H Patrick Glenn (1940–2014), Professor of Law and former Director of the Institute of Comparative Law at McGill University, was a key figure in the global discourse on comparative law. This collection is intended to honour Professor Glenn’s intellectual legacy by engaging critically with his ideas, especially focusing on his visions of a ‘cosmopolitan state’ and of law conceptualized as ‘tradition’. The book explores the intellectual history of comparative law as a discipline, its attempts to push the objects of its study beyond the positive law of the nation state, and both its potential and the challenges it must confront in the face of the complex phenomena of globalization and the internationalization of law. An international group of leading scholars in comparative law, legal philosophy, legal sociology, and legal history takes stock of the field of comparative law and where it is headed.

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A Cosmopolitan Jurisprudence

ESSAYS IN MEMORY OF H. PATRICK GLENN

Edited by

HELGE DEDEK
McGill University
The perspective of the cosmopolitan must entail relationships to a plurality of cultures understood as distinctive entities. (And the more the better; cosmopolitans should ideally be foxes rather than hedgehogs.) But furthermore, cosmopolitanism in a stricter sense includes a stance toward diversity itself, toward the coexistence of cultures in the individual experience. A more genuine cosmopolitanism is first of all an orientation, a willingness to engage with the Other.

_Ulf Hannerz_ (*)

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Foreword

William Twining

Patrick Glenn died unexpectedly in 2014. This book was put together in his honour. Patrick would not have wanted a conventional festschrift or liber amicorum. He preferred dialogue, conversations, even criticism. The contributors have proceeded in the same spirit. The result is a series of responses to his writings in the form of extensions, applications, refinements, queries, and dissents, which combine to augment his legacy in a number of directions. All of the chapters exhibit great respect for him as a person, thinker, and scholar, but all engage with him critically.

Glenn is now famous as the author of Legal Traditions of the World, which was published in 2000, having already been awarded the Grand Prize of the International Academy of Comparative Law two years prior. It is already in its fifth edition. For comparatists, he was already well known as an erudite, thoughtful, and highly original scholar who was given to challenging orthodoxies within the sub-discipline. What was surprising to almost everyone is that Legal Traditions of the World also turned out to be an audacious, radical, and provocative contribution to general jurisprudence. On publication, this work attracted a great deal of attention. Taken on its own, it has given Glenn the image of an agent provocateur, but it has to be set in the context of his later writings, which, although highly original, are more nuanced, reflective, and narrowly focused. As the authors of the subsequent chapters make clear, his later writings refine, amplify, and develop the bold theses of Legal Traditions of the World.

I first met Patrick in 2003 during his stay in Oxford. We became friends, had some enthralling conversations, and stayed in touch, but I have regretted that we never had much closer contact. Stimulated by the second edition of Legal Traditions of the World (2004), a group of us held a seminar at the School of Oriental and African Studies in 2005, and I helped to coordinate the publication of a symposium in the first volume of the Journal of Comparative Law.1 Praise and criticism were evenly distributed and Patrick responded with characteristic grace and verve.2

As soon as I read *Legal Traditions of the World*, I realized that this was an important book, but it required several readings before I realized how important it was. It is worth spelling out the main reasons for its significance for both legal theory and the discipline of law.

First, it adopts a genuinely global perspective without the tendencies to reductionism of most globalization theory and inflated ‘globababble’. Glenn takes on all law, broadly conceived, in the whole world, but his message is one of complexity. Legal phenomena are varied, fluid, constantly changing, and interacting. They cannot be captured by simple static snapshots of ‘momentary legal systems’.

Second, *Legal Traditions of the World* shows how macro-comparative law, often dismissed as not intellectually respectable, can be central to developing a vision of legal phenomena that no longer treats sovereign nation states and Western municipal legal systems as the ‘essence’ of law. By moving beyond Western perspectives, it contributes significantly to the decolonization of comparative law and legal theory.

Third, by choosing tradition as his central concept in preference to legal systems, culture, civilizations, or legal families, Glenn reinserts history and pastness at the core, while rejecting dichotomies between past and present. *Legal Traditions of the World* can be seen as reviving the dormant tradition of historical jurisprudence of Vico, Montesquieu, Maine, and Vinogradoff and joins forces with contemporary jurists like Brian Tamanaha in re-establishing sociohistorical perspectives as the third, often missing, pillar of theoretical understandings of law. Although Glenn did not develop this very far, he has also provided an important bridge to world history, which is again becoming a respectable pursuit. However, I share the feelings of Martin Krygier and David Nelken (expounded in this volume) that Patrick was over-optimistic in suggesting that traditions are inherently benign and supportive of his hopes for ‘sustainable diversity’.

Glenn’s particular conception of tradition in terms of ‘flows of normative information’ has provoked much criticism and discussion. Clearly, there are conceptual difficulties, but in my view it suits his purposes very well. He gives the concept sufficient analytical purchase to enable comparison of traditions in terms of four aspects: information as the core that constitutes the identity of a tradition, its underlying justification, its concept of change, and how the tradition relates to other traditions. Moreover, as he pointed out to me in conversation, the concept of culture combines both ideas and actual practices while downplaying the past, whereas by confining the idea of tradition to information (ideas in a broad sense), he

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7 See, for example, the work of Jürgen Osterhammel and colleagues.
9 On culture as a concept, see H Patrick Glenn, ‘Legal Cultures and Legal Traditions’ in Mark van Hoecke (ed), *Epistemology and Methodology in Comparative Law* (Bloomsbury 2004) 7, 1ff.
had made his project more manageable while treating the past as part of the present. These intriguing claims are explored in depth in the ensuing chapters.

Fourth, comparative law as a distinct sub-discipline has tended to focus on a rather narrow range of issues. Glenn, on the other hand, opens up the field by linking it directly to such topical ideas as corruption, fundamentalism, multivalent logic, ‘clash of civilizations’, and even chaos theory.

This volume neatly sets the ideas of Glenn the *agent provocateur* in the context of more nuanced and careful reflections of an immensely erudite and original scholar, and as John Bell suggests, he undermines any sharp dichotomy between macro- and micro-comparative studies. It brings out clearly why Patrick Glenn’s work deserves the attention of legal theorists and colleagues in other disciplines in addition to giving new directions to comparative law.
Acknowledgements

The publication of this volume concludes a long journey, throughout which a debt of gratitude has accumulated. First, I wish to thank Jane Glenn for kindly offering advice and, especially, for giving this project her blessing. Jane Glenn also suggested that I reach out to William Twining, whose participation in this project has been of pivotal importance. Besides contributing the Foreword, William Twining has accompanied this undertaking from its inception, has read the manuscript, and has offered feedback, guidance, and assistance throughout.

I also wish to express my gratitude to all the authors who have contributed to this volume for making this tribute possible. I am grateful to Vivian Curran, in particular, for organizing a panel in memory of Patrick Glenn at the 2018 World Congress of Comparative Law at Fukuoka, where several contributors to this book had a chance to present their homage to Patrick Glenn and to workshop their ideas.

I am grateful to Matt Gallaway of the Cambridge University Press for his stewardship, and to two anonymous peer reviewers for their constructive criticism. Richard Kay and Mortimer Sellers have kindly welcomed this volume into the ASCL Studies in Comparative Law Book Series. My McGill colleague Lysanne Larose graciously allowed me to use the beautiful portrait she took of Patrick Glenn in 2012. The Archives de la Ville de Montréal gave their permission to make use of an archival image of Buckminster Fuller’s Expo 67 American Pavilion. Special thanks are owed to Montreal artist Michel de Broin, who generously agreed to images of his artwork ‘Black Whole Conference’ being used in this book and as its cover image.

Jennifer Anderson and Amber Lynch have offered feedback and overseen the logistics of the editing process, both aptly drawing on their ample experience (inter alia) as Article Editors of the American Journal of Comparative Law. Cora Madden assisted in the editing process and created the index. Finally, I am grateful to the Eddie Look and Winnie Wing Yin Chan Fund and the Law & You Fund for financial support.

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Images

2. R Buckminster Fuller, US Pavilion, Expo 67, Montreal – Archives de la Ville de Montréal, VM94-EX136-779
3. The US Expo 67 Pavilion, now called the ‘Biosphere’ and housing an environment museum (photo: Guilherme Duarte Garcia, 2013)
5. H Patrick Glenn, 1940–2014 (photo: Lysanne Larose)