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

authoritarianism (cont.)	solutions to
neutralization of international	cultural factors, 84-85
organizations, attempts by	economic reform, requirement of,
authoritarian regimes, 69–70	82-84
Orbán and, 51	multilevel approach, requirement
in Poland, 77–78	of, 80–82
Putin and, 78	overview, 4
rogue states (see rogue states)	weakening of limits to state power
"rule by law" and, 472	and, 114, 119–20, 130, 140,
in Russia, 78	144–48
"thin" rule of law and, 186	Bai Por, 427–28
transnational legal ordering (TLO)	Baka, András, 269
and, 317–18	Bangalore Principles, 188–89
violence and, 321–22	Bannelier, Karine, 221
Xi and, 78, 455	Bannon, Steve, 494
Azerbaijan, ECtHR and, 318	Barber, Nicholas, 21
rizerbarjan, Ectrix and, 510	Bazoum, Mohamed, 391–92
Bachelet, Michelle, 64, 69	Beijing Consensus, 454–55
Bachmann, Ingeborg, 3	Belarus
backsliding in rule of law. See also	absence of rule of law in, 495
specific country	backsliding in, 58–59, 130
arbitrary exercise of power and,	as illiberal state, 169
112–13, 114	Benin, backlash against African Court
authoritarianism and, 113, 115, 120,	in, 66–67
	Berlin Conference (1884–85), 32
130, 140, 142–48, 149	
basic hypothesis, 119, 126–30	Bernhardt, Rudolf, 301–2
cluster analysis of countries, 114,	Berra, Yogi, 496 Phyminal (Thailand), 414, 415, 420
115, 133–36, 138–42	Bhumipol (Thailand), 414, 415, 420
COVID-19 pandemic and, 131	Biden, Joe
data collection, 120–22	generally, 4
drivers of, 135–48	China and, 82
ECJ and, 322–23	reengagement by, 80–81
empirical analysis, 115, 126–32	risks of reengagement, 81
EU, resistance to backsliding by, 52	"worker-centered trade policy," 82
European Commission and, 322–23	bilateral investment treaties, 185
incremental nature of, 114, 149	Bindig, Rudolf, 304–5, 309
indicators, 122–24, 131, 135–36,	Black's Law Dictionary, 18
138–42	Blokker, Niels, 220–21
in Latin America, 381, 482, 484	Boakai, Joseph, 400
limited nature of, 114-15, 131	Bolivia
origin of term, 112	Constitution, 352–54
outstanding questions, 148	hyperpresidential rule, reversal
overview, xi, 111, 482	of, 350
populism and, 115, 120, 142-48, 149	Bolsonaro, Jair, 347-48, 356, 378
recent backsliding, 51-52	Bondansky, Daniel, 231
regime change and, 144	Bongo, Omar, 395
resistance to, 52, 488	Börzel, Tanja, 34
social impact of, 148-49	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,	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
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	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
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	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
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	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.)	masses, interests of, 431
Belt and Road Initiative, 68, 70	neo-authoritarianism in, 454–55
Biden and, 82	neutralization of international
Chinese Communist Party (CCP)	organizations, attempts at,
authority over judiciary, 435,	69–70
444-45	Niger and, 392
on international law, 445	norm entrepreneurship and, 456
Marxist-Leninist view of law, 445	outside world, interactions with,
norm entrepreneurship and, 456	443–44, 445–46, 448
reformers in, 434	overview, xiv-xv, 444-45
Soviet Union and, 432–33	Permanent Court of Arbitration
supremacy regarding law, 440-41	(PCA) and, ix–x, 67, 450
Chinese contexts of rule of law,	Philippines, territorial dispute
431–32	with, 450
Chinese exceptionalism, 455	private law in, 16
civil society organizations in, 64, 69,	promotion of rule of law in, 434-35
448-49	property law in, 436-37
"comprehensive rule of law" in,	Regulations of the People's Republic
440-42	of China on Arrest and
COVID-19 pandemic in, 442	Detention, 433
Cultural Revolution, 433, 434, 445	repression of internal dissent in, 71
as dual state, 13, 320	rise of as authoritarian regime, 72,
economic determinism in, 444, 453	74–75
elites, contestation between, 433	Russia and, 81
engagement with US, 81-82	Security Council peacekeeping
factors influencing shifts in rule of	operations and, 69
law in, 52	Sinicized Marxism, 454, 455
Great Financial Crisis (2008)	socialist market economy in, 434
and, 437	"socialist rule of law with Chinese
Hong Kong, suppressive measures	characteristics," 440, 495
in, 71, 429, 495	South China Sea Arbitration, 450
Human Rights Council and, 69	on sovereign equality, 92–93
illiberalism in, 73	Soviet model, 432–33
international commercial arbitration	territorial disputes and, 450
and, 449–50	"Three Supremes" Doctrine, 437
Iraq War, effect of rise of China	Tibetans, suppression of, 71
on, 75	trade war with US, 31
Judges Law of the People's Republic	transnational legal ordering (TLO)
of China, 435	in, 447
lack of criticism in, 484	transnational rule of law, impact on
leadership and participation in	actors and, 449-51, 457
international organizations,	civil society organizations and,
attempts at, 70–71	448–49
legal instrumentalism in, 444,	debates regarding, 446
451–53	dominant normative framework,
linearity of institutional change	adoption of, 447-48
in, 444	exposure to outside world,
maritime areas, claims over, ix-x	variation in, 448

firms and, 448	Security Council during, 212–13, 228
fundamental norms and, 451–57	Colombia
growing engagement with outside	Constitution, 353–54
world and, 445–46	hyperpresidential rule, reversal of,
interests and, 447	350, 378
international commercial	IACHR, backlash against, 66
arbitration and, 449–50	judicial review in, 351
international organizations and,	state of exception in, 352
450–51, 457	colonialism, 10–11
marginal effect on, 454, 455–57	Commission for Democracy through
state-centered analysis, drawbacks	Law (Venice Commission)
of, 447	African Commission compared,
territorial disputes and, 450	206–7
transnational legal ordering	constitution-shaping and, 158–59
(TLO) and, 447	elections and, 277
Trump and, 82	emergency decrees and, 277-78
"turn against law" in, 437–40	Hungary and, 275–76
UN special rapporteurs and, 69	judicial independence and, 203
US and, 80–81, 442	Poland and, 275–76
Uyghurs, suppression of, 71, 93,	rogue states and, 275-76
94, 321	Rule of Law Checklist, 157,
WTO and, 74, 156, 167-68, 434, 446	194–95, 277
Christakis, Théodore, 221	rule of law generally, 37, 194-96
civil society organizations	"soft law" and, 198
in China, 64, 69, 448–49	Turkey and, 332-33, 336, 339
in China, 64, 69, 448–49 empirical trends in rule of law and,	Turkey and, 332–33, 336, 339 Commission on International Trade
empirical trends in rule of law and, 63, 64	
empirical trends in rule of law and, 63, 64 in Israel, 64	Commission on International Trade Law (UNCITRAL), 231 Compaoré, Blaise, 394
empirical trends in rule of law and, 63, 64 in Israel, 64 López Obrador's attempts to weaken,	Commission on International Trade Law (UNCITRAL), 231 Compaoré, Blaise, 394 conceptualization of rule of law
empirical trends in rule of law and, 63, 64 in Israel, 64 López Obrador's attempts to weaken, 358–59, 377	Commission on International Trade Law (UNCITRAL), 231 Compaoré, Blaise, 394 conceptualization of rule of law arbitrary exercise of power, as
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,	Commission on International Trade Law (UNCITRAL), 231 Compaoré, Blaise, 394 conceptualization of rule of law arbitrary exercise of power, as opposing (see arbitrary exercise
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	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)
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	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)
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	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
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	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
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	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
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	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
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	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
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	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
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	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,
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,	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)
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	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
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	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
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	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
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	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-
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	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
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	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-

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

UN constitution-shaping in, 160 Couso, Javier, 352-53 Council of Europe (CoE). See also COVID-19 pandemic specific country backsliding and, 131 generally, 32 in China, 442 accession to, 261, 297-98 conditionality mechanism and, Committee of Ministers, 268-69, 204, 205 297, 345-46 Hungary, COVID-19 pandemic Committee on Legal Affairs and relief in, 205 Poland, COVID-19 pandemic relief Human Rights, 299, 303, 305, in, 204, 205 populism and, 76 Committee on Political Affairs, 299, Crawford, James, 35, 47-48, 94 305, 306, 307 Committee on Relations with critical theory, 10-11 European Non-Member Croatia, EU accession, 168-69 Countries, 299 Constitution, 352-53 constitution-shaping and, 169 Convention on Preventing and Marxism and, 353 Combating Violence against revolution in, 353 Women and Domestic Violence "culture of conduct," 290, 292-93, (Istanbul Convention), 333 474 - 75ECHR, incorporation into national Cyprus law (see European Convention EU accession, 325-26 UN Good Offices Mediation on Human Rights (ECHR)) European Commission for Team, 217 Democracy through Law Czech Republic (Venice Commission) (see CoE accession, 299-300 Commission for Democracy EU constitution-shaping in, 169 through Law (Venice Danube Institute, 494 Commission)) Daranee Charnchoengsilpakul, 417-18 EU versus, 295 former Soviet bloc states, accession decline in rule of law. See backsliding in of, 298, 299-300 rule of law Dedov, Dmitry, 284 Gorbachev and, 284-86, 294-96 membership conditions, 155, de Gaulle, Charles, 292 Demirtas, Selahattin, 330, 335-37 156, 483 Parliamentary Assembly of the democracy Council of Europe (PACE), 270, arbitrary exercise of power and, 18 284-85, 297-98, 306 asymmetric rupture and, 279-80, Putin and, 308-9 486 - 87defined, 380 Russia and (see Russia) suspension of members, 264 empirical trends in rule of law and, Venice Commission (see 59-62 Commission for Democracy liberal democracy, 60 through Law (Venice polyarchy, 59-60 Commission)) populism as challenge to, 347 Yeltsin and, 304 rule of law, relation to, 9-10, 17, 112, Court of Justice of the European Union 185, 255, 320, 344, 385 (CJEU), 37, 116-17 "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, 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 Pichts (ECHR)	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 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 demogracy and, 59, 62
ECHR. See European Convention on Human Rights (ECHR)	corruption and, 53 democracy and, 59–62
ECJ. See European Court of Justice (ECJ)	economic focus, shifts in, 75 ECtHR, backlash against, 65–66

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

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

arbitrary exercise of power, restraint transnational legal ordering (TLO) and, 109, 191-92 of, 98-99 "exit doors," 352-53 economic development, 98-99 freedom and dignity, 98-99 Fallon, Richard, 97 horizontal functions, 99 Farrall, Jeremy institutional function, 98-99 generally, xii manifest functions, 7 Australia/ANU initiative and, 215, security and trust, 98-99 vertical functions, 99 233-34, 237-38 on avoiding formalism, 470 fundamental rights, relation to rule of on extrapolation from domestic law, 15-16 law, 477 on peacekeeping operations, 492 Gabon, impacts of coup on rule of law, 382, 383, 389, 395 on recency of transnational rule of law, 489-90 Gambia, impacts of coup on rule of on rule of law, 236 law, 382 Gargarella, Roberto, 351 Security Council and, 213, 216–18, 225, 248, 480-81, 490 General Agreement on Tariffs and Trade (GATT), 40-41 Financial Action Task Force, 211 financial assistance, rule of law as General Assembly (of UN) Countering the Use of Information condition for, 462 Finland, NATO and, 344 and Communications Foner, Eric, 12-13 Technologies for Criminal Food and Agricultural Organization Purposes, 71 (FAO), 70 Declaration on Principles of Ford, Lisa, 11 International Law (1970), 104 Ford Foundation, 449 Declaration on the Rule of Law at the formalism, avoiding, 13, 116, 344-45, National and International 385, 386, 466, 470, 479-80 Levels (2012), 92, 102-4, 107, former Soviet bloc states 489 - 90CoE accession, 298, 299-300 Guidance Note on the UN Approach to Rule of Law Assistance ECHR accession, 50 (2008), 153-54, 162, 163 EU accession, 50 proposed human rights Guidance Note to Constitutionorganization, 307 Making Processes (2009), WTO accession, 50 162-63, 176 Fraenkel, Ernst, 3, 12 Rule of Law and Transnational Justice (2004), 177 France backsliding in, 140 Security Council and, 227-28 constitutional transition in, 292 geopolitics, transnational rule of law and. See also specific country variations in rule of law in, 131 freedom, relation to rule of law, 7-8 in Africa, 396-97 Freedom House, 52-53, 58-60, 63, Cold War, absence of transnational 111, 257 rule of law during, 491-92 "end of history" and, 492-93 Fukuyama, Francis, 492-93 fall of communism and, 491, 492 Fuller, Lon, 14, 19, 21, 53 functions of rule of law overview, 463, 489

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 impacts of coup on rule of law, 382 Security Council constitution-shaping in, 160 Gusinksy, 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
forward and backward reasoning, 7 overview, 5–6, 319, 463 possibility of, 479 on multiple levels of rule of law, 322 on peacekeeping operations, 492 Gorbachev, Mikhail on recency of transnational rule of
generally, xiii, 315 law, 489–90

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

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

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

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

Kenya, judicialization of elections in,	compromised state of
401-2	constitutionalism in, 352
Khasbulatov, Ruslan, 287, 301	"constitutionalism of fusion," 351
Khodorkovsky, Mikhail, 313	early constitutions, 351
Korean War	executive branches, changes in, 354
Security Council authorization of use	"exit doors," 352–53
of force in, 46–47, 220–21	expansion in rule of law in, 355–56
Soviet abstention and, 220–21	
Kosovo	free-market ideology in, 353
	hyperpresidential rule in, 350, 378
EU accession, absence of movement	international human rights law in, 39
toward, 168–69	international measures to support
NATO/EU peacekeeping operations	rule of law in, 186–88,
in, 46	189–90, 209
Security Council, 219	iusnaturalism, 352
Kozyrev, Andrei, 286–87	judicial review in, 351–52
Krygier, Martin	Judiciary Councils, 354
on arbitrary exercise of power, 18,	last-wave constitutions in, 350,
184, 333, 345	353-55
goal-oriented approach to rule of	legislative branches, changes in, 354
law, 319	Marxism and, 353
on lack of clarity in rule of law, 240	overview, xiii-xiv, 350-51
on purpose of rule of law, 98	presidential powers, expansion of,
on rule of law as prevailing value, 226	356–57
on social goals and practices, 5	remaining challenges in, 356
on telos of rule of law, 96–97	resilience of rule of law in, 79
transnational perspective on rule of	"third wave" of democratization
law, xv	in, 491
Krylenko, Nikolai, 293	Latvia, EU constitution-shaping in, 169
Kudryatsev, Vladimir, 290–91	Lavrov, Sergei, 289–90
Kuhelj, Alenka, 143	Law, David, 51–52
Kumm, Mattias, 10	"law and development," 184–85
	lawfare, 22
Kurban, Dilek, xiii, 482–83	The state of the s
Kuwait, Iraqi invasion of, 232	"law talk," 22
Kwankwaso, Rabiu Musa, 398-99	League of Nations mandate system,
T N: 1 01	32–33
Lacey, Nicola, 21	"legal black holes," 20
La Forest, Gérard, 39–40	legality principle, 22–23, 192–93
Lalumière, Catherine, 286, 295–96	legally ordered communities, 97–98,
Lam, Esther, 167–68	467–68, 469
Lánczi, András, 255	Leopold (Belgium), 32
Lander, Jennifer, 477–78	Le Pen, Marine, 52, 494
Latin America. See also specific country,	Leuprecht, Peter, 298, 306, 308
agreement, or body	Leventhal, Harold, 256
ambivalence toward	Levitzky, Steven, 113
constitutionalism in, 352-53	Li, Ji, xiv-xv, 13, 429
backsliding in, 381, 482, 484	liberal democracy, 60
bills of rights in, 355	Liberia
challenges to rule of law in, 349	elections in, 387, 398, 400-1
O	· · · · , · · · , · · · , · · · · , · · · ·

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

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

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	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
effect of international law on	transfer of power in, 391-92
domestic law and, 43–44 Mutua, Makau, 13, 396, 401	uranium mining in, 392 US and, 393
Myanmar	Nigeria
absence of rule of law in, 495 attacks on rule of law in, 428–29	absence of military leaders from ballot, 399
	All Progressive Congress (APC),
Nardin, Terry, 15–16, 94, 105, 319	398–99, 403
national constitutions EU versus, 202–3, 209	elections in, 398–99 election technology in, 399
rule of law incorporated into,	judicialization of elections in
35–36, 50	danger of legitimizing
Universal Declaration of Human	authoritarianism, 404–5
Rights incorporated into, 35 national human rights institutions,	high-profile elections, 402–4,
36	legitimacy, effect on, 401,
national rule of law	402–4, 405
defined, 184	Liberia compared, 400
international organizations and, 185	overview, 383, 390
international rule of law versus, 186 overview, 475–76	social media and, 403, 404 Labour Party (LP), 398–99, 403
ordinew, 1/5 /0	Euroui 1 arty (E1), 370 77, 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,	elections and, 263–64 Erdoğan compared, 344 EU and, 485 judicial independence and, 197 populism and, 76 Ukraine War and, 485 Organization for Security and Cooperation 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 Chachavalpongpun, 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
consolidation of power by, 257–58, 272	as external focus of Security Council, 223

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

Orbán and, 76 rise of, 76–77 Trump and, 76, 77 well-tempered power and, 488	Raz, Joseph, 14, 19, 102, 472–73 Regional Comprehensive Economic Partnership, 457 regional courts. See also specific court
Portugal	Africa, impact in, 407–9
backsliding in, 140	backlash against, 209
ECJ Portuguese Judges case, 199–200,	direct effect of international law on
202-3	domestic law and, 44-45, 47
Postema, Gerald, 6, 29	overview, 183
"postnational liberal international	as "trustee courts," 44–45
order," 34	regional organizations. See also specific
Pou Giménez, Francisa, xiii–xiv, 79,	organization
482, 484	backlash against, 209
power	Ecuador in, 261
arbitrary exercise of power (see	indirect effect of international law on
arbitrary exercise of power)	domestic law and, 37–38
concepts of, 5	overview, 183
law as vehicle for exercise and communication of, 468	peace as goal of, 30
rule of law, relation to, 469	Russia in, 261 Turkey in, 261
well-tempered power (see well-	Venezuela in, 261
tempered power)	Reporters Without Borders, 63
Prayuth Chan-ocha, 410, 418	responsibility to protect (R2P), 33–34,
pressure on rule of law, 461–62	222–23
private actors, indirect effect of	Review of African Political
international law on domestic	Economy, 393
law and, 43–44	Ristei Gugiu, Mihaiela, 115
Project on International Courts and	Roch Kaboré, March, 394
Tribunals, 50	Rodrik, Dani, 83
Prost, Kimberly, 229	rogue states
Pufendorf, Samuel, 89	abuse of rule of law by, 487–88
Putin, Vladimir	asymmetric rupture and, 279-80,
generally, xiii, 313, 315, 429	486-87
abandonment of legal reforms, 289 authoritarianism and, 78	directly applicable laws, enforcement of, 262, 265–70, 280
Council of Europe and, 308-9	erga omnes obligations and, 262,
ECtHR, backlash against by, 65	271–74, 280
humanitarian intervention, invasion	membership conditions, impact of,
of Ukraine portrayed as, 33–34	260, 261–62, 267–68
justifications for Ukraine War, 87–88	national rule of law, ineffectiveness
repudiation of treaties by, 289-90	of in bringing about change, 279
Second Chechen War and, 309	supererogatory compliance and, 262,
traditional values, invasion of	274–78
Ukraine viewed as	Transition 2.0 and, 259, 260–63 transnational rule of law, use of to
supporting, 78	restore democracy, 256–57,
Rajah, Jothie, 12, 26, 231, 406	278–79
Ratner, Steven, 28–29	Venice Commission and, 275–76
radici, steven, 20 2)	, chiec Commission and, 275 70

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

monitoring bodies, 228 Scheppele, Kim Lane rule-of-law challenges, 222 generally, xii-xiii Sanctions Committees, 228 on abuse of rule of law by rogue states, 487, 488 Security Council generally, 42, 46 Working Group on General Issues of on authoritarianism, 322 Sanctions, 228 on backsliding, 112 Sandholtz, Wayne on international courts, 38 on abuse of rule of law, 289 on rule of law "writ large," 253, on arbitrary exercise of power, 486 - 87112-13, 117, 184, 214, 229, 308, on rule of law "writ small," 252, 475 on Security Council, 211-12, 216, 333, 345, 384-85, 411-12, 415, 225 - 26467, 468 on avoiding formalism, 385, 386, 470 terrorism and, 47 on backlash against rule of law, 495 on violating domestic law to restore on backsliding, 482 democracy, 488-89 conception of rule of law, 350-51 Schmitt, Carl, 11, 19, 255 on "culture of conduct," 290, 474-75 Schoppe, Christoph, xi-xii, 476, 482, on democracy, 112 483, 484, 485 on democracy and rule of law, 344 Security Council. See also specific on democratic participation, 241 country on enmeshment of national and arbitrary exercise of power and, international law, 317-18, 476 214, 229 on goal-oriented approach to rule of Australia/ANU initiative, 233–40, law, 344-45, 384, 466 480 - 81on indicators, 63, 114, 122, 123 Austria/NYU initiative, 233–40, on institutionalized practice, 385 480 - 81on international law, 252, 407–8 bodies of experts, 228 during Cold War, 212-13, 228 on lack of opportunity to be heard, constitution-shaping and, 163-67 320, 416 meta-principle of rule of law and, 224 discourse regarding rule of law, on metrics for measuring rule of 224 - 26law, 386 emergence of rule of law in, 213, on multiple levels of rule of law, 322 232 - 33,490on recursive nature of international empirical data, 216-18 law, 25 external formulation of rule of law, on rule of law as principle and 223, 224, 225-26, 227, 230 practice, 223-24 formal powers to promote rule of law, 218 on social order, 408 on transnational legal ordering General Assembly and, 227-28 as "hard case" relating to rule of law, (TLO), 287, 388, 406–7 on "virtuous transnational cycle," 213 - 14240 - 41ICI and, 227-28 Sankara, Thomas, 394 internal formulation of rule of law, Santos, Juan Manuel, 378 223, 224, 225, 226-27, 228-29 São Tomé and Príncipe, impacts of interventions authorized by, 30, 33 coup on rule of law, 382 meetings on rule of law, 242-48 Sato, Yuko, 143 micro-TLOs and, 233-42 monitoring bodies, 228 Scalia, Antonin, 256

Security Council (cont.)	Shaffer, Gregory
Office of the Ombudenerson 42 43	on abuse of rule of law, 289
Office of the Ombudsperson, 42–43,	
47–48, 222, 228–29, 238,	on arbitrary exercise of power,
239–40	112–13, 117, 184, 214, 229, 308,
overview, xii, 212	333, 345, 384–85, 411–12, 415,
peace as goal of, 30	467, 468
peacekeeping operations (see	on avoiding formalism, 385, 386, 470
peacekeeping operations)	on backlash against rule of law, 495
power of, 109	on backsliding, 482
procedure and rules regarding rule of	conception of rule of law, 350-51
law, 224, 226–27	on "culture of conduct," 290, 474-75
reform efforts, 80	on democracy, 112
reluctance to apply rule of law to	on democracy and rule of law, 344
itself, 211–12	on democratic participation, 241
Resolution 1373, 47	on enmeshment of national and
sanctions (see sanctions)	international law, 317-18, 476
sanctions committees, 228	on goal-oriented approach to rule of
scholarly focus on, 214-16	law, 344-45, 384, 466
structures regarding rule of law, 224,	on indicators, 114, 122, 123
227–30	on institutionalized practice, 385
terrorism and, 42-43, 47, 185,	on international law, 252, 407-8
216, 229	on lack of opportunity to be heard,
transnational law and, 253	320, 416
transnational legal ordering (TLO),	meta-principle of rule of law and, 224
in context of, 210–11	on metrics for measuring rule of
UN Charter, authority under,	law, 386
210, 218	on multiple levels of rule of law, 322
use of force, authorization of (see use	on rule of law as principle and
of force, authorization of)	practice, 223–24
veto power, 33-34	on social order, 408
well-tempered power and, 480	"soft law" and, 6
Working Group on General Issues of	on transnational legal ordering
Sanctions, 228	(TLO), 24, 26, 184, 287, 388,
Selznick, Philip, 15, 20	405-7
Sen, Amartya, 7–8	on US-China relations, 81-82
separation of powers	on "virtuous transnational cycle,"
African Charter and, 206–7	240–41
Austria/NYU initiative and, 236,	Shanghai Cooperation
241, 481	Organization, 71
in DRC, 206-7	Sharlet, Robert, 292
local rule-of-law cultures and, 173	Shklar, Judith, 5, 465
in rule of law, 19	Shumeyko, Vladimir, 304
in Russia, 304–5	Sierra Leone
UN Charter, lack of in, 227–28	elections in, 398
in US, 19	Security Council and
September 11 terrorist attacks, 42,	peacekeeping operations, 46
47, 232	sanctions, 228
Serbia as illiberal state, 169	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	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
constitution-shaping, 164, 165-66	289–90
use of force, authorization of, 30 Somchai Preechasilapakun, 413 South Africa	Stuchka, Pyotr, 293 substance of law, relation to rule of law. 8–9
Constitution, 259	Sudan
as dual state, 320 ICSID and, 67	African Union, suspension by, 159
Security Council sanctions against, 46, 220	impacts of coup on rule of law, 382 Security Council sanctions and, 228
variations in rule of law in, 131 South African Development	supranational rule of law defined, 184
Community, 67	in ECJ, 192
South China Sea Arbitration, 450	international organizations and, 185
Southern Rhodesia, Security Council sanctions against, 46, 220	overview, 208–9 surveillance
South Korea, backsliding in, 55, 62, 140	in Hungary, 274

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

People's Party, 412	in Africa, 405-7, 478
protest movement in, 410, 412,	authoritarian states and, 317-18
418–20	in China, 447
royalist nature of law, 413	commerce and, 109
"rule of coups" in, 413	conceptual aspects of, 231
"shattering the ceiling," 420	ECHR and, 210–11
Shattering the Palace, 427	ECtHR and, 191, 210–11
Thai Lawyers for Human Rights	EU and, 109, 191–92
(TLHR), 415, 417–18	expansion in rule of law and, 50
treason in, 426	horizontal benefits of rule of law for
United Front of Thammasat and	sovereigns and, 108-10
Demonstration (UFTD),	ICC and, 210–11
419–21, 422–23	IMF and, 109
violence against dissidents in, 415	legally ordered communities, 97-98
working toward rule of law in, 412,	micro-TLOs, 233-42
427–28	in Mongolia, 478
Thaksin Shinawatra, 413-14	overview, 24–26, 230
"thick" rule of law, 13-14, 15-16, 116,	presenting problem, 231–32, 233–34
252, 472	recursive cycles, 234–35, 343–44
"thin" rule of law, 13-15, 116, 186,	regional TLOs, 482
252, 472	Security Council in context of,
"third wave" of democratization, 491	210-11
Third World Approaches to	tensions in, 484
International Law (TWAIL),	transnational rule of law and, 24-26,
22, 172	182, 184–85
Thompson, E.P., 186	in Turkey, 343-44
Thongchai Winichakul, 413	UN and, 109
Timor Leste	World Bank and, 109
Security Council and	WTO and, 109
constitution-shaping, 163, 165-66	transnational rule of law
peacekeeping operations, 46, 219	in Africa, 405
use of force, authorization of, 221	defined, 252
UN role in creation of, 160	direct effect of international law on
Tinubu, Bola Ahmed, 398–99, 403	domestic law (see direct effect of
TLO. See transnational legal	international law on
ordering (TLO)	domestic law)
Transatlantic Trade and Investment	domestic analogies, 476–77
Partnership, 81	empirical trends (see empirical
Transition 1.0, 261	trends in rule of law)
Transition 2.0, 259, 260–63	extrapolation from domestic law,
transnational law	477, 480
EU and, 253	"growing" versus "grafting," 496–97
IACHR and, 253	indirect effect of international law on
Security Council and, 253	domestic law (see indirect effect
UN Charter and, 253	of international law on
WTO and, 253	domestic law)
transnational legal ordering (TLO)	judicial independence and, 200
actor mismatch and, 235	"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,	resistance to policies, 79 withdrawal from treaties by, x, 77 WTO and, 31 "trustee courts," 44–45 Trusteeship Council, 172
252–55, 282–83 multiple levels of, 476	Tsighe Taye, Mihreteab, 382 Tunisia, emergency decrees in, 207
"North Star" effect, 282	Turkey
overview, xv, 4	arbitrary exercise of power in, 333
recency of, 489–91	backsliding in, 55, 58–59, 62, 130
rise of, 463	constitutional complaint
rogue states, use in to restore	mechanism, 338–40, 345
democracy, 256–57, 278–79	Constitutional Court (AYM), 326,
role of international law in, 22–24	330, 331, 338–40, 341–42, 345
socio-legal theory of, 23–24	constitutional immunity in, 329–31
time, relevance of, 496 transnational legal ordering (TLO)	Council of Europe and, 316, 317, 345 curfews in, 328–29, 343–44
and, 24–26, 182, 184–85	Democratic People's Party
Trans-Pacific Partnership, 77, 81	(DEHAP), 325, 333–34
Traoré, Ibrahim, 394	ECHR, ratification of, 316
Treaty for Establishment of the East	ECtHR and
African Community, 207	adverse judgments in, 317
Treaty on European Union (TEU)	arbitrary exercise of power
accession criteria, 155	and, 345
backsliding, response to, 197 elections and, 276	challenges to authority of, 326, 337–38
erga omnes obligations and, 272	on disenfranchisement of
infringement actions under, 197-99,	minorities, 335–37
200-2	dual role of, 333
judicial independence and,	electoral threshold and,
199–203	333–35, 344
rule of law in, 37, 190, 196, 204-5	failures of, 345-46, 482-83
Treaty on Conventional Armed Forces	inaccessibility of, 317
in Europe, 289–90	inadmissible cases, 323, 326,
Treaty on the Carriage of Goods by Sea	337–38
(Rotterdam Rules), 211	overview, xiii, 318, 323–24
Trechsel, Stefan, 302–3	positive judgments in, 316
Trindade, Antonio Cançado, 189–90	unheard cases, 337–42
Trinidad and Tobago	electoral threshold in, 324–25,
corporal punishment in, 189–90 IACHR, withdrawal from, 66	333–35, 344 emergency rule in, 331–32
IACTIR, withdrawar from, 66 IACtHR, backlash against, 66,	EU and, 316, 317, 325–26, 343,
189–90	345
Trump, Donald	failure to sanction, 316, 317
"America First" policies, 72, 77	Fethullah Gülen movement, 327,
Bolsonaro compared, 348	331, 343
China and, 82	High Council of Judges and
populism and, 76, 77	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	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
Venice Commission and, 332–33,	peace as goal of, 30
336, 339	peacemaking, constitution-shaping as, 160–62
Ukraine	phenomenological conception of
annexation of territory by Russia, 88	rule of law and, 26
as illiberal state, 169 right to benefits of rule of law,	promotion of rule of law and, 463 on rule of law, 16
102, 106	rule of law, 10
Ukraine War (see Ukraine War)	Security Council (see Security
Ukraine War	Council)
generally, ix, xiii	South Sudan, role in creation of, 160
as breach of rule of law, 102, 106	Timor Leste, role in creation of, 160
constitution-shaping, effect on, 181	transnational legal ordering (TLO)
General Assembly and, 88	and, 109
humanitarian intervention, invasion	trusteeship system, 32–33
portrayed as, 33–34	Ukraine War and, 88 United States
Hungary and, 205 ICJ and, 88	Afghanistan, invasion of, 75
justifications for, 87–88, 93	backsliding in, 58–59, 62, 148, 381
Orbán and, 485	Burkina Faso and, 394–95
Poland and, 205	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)	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,
Joint Transatlantic Agenda, 80–81	
Libya, intervention in, 33	415, 420 Vallelersundi, Loyola de Palacio, 296
minorities in, 10	Van Aken, Anne, 45
"Muslim ban," 79	Vargas, Getulio, 349, 352–53
NATO and, 77	Varieties of Democracy (V-Dem),
Niger and, 393	58-60, 111, 121, 257
Paris Agreement and, 77, 80	Vattel, Emer de, 89–90
resilience of rule of law in, 79	Venezuela
as revisionist power, 72–73	backsliding in, 55, 130
Russia and, 80–81	Constitution, 353–54
separation of powers in, 19	IACHR, withdrawal from, 66
September 11 terrorist attacks, 42,	IACtHR, backlash against, 66
47, 232	judicial review in, 351
terrorism and, 72	lack of criticism in, 484
trade war with China, 31	in regional organizations, 261
UNESCO and, 77, 80	Venice Commission. See Commission
variations in rule of law in, 131	for Democracy through Law
"war on terror," 46, 75	(Venice Commission)
WHO and, 77	Versteeg, Mila, 52–53, 55
withdrawal from treaties by, x, 77	vertical functions of rule of law, 99
WTO and, x, 31, 40–41, 67, 77	Vienna Convention on Diplomatic
Universal Declaration of Human Rights	Relations, 77
generally, 286	Vienna Convention on the Law of
national constitutions, rule of law	Treaties (VCLT), 176–77
incorporated into, 35	Volen, Eric, 39
rule of law in, 34–35	Volpe, Valentina, 180
University of Oueensland, 237	V-Party, 143
University of Queensland, 237 Uprimny, Rodrigo, 355	Wald, Patricia M., 256
Uribe, Álvaro, 378	Waldron, Jeremy
Uruguay, Constitution, 352–53	generally, 102
oragaay, Constitution, 332–33	Scherany, 102

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