

# LAW AND CONTEMPORARY PROBLEMS

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## FOREWORD

The doctrine that the sovereign is not answerable in damages for the wrongs committed by its officers and employees, once epitomized in the expression, "The King can do no wrong," has persisted in modern law to a degree which would astonish most citizens. True, the full impact of this doctrine of sovereign non-responsibility in tort has been averted by legislative enactment and, in the municipal area at least, by judicial distinction between activities "governmental" and "proprietary." This distinction has stimulated a voluminous literature, as the article in this symposium by Mr. Repko demonstrates, and, while other phases of the general problem have not received comparable attention, legal scholars and political scientists have been virtually unanimous in judging most of the legislative and judicial relaxations of sovereign immunity to be fragmentary and haphazard and to allow many occasions for injustice to continue.

Long before the entrance of the United States into the war (and this symposium was planned prior to that event) increasing governmental activity by states and municipalities, as well as by the Federal Government, had made acute the problems raised by governmental immunity, and, since December, 1941, such activity has, of course, accelerated. As government has been coming in contact with more and more of the affairs of everyone, damage to persons and property by its agents has tended to increase proportionately. This has been bringing about a more widespread concern for those problems to which attempts to secure redress for such injuries give rise. Committees of the American Bar Association and the American Political Science Association have studied various aspects of the subject for a number of years. A "model" bill which would deal comprehensively with the subject on the state and local levels was drafted some years ago by a committee of the latter association, headed by Professor E. M. Borchard. The Federal Tort Claims Bill is now pending in Congress. Both proposals represent tremendous strides toward the assumption by government of complete tort liability. It may be confidently assumed that legislation modeled after these two bills will be urged during the next few years in all parts of the country.

In the belief that consideration of the "model" state and local tort liability bill would proceed more intelligently if information concerning present experience in handling tort claims could be made available, the Committee on Public Administration of the Social Science Research Council undertook several years ago to sponsor factual studies in certain representative cities. The article by Mr. Patterson H. French

entitled "Research in Public Tort Liability" indicates the plan and scope of these surveys, a number of which have recently been completed. Several of the articles in this symposium draw on the material thus made available, but the symposium deals with the problem on all levels of government, federal and state as well as municipal.

A word about the late appearance of the issue and its arrangement: Certain writers who had promised to contribute to the symposium found belatedly that new duties incident to the war prevented the completion of their papers. Through the willingness of Lieutenant Colonel Leon T. David and Mr. French to revise their articles completely after being advised of the gaps in the symposium created by the withdrawal of other writers, it was possible by delaying publication to preserve the original scope of the issue. The revised articles now combine studies of the liability problems of the municipality (the most prolific breeder of tort claims and litigation) with discussions of many administrative considerations common to all levels of government. While this fact would logically have led to the placing of these articles in advance of those dealing with state and federal liability, it was deemed expedient to place them both (together with the closely related article by Mr. Warp) at the end of the symposium in order to keep delay to a minimum.

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