Index

Abu-Lughod, Lila 155, 160
Abu-Odeh, Lama 141
access to justice 205–24
alienation effect 221–2
belief in justice and a fair world 208–9
conflict displacement and deferral 218–19, 221–2
constitutional reform measures 214–15
gatekeepers 206–7, 223, 224
injustice management 218–19, 221–2
institutional reforms 214, 223–4
justice servers 207
law-rule interpretive function 210–11, 214, 218
legal aid 214, 223–4
legal due process 206, 215, 219, 222
legal narratives of justification 212–14, 219
legal relevance selection 219–20
legal side-effects 220–21
and legal vocabulary 218–19, 220–21
normalization narrative 217–22, 223
normative discourse 210, 212, 216–17, 223
philosophical and jurisprudential narratives 216–17, 219
public interest groups 207–8, 223–4
reformist approach 223–4
right to day in court 223–4
romantic narrative of injustice 11, 209–10, 216
‘should work’ and ‘does work’ comparisons 214–15, 216
strategic option reduction 220–21
technical-legal reforms 214–15
threshold fears, lowering 215
voluntarist approach 223
activist functionalists, Law and Development movement 91
Adelman, Howard 115, 116, 121, 138, 156, 161, 226
Adorno, Theodor 28–9, 30, 54, 78
Ahmed, Leila 136, 139, 142, 144
Ainsworth, Janet 42, 76
Al-Jabri, Mohammed Abed 23
Al-Saji, Alia 116, 126, 134, 136, 140, 144, 147, 156, 159, 160
Alibhai-Brown, Yasmin 155
alienation practices
and access to justice 221–2
and critique and comparison 29, 32
human rights, effects of 179–82
Muslim veiling controversy see Muslim veiling controversy
Alston, Philip 190
amatour-comparatists 104–7
see also mainstream and non-mainstream comparisons
amnesia, universalism and over-generalization concerns 99–100
Amstutz, Marc 27
Ancel, Marc 103
Anghie, Antony 26–7, 189
Appleby, R. Scott 198
Arendt, Hannah 180, 192, 202, 216, 219
Arminjon, Pierre 49
association, critical by 28–31
see also critique and comparison
asylum cases and ethics 180–82, 183
authorship and narrative 203–4
see also human rights and narratives of justification
Badinter, Élisabeth 145, 146, 148, 149
Baer, Susanne 111, 227
Comparative law as critique

Baier, Annette 194
Baier, Keith 175
Balaghi, Shiva 144
Ballard, Roger 111
Bannister, Robert 78
Bareto, José-Manuel 88
Bartkowski, John 115, 136, 142, 144, 155
Barton, John 86, 100, 106, 107
Bauman, Zygmunt 110
Baxi, Upendra 18, 92, 102, 108, 112
Beck, Lois 146
Bedford, Sybille 105
Bell, David 161
Benhabib, Seyla 116, 180, 216
Benjamin, Walter 29
Berman, Harold 41, 74, 90, 108
Berman, Nathaniel 100, 152, 172
Bernard, H. Russell 105
Boltanski, Luc 172, 213
Borges, Jorge 50
Bowen, John 121, 143
Brennan, Teresa 153
Brierley, John 4, 39, 87, 88, 89, 92, 93, 100
Brooks, Peter 169, 170
Brown, Wendy 26, 162, 188
Brüggemeier, Gert 66
Brysk, Alison 188
Buchanan, Allan 192, 216
Burgess, John 13
Burneyat, Myles 155
Bussani, Mauro 10, 60, 61, 62, 63, 64–5, 68, 69, 78, 92, 94, 95
Butler, Judith 32, 33, 70
Callaway, Barbara 142
Campbell, Tom 203
Canada, R. v. NS 121, 132
Cappelletti, Mauro 87, 89, 92, 206, 211
Carbonnier, Jean 41
Carrington, Paul 27
Chakrabarty, Dipesh 37
Charlesworth, Hilary 170
Chatterjee, Partha 150
Cheah, Pheng 181
Chimni, B.S. 27
China, Constitution justification narratives 200–201
Chomsky, Noam 188
Chrisafis, Angelique 144
Cinderella complex 4, 11, 20–21, 40–41, 49
Clark, David 87, 92
Classical Critical Theory 32
classification and cognitive control 90, 91–2
focus, post-war 48–50
Japanese law 51–2
Coene, Gily 143
cognitive control and Common Core Project 94–6
ethics of similarity-pragmatism and foreign legal systems 88–90
and information interpretation 85–96
method 86–8, 91–2
politics of 90–96
unification projects 92–5
see also mainstream and non-mainstream comparisons
Colombi Ciacchi, Aurelia 66
colonialism 18–19, 45, 102
see also Western tradition
colonizers’ attitude see Muslim veiling controversy, colonizers’ attitude
commitment
detachment/commitment in grid 80–81, 83, 84, 104–12, 114, 117, 150–51, 152, 225–7, 229
detachment/commitment, Muslim veiling controversy 117, 118, 130–31, 135, 150, 155
see also grid analysis
Common Core Project 59–70, 94–6
see also convergence process, EU; legal unification
comparative law as discipline 3–16
codifications and legislation comparisons 15
comparative law as science 9–10
constitutional law, dialogical method and cross-fertilization 99
contextual analysis shift 11–12
disciplinariness and knowledge production 7–9, 10
Index

discipline methodology 8
foundations and traditions 42–3
‘golden era’ 13
identity problem and semantics 11
and interdisciplinarity 12–13
legislation and legal solutions to
social problems comparison 5
mainstream comparative law and
legal validity 6–7, 11, 15
mainstream as orthodoxy 13–16
modernist phase and functionalism 15
Paris Congress 5, 42, 43
permeability of disciplinary
boundaries, testing 12
positivism debate see positivism
universal jurisprudence 5, 15
and Western tradition see Western
tradition
see also critique and comparison;
mainstream and non-mainstream
comparisons
conflict
displacement and deferral, and access
to justice 218–19, 221–2
management, human rights and
narratives of justification 173
Conquergood, Dwight 79–80, 82, 83,
106, 107, 226
Constantinesco, Leontin-Jean 103
critique
comparative constitutional law,
dialogical method and
cross-fertilization 99
critical perspectives
constitutional mythology, human
rights and narratives of
justification 196–7
convergence process, EU 4–5, 56, 95,
96
see also Common Core Project
Cotterell, Roger 88
Cover, Robert 41
Crane, William 13
Crapanzano, Vincent 42, 71
Creevey, Lucy 142
Critical Legal Studies movement (CLS)
24–6, 27, 31
critical perspectives
legal narratives and human rights
169–71
skepticism between critique and
relativism in Muslim veiling
controversy 154–61
critique and comparison 17–34
and alienation practices 29, 32
classical critical theory 32
critical approaches 17–22
critical by association 28–31
critical by self-definition 24–8
critique modalities 22–4
critique of rights 26–7
descriptive or prescriptive
approaches 23, 32
ethical dimension 21
Frankfurt School 27–9, 30, 32
internal and external critiques,
distinguishing between 23
legal dimension 30–31
mainstream reaction 20–21
Marxist thought 29, 30, 32
negative judgment concerns 22–3
non-traditional in comparative law 32
post-modern critiques 17–18
scientific method 32–3, 77–9, 81,
85–6, 101
social dimension 29, 30, 32
traditional theory characteristics 29
Utah Symposium, ‘New Approaches
to Comparative Law’ 18
and Western tradition see Western
tradition
see also comparative law as
discipline
cultural oppression claims, Muslim
veiling controversy 135–7, 138–9,
143–4
Damaška, Mirjan 57
Daniels, Ron 96, 217

Günter Frankenberg - 9781785363948
Downloaded from Elgar Online at 07/01/2019 12:15:57PM
via free access
Comparative law as critique

Danielsen, Dan 26
Dannemann, Gerhard 19, 47
David, René 4, 10, 39, 44, 46, 49, 50–51, 52, 87, 88, 89, 92, 93, 100
De Cruz, Peter 38, 39
deferral and displacement of human rights claims 177, 179–80
Del Vecchio, Giorgio 46, 52, 98
Delphy, Christine 140
Denzin, Norman 226
Derrida, Jacques 41, 81, 180, 205, 208, 212, 218, 220, 224, 231
descriptive/prescriptive approaches 23, 32, 63, 64, 68–9, 111
detachment
detachment/commitment in grid 80–81, 83, 84, 104–12, 114, 117, 150–51, 152, 225–7, 229
detachment/commitment, Muslim veiling controversy 117, 118, 130–31, 135, 150, 155
see also grid analysis
Dezalay, Yves 95
differencing as method 71–6, 82–3, 84, 85, 104–12
management of differences, concerns over 64–5
similarity/difference intersect 82–3, 84, 85, 88–90, 117, 118, 130–31, 135, 150, 155, 225–7
see also grid analysis
disparate events, structural connection 195–7
see also human rights and narratives of justification
distancing as method 70–71, 75–6, 80, 81, 83, 85
Donnelly, Jack 194
doubt
method, and skepticism between critique and relativism 155–9
self-reflection and doubt requirements 81, 83
Douglas, Mary 79, 91, 111
Douzinas, Costas 179, 185, 188
due process, and access to justice 206, 215, 219, 222
Dufourmantelle, Anne 180
Duits, Linda 164
Dupré, Cathérine 102, 192
Durham, W. Cole 131
Dworkin, Ronald 26–7, 179, 181, 192, 221
Eaves, Elizabeth 185
Ehrmann, Henry 48, 73
El Guindi, Fatwa 156
El Habti, Raja 141
Ellingson, Ter 151
Engle, Karen 26, 190
entitlement and responsibility provision 167, 171–2, 175, 176, 191, 193, 195, 197, 199
see also human rights and narratives of justification
Escarra, Jean 10, 105
Esposito, John 146
Esposito, Roberto 198
Esquirol, Jorge 18, 49, 80
ethics dimension
amatour-comparatists 106–7
asylum cases and human rights 180–82, 183
cognitive control, similarity-pragmatism and foreign legal systems 88–90
common concepts, search for, and exclusion of ethics and politics 78–9
critique and comparison 21
rescue ethics, Muslim veiling controversy 140–44
skepticism 110–11
and thicker comparison 231–3
teachers’ perception, Muslim veiling controversy 152–3
universalism 99–100
visual control and Muslim veiling controversy 118, 127–30
zero tolerance and Muslim veiling controversy 147–8
see also politics dimension
EU
Common Core Project 59–70, 94–6
convergence process 4–5, 56, 95, 96
legal unification attempts 59–60, 61–2
Personality Rights in European Tort Law 66–7
UNIDROIT principles 44, 59, 100
European Court of Human Rights
Ahmad v. United Kingdom 125
Alekseyev v. Russia 189
Caroline case 66–7
Dahlab v. Switzerland 123, 133, 134, 138
Dogru v. France 132, 157
Kalaç v. Turkey 125
Karaduman v. Turkey 133, 158
Kervanci v. France 132, 157
Refah Partisi v. Turkey 131
on religious symbols in schools 123
Şahin v. Turkey 125, 133, 139, 157
S.A.S. v. France 120, 126, 127, 129, 130, 132–3, 144, 157
Evans-Pritchard, Edward viii
Ewald, William 97, 98
Eyerman, Ron 187
factualism
analysis of ‘legal formants’, and combination of functionalism and factualism 60–61, 63–9
facticity and objectivity 67–70
mainstream techniques 60–70
see also functionalism; Western tradition
Fadel, Mohammad 131
Fanon, Frantz 139, 149, 150, 151
Fauvarque-Cosson, Bénédicte 44, 49
feminist criticism, Muslim veiling controversy 135, 137, 138, 140–42, 143–4, 148
Ferrari, Alessandro 116, 143
Feuerbach, Anselm von 43
Fikentscher, Wolfgang 6
Fischer-Lescano, Andreas 27
Fitzsimmons, Michael 196
Fletcher, George 3
foreign laws
cognitive control and ethics of similarity-pragmatism 88–90
differences, and functionalist approach 57–8, 70–71
formalism 6, 11, 73–4, 85, 169, 228–9
see also positivism
Forst, Rainer 128, 192
Foster, Nicholas 12
Foucault, Michel 7, 8, 32–3, 34, 41, 50, 91
France
French school of comparative law 44, 45, 49–51, 96
public order concept 120–21
Revolution and mythical narratives 196–7, 200
Frank, Jerome 67
Frankfurt School 27–9, 30, 32
Freud, Anna 172
Frug, Mary Joe 26
Frye, Northrop 191, 195
functionalism
activist functionalists, Law and Development movement 91
and cognitive control 90, 91, 92, 94
disadvantages 58–9
foreign law differences, and functionalist approach 57–8, 70–71
history 15
‘legal formants’, and combination of functionalism and factualism 60–61, 63–9
mainstream techniques 48–9, 50, 52–70
as method 56–7
and rationalism 74–5
and search for common concepts 59–70
see also factualism; Western tradition
Gans, Eduard 45, 96, 100, 101
Garth, Bryant 95
gatekeepers, access to justice 206–7, 223, 224
Gauchet, Marcel 196
gender equality, Muslim veiling controversy 137–42, 143–4
generalization, over-generalization and amnesia concerns 99–100
Ger, Güliz 115, 136, 154
Gérin, André 149
Germany
asylum as basic right 180–82, 183
Caroline 66–7
Crucifix 122–3
German world-historical development 44, 45, 48, 96
Ludin 122, 123–4, 131, 132, 133, 134, 157
public order concept 120
Gewirth, Alan 191
Gewirtz, Paul 169
Ghazal Read, Jen’nan 115, 130, 136, 142, 144, 155
Giddens, Anthony 78
Gieryn, Thomas 23
Glanert, Simone 54, 81
Glendon, Mary Ann 51, 73, 74, 79, 86
Glenn, H. Patrick 47, 51, 52, 97, 103, 106
Goodman, Nelson 228, 229
Gordley, James 3, 61, 95
Graziadei, Michele 52
Gregory, Derek 48, 77
grid analysis
detachment/commitment 80–81, 83, 104–7, 114, 117, 150–51, 152, 225–7, 229
grid construction 79–83
mainstream and non-mainstream comparisons 84–112
Muslim veiling controversy 114–15, 117–18, 130–31, 135, 150, 155, 161–2
similarity/difference 82–3, 84, 85, 88–90, 117, 118, 130–31, 135, 150, 155, 225–7
Griffin, James 192
Großfeld, Bernhard 103, 104, 109
Grosswald Curran, Vivian x, 10, 61, 71, 110, 111, 227, 230
Günther, Klaus 191, 203
Gusy, Christoph 120
Gutteridge, Harold 3, 38, 54, 101
Habermas, Jürgen 29, 54, 164, 192, 194, 216
Halley, Janet 26, 34
Haraway, Donna 85
Harding, Andrew 3, 103
harmonization see Common Core Project
Hathaway, Oona 203
Hegel, Georg 43, 45, 226
Hirsch, Ran 12, 13
Hirschman, Nancy 141, 163, 164
Horkheimer, Max 28–9, 30
Horwitz, Morton 26
human rights, and gender equality, Muslim veiling controversy 137–42, 143–4
human rights and narratives of justification 167–204
alienation effects of human rights 179–82
asylum cases and ethics 180–82, 183
authority and promise 201
authorship and narrative 203–4
conflict management 173
constitutional mythology 196–7
deferral and displacement of human rights claims 177, 179–80
development and sources 201
developmental scheme and positive ideology 187–8
title
 enumerated
entitlement and responsibility provision 167, 171–2, 175, 176, 191, 193, 195, 197, 199
fundamentals of human rights 192–3

Günter Frankenberg - 9781785363948
Downloaded from Elgar Online at 07/01/2019 12:15:57PM via free access
human rights law method 177
human rights as positive ideology 186–9
information selectivity effects 178–9
justification mechanism 171–5
language and modality 202–3
law-rule, submitting reality to language and routines of 176–7
legal narratives 168–71
legal narratives, critical perspective 169–71
legal narratives from claims to validity 197–9
legal narratives, as legislative commentary 171–2
military action in terms of justice and human rights 175–6
narratives as modern mythology 195–201
normalization as depoliticization 183–6
normalization narratives and law-rule as order 176–86
normative narratives 173, 179, 183, 189–90, 191–2, 193–4, 198–9
political agenda links 187–9
political-educational agenda of legal narratives 199–201
poverty issues 182–3
romantic narrative of human rights 191, 193–4, 202–4
secret government practices, justifying 174–5
strategic options and imaginative space reduction 182–3
structural connection of disparate events 195–7
torture cases, semantics and national security 184–6, 203–4
universal nature 189–94
unjust actions, dealing with 173–5, 177
validity claims and superior knowledge derivation 198–9
humanitarian rhetoric 44–7
see also mainstream techniques

information interpretation and cognitive control 85–96
interpretation concerns 68–70, 82
knowledge and information focus 54–5, 60–63
questionnaires and fact-finding 65–7
selectivity effects and human rights 178–9
see also knowledge; language injustice management 211–15
see also access to justice innocence, professional 41–2
innocent spirit and humanitarian rhetoric 44–7
and legal unification 73–4
interpretation and cognitive control 85–96
concerns 68–70, 82
see also knowledge; language Islamophobia concerns 142, 148, 149
see also Muslim veiling controversy

Jackson, Vicki 97
Jaeggi, Rahel 32, 179, 180
Jameson, Frederic 79, 87, 91, 99, 107
Jamin, Christophe 96, 100
Japanese law comparison with Western legal system 51–2
see also Western tradition
Jost, John 187
Jouannet, Emmanuelle 199
Juergensmeyer, Mark 148
justice see access to justice
Kadelbach, Stefan 170
Kafka, Franz 205, 206–7, 208, 210, 212, 217, 218, 220, 222, 223, 224
Kahn, Robert 122, 124, 131
Kahn-Freund, Otto 38
Kairys, David 25
Kaplan, David 233
Kapur, Ratna 115, 116, 144, 149, 160, 164
Kaufmann, Walter 226
Keaton, Trica 116, 136
Keddi, Nikki 146
Comparative law as critique

Kelman, Mark 25
Kennedy, David 18, 19, 26, 27, 108, 109, 169–70, 172, 175, 182, 190, 199, 203, 221
Kennedy, Duncan 19, 26, 27, 121
Kerameus, Konstantinos 47, 103
Kirchheimer, Otto 30
Kischel, Uwe 20
Kitagawa, Zentaro 51, 55
Klausen, Jytte 161
Klein, Peter 155
Knop, Karen 190
knowledge
human rights validity claims and superior knowledge derivation 198–9
and information focus 54–5, 60–63
see also information
Kocourek, Albert 46
Kohler, Josef 45, 46, 100, 101
Konstantinos, Kerameus 47
Koskenniemi, Martti 25, 26, 137, 187, 189, 193, 196
Kötz, Hein 10, 19, 20, 38, 40, 44, 53, 54, 56, 57, 58, 59, 74, 78–9, 87–8, 90, 91, 92, 97, 103
Kuhn, Thomas 7, 14
Kunze, Rolf 48
Laborde, Cécile 145
Lambert, Édouard 43, 45, 46, 53, 100, 101, 101–2
language
comparative law, identity problem and semantics 11
law-rule, submitting reality to language and routines 176–7
legal vocabulary and access to justice 218–19, 220–21
and modality 202–3
see also information; interpretation
Lasser, Mitchel 19, 54, 108, 109, 111
Latour, Bruno 65
Lave, Jean 89, 91, 94
Law and Development movement, activist functionalists 91
law-rule
interpretive function and access to justice 210–11, 214, 218
normalization narratives and human rights 176–86
programs 95–6
submitting reality to language and routines 176–7
Lazreg, Marnia 186
legal aid, and access to justice 214, 223–4
legal dimension, critique and comparison 30–31
legal due process, and access to justice 206, 215, 219, 222
legal formalism 6, 11, 73–4, 85, 169, 228–9
see also positivism
legal forms analysis 60–61, 63–9
see also mainstream techniques
legal justification, visual control method and Muslim veiling controversy 120–27
legal narratives
and access to justice 212–14, 219
critical perspective and human rights 169–71
human rights, from claims to validity 197–9
human rights and narratives of justification 168–71
as legislative commentary in human rights 171–2
political-educational agenda 199–201
legal positivism see positivism
legal realism 31
legal relevance selection and access to justice 219–20
legal side-effects and access to justice 220–21
legal unification and innocent spirit 73–4
see also Common Core Project; mainstream techniques
legal validity, and mainstream comparative law 6–7, 11, 15
legoecentrism 11–12, 14, 79
see also positivism
Index

Legrand, Pierre x, 11, 13, 14, 17, 18, 19, 57, 72, 82, 84, 104, 105, 106, 108, 110, 111, 231
Leiter, Brian 26
Lepaulle, Pierre 4, 55, 101, 105
Levinson, Sanford 184
Lévy, Bernard 143, 145, 147, 148
Leyland, Peter 103
Liddell, Henry 22
Liebesny, Herbert 85
Liggett, Bradley 131
Lincoln, Yvonna 226
Longman, Chia 143, 144
Lopez, Gerald 169
Luhmann, Niklas 28, 179, 180, 220, 229
Macdonald, Myra 144, 148, 149
Machura, Stefan 180
Madelin, Alain 142
Mahmood, Saba 116, 121, 136, 160, 161, 162, 163
mainstream comparative law and legal validity 6–7, 11, 15
mainstream and non-mainstream comparisons 77–112
activist functionalists 91
amatour-comparatists 104–7
amatour-comparatists, ethics 106–7
amatour-comparatists, politics of 107
classification methods and cognitive control 91–2
cognitive control see cognitive control
commitment see under grid analysis
common concepts, search for, and exclusion of ethics and politics 78–9
Common Core Project see Common Core Project
comparative constitutional law, dialogical method and cross-fertilization 99
comparative law styles as discrete tracks 80
detachment see under grid analysis
differencing see under grid analysis
differencing as method 80, 81, 83, 85
detachment see under grid analysis
differencing as method 80, 81, 83, 85
formalism 6, 11, 73–4, 85, 169, 228–9
functionalism see functionalism
grid analysis see grid analysis
information interpretation 85–96
interpretation dilemma 82
mainstream scientific method 77–9, 81, 85–6, 101
methodological concerns 77–9
normative discourse and universalism 102, 103
objectivity 81
politics see politics dimension
positivism see positivism
preconceptions and stereotypes, dealing with 83
self-reflection and doubt requirements 81, 83
similarity see under grid analysis
skepticism 107–12
skepticism, ethics 110–11
skepticism method 109–10
skepticism, politics of 111–12
universalism see universalism
Western tradition see Western tradition
see also comparative law as discipline
mainstream techniques 37–76
analysis of ‘legal formants’, and combination of functionalism and factualism 60–61, 63–9
classification focus, post-war 48–50
comparative law foundations and traditions 42–3
comparative law as method as science debate 37–42
descriptive/prescriptive approaches 23, 32, 63, 64, 68–9, 111
differencing as method see differencing as method
distancing as method 70–71, 75–6, 80, 81, 83, 85
facticity and objectivity 67–70
factualism 60–70

Günter Frankenberg - 9781785363948
Downloaded from Elgar Online at 07/01/2019 12:15:57PM via free access
foreign law differences, and functionalist approach 57–8, 70–71
French school of comparative law 44, 45, 49–51, 96
functionalism see functionalism
German world-historical development 44, 45, 48, 96
innocent spirit and humanitarian rhetoric 44–7
innocent spirit and legal unification or harmonization projects 73–4
interpretation concerns 68–70
Japanese law comparison with Western legal system 51–2
knowledge and information focus 54–5, 60–63
management of differences, concerns over 64–5
méthode Montesquieu 14, 43–4, 57, 96–7, 104, 105
positivism see positivism
professional innocence 41–2
questionnaires and fact-finding 65–7
social problems, functionalist focus on 56, 58
taxonomy and mapping laws of the world 47–52
universal jurisprudence 42–7, 54
value neutrality of functionalist analyses 56
Western tradition see Western tradition
Mamdani, Mahmood 102
Marcuse, Herbert 28–9
Markesinis, Basil 3
Marks, Susan 171
Marxist thought 29, 30, 32
Mattei, Ugo 10, 17–18, 19, 20, 60, 61, 63, 64–5, 68, 69, 78, 92, 94, 95, 108
Mayer, Jane 186
McCruden, Christopher 99
McGoldrick, Dominic 116, 135
McQuoid-Mason, David 215
Medic, Veit 153–4
Méret, Fred 20, 190, 202
Menger, Carl 78
Menski, Werner 12, 88, 92, 94, 111
Merino Acuña, Roger 18
Merleau-Ponty, Maurice 162
Merryman, John 38, 87, 91, 92, 105, 108
Messer-Davidow, Ellen 7, 8, 17
Mészáros, István 179
methods
cognitive control 86–8, 91–2
comparative law as method as science debate 37–42
dialogical, and cross-fertilization 99
differencing see differencing as method
distancing as 70–71, 75–6, 80, 81, 83, 85
doubt and Muslim veiling controversy 155–9
functionalism as 56–7
human rights law 177
legal reasoning and Muslim veiling controversy 118
méthode Montesquieu 14, 43–4, 57, 96–7, 104, 105
methodological concerns 77–9
militancy, and Muslim veiling controversy 146–7
orientalizing, and Muslim veiling controversy 151–2
scientific 32–3, 77–9, 81, 85–6, 101
skepticism 109–10
universalism 98–9
visual control and Muslim veiling controversy 120–27
Michaels, Ralf 4, 46, 52, 55, 56, 58, 59, 63, 86
Michaelson, Christopher 121
militancy method and Muslim veiling controversy 146–7
military action in terms of justice and human rights 175–6
see also human rights and narratives of justification
Mitchell, William 117
Monateri, Pier 10, 18, 55, 108
Montesquieu, Charles de Secondat 14, 43–4, 57, 96–7, 104, 105
Moore, Kathleen 124–5, 131, 144, 154
Index

Moore, Sally 168, 233
Moors, Annelies 142
Moran, Joe 12
Moses, Bernard 13
Motoc, Julia 199
Müge Coçek, Fatma 144
Muir Watt, Horatia 19, 52, 104, 108
Munday, Roderick 17
Murphy, Walter 86, 104
Muslim veiling controversy 113–64
  changing reasons for wearing
    headscarves and need to be heard
    136, 140–41
  comparative law relation 113–14
  conspicuousness of Islamic dress
    118, 126, 128
  conspicuousness of Islamic dress,
    public order and management of
    religious plurality 131–2
  cultural oppression claims 135–7,
    138–9, 143–4
  ethics dimension and visible
    co-existence of covered woman
    118
  feminist criticism 135, 137, 138,
    140–42, 143–4, 148
  grid use 114–15, 117–18, 130–31,
    135, 150, 155, 161–2
  Islamophobia concerns 142, 148, 149
  method as legal reasoning 118
  normative matrix of dress 161–4
  politics dimension 118, 122
  public order threat 120–21
  religious freedom and self-expression
    rights balance 121–7, 132
  similarity/difference 117, 118,
    130–31, 135, 150, 155
  skepticism between critique and
    relativism 154–61
  skepticism between critique and
    relativism, ethics and politics
    159–61
  skepticism between critique and
    relativism, method of doubt
    155–9
  travelers’ perception 150–54, 164
  travelers’ perception, ethics 152–3
  travelers’ perception, orientalizing
    method 151–2
  travelers’ perception, politics of
    153–4
  veiling, emotions evoked by 115–16
  veiling styles 114–15
  visual impact 116, 117, 124, 130, 134
  Western secular comparison 114–15,
    117–18, 119, 121–2, 132, 134,
    142, 143, 145, 146, 147, 148–9
  Western and Sharia law comparison
    153–4
  Muslim veiling controversy, colonizers’
    attitude
  human rights issues and gender
    equality 137–42, 143–4
  method and universality 137–40, 143,
    149
  political attitude 143–4
  radicalized pessimism and
    apocalyptic crusaders 145–50,
    164
  radicalized pessimism and
    apocalyptic crusaders, ethics of
    zero tolerance 147–8
  radicalized pessimism and
    apocalyptic crusaders, free will
denial 146
  radicalized pessimism and
    apocalyptic crusaders, militancy
    method 146–7
  radicalized pessimism and
    apocalyptic crusaders, politics of
    148–50
  rescue ethics 140–44
  rescue mission 135–44
  Muslim veiling controversy, control
    argument and threat perception
    119–35, 164
  judicial review of Islamic dress code
    132
  public safety and security 131
  situational tolerance 129
  visual control ethics 127–30
  visual control method and legal
    justification 120–27
  visual control politics 130–35
  Mutua, Makau Wa 187, 188
Comparative law as critique

mythology, narratives as modern mythology 195–201

*see also* human rights and narratives of justification

Nader, Laura 79, 84, 102
Nagel, Thomas 72, 82
NAIL (New Approaches to International Law) 26–7

narratives

of justification, and human rights *see* human rights and narratives of justification

legal narratives of justification and access to justice 212–14, 219

romantic *see* romantic narratives

thick legal comparison 227–9, 231–3

negative judgment concerns 22–3

Nelken, David 10, 11, 99, 103, 108
Netherlands, *niqāb* ban 142
Neumann, Franz 30, 193
Nickel, James 192
Niewöhner, Jörg 83, 168, 227, 228, 232
Nigro, Raffaella 127, 158

non-traditional practice in comparative law 26, 32

Noonan, Harold 82
Noonan, John 67

normalization narratives

access to justice 217–22, 223

law-rule as order, and human rights 176–86

normative discourse

access to justice 210, 212, 216–17, 223

normative matrix of dress and Muslim veiling controversy 161–4

normative narratives and human rights 173, 179, 183, 189–90, 191–2, 193–4, 198–9

and universalism, mainstream and non-mainstream comparisons 102, 103

objectivity 67–70, 81

Orford, Anne 172, 185, 190

Örücü, Esin 3, 4–5, 10, 33, 99

Palmer, Vernon 6, 9, 10, 14, 20, 38, 41, 59, 60, 62, 71, 72
Panikkar, Raimon 98, 231
Pape, Robert 198
Paris Congress 5, 42, 43
Parry, John 18
Pastorelli, Sabrina 116, 143
Pedwell, Carolyn 163
Peek, Lori Ann 154
Peerenboom, Randall 96
Peters, Anne 18, 20, 27, 86
Peters, Edward 184
philosophical narratives and access to justice 216–17, 219

Pogge, Thomas 192

politics dimension

*amatour*-comparatists 107

cognitive control 90–96

common concepts, search for, and exclusion of ethics and politics 78–9

human rights, normalization as depoliticization 183–6

human rights and political agenda links 174–5, 187–9, 199–201

Muslim veiling controversy 118, 122, 130–35, 143–4, 148–50, 153–4

skepticism 111–12

and thicker comparison 231–3

universalism 100–104

*see also* ethics dimension

positivism

debate 12, 14

dispute 78, 101

legal positivism 50, 63–9, 93–4

legocentric 11–12, 14, 79

mainstream techniques 50, 63–9

structuralist 63–4

*see also* formalism

Pound, Roscoe 87

poverty issues and human rights 182–3

preconceptions and stereotypes, dealing with 83

prescriptive/descriptive approaches 23, 32, 63, 64, 68–9, 111
Index

Priest, Dana 185
public interest groups, and access to justice 207–8, 223–4
public order, and Muslim veiling controversy 120–21, 131–2
Pufendorf, Samuel 43
questionnaires and fact-finding 65–7
see also information
Rabel, Ernst 44, 46, 48, 53, 54, 55, 88, 92, 101
radicalized pessimism and apocalyptic crusaders see under Muslim veiling controversy, colonizers’ attitude
Rawls, John 192, 208, 216
reductionism problems 67, 227, 229–30
Reece, Debra 144, 163
reflexive comparison 229–31
reformist approach
access to justice 223–4
and universalism 101–2
Reimann, Anna 153–4
Reimann, Mathias 9, 10, 18, 19, 40, 52, 53
Reitz, John 55
relativism, skepticism and Muslim veiling controversy 154–61
religious freedom and self-expression rights balance, Muslim veiling controversy 121–7, 132
Rhode, Deborah 206
Riles, Anneline 18, 27, 40, 41, 44, 46, 65, 104, 106
Riley, Patrick 43
Rittich, Kerry 34
Roberts, Paul 47, 103
romantic narrative
and access to justice 11, 209–10, 216
and human rights 191, 193–4, 202–4
see also narratives
Rorty, Richard x, 23, 194
Rosaldo, Renato 70
Rosen, Lawrence 72
Rosett, Arthur 93
rule of law see law-rule
Ruskola, Teemu 19
Sacco, Rodolfo 5, 56, 58, 60–62, 63–4, 68–9, 94, 109
Sacksofsky, Ute 122, 159
Said, Edward 77, 100, 111, 139, 146, 152, 163, 226–7
Sajó, András 119
Salecl, Renata 193
Saleilles, Raymond 98, 100, 101
Samuel, Geoffrey 65
Sandikci, Özlem 115, 136, 154
Sands, Philippe 184, 185, 186
Santos, Alvaro 91, 95
Sawer, Geoffrey 74
Scanlon, Thomas 192, 216
Schacht, Richard 179, 221
Schefter, Thomas 83, 168, 227, 228, 232
Schlesinger, Rudolf 38, 55, 60–61, 78, 86
Schröder, Jan 46
Schwarz-Liebemann von Wahrendorf, Hans-Albrecht 88
Schwarzer, Alice 145, 147, 148
Schwenke, Heiner 18, 20, 27, 86
Schwenzer, Ingeborg 44, 48
scientific method 32–3, 77–9, 81, 85–6, 101
Scollon, Ron 97
Scott, Joan 130
Scott, Robert 22
secret government practices, justifying 174–5
see also human rights and narratives of justification
self-definition, critical by 24–8
self-expression, Muslim veiling controversy and self-expression rights balance 121–7, 132
self-reflection and doubt requirements 81, 83
Sharia law comparison 153–4
see also Western tradition
Shilliam, Robert 76, 226
Siem, Mathias 33
Siim, Birte 143
similarity/difference intersect 82–3, 84, 85, 88–90, 117, 118, 130–31, 135, 150, 155, 225–7

see also differencing as method; grid analysis

skepticism 107–12

Muslim veiling controversy 154–61

Skjeie, Hege 143

Smith, Joseph 90

Smith, R. Jeffrey 185

social dimension 5, 29, 30, 32, 56, 58

human rights see human rights and narratives of justification

Stephens, Thomas 153

stereotypes and preconceptions, dealing with 83

Stiglitz, Joseph 188

strategic comparison, Western concept of law 90–96

strategic option

human rights and imaginative space reduction 182–3

reduction, and access to justice 220–21

structural connection of disparate events 195–7

see also human rights and narratives of justification

structuralist positivism 63–4

see also positivism

Talpade Mohanty, Chandra 144–5

Tanenhaus, Joseph 86

taxonomy and mapping laws of the world 47–52

Taylor, Charles 100

Teitel, Ruti 99

Tennant, Chris 26

Thevenot, Laurent 172, 213

Thomas, John 43

Thompson Klein, Julie 12, 13

threat perception see Muslim veiling controversy, control argument and threat perception

Tomberlin, James 83

Tomuschat, Christian 170

torture cases and human rights 184–6, 203–4

traditional theory characteristics 29

travelers’ perception, Muslim veiling controversy 150–54, 164

Trebilcock, Michael 96, 217

Trubek, David 91, 95

Tunc, André 50, 87

TWAIL (Third World Approaches to International Law) 26–7

Twining, William 18, 40, 49, 85, 87, 88, 105, 108, 225

UK

Begum v. Denbigh High School 133, 155, 157–8, 162

The Queen v. D (R) 125, 129, 132, 152, 155, 156–7

Unger, Roberto 25

unification projects 73–4, 92–5

Common Core Project 59–70, 94–6

universalism 42–7, 54

colonizers’ method and universalism, Muslim veiling controversy 137–40, 143, 149

debate 83, 96–104

ethics 99–100

human rights and narratives of justification 189–94

over-generalization and amnesia concerns 99–100

politics 100–104

reformist approach 101–2

unjust actions, dealing with 173–5, 177

see also human rights and narratives of justification

US

Brown v. Board of Education of Topeka 218

Critical Legal Studies movement (CLS) 24–6, 27

Declaration of Independence validity claim 198, 200

Freeman v. Florida 124–5, 128, 130, 131, 149

Planned Parenthood v. Casey 170, 171
Restatement projects 59

torture and human rights violations, dealing with 186

Utah Symposium, 'New Approaches to Comparative Law' 18

Vakulenko, Anastasia 133, 135, 137, 139, 140, 157

validity
claims and human rights 198–9
legal validity and mainstream comparative law 6–7, 11, 15

Van Zoonen, Liesbet 164

veiling controversy see Muslim veiling controversy

visual control and Muslim veiling controversy
control argument and threat perception 127–30
legal justification 120–27
politics 130–35
visual impact, Muslim veiling controversy 116, 117, 124, 130, 134

Vogenauer, Stefan 53, 57, 100, 101

voluntarist approach and access to justice 223

Van Bar, Christian 93, 95

Van Mangoldt, Herrmann 132

Wadud, Amina 163

Wallenstein, Immanuel 189

Walzer, Michael 175

Watson, Alan 3, 39, 40, 93, 97

Watt, Gary 93

Weisberg, Richard 169

Weisstub, David 90

Wellmer, Albrecht 78

Wesche, Thilo 32

Western tradition
and comparative law as discipline 6, 15
concept of law as framework for comparison 85–6, 87–9, 90–98, 100–102
distinguishing features, and differencing 73–5
Japanese law comparison 51–2
legacy 18–19
secular comparison, and Muslim veiling controversy 114–15, 117–18, 119, 121–2, 132, 134, 142, 143, 145, 146, 147, 148–9

Sharia law comparison 153–4
see also colonialism; factualism; functionalism

White, Hayden 169, 191
Whitman, James 89
Wiethölter, Rudolf 30–31
Wigmore, John 11, 39, 46, 105–6, 107
Williams, Patricia 26, 169
Williams, Raymond 22
Winter, Bronwyn 145
Wong, David 75
Wong Scollon, Suzanne 97

Yeğenoğlu, Meyda 148
Yengoyan, Aram 168, 232
Young, Iris 110
Young, Robert 102
Yu, Guanghua 18

Zhang Yimon 222
Zimmermann, Reinhard 10, 40, 60
Zumbansen, Peer 27
Zweigert, Konrad 10, 19, 20, 38, 40, 53, 54, 56, 57, 58, 74, 78–9, 87–8, 90, 91, 92, 97, 99, 103