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Themes in Exam

- legal transplants
 - legal development
 - cross-pollination of traditions: points of intersection among traditions
 - alan Watson - borrowing is the way the law develops
 - how transplanted laws can adapt to local context
- chthonic law
 - underlying a lot of other traditions - as a starting point
 - comparing more “well-established” traditions with chthonic law
- how legal traditions are born and develop
 - how they come together
 - what influences their development
 - the brain tub of information swirling around
- **written law versus oral law**
 - **what are the differences and implications**
- evaluate Glenn
 - good parts and the shortcomings
- compare legal traditions
 - like the civil and common-law - good/bad, pros/cons
- forces of convergence and divergence
 - legal identity, legal culture
 - are we losing the ‘common law’ to the civilian tradition?
 - do we now just have a ‘Western legal tradition’?
- revelation or religion as a source of law in a tradition
 - versus a secular system
- how traditions change?
- national/state law versus legal traditions
- **who is the “judge” in different legal traditions?**
 - **what is their role? how do they function?**
- human rights - how are these integrated into traditions? are they an export/transplant of civil law (possibly common law) tradition?
- **Is one tradition overtaking the world?**

National Legal Systems

Glenn's system is about tradition, not about national legal system (e.g. Civil, Common)

- What is actually the binding law at a given period of time
- legal tradition is a broad inheritance
- national legal system is recognised as binding law with a political boundary of a state
- National Identity is made up
- French 70% of France didn't speak French
- myth of the modern world comes with racism
- language + race + borders = country
- the nation = the people

Glenn's categorisation

- classifying legal systems
- critique
 - doesn't deal with mixed legal systems properly
 - however classification schemes not intended to be perfect - give you some info

Tradition

- information passed down

Elements:

1. times has passed/something happened in the past
 2. presence of past (brought to the present)
 3. traditio
- in order to be a tradition, information must keep getting passed down in relevant societal context

Bran-Tub

- older tradition = bigger bran-tub
- not all info vital for tradition but can be used to shape it over time

Theories

- parasitic traditions feeding off main traditions

Difference between chthonic tradition and national legal system?

- one is binding in a state
- e.g. **Confucian Law** is not actual Chinese Law but a good description of things encompassed

Chthonic Legal Tradition

- Dwelling in and belonging in surface of earth (Greek word)
- God's lived under earth
- Glenn is borrowing word to describe indigenous legal tradition
- Believes 'native', 'indigenous', 'Aboriginal' problematic for this group due to colonial influence
 - who is really native? What about the British?

PEOPLE WHO LIVE ECOLOGICAL LIVES IN CLOSE HARMONY WITH THE EARTH

- Oral tradition plays defining role

Differing from other legal traditions, **no point of origin.**

- emerged based on:
 - people living
 - experience
 - learning about earth
 - passing down knowledge
 - oldest existing legal tradition (2 million years)
 - bran tub differs among communities
 - but also many commonalities
 - oral teachings (story telling) to transmit info
 - "telephone" (Chines Whispers)
 - **however due to orality, only maintains the core, important information**
- In Australian legal traditions, always have to look things up because volume of law is so great
- oral chthonic tradition passes down only important law.
- chthonic traditions are living traditions - 'persuasion' is important and relevant
 - law is visible in the environment around you

Chthonic Stories

- Indigenous law drawn from relationships
- Canadian Indigenous: living well in the world = law
- humility, recognising they are newcomers in the world (fossils)
- as we draw law from the environment we find analogies