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A Simple Story

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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. The world could use a good book called *Legal Traditions of the World*. Glenn insists in the equal value of all of the world's legal »traditions«, whether or not they originated in the west. This is admirable and well worth saying, especially at a time when Americans are increasingly convinced of the plain superiority of their system. We need open-minded books – and particularly books that, like this one, emphasize the magnificence of Islam, and its (at least sporadic) influence on the west.

Nor is it a bad idea to organize a book around the description of legal »traditions«. Like other comparatists, Glenn is aware that traditional forms of classification in comparative law are inadequate. Our nineteenth-century predecessors classified legal systems by their sources, but it is obvious to everyone that this will not do. Common lawyers have always drawn heavily on Roman sources, and civilians have always drawn on precedent. Islamic law has drawn on Roman law too. The influence of Islamic law on the west is evident in institutions as common as the check, and so on. Instead of imagining that we can differentiate legal systems by their sources, it might make sense to speak, as Glenn does, of different »traditions«, characterized in part by the central place they give to certain sources, but also characterized by their *mentalités*, by their habits of thought, by their concepts of the nature of authority.

Readers of *Rechtsgeschichte* will also find it an excellent idea to focus on the historical formation of the world's »traditions«, as this book

resolutely does. Nevertheless, lovers of serious scholarship will certainly dislike this book. Glenn has read widely in the western-language literature, he has some intelligent observations to make, and his heart is in the right place. Still this is a poorly executed, self-indulgent piece of work – even if, as advertised in its opening pages, it won the Grand Prize of the International Congress of Comparative Law, »presented by HRH Prince Philip, the Duke of Edinburgh«.

Glenn's book has a scheme. His early chapters offer a roughly chronological account of the emergence of »traditions« in the mediterranean basin and Europe. First, in Chapter 3, we are introduced to what Glenn calls »chthonic« law, a form of environmentally conscious law practiced by aboriginal peoples everywhere but most easily documented through the anthropology of Africa. Thereafter, in his account, everything slowly breaks away from the »chthonic«. First comes Talmudic law, »one of the earliest ... to separate itself from chthonic tradition« (86). Talmudic law is not, as readers might suppose, the law of the Talmud, but all of Jewish law, beginning with the Pentateuch. Unlike »chthonic« law, it is a law of revelation. Next we have Civil Law, which grew up in Europe, »a very chthonic place« as of about 3000 years ago (117). The rise of Roman Law put an end to that. The Civil Law is a law of the person, which means it has become concerned with human dignity. It is also a law which, after many centuries of development, has come, very much unlike »chthonic« law, to embrace change. Islamic Law and the Common Law follow. Both show important chthonic elements, but both are heavily dependent upon the post-chthonic traditions that preceded them.

* H. PATRICK GLENN, *Legal Traditions of the World. Sustainable Diversity in Law*, Oxford, New York: Oxford University Press 2000, XXIV, 371 S., ISBN 0-19-876575-4

The narrative becomes looser in the next two chapters, as we leave the mediterranean and Europe behind. First we have Hindu law, presented partly in reliance upon English-language treatises, partly in reliance upon Glenn's own »speculation« (260–261) about the Hindu mentality. Finally comes, in 38 pages, the law of Asia, »a big place, extending from Moscow« through »Turkey, Israel and Saudi Arabia«, on »through Pakistan and India, to Japan and the Philippines«. This chapter includes some remarks on Indonesian Adat, but is mostly concerned with the Confucian tradition in China, whose traditions once again emerged from a »clearly chthonic« early law (296).

Such is the scheme of Glenn's book. It has one undeniable beauty: It is easy for students to follow. Indeed, it is guaranteed to charm students, with its Rousseauian pathos of the tale of »chthonic« law, once our common possession when we were all close to the natural world, and still alive in our hearts. It is not hard to guess that this book has its origins in the lecture notes of a popular teacher. But Glenn's scheme is obviously too rickety a structure for a serious exploration of its subject. Even Glenn seems sometimes to know this, as his footnotes occasionally indicate. »Chthonic« is an amusing word, which undoubtedly gets laughs from the students all semester long. But what careful scholar would talk about the »chthonic« law of all the human world, 3000 years ago, without forthrightly acknowledging the chanciness of the generalization? Infelicities and errors abound. Talmudic law is not the same as Jewish law. Why say that it is, while burdening students with embarrassing misconceptions, such as that Jesus criticized the talmudic tradition? (109) Jewish law did not emerge from the »chthonic« tradition, but followed several centuries of learned ancient Near

Eastern tradition. Is that a truth too complicated, or too boring, to be told? Many solecisms seem the product of Glenn's effort to tell as simple a story as possible. The history of Roman law is easier to grasp if we pretend that there was always formulary procedure until it finally vanished »in the fifth century A. D. (when nobody was really minding the store)« (119). But – leaving aside the inanity of the parenthetical lecture-hall remark – is it really appropriate to distort a complex truth so blithely? Yes, it is surely good that students should learn something about Hindu law. But are we really doing more good than harm when we tell them that the Upanishads »have been around almost as long as the Vedas«, instead of devoting a few sentences to the elementary facts about two profoundly different stages in the development of Hindu tradition (261)? And on it goes.

As for the methodology of »traditions«: It is poorly worked out. Glenn begins with two rambling chapters on the nature of »traditions«, legal and otherwise, which offer no defense of the concept of »tradition« as an organizing concept. This failure to address basic methodological questions haunts the text thereafter, both in its history and in its comparative law. Speaking of »traditions« is certainly an appealing idea, but any history of »traditions« manifestly risks becoming an internalistic one – one that takes too little account of political, social and economic forces. It also risks committing the intentionalist fallacy famously attacked by Quentin Skinner. Glenn's book is dotted with self-confident verdicts that display his indifference to all such methodological dangers. »From whenever roman law began, to the present«, we are told, »there has been a major, and ongoing discussion (maybe argument here would be more appropriate) as to what European law should be« (116–

117). Maybe this hopeless anachronism has some utility for student note-takers. Or again: »Early on«, we are informed, with regard to one of the fundamental problems of human history, »China developed [many inventions] ... [but] then seems to have decided, in a consensual non-formal way, that that was probably as far as things should go« (300). What are we supposed to make of this breezy pomposity? Maybe it is meant, once again, to capture the attention of students. As for the methodology of comparative law: Glenn never relates his approach to the approaches of any other scholar. This is particularly frustrating, considering the high methodological standard set by figures like Zweigert and Kötz, Watson and Sacco.

When His Royal Highness awarded the Grand Prize to this book, it was, one hopes,

more for its admirably ecumenical spirit than for its contribution to scholarship. The *Legal Traditions of the World* might make a good text for weak students who need a few lessons in the love of their fellow man. Even those students, though, should not be asked to wade through the garrulous first two chapters. Some readers will probably be moved by Glenn's »speculations« about the mentalities of his assorted traditions. Others, though, are going to want more law, more careful thinking, more scrupulous history – a different book.

The chapter on Islamic law, it should be said, despite its misspelling of »qiyas« as »qyas«, is generally not bad.

James Q. Whitman

Epoche – Mentalität – Praxis

Das justinianische Zeitalter neu aufgeschlossen*

Der Gestaltungswille des Mächtigen und die Begrenztheit seiner Gestaltungsmöglichkeiten; das Unerwartete, Katastrophische als Einbruch in das Gleichmaß des Alltags und als Verdunkelung des Wegs zu einem angepeilten Ziel; das Gefühl, in einem anderen, neuen Zeitalter zu leben; die Erklärungen und Rituale, die bemüht werden, um mit einer bedrückenden Wirklichkeit fertigzuwerden: Es ist vor allem das Gebundensein an Grundelemente kultur- und epochenübergreifender menschlicher Erfahrung, was das Geschäft des Historikers von anderen Disziplinen, die sich so gern ihre ganz eigene, ganz abgeschlossene (Labor-)Welt bauen wollen, unterscheidet. Geschmiedet und geläutert werden

diese Bausteine des Humanum zu Konzepten und Begriffen wie Persönlichkeit und Geschichte, Kontingenz, Epoche oder Mentalität. Diese entwickeln dann im schlechteren Fall ein Eigenleben oder sie verkommen zu Schlagwörtern beim unreflektierten Rekonstruieren von »Wirklichkeit«. Mitunter aber strukturieren und temperieren sie das Fragen und Forschen so, dass am Ende der Lektüre zugleich Spezialisten etwas Neues erfahren und Nicht-Spezialisten etwas gelernt haben, was ihr eigenes Koordinatennetz von Geschichte und Historie dichter und fester zu knüpfen vermag. Mischa Meiers Buch leistet beides; es ist daher eine Zierde für den Autor, für den Leser ein ausgesprochener Glücksfall.

* MISCHA MEIER, *Das andere Zeitalter Justinians. Kontingenzerfahrung und Kontingenzbewältigung im 6. Jahrhundert n. Chr.* (Hypomnemata, Bd. 147), Göttingen: Vandenhoeck & Ruprecht 2003, 739 S., ISBN 3-525-25246-3