

David - I think this  
can go into a note

OWEN

INSERT G, Into text, at p. 20.

New § 18

The Court cannot wish away these extensive municipal immunities. It quotes two nineteenth-century treatises as referring to municipal liability for some torts. Ante, at 17. Both passages, however, refer to exceptions to <sup>the</sup> existing immunity rules. The first treatise cited by the Court conceded <sup>as</sup> that many jurisdictions ~~had~~ embraced the governmental/proprietary distinction. T. Shearman & A. Redfield, A Treatise on the Law of Negligence § 120, at 140-141 (1869). The same volume also notes that local governments could not be sued for injury caused by discretionary acts, id., § 127, at 154, or for its officers' acts beyond the powers of the municipal corporation, id., § 140, at 169. The Court's quotation from Dillon on Municipal Corporations stops just before that writer acknowledges that local governments are liable only for injury caused by nondiscretionary acts involving "corporate duties." 2 J. Dillon, The Law of Municipal Corporations, § 764, at 875 (2d ed. 1873). That writer's full statement of municipal tort liability recognizes immunity for both governmental and discretionary acts:

"The doctrine may be considered as established, that where a duty is a corporate one, that is, one which rests upon the municipality in respect of its special or local interests, and not as a public agency, and is absolute

David -  
This is  
not  
a self-  
evident  
supportive  
as I had  
expected from  
your lead  
sentence.

I have moved  
in Dillon that  
would make  
the situation  
clearer?



and perfect, and not discretionary or judicial in its nature . . . the corporation is liable in a civil action. . . ."  
Id., § 778, at 891 (emphasis in original).