and others in dealing with matters of corporate governance—which may perhaps be appropriate, at least in part, in a United States context but are quite wrongly taken for granted in others. We neglect "the innate diversity of business enterprise" (p. 123). To put this view into practice, he himself deals in separate chapters with corporate governance issues in listed public companies, in small and medium-sized enterprises (and more particularly family-owned businesses), in not-for-profit organisations and in publicly-owned, corporatised and privatised public utilities. Secondly, he is critical of the way in which the duties of different categories of company officers (executive and non-executive directors, members of audit and other committees, senior and middle management, the auditors, and so on) seem generally to be dealt with by judges, scholars and lawmakers in isolation, rather than with reference to the correlative roles and duties of the others. To how many English lawyers, I wonder, would the thought occur that "what we do not need are boards that meddle in matters better left to management, while neglecting the important things that directors alone can do" (p. 308); or "what is required is not so much a skilful director as a skilful board" (p. 126)?

I commend this book to lawyers and non-lawyers alike, and to those in London, Belfast or Edinburgh as much as those in Canberra, Ballarat or Dunedin.

L.S. Sealy

Public Procurement (Vols. I and II). Edited by Sue Arrowsmith and Keith Hartley. [Cheltenham: Elgar Reference Collection. 2002. xxxviii, 1366, and (Index) 4 pp. Hardback £310.00. ISBN 1–84064–096–0.]

Sue Arrowsmith has done more than anyone to establish public procurement as a legal discipline in the UK. She was a moving spirit behind the inauguration of the UK Association for Regulated Procurement in 1994 and has published much in the subject. Her co-editor, Keith Hartley, is an economics professor and together they have edited this collection of articles by various authors, previously published between 1961 and 2000. The articles appear in their original formatting and preserve their original pagination, as well as having pagination, which runs through the new collection.

The credentials of the editors mark out this large collection as an authoritative survey for anyone wishing to get an overview of the state of academic discussion about public procurement at national, EU and international levels, whether central, local government, health service or defence procurement. For anyone who wants to plunge more deeply into EC public procurement law, the rest of Professor Arrowsmith's work is a good place to start.

The collection is divided into ten parts—four in Volume I and six in Volume II. These are: Outsourcing versus internal provision; the approach to procurement in the public sector—competition and transparency; corruption; public procurement as a tool of industrial, social and environmental policies; public procurement as a barrier to trade and its regulation under international trade agreements; enforcing public procurement rules; defence procurement; contracting (in the defence related

sector); defence industry methods; and liberalisation of defence markets in Europe. The headings to each part give a good indication of the articles included and demonstrate the breadth of the editors' approach and the scope and relevance of public procurement as a field for lawyers and economists to study—and also for political scientists, though this is less stressed in the collection than it might be. As the headings also indicate, the two volumes include much material on defence procurement, both in the EU and in the US. A public purchasing practitioner who does not operate in the defence sector will be interested in seeing what techniques have been tried, and with what success, in that heavily regulated and somewhat uncompetitive environment.

The collection opens with a good summary of both parts and gives a useful overview of the main themes of the collection, which enables the reader to dip in and out effectively. It also gives in its first paragraph a fine justification for the entire undertaking, noting that "government purchasing accounted for about 14 per cent. of gross domestic product (GDP) across the European Community". It is indeed surprising, given the economic and political importance of the subject, that few universities include public procurement in their courses. Over the last five years every major commercial law firm, whose clients are, or who sell to, government, has developed a public sector unit able to handle public procurement matters. Whilst commercial significance is not in itself a reason for taking an academic interest in an area of law, the intellectual value of the study of public procurement should not be overlooked: first because the nature of the activity regulated has itself become more sophisticated and interesting, and more difficult to regulate; and secondly because of the light the regulation casts on underlying political policy objectives at a national and supra-national level.

Public purchasing has changed radically over the last few years. No longer is this a Cinderella activity, for lowly clerks buying pens, shovels, vehicles and the like. Public purchasing needs have become much more complex, leading to the development of sophisticated techniques, in order effectively to buy complex services, sometimes for 25 year contract periods, often in conjunction with privatisation, and more frequently than was the case in the past, with the assistance of private rather than public finance. The scale of this activity gives it a political aspect. But quite apart from its political and constitutional importance, the legal regulation of public procurement, for example by the EU, is interesting because the regulators are trying to regulate an activity, which is radically in flux. Inevitably the early regulation in the EU, which is currently expressed in the Public Sector and Utilities Directives and is now transposed into national legislation in all member states, is detailed and prescriptive and does not cope well, for example, with complex IT procurement (which Professor Arrowsmith touches upon in the eighth essay in Volume II). In 1996 the European Commission published a Green Paper on public procurement in which the Commission tried to blame the relatively minor economic impact of the rules on bad behaviour by member states (certainly a factor) and suggested that the main need was for consolidation of the rules and better enforcement. However the Commission had to take note of the 300 responses, many of which were less than enthusiastic and urged the Commission to simplify and modernise the rules. At a technical level it is hard to get the regulation of public procurement right when the methods

of purchasing are still developing. The effectiveness of periodic competition as against longer-term partnerships is also not at all clear—nor whether the two concepts can be integrated. (In the 10th essay in Volume I David Parker and Keith Hartley provide a critique of "The Economics of Partnership Sourcing versus Adversarial Competition" and conclude that the case for preferring the first is not clear cut. However it remains of considerable interest in the current UK procurement scene.) Of course acceptance by the Commission that a problem exists and agreed legislation are two different things, so the rules probably will have to creak along for a few years yet, even the Commission's web site expresses the hope that implementation will happen in 2002. It is interesting that in the essay "Towards a Multilateral Agreement on Transparency in Government Procurement" in Volume I, Professor Arrowsmith suggests that the best way forward to develop and secure support for a WTO transparency agreement would be to push for a simple and flexible agreementand argues that a WTO Transparency Agreement should contain binding and mandatory provisions, which focus on publicity, transparency and monitoring, with more detailed implementation following at a national level, but that any WTO agreement should not seek to define the national rules in any detail.

Although the regulation of procurement is usually justified as promoting value for money, the underlying political and policy questions are far more interesting. At a national level, in the UK, for example, rules for compulsory competitive tendering have reshaped the public-private divide, transferring services into the private sector and thereby bringing large swathes of the private sector under government control (as paymaster). It has also been effective in introducing insecurity into public employment and destroying the power of local council "barons", as they once used to be called, whose power was thought to rest on the employment of large in-house "direct labour organisations". Meanwhile, the EU has required cross border advertisement of public contracts, in order to stimulate cross border trade on a scale of the activity which could make the internal market a reality. Moreover economic integration may be expected to stimulate political integration, since ultimately, to a greater or lesser extent, economic forces and interactions need to be guided or controlled politically. At an international level, the WTO is the battle ground on which poorer countries try to gain access for their low labour cost manufacturing to the rich markets of the industrialised countries, who, in turn, seek to protect their high labour cost commercial base, by extracting commitment to the international protection of intellectual property. Professor Arrowsmith has an interesting analysis of the relatively low rate of adherence to the Global Procurement Agreement, particularly by less developed countries, in her essay.

Public procurement has also served to show up some of the cracks in Europe's internal market legislation, of which the public procurement directives form part. The ECJ has been asked repeatedly to take an interest in the impact of competitive tendering on the employment of private and public sector workers and the extent to which the Acquired Rights Directive 1977 (transposed as the Transfer of Undertakings Regulations 1981 as amended) applies to change of service contractors. The case-law has swung all over the place on this issue at EU and UK level since the early 1990s, because there has been no political discussion and agreement

about the balance to be struck between the free movement principles and the employment protection measures in the EC Treaty. These two policy objectives are in tension.

Given the importance of the development and enlargement of the EU and of the WTO and the General Procurement Agreement, it is time a few more lawyers, economists and political scientists took an interest in this field. Professor Arrowsmith and Hartley's pioneering collection deserves a wide audience.

Nevertheless, it is disappointing that the coverage of the volumes only goes up to 2000. There are no articles which give an idea of the rapid developments in purchasing in the UK in the last two years. These include two major reviews of government procurement (the Gershon report into central government purchasing, which led to the creation of the Office of Government Commerce in the Treasury, and the Byatt Report on local government purchasing), as well as much argument about the wisdom of the Private Finance Initiative. In addition, government policy has encouraged a rapid increase in outsourcing (private sector supply, rather than public sector provision) and placed strong emphasis on establishing "partnerships" (in a non-legal sense) with suppliers and between public sector agencies. Meanwhile e-procurement has begun to take hold. This has the capacity to radicalise the buying power of government as this might make government a dominant purchaser, able to exploit and abuse its market position.—The methods of procurement may also be subject to violent change, which, without care, could lead to purchasing becoming less transparent, less controlled and less auditable. E-purchasing and increased outsourcing together, if done badly, could simply led to quicker bad buys.

Various essays seek to analyse the effect of outsourcing under the Conservative government. However, as George Boyne notes in his essay much of the analysis was partisan, coming either from the proponents or the detractors of the policy. He concludes that "the evidence ... is sparse and methodologically flawed ... More comprehensive and more accurate evidence ... is clearly required". The two volumes contain no assessment of the impact of PFI. The only assessment of outsourcing relates to blue-collar service outsourcing (and only up until 1997/8), which resulted from rules prescribed by a Conservative-controlled central government and largely applied only reluctantly by local government, which was not controlled by Conservative politicians. PFI and the current trend towards outsourcing across the whole range of public services, including professional services, are now strong features of UK public purchasing and they are accepted and endorsed by central and local government. Both will have long-term effects. Up-to date, comprehensive, accurate, methodologically sound and impartial assessment is needed.

No articles chart the deficiencies of the EU public procurement regime and the current, somewhat flawed but better-than-nothing, proposals to improve them, apart from a brief discussion of the problems arising from the lack of clarity in the European rules in the fifth essay in Volume I. This is disappointing. First, it is important to get these rules into better shape, particularly since, as the essay notes, the WTO rules broadly follow the approach of the European rules. Secondly, as the essay also notes, "the European Union regime on procurement represents the most longstanding and rigorous attempt to open up competition in public markets." There is now a decade of experience of trying to work with and enforce those

rules—they are a test bed for what can and what cannot usefully be regulated, across a broad range of increasingly complex procurement needs. All member states are required to put significant procurement out to EC tender. The UK has been more assiduous than many other member states in doing this and the UK has also been at the forefront of experiments in outsourcing and the use of private finance to fund public projects. Thus UK practitioners have had to work out how to make complex purchases within a regulated framework in an effective way.

These are minor quibbles and it is perhaps unfair to expect such a huge assemblage of articles to be completely up-to-date. This reviewer agrees with the editors opinion "[t]here remains extensive scope for more theoretical, empirical and critical evaluation, especially based on interdisciplinary work involving economists and lawyers." This work is a great start. Its price may appear a bit steep but every university law faculty should have a copy which should be read enthusiastically.

ROSEMARY BOYLE