

KARL MARX AND HENRY SUMNER MAINÉ ! INDIA AND THE ASIATIC MODE OF PRODUCTION by CYRIL LEVITT

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In the Preface to his Critique of Political Economy of 1859, Karl Marx made reference to four modes of production which mark progress in the development of the social economy. Of the Asiatic, ancient or classical antique, feudal and modern bourgeois modes of production listed by Marx in passing. Asiatic has remained the most obscure. Furthermore, this topic has become so controversial that the very mention of the phrase “Asiatic mode of production” is liable to arouse the passions of otherwise sober scholars. In

part, the disputatious nature of this matter is related to the stormy political history to which it has been subjected. In part, it is related to the lack of empirical material available to the founders of the theory."

Of course, Marx never developed a systematic theory of the Asiatic mode of production. He left bits and pieces of a theory in both his published and unpublished writings, but he did not succeed in bringing them together before his death. The fact that he spent so much time during his last years researching matters related to the AMP is a good indication, however, that this topic continued to occupy his thoughts. There is little doubt that had he lived another few productive years, he would have developed in a systematic way the partial insights into what he believed was the mode of production in pre-colonial Asia.

The Sources of the Theory

Marx based his views on the Asiatic mode of production upon several sources. He read the reports of 17th century European travellers to the Orient with great interest, and he treated them as general ethnographic accounts of the conditions of life there. He also read the philosophically and politically tinged descriptions of Oriental society which he found in the writings of many of the great European thinkers of the 18th and 19th centuries.

In addition, Marx carefully followed the reports of British colonial administrators who were engaged in the practical task of governing India and other British colonies. Although Marx concerned himself with China, Persia, Turkey and other Oriental countries, he developed his views on the Asiatic mode of production primarily on the basis of

his studies.

These British colonial administrators, men such as Cornwallis, Wilks, Dow, Campbell, Elphinstone, Metcalfe, among others, made a contribution to the theory of the AMP. However, in his most concentrated and systematic study of matters related to the AMP undertaken shortly before his death, two figures stand out in importance from all the rest. In the writings of Sir John Budd Phear and Sir Henry Sumner Maine Marx found a rich source of ethnographic material on the social, economic, juridical and political life of India.

Sir John Budd Phear

Sir John Budd Phear (1825-1905) was a British judge in colonial India and a follower of Henry Maine in ethnological matters." His study. The Aryan Village in India and Ceylon, was based upon his judicial experiences in these areas. The book attracted Marx's attention largely because it contains material directly related to questions of Oriental society and, in particular, to the Oriental commune." Although the method used by Phear is not reliable, 10 his researches did provide Marx with a detailed description of village life in Bengal and Ceylon."

Marx did have a general if vague theory of the AMP before his readings in ethnology late in his life, but his theory received its first empirical confirmation in Phear's survey. In Phear's book, the critical distinction between the modes of production in feudal Europe and the Orient were set out: "In Europe, in distinction to the East. In place of the produce (type of) tribute a dominion over the soil was to the condition of serfs or labourers. In the East, under the village substituted-the cultivators being turned out of their

land and reduced system, the people practically governed themselves, and the contest for power among the Chiefs of the noble class was mainly a struggle for command of the kachari tables.

Phear criticized those who confounded the Oriental economy with the feudal and Marx gave him support on this issue: “D. Verwandlung-dch d. English rogues and asses-der Zemindaris in private proprietors machte es eo ipso (wenn auch nicht in Idee jener asses) all intermediate interests zu rights in land,.u. the owner of any such interest could encumber the land or alienate it within the limit of the right: seine ownership selbst konnte wieder d. complex Hindu joint-parcenary form annehmen.” (“The transformation-by the English rogues and asses-of the Zamindars into private proprietors makes eo ipso (if not also in the idea of those asses) all intermediate interests into rights in land, and the owner of any such interest could encumber the land or alienate it within the limit of the right; his ownership itself could again assume the complex Hindu joint-parcenary form.”)

Yet, even though Phear posited a distinction between Orient and Occident, he fell into the same ethnocentric trap against which he had cautioned others. Referring to Phear Marx wrote: “Dieser Esel nennt d. Constitution d. village feudal).”1 (“This ass calls the Constitution of the village feudal.”) In criticizing Phear’s ethnocentrism on the one hand, and his moral outrage at the conditions of the ‘oppressed’ ryots on the other, Marx showed contempt for would-be reformers who are distanced from their object of concern but who contrive nevertheless to build ‘moral’ bridges to it: “A husbandman of the present day is the primitive being he always(!) has been. With a piece of rag round his loins for clothing, bare feet, a miserable hut to live in, and a daily fare of the coarsest description, he lives his life unruffled by ambition. If he

gets his two meals and plain clothing he is content with his lot, and if he can spare a few rupees more for purchasing jewellery for his wife and children, and a few rupees more for religious ceremonies he will consider himself as happy as he can wish to be. He is the greatest enemy of social reform (? wäre nicht enemy of getting himself the rent to pay Zemindarees, old or young !) (? would he not be enemy of getting himself the rent to pay zemindarees, old or young !"), and never dreams of throwing off the trammels which time or superstition has spun around him. He will not send his son to school for fear (and a very just one, too!) of being deprived of his manual assistance in the field…The ryots too poor (1) too ignorant, too disunited among themselves to effect…improvement.""

Phear's scorn for the inhabitants of the village communities is matched only by his maudlin outrage at their plight. Marx sought to expose the cant of this philanthropy by focusing upon the real forces at work in society. The utopian wish for betterment is itself an expression of the existing state of affairs.1.

Sir Henry James Sumner Maine

Most social scientists today associate the name of Henry Maine with one specific phrase concerning the direction of social development from status to contract. This characterization is the only legacy of Maine's which has penetrated the contemporary literature. Otherwise, he is a forgotten man. Indeed, there exists only one full. length biography and a few minor sketches of his life which were written by way of obituary, Yet, of the material contained in Marx's ethnological notebooks, the excerpts from and comments upon the work of Maine is clearly the most important, for the Main excerpts contain proportionately and absolutely a larger amount of material introduced

by Marx.”

Henry James Sumner Maine was born on August 15, 1822 at Hochelife, Bedfordshire. His father, James, a physician, separated from his wife in 1824 and was thereafter listed as a resident of Hindus- tan. Although a child of relatively humble birth, Henry was allowed to attend Christ’s hospital as a blue coat boy through the intervention of his godfather, the Reverend John Bird Sumner, a cousin of his mother who became the Archbishop of Canterbury in 1848.

An outstanding student, Maine won many school prizes for his Latin and Greek compositions. In 1840 he accepted a scholarship to Pembroke College at Cambridge University. After winning the Senior Classic and First Chancellor’s Medallist awards, he was appointed to a classics tutorship at Trinity Hall, Cambridge. He began his study of Roman Law at this time and on June 21, 1847, he was made Regius Professor of Civil Law at Cambridge, a position described by James Fitzjames Stephen as an “ill-paid sinecure.”11

Maine began a journalistic career in 1847 as a contributor to the Morning Chronicle, a paper in sympathy with the free-trade supporters of Robert Peel.” Money worries drove him to private practice, but in 1852 he was appointed to a Readership in Jurisprudence and Civil Law at the Middle Temple, Inns of Court. Here he met M.E. Grant Duff, his first biographer, and Whitely Stokes, the Irish philologist to whom he dedicated the Lectures on the Early History of Institutions.

In 1855 Maine collaborated in founding the Saturday Review and in the first three volumes published over 70 articles on contemporary political issues.

This series of essays already contained the germs of his later views-anti-Benthamism, anti-universal suffrage, anti-populism and anti-state collectivism. He wrote his first piece on India in this magazine, and in the Indian debate following the Sepoy Mutiny of 1857, defended the East India Company's hegemony over India, against the claims of the British Crown.

In 1861, John Murray (Darwin's publisher), brought out the first edition of Ancient Lase, Maine's most famous work, and incidentally. the one in which the term 'from status to contract' appears. Maine's career in India began in 1862 when he accepted the appointment to the position of Legal Member to the Viceroy's Indian Council. He used Ancient Law as a blue-print for his juridical activities, and as Feaver points out, India was his proving ground. The question fore- most in Maine's mind concerned the proper degree of legislation necessary to free the individual native of India from the bonds of the village community without bringing about social collapse or revolution. In other words, he would ask himself how the British administration could speed-up the 'natural' process of social development from status to contract. As a consequence, 211 acts were passed under Maine's tenure, and many more drafted by him were affected by his successor J. F. Stephen.

Resigning his Indian post in 1869, Maine returned to England and accepted the first Corpus Professorship of Jurisprudence at Oxford University. He began his first lecture series in the Hilary Term of 1870. In the following years these lectures were attended by Frederick Pollock. Frederic Seebohm and Paul Vinogradov, all who later became important figures in British historical jurisprudence.)

During his term at Oxford, Maine's second book, Village Communities in the

East and West, was published in London by John Murray (1871). Much of the theory in these six Oxford lectures was based upon Maine's recently acquired Indian experience. He used the research and authority of German writers such as G: L. von Maurer who investigated the Teutonic village communities in order to confirm the common origin of various branches of the 'Aryan' race and to trace the early history of feudalism in Western Europe. Maine believed that the roots of the feudal era lay in the period of dissolution of the free village communities which, he argued, existed in pre-feudal England. Accordingly, Maine believed that the Indian, Teutonic, and Celtic data went a long way in confirming Nasse's claim that the feudal manor in England evolved out of the free village community in England where land was held in common.

Henry Maine became Sir Henry Maine K.C.S.L. (Knight Com- mander of the State of India) on May 15, 1871 and, later in that year he was appointed permanent paid member to the Indian Council in London. Of course, he continued with his lectures at Oxford, preparing a number of topics which eventually came to be included in the Lectures on the Early History of Institutions, his third major work, published by Murray in 1875. (Lecture XI of this book was first read at Oxford in the winter of 1872; entitled 'the History of Property of Married Women' it was first published by a feminist group in 1873).

Maine had an opportunity to examine the ancient Irish law books at Trinity College in Dublin during a vacation in 1873 and this provided him with background material for his discussion of the ancient Irish law in the Lectures. This book is Maine at his best. It was a mature distillation of the most important themes with which he had concerned himself all his life. It was for

this reason the ideal book for Marx to have chosen for critical review.

Maine continued to gather honours to himself. He was made Master of Trinity Hall in 1877, having been chosen by Cambridge University to deliver the Rede Lecture in 1875. He was elected associate member of the Academie des Sciences Moral et Politiques in May 1883, in a competition with Herbert Spencer.

Maine's last major contribution to anthropological theory appeared in 1883 under the title Dissertations on Early Law and Custom, and it too was a collection of lectures delivered at Oxford. The Dissertations treated topics which had already been taken up in Maine's earlier books: the origins of feudalism, the nature of early property relations, primitive forms of inheritance and descent, etc. He also took the opportunity to reply to critics of his theory of Joint Family (which Maine believed was the earliest form of family life)."

In his later years, Maine devoted more time to theoretical and practical politics, first in his contributions to the St. James Gazette and later in his book Popular Government, a defence of elitist political forms. His last book, International Law a collection of (Whewell) lectures delivered before Cambridge University in 1887, was edited by Frederic Harrison and Frederick Pollock and published after Maine's death. 20

Superficially the biographies of Maine and Marx bear a striking resemblance to one another. Both were children of middle class families; both were steeped in classical learning: both had studied the law and read the same legal authorities; both were members of student clubs and both began their

careers in journalism at approximately the same time; both were men of modest means who achieved some measure of security later in life. It is even probable that the two men had unknowingly encountered one another in the Reading Room of the British Museum. However, in spite of this similarity in background, Maine and Marx cast their lots with opposed historical forces both in theory and in practice.

The ‘Lectures on the Early History of Institutions and the Marx Excerpts

The Lectures is divided into thirteen chapters or rather ‘lectures’; the first ten deal primarily with Brehon Law, the law of the ancient Irish. Lecture XI on the history of the property of married women has already been mentioned. Lectures XII and XIII together constitute a polemic against the analytic theory of law of Jeremy Bentham, John Austin and their followers. Throughout the book there are numerous references to the Hindu Law of pre-colonial India. By establishing similarity between the form and content of ancient Irish and Indian law, Maine thought he could demonstrate the unity of the ‘Aryan’ race which stretched from Ireland in the West to India in the East.

Marx’s excerpts from the Lectures are found on pages 160-197 of note book B146 approximately 36 1/4 manuscript pages representing about 21% of the contents of the four manuscripts contained in Krader’s edition.””

The Joint Family and the Gens

If Marx was positively inclined toward the work of Morgan, (albeit less enthusiastically so than was Engels), he opposed much of the content of

Maine's book, often by citing Morgan against it. The issues were related to questions of matriarchy and patriarchy; however, of central importance for Marx was the confrontation between Morgan's theory of the matrilinear gens and Maine's theory of the patrilinear Hindu Joint Family, as to which form was the original one. In his excerpts from Maine, Marx joined the battle on Morgan's side by attempting to show that the very evidence adduced by Maine in his cause proves the case for the theory of the gens. We note the following references in the Marx excerpts:

-As a prelude to Lecture III, Marx wrote: "Die flgden 'Extracts' zeigen, einerseits dass Herr Maine sich noch nicht aneignen konnte was Morgan noch nicht gedruckt hatte, andrerseits, dass er Sachen die sich u. a. schon bei Niebuhr finden, darzustellen sucht as 'Pointed out' by the identical Henry Summer Maine 13 ("The following Extracts' show, on the one hand that Mr. Maine could not yet have appropriated what Morgan had not yet published, on the other hand, that he seeks to present things which are already found in Niebuhr, as 'Pointed out' by the identical Henry Summer Maine!")

-On the relationship between kinship and territory in Maine, Marx remarked: "Dies zeigt, wie wenig die Gens a fact observed by the identical Maine is !" ("This shows, how little is the Gens a fact observed by the identical Maine !")

-In this regard, Marx has some critical words for Maine's scholar- ship: "Nach Herrn Maine, first: Hindoo Joint Family, 2nd, Household Community, of the Southern Slavonians, 3rd the true Village Community as found first in Russia and next in India [Dies 'first' u. 'next' bezieht sich nur auf d. relative periods worin diese things dem great Maine bekannt geworden.]" ("According to Mr. Maine, first: Hindoo Joint Family. 2nd Household Community of the Southern

Slavonians. 3rd the true Village Community as found first in Russia and next in India. [This ‘first’ and ‘next’ is only related to the relative periods in which these things became known to the great Maine !]”

-Marx criticizes Maine’s misuse of the Joint family in India as a model of the original familial form: First “a Joint Family die statt ges weil d, Herr Maine d. Joint Family wie sie in Indien existirt fälschlich als ursprüngliche Form betrachtet.”) (“First a Joint Family (this instead of gens, because Mr. Maine falsely considers the Joint Family as it exists in India as the original form.”)

-This culminates in this diatribe which Marx unleashes at Maine: “Herr Maine als blockheaded Englishman geht nicht von gens aus, sondern von Patriarch, der spater Chief wird etc. Albernheiten (116-18). Dies passt namtlich für d. älteste Form der gens !-Dieser Patriach- z.B. bei d. Morganschen Iroquois (wo d. gens in female descent 1) Der Blödsinn Maine’s gipfelt in d. Satz: ‘Thus all the branches of human society may or may not have been developed from joint families [wo er grade die jetzige Hindooform der lezteren in Aug hat, dies sehr sekundären Charakter hat, u. deshalb auch-ausserhalb d. village communities thront, namentlich in d. Städten (“Mr. Maine as a block. headed Englishman does not proceed from the gens, but rather from the Patriarch who later becomes Chief etc. Foolishness (116-18). This applies particularly for the oldest form of the gens! This Patriach- e.g. among Morgan’s Iroquois (where the gens in female descent!) Maine’s nonsense reaches a peak in this sentence: Thus all the branches of human society may or may not have been developed from joint families [where he has precisely the current Hindoo form of the latter in mind, this has a very secondary character, and therefore-reigns outside the village communities, especially in the cities which arose out of an original patriarchal cell; but, wherever the Joint Family is an institution of

the Aryan race (1), we (who?) see it spring from such a cell, and when it dissolves, we see it dissolving into a number of such cells.”

There are a number of points to notice here: Maine’s ethnocentrism, the gens as an older form than the Joint Family; the modernity of the Hindoo form of the latter (a poor example of a primitive form). We also take notice that Marx is careful to make the distinction here between the relations of the town and those of the countryside, some- thing which his critics accuse him of glossing over, especially in his earlier writings on India. A few pages later he emphasizes this distinction once again :”+

D. ganz falachie Vorstellung des Maine, der d. Privatfamilie, wenn in Indien auch in d. Form. worin sie dort existirt.-u. zwar in d. Städten mehr als auf d. Land, u. bei d. Grundrentbesitzern mehr als bei d. arbeitenden Gliedern einer village community-als d. Basis betrachtet woraus sich Sept u. Clan entwickeln etc, zeigt sich flgder Phrase: Nachdem er gesagt, dass d. ‘power of distribution of inheritances vested in the Celtic Chiefs essentially diseslbe Institution sei, die dem ‘Hindoo father’ reserved ist dch die ‘Mitakshara’ fährt er fort: It is part of the prerogative (eselhafter Ausdruck fur die gens u. Tribe verhältnisse) belonging to the representative of the purest blood in the joint family: but in proportion as the Joint Family, Sept, or Olan becomes more artificial the power of distribution tends more and more to look like mere administrative authority. (196, 197) D. Sache ist grad umgekehrt. Für Maine, der sich d. English Private family vested in the Celtic Chiefs is essentially the same institution which is reserved for the ‘Hindoo father’ by the Milakshara he continues: ‘It is part of the prerogative (asinine expression for the gens and Tribe relations) belonging to the representative of the purest blood in the joint family; but in proportion as the Joint Family, Sept or Clan becomes more

artificial the power of distribution tends more and more to look like mere administrative authority. (196, 197) The matter is precisely opposite. For Maine, who after all cannot knock the English Private family out of his head, this entirely natural function of the chief of the gens further of the tribe, naturally precisely because he is its chief (and theoretically always “elected”) appears as ‘artificial’ and ‘mere administrative authority’ while the arbitrariness of the modern pater familias is exactly ‘artificial’ as the private family itself is, from the archaic standpoint.)”

There are several interesting points of theoretical interest here. For one, the division of land by the Chief cannot be abstracted from the web of gentile and tribal relations as though private property relations obtained. But this ‘completely false idea’ of Maine stems from a two-fold error on his part. First, his conclusions concerning the village community were based upon observations mostly of landlord families in the city, as opposed to the working families of the village commu- nities in the country. Secondly, Maine believed that the clan, sept and tribe developed out of the private family. This is an ethnocentrism and, according to Marx, it stands history on its head. Furthermore, the chief of a joint family was endowed by Maine with ‘free will’ (note the use of the word “prerogative”) torn from the relations within the gens and tribe. (In a later lecture, Maine charges Austin with making the same kind of abstraction). The question of artificiality presented as an absolute by Maine is relativized by Marx who situates it within its social context.””

The Anthropology of Ancient Hindu Law

In the Lectures, Maine studied the comparative jursiprudence of ancient Ireland and India in order to prove the pristine unity of the ‘Aryan’ race. In

Lecture X he treated the practice of Distress in the Irish, English, Nordic and Teutonic law. To Maine's discussion of the Irish and German practice of Distress Marx added the following note: "[Noch heut zu Tag bei distress in Oudh d. creditor landlord takes ausser cattle (dies vor allem etc.) auch Personen als Sklaven. Se The Garden of India von Irwin.]" "(Even today in Oudh concerningafter all nicht aus d. Kopf schlagen kann, erscheint diese gans natürliche Funktion des Chiefs of gens. weiter of Tribe, natürlich grade weil er ihr Ciaf ist (u. theoretisch immer gewählter') als 'artifical' u. 'mere administrative authority' whd d. Willkühr d. modernen pater familias grade 'artificial ist, wie d. Privatfamily selbst, vom archaischen Standpunkt]" ("The completely false idea of Maine, who considers the private family, in India as well in the form in which exists there,-in the cities more than in the country, and among the landlords more than among the working members of a village community-as the basis out of which the Sept and Olan develop etc.. is shown in the following phrase as well after he said that the power of distribution of inheritances distress the creditor landlord takes besides cattle (this above all etc.) persons as slaves as well. See The Garden of India by Irwin)"

From pages 297-299 Marx excerpted matters concerning various aspects of the Hindu law of distress known as 'sitting dharna'. Maine claimed that his friend Whitely Stokes was the first to refer to the practice in this connexion, but Marx added: "(Cf. Strange: Hindoo Late)".

In Lecture XI concerning the early history of settled property of women Maine discussed the question of the status of the property of deceased males in the Hindu law and in the law of the Catholic Church. He pointed out that the Mitakshara guaranteed a woman the right to certain property which her husband could not alienate or appropriate. Marx added: "D. Gunst der

indischen Gesetzgebung für d. Frauen, die sich bis jetzt in dem Stridhan (settled property of a married woman), incapable of alienation by her husband, u. ebenso darin verspricht, dass d. Habe der Frau auf d. Töchter od. die female members ihrer familie übergeht. (cf. Strange: 'Hindoo Law') etc-alles dies von Herrn Maine nicht richtig gedeutet, weil ihm alle Einsicht in gens u. daher auch ursprüngliche Vererbung in female,-nicht male, line of descent-abgeht. Der Esel sagt selbst mit welchen gefärbten Brillen er sieht : 'Among the Aryan [the devil take this 'Aryan' cant !] sub-races, the Hindoos may be as confidently asserted as the Romans to have had their society organized as a collection of patriarchally governed families. [Aus Niebuhr konnte er schon wissen, dass d. röm family noch eingehüllt in der gens," selbst nachdem sie in ihrer specific. From mit d. patria potestas ausgebildet.]" ("The advantage of the Indian legislation for the women who until now in the Stridhan (settled property of married women), incapable of alienation by her husband, and in this way promises therein that the possessions of the woman is made over to her daughter or to the female members of her family. (cf. Strange: 'Hindoo Law') etc-all of this is not rightly construed by Mr. Maine because every examination into the gens and thus also into the original inheritance in female.-not male, line of descent-is lost to him. The ass himself says with what coloured glasses he sees: 'Among the Aryan [the devil take this 'Aryan' cant !] sub-races, the Hindoos may be as confidently asserted as the Romans to have had their society organized as a collection of patriarahally governed families. [He could already know from Niebuhr that the Roman family was still enveloped in the gens, even after it developed in its specific form with the patria potestas.]")

Once again Marx raises the gens against the private, patriarchal family. The theory of the gens explains for Marx the reason why the husband is prevented

from alienating the property of his wife and why it devolves upon her daughters or female members of her family. Marx also loses his patience with Maine's patent racism. Finally, Marx calls Maine's scholarship into question once again by referring to Niebuhr's work on the Roman family.

Following this same line of thought, Marx seeks to ridicule Maine's bewiderment before the fact of the protection of the wife's property from disposal by the husband guaranteed by Hindu law: "If, then, (a nice 'If only resting upon Maine's own 'confident assertion') then, (dies 'then' Pecksniffian) (this 'then' Pecksniffian) at any early period, [Maine transports his 'patriarchal' Roman family into the very beginning of things] the married woman had among the Hindoos her property altogether enfranchised from her husband's control ['enfranchised", that is to say, from Maine's 'confident assertion'], it is not easy to give a reason why the obligations of the family despotism [a principal pet-doctrine of block-headed John Bull to read in original 'despotism'] were relaxed in this one particular. (323)"**

Marx then skips back to pages 321-322 to excerpt a quote from the Mitakshara found in Maine. But he prefaces this with a long passage based on Strange. This issue to which Marx wishes to call attention here concerns the real difficulty contemporary jurists have in making sense out of archaic legal sources given that the conditions and relations of life to which these sources refer and upon which they are founded no longer obtain. Marx wrote: "Maine citirt folgende Stelle aus d. treatise Mitakshara u. zwar Stelle schon citirt von Sir Thomas Strange Hindu Law' (see Daselbst t. I, p. 26-32) in Strange's Buch (obgleich schon 1830 publicirt citirbar als 2nd edit. seines Werks: 'Elements of Hindu Law', enthält viel vollständigere Quellenangaben u Auseinandersetg über diesen Punkt. Man ersieht ferner aus dem was Strange aus d. Quellen

angiebt, das schon im Mitakshare nicht zu sprechen von späteren Hindu juristischen Commentaren, ihr Verfasser den Ursprung der Stridhana nicht mehr versteht u. sich selber ganz so falsch rationalistisch plausibel zu machen sucht, wie etwa d. röm Juristen aus Cicero's Zeit ihnen unverständliche altrömische für sie 'archaische') Rechstgebräuche od Formeln. Eine solche rationalistische Erklärung ist es z. B., wenn in Mitakahara' d. fee', der Braut 'what is given to her in her bridal procession, upon the final ceremony, when the marriage already contracted and solemnized, is about to be consummated, the bride having hitherto remained with her mother' (Strange,t. I, p. 29); Strange bemerkt of this domio-ductio. this bringing of the bride home, which, with the Hindoo, is a consequence only of the antecedent contract, that, among the Romans, it was an ingredient wanting to its completion: till when, the bride was a 'sponsa' only; becoming or statim atque ducta est, quamvis nondum in cubiculum meriti venerit'; und fährt Strange fort: The fee of a Hindu wife has more- over this anomaly attending it, that, upon her death, it descends in a course of inheritance peculiar to herself. 'Diese 'anomaly' ist nur fragmen- tarisches, auf bestimmten Theil d. Vermögens reducirte, survival d. alten normalen rule, die gegründet auf descent der gens in der female line, der primitiven. So verhält es sich allzuesrt mit den 'Anomalien' in Recht etc. (In d. Sprache d. Ausnahmen auch allzuerst Ueberbleibsel d. älteren ursprünglicheren) D. alte Norm erscheint in veränderten relativ modernen Zustand als 'Anomalie', als unverständliche Ausnahme. Sämtliche indische Rechtsquellen u. Commentare verfasst, nachdem d. descent in female line schon seit lange übergegangen in descent in male line. (Aus Strange ferner ersichtbar, dass in verschiedenen Theilen Indians d. Anomalie mehr od. minder vollständiges' Uberbleibsel.)" ("Maine cites the following passage from the treatise Mitakshara, the passage already cited by Sir Thomas Strange Hindu Law' (see the same t. I. p. 26-32) in

Strange's book (even though already published 1830 cited as 2nd edition of his work: Elements of Hindu Law', contains much more complete list of sources and discussion concerning this point. Furthermore, one notices from Strange's sources that already in the Mitakshara not to speak of the later Hindu juridical commen- taries, its author no longer understands the origin of the Stridhana and seeks to make himself plausible in a falsely rationalistic way, just as the Roman jurists who were contemporaries of Cicero did in relation to the old Roman (for them 'archaic') legal customs or formulas which they didn't understand. Such a rationalistic explanation is found e.g. when in the Mitakshara the 'fee' of the bride 'what is given to her in her bridal procession, upon the final ceremony, when the marriage already contracted and solemnized, is about to be consummated, the bride having hitherto remained with her mother' (Strange, t. I, P. 29); Strange notices of this domio-duotio, this bringing home of the bride, which, with the Hindoo, is a consequence only on the antecedent contract, that, among the Romans, it was an ingredient wanting to its completion; till when, the bride was a 'sponsa' only; becoming 'uzor" statim atque ducta est, quamvis nondum in cubiculum meriti venerit'; and Strange continues: 'The fee of a Hindu wife has moreover this

ancomaty attending it, that, upon her death, it descends in a course of inheritanos pesuliar to herself. This anomaly is only fragmentary, reduced to a specific part of the inheritance, survival of the old normal rule, which was based upon descent of the gens in the female line, of the primitives. Thus it is first and foremost with the 'anomalies' in law etc. In the language of exceptions as well in the first place remnants of older original ones) The old norm appears in the changed relatively modern condition as 'anomaly', as incomprehensible exception. All Indian legal sources and commentaries were

composed after the descent in female line already a long time ago changed into descent in male line. (From Strange further noticeable that in different parts of India the anomalies more or less ‘complete’ remnant.)”)

The Custom of Suttee

In Lecture XI of the Lectures, Maine took notice of the custom of Suttee where the widow was burned following the death of her husband. Marx added an excerpt from Thomas Strange on this topic. According to Strange, the practice was not law but malus usus, merely recommended. Strange emphasized the role of ‘designing Brahmins’ and ‘interested relatives’ and Marx, following Strange, calls the practice “einfacher religiöser Mord.” Maine, however, is mild in his treatment of the clergy. Marx wrote: “Herr Maine selbst fügt dem, was man bei Strange findet nichts zu…”) (“Marx wrote: Mr, Maine himself adds nothing to that which is found in Strange…”) [Maine always mild when speaking of clergy and lawyers! and higher class people generally !] Maine implies that churchmen elsewhere were less hypocritical and self-seeking: “…So weiss die Strange auch, setzt aber hinzu, dass d. Kirchenpfaffen es anderswo nicht besser machten!” (“… Thus Strange knows this as well, but he adds that the clerics elsewhere were no better.”)

Returning to the issue of Suttee Marx writes: “Wir haben gesehen, dass wenn der Mann ohne issue stirbt, the widow comes in for her life (diese Herabsetzung auf tenure for life auch erst später, wie genau Musterung des von Strange angeführten Quellen zeigt) before the collateral relatives (of her husband, not her own, was Maine zu sagen vergisst; ihre eignen Verwandten hatten beim suttee bloss d. Interesse, dass sie sich ‘religiös’ bewährte). (“We have seen that if the man dies without issue, the widow comes in for her life

(this reduction to tenure for life also only later, as the exact inspection of the sources introduced by Strange shows) before the collateral relatives (of her husband, not her own. what Maine forgets to mention: her own relatives' only interest in the suttee was that they acted 'religiously.)"

There follows a quote from Maine which claims that Suttee is confined to the wealthier classes. Marx cites Strange in opposition to this: "Stranor, dessen Buch 45 Jahr älter als das des Maine, u der Chief Justion of Madras geswesen war, u. 1798 entered upon the adminis tration of justice, at the Presidency of Madras (Le. Preface VIII) wie er selbst uns in Vorrede seines Buchs erzählt, sagt dagegen mit Bezug natürlich auf die Präsidentschft v. Madras: 'It (the custom of Suttee) is confined pretty much to the lower classes."–a proof that it has no deeper root in the religion, than it has in the law of the country. TI. p. 241)]" ("[Strange, whose book is 45 years older than that of Maine, and who was Chief Justice of Madras, and in 1798 entered upon the administration of justice, at the Presidency of Madras (e. Preface VIII) as he himself tells us in the preface to his book, says on the other hand naturallu in relation to the Presidency of Madras: 'It (the custom of Suttee) is confined pretty much to the lower classes-a proof that it has no deeper root in the religion, than it has in the law of the country. T., p. 241)"]

There follows an excerpt from Maine on the widow's self-sacrifice and a series of comments from Marx: "The anxiety of her family [Umgekehrt: of her husban's family, die erbte; nur die weiblichen Glieder ihrer family waren interessirt in her Stridhana; im übrigen konnte ihre family nur deh religiösen Fanatismus u. Einfluss der Brahminen interessirt sein]…but the Brahmins (ausser d. ecclesiatical Brahmins could, namentlich in d. higher classes, d. Verwandtschft d. Mannes musste es grösstentheils aus wultlichen Brahminen

bestehen !] who exhorted her to the sacrifice were undoubtedly naiver Maine 1) influenced by a purely professional dislike to her enjoyment of property. The ancient [i.e. dies auch modificirtes survival vom Archaischen] rule of the civil law, which made her tenant for life, could not be got rid of, but it was combated by the modern institution which made it her duty to devote herself to a frightful death." (335, 336)" ("The anxiety of her family [the opposite of her husband's family, which inherited: only the female members of her family were interested in her Stridhana: furthermore, her family could only be interested through religious fanaticism and the influence of the Brahmins)…but the Brahmins [except the ecclesistical Brahmins could, especially in the higher classes, the relations of the man must have consisted for the most part of worldly Brahmins!] who exhorted her to the sacrifice were undoubtedly (I naive Maine!) influenced by a purely professional dislike to her enjoyment of property. The ancient [i.e. this too a modified survival from the archaic] rule of the civil law, which made her tenant for life, could not be got rid of, but it was combated by the modern institution which made it her duty to devote herself to a frightful death.' (335,336)")

Marx then adds: "Obgleich Suttee eine Neuerung v.d. Brahminen eingeführt, hindert dies nicht, dass in d. Brahminenköpfen d. Neuerung selbst wieder auf Reminiscenz auf älterer Barbarei (Begraben d. Mannes mit seinem Eigenthum) beruhte! Namentlich in Pfaffenköpfen revive d. urältesten Greuel aber ihrer Naiven Ursprünglichkeit beraubt." (Even though Suttee an innovation introduced by the Brahmins, this does not hamper the fact that in the heads of the Brahmins the innovation itself is once again based upon a reminiscence of the older barbarism (burying the man with his property)! Especially in the heads of the clerics the oldest horrors revive (d) but robbed of their naive primitiveness.") For Marx, the modern form of Suttee is more reprehensible

than the murderous practices of archaic times, since the latter were in some sense naive expressions of a barbarous period in human history whereas the former is to a large extent the result of conscious machinations of a clerical stratum within a civil society.

From here, Marx goes on to consider Maine's evaluation of the status of women under the Romans, in the feudal period and in Catholicism. "Wenn Herr Maine sagt: 'There can be no serious question that, in its ultimate result, the disruption of the Roman Empire was very unfavourable to the personal and proprietary liberty of women' (337), so dies verdammt cum grano salis zu nehmen. Er sagt: 'The place of women under the new system (d. Barbaren) when fully organized (d. h. nach Entwicklung d. Feudalwesens was worse than it was under Roman law, and would have been very greatly worse but for the efforts of the Church' (337) so dies abgeschmackt, considering dass d. Church den divoros (röm.) aufhob od. so viel als möglich ersch werte u. überhaupt d. che, obgleich sacrament, als Sünde behandelte. Mit Bezug auf 'proprietary right' hatte d. Güterschleichnde Kirche allerdings Interesse den Weibern einiges zu sichern (umgekehrtes Interesse wie die Brahminen 1)" (When Mr. Maine says: "There can be no serious question that, in its ultimate result, the disruption of the Roman Empire was very unfavourable to the personal and proprietary liberty of women' (337), this is bloody well to be taken cum grano salis. He says: 'The place of women under the new system (the barbarians) when fully organized (i.e. after the development of the feudal system) was worse than it was under Roman law, and would have been very greatly wors: but for the efforts of the Church (337) then this is absurd, considering that the Church cancelled divorce (Roman) or made it as difficult as possible and treated marriage in general, even though a sacrament, as sin. In relation to 'proprietary rights' the Church which prowls around looking for goods had an

interest to be sure in securing something for the women (opposite interest to that of the Brahmins !)”

Here the economic factor is emphasized. Its effects. however, are not fixed but historically variable. The Catholic clergy and the Brahmins are both acting in their own economic interests. Yet they argue different sides of the issue in order to secure their interests, on account of the different conditions which are obtained in Europe and India with respect to the inheritance of property. The interests of the Brahmins led them to attack the proprietary rights of women, the interests of the Church to their defence.

Conclusion

Karl Marx, whose centenary we honour this year, left us with the pieces of a theory of an Asiatic mode of production. From the point of view of 1983, we can see that the theory was constructed upon an empirical base which could not bear the weight placed upon it. Lawrence Krader has shown, for example, that the key features of the supposedly distinctive mode of production of precolonial Asia, namely the communal form of labour in a substantively civil society,” are found in many different parts of the world including pre-Homeric Greece, among the Aztecs and Incas, in the ancient Middle East, and so on. Krader has proposed that we drop all reference to an Asiatic, an African etc. mode of production and instead refer to a communal/ social mode of production Here production is organized communally, but only as a formal matter. The substantive relations of life are social and civil, given expression in the law of social value.””

Marx made good use of the work of men such as Phear and Maine and his

instinct concerning the specificity of social and economic life in India was methodologically sound. At the same time, it is incumbent upon us not only to build upon that foundation which our predecessors have prepared for us, but to question that very foundation empirically and theoretically.

Notes and References

1. Karl Marx, 4 Contribution to the Critique of Patitis Beansny, International Publishers, Inc., New York, 1970, p. 21. References to matters bearing upon the Asiatic mode of production are found here and there in Capital and the Theories of Surplus Value Related issues are also found in the German Ideology, articles in the New York Daily Tribune, the Grundrisse, and in Marx's correspondence, For a detailed treatment, see L. Krader, The Asiatic Mole of Production, Van Gorcum, Assen, Holland, 1975 (hereafter cited as AMP).

2. C. AMP. p. 113, 315. See also A.M. Bailey &; J. R. Llobera, "Asistic Mode of Production (Part 2), Critique of Anthropology, 45, Autumn, 1975, pp. 74-6; 1 Varga, African Mole of Production: A Research Hypothesis (unpublished paper), Department of Sociology, Queen's University, Kingston, Ontario.

3. The science of anthropology as a rigorous, empirically oriented discipline is a development of the twentieth century, even though its roots reach back to classical antiquity.

4. In the 13th century, Marco Polo returned from a voyage to the Orient. His reports of great wealth and luxury of the East were greeted sceptically by his fellow Europeans. From then on he was playfully known as 'Marco millions'. Cf. AMP. p. 19. See works by other European travellers: Sir Thomas Roe. (1581

7–1644), Collection of Voygas, London, 1732: Sir William Methold (d. 1653), Balations of the Kingdom of Golchonda and other neighbouring Nations within the Gulfe of Bengola, in Vol. 5. of Samuel Purchas' Pilgrims. London, 1626; Adam Olearius (Olschlager) (1599-1671), Neus Orientalische Reise (1647), Moskowitische und Persische Reise (1656). Berlin. 1959: Francois Bernier (1625-1688). Voyages, contenant la description des Ets du Grand Mogol (1670): Niccolao Manucci (1638 7-1709), Storio do Mogor, or Mogul India (1907). W. Irvine, tr. and ed.. 4 Vols. Calcutta: Jean Chardin (1643-1713), Recil du couronnement du roi de Perse Soliman III: Jean Tavernier (1605-1689). Les siz voyages qu'il fait en Turquie, en Perse, et aux Indes, Seconde Partie, Paris, 1679: Jean de Thevenot (1633-1677), Voyages de M. de Thevent en Europe, Asie et Afrique, Ct. C. Levitt, L. Krader's Researches on the Asiatic Mode of Production, Critique of Anthropology, No. 11, 1978.

5. For a detailed treatment of the Oriental reception of the great European thinkers of the 18th and 19th centuries, see AMP, chapter L. For Marx, the three most important influences upon the formation of the theory of the Asiatic mode of production were the writings of Adam Smith, G. W. F. Hegel, and Richard Jones. All three men stressed the specificity of the conditions and relations of society and economy in Asia. Cf. Levitt, op. cit.

6. Cl. AMP, especially chapters I and IV: C. Levitt, op. cit. p. 43.

7. From 1879 to 188? Marx engaged in a systematic study of the leading works in evolutionist anthropology. Although he died before he could develop his thoughts in a work of his own, we are fortunate to have his notebooks in which he excerpted and criticized the important ideas of the leading anthropologists of his day. We owe a debt to Lawrence Krader who brought

his erudition and learning to bear in his transcription and edition of, and introduction to these ethnological notebooks. See The Ethnological Notebooks of Karl Marz (studies of Morgan, Phear, Maine, Lubbock), transcribed, edited and introduced by Lawrence

Krader. Van Gorcum, Assen. Holland, 1972. The four works which Marx selected for review and criticism are:

Lewis Henry Morgan, Ancient Society or Researches in the Lines of Human Progress from Savagery through Barberian to Civilization, New York-London, 1877. Sir John Budd Phear, The Aryan Village in India and Ceylon, London, 1880.

Sir Henry Sumner Maine, Lectures on the Early History of Institutions. London,1875.

Sir John Lubbock (Lord Avebury). The Origin of Civilisation and the Primitive Condition of Man, London, 1870.

For further discussion of the notebooks, see L. Krader, Ethnologie und Anthropo logie bei Marx, Carl Hanser Verlag, Munich. 1973; id.. 'Karl Marx as Ethnolo- gist. Transactions of the New York Academy of Sciences, Series II. Vol. 35, No. 4. April. 1973, pp. 304-13; id., The Ethnological Notebooks of Karl Marx: A Summary, paper IX, ICAES Congress, Chicago, 1973/International Review of Social History, No. 2, 1973; id., Dialastic of Civil Society, Van Gorcum, Assen. Holland. 1976; C. Levitt, Anthropology and Historical Jurisprudence: An Eximi tion of the Major Issues Raiani in Marz's Rucarpts from Henry Sumner Maine's Lectures on the Early History of Institutions,

unpublished Ph.D. dissertation, Freie Universität Berlin, 1975; id., ‘Karl Marx on Law, State and Collectivity.’ Catalyst, No. 12, 1978: id.. ‘The thnological Notebooks of Karl Marx, Catalyst, No. 12, 1978.

8. In a letter to his friend M.E. Grant Duff (March 30, 1874) Maine hal the follow- ing to say about Phear: “He is a prig, but has really much knowledge of the ways and life of Bengalees. His name reminds me that you really must read his article on ‘Rustic Bengal’ in the new number of the Calcutta Review. And when you are in Calcutta, try to get a view of one of the small native houses inhabited by a Joint Family. The institution is a very curious one and Phear could tell you what to observe in its way of conducting itself.” G. Feaver, From Status to Contract: A Biography of Sir Henry Maine 1820-1888, Longmans, Green &; Co. Ltd., London &; Harlow, 1969, p. 146.

*Phear’s description of village life in Bengal in The Aryan Village was based upon his articles in the Calcutta Review, July and October, 1874. See the Notebooks, p. 245.

9. Cf. Notebooks, p. 31.

10. Phear’s descriptions match no actual village. He constructed what he called a ‘type specimen’ of a village, a hypothetical construct filled with data taken from many sources. Krader has discussed the ‘type specimen,’ but Marx did not make use of the term. Cf. Notebooks, p. 22: Krades. The Ethnological Notebooks ef Karl Marx: A Summary, op. cit.

11. “Nevertherless Phear provided detailed accounts of household budgets, land accounts, tax schedules, lists of possessions which are quite concrete

(see Phear excerpts, pp. 134, 143 and passim). Notebooks, p. 32.

12. Notebooks. p. 284. The Kachari or Cutchary is the “court or offior, where public business, or the business of a comindar’s estate (wie hier), is done.” Notebooks, p. 254. (Marx’s emphasis)

14. op. cit., p. 256. And again in the discussion of the so-called ‘Indo-Aryan Social and Landod System, Phear lapses once again into the European standpoint, Marx reacted sharply: “This respectable ass imagines that ‘there grew up, even from the commencement, a gradation of respectability and employment within the village. (1) (The ass also causes everything to be founded by private families).” op. cit., p. 281.

15. Notebooks, p. 257 (Marx’s interpolations in boldface). Phear reduced the natives to creatures motivated strictly by material interests of the pettiest sorts. Marz, on the other hand, situates the behaviour of the ryot within the web of the social relations of the commune. (Krader interprets the passage in this way.) The reference to the generation of the zemindar refers to an earlier passage and shows that age played no role in the relations of domination and oppression, according to Marx.

16. See Marx’s critique of Proudhon in Das Elend der Philosophie. Cf. Karl Korsch, Karl Marz, Russell &; Russell, New York, 1963, p. 53.

17. Feaver’s is the only full biographical account of Maine. M.E. Grane Duff wrote a very short biography-obituary in a volume edited by Whitely Stokes. It contains selections from Maine’s Indian speeches. The following is a survey of small biographical contributions from the journals which I reviewed while

working in the British Museum: ‘The Late Sir H.J.S Maine.’ The Atheneum, No. 3:46, Feb. 11. 1888, p. 181: “Sir Henry Maine and his Work. The Contemporary Deview, Vol. LV. Jan.-June 1839. p. 265 (F. Pollock): ‘A Lawyer with Style.” The Atlantic Monthly, Vol. LXXXII, 1898, p. 363 (Woodrow Wilson): “Sir Henry Maine as a Jurist.” The Edinburgh Review, Vol. CLXXVIII. July 1893-October 1993, p. 100 (probably written by F. Pollock): ‘Sir Henry Maine, The Lase Quarterly Review, No. XIV, April 1888, p. 129 (A. C. Lyall): ‘India and Sir Henry Sumner Maine.” Journal of the Society of the Arts, Vol. XLVI. Nov. 19. 1877-Nov. 11, 1898, p. 390 (C.L. Tupper). The list is by means complete. However, it does represent a good cross-section.

18. See note 7 above.

19. Not bucks, p. 12

20. Feaver reports that Maine’s birthdate is uncertain, for his baptism was never officially recorded. The date has been taken from Vean’s Alumni Cantabrigiensis. 21. Feaver, op. cit., p.

22. Maine resigned from the paper along with most Conservative contributors in 1854 when the ownership of the enterprise was acquired by Serjeant Glover, a Liberal Party sympathizer. See Feaver, p. 30.

23. Cf. Village Communities in the East and West, London, 1876, p. 230.

24. Feaver reports that the publisher selected the title from among three proposed

by Maine:

1. “Ancient Law, and Its Relation to Modern Ideas”

2. “Ancient Law, and Its Connection with the Early History of Society, and Its Relation to Modern Ideas”

3. “Archaic Jurisprudence, etc., etc., etc.”Maine himself favoured the first title, but agreed when Murray chose the second. Feaver. pp. 41-2.

25. In the first and third drafts of his letter to Vera L. Sassulitch, Marx called attention to Maine’s administrative exploits in India and the ideological character of his theories of colonial administration: “Sir Henry Maine z. B., der ein eifriger Mitarbeiter der englischen Regierung bei ihrem Werk der gewaltsamen Zerstörung der indischen Gemeinden war, versichert uns heuchlerisch, dass alle edlen Bemühungen der Regierung, diese Gemeinde zu erhalten, an der spontanen Gewalt der ökonomischen Gesetze gescheitert seien !” MEW 19, p. 386. “Was zum Beispiel Ostindien anbelangt, so ist es aller Welt, mit Ausnahme von Sir H. Maine und andren Leuten gleichen Schlags, nicht unbekannt, dass dort die gewaltsame Aufhebung des Gemeineigentums an Grund und Boden nur ein Akt des englischen Vandalismus war, der die Eingeborenen nicht nach vorn, sondern nach rückwarts stiess.”, op. cit.. p. 402. Cf. Maine’s own statement on this matter: “Though it be virtually impossible to reconcile the great majority of the natives of India to the triumph of western ideas, maxims and practices, which is nevertheless inevitable, we may at all events say to the best and most intelligent of them that we do not innovate or destroy in mere arrogance. “We rather change because we cannot help it.” Village Communities. p. 237.

26. Feaver claims that this situation caused bad feelings between Maine and Stephen since the latter had received the credit for the original work of the former. See Feaver. p. 292.

27. The relationship between the doctrine of individual ownership of land and the question of a free or servile village community was brought out by Seebohm: “Ie is simply an attempt to set English Economic History upon right lines at its historical commencement by trying to solve the still open question where it began with the freedom or with the arfdom of the masses of the people-whether the village communities living in the “hams” and “tons’ of England were, at the outser of English history, free village communities or communities in arfdom under a manorial lordship.” F. Seebohm, The English Village Community. Longmans, Green & Co., London, New York, Bombay, 1896, p. IX. Seebohm concludes in this book that the English village community was a servile collectivity under lordship. However, Vinogradov, Pollock and Maitland essentially supported the idea of the free village community and the communal nature of its property. See: P. Vino- gradov. The Growth of the Manor. A M. Kelley Publishers, New York, 1968, pp. 83-7: F. Pollock & F. W. Maitland, The History of English Law, Cambridge University Press, 1968, Vol. I, pp. 620-34: F. W. Maitland. Township and Borough, Cambridge University Press, 1898: id., The Domesday Book: and Beyond, Cambridge. 1897, pp. 221-2. It should be noted, however, that the issues involved are very complex and not amenable to simple classificatory scheme such as servile or free village communities. Indeed, both elements are present according to the above authors, but the emphasis they agree is on communalism.

One can notice a similar thread running through the above-mentioned works.

a thread which leads back to Henry Maine. Hence, if one speaks of the English School of Historical Law (although it is not a school ‘sensu stricto”), one means

L. Krader, Anthropology and Early Law, Basic Books. New York, London, 1966, p. 3.

Henry Maine and his followers in this issue. Seebohm is an exception. He stands closer to Fustel de Coulanges in this matter, although a devoted admirer and student of Maine. See N. D. Fustel de Coulanges, The Origins of Property in Land, tr. M. Ashley, Soran Sonnenschein &; Co., London, 1891.

Maine addressed himself to Seebohm’s admiration in a letter to Alfred Lyally, Oct. 18, 1883: “Is a statement made to me that a relative of yours, a lady, is going out to India to re-investigate the history of the Indian Village-Communi ties correct? My informant was Seebohm, a man who has published a book called the English Village Community’, a singular misnomer since his object seems to be to prove that no such thing ever existed. It is a curious mixture of learning and superficiality, learning in respect of what he has observed and read. superficiality in regard to what (not having had much of an education) he has not had the time to get up. If there is really no connection between the Indian Village Community and the institution (whatever it was) out of which the English and German manor grew, it is the most singular of accidental resemblances in form.” Feaver, p. 295.

28 Feaver, p. 170. Maine enjoyed membership in a number of scientific academies in several countries. At the time of his death, he was about to be sponsored by Franz von Holtzendorf as a candidate for honorary membership

in the Juridical Society of Berlin. See: Law Quarterly Review, No. XIV, April 1888. 29. McLennan had issued the following challenge in 1865: “We have already pointed out that Mr. Maine seems not to have been able to conceive of any social order more primitive than the patriarchal. And as he found agnation-or kinship exclusively through males-to be a common concomitant of the patriarchal system, he has committed himself to the opinion that that was the only kinship known to primitive times. He argues, indeed, against the possibility of kinship through females in early times as being inconsistent with social order and stability. The learned and ingenious writer must be held to have taken up the threads of legal history where they began to unwind themselves, of new, after the completion of a social revolution. It is quite undoubted, as he says that few indigenous bodies of law belonging to the communities of the Indo-European stock do not exhibit peculiarities which are referable to agnation. With the advance of society-the growth of marriage laws-the superiority of the male sex must have everywhere tended to establish that system. But, before that result could be reached, many stages of progress had to be found in the early customs of most of the Indo-European races, we have seen that the indigenous customs of most early communities-whether of the Indo-European. Turanian. or Semitic race-exhibit peculiarities intelligible only on the supposition that kinship and succession through females were the rule before the rise of agnation. Further, we have seen that wherever non-advancing communities are to be found-isolated in islands or maintaining their savage liberties in mountain fortresses-there to this day exists the system of kinship through females only. The state of old, says Mr. Maine, recognized as its units not individuals but families. True. But at a yet older date we must conclude that neither the state, nor the family, properly speaking existed.” J. McLennan. Primitive Marriage: An Inquiry into the Origin of the Form of Capture in Marriage Ceremonies, Adam & Charles Black,

Edinburgh, 1865, pp. 227-9.

30. While recuperating from overwork and ill-health at Cannes, Maine suffered a stroke which led to his death on Feb. 1, 1888. He was shortly thereafter buried at Cannes. Fustel de Coulanges delivered a eulogy at his burial. Feaver. p. 261.

31. The Brehons arose as a class in pre-Christian Ireland, and unlike the Fili who were masters of secular learning in general, were experts only in the law. “The Brehon (O. I. Brethem, M. L. Breitheimk, m. a judge, Anglicized Brehon) was not a judge, but was a specialist who knew, preserved, and to some extent developed the law.” John Cameron, Celtic Lam: The ‘Senchus Mor’ and ‘The Book of Aicill, and the Traces of an Early Gaelic System of Law in Scotland. William Hodge & Co. Ltd., London, Edinburgh, Glasgow, 1937, p. 12. Their role was similar to that of the juris Prudentes in Rome, who acted as arbiters between parties. The legal learning of the Brehons was passed from generation to generation due to the necessity of maintaining an orderly transmission of legal documents and manuscripts on the one hand, and to the requirement which specified that land could only be transferred from Brehon to Brehon on the other. See op. cit., p. 13. The Brehons played an instrumental role in the Christianization of the pagan Irish laws, and they remained active in their official capacities well into the period of British rule of Ireland (even in the face of the British prohibition of the old Irish laws). See: L. Ginnell, The Brehon Laws, T. Fisher Unwin, London, 1894: Hancock’s ‘Introduction’ to The Ancient Laws of Ireland. Vol. 1, Dublin &; London, 1865.

32. The Morgan, Phear and Lubbock excerpts represent about 58%, 16% and 5% of the total of Marx’s writings in the Notebooks respectively.The following

citations are all taken from Marx's excerpts from Henry Maine's Lectures on the Early History of Institutions found in the Notebooks pp. 287-336, unless stated otherwise.

33. Maine does in fact cite Morgan's Systems of Consanguinity and Affinity in tha Human Family. However. Maine could not have assimilated Morgan's theory of the gens since it was only systematically developed later in Ancient Society, 1877. This is precisely Marx's point.

The reference to Niebuhr is more important for it raises serious questions with respect to Maine's scholarly competence. Either Maine hadn't read Niebuhr carefully, in which case he can be faulted for neglecting important source material, or, as Marx suggests, he knew Niebuhr's work very well but did not report the reference in which case he is guilty of plagiarism. The matters at issue relate to primitive kinship and primitive notions of power. Cf. Lectures on the Early History of Institutions, pp. 64-9: B. G. Niebuhr, The History of Rome, Vol. I, pp. 262-89.

34. See AMP. pp. 38-9. Bernier described the towns in Asia as little more than military camps, a view which Marx cited in 1853. However, the formulation of the opposition between the town and countryside in Smith, Jones and Phear convinced Marx of the opposition of the two in India. In any event, the opposition was weaker than in Europe; the continuity of the city and country-side is more marked in Asia. See AMP, p. 187.

35. Feaver suggests that Maine spent very little time living under non-European conditions. His fear of illness. justified or not, seemed to have limited his freedom of movement considerably. Feaver, pp. 68-9.

36. See Krader’s discussion of this excerpt and comment in the Notebooks, p. 40.

37. Notebooks. p. 43: Cf. L. H. Morgan, Ancient Society, p. 197.

38. Cf. Henry Sumner Maine, Dissertations on Early Law and Custom, London, 1883, pp. 253-5

39. “The priests pretend to have had revelations from the spirit-world, showing the unfortunate dead to be tortured in Purgatory, and that he can only be extricated by a fresh course of costly services in the house. The price to be paid is fixed at the highest sum they think it possible to extract. It ends in the family raising every possible coin, and even selling their jewels, to procure the necessary sum.” H. S. Maine, op. cit., p. 62.

40. Cf. Ancient Law. pp. 91-4.

41. Krader has defined civil society as class-divided society with systematic and routinized exchange relations, with a state and with at least the beginnings of a separation of the public and private spheres. Cf. L. Krader, Dialectic of Civil Socisty, Van Gorcum. Assen, Holland, 1979. According to this definition, societies with AMP-like characteristics are civil societies, as are all modern

socialist societies.

42. Cf. L. Krader. Treatise of Social Labor, op. cit.

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