to some undetermined and changing degree to the national government, a sovereign that does not have plenary power over them but that is more than their coequal.[57]

Outside the area of federal court jurisdiction, *Nevada v. Hall*,[58] perfectly illustrates the difficulty. This case arose when a California resident sued a Nevada state agency in a California court because one of the agency's employees negligently injured him in an automobile accident in California. Although it recognized that the rule during the framing of the Constitution was that a state could not be sued without its consent in the courts of another sovereign, the Court discerned no evidence in the federal constitutional structure, in the specific language, or in the intention of the Framers, that would impose a general, federal constitutional constraint upon the action of a state in authorizing suit in its own courts against another state. The Court did imply that in some cases a "substantial threat to our constitutional system of cooperative federalism" might arise and occasion a different result, but this was not such a case.[59]

Within the area of federal court jurisdiction, the issue becomes the extent to which the states upon entering the Union gave up their immunity to suit in federal court. *Chisholm* held, and enactment of the Eleventh Amendment reversed the holding, that the states had given up their immunity to suit in diversity cases based on common law or state law causes of action; *Hans v. Louisiana* and subsequent cases held that the Amendment in effect codified an understanding of broader immunity to suits based on federal causes of action.[60] Other cases have held that the states did give up their immunity to suits by the United States or by other states and that subjection to suit continues.[61]

Still another view of the Eleventh Amendment is that it embodies a state sovereignty principle limiting the power of the Federal

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[57] *See* Fletcher, *supra*.

[58] 440 U.S. 410 (1979).

[59] 440 U.S. at 424 n.24. The Court looked to the Full Faith and Credit Clause as a possible constitutional limitation. The dissent would have found implicit constitutional assurance of state immunity as an essential component of federalism. Id. at 427 (Justice Blackmun), 432 (Justice Rehnquist).

[60] For a while only Justice Brennan advocated this view, Parden v. Terminal Ry., 377 U.S. 184 (1964); Employees of the Dep't of Pub. Health and Welfare v. Department of Pub. Health and Welfare, 411 U.S. 279, 298 (1973) (dissenting), but in time he was joined by three others. *See*, *e.g.*, Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 247 (1985) (Justice Brennan, joined by Justices Marshall, Blackmun, and Stevens, dissenting).

[61] *E.g.*, United States v. Texas, 143 U.S. 621 (1892); South Dakota v. North Carolina, 192 U.S. 286 (1904). *See* Kansas v. Colorado, 533 U.S. 1 (2001) (state may seek damages from another state, including damages to its citizens, provided it shows that the state has an independent interest in the proceeding).