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## RECENT PUBLICATIONS

VARIETIES OF SOVEREIGNTY AND CITIZENSHIP. Edited by Sigal R. Ben-Porath & Rogers M. Smith. Philadelphia, Pa.: University of Pennsylvania Press. 2013. Pp. vi, 339. \$79.95. If historians come to see the quarter century following World War II as the pinnacle of the global Westphalian system of nation-states, they may see the beginning of the twenty-first century as the start of its unraveling. New concepts of political sovereignty and citizenship have begun to emerge as a result of globalizing forces; at the same time, the role of the sovereign nation-state in relation to global politics and its own constituents has been transformed. Professors Sigal Ben-Porath and Rogers Smith have collected a series of essays that address and assess these changes and their implications for global political development. The essays are grouped thematically into three sections: The first group concerns the changing role of military force in the face of evolving conceptions of sovereignty. The second addresses the issue of immigration across state boundaries. The third contemplates cosmopolitan alternatives to the nation-state. The essays reflect a range of historical, cultural, and legal approaches and often reach disparate conclusions regarding how to describe or confront the challenges of the emerging global political system. As a whole, they provide the reader with a fuller understanding of the changing role of sovereignty in the context of globalization.

LAWS OF CREATION: PROPERTY RIGHTS IN THE WORLD OF IDEAS. By Ronald A. Cass and Keith N. Hylton. Cambridge, Mass.: Harvard University Press. 2013. Pp. 275. \$55.00. In this new release, Professors Ronald Cass and Keith Hylton offer a thoughtful defense of intellectual property rights. In the face of an ever-growing chorus of skeptics who dispute that intellectual property warrants legal protection as “property,” *Laws of Creation* seeks to “provide[] a framework for evaluating the major controversies about intellectual property rights today” (p. 11). The authors reject skeptics’ of intellectual property law as a “zero-sum conflict between rights-holders and members of the public” (p. 210) that is rigged in the former’s favor. Instead, they offer a utilitarian approach that emphasizes the tradeoff between dynamic costs (those that occur over time) and static costs (those observable at a given moment). Comprehensive but refreshingly concise, Cass and Hylton open with a theoretical overview of property rights and their relationship to intellectual property, then apply their own framework to patent, trade secret, copyright, and trademark law. Given trends in technology, the criticism aimed at robust intellectual property rights seems unlikely to abate anytime soon — which makes the authors’ contribution all the more important.

THE 3½ MINUTE TRANSACTION: BOILERPLATE AND THE LIMITS OF CONTRACT DESIGN. By Mitu Gulati & Robert E. Scott. Chicago, Ill.: The University of Chicago Press. 2013. Pp. viii, 232. \$35.00. Even as legal practice and corporate work become more specialized, standard boilerplate has remained remarkably constant across a variety of contracts. In their thoughtful new book, Professors Mitu Gulati and Robert Scott explore this phenomenon, adding depth and complexity to a feature of contracts long considered mundane. They begin their study with *Elliott Associates v. Peru* and its universally maligned interpretation of the *pari passu* clause, an interpretation that nonetheless has become enshrined in contract boilerplate. Curious about why this frequently harmful language has remained so resilient, the authors examined over 1500 contracts and conducted over 200 interviews, a searching inquiry that was equal parts behavioral psychology and legal analysis. Ultimately concluding that the pressure to maintain a high volume of transactions encourages the stickiness of boilerplate — even though changing something like the *pari passu* clause would take a mere “[t]hree and a half minutes” (p. 6) — Professors Gulati and Scott make a provocative point about contract design that would be useful reading for transactional lawyers across the globe.

FROM THE CLOSET TO THE ALTAR: COURTS, BACKLASH, AND THE STRUGGLE FOR SAME-SEX MARRIAGE. By Michael J. Klarman. New York, N.Y.: Oxford University Press. 2013. Pp. xii, 276. \$27.95. The question of same-sex marriage has met with a striking reversal in public opinion over the past two decades. In *From the Closet to the Altar*, Professor Michael Klarman recounts the history of the gay rights movement, from its covert beginnings in the 1950s through its emergence as a civil rights issue in the 1970s and its later emphasis on marriage as a pathway to social equality. Klarman focuses throughout on the relationship between public opinion and the law, noting the intense political backlash that accompanied many advancements in gay rights that lacked majority public support. Courts are constrained by public opinion, he argues, but are more likely than legislatures to contravene majority viewpoints on issues of social equality. This perceived overreaching galvanizes the opposition, as evidenced by the series of state constitutional amendments banning gay marriage that followed the Massachusetts Supreme Judicial Court’s holding that same-sex marriage is protected under its state constitution. Klarman remains ambivalent on whether high-profile litigation, or its emphasis on marriage equality in particular, has harmed the gay rights movement more than it helped it. Regardless, this engrossing new book will inform that debate as the Supreme Court considers the issue of gay marriage.