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Legal traditions: A dialogue between comparative law and comparative legal history^{*}

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‘Legal tradition’ is a term frequently used in legal history and comparative law. The increasing interest in global perspectives on law and history, the dialectics inherent in globalisation as such, as well as some tendencies of ‘de-’ and ‘re-traditionalisation’, often enhanced by law, have made legal traditions even more topical. But what does ‘legal tradition’ mean? In this article, I review some characteristic usages of the term by classical authors from both legal history and comparative law, like JH Merryman and Harold J Berman, with special emphasis on the work of Canadian comparative law scholar HP Glenn. Beyond its grounding in contemporary information theory and evidence of an impressive command of legal-historical scholarship, his concept of legal tradition as normative information bears analytical potential for legal historians and should be read as an invitation to dialogue between comparative law and comparative legal history.

Keywords: legal tradition; comparative law; legal history; HP Glenn

I. Introduction

When talking about law in a transnational, global or comparative perspective, legal scholars often use expressions like legal cultures, legal families and legal traditions. We employ these macro-level concepts to categorise and analyse legal systems and to build methodological frameworks for comparison. Each of these terms has been subject to much discussion, especially in comparative law, where there is a lively debate on methodology.¹ They have also entered the

^{*}This article expands on ideas initially presented at the inaugural lecture of the 9th Brazilian Legal Historical Conference, September 2017, Rio de Janeiro (<http://congresso2017.ibhd.org.br/>). I am grateful for some useful recommendations by the anonymous reviewers of this article.

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¹Several recent introductions to comparative law present good overviews, such as Mathias Siems, *Comparative Law* (Cambridge University Press 2014), esp 72ff; Jaakko Husa, *A New Introduction to Comparative Law* (Hart Publishing 2015), esp 96ff; Uwe Kischel, *Rechtsvergleichung* (CH Beck 2015), §§ 3, 4 and various entries in Jan Smits (ed), *Elgar*

discourse on legal history. Their meanings differ according to how they have developed in various subdisciplines.

In this broader context, the use of the term ‘legal tradition’ is rightly of special interest to legal historians. More than any other concept, it seems to emphasise the historical dimension, and the term’s growing usage testifies to its topicality, so it would be worthwhile to review some usages by legal scholars. One conceptualisation in particular has not received too much attention from legal historians: H Patrick Glenn’s concept of ‘legal tradition’. Can it be brought to bear on (comparative) legal-historical analysis? What role does legal history play in Glenn’s work? What can legal historians learn from him? Could methods developed in legal history complement his ideas? This contribution seeks to engage with these questions as well as to foster dialogue between legal history and comparative law.² First, however, it would be useful to take stock of some current usages of the term ‘tradition’.

Encyclopedia of Comparative Law (2 edn, Edward Elgar 2012). Robert Leckey, ‘Review of Comparative Law’ (2017) 26 *Social & Legal Studies* 3 also provides a brief survey of methods. As examples of the lively debate, see Judith Schacherreiter, ‘Das Verhängnis von Ethnozentrismus und Kulturrelativismus in der Rechtsvergleichung: Ursachen, Ausprägungsformen und Strategien zur Überwindung’ (2013) 77 *Rabels Zeitschrift für ausländisches und internationales Privatrecht* 272; Marieke Oderkerk, ‘The Need for a Methodological Framework for Comparative Legal Research: Sense and Nonsense of “Methodological Pluralism” in Comparative Law’ (2015) 79 *Rabels Zeitschrift für ausländisches und internationales Privatrecht* 589; Jaakko Husa, ‘The Future of Legal Families’ *Oxford Handbooks Online* <10.1093/oxfordhb/9780199935352.013.26> (accessed 12 September 2017). For an overview of the main topics discussed here, see Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (Oxford University Press 2006). Pierre Legrand and Roderick Munday (eds), *Comparative Legal Studies: Traditions and Transition* (Cambridge University Press 2003). Interestingly, scholarship on comparative constitutional law with important methodological reflections is expanding due to transnationalisation, among other reasons. See, for example, Peer Zumbansen, ‘Carving Out Typologies and Accounting for Differences Across Systems: Towards a Methodology of Transnational Constitutionalism’ in Michel Rosenfeld and András Sajó (eds): *The Oxford Handbook of Comparative Constitutional Law* (The Oxford Handbook of Comparative Constitutional Law, Oxford University Press 2012); Ran Hirschl, *Comparative Matters: The Renaissance of Comparative Constitutional Law* (2 edn, Oxford University Press 2014).

²This dialogue has a long history. For recent research on it, see Jürgen Basedow, ‘Hundert Jahre Rechtsvergleichung: Von wissenschaftlicher Erkenntnisquelle zur obligatorischen Methode der Rechtsanwendung’ (2016) 71 *JuristenZeitung* 269; Stefan Vogenauer, ‘Rechtsgeschichte und Rechtsvergleichung um 1900: Die Geschichte einer anderen »Emanzipation durch Auseinanderdenken«’ (2012) 76 *Rabels Zeitschrift für ausländisches und internationales Privatrecht* 1122. On comparative law and legal history, see, for example, James Gordley, ‘Comparative Law and Legal History’ in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (The Oxford Handbook of Comparative Law, Oxford University Press 2006 (online 2012); David Ibbettson, ‘The Challenges of Comparative Legal History’ (2013) 1 *Comparative Legal History* 1; Alexandra Mercescu, ‘How can Legal History Contribute to Comparative Law? Or on How Two “Ancillary” Disciplines Can Join to Undermine “The Discipline”’ (2013) 1 *Romanian*

II. The topicality of ‘tradition’

While ‘tradition’ has, since Max Weber at least, often carried connotations of resilience against change and has generally been used in opposition to rationality and modernity, through which it has sometimes acquired a pejorative connotation,³ this seems to have changed. After decades of de-traditionalisation – at least in the Euro-Anglo-Saxon world – sociologists have begun to observe a ‘re-traditionalisation’ in which traditions are simultaneously being abandoned and rekindled. ‘In all the sameness’ wrought by globalisation, as Glenn puts it, ‘people ask who they are’, and often the answers seem to come from the past,⁴ especially for those living in diasporas or as ‘strangers in their own lands’.⁵ In politics, the appeal to ‘tradition’ is used as a means of maintaining social coherence in a globalising world. Often, speaking about tradition is a nationalist or localist rejoinder to perceived external domination and cultural homogenisation. In notable synchrony, local, national and global regimes of memory are explicitly dedicated to tradition-building. In cultural studies and the humanities, theoretical developments like post-structuralism, intertextuality and praxeology have enriched debates about the weight of implicit understandings, about practices as the accretion of experiences and about webs of references, which all contain information stemming from the past, from tradition. For many religions, tradition is a constitutive element of increasing importance in our post-secular age. Religious laws, among other kinds, are interpreted with particular understandings of tradition.⁶ As pluralism

Journal of Comparative Law 25; Kjell Å Modéer, ‘Time and Space in Comparative Legal Science: Twins or Aliens? Comparative Law and Legal History from Modern to Late Modern Discourses’ in Patrik Lindskoug and others (eds), *Essays in Honour of Michael Bogdan* (Essays in Honour of Michael Bogdan, Juristförlaget Lund 2013); Heikki Pihlajamäki, ‘Comparative Contexts in Legal History: Are We all Comparatists Now?’ (2015) 70 *Seqüencia* (Florianópolis) 57.

³For a good summary of the history of the concept, see the entry in *Geschichtliche Grundbegriffe*, Siegfried Wiedenhofer, ‘Tradition, Traditionalismus’ in Otto Brunner, Werner Conze and Reinhart Koselleck (eds), *Geschichtliche Grundbegriffe Historisches Lexikon zur politisch-sozialen Sprache in Deutschland*, vol 6 (*Geschichtliche Grundbegriffe Historisches Lexikon zur politisch-sozialen Sprache in Deutschland*, Klett-Cotta 1990) and V Steenblock, ‘Tradition’ in Karlfried Gründer and Joachim Ritter (eds), *Historisches Wörterbuch der Philosophie St-T*, vol 10 (*Historisches Wörterbuch der Philosophie St-T*, Wissenschaftliche Buchgesellschaft 1998). For a general overview from the perspective of constitutional law, see Walter Leisner, *Tradition und Verfassungsrecht zwischen Fortschrittshemmung und Überzeugungskraft: Vergangenheit als Zukunft?* (Duncker & Humblot 2013).

⁴H Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law* (5 edn, Oxford University Press 2014) 56.

⁵Arlie Russell Hochschild, *Strangers in Their Own Land Anger and Mourning on the American Right* (The New Press 2016).

⁶In the case of the *Codex Iuris Canonici*, the *traditio canonica* is even included in the codification itself. See canon 6, § 2; and Helmuth Pree, ‘*Traditio Canonica: la norma de interpretación del c. 6 & 2 del CIC*’ (1995) 35 *Ius canonicum* 423.

‘relativizes and thereby undermines many of the certainties by which human beings used to live’, variants of neo-traditionalism flourish.⁷ Modern means of communication might turn out to aid the expansion and reinforcement of traditions, just as they can also be a deadly threat to them. They render adherence to traditions easier, but they also facilitate the assembly of heterogeneous traditions, causing interference in cultural, social and political systems.

Legal scholarship is not immune to the increasing importance of tradition, and not only in the form of religious laws, as already mentioned. As part of the ‘worlding’ of the social sciences and the humanities⁸ with its manifold consequences, there is a steady stream of books and handbook chapters that summarise the legal tradition of an area or present certain aspects of it. The ‘Hindu’ and ‘Chinese legal tradition(s)’, for instance, are sometimes reconstructed in a mode European observers would call ‘essentialist’, in search of a ‘Hindu’ and ‘Chinese way(s)’, just as Europeans have a long history of creating and affirming identities and drawing boundaries. The intensity of such othering practices undulates, with noticeable peaks in the 1930s, 50s and 80s, since the latter half of the last century in terms of European legal integration and, recently, in times of crisis.

It is not, however, only a question of book titles and sales figures. Some of the most progressive social and legal theories have paved the way for a new appreciation of ‘tradition’, of which I can only briefly mention a few aspects. Constructivist approaches in the social sciences and cultural studies have emphasised the importance and power of social discourse. The declining authority of formal law, the widespread idea that justifying law rationally is impossible and critiques of systemic legal thought seem to lend ‘tradition’ a constitutive function. Performative legal theories and those advocating a postmodern shift from rational-legal authority to ‘self-expression’ draw on ‘tradition’. Reflections about the emerging world order and models of global law see historical encounters between traditions as a source of discursive legitimation for these normative orders. There is much debate about a ‘transnational concept of law’, where different traditions might merge. More practically, the inadequacy of national legal systems in facing challenges of transnationalisation has led some comparativists to suggest that we complement our legal sources by admitting ‘tradition’ or ‘legal heritage’ (*Rechtsüberlieferung*) as a source of law.⁹ Finally, those who worry about a ‘crisis’ of our legal systems often propose evaluating previous forms of social organisation by their laws, which is to say: traditions.

Some of this is mirrored in legal practice and debates about reforming justice systems. Transnational – sometimes even national – courts seem increasingly

⁷Peter L Berger, *The Many Altars of Modernity: Toward a Paradigm for Religion in a Pluralist Age* (De Gruyter 2014) 9, 10.

⁸Theo D’Haen, ‘Worlding the Social Sciences and Humanities’ (2016) 24 *European Review* 186.

⁹Eugen Bucher, ‘Rechtsüberlieferung und heutiges Recht’ (2000) 8 *Zeitschrift für Europäisches Privatrecht* 394.

willing to use comparative legal reasoning in their decisions by drawing on foreign traditions and, in doing so they establish lines of transjudicial communication.¹⁰ Advocates of legal pluralism and multicultural jurisdictions conceptualise the state as a mediator between different communities that demand recognition for their traditions; in some countries such policies of ‘reasonable accommodation’ have already been implemented.¹¹ ILO Convention 169 applies to ‘tribal peoples ... whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations’, and the UN Declaration on the Rights of Indigenous Peoples equally draws on tradition.¹² As there is no consensus definition of indigenous peoples, historical continuity is a key factor in defining them, and indigenous peoples’ self-definition and self-recognition generally draw on tradition, so there are ‘returns’ of all kinds.¹³ Legal pluralists as well as fundamentalists, transnationalists and nationalists are all talking about ‘tradition’.

This is but one context in which fundamental questions arise, like: what is a ‘legal tradition’? In what contexts and for what purposes can such traditions be used? Do they really entail drawing on history? What normative value do we ascribe to the past? How does the legal practice of considering ‘tradition’ to be a criterion for adjudicating rights relate to claims that traditions are ‘invented’, that communities claiming them are ‘imagined’,¹⁴ that there is nothing pure and that hybridity is all over the place? Is ‘tradition’ a Western concept? To what extent would this affect its

¹⁰See Mads Andenas and Duncan Fairgrieve (eds), *Courts and Comparative Law* (Oxford University Press 2015).

¹¹On this topic, especially with regards to religion, see Katayoun Alidadi, *Religion, Equality and Employment in Europe: The Case for Reasonable Accommodation* (Hart Publishing 2017); Marie-Claire Foblets, Jean-François Gaudreault-Desbiens and Alison Dundes Renteln (eds), *Cultural Diversity and the Law: State Responses from Around the World. Proceedings of the Conference “The Response of State Law to the Expression of Cultural Diversity”, Brussels, September 2006 (with the Support of the Francqui Foundation)* (Bruylant 2010); Ayelet Shchar, *Multicultural Jurisdictions: Cultural Differences and Women’s Rights* (Cambridge University Press 2001).

¹²For an overview of the definition of indigenous peoples as communities ‘having a historical continuity with pre-invasion and pre-colonial societies’, (Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 1983), or of the application of ILO 169 to ‘tribal peoples ... whose status is regulated wholly or partially by their own custom or traditions ...’ and to ‘peoples ... who are regarded as indigenous on account of their descent from the populations which inhabited the country’ and further criteria developed during the preparation of the UN Declaration, see Alexandra Tomaselli, *Indigenous Peoples and Their Right to Political Participation. International Law Standards and Their Application in Latin America* (Nomos 2016) 32–39; Stephen Allen and Alexandra Xanthaki (eds), *Reflections on the UN Declaration on the Rights of Indigenous Peoples* (Hart Publishing 2011).

¹³James Clifford, *Returns: Becoming Indigenous in the Twenty-First Century* (Harvard University Press 2013).

¹⁴Eric Hobsbawm and Terence Ranger (eds), *The Invention of Tradition* (Cambridge University Press 1983); Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Verso 1983).

applicability on a global scale, especially for peoples who do not share our ‘Western’ or ‘Euro-American’ notion of linear historical time? There seems to be need for reflection, and legal historians are called to participate in this effort.

In the vast literature on ‘legal tradition,’ one author has minted the term in noteworthy fashion: the recently deceased Canadian legal scholar H Patrick Glenn. He famously authored *Legal Traditions of the World*, a book received enthusiastically by some and harshly criticised by other comparative-law experts.¹⁵ Most legal historians have not paid too much attention to it, and if so, they have tended to dismiss it quickly, with notable exceptions like Kjell Modéer, who called Glenn ‘one of the crusaders for the historical turn’ or Seán P Donlan, whose concept of ‘hybrid legal traditions’ closely resembles Glenn’s.¹⁶ Yale law professor James Whitman condemned the book in 2004, writing that ‘lovers of serious scholarship are sure to dislike this book. For that very reason it is important to begin by insisting that it does have some virtues’. In what followed, however, he listed few virtues but a large number of errors and simplifications, resulting in an overall scathing review¹⁷.

Notwithstanding such criticism, Glenn’s work has become highly influential and widely cited.¹⁸ It contains original thoughts about the evolution of law, the emergence of legal systems beyond the state, means of reasonably accommodating

¹⁵In 2006, the *Journal of Comparative Law* dedicated a special issue to debating this book under the title: ‘*A Fresh Start for Comparative Legal Studies? A Collective Review of Patrick Glenn’s Legal Traditions of the World, Second Edition*’. For an account of the criticism and further review, see Nicholas HD Foster (ed), ‘A Fresh Start for Comparative Legal Studies? A Collective Review of Patrick Glenn’s *Legal Traditions of the World*, 2nd Edition’ (2006) 1 *Journal of Comparative Law* 100; Glenn answered to this criticism in H Patrick Glenn, ‘Legal Traditions and *Legal Traditions*’ (2007) 2 *Journal of Comparative Law* 69, with a rejoinder to Glenn by Andrew Halpin, ‘A Rejoinder to Glenn’ (2007) 2 *Journal of Comparative Law* 88. On Glenn’s work also Husa, *A New Introduction to Comparative Law* (n 1) 223ff; Kischel, *Rechtsvergleichung* (n 1) 158ff; Ko Hasegawa, ‘A Glance at the Dynamics of “Confluence” in a Legal System – Notes on H. Patrick Glenn’s Insights Concerning *Legal Traditions of the World*’ (2016) 7 *Transnational Legal Theory* 1.

¹⁶Kjell Modéer, ‘Time and Space in Comparative Legal Science: Twins or Aliens? Comparative Law and Legal History from Modern to Late Modern Discourses’, (n 2), 345; Seán Patrick Donlan, ‘Comparative Law and Hybrid Legal Traditions. An Introduction’ in Eleanor Cashin Ritaine, Sean Patrick Donlan and Martin Sychold (eds), *Comparative Law and Hybrid Legal Traditions Lausanne, 10–11 September 2009* (Comparative Law and Hybrid Legal Traditions Lausanne, 10–11 September 2009, Schulthess 2010).

¹⁷James Q Whitman, ‘A Simple Story’ (2004) 4 *Rechtsgeschichte* 206. In a notable act of self-criticism, James Whitman recently called his review a “nasty nonsense” which he deeply regrets, see: James Q Whitman, ‘The Hunt for Truth in Comparative Law’ (2017) *The American Journal of Comparative Law* 65, 181, quotations in 182–3. I am grateful to the anonymous reviewer of this article for recommending to include this recent publication. However, I decided to maintain the original reference, because it might not have been without significance at this moment.

¹⁸His ‘*Legal Traditions of the World*’ was followed by two other books: H Patrick Glenn, *On Common Laws* (Oxford University Press 2005) and H Patrick Glenn, *The Cosmopolitan*

legal diversity and, most importantly for the present purposes, a ‘coherent and sophisticated theoretical account of the idea of tradition’, as William Twining notes.¹⁹ Therefore, it seems timely to analyse Glenn’s thought and ask how legal historians might build on some of his ideas. First, however, a short overview of some interpretations and uses of the term ‘legal tradition’ might be helpful.

III. Traditions of talking about ‘legal tradition’ in comparative law and legal history

‘Legal tradition’ is used widely and variously, especially in the English-language publications that increasingly monopolise academic publishing.²⁰ Many, if not most, scholars invoke John Henry Merryman’s *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*, which was first published in 1969. Unchanged for nearly half a century, ‘legal tradition’ is defined in the current third edition (2007, co-authored with Rogelio Pérez-Perdomo) as

a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization and operation of the legal system, and about the way law is or should be made, applied, studied, perfected, and taught.²¹

In other words: legal traditions are understood as the historical underpinnings of modern law. To know them is important, because ‘the legal tradition relates the legal system to the culture of which it is a partial expression. It puts the legal system into cultural perspective’.²²

Diverging considerably from legal tradition, the term ‘tradition of regulation’ (*Regelungstradition*) is proximate to ‘legal tradition’ and appears predominantly in German-language scholarship and studies influenced by institutional history and legal dogmatic. Here, however, it is not usually employed as a means to grasp the context of legal texts. On the contrary, it refers to the fact that legal

State (Oxford Constitutional Theory, Oxford University Press 2013), which build on his idea of legal tradition and develop them further.

¹⁹William Twining, *General Jurisprudence. Understanding Law from a Global Perspective* (Cambridge University Press 2009) 80.

²⁰For a didactic overview and a list of possible criteria, see John Warren Head, *Great Legal Traditions: Civil Law, Common Law, and Chinese Law in Historical and Operational Perspective* (Carolina Academic Press 2011) 5ff.

²¹John Henry Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Stanford University Press 1969) 2. The same in John Henry Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (2 edn, Stanford University Press 1985) and John Henry Merryman and Rogelio Pérez-Perdomo, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (3 edn, Stanford University Press 2007).

²²Merryman 1st, 2nd, 3rd eds 2.

discourse, as specialised knowledge, can display resilience and even limited autonomy, which renders a study of its diachronic evolution possible and necessary. ‘Tradition’ serves to explain the diachronic evolution of a legal institution, like the regulatory framework for electing bishops²³ and the law of obligations.²⁴ It connects different elements of historical regulation over a longer period and represents them as parts of a process of diachronic cultural reproduction. Many of these institutional histories in combination compose ‘the Roman law tradition’ and the ‘civil law tradition’ as historical formations.

Another distinct meaning of ‘legal tradition’ was coined by Harold J Berman in his *Law and Revolution: The Formation of the Western Legal Tradition*, which was published in 1983 and remains one of the most influential historical accounts of western legal history.²⁵ For Berman, the western tradition is specifically built on ‘tradition’: ‘By “tradition” I mean this sense of continuity between past and future, the partnership, as Edmund Burke put it, of the generations, the looking backwards to our ancestors for inspiration in moving forward to our posterity’.²⁶ ‘Tradition’ thus refers not only to the fact that we are all part of a historically connected sequence that conditions our attitudes; it denotes a habit, a conscious mode of constructing society and its law in dialogue with the past and, according to Berman, it is specific to the West.

For reasons of brevity, these examples illustrating three important types will have to suffice. We find, in the case of Merryman and those he has inspired, an unspecific use of ‘legal tradition’ as a concept comprising a set of attitudes about law that need to be taken into account when analysing legal systems. Embedding individual legal systems in their proper contexts is held to be so important that it is possible – perhaps even necessary – to classify them as parts of a group. ‘Tradition’ is the common denominator of this embeddedness, which is sometimes referred to as ‘legal culture’, and it identifies common genealogy as the main criterion defining the group. This usage does not necessarily suggest that the past dominates the present, although genealogy imposes its own constraints on the law. Remember that, for Merryman, traditions are ‘deeply rooted, historically conditioned attitudes’. In fact, this interpretation is less interested in history than in its effect on the present, and it comes very close to what others call ‘legal culture’, which can be grounded on very different theories about cultural

²³ Andreas Thier, *Hierarchie und Autonomie: Regelungstraditionen der Bischofsbestellung in der Geschichte des kirchlichen Wahlrechts bis 1140* (Klostermann 2011).

²⁴ Reinhard Zimmermann, *The Law of Obligations: Roman Foundations of the Civilian Tradition* (Kluwer Law and Taxation 1990).

²⁵ The first book was followed by a second entitled *Law and Revolution, II The Impact of the Protestant Reformations on the Western Legal Tradition* (2003). On the significance of Berman, see the contributions in Thomas Duve, ‘Law and Revolution – Revisited’ (2013) 21 *Rechtsgeschichte - Legal History* 156.

²⁶ Harold J Berman, ‘The Western Legal Tradition in a Millennial Perspective: Past and Future’ (2000) 60 *Louisiana Law Review* 739, 740.

evolution and the course of history.²⁷ The second take on the term differs from this (only seemingly, as should now be clear) ‘straightforward approach’ – as John Head called it in his book *Great Legal Traditions*²⁸ – and refers to the diachronic history of legal institutions. Here, we find a concept used for research in legal history that is primarily focused on institutions rather than contexts and that is more interested in the past as such, even though this kind of inquiry might be motivated by the need to understand current regulation as a contingent product of this evolution. Finally, the third approach links ‘legal tradition’ specifically to the western legal tradition. According to Berman, its most prominent advocate, this western tradition is characterised by a distinct and conscious use of the past to construct its legal system. One might call this a philosophical or, in light of Berman’s late writings, even prophetic use of the term ‘tradition’.

Obviously, these concepts should and must be historicised and contextualised. Two of them stem from the Cold War era and are based on a whole series of fundamental assumptions. They have served different but related aims. Whereas the ‘straightforward use’ predominates in comparative law and tries to understand current legal systems by placing them in context, the ‘western legal tradition’ is a historical assessment of legal evolution in one part of the world. The former wants to explain legal systems and make comparative work possible; the latter was born out of disenchantment with the course of western legal culture. Both conjure an image of a western legal tradition that is clearly distinguishable from others. The ‘legal-historical’ concept of the ‘tradition of regulation,’ though, is often indebted to the tradition of the German Historical School, which sought to identify the internal logic of law and stable formations.

Glenn’s understanding of legal tradition diverges from them all.²⁹ As a scholar of comparative law, Glenn developed his reasoning mainly in response to the mainstream of comparative law, which drew on macro-concepts identified with a certain space, like legal families and legal cultures.³⁰ Merryman was one representative of the mainstream; Konrad Zweigert, Hein Kötz and René David counted among the others. For Glenn, these concepts served a useful purpose ‘in a time of radical legal nationalism’ to remind jurists ‘of forms of belonging which the state could not encompass, or avoid’. They were part of what he calls the ‘taxonomic

²⁷On the relation between legal history and comparative law, see Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law* (3 edn, Oxford University Press 1998) 7–8; JW Head, *Great Legal Traditions: Civil Law, Common Law, and Chinese Law in Historical and Operational Perspective* (Carolina Academic Press 2011) 29f.

²⁸Head, *Great Legal Traditions* (n 27) 5ff.

²⁹On Glenn’s vision of Berman, see H Patrick Glenn, ‘A Western Legal Tradition?’ (2010) 49 *Supreme Court Law Review* 601. On his vision of the concept of legal culture, see Mark van Hoecke, ‘Legal Cultures, Legal Traditions and Comparative Law’ (2006) 35 *Netherlands Journal of Legal Philosophy* 331 and H Patrick Glenn, ‘Legal Traditions and the Separation Thesis’ (2006) 3 *Netherlands Journal of Legal Philosophy* 222.

³⁰H Patrick Glenn, ‘Comparative Legal Families and Comparative Legal Traditions’ in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (The Oxford Handbook of Comparative Law, Oxford University Press 2006).

project' of western comparative law.³¹ Global studies today would call it a 'container approach'. According to Glenn, the taxonomic project was formulated from the perspective of nation-states. It was political, ideological, fixed on national legislation, static, essentialist and blind to all other modes of transversal normativity. It was based on an insufficient binary logic, and it used dysfunctional, rigid categories.³² It enshrined a positivist vision of one particular tradition, the Western, and was grounded on the assumption that the existence of states, with their systemic closure against other nation-state systems, was a natural fact or a 'reflection of underlying and definite truths'.³³ For Glenn, moreover, it failed as a project because it did not develop legal reasoning for today and tomorrow, a legal order for an interconnected world with accelerated communication and mobility, growing transnational law and increasingly conflictual relations among adherents of different identities.³⁴ As we can see, Glenn harshly criticised the analytical tradition of his discipline, especially the essentialist versions of 'legal culture' and underlying imperialist notions in our academic vocabulary, with his own thoughts influenced by the philosophy of science and critical legal, postcolonial and postmodern approaches. Not surprisingly, his critique already reveals some of his own aims, as a closer look at his concept of 'legal traditions' shows.

IV. Legal traditions of the world – H P Glenn

For Glenn, tradition is simply information, a 'loose conglomeration of data, organized around a basic theme or themes'.³⁵ Legal tradition, thus, is normative information. Glenn was criticised for this but repeatedly refused to be more explicit about what 'normative' means and how 'legal' traditions are delimited from other traditions on the grounds that this was neither necessary nor possible. He considers this insistence on separating the legal from all else in the world a typical and uniquely western way of thinking. Obviously, he does not question that there are differences between what we call 'legal' and 'non-legal', but for him making a general distinction is as unnecessary as it is impossible.

Legal theorists (and or legal comparativists), therefore, need not formulate a definition of a legal tradition because the (various) definitions are out there. One must simply work with them. There is no prior definition to which they must conform,

³¹ibid 422–23.

³²On the classification, see H Patrick Glenn, 'A Western Legal Tradition?' (2010) 49 *Supreme Court Law Review* 601, making some reference to Viehweg and others.

³³On this reification, see ibid 609.

³⁴Glenn has clearly outlined his vision of the discipline in Glenn, 'Comparative Legal Families and Comparative Legal Traditions' (n 30) and H Patrick Glenn, 'The Aims of Comparative Law' in Jan Smits (ed), *Elgar Encyclopedia of Comparative Law* (Elgar Encyclopedia of Comparative Law, Edward Elgar 2012).

³⁵H Patrick Glenn, *Legal Traditions of the World. Sustainable Diversity in Law* (2 edn, Oxford University Press 2004) (n 4) 16.

or against which they should be evaluated. This does not prevent their variation against one another³⁶

– a statement expressing his preference inductive approaches; I will return to this point later.

Whether ‘legal’ or not, in order for either label to be applicable the normative information must have been ‘captured’ in a first transformative moment.³⁷ Once captured, that information goes on to be selected and appropriated in a continuous and dynamic process. ‘A living tradition thus functions by way of the continual reflexive process, through looping or feedback’. Glenn calls this the ‘massaging’ of tradition.³⁸ Because of this continuous feedback, any tradition ‘bears within itself the seed of diversity or, more radically, change’,³⁹ resulting in a ‘remarkable process of oscillation between stability and variation’.⁴⁰ This process gains its dynamism through continuous, but ultimately unsuccessful, attempts to achieve ‘closure’. The grandest and most successful closure in history is the modern western state and its specific techniques of controlling the sources of law. For Glenn, the modern state is ‘an informational node within a larger body of normative information, or more precisely, legal tradition’.⁴¹ However, the ‘system of the state cannot tolerate the possibility of other systems within it; this is the nature of systemic thinking. The system necessarily controls the interacting elements which compose it’.⁴² Notwithstanding the flourishing of such legal systems in much of the world throughout the nineteenth and twentieth centuries, Glenn is convinced that these attempts at closure are only ‘rarely successful’, because ‘there is no regress stopper in the face of informational challenge, whether internal or external’. In the long run, closure caps dynamism, and closed legal systems implode under the pressure of adaptation. This pressure is caused by their internal diversity, which results from the fact that, according to Glenn, all major legal traditions have been incorporating ‘multiple internal and lateral traditions which are not consistent with each other and which may not even be consistent with the leading version of the major tradition’.⁴³ The accessibility of these divergent options and their ‘persuasive authority’ inevitably cause transformation.

The internal dynamics described by Glenn as ‘looping’, the selection and mutation, are further enhanced by the fact that every legal tradition interacts

³⁶Glenn, ‘Legal Traditions and *Legal Traditions*’ (n 35) 71.

³⁷*ibid.*, ‘*A present past is one which has been captured, in a way which allows present use and present, further, transmission*’ 7.

³⁸Glenn, ‘Comparative Legal Families and Comparative Legal Traditions’ (n 30) 428.

³⁹Glenn, *Legal Traditions of the World. Sustainable Diversity in Law* (n 4) 30.

⁴⁰Glenn, ‘Comparative Legal Families and Comparative Legal Traditions’ (n 30) 429.

⁴¹H Patrick Glenn, ‘Transnational Common Laws’ (2006) 29 *Fordham International Law Journal* 457, 468.

⁴²Glenn, *Legal Traditions of the World: Sustainable Diversity in Law*, 54–55.

⁴³*ibid* 367.

constantly with others.⁴⁴ Even the slightest contact with another tradition implies a variation in the information base of the initial tradition. As soon as different traditions come into contact, a process of accommodation starts. 'If something is known to be out there, it is already in here. The simple existence of information derived from another complex tradition thus blurs the distinction between the two traditions'.⁴⁵ While this alone is reason enough to suggest that no contact is without consequences, exchange and mutual adaptation are further facilitated by structural similarities that Glenn sees at work in all major legal traditions, like casuistry and a common tendency to produce interaction between local, particular and common laws. 'In today's world there are therefore no pure identities of tradition'.⁴⁶

So what kind of picture emerges from these reflections about the evolution of traditions? At first, it would seem quite similar to established ways of ordering the world into different spheres, as we find in comparative law. In a seeming contradiction to his general deliberations about legal evolution, Glenn includes the categories of Talmudic law, civil law, Islamic law, common law, Hindu law, Confucian law and a legal tradition he calls 'chtonic,' whose most evident feature is its orality, in his own taxonomy. The epistemic status of these traditions, however, is very different from those included in the classic taxonomy that associated legal traditions with certain legal systems and established more or less clear boundaries between them, recognising only a few mixed legal systems. Glenn's legal traditions are expressly not meant to form an overarching category into which concrete legal systems of nation-states can be integrated, nor could they be associated with a certain space. As bodies of normative information that are structurally open to exchange and integration, these traditions do not exist anywhere in the world in pure form. They are a 'loose conglomeration of data, organized around a basic theme or themes, and variously described as a "bundle", a "toolbox", a "language", a "playground", a "seedbed", a "ragbag" or a "bran tub"'.⁴⁷ People may make use of the information contained in the toolbox, appropriate these tools and include them in the continuous feedback loop, mixing them with persuasive authorities from other traditions and thus (re)constitute their legal systems. These legal systems, however, will always be contingent and continuously changing appropriations of the normative information provided by traditions.

Whence does Glenn derive these ideas about legal traditions? I think it is fair to say that Glenn uses an inductive and eclectic method. There is no unique, overarching theory behind his thinking, although parts of his analysis are inspired by variants of systems theory and the theory of evolution. He does, however,

⁴⁴ibid 33.

⁴⁵ibid 374.

⁴⁶ibid 34.

⁴⁷ibid 16.

use them carefully, and he constantly draws on philosophy of science and logic, legal theory, social science and anthropology to frame or nuance his statements. He is influenced by Martin Krygier's vision on 'Law as Tradition', and one important element of his thought, 'closure', is taken from US philosopher Hillary Lawson. His preference for relational over comparative categories is grounded in Carnap's logic, and his arguments about the necessity and possibility of overcoming Western binary logics and accepting 'multivalent thinking' are grounded in fuzzy logic, all of which deserves more thorough discussion.⁴⁸ His major inspiration, however, is legal history. In an impressive effort to read legal-historical literature in different languages, Glenn built his reflections on the findings of legal-historical research, and from these he synthesised an account of how law operates in time. Even if he did not get everything right, and many details are worthy of criticism, he undoubtedly provided us with a puzzling, profound and well informed analysis of legal history on a global scale – something that legal-historical professionals have not dared to do, at least not since the days of Max Weber (who was, by the way, a legal historian). Glenn learned a lot from legal history, so what can legal historians learn from him?

V. 'Legal traditions' of the world and (global) legal history

Generally speaking, Glenn provides legal history with a stunning attempt at an empirically grounded middle-range theory of legal evolution. Its inductive character, the open concept of tradition as normative information and his insistence on using flexible, overlapping, non-exclusive categories can liberate and inspire research in legal history. Notwithstanding the many flaws and generalisations in his attempt to summarise whole libraries of research on legal histories of the world, a legal historian will find many of his arguments and the major contours he traces quite convincing. Legal historians know that there has always been something like 'comparative law before comparative law' and that jurisdictional complexity and resulting hybridity is the rule, not the exception.⁴⁹ His diagnoses that it is wrong to apply rigid categories and binary logics and that legal evolution

⁴⁸There has been debate about some aspects of his ideas on 'multivalent thinking' in (2006) *Netherlands Journal of Legal Philosophy* 3; see Hoecke, 'Legal Cultures, Legal Traditions and Comparative Law' (n 29). Glenn develops his ideas about different juridical logics in more detail in his book *The Cosmopolitan State* (2013) 259ff.

⁴⁹On mutual observation among members of different juridical epistemic communities, see Charles Donahue Jr, *Comparative Law before the Code Napoléon* (Oxford University Press 2006 (online 2012)); Heinz Mohnhaupt, 'On the Development of the Term «Verfassung»'. From the Plurality of the Ancien Régime's «Leges Fundamentales» in Jørn Øyrehagen Sunde (ed), *Constitutionalism before 1789 Constitutional Arrangements from the High Middle Ages to the French Revolution*, Pax Forlag 2014); on jurisdictional complexity and the resulting hybridity, see the contributions in Thomas Duve (ed), *Entanglements in Legal History: Conceptual Approaches* (Global Perspectives on Legal History, Max Planck Institute for European Legal History 2014); Seán Patrick Donlan and Dirk Heirbaut

is a process of continuous adoption of normative information through persuasive authorities are close to what legal-historical research on so-called ‘pre-modern’ western legal history is increasingly emphasising. The living law has never produced coherent systems, even if nineteenth- and twentieth-century legal historiography was often tempted to find them in history. He is also completely right in emphasising practices of accommodation. Instead of viewing different legal traditions from a paradigm of conflict, we would do well to understand them in their complementarity and coexistence, remaining attentive to practices of accommodation and functional ambiguity. In this sense, what Glenn proposes might be familiar to scholars acquainted with, for example, the early modern legal history of Europe

His view of ‘common laws’ and the state and its history are also inspiring, despite some possible flaws in the details. In his book *On Common Laws*, Glenn develops a concept of common law that greatly exceeds its specific articulations in concrete legal-historical formations, like the *ius commune* of continental Europe and the common law of the Anglo-Saxon world. These common laws are relational and emerge in constant dialogical tension with local, particular laws. Glenn finds them in the major legal traditions, and they constitute ‘lateral traditions’.⁵⁰ In the Western tradition, for example, German ‘*gemeines Recht*’, as embodied in law books (*Rechtsbücher*), like the *Sachsenspiegel*, is common law in this broader sense, as are the Castilian *Siete Partidas*, the French *droit coutumier*, among others. Common laws ‘do contain information, but declare none of it as obligatory or binding’ and are sources of information for other common laws as well as for particular laws.⁵¹ They are based on a different understanding of authority and part of a cooperative or ‘conciliatory’ legal paradigm.⁵² Historically, they were essential to the process that laid the ground from which the modern state-centred system of legal sources emerged, the legal system that later claimed exclusivity.⁵³ However, common laws did not disappear in the heyday of juridical absolutism. Substantial parts of what had fallen out of fashion in Europe, like the *ius commune*, *gemeines Recht*, *Siete Partidas*, and Pandectist thought, fed into common laws overseas,⁵⁴ just as the same codifications, drafts of legislation, and important authors’ works circulated around the world in varying concentrations. They remained what they were: normative information and persuasive authority that was adopted, adapted, and integrated into the feedback loop of law production. From this perspective, legal thought and codifications of the nineteenth century incarnated the monopolisation of norms in one part of the world and went on to

(eds), *The Laws’ Many Bodies: Studies in Legal Hybridity and Jurisdictional Complexity, c1600–1900* (Duncker & Humblot 2015).

⁵⁰H Patrick Glenn, *On Common Laws* (Oxford University Press 2005) 1.

⁵¹*ibid* 96.

⁵²*ibid* 43.

⁵³*ibid* 50.

⁵⁴*ibid* 59.

become part of new common laws in other areas, which is one reason why it seems Eurocentric to declare the nineteenth century the end of common laws.⁵⁵ Without probing this more deeply, it seems clear that the analytical potential of Glenn's concept of tradition-as-normative-information is especially high in cases of circulation or, more accurately, when global knowledge is created through cultural translation.

Another field where Glenn's ideas can inspire legal historians is his analysis of the state. He developed these thoughts in his last and most ambitious book, *The Cosmopolitan State* (2013), which definitely deserves more attention by legal historians and jurists interested in the future of our constitutional system. From the perspective of legal traditions, the modern, western (nation-) state is an attempt at closure. However, the state is not opposed to tradition, but is itself a product of tradition. The state is 'an informational node within a larger body of normative information, or more precisely, legal tradition',⁵⁶ itself a historical formation that has evolved under specific historical circumstances and as part of tradition.

State law is traditional law, though often denying its traditional character. This is why there are states, because there is a powerful normative tradition in favor of their creation and maintenance. This tradition is a transnational one, so it may be said that states themselves are the product of transnational law.⁵⁷

Modern states are 'grounded on an underlying, normative argument ... that justified their creation and maintenance' – a tradition of positivist thought with an underlying *ius publicum*, for Glenn another example of common law.⁵⁸ The state has shaped our legal theory, and legal theory has even taken it as the exclusive source of law. The transnationalisation of law, however, is increasingly challenging the idea of a sharp divide between state law and non-state law. Today, the state cannot control legal information totally and exclusively; it can eliminate neither local nor distant sources of identity and law. Under twenty-first century conditions, the reductionist and constructed character of the legal system necessarily leads to instability. The closure that nation states embody is in crisis due to increasing claims for legal diversity, among other causes:

To the extent that all of these forms of states rely on their own authority as paramount over all others, on the primacy of secular constitutional law and national forms of identity, they are all today experiencing the same internal problems. They are the problems of the new diasporas. The new diasporas all involve a view from somewhere else.⁵⁹

⁵⁵ibid 74.

⁵⁶Glenn, 'Transnational Common Laws' (n 41) 468.

⁵⁷H Patrick Glenn, 'A Transnational Concept of Law' in Peter Cane and Mark Tushnet (eds), *The Oxford Handbook of Legal Studies* (The Oxford Handbook of Legal Studies, Oxford University Press 2005), 850.

⁵⁸Glenn, 'Transnational Common Laws' (n 41) 461.

⁵⁹Glenn, *Legal Traditions of the World: Sustainable Diversity in Law* (n 4) 55.

For Glenn, the only solution is to recognise the cosmopolitan nature of state. Because as ‘the widespread notion of the nation-state has never been brought into existence, anywhere, in spite of the widespread acceptance of the idea’, and because all contemporary states are already cosmopolitan,⁶⁰ there are also established means of dealing with this diversity that defy the nation state and its juridical techniques. The challenge is to admit that sustainable diversity is not a hope but a reality.

For three centuries we have been teaching populations that the ideal form of organization of human society is the ‘nation–state’. It may take a longer period of time to teach that it is rather ‘*convivencia*’ which is the natural condition of humanity and that various forms of para-consistent thought are necessary to ensure its survival.⁶¹

Again, this is a bold statement. It is certainly debatable, and I myself have many questions and doubts, but it addresses one of the core issues of current law, and legal historians should not ignore it.

To synthesise these observations somewhat, there are few legal-historical writings so firmly based on a sound analysis of legal evolution as a process of normative information being appropriated and transformed in combination with concepts like ‘multivalent logics’. Glenn’s gift for daring inductive abstraction might not only help legal historians to better understand the particularity of various patterns of how justice was administered in the past, but also to better grasp one of the major challenges for legal systems in the future: how to operate along with new techniques of processing normative information. Glenn’s approach not only presents some interesting perspectives on legal history; it also seems compatible with legal theories advocating a praxeological or performative concept of normativity. Viewing traditions as normative information that is produced, captured and adapted by communities of practice – in other words, language games – necessarily draws attention to the transmission media and transformation of this information, thus successfully integrating a fundamental dimension that is often absent from legal-historical research. It also helps to overcome the serious shortcomings from which the concept of legal pluralism suffers because of the ‘deep conceptual confusion’⁶² as well as from its surprisingly legalistic and state-centred structure.⁶³ Since these legal theories – and Glenn himself – seek an analysis of law’s operation that responds to basic patterns of communication and epistemology, without being bound to a certain culture, they might even

⁶⁰H Patrick Glenn, ‘Differential Cosmopolitanism’ (2016) 7 *Transnational Legal Theory* 57, 58–59.

⁶¹*ibid* 59.

⁶²Brian Z Tamanaha, ‘Understanding Legal Pluralism: Past to Present, Local to Global’ (2008) 30 *Sydney Law Review* 375, 390ff.

⁶³Thomas Duve, ‘Was ist „Multinormativität“? – Einführende Bemerkungen’ (2017) 25 *Rechtsgeschichte - Legal History* 88.

contribute to a general jurisprudence on a transnational scale. It is no coincidence that scholars, like William Twining, who are engaged in this endeavour praise Glenn's work. However, this purpose also requires that his work be complemented by a perspective that, at least at first glance, seems contrary to his explicit aims: practice.

VI. Legal tradition and cultural translation

In his repeated polemic against the concept of 'legal culture' and elsewhere, Glenn insisted on the definition of legal tradition as normative information 'as opposed to all else in the world, including practice'.⁶⁴ This concentration on information permits to 'separate the normative information that precedes us from what we actually do in life and the decisions we actually make, faced with the normative information of the tradition'. Thus, it should be able to perceive three distinct phenomena: the tradition itself, the process of its transmission, and contemporary reaction to it.⁶⁵ The 'concept of tradition allows you to engage and judge conduct against the normative information which actually precedes it'.⁶⁶

It is this illusion of being able to separate normative information from the circumstances of its appropriation that seems the most serious blind spot of his conceptualisation. Because if we consider, as Glenn seems to do in other instances, that normativity is generated by the appropriation of persuasive authorities through those who are enacting, reinterpreting and translating what they understand the information to mean, a decisive part of the production of meaning lies not on the part of the information transmitted, but in the minds of those who (re)produce it. Glenn himself demonstrates that he is aware of the importance of this dimension when he speaks about the process of 'massaging' of tradition or in developing the concept of persuasive authority. He also shows openness towards the fact that certain modes of administering justice are a part of tradition. Why, then, does he exclude practice so utterly from his concept?

Leaving aside possible interpretations, like the practical need to draw a clear distinction between legal tradition and the concept of legal culture, one explanation might be that Glenn did not consider practice to be a good candidate for structured analysis. However, cultural studies and the humanities have been developing interesting approaches in precisely this direction that bring some of the factors that might affect the reproduction of normative information within our grasp. These suggestions have recently been referred to as implicit knowledge, social, political, cultural and epistemic practices, embedding of law and so on. They have been linked with material dimensions, certain conditions of the

⁶⁴Mireille Hildebrandt, 'The Precision of Vagueness, Interview with H. Patrick Glenn' (2006) 35 *Netherlands Journal of Legal Philosophy* 346.

⁶⁵Glenn, 'Legal Traditions and *Legal Traditions*' 2007 (n 15) 71.

⁶⁶Glenn, 'Comparative Legal Families and Comparative Legal Traditions' (n 30) 354–355.

functioning of epistemic communities, styles of thought (*‘Denkstile’*) and conventions. These conventions, as recently reconceptualised by French sociology of conventions, a pragmatist and historical perspective in the analysis of institutions, have been characterised as logics of coordination, as cultural frames of evaluation and coordination that actors refer to when they have to establish shared framings of situations, events and objects. Together with other methods dedicated to reconstructing social practices from studies of cultural translation and elsewhere, these conventions might be a key to better understanding some of the conditions under which normative information is appropriated.⁶⁷ As these social practices have a normative character, it seems possible and necessary to consider them another normative layer open for legal-historical analysis under the label of ‘multinormativity’.⁶⁸ Integrating this into the analysis might not have been part of Glenn’s initial plan, but it could complement his approach, which seems to grasp only one side of the diachronic process of the (cultural) translation of law – the information to be massaged – and leaves crucial lacunae regarding the conditions and circumstances of this process.⁶⁹

VII. Concluding remarks

Though definitely not the last word on the subject, this brief panorama might have shed some light on a few points. First, there are different understandings of legal tradition in different fields, and each adapts the concept to its own purposes. Many comparative law scholars use it synonymously with legal culture, some have a prophetic or philosophical understanding of the term, and for others it is simply a unit of analysis for legal-historical studies without further significance. For Glenn, it is ‘normative information, as opposed to all else in the world, including practice’.⁷⁰ It can be used for taxonomic purposes, with its implicit and explicit political dimensions, to construct and deconstruct, to legitimise and delegitimise normative orders.

In my estimation, Glenn’s analysis shows convincingly that there are no pure traditions and that hybridity is the rule. But since hybridity is inherent to all legal traditions, I would also say that this hybridity cannot be used as an argument against claims like those of, for example, indigenous peoples who draw on a normative history which finally is ‘never pure’. Glenn also makes clear that, as legal

⁶⁷On this, see Thomas Duve, ‘Von der Europäischen Rechtsgeschichte zu einer Rechtsgeschichte Europas in globalhistorischer Perspektive’ (2012) 20 *Rechtsgeschichte - Legal History* 18; Thomas Duve, ‘Global Legal History – A Methodological Approach’, *Oxford Handbook Online - Law* (Oxford Handbook Online - Law, 2017).

⁶⁸Duve, ‘Was ist „Multinormativität“? – Einführende Bemerkungen’ (n 63).

⁶⁹It has been rightly criticised that Glenn ignores economic aspects. See Richard Janda, ‘Cosmopolitan Normative Information: Patrick Glenn’s Legal Theory’ (2016) *Inter Gentes Journal of International Law & Legal Pluralism*.

⁷⁰Glenn, ‘Comparative Legal Families and Comparative Legal Traditions’ (n 30) 356.

traditions are continually being reproduced and (re)interpreted, everything depends on the choices we make in the present. Thus, the authority we ascribe to normative information, its persuasiveness, is from today, not from the past. It depends on how we evaluate the past today. However, our tradition imposes constraints on these choices, on our preferences and options.

Glenn's vision of legal tradition as normative information is not without its conceptual weaknesses. It tends to be essentialist, it underrates the need of translation into different contexts, it is not sensitive for the significance of institutions, and it does not provide clear criteria for the distinction of what is and what is not part of a legal tradition, once the normative information is engaged in the intense and inevitable process of interaction and the resulting hybridity. However, and despite of these reservations, it seems to be applicable on a global scale, if we take seriously his wide use of 'legal' as 'normative', it tries to be non-Eurocentric, and it claims to foster sustainable diversity in law. Moreover, it situates law and the state within contemporary information theory and addresses core issues of today's, and perhaps tomorrow's, world of law – the response of our legal systems to proliferating claims of diversity. Both legal history and comparative law have good reasons to jointly explore the analytical potential of his concept of legal traditions and possible modifications of it in their academic practice.

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