

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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"EVOLVING STATE ACCOUNTABILITY: A CRITICAL EXAMINATION OF TORTIOUS LIABILITY IN ENGLAND AND THE IMPACT OF SOVEREIGN IMMUNITY"

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ABSTRACT

This study provides an analysis of tortious liability in England, In England, tortious liability of the State is governed by common law principles and the Crown Proceedings Act, 1947, which restricts the ability to sue the government in certain contexts. The Crown's legal immunity in England, historically based on the maxim "The King can do no wrong" and the Roman law principle of state immunity, shielded it from accountability, particularly regarding the actions of its employees. This doctrine suggested that the government could neither commit nor authorize wrongful acts and could not be sued in its own courts without its consent. However, the passing of the *Crown Proceedings Act, 1947* marked a significant shift, subjecting the Crown to legal liabilities similar to those of private individuals. Despite this change, "acts of state"—actions taken by the Crown's representatives and ratified by the sovereign—remained exempt from legal scrutiny. This shift in legal principles highlights the evolving relationship between the Crown and its subjects, with an increasing recognition of the need for state accountability in the legal system.

INTRODUCTION

For many years, England faced a complex legal issue regarding the Crown's immunity from liability. Historically, the Crown was shielded from legal accountability, particularly concerning the actions of its employees. This principle was rooted in British legal tradition and the maxim "The King can do no wrong," which implied that the government could neither

commit nor authorize any wrongful acts. Additionally, the idea of state immunity, derived from Roman law, suggested that a sovereign state could not be sued in its own courts without its consent. However, this long-standing legal doctrine began to shift with the enactment of the *Crown Proceedings Act, 1947*. This legislation marked a significant departure from previous practice, establishing that the Crown would be subject to legal liabilities similar to those of private individuals. Despite this, a distinction remained in cases involving "acts of state," where actions taken by the Crown's representatives, sanctioned or ratified by the sovereign, were exempt from legal scrutiny. The evolution of these legal principles reflects the changing relationship between the Crown and its subjects, with increasing recognition of the need for the state to be held accountable in the legal system.

TORTIOUS LIABILITY OF THE CROWN IN ENGLAND

Law prior to the Crown proceedings Act

Before the enactment of the Crown Proceedings Act, 1947, two ancient yet fundamental principles governed the liability of the Crown and its servants

- i. the substantive rule that "the King can do no wrong,"
- ii. the procedural rule that the King could not be sued in his own courts. These principles persisted into the 20th century, meaning that until January 1, 1948, the Crown could not be held liable for wrongs, whether committed with its express authorization or by its servants while performing their official duties.¹

The King can do no wrong

The maxim "the King can do no wrong" is an ancient and fundamental principle, but it does not imply that the King is above the law or that all his actions are inherently just or lawful. According to the renowned commentator Blackstone, this maxim has two interpretations. Firstly, it means that any faults in the conduct of public affairs are not attributed directly to the King, nor is he personally accountable to the people for them, as this doctrine preserves the constitutional independence of the Crown, which is vital for maintaining the balance of power in a free and functioning Constitution. Secondly, it signifies that the Crown's prerogative cannot be used to cause harm; it is meant to serve the people's benefit and cannot be wielded in a way that harms them. Maitland, on the other hand, explained the maxim by stating,

¹ Wade, E.C.S. and Bradley, A. W. *Constitutional and Administrative law* 10th Ed. (Longman, London, 1985) P.678; Hood Philips, O. and Paul Jackson, *Constitutional and Administrative law*, 7th Ed. (Sweet and Maxwell, London, 1987) P.702.

"English law does not provide any means whereby the King can be punished or compelled to make redress."

According to Broom,² the maxim "the King can do no wrong" has two meanings. First, it suggests that the sovereign, in his personal and natural capacity, is independent of and not subject to any earthly authority or jurisdiction. Consequently, any issues arising in public affairs are not directly attributed to the King, meaning he is not personally accountable to his people for them. Second, it signifies that the Crown's prerogative cannot be used to cause harm, as it exists for the benefit of the people and cannot be exercised to their detriment. This principle establishes that the King is bound by the law, just like his subjects, and cannot authorize acts that are prohibited by law.

Ludwick Ehrlich, however, argues that even Blackstone misunderstood the maxim. According to Ehrlich, the maxim simply means that the King is not entitled to commit wrongs. If the King's actions are unlawful, they are considered wrongful (*injuria*). Thus, while the law presumes that the King's personal actions are not wrongful, any commands he gives to his servants that are unlawful are not considered legitimate commands in the eyes of the law. In such cases, the servant becomes personally liable for the unlawful act, not the King.

King could not be sued in his own Courts

The principle that the King could not be sued in his own courts stemmed from a feudal tradition, where a feudal lord could not be held accountable in his own court. This practice reflected the social conditions of medieval England³, where feudal lords held supreme authority. The legal system at the time was archaic, and lords often exercised their power to protect their subjects, even when they committed offenses. According to Street,⁴ "Just as no lord could be sued in the court he controlled to adjudicate disputes among his tenants, the King, at the top of the feudal hierarchy and not subject to any other court's jurisdiction, could not be sued." A ruling from the King's Court in 1234 stated, "our Lord the King cannot be summoned or commanded by

² Herbert Broom, *A Selection of Legal Maxims*, 10th Ed. (Sweet and Maxwell, London, 1939), pp. 21

³ The society was not complex and the civil law was rudimentary. The subject of Anglo-Saxon Justice did not cover offences except violent ones and theft. In such a society when the law could not compel an accused or a suspect to submit himself to Justice and pay fines, it could not be imagined that a tenant or an individual might sue his Lord, or the over Lord-the King, for damages; Pollock and Maitland, *The History of English Law*, Vol. 1 (1968) P.P. 37-38

⁴ Street, H. *Governmental Liability: A comparative study*, (Cambridge University Press, 1953) P.1

anyone." Therefore, under common law, no human authority could enforce the law against the King—he could act as a plaintiff but could not be made a defendant.

The Petition of Right

While the two common law maxims shielded the King from liability, it was recognized that the King, as the source of justice and equity, could not refuse to address wrongs when petitioned by his subjects. In early tort cases against the King, the remedy was not sought through a writ but through a petition.⁵ This practice remained in place until the new system introduced in 1948. The procedure was later streamlined by the *Petitions of Right Act* of 1860, which provided a more straightforward petition process and allowed for the awarding of costs on either side. Essentially, a *Petition of Right* was a document in which the petitioner outlined their right and the violation of it, requesting the King to provide justice. The Crown's consent was indicated by the endorsement "Let Right be done," and once this approval was granted, the plaintiff could then seek judgment from one of the regular courts.⁶

Initially used to recover land or property, this remedy took a significant step forward after the 1688 Revolution when judges agreed that it could also be used to enforce the collection of debts. This development occurred in the *Banker's Case*⁷, where several bankers sought to sue the Crown for unpaid loans to King Charles II, who had defaulted on them. The central issue was whether the petition of right was the correct legal procedure. The Court of Exchequer Chamber affirmed that it was. No significant cases followed until 1874, when an inventor, who had developed a new type of heavy artillery, sued the War Office for a promised reward. In *Thomas v. The Queen*,⁸ the case established that a judgment could be issued against the Crown in a petition of right for a breach of contract made by the Crown's agent.

No Liability in Tort

Meanwhile, the judges consistently rejected the idea of using the petition of right for tort claims. The first significant case in this regard was Viscount Canterbury's⁹ unsuccessful petition of right in 1842. He had been the Speaker of the House of Commons in 1834 when

⁵ somervell, "The State as Defendant." 33 A.L.J., (1959), P.149

⁶ Holdsworth, W.S. A History of English Law, IX 2nd Ed. Matheueven and Co., Ltd., London, (1944), P.12 Pollock and Milland supra note 6 at P515.

⁷(1690-1700), 14 S.T.I. cited by Holdsworth W.S

⁸ (1874), L.R.10 Q.B.31

⁹ Viscount Canterbury v. Attorney General (1842):1 Ph.306

Crown-employed workers, tasked with burning old tally sticks from the Exchequer, accidentally destroyed both Houses of Parliament and the Speaker's house. His claim against the Crown for the value of his household goods failed because it was determined that the negligence of the workers could not be attributed to the Crown, either directly or indirectly. Similarly, in *Tobin v. The Queen*,¹⁰ where a British naval commander, while suppressing the slave trade off the coast of Africa, seized and destroyed a ship from Liverpool, the owner's petition of right was also rejected.

In 1920, the House of Lords made some progress towards acknowledging the Crown's liability when it ruled that a petition of right could be used to enforce the statutory duty to pay compensation. Viscount Dunedin stated that "the petition of right does no more and no less than to allow the subject of such cases to sue the Crown." However, in the *Anglo-Saxon Petroleum Company* case,¹¹ it was ruled that a negligence action could not be brought against the Crown. The Court clarified that the petition of right was only available when a subject's land, goods, or money had come into the Crown's possession, and the purpose of the petition was to seek restitution or, if that was not possible, compensation. It could also be used in cases arising from a contract, such as claims for goods supplied to the Crown or public service. As a result, the Crown's immunity from tort claims, which had been an unyielding principle, remained intact until Parliament abolished it in 1947.

Personal Liability of Crown Servants

The Crown's immunity from tort liability did not extend to its servants personally. It has always been a fundamental principle that ministers and officials, regardless of rank, are personally liable for any injury unless they can demonstrate legal authority for their actions. Orders from the Crown are not considered legal authority unless they fall under rare exceptions, such as the prerogative powers during wartime, like the detention of an enemy alien. Therefore, while the Crown itself could not be sued in tort, an injured party could always sue the specific Crown servant responsible for the act, including any minister or senior officer who either ordered or directly caused the wrongdoing.

¹⁰ *Attorney General v. De Keyser's Royal Hotel Ltd.*, (1920) A.C.P.508 at P.P. 530-531

¹¹ *Anglo-Saxon Petroleum Company v. Lords Commissioner of Admiralty*, (1947) K.B. 794 at pp. 801

In *Madraze v. Willes*¹², a captain of a British warship who destroyed a Spanish trading vessel, believing he was acting within his duties, was held personally liable to the ship's owner. Similarly, in *Bainbridge v. Postmaster-General*¹³, it was ruled that a superior officer could not be held liable solely by virtue of his position, as it is the Crown that is the employer. However, if the superior officer participated in the wrongful act, he was as liable as any other participant. Orders from higher authorities could not serve as a defense, as neither the Crown nor its servants have the authority to authorize wrongful acts. As a result, the personal liability of officials was a key safeguard for the rule of law and a foundational element for the development of remedial practices in public service.

The Fiction of Nominated Defendant

To address the perceived injustice that the Crown could not be sued for the wrongful actions of its servants, the courts created a legal fiction involving a nominated defendant. In this arrangement, the legal process was technically initiated against the individual servant, but the Crown effectively handled the defense. If damages were awarded, they were paid from public funds. Government departments played an active role in facilitating this process and, in cases of uncertainty about which servant to sue, would often provide the name of a suggested defendant. This practice came to be known as the "fictitious defendant," "technical defendant," or "representative defendant."¹⁴

Breakdown of the Fiction

For many years, the practice of using nominated defendants effectively addressed the limitations of the law. However, according to Glanville Williams,¹⁵ this practice had three major flaws. First, the plaintiff might not know the identity of the servant who caused the injury, leaving them with no one to sue. Second, the Crown could dispute whether the wrongdoer was its servant or if the act occurred while the servant was performing their duties. Third, this practice did not provide a mechanism for recovering damages from the Crown in situations where an ordinary employer would be directly liable.

¹² Walker v. Baird, (1892) A.C.561

¹³ 1906) 1 K.B.178

¹⁴ This device was adopted by statute and still operates for criminal liability for traffic offences; Road Traffic Act, 1972 S.188(8), Barnett v. French (1981) 1 W.L.R. 848

¹⁵ Glanville Williams, Crown Proceedings (1948) pp.17-18

The practice of nominated defendants was criticized by the House of Lords in the 1946 case *Adams v. Naylor*.¹⁶ In this case, military authorities had created a minefield surrounded by a wire fence with notices warning the public to "Keep out." However, the wind had buried parts of the fence under sand. When a boy retrieved a ball, he accidentally triggered a buried mine, resulting in his death and another child's serious injury. The House of Lords dismissed the claim, stating that the minefield was under the Crown's occupation, not a nominated Crown servant's, and that only the occupier of the land had a duty of care to the injured parties.

Following *Adams*, the Court of Appeal rejected a claim in *Royster v. Cavey*¹⁷ against a nominated defendant. In this case, the plaintiff, an employee at a Royal Ordnance Factory, was injured while working and sought to sue for negligence against the occupier of the factory. Since no tort claims could be made against the Crown, the Treasury solicitor provided the name of the nominated defendant, Cavey, the factory superintendent. However, Cavey had no connection to the factory at the time of the incident. The court rejected the practice of using a nominated defendant. Scott L.J. stated that the court could not proceed with a case where the action was not genuinely against the real defendant but rather against a name provided merely to facilitate the trial. Bucknill L.J. echoed this, saying the court could not deliver a judgment against a defendant who, in fact, had no liability. These cases revealed the shortcomings of the temporary practice of suing the Crown indirectly through a nominated defendant.

Liability under the Crown Proceedings Act, 1947

As civilization progressed, the role of the Crown evolved. The abolition of the Court of Star Chamber in 1641 and the passage of the Habeas Corpus Act in 1679 significantly weakened the King's ability to govern in a feudal manner. The need for change was particularly evident in 1921, when Lord Chancellor Birkenhead formed a committee of lawyers and other experts to examine the Crown's role as a litigant and suggest possible reforms. In 1927, the committee produced a Draft Bill¹⁸ proposing the abolition of the petition of right and granting the Crown greater liability in tort. However, the proposal was shelved due to opposition from various government departments. The Donoughmore Committee later advocated for similar reforms, but the resulting Administration of Justice (Miscellaneous Provisions) Act of 1933 only improved the Crown's ability to litigate, without making it liable for torts. The rise in accidents

¹⁶ (1946) A.C. 543

¹⁷ (1946) 2 All E.R. 642

¹⁸ Crown Proceedings Committee Report, emd.2842 (1927)

involving state transportation during World War II, combined with concerns about the potential nationalization of industries and the expansion of government immunities, led to the introduction of a Crown proceedings Bill in the House of Lords. Based largely on the 1927 Draft Bill, it became law on July 31, 1947, and took effect on January 1, 1948.

General Rules of Liability

The Crown Proceedings Act of 1947, as its name suggests, reformed the procedures for civil cases involving the Crown and significantly altered the Crown's rights and liabilities in relation to individuals. The Act holds the Crown accountable in tort in the same manner as a private individual with full legal capacity. The overarching aim is to treat the Crown like any other defendant in legal proceedings. However, the Act does not change the personal liability of Crown servants, which was central to the old legal system.¹⁹

Under the new law, if a Crown servant commits a tort while carrying out their duties, both the servant and the Crown are jointly and severally liable, aligning with the standard principles of employer-employee liability. The Act specifies three categories where the Crown can be held liable:

1. Torts committed by its servants or agents.
2. Breaches of duties owed by employers to their servants or agents at common law.
3. Breaches of duties associated with the ownership, occupation, possession, or control of property.

However, in the first category, the Crown is only liable if the servant or agent would have been liable themselves. This maintains defenses like "act of State" and protects statutory or prerogative powers. The Act also allows the Crown to be held responsible for torts committed by its servants that exceed the scope of their legal powers (*ultra vires*), similar to how the Crown can be liable for negligent use of such powers. The Act does not alter the rule that statutes do not bind the Crown unless explicitly stated. The Crown can also be held accountable for actions taken by ministers or other servants, even if the power was granted directly to them and not to the Crown itself, as if those actions were carried out on the Crown's behalf. Essentially, the Act aligns the Crown's liability in tort with that of an individual, in line with Anglo-American legal principles, rather than adopting a separate administrative law system.

¹⁹ Section 2(1) of the Crown Proceedings Act, 1947, There is no liability in tort outside the Act, *Tranik v. Lennox* (1985) IWL 532

Crown and Crown servant

Today, the term "Crown" in constitutional law refers to a collective entity that includes the Sovereign in their governmental capacity, along with ministers, civil servants, and the armed forces. Despite the growth of the government, those working in the central government continue to enjoy Crown status. This protection extended to what was somewhat inadequately referred to as the "General Government" or the "Government of the Province," but it did not apply to local authorities or public corporations. Legislative practice typically specifies whether a new public body, created by an act, holds Crown status. If such a specification is absent, it becomes necessary to determine whether the public authority possesses Crown status.

Crown servant

When considering who qualifies as a servant of the Crown, it's important to note that the Crown is liable for the same torts committed by its servants or agents as a private person would be. The term "agent" includes independent contractors. Generally, in tort law, an employer is liable for the wrongful acts of their servant or agent committed during the course of their employment, but not for the actions of independent contractors, who are responsible for their own misdeeds. The terms "servant" and "agent" are not specifically defined in the Crown Proceedings Act, meaning that the usual rules of tort law do not automatically apply when determining if someone is a servant of the Crown. Additionally, the Crown's liability for the actions of its servants is limited by the Act, which introduces a specific criterion based on appointment and pay. According to the Act, the Crown is not liable for the torts of any officer unless that officer is appointed directly or indirectly by the Crown and is paid or would typically be paid entirely from the Consolidated Fund or equivalent sources. This provision also covers voluntary officeholders, such as ministers working without salary, but excludes officers or servants of statutory corporations. In one case, the House of Lords ruled that the custodian of enemy property was considered a Crown servant and was therefore exempt from paying taxes.

However, the rules in the Act for defining a servant of the Crown are seen as imprecise. Typically, when a person's servant is told to work under the direction of someone else, that person (B) would be liable for any negligence of the "borrowed servant." However, the Crown Proceedings Act does not extend liability to the Crown for the actions of a borrowed servant, as such a person is neither an agent nor an officer of the Crown. This is considered a gap or omission in the Act.

Public Corporation as An Organ of the Crown

When Parliament creates a public corporation, it becomes necessary to determine whether the corporation holds the attributes of the Crown and is protected by the Crown's shield. While various criteria have been considered by the courts, the key factor often relies on the ruling in *Tamlin v. Hannaford*,²⁰ which was incorporated into the Transport Acts. This ruling specified that a corporation should not be regarded as a servant or agent of the Crown, and as a result, commercial corporations were generally not considered Crown agents.

One of the main tests used by the courts now is whether the corporation performs functions that are part of the general government of the country and whether it is under some degree of control by a Crown minister. For instance, the Central Land Board, which was later abolished, was found to be a Crown agent. However, the British Broadcasting Corporation (BBC) was determined not to be a Crown entity. Despite receiving financial support from the government, the BBC's independence from government control was intentionally established and maintained. On the other hand, Regional Hospital Boards, created under the National Health Service Act of 1946 to manage hospitals on behalf of the Minister, were ruled to be part of the Crown service. Hogg argues that statutes creating public corporations would benefit from clearly stating the extent to which the corporation should have Crown attributes. There should be a strong presumption that a public corporation should be treated under the law like a private entity. A key factor in determining whether a corporation is a Crown servant is the "control test." If a corporation exercises its powers with significant independence from ministerial control, it is not considered a Crown servant. However, if the corporation is controlled by a minister in a manner similar to a government department, it is regarded as a Crown servant.

In *Tamlin v. Hannaford*, the Court of Appeal ruled that the British Transport Commission, the predecessor of the British Railways Board, was not a servant or agent of the Crown. The issue was whether a property leased from the Great Western Railways was exempt from the Rent Restriction Acts because it was vested in the British Transport Commission under the Transport Act of 1947. Denning L.J. held that while the minister had significant powers over the British Transport Commission, it was not his agent, as it did not have the immunities or privileges of the Crown, its servants were not civil servants, and its property was not Crown property.

²⁰ 1949 2 All E.R. 327

Police - Not Crown Servants

The Crown Proceedings Act excludes police officers from being classified as Crown servants, as they are neither appointed nor paid by the Crown. Police forces in England are typically maintained by individual counties and county boroughs, except in cases where forces have been merged to form combined areas. The Metropolitan Police is the only police force directly controlled by the Home Secretary in England. Therefore, outside of London, police forces are not under the direct control of the central government, as the concept of a national police force contradicts the English tradition of local governance. Due to the unique structure of the police system, defining their legal status was complex before the Police Act of 1964. Prior to this, there was no vicarious liability for the police. In the case of *Fisher v. Oldham Corporation*,²¹ it was ruled that a claim for damages arising from wrongful arrest by the police could not be made against the local police authority, as the police were acting on their own behalf and not as servants of the local authority. There was no legal connection that would make the local authority liable.

However, under Section 48 of the Police Act of 1964, the police authority is responsible for ensuring the police force is efficient and for overseeing its operations. The Chief Constable is held liable for the wrongful acts of constables under his direction and control, in the same way that an employer is liable for the actions of their employees during the course of their duties. Any damages awarded against the Chief Constable for vicarious liability are paid from the police fund.

Crown's Liability for Negligence

Since the enactment of the Crown Proceedings Act, the approach in England has been to subject the Crown to the same civil liability laws as private individuals. This means that any claim against the Crown must be based on a specific tort. The Crown's liability for torts, particularly negligence, is clearly demonstrated in *Dorset Yacht Co. v. Home Office*,²² where the House of Lords ruled that the Home Office (representing the Crown) was liable for damage caused by Borstal boys who escaped during a training exercise. These boys, who had criminal records, were being supervised by Borstal officers with instructions to keep them in custody. However, due to the officers' negligence, the boys escaped and caused damage to a yacht, for which the

²¹ (1930) 2 K.B.364

²²(1970) A.C. 1004 at 1055

yacht owner successfully sued. In the trial's preliminary phase, the question was whether the Home Office owed a duty of care to the yacht owner that could lead to liability. The *Sigler J.* answered affirmatively. The Court of Appeal upheld this decision. The House of Lords ruled that the Home Office was indeed liable for the negligence of the officers. The Court determined that the officers had a duty of care to the yacht owner, and that the damage to the yacht was a foreseeable consequence of their failure to exercise reasonable care. The argument that the Crown was not liable for the actions of individuals who were not servants or agents was also rejected. The case applied the tort law principle that a duty of care arises from a relationship of proximity, where the harm caused is a natural and probable result of a breach of duty. The House of Lords further noted that the existence of statutory duties did not prevent liability for negligence in carrying out those duties under common law.

Liability For Breach of Statutory Duty

An action for breach of statutory duty differs from one alleging the negligent exercise of statutory powers. Generally, a breach of statutory duty allows an injured person to seek damages, provided the statute imposes such a right. Some statutes explicitly state whether a breach will lead to legal action. Section 2(2) of the Crown Proceedings Act introduces two limitations on the Crown's liability: (a) the Crown is bound by a statutory duty only if the statute explicitly states so, and (b) the Crown is liable only if the statutory duty is binding on individuals other than the Crown and its officers. Therefore, the Crown is not liable if the duty only binds itself. Street criticizes the second limitation, arguing that there is no valid reason for this requirement. Thus, if a statute imposes a duty on the Crown and grants a private right of action for breach, the Crown can be held directly liable for damages if it fails to fulfill that duty. In such cases, the Crown's liability arises from the statute, not from Crown proceedings legislation. If the statute is silent on this issue, the courts will interpret the intention of Parliament.

However, damages are not available for every breach of statutory duty. If the statute provides for a penalty, this typically precludes a civil claim. In *Atkinson*, the plaintiff sued a company for fire damage caused by its failure to maintain proper water pressure. The claim was dismissed because the Water Works Clauses Act of 1847 specified a fine of 10 pounds for such failure. In contrast, in *Read v. Croydon Corporation*²³, the plaintiff succeeded in claiming

²³ (1938) 4 All.E.R. 631.

compensation despite a penalty being stipulated in the Water Works Clauses Act of 1847. The case involved a breach of the duty to supply pure and wholesome water. Judge Stable distinguished this case from *Atkinson*, arguing that the maintenance of water pressure was a community-wide concern, while the supply of pure water was an individual matter affecting each householder.

Judicial Immunity

The Crown is not liable for judicial errors or for torts committed by individuals while carrying out judicial processes. However, the term "judicial" is not clearly defined and must be interpreted based on the context in which it is used. This often leads to issues when determining the scope of judicial immunity, particularly in relation to judges of various administrative tribunals. Judicial decisions on this matter have been inconsistent. For example, a tribunal that hears applications for deferment from military service has been considered judicial, but licensing judges have been excluded from judicial immunity. Street argues that the Crown Proceedings Act fails to account for the inconsistency between judicial immunity and the State's duty to compensate those who suffer unjust losses through judicial processes, even when those losses are not the fault of a Crown employee. Previously, a sharp distinction existed between the status of inferior and superior courts, but it is now clear that all judges, whether in superior or inferior courts, are immune from lawsuits as long as they act within their jurisdiction or powers. Lord Denning M.R. strongly advocated for this immunity, emphasizing that judges must be free to perform their duties independently and without fear of being held liable for damages. A judge should not be concerned about facing legal consequences when making decisions within their jurisdiction, provided they genuinely believe their actions fall within their legal powers. However, if magistrates act beyond their jurisdiction, either intentionally or accidentally, they are not immune from lawsuits.

It is important to note that under Section 53 of the Justices of Peace Act, 1979, magistrates can be sued for their judicial actions but may be indemnified from public funds, provided they acted reasonably and in good faith.

Application of the Doctrine of Act of State

The doctrine of "act of State" applies only to actions that impact foreigners, whether during wartime or peacetime, and are carried out under the orders or subsequent approval of the

sovereign. A classic example of an "act of State" is found in *Buron v. Denman*,²⁴ where the defendant, a captain in the Royal Navy, freed slaves and set fire to slave barracoons belonging to a Spanish plaintiff on the West Coast of Africa, outside British territories. Initially, the defendant had no authority to take these actions, but they were later ratified by the Crown. The court ruled that the plaintiff could not seek a remedy for trespass against the defendant. In *Walker*, it was established that there can be no "act of State" between the sovereign and his subjects, even if the wrongful act occurs within British territory.

Crown Privilege and Public Interest Immunity

Under common law, the Crown was exempt from orders for discovery or answering interrogatories due to its prerogative powers. It could refuse to produce documents if doing so would harm the public interest. The Crown Proceedings Act, however, was the first legislation that allowed the Court to compel the Crown to make document discoveries and answer interrogatories in civil proceedings where it was a party. Despite this, the Crown still retains immunity from producing documents or providing oral evidence about a document's existence if such disclosure would be harmful to the public interest. This immunity, once referred to as "Crown Privilege," is now commonly called "Public Interest Immunity."

Contents and Class claims

In *Ellis v. Home Office*,²⁵ the Crown's claim of privilege from discovery or interrogation based on "Class Claim" was strongly criticized. In this case, the Home Office sought to withhold police and medical reports about a prisoner who had violently attacked a man awaiting trial in Winchester prison. The Court ruled that without access to these reports, the injured party could not prove whether the prison authorities had been negligent by failing to recognize the prisoner's dangerousness. This led to widespread discontent with the Crown's use of privilege. Consequently, in 1956, the Lord Chancellor announced that the government would no longer claim privilege over certain types of documents. These included reports from witnesses of accidents on roads or government premises, medical reports on civilian employees or prison doctors, materials needed for defense in criminal cases, and statements made to the police.

²⁴ (1848) 2 Ex. 167

²⁵ (1952)2 All.E.R.149; Delvin J. expressed his dissatisfaction thus: "before I leave this case, I must express my uneasy feeling that Justice may not have been done because the material evidence before me was not complete and something more than an uneasy feeling that whether Justice has been done or not, it certainly will not appear to have been done' at p. 155.

Additionally, ministers would not claim Crown privilege on documents related to scrutiny without first consulting the Prime Minister.

Conclusion

In conclusion, the development of tortious liability in England, particularly regarding the State's accountability, reflects a significant shift from traditional immunity to a more modern framework of legal responsibility. Historically, the Crown enjoyed absolute immunity under the maxim "The King can do no wrong," based on Roman law principles of state immunity, which shielded it from being sued. However, the enactment of the **Crown Proceedings Act, 1947** marked a pivotal change, bringing the Crown under legal liability akin to private individuals, while still maintaining certain exceptions, such as "acts of state." Despite these exceptions, the shift underscores an increasing recognition of the need for state accountability in the legal system. This evolving relationship between the Crown and its subjects highlights a balance between preserving state sovereignty and ensuring that the government is held responsible for its actions, especially when those actions result in harm. While complete accountability may not yet be achieved in all circumstances, the legal landscape in England has undeniably moved toward greater state responsibility, reflecting broader global trends of governmental transparency and accountability.