There are real concerns that unelected judges may be too ready to interfere with the elected government or to interpret legislation in an unacceptably narrow way. This may indeed suggest that judges are undermining democracy but provided the courts are applying the relevant principles in a consistent and bona fide way, this does not undermine the rule of law itself.

A controversial issue for English lawyers is whether the doctrine of parliamentary sovereignty is compatible with the rule of law. Wacks concludes that it is, but I wonder whether this is too sanguine. The orthodox doctrine requires the courts to give priority to whatever Parliament enacts. The logic of that position is that ultimately the rule of law is entirely in the hands of Parliament (and often, in effect, the executive). It might, for example, seek to remove – either generally or in specific areas – the right of the judiciary to review the decisions of the executive or Parliament. One might assume that in practice Parliament is unlikely to take such a radical step – although the idea has from time to time been mooted – but the conflict is ever-present and so surely is the threat. Many who support the orthodox position would accept that the doctrine could, theoretically, put the rule of law at risk. They would argue where there is a clash between the elected representatives and the unelected judges, the views of the former must take precedence even though the rule of law is infringed. Wacks has expressed the view that an autocracy – in essence a dictatorship – is incompatible with the rule of law; it is not obvious why what has been described as an "elective dictatorship" (a phrase popularised by a former Lord Chancellor, Lord Hailsham, in a lecture in 1976) does not at least pose a potential threat to it.

Other important challenges to the rule of law result from the development of the global economy and the rise of very powerful high-tech companies with great influence on state governments who can manipulate their activities between different jurisdictions so as to evade effective regulatory control. These raise very different kinds of problems which go to the scope and efficacy of the rule of law as nation states lose their power.

This is a valuable addition to the burgeoning literature on the rule of law. Wacks explores the subject from a fresh perspective. The book provokes as many questions as answers, but in so doing it stimulates further discussion of this fascinating and elusive concept.

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Contractual Relations: A Contribution to the Critique of the Classical Law of Contract. By David Campbell. [Oxford University Press, 2022. xxiv + 438 pp. Hardback £95.00. ISBN 978-0-19885-515-6.]

One might be forgiven for thinking, given Professor Campbell's extensive engagement with the topic in the past (and indeed the title of the book), that *Contractual Relations* would be a restatement of the relational theory of contract. This is to far underestimate the scale, ambition and practical insight of the project undertaken in this new volume. Contained within it is a wholesale critique of classical contract theory, welfarism, laissez-faire, ultra-minimalist and amoral conceptions of contract, and even the communist critique of contract from which

Campbell carefully borrows. From the ashes of this criticism rises the phoenix of a "liberal socialist" basis for the law of contract, resting critically upon what Campbell terms the "relationship of mutual recognition". The book convincingly demonstrates this principle to be embodied in not only the acutely contemporary notion of good faith, but in the very nature of contract law itself.

The book is top-and-tailed by relatively abstract theory which, while perhaps challenging to a doctrinal contract lawyer, repays investment in its core themes. It is particularly helpful that the political and philosophical concerns that underpin the later doctrinal work – that of a "liberal socialism" – are laid out so clearly in the early chapters of the book. The liberal dimension of Campbell's political leanings finds its clearest expression in the "*de gustibus*" principle, which requires an active, institutionalised neutrality between the different preferences of individual market actors (p. 31). The socialist dimension, on the other hand, is far from the criticism of the free market that one might expect; it instead finds expression in the relationship of mutual recognition – a series of objective duties that parties owe to one another in the course of contracting, that uphold the universal right to legitimately pursue one's own self-interest (p. 9). It is through combined concern for these two fundamental principles that contract can act as the "legal institutionalisation of autonomy in exchange" (p. 16), and the twin perspectives that form the core of Campbell's thesis – neo-classical economics and doctrinal critique – are used as different ways of evaluating contract law against the same underlying philosophical position. This clarity is most welcome in an area where axiomatic philosophical assumptions are all too easily swept under the carpet.

It is within the framework of those principles that Campbell's most insightful application of the relational theory is best illuminated. Whilst it is of course recognised that all contracts have a relational dimension, Campbell deals a killer blow against the law's failure to engage properly with the legal concept of relational contract. Leaning on the insights of Macneil, Campbell masterfully reframes the often misconstrued spectrum between discrete and relational contracts, refocusing the discussion on the difference between "presentiation" (i.e. pre-emptive risk allocation) and "contract planning" (i.e. the creation of cooperative structures for contract performance *without* substantive risk allocations) (p. 332). The difference between the two reflects a conscious decision by contracting parties to organise their affairs, and deal with risks, in different ways. Campbell makes an inspired comparison with Coase's theory of the firm: just as abandoning market structures in favour of an internally managed firm may be a rational choice for an economic actor, so might the choice to abandon the classical "discrete" contract in favour of a relational approach (pp. 347ff.).

In failing to accommodate relational approaches to contracting, the positive law puts unwarranted substantive restrictions on what parties can actually agree. Decisions such as *Baird Textile Holdings v Marks & Spencer* [2001] EWCA Civ 274, which refuse to accept the validity of contracts formed on the basis of cooperation rather than pre-emptive risk allocation, effectively prohibit the option of a planning-based approach (p. 356). Similarly, in cases like *Williams v Roffey Bros & Nicholls* [1991] 1 Q.B. 1, the failure of the law to recognise that variation is a necessary part of the "contract planning" approach leads to the unfortunate pigeonholing of contract variation into discussions of novation and fresh consideration (p. 339). These failures undermine the underlying concern for a liberal law of contract that

ought to pass no judgment on parties' choices on how to conduct their affairs, and contradicts the relationship of mutual recognition, which requires parties to respect the expectations of cooperation that they induce in others (p. 359).

Campbell's critique goes far beyond the legal concept of relational contract. The main substance of the book addresses a wide variety of doctrines – ostensibly he limits himself to the headings of "agreement", "bargain" and "remedy", but very little of the general law of contract is safe from his critical eye. In each case, Campbell teases out the consequences of the positive law for the pursuit of his philosophical ideal with accuracy and pragmatism. One also senses his genuine investment in the subject matter, which manifests in colourful and illuminating ways (e.g. he describes the sorry state of hire purchase agreements before the 1974 Act as "deplorably callous in such a period manner as to evoke passages in Dickens" (p. 226)), although at times it verges on the overbearing (e.g. when describing "compensation culture" as a "disgusting strain of mendicancy … fostered by and pandered to by the legal profession" (p. 173)).

There is far too much content and nuance to do justice to in a review, but one striking example of the novelty of Campbell's approach is his treatment of construction. Perhaps controversially, he seeks to defend the proposition that there is no need for "strong distinctions" between interpretation and implication (p. 139). But in a departure from the well-worn reasoning of *Attorney General of Belize v Belize Telecom Ltd.* [2009] UKPC 10, the unity between the two is argued to exist in an expanded concept of "business efficacy". Business efficacy is fleshed out beyond the classically thin concept of the minimum obligations needed to give effect to party intention, and restated as the bridge between the objective principle of interpretation and the relationship of mutual recognition. That is to say, the court's refusal to uphold purely subjective interpretations is a refusal to sanction behaviour that "does not respect, or indeed intentionally negates, the autonomy of the other party" (p. 123).

In the case of interpretation, business efficacy represents the "moral attitude" that adds necessary texture and moderation to pure linguistic technique (p. 122). Therefore, in a case like *Arcos v Ronaasen* [1933] A.C. 470, the result cannot be justified by the process of interpretation because it seeks to confer a benefit (an unlimited right to terminate for breach) that was not part of the objectively manifested agreement (p. 128). Implication operates on much the same principle, except that the question becomes "could the parties reasonably have agreed this term?", as opposed to whether the parties actually did agree it (p. 138). Whilst it may seem that there is a significant difference between what the parties *did* agree and what they *could have* agreed, Campbell makes a sustained case against overstating that distinction. In the context of consumer contracts, for example, where implied terms and standard form contracts are rife, Campbell argues that the whole contract is formed under the assumption that standard market conditions of producer competition and consumer sovereignty will be upheld (p. 106). Under these conditions, both interpretation and implication rest on the tacit assumption between parties that contract terms will be directed to satisfying the customer needs of which the producer is, or ought to be, aware. This is a particularly appealing explanation in the context of Campbell's leading example of implied terms warranting the satisfactory quality of consumer goods (pp. 104ff.).

One difficulty that this reader had with following that argument, however, was the dismissive treatment given to disputes that arise over the content of such implied terms – what happens, for example, when there is scope for disagreement over

which of the consumer's needs should have been foreseen? Campbell frames these issues as unrelated to the nature of the implied term itself, but rather as being "about the openness of the meaning of the reasonable standard and, indeed, about the nature of the adjudication of 'hard' cases" (p. 108). However, one cannot help but think that there is a more serious question being raised here about the *mutual* aspect of mutual recognition. Given the existence of reasonable dispute over the content of the implied term, it is apt to question whether the producer could have agreed to undertake that obligation in any meaningful sense. To nonetheless impose such a term would raise profound issues about whether the producer's own autonomy and freedoms are being adequately protected, such that she is free from non-consensual obligations.

This also invites further scrutiny of Campbell's broader assertion that the law should not be concerned to redress issues of inequality of bargaining power (p. 195). This reader was certainly tempted to ask whether such inequalities nonetheless impact the court's willingness to give differing levels of protection to the autonomy of otherwise unmatched parties. This apparent distinction becomes even more pressing when one considers the heightened concern Campbell has for freedom for non-consensual obligations when consumers are concerned; it appears that in this context, even he implicitly recognises the need to place more expansive duties on stronger contracting parties (pp. 222ff.). I would venture to suggest that this both is, and should be, the case – even if for no greater reason than that stronger parties are more able (and willing, perhaps) to abuse the contractual relationship and undermine mutual recognition.

As a final suggestion, one question left lingering at the end of the book was of the relevance of the relationship of mutual recognition to parties themselves – a perspective that is raised by the relational view as being of crucial importance (pp. 50ff.). Whilst a number of convincing arguments are given to practitioners and academics for how the law ought to develop to institutionalise a moral relationship in the positive law, it does seem, at times, that what is required of the parties themselves is merely that they reach contractual results that *could* be consistent with the holding of that attitude, rather than the actual holding of the moral position itself.

To take the implied term as to satisfactoriness as an example again, Campbell asserts that the term serves to impose "active duties of recognition of the buyer's autonomy of choice on the seller" (p. 114). Yet it appears that sellers do not actually have to recognise that autonomy – they can simply submit to the compulsion of a contract law that is viewed as unnecessarily regulating the market within which they operate. A similar observation can be made of Campbell's assertion that optimal market conditions can only be realised when "the legitimate realisation of the self-interest of one is conditional on the legitimate realisation of the self-interest of the other" (p. 24). Whilst this must certainly be true in respect of institutionalised values in the law of contract, it does not necessarily follow that it must also be reflected at the micro-level of individual transactions. Consider, for example, an economic goliath who imposes on a weaker party a contract that, whilst vastly uneven in its distribution of wealth, is still Pareto efficient. Imagine that the goliath does so for a reason other than respect for the autonomy of the other party – perhaps a motive of mercy, or a moral commitment to global wealth maximisation. How ought the law to respond to the goliath, who subjectively holds no respect for the autonomy of the weaker party, but has acted in a way that would nonetheless be compatible with having such respect? In this regard, it is far from obvious that the relationship of

mutual recognition has the "moral" character that Campbell assumes; at least insofar as contract parties, rather than the courts, are concerned (p. 9).

None of this, however, is to take away from what is a thoughtful, imaginative and important contribution to contract law scholarship. One hopes that this excellent volume reignites a popular interest in detailed, doctrine-facing theoretical scholarship with a basis in a pragmatic and sensible relational theory.

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Company Law: A Real Entity Theory. By EVA MICHELER. [Oxford University Press, 2021. xxxv + 282 pp. Hardback £80.00. ISBN 978-0-19885-887-4.]

Theories of companies abound. On some accounts, the company is a mere fiction ("fiction theories"). Others stress that companies are created through an exercise of state power ("concession theories"). Yet other theories regard companies as merely the aggregate of their members ("aggregate theories"). Most prominent in recent years are "nexus of contracts" theories, which see the company as a nexus for contracts between different participants in the company, such as managers and shareholders. The chief rival to all these theories is the "real theory" (also called the "real entity theory" or "organic theory"), most famously advanced by Otto von Gierke and subscribed to by Frederic Maitland. The real entity theory takes different forms, but its core claim is that companies are real, naturally occurring beings, with characteristics that differ from those of their human members. On this account, the company is no mere legal fiction. It has an independent existence of its own, is created by the association of its members rather than by an act of the state, and it is not just the sum of its parts.

In *Company Law: A Real Entity Theory*, Professor Eva Micheler provides a timely and wide-ranging revival and modernisation of the real entity theory. The book's aims are ambitious: it aims to show that the real entity theory best explains many features of doctrinal English *company law*.

The book's central claim is that "company law can be better understood if we conceive companies as autonomous actors with processes that shape and are shaped by natural actors" (p. 31). Micheler sees this perspective as having two main benefits: first, it "helps [us] to understand the law as it stands", and second, it "allows us to make recommendations at a normative level" (p. 31). Three normative recommendations are advanced over the course of the book: financial incentives should be abandoned as a way of advancing non-director interests, companies should not be required to have statements of their corporate purposes, and that the integration of non-shareholder interests into company law is best done by achieving integrating those interests into the company's decision-making process (pp. 260–61).

Methodologically, Micheler's project of trying to show that English company law can be better understood if we conceive companies as autonomous real social actors is what is sometimes described as an "interpretive" account. As Stephen Smith once explained in a different context, "[i]nterpretive theories aim to enhance understanding of law by highlighting its significance or meaning .... [T]his is achieved by