

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* *Treuhandverhältnisse*
 - 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
 - Treupflicht*, 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
- numerus 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 and 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, 29, 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
- Treuhandverhältnisse* (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

