

Strict Liability: An Immoral and Unjust Standard of Responsibility?

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Abstract

During the past century, strict liability has been gradually increasing in value. It has been traditionally imposed when damage is occurred by trespassing livestock, or by any vicious animals. Strict liability generally means liability without fault, that is, without intention or negligence. Ever since after the landmark judgement of Rylands versus Fletcher, today, many courts have imposed strict liability for abnormally dangerous or ultra-hazardous activities. During the formative years of the common law, the theories of strict liability were dominant in nature. But it was in the nineteenth century that there was an express and decided shift. Accidents do occur, and sometimes, the personal property is damaged and lost altogether. The social and personal costs of these accidents are really very staggering in nature. Especially, the question that who will actually bear these costs has actually become a topic for discussion. This is perhaps because the answer is so obvious. At least the nontrivial accidents are ought to be borne by those at fault in causing these accidents. At one time, the requirement of fault was so deeply rooted in the concept of personal responsibility, that in the famous case of Ives versus South Buffalo, it was strongly argued by Judge Werner that any liability without fault is not only immoral in nature, but it is also an unconstitutional violation of the due process of law. This article will basically emphasize on how strict liability is an unjust or immoral standard of responsibility in Torts and what that immorality is not and what it might be. In this article, I strongly defend the doctrine of strict liability as a philosophically interesting default rule which lays the groundwork for a healthier moral cooperative relation between the contracting parties than a fault-based system would.

Keywords: Strict liability, unjust, immoral, negligence, fault-based system

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INTRODUCTION

It is not at all surprising that what is called today, the tort theory is generally comprised of large attempts to fashion the general principles of compensation called popularly the liability rules. In Oliver Wendell Holmes great work "The Common Law", he wrote that there is always a loss ought to lie where it falls. The major forms of liability in tort, that is, strict liability and the negligence rule, is always a basic one that our legal system makes. But, as a general rule, any losses in tort litigation will always lie where they generally fall, and this in turn creates a burden on the victim. In this regard, Holmes always believed that this is less cumbersome administratively and costly than any other alternatives. Thus, this liability, which is basically primary, is always deeply rooted in the considerations of administrative cost avoidance. But it is to be kept in mind that

losses do not always remain where they have fallen; nor apparently, should they.

But the simplicity of torts based upon its use of ordinary language is deceptive. Even if ordinary language contains most of the concepts that bear on questions of personal responsibility, it often uses them in loose, inexact, and ambiguous ways [1].

In order to justify a system of liability rules, the following has been advanced. Accident costs are always shifted from victims to injurers under a retributive rationale, in order to penalize faulty or blameworthy injurers. Compensation is always likened to penal sanctions or punishment based on this retributive theory. The faulty injurers are always liable for their victims' losses under a compensatory rationale. This theory stresses

that the fault-free victims must be compensated for any unjustifiable losses. Keeping this in view, rather than the principles of retributive justice, the principles of compensatory justice remains the touchstone of a liability rules system.

Again, under the risk, spreading argument, accident costs are ought to spread maximally over persons and also time, and also to ensure that those individuals are best able to bear them. Under a deterrence argument, in order to provide incentives, accident costs should be allocated for the party best able to avoid the accident to do so. And in case if we are unsure of who is the cheapest or best accident avoider, then the costs should be borne by the party who is best able to decide if the accident is worth its costs.

THE INSIDE MORALITY OF STRICT LIABILITY IN TORTS

From the traditional view, while the retributive and compensatory rationales appear to require both fault-based rules of liability, the risk spreading, and deterrence justifications of liability require neither. For example, by enhancing better safety measures, the factory owners might prove to be cheaper and also better accident avoiders than their careless and negligent employees. The goals of wealth and cost distribution, the goals of deterrence, and cost spreading may include the fault-based liability rules.

Neither justice considerations nor utility requires that liability is to be based on fault. Thus, we can say that the whole principle of compensatory justice can be best viewed as “steady-state” or “equilibrium” principles of justice. Thus, the concept of justice is that those who are at fault forfeit the gains imputable to their gross misconduct. In order to secure the goals of justice in tort law, if the rules of fault-based liability are not required, then the question is for a fault system, what are the justifications which exists? The answer to this is that even if the system of fault is not required by consideration of justice, it is nevertheless morally superior to the principle of strict liability.

Although corrective justice has long been prominent in European thinking about law, it

has not fared well in contemporary theorizing. In the United States corrective justice is most closely associated with Richard Epstein's promotion of strict liability. In postulating that tort law should in principle hold the defendant liable for whatever injury he causes, Epstein confuses what tort law is about the doing and suffering of harm with what tort law requires. Because his suggestion allows the plaintiff's holdings to determine the limits of the defendant's action, it violates the equality of doer and sufferer. Epstein thus ignores the norm that pertains to corrective justice [2]. Thus, his writings state and restate an elaborate intuition without any convincing argument.

Again, Professor Richard Epstein's [3] theory of strict liability gives us a different approach. Epstein puts forward a theory of corrective justice which determines responsibility on purely causal grounds. According to him, the principles of strict liability say that the liberty of one person ends when he causes harm to another. Until that point, he is free to act as he chooses, and need not take into account the welfare of others [4].

A recent Indiana case, **Galbreath versus Engineering Construction Corp.** [5], represents a new approach to the problem of proximate cause in tort cases involving strict liability. Defendant in this case used dynamite to blast rock-an abnormally dangerous activity for which strict liability is imposed under Indiana law. The explosion broke a high-pressure gas pipe, and the escaping gas ignited when it came into contact with a backhoe engine operating nearby. The plaintiff, who was repairing the broken pipe, was severely burned. He sought to hold defendant strictly liable for his injury, but the trial court sustained a demurrer to his complaint on the ground that strict liability for blasting was limited to damage caused by vibrations or flying debris. The Indiana Court of Appeals reversed and remanded, holding that strict liability should extend to any harm that is a reasonably foreseeable result of an abnormally dangerous activity [6].

Recently, under the rule of **Greenman versus Yuba Power Products Inc.** [7], for any damage caused by defective products,

manufacturers and sellers have been strictly held liable. Like liability based on negligence, strict liability is limited by the requirement of actual causation. Unless the defendant's conduct is an actual cause of the plaintiff's harm, the defendant cannot be held liable. Sometimes, however, in both the cases of negligence and strict liability, the courts thought to adopt a further limitation, that is, a rule which differentiates remote from proximate causes. This was put forward with a view that for every harmful result of its activities, the defendant will not be held responsible.

In negligence cases, most courts have adopted foreseeability as a criterion for proximate cause: a defendant is liable only for harm that is a reasonably foreseeable result of his negligence. In strict liability, on the other hand, no such consensus has developed [8]. The courts have two different approaches or viewpoints in this regard. Firstly, there exists a group of cases where the plaintiff's harm did not result from the risk that led the courts to impose the doctrine of strict liability on the defendant. Secondly, another is the group where the plaintiff's injury resulted from the conduct of the defendant in an indirect manner. Usually, the courts have never held the defendant responsible when the plaintiff's injury does not actually result from the risk for which the defendant has been imposed with strict liability. For example, the owner of trespassing livestock is strictly liable for damage that such animals ordinarily do, such as destruction of grass or crops, or the breeding of a scrub bull with a pedigreed cow; but ordinarily there is no liability for attacks on people. If a person knows that an animal, he owns has a vicious propensity, he is strictly liable for any damage that results from that propensity, but usually not for damage caused by some other propensity of which he does not know [9].

Accidents will be conceived of as involving two types of parties, "injurers" and "victims", only the latter of which are assumed to suffer direct losses. The categories of accidents that will be examined initially are unilateral in nature, by which is meant that the actions of injurers but not of victims are assumed to affect the probability or severity of losses [10].

Generally, the owner of a wild animal will not be responsible if by its mere appearance, it frightens other animals. Thus, one who engages in an abnormally dangerous activity will be strictly liable only for the damage that comes within the risk that ultimately makes the activity abnormally dangerous. Likewise, for any harm resulting from a defective product, a manufacturer or seller will usually not be held liable. Also, when the plaintiff's harm results too indirectly from the activity of the defendant, the courts have tended to limit strict liability. For example, in the case of *Hollenbeck versus Johnson*, when the cow of the defendant trespassed in the plaintiff's barn and broke through the floor, creating a hole into which the plaintiff fell, the defendant was not held liable. Some acts like the action of an animal other than the defendant, an act of God, an innocent or negligent or intentional intervening conduct by a third person are held some of the grounds where some courts relieve the defendant of liability. Often, the Courts in many situations, have refused to find a defendant liable that would certainly have called for liability under the test of foreseeability used in negligence cases. Again, in the case of **Greeley versus Jameson**, the defendant's horse kicked the plaintiff and as a result he broke his leg. In the past, the horse has bitten many people. The court required the plaintiff to show that the horse had a propensity to kick people (not just a propensity to attack them) and ruled that evidence of the earlier biting incidents did not subject the defendant to strict liability when the horse kicked [11].

In **Kaufman versus Boston Dye House, Inc.** [12], a highly inflammable petroleum product called Varnolene was stored by the defendant on its property, which is an abnormally dangerous activity. When a third party operated a gasoline engine, the Varnolene escaped into a creek and caught fire. As a result, sparks were emitted. Here, the defendant was not held liable due to intervening cause. In similar cases if negligence, liability has been found though there was an intervening negligent or even an intentional act—although in this case, the act of the third party was not even negligent.

Because of the fact that courts enforce the limitations on the doctrine of strict liability so restrictively, the plaintiffs, as in the case of **Galbreath versus Engineering Construction Corp.**, often find it necessary to try to prove negligence on the part of the defendant, even though the injuries have been caused by an abnormally dangerous activity, or by a vicious animal. In Galbreath's case, the term "foreseeability" which the Court used is not unprecedented. The Courts, in many cases, involving animals and abnormally dangerous activities, have used the terminology of negligence law. But the foreseeability test has been first adopted in the Galbreath case.

UNDERLYING CONCEPT BETWEEN "STRICT LIABILITY IN FAULT" AND "THE FAULT IN STRICT LIABILITY"

Negligence is a very well-defined manner that is insensitive relatively Jr. greatly focused towards the indifference of the laws of negligence to the actual ability of the actor to remain free from calamities. He rightly noted that the law always applies the same standard to the competent as well as the incompetent, even though the latter will definitely find it impossible or difficult to comply with. Mark Grady famously stressed that the standard of care is always applied by the courts using a relatively narrow time horizon.

The breach question within a negligence claim concerns whether an actor has failed to meet the standard on a particular occasion. In sum, the standard of conduct built into the tort of negligence is strict [13].

In tort law, it would indeed be a very tough job to exaggerate the extent to which the whole difference between strict liability and negligence is embedded. Infact, strict liability is the imposition of liability even after enough reasonable care has been exercised, whereas, negligence is the failure to exercise the due reasonable care.

Particular torts are sometimes expressed by implying to the "objectivity" of the standards of conduct that they set. Very often, this objective dimension of familiar torts has often been understood to imply an embrace of

liability beyond wrongdoing. But, this understanding is not correct or is mistaken. Simultaneously, tort law is strict and is wrong based. However, there is arguably a small corner of tort law which recognizes a strict liability form that do not require wrongdoing in any case. The court in Rylands seems never to have suggested that the defendant was doing something he was not supposed to be doing. There was nothing about the creation of the reservoir that was itself invasive, and there is no indication from the Law Lords that the defendant was required to stop carrying on his activity in the manner in which he had been carrying it out. Nuisance, as we have seen, turns on the idea of a context-inappropriate use of one's property. In so far as Rylands and its progeny impose liability without anything that would qualify as wrongdoing, they create an interpretive problem for anyone who claims, as we have claimed, that torts are wrongs. A tenet of our "civil recourse" theory is that, through tort law, the state affords to a plaintiff a right of action against a defendant only because the defendant has wronged the plaintiff. A right of action is a power to exact a remedy from a defendant as redress for having been wronged. Without a wrong, there is no entitlement to a right of action. Strict liability for injuries inflicted by abnormally dangerous activities-if it really is not wrongs-based liability breaks the civil recourse mold [14].

But the most important question which arises now is **"Why does the Common law always permit the plaintiffs to recover from the defendants, if at all the defendant/s has not committed any legal wrong against the plaintiff?"** The answer here lies to the idea of fair distribution rather than wrongfulness. In certain activities where the defendants engage, unilaterally impose well-known substantial risks upon others in a course of conduct which is consciously undertaken for their own benefit. In such cases, if a knowing risk imposition is permitted upon others—if it is not prohibited or enjoined—then those who are engaged in such risk imposition must stand ready to compensate those injured by it. For this kind of extraordinary risk imposition, the permissibility is conditioned on the willingness of the risk imposer to take responsibility for all the damages that comes from it.

The coup de grace for the case for strict liability must surely be that it is unnecessarily blunt. It fails to distinguish between those who acted with all reasonable care in avoiding the proscribed act or omission from those who did not. Punishing the first group of persons can have little effect in preventing other persons in the future from committing the similar offence. Thus, it has been proposed that in order to carry out the object of the statute in creating the offence satisfactorily, it is sufficient to impose liability based on proof of negligence [15].

CONCLUSION

Torts are once one of the simplest and one of the most complex areas of the law. Torts as a branch of common law stands in sharp opposition as it does not regard economic theory as the primary means to establish the rules of legal responsibility. Generally, two major theories have marked the development of the common law of tort. The first theory holds that a plaintiff should be entitled to recover prima facie from a defendant who caused him harm, only if the defendant intended to harm the plaintiff or failed to take reasonable steps to avoid inflicting the harm. The other theory is that of strict liability, which holds the defendant prima facie liable for the harm caused whether or not either of the two further conditions related to negligence and intent is satisfied. The traditional opinion is that strict liability is an unjust theory of responsibility in the law of torts as it does not allow the defense of freedom from fault to defeat an attribution of liability. We can say that it is the narrow injustice that one who is without fault is required, in the absence of a contractual agreement, to be the insurer of one who is at fault. Hence, the principle of absolute liability may violate the principle of justice.

Without reference to particular kinds of categories of cases, we cannot decide which no-fault decision to make. Moreover, in many cases, we tend to discover that the strict liability doctrine is morally superior to the criterion of fault. The preoccupation with fault as an important element in a just theory of torts has concealed the important structural similarities between the criteria of fault and

strict injurer liability. By simply focusing on the presence of fault in a just theory of liability, most of the moral philosophers to a great extent have ignored the question of who has to bear a loss when no candidate for it is at fault. As a result, these philosophers have completely stopped in contributing to the dialogue at that very point where they are actually needed at large to contribute.

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