sociation between universalism and chauvinism. Even if the cosmopolitan position ultimately has the better of the argument, more practical problems remain. How, simply but crucially, can more people be motivated to act in more cosmopolitan ways? Where, between the selfishness of homo economicus and the saintly impartiality of the utilitarian maximizer, can cosmopolitan considerations find a convincing motivational foothold? Although Jones certainly recognizes these problems, his analytical efforts remain focused on the problem of justification. I, at least, am left convinced that Jones is probably right about global justice but am still puzzled by the enormous gulf between this ideal and global reality.

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This book begins with the liberal commonplace that a society’s fundamental political principles must be acceptable, in some sense of “acceptable,” to those who are governed by them. Klosko’s book is distinguished by its insistence that there is an urgent practical need to find actually acceptable principles and that the search for such principles must be partly empirical. Klosko uses what he calls the “method of convergence,” relying on empirical data to identify political principles on which citizens converge. According to Klosko, public opinion research shows that citizens accept “a range of rights for all citizens,” “respect for those rights necessary for the proper functioning of the democratic process,” and “distribution according to merit, supported by real equality of opportunity, in the economic sphere” (p. 230). These commitments are recognizably liberal. They are also recognizably general. Klosko maintains that their generality does not pose a problem, for he says there is also widespread agreement that the implications of principles at the heart of the liberal consensus should be worked out by democratic procedures.

A potential difficulty for the method of convergence is that not just any principles which are widely acceptable are morally acceptable. Attention to what citizens actually think shows that while there is general assent to strong claims about rights when these claims are stated abstractly, citizens disagree profoundly about rights claims in particular instances. Some citizens, who might be called “strong liberals,” seem to apply strongly stated principles straightforwardly to cases. Others who assent to abstract principles about freedom of speech, for example, also say that members of some groups should not be allowed to organize rallies, give public speeches, or teach in public schools. This, Klosko says, is evidence of their intolerance (p. 43). Intolerant citizens may pose a problem for the method of convergence because it may be that the only principles acceptable to them are principles which are too weak to be morally acceptable.

Klosko could try to avoid this difficulty by claiming that the intolerant are unreasonable and that his task is to identify principles which are acceptable to reasonable people. This strategy for coping with intolerance would, however,
face problems of its own. Since everyone who is not a strong liberal is intolerant, the strategy would at best buy convergence on strong liberal principles at the price of excluding some to whom we might think principles must be justifiable—like those who qualify as intolerant simply because they do not think Nazis should be given parade permits to march in U.S. Jewish communities.

One of Klosko’s reasons for rejecting the strategy is that he recognizes this problem. Empirical investigation shows that even those who are too intolerant to accept strong rights principles accept enough to qualify them as persons to whom political principles must be justifiable (cf. p. 29). Thus Klosko, like those who would exclude the intolerant, is looking for principles that are justifiable or acceptable to reasonable citizens. He merely construes “reasonability” and “intolerance” weakly, so that some people who are intolerant are also reasonable.

He then concludes that principles must be acceptable to them as well (pp. 80, 115). If it seemed tendentious to label everyone who is not a strong liberal intolerant, Klosko’s refusal to label all the intolerant unreasonable removes some of the sting. But Klosko has another reason for refusing to exclude the intolerant as unreasonable. Excluding them for intolerance without looking at what else they believe would require Klosko to use an a priori standard of reasonability. Use of a strong a priori standard invites us to look for principles acceptable to reasonable people by philosophical reflection on what those who satisfy the standard ought to accept. There is, however, no reason to think that this way of identifying principles will solve the practical problem of finding principles which are acceptable to actual citizens who seem reasonable on examination.

Better, Klosko thinks, to see whether those who are not strong liberals in fact accept principles which are morally acceptable. Better, that is, to rely on the method of convergence.

It is interesting and important to ask whether there are morally acceptable political principles that are also acceptable to recognizably reasonable citizens. Klosko’s insistence that public opinion research bears on a problem in political philosophy is a welcome reminder that philosophers should pay more attention to empirical studies of politics. But it is questionable whether a proceduralist view like Klosko’s adequately protects the rights of minorities, particularly rights that are not obviously “necessary for the proper functioning of the democratic process.” Homosexuals, for example, might well wonder whether their rights to housing, to nondiscrimination in employment, and to nondiscriminatory laws of testamentary disposition will be adequately protected in jurisdictions where they are the objects of majority intolerance. The difficulty of using democratic procedures to enact hate crime statutes in the United States is not encouraging. But worries of this kind, though urgent, are also obvious and are unlikely to get at what is distinctive about Klosko’s argument for proceduralism. Rather than press them here, I want to look at Klosko’s use of empirical studies to set up the practical problem with which he is concerned, and at the contrast Klosko draws between Rawls’s solution to that problem and his own.

Klosko thinks that one of the deepest and most obvious cleavages among citizens of liberal democracies like the United States is that between the deeply religious and the nonreligious (p. 5). This division poses, or at least exacerbates, the problem of finding principles which can be accepted by those who reject strong rights principles. To see this, note that Klosko thinks those who endorse
strong rights principles in the abstract but are intolerant in practice are not necessarily inconsistent. When they appear to accept strong, abstractly stated principles, what they mean to accept are principles with tacit qualifications concerning whose rights may be abridged and when. Klosko recognizes that there are some qualifications on absolute rights claims that anyone must accept, such as the qualification that rights might be circumscribed in the face of clear and present danger. What distinguishes intolerance from acceptance of qualifications of this kind, he says, is that it is a willingness to abridge others’ rights in response to a perceived threat to the moral order (pp. 67–68). The prevalence of intolerance is therefore due to people’s values. Klosko singles out religious values as “an important factor that has been found to contribute to intolerance” (p. 44).

Though Klosko does not say so, the claim that intolerance is religiously based is critical to his argument. For one thing, it is difficult for a philosopher concerned with actual consensus to exclude as unreasonable all those who have religious attitudes which dispose them to intolerance since, in the United States at least, Klosko thinks so many people would have to be excluded (cf. p. 107). Furthermore, if intolerance drew its sustenance from sources other than religion, a liberal state could take aggressive steps to eradicate it. But Klosko seems to think that because intolerance stems from religious roots and because liberal democracies are committed to religious toleration, liberal democracies must tread lightly. Thus he suggests that some forms of democratic education might alter intolerant attitudes. He does not pursue the suggestion because he thinks that a pluralistic democracy should allow forms of religious education that transmit intolerant attitudes (p. 114). Instead Klosko assumes that intolerance is widespread and, for practical purposes, ineradicable.

Because it seems so important to Klosko that religion somehow explain the prevalence of intolerance, it is worth asking how compelling an explanation he provides. Klosko does not claim that there is a connection between religion and such and intolerance. Rather he says that there are cognitive attitudes associated with certain forms of religion that predispose their adherents to intolerance. Those attitudes, he says, are most closely associated with evangelicalism and fundamentalism. He relies on a number of empirical studies to document the connections. There are, however, serious difficulties with employing these studies to explain the genesis of the problem to which Klosko’s proceduralism is the solution.

One difficulty is that the literature Klosko uses “centres on prejudice . . . rather than on intolerance” (p. 86, emphasis in original). Prejudice, according to the author of one of the studies Klosko cites, is sustained by stereotyping. It is “an averse or hostile attitude towards a person who belongs to a group, simply because he belongs to that group and is therefore presumed to have the objectionable qualities ascribed to the group” (p. 87). It is not intolerance, which is a willingness to deny members of that group their rights because they pose a threat to the normative order. Nonetheless, Klosko assumes that prejudice and intolerance go together. If someone is prejudiced against a group, he says, “she will probably be willing to abrogate the rights of its members” (p. 87).

This assumption, though necessary if Klosko is to use the empirical literature about evangelicals and fundamentalists, is highly implausible. Its implausibility
is most evident in the case of prejudice against evangelicals and fundamentalists themselves. This prejudice is widespread in some circles of American society, yet it seems highly unlikely that those who hold it would agree to the large-scale abrogation of fundamentalists’ and evangelicals’ rights. To see the extent to which evangelicals are stereotyped, we need look no further than Klosko’s own text. Klosko says that “the greater intolerance of evangelicals can be accounted for by their lower levels of education” (p. 84). In fact, self-identified evangelicals are more likely to have college degrees than Catholics, liberal Protestants, and the nonreligious; they are more likely than mainline Protestants to have graduate work beyond the master’s level, twice as likely as the nonreligious to have reached this level of education and four times as likely as Catholics (Christian Smith, American Evangelicalism [Chicago: University of Chicago Press, 1998], table 3.1). To see the virulence of the prejudice against fundamentalists, we need only gauge the leap some of Klosko’s sources make to the conclusion that fundamentalists are not merely intolerant but dangerous. After describing fundamentalists’ attitudes toward religious doubts, one of his sources simply asserts that “people trained to think this way ‘would be relatively willing to do whatever the authorities said had to be done to . . . a minority’” (p. 97, emphasis added).

But the real difficulty with using these studies to explain intolerance and to identify the attitudes on which tolerance depends is that they rely on categories which are not nuanced enough to be genuinely illuminating. Klosko relies on a study which examined “the quest orientation,” “an open-ended, questioning orientation” toward religion that values doubts and the revisability of religious beliefs (pp. 92-93). Those who adopt “the quest orientation” are contrasted with orthodox believers, including fundamentalists, who are said to tend toward intolerance because they are “dogmatic” (p. 99) and “authority-minded” (p. 111). “At the heart” of orthodox religious attitudes associated with intolerance, Klosko claims, is the absolute authority accorded to scripture (p. 107).

The problem with this contrast is that those who tend toward intolerance are not alone in according this status to important texts. During the House Judiciary Committee’s Watergate hearings, the great Texas congresswoman Barbara Jordan famously said, “My faith in the constitution is whole, it is complete, it is total.” Glossing this remark, one of Jordan’s biographers says, “It is no overstatement . . . to speak of fidelity or faithfulness to law. This is essentially the same kind of dramatic response to the sacred, to the ultimate purpose of life, that is characteristic of religious faith” (Barbara A. Holmes, A Private Woman in Public Spaces [Harrisburg, Pa.: Trinity, 2000], p. 95, quoting Harold Berman). The point of citing Jordan’s profession of constitutional faith is not that liberal constitutionalists can be as dogmatic about their favored texts as orthodox believers can be about theirs. It is that liberal constitutionalism may depend on, or at least be supported by, a wide range of attitudes and dispositions, including the disposition to regard texts as sacred and as worthy of a faith that is “whole,” “complete,” and “total.” The exclusive association of tolerance with skepticism about authoritative texts or with the quest orientation toward ultimate questions is therefore inadequate as an account of the psychological preconditions of tolerance, hence, unpromising as an explanation of intolerance.

There are also widely held religious attitudes to which Klosko’s empirical studies seem to be insensitive. Klosko cites a study which purports to show that
the quest orientation "correlates with higher levels of cognitive complexity in the religious domain than other orientations" (p. 93). This alleged correlation raises questions about what "other orientations" were investigated. There is a venerable strain of Judeo-Christianity according to which wisdom begins with the acceptance of articles of faith that the believer comes to understand through philosophical and theological inquiry. Those who turn to Augustine, Maimonides, Aquinas, Luther, Calvin, or Rahner to understand their doctrinal commitments will develop belief systems of enormous cognitive complexity. That Klosko's study seems to have no place for this form of orthodoxy suggests that the model of religion at work in his explanation of intolerance is seriously deficient. There may be a great deal of intolerance in the United States and elsewhere, and it may be associated with religion, but the empirical studies adduced in Democratic Procedures and Liberal Consensus do not go far enough in helping us understand why. This is particularly unfortunate if the difference between the deeply religious and the nonreligious is as profound as Klosko says. Mutual sympathy and toleration sufficient to reach across the divide depend on mutual understanding.

Still, the ineliminability of intolerance is all Klosko needs to motivate the method of convergence. He repeatedly insists that this method is preferable to Rawls's because it better addresses the practical problem of locating morally acceptable principles on which reasonable citizens will actually agree. Rawls's principles are too strong, he claims, to be the object of actual consensus. Klosko does not, however, take seriously the possibility that Rawls is concerned with a very different practical problem than that of finding principles on which actual citizens will agree: the problem of finding principles on which reasonable citizens can agree.

Why should we be interested in possible rather than actual agreement? All too briefly, Rawls—at least the Rawls of Political Liberalism—wants to provide his readers grounds for believing that liberal democracy can be a just and effective form of government, one worthy of our commitment despite our ample grounds for cynicism about contemporary politics. Rawls wants, in a phrase he takes from Kant, to provide us grounds for "reasonable faith" in liberal democracy. He thinks that such faith can be sustained only by the belief that a just society is possible. To establish that possibility, he needs to identify the principles that would govern such a society and to argue that citizens' allegiance to those principles would be stable over time. This is why he says that "the problem of political liberalism" is: "How is it possible that deeply opposed though reasonable comprehensive doctrines may live together and all affirm the political conception of a constitutional regime? What is the structure and content of a political conception that can gain the support of such an overlapping consensus?" (John Rawls, Political Liberalism [New York: Columbia University Press, 1995], p. xx, emphasis added). Clearly the principles that would govern a just liberal democracy might be much stronger than the principles that citizens of contemporary societies like the United States will actually accept. Principles that are too strong for Klosko's purposes might suit Rawls's purposes admirably.

Admittedly this reading of Rawls places very great weight on the closing sentences of "Idea of an Overlapping Consensus" (Rawls, p. 172) and of the "Introduction to the Paperback Edition" (Rawls, p. lxiii). Sustaining it would
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.

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

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