He was still a country lawyer when he said that American power does not lie in military strength. "Our defense is in the preservation of the spirit which prizes liberty as the heritage of all men, in all lands, everywhere." He continued soberly: When you become "accustomed to trample on the rights of those around you, you have lost the genius of your own independence, and become the fit subjects of the first cunning tyrant who arises."[31]

JOHN P. FRANK†

GOVERNMENTAL LIABILITY. By H. Street. Cambridge (Eng.): Cambridge University Press, 1953. Pp. 223. $5.00.

PROFESSOR Street's volume considers the capacity of the individual to sue the State and other administrative bodies. This field is of growing importance, for the prevailing tendency is to grant additional functions and greater powers to government. Hence, there is an increasing need for legal remedies against possible wrongs and abuses of government. Strange as it may seem, this topic has not attracted sufficient attention from legal scholars in England and in this country. Despite recent statutory enactments of considerable importance, the majority of the scholars have perhaps failed adequately to explore the fundamental aspects of the problem and particularly the basic principles on which liability of a modern State should be predicated. This is probably one of the main reasons why, according to Professor Street, "English law has not yet made a full contribution to the reconciliation of the freedom of the individual and the authority of the State,"[1] and why "much reform is called for [in England] before the individual has adequate legal protection against the administration."[2]

Professor Street's book contains a very interesting and successful re-examination of the entire problem of governmental liability. For its solution he does not offer any magic formula; instead, he comes forward with a number of specific suggestions based on a close analysis of the historical development and the present status of the law in England and in this country, coupled with a comparative analysis of the legal remedies against the administration which have been devised in Western Europe, especially in France.

Following an historical introduction, which deals with the development of the law of State liability in England, the United States and Western Europe,[3] the author analyzes the main problems relating to State liability in tort,[4] in contract,[5] in quasi-contract and as a result of expropriation.[6] The author

31. III, p. 95.

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1. P. 186.
2. *Ibid.*
3. Pp. 1-24.
4. Pp. 25-80.
5. Pp. 81-119.
6. Pp. 120-131.

also examines the extent to which certain special remedies, such as declaratory judgments and prerogative writs, can be resorted to against the State,[7] and the substantive and procedural limitations on State liability. Professor Street deals with the basic theses of the book within the first three chapters and in the conclusions (pp. 185-6), while in chapters IV to VI he examines, somewhat sketchily, questions of comparatively lesser importance.

The author exhaustively demonstrates that governmental immunities, both substantive and procedural, originated in a feudal background as prerogatives personal to the king.[8] Immunity was reinforced by theories of the divine right of kings and of absolute sovereignty, theories already obsolete at the time of the American Revolution; yet the doctrine of state immunity was adopted in this country and still prevails both in the United States and in England, to the extent to which it has not been modified by specific statutory enactments such as the Federal Tort Claims Act of 1946[9] and the Crown Proceeding Act of 1947.[10] The statutes whereby State liability is established are honeycombed with exceptions, some of which, as the author shows, are hardly defensible; furthermore, the courts are disinclined, on the whole, to construe those statutes liberally.

The author also demonstrates that both in England and in the United States the law governing the liability of the State and administrative bodies is not uniform. "There are very important differences between the liability of governmental and other public bodies. No satisfactory reasons for these differences are adduced."[11] Moreover, administrative bodies, to the extent to which they are liable, are made liable according to the principles of private law, even though their very nature as organs of administration has compelled some changes from private law. These changes, however, "have not been accompanied by any recognition in theory that [the State and other administrative bodies] are or should be placed in a category separate from private individuals. There is, then, no separate law of administrative liability."[12]

The author points out that the doctrine of sovereign immunity was superseded in European countries by the principle of governmental liability at a much earlier date and to a much greater extent than in England and the United States. Professor Street devotes special attention to the evolution of the doctrine of State liability in France, where it was mainly developed through a series of decisions of the *Conseil d'Etat*, the highest administrative court, rather than through statutory enactments. In France, liability of the State and other administrative bodies is now the rule, but the administration can be sued and is liable only when the official commits a *faute de service, i.e.*, a wrongful act within the scope of his functions. In the event of a *faute de personne, i.e.*, a wrongful act committed by an official beyond the scope of his functions, the

7. Pp. 131-2.
8. Pp. 143-65; 166-84.
9. 60 STAT. 842, 28 U.S.C. § 921 (1946).
10. 10 & 11 GEO. VI, c. 44.
11. P. 185.
12. *Ibid.*

administration is not liable but the officer may be sued in his individual capacity in the civil courts. If there is a combination (*cumul*) of both faults, then the administration may be sued. Professor Street demonstrates that French administrative law has developed two features of great merit: uniform rules governing the liability of the State and other public bodies; and the predication of the liability of the State and other administrative bodies on the risk inherent in the performance of a public service rather than on fault. By way of conclusion, he suggests that the two principles should be adopted in England. However, he would qualify the acceptance of the second feature: "[I]n so far as private law rules are appropriate, there is no reason why those rules should not be adopted. In the residuary circumstances where private law is inadequate, then uniform principles of public law, in accordance with the principles made herein, should be adopted."[13]

Professor Street also mentions certain shortcomings of the French law of administrative liability. He criticizes French administrative law, because "no injunction or other enforcement provisions are permitted against the State."[14] In fact, however, some enforcement provisions against the State do actually exist, although it is true that no injunctive relief may be granted. This is not, however, a special feature of administrative law, for injunctive relief is seldom granted by French law, not only in the field of administrative law but also in matters governed by private law. There is less merit perhaps to Professor Street's contention that "the theory of *cumul* leads to official irresponsibility with the attendant danger of a poor standard of public service."[15] As pointed out by Professor Bernard Schwartz in his recent book,[16] the French *Conseil d'Etat* has recently held in the *Laruelle* case (July 28, 1951) that in the event of *cumul* the State may have recourse against the official. Hence official irresponsibility is no longer the rule; on the contrary, in most European countries the modern trend is toward the recognition of the individual liability of the officer. For instance, the Constitution of the Republic of Italy, which became effective on January 1, 1948, provides in Article 28 that "employees and servants of the State and other public bodies are individually liable, according to penal, civil and administrative law for [their] acts performed in violation of rights. In such event the State and the other public bodies are subject to civil liability jointly [with them]." According to the modern trend in European countries, therefore, the State is jointly liable for damages in order to secure recovery to the victim who otherwise might be unable to collect from an impecunious officer; the latter, however, is not immune from prosecution and liability.

Professor Street is opposed to the creation of special administrative courts in common law countries. Possibly there is no need for the creation of such special courts in England or the United States. And it should be emphasized

13. Pp. 185-6.
14. P. 77.
15. *Ibid.*
16. SCHWARTZ, FRENCH ADMINISTRATIVE LAW AND THE COMMON-LAW WORLD 286 (1954).

that the development of the jurisdiction of the *Conseil d'Etat* in France and of similar specialized courts in other European countries is to some extent the result of historical accident rather than of preconceived plans. It would be incorrect, however, to oppose creation of administrative courts on the ground that as a rule they are more subservient to the administration than courts of general jurisdiction. The contrary is often true, at least in Europe. Being more familiar with the administrative machinery and its shortcomings, judges of administrative tribunals are less inclined than other judges to be awed by the prestige of the government.

These criticisms of Professor Street's book are matters of opinion, and in any event are minor ones. They cannot detract from the great value of his work. The book deals effectively with some of the more difficult problems of administrative law. It is clear, concise and convincing. It conclusively shows that a careful and intelligent analysis of the provisions of foreign legal systems may be of considerable assistance in improving corresponding provisions of domestic law. This is comparative law at it best.

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INTERSTATE COOPERATION: A STUDY OF THE INTERSTATE COMPACT. By Vincent V. Thursby. Washington, D.C.: Public Affairs Press, 1953. Pp. vi, 150. $3.25.

THIS modest volume concerns itself with the "Compact Clause of the Constitution in public law."[1] Works in this field of compact endeavor have been rather few.[2] This book, therefore, is a welcome addition.

In contrast with discussions of the compact device which have tended to discount if not discourage its practice, Mr. Thursby's account might properly be viewed as lending some encouragement to the use of compacts. Generally, however, his work contemplates the field and renders a status report; those in search of a method to deal with a particular problem of interstate cooperation must still decide whether or not their problem can best be solved through compacting.

The Founding Fathers, in a negative way, included in the Constitution the authority to compact. Subsection 3, Section 10, Article I of that document provides: "No State shall, without the consent of Congress, . . . enter into any agreement or compact with another State, or with a foreign power. . . ." This bare authorization, or perhaps more properly recognition, of compacts

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1. P. 1.

2. Law review consideration was stimulated by the landmark article of Frankfurter & Landis, *The Compact Clause of the Constitution*, 34 YALE L.J. 691 (1925). Treatises, however, are few. See ELY, OIL CONSERVATION THROUGH INTERSTATE AGREEMENT (1933); NATIONAL RESOURCES COMMITTEE, REGIONAL FACTORS IN NATIONAL PLANNING (1935); REPORT OF THE NEW YORK JOINT LEGISLATIVE COMMITTEE ON INTERSTATE COOPERATION (1948); ZIMMERMAN & WENDELL, THE INTERSTATE COMPACT SINCE 1925 (1951).