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This number is dedicated to the memory of

**Ernst Freund**

late John D. Wilson Professor of Law  
the University of Chicago

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## THE FEDERAL TORT CLAIMS BILL

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**F**ORTY years ago, Ernst Freund, in an article which is still fundamental to the subject, stated:

A tort committed in the exercise of governmental functions creates no private cause of action against the state; where a liability is demanded by justice, it must be created by statute.

A tort committed in connection with private relations should give rise to a corresponding civil liability, with such statutory exceptions as may be dictated by public policy. This is not the recognized law, but seems to be demanded on general principles.<sup>1</sup>

After nearly ten years of effort, the Committees on Claims of the two houses of Congress, with the co-operation of the law officers of the several executive departments, finally have worked out a bill<sup>2</sup> which, if passed, will carry into effect the principles of a just and sound public policy advocated by Ernst Freund in 1893. In the light of this revolutionary, although long over-due, development, which probably only budgetary considerations of the moment can deter from early enactment into law, it

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<sup>1</sup> Private Claims Against the State, 8 Pol. Sci. Q. 625, at 652 (1893).

<sup>2</sup> The Howell-Collins bill of the 72d Cong., 1st sess., S. 4567, Calendar No. 697, Senate Report 658. The bill is largely to be credited to the efforts of Representative Underhill of Massachusetts beginning in 1924, and of Senators Bayard of Delaware and the late Senator Howell of Nebraska, who was chairman of the Senate Committee on Claims during the later years of the bill's career. Great credit is also due to Mr. Alexander Holtzoff of New York, Special Assistant to the Attorney General, who was assigned by Attorney General Mitchell to the special task of co-ordinating the views of the Government departments and whose detailed criticisms of the bill helped greatly in the formulation of the latest, and possibly, final draft. Much credit is also due to Mr. O. R. McGuire, Counsel of the General Accounting Office of the Comptroller General.

may be appropriate to signalize the event as something of a memorial to the farsighted sagacity and the public services of Ernst Freund.

It can readily be appreciated that, in working out the policy of establishing new legal relations between private individuals and the Federal Government and of fixing the details of the procedure to give them effect, an infinite number of considerations had to be taken into account. The Howell-Collins bill, which will probably not be greatly changed,<sup>3</sup> is the culmination of long efforts and many drafts of bills, one of which actually passed both House of Representatives and Senate in 1929,<sup>4</sup> only to be given a pocket veto by President Coolidge, presumably because of the Attorney General's objection to that provision of the bill, as then drafted, enabling the Comptroller General first to "settle" and determine the validity of the claim and then to appear in the Court of Claims on certiorari proceeding to defend the settlement he had approved. Inasmuch as the Attorney General had customarily been the only legal official to defend the United States in the Court of Claims, this innovation was considered objectionable by him.<sup>5</sup> Perhaps the failure of the bill is not to be too greatly regretted, for the Howell-Collins bill now under consideration is in some respects a great improvement upon it.

Briefly, the Howell-Collins bill provides for the "allowance and payment of claims" for damage to private property up to \$50,000 caused by the "negligence<sup>6</sup> of any officer or employee of the Government within the scope of his office or employment, and not out of contract." In the case of personal injuries or injury resulting in death, a limit of liability of \$7500 is provided for. The procedure for asserting the claim is by notice to the

<sup>3</sup> It will be reintroduced in the 73d Congress by Senator Bailey, Chairman of the Claims Committee of the Senate.

<sup>4</sup> On March 2, 1929, after a Conference Report. H. R. 9285, 70th Cong., 2d sess.; Senate 4377, 70th Cong., 2d sess.; Senate Report 1699, 70th Cong., 2d sess.

<sup>5</sup> The Attorney General's objection of February, 1929, was embodied in a letter addressed to Senator Deneen of Illinois, in charge of the bill. It was drafted by Assistant Attorney General Galloway, then in charge of Court of Claims cases. Its substance will be found in the article of Mr. O. R. McGuire, *Tort Claims Against the United States*, 19 *Geo. L. Jour.* 133, at 134, note 7 (Jan. 1931).

<sup>6</sup> The bill of 1929, as passed by House and Senate, and even the original Howell bill of 1932, had contained the words, in successive bills ever since 1925, "negligent or wrongful act or omission." Negligence is not usually wilful, so that the most recent draft may be said to narrow the scope of substantive liability assumed. Other exceptions and limitations will be adverted to hereafter.

The English Crown Proceedings bill, 1927, Command 2842, which may soon be enacted, reads (section 11): "Subject to the provisions of this Act, the Crown shall be liable for any wrongful act done, or any neglect or default committed, by an officer of the Crown in the same manner and to the same extent as that in and to which a principal, being a private person, is liable for any wrongful act done, or any neglect or default committed, by his agent. . . ."

Comptroller General within 30 days of the "occurrence of the event" out of which the claim arose, to be extended to 90 days if the claimant can show reasonable cause for delay and can prove that the United States has not been prejudiced thereby; but this must be followed within a year by a formal claim under oath.<sup>7</sup> The General Accounting Office, after subpoenaing witnesses, if necessary, and on such evidence as the claimant and the Government Department involved may supply, is then authorized to "settle and adjust" the claim. If the claim is under \$1000, and provided the claimant assents, the Comptroller General can pay the claim out of the appropriation of the Department or independent establishment in question, if the head of the Department approves. Settlements above \$1000 must be certified to Congress for congressional action. If the claimant is dissatisfied, he can file an original suit—not by certiorari, as the 1929 bill provided—in the Court of Claims, within one year of the unaccepted decision of the Comptroller General or, if a decision is delayed, six months after the claim has been filed. The judgments of the Court of Claims are final, as usual, except for the possibility of review on certiorari by the United States Supreme Court.

Fourteen types of tort claims are excepted from the bill, including claims arising out of the loss or miscarriage of mail matter, out of the assessment or collection of taxes, out of losses of property of persons in the military or naval service, out of the merchant marine and Navy suits in admiralty Acts of 1920 and 1925, respectively, out of acts of the Alien Property Custodian, out of the administration of the quarantine laws—now without exception of the laws administered by the Public Health Service, as in the 1929 bill—out of flood control and river and harbor and irrigation activities, out of injuries to vessels and cargo passing through the Panama Canal, out of the acts of military and naval forces where relief is otherwise provided, out of injury to or death of a prisoner, out of alleged negligence of physicians or employees of a "Government hospital, dispensary, or institution,"<sup>7a</sup> out of injuries or death arising from assault and battery, false arrest or imprisonment, malicious prosecution, libel, slander, misrepresentation, deceit, interference with contract rights, or any criminal act, or—a provision not found in the 1929 bill—out of the alleged effect of an Act of Congress, or executive order of the President, or of any department or independent establishment.

<sup>7</sup> In section 303 of the bill, providing for a formal claim, the original words "negligent or wrongful acts or omissions" are retained. It is submitted that they should be restored to section 1.

<sup>7a</sup> The term "institution" seems exceptionally broad.

This represents a considerable limitation of substantive liability, and is doubtless induced by the effort to confine the new policy within a narrow range, dictated by caution. As experience in the administration of the Act develops, it may be found advisable to extend its provisions, for it must be remembered that tort claims not brought within the Act are directed, as of old, to committees of Congress.

The Federal Government has, to a limited extent, opened the door to suit or claim against itself, at first in contract cases, and, since 1922, in property tort cases up to \$1000, relief in these latter cases being administrative only. Although the Constitution provides that "private property" shall not "be taken for public use without just compensation," there was until 1855 no judicial means of making the requirement effective. Claimants were compelled to petition Congress to redress their grievances. The defects of this system, both for the claimant and for the members of Congress, led to the establishment of the Court of Claims, with jurisdiction in claims founded upon a "law of Congress or upon any regulations of an Executive Department, or upon any contract, express or implied." To this there were added, by the Tucker Act of 1887, claims founded "upon the Constitution of the United States," a clause which has been construed into comparative meaninglessness, and claims "for damages, liquidated or unliquidated, in cases not sounding in tort."

These jurisdictional clauses have been construed most strictly against the claimant. The owner of property taken by Government officers for public use must prove that it was "taken" under an express or implied promise to pay for it. And a promise to pay will not easily be "implied." Impressed by the inhibition against claims "sounding in tort" and by the traditional view that the Government's consent to be sued is to be construed as narrowly as possible, the Supreme Court has given an exceedingly technical construction to the terms "taking" and "implied contract" and a very wide interpretation to the clause "sounding in tort."<sup>8</sup> Thus, the physical act of "taking" must so greatly interfere with the private use that the injury and deprivation are permanent and substantial, and not merely temporary or consequential, and, therefore, tortious. There must be an intent to take. Thus, a denial or questioning of the owner's right to the property—except in patent cases under statute—by the Government's assertion of an adverse claim or the denial of an intent to pay, will defeat recovery, for the taking is then tortious. The more flagrant and unjustifiable the Government's acts, the less becomes its liability—hardly a commendable principle of law. Moreover, the circumstances must not nega-

<sup>8</sup> 34 Yale L. Jour. 28, 30 *et seq.*

tive the owner's open or tacit acquiescence, otherwise the plaintiff will defeat that consensual relation which is supposed to underlie the implied contract—implied in fact, rather than in law.<sup>9</sup> Mere evidence of Governmental enrichment is insufficient to raise the implication of contract; a quasi-contractual obligation will not be recognized, unless, as in tort cases, covered by a special Act of Congress *ad hoc* conferring jurisdiction. Such Acts have occasionally been passed. There are many other legal hurdles placed by judicial construction in the way of claimants. Unless a claimant is fortunate enough to be able to climb them all, he is likely to find his claim dismissed as “sounding in tort.”

In recent years the force of circumstances has induced a growing disposition on the part of Congress to authorize suit in tort against the United States or to provide administrative machinery for the determination of legal responsibility under customary rules of law. In 1910 suits for patent infringement were permitted.<sup>10</sup> Since 1900, special statutes have been passed with increasing frequency, either appropriating funds, after committee investigation, to compensate for tort injuries of various kinds or else referring such claims to the Court of Claims or United States District Courts for determination and judgment. A Federal “Employers’ Liability Act” has been passed, establishing an Employees’ Compensation Commission to provide compensation for disability or death of an employee “resulting from a personal injury sustained while in the performance of duty.”<sup>11</sup> In taking over the railroads and certain collateral services during the war, with the curious exception of the telegraph system,<sup>12</sup> and in establishing a Shipping Board for the operation of merchant ships, the Government placed itself, in respect of legal responsibility, in the position of a private operator.<sup>13</sup> On March 3, 1925, a comprehensive Suits in Admiralty Act was passed,<sup>14</sup> authorizing suits against the United States in the Federal District Courts for damage caused by and salvage service rendered to public vessels of the United States, thus materially extending the scope of the Act of March 9, 1920, relating to publicly-owned merchant vessels. In the operation of its war ships and public vessels, the United States thus

<sup>9</sup> *Baltimore & Ohio R. R. v. United States*, 261 U.S. 385 (1923); same parties, 261 U.S. 592 (1923), under Dent Act; *Jacob Reed’s Sons v. United States*, 273 U.S. 200 (1927), *aff’g.* 60 Ct. Cl. 97 (1925).

<sup>10</sup> Act of June 25, 1910, 36 Stat. 851.

<sup>11</sup> Act of Sept. 7, 1916, c. 458, 39 Stat. 742.

<sup>12</sup> *Western Union Tel. Co. v. Poston*, 256 U.S. 662 (1921).

<sup>13</sup> Act of March 21, 1918 (R. R.); Act of Sept. 7, 1916, § 9, 39 Stat. 728; Act of March 9, 1920, 41 Stat. 525.

<sup>14</sup> 43 Stat. 1112.

waived its sovereign immunity from suit and responsibility, retaining merely those privileges as to limitation of liability possessed by ship owners and operators generally. This step marked an epoch in American public law.

Congress has also passed a number of statutes, mainly since the war, conferring a limited administrative jurisdiction on the heads of the various Executive Departments to settle claims for tort injuries arising in their respective Departments. Even prior to the general Act of December 28, 1922, conferring power on the head of each Executive Department and independent establishment to settle claims for "damage to or loss of privately-owned property" not exceeding \$1000, "caused by the negligence of any officer or employee of the Government acting within the scope of his employment,"<sup>15</sup> numerous Acts had been passed conferring on the heads of certain Departments, mainly War, Navy, and Post Office, a limited power to settle tort claims.<sup>16</sup> Some of the provisions of these Acts, renewed in annual deficiency appropriations, or otherwise, extend the scope of the Act of December 28, 1922, to personal injuries and/or dispense with proof of negligence.

The partial and limited relief thus afforded to claimants in certain tort cases is a recognition of the validity of the principle. By the pending bill, it is now admitted that tort claims in excess of \$1000 are equally entitled to consideration. Unable to present them to the Executive Departments or the Courts, the claimants have pressed these claims upon the Government through a bill in Congress—a political, and not a legal, channel. The history of claims against the United States presents a picture of the gradual transfer of claims by Congress from the political to legal channels—first in contract cases, then in small tort and special types of tort claims, like patent and admiralty. Now comes a general tort bill.

It may be of interest to trace the evolution of some of the major features of the pending bill. As the tort claims bill first passed the House, without a dissenting vote, on June 10, 1926,<sup>17</sup> a limitation of liability to \$3000, introduced by the Senate, was removed, and liability in property cases was left unlimited. This seemed too broad for an experimental policy, so that subsequent bills have limited the jurisdiction to claims not ex-

<sup>15</sup> Act of Dec. 28, 1922, c. 17, 42 Stat. 1066.

<sup>16</sup> See for example Act of Oct. 6, 1917, 40 Stat. 389; Act of March 29, 1918, 40 Stat. 499; Act of Aug. 24, 1912, 37 Stat. 586; Act of Oct. 6, 1917, 40 Stat. 364; Act of Mar. 4, 1921, 41 Stat. 1436; Act of June 16, 1921, 42 Stat. 63; Act of June 7, 1924, c. 291, 43 Stat. 483 and Pub. No. 413, pp. 6-7, 68th Cong.; Veterans' Act of June 7, 1924, 43 Stat. 607; Act of May 28, 1924, 43 Stat. 199; Act of June 7, 1924, 43 Stat. 492.

<sup>17</sup> Sen. 1912, 69th Cong.

ceeding \$50,000. Claims in excess of \$50,000 will have to be advanced through political channels, as heretofore, although it is possible that the passage of the Tort Claims Act will persuade Congress more readily to refer such claims to the Court of Claims. In personal injury cases, the bills always carried a limitation, first of \$10,000, now reduced to \$7500. Fear of exaggerated claims accounts for these limitations. If experience justifies the new policy, it is possible that the jurisdictional amount will be raised.

Influenced by the example of the Small Claims Act of 1922, which gave the heads of Executive Departments power to settle property claims (subject to congressional approval by appropriation) up to \$1000, the early tort bills of 1925-1928 had sought to leave small claims in the executive channel, and make only larger claims the subject of judicial action. At one time the executive jurisdiction was limited to \$2000, claims beyond that to go to the District Courts and Court of Claims. Fearful of overburdening the courts, the administrative jurisdiction was later raised to \$5000. Inasmuch as most claims would involve less than \$5000, it was realized that a very precise procedure would have to be worked out, for diversity of view in the different departments might lead to confusion in the administration of the Act. Indeed, the Small Claims Act of 1922, limited to \$1000, had produced considerable discord in its interpretation by various departments.<sup>18</sup> Hence the entrance upon the scene of the Comptroller General as a unifying authority.

There had been some disposition to limit the authority of the Comptroller General in these matters, for he is a fiscal rather than a judicial officer. At first, he was to have jurisdiction, after a report from the executive departments concerned, to settle claims up to \$2000, the main reason for centralization of authority being the necessity for unifying policy and procedure. He was also empowered, with the Attorney General, to compromise claims above \$2000, as in the Suits in Admiralty Act of 1925. The House of Representatives, in its drafts of 1926 and 1928, cut down the Comptroller's powers materially, by raising executive department jurisdiction to \$5000, without interference by the Comptroller General, except to make uniform rules for the department's law officers in administering the Act. But the Comptroller General was alert to the interests of his office, for in the 1929 bill, as it finally passed, the Senate not only restored his lost glory, but increased it by giving him, through the General Accounting Office, exclusive jurisdiction of all claims up to \$50,000, with re-

<sup>18</sup> See, as to the subrogation policy, the correspondence between the Secretary of War and the Comptroller General in 1930, *Georgetown Law Journal*, *supra* note 5, p. 141 note.

view on certiorari to the Court of Claims. This went so far as to arouse the protest of the Attorney General, a fact which presumably induced President Coolidge to withhold his approval. By the 1929 bill, also, the proposed jurisdiction of the United States District Courts was eliminated.<sup>39</sup> The fluctuation of policy from preference for the judicial, then for the administrative and back to the judicial channel—now embodied in the Howell bill of 1932—can thus be observed. In 1929, the Congress preferred to make the Comptroller and the Court an advisory body for the relief of Senate and House claims committees. By 1932, the Comptroller having yielded to the objections of the Attorney General with respect to appearance before the Court of Claims, the *nisi prius* proceedings were administrative, the “appeal” judicial, much as in the case of claims for tax refunds addressed to the Commissioner of Internal Revenue.

The Small Claims Act of 1922, although purporting to be kept in force by some of the earlier drafts, is now by implication repealed as inconsistent with the pending measure.

The Comptroller General in all cases will now make up the record, in the meantime seeking to settle the claim. Because the Government should have full opportunity to assemble its evidence in defense, while still obtainable, a very short period (30 days) for filing notice of claim is provided. The heads of the executive departments and establishments are required to make prompt investigations of any accident or event in which their employees are involved, whether or not Government liability is inferable, and to transmit claims, reports, and recommendations for settlement to the Comptroller. Depositions of witnesses may be taken, with the assistance of the staff of the Department of Justice in the field, and the Comptroller General may issue subpoenas requiring witnesses to attend at Washington before an attorney of the Comptroller General acting as a commissioner—on the model of the Federal Trade Commission—with power to invoke the aid of the District Courts to require, under threat of contempt, the production of evidence, written or oral. This confers considerable judicial power on a fiscal officer, but it may be justified by the necessities of the case and will be likely to be employed advisedly, in the light of the fact that a dissatisfied claimant can bring an original suit in the Court of Claims. How much importance will be attributed to the findings of fact by the Comptroller General is still uncertain. On certiorari the findings might have been practically conclusive. Possibly on the origi-

<sup>39</sup> On the apparent ground (Sen. Rep. 1609, 70th Cong., 2d sess.) that “it is not believed that the procedure of suits against the United States is a proper one to secure judicial determination of tort claims, especially where there is no controversy as to the liability of the United States.”

nal suit, the Court of Claims will refer contested issues of fact to one of its Commissioners. The proceedings in Washington, although confinable to final argument, may operate to the disadvantage of small claimants living at a distance from Washington, who may prefer to accept the settlement offered by the Comptroller rather than incur the expense of a suit in the national capital. It was this possible hardship which was responsible for the assignment of jurisdiction to the District Courts in the earlier bills.

Claims for personal injury, which in earlier bills were placed largely under the jurisdiction of the Employees' Compensation Commission, are also to be filed now with the Comptroller General, who may enlist the aid of the Compensation Commission to investigate claims and make recommendations. Negligence of officers or employees and "defect or insufficiency" of "machinery, vehicle or appliance" are the sources of liability for personal injury or death.

Contributory negligence is a bar to relief for property and personal injury claims. In earlier bills, the rule of comparative negligence had been adopted, and in the Howell bill of December 9, 1931, the rule of contributory negligence was to be limited by the doctrine of "last clear chance." The Attorney General, however, expressed the opinion that the latter doctrine was implicit in the contributory negligence rule, as announced by the United States Supreme Court,<sup>20</sup> and that the explicit mention of the doctrine in the bill might be construed as extending it beyond the limitations of the Supreme Court to embrace the more liberal view of some of the state courts. In personal injury and death claims, moreover, intoxication and wilful misconduct are assimilated to contributory negligence, as are, to the extent deemed controlling, the aggravation of the injury or precipitation of the death by unreasonable refusal or failure to submit to or procure medical or surgical aid, which indeed the Comptroller General can demand as a condition of pecuniary relief under the bill.

Certain other features of the bill deserve brief mention. If joint liability for an injury or loss rests upon some person other than an officer or employee of the United States, the Government assumes liability only for its proportionate share.

If the injured person or property was insured, the Comptroller General and the Court of Claims are directed to deduct the amount of insurance, collected or collectible, from any award or judgment; and yet, the subrogated insurance company has no standing to prosecute its own claim against the Government. Thus, the Government is likely to escape a great

<sup>20</sup> *Chunn v. City & Suburban Ry.*, 207 U.S. 302 (1907). It was suggested that the Comptroller General and the Court of Claims would of necessity be bound by that decision.

deal of liability which legally it should assume, as would any other corporate tort-feasor. In the matter of international claims, somewhat different considerations prevail, for there are several reasons why, in addition to questions of nationality, insurance companies should not be made whole by the nation and even by foreign nations for risks which they assumed for profit. In international matters, only the original claimant should be given a *locus standi*, subrogation being a matter of private law. In municipal matters, however, it would not seem improper to ask the Government to assume its valid burdens, whether the compensation accrue to an injured individual or to the insurance company which has already paid the loss.

In case the officer acted wilfully, the Government is empowered to recoup its payments under the Act from the wrongdoing officer. Continental law generally provides for such right of redress, although its pecuniary value may often not be great. Yet there is administrative value in creating a more efficient service by enabling the Government to hold officers to personal responsibility for their wilful acts, by deductions from salary or other recourse. Perhaps this might be too harsh in the case of unintentional negligence, other administrative sanctions possibly sufficing; for by the express mention of wilful misconduct, it is assumed that the common law right of recourse in other cases is not expected to be invoked.

The governmental agencies to which the prospective Act extends are not only the executive departments and independent establishments, but all corporations in which the Government owns 51 per cent or more of the voting shares and "securities." The Panama Railroad is excluded, presumably because it is already suable in tort.

An effort is made to prevent the Act from becoming a lawyers' bonanza. Soliciting claims "directly or indirectly" is made a criminal offense, and attorney's fees, where an award or judgment is obtained, are to be fixed in each case by the Comptroller General or the Court of Claims, as the case may be. But whereas all bills prior to the Howell-Collins bill established a maximum attorney's allowance of 15 per cent, the last bill, on the suggestion of the Attorney General, fixed the possible maximum at 25 per cent, not an ungenerous amount, and higher, I believe, than any foreign lawyers' tariff admits. The charging or collection of any fee in excess of the amount allowed by the Comptroller General or the Court of Claims is made a penal offense.

The presentation of false evidence or the exaggeration of a claim "with intent to defraud the United States" is a bar to the allowance of any claim.

Earlier bills had undertaken to make the Tort Claims Act retroactive,

so as to admit claims which had accrued at a date two or three years prior to its enactment. The Howell-Collins bill abrogates this feature, a conclusion explainable by the fact that the Government's opportunity to assemble evidence in defense, carefully safeguarded by the pending bill, would probably in old cases have been overlooked or lost. The Act will hence apply only prospectively. Claims which arose before its enactment will therefore continue to be presented to the Congress and to be referred to its Committees on Claims.

These are the outlines of the new system of redistributing the risks of loss in connection with certain governmental activities. For years an academic campaign had been waged, designed to emancipate the United States from a slavish subservience to ancient—and, I think, historically misunderstood—formulas which had produced manifest injustice in the name of law and order. The unhappy sufferer was left to bear practically all the risks of a defective or misdirected operation of the administrative machine. Realization of this incongruity had produced statutory efforts at escape; but the old dogmas served induly to restrict their judicial interpretation and, in the field of municipal government, produced judicial distinctions which did credit to the courts' desire to reconcile law and justice, but by their artificiality added, if I may say so, an occasional note of absurdity to the process of judicial exposition.<sup>21</sup> In recent years, the climate of opinion has begun to change, and an increasing number of state statutes assuming governmental responsibility in tort are receiving the liberal construction intended by the legislatures. Municipal corporation counsel and states' attorneys, however, still occasionally affect the belief that the assumption of liability is a gratuitous gift, that the legislature could not have intended what it said, and that the extension of governmental responsibility is somehow contrary to the public interest. Courts, on the whole, are taking a more reasonable position.

What is likely to be the practical effect of the Federal Tort Claims Act? While enlarging the administrative personnel of the Comptroller General's office and perhaps adding judges and commissioners to the Court of Claims, it should greatly relieve the congestion in the Claims Committees and should enable the Congress to devote its exclusive attention to more important problems. It will substitute judicial methods, with adequate facilities for investigating and weighing evidence, for political methods, handicapped by inadequate facilities, in the adjustment of a large group

<sup>21</sup> Some of these distinctions, mainly incidental to the effort to distinguish governmental from corporate functions, are discussed in a series of articles on Government Liability in Tort, 34 *Yale L. Jour.* 1, 129, 229 (1925).

of claims, claims which are inseparable from and often unavoidable in the operation of so vast a machine as the Federal Government. It will promote popular confidence in the justice of the Government, by no means an unimportant, even if intangible, factor in public administration. The cost should not be excessive, and the award of damages will be likely to be more equitable, as well as legal, than is possible under the present system. The example afforded by the Federal Government in publicly recognizing by statute its moral obligation to indemnify those it has unjustly injured, should serve to stimulate like recognition in the states and cities of the United States. It is one of the many misfortunes associated with the passing of Ernst Freund that he did not live to see the fruition of his scholarly efforts.