

---

## HENRY MAINE'S CONTRIBUTION TO LAW

---

Aditya Trivedi, Jagran Lakecity University, Bhopal, M.P.

### INTRODUCTION

In the 19th century, Sir Henry Maine was a well-known British comparative law scholar and jurist. His contributions to the study of jurisprudence and legal history, in particular, have had a lasting influence on our knowledge of the evolution of legal systems. He also founded the English historical school of law. He carried forward the thoughts and views of famous jurist Savigny who was the 'Father of historical school.' Sir Maine is best renowned for his innovative work in the field of historical law. He argued that societies progress through distinct stages of development in their legal systems, from primitive customs and traditions to more advanced and formalized legal codes. In his influential book "**Ancient Law**" (1861), he examined the development of legal systems and emphasized the shift from civilizations with a status-based legal system to societies with contract-based legal systems. When Maine served as a member of law on the Council of the Governor-General of India from 1861 and 1869, he thoroughly researched the Indian legal system. Sir Henry Maine came to the conclusion in his comparative study that practically all ancient societies connected to Hindu, Roman, Anglo-Saxon, Hebrew, and Germanic communities had developed their legal systems and other social institutions in a manner like that of a palace. Maine introduced the concept of "status" in his analysis of customary law. He contended that in primitive societies, individuals were defined by their social status, which determined their rights and obligations. Customary law was closely tied to these status distinctions, regulating relationships between different groups within the society.

### MAINE'S MAJOR CONTRIBUTIONS TO LAW

Maine outlined the development of law in four stages:

- **First stage:** Rulers are said to be guided by the divine. Furthermore, laws are created based on directives from the ruling class. Ancient Greek Themistes or we can say Themes of antiquated Greek. is one of the examples. The judgment of the king was

considered to be the judgment of God or some divine body. King was merely an executor of judgments of God, not the law-maker.

- **Second stage:** The King's orders thereafter were governed by custom which means commands of King converted into customary law. Customs seems to have succeeded to the right and authorities of the king. In this stage the priest became a repository of law that circulated the King's power and claimed the sole monopoly of knowledge. Therefore, the priest class tried to preserve the customs of race or caste intact. The custom prevails in the ruler or majority class.
- **Third stage:** A minority controls the knowledge and administration of customs. As a result of the Ministers' lack of capacity to enact laws, a minority class or typical class has a significant effect over the data on customs. The minority that maintains order over the law also succeeds in displacing the ruler.
- **Fourth stage:** This stage is also known as 'Codification stage' in which the law is codified and promulgated also we can say the law is systematized and declared.

### **SIR HENRY MAINE DESCRIBED TWO TYPES OF SOCIETY**

Maine makes the fascinating observation that most cultures found this formalization fatal because the "static" societies were unable to devise ways to continuously modify their legal system to keep it in line with a constantly changing environment and newly emerging requirements. Maine looked into the "progressive" societies, those that had survived.

According to Henry Maine, there are two types of societies;

- Progressive Societies
- Static Societies.

**Static Societies:** According to Maine after the fourth stage of the development of law, when the primitive law has been embodied in a code, societies that do not advance and develop their legal systems are considered static societies. Static societies remain stuck in the age of codes. Static or fixed social requests did not move past code-based law. As demonstrated by Maine,

the general populace was misled into the certainty of the law and, as a result, was reluctant to change it.

**Progressive Societies:** Societies which go on progressing after the fourth stage of development of law are Progressive Societies. With the aid of the following tools, they formulate their laws:

- **Legal fiction:** Legal Fiction modifies the law to suit societal demands without altering the actual text of the law. Legal fiction harmonizes the legal system but makes it challenging to comprehend the law. In essence, the term "Legal Fictions" refers to situations where a rule, although maintaining its formal consistency, is given a radical new interpretation in practise, significantly changing how it operates.
- **Legislation:** The most desirable and efficient way to amend the law is through legislation. Laws will be passed and made formally effective. An externally defined body of people gives legislation its power, and this authority is unrelated to whatever underlying concepts that the regulations it declares may be based on. Legislation has a much more modest place within the historical constitution, regulation, and evolution of law. Legislation is merely another agent of change
- **Equity:** According to Maine "Equity is a body of rules existing by the side of the original civil law and founded on distinct principles,". Equity aids in eradicating unfairness and rigidity. On the other hand, it is a process that overtly, rather than only through reinterpretation, interferes with the formal norms. This phrase refers to sets of regulations that developed alongside established customary law but which, incidentally, asserted their primacy above it in light of the sanctity of the underlying (often moral) concepts.

### **CUSTOMARY LAW:**

Maine argued that in the earliest stages of human society, law was primarily based on custom. Customary law, according to him, represented the accumulated wisdom and practices of a community over time. It was not written or codified but was transmitted orally and through tradition. The huge point for the law authority is that nobilities were commonly the depositaries and chiefs of law they seem to have won to the privileges of the master, with the huge difference, regardless, they don't appear to have affirmed to organize inspiration for each

sentence. In addition, there is the claim of a great beginning for the entire collection of rules, or for a portion of it, but the development of thought no longer grants the game plan of explicit discussions to be explained by the acceptance of an extra human intercession. This is where the relationship of thoughts which brief the judgement of the male-driven ancestral pioneer to the attributed to excessively human record shows itself. Maine's ideas on customary law and legal evolution had a profound impact on the field of jurisprudence and legal anthropology. His work helped to establish the study of legal history and the role of custom in legal development as important areas of academic inquiry.

The reasons why customary law receives supremacy, becomes obvious. First, customary law is the normative framework that arranges people into family institutions, through which society understands them, and through which people perceive one another. For instance, according to customary law, every individual must be a member of a family unit in order to be accepted as a member of the community. Additionally, not every family will suffice. Thus, all recognized units must be connected through a common ancestor, according to customary law. Second, it is customary law which designates the word of the father as authoritative within each family-institution. From this perspective, the only difference between a patriarchal and a matriarchal society is that the former adheres to a customary law which designates as authoritative the word of the father within each family, while the latter designates the word of the mother. From this perspective, the existence of customary law, as well as the intertwinement between the concept of custom and law, becomes an empirical, historical reality. Customary law also played a crucial role in governing property rights and land tenure systems. Maine examined how customary practices related to property evolved over time and how they influenced property rights in different societies.

### **MAINE'S WORK IN INDIA**

India was colonized under British rule through the workings of the British East India Company. Around 1820, this authority began to lean even more heavily towards "British paramountcy, which is the belief in British dominance in Indian political, economic, and cultural life." It was quite interesting to see how India's legal system evolved while it was being colonized by the British Empire. Given that it possessed both codifications and formalizations, had regularly formed courts, and utilized both components of legal fictions and equity in addition to customary law—yet showed no evidence of legislation—it was well above the level of merely

customary law. For Maine, India demonstrated a complex network of autonomous customary units that could not be managed outside without a thorough understanding of its way of life, despite its absence of formal organization and regulation.

The Indian Mutiny (or First War of Independence) of 1857 served as the most notable example of this idea being proven correct. Maine believed that despite its failure, this uprising would prove to be "the greatest fact in all Anglo-Indian history" because it demonstrated the limits of compulsion and imposition as the primary components of law and order. In response to the Mutiny, the Crown took control of the Indian provinces that the East India Company was responsible for in 1858 and established the policy of non-interference as the cornerstone of its governance. It was in the wake of these events that Maine's work began gaining practical relevance and attention outside the purely theoretical and academic circles. The structural contrasts between the various evolutionary stages of legal history were emphasized in Maine's narrative of law's development. This made it possible for the colonizing powers to perceive Indian populations as having a fully functional legal system that was founded on custom, customary law, codifications, and traditionally recognized courts rather than on legislation, command, and sanction. Further, it highlighted how law is nothing but a subpart of a greater functional whole, a "facet of culture" which means the pattern of the interrelation of culture traits and how, as a result, the social norms that support and integrate law cannot be conceptualized or regulated independently.

Maine was entitled to serve as a Legal Member of the Council of the Governor-General in India during the Crown delegation's 1862–1869 term precisely because of this theoretical component of his work. Maine's approach was the only one capable of, at the very least, providing the foundation and the general direction for a rejuvenated jurisprudence and, ultimately, a concept of law to replace Austin's. Maine's work in India expanded the influence of his legacy at the time by improving British colonial practices in addition to law and academics more generally.

His work in India encompassed several key areas:

- **Legal and Judicial Reforms:** Maine played a crucial role in shaping legal and judicial reforms. He was involved in the development of laws, regulations, and administrative procedures. His knowledge of comparative law and legal history influenced the reforms undertaken during his time in India.

- **Ancient Indian Law:** Maine took a keen interest in the study of ancient Indian legal systems and customs. He conducted extensive research into Hindu law and customary practices, and his findings were published in works like "Lectures on the Early History of Institutions" (1865). He analyzed the intricacies of ancient Hindu law, including issues related to property, marriage, and inheritance.
- **Legal Education:** While in India, Maine made efforts to promote legal education and improve the training of Indian legal professionals. He contributed to the development of legal curricula and the establishment of law schools, emphasizing the importance of legal education in a rapidly changing society.
- **Impact on Colonial Legal Systems:** Maine's ideas and recommendations in the area of law and governance in India had a lasting influence on the British colonial administration's legal policies. His emphasis on the importance of understanding local customs and traditions shaped colonial approaches to law and governance in India.
- **Village Communities:** Maine looked into the social and legal framework of Indian villages in his research on village communities, which was covered in his book "Village Communities in the East and West" (1871). He looked at the idea of shared land ownership and the function of village councils in resolving conflicts. His insights advanced knowledge of rural Indian society and government.

### **CRITICISMS OF HENRY MAINE**

For the following reasons, Maine is criticized for altering the makeup and organization of early society: Early society does not provide a consistent illustration of how law has evolved through its three stages—from individual orders and judgements of male-centric rulers through law as custom upheld by judgements to law as code. The apparent inflexibility of the law has repeatedly been put to the test by modern anthropologists who believe that primitive people groups were adaptable and their rules were flexible. There were matriarchal social orders just as there were ones that were dominated by men. Furthermore, it has been established that status does not necessarily tend towards contraction. Or perhaps the opposite advancement has been possible. For instance, the implementation of social government assistance in advanced countries is based on status. Status is determined by "governmental policy regarding minorities in society" in the United States, a system founded on Afro-Americanism. Additionally, single

parenting is considered a legal status in Canada and the UK. In spite of the fact that Maine completed his legally required task, he ignored the characteristics that have characterized social hierarchies over time.

### **TRANSITION TO CONTRACT**

One of Maine's central ideas was that societies progressed from a state of status-based law to a more advanced system based on contracts. In status-based societies, individuals' legal rights and duties were determined by their social position. However, as societies evolved, they moved toward contractual relationships, where individuals had more autonomy in entering into agreements and contracts.

### **MAJOR WORKS BY SIR HENRY MAINE**

- In 1861, Maine's 'first book Ancient Law' was issued.
- He also wrote 'Village Communities' (1871)
- Early History of Institutions (1875)
- Dissertations of Early Law and Custom (1883)

### **CONCLUSION**

The writings of Sir Henry Maine push us to examine the privileged position that philosophy has held within jurisprudential inquiries, and his project pushes us to firmly ground philosophical inquiry as it relates to law upon an interdisciplinary perspective; a perspective that is shaped first and foremost through history. Furthermore, while being lost and forgotten today, this initiative had a lasting impact on not only the control British colonial forces exercised at the time, but also subsequent generations of philosophers of law. Also, Sir Henry Maine's work in India was characterized by his deep interest in Indian legal systems, society, and governance. He contributed to legal reforms, studied, and documented customary practices, and played a significant role in shaping legal education and the understanding of Indian legal traditions. His writings continue to be valuable sources for the study of Indian legal history and the impact of British colonialism on Indian law and society. Henry Maine aided the entire world by encouraging the systematization of the law; the result is reflected in the Statute.