Yearworth v North Bristol NHS Trust (2009). Professor Lorna Fox O'Mahony introduces *Lloyd's Bank v Rosset* (1990) as a case that has been "extensively criticised and broadly acknowledged to be doctrinally poor" (p. 179) and describes its place in "the sorry history of the common intention constructive trust" (p. 197). The *Star Industrial* case is well established as a landmark in trademark law, but Mr. Jonathan Griffiths argues persuasively that "its status as a landmark may be more problematic than has hitherto been suggested" (p. 278).

Yearworth v North Bristol NHS Trust (2009) is the only case that features in two volumes in this series as landmarks of both property and medical law. The claimants were awarded damages for the destruction of sperm that they had entrusted to the defendant for safe storage. The Court of Appeal decided that this was not personal injury, but damage to property. Mr. James Lee argues that there was no "need for the property enquiry", because the court could have reached the desired result either "by revisiting what forms of damage are compensable" or "on the basis of assumption of responsibility" (p. 41). However, liability must depend on identifying a wrong done; if there was no wrongful interference with the claimants' persons or property, what rights were infringed? Would we want a different result if the sperm had been destroyed by someone who had not assumed responsibility for it, such as a vandal who broke into the hospital?

Dr. Robin Hickey does an excellent job situating *Armory v Delamirie* (1722) in its historical and legal context, but readers might be unhappy that he downgrades it from landmark to milestone (p. 143). He argues that our understanding of the case, as a simple illustration of relativity of title, was probably not how it was perceived at the time. Instead, it was more likely that a finder's right to sue for conversion was then based on a duty to account as a bailee for the true owner. However, the law has long since moved on and so it is surprising that Hickey argues for a return to the eighteenth century. What would be gained by making claimants prove that they are either owners or bailees? The wonderful legacy of *Armory v Delamirie* is that the simple plea of "I had it first" is good enough.

This is a fine collection of essays with much to offer property lawyers, teachers and students. The broad coverage of different aspects of property law is one of many attractive features. Notably absent are any chapters dealing with cases that we usually think of as part of commercial law. There are enough landmarks in that field to fill a volume on their own. Perhaps they will someday.

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Lions under the Throne: Essays on the History of English Public Law. By Stephen Sedley [Cambridge: Cambridge University Press, 2015. x + 295 pp. Paperback £25.99. ISBN 978-1-107-55976-9.]

Legal history is not simply an intellectual niche interest. It provides the framework upon which any true understanding of legal principle hangs. Students struggle to make sense of public law without the historical background that gives it context and meaning. Practitioners may be able to recite and apply legal principles in their raw form but without a knowledge of their genesis would find it difficult to perceive the full potential of a principle's application. History informs our present and lays down paths for the future. In a country without a formal written constitution, the constitution is its history.

Stephen Sedley's collection of essays on the history of English public law is a significant contribution to our understanding of public law today. It is derived from lectures that he gave as a visiting professor of law at the University of Oxford after his retirement from the Court of Appeal in 2011. Wisely, it is not an attempt to survey the entire history of English public law. Instead, the book takes two different approaches. First, there are what Sedley describes as "vertical drillings", being chapters which involve "thematic attempts to trace their topic from early days to the present". Then there are horizontal chapters which "take a stratum of time and examine developments in public law within it". Both approaches are fruitful, each providing an explanation, albeit not the only possible explanation, as to how fundamental principles of public law have developed over time.

The chapters are not replications of the lectures. They have been reformulated into self-contained scholarly works. Yet, here and there, mostly in footnotes, some of the quirky and delightful detail that would have lightened the lectures survives. Sedley notes in his introduction that he deliberately removed or reduced to footnotes many of the anecdotes and the details that had been intended to make the lectures more vivid and immediate. This is a pity, as the small gems that remain do make the book more engaging for the reader. For example, when commenting on the appointment of Lord Hewart as Lord Chief Justice, Sedley notes in a footnote that Lloyd George in 1921 had appointed his stop-gap predecessor, Lord Trevethin, to the post of Lord Chief Justice "in return for an undated letter of resignation" and that the "first Lord Trevethin knew of his own resignation was when he read about it in the *Times*", apparently while on a train to London. Other highlights include the usher at the Employment Appeal Tribunal, who successfully predicted the outcomes of appeals and ran a profitable sideline in taking bets from barristers, and Sedley's dry reference to the Human Rights Act as "impartially described by *The Sun*, in a news story, as 'the hated law which frees murderers to kill again'".

The title of the book, *Lions under the Throne*, refers to the carved lions at the foot of the coronation throne, splendidly photographed on the cover. Bacon, in 1625, described judges as lions under the throne, their role being to ensure that the state operates within the law while respecting sovereignty. Sedley recognises that this image contains ambiguity. The lions under the throne may be regarded as subservient – crushed by executive authority – or vigilantly snapping at the monarch's heels. A third view is that the lions hold up the throne. As Bracton had written in the thirteenth century, the king was not subject to men, "but to God and the law, for law makes a king". We have seen evidence of this recently with the statutory changes to the rules of succession to the throne and the legal challenge to the effectiveness of this change with respect to Canada. The Sovereign only holds office according to the law as it applies in the relevant Realm.

Sedley approaches his topics with the touch of a judge, a scholar and an interested bystander observing the passing parade of history. This is illustrated by his opening discussion of the famed *Wednesbury* case (*Associated Provincial Picture Houses Ltd. v Wednesbury Corp.* [1948] 1 K.B. 223). He notes that few remember that the cinema chain actually lost the case, with the cinema in Wednesbury later succumbing to its fate as a bingo hall. Sedley concludes, with a licence that can only be given to a former member of the Court of Appeal, that "Not for the first or last time, the court set out a shining set of principles on which it would unhesitatingly correct public law errors, and then declined to apply them to the facts before it".

Sedley also refers to the "supine jurisprudence of *Wednesbury*" and suggests that "much of the development of modern public law has been a struggle to escape from Lord Greene's straitjacket".

On other topics, he is equally blunt. When it comes to the subject of "judicial activism", he describes the term as having no jurisprudential meaning, observing that a "judge is either active or asleep". As for the "rule of law", its fuzzy edges cause Sedley to suggest that "there may be some force in the sceptical view that the rule of law is simply a form of self-congratulation – a badge which a society or a legal system awards itself … for good behaviour".

One of the more fascinating chapters considers public law in the Interregnum between the defeat and execution of Charles I and the restoration of Charles II. The efforts of royalists to obliterate the legal reforms of that period from the statute book and to cast the Puritans as Christmas-banning killjoys have been effective in removing from public consciousness the important legal and constitutional developments of this era. Sedley takes a more sophisticated approach to Puritanism, addressing both its religious and political nature.

On the religious side, he discusses the reality of the so-called "abolition of Christmas". Just as tabloid newspapers take delight each year in reporting on attempts by local councils to ban Christmas through declining to support nativity plays or carol singing, the abolition of Christmas by the Puritans appears to have been similarly exaggerated. Sedley traces it back to a singular instance in 1644 when Christmas Day fell upon a day traditionally requiring religious fasting. An Ordinance was passed for the occasion which gave precedence to fasting over celebration. A later attempt to eliminate the main religious festivals due to their pagan origins simply had the effect of giving them secular roots that continue to flourish today. Other religiously motivated reforms of the period included the criminalisation of "dancing, profanely singing, drinking or tippling" on Sundays, adultery and fornication. Most fascinating was the setting of a range of different fines for swearing and cursing. In an early attempt at distributive justice, swearing lords were fined 30 shillings, a foul-mouthed knight or baronet was fined 20 shillings, a cursing gentleman was fined six shillings and eight pence, and a cussing commoner faced a fine of three shillings and four pence.

More important, however, were the reforms made to the legal and political system. Sedley quotes from the complaint in 1649 by John Warr that the law "entangles the small flies and dismisseth the great". Warr asked why the law is kept in an "unknown tongue" and why the law is a "meander of intricacies", afflicted by "delays, turnings and windings". Cromwell's Commonwealth and the Protectorate undertook unprecedented law reform, fuelled in part by the first Law Commission, chaired by Sir Matthew Hale. Some of its proposals, such as the abolition of the Court of Chancery, failed, causing the igniting of joyous bonfires and drunken merriment in the Temple. But others, such as the use of English in the conduct and recording of legal proceedings, the institution of judicial independence, a rudimentary form of legal aid and an end to gaoling debtors who had minimal financial resources were achieved. So too was the constitutionalisation, in statutory form, of parliamentary sovereignty, the holding of regular Parliaments and the imposition of limits on executive power, including a prohibition upon the suspension, abrogation or repeal of laws by the executive or the imposition of taxes or charges upon the people without the consent of Parliament. Sedley compares these provisions of Britain's first written Constitution, the Instrument of Government, with the re-manifestation of some of them in the Bill of Rights 1688. He notes that, while the Instrument of Government was expunged from the statute book (and indeed burned by the public hangman), "in the centuries which have followed, the changes first made or attempted in the years of the Commonwealth and the Protectorate have returned like a slow tide".

From the point of view of an Australian reviewer, the discussion of whether there is a "third source" of executive power beyond statute and the prerogative is most

pertinent. Sedley discusses the provenance and applicability of the "Ram doctrine" that "ministers can do anything a natural person can do unless limited by legislation". While accepting that the Crown, as a corporation, may have the capacities of a natural person, he distinguishes this from the exercise of power, concluding that "The Crown and the individual share the capacity to dispense their money or property stupidly, maliciously or capriciously; but where the individual is also legally free to do so, the Crown is not. The reason is constitutionally fundamental: the Crown's powers exist not for its own benefit but for the public good".

The High Court of Australia took a similar view in *Williams v Commonwealth* [2012] HCA 23; (2012) 248 C.L.R. 156, drawing a distinction between the capacities of the Commonwealth of Australia as a legal person, such as its capacity to own property, enter contracts and spend money, and its power to exercise those capacities. While there was no limit on the capacity of the Commonwealth to contract or spend, its power to do so was limited by factors such as the distribution of powers within a federal nation, the accountability of the executive to Parliament and the fact that it was spending "public money" rather than its own money.

Sedley draws from his analysis that the "third source of executive power is at base a theory of government outside the law, and it would be better not to find government seeking juridical endorsement of it".

Although this book is one of legal history, it also has much to say of the likely future of public law. In particular, it points to the germination of the proposition that constitutional statutes have a different status to other laws. One ramification is that they cannot be impliedly repealed. Cases including those dealing with the "metric martyrs", the fox-hunting ban and the planned HS2 rail line have set the stage for the development of further consequences arising from the distinction of constitutional statutes from others.

Sedley observes that the "jurisprudential impulse towards constitutionalism may at one level be a response to a growing sense, now publicly shared by a number of senior judges, that the UK's political and legal sovereignty has been compromised by or surrendered to supra-national courts and institutions". This sense was clearly not confined to the judiciary, being one of the factors contributing to the British vote to exit the European Union. It will be interesting to see how the legal disentanglement of the UK from the EU will affect the approach of judges to the constitutional relationship between the courts and Parliament and the further development of English public law. No doubt this will open up a new chapter in the history of English public law, which would be worthy of consideration in any future edition of Sedley's most thoughtful and useful book.

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Proof of Causation in Tort Law. By Sandy Steel [Cambridge: Cambridge University Press, 2015. xxiv + 429 pp. Hardback £79.99. ISBN 978-1-107-04910-9.]

Almost every system of tort law subscribes to a version of the following rule: "Proof of Causation Rule (PCR): D cannot be held liable for losses arising from C's injury unless C can prove (to the relevant standard) that D's conduct was a cause of C's injury." But consider the following case considered in Dr. Steel's book: "*Two hunters.* D1, D2 and C are on a hunting trip. D1 and D2