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Review of M. Glendon: The Transformation of Family Law: State, Law, and Family in the United States and Western Europe

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The Transformation of Family Law: State, Law, and Family in the United States and Western Europe.

By Mary Ann Glendon.[1] Chicago and London: The University of Chicago Press. 1989. Pg. xv, 320.

I. INTRODUCTION

Professor Mary Ann Glendon's book, *The Transformation of Family Law*,[2] chronicles the changes in family law which have occurred over the last hundred years, with special emphasis on the more radical changes in the last two decades. Professor Glendon generally refrains from judging these changes, and instead concentrates on explaining what the changes are, how they affect family law, and why they have occurred. This approach is markedly different from an earlier work, *Abortion and Divorce in Western Law*,[3] in which Professor Glendon advocated sweeping changes for American family law.[4] *Transformation* more closely resembles another Glendon effort, *State, Law and Family: Family Law in Transition in the United States and Western Europe*, which objectively presented a comparative survey of family law in several Western nations.[5] Because of the many changes occurring in the family law area since the 1977 publication of that book, Professor Glendon wrote *Transformation* as a successor to *Family Law in Transition.*

Because *Transformation* is largely an objective recounting of the changes occurring in the family law arena, the major portion of this review will focus on summarizing the findings of Professor Glendon. Special emphasis will be given to those areas of

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1. Professor of Law, Harvard University.

2. M.A. GLENDON, THE TRANSFORMATION OF FAMILY LAW: STATE, LAW, AND FAMILY IN THE UNITED STATES AND WESTERN EUROPE (1989) [hereinafter TRANSFORMATION].

3. M.A. GLENDON, ABORTION AND DIVORCE IN WESTERN LAW: AMERICAN FAILURES, EUROPEAN CHALLENGES (1987) [hereinafter ABORTION AND DIVORCE IN WESTERN LAW]. Professor Glendon sets the stage for her proposals by comparing American abortion and divorce laws with those of most major Western nations.

4. For a more detailed discussion of the differences between the two books, see *infra* notes 65-68 and accompanying text.

5. M.A. GLENDON, STATE, LAW AND FAMILY: FAMILY LAW IN TRANSITION IN THE UNITED STATES AND WESTERN EUROPE (1977) [hereinafter FAMILY LAW IN TRANSITION].

the book where Professor Glendon deviates from an objective recounting of the recent transformation of family law. Following the summary, a brief response will be given.

II. SUMMARY OF *The Transformation of Family Law*

The Transformation of Family Law is a comparative work, focusing primarily on family law in the United States, Great Britain, West Germany, France, and Sweden. Professor Glendon's comparativist approach illustrates that the transformation of family law is common to many countries. The comparativist analysis of how and why other countries have transformed their body of family law leads to "a heightened awareness of the ways in which other nations have approached problems with which [the United States'] legal system is currently struggling."[6] Indeed, the United States has much to learn from the successes and the failures of other countries in the area of family law.

A. Formation of Legal Marriage

At the outset of the book, Professor Glendon provides the reader with a historical overview of how the law came to regulate familial behavior. She notes that societal norms surrounding marriage and divorce were largely dictated by custom and tradition until the desecularization of marriage and divorce was brought about by ecclesiastical intervention. The final step toward legal control of family law procedures occurred with the resecularization of marriage and divorce beginning with the Enlightenment.[7] This historical overview sets the stage for Professor Glendon's discourse on further changes which family law has undergone since its resecularization. The author first looks at the changes surrounding the actual formation of marriage, addressing such issues as who may marry, who may marry whom, what premarital procedures must be undertaken, what formalities are necessary to solemnize marriage, and what she calls "the ideologizing of the freedom to marry."[8]

The section on who may marry focuses on the legal eligibility to marry. The author looks at the different ways in which England, France, West Germany, and the United States have treated marital prerequisites such as minimum age, parental

6. TRANSFORMATION, *supra* note 2, at 4.
7. *Id.* at 31.
8. *Id.* at 75.

consent, and restrictions on remarriage. The contrast between the approaches is striking. The British and the United States' approaches are more permissive than the French and German systems. Nevertheless, some similarities remain. All four countries have regulations concerning when and under what conditions a person may marry. These regulations notwithstanding, in all four countries any marriage voluntarily entered into will generally be recognized as legal unless challenged.

Professor Glendon reports that there are now very few restrictions on who may marry whom. England, France, West Germany, and the United States all have basically forsaken restrictions in this area with the exceptions of prohibitions on simultaneous marriage, homosexual marriage, and marriage between close relatives.[9]

The author makes it clear that premarital procedures have come full circle. Early marriage was largely a thing of custom. In old England people lived as if they were married and by custom they were considered married by society. With the subsequent intervention of ecclesiastical control over the marriage ceremony, more stringent marital prerequisites, such as the *banns of marriage*,[10] became the norm. Later, as the marriage procedure became resecularized, additional requirements were imposed on couples wishing to marry. Generally, parties were required, as they are today, to receive a marriage license prior to performance of the wedding ceremony. To obtain the license, the parties intending to marry were usually required to obtain medical clearance, give public notice of the intended ceremony, produce their birth certificates, and wait a certain length of time between registration of the marriage and the ceremony. Vestiges of these requirements still exist in England, France and West Germany. However, observance of the requirements is easier, and penalties for non-compliance are less severe. Because United States marriage regulations are promulgated by the different states, Professor Glendon indicates that there are many different marriage regulatory schemes. The Uniform Marriage and Divorce Act (UMDA) does provide some measure of stability in this country, since most states have either adopted the UMDA in its entirety,

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9. *Id.* at 49.

10. *Id.* at 61. The *banns of marriage* required a written notice of the parties' intention to marry, their full names, and their place of residence. This information was then published in the church register and publicly announced for three consecutive Sundays. *Id.*

or patterned their own state marriage regulation after it. American marital prerequisites generally require a marriage license, a medical exam, and often a short waiting period. In the United States, as in Western Europe, enforcement of these procedural requirements is lax.[11]

Professor Glendon illustrates the extent of state involvement in the actual marriage ceremony through (1) the state's adoption of religious or customary marriage rituals which are then "secularized, and made uniform for all groups of the population, and (2) the ideology of marriage being communicated by the legal system."[12] State involvement ranges from compulsory civil ceremonies in West Germany and France, to the more secular "pluralistic systems" of the United States and Great Britain.[13]

In a section on ideologizing the freedom to marry, Professor Glendon explores the trend in favor of the individual's right to marry almost anyone in nearly any manner. She notes that this trend is present in all of the nations she closely studied and observes that modern state involvement differs vastly from early marriage regulation.[14] Although the stress on the individual's right to choose is paramount in all of the countries in her study, Professor Glendon also provides a description of the variations on this theme found in each country.

B. The Law of the Ongoing Family

The chapter entitled "The Law of the Ongoing Family"[15] looks at several signals indicating that a transformation of family law has taken place. The first signal Professor Glendon considers is state regulation of the relationship between parent and

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11. *Id.* at 65-66.
12. *Id.* at 66-67.
13. *Id.*
14. Professor Glendon stated the following about this trend:

> The evolution of English, French, German, and American marriage formation law has long been marked by currents favorable to an individual's right to marry and to freely choose his or her spouse. As individuals have gradually achieved independence, for better or for worse, from the types of family and group ties that characterized pre-modern society, nearly all elements of political, ecclesiastical, or family control over marriage decisions have disappeared from the law of marriage formation.

Id. at 75. This trend most recently led to the establishment of some sort of a "fundamental right to marry" in each of the jurisdictions closely observed by Professor Glendon. *Id.* at 76-82.

15. *Id.* at 85-147.

child as to matters of discipline, sex education, and other parental decisions relating to the child's upbringing. States try to regulate these relationships only in cases of extreme abuse or neglect. Otherwise, the state defers to the decision-making ability of the parents.[16]

Another signal addressed by the author is the use of names in Western societies. Professor Glendon asserts that "[t]he effect of marriage upon the names of the spouses . . . is heavily laden with symbolism."[17] The long-recognized practice of wives adopting the names of their husbands is still generally observed today. This practice, however, is based on custom and is not legally required. Since the women's rights movement heightened awareness of the individual's right to choose, many women brought suit seeking recognition of their right to decide the composition of their name. Although such suits met with some initial resistance, Western family law now allows individuals to choose whatever name they wish.

Another signal of the transformation of family law studied by Professor Glendon is the economic relationship between husband and wife.[18] This topic occupies a major subsection of the book, and is illustrative of the feminist viewpoint sometimes taken by the author both in this book and in earlier works.[19] In general, the transformation in this area has resulted in joint management of family economic affairs by the husband and wife. This shift in the legal treatment of women is especially important for those women who do not work outside the home and, due to the difficulty of measuring economic contribution to the marriage, are at a distinct disadvantage when marital property is separated upon divorce. Despite the seeming importance of this change to women staying at home, Professor Glendon notes the failure of Western family law systems to significantly alter the position of such women during the marriage:

> We have seen that the marital property systems of England, France, West Germany, and the United States have come to

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16. *Id.* at 97-102.

17. *Id.* at 103.

18. *Id.* at 110-40.

19. The feminist viewpoint espoused in TRANSFORMATION is not nearly as extreme as the "radical feminist commentary" found in ABORTION AND DIVORCE IN WESTERN LAW. Cohen, *Essay: Comparison-Shopping in the Marketplace of Rights* (Book Review), 98 YALE L.J. 1235, 1238 (1989) (review of ABORTION AND DIVORCE IN WESTERN LAW "vigorously opposing" Professor Glendon's proposals).

> resemble each other in a number of ways. In all of them the spouses are formally equal, and each spouse has substantial freedom to deal with his or her own earnings. Despite their rhetoric, none has done much to improve the day-to-day position during marriage of the spouse who has no income.[20]

Notwithstanding the lack of significant improvement in spouses day-to-day lives from a legal standpoint, societal views and customs have changed.

For example, the law no longer imposes on husbands the legal responsibility of meeting the financial needs of the family. As a result, alimony today is no longer viewed as long term financial support for the wife, but simply as interim support available to husband or wife until the financially inferior partner has had an opportunity to regain economic stability. Although called by different names and supported by varying philosophies, the author notes that this change in support law is uniform throughout the nations studied. The equality achieved through such a change is to be applauded. However, one must wonder what effect this has on women who are not prepared to enter the workplace, either due to lack of training or because of child care responsibilities.[21] Seen in this light, equality in financial responsibility may not lead to equality in the financial position of the spouses, especially following a divorce involving minor children in which the woman generally obtains the custody of the children and the accompanying financial burden.

This chapter also explores the legal changes regarding ownership of property both during and after marriage.[22] The author has had extensive experience in this field, often teaming with long-time partner and mentor Max Rheinstein, to whose memory this book is dedicated. In a comparative study undertaken by Professors Glendon and Rheinstein in the early 1970s,[23] they discovered that marital property laws of Western nations "had partially converged insofar as separate property systems had adopted devices to increase sharing of property between the

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20. TRANSFORMATION, *supra* note 2, at 134.

21. Professor Glendon treats this issue in greater detail later in the book, *see infra* notes 38-48 and accompanying text, and in ABORTION AND DIVORCE IN WESTERN LAW, *supra* note 3, at 86-104.

22. "After marriage" includes dissolution of the relationship both by death or by divorce. Each of these is explored in turn by the author.

23. The results of this study were published in Rheinstein & Glendon, *Interspousal Relations*, in INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW (1980).

spouses, and community property systems had adopted devices to provide for more independence in management."[24] At the same time, the study revealed a growing divergence in the way that nations determined which spouse had post-marital ownership over various items acquired both before and during the marriage.[25]

In *Transformation*, the author notes that these trends of convergence and divergence have continued, but "[b]ecause of changes in the nature and forms of wealth, marital property law is losing much of its accustomed subject matter and is, once again, becoming only marginally relevant to the lives of a great number of couples."[26] Professor Glendon points out, however, that "[t]hese trends do not mean that family law is losing any of its economic emphasis. Rather the emphasis has shifted from rights in traditional property to the issue of rights in a spouse's earning power and benefits, especially after divorce."[27]

In the economic relations section, Professor Glendon also touches briefly on the marriage contract. This is one area where the author leaves her position of neutrality maintained throughout most of *Transformation* and speaks out against the use of marriage contracts. She first notes that marriage contracts are widely held enforceable, even if drawn up in contemplation of divorce. The author then argues that they should not be enforceable:

> Many of the proponents of marriage contracts . . . appear to disregard the fact that such agreements are nearly always used to insulate the property of the economically stronger spouse, who in most cases will have the better bargaining position. Leaving this practical problem aside, we have seen that, as a matter of law, relegating interspousal economic relations to private contract in common law systems is not so simple as it has been made to sound. The problems proliferate when a partner seeks to use an interspousal contract for noneconomic purposes. Contract law furnishes little support for the idea that courts should become involved in enforcing agreements about the duration of marriage, the number and spacing of children, the duties of the spouses, or the division of labor and decision making within the family.[28]

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24. TRANSFORMATION, *supra* note 2, at 117.
25. *Id.*
26. *Id.* at 135.
27. *Id.*
28. *Id.* at 139.

The author predicts that pre-nuptial contracts mandating non-economic spousal behavior will not be enforced by the governments of England, France, West Germany, or the United States, but will instead be left to custom and tradition.

C. Divorce

Although divorce, like marriage, is "both a social and legal phenomenon,"[29] Professor Glendon restricts her remarks in this chapter to the legal aspects of divorce, focusing on legal reforms occurring in the last twenty-five years in England, France, West Germany, Sweden, and the United States. The reform movement in each country has led to free terminability of the marriage relationship, which often takes the form of no-fault divorce.[30] Even in jurisdictions that have retained fault-based divorce, it is clear that "divorce is readily available when the spouses reach an agreement on all issues, as they eventually do everywhere in the great majority of cases."[31]

While differing significantly in divorce procedures, all nations studied by Professor Glendon provide easy access to divorce. For example, the role of the judge in facilitating a settlement varies greatly, as does each spouse's leverage in a settlement context. In addition, some nations, such as England, West Germany, and France have "hardship clauses" which allow contested divorces, but refuse to recognize divorce as a "right."

The required waiting period after the divorce has been requested, but before it is finalized, also varies from country to country. France has the strictest waiting period, six years, while England and West Germany require five and three year waiting periods respectively.[32] During this lengthy waiting period the spouses must remain separate prior to receiving a divorce contested by an innocent spouse. In countries with longer waiting periods, a different ideology of marriage is being promoted than that of other nations where a divorce is available in one year or less.[33] The ideology espoused by nations with long waiting periods reflects the value that society places on the marriage rela-

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29. *Id.* at 140.

30. Of the jurisdictions studied by Professor Glendon, Sweden, West Germany, and 19 U.S. states have only no-fault divorce. *Id.* at 192.

31. *Id.*

32. Because American divorce procedures are regulated by the states, waiting periods in this country vary greatly from state to state.

33. TRANSFORMATION, *supra* note 2, at 192.

tionship itself, rather than on the individual's right to freely exit the marriage.

Professor Glendon postulates that the deregulation of the divorce process is a symptom of marriage breakdown rather than a cause. However, she argues that

> it is not the perishability of marriage (or even the frequency of remarriage) that is modern, but the role that individual choice now plays in both the formation and the dissolution of marriage. This expanded role for choice was in turn made possible by the declining role played by marriage and the family as determinants of an individual's economic security and social standing. Marriage law has moved from a situation once characterized by a family or parental role in the selection of a spouse, to the gradual introduction of a veto by the child, then to the choice of one's own spouse limited by the retention of a parental veto, then to unfettered choice, and now finally to a situation where people may and often do try to "correct" their original choices.[34]

Therefore, marriage today can be characterized as a relationship which can be freely formed and dissolved based primarily on the desires of the spouses.

D. The Legal Effects of Marriage Termination

1. By divorce

Although the author proves that marriage can be freely exited and entered into, the state still closely oversees the legal effects of marriage termination. The most controversial legal issues arising from marriage dissolution include alimony and child support, child custody, and division of marital property.[35] Professor Glendon surveys and compares legislation surrounding these controversial issues in the United States, West Germany, France, England, and Sweden.

During this century, legal requirements surrounding alimony and child support have undergone a complete reversal within each country. Less then 100 years ago it was a common social view and legal principle that the husband bore the primary economic responsibility to provide for his wife both during the marriage and in cases of divorce. Today, spouses are left to

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34. *Id.* at 194.
35. *Id.* at 196.

determine how they will jointly provide for the financial needs of the family during marriage. Upon divorce, each spouse has no obligation to provide for the other unless special circumstances exist.[36]

Professor Glendon points to several problems which flow from this new social and legal view of joint spousal financial responsibility. The first involves the relationship between the current status of support law and no-fault divorce. Professor Glendon makes the following comment:

> While there seems to be general agreement that marital misconduct should not be an absolute bar to recovery of support by an ex-spouse who is otherwise eligible to receive it, it has proved difficult to completely eliminate fault from consideration, especially where the behavior in question is of an egregious sort.[37]

Another concern expressed by the author is the support laws' potentially unjust treatment of the economically inferior spouse:

> Modern support law, like modern divorce law, promotes an altered ideology of marriage. In place of the homemaker-breadwinner model, support law now presupposes a partnership of two equal individuals who may have been economically interdependent in marriage, but who are at least potentially independent upon divorce. If one of the spouses is not in a position to provide for her own needs immediately, the role of support law is increasingly seen as that of temporarily aiding in the transition to self-sufficiency.[38]

In theory, support law should aid the dependent spouse in making the transition to economic self-sufficiency. In practice, however, alimony is infrequently used, thereby imposing potentially inequitable burdens on the homemaker spouse in cases of divorce. This problem is exacerbated because generally the homemaker spouse also receives custody of the children, imposing additional economic burdens.[39]

The author next considers the effect of dividing up marital property in cases where one spouse is at an economically disadvantageous position, often because that spouse has received custody of the children. Despite differences in the various nations'

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36. *Id.* at 233.
37. *Id.*
38. *Id.* at 233-34.
39. *Id.* at 234.

processes for dividing marital property, Professor Glendon notes that "[t]hey are trying to put together the best possible package—from property, income, and in-kind personal care—to provide for the basic needs of children."[40] Two general observations are offered on the manner in which marital property is divided upon divorce. First, according to Professor Glendon,

> [e]xperience under the new laws governing the legal effects of divorce indicates that *in most cases*, division of marital property cannot be the primary mechanism for arranging the spouses' financial affairs after divorce. Support laws that start from the principle that no support should be available treat as exceptional what is in fact statistically the most frequent case: that of a spouse whose capacity for self-support is impaired because of her child-care responsibilities. The idea of making a clean break is wholly unrealistic in those cases where minor children are present and in many cases where one spouse has devoted years to raising children who are now grown.[41]

Professor Glendon concludes that "[t]he time has come to recognize in similar fashion that many rules of marital property and support law which may well be suited to the situations of childless couples are inappropriate to the circumstances of families with children."[42]

The author next looks at how each nation distributes the economic responsibility in divorce cases involving minor children.[43] Three general approaches are taken by the five countries studied. These approaches are called the continental pattern, the Nordic pattern, and the Anglo-American pattern.

Under the continental pattern, exemplified by France and West Germany, the financially superior spouse provides the largest amount of support for dependent family members, with the remainder supplied by the state. This is facilitated by the active role taken by the French and West German judges in supervising the financial arrangements made by the spouses upon divorce.[44]

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40. *Id.* at 235.

41. *Id.* (emphasis in original). Professor Glendon also refers to analogous situations in which bodies of law were written to apply to an "ideal" situation, but failed because the ideal was the exception rather than the norm. For a further exposition on Professor Glendon's views on this matter, see ABORTION AND DIVORCE IN WESTERN LAW, *supra* note 3, at 91-104.

42. TRANSFORMATION, *supra* note 2, at 235.

43. *Id.*

44. *Id.* at 236 (citing Meulders-Klein, *Financial Agreements on Divorce and the*

The Nordic pattern emphasizes "spousal self-sufficiency, with child support computed in such a way as to exact a fair contribution from the noncustodial parent without unduly burdening him or his new family."[45] This approach requires an absorption of much of the costs of divorce through generous publicly supported welfare programs designed to help families with children.

The Anglo-American pattern is criticized by Professor Glendon because it endorses the "Nordic degree of commitment to spousal independence and self-sufficiency at the theoretical level, but fail[s] to establish the conditions necessary to realize this ideal in practice."[46] The reasons for this failure are the lack of the following:

> [G]enuine judicial supervision of the spouses' financial arrangements for children; mechanisms to ensure that child support is fixed at realistic and fair levels; highly efficient collection systems; "maintenance advance" systems in which the state not only collects unpaid child support, but partially absorbs the risk of nonpayment by advancing support up to a fixed amount in cases of default. Notably absent too, from the American scene is the relatively generous public benefits and services for one-parent families that exists in Sweden and, to a lesser degree, in France and West Germany.[47]

Although no country has completely solved the economic problems associated with single-parent families, it is clear that Professor Glendon views the Anglo-American approach used by the United States as the least palatable of the three approaches.[48]

Freedom of Contract in Continental Europe, in THE RESOLUTION OF FAMILY CONFLICT: COMPARATIVE LEGAL PERSPECTIVES 297 (1984)).

45. *Id.* (citing Agell, *Social Security and Family Law in Sweden*, in SOCIAL SECURITY AND FAMILY LAW WITH SPECIAL REFERENCE TO THE ONE-PARENT FAMILY: A COMPARATIVE SURVEY 149, 158-60 (1979)).

46. TRANSFORMATION, *supra* note 2, at 236.

47. *Id.* at 236-37.

48. Professor Glendon states:

> France and West Germany stress the responsibility of the former provider. Sweden, while strictly enforcing child support obligations, assumes substantial public responsibility for the welfare of one-parent families. The situation in England may move in the continental direction in view of the 1984 reorientation of its divorce law. As for England's levels of public assistance, they are, while low, relatively generous in view of the size of that country's gross national product. Thus it is the United States which stands at an extreme point on the spectrum of countries discussed here, having embraced free terminability of marriage and spousal self-sufficiency after divorce, while failing to assure

2. *By death*

Inheritance law's path to modernization has been much smoother than that of divorce. Professor Glendon attributes this smooth transition to changes in the way in which families distribute their wealth. Modern families concentrate much more heavily on providing their children with an early "inheritance" in the form of education and other opportunities.[49] In addition, "the position of the surviving spouse has steadily improved everywhere at the expense of the decedent's blood relatives,"[50] reflecting the special place accorded legal marriage in modern inheritance law.

Professor Glendon states that this transformation in family law is not surprising because

> [t]he main obstacles to inheritance by spouses in the past were feelings about blood ties, family land, and inherited wealth. Such feelings were always more characteristic of some sectors of society than others and are now becoming fainter, even where they were once strong. Unlike in the divorce situation, neither public policy nor significant bodies of opinion push strongly for maintaining independence of the spouses' economic interests in the area of succession.[51]

Because of these factors, as well as the *inter vivos* wealth transfers which are increasingly popular in modern Western societies, "an increasing preference for the surviving spouse over children of the marriage and also over other blood relatives" dominates the legal landscape in this area today.[52]

E. Informal Family Relations

This chapter of *Transformation* deals with *de facto* rather than *de jure* family relationships. This section of Professor Glendon's book is much different than the analogous section of its 1977 predecessor, *Family Law in Transition,* because of the many changes that took place during the years between the pub-

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either public or private responsibility for the casualties.

Id. at 237 (citing ABORTION AND DIVORCE IN WESTERN LAW, *supra* note 3). *See also* Melli, *Constructing a Social Problem: The Post-Divorce Plight of Women and Children*, 1986 AM. B. FOUND. RES. J. 759, 771.

49. TRANSFORMATION, *supra* note 2, at 238-39.

50. *Id.* at 238.

51. *Id.* at 251.

52. *Id.*

lication of the two books. The shift in societal views of this type of behavior has led to a new body of law dealing with these informal family relationships.[53]

A comparative analysis of legal and social treatment of informal family relationships reveals that "the traditionally central position of legal marriage in family law has been extensively eroded everywhere."[54] Although inheritance rights do not vest in a *de facto* marriage, nearly all other rights associated with marriage can now be enjoyed by members of a *de facto* family.

Among these rights are the equal legal treatment of children born to legally unmarried parents, and the marital property rights of *de facto* spouses upon dissolution of the relationship. Professor Glendon notes that the "focus of the law relating to children born outside marriage has shifted, appropriately, from preoccupation with wealth and status to concern for the children themselves."[55] In addition to substantially equal financial rights, children of legally unmarried parents now can establish paternity with little difficulty through advanced medical technology. Without the opportunity to establish paternity, many of their financial rights would be lost, making this advance significant to the legal status of these children.

In each country studied, the property rights of the two cohabitants, upon dissolution of their relationship, differed according to marital property laws of that nation. Professor Glendon explains that "[w]ithin any given system, the law of the informal family embodies the same tension between ideas of separateness and sharing that characterizes modern family law generally, although it does not always resolve the tension in the same way."[56]

A big difference between a *de facto* and a *de jure* marriage upon dissolution is that no alimony is awarded to cohabitants upon dissolution of their relationship. But because alimony is now awarded a *de jure* spouse only in exceptional circumstances, this distinction is minor. Moreover, legally married spouses enjoy a more equitable division of property than their *de facto* counterparts. The extent of the disparity depends on the nation.

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53. *Id.* at 252-55.

54. *Id.* at 284.

55. *Id.* at 285.

56. *Id.* at 287.

F. State, Law, and Family

In the concluding chapter Professor Glendon reflects on the trends shown by earlier chapters, and makes some general observations. The author uses the final chapter as a forum to advocate a new way to look at family law as a whole, which she terms an "ecological approach." This approach calls for the preservation of the family despite the strong trend toward individual rights and asks "whether governments might be able to assist families and their members indirectly by attending to the health of surrounding small-scale communities."[57] Professor Glendon supports her approach with the following rationale:

> There is at present in legal discourse little recognition that family members may need nurturing environments as much as they need rights, or that families themselves may need surrounding communities in order to function at their best. By systematically—though for the most part unintentionally—ignoring the "little platoons" from which families and individuals have always drawn emotional and material sustenance, modern legal systems probably contribute to some extent to their atrophy. By pursuing other social aims in such areas as welfare, urban renewal, and industrial policy without considering the impact on families, neighborhoods, churches, and other associations, governments have often eroded the conditions in which such associations flourish.[58]

Implied here is the notion that government, as a mediating structure, must do more to preserve the fabric of society. The status quo fails because it takes into account "only individuals, the market, and the state."[59] Consequently, Professor Glendon asserts that "governments should view the protection of neighborhoods, churches, families, and other voluntary associations as an important social aim," and in addition, "such organizations should be used in preference to government agencies wherever possible to carry out social purposes."[60]

Professor Glendon then considers an array of political and practical criticisms of her proposal. However, she concludes that while it may be difficult to recover what has been lost by over-

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57. *Id.* at 308.

58. *Id.* at 308 (citing Rodes, *Greatness Thrust Upon Them: Class Biases in American Law*, 28 AM. J. JURIS. 1 (1983)).

59. TRANSFORMATION, *supra* note 2, at 309.

60. *Id.* (citing P. BERGER & R. NEUHAUS, TO EMPOWER PEOPLE: THE ROLE OF MEDIATING STRUCTURES IN PUBLIC POLICY (1977)).

emphasizing the individual, an ecological approach to family law could avoid the risks associated with increasing individual isolation.[61]

This chapter also addresses the general trend away from traditional familial values and toward an aspiration of neutrality toward all lifestyles and opinions.[62] This trend seems to be geared toward achieving unlimited freedom of choice for the individual. Perhaps to combat this trend, the book ends with a poetic passage reminding the reader that despite the transformation of family law toward recognizing individual rights and alternative lifestyles, the family unit continues to serve an important function in almost everyone's lives:

> However frail and faltering they may currently seem to be, families remain, for most of us, the only theater in which we can realize our full capacity for good or evil, joy or suffering. By attaching us to beings and feelings that are perishable, families expose us to conflict, pain, and loss. They give rise to tension between love and duty, reason and passion, immediate and long-range objectives, egoism and altruism. But relationships between husbands and wives, parents and children, can also provide frameworks for resolving such tensions. Even though, after the loosening of legal and economic ties that we have traced in this book, the principal bonds which remain to unite the family may be the ties of human affection, we can perhaps—if we are hopeful—recognize in those fragile connections analogies for the Love that invites a response from all men and women of good will. A note sounded by a player on one instrument may draw forth a corresponding note from another; a child, hearing an accordion outside the window, may begin to sing and dance.[63]

III. RESPONSE

There is little to criticize in Professor Glendon's latest work. Her study of various family law systems is amply supported by a significant number of sources, signifying the exhaustive research behind this type of book. She maintains a neutral position on most areas studied in her book.[64] Even so, Professor Glendon

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61. TRANSFORMATION, *supra* note 2, at 311.

62. *Id.* at 297.

63. *Id.* at 313.

64. In fact, the author becomes so textually removed from the work that at one point she refers to herself in third person. *Id.* at 117.

does make her presence known at certain times throughout the book. When she does step forward to make critical commentary, her views are thoughtful and carefully presented.

Professor Glendon's approach in this book stands in sharp contrast to another recent book, *Abortion and Divorce in Western Law*,[65] in which she attacked recent changes in abortion and divorce law in America while proposing sweeping changes in these areas. Her proposals were highly controversial, drawing vigorous criticism and intense praise from different sides of the abortion and divorce reform debate.[66] In a review of *Abortion and Divorce in Western Law*, Professor Jane Maslow Cohen[67] called Professor Glendon's approach an "idiosyncratic blend of conservative conviction and radical feminist commentary."[68]

Although some feminist rhetoric can be found in *Transformation*, Professor Glendon maintains a relative neutrality in this book which is much more characteristic of her usual approach to legal issues than that taken in *Abortion and Divorce in Western Law*. Her neutrality makes her analysis of the state of the law at the end of each section of the book more credible because it serves as a source of information. Because she is presenting factual data over time, and reporting on the trends that those facts indicate, arguing with Professor Glendon's conclusions is difficult. Professor Glendon saves her hardest punches for the issues most important to her. These include the failure of no-fault divorce to equitably treat the custodial parent and the adoption of an ecological approach to family law. But even when dealing with those issues, Professor Glendon offers both sides of the debate, showing her recognition of opposing viewpoints. Such treatment of controversial issues should result in *Transformation* scoring more points with the family law academic community as a whole. It would seem that liberal and conservative scholars alike, rather than targeting this book for wrath or praise, will instead look to it for evidence of the enlightenment of society, or its degradation.

Reviewed by Jonathan O. Hafen

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65. ABORTION AND DIVORCE IN WESTERN LAW, *supra* note 3.

66. *See, e.g.*, Cohen, *supra* note 19, at 1235; Ietswaart, *Incomplete Stories*, 69 B.U.L. REV. 257 (1989) (review of ABORTION AND DIVORCE IN WESTERN LAW "fully agreeing" with Professor Glendon's proposals).

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68. Cohen, *supra* note 19, at 1238.