

LAW AND THE NEW LOGICS

This book is unique in presenting an interdisciplinary conversation between jurists and logicians. It brings together scholars from both law and philosophy and looks at the application of ‘the new logics’ to law and legal ordering, in a number of legal systems. The first part explores the ways in which the new logics shed light on the functioning of legal orders, including the structure of legal argumentation and the rules of evidence. The second addresses how non-classical logics can help us to understand the interactions between multiple legal orders, in a range of contexts including domestic and international law. The final part examines particular issues in the applicability of non-classical logics to legal reasoning. This book will be of interest to scholars and students of law, jurisprudence and logic who want to deepen their understanding of the relationships between law and logic, and learn about recent developments in formal logic and their implications for legal reasoning.

H. PATRICK GLENN taught and had research interests in the areas of comparative law, private international law, civil procedure and the legal professions. He was Peter M. Laing Professor of Law at McGill University, and was a member of the Royal Society of Canada and a titular Member of the International Academy of Comparative Law. He also served as Director of McGill’s Institute of Comparative Law. In 2006, Glenn received the Prix Léon-Gérin in recognition of his contributions to comparative law over his career, and in 2012, he was elected president of the American Society of Comparative Law. He died in October 2014.

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This book is dedicated to Jane and Patrick Glenn
In gratitude for everything they have done
for their students and their colleagues.

LDS

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PREFACE

Hugh Patrick Glenn, who passed away in 2014, was one of the world's best-known comparative lawyers. One of the reasons for his reputation was that he did comparative law *differently*. This special voice was exemplified in what is probably his best-known book, *LEGAL TRADITIONS OF THE WORLD: SUSTAINABLE DIVERSITY IN LAW*. Upon its first appearance in 1998, it was awarded the inaugural Canada Prize of the International Academy of Comparative Law; the fifth edition was published in 2014. Like many great books, *Legal Traditions* found its origin in a course; in this case, a course that H. P. Glenn taught for many years at McGill's Faculty of Law, and that is still taught today.

H. P. Glenn was appointed to McGill in 1971, in the same year as Jane Matthews Glenn, both having come from doctoral studies in Strasbourg. During a long career, he published voluminously and, with Jane, visited law faculties and centres of comparative law around the world. He was a Bora Laskin National Fellow in Human Rights Law, a Killam Research Fellow and a Visiting Fellow of All Souls College, Oxford. He was a member of the Royal Society of Canada, and received in 2006 the Prix Léon-Gérin from the Government of Québec. He was posthumously awarded the Paul-André Crépeau Medal by the Quebec Division of the Canadian Bar Association.

He developed particular expertise in comparative civil procedure and comparative private international law. It was in the later part of his career that he became interested in comparative law writ large, at the level of legal traditions. This led not only to *LEGAL TRADITIONS*, but also to his monographs *ON COMMON LAWS* (2005) and *THE COSMOPOLITAN STATE* (2013). The latter is a truly ambitious work that aims to re-assess the nature and role of the state in the modern world.

THE COSMOPOLITAN STATE reflects H. P. Glenn's growing interest in the relationship between law and logic. He sought to demonstrate that it is a mistake to think that law and legal reasoning are necessarily governed by classical logic, with its laws of the excluded middle and of

non-contradiction. He thus became increasingly interested in non-classical logics.¹ These include fuzzy logics, which reject the law of the excluded middle and allow truth-values other than 'true' and 'false'. They also include paraconsistent logics, which reject the law of non-contradiction and allow the co-existence of contradictory propositions. This current of thought was related to his emerging idea that we should be less concerned with the 'conflict' of laws and more attentive to the conciliation of laws.² Indeed, it was part of a wider vision about law that was the product of his whole career. This vision rejected the idea of legal systems as self-contained normative orders that operate wholly independently. For Glenn, the idea of independent legal systems, with its link to what might be called classical, taxonomic comparative law, was part of a worldview that was tied to an understanding of the State and its legal system as wholly self-contained. With the benefit of a long view of history and a wide comprehension of the legal traditions of the world, Glenn rejected the monopoly of that approach. He argued for a more nuanced understanding of how legal traditions interact, using the ideas of conciliation and interpretation, as well as the insights of non-classical logic.³

If these propositions seem somewhat abstract, and indeed difficult to grasp for the jurist who takes classical logic for granted, a concrete example may illustrate the power and the importance of this train of thought. In Canada, as in many countries, there are legal systems that were brought by colonists, and there are Aboriginal communities who consider themselves to be governed by their own laws. The juridical version of classical logic may reel at this: since these communities are

¹ In addition to the present book, and its short chapter by H. P. Glenn (the origins of both of which are described below), see also *Multivalent Logic and the Rome Convention* in K. Boele-Woelki and W. Grosheide, eds., *THE FUTURE OF EUROPEAN CONTRACT LAW: ESSAYS IN HONOUR OF EWOUT HONDIUS* (Kluwer, 2007), 283; *Les droits privés* (Les Éditions Thémis, 2012) (the text of the 16th *Conférence Albert-Mayrand* given at the *Université de Montréal*); *The Cosmopolitan State* (O.U.P., 2013), particularly ch. 14; *LES LOGIQUES DU DROIT INTERNATIONAL PRIVÉ*, a chapter in *La conciliation des lois*, vol. 364 of the *Collected Courses of the Hague Academy of International Law* (Brill, 2013); *LEGAL TRADITIONS OF THE WORLD: SUSTAINABLE DIVERSITY IN LAW*, 5th ed. (O.U.P., 2014), particularly at 368–372.

² By the end of career, his own course on the subject was entitled 'Private International Law: The Conciliation of Laws'.

³ For a careful assessment of Glenn's work, see R. Janda, *Cosmopolitan Normative Information: Patrick Glenn's Legal Theory* (2016) 1 *INTER GENTES: MCGILL J INTL L & LEG PLURALISM*, online at <http://intergentes.com/cosmopolitan-normative-information-patrick-glenns-legal-theory>.

inside Canada, seen as a physical and political unit, they must be governed by Canadian law; according to classical logic and a view of legal systems as mutually exclusive, the only alternative would be to see them as outside of Canada. But it is not so; scholars of Aboriginal law note that the law that applies to Aboriginal peoples draws on both Aboriginal and non-Aboriginal sources of law.⁴ And in line with Glenn's argument as it is set out in his contribution to this volume, it is by a process of interpretation that these multiple legal orders can be brought into harmony.

In 2010–2011, Glenn held the Henry G. Schermers Fellowship of the Hague Institute for the Internationalization of Law, and he and Jane spent that year at the Netherlands Institute of Advanced Study in Wassenaar. He organized a workshop on *Multi-Valued Law and Multivalent Logic* that took place at the Institute on 17–18 June 2011. This workshop brought together a group of logicians and jurists to reflect on questions arising out of the interactions between legal reasoning and legal orders, and non-classical logics. It was important to Patrick that the papers given that day be developed and published, but it was reflective of his scholarly character that he was in no great rush. He stayed in contact with all of the contributors, and announced in September 2014 that he had signed a contract to publish the essays as a book, under his editorship, with Cambridge University Press. To everyone's shock, he passed away about two weeks later.

All of the contributors to this volume wanted to continue the project, for its own inherent scholarly value but also to stand as a tribute to Patrick Glenn's special brilliance. Cambridge University Press and Jane Matthews Glenn were equally supportive of the idea. Being already a contributor, and a colleague of both Patrick and Jane, it was an honour for me to take on the role of co-editor. The royalties will go to the Paul-André Crépeau Centre for Private and Comparative Law at McGill's Faculty of Law, of which Patrick was and Jane remains a member. The text that is included under the authorship of Patrick Glenn is derived from a document that was found among his electronic files and that was apparently the draft paper from which he gave his own presentation at the workshop. It has been lightly edited for publication with the other papers. Although it is relatively short, it touches on almost all of

⁴ J. Borrows, *RECOVERING CANADA: THE RESURGENCE OF INDIGENOUS LAW* (U. of Toronto Press, 2002), esp. at 5–12; see also *Legal Traditions of the World*, note 1, at 84–85.

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PREFACE

the currents of thought that characterized Patrick's thinking over the last decade.

We are aware that this is an unusual book, born of an unusual, but unusually thought-provoking event. We hope that it will be of interest to logicians, to jurists and to anyone who is interested in legal reasoning and legal systems. We offer the collection as a tribute to H. Patrick Glenn: a great scholar, a great thinker, a great teacher and a great colleague.

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