

Contexts and Comparisons

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Mary Ann Glendon *Abortion and Divorce in Western Law: American Failures, European Challenges*. Harvard University Press, Cambridge, Massachusetts and London, England, 1987. Pp 197. \$25.00.

I. INTRODUCTION

I was intrigued by the Introduction to Mary Ann Glendon's new book, *Abortion and Divorce in Western Law: American Failures, European Challenges*. The author claims that her book will provide an opportunity to look at the evolving legal regulation of abortion and divorce from a perspective touted as a "powerful new method of legal interpretation."¹ Professor Glendon instructs the reader that she seeks to employ a "comparative law" perspective to examine these two areas of family law.

This comparative perspective, Glendon asserts, reveals that the legal positions the United States has adopted on both the abortion and divorce issues represent "extremes" when compared with those other countries have developed. Further, a comparison of the laws in the United States with the laws of other countries assists in understanding and explaining this difference. As the title to the book indicates, Glendon views the United States' solutions to the issues involved in abortion and divorce as "failures" and believes we have much to learn from our European colleagues. Glendon concludes that in America, in contrast to most European countries, the rights of women have been protected at the expense of fetal life, and there has been a failure to consider the difficult issues the abortion controversy presents. As for divorce, she contends that legislators and judges in the United States have imple-

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¹ This claim is made on the dust jacket of the book. Professor Glendon asserts that her hope is that the methodology "will give us insight into our own situation and . . . occasionally help us to find . . . 'our own paths through the forest.'" Mary Ann Glendon, *Abortion and Divorce in Western Law: American Failures, European Challenges* 1 (Harvard, 1987). All page references in textual parentheticals are to this book.

mented unilateral no-fault divorce without regard to the economic vulnerability of women and children. She is critical of our failure to provide for dependency and to balance needs with rights.

Glendon would be more comfortable with what she interprets as the European solutions. Abortion would be appropriate when the woman is in "distress" or there is some fetal abnormality. Divorce would be restricted, with long waiting periods, and fault would reenter the equation as a basis for economic and other decisions. Glendon sees these solutions as symbolically more satisfying and as fostering ideals such as responsibility and commitment rather than individualism and self-centeredness.

Initially, I was puzzled that Glendon chose to consider two different topics, either of which alone would have been more than sufficient for examination through a comparative analysis. Both subjects, of course, may be viewed as embodying moral responses to important aspects of life involving intimacy and reproduction, but why she paired them for purposes of this book was not clear. Other than the fact that these are both subjects normally considered in a survey family law course, I could see no obvious reason why and how they fit together for purposes of comparative legal analysis.

Furthermore, asking a reader first to consider abortion alongside divorce, and then to compare the treatment of both across nations, seemed to make the task unnecessarily complicated. Describing adequately and then applying a novel and imaginative methodology to two massive topics in order to expose the political and moral bankruptcy of the resolutions in the United States seemed too heavy a burden for a mere 197-page (including three appendices, notes and an index) book.

Of course, one similarity is that the laws concerning both topics underwent extensive changes in the past two decades in almost all the countries the book considers. These changes uniformly resulted in more liberalized state restrictions with more autonomy for individuals. Such reforms, at least in the United States, were the products of changing societal values that generated widespread dissatisfaction with the expressed law. The significant similarity between abortion and divorce to Glendon, however, appears to be that in both areas the United States has adopted what she considers to be extreme legal solutions that are at odds with the "widespread popular sense of how to deal with a difficult social problem that has no good solution." (p 75) Glendon contends that "our legal vocabulary and imagination have been inadequate to the task of telling the kind of story most Americans would want to tell

about the sad and complex issues involved in divorce and abortion." (p 113) According to Glendon, more appropriate stories are revealed by the comparative method.

These are indeed weighty claims to make for any methodology, and they inclined me to give both the development and application of the methodology close attention. For that reason, this review does not directly engage Glendon on the level of her substantive preferences for resolving the abortion and divorce dilemmas. I am much more interested in how she develops and uses comparative methodology. Unfortunately, while Glendon initially presents the outlines of an interesting technique of legal analysis in her description of comparative legal methodology, she fails in this book—under the terms she herself defines—to adequately employ this methodology. The comparisons she offers are superficial and out of context. She does not present the content and texture of "the law" in the various countries so as to convince the reader that European solutions can be transplanted, and their stories translated for Americans. Ultimately, she does not deliver anything more convincing than strongly asserted conclusory statements that leave the reader at worst confused, and at best curious, as to what prompted them. Our understanding of Mary Ann Glendon's perspective is enhanced, but our knowledge of the European "challenges" is not.

II. COMPARATIVE METHODOLOGY

A. Construction of the Methodology

In her Introduction, Professor Glendon describes the evolution of the traditional idea of comparative legal analysis. She indicates that comparative analysis has moved from its nineteenth-century beginnings as an undefined compilation of a variety of methods of looking at the law to its present-day systematic study of other legal systems. Contemporary comparative methods, we are informed, take us beyond concentration on formal legal rules, institutions and procedures. The modern inquiry is into how the components of a legal system actually operate in practice.

Glendon describes the comparative methodology as one that considers the law in its "full social and economic context." (p 4) In addition, the application of the methodology reveals the "complex interactions among law, behavior, and ideas, and . . . explore[s] the connections between legal and social change." (p 4). Law, or the study of law using the comparative technique, is thus understood to be a "heuristic device" that reached its "highest form in the

legal sociology of Max Weber.” (p 4) Glendon argues that this methodology will provide Americans with an awareness of foreign experiences with legal reforms and will have a positive impact on our own efforts to resolve the questions that difficult areas of social and legal policymaking pose. Presumably, it will reveal alternative (better) solutions to those that Americans have developed.

Glendon further expands this emphasis on the educational or instructive potential of the comparative study of law in her rather lengthy recounting of the dialogue in Plato’s *Laws* between the strangers on their way to Crete. Glendon presents this dialogue as an argument for the value of comparative analysis. She characterizes the dialogue as focused on the educational potential of law for the citizenry rather than on what would be the “right” law for the state. (p 5) She notes that Plato’s Athenian Stranger “continually brings the discussion around to the classical idea that the aim of law is to lead the citizens toward virtue, to make them noble and wise.” (p 6)

From Plato Glendon jumps to the more contemporary work of James Boyd White and Clifford Geertz and weaves them into her justification for use of comparative methods in the study of law. Introducing these contemporary scholars into her analysis allows Glendon to suggest the appropriateness of comparisons of the “stories,” “visions” and “symbols” that the laws of various countries represent. Glendon’s subsequent presentation of the comparative method of legal analysis owes much to White and Geertz. Throughout the text she continually refers to their insights as illuminating the results of her comparative study of abortion and divorce. Glendon is enamored of Geertz’s suggestion, for example, that laws tell us “stories” about the society from which they came.

Geertz, Glendon tells us, viewed law as the “way that a society makes sense of things,” as a “‘distinctive manner of imagining the real.’” (p 8)² Viewing law in this way leads to two central inquiries. First, we must focus on the manner in which legal systems characterize factual situations. Second, we must examine how legal norms are conceived. (p 8) From a comparative perspective this focus allows us to examine differences in the stories, symbols and visions that different legal cultures present in their laws.

Glendon tells the reader that the stories presented have a “powerful influence not only on how legal norms are invented and applied within that system, but on how facts are perceived and

² Quoting Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* 184 (Basic Books, 1983).

translated into the language and concepts of the law." (p 8) She believes that the stories underlying the law reflect who we are, where we came from, and where we are going. They affect our lives as much, if not more, than the "specific rules, standards, institutions, and procedures" that compose the Law. (p 8) In this way, she carries forward her major theme of the educational value of law and its underlying stories, which is also her major justification for comparative analysis. Glendon labels this educational function as the law's "constitutive" nature, picking up on a term used by White in his important 1985 article on language and rhetoric.³

It is at this point that one of the more problematic aspects of Glendon's presentation (as contrasted with her application) of comparative methodology is revealed. Even though Glendon would appear to have been more comfortable relying on Plato, and in fact returns to the Athenian Stranger in the last few pages of the text, she ultimately relies on and adopts White's and Geertz's concepts of the educational or constitutive nature of the rhetoric of law as her fundamental argument for the use of comparative analysis.

There is a problem, however, with this matching of the classical and the modern as support for a unified vision of the educational nature of law. Glendon places on the same spectrum Plato's notion of education, based as it is on a belief in essentialism and the idea of a transcendental, realizable truth, and the contemporary discussions of law as rhetoric (White), on the one hand, and law as symbolic anthropology (Geertz) on the other. This is a problematic placement to be sure.

The very introduction of the concepts of "noble and wise" in Plato as the educational goal of law implies that some solutions are better (nobler and wiser) than others. In this hierarchical vision, law and, hence, the lawmaker serve the function of educating the populace. Truth is to be discovered, moved toward, symbolized. This is certainly one way to articulate and understand "education." It seems apparent from the very beginning of her book that Glendon has some firm notions of what are the "right" (or at least "better") resolutions of the problems associated with abortion and divorce. The European solutions revealed by comparative methodology instruct Americans as to what is "noble and wise."

Both White and Geertz, by contrast, are concerned with language and symbolism and the significance of law as rhetoric. How-

³ James Boyd White, *Law as Rhetoric, Rhetoric as Law*, 52 U Chi L Rev 684, 688 (1985). White defines and describes the constitutive aspects of law and rhetoric at 688-89, and the significance of stories at 696-98.

ever, Glendon does not seem adequately to appreciate the insights to be gained from their work. For example, she does not seem to be aware that, for White and Geertz, the very content and meaning of a concept such as "education" is not fixed, but is a matter of interpretation, affected by time, culture and context. For example, the meaning of "education" may be very different when used to discuss the theories of White as contrasted with Geertz, let alone when compared with Plato's conception of the term centuries ago. If this is true of such a seemingly neutral term, imagine what differences in meaning and content can exist in terms such as "noble" or "wise." The failure to appreciate that the same word may signify different realities leads Glendon to use the language and ideas of theorists such as Geertz and White without understanding the more radical implications of their theories.

For example, her appropriation of White's terms (e.g., "constitutive") should not obscure the fact that there seem to be important differences in the ways she and White view the constitutive (or educational) nature of law. Glendon seems to view lawmaking as a process involving conscientious and conscious choices of values by lawmakers who then use law to educate the populace. This approach is much in line with Plato's vision of law. Glendon views law as having much more of a transformative power than White, as being instrumental in moving society from point x to point y along some path rationally chosen because of the desirability of the values represented. In essence, her entire book is an argument that the images we project in our laws will, and can, have a profound impact on who we are and where we go as a society. This is an essentialist and a utilitarian view, whereby laws operate upon people, and, thus, upon society, having a constitutive effect. Law can be utilized to construct and implement what is "noble and wise."

By contrast, both White and Geertz assert that the reality is in the expression of the rule, that there is no meaning outside of representation, no objective truth to be discovered, realized and represented. Further, insofar as such representation constitutes "reality," that reality is itself embedded and integrated into a web of concurrent realities that are also expressed rhetorically. In other words, White and Geertz question whether it is possible to make an objective assessment as to what is unchangingly "true" or expresses the "noble and wise" value. White expresses this idea in this way:

Both the lawyer and the lawyer's audience live in a world in which their language and community are not fixed and certain but fluid, constantly remade, as their possibilities and limits

are tested. The law is an art of persuasion that creates the objects of its persuasion, for it constitutes both the community and the culture it commends.

This means that the process of law is at once creative and educative . . . both the identity of the speakers and their wants are in perpetual transformation . . . the law cannot be a technique . . . by which "we" get what we "want," for both "we" and our "wants" are constantly remade in the rhetorical process.⁴

One cannot make the leap from Plato to White and Geertz as Glendon does without a considerably longer explanation of how these theorists work together.⁵ Their positions, far from supporting each other, seem to undermine each other and cannot be used as support for the same method or theory. Geertz, for example, is an anti-Platonist who challenges the whole concept of essentialism or truth as a transcendental, discoverable, universal reality.⁶ Since White's work is rooted in an appreciation of context—factual and specific differences that produce reality more than they allow for its discovery—he also challenges such beliefs. It is possible to interpret both of these scholars as focusing on "education," although within the context of their work it would seem that the task of education is not the same as Plato's, namely to instruct or reveal what is "noble and wise." Rhetoric does not reveal reality, it *is* reality, representing to Geertz and White an aspect of the community and society. The education provided in this manner is sociological or anthropological. Education occurs in confronting the reality that constitutes the rhetoric of law. This is a far different perception from Glendon's. She asserts the ability (and desirability) of the law to embody an abstract and objective moral principle that can be used to educate society.

These observations about Glendon's construction and presentation of comparative methodology lead to consideration of a second serious problem with Glendon's book, that of application. She

⁴ White, 52 U Chi L Rev at 691 (cited in note 3).

⁵ Glendon merely states that "recently a few American scholars have begun to talk about looking at law in a way that would not have sounded entirely strange to Plato" as a way of introducing White's ideas about law as rhetoric. She describes Geertz as presenting a "related invitation or challenge directed specifically to comparatists." (p 8)

⁶ The juxtaposition of Plato and Geertz is particularly interesting. Geertz is recognized as one of the major proponents of an anti-Platonist view, asserting that there is no essential or inherent meaning to rhetoric and, hence, no value in the Platonist's search for a transcendent reality. Richard A. Shweder, *The How of the Word*, NY Times Book Rev 13 (Feb 28, 1988).

fails to employ, on its own terms, the comparative method she herself develops from the work of Geertz and White.

B. Application of the Methodology

One promising aspect of Glendon's initial description of comparative analysis is that it supposedly places the things considered in context. (p 4) This emphasis on context is consistent with feminist methodology and other methods or theories that look beyond broad abstractions to the details of expression and experience. Unfortunately, Glendon's book fails to take context seriously. That the consideration of the topics is superficial and not in context is evident from the coverage of twenty countries and two broad and complex areas of relation regulation in 142 pages of text and thirty-two pages of footnotes. What is missing is context. All that she compares are some abstract doctrinal representations. Although touted initially, in Glendon's hands the grand tool of comparative analysis ultimately is no more than a device to string together a superficial collection of incomplete doctrinal strands torn from the complex fabric of laws in a variety of countries. Comparative analysis seems a subterfuge, a way to obscure the presentation of political or moral positions, to cloak them with a mantle of objectivity. The author in this way does not have to explain why or how she reached her conclusions and, thus, can avoid responsibility for them. Cut free of context, moral or political preferences are presented as absolutes, not as interpretations, their existence alone substituting for an explanation of why and how they are warranted.⁷

Looking at the work of White and Geertz, however, one would not expect comparative analysis to resort to segmented, disembodied doctrinal expressions used to bolster a political or moral

⁷ I cannot resist pointing out that Glendon's treatment of substance is as problematic as her treatment of methodology. In neither instance is her exploration put in context. For example, Glendon states that the doctrinal law of Belgium, although severe on its face, nonetheless in practice sometimes makes it easier to obtain abortions than the superficially more lenient laws of West Germany. She avoids any issues such an observation might raise by asserting that the "main purpose of the inquiry here, however, is not to ascertain how easy or difficult it is for a pregnant woman to obtain a legal abortion. It is rather to examine the messages about such important matters as life and liberty, individual autonomy and dependency, that are being communicated both expressly and implicitly by abortion regulation." (p 15) Glendon does not explain why a "law in action" perspective, one which considers how the law operates in practice, is not as significant as the purely doctrinal presentation. Nor does she consider why practice is not considered an essential part of communication in a comparative scheme—why what happens in practice does not represent an important part of the message delivered by the law in a society.

preference. Rather, one would hope that comparative analysis would embody the complexity and fullness of the expression of law. Comparisons should be of laws *placed in context*. Consider this quote from White:

Like law, rhetoric invents; and, like law, it invents out of something rather than out of nothing. It always starts in a particular culture and among particular people. There is always one speaker addressing others in a particular situation, about concerns that are real and important to somebody, and speaking a particular language. Rhetoric always takes place with given materials. One cannot idealize rhetoric and say, "Here is how it should go on in general." . . . [R]hetoric is always specific to its material.⁸

For comparisons to be beneficial it is necessary for the laws compared to be discovered, translated, accessible and understood. There are always dangers in comparisons, particularly if one's knowledge of the things to be compared is not symmetrically complex. Comparative legal analysis based on White's insights must begin with an exploration of whether or not there are enough contextual similarities in the problems confronted. In addition, a consideration of the practical and material, cultural and societal limits placed on solving such problems would seem essential before one could make a generalization that would be instructive across nations. Comparative analysis would have no "educational" value, even in Glendon's terms (as applied or symbolic morality), if one were comparing apples and oranges. For comparative analysis to be effective it must explore context and consider the similarities and differences between the contexts being compared. It must make sure that even though the species is different, nonetheless, it is apples at which we are looking.

Another way of presenting the same point is to consider the question of constraints. Geertz, for example, noted:

. . . [C]ulture is best seen not as complexes of concrete behavior patterns—customs, usages, traditions, habit clusters—as has, by and large, been the case up to now, but as a set of control mechanisms—plans, recipes, rules, instructions (what computer engineers call "programs")—for the governing of behavior. [Also] man [sic] is precisely the animal most desperately dependent upon such extragenetic, outside-the-skin con-

⁸ White, 52 U Chi L Rev at 695 (cited in note 3).

trol mechanisms, such cultural programs, for ordering his [sic] behavior.⁹

Whether we can understand constraints or limitations, and thus interpret reality, is dependent on context. Without context there is no meaning:

If anthropological interpretation is constructing a reading of what happens, then to divorce it from what happens—from what, in this time or that place, specific people say, what they do, what is done to them, from the whole vast business of the world—is to divorce it from its applications and render it vacant. A good interpretation of anything—a poem, a person, a history, a ritual, an institution, a society—takes us into the heart of that of which it is the interpretation.¹⁰

Comparative analysis informed by context, consistent with White's and Geertz's insights, should at a minimum explore the cultural foundations of the societies to be compared—the beliefs and values that give it direction—and the institutions that are the social-structural and political instruments through which such values are expressed.¹¹ It seems to me that there are, at a minimum, two different contexts for the abortion and divorce comparisons that Glendon should have considered. First, she should have provided both political and historical information about the various countries to place their laws in context. In addition, she should have provided social and legal information about these countries.

Glendon discusses neither who the major political actors were nor how their ideas and values might have affected the reforms in the countries she compares with the United States. Such information would not only have enriched the chapter on abortion, for instance, but seems essential to the presentation and understanding of the abortion stories from other countries she asks us to consider and compare.¹² France, a country whose laws on abortion Glendon

⁹ Clifford Geertz, *The Interpretation of Cultures* 44 (Basic Books, 1973).

¹⁰ *Id.* at 18.

¹¹ Geertz introduces this two-tiered method of inquiry as the appropriate way of discovering the "reality" of Bali society. *Id.* at 331.

¹² In the text I focus on the abortion discussion, but Chapter Two, which deals with divorce, has the same problems. Context is missing in Glendon's discussion of divorce. There are no descriptions of the societal and political cultures, and no identification of the political actors.

In her divorce chapter Professor Glendon utilizes the comparative method to argue for a system of different rules to govern divorces in marriages with children. Decades ago the legal classification of two types of marriage was proposed by Judge Ben Lindsey. See the description in Martha L. Fineman, *Law and Changing Patterns of Behavior: Sanctions on*

cites with approval, has a large Catholic population. It also has a unique feminist discourse and literature that has helped to articulate the cultural reality of French motherhood and female sexuality. Glendon could have profitably compared and contrasted this to the rhetoric and ideas that women have developed in the United States. Neither the religious nor the secular interest groups, certainly sources of conflicting stories about abortion, are even mentioned. Yet their realities are essential to our understanding and should have been integrated into the discussion of the changes of the doctrinal rules that occurred. Is it that Glendon does not believe that interest groups have had any impact on abortion reform, or is it that she views the concerns and content of these interests as being the same across these cultures? Either conclusion we should question.¹³

Also missing is a discussion of the more basic political cultures of the nations she compares. Certainly the concept of "state" is different in France with its more homogeneous population and spe-

Non-Marital Cohabitation, 1981 *Wisconsin Law Review* 275, 319-20. More recently Judith Younger has suggested more restrictive divorce rules for couples with children. Judith T. Younger, *Marital Regimes: A Story of Compromise and Demoralization, Together With Criticism and Suggestions for Reform*, 67 *Cornell Law Review* 45, 90-94 (1981). None of these plans seems to have amounted to very much, and there is no indication in Glendon's book that such rules exist in other countries. She feels that "children's interests" should come first, but doesn't tell us how such different treatment works.

The superficiality of Glendon's treatment of the topic is also evident in her suggestion that custody battles may be resolved by resort to a "primary caretaker" rule. This should have been considered in the context of some of the criticisms of such a rule. Feminists, in particular, have been quick to note that such a rule deepens the stereotypical presentation of women as stay-at-home caretakers with the result that women who deviate from that model may suffer by losing custody of their children even when they perform virtually all the parental caretaking after work. Given that a majority of women now hold jobs outside the home, this is a point well worth discussing when one is proposing solutions or offering suggestions for reform. See, Martha L. Fineman, *Dominant Discourse, Professional Language, and Legal Change in Child Custody Decisionmaking*, 101 *Harvard Law Review* 727, 770-74 (1988).

¹³ Glendon does tack on a few pages of text on abortion as a "women's issue" (pp 50-52), but this section does not contain a discussion of either the political or theoretical implications of the realization that it might be a *woman's* issue. This section rapidly reduces itself to a rather superficial consideration of the tired themes presented in Carol Gilligan, *In a Different Voice* (Harvard, 1982), without considering that the way women talk about the abortion issue might have some impact on the way that the various societies perceive the issue. Glendon's failure to address the differences in feminist thinking across the cultures implies either that feminist rhetoric is irrelevant, or that there are no significant differences among feminists from countries such as France as opposed to those from the United States. Either of these conclusions would be inaccurate. See generally, Claire Duchon, ed, *French Connections: Voices from the Women's Movement in France* (Univ of Mass, 1987); Elaine Marks and Isabelle deCourtivron, eds, *New French Feminisms* (Univ of Mass, 1980); Toril Moi, ed, *French Feminist Thought: A Reader* (Basil Blackwell, 1987).

cific historical position, from what it is in the United States. Even in England the notion of the legitimacy of governmental involvement in citizens' day-to-day lives is received very differently from the way it is received in the United States. In fact, some comparativists have gone so far as to assert that Americans have institutionalized their distrust of all government so that the "powers of government are limited, divided, checked, and balanced," in contrast to the English system which is a "well integrated machine in which the various constituent parts operate with a high degree of trust for each other's functions and role."¹⁴

Surely this type of political context may help us to understand and compare the laws that arise from the different cultures. Whether regulatory government policies and officials are viewed as helpful and performing a protective function or as the enemies of individual liberty and freedom could help explain why some countries accept the "burdens" on the abortion decision that the United States does not.¹⁵

In addition to her failure to provide social and political context, Glendon neglects to give the reader any information regarding differences in legal cultures. This omission is even less understandable for a book that presents itself as a comparative legal analysis. Glendon's presentation proceeds as though the process of lawmaking occurs under the same conditions in all the countries considered. She then makes comparisons of legislative products without reference to the processes of production. Surely differences in legal culture operate as significant constraints on the construction of law. One cannot assume that all legal cultures are the same. In fact, other authors using comparative methodology have found that countries as superficially similar in legal traditions as England and the United States "differ profoundly."¹⁶

¹⁴ P. S. Atiyah and Robert S. Summers, *Form and Substance in Anglo-American Law: A Comparative Study of Legal Reasoning, Legal Theory, and Legal Institutions* 40 (Clarendon, 1987).

¹⁵ Hidden in Glendon's consideration of the abortion issue are some obscure references to the different political cultures such as her notation that the French have a different drafting tradition (p 129), or that on the European continent, older ideas about law survived. (pp 57, 120) But these are too scanty to provide any serious context for a consideration of the limitations or impact distinct political traditions may have had and continue to have on the resolutions of the issues she discusses.

¹⁶ For example, Atiyah and Summers state:

First, substantive *reasoning* is used far more widely than formal reasoning in the American system . . . while in the English system, the reverse is true. Secondly, this difference in methods of reasoning reflects a deep difference in legal style, legal culture, and, more generally, the *visions* of law which prevail in the two countries. [We] suggest a number of explanations for these differences, which are mostly drawn from institu-

Glendon's last chapter makes passing reference to selected historical themes that she sees as underpinning the American notion of individualism and the early philosophical justifications for rules. However, this chapter does not remove my objections to her lack of context. In fact, in some ways this last chapter is the most disappointing. It seems to have been tacked on with little expressed relationship to the laws or "stories" discussed in the earlier chapters. It is full of generalized, sweeping statements about the nature of individualism and the lack of community in the United States, statements that discount the experiences of many subcultures in American society. The section is partly historical, partly philosophical and partly pop psychology or sociology and, in my opinion, does not remedy the glaring omissions of context in the chapters on divorce and abortion.

III. CONCLUSION

Context is essential to comparison, and context is what is missing from Glendon's book. Without it the reader is compelled to accept Glendon's interpretation (for that is all in the end that she offers) of what the laws are and what stories are told in the various countries.

This issue of interpretation—who interprets and what authority the interpretation carries—is significant. White and Geertz understand that multiple interpretations are possible. Without context for her interpretation we cannot get into the "heart of that of

tional, historical, and cultural differences between the two countries. Atiyah and Summers, *Form and Substance in Anglo-American Law* at 1 (cited in note 14) (emphasis in original).

At the conclusion of their lengthy and detailed comparison of the English and American systems the authors state:

It now seems to us that legal theorists would do well to approach many of the standard questions of jurisprudence at a lower level of abstraction, a level that at least takes account of *basic* variations in the phenomena of law from system to system. . . . We believe that the answers to most such questions will depend in major part upon the degree to which a given legal system is (appropriately) more formal or (appropriately) more substantive, matters that cannot be ascertained in the abstract. . . . It is plain that in both England and America people use the *concept* of law, the *concept* of legislation, the *concept* of a judge, and the *concept* of precedent. But—to borrow a distinction first used by W.B. Gallie, and subsequently by John Rawls and Ronald Dworkin—it seems to us evident . . . that, at an intermediate and at a still lower level of generality, these phenomena do differ, even in basic ways. Accordingly, the appropriate *conceptions* of these phenomena also vary. And surely the primary task of the theorist here must be to devise conceptions and terminology which can be used to represent *those phenomena* faithfully.

Id at 416-17 (emphasis in original) (footnotes omitted).

which it is the interpretation." The whole story is not conveyed. A moral without the rest of the story, interpretation without context, is "divorc[ed] from its application and render[ed] vacant."¹⁷

Glendon's conclusions are vacant. She argues that the United States' adoption of extreme versions of solutions to the abortion and divorce dilemmas reflects Americans' difficulty in "articulating the richness of their personal commitments." (p 113) She also concludes that the distinct American story found in our laws is related to other stories in our culture, those about "self-reliance, individual liberty, and tolerance for diversity." (p 114)

In the abortion context she interprets the story American law tells as focusing on individual rights. This leads to her assertion that the abortion decision "present[s] us with the image of the pregnant woman as autonomous, separate, and distinct from the father of the unborn child (and from her parents if she is a minor), and insulated from the larger society which is not permitted even to try to dissuade her or ask her to wait to get counseling, information, or assistance . . . [and] is more distinctively American than it is masculine in its lonely individualism and libertarianism." (p 52)

Glendon's own blindness to the rich interpretive possibilities of comparative analysis even within our own culture prevents her from seeing that this is only one possible American story. One could interpret the law governing abortion in this country not as individualistic and reflecting a lack of responsibility and commitment, but as exactly the opposite. The decision by our Supreme Court in *Roe v Wade* can be seen as giving expression to the notion of unity or continuity between mother and child. Giving women choice rejects the troublesome, individualistic conceptualization of a "maternal-infant" conflict that places a woman in an adversarial role with the fetus she carries. The individualistic conceptualization is more alienating than one that assumes women act in their own interest and that of their fetus and should be free of state supervision and control. Looking at the American abortion story as one that exhorts the mother-child bond, particularly in the context of women's economic and reproductive lives, is the story I prefer—the interpretation that is my reality. And, ultimately, after all, it is only a matter of interpretation—interpretation in context.

¹⁷ Geertz, *The Interpretation of Culture* at 18 (cited in note 9).