established in breach of international obligations is still followed. Although the United States during this period several times restated its traditional policy of recognizing *de facto* governments and states which gave evidence of permanency, popular support, and willingness to abide by international law, in practice it departed from this policy on many occasions. These new policies have made necessary in the *Digest* considerable sections on conditional recognition, acts falling short of recognition and effects of non-recognition.

Among other sections of political as well as juristic interest are those concerning arms embargoes and other sanctions, mandates, plebiscites and the doctrine of self-determination, opposition to conquest, title to arctic and antarctic regions, and efforts to extend the marginal seas beyond the three-mile limit. Some of these topics, though of great importance, are tucked away under other headings which figured in Moore's *Digest.* The material would doubtless have suggested a more extensive revision of Moore's classification though the convenience of preserving that classification, so far as possible, undoubtedly justifies Hackworth's decision.

The present work is scholarly and convenient to use. The material is indispensable to the international lawyer and to foreign office officials and will also be of value to diplomatic historians. The editor, who is at present Legal Adviser of the Department of State, is to be congratulated on carrying on the work in spare hours of a life well occupied with contemporary problems. It is to be hoped that the increasing gravity of the world crisis will not delay the production of the remaining volumes.

QUINCY WRIGHT†

Handbook of the Law of Torts. By William L. Prosser.* St. Paul: West Publishing Co., 1941. Pp. xiii, 1309. $5.00.

The task of reviewing a textbook on torts is not an easy one. Professor Prosser's book is well over eleven hundred pages long; and this reviewer has deemed it impracticable, in view of other commitments on his time, to read the book from cover to cover. Instead of doing this I have looked it through very carefully and have read the parts dealing with subjects on which I have done a considerable amount of investigation and with respect to which I may be said to have more or less educated convictions. As a result of this, I have come to the conclusion that the book is an excellent, concise treatment of the subject of torts and I believe it to be the most useful and thorough compendium and panoramic work of its kind between two covers. At the risk of being thought to have made an invidious comparison, I cannot keep from openly judging it by the high standard already set by Professor Harper, whose book I have used with great appreciation as a necessary supplement to my casebook and classroom hours in teaching torts. While not belittling *Harper on Torts* in any way, I would like to suggest that Professor Prosser's treatment of the subject is considerably more catholic than Professor Harper's. The latter's established work, in my opinion, is inclined to be conventionalized and to reflect too obviously the *Restatement of Torts* as a standard and as a point of departure. Nor do I wish to belittle, in turn, the *Restatement,* which is a monumental tribute to the integrity and industry of its various reporters, chiefly Pro-

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fessor Bohlen. But in my opinion, it tends to create a somewhat misleading sense of certainty about the law and ventures too seldom into either analysis or appreciation of novel developments. Perhaps all I mean is that Professor Prosser seems to have written about this ill-defined subject more as I tend to see it and think about it than did Professor Harper and the learned restaters.

Professor Prosser is guilty of some of the sins of omission or, perhaps, elision, which must inevitably occur in an undertaking of the kind he chose to embark upon. After all, eleven hundred-odd pages is just not room enough to do real justice to the subject of torts. Indeed, he very wisely says as much when he indicates that the most helpful and penetrating analyses occur in texts on particular torts and in law review literature.[1] With becoming humility, he purports to submit a concise *general* treatment of the subject with exhaustive references to the more detailed discussions available in such texts and in law reviews. At the same time he undertakes to give at least thumb nail sketches or indications of the salient features of most of these other writings and takes great pains to suggest to his readers that much speculation is going on concerning the state of the law dealing not only with particular phases of the subject of torts but also with the adequacy of views asserted with respect to some of the most fundamental bases of tort theory, liability, and policy. So the upshot is that a student who depends on Professor Prosser's book for his knowledge of the law of torts has at best but an imperfect notion of its multiple intricacies and facets; yet this same student with an adequate law library at his disposal has in the book under review a key to as near perfection of knowledge of this broad subject as he can hope to find. The contrast between this book, with its wealth of citations to cases and secondary authorities, and the *Restatement*, with its authoritarian and somewhat arbitrary approach, is startling. Sharing the belief that there is no royal road to the understanding of tort law, I nevertheless believe Professor Prosser's book to be the best available set of directions to the hard way which most of us have to follow to achieve any sort of comprehensive insight into this particular branch of knowledge.

To get down to particulars, I regret Professor Prosser's not having consolidated the material dealing with trespass and case,[2] some of that dealing with trespass to land,[3] some of that dealing with unavoidable accident,[4] some of that concerning res ipsa loquitur,[5] and that dealing with dangerous things and activities and the theory of absolute liability[6] into a well-knit modernization and hornbook treatment of the notion first appearing in Holmes's third lecture in his *Common Law*. Personally, I believe the result of such a consolidation would be a new perspective on a good deal of our tort law that otherwise seems disjointed and arbitrary. The desirability of such a treatment is, I realize, a matter of personal opinion; but I think the burden is on those who have time to write books to introduce some synthesis into a rather messy subject and to explain, by making them part of a pattern, some of the curiosities of tort law such as *Hay v. The Cohoes Co.*[7] and *Green v. General Petroleum Corp.*[8] which, as isolated phenomena, seem contrary to the rules and principles as we have inherited them from our ancestors. Again, I become a little glum when I read the section on conversion.[9] For years, I fear, it has been the fashion for professors of torts to assume that the

[1] P. 24.
[2] Section 7.
[3] Section 13.
[4] Section 29.
[5] Section 44.
[6] Section 59.
[7] 2 N.Y. 159 (1849).
[8] 205 Cal. 328, 270 Pac. 952 (1928).
[9] Section 15.

troublesome issues arising in actions for conversion are adequately covered in courses on property. But this is certainly an unwarranted assumption; and it is a particularly unsafe one for an author of a textbook on torts to share. In my opinion there is a good deal left unsaid and even unsuggested in Professor Prosser's treatment which I should suppose the user of a textbook might count on finding in it. As instances of what I mean, I suggest the troublesome issues arising out of *Cundy v. Lindsay*,[10] *Hollins v. Fowler*,[11] and the *Rymill* cases,[12] and those involved in *Varney v. Curtis*[13] and *Leuthold v. Fairchild*[14]—all considered from the point of view, in turn, of certain mooted policies in the law of sales. If the necessity for terseness and brevity in writing a textbook forced Professor Prosser into the verbal reticence displayed in this section, then it is fortunate indeed that most of our law schools have abandoned the textbook in favor of the casebook as a teaching vehicle.

But the repetition of instances wherein I believe the treatment of particular subject matter to have been insufficiently detailed and analytical may seem to detract from the very high opinion of the book I have already stated above. But, just because I feel that I could hold forth at length on how Professor Prosser might better have handled the material on so-called proximate cause in negligence actions does not necessarily mean that what he chose to include is not an excellent short treatment of that baffling subject. Nor would one expect in a work of this nature the sort of speculation on the development of "enterprise liability" under the name of negligence and its associated tags as appears in a recent note in the *University of Chicago Law Review*.[15] Rather, one is pleased to observe the frequent instances of Professor Prosser's care and observation in having brought to light and exposed questionable features in the law which need some ridicule cast upon them, such as parts of imputed negligence and the doctrine of "libel per quod," as well as his understanding treatment of such theoretically untenable but nonetheless socially significant developments of "enterprise liability" as that of manufacturers to consumers occurring under the label of warranty.

Pervading my reaction to Professor Prosser's book is the renewed feeling of dismay at the terrific number of matters which are included under the title of Torts. It is perhaps small wonder that he did not completely satisfy me in the cursory treatment he afforded some aspects of the subject on which I believe he should have enlarged. After having given the entire book a more than casual inspection, I am willing to give Professor Prosser considerable applause for merely having undertaken the work. But his having actually achieved such a fine job earns not only my unstinted admiration but also first place along with *Harper on Torts* among the citations of outside authorities for the students in my class on Torts.

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[10] 3 App. Cas. 459 (H.L. 1878).

[11] L.R. 7 H.L. 757 (1875).

[12] Cochrane v. Rymill, 40 L.T. 744 (C.A. 1879); Nat'l Mercantile Bank, Ltd. v. Rymill, 44 L.T. 767 (C.A. 1881).

[13] 213 Mass. 309, 100 N.E. 650 (1913).

[14] 35 Minn. 99, 27 N.W. 503 (1886).

[15] Loss-Shifting and Quasi-Negligence: A New Interpretation of the *Palsgraf* Case, 8 Univ. Chi. L. Rev. 729 (1941).

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