

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, Kwane Anthony, 80
- Arab Spring, 343
- Arajarvi, 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 Cooperation 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
- Issofou, 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, Mattias, 10
- Kurban, Dilek, xiii, 482–83
- Kuwait, Iraqi invasion of, 232
- Kwankwaso, Rabiū 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, Giorgia, 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 Siththijirawattanakul, 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, Francisca, 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
 Sripathi, 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 (TWAAIL), 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