the original and the appellate jurisdiction of the Supreme Court, was clearly stated. Federal courts were to deal with all cases in law or equity arising under the constitution or the laws or treaties made under it; with all cases affecting public ministers and consuls, or admiralty or maritime law; with suits by or against the United States ; and with suits by one State against another, by a State against citizens of another State, by a citizen of one State against a citizen of another, by a citizen of a State against citizens of his own State when the question was one of a grant of land from different States, by a State or its citizens against foreigners, or by a foreigner against an American. As the section first stood, it was open to the construction of giving the power to the citizen of one State to sue another State, and the Supreme Court so construed it in 1793-94. The States at once took the alarm ; and the 11th amendment, forbidding suit against a State under this section except by another State, was ratified in 1798.

1. As soon as the new Government was organized in 1789, a Judiciary Act was passed, organizing the whole system of inferior Federal courts. Subsequent development has not changed the essential nature of this first Act. The Supreme Court now consists of a chief justice and eight associate justices ; there are nine circuit courts, each consisting of a Supreme Court justice and a circuit judge ; and fifty-six district courts, each with a district judge. Each circuit comprises several States ; and the Supreme Court justices, in addition to their circuit work, meet in bank annually at Washington. The districts cover each a State or a part of a State. Appeal lies from the district to the circuit court when the matter involved is of a value greater than $500, and from the circuit to the Supreme Court when $5000 or more is involved. There are also Territorial courts ; but these are under the absolute power of Congress over the Territories, and are not covered by the constitutional provisions as to courts. Consular courts, held abroad, fall under the treaty power.
2. The Constitution’s leading difference from the Confederation is that it gives the national Government power over individuals. The Federal courts are the principal agent in securing this essential power ; without them, the constitution might easily have been as dismal a failure as the Confederation. It has also been a most important agent in securing to the national Government its sup­remacy over the States. From this point of view the most im­portant provision of the constitution is the grant of jurisdiction to Federal courts in cases involving the construction of the constitu­tion or of laws or treaties made under it. The 25th section of the Judiciary Act permitted any Supreme Court justice to grant a writ of error to a State court in a case in which the constitutionality of a Federal law or treaty had been denied, or in which a State law objected to as in violation of the Federal constitution had been maintained. In such cases, the defeated party had the right to carry the “ Federal question ” to the Federal courts. It was not until 1816 that the Federal courts undertook to exercise this power; it raised a storm of opposition, but it was maintained, and has made the constitution what it professed to be—“ the supreme law of the land.” As a subsidiary feature in the judiciary system, treason was restricted to the act of levying war against the United States, or of adhering to their enemies, giving them aid and comfort ; the evidence of it to confession in open court, or to the testimony of two witnesses to an overt act ; and any forfeiture in the punishment to a life effect only. The States, however, have always asserted their power to punish for treason against them individually. It has never been fully maintained in practice ; but the theory had its effect in the secession period.
3. The States were bound to give credit to the public records of other States, to accord citizenship to the citizens of other States, to return criminals fleeing from other States, and to return “persons held to service or labour” under the laws of another State. This last was the “fugitive slave” provision of the constitution, which became so important after 1850 (§ 228).
4. The Federal Government was to guarantee a republican form of government to each of the States, and to protect each of them against invasion, or, on application of the legislature or governor, against domestic violence. The “guarantee clause” really substituted State rights under the guarantee of the Federal Government for the notion of State sovereignty under the guaran­tee of the State itself. A still stronger case of this was in the 5th article of the constitution, stating the manner of amendment. The convention of 1787, it must be borne in mind, was working under a system of government which provided expressly that it was not to be altered in the least unless by consent of all the States. The constitution provided that it was to go into force, so far as the ratifying States were concerned, as soon as nine of the thirteen States should ratify it, and that any future amendment, when passed by two-thirds of both houses and ratified by the legislatures or conventions of three-fourths of the States, should become a part of the constitution. By application of the legis­latures of two-thirds of the States, a new convention, like that which framed the constitution, might take the place of the two houses of Congress in proposing amendments. A system under which a State submits its whole future destiny to an unlimited power of decision in three-fourths of its associate States can hardly be called one of State sovereignty.
5. The debts of the Confederation, and its engagements, were made binding on the new Government ; the constitution, and laws and treaties to be made under it, were declared to be " the supreme law of the land” ; judges of State courts were to be bound thereby, “anything in the constitution or laws of any State to the contrary notwithstanding” ; all the legislative, execu­tive, and judicial officers of the United States and of each and every State were to be bound by oath or affirmation to support the constitution of the United States ; but religious tests were for­bidden.
6. Ten amendments were adopted so soon after the ratification of the constitution that they may fairly be considered a part of the original instrument. They were due to a general desire that a “bill of rights ” of some kind should be added to it ; but they did not alter any of the articles of the constitution. They forbade any establishment of religion by Congress, or any abridgment of freedom of worship, of the press, or of speech, or of the popular right to assemble and petition the Government for redress of grievances ; the billeting of soldiers ; unreasonable searches or seizures, or general warrants; trials for infamous crimes except through a grand jury’s action ; subjecting a person for the same offence to be twice put in jeopardy of life or limb ; compelling him to witness against himself in criminal cases ; the taking of life, liberty, or property without due process of law or without com­pensation for property ; and the demand of excessive bail, or the imposition of excessive fines or of cruel or unusual punishments. They asserted the right of the people to keep and bear arms, to a jury trial from the vicinage in criminal cases or in cases involv­ing more than $20, to a copy of the indictment, to the testimony against the prisoner, to compulsory process on his behalf, and to counsel for him. And they stated expressly the general principle already given, that the Federal Government is restricted to granted powers, while those not mentioned are reserved “to the States respectively or to the people.”
7. The omission of the word “thereof” after the clause last mentioned seems significant. The system of the United States is almost the only national system, in active and successful opera­tion, as to which the exact location of the sovereignty is still a mooted question. The contention of the Calhoun school—that the separate States were sovereign before and after the adoption of the constitution, that each State adopted it by its own power, main­tained it by its own power, and could put an end to it by its own power, that the Union was purely voluntary, and that the whole people, or the people of all the other States, had no right to maintain or enforce the Union against any State—has been ended by the Civil War. But that did not decide the location of the sovereignty. The prevalent opinion is still that first formulated by Madison :—that the States were sovereign before 1789 ; that they then gave up a part of their sovereignty to the Federal Government ; that the Union and the constitution were the work of the States, not of the whole people ; and that reserved powers are reserved to the people of the States, not to the whole people. The use of this bald phrase “ reserved to the people,” not to the people of the several States, in the 10th amendment, seems to argue an underlying consciousness, even in 1789, that the whole people of the United States was already a political power quite distinct from the States, or the people of the States ; and the tendency of later opinion is in this direction. It must be admitted that the whole people has never acted in a single capacity ; but the restriction to State lines seems to be a self-imposed limitation by the national people, which it might remove, as in 1789, if an emergency should make it necessary. The Civil War amend­ments are considered below (§ 305-309).
8. By whatever sovereignty the constitution was framed and imposed, it was meant only as a scheme in outline, to be filled up afterwards, and from time to time, by legislation. The idea is most plainly carried out in the Federal justiciary: the constitution only directs that there shall be a Supreme Court, and marks out the general jurisdiction of all the courts, leaving Congress, under the restriction of the president’s veto power, to build up the system of courts which shall best carry out the design of the constitution. But the same idea is visible in every department, and it has carried the constitution safely through a century which has radi­cally altered every other civilized government. It has combined elasticity with the limitations necessary to make democratic government successful over a vast territory, having infinitely diverse interests, and needing, more than almost anything else, positive opportunities for sober second thought by the people. A sudden revolution of popular thought or feeling is enough to change the house of representatives from top to bottom ; it must continue for several years before it can make a radical change in the senate, and for years longer before it can carry this change through the judiciary, which holds for life ; and all these changes must take place before the full effects upon the laws or constitution