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-Toteff, 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
imaginaris see imaginaries of authority, and disagreements
informal see informal authorities in European private law
institutional see institutions
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
Brockmöller, A 204
Brödermann, E 212
Brout, T 256
Brunner, C 153
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

constitutonal 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 transcendency 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
and UN Charter 61–3, 67, 73, 140–41
and constitutional authority 125–50
analysis framework 127–9
and autonomy and equality 133–4
cosmopolitan constitutionalism as abstract ideal 130–31, 136
cosmopolitan 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
Index

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
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
dereference 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
Dreznner, 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
Index

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
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
Authority in transnational legal theory

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
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
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
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

Roger Cotterrell and Maksymilian Del Mar - 9781784711627
Downloaded from PubFactory at 09/16/2023 10:44:28AM
via free access
Index

‘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
Authority in transnational legal theory

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
historicalising 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 consults 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
iус agenda power, informal authorities
in European private law 198
iус 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
juristc 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
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
in 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
Index

| 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 |
| 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 |
| Mandani, 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 |
| Measles, E | 291 |
| Menyhart, R | 262 |
| Merry, S | 34, 152, 185, 261 |
| Mertens, B | 196 |
| Mertus, J | 197 |
| 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 |
Authority in transnational legal theory

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
Overdevest, 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
Pawlowski, H-M 207
Perry, J 377
Peters, A 138, 140, 142
Peters, B 1, 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
deferecence 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
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
Index

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
and 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
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
<table>
<thead>
<tr>
<th>Author</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rehberg, K-S</td>
<td>214</td>
</tr>
<tr>
<td>relative authorities</td>
<td>156–8, 166, 183, 282, 293–9, 331, 364</td>
</tr>
<tr>
<td>Rehberg, K-S</td>
<td>214</td>
</tr>
<tr>
<td>religious and state law conflicts</td>
<td>161–4</td>
</tr>
<tr>
<td>Rehnk, J</td>
<td>184, 185</td>
</tr>
<tr>
<td>Resnik, J</td>
<td>156–8, 166, 183, 282, 293–9, 331, 364</td>
</tr>
<tr>
<td>Reus-Smit, C</td>
<td>276</td>
</tr>
<tr>
<td>Rhodes, R</td>
<td>35</td>
</tr>
<tr>
<td>Richardson, A</td>
<td>377</td>
</tr>
<tr>
<td>Ringen, S</td>
<td>270</td>
</tr>
<tr>
<td>Rixen, T</td>
<td>271</td>
</tr>
<tr>
<td>Robbins, B</td>
<td>174</td>
</tr>
<tr>
<td>Roele, I</td>
<td>145</td>
</tr>
<tr>
<td>Röhl, K</td>
<td>195</td>
</tr>
<tr>
<td>Roman legal texts (ius commune)</td>
<td>12–13, 196–7, 200–203, 206, 214, 216–17, 397</td>
</tr>
<tr>
<td>Romano, G</td>
<td>344</td>
</tr>
<tr>
<td>Rosen, A</td>
<td>282</td>
</tr>
<tr>
<td>Rosenau, J</td>
<td>35, 39, 42</td>
</tr>
<tr>
<td>Rosenblum, N</td>
<td>34, 42</td>
</tr>
<tr>
<td>Ross, R</td>
<td>153</td>
</tr>
<tr>
<td>Scott, J</td>
<td>246, 362</td>
</tr>
<tr>
<td>Scottish politics, and imaginaries of authority</td>
<td>244–6</td>
</tr>
<tr>
<td>Scully, M</td>
<td>382</td>
</tr>
<tr>
<td>second look principle, private international law perspective</td>
<td>348</td>
</tr>
<tr>
<td>secondary rules of change</td>
<td>53, 71, 72–3</td>
</tr>
<tr>
<td>Sell, S</td>
<td>372, 375, 381, 383–4</td>
</tr>
<tr>
<td>senatus consulta, informal authorities in European private law</td>
<td>194, 197</td>
</tr>
<tr>
<td>Sending, O</td>
<td>38</td>
</tr>
<tr>
<td>service conception of authority</td>
<td>99, 104–6, 107, 108, 109, 110</td>
</tr>
<tr>
<td>Sève, R</td>
<td>78</td>
</tr>
<tr>
<td>Shaffer, G</td>
<td>97, 259, 261</td>
</tr>
<tr>
<td>Shapiro, S</td>
<td>195</td>
</tr>
<tr>
<td>sharia courts and liberal communities</td>
<td>159</td>
</tr>
<tr>
<td>Shils, E</td>
<td>392</td>
</tr>
<tr>
<td>Sierra Leone, criminal prosecution see contingency of transnational authority, Africa, Sierra Leone criminal prosecution, UN Special Court</td>
<td></td>
</tr>
<tr>
<td>Sikkink, K</td>
<td>143</td>
</tr>
<tr>
<td>Simmons, A</td>
<td>286</td>
</tr>
<tr>
<td>Simmons, B</td>
<td>41</td>
</tr>
<tr>
<td>Simpson, G</td>
<td>271</td>
</tr>
<tr>
<td>singularity concept and international community</td>
<td>139–42</td>
</tr>
<tr>
<td>Slapnicar, K</td>
<td>208</td>
</tr>
<tr>
<td>Slaughter, A-M</td>
<td>82, 268, 356</td>
</tr>
<tr>
<td>Snidal, D</td>
<td>43, 368, 369, 370</td>
</tr>
<tr>
<td>Sassen, S</td>
<td>35, 40, 227–8, 325, 342, 345, 346</td>
</tr>
<tr>
<td>Schaeffer, M</td>
<td>270</td>
</tr>
<tr>
<td>Schauer, F</td>
<td>68, 70–71, 191, 214, 218</td>
</tr>
<tr>
<td>Schepel, H</td>
<td>337, 346, 359</td>
</tr>
<tr>
<td>Schmidt, M</td>
<td>354</td>
</tr>
<tr>
<td>Schmitt, C</td>
<td>241, 399, 400</td>
</tr>
<tr>
<td>Schmitoff, C</td>
<td>347</td>
</tr>
<tr>
<td>Scholte, J</td>
<td>46</td>
</tr>
<tr>
<td>Schröder, J</td>
<td>201</td>
</tr>
<tr>
<td>Schulte-Nölke, H</td>
<td>210</td>
</tr>
<tr>
<td>scientific knowledge, increasing reliance on</td>
<td>373–4, 375–6</td>
</tr>
<tr>
<td>see also expertise and authority in transnational governance</td>
<td></td>
</tr>
<tr>
<td>Scott, J</td>
<td>246, 362</td>
</tr>
<tr>
<td>Scottish politics, and imaginaries of authority</td>
<td>244–6</td>
</tr>
<tr>
<td>Scully, M</td>
<td>382</td>
</tr>
<tr>
<td>second look principle, private international law perspective</td>
<td>348</td>
</tr>
<tr>
<td>secondary rules of change</td>
<td>53, 71, 72–3</td>
</tr>
<tr>
<td>Sell, S</td>
<td>372, 375, 381, 383–4</td>
</tr>
<tr>
<td>senatus consulta, informal authorities in European private law</td>
<td>194, 197</td>
</tr>
<tr>
<td>Sending, O</td>
<td>38</td>
</tr>
<tr>
<td>service conception of authority</td>
<td>99, 104–6, 107, 108, 109, 110</td>
</tr>
<tr>
<td>Sève, R</td>
<td>78</td>
</tr>
<tr>
<td>Shaffer, G</td>
<td>97, 259, 261</td>
</tr>
<tr>
<td>Shapiro, S</td>
<td>195</td>
</tr>
<tr>
<td>sharia courts and liberal communities</td>
<td>159</td>
</tr>
<tr>
<td>Shils, E</td>
<td>392</td>
</tr>
<tr>
<td>Sierra Leone, criminal prosecution see contingency of transnational authority, Africa, Sierra Leone criminal prosecution, UN Special Court</td>
<td></td>
</tr>
<tr>
<td>Sikkink, K</td>
<td>143</td>
</tr>
<tr>
<td>Simmons, A</td>
<td>286</td>
</tr>
<tr>
<td>Simmons, B</td>
<td>41</td>
</tr>
<tr>
<td>Simpson, G</td>
<td>271</td>
</tr>
<tr>
<td>singularity concept and international community</td>
<td>139–42</td>
</tr>
<tr>
<td>Slapnicar, K</td>
<td>208</td>
</tr>
<tr>
<td>Slaughter, A-M</td>
<td>82, 268, 356</td>
</tr>
<tr>
<td>Snidal, D</td>
<td>43, 368, 369, 370</td>
</tr>
</tbody>
</table>
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

'labeling' 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

jurist 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
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
systemicity, and legal validity terminology issues 99–102
systemic ability to induce deference 293
Index

systemic validity 55–64, 66–7, 68–70
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

Tamanaha, B 72–3, 101, 152, 270
case, corporate code of conduct 343
Teubner, G 144–6, 161, 169, 256, 336
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

Taylor, C 132
technical standards, private international law 342–3
territory, imaginaries of authority 223, 226, 227, 231, 239
to be obeyed 388
Tunisia, Constitution and sovereignty 92
Tuori, K 98, 241–2
Turcotte, 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
Authority in transnational legal theory

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
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
Index

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