

Evolution of Property

By Lewis Morgan

(Excerpted from *Ancient Society*)

Introduction

This inexpensive pamphlet was prepared for those members of the working class who do not have the time to become involved in more voluminous works and yet who wish to get a clearer insight into the story of man than is provided in the officially recognized schools – a school which concerns itself with a tedium of dates and legal enactments and almost completely ignores the underlying causes of human behavior.

Lewis Morgan began to practice law in New York in 1844 but later through his membership in the secret society the “Grand Order of the Iroquois” he became interested in Indian lore and was adopted into the Seneca tribe. With the aid of the Smithsonian Institute he spent most of his life searching for evidence which gave rise to his theory of social evolution. It could be said that Morgan was by vocation a lawyer but by avocation an anthropologist.

This excerpt is a complete unabridged reproduction of the two chapters of Lewis Morgan’s Part IV of *Ancient Society*, written in 1877. While the work is almost one hundred years old the reader will be pleased to discover it sheds far more light than do the works of many contemporary writers, who often pander to the market or who for unknown reasons channel their investigations into narrow avenues in an effort to excuse the contradictions of modern capitalism.

Notwithstanding issue could be taken with Morgan on some points. For example there is a growing school of Socialists who question the expression “races of mankind”. The postulation is that there is one race and differences in skin pigmentation, color of hair, shape of nose, etc. are but variations of the original human race. Nevertheless, taken in the context of Morgan’s work the term race does not take on a racist meaning. While somewhat compromising with the term race no mistake should be made concerning the vehement opposition all socialists take to the religious overtones in the final paragraph. However, in the interests of an honest historic presentation and as a tribute to the totality of Morgan’s work the passage was left intact.

Larry Tickner, General Secretary, Socialist Party of Canada.

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The Three Rules of Inheritance

It remains to consider the growth of property in the several ethnical periods, the rules that sprang up with respect to its ownership and inheritance and the influence which it exerted upon ancient society.

The earliest ideas of property were intimately associated with the procurement of subsistence, which was the primary need. The objects of ownership would naturally increase in each successive ethnical period with the multiplication of those arts upon which the means of subsistence depended. The growth of property would thus keep pace with the progress of inventions and discoveries. Each ethnical period shows a marked advance upon its predecessor, not only in the number of inventions, but also in the variety and amount of property which resulted therefrom. The multiplicity of the forms of property would be accompanied by the growth of certain regulations with reference to its possession and inheritance. The customs upon which these rules of proprietary possession and inheritance depend, are determined and modified by the condition and progress of the social organization. The growth of property is thus closely connected with the increase of inventions and discoveries, and with the improvement of social institutions which mark the several ethnical periods of human progress.

I. Property in the Status of Savagery.

In any view of the case, it is difficult to conceive of the condition of mankind in this early period of their existence when divested of all they had gained through inventions and discoveries, and through the growth of ideas embodied in institutions, usages and customs. Human progress from a state of absolute ignorance and inexperience was slow in time, but geometrical in ratio. Mankind may be traced by a chain of necessary inferences back to a time when, ignorant of fire, without articulate language, and without artificial weapons, they depended, like the wild animals, upon the spontaneous fruits of the earth. Slowly, almost imperceptibly, they advanced through savagery, from gesture language and imperfect sounds to articulate speech; from the club, as the first weapon, to the spear pointed with flint, and finally to the bow and arrow; from the flint-knife and chisel to the stone axe and hammer, from the osier and cane basket to the basket coated with clay, which gave a vessel for boiling food with fire; and, finally, to the art of pottery, which gave a vessel able to withstand the fire. In the means of subsistence, they advanced from natural fruits in a restricted habitat, to scale and shell fish on the coasts of the sea, and finally to bread roots and game. Rope and string-making from filaments of bark, a species of cloth made of vegetable pulp, the tanning of skins to be used as apparel and as a covering for tents, and finally the house constructed of poles and covered with bark, or made of plank split by stone wedges, belong, with those previously named, to the Status of Savagery. Among minor inventions may be mentioned the fire-drill, the moccasin and the snow-shoe.

Before the close of this period, mankind had learned to support themselves in numbers. In comparison with primitive times; they had propagated themselves over the face of the earth, and come into possession of all the possibilities of the continents in favor of human advancement. In social organization, they had advanced from the

consanguine horde into tribes organized in gentes, and thus became possessed of the germs of the principal governmental institutions. The human race was now successfully launched upon its great career for the attainment of civilization, which even then, with articulate language among inventions, with the art of pottery among arts, and with the gentes among institutions, was substantially assured.

The period of savagery wrought immense changes in the condition of mankind. That portion, which led the advance, had finally organized society and developed small tribes with villages here and there which tended to stimulate the inventive capacities. Their rude energies and ruder arts had been chiefly devoted to subsistence. They had not attained to the village stockade for defense, nor to farinaceous food, and the scourge of cannibalism still pursued them. The arts, inventions and institutions named represent nearly the sum of the acquisitions of mankind in savagery, with the exception of the marvelous progress in language. In the aggregate it seems small, but it was immense potentially; because it embraced the rudiments of language, of government, of the family, of religion, of house architecture and of property, together with the principal germs of the arts of life. All these their descendants wrought out more fully in the period of barbarism, and their civilized descendants are still perfecting.

But the property of savages was inconsiderable. Their ideas concerning its value, its desirability and its inheritance were feeble. Rude weapons, fabrics, utensils, apparel, implements of flint, stone and bone, and personal ornaments represent the chief items of property in savage life. A passion for its possession had scarcely been formed in their minds, because the thing itself scarcely existed. It was left to the then distant period of civilization to develop into full vitality that "greed of gain" (*studium lucri*), which is now such a commanding force in the human mind. Lands, as yet hardly a subject of property, were owned by the tribes in common, while tenement houses were owned jointly by their occupants. Upon articles purely personal which were increasing with the slow progress of inventions, the great passion was nourishing its nascent powers. Those esteemed most valuable were deposited in the grave of the deceased proprietor for his continued use in the spirit land. What remained was sufficient to raise the question of its inheritance. Of the manner of its distribution before the organization into gentes, our information is limited, or altogether wanting. With the institution of the gens came in the first great rule of inheritance, which distributed the effects of a deceased person among his gentiles. Practically they were appropriated by the nearest of kin; but, the principle was general, that the property should remain in the gens of the decedent, and be distributed among its members. This principle was maintained into civilization by the Grecian and Latin gentes. Children inherited from their mother, but took nothing from their reputed father.

II. Property in the Lower Status of Barbarism.

From the invention of pottery to the domestication of animals, or, as an equivalent, the cultivation of maize and plants by irrigation, the duration of the period must have been shorter than that of savagery. With the exception of the art of pottery, finger weaving and the art of cultivation, in America, which gave farinaceous food, no great invention or discovery signalized this ethnical period. It was more distinguished for progress in the development of institutions. Finger weaving, with warp and wool,

seems to belong to this period, and it must rank as one of the greatest of inventions; but it cannot be certainly affirmed that the art was not attained in savagery. The Iroquois and other tribes of America in the same status manufactured belts and burden-straps with warp and woof of excellent quality and finish; using fine twine made of filaments of elm and basswood bark. The principles of this great invention, which has since clothed the human family, were perfectly realized; but they were unable to extend it to the production of the woven garment. Picture writing also seems to have made its first appearance in this period. If it originated earlier, it now received a very considerable development. It is interesting as one of the stages of an art which culminated in the invention of a phonetic alphabet. The series of connected inventions seem of have been the following: 1. Gesture Language, or the language of personal symbols; 2. Picture Writing, or idiographic symbols; 3. Hieroglyphs, or conventional symbols; 4. Hieroglyphs or phonetic symbols used in a syllabus; and 5. A Phonetic Alphabet, or written sounds. Since a language of written sounds was a growth through successive stages of development, the rise of its antecedent processes is both important and instructive. The characters on the Copan monuments are apparently hieroglyphs of the grade of conventional symbols. They show that the American aborigines, who practiced the first three forms, were proceeding independently in the direction of a phonetic alphabet.

The invention of the stockade as a means of village defense, of a raw-hide shield as a defense against arrow, which had now become a deadly missile, of the several varieties of the war-club, armed with an encased stone or with a point of deer horn, seem also to belong to this period. At all events they were in common use among the American Indian tribes in the Lower Status of barbarism when discovered. The spear pointed with flint or bone was not a customary weapon with the forest tribes, though sometimes used. This weapon belongs to the period of savagery, before the bow and arrow were invented, and reappears as a prominent weapon in the Upper Status of barbarism, when the copper-pointed spear came into use, and close combat became the mode of warfare. The bow and-arrow and the war-club were the principal weapons of the American aborigines in the Lower Status of barbarism. Some progress was made in pottery in the increased size of the vessels produced, and in their ornamentation; but, it remained extremely rude to the end of the period. There was a sensible advance in house architecture, in the size and mode of construction. Among minor inventions were the air-gun for bird-shooting, the wooden mortar and pounder for reducing maize to flour, and the stone mortar for preparing paints; earthen and stone pipes, with the use of tobacco; bone and stone implements of higher grades, with stone hammers and mauls, the handle and upper part of the stone being encased in raw hide; and moccasins and belts ornamented with porcupine quills. Some of these inventions were borrowed, not unlikely, from tribes in the Middle Status; for it was by this process constantly repeated that the more advanced tribes lifted up those below them, as fast as the latter were able to appreciate and to appropriate the means of progress.

The cultivation of maize and plants gave the people unleavened bread, the Indian succotash and hominy. It also tended to introduce a new species of property, namely, cultivated lands or gardens. Although lands were owned in common by the tribe, a possessory right to cultivated land was now recognized in the individual, or in the group, which became a subject of inheritance. The group united in a common

household were mostly of the same gens, and the rule of inheritance would not allow it to be detached from the kinship.

The property and effects of husband and wife were kept distinct, and remained after their demise in the gens to which each respectively belonged. The wife and children took nothing from the husband and father, and the husband took nothing from the wife. Among the Iroquois, if a man died leaving a wife and children, his property was distributed among his gentiles in such a manner that his sisters and their children, and his maternal uncles, would receive the most of it. His brothers might receive a small portion. If a woman died; leaving a husband and children, her children, her sisters, and her mother and her sisters inherited her effects; but the greater portion was assigned to her children. In each case the property remained in the gens. Among the Ojibwas, the effects of a mother were distributed among her children, if old enough to use them; otherwise, or in default of children, they went to her sisters, and to her mother and her sisters, to the exclusion of her brothers. Although they had changed descent to the male line, the inheritance still followed the rule which prevailed when descent was in the female line.

The variety and amount of property were greater than in savagery, but still not sufficient to develop a strong sentiment in relation to inheritance. In the mode of distribution above given may be recognized, as elsewhere stated, the germ of the second great rule of inheritance, which gave the property to the agnatic kindred, to the exclusion of the remaining gentiles. Agnation and agnatic kindred, as now defined, assume descent in the male line; but the persons included would be very different from those with descent in the female line. The principle is the same in both cases, and the terms seem as applicable in the one as in the other. With descent in the female line, the agnates are those persons who can trace their descent through females exclusively from the same common ancestor with the intestate; in the other case, who can trace their descent through males exclusively. It is the blood connection of persons within the gens by direct descent, in a given line, from the same common ancestor which lies at the foundation of agnatic relationship.

At the present time, among the advanced Indian tribes, repugnance to gentile inheritance has begun to manifest itself. In some it has been overthrown, and an exclusive inheritance in children substituted in its place. Evidence of this repugnance has elsewhere been given, among the Iroquois, Creeks, Cherokees, Choctas, Menominees, Crows and Ojibwas, with references to the devices adopted to enable fathers to give their property, now largely increased in amount, to their children.

The diminution of cannibalism, that brutalizing scourge of savagery, was very marked in the Older Period of barbarism. It was abandoned as a common practice; but remained as a war practice, as elsewhere explained through this, and into the Middle Period. In this form it, was found in the principal tribes of the United States, Mexico and Central America. The acquisition of farinaceous food was the principal means of extricating mankind from this savage custom.

We have now passed over, with a mere glance, two ethnical periods, which covered four-fifths, at least, of the entire existence of mankind upon the earth. While in the Lower Status, the higher attributes of man began to manifest themselves. Personal

dignity, eloquence in speech, religious sensibility, rectitude, manliness and courage were now common traits of character; but cruelty, treachery and fanaticism were equally common. Element worship in religion, with a dim conception of personal gods, and of a Great Spirit, rude verse-making, joint-tenement houses, and bread from maize, belong to this period. It also produced the syndyasmian family, and the confederacy of tribes organized in gentes and phratries. The imagination, that great faculty which has contributed so largely to the elevation of mankind, was now producing an unwritten literature of myths, legends and traditions, which had already become a powerful stimulus upon the race.

III. Property in the Middle Status of Barbarism.

The condition of mankind in this ethnical period has been more completely lost than that of any other. It was exhibited by the Village Indians of North and South America in barbaric splendor at the epoch of their discovery. Their governmental institutions, their religious tenets, their plan of domestic life, their arts and their rules in relation to the ownership and inheritance of property, might have been completely obtained; but the opportunity was allowed to escape. All that remains are scattered portions of the truth buried in misconceptions and romantic tales. This period opens in the Eastern hemisphere with the domestication of animals, and in the Western with the appearance of the Village Indians, living in large joint-tenement houses of adobe brick, and, in some areas, of stone laid in courses. It was attended with the cultivation of maize and plants by irrigation, which required artificial canals, and garden beds laid out in squares, with raised ridges to contain the water until absorbed. When discovered, they were well advanced toward the close of the Middle Period, a portion of them having made bronze, which brought them near the higher process of smelting iron ore. The joint-tenement house was in the nature of a fortress, and held an intermediate position between the stockaded village of the Lower, and the walled city of the Upper Status. There were no cities, in the proper sense of the term, in America when discovered. In the art of war they had made but little progress, except in defense, by the construction of great houses generally impregnable to Indian assault. But they had invented the quilted mantle (*escaupiles*), stuffed with cotton, as a further shield against the arrow, and the two-edged sword (*macuahuitl*), each edge having a row of angular flint points imbedded in the wooden blade. They still used the bow and arrow, the spear, and the war-club, flint knives and hatchets, and stone implements, although they had the copper axe and chisel, which for some reason never came into general use.

To maize, beans, squashes and tobacco, were now added cotton, pepper, tomato, cacao, and the care of certain fruits. A beer was made by fermenting the juice of the maguey. The Iroquois, however, had produced a similar beverage by fermenting maple sap. Earthen vessels of capacity to hold several gallons, of fine texture and superior ornamentation were produced by improved methods in the ceramic art. Bowls, pots and water-jars were manufactured in abundance. The discovery and use of the native metals first for ornaments, and finally for implements and utensils, such as the copper axe and chisel, belong to this period. The melting of these metals in the crucible, with the probable use of the blow-pipe and charcoal, and casting them in moulds, the production of bronze, rude stone sculptures, the woven garment of cotton, the house of dressed stone, ideographs or hieroglyphs cut on the grave-posts of

deceased chiefs, the calendar for measuring time, and the solstitial stone for marking the seasons, cyclopean walls, the domestication of the llama, of a species of dog, of the turkey and other fowls, belong to the same period in America. A priesthood organized in a hierarchy, and distinguished by a costume, personal gods with idols to represent them, and human sacrifices, appear for the first time in this ethnical period. Two large Indian pueblos, Mexico and Cusco, now appear, containing over twenty thousand inhabitants, a number unknown in the previous period. The aristocratic element in society began to manifest itself in feeble forms among the chiefs, civil and military, through increased numbers under the same government, and the growing complexity of affairs.

Turning to the Eastern hemisphere, we find its native tribes, in the corresponding period, with domestic animals yielding them a meat and milk subsistence, but probably without horticultural and without farinaceous food. When the great discovery was made that the wild horse, cow, sheep, ass, sow and goat might be tamed, and when produced in flocks and herds, become a source of permanent subsistence it must have given a powerful impulse to human progress. But the effect would not become general until pastoral life for the creation and maintenance of flocks and herds became established. Europe, as a forest area in the main, was unadapted to the pastoral state; but the grass plains of high Asia, and upon the Euphrates, the Tigris and other rivers of Asia, were the natural homes of the pastoral tribes. Thither they would naturally tend; and to these areas we trace our own remote ancestors, where they were found confronting like pastoral Semitic tribes. The cultivation of cereals and plants must have preceded their migration from the grass plains into the forest areas of Western Asia and of Europe. It would be forced upon them by the necessities of the domestic animals now incorporated in their plan of life. There are reasons, therefore, for supposing that the cultivation of cereals by the Aryan tribes preceded their western migration, with the exception perhaps of the Celts. Woven fabrics of flax and wool, and bronze implements and weapons appear in this period in the Eastern hemisphere.

Such were the inventions and discoveries which signalized the Middle Period of barbarism. Society was now more highly organized, and its affairs were becoming more complex. Differences in the culture of the two hemispheres now existed in consequence of their unequal endowments; but the main current of progress was steadily upward to a knowledge of iron and its uses. To cross the barrier into the Upper Status, metallic tools able to hold an edge and point were indispensable. Iron was the only metal able to answer these requirements. The most advanced tribes were arrested at this barrier, awaiting the invention of the process of smelting iron ore.

From the foregoing considerations, it is evident that a large increase of personal property had now occurred, and some changes in the relations of persons to land. The territorial domain still belonged to the tribe in common; but a portion was now set apart for the support of the government, another for religious uses, and another and, more important portion, that from which the people derived their subsistence, was divided among the several gentes, or communities of persons who resided in the same pueblo. That any person owned lands or houses in his own right, with power to sell and convey in fee — simple to whomsoever he pleased, is not only un-established but improbable. Their mode of owning their lands in common, by gentes, or by

communities of persons, their joint tenement houses, and their mode of occupation by related families, precluded the individual ownership of houses or of lands. A right to sell an interest in such lands or in such houses, and to transfer the same to a stranger, would break up their plan of life. The possessory right, which we must suppose existed in individuals or in families, was inalienable, except within the gens, and on the demise of the person would pass by inheritance to his or her gentile heirs. Joint tenement houses, and lands in common indicate a plan of life adverse to individual ownership.

The Maqui Village Indians, besides their seven large pueblos and their gardens, now have flocks of sheep, horses and mules, and considerable: other personal property. They manufacture earthen vessels of many sizes and of excellent quality, and woolen blankets in looms, and with yarn of their own production. Major J. W. Powell noticed the following case at the pueblo of Oraybe, which shows that the husband acquires no rights over the property of the wife, or over the children of the marriage. A Zunian married an Oraybe woman, and had by her three children. He resided with them at Oraybe until his wife died, which occurred while Major Powell was at the pueblo. The relatives of the deceased wife took possession of her children and of her household property; leaving to him his horse; clothing and weapons. Certain blankets which belonged to him, he was allowed to take, but those belonging to his wife remained. He left the pueblo with Major Powell, saying he would go with him to Santa Fe, and then return to his own people at Zuni. Another case of a similar kind occurred at another of the Moqui pueblos (*She-pow-e-luv-ih*), which also came to the notice of my informant. A woman died, leaving children and a husband, as well as property. The children and the property were taken by the deceased wife's relatives; all the husband was allowed to take was his clothing. Whether he was a Moqui Indian or from another tribe, Major Powell, who saw the person, did not learn. It appears from these cases that the children belonged to the mother, and not to the father, and that he was not allowed to take them even after the mother's death. Such also was the usage among the Iroquois and other northern tribes. Furthermore, the property of wife was kept distinct, and belonged to her relatives after her death. It tends to show that the wife took nothing from her husband, as an implication from the fact that the husband took nothing from the wife. Elsewhere it has been shown that this was the usage among the Village Indians of Mexico.

Women, as well as men, not unlikely, had a possessory right to such rooms and sections of these pueblo houses as they occupied; and they doubtless transmitted these rights to their nearest of kin, under established regulations. We need to know how these sections of each pueblo are owned and inherited, whether the possessor has the right to sell and transfer to a stranger, and if not, the nature and limits of his possessory right. We also need to know who inherits the property of the males, and who inherits the property of the females. A small amount of well-directed labor would furnish the information now so much desired.

The Spanish writers have left the land tenure of the southern tribes in inextricable confusion. When they found a community of persons owning lands in common; which they could not alienate, and that one person among them was recognized as their chief, they at once treated these lands as a feudal estate, the chief as a feudal lord, and the people who owned the lands in common as his vassals. At best, it was a

perversion of the facts. One thing is plain, namely, that these lands were owned in common by a community of persons; but one, not less essential, is not given; namely, the bond of union, which held these persons together. If a gens, or a part of a gens, the whole subject would be at once understood.

Descent in the female line still remained in some of the tribes of Mexico and Central America, while in others, and probably in the larger portion, it had been changed, to the male line. The influence of property must have caused the change, that children might participate as agnates in the inheritance of their father's property. Among the Mayas, descent was in the male line, while among the Aztecs, Tezucans, Tlacopans and Tlascalans, it is difficult to determine whether it was in the male or the female line. It is probable that descent was being changed to the male line among the Village Indian generally, with remains of the archaic rule manifesting themselves, as in the case of the office of Teuctli. The change would not overthrow gentile inheritance. It is claimed by a number of Spanish writers that the children, and in some cases the eldest son, inherited the property of a deceased father; but such statement, apart from an exposition of their system, are of little value.

Among Village Indians, we should expect to find the second great rule of inheritance which distributed the property among the agnatic kindred. With descent in the male line, the children of a deceased person would stand at the head of the agnates, and very naturally receive the greater portion of inheritance. It is not probable that the third great rule, which gave an exclusive inheritance to the children of the deceased owner had become established among them. The discussion of inheritances by the earlier and later writers is unsatisfactory, and devoid of accurate information. Institutions, usages and customs still governed the question, and could alone explain the system. Without better evidence than we now possess, an exclusive inheritance by children, cannot be asserted

Three Rules of Inheritance (continued)

The last great period of barbarism was never entered by the American aborigines. It commenced in the Eastern, according to the scheme adopted, with the production and use of iron.

The process of smelting iron ore was the invention of inventions, as elsewhere suggested, beside which all other inventions and discoveries hold a subordinate position. Mankind, notwithstanding a knowledge of bronze, were still arrested in their progress for the want of efficient metallic tools, and for the want of a metal of sufficient strength and hardness for mechanical appliances. All these qualities were found for the first time in iron. The accelerated progress of human intelligence dates from this invention. This ethnical period, which is made forever memorable, was, in many respects, the most brilliant and remarkable in the entire experience of mankind. It is so overcrowded with achievements as to lead to a suspicion that many of the works ascribed to it belong to the previous period.

IV. Property in the Upper Status of Barbarism.

Near the end of this period, property in masses, consisting of many kinds and held by individual ownership, began to be common, through settled agriculture, manufactures, local trade and foreign commerce; but the old tenure of lands under which they were held in common had not given place, except in part, to ownership in severalty. Systematic slavery originated in this status. It stands directly connected with the production of property. Out of it came the patriarchal family of the Hebrew type, and the similar family of the Latin tribes under paternal power, as well as a modified form of the same family among the Grecian tribes. From these causes, but more particularly from the increased abundance of subsistence through field agriculture, nations began to develop, numbering many thousands under one government, where before they would be reckoned by a few thousands. The localization of tribes in fixed areas and in fortified cities, with the increase of the numbers of the people, intensified the struggle for the possession of the most desirable territories. It tended to advance the art of war, and to increase the rewards of individuals prowess. These changes of condition and of the plan of life indicate the approach of civilization, which was to overthrow gentile and establish political society.

Although the inhabitants of the Western hemisphere had no part in the experience which belongs to this status, they were following down the same lines on which the inhabitants of the Eastern had passed. They had fallen behind the advancing column of human race by just the distance measured by the Upper Status of barbarism and the super-added years of civilization.

We are now to trace the growth of the idea of property in this status of advancement, as shown by its recognition in kind, and by the rules that existed with respect to its ownership and inheritance.

The earliest laws of the Greeks, Romans and Hebrews after civilization had commenced, did little more than turn into legal enactments the results which their previous experience had embodied in usages and customs. Having the final laws and the previous archaic rules, the intermediate changes, when not expressly known, may be inferred with tolerable certainty.

At the close of the Later Period of barbarism, great changes had occurred in the tenure of lands. It was gradually tending to two forms of ownership, namely, by the state and by individuals. But this result was not fully secured until after civilization had been attained. Land among the Greeks were still held, as we have seen, some by the tribes in common, some by the phratry in common for religious uses, and some by the gens in common; but the bulk of the lands had fallen under individual ownership in severalty. In the time of Solon, while Athenian society was still gentile, lands in general were owned by individuals, who had already learned to mortgage them; but individual ownership was not then a new thing. The Roman tribes, from their first establishment, had a public domain, the *Ager Romanus*; while lands were held by the curia for religious uses, by the gens, and by individuals in severalty. After these social corporations died out, the lands held by them in common gradually became private property. Very little is known beyond the fact that certain lands were held by these

organizations for special uses, while individuals were gradually appropriating the substance of the national areas.

These several forms of ownership tend to show that the oldest tenure, by which land was held, was by the tribe in common; that after its cultivation began, a portion of the tribe lands was divided among the gentes, each of which held their portion in common; and that this was followed, in course of time, by allotments to individuals, which allotments finally ripened into individual ownership in severalty. Unoccupied and waste lands still remained as the common property of the gens, the tribe and the nation. This, substantially, seems to have been the progress of experience with respect to the ownership of land. Personal property, generally, was subject to individual ownership.

The monogamian family made its first appearance in the Upper Status of barbarism, the growth of which, out of a previous syndyasmian form was intimately connected with the increase of property, and with the usages in respect to its inheritance. Descent had been changed to the male line; but all property, real as well as personal, remained, as it had been from time immemorial hereditary in the gens. Our principal information concerning the kinds of property, that existed among the Grecian tribes in this period, is derived from the Homeric poems, and from the early laws of the period of civilization which reflect ancient usages. Mention is made in the Iliad of *fences* around cultivated fields, of *an enclosure of fifty acres*, half of which was fit for vines and the remainder for tillage and it is said of Tydeus that he lived in a mansion rich in resources, and had corn-producing fields in abundance. There is no reason to doubt that lands were then fenced and measured, and held by individual ownership. It indicates a large degree of progress in a knowledge of property and its uses. Breeds of horses were already distinguished for particular excellence. Herds of cattle and flocks of sheep possessed by individuals are mentioned, as "sheep of a rich man standing countless in the fold." Coined money was still unknown, consequently trade was by barter of commodities, as indicated by the following lines: "Thence the long-haired Greeks bought wine, some for brass, some for shining iron, others for hides, some for the oxen themselves, and some for slaves." Gold in bars, however, is named as passing by weight and estimated by talents. Manufactured articles of gold, silver, brass and iron, and textile fabrics of linen and woolen in many forms, together with houses and palaces, are mentioned. It will not be necessary to extend the illustrations. Those given are sufficient to indicate the great advance society had attained in the Upper Status of barbarism, in contrast with that in the immediately previous period.

After houses and lands, flocks and herds, and exchangeable commodities had become so great in quantity, and had come to be held by individual ownership, the question of their inheritance would press upon human attention until the right was placed upon a basis which satisfied the growing intelligence of the Greek mind. Archaic usages would be modified in the direction of later conceptions. The domestic animals were a possession of greater value than all kinds of property previously known put together. They served for food, were exchangeable for other commodities, were usable for redeeming captives, for paying fines, and in sacrifices in the observance of their religious rites. Moreover, as they were capable of indefinite multiplication in numbers, their possession revealed to the human mind its first conception of wealth. Following upon this, in course of time, was the systematic cultivation of the earth

which tended to identify the family with the soil, and render it a property-making organization. It soon found expression, in the Latin, Grecian and Hebrew tribes, in the family under paternal power, involving slaves and servants. Since the labor of the father and his children became incorporated more and more with the land, with the production of domestic animals, and with the creation of merchandise, it would not only tend to individualize the family, now monogamian, but also to suggest the superior claims of children to the inheritance of the property they had assisted in creating. Before lands were cultivated, flocks and herds would naturally fall under the joint ownership of persons united in a group, on a basis of kin, for subsistence. Agnatic inheritance would be apt to assert itself in this condition of things. But when lands had become the subject of property, and allotments to individuals had resulted in individual ownership, the third great rule of inheritance, which gave the property to the children of the deceased owner, was certain to supervene upon agnatic inheritance. There is no direct evidence that strict agnatic inheritance ever existed among the Latin, Grecian or Hebrew tribes, excepting in the reversion, established alike in Roman, Grecian and Hebrew law; but that an exclusive agnatic inheritance existed in the early period may be inferred from the reversion.

When field agriculture had demonstrated that the whole surface of the earth could be made the subject of property owned by individuals in severalty, and it was found that the head of the family became the natural center of accumulation, the new property career of mankind was inaugurated. It was fully done before the close of the Later Period of barbarism. A little reflection must convince any one of the powerful influence property would now begin to exercise upon the human mind, and of the great awakening of new elements of character it was calculated to produce. Evidence appears, from many sources, that the feeble impulse aroused in the savage mind had now become a tremendous passion in the splendid barbarian of the heroic age. Neither archaic nor later usages could maintain themselves in such an advanced condition. The time had now arrived when monogamy, having assured the paternity of children, would assert and maintain their exclusive right to inherit the property of their deceased father.”

In the Hebrew tribes of whose expedience in barbarism very little is known, individual ownership of lands existed before the commencement of their civilization. The purchase from Ephron by Abraham of the cave of Machpelah is an illustration. They had undoubtedly passed through a previous experience in all respects similar to that of the Aryan tribes; and came out of barbarism, like them, in, possession of the domestic animals and of the cereals, together with a knowledge of iron and brass, of gold and silver, of fictile wares and of textile fabrics. But their knowledge of field agriculture was limited in the time of Abraham. The reconstruction of Hebrew society, after the Exodus, on the basis of consanguine tribes, to which on reaching Palestine territorial areas were assigned, shows that civilization found them under gentile institutions, and below a knowledge of political society. With respect to the ownership and inheritance of property, their experience seems to have been coincident with that of the Roman and Grecian tribes, as can be made out, with some degree of clearness, from the legislation of Moses. Inheritance was strictly within the phratry, and probably within the gens, namely, “the house of the father”. The archaic rule of inheritance among the Hebrews is unknown, except as it is indicated by the reversion, which was substantially the same as in the Roman law of the Twelve

Tables. We have this law of reversion, and also an illustrative case, showing that after Children had acquired an exclusive inheritance, daughters succeeded in default of sons. Marriage would then transfer their property from their own gens to that of their husband's, unless some restraint, in the case of heiresses, was put on the right. Presumptively and naturally, marriage within the gens was prohibited. This presented the last great question which arose with respect to gentile inheritance. It came before Moses as a question of Hebrew inheritance, and before Solon as a question of Athenian inheritance, the gens claiming a paramount right to its retention within its membership; and it was adjudicated by both, in the same manner. It may be reasonably supposed that the same question had arisen in the Roman gentes, and was in part met by the rule that the marriage of a female worked a *deminutio capitis*, and with it a forfeiture of agnatic rights. Another question was involved in this issue; namely, whether marriage should be restricted by the rule forbidding it within the gens, or become free; the degree, and not the fact of kin, being the measure of the limitation. This last rule was to be the final outcome of human experience with respect to marriage. With these considerations in mind, the case to be cited sheds a strong light upon the early institutions of the Hebrews and shows their essential similarity with those of the Greeks and Romans under gentilism.

Zelophehad died leaving daughters, but no sons, and the inheritance was given to the former. Afterwards, these daughters being about to marry out of the tribe of Joseph, to which they belonged, the members of the tribe objecting to such a transfer of the property, brought the question before Moses, saying: "If they be married to any of the sons of the *other* tribes of the children of Israel, then shall the inheritance be taken from the inheritance of our fathers, and shall be put to the inheritance of the tribe whereunto they are received: so shall it be taken from the lot of our inheritance." Although this language is but the statement of the results of a proposed act, it implies a grievance; and that grievance was the transfer of the property from the gens and tribe to which it was conceived as belonging by hereditary right. The Hebrew lawgiver admits this right in the language of his decision. "The tribe of the sons of Joseph hath spoken well. This is the thing which the Lord doth command, concerning the daughters of Zelophehad, saying: Let them marry to whom they think best: only to the family of the tribe of their father shall they marry. So shall not the inheritance of the children of Israel remove from tribe to tribe: for every one of the children of Israel shall keep himself to the inheritance of the tribe of his fathers. And every daughter that possesseth an inheritance in any tribe of the children of Israel shall be wife unto one of the family of the tribe of her father, that the children of Israel may enjoy every man the inheritance of his fathers." They were required to marry into their own phratry (*supra*, p. 368), but not necessarily into their own gens. The daughters of Zelophehad were accordingly "married to "their father's brother's sons", who were not only members of their own phratry, but also of their own gens. They were also their nearest agnates.

On a previous occasion, Moses had established the rule of inheritance and of reversion in the following explicit language. "And thou shalt speak unto the children of Israel, saying, If a man die and have no son, then you shall cause his inheritance to pass unto his daughters. And if he have no daughter, then you shall give his inheritance unto his brothers. And if he have no brethren, then ye shall give his inheritance unto his father's brethren. And if his father have no brethren, then ye shall

give his inheritance unto his kinsman, that is next to him of his family, and he shall possess it.”

Three classes of heirs are here named; first, the children of the deceased owner; second, the agnates, in the order of their nearness; and third, the gentiles, restricted to the members of the phratry of the decedent. The first class of the heirs were the children; but, the inference would be that the sons took the property, subject to the obligation of maintaining the daughters. We find elsewhere that the eldest son had a double portion. In default of sons, the daughters received the inheritance. The second class were the agnates, divided into two grades; first, the brethren of the decedent, in default of children, received the inheritance; and second, in default of them, the brethren of the father of the decedent. The third were the gentiles, also in the order of their nearness, namely, “his kinsman that is next to him of his family”. As the “family of the tribe” is the analogue of the phratry (*supra*, p. 369), the property, in default of children and of agnates, went to the nearest phrator of the deceased owner. It excluded cognates from the inheritance, so that a phrator, more distant than a father’s brother, would inherit in preference to the children of a sister of the decedent. Descent is shown to have been in the male line, and the property must remain hereditary in the gens. It will be noticed that the father did not inherit from his son, nor the grandfather from his grandson. In this respect and in nearly all respects, the Mosaic law agrees with the law of the Twelve Tables. It affords a striking illustration of the uniformity of human experience and of the growth of the same ideas in parallel lines in different races.

At a later day, the Levitical law established marriage upon a new basis independent of gentile law. It prohibited its occurrence within certain prescribed degrees of consanguinity and affinity, and declared it free beyond those degrees. This uprooted gentile usage in respect marriage among the Hebrews; and it has now become the rule of Christian nations.

Turning to the laws of Solon concerning inheritances, we find them substantially the same as those of Moses. From this coincidence, an inference arises that, the antecedent usages, customs and institutions of the Athenians and Hebrews were much the same in relation to property. In the time of Solon, the third great rule of inheritance was fully established among the Athenians. The sons took the estate of their deceased father equally; but charged with the obligation of maintaining the daughters, and of apportioning them suitably on their marriage. If there were no sons, the daughters inherited equally. This created heiresses by investing woman with estates, who like the daughters of Zelophehad, would transfer the property, by their marriage, from their own gens to that of their husband. The same question came before Solon that had been brought before Moses, and was decided in the same way. To prevent the transfer of property from gens to gens by marriage, Solon enacted that the heiress should marry her nearest male agnate, although they belonged to the same gens, and marriage between them had previously been prohibited by usage. This became such a fixed rule of Athenian law, that M. De Coulanges, in his original and suggestive work, expresses the opinion that the inheritance passed to the agnate, subject to the obligation of marrying the heiress. Instances occurred where the nearest agnate, already married, put away his wife in order to marry the heiress, and thus gain the estate. Protomachus, in the Eubulides of Demosthenes, is an example. But it is

hardly supposable that the law compelled the agnate to divorce his wife and marry the heiress, or that he could obtain the estate without becoming her husband. If there were no children, the estate passed to the agnates, and in default of agnates, to the gentiles of the deceased owner. Property was retained within the gens as inflexibly among the Athenians as among the Hebrews and the Romans. Solon turned into a law what, probably, had before become an established usage.

The progressive growth of the idea of property is illustrated by the appearance of testamentary dispositions established by Solon. This right was certain of ultimate adoption; but, it required time and experience for its development. Plutarch remarks that Solon acquired celebrity by his law in relation to testaments, which before that were not allowed; but the property and homestead must remain in the gens of the decedent. When he permitted a person to devise his own property to any one he pleased, in case he had no children, he honored friendship more than kinship, and made property the rightful possession of the owner. This law recognized the absolute individual ownership of property by the person while living, to which was now superadded the power of disposing of it by will to whomsoever he pleased, in case he had no children; but the gentile right to the property remained paramount so long as children existed to represent him in the gens. Thus at every point we meet the evidence that the great principles, which now govern society, were elaborated step by step proceeding in sequences, and tending invariably in the same upward direction. Although several of these illustrations are drawn from the period of civilization, there is no reason for supposing that the laws of Solon were new creations independent of antecedents. They rather embodied in positive form those conceptions, in relation to property, which had gradually developed through experience, to the full measure of the laws themselves. Positive law was now substituted for customary law.

The Roman law of the Twelve Tables (first promulgated 449 B. C.) contain the rules of inheritance as then established. The property passed first to the children, equally with whom the wife of the decedent was a co- heiress; in default of children and descendants in the male line, it passed to the agnates in the order of their nearness; and in default of agnates it passed to the gentiles. Here we find again, as the fundamental basis of the law, that the property must remain in the gens. Whether the remote ancestors of the Latin, Grecian and Hebrew tribes possessed, one after the other, the three great rules of inheritance under consideration, we have no means of knowing, excepting through the reversion. It seems a reasonable inference that inheritance was acquired in the inverse order of the law as it stands in the Twelve Tables; that inheritance by the gentiles preceded inheritance by the agnates, and that inheritance by the agnates preceded an exclusive inheritance by the children.

During the Later Period of barbarism a new element, that of aristocracy, had a marked development. The individuality of persons, and the increase of wealth now possessed by individuals in masses, were laying the foundation of personal influence. Slavery, also, by permanently degrading a portion of the people, tended to establish contrasts of condition unknown in the previous ethnical periods. This, with property and official position, gradually developed the sentiment of aristocracy, which has so deeply penetrated modern society, and antagonized the democratical principles created and fostered by the gentes. It soon disturbed the balance of society by

introducing unequal privileges, and degrees of respect, for individuals among people of the same nationality, and thus became the source of discord and strife.

In the Upper Status of barbarism, the office of chief in its different grades, originally hereditary in the gens and elective among its members, passed, very likely, among the Grecian and Latin tribes, from father to son, as a rule. That it passed by hereditary right cannot be admitted upon existing evidence; but the possession of either of the offices of *archon*, *phylo-basileus*, or *basileus* among the Greeks, and of *princeps* and *rex* among the Romans, tended to strengthen in their families the sentiment of aristocracy. It did not, however, become strong enough to change essentially the democratic constitution of the early governments of these tribes, although it attained a permanent existence. Property and office were the foundations upon which aristocracy planted itself.

Whether this principle shall live or die has been one of the great problems with which modern society has been engaged through the intervening periods. As a question between equal rights and unequal rights, between equal laws and unequal laws, between the rights of wealth, of rank and of official position, and the power of justice and intelligence, there can be little doubt of the ultimate result. Although several thousand years have passed away without the overthrow of privileged classes, excepting in the United States, their burdensome character upon society has been demonstrated.

Since the advent of civilization, the outgrowth of property has been so immense; its forms so diversified, its uses so expanding and its management so intelligent in the interests of its owners, that it has become, on the part of the people, an unmanageable power. The human mind stands bewildered in the presence of its own creation. The time will come, nevertheless, when human intelligence will rise to the mastery over property, and define the relations of the state to the property it protects, as well as the obligations and the limits of the rights of its owners. The interests of society are paramount to individual interests, and the two must be brought into just and harmonious relations. A mere property career is not, the final destiny of mankind, if progress is to be the law of the future as it has been of the past. The time which has passed away since civilization began is but a fragment of the past duration of man's existence; and but a fragment of the ages yet to come. The dissolution of society bids fair to become the termination of a career of which property is the end and aim; because such a career contains the elements of self-destruction. Democracy in government, brotherhood in society, equality in rights and privileges and universal education, foreshadow the next higher plane of society to which experience, intelligence and knowledge are steadily tending. It will be a revival, in a higher form, of the liberty, equality and fraternity of the ancient gentes.

Some of the principles, and some of the results of the growth of the idea of property in the human mind have now been presented. Although the subject has been inadequately treated, its importance at least has been shown. With one principle of intelligence and one physical form, in virtue of a common origin, the results of human experience have been substantially the same in all times and areas in the same ethnical status.

The principle of the intelligence, although conditioned in its powers within narrow limits of variation, seeks ideal standards invariably the same. Its operations, consequently, have been uniform through all the stages of human progress. No argument for the unity of origin of mankind can be made, which, in its nature, is more satisfactory. A common principle of intelligence meets us in the savage, in the barbarian, and in civilized man, It was in virtue of this that mankind were able to produce in similar conditions the same implements and utensils, the same inventions, and to develop similar institutions from the same original germs of thought. There is something grandly impressive in a principle which has wrought out civilization by assiduous application from small beginnings; from the arrow head, which expresses the thought in the brain of a savage, to the smelting of iron ore, which represents the higher intelligence of the barbarian, and, finally, to the railway train in motion, which may be called the triumph of civilization.

It must be regarded as a marvelous fact that a portion of mankind five thousand years ago, less or more, attained to civilization. In strictness but two families, the Semitic and the Aryan, accomplished the work through unassisted self-development. The Aryan family represents the central stream of human progress, because it produced the highest type of mankind, and because it has proved its intrinsic superiority by gradually assuming the control of the earth. And yet civilization must be regarded as an accident of circumstances. Its attainment at some time was certain; but that it should have been accomplished when it was, is still an extraordinary fact. The hindrances that held mankind in savagery were great, and surmounted with difficulty. After reaching the Middle Status of barbarism, civilization hung in the balance while barbarians were feeling their way by experiments with the native metals, toward the process of smelting iron ore. Until iron and its uses were known, civilization was impossible. If mankind had failed to the present hour to cross this barrier, it would have afforded no just cause for surprise. When we recognize the duration of man's existence upon the earth, the wide vicissitudes through which he has passed in savagery and in barbarism, and the progress he was compelled to make, civilization might as naturally have been delayed for several thousand years in the future, as to have occurred when it did in the good providence of God. We are forced to the conclusion that it was the result, as to the time of its achievement, of a series of fortuitous circumstances. It may well serve to remind us that we owe our present condition, with its multiplied means of safety and of happiness, to the struggles, the sufferings, the heroic exertions and the patient toil of our barbarous, and more remotely, of our savage ancestors. Their labors, their trials and their successes were a part of the plan of the Supreme Intelligence to develop a barbarian out of a savage, and a civilized man out of this barbarian.