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Constitutional Law—State Sovereign Immunity—Nevada v. Hall, 440 U.S. 410 (1979)

Richard H. Pierson

CONSTITUTIONAL LAW—STATE SOVEREIGN IMMUNITY—*Nevada v. Hall*, 440 U.S. 410 (1979).

In 1968, plaintiffs, California residents, were involved in an automobile accident in California. The other vehicle was owned by the State of Nevada and operated by a University of Nevada employee in the course of his employment. Plaintiffs brought suit in a California court against the State of Nevada, the University of Nevada, and the deceased employee's estate. The trial court quashed service of process upon the State and the University of Nevada for lack of jurisdiction.[1] The California Court of Appeals affirmed, reasoning that Nevada's sovereign immunity precluded California's jurisdiction over Nevada without its consent.[2] The California Supreme Court reversed and remanded the case, holding that Nevada's sovereignty did not extend beyond its own borders and that Nevada was, therefore, not immune from suit for its activities in other states.[3]

On remand, judgment was rendered against Nevada for $1,150,000.[4] The California Court of Appeals affirmed,[5] and the California Supreme Court denied certiorari.[6] The United States Supreme Court granted certiorari and held that a state may be sued without its consent in the courts of a sister state.[7]

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1. Nevada v. Hall, 440 U.S. 410, 411–12 (1979). Plaintiffs claimed jurisdiction over the defendants pursuant to California's Nonresident Motorist Statute, CAL. CIV. PROC. CODE § 17451 (West 1971).

2. Hall v. University of Nev., 1 Civ. No. 28689 (Calif. Ct. App. filed May 11, 1972, *vacated* Dec. 21, 1972).

3. Hall v. University of Nev., 8 Cal. 3d 522, 503 P.2d 1363, 105 Cal. Rptr. 355 (1972). The court analogized Nevada's position to that of a state entering a federally regulated field of activity (*see, e.g.*, Parden v. Terminal Ry., 377 U.S. 184 (1964)), and to the situation of one state owning property which is located in another state. *See* note 8 *infra*. The court refused to grant immunity as a matter of comity, citing California's strong policy against sovereign immunity and in favor of compensation of tort victims. 8 Cal. 3d at 525–26, 503 P.2d at 1365–66, 105 Cal. Rptr. at 357–58. The United States Supreme Court declined to grant a writ of certiorari at that time, 414 U.S. 820 (1973), and the case was remanded for trial.

For commentary on the California Supreme Court decision, see Martiniak, Hall v. Nevada: *State Court Jurisdiction over Sister States v. American State Sovereign Immunity*, 63 CALIF. L. REV. 1144 (1975); Note, *Hall v. University of Nevada: Sovereign Immunity and the Transitory Action*, 27 ARK. L. REV. 546 (1973); Note, *Sovereign Immunity—May a State Assert In Personam Jurisdiction over a Sister State Without its Consent?*, 53 B.U.L. REV. 736 (1973); Note, *Sovereignty of a State Does Not Extend Into the Territory of Another State so as to Create Immunity From Suit Arising Out of the Sister State's Activities Within the Boundaries of the Forum State*, 6 LOY. L.A.L. REV. 585 (1973).

4. Nevada v. Hall, 440 U.S. at 413.

5. Hall v. University of Nev., 74 Cal. App. 3d 280, 141 Cal. Rptr. 439 (1977). The Court of Appeals also affirmed the trial court's decision that the full faith and credit clause did not require California courts to apply Nevada's statutory limitation of liability, which was $25,000 at the time of the accident. *See* NEV. REV. STAT. § 41.035 (1965).

6. Nevada v. Hall, 440 U.S. at 413.

7. Nevada v. Hall, 440 U.S. 410 (1979).

The doctrine of state sovereign immunity in the courts of another state and the federal courts will be examined in section I of this casenote. In section II, the Court's reasoning in *Nevada v. Hall* will be discussed. The Court's conclusion that the Constitution places no limit on a state court's jurisdiction over a sister state will be challenged in part A of section III. The ambiguities in the *Hall* opinion that render the scope of a state court's jurisdiction uncertain and the desirability of limiting that jurisdiction will be examined in part B of section III. Finally, this note will suggest how the Court might limit a state court's jurisdiction over a sister state in future cases in a manner consistent with *Hall*.

I. BACKGROUND

Until *Nevada v. Hall*, it was widely assumed that a state could not be sued without its consent in the courts of another state.[8] Although rarely articulated, several theories underlie this claim of immunity. The common law doctrine of sovereign immunity[9] protects a state from suit in its own courts, and state courts have extended this immunity to other states as a matter of comity.[10] A similar privilege existed in the field of interna-

8. *See generally* 72 AM. JUR. 2d *States, Territories, and Dependencies* § 99 (1974); 81A C.J.S. *States* § 298 (1977); Annot., 81 A.L.R.3d 1239 (1977). An exception to this rule is where a state owns property situated in another state. The forum state's interest in determining the title and status of property within its borders justifies the state's jurisdiction. *See, e.g.*, Georgia v. Chattanooga, 264 U.S. 472, 480–82 (1924). The application of this exception to the present case is discussed in Martiniak, *supra* note 3, at 1147–48; Note, Hall v. University of Nevada: *Sovereign Immunity and the Transitory Action*, 27 ARK. L. REV. 546, 549 (1973); Note, *Sovereign Immunity—May a State Assert In Personam Jurisdiction over a Sister State Without its Consent?*, 53 B.U.L. REV. 736, 738–39 (1973).

9. The common law doctrine of sovereign immunity originated in England as flowing from the principle that the King was the source of all justice. The courts derived their authority from the King and, therefore, had no authority over him without his consent. Only later was this principle articulated into Blackstone's apology that "[t]he King can do no wrong." Pugh, *Historical Approach to the Doctrine of Sovereign Immunity*, 13 LA. L. REV. 476 (1953). *But see* W. PROSSER, HANDBOOK OF THE LAW OF TORTS 970–71 (4th ed. 1971); RESTATEMENT (SECOND) OF TORTS § 895 B, Comment a (1977). Despite the fact that the American political system (with its balance of powers and egalitarian principals) differed markedly from England's, the doctrine was early accepted into American law. Justice Holmes explained the rationale of the doctrine as being based "on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends." Kawananakoa v. Polyblank, 205 U.S. 349, 353 (1907), *cited in* Nevada v. Hall, 440 U.S. at 415–16.

10. There are two reported instances where immunity has been granted as a matter of comity. The *Hall* Court read Paulus v. South Dakota, 52 N.D. 84, 201 N.W. 867 (1924), and Paulus v. South Dakota II, 58 N.D. 643, 227 N.W. 52 (1924) as such a case. *See* notes 27 & 28 and accompanying text for a discussion of the *Paulus* case. Since the *Hall* decision, New York has also extended immunity to a sister state as a matter of comity. Ehrlich-Bober & Co., Inc. v. University of Houston, 69 A.D.2d 75, 418 N.Y.S.2d 81 (1979).

The doctrine of comity, as it applies to sovereign immunity among nations, is a voluntary refusal

tional law.[11] In addition, the eleventh amendment[12] appeared to provide a constitutional basis for sovereign immunity and, thus, to foreclose the possibility that a state could be sued without its consent by a citizen of another state in any forum.[13] Further, *in personam* jurisdiction of state courts was principally confined to the citizens of the state or persons within its borders;[14] obviously, one state cannot be physically present in another state.

With the decline of common law sovereign immunity,[15] the emergence of "restrictive immunity" in international law,[16] and the advent of long-arm jurisdiction,[17] the traditional barriers to suit in the courts of a sister state were removed. As states increasingly assumed formerly private ac-

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by the courts of one nation to entertain a suit against another in order to promote goodwill and reciprocity. Comment, *The American Doctrine of Sovereign Immunity: An Historical Analysis*, 13 VILL. L. REV. 583, 586 (1968).

11. In The Schooner Exchange v. McFadden, 11 U.S. (7 Cranch) 116 (1812)(cited by the *Hall* Court, 440 U.S. at 416), the Court held that the immunity of a foreign state was not absolute, but was based upon the forum state's consent. The *Schooner Exchange* Court, however, found that the United States had waived its jurisdiction, based upon "the common consent of the nation states and their coequal dignity." Comment, *The American Doctrine of Sovereign Immunity: An Historical Analysis*, 13 VILL. L. REV. 583, 586 (1968). It was not until the latter half of the twentieth century that the United States abandoned absolute immunity to international sovereigns in favor of "restrictive immunity." *See generally id.*; Nevada v. Hall, 440 U.S. at 417 n.13.

12. U.S. CONST. amend. XI, provides as follows: "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."

13. *See* cases cited in 440 U.S. at 437–41 (Rehnquist, J., dissenting).

14. Pennoyer v. Neff, 95 U.S. 714 (1877).

15. As tort law became increasingly concerned with compensating the victim and governments undertook more proprietary activities, critics argued that the government should not hide behind a defense with "feudal origins." *See, e.g.*, Fox, *The King Must Do No Wrong: A Critique of the Current Status of Sovereign and Official Immunity*, 25 WAYNE L. REV. 177 (1979); Weick, *Erosion of State Sovereign Immunity and the Eleventh Amendment by Federal Decisional Law*, 10 AKRON L. REV. 583 (1977). This criticism has been most pronounced in California. In its decision in the *Hall* case, the California Supreme Court declared that "the doctrine of sovereign immunity must be deemed suspect." Hall v. University of Nev., 8 Cal. 3d at 526, 503 P.2d at 1366, 105 Cal. Rptr. at 358.

16. *See* note 11 *supra*.

17. The traditional basis for personal jurisdiction is the presence of the defendant in the forum state. *See* note 14 *supra*. In more recent years state jurisdiction has been extended through "long-arm" statutes, such as the nonresident motorist statute used in this case. Assuming that there are sufficient "minimum contacts" to satisfy the requirement of "due process" under the fourteenth amendment, *see* discussion at notes 72 & 74 and accompanying text *infra*, the long-arm statutes assert jurisdiction over a corporation or individual that has committed a tortious act or caused harmful consequences in the forum state. *See generally* Reese & Galston, *Doing an Act or Causing Consequences as a Basis of Judicial Jurisdiction*, 44 IOWA L. REV. 249 (1959); Comment, *The Development of In Personam Jurisdiction over Individuals and Corporations in California: 1849–1970*, 21 HASTINGS L.J. 1105, 1108–10 (1970); Note, *Negligent Acts Committed Outside Forum Causing Harm in Forum as Basis of In Personam Jurisdiction*, 46 IOWA L. REV. 868 (1961). For an example of a "universal long-arm statute," see CAL. CIV. PROC. CODE § 410.10 (West 1973), *quoted in* note 69 *infra*.

tivites, governmental immunities were widely criticized, and states began to limit that immunity by statute or judicial decision.[18] It was inevitable that the state's immunity from suit in the courts of a sister state would also be brought under scrutiny and that, eventually, the defendant state would be forced to articulate a more specific source from which the immunity could be derived.[19]

Although the Constitution provides for federal court jurisdiction in suits "between a State and Citizens of another State,"[20] it does not address the issue whether state courts can exercise concurrent jurisdiction. There is little evidence to suggest that this was an issue during the constitutional convention or subsequent ratification debates; most of the attention was focused on the extent of federal court jurisdiction over a state.[21] Whatever the founders' intent, in *Chisolm v. Georgia*[22] the Supreme Court read article III literally and held that a state could be sued in the federal courts by a citizen of another state. The states reacted quickly by drafting and ratifying the eleventh amendment, which removed jurisdiction over suits between a state and a citizen of another state from the federal courts.[23] Although early court decisions broadly interpreted the amendment to prevent any suit against a state in the federal courts by a citizen of another state,[24] the more recent trend has been to allow a state to be sued in the federal courts in certain classes of cases.[25]

18. *See* note 15 *supra*.

19. *See* Nevada v. Hall, 440 U.S. at 417 n.13.

20. U.S. CONST. art. III, § 2.

21. *See* C. JACOBS, THE ELEVENTH AMENDMENT AND SOVEREIGN IMMUNITY 1–26 (1972). At the time of ratification, it was widely argued that the federal court jurisdiction granted in article III was available only in suits where a state was the plaintiff, not the defendant. Later scholars have argued whether this was an accurate interpretation of an "understanding" that existed at the time of the Constitutional Convention, or whether Hamilton later adopted this view to appease critics who represented a renewed interest in states' rights. *Id.*

22. 2 U.S. (2 Dall.) 419 (1793).

23. *See* note 12 *supra* (text of the eleventh amendment).

24. This early rule of construction was described by one author as follows: "The eleventh amendment is not to be interpreted literally, but according to the 'fundamental rule of jurisprudence' that 'a state may not be sued without its consent.' " Weick, *Erosion of State Sovereign Immunity and the Eleventh Amendment by Federal Decisional Law*, 10 AKRON L. REV. 583 (1977), *citing Ex parte* New York, 256 U.S. 490, 497 (1921). Applying this rule of construction the Court has prohibited suits against states that violate the spirit, if not the letter, of the eleventh amendment. Thus, the Court has held that the eleventh amendment prohibits federal jurisdiction in suits against a state by the state's own citizens, Hans v. Louisiana, 134 U.S. 1 (1890); where a state is the real party in interest though not named as defendant, Ford Motor Co. v. Department of Treasury, 323 U.S. 459 (1945); and where a state is suing another state in federal court to recover claims assigned to it by its citizens, New Hampshire v. Louisiana, 108 U.S. 76 (1883).

25. The most noted exception has been under the "implied waiver" doctrine, according to which a state is said to have waived the eleventh amendment protection by entering into a federally regulated activity. *See, e.g.*, Parden v. Terminal Ry., 377 U.S. 184 (1964); Petty v. Tennessee-Missouri Bridge Comm'n, 359 U.S. 275 (1959). This doctrine has been restricted somewhat by Edelman v.

There are only two previously reported cases in which a state was sued without its consent in the courts of a sister state. In *Nathan v. Virginia,*[26] plaintiff sought to attach goods in Philadelphia belonging to the State of Virginia. The Court of Common Pleas dismissed the suit without discussion, apparently agreeing with defendant's argument that sovereign immunity, as applied among sovereign nations, prevented the Pennsylvania courts from entertaining a suit against a sister state without its consent.

In *Paulus v. South Dakota,*[27] the North Dakota Supreme Court refused to entertain a suit against the State of South Dakota arising from defendant's mining operations in the forum state. While the *Paulus* court did not specify the source of South Dakota's immunity, the United States Supreme Court in *Hall* interpreted *Paulus* to represent a grant of immunity as a matter of comity, not as an inherent limitation upon the jurisdiction of the forum state.[28]

The clear effect of the *Paulus* decision, however, was to support the belief that a state could not be sued without its consent in the courts of another state. The Supreme Court rejected this view in *Nevada v. Hall.*

Jordan, 415 U.S. 651 (1974), which held that state participation in jointly funded programs does not amount to a waiver of the eleventh amendment immunity. *See generally* Weick, *supra* note 24; Comment, *Avoiding the Eleventh Amendment: A Survey of Escape Devices,* 1977 ARIZ. ST. L.J. 625, 635–41 (1977); Note, *The Eleventh Amendment: Implied Waiver of State Immunity Re-Examined,* 53 CHI.-KENT L. REV. 475 (1976); Comment, *Sovereign Immunity: State Liability Under Federal Law and Limits of the Implied Waiver Doctrine,* 9 CONN. L. REV. 247 (1977).

Another, more recent exception to the eleventh amendment immunity has been made for actions brought under the fourteenth amendment. In Fitzpatrick v. Bitzer, 427 U.S. 445 (1976), the Court held that the eleventh amendment is limited by the fourteenth. *See* Liberman, *State Sovereign Immunity in Suits to Enforce Federal Rights,* 1977 WASH. U.L.Q. 195 (1977); Weick, *supra* note 23; Comment, *Avoiding the Eleventh Amendment: A Survey of Escape Devices,* 1977 ARIZ. ST. L.J. 625, 641–44; Note, *The Eleventh Amendment and Federally Protected Rights,* 27 BUFFALO L. REV. 57 (1977); Comment, *Constitutional Law: Federal Rights and State Immunity—An Unresolved Conflict,* 17 WASHBURN L.J. 194 (1977).

26. 1 U.S. (1 Dall.) 77 (Common Pleas, Philadelphia County, 1781).

27. 52 N.D. 84, 201 N.W. 867 (1924); Paulus v. South Dakota II, 58 N.D. 643, 227 N.W. 52 (1929).

28. Nevada v. Hall, 440 U.S. at 417–18 n.13. The *Paulus* decision has often been mistakenly distinguished by the claim that the plaintiff was a South Dakota resident. *See* Hall v. University of Nev., 8 Cal. 3d at 525, 503 P.2d at 1365, 105 Cal. Rptr. at 357; Note, Hall v. University of Nevada: *Sovereign Immunity and the Transitory Action,* 27 ARK. L. REV. 546 (1973); Note, *Sovereign Immunity—May a State Assert In Personam Jurisdiction over a Sister State Without Its Consent?,* 53 B.U.L. REV. 736, 738–39 (1973); Note, *Sovereign Immunity—Sovereignty of a State Does Not Extend into the Territory of Another State so as to Create Immunity From Suit Arising out of the Sister State's Activities Within the Boundaries of the Forum State,* 6 LOY. L.A.L. REV. 585, 586–87 (1973). These writers were apparently unaware that the case was brought before the Supreme Court of North Dakota a second time with the plaintiff as a resident of North Dakota. The court there made it clear that its decision was not dependent upon the plaintiff's residency. Paulus v. South Dakota II, 58 N.D. 643, 277 N.W. 52 (1929).

II. THE *HALL* COURT'S REASONING

In *Nevada v. Hall,*[29] the Court held that Nevada was subject to suit in the California courts. Writing for the majority,[30] Justice Stevens began by noting that the common law doctrine of soverign immunity is not applicable since it applies to suits brought against the sovereign in its own courts.[31] When the suit is brought in the courts of another sovereign, Justice Stevens reasoned, the doctrine of international law sovereign immunity is more appropriate.[32] Quoting from the early case of *The Schooner Exchange v. McFadden,*[33] he found that the forum state's jurisdiction is subject to no limitation by a foreign sovereign and that, hence, any immunity from suit would have to be based upon the forum state's consent.[34] Applying this principle to the present case, Justice Stevens found no such consent. He noted that California had chosen not to extend immunity as a matter of comity[35] and apparently assumed that there was

29. 440 U.S. 410 (1979).

30. Justice Stevens was joined in the majority opinion by Justices White, Brennan, Stewart, Marshall, and Powell. Justices Blackmun and Rehnquist wrote separate dissents with Chief Justice Burger joining in both dissents.

31. Nevada v. Hall, 440 U.S. at 414–16. Common law sovereign immunity in England rested upon the court's subordinance to the King and in America has been justified on the basis of separation of powers. *See* note 9 *supra*.

32. "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. . . ." Nevada v. Hall, 440 U.S. at 416.

33. 11 U.S. (7 Cranch) 116 (1812).

34. The *Schooner Exchange* decision, however, did not stop at that point. Justice Marshall upheld the French claim of immunity, stating that the forum nation waives jurisdiction when it consents to the passage of another nation over its territory. Furthermore, the waiver of jurisdiction is not a mere gratuity, but is founded upon the "common consent of the nation states and their coequal dignity." Comment, *The American Doctrine of Sovereign Immunity: An Historical Analysis,* 13 VILL. L. REV. 583, 586 (1968). The *Hall* Court could have found a similar implied agreement among states had it chosen to do so. California's internal policy against sovereign immunity is not effective to rebut the presumption that jurisdiction has been waived. Since a state's internal policy is a substantially different issue from its foreign policy, California's sister states were justified in assuming that California would still recognize their claim of immunity regardless of its policy in respect to its own citizens.

It is also important to note that the characterization of international law sovereign immunity as "comity" may not be applicable to interstate suits. One author suggests that sovereign immunity in international law is characterized as comity merely because there is no authority to enforce the immunity. Martiniak, *supra* note 3, at 1151, 1162–63. Once a basis for the immunity is agreed upon, the Supreme Court could surely enforce the immunity among the states. Furthermore, some dictum suggests that principles of international law have no application to the states. "All the rights of the States as independent nations were surrendered to the United States. The States are not nations, either as between themselves or toward foreign nations." New Hampshire v. Louisiana, 108 U.S. 76, 90 (1883).

35. Nevada v. Hall, 440 U.S. at 418.

no express or implied agreement among the states that requires one state to grant immunity to another.[36] Justice Stevens concluded that unless a "federal rule" exists that requires the application of sovereign immunity to the defendant state, "we of course have no power to disturb the judgment of the California courts."[37]

The Court held that there was no constitutional prohibition against a state being sued in the courts of another state.[38] Although article III of the Constitution grants jurisdiction to the federal courts in suits between a state and a citizen of another state, Justice Stevens denied that this impliedly prohibits the state courts' exercise of concurrent jurisdiction.[39] The Court also concluded that the eleventh amendment limits only the federal jurisdiction and does not establish a constitutional basis for sovereign immunity in the state courts.[40]

The Court also discussed whether the Full Faith and Credit Clause requires California to apply Nevada's $25,000 statutory limit to liability.[41] The Court acknowledged that each state must give full faith and credit to the official acts of other states,[42] but held that the clause does not require California to give extra-territorial effect to Nevada statutes which contravene the legitimate public policy of the forum state.[43]

Justices Blackmun and Rehnquist wrote separate dissents with Chief Justice Burger joining in both. The dissenters argued that sovereign immunity from suits in the courts of another state was an "implied . . . essential component of federalism,"[44] whose basis could be located in the "implicit ordering of relationships within the federal sys-

36. The Court does not discuss whether such an agreement exists, but proceeds as though it does not. It could, of course, have found an implied agreement based upon common practice among the states. *See* note 34 *supra*.

37. Nevada v. Hall, 440 U.S. at 418.

38. "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." 440 U.S. at 421.

39. *Id.*

40. *Id.*

41. *Id.* at 421–24.

42. *Id.* at 421.

43. *Id.* at 422–24.

44. Nevada v. Hall, 440 U.S. at 430 (Blackmun, J., dissenting). Justice Blackmun argued that the Founding Fathers considered state immunity from suit in the courts of another state a principle so well settled that they did not feel it necessary to include it in the Constitution. *Id.* at 431. He also argued, "[i]f the Framers were indeed concerned lest the States be haled before the federal courts—as the courts of a ' "higher" sovereign,' *ante,* at 418—how much more must they have reprehended the notion of a State's being haled before the courts of a sister State." *Id.* Expanding upon this theme, Justice Rehnquist stated:

By its terms that Amendment only deprives federal courts of jurisdiction where a State is haled

tem."[45] Justice Rehnquist gave extensive examples from previous Court opinions where the language strongly suggested that the eleventh amendment barred such suits;[46] he also claimed such suits ran contrary to the founders' intent since article III was intended to establish a neutral forum for interstate disputes.[47] Justice Blackmun expressed dismay that the Court was painting with too broad a brush by not restricting California's jurisdiction to suits arising out of activities in the forum state.[48] Both justices expressed concern that the Court's decision would reduce contacts and cooperation among the states.[49]

III. ANALYSIS OF THE COURT'S OPINION

The Court was understandably reluctant to limit the jurisdiction of the

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into court by citizens of another state or of a foreign country. Yet it is equally clear that the States that ratified the Eleventh Amendment thought that they were putting an end to the possiblity of individual States as unconsenting defendants in foreign jurisdictions, for, as Mr. Justice Blackmun notes, they would have otherwise perversely foreclosed the neutral federal forums only to be left to defend suits in the courts of other States. The Eleventh Amendment is thus built on the postulate that States are not, absent their consent, amenable to suit in the courts of sister States."

440 U.S. at 437 (Rehnquist, J., dissenting).

45. Nevada v. Hall, 440 U.S. at 433 (Rehnquist, J., dissenting). Justice Rehnquist was referring to the Court's past efforts to follow the "Constitutional plan" when the Constitution is silent or ambiguous. One example he gives of such an effort is McCulloch v. Maryland, 17 U.S. (4 Wheat.) 159 (1819), in which the Court upheld the power of Congress to establish a national bank even though the Constitution was silent on the issue. 440 U.S. at 433–34.

46. Nevada v. Hall, 440 U.S. at 437–41 (Rehnquist, J., dissenting).

47. *Id.* at 434–35.

48. *Id.* at 427, 428–29 (Blackmun, J., dissenting). Justice Blackmun was concerned that a state would be subject to the same liabilities as individuals. "There is no limit to the breadth of the Court's rationale, which goes beyond the approach taken by the California Court of Appeal in this case. . . . Indeed, the [California] court said flatly that 'state sovereignty ends at the state boundary. . . .' That reasoning finds no place in this Court's opinion." *Id.* at 428 (Blackmun, J., dissenting) (quoting Hall v. University of Nev., 74 Cal. App. 3d 280, 284, 141 Cal. Rptr. 439, 441 (1977), which quoted Hall v. University of Nev., 8 Cal. 3d at 525, 503 P.2d at 1365, *cert. denied*, 414 U.S. 820 (1973)).

49. Nevada v. Hall, 440 U.S. at 429–30 (Blackmun, J., dissenting), and 442–43 (Rehnquist, J., dissenting). As an example, Justice Blackmun noted that Nevada might withdraw assets (such as bank accounts) from California so that the plaintiff would be forced to go to the Nevada courts in order to enforce the judgment. *Id.* at 429 (Blackmun, J., dissenting). Realistically, however, the *Hall* decision will not have such a drastic effect on interstate dealings since modern state governments can hardly operate solely within their borders. The real effect of the *Hall* decision will be in terms of increased insurance rates for state activities outside its borders which, in turn, will result in either higher taxes or less funds for other services. *See* note 79 *infra* for a discussion of the political aspects of a sovereign immunity policy.

There is considerable uncertainty whether the Supreme Court could order the Nevada legislature to satisfy the judgment. Although the full faith and credit clause requires a state to enforce the valid judgments of another state, there are some decisions suggesting that a state legislature cannot be compelled to appropriate funds for a particular purpose. *See* Martiniak, *supra* note 3, at 1144, 1162–64 for a discussion of these decisions and how they might apply to the *Hall* decision.

California courts. Since the eleventh amendment expressly prohibits federal court jurisdiction,[50] a denial of the California court's jurisdiction would have left plaintiffs only the remedy granted by the defendant state itself.[51] Although that result is contrary to the modern trend in the law relating to sovereign immunity,[52] this note concludes that article III and the eleventh amendment do prohibit one state's jurisdiction over a sister state without its consent. Moreover, the Court's opinion is overly vague and provides little guidance as to the scope of state court jurisdiction over a sister state in future cases.

A. Constitutional Prohibitions

Justice Stevens' conclusion that article III does not bar concurrent state jurisdiction ignores the history and purpose of article III. Although article III does not expressly prohibit suits against a state in the courts of another state, several considerations make it apparent that the founders did not intend to allow such suits. First, the purpose of article III of the Constitution was to correct the interstate conflicts that plagued the nation under the Articles of Confederation by establishing a neutral forum to determine interstate disputes.[53] This purpose is manifested in the grant of federal jurisdiction over controversies "between two or more States;—between a State and Citizens of another State;—[and] between citizens of different states. . . ."[54] If a state were to exercise concurrent jurisdiction in suits between a state and a citizen of another state, the purpose of providing a neutral forum would be defeated.[55] Arguably, the states would not have abolished their only neutral forum in enacting the eleventh amendment had they anticipated that one state could be held liable in the courts of another state.[56]

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50. *See* note 12 *supra* (text of the amendment).

51. This remedy is not always a satisfactory one. Besides the considerable expense and inconvenience of litigating in another state, litigants might find the forum (defendant) state more likely to apply its own laws and procedural rules, which may not be as beneficial to the plaintiff. In *Hall,* for example, the plaintiff's recovery in the Nevada courts would have been limited to $25,000. *See* note 5 *supra.*

52. *See* note 15 *supra.*

53. *See* C. JACOBS, *supra* note 21, at 9. *See also* citation in Nevada v. Hall, 440 U.S. at 434 n.2 (Rehnquist, J., dissenting).

54. U.S. CONST. art. III, § 2, cl. 1.

55. Some decisions have indicated that article III did not in itself divest state courts of concurrent jurisdiction. Plaquemines Tropical Fruit Co. v. Henderson, 170 U.S. 511 (1898) (Louisiana as a plaintiff in its own courts in a quiet title action against residents of another state); Tiernan v. Missouri-New York World's Fair Comm'n, 48 Misc. 2d 376, 264 N.Y.S.2d 834 (1965) (Missouri as a defendant in New York courts for injuries to an Illinois resident at Missouri's exhibition at the New York World's Fair).

56. *See* note 44 *supra.*

Second, it is quite possible that the only reason the founders did not include an express prohibition against such suits in article III was that the founders considered the principle too obvious to mention.[57] At the time of the Convention, such a suit would not have been allowed by the courts of any state; sovereign immunity was recognized by every state and the *in personam* jurisdiction of a state court was confined to its own citizens or persons physically present in the forum.[58] Furthermore, the *Nathan v. Virginia* decision had recently determined that a state was protected from suit in the courts of another state by sovereign immunity.[59]

Third, the eleventh amendment was intended to preclude suit in any forum without the consent of the defendant state. The principle was recognized in *New Hampshire v. Louisiana*,[60] in which the Supreme Court held that the eleventh amendment could not be circumvented in a suit brought by one state against another state in federal court to recover claims assigned to it by its citizens. The Court stated that federal jurisdiction under article III was the exclusive remedy available to a citizen of another state:

> [T]he special remedy, granted to the citizen himself, must be deemed to have been the only remedy the citizen of one State could have . . . against another State . . . except such as the delinquent State saw fit itself to grant. . . . It follows that when the [eleventh] amendment took away the special remedy there was no other left.[61]

This conclusion is further supported by the theory that the eleventh amendment was enacted to protect the solvency of state treasuries.[62] The amendment could achieve this purpose only if it limited the jurisdiction of every conceivable forum, including that of sister states.

57. The majority opinion stated that "[t]he 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." Nevada v. Hall, 440 U.S. at 420. *See also id.*, at 419 n.16 (comments by Hamilton and Marshall which evidence a belief that no state would be subject to suit without its consent). This led Justice Blackmun to voice in his dissent: "The Court's acknowledgement, referred to above, that the Framers must have assumed the States were immune from suit in the courts of their sister States lends substantial support. The only reason that this immunity did not receive specific mention is that it was too obvious to deserve mention." *Id.* at 430–31 (Blackmun, J., dissenting).

58. *See* note 14 and accompanying text *supra*.

59. *See* note 26 and accompanying text *supra* (discussion of *Nathan v. Virginia*).

60. New Hampshire v. Louisiana, 108 U.S. 76 (1882). *See also* cases cited in Nevada v. Hall, 440 U.S. at 437–41 (Rehnquist, J., dissenting).

61. New Hampshire v. Louisiana, 108 U.S. at 91.

62. *See* C. JACOBS, *supra* note 21, at 69. According to this theory, the states were heavily in debt as a result of the Revolutionary War or were in danger of again becoming heavily in debt if war-related claims were allowed against the states. Jacobs disputes this theory, stating that at the time the eleventh amendment was passed the states were in a fairly good financial situation, with the burden of the war debts having been assumed by the federal government. *Id.*

The Constitution, therefore, does contain an implicit prohibition against state court jurisdiction over a sister state based upon the history and purpose of article III and the eleventh amendment. The *Hall* Court, nevertheless, held that no such constitutional prohibition exists. Since that result is contrary to the founders' intent, the remedy sought by the Court should be carefully circumscribed in order to remedy the perceived wrong without sacrificing the founders' goals. The Court has thus far failed to do so.

B. Scope of the State Court Jurisdiction

Even if we accept the Court's conclusions regarding the lack of any constitutional prohibition, the *Hall* opinion is ambiguous as to the extent of state jurisdiction over a sister state. There are several considerations that might be important to the result in *Hall:* the plaintiffs were residents of the forum state, the forum state had waived its own immunity from suit arising from automobile accidents, and the suit involved an automobile accident in the forum. The Court's opinion, however, provides little guidance as to whether the Court would allow jurisdiction by the courts of another state if any of these facts were different.

The plaintiff's residency will probably not be an important consideration in determining the extent of the forum state's jurisdiction. The *Hall* Court did not address this issue, but *Pacific Employers Insurance Co. v. Industrial Accident Commission*[63] provides some guidance. In that case, a Massachusetts resident sued his Massachusetts employer in the California courts for an injury he received while working in California. The court found that California had a substantial interest in the compensation of those injured within its borders, regardless of the residency of the parties. If the *Pacific Employers Insurance* principle were applied to the *Hall* situation, forum-shopping would be encouraged since a state could be sued by its own citizens in the courts of another state, even though such a suit might be prohibited in the courts of their own state.[64]

The *Hall* Court also left unresolved the question whether the defendant state is to be treated as any other nonresident defendant or whether it will be granted the special protections applicable to the forum state. For example, if the forum state's liability were limited by statute to $25,000,

63. 306 U.S. 493 (1939). The *Hall* court relied on this case in holding that California need not apply Nevada law under the full faith and credit clause since Nevada's statutory limitation of liability would contravene California's legitimate public policy of full victim compensation. Nevada v. Hall, 440 U.S. at 421–24.

64. In Ehrlich-Bober & Co., Inc. v. University of Houston, 69 A.D.2d 75, 418 N.Y.S.2d 81 (1979), the New York court demonstrated the courts' discretionary powers to refuse jurisdiction over a state on the basis of comity. New York, however, is not prohibited from changing that policy.

would the defendant state's liability also be limited to the same amount, or would its liability be the same as any other nonresident litigant? This was not an issue in *Hall* since under California law, the state had retained no monetary limitation upon its liability for automobile accidents.[65] The question will be important in cases where there remains a wide gap between the amount recoverable against the state and that recoverable against an individual.[66]

The most serious problem concerns the possibility that a state will be sued for its activities outside the forum state. Although the Court makes reference to the fact that the suit involved a tortious act in California,[67] the Court's decision does not limit Nevada's liability to suits arising from activities in the forum state.[68] Without such a limitation, a state may find itself subject to suit for its activities in third states[69] or even within its own borders.[70] This result could be unfortunate because such suits could inter-

65. *See* note 5 *supra.*

66. Where the forum state retains some limits on its own liability, it would be more difficult for the forum state to refuse to apply the defendant state's limitations of liability under the full faith and credit clause since the defendant state's limitation is clearly not against the public policy of the forum state. *See* Nevada v. Hall, 440 U.S. at 421–24, *citing* Bradford Elec. Co. v. Clapper, 286 U.S. 145 (1932), and Pacific Employer's Ins. Co. v. Industrial Accident Comm'n, 306 U.S. 493 (1939).

67. *See, e.g.*, Nevada v. Hall, 440 U.S. at 424: "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. . . .' " "California . . . has adopted as its policy full compensation in its courts for injuries on its highways resulting from the negligence of others. . . ." *Id.* at 426.

68. "There is no limit to the breadth of the Court's rationale, which goes beyond the approach taken by the California Court of Appeal in this case. . . . Indeed, the [California] court said flatly that 'state sovereignty ends at the state boundary'. . . . That reasoning finds no place in this Court's opinion." *Id.* at 428 (Blackmun, J., dissenting).

69. Thus, a state may well find itself in the same position as the defendant in Cornelison v. Chaney, 16 Cal. 3d 143, 545 P.2d 264, 127 Cal. Rptr. 352 (1976), where a California resident sued a Nebraska trucker in the California courts over an accident that occurred in Nevada. The court found sufficient "minimum contacts" in the fact that the defendant had driven trucks through the state in recent years, had a California license on his truck, and was carrying a load to California when the accident occurred. The court concluded that California was not an "inconvenient forum" since the accident occurred not far from the California border and a witness (the plaintiff) resided in California. The court's jurisdiction was based upon a statute which provides, "[a] court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." CAL. CIV. PROC. CODE § 410.10 (West 1973).

70. *Cf.* Bernhard v. Harrah's Club, 16 Cal. 3d 313, 546 P.2d 719, 128 Cal. Rptr. 215, *cert. denied,* 429 U.S. 859 (1976). In that case a California resident became intoxicated in a Nevada nightclub and was subsequently involved in an automobile accident in California. The California Supreme Court determined that it had jurisdiction over the defendant club since the club solicited customers in California who could be expected to use California highways. *Id.* at 322, 546 P.2d at 725, 128 Cal. Rptr. at 221. The court held that the defendant club could be held liable under California's judicially created "Dram Shop" doctrine, despite the fact that Nevada had expressly rejected the doctrine and defendant's conduct could result in no civil liability in the Nevada courts. *Id.* at 317, 546 P.2d at 721, 128 Cal. Rptr. at 217. Applying a "governmental interest" choice of law analysis, the court reached the conclusion that California had an "important and abiding interest" in having its rule applied to Nevada establishments and that California's policy would be "more significantly impaired" if the rule were not applied. *Id.* at 323, 546 P.2d at 725–26, 128 Cal. Rptr. at 221–22.

fere with the sovereignty and policies of both the defendant state and the state where the activities occurred.[71]

Without special limitations, the forum state may exercise jurisdiction over any state having sufficient "minimum contacts" with the forum state to render the exercise of jurisdiction "substantially fair."[72] The "minimum contacts" rule fails to limit effectively the forum state's jurisdiction since most states engage in considerable interstate contacts with their neighbors.[73]

Such an extensive grant of jurisdiction over other states threatens to interfere with the legitimate policies of those states and, hence, to intrude upon their sovereignty. For example, Arizona might wish to encourage interstate commerce with Nevada by extending immunity to Nevada as a matter of comity. Should an agent of Nevada become involved in a collision in Arizona, jurisdiction by the California courts[74] would frustrate the policy by discouraging Nevada from sending its agents anywhere outside its borders.[75] In cases where the suit involves the defendant state's conduct within its own borders, the jurisdiction creates an even greater intrusion upon the sovereignty of the defendant state. Not only is the forum

71. *See* notes 76 & 77 and accompanying text *infra*.

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

73. If a defendant's contacts are so significant that he has availed himself of the privileges of the forum state, the defendant may be subject to the "general jurisdiction" of the state and subject to suit over any activities, whether or not the action is related to the contacts that establish the court's jurisdiction over the defendant. As the quality and frequency of those contacts decline, the jurisdiction over the defendant must be more closely confined to the conduct that establishes jurisdiction over the defendant. Cornelison v. Chaney, 16 Cal. 3d 143, 545 P.2d 264, 127 Cal. Rptr. 352 (1976).

It is also clear that the defendant does not actually have to "enter" the forum state to establish sufficient minimum contacts. A defendant may be held liable when his acts in one state create "consequences" in the forum state. For example, in Buckeye Boiler Co. v. Superior Court of Los Angeles County, 71 Cal. 2d 898, 458 P.2d 57, 80 Cal. Rptr. 113 (1969), the basis of jurisdiction rested solely on the fact that the defendant should have been able to foresee that one of its products might enter the forum state and cause an injury there. *See also* Reese & Galston, *Doing an Act or Causing Consequences as Bases for Judicial Jurisdiction*, 44 IOWA L. REV. 249, 260–64 (1959); Note, *Negligent Acts Committed Outside the Forum Causing Harm in Forum as Basis of In Personam Jurisdiction*, 46 IOWA L. REV. 868 (1961). Even the limited protections offered by the "minimum contacts" rule may not apply to the states as defendants. The "minimum contacts" rule is based upon the due process clause of the fourteenth amendment, and prior cases have held that a state is not a "person" protected by the fourteenth amendment. *See, e.g.*, Scott v. Frazier, 258 F. 669 (N.D. 1919), *rev'd on other grounds*, 253 U.S. 243 (1920); Wisconsin v. Zimmerman, 205 F. Supp. 673 (W.D. Wis. 1962); El Paso County Water Improvement Dist. No. 1 v. City of El Paso, 133 F. Supp. 894 (W.D. Tex. 1955), *rev'd in part on other grounds and aff'd in part*, 243 F.2d 927 (5th Cir.), *cert. denied* 355 U.S. 820 (1957); Warren County, Miss. v. Hester, 219 La. 763, 54 So. 2d 12 (1951), *cert. denied*, 342 U.S. 877 (1951); State *ex rel.* New Mexico State Highway Comm'n v. Taira, 78 N.M. 276, 430 P.2d 773 (1967).

74. Jurisdiction over the defendant state could be had in the same manner the California courts asserted jurisdiction in *Cornelison v. Chaney*, discussed in note 69 *supra*.

75. *See* notes 76 & 77 and accompanying text *infra* (discussion of the effects of a state's public policy regarding sovereign immunity).

state substituting its own policy of sovereign immunity for that of the defendant state,[76] but in so doing the forum state is regulating the defendant state's conduct within its own borders.[77] Although it is quite possible that conflicts such as these might be avoided through the neutral application of conflict of laws principles, the modern trend is to leave considerable latitude to the forum state's courts to apply forum law.[78]

76. Modern sovereign immunity is not necessarily a blind reliance on feudal concepts (*see* note 15 *supra*), but a political decision reflecting a rational balance between the need to secure victim compensation and the state's ability to provide government services. Alstyne, *Governmental Tort Liability: A Public Policy Prospectus,* 10 U.C.L.A.L. REV. 463 (1963); Fox, *The King Must Do No Wrong: A Critique of the Current Status of Sovereign and Official Immunity,* 25 WAYNE L. REV. 177 (1979). Increased tort liability affects that balance by forcing the state either to divert funds from government services or to raise taxes to pay for increased insurance and judgment costs. States with a small tax base and a greater demand for basic social services might well be justified in preserving limits on state liability. The courts should exercise a good deal of caution before they allow a substitution of the balance struck by the forum state for that of the defendant state.

77. The specter of one state regulating the affairs of another within its own borders is precisely the reason that the result in *Hall* was so attractive. It ran contrary to many persons' sense of equity and justice to restrict a California resident's recovery for an accident in his own state because of another state's policies. This was set forth by the Court at the end of the opinion: "[I]f a federal court were to hold . . . that California is not free in this case to enforce its policy of full compensation, that holding would constitute the real intrusion of the sovereignty of the States. . . ." Nevada v. Hall, 440 U.S. at 426–27. This principle is also stated in a portion of The Schooner Exchange v. McFadden, 11 U.S. (7 Cranch) 116, 135 (1812), which was quoted by the Court:

> The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitations 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 would impose such restriction.

Cited in Nevada v. Hall, 440 U.S. at 416. A suit involving a defendant state's activities within its own borders, however, creates no less an intrusion upon the sovereignty of the defendant state. Furthermore, the forum state may have few sovereign interests at stake when the suit involves activities outside its borders, especially compared with the resulting intrusion upon the defendant state.

78. States are generally free to make their own determinations as to choice of law within certain constitutional limits. R. LEFLAR, AMERICAN CONFLICTS LAW 12 (3d ed. 1977). With the withdrawal of the Supreme Court from the "rule-making" function in the conflict of laws area, *id.* at 105, and the modern trend away from strict rules and toward the "most significant relationship" or "government interest" analysis, *id.* at 182–86, state courts are left with wide latitude to determine which is the proper law to apply to a given case. This has led to a marked preference for courts to choose the laws of the forum over those of a competing state. "Modern courts and scholars recognize that the dominance of the forum court in the choice-of-law process inevitably produces a tendency to prefer the forum's own law above the law of any other state." *Id.* at 6.

> The idea that the forum's own law is the best in the world is not uncommon among judges. It is altogether possible that a court may conclude, after intelligent comparison, that its local rules are wiser, sounder, and better calculated to serve the total ends of justice under law in the controversy before it than are the competing rules of the other states that are involved in the case.

Id. at 182.

The constitutional limits referred to above cast the "outer limits" of a state court's discretion to determine which state's law should be applied to a given case. Based primarily on the full faith and credit clause and the fourteenth amendment due process clause, the modern rule has been described as follows:

C. *Limitation of State Court Juridsiction*

The Court's opinion is not clear as to whether a state court's jurisdiction over a sister state could be limited and, if limited, whether it would be consistent with the *Hall* opinion. The Court's only reference to future limitations was confined to a brief footnote:

> 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 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.[79]

The thrust of the footnote is that the Court will reserve the option of limiting jurisdiction in future cases. The Court, however, provides no clues as to what policies it refers to or how it might reach a different result.[80]

The footnote appears at first glance to be inconsistent with the thrust of the *Hall* opinion. In *Hall,* the Court held that there are no constitutional prohibitions against state jurisdiction over a sister state. Since the due process clause of the fourteenth amendment offers little or no protection to the states,[81] the Court would be hard pressed in future cases to discover an effective constitutional provision not disposed of in *Hall.*[82]

> Where more than one State has sufficiently substantial contact with the activity in question, the forum State, by analysis of the interests possessed by the States involved, could constitutionally apply to the decision of the case the law of one or another state having such an interest in the multistate activity.

Richards v. United States, 369 U.S. 1, 15 (1962), *cited in* R. LEFLAR, AMERICAN CONFLICTS LAW 105 (3d ed. 1977). In addition, the "contravention of public policy" exception to the full faith and credit clause applied by the Court in *Hall* leaves little room for a state court to transgress these limits so long as there is a rational basis for applying the forum state's law. *See* text accompanying notes 41–43 *supra. See generally* R. LEFLAR, AMERICAN CONFLICTS LAW 105–23 (3d ed. 1977); R. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS (2d ed. 1980).

79. Nevada v. Hall, 440 U.S. at 424 n.24. The Court's reference to "cooperative federalism" is a response to the argument that states will attempt to reduce their interstate contacts in order to avoid establishing "minimum contacts," or simply lessen the risk of liability outside its borders. *See id.* at 429–30, 442–43 (Blackmun, J., dissenting). As a practical matter, it is unlikely that these states will retreat within their own borders; instead, they will simply purchase more insurance. This, of course, requires either higher taxes or reduced government services.

80. The footnote might suggest that the Court would allow suits arising from activities in the forum state or third states, but not those arising from activities within the defendant state itself. The Court's reference, however, is sufficiently vague to leave the question open.

81. *See* note 73 and accompanying text *supra.*

82. The Court stated that neither article III, the eleventh amendment, nor the Full Faith and Credit Clause prohibited suits against a state in the courts of a sister state. Nevada v. Hall, 440 U.S. at 421, 424. The Court also stated that "unless such a federal rule exists, we of course have no power to disturb the judgment of the California courts." *Id.* at 418. One option that might be available to the Court is to limit the choice-of-law options available to a state court when the defendant is a state and the suit involves a state's activities within its own borders. This could be accomplished under the Full

One solution to this problem might be found through the use of a "government interest" analysis such as that used in the conflict of laws field.[83] Where the suit involves the defendant state's activities within the forum state, it is clear that the forum state's interest in regulating conduct within its borders is superior to the defendant state's interest in retraining its immunity.[84] However, where a suit involves the defendant state's activities outside the borders of the forum state, this police power is not at stake.[85] The additional harm imposed upon the defendant state's sovereignty[86] (or that of the state where the activity occured)[87] may justify a limitation upon either the jurisdiction of the forum state or its discretion to determine which law it will apply.[88]

IV. CONCLUSION

Prior to *Nevada v. Hall* it was widely assumed that a state could not be sued without its consent in the courts of another state. In *Hall* the Court held, in effect, that no such immunity exists between states. The *Hall* decision leaves a number of issues unsettled, the most troubling of which is the prospect of one state passing judgment upon the activities of a defendant state within its own borders. The jurisdiction of the state courts in such cases should be limited to that which is necessary to preserve the sovereignty of the forum state without creating an undue infringement upon that of the defendant state.

Faith and Credit Clause. The Court in *Hall* held that California is not required to apply Nevada law to activities occurring in California when the Nevada law would contravene California's legitimate public policy. *See* text accompanying notes 41–43 *supra*. This does not preclude the court from finding otherwise when the suit involves a state's activities within its own borders. *But see* Alaska Packers Ass'n v. Industrial Accident Comm'n, 294 U.S. 532 (1935) (California may apply its own Workmen's Compensation law to an employee injured in Alaska while employed under a contract made in California with California employers). This method of resolving the conflict would require the Court to depart from its modern trend toward "states rights" in regard to choice of law decisions. R. LEFLAR, AMERICAN CONFLICTS LAW 105, 116–20 (3d ed. 1977).

83. *See generally* R. LEFLAR, AMERICAN CONFLICTS LAW 185–89 (3d ed. 1977).

84. *See* note 77 *supra*.

85. This is not to say that an exception should not be allowed where the defendant state's negligent acts within its borders results in substantial foreseeable harm in a neighboring state. For example, one state might negligently maintain a dam and reservoir which eventually results in the dam bursting and flooding areas in a neighboring state. This author, however, leaves to others the task detailing the limits of such an exception.

86. *See* notes 76 & 77 and accompanying text *supra*.

87. *See* text accompanying notes 74 & 75 *supra*.

88. It is uncertain whether this rule would be observed by state courts of their own volition, especially where the refusal to grant jurisdiction or the application of another state's laws would result in a bar to or limitation upon the plaintiff's recovery. *See* note 78 *supra*. Although the Supreme Court could enforce such a distinction through the Full Faith and Credit Clause, this would require a departure from the Court's trend away from the creation of constitutional choice of law determinations. *See* note 82 *supra*.

Despite its defects, the *Hall* decision will provide welcome relief to plaintiffs injured within their own state by the conduct of another state. Whether this jurisdiction will be limited to the purpose for which it was recognized can be answered only in future decisions.

Richard H. Pierson