

require an exegetical argument that cannot be pursued here. Even if that interpretation can be defended, it would not tell against the very great interest of the different practical problem Klosko takes up or against his solution to that problem. There is a great need for philosophical work exploring the relationship between liberalism and various forms of Judeo-Christian orthodoxy. The need is made pressing by the development of liberal theory in recent decades, which makes explicit the presuppositions and aspirations of many of the societies traditional religion has inhabited since the Reformation. It is made urgent by the increasing political power of religion in many parts of the world, including the liberal democracies of the West. Klosko's book is informed by both political philosophy and empirical work on religion. Notwithstanding the criticisms made here, it is a most welcome and admirable contribution.

PAUL WEITHMAN  
*University of Notre Dame*

Kraus, Jody S., and Walt, Steven D., eds. *The Jurisprudential Foundations of Corporate and Commercial Law*.

Cambridge: Cambridge University Press, 2000. Pp. 245. \$54.95 (cloth).

Ask a law professor about the jurisprudential foundations of corporate and commercial law, and you are likely to receive a blank stare. Although there is a lively law and economics literature on corporate and commercial law, and a listless doctrinal literature, there is no literature on the jurisprudential foundations of these fields of law. Maybe the reason for this is that corporate and commercial law are best understood as subfields of contract law, and there is a literature on the jurisprudential foundations of contract law. Any jurisprudential insights on contract law therefore apply *mutatis mutandis* to corporate and commercial law, and separate jurisprudential literatures on these fields are unnecessary. In any event, jurisprudential work on corporate and commercial law would certainly be novel and possibly interesting, and further jurisprudential work on contract law would be welcome. This book, despite its title, delivers neither.

Two of the essays are jurisprudential but unrelated to the jurisprudential issues specific to contract (or corporate or commercial) law. Daniel Farber thinks that a Rawlsian perspective can resolve the long-running battle between scholars who think that legal rules should be evaluated on the basis of efficiency and those who reject this position. Lewis Kornhauser rehashes the well-known problems with using efficiency to evaluate legal rules. Kornhauser's skepticism about the practicality of the efficiency criterion, like Farber's attempt to incorporate it in a more abstract normative framework, are general to legal theory and have no distinctive implications for understanding contract, commercial, or corporate law.

Alan Schwartz's essay enlists Karl Llewellyn in the vanguard of the law and economics movement. Llewellyn was a significant figure in the history of American legal thought, but most of his writing on contract law was heavily doctrinal, turgid, and dull and has little contemporary interest. (His one significant idea

about commercial law—that it should be flexible and incorporate business norms—did influence the Uniform Commercial Code through his participation in the drafting of that document.) Schwartz focuses on some very general characteristics of Llewellyn's contracts scholarship, especially its instrumental orientation and its concern with (in a loose sense) efficient outcomes, and it is true that these characteristics make Llewellyn's scholarship recognizably modern, in contrast to the excessively formalistic contracts scholarship against which he was reacting. But this makes Llewellyn a progenitor of modern law and economics in only the loosest possible way—only in the sense that legal realism in general anticipated law and economics by treating law as an instrument of social policy. The problem with Schwartz's essay is that he does not unearth any striking Llewellynian insights about contract law and is unable to show why the now commonplace ideas that he attributes to Llewellyn should change our views about modern contracts scholarship, whether it is inspired by him or not.

Llewellyn's incorporation idea has been influential, as I mentioned, and lately it has been both updated and criticized. The updaters argue that courts should rely on business custom when interpreting contracts, because business custom is likely to be efficient and because it is easier for courts to identify and enforce business custom than it is for courts to figure out efficient contract rules on their own. The critics argue that parties do not want courts to enforce business customs, they want courts to enforce their contracts. The best interpretive strategy from the perspective of parties is "literal" interpretation of contracts. The essay by Jody S. Kraus and Steven D. Walt takes the first position; the essay by Robert Scott takes the second position in the course of criticizing the Uniform Commercial Code. The authors present their cases with skill, but the dispute peters out over insoluble empirical questions about the sophistication of courts and the ease with which parties can embody their intentions in a contract.

Richard Craswell promises to cut the Gordian knot in an essay entitled "Do Trade Customs Exist?" The "semifacetious" answer is "no." If this answer were not semifacetious and indeed were true, then the defense of incorporation would be untenable: if trade customs do not exist, then they cannot be used by courts to interpret contracts. Craswell argues that defenders of incorporation think that trade customs are simply rules that courts can identify and enforce without making normative judgments and even without having much understanding about the underlying industry. The truth is more complex. It is well-known from other jurisprudential debates that a collection of outcomes—cases or informal resolutions of business disputes—is consistent with an indefinitely large number of theories or principles, and one can select among them only on the basis of an independent theory of what the law, or the practice, should accomplish. Courts faced with commercial disputes cannot mechanically apply trade customs any more than they can mechanically apply judicial precedents. They must make a complex judgment about the proper outcome of the case, a judgment that can be influenced but not determined by the court's knowledge about how similar disputes have been informally resolved in the business community.

Craswell's sly essay is a delight to read. But, as he concedes, the defenders of incorporation can rebuild their defenses from the wreckage. A wider perspective might be helpful. The critics of the "incorporationists" are, on one side, those who think that courts should enforce contracts literally, and, on the other

side, those who think that courts should engage in policy analysis. The incorporationists argue that the first group demands too little from the courts and that the second group demands too much. Even if incorporationist judges must exercise judgment—and this is all in the end that Craswell is saying—and cannot mechanically apply trade customs, it does not follow that these judges need to have as much information as the policy analysts. The advantage of the incorporation strategy is that it unburdens judges of the impossible task—so grimly described by Kornhauser—of deriving efficient rules; at the same time, this strategy avoids many of the false outcomes that would surely be generated by literalism. Or so is the claim of the defenders of incorporation. Craswell's efforts notwithstanding, the critique of incorporation remains empirical, not analytic.

Philosophers interested in learning about the moral underpinnings of contract (or corporate or commercial) law will be disappointed by this book, because the essays either take for granted the assumption that contract law ought to reflect efficiency concerns, or they criticize the efficiency criterion without relating their criticisms to jurisprudential questions specific to contract law. Kraus and Walt anticipate this reaction to their book with the opening lines of their introduction: "Efficiency is the dominant theoretical paradigm in contemporary corporate and commercial law scholarship. The jurisprudential foundations of corporate and commercial law, then, are the foundations of efficiency analysis" (p. 1). They further suggest that the question "What is the best way of pursuing efficiency in corporate and commercial law?" (p. 1) is a jurisprudential question. It would not be fruitful to start a semantic debate about what jurisprudence is, or how it should be understood in relation to specific fields of law. It is sufficient to say that if you open this book expecting to see extended discussion of the ideas of scholars who have made philosophical contributions to the contract law literature—scholars like Charles Fried, Lon Fuller, Randy Barnett, Robert Hale, Anthony Kronman, Grant Gilmore, Patrick Atiyah, Morris Cohen, Duncan Kennedy, Robert Summers, Ernest Weinrib, Robert Hillman, Jules Coleman, Melvin Eisenberg, or for that matter Holmes or Savigny—you will be disappointed. Schwartz discusses Llewellyn but only to the end of reducing him to a modern legal economist. Only Craswell's essay raises issues likely to be of interest to the jurisperdent. The book is otherwise a hodgepodge of essays on contract law. Not a bad hodgepodge—the three essays on trade custom and incorporation are likely to interest specialists in commercial law—but a hodgepodge all the same.

ERIC A. POSNER  
*University of Chicago*

Mele, Alfred R. *Self-Deception Unmasked*.

Princeton, N.J.: Princeton University Press, 2001. Pp. 160. \$49.50 (cloth); \$15.95 (paper).

In *Self-Deception Unmasked*, Alfred R. Mele presents in a systematic way a theory of self-deception that he has been developing throughout a series of books and papers since his first dealing with the topic in 1982. He discusses two distinct