

## INDEX

- Abbott, Tony, 494
- Abubakar, Alhaji Atiku, 398–99
- Afghanistan
- absence of rule of law in, 495
  - Security Council and
    - constitution-shaping, 163, 165–66
    - peacekeeping operations, 46
    - sanctions, 228
    - use of force, authorization of, 30
  - Taliban, 42, 153, 222
  - UN Assistance Mission in
    - Afghanistan (UNAMA), 153
  - UN constitution-shaping in, 160
  - US invasion of, 75
- Africa. *See also specific country, agreement, or body*
- backsliding in, 381
  - bottom-up analysis of rule of law in, 388–89
  - coups, impacts on rule of law in, 380–81, 382–83, 389, 390–97
  - elections in, 389
  - French neocolonialism and, 397
  - geopolitical factors in, 396–97
  - international measures to support
    - rule of law in, 206–8, 209
  - judicialization of elections in, 381–82, 383, 390, 400, 401–5
  - overview, xiv, 382–84
  - regional courts, impact of, 407–9
  - rule of law in African context, 385–86
  - socio-legal analysis, 383–84
  - strategic litigation of rule of law
    - in, 407
  - successful transfers of power in, 383, 389–90
  - threats to rule of law in, 380–81, 387
  - transnational legal ordering (TLO)
    - in, 405–7, 478
  - transnational rule of law in, 405
- African Charter on Democracy, Elections and Governance (ACDEG), 206
- African Charter on Human and Peoples' Rights, 206–8, 253
- African Commission on Human and Peoples' Rights
- elections and, 276
  - enforcement powers, 206
  - judicial independence and, 206–7
- African Court on Human and Peoples' Rights
- backlash against, 66–67, 408
  - Benin, backlash against in, 66–67
  - Côte d'Ivoire, backlash against in, 66–67
  - direct effect of international law on
    - domestic law and, 44–45
  - on emergency decrees, 207
  - enforcement powers, 206
  - rule of law generally, 207
  - Rwanda, backlash against in, 66–67
  - Tanzania, backlash against in, 66–67
- African Peer Review Mechanism, 206
- African Union
- Burkina Faso, suspension of, 159
  - constitution-shaping and, 159
  - Constitutive Act of the Union, 206
  - Guinea, suspension of, 159
  - interventions by, 30
  - Mali, suspension of, 159
  - Peace and Security Council (PSC), 159, 206
  - peacekeeping operations, 46
  - Somalia, peacekeeping operations
    - in, 46

- Sudan, suspension of, 159  
 Agenda 2030, 179  
 Agenda for Democratization, 161  
 Akinkugbe, Olabisi D., xiv, 470, 474, 478  
 Albania, absence of movement toward  
   EU accession, 168–69  
 Albi, Anneli, 169  
 Alexander II (Russia), 293, 304–5  
 Al Qaida, 42, 222, 228  
 American Bar Association, 495  
 American Bar Foundation, 449  
 American Civil Liberties Union, 79  
 American Declaration of Human  
   Rights, 186  
 Ananda (Thailand), 414  
 anatomical reform, 481  
 Andropov, Yuri, 294  
 Angola  
   Security Council sanctions and, 228  
   UNITA, 228  
 Annan, Kofi, 35–36, 90, 213, 225,  
   232–33, 248  
 Appiah, Kwame Anthony, 80  
 Arab Spring, 343  
 Arajärvi, Noora, 92  
 arbitrary exercise of power  
   backsliding and, 112–13, 114  
   defined, 17–18  
   democracy and, 18  
   ECJ on, 193  
   ECtHR on, 193  
   empirical trends in rule of law and,  
     56–58  
   goal-oriented approach to rule of law  
     and, 384  
   human rights and, 18  
   ICJ on, 18  
   opportunity to be heard, lack of,  
     19–20, 320, 416  
   predictability of exercise of power,  
     lack of, 19, 416  
   proportionality, lack of, 20, 417  
   public reasoning, lack of, 20, 416–17  
   restraint of as function of rule of law,  
     98–99  
   rule of law as opposing, 5–6, 7,  
     16–17, 116–17, 184, 384–85,  
     388, 473  
   Security Council and, 214, 229  
   in Thailand, 411–12, 415  
   in Turkey, 333  
   war as, 28  
   well-tempered power as remedy for,  
     467, 468–71  
   wielders of power not subject to law,  
     18–19, 308, 415–16  
 Arce, Moisés, 143  
 Arendt, Hannah, 84  
 Argentina  
   Constitution, 353–54  
   IACHR, backlash against, 66  
   improvement in rule of law in, 131  
 Arnon Nampa, 419, 421, 424–25, 426,  
   427, 428  
 Asian Infrastructure Investment  
   Bank, 457  
 Association Agreement (EU), 316  
 asymmetric rupture, 279–80, 486–87  
 Atkinson, David, 304–5, 306,  
   309  
 Auriol, Vincent, 212  
 Austin, John, 475–76  
 Australia  
   Australia/ANU initiative, 233–40,  
     480–81  
   Australian Research Council, 215,  
     217, 236  
   Civil Military Centre, 215  
   Human Rights Committee and, 36  
   Security Council and, 215–16  
 Australian National University, 233–40  
 Austria/NYU initiative, 233–40,  
   480–81  
 authoritarianism  
   abuse of rule of law in, 387–88, 472,  
     487–88  
   backsliding and, 113, 115, 120, 130,  
     140, 142–48, 149  
   in China, 72, 74–75, 78, 454–55  
   Erdoğan and, 316, 317  
   in Hungary, 77–78  
   lawlessness and, 342–43  
   leadership and participation in  
     international organizations,  
     attempts by authoritarian  
     regimes to increase, 70–71

- authoritarianism (cont.)  
 neutralization of international  
   organizations, attempts by  
     authoritarian regimes, 69–70  
 Orbán and, 51  
 in Poland, 77–78  
 Putin and, 78  
 rogue states (*see* rogue states)  
 “rule by law” and, 472  
 in Russia, 78  
 “thin” rule of law and, 186  
 transnational legal ordering (TLO)  
   and, 317–18  
 violence and, 321–22  
 Xi and, 78, 455  
 Azerbaijan, ECtHR and, 318
- Bachelet, Michelle, 64, 69  
 Bachmann, Ingeborg, 3  
 backsliding in rule of law. *See also*  
   *specific country*  
   arbitrary exercise of power and,  
     112–13, 114  
   authoritarianism and, 113, 115, 120,  
     130, 140, 142–48, 149  
   basic hypothesis, 119, 126–30  
   cluster analysis of countries, 114,  
     115, 133–36, 138–42  
   COVID-19 pandemic and, 131  
   data collection, 120–22  
   drivers of, 135–48  
   ECJ and, 322–23  
   empirical analysis, 115, 126–32  
   EU, resistance to backsliding by, 52  
   European Commission and, 322–23  
   incremental nature of, 114, 149  
   indicators, 122–24, 131, 135–36,  
     138–42  
   in Latin America, 381, 482, 484  
   limited nature of, 114–15, 131  
   origin of term, 112  
   outstanding questions, 148  
   overview, xi, 111, 482  
   populism and, 115, 120, 142–48, 149  
   recent backsliding, 51–52  
   regime change and, 144  
   resistance to, 52, 488  
   social impact of, 148–49  
   solutions to  
     cultural factors, 84–85  
     economic reform, requirement of,  
       82–84  
     multilevel approach, requirement  
       of, 80–82  
     overview, 4  
     weakening of limits to state power  
       and, 114, 119–20, 130, 140,  
       144–48
- Bai Por, 427–28  
 Baka, András, 269  
 Bangalore Principles, 188–89  
 Bannelier, Karine, 221  
 Bannon, Steve, 494  
 Barber, Nicholas, 21  
 Bazoum, Mohamed, 391–92  
 Beijing Consensus, 454–55  
 Belarus  
   absence of rule of law in, 495  
   backsliding in, 58–59, 130  
   as illiberal state, 169  
 Benin, backlash against African Court  
   in, 66–67  
 Berlin Conference (1884–85), 32  
 Bernhardt, Rudolf, 301–2  
 Berra, Yogi, 496  
 Bhumipol (Thailand), 414, 415, 420  
 Biden, Joe  
   generally, 4  
   China and, 82  
   reengagement by, 80–81  
   risks of reengagement, 81  
   “worker-centered trade policy,” 82  
 bilateral investment treaties, 185  
 Bindig, Rudolf, 304–5, 309  
*Black’s Law Dictionary*, 18  
 Blokker, Niels, 220–21  
 Boakai, Joseph, 400  
 Bolivia  
   Constitution, 352–54  
   hyperpresidential rule, reversal  
     of, 350  
 Bolsonaro, Jair, 347–48, 356, 378  
 Bondansky, Daniel, 231  
 Bongo, Omar, 395  
 Börzel, Tanja, 34  
 Bosch, Hieronymus, 303

- Bosnia–Herzegovina
  - EU accession, absence of movement toward, 168–69
  - Security Council authorization of use of force in, 30
- Boutros-Ghali, Boutros, 161
- Brandeis, Louis, 19, 20
- Brazil
  - backsliding in, 55, 62, 130
  - challenges to rule of law in, 347–48
  - Constitution, 352–54
  - hyperpresidential rule, reversal of, 350, 378
  - IACHR, backlash against, 66
- Breyer, Stephen, 256
- Brezhnev, Leonid, 294
- British East India Company, 93
- Brookings Institution, 157
- Bugaric, Bojan, 143
- Bukele, Nayib, 348, 356
- Bulgaria, CoE accession, 299–300, 483–84
- Bung Por, 427–28
- Burkina Faso
  - African Union, suspension by, 159
  - coups, impact on rule of law, 382, 389, 394–95
  - elections in, 395
  - French neocolonialism and, 394–95
  - geopolitical factors in, 394–95
  - improvement in rule of law in, 131
  - Niger and, 393
  - overview, 383
  - Russia and, 394–95
  - US and, 394–95
- Burundi, backlash against ICC in, 67
- Bush, George W., 22, 93
- Caesar, Winston, 189
- Calderón, Felipe, 357, 364, 369
- Cambodia
  - backsliding in, 130
  - Security Council constitution-shaping in, 163
  - UN constitution-shaping in, 160, 170
- Cameroon, judicial independence in, 206–7
- Canada, application of international law in domestic courts, 39–40
- CAR. *See* Central African Republic (CAR)
- Caribbean Court of Justice (CCJ), 188–89, 190
- Carothers, Thomas, 51, 54
- Castañeda, Jorge G., 381
- Centellas, Miguel, 115
- Central African Republic (CAR)
  - Security Council and constitution-shaping, 163, 164–65, 166
  - peacekeeping operations, 221
  - UN constitution-shaping in, 160, 170
- Chad, impacts of coup on rule of law, 382
- Charlesworth, Hilary, 215, 217
- Charter of the United Nations
  - Russian violations of, 288
  - Security Council authority under, 210, 218
  - separation of powers, lack of, 227–28
  - on state sovereignty, 90
  - transnational law and, 253
  - on use of force, 30, 176–77
- Chávez, Hugo, 66, 260
- checklists
  - avoiding, 20, 466, 470, 472, 474, 479–80
  - Venice Commission Rule of Law Checklist, 157, 194–95, 277
- Cheesman, Nick, 72, 385
- Chernenko, Konstantin, 294
- Chernomyrdin, Viktor, 304
- Chesterman, Simon, 14, 21, 215–16, 225–26, 233–34, 235
- Chile
  - constituent assembly in, 259
  - as dual state, 320
  - IACHR, backlash against, 66
- China
  - academic debates regarding law, 433–43, 453–54
  - activists, prosecution of, 442
  - Administrative Litigation Law of the People's Republic of China, 434
  - authoritarianism in, 78

- China (cont.)  
 Belt and Road Initiative, 68, 70  
 Biden and, 82  
 Chinese Communist Party (CCP)  
   authority over judiciary, 435,  
     444–45  
   on international law, 445  
   Marxist–Leninist view of law, 445  
   norm entrepreneurship and, 456  
   reformers in, 434  
   Soviet Union and, 432–33  
   supremacy regarding law, 440–41  
 Chinese contexts of rule of law,  
   431–32  
 Chinese exceptionalism, 455  
 civil society organizations in, 64, 69,  
   448–49  
 “comprehensive rule of law” in,  
   440–42  
 COVID-19 pandemic in, 442  
 Cultural Revolution, 433, 434, 445  
 as dual state, 13, 320  
 economic determinism in, 444, 453  
 elites, contestation between, 433  
 engagement with US, 81–82  
 factors influencing shifts in rule of  
   law in, 52  
 Great Financial Crisis (2008)  
   and, 437  
 Hong Kong, suppressive measures  
   in, 71, 429, 495  
 Human Rights Council and, 69  
 illiberalism in, 73  
 international commercial arbitration  
   and, 449–50  
 Iraq War, effect of rise of China  
   on, 75  
 Judges Law of the People’s Republic  
   of China, 435  
 lack of criticism in, 484  
 leadership and participation in  
   international organizations,  
   attempts at, 70–71  
 legal instrumentalism in, 444,  
   451–53  
 linearity of institutional change  
   in, 444  
 maritime areas, claims over, ix–x  
 masses, interests of, 431  
 neo-authoritarianism in, 454–55  
 neutralization of international  
   organizations, attempts at,  
   69–70  
 Niger and, 392  
 norm entrepreneurship and, 456  
 outside world, interactions with,  
   443–44, 445–46, 448  
 overview, xiv–xv, 444–45  
 Permanent Court of Arbitration  
   (PCA) and, ix–x, 67, 450  
 Philippines, territorial dispute  
   with, 450  
 private law in, 16  
 promotion of rule of law in, 434–35  
 property law in, 436–37  
 Regulations of the People’s Republic  
   of China on Arrest and  
   Detention, 433  
 repression of internal dissent in, 71  
 rise of as authoritarian regime, 72,  
   74–75  
 Russia and, 81  
 Security Council peacekeeping  
   operations and, 69  
 Sinicized Marxism, 454, 455  
 socialist market economy in, 434  
 “socialist rule of law with Chinese  
   characteristics,” 440, 495  
 South China Sea Arbitration, 450  
 on sovereign equality, 92–93  
 Soviet model, 432–33  
 territorial disputes and, 450  
 “Three Supremes” Doctrine, 437  
 Tibetans, suppression of, 71  
 trade war with US, 31  
 transnational legal ordering (TLO)  
   in, 447  
 transnational rule of law, impact on  
   actors and, 449–51, 457  
   civil society organizations and,  
   448–49  
   debates regarding, 446  
   dominant normative framework,  
   adoption of, 447–48  
   exposure to outside world,  
   variation in, 448

- firms and, 448
- fundamental norms and, 451–57
- growing engagement with outside world and, 445–46
- interests and, 447
- international commercial arbitration and, 449–50
- international organizations and, 450–51, 457
- marginal effect on, 454, 455–57
- state-centered analysis, drawbacks of, 447
- territorial disputes and, 450
- transnational legal ordering (TLO) and, 447
- Trump and, 82
- “turn against law” in, 437–40
- UN special rapporteurs and, 69
- US and, 80–81, 442
- Uyghurs, suppression of, 71, 93, 94, 321
- WTO and, 74, 156, 167–68, 434, 446
- Christakis, Théodore, 221
- civil society organizations
  - in China, 64, 69, 448–49
  - empirical trends in rule of law and, 63, 64
  - in Israel, 64
  - López Obrador’s attempts to weaken, 358–59, 377
  - Mexico, attempts to weaken, 358–59, 377
  - in Russia, 64
- climate change
  - Human Rights Committee and, 36
  - minimalist perspective on rule of law and, 32
  - Paris Agreement, 77, 80, 231
  - threat from, 32, 75
- Closa, Carlos, 485
- cluster analysis of countries, 114, 115, 133–36, 138–42
- Conde, Alpha, 395–96
- Cold War
  - absence of transnational rule of law during, 491–92
  - post-Cold War expansion in rule of law, 50–51
  - Security Council during, 212–13, 228
- Colombia
  - Constitution, 353–54
  - hyperpresidential rule, reversal of, 350, 378
  - IACHR, backlash against, 66
  - judicial review in, 351
  - state of exception in, 352
- colonialism, 10–11
- Commission for Democracy through Law (Venice Commission)
  - African Commission compared, 206–7
  - constitution-shaping and, 158–59
  - elections and, 277
  - emergency decrees and, 277–78
  - Hungary and, 275–76
  - judicial independence and, 203
  - Poland and, 275–76
  - rogue states and, 275–76
  - Rule of Law Checklist, 157, 194–95, 277
  - rule of law generally, 37, 194–96
  - “soft law” and, 198
  - Turkey and, 332–33, 336, 339
- Commission on International Trade Law (UNCITRAL), 231
- Compaoré, Blaise, 394
- conceptualization of rule of law
  - arbitrary exercise of power, as opposing (*see* arbitrary exercise of power)
  - checklists (*see* checklists)
  - colonialism and, 10–11
  - continuum of legality, 320
  - critical theory and, 10–11
  - defining rule of law, 16, 117, 318–19
  - democracy, relation to, 9–10, 17
  - dual state and, 12–13
  - formalism, avoiding (*see* formalism, avoiding)
  - freedom, relation to, 7–8
  - functionalist approach, 319
  - fundamental rights, relation to, 15–16
  - goal-oriented approach (*see* goal-oriented approach to rule of law)
  - human rights, relation to, 17, 320

- conceptualization of rule of law (cont.)
  - imperialism and, 10–11
  - as institutionalized practice, 6–7, 21, 385
  - manifest functions of, 7
  - market-oriented policies and, 16
  - meta-principle of rule of law, 224
  - moral approach, 319
  - multiple levels, 322
  - overview, 4
  - phenomenological conception of, 26
  - as principle and practice, 223–24
  - “rule by law” compared, 11–12, 118, 338–40, 472
  - as social order, 408
  - as societal equilibrium, 118–19
  - substance of law, relation to, 8–9
  - teleological view (*see* goal-oriented approach to rule of law)
  - “thick” rule of law (*see* “thick” rule of law)
  - “thin” rule of law (*see* “thin” rule of law)
- conditionality mechanism, 155, 197, 204–6, 267–68
- Conference on Security and Co-operation in Europe, 295
- Congo, Democratic Republic of (DRC)
  - domination by powerful states, 32
  - elections in, 398
  - Security Council peacekeeping operations in, 221
  - separation of powers in, 206–7
- constituent assemblies, 258–60
- constitutionalism, populism as
  - challenge to, 347
- “constitutionalism of fusion,” 351
- constitution-shaping. *See also specific country*
  - adoption of constitutions without external assistance compared, 171
  - African Union and, 159
  - conditionalities, 156–59
  - Council of Europe and, 169
  - critiques of, 171–74
  - economic development, lack of, 174
  - elections and, 163–64, 166
  - EU and, 168–69
  - Europe, success of in, 168–70
  - fragility of institutions, problem of, 171
  - Global South, success of in, 170
  - IMF and, 157–58, 172–73
  - inclusiveness in, 164–65
  - international financial institutions (IFIs) and, 157–58, 167–68, 172–73, 178–79
  - local rule-of-law cultures and, 173, 177–78
  - membership conditions, 155–56
  - neoliberalism, criticism regarding, 172–73
  - OAS and, 159
  - overview, xi, 153–54
  - as peacemaking, 160–62
  - perceived lack of control and, 181
  - Security Council and, 163–67
  - “social” rule of law and, 178–80
  - state sovereignty, respecting, 174–77
  - strategies for, 181
  - substance of constitution and, 165–66
  - Ukraine War, effect of, 181
  - UN and, 160, 162–63, 170
  - Venice Commission and, 158–59
  - World Bank and, 157–58, 172–73
  - WTO and, 167–68
- conventionality control, 188
- Convention of the Law of the Sea, 450
- Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), 333
- Convention on the Settlement of Investment Disputes, 45
- Correa, Rafael, 260, 356, 378
- corruption
  - empirical trends in rule of law and, 53
  - Inter-American Commission on Corruption, 157
- Costa Rica, Constitution, 352–54
- Côte d’Ivoire
  - African Court, backlash against, 66–67

- UN constitution-shaping in, 160
- Council of Europe (CoE). *See also specific country*
- generally, 32
- accession to, 261, 297–98
- Committee of Ministers, 268–69, 297, 345–46
- Committee on Legal Affairs and Human Rights, 299, 303, 305, 307, 315
- Committee on Political Affairs, 299, 305, 306, 307
- Committee on Relations with European Non-Member Countries, 299
- constitution-shaping and, 169
- Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), 333
- ECHR, incorporation into national law (*see* European Convention on Human Rights (ECHR))
- European Commission for Democracy through Law (Venice Commission) (*see* Commission for Democracy through Law (Venice Commission))
- EU versus, 295
- former Soviet bloc states, accession of, 298, 299–300
- Gorbachev and, 284–86, 294–96
- membership conditions, 155, 156, 483
- Parliamentary Assembly of the Council of Europe (PACE), 270, 284–85, 297–98, 306
- Putin and, 308–9
- Russia and (*see* Russia)
- suspension of members, 264
- Venice Commission (*see* Commission for Democracy through Law (Venice Commission))
- Yeltsin and, 304
- Court of Justice of the European Union (CJEU), 37, 116–17
- Couso, Javier, 352–53
- COVID-19 pandemic
- backsliding and, 131
- in China, 442
- conditionality mechanism and, 204, 205
- Hungary, COVID-19 pandemic relief in, 205
- Poland, COVID-19 pandemic relief in, 204, 205
- populism and, 76
- Crawford, James, 35, 47–48, 94
- critical theory, 10–11
- Croatia, EU accession, 168–69
- Cuba
- Constitution, 352–53
- Marxism and, 353
- revolution in, 353
- “culture of conduct,” 290, 292–93, 474–75
- Cyprus
- EU accession, 325–26
- UN Good Offices Mediation Team, 217
- Czech Republic
- CoE accession, 299–300
- EU constitution-shaping in, 169
- Danube Institute, 494
- Daranee Charnchoengsilpakul, 417–18
- decline in rule of law. *See* backsliding in rule of law
- Dedov, Dmitry, 284
- de Gaulle, Charles, 292
- Demirtaş, Selahattin, 330, 335–37
- democracy
- arbitrary exercise of power and, 18
- asymmetric rupture and, 279–80, 486–87
- defined, 380
- empirical trends in rule of law and, 59–62
- liberal democracy, 60
- polyarchy, 59–60
- populism as challenge to, 347
- rule of law, relation to, 9–10, 17, 112, 185, 255, 320, 344, 385
- “third wave” of democratization, 491



- democracy (cont.)
  - violating domestic law to restore, 279–81, 282, 486–87, 488–89
- Democracy Cluster Classification
  - Index, 115
- “democratic careening,” 262–63
- democratic peace theory, 29–30
- Deng Xiaoping, 433, 434, 446, 451
- Denmark, backlash against ECtHR
  - in, 66
- Dewey, John, 7
- Dicey, Alfred Venn, 21, 102, 464–65, 478
- direct effect of international law on
  - domestic law
  - assessment of international organizations, 48–49
  - complementarity, 45–46
  - overview, 27
  - regional courts and, 44–45, 47
- dispute resolution
  - ECtHR, as goal of, 32
  - EU and, 32
  - ICJ, as goal of, 30–31
  - ITLOS, as goal of, 30–31
  - minimalist perspective on rule of law, 30–32
  - PCA, as goal of, 30–31
  - WTO, as goal of, 31
- Dominican Republic
  - IACHR, withdrawal from, 66
  - IACtHR, backlash against, 66
- DRC. *See* Congo, Democratic Republic of (DRC)
- dual states, 12–13, 320–21
- Duombouya, Mamady, 395
- Durkheim, Emile, 474
- Duterte, Rodrigo, 76, 428–29
- Dworkin, Ronald, 15
- East African Court of Justice (EACJ), 208
- East Timor. *See* Timor Leste
- ECHR. *See* European Convention on Human Rights (ECHR)
- ECJ. *See* European Court of Justice (ECJ)
- Economic Community of West African States (ECOWAS)
  - Community Court of Justice, 207–8
  - creation of, 207–8
  - interventions by, 30
  - Niger and, 393
- ECtHR. *See* European Court of Human Rights (ECtHR)
- Ecuador
  - Constitution, 353–54
  - Council of Social Accountability and Participation, 378
  - hyperpresidential rule, reversal of, 350, 378
  - in regional organizations, 261
- Educational, Scientific and Cultural Organization (UNESCO), 64, 77
- Egypt, backsliding in, 55
- elections. *See also specific country*
  - in Africa, 389
  - African Commission and, 276
  - constitution-shaping and, 163–64, 166
  - ECHR and, 276–77
  - EU and, 276–77
  - judicialization of, 381–82, 383, 390, 400, 401–5
  - Orbán and, 263–64
  - process versus outcome, 400–1
  - rule of law, relation to, 386–87
  - Treaty on European Union (TEU) and, 276
  - Venice Commission and, 277
- El Salvador
  - backsliding in, 130
  - challenges to rule of law in, 348
- emergency decrees, 207
- empirical trends in rule of law
  - arbitrary exercise of power and, 56–58
  - backsliding, 115, 126–32
  - challenges in measurement, 52–54
  - civil society organizations and, 63, 64
  - corruption and, 53
  - democracy and, 59–62
  - economic focus, shifts in, 75
  - ECtHR, backlash against, 65–66

- enmeshment of national and international law, 72–79
- external factors, 72
- “gradual autocratization,” 51
- importance of studying, 86
- indexes for measuring rule of law, 52–53
- internal factors, 72
- international courts, backlash against, 65–67
- international trends, 64–72
- judicial independence and, 63
- leadership and participation in international organizations, attempts by authoritarian regimes to increase, 70–71
- media independence and, 63–64
- national trends, 54–64
- neutralization of international organizations, attempts by authoritarian regimes, 69–70
- nonbinding instruments, increased use of, 67–68
- overview, 4, 49
- parallel shifts at national and international levels, 49–50
- populism, rise of, 76–77
- post-Cold War expansion in, 50–51
- recent backsliding in, 51–52
- resistance to backsliding in, 52
- “rule-of-law revival,” 51
- “soft law,” increased use of, 67–68
- “end of history,” 492–93
- environmental, social and governance (ESG) practices, 42
- Equator Principles, 42
- Erdoğan, Recep Tayyip
  - generally, xiii
  - attempted coup against, 327, 331–32, 344
  - authoritarianism and, 316, 317
  - consolidation of power, 327, 332–33
  - constitutional immunity and, 329–30
  - election of, 324
  - failures of ECtHR regarding, 345–46
  - HDP, suppression of, 335–36
  - judicial independence and, 326–27
  - lawlessness and, 343–44
  - move away from rule of law, 343–44
  - one-party rule and, 344
  - Orbán compared, 344
  - populism and, 76
  - rule-of-law reforms by, 325
- erga omnes* obligations, rogue states and, 262, 271–74, 280
- Estonia
  - CoE accession, 299–300
  - EU constitution-shaping in, 169
- E10 Influence Project, 217–18, 237–38
- Europe. *See also specific country, agreement, or body*
  - constitution-shaping, success of, 168–70
  - illiberalism in, 73
- European Arrest Warrant, 201
- European Coal and Steel Community, 32
- European Commission
  - backsliding and, 322–23
  - defining rule of law, 195
  - infringement actions brought by, 197–98, 200–2, 272
  - judicial independence and, 200–2
  - Justice Scoreboard, 198
  - Rule of Law Framework, 198, 204
  - rule of law generally, 116–17, 195–96
  - Rule of Law Report, 198
  - “soft law” and, 198
- European Community
  - accession to, 155
  - infringement actions, 197–99
  - rule of law in, 192
- European Convention on Human Rights (ECHR)
  - CoE, ratification required for membership, 156
  - elections and, 276–77
- erga omnes* obligations and, 271–72, 274
- former Soviet bloc states, accession of, 50
- Hungary and, 263
- incorporation into national law, 38
- Poland and, 263
- rule of law in, 65, 190, 195–96

- (ECHR) (cont.)  
 Russia and (*see* Russia)  
 supererogatory compliance and, 276–77  
 transnational legal ordering (TLO) and, 210–11  
 Turkey, ratification by, 316
- European Court of Human Rights (ECtHR)  
 on arbitrary exercise of power, 193  
 backlash against, 322–23  
 binding nature of decisions, 265, 268–69  
 Denmark, backlash against in, 66  
 direct effect of international law on domestic law and, 44–45  
 dispute resolution as goal of, 32  
 empirical trends in rule of law, 65–66  
 Erdoğan, failures regarding, 345–46  
*erga omnes* obligations and, 271–72  
 Hungary, ECtHR cases, 269, 270, 273  
 indirect effects of rulings, 39  
 judicial independence and, 194, 203  
 jurisdiction of, 271  
 lack of enforcement power, 192  
 legality principle in, 193  
 Poland, ECtHR cases, 264–65, 269–70, 273–74  
 Putin, backlash against by, 65  
 resilience of, 80  
 rule of law in, 65, 195–96  
 Russia and (*see* Russia)  
 Switzerland, backlash against in, 66  
 transnational legal ordering (TLO) and, 191, 210–11  
 Turkey and (*see* Turkey)  
 UK, backlash against in, 66  
 unheard cases, 323, 337–42
- European Court of Justice (ECJ)  
 on arbitrary exercise of power, 193  
 backsliding and, 322–23  
*erga omnes* obligations and, 271–72  
 Hungary, ECJ cases, 265, 266–67, 270  
 judicial independence and, 193–94, 197, 199–202  
 legality principle in, 192–93  
 Poland, ECJ cases, 264–66, 270
- Portuguese Judges* case, 199–200, 202–3  
 right of sovereigns to redress in, 106–7  
 rule of law generally, 192  
 supranational rule of law in, 192  
 terrorism and, 42–43, 185, 229
- European Union. *See also specific country*  
 accession to, 261  
 Charter of Fundamental Rights (CFR), 37, 267–68, 271  
 Common Provisions Regulation, 267, 272  
 conditionality mechanism, 155, 197, 204–6, 267–68  
 Conditionality Regulation, 267  
 constitution-shaping and, 168–69  
 Copenhagen criteria, 37, 155, 261, 325  
 Council of Europe versus, 295  
 Court of Justice of the European Union (CJEU), 37, 116–17  
 dispute resolution and, 32  
 elections and, 276–77  
*erga omnes* obligations and, 271–72, 274  
 former Soviet bloc states, accession of, 50  
 freezing of funds of member states, 267–68  
 incentives for accession, 50  
 Joint Transatlantic Agenda, 80–81  
 national constitutions versus, 202–3, 209  
 Orbán and, 485  
 overview, xii–xiii  
 peacekeeping operations, 46  
 promotion of rule of law and, 463  
 Recovery and Resilience Regulation, 267, 272  
 resistance to backsliding by, 52  
 rule of law generally, 495  
 supererogatory compliance and, 276–77  
 TEU (*see* Treaty on European Union (TEU))  
 transnational law and, 253

transnational legal ordering (TLO)  
and, 109, 191–92  
“exit doors,” 352–53

Fallon, Richard, 97

Farrall, Jeremy

generally, xii

Australia/ANU initiative and, 215,  
233–34, 237–38

on avoiding formalism, 470

on extrapolation from domestic  
law, 477

on peacekeeping operations, 492

on recency of transnational rule of  
law, 489–90

on rule of law, 236

Security Council and, 213, 216–18,  
225, 248, 480–81, 490

Financial Action Task Force, 211

financial assistance, rule of law as  
condition for, 462

Finland, NATO and, 344

Foner, Eric, 12–13

Food and Agricultural Organization  
(FAO), 70

Ford, Lisa, 11

Ford Foundation, 449

formalism, avoiding, 13, 116, 344–45,  
385, 386, 466, 470, 479–80

former Soviet bloc states

CoE accession, 298, 299–300

ECHR accession, 50

EU accession, 50

proposed human rights  
organization, 307

WTO accession, 50

Fraenkel, Ernst, 3, 12

France

backsliding in, 140

constitutional transition in, 292

variations in rule of law in, 131

freedom, relation to rule of law, 7–8

Freedom House, 52–53, 58–60, 63,  
111, 257

Fukuyama, Francis, 492–93

Fuller, Lon, 14, 19, 21, 53

functions of rule of law

arbitrary exercise of power, restraint  
of, 98–99

economic development, 98–99

freedom and dignity, 98–99

horizontal functions, 99

institutional function, 98–99

manifest functions, 7

security and trust, 98–99

vertical functions, 99

fundamental rights, relation to rule of  
law, 15–16

Gabon, impacts of coup on rule of law,  
382, 383, 389, 395

Gambia, impacts of coup on rule of  
law, 382

Gargarella, Roberto, 351

General Agreement on Tariffs and  
Trade (GATT), 40–41

General Assembly (of UN)

Countering the Use of Information  
and Communications

Technologies for Criminal  
Purposes, 71

Declaration on Principles of  
International Law (1970), 104

Declaration on the Rule of Law at the  
National and International  
Levels (2012), 92, 102–4, 107,  
489–90

Guidance Note on the UN Approach  
to Rule of Law Assistance  
(2008), 153–54, 162, 163

Guidance Note to Constitution-  
Making Processes (2009),  
162–63, 176

Rule of Law and Transnational  
Justice (2004), 177

Security Council and, 227–28

geopolitics, transnational rule of law  
and. *See also specific country*  
in Africa, 396–97

Cold War, absence of transnational  
rule of law during, 491–92

“end of history” and, 492–93

fall of communism and, 491, 492

overview, 463, 489

- geopolitics rule of law (cont.)
  - persistence of transnational rule of law and, 495–96
  - potential decline of transnational rule of law and, 493–94
  - “third wave” of democratization and, 491
- Georgia, Russian annexation of territory in, 288
- Germany
  - Constitution, 258–59
  - economic blocs and, 31
  - EU and, 32
  - international human rights law, incorporation of, 38
  - Nazi Germany as dual state, 12, 320
  - Solange* jurisprudence, 47
- Gessen, Masha, 429
- Ginsburg, Tom
  - generally, xi–xii
  - on attempts by authoritarian regimes to neutralize international organizations, 69
  - on backsliding in EU, 483
  - on CoE, 317
  - defining democracy, 380
  - on democracy, 345
  - on enmeshment of national and international law, 476
  - on indicators, 52–53, 55
  - on regional TLOs, 482
  - on state sovereignty, 485
  - on threat from authoritarianism, 322
  - on transnational legal ordering (TLO), 484
- Global Compact on Migration, 77, 80
- globalization, 82
- Global Reporting Initiative, 42
- goal-oriented approach to rule of law
  - anatomical approach distinguished, 466–67
  - arbitrary exercise of power and, 384
  - formalism, avoiding, 344–45
  - forward and backward reasoning, 7
  - overview, 5–6, 319, 463
  - possibility of, 479
- Gorbachev, Mikhail
  - generally, xiii, 315
  - on “Common European Home,” 284–86, 306
- Council of Europe and, 284–86, 294–96
- glasnost* and, 285
- as head of Soviet Union, 284
- perestroika* and, 285
- pragmatism of, 285
- rule of law, attempts to introduce, 290–92, 293–94
- Russian abandonment of vision of, 289
- Gordon, Robert, 10
- Grattet, Ryken, 6
- Great Financial Crisis (2008), 75, 437
- Guatemala Constitution, 352–53
- Guiding Principles on Business and Human Rights, 42
- Guinea
  - African Union, suspension by, 159
  - impacts of coup on rule of law, 382, 389, 395–96
  - overview, 383
  - presidential term limits in, 395–96
- Guinea-Bissau
  - impacts of coup on rule of law, 382
  - Security Council constitution-shaping in, 164–65
  - UN constitution-shaping in, 160
- Gusinsky, Vladimir, 313
- Guyana, judicial independence in, 188
- Haberkorn, Tyrell, xiv
- Habermas, Jürgen, 9–10, 15, 20
- Haiti, Security Council and
  - constitution-shaping, 164–65
  - peacekeeping operations, 46, 219
  - use of force, authorization of, 30
- Halliday, Terence
  - generally, xii
  - on avoiding formalism, 470
  - on extrapolation from domestic law, 477
  - on multiple levels of rule of law, 322
  - on peacekeeping operations, 492
  - on recency of transnational rule of law, 489–90

- Security Council and, 217, 480–81
- “soft law” and, 6
- on transnational legal ordering (TLO), 24, 26, 184, 405–6
- hate crimes, 6
- Hayek, Friedrich A., 19, 43, 83, 97, 102
- Helfer, Laurence, 39
- Helsinki Accords, 286
- Helsinki Final Act, 295
- Henri-Damiba, Paul, 394
- Heritage Foundation, 52–53
- Hobbes, Thomas, 119
- Hobsbawm, Eric, 491–92
- horizontal benefits of rule of law for
  - sovereigns
  - analogy of states to individuals, 105–6
  - coercive penetration of sovereignty disfavored, 91–92
  - courts, right of sovereigns to redress in, 106–7
  - criticism of sovereignty, 91
  - domestic rule of law analogy, 100–2
  - dual nature of national governments and, 100–2
  - nested dualism of states and individuals and, 89–95
  - 1970 General Assembly Declaration and, 104
  - overview, x–xi, 88–89
  - purpose of noninterference principle, 90–91
  - skepticism of Western motives, 93–94
  - sovereign equality and, 92–93
  - transnational legal ordering (TLO) and, 108–10
  - treaties and, 106
  - 2012 General Assembly Declaration and, 92, 102–4, 107
  - Waldron’s argument against, x–xi, 87, 89, 95, 96, 99–100
- horizontal functions of rule of law, 99
- Hull, Cordell, 31
- humanitarian intervention, 33–34
- human rights. *See also specific agreement or body*
  - arbitrary exercise of power and, 18
  - former Soviet bloc states, proposed human rights organization, 307
  - Latin America, international human rights law in, 39
  - national human rights institutions, 36
  - rule of law, relation to, 17, 320
  - in Russia, 301–3
- Human Rights Committee
  - Australia and, 36
  - climate change and, 36
  - individual claims before, 36
- Human Rights Council
  - backlash against, 77
  - neutralization, attempts by authoritarian regimes, 69
  - reports to, 36
- Humphreys, Stephen, 479
- Huneus, Alexandra, 188
- Hungary
  - abuse of rule of law in, 485
  - authoritarianism in, 77–78
  - backsliding in, 55, 58–59, 62, 130, 196
  - CoE accession, 263, 299–300
  - Constitution, 259
  - constitution-shaping in, 157, 169
  - COVID-19 pandemic relief in, 205
  - directly applicable laws, enforcement of, 265–70
  - as dual state, 263–64
  - ECHR and, 263
  - ECJ cases, 265, 266–67, 270
  - ECtHR cases, 269, 270, 273
  - elections in, 263–64, 275
  - emergency decrees in, 272, 277–78
  - in EU, 263
  - EU constitution-shaping in, 169
  - Fidesz Party, 272
  - freezing of funds by EU, 267–68
  - as hybrid regime, 263–64
  - as illiberal state, 190, 484
  - infringement actions against, 197–98, 201, 272
  - judicial independence in, 37, 63, 197–98, 201, 269, 272–73
  - Kúria (Supreme Court), 269

- Hungary (cont.)  
   laws limiting EU authority over, 272–73  
   membership conditions, impact of, 267–68  
   opposition in, 280–81  
   PACE and, 270  
   populism in, 76  
   proposals to remedy backsliding in, 257–58, 260  
   resistance to backsliding in, 52, 483–84  
   state sovereignty and, 485  
   “super milestones,” 273  
   surveillance in, 274  
   Ukraine War and, 205  
   Venice Commission and, 275–76
- Hurd, Ian, 22, 108
- Hussein, Saddam, 93
- hyperpresidential rule in Latin America, 350, 378
- IACHR. *See* Inter-American Commission on Human Rights
- IACtHR. *See* Inter-American Court of Human Rights (IACtHR)
- Iancu, Alexandra, 172, 173–74
- Ibrahim Index of African Governance (IIAG), 391
- ICC. *See* International Criminal Court (ICC)
- ICCPR. *See* International Covenant on Civil and Political Rights (ICCPR)
- ICJ. *See* International Court of Justice (ICJ)
- illiberalism  
   Belarus as illiberal state, 169  
   in China, 73  
   in Europe, 73  
   Hungary as illiberal state, 190, 484  
   Poland as illiberal state, 190  
   of populism, 494–95  
   in Russia, 73  
   Serbia as illiberal state, 169  
   Ukraine as illiberal state, 169  
   in US, 72
- IMF. *See* International Monetary Fund (IMF)
- immigration, 84
- imperialism, 10–11
- India  
   backsliding in, 140  
   ICSID and, 67  
   media independence in, 63–64
- indirect effect of international law on domestic law  
   application of international law in domestic courts, 39–40
- individual claims, 36
- international organizations and, 40–41
- multinational companies and, 43–44
- national constitutions, rule of law incorporated into, 35–36, 50
- national human rights institutions, 36
- nonstate entities and, 42
- overview, 27, 34
- private actors and, 43–44
- regional organizations and, 37–38
- reporting, 36–37
- Indonesia, ICSID and, 67
- Indo-Pacific Economic Framework, 80–81
- Industrial Development Organization (UNIDO), 70
- infringement actions, 197–99, 272
- institutionalized practice, rule of law as, 6–7, 21, 385
- Inter-American Commission on Corruption, 157
- Inter-American Commission on Human Rights, 186–88
- Inter-American Convention on Human Rights (IACHR)  
   Argentina, backlash against in, 66  
   backlash against, 66  
   Brazil, backlash against in, 66  
   Chile, backlash against in, 66  
   Colombia, backlash against in, 66  
   conventionality control and, 188  
   Dominican Republic, withdrawal of, 66  
   judicial protection and, 187

- obligation to appear and, 189–90
- overview, 186–88
- Paraguay, backlash against in, 66
- political participation and, 187
- transnational law and, 253
- Trinidad and Tobago, withdrawal of, 66
- Venezuela, withdrawal of, 66
- withdrawals from, 66
- Inter-American Court of Human Rights (IACtHR)
  - backlash against, 66
  - creation of, 186–88
  - direct effect of international law on domestic law and, 44–45
  - Dominican Republic, backlash against in, 66
  - enhanced role of, 354–56
  - indirect effects of rulings, 39
  - Mexico and, 371, 374, 375–76
  - resilience of, 80
  - rule of law in, 190
  - Trinidad and Tobago, backlash against in, 66, 189–90
  - Venezuela, backlash against in, 66
- Inter-American Democratic Charter, 159, 186–88
- Intermediate Nuclear Forces Treaty, 77
- International Centre for Settlement of Investment Disputes (ICSID), 67
- International Civil Aviation Organization (ICAO), 70
- international commercial arbitration, 449–50
- International Commission of Jurists, 184–85
- International Court of Justice (ICJ)
  - on arbitrary exercise of power, 18
  - dispute resolution as goal of, 30–31
  - right of sovereigns to redress in, 106
  - Security Council and, 227–28
  - on state sovereignty, 90
  - Ukraine War and, 88
- international courts. *See also specific court*
  - backlash against, 65–67
  - proliferation of, 50
- International Covenant on Civil and Political Rights (ICCPR)
  - individual claims under, 36
  - rule of law in, 35
- International Covenant on Economic, Cultural and Social Rights (ICESCR), 35
- International Criminal Court (ICC)
  - backlash against, 66, 67, 77
  - Burundi, backlash against in, 67
  - direct effect of international law on domestic law and, 45
  - Office of the Prosecutor, 45
  - Philippines, backlash against in, 67
  - Rome Statue, 211
  - transnational legal ordering (TLO) and, 210–11
  - US and, 72, 77
- International Criminal Police Organization (Interpol), 70–71
- International Electrotechnical Committee (IEC), 70
- international financial institutions (IFIs), 157–58, 167–68, 172–73, 178–79
- international investment arbitration, 31–32, 185
- international law
  - application in domestic courts, 39–40
  - direct effect of international law on domestic law (*see* direct effect of international law on domestic law)
  - importance to rule of law, 86
  - indirect effect of international law on domestic law (*see* indirect effect of international law on domestic law)
  - nested dualism of states and individuals in, 89–95
  - as recursive process, 25
  - role in transnational rule of law, 22–24
  - rule of law, relation to, 407–8
  - skepticism regarding existence of, 21–22, 476
  - socio-legal theory of, 23–24



- International Law Commission, 67–68
- international measures to support rule of law
- in Africa, 206–8, 209
  - in Europe (*see specific topic*)
  - in Latin America, 186–88, 189–90, 209
  - overview, xi–xii, 182–84, 208–9
- International Monetary Fund (IMF)
- constitution-shaping and, 157–58, 172–73
  - promotion of rule of law and, 463
  - transnational legal ordering (TLO) and, 109
- international organizations. *See also specific organization*
- assessment of, 48–49
  - constitution-shaping (*see* constitution-shaping)
  - importance to rule of law, 86
  - indirect effect of international law on domestic law and, 40–41
  - leadership and participation in, attempts by authoritarian regimes to increase, 70–71
  - national rule of law and, 185
  - neutralization of, attempts by authoritarian regimes, 69–70
  - supranational rule of law and, 185
- International Standardization Organization (ISO), 70
- International Telecommunications Union (ITU), 70, 71
- International Tribunal for the Law of the Sea (ITLOS)
- dispute resolution as goal of, 30–31
  - right of sovereigns to redress in, 106
- investor–state arbitration, 67
- Iran, nuclear deal with, 77
- Iraq
- Iraq War (*see* Iraq War)
  - Kuwait, invasion of, 232
  - right to benefits of rule of law, 106
  - Security Council and
    - peacekeeping operations, 46
    - sanctions, 228
    - use of force, authorization of, 30, 221
- Iraq War
- as breach of rule of law, 106
  - in context of Western abuses of international law, 94
  - false justifications for, 94
  - reappraisal of military force and, 232
  - rise of China, effect on, 75
- Islamic conceptions of rule of law, 13
- Israel, civil society organizations in, 64
- Issoufou, Mohamadou, 391–92
- Istanbul Convention, 333
- ITLOS. *See* International Tribunal for the Law of the Sea (ITLOS)
- iusnaturalism, 352
- Japan
- backsliding in, 62
  - Constitution, 258–59
  - economic blocs and, 31
  - media independence in, 63–64
- Joint Transatlantic Agenda, 80–81
- judicial independence. *See also specific country*
- African Commission and, 206–7
  - ECJ and, 200–2, 193–94, 197, 199–200
  - ECtHR and, 194, 203
  - empirical trends in rule of law and, 63
  - European Commission and, 199–202
  - infringement actions involving, 197–99, 200–2
  - local rule-of-law cultures and, 173
  - Orbán and, 197
  - TEU and, 199–203
  - transnational rule of law and, 200
  - Venice Commission and, 203
- Kaczyński, Jarosław, 485
- Kahn, Jeffrey, xiii, 482, 483
- Kahraman, Fritz, 12–13, 321
- Kant, Immanuel, 90, 105, 109
- Kara-Murza, Vladimir, 314
- Kazakhstan
- backsliding in, 114
  - improvement in rule of law in, 131
- Keleman, R. Daniel, 487
- Kelsen, Hans, 255

- Kenya, judicialization of elections in, 401–2
- Khasbulatov, Ruslan, 287, 301
- Khodorkovsky, Mikhail, 313
- Korean War
- Security Council authorization of use of force in, 46–47, 220–21
  - Soviet abstention and, 220–21
- Kosovo
- EU accession, absence of movement toward, 168–69
  - NATO/EU peacekeeping operations in, 46
  - Security Council, 219
- Kozyrev, Andrei, 286–87
- Krygier, Martin
- on arbitrary exercise of power, 18, 184, 333, 345
  - goal-oriented approach to rule of law, 319
  - on lack of clarity in rule of law, 240
  - on purpose of rule of law, 98
  - on rule of law as prevailing value, 226
  - on social goals and practices, 5
  - on *telos* of rule of law, 96–97
  - transnational perspective on rule of law, xv
- Krylenko, Nikolai, 293
- Kudryatsev, Vladimir, 290–91
- Kuhelj, Alenka, 143
- Kumm, Matthias, 10
- Kurban, Dilek, xiii, 482–83
- Kuwait, Iraqi invasion of, 232
- Kwankwaso, Rabi'u Musa, 398–99
- Lacey, Nicola, 21
- La Forest, Gérard, 39–40
- Lalumière, Catherine, 286, 295–96
- Lam, Esther, 167–68
- Lánczi, András, 255
- Lander, Jennifer, 477–78
- Latin America. *See also specific country, agreement, or body*
- ambivalence toward constitutionalism in, 352–53
  - backsliding in, 381, 482, 484
  - bills of rights in, 355
  - challenges to rule of law in, 349
  - compromised state of constitutionalism in, 352
  - “constitutionalism of fusion,” 351
  - early constitutions, 351
  - executive branches, changes in, 354
  - “exit doors,” 352–53
  - expansion in rule of law in, 355–56
  - free-market ideology in, 353
  - hyperpresidential rule in, 350, 378
  - international human rights law in, 39
  - international measures to support rule of law in, 186–88, 189–90, 209
  - iusnaturalism, 352
  - judicial review in, 351–52
  - Judiciary Councils, 354
  - last-wave constitutions in, 350, 353–55
  - legislative branches, changes in, 354
  - Marxism and, 353
  - overview, xiii–xiv, 350–51
  - presidential powers, expansion of, 356–57
  - remaining challenges in, 356
  - resilience of rule of law in, 79
  - “third wave” of democratization in, 491
- Latvia, EU constitution-shaping in, 169
- Lavrov, Sergei, 289–90
- Law, David, 51–52
- “law and development,” 184–85
- lawfare, 22
- “law talk,” 22
- League of Nations mandate system, 32–33
- “legal black holes,” 20
- legality principle, 22–23, 192–93
- legally ordered communities, 97–98, 467–68, 469
- Leopold (Belgium), 32
- Le Pen, Marine, 52, 494
- Leuprecht, Peter, 298, 306, 308
- Leventhal, Harold, 256
- Levitzky, Steven, 113
- Li, Ji, xiv–xv, 13, 429
- liberal democracy, 60
- Liberia
- elections in, 387, 398, 400–1

- Liberia (cont.)  
 nonjudicialization of elections  
   in, 400  
 Security Council sanctions and, 228  
 successful transfer of power in,  
   383, 387, 389–90, 398,  
   400–1  
 UN Mission in Liberia, 217
- Libya  
 Security Council and  
   constitution-shaping, 163, 164–66  
   use of force, authorization of, 33,  
   222–23  
 UN constitution-shaping in, 160
- Lied, Harold, 295
- Lithuania  
 CoE accession, 299–300  
 EU constitution-shaping in, 169
- Litvinenko, Alexander, 314
- Llewellyn, Karl N., 7
- local rule-of-law cultures, 173, 177–78
- López Obrador, Andrés Manuel  
 abandonment of left-wing ideals by,  
   348–49, 358  
 antipathy toward rule of law,  
   362, 376  
 checks and balances, attempts to  
   weaken, 377  
 civil society organizations, attempts  
   to weaken, 358–59, 377  
 criticism of INE, 364–65  
 election of, 358  
 independent agencies, attempts to  
   weaken, 377  
 initial reform plans for INE, 364–65  
 judicial barriers to, 377–78  
 judiciary, attempts to weaken, 377  
 legislature, attempts to weaken,  
   377  
 militarization of society generally,  
   377–78  
 National Guard and, 370–71  
 “Plan B” for INE, 366–69  
 pluralism, disdain for, 358–59  
 populism and, 358  
 public expenditures and, 361  
 social programs, cutbacks in, 359–60  
 transfer programs and, 360–61
- Lukin, Alexander, 294
- Lula da Silva, Luis Inácio, 378
- Madagascar, elections in, 398
- Madison, James, 119
- Malawi, judicialization of elections in,  
 401–2
- Mali  
 African Union, suspension by,  
   159  
 impacts of coup on rule of law, 382  
 Niger and, 393  
 Security Council constitution-  
   shaping in, 165–66
- Malinowski, Bronisław, 479–80
- manifest functions of rule of law, 7
- manipulation of rule of law, 255–56
- Mao Zedong, 433, 440, 444
- Marcos, Ferdinand, 428–29
- Marcos, Ferdinand “Bongbong,” 76,  
 428–29
- Markert, Thomas, 158
- market-oriented policies, 16
- Marshall, John, 39
- Marxism  
 China, Marxist–Leninist view of law  
   in, 445  
 Cuba and, 353  
 Latin America and, 353  
 Sinicized Marxism, 454, 455  
 Soviet Union, Marxist–Leninist view  
   of law in, 293
- McCann, Michael, 12–13, 321
- media independence  
 empirical trends in rule of law and,  
   63–64  
 in India, 63–64  
 in Japan, 63–64
- Medvedev, Dmitri, 313
- Meierhenrich, Jens, 21, 26, 320
- Meloni, Georgia, 52, 494
- Mercan, Zeynep, 339
- meta-principle of rule of law, 224
- Mexico  
 Acuerdo Militarista (Militarist  
   Decree), 373–74, 375  
*amparo* writ, 351  
 army, 372–74

- automatic pretrial imprisonment in, 370–71
- backsliding in, 362–63
- challenges to rule of law in, 348–49
- civil society organizations, attempts to weaken, 358–59, 377
- Constitution, 353–54
- “dirty war,” 369
- elections in
  - reforms, 363–64
  - reliability of, 357
  - rigged nature of early elections in favor of PRI, 363
- General Law of the Public Security System, 370, 372
- health care in, 359–60
- IACtHR and, 371, 374, 375–76
- independent agencies, attempts to weaken, 377
- Instituto de Salud para el Bienestar (INSABI), 359–60
- Instituto Federal Electoral (IFE), 363
- Instituto Nacional Electoral (INE)
  - constitutional protection of, 377
  - controversias*, 367–68
  - creation of, 363–64
  - duties of, 364
  - initial reform plans, 365–66
  - overview, 350, 362
  - “Plan B,” 366–69
  - presidential recall and, 365
  - Supreme Court invalidation of “Plan B,” 368–69
- Interior Security Act, 369–70
- judiciary, attempts to weaken, 377
- Law on the National Guard, 370, 371–72, 374–75
- Law on the National Registry of Detentions, 370, 372
- legislature, attempts to weaken, 377
- marines, 373
- Mexicana de Aviación, 373
- militarization of society generally, 350, 362, 377–78
- MORENA Party, 358, 364, 366–67, 375, 377
- National Commission of Human Rights, 374
- National Guard
  - Amendment Decree, 371
  - army, authority of, 373–74
  - challenges to, 371
  - creation of, 370–71
  - opposition to, 371
  - Supreme Court and, 375
  - transfer to military command, 374–75
- National Law on the Use of Force, 370, 372
- national ombudsperson, 377–78
- national registries, 372
- National Research Council, 359
- National System of Public Security Information, 372
- overview, xiv
- Partido Revolucionario Institucional (PRI), 358, 363
- presidential recall, 365
- preventive imprisonment in, 375–76
- public expenditures in, 361
- regional human rights regimes and, 378–79
- remaining challenges in, 357–58
- resilience of rule of law in, 79
- Seguro Popular, 359–60
- social programs, cutbacks in, 359–60
- strength of political rights in, 357
- Supreme Court
  - Acuerdo Militarista (Militarist Decree) and, 375
  - National Guard and, 375
  - “Plan B,” invalidation of, 368–69
  - preventive imprisonment and, 375–76
  - transfer programs in, 360–61
  - violence in, 357
  - “war against drugs,” 369–70, 357
- micro-TLOs, 233–42
- “militant rule of law,” 489
- minimalist perspective on rule of law
  - climate change and, 32
  - democratic peace theory and, 29–30
  - dispute resolution as goal of, 30–32
  - domination by powerful states and, 32–34

- minimalist perspective (cont.)
  - humanitarian intervention and, 33–34
  - overview, 27
  - peace as goal of, 28–30
  - responsibility to protect (R2P) and, 33–34
- Modi, Narendra, 63–64, 76
- Moldova, improvement in rule of law in, 131
- Mongolia, transnational legal ordering (TLO) in, 478
- Montenegro, absence of movement toward EU accession, 168–69
- Montesquieu, 5, 109, 471
- Montoya, Ana María, xi, 76–77, 482
- Morales, Evo, 356
- Moreno, Lenin, 378
- Morocco, variations in rule of law in, 131
- Moustafa, Tamir, 12
- Mozambique, Security Council and, 219
- Mugabe, Robert, 67
- Mühlemann, Ernst, 305, 306, 315
- Mukum Mbkau, John, 387
- multinational companies, indirect effect of international law on domestic law and, 43–44
- Mutua, Makau, 13, 396, 401
- Myanmar
  - absence of rule of law in, 495
  - attacks on rule of law in, 428–29
- Nardin, Terry, 15–16, 94, 105, 319
- national constitutions
  - EU versus, 202–3, 209
  - rule of law incorporated into, 35–36, 50
  - Universal Declaration of Human Rights incorporated into, 35
- national human rights institutions, 36
- national rule of law
  - defined, 184
  - international organizations and, 185
  - international rule of law versus, 186
  - overview, 475–76
  - rogue states, ineffectiveness in bringing about change in, 279
  - as rule of law “writ small,” 252
- NATO. *See* North Atlantic Treaty Organization (NATO)
- Nattaporn Toprayoon, 422–26
- Navalnyy, Alexei, 314
- Nemtsov, Boris, 314
- New York University Institute for International Law and Justice, 233–40
- Nicaragua, backsliding in, 130
- Nicholas II (Russia), 293
- Niger
  - backsliding in, 58–59
  - Burkina Faso and, 393
  - China and, 392
  - economic factors in, 392
  - ECOWAS and, 393
  - elections in, 391
  - French neocolonialism and, 392–93
  - geopolitical factors in, 392–93
  - impacts of coup on rule of law, 382, 389, 391–94
- Mali and, 393
- overview, 383
- Russia and, 392–93
- transfer of power in, 391–92
- uranium mining in, 392
- US and, 393
- Nigeria
  - absence of military leaders from ballot, 399
  - All Progressive Congress (APC), 398–99, 403
  - elections in, 398–99
  - election technology in, 399
  - judicialization of elections in
    - danger of legitimizing authoritarianism, 404–5
    - high-profile elections, 402–4, 405
  - legitimacy, effect on, 401, 402–4, 405
  - Liberia compared, 400
  - overview, 383, 390
  - social media and, 403, 404
  - Labour Party (LP), 398–99, 403

- New Nigeria Peoples Party (NNPP), 398–99
- People's Democratic Party (PDP), 398–99, 403
- successful transfer of power in, 383, 389–90, 398–99
- third parties in, 399
- variations in rule of law in, 131
- Nixon, Richard, 18
- nonbinding instruments, increased use of, 67–68
- nonstate entities, indirect effect of international law on domestic law and, 42
- North American Free Trade Agreement (NAFTA), 67
- North Atlantic Treaty Organization (NATO)
- backlash against, 77
  - Finland and, 344
  - Kosovo, NATO/EU peacekeeping operations in, 46
  - Libya, intervention in, 33
  - membership conditions, 155
  - peacekeeping operations, 46
  - Sweden and, 344
  - US and, 77
- North Macedonia, absence of movement toward EU accession, 168–69
- “North Star” effect, 282
- Oakeshott, Michael, 7
- OAS. *See* Organization of American States (OAS)
- Obama, Barack, 81
- Obio, Peter, 398–99
- Office of the High Commissioner for Human Rights, 36
- Ondimba, Ali Bongo, 395, 397
- Open Skies Treaty, 77
- Opium War, 93
- Orbán, Viktor
- generally, 255, 494
  - abuse of rule of law by, 487, 488
  - authoritarian aims of, 51
  - consolidation of power by, 257–58, 272
  - elections and, 263–64
  - Erdogan compared, 344
  - EU and, 485
  - judicial independence and, 197
  - populism and, 76
  - Ukraine War and, 485
- Organization for Security and Co-operation in Europe (OSCE)
- Office of Democratic Institutions and Human Rights (ODIHR), 274–75, 277
- promotion of rule of law and, 463
- Organization of African Unity, 206
- Organization of American States (OAS). *See also specific agreement or body*
- constitution-shaping and, 159
  - rule of law generally, 186
- overstatement of rule of law, 462
- Palau, UN trusteeship system and, 32–33
- Palombella, Gianluigi, 15
- Panupong Jadnok, 421, 424–25, 426, 427, 428
- Panusaya Sitthijirawattanakul, 419–20, 421, 424–25, 426, 427, 428
- Paraguay
- Constitution, 353–54
  - IACHR, backlash against, 66
- Paris Agreement, 77, 80, 231
- Paris Principles, 36
- Parit Chiwarak, 420–21, 427
- Parliamentary Assembly of the Council of Europe (PACE), 270, 284–85, 297–98, 306
- Pavel, Carmen, 91
- Pavin Chachavalongpun, 414
- PCA. *See* Permanent Court of Arbitration (PCA)
- peacekeeping operations. *See also specific country*
- African Union, 46
  - emergence of, 492
  - EU, 46
  - expansion of Security Council powers, 219
  - as external focus of Security Council, 223

- peacekeeping operations (cont.)
  - NATO, 46
  - Rule-of-law challenges, 221
  - Security Council generally, 46
- Pech, Laurent, 112, 487
- Pegasus software, 273–74
- Peña Nieto, Enrique, 369–70
- Peng Zhen, 434
- Permanent Court of Arbitration (PCA)
  - backlash against, 67
  - China and, ix–x, 67, 450
  - dispute resolution as goal of, 30–31
- Permanent Court of International Justice, 31
- Perón, Juan Domingo, 349, 352–53
- Perú
  - Constitution, 353–54
  - variations in rule of law in, 131
- Peters, Anne, xi, 482, 485–86, 495
- Petro, Gustavo, 378
- Pettit, Philipp, 17–18
- phenomenological conception of rule of law, 26
- Philippines
  - attacks on rule of law in, 428–29
  - backsliding in, 55, 62, 130
  - China, territorial dispute with, 450
  - ICC, backlash against, 67
  - South China Sea Arbitration, 450
  - variations in rule of law in, 131
- Pita Limjaroenrat, 428
- Plato, 18
- Poland
  - abuse of rule of law in, 485
  - authoritarianism in, 77–78
  - backsliding in, 55, 58–59, 62, 130, 196
  - CoE accession, 263, 299–300
  - Constitution, 202
  - Constitutional Tribunal, 200, 202, 270, 281
  - constitution-shaping in, 157
  - COVID-19 pandemic relief in, 204, 205
  - directly applicable laws, enforcement of, 265–70
  - Disciplinary Chamber of Supreme Court, 266, 270
  - ECHR and, 263
  - ECJ cases, 264–66, 270
  - ECtHR cases, 264–65, 269–70, 273–74
  - elections in, 264–65, 275, 484
  - in EU, 263
  - EU constitution-shaping in, 169
  - Extraordinary Chamber of Supreme Court, 270
  - freezing of funds by EU, 267–68
  - as illiberal state, 190
  - infringement actions against, 198, 199–203
  - judicial independence in, 37, 63, 199–203, 264–65, 266, 269–70, 273
  - Law and Justice Party (PiS), 264–65, 281
  - membership conditions, impact of, 267–68
  - National Judicial Council, 266, 270
  - opposition, electoral success of, 281–82
  - PACE and, 270
  - resistance to backsliding in, 52, 483–84
  - state sovereignty and, 485
  - surveillance in, 273–74
  - Ukraine War and, 205
  - Venice Commission and, 275–76
- Polanyi, Karl, 83
- polyarchy, 59–60
- Ponce, Alejandro, xi, 76–77, 482
- populism
  - backsliding and, 115, 120, 142–48, 149
  - as challenge to rule of law, 347
  - constitutionalism, as challenge to, 347
  - COVID-19 pandemic and, 76
  - democracy, as challenge to, 347
  - Erdoğan and, 76
  - in Hungary, 76
  - hypocritical attitude toward rule of law, 494
  - illiberalism of, 494–95
  - immigration and, 84
  - López Obrador and, 358

- Orbán and, 76  
 rise of, 76–77  
 Trump and, 76, 77  
 well-tempered power and, 488
- Portugal  
 backsliding in, 140  
 ECJ *Portuguese Judges* case, 199–200, 202–3
- Postema, Gerald, 6, 29
- “postnational liberal international order,” 34
- Pou Giménez, Francisa, xiii–xiv, 79, 482, 484
- power  
 arbitrary exercise of power (*see* arbitrary exercise of power)  
 concepts of, 5  
 law as vehicle for exercise and communication of, 468  
 rule of law, relation to, 469  
 well-tempered power (*see* well-tempered power)
- Prayuth Chan-ocha, 410, 418
- pressure on rule of law, 461–62
- private actors, indirect effect of international law on domestic law and, 43–44
- Project on International Courts and Tribunals, 50
- Prost, Kimberly, 229
- Pufendorf, Samuel, 89
- Putin, Vladimir  
 generally, xiii, 313, 315, 429  
 abandonment of legal reforms, 289  
 authoritarianism and, 78  
 Council of Europe and, 308–9  
 ECtHR, backlash against by, 65  
 humanitarian intervention, invasion of Ukraine portrayed as, 33–34  
 justifications for Ukraine War, 87–88  
 repudiation of treaties by, 289–90  
 Second Chechen War and, 309  
 traditional values, invasion of Ukraine viewed as supporting, 78
- Rajah, Jothie, 12, 26, 231, 406
- Ratner, Steven, 28–29
- Raz, Joseph, 14, 19, 102, 472–73
- Regional Comprehensive Economic Partnership, 457
- regional courts. *See also specific court*  
 Africa, impact in, 407–9  
 backlash against, 209  
 direct effect of international law on domestic law and, 44–45, 47  
 overview, 183  
 as “trustee courts,” 44–45
- regional organizations. *See also specific organization*  
 backlash against, 209  
 Ecuador in, 261  
 indirect effect of international law on domestic law and, 37–38  
 overview, 183  
 peace as goal of, 30  
 Russia in, 261  
 Turkey in, 261  
 Venezuela in, 261
- Reporters Without Borders, 63
- responsibility to protect (R2P), 33–34, 222–23
- Review of African Political Economy*, 393
- Ristei Gugiu, Mihaiela, 115
- Roch Kaboré, March, 394
- Rodrik, Dani, 83
- rogue states  
 abuse of rule of law by, 487–88  
 asymmetric rupture and, 279–80, 486–87  
 directly applicable laws, enforcement of, 262, 265–70, 280  
*erga omnes* obligations and, 262, 271–74, 280  
 membership conditions, impact of, 260, 261–62, 267–68  
 national rule of law, ineffectiveness of in bringing about change, 279  
 supererogatory compliance and, 262, 274–78  
 Transition 2.0 and, 259, 260–63  
 transnational rule of law, use of to restore democracy, 256–57, 278–79  
 Venice Commission and, 275–76



- rogue states (cont.)
  - violating domestic law to restore democracy in, 279–81, 282, 486–87, 488–89
- Romania, CoE accession, 299–300, 483–84
- Rosen, Laurence, 13
- Rotterdam Rules, 211
- Rudden, Bernard, 292
- Ruggie, John, 79
- “rule by law,” 11–12, 118, 338–40, 472
- rule of law. *See specific topic*
- Russia. *See also* Soviet Union
  - absence of rule of law in, 495
  - annexation of Ukrainian territory by, 88
  - assassinations committed by, 314
  - authoritarianism in, 78
  - Burkina Faso and, 394–95
  - China and, 81
  - civil society organizations in, 64
  - Constitutional Court, 65, 301, 314
  - constitutional crisis in, 301
  - Council of Europe and
    - accession to, 307–8
    - early engagement with, 286–87, 290, 296–97, 303–6
    - “eminent lawyers” report, 299, 301–3
    - expulsion from, xiii, 65, 78, 169, 264, 287–88, 290
    - failures of, 482
    - overview, 314–15
    - reluctance to admit, 298–99
    - revisionist account of, 289–90
    - “therapeutic admission,” 298, 299, 306, 307, 482, 483
  - Crimea, annexation of, 288
  - Criminal Procedure Code, 304–5
  - ECHR and
    - backlash against, 288–89
    - expulsion from, 65, 78, 287–88
    - incompatibility of criminal code with, 302
    - promise to accede to, 304
    - ratification of, 287, 309
    - violations of, 309–13
  - ECtHR and
    - backlash against, 65
    - cases against Russia in, 309–13
    - challenges to authority of, 314
    - consent to jurisdiction, 309
    - failures of, 318, 483
    - opposition to reforms in, 288–89
    - elections in, 306
    - factors influencing shifts in rule of law in, 52
    - First Chechen War, 303, 305
    - Georgia, annexation of territory in, 288
    - Gorbachev, abandonment of vision of, 289
    - human rights in, 301–3
    - as illiberal state, 73, 169
    - lack of criticism in, 484
    - leadership and participation in international organizations, attempts at, 71
    - neutralization of international organizations, attempts at, 69
    - Niger and, 392–93
    - overview, xiii
    - in regional organizations, 261
    - Second Chechen War, 309
    - separation of powers in, 304–5
    - on sovereign equality, 92–93
    - as successor to Soviet obligations, 286
    - Ukraine War (*see* Ukraine War)
    - UN Charter, violations of, 288
    - US and, 80–81
  - Rutskoi, Alexander, 301
  - Rwanda, backlash against African Court in, 66–67
  - Ryan, Alan, 217
  - Rybkin, Ivan, 304
  - Saeed, Kais, 207
  - Sajó, András, 489
  - Salgado Macedonio, Félix, 364–65
  - sanctions. *See also specific country*
    - bodies of experts, 228
    - expansion of Security Council powers, 220
    - as external focus of Security Council, 223

- monitoring bodies, 228
- rule-of-law challenges, 222
- Sanctions Committees, 228
- Security Council generally, 42, 46
- Working Group on General Issues of Sanctions, 228
- Sandholtz, Wayne
  - on abuse of rule of law, 289
  - on arbitrary exercise of power, 112–13, 117, 184, 214, 229, 308, 333, 345, 384–85, 411–12, 415, 467, 468
  - on avoiding formalism, 385, 386, 470
  - on backlash against rule of law, 495
  - on backsliding, 482
  - conception of rule of law, 350–51
  - on “culture of conduct,” 290, 474–75
  - on democracy, 112
  - on democracy and rule of law, 344
  - on democratic participation, 241
  - on enmeshment of national and international law, 317–18, 476
  - on goal-oriented approach to rule of law, 344–45, 384, 466
  - on indicators, 63, 114, 122, 123
  - on institutionalized practice, 385
  - on international law, 252, 407–8
  - on lack of opportunity to be heard, 320, 416
  - meta-principle of rule of law and, 224
  - on metrics for measuring rule of law, 386
  - on multiple levels of rule of law, 322
  - on recursive nature of international law, 25
  - on rule of law as principle and practice, 223–24
  - on social order, 408
  - on transnational legal ordering (TLO), 287, 388, 406–7
  - on “virtuous transnational cycle,” 240–41
- Sankara, Thomas, 394
- Santos, Juan Manuel, 378
- São Tomé and Príncipe, impacts of coup on rule of law, 382
- Sato, Yuko, 143
- Scalia, Antonin, 256
- Scheppele, Kim Lane
  - generally, xii–xiii
  - on abuse of rule of law by rogue states, 487, 488
  - on authoritarianism, 322
  - on backsliding, 112
  - on international courts, 38
  - on rule of law “writ large,” 253, 486–87
  - on rule of law “writ small,” 252, 475
  - on Security Council, 211–12, 216, 225–26
  - terrorism and, 47
  - on violating domestic law to restore democracy, 488–89
- Schmitt, Carl, 11, 19, 255
- Schoppe, Christoph, xi–xii, 476, 482, 483, 484, 485
- Security Council. *See also specific country*
  - arbitrary exercise of power and, 214, 229
  - Australia/ANU initiative, 233–40, 480–81
  - Austria/NYU initiative, 233–40, 480–81
  - bodies of experts, 228
  - during Cold War, 212–13, 228
  - constitution-shaping and, 163–67
  - discourse regarding rule of law, 224–26
  - emergence of rule of law in, 213, 232–33, 490
  - empirical data, 216–18
  - external formulation of rule of law, 223, 224, 225–26, 227, 230
  - formal powers to promote rule of law, 218
  - General Assembly and, 227–28
  - as “hard case” relating to rule of law, 213–14
  - ICJ and, 227–28
  - internal formulation of rule of law, 223, 224, 225, 226–27, 228–29
  - interventions authorized by, 30, 33
  - meetings on rule of law, 242–48
  - micro-TLOs and, 233–42
  - monitoring bodies, 228

- Security Council (cont.)  
 Office of the Ombudsperson, 42–43, 47–48, 222, 228–29, 238, 239–40  
 overview, xii, 212  
 peace as goal of, 30  
 peacekeeping operations (*see* peacekeeping operations)  
 power of, 109  
 procedure and rules regarding rule of law, 224, 226–27  
 reform efforts, 80  
 reluctance to apply rule of law to itself, 211–12  
 Resolution 1373, 47  
 sanctions (*see* sanctions)  
 sanctions committees, 228  
 scholarly focus on, 214–16  
 structures regarding rule of law, 224, 227–30  
 terrorism and, 42–43, 47, 185, 216, 229  
 transnational law and, 253  
 transnational legal ordering (TLO), in context of, 210–11  
 UN Charter, authority under, 210, 218  
 use of force, authorization of (*see* use of force, authorization of)  
 veto power, 33–34  
 well-tempered power and, 480  
 Working Group on General Issues of Sanctions, 228
- Selznick, Philip, 15, 20
- Sen, Amartya, 7–8
- separation of powers  
 African Charter and, 206–7  
 Austria/NYU initiative and, 236, 241, 481  
 in DRC, 206–7  
 local rule-of-law cultures and, 173  
 in rule of law, 19  
 in Russia, 304–5  
 UN Charter, lack of in, 227–28  
 in US, 19
- September 11 terrorist attacks, 42, 47, 232
- Serbia as illiberal state, 169
- Shaffer, Gregory  
 on abuse of rule of law, 289  
 on arbitrary exercise of power, 112–13, 117, 184, 214, 229, 308, 333, 345, 384–85, 411–12, 415, 467, 468  
 on avoiding formalism, 385, 386, 470  
 on backlash against rule of law, 495  
 on backsliding, 482  
 conception of rule of law, 350–51  
 on “culture of conduct,” 290, 474–75  
 on democracy, 112  
 on democracy and rule of law, 344  
 on democratic participation, 241  
 on enmeshment of national and international law, 317–18, 476  
 on goal-oriented approach to rule of law, 344–45, 384, 466  
 on indicators, 114, 122, 123  
 on institutionalized practice, 385  
 on international law, 252, 407–8  
 on lack of opportunity to be heard, 320, 416  
 meta-principle of rule of law and, 224  
 on metrics for measuring rule of law, 386  
 on multiple levels of rule of law, 322  
 on rule of law as principle and practice, 223–24  
 on social order, 408  
 “soft law” and, 6  
 on transnational legal ordering (TLO), 24, 26, 184, 287, 388, 405–7  
 on US–China relations, 81–82  
 on “virtuous transnational cycle,” 240–41
- Shanghai Cooperation Organization, 71
- Sharlet, Robert, 292
- Shklar, Judith, 5, 465
- Shumeyko, Vladimir, 304
- Sierra Leone  
 elections in, 398  
 Security Council and  
 peacekeeping operations, 46  
 sanctions, 228
- Sikkink, Kathryn, 51

- Singapore as dual state, 12
- Singapore Mediation Convention, 450
- Slater, Dan, 263
- Slaughter, Anne-Marie, 105
- Slovakia, CoE accession, 299–300, 483–84
- Slovenia
  - CoE accession, 483–84
  - EU constitution-shaping in, 169
- Smith, Adam, 82
- Smith, Ian, 220
- “social” rule of law, 178–80
- societal constitutionalism, 479–80
- societal equilibrium, 118–19
- socio-legal analysis, 383–84
- “soft law”
  - generally, 81
  - European Commission and, 198
  - increased use of, 67–68
  - Venice Commission and, 198
- Solange* jurisprudence, 47
- solutions to backsliding
  - cultural factors, 84–85
  - economic reform, requirement of, 82–84
  - multilevel approach, requirement of, 80–82
- overview, 4
- Somalia
  - African Union peacekeeping operations in, 46
  - Security Council and
    - constitution-shaping, 164, 165–66
    - use of force, authorization of, 30
- Somchai Preechasilapakun, 413
- South Africa
  - Constitution, 259
  - as dual state, 320
  - ICSID and, 67
  - Security Council sanctions against, 46, 220
  - variations in rule of law in, 131
- South African Development Community, 67
- South China Sea Arbitration, 450
- Southern Rhodesia, Security Council sanctions against, 46, 220
- South Korea, backsliding in, 55, 62, 140
- South Sudan
  - Security Council constitution-shaping in, 163, 164–66
  - UN constitution-shaping in, 170
  - UN role in creation of, 160
- sovereign equality, 92–93
- Soviet Union. *See also* former Soviet bloc states; Russia
  - China and, 432–33
  - collapse of, 24, 46, 232
  - Constitution, 291–92
  - Council of Europe and, 284, 294–96
  - elections in, 286
  - glasnost*, 285
  - Gorbachev as head of, 284
  - Korean War, Soviet abstention and, 220–21
  - lack of rule of law in, 292–93
  - Marxist–Leninist view of law in, 293
  - perestroika*, 285
  - Russia as successor to Soviet obligations, 286
- Sripati, Vijayashri, 172–73, 176
- state sovereignty
  - constitution-shaping respecting, 174–77
  - Hungary and, 485
  - ICJ on, 90
  - Poland and, 485
  - UN Charter on, 90
- Stone Sweet, Alec, 32, 44–45
- Strategic Arms Reduction Treaty, 289–90
- Stuchka, Pyotr, 293
- substance of law, relation to rule of law, 8–9
- Sudan
  - African Union, suspension by, 159
  - impacts of coup on rule of law, 382
  - Security Council sanctions and, 228
- supranational rule of law
  - defined, 184
  - in ECJ, 192
  - international organizations and, 185
  - overview, 208–9
- surveillance
  - in Hungary, 274

- surveillance (cont.)
  - in Poland, 273–74
- Sustainable Development Goals (SDGs), 179–80
- Sweden, NATO and, 344
- Switzerland, backlash against ECtHR in, 66
- Taliban, 42, 153, 222
- Tamanaha, Brian
  - generally, x–xi
  - on avoiding checklists, 474
  - defining rule of law, 6
  - on development of rule of law, 473
  - functionalist approach to rule of law, 319
  - on horizontal benefits of rule of law for sovereigns (*see* horizontal benefits of rule of law for sovereigns)
  - on legality principle, 22–23
  - on legally ordered communities, 467–68, 469
  - on manifest functions of rule of law, 7
  - on state sovereignty, 485
  - on support for rule of law, 463
  - on well-tempered power, 469
- Tamntawan Tuatulanon, 427
- Tandja, Mamadou, 392
- Tanzania
  - African Court, backlash against, 66–67
  - rule of law in, 207
- Tecmed* arbitration, 43–44
- teleological view of rule of law. *See* goal-oriented approach to rule of law
- telos* of rule of law, 96–97
- terrorism
  - due process and, 42–43, 185
  - ECJ and, 42–43, 185, 229
  - rule of law and, 42–43
  - Security Council and, 42–43, 47, 185, 216, 229
  - September 11 terrorist attacks, 42, 47, 232
  - tension between suppression and due process and proportionality, 73, 229
  - US and, 72
  - “war on terror,” 46, 75
- TEU. *See* Treaty on European Union (TEU)
- Teubner, Gunther, 479–80
- Thailand
  - arbitrary exercise of power in, 411–12, 415
  - Article 49 of Constitution, proceedings under, 422–26
  - Article 112 of Criminal Code
    - arrest of dissidents under, 421–22, 427–28
    - challenges to, 417–18, 428
    - increase in prosecutions under, 414–15
    - opportunity to be heard, lack of, 416
    - overview, 410, 412
    - predictability of exercise of power, lack of, 416
    - proportionality, lack of, 417
    - public reasoning, lack of, 416–17
    - wielders of power not subject to law, 415–16
  - “attitude adjustment” in, 414
  - backlash against of rule of law in, 411, 412, 420–26
- Campaign Committee for the Amendment of Article 112 (CCAA112), 417
- challenges facing, 429–30
- Constitution (1997), 413
- Constitution (2017), 415–16, 418
- Constitutional Court, 422, 424–26, 428
- coups in, 412–14
- demands of protest movement, 418–20
- elections in, 410, 428, 429–30
- Move Forward Party, 410, 428
- National Council for Peace and Order (NCPO), 410, 413–15, 417–18, 422, 428
- overview, xiv

- People's Party, 412  
 protest movement in, 410, 412, 418–20  
 royalist nature of law, 413  
 “rule of coups” in, 413  
 “shattering the ceiling,” 420  
 Shattering the Palace, 427  
 Thai Lawyers for Human Rights (TLHR), 415, 417–18  
 treason in, 426  
 United Front of Thammasat and Demonstration (UFTD), 419–21, 422–23  
 violence against dissidents in, 415  
 working toward rule of law in, 412, 427–28  
 Thaksin Shinawatra, 413–14  
 “thick” rule of law, 13–14, 15–16, 116, 252, 472  
 “thin” rule of law, 13–15, 116, 186, 252, 472  
 “third wave” of democratization, 491  
 Third World Approaches to International Law (TWAIL), 22, 172  
 Thompson, E.P., 186  
 Thongchai Winichakul, 413  
 Timor Leste  
     Security Council and  
         constitution-shaping, 163, 165–66  
         peacekeeping operations, 46, 219  
         use of force, authorization of, 221  
     UN role in creation of, 160  
 Tinubu, Bola Ahmed, 398–99, 403  
 TLO. *See* transnational legal ordering (TLO)  
 Transatlantic Trade and Investment Partnership, 81  
 Transition 1.0, 261  
 Transition 2.0, 259, 260–63  
 transnational law  
     EU and, 253  
     IACHR and, 253  
     Security Council and, 253  
     UN Charter and, 253  
     WTO and, 253  
 transnational legal ordering (TLO)  
     actor mismatch and, 235  
     in Africa, 405–7, 478  
     authoritarian states and, 317–18  
     in China, 447  
     commerce and, 109  
     conceptual aspects of, 231  
     ECHR and, 210–11  
     ECtHR and, 191, 210–11  
     EU and, 109, 191–92  
     expansion in rule of law and, 50  
     horizontal benefits of rule of law for  
         sovereigns and, 108–10  
     ICC and, 210–11  
     IMF and, 109  
     legally ordered communities, 97–98  
     micro-TLOs, 233–42  
     in Mongolia, 478  
     overview, 24–26, 230  
     presenting problem, 231–32, 233–34  
     recursive cycles, 234–35, 343–44  
     regional TLOs, 482  
     Security Council in context of,  
         210–11  
     tensions in, 484  
     transnational rule of law and, 24–26,  
         182, 184–85  
     in Turkey, 343–44  
     UN and, 109  
     World Bank and, 109  
     WTO and, 109  
 transnational rule of law  
     in Africa, 405  
     defined, 252  
     direct effect of international law on  
         domestic law (*see* direct effect of  
         international law on  
         domestic law)  
     domestic analogies, 476–77  
     empirical trends (*see* empirical  
         trends in rule of law)  
     extrapolation from domestic law,  
         477, 480  
     “growing” versus “grafting,” 496–97  
     indirect effect of international law on  
         domestic law (*see* indirect effect  
         of international law on  
         domestic law)  
     judicial independence and, 200  
     “law talk” and, 22

- transnational rule of law (cont.)  
 minimalist perspective on rule of law  
   (see minimalist perspective on rule of law)  
 as moving beyond national focus, 252–55, 282–83  
 multiple levels of, 476  
 “North Star” effect, 282  
 overview, xv, 4  
 recency of, 489–91  
 rise of, 463  
 rogue states, use in to restore  
   democracy, 256–57, 278–79  
 role of international law in, 22–24  
 socio-legal theory of, 23–24  
 time, relevance of, 496  
 transnational legal ordering (TLO)  
   and, 24–26, 182, 184–85
- Trans-Pacific Partnership, 77, 81
- Traoré, Ibrahim, 394
- Treaty for Establishment of the East African Community, 207
- Treaty on European Union (TEU)  
 accession criteria, 155  
 backsliding, response to, 197  
 elections and, 276  
*erga omnes* obligations and, 272  
 infringement actions under, 197–99, 200–2  
 judicial independence and, 199–203  
 rule of law in, 37, 190, 196, 204–5
- Treaty on Conventional Armed Forces in Europe, 289–90
- Treaty on the Carriage of Goods by Sea (Rotterdam Rules), 211
- Trechsel, Stefan, 302–3
- Trindade, Antonio Cançado, 189–90
- Trinidad and Tobago  
 corporal punishment in, 189–90  
 IACHR, withdrawal from, 66  
 IACtHR, backlash against, 66, 189–90
- Trump, Donald  
 “America First” policies, 72, 77  
 Bolsonaro compared, 348  
 China and, 82  
 populism and, 76, 77  
 resistance to policies, 79  
 withdrawal from treaties by, x, 77  
 WTO and, 31
- “trustee courts,” 44–45
- Trusteeship Council, 172
- Tsighe Taye, Mihreteab, 382
- Tunisia, emergency decrees in, 207
- Turkey  
 arbitrary exercise of power in, 333  
 backsliding in, 55, 58–59, 62, 130  
 constitutional complaint  
   mechanism, 338–40, 345  
 Constitutional Court (AYM), 326, 330, 331, 338–40, 341–42, 345  
 constitutional immunity in, 329–31  
 Council of Europe and, 316, 317, 345  
 curfews in, 328–29, 343–44  
 Democratic People’s Party (DEHAP), 325, 333–34  
 ECHR, ratification of, 316  
 ECtHR and  
   adverse judgments in, 317  
   arbitrary exercise of power and, 345  
   challenges to authority of, 326, 337–38  
   on disenfranchisement of minorities, 335–37  
   dual role of, 333  
   electoral threshold and, 333–35, 344  
   failures of, 345–46, 482–83  
   inaccessibility of, 317  
   inadmissible cases, 323, 326, 337–38  
   overview, xiii, 318, 323–24  
   positive judgments in, 316  
   unheard cases, 337–42  
 electoral threshold in, 324–25, 333–35, 344  
 emergency rule in, 331–32  
 EU and, 316, 317, 325–26, 343, 345  
 failure to sanction, 316, 317  
 Fethullah Gülen movement, 327, 331, 343  
 High Council of Judges and Prosecutors (HSYK), 326–27

- Istanbul Convention, withdrawal from, 333
- judicial independence in, 326–27
- Justice and Development Party (AKP), 316, 324, 326–27, 332, 334
- Kurds, military attacks on, 341–42, 343–44
- lawlessness in, 341–42, 343–44
- move away from rule of law, 343–44
- Nationalist Movement Party (MHP), 329, 332
- one-man rule, move toward, 332–33
- one-party rule in, 344
- overview, xiii
- Peoples' Democratic Party (HDP), 328, 329–31, 332, 335–36, 343
- PKK, war with, 328
- in regional organizations, 261
- “rule by law” in, 338–40
- rule of law reforms in, 325
- snap elections in, 328, 329
- State of Emergency Inquiry Commission, 339–40
- transnational legal ordering (TLO) and, 343–44
- Ukraine War and, 343
- Venice Commission and, 332–33, 336, 339
- Ukraine
  - annexation of territory by Russia, 88
  - as illiberal state, 169
  - right to benefits of rule of law, 102, 106
  - Ukraine War (*see* Ukraine War)
- Ukraine War
  - generally, ix, xiii
  - as breach of rule of law, 102, 106
  - constitution-shaping, effect on, 181
  - General Assembly and, 88
  - humanitarian intervention, invasion portrayed as, 33–34
  - Hungary and, 205
  - ICJ and, 88
  - justifications for, 87–88, 93
  - Orbán and, 485
  - Poland and, 205
  - Putin's justifications for, 87–88
  - traditional values, invasion viewed as supporting, 78
  - Turkey and, 343
  - war crimes in, 94
- UNESCO. *See* Educational, Scientific and Cultural Organization (UNESCO)
- United Kingdom
  - Brexit, 52, 73
  - Brighton Conference, 66
  - ECtHR, backlash against in, 66
  - Human Rights Act, 38, 66
  - international human rights law, incorporation of, 38
  - variations in rule of law in, 131
- United Nations. *See also specific agreement or body*
  - Charter (*see* Charter of the United Nations)
  - constitution-shaping and, 160, 162–63, 170
  - consultants on rule of law, 41
  - defining rule of law, 117
  - General Assembly (*see* General Assembly (of UN))
  - Paris Principles, 36
  - peace as goal of, 30
  - peacemaking, constitution-shaping as, 160–62
  - phenomenological conception of rule of law and, 26
  - promotion of rule of law and, 463
  - on rule of law, 16
  - rule of law generally, 495
  - Security Council (*see* Security Council)
  - South Sudan, role in creation of, 160
  - Timor Leste, role in creation of, 160
  - transnational legal ordering (TLO) and, 109
  - trusteeship system, 32–33
  - Ukraine War and, 88
- United States
  - Afghanistan, invasion of, 75
  - backsliding in, 58–59, 62, 148, 381
  - Burkina Faso and, 394–95
  - China and, 80–81, 442



- United States (cont.)  
   courts, right of sovereigns to redress  
     in, 107  
   as dual state, 12–13  
   engagement with China, 81–82  
   factors influencing shifts in rule of  
     law in, 52  
   Guantanamo Bay detainees, 20, 93  
   Human Rights Council and, 72,  
     77, 80  
   ICC and, 72, 77  
   ICSID and, 67  
   illiberalism in, 72  
   Indo-Pacific Economic Framework  
     and, 80–81  
   Iran, nuclear deal with, 77  
   Iraq War (*see* Iraq War)  
   Joint Transatlantic Agenda, 80–81  
   Libya, intervention in, 33  
   minorities in, 10  
   “Muslim ban,” 79  
   NATO and, 77  
   Niger and, 393  
   Paris Agreement and, 77, 80  
   resilience of rule of law in, 79  
   as revisionist power, 72–73  
   Russia and, 80–81  
   separation of powers in, 19  
   September 11 terrorist attacks, 42,  
     47, 232  
   terrorism and, 72  
   trade war with China, 31  
   UNESCO and, 77, 80  
   variations in rule of law in, 131  
   “war on terror,” 46, 75  
   WHO and, 77  
   withdrawal from treaties by, x, 77  
   WTO and, x, 31, 40–41, 67, 77  
 Universal Declaration of Human Rights  
   generally, 286  
   national constitutions, rule of law  
     incorporated into, 35  
   rule of law in, 34–35  
 University of New South Wales, 237  
 University of Queensland, 237  
 Uprimny, Rodrigo, 355  
 Uribe, Álvaro, 378  
 Uruguay, Constitution, 352–53  
   use of force, authorization of. *See also*  
     *specific country*  
   expansion of Security Council  
     powers, 220–21  
   as external focus of Security  
     Council, 223  
   responsibility to protect (R2P),  
     33–34, 222–23  
   rule-of-law challenges, 222–23  
   Security Council generally, 46–47  
   UN Charter on, 30, 176–77  
   use of term “rule of law,” 464–66  
   USSR. *See* Soviet Union  
   Uzbekistan, improvement in rule of law  
     in, 131  
 Vajiralongkorn (Thailand), 414,  
   415, 420  
 Vallelersundi, Loyola de Palacio, 296  
 Van Aken, Anne, 45  
 Vargas, Getulio, 349, 352–53  
 Varieties of Democracy (V-Dem),  
   58–60, 111, 121, 257  
 Vattel, Emer de, 89–90  
 Venezuela  
   backsliding in, 55, 130  
   Constitution, 353–54  
   IACHR, withdrawal from, 66  
   IACtHR, backlash against, 66  
   judicial review in, 351  
   lack of criticism in, 484  
   in regional organizations, 261  
 Venice Commission. *See* Commission  
   for Democracy through Law  
   (Venice Commission)  
 Versteeg, Mila, 52–53, 55  
 vertical functions of rule of law, 99  
 Vienna Convention on Diplomatic  
   Relations, 77  
 Vienna Convention on the Law of  
   Treaties (VCLT), 176–77  
 Voeten, Eric, 39  
 Volpe, Valentina, 180  
 V-Party, 143  
 Wald, Patricia M., 256  
 Waldron, Jeremy  
   generally, 102

- on analogy of states to individuals, 105–6
- on contestation, 19
- on discursive quality of rule of law, 15
- on domestic rule of law, 100–2
- on general norms, 14
- horizontal benefits of rule of law for sovereigns, argument against, x–xi, 87, 89, 95, 96, 99–100
- inconsistency with international law, 102
- on purpose of rule of law, 97, 98
- on rule of law as “solution concept,” 466–67
- on states with legal rights but not protection of rule of law, 107
- Wanchalearm Satsaksit, 418
- “war on terror,” 46, 75
- Watts, Arthur, 92, 104, 105–6
- Weah, George, 400
- well-tempered power
  - arbitrary exercise of power, as remedy for, 467, 468–71
  - “culture of conduct” and, 474–75
  - how to achieve, 474
  - limiting versus modifying power, 471–72
  - populism and, 488
  - requirements for, 462
  - Security Council and, 480
  - as *telos* of rule of law, 473–74
- Wichai (Thai dissident), 415, 417–18
- Williams, Bernard, 28
- Woolcock, Michael, 496–97
- World Bank
  - applications for project financing, 176
  - constitution-shaping and, 157–58, 172–73
  - consultants on rule of law, 41
  - Convention on the Settlement of Investment Disputes, 45
  - country policy and institutional assessments (CPIA), 157–58
  - defining rule of law, 16
  - on good governance, 179
  - indexes for measuring rule of law, 52–53
  - phenomenological conception of rule of law and, 26
  - power of, 109
  - promotion of rule of law and, 463
  - rule of law generally, 495
  - transnational legal ordering (TLO) and, 109
- World Health Organization (WHO), 77
- World Intellectual Property Organization (WIPO), 70
- World Justice Project
  - data collection, 121–22
  - defining rule of law, 117
  - indicators, 122–23
  - phenomenological conception of rule of law and, 26
- Rule of Law Index*, 52–54, 55–58, 113–14, 118, 120, 124–26, 131–32
- transnational rule of law and, 184–85
- World Summit Outcome (2005), 104, 179
- World Trade Organization (WTO)
  - backlash against, 67, 77
  - China and, 74, 156, 167–68, 434, 446
  - constitution-shaping and, 167–68
  - dispute resolution as goal of, 31
  - former Soviet bloc states, accession of, 50
  - membership conditions, 156
  - right of sovereigns to redress in, 106
  - rule of law and, 40–41
  - transnational law and, 253
  - transnational legal ordering (TLO) and, 109
  - Trump and, 31
  - US and, x, 31, 40–41, 67, 77
- WTO. *See* World Trade Organization (WTO)
- Xi Jinping
  - generally, xiv–xv
  - abuse of rule of law by, 321
  - authoritarianism and, 78, 455
  - on “comprehensive rule of law,” 440–42

- Xi Jinping (cont.)  
  legal reform and, 444–45  
  on rise of East and decline of West, 493
- Yeltsin, Boris  
  generally, xiii, 286, 315  
  constitutional crisis and, 301  
  Council of Europe and, 304  
  First Chechen War and, 303  
  legal reforms of, 289  
  reelection of, 306  
  resignation of, 308–9
- Yemen  
  Security Council constitution-shaping in, 163, 164–65  
  UN constitution-shaping in, 160
- Yingluck Shinawatra, 417
- Yugoslavia, civil wars in, 232
- Yukos Oil Company, 313
- Yüksekdağ, Figen, 330, 337
- Zaldívar, Arturo, 368
- Ziblatt, Daniel, 113
- Zimbabwe  
  elections in, 398  
  improvement in rule of law in, 131  
  South African Development Community, backlash against, 67
- Zorkin, Valery, 301
- Zürn, Michael, 34