THE ANCIENT COMMONWEALTH.

The small book of M. de Coulanges contains the results of a life-time's study of Greek and Roman institutions. The purpose of the author is to represent, in its every day, practical workings, the Roman law, which, it is well known, prevails as the common law of continental Europe. A knowledge of the corpus juris, not as a dogmatic system, but as an exponent of the ideas which influenced the ancients in their daily transactions, would do much to destroy the evil political influences which lurk in the system; it would strip off the disguise which has hitherto concealed the drift of arbitrary measures, and disclose the motive from which they spring; it would do away altogether with the indiscriminate application of Roman institutes to modern society; it would bring about an intelligent discussion of the principles which should direct legislation, and it would prepare the way for the study of comparative jurisprudence, which is the grand want of the present day.

What, is the imagination daring enough to attempt a task

1 A study of the religion, the laws and the institutions of Greece and Rome, by Fustel de Coulanges, Professor of History in the faculty of literature at Strasbourg. A work crowned by the French Academy. 3d ed., Paris, 1870 Hachette & Co.

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of such magnitude? Niebuhr\textsuperscript{2} and Schroegler\textsuperscript{3} succeeded by sheer force of intellect in throwing an occasional gleam of light upon the early structure of Roman society, but the result of their investigations led to doubt and misgivings as to the credibility of history. It remained for a creative genius to seize, with the sagacity of inspiration, upon the fragments which lie scattered through the works of Greek and Roman authors, and to reconstruct out of the scanty material at hand the life which was led by the Aryan race during the long periods of its development, from an humble origin in central Asia to the imperial grandeur of universal dominion at Rome. This is the achievement of M. de Coulanges. He has caught the spirit of ancient life. His sketch of the different epochs as they succeed each other has the vividness of reality. The reader recognizes at once, in the delineation, the truth of history. The completeness of the triumph might mislead him as to the extent of the accomplishment, it seems so simple and natural now that it is done, did he not recollect the multitudinous failures which preceded success.

How, it will be asked, did the author become able to attain such a result? Genius is not the revelation of knowledge; it is the quickened intellect that apprehends the import of things which escape the attention of uninspired minds; and the information must be collected before the faculty of insight is called into play. The mind, too, must be trained for its work; experience adjusts its range and measures its resources. Here lies the secret. For centuries the French mind has been disciplined by observation and study for understanding the laws which regulate the structure and movement of society. The basis of analysis is individual character, and while the rest of the world is still at this incipient stage of the process, the French have long since busied their thoughts with the ulterior problem: How character in the aggregate is moulded by the ideas which obtain dominion over it. This advance, made by the French in the scientific study of human nature, is recognized and acknowledged by other nations, though only when it is brought home to them-

\textsuperscript{2} History of Rome, 3 vola., translated by Hare and Thielwall, London, 1853.
\textsuperscript{3} Geschichte Roms von Schrogler, 3 Bande.
selves individually. Americans cannot find words adequate to express their appreciation of the penetration which de Tocqueville displayed in his profound work upon democracy in America, and Englishmen rival them in admiration of the insight which detected and the intelligence which exposed with such wonderful clearness and precision the drift of modern society; though both are too apt to disparage the French, and echo the shallow declamation about the frivolity of the race. Whoever treats de Tocqueville as an exceptional phenomenon, and not as the product of the antecedent training of the French intellect, betrays his own triviality and lack of sustained thought. The very originality by which he startled the Anglo-Saxon world, lay in detecting the resemblance which exists in reality, though covered up by a divergence in external forms, carried to the extreme point of contrast, between the social state of France and that of the United States. He was enabled to discover the likeness and draw the parallel between the two nations by reason of the ultimate knowledge he possessed of the causes which induced the transformation of society in France; and he derived this knowledge from the introverted researches of his countrymen, who have advanced the study of mankind to a science. The evidence, were any required, of his raison d'etre would be the adjustment of his mind to the actual stage and course of French thought which, already prepared for the results of his observation and reflection, would take them up, and carry them on to the greatest advantage. This has been the success which attended de Tocqueville's work in France, and on the other hand it has produced nothing but a transient effect elsewhere. In this connection it should not pass unobserved that it is France which constitutes the main subject of his reflections, and which forms the background of his portraiture of America. He takes the United States as an illustration of the predisposing causes which are at work remoulding society, because they are alike in both countries, and are not resisted in America, as they are in France, by influences of an opposite tendency, but work out in natural development the character inherent in them. American institutions are sure to foreshadow the future of
France. In Anglo-Saxon communities the scientific method was not understood, and the English particularly, who mistook the work for a political pamphlet, caught it up with enthusiasm, and tried to turn it to partisan ends, but the serene truthfulness of the scientific temperament disconcerted them. It indicated a method of investigation which required, so profoundly identified is party pride with individual character, self-abnegation, and the renunciation of science was easier than of self. They were accustomed to that spurious nondescript species of impartiality typified in Hallam, who is all the more a partisan because he throws the great weight of his character and intellect into the advocacy of a party. He apprehends with the clearest grasp the strong points of his position, and he presents them in a form which seems to exclude the necessity of argument, whilst he disarms antagonism by the courtesy of his address, and with an apparent fairness professes to render full justice to his opponents, though all the time he is seeking to overpower them with his massive strength and cunning. Marshall is his American counterpart.

The undertaking of de Tocqueville, to detect the latent springs of action in American life, and to explain how the motives which influence conduct shaped the destiny of society, was not less vast than it was complicated. But the material for investigation was at hand; he visited the United States and traveled through them, surveying the people in their various aspects, and mingling with them at every point. No reporter interviewed the personages with whom he came in contact more searchingly than did this unobtrusive noble of France, and though, in his desire for knowledge, he had the curiosity of a Yankee, his inquisitiveness sprang from no vulgar instinct; it was dignified by an intellectual purpose. He speaks in his correspondence with delight of the communicativeness of railway acquaintances, and contrasts the information which he gained from uncouth traveling companions in America with the sterility of well-bred Europeans. In fact his great work is a study from life. The work of de Coulanges, on the contrary, is a research into states of society, which have long ages since passed out of existence and left but the sha-
dowiest traces that they ever had been. To reconstruct the fabric of society as it stood anterior to the earliest vestiges of history, and to exhibit the mutations which it underwent from its origin to its culmination and decay, seems like childish audacity. Gigantic as is the feat, it has not only been undertaken but performed by de Coulanges. With a steadier insight than Montesquieu he has divined the spirit of laws; and the motive of conduct once laid bare, it is easy to interpret the facts of antiquity; restored to the functions of life, they reveal society in its spontaneous movement. It is when the result of his investigations is brought to the surface, and presented in the guise of history, that the profound originality of the author is comprehended. History ceases to be a catalogue of the external incidents in the life of a people; it becomes an exposition of the ideas which prevailed among them. It is the evolution and revolution of thought which mark the events and epochs of history. To what extent de Coulanges has intellectualized the subject, may be measured by instituting a comparison between him and Groté or Mommsen. They do not seek to master the inner life of the ancients, and to explain the course of events by a knowledge of the modes of thought which governed the classical mind. On the contrary, they blunder over and disregard the distinction which separates an ancient from a modern, and apply to the interpretation of ancient conduct the principles and theories of life which had no influence upon, or even existence in, the minds of the individuals whom they describe. This is bad enough, but they add infatuation to blindness, and write for a purpose entirely apart from that which they profess; they disfigure and travesty the events and characters of history for the sake of party. It is a satisfaction to know that they will receive their reward. Written under the impulse of a transient caprice, their elaborate works, like Mitford's history of Greece, will be discarded and shelved by the next generation. In fact they are antiquated already, and have been superseded by authors who are possessed of deeper penetration, and who are elevated above the low standard of politics by the spirit of science and by the appreciation of truth. It is a relief to turn from the freaks and humors of par-
tisanship, and, with de Coulanges, to contemplate history in the “dry light” of thought. His work belongs to the class designated by the Germans as Culturgeschichte. There is no corresponding word in English, and the nearest approach to an equivalent is the History of Civilization, though that is too vague a generality. The meaning of the term, however, will be understood by the contents of the book, which furnishes the finest type of the class.

The first point which attracts attention is the fact that a particular race has been able to found a regular government; not an easy task among the roving, unstable savages of early times. “To give them common rules of conduct,” says the author, “to establish command and make them accept obedience, to make passion yield to reason, and private judgment to public authority, requires something stronger than material force, more worthy of respect than interest, more certain than a philosophical theory, more unchangeable than a contract, something which resides in all hearts and rules them with sovereign sway. That something is a belief.”

The creed which first took possession of the imagination and subjugated the intellect of men, would, merely as a psychological fact, absorb the interest of serious beings who recognize in religion the deepest emotion of the soul; but when the belief has not merely gained an ephemeral ascendency, but has maintained its supremacy over the race during the vast cycles of its existence, until it organized a society which was the embodiment of its dictates, everyone is profoundly interested in the phenomenon. Such is the Aryan religion. Speaking of it de Coulanges says:

“A comparison of the tenets and of the laws show that a primitive religion constituted the Greek and Roman family, established marriage and the paternal authority, fixed the degrees of relationship, consecrated the right of property and the right of inheritance. This same religion, after having enlarged and extended the family, formed a wider association in the city, and reigned in it as in the family. From it have come all the institutions as well as all the private law of the ancients. It is to this that the commonwealth owed its principles, its rules, its usages and its magistracies. But in the
course of time these old tenets were modified or effaced; private law and political institutions were changed with them. Then unfolded itself a series of revolutions, and social transformations followed regularly the transformation of the intelligence."

The starting-point in the creed was the worship of the dead. It is perhaps at the news of death that man received for the first time an idea of the supernatural, and that he aspired to hope for something beyond what he saw. Death was the first mystery; it put man on the way to other mysteries. It elevated his thoughts from the visible to the invisible, from the transitory to the eternal, from the human to the divine. The belief prevailed that man, when he died, did not cease to exist; he continued the career which he had begun in life, though now he rose to the rank of a god. The tomb in which he lay buried was his temple, and before it stood an altar for the sacrifices which were rendered to him as a deity. Though invisible to the human eye he did not become immaterial; he retained the cravings of the body. Without nourishment he could not repose in peace; he was forced to abandon his home and wander abroad a perturbed ghost. Neglected and unhappy, he became malevolent; he visited upon the living who were guilty of impiety in not sacrificing to him with food and wine, the evils they most dreaded. He afflicted them with disease, he destroyed their crops, he haunted them with apparitions. Until appeased and propitiated by the funeral repasts he gave mortals no rest or comfort, but harassed them with apprehensions and troubles. Restored to his home by the offerings and libations which were due him, he became reconciled to his own, and was now to them who honored him a tutelary divinity. To protect them he continued to take part in human affairs, and constantly intervened as a god. Dead though he was, he knew how to be quick and powerful. He was addressed and his aid and favors were invoked with prayers. A tomb was not passed without a supplication that the god within would be propitious. The power which the ancients attributed to the dead may be judged by the prayer which Electra addressed to the shades of her father: "Take pity upon me and upon my brother Orestes; cause him to re-
return to this land; hear my prayer, O my father; grant my request and receive my libations.” These powerful gods did not confer merely material benefits; for Electra adds: “Give me a heart more chaste than that of my mother, and hands more pure.”

The sacred fire which burnt upon the altar in each house among the Greeks and Romans, was the symbol of the departed soul and its mysterious presence. Everything which was thought to be agreeable to a god was devoted to the flame—flowers and fruits, incense, wine, and victims. The object of adoration was not taken from the physical world, it was found in man himself; it was the invisible being who resides within, the moral and thinking force which animates and governs the body. The essence of every sacrifice was to keep up and revive the sacred fire, to nourish and develop the spiritual body of the god.

It was for this reason that before everything else they gave him wood; it was for this reason that afterward they poured upon the altar the fiery wine of Greece, and oil, and incense, and the fat of victims. The deity received these oblations; he devoured them; satisfied and radiant, he erected himself upon the altar, and illuminated the worshiper with his rays. That was the moment to invoke him; the hymn of prayer issued from the heart of man.

De Coulanges remarks with acuteness as well as justice, that mankind does not adopt now, nor has it for many centuries admitted, religious system, except upon two conditions; one that it reveals to him an universal god; the other that it addresses its precepts to all men, and is open to all, not repelling systematically any class nor any race. But this religion of the early times does not fulfill either of these two conditions. Not only did it not offer a universal god for the worship of man, but its gods did not even accept the worship of all men. They did not present themselves as being the gods of the human race. They did not even resemble Brahma, who was, at least, the god of a great caste, nor Zeus, who was the god of an entire nation. In this primitive religion each god could be adored only by a single family. The services rendered to him could not be performed by any one who was
not of his blood; and the nearest relative must celebrate the funeral obsequies. No stranger was permitted to attend the funeral repasts, which were renewed at stated intervals, nor even to approach a tomb; his presence disturbed the repose of the god. The word by which the ancients designated the worship of the dead is significant; the Greeks said patriazein, the Latins said parentare. That is, the prayer and the offering were addressed by each only to his fathers. The worship of the dead was exclusively the worship of the ancestors. We have assuredly great difficulty, as de Coulanges remarks, to comprehend how a man could worship his father or his ancestor. To make of man a god seems to us mockery of religion. It seems to us almost as difficult to comprehend the ancient beliefs of these men, as it would have been for them to imagine ours. But reflect that the ancients did not have the idea of creation; hence the mystery of generation was for them what the mystery of creation may be for us. The procreator appeared to them a divine being, and they worshiped their ancestor. This sentiment must have been very natural and very powerful, for it appears as the principle of religion at the origin of nearly all human societies.

Each family had its tomb, where its members went one after another to take their rest, always united in death. The ceremonies of the worship were conducted in secrecy, and to avoid the public gaze the tomb was situated inside of the mansion; hence came the designation of ancestors as dīi penates, or Theoi μυχιοὶ—gods of the interior. The rites were prescribed and regulated by the head of the family, who officiated as priest in the service. Though the Pontifex at Rome, or the Arkon at Athens; after their supervision had been introduced, might see that he performed his functions, they were not at liberty to interfere with the celebration or to dictate the formulas which should be employed. The rule was imperative: Suo quisque rītus sacrificiā faciat.

A domestic religion of this kind was evidently not revealed by the imagination of any gifted son of man; nor was it propagated by a caste of priests. It arose spontaneously in the human breast. Its cradle was the family. The father, in giving life to his son gave him at the same time his creed, his religion,
the right to guard the altar, to offer the funeral repasts, to pronounce the (sacred) formulas of prayer. Generation established a mysterious bond between the child who was born to life and all the gods of the family. These gods were even members of his family—Theoi eggeneis—that is, of his blood—Theoi su-naimoi. The child therefore brought with him the right by birth to adore them and to offer them sacrifices; as in like manner when death in good time should have rendered him divine, he would be counted in his turn among the gods of the family.

A peculiarity, which it is important to remark in the domestic religion, consists in its propagation only through males. This is due, without doubt, to the idea which men had of generation. The belief of the primitive ages, as it is found in the Vedas, and as it is seen in the vestiges scattered throughout Greek and Roman law, was that the reproductive power resided exclusively in the father. The father alone possessed the mysterious principle of being, and transmitted the spark of life. It resulted from this ancient opinion, that the administration of the domestic religion passed always, as a matter of course from male to male; that a woman did not participate in it except by the intermediation of her father or of her husband, and also that after death a woman did not receive the same share as a man in the worship or in the ceremonies of the funeral repasts.

An adequate explanation of the ancient family requires, however, something besides generation, for the sister did not take the same place in the family that the brother did, and the emancipated ceased ipso facto to form any part of it. Nor was natural affection the basis of the family. The historians having discovered that it was formed neither in birth or affection, ascribed its origin to the paternal power and made out of the superior force of the husband over his wife, and of the father over his children, the establishment of the family. Now it is a grave delusion thus to put force as the origin of law. We shall see elsewhere that the paternal or marital power, far from having been a first cause, has been itself an effect; it was derived from religion and has been established by it. That was not therefore the principle which constituted
the family. That which united the members of the ancient family was something more powerful than birth, than affection, than physical force; it was the religion of the altar and of the ancestors. This it was that caused the family to form one body in this life and in the other. It was not, of course, religion which created the family, but it was religion which gave to it its rules, and from that circumstance has it come that the ancient family has a constitution so different from that which it would have had if natural affections had been the only motives for its establishment. The ancient Greeks had a term very significant to designate a family; they said: epistem, a word which signifies literally, that which is near an altar. A family was a group of persons to whom religion gave the right to invoke the same altar, and to offer funeral repasts to the same ancestors.

A daughter took part in the religious services with her father, a wife with her husband. Unlike a savage that guards his amulet or idol for himself, the husband did not appropriate the tutelary divinity to himself, but admitted his wife to share in the worship and in the protection with him. Marriage, therefore, was still of grand importance, as it involved a change of religion, renunciation of the gods whom the daughter had been brought up to reverence and adore, and the conversion to a new creed with other gods who tolerated no rival worship. As might be anticipated the ceremony was purely a sacrament, which the original name, telos, imports. It consisted of three parts or acts, the traditio, deductio in domum, and confarreatio of the Roman law. In Greece the ceremony began before the altar of the father, who, surrounded by his family, and in the presence of the suitor, offered up a sacrifice. At its close he declared, in pronouncing a sacramental formula, that he gave his daughter to the young man. This was requisite to release her from the obligations of her maiden religion. Then she was transported to the mansion of her husband, either by him or the herald, who was clothed with sacerdotal functions. The maid was ordinarily placed in a chariot. She had her face covered with a veil, and on her head was a crown which was used in all the ceremonies of worship. Her robe was white, and white was the color of the
vestments in all religious services. She was preceded by one who bore a torch; it was the nuptial torch. Throughout the route was chanted around her a religious hymn, which had as its refrain, *O humen, O humenaie.* This hymn was called Hymen, and the importance of this sacred chant was so great that it gave its name to the entire ceremony. Arrived at her new home, it was necessary that her husband should feign to carry her off without her consent, that she should resist with cries, and that the women who accompanied her should pretend to defend her. Why this rite? Was it not to mark with force that the wife who was about to sacrifice at the altar had no right there of herself; that she did not approach at the instigation of her own will, and that it was necessary that the representative of the locality and of the deity should introduce her to it by an act of his power? This was the prelude to the ceremony. The sacred act was now about to take place. The pair approaches the altar; the bride stands in the presence of the domestic divinity; she touches its emblem, the sacred fire; she is anointed with the purifying liquid. Prayers are said. Then the bride and groom shall between them eat a simple cake (*panis farius*), and the partaking of the sacred communion together unites them with each other and with the domestic gods so indissolubly that nothing but a ceremony performed with equivalent solemnities could dissolve the relation. The phraseology of the jurists is now intelligible; they define marriage thus: *Nuptiae sunt divini juris et humani communicatio;* and again: *Uxor socia humanae rei atque divinae.*

This religion taught man that the conjugal relation was something other than a connection of the sexes and a passing emotion, and it united the pair by the powerful tie of the same worships and of the same belief. The ceremony of the wedding was, besides, so solemn, and produced consequences so grave, that it is not to be wondered at that men should not have thought it allowable or even possible for more than one woman in each mansion. Such a religion could not admit polygamy.

The future life was not contemplated as the reward or punishment for the conduct led by the deceased; but his fate in the other world depended upon the observance by his descend-
ants of his wants. His only anxiety was that some one of his blood should live to lay offerings on his tomb. Solicitude for the welfare of the ancestors constituted the fundamental principles of domestic law. From it resulted the rule that each family should perpetuate itself; for extinction of its issue reduced the gods to evil spirits, who roamed abroad and led a wretched and damned existence. Each member therefore had a powerful inducement to leave a son after him, convinced that upon that depended a glorious immortality. The laws of Manu describe the eldest son as him who was begotten for the accomplishment of duty toward the ancestors. The religion which formed the family required imperiously that it should not perish. In view of this dictate of morality, celibacy became at once a serious impiety and a misfortune; a sin, because it put in jeopardy the happiness of the departed members of the family; a misfortune, because the bachelor himself could not receive any worship after his death; a man did not, according to ancient belief, belong to himself; he belonged to his family. He was one in the series and he had no right to arrest the series of himself. He was not born by accident; he was introduced into life in order to maintain a religion, and he had no right to depart until he had made sure that the religion would be continued after him. The law accordingly compelled him to marry, and the object of marriage, as it is expressed in the sacramental formula of the wedding service, was to beget children ducere uxorem liberum quaerendorum causa, said the Romans: Paidon ep aroto gnesion, said the Greeks. Sterility was not only a ground of divorce; it cast upon the husband the duty of putting away his wife, though like Cornelius Ruga, whom Aulus Sellius describes, he loved her devotedly and entertained unmingled admiration for her behavior. He was bound by his marriage oath to sacrifice his love in obedience to the sacred purpose, which would be frustrated did he not discard his wife and take another in her place. If, on the other hand, the sterility was the result of his impotence, his brother or other near relative took his place, and the child was nevertheless reputed the lawful issue of the wedlock, and continued the religion of the family, though an illegitimate offspring was not permitted to take any
part in the worship, so great was the spiritual empire over man. With all the more reason the law prescribed the marriage of the widow who had no children, with the nearest relative of her husband. The son was reputed to be the issue of the deceased.

The last resource which religion offered a family to escape the misfortune, so dreaded, of extinction, was the right of adoption. As the object was to have some one who would look to the perpetuity of the domestic religion, to the safety of the altar, to keeping up the funeral offerings, and to the repose of the spirits of the progenitors, it followed that it could take place only when there was no son to perform these rites of domestic worship. The adopted was initiated into the mysteries and shared the religion of his new father, *in sacra transit*. The correlative of adoption was emancipation; before a son could enter into a new family, he must have severed the tie which bound him to the old family, and this was the bond of religion. The breach was significantly termed, *sacrorum detestatio*.

Relationship is defined by Plato to be communion with the same domestic gods, and, as above observed, the right to sacrifice at the altar was transmitted from male to male, and the worship of the dead was also addressed only to the ascendants in the masculine line. From this dictate of religion it resulted that relationships could not be made out through women. According to the opinion of remote times woman transmitted neither the existence nor the religion. The son owed everything to the father. The much discussed agnation of the Roman law was nothing other than the relationship which religion had established at the beginning. In like manner as the right to worship was transmitted from male to male, two men could be agnates, as is attested by all the jurisconsults, only if in remounting always through males they found a common ancestor. The rule for agnation, therefore, was the same as for worship. Let it not escape the attention, however, that birth was not the principle of relationship; it was not by descent through males that relationship was established; it was by the worship that agnates were recognized. The son whom emancipation had detached from the worship, was no
longer the agnate of his father. The stranger who had been adopted, that is to say, admitted to the worship, became an agnate of the adopting father and a member of his family. So true is it, that it was religion which established relationship. The degrees were determined by the rites which were performed to the different series of ancestors.

A question of paramount importance for the development and destiny of a people is the institution of property. Some races never succeed in establishing private property, and others only after a protracted and painful effort. The Tartars conceive the right of property when it concerns flocks and herds, and they comprehend it no longer when it concerns the soil. Among the ancient Germans the land belonged to no one; each year the tribe assigned to each member a lot to cultivate, and the lot was changed the following year. The German was the owner of the crop; he was not the proprietor of the land. It was the same in a portion of the Semitic race and among the Slavonic tribes. But the populations of Greece and Italy have always, from the remotest antiquity, recognized private property. At no epoch was the land held in common. The idea of private property was involved in the religion itself. Each family had its altar and its ancestors. These gods could be adored only by the family which they protected; they were its property. The altar is the symbol of sedentary life, as its name imports, *hestia, histemi, stare*. The family which, by duty and by religion, remains always grouped around the altar, becomes like it permanently attached to the soil. The idea of home arises naturally by association. Each altar, as it represents a separate religion, must be isolated by distance, if not by a boundary, which marks clearly the limits which separate it from the domain of any other altar. The sacred inclosure which the Greeks called *herkos*, and the Latins, *herctum*, was in compass sufficiently extended to contain the mansion of the family, its flocks and herds and the little patch of ground which it cultivated. At stated intervals the head of the family made the tour around his farm, following the boundary line; he drove before him the victims; he chanted hymns and offered up sacrifices. By this ceremony he obtained the good-will of the gods toward
his land and his mansion, and he fixed the inviolable limits of his domain. In subsequent ages, when the population has arrived in Greece and Rome and has built cities, the houses are brought closer together, but they are not contiguous. A party-wall would have been a sacrilege; it would have destroyed the hallowed boundary of the domestic gods, and brought ruin and desolation with it. At Rome the law required a distance of two feet and a half to be always left open between two houses, and this space was dedicated to the gods of the inclosure, Theoi horioi of the Greeks, and the god Terminus of the Latins. It could not be acquired by prescription. The Greeks said the altar had taught man how to build houses. In fact, as he was located by his religion in one place, which he believed it his duty never to abandon, he soon thought of raising on this spot a solid construction. A tent suits the Arab, a chariot the Tartar, but a family with a domestic altar must have a residence which will last. The hut of clay or of wood is replaced by the mansion of stone, which was built not only for the life of a man, but for the generations of a family which succeed each other in the residence. The family appropriates the land by placing in the soil its dead, and in so doing it implants itself there forever. The living scion of the family can truly say: This land is mine. It is so completely his that it is inseparable from him, and that he has not the right to part with it. He owed his title to the domestic gods, who conferred upon each family the right to the land. He holds it in charge for the members who are dead and for those who are to be born. It is identified with the family and cannot be separated from it. Even later in the history of the race, when the division of land was permitted, it could be made only by a priest, the agrimen sor, and a sale could take place only in the presence of the librippen, also a priest, and by the sacred formality of mancipation. Thus man arrived without discussion, without effort, without a shadow of hesitation, at one bound, and by virtue of his religious belief, at the conception of the right of property, that right from which all civilization has sprung.

So powerful was the conviction of the inalienable right that a debtor, though imprisoned and reduced to servitude, still re-
tained his property, subject to his creditors, his land followed him as it were into slavery; the master made use of the physical resources of his debtor, and enjoyed the fruits of his land, but he did not become the proprietor.

Inheritance, like property, springs from the same source, religion. The estate devolves upon him who officiates in the family worship. As the son is the natural and enforced perpetuator of the worship, he inherits the property. There is the rule of inheritance found. The son does not succeed because the father wills it. No testament is required; the son inherits as a matter of right, ipso jure heres existit. He is even compelled to be heir heres necessarius. The judicial language of Roman terms, the son haees suas, as if it said, heres sui ipsius. He inherits, indeed, only from himself. Between the father and him there is neither a gift, a legacy, nor a change of ownership. There is simply a continuation, morte parentis continuatur dominium. Already during the life-time of the father the son was co-proprietor of the farm and of the man-sion, nio quoque patre dominus existimatur. To obtain a just view of inheritance among the ancients an estate should not be conceived as passing from one man to another. The estate is immoveable, like the altar and the tomb to which it is attached. It is the man who passes.

Under the dominion of religion the daughter, like an emancipated son, is excluded from the inheritance, while an adopted son acquires the estate of the family which he has entered. A last will would be an anachronism, and when in later times testaments were introduced it was conspicuously, by way of exception, accompanied with the greatest solemnity. It required the sovereign authority of the people, assembled in committee, cslatis committis, under the presidency of the Pontifex Maximus, to dispense with the general law, which regulated the order of succession, and to substitute a special law for the occasion.

Primogeniture and the paternal power resulted inevitably from the domestic religion with its sovereign pontiff. As everything was derived from this source, the priest became the natural proprietor, law-giver and judge. The word pater indicates the functions of his office. The epithet was origi-
nally synonymous with *rex*; it contained in it not the idea of paternity, but that of power, of authority, of mystic dignity. *Familia* means property; it designates the farm, the mansion, the money, the stores, and, therefore, say the twelve tables, speaking of the heir, *familia narratrix*—let him take the estate. *Gens*, which is equivalent to *genus*, and corresponds with the verb *gignere* and the substantive *genitor*, expresses paternity and describes the ancient family.

The god adored by the family is a common ancestor, and its temple is his tomb. The name which each member bore indicated the descent, as Claudius meant a son of Clausus; it terminated invariably in *ius*, an adjective form, to denote the relationship, and in Greek *ides* or *ades*. The *gentilis* is the next of kin, and in default of agnates, inherits in preference to the cognati, the nearest relative through the maternal stock. Nothing can be more closely bound together than are the members of a *gens* united in the celebration of the same sacred ceremonies that aid each other reciprocally in all the needs of life. The entire *gens* answers for the debts of its members; it ransoms the prisoner, it pays the penalty imposed by judicial sentence. If one of them becomes a magistrate they tax themselves to defray the expenses of the magistracy; the accused is accompanied to the tribunal by all the members of his *gens*. But one member cannot call another to appear in the public courts, because justice is administered among its members by the *gens* itself, which has, in fact, its head, who is at the same time its priest, its judge, and its commander in chief, and he has exclusive jurisdiction. To go back in thought amidst remote generations is to forget the mingled life which has been led for ages in cities or even in communities, and to let the imagination recall the periods when no life in common existed except within the circle of independent families. Religious isolation is the law of the family; its worship is death. In death even, or in the existence which follows it, families do not mingle with each other; each one continues to live apart in its tomb, from which the stranger is excluded. Each family has its own property, that is, its share of land which is inseparably attached to it by its religion; its gods Termini guard the inclosure, and its departed spirits watch over it.
The isolation of property is so obligatory that two domains cannot border on each other, and must have between them a strip of land which may be neutral and may remain inviolable. Finally, each family has its chief, as a nation has its king. It has its laws, which without doubt are not written, but which religious faith engraves in the heart of each man. It has its own internal judicature above which there is no other to which an appeal may be taken. Everything of which man has strict need for his material life or his moral life the family possesses in itself. It needs nothing outside; it is an organized state, a society which suffices unto itself. This family, in ancient times, was not reduced to the proportion of a modern family. In large communities a family dismembers itself, and is on the decrease; but in the absence of every other society it extends, it develops itself, and ramifies without dividing itself. Many younger branches remain grouped around the older branch, near the one altar and the common tomb. The client too formed an integral part of the ancient family, and enjoyed its protection. He shared in its worship and bore the family name.

This was the mode of life that continued through vast ages, and during which the private law of the ancients was founded. A comparison between the domestic institutes of the Hindus and of the Greeks and Romans interprets both, because they are both essentially alike, while there is no resemblance between the public law of an oriental and of the occidental communities.

It would be not less instructive to follow out, with de Coulanges, the later development of the Aryan race, particularly through the stages which are indicated in the Roman law, than it has been to discover the starting point of the civilization which has spread its influence over the world. But it must suffice to have shadowed forth an outline of that primeval history which, in spite of the researches made into antiquity, has remained, until de Coulanges recreated it, unknown in its coherence, to mankind. No intelligent student of history will fail to read the book itself, in order to see how the patriarchal state entered into and determined the character of the ancient commonwealth. The changes which took place
with the enlargement of the community will be understood in their true significance; the expansion of thought induced by the wider range of life will account for the growth of social institutions. It is a salient trait of the French as it is of the German to move in the plane of general ideas with the ease and familiarity that an Englishman or American exhibits only in the concrete domain of practical life, and this facility enables them to apprehend, not only with facility, but with nicety, the exact shade and lineaments of an idea, with the distinctness of vision. Law, when handled by a master of this type, becomes what neither the practitioner nor the jurist ever dreamt of, a revelation of the course and development of the ideas which prevailed among the people who founded and built up the system; it is the abstract and epitome of its history. As interpreted by the author, the reader is startled by the consequences involved in an enactment and by the logical force of the deduction which he draws from it. Under his hand it yields up the secret of its existence and records the story of a struggle, the issue of which it embodies. Thus in every aspect, at the turning points of history, a different light is thrown upon the antique fabric of society, and it looms up above the horizon of the past as it were by the magic of enchantment.

The book of de Coulanges will become the basis for the study of Roman jurisprudence. Enough has been said to show that he has given the clue to its interpretation. At this very day the professors of law in the German universities are at a loss to understand the meaning of legal forms which he has made perfectly clear, and until each institute is comprehended in its original purport, the system is distorted and misapplied. Thus agnation, though greatly altered in the course of centuries, remained, nevertheless, the framework of the Roman family, and until it was explained, the unit of organization in ancient life continued to be a mystery.

The author needs no praise. The contemplation of his great work undoubtedly affords him, as it does every one who reads it, the profoundest satisfaction. It is the result of a rare combination of erudition, of sagacity, of reflection, and above all, of imagination. He seems to have digested every particle