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# Visions of Kinship in Medieval Europe

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To my four-fathers

Lloyd Hummer  
John McCulloh  
Patrick Geary  
Marc Kruman



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Books rest on the contributions of many. The late Karl Schmid's work, a source of fascination since I met it early in graduate school, was the inspiration for my interest in kinship. Along the way the study picked up additional intellectual influences. I have noted them in the following chapters, but I mention in particular Mayke De Jong, Steven White, Anita Guerreau-Jalabert, Janet Carsten, and Eduardo Viveiros de Castro. I thank those who took the trouble to comment on all or parts of the manuscript: Patrick Geary, Jason Glenn, Christopher Johnson, Geoff Koziol, and Jay Rubenstein, as well as two anonymous reviewers. Geoff went above and beyond, annotating the entire manuscript and saving it from many errors. Oxford University Press's editorial team of Stephanie Ireland and Cathryn Steele, and crack production manager Saranya Jayakumar, and Donald Watt and Michael Janes ensured a remarkably smooth and timely publication process. The project was launched with the support of a Career Development Chair from Wayne State University, and a fellowship at the Max Planck Institut für Geschichte. Hilary Hahn's violin accompanied the solitary hours of research and writing; and my children, Genevieve and Peter, wife of thirty years, Sara, and our magical standard poodle, Cisco, kept it all from becoming lonely. Lastly, I have benefited from wonderful models of personal and professional decency. I dedicate this book to them: my *genitor* and *pater* Lloyd Hummer, who endured the Dust Bowl on a bleak farm in the Oklahoma Panhandle and at 85 still marvels that he became a doctor and sent all of his children to college; my undergraduate teacher John McCulloh, whose friendship, teaching, and wisdom have meant more than he knows; my *Doktorvater* Pat Geary, who remains an inexhaustible well of friendship, good sense, intellectual vigor, support, and advice; and Marc Kruman, a true mensch, my Chair for the first seventeen years of my career, and from whom I learned how to be a departmental citizen.





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## *Abbreviations*

CCCM	Corpus Christianorum Continuatio Mediaevalis
CCSL	Corpus Christianorum Series Latina
CDF	<i>Codex Diplomaticus Fuldensis</i>
CSEL	Corpus Scriptorum Ecclesiasticorum Latinorum
HSM	Hessisches Staatsarchiv Marburg
KF	<i>Klostergemeinschaft von Fulda</i> , ed. Karl Schmid et al.
LF	<i>Liber Floridus</i> , Ghent University Library, ms 92
MGH	<i>Monumenta Germaniae Historica</i>
AA	<i>Auctores Antiquissimi</i>
LL nat. Germ.	<i>Leges Nationum Germanicarum</i>
SRG	<i>Scriptores Rerum Germanicarum</i>
SRM	<i>Scriptores Rerum Merovingicarum</i>
SS	<i>Scriptores</i>
PL	<i>Patrologia Latina</i>
PLRE	<i>Prosopography of the Later Roman Empire</i>
TF	<i>Die Traditionen des Hochstifts Freising</i>
TW	<i>Traditiones Wizenburgenses</i>
UF	<i>Urkundenbuch des Klosters Fulda</i>



## Introduction

This study examines expressions of kinship between the late Roman Empire in the West and the twelfth century in Europe. It will focus on the areas of Continental Europe ultimately harnessed to Frankish rule and the aristocrats who dominated the historical stage and were responsible for its records. It will assume that the familial consciousness of those who made up this aristocracy was inseparable from the institutions which gave shape to the administrative and political order. That is, it will not assume that kin groups were (are?) self-evident and autonomous social phenomena whose existence has been obscured by our sources which must be purged of rhetorical contaminations so that we can see more clearly the social “reality” beyond them, and then processed by the methods of social history into an historical vision of the past recognizable to us. Rather, the study explores the ways that kinship, as a constituent of indigenous social cosmologies, expresses itself through, and is expressed by, the political and religious order, so much so that it is nearly impossible to speak of the former without accounting for changes in the latter.

Studies of kinship generally presume that kinship can be treated as a consistent and basic organizing principle of human social organization and that its patterns can be derived from historical records by tracing genealogical connections between individuals within a kin group. Indeed, its *naturalness* seems self-evident since historical sources are replete with references to kin ties and frequently deploy the language of kinship to widen the circle of affective bonds beyond blood relations. Despite the ubiquity of kinship in the sources, the genealogies have not been particularly easy to retrieve from the medieval record. As soon as one begins to trace out a kin group, the trail just as quickly fades, often leaving behind a smattering of names which seem to belong to descendants, but lack the context necessary to establish firm genealogical connections (assuming they had existed).

Why this should be the case is not so easily explained. Source discontinuities pose some problems in that their unevenness—the density of documentation in a region giving way to a thinner record, to records of qualitatively different sort, or to none at all—can make it impossible to trace relationships. However, even in instances where we do possess a concentration of documents, genealogical connections remain surprisingly elusive. Given the conviction that kinship was a basic element of medieval social life, why were they not exhibited more clearly?

One approach to these puzzling silences has been to worry less about the reconstruction of connections between individuals in a group and instead treat kinship as an organizational mode of society in which real or imputed blood relations dominated, manipulated, and defined economic, social, and political activity.

Nevertheless, it was not long before Marc Bloch, a pioneer of this approach, commenced to complain that the kindred was “too vague and too variable in its outlines, too deeply undermined by the duality of descent by male and female lines.” Consequently, individuals “were obliged to seek or accept other ties.” He had to conclude that kinship never really worked well as a type of society in the Middle Ages; rather, it was merely one of several constituent elements of feudal society and “its relative weakness explains why there was feudalism at all.” However, he also believed that the weakening of kinship in absolute terms occurred with the revival of state power in the later Middle Ages, which curbed the feud and offered an alternative source of protection.<sup>1</sup> I leave aside for the moment the merits of this argument and observe that, even if kinship might help to define a society, Bloch noticed early on the problem that would bedevil inquiries into kinship of the medieval period: attempts to identify and trace kinship are frequently subverted by a stubbornly uncooperative record.

This record to a degree can be forced to cooperate by subjecting it to the prosopographical methods developed within German scholarship and now widely practiced. Distinctive names, when combined with their repetition in particular localities where similarly named individuals are known to have held property, and their appearance among a recurring circle of associates, can round out an individual's identity and his or her social network.<sup>2</sup> The very laboriousness of prosopographical reconstruction testifies to the unwillingness of the extant records to give up their secrets. Moreover, the connections that can be uncovered usually are probable, or merely possible, rather than definitive. The deeper problem is that prosopography assumes things about kinship that ought not to be presumed, namely that genealogical connections were as crucial as the method believes they were. But were they?

One might also force the record to cooperate by applying anthropological models and insights. This has long been a path taken when other approaches have exhausted themselves: the conviction that our modeling is all wrong and that if we just had the right anthropology, we might create a machine that could stamp out some answers. For a time structuralism reigned (and in some quarters still reigns), only to be supplemented or displaced by the later twentieth century with an emphasis on practice, both within anthropology and in the social history that has been derived with its help.<sup>3</sup> The criticism of structuralism is that the forms it identifies are artificial because they are a contrivance of researchers, rather than conceptions authorized by the historical actors themselves. In other words, structuralism runs the risk of denying individual agency and overriding culturally specific meanings. We are on much better footing if we observe what people actually do: who a

<sup>1</sup> Marc Bloch, *Feudal Society*, trans. L. A. Manyon (Chicago, 1961), pp. 123–46; quotes at p. 142.

<sup>2</sup> The enterprise began in the early twentieth century; see Chapter 3.

<sup>3</sup> Sherry Ortner, “Theory in Anthropology since the Sixties,” *Comparative Studies in Society and History* 26 (1984), 126–66; and, more recently, Ortner, *Anthropology and Social Theory: Culture, Power, and the Acting Subject* (Durham, NC, 2006). See also Robert Wheaton, “Observations on the Development of Kinship History,” in Tamara Hareven and Andrejs Plakans, eds, *Family History at the Crossroads* (Princeton, NJ, 1987), pp. 285–301.

person thinks of as their kin is what matters most.<sup>4</sup> Still, historians cannot interrogate dead people, and have to work with sources that make even a focus on practice difficult to sustain, either because the sources are incomplete or because the sources were authored by third parties who might or might not have conveyed faithfully the consciousness of their subjects.

At this point we might as well just blame the authors of medieval sources, all of which before the twelfth century were written or preserved within ecclesiastical institutions, and chalk up the problem to clerical autism. This approach possesses an aura of obviousness—*of course* the clergy was self-interested—and anticipates the working medievalist's greatest anxiety, that the sources are forever fooling us about something or other. On closer inspection the critique falls apart. It is not clear at all that the ecclesiastical culture of the early Middle Ages was so detached from the rest of society. In fact, everything we know about the political culture of the period points in the opposite direction, towards close cooperation between the lay and clerical spheres.<sup>5</sup> The great prelates, as well as the run-of-the-mill clerics and monks, arose from and often remained in frequent and well-attested contact with wider associative networks. Indeed, because of the close interaction between the secular and spiritual spheres, the records handed down through ecclesiastical archives are shot through with documents once possessed by lay actors.<sup>6</sup> Thus, if clerics did to some extent occlude other expressions of sociability, they should have left plenty to work with. Yet the record still defies any easy view of suspected familial networks.

All of these approaches share the certitude that kinship is so fundamental that we ought to be able to see it; and if we cannot, the sources are too scarce, or they have been constructed so as to keep us from seeing it. In response, we organize an expedition, armed with sophisticated methods which locate bits of evidence and reassemble them into the sociological realities which surely must have been out there. This is reasonable as far as it goes, although we might wonder whether the problem lay in the construct itself, into which has been baked a host of modernist assumptions at odds with the sentiments of the sources. Why do we demand to find things that our subjects cared much less about? Is not their lack of attention evidence of something else?

The fact of the matter is kinship did not exist in Europe during the Middle Ages. What I mean is that kinship was never an indigenous category; it was never an abstraction by which people of the time conceptualized their social life. There was no term "kinship" that bound together the cluster of sociological phenomena

<sup>4</sup> Pierre Bourdieu, *Outline of a Theory of Practice* (Cambridge, 1977), pp. 33–43.

<sup>5</sup> See especially Mayke de Jong's *oeuvre*, much of which is preoccupied with this very problem. As examples, see *The Penitential State: Authority and Atonement in the Age of Louis the Pious, 814–40* (Cambridge, 2009); "Ecclesia and the Early Medieval Polity," in Stuart Airlie and Walter Pohl, eds, *Staat im frühen Mittelalter* (Vienna, 2006), pp. 113–32; "Carolingian Monasticism: The Power of Prayer," in McKitterick (ed.), *The New Cambridge Medieval History*, vol. 2 (Cambridge, 1995), pp. 622–53; and "Rethinking Early Medieval Christianity: A View from the Netherlands," *Early Medieval Europe* 7: 3 (1998), 261–75.

<sup>6</sup> Warren Brown et al., eds, *Documentary Culture and the Laity in the Early Middle Ages* (Cambridge, 2013).



that we now associate with the concept: marriage, alliance, incest, descent, terminology, procreative myths, parenthood, and so forth.<sup>7</sup> No matter where we look, neither in the Middle Ages nor in antiquity can we find anywhere a work dedicated to kinship, say a treatise called *De consanguinitate*.

This is just the beginning of the epistemological problems. David Schneider's 1984 *Critique of the Study of Kinship* nearly destroyed kinship studies in anthropology, and indirectly among social historians who had long taken cues on the subject from anthropologists.<sup>8</sup> Building upon a growing unease with kinship studies in Anglo-American scholarship, Schneider's critique asserted that kinship was not a construct indigenous to many of the peoples around the globe anthropologists had been studying. It was a construct of the West, one based on biogenetic, genealogical assumptions which happen to be our own folk myths about kinship. Many of the problems that plagued anthropological inquiry, bound tightly as it had been to kinship studies, were a consequence of researchers' habits of deriving ethnographic agendas from Western analytical categories and unconsciously understanding alien cultures on their own terms. Anthropologists had been running in circles for over a century. Marcel Mauss's classic work on the gift as a "total social fact" at once integrating kinship, politics, economics, and religion was dismissed by Schneider as an act of self-discovery. Having arbitrarily divided an alien culture into categories intelligible to the West, Mauss now purported to discover that it was not so divided after all: "What was one to begin with is discovered to have been one all along!"<sup>9</sup>

Schneider held out the possibility that kinship studies might be salvaged if one were able to derive categories of indigenous provenance, although he did not find the prospects encouraging, given his suspicion that kinship was irredeemably ethnocentric. Despite his misgivings, Schneider surprisingly became the Joshua of kinship studies. His challenge, as well as his earlier idiosyncratic study of *American Kinship*, pointed the way to new vistas of inquiry and inspired a spate of extraordinarily creative work on kinship.<sup>10</sup> Gone now is the privileged position of kinship above all other social forms, the belief that reigned so long in anthropology and among many social historians that this or that civilization, now or in the past, could be classified as "kin-based."<sup>11</sup> To say that a society is based on kinship is illogical because there is no such thing as kinship without society. Every person is born into a kinship system which regulates not just procreation, but more generally social reproduction. No matter what era in history we examine, no matter which indigenous tradition an ethnographer might visit, kinship is always there, interacting with, embedded within, and expressing itself through the social,

<sup>7</sup> Cf. Hans Werner Goetz, "Verwandschaft im früheren Mittelalter (I): Terminologie und Funktionen," in Gerhard Krieger, ed., *Verwandschaft, Freundschaft, Bruderschaft: soziale Lebens- und Kommunikationsformen im Mittelalter* (Berlin, 2009), pp. 15–36; p. 20; Simon Teuscher, "Flesh and Blood in the Treatises on the Arbor Consanguinitatis (Thirteenth through Sixteenth Centuries)," in Christopher H. Johnson et al., eds., *Blood and Kinship. Matter for Metaphor from Ancient Rome to the Present* (New York, 2013), pp. 83–104; at p. 83.

<sup>8</sup> David M. Schneider, *A Critique of the Study of Kinship* (Ann Arbor, MI, 1984).

<sup>9</sup> *Ibid.*, p. 197.

<sup>10</sup> David M. Schneider, *American Kinship*, 2nd edn (Chicago, 1980).

<sup>11</sup> The argument runs throughout Maurice Godelier's *The Metamorphoses of Kinship*, trans. Nora Scott (New York, 2011).

political, and religious spheres. If one hopes to understand its power, it cannot be isolated and understood as if it were distinct from everything else.

So how is one to study such a phantasm? A good place to start is to grasp that every society has its beliefs about what it considers to be “given,” what in the West has often been called “natural.” This belief in what is given, in “the way things are,” while it includes the “facts” of kinship, is more accurately the operation of a cultural ontology which makes those facts seem self-evident and assigns them meaning. Ironically, it was Schneider’s study of people who believed deeply in biogenetic kinship that pointed a way out of the epistemological maze when he examined Westerners, Americans, rather than an obscure people in some faraway place, putatively organized by kindreds and clans. We had kinship too, and in Schneider’s estimation ours expressed a distinctive and peculiar folk belief in which biology was as much symbol as fact. As he put it in the opening sentence of his study *American Kinship*, “This book is concerned with American kinship as a cultural system; that is, as a system of symbols.”<sup>12</sup> Americans, he said, were invested in the idea that kinship reflected the facts of biology, that whatever biology says kinship is, then that is what kinship is. If genetics should turn up a heretofore unknown relative, then that person would be considered kin.<sup>13</sup> However, this is a *belief*, one often at odds with what people might say upon questioning, but one which is all the more powerful because it is a symbol, shaping sentiments even when actual experience runs contrary to it: “So much of kinship and family in American culture is defined as being nature itself, required by nature, or directly determined by nature that it is quite difficult, often impossible, in fact, for Americans to see this as a set of cultural constructs and not the biological facts themselves.”<sup>14</sup>

Schneider’s conclusion raises yet another epistemological problem: Who is Schneider to tell Americans that theirs is a “cultural construct”? Is not his mission as an anthropologist to *understand* his informants, to document what they consider to be “true,” as if he were visiting an alien civilization? Indeed, this has posed one of the greatest challenges in the ethnography of kinship since Schneider’s devastating critique: to understand the various manifestations of kinship around the world, not as evidence that kinship is a “construction” and therefore contingent (a contemporary Western preoccupation if there ever was one), but to understand as best as one can from within a culture how beliefs about kinship express a native ontology of what is considered “given,” even if we as outsiders might view these assertions as products of human inventiveness.<sup>15</sup>

Very little of Schneider’s critique has found its way into treatments of medieval kinship, which have often proceeded as if medieval kinship was basically our own (with just more radical incest prohibitions), and have considered the reconstruction of genealogical connections a self-evident goal of “doing kinship.”<sup>16</sup> Those working in

<sup>12</sup> Schneider, *American Kinship*, p. 1; cf. p. 33.

<sup>13</sup> Ibid., p. 23.

<sup>14</sup> Ibid., p. 116.

<sup>15</sup> See Eduardo Viveiros de Castro’s scintillating article, “The Gift and the Given: Three Nano-Essays on Kinship and Magic,” in Sandra Bamford and James Leach, eds, *Kinship and Beyond: The Genealogical Model Reconsidered* (New York, 2009), pp. 237–68; Marshall Sahlins, *What Kinship Is and Is Not* (Chicago, 2013); and Janet Carsten, *After Kinship* (Cambridge, 2004).

<sup>16</sup> See Chapter 3.

Europe's past perhaps have considered themselves exempt, since Schneider implied that the examination of kinship was legitimate so long as it was done on Western societies. Yet this hardly offers us an easy way out when, as I have said, we can find no evidence that kinship existed as an indigenous category in medieval thought. In this sense, the medieval past begins to resemble the non-Western civilizations Schneider was convinced his colleagues had been misunderstanding. By what right do we examine a phenomenon that had no native provenance and declare it to be significant anyway?

This study explores that question, and in the process wrestles with many of the frustrations that have afflicted the study of kinship in medieval Europe. It seeks to understand how beliefs about matters that we associate with kinship are bound up with expressions of what is—of what people of medieval Europe believed to be true and certain about their world (even when their actual experience might have run contrary to it). To do so, we must enter a time and place where kinship was not, as it has been for us, a primordial sociological phenomenon, an evolutionary manifestation of human sociality. We have to set aside, as best we can, our folk myths about how history works and moves, about how we envisage the human past—whether we explicitly invoke it or not—as the movement from hunting and gathering to farming, to complex civilization. In that vision of the past, kinship looms large as an elemental facet of human social organization, indeed as a *symbol* of basic human impulses, motivations, and agency.<sup>17</sup> For us, kinship studies have long played a vital role in disenchanting history, in reorganizing and transforming it, and thus creating histories useful for the secular order we have been building since the late eighteenth century.

The problem is that in the Middle Ages we meet people who perceived none of this. We enter a world believed to have been a mere five thousand years old, where the cosmos and humanity were created by divine fiat, and its subsequent history was a record of the inscrutable will of God. Primordial in this world were divine Things, conceived before the act of Creation and revealed in the unfolding of Time: the Trinity, the Word made flesh, and the Church, the Bride of Christ. Theirs was a mental world shaped by philosophical realism, where Words signified Things, and Things and Signs were representations of transcendent reality. This will hardly strike many familiar with the period as a revelation, yet it is basic for grasping what kinship meant in medieval Europe. Kinship in this world was not an agent with the power to explain primary human motives, or how human society functioned. Historical events were reverberations of divine plans prefigured before time. In this conception of reality, of “the way things are,” kinship was a Sign of other Things pointing to deeper Truths about the Trinity, the Incarnation, and the Church. Familial patterns were significant not because they were evidence of human volition and agency; rather, they were reverberations of mystical community prefigured in

<sup>17</sup> While anthropologists reject the idea that so-called “kin-based” societies represent fossilized stages of societal development, kinship remains deeply connected to the story of human evolution as a trait distinguishing humanity from other primates; see Godelier, *Metamorphoses*, pp. 432–70; as well as Nicholas J. Allen et al., eds, *Early Human Kinship: From Sex to Social Reproduction* (Malden, MA, 2008).

divine Things. Sexual regeneration was vital not only because of the divine command to “be fruitful and multiply,” but because it was *procreation*, a pale manifestation of the deep mysteries of Creation itself, the mystical regeneration of the Church, and the self-generated Trinity. What is fundamental and therefore real for us, was for them epiphenomenal; and what was real for them, we have a habit of treating as mystifications disguising what *really* was going on.

Any study of kinship, therefore, can take little for granted if it has as its ambition to understand something of the culture it wants to investigate. Maurice Godelier’s recent *Metamorphoses of Kinship* represents the most thorough response to Schneider’s challenge and the most far-reaching effort to reconceptualize kinship studies. Godelier rejected the notion that one could not control for “notions . . . received . . . unconsciously or didactically from one’s own culture.” Rather, these “must be deconstructed by confronting them with other concrete sociological and historical realities, and then one must go on to reconstruct them in the context of a theoretical analysis capable of detecting . . . principles and rules” which can account for the infinite diversity of kinship:

It is by taking this two-pronged approach, by deconstructing and then reconstructing, that the anthropologist, the historian, the sociologist or the psychologist will be able to decentre him- or herself with respect to the cultural and social assumptions of the society in which they were born.<sup>18</sup>

This is wise advice, but Godelier has overlooked one final, glaring epistemological problem: the historicity of his own discipline. It figures not into his analysis that kinship, indeed anthropology itself, as an invention of the nineteenth century, is an expression, or rather symbol, of a modern Western commitment to a disenchanting world of human agency. Having undermined a biblical view of the cosmos and a divinely ordained social and political order, our anthropologists, sociologists, and historians for two centuries have been busy legitimizing human processes as the bases of civilization, with profound implications for the way we organize our past, understand our present, and ponder our future. Consequently, this study will begin not in the Middle Ages, but in the nineteenth century, when kinship first took shape as a category of analysis. Because kinship studies have been joined at the hip to the modernist project since their inception, it is vital that we come to grips with our assumptions, perceptions, and expectations about kinship if we are to fathom its various meanings in medieval Europe, which early on became a fixation of kinship studies. Our beliefs about kinship will have to be—as Godelier advised—unwound, before we can intuit what kinship meant for the denizens of medieval Europe.

<sup>18</sup> Godelier, *Metamorphoses*, p. 214.



PART I

UNWINDING



# 1

## The Modernity of Kinship

As strange as it may seem, the idea that the study of kinship might offer a way to conceptualize and examine societal dynamics, to lay bare the elements of human society and chart its evolution from primitive origins, is scarcely a century and a half old.<sup>1</sup> While there was an awareness before the mid-nineteenth century of many of the forms we associate with kinship, they were not perceived to be inter-related manifestations of a systemic phenomenon called *kinship* that could be wielded as a powerful analytic to probe how societies work and reveal the phenomenological impulses structuring human civilization and driving history. In fact, the study of kinship was invented simultaneously, independently, and quite suddenly by a quartet of ingenious lawyers struggling to probe the deeper human past by a novel re-examination of classical materials: Johann Bachofen (1815–87) in Switzerland, Henry Sumner Maine (1822–88) and John Ferguson McLennan (1827–81) in Britain, and Lewis Henry Morgan (1818–81) in America. We can add to their number a fifth savant, Numa Denis Fustel de Coulanges (1830–89), whose unorthodox conclusions about the ancient past were similarly derived from a creative use of classical legal texts.<sup>2</sup> Within a decade they published what would become the foundational works of modern kinship studies: Bachofen's *Das Mutterrecht* (1861), Maine's *Ancient Law* (1861), Fustel de Coulanges's *La Cité antique* (1864), McLennan's *Primitive Marriage* (1865), and Morgan's *Systems of Consanguinity and Affinity of the Human Family* (1871).

While each of these figures had his own motivations, they were mostly temperamentally conservative, shared the historicist commitment to tradition and faith in the organic and regulated unfolding of history, believed in the explanatory power of origins, and had discovered in kinship a comparative method for exploring the distant past and explaining its dynamic progression. Their works not coincidentally also arrived with the final crumbling of a biblically bounded past and stood at the precipice of the “revolution in ethnological time” that thoroughly reconceptualized

<sup>1</sup> According to the *Oxford English Dictionary*, *kinship* is “a modern word” and is absent from English dictionaries before 1828. Aside from an example from 1786, all of the examples the *OED* cites are from 1850. Grimm's *Deutsches Wörterbuch* traces the German word for kinship, *Verwandtschaft*, to the sixteenth century.

<sup>2</sup> Thomas R. Trautmann, *Lewis Henry Morgan and the Invention of Kinship* (Berkeley, CA, 1987), pp. 1–4, 179–204. For a lively appraisal of kinship's Big Bang moment, see Friedrich Engels's tendentious ode to Morgan in his *Origin of the Family, Private Property, and the State in Connection with the Researches of Lewis H. Morgan*, 4th edn (New York, 1942), pp. 7–18.



human origins.<sup>3</sup> By the time they had died during the 1880s, kinship was entrenched as an analytical paradigm and the field of anthropology, which they played no small role in creating, was well on its way to becoming a separate discipline. The nineteenth century is the canyon that we have to cross to get to premodern conceptions of kinship.

In his idiosyncratic *Mutterrecht*, or *Mother-Right*, Johan Bachofen proposed successive phases of human prehistory defined by modes of kinship. Humanity, he believed, had progressed from a state of no kinship to successive eras marked by matriarchy and finally the patriarchy of classical antiquity.<sup>4</sup> The movement from one phase to the next was “gradual,” he said, for “the human race knows no leaps, no sudden progressions.”<sup>5</sup> The phases were systemic and rooted in religion, so that “cultic conceptions are their source, the social forms are their consequence and expression.”<sup>6</sup> Bachofen made clear that these “systems” were not “local” or limited to a “particular people”; they were “universal,” happened “everywhere,” and were regulated by a “principle” or “law.”<sup>7</sup>

Bachofen had discovered the earlier stage of mother-right mostly in an exquisite reading of the myths, symbols, and rituals of classical antiquity, but also from reports of the myths of peoples around the world.<sup>8</sup> “Myth,” he declared, “contains . . . the origins which determine the subsequent development, which define its character and direction. Without knowledge of the origins, the science of history can come to no conclusion.” Myths reveal that “the forms of family organization prevailing in the times known to us are not original forms, but consequences of earlier stages.”<sup>9</sup> “Archaeologists,” he observed, “have had nothing to say of mother-right. The term is new and the family situation it designates unknown.” Bachofen’s aim was “to set forth the moving principle of the matriarchal age, and to give it proper place in relationship to the lower stage of development and to the higher levels of culture.” Thus, he hoped to “restore the picture of a cultural stage which was overlaid or totally destroyed by the later development of the ancient world.”<sup>10</sup> While his method was empirical, the “particulars” were useful as “comparisons which will enable us . . . to arrive at increasingly universal principles.”<sup>11</sup>

In the original wild state of promiscuity, or “unregulated hetaerism,” there was no kinship to speak of beyond the “love between a mother and her offspring” to relieve an otherwise dreary “moral darkness.” The mother–child bond for Bachofen “stands at the origin of all culture” and “operates . . . as the divine principle of love,

<sup>3</sup> Trautmann, *Lewis*, pp. 205–30. On the shift away from biblical ethnology and history, see also John C. Green, *The Death of Adam: Evolution and its Impact on Western Thought* (Ames, IA, 1959); George Stocking, *Victorian Anthropology* (New York, 1987).

<sup>4</sup> Johann Jakob Bachofen, *Das Mutterrecht: Eine Untersuchung über die Gynaiokratie der alten Welt nach ihrer religiösen und rechtlichen Natur* (Stuttgart, 1861). The introduction and several chapters are translated in *Myth, Religion, and Mother Right: Selected Writings of J. J. Bachofen*, trans. Ralph Manheim (Princeton, NJ, 1967); pp. 69–207.

<sup>5</sup> Bachofen, *Mother-Right*, p. 98.

<sup>6</sup> *Ibid.*, p. 88.

<sup>7</sup> *Ibid.*, pp. 69, 76, 91, 94, 105, 113, 116, 119.

<sup>8</sup> Cf. Lionel Gossman, *Basel in the Age of Burckhardt: A Study in Unseasonable Ideas* (Chicago, 2000), pp. 111–200, esp. 139–47, 171–200; and Cynthia Eller, *Gentlemen and Amazons: The Myth of Matriarchal Prehistory, 1861–1900* (Berkeley, CA, 2011), pp. 41–55.

<sup>9</sup> Bachofen, *Mother-Right*, p. 75.

<sup>10</sup> *Ibid.*, pp. 69–70.

<sup>11</sup> *Ibid.*, p. 76.

of union, of peace.”<sup>12</sup> This hetaeric “system” was abusive toward women, who, “exhausted by [male] lusts,” restrained masculine strength by marriage and militant empowerment discernible in myths of Amazons. Matriarchy, he pronounced, “everywhere grew out of women’s conscious, continued resistance to the debasing state of hetaerism.”<sup>13</sup> This “Demetrian law” resisted “any return to the purely natural law,” to the “more primordial view” of hetaerism.<sup>14</sup> “Matriarchal cultures,” he said, were marked by “universal freedom and equality” and an “admirable sense of kinship . . . which knows no barriers or dividing lines and embraces all members of a nation alike.” This was the logical consequence of “the love that arises from motherhood [which] is not only more intense, but also more universal.”<sup>15</sup> However, matriarchy “degenerated into Amazonian severity,” so that just as the extremes of hetaerism had produced matriarchy, the extremes of matriarchy led to patriarchy. Women lost “political power . . . and sometimes her rule over the family.”<sup>16</sup>

The transition from “the maternal to the paternal conception of man forms the most important turning point in the history of the relations between the sexes.” Whereas originally men had “no visible relation to the child,” in the marital state they gradually became aware of themselves as fathers. At first a man belonged “to the offspring only through the mediation of the mother” and “always appear[ed] as the remoter potency,” so that his role possessed at most “a certain fictive character.” “The triumph of paternity,” Bachofen argued, was a great moral development because it “brings with it the liberation of the spirit from the manifestations of nature” as a man “becomes conscious of his higher calling.” He now apprehended his “begetting potency” as a spiritual calling above the materiality of “childbearing motherhood.” Thus, “the triumph of paternity brings with it the liberation of the spirit from the manifestations of nature, a sublimation of human existence over the laws of material life.”<sup>17</sup> Change, however, was not an unalloyed good, for, whereas “the maternal principle is universal, the paternal principle is inherently restrictive,” so that the “universal fraternity” in the “idea of motherhood . . . dies with the development of paternity,” which creates a “closed individual organism”: a “family based on father right.”<sup>18</sup>

More systematic was Maine’s dazzling study of *Ancient Law*, which reified kinship into something that we can recognize as totalizing, as a way to describe—and explain—an entire society, in this case prehistoric humanity.<sup>19</sup> Whereas Bachofen discerned distant pasts in myth, the pivot for Maine was jurisprudence, which hinted at earlier phases of “primitive” or “archaic” society. The crux of Maine’s argument appears in the fifth chapter, but briefly in the preceding chapters Maine had sketched the progression of jurisprudence from a primitive era of ad hoc judgments, to the “epoch of Customary Law,” and finally to the “era of Codes,” of “mature jurisprudence.”<sup>20</sup> His sources included classical materials, as well as comparative

<sup>12</sup> Ibid., p. 79.

<sup>13</sup> Ibid., p. 94.

<sup>14</sup> Ibid., pp. 95, 97.

<sup>15</sup> Ibid., p. 80.

<sup>16</sup> Ibid., pp. 104–5, 107.

<sup>17</sup> Ibid., p. 109.

<sup>18</sup> Ibid., p. 80.

<sup>19</sup> Henry Sumner Maine, *Ancient Law: Its Connection with the Early History of Society and its Relation to Modern Ideas*, 3rd edn (London, 1866; reprint: London, 2002). Maine says that the second and third editions are “substantially reprints” of the first, p. xliii.

<sup>20</sup> Ibid., pp. 1–43.

evidence from other Indo-European peoples, especially the “Hindoos.”<sup>21</sup> The “rudimentary ideas” embodied in these materials, he said, “are to the jurist what the primary crusts of the earth are to geologists.” The problem was that jurisprudence had been based not on “observation” but on “theories...absolutely unverified, such as the Law of Nature or the Social Compact.”<sup>22</sup> He examined and rejected the utilitarian legal doctrine of Jeremy Bentham, and both British and French rationalist conceptions of natural law because all either ignored, or misunderstood, the customary development of law in classical antiquity.<sup>23</sup>

When he reached chapter five, Maine reiterated his criticisms. He conceded that legal scholars had periodically seen “the necessity of submitting the subject of jurisprudence to scientific treatment,” but that “what has hitherto stood in the place of science has for the most part been a set of guesses.” He dismissed the “Lockean theory of the origin of Law in a Social Compact” and Hobbes’s countervailing repudiation of “the law of nature” as fundamentally ahistorical.<sup>24</sup> Montesquieu came closest to grasping the organic development of law, but even Montesquieu believed that “laws are the creatures of climate, local situation, accident, or imposture.” Consequently, Montesquieu had “looked on the nature of man as entirely plastic” and “greatly underrates the stability of human nature” and tradition.<sup>25</sup> Bentham also had an “historical theory,” but it was based on the idea that “societies modify...their laws according to...general expediency” and the “greater good,” which “are nothing more than different names for the impulse which prompts the modification.”<sup>26</sup> In sum, with the partial exception of Montesquieu, theories of jurisprudence “take no account of what law has actually been at epochs remote from the particular period at which they made their appearance,” and “when they turned to archaic states of society...they uniformly ceased to observe and began guessing.”<sup>27</sup>

Maine set out his method: “we ought to commence with the simplest social forms in a state as near as possible to the rudimentary condition.”<sup>28</sup> The “rudiments of the social state” could be found in observers, such as Tacitus in his *Germania*, but preeminently in “the old law...which was preserved mainly because it was old” and therefore “cannot reasonably be supposed to have been tampered with.” These materials could be further amplified with materials from kindred Indo-European civilizations, such as India.<sup>29</sup> Maine now revealed his stunning discovery: “The effect of the evidence derived from comparative jurisprudence is to establish that view of the primeval condition of the human race which is known as the Patriarchal Theory.”<sup>30</sup> In these most primitive times, before even simple judgments had appeared, society was a mere collection of families under the rule of fathers.<sup>31</sup> “The history of political ideas begins, in fact, with the assumption that

<sup>21</sup> Ibid., pp. 17–20.

<sup>22</sup> Ibid., p. 3.

<sup>23</sup> Ibid., pp. 78–96.

<sup>24</sup> Ibid., pp. 113–14.

<sup>25</sup> Ibid., p. 116.

<sup>26</sup> Ibid., pp. 117–18.

<sup>27</sup> Ibid., p. 119.

<sup>28</sup> Ibid., p. 119.

<sup>29</sup> Ibid., pp. 120–2.

<sup>30</sup> Ibid., p. 122. Cf. Adam Kuper, *The Reinvention of Primitive Society: Transformations of a Myth* (New York, 2005), pp. 39–58.

<sup>31</sup> Maine, *Ancient Law*, pp. 124–6.

kinship in blood is the sole possible ground for community in political functions.”<sup>32</sup> Kinship was the germ by which human society came to encompass ever-widening “concentric circles” of affiliation, and legal “fictions” became the lever by which these were sanctioned and expanded. The belief was that members of a family, house, tribe or state were related, even if this was literally untrue as one could see in the widespread practice of adoption.<sup>33</sup>

This family, Maine cautioned, is not one that “a modern” would recognize. To understand it, we have to make “an important extension and an important limitation” because ancient law made no distinction between “a real and adoptive connexion,” and the family was defined not by “cognatic relationship,” as in modern Europe, but by agnatic descent from the “highest living [male] ascendant.”<sup>34</sup> This explained the peculiar Roman rules for inheritance and marriage, and why, strange to us, two uterine siblings from different fathers were not considered kin. Kinship was never strictly confined to blood, but functioned as a way to name the ever-widening social and political relationships among agnatic groups “which includes many more whom we should never reckon among our kindred.” Consequently, ancient society was fundamentally communal, and was composed of family units under the primordial authority of the father, who stood before the law and whose *patria potestas* was a vestige of “the family organisation of the earliest society.”<sup>35</sup> “The foundation of Agnation is not the marriage of Father and Mother, but the authority of the Father”: “Where the Potestas begins, Kinship begins,” and “Where the Potestas ends, Kinship ends.”<sup>36</sup>

This premodern primitivism, which included medieval Europe, Maine opposed to modern (European) society based on *contract* where individuals were free to make agreements or associate with whomever they wished. The substantive divide that separated primitive from modern society Maine summed up in his famous dictum, “from status to contract.”<sup>37</sup> Thus, whereas Enlightenment philosophers had imagined an early, primitive state of nature populated by individuals, who then became enmeshed in family associations and finally more complex society, Maine’s thesis worked in the opposite direction: individualism was made possible by the weakening of kinship and the consequent strength of contract in modern society.<sup>38</sup>

Unaware of Bachhofen and Maine, Fustel de Coulanges published his catalyzing study of the *Ancient City* (1864), which was based on his dissertation on the Vestal cult (1858).<sup>39</sup> Fustel beheld in classical sources the vestiges of yet earlier periods of prehistory, “for the institutions and beliefs which we find at the flourishing periods of Greece and Rome are only the development of those of an earlier age.” Like Maine, he warned of their strangeness. History “is always in movement; it is always

<sup>32</sup> Ibid., p. 129.

<sup>33</sup> Ibid., pp. 126–32.

<sup>34</sup> Ibid., p. 133.

<sup>35</sup> Ibid., pp. 135–45.

<sup>36</sup> Ibid., p. 149.

<sup>37</sup> Ibid., pp. 169–70.

<sup>38</sup> Stocking, *Victorian Anthropology*, pp. 117–28; Karuna Mantena, *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism* (Princeton, NJ, 2010), pp. 56–88.

<sup>39</sup> Numa Denis Fustel de Coulanges, *La Cité antique: Étude sur le culte, le droit, les institutions de la Grèce et de Rome* (Paris, 1864); English translation: *The Ancient City: A Study on the Religion, Laws, and Institutions of Ancient Greece and Rome* (Baltimore, MD, 1980). Cf. Momigliano’s foreword to *Ancient City*, p. x; and G. P. Gooch, *History and Historians in the Nineteenth Century*, 2nd edn (London, 1913; reprint: New York, 1949), pp. 209–13, 473.

progressing," such that "man has not . . . the way of thinking that he had twenty-five centuries ago." He bluntly declared that, contrary to popular and educated belief, the ancient Romans were entirely alien and that one had to study them "as if they were entirely foreign to us . . . as if we were studying ancient India or Arabia."<sup>40</sup> India was not an arbitrary analog, for Fustel had also tapped the burgeoning field of Indo-European studies, whose researches justified a liberal use of ancient Indian texts to shed light on dimly attested antique forms. For him, archaic vestiges peeked out of Homeric and Virgilian legends, as well as from the even older "hymns of the Vedas" and "the laws of Manu."<sup>41</sup>

Fustel "proposed to show upon what principles and by what rules archaic Greek and Roman society was governed." As with Maine, his ancient peoples were organized by kinship—by patriarchal families whose claims, property, and continuity, however, were explicable not in terms of politics, but of a totalizing ancestral religion.<sup>42</sup> Family was a cultural rather than a strictly biological phenomenon, regulated by norms and rules of recruitment which determined who was part of the kin group and who was not.<sup>43</sup> "Generation alone was not the foundation of the ancient family," nor was its "principle natural affection." Its "members were united by something more powerful than birth, affection, or physical strength [of the father]": "the religion . . . of dead ancestors." Thus, the "ancient family was a religious rather than natural association."<sup>44</sup> He announced that "a comparison of beliefs and laws shows that a primitive religion constituted the Greek and Roman family, established marriage and paternal authority, fixed the order of relationship, and consecrated the right to property and the right of inheritance."<sup>45</sup> Because "domestic religion was transmitted only from male to male," "kinship [was] what the Romans called agnation," and it extended to everyone subject to the authority of the father, which could encompass thousands.<sup>46</sup> He concluded that "the study of the ancient rules of private law has enabled us to obtain a glimpse beyond the times that are called historic, of a succession of centuries during which the family was the sole form of society."<sup>47</sup> By a "series of revolutions," "this same religion, after having enlarged and extended the family, formed a still larger association, the city, and reigned in that as it had reigned in the family."<sup>48</sup>

Maine, Bachofen, and Fustel de Coulanges were instinctively historical in temper and practice. To McLennan was reserved the glory of grasping the expanse of human prehistory vividly depicted in Charles Lyell's *Antiquity of Man* (1863), and conjoining the reigning fascination with primitivism and the idea of (social) evolution.<sup>49</sup> Although McLennan was unaware of Bachofen's work, his *Primitive Marriage* put forth a similar, if more systematic progression of human development

<sup>40</sup> Fustel de Coulanges, *Ancient City*, pp. 3–4.

<sup>41</sup> *Ibid.*, pp. 5–6.

<sup>42</sup> *Ibid.*, pp. 32–108; cf. Trautmann, *Lewis*, pp. 186–91.

<sup>43</sup> S. C. Humphreys, "Foreword" to *Ancient City*, pp. xv–xxiii, esp. xix–xx.

<sup>44</sup> Fustel de Coulanges, *The Ancient City*, p. 34.

<sup>45</sup> *Ibid.*, p. 5.

<sup>46</sup> *Ibid.*, p. 48.

<sup>47</sup> *Ibid.*, p. 109.

<sup>48</sup> *Ibid.*, p. 5.

<sup>49</sup> John F. McLennan, *Primitive Marriage: An Inquiry into the Origin of the Form of Capture in Marriage Ceremonies* (Edinburgh, 1865). On McLennan's theories, see Peter Rivière's introduction to *Primitive Marriage* (Chicago, 1970), pp. xxii–xl; Eller, *Gentlemen*, pp. 72–9; Kuper, *Reinvention*, pp. 55–8; Trautmann, *Lewis*, pp. 194–204.

from promiscuity to matriarchy, and finally to patriarchy. His evidence was the phenomenon of bride capture, which he discovered in the “legal symbolism” embedded in ancient texts as well as in ethnographic accounts of contemporary “rude peoples.” He reasoned that prehistoric males, because they had been warlike and feared weakness, killed female infants. This caused a shortage of women, forcing men to steal wives. The women, hopelessly outnumbered, necessarily must have stood at the center of a system of polyandry. Because paternity could hardly have been determined, kinship must have been reckoned through women. This explained the sequence of events which must sit behind the rules of *exogamy* (a word he coined, along with *endogamy*) among living groups or historically attested peoples. He then deduced the stages by which kinship moved from being accounted through women to being reckoned through men.<sup>50</sup>

Perhaps more influential was the comparative method McLennan set out, its infusion with notions of social evolution, and the conceptualization of his evidence as “survivals” of earlier forms. The work of Bachofen, Fustel de Coulanges, and Maine had relied on the elucidation of survivals too—for example, in the case of Maine, older legal practices fossilized in later law codes—but McLennan transformed this idea into a methodological doctrine.<sup>51</sup> He was gripped by the “study of races in their primitive condition” as a way to understand the “early formation of civil society,” and was particularly receptive to contemporary reports of indigenous peoples, which were believed to represent stages in the evolutionary development of human civilization. McLennan combined this evidence with the legal “symbols” embedded in classical sources to generate “social phenomena more or less archaic” which could be classified and ordered to reveal “the stages of human advancement.”<sup>52</sup> Moreover, contemporary ethnographic evidence promised to reveal periods even older than that illuminated by Indo-European philology; and unlike the classical materials, it was better informed about “family and tribal groupings.”<sup>53</sup> The Indo-European peoples, he claimed, were little different from the pastoral peoples of the “Khargiz type,” i.e. they represented not the most primordial stage. For the really early “features of primitive life, we must look . . . to those [tribes] of Central Africa, the wilds of America, and the islands of the Pacific.” In those places “we find marriage laws unknown, the family system underdeveloped,” and the surprising reckoning of “blood-relationship . . . through mothers.”<sup>54</sup>

Of the two types of sources, the ethnographic was far superior because it offered direct observation of “very rude forms,” whereas the vestiges in classical materials were obscured by the sentiments of “nations” at an “advanced” stage of development.<sup>55</sup> Once forms had been identified and classified, one could assume that wherever we might find them, “we are justified in inferring that in the past life of the people employing them, there were corresponding realities.”<sup>56</sup> Bride capture, therefore, was the surviving vestige of an earlier *systemic* reality, which could be filled out with

<sup>50</sup> The argument is brought together in chapter eight of *Primitive Marriage*: “Ancient Systems of Kinship and Their Influence on the Structure of Primitive Groups,” pp. 151–265.

<sup>51</sup> Stocking, *Victorian Anthropology*, pp. 164–9.

<sup>52</sup> McLennan, *Primitive Marriage*, pp. 5–6.

<sup>53</sup> *Ibid.*, p. 6.

<sup>54</sup> *Ibid.*, p. 8.

<sup>55</sup> *Ibid.*, p. 9.

<sup>56</sup> *Ibid.*, p. 12.



ethnographic evidence from contemporary people who were believed to represent arrested stages of human development since prehistoric times. However, in “civilized” peoples, the phenomenon which once was literally real, became “merely symbolic,” such that behind the “fiction” of bride capture in the wedding ceremonies of recorded history there had existed in primitive times an actual theft.<sup>57</sup> Thus, “the symbolic forms that appear in a code or in a custom” can be read like “rings in the transverse section of a tree” to tell its age, or like “a fossil fish on a hill-side” that tells us the surrounding area used to be under water.<sup>58</sup>

Meanwhile, the American railroad lawyer and investor, Lewis Henry Morgan, was researching his *Systems of Consanguinity and Affinity of the Human Family*, which in retrospect would seal his fame as the father of the anthropological study of kinship. Despite its relatively late date of publication, the book actually was begun independently in 1859 and finished by 1867, but due to delays it did not appear until 1871.<sup>59</sup> Unlike Bachofen, Maine, Fustel de Coulanges, and McLennan, all of whom remained armchair anthropologists, Morgan supplemented his classical learning with actual fieldwork among Native Americans, and with data he had solicited from missionaries around the world.<sup>60</sup> Moreover, his work—like McLennan’s—was receptive to the radical implications aroused by Darwin, with whom he met for lunch during his European trip in 1870/71 and subsequently developed a relationship cordial enough that he would receive Darwin’s sons on their trip to America. These encounters paid off professionally when Darwin cited in his *Descent of Man* Morgan’s monograph on the American beaver (1868), a study Morgan had worked up in part from observations made during his travels in the 1850s and 60s to the wilderness of northern Michigan, where he and his partners had set up a company to extract the recently discovered metals in the Iron Mountains of the Upper Peninsula.<sup>61</sup>

Like his scholarly partners in the burgeoning kinship business, Morgan’s approach initially was inspired by the emerging field of philology, which had suggested that if a human phenomenon such as language was, like the physical sciences, governed by decipherable laws, then perhaps other dimensions of human activity could be similarly conceived and studied. Where linguists in the early nineteenth century had uncovered an astonishingly far-flung family of Indo-European languages, Morgan believed that a study of kinship terminology could extend the successes of philology beyond Indo-European peoples and reveal the relationships between branches of the entire human family by classifying its civilizations according to their systems of kinship. “Philology,” he said, “has proved itself an admirable instrument for the classification of nations into families upon the basis of linguistic affiliation.” While “comparative philology” had had considerable success with the Aryan and Semitic languages and was making progress with other linguistic families, “it is probable that the number of these families... will

<sup>57</sup> Ibid., pp. 15, 43–58.

<sup>58</sup> Ibid., pp. 17, 41.

<sup>59</sup> Trautmann, *Lewis*, p. 148.

<sup>60</sup> Lewis Henry Morgan, *Systems of Consanguinity and Affinity of the Human Family* (Washington D.C., 1871; reprint: Oosterhout, 1966), pp. viii–ix, 3–9.

<sup>61</sup> Trautmann, *Lewis*, pp. 24, 173–4; Carl Resek, *Lewis Henry Morgan: American Scholar* (Chicago, 1960), pp. 66–75.

considerably exceed the number now recognized." Still, linguistics had not been able to "cross the barrier which separates the Aryan from the Semitic languages." Morgan reasoned that kinship, which preserved "some of the oldest memorials of human thought and experience," might better reveal the "progressive changes with the growth of man's experience in ages of barbarism," as well as the Asiatic origins of Native Americans.

On the basis of their kinship systems, he divided civilizations into two general groups: those governed by the "descriptive," or "natural" kinship of civilized nations (i.e. European and Near Eastern peoples), and the "classificatory" systems of the "inferior nations."<sup>62</sup> Morgan at first believed that descriptive kinship was primal and natural, and that classificatory kinship logically must have been a deliberate human contrivance representing the modification of the original descriptive state. This original "descriptive" kinship he thought was relatively recent because he had accepted the general belief that, when it came to human origins anyway, time was bounded by the Bible. Morgan thus assumed that systems of kinship, like languages, were originally united and then subsequently beset by drift from the descriptive standard, a kind of sociological Babel theory. However, as Morgan was finishing his *Systems*, he was overtaken by the "revolution in ethnological time," which culminated during the 1860s and blew the floor out from beneath prehistory.<sup>63</sup> Darwin's *Origin of Species*, Lyell's *Antiquity of Man*, and the accumulation of human fossils uncovered by the budding field of prehistoric archaeology pioneered by John Lubbock had illuminated a deep past before the advent of recorded history, which had provided the evidence for Morgan's "descriptive" kinship. Although much of the original philological conception of the work remained, Morgan quickly revised *Systems* to make room for the expanse of prehistory.<sup>64</sup> The social-evolutionary dimension already present in the earlier drafts was drawn out, so that Morgan reconceived kinship systems as evolutionary stages in human progress. The "classificatory" systems of kinship now were seen to represent the more primitive, prehistorical stages of human development, which had been superseded by the "descriptive" forms of higher civilization visible in classical times.

Morgan developed his evolutionism more thoroughly in his influential *Ancient Society*, which charted the stages of human development from primitive subsistence to societies progressively ordered by government, reaching a pinnacle in the Roman Empire.<sup>65</sup> Human time now extended hundreds of thousands of years into the past before the "glacial period."<sup>66</sup> His aim was "to bring forward additional evidence of the rudeness of the early condition of mankind . . . while winning their way to civilization."<sup>67</sup> This societal evolution was paralleled by the development of kinship which reached its end stage in the "monogamian family" of civilized peoples, a process which in turn was accompanied by technological development

<sup>62</sup> Morgan, *Systems*, pp. v–viii; Trautmann, *Lewis*, pp. 58–147.

<sup>63</sup> Trautmann, *Lewis*, pp. 205–30; Stocking, *Victorian Anthropology*, pp. 69–77.

<sup>64</sup> Trautmann, *Lewis*, pp. 148–78, 205–46.

<sup>65</sup> Lewis Henry Morgan, *Ancient Society: Researches in the Lines of Human Progress from Savagery through Barbarism to Civilization* (New York, 1877).

<sup>66</sup> *Ibid.*, p. v.

<sup>67</sup> *Ibid.*, p. 4.



and evolving notions of property as humanity moved from savagery to barbarism, to civilization. He pursued two “lines of investigation”: “inventions and discoveries” and “primary institutions.”<sup>68</sup> The earliest institutions of government were based “upon relations purely personal” evident in “the gens, the phratry, the tribe,” by contrast with the abstract organization of later territorial states.<sup>69</sup> Like Bachofen and McLennan, he traced an evolutionary development of the family from the “consanguine family” based on intermarriage of brothers and sisters to matrilineal forms, to the “patriarchal family” of Semitic peoples, and finally the “monogamian family . . . founded upon the marriage of one man with one woman,” which “is pre-eminently the family of civilized society, and was therefore essentially modern.”<sup>70</sup>

Morgan’s work, which brilliantly blended history with emerging notions of human evolution, was widely influential in the late nineteenth century, read avidly by historians and social theorists alike, who were in closer interaction than they are today, and deeply impressed the thinking of Marx and Engels on marriage and property.<sup>71</sup> By the early twentieth century, however, *Ancient Society* was set aside by historians as a work of anthropology, while anthropologists rejected the reductive, conjectural history and evolutionism that formed the explanatory spine of both *Ancient Society* and *Systems*. Nevertheless, Morgan’s *Systems* remained influential, if controversial, among anthropologists. Whatever its (retrospective) weaknesses, it established kinship as a sub-discipline of anthropology, no mean feat when one considers the exalted status of kinship in anthropological inquiry ever since. Claude Lévi-Strauss dedicated to Morgan his *Elementary Structures of Kinship*, one of the masterworks of twentieth-century anthropology, with good reason: “to pay homage to the pioneer of the research method modestly adopted in this book.”<sup>72</sup> More recently, Godelier has declared Morgan “the founder” of kinship studies.<sup>73</sup>

The sudden discovery of kinship in the 1860s raises the question, why then? Or, better, why were intellectuals looking for kinship . . . and discovering it? We can, as many histories of anthropological thought tend to do, locate the proximate intellectual inspirations: Historians and antiquarians in the sixteenth and seventeenth centuries had dallied with notions of vestiges and stages of development; and Enlightenment thinkers classified those stages with formal stadial theories.<sup>74</sup> While their ideas were suggestive, they also were qualitatively different from those of the nineteenth century, exhibiting a much greater fidelity to biblical modeling, either because theorists wanted to demonstrate the essential veracity of scripture or because, even where they were hostile to revealed truth, their ideas remained fastened to a static, hierarchical conception of the world.<sup>75</sup> Stadial theories tended to classify cultures by typological stages and, although Scottish models in particular

<sup>68</sup> *Ibid.*, pp. 4–5.

<sup>69</sup> *Ibid.*, pp. 6–7.

<sup>70</sup> *Ibid.*, pp. 27–8.

<sup>71</sup> Engels, *Origin*; cf. Trautmann, *Lewis*, pp. 251–5.

<sup>72</sup> Claude Lévi-Strauss, *The Elementary Structures of Kinship*, rev. edn, trans. James Harle Bell et al. (Boston, MA, 1969), p. xxvi.

<sup>73</sup> Godelier, *Metamorphoses*, pp. 10–14.

<sup>74</sup> Margaret Hodgen, *Early Anthropology in the Sixteenth and Seventeenth Centuries* (Philadelphia, PA, 1964), pp. 433–511.

<sup>75</sup> *Ibid.*, pp. 484–510.

were based on the evidence of “savages” and underwritten by assumptions of progress, Scottish philosophers firmly distinguished conjectural theorizing from conventional narrative history. Consequently, Enlightenment models lacked the sharpened sense of organic progression one finds in the deft blending of conjectural and empirical history in nineteenth-century historicism, which carefully documented the evolution of one stage to the next.<sup>76</sup>

The more immediate spark for kinship studies was supplied by Barthold Georg Niebuhr’s (1776–1831) inquiries into Roman history.<sup>77</sup> Specifically, it was the critical method by which Niebuhr carefully situated sources in their time and place, and thereby showed how historians might strip the historical enterprise of its credulous use of ancient historians, that electrified historians. This rearrangement and reprioritizing of historical sources allowed Niebuhr to redirect the objects of historical inquiry toward subjects that we can see in retrospect were suggested to him by the needs of the hyper-centralizing European states that were reordering social and economic life. Niebuhr, not coincidentally a Danish and then Prussian statesman, based his investigation on up-to-then neglected administrative and legal, rather than narrative, documentation. Armed with the instruments of “scientific history”—tools which still define modern professional history—Niebuhr illuminated the early development of Roman history, widely seen in his time as the pivotal act in human history, and transformed otherwise static and neglected administrative and legal documentation into a dynamic story of the emergence and growth of the Roman state and its institutions.

Striking was the idea that the Roman state had not been an association of legally defined individuals, nor had it administered territory; rather, individuals were subordinate to patriarchal families, which were organized into patrilineal *gentes*, or clans, which in turn were grouped together in the *curiae*. “In its primitive form,” Niebuhr observed, the early Roman state was unlike the territorial states of modern times. It “was divided into a number of associations, each of which again consisted of a number of families.” These *gentes* governed and regulated themselves, and “those who did not belong by birth, could be admitted only by a derivation of the rule.” They “must not be confounded with our *family*”; rather, they resembled the “*Geschlechter*,” or clans, “among our ancestors.” He then illustrated his point with analogies to “the tribes of the Arabs,” the “highlanders of Scotland,” and to his own people, the Ditmarschen of northern Germany.<sup>78</sup> The Ditmarschen in particular would enjoy a long life in kinship studies as a living vestige of primeval clans, although for Niebuhr they served merely as an illuminating example of a corporate clan. “The ancients,” he continued, “did not vote as individuals, but as

<sup>76</sup> H. M. Höpfel, “From Savage to Scotsman: Conjectural History in the Scottish Enlightenment,” *Journal of British Studies* 17 (1978), 19–40; Kuper, *Reinvention*, pp. 26–36.

<sup>77</sup> Gooch’s wonderful survey of nineteenth-century historiography rightly begins with Niebuhr, *History*, pp. 14–24. See also on Niebuhr’s influence, Mantena, *Alibis*, pp. 62–5; Nick Obrien, “Something older than law itself: Sir Henry Maine, Niebuhr, and ‘the path not chosen,’” *The Journal of Legal History*, 26: 3 (2005), 229–51; and Stocking, *Victorian Anthropology*, pp. 21–2.

<sup>78</sup> Barthold Georg Niebuhr, *Lectures on the History of Rome, from the Earliest Times to the Commencement of the First Punic War*, trans. Leonhard Schmitz (London, 1848), vol. 1, pp. 86–8, 90.

corporations" of *curiae*, which were made up of groups of *gentes*. He examined the relationship of *curiae* to the tribes, and observed that "in this we have a glimpse of the innumerable stages through with the Roman constitution passed in its development; and it was this very gradual development which secured so long a duration to Roman liberty."<sup>79</sup> In short, Roman political institutions had been based on the gradual evolution of social forms.

His partner in this enterprise was yet another lawyer, the great legal historian Friedrich Karl von Savigny, who drew upon Montesquieu's and Herder's concepts of the *Volksgeist*—the idea that every people was animated by a distinctive combination of environment, traditions, laws, language, and literature—and applied it more exclusively to his interpretation of law.<sup>80</sup> For Savigny the genius of a people was embodied in its laws, which had taken shape organically and grown out of traditions rooted in the deeper past beyond the horizons of the written record. Law was not just a collection of rules, but rather a warehouse of cultural and historical artifacts that attested to earlier stages of development. This potent and enormously influential idea threw open legal sources to empirical, historical investigation.<sup>81</sup> The laws of Rome could now be read as containing within them evidence not only of the particular genius of the Romans, but also—as in the hands of Henry Maine—of earlier stages of ancient history. Most important to Savigny, however, was the fate of the Roman Empire and the emergence of the Germanic peoples, so that it is not an exaggeration to say that the systematic study of the Middle Ages in the nineteenth century grew out of the prevailing preoccupation with Roman history. Savigny embarked on a monumental effort to trace the influence of Roman law after the collapse of the empire, through the early Middle Ages, down to its reinvigoration in the twelfth century. This raised the problem of how to apprehend the Germanic *Volksgeist* during the medieval period, which, Savigny believed, was marked by the persistence and overall dominance of Roman forms. He got around the impediment by proposing that the Germanic *Volksgeist* had selected those aspects of Roman law that had ennobled its genius.<sup>82</sup> While Savigny's pioneering work was generally cosmopolitan in outlook—hence the rapid translation of his works into Italian, French, and English—his *Volksgeist* theories would prove to be an inspiration for the more stridently nationalistic Germanist historiography propagated by two of his pupils, the Brothers Grimm.

This was heady stuff, made all the more potent by Niebuhr's demonstration that his method authorized historians to fill in the many lacunae that dotted the ancient record. In premodern times, sacred history would have bridged these voids, but in the nineteenth century historians were looking for alternative sources of historical

<sup>79</sup> Niebuhr, *Lectures*, p. 91.

<sup>80</sup> Gooch, *History*, pp. 47–53; Hermann Kantorowicz, "Volksgeist und historische Rechtsschule," *Historische Zeitschrift* 108: 2 (1912), 295–325.

<sup>81</sup> Friedrich Karl von Savigny, *Vom Beruf unsrer Zeit für Gesetzgebung und Rechtswissenschaft* (Heidelberg, 1814); English trans. Abraham Hayward, *Of the Vocation of Our Age for Legislation and Jurisprudence* (London, 1831).

<sup>82</sup> Hermann Kantorowicz, "Savigny and the Historical School of Law," *Law Quarterly Review* 53: 3 (1937), 326–47, esp. pp. 332–43.

authority and finding them in the comparative materials opened up by the discovery of the Indo-European family of languages. While today “family” is merely descriptive of linguistic relationships, in the nineteenth century philological connections were seen as evidence of deeper historical relationships unmentioned in the extant record.<sup>83</sup> It is nearly impossible to overstate the excitement this touched off as sources once seen to be disconnected in time and place could now dramatically augment the record and fill in the gaps that dotted the register of antiquity.<sup>84</sup> Henry Maine, Fustel de Coulanges, and Morgan, as we have seen, made comparative use of the ancient sources of India, now envisaged as Europe at an earlier stage of development, and thereby amplified and broadened Niebuhr’s seminal insights.

Driving these intellectual trends were the cultural struggles ignited by the French Revolution and the Napoleonic Wars, and the political philosophies of the Enlightenment held responsible for their destructiveness.<sup>85</sup> Anyone who was anyone among intellectuals in nineteenth-century Europe, whether they inclined toward tradition or were sympathetic to republicanism, brooded over the French Revolution and its troubling excesses. It is no coincidence that historicism first took shape in the German lands during the late phases of the Napoleonic Wars as an explicit reaction to French conquest and French revolutionary values. Whereas the German Enlightenment had originally been cosmopolitan, Napoleon’s conquest stimulated German nationalism and the defensive scholarship of Niebuhr and Savigny that grew out of it.<sup>86</sup> The distrust of revolutionary movements, strewn throughout Niebuhr’s letters, many of them to Savigny, was neatly summed up in a post-mortem memoir written by his colleagues, who observed that Niebuhr differed from:

most of the young and many of the elder persons in that day, who saw in [the French Revolution] the promise of an era of glorious liberty, and many of whom carried their enthusiasm to such a height, as to view the most horrible excesses, simply as deplorable, but inevitable steps in the transition to a higher development of the human race.

He detested the “arrogant tone of triumph” of the enthusiasts who regarded “different views” as “unenlightened and timorous.” He studied history intently and from it developed a reverence for “liberty when obtained though self-sacrifice and persevering effort in conformity with law,” as opposed to revolutionary schemes, which “tended to lawlessness, to the overthrow of the social order, to establish the sway of mobs and demagogues.”<sup>87</sup>

The antidote to republican agitation was history. As with so much of European thought well into the nineteenth century, intellectual combat was waged on the field of classical antiquity. To the extent that Enlightenment theorists had paid attention to history, they claimed to find justification for the absolute rights to private property and individualism in the state of nature supposedly vouchsafed by

<sup>83</sup> Thomas R. Trautmann, *Aryans and British India* (Berkeley, CA, 1997).

<sup>84</sup> Thomas Shippey, *The Road to Middle Earth*, rev. edn (Boston, MA, 2003), pp. 1–27.

<sup>85</sup> The thesis of Mantena, *Alibis*, pp. 58–73.

<sup>86</sup> Cf. Gooch, *History*, pp. 14–24, 42–75.

<sup>87</sup> *The Life and Letters of Barthold Georg Niebuhr*, trans. Susanna Winkworth, 2nd edn, 3 vols (London, 1852), vol. 1, pp. 21–2.

the authority of the ancients, but subsequently corrupted, thus sanctioning radical purging of the existing order. One way that critics dealt with the perceived extravagance of these (revolutionary) claims was to go back to the classical past and show that the philosophers had in fact not understood it very well. Niebuhr's method made it possible to sift the sources, order, criticize and contextualize them, and thereby undermine the uses to which they had been put. Needless to say, in these positivist times scholars were not content to undermine; they believed the method could uncover what really had gone on in the past and bring this hard-won knowledge to bear on contemporary problems. Niebuhr, for example, re-examined the land reforms of the Roman Republic to undercut their use as a precedent for the revolutionary land-reform schemes of his own day.<sup>88</sup> In short, society was not so malleable as Enlightenment theorists had believed, and custom and tradition had remained stubbornly resilient in the face of radical agitation to overthrow them. Unlike the philosophers, who were criticized for relying on little more than mental action, their critics now had evidence, history, which, when combined with Niebuhrian criticism, could be studied "scientifically," so that its patterns, or "laws," could be deciphered.

The kinship enterprise thus was one facet of the widespread critique of the Enlightenment idea that philosophers could deduce abstract, eternal principles out of thin air, impose them on society, and transform humanity through raw political action. Not surprisingly, the problem of kinship attracted figures—with the possible exception of McLennan—of conservative temperament. They were not necessarily reactionaries, but rather represented the faces on the moderate side of the liberal coin who believed in progress guided by tradition, as opposed to those on the republican side, who joined progress to urgent demands for democratic enfranchisement.

Bachofen, a traditionalist, seethed with contempt for the materialism of his times, the democratic forces challenging the privileges of burghers like himself, and the hyper-centralized nation states whose civil bureaucracies were displacing the unpaid magistrates of his class.<sup>89</sup> In an autobiographical letter of 1854 to his old teacher Savigny, he confessed that he had gone to Rome in the 1840s "a republican" and "an unbeliever who represented no tradition," but "all this I left behind in Italy."<sup>90</sup> He was disheartened by the "arrival of Garibaldi's band," which fomented "disorder of all sorts." He left Rome, and "on my journey homeward, I beheld the breakdown of all order."<sup>91</sup> Republican agitation in his homeland soured him further, especially after his appointment as professor of Roman Law at the University of Basel was criticized by radical liberal newspapers as a handout to the privileged. He resigned his professorship and, embittered, retreated into the classical past and increasingly conservative views.<sup>92</sup>

<sup>88</sup> Arnaldo Momigliano, "Niebuhr and the Agrarian Problems of Rome," *History and Theory* 21: 4 (1982), 3–15, pp. 8–9.

<sup>89</sup> Gossman, *Basel*, pp. 122–37.

<sup>90</sup> Bachofen, "My Life in Retrospect," in *Myth*, pp. 3–17; p. 13.

<sup>91</sup> *Ibid.*, pp. 14–15. <sup>92</sup> Gossman, *Basel*, pp. 122–4.

"More and more," he complained to Savigny, "I came to disregard the modern point of view" and "felt an increasing distaste for all modern systems."<sup>93</sup> Whereas before Bachofen had seen Romulus as an "Italic Adam," he now "saw him as an extremely modern figure" and Rome as the mere "fulfillment and end of a cultural era spanning a millennium."<sup>94</sup> It did not help his mood that his own attempt at a Roman history was adjudged an uncritical mess by Theodor Mommsen, whose work Bachofen in turn privately denounced as an anachronistic modernization of ancient history.<sup>95</sup> As Lionel Gossman observed in his study of the "sulking corner of Europe" that was Basel in those days, Bachofen's scholarly pursuits are impossible to separate from his personal bitterness, pessimism, melancholy, and stoic resignation:

His writing expresses two responses....: elegiac regret at what had been lost, sometimes accompanied by passionate evocations of long-gone conditions of life, and stoical resignation, submission to what was assumed to be a providential plan, even an austere joy at the destruction of the old, since it is the necessary prelude to the coming of the new.<sup>96</sup>

Bachofen's evocation in *Mutterrecht* of the beauties of an older order (of matriarchy) clubbed into obsolescence by a new one (of patriarchy) bears striking parallels to his feelings about the politics of his own times.<sup>97</sup>

The antipathy to political radicalism and sympathy with elites was also an animating impulse of Maine and Fustel de Coulanges, who in effect "ethnologized" or "otherized" the Roman past to show that its organization was so fundamentally alien that it could never be used to justify radical ends.<sup>98</sup> Fustel remained studiously aloof from politics, but he was a traditionalist whose "basically conservative and religious interpretation of political life, such as that contained in the *Cité antique*, naturally made Fustel *persona grata* at the court of Napoleon III" during the Second Empire.<sup>99</sup> We will return in Chapter 2 to his disdain for German scholarship, which has tended to color treatments of Fustel's scholarship, but at the time he wrote *Ancient City*, he was possessed of a haughty disregard for all modern scholarship.<sup>100</sup> Or so he claimed. If his enshrinement of private property in primordial ancestral religion was an innovation, his emphasis on the religious basis of the Roman *gens* bears a striking resemblance to some of Niebuhr's darting insights.<sup>101</sup>

Whatever the sources of Fustel's inspirations, his skepticism of Enlightenment and revolutionary thought was advertised at the outset of the *Ancient City*. "The moderns," Fustel declared, "have deceived themselves about the liberty of the ancients, and on this very account liberty among the moderns has been put in

<sup>93</sup> Bachofen, "My Life," p. 4.

<sup>94</sup> *Ibid.*, p. 14.

<sup>95</sup> Gossman, *Basel*, pp. 163–8.

<sup>96</sup> *Ibid.*, p. 133.

<sup>97</sup> *Ibid.*, pp. 122–36, 171–80.

<sup>98</sup> Mantena, *Alibis*, pp. 60–70; Trautmann, *Lewis*, p. 4.

<sup>99</sup> Arnaldo Momigliano, "The Ancient City of Fustel de Coulanges," in A. D. Momigliano, *Studies in Ancient Scholarship* (Berkeley, CA, 1994), pp. 162–78; p. 165.

<sup>100</sup> Momigliano, "Ancient City," pp. 164, 173.

<sup>101</sup> Niebuhr, *Lectures*, pp. 88, 91.



peril." We have "become accustomed continually to compare them with ourselves, to judge of their history by our own, and to explain our revolutions by theirs." "The last eighty years"—a pointed reference to the French Revolution and presumably the revolutions of 1848—"have clearly shown that one of the great difficulties which impede the march of modern society is the habit which it has of always keeping Greek and Roman antiquity before its eyes."<sup>102</sup> Some of those "difficulties," apparently, were visible in contemporary land-reform schemes, for "among the ancients the appropriation of land for public utility was unknown."<sup>103</sup> Consequently, he insisted somewhat paradoxically on the sanctity of private property in antiquity, but assured his readers that in Roman times "the individual has it in trust; it belongs to those who are dead and to those who have yet to be born."<sup>104</sup> Contrary to what the philosophers and the radicals believed, Fustel pronounced in the title to chapter XVII that "the ancients knew nothing of individual liberty."<sup>105</sup>

Maine arose from a humble, yet upwardly mobile Scottish family that had relocated to the environs of London and borne a reflexive sympathy for elites.<sup>106</sup> Although he remained aloof from party politics, at least until later in life when his Tory tendencies became more pronounced, his anonymous newspaper articles in the decade leading up to *Ancient Law* reveal his suspicion of mass self-government, and a preference for aristocratic leadership and the rule of privileged and educated elites, which he linked to ordered progress.<sup>107</sup> His articles also took on French republicanism, which he held responsible for anarchy and tyranny whenever it had been tried, and American democracy, which—while it had avoided the worst of French excesses—led to the vulgarization of culture.<sup>108</sup>

In *Ancient Law*, the false prophet of the reformists' belief that politics could be remade at a whim was Rousseau, who wielded an unfortunate, if admittedly "prodigious influence over the minds of men." "The central figure" of Rousseau's imagination "whether arrayed in an English dress as the signatory of a social compact, or simply stripped naked of all historical qualities, is uniformly Man, in a supposed state of nature," which had been erroneously confused with the Roman law of nature. "Every institution and law which would beseem this imaginary being... is to be condemned as having lapsed from an original perfection," and "every transformation of society"—i.e. liberal reform—"which would give it a closer resemblance to the world over which the creature of Nature reigned, is admirable and worthy to be effected at any apparent cost."<sup>109</sup> However, human beings were not nearly so plastic as theorists such as Rousseau had imagined. They had paid insufficient attention to "those qualities which each generation receives from its predecessors, and transmits but slightly altered to the generation which follows it."<sup>110</sup>

<sup>102</sup> Fustel de Coulanges, *Ancient City*, p. 3.

<sup>103</sup> *Ibid.*, p. 63.

<sup>104</sup> *Ibid.*, p. 62.

<sup>105</sup> *Ibid.*, p. 211.

<sup>106</sup> George Feaver, *From Status to Contract: A Biography of Sir Henry Maine 1822–1888* (London, 1969), pp. 1–24.

<sup>107</sup> *Ibid.*, pp. 29–40, 179–81, 211–50.

<sup>108</sup> *Ibid.*, pp. 35, 222.

<sup>109</sup> Maine, *Ancient Law*, pp. 87–8.

<sup>110</sup> *Ibid.*, p. 116.

*Ancient Law* set out a vision of Roman history in which its earlier phases were characterized first by ad hoc judgments disconnected from abstract principles (which did not yet exist), and then by the emergence of customary law. These phases were succeeded by a period during which laws were codified. Finally, he arrived at the period of “mature jurisprudence” when the law set itself above society and jurists established a self-perpetuating profession.<sup>111</sup> If these jurists might consciously renovate and systematize the law, the law nevertheless remained constrained by custom. The English of all people, he mused, should understand as much, since this was the process by which English law had evolved.<sup>112</sup> The most remote phases in jurisprudence could be fleshed out once one grasped the primitive familial organization which impressed itself upon all aspects of society: “[S]ociety in primitive times was not what it is assumed to be at present, a collection of *individuals*. In fact, and in the view of the men who composed [archaic law], it was an *aggregation of families*” under patriarchal authority.<sup>113</sup>

Morgan, a political Whig and urban patrician of Rochester, New York, inhabited a class analogous to that of Maine and Bachofen, although he was unencumbered by the Old World burdens of revolutionary turbulence. His optimism about the development of humanity issued from his literal investment in American progress. In a local lecture of 1852, “he pictured the ideal society as homogeneous and free of all permanent divisions according to religion, education, ownership of property, or advantages in commercial enterprise.” Other than slavery, “that Russian institution, . . . our country is paradise regained.”<sup>114</sup> And so it seemed to him. During his trips to northern Michigan he marveled at the railroads laden with ore that had been run through the primeval forests. His dogged work as a lawyer for the railroad companies and his investment in the new rail lines made him a substantial fortune.

What he did share with his European counterparts was a fascination with the primitive, an enormously productive construct which each of the inventors of kinship in his own way substantially enlarged and formalized.<sup>115</sup> By mid-century, the idea of the primitive had become largely synonymous with the Indo-European past, and was subsequently amplified with colonial accounts of indigenous peoples.<sup>116</sup> The keen interest in Indo-European studies was part of the larger story of the British imperial project in India and the general struggle of Europeans to understand the traditional societies under colonial rule around the globe.<sup>117</sup> In the career of Henry Maine, the scholarly and the imperial impulses neatly converged. Shortly after the publication of *Ancient Law*, Maine was sent to India to lend his expertise to the British legal reform of the subcontinent, a program he likened to the civilizing power of Roman law over primitive Germanic peoples.<sup>118</sup>

For Morgan, the growing American empire presented an analogous dynamic: an expanding frontier populated by indigenous peoples. The many enclaves of Native

<sup>111</sup> Ibid., pp. 1–20.

<sup>112</sup> Ibid., pp. 8–9.

<sup>113</sup> Ibid., p. 126.

<sup>114</sup> Resek, *Lewis*, p. 52.

<sup>115</sup> Kuper, *Reinvention*, pp. 1–81.

<sup>116</sup> Stocking, *Victorian Anthropology*, pp. 56–62, 78–109.

<sup>117</sup> Trautmann, *Aryans*.

<sup>118</sup> Feaver, *Status*, pp. 88–9; Kuper, *Reinvention*, p. 49.