

Index

- access platforms, 281, *See also* Airbnb; Facebook; Google; Twitter; Uber
corporate social responsibility guidance rules for, 282
duty of fairness in entry and exit rules, 291, 297
duty of loyalty owed to users by, 288, 292–93
duty of to mitigate discrimination, 293–96
duty of to provide prior notice before changing locations, 296
jurisdictional interest in social impacts of, 282
legal role of as private actors, 278, 279, 280, 287
as market-constituting fiduciaries, 33, 279, 280, 287–89, 291–93, 298
multiple beneficiaries' problem in, 290, 291
as norm creators, 284, 285, 298
power over users held by, 23, 282, 283, 287, 289, 290, 292, 298
public utilities approach to, 284, 285
responsibilities of platforms towards users, 23, 279, 280, 290, 291, 292, 293, 295
self-regulation of terms of service in, 282, 284
service role of, 289–91
as transnational companies, 282
vs. Facebook and Google type platforms, 280
vs. traditional fiduciaries, 287
advocacy, transnational legal, 13, 16, 151, 159, 164, 166
Africa, U.K. imperialism in, 254, 259
agency problems, 99, 107, 110, 111, 202, 242, 248
aging, of East Asian societies, 213
Airbnb, 278, 280, 281, 284, 289, 292, 293, *See also* access platforms
Community Commitment policy of, 295
cooperation with local governments of, 282
discrimination and, 294, 296
power over users of, 282
- Amazon, 280, 281, 284, 293
U.S. court ruling on, 282
Anglo-common law, 183
Annan, K., 163
Armitage v. Nurse, 174
Ashgar Leghari v. Federation of Pakistan, 165
Australian fiduciary law, 46, 93
corporate directors duties in, 94
divergence of corporate directors duties from U.S., 223–24
duty of care and international court communication and, 69–71
Nauru case against, 258
population statistic compiling on Aboriginal peoples and, 253–54
autonomy-enhancing ideal in fiduciary law, 238, 239, 241–42, 259
- Bartlett v. Barclays Bank*, 175–77
Bishop, J., 282
BlackRock, 65–66, 84
bond markets, 27, *See also* net-short debt investing; *Windstream v. Aurelius*
fiduciary duties between bondholders and CDS counterparties, 134–35
fiduciary duties within bondholder group, 132–34
International Capital Markets Association (ICMA) and, 137–38
transnational as non-state law, 140
transnational as private legal ordering, 125–26, 136–37
transnational fiduciary duties in state law, 141–43
Bristol & West Building Society v. Mothew, 68, 70, 94

- Bürgerliches Gesetzbuch.* See under German fiduciary law
- Burke, E., 3, 31, 249–50
- Cayman Islands, 2, 28, 172
- Channel Islands, 172
- Charitable Corp v. Sutton (“Sutton’s case”)*, 219
- Cherokee Nation, 250–52
- Children’s Trust (NGO), 4, 153, 165
- Chinese fiduciary law, 45, 207–9
 Chinese Trust Law, 184
 Confucian influence in, 189
 diffusion of trust law in, 56–58
 modernization of in 19th and early 20th centuries, 193
 trust law in, 208
- civil law countries, 8, 11, 12, 37, 38
 civil law trusts and, 187, 214
 civil law trusts in East Asian countries, 170, 179–86
 civil society in East Asian countries and, 213
 duty of care and international court communication, 69–71
 duty of care in, 43
 duty of loyalty in, 43
 duty of loyalty in vs. in common law countries, 68–69, 181–83, 211
 fiduciary duties between bondholder and issuer in, 131–32
 fiduciary duties within bondholder groups in, 134
 public trust doctrine in, 154, 156
 transnational fiduciary law in, 40, 41, 45–46
- civil law East Asia, 190, *See also* Chinese fiduciary law; civil law countries; Japanese fiduciary law; South Korean fiduciary law; Taiwanese fiduciary law
- climate change, 7, 16, 27, 28, 149, 153, *See also* environmental law and regulation
 human rights litigation for, 4, 164
 international climate change litigation, 153, 164, 165
 micro-TLOs for addressing, 162
 Urgenda decision of the Hague District Court, 164
 coercive enforcement of law, 264, 267, 276
- colonialism, 9, 10, 20, 22, 188, *See also* imperialism in fiduciary law; League of Nations mandate system; Native Americans, fiduciary colonialism against
- of Japan in South Korea and Taiwan, 193, 194, 209
 origins of modern international law and, 31
 Western over China, 193
- common law countries
 common law East Asia, 189, 197–99, 201–3
 corporate directors duties and, 219–25
 duty of care and international court communication and, 69–71
 duty of care in, 43
 duty of loyalty in, 43
 duty of loyalty in vs. in civil law countries, 68–69, 181–83, 211
 fiduciary duties between bondholder and issuer in, 128–31
 fiduciary duties within bondholder groups, 133
 Hong Kong and Singapore as, 189
 Japanese fiduciary law and, 192
 public trust doctrine in, 154, 156
 transnational fiduciary law in, 41, 45–46
 trust transplantation to civil law countries, 179, 180
- common law East Asia, 189, 197–99, 201–3, *See also* common law countries; East Asian fiduciary law; Hong Kong; Singapore
- comparative law
 vs. transnational law, 40, 41, 43, 46–48
- conflict of interest management, financial conglomerates and, 87–88
 insider trading and, 89–90
 mergers and acquisitions and, 88–89
- conflict-of-laws principles, 25, 80–83
- Confucian tradition, 189, 208
- Congo Free State, 256
- contract law
 duty of loyalty in civil vs. common law countries and, 68–69
 German fiduciary law and, 48–53
 mandate contracts and, 49–52
 TLO theory and, 43, 44
 tort of contract cases, 82
 transnational fiduciary law and, 43, 45–46
- corporate codes, 30
 as accountability mechanism, 219, 235
 authorship of, 232
 corporate scandals and crises and, 230
 as norm creators, 219, 225–35
 shareholders vs. stakeholder interests and, 30, 232, 233, 234
 transnationalization of U.K. corporate codes, 17, 219
- corporate directors fiduciary duties, 7, 29
 as accountability mechanism, 219, 235
 in Australia, 94
 comparative across U.K., U.S. and Australia, 220, 223–24
 differing definitions of across jurisdictions, 30, 222, 223, 224, 225

- ESG issues and, 66
in India, 223
judicial review of by independent judges, 29, 91
as legal transplantation of British law, 220
policing of self-dealing by, 18
stakeholder interests and, 223, 224
in U.K. law, 219
- corporate law and governance. *See also* corporate codes; corporate directors fiduciary duties; environmental, social, and governance (ESG) standards; stewardship codes
in China, 207–9
in common law East Asia, 201–3
convergence theory vs. path dependence theories, 221
corporate social responsibility guidance for access platforms, 282
Delaware approach in, 42, 62, 66, 75, 81, 82
divergence of U.S. from U.K., 18, 222, 223
divergence of U.S. from U.K./Australia, 223
dominance of American model of in 1990s, 199
ESG standards and, 65
family-controlled companies, 190, 193, 199, 201, 202, 213, 231, 232
OECD Principles of Good Governance, 24, 90–92
path dependence theories in, 30, 219, 221, 225, 235
post-financial crisis developments in Japan, 204–7
scandals and crises in, 217, 218, 225
shareholder primacy model of, 20, 21, 29, 199, 206
Sinclair Oil Corp. v. Levien, 80, 81
social role of corporations and, 217
stakeholder-oriented model of, 62, 65, 66, 91, 223, 224, 233, 234
transnational framework for, 17, 29, 217
UN and OECD as standards-setters for, 42, 61, 90–92
U.S. influence on Japanese, 196–97, 203–4, 212
U.S. vs. Japanese norms, 29
- Cortés, H., 245, 246, 255
courts, 4, 16, 32, 34, 151
convergence of on public trust norms, 166
court communication between nations, 68, 69–71
fiduciary law and, 77
International Court of Justice, 258
judicial reasoning in development of fiduciary law, 221
judicial review of corporate directors by independent judges, 29, 91
liberal interpretation of trust jurisprudence, 175
public trust principle enforcement and, 165
- Delaware approach in corporate law, 42, 62, 66, 75, 81, 82, 220, 223, 224
duty of loyalty and care for corporate directors and, 224
discretionary powers, 3, 13, 41, 48, 49, 72, 285
discretionary trusts, objects of, 172–75
discrimination, duty of access platforms to mitigate, 293–96
Dodge v. Ford Motor Co., 62
domestic law
convergence around public trust principles and, 158
domestic public trust litigation, 164, 166
formation of transnational fiduciary law and, 68
horizontal legal ordering via norms, 16
transnational fiduciary law and, 17
uncertain status of in transnational law theory, 53–56
- Dual Mandate in British Tropical Africa, The (Lugard), 254
- duty modification clauses, 172, 175–78
- duty of care, 11, 70, 101, 242
in civil vs. common law countries, 43, 69–71
contestation on, 182
in Delaware approach in corporate governance, 224
financial intermediaries and, 99
international court communication and, 69–71
as legal transplantation of British law, 220
in net-short debt investing, 125
public authorities and, 31
in U.S., 70
- duty of honesty and good faith, in East Asian countries, 182
- duty of loyalty, 3, 11, 23, 43, 101, 238, 242, 286
for access platforms towards users, 280, 288, 292–93
- American duty of loyalty in East Asia, 201, 212
American vs. Japanese, 29, 195–96
in civil vs. common law countries, 43, 49, 68–71, 181–83, 211
- in Delaware approach in corporate governance, 224
- financial intermediaries and, 99
in Germany, 38
indigenous East Asian norms of, 20, 188–89, 211
international court communication and, 69–71
in Japanese fiduciary law, 192
as legal transplantation of British law, 220
as meta-concept, 33
in net-short debt investing, 125, 126
public authorities and, 31
to purposes, 287
of trustees, 181–83

- duty of loyalty (cont.)
 in the U.S., 192
 varying construction of by country, 19, 68–69
 varying construction of in East Asian countries, 20, 71–72
- East Asian fiduciary law, 43, 45, 215
 civil law trusts in, 39, 42, 170, 179–86
 civil society realignment in East Asia and, 213
 colonization and, 209
 common law East Asia, 189, 197–99, 201–3
 corporate law and governance, 201–3
 diffusion of trust law in, 56–58
 duty of honesty and good faith in, 182
 duty of loyalty in vs. in U.S., 201, 212
 exemplary trust law in, 214
 fiduciary duties of trustees in, 181–83
 indigenous fiduciary norms, 20, 188–89, 211
 interaction of East Asian and Western fiduciary norms, 211
 mechanisms of transnationalization of, 56–60, 209–12
 modernization thru Western law/norms in 19th/early 20th centuries, 188–99, 209
 status-based notions in, 19, 29, 183, 189, 190, 211
 U.K. stewardship code adoption and, 231, 232
 varying duty of loyalty construction in, 71–72
 vs. Anglo-common law approaches to trust law, 186
- East India Company (Britain), 3, 31, 241, 248–49
- Eatwith, 278
- English law. *See United Kingdom (U.K.) fiduciary law*
- environmental law and regulation, 5, 7, *See also* climate change; environmental, social, and governance (ESG) standards
 delay in despite growth of, 165
 environmental trusteeships and, 162–63
 Paris Agreement as public trust norm, 163
 political dysfunction in, 149, 152
 public trust doctrine and, 16, 27, 28, 146, 147, 148, 149, 151, 152, 153, 162, 166
 wetlands conservation, 158–59
- environmental, social, and governance (ESG) standards, 42
- disclosure rules in EU law, 63–65
- in France, 63
 as normative thrust in transnational fiduciary law, 60–66
- equity law, 69, 72
 in East Asian civil trusts, 180
- European Union (EU) fiduciary law, 101
 conduct-of-business standards for financial services in, 104
 ESG disclosure rules in, 63–65
 regulatory conduct-of-business legislation, 112–24
 Treaty on European Union (TEU), 112
 Treaty on the Functioning of the European Union (TFEU), 112
- extraterritoriality in fiduciary law, 25, 83–85
- Facebook, 280, 281, 284
 as information fiduciary, 23, 284
- family, 29
 family-controlled companies, 18, 190, 193, 199, 201, 202, 213, 231, 232
 norms of deference to elders and, 20, 183, 189
- fiduciary colonialism, 252
 against Native Americans, 243–44, 250–53
- Fiduciary Duty for the Twenty-first Century report (UNEP), 4, 16, 24, 39, 61
- fiduciary law/norms, 4, 39, *See also* by specific countries; duty of care; duty of loyalty; imperialism in fiduciary law; transnational fiduciary law/norms; unified theory of fiduciary law
 autonomy-enhancing ideal in, 238, 239, 241–42, 259
 case study of public trust doctrine as transnational normative settlement, 147–52
 common law and civil law jurisdictions and, 41 as counter to self-interest, 22, 23
 courts in, 77
 defined, 93
 development of regulatory conduct-of-business standards by general norms of, 109–12
 discretionary powers in, 285
 as distinct body of law, 242
 economic structure of, 238
 emergence of modern markets and, 243–44
 English law and, 8, 9
 extraterritorial application of, 25, 83–85
 fiduciary duties between bondholder and issuer under civil law, 131–32
- fiduciary duties between bondholder and issuer under common law, 128–31
- fiduciary duties between bondholders and CDS counterparties, 134–35
- fiduciary duties within bondholder group, 132–34
- fiduciary norms, 3
- functional fiduciary law, 109, 111–12, 116, 117, 120, 122, 123–24
- gap-filling function of, 21, 32, 33, 95

- hard law in definition of, 77
history on, 3
hybrid system of, 39, 67
imperialism in fiduciary law, 239–41
institutionalization of, 14–18
Islamic law and, 8, 9
lack of scholarship on U.S. and European imperialism, 238
lack of transnational dimensions in scholarship of, 33, 79, 80
as meta-concept, 3, 16, 24, 31, 32, 33
regulatory agencies as producing, 12
scholarship on, 3, 39
as state-enforced law, 77, 78
transnational applications of, 80
vertical ordering of norms and TLO formation, 41
vs. transnational fiduciary law, 93–96
vs. transnational law, 78
fiduciary theory of public law, 13, 31
financial conglomerates. *See* conflict of interest management, financial conglomerates and financial crisis of 2007–2009, 218
Japanese corporate governance developments after, 204–7
U.S. vs. U.K. view on causes of, 230
Financial Instruments Directive (MiFID I and II), 104, 106, 114, 116, 117, 119, 121
financial intermediaries-customer relationships, 21
convergence of regulatory standards for, 26, 98–100, 102–7
food safety standards, as norm, 266, 273, 276
French fiduciary law, 42, 63, 191
corporate social responsibility guidance for access platforms, 282
histoire croisée, 41, 56, 59
public trust concepts in French law, 154
functional fiduciary law, 21, 26, 67, 111–12, 123–24
defined, 26
IOSCO Principles as, 116
in German private law, 120
regulatory standards and private law interactions and, 117, 122
Future of the Corporation project (British Academy), 217
German fiduciary law, 41, 44, 46, 48–53, 191, *See also Treuhandlerhältnisse*
German Civil Code (*Bürgerliches Gesetzbuch* (BGB)), 49, 57, 180
German Securities Trading Act, 119, 120
influence on East Asian countries of, 194
mandate contracts and, 49–52
public trust concepts in German law, 154
regulatory conduct-of-business standards in private law and, 117–20
Treuepflicht, 46
global financial crisis of 2007–2009
Japanese corporate governance developments after, 204–7
stewardship codes in response to, 230
U.S. vs. U.K. view on, 230
global law, question of, 67
global tech entrepreneurship, 172
global wealth
as driving offshore trust jurisdictions, 170
good faith principle, 128–30
Google, 280, 281, 284
as information fiduciary, 23, 284
governance fiduciaries, 286, 287
guardianship, 239, 259
de Vitoria on, 245–47
of Indigenous Peoples, 244–47
limiting of Indigenous sovereignty and, 249
population statistics as tool of imperial, 253
in Roman law, 245
trusts as alternative to, 214
Guiding Principles on Business and Human Rights (UN, 2011), 24, 61, 64
Hague Trust Convention, 15, 16, 38, 45, 170–71, 179, *See also* modern trust law/norms
Halliday, T., 5, 14, 78, 79, 86, 137, 138, 147, 150, 169, 183, 265
on legal aspects of TLOs, 266–67
hard law, 26, 212
in fiduciary law, 77
gaps in filled by fiduciary norms, 32
in transnational fiduciary law, 79
Western fiduciary norms incorporation into, 29
Hazard Analysis and Critical Control Point (HACCP) management systems, 274
Hilton v. Barker Booth & Eastwood, 94
histoire croisée, 41, 56, 58, 59
Hong Kong fiduciary law, 9, 189
adoption of English fiduciary law in, 190, 197–99, 201–3
lack of charity commission in, 213
trust law in, 208, 209
wealth management centers and, 172
Zhang v. DBS case and, 176–77
horizontal legal ordering, 16, 28, 41, 53, 72
among onshore/ offshore jurisdictions and civil/ common law jurisdictions, 170, 172
of corporate governance codes, 30
horizontal transmission of U.K. stewardship codes, 231–32

- horizontal legal ordering (cont.)
 local level normative settlement and, 30
 transnational fiduciary law formation and, 24,
 25, 34, 41, 42, 53, 56–60, 72
- human rights
 climate change litigation and, 4, 164
 fiduciary norms for corporate respect of, 2, 61
 human rights standards, 266
 international human rights law, 31
 hybrid system of fiduciary law, 39, 67
- imperialism in fiduciary law, 9, 239–41, 259, *See also* League of Nations mandate system; Native Americans, fiduciary colonialism against
- Burke on trust obligations of imperial officials and, 249–50
- East India Company and European, 31, 241, 248–49
- lack of scholarship on U.S. and European, 238
- population statistic compiling on Aboriginal peoples in Australia and, 253–54
- resistance and, 31, 239, 246, 247, 251, 258
- Spanish imperialism in Mexico, 244–48, 254–55
- U.K. imperial theory and accounting practices in Africa, 254
- independent judges, 29, 91
 judicial reasoning in development of fiduciary law, 221
- indeterminacy/contradictions within legal orders, TLO emergence and, 21, 22, 277
- Indian fiduciary law
 corporate directors fiduciary duties in, 223
 East India Company in, 248–49
 public trust doctrine in, 155, 156, 157, 164
 trust law, 9
- Indian guardianships, 237, 241, 252
- Indigenous Peoples, 2, 9, 22, *See also* imperialism in fiduciary law; League of Nations mandate system; Native Americans, fiduciary colonialism against
 guardianship ideology and practices against, 244–47
 resistance of, 246, 247, 251, 258
- Spanish imperialism in Mexico and, 244–48
- Taungurung Peoples of Australia, 253–54
- Tlaxcalans (Indigenous Mexicans), 244, 246, 254–55
- industrial trusts, 178
- information fiduciaries, 23, 32, 33, 285
 critique of, 23, 285
 defined, 284
 insider trading, 89–90
- institutional investors, 3, 17, 30, 84, 205, 227, 230, 231, 232
- International Capital Markets Association (ICMA), 27, 133, 137–38
- International Conduct of Business Principles (IOSCO)
 as functional fiduciary law, 109, 111–12, 116
- international law
 international private law, 56
 transnational fiduciary law and, 17
- International Organization for Standardization (ISO), 32, 264, 277
 as case study of transnational public fiduciary theory, 270–75
 fiduciary duties to stakeholders of, 271–72, 273
 HACCP framework use of, 274
 as TLO, 32
- International Organization of Securities Commissions (IOSCO), 21, 26, 92, 102
- financial intermediary-customer relationships standards and, 100
- International Conduct of Business Principles of, 102–7
- Principles of as functional fiduciary law, 109, 111–12, 116
- international organizations, as standards-setters in corporate law, 6, 42, 61, 90–92
- international private law, 56
- international public trust litigation, 152, 166
- International Swaps and Derivatives Association (ISDA), 104, 134, 135
- Investment Advisers Act of 1940, 83, 84
- Investment Services Directive (ISD), 104
- investor protections, 109, 220
 in civil vs. common law countries, 29
- Investor Stewardship Group (ISG), 232
- Islamic law, 8, 9
- Italy
 Environment Ministry and public trust, 156
- Ito Review, 205
- Japanese fiduciary law, 29, 39, 45
 Civil and Commercial Code of, 191–92
 corporate governance developments post-financial crisis, 204–7
 diffusion of trust law and, 56–58
 duty of loyalty construction in, 71–72
 duty of loyalty in vs. in U.S., 195–96
 influence of on Korea and Taiwan, 193–95
 influence of U.S. on, 195–97
- Ito Review, 205
 Japan Revitalization Strategy, 205
 Japanese Trust Act, 182, 184, 192

- Japanese vs. U.S. corporate governance norms
and, 29, 212
reception of Western legal norms by (19th and early 20th), 191–92
reform of guardianship system, 213
status-based notions in, 19, 29, 183, 189, 190, 211
U.S.–Japan Structural Impediment Initiative, 197
- Juliana v. United States*, 165
- jurisprudential study of fiduciary law, 14, 31, 264, 267, 268, 269, 270, 277, 279
access platforms as market-constituting fiduciaries and, 32, 33
ISO authority and, 32, 267, 276
legitimate authority and, 268
vs. sociolegal study, 6, 264
- law matters* hypothesis, 29, 30, 219, 220–21, 225
critiques of, 30, 222
- law, national. *See also* by specific country;
domestic law; duty of care; duty of loyalty
formation of transnational fiduciary law and, 68
uncertain status of in transnational law theory, 53–56
- lawyers and legal intermediaries
insider trading restrictions at law firms and, 89–90
lawyers as trusted agents in 19th century U.S., 243–44
TLO formation and, 21, 22
- League of Nations mandate system, 10, 20, 241
accounting practices of, 257–58
as first TLO, 240, 244, 256, 257
public fiduciary theory and, 150
sacred trust of civilization institutionalization by, 31, 240, 244, 255, 256, 258
trusteeship as justification for, 9
U.S. role in creation of, 255
- legitimacy, of TLOs, 264, 267–68
- lex mercatoria*, 32, 44, 54, 60, 265, 275, 276
critiques of as not actual law, 32, 136, 264, 268, 276
- liability, fiduciary, 88–89
- Litchfield Law School, 243
- local level legal practices
access platforms and, 279, 282, 297
corporate directors duties and, 222, 225
local norm divergence and, 30
normative settlement and, 5, 17–19, 21, 24, 28, 29, 30, 55, 67, 150, 157, 158, 159, 160, 169, 178, 208, 215, 216
- Loi Pacte* (French fiduciary law), 42, 63
- Lone Wolf v. Hitchcock*, 252
- Loughlin, M., 264, 268, 269, 276, 277
- Louisianan fiduciary law, 39
- loyalty to the corporation, 189
- Lyft, 283, 296
- M.C. Mehta v. Kamal Nath*, 153
- mandate contracts, 49–52
- market-constituting fiduciaries, access platforms as, 33, 279, 280, 287–89, 291–93, 298
emerging TLO for regulation of, 33
- mergers and acquisition, 88–89
- Mexico, Spanish imperialism in, 244–48, 254–55
micro-TLOs, 33
natural resource management problems and, 152, 162, 166
- United Nations Convention on the Law of the Sea (UNCLOS) as, 161–62
- World Heritage Convention as, 161–62
- MiFID I and MiFID II. *See* Financial Instruments Directive (MiFID I and II)
- modern trust law/norms, 15, 22, *See also* Hague Trust Convention
as an alternative to guardianship, 214
in China, 208
civil law trusts, 187, 214
civil law trusts in East Asian countries, 56–58, 179–86
as contributing to TLO theory, 170, 186
courts' liberal interpretation of trust jurisprudence, 175
development of in India, 9
diffusion of, 56–58
duty modification clauses and, 175–78
East Asian as exemplary, 214
East Asian vs. Anglo-common law approaches to, 186
English trust law and, 2, 8, 9, 183, 184, 185, 186, 187
fiduciary duties of trustees in East Asia, 181–83
formation of thru entanglement of national laws, 56–60
horizontal interactions among onshore/offshore jurisdictions, 170, 172
increased demand for trust management, 28, 172
industrial trusts, 178
jurisdictional competition for trust business and, 28, 170, 172, 173, 189, 203
objects of discretionary trusts in, 172–75
remedies for breach of trust, 186
rise of transnational trusts, 29, 171–72
as transnational, 2, 169, 170, 178, 186
vertical legal ordering in, 170–71
- Morgan Stanley, 82–83
- mutual funds, U.S., 83–85

- Native Americans, fiduciary colonialism against, 250–53, *See also* Cherokee Nation; imperialism in fiduciary law; Indigenous Peoples
 lawyers as trusted agents and, 243–44
 natural law, public trust doctrine and, 146, 166
 natural resource management, 147, 151
 political dysfunction in, 149
 public rights to waterways and, 146, 154, 156, 158, 253
 public trust doctrine and, 27, 149, 152, 162, 166
 state as trustee norm transnationalization, 28, 146
 wetlands conservation, 158–59
- Nauru, case brought against Australia, 258
 net-short debt investing, 125–26
 defined, 27, 125
Windstream v. Aurelius case study, 125–31, 143–45
- Nigeria
 public trust doctrine in, 157
 non-binding rules, normative effects of, 62–66
 non-governmental organizations (NGOs), 3, 16
 growth of in Asia, 213
 non-state law, transnational fiduciary law as, 140
 no-profit rule, 52
 norm creators
 access platforms as, 284, 285
 corporate codes as, 219, 225–35
 normative settlement, 15, 159, 166
 of fiduciary norms in transnational fiduciary law, 4, 26
 at local level, 5, 17–19, 21, 24, 28, 29, 30, 55, 67, 150, 157, 158, 159, 160, 169, 178, 208, 215, 216
 of public fiduciary norms, 23, 147, 148, 150
 public trust doctrine and, 147–58, 165
 in TLO theory, 5, 6, 15, 17, 26, 42, 47, 256
 treaties as transnational, 16
- numeris clausus* principle of property rights, 179, 180, 181
- offshore jurisdictions, 172, 186, *See also* modern trust law/norms
 adoption of modifications of by onshore jurisdictions, 2, 28, 170
 Chinese trust law and, 209
 global wealth as driving of, 28, 170
 trusts in vs. in onshore, 172
- Ohio, 243, 244
- Oklahoma, 237, 241, 252
- onshore jurisdictions, 186, *See also* modern trust law/norms
 adoption of offshore modifications by, 28, 170
- horizontal competition with offshore jurisdictions, 2, 172
 trusts in vs. in offshore, 172
- Organisation for Economic Co-operation and Development (OECD)
 Principles of Good Governance of, 24, 30, 61, 90–92, 221
 as standards-setter, 42, 61
- Pakistan, public trust climate change litigation in, 153, 165
- Paris Agreement, 163, 166
- path dependence theories in corporate governance, 30, 219, 221, 225, 235
- peer-to-peer platforms. *See* access platforms; Airbnb; Eatwith; Turo; Uber
- Permanent Building Society (in liq) v. Wheeler*, 70
- Permanent Mandates Commission (PMC), 257, 258
- Philippines
 public trust doctrine in, 164
- political dysfunction, 154, 155
 in environmental regulation, 149, 152
- population statistics, 253–54
- power. *See also* discretionary powers
 of access platforms over users, 289, 290, 292, 298
 power-conferring rules, 264, 276
 in private law, 285
- Principles for Responsible Investment (PRI), 65
- private legal ordering, 5, 26, 87–90, 95
 regulatory conduct-of-business standards in EU law and, 114
 transnational bond markets as, 125–26, 136–37
- public fiduciary theory, 22, 23, 149, 163, 263–64, 277
 on conflict between multiple beneficiaries, 291
 ISO as case study of transnational, 270–75
 normative settlement of norms of, 23, 147, 148, 150
- public trust doctrine, 27
 in civil law countries, 154, 156
 in common law countries, 154, 156
 convergence around principles of across domestic legal systems, 158
 domestic public trust litigation, 164
 as empowering or constraining government action, 155, 156, 157
 environmental law and, 16, 27, 28, 146, 147, 148, 149, 151, 152, 153, 162, 166
 environmental trusteeships and, 162–63
 as frame for advocacy, 151, 159, 164, 166
 in Indian law, 156, 157, 164
 international climate change litigation and, 153, 164, 165

- as internationalized, 146, 166
 legal roots of, 148
 natural law understanding of, 166
 in Nigeria, 157
 Paris Agreement as public trust norm, 163
 as potential meta-TLO, 28, 152, 162–63, 166
 as solution to political dysfunction, 149, 152, 154, 155
 in South Africa, 157
 as study of transnational normative settlement, 147–58, 165
 TLO theory and, 147
 as transnational legal norm vs. TLO, 146, 147
 in U.S., 156, 157, 160, 164, 165, 166
 public utilities approach to access platforms, 284, 285
- Ramsar Convention, 158–59, 166
 recursive development of transnational fiduciary law, 5, 6, 18–20, 24, 29, 30, 31, 33, 34, 172, 174, 181, 183, 230
 in civil and common law jurisdictions, 214
 in East Asian countries, 73
 in TLO theory, 15
 regulation of transnational digital companies, 32, 33. *See also* access platforms
 regulatory agencies, transnational fiduciary norm development, 20, 21
 regulatory conduct-of-business standards
 contingency problem in, 111–12
 convergence of for financial intermediaries—customer relations, 98–100, 102–7
 as emerging TLO, 26, 124
 in EU legislative context, 112–24
 as functional fiduciary law, 111–12
 harmonization efforts of vs. private law, 100, 101, 109–12
 International Conduct of Business Principles (IOSCO) and, 102–7
 private German law and, 117–20
 in U.S., 108, 109
 remedies for breach of trust, 186
 resistance in TLO theory, 5, 20, 29, 30, 31, 239, 246, 247, 251, 258
 Roman law, 3, 8, 11, 239
 guardianship and, 245
 public trust doctrine and, 148, 153
- sacred trust of civilization, 31, 240, 244, 255, 256, 258. *See also* imperialism in fiduciary law; League of Nations mandate system; Native Americans, fiduciary colonialism against
 East India Company and, 249
 Sax, J., 148, 153
- scandals, in corporate law, 217
Schmidt v. Rosewood, 174
 Schultz, T., 264, 268, 269, 276, 277
 Securities and Exchange Commission (SEC), 84
 Securities Industry and Financial Markets Association (SIFMA), 27, 137
 self-dealing, 18
 in Japanese fiduciary law, 191, 192
 self-interest, 22, 23, 48
 self-regulation, 33
 access platforms and, 279, 282
 Shaffer, G., 5, 14, 78, 79, 86, 93, 137, 138, 147, 150, 169, 183, 263, 265
 on legal aspects of TLOs, 266–67
 shareholders, 66
 Anglo-American common law notions of loyalty to, 20
 corporate codes and, 30, 232, 233, 234
 public companies holdings (1963 to 2020) by shareholder category (U.K.), 84
 shareholder primacy model of corporate governance, 20, 21, 29, 66, 199, 206, 212
 shareholder rights revision in Japan, 197
 shareholder stewardship codes, 30, 226
 in state and family-controlled firms, 18, 30
Sinclair Oil Corp. v. Levien, 80, 81
 Singapore fiduciary law, 189
 adoption of English fiduciary law in, 191, 197–99, 201–3
 adoption of U.K. stewardship codes by, 232
 charities and, 214
 stewardship code of, 17, 30
 trust law in, 208, 209
 wealth management centers and, 172, 203
 social norms, 78, 136, 138, 139
 social problems, 14, 26
 fiduciary frameworks and, 13, 32
 public trust doctrine and, 151
 TLOs addressing of, 14, 15, 16, 41
 in transnational law definitions, 217
 sociolegal study of fiduciary law, 6, 25, 31, 33, 43, 166
 access platforms as market-constituting fiduciaries and, 32, 33
 critiques of unified theory and, 34
 ISO authority and, 32
 as TLO framework, 147, 264, 265, 267, 277
 vs. jurisprudential study, 6, 264
- soft law, 24, 26, 212
 in development of transnational fiduciary law, 16, 123
 in formation and institutionalization of TLOs, 26
 in regulation, 212

- soft law (cont.)
 in stakeholder-oriented model of corporate governance, 42
 in transnational law, 78
- South Africa
 public trust doctrine in, 157
- South Korean fiduciary law, 45
 American-style corporate governance reforms in 90s, 200
 civic activities in, 213
 diffusion of trust law and, 56–58
 duty of loyalty construction in, 71–72
 family-controlled companies (*chebol*) in, 201
 influence of Japanese fiduciary law on, 193–95
 Korean Trust Act, 184
- South Sea Company, 1
 sovereignty, 152, 164
 concept of trust and, 31
 East India Company and, 31, 249
 over natural resources, 258
 Spanish claims of over Indigenous lands, 245
- Spanish imperialism, 244–48
- stakeholder-oriented model of corporate governance, 5, 62, 65, 66, 233, 234
 corporate directors duties and, 223, 224
 ISO's fiduciary duties to stakeholders, 271–72, 273
 Japanese resistance to, 234
 OECD good governance principles and, 91
 soft law and, 42
 stakeholders use of fiduciary norms, 2, 42
 standards and principles, 6, 31, 61, 238, *See also* environmental, social, and governance (ESG) standards; International Organization for Standardization (ISO); regulatory conduct-of-business standards
 autonomy and, 242
 food safety standards, 266, 273, 276
 human rights standards, 266
 as norms, 211, 266, 273, 276
 standard-setting and private ordering, 87–90
 transnational standard documentation for bondholders, 134, 137, 138, 143
 UN and OECD as standard-setters, 42, 61, 90–92
 state law, transnational fiduciary duties and, 141–43
 status-based notions, 19, 29, 183, 189, 190, 211
 stewardship codes, 206
 of Asian countries, 232
 divergence in adopted, 232
 horizontal transmission of U.K., 231–32
 of Japan, 205
 link between problem framing and regulatory outcomes, 230
 of Singapore, 17, 30, 232
 shareholder stewardship codes, 30, 226
 of U.K., 17, 205, 212, 230, 231–32
- Sweden
 Nature Conservation Board and public trust, 156
- Taiwanese fiduciary law, 45, 201
 American-style corporate governance reforms in 90s, 200
 civic activities in, 213
 diffusion of trust law and, 56–58
 influence of Japanese fiduciary law on, 193–95
 Taiwanese Trust Law, 182, 184
- Taungurung Peoples (Australia), 253–54
- Tlaxcalans (Indigenous Mexicans), 244, 245, 246, 254–55
- tort of contract cases, 82
- transnational fiduciary law/norms, 4, *See also* by specific country; fiduciary law/norms; imperialism in fiduciary law; transnational legal orders (TLOs); unified theory of fiduciary law
 access platforms as transnational companies, 281
 as application of fiduciary law vs. as field deserving independent study, 76, 97
 comparative contract law and, 45–46
 contract law and, 43
 court communication between nations, 68, 69–71
 defining of, 40
 differing conceptualizations of, 33, 75, 76–79
 diffusion of trust law in East Asian countries and, 56–58
 duty of care and international court communication, 69–71
 duty of loyalty and, 68–69
 emergence of in financial intermediation conduct-of-business standards, 105–7
 English law and, 9
 extraterritorial application of fiduciary law and, 25, 83–85
 fiduciary duties between bondholder and issuer under civil law, 131–32
 fiduciary duties between bondholder and issuer under common law, 128–31
 fiduciary duties between bondholders and CDS counterparties, 134–35
 fiduciary duties within bondholder group, 132–34
 as field, 41
 formation and institutionalization of, 5, 6, 14–18
 formation of thru entanglement of national laws, 16, 24, 25, 34, 41, 42, 43, 47, 53, 56–60, 68, 70, 72, 79, 80, 84, 86, 96–97, 169, 170, 183, 188–89

- as global law, 75
as hard law in transnational contexts, 79
historical factors in, 58, 59, 188, 191
horizontal ordering of national legal orders and, 41
hybrid system of, 67
implementation variation in, 5
in civil vs. common law countries, 40, 41,
45–46, 68–69
interaction of East Asian and Western fiduciary
norms, 188–89, 209–10
lack of scholarship on transnational dimensions,
74, 97
mechanisms of in East Asian countries, 209–12
modern trust law/norms as, 169, 170, 171–72,
178, 183
national law's uncertain status in, 53–56
as non-state law, 140
norm development at local level and, 5, 17–19,
21, 24, 28, 29, 30, 55, 67, 150, 157, 158, 159,
160, 169, 178, 208, 215, 216
as process, 96–97
public and private responsibility in, 3, 33
public trust doctrine as transnational norm,
147–52
recursive development of, 5, 6, 18–20, 24, 29, 30,
31, 33, 34, 73, 172, 174, 181, 183, 214, 230
scholarship on, 3
soft law in development of, 16
theoretical framework of, 79
transnational fiduciary duties in state law,
141–43
transnational law defined, 40
as transnational legal ordering of fiduciaries, 79,
86–96
transnational legal orders (TLOs) as framework
for, 7–14, 23, 78–79, 86–87, 150, 209, 215
as unsettled concept, 216
vs. comparative law, 40, 41, 43, 46–48
vs. fiduciary law, 78, 93–96
Western transplantation to East Asian countries,
188–99, 209
transnational legal orders (TLOs), 28, 33, 34, 41,
76, 113, 142, 215, *See also* transnational
fiduciary law/norms; unified theory of
fiduciary law
access platform regulation as emerging, 33, 279,
282
bond markets as private legal ordering, 125–26,
136–37
conduct-of-business standards as emerging, 104–7
constitutive properties of legal aspects of, 266–67
contract law and, 43, 44
critiques of as not actual law, 32, 136, 264, 267,
268–70, 276
defined, 5, 47, 86, 150, 265
environmental trusteeships as, 162–63
fiduciary activities by financial intermediaries as
emerging, 101
as framework for transnational fiduciary law,
7–14, 78–79, 86–87, 150, 209, 215
geographic component of, 54, 68
as governing of fiduciaries, 79, 86–96, 97
institutionalization of, 5, 21, 32, 256
ISO as, 32
law matters hypothesis in, 220
local level legal practices in, 5, 17–19, 21, 24,
28, 30, 55, 67, 150, 183, 222, 225
mandate system of League of Nations as first,
240, 244, 256, 257
micro-TLOs, 33, 152, 161–62, 166
modern trust norms/laws contribution to theory
of, 170, 186
movement of norms as normative force, 60
multi-dimensionality of, 19, 29, 34, 169, 183, 230
national law's uncertain status in, 53–56
normative settlement in, 4, 5, 6, 15, 17, 42, 47,
55, 78, 256
on social problems, 26, 41
private lawmaking and practice and, 26
as providing solutions to problems, 13, 14, 15,
16, 23, 24, 29, 33, 34, 214, 217–18, 221, 280
public trust doctrine and, 147–52
question of legitimate authority of, 264, 267–68,
276, 277
recursive processes in, 5, 6, 15, 18–20, 24, 29,
30, 31, 33, 34, 73, 172, 174, 181, 183, 214,
230
regulatory conduct-of-business standards as
emerging, 26, 124
sociolegal conception of, 6, 25, 32, 147, 264,
265, 267, 277
soft law in development of, 26
vs. transnational norms, 166
treaties, 16, *See also* Hague Trust Convention;
Native Americans, fiduciary capitalism
against
Treaty on European Union (TEU), 112
Treaty on the Functioning of the European Union
(TFEU), 112
Treuepflicht, 46, *See also* German fiduciary law
Treuhänderverhältnisse (relationships of trust,
Germany), 24, 61, *See also* German fiduciary
law
trust, 16, 26, 27, *See also* duty of loyalty; modern
trust law/norms; public trust doctrine
digital businesses abuse of individuals', 23
lawyers as trusted agents and, 243–44
sovereignty and, 31

- trust law. *See* modern trust law/norms
 trusteeship. *See also* guardianship; imperialism in fiduciary law; League of Nations mandate system
 critiques of during decolonization era, 259
 League of Nations and, 9, 255
 transformation of in modern transnational trusts, 178
 as transnational norm of European imperialism, 256
 U.S. and, 255
 Turo, 278
 Twitter
 as information fiduciary, 23
- Uber, 32, 278, 280, 281, 283, 289, *See also* access platforms
 community commitment of, 296
 as employer of its drivers argument, 282, 284
 as information fiduciary, 284
 unified theory of fiduciary law, 4, 5, 12, 14, 67, 107, 212, 214, 222
 corporate directors fiduciary duties and, 219
 critiques of, 25, 30, 67, 70, 186
 as meta-concept, 3, 24
 scholarship on, 39
 sociolegal viewpoints on, 34
 Uniform Commercial Code (U.C.C.), 129
 United Kingdom (U.K.) fiduciary law, 46, 69, 94
 adoption of in Hong Kong and Singapore, 190, 197–99, 201–3
 Burke on trust obligations of imperial officials and, 249–50
 corporate directors fiduciary duties and, 219
 divergence of corporate directors duties from U.S., 223–24
 divergence of corporate law from U.S., 222, 223
 duty of care and international court communication, 69–71
 duty of care in, 43
 duty of loyalty in, 43
 East India company and European imperialism, 31, 241, 248–49
 history of, 8, 9
 horizontal transmission of stewardship codes of, 231–32
 imperial theory and accounting practices, 254
 legal transplantation of, 220, 222
 public companies holdings (1963 to 2020) by shareholder category, 84
 public trust doctrine and, 156
 regulatory reform for financial services in, 104
 transnationalization of corporate governance codes of, 17, 30, 219
 on trusts, 174, 180, 181, 183, 184, 185, 186, 187
 U.K. stewardship codes, 17, 205, 212, 230, 231–32
 vs. East Asian approaches to trust law, 186
 United Nations (UN)
 Convention on the Law of the Sea (UNCLOS), 161–62
 Environmental Rule of Law Global Report (UNEP), 165
 Fiduciary Duty for the Twenty-first Century (report), 4, 16, 24, 39, 61
 Guiding Principles on Business and Human Rights (2011), 24, 61, 64
 Principles for Responsible Investment (PRI), 65 as standards-setter, 42, 61
 Trusteeship Council of, 10, 17, 162–63, 258
 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, 159–61
 United Nations Environment Programme (UNEP), 39, 61, 153
 United States (U.S.) fiduciary law, 39, 46, 94, 104, *See also* Delaware approach in corporate law
 climate change litigation, 165
 divergence of corporate directors duties from U.K./Australia, 223–24
 divergence of corporate law from U.K., 222, 223
 dominance of corporate governance model of in 1990s, 199
 duty of care in, 43, 70
 duty of loyalty in, 43, 195–96
 ESG standards and, 61, 65
 extraterritorial effects of, 79, 83–85
 fiduciary colonialism against Native Americans and, 243–44, 250–53
 influence of duty of loyalty in East Asia, 212
 influence of on Japan, 195–97
 insider trading laws, 90
 lawyers and economic development in 19th century and, 243–44
 mutual funds and, 83–85
 public trust doctrine in, 155, 157, 160, 164, 165, 166
 regulatory conduct-of-business standards in, 108, 109
 trusteeship and, 255
 U.S. Restatement Third of Trusts, 181, 192
 U.S. vs. Japanese corporate governance norms and, 29
 U.S.–Japan Structural Impediment Initiative, 197
 user privacy, 23, 24
- Veleron Holdings, B.V. v. Morgan Stanley*, 82–83
 Versailles Treaty, 10

- vertical legal ordering, 16, 28, 41
beyond the state norms and, 53, 60
of corporate governance codes, 30
of fiduciary law, 42
ESG standards as normative thrust
and, 60–66
local level normative settlement and, 30
of modern trust law, 170–71
non-national fiduciary norms and, 41
of transnational body of soft law, 24, 25
treaties as, 16
- Vitoria, F. de, 31, 245–47, 249, 255, 256
- waterways, public rights to, 146, 154, 156, 158, 253
- wealth management centers, 175
increased demand for, 172
offshore vs. onshore operations, 172
Singapore and Hong Kong as, 172, 203
- Western fiduciary norms, 29
reception in Japan (19th and early 20th centuries), 191–92
- wetlands conservation, 158–59, 166
- Whittlesey, E., 243, 244
- Wilson, W. (U.S. President), 255
- Windstream v. Aurelius*, 125–31, 143–45
fiduciary duties between bondholder and issuer
in civil law countries and, 131–32
fiduciary duties between bondholder and issuer
in common law countries, 128–31
fiduciary duties between bondholders and CDS
counterparties, 134–35
fiduciary duties within bondholder group,
132–34
- Worcester v. Georgia*, 251
- World Bank
corporate governance and, 30, 221
- World Heritage Convention, 28, 159–61
as micro-TLO, 161–62
- Zhang v. DBS*, 176–77
- Zitkala-Ša, 237, 239, 241,
252

