

**MCGILL UNIVERSITY**  
**FACULTY OF LAW**

**LEGAL TRADITIONS**  
CMPL 600  
WINTER 2013  
**PROFESSOR RENÉ PROVOST**

SYLLABUS

***Schedule***

Course: Tuesday-Thursday 11h30-13h00

Office Hours: Wednesday 11h30-12h30 (other times by appointment)  
3674 Peel, room 202  
Tel: 514-398-6647  
E-mail: [rene.provost@mcgill.ca](mailto:rene.provost@mcgill.ca)  
Assistant: Libby Parker ([libby.parker@mcgill.ca](mailto:libby.parker@mcgill.ca))

I am happy to meet to discuss the content or structure of the course, or any other questions, after class, during my office hours or during an appointment, which you can make by email.

***Course objectives:***

The concept of a legal tradition. Nature of particular legal traditions, such as those of the civil and common law; selected other traditions, both secular and religious. Cultural and philosophical foundations of particular traditions, and their implementation through the institutions of each tradition. Relations between traditions (colonialism, legal pluralism, accommodation, cross-cultural jurisprudence). Relations within traditions. Agency.

***Documents:***

**Obligatory texts:**

H. Patrick Glenn, *Legal Traditions of the World*, Oxford: Oxford University Press, 2010 (4<sup>th</sup> edition), available at the McGill Bookstore.

**Additional documents:**

All other materials used in the course will be available electronically on MyCourse.

***Evaluation:***

20% Two (2) reflection pieces on assigned readings to be posted under ‘Discussions’ on MyCourse two days prior to the date on which the reading comes up  
20% In-class presentation on a selected legal tradition

60% Term paper (15 pages approximately) on a topic to be determined in agreement with the instructor. Due Tuesday April 10. The final essay will be submitted under the student’s name (as opposed to exam number) through MyCourse and Turnitin ([www.turnitin.com](http://www.turnitin.com)). More information is available at <http://kb.mcgill.ca/kb/article?ArticleId=1560&source=Article&c=12&cid=2>.

The course is a research seminar, which implies the need for attendance and participation in class discussions.

*Statement on integrity:* The University Senate has adopted a rule requiring that the following statement be included in all course outlines:

“McGill University values academic integrity. Therefore all students must understand the meaning and consequences of cheating, plagiarism and other academic offences under the Code of Student Conduct and Disciplinary Procedures (see <http://www.mcgill.ca/integrity> for more information).”

As a simple rule of thumb, remember to always place between quotation marks any language (more than 3-4 consecutive words) that is borrowed from someone else, and to include a footnote reference for any idea borrowed from an outside source.

In accord with McGill University’s Charter of Students’ Rights, students in this course have the right to submit in English or in French any written work that is to be graded.

### ***Schedule of Sessions:***

1. \ 8 January 2012 Introduction

2. \ 10 January 2012 Conceptualising legal normativity

Katharine T Bartlett, “Only Girls Wear Barrettes: Dress and Appearance Standards, Community Norms, and Workplace Equality” (1994) *Michigan Law Review* 2541-55, 2571-72, 2579-80

Lon L Fuller, “Human Interaction and the Law” (1969) 14 *American Journal of Jurisprudence* 1.

3. \ 15 January 2012 The Invention of Tradition

Terrence Ranger, "The Invention of Tradition in Colonial Africa," in Terrence Ranger and Eric Hobsbawm eds., *The Invention of Tradition* 211-213, 247-262

G Carter Bentley, "Hermeneutics and World Construction in Maranao Disputing," *American Ethnologist*

Martin Chanock, "Neither Customary nor Legal; African Customary Law in an Era of Family Law Reform", *International Journal of Law and Family*

4.\ 17 January 2012 \ A Theory of Traditions

HP Glenn, *Legal Traditions of the World*, Chapter 1

5.\ 22 January 2012 \ Between Traditions

HP Glenn, *Legal Traditions of the World*, Chapter 2

6.\ 24 January 2012 \ Chthonic Tradition

HP Glenn, *Legal Traditions of the World*, Chapter 3

Rupert Ross, 'Being Indian is a State of Mind', *Dancing with a Ghost* (Toronto: Octopus Publishing Group, 1992) 70-87

7.\ 29 January 2012 \ Chthonic Tradition cont'd

HP Glenn, *Legal Traditions of the World*, Chapter 3

Rupert Ross, 'Being Indian is a State of Mind', *Dancing with a Ghost* (Toronto: Octopus Publishing Group, 1992) 70-87

8.\ 31 January 2012 \ Mapping the Emergence of a Tradition

John EC Brierley and Roderick Macdonald, *Quebec Civil Law: An Introduction to Quebec Private Law*, Toronto, Emond Montgomery Publications Limited, 1993, pages 6-32

Map, Written and Oral Customs in France in the 16<sup>th</sup> Century

Codal form : Nouvelle coutume de Paris, art 88-95 & Code civil du Québec, art 899-907

Historical Documents : Concession de terre en censive, 18 Nov. 1655 ; Alexis de Tocqueville, « Un procès à Québec, 1831 », in *Voyages en Sicile et aux États-Unis* (Gallimard, 1957).

André Morel, « La réaction des Canadiens devant l'administration de la justice de 1764 à 1774 - une forme de résistance passive » (1960) 20 R du B 53-63

Historical Documents : Lettre publiée dans *La Minerve*, 4 avril 1857 ; Discours prononcé par D Girouard au convocation de l'Université McGill, vers 1860 ; *The Examiner*, janvier 1861; Conférence de l'avocat de bellefeuille, 1864.

9.\ 5 February 2012 \ Civil Law Tradition

HP Glenn, *Legal Traditions of the World*, Chapter 5

John E.C. Brierley and Roderick Macdonald, *Quebec Civil Law : An Introduction to Québec Private Law*, Toronto, Emond Montgomery Publications Limited, 1993 aux pp. 34-54.

10.\ 7 February 2012 \ Civil Law Tradition Cont'd

HP Glenn, *Legal Traditions of the World*, Chapter 5

John E.C. Brierley and Roderick Macdonald, *Quebec Civil Law : An Introduction to Québec Private Law*, Toronto, Emond Montgomery Publications Limited, 1993 aux pp. 34-54.

11.\ 12 February 2012 \ Common Law Tradition

HP Glenn, *Legal Traditions of the World*, Chapter 7

A.T. Kronman, 'Precedent and Tradition' (1990) 99 Yale L.J. 1029 at 1034-1039, 1043

12.\ 14 February 2012 \ Common Law Tradition Cont'd

HP Glenn, *Legal Traditions of the World*, Chapter 7

A.T. Kronman, 'Precedent and Tradition' (1990) 99 Yale L.J. 1029 at 1034-1039, 1043

13.\ 19 February 2012 \ Talmudic Legal Tradition

HP Glenn, *Legal Traditions of the World*, Chapter 4

Georges Horowitz, 'Letter and Spirit of the Law' et 'Preliminary Notions' in *The Spirit of Jewish Law: A Brief Account and Rabbinical Jurisprudence with a Special Note on Jewish Law and the State of Israel*, New York, Bloch Publishing Company, 1993 at 1-17.

14.\ 21 February 2012 \ Talmudic Legal Tradition Cont'd

HP Glenn, *Legal Traditions of the World*, Chapter 4

Georges Horowitz, 'Letter and Spirit of the Law' et 'Preliminary Notions' in *The Spirit of Jewish Law: A Brief Account and Rabbinical Jurisprudence with a Special Note on Jewish Law and the State of Israel*, New York, Bloch Publishing Company, 1993 at 1-17.

15.\ 26 February 2012 \ Islamic Legal Tradition

HP Glenn, *Legal Traditions of the World*, Chapter 6

Vrinda Narain, *Gender and Community : Muslim Women's Rights in India*, Toronto, U. Toronto Press, 2001 aux pp. 13-24.

16.\ 28 February 2012 \ Islamic Legal Tradition Cont'd

HP Glenn, *Legal Traditions of the World*, Chapter 6

Vrinda Narain, *Gender and Community : Muslim Women's Rights in India*, Toronto, U. Toronto Press, 2001 aux pp. 13-24.

Reading Week : 4-8 March 2012

17.\ 12 March 2012 \ Hindu Legal Tradition

HP Glenn, *Legal Traditions of the World*, Chapter 8

Werner Menski, 'Postmodern Hindu Law'

18.\ 14 March 2012 \ Hindu Legal Tradition Cont'd

HP Glenn, *Legal Traditions of the World*, Chapter 8

Werner Menski, 'Postmodern Hindu Law'

19.\ 19 March 2012 \ Asian Legal Tradition

HP Glenn, *Legal Traditions of the World*, Chapter 9

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20.\ 21 March 2012 \ Asian Legal Tradition Cont'd

HP Glenn, *Legal Traditions of the World*, Chapter 9

21.\ 26 March 2012            Other Traditional Forms of Governance

Mary Douglas, 'Accountability Among the Azande'

Peter Geschiere, 'Witchcraft and the State: Cameroun and South Africa'

22.\ 28 March 2012            Traditions and Relations of Power: Colonialism

Martin Chanock, "Social and Legal History in Central Africa," in *Law Custom and Social Order: The Colonial Experience in Malawi and Zambia* (21pp)

John L. Comaroff, "Colonialism, Culture, and the Law: A Foreword," *Law and Social Inquiry*

23.\ 2 April 2012            Intersecting Traditions

Tim Kelsall, "Insufficiently Hybrid: Assessing the Special Court for Sierra Leone"

René Provost, "Magic and Modernity in *Tintin au Congo* (1930) and the Sierra Leone Special Court"

John and Jean Comaroff, "Criminal Justice, Cultural Justice: The Limits of Liberalism and the Pragmatics of Difference in the New South Africa," *American Ethnologist*

24.\ 4 April 2012            Micro-Traditions

Daniel Jutras, "The Legal Dimensions of Everyday Life" (2001) *Canadian Journal of Law & Society* 45, pages 45-65

Martha-Marie Kleinhans & Roderick Macdonald, "What is *Critical Legal Pluralism*?" (1997) *Canadian Journal of Law & Society* 25, pages 25-46

25.\ 9 April 2012            Reconciling Legal Traditions

HP Glenn, *Legal Traditions of the World*, Chapter 10

Mireille Delmas-Marty, *Ordering Pluralism* (2009) 1-16

26.\ 11 April 2012            Legal Education Across Traditions

Nicholas Kasirer, 'Legal Education as Métissage' (2004) 78 *Tulane Law Review* 481-501

Peter Strauss, 'Transsystemia - Are We Approaching a New Langdellian Moment? Is McGill Leading the Way?', (2006) 56 *Journal of Legal Education* 161-171

Harry Arthurs, 'Law and Learning in an Era of Globalization' (2009) 10 *German law Journal* 629-639