

The central problem with the analysis purporting to support this assertion is that Fitzgerald seems to describe as an empirical model what is, in fact, a Weberian *ideal-type*. The “Westphalian system of nation-states,” describing a world divided into separate territories controlled by *sovereign states* that exercise independent *national* wills in relation to each other, has never existed in the real world. Thus, to say that this system continues to be “robust” is to claim to answer the wrong question. The book provides a great deal of good information in response to a better question, which is about how political elites attempt to build such (Westphalian) states by trying to maintain control of their territories and the people who “belong” to them, in part by trying to construct and maintain a sense of national identity in a population that will view those elites as best suited to lead them. Fitzgerald provides countless examples of the challenges to Mexico’s political elites as they have tried—mostly unsuccessfully—to manage emigration in the face of incomplete domestic control over their own territory (via, e.g., rebellion, the operation of the country’s federal system), but even more so in the face of the hegemonic power of the United States. The book would have been more nuanced, and accurate, had the author framed his state-building theoretical analysis in this constructivist way, rather than in terms of whether the actions of a given (relatively weak) state in fact demonstrate the robustness of the Westphalian system of nation-states.

Even this revision would leave an unduly narrow focus, however, in that it views political agency as primarily belonging to state agents, while the rest of the population is a “mass” to be managed. In part, this may derive from Fitzgerald’s Weberian assumption that politics can be understood exclusively in terms of domination. This unstated assumption leaves him free to focus on elites’ efforts to control and manage their populations, both domestic and emigrant. But, with few exceptions, it also leads him to mostly ignore the perspectives, and the real voices, of those who are on the receiving end of these managerial efforts. What is lost in such a narrow perspective is made evident by a reading of the Smith and Bakker book.

**Government by Contract: Outsourcing and American Democracy.** Edited by Jody Freeman and Martha Minow.

Cambridge, MA: Harvard University Press, 2009. 552p. \$49.95.  
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— Trevor L. Brown, *The Ohio State University*

The pace and scale of public sector contracting, at least at the federal level in the United States, has significantly increased and expanded at the dawn of the twenty-first century. *Government by Contract*, an edited volume of essays on the use of exchanges between government agencies and private firms, nonprofits, or public organizations to provide public services, charts this growth and explores the

evolution of an increasingly complex service delivery landscape. The editors—Jody Freeman and Martha Minow—have brought together an impressive group of scholars (some with practitioner experience) to wrestle with the challenges posed by the expansion of outsourcing. The result is both timely and weighty. Given that the current Obama administration has placed federal contracting reform at the top of its management agenda, the opportunity is presented for this volume to contribute to an ongoing dialogue about how best to deliver public services.

Public sector contract reformers would be well served to read this book, not because it provides answers to vexing technical questions (e.g., are fixed price contracts preferable to cost-plus?) but because, in total, the contributors frame important trade-offs around the fundamental choices in contracted service delivery. On the one side are public law concerns about transparency, accountability, and fairness under contracted service delivery. On the other side are performance considerations—contracting may lower costs, improve performance, and speed service delivery. These two perspectives are not mutually exclusive (nor are they exhaustive—there are other concerns in contracted service delivery), but in many cases, efforts to address public law concerns may diminish performance or vice versa.

At its core, the volume is born of a public law critique of the current state of affairs in government service delivery. Many of the contributors are legal scholars concerned that contracting’s recent rapid growth, in large part driven by the expansion of defense contracting through the wars in Iraq and Afghanistan, has come at the expense of inherent democratic values. In their opening chapter Freeman and Minow summarize this apprehension: “The primary concern, voiced in recent years by critics in public policy circles and in academia, is that the ubiquity of governance-by-private-contractors strikingly outstrips our legal and political capacities of oversight meant to ensure that the contractors’ execution of these governmental functions complies with democratic norms” (p. 2).

At the same time that the editors highlight the public law critique, they are to be credited with opening the debate to those whose concerns are perhaps more prosaic, but no less important. Some of the authors focus more on the programmatic goals of contracting—the trinity of cost efficiency, improved performance and innovation, and faster, more flexible service delivery. Freeman and Minow do more than simply bring together scholars with opposing viewpoints. They provide a structure that effectively guides the reader through the important trade-offs between public law considerations and contracting’s programmatic goals. Unlike some edited volumes that utilize a particular conceptual framework to outline each contribution and bring coherency to the project, this volume benefits from the sequential structuring of the contributions. Freeman and Minow’s overarching impact is on the effective organization of the volume.

After a stirring introduction from the editors that frames the primary debate, albeit with a public law bent, the next three chapters provide the history and context of contracting in the United States. All three are valuable, but William Novak's chapter on the history of public-private governance in the United States will be particularly informative for those who lack the long view of government contracting and, instead, point to the latter half of the twentieth century as the dawn of public service contracting. The next three chapters form the basis of the primary critique of the current system. They examine "cases" of contracting, focusing on regulation, defense, and prisons. The cases are all well researched and provide sharp critical insights into the flaws of some contract arrangements in these service areas. On the other hand, these chapters are sometimes narrowly constructed, both in their case selection and in their analysis. The critiques occasionally cherry-pick the most egregious examples of contract failure along the public law dimensions that concern the authors—lack of transparency, diffuse accountability, insufficient due process, and so on. This is not to say that these problems do not exist in the current system. As the authors rightly point out, they do. The risk, however, of such analysis is that a few selective cases serve as the basis for reforming a system that encompasses a vast array of public agencies that deliver very different types of public services in very different ways.

Yet here is the power of the volume. Rather than distill solutions directly from these cases, the editors turn the stage over to those who offer well-thought-out explanations for the current system, sometimes even making the case for relaxing some of its current constrictions. Chapters by Steve Kelman and by Stan Soloway and Alan Chvotkin provide balance to the public law emphasis of the volume. Kelman, Soloway, and Chvotkin write from the experience of working directly with those who implement services and bring voice to the considerations of contracting's programmatic goals. Kelman's chapter, in particular, frames the trade-offs inherent in tightening accountability or enhancing transparency. As he writes, "Most importantly, I seek to remind people from the public law world that contracting has substantive goals and aims—to help government agencies meet their missions to serve the public—that should not be lost while attending to public law issues" (p. 154). No change is without cost.

In a similar vein, these chapters are followed by contributions from legal scholars who point to ways that existing tools can be used more effectively to address public law considerations while minimizing the impact on contracting's programmatic goals. The volume concludes where it started, with a public law critique of the current arrangement, telling readers that the pragmatic demands of delivering increasingly complex services via public-private service delivery networks must all take place

within the context of the U.S. Constitution and its prevailing, though often conflicting, principles. Among the final three chapters, Laura Dickinson's contribution puts the public law coda on the volume, recommending practical public law-based recommendations to improve the practice of contracting.

The scales of the book definitely tilt to the public law side, in large part through the selection of extraordinary cases of contracting's failure to attend to public law considerations. While at times the contributors perhaps unfairly elevate transparency, fairness, and accountability as "public values" over efficiency, quality, and performance as baser technical goals, in total the book signals the importance of all of these values in the delivery of public services. Ultimately, the value of *Government by Contract* is the well-structured platform it provides for framing the trade-offs among these important values in public sector contracting.

**The Democracy Index: Why Our Election System is Failing and How to Fix It.** By Heather K. Gerken. Princeton: Princeton University Press, 2009. 192p. \$24.95.

**Bush v. Gore: Exposing the Hidden Crisis in American Democracy.** By Charles L. Zelden. Lawrence, KS: University Press of Kansas, 2008. 416p. \$34.95.  
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— Stephen J. Wayne, *Georgetown University*

The Constitution of the United States requires the states to conduct elections for federal officials subject to any legislation Congress may enact. The Framers gave the states the authority to determine the time, place, and manner of holding elections to avoid the issue of voter eligibility, to acknowledge the principle of federalism, and to overcome the national government's lack of personnel to administer simultaneous elections across the country, much less tabulate the vote accurately and in a timely fashion. In granting the states this power, the Framers did not anticipate the creation of political parties that would perceive the electoral system as the key to their acquisition and maintenance of power, nor did they foresee the developments in communications technology that have occurred over the years.

As a consequence of the decision, and despite the passage of laws and constitutional amendments that have limited states' discretion, the states continue to prescribe and enforce the rules by which elections are held, voter eligibility is determined, and ballot access is established. They also decide on the polling places, manner of voting, and the type of ballots, and/or they delegate some or all of these decisions to local voting districts. The result, a very decentralized electoral voting system, has produced a mish-mash of laws and procedures that undercuts the conduct of a democratic electoral process and occasionally affects election outcomes.