

1-1999

Commentary on William Lloyd Prosser, Strict Liability to the Consumer in California

David J. Jung

Follow this and additional works at: https://repository.uchastings.edu/hastings_law_journal



Part of the [Law Commons](#)

Recommended Citation

David J. Jung, *Commentary on William Lloyd Prosser, Strict Liability to the Consumer in California*, 50 HASTINGS L.J. 861 (1999).
Available at: https://repository.uchastings.edu/hastings_law_journal/vol50/iss4/10

This Article is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings Law Journal by an authorized editor of UC Hastings Scholarship Repository.

Commentary on William Lloyd Prosser, Strict Liability to the Consumer in California

by
DAVID J. JUNG*

For a generation of law students and lawyers, William L. Prosser—author of the era’s leading casebook and hornbook, and Reporter for the RESTATEMENT (SECOND) OF TORTS (1965)—was Mr. Torts. Law professors knew that Prosser had other talents as well: he was a satiric lyricist with a deadly aim, whose songs, performed at the annual meetings of the Association of American Law Schools, skewered the foibles of his colleagues, his profession and himself. One of Prosser’s best known efforts took aim at an institution he later would join, the Hastings 65 Club:¹

I’m approaching the date of retirement,
Next year on July twenty-nine;
A statutory requirement,
For few die, and none will resign.
I’m tired, and weary of teaching,
Worn down by the ultimate straw;
I’m hopeful I soon will be reaching
The Hastings College of Law
Where nobody reads any cases,
And nobody does any chore;
It’s over the hill to Hastings,
Where nobody works anymore²

* Professor of Law, University of California, Hastings College of the Law. I would like to thank Jennifer B. Hammett and David I. Levine for their thoughtful advice and comments.

1. The Hastings 65 Club’s genesis and history are described in THOMAS G. BARNES, HASTINGS COLLEGE OF THE LAW: THE FIRST CENTURY (1978). When Prosser joined the Hastings faculty, 90% of the teaching load was carried by the members of the 65 Club, distinguished professors who had been “superannuated” at their home institutions and who had moved to Hastings to continue teaching. *See id.* at 338.

2. William L. Prosser, “Over the Hill to Hastings” (sung to the tune of “Over the Hill

Luckily for the *Hastings Law Journal*, when William Lloyd Prosser made it to Hastings, he was hardly over the hill. After he retired from Boalt Hall and joined the Hastings 65 Club in 1963, Prosser shepherded the RESTATEMENT (SECOND) OF TORTS to completion, published the fourth edition of his classic hornbook and the fourth and fifth editions of his casebook, and wrote fourteen articles, among them *Strict Liability to the Consumer in California*.³

Strict Liability to the Consumer in California completes a trilogy⁴ of articles in which Prosser traces the evolution of the law of strict product liability. In the first two articles—*The Assault upon the Citadel (Strict Liability to the Consumer)*⁵ [hereinafter *The Assault*] and *The Fall of the Citadel (Strict Liability to the Consumer)*⁶ [hereinafter *The Fall*]⁶—Prosser adopts a military metaphor to describe the attack that brought down the citadel of privity and made way for strict liability, in what “has been the most rapid and altogether spectacular overturn of an established rule in the entire history of the law of torts.”⁷ With *Strict Liability to the Consumer in California* [hereinafter *Strict Liability—California*], the correspondent returned from the battlefield to survey developments on the home front.⁸

While Prosser cast himself as the correspondent in these articles, *agent provocateur* might more aptly capture his role: “Prosser had been predicting the imminent demise of warranty law and the adoption of strict products liability as part of his propaganda in favor of reform . . . for almost two decades. And in *The Assault* he finally got lucky.”⁹ Lucky, indeed. In the same year during which *The Assault* appeared, the New Jersey Supreme Court set aside contract provisions that disclaimed implied warranties and excluded consequential damages as against public policy and allowed an

to the Poorhouse”). LAW SCHOOL ASSOCIATION LYRICS, 45-46 W.L. Prosser 1962 ed. Performed at the 1957 meeting of the Association of American Law Schools by Professor John W. Reed.

3. William L. Prosser, *Strict Liability to the Consumer in California*, 18 HASTINGS L. J. 9 (1966).

4. Prosser had also predicted that the privity requirement would be eliminated in his 1943 article, William L. Prosser, *Implied Warranty of Merchantable Quality*, 27 MINN. L. REV. 117 (1943), and in the first and subsequent editions of his treatise on torts, W. PROSSER, HANDBOOK OF THE LAW OF TORTS (1941). See George L. Priest, *Commentary on William L. Prosser, The Assault upon the Citadel (Strict Liability to the Consumer)*, 100 YALE L.J. 1470, 1471 (1991).

5. William L. Prosser, THE ASSAULT UPON THE CITADEL (STRICT LIABILITY TO THE CONSUMER), 69 YALE L.J. 1099 (1960).

6. William L. Prosser, THE FALL OF THE CITADEL, 50 MINN. L. REV. 791 (1966).

7. *Id.* at 793-94.

8. Prosser, *supra* note 2 at 9.

9. Priest, *supra* note 4 at 1530.

injured consumer to recover damages from the manufacturer of a defective automobile.¹⁰ Three years later, in *Greenman v. Yuba Power Products*,¹¹ the California Supreme Court declared that injuries caused by defective products would be subject to strict liability in tort, and the next year, the American Law Institute approved Section 402A of the RESTATEMENT (SECOND) OF TORTS.

So, if luck it was, give luck its due. Prosser's writings generally, and *The Assault* in particular, have been widely credited as influencing courts to abandon warranty law as the source of liability for sellers of defective products and to move to strict liability in tort.¹² *The Assault's* importance is undeniable by one measure, at least. It may be the most frequently cited law review article of all time.¹³ And while *Strict Liability—California* was more parochial an undertaking, it met a similar reception. Cited in four opinions by the California Supreme Court, in twenty eight opinions by the California Courts of Appeal, in twenty opinions in seventeen other jurisdictions, and in thirty law review articles, the article is one of the most frequently cited articles ever published in the *Hastings Law Journal*.

Part of a wave of scholarship about product liability that followed on the heels of *Henningsen*, *Greenman*, and section 402A,¹⁴ *Strict Liability—California* retells the story of the Citadel's fall, but from a California perspective. As such, its value to the California courts is obvious. At each step in the law's development, Prosser documents parallel developments in California, providing detailed descriptions of the governing cases, and indicating precisely which issues have been decided, and which remain. A court seeking to know "the law," could not ask for a clearer guide, or a more authoritative source,¹⁵ and in the early years, that certainly was the

10. See *Henningsen v. Bloomfield Motors*, 161 A.2d 69, 95-97 (N.J. 1960).

11. 377 P.2d 897, 900 (Cal. 1962).

12. See JANE STAPLETON, *PRODUCT LIABILITY* 23 n. 57 (1994); G. EDWARD WHITE, *TORT LAW IN AMERICA: AN INTELLECTUAL HISTORY* 177 (1980); Jacqueline S. Bollas, *Note, Use of the Comparative Negligence Doctrine in Warranty Actions*, 45 OHIO ST. L.J. 763, 764 n.7 (1984). James J. White, *1983 Survey of Books Relating to the Law: Scholarly Book: What, to Whom and Why*, 81 MICH. L. REV. 723, n.3 (1983).

13. See 1 ROBERT C. BERRING, ed., *GREAT AMERICAN LAW REVIEWS* 26 (1984). (looking at both citations in law reviews and citations by courts). Another survey, focusing solely on citations in law reviews, found the article to be the third most frequently cited article to have appeared in the *Yale Law Journal*. See Fred R. Shapiro, *The Most Cited Articles from the Yale Law Journal*, 100 YALE. L.J. 1449, 1462 (1991).

14. See George L. Priest, *The Invention of Enterprise Liability: A Critical History of the Intellectual Foundations of Modern Tort Law*, 14 J. LEGAL STUD. 461 at 511 and nn. 321-24 (1985) (citing articles).

15. See *Kreigler v. Eichler Homes, Inc.* 74 Cal.Rptr. 749, 752 (Cal. Ct. App. 1969) (referring to Prosser as "our most eminent authority in the law of torts.") Prosser's treatise, his casebook, his articles, and his role as the Reporter for the influential

article's appeal. Through the early 1970's, citations to the article—within and without California—rely on it as direct authority for statements of settled law,¹⁶ and as authority for extending the law.¹⁷

A second source of the article's value to the courts is the insight it provides into the thoughts of the Reporter for the American Law Institute's RESTATEMENT (SECOND) OF TORTS. The RESTATEMENT's section 402A, which formulates a rule of strict liability for defective products, has proven to be one of the Restatement's most influential sections.¹⁸ Prosser rewrote section 402A three times between 1961 and 1964, first limiting the principle's application to food products (1961), then broadening it to products intended for intimate bodily use (1962) and, finally, extending it to all products (1964). As finally approved, the Restatement's rule extended strict liability to anyone engaged in the business of selling a product, if the product is "in a defective condition unreasonably dangerous" to the product's user or consumer.

The RESTATEMENT's language however, was unfortunate in one respect. For some courts, the coupling of the phrases "defective condition" and "unreasonably dangerous" was troubling, insofar as it seemed to reintroduce an element of negligence to the law of strict liability.¹⁹ In *Strict Liability—California*, Prosser explains why the phrase was chosen:

The second, and more important, question concerns products that are in themselves unavoidably dangerous. Whiskey is such a product. It causes a variety of calamities, from cirrhosis of the liver to drunken driving . . . Where only negligence is in question, the answer as to such products is a simple one. The utility and social value of the thing sold clearly outweighs the known, and all the more so the unknown risk and there is no negligence in marketing the product. But what is to be the rule as to strict liability? Does the maker of whiskey . . . become automatically responsible for all

RESTATEMENT (SECOND) OF TORTS made him a preeminent authority in the field, acknowledged by his peers as "a great Master of Torts." Lawrence H. Eldredge, *William Lloyd Prosser*, 60 CAL. L. REV. 1245, 1245 (1972). Or, as another of Prosser's peers put it: "Prosser on Torts! It has a completed sound, a belonging sound, a natural sound, a sound to be remembered for years to come." John W. Wade, *William L. Prosser: Some Impressions and Recollections*, 60 CAL. L. REV. 1255, 1255 (1972).

16. See, e.g., *Price v. Shell Oil Co.*, 466 P. 2d 722, 725 (Cal. 1970) (retailers are subject to strict liability).

17. See, e.g., Kreigler, *supra* note 15, at 753 (strict liability applies to seller of mass-produced homes).

18. See David G. Owen, *Defectiveness Restated: Exploding the "Strict" Products Liability Myth*, 1996 U. ILL. L. REV. 743, 743 (section 402A is "the most often cited Restatement section in history"). Carl T. Bogus, *War on the Common Law: The Struggle at the Center of Products Liability*, 60 MO. L. REV. 1, 12 (1995) (section 402A has been cited in over 3000 judicial opinions).

19. *Cronin v. J.B.E. Olson Corp.*, 501 P. 2d 1153, 1161-62 (Cal. 1972).

the harm that such things do in the world? It was undoubtedly to forestall such a possibility that the Restatement limited its new section to products "in a defective condition unreasonably dangerous to the user or consumer."²⁰

Paralleling and expanding upon the explanation given in the RESTATEMENT's Official Comments²¹, this paragraph provided a convenient explanation for the section's language, and in jurisdictions outside California, it is this paragraph that largely accounts for how frequently the article has been cited. Courts relied on it as a definitive account of the role that "unreasonableness" was to play in the evaluation of a product's defective condition.²² Thus, this article's importance at the time of its publication is straightforward. It offered courts and scholars a clear description of the state of the law, by the most respected author of the time. It also gave the courts an external source to cite as they sought to explicate section 402A.²³

What of the article's relevance today? Certainly the law has passed it by. The article offers little that would advance the analysis of the issues now in the forefront of product liability law. The article merits revisiting, however, for at least two reasons. It provides interesting insights into an important period in tort law's intellectual history. It also provides an intriguing contrast with the climate that has surrounded the formulation of the RESTATEMENT (THIRD) OF TORTS: PRODUCT LIABILITY (proposed final draft, April 1, 1997).

In intellectual style, *Strict Liability—California* is vintage Prosser.²⁴ It displays his characteristic flair for the memorable case. (After hearing the story of the Happy Daze Buffet,²⁵ I doubt that anyone could look at a ham and cheese sandwich in quite the same way again, or doubt that consumers have a legitimate claim to the law's protection.) The prose, if not reaching the metaphorical heights

20. Prosser, *supra* note 3, at 23.

21. Also written, conveniently, by Prosser. See Priest, *supra* note 14, at 521 and n. 366.

22. See, e.g., *Cronin*, 501 P. 2d at 1161; *Cassisi v. The Maytag Co.*, 396 So. 2d 1140, 1144 (Fla. Dist. Ct. App. 1981); *Brown v. Clark Equip. Co.*, 618 P.2d 267, 275 (Haw. 1980); *Pyatt v. Engel Equip. Inc.*, 309 N.E. 2d 225, 229 (Ill. App. Ct. 1974). Similarly, courts have relied on Prosser's account of the irrelevance of contributory negligence, other than assumption of the risk, to product liability, an account that also paralleled the Restatement's official comments. See *Luque v. Maclean*, 501 P. 2d 1163, 1169-70 (Cal. 1972); *Ruiz v. Minnesota Mining and Mfg.*, 93 Cal.Rptr. 270, 275 (Cal. Ct. App. 1971); *Barth v. B.F. Goodrich Tire Co.*, 71 Cal.Rptr. 306, 314 (Cal. Ct. App. 1968).

23. Although the official comments contain the same explanations, presumably courts preferred the academic source because California actually never adopted section 402A as law. Also, the Official Comments do not indicate who the author was, and Prosser's name lent prestige.

24. G. EDWARD WHITE, *TORT LAW IN AMERICA: AN INTELLECTUAL HISTORY* (1980).

25. Prosser, *Strict Liability—California*, *supra* note 3, at 13.

of *The Assault*, is accessible, even entertaining. Prosser's characteristic determination to cite every conceivable case is certainly present: In fifty pages, there are over eight hundred citations to cases for specific points of law. Here, as in Prosser's treatise, the weight of authority amassed is overwhelming.²⁶

More than just the habit of a careful treatise writer, Prosser's devotion to the case law is an important feature of his intellectual style. It reflects, as Professor G. Edward White has discussed, one of the ways in which Prosser was influenced by the Legal Realist movement. He shared the Realists' belief that the results in particular cases, more than abstract or general principles, are what define the law.

Prosser's success as a treatise writer, and his success in this article, however, lay in his ability to see patterns within the cases' near infinite variation. Thus, White comments upon Prosser's "compulsion not to leave his material in an undigested mass, thereby implicitly suggesting that the discrete case contained the only "rules" of tort law."²⁷ So, Prosser created "pseudo-rules, classifications that purported to summarize the 'state of the law' in a given area of Torts, but in fact were simply devices that aided in summary and synthesis of a disparate mass of material."²⁸

In *Strict Liability—California*, that is precisely how Prosser treats the question of defenses to strict product liability. He begins by asserting that "the language of the courts is in a state of flat contradiction as to whether contributory negligence is a defense to strict liability for a defective product."²⁹ "The confusion," he finds, however, "is a superficial one of words and definition only If the substance of the cases is looked to, rather than their language, they fall into an entirely consistent pattern."³⁰ A plaintiff's failure to discover a product's dangerousness—contributory negligence—is not a defense, but voluntarily encountering a known unreasonable danger—assumption of the risk—is.

White's argument is that Prosser's scholarly reputation was in no small part the result of his facility with classification. Prosser's classifications of the cases took on a life of their own, finding acceptance in courts and assuming a doctrinal function despite their origins as simple tools of synthesis and organization. Here, again, *Strict Liability—California* offers an example. By 1972, when the

26. And, as in Prosser's treatise, the citations are not always completely reliable. See the discussion in Priest, *supra* note 14, at 514.

27. WHITE, *supra* note 244, at 161.

28. *Id.*

29. Prosser, *supra* note 3, at 48.

30. *Id.*

California Supreme Court decided *Luque v. McLean*,³¹ the Court asserted as uncontroverted that “the only form of contributory negligence that is a defense to strict liability is that which consists in voluntarily and unreasonably proceeding to encounter a known danger, more commonly referred to as assumption of risk.” The authority for this proposition? Prosser’s article, and two court of appeals decisions,³² that in turn rely on Prosser’s article. Thus, while Prosser’s attention to the results in particular cases showed the influence of Realism, in Prosser’s hands, variation coalesced into doctrine.

Prosser was similarly able, in his treatise and in his articles, to balance the Realist recognition of the role that policy plays in shaping the common law with the need for rules that can both explain and predict how cases are decided. Thus, here and in *The Assault*, he carefully recounts the policy arguments that can be mustered to support the notion of strict liability to consumers. Some of those, he finds, are to be rejected out of hand; they “have a specious and unconvincing sound, and would appear to have been concocted in the heads of professors rather than based upon any realities of the situation.”³³ The policies that matter, to Prosser, are the ones that have been mentioned, not by scholars, but by the courts. Thus, in *Strict Liability—California*, what is important is that the *Greenman* opinion explicitly rests on two, alternative policies—risk distribution, on the one hand, and the manufacturer’s implicit representations of safety on the other—and that the way in which the law may be expected to evolve will depend on which rationale the courts ultimately select.

Thus, policy too is transformed into doctrine, and what is of interest is which policies the courts will find persuasive, and how those policies will shape the rules. Jane Stapleton has argued that this integration of policy with doctrine is a peculiarly American approach to legal reasoning: “Whereas ‘most American lawyers tend to think of a case-law rule as in some sense . . . incorporating its underlying reasons, so that it tends to be a mere guide to decision making,’ British lawyers distinguish a rule from the reasons for it.”³⁴ As a result, “U.S. legal reasoning is now highly ‘substantive,’ that is, it is strongly influence by reasons of a moral, economic, political

31. 501 P.2d 1163, 1169 (Cal. 1972)

32. See *Ruiz v. Minnesota Mining and Mfg.*, 93 Cal. Rptr. 270, 275 (Cal. Ct. App. 1971); *Barth v. B.F. Goodrich Tire Co.*, 71 Cal. Rptr. 306, 314 (Cal. Ct. App. 1968).

33. Prosser, *supra* note 5, at 1119.

34. STAPLETON, *supra* note 12, at 71 (citing ATIYAH AND SUMMERS, *FORM AND SUBSTANCE IN ANGLO-AMERICAN LAW* (1987)).

institutional or other social nature."³⁵ Hand in hand with this "substantive" view of precedent is an instrumental vision of the law, in which, as Holmes described it, "the judges' task . . . was to decipher the social 'ends which the rules . . . seek to accomplish, the reason why the ends are desired, what is given up to gain them, and whether they are worth the price.'"³⁶ According to Stapleton, the "substantive" character of American legal reasoning—the belief that a rule can always be adjusted that characterizes *Henningsen* and *Greenman*—made it possible for the doctrine of strict liability to "evolve."

While Prosser found the courts' use of policy in tort cases easy to accommodate, the tone of his articles suggests that he was less sanguine about the role that politics might play. In *The Assault*, he describes the first, critical step toward strict liability—the elimination of the privity requirement in the food cases—as "the aftermath of a prolonged and violent national agitation over defective food" that took place at the turn of the century.³⁷ As a result of this agitation and the political movement it generated, "time and public sentiment were ripe for a change in the law of food liability."³⁸ Yet, he characterizes the public concern with contaminated food as "almost [reaching] a pitch of hysteria," and offers, by way of explanation, "This was the age of the 'muckrakers'."³⁹ He derides Upton Sinclair's *The Jungle*, a work credited with inspiring public concern, observing that "the portrayal in this novel strains credulity today."⁴⁰

Similarly, in discussing the question of whether there could be liability for products that had some inherent, unavoidable danger, Prosser suggests that the "conclusion would be clearly indicated" that there could not be, but for "the state of confusion [in the case law] surrounding the question of lung cancer from smoking cigarettes."⁴¹ That confusion, in turn can be laid to blame on politics: "It may be unfortunate that these cases dealt at this time with an issue about which there has been so much popular outcry as lung cancer from smoking."⁴² The implication is that public outcry could only muddle

35. *Id.* at 70.

36. *Id.* at 71 (citing ATIYAH AND SUMMERS, FORM AND SUBSTANCE IN ANGLO-AMERICAN LAW (1987)).

37. Prosser, *supra* note 5, at 1105.

38. *Id.* at 1106.

39. *Id.* at 1105.

40. Prosser found the book's literary merits even more questionable: "the writer cannot refrain from expressing his opinion as to how bad a piece of literature it is. As to style, characterization, plot, incident, dialogue, everything in short beyond the subject with which it deals, the book is trash." *Id.* at 1105, n. 40.

41. Prosser, *supra* note 2, at p. 26.

42. *Id.* at 27

the law's evolution. Policy could be comfortably accommodated within the common law; politics perhaps was another matter.

The possibility of drawing such a line between policy and politics flows from Prosser's times. While Sinclair's America was deeply divided by ideology, when Prosser was writing, the "end of ideology"⁴³ had already been declared: "From the late 1940's through the 50's . . . a number of writers agreed that the problems of modern America were no longer ideological, but technical and administrative, and that these could be solved by knowledgeable experts rather than by mass movements."⁴⁴

According to White, one of the effects of the trend toward "consensus scholarship that characterized postwar American intellectual life" was "a surface reconciliation of doctrinal and policy perspectives in the field of Torts."⁴⁵ Prosser's contributions in his articles on product liability and elsewhere were critical to that reconciliation.⁴⁶ With Prosser's faith in the ability of courts to meld policy and doctrine, even the most divisive ideological debate could be transformed and brought within the orderly processes of the legal system:

Dean Pound once denounced this [risk distribution theory] as a piece of "authoritarian law" and a major step in the direction of socialism. Assuming that we are not nowadays disposed to flee shrieking in terror from the prospect of a spot of socialism in our law when the public interest demands it, the question remains whether our courts, our legislators, and public sentiment in general, are yet ready to adopt so sweeping a legal philosophy, and to impose so heavy a burden abruptly and all at once upon tall producers. Thus far there has been relatively little indication that the time is yet ripe for what may very possibly be the law of fifty years ahead.⁴⁷

Closer to forty years than fifty have passed since Prosser wrote, and an entire Restatement—the RESTATEMENT (THIRD) OF TORTS: PRODUCT LIABILITY—has come to occupy the place of section 402A. Reflecting on the process that has led to the RESTATEMENT (THIRD), it is striking that *Strict Liability—California* fails to predict the issues that were to come to trouble California's and the country's courts as a result of the move toward strict product liability. Of the issues Prosser identifies as undecided—the effect of disclaimers, the role of contributory negligence, the liability of manufacturers to bystanders,

43. DANIEL BELL, *THE END OF IDEOLOGY: ON THE EXHAUSTION OF POLITICAL IDEAS IN THE FIFTIES* (1960).

44. RICHARD H. PELLIS, *THE LIBERAL MIND IN A CONSERVATIVE AGE* 130 (2d ed. 1989).

45. WHITE, *supra* note 12, at 153.

46. *Id.*

47. Prosser, *supra* note 5, at 1120.

and the causation problems introduced when there are multiple defendants—only the last proved to be a truly difficult issue to address. The issues that in fact produced the decade of controversy that led to the adoption of the RESTATEMENT (THIRD) OF TORTS: PRODUCT LIABILITY—liability for defective designs,⁴⁸ liability for inadequate warnings, and the role of the “state of the art” defense—Prosser completely missed.

Not only did Prosser miss the legal issues that would define strict product liability in the 1970's and 80's, he also failed to anticipate the political dispute it would generate. Prosser actually saw the shift to strict product liability as fairly inconsequential. Strict liability, he thought, would only change the actual outcome of “such a minor fraction of the total number [of cases] that the alarm voiced by a good many manufacturers over the prospect of a vast increase in liability appears to be quite unfounded.”⁴⁹ But the alarm did not subside, and product liability became a political battleground, blamed in national political campaigns for stifling American inventiveness at home and competitiveness abroad, and giving rise to a powerful movement for legislative reform.

How did Prosser miss the boat? Did he underplay the impact of the changes he proposed in order to make them more palatable? Perhaps. But more likely, the answer is ironic. Prosser's commitment to “consensus thinking” did not deny that there were serious disputes within the law of torts; it simply expressed the faith that the legal process could resolve those disputes within the contours of a consensus over shared principles. The possibility of consensus, and the commitment to incremental change, were not products of the end of ideology, but, rather, reflected how widely the ideology of consensus itself was shared. In characterizing the development of product liability law as merely an incremental change, Prosser, thus proved himself to be a man of his time, a time when radical shifts were occurring under the surface of apparent continuity. Paradoxically, within this climate of consensus, the seeds of a revolution in the law had taken root under the guise of incremental change.

48. Here is an especial irony, because the *Greenman* case itself dealt with a defectively designed product. See *Greenman*, 377 P. 2d at 900.

49. Prosser, *Strict Liability—California*, *supra* note 3, at 52.