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MAINE AND MORGAN: A PRELIMINARY INQUIRY INTO THE SCHOLARLY RELATIONSHIP OF TWO VICTORIAN LAWYERS

Rennard Strickland*

A nineteenth century wit pictured early anthropology as "the investigation of oddments by eccentrics."¹ And in a very real sense this was an apt description of the conjectural antics of the early investigators of ancient society. As Professor Max Gluckman notes "the anthropologists of the second half of the nineteenth century studied a mixed bag of subjects: skull-shapes, types of hair, folktales, the materials of so-called simple peoples . . . wedding customs, magical practices, and as-yet unwritten languages."²

Most of the Victorian students of primitive man engaged in what Radcliffe-Brown was to call the "if-I-were-a-horse model" of reasoning. Even the most sophisticated of these early investigators reported and interpreted "the unusual, the exotic, the bizarre, . . . the grotesque" and "built arguments out of oddments of information." The modern student of the science of anthropology reads most early works as little more than pioneering but fictional studies.

Standing with the great body of these nineteenth century investigators were two conservative lawyers, Lewis Henry Morgan and Henry Sumner Maine. Maine and Morgan, more than other early students of ancient man, have most gracefully weathered the passage of time. Amazingly, Morgan and Maine have remained significant figures despite the near universal rejection of many specifics of their original theories, including the conceptions of matriarchal and patriarchal origins of society.³

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1. C. KLUCKHOHN, *MIRROR FOR MAN* 11 (1961).

2. M. GLUCKMAN, *POLITICS, LAW AND RITUAL IN TRIBAL SOCIETY* 1 (1965).

3. The most comprehensive consideration of contemporary attitudes toward this

E. Adamson Hoebel, the most respected of our modern legal anthropologists, has written that "Sir Henry Maine's *Ancient Law* still remains . . . the preeminent work on the origin and nature of primitive legal institutions."⁴ Gluckman notes "for me personally the greatest of these men, whose book I can read as if I were conversing with a modern anthropologist, was Sir Henry Maine."⁵

Today we are witnessing what Leslie A. White has called "a revival of interest in Morgan's work and a new appreciation of his achievements."⁶ In the inaugural Lewis Henry Morgan Lecture at the University of Rochester, Meyer Fortes characterized the "father of anthropology" as "one of the inspired pioneers who brought order and method into the studies . . . where previously random speculation and casual curiosity had been the rule."⁷ Recently Morgan has been called "a singular figure in the intellectual history of the nineteenth century [who] cast out the notion that subjective, irrational, or subconscious factors made every man his own historian."⁸

A twentieth century lawyer who is also a student of primitive man would find it easy to cast a backwards glance at these two great pioneer figures and say that it was more than mere coincidence that the modern science of anthropology rests upon the work of the legal mind. In viewing the career of these distinguished students of ancient society one is reminded of Samuel Johnson's observation that "Lawyers know life practically" and that "a bookish man should always have them to converse with."⁹ And yet to do this is to cast nineteenth century legal thought into the twentieth century mold, to forget that Maine was himself a significant figure in the creation of the scientific and comparative study of law.¹⁰

Maine and Morgan were undoubtedly products of that great nine-

controversy is David F. Aberle, *Matrilineal Descent in Cross-Cultural Perspective in MATRILINEAL KINSHIP* 655-727 (D. Schneider & E. Gough eds. 1961).

4. Hoebel, *Fundamental Legal Concepts as Applied in the Study of Primitive Law*, 51 *YALE L.J.* 951 (1942).

5. M. GLUCKMAN, *supra* note 2, at 17.

6. WHITE, *Introduction to L. MORGAN, ANCIENT SOCIETY* at 1 (1964).

7. M. FORTES, *KINSHIP AND THE SOCIAL ORDER: THE LEGACY OF LEWIS HENRY MORGAN* 6 (1969) [hereinafter cited as FORTES].

8. C. RESEK, *LEWIS HENRY MORGAN: AMERICAN SCHOLAR* 151-52 (1960).

9. A. JOHNSON *READER* 456 (E. Adams & G. Milne eds. 1966).

10. One need only remember the evaluation of Sir Frederick Pollard in his *Oxford Lectures*: "At one master stroke he forged a new and lasting bond between law, history, and anthropology. Jurisprudence itself has become a study of the living growth of human society through all its stages." See W. HOLDSWORTH, *THE HISTORIANS OF ANGLO-AMERICAN LAW* 83 (1928).

teenth century stirring which was the birth of modern social science.¹¹ The reputation of each rests more clearly upon his one great book than their admirers would be willing to admit.¹² Maine's classic was *Ancient Law* with the famous Chapter Five on Primitive Societies and the observation that the movement of society was from status to contract.¹³ Morgan's reputation survives upon the basis of his original treatment of what was to become the science of kinship.¹⁴

While both Maine and Morgan focused their studies upon the organization of society and the "evolution" of the legal order, the two were studying distinctly separate phases of development. Maine observed what we have come to call "archaic law" or the laws of ancient peoples. Morgan concentrated his study on primitive laws of preliterate societies.¹⁵ Morgan began his observations in an effort to record and

11. For an excellent analysis of the world of Morgan and Maine examine J. BURROW, *EVOLUTION AND SOCIETY: A STUDY IN VICTORIAN SOCIAL THEORY* (1966), especially Chapter Five on Sir Henry Maine. This paper makes no attempt to explore the political theories of Morgan or Maine except to note that both were considered "conservative" figures. Maine, for example, has recently been praised by Russell Kirk. There is, no doubt, a great irony in the fact that railroad lawyer Morgan became a central figure in Marxist interpretations of "cultural progress." For additional information consult M. CRANSTON, *POLITICAL DIALOGUE* (1968); F. ENGELS, *ORIGIN OF THE FAMILY* (4th ed. Reports transl. 1902); R. KIRK, *THE CONSERVATIVE MIND* (1968); N. LENIN, *STATE AND REVOLUTION* (1917); B. LIPPINCOTT, *VICTORIAN CRITICS OF DEMOCRACY* (1964). For an incisive interpretation of Maine's concepts in light of modern jurisprudential theory, see Rehbinder, *Status, Contract, and the Welfare State*, 23 *STAN. L. REV.* 941 (1971).

12. Both books are available in a number of new editions.

13. For a brief evaluation of historical interpretation of Maine's generalization in the last sentence of Chapter V of *ANCIENT LAW* read M. Gluckman, *Concepts in the Comparative Study of Tribal Law*, in *LAW IN CULTURE AND SOCIETY* 351 (L. Nader ed. 1969). Gluckman argues that the simple statement that "If then we employ status, agreeably with the usage of the best writers, and avoid applying the term to such conditions as are the immediate or remote result of agreement, we may say that the movement of progressive societies has hitherto been a movement from Status to Contract" has been more frequently misread than any other single statement on the development of society.

14. British anthropologist W.H.R. Rivers has concluded: "I do not know of any discovery in the whole range of science which can be more certainly put to the credit of one man than that of the classificatory system of relationship by Lewis Morgan. By this I mean, not merely that he was the first to point out clearly the existence of this mode of denoting relationship, but that it was he who collected the vast mass of material by which the essential character of the system were first to recognize. . . ." W. RIVERS, *KINSHIP AND SOCIAL ORGANIZATION* 14-15 (1914). George P. Murdock called Morgan's work with kinship "perhaps the most original and brilliant single achievement in the history of anthropology." G. MURDOCK, *SOCIAL STRUCTURE* 91 (1949).

15. In considering the distinction in approaches a letter from Frederick William Maitland to Frederick Pollard provides some insight into Maine's methods. "You spoke of Maine. Well, I always talk of him with reluctance, for on the few occasions on which I sought to verify his statements of fact I came to the conclusion that he trusted much to a memory that played him tricks and rarely looked back at a book

preserve the existing customs—the primitive law—of native North American Indian Tribes, while Maine sought to interpret the order of earlier civilizations.¹⁶ Robert Redfield in his "Maine's Ancient Law in the Light of Primitive Societies" recorded Maine's limited concept of primitive law.

To Maine primitive society was the society of the Greeks at the time of the Homeric poems, or of Rome at the time of the early kings, and primitive law was the law of that society To Maine primitive law was not the law of the primitive peoples that survive until modern times. To Maine, primitive law was ancient law, the law of the earliest classical civilization Maine asked materials on Rome and Greece to tell him what the first social condition of mankind was The reader of the book will not find a single reference to any non-literate people surviving into modern times. There is no reference to any American Indian, African, or Oceanic tribe. In short, Maine has nothing to say, in any particular, about custom and law in non-literate, tribal or subtribal communities.¹⁷

By contrast, Morgan's first observations on primitive law were outgrowths of his specific field recordings and interpretations of the life ways of the Iroquois tribe of Indians.¹⁸ The early letters and papers, such as the 1847 "Letters on the Iroquois" and the 1857 "Laws of Descent of the Iroquois," consider the study of systems of law secondary to the recording of a vanishing tribal civilization.¹⁹

Yet there is evidence of cross-fertilization of ideas between Maine and Morgan. Each makes specific reference to the other's works.²⁰ The scholarly debate over the nature of their influence on each other is

that he had once read: e.g., his story about the position of the half-blood in the law of Normandy seems to me a mere dream that is contradicted by every version of the customal." Letter from Frederic W. Maitland to Frederic Pollard, January 21, 1901 in *THE LETTERS OF FREDERIC WILLIAM MAITLAND* 222 (C. Fifoot ed. 1965). See also Landman, *Primitive Law, Evolution, and Sir Henry Maine*, 28 *MICH. L. REV.* 404 (1929-30).

16. FORTES 11-12.

17. Redfield, *Maine's Ancient Law in the Light of Primitive Societies*, 3 *W. POL. Q.* 576-77 (1950).

18. The most complete record of Morgan's field methods and observational data is found in his journals. LEWIS HENRY MORGAN'S *THE INDIAN JOURNALS, 1859-1862* (L. White ed. 1959); White, *Lewis H. Morgan's Journal of a Trip to Southwest Colorado and New Mexico*, 8 *AM. ANTIQUARIAN* (1942); White, *Lewis H. Morgan's Western Field Trips*, 53 *AM. ANTHROPOLOGIST* 11 (1951).

19. Morgan, *Letters on the Iroquois Addressed to Albert Gallatin*, 5 *AM. WHIG REVIEW* 177-90, 242-57, 447-61, in N. CRAIG, *OLDEN TIMES* (1948); Morgan, *Laws of Descent of the Iroquois*, 11 *AM. ASS'N. ADVANCEMENT SCI.* 341 (1858).

20. White, *supra* note 6, at xxxi.

a long one which has apparently resolved itself into a realization that both approached the same problems at approximately the same time and arrived independently at similar questions concerning the organization of early society.²¹ Few dispute the conclusion of Morgan's foremost chronicler Leslie White.

[While] it has been asserted . . . that Morgan 'took his theory' from Maine's *Ancient Law* (1861) we are not sure that this assumption is justified. Maine is mentioned in *Ancient Society* but not in this connection. We have no good reason to believe that Morgan was unwilling to give other scholars credit for information or understanding which he had derived from them. And, furthermore, we find that Grote makes virtually the same distinction in a passage which Morgan quotes in *Ancient Society*.²²

One may safely conclude that Morgan and Maine "exercised convergent influence" starting as they did from "opposite kinds of data and premises."²³ Morgan was essentially an ethnologist and Maine a jurist. The primary disagreement between the two was "the accidental result of Maine's absorption in the history of Roman and Hindu family law and of Morgan's Iroquois predilections."²⁴ For as Meyer Fortes has reminded us:

We cannot fail to be impressed by the compatibility of their points of view and their theories Whether or not, for example, Morgan borrowed the division he made between *societas* or gentile society, and *civitas* or political society, from Maine's celebrated contrast between status and contract, is immaterial. The fact is that he found it apposite to his thought and improved on it theoretically by lifting it from its narrow legal association to the sociologically more significant political plane. . . . Today of course we can see that they were complementary to each other. Patriarchy versus matriarchy, *patria-potestas* versus the democracy which Morgan tended to overrate in the matrilineal gens, the principle of the corporation as legal entity by contrast with the structure of the corporate gens as a political unit based on

21. Fortes, *Social Anthropology*, in *SCIENTIFIC THOUGHT IN THE TWENTIETH CENTURY* 336 (A. Heath ed. 1951); FORTES 3-17; Lowie, *Lewis Henry Morgan in Historical Perspective*, in *ESSAYS IN ANTHROPOLOGY PRESENTED TO A. L. KROEBER* (1936); R. LOWIE, *PRIMITIVE SOCIETY* 50, 319 (1920); White, *Morgan's Attitude Toward Religion and Science*, 46 *AM. ANTHROPOLOGIST* 218 (1944); White, *How Morgan Came to Write Systems of Consanguinity and Affinity*, in *PAPERS OF THE MICH. ACAD. OF SCI. ARTS & LETTERS* 262 (1957).

22. White, *supra* note 6, at xxxi.

23. C. HAVINGER, *PIONEERS IN ANTHROPOLOGY* 123 (1936).

24. FORTES 11.

kinship—in all these respects their researches complemented each other.²⁵

Morgan's concern with Maine is perhaps best illustrated in *Ancient Society* published in 1877. As the subtitle—"Through Savagery and Barbarism to Civilization"—suggests, the work presented Morgan's theory of the evolution of human society as a whole.²⁶ In the concluding chapter entitled "Sequence of Institutions" the American defends his conception of societal origins. He admits that "this sequence . . . contravenes some of the conclusions of that body of eminent scholars who, in their speculations upon the origin of society, have adopted the patriarchal family of the Hebrew and Latin types as the oldest form of the family, and as producing the earliest organized society." Morgan concludes that "among the latest, and holding foremost rank among them, is Sir Henry Maine, whose brilliant researches in the sources of ancient law, and in the early history of institutions, have advanced so largely our knowledge of them."²⁷

In *Ancient Society* Morgan notes that Maine relied upon evidence from the Grecian family of the Homeric period to establish his point by reference to what he believed were earlier family institutions. Chapter Fifteen contains an extended quotation from Maine's recently published *Lectures On The Early History of Institutions*. Morgan herein acknowledges that "the communities of Villeins on French estates in former times, noticed by Sir Henry Maine in his recent work, may prove to be, as he intimates, remains of ancient Celtic gentes."²⁸

Maine's *Ancient Law* predates the major works of Morgan. *Lectures On The Early History of Institutions* which is subtitled "A Sequel to 'Ancient Law'" includes three specific references to the works of Lewis Henry Morgan.²⁹ The most detailed consideration is contained in Lecture Seven entitled "Ancient Divisions of the Family." The essential element of Maine's evaluation is found in the following passage:

I have spoken before of a volume of "Systems of Consanguinity and Affinity in the Human Family," published by the Smithsonian Institute at Washington. The author, Mr. Lewis Morgan, is one of the comparatively few Americans

25. FORTES 12.

26. For editions of ANCIENT SOCIETY see White, *supra* note 6, at xlv.

27. L. MORGAN, ANCIENT SOCIETY 428 (1964).

28. *Id.* at 305.

29. H. MAINE, LECTURES ON THE EARLY HISTORY OF INSTITUTIONS 68, 70, 212 (1884).

who have perceived that, if only on the scores of the plain extant evidences of the civilization which was once enjoyed and lost by some branches of their stock, the customs and ideas of the Red Indians deserve intelligent study. In prosecuting his researches Mr. Morgan was struck with the fact that the conception of Kinship entertained by the Indians, though extremely clear and precise, and regarded by them as of much importance, was extremely unlike that which prevails among the now civilized races. He then commenced a laborious investigation of the whole subject, chiefly through communications with correspondents in all parts of the world. The result at which he arrived was that the ideas on the subject of relationship entertained by the human family as a whole were extraordinarily various, but that a generalization was possible, and that these ideas could be referred to one or other of two distinct systems, which Mr. Morgan calls respectively the Descriptive and the Classificatory system.

. . . .

I am not now concerned with the explanation of the Classificatory system of Kinship. Mr. Morgan and the school to which he belongs find it, as I said before, in a state of sexual relations, alleged to have once prevailed universally throughout the human race, and known now to occur in some obscure fragments of it My own opinion, which I will state at once, is that the resemblance between the Irish classification of kindred and the modes of classification described by Mr. Morgan is only superficial and accidental. The last explanation Mr. Morgan would admit of the remarkable ideas concerning kinship which form the subject of his book would be that they are connected with the *Patria Potestas*, that famous institution which held together what he and his school consider to be a relatively modern form of family.³⁰

Few students of early law realize that Lewis Henry Morgan and Henry Sumner Maine were frequent correspondents who while they never formed a personal friendship nonetheless developed strong scholarly ties.³¹ Perhaps it is true, as one biographer suggested, "in the

30. *Id.* at 212-16.

31. Maine's letters to Morgan (hereafter cited as HSM TO LHM) are found in the Lewis Henry Morgan Papers, Rush Rhees Library, University of Rochester. The author would like to thank the special collections staff for making copies of these letters available. Selected excerpts from these letters have been reprinted in B. STERN, *LEWIS HENRY MORGAN: SOCIAL EVOLUTIONIST* (1967) and G. FEVER, *FROM STATUS TO CONTRACT: A BIOGRAPHY OF SIR HENRY MAINE, 1822-1888* (1969) [hereinafter cited as FEVER]. Morgan's letters to Maine are apparently at the University of London but must be examined in this library.

midsts of the great Victorian age of historical synthesis and evolutionary social thought, the fundamental question of 'which came first patriarchs, matriarchs, or promiscuous hordes?' was to leave very little room for scholarly fellowship."³²

We know that Morgan and Maine met for the first time in 1871. An entry in Morgan's travel journal for July 27, 1871 reports:

LONDON: In the afternoon I called upon Mr. McLennan by appointment and we went down to the Athenaeum Club to meet Sir Henry S. Maine, author of Maine's *Ancient Law*. McLennan had previously written to him of our intended call. He is a member of this famous London Club, and spends most of his time at the Club House in Pall Mall. Sir Henry is a good sized and handsome man about fifty and perhaps over, of fine personal appearance and manners. We had a half hour's talk, mostly on Indian matters, and the ages of barbarism, and I left quite well pleased. I told him he and Lubbock should write and put McLennan in a professorship at Cambridge so as to free his time and enable him to follow his ethnological work.³³

During the next ten years these two scholars exchanged letters, articles and books as well as inquiries concerning their scientific observations and small-talk about health. Typical of their notes is one from Maine to Morgan which reports that "I have carefully followed all your investigations so far as they are known to me, and in my last book I have spoken of the value of your SYSTEMS OF CONSANGUINITY AND AFFINITY. I hear with much pleasure that you have a volume in the press."³⁴

Perhaps the most important extant piece of correspondence between Morgan and Maine is a letter of July 30, 1876, in which Maine contrasts his approach with Morgan's investigation. This is as concise and incisive an analysis of the scholarly distinctions between Maine and Morgan as has ever been written.

As you truly say, we have attacked the same subject from opposite sides. I understand you to have begun with observations of the customs of savages, whereas I began as a Professor of Jurisprudence and should very probably have never interested myself in primitive usage, if I had not been profoundly discontented with the modes of explaining

32. FEVER 135.

33. White, *Extracts from the European Travel Journal of L.H. Morgan*, 56 ROCHESTER HISTORICAL SOC'Y. PUBL. 374-75 (1937).

34. HSM TO LHM, July 30, 1876.

legal rules which were in fashion when I began to write. I am still apt to limit my enquiries to ancient institutions which I can more or less distinctly connect with modern ideas and ways of thought.³⁵

Clearly Maine seemed to have developed a more genuine scholarly interest in the works of Morgan than Morgan displayed for Maine's interpretations. In fact, Morgan was quite provincial in his attitude toward the contributions and theories of others. Such thinking is somewhat surprising in one who accumulated the masses of scientific data which Morgan gathered in the form of questionnaires from investigators among primitive peoples in all areas of the world. Maine's interest, by contrast, is reflected in his response to a complimentary copy of Morgan's most recent monograph. Maine wrote the author that "I am extremely obliged to you for your paper on 'Stone and Bone Implements', which I have just found at the Athenaeum. I will read it at once. I think it must be the same paper which Sir John Lubbock told me he was reading with great interest." Maine concluded that he was "just on the point of writing to Professor Henry for your larger work."³⁶

The care with which Maine studied the works of Morgan is demonstrated by a portion of a letter to Morgan following the publication of *Ancient Society*. "Many weeks have passed," Maine apologized, "since I received your volume on *Ancient Society*, but I have not acknowledged it simply because I have been reading it very carefully, though slowly, through." Maine was reluctant to comment but rather concluded "I feel it would be a bad compliment to pass any concise or summary judgment upon it, and I will only say that I have read it with the strongest interest and that there is hardly a chapter which does not present some new material for thought." Maine assured his friend that "I intend to give [your new theories] that full attention which is deserved by the conscientiousness and laboriousness evident in every part of your work and by the novelty and ingenuity of your inferences." As a final point of praise it was speculated that "the book cannot fail to make a deep mark on the path of inquiry which we both follow."³⁷

The letters to Morgan mirror the development of Maine's understanding of the early organization of society. The following para-

35. HSM TO LHM, July 30, 1876.

36. HSM TO LHM, July 31, 1871.

37. HSM TO LHM, July 30, 1877.

graph preserved in the archives at the University of Rochester provides an excellent insight into Maine's inquisitive mind.

No doubt the two lines of enquiry promise more and more to connect themselves together, and if I am not yet prepared to say that the connection has been established, I am quite ready to be convinced whenever the evidence is sufficient. Your work on SYSTEMS OF CONSANGUINITY, etc., carried the evidence much farther than before, and I shall look forward with great curiosity to your new publication. No doubt the history of property is greatly bound up with that of social development, and I suspect that physiology and biology must be called in before all is clear. I myself stumble a little at the unquestioning acceptance by anthropologists of the theological assumption of the descent of mankind from one single pair which seems to pervade a good deal of present investigations of savage customs.³⁸

Maine recognized that he and Morgan were exploring many of the same areas but the American anthropologist felt that the two would not conflict. In this letter dated from London, April 30, 1878, Maine again reports on his reading of *Ancient Society* and asks some very specific questions. A large portion of the letter is included to illustrate the points of inquiry which Maine directed toward Morgan.

With regard to "female" gentes, i.e., gentes believed to have sprung from female and continued through females, I have some difficulty in conceiving them as localised or combatant bodies. It is probably, however, that the difficulty arises solely from my ignorance of facts and hence it comes that I venture to trouble you with some questions about these gentes. Do the females, through whom alone these gentes are continued, remain always in the local seat of the gens, and do their husbands come to them from the seats of other gentes? Do their daughters remain always in the locality and do their sons go abroad to live with wives of other gentes?

Such an organization is quite conceivable and a friend of mine, who has been Chief Justice of the Colony of British Columbia, describes something very like it as prevailing among the Indians of that territory. He describes every male Indian as seeking a wife in some village other than that in which he was born, as going to live with her and as *taking her name*—I presume her gentile name.

But I want to be quite sure of the facts. May I then ask you who are the men of mature age inhabiting the local seat of a

38. HSM TO LHM, July 30, 1876.

"female" gens? I have no doubt that you can answer this in a moment from actual observation and I dare say I could ascertain it in a moment from your "League of Iroquois," but the book does not seem to be procurable in this country. My hesitation in the matter arises from the difficulty I feel in conceiving a "female" gens, if properly described above as a self-acting or combatant body, since all men whom one would suppose to be the kernal of the group would be strangers to it by birth.

Could you also tell me what extent a "female" gens serves as a real check on intermarriage of real kin. If an Indian has two wives of different "female" gentes, it is surely impossible that their children can intermarry though they are not gentile relatives!

Pardon my troubling you with these questions, in the interest of our subjects which lie so near together.³⁹

Maine pinpointed the central area of common concern in a letter discussing Morgan's *Ancient Society*. The message extends Maine's conception of his variations from Morgan's methods and explores their mutual interest in "gens."

Possibly you may remember that when I thanked you for kindly sending me your work on ANCIENT SOCIETY, I told you that I intended to read it with much care. I am now studying it with great attention and with great interest and profit and I have no doubt that I shall have occasion to express myself about it in print. Not indeed that I am likely to trespass on what is strictly your ground. The field of inquiry into the early history of institutions is now so intensive that it may be usefully mapped out into different parts occupying different tendencies. But I have long thought that investigators like yourself who work by actual observation of group customs and those who, like me, are chiefly busy with ancient records and bodies of written law were most likely to find a point of contact in the gens, and hence I am extremely anxious to be sure that I thoroughly understand all your descriptions of the social phenomena to which you attach so much importance. I need scarcely say that the gens in the early records and law of the higher and more advanced races shows itself at first not only as a self-acting group but as a group occupying a definite local seat. There is also a good deal of evidence that it was a combatant group; part of it is the striking story which I see you notice of the expedition of the Fabii against Veii. All this is perfectly intelligible of the male "gens" i.e. of the gens, theoretically

39. HSM TO LHM, April 30, 1878.

descended from the male and continued through the males. In this case, the males who are the muscle of gens remain in it always and serve for purposes of labour and fighting. I gather from some observations in your 7th Chapter on the "Aztec Confederacy" that you conceive the "Male" Indian gentes to have lived together in the same locality; and perhaps you have actually seen this as an existing phenomena.⁴⁰

The author has been unable to obtain significant portions of Morgan's letters to Maine. Unfortunately most of the papers of Sir Henry Sumner Maine were destroyed.⁴¹ We get something of a hint of the nature of these writings from a letter which Maine wrote to E. B. Taylor. The note was only recently discovered pasted inside the front of Taylor's copy of Maine's *Ancient Law*.

I look forward with much interest to the paper on Morgan. His book is certainly most curious, but there is something unsatisfactory about the man. I wrote him at his own invitation the other day and put to him a very simple and definite question, and now I have a letter of four quarto pages complaining of the . . . 'tendency of (my) mind to definiteness' and of the difficulty of answering it after all. Perhaps, as I fear is now the case with McLennan, he lives in fear lest anybody should get scent of his supposed discoveries.⁴²

Something of the style and direction of Morgan's letters to Maine can be conjectured from reading the surviving correspondence with other students of ancient society. Morgan defended his work in almost every respect. The New York lawyer asked questions that would draw out others as if he were a debater seeking the weak point of his opponent. In fact, Morgan was a stern critic who resented the arguments of others.⁴³

A letter from Morgan to Maine dated May 14, 1878, is surely

40. HSM TO LHM, July 30, 1877.

41. The story of Maine's papers which undoubtedly included most of the letters written by Morgan to Maine is explained by Maine's biographer George Fever. "As to Sir Henry's personal papers, it is likely that these . . . remained in a single collection for some years after his death, and certainly there is evidence that Grant Duff had access to such a collection. By 1903 they had been dispersed. . . . Lady Maine was an elderly woman living in reduced circumstances, and seems to have had little sense of her husband's historical importance. According to her grandson, she threw away the contents of letters written to Sir Henry by prominent literary men like Thackeray and Dickens, after cutting off and selling his signatures." FEVER xviii-xix. The remnants of Maine's papers were purchased by Harold Laski in 1940 and eventually given to the London School of Economics.

42. Letter from Henry S. Maine to E.B. Taylor, May 27, 1878, in FEVER 164.

43. See PIONEERS IN AMERICAN ANTHROPOLOGY: THE BANDELIER-MORGAN LETTERS (L. White ed. 1940); Stern, *Selections from the Letters of Lorimer Fison, A.W. Howitt, Lewis Henry Morgan*, 32 AM. ANTHROPOLOGIST 138 (1933).

typical.⁴⁴ Morgan proclaimed that "I claim no exclusive field in the gentile organization and should be glad to see you enter it in good earnest." This statement was followed by the strong suggestion that the tendency of Maine's mind "to definition" would restrict his ability to critically observe. Maine's recent biographer George Feavers reports that in this letter "drawing on his knowledge of the Iroquois, Morgan firmly defended his matrilineal views, and concluded by inviting Maine to America, where he promised, he would take him 'to one of our Reserves, and show you members of the different *gentes*, and see what [these Indians] have to say about them.'"⁴⁵

Undoubtedly the most disturbing factor in Morgan's relationship with Maine was the American's inability to picture Indian society for his English friend. Morgan notes in a letter to an American anthropologist that "the Europeans have had no experience which will enable them to know the life of the native people. I do not understand the failure to reason the *gentes*. Perhaps a visit among the Indians or native peoples of America would clear the thoughts."⁴⁶

Both Morgan and Maine recognized their points of departure. And yet both have survived for much the same reason. Each approached the science of the study of ancient society from a surprisingly modern viewpoint. Robert Redfield has concluded that most of their fellow scientists were not true students in that they wrote and dreamed in a world of conjecture.⁴⁷ But these two men stood apart. Their letters show that both recognized the significance of gathering hard data and historical instances. They drew from distinctive sources but they recognized the need for strong proofs in generalization. And thus Morgan and Maine became the greatest generalizers of their day. Surely Holdsworth's summary evaluation of Sir Henry Maine applies with equal force to Lewis Henry Morgan.

And so, although many of his conclusions are not now accepted, his books will always be studied, because they show the workings of the mind of genius . . ., because they have an artistic form which cause them to last long after more learned books have passed into oblivion.⁴⁸

44. Letter from Lewis H. Morgan to Henry S. Maine, May 14, 1878, in FEVER 164.

45. FEVER 164.

46. Letter from Lewis H. Morgan to James Albert Robinson, May 18, 1878, Morgan Papers, University of Rochester.

47. Redfield, *Maine's Ancient Law in the Light of Primitive Societies*, 3 W. POL. Q. 576 (1950).

48. W. HOLDSWORTH, *THE HISTORIANS OF ANGLO-AMERICAN LAW* 83 (1928).