ("the legislative history of the Constitution hardly warrants the conclusion drawn by some that there was a general understanding, at the time of ratification, that the states would retain their sovereign immunity.").

Eleventh Amendment.[18] That Amendment places explicit limits on the powers of federal courts to entertain suits against a State.[19] The doctrine that no State may be sued without its consent led this Court to enlarge those limits by holding that the States' immunity from suit in a federal court extends to suits brought by their own citizens,[20] by a federal corporation,[21] or by a foreign state.[22]

The language used by the Court in these cases, like the language used during the debates on ratification of the Constitution, emphasized the widespread acceptance of the view that a sovereign State is never amenable to suit without its consent.[23] But all of these cases, and all of the relevant

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[18] See *Hans* v. *Louisiana*, 134 U. S. 1, 11, *Monaco* v. *Mississippi*, 292 U. S. 313, 325.

[19] The Eleventh Amendment to the Constitution provides:

"The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

Even as so limited, however, the Eleventh Amendment has not accorded the States absolute sovereign immunity in federal court actions. The States are subject to suit by both their sister States and the United States. See, *e. g.*, *North Dakota* v. *Minnesota*, 263 U. S. 365, 372; *United States* v. *Mississippi*, 380 U. S. 128, 140–141. Further, prospective injunctive and 380 U. S. 128, 140–141. Further, prospective injunctive and declaratory relief is available against States in suits in federal court in which state officials are the nominal defendants. See *Ex parte Young*, 209 U. S. 123; *Edelman* v. *Jordan*, 415 U. S. 651. See generally Baker, Federalism and the Eleventh Amendment, 48 U. Colo. L. Rev. 139 (1977).

[20] *Hans* v. *Louisiana*, *supra*. In the *Hans* opinion, the Court recognized that the Eleventh Amendment "did not in terms prohibit suits by individuals against the States," but declared "that the Constitution should not be construed to import any power to authorize the bringing of such suits." 134 U. S., at 11.

[21] *Smith* v. *Reeves*, 178 U. S. 436.

[22] *Monaco* v. *Mississippi*, 292 U. S. 313.

[23] See, *e. g.*, *Hans* v. *Louisiana*, *supra*, at 18 ("The state courts have no power to entertain suits by individuals against a state without its consent,

debate, concerned questions of federal court jurisdiction and the extent to which the States, by ratifying the Constitution and creating federal courts, had authorized suits against themselves in those courts. These decisions do not answer the question whether the Constitution places any limit on the exercise of one's State's power to authorize its courts to assert jurisdiction over another State. Nor does anything in Art. III authorizing the judicial power of the United States, or in the Eleventh Amendment limitation on that power, provide any basis, explicit or implicit, for this Court to impose limits on the powers of California exercised in this case. A mandate for federal court enforcement of interstate comity must find its basis elsewhere in the Constitution.

III

Nevada claims that the Full Faith and Credit Clause of the Constitution requires California to respect the limitations on Nevada's statutory waiver of its immunity from suit. That waiver only gives Nevada's consent to suits in its own courts. Moreover, even if the waiver is treated as a consent to be sued in California, California must honor the condition attached to that consent and limit respondent's recovery to $25,000, the maximum allowable in an action in Nevada's courts.

The Full Faith and Credit Clause does require each State to give effect to official acts of other States. A judgment entered in one State must be respected in another provided that the first State had jurisdiction over the parties and the subject matter. Moreover, in certain limited situations, the courts of one State must apply statutory law of another State. Thus,

Then how does the circuit court, having only concurrent jurisdiction, acquire any such power?"); *Monaco* v. *Mississippi*, *supra*, at 322–323 ("There is also the postulate that States of the Union, still possessing attributes of sovereignty, shall be immune from suits, without their consent, save where there has been 'a surrender of this immunity in the plan of the convention.' ").

in *Bradford Electric Co.* v. *Clapper*, 286 U. S. 145, the Court held that a federal court sitting in New Hampshire was required by the Constitution to apply Vermont law in an action between a Vermont employee and a Vermont employer arising out of a contract made in Vermont.[24] But this Court's decision in *Pacific Insurance Company* v. *Industrial Accident Commission*, 306 U. S. 493, clearly establishes that the Full Faith and Credit Clause does not require a State to apply another State's law in violation of its own legitimate public policy.[25]

The question in *Pacific Insurance* was whether the Full Faith and Credit Clause precluded California from applying its own workmen's compensation act in the case of an injury suffered by a Massachusetts employee of a Massachusetts employer while in California in the course of his employment. Even though the employer and employee had agreed to be bound by Massachusetts law, this Court held that California was not precluded from applying its own law imposing greater responsibilities on the employer. In doing so, the Court reasoned:

> "It has often been recognized by this Court that there are some limitations upon the extent to which a state may be required by the full faith and credit clause to enforce even the judgment of another state in contravention of

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[24] Justice Stone concurred in the *Clapper* decision, expressing the view that the result was supported by the conflict of law rule that a New Hampshire court could be expected to apply in this situation, and that it was unnecessary to rely on the Constitution to support the Court's judgment. He also made it clear that the rule of the case did not encompass an action in which the source of the relationship was not a Vermont contract between a Vermont employer and a Vermont employee. 286 U. S., at 163–165.

[25] See also *Alaska Packers Assn.* v. *Comm'n*, 294 U. S. 532; *Bonaparte* v. *Tax Court*, 104 U. S. 592 (holding that a law exempting certain bonds of the enacting State from taxation did not apply extraterritorially by virtue of the Full Faith and Credit Clause).

> its own statutes or policy . . . . And in the case of statutes, the extrastate effect of which Congress has not prescribed, as it may under the constitutional provision, we think the conclusion is unavoidable that the full faith and credit clause does not require one state to substitute for its own statute, applicable to persons and events within it, the conflicting statute of another state, even though that statute is of controlling force in the courts of the state of its enactment with respect to the same persons and events . . . . Although Massachusetts has an interest in safeguarding the compensation of Massachusetts employees while temporarily abroad in the course of their employment, and may adopt that policy for itself, that could hardly be thought to support an application of the full faith and credit clause which would override the constitutional authority of another state to legislate for the bodily safety and economic protection of employees injured within it. Few matters could be deemed more appropriately the concern of the state in which the injury occurs or more completely within its power." 306 U. S., at 502–503.

The *Clapper* case was distinguished, and limited to its facts, on the ground that "there was nothing in the New Hampshire statute, the decisions of its courts, or in the circumstances of the case, to suggest that reliance on the provisions of the Vermont statute, as a defense to the New Hampshire suit, was obnoxious to the policy of New Hampshire." *Id.*, at 504.[26]

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[26] Justice Stone who had concurred separately in *Clapper*, see n. 24, *supra*, wrote for the Court in *Pacific Insurance*. After distinguishing *Clapper*, he limited its holding to its facts:

"The *Clapper* case cannot be said to have decided more than that a state statute applicable to employer and employee within the state, which by its terms provides compensation for the employee if he is injured in the course of his employment while temporarily in another state, will be given full faith and credit in the latter when not obnoxious to its policy." 306 U. S., at 504.

In *Pacific Insurance*, on the other hand, California had its own scheme governing compensation for injuries in the State, and the California courts had found that the policy of that scheme would be frustrated were it denied enforcement. "Full faith and credit," this Court concluded, "does not here enable one state to legislate for the other or to project its laws across state lines so as to preclude the other from prescribing for itself the legal consequence of acts within it." *Id.*, at 504–505.

A similar conclusion is appropriate in this case. The interest of California afforded such respect in the *Pacific Insurance* case was in providing for "the bodily safety and economic protection of employees injured within it." *Id.*, at 503. In this case, California's interest is the closely related and equally substantial one of providing "full protection to those who are injured on its highways through the negligence of both residents and nonresidents." *Hall* v. *University of Nevada* (appendix to petition at 7). To effectuate this interest, California has provided by statute for jurisdiction in its courts over residents and nonresidents alike to allow those injured on its highways through the negligence of others to secure full compensation for their injuries in the California courts.

In further implementation of that policy, California has unequivocally waived its own immunity from liability for the torts committed by its own agents and authorized full recovery even against the sovereign. As the California courts have found, to require California either to surrender jurisdiction or to limit respondents' recovery to the $25,000 maximum of the Nevada statute would be obnoxious to its statutorily based policies of jurisdiction over nonresident motorists and full recovery. The Full Faith and Credit Clause does not require this result.

IV

Even apart from the Full Faith and Credit Clause, Nevada argues that the Constitution implicitly establishes a Union in

which the States are not free to treat each other as unfriendly sovereigns, but must respect the sovereignty of one another. While sovereign nations are free to levy discriminatory taxes on the goods of other nations or to bar their entry altogether, the States of the Union are not.[27] Nor are the States free to deny extradition of a fugitive when a proper demand is made by the Executive of another State.[28] And the citizens in each State are entitled to all privileges and immunities of citizens in the several States.[29]

Each of these provisions places a specific limitation on the sovereignty of the several States. Collectively they demonstrate that ours is not a union of 50 independent sovereigns. But these provisions do not imply that any one State's immunity from suit in the courts of another State is anything other than a matter of comity. Indeed, in view of the Tenth Amendment's reminder that powers not delegated to the Federal Government nor prohibited to the States are reserved to the States or to the people,[30] the existence of express limitations on state sovereignty may equally imply that no unstated limitations on state power were intended by the Framers.

In the past, this Court has presumed that the States intended to adopt policies of broad comity towards one another. But this presumption reflected an understanding of state policy, rather than a constitutional command. As this Court stated in *Bank of Augusta* v. *Earle*, 13 Peters 519, 590:

> "The intimate union of these states, as members of the same great political family; the deep and vital interests

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[27] See U. S. Const., Art. I, § 8.

[28] *Id.*, Art. IV, § 2.

[29] *Ibid.*

[30] The Tenth Amendment to the United States Constitution provides:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

> which bind them so closely together; should lead us, in the absence of proof to the contrary, to presume a greater degree of comity, and friendship, and kindness towards one another, than we should be authorized to presume between foreign nations. And when (as without doubt must occasionally happen) the interest or policy of any state requires it to restrict the rule, it has but to declare its will, and the legal presumption is at once at an end."

In this case, California has "declared its will"; it has adopted as its policy full compensation in the courts of its State for injuries on its highways resulting from the negligence of others, whether those others be residents or nonresidents, agents of the State or private citizens. Nothing in the Federal Constitution authorizes or obligates this Court to frustrate that policy out of enforced respect for the sovereignty of Nevada.[21]

In this Nation each sovereign governs only with the consent of the governed. The people of Nevada have consented to a system in which their State is subject only to limited liability in tort. But the people of California, who have had no voice in Nevada's decision, have adopted a different system. Each of these decisions is equally entitled to our respect.

Whether it is wise policy, as a matter of harmonious interstate relations, for States to accord each other immunity or to respect any established limits on liability, is ultimately a matter for the States themselves, or for Congress to decide. In the absence of constitutional or statutory authority, a federal court may not require any State to modify its own legitimate policies. Indeed, if a federal court were to hold, by inference from the structure of our Constitution and nothing

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[21] Cf. *Georgia* v. *Chattanooga*, 264 U. S. 472, 480 ("Land acquired by one State in another State is held subject to the laws of the latter and to all incidents of private ownership. The proprietary right of the owning State does not restrict or modify the power of eminent domain of the State where the land is situated.").

else, that California is not free in this case to enforce its policy of full compensation, that holding would constitute the real intrusion on the sovereignty of the States—and the power of the people—in our Union.

The judgment of the California Court of Appeal is affirmed.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

January 15, 1979

Re: No. 77-1337 - University of Nevada v. Hall

Dear John:

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Mr. Justice Stevens

Copies to the Conference

DW 1/15/79

There may be situations where there could result from a suit in the courts of another state. We

Memorandum

To: Justice Powell

Re: Proposed Footnote in Univ. Nevada v. Hall

I would consider adding the following footnote after "recovery." on page 14, line 31:

"California's exercise of jurisdiction in this case poses no substantial threat to our constitutional system of cooperative federalism: ~~It is difficult to imagine how~~ suits involving traffic accidents occurring outside of Nevada ~~are likely to~~ hardly could interfere with Nevada's ~~ability to function as a State.~~ capacity to fulfil its own sovereign responsibilities, for example, ~~But we~~ express no view as to whether a state could entertain suits against a sister state with respect to sovereign acts taken within the sister state's borders. See R. Weintraub, Commentary on the Conflict of Laws, 408-19 (1971)."

The Weintraub citation is taken from my bench memo; the library is getting the book from L.C. so I can check it.

1/15/79 David

DW 1/13/79

Memorandum

To: Justice Powell

Re: Justice Stevens' opinion in Nevada v. Hall

The sole concern I have concerning Justice Stevens' opinion is with pp 13-14. As we have discussed, I think it is quite proper for California to entertain suits against Nevada with respect to auto accidents occurring on California highways. Justice Stevens concludes that this is so because California has a "substantial" (p. 14) and "legitimate" (p. 16) interest in such matters. I do not question the substantiality and legitimacy of California's interest. My concern, however, is that there may be some cases in which one state might have a substantial and legitimate interest in disputes involving sovereign acts of sister states. Thus, for example, California may have a legitimate interest in the manner in which Nevada develops its public lands. To allow California residents to sue the State of Nevada with respect to such matters in California courts, however, could pose a substantial threat to our federal scheme.

The concern I am setting forth may be too speculative to deserve addressing in this opinion. Nonetheless, as I described in my bench memorandum to you, I would prefer to say

that California acted within its constitutional rights in this case because California's substantial interest in the subject matter of the suit was not plainly overshadowed by the threat such lawsuits pose to our federal fabric. A standard phrased in such language would leave the Court an "out" if in some future case it is apparent that a state's actions are likely to lead to judicial warfare among the states. If you were to agree with the point I make here, it is possible that it could be accomodated in a footnote inserted at the end of the last full sentence on page 14 (just before roman numeral four). The footnote could say that we do not here consider whether the entertaining of some suits against sister states might be so obnoxious to our scheme of federalism that it could not be justified even by a substantial, legitimate state interest.

1/15/79 David

January 16, 1979

77-1337 University of Nevada v. Hall

Dear John:

In a separate note, I am joining your opinion in the above case.

It is a fine opinion, and I am happy to join it. I do have one suggestion that perhaps you will consider. As you suggest, comity among the states should prevent our decision in this case from producing reciprocal-type litigation on questions more closely related to state sovereignty than a tort action. It is difficult to foresee the types of situations that may arise. I would therefore be happier if your opinion had some sort of caveat.

Possibly a footnote along the following lines would serve this purpose:

> "California's exercise of jurisdiction in this case poses no substantial threat to our constitutional system of cooperative federalism. Suits involving traffic accidents occurring outside of Nevada could hardly interfere with Nevada's capacity to fulfil its own sovereign responsibilities. There may be situations where this could result from a suit in the courts of another state. We express no view, for example, as to whether a state could entertain suits against a sister state with respect to sovereign acts taken within the sister state's borders. See R. Weintraub, Commentary on the Conflict of Laws, 408-19 (1971)."

Sincerely,

Mr. Justice Stevens

lfp/ss

January 16, 1979

77-1337 University of Nevada v. Hall

Dear John:

Please join me.

Sincerely,

Mr. Justice Stevens

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

I called John's office & approved this. 1/18 9.15 AM LFP

January 17, 1979

Re: 77-1337 - University of Nevada v. Hall

Dear Lewis:

Would the following new n. 27 at the end of Part III on page 14 take care of your concern?

"27/ California's exercise of jurisdiction in this case poses no substantial threat to our constitutional system of cooperative federalism. Suits involving traffic accidents occurring outside of Nevada could hardly interfere with Nevada's capacity to fulfill its own sovereign responsibilities. We have no occasion, in this case, to consider whether different state policies, either of California or of Nevada, might require a different analysis or a different result. See R. Weintraub, Commentary on the Conflict of Laws, 408-410 (1971)."

Respectfully,

John

Mr. Justice Powell

pp. 7, 10, 14, 15
footnotes renumbered

To: The Chief Justice
Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: _____

Recirculated: JAN 18 79

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77–1337

University of Nevada et al., Petitioners, v. John Michael Hall, Etc., et al. | On Writ of Certiorari to the Court of Appeal of California, First Appellate District.

[January —, 1979]

MR. JUSTICE STEVENS delivered the opinion of the Court.

In this tort action arising out of an automoble collision in California, a California court has entered a judgment against the State of Nevada that Nevada's own courts could not have entered. We granted certiorari to decide whether federal law prohibits the California courts from entering such a judgment or, indeed, from asserting any jurisdiction over another sovereign State.

The respondents are California residents. They suffered severe injuries in an automoble collision on a California highway on May 13, 1968. The driver of the other vehicle, an employee of the University of Nevada, was killed in the collision. It is conceded that he was driving a car owned by the State, that he was engaged in official business, and that the University is an instrumentality of the State itself.

Respondents filed this suit for damages in the Superior Court for the City of San Francisco, naming the administrator of the driver's estate, the University, and the State of Nevada as defendants. Process was served on the State and the University pursuant to the provisions of the California Code authorizing service of process on nonresident motorists.[1]

[1] Section 17451 of the California Code provides:

"The acceptance by a nonresident of the rights and privileges conferred upon him by this code or any operation by himself or agent of a motor

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my change is note N 24 p 14

This includes the change we suggested. The other changes are minor. You have joined. Dave

The trial court granted a motion to quash service on the State, but its order was reversed on appeal. The California Supreme Court held, as a matter of California law, that the State of Nevada was amenable to suit in California courts and remanded the case for trial. *Hall* v. *University of Nevada*, 8 Cal. 3d 522, 503 P. 2d 1363. We denied certiorari. 414 U. S. 820.

On remand, Nevada filed a pretrial motion to limit the amount of damages that might be recovered. A Nevada statute places a limit of $25,000 on any award in a tort action against the State pursuant to its statutory waiver of sovereign immunity.[2] Nevada argued that the Full Faith and Credit

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vehicle anywhere within this state, or in the event the nonresident is the owner of a motor vehicle then by the operation of the vehicle anywhere within this state by any person with his express or implied permission, is equivalent to an appointment by the nonresident of the director or his successor in office to be his true and lawful attorney upon whom may be served all lawful processes in any action or proceeding against the nonresident operator or nonresident owner growing out of any accident or collision resulting from the operation of any motor vehicle anywhere within this state by himself or agent, which appointment shall also be irrevocable and binding upon his executor or administrator." Cal. Code § 17451 (West 1971).

An administrator of the decedent's estate was appointed in California and was served personally.

[2] Nevada Revised Statutes 41.035 (1) as it existed in 1968, found in official edition, Statutes of Nevada 1965, p. 1414, [later amended by Statutes of Nevada 1968, p. 44, Statutes of Nevada 1973, 1532, and Statutes of Nevada 1977, 985, 1539]:

"1. No award for damages in an action sounding in tort brought under NRS 41.031 may exceed the sum of $25,000 to or for the benefit of any claimant. No such award may include any amount as exemplary or punitive damages or as interest prior to judgment."

Nevada Revised Statutes 41.031, found in official edition, Statutes of Nevada, 1965, p. 1413, as amended by Statutes of Nevada, 1975, 209, 421 and Statutes of Nevada 1977, 275.

"1. The State of Nevada hereby waives its immunity from liability and action and hereby consents to have its liability determined in accordance

Clause of the United States Constitution [3] required the California courts to enforce that statute. Nevada's motion was denied, and the case went to trial.

The jury concluded that the Nevada driver was negligent and awarded damages of $1,150,000.[4] The Superior Court entered judgment on the verdict and the Court of Appeal affirmed. After the California Supreme Court denied review, the State of Nevada and its University successfully sought a writ of certiorari. —— U. S. ——

Despite its importance, the question whether a State may claim immunity from suit in the courts of another State

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with the same rules of law as are applied to civil actions against natural persons and corporations, except as otherwise provided in NRS 41.032 to 41.038, inclusive, and subsection 3 of this section, if the claimant complies with the limitations of NRS 41.032 to 41.036, inclusive, or the limitations of the NRS 41.010. The State of Nevada further waives the immunity from liability and action of all political subdivisions of the state, and their liability shall be determined in the same manner, except as otherwise provided in NRS 41.032 to 41.038, inclusive, and subsection 3 of this section, if the claimant complies with the limitations of NRS 41.032 to 41.036, inclusive.

"2. An action may be brought under this section, in a court of competent jurisdiction of this state, against the State of Nevada, any agency of the state, or any political subdivision of the state. In an action against the state or any agency of the state, the State of Nevada shall be named as defendant, and the summons and a copy of the complaint shall be served upon the secretary of state."

[3] Article IV, § 1 provides:

"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

[4] The evidence indicated that respondent, John Hall, a minor at the time of the accident, sustained severe head injuries resulting in permanent brain damage which left him severely retarded and unable to care for himself, and that respondent Patricia Hall, his mother, suffered severe physical and emotional injuries.

has never been addressed by this Court. The question is not expressly answered by any provision of the Constitution; Nevada argues that it is implicitly answered by reference to the common understanding that no sovereign is amenable to suit without its consent—an understanding prevalent when the Constitution was framed and repeatedly reflected in this Court's opinions. In order to determine whether that understanding is embodied in the Constitution, as Nevada claims,[5] it is necessary to consider (1) the source and scope of the traditional doctrine of sovereign immunity; (2) the impact of the doctrine on the framing of the Constitution; (3) the Full Faith and Credit Clause; and (4) other aspects of the Constitution that qualify the sovereignty of the several States.

I

The doctrine of sovereign immunity is an amalgam of two quite different concepts, one applicable to suits in the sovereign's own courts and the other to suits in the courts of another sovereign.

The immunity of a truly independent sovereign from suit in its own courts has been enjoyed as a matter of absolute right for centuries. Only the sovereign's own consent could qualify the absolute character of that immunity.

The doctrine, as it developed at common law, had its origins in the feudal system. Describing those origins, Pollock and Maitland noted that no lord could be sued by a vassal in his own court, but each petty lord was subject to suit in the courts of a higher lord. Since the King was at the apex of the feudal pyramid, there was no higher court in which he

[5] No one claims that any federal statute places any relevant restriction on California's jurisdiction or lends any support to Nevada's claim of immunity. If there is a federal rule that restricts California's exercise of jurisdiction in this case, that restriction must be a part of the United States Constitution.

could be sued.[6] The King's immunity rested primarily on the structure of the feudal system and secondarily on a fiction that the King could do no wrong.[7]

We must, of course, reject the fiction. It was rejected by the colonists when they declared their independence from the Crown,[8] and the record in this case discloses an actual wrong committed by Nevada. But the notion that immunity from suit is an attribute of sovereignty is reflected in our cases.

Chief Justice Jay described sovereignty as the "right to govern"; [9] that kind of right would necessarily encompass the right to determine what suits may be brought in the sovereign's own courts. Thus, Justice Holmes explained sovereign immunity as based "on the logical and practical ground that

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[6] See 1 F. Pollock & F. Maitland, History of English Law 518 (2d ed. 1898) ("He can not be compelled to answer in his own court, but this is true of ever petty lord of every petty manor; that there happens to be in this world no court above his court is, we may say, an accident."); Engdahl, Immunity and Accountability for Positive Governmental Wrongs, 44 U. Colo. L. Rev. 1, 2–5 (1972).

[7] See 1 W. Blackstone, Commentaries on the Laws of England 239 (1765) ("The king, moreover, is not only incapable of doing wrong, but of thinking wrong: he can never mean to do an improper thing.") In fact, however, effective mechanisms developed early in England to redress injuries resulting from the wrongs of the King. See Jaffe, Suits Against Governments and Officers: Sovereign Immunity, 77 Harv. L. Rev. 1, 3–5 (1963).

[8] The Declaration of Independence proclaims:

"That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government . . . and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States."

See generally B. Bailyn, The Ideological Origins of the American Revolution 198–229 (1967).

[9] See *Chisholm* v. *Georgia*, 2 Dall. 419, 472.

there can be no legal right as against the authority that makes the law on which the right depends." [10]

This explanation adequately supports the conclusion that no sovereign may be sued in its own courts without its consent, but it affords no support for a claim of immunity in another sovereign's courts. Such a claim necessarily implicates the power and authority of a second sovereign; its source must be found either in an agreement, express or implied, between the two sovereigns, or in the voluntary decision of the second to respect the dignity of the first as a matter of comity.

This point was plainly stated by Chief Justice Marshall in *The Schooner Exchange* v. *McFaddon*, 7 Cranch 116, which held that an American court could not assert jurisdiction over a vessel in which Napoleon, the reigning emperor of France, claimed a sovereign right. In that case, The Chief Justice observed:

> "The jurisdiction of courts is a branch of that which is possessed by the nation as an independent sovereign power.
>
> "The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction.
>
> "All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source." 7 Cranch 116, 136.

[10] See *Kawananakoa* v. *Polybank*, 295 U. S. 349, 353.

After noting that the source of any immunity for the French vessel must be found in American law, The Chief Justice interpreted that law as recognizing the common usage among nations in which every sovereign was understood to have waived its exclusive territorial jurisdiction over visiting sovereigns, or their representatives, in certain classes of cases.[11]

The opinion in *The Schooner Exchange* makes clear that if California and Nevada were independent and completely sovereign nations, Nevada's claim of immunity from suit in California's courts would be answered by reference to the law of California.[12] It is fair to infer that if the immunity defense

[11] The opinion describes the exemption of the person of the sovereign from arrest or detention in a foreign territory, the immunity allowed to foreign ministers, and the passage of troops through a country with its permission. 7 Cranch, at 137–140.

[12] Were it an independent sovereign Nevada might choose to withdraw its money from California banks, or to readjust its own rules as to California's amenability to suit in the Nevada courts. And it might refuse to allow this judgment to be enforced in its courts. But it could not, absent California's consent and absent whatever protection is conferred by the United States Constitution, invoke any higher authority to enforce rules of interstate comity and to stop California from asserting jurisdiction. For to do so would be wholly at odds with the sovereignty of California.

[13] The States' practice of waiving sovereign immunity in their own courts is a relatively recent development; it was only last year, for example, that Pennsylvania concluded that the defense would no longer be recognized, at least in certain circumstnces, in that State. See *Mayle* v. *Pennsylvania*, 388 A. 2d 709 (Pa. 1978); Act. No. 1978–152, § 42 Pa. C. S. A. §§ 5101, 5110 (Sept. 28, 1978). But as States have begun to waive their rights to immunity in their own courts, it was only to be expected that the privilege of immunity afforded to other States as a matter of comity would be subject to question.

Similarly, as concern for redress of individual injuries has enhanced, so too have moves toward the reappraisal of the practices of sovereign nations according absolute immunity to foreign sovereigns. The governing rule today, in many nations, is one of restrictive rather than absolute immunity. See 26 Dept. State Bull. 984 (1952); Note, The Jurisdictional Immunity of Foreign Sovereigns, 63 Yale L. J. 1148 (1954); Mareniak,

Nevada asserts today had been raised in 1812 when *The Schooner Exchange* was decided, or earlier when the Constitution was being framed, the defense would have been sustained by the California courts.[13] By rejecting the defense in this very case, however, the California courts have told us that whatever California law may have been in the past, it no longer extends immunity to Nevada as a matter of comity.

Nevada quite rightly does not ask us to review the California courts' interpretation of California law. Rather, it argues that California is not free, as a sovereign, to apply its own law, but is bound instead by a federal rule of law implicit in the Constitution that requires all of the States to adhere to the sovereign immunity doctrine as it prevailed when the Constitution was adopted. Unless such a federal rule exists, we of course have no power to disturb the judgment of the California court

II

Unquestionably the doctrine of sovereign immunity was a matter of importance in the early days of independence.[14] Many of the States were heavily indebted as a result of the Revolutionary War. They were vitally interested in the question whether the creation of a new federal sovereign, with courts of its own, would automatically subject them, like lower English lords, to suits in the courts of the "higher" sovereign.

But the question whether one State might be subject to suit in the courts of another State was apparently not a matter of concern when the new Constitution was being drafted and ratified. Regardless of whether the Framers were correct in assuming, as presumably they did, that prevailing notions of comity would provide adequate protection against the

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Hall v. Nevada, State Court Jurisdiction Over Sister States v. American State Sovereign Immunity, 63 Calif. L. Rev. 1144, 1155–1157 (1975).

[14] See generally C. Jacobs, The Eleventh Amendment and Sovereign Immunity 1–40 (1972).

unlikely prospect of an attempt by the courts of one State to assert jurisdiction over another, the need for constitutional protection against that contingency was not discussed.

The debate about the suability of the States focussed on the scope of the judicial power of the United States authorized by Art. III.[15] In The Federalist, Hamilton took the position that this authorization did not extend to suits brought by an individual against a nonconsenting State.[16] The contrary position was also advocated [17] and actually prevailed in this Court's decision in *Chisholm* v. *Georgia*, 2 Dall. 419.

The *Chisholm* decision led to the prompt adoption of the

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[15] Article III provides, in relevant part:

"Section 1. The judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish . . . .

"Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . . to Controversied to which the United States shall be a Party;—to Controversied between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

[16] The Federalist No. 81, p. 547 (Heritage Press 1945) (A. Hamilton) ("[it] is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent"); see 2 J. Elliot, The Debates in the Several State Conventions on the Adoption of the Federal Constitution 555 (John Marshall) ("I hope that no gentleman will think that a state will be called at the bar of the federal court . . . . The intent is to enable states to recover claims of individuals residing in other states. I contend this construction is warranted by the words.") *Id.*, at 533 (James Madison)

[17] See 2 *id.*, at 491 (James Wilson). ("When a citizen has a controversy with another state, there ought to be a tribunal where both parties may stand on a just and equal footing."); C. Jacobs, *supra*, at 40 ("the legislative history of the Constitution hardly warrants the conclusion drawn by some that there was a general understanding, at the time of ratification, that the states would retain their sovereign immunity.").

Eleventh Amendment.[18] That Amendment places explicit limits on the powers of federal courts to entertain suits against a State.[19]

The language used by the Court in cases construing these limits, like the language used during the debates on ratification of the Constitution, emphasized the widespread acceptance of the view that a sovereign State is never amenable to suit without its consent.[20] But all of these cases, and all of the relevant debate, concerned questions of federal court jurisdiction and the extent to which the States, by ratifying the Constitution and creating federal courts, had authorized suits against themselves in those courts. These decisions do not answer the question whether the Constitution places any

[18] See *Hans* v. *Louisiana*, 134 U. S. 1, 11; *Monaco* v. *Mississippi*, 292 U. S. 313, 325.

[19] The Eleventh Amendment to the Constitution provides:

"The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

Even as so limited, however, the Eleventh Amendment has not accorded the States absolute sovereign immunity in federal court actions. The States are subject to suit by both their sister States and the United States. See, *e. g.*, *North Dakota* v. *Minnesota*, 263 U. S. 365, 372; *United States* v. *Mississippi*, 380 U. S. 128, 140–141. Further, prospective injunction and declaratory relief is available against States in suits in federal court in which state officials are the nominal defendants. See *Ex parte Young*, 209 U. S. 123; *Edelman* v. *Jordan*, 415 U. S. 651. See generally Baker, Federalism and the Eleventh Amendment, 48 U. Colo. L. Rev. 139 (1977).

[20] See, *e. g.*, *Hans* v. *Louisiana*, *supra*, at 18 ("The state courts have no power to entertain suits by individuals against a state without its consent. Then how does the circuit court, having only concurrent jurisdiction, acquire any such power?"); *Monaco* v. *Mississippi*, *supra*, at 322–323 ("There is also the postulate that States of the Union, still possessing attributes of sovereignty, shall be immune from suits, without their consent, save where there has been 'a surrender of this immunity in the plan of the convention.'").

limit on the exercise of one's State's power to authorize its courts to assert jurisdiction over another State. Nor does anything in Art. III authorizing the judicial power of the United States, or in the Eleventh Amendment limitation on that power, provide any basis, explicit or implicit, for this Court to impose limits on the powers of California exercised in this case. A mandate for federal court enforcement of interstate comity must find its basis elsewhere in the Constitution.

III

Nevada claims that the Full Faith and Credit Clause of the Constitution requires California to respect the limitations on Nevada's statutory waiver of its immunity from suit. That waiver only gives Nevada's consent to suits in its own courts. Moreover, even if the waiver is treated as a consent to be sued in California, California must honor the condition attached to that consent and limit respondent's recovery to $25,000, the maximum allowable in an action in Nevada's courts.

The Full Faith and Credit Clause does require each State to give effect to official acts of other States. A judgment entered in one State must be respected in another provided that the first State had jurisdiction over the parties and the subject matter. Moreover, in certain limited situations, the courts of one State must apply statutory law of another State. Thus, in *Bradford Electric Co. v. Clapper*, 286 U. S. 145, the Court held that a federal court sitting in New Hampshire was required by the Constitution to apply Vermont law in an action between a Vermont employee and a Vermont employer arising out of a contract made in Vermont.[21] But this Court's

[21] Justice Stone concurred in the *Clapper* decision, expressing the view that the result was supported by the conflict of law rule that a New Hampshire court could be expected to apply in this situation, and that it was unnecessary to rely on the Constitution to support the Court's

decision in *Pacific Insurance Company* v. *Industrial Accident Commission*, 306 U. S. 493, clearly establishes that the Full Faith and Credit Clause does not require a State to apply another State's law in violation of its own legitimate public policy.[22]

The question in *Pacific Insurance* was whether the Full Faith and Credit Clause precluded California from applying its own workmen's compensation act in the case of an injury suffered by a Massachusetts employee of a Massachusetts employer while in California in the course of his employment. Even though the employer and employee had agreed to be bound by Massachusetts law, this Court held that California was not precluded from applying its own law imposing greater responsibilities on the employer. In doing so, the Court reasoned:

> "It has often been recognized by this Court that there are some limitations upon the extent to which a state may be required by the full faith and credit clause to enforce even the judgment of another state in contravention of its own statutes or policy . . . . And in the case of statutes, the extrastate effect of which Congress has not prescribed, as it may under the constitutional provision, we think the conclusion is unavoidable that the full faith and credit clause does not require one state to substitute for its own statute, applicable to persons and events within it, the conflicting statute of another state, even though that statute is of controlling force in the courts of

judgment. He also made it clear that the rule of the case did not encompass an action in which the source of the relationship was not a Vermont contract between a Vermont employer and a Vermont employee. 286 U. S., at 163–165.

[22] See also *Alaska Packers Assn.* v. *Comm'n*, 294 U. S. 532; *Bonaparte* v. *Tax Court*, 104 U. S. 592 (holding that a law exempting certain bonds of the enacting State from taxation did not apply extraterritorially by virtue of the Full Faith and Credit Clause).

> the state of its enactment with respect to the same persons and events . . . . Although Massachusetts has an interest in safeguarding the compensation of Massachusetts employees while temporarily abroad in the course of their employment, and may adopt that policy for itself, that could hardly be thought to support an application of the full faith and credit clause which would override the constitutional authority of another state to legislate for the bodily safety and economic protection of employees injured within it. Few matters could be deemed more appropriately the concern of the state in which the injury occurs or more completely within its power." 306 U. S., at 502–503.

The *Clapper* case was distinguished on the ground that "there was nothing in the New Hampshire statute, the decisions of its courts, or in the circumstances of the case, to suggest that reliance on the provisions of the Vermont statute, as a defense to the New Hampshire suit, was obnoxious to the policy of New Hampshire." *Id.*, at 504.[23] In *Pacific Insurance*, on the other hand, California had its own scheme governing compensation for injuries in the State, and the California courts had found that the policy of that scheme would be frustrated were it denied enforcement. "Full faith and credit," this Court concluded, "does not here enable one state to legislate for the other or to project its laws across state lines so as to preclude the other from prescribing for itself the legal consequence of acts within it." *Id.*, at 504–505.

[23] Justice Stone who had concurred separately in *Clapper*, see n. 24, *supra*, wrote for the Court in *Pacific Insurance*. After distinguishing *Clapper*, he limited its holding to its facts:

"The *Clapper* case cannot be said to have decided more than that a state statute applicable to employer and employee within the state, which by its terms provides compensation for the employee if he is injured in the course of his employment while temporarily in another state, will be given full faith and credit in the latter when not obnoxious to its policy." 306 U. S., at 504.

A similar conclusion is appropriate in this case. The interest of California afforded such respect in the *Pacific Insurance* case was in providing for "the bodily safety and economic protection of employees injured within it." *Id.*, at 503. In this case, California's interest is the closely related and equally substantial one of providing "full protection to those who are injured on its highways through the negligence of both residents and nonresidents." *Hall* v. *University of Nevada* (appendix to petition at 7). To effectuate this interest, California has provided by statute for jurisdiction in its courts over residents and nonresidents alike to allow those injured on its highways through the negligence of others to secure full compensation for their injuries in the California courts.

In further implementation of that policy, California has unequivocally waived its own immunity from liability for the torts committed by its own agents and authorized full recovery even against the sovereign. As the California courts have found, to require California either to surrender jurisdiction or to limit respondents' recovery to the $25,000 maximum of the Nevada statute would be obnoxious to its statutorily based policies of jurisdiction over nonresident motorists and full recovery. The Full Faith and Credit Clause does not require this result [24]

IV

Even apart from the Full Faith and Credit Clause, Nevada argues that the Constitution implicitly establishes a Union in which the States are not free to treat each other as unfriendly sovereigns, but must respect the sovereignty of one another.

[24] California's exercise of jurisdiction in this case poses no substantial threat to our constitutional system of cooperative federalism. Suits involving traffic accidents occurring outside of Nevada could hardly interfere with Nevada's capacity to fulfill its own sovereign responsibilities. We have no occasion, in this case, to consider whether different state policies, either of California or of Nevada, might require a different analysis or a different result

While sovereign nations are free to levy discriminatory taxes on the goods of other nations or to bar their entry altogether, the States of the Union are not.[25] Nor are the States free to deny extradition of a fugitive when a proper demand is made by the Executive of another State.[26] And the citizens in each State are entitled to all privileges and immunities of citizens in the several States.[27]

Each of these provisions places a specific limitation on the sovereignty of the several States. Collectively they demonstrate that ours is not a union of 50 wholly independent sovereigns. But these provisions do not imply that any one State's immunity from suit in the courts of another State is anything other than a matter of comity. Indeed, in view of the Tenth Amendment's reminder that powers not delegated to the Federal Government nor prohibited to the States are reserved to the States or to the people,[28] the existence of express limitations on state sovereignty may equally imply that caution should be exercised before concluding that unstated limitations on state power were intended by the Framers.

In the past, this Court has presumed that the States intended to adopt policies of broad comity towards one another. But this presumption reflected an understanding of state policy, rather than a constitutional command. As this Court stated in *Bank of Augusta* v. *Earle*, 13 Peters 519, 590:

> "The intimate union of these states, as members of the same great political family; the deep and vital interests

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[25] See U. S. Const., Art. I, § 8.

[26] *Id.*, Art. IV, § 2.

[27] *Ibid.*

[28] The Tenth Amendment to the United States Constitution provides:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

> which bind them so closely together; should lead us, in the absence of proof to the contrary, to presume a greater degree of comity, and friendship, and kindness towards one another, than we should be authorized to presume between foreign nations. And when (as without doubt must occasionally happen) the interest or policy of any state requires it to restrict the rule, it has but to declare its will, and the legal presumption is at once at an end."

In this case, California has "declared its will"; it has adopted as its policy full compensation in the courts of its State for injuries on its highways resulting from the negligence of others, whether those others be residents or nonresidents, agents of the State or private citizens. Nothing in the Federal Constitution authorizes or obligates this Court to frustrate that policy out of enforced respect for the sovereignty of Nevada.[29]

In this Nation each sovereign governs only with the consent of the governed. The people of Nevada have consented to a system in which their State is subject only to limited liability in tort. But the people of California, who have had no voice in Nevada's decision, have adopted a different system. Each of these decisions is equally entitled to our respect.

It may be wise policy, as a matter of harmonious interstate relations, for States to accord each other immunity or to respect any established limits on liability. They are free to do so. But if a federal court were to hold, by inference from the structure of our Constitution and nothing else, that California is not free in this case to enforce its policy of full compensation, that holding would constitute the real intru-

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[29] Cf. *Georgia v. Chattanooga*, 264 U. S. 472, 480 ("Land acquired by one State in another State is held subject to the laws of the latter and to all incidents of private ownership. The proprietary right of the owning State does not restrict or modify the power of eminent domain of the State where the land is situated.").

sion on the sovereignty of the States—and the power of the people—in our Union.

The judgment of the California Court of Appeal is affirmed.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 18, 1979

Re: No. 77-1337 - University of Nevada
v. John Michael Hall

Dear John,

With the change we talked about, I join your opinion in this case.

Sincerely yours,

Byron

Mr. Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 19, 1979

RE: No. 77-1337 University of Nevada v. Hall

Dear John:

I agree.

Sincerely,

Bill

Mr. Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 19, 1979

Re: No. 77-1337 - University of Nevada v. Hall

Dear John:

Please join me.

Sincerely,

T.M.

Mr. Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 31, 1979

Re: 77-1337 - University of Nevada v. Hall

Dear John:

After oral argument I remained perplexed and somewhat ambivalent about this case, although I came down to affirm.

The passage of time has not cleared this up and, indeed, has revived my concerns. This holding is a large step and if Nevada has removed all its assets from California this holding could generate another case when California seeks the aid of Nevada courts to enforce the judgment.

Harry and Bill Rehnquist voted to reverse and I assume one of them will be writing. I prefer to wait to see what is said on that side.

Regards,

WEB

Mr. Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 8, 1979

Re: No. 77-1337 - Nevada v. Hall

Dear Harry:

Please join me in your dissenting opinion.

Sincerely,

Mr. Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 13, 1979

Re: No. 77-1337 - University of Nevada v. Hall

Dear John:

I have joined Harry's dissent in this case, which I am sure will be the principal one, but may want to write a separate dissent enlarging on one point. I will try not to hold you up for more than a few days.

Sincerely,

Mr. Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 1, 1979

Re: 77-1337 - University of Nevada v. Hall

Dear Harry & Bill:

Please show me joining both of you in dissent.

Regards,

WEB

Mr. Justice Blackmun
Mr. Justice Rehnquist

Copies to the Conference

THE C. J.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. P. S.
								11/13/78
letter 1/31/79	join JPS 1/19/79	join JPS 1/15/79	join JPS 1/18/79	join JPS 1/19/79	1st draft 2/7/79	join JPS 1/16/79	join HAB 2/8/79	1st draft 1-11-79 2nd draft 1/16/79
join HAB + WHR 3/1/79					2nd draft 2/12/79		1st draft dissent 2/27/79	3rd draft 1/18/79
							2nd draft 3/2/79	4th draft 2/9/79

77-1337 Univ. of Nevada v. Hall