find it reasonable. The alternative view, promoted in Gray's book and increasingly elsewhere is, to my mind, distressingly authoritarian; the flip side of an increasingly conformist society.

The idea, then, is that strict liability is needed in the law, because the law must carve out areas in which individuals are sovereign over themselves. Crucially, it is the individual herself who must be sovereign, and not the courts acting in her name. The point of the liability, then, is to say, as it were, "This is hers. You cannot go there without her permission". The paradigm example of this "this" is, of course, the individual's body. It is up to her to determine how it is used, and not up to the courts or the community to decide how others can reasonably use it. We have gone too far down this road already.

Naturally, this is not to defend all areas of strict liability. Nor is it to reject the importance of the thesis advanced in Gray's book. It is just to say that there is another side to this debate and that the debate is an important one that ought to be joined. I am sure that this book will prove to be a very valuable contribution to this discussion. I certainly commend it to the reader.

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Possession, Relative Title, and Ownership in English Law. By Luke Rostill. [Oxford University Press, 2021. xxvi + 180 pp. Hardback £80.00. ISBN 978-0-198-84310-8.]

The old adage that possession is nine-tenths of the law is a statement which obscures as much as it reveals. While most property law scholars would agree that possession is important, what possession is, the effects that it has, and how it relates to ownership – itself a contested concept in the common law – are more fraught than the adage suggests. As foundational as possession may be to the common law of property, its meaning is flexible and "ambiguous" (p. 4). In that it could be said to share much with the common law of property as a whole. After all, another key principle of the common law of property is the relativity of title (p. 2). In *Possession, Relative Title, and Ownership in English Law*, Rostill sets out to "illuminate the principle of the relativity of title, and its relationship to possession and ownership" (p. 4).

Before even mentioning what he hopes to achieve with the book, Rostill acknowledges multiple controversies in the law of property. These include what sort of title is acquired through taking possession, whether ownership exists under the common law, and whether possession gives rise to a presumption of ownership or is evidence of ownership (pp. 2–3). These controversies are in equal parts long-standing and well-worn. As such, it might be asked whether there is anything new left to say, or only mere positions to take and defend. Indeed, there is a risk that the entirety of the book could have been simply clearing ground for future scholarship building on the arguments advanced in the book. Happily, while the book points towards future work, it also stands alone as an important synthesis and analysis of the existing state of the aforenamed controversies, particularly the nature of title acquired by possession, and is buttressed by an extensive analysis of case law. Rostill might draw on theory but his interest in property law is not philosophical; rather, his interest is in *the law*: the cases, the statutes and the interaction between the two.

The book's argument is structured around four questions across seven substantive chapters and a short introduction. The first question asks what possession is in the

context of "rules concerning the acquisition of title" (p. 4). Chapter 2 deals with this question and begins by distinguishing its goals from two classic accounts of possession offered by Salmond, and Pollock (p. 7). Rostill's goal is neither philosophical nor general but focused on the sort of possession which may give rise to title. He seeks to argue against any conclusion that possession "is no more than a device of policy and convenience" (pp. 9, 13). He notes that "policy and convenience" may aid courts in borderline cases but their use as an aid does not reduce possession to mere policy (pp. 13–14).

In terms of what possession is, Rostill argues that there are two requirements: "exclusive physical control", and "an intention … to exclude the world" (p. 15). Of course, as any property scholar knows, what amounts to physical control depends on the thing being controlled (p. 17); and in the context of the latter requirement, the intention is to *possess* rather than "*own*" (p. 19). Having thus answered the first question, Rostill spends the next three chapters answering the second of his four questions: "what is the nature of the 'title' that is acquired by obtaining possession?" (p. 4).

Chapter 3 offers an overview of the existing debates over "the legal consequences of obtaining possession" (p. 25). The key question is whether possession grants an "alienable proprietary interest in a thing" or simply protection of possession for so long as it subsists (p. 26). To answer this question, Rostill identifies three accounts of possessory titles: "the Possessory Right View, the Strong Proprietary Interest View, and the Presumed Property View" (p. 27). These accounts are ideal types and the chapter notes that each of the three is not necessarily incompatible with another of the three (p. 36), but they are different (p. 37). Rostill maintains that rules conferring an interest and rules presuming an interest are different (p. 37), and refutes conceptual objections to presumptions of ownership (pp. 37–51). The end result is that presuming ownership is conceptually possible but whether the common law does so can only be answered by looking at the case law (p. 51).

In Chapter 4, the argument moves on to possessory titles to land, with Chapter 5 dealing with possessory titles to chattels. With respect to land, Rostill argues that a possessor will acquire "a legal fee simple estate" (p. 54). Here it is implicit that the relevant possessor is someone who does not otherwise have an entitlement to possession such as via a lease or a licence. What is made explicit, however, are the "incidents" of a legal fee simple estate. These incidents are themselves controversial and subject to qualification. The controversy over the "content of a freehold", to use Douglas's phrase (Simon Douglas, "The Content of a Freehold: A 'Right to Use Land'" in N. Hopkins (ed.) *Modern Studies in Property Law*, vol. 7 (Oxford 2013), 359), may have been a distraction from the main argument but it could have been acknowledged with a sentence or two defending the choices made.

Regardless, for Rostill, the four incidents of a legal fee simple are: exclusive possession and use; the absence of term; that it is not dependent on possession; and "certain powers of disposition" (p. 55). Of the four, the third is the most debatable: does a mere possessor "acquire[] … an estate in the land … which is not possession-dependent"? (p. 61). Here Rostill draws on nineteenth-century statutory reforms to refute the older law's refusal to see possession as a source of title (p. 62). The discussion of statutory reforms is refreshing as it recognises that property law is not a fixed body of principles handed down from on high but an area of law which can be and has been reformed. In the context of recent land registration reforms, for example, land law scholars have noted judicial reluctance to apply the "new" rules. In showing that statute has amended the rules before, including foundational rules around possession, Rostill's work could dispel the judicial tendency to revert to the "old" pre-registration rules in England. While Chapter 4 concludes with a

reference to the Land Registration Act 2002, it is for the changes it makes to title-by-possession rather than to engage in the debate over the judicial interpretation and application of that Act (pp. 96–97).

There were no such statutory changes to the possessory rules regarding chattels in the nineteenth century, nonetheless Chapter 5 argues that the position with respect to chattels is similar to land (p. 99). In the context of chattels, Rostill rests his argument about possessory title not being possession-dependent (after, of course, the initial possession) on distinguishing cases where the possessor "relinquished possession to another" from those where "a person lawfully took the chattel from a possessor and the taker's authority subsequently expired" (p. 105). After examining several cases, Rostill concludes that the possessor can (re)claim the chattel even where it was seized by a third party under lawful authority (pp.105–109).

The third question – "what are the grounds of the rules that confer proprietary interests on possessors" – is the focus of Chapter 6 (p. 5). In effect this chapter is an attempt to justify the rules. Not surprisingly, the main justification is the need for certainty (pp. 129, 144–53). However, Rostill also has to deal with the fact that these rules apply to registered land (pp. 149–50). His conclusion is that the grounds for the rules applying to registered land are "mysterious" (p. 129) and "appear to lack a valid legal basis" (p. 150). Given that most land in England is now registered land, the relatively brief analysis given to registered land is disappointing. If possession was granted a new importance and legal effect by nineteenth-century reforms then why have twentieth- and twenty-first century reforms not been able to limit possession's significance?

Chapter 7 deals with the fourth question: "what is the relationship between the relativity of title and ownership?" (p. 6). The chapter draws on Honoré's incidents of ownership (pp. 158–62) but does not link these incidents with the earlier discussion of the incidents of a legal fee simple estate. The water is then further muddied by the denial of the orthodoxy that a person owns an estate in land rather than the land itself (p. 168). The distinction might be largely academic but when the argument is that mere possessors acquire a fee simple, more needs to be said about why that fee simple is not ownership. Here Rostill argues that an inferior fee simple, that is one originating in possession, is a title but it is not ownership (pp. 171–73). It is consistent with relative title to argue that the "best" title is stronger than any inferior title arising out of mere possession (p. 171), but that does not preclude the inferior title from amounting to ownership. Rostill's distinction rests on the argument that only the holder of the strongest title owns *the land* while anyone who owns an inferior title does not own the land (or the chattel as the case may be) (p. 171). In short: English law has relative title but not relative ownership. As interesting as this claim is, it is not fully fleshed out and seems like a distinction too far. The orthodoxy that English law, and the common law more broadly, allows for ownership of rights is a much simpler explanation than this (as yet) underdeveloped argument that only superior titles own the land.

The absence of a conclusion means that the book ends somewhat abruptly with the final sentence of Chapter 7. The lack of a conclusion does not detract from the argument of the book but it does make it feel almost too short. At just over two hundred pages, there should have been room to include a conclusion or even to expand on the claimed distinction between title and ownership which closes the book.

The other aspect of the book which could have used some additional fleshing out is Rostill's reliance on the architecture of property law. The introduction contains a single reference to the concept (p. 6) but it is not mentioned again and nor is it, even briefly, described. It is obvious to those familiar with English property law

scholarship that architecture is a reference to Ben McFarlane's work and, indeed, McFarlane supervised the thesis which became *Possession, Relative Title, and Ownership in English Law* (p. vii). Not everyone will be familiar with the concept of property law's architecture and it should have been at least briefly sketched out both for those unfamiliar with it and so that readers could understand Rostill's interpretation of it.

That being said, the main focus of *Possession, Relative Title, and Ownership in English Law* is on the nature of title acquired by possession rather than property's architecture, or the difference between title and ownership. By examining both possession of land and possession of chattels, this work offers a counter-balance to the tendency to silo real property and personal property. So too does Rostill's close attention to case law act as a corrective to abstract theoretical accounts of property. In summary, *Possession, Relative Title, and Ownership in English Law* is a lucid, succinct and thought-provoking engagement with the foundational principles and the enduring controversies of English property law.

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Reforming Civil Procedure: The Hardest Path. By Dominic De Saulles [Oxford: Hart Publishing, 2019. xlvi + 204 pp. Hardback £55.00. ISBN 978-1-50992-590-2.]

Dominic De Saulles has given us a refreshing review of the efforts during the past century by judges and lawyers of the Common Law in both England and Wales and the US to provide a fair but uncomplicated procedure for those who seek a remedy for their civil disputes from the courts.

It is heartening to read the author's account of the efforts in the 1930s in the US to achieve an aim which 60 years later was to confront the English. He rightly opens his narrative with the sad reflection "that disappointment in the process and outcomes are writ large" (p. 1). There are many practitioners and members of the judiciary who share this view of our efforts in the 1990s. We all started with the best of intentions but De Saulles has graphically described some of the mistakes that flowed from our efforts.

In the opening to Chapter 1, "Purpose and Function" (of rules of procedure), De Saulles makes the pertinent comment with which I agree: "The Federal Civil Procedure Rules of 1938 (FCPR) were not a permanent fix. The Civil Procedure Rules 1998 (CPR) failed to achieve all that for which their promoters hoped" (p. 1). As one of the original three Assessors on the Access to Justice Enquiry (named by De Saulles as one of his "reformers"), I was anxious to provide a fairer and simpler procedure for the resolution of civil disputes than the Rules of the Supreme Court, which I believe CPR to a great extent achieved despite all the warts and pimples. Sadly, there is no contemporary record of our work on the Access to Justice Enquiry. Such minutes as were kept by the two civil servants attached to the Enquiry are possibly locked away in the vaults of Ministry of Justice. Hence we cannot emulate the history of the efforts of our American colleagues, but the initial three reformers/assessors were working judges or lawyers who had to fit the demands of this Enquiry into their ordinary judicial day's work; only Lord Woolf was given two years free of judicial commitments. Yet the Enquiry did at least approach the task in one very novel, constructive and much appreciated