be trumpeted just as loudly. Chapter 3 stands out in this respect. It not only holds out several research batons with the express intention that early career researchers should now grasp and run with them, but it also shakes up orthodoxy in suggesting that we would do well to jettison (1) our conceptualising those things that count as "a cause" in but-for terms (pp. 81–82) and (2) the *novus actus interveniens* concept (pp. 92–95). On these bases alone – although many others could be given – no academic tort lawyer can afford to overlook the rich and provocative scholarship on offer in this refreshing, slender, but nonetheless superb volume.

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*The Evolution from Strict Liability to Fault in the Law of Torts*. By ANTHONY GRAY [Oxford: Hart Publishing, 2021. 278 pp. Hardback £85.00. ISBN 978-1-50994-099-8.]

As its title indicates, Anthony Gray's book is an investigation of the evolution of tort law usually, though not always and not always linearly, from strict to fault-based liability. But it is more than this. It is a sustained argument to the effect that this evolution should be celebrated and that it has not gone far enough. In fact, Gray maintains, all strict liability needs to be replaced. Thus, Gray concludes his investigation with four bold claims: that *Rylands v Fletcher* should be killed off, that the tort of nuisance should be absorbed into the law of negligence, that the same thing should happen to the law of defamation unless comprehensive statutory reform is commenced that would make this area of the law fault-based, and that the tort of trespass to the person should also either be subsumed into the law of negligence or so reformed that it too becomes clearly fault-based (p. 266). The author even suggests that the common law might view Article 1382 of the *Code Civil* as at least an inspiration for this development (p. 262). Accordingly, as is surely apparent already, the argument of this book will be of great interest to many tort lawyers.

The book begins with a general overview of the place of strict liability in the history of tort law. It then examines the rather curious fragmentary actions that deal with the liability of common carriers and innkeepers and for fire, firearms and animals. It concludes, as I suspect most would be inclined to accept already, that the law is a bit of a mess here.

The real work begins with the investigation of *Rylands v Fletcher*. Gray examines the background to the decision itself and its subsequent judicial treatment. He also explores the influence of the case in Australia, Canada and the US. He then analyses the theoretical debates that have occurred in this area, concluding that the arguments in favour of *Rylands v Fletcher*, and generally of strict liability in this context, do not stack up.

In this regard, one of the very positive things about this book is the frankness with which its author expresses himself; specifically, that he does not try to conceal his impatience at what he is surely right to regard as an unacceptable state of affairs. Two things in particular rile him: the half-baked nature of the kind of policy analysis that is de rigueur in this area of tort scholarship and the timidity of judges who appear to recognise that something must be done but who cannot quite bring themselves to do it. For example, "Judges frankly acknowledge that the doctrine is 'not worth the effort', but timorously refuse to take the decision to get rid of it … it is time to put the doctrine out of its misery but, frankly, this requires judges with the

courage to make hard but necessary decisions, rather than exacerbate the problem" (p. 97). The argument of the book is particularly strong in this area. As Gray points out, it is not simply that the courts do not do what they ought to do, it is that they refuse to do what they ought to do while acknowledging that something ought to be done; a combination that almost inevitably produces dissemblance. Gray states (at p. 90):

> As with cases like *Read v Lyons* [[1947] A.C. 156] and *Cambridge Water Co.* [*v Eastern Counties Leather plc.* [1994] 2 A.C. 264], the dispute could be resolved relatively simply, without substantial excursis on the metes and bounds of the *Rylands* doctrine… Yet, the courts embarked on a lengthy *obiter dicta* discussion of the *Rylands* doctrine. With respect, it is not always entirely clear that these unnecessary comments reduce the confusion and uncertainty surrounding the scope of the doctrine (to put it as kindly as possible). With respect, the same might be said of the five separate judgments issued in the *Transco* [*v Stockport Metropolitan Borough Council* [2004] 2 A.C. 1] case. All judges were agreed that … *Rylands* liability could not exist. Anything else was superfluous. Now, one could understand a lengthy *obiter dicta* excursis in an effort to provide much-needed clarity in an area that continues to be riven by uncertainty and ambiguity. This would be difficult to achieve when five different judgments are issued, all with obvious differences in emphasis and focus, and in some cases further manifestations of disagreement among members of the court.

As I would summarise this accurate description of things, *Rylands* has unfortunately become a fetish.

The book then turns to examine the relationship between fault and strict liability in nuisance, defamation and trespass. The pattern of investigation is the same: the development of the case law is examined, revealing inconsistencies and problems, and academic work is then explored that argues in favour of and against strict liability. In each case, the author comes down firmly on the side of fault-based regimes.

The core of Gray's thesis is clear and powerful. It is that strict liability has been tried and found wanting. It has been found wanting because judges have found it impossible to apply consistently, as doing so would frequently result in patent injustice. For this reason, Gray maintains, the courts have in various ways introduced fault into strict liability torts. Sometimes this has happened openly and audaciously, such as when the High Court of Australia submerged *Rylands v Fletcher* into the tort of negligence in *Burnie Port Authority v General Jones Ltd.* [1994] HCA 13. At other times, it has happened in a more hesitant fashion via the incorporation of concepts borrowed from the law of negligence. A classic example of this would be the introduction of the idea that a defendant can be liable only for reasonably foreseeable results of her actions in the law of private nuisance. Sometimes the change has been more covert. A good example of this is the creation of defences in the law of defamation that permit defendants not at fault to avoid liability, despite the fact that the tort is still frequently said to be strict. In Gray's view, this is the lesson of history. Strict liability does not work and it is past time to stop trying to make it work.

As I have said, Gray presents a powerful case. His argument is one that all interested in the justification of tort law need to confront. For this reason alone, I would warmly recommend the book. But it is also likely that Gray's argument will be echoed by others. I am aware, for instance, of other monographs currently being written that support Gray's thesis. My prediction is that one of the foremost issues of the next decade or so will be the place of strict liability in the law of tort.

It is worth pausing for a moment to notice that in some ways this is an astonishing development. After all, it was not long ago that many thought tort law, and fault-based liability in particular, had no future. We are now told that fault-based liability is the future. Why is this? Gray would say that this is the lesson of history, but there is another possible explanation.

As just noted, it was once thought that tort law was living on borrowed time. The most important reasons for its survival are undoubtedly political; but it is also significant that over the last 25 years or so, scholars of tort law have advanced explanations of the law that responded to the earlier criticisms raised of it. The essence of this response was to say that the criticism was unfair, because it condemned tort law for failing to do what it was not designed to do (e.g. to provide a system of compensation for incapacity that fitted the demands of the welfare state) while ignoring what it was designed to achieve (e.g. corrective justice). Because the criticism had focused mainly on the law of negligence, that was where the response was also concentrated. Though this is still very underappreciated, the fact is that the response was so successful that there now exists (in the Commonwealth) a rough consensus on the nature and justification of fault-based liability that did not appear even to be on the horizon 25 years ago. Consequently, this theorising has meant that, to many now, fault-based liability just seems right.

There are two problems, however. First, while theorists have defended fault-based liability qua a system of legal doctrine, this has not been, and was often not intended to be, a defence of the actual operation of, say, the law of negligence in our courts. On the contrary, these arguments were often highly critical of the behaviour of courts in this area. Moreover, the problems with the practical functioning of the law of negligence are legendary. This raises an essential question: How keen should we be to replace torts such as nuisance or trespass with something as problematic as the modern positive law of negligence? This important question is not examined by Gray. Second, while tort theorists have defended the negligence doctrine from the criticism outlined above, much less work has been done on strict liability. The danger, then, is that legitimate areas of strict liability will be destroyed as collateral damage by the theory that helped save fault-based liability.

Every book has weaknesses, of course, and one of this book's is that it spends only 10 pages examining the law of trespass (pp. 254–63). This was regrettable, because an important argument for strict liability applies especially in this area. This argument is not mentioned in Gray's book. The argument is basically this. Compare the following two claims:

(1) When I pursue my projects, I sometimes come into conflict with you pursuing your projects. The right way to deal with this conflict is to say that I have done nothing wrong unless I acted unreasonably (i.e. unless I was at fault in some way).
(2) When I pursue my projects, I sometimes use you or your stuff in the pursuit of those projects. The right way to deal with this conflict is to say that I have done nothing wrong unless I acted unreasonably (i.e. unless I was at fault in some way).

My own view is that, while (1) is morally sound, (2) is a moral outrage. I should not get to use you or your stuff because someone else might think I was being reasonable. I should be allowed to use you or your stuff only if you agree to let me. This, I think, is the proper basis of strict liability.

To put this another way, it is up to you to determine how people are allowed to use you and your stuff. It is not right for anyone else, including members of the judiciary or even Parliament, to determine what you have to accept on the basis that they

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