the maternal to the cognatic or the agnatic system. While this conclusion may be rejected, it must nevertheless be admitted that criticism of the patriarchal theory has been very successful in its general results. It appears to have established beyond question the complex and highly artificial character of the Roman family. So far from being the type of early social organization, it is seen to be relatively modern and ill fitted to the condition of primitive men.

In the meantime, the patriarchal theory has had to reckon with a totally different view of the genesis and development of social institutions. To this view let us now turn.

1 Such are the isolated facts comprised in the early annals which seem to imply acknowledged kinship in the female line, even precedence of the latter; the fact that the status of slaves, illegitimate children, and the children of concubines was determined by the condition of the mother; the effects of marriage by usus; the supposed evidences of former wife-capture and wife-purchase, marking the transition to the agnatic system; the instances of wife-lending as by the elder Cato; and especially the plebeian element; for cognation, not agnation, prevailed among the plebeians, and possibly among them kinship was at first counted only through the mother; see Dargun, Mutterrecht und Vaterrecht, 115; Bernhoff, "Zur Geschichte des europäischen Familienrechts," Z. f. V. VIII, 197-201; "'Germanische und moderne Rechtsideen in respiriren röm. Recht,'" id., IV, 227 ff.; Staat und Recht der röm. Königszeit, 102, 205 ff.; Giraud-Teulon, Les origines du mariage, 368-375; Sohn, Institutionen, 300, 301, notes; Karlowa, Die Formeln der röm. Ehe, 1 ff.; McLennan, Patriarchal Theory, 194 ff., 235 ff., 250 ff.

1891," in ZVR., XI. The last-named paper may be read in connection with Rehmøn's "Ueber das Recht der Amazons," in ZVR., X; Kohler's "Ueber das Negerrecht, namentlich in Kamerun," ibid., XI; Berthelon, "Les formes du mariage," in Arch. de l'anth. crim., VIII (1890); Zöller, Forschungsergebnisse der Kolonial Kamerun (Berlin and Stuttgart, 1889); the Kamerun of Buchner (Leipzig, 1887); Munzinger's Ostafrikanische Studien (Schaffhausen, 1884); the important work of Fritsch, Die Ein- 

geborenen Südafrikas (Breslau, 1872), treating of the family customs of various aboriginal tribes; Kranz. By entirely different routes the theories of universal communism and mother-right were reached by Lewis H. Morgan, beginning with the systematic treatise entitled 1881); and by J. F. McLennan, the editor and completed by his brother Donald McLennan; and the second series of Studies (London and New York, 1886), edited by his widow and Arthur Platt.

Sir John Lubbock, Origin of Civilization (New York, 1899), maintains the theory and introduces the name of "communal marriage." McLennan is in the main supported by Robertson Smith, Kinship and Marriage in Early Arabia (Cambridge, 1885). This book may be read in connection with Wilken, Das Matriarchat bei den alten Arabern (Leipzig, 1884); Kohler, "Vorislamisches Recht der Araber," in ZVR., VIII; Friedrichs, "Das Eherecht des Islams," ibid., VII; Vincenti, Die Ehe im Islam (Vienna, 1870); Fisichio, Der Einfluß des Islams auf das häusliche, soziale, und politische Leben seiner Bekenner (Leipzig, 1851); Ferron, Femme arabe (Paris and Alger, 1868); Kremer, Kulturgeschichte des Orients unter den Kalifen (Vienna, 1870); Vambéry, Der Islam im neunzehnten Jahrhundert (Leipzig, 1875); his Türkenvolk (Leipzig, 1886); Hanoteau and Letournel, La kabylie et les coutumes kabyles (Paris, 1885); and Bawar, "The Marriage Customs of the Moors of Ceylon," in Journal of the Royal Asiatic Society, Ceylon Branch, 1887-88, X, 219-33 (Colombo, 1888). Read also Redhouse, Notes on Taylor's 'Arabian Matriarchate,' propounded by Taylor before the British Association, Montreal, 1884.

For the matrimonial institutions of the Australian aborigines, whose so-called "group-marriage" has played so great a part in speculation, see especially Fison and Howitt, Kamilaroi and Kurnai


McLennan was first systematically and luminously criticised by Spencer, in Part III of his Principles of Sociology (published, in parts, 1874-77; complete, New York, 1879). McLennan replied in two articles in the Fortnightly Review, XXVII (London, 1877); and in turn Spencer has a "Rejoinder," reprinted in his Various Fragments (New York, 1898). Gomme supplements McLennan's evidences for his "Theory of the


The subject is also treated by Schroeder, *Das Recht der geschlechtlichen Ordnung* (Berlin, 1893); Gage, *Woman, Church, and State* (Chicago, 1893); and Mason, *Woman’s Share in Primitive Culture* (New York, 1894). Mucke, *Horde und Familie* (Stuttgart, 1895), traces the classificatory systems of kinship to original “space-relationships” in the horde camping-place, and the work is a remarkable example of ingenious though fantastic speculation on a large scale.
For the matrimonial customs of low races, especially valuable are Krause, *Die Tlinkit-Indianer* (Jena, 1885); Marshall, *A Phrenologist amongst the Todas* (London, 1872); and the magnificent volumes of Paul and Fritz Sarasin, *Die Weddas von Ceylon* (Wiesbaden, 1892-93). For examples of sexual practices, commonly regarded as survivals of primae noctis, see Buch, *Die WOMinden* (Helsingfors, 1882); Kohler, "Studien über Frauengemeinschaft," in *ZVR., V*; Bastian, *Rechtsverhältnisse* (Berlin, 1873); his "Eheverhältnisse," in *ZFE., VI*; and his "Matriarchat und Patriarchat," *ibid.*, *Verhandlungen* (Berlin, 1896); Pless, *Das Weib* (Leipzig, 1895); his *Das Kind* (Leipzig, 1884); and Mantegazza’s *Geschlechtsverhältnisse des Menschen*, constituting with the earlier *Physiologie der Liebe* and *Hygiene der Liebe* his so-called "trilogy of love." For the bearings of phallicism on the subject read Howard’s *Sex Worship* (2d ed., Washington, 1888), containing a bibliography. In this connection are also of service the works on "seignorial right," the most elaborately monograph being Schmidt’s *Jus primae noctis* (Freiburg, 1881), containing a full bibliography. See also his *Stavische Geschichtsquellen zur Streitfrage über das Jus Primae Noctis* (Posem, 1886); his paper in *ZFE., XVI*; and Kohler’s criticism, *ZVR., IV, V.* Against its existence as a right of the medieval lord are Veuillot, *Droit du seigneur* (1st ed., Paris, 1854; 3d ed., 1878); Baer, *Recherches* (Gand, 1817); Barthémy, "Droit du seigneur," in *Revue des questions historiques*, I (Paris, 1866), a critical paper of value; and Labessade, *Droit du seigneur et la rosière de Science* (Paris, 1878). In his *Réponse* (Paris, 1857) Delpit makes a vigorous and detailed reply to the arguments of Veuillot (early edition). See also Foras, *Droit du seigneur* (Chambéry, 1886); and, for comparison, read "Bibliophile’s" *Les nuits d’épreuve des villageoises allemandes avant le mariage* (Brussels, 1877); Gruppen’s quaint *De zoove theotikos* (Göt- tingen, 1748); and Fischer’s remarkably valuable and interesting *Provendichte der teutschen Bauernmädchen* (Berlin and Leipzig, 1780; reprinted, Leipzig, 1898).

To "break ground" for the study of the subject it may be well in the outset to read chaps. ii and iv of Posada’s *Théories modernes*; Kautsky’s "Entstehung der Ehe und Familie," in *Kosmos*, XII; Friedrichs, "Ursprung des Matriarchats," in *ZVR., VIII*, in connection with his "Zur Matriarchatsfrage," in *ZFE., XX*; and especially his "Familienstufen und Eheformen," in *ZVR., X*. The literature and the theories are also reviewed by Bernhoff, "Zur Gesch. des eur. Familienrechts," *ibid.*, VIII; and Schurman gives an interesting summary and criticism in *Ethical Import of Darwinism* (New York, 1888).

For the works of Wake, Letourneau, Starche, Westermarck, and other antagonists of the horde theory, see *Bibliographical Notes* III.]
fusing, and the style so obscure that it is with the utmost difficulty the author’s meaning can be gathered. Nevertheless it is undeniable that he has created the terminology and developed the essential elements of the communistic and gynocratic theories even in their leading details.

According to Bachofen, there are three general phases in the evolution of human sexual relations. The first is the period of aphrodisiac hetairism, in which men and women have each other in common; the second is the period of demetrian mother-right or gynocracy, in which kinship and succession are in the maternal line and woman gains religious and political supremacy; and the third, the period of the patriarchate or apollonistic father-right, in which the more spiritual principle of paternity is triumphant. Each of these periods is regarded as a universal culture-stage.

In the first phase, or that of the unregulated communism, material motherhood is the essential fact. Fatherhood is necessarily uncertain. There is no conception of kinship between father and child. Woman, it is assumed, is exposed to the lust or sexual tyranny of man; and it is through her successful revolt against the bondage of unbridled hetairism that she attains the second stage of progress. The period of demetrian gynocracy is therefore represented as a turning-point, a transitional phase, through which humanity passes from its lowest to its highest status. With it the rudiments of marriage appear, but combined with hetairism surviving in various forms or gradations. It is the woman and not the man who obeys the marriage law. Indeed, strict mar-

1 Das Mutterrecht, vi, xvii-xix, xx, passim.
2 Ibid., vi. "Wie auf die Periode des Mutterrechts die Herrschaft der Paternität folgt, so geht jener eine Zeit des regulirten Hetairismus voran."—Ibid., xvii. For many illustrations, see the Index at "Aphrodito," "Demeter," and "Apollo," the names of the divinities presiding respectively over the three phases.
3 "Es kann nicht verkannt werden: die Gynakokratie hat sich überhaupt in bewusstem und fortgesetztem Widerstande der Frau, gegen den sie erniedrigenden Hetairismus hervorgebildet, befestigt, erhalten."—Ibid., xix; cf. xviii, 17-18.

The theory of the Horde and Mother-Right

riage, the exclusive appropriation of a woman by one man, is looked upon as an abridgment of a natural or religious right for which expiation must be rendered to the goddess whose law is violated; and only thus, as a penalty or composition for the privilege of restricted intercourse, can be rationally explained those lascivious customs, such as temporary prostitution, so often found in connection with legal marriage.

A difficulty, however, presents itself. The theory of Bachofen assumes, as a general fact in social evolution, that a period of promiscuity and oppression of the female sex is followed, not merely by an age of mother-right, involving as a necessary consequence of the continued uncertainty of fatherhood the recognition of kinship only in the maternal line; but by an age of gynocracy, involving the social leadership of women and eventually the political and even the military subordination of men. Woman emancipates herself and then she becomes an Amazon. "Weary of the lust of man, she first feels a longing for a securer position and a purer existence. The feeling of shame and the rage of despair inflame her to armed resistance." As "a rival to man, the Amazon became hostile to him, and began to withdraw from marriage and from motherhood. This set limits to the rule of women, and provoked the punishment of heaven and men. Thus Jason put an end to the rule of
the Amazons in Lemnos; thus Dionysos and Bellerophon strove together, passionately, yet without obtaining any decisive victory, until Apollo with calm superiority finally became the conqueror;" and so the purer principle of fatherhood prevailed and the era of father-right appeared. But, says Bochofen, that woman should gain supremacy over man arouses our astonishment, because the fact is contrary to what we should expect from their relative physical powers. "The law of nature delivers the scepter of power to the stronger." The paradox, however, is easily explained. "At all times woman has exerted the most powerful influence upon man, upon the culture and morals (Gesellung) of peoples," through the direction of her mind toward the supernatural, the wonderful, and the divine. Through her possession of the mysteries of religion she deprived man of the superior position which nature had given him. "Religion is the only efficient lever of all civilization. Each elevation and depression of human life has its origin in a movement which begins in this supreme department." "Just as the child receives its first discipline from the mother, so do peoples receive it from woman. The man must serve before he can attain supremacy. To the wife alone it is given to tame the unbridled power of man and to guide him in the path of well-doing." But amazonism was a shock to the religious feeling in the stage of mother-right, just as gross hetairism was an offense in the former period.

Hence arose a striving for the realization of a higher conception of social relations. "It was the assertion of fatherhood which delivered the mind from natural appearances, and when this was successfully achieved, human existence was raised above the laws of material life. The principle of motherhood is common to all the species of animal life, but man goes beyond this tie in giving the pre-eminence to the power of procreation, and thus becomes conscious of his higher vocation.... In the paternal and spiritual principle he breaks through the bonds of tellurism and looks upward to the higher regions of the cosmos. Victorious fatherhood thus becomes as distinctly connected with the heavenly light as prolific motherhood is with the teeming earth." "All the stages of sexual life, from aphrodisic hetairism to the apollonistic purity of fatherhood, have their corresponding type in the stages of natural life, from the wild vegetation of the morass, the prototype of conjugal motherhood, to the harmonic law of the Uranian world, to the heavenly light which, as the flamma non urens, corresponds to the eternal youth of fatherhood. The connection is so completely in accordance with law, that the form taken by the sexual relations of life may be inferred from the predominance of one or the other of these universal substances in worship." The theories of Bochofen have given rise to luxurious speculation. With slight modification his conclusions have been accepted by a host of faithful disciples. By others they have been criticised or abandoned. Various schemes have been constructed in the attempt to explain the sequence in which the forms of marriage and the phases of the family have historically appeared. With the literature of this speculation, so far as primitive communism is assumed, the

1 STARCKE'S summary, op. cit., 244; BACHOFEN, xxvii.
2 STARCKE'S summary, op. cit., 244, 245; BACHOFEN, xxix.
The present chapter is concerned. As a rule, only the incidental or negative results of criticism will be noticed, leaving for the following two chapters the criticism originating in a wholly different view of social evolution.

It is convenient in the outset to note the importance of carefully distinguishing between the conception of mother-right, implying kinship in the female line, and that of gynocracy, denoting the supremacy of the female sex. Bachofen, as already seen, uses Mutterrecht as comprehending gynocracy; while some of his followers likewise speak confidently of a time when women took social precedence of men, or even held them in political subjection. Such is the view of Giraud-Teulon, who, with Bachofen, interprets the Amazon myth as implying an age in which women exercised a decided social and political domination. Lippert and Unger take a similar position. On the other hand, it is maintained by a number of writers, who reject the idea of a political or military gynocracy, that the inheritance of property, or even held them in political subjection.

But Dargun's use of Mutterrecht to express maternal or paternal kinship, and Matriarchat and Patriarchat to express maternal or paternal power, seems preferable, in order to avoid confusing the two conceptions; see above, chap. i, p. 21. Compare further GROSSE, "Die Formen der Familie," 11, who uses Mutterfolge and Vaterfolge respectively as opposed to Matriarchat and Patriarchat; and HELLWALD, Die mensch. Familie, 172-31, who gives definitions of "marrige" and "family." And WESTERMARCK, "Le matriarcat," Annales, 115 ff., who shows that in practice writers have used "matriarchate" in three senses.

1 KAUFERN, "Die Entstehung der Ehe und Familie," Kosmos, XII, 243, 244.
2 PESCHEL, Rassen der Mensch, 233, 234.
3 TYLOR, Method of Investigating Institutions, 223.
5 HELLWALD, Die mensch. Familie, 213 ff. But this author (142 f., 116) shows that among primitive men the sexes were not fully differentiated; so that women often possessed "amazonian" characteristics.
6 GROSSE, Die Formen der Familie, 48, 161 f., 176 f., 183. According to Grosse, among the lowest existing races patriarchialism prevails. Examples of women exercising political authority in the clan (Sippe) are exceedingly rare, although such may be found occasionally, as among the Huron and Iroquois, and some other peoples.
8 FRIEDRICH, "Uber den Ursprung des Matriarchats," Z.F.R., 391, 382, though he shows elsewhere that paternal authority may coexist with mother-right: "Familienstufen und Eheformen," ibid., X, 206. Cf. MUCKE, "Die mensch. Familie, 106 ff., 114 ff., passim, who maintains that the family, androcratic or gynocratic, originates in slavery through rape or purchase. In the gynocratic family the woman is owner and mistress of the man, as the man is lord of the woman in the androcratic family.

For an example see POWELL, op. cit., and his "Wyandotte Society," A. A. A. S., XXIX, 678-88.
often, as Dargun points out, so well shown, the same custom has not enabled her to escape social degradation or marital bondage. She is rather the medium through which rights are conveyed and relations established. Thus, for instance, among the Australians, with whom the clan of the children is, as a rule, determined by that of the mother, the husband is, as an automaton in his family, and the children always belong to his tribe. Dr. Starcke reaches a similar conclusion. Referring to the "important place" taken by the woman among various African peoples, he declares that all which "has been said only shows that women in some instances enjoy privileges which are always enjoyed by men." In short, if among many peoples at some stage of progress research has clearly demonstrated the existence of mother-right, it has just as clearly shown that the notion of a gynocracy, of a period of female supremacy, is without historical foundation.

The theory of original communism has been accepted by many writers, though examples of absolute promiscuity have not been produced. Its former existence is inferred from certain customs and institutions which are believed to be its survivals. Even the promiscuity which is thus assumed is not "perfectly indiscriminate," but restricted to the members of the unorganized horde or tribe occupying a particular locality or roaming about together. Hence, significantly, it has sometimes been described as communal or group "marriage." Accordingly the horde or band becomes the unit or starting-point of social development.

Many evidences of the former universality of promiscuity are brought forward. This evidence—to adopt Westermarck's convenient analysis—"flows from two sources."


3. On the horde see Bernhoff, "Zur Gesch. des eur. Familierechts," ZFR., VIII, 101; Westermarck, Human Marriage, 41, 52; Fries, "Familienstufe und Eheformen," ZFR., X, 101, 109; and ibid., VIII, 378, 379; Kautsky, "Die Entstehung der Ehe und Familie," Kautsky, XII, 103 ff. (the Stamm); Post, Geschichteinsamenschaft, 4 ff.; Familienrecht, 57, 58; Kohlert, in ZFR., VII, 204; Mucke, Horde und Familie; Gumplowicz, Die Formen der Ehe, 59, 62; Fries, Zur Naturgeschichte des Menschen, 105, 106; McLennan, Studies in Primitive History, and the literature cited below on the Australian class-systems, and on the works of Morgan and Spencer.
Matrimonial Institutions

First, there are, in the books of ancient writers and modern travelers, notices of some savage nations said to live promiscuously; secondly, there are some remarkable customs which are assumed to be social survivals, pointing to an earlier stage of civilization when marriage did not exist.1 1 The mass of facts collected to illustrate the licentiousness of savage and barbarous tribes cannot here be dwelt upon.2 It must suffice for the present to note that, according to recent investigation, every instance of alleged indiscriminate sexual relations appears to stop far short of absolute promiscuity.3 So also several of the more interesting customs, regarded as direct survivals of communism, require only to be briefly mentioned. The principal argument, of course, as will presently appear, is grounded upon the existence of polyandry, and especially upon the proofs adduced of the wide prevalence of kinship reckoned through the mother’s line. For it is generally assumed that this system can arise only when paternity is uncertain. Legalized hetairism or prostitution,1 2 practiced among the Parthians and American Indians.

Die Naturvölker, I, 267 ff.; 11, 413
Ueber die Probe-

Cuazilie, 122; GDYOT, Prostitution, 12 ff.; MOROAN, Ancient Society, 11 ff.
PORT, Familienrecht, 57, 362; KOTALEVSKY, Zur Geschichtc der Familic, 11, 128 (Brazil and ancient Peru); PRATZ, Hist. de la Louisiane, 11, 3R6 (Natchez Indians); STEVENSON, in XI. Rep. of Bureau of Eth., 19, 20 (the Sin); TURNER, ibid. XI, 189 (the Innuit).


3 The result of the recent researches of Spencer, Starcke, Westermarck, Letourneau, and others will be discussed in the next chapter.

In this connection, likewise, belong those "scandalous nuptial rites" which Bachofen, Lubbock, and Giraud-Teulon regard as acts of "expiration" for marriage. According to this theory, marriage, the individual possession of a woman, was originally regarded as a violation of communal right, for which some compensation or expiration must be rendered. The customs referred to

1 Polyarch, Lycurgus, c. 15 (Sparta); Friedrichs, "Ursprung des Matrilok- 
chas," ZVR., VII, 372, 373; Post, Aufstieg, 21; Geschlecht, 34, 35; Nadaillac, 
"L'évolution du mariage," 17 ff.; Lubbock, Origin of Civilization, 331, 332, who men-
tions the well-known case of Cato's lending his wife Marcia to his friend Hortensius; 
Buc, Die Wolfsknechte, 48; Kohler, in ZVR., III, 395, note (India), 396 (Germans); V, 
336 (Welkun); XI, 323 (Alaska), 324 (Crete); XII, 326 (Australia); VIII, 34 (Birma); 
XI, 422 (Kamoro); Joly, in ZVR., IV, 331, 332 (Hindus); Smith, Kinship and Marriage, 
116; Water, Anthropologie, II, 114 (Africa); Nelson, "The Eskimo about 
Bering Strait," in XVIII, Rep. of Bureau of Eth., Part I, 235; Meiser, in XV, Rep. of 
Bureau of Eth., 17, 18 ( Sioux); Westermarck, op. cit., 74 n. 1, mentions, with the 
"Point narrow Expedition," because usually the woman does not belong to the husband's tribe, 
and because often the privileges are exercised by friends of both bridegroom and 
bride. Cf. Fison and Howitt, Kurnwar, 149-56; Wake, Marriage 

2 Theses may be compared with the license practiced at certain gatherings among the 
Arama and several other Australian tribes: Spencer and Gillen, Native Tribes of 
Central Australia, 30 ff.

The first group comprises the lascivious religious rites, the so-called 
sacred or temple prostitution, found in connection with the worship of various deities of love and procreation, such as the Babylonian Mylitta, the Hellenic Aphrodite, the 
Italian Venus and the Carthaginian Moloch. The 
second class fall the revolting nuptial privileges, accorded in 
many parts of the world to priest, chiefman, or king, or 
to the friends of the bridegroom and sometimes to those of 
the bride. To these privileges in general the name of 

jäkön, and many other peoples. In this connection, like-

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fall for the most part in two general classes. The 
first group comprises the lascivious religious rites, the so-called 
sacred or temple prostitution, found in connection with the worship of various deities of love and procreation, such as the Babylonian Mylitta, the Hellenic Aphrodite, the Italian Venus and the Carthaginian Moloch. In 
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the bride. To these privileges in general the name of 

husbands, and borrow his cousin's wife for the expedition, as she was a good shot and a good 
hunter. Sometimes in such cases the women are better pleased with their new 
mates and remain with them. "According to Gilders (Schottel's search, 192) it is 
a usual thing among friends in that region to exchange wives for a week or two 
every two months." Eger (Greenland, 136) says such inter-village exchanges take place at festivals. So also at Resolute Bay, at certain times there is said to be 
a "general exchange of wives throughout the village, each woman passing from man 
to man till she has been through the hands of all, and finally returned to her hus-
Turner, "Ethnology of Ungava Dist.," ibid., 190. The loaning of wife or daughter 
for a guest, or the prostitution of the wife for hire, appears among some South 
American tribes: Martius, Ethnographie, I, 115; idem, Rechtszustande, 65.

In his study, Origin of Civilization, 130-37, 336 ff.; Giraud-Teulon, Les origines du 
mariage, 5 ff.; says: "Le mariage (on prendant notamment son sens 440) 
appear Châu les races inférieures comme une infraction aux droits de la com-
munauté, ou partant, comme il est violato de l'une lagelle religieuse, il s'y trouva qu'en sait." See the criticism 
by McLennan, Studies, I, 335 ff., who rejects the theory of expiration for violation of 
communal right; because usually the woman does not belong to the husband's tribe, 
and because often the privileges are exercised by friends of both bridegroom and 
brother. Cf. Fison and Howitt, Kamau and Kuruma, 148-49; Wake, Marriage 
and Kinship, 11, 34, 45, 245 ff.; Lipert, Geschichte der Familie, 169; Kohler, in 
ZVR., VII, 357 (Australia); Mucke, Horde und Familie, 238-40, who rejects the 
theory; and Kohlbrandt, Die Ursprünge der Familie, 178-79. For a discussion in 
Archiv für Anthropologie, 23, 8, who refers to the recent existence of 
the alleged custom in Russia; Friedrich, in ZVR., X, 214, 215; Starch, op. cit., 
134-25. There is a learned discussion in the quaint De woman theologica, cap. I, of 
Greven; the literature on this subject is richly illustrated in Bibliographical Note 17, should be consulted; and 
Starch has appended a very full bibliography to his book. The term jus primae noctis is especially applied to the allowed "right of the lord" in feudal times; 
but the existence of even this custom as a legal privilege is still an unsettled 
question.
this practice among the American aborigines is communicated by Castañeda.\(^1\)

The argument for original promiscuity based on the various practices just mentioned is not conclusive. Most, if not all, of them are perhaps capable of other and simpler explanations. The wife-lending, as suggested by Westermarck, may be “due merely to savage ideas of hospitality;”\(^2\) while the custom of sacred prostitution evidently belongs “to phallic-worship, and occurred, as Mr. McLennan justly remarks, among peoples who had advanced far beyond the primitive state. The farther back we go, the less we find of such customs in India; the germ only of phallic-worship shows itself in the Vedas, and the gross luxuriance of licentiousness, of which the cases referred to are examples, is of later growth.”\(^3\) So likewise the *jus primae noctis*, instead of being an expiation for an encroachment on communal right, may be more naturally explained either as an abuse of power,\(^4\) in some cases as an evidence of hospitality,\(^5\) or in others as a “common war-right, exercised whenever, under any circum-

\(^1\) The custom is for the men “to buy the women whom they marry of their fathers and relatives at a high price, and then to take them to a chief, who is considered to be a priest, to deliver them and see if she is a virgin; and if she is not, they have to return the whole price, and he can keep her for his wife or not, or let her be concubined, as he chooses.” In the same connection, Castañeda says, “among them are men dressed like women who marry other men and serve as their wives;” and he describes also a curious kind of legal or consecrated prostitution existing among the same people: see the translation of Castañeda’s account in WINSOR’S “Coronado Expedition, 1540-2.” XIV. Rep. of Bureau of Eth., 533, 534. Cf. FAWCETT, “On Basutos: Women, Who, through Dedication to a Deity, Assume Masculine Privileges,” Jour. Anthr. Soc. (Bombay), II (1891), 322-54.

\(^2\) WESTERMARCK, *Human Marriage*, 73, 74; WARE, *Marriage and Kindship*, 81, 82. The custom may possibly be accounted for by the slow growth of the sentiment upon which “conjugal attachment depends:” McLennan, *Studies*, I, 341. For an alleged “survival” see SCHMIDT, *Hochzeit in Thüringen*, 31. For the strictly regulated form of wife-lending among certain Australian tribes see the reference to the work of Spencer and Gillen below.

\(^3\) WESTERMARCK, op. cit., 73; McLennan, *Studies*, I, 341, 342. This is also the view of CLIFFORD HOWARD in his *Sex Worship*, chaps. v, ix, x.

\(^4\) WESTERMARCK, op. cit., 75; SCHMIDT, *Jus primae noctis*, 41.

\(^5\) WESTERMARCK, op. cit., 73.
But these usages are capable of a very different explanation. That they imply a primitive state of promiscuity is emphatically denied by Crawley. Like sacred prostitution, the customs of avoidance, the couvade, and marriage rites in general, according to his theory, they take their rise in the religious or superstitious ideas upon which sexual taboos rest.

Adherents of the communistic theory are not entirely at one as to the phases in the development of marriage and the family. Very generally the family, regarded from the standpoint of authority and kinship, is said to pass from the unregulated horde through the maternal and the paternal to the parental or two-sided stage. Thus Dargun declares that there is a tendency for the uterine system of kinship to give place to the paternal, but never the reverse. Kohler takes the same position. Lippert regards the history of social culture as beginning with the natural relation of mother and of a girl just before her marriage by certain men who have access to her in a definite order. Those men belong to forbidden groups; that is, groups into which the woman may not marry. The ceremonies in question are of the nature of those which Sir John Lubbock has described as indicative of expiation for marriage; and they may be regarded as "rudimentary customs" pointing back to a stage of wider marital rights than those which now exist in these tribes. The third relationship is the license allowed on "occasions when a large number of men and women are gathered together to perform certain corroborees;" the more important gatherings lasting perhaps "ten days or a fortnight." Every day "two or three women are told off to attend at the corroboree ground, and, with the exception of men who stand in the relation to them of actual father, brother, or son, they are, for the time being, common property to all the men present." The explanations of similar usages advanced by McLennan and Westernarch, such as phallicism, are deemed inapplicable to these cases: Spencer and Gillen, Native Tribes of Central Australia, 92-111. Compare especially Kohler, Zur Urgeschichte der Ehe, 61 ff., passim, who finds in the totem groups and classificatory systems of relationship, existing in Australia, America, and elsewhere, evidence of former group-marriage.

According to FRIEDRICH, "Familienstufen und Eheformen," ZVR., X, 190 ff., the forms of the family are the following: (1) "die lose Familie;" (2) "die matrarchale, uterine Familie;" (3) "die patriarchale, agnatische Familie;" (4) "die moderne, zweisitzige Familie." Kohler, in ZVR., III, 393; IV, 295 ff.

KANT, "Die Entstehung der Ehe und Familie," KRON, XII, 335-48, especially 341; cf. MUCKE, Befunde, 112 ff.


The child, producing in course of evolution, long before "marriage" arose, the "primitive family" whose principle is mother-right, and which, in turn, under various influences, generally yields to the "old family" (Allfamilie) in its origin based, not on relationship, but on patriarchal power and possession. Bernhöft denies the invariable sequence of mother-right and father-right; and KAUTSKY maintains that the two systems are parallel, not successive, developments from the hetairism of the primitive horde.

Marriage also, like the family, is said to pass through several distinct phases of development. Thus, with respect to the number of persons joining in a household, Friedrichs distinguishes four "forms" of marriage which, with equal propriety, may be called forms of the family. These are group-marriage, polyandry, polygyny, and monogamy, the first three forms having several varieties. But, as will hereafter appear, it would be rash to infer that these forms necessarily arise in the order named. Again, with regard to the way in which it originates, marriage presents a number of successive stages. According to Kohler, these are marriage by capture, marriage by purchase, religious marriage, and civil marriage. That wife-capture generally gives place to wife-purchase, and this in turn to marriage by gift, and then to the modern contract between the parents, or later between the parties themselves, is especially

1 LIPPERT, Geschichte der Familie, 4 ff., 218 ff., idem, Kulturgeschichte, I, 76 ff., 90.
3 KAUTSKY, "Die Entstehung der Ehe und Familie," KRON, XII, 335-48, especially 341; cf. MUCKE, Horde und Familie, 112 ff.
5 See below, chaps. iii, iv.
6 Die Ehe aus der Uebereignung der Frau durch den Mann herorigirt, und wie sie sich von da aus zum Frauenkaufe gestaltet; wie sie zur religiösen Heilanstalt wurde und wie sie von da aus zum geistigen Rechtsinstitute umbildete, indem die religiösen Feier nicht mehr obliigt blieb, . . ., lehrt uns das indische Recht klarer, als jedes andere." - "Indisches Ehe- und Familienrecht," ZVR., III, 342, 343.
insisted upon. Hildebrand, however, reverses this order. A measure of progress he finds in what he regards as the three great industrial stages of human culture: those of the chase, pastoral life, and agriculture. In the first stage, not communism, but a tendency toward monogamy prevails. There is little notion of private property; hence self-determination is not a motive of social action. Marriages are freely formed through presents given to the parents, or even without them by simple agreement of the parties. Later, with the rise of private property, marriage by purchase and marriage by capture come into existence; though capture is always exceptional and of comparatively little importance in the history of marriage.

Similar to the view of Hildebrand, in respect to the initial stage, is the theory of Kautsky. The starting-point is the horde. In this absolute equality of the sexes prevails; and the only divisions are the different generations. Neither the maternal nor the paternal line is recognized, for the children belong to the group. Not promiscuity, but "hetairism," or rather "hetairistic monogamy," exists. Incessant feuds, however, lead to wife-capture; and wife-capture tends directly to communism, for the captured woman belongs as a slave to the band. But the rights of the band may pass to the individual. The free native woman is "wooed;" the war-captive is "fought-for;" and so she becomes the slave-wife of the strongest, who may win other wives in the same way. Marriage by capture thus conquers the original monogamy, in whose place polygyny appears, either at once, or after a transition-period of communism in women. Moreover, in this process may be discerned the genesis of modern individual marriage under the sanction of the law. But the consequences of wife-capture are not yet exhausted. The presence in the horde of women taken from several neighboring bands leads at once to the formation of clans and to the matriarchate; for the connection of children with the clan is naturally determined by the mother. The development of private property produces still further results. The individual may buy his wife. She becomes his chattel; and the offspring also belong to him. Thus marriage by purchase gains the victory over wife-capture; and the patriarchate triumphs over mother-right. This is the order of development in the more war-like hordes. But wife-capture does not always precede wife-purchase as a general phase. In the more peaceful and industrious groups wife-capture does not appear at all. Here hetairistic monogamy runs its natural course. Partly under the external influence of tribes where mother-right existed as the result of wife-capture, but mainly under the powerful influence of private property, the matriarchate arose. In the earlier stage kinship with the father was disregarded or unknown. Naturally, therefore, under the new condition, name and also property were transmitted to the children through the mother, with whom their physical connection was always manifest. So it appears that the conception of private property is the basis of "hetairistic mother-right" as it is of father-right; and hetairistic mother-right, as distinguished from the mother-right which owes its origin to wife-capture, implies the precedence of woman in the family. "Gynocracy and patriarchalism are therefore parallel branches of the same stem," the original hetairism of the horde; the one cannot be a further development of the other. Gynocracy, and with it polyandry, which is its
result, is the highest stage in the evolution of hetairistic mother-right: just as polygyny and the patriarchal family are the highest stage in the evolution of father-right or the agnatic system of kinship. 1

To the theory of Kautsky that of Dargun, already explained, bears some resemblance in important details. But Dargun rejects Kautsky's idea of original monogamy; and he does not regard wife-purchase as the necessary source of the patriarchate, though the rise of the latter was greatly favored by it; while mother-right is especially due to the uncertainty of fatherhood. 2

Hellwald—who in the general development of his subject and in many essential particulars agrees closely with Lippert 3—seeks the elements of human sexual relations in those of the lower animals. Absolute promiscuity has never existed among men. The hetairism which prevailed was restricted to the immediate band or horde of kindred, which was probably never large. Thus in the horde there was "unregulated polygyny." To the earliest sexual relations 4 of men neither "marriage" nor "family" may properly be applied; and for them no suitable name is forthcoming. In the horde the first social institution evolved was the "mother-group" or rudimentary primitive family (Urfamilie). "Mother and child," as Lippert suggests, "these were the simplest elements of the oldest organization." For the

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1 According to KAUTSKY, just as polygyny arises in a Herrschaftsverhältnis—the lordship of the man over the captured or purchased woman—so polyandry originates in an analogous relation of the woman to the man. Under gynocracy the woman chooses her husband, hence polyandry; 344-46.

2 KAUTSKY, 317.

3 DARGUN, Mutterrecht und Vaterrecht, 60, 61, 127, 43-53.

4 For LIPPERT's development of the family see his Geschichte der Familie, and especially his excellent Kulturgeschichte, I, 71-90; II, 1-165, 305-54.

5 HELLWALD, Die mensch. Familie, 121, 132, 136. "Was Platz grriff, war wohl unreguläre Polyandrie, welche aber ähnlich naturgeboren Polyandrie nach sich zieht, und aus dieser Verwischung jenes echten Geschlechtsverkehr schuf, für welchen noch die richtige Benennung fehlt."—Ibid., 129.
and the family properly so called, although rudimentary as compared with the modern institutions. The mother ceases to be merely the center of the common life; she is now the social axis around which everything revolves. Mother-right, implying kinship as well as succession to name and property exclusively in the maternal line, becomes fully established. The matriarchate, unlike the simple mother-group, is not a universal phase through which all mankind has run. In some cases the agnostic system or father-right may have followed immediately upon the earlier stage of mother-right. Incident to the matriarchate are the polygynous and polyandrous forms of the family. With these the institution of property grew apace; and so we reach the paternal system, whose triumph is powerfully aided by wife-capture. In this stage, whatever be the form of social union—whether it be called gens, sippe, or joint-family—it rests upon the authority of the father or patriarchal lord. Following Lippert, the author prefers for this patriarchal group the name “old family” (Altfamilie); and he finds its most famous examples in Hellas and Rome. Here monogamy gained the victory; and so, under the influence mainly of Stoicism and Christianity, the foundations of modern marriage and the individual family were laid.

The influence of economic forces on the evolution of matrimonial and family institutions is especially emphasized by Grosse. Restricting his examination to the conditions which lie within actual “historical or ethnological experience,” he seeks to demonstrate that the “various forms of the family correspond to the various forms of economy” that “in its essential features the character of each particular form of the family may be explained by the form of economy in which it is rooted.” For the sake of clearer analysis the peoples known to history or ethnology are arranged, not in three, but in five groups according to the leading types of industrial life. These are the lower and upper hunters, the pastoral peoples, and the lower and upper cultivators of the soil. But, like Kohler, Lippert, and Hellwald, the author rejects the popular theory adhered to by Hildebrand, that the chase, herding, and agriculture are three successive stages of progress through which all the races of mankind have necessarily passed. For, as a matter of fact, some pastoral peoples, and even some hunters, like the Eskimo, are more advanced in culture than various peoples who are chiefly dependent upon agriculture; and some tillers of the soil, as Hildebrand concedes, may never have passed through the pastoral stage. On the other hand, Grosse distinguishes two forms of the family: the individual family (Sonderfamilie), or the community of parents and children living in a lasting and exclusive marriage relation, and the great-family (Grossfamilie), which comprises, not merely parents and children, but all descendants with their families, so far as they are not separated from it by marriage or otherwise. Examples of the “great-family” are afforded by the Romans and the Chinese; while the “individual family” is practically the only form known wherever western European culture prevails. In each form of the family either the maternal or the paternal succession (Mutterfolge or Vaterfolge) may exist; but succession must

1 LIPPERT, Geschichte der Familie, 218, 219, who distinguishes between the “Alt- und Gesamtfamilie” and the modern “Sonderfamilie.”

not be confused with the matriarchate or with the patriarchate, each involving the idea of authority; although paternal succession usually implies paternal power, while succession in the female line does not necessarily carry with it the supremacy of the mother.

Among the peoples classed as "lower hunters," even the most backward, exists the individual family; and in the majority of cases it is founded on monogamic marriage, for promiscuity nowhere appears. The authority of the husband is patriarchal. "He procures his wife by exchange or service; and in consequence he is her owner and lord." The "great-family" and the gens (sippe) are also found among these peoples; but they are relatively little developed. Gentes which have become unions for protection and control of territory are father-gentes; while those in which the kinship is traced through the mother are not unions for the purposes of the common life, but for maintenance of the common name. The case is practically the same for the "upper hunters." Wife-purchase, however, is more pronounced. The individual monogamic family still predominates. Kinship through the mother is not so much a "motive for union as it is for separation of those related by blood." Here as among the lower hunters it is the paternal gens which forms an actual union for the common life; and there is "not the least ground for assuming" that a patriarchal gentile constitution has replaced an earlier matriarchal form. Among peoples leading a pastoral life, even more than with those devoted to the chase, the chief economic production lies in the hands of the man. Accordingly he has the place of power and honor. Through him descent and kinship are usually traced. Nowhere is the paternal system so one-sided and so stringently carried out as among pastoral tribes. Woman is oppressed and degraded. She is bought or stolen by her lord. Polygyny, with all its attendant evils, flourishes. The individual family has a thoroughly patriarchal stamp; but it is still the most conspicuous social fact, surpassing in practical significance for the needs of the pastoral life the great-family, and far more the gens. On the contrary, among the lower cultivators woman holds an economic position at least equal in social importance to that of man. As a rule, therefore, she is no longer his slave, but his companion, sometimes even his superior. She gains a corresponding share in the control of the children. The great-family is in like manner affected by the new economic conditions. Communal agriculture gives a mighty impulse to the growth of the gentile constitution; and now among many peoples, under influence of the new and higher position of woman, the maternal gens, perhaps existing side by side with the paternal gens, is developed into a firm social, economic, and political union. In the life of the lower cultivators, if the gens thus becomes the mightiest social organization, the fact is due essentially to its economic function. With the change from communal to individual agriculture the gentile constitution is dissolved; and so among the higher cultivators the individual monogamic family has more than regained its former sway. "Thus it appears," the author summarizes, "that under every form of culture that form of family organization prevails which is best suited to economic needs and conditions;" although, he wisely warns us, a perfect explanation of the various types of the human family can never be given until every part and function of culture which has had an influence upon the functions or the organisms of the family has been separately examined for each case.

The views of Dargun, Hildebrand, and Grosse may be compared with the remarkable, but scarcely well-grounded,
speculation of Mucke. According to his ingenious theory, men originally lived in the horde, which, so far from being a fortuitous unorganized band, in which "animal promiscuity" prevailed, was so strictly ordered as to be worthy the name of the "society of the primeval age." They do not arise in notions of descent. They are determined by the fixed spaces occupied by each sex, generation, and individual in the Hordenlager or camping-place. Every male finds his predestined wife in the corresponding room or division on the opposite side of the sleeping-space; each brother thus marrying the sister nearest to himself in the order of birth. This ideal life of the horde is brought to an end through the rise of the family. The family (from famil, a "servant") is the very opposite of the horde of free and equal members, originating as it does in subjection and servitude. Almost simultaneously the family develops two forms, the androcratic and the gynocratic. Each originates

MUCKE, Horde und Familie, 125, 126, 111, 113 ff. Mucke is harshly reviewed by Kohler, Umgeschichte der Ehe, 17-27.

1 Mucke, Horde und Familie, 1851. Mucke is harshly reviewed by Kohler, Umgeschichte der Ehe, 17-27.

2 "Genossenschaft der Urzeit." He derives horde from arata, arda=local community, "Ortsgemeinschaft," hence "order": Mucke, viii, 40, 41, 43 ff., passim.

3 Raumverwandtschaften, Mucke, 1 ff., 29-45, passim.

4 The details of the author's argument cannot here be given. First (erster Abschnitt) he appeals to the mental processes of the child. The spaces, and consequent the relationship, arise in the child's "sens-perception," the impression obtained by the infant soul of the relative distance or remoteness of persons belonging to the different ages and generations. The very inadequate evidence adduced for the former universality of such Lager arrangement (sechster Abschnitt) consists (1) of the alleged customs of modern Asiatic hordes; and (2) the remains of ship-shaped graves and dwelling-places discovered in various parts of the world. With wonderful ingenuity the author is able to explain by his theory nearly every problem connected with marriage and the family. Aside from the constructive part of his work, his criticism of other writers, though often unjust and intolerant, is sometimes acute and instructive.

The doctrine of the primitive horde as the starting-point of social evolution has a special interest in connection with the researches of Lewis H. Morgan and J. F. McLennan. Though their principal works appeared subsequently to that of Bachofen, each has reached his conclusions independently; and each, rejecting the patriarchal family as the primordial unit, has set forth what may be called a "constructive" theory of uniform social progress. In the hands

1 The brothers capture men for their sisters by way of reprisal and retaliation for stealing the latter: MUCKE, Horde und Familie, 110, 112, 113 ff.

But at first the man and woman are merely slaves—there is no sexual or marriage relation whatever: ibid., 117.

2 Ibid., 178-82. In the fourth and fifth Abschnitte (155-247) the author discusses the dissolution of the horde through the influence of the two forms of the family. The argument is involved and almost entirely apriori. It is nearly impossible to discover his conclusion as to whether a purely patriarchal or matriarchal family is differentiated in the process.

3 McLennan's Studies in Ancient History appeared in 1876, being mainly a reprint of his Primitive Marriage, published January, 1865, four years later than Bachofen's book; but "it was in the spring of 1866," he says, "that I first heard of Das Muttermrecht."—Studies, I, 319.

4 Mucke's League of the Iroquois was published in 1854, and in this he describes some of the essential facts connected with his theory. In 1857, he re-examined the subject and enlarged his views (Proceedings of the Am. Association for the Advancement of Science, Part II). But it was not until 1871 that his great work on Systems of Consanguinity appeared, though accepted for publication, January, 1868. This was followed by the Ancient Society, 1871, in which his theory is fully elaborated. The Houses and Home-Life of the American Aborigines, 1881, was originally intended as Part V of the Ancient Society.