

INDEX

- Aboriginal law. *See also* Australian
 Aboriginal people
 discourse versus fact and, 5–6
Marshall (No. 2) and, 8–9
*Members of the Yorta Yorta
 Aboriginal Community v
 Victoria*, 46
 processes of justice and, 12–13
 traditional practice as land claim
 basis, 4–5
- Aboriginal rights. *See also* Australian
 Aboriginal people
 criticisms related to, 133–4
 dialogic process and, 135–6
 as identity politics, 132–9
 judges' role in, 143–4
 legal recognition of, 129–32
- acculturation of justice
 ADR and, 13–15
 defined, 3
 formal power and informal culture,
 15
 overview, 11–12
 processes of justice and, 12–13
- ADCK. *See* Agence pour le
 Développement de la Culture
 Kanak
- Additional Protocol II, 298
- adjudication
 judge and, 43–5
 legal positivism and, 42–3
- Adler, Peter, 252
- admonitions. *See* *öwkhanta*
- ADR. *See* alternative dispute resolution
- Africa. *See also* Sierra Leone Instructor
 Manual; Sierra Leone Special
 Court
- FGC in, 85–6
 ICA and, 111–12
L'Afrique accusé? (Zirn), 111–12
- Agence pour le Développement de la
 Culture Kanak (ADCK),
 214–16
 intangible elements of Kanak
 heritage and, 215–16
 traditional knowledge collection and
 transmission and, 214–15
- agunah* (chained or anchored woman)
Agunot Campaign, 72–3
get and, 56–7, 73
 strategy for granting of *get* by, 73
 strategy of changing religious
 denomination by, 73–4
- Aidara* case, 119–20, 122
- Akan people, 342
- alternative dispute resolution (ADR)
 acculturation of justice and, 13–15
 in Australia, 253
 Australian Aboriginal people
 frustrated aspirations and, 256–7
 mediation design and, 257–8
 MIRJ and, 258–60
 background related to, 247–9
 conclusions related to, 263–5
 conflict resolution and, 250–1
 critical literature emerging about,
 253–4
 criticizing Western justice system,
 224–8
 cultural models and Western law,
 242–6
 cultural politics of, 250–5
 difference and, 261–2

- formal power and informal culture, 15, 255
- formalism of law and, 253–4
- forms of, 223
- global trends in, 282–4
- globalised liberal peacebuilding apparatus and, 262
- governing and, 260
- Gullah Island dispute resolution, 244–5
- historical nostalgia and, 229–31
- legal anthropology and, 251, 253
- legal pluralism in, 255–63
- liberal governmentality and, 255–6
- medical metaphors of, 228
- mythic view of past and, 252
- NADRAC and, 253, 257–9
- non-Western influence
- Chinese model, 234
 - exotic longing and, 231–3
 - ho'oponopono model, 235–7
 - Kpelle moot model, 234–5, 237–42
 - overview, 223–4
 - shopping for models of, 233–7
- ontological concerns and, 262–3
- overview, 7–8
- practitioner techniques and, 242–3
- process and technique early focus of, 251–2
- rise of, 250
- Rwanda and, 282–4
- self-reconfiguration and, 254
- technicality and susceptibility in, 261
- USA and, 250–2
- yearning rhetoric used within, 228–33
- Amerindian people, 203–4
- anachronistic space, 231–3
- Andrade, Oswald de, 313
- Anglo-Saxon moots, 238–9
- Anglo-style legal procedure
- citatoriality and, 159–60
 - Hopi jurisprudence and, 155
 - jurisdiction and, 155, 160–1
- Annonciata (family land ownership dispute participant), 273–5
- anthropology
- centaur jurisprudence and, 1–2
 - legal, 251, 253
- anthropophagy. *See also* cannibalism; Sierra Leone Special Court
- ethnographic studies of, 320–2
 - law cannibals make and, 316
- Arens, William, 315–17
- arranged marriage, 70
- Augustine, Keptin Stephen, 131–2
- Austin, John, 45–6
- Australia. *See also* High Court of Australia; Northern Territory Supreme Court
- ADR in, 253
 - judge and, 45
 - native title hearings in, 35–6
- Australian Aboriginal people. *See also* Alternative dispute resolution
- ADR design and, 257–8
 - ADR frustrated aspirations for, 256–7
 - conclusions related to, 263–5
 - MIRJ and, 258–60
 - NADRAC and, 253, 257–9
- Australian Military Court at Rabaul, 300–2
- Australian Military Courts sitting at Wewak, 300–2
- Australian Native Title Tribunal, 150
- Ba* case, 106
- Badiaga, Fatou, 119–20
- Bakhtin, Mikhail, 157
- Baradji* case, 102
- barbarism. *See* new barbarism
- Barton, Ansley Boyd, 231–3
- Baudrillard, Jean, 332, 334–5
- Beatrice (family land ownership dispute participant), 273–5
- “Before the Law” (Kafka), 1–2
- LeBel, Louis, 131–2, 135–6
- Belgian written law, 281–2
- Benham, Robert, 231–3
- Benjamin, Walter, 160–1
- Bergner, Daniel, 317–18
- Bilger, Philippe, 106–8
- Bimin-Kuskumin people, 327–8
- Binnie, Ian, 8–9, 145–6
- blacksmith caste. *See forgerons*

- Blah, Moses Zeh, 310–11
 Bobo (three-month old baby),
 108–10
 Bohannan, Paul, 240
 Borrowes, John, 139, 141–2, 148–51
 Boutet, Judge, 307–10
Boni hinda, 317–18
 Breton case, 97–8
 Burger, Warren, 225–6
 bush wives cannibalism, 11–12
berei mu neni saa (house palaver),
 237–42, 238
- Canada. *See also* Supreme Court of
 Canada
 legal establishment soul-searching in,
 226
 s.35 of Constitution of, 129–30
 cannibalism. *See also* Charles Taylor
 trial
 appropriate, 327–8
 body as symbol of society and, 328–9
 CDF trial and, 307–10
 civilization and, 294
 conclusions, 341–3
 as dangerous for eater, 340
 dead body protection in war and,
 296–302
 dignity and
 community, 305
 personal, 302–5
 eater transformation and, 338
 evidence and, 306
 fear instilled via, 329–30
 ICC and, 302
 incorporation and, 338–9
 international court case law related
 to, 299–300
 International Military Tribunal for
 Far East and, 299–300
 Kamajors and, 293, 326–7
 law against, 295–313
 international law, 296–306
 overview, 295–6
 SCSL ambiguous stance in, 294–5,
 306–13
 law and community related to, 325–6
 law as, 332
- law cannibals make, 313–31
 anthropophagy and, 316
 code content of, 326–7
 conclusions, 331
 eating habits and, 315
 ethics and, 322–31
 ethnographic studies and, 320–2
 existence and construction of
 cannibalism, 315–22
 explorers and, 315–16
The Man-Eating Myth and,
 315–16
 other and, 316
 overview, 313–14
 societal values and, 326–7
 transgression of, 327–8, 330–1
 law transformed via, 339
 legal positivism and, 295–313
 as metaphor for law, 332–6
 metaphor in search of itself and,
 336
 microlaw and, 323–5
 morality of law and, 325–6
 mortuary cannibalism and, 298–9,
 338
 mythical construction and, 322
 narratives about, 316–17
 national court case law related to,
 300–2
 new barbarism and, 317–18
 non-legal normative systems and,
 339
 othering via, 329–30
 overview, 17, 293–5
 power absorbed via, 338–9
 regulated, 320–2
 RUF trial and, 319
 three laws, 294–5
 Trial Chamber of the International
 Criminal Tribunal for former
 Yugoslavia and, 299–300
 category-individuating properties
 classical definitionalist conception of,
 25
 of law, 24–6
 sovereignty, 26
 ways of construing, 24–5
 CDF. *See* Civil Defence Forces trial

- CEDAW. *See* Convention on the Elimination of All Forms of Discrimination against Women
- Celestin (property dispute defendant), 271–2
- centaur jurisprudence
 law and culture and, 1–2
 legal pluralism and, 2–3
 overview, 1–5
- centralism, 322–3
- Cesarine, Paola, 348–9
- Charles Taylor trial
 broken cannibal law and, 330–1
 defence in, 310–11
 prosecution in, 311–12
 racism and, 312–13
 before SCSL, 310–12, 319–20
 Tholley testimony in, 293
- Chatterjee, Partha, 248
- The Cheyenne Way* (Hoebel & Llewellyn), 140
- child soldiers, 11–12
- Chinese model, of ADR, 234
- Christianity, Rwanda and, 283–4
- Christie, Gordon, 145–6
- chronotopes, 157
- Cissé, Diénéba, 106–8
- citatoriness, 159–60
- Civil Defence Forces (CDF) trial
 ambivalence apparent in, 309–10
 broken cannibal law and, 330–1
 code of cannibalism and, 326–7
 command responsibility and, 339–40
 defence objections in, 307–8
 devour metaphor and, 336–7
 fear and, 329–30
 judges' interest expressed in, 308–9
 magic and, 340–1
 before SCLS, 307–10
- civil law
 deficiencies, 64–5
 divorce act and, 70–1, 76–7
 empowerment and, 66–7
 financial religious entitlements and, 77–9
shariah councils and, 69
 unregistered Muslim marriages and, 67–70, 80
- clans. *See* *nygam*
- Clarke, Kamari Maxine, 334–5
- Coe v Commonwealth (No 1)* (High Court of Australia), 46
- coexistence, 195–6
- colonial town meetings, American, 239–40
- Columbus, Christopher, 315–16
- “The Coming of Anarchy” (Kaplan), 317–18
- comite y’abunzi* (mediation committees), 266
 ADR and, 282–3
 establishment of, 273
 family land ownership dispute example, 273–5
 process elements, 275–6
 as tool of pacification and control, 287–8
- Commaret, Mrs., 102–4
- community of inquirers, 25
- concept acquisition, 32
- The Concept of Law* (Hart), 48
- conceptual community, 25
- conflict resolution. *See also* alternative dispute resolution
 ADR and, 250–1
 Western thinking and, 7–8
- Conklin, Beth, 338
- Connolly, Tony, 342
- Conseil d’État, 216
- Constitutional History of England* (Stubbs), 238–9
- contact zones
 New Caledonia, 195
 sociabilities and, 195–6
- contingent, 323
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 99
- conviviality, 195–6
- Cormack, Bradin, 160–1
- Corneloup, Yves, 100, 107, 112
- Coulibaly* case, 98, 102–4, 110–13
- counter-interpretive legal factors
 adjudication and, 42–3
 defined, 34–5
 Hart and, 52–3

- counter-interpretive legal factors (cont.)
 judge and, 43–5
 judicial impartiality and, 49
 native title hearing examples related to, 35–6
 operative concept of law and, 37
 rules and, 39–41
 sovereignty and, 49
 at systemic level, 37
- Cour d'Assises*
Ba case, 106
Baradji case, 102
Coulibaly case and, 98, 102–4
 films shown in, 111–12
Gréou case, 106–8
 jurisdiction of, 97–8
 transfer of jurisdiction to, 98–101
Traore, Doucoure case, 104–6
Traore case, 108–10
- Cover, Robert, 325–6
 Crane, David, 319
 criminal law. *See also* international criminal law
 acculturation of justice and, 11–12
 cultural trait as defence in, 4–5
 non-recognition of customary law in field of, 207–9
- critical legal pluralism
 defined, 60–1
 sovereign legal subjects and, 61–2
- cross-cultural hermeneutical exercise, 143
- cross-cultural interpretation
 concept acquisition and, 32
 counter-interpretive legal factors and, 34–5
 general theory of, 31
 judge and, 43–5
 key factors, 32–3
 at trial, 34
 in legal settings, 31–7
 native title hearing examples related to, 35–6
 overview, 30–1
 rules and, 39–41
 state legal systems and, 36–7
- Cruikshank, Julie, 139
- cultural critique, 227–8
 cultural pluralist approach, 362–4
 cultural trait, as defence, 4–5
 culture. *See also* legal culture; pluralized narratives of law and cultures; translation of cultures
 of argument, 142
 belonging and, 182–3
 defining, 182–3
 factualization of, 8–9
 is law, 61–2
 limits of, 348–57
 numbers constituting, 183
 overview, 1–5
 sameness and difference and, 182–3
 social dimension of, 182–3
- culture of lawfulness
 agenda of, 354
 Culture of Lawfulness Project, 352
 international empowerment and, 354
 as patronising, 354–5
 Pereira project, 352–4
 as socio-cultural intervention, 352
- custom
 as context to application of international criminal law, 4–5
 FGC and, 86–7
 Hopi Appellate Court guidelines related to, 153
- customary civil status. *See* Kanak people
- customary law, non-recognition of, 207–9
- customary norm
 binding nature of traditional practices and, 95–6
 cohesive function and, 94–5
 FGC as, 93–6
 sanction and, 93–4
 state law versus, 89–93, 108–13
 time and, 93–4
- Dan (Hopi man), 165–7
 Danzig, Richard, 234–5
 decentralised, 323
 Deferre status, 197
 deliberative, 323
 Derrida, Jacques, 1–2

- Dewey, John, 346
 Diallo, Assitan, 117–19
 Diamond, Stanley, 336
Diawara case. See Wagué, Diawara case
dijin (ancestors), 85–6
 discourse
 fact and, 5–6
 mediation, 13–15
 perpetuity and, 6–7
 divorce. *See also specific type*
 civil and religious law and, 70–1,
 76–7
 legal aid clinics case example,
 276–8
The Divorce (Religious Marriages) Act
 2002 70–1
 Dobriansky, Paula, 352
 Doua (three-month old baby), 91
Doucara case, 113–14
 Douglas, Mary, 328–9
 Douzinas, Costas, 160–1, 333–4
La Duperie (ICA), 111–12
- Eagleton, Terry, 182–3
 Educational Assistance in an Open
 Environment measure, 108–10
 efficiency critique, 226–7
 Elise (property dispute victim),
 271–2
 endocannibalism, 298–9, 338
 epistemic conditions, 32–3
 essentialism, 134–6
 ethics, cannibalism and, 322–31
 ethnocentrism/assimilation, 135–6
 European Union law, 48
 Evans-Pritchard, Edward, 316
excision. See female genital cutting
exequatur, 76–7
 exocannibalism, 298–9
 exogenous institutions, 7–8
 exotic longing, 231–3
 explorers, 315–16
- fact
 discourse and, 5–6
 Indigenous law as, 45–9
 perpetuity and, 6–7, 157
 pro-interpretive factors and, 45
 translation of cultures into, 6–7
 Fallon, Mustapha, 309–10
 family land ownership dispute example,
 273–5
 family law. *See also fieldwork, among*
 Jewish and Muslim women;
 religious law
 family/market dichotomy and, 58–9
 Jewish compared with Muslim, 58
 micro power relations and, 61–2
 overview, 16–17, 57–60
 Farhadi, Asghar, 84
faskh divorce
 as fault-based, 55–6
 grounds for, 55–6
 Favali, Lyda, 94
 female genital cutting (FGC)
 aesthetics and, 88–9
 in Africa, 85–6
 age groups and, 114–15
Aidara case, 119–20, 122
Ba case, 106
Baradji case, 102
 conclusions, 120–4
Coulibaly case, 98, 102–4, 110–13
 custom and, 86–7
 as customary norm with force of law,
 93–6
 customary norms versus state law
 and, 89–93, 108–13
 Doua and, 91
Doucara case, 113–14
 explanations in favor of, 86–9
 family and, 87–8
 Favali and Pateman and, 94
 fertility and birthing process and, 88
 financial contribution and, 115–17
Fofana Traore case, 114
 French criminal justice system
 response to, 96–101
Gréou case, 106–8, 114
 group versus individual and, 85–6
 hygiene and, 88
 immigrants' social inclusion and,
 99–100
 marriage and, 87–8
 men in perpetration of, 113–20
 morality and, 89

- female genital cutting (FGC) (cont.)
 normative universes in conflict and,
 9–11, 85
 oral tradition and, 114–15
 overview, 9–11, 85–9
 punishment reasons in closing
 arguments, 101–8
 religion and, 88
Soumare case, 113–14
 study methodology, 90–1
 emotional detachment and, 92–3
 for interviews, 91–2
 as taboo subject, 114
Teneng Jahate case, 117–19
 translation of cultures and, 9–11
Traore, Doucoure case, 104–6, 114
Traore case, 108–10
 as violent acts, 101–2
 WHO and, 99
- feminism, 83–4
- Ferme, Marianne, 342
- FGC. *See* female genital cutting
- fieldwork, among Jewish and Muslim
 women
 civil law deficiencies and, 64–5
 conclusions related to, 80–4
 overview of, 63–4
 religious law deficiencies and, 65–6
- First Geneva Convention for the
 Amelioration of the Condition of
 the Wounded and Sick in Armed
 Forces in the Field,
 296–7
- Fitzpatrick, Peter, 252–4
- flexible monism, 194
- Fofana Traore* case, 114
- For Space* (Massey), 179–80
- forced marriage, 70
- forgerons* (blacksmith caste), 87–8
- Foucault, Michel, 75–6, 139, 253–4
 “Of Other Spaces,” 54
- fragmentation, 323
- France. *See also* Kanak legal order;
 Kanak people; New Caledonia
 Article 75 of constitution of, 198–9
 Article 82 of constitution of, 198
 legal pluralism and, 191
 legal system adaptation in, 12–13
- territories resisting unitary model of
 law in, 192
 as unitary state, 191
- Frank, Jerome, 225–6, 234
- Frederic (family land ownership
 dispute participant), 273–5
- French criminal justice system
Ba case, 106
Baradji case, 102
 Breton case and, 97–8
Coulibaly case, 98, 102–4,
 110–11
 FGC customary norms versus state
 law in, 89–93, 108–13
 FGC punishment reasons in closing
 arguments in, 101–8
Gréou case, 106–8
 immigrants’ social inclusion and,
 99–100
 response to FGC within, 96–101
Traore, Doucoure case, 104–6
Traore case, 108–10
- French Guyana, 203–4
- French law
 Conseil d’État and, 216
 physical integrity right in, 85–6
- Freud, Sigmund, 342
- Friedman, Lawrence, 181–2
- Fuller, Lon, 325–6
- fusion of horizons, 143
- gacaca* (genocide courts), 13–15, 266
 ADR and, 282–3
 Belgian written law and, 281–2
 design of, 270
 Elise and Celestin’s testimony before,
 271–2, 285
 etymology related to, 278–9
 example from, 270
 as tool of pacification and control,
 287–8
 truth commission model and,
 283–4
 unity principles and, 286–7
- Gaillard, Françoise, 117–19
- GAMS. *See* Groupe pour l’Abolition
 des Mutilations Sexuelles
- Garapon, Antoine, 108–10

- Gatanazi (family land ownership dispute participant), 273–5
- Gearey, Adam, 333–4
- Geertz, Clifford, 1–2, 61–2, 143, 157, 334–6
- General Military Government Court at Dachau, US, 300–2
- genocide courts. *See gacaca*
- Geschiere, Peter, 327–8
- get* (divorce)
- agunah* and, 56–7, 73
 - biblical foundation for, 56
 - strategy for granting of, 73
 - strategy of changing religious denomination for, 73–4
- Gibbs, James, 234–5
- Bohannan and, 240
 - “The Kpelle Moot” and, 237–8
 - Kpelle moot model and, 237–42
- Glenn, H. Patrick, 158–9
- Goro Nickel Company, 212–14
- Grammond, Sébastien, 144–7
- Gray, John Chipman, 176
- Gréou* case, 106–8, 111–12, 114
- Griffith, Courtney, 310–11, 319–20
- Griffiths, John, 143–4
- Groupe pour l’Abolition des Mutilations Sexuelles (GAMS), 106
- Gullah Island dispute resolution, 244–5
- Habermas, Jürgen, 152–3, 157
- habilitated pluralism, 194
- halacha* (corpus of Jewish law), 55–6
- harmony legal models, 266–7
- ADR and, 282–3
 - benign cultural framing of, 284–5
 - conclusions, 288–9
 - counter-hegemonic strategy related to, 286
 - justification for unity and reconciliation and, 278–9
 - post-genocide Rwanda’s, 269–78
 - pre-colonial period and, 279–80
 - state control and, 280–1
 - as tool of pacification and control, 287–8
 - unity principles and, 286–7
- Hart, H. L. A., 25
- adjudication and, 42–3
 - The Concept of Law* by, 48
 - counter-interpretive legal factors and, 52–3
 - Indigenous law as fact and, 45–9
 - judges and, 43–5, 51–2
 - judicial practice and, 49–53
 - rules and, 38–42
 - sovereignty and, 46–9
- Hasan, Khola, 78–9
- Hayek, Friedrich von, 348–9
- Helms, Jesse, 333–4
- Henderson, Sákéj, 148–51
- Herodotus, 316–17
- High Court of Australia, 46
- Hite, Katherine, 348–9
- Hobsbawm, Eric, 229–31
- Hoebel, Edward Adamson, 95–6, 140
- Honie v. Hopi Tribal Housing Authority*, 154
- ho’oponopono model, 235–7
- Hopi
- Appellate Court, custom and tradition guidelines from, 153
 - language, 155–6
 - reservation, 162
 - tradition, 153, 162–3
- Hopi jurisprudence
- abstract, 152–3
 - Anglo-style legal procedure and, 155
 - authority and, 158–9
 - citatoriality and, 159–60
 - commitment to continuity and, 158–9
 - courts of, 147
 - crisis of law-making and, 158
 - Honie v. Hopi Tribal Housing Authority*, 154
 - jurisdiction and, 160–1
 - nieces’ property inheritance dispute example in, 152–4
 - overview, 6–7
 - procedural formalism in, 155
 - rupturing connections related to, 158
 - structure of, 162
- Hopi Tribal Court
- Jean and Dan in, 165–7

- Hopi Tribal Court (cont.)
 judges and attorneys in, 170–4
 oral wills and, 169
 perpetuities of tradition in, 163–75
 tradition, arguing with, 162–3
 house palaver. *See berei mu neni saa*
 Howard, George Elliot, 239–40
 Hulme, Peter, 316
 Human Leopard Society, 316–17
 hybrid sociological approaches,
 350–2
- ICA. *See* Inter-African Committee on
 Traditional Practices
 ICC. *See* International Criminal Court
 ICRC. *See* International Committee of
 the Red Cross
- identity
 Aboriginal rights as identity politics,
 132–9
 Indigenous law and, 24, 41–2
 state law and, 23–4, 41–2, 50
 true version of, 136–7
- IFaMP. *See* Indigenous Facilitation and
 Mediation Project
 incorporation, 338–9
 Indigenous Facilitation and Mediation
 Project (IFaMP), 257–8
 Indigenous law. *See also* Aboriginal law;
 Aboriginal rights; Amerindian
 people; Australian Aboriginal
 people; Hopi; Hopi
 jurisprudence; Hopi Tribal
 Court; Kanak legal order; Kanak
 people
 Austrian view related to, 45–6
 conclusions, 148–51
 cross-cultural hermeneutical exercise
 and, 143
 as fact, 45–9
 identity and, 24, 41–2
 interpretation and, 11, 27–8
 James Bay and Northern Quebec
 Agreement and, 146–7
 legal pluralism and recognition of,
 140–8
Mitchell v MNR and, 145–6
 politics of cultural recognition and,
 5–6
 property and, 141
 sovereignty and, 26
 state recognition strategies and,
 143–4
 translation process and,
 141–2
 two row wampum and,
 145–6
- Instructor Manual (Sierra Leone),
 297
- Inter-African Committee on
 Traditional Practices (ICA),
 111–12
 intercultural legal tradition, 18
 International Committee of the Red
 Cross (ICRC), 296–8
 International Criminal Court (ICC),
 302–5
 international criminal law
 bush wives cannibalism and,
 11–12
 cannibalism, 296–306
 case law, 299–300
 lack of recognition of, 295–6
 custom as context to application of,
 4–5
 dead body protection in war and,
 296–302
 hybrid courts of, 13–15
 International Military Tribunal for Far
 East, 299–300
 interpretation. *See also* cross-cultural
 interpretation
 agents of law and, 29–30
 Indigenous law and, 11, 27–8
 limits of law regarding, 38–45
 overview, 11, 30–1
 pro-interpretive factors and, 45
 state law and, 27–8
 translation of cultures and, 11
 interpretive phase, 27
inyangamugayo (panel of
 locally-elected judges), 270
itangu (sources of traditional authority
 in matrilineal clans), 173–4

- Jackson, Sherman, 148–51
 James Bay and Northern Quebec Agreement, 146–7
 Japanese army, 299–302
 Jean (Hopi woman), 165–7
 Jewish law
 compared with Muslim family law, 58
 feminism and, 83
 halacha, 55–6
 ketubah and, 77–8
 pluralized narratives and, 16–17
 various and contradictory voices embraced in, 82–3
 women's vulnerability under, 54–7
 Jewish marriage, contractual nature of, 82
 Jewish women. *See also* fieldwork, among Jewish and Muslim women
 agency of, 74
 Agunot Campaign and, 72–3
 conclusions related to, 80–4
 financial religious entitlements and, 77–9
 interpersonal networks and, 75–6
 ketubah and, 77–8
 religious space as contractual for, 72–3
 strategy for granting of *get*, 73
 strategy of changing religious denomination by, 73–4
 vulnerability under Jewish law of, 54–7
jir sa ya (*jir* at home), 240
 Johnson, Kirsten, 111–12
 judges. *See also specific judge*
 adjudication and, 43–5
 Australian native title sphere and, 45
 concept of, 30
 counter-interpretive legal factors and, 43–5
 customary civil status and, 200–1
 Hart and, 43–5, 51–2
 in Hopi Tribal Court, 170–4
 interest in CDF trial, 308–9
 inyangamugayo, 270
 role in Aboriginal rights, 143–4
 judicial concept acquisition, 32
 judicial discretion, 38
 judicial impartiality, 49
 jurisdiction, 160–1
 justice critique, 226–7
 Kafka, Franz, 1–2
 Kahn, Paul, 156–7
Kajelijeli case, 302–5
 Kamajors, 293, 326–7
 Kanak legal order
 acculturation of state legal institutions with, 202–7
 conclusions, 216–19
 contractual practices recognition of, 210–14
 customary land and, 198–9
 evolution of recognition of, on margins of French state, 210–16
 frontiers of recognizing, 207–10
 non-recognition of customary law, in field of criminal law, 207–9
 Ouvéa Island incident and, 200
 public maritime domain recognition of, 210–12
 recognition of, 198–9
 Rhéébù Nùù committee and, 212–13
 state legal order coordination with, 199–207
 state legal order subordination of, 209–10
 Kanak people
 ADCK and, 214–16
 assimilation of, 197–9
 civil status of, 197–9
 conclusions, 216–19
 customary civil status
 cases growing in, 202
 courts created for, 201
 customary assessors and, 202, 204
 customary palaver and, 205–6
 judges' refusal to apply, 200–1
 pre-litigation phase and, 205
 slow implementation of, 200–2
 customary land and, 198–9
 industrial project participation of, 212–14
 intangible elements of heritage of, 215–16

- Kanak people (cont.)
 personal civil status and, 198–200
- Kanneh, Karmoh, 310–11
- Kaplan, Robert, 317–18
- Kargbo, Samuel, 310–11
- Kayishema and Ruzindana* case, 302–5
- Kearns, Thomas R., 4–5
- Keita, Aramata Souko, 102–4
- Kelsall, Tim, 334–5
- ketubah* (Jewish marriage contract), 77–8
- khul* divorce, dower and, 55–6
- Kilgour, Maggie, 319–20, 333–4, 340
- King, Gelaga, 340–1
- Kleinhans, Martha-Marie, 60–1
- Kondewa, Allieu, 307–10, 330–1
 command responsibility of, 339–40
- King dissent and, 340–1
- “The Kpelle Moot: A Therapeutic Model for the Informal Settlement of Disputes” (Gibbs), 237–8
- Kpelle moot model
 advocates of, 234–5
 American colonial town meetings and, 239–40
 Anglo-Saxon moots and, 238–9
 Bohannan and, 240
beré mu neni saa and, 237–42
 Gibbs and, 237–42
jir sa ya and, 240
 as therapeutic, 234, 241
 Western values and, 241
- Kymlicka, Will, 132–3
- Lauterpacht, Hersch, 300–2
- law. *See also* Belgian written law; cannibalism; civil law; criminal law; family law; French law; Indigenous law; international criminal law; Jewish law; Muslim law; pluralized narratives of law and cultures; religious law; state law
 cannibalism as metaphor for, 332–6
 as cannibalistic, 332
 category-individuating properties of, 24–6
 community and, 325–6
 different concepts of, 24–6
 Hart’s definition of, 39–42
 is culture, 61–2
 metaphor in search of itself and, 336
 operative concepts of, 28, 37
 overview, 1–5
 recognitional limits of, 28
 subcategories, 4–5
 as synonymous with legal system, 23–4
 translation process and, 141–2
- Law in the Domains of Culture* (Sarat & Kearns), 4–5
- Leach, Edmund R., 88–9
- legal aid clinics, 13–15, 266
 ADR and, 282–3
 divorce case example and, 276–8
 structure of, 276
 as tool of pacification and control, 287–8
- legal anthropology, 251, 253
- legal culture
 boundaries of space and, 188
 composite character of, 184
 definitions, 184–6
 Friedman and, 181–2
 legal cultureS (pluralism), 186–8
 legal hyphen culture (as process), 188–90
 Legrand’s conception of, 185–6
 Nelken’s conception of, 184–5
 place and, 185–6
 pluralized narratives of law and cultures and, 17
 process and, 188–90
 relational, 8–9, 176
 social learning and, 189–90
 temporal dimension and, 189
 unsteered adaptations and, 189
- legal indeterminacy, 38
- legal *mentalité*, 185–6
- legal normativity, 322–3
 microlaw and, 323–5
- legal pluralism. *See also* critical legal pluralism
 in ADR, 255–63
 boundaries of space and, 188

- centaur jurisprudence and, 2–3
 characteristics of, 323
 conclusions, 18–19, 148–51
 cultural multiplicity and, 187
 discursive approach of, 142
 France and, 191
 interpretation and, 11
 judges' role in, 143–4
 legal culture and, 186–8
 legal hyphen culture (as process)
 and, 188–90
 legal positivism and, 28
 multiple theories of, 193
 normative regimes and, 9–11
 Otis and, 193–4
 Pluralisme hors l'État, 193
 popularity of, 186–7
 questions surrounding, 23–4
 recognition and, 23–4, 140–8
 recognition of Indigenous law and,
 140–8
 space and, 186–8
 state organized, 193–4
 strong, 144–5
 strongest versions of, 147
 weak, 143–4
- legal positivism
 adjudication and, 42–3
 cannibalism and, 295–313
 case study, 38–45
 characteristics of, 322–3
 as commonly held paradigm, 50–1
 focus on, 28
 Indigenous law as fact and, 45–9
 interpretive limits of law and, 38–45
 judge, concept of, and, 30
 judge and, 30, 43–5
 judicial practice and, 49–53
 legal pluralism and, 28
 overview, 29
 rules and, 38–42, 51–2
- Legrand, Pierre, 182–3, 185–6, 244–6
 Lestringant, Frank, 319–20
 Lévi-Strauss, Claude, 333–4
 Lewis, I. M., 338
 liberal approach, to drugs, 361–2
 liberal peace approach, 347
 liberal universalist approach, 346–7
- Livingstone, David, 316
 Llewellyn, Karl N., 140
 Lowy, Michael, 234–5
Lucas v. Hamm, 176
- Macdonald, Roderick A., 60–1, 322–3
 magic, 340–1
 Maka people, 327–8
 man of knowledge. *See navoti'yaqa*
The Man-Eating Myth (Arens), 315–16
Manual of the Law of Armed Conflict
 (UK), 296–7
 Markell, Patchen, 127–9, 136–7
 marriage
 acts in UK law, 67
 arranged, 70
 contractual nature of, 82
 FGC and, 87–8
 forced, 70
ketubah and, 77–8
 unregistered, 67–70, 80
Marshall (No. 2) (Supreme Court of
 Canada), 8–9
 Marzah, Joseph 'Zigzag,' 310–11,
 319–20, 330–1
 Massey, Doreen, 179–80
 Maignon agreement, 197, 200
 McClintock, Anne, 231–3
 McLachlin, Beverley, 131–2
 McNay, Lois, 136–7
 Mead, Margaret, 316
 mediation. *See also comite y'abunzi*
 committees, 13–15
 discourse, 13–15
 IFaMP, 257–8
 Mégret, Frédéric, 312–13
 Melissaris, Emmanuel, 142, 184
Members of the Yorta Yorta Aboriginal
Community v Victoria (High
 Court of Australia), 46
 men, FGC and, 113–20
 Menkel-Meadow, Carrie, 262
 Merry, Sally, 251–2
 metaphor
 cannibalism as, 332–6
 conclusions, 341
 digest or devour, 336–7
 medical, 228

- metaphor (cont.)
 in search of itself, 336
 translation and, 337–8
- Michaels, Ralf, 144–5
- micro power relations, 61–2
- microlaw, 323–5
- Milirrpum v Nabalco Pty Ltd*
 (Northern Territory Supreme
 Court), 46–7
- Military Commission at the Mariana
 Islands, US, 300–2
- Military Commission Instruction No. 2
 (USA), 297
- MIRJ. *See* Mornington Island
 Restorative Justice Project
- Miskowicz, Jay, 54
- Mitchell v MNR*, 145–6
- Moise (family land ownership dispute
 participant), 273–5
- monism, 193–4, 322–3
- Montaigne, Michel de, 316–17
- moot. *See* Kpelle moot model
- morality
 FGC and, 89
 of law criteria, 325–6
- Mornington Island Restorative Justice
 Project (MIRJ), 258–60
- mortuary cannibalism, 298–9, 338
- “The Most Unconventional Weapon”
 (Bergner), 317–18
- Motha, Stewart, 135
- Mouton, Jacques, 117–19
- Munyard, Mr., 310–11
- Muslim law
 feminism and, 83–4
 Jewish family law compared with, 58
 pluralized narratives and, 16–17
 religion as cultural sphere and, 71–2
 women’s vulnerability under, 54–7
- Muslim marriage
 contractual nature of, 82
 unregistered, 67–70, 80
- Muslim women. *See also* fieldwork,
 among Jewish and Muslim
 women
 conclusions related to, 80–4
 financial religious entitlements and,
 77–9
- lack of agency of, 74–5
 religion as cultural sphere for, 71–2
 religiously divorcing challenges of,
 79–80
 “A Separation” and, 84
shariah councils and, 69
 unregistered marriages and, 67–70,
 80
 vulnerability under Muslim law of,
 54–7
- NADRAC. *See* National Alternative
 Dispute Resolution Advisory
 Council
- Nallo, Albert Moinina Jusu, 326–7
- National Alternative Dispute
 Resolution Advisory Council
 (NADRAC), 253
 colonial rule of law architecture and,
 259
 policy-focused national projects
 involving, 257–9
- National Strategy Information Centre
 (NSIC), 352
 Pereira project of, 352–4
- native title hearings
 in Australia, 35–6
 cross-cultural interpretation and,
 35–6
- natural necessity, 26–7
- navoti* (traditional knowledge), 155–6
- navoti’ytaqa* (man of knowledge), 163
- Nelken, David, 184–5
- new barbarism, 317–18
- New Caledonia. *See also* Kanak legal
 order; Kanak people
 acculturation of legal institutions in,
 202–7
 conclusions, 216–19
 contact zones and, 195
 Deferre status and, 197, 199
 French Guyana compared with, 203–4
 history, 197–9
 legal status in, 197
 legal system adaptation in, 12–13
 overview related to, 196
 sociabilities, four types of, and,
 195–6

- as unique experiment, 192–3
- New Zealand, 150
- Newman, Dwight, 148–51
- ngyam* (clans), 162–3
- nieces' property inheritance dispute
 - example, 152–4
- Niyitegeka* case, 302–5
- normative sites, 3
- Northern Territory Supreme Court, 46–7
- Nouméa agreement, 197, 200, 207–8
- NSIC. *See* National Strategy Information Centre
- Ntaganda, Bosco, 302–5

- Obeyesekere, Gananath, 316–17
- “Of Cannibals” (Montaigne), 316–17
- “Of Other Spaces” (Foucault & Miskowiec), 54
- Ojuku, Mr., 293
- Oliver, Kelly, 135
- operative concepts, of law, 28, 37
- oral tradition, 114–15
- oral wills, 169
- Otis, Ghislain, 193–4
- Ouvéa Island incident, 200
- öwkhanta* (admonitions), 168–9

- panel of locally-elected judges. *See* *inyangamugayo*
- Pappas, Caroline, 306
- Le Pari de Bintou* (Johnson), 111–12
- Parmar, Ms., 307–10
- Pateman, Roy, 94
- Pavlich, George, 253–4
- Pearce, Roy Harvey, 316–17
- Peirce, Charles, 156–7
- Pereira project, 352–4
- perpetuity
 - abstract, 152–3
 - authority and, 156–9
 - citationality and, 159–60
 - commitment to continuity and, 158–9
 - concept of, 156
 - conclusions, 175–8
 - discourse and, 6–7
 - facts and norms and, 6–7, 157
 - Jean and, 165–7
 - jurisdiction and, 160–1
 - rupturing connections related to, 158
 - of tradition in Hopi Tribal Court, 163–75
 - Uniform Statutory Rule Against Perpetuities, 176
- Petrig, Anna, 302–5
- Philippines, 300–2
- philosophical pragmatism, 346
- Pluralisme hors l'État, 193
- pluralized narratives of law and cultures
 - defined, 3
 - dispute resolution and, 15
 - family law and, 16–17
 - legal culture and, 17
 - resilience approaches and, 17–18
- politics of cultural recognition, 5–6
- Poro secret society, 326–7, 330–1
- positivism, 322–3. *See also* legal positivism
- Pound, Roscoe, 225–6
- Pound Conference, 225–6
- practical adequacy, 27
- pragmatism. *See* philosophical pragmatism
- prescriptivism, 322–3
- properly, 23
- Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui* case, 302–5
- “The public and its problems” (Dewey), 346

- Quiminal, Catherine, 87

- R v Bernard*, 131–2
- R v Marshall*, 131–2
- R v Van Der Peet*, 130–1
- RAP. *See* Rule Against Perpetuities
- Rau, Éric, 201
- Raulin, Anne, 87–8, 92–3
- recognition, 23–4
 - Aboriginal rights as identity politics and, 132–9
 - conclusions, 148–51
 - cross-cultural hermeneutical exercise and, 143

- recognition (cont.)
 ethnocentrism/assimilation and,
 135–6
 of Indigenous rights, 129–32
 James Bay and Northern Quebec
 Agreement and, 146–7
 legal pluralism, strongest versions of,
 and, 147
 legal pluralism and, 23–4, 140–8
 overview, 127–9
 power and, 137, 143–4
 problems of, 134–9
R v Marshall and R v Bernard and,
 131–2
R v Van Der Peet case, 130–1
 reification/essentialism and, 134–6
 sovereign agency and, 138
 state strategies of, 143–4
 translation and, 131–2
 true version of identity and, 136–7
 two row wampum and, 145–6
 ways out of pathology related to, 137–8
 reconciliation, 195–6
 regulation by convention, 163–4
 reification/essentialism, 134–6
 Reisman, Michael, 323–5
 religion
 as cultural sphere, 71–2
 FGC and, 88
 legalizing, 63–80
 religious law
 conclusions related to, 80–4
 deficiencies, 65–6
 divorce and, 70–1, 76–7
 empowerment and, 66–7
 family/market dichotomy and, 58–9
 financial entitlements and, 77–9
 interpersonal networks and, 75–6
 relational contract and,
 58–9
 resilience approach
 conclusions, 367–8
 overview, 344–8
 pluralized narratives of law and
 cultures and, 17–18
 rise of, 357–60
 Scenarios Report and, 360–1
 war on drugs and, 364–6
 Revolutionary United Front (RUF)
 trial, 319
 Rhéebù Nùù committee, 212–13
 Richards, Paul, 317–18
 Rome Statute (ICC), 302
 RUF. *See* Revolutionary United Front
 trial
 Rule Against Perpetuities (RAP), 156,
 175–8
 common law and, 175–6
 problems with, 176
 rule of recognition
 European Union law and, 48
 sovereignty and, 47–8
 rules
 content of, 39–41
 counter-interpretive legal factors
 and, 39–41
 cross-cultural interpretation and,
 39–41
 Hart and, 38–42, 47–8
 interpretation and, 39–40
 primary and secondary forms of, 40
 Rwanda
 ADR and, 282–4
 background context, 266–9
 Belgian written law in, 281–2
 Christianity and, 283–4
 conclusions, 288–9
 counter-hegemonic strategy used in,
 286
gacaca example from, 270
 harmony legal models within, 269–78
 justification for unity and
 reconciliation and, 278–9
 mediation discourse and, 13–15
 pre-colonial period in, 279–80
 repression in, 284–5
 state control and, 280–1
 truth commission model and, 283–4
 s.35, of Constitution of Canada, 129–30
 Sanday, Peggy Reeves, 338–9
 Sander, Frank, 225–6
 Santos, Boaventura de Sousa, 195–6,
 210, 332–3
 Sarat, Austin, 4–5
 Sauter, Mr., 307–10

- Scenarios Report, 360–1
 Schmid, Max, 300–5
 SCSL. *See* Sierra Leone Special Court
 “A Separation” (Farhadi), 84
 Sermet, Laurent, 193–4
 Set of Principles for the Protection and
 Promotion of Human Rights
 through Action To Combat
 Impunity (UNGA), 299
shariah councils, 69
 Sheehan, Bernard, 316–17
 Sierra Leone Instructor Manual, 297
 Sierra Leone Special Court (SCSL),
 11–12
 ambiguous stance of, 294–5, 306–13
 cautious approach of, 312–13
 CDF trial before, 307–10
 Charles Taylor trial before, 310–12,
 319–20
 Ojuku testimony before, 293
 pluralized narratives and, 16–17
 RUF trial, 319
 three cannibal laws and, 294–5
 Sissons-Morrow collection of Inuit
 sculptures, 16–17
 Smyth, Yanks, 311–12
 sociabilities, 195–6
 socio-cultural approach, 346–7
 sociological institutionalist approach,
 348–9
 Solis, Gary, 302–5
 Sommy, Jean-Marie, 102
 Soucko, Taky, 104–6
Soumare case, 113–14
 sovereignty
 Austinian view and, 45–6
 counter-interpretive legal factors
 and, 49
 critical legal pluralism and,
 61–2
 Hart and, 46–9
 Indigenous and state law related to,
 26
 recognition and, 47–8, 138
 rule of recognition and, 47–8
 space
 anachronistic, 231–3
 boundaries and, 188
 legal hyphen culture (as process)
 and, 188–90
 legal pluralism and, 186–8
 Massey and, 179–80
 “Of Other Spaces,” 54
 religious, 72–3
 story and, 180
 time-space envelopes, 157
 Stanley, Henry Morton, 316
 state law
 agents of, 29–30
 FGC customary norms versus,
 89–93, 108–13
 identity and, 23–4, 41–2, 50
 interpretation and, 27–8
 interpretive limits of, 28
 James Bay and Northern Quebec
 Agreement and, 146–7
 judges’ role in, 143–4
 sovereignty and, 26
 two row wampum and, 145–6
 story
 holding in tension and, 180
 space and, 180
 telling, 63
 strict monism, 194
 Stubbs, Bishop, 238–9
 subordinated pluralism, 194
 Supreme Court of Canada
 Marshall (No. 2), 8–9
 Van der Peet, 11–12
 susceptibility, 261
 Sutton, Donald, 312–13, 329–30
 Syrakis, Luce, 106
 Tachibana Yochio, 300–2
Tadić case, 299–300
talaq divorce, as unilateral act, 55–6
 Tamanaha, Brian, 142–3, 348–9
 Taylor, Charles (former President of
 Liberia). *See also* Charles Taylor
 trial
 broken cannibal law and, 330–1
 demonizing of, 312–13
 self-defence of, 311–12
 Taylor, Charles (philosopher)
 authentic identity and, 136–7
 fusion of horizons and, 135–6

- Taylor, Charles (philosopher) (cont.)
 recognition and, 132–3, 135–7
- Tazaki Takehiko, 300–2
- technicality, 261
- Teneng Jahate* case, 117–19
- Teubner, Gunther, 142
- Tharcisse (wife in divorce case), 276–8
- Thin, Jean-Claude, 104–6
- Tholley, Akiatu, 293
- time-space envelopes, 157
- Tiv people, 240
- Tjibaou, Jean-Marie, 201
- Tomiyasu Tisato, 300–2
- town meeting, 239–40
- tradition
 abstract, 152–3
 ADCK and, 214–15
 arguing with, 162–3
 binding nature of, 95–6
 conclusions, 175–8
 general norms of, 172
 Hopi, 153, 162–3, 164–5, 174
 ICA and, 111–12
 intercultural legal, 18
itangu and, 173–4
 Jean and, 165–7
 as land claim basis in aboriginal law,
 4–5
navoti and, 155–6
 oral, 114–15
 oral wills and, 169
- traditional feast hall. *See yukw*
- translation
 Indigenous law and, 141–2
 metaphor and, 337–8
 recognition and, 131–2
- translation of cultures
 ADR and, 7–8
 defined, 3
 discourse versus fact and, 5–6
 exogenous institutions and, 7–8
 into facts, 6–7
 FGC and, 9–11
 interpretation and, 11
 relational legal culture and, 8–9
- Traore, Doucoure* case (1993), 104–6,
 114
- Traore* case (1984), 108–10
- Trial Chamber of the International
 Criminal Tribunal for former
 Yugoslavia, 299–300
- Tribunal Correctionnel*
Coulibaly case and, 98, 110–11
 jurisdiction of, 97
 transfer of jurisdiction from, 98–101
- Tribunal pour enfants*, 109
- trouble case method, 140
- Truth and Reconciliation Commission
 Hearings, 305
- truth commission model, 283–4
- Tsilqot'in Nation* decision, 131–2
- Tull, Denis, 338–9
- Twining, William, 140
- two row wampum, 145–6
- UK. *See* United Kingdom
- UNGA. *See* United Nations General
 Assembly
- Uniform Statutory Rule Against
 Perpetuities, 176
- United Kingdom (UK). *See also*
 fieldwork, among Jewish and
 Muslim women
 divorce act within, 70–1
 Jewish compared with Muslim
 family law in, 58
Manual of the Law of Armed Conflict
 of, 296–7
 marriage acts within, 67
- United Nations General Assembly
 (UNGA), 299
- United States of America (USA)
 ADR and, 250–2
 colonial town meetings and, 239–40
 General Military Government Court
 at Dachau of, 300–2
 Military Commission at the Mariana
 Islands of, 300–2
 Military Commission Instruction
 No. 2 of, 297
- Van der Peet* (Supreme Court of
 Canada), 11–12. *See also* *R v*
Van Der Peet
- Veçant, Martine, 110–11
- violence, 195–6

- Wagué, Diawara* case, 111–12
 Waitangi Tribunal, 150
 war on drugs
 conclusions, 367–8
 cultural pluralist approach, 362–4
 law-based approaches, 361–4
 liberal approach, 361–2
 overview, 17–18, 344–8
 resilience approach, 364–6
 Scenarios Report and, 360–1
 Wari tribes, 298–9
 Weil-Curiel, Linda, 98–100
 Weiss, Susan, 82–3
 Wesley, John, 316–17
 Western countries, 85
 Western justice system
 criticizing, 224–8
 cultural critique of, 227–8
 defending, 225
 efficiency critique of, 226–7
 exotic longing and, 231–3
 historical nostalgia and, 229–31
 justice critique of, 226–7
 medical metaphors of, 228
 Pound Conference and, 225–6

 White, James Boyd, 337–9
 Whiteley, Peter, 163
 WHO. *See* World Health Organisation
 Willis, John, 243
 wills. *See* oral wills
 witchcraft, 327–8
 women. *See also* fieldwork, among
 Jewish and Muslim women;
 Jewish women; Muslim women
 agency of, 63
 CEDAW, 99
 divorce act and, 70–1
 feminism and, 83–4
 marriage acts impacting, 67
 patriarchal constraints affecting, 61
 World Health Organisation (WHO),
 99

 Yamorto squad, 307–10
 Yattabare, Oura, 104–6
yukw (traditional feast hall), 141
 Yves Merlet marine reserve, 211–12

 Zimmermann, Augusto, 349–52
 Zirn, Jean-Pierre, 111–12