1958

Handling Claims Against the State of Minnesota

Leslie L. Anderson

Follow this and additional works at: https://scholarship.law.umn.edu/mlr

Part of the Law Commons

Recommended Citation
https://scholarship.law.umn.edu/mlr/1817

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Minnesota Law Review collection by an authorized administrator of the Scholarship Repository. For more information, please contact lenzx009@umn.edu.
HANDLING CLAIMS AGAINST THE STATE OF MINNESOTA

LESLIE L. ANDERSON*

I.

The Minnesota Legislature, in 1955, waived the immunity of the state from suit on its contracts and created a State Claims Commission to which other claims against the state could be submitted. The commission was declared to be a “special instrumentality of the legislature.” It consisted of five commissioners: two selected by the committee on committees of the senate, two by the speaker of the house, and these four were empowered to name the fifth member. Legislators were ineligible for appointment to the commission, but two members of each house of the legislature were to be selected to advise the commission and to investigate claims and make recommendations. Jurisdiction was conferred upon the district courts over contract cases. Passage of this statute was prompted in part by action of the State Bar Association, which strongly recommended that the state waive its immunity from suit in both contract and tort. The resulting statute was a compromise measure, permitting litigation against the state on its contracts only with the commission created to consider other claims. It was an advanced step in democratic government.

However, in 1957 the legislature eliminated the State Claims Commission, repealed the right to sue the state generally on its contracts, and created what it chose to call “a commission to hear and adjudicate claims against the state.” Personnel of this new commission were six in number: three senators appointed by the committee on committees and three representatives appointed by the speaker of the house. The functions and procedures of this commission remained substantially the same as those of the 1955 commission.

---

*Judge of District Court, Minneapolis, Minnesota.
1. L. Minn. 1955, c. 878.
2. Id. § 3.
3. Id. § 2.
4. L. Minn. 1957, c. 899.
5. Both commissions were to select their own officers. The director of research of the legislative research committee was designated the clerk for each. The state capitol was particularized as the regular meeting place for each of the commissions, and authority was given in each statute to hear claims arising elsewhere in the state at any county seat. The 1957 commission may hear claims for injury or death of an inmate of a state penal institution and those arising out of the care or treatment of a person in a state institution, a jurisdiction not granted to its predecessor. L. Minn. 1957, c. 899, § 9(4)-(5). The Governor or head of a state agency, moreover, may refer claims to the commission for an advisory determination. Id. § 13.
In and of itself, the conclusion seems inescapable that the 1957 statute was a step backward in the field of progressive democratic government. Not only was the right to sue the state on its contracts revoked, but the new legislative commission was given a broad jurisdiction to hear claims and demands against the state or any of its agencies. The commission was empowered to consider claims which the state "should in equity and good conscience discharge and pay." This, of course, goes beyond anything that the bar association had recommended. The words can be made to mean many things. To the extent that this provision permits determination of claims other than those allowable according to rules of law, the courts certainly are not in a position to handle them; and there could hardly be a right of appeal, if the law did permit it, on a judicial basis. For the legislature to authorize determination of such broad claims by other than legislators approaches the borderline of abdication of the legislative function.

Two factors were detectable that seemed to make the legislature hesitant to waive the immunity of the state from suit. One was the commendable insistence on the part of legislators not to unduly loosen their control over state expenditures and appropriations. The other was the probability that permitting suit in tort and contract against the state would create more problems for the office of the attorney general than it had facilities to handle.

But neither of these grounds for hesitancy has tenable validity in relation to suit against the state on its own contracts. In the first place, no contract with the state is valid until the legislature has given authority to enter into it. In that way alone, the legislature retains control over appropriations and expenditures whether rights under the contract in event of dispute are determined by a court, a commission, or a legislative committee. If the state chooses to enter into a legal bargain, it certainly is under a moral compunction to hold itself open to the same procedures for determination of its obligations as it expects to use, if necessary, to assert its rights

---

6. L. Minn. 1957, c. 899, § 9(1).
7. "We have no officers in this government, from the President down to the most subordinate agent, who does not hold office under the law, with prescribed duties and limited authority. And while some of these, as the President, the Legislature, and the Judiciary, exercise powers in some sense left to the more general definitions necessarily incident to fundamental law found in the Constitution, the larger portion of them are the creation of statutory law, duties and powers prescribed and limited by that law." Miller, J., The Floyd Acceptances, 74 U.S. (7 Wall.) 666, 676-77 (1868).
8. "It is a fundamental principle of our form of government that the Legislature, which is the appropriating branch, has sole power to authorize the payment of claims against the Commonwealth." George A. Fuller Co. v. Commonwealth, 303 Mass. 216, 220, 21 N.E.2d 529, 531 (1939).
against the contracting party. This ought to be a factor in the state's getting better bargains. It should reduce the risks to contractors and better protect the public.

Further, since Minnesota waives its immunity from suit in controversies arising out of its contracts for the construction or repair of its trunk highways, a semblance of evil appears in the state selecting with which of its bargains it will assume normal legal responsibility. Regardless of whether determination of controversies by a legislative committee is intended to be political rather than according to actual legal right, it is regarded by people as political. Regardless of the integrity of the persons who make these determinations, something appears lacking in the integrity of a procedure in which agents of the very person against whom the claim is made are to determine finally whether the claim will be allowed or not. It is submitted that all progress in the field of claims against government, considered in the light of democracy's meaning, must be made in the direction of permitting grievances to be determined as matters of right.

The issue of governmental immunity is not, however, closed in Minnesota. The 1957 legislature created an interim commission to examine the lower court system of Minnesota, and "to study and investigate the best method of handling claims against the state." This commission is made up of fifteen members: five state senators, five representatives, and five members of the Minnesota State Bar Association. Qualifications of the men selected are of the highest. Lawyers, judges, teachers and the public generally have been invited to contribute their views to the interim commission on this subject. This paper will investigate and evaluate some of the alternative methods of dealing with claims against the State of Minnesota.

II.

It is almost hackneyed to repeat that the claim of governmental immunity from suit is lifted from the philosophy that the king can do no wrong, notwithstanding the fact that even dictatorships and

9. Minn. Stat. §§ 161.03(17)-(20) (1953). At the election of the plaintiff, the action may be brought in Ramsey county, or in the county where the major portion of the contract is performed, or in the county where the plaintiff resides, or, if several plaintiffs of varying counties, in the district court of the county of any one of them. Id. § 161.03(19).

10. L. Minn. 1957, c. 951.

11. Mr. Justice Holmes indicated in The Western Maid that the government cannot be a wrongdoer because it makes the law. 257 U.S. 419 (1922). He said in Kawananakoa v. Polynbank: "A sovereign is exempt from suit... on the... ground that there can be no legal right as against the authority that makes the law on which the right depends." 205 U.S. 349, 353 (1907).
monarchies frequently permit such litigation. The argument to the effect that the processing of claims should be handled by legislative committees because that is the traditionally-accepted method by which such claims are processed, is equally untenable.

Although at the time that both the federal and Minnesota governments were established the prevailing philosophy was that governmental activity should generally be restricted to a minimum, as early as 1924 Professor Borchard of Yale wrote of the substantial increase in governmental activity, and concluded that this change in activity was one of the reasons why people needed a right of recourse to the courts for their protection.\textsuperscript{12} Benefits brought to many people by the growth of governmental activity are often also accompanied by some hardships and injustices. This has become increasingly apparent in the wholesale condemnations of homes and business properties for purposes of highway development. The street of public improvement is not alone a one-way thoroughfare; and it is desirable, from time to time to locate such injustices as may be remediable and correct them. More persons are apt to be hurt today than heretofore because of the government's increased physical and mechanical activity. If persons cannot enforce rights against the wrongdoer, then they have increasingly less protection under our government. The recommendation that the state give this protection to the people is simply a means of keeping up with the changes that have occurred. It is unjust to ask one person maimed by the state to bear himself the burden of his loss or injury when the activity that injured him was conducted for the benefit of all the people. The compensation to which he should be entitled as a matter of right should be simply regarded by the state as a part of the cost of the project by which he has suffered harm.

The federal government was slow to permit itself to be sued in tort, but the final step was inevitable in the interests of fairness to both claimants and members of Congress. Divesting itself of the responsibility of attempting to adjudicate these tort claims was one of the steps the members of Congress took to accomplish a more efficient congressional reorganization. The following are typical statements made by members of Congress with relation to their efforts to be fair to claimants and by way of critique of the legislative committee method of determining claims:

\textit{Mr. Kefauver... the ordinary injured claimant who does not have political connections is likely not to get justice. It is a haphazard method. We are using a forum which is not set up

\textsuperscript{12} Borchard, \textit{Governmental Liability in Tort}, 34 Yale L.J. 1, 129, 229 (1924-25).}
for the giving of real consideration to the merits of private claims bills.

The Chairman. I have often been somewhat aggrieved when a claim, which has had consideration by the House committee and by the House, came over to the Senate and had consideration by the Senate Claims Committee, and then came up under unanimous consent in the Senate, and a figure had been arrived at that a man who was hit by a Government truck and lost a leg... should have $2,500, but because some Senator, who was not a member of the committee, and only had an opportunity to read the report as the calendar was being called thought the amount excessive... I have seen the person in charge of the bill willing to reduce the amount by $1,000 in order to obviate the single objection which would throw the bill over and perhaps defeat it... [I]t seems to me obvious on the face of it the present procedure is not the way to secure a judicial determination of the right of private claimants.

Mr. Kefauver. Senator La Follette, at the conclusion of the last Congress I saw this happen: A claim bill passed the House for $5,000. I think it was a death case. The Senate allowed $500. The Congressman who had sponsored the bill in the House agreed to accept the reduced amount of the Senate on the theory that the Congress was about to adjourn and unless he got it through for $500 he feared he would not get anything. Of course, that is not doing justice to the claimant.

The Vice Chairman. That is a case of our great Government taking advantage of a widow who is suffering a real loss.\(^\text{13}\)

The discussion continued with relation to the impact of the legislative bodies having to determine private claims upon the efficiency of members of Congress in the broad public service for which they were elected:

Mr. Kefauver. As it works, the departments actually pass on these claims. As the chairman has said, Members of Congress, because of the stress of other matters, simply do not have time to give them judicial consideration. So what happens is that a claims bill is sent to the department and if the department is against it the chances are the claims bill is not passed, and if the department is for it the claims bill is usually passed through both Houses.\(^\text{14}\)

Mr. Voorhis. It is too obvious to require long exposition that the central function of any national legislature should be the devising of a national legislative program with all that that implies.\(^\text{15}\)

\(^{13}\) *Hearings Before the Joint Committee on the Organization of Congress, 79th Cong., 1st Sess., 66-69 (1945).*

\(^{14}\) *Id.* at 69.

\(^{15}\) *Id.* at 29.
Senator Taylor. I am on the Claims Committee. As a new member, it strikes me that it is absolutely a very poor proposition to ask Senators to spend their time pouring over these claims . . . you are absolutely at a loss if you have not gone through the case yourself. So I have found that I had to go through them personally and at a time when I was supposed to be familiarizing myself with Dumbarton Oaks, Bretton Woods, or Manpower, and many other things. I find I have to spend hours poring [sic] through these claims.36

Congressional leaders also realized that if they were to be relieved of private claim determination, the decisions of the courts, after exhaustion of the right of appeal, must be final. Thus, testimony before the congressional committee continued:

Mr. Kefauver. The second reason a bill of this sort has not been passed in the past is we fear that even after the claim has been considered by the court, some Congressman, upon the behest of an injured person, would still try to get a private claims bill through the Congress. That could be taken care of by providing in the law that this would be his exclusive remedy and a claimant should be estopped or precluded from asserting a claim in any other way except in a court established for the consideration of it.17

The result of the congressional inquiry was enactment of the Federal Tort Claims Act as a part of the Congressional Reorganization Act of 1946.18 President Coolidge had previously vetoed a general court of claims bill that was passed by the 70th Congress, but largely, it appears, because of certain administrative features in the bill.19 The Federal Tort Claims Act had been recommended by the attorney general of the United States during the Franklin D. Roosevelt administration, and after passage, it was signed by the President. Legislation of this sort had been advocated by the American Bar Association. It carried the support of both liberal and conservative leaders who were studying the problem over the years. By virtue of this statute, the federal government has now waived its immunity from both tort and contract20 suit against it; and that, in itself, adds to a natural public expectation that the states will follow, even though perhaps with caution.

16. Id. at 218-19.
17. Id. at 67.
The constitution of Minnesota provides that one's property cannot be "taken, destroyed or damaged" without just compensation.\(^{21}\) It gives no similar guarantee to human life. As has been done in various other states,\(^ {22} \) the Minnesota Supreme Court has indicated that this eminent domain provision places a duty on the legislature to provide a procedure in court for the proof of damages under the state constitution.\(^ {23} \) The state has singled out proceedings for the condemnation of property in fulfillment of the requirements of the constitutional guarantee for the taking of property.\(^ {24} \) No fair reason exists why human life, property damage, or destruction apart from the eminent domain process should not be accorded the same dignity of treatment.

It should be emphasized that even if the courts should be the instrumentality to determine liability and its amount, if any, it would still remain within the control of the legislature to appropriate the funds necessary to pay the claims. It would be expected that any statute waiving the state's immunity would also preclude the


22. The federal constitutional counterpart has not been held to be self-executing. In a number of instances, however, similar provisions in state constitutions have been held to be self-executing and to constitute a waiver of immunity from suit brought against it to enforce their terms. Woodward Iron Co. v. Cabaniss, 87 Ala. 328, 6 So. 300 (1889); Campbell v. Arkansas State Highway Comm., 183 Ark. 780, 38 S.W.2d 753 (1931); Rose v. State, 19 Cal.2d 713, 123 P.2d 505 (1942); Board of Comm. of Logan County v. Adler, 69 Colo. 290, 194 Pac. 621 (1920); Bassett v. Swenson, 51 Ida. 256, 5 P.2d 722 (1931); People ex rel. John V. Farwell Co. v. Kelly, 361 Ill. 54, 196 N.E. 795 (1935); Felt v. Louisiana State Live Stock Sanitary Bd., 178 So. 644 (La. App. 1938); Parker v. State Highway Comm., 173 Miss. 213, 162 So. 162 (1935); Barker v. St. Louis County, 340 Mo. 986, 104 S.W.2d 371 (1932); Dougherty v. Vidal, 37 N.M. 247, 21 P.2d 90 (1933); Morrison v. Clackamas County, 141 Ore. 564, 18 P.2d 814 (1933); County of Chester v. Brower, 117 Pa. 647, 12 Atl. 577 (1888); Chick Springs Water Co., Inc. v. State Highway Dept, 159 S.C. 481, 157 S.E. 842 (1930); Nelson County v. Loving, 126 Va. 283, 101 S.E. 406 (1919); Johnson v. Parkersburg, 16 W.Va. 402, 37 Am. Rep. 779 (1880); Washington Water Power Co. v. Waters, 186 Fed. 572 (N.D. Ida. 1910).

23. "... as to the question of the amount of compensation, the owner of land taken for public use has a right to require that an impartial tribunal be provided for its determination, and [that] the government is bound in such cases to provide such tribunal, before which both parties may meet and discuss their claims on equal terms..." McMillan. J., in Langford v. County of Ramsey, 16 Minn. 333, 339 (1870-71). At the time of this case, determination had been made by the commissioners. The Court said on this point, "It certainly cannot be said that this is a just or equitable mode of determining the compensation due to a citizen for property taken for public use." Id. at 340.

"So great... is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community. ... The public is now considered as an individual, treating with an individual for an exchange. All that the legislature does is to oblige the owner to alienate his possessions for a reasonable price..." 1 Bl. Comm. § 139 (Sharpswood 1879).

right to levy execution against the state and specify that judgments would not constitute liens against its property.

As to torts, it could well be provided for the administrative determination of small claims within the affected state department or agency, subject to approval by the attorney general and with the further right of appeal to the district court. Provision for this small tort claim procedure would give claimants an informal and inexpensive method for making their claims. It ought to protect the office of the attorney general from having to move around to handle too many small matters all over the state. It puts an onus for prompt investigation on the state department or agency involved, and it provides something of public relations value to the department or agency. If this administrative procedure should be made available, recourse to the courts ought not to be permitted until administrative efforts have been exhausted. There is precedent for this administrative method. The federal government used it in various ways prior to enactment of the Torts Claims Act, and a large number of claims were permitted to be settled administratively within the armed forces during World War II for damage and destruction caused by them. The Federal Tort Claims Act specifically authorized such settlement of claims not exceeding $1,000.

The more desirable result may be that the state simply waive its immunity from suit in both contract and tort. It should be indi-

27. "If I were a member of the legislative branch of the government considering the advisability of establishing a court of claims with tort jurisdiction or of conferring such jurisdiction upon existing tribunals as against the state, the reasons advanced by the majority would be persuasive. Functions now performed by the state seem to demand legislation of that character." Loring, J., dissenting in State v. Stanley, 188 Minn. 390, 395, 247 N.W. 509, 511 (1933).
"It is certainly not in accord with American democracy to permit the state to take private property by other than legal means and then to defend itself by a plea of nonusability." Gallagher, Henry M., C.J., in State v. Bentley, 216 Minn. 146, 160, 12 N.W.2d 347, 355 (1943).
In the field of municipal corporations, courts, in veering away from the rule of governmental non-liability, have resolved a distinction between governmental and proprietary functions and declared that there is liability for tortious results of the latter. This has been a judge-made escape from obvious injustice to the public. "More than that, the decisions in each of the States are disharmonious and disclose the inevitable chaos when courts try to apply a rule of law that is inherently unsound. The fact of the matter is that the theory whereby municipalities are made amenable to liability is an endeavor, however awkward and contradictory, to escape from the basic historical doctrine of sovereign immunity." Frankfurter, J., in Indian Towing Co., Inc. v. United States, 350 U.S. 61, 65 (1955).
cated here that in the various states such claims are handled by a hodge-podge of different methods. If there has been a trend, it is away from the legislative method. Constitutional restrictions affect the procedures in some states. Some constitutions require an administrative procedure. Those of Idaho, Montana, Nevada, and Utah provide for boards consisting of the governor, secretary of state, and attorney general who are to examine all claims before they are submitted to the legislature. Nebraska provides for an administrative adjustment to be made by the state auditor and approved by the secretary of state, but appeal is permitted from their rulings to the district court. One could not fairly inflict this function upon those officers in Minnesota in addition to their many present duties. Even so, the Nebraska method at least paves the way to a determination according to legal right.

The Illinois Constitution provides that the state "shall never be made defendant in any court of law or equity." The legislature of that state, however, displayed an interesting anachronism by creating what it calls a court of claims. This is not a constitutional court in the ordinary sense. It might be regarded as a legislative or advisory court, and its action does not affect the legislature's power for paying claims against the state. Its authorized jurisdiction was originally worded broadly, much as in the Minnesota 1955 and 1957 statutes, to try claims against the state, whether legal or equitable, in tort or in contract, which the state "should in equity and good conscience discharge and pay..." But this broad provision has since been removed from the statute. Despite the strictly advisory

28. "Even so, sovereign responsibility for tort probably has already become the rule rather than the exception." Davis, *Tort Liability of Governmental Units*, 40 Minn. L. Rev. 751 (1956). Professor Davis' article is a distinct contribution to this general subject.

29. Idaho Const., art. IV, § 18 providing that "... no claim against the state... shall be passed upon by the legislature without first having been considered and acted upon by said board."


35. "The court of claims is a statutory body not provided for in the constitution, and its action can have no effect upon the power of the legislature to pay claims against the State... The power or lack of power to appropriate money to pay claims depends upon the constitution and not upon the action of the court of claims." Fergus v. Russell, 277 Ill. 20, 25, 115 N.E. 166, 167-68 (1917).

nature of the decisions of the Illinois court of claims, no case has been found where the General Assembly of that state has not paid claimants in accordance with the determinations of that court. The court of claims law in Illinois provides that any judge of the court may sit at any place within the state to take evidence. Approximately one hundred cases are handled by the court each year.

It is obvious that the Illinois court of claims is somewhat of a legislative agency, and its usefulness need not be limited to one particular kind of case. It had jurisdiction until 1951 over claims of state government employees arising under the workmen's compensation legislation, although since that date the Industrial Commission in Illinois has been handling these cases. In 1953, the legislature there appropriated $150,000 to the court for the purpose of settling claims against the state arising out of the activities of the Illinois Coal Products Commission.

The North Carolina Constitution, as does the constitution of Idaho, gives original jurisdiction to the state supreme court over claims against the state. As indicated above, the Idaho Constitution also provides for a board, consisting of the governor, secretary of state, and attorney general, to examine claims; and the administrative determination by this board is prerequisite to the supreme court's assuming jurisdiction. In North Carolina, on the other hand, the legislature has authorized the Industrial Commission to consider tort claims not in excess of $8,000.

Constitutions of Idaho and North Carolina, then, provide forums for the consideration of disputed claims. Yet they do not specify procedures, and the legislatures have not designated any except as indicated above in North Carolina. Certainly appellate courts are not well constituted for the actual trial of cases, and they do not have facilities if jury trial is in order. The procedure in those states is generally to commence suit in the supreme court; after the issue is joined the case is referred to a judge of a trial court to find as to disputed fact questions. The trial judge makes his findings of fact and conclusions of law and files them, along with a transcript.

41. E.g., "... in proper cases the Court may order that issues of fact be tried in the Superior Court..." Cohoon v. State, 201 N.C. 312, 160 S.E. 183 (1931).
of the testimony when he is directed, in the supreme court, where
the parties have the opportunity to argue further.

Three possible methods of handling governmental claims by a
court procedure might be suggested. One would be the creation
of a separate court of claims. A second would be by some board
or administrative body with the right of appeal. The third would be
by suit in district court by the usual method, with some protective
precautions.

One state court of claims has fallen by the wayside. That was
the court in West Virginia which was created in 1941 with juris-
diction over both tort and contract cases. In 1953 the state trans-
ferred the duties of this court to the attorney general. Hear-
ings are now held at his office where he takes testimony, although he
is not bound by the usual rules of evidence and affidavits are not
acceptable as proof. True, the attorney general may lean over back-
wards to be fair; but the question still remains whether the integrity
of the procedure is not fairly to be questioned when the determina-
tion of rights is made by an attorney or agent of the very person
against whom the claim is made.

New York, on the other hand, has a court of claims which it
has strengthened and given added deserved prestige. The legisla-
tive method of passing upon private claims was found historically
to have led to abuses, especially with relation to construction proj-
ects. Primarily to remedy this evil, the New York Constitution
was amended in 1874 to forbid the legislature to audit any private
claim. The legislature accordingly provided certain public officers
as a Board of Audit to perform the service. In 1883, that board
was abolished and a Board of Claims was created in its stead with
substantially the same powers. In 1897 this board, in turn, was
supplanted by a “court of claims” with increased jurisdiction. It
became a “board” again in 1911, and once more revived as the

42. W.Va. Code Ann. §§ 1143-47 (1949). Designated “a special instrumentality of the legislature” and “A determination . . . shall not be subjected to appeal . . . or review.” Id. § 1146. The jurisdiction included that over claims which the state “should in equity and good conscience discharge and pay.” Id. § 1147(8).
44. Rules of Attorney General, pursuant to statute delegating to him the
function of hearing claims.
45. The Court of Claims of the State of New York (a pamphlet argument for constitutional provision for the court).
path of persons asserting unfounded claims against the state.” Cayuga County v. State, 153 N.Y. 279, 288, 47 N.E. 288, 290 (1897).
47. N.Y. Sess. Laws 1883, c. 205.
48. N.Y. Sess. Laws 1876, c. 444.
49. N.Y. Sess. Laws 1897, c. 36.
50. N.Y. Sess. Laws 1911, c. 856.
“court” of claims in 1915.\textsuperscript{51} Thus its status from “board” to “court” and back to “board” again occurred over the years as new political powers assumed control in the legislature, the change being a means for a new administration to oust the appointees of the old.\textsuperscript{52} Efforts to make the court a genuinely judicial one bore fruit, however. It was made a constitutional court effective in January of 1950.\textsuperscript{53}

Here, then, is the first suggested possibility for Minnesota—a newly constituted court of claims from which a right of appeal would be permitted. There may be merit in the suggestion that a group of judges who confer together regularly and who deal exclusively in problems involving the state would become specialists and do a more competent job. If the court were to have exclusive jurisdiction over both contract and tort cases, there might be enough work to justify its existence. There is precedent for such a court in the long-established United States Court of Claims. In such a forum grievances could be submitted on a basis of legal right and be defended by the state on that ground. The office of the attorney general would have but one court with which to deal and would not be under the threat of having to appear in many courts all over the state at the same time. One judge could try the facts alone on smaller cases and report to the full bench for the entire court’s decision, and the entire panel sitting together could take the place of a jury in the larger or more important cases. This method of handling such claims, however, would require the creation of an entirely new judicial body with all of its consequent expenses to the state, and a new court of claims might be regarded as surplusage in the light of presently-available court facilities.

It is now the trend, moreover, to consolidate and unify court systems rather than to raise new jurisdictional conflicts by the creation of new courts. Examples of such conflicts with their consequent cost and other problems to both litigants and the state are apparent in Minnesota. Jurisdictional monetary limits in municipal courts vary from court to court, and the limitation on procedural facilities not infrequently raises questions as between the municipal

\begin{footnotesize}
\textsuperscript{51} N.Y. Sess. Laws 1915, c. 1, 100.
\textsuperscript{52} “During a period of many years, it has been the practice whenever a change of administration has occurred to legislate out of office either the Court of Claims or the Board of Claims, and to substitute therefor either a Board of Claims or a Court of Claims, as the case might require. This practice has not been conducive in all cases to the best interests of the State.” Letter of Nov. 23, 1921, from Merton E. Lewis, former Attorney General of New York.
\textsuperscript{53} N.Y. Const., art. VI, § 23. The court has jurisdiction “to hear and determine claims against the state or by the state against the claimant or between conflicting claimants as the legislature may provide.”
\end{footnotesize}
and district courts. Appeals from some municipal courts are direct to the supreme court, but from others appeal is to the district court for trial de novo. With the latter there is an invitation for recalcitrant parties to employ this easy appeal as a means of strategy where no meritorious claim or defense in fact exists. District courts attempt to force cases within certain monetary limits into the municipal courts in disregard of the probable constitutional right of claimants to select their own forums for trial. The fact that appeal from probate court is to the district court for trial de novo and perhaps with jury means that two trials on the identical facts are often required and are at least permitted, the appeal process inviting participants to toy with each other in the probate court and even to delay display of their full hand until the appeal—all with the possibility of further appeal thereafter. The possible creation of county courts to take over the function of municipal courts and perhaps absorb the functions of probate courts has had its consideration among some persons in Minnesota; and the possible lack of wisdom in trying family matters in a wholly separate court, which has been suggested by some, becomes apparent because of jurisdictional conflicts that might arise.

By like token, the Temporary Commission on the Courts in New York has unanimously concluded that the jurisdiction of the surrogate courts in that state should be exercised by the supreme court in New York City and by the county courts elsewhere in the state. It also concluded that the court of claims of New York should no longer exist, but its functions should be exercised in the future by the highest trial court as already constituted. The change would have to be by constitutional amendment, of course. The annual cost of the court of claims in New York has approximated $545,000. Jurisdictional conflicts between it and the regularly-constituted trial courts create complications. The court of claims does not have equity jurisdiction; nor does it have jurisdiction over a person who is claimed to be a joint tortfeasor with the state. Suits against the state and a joint tortfeasor must be two in number, one in the court of claims against the state for trial by the court and one in another court against the joint tortfeasor for possible trial by jury. The two actions cannot be consolidated. Title to land is not triable in the court of claims, and it may not try claims against a city, town, village or other political subdivision.

Most controversies with the state are not so intricate, important or novel that specialists in the field are required to adjudicate them. Many of the same questions arising between a claimant and the state likewise arise between a claimant and a city or other political
subdivision. Handling claims against the state in a regularly-consti-
tuted trial court would permit third-party actions, and could
permit the granting of equitable relief. Practice and procedure could
then be kept more uniform. As the New York Temporary Commiss-
ion has stated, proper safeguards for the office of the attorney
general can certainly be provided, and the large expense of a
separate court avoided. Problems peculiar to the attorney general
are not to be capitably regarded, but they certainly are not insur-
mountable simply because trial would be in the regularly-constituted
trial courts.54 Recognizing the advantages of a separate court of
claims, the recommendation nevertheless seems inevitable that it
would be better not to establish such a court in Minnesota.

The second proposed procedure finds its example in Michigan
where judges themselves comprise a board to hear claims. The
Michigan constitution forbids the legislature to audit or allow
private claims.55 It designates the secretary of state, state treasurer,
and land office commissioner as a board for adjusting them.56 Legis-
lation, though, has limited the size of the claims that may be sub-
mitted to that board. The Michigan Legislature in 1939 created
what it called a court of claims and left the administrative board to
handle only claims under $100.57 The judges of that court are
circuit court judges designated by the presiding circuit judge of the
state. The parties have the right of appeal to the supreme court.

This method of operation may be adaptable to Minnesota. As-
signments could be made by the chief justice with provision for
rotation of assignments to obviate placing too much burden on any
one judge or conflicting too much with calendar assignments in
certain districts. This method, again, would restrict the number of
trials at any one time so as not to require the attorney general’s office
to make many appearances simultaneously all over the state.

The third suggestion, and that favored by this writer, is that
the state simply waive its immunity from suit against it in tort and
contract; suit to be brought in the presently-existing courts as is
done between private parties. Suit is allowed against the state with
varying limitations in at least eighteen states, original jurisdiction
being in the supreme court in three of them.58 Certainly, this fact

54. The Plan of the Temporary Commission on the Courts for a Simpli-
   fied State-Wide Court System (1956).
56. Id., art. VI, § 20. To “... adjust all claims against the state not
   otherwise provided for by general law.”
   Code §§ 16041-54 (1945) (on express contract and tort after claim is dis-
   allowed administratively); Conn. Gen. Stat. §§ 7781, 8297 (1949) (for
together with the existing law on the federal level is illustrative to show that litigation against the government is not novel. A more serious problem would seem to relate to the facilities of the attorney general's office. However, the federal government faced this problem and private industry has always been obliged to do so. One possibility would be for a controlled calendar, perhaps under the direction of the chief justice of the supreme court, to help limit the number of places in which the attorney general's staff would be obliged to appear at any particular time. If it is necessary to increase the size of the attorney general's office, then that should be done. It might be necessary to recognize increasingly the position of the attorney general as head of a centralized legal system for the state and have some of these cases defended by county attorneys under his direction. This feature of the state's present inquiry at least is not unsolvable.

Practice under the Federal Tort Claims Act is for trial to be by the court without a jury. This suggests a feeling on the part of some people that judges might be more predictable and they might be more conservative in their allowances than jurors. Certainly, it should be in order for the attorney general to settle cases, and, for the protection of the state, court approval of the settlements could be provided for.

negligent operation of state-owned vehicles, but in 1957, the legislature submitted to the people a constitutional amendment that "claims against the state shall be resolved in such a manner as may be provided by law." Conn. Pub. Act, 1957, No. 615; Idaho Const., art. V, § 10 (original jurisdiction in supreme court); Ill. Rev. Stat. c. 37, §§ 439.1-25 (1957) (suit in court of claims on contract or tort); Ind. Ann. Stat. §§ 4-1501 to 1507 (Burns 1946) (in superior court of Marion County sitting as a court of claims on money demands arising in law or equity on express or implied contracts); Mass. Ann. Laws c. 258, §§ 1-4A (1956) (in superior court on all claims at law or in equity); Mich. Comp. Laws §§ 647.25, 691.108 (1948) (in court of claims in contract and tort); Minn. Stat. Ann. § 161.03(17)-(20) (1946) (on highway contracts); Miss. Code Ann. §§ 4387-89 (1957) (on a liquidated claim which state auditor is empowered, but refuses, to allow); Neb. Const., art. VIII, § 9 (certain claims, including those on contract, express or implied, sued in Lancaster County); N.Y. Const., art. VI, § 23, N.Y. Ct. Cl. Act (in court of claims on contract, express or implied, or tort); N.C. Const., art. IV, § 9 (in supreme court); N.D. Rev. Code §§ 32-1202 to 1204 (1943) (title to property or on contract); S.D. Code § 33.0604 (1939) (complaint filed in supreme court, referred to senior circuit judge in any county sitting as commissioner of claims, in contract and tort); Va. Code Ann. § 8-752 (1957) (on claims disallowed by comptroller); Wash. Rev. Code § 4.92.010 (1956) (in superior court of Thurston County on any claims); Wis. Stat. §§ 285.01-06 (1955) (suit allowed after legislature disallows claim).

59. But see Indian Towing Co. v. United States, 350 U.S. 61 (1955). It was there said: "Of course, when dealing with a statute subjecting the Government to liability for potentially great sums of money, this Court must not promote profligacy by careless construction. Neither should it as a self-constituted guardian of the Treasury import immunity back into a statute designed to limit it." Frankfurter, J., Id. at 69.
Since the government conducts its activities all over the state, it ought to be suable all over the state without the necessity of aggrieved persons having to go for trial to, perhaps, the judicial district in which the capitol is situated. One should not be denied convenient access to the courts simply because the state is involved and because he was injured in Koochiching, St. Louis, or Lyon county where he resides and where operations of the state occur. Burdens on claimants to appear personally at a trial in a distant county could be greater than the value to them if determination were to be by a legislative committee where proof by affidavit could be permitted. Venue should always be available in the county of the capitol, but should also be available in other districts consistent with rules as they exist between private parties and subject to such change of venue as usual rules provide.

III.

Effort has been made in this article to indicate that there is no well-established, single, traditional process for determining claims against governments, even though determination by legislative committee has been the rule in Minnesota until 1955. At least the legislature has opened the way for a fresh consideration of this problem free of personality conflicts. One is compelled to the conclusion that, as between private litigants, so as between a private claimant and the government, determination of a legal controversy is a judicial process. Citizens have a moral right to expect that it will be so handled. It is submitted that the preferable method of handling claims against the state is for the state to come out from behind its veil of immunity from suit in both contract and tort, except that provision might well be specified for the administrative handling of smaller tort claims with the right of a claimant to appeal.

60. "Following the masterful leadership of Professor Edwin M. Borchart, nearly every commentator who considers the subject vigorously asserts that the doctrine of sovereign immunity must go. The Supreme Court in 1939 observed that 'the present climate of opinion . . . has brought governmental immunity from suit into disfavor.' The attitude that is now dominant was expressed nearly a century ago by President Lincoln in his first annual message to Congress: 'It is as much the duty of Government to render prompt justice against itself in favor of citizens as it is to administer the same between private individuals. The investigation and adjudication of claims in their nature belong to the judicial department.'" Davis supra note 27, at 753.
CONTRIBUTORS TO THIS ISSUE


GILBERT GEIS. A.B. 1947, Colgate University; M.S. 1949, Brigham Young University; Ph.D. 1953, University of Wisconsin. Former research director of the Oklahoma Crime Commission. Assistant Professor of Sociology, Los Angeles State College.

HORACE R. HANSEN. LL.B. 1933, St. Paul College of Law. Member of the Minnesota Bar. General Counsel, Group Health Federation of America.

MARILYN Vavra KUNKEL. A.B. 1957, University of Oklahoma. Graduate Student, University of Oklahoma.


FRANCIS A. ALLEN. A.B. 1941, Cornell College; LL.B. 1946, Northwestern University. Member of the Illinois Bar. Former Law Clerk to Chief Justice Vinson. Professor of Law, University of Chicago Law School.

RAYMOND L. CAROL. A.B. 1947, Johns Hopkins University; M.A., 1951, Ph.D. 1956, Syracuse University. Associate Professor of Political Science, Le Moyne College.

MAURICE H. MERRILL. B.A. 1919, LL.B. 1922, University of Oklahoma; S.J.D. 1925, Harvard Law School. Member of the Oklahoma Bar. Research Professor, University of Oklahoma Law School. Author: Cases and Materials on Administrative Law (1954); Law of Notice (1952); Covenants Implied in Oil and Gas Leases (2d ed. 1940); Misrepresentation to Secure Employment, 14 Minn. L. Rev. 646 (1930).
