

**VILLAGE-COMMUNITIES
IN THE EAST AND
WEST. SIX LECTURES
DELIVERED AT OXFORD**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649116522

Village-communities in the East and West. Six lectures delivered at Oxford by Henry Sumner Maine

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

HENRY SUMNER MAINE

**VILLAGE-COMMUNITIES
IN THE EAST AND
WEST. SIX LECTURES
DELIVERED AT OXFORD**



VILLAGE-COMMUNITIES

IN TWO

EAST AND WEST.

BY THE SAME AUTHOR.



ANCIENT LAW: ITS CONNECTION WITH
THE EARLY HISTORY OF SOCIETY, AND ITS
RELATION TO MODERN IDEAS. *4th Edition,*
8vo. 12s.

VILLAGE-COMMUNITIES

IN THE

EAST AND WEST.

SIX LECTURES DELIVERED AT OXFORD

BY

HENRY SUMNER MAINE,

CORPUS PROFESSOR OF JURISPRUDENCE IN THE UNIVERSITY,
FORMERLY LAW MEMBER OF THE SUPREME GOVERNMENT OF INDIA,
AUTHOR OF 'ANCIENT LAW.'

LONDON:

JOHN MURRAY, ALBEMARLE STREET.

1871.

P R E F A C E.

THE SIX LECTURES which follow were designed as an introduction to a considerably longer Course, of which the object was to point out the importance, in juridical enquiries, of increased attention to the phenomena of usage and legal thought which are observable in the East. The writer had not intended to print these Lectures at present; but it appeared to a part of his audience that their publication might possibly help to connect two special sets of investigations, each of which possesses great interest, but is apparently conducted in ignorance of its bearing on the other. The fragmentary character of the work must be pleaded in excuse for the non-performance of some promises which are given in the text, and for some digressions which, with reference to the main subject of discussion, may appear to be of unreasonable length.

The eminent German writers whose conclusions

are briefly summarised in the Third and Fifth Lectures are comparatively little known in England, and a list of their principal works is given in the Second Appendix. For such knowledge of Indian phenomena as he possesses the writer is much indebted to the conversation of Lord Lawrence, whose capacity for the political direction of the natives of India was acquired by patient study of their ideas and usages during his early career. The principal statements made in the text concerning the Indian Village Communities, have been submitted to Mr. George Campbell, now Lieut.-Governor of Bengal, who has been good enough to say that they coincide in the main with the results of his own experience and observation, which have been very extensive. No general assertions are likely to be true without large qualification of a country so vast as India, but every effort has been made to control the statements of each informant by those of others.

Some matter has been introduced into the Lectures which, for want of time, was omitted at their delivery.

February 1871.

CONTENTS.

LECTURE I.

THE EAST, AND THE STUDY OF JURISPRUDENCE.

Comparative Jurisprudence—Comparative and Historical Methods— The Past and the Present—Limits of Comparative Jurisprudence— Method of Comparison—Enquiries of Von Maurer—The Mark and English Law—Eastern and Western Communities—Characteris- tics of Indo-Modern Theories of Race—The Patriarchal Family —Barbarous Forms of the Family—Origin of Law in the Family— Village Community—Law of Nature—Codified Brahminical Law— Feudal System—Conditions of Juridical Study—English Ignor- ance of India—Disappearance of Indian Phenomena—Influence of Western Ideas—Influence of Physical Science—Influence of British Empire	PAGE 1
--	--------

LECTURE II.

THE SOURCES OF INDIAN LAW.

Indian Settlements—Settlement and Revenue Courts—The Civil Courts—The Indian Judicial System—The Supreme Courts—English Law in India—Indian Opinion on English Law—Locality of Custom —The Will of Bengal—Wills and Collective Property—A Modern Indian Will—The Sudder Court—Influence of Sudder Courts—De- velopment of Hindoo Law—Effect of Juridical Commentaries—The Bar and English Law—Mahometan Law—The Pundits—Codified Hindoo Law—Varieties of Native Usage—The Written Law—Hindoo Widow's Estate—Preservation of Customary Law—Caste in India— Tradition—Different Forms of Tradition—Popular Ignorance of Law in England—The Experts and English Law—Indian and Teutonic Village Systems	29
---	----

LECTURE III.

THE WESTERN VILLAGE COMMUNITY.

Antiquity of Indian Customary Law—Traditional Law—Analysis of a Law—Indian Conceptions of Law—English Influence on Legal Conceptions—Unwilling Assumption of Sovereignty—Influence of Courts of Justice—Change in Nature of Usage—Growth of Conception of Right—Influence of English Law—Connection of Eastern and Western Custom—Von Maurer—The Teutonic Village Community—The Arable Mark—English Theories of Land-Law—The Arable Mark in England—Shifting Severalties—The Common Fields—Their Great Extent—Extract from Marshall—Scott on Udal Tenures—Commonly of Lauder—Peculiarities of Scottish Example—Vestiges of the Mark PAGE 63

LECTURE IV.

THE EASTERN VILLAGE COMMUNITY.

The Indian Village Community—Mahometan Theory of Ownership—Land Settlement of Bengal—The Indian Proprietary Unit—The Indian Village—The Cultivated Land—The Growth of Custom—Water Rules—The Sources of Primitiv Law—Customs of Repartition—The Village—Secrecy of Family Life—Dislike of English Criminal Law—Fictions Attending Legislation—Village Rules—Origin of Indian Towns—Indian Capitals—The Village Waste—The Indian Wastes—The Government and the Wastes—The Village Council—Peaceful Character of Population—Hereditary Trades—Remuneration of Village Traders—The Outsiders—Absorption of Strangers by Community 101

LECTURE V.

THE PROCESS OF FEUDALISATION.

Feudalism—The Benefices—The Manor—The Manorial Group—New Condition of the Waste—Changes in the Grass-lands—The Free Tenants—Settlements of Villains—The Manorial Courts—Encroachments of the Lord—Roman and Feudal Law—Causes of Feudalisation—Growth of Suzerainties—Leading Families—Elements of Feudal System—Systematic Feudalism—Antiquarianism of Indian Politics—Political Results of Settlements—Various Forms of Settlement—