It takes a village
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Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism by Karuna Mantena
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If, around 1880, an educated person in Britain had been asked to list the most important intellectuals of the previous generation, he or she might well have mentioned, alongside Darwin and John Stuart Mill, the name of Sir Henry Maine, the subject of Karuna Mantena’s valuable new study. His name isn’t heard much anymore, but in his own day Maine (1822-88) was regarded as a towering public intellectual. He became regius professor of civil law at Cambridge at the age of 25, then a writer for the *Morning Chronicle*, law member of the government of India in 1862, professor of historical and comparative jurisprudence at Oxford and finally, master of Trinity Hall, Cambridge. Maine appeared to have shown Victorians how Europe, and Britain in particular, had achieved social and political modernity through the evolution of law and political institutions. He charted this progress from the original village community, through the development of private property to the ‘Teutonic mark’ (a group of co-sharing villagers), the medieval manor and, ultimately, to representative government by educated and propertied elites. According to Maine, the persistence of Roman legal concepts played a critical part in this evolution in much of Europe. By contrast, the ‘Aryan outliers’, India in particular, and Ireland before the English settlement, remained immured in the primitive form of the village community dominated by patriarchy, caste or tribalism. Indeed, these primitive forms had widely persisted into the present. As Maine put it, ‘in the East aristocracies became religious, in the West civil or political.’ Thus India was an ‘assemblage’ of ‘fragments of ancient society’: fragments which were then in some cases locked in place by British rule.

Maine’s legal historicism was famous across Europe. He stood alongside the great continental historians of antiquity, such as Fustel de Coulanges and Barthold Niebuhr. He even came to the notice of an irritated Karl Marx, who derided the ‘blockhead Maine’. By
the 1880s, Marx had come to believe that the Russian village community, the *mir*, could provide the basic unit of a future egalitarian Communist society. He deplored Maine’s portrayal of such communities as a ‘primitive patriarchal’ form; they were, Marx believed, free from relations of domination, even the domination of men over women and children. Maine, by contrast, believed that ‘freedom evolved’ and that the village community was merely the starting point, not a premonition of the imminent future.

The decline of Maine’s reputation can be put down partly to late Victorian political controversy. He opposed Gladstone’s Reform Bill of 1884, prophesying that it would lead to revolution. He also stridently denounced the policy of Lord Ripon, the liberal viceroy of India, who introduced limited forms of local representation to the subcontinent in the early 1880s. But the guillotine was not erected in Parliament Square, and India did not become the scene of a second mutiny, at least not a violent one. So Maine’s reputation as a political seer was tarnished, and his Whiggish politics came to be seen as somewhat archaic after his death in 1888. Increasingly, too, his writings appeared dated. English lawyers were suspicious of his call for legal codification to redress the muddle of the common law from which they so clearly benefited. In the universities and academic debate, his historicism succumbed, first to a more encompassing and allegedly scientific form of racism, then to Marxism and, much later, to postcolonialism’s distrust of grand historical narratives. More recently, historians of Greece and Rome have certainly been happy to discuss whether the classical economies were archaic or modern. But most of them have remained resolutely Eurocentric, avoiding any outlandish comparisons with ancient India. It is true that the generation of structuralist anthropologists writing in the 1950s and 1960s, notably Meyer Fortes and Evans-Pritchard, were influenced by Maine’s idea of the village community in their work on African political systems, as Mantena notes. Yet Maine’s broader comparative work on the evolution of law and political forms in Western Europe and India is today regarded as too teleological and positivist by most historians, anthropologists and other social scientists.

Mantena’s book is, however, testimony to the expanding significance of India itself and the vigorous development of Indian history in both the subcontinent and the United States. *Alibis of Empire* stands alongside a range of works on enlightenment anti-imperialism and the liberal imperialism of the 19th century. The broad direction of her argument is subtly different, however. She charts a shift from the early 19th century, when imperial expansion was justified in terms of development and the civilising mission, to the period after the rebellion of 1857, the culmination of a ‘crisis of liberal imperialism’. In this later period, British rule in India and other parts of the empire found an ‘alibi’ in the notion that subject civilisations remained at a primitive level of social evolution. Maine’s key works, *Ancient Law* and *Village-Communities in the East and West* formalised this shift. The 1857
rebellion and the apparent failure of earlier attempts at Benthamite reform fundamentally to change Indian society meant that British officials and politicians needed a new grand theory and new rhetoric to explain their continued presence as rulers.

Since, according to Maine, India was this ‘assemblage’ of ‘fragments of ancient society’, though not an ‘ancient society complete in itself’, a modern British bureaucracy and British commercial interests could evidently subsist with a variety of village councils, landlord cabals and princely states. After 1857, according to Mantena, there was a shift in colonial thinking away from human universals and ameliorative political action towards the fundamentally different nature and rhythms of Indian society. While ‘cultural difference’ had become a broad defining theme of most anthropology by the end of the 19th century, in the work of Franz Boas above all, the notion of a progression from the primitive to the advanced, which Boas did not endorse, was highly congenial to colonial officials.

In accordance with this shift, British legal interventions no longer unambiguously supported legal, educational and commercial ‘progress’, but instead came to investigate and legislate on local customary law, particular forms of kinship and ancient proprietary rights. Maine’s interpretation, therefore, provided a rationale for the notion of ‘indirect rule’ through magnates and princely states, which became the hallmark of later colonial administration, not only in India but also in Malaya and across large parts of Africa. Maine’s ideas influenced the policies of Sir Alfred Lyall in India, Lord Cromer in Egypt and Lord Lugard in West Africa, all of whom paid close attention to the particular social and political structures of the provinces they came to rule.

Mantena, though, does not argue that there was an abrupt or complete break between the two eras. She notes, for instance, that Maine believed that, properly managed, the codification of law could reinforce social progress. So while he opposed a universalising, analytical jurisprudence, he continued to advocate legal reforms that would rationalise the law, but stop short of the full-scale codification urged by Bentham. He believed, indeed, that the common law itself still had some way to go before it became truly modern. Britain could still learn from the Roman example.

At the heart of Maine’s work and Mantena’s book lies the issue of property. She points out that he rejected earlier theoretical arguments about the origin of property in Roman and ‘Teutonic’ Europe and argued instead for a comparative ‘historical explanation that emphasised slow institutional developments’. He criticised policies in British India, which had, in his view, promoted the unfettered development of private property and the land market. The market had brought ‘native society’ to crisis, he believed, by undermining the pattern of communal ownership and land use which had underpinned it. Measures such as the Punjab Land Alienation Act of 1900, which attempted to prohibit the passage of land
from cultivator to money-lender, clearly show how far his ideas, by that time taught in Oxford, Cambridge and Trinity College, Dublin, formed the conservative policies of later British administrators. The irony was that even this attempt to take account of local conditions exposed, in a different way, the impossibility of autocratic government by foreigners. The 1900 Act set the Hindu commercial classes at odds with Muslim landlords and peasantry and gave a significant fillip to the Indian National Congress, whose radical faction was soon demanding the immediate end of British rule.

The recent disinterment of Maine can in part be put down, as I’ve said, to the ascent of India as an economy and as an area of study. But there is another contemporary context for the shift: the debate about ‘humanitarian intervention’ and ‘American empire’ to which several recent books on British imperial ideology have gestured. Mantena ends by discussing the resurgence of arguments for liberal imperialism: that is, ‘the use of force for transformative political projects (across borders)’. She implies that the same shift from liberal universalism to hidden patterns of indirect rule has been apparent in recent years in Iraq and Afghanistan. A simplistic belief that the ballot box will transform these states into Western-style capitalist democracies has given way to the view that cultural difference is so great that tribal elders, local bosses and religious leaders must be empowered so that Western military and financial commitments can be reduced. Historical evolutionism of Maine’s variety, though without his subtlety, certainly remains popular: only recently the secretary of state for defence, Liam Fox, declared, to the fury of President Karzai and the Afghan media, that Afghanistan was ‘a broken 13th-century country’.

Mantena refers to the work of Radhakamal Mukerjee, who wrote on ‘village communities in the East and West’ in the 1920s, and she is currently thinking about the relationship between Gandhi’s ideas of village republics and Maine’s. Yet Indians make only fleeting appearances as authors, commentators or critics in Alibis of Empire. This is not necessarily a fatal flaw. Much of the most important work on the ideology of empire has focused on debates between colonial officials, or between them and canonical Western thinkers. Eric Stokes, in his classic The English Utilitarians and India, referred to Ram Mohan Roy, India’s first liberal thinker and a reader – later a critic – of Bentham, only in footnotes. Another classic, Ranajit Guha’s A Rule of Property for Bengal, largely concentrated on the influence of the French physiocrats on British policy towards the land-tax in eastern India. Yet now perhaps is the time to introduce non-European thinkers and political leaders more firmly into the debates. Even Stokes lamented later in his career that he had spent too long working on texts which amounted to little more than ‘what one clerk says to another’. He devoted his later years to the life of the Indian peasantry and its resistance to colonial rule in 1857. Guha moved in the same direction, initiating the ‘subaltern studies’ movement.

There is a particularly good reason for bringing Indian voices much more centrally into the
analysis of Maine and the village community, in that he was, in effect, reacting to a debate between East India Company officials, radical British critics of empire and increasingly assertive Indian writers, which had persisted since the beginning of the 19th century. Attention to this debate would restore a sense of ‘real politics’ to the issues involved. The panchayats, or village assemblies, empowered by Nehru’s government after 1948, had been a focus of political debate since the earliest days of British rule. In western India, scholar-officials such as H.G. Briggs had encountered systems of village government, representation, debate and justice which seemed to embody some form of local democracy. Indian writers, notably Ram Raz (c. 1790–1830), put contemporary observations together with studies of Sanskrit texts. Raz argued that India had always had a form of basic popular government in villages and city neighbourhoods, and that this justified demands for Indian participation in grand juries and for other forms of representation (Indians were debarred from jury service at the time on the grounds that they couldn’t take a Christian oath). Ram Mohan Roy prefaced his famous denunciation of widow-burning in 1822 with a description of an ‘ancient Indian constitution’. This had supposedly degenerated as a result of internal conflict between castes and invasion by foreigners, the Muslims and later the British. This too was offered up in support of Indians’ demands for representation.

By comparison, many British writers, notably Sir John Malcolm, who proclaimed ‘there is no public in India,’ dismissed these historicist arguments and insisted that the panchayats and other bodies were and had always been nothing more than local agents of despotism, which was India’s natural form of government. The Indian village community was a basic, indeed primitive form of social organisation subject to the rule of village-controllers. There was no proof of any primeval democratic spirit. This was the debate that Maine extended into a comparative argument, taking into account the classical European world, Germany and Ireland. He, too, was clearly aware of and irritated by Indians’ lauding of their classical and democratic past. He scornfully denounced such romanticism in one of his addresses to Calcutta University, of which he became vice-chancellor in 1863. Far from recreating a classic Hindu past, without British control India would revert to ‘Mahratta robbery and Mahomedan rule’. According to modern scholars such as Narendra Wagle, who have looked at the copious written records of these local bodies in western India, none of the 19th-century commentators were entirely correct about the panchayats or the politics of village communities. They were not simply arms of the despotic state; nor were they village parliaments. But the important thing is that Maine’s ideas took account of existing institutions and debates within India, which included Indian writers, albeit in a subservient position.

Mantena uses her final substantive chapter to show how Maine’s arguments were taken up and modified in European debates about empire and governance, providing an ‘alibi’ for
paternalist and conservative rule. Yet here again it is interesting to see how Indian thinkers used, indeed ‘cannibalised’ his work in debates among themselves and in attempts to refute the arguments of their British rulers. Pherozeshah Mehta (1845-1915), Bombay liberal, tyro of the Bombay municipal board and later president of the Indian National Congress, took Maine seriously. His own community, the Parsis of Bombay, Zoroastrian refugees from Iran via Gujarat, had created a local representative body, the Parsee Panchayat, as a form of representation for the adjudication of property and family disputes. Such bodies had been the scene of constant controversy between social radicals and conservatives, rich magnates and ‘middling people’ since the early 18th century, so Mehta wasn’t simply writing from a position of historical romanticism. He rewrote the history of the panchayat from a comparative perspective, extending the ideas of Ram Raz and Ram Mohan Roy, and in doing so qualified Maine: India did, in fact, have ancient systems of local representation.

Mehta ignored Maine’s evolutionary argument, but used his publications on village communities of equal proprietors as an argument against the idea that racial characteristics barred ‘orientals’ from governing through representative institutions. Citing Carl Friedrich von Savigny and various French writers on continental European history, Mehta asserted that just as Roman institutions had been successfully grafted onto the ‘rude’ Teutonic mark, so British self-government could be bonded with its analogue, the Indian panchayat. This would provide a ‘substratum’ for representative democracy. The British rulers should not fear local bodies of this sort, he added. The French Revolution and the recent Paris Commune had come about precisely because the monarchy and then the Second Empire had destroyed the councils and inferior assemblies.

Another western Indian liberal, M.G. Ranade, also went some way with Maine, but ultimately dissented on the issue of representation. Discussing the impact of the commercialisation of rural society following British rule, he noted that ‘status’ remained more significant to Indians than ‘contract’: a kinder version of Maine’s own dismissive statement that ‘each individual in India is a slave to the customs of the group to which he belongs.’ But Ranade noted pointedly that Simon de Montfort’s first parliament had long predated England’s escape from the domination of concepts of status. The supposed backward state of its society should not be used as an argument to deny Indians political representation.

Other Indian public men were even more selective. The young Mohandas Gandhi subtly rejected Maine’s notion that the village community was a primitive form. In a petition to the Natal Legislative Assembly in South Africa in 1894, he claimed that the Teutonic mark was ‘hardly so well organised or so essentially representative’ as an Indian village community, at least not until the Roman element was added. Subverting Maine’s historical teleology, he
also added that ‘the Indian nation has known, and has exercised, the power of election from times far prior to the time when the Anglo-Saxon races first became acquainted with the principles of representation.’ In response, the *Natal Mercury* adopted Malcolm’s old position, insisting that Indian village communities had nothing to do with representation, merely land tenure. Village-community life was common to all ‘primitive peoples’ and, if anything, was proof of their backwardness. Gandhi dismissed this view, along with Maine’s, pointing to the fact that the princely state of Mysore had recently given ‘the political franchise rights to its subjects’. There was no truth in the idea that Indians were attuned to despotism. Later, Gandhi came to reject utterly Maine and liberal historicism. Village self-government was a bastion against ‘the wrong type of modernity’:

> Here there is perfect democracy based upon individual freedom. The individual is the architect of his own government. The law of non-violence rules him and his government. He and his village are able to defy the might of a world.

Most Indian liberals and socialists naturally rejected Maine’s assumption that the village community was a primitive form of social organism. Often, they came unwittingly close to the later Marx’s view that these institutions might provide the basis for an egalitarian, even socialist society. Yet Sir Henry might have found an ally in an unusual quarter. Bhim Rao Ambedkar, leader of the ‘untouchables’, or *dalits*, and a key figure in the drafting of the constitution of independent India in 1948, was much closer to Maine in his assessment of the village community. He denounced the village as ‘a sink of localism, a den of ignorance, narrow-mindedness and communalism’. Orthodox Hinduism reinforced class exploitation, he believed; he had not been brought up in a palace or a rich lawyer’s house, but as an outcaste boy in a poor village. In the 1930s, he had been at the heart of a campaign to transform the ‘shares’ in village produce owed to untouchables for menial tasks into property rights in order to make ‘slaves’ into citizens. This would have effected Maine’s transition from ‘status to contract’ in short order. Village republics had not been the original democratic assemblies, as earlier Indian liberals regarded them, let alone the arcadian location of ethical virtue of Gandhi’s ideal: instead, Ambedkar asserted in 1948, they had been ‘the ruination of India’. The paternalist Maine wrote something similar in *Ancient Law*.

It is ironic that this judgment was similar to the position adopted a century earlier by the younger, then more classically ‘Marxist’ Karl Marx, who regarded the British as a progressive force because their railways and the bourgeois colonial economy had begun to undermine the backward village community and to create a true proletariat in India. This was long before he denounced that ‘blockhead Maine’. 