Much of international law, like much of contract, is enforced not by independent sanctions but rather through cooperative interaction among the parties, with repeat dealings, reputation, and a preference for reciprocity doing most of the enforcement work. The Limits of Leviathan identifies the areas in international law where formal enforcement provides the most promising means of promoting cooperation and where it does not. In particular, it looks at the International Criminal Court, the rules for world trade, efforts to enlist domestic courts to enforce orders of the International Court of Justice, domestic judicial enforcement of the Geneva Convention, the domain of international commercial agreements, and the question of odious debt incurred by sovereigns. This book explains how international law, like contract, depends largely on the willingness of responsible parties to make commitments.

Robert E. Scott is a nationally recognized scholar and teacher in the fields of contracts, commercial transactions, and bankruptcy. He was the inaugural Lewis F. Powell Jr. Professor of Law at the University of Virginia School of Law from 1982 to 2003 and William L. Matheson & Robert M. Morgenthau Distinguished Professor from 2001 to 2003. In 2003 he was named an inaugural recipient of the David and Mary Harrison Distinguished Professorship. He has delivered numerous papers and published extensively in law journals. He has coauthored four books on contracts and commercial transactions. Among his many articles are six that he coauthored with Professor Charles Goetz that set the standard for the economic analysis of the law of contracts.

Paul B. Stephan is an expert on international business and Soviet and post-Soviet legal systems who has spent his career studying and writing about the globalization of the world economy and the transition away from Soviet-style socialism. He joined the Virginia faculty in 1979 and was the Percy Brown Jr. Professor of Law from 1991 to 2003. In 2003, he succeeded Scott as the Lewis F. Powell Jr. Professor of Law. He has written extensively on international law, corruption, and the history of the Cold War, as well as on taxation and constitutional law. He has worked in Russia, Georgia, Ukraine, Albania, and Slovakia on behalf of the U.S. Treasury and in Kazakhstan and Azerbaijan on behalf of the International Monetary Fund.
THE LIMITS OF LEVIATHAN

Contract Theory and the Enforcement of International Law

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FOREWORD

This book has its origins in work we presented at a conference on Freedom From Contract, organized by Omri Ben-Shahar of the University of Michigan and hosted by the University of Wisconsin Law School. That conference reinforced two impressions that had motivated our collaboration: Contracts scholars and international lawyers have not made much of an investment in learning what each field has to offer the other, and the possibilities for mutual enrichment are great. This extension of that project represents our effort to demonstrate both that problems in international relations illuminate some of the most challenging issues in contract theory today, and that international law takes on great theoretical richness and rigor when it employs the insights of contract theory.

For the most part, our theoretical claims in this book are positive and descriptive rather than normative. We believe that contract theory (an umbrella phrase that we use to describe both the law and economics of contracts as well as the separate discipline of the economics of contract) explains much of current practice regarding the enforcement of international law. Seeking to understand why we see the legal institutions we do, as opposed to describing and defending a better world in which we might live, is more familiar to contracts scholars than to international lawyers. One of the exciting challenges of international law and international relations theory, however, is to give a convincing account of the world as we find it, and for this purpose contract theory does important work. We will be happy if this book challenges both contracts scholars and international lawyers to rethink what their disciplines do.

We could not leave the subject, however, without showing some of the normative implications that contract theory has for current controversies in international law and its enforcement. The final chapter of this book considers some of these questions. We recognize that not everyone will appreciate the
Foreword

normative implications of our theory and that some will resist them. We wel-
come the challenge of this criticism, as our primary purpose is to open a con-
versation. Where this leads us is less important than that we start down the
path.

We recognize that an attempt to marry widely divergent scholarly tradi-
tions, with distinct methodological approaches and normative commitments,
presents great obstacles. We have learned from our collaboration that scholars
in one field tend to regard those in the other as speaking a separate language.
One modest contribution that we make toward overcoming these barriers is
the glossary at the back of the book, which is meant to help the reader negoti-
ate through the terminological hurdles that interdisciplinary work necessarily
erects. More generally, we believe that this book demonstrates how scholars
from different traditions can craft a joint research agenda of general interest.

Our paper for the Freedom From Contract conference and the subsequent
book manuscript has received careful comments from many colleagues. We
benefited from comments of the conference participants, in addition to insights
derived from workshops at the University of Chicago Law School, George-
town University Law Center, Case Western Reserve Law School, Vanderbilt
Law School, Washington and Lee Law School, and the University of Virginia
School of Law. In addition, a number of colleagues have shared with us both
their criticism and wisdom. Jody Kraus and Ted White in particular gave valu-
able guidance at a time when we were considering what this book should look
like. Other attentive and helpful readers included Karen Alter, George Bermann,
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beck and call and never let us down. Jeremy Weinberg provided invaluable
research assistance, and Aaron Mahler displayed great skill as an editor. Our
Dean, dear friend and colleague John C. Jeffries Jr., ensured that we never lacked
for support. John Berger persuaded us to undertake this project, and we remain
in his debt. Laura Lawrie was an excellent copy editor. Last, but far from least,
Pamela Clark and Elizabeth Scott gave us the right mix of uncritical acceptance
and coruscating insight.