

Index

- Abbott, K 42, 368, 369, 370
- accountability
- delegatory over participatory 5–6
 - expertise and authority in transnational governance 377–80
 - structures, postnational governance, authority in 31–2, 44, 46–7
- see also* legitimacy; validity
- accounting standards and financial crisis 377–80, 385
- see also* expertise and authority in transnational governance
- Acquis Principles*, informal authorities in European private law 215
- Adair-Totoff, C 265
- Adler, M 66, 70
- Adomeit, K 207, 217
- Africa, contingency of transnational authority *see* contingency of transnational authority, Africa
- Alexander, L 70–71
- Alexy, R 203, 205, 214
- Alter, K 364, 367–8
- Alvarez, J 337
- Amselek, P 331
- Amsterdamska, O 375
- analytical legal theory, implications for 73–4
- Andenaes, M 341
- Anderson, G 147
- anthropology, contingency of transnational authority, Africa 306
- Antonio, R 270
- Appiah, K 173
- arbitration 209, 210–13, 331–2, 345–6, 347, 348–9
- Arendt, H 4–5, 37, 222, 225, 253, 284, 374
- Armitage, D 27, 130
- Arts, B 362–3
- atrocities *see* contingency of transnational authority, Africa, Sierra Leone criminal prosecution, UN Special Court
- auctoritas suadendi*, informal authorities in European private law 192, 193, 194, 196–7
- Austin, J 119, 230, 231–2, 254, 255, 276, 399–400
- authority
- accountability *see* accountability
 - claims to 16, 263, 328, 388 *see also* claims to authority, legal systems and dynamic social phenomena
 - coercion 154, 180–81, 288–9, 297
 - constitutional *see* ‘constitutional’ headings
 - cultural issues *see* cultural issues
 - deference capacity 37–9, 293, 327, 337
 - definition 281, 327–8, 335, 388–91
 - demands for 391, 394
 - denial, and disembedded economy 344–9
 - embedded 358
 - epistemic 363–4, 370–76, 381–3, 388, 391–2
 - and expertise *see* expertise and authority in transnational governance
 - futures of *see* transnational futures of authority
 - governance 233–4, 235, 237–40, 247–8, 363–6, 370, 376–84, 388–9, 392
 - hierarchical *see* hierarchical authority
 - history *see* history

- imaginaries *see* imaginaries of
 authority, and disagreements
 informal *see* informal authorities in
 European private law
 institutional *see* institutions
 knowledge-based claims for 20–21
 legal, and overlapping jurisdictions
 see legal authority and
 overlapping jurisdictions
 and legitimacy *see* legitimacy
 legitimate authority and coercion,
 distinguishing between 288–9,
 297
 liberalism *see* liberalism
 liquid *see* postnational governance,
 authority in, liquid authority
 metaphors *see* metaphors
 minimal conception, need for 388–90
 and modern state *see* modern state
 and concept of authority
 non-state 158–60, 178, 179, 183,
 184–5, 339–44
 philosophical approaches 16–17,
 29–30, 31, 164–5
 pluralism *see* legal pluralism
 in postnational governance *see*
 postnational governance,
 authority in
 practice and experience 15, 17, 253
 private international law *see* private
 international law
 and regulation *see* regulation
 relative 156–8, 293–9
 Roman legal texts (*ius commune*)
 12–13, 196–7, 200–203, 206,
 214, 216–17, 397
 service conception 99, 104–6, 107,
 108, 109, 110
 social scientific approach 18–19
 social/normative divide *see* social/
 normative divide and
 understanding of authority
 socio-legal perspective *see*
 socio-legal perspective on
 transnational legal authority
 sociological approach 15–16, 226–8
 sovereignty *see* sovereignty
 state *see* state authority
 theory of de facto authority (TDFa)
 see legal authority and
 overlapping jurisdictions, theory
 of de facto authority (TDFa)
 see also power
 autonomy
 party autonomy principle 347–8
 regulation and semi-autonomous
 social fields, Africa 318
 subjects' concerns, social/normative
 divide and understanding of
 authority 287–8
 autonomy and equality, and
 constitutional authority
 contradictions 133–4
 Avant, D 37, 41
 Avbelj, M 165, 166, 229
 Avi-Yonah, R 270
 Bacchus, J 275
 Bachmann, G 195, 215
 Ball, T 41, 228
 Barber, N 98, 106
 Barnett, M 41, 46, 363
 Bartelson, J 34
 Barthelsen, J 331
 Bartley, T 369
 Bauman, Z 34, 40, 44, 46, 325, 332
 Beale, H 209
 Bell, C 143
 Bell, J 12, 101
 Benda-Beckmann, F 152
 Benhabib, S 185
 Benton, L 153, 226
 Beramendi, P 346
 Berger, K 213
 Berger, P 214
 Berman, H 261–2
 Berman, P 8, 10–11, 144, 151–88, 260,
 352, 357
 Berteau, S 12
 Besson, J 30, 40
 Besson, S 104, 118
 Biersteker, T 35, 325, 336, 362, 363
 Black, J 36, 42, 43
 Blau, P 38
 Bleicken, J 193–4, 197
 Bodenheimer, E 195

- Bodin, J 76, 80, 81
 Bomhoff, J 355, 357, 358, 359
 Bortolotti, F 212
 Boström, M 369, 377
 Botzem, S 369, 373, 377, 378
 Bradley, C 31
 Braithwaite, J 381
 Brassett, J 46
 Braun, A 203
 Braun, J 195
 Brito Viera, M 224
 Brockmüller, A 204
 Brödermann, E 212
 Broude, T 256
 Brummer, C 153
 Brunnée, J 180
 Buchanan, A 29, 32
 Bureau, D 331, 337, 349, 350
 Burkina Faso, land rights 314–15
 Büthe, T 336
- Cai, C 276
 Calliess, G-P 97, 256, 336, 396
 Canada, *Manitoba Language Rights*
 and Constitution 56–7, 64–6, 67,
 68–9, 72, 73
 Canaris, C-W 204, 211–12
 Carré de Malberg, R 83–4, 86–7
 Carruthers, B 372
 Cervantes, C 212
 Chang, W-C 143
 charismatic authority 265–8
 child soldiers *see* contingency of
 transnational authority, Africa,
 Sierra Leone criminal prosecution,
 UN Special Court
 Choudhry, S 125
 Christiano, T 29, 32
 citizens' perspective 46–7, 51
 claims to authority, legal systems and
 dynamic social phenomena 49–74
 analytical legal theory, implications
 for 73–4
 centrality of the state in legal theory
 49–50
 citizens' perspective 51
 constitutional arrangements and
 overlap with officials and legal
 institutions 65–6
 constitutionally-asserted
 presumptions of systemic
 validity 68–70
 continuity of law 50–51, 70
 and globalization 50, 51
 identity of legal systems 50–51, 67,
 68
 inclusive and exclusive legal
 positivists, rivalry between 55–6
 international constitutionalism and
 UN Charter 61–3, 67, 73
 international law 61–4, 69
 interregnum periods 60–61, 69–70
 interruption period 69
 judicial review 68
 judicial supremacy 70–71
 law-applying institutions 53, 54–5
 legal devolution and creation of new,
 independent legal systems 53–4
 legal norms 52, 53, 68–72
 legal officials' unity and
 systematicity presumptions and
 transcendence 64–7
 legal orders 55, 60–61, 62, 64, 67
 legal pluralism 50
 legal systems as epiphenomena 72–3
 legal system's role in explanation of
 legality 51–5
 legal validity as existence 56
 membership conditions and
 constituent legal norms 53
 municipal law 55, 65–6
 nature of law 49, 51–2, 53–4, 67,
 70–71
 obligations 52, 62, 63, 67
 official practice 52, 54, 55–8, 60,
 64–72
 'outside' determination of legal text's
 status, need for 71–2
 presumption of validity 58–62
 rights and obligations set out in the
 UN Charter, conformity with 63,
 67
 rule of recognition in legal systems
 52–3, 54, 62, 63

- secondary rules of change 53, 71, 72–3
- social nature of legal systems 50, 51, 52–3, 59–61, 65, 67, 68–9, 70, 71
- social reality of law 49, 51, 57, 59, 60, 70
- supreme law 63, 68, 71
- systemic validity beyond practice 55–7, 66–7
- systemic validity, transcendence
 - argument and independence of practice 57–64
- validating purport 52, 58–60, 62, 71–2
- validity criteria 56, 57
- validity presumptions as norms for courts 68–72
- Clausen, B 270
- climate change politics and contested authority 364
- Clive, E 209
- Cobb, R 378
- codifications, non-legislative, in transnational private law 208–13
- coercion 154, 180–81, 288–9, 297
- Cohen, J 262
- Coing, H 201
- Coleman, K 264
- collaborative strategies for gaining and maintaining epistemic authority 374–5
 - see also* expertise and authority in transnational governance
- Collins, H 396
- communal networks 264–5, 272–6, 279, 395, 396–7
- conflict of laws 160–65, 339–40, 349–51
- constitutional arrangements 8–9
 - constitutionally-asserted presumptions of systemic validity 68–70
- cosmopolitan constitutionalism 259, 262
 - and global legal pluralism 165–71, 186–8
 - and imaginaries of authority, and disagreements 228–30, 234–6
 - and overlap with officials and legal institutions 65–6
 - socio-legal perspective 258–60
 - and UN Charter 61–3, 67, 73, 140–41
- constitutional authority 125–50
 - analysis framework 127–9
 - and autonomy and equality 133–4
 - constitutionalism as abstract ideal 130–31, 136
 - constitutionalism as system of collective self-rule orientated towards the common interest 126–7, 135–6
 - decentralized transnational constitutional system 141–2
 - ethical dimension, particularity and universality contrast 128, 131–2, 133–4
 - functional dimension, and capacity and constraint 128, 132–4, 137–8
 - and international human rights 140, 141
 - internationalization of constitutional law 143, 149
 - legacy of 125–7, 137–8
 - open system approach and common constitutional themes 142–3
 - partiality of transnational constitutionalism 146–8
 - plurality of transnational constitutionalism 144–6
 - singularity concept and international community 139–42
 - socio-cultural dimension 128, 133–5, 148–9
 - sovereignty issues 132, 136–7
 - state-centred form 128, 129–38, 146–7
 - structural dimension 128, 129–31
 - transnational constitutionalism 138–46, 147–8
- contingency of transnational authority, Africa 300–321, 394
- anthropology 306
- diagnostic events 317

- regulation and semi-autonomous social fields 318
- social life in process, recognition of 317–18
- contingency of transnational authority, Africa, Regional Trade Organizations court case among southern African states (*Mike Campbell (Pvt) Limited v. Zimbabwe*) 19, 301, 306–13, 319, 320
- case deferment 309–10
- and COMESA (Common Market for Eastern and Southern Africa) 312
- and continental integration plans (African Economic Community) 312–13
- financial support 312
- Lancaster House Agreement 307
- Southern African Development Community court 308, 311–12
- violent attack on farm owners 309–11
- contingency of transnational authority, Africa, Sierra Leone criminal prosecution, UN Special Court 300–306, 318–19, 320
- commitment of political sponsors 306
- financial costs and sponsorship 302–3, 306, 318–19
- outreach effort 303, 304
- witness and defense counsel disputes 305
- contingency of transnational authority, Africa, transnational funding agencies (West Africa) 301, 313–17, 319, 321
- Burkina Faso land rights illustration 314–15
- funding expectations 314, 315, 320
- Mali decentralization illustration 315–17
- United Nations Convention to Combat Desertification 313–14
- continuity of law 50–51, 70
- contract law principles, private international law perspective 343–4, 347–8
- Cook, C 203
- Cooper, S 28, 29, 31
- copyright regulation and positive regulatory example 381–4, 385–6
- Cormack, B 226
- corpus iuris canonici*, informal authorities in European private law 200
- corpus iuris civilis*, informal authorities in European private law 200, 203, 208, 213–14, 216
- corruption effects 269–70
- cosmopolitan constitutionalism 259, 262
- cosmopolitanism, and global legal pluralism 171–5
- Cotterrell, R 1–22, 43, 50, 55, 96, 97, 98, 249, 253–79, 294, 295, 300, 317, 321, 326, 327, 328, 387–403
- Cover, R 162, 169
- Cross, K 271
- cultural issues
 - socio-legal perspective on transnational legal authority 264–5
 - trade in cultural products, and international law 175–6
 - transnational futures of authority 393–6, 398
- Culver, K 6, 49–74, 97, 100, 102, 156–7, 294, 329
- Cuniberti, G 343
- customary law 77–8, 195, 202, 204
- Cutler, A 35, 103, 298, 325, 342, 363, 368, 384
- Czempiel, E 39
- Danielson, D 348
- Dasser, F 212
- Daugareilh, I 354
- Davies, H 41
- Davis, K 41, 45, 291, 332
- Dawson, M 125
- De Búrca, G 47
- de facto* authority 82–3, 284–6, 292, 296–7

- theory of *see* legal authority and overlapping jurisdictions, theory of de facto authority (TDFA)
- De Wet, E 140
- De Witte, F 125
- decision-making locus, liquid authority 45–6
- deference capacity of authority 37–9, 159–60, 293, 327, 337
- Del Mar, M 1–22, 220–50, 256, 265, 277, 387–403
- delegation of authority by states 31–2
- Delmas-Marty, M 259
- democracy, and global legal pluralism 184
- denial of authority and disembedded economy 344–9
 - see also* private international law perspective
- descriptive and normative components, global legal pluralism 154–5, 179–82
- Devaux, C 259, 263, 267, 268
- Dezalay, Y 347, 373
- diagnostic struggles as key to greater accountability 377–80
 - see also* expertise and authority in transnational governance
- Dickson, J 106, 107
- Diederichsen, U 217
- differentiation of society, effects of 34–5
- Dilliard, I 266
- dispute allocatory function, private international law 349–51, 358–9
- disputes over expert knowledge claims 373–4
- diversity concerns in universalism 171–2
- Djelic, M-L 272, 273, 361
- Dobner, P 125
- Dobusch, L 369, 377, 381
- domination instrument, expertise as 372–3
- Donahue, C 201
- Doralt, W 209
- Dorsen, N 143, 147
- Dorsett, S 5
- Drahos, P 381
- Drezner, D 42
- Drori, G 371
- Drosdeck, T 206
- Duck, A 199
- Duguit, L 90
- Dunoff, J 176–7
- Duval, A 258
- Duvall, R 46, 363
- Dworkin, R 54, 58, 184, 204
- Easton, D 223, 392
- Eberlein, B 377
- Ecker-Ehrhardt, M 36
- Eidenmüller, H 209, 210
- Eisgruber, C 184
- Elden, S 226
- Elder, C 378
- Eleftheriadis, P 229
- Elkin-Koren, N 383
- Elkins, Z 137
- Ellickson, R 153
- Ely, J 357
- embedded authority, private international law perspective 358
- Emerson, T 172
- enforcement (coercion) 154, 180–81, 288–9, 297
- English common law, and informal authorities in European private law 203
- Enroth, H 36, 44
- environmental issues 357, 364
- epistemic authority 363–4, 370–76, 381–3, 388, 391–2
- Epstein, S 374–5
- Erlingsson, G 270
- Essen, G 199, 217
- Esser, J 205
- ethical dimension, constitutional authority contradictions 128, 131–2, 133–4
- European law
 - Acquis Principles* 215–16
 - Brunner v. The European Union Treaty* 106–7, 114, 165–6
 - Charter of Fundamental Rights 141–2

- decision-making process and
 ‘democratic deficit’ 82
Deckmyn v. Vandersteen 384
 Draft Common Frame of Reference
 (DCFR) 209–10, 215
 EU law over constitutional rules
 79–80
Flaminio Costa v. ENEL 79
 International Financial Reporting
 Standards (IFRS) 378, 379
 Lando Commission’s Principles of
 European Contract Law (PECL)
 209, 210–12, 215–16, 218–19
 Lisbon Treaty 79, 82, 89, 90
 non-legislative codifications 209–12,
 215–16, 218–19
 overlapping jurisdictions 107, 114,
 117
 Pirate Parties, rise of 384
 pluralist constitutional base 167
 principle of subsidiarity, Treaty of
 European Union 117
 private law, informal authorities *see*
 informal authorities in European
 private law
 Rome I Regulation 343–4
 sovereignty issues 81–2, 85–6, 87–8,
 90, 92, 233–4, 239–40, 246
see also individual countries
 Evans, G 98
 Everson, M 356
 expertise and authority in transnational
 governance 361–86, 394
 accountability issues 378–9
 accounting standards and financial
 crisis 377–80, 385
 challengers using expertise to claim
 governance authority 376–84
 charismatic basis 267–8
 climate change politics and contested
 authority 364
 collaborative strategies for gaining
 and maintaining epistemic
 authority 374–5
 collective action frames, use of 383
 copyright regulation and positive
 regulatory example 381–4,
 385–6
 diagnostic struggles as key to greater
 accountability 377–80
 disputes over knowledge claims
 373–4
 domination instrument, expertise as
 372–3
 epistemic authority 363–4, 370–76,
 381–3, 388, 391–2
 forum-shopping and regime-shifting
 367
 future research 386
 governance authority 363–4, 365–6,
 370, 376–84
 ‘informers’ in situations of regime
 complexity 367–8
 institutionalization effects 365,
 375–6
 international knowledge institutions
 373–4
 legal indeterminacy and
 inconsistency between
 overlapping states 366–7
 monopolistic strategies for epistemic
 authority 372–3
 Pirate Parties, rise of 384
 politics by ‘positive example’ and
 network effects 383
 problem definition issues 372, 376,
 378–80, 382
 regime complexity and mobilization
 strategies of weaker actors 383
 regulatory uncertainty 362, 366–8,
 370, 379
 relative authority and regime
 complexity 364
 scientific knowledge, increasing
 reliance on 373–4, 375–6
 state-based regime complexity and
 regulatory uncertainty 366–8
 transnational regime complexity and
 indeterminacy 368–9
 expertise resources, availability of 267,
 270–71
 external (‘outside’) determination of
 legal text’s status, need for 71–2
 external private forces, effects on
 transnational legal authority
 269–71

- Falk Moore, S 17–18, 300–321, 394
 Fallon, R 66
 Fassbender, B 61–3, 73, 140
 federal powers 169, 255
 Fernandez Arroyo, D 327, 336
 Ferrajoli, L 85
 Ferrando, T 345
 Figgis, J 153
 finance and financial issues
 financial crisis and accounting standards 377–80, 385
 neo-liberalism and financialization, effects on private international law 342
 non-state financial institutions 332, 342
 public finances' misuse, effects of 270
 Regional Trade Organizations court case among southern African states, financial support 312
 Sierra Leone criminal prosecution, UN Special Court, costs and sponsorship 302–3, 306, 318–19
 transnational funding agencies (West Africa), funding expectations 314, 315, 320
 Finnemore, M 41
 Fischer, F 371, 372, 381
 Fischer-Lescano, A 336
 Fisher, T 353
 Flanders, C 268
 Flathman, R 37, 284
 Fligstein, N 34, 40, 370
 Follett, M 374
 Foucault, M 33, 220, 328, 342
 Fourcade-Gourinchas, M 373
 fragmentation of international law 175–7, 256, 331
 France
 constitutional amendment status 89, 90
 Constitutional Council, power and the exercise of power, distinction between 87, 90
 Declaration of the Rights of Man 91, 93, 132
 Erika pollution case 343
 hierarchy of norms, preservation, and French Constitutional Council, modern state and concept of authority 79–80, 85–6, 91
 legislative powers of King 77
 sovereignty and judicial review 93
 sovereignty, meanings in French, and distinctions between, modern state and concept of authority 83–4
 Frankenberg, G 143
 Fransen, L 369
 Freeman, R 370
 Friedman, L 262
 Friedman, R 37, 38
 Frydman, B 332
 Fuchs, D 363, 374
 functional dimension, constitutional authority contradictions 128, 132–4, 137–8
 Furedi, F 33, 40, 226, 227
 future contribution potential, private international law perspective 358–60
 future research
 expertise and authority in transnational governance 386
 global legal pluralism, evolution of 187–8
 futures of authority *see* transnational futures of authority
 Galán, A 159–60, 168, 179
 Galanter, M 152
 Gallie, W 126
 Gamson, W 372
 Gardner, J 68, 105, 110
 Garré, R 195
 Garth, B 347, 373
 Gathii, J 301, 312, 313, 320
 general will, law as expression of 84, 91, 92, 93–4
 Germany
 Basic Law eternity clause 89
 Basic Law and sovereignty 92
 Constitutional Court 79, 86, 89, 90, 107

- 'declaratory' theory of judicial decisions 204–5
- 'leading opinion' reference 206
- Maastricht* judgment 86
- Palandt* commentary 207–8
- private law commentaries 204–8
- Gerstenberg, O 169
- Geuss, R 193, 194, 362, 363, 392
- Giddens, A 362
- Ginsburg, R 164–5
- Giudice, M 6, 49–74, 97, 100, 102, 156–7, 261, 294, 329
- Glenn, P 2, 6, 11–12, 174, 268
- global administrative law 258
- global legal paradigm, private international law perspective 160–65, 339–44
- global legal pluralism, evolution of 10, 151–88, 260–61,
 - authority concept 155–8
 - and classic legal pluralism 186–8
 - coercive enforcement power 154, 180–81
 - conflict of laws 160–65
 - constitutionalism 165–71, 186–8
 - cosmopolitan patriots 173–5
 - cosmopolitanism 171–5
 - and democracy 184
 - descriptive and normative components 154–5, 179–82
 - directly deliberative polyarchy 169
 - diversity concerns in universalism 171–2
 - fragmentation of international law 175–7
 - future research 187–8
 - hierarchical legal order 156–7, 165–6, 167, 168–9
 - history 152–5
 - international response to regulating hazardous chemicals, collaborative effects 177
 - judgment recognition 159
 - judicial opinions, legacies, and philosophies 164–5
 - legitimacy and efficacy issues 154
 - liberal universalism 168, 186–7
 - and liberalism 178–83
- moral authority of international norms 181
- mutuality principle 160
- nation-states and cosmopolitanism 174
- non-state authorities 158–60, 178, 179, 183, 184–5
- normative conflict and procedural management 166–7
- pluralism as alternative to global constitutionalism 170–71
- proceduralist version 155, 168, 179, 182–3
- reciprocal deference and state control 159–60
- relative versus absolute authority 156–8
- religious and state law conflicts 161–4
- and rule of law 183–4
- sharia courts and liberal communities 159
- social systems, interaction of 169
- state-based pluralism within a federalist legal structure 169, 255
- trade in cultural products, and international law 175–6
- universalism and cosmopolitanism 171–2
- global ordering, and private international law perspective 327
- globalization effects 40, 42–3, 44, 50, 51
- Glossa ordinaria*, informal authorities in European private law 200
- Goldhamer, H 392
- Goldman, B 347
- Goldmann, M 36
- Gosme, C 330
- governance authority 233–4, 235, 237–40, 247–8, 363–6, 370, 376–84, 388–9, 392
- Grant, R 31
- Graycar, A 269–70
- Graz, J-C 368
- Green, D 41
- Green, M 69–70

- Griffiths, J 152
 Grimm, D 127, 130, 131, 147, 149, 195
 Groppi, T 268
 Grotius, H 191–2, 197, 198, 202
Grundnorm 71, 214, 335
- Haas, P 361, 370
 Habermas, J 203–4, 372
 Hacking, I 134
 Hähnchen, S 207, 217
 Halberstam, D 169, 184
 Hall, B 35, 325, 336, 362, 363
 Hall, J 225
 Halliday, T 372, 378
 Hallström, K 369, 377
 Handl, G 1
 Hart, H 52, 53, 54, 58–9, 60, 61–2, 65, 69, 70, 71–2, 73, 194, 195, 214, 246, 255, 258
 Hawkins, D 31
 hazardous materials, international response to regulating 177
 Helfer, L 367
 Henne, T 206
 heterogeneity issues, private international law 328–9, 353
 Heupel, M 40, 45
 Heyns, C 271
 hierarchical authority 13–14
 and global legal pluralism 156–7, 165–6, 167, 168–9
 modern state and concept of authority 77–81, 85–6, 91
 postnational governance, authority in 29
 socio-legal perspective on transnational legal authority 254–5, 256
- history
 authority studies, historical and sociological approaches 226–8
 global legal pluralism, evolution of 152–5
 historicising authority 11–14
 informal authorities in European private law 191–2, 193–4, 196–9
 legislation history, modern state and concept of authority 77–9
- liquid authority 39–40
 sceptical reactions to, transnational futures of authority 401–2
 Hobbes, T 194, 198–9, 224, 283, 289
 Hooghe, L 29, 31, 40, 76
 Hooker, M 152
 human rights 140, 141, 341, 355, 357
 Hurd, I 28, 31, 287
 Hurrell, A 44
- Ibbetson, D 101
 identity of legal systems 50–51, 67, 68
 see also claims to authority, legal systems and dynamic social phenomena
 images *see* metaphors
 imaginaries of authority, and disagreements 220–50
 ability to govern and right to govern, distinction between 233–4, 235, 237–40, 247–8
 authority studies, historical and sociological approaches 226–8
 constitutional pluralism 228–30, 234–6
 disagreement sources 221–4
 images (metaphors), power of 224–5
 imaginaries, importance of 240–49
 imaginaries, reductive aspects 243–4
 jurisdiction 226
 law as institutional normative order 235–6
 legal positivism and sovereignty 230–31, 232–5, 239, 247–8
 Loughlin's criticism 230–7, 240–9, *see also* Loughlin, M
 Loughlin's criticism, MacCormick's response 237–49, *see also* MacCormick, N
 parent-child relation 222, 224, 242–3
 pluralism under international law 236–7, 241–2, 244–5
 political power concept 231–4, 235–40, 244
 and Scottish politics 244–6
 subsidiarity decisions 246, 248
 territory 223, 226, 227, 231, 239

- imperium* concept, informal authorities
in European private law 193, 197
- imputation principle, and sovereignty
91–4
- India
constitutional amendment status 89
Minerva Mills v. Union of India 89
- informal authorities in European private
law 191–219
- Acquis Principles* 215
- arbitration 212–13
- auctoritas suadendi* (influence in
persuasion) 192, 193, 194,
196–7
- authority concept 192–5, 196–9
- authority and recognition 213–16
- corpus iuris canonici* 200
- corpus iuris civilis* 200, 203, 208,
213–14, 216
- customary law 195, 202, 204
and English common law 203
- formal presentation of legal texts,
influence of 215
- formality of legal norms 196–7
- German *Palandt* commentary 207–8
- German private law commentaries
204–8
- Germany, ‘declaratory’ theory of
judicial decisions 204–5
- Germany, ‘leading opinion’ reference
206
- Glossa ordinaria* 200
- history 191–2, 193–4, 196–9
- imperium* concept 193, 197
- ius agenda* power 198
- ius commune* discourse 200, 201–2,
206, 216–17
- judge-made law 204–5, 217
- legal argument 199–204
- legitimacy 195, 203, 205, 211–12,
214, 216
- non-legislative codifications in
transnational private law 208–13
- normativity 194, 203, 209, 214
- patria potestas* 193
- political theory 192–9
- potestas iubendi* (power in command)
192, 193
- Roman legal texts (*ius commune*),
authority of 196–7, 200–203,
206, 214, 397
- Sachsenspiegel* texts 202
- senatus consulta* 194, 197
- sovereignty concept 192, 193–5,
196–7, 198–9, 218
- statutory law 204
- validity of law 193, 194–5, 203,
214
- see also* European law; private
international law perspective
- ‘informers’ in situations of regime
complexity 367–8
- see also* expertise and authority in
transnational governance
- institutions
authority relationships between
institutions and overlapping
jurisdictions 114–21
- framework, lack of established, in
private international law
327–8
- institutional actor role, legal authority
and overlapping jurisdictions
103–4, 116–17
- institutionalization effects, expertise
and authority in transnational
governance 365, 375–6
- international knowledge 373–4
- law as institutional normative order
235–6
- law as institutionalised doctrine
389
- law-applying 53, 54–5, 108–14
- non-state financial 332, 342
- public institution authority,
postnational governance 35–6
- International Accounting Standards
Board (IASB) 377–8, 379–80
- international constitutionalism and UN
Charter 61–3, 67, 73, 140–41
- see also* constitutional arrangements
- International Criminal Court 31, 62
- International Financial Reporting
Standards (IFRS) 378, 379, 380
- international knowledge institutions
373–4

- international law
 claims to authority, legal systems and dynamic social phenomena 61–4, 69
 fragmentation of 175–7, 256, 331 and legal pluralism 175–7, 236–7, 241–2, 244–5
 postnational governance, authority in 27–9, 30–31, 32, 36
 private *see* private international law perspective
 transnational futures of authority 395–9
 World Trade Organization law 256, 275
- international sovereignty, modern state and concept of authority 81–4, 85–6
see also sovereignty
- internationalization of constitutional law 143, 149
- interregnum periods, claims to authority, legal systems and dynamic social phenomena 60–61, 69–70
- intra-state jurisdictional overlaps 108, 121
- investment arbitration authority, private international law 345–6, 347, 348–9
see also arbitration
- Italy
 Constitution and sovereignty limitations 86, 92
 constitutional amendment status 89
- ius agenda* power, informal authorities in European private law 198
- ius commune see* Roman legal texts
- Jackson, J 263
 Jackson, V 143
 Jaklic, K 167
 Jansen, N 12, 191–219, 226, 257, 341
 Japan, Constitution and sovereignty 92
 Jasanoff, S 345
 Joerges, C 160–61
 Jolls, C 153
 Joosse, P 266
 judge-made law 78–9, 204–5, 217
 judicial opinions, and global legal pluralism 164–5
 judicial review 46, 68, 92–3
 judicial supremacy 70–71
 jurisdictions
 boundaries, socio-legal perspective 260–61
 imaginaries of authority, and disagreements 226
 overlapping *see* legal authority and overlapping jurisdictions
 juristic approach limits, transnational legal authority 255–6, 258–62
- Kalyvas, A 133
 Karayanni, M 350, 357
 Karlsson Schaffer, J 1, 36
 Kegel, G 329
 Kelley, J 31, 41
 Kelsall, T 306
 Kelsen, H 51–2, 53–4, 58–9, 61, 71–2, 77, 81, 97–8, 102, 112, 119, 230, 255
 Kennedy, D 41, 44, 325, 327, 331, 332
 Keohane, R 29, 31, 32, 184
 Kerchove, M 55, 66
 Kinchy, A 373, 375
 Kingsbury, B 32, 46, 258, 259, 368
 Kleinbard, E 270
 Kleinheisterkamp, J 209, 213
 Knop, K 164, 350
 Koenig-Archibugi, M 46–7
 Komárek, J 165, 166, 229
 Koremenos, B 31
 Koschaker, P 201
 Koskenniemi, M 63–4, 175, 256, 331, 337, 342, 348–9
 Kramer, E 205
 Krasner, S 336
 Krieger, L 228
 Krisch, N 4–6, 25–48, 74, 101, 146, 156, 157–8, 170–71, 183–4, 185, 197, 223, 249, 259, 260, 261, 271, 291, 292–3, 327, 329, 345, 352–3, 394
 Krynen, J 78

- Kumm, M 138, 168, 259
 Kunkel, W 194
- 'labelling' approach, social/normative
 divide and understanding of
 authority 290
- Lacey, N 282
 Ladeur, K 47
 Lagarde, P 328, 354
 Lagneau-Ymonet, P 377, 378, 379
 Lake, D 26, 28, 29, 31, 33
 Lambert, H 268
- land confiscation *see* contingency of
 transnational authority, Africa,
 Regional Trade Organizations
 court case among southern African
 states
- Lando, O 209
 Lang, P 201
 Langenbucher, K 204, 205
 Larenz, K 204
 Lauterbach, W 199, 202
- Law
 English common law 203
 European law *see* European law
 general will, law as expression of 84,
 91, 92, 93–4
 as institutional normative order
 235–6
 international law *see* international
 law
 judge-made law 78–9, 204–5, 217
 minimalist concept 389–90
 nature of law 49, 51–2, 53–4, 67,
 70–71
- Le Deouff, M 224
- legal argument, informal authorities in
 European private law 199–204
- legal authority, transnational futures of
 authority 389–90
- legal authority and overlapping
 jurisdictions 96–121
 authority relationships between
 institutions and overlapping
 jurisdictions 114–21
 conceptual analysis 97–9
 and EU Member States 107, 114, 117
 institutional actor role 103–4
- intra-state jurisdictional overlaps
 108, 121
- jurisdictional rules 102–3, 111–12,
 114, 117, 121
- law-applying institutions and legal
 systems 108–14
- legal rules 103–4, 108, 109, 112–14,
 119
- legal system (systematicity) and legal
 validity terminology issues
 99–102
- legitimate authority 104, 109, 115,
 116, 120–21
- lex mercatoria* 97
 and nation-states 98
- service conception of authority 99,
 104–6, 107, 108, 109, 110
- state law 102, 119
- state sovereignty 107, 108, 118–19,
 121
- supra-state legal systems 99, 106,
 107, 108, 115, 118–19, 120, 121
- transnational jurisdictional overlaps
 96–107
- transnational legal developments
 100, 101, 105
- transnational legal phenomena 99,
 102, 103, 106
- legal authority and overlapping
 jurisdictions, theory of de facto
 authority (TDFA) 7–8, 96–107
- institutional-deference relationship
 116–17
- law-applying institutions and
 circularity effect 110–11
- law's claim to authority 110
 and normal justification thesis (NJT)
 105–6, 109, 114–17, 120
- and overlapping authorities 107, 108
- rule of recognition 111–12
- state-centred character, alleged
 119–20
- traditional theory, advantage over
 112–14
- transnational jurisdictional overlaps
 118–19, 120–21
- legal devolution and creation of new,
 independent legal systems 53–4

- legal indeterminacy and inconsistency
between overlapping regimes
366–7
- legal norms *see* norms
- legal orders 34, 42, 156–7, 165–6, 167,
168–9
- legal pluralism
authority 10
claims to authority, legal systems and
dynamic social phenomena 50
and conflict management, private
international law perspective
349–51
constitutional pluralism, imaginaries
of authority, and disagreements
228–30, 234–6
global *see* global legal pluralism,
evolution of
and international law 175–7, 236–7,
241–2, 244–5
social/normative divide and
understanding of authority
294–5, 296
socio-legal perspective on
transnational legal authority
256, 260, 261, 276, 277–9
theory, postnational governance,
authority in 34
of transnational constitutionalism,
constitutional authority
contradictions 144–6
under international law, imaginaries
of authority, and disagreements
236–7, 241–2, 244–5
- legal positivism
inclusive and exclusive legal
positivists, rivalry between 55–6
private international law perspective
335, 339–40
and sovereignty 230–31, 232–5, 239,
247–8
- legal rules, and overlapping
jurisdictions 103–4, 108, 109,
112–14, 119
- legal systematicity 6–7, 99–102
and claims to authority *see* claims to
authority, legal systems and
dynamic social phenomena
- legal texts, formal presentation,
influence of 215
- legal validity *see* validity
- legal-rational authority 41–2, 267, 269
- legality, legal system's role in
explanation of 51–5
- legislation history, modern state and
concept of authority 77–9
- legitimacy
and communal networks 264–5,
272–6, 279, 395, 396–7
disputes, transnational futures of
authority 397
and efficacy issues, global legal
pluralism 154
informal authorities in European
private law 195, 203, 205,
211–12, 214, 216
issues, postnational governance 32
legitimate authority and coercion,
distinguishing between 288–9,
297
legitimate authority, and overlapping
jurisdictions 104, 109, 115, 116,
120–21
legitimate domination analyses 265
liquid authority 44, 46–7
and power, transnational futures of
authority 396–400
private regulatory governance 297–9
procedural or substantive, social/
normative divide 296–7, 298
socio-legal perspective 263–4, 396–7
transnational futures of authority 388,
390, 391, 392, 394–5, 396–400
and validity parameters, private
international law 335–6, 352–5
versus de facto authority 284–6, 292,
296–7
in Weber 262–8
see also accountability; validity
- Leino, P 256
- Leiter, B 286
- Lessig, L 382
- Letsas, G 229
- Levit, J 396
- Levy, D 382
- lex mercatoria* 97, 347

- liberalism 11, 159, 168, 186–7, 342
 Lindahl, H 135, 234, 260
 Linde, J 270
 liquid authority *see* postnational
 governance, authority in, liquid
 authority
 Lithuania, Constitution and sovereignty
 92
 London Court of International
 Arbitration 97
 Loughlin, M 14, 125, 128, 134, 147,
 229–37, 238, 239, 240–49
 Luckmann, T 214
 Luhmann, N 214, 215
 Luig, K 201
 Lukes, S 29, 35, 37, 362

 Maasen, S 371, 372
 McAdam, D 34, 40
 MacAmhlaigh, C 125
 McClachlan, C 330
 MacCormick, N 14, 52, 82, 86, 98, 105,
 119, 165–6, 229, 230–32, 234,
 235–49
 McCrudden, C 268
 MacDonald, E 135
 Macdonald, K 46–7
 Macdonald, T 44
 McVeigh, S 5
 Maddox, G 131
 Maduro, M 168
 Maitland, F 153
 Malets, O 365, 369
 Mali decentralization 315–17
 Mamdani, M 311
 Mann, M 226, 374
 March, J 365
 Marcussen, M 373
 Marella, F 213
 marginalisation of authority,
 transnational futures 399–400
 Marks, G 29, 31
 Marks, S 263
 Marmor, A 38, 54
 Martin-Ortega, O 62
 Mattli, W 336
 Maurer, A 214
 Mayerfeld, J 184

 Melissaris, E 291
 Menyhart, R 262
 Merry, S 34, 152, 185, 261
 Mertens, B 196
 Mertus, J 97
 metaphors
 power of, imaginaries of authority
 224–5
 search for new, transnational futures
 400–401
 methodological paradigm, private
 international law perspective 329,
 331, 333, 334, 349, 351, 352, 354,
 356
 methodology effects, social/normative
 divide 286
 Meunier, S 364, 367–8
 Meuwese, A 358
 Mexican Constitution, presumption of
 continuing validity 60–61, 68–9,
 73
 Michaels, R 160, 203, 209, 211, 213,
 261, 273, 329, 333, 339
 Millar, J 225–6
 Miller, C 373
 Miller, R 96–7
 Mills, A 334
 Milner, H 27
 minimal conception of authority, need
 for 388–90
 Mische, A 375, 382
 modern state and concept of authority
 75–95
 claim of authority of the state 80–94
 customary law integration 77–8
 de facto political or economic
 independence of states 82–3
 exercise of authority 76–80
 general will, law as expression of 84,
 91, 92, 93–4
 hierarchy of norms as a means for
 authority 77–9
 hierarchy of norms, preservation, and
 French Constitutional Council
 79–80, 85–6, 91
 international sovereignty 85–6
 judge-made law integration 78–9
 legislation history 77–9

- obligations 80, 86, 88
- representation theory and sovereignty 92
- sovereign authority claim in international context 81–4
- sovereignty and imputation principle 91–4
- sovereignty and judicial review 92–3
- sovereignty, meanings in French, and distinctions between 83–4
- sovereignty as result of hierarchy of norms 80–81
- state's monopoly of legitimate violence 76–7
- state's sovereignty authority 86–8
- supreme authority, existence of, and constituent power 88–90
- Vaihinger's 'as if philosophy' 81
- Westphalian system 81
- Mohnhaupt, H 208
- Moldova, declaration as sovereign state 59–60, 67, 73
- Monateri, P 334, 337
- monopolistic strategies for epistemic authority 372–3
- Moore *see* Falk Moore
- moral authority of international norms 181
- moral distance of authority 395
- moral legitimacy of authority 286
- Morgan, G 369
- Mosley, L 367
- Mouton, J-D 80
- Muir Watt, H 19–20, 325–60
- multinational corporations, influence of, private international law 338, 348–9, 357
- municipal law 55, 65–6
- Muñiz-Fraticelli, V 158, 263
- mutuality principle 160
- nation-states *see* state authority
- national laws, borrowing from, private international law 351
- networks
 - communal 264–5, 272–6, 279, 395, 396–7
 - effects and politics by 'positive example' 383
- Neumann, F 279
- Newman, D 160
- NGOs' influence, private international law 333, 341
- Nölke, A 365, 368, 377, 378
- Nollkaemper, A 101
- non-legal approaches, private international law perspective 336–7
- non-legislative codifications in transnational private law 208–13
- non-recognized states, application of laws of, private international law 350, 351
- non-state authorities 158–60, 178, 179, 183, 184–5, 339–44
- non-state financial institutions 332, 342
- non-state norms 343–4
- normal justification thesis (NJT) 105–6, 109, 114–17, 120
- normativity
 - conflict and procedural management, global legal pluralism 166–7
 - descriptive and normative components, global legal pluralism 154–5, 179–82
 - disorder beyond the state, and private international law 330–38
 - informal authorities in European private law 194, 203, 209, 214
 - law as institutional normative order 235–6
 - normative/social divide *see* social/normative divide and understanding of authority
- norms
 - claims to authority, legal systems and dynamic social phenomena 52, 53, 68–72
 - contractual obligations and non-state norms 343–4
 - formality of legal norms 196–7
 - Grundnorm* 71, 214, 335
 - moral authority of international norms 181
 - private norm-production 337–8

- sovereignty as result of hierarchy of 80–81
- validity presumptions as norms for courts 68–72
- North Atlantic Treaty Organization (NATO) 62–3
- Nussbaum, M 172–3
- obligations
 - claims to authority, legal systems and dynamic social phenomena 52, 62, 63, 67
 - contractual obligations and non-state norms 343–4
 - modern state and concept of authority 80, 86, 88
 - postnational governance, authority in 26, 30–31, 32, 40
 - social/normative divide and understanding of authority 283, 287–8, 292–3, 298
- Oestmann, P 195
- official practice, claims to authority, legal systems and dynamic social phenomena 52, 54, 55–8, 60, 64–72
- Okediji, R 383
- Olsen, J 365
- Ong, A 173
- open system approach, constitutional authority contradictions 142–3
- Oser, D 212
- Ost, F 55, 66
- ‘outside’ determination of legal text’s status, need for 71–2
- Overdeest, C 369, 375
- overlapping jurisdictions *see* legal authority and overlapping jurisdictions
- overlapping regimes, legal indeterminacy and inconsistency between 366–7
- Page, E 371
- Paine, T 134
- Palombella, G 132
- parent-child relation, imaginaries of authority 222, 224, 242–3
- Parker, L 374
- Parsons, T 374
- partiality of transnational constitutionalism 146–8
- party autonomy principle, private international law 347–8
- Partzsch, L 363, 374
- patria potestas*, informal authorities in European private law 193
- Patterson, D 159–60, 168, 179
- Paul, J 337
- Paulus, A 138, 140
- Pauly, L 346
- Pauwelyn, J 40, 196
- Pawłowski, H-M 207
- Perry, J 377
- Peters, A 138, 140, 142
- Peters, B I, 36
- philosophical approaches to authority 16–17, 29–30, 31, 164–5
- Piattoni, S 169
- Picciotto, S 368
- Picker, E 204
- Pirate Parties, rise of 384
- Pistor, K 339, 342, 345
- pluralism *see* legal pluralism
- Polanyi, K 355, 358
- political authority and communal legitimacy 272–6
- political and cultural sources of authority, transnational futures of authority 393–6, 398
- political power concept 231–4, 235–40, 244
- political theory, informal authorities in European private law 192–9
- politics by ‘positive example’ and network effects 383
- Ponthoreau, M-C 268
- positivism *see* legal positivism
- Posner, E 377
- Pospisil, L 153
- Postema, G 100, 101
- postnational governance, authority in 25–48, 394
 - accountability structures 31–2
 - authority in international thought 27–30

- citizens' perspective 46–7
- deference capacity of authority 37–9
- delegation of authority by states 31–2
- globalization effects 40, 42–3, 44
- hierarchical relations and compliance 29
- international law 27–9, 30–31, 32, 36
- judicial review 46
- legal orders 34, 42
- legal philosophy 29–30, 31
- legal pluralism theory 34
- legitimacy issues 32
- obligations 26, 30–31, 32, 40
- political philosophy 29
- private forms of regulation, rise of 35, 43
- public institution authority 35–6
- quasi-governmental authority beyond the state 28
- rational-legal authority 41–2
- rationalization and differentiation of society, effects of 34–5
- reasons for action 30
- recognition of authority 38–9
- solid authority 26, 27–35
- UN Security Council, Counter-Terrorism Committee (CTC) 44–5
- World Bank, Doing Business indicators 45–6
- postnational governance, authority in, liquid authority 39–47, 394
- accountability and legitimacy 44, 46–7
- critique of 43–7
- decision-making locus 45–6
- disguised 44–5
- dynamism of authority in global governance 42–3, 46
- history of 39–40
- informality 40–41
- societal challenge effects 41–2
- substantive grounding of authority 41, 43
- potestas iubendi* (power in command), informal authorities in European private law 192, 193
- power
 - coercive enforcement 154, 180–81
 - federal 169, 255
 - France, legislative powers of King 77
 - France, Constitutional Council, power and the exercise of power, distinction between 87, 90
 - images (metaphors), power of 224–5
 - ius agenda*, informal authorities in European private law 198
 - and legitimacy 396–400
 - modern state and concept of authority 88–90, 268–72
 - political power concept 231–4, 235–40, 244
 - potestas iubendi* (power in command), informal authorities in European private law 192, 193
 - regulatory power and marginalisation of authority 399–400
 - transnational authority or transnational power 289–93
 - UN Charter, Security Council enforcement powers 140
 - see also* authority
 - Prakash, A 372, 375, 381
 - presumption of validity 58–62
 - see also* validity
 - Preuss, U 89
 - private forces, external, effects of 269–71
 - private forms of regulation, rise of 35, 43
 - private international law perspective 325–60
 - arbitration, international commercial 331–2
 - authority claims, uncoordinated 333–5
 - authority definition 327–8, 335
 - authority and responsibility 355–8
 - conflict of laws discipline 339–40
 - contemporary examples of claims to authority beyond the state 331–2
 - contract law principles 347–8
 - contractual obligations and non-state norms under the Rome I Regulation 343–4

- corporate code of conduct in tort
 - cases 343
- deference effects of authority 327, 337
- denial of authority and disembedded economy 344–9
- dispute allocatory function 349–51, 358–9
- embedded authority 358
 - future potential 358–60
- global legal paradigm 160–65, 339–44
- and global ordering 327
- heterogeneity of authority claims 328–9, 353
- human rights violations 341, 355, 357
- institutional framework, lack of established 327–8
- investment arbitration authority 345–6, 347, 348–9
- legal pluralism and conflict management 349–51
- legitimacy and validity parameters 335–6, 352–5
 - lex mercatoria* debate 347
- methodological paradigm 329, 331, 333, 334, 349, 351, 352, 354, 356
- multinational corporations, influence of 338, 348–9, 357
- national laws, borrowing from 351
- neo-liberalism and financialization, effects on 342
- NGOs' influence 333, 341
- non-legal approaches 336–7
- non-recognized states, application of laws of 350, 351
- non-state authority and private international legal paradigm 339–44
- non-state financial institutions 332, 342
- normative disorder beyond the state 330–38
- party autonomy principle 347–8
- positivist model 335, 339–40
- private norm-production 337–8
- productive inconsistencies 349–51
- proximity principle 354–5
- regime theory 336–7
- second look principle 348
- social and environmental responsibility 357
- social norms and technical standards, and incidental application 342–3
- subordinate relationship with public international law 346–7
- transnational public good perspective 333
- Westphalian model 334, 338–9, 340, 341
 - see also* informal authorities in
 - European private law
 - private law evolution 19–21
 - private ordering 258–9, 261
 - private regulatory governance legitimacy 297–9
- Psarras, H 7–8, 96–121, 296
- public finances' misuse, effects of 270
- public good perspective, private international law perspective 333
- public institution authority, postnational governance, authority in 35–6
- Pufendorf, S von 198
- Pulkowski, D 175–6, 177
- Quack, S 20–21, 257, 267, 272, 273, 361–86, 394
- Ranieri, F 199, 203
- rational-legal authority *see* legal-rational authority
- Raustiala, K 42, 364, 366–7
- Raz, J 27, 30, 50, 52–3, 54, 58, 99, 102, 103, 105, 107, 109, 110, 111, 113, 114, 115–16, 117, 119, 120, 121, 156, 157, 194–5, 196, 223, 253, 257, 269, 283, 285, 286, 296, 297, 392
- recognition of authority 38–9, 213–16, 295
 - see also* rule of recognition
- regime complexity 364, 366–9, 383
- regulation
 - accounting standards 377–80
 - copyright regulation 381–4, 385–6

- regulatory authority 19, 20–21
 regulatory power and marginalisation
 of authority 399–400
 regulatory uncertainty 362, 366–8,
 370, 379
 and semi-autonomous social fields,
 Africa 318
 Rehberg, K-S 214
 relative authorities 156–8, 166, 183,
 282, 293–9, 331, 364
 religious and state law conflicts 161–4
 Resnik, J 184, 185
 Reus-Smit, C 276
 Rhodes, R 35
 Richardson, A 377
 Ringen, S 270
 Rixen, T 271
 Robbins, B 174
 Roele, I 45
 Röhl, K 195
 Roman legal texts (*ius commune*)
 12–13, 196–7, 200–203, 206, 214,
 216–17, 397
 Romano, G 344
 Rosen, A 282
 Rosenau, J 35, 39, 42
 Rosenblum, N 34, 42
 Ross, R 153
 Roughan, N 10, 16–17, 36, 38, 74, 97,
 105, 107, 115, 154, 156, 157,
 222–3, 242–3, 280–99, 364, 390,
 403
 Ruggie, J 355
 rule of recognition 52–3, 54, 62, 63,
 111–12
see also recognition of authority
 Rundle, K 285, 286
 Rüthers, B 195
 Ryle, G 72–3
 Sabel, C 102, 169
Sachsenspiegel texts 202
 Sadurski, W 398
 Sahlin-Andersson, K 361
 Sampford, C 55, 66
 Santos, B 152, 154
 Sarra, C 12
 Sartori, G 126, 129, 133, 134
 Sassen, S 35, 40, 227–8, 325, 342, 345,
 346
 Schaeffer, M 270
 Schauer, F 68, 70–71, 191, 214, 218
 Schepel, H 337, 346, 359
 Schmidt, M 354
 Schmitt, C 241, 399, 400
 Schmittoff, C 347
 Scholte, J 46
 Schröder, J 201
 Schulte-Nölke, H 210
 scientific knowledge, increasing
 reliance on 373–4, 375–6
see also expertise and authority in
 transnational governance
 Scott, J 246, 362
 Scottish politics, and imaginaries of
 authority 244–6
 Scully, M 382
 second look principle, private
 international law perspective 348
 secondary rules of change 53, 71, 72–3
 Sell, S 372, 375, 381, 383–4
senatus consulta, informal authorities in
 European private law 194, 197
 Sending, O 38
 service conception of authority 99,
 104–6, 107, 108, 109, 110
 Sève, R 78
 Shaffer, G 97, 259, 261
 Shapiro, S 195
 sharia courts and liberal communities
 159
 Shils, E 392
 Sierra Leone, criminal prosecution *see*
 contingency of transnational
 authority, Africa, Sierra Leone
 criminal prosecution, UN Special
 Court
 Sikkink, K 143
 Simmons, A 286
 Simmons, B 41
 Simpson, G 271
 singularity concept and international
 community 139–42
 Slapnicar, K 208
 Slaughter, A-M 82, 268, 356
 Snidal, D 43, 368, 369, 370

- Snyder, F 261
- social and environmental responsibility,
private international law 357
- social nature of legal systems 50, 51,
52–3, 59–61, 65, 67, 68–9, 70, 71
- social norms and technical standards,
private international law
perspective 342–3
- social phenomena, and claims to
authority *see* claims to authority,
legal systems and dynamic social
phenomena
- social reality of law 49, 51, 57, 59, 60,
70
- social scientific approach to authority
18–19
- social/normative divide and
understanding of authority
280–99, 390, 403
- authority and authorities, competing
conceptions 283–9, 290–91
- authority and authorities,
transnational authority or
transnational power 289–93
- authority definition 281
- authority distinctions as significant
287–9
- authority interdependence 295
- authority as variable phenomenon
291
- authority's acceptance/approval by
its subjects 286
- 'labelling' approach 290
- legal pluralism 294–5, 296
- legitimate authority and coercion,
distinguishing between 288–9,
297
- legitimate versus de facto authority
284–6, 292, 296–7
- methodology effects 286
- moral legitimacy of authority 286
- normative and sociological
conceptions of legitimate
authority, relationship between
283–6, 390, 403
- obligations 283, 287–8, 292–3, 298
- private regulatory governance
legitimacy 297–9
- procedural or substantive legitimacy
296–7, 298
- recognition of relative authority 295
- relative authorities 293–9
- statist conception of authority 289
- subjects' autonomy concerns 287–8
- subject's deference to authority
292–3, 299
- systemic ability to induce deference
293
- societal challenge effects, liquid
authority 41–2
- socio-cultural dimension, constitutional
authority 128, 133–5, 148–9
- socio-legal perspective on transnational
legal authority 253–79
- charismatic authority 265–8
- communal networks and legitimate
authority 273–5, 276, 279
- constitutional approaches 258–60
- corruption effects 269–70
- cosmopolitanism 262
- cultural characteristics, awareness of
264–5
- expertise resources, availability of
267, 270–71
- external private forces, effects of
269–71
- federal powers 169, 255
- fragmentation of international law
256
- global administrative law 258
- hierarchical authority 254–5, 256
- jurisdictional boundaries 260–61
- juristic approach limits 258–62
- legal pluralism 256, 260, 261, 276,
277–9
- legal-rational authority 267, 269
- legitimacy and networks of
communal relations 264–5
- legitimate domination analyses 265
- political authority and communal
legitimacy 272–6
- practical authority of states as
lawmakers 268–72, 275–6
- private ordering 258–9, 261
- public finances' misuse, effects of
270

- relative strength of states, effects of 271
- relative weight of authority claims, assessment of 256–7
- state authority 269, 270
- state-focused juristic view 255–6
- traditional authority 265
- transnational communities 272–6
- transnational problem 254–7
- Weber, authority and legitimacy in 262–8, *see also* Weber, M
- ‘world law’ concept 261–2
- sociological approach 15–16, 226–8
- solid authority, postnational governance 26, 27–35
- Somek, A 258
- sovereignty
 - and authority 7, 76, 87, 88, 222–3, 230–32, 240–41 *see also* state authority
 - and British Parliament 89
 - concept 192, 193–5, 196–7, 198–9, 218
 - and constitutional authority
 - contradictions 132, 136–7
 - global 399–400
 - and imputation principle 91–4
 - international, modern state and
 - concept of authority 80–84, 85–8, 91–4
 - and judicial review 92–3
 - legal authority and overlapping
 - jurisdictions 107, 108, 118–19, 121
 - and legal positivism 230–31, 232–5, 239, 247–8
 - meanings in French 83–4
 - and representation theory 92
 - as result of hierarchy of norms 80–81
 - Westphalian system 81, 334, 338–9, 340, 341
 - see also* European law
- state authority
 - centrality of the state in legal theory 49–50
 - concept 289
 - constitutional authority, state-centred form 128, 129–38, 146–7
 - cosmopolitanism 174, 262
 - delegation, postnational governance 31–2
 - legal authority and overlapping
 - jurisdictions 102, 119
 - modern *see* modern state and concept of authority
 - monopoly of legitimate violence 76–7
 - national laws, borrowing from, private international law 351
 - non-recognized states, application of laws, private international law 350, 351
 - overlapping jurisdictions 98
 - overlapping, legal indeterminacy and inconsistency 366–8
 - practical limits on states 268–72
 - reciprocal deference 159–60
 - religious and state law conflicts, global legal pluralism, evolution of 161–4
 - socio-legal perspective 255–6, 268–72, 275–6
 - state-based pluralism within a federalist legal structure 169, 255
 - theory of de facto authority (TDFA) 119–20
 - statutory law, informal authorities in
 - European private law 204
- Steffek, J 47
- Stone, D 378–9
- Strassheim, H 370
- structural dimension, constitutional authority 128, 129–31
- Stryk, S 199, 202, 203, 208
- subsidiarity decisions, imaginaries of authority 117, 170, 246, 248, 259, 276
- Summers, R 196
- supra-state legal systems 99, 106, 107, 108, 115, 118–19, 120, 121
- supreme law 63, 68, 71
- Sweet, A 97, 141
- systematicity, and legal validity
 - terminology issues 99–102
- systemic ability to induce deference 293

- systemic validity 55–64, 66–7, 68–70
- Tamanaha, B 72–3, 101, 152, 270
- Taylor, C 132
- technical standards, private
international law 342–3
- territory, imaginaries of authority 223,
226, 227, 231, 239
- Teubner, G 144–6, 161, 169, 256, 336
- theory of de facto authority *see* legal
authority and overlapping
jurisdictions, theory of de facto
authority (TDFA)
- Thomas, C 263, 264
- Thornhill, C 130
- Toope, S 180
- tort cases, corporate code of conduct
343
- Trachtman, J 356
- trade in cultural products, and
international law 175–6
- traditional authority 112–14, 265
- transcendence, systemic validity,
transcendence argument 57–64
- transnational communities 272–6
- transnational constitutionalism 138–46,
147–8
- transnational funding agencies *see*
contingency of transnational
authority, Africa, transnational
funding agencies (West Africa)
- transnational futures of authority
387–403
- approaching authority, differences in
393
- authority conceptions and power,
relationship between 391–3
- authority, criteria for use of term
400–403
- authority and power 390–93
- claimant entitled to be obeyed 388
- claimant listened to with special
respect 388
- claimants and authority, relationship
between 263, 391
- communal networks 395, 396–7
- consortia of states 399
- demands for authority, looking for
391, 394
- epistemic authority of ‘experts’ 388,
391–2
- governmental authority 388–9, 392
- hegemonic blocs 399
- international law 395–6, 398–9
- legitimacy 388, 390, 391, 392, 394–5,
396–400
- metaphors, search for new
400–401
- minimal conception of authority,
need for 388–90
- moral distance of authority 395
- political and cultural sources of
authority 393–6, 398
- power and legitimacy 396–400
- regulatory power and marginalisation
of authority 399–400
- sceptical reactions to history 401–2
- transnational jurisdictional overlaps
96–107, 118–19, 120–21
- transnational law
- transnational problem, socio-legal
perspective 254–7
- transnational public good perspective,
private international law
perspective 333
- transnational regime complexity and
indeterminacy 368–9
- Transnistria 59–60, 67
- Troper, M 7, 75–95
- Trumbull, G 383
- Tully, J 40, 137
- Tunisia, Constitution and sovereignty
92
- Tuori, K 98, 241–2
- Turner, S 266
- Twining, W 282, 291, 294
- Tyler, T 272
- Ulfstein, G 140
- UN Charter
- constitutional properties 61–3, 67,
73, 140–41
- Security Council enforcement
powers 140

- state sovereignty and right to wage wars 85
- supremacy clause 140
- UN Convention on Contracts for the International Sale of Goods 215
- UN Convention to Combat Desertification 313–14
- UN Security Council, Counter-Terrorism Committee (CTC) 44–5
- uncertainty, regulatory, and expertise and authority in transnational governance 362, 366–8, 370, 379
- Unger, R 195
- UNIDROIT Principles of International Commercial Contracts (PICC) 209, 210–13, 215, 218–19, 343
- United States
- Alaska Packers Assn v. Industrial Accident Comm'n of California* 350
- American Restatements 209, 210–11
- Bob Jones Univ. v. United States* 161–3
- conflict-of-laws cases 161–4
- constitutional law concepts 66, 70–71, 143, 350
- Declaration of Independence 132
- Employment Div., Dept. of Human Resources of Oregon v. Smith* 163–4
- extraterritorial conduct of US based multinational corporations 357
- Financial Accounting Standards Board (FASB) and financial crisis 380
- John Doe v. Nestlé USA* 343
- Lawrence v. Texas* 143
- Mark Kasky v. Nike* 343
- Roper v. Simmons* 143
- sovereignty and judicial review 92–3
- speech-protective interpretation of First Amendment 171–2
- state-based pluralism within a federalist legal structure 169, 255
- Wiwa v. Royal Dutch Petroleum Co* 357
- universalism 168, 171–2, 186–7
- Uphoff, N 363
- Vabulas, F 43
- Vaihinger's 'as if philosophy' 81
- validity
- and claims to authority 52, 56, 57, 58–62, 68–72, 254
- informal authorities in European private law 193, 194–5, 203, 214
- parameters, private international law 335–6, 352–5
- systemic 55–64, 66–7, 68–70
- terminology issues, and overlapping jurisdictions 99–102
- see also* accountability; legitimacy
- Van der Burg, W 181
- Van Waeyenberge, A 332
- Vanderlinden, J 152
- Varella, M 256
- Vedel, G 90, 93–4
- Venzke, I 36, 37, 38, 283, 284
- Versteeg, M 143
- Victor, D 42, 364, 366–7
- Vienna Convention on the Law of Treaties 85
- Villa, D 269–70
- violence
- atrocities *see* contingency of transnational authority, Africa, Sierra Leone criminal prosecution, UN Special Court
- land confiscation *see* contingency of transnational authority, Africa, Regional Trade Organizations court case among southern African states
- state's monopoly of legitimate 76–7
- Vogenauer, S 203, 204, 212, 213
- Von Bar, C 209
- Von Bernstorff, J 255
- Von Bogdandy, A 36
- Von Daniels, D 97, 258
- Von Savigny, F 204
- Voß, J-P 370
- Wai, R 340, 346, 355, 356
- Waldron, J 54, 71, 105, 126, 140–41, 143

- Walker, N 4, 8–10, 108, 112, 125–50,
166, 167, 258, 259, 326, 335
- Wallace, R 62
- Walton, K 282
- Waltz, K 27–8
- Waluchow, W 50, 55–7, 101
- Walzer, M 228
- war crimes *see* contingency of
transnational authority, Africa,
Sierra Leone criminal prosecution
- Weber, M 29, 33–4, 76, 192, 195, 228,
253–4, 262–8, 277, 283, 285, 327,
337
- Weiler, J 167
- Weingart, P 371, 372, 373
- Weinrib, L 143–4
- Weiss, J 379
- Wesel, U 206
- Westphalian system 81, 334, 338–9,
340, 341
- Williams, G 110
- Wilmarth, A 270
- Windscheid, B 204
- Wittmann, R 194
- Wolf, K 249
- Woods, N 336
- Woodward, B 353
- World Bank
Doing Business indicators 45–6
- ICSID Arbitration, *Bernhard Von
Pezold v. Republic Of Zimbabwe*
333
- World Trade Organization
political and legal authority 275
Trade-Related Aspects of Intellectual
Property Rights (TRIPS) 381
- Worman, N 400
- Yeh, J-R 143
- Young, M 175
- Zeitlin, J 102, 369
- Zekoll, J 210
- Zimbabwe
ICSID Arbitration, *Bernhard Von
Pezold v. Republic Of Zimbabwe*
333
Regional Trade Organizations court
case *see* contingency of
transnational authority, Africa,
Regional Trade Organizations
court case among southern
African states
- Zimmermann, R 205, 206, 207, 209,
211, 215–16, 219
- Zippelius, R 205, 217
- Zumbansen, P 96–7, 256, 261, 294, 298,
336, 396
- Zürn, M 26, 37, 38, 41, 364, 365

