



the king is peaceably established, he finds cultivation going on in villages of the aboriginal races, many of whom have accepted his rule with very little if any opposition; the humbler ranks of his own followers also take to cultivation, and it becomes a natural plan for each to give a share of the grain produce to the sovereign or the local chief, as the case may be. Outlying tracts subdued, but not occupied, will pay their tribute also, in whatever form is most convenient, to the Royal Treasury. The system of taxation was soon extended further, for we find the trading and artisan classes organised into recognised guilds, each with its own head; and by this means a contribution from the non-agricultural classes was secured.¹

When we come to the times represented by the Laws of Manu, the 'manner of the kingdom' is already well known; and there is no detailed description of it. The Rājā receives his regular grain-share, and has officers to supervise its collection. Naturally (for the Brahman must be exalted), the council of chiefs has disappeared into the background, and the Brahman ministers are the ostensible advisers. But this more nearly represents the individual monarchy than the tribal form, where a sufficiently complete clan, with its greater chief and heads of minor clans were engaged in the government of a territory. When we see the 'Rāj' established on this clan-basis in Rājputāna, we observe how an important post is assigned to every chief within the clan, and with it an oath of service is exacted and a formal recognition of the Rājā's supremacy.² This is something different from what Manu contemplates.

Bearing in mind the limited object with which this account

¹ I may be permitted to observe that in towns this 'guild' system of tradesmen and merchants still exists; and if we had boldly made use of it in our first efforts to establish an income tax, there might have been less friction; for it is a matter of obvious justice as well as of ancient custom, that non-agriculturists should contribute as well as the owners of land. What caused the unpopularity was the attempt to enforce a European mode of levy—an inquiry into profits and incomes, and a very useless and nominal examination of shop-books. It might have been unscientific, but it would have been far more practical, to assess the different 'castes' or trade guilds, &c., in lump sums through their *caudharis*, as they were afterwards called.

² We have, fortunately, the valuable assistance of Colonel Tod's



of the Hindu State is introduced, I do not propose to give all the *minutiae* of the really ancient organisation of Mewār and other early kingdoms. It will be enough to say that in the complete or clan 'Rāj,' the rank of Rājā¹ is given to the head of the chief family of the eldest branch: thus, the chief is still addressed as 'Bāpji' (revered father). Under him the heads of the lesser clans and families will have graded titles—*Rāo* (or *Rāv* in Western India), *Rāwat* (or *Rāwal*), *Thākur* and others.

The Rājā's demesne was the central, and usually the richest, part of the country, and each chief had a territory round² it; while the lesser chiefs, who could not be so furnished, held special

Rājasthān, originally published in 1827 and since reprinted. Colonel Tod is no doubt uncritical, and his linguistic and other deductions are of little value; but for all matters of custom and observance, of which he had intimate personal knowledge, his authority is first-rate. His love of analogies often leads him to absurdity. Hence he is too fond of identifying the Rajput system with the feudal system of Europe, to which, no doubt, it has *some* resemblance. As an instance I may quote his allusion to the *minor* holding, on military service, of what he calls a 'hide' of land. The native term *ṇarsā* means the leather or hide bag used for irrigation, and referred probably to the area of land watered by one *ṇarsā*. Obviously it had no kind of connection with the 'hide' in the English manorial system or with European feudal tenures. The etymology of 'hide' is not understood (Seebohm, *English Village Community*, p. 398; Stubbs's *Const. History*, 5th ed. i. 79); but it can have no similarity with the *ṇarsā* of land in India.

¹ The title varies, but it is usually *Rājā* or *Rānā*. *Mahārājā* is a complimentary addition. *Ādhirājā* is sometimes coupled with the latter, and where not merely a bombastic title it properly implies 'suzerain' over a number of other States. For it will be remembered that one of the most frequent features of Hindu States, especially those *not* on the clan system, is that they are combined in confederacies, and united under the hegemony of some great emperor like Asoka or the sovereign of Kanauj. The Chinese pilgrim in the seventh century saw the State barge of Kanauj being drawn by eighteen minor Rājās. This confederacy did not imply any interference with interior State affairs, only with general defence and offence. *Çakravartī* was another title applied to a 'suzerain' Rājā.

² This was often pictorially represented as a flower with open petals round a central disc. See, for instance, p. 1 in Cunningham's *Ancient Geography*, where the Map of India, A.D. 550, according to *Varāhamitra*, is given. The whole is represented, on this ideal, as a central domain with subordinate kingdoms lying all round it.



offices with assignments of Revenue or other means of support, within the central demesne.

The Rājā's demesne has come to be universally described by the Arabic word *Khālṣa* (or *Khālīṣa*), which has supplanted any older indigenous term or terms. The Sikhs also adopted the word, first as representing the consolidated territory belonging to the whole of the Sikh confederacy, and afterwards as meaning the 'State power' unified under their great Rājā Ranjīt Singh. The Mughal emperors employed the term to signify the whole of the lands paying revenue direct to the Treasury, as distinguished from the territory available to be held 'in *jāgīr*'—i.e. on assignment of the local revenue, to certain great chiefs or officers of State (*Mansabdār*).¹ This was evidently an adaptation of the Aryan model.

To return to the Hindu 'Rāj.' Where there were no geographical features that invited a natural division of territory otherwise, the chief's portions were frequently allotted by counting up groups of villages. The full estate was most frequently the *ṣaurāsī*, or group of eighty-four villages.² Smaller estates, or even subdivisions effected for any family or local reason, were *bedlisī*, or tracts of forty-two villages, or *ṣaubīsī*, tracts of twenty-four. It is only necessary to add that the traces of this division always, as far as I know, indicate the remains of some rulership, or at least of a local barony or over-lordship of some kind, and never the mere clan-settlement of cultivating landholders in a 'democratic' group.

The Rājā and the chiefs each collected the revenue in his own territory; the chiefs paid no revenue to the Rājā, but

¹ Colonel Tod does not give any Hindī name for the 'demesne' even in the case of the ancient dominion of the Rānā of Mewār. I have some reason to think that the term *kot* may have been applied, or perhaps *maṇḍalam*.

² Some interesting information regarding vestiges of old *ṣaurāsī* divisions in various parts of Upper India will be found in Beames' *Elliot's Glossary*, (s.v. '*chaurāsī*'). In the Statistical Account of the Gorakhpur District, North-West Provinces (*N.-W. P. Gazetteer*, vi. 436), I find this term used, not with reference to a number of villages, but to an extent of circuit in *kos* (=1½ mile.) Thus a certain Rājā's territory was a circuit of eighty-four *kos*, enlarged to a *satāsī*, or circuit of eighty-seven *kos*; and so with the lesser divisions.



helped him with aids in time of war; and the chief's heir paid a 'fine' on his succession; when also he did homage and received investiture from the Rājā.¹ The early rulers made no claim to be owners of the soil; there is not a trace of such a claim in the Mānava Dharmaśāstra or in any other ancient text.² In Rājputāna we find, for example, the oldest and most dignified of the rulers only claiming as his State-right, what was described by the three words 'Ān, dān, kām'—i.e., as Colonel Tod explains, his right to allegiance and military service of all grades; his right to the land-revenue share (*bhog*) and other taxes (*barār*), including supplies of grass and wood or the equivalent thereof (*khar-laker*); and his right to royalties on mines.³ No doubt this right included, as elsewhere, the power to dispose of waste and unoccupied land in the demesne.

It is frequently the custom of writers on Indian subjects to speak of this system of chiefs in subordination to a Rājā as 'feudal'; but it is forgotten that really it differed from the feudal system of Europe in being as much dependent on clan-relationship as on anything else. The safety of the State and success in war alike demanded the loyal allegiance and obedience of every clansman in his grade and place: otherwise, the chiefs remembered that they had as good a right to the *pāt*, or feudal estate, as the Rājā had to his 'Rāj.'⁴ In neither case did the

¹ In Mewār the *pattāit*, or subordinate chiefs, were numerous enough to be ranked in classes (Tod, i. 127). The fourth and lowest consisted of the *Bābu*, or younger branches of the Rājā's own family, who received life grants for their subsistence.

² The question of State ownership of the soil is dealt with in the next section.

³ In Mewār there were some valuable minerals (see Tod, i. 128). *Kām* = mine, is a Persian form, but connected with the Sanskrit *khānī*.

⁴ Colonel Tod has given some interesting appendices of original documents illustrating this. One of them sets forth the grievances of the *pattāit*, or vassal chiefs, of Deogarh, against their *Rāwat*. The petitioners give him the correct title, Deogarh being a State of secondary rank; in the reply the chief styles himself *Mahārājā*. The chiefs remind him that when the State was founded, their territorial allotments were made out as much as the *Rāwat's* own. They complain of his assuming to make grants to outsiders within their estates; and of his listening to the advice of foreigners instead of allowing them (the chiefs) to form his Council.

THE INDIAN VILLAGE COMMUNITY

allotment of territory have anything to do with the actual ownership of the soil; the chiefs' territory and the Rājā's were alike in that respect.¹

A similar system of a Rājā and his 'vassal' chiefs with appropriate allotments of territory all round, appears in the account of the Hindu kingdom of Orissa as given by Sterling. It was adopted in its essential idea, though not in detail, by the Sikhs; and its features may be traced in the States of Simla and Kāngrā.

But obviously the system in its completeness depends on the presence of the whole clan and its branches. And when we remember by what strange adventures and by aid of what singular freaks of fortune many local rulerships were gained, it is not surprising to find a single chief without his clan, or attended only by a small following. The whole of India furnishes us with examples of Hindu States² which at one time or another had rulers or Rājās of some princely Rājput house, and perhaps not one other chief of the same family in his territory. OUDH affords us many examples. Thus, for instance, of the northern kingdoms, Gondā, Atraulā, &c., Mr. Bennett writes: ³ 'The Rāj rested on a

¹ So little was the 'fief' connected with ownership in the land, that there was a time, in Mewār at any rate, when the fiefs were moveable. (Tod, i. 146):—'I need only mention that as late as the reign of Rājā Singhram the fiefs of Mewār were actually moveable, and a little more than a century and a half has passed since this practice ceased.'

It is also hardly necessary to add that the *working* of the system, and the degree to which the Rājā was really chief ruler and the vassals really subordinate in their own estate, depended on the energy and character of the Rājā himself and the general *morale* of the whole clan. With a weak ruler, the tendency for the local chiefs to assert complete independence would soon become marked, especially as the clan-feeling grew weaker, as it must do in the course of time.

² It will be remembered that the States were always comparatively small, and constantly changing. When we hear of great Hindu empires or extensive kingdoms, it is always that the 'Emperor' was the head of a great confederacy of smaller States, reproducing on the larger scale the idea of the 'Rājā' and his 'barons.' They were held together by the slenderest threads; the sending of an embassy was enough. It was only thus that it was possible for Asokā, for instance, to be nominal head of an empire extending at one time from Afghānistān to Ganjam. See Grierson's *Notes on the Gāyā District*, 1893, p. 102.

³ *Gondā S. R.* p. 37 ff.



purely territorial basis. . . . Every *Rāj* was confined to a definite tract of country, enclosed in a ring fence by recognised boundaries, and applied to every inch of land within those boundaries. . . . To suppose that it was in any way connected with the idea of clanship is a mistake. . . . The author goes on to instance the territory called *Khurāsa*, in which, though a numerous *Chatri* clan (*Bisēn*) held properties, the *Rājā* was a *Kalhan̄s*, he and his immediate family being the only members of the clan in the territory. Many similar cases could be quoted. There was thus no opportunity for any feudal baronies; or perhaps there might have been one or two adjacent territories which acknowledged a dependence on the *Rājā*, but that was all. The minor members of the *Rājā*'s family (*chotbhaiyā*) would then be provided for by grants or assignments of revenue or territory within the *Rāj*. The '*Rāj*' is essentially a territorial dominion, one and indivisible; and, properly speaking, the *Thākur* or '*Baron's*' estate is also indivisible. But in the latter case, in former days at any rate, partition was not always avoided. I have even met with instances where a *Rājā*'s kingdom has been formally partitioned among his heirs. This, no doubt, is exceptional, as the rule of primogeniture most commonly applies to the public or territorial estates of *Rājās* and ruling chiefs. The subject of primogeniture will come before us again at a later stage,¹ and need not be further considered here. Hindu States were nearly always of small or at least limited size.²

It may not be out of place to add that in the movements and turmoils of the *Rājput* disruption occasioned by the Moslem invasions—and probably it has been so at all times—a great number of local chiefships have been established in a very informal way, and ruled without any attempt to adopt what I have described as the more regular features of the Hindu monarchy. We find small parties of *Rājputs* settling down in a place and

¹ *Post*, p. 304.

² It was the small States, ranging, in the Trans-Ghāgrā districts, from 100 to 1,000 square miles each, that afterwards formed the principal basis of the Revenue divisions or *Taluqās* formed under the Muhammadan government of Oudh. I need hardly also allude to the thirty-two small States in the Simla Hills; all are held by their separate *Rājā* or *Rānā*; and only in some cases are there one or two dependent '*baronies*' attached to the State.



establishing a rude kind of 'barony.' If the leading chief afterwards attains to some power and reputation, and to an extensive domain, he will probably assume, or receive from the emperor, the title of Rājā. Such dominions were autocratically, but not unkindly, governed in old days. But they were very unstable, and were exceedingly liable to be broken up by family quarrels and to go to pieces.

SECTION III.—ARYAN IDEAS OF PROPERTY IN LAND

It has been incidentally mentioned that the idea of separate fields measured with a reed appears in the *R̥gveda*. This shows that the principle of appropriation was not unknown at that early date. But from all that we know of the results of the Aryan invasion, the chief agent in producing varied forms of land-tenure must have been the introduction of a number of separate centralised governments, with the opportunities that they afforded for the growth of over-lordships, whether extending to considerable estates or to single villages. The humbler Aryans no doubt settled down to village life either in independent democratic communities or under village or other local lords; but, as tradition and history are more concerned with the deeds of the military and ruling classes, the prominent subjects of attention are the founding of royal capitals and the establishment of monarchies. These are varied with many incidents of local adventures, of estates gained by grant, or by what were in fact mere marauding expeditions. Everywhere we hear of little groups of Rājputs, under efficient leaders, seizing on and extending territorial possessions. Nor do we forget the case where no monarchical development occurred. Even in those Aryan villages that were always held by cultivating fraternities from the first, the co-sharers, 'democratic' though we may call them, and having no pretensions to any noble rank, still regarded themselves as holding the land on a superior tenure extending to the whole area of their possession, in a way that we do not observe among the humbler *raiyatwārī* communities. And it may be convenient to add that the same feeling of superiority and of union was evinced by the Jat, Moslem,



and other clans who later formed similar settlements of joint-villages.

In the case of Aryan clans or individuals establishing a territorial *rule*, their original practice was only to take the lord's share of the produce, without directly affecting the cultivating tenure of any existing holders. If, then, on the loss of the ruling position, the families became actual owners of the land, under the toleration of some new conquering ruler, we may be sure that the ownership would be of a 'superior' character. In the larger estates, the great landlord would still regard himself very much as if he were still a Rājā. He would be a great overlord and rent-receiver, without interfering much with the actual soil tenancy. If the resulting estates were scattered villages, the bodies of 'inheritors' would become still more the immediate owners, perhaps themselves cultivating the land; but there would still be the pride of descent, and that sense of superiority which in India depends much more on caste and birth than on appearances of wealth or forms of occupation.

Aryan land-holding, in the case of all the higher castes, had thus a natural tendency to the landlord form. Otherwise, we have no evidence whatever that the Aryan mind conceived any *special form of village* as such. The same physical conditions and tribal ideas of family grouping that operated in all cases, equally invited the Aryans to form 'villages'—even where they were not taking the lordship of villages already established. But their peculiar position and sense of superiority led automatically to a difference in the *internal* constitution of those villages which were held by the higher castes.

When we come to speak, in the next chapter, of the *origin* of the joint-village, we shall discuss the kind of tribal feeling which gives rise to a sense of joint-ownership in some form or degree; and we shall consider the nature and effects of the joint-inheritance as producing what is called common ownership in the joint-family of the original over-lord. It will be sufficient to notice here that the purer Aryan clans exhibit both principles; they had a strong sense of union in the clan, and of the right of all the clan members to share alike in the common acquisition of territory; they also had the joint-family.

As to the earliest ideas of land-holding among the Aryans,



In the state of movement and constant warfare which the Vedic hymns represent, we do not find any direct or even covert allusion to any system of sharing the land conquered or occupied.¹ If anything of the kind had existed, it is hardly possible that it should have escaped all mention.

What, however, is still more to the purpose, is that there is no mention in the much later *Laws of Manu*, of anything like a joint-village or an area of land held 'in common.' This is the more remarkable because the joint-inheritance principle is fully asserted; and so it would follow that if a father became the owner of a whole village, and was succeeded, say, by four sons and six grandsons (representing two other sons deceased), the whole village would naturally be held by a 'community' of ten co-sharers. But the 'village' as a form of tenure depending on a co-sharing constitution, such as is now observed in Upper India, is nowhere mentioned by the author or authors.² The *grāmam*,

¹ Zimmer once or twice speaks of the 'Dorfgemeinde,' but this is rather by way of using a current form of speech; for there is no Vedic evidence that 'communities' were formed by 'village' bodies in any sense at all, far less as connected with land-owning. In the passage above quoted from the *Rgveda* (p. 194, *ante*), giving the different divisions of the tribe, we find mention of the *Verwandtschaft* = *janman*. Zimmer (p. 160) remarks that this is 'evidently' (*deutlich*), a village, because the inhabitants of the village were originally of a single family or kindred. I submit there is nothing 'evident' about it; the statement about the village is derived from the conventional belief on the subject and is based on no evidence whatever. All that the term (*janman*) implies is that there was a group of connected single families held together by some tie of descent, so as to be recognised as one of the groups into which a tribe was subdivided, possibly having a central residence or fortress. As to community of property or of land-holding, nothing of the kind is so much as hinted at.

² Although it is again and again represented by our books that the 'village community,' meaning one with a collective ownership, was known to Manu. I have more than once gone carefully over the latest and best translation (Dr. G. Bühler's) without being able to discover the smallest trace of any such allusion. M. de Laveleye's statement (*Propriété primitive*, p. 66), that 'the mention of the "communautés" in Manu did not suffice to enlighten the English lawyers' as to the joint-village, is perhaps thus explainable! The fact is that until 1795 (when the Benares province was to be settled) English administrators had no opportunity of coming across any jointly owned villages at all; and the significance and



or village, is referred to; and, as it must have then been a well-known, if not already ancient, institution, it is perhaps not to be expected that any description should be given. The code contemplates the king as receiving his revenue-share in kind from each village; and there are district officers in several grades having jurisdiction over ten or twenty, or one hundred, villages; and there is the plan of granting to such officers an assignment of the land-revenue share on one or two or more 'ploughs' as an official remuneration. The village thus referred to is that which corresponds to our *raiyatwārī* form, with its hereditary chief or headman; the latter, as I have remarked,¹ being the characteristic feature in which the joint-village is naturally wanting. Moreover, we shall see presently that the *Mānava* idea of right in land is apparently confined to a primitive and natural one based on the feeling that labour expended on the first clearing of the virgin waste gives a claim to the continued enjoyment of the 'lot'; and this comports rather with the *raiyatwārī* idea of village holdings. Nothing is said of the ownership of a whole village in shares, or of the general lordship of a whole village being granted by the king. Possibly the time had not yet come when such grants (to cadets of the Royal house, or to persons deserving of a reward) were common. More probably, to my mind, in the author's time, such grantees or other over-lords were not yet regarded as *owners of the soil*, or their heirs as forming a body of village co-proprietors; they were still merely the assignees of the royal revenue and perquisites—'lords of the manor' and nothing more; in other words, the position of the superior family had not yet developed into that of a 'village community,' with an acknowledged *ownership in the soil* in any shape, but was an *over-lord right* not regarded as in itself inconsistent with the still subsisting, permanent, and original, right of the village-cultivators as clearers of the soil.

As regards a general idea of title to the soil, or property in land, I am not aware of any direct declaration on the subject earlier than the mention of it in the *Laws of Manu*; and this,

peculiar nature of them was not realised till 1803-1820, when the administration extended to the North-West Provinces, the home of this form of village.

¹ *Ante*, p. 10.



again, appears to be consistent with very early tribal ideas in India.¹ We do not, of course, expect to meet in Sanskrit literature with any juristic analysis of ownership, or of the theory of 'possession,' or a 'just title,' or of the nature of the rights and enjoyments which cluster round ownership; these are refinements of Western jurisprudence. But the writer in the 'Laws' plainly refers, not to his own ideas, but to what he understands to be the ancient opinion, when he says that 'sages who know the past call this earth (*prthivī*) even the wife of *Pr̥thu*; they declare a field to belong to him who cut away the wood, or who cleared and tilled it, and a deer to him who owned the arrow which first struck it.'² Certain attributes of 'private

¹ Colonel Tod, for example, records the saying of the soil cultivator in the ancient State of Mewār, that he had so close a connection with the soil that he was like the *akhāi dhūbā*—the *dhūb* grass that could not be eradicated; and he asserted his right in the oft-repeated saying—

Bhogrā dhan-i-Rāj hu
Bhūmrā dhan-i-māj hu.

'The Revenue share (*bhog*) is the king's property [or wealth = *dhan*]; the soil is my property.'—Tod, i. 424.

Something of the same idea is perhaps expressed by the Kashmir proverb (right acquired by labour and skill bestowed), '*Yus kariḥ gonglu sui kariḥ krāo*'—'He who has ploughed the land shall reap the crop,' a rule, alas! for centuries overridden by despotic rulers in that valley. (See Walter Lawrence's *Kashmīr*, or his shorter and charming paper in *Journal Soc. Arts*, April 1896, xlii. 491.)

² Laws, chapter ix. v. 44. The Glossary of *Kullūkā Bhaṭṭā* explains 'eradicating the stumps' by the addition 'who cleared and tilled the land.' The text is:—

Pr̥thor-apimam pr̥thivīm bhāryām purvā vidoviduh
Sthān-uçched asya kedāramāhuḥ çalyavatamṛgam,

where *kedāram* is a field or cultivated land in general.

I observe that in one of the reprints in Professor Ashley's series of *Economic Classics*, Richard Jones, in his *Essay on Rents* (App. vi.) falls upon this passage and ridicules Colonel Tod for applying it to Mewār (*ut supra*, Tod, i. 424), or taking it as a declaration of fact when it is 'mere allegory.' But Jones (writing before 1830) had very little information, even at Haileybury, about Indian tenures, and he was completely taken up with the idea that land had at all times been regarded as State property in India; so this assertion of private right was a stumbling-block to him. It may be well, therefore, to mention that the passage in Manu is quite reliable. It occurs, it is true, casually, in con-



ownership,' as we should say, are also alluded to—for example, the sale of land by a formal process; and an imprecation is denounced on one man who should wrongfully sow seed in the field of another; rules for settling boundaries are given, and the fencing of fields is alluded to.¹

There is no reason to suppose that in the time (whatever the true date may be) represented by the *Laws of Manu*, the claim of the king to be owner of all land was as yet asserted. Nothing of the kind is mentioned in the Code or in any other ancient text. But the fact of the king having a share in the produce naturally put him in a position to exercise a degree of control, the limits of which, in fact, depended on his own sense of what

nection with an argument about the right to a child begotten on a woman by a man other than her husband; and the writer, no doubt, merely introduces his statement about land as an *illustration* or *argument from analogy*. But the whole point of his case would obviously be lost if the illustration itself were not a statement of fact, and one which his readers would recognise as such. There is nothing whatever metaphorical or fanciful about the text; it is a plain statement of a principle of ownership, and obviously the ancient commentator also treats it as such. It is consistent with all we know, in other ways, of early Indian land-owning; it is consistent with everything else that Manu says about the subject. There is, of course, no regular chapter or formal section on land-ownership in Manu; such a thing could not be looked for.

¹ The right by 'first clearing' appears in various guises in India. Indeed, in early times, when cultivators were scarce in proportion to the arable land, any reasonable ruler must have discovered the importance of fostering and extending cultivation and attaching the cultivators to their holdings. The same principle (right of the first clearer), Colonel Vans Kennedy informs us, is admitted by all the Muhammadan jurists (see, for example, the *Hidāyā*, written about A.D. 1152, Hamilton's Translation, 4 vols. 1791, book xlv.; referred to in *L. S. B. I.* i. 229). Even at the present day nothing is commoner in Northern India than to hear tenants claim occupancy rights on the ground that they are *būtāmīr*, or took part in the *būtā-shigāfi*, as the popular phrase is—i.e. in clearing the jungle. Here, from the general growth of over-lord claims, the cultivators are very often in the tenant class, but the sense of permanent right on the basis of first preparation of the soil is the same.

It will also be observed that in places where the periodic redistribution of allotments was customary, it always ceased to apply, or never applied in the locality at all, where the holdings were irrigated, or were made culturable by some exceptional expenditure of labour or capital on the part of the holder.



was right. It is not surprising that, as a matter of history, the claims of the Rājā, or the State-right, if we prefer so to call it, soon became consolidated and intelligible. We have seen how the Mewār Rājās spoke of their *Ān, dān, kār*; and it became a recognised attribute of the ruling power that, as a matter of custom, it had the combined right to the share of the produce, the right to the waste, and the right to tolls and transit dues. This aggregate of rights was from early Muhammadan times spoken of as *the Zamīndārī*. Later on in history, when the continued invasions and local wars brought about a frequent succession of new conquering princes and marauding chiefs, and when, at the break up of the Mughal Empire, the deputies over the great provinces assumed independence, the temptation to increase the share demanded from the husbandmen, and to enlarge the pretensions of the ruler generally, was irresistible. The old State-right, or 'Zamīndārī,' was magnified into a general superior ownership of the entire domain.¹ This natural pretension of conquering princes received a further impulse from the Moslem invaders, who not only had all the ideas of superiority natural to conquerors, but added to them the religious zeal which supposed that the faithful were the natural 'inheritors' of the wealth of infidels. All over India, the rulers, whether Moslem or Rājput, had thus no lack either of motive or opportunity for establishing their virtual ownership of the soil of their territory. But in practice, it is only just to remember, the better class of even foreign conquerors never conceived of their rights as

¹ The earliest notice I can find is about 312 B.C., where Megasthenes is describing a *land tribute* as well as the *land-revenue share*, which Chandraguptā, King of Magadhā, made the people pay because 'all India is the property of the Crown and no private person is permitted to own land.' This may have been merely an erroneous inference from the particular local obligation to pay 'land tribute.' And Chandraguptā was a conqueror of alien race. Lassen (ii. 726) also remarks that Megasthenes was in error. This must certainly be held to be the case as regards any *general* assertion of the Rājā's right in land at so early a date. It was at a much later time, possibly when the Buddhistic princes had been generally defeated, that the Brahmanic writers invented the story of Parasu Rama having conquered the whole earth and presented it to the Sage Kasyapa (*i.e.* to the Brahmins), who allowed the Kshatriyā ruling chiefs to manage it for them.



necessarily antagonistic to the concurrent, hereditary, permanent, and long-established right of the older cultivators of the soil.¹

Whatever may have been the precise date to which the right of the State to be considered superior owner of the soil may be carried back, it is certain that no ancient Hindu authority can be quoted for it; nor is it consistent with the genuine principles of the Muhammadan law. On the other hand, by the beginning of the eighteenth century, and in some cases of conquest long before that, all the rulers of the Muhammadan States, and all the local Rājās who were conquerors and mostly foreigners, were found *de facto* to claim the superior ownership of every acre of their dominions. And this right is asserted by the Native States to the present day.

It is often stated in books that 'the Hindu law' recognises the State ownership of the land; but it will invariably be found that the only authority for this is an implied, and occasionally an express, reference to what the author apparently did not know to be a purely modern Hindu law digest known as Jagannātha's.² The compiler of this work, who collects and comments on really

¹ The feeling in favour of the protection of the husbandman seems to have been noticed in early times. It is reflected in the Statement of Megasthenes as epitomised by Diodorus (McCrindle's *Megasthenes*, &c., p. 41), that husbandmen were exempted from fighting and 'devote their whole time to tillage; nor would an enemy coming upon a husbandman at work on his land do him any harm.' And again (p. 33): 'Among the Indians . . . by whom husbandmen are regarded as a class that is sacred and inviolable, the tillers of the soil, even when battle is raging in their neighbourhood, are undisturbed by any sense of danger.' He adds also that the land is not ravaged with fire nor the trees cut down.

The fact is that all settled rulers, not mere marauders under the necessity of plundering while they could, have recognised that security to the cultivator means in the long run the best revenue. Even the Marāthās did not altogether forget this. The harshness of native rule is usually inferred from the heavy revenue demand, or the excessive share of the produce; but it is forgotten that the demand was not enforced except in the most elastic manner, and that pressure was relaxed at once in a bad season. The European principle is a low rent and punctual, inexorable, payment. The Oriental rule is the largest possible claim and only take what you can for the season.

² *The Digest of Pandit Jagannātha Tarkapañcānana*, translated by H. T. Colebrooke, 3 vols. (Calcutta, reprinted London 1801). The work



ancient texts sometimes with great skill, is, in this matter of asserting State ownership, reduced to writing some remarks of his own, while he *does not attempt to quote a single ancient text* in support of them. He was probably aware of the fact that the soil in Bengal and other States had, at the date of his writing, long been *de facto* subject to the claim of the State; and, although he had no authorities to give in support of such a claim, he thought it necessary to conform his opinion to the actually existing practice.¹

When once the Rājā attained to a superior lordship of the whole soil, all grantees and others deriving their title from him would naturally have *their* pretensions enlarged; and these they could the more easily realise, because they were in closer managing connection with the land than the Rājā at his capital, acting only through his officials, could ever be. Hence we soon find the ancient 'right by first-clearing' in many cases put aside or overshadowed by a new claim of conquering tribesmen, or adventurous settlers and grantees, who spoke of their conquest right or over-lordship as their *wārīṣi* or *mārāṣi* right or as their *wirāṣat*.² There is frequently good reason to desire

was compiled towards the end of the last century at the suggestion of Sir W. Jones.

¹ He attempts to get out of the difficulty (i. 460) by alluding to the myth of Parasu Rāma and his gift, and saying that the land became the 'protective property' (whatever that may be), successively held by 'powerful conquerors' and not by 'subjects cultivating the soil.' The compiler allows that the 'subject' acquires an 'annual property' (!) on payment of the land revenue, and that the king may not give the land to anyone else for *that* year. He seems to think that, unless there is a special agreement otherwise, the king *may* turn out any owner from a field if anyone else offers to pay him a higher revenue. The whole passage is, however, so vague that it is hopeless to extract any reasonable meaning.

² All being connected with the Arabic *wirṣ*, *wirṣa* = inheritance. It is curious to notice how these Arabic terms have become general. Among the Panjāb frontier tribes, of course, the use of the term *wirāṣat* for right in the soil is natural because the tribes are Moslem. But in the Dakhān and Southern India *mīrāṣi* became everywhere used for the landlord or superior right in or over a village. The term came in with the Land Settlements and careful assessments of Malik 'Ambar and other ministers under the Muhammadan kings of the Dakhān. It was the policy of these kings to confirm or resuscitate the families that had obtained over-



some euphemistic term to account for the successful acquisition of a village or other estate; and when the title has actually descended to later generations, it is spoken of proudly as 'the inheritance.' It will invariably be found that, wherever we have this term applied, it is always in connection either with some originally over-lord right (which has in time ripened into a proprietorship in the hands of a joint body of heirs), or with some special privileged ownership or permanent superior title. The clans who were agriculturists as well as conquerors, like the Jats, do not use the term so much; perhaps because they combine in themselves both the right resulting from first establishment of cultivation and also the right of conquest or successful acquisition. Moreover, a large number of existing Jat communities were peaceable settlers.

There is one aspect of the changes resulting from Aryan over-lordship which is worthy of special remark. This is true not only of Aryan clans but equally of the Muhammadans, Marāthās, Sikhs, and sometimes Jats. I allude to the fact that wherever some royal grant has issued, or some other special interest in land has been created or assumed by conquest, we are not unfrequently presented with the spectacle of a series of

lord rights in the villages of their dominions, and make the Revenue Settlement with them for the whole village. Whenever a man speaks of land as his *mīrās*, he means that he has a superior sort of right as being descended from one of the old over-lord families, or as having purchased such a title in past days. But as the Revenue Administration of the Mughal emperors and also of the Muhammadan kings of the Dakhān was the only business-like, tolerably systematic administration known, its principles were generally copied; and the Perso-Arabic terms employed became generally diffused even in Marāthā and Hindu States.

The only place where I have seen *wārisī* adopted by Hindus and used of a *secondary* kind of right, is in the hills of Kāngrā and Simla, where the Rājās were themselves the superior owners, but where they respected the permanent, hereditary, and, to a limited extent, alienable right of the land-holders, and called it *wārisī*. Here perhaps the meaning is that the holding is *hereditary*, just as the modified form *maurūsi* is applied to what we should call the 'occupancy tenant' classes. This seems the more likely because in the level (outer) Talukās of Kāngrā, where regular villages were formed, the title of the proprietary families is described by the term *mālikī*, or ownership, not as *wārisī*. See Lyall, *Kāngrā S. R.* § 17, p. 20; and Barnes, *S. R. Kāngrā*, § 193 ff.



rights or interests *superimposed* one on the other. In parts of the Panjāb, for instance, we may find villages with three such interests. There is an original body—possibly once independent settlers and first-clearers of the soil. They have now so completely acquiesced in the ‘tenant’ rank that there is no further question of any possible change. Over them will be found the general co-sharing body, who represent the ‘proprietary’ interest in the village; only, in the cases alluded to, they are not quite free, they are called *adnā mālīk*, or owners in the second degree; for over them another co-sharing family has obtained the overlord position as ‘*alā mālīk*, or superior proprietors. Now, under the *régime* of British law, all these interests have been preserved and defined, and stopped from going any further; so that in all probability the *adnā mālīk* are the virtual owners, and the superiors are only entitled to some fees or rent-charges, or to have the benefit of the waste, &c. But had things gone on without interference, the time would probably have come when the ‘actual proprietors’ would have also been completely reduced to the grade of tenant, and the ‘superiors’ would have claimed the entire landlord-right. The same sort of thing is often seen in the greater landlord estates, where every shade of right, from a mere claim to a nominal manorial due or fee up to a complete managing right over the land, can be observed.

Even at the risk of seeming to wander away from my direct subject, I may pause to explain how it was that these complicated rights could be in practice given effect to, and how they could exist together without interminable confusion. They grew up under a social stage in which an extremely vague notion prevailed as to *ownership in the soil*, although a feeling of ‘right,’ in some sense, existed, and the utmost attachment to an old family location was evinced. Up till quite late historical times, the most complicated interests would be dealt with in terms of *sharing the actual produce*. The old Oudh kingdoms afford a good illustration. And in the case of Gondā we have once more the benefit of an exceptionally good account by Mr. W. C. Benett.¹ ‘The produce,’ he writes, ‘is the common property of

¹ *Gondā S. R.* p. 48.



every class in the agricultural community from the Rājā to the slave. No one is absolute owner any more than the others; but each has his permanent and definite interest.¹ And again: 'The basis of the whole society is the grain-heap, in which each constituent rank had its definite interest. There is as yet no trace of private property, whether individual or communal; the rights which bear the nearest resemblance to it being the essentially State-rights of the Rājā.'² I have quoted the words as they stand; but they must be understood in connection with the context and all that is further said about the independent hereditary right to the separate family holdings. The words do not really imply that there was any ignoring of a specific interest of each holder in his hereditary land. What is meant is that no one conceived of his hereditary right as setting up an exclusive title to the enjoyment of the whole of the produce of the land tilled. It comes to this, that a claim to a certain share of the *produce* is the tangible element and apparent symbol of right rather than any theory of *soil* ownership, whether individual or collective. It will not be supposed, *e.g.*, that all the grain from all holdings was thrown into one common heap, and that, after first deducting the dues of the headman, the watchman, the *paṭwārī*, the carpenter and so forth, the rest was formed into two heaps, of which the Rājā took one and the rest was equally allotted among the cultivators—share and share alike. Every holding collected its own grain-produce, and after setting apart the share of village officers and artisans, and then the Rājā's share, the rest went entirely to the several land-holders. The cultivating holder's share was not, therefore, in any way independent of the extent and advantages of the particular holding or the amount of labour and skill expended on it.

¹ It is interesting to notice that in Basti, a district once forming part of Oudh, where the grain distribution was found still in full force, the grain heap is actually spoken of as '*pāñṇōṇ-māl*' (= the property of five: *i.e.* that in which an indeterminate number of people have an interest). See Hooper's *Basti S. R.* 1891, p. 39, where there are curious details about the grain division.

² Referring to the fact that around the Rājā's right to his share in the produce there clustered a number of other rights which were recognised and had the character of permanent property at a very early stage, see p. 208, *ante*.

From quite another part of the country I may quote an actual instance which came under my notice judicially, and which shows how complicated interests can be settled in terms of sharing the produce—interests which would be the despair of the jurist attempting to define them scientifically, in terms of *landed* right. The case occurred in a village near the Jihlam River, North Panjāb. There was first an old cultivating group—possibly representing the original clearers and settlers, who may once have had independent rights. But long ago another superior-caste family (whether by a Rājā's grant or by some forgotten act of conquest or usurpation, it is now impossible to say) had acquired the ownership and formed the village community as a co-sharing body; they claimed the whole estate, and the first group were unmistakeably their tenants with whatever privileges. So far we have the ordinary type of a joint- or landlord-village—in this instance apparently grown up over an earlier cultivating group. But in Sikh times some enterprising person with the necessary capital observed that, if a canal-cut were made in the alluvial soil, from the river, it would bring water to the village and greatly enhance the productiveness of the land as well as render it secure against failure of wells or of the monsoon rains. This person applied to the local governor and obtained a grant to carry out his work, he being given an assignment of a portion of the Government revenue share. As the work largely increased the harvest out-turn, no one felt the charge very much; the extra share was, in fact, paid without diminishing the Government heap from what it had been before. But the capitalist had thus acquired a permanent interest of some kind in the entire village. But there was yet another interest: it happened that a shrine of some sanctity existed within the village area; and some religious mendicant or other similar applicant besought another assignment of produce to enable him to provide for the up-keep of the shrine and worship thereat. His request was granted, and thus another permanent interest—called a *mu'āfi*—was grafted on the village estate. Practically the whole of these various interests were provided for by dividing the grain heap. Before the canal-maker came the produce was divided between the owners, the cultivators, and the Sikh governor. When the canal grant



was made, and later on the *mu'āfi*, do not suppose that the grantees would simply get a part of the share which the governor's officers were carting away. The grantees were both of them regarded as having some kind of permanent interest in the whole village; and both of them would go to the official headman, and the grain shares of all would be adjusted by bargain and compromise. Doubtless, if things had continued as they were, under Sikh administration, one or other of the 'over-lords,' as I may call them, would have got the upper hand, and made all the rest his 'tenants'; but the British rule came, crystallising the rights into recorded forms, and preventing further aggressions and decays and changes, and all the four interests of tenant, joint-owner, canal-grantee, and religious-grantee, became stereotyped and defined as best they might.

One other instance I will quote from the Kāngrā Hills, where we have already noticed the assumption of soil ownership by the Rājās and the consequent position of the actual land-holders as what we may call 'Crown-tenants.' Such land-holders often have tenants, some of a permanent character called *opāhu*, under them; the *opāhu*, in fact, probably represent an older stratum of cultivating right, and belong to families over whom, in some cases, the *wāris* was established. This gradation of right from the Rājā to the cultivating tenant is, as usual, expressed in terms of a division of the produce. The *opāhu* tenant accordingly describes his position thus: 'My superior, the *wāris*, is the owner (*mālik*) of the lord's share or first half of the grain (*sat*), and he has the (*thikā*) duty of paying the Rājā's revenue; I am owner of the cultivating holder's share (*krat*) or remaining half, as well as of the (*kāsh*) business of cultivation.'¹ 'Ownership' is not in the soil, but in the shares of the produce, and in the 'business' of cultivation or of paying the revenue.

SECTION IV.—THE 'INDO-SCYTHIC' OR NORTHERN TRIBES: THE MUSSULMANS

Long after the Aryan kingdoms had been founded, other tribes, as we have seen, from time to time followed the steps of the first invaders, and established themselves sometimes as rulers,

¹ Lyall's *Kāngrā S. R.* p. 62.



sometimes as colonists, in Upper India. The most important of these races, from an agricultural point of view, are the Jats and Gujars. They, too, are among the most prominent of the founders of villages and of *villages in the joint-form*.

It is not surprising, then, what with Rājput clans, Jats, Gujars, and other more or less closely connected races, all of whom had pretensions to superiority, and many of whom had the most complete *tribal* organisation, there should be varieties of joint-villages, whether tribal, 'democratic,' or held by the joint descendants of 'aristocratic' founders, as the prevailing tenure from the Indus to Benares.

The Jat and Gujar are especially largely represented, by original village foundations over extensive tracts, in the Panjāb. The Gujar were more pastoral, and perhaps for a long time continued to feed their cattle in the great prairie and jungle areas of the Panjāb Doābs before they took to settled agriculture. We find the Jat village settlements to be among the most strongly constituted; often there is a considerable clan feeling, and not unfrequently much pride of descent from some noted ancestor, to be found among them; and there is always a co-sharing or joint-claim to the whole village area. Sometimes we find Jat settlements on areas much larger than the 'normal' village. As a matter of fact, it is highly probable that the Jat villages represent both the clan settlements or settlement of 'democratic' colonising groups, and also the estates of dignified leaders or chiefs, very likely of half Rājput origin, whose descendants form the existing communities.

The internal constitution of the Jat and other tribal villages is, in fact, very much the same as that of the Rājput. But I am rather inclined to believe that the true *bhaiāchārā*, or method of equally-valuated holdings, is a Jat, or at least not a Rājput, principle. I could not, however, say this with any confidence; and in the sequel we can without difficulty describe the different kinds of joint-village without separating Rājput from Jat or other owners. Whatever religion these Northern races may originally have had, they are now either nominally Hindu or Mussulman; except, indeed, where some of the finest clans have swelled the ranks of the Sikh confederacy. It may be conveniently here mentioned, that while the tribes are nominally Hindu



or Mussulman, they have, in the Panjāb at any rate, adhered to a customary law of their own. Their rules of inheritance, their customs of adoption and other kindred matters, differ considerably from the Hindu law of the text-books; nevertheless, the customs are such as tend to keep up the idea of the *joint-family property*; and hence it is that their forms of joint-village are so similar. In fact, Jat custom recognises the 'joint-family' quite as strongly as the Hindu law does, though in a less elaborate form. There are many great and lesser clans of Jats whose custom is not entirely uniform; but all agree in the feeling that ancestral land belongs to the whole family. I cannot venture on a detailed examination of the customary rules; ¹ but I may mention that the idea of joint-right to ancestral land is indicated by the customary limitation of the 'house-father's' power of alienating it. Concurrently with this, the power of defeating the expectation of collateral agnates, in the case of a sonless owner of land, by making an 'adoption,' is much restricted. The succession is strictly agnatic, and females take no share.²

There is one subject, however, which I have hitherto purposely kept in the background in order that it might not seem to complicate the discussion of the really important elements of joint-village origin, the Aryan and the Jat custom. I refer to the Moslem conquests and to the effect they may have had on village tenures and on ideas of land-holding generally. The strange thing is that they had so little *direct* effect. Their dominion, of course, introduced many grantees and other superior holders of estates, whose descendants remain to this day. It was to the Mughal supremacy that the country owed the introduction of something like a regular system of

¹ Nor is this necessary after the work of Mr. C. L. Tupper, who has collected in his *Panjāb Customary Law* a number of the tribal codes, to which he has prefixed valuable introductory essays. Still more recently, a small but excellent book, giving the *judicially decided points* of customary law as far as they relate to ancestral land, has been brought out at Lahore by Mr. Justice Roe and Mr. H. A. B. Rattigan (*Tribal Law in the Panjāb*. Lahore: Civil and Military Gazette Press, 1896). This also contains a good preliminary essay on the subject of the customary law in general. (See *Asiatic Quart. Rev.* July 1896.)

² The widow is allowed to retain land, on a life tenure only, as representing her husband, when there are no sons.

land-revenue administration ; and with that system a number of new and sometimes convenient terms for tenures and other matters connected with land-holding became current. But the very fact that a conquest, or rather series of conquests, which occupies such a prominent place in Indian history, and which developed the land-administration so extensively, should have had so little effect on the land-holdings, at least in the villages, is in itself somewhat remarkable, and makes it all the more necessary to explain why it was so.

The chief features of the Moslem conquest are easily remembered. We may pass by the Arab invasion of the eighth century of our era, which only affected a part of Sindh and the immediate neighbourhood. As far as India is concerned, we have first the series of Pathān dominations, and then the Mughal. The Pathān period commenced with mere raids or plundering expeditions. Sultān Maḥmūd of Ghazni was in fact a knight-errant, actuated partly by religious zeal, partly by love of adventure and plunder. For more than a century the princes of his House had no wider dominion in India than the Panjāb, or rather the western part of it. But with the twelfth century invasions began to have more lasting results under the successful efforts of the Ghori kings. From that time successive colonies of Turki, Pathān, and early Mughal families were introduced into India ; but they were mostly soldiers, and when they did settle here and there in agricultural villages, they seem to have adopted the habits of their neighbours, or observed their own purely tribal methods of dividing the lands occupied. In most cases there is little to distinguish their villages from settlements of other adventurous or conquering tribesmen ; but one series of settlements on the Panjāb frontier will furnish us with interesting material for future consideration.

The chief result of the success of the first or pre-Mughal emperors (1152-1525 A.D.) was to establish, besides the central kingdom of Delhi, other independent Muhammadan States in Upper India, of which Gaur, or Bengal, is perhaps the most prominent.¹ Further south, the Muhammadan kingdoms of the

¹ It is curious to observe that the geographical features which influenced the first Aryan movements also affected the Moslem invasions. Some of them, taking the Indus Valley line, were directed to Gujārāt and



Dakhān arose out of the disorders at Delhi after the time of 'Alāu-d-dīn Khiljī. A successful general (Zāfir Khān), in the usual Indian fashion, set up as an independent prince; and though the single kingdom afterwards split up into five, the period of dominion was not an unhappy one for the country (A.D. 1489-1688).

The full establishment of the Mughal empire of Northern India may be dated from the reign of Akbar in 1556. The Revenue Settlement of this emperor, effected under the direction of Rājā Todār Mal, has become famous. It will be observed that though the Settlement was, locally at any rate, accompanied by something like a survey, or rather a rough chain-measurement of holdings, it had nothing to do with any inquiry into landed rights, or with securing titles, as the British Revenue Settlements undertook to do. It propounded no State policy or new theory of rights in land. It settled the amount of revenue, with reference to the crop and kind of soil: the amount was collected village by village, and there was no tendency to interfere with the existing tenures, either by definition or modification. Akbar's dominion was extended southward to Ajmer and to the northern part of Bombay known as Gujarāt; but the Muhammadan kingdoms of the Dākhan beyond were not interfered with till the evil genius of Aurangzeb, in the latter part of the seventeenth century, moved him to seek their destruction—and his own. The Marāthā power, in fact, rose upon the ruins of both, and would have probably removed every vestige of Moslem rule south of the Vindhya if the State of Haidarābād, which as usual originated in a governorship or dependency of the empire,¹ had not been preserved by the events of the French and English struggles for supremacy.

From the land-holding point of view, the Mussulman element in India is represented first by a number of colonies of early Moslems, the relics of the Pathān empire; and these had very

the Western Dakhān, the Vindhyan Hills not opposing an advance (p. 43, *ante*). The later invasions proceeded from the passes more to the North-West; and Upper India—including Bengal—was the chief scene of their success. When the Mughals attacked the South, it was by means of the passes through the Vindhyan barrier, at a comparatively late period.

¹ Whence the title the *Nizām* (= *Nawāb-Nāzīm* of Haidarābād.)



little sympathy with the later arrivals in the train of Humāyūn and his successors. As the result of both empires, but chiefly the later one, many individual Sayyad and other dignified Moslem families (some with pretensions to religious sanctity) rose to local influence and obtained estates or received grants of villages. Thus we have a number of landlord estates, and over-lord estates, and some village-communities of Moslem tribes, as I have already stated. By far the strongest Mussulman element in the agricultural population consists of tribes and families already settled—Jat, Gujar, Rājput, and others, who adopted the Moslem creed. But neither the original Muhammadan invaders (and with them we may for this purpose include our Panjāb frontier tribes) nor the local converts, though often fiercely religious, had any knowledge of the Muhammadan law; nor, indeed, if they had, would they have been likely, as land-holders, to follow it accurately. The Muhammadan law of inheritance, which is the branch that would most nearly concern land-holding families and communities, evidently had its origin among a people whose chief wealth was in camels and merchandise, or even houses in towns; it is ill adapted for those whose attention is before all things concentrated on their ancestral land. As a matter of fact, the Moslem land-holding villages and tribes in Northern India very generally follow what I may fairly call the general agricultural custom of family land-holding,¹ more or less modified by features derived from the Muhammadan law—such as allowing shares to daughters (until marriage). In other words, the joint-family system is observed; there is an equal inheritance of all sons and grandsons, &c. (agnates), in their grade of descent; the same degree of restriction is placed on the alienation of ancestral property, and even more objection is felt to adoption, by a sonless landowner, of anyone who is not either a near agnate (with consent of the rest) or a resident son-in-law.²

¹ It is only the greater families, chiefs, and persons of religious pretensions, that attempt to follow the *shara'*, with its complicated rules of sharing and its exclusion of one grade of descent by another, and its allowance of shares to females. The villagers usually follow their own custom and imagine that it is 'the Muhammadan law.'

² The 'resident son-in-law,' *khāna-dāmād* (P.); *ghar-jawāi* (H.), is



No wonder, then, that Muhammadan joint-villages are not very different from Hindu or Sikh villages of the joint type, and that where they are purely tribal villages their mode of settlement and sharing the land still assimilate them in class to the ordinary joint community type.

The indirect influence of the Muhammadan systems of administration has, however, been not inconsiderable. In the first place may be mentioned the general introduction of names and terms connected with land tenures, which have had a gradual tendency to fix ideas and crystallise forms, although in themselves these words and terms rarely imported any new ideas. The Moslem governments, in fact, everywhere adopted the customs they found ready, and the old things were called by new names. For example, the royal rights—to the revenue share, to the waste land, and to other levies and taxes—were collectively called the *Zamīndārī*; the royal demesne—itsself derived from the old clan ideas of territorial division—was called *Khālṣa*. Hereditary rights (of the superior families) were called *mīrāsī*, but no change was implied in the nature of the right. The revenue system was simply the old indigenous system, not really affected by Muhammadan law theories of the tax or *khirāj* imposed on the conquered, though the name is made use of. The change introduced by Akbar from payment in kind to payment in money was one which was inevitable; it was made by Hindu States as well. Indirectly the change affected village life a good deal. As long as the old grain-share system lasted, the management was necessarily very much what we may call *raiṣatwārī*, and the tenure of the village lands was secure, since the headman and the whole body of cultivators managed the business together; and the concern of the tax-gatherer was not with the nature of the holdings nor who held them, but with the quantity of grain he might (on one or other of the methods of estimating it in use) successfully demand as the generally known total

virtually a form of adoption. A sonless land-owner will take into his family a child, or a youth, and if he gives satisfaction will marry him to his daughter on the understanding that he is to succeed as heir to the land. Sometimes the marriage takes place at once; oftener the 'son-in-law' is taken as a child, and the father defers the formal acknowledgment and betrothal till he sees how the boy will turn out.

produce of the village. The grain was brought to the village threshing-floor, and was divided, as we have seen, so much to the menials and artisans, so much to the king, and the balance to the cultivator. But the cash revenue not only demanded a survey and record of holdings, but it led to a calculated total demand from the village, which had to be realised without much regard to individual rights. Especially was this the case when revenue-farming became a general practice. It was out of this system that the fabric of the Bengal landlords' estates grew,¹ at the expense of the old village constitution; and where farming went more by single villages, the control of the manager seemed to convert itself into virtual ownership, with equal facility—always supposing the decadence of the Central Government and the consequent relaxation of detailed local control. The farmers, once established, left their families to inherit and to share the village lands among themselves. In the south country, the system of farming—though adopted by the Mārāthās, did not lead to the general establishment of landlordships, because it was efficiently, and indeed mercilessly, controlled by its adopters. But of all the varieties of tenure that grew up locally, fewest of all are due to the operation of the Moslem systems of land-administration.

In Madras, the Moslem power was never really established, except as regards the short-lived dominion of the Mysore Sultāns in the West, and of the Nawābs of the Carnatic (and Karnūl)—dependencies of the Haidarābād State. These insecure and tyrannical Governments destroyed much in the case of individual rights, but created nothing in the way of new tenures. The occasional joint-villages that have survived, or that once existed, south of the Vindhyas, do not owe their origin to Moslem rule.

¹ Though it must not be forgotten that the landlords were not *all* originally mere Revenue farmers. A number of local hereditary Hindu Rājās of the old *régime* had been subdued and converted into tributaries, and were regarded by the emperors as the 'Zamindārs' or managers of their estates. It was very probably the example set by the management of these territories that suggested the appointment of capitalists and others to farm the revenues of large tracts, and so to found landlord-estates, where there were no hereditary Rājās.



It may also be said to be one of the indirect effects of Moslem conquest that Hindu Rājās fled into the hill country, and there produced the changes that we have mentioned ; also that Rajput chiefs and Rājās, and sometimes whole clans, were removed and dispersed, and set upon new adventures, and often owe their over-lordship in new homes to the encouragement or the grant of the emperors.

But it will be remembered that the dispersion was almost as much the result of feuds and internecine quarrels among the Rajput clans themselves as it was of the imperial victories. From the end of the twelfth century, the inability of the clans to unite ensured the defeat of the Tumār, Rahtor, Chauhān, and other leading Hindu powers of the day.

One other effect on tenures, though it is a more doubtful instance, may be stated. The principle that the conquering ruler became the owner of all land, and that the local cultivators became only his *rai-yats*, or subject-tenants, may perhaps be said to have originated with the Muhammadan invaders. At any rate, the claim received a great impulse from the Moslem theory that the property of 'infidels' became the right of the conqueror. The theory, it is true, was in strict law largely modified by texts which virtually secured the property of all who submitted and lived in peace and obedience ; but conquerors were apt to seize the principle and forget its limitations. It may be justly said, however, that we have some evidence of Hindu conquerors adopting the same pretensions before Moslem times ; and at least it is uncertain whether the Hindu Rājās of the Hill States, for instance, were influenced by ideas learned from the Moslems in establishing their claims to the land, which their successors adopt to this day.

The embarrassment of the British Government on succeeding to a *de facto* but not *de jure* claim to all land, and the existing theory of State ownership in all Native States, may, on the whole, be fairly regarded as a legacy of the Moslem conquest.

If I were dealing with the history of the revenue administration, it would be necessary to take notice of the Marāthā administration, at least in the districts where it was firmly established. But from the point of view of village-tenures it requires little or no attention. Whatever effect it had was to



break down individual rights, and to charge with imposts tenures that had before been free. As a rule, the Marāthās were far too keen financiers to allow their revenue-farmers to remain long enough in possession to establish themselves as owners. That result happened either when there was no control, or when, as in the first days of British rule, the position of village co-sharers was misunderstood. As a matter of fact, the *Khot* estates in one or two of the Bombay coast-districts are almost the only 'estates' that have arisen out of Marāthā revenue-farming.



CHAPTER VI

THE TRIBE AND THE VILLAGE

SECTION I.—PRELIMINARY OBSERVATIONS

A CHAPTER on the relation of the tribe to the village will hardly need any preliminary justification.

If physical circumstances invite the grouping of cultivators into more or less compact bodies, and cause them to arrange their cultivated fields and grazing grounds in a ring fence, it is also true that there must be something more, which determines what households shall thus settle or keep together; if there are limits other than those of available space in the contemplated village, we ask what are the limits of relationship which determine the several groups? Next, it is evident that if we are right in believing that pre-Aryan races had established villages and permanent cultivation in very ancient times, it is a necessary conclusion that such settlements took place under purely and primitively tribal conditions of life. Indeed, as we reviewed in Chapters IV. and V., the whole series of races—the TIBETO-BURMAN, KOLARIAN, DRAVIDIAN, ARYAN, LATER NORTHERN, including our latest arrivals of MOSLEM TRIBES ON THE PUNJAB FRONTIER, continual reference to their *tribal* condition was made. The evidence, in the case of the earliest tribes—now long mingled with the general ‘Hindu’ or ‘Muhammadan’ population—is naturally scanty. We see, however, certain survivals and remnants, all of which point to the earliest village settlements having been formed as subdivisions of some wider *clan-area*. Indeed, in some cases the clan-territory is much more definite than the village. The KOLARIAN villages of Chutiya-Nagpur, including those of the *Santāls*, the DRAVIDIAN villages in the same neighbourhood, the *Kāndh* villages of Orissa,



—all are on a tribal basis. When we come to the ARYAN and later tribes, we still have much evidence of tribal life. As might be expected, however, we soon begin to find a stage of more rapid progress, and with it inevitable diversity; we cannot expect to find that *all* the villages resulting from Aryan, Jat, and other later races are connected with the tribe. For one thing, it was only a limited number of the Aryan clans who never developed monarchical ideas, and who settled without Rājās or chiefs of territories. Most others seem to have become monarchical very readily. It is true that at one time the monarchy itself was constructed on clan lines. But many kingdoms were ruled by individual princes, and in them clan institutions tended to become modified and gradually to disappear. The development of the Hindu State was, in fact, one great though indirect cause of a large number of non-tribal villages.

It will be remembered, then, that while tribal-villages are sufficiently numerous and important to demand a separate chapter, we shall also have to devote another chapter to an almost equally large class of non-tribal villages.

Speaking first of the villages connected with clan-settlements and arising as subdivisions of distinct clan-territories, one thing strikes us, and that is that the earliest settlers seem to be connected with a form of village in which there is no joint-ownership, but only the aggregation of individual or household possessions, the title to which is based on the labour expended in clearing the land and making it fit for the plough. The later clans, on the other hand, appear always to have some stronger cohesion, some sense of superiority and conquest, which produced at least the appearance of collective ownership in their settlements.

Those who have a strong *a priori* inclination to believe in the universal existence of collective-ownership among early tribes may be disposed to doubt the possibility of the *raiyatwārī* or separate-holding village emerging from tribal conditions of life; and no doubt the matter will call for our further consideration hereafter. Meanwhile, the fact remains that the *raiyatwārī* form of village prevails over the districts occupied by non-Aryan tribes and clans, and that it was the Aryan and later tribes—who may be called ‘superior’—that developed villages in the



joint form. I shall here be pardoned for repeating the warning that 'the joint form' does not imply one single principle or cause of collectivity. The 'jointness' of clan or tribal villages is something practically distinct from the 'jointness' of villages the owners of which are co-heirs and descendants of a single founder or grantee. And these again are distinct from villages united by association, or aggregated in some other way—neither tribal, nor by descent from the individual.

The mention of the *raiayatwāri* village as in origin tribal, and of some of the joint-villages as also tribal, may seem to produce some kind of cross-classification of villages in general. But a short table in the footnote will make the matter clear.¹ For, reverting for a moment to our initial distinction between *raiayatwāri* and *joint* villages, the real fact is that of joint-villages only a certain portion are connected with the tribe; while of tribally-originating villages, only a portion exhibit features of joint ownership. The table in the footnote also enables me to call attention to a distinction which it is desirable to make in the 'tribal' section of our joint-village class. It is easy to understand the fact that, when an area of country is found to be occupied by a clan or a tribe, that result may have come about in either of two ways—(1) the whole clan or tribe, already existing in sufficient numbers, may have conquered or occupied the site and proceeded to divide it among themselves; (2) or the clan may have gradually grown up on the spot, the first occupation of a considerable area having been by a single family (with its dependents and followers), and these, having multiplied in the course of many generations, have now formed

Tribal origin	{	Raiyatwāri village.	{	[N.B.— <i>Modern</i> villages in this form may of course occur apart from any tribal connection.]	
		Joint-village, division.		1st	1. Established by clan already formed and numerous. 2. Established by <i>clan</i> gradually growing up on the spot.
Non-tribal origin	{	Joint-village, division.	{	2nd	1. Arising out of the joint inheritance in succession to <i>individual</i> founder. 2. Some form of voluntary association.

a clan, and to some extent retained the clan connection. Sometimes it is not certain which of these two things really happened. But in most cases we shall see that the 'clan-expansion' areas have certain features of their own. However that may be, it is not difficult to discern the marks of a *clan-connection* which can be distinguished from that of the mere *family*; and where that is so, we are justified in treating the village, for the purposes of study at any rate, as in the 'tribal' class.

Before proceeding further to inquire into the structure of the tribe, and how this structure affects the possession of land and the formation of villages, I should like to allude to the manner in which this question of 'the tribe and the village' has been dealt with in some of our more valuable books of reference. In his excellent volumes on 'Panjāb Customary Law,' Mr. C. L. Tupper has called attention to the difference between the explanation of origin of the village (regarded as a group of families with an aggregate land allotment) suggested by M. de Laveleye and by Sir H. S. Maine respectively.¹ M. de Laveleye thought that the tribe or clan, regarded as already grown up from the single family in which it necessarily originated, began with a sort of indefinite common ownership of the whole territory occupied by it. This was probably when the clan was in a pastoral stage, during which agriculture was only beginning to be adopted: it then sufficed to apportion the lands destined to cultivation, in lots that were only temporarily assigned to the different households. In the course of time the regularly cultivated land was more permanently divided into parcels; but even in this stage the land is regarded as the 'collective property' of the clan, because 'it returns' to the clan 'from time to time, so that a new partition may be effected.'²

Sir H. S. Maine, on the other hand, considered that the village groups were either bodies of actual kinsmen, or groups in which time and circumstances had caused the relationship to be forgotten, so that 'the merest shadow of consanguinity survives' and 'the assemblage of cultivators is held together solely

¹ See the dissertation (p. 7) prefixed to vol. ii. of *Panjāb Customary Law*.

² Quoted from *Primitive Property* (Trans.), p. 4, as cited by Mr. Tupper.



by the land which they till in common.’¹ In short, the joint family begins the process; and this expands, first into the larger family—such as the house communion—and finally into the ‘village-group.’ The remarks already made will have suggested that there is no occasion to make any choice between these two opinions or to regard them as in any need of reconciliation. Both contain a good deal of the truth; and they are not opposed, for the simple reason that, perhaps unconsciously, each writer is describing a different kind or division of the ‘joint-village.’ Given the *whole clan* settling ready made, as on the Panjāb frontier, or a small family expanding on the same spot into a clan—*e.g.* the ‘cultivating fraternities’ of Jats, which we shall presently describe in the Mathurā district—and still acting on *tribal* principles, M. de Laveleye’s description is perfectly correct, except that his idea of ‘collective ownership’ may be somewhat different from that which we may finally prefer to accept. Given, on the other hand, the joint-village arising out of the multiplication of kindred of *one individual founder*, and *not on any directly tribal* principles, then we have the village as described in the passage from Sir H. S. Maine. That, I am convinced, is the real explanation of the difference; and it will be remembered that both authors were under the unfortunate impression that *all* villages in India were in essential features the same; and they did not think of the broad and fundamental distinctions, such as the little table in the note to p. 227 calls to mind.

It will be observed that neither in their suggestions regarding origin, nor, as far as I can discover, in any other connection, does either of the eminent authors afford any solution to the question how the divisions of clans, and of families under the joint constitution, are regulated, or how they originated. The illustrations which are collected in the sequel bring into prominence the existence of such divisions; and they are evidently on a uniform principle.

Where we have the earliest tribes to deal with, it is not surprising that we have only limited traces of such details, and that further study is almost impossible. But when we come to

¹ *Early History of Institutions*, pp. 77–82.



the Aryan, Jat, and other clan-settlements of later times, the divisions of clan and family are most prominent, and we may reasonably hope to discover the principle on which they proceed. We have also to consider what is the connection which the clan and its divisions have with the land; how far do they own it collectively, or individually, or 'own' it at all?

Before dealing with these two questions, it will be well to call attention to the existence of certain territorial divisions which can be traced in almost all the provinces, and which indicate the location of clans and tribes. By this means we are provided with a certain unit area connected with clan life, as a sort of starting-point from which our further inquiries may proceed.

1. It is certainly a noticeable feature that in almost all parts of inhabited India we can trace the existence of distinct territorial areas or jurisdictions, indicating the primary or secondary divisions of a tract of country occupied by a clan or tribe. As the feature is equally noticeable in the southern districts, where the *raiyatwāri* form of village prevails, the fact, reinforced by other direct evidence, compels us, as I have already remarked, to include the *raiyatwāri* village as properly belonging to the tribal class. Each such separate area seems to mark the location of a separate clan, possibly itself a section of a larger tribe. It must be added that the most early clans appear to have been *totemistic*, or at least to have had distinguishing marks or insignia.¹ The boundaries of these clan-areas were fixed, even when internal divisions were imperfectly defined; and respect for them would always be enforced. Among the Kolarians we have noticed the *parhā*, or union of villages, probably the earliest example of tribal areas. It is rarely safe to trust to mere similarities of sound, but it has been suggested that some old word (resembling *parh* or *pir*) may be the origin of the official

¹ I have noticed this among the Kolarians and Santāls as well as the Dravidians (pp. 120, 155, *ante*). Among the Aryans also distinctive banners and symbols were well known. Possibly some of the 'monograms' on old coins may have some connection with the clan symbols. The *Nāgbāṇsi* families formerly marked the serpent *lunette* on their seals; and the use of the sun, the lion, the *katār* or dagger, fish, &c., employed as royal or as tribal emblems, is well known.



pargana division adopted by the Mughal Government.¹ All over the South of India we have traces of the *nādu* (cf. also the *mutthā* among the Kāndh tribes), which was often a sort of 'county'; and in some places there is a clearly surviving tradition of the purpose of this division. Thus in part of Madras known anciently as the *Tondaimaṇḍalam* we find first a number of *kuttam*—the name probably indicating the 'fort' which was the seat of the territorial chief; each of these primitive territories was afterwards reorganised into *nādu*, and each *nādu* contained a number of villages (called *nattam*, i.e. the village site). The chief of the *nādu* was called *Nātthān*. In Malabār we have evidence of how these *nādu* divisions were governed by the *nād-kuttam*, or assembly of representative elders out of the family groups, or *tara*, of the ruling class, in each *nādu*; these have been already described.² All over Northern India, again, we have clear indications of clan-areas, under the names of *talūga*, *ilāqa*, and *ṭappā*, or *ṭhapā*. Local illustrations of this peculiarity will occur repeatedly in the sequel. Here my object is to call attention to the fact that, such divisions being the natural consequence of tribal-life, they appear all over India and among all tribes, the oldest and most primitive as well as the latest and more advanced; and they have often lasted after the tribal stage had passed away. For this survival there are two reasons: first, when the clans themselves adopted the monarchical form of government, or were conquered by territorial chiefs, these clan-divisions everywhere became the natural landmarks for defining the jurisdiction of kingdoms and of chiefships such as those

¹ It is curious (see p. 152, *ante*) that among the Bhil a similar term—*parrah*, as Malcolm writes it, is used for the little cluster of separate homesteads or the hamlet, and not apparently for any larger aggregate of these hamlets. A somewhat similar term appears again among the Bilūchi tribes (p. 245, *post*).

² See p. 170, *ante*. The word *kuttam* (Wilson's *Glossary*) means both an 'assembly' and also a 'fortified place or group of houses.' So that we find it applied both to the division of territory protected, so to speak, by the chief's fort or capital, and also to the assembly of the representatives of the families in the *nādu*. Some account of *Tondaimaṇḍalam* will be given in a subsequent chapter. The first *kuttam* division was due to the Pallava tribes; that into *nādu* and also villages was effected by their successors, the Vellālar colonists.



of the *pālegāra*, who assumed dominion over *nādu*s in the South.

In many cases (as, *e.g.*, the Panjāb frontier and the cultivating fraternities of the North-West Provinces and the Panjāb plains) the *ilāqa* or *ṭappa* is still occupied by a number of villages *all of the same clan*, and has been utilised as the basis of modern surveys and records of rights. We may also find occasional instances of similar areas which at one time became a Rājā's territory, but which ultimately formed a kind of clan-estate or community of cultivators composed of the descendants of the once ruling house whose power had been broken.¹ In nearly all cases it will be found that old clan-areas, whether or not they became Rājā's territories, have ultimately formed the basis of the administrative and land-revenue subdivisions of districts; and that is why the '*pargana*,' the '*taluqa*,' and other such ancient subdivisions are remembered to the present day.

2. But clan-territories clearly indicate the existence of clans; and all we can discover of the earliest clans leads us to believe that they were not unorganised hordes, or collections of individuals; they were invariably organised on some principle.

It is evident, in the first place, that every large clan has certain primary and secondary main divisions, to one or other of which every existing family belongs. Even in the village which originates in a single family we may remember to have noticed divisions called *pāṭṭī*, *thole*, &c., which are in fact groups based on the same principle as the clan divisions. In either case distinctive names are attached to these divisions, but not to any others; because they represent the first branches, or degrees of descent, from the founder of the clan, or of the individual village, as the case may be. And there is something which makes these main divisions proceed up to a certain point and then stop; so that subsequent families belonging to one or other of the established groups do not again form further groups under new designations.

It is a matter of principle which, I think, will readily be

¹ More commonly the *individual* members, remnants of such houses have formed separate village estates; but there are cases of what now appear as clan-areas of village proprietors, formed in this way.



accepted, that there is a certain aggregation of descents from an ancestor or founder which constitutes (up to a known limit of blood relationship) a 'family'; there is a further connection allowed to subsist between the different 'families'—less direct than family union, but extending much wider—which is in fact the lien of the 'minor-clan.' These ties seem to depend on natural feelings common to human nature, and therefore to be found in all tribes. The survival of the clan-stage in India is certainly marked by (a) a limited but practical union of the whole clan settled in one place; (b) the recognition of a 'wider-kindred' forming a 'minor-clan' or something similar; (c) a 'close-kindred' forming the 'family.' What determines the limits of these groups?

We may pass over the fission of a great *tribe* into separately named *clans*. Such a fission must necessarily take place when numbers increase very greatly. And it is a matter of accident, and of circumstances of location, whether a generic designation for the whole tribe is kept up, or whether the several clans have in fact become separate tribes.

But inside the clan there is almost everywhere observed a further grouping into what I may call *minor-clans* or *septs*. Perhaps there is more than one such subdivision; finally, the last of such acknowledged groups is made up of the single *families* or households.

Now let us take, merely for the purpose of comparison and illustration, such a standard as the Welsh tribe, which has recently been examined by Dr. Seebohm.¹ Speaking first of the grouping of the *people*, not of their mode of ownership, we find (1) a close-kindred or group of immediate relations recognised, and also (2) a 'wider-kindred.' The former answers to the family, the latter very much to the minor-clan. Outside that, again, is the general group of the clan, still held together by the common lien of loyalty to the chief and of obligation to general

¹ The opportunity for studying the Welsh tribe was almost unique, for it happened that shortly after the Conquest the Normans completed *extenta*, or surveys for revenue purposes, and these display in several cases the tribal constitution of the people. These 'extents' can in turn be compared with statements of the Welsh codes and other documents; and thus the conclusions drawn will be tested independently by both authorities.



service and defence, as well as by certain customs of co-aration and common pasturage. In Wales the close-kindred was called a *wela*, or *gwely*; it consisted of the purely natural group of the individual clansman, and his father, grandfather, and great-grandfather; direct inheritance went no further. And this group of close-kindred would naturally also suggest a wider group; but I will quote Dr. Seebohm's own words. 'The eldest living ancestor, as chief of the household occupying the principal homestead or *tyddyn*, and seated by the ancestral hearth, might well live to see growing up around it a family-group extending to great-grandchildren. On the other hand, looking backward to his own childhood, he might well recollect his own great-grandfather sitting as head of the household at the same hearth, just as his great-grandchildren would some day hereafter remember him. Thus the extreme natural reach of the knowledge of the head of the household might cover seven generations. Finally, if family tradition went back two stages further than actual memory, thus it would embrace the larger kindred to the ninth degree of descent.'¹ In fact, the kindred to the seventh degree came to be a recognised limit of natural direct connection; and this was reckoned as the 'wider-kindred,' while for certain purposes only, in Wales, it was extended to the ninth degree. Now, whether the precise number of degrees is the same or not in all cases, the idea of the thing is perfectly natural. Dr. Seebohm has justly pointed out that in another tribe, as widely different as that of ancient Israel, exactly the same thing was recognised. This is apparent from the narrative in the Book of Numbers regarding the trespass of Achan. The perpetrator was discovered by casting lots and successively narrowing down the area of choice: first the whole clan of Judah² was taken; then the minor-clan of the Zarhites, the ancestor of which, Zarah son of Judah, was of course long dead—

¹ *Tribal System in Wales*, p. 84.

² We commonly hear of the 'twelve tribes,' perhaps because they were the *great-grandsons* of Abraham, and thus on the death of their father (and all before him) they divided and began afresh; and as they were established in a new country, where there were no pre-existing areas already named after the first generation, each of the twelve began a new *oikos*—a new close-kindred which would expand again in the same way.



this was the 'wider kindred.' Then the close-kindred or 'house' was indicated. And here for the first time an individual name appears; Zabdi is mentioned personally as probably the oldest living, or, at all events, personally remembered, head. He is not called a son of Zarah; for all we know there may have been more than one degree between him and the founder of the whole minor-clan called 'Zarhite.' Zabdi's son is Carmi, and he is taken; and finally Carmi's son Achan, whose own sons are still children. Zabdi, in fact, is the great-grandfather and head of the 'wele.' A precisely similar state of things is observed in the account of the selection of Saul son of Kish to be king (1 Samuel x. 21). The tribe or clan of Benjamin comes first; then the minor-clan of Matrites, and then the family of which Saul is the adult son. Moreover, from chapter ix. we gather that the 'Matrites' included *seven* degrees back to great-grandfather's great-grandfather—Kish, Abiel, Zeror, Becorath, Aphiah, and an unnamed 'Benjamite, a mighty man of valour,' probably Matri himself.

And these are not the only indications we possess of these features of clan, wide-kindred, and close-kindred, for which I have claimed universality, and which explain to some extent the divisions of the clan-territories, as well as of some of the village groups in India. Mr. Hugh E. Seebohm has followed up his father's inquiries in Wales by an examination of the Greek tribal system,¹ and he shows not only that the same basis of connection and separation existed in ancient Greece, but he has also drawn illustrations, with great care, from the 'Laws of Manu,' as showing the same ideas among the Brahmanic Aryans. With them, the sacrificial cake and the libation of water being essential funeral ceremonies in the *family*, we find the degrees of kindred measured by the right to offer the one or the other.

The text of the 'Laws'² prescribes that the cake is to be offered to three ancestors and the water to three; the fourth in descent is the offerer, and the fifth has no concern with the oblations. That is to say, three ancestors—i.e. to the great-grand-

¹ *On the Structure of Greek Tribal Society: an Essay* (Macmillan, 1895).

² Chap. ix. 186, compared with v. 60 and iii. 5. See H. E. Seebohm, *op. cit.* pp. 51, 52.



father upwards from the surviving householder who offers the gift—receive the *cake*; and three, upward again—i.e. to great-grandfather's great-grandfather—receive the *water* libation. So that the existing householder offers the cake to his deceased father, grandfather, and great-grandfather. But then the householder may live to see his son, grandson, and great-grandson, who can also join with him in offering the cake; so we read in the fifth chapter that the relation of the *sapinda* ceases with the *seventh* person; and it is within this degree also that a man of the twice-born classes is debarred from marrying a woman of the family. The water libation degree (*samānodaka*) is stated to extend as far back as there is community of family-name or recollection of descent. In Wales this was held not to exist beyond *fifth cousins*, and that seems practically to have been the limit meant by the 'Laws' in the passage of the sixth chapter, where the *fifth* degree is mentioned as relating to the water offering as well as the cake.¹ All are *sapinda* who offer to the same ancestors, so that a large circle of relatives is included; while the immediate family extends in each group to the great-grandfather. This at once suggests the household (*oikos*) and the related kindred (*ἀρχαίστεία*) of the Greeks, or the Welsh *wela*, and the wider-kindred, and also the Israelite arrangement of kindred. When in such widely different regions we come across this same distinction, we are justified in believing it to be universal and springing out of a feeling common to all early tribes, and founded in human nature itself.

The same principle of division appears also in the rules regarding the marriage relation. It will be remembered that, while

¹ Mr. Seebohm used Burnell's translation. G. Bühler's is the same. It is plain that the groups would be moving downwards with the death of each grade, and, as Mr. Seebohm says, 'at no time would more than four generations have a share in the same cake offered to the three nearest ancestors of the head of the family.' The same idea of the three degrees is emphasised in a text of the *Mitāksharā* (*Vivahāra khāndham*, *Mātrikā* XXXII.), as quoted by Ellis in his *Memoir* on the South Indian villages. The text speaks of the enjoyment of property by direct ancestral descent, and the Commentary adds: ' . . . descent from three direct ancestors, namely, the father and the rest [grandfather and great-grandfather], is termed direct ancestral descent. And the reason of this is, as *Kātyāyana* says, that memory does not extend beyond this degree.'



all Indian *tribes* are endogamous to some extent, so that, for regular marriage, a Rājput or a Jat always chooses a Rājput or a Jat and so on, yet also the *clans* are mostly exogamous, for a man of one *got* must choose a wife out of another clan or *got*.¹ Now, it appears that as long as a real, not merely a remote or traditional, common ancestor is remembered, the man and the women are not regarded as in groups sufficiently distinct to intermarry.²

If we apply these principles of division to the clan, we see how they explain to a large extent such groups as we observe, for instance, among the Panjāb frontier tribes. We find a whole *tribe* (or small nation) occupying a country called generically its '*ilāqa*'. Each *clan* is represented by a *ṭappā* area. And the clan is again subdivided into large groups, which I may call incidental, as they are due to the fission *per stirpes*—sons of an elder wife being distinguished from sons of a younger, or of a concubine. These sections are called by personal names, and often have the syllable *-zāi* added. They are not distinguished by any generic name; for convenience I will call them sub-*ṭappā*. Within each 'sub-*ṭappā*' we find a number of (still large) groups called *kheḷ*. In some cases the *kheḷ* itself is subdivided into a series—viz. into *kandī* and finally into *thal*. Within these final subdivisions come all the existing 'houses' or 'families.' These acknowledged divisions seem to me essentially, and allowing for local and minor variations, to depend on the universal three grades of original descent. The whole *ṭappā* represents the common *great-grandfather* of the original family; the sub-*ṭappā*, his sons, or in some cases grandsons raised to the rank of

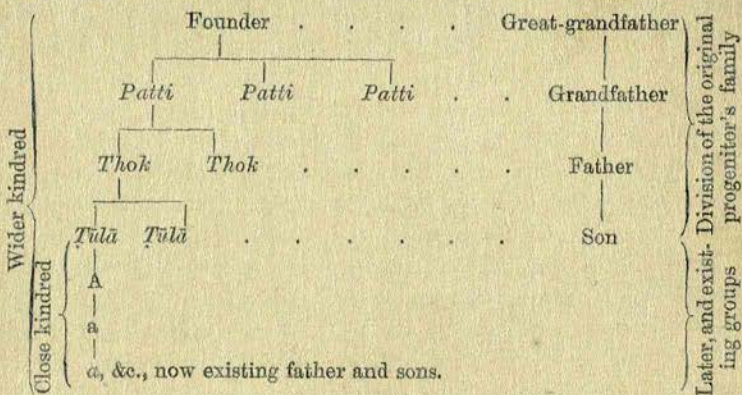
¹ The Mughal and other Moslem tribes form an exception to this rule.

² See some good remarks in Ibbetson's *Karnāl S. R.* § 186 ff, and compare the cases noted in the *Rohtak S. R.* p. 21. Thus, for example, in the Rohtak district the Jat minor-clans—*Ahlān* of Dighal, *Auliān* of Sāmpla, *Birmā* of Gubhāna, *Māri* of Madhāna, and *Jūn* of Choḍi—are all known descendants of four sons of one ancestor; and they do not intermarry; they form minor-clans and not clans, and are not sufficiently out of the bonds of 'wider kindred.' Compare also the case of the *Nohwar* and *Narwar* Jats in the *Mathurā S. R.* p. 33. 'Memory,' it will be remembered, according to the Hindu lawyers, ran to 100 years, or the *three* generations spoken of. Custom and law are here at one. Cf. *Laws of Manu*, iii. 5.



sons;¹ these are the *grandfathers* of the original series. Then the *khel* are their sons—the fathers of the primary group. If there are *khandi*, or a further subdivision of the *khel*, they represent a new or secondary series of kindred and families, including all the tribal population existing at the time of location.²

As the tribal or clan division depends on the grades of descent in the first or progenitor family, so it will be found that a village on the *family* basis, also divides itself into primary and secondary groups according to the grades of the first founder's family. Take the case of the joint-village derived from one original founder or acquirer. As I have already mentioned in Chapter I., the primary division of a village in the *pattidārī* form follows the three degrees, with the fourth as the head of the existing households. Thus:—



After the *tulā*, the main divisions (the original 'family') go no further. The sons, grandsons, &c., of the *tulādār* (head or progenitor of the *tulā*) are the existing close-kindred; and only if they were to move off and found a new estate somewhere else

¹ Cf. the case of Ephraim and Manasseh, Genesis xlviii.

² It is exactly the same if we apply the Pathān names to the Israelite. The whole tribe or nation is Israel, and its *ilāqa* Palestine; but the actual units are the *tappā* Judah, Benjamin, &c.; and, in the case above quoted, the sub-*tappā* or *-zai* division is the Zarhites; the *khel* Zabdi; and the *kandi* Carmi, whose son Achan and his wife and children, beginning a new series, represent one of the existing households in the *kandi*.



might we have the elder commencing a new group as founder, and his sons furnishing the *patti* division, and so on.¹

Referring to Chapter I,² it will be observed that the same thing occurs in the *bhaiāchārā*, or equal-sharing fraternity, often occupying an area much larger than an ordinary village. This estate is divided into groups as above according to the members of the *original* family in three descents. After that, the fifth and subsequent degrees all take equal shares or lots according to their actual requirement. In the ancestral-share form (*pattī-dārī*), the fifth and subsequent degrees still adhere to the proper fractions according to the law of inheritance. And it is this difference that marks the two kinds of village.

3. We have now to connect these groups of kindred with the land on which they are settled. It has already been remarked that in tribal settlements 'villages' are not always formed. In every case there is the division of the territory; sometimes, if the tribe is large, into clan territories and other large primary allotments. In the case of the *raiyatwārī* districts, we know that clan areas were formed, and these appear divided further into compact villages, though we cannot explain how. We have already found reason to include all the later tribes—Aryan, Jat, Moslem, &c., as alike forming village groups with a joint constitution; and it is certainly true that we can discern a strong tribal union which has enabled the Land-Revenue Administration to treat the villages (or whatever forms anything like a village) as jointly responsible for the revenue. How, then, is it possible that tribal custom can comport both with purely individual (*raiyatwārī*) holdings, and also with such apparently joint-holding customs as the frontier tribes, for example, exhibit?

It will be seen from the examples presently given that, in reality, the joint-holding of these tribal groups is of a limited and peculiar kind. Indeed, at first sight we might be tempted to deny the existence of any real common-holding, and so to do away with the distinction. It is quite true that there is no case on record in which a whole tribe possesses a large area really held in common; nor, indeed, does any considerable section of

¹ As to the different local names for the divisions, see p. 31, note.

² P. 32, *ante*.



the clan so hold. Sometimes we find large primary divisions made on the ground, such as I have above enumerated. In other cases such divisions do not appear, or have long been completely forgotten, and the whole area is divided out directly into household shares—so many ‘ploughlands,’ or something of the kind, to each. In the case of the clan growing up on the spot from a small initial group, there may or may not be primary divisions; if there are, the division was made while the family was still small; in any case, all the family holdings are allotted; very often they have been added on, one by one, as the numbers grew. Where, then, it may be asked, does the holding ‘in common’ or jointly come in? In the first place, the smaller groups constituting in some sense a large ‘family,’ often hold jointly among themselves, being relatives within a certain limit, acknowledging a rule of joint-inheritance and the institution which we call ‘the joint-family.’ And there is in these joint tribal villages a wider species of union over and above that; of it I will speak immediately. These features produce a real distinction between the *raiayatwāri* and the later tribal villages; and the difference appears to me essentially to depend on the different constitution of the *family* as regards its right over the land held.

Ownership of property does not depend on universal sentiments like those which produce the liens of close or wider kindred. It is true that the sense of right to a thing in virtue of labour, time, and wealth expended on producing it is, if not a purely natural, at any rate a very widespread sentiment, and it may be accompanied or reinforced by a sense, also natural, of right as member of a tribe, to share with the others what all have together acquired, and perhaps fought for. But farther development of custom depends on the conditions of life; and we see cases where the *land* is hardly regarded at all, but the irrigation water is the real object of customary right, or where rights are centred in the grain-heap at harvest. Let me once more refer, for illustration, to the case of the Welsh tribe and its family group, or *wela*. As long as the head of the group lived, the property in the homestead, and all other rights, vested in him. Whatever partition took place was informal and for convenience only: the various adult members of the family would, indeed, enjoy their



several homesteads and crofts and their cattle; but no new theoretically separate 'properties' or 'estates' were formed till the final separation after the completion of the course of descent and the commencement of new '*weles*.'¹ It was owing to the circumstances of the situation that separate land-shares were not allotted on the ground, and that co-aration and the division of the harvest was the custom.² If the Welsh family had been in the habit of taking and managing a separate holding of the tribal land, it would have been very like the *rai jatwāri* family as it appears in early India.

Sufficient attention is hardly perhaps paid to the fact that all 'families' are not, in ancient tribes, constituted on the model of the Hindu joint-family; and not only so, but that early Dravidian and other non-Aryan tribes do not, even in India, appear to have known the joint-family, at any rate before they became 'Hindus.' The early *Kāndh* tribes, to take a definite instance, show a form of family in which the *patria potestas* is complete, and in which the head of the family is the sole owner during his life; there is nothing of that inchoate right of the sons as soon as born, and of the inability of the father to alienate ancestral property without consent of the family, and so on, which mark the 'Hindu family' not only in the theory of law-books, but in the actual custom of certain local tribes.³

It appears to me that the joint-family, with its limitation of the power of the head, who, in fact, only takes the place of a sort of *primus inter pares*, is a later elaboration—however old in itself—of a time when, after long settlement and regular government, the law has developed and the tribal stage is passing, or has passed, away. Perhaps the sense of clan-union, which must long have lingered among the 'twice-born' classes, found its echo in this joint-family. Moreover, Hindu law, and the custom⁴ of

¹ Seebohm, *Tribal System in Wales*, pp. 89, 95.

² *Ante*, p. 50.

³ Dr. Seebohm notices this distinction. See *Tribal System in Wales* p. 95. I venture to think that an examination of the older Sanskrit law-texts would show that the limitation of the power of the house-father was much less in early times than it afterwards became, when the joint inheritance law was elaborated, and so much affected the idea of the family constitution.

⁴ *Ante*, p. 210.

the Northern conquering and energetic tribes, both proceed from people who have much pride of race and strong ideas of rights 'by inheritance,' and of *equally representing a noble or heroic ancestor who was the founder of their fortunes* and the object of their worship. It is quite possible that the absence of joint ownership in the family marked a condition of tribal society in which no strong sense of union was evoked by the conditions of life. Probably the first settlers found but few human enemies to contend with, or were not subjected to any circumstances that tended to supersede the purely patriarchal rule. More it would not be justifiable to say; but at least it is a geographical fact that the *raiyatwāri* form of village survives most completely where the settlement (in any numbers) of Aryan, Jat, Gujar, Moslem, and other conquering and 'superior' tribes took effect least. The joint-village is, in fact, conterminous with the range of Aryan and later conquests, or with races which have developed the joint-family. Wherever we find such joint or shared villages, either surviving or once existing, in the South, it is always in connection with some explainable circumstances of local overlordship, or special colonising privilege.

In thus endeavouring to account for the *raiyatwāri* form of village as arising under early *tribal* conditions, I should like to repeat that it is quite possible that originally the villages may have been held by subdivisions of clans—real groups of kindred—and that a feeling of tribal union may have once existed which now cannot be traced. If we were to take away from a frontier village in the Panjāb the sense of tribal union, the actual tenure would be hardly distinguishable from the *raiyatwāri*. If it is true that the head of the non-Aryan family was sole owner of the holding, the fact would have tended to concentrate and fix the sentiment of ownership as arising out of the original occupation and laborious clearing of the soil. It may be added that this also may help to account for the absence of any idea of a joint proprietary claim to a certain area of the waste adjoining each village. The villages being widely scattered through a great area of waste generally subject to the clan, the land not cleared and merely grazed over was regarded as 'common'—merely in the same sense that the air, or the water



of a river or lake is common.¹ The idea of 'property' did not attach to 'unwrought,' uncleared land. Accordingly, when the looser tribal government gave way to the rule of a Rājā, whether by conquest or by commendation, it became an easily established custom for the Rājā to dispose of the waste as he pleased. It is well, too, to remind ourselves that all this is not a mere question of theoretic possibility; it is based on some actual survivals, which, though local, almost necessarily indicate a more general custom in early times. It is only necessary to refer to such well-preserved indications of early village forms as those of the Kāndh tribes, or the Kolarian and Dravidian settlements in Chutiya-Nāgpur. We there have evidence not only of the tribal constitution of agricultural society and of the formation of village-groups, but also of the absence of collective ownership. There is no 'joint-family,' there is no co-aration, nor any holding 'in common.' True, there is equal division among the sons of a deceased owner, but that is not the 'joint-family'; it is only one feature which perhaps marks the beginning of such an institution. We have not now much evidence that the families in the Western or Southern *raiyatwāri* villages are connected by clan ties, or that groups of villages of the same clan are found contiguously.² It is the different idea of the 'family' that is at the root of the distinction between the non-Aryan villages and those of the later tribes.

But, besides the joint-family, the later tribes also exhibit a kind of union beyond the circle of the immediate co-sharing relatives, which in the nature of things we can hardly hope to find evidence of among the scanty relics of the older Kolarian and Dravidian tribes that alone survive. All the Northern tribes as well as the Aryans evidently had a strong sense of general unity and cohesion; there was then a feeling that when a territory was occupied it was the acquisition of the whole body, so that all were equally entitled to share in it, and that its maintenance and defence was the common concern of all. It was this feeling perhaps, among the frontier tribes, *e.g.*, that causes

¹ See *ante*, pp. 10, 11.

² It will be remembered, however, that this question has not been studied. On this subject, and on the causes of the miscellaneous nature of *raiyatwāri* holdings, see pp. 18, 19.



the *per-capita* principle of sharing to be so much commoner than the rule of allotment according to the varying shares of the law or custom of inheritance. And this sense of equality also doubtless led to ready acquiescence in the tribal custom of allotting the holdings for a term of years only, so that they might be exchanged, and each group get its turn at the good or bad—the more or less advantageous and convenient farms. I do not see how this feeling can be said to imply a ‘common ownership’ in the face of the always separately assigned holding and the definite share which is understood to exist. In the same way, the retention of the waste area undivided is a matter of convenience only, as I have more than once explained. Whenever any portion of tribal land that would under ordinary circumstances be divided out is not so, it is always under exceptional and explainable circumstances; and even then the definite shares are well known. But the conditions of tribal security also demand that the various groups and sections shall acknowledge a union for the purposes of defence, and this includes a joint liability for taxes or other charges which have to be met. For example, the frontier tribal villages would find it quite natural to accept the joint liability for the Government land-revenue, under the North-West Provincial system; and it is largely owing to this fact, and to the consequent adoption, for these villages, of the nomenclature and forms of record employed by the revenue system in question, that they have been identified with the ‘joint-villages’ of another kind—those in which the co-sharers are really heirs of one man.

SECTION II:—TRIBAL CUSTOM AS EXHIBITED IN THE PANJĀB FRONTIER DISTRICTS.

In the frontier districts of the Panjāb a number of Pathān and Bilūchī tribes, professing the Muhammadan faith,¹ have established themselves, and remained more or less undisturbed, all within known historical times—some within the last two or three hundred years, others even as late as the last

¹ To which they were converts under the various Khālifs. See Bellew, *The Races of Afghānistān* (Calcutta, 1880); also D. Ibbetson, *Panjāb Ethnog.* § 390-3 for Pathān, and § 377-9 for Bilūchī.



century. They are all fighting tribes: they found, however, only a limited opposition from human enemies, and a large part of the country was virgin soil when they occupied it. The arable land is mostly dry and open, both hilly and level, but with no tropical jungle to contend with. Sometimes, but locally, the soil is fertile; more often it requires artificial irrigation before it is cultivable at all, except in seasons of unusual rainfall. The tribes are wholly non-monarchical, and if they have submitted in general to the suzerainty of some neighbouring State, or some greater local chief has succeeded in making himself a territorial ruler, that does not alter their internal constitution. We see clearly the clan, with its greater chief; minor clans, with their chiefs; and again smaller groups, each with its own head. Blocks of land smaller than the *khel*, and such as we should call 'villages,' are by no means always found; among the Bilūchī especially, the family shares are so many portions of the general (and still considerable) *khel* territory, and a few families live together in small hamlets. And in most cases the smallest group that has a name indicating a recognised subdivision of a clan seems too large to call a 'village.'

The chiefs, as a rule, have no pretensions to be owners or even governors of the whole territory, as the Hindu Rājās were. They had no territorial 'revenue,' only their own share of the tribal possession; though it appears that in some cases, at any rate, a special share of the land was reserved for the superior chief (or *Khān*).¹ And generally there must have been some provision for the support of the patriarchal position. Mr. Ibbetson, in the work cited in a preceding note, has fully gone into the history of the Pathān and Bilūchī tribes. It is only necessary here to say that the Bilūchī tribe is called *Tumān*, and its chief *Tumāndār*. It is divided into clans (*pāra*; cf. the Kolarian and Dravidian *parhā*), the clan chief being called *Muqaddam*. The minor-clans are *phollī*. The clans are all descended from one ancestor; and the subdivision or minor-clan is the 'wider kindred' from the same head.

The Pathān tribe is said to be more homogeneous than the Bilūchī. The Pathān and the Bilūchī, however, both recognise the custom of *hamsāya*—the 'neighbour' (of some other race)

¹ See, for instance, the *Peshāwar S. R.* § 589.



taken under the tribal 'shadow' or protection. Thus the non-tribal artisans and menials of the hamlets speak of themselves as belonging to the tribe which protects them. Among the Bilūchī, whole sections of foreign clans have been adopted as clans of the tribes, under the custom of *hamsāya*;¹ but the custom is not carried to such lengths among the Pathāns.

The Pathān tribe usually, but not always, has a *Khān*—the head of the *Khān-khel*, or eldest house of the eldest branch; and each clan and minor-clan has its *malik*, or head. 'The chief,' says Mr. Ibbetson, 'is seldom more than their leader in war and their agent in dealings with others; he possesses influence rather than power, and the real authority rests with the *jirga*, a democratic council composed of all the *maliks*. It is needless to say that all the districts are found to be divided into *ilāqa* and *tappā*—the distinct areas and sub-areas of each clan and minor-clan.

It is a misfortune that the tribal areas have all come under, not only the revenue administration of the North-Western system—which is quite capable of being worked to suit them admirably—but under its forms of record, and especially under a vicious nomenclature entirely unsuited to them, and invented really for villages of another character. It is simply misleading to classify the frontier-villages in a mass under such headings as *zamindārī*, *pattidārī*, or *bhaiāchārā*, unless of course where some area has become the property of one man, or of his heirs jointly (*zamindārī mushtarka*), or where some portion is really divided throughout on fractional shares, as among descendants of one original owner (*pattidārī*). *Bhaiāchārā* they all are, in the sense that they are governed by the 'custom of the tribal group or brotherhood'; but unfortunately the word *bhaiāchārā* has got so misused in the Panjāb as to have lost its distinctive meaning.²

An example taken from the Peshāwar district will at once

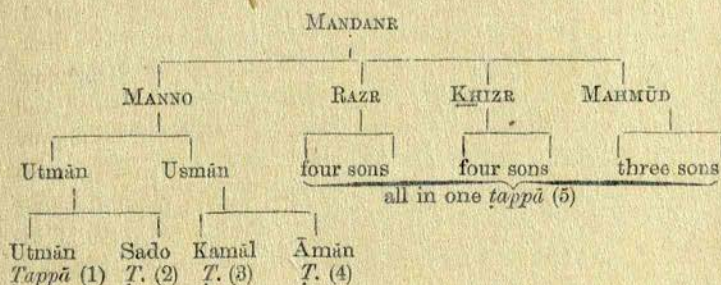
¹ See, for example, the cases reported by Ibbetson, § 380.

² This use or misuse of official terms is the subject of an appendix to Chapter VIII. I will only here say that any village, no matter of what form, so long as it is shared on some plan other than the ancestral system, or is held in severalty, is called *bhaiāchārā*, depriving the term of all meaning except the negative one that it is not *pattidārī*.

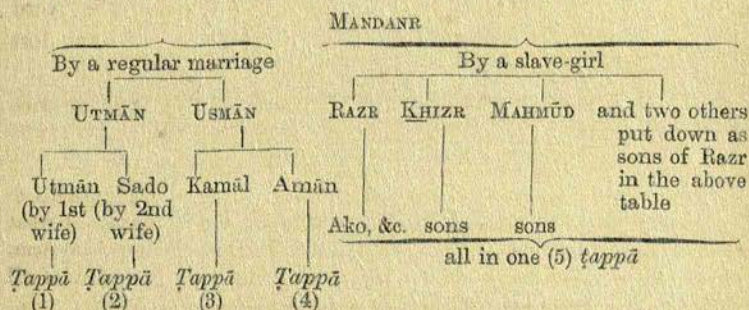


serve to show the way in which the clans are divided. The Yusufzai country had become the 'heritage' of four sons of one MANDANR.¹ If we accept the first genealogy, it would be supposed that these four sons would be the heads of four clans. But as a matter of tribal arrangement, the clans actually recognised are five, as we perceive from there being five *ṭappā*, or clan-territories. No *ṭappā* is called after MANNO, the eldest son, but no less than four of the *ṭappā* are allotted to his four grandsons (the sons of Utmān and Usmān), while only one *ṭappā* is called after RAZR, and that represents not only Razr but also his two brothers. It is curious that the supposed son Manno should be effaced entirely by a number of grandsons; and that there should be only one clan-area among the remaining three sons together. I feel sure that the real origin of this was the different mothers, and the probable disparity of their rank. In

¹ *Peshāwar S. R.* §§ 199 and 226 ff. The 'tree' is given thus:—



Another genealogy, which seems much better to justify the *actual* territorial allotment to the several branches, is also referred to (*S. R.* note to p. 92).





this tribe, too, the custom of *paranai-vesh* prevails—i.e. that all the sons of one wife, however many, share with those of another, who may be fewer, *per stirpes*. There is also the possibility that in some cases the grandson was more distinguished in war or otherwise, and so may have supplanted the father. Thus the two sons of Utmān, besides being separated (owing to the different mothers), are each given the dignity of a whole *ṭappā*, whereas normally they would have shared one between them. However that may be, the *ṭappā* divisions actually stand:—

1. <i>Ṭappā Utmānzāi</i>	} Sons of UTMĀN	} These two are grandsons (or more probably sons) of the founder
2. " <i>Sadozāi</i>		
3. " <i>Āmānzāi</i>	} Sons of USMĀN	
4. " <i>Kamālzāi</i>		
5. " <i>Razr</i>		
	RAZR and other sons of founder (together)	

Thus the whole *‘ilaga* is first divided into *ṭappā*. Next, some of the *ṭappā* are divided into intermediate areas for which no distinctive designation is provided; they are spoken of as *daftar*, which means any group of lands in general, but the local name still ends with *-zāi*, as if they were ‘sub-*ṭappā*.’ This intermediate division is due to the separation of the groups of offspring from different wives—e.g. *Ṭappā Kamālzāi* is so divided: the terms *Mishr-rānizāi* and *Kishr-rānizāi* merely mean ‘of the elder (*Mishr*) queen (*rānī*)’ and ‘of the younger or lesser (*Kishr*).’

The *Razr* division is a very large one, and is subdivided for another reason, because it includes several brothers of *Razr* (or perhaps they are his sons.)¹

A diagram will make this plain; it of course has no pretensions to represent any geographical fact, or the relative size of the different divisions; it is literally a diagram.

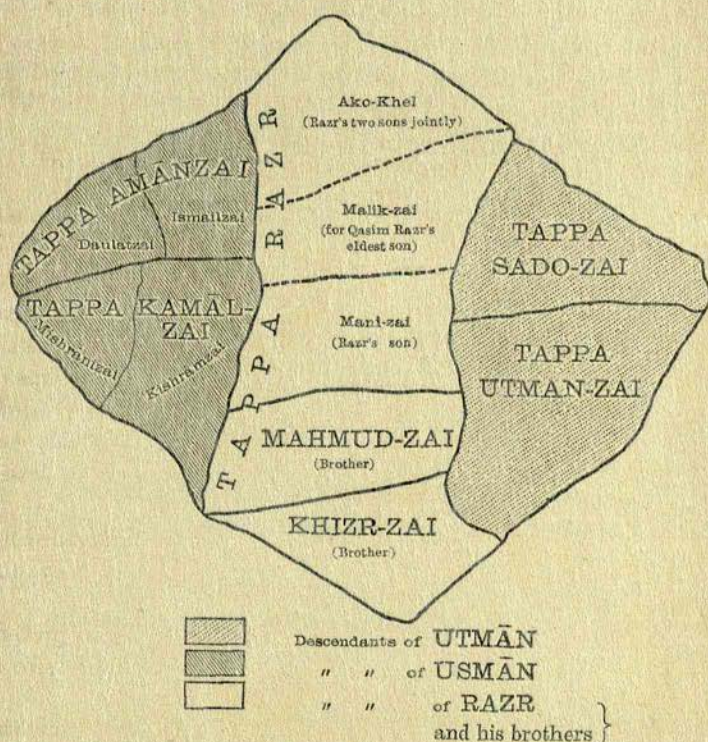
The word, or rather termination, *-zāi* is derived from the Pashtu *-zoe* and means ‘son’; while *khel* is the Arabic word meaning ‘group’ or ‘company.’ It is said that these terms are used ‘indifferently for the larger and smaller divisions.’²

¹ These are also marked by the termination *-zāi*. In one case it appears to be *-khel*, but I am not sure that the personal name was not *Akokhel*.

² *Tribal Law in the Panjāb* (Roe and Rattigan. Lahore 1895), p. 4.



DIAGRAMMATIC ILLUSTRATION
of the
'ILĀQA OF MANDANR



N. B.—Each of the divisions shown above is again divided into *khel*:
e.g. T. Utmanzai is divided into forty-one such, of which four are occu-
pied by *hamsāya* (colonies of other tribes).



But I venture to think that though in practice this may be so to a considerable extent, there is more properly a difference, and that *-zāi* indicates the larger groups from one of the 'sons,' or first main branches in the table of descent, and *k̤hel* the secondary branches. If that is so, then the *'ilāqa* may be indicated as the tribal area; the *ṭappā* marks the greater clan; the '*sub-ṭappā*' (or territory with the name-termination *-zāi*) also marks an intermediate division large enough to be called a sub-clan; while *k̤hel* is the still considerable group, the minor-clan or 'wider-kindred.' For the examples seem to indicate that the *k̤hel* is too large to consist of only the immediate relatives within seven degrees (or some similar limit); the sub-sections of the *k̤hel* correspond better to the 'close-kindred.'

As regards sharing the *land*, the *tribal* or *clan* authorities appear to have effected only the main (or primary and secondary) allotments of territories and sub-territories. Apparently the *k̤hel* groups arranged themselves as they pleased. But about this I am doubtful. However the *k̤hels* may have been allotted, it is usually the case that each has a considerable area; and it depends on circumstances whether there is one village-group, with its one residence for all its households, or whether separate hamlets are formed, or both.

In any case, the principal territorial areas were made large enough to accommodate all the then existing descendants—i.e. to give everyone a *share* on one or other of two principles, (a) that of counting every head (man, woman, and child), and giving to each existing household the number of equal shares it contained, without respect to gradation; or (b) that of regarding the table of descent, and giving larger or smaller shares, according to the number and degree of the existing kindred;¹ though whether this sharing according to grade is carried out *all through* is not so clear.

It very often happens that the individual shares are made up of separate specimen strips of each kind of soil, scattered through the whole *ṭappā* or *daftar* of a subdivision group. In

¹ And often separated because of the difference of mothers—first wife and second wife, or perhaps legitimate wife and inferior.

² Cf. H. E. Seebohm, *Tribal Society in Greece*, pp. 65, 66.



that case compact areas for further subdivisions of the body are impossible. The collections of families that cohere from some general rule of wider-kindred form the *khel*; and many *tappās* are at once divided (on the ground) into a corresponding number of *khel* areas. As these are large and contain much waste, when the families expand, new hamlets are started, more land is broken up, and in time the hamlets grow into independence; and thus a *khel* splits up into a series of what are more like ordinary 'mauza.' In some cases no subordinate divisions of the land *en bloc* occur, but the whole *tappā* (or even the whole 'ilāqa') is at once allotted into a great number of single or household shares. In others, on the contrary, there are so many sub-sub-divisions (if I may so say) that the Revenue authorities are obliged to club several together to get a manageable unit of assessment and general control.

The materials for illustrating these frontier tribal settlements have been in part collected, and accompanied by interesting remarks, by Mr. C. L. Tupper.¹ And there are also some further Settlement Reports now in print and available for direct quotation. I shall select typical instances from the frontier districts of Hazārā, Peshāwar, Kohāt and Bannū, and the more westerly districts (which also extend further southwards) of Dera-Ismail-Khān and Dera-Ghāzi-Khān. In none of these do we find that the definition of small or limited *village*-areas, as such, is part of the tribal procedure of location or allotment; where they have come to exist, it is under later influences. We find that procedure essentially confined to the major-groups and sub-groups; and then attention is paid to the actual unit shares. Everywhere the people exhibit their sense of the natural aggregation, up to a certain limit, of kindreds; they also show the strong influence of the feeling that the superior right of the clan or clan-division to the whole area is unquestionable; and that every member of the clan has a right to his due share of the territory won by

¹ *Panjab Customary Law*. Especially in vol. ii.; and as regards the custom of redistributing periodically the several shares, in part ii. of vol. iii. But some Settlement Reports have since been printed. It is only necessary to remark that Mr. Tupper throughout uses the term *bhaiāchārā* in its official sense, including *all* kinds of villages which are not on the *pattidāri* principle, or held by sole landlords.



the common exertions of the group. The shares are, as a rule, divided out from the very first; only the grazing land or the waste is left in common. More rarely, part of the arable land is also left undivided, though the shares are known. The custom of exchanging holdings (where it was applied) must have tended to keep up the feeling of a sort of general clan ownership, which, however, was not inconsistent with independent right to the household share. The exchange was, in fact, evidently invented to secure equality. The joint responsibility for taxes, &c., is accepted by the whole *khel*, but not, so far as I know, by any larger group united.

The HAZARĀ district is occupied by clans who for the most part do not date back, in their present location, beyond the eighteenth century; they drove out or subordinated the weaker families whom they found in the country. 'The right thus asserted or acquired,' writes the late Colonel Wace, 'by the strong over the weak was popularly termed *wirāsāt* or *wirṣa*; and its possessor was called *wāriṣ* (*Angl.* heir). In fact, as stated by Major J. Abbott in some notes left by him, the *wāriṣ* is the last conqueror.'¹ In the centre of the district are four *ilāqa*—(a) Mangal, which was the joint holding of two clans or groups, Mansūr and Hasāzāi; (b) Nawāshahr was the holding of the Mansūr alone; (c) Dhamtaur of the Hasāzāi alone; (d) Rajoyā of the Sālār. All were subdivided into groups which afterwards served to form villages. The *status* was much disturbed under the Sikh rule, and several of the villages have fallen into the hands of 'a motley gathering of occupants of all classes.' A periodical redistribution of shares was formerly the custom.

But the PESHĀWAR district much more completely illustrates our point. 'The main divisions or tribes'² have each a separate tract of country generally known by the name of the tribe

¹ See *ante*, p. 210, as to the use of these terms of Arabic origin. Among the frontier tribes, being Moslem, the use is not surprising. Mr. Tupper compares the *Geerften* (inhabitants of the village) under the old Germanic law and the *Erfgenamen* in the Saxon provinces of the Low Countries, who were the people in the 'mark' who possessed a *whare* or share in the tribal 'inheritance.'

² Captain Hasting's *S. R.* 1874, p. 84 ff.



now or originally occupying it; for instance, . . . the *tappā* Mohmand. . . . In each main tribe there are groups of families or branches of the tribe which, owing to their numbers or close coherence, have become distinct subdivisions.¹ The traditional origin of the territorial position is simple. A certain chief—Shekh Mali—made a *taqsim*, or partition of the whole country, which commenced with the counting up of the requisite number of shares to provide one for every separate man, woman, and child in the tribe. According to the total numbers so obtained for each main subdivision, suitable areas were marked out. The allotments of general territory were apparently only roughly discriminative of soil qualities. Thus in the Yusufzai country the main divisions were for the branches of Mandanr's descendants (they were a Yusufzai tribe):² each got part of its territory in the hill country, part in the level. As a matter of fact, the people themselves afterwards altered this, and the Mandanr branches came to hold the whole of the plain country. The areas were taken by drawing lots. The chief's partition went no further than the main divisions or subdivisions;³ nothing was said about 'villages' or *khel* inside the territories. I have already discussed the formation of the first great divisions; now we shall see how the further division comes about. An actual case will best illustrate what was done. The Yusufzai country is dependent on rainfall for its tillage, and a special internal allotment of the *tappā* was adopted. The people themselves divided the *tappās* into *khel*. From the records I notice that many of the *khel* areas contain each a more central group with its site for residence, and also several subsidiary (separately named) hamlets. Some 'hamlets' consist of a group of holdings on some peculiar kind of soil, as they are distinguished by the description *sholgira* (=rice growing) or *maīra* (ordinary dry loam). In the Muhammadzai *tappā* in the neighbouring Hashtnagar tract, there is a regular subdivision into eight large *khel*, each having a central residence group and several hamlets.

¹ See p. 237, *ante*. The allusion is to the *sub-tappā*, or intermediate division of the first great blocks.

² This is the 'ilāqa of which a diagram is given.

³ As in the diagram on p. 249.



Another mode of division appears among the Gigāni clan or tribe. They first of all made their *whole area* into thirty-six allotments called *kandī* (the word we shall meet with again but not necessarily in the same sense). Each *kandī* is a mere local area adopted for division purposes, and doubtless for distinguishing the different kinds of soil. Each should contain one hundred individual and equal shares. Then the *khel* groups of families were provided for, either by their taking one or more whole *kandī* to the extent of the number of single shares their counting demanded, or else taking the due number of shares scattered through several *kandī*.

Next as to the internal arrangements of the *kheles* inside the *tappā*. It will be observed that, whatever the size of the *khel* and the number of households composing it, the group may again have some further subdivision. Regarded as a group of families, it is subdivided into *kandī* (all households in the *kandī* have the same patronymic),¹ and sometimes the *kandī* are divided once more into *thal*, before we come to the (perhaps numerous) single households. Just as the *khel* group has a chief called *malik*,² so each *kandī* has its *malik*. And the *kandī* tend to set up separate residence-sites, each with its own little prayer-mosque, and its *hujra*, or guest house, in which, by the way, all the unmarried youth of the section sleep together. The land of the *kandī* or of the *thal* group always includes as many *bākhṛā*, or *brākhā* (= shares), as there are *individuals* in it.³

If the arable land to be allotted into shares is variable in

¹ This, I presume, makes the *kandī* a 'close-kindred,' like the Welsh *welc*; and if it happens to be very large, or for some special convenience, it may be again divided into *thal* (Captain Hastings writes *tal*), just as the *welc* might be divided into *gavell*.

² The clan-chief is *Khān*, sometimes with the Arabic title of *Arbāb*. The next major-division chief is also *Khān*.

³ The individual share is sometimes locally *pūchā*, and not *bākhṛā*. The *S. R.* does not explain what the difference is. But, referring to the *khel* of the Muhammadzai *tappā* in Hashtnagar above alluded to, I notice that the four northern *khel* are divided into 6,000 *pūchā*, while the other four are composed of 480 *bākhṛā*. It must be remembered that with these final shares the numbers are counted often to suit the clumsy methods of division where any system of vulgar or other fractions is unknown.



quality, the clan authorities will arrange a number of circles or series, called *vand*, consisting of the 'good,' 'middling,' 'indifferent' soils, or distinguished in some other way. Then the groups of sharers will have to take their lands partly out of each series.

Where the land depends on irrigation, this scattering of holdings over several soil-divisions is not observed. But in any case, in spite of the soil-classification, inequality in the holdings is not altogether eliminated. So a system of periodical exchange or redistribution (*vesh*) was long followed. Indeed, at first, the entire *tappā* divisions were exchanged. But this general exchange must have proved so inconvenient that it was naturally the first to fall into disuse.¹ The exchange of single holdings also gradually ceased when the effects of years of individual labour and cultivating skill began to tell, and individuals became attached to their fields; and when, moreover, a long period of peace made settled possession more natural. The 'village' areas, regarded as smaller groups within the *khel*, are thus brought about by the gradual action of circumstances; but the tribal-grouping of families and the recognition of different degrees of kindred is really what originates it.

The *khel* groups are sufficiently distinct to attract to themselves the usual local staff of village hereditary servants and menials,² or more than one according to size and subdivision. The *Peshāwar S. R.* notices the weaver, potter, carpenter, blacksmith, cotton-cleaner, sweeper and grave-digger, barber, ballad singer (*Dām*),³ and a Hindu *dharvāi*, or grain-weighman. There is always an *imām*, or priest, for the mosque, and some menials still called *ghulām*, or 'slave,' descendants of former captives in war or of purchased slaves in old days. These menial and artisan classes always intermarry with their own caste; they 'trace no origin, nor are they able to call themselves of any tribe or clan.'⁴ They are often remunerated by small holdings of rent-free land.⁵ Every *khel* has its *jirga*, or council of elders

¹ *S. R.* §§ 201, 202.

² Cf. p. 16, *ante*.

³ *S. R.* § 29. May it be that this *Dām* caste indicates by its name an origin from the Dom—one of the 'aboriginal' hill tribes?

⁴ *Ibid.* §§ 211, 212.

⁵ In Yusufzai there are some 75,000 Gujar herdsmen, whom the late

(*mishr*), or elders of houses, and chiefs of the group, or of the *kandi* or section. They are referred to on 'all questions of custom and matters affecting the village society.' I find no trace of any 'holding in common,' or any co-aration; the lots are counted up and separated, from the first settlement of the tribe: the waste is undivided because it would serve no purpose to allot it.

In the KOHĀT district a very similar form is observed, and the terms used are also identical.¹ Thus the Bangash clan or tribe has four *ṭappā*, called Upper and Lower Mirānzāi, Samīlzāi, and Bāizāi respectively. Each is divided out into sub-sections, which are here mostly in compact blocks; and nothing remains as common of the whole clan. The '-zāi' territories were partitioned further among the *khel*, but the allotment only took account of the total number of single shares in the whole group. Thus the *ṭappā* 'Upper Mirānzāi' reckons as 1,250 shares. Of these, 500 are supposed to belong to the *Darsamand khel*. The *khel* people themselves will not always apportion the area in just that number of household-shares; as a matter of fact, the theoretical lot of 500 *bākhṛā* is actually held in 347 holdings.² It is interesting to notice that, in the case of the Bāizāi *ṭappā*, a cash assessment imposed through some ruling chief about two centuries ago³ caused the old share-list to be superseded; a new number of *bākhṛā* was arranged, so that each should represent one rupee of the total assessment; and now shares are frequently spoken of as so many 'rupees.' In this *ṭappā* the distribution of land in compact blocks among the sections is not carried out; for the soil varies, and there is one portion, near Kohāt, which has exceptionally good springs; so each section has got a portion in the spring-watered area, and the rest of its lot, some here, some there, scattered about over the *ṭappā*.⁴ The *vesh* or ex-

Dr. Bellew believed to be the descendants of one of the Indo-Scythian tribes who were settled in the country before the present clans occupied it. They are exclusively keepers of cattle by occupation, the other clans having claimed all the land as a possession.

¹ Kohāt S. R. 1884.

² See note, p. 254, *ante*.

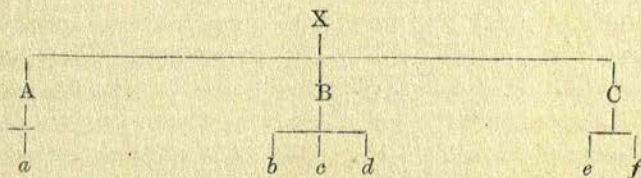
³ Kohāt S. R. § 182.

⁴ And in that case the outlying blocks are made over to groups of tenants.



change was also customary. The word *vesh* is here, as often elsewhere, applied both to the process of the exchange itself and to the recognised series of areas of different soil-character according to which the holdings are made up. The exchange is here *within* the *khel* only; first one entire sub-section exchanges with another, and then the families within the sub-section exchange among themselves. But the most important point to notice is, that lots or household-holdings are not here assigned, as they are in Peshāwar, by *khulāvesh*, or counting up every head in the clan or in the *khel*; at least, that rule only applies to some parts. Here a *standard number of shares* for each section and sub-section is maintained, whether the actual households are, afterwards, more or less.¹ The custom of periodic exchange lasted here for a long time, and is not yet entirely extinct. In Upper Mirānzāi it was not possible, on this account, at the first Revenue Settlement, to make field maps for the villages; but the Report of the last Settlement notes that the desire of the holders to reap the benefits of their own labour and improvements has tended to put an end to the custom. In this district, too, there was a custom of having certain *qabza* (=possession) lands which were

¹ *Kohāt S. R.* § 183. The principle of ancestral shares, as compared with the *khulāvesh*, or equal shares *per capita*, is easily illustrated. Suppose a *kandi*, or sub-section of a *khel*, called after an ancestor X. His three sons, A, B, C, represent the *thal*, and *a, b, c, d, e, f* are the individual sharers.



Let us suppose that the *kandi* owns a standard number (sixty) of the shares as originally constituted. Each *thal* would then have twenty shares. On the death of A, his one son *a* would inherit the whole twenty; the three sons of B would get B's twenty shares between them, or six and two-third shares each. If after the death of A, B, and C a redistribution were made on the *khulāvesh* system, *a* would not get the whole twenty shares of A, and so on; each one of the sharers *a—f*, would have an equal proportion of the whole—*i.e.* ten shares each.

held permanently, on what grounds is not stated, and excluded from the lands subject to the customary periodical exchange.¹

Both in Peshāwar and in Kohāt there are special rules for sharing the water of streams used for irrigation. Space prevents me from going into the details, but the rules serve to emphasise the way in which the lands are grouped, and show clearly the division of *khel* into *kandi* and *thal*. There is a water channel for the whole *khel*, and this branches out into distributories for each *kandi*, and then again into channels for each *thal*. Within the *thal*, the fields, or plots ridged to retain the water, are made of the same number as the *bākhṛā*, or individual shares included in the *thal*. It will be observed that this system of fixed fractional-shares of a given total, which is adhered to all through the grades of descent, is in principle very like the *pattidāri*, of which the typical form occurs in the case of the village derived from an individual founder. And the system was further maintained by the fact that, the *irrigated* land being alone regarded, and being of equal value throughout, the shares of the Government revenue were, without injustice, fractions corresponding to the water-share fraction. In former days, if anyone casually cultivated some of the unirrigated land, there being no map, notice was not taken of it; payment was made according to the strictly kept shares in the *ābī* or irrigated land. But under more modern arrangements this area of appropriated unirrigated land comes under measurement, and it is then discovered that one sharer holds, and has perhaps made profitable, a good deal more land than another; under these circumstances, an adjustment will probably be called for, and payment distributed according to the acreage actually held.

In the district of BANNU there are four distinct clans. We will notice that called the Bannūchi, who settled about five hundred years ago. Here we see that, as so often observable, the *ancestral* division of the clan guides the distribution of the land-shares up to a certain point only—i.e. the termination of the original close-kindred. The clan is divided into main

¹ This seems to resemble the *bocland* of the Anglo-Saxon tenures—land held by some special title outside the usual or old customary folk-tenure. See Stubbs, *Const. Hist.* i. 81, and the reference to Lodge's *Essays on Anglo-Saxon Law* in the note.



sections, and these into sub-sections, all families in the latter having a common patronymic.¹ 'The traditional accounts of the Bannūchi,' says the Settlement Officer, 'respecting the original division of the country among themselves on ancestral shares, and the sub-sectional apportionment of land and water within the limits of each main share, in proportion to the amount of canal excavation work done, are in all probability true.' Here, as a rule, there is no *vesh* or exchange: it would not suit a state of things where each holding is permanently created by means of its channel for watering. It is interesting to notice that another clan, the Niāzāi, came to their location (in the 'Isākḥel Tahsil or sub-district) in alliance with some Jat clan, and that on apportioning the territory they gave the Jats an 'ilāqa, such as they had for themselves. Both clans made their main division on ancestral lines; here the first division of the 'ilāqa is *tal*, or *thal*); that is again subdivided into *darra*, and that into single shares or *lich*.

Among the Wazirī it is worth while noting how some of their territories are said, euphemistically, to have been 'acquired by purchase.'² They have no general custom of exchange; but in certain families the entire holding is redistributed, not after fixed periods, but occasionally—perhaps on the death of some leading member or head of a household, by means of a temporary partition.³

In the Marwat country we have another example in the Marwat clan (a branch of the Niāzāi, but coming to the district at a later period), where the periodical redistribution is either still practised or has only recently been given up. Here the rule of providing a share *per capita* throughout the clan prevails.⁴

¹ *Bannu S. R.* § 128, p. 123.

² *Ibid.* § 129. 'The fiction of sale seems to have been invented at some time after the seizure of the land in order to save the honour of the weaker side, and enable spoiler and spoiled to live together in peace.'

³ This, it will be remembered, was the custom of the Welsh tribes; the final partition was only made among the second cousins of the *welo* group when the father, grandfather, and great-grandfather were all dead.

⁴ *S. R.* § 136. This is spoken of as a 'communal' or collective form of tenure because of the periodic reallocation; and in *Panjab Customary Law*, ii. 22, Mr. Tupper speaks of the tribe holding its



In the DERA ISMAÏL KHÂN district, along the West frontier, we find quite a notable variety of tribes with somewhat different customs; most of which tend to show how little the village, as a separately defined group of land-holdings, still less as any kind of unit of property, has to do with the organisation of the tribal stage. The country, too, is physically diversified; there is a wide tract on the edge of the Western hills (*Damān*),¹ where the cultivation is carried on in terraced and embanked fields moistened by the mountain streams or springs. There is also the light-soiled, open country of low hills between Shekh-Budīn and the Indus River, partly cultivated by aid of hill streams, partly depending on rainfall. There is also some flat alluvial land along the river; and, lastly, the inland tract of dry land partaking of the desert character of the South Panjāb. In this district, too, we find instances of villages where a landlord family (*alā mālik*) has obtained the superiority over the actual soil-owners (*adnā mālik*). This is, however, beyond our immediate object. Among the instances of *clans* occupying distinct tracts, we have the interesting case of a large area in the Damān, some forty miles long by twelve to sixteen broad, colonised within the present century by a tribe of Bhitāni.² The clan has divided into three main territorial groups. It is here noted that the residence-sites are small clusters of mean cottages and huts, hidden away in hollows; and that caves in the rock are often used as dwellings. The cluster of such dwellings is called *kirrī*; in the level country a *kirrī* will contain the dwellings of

‘ilāga ‘jointly.’ I am unable to see here or elsewhere any real ‘communal’ ownership. Nor do I know of the smallest piece of evidence of a frontier tribe holding jointly for a time even. The whole plan seems to consist in an immediate several allotment of major and minor shares. Where these depend on the individual labour and expense of providing canal irrigation, the allotment is permanent; otherwise it is first made as equal as possible, and a redistribution is provided for with the evident object of quieting jealousies, and preventing the stereotyping of inequalities in the holdings.

¹ Mr. H. St.-G. Tucker always writes the word with the final *ā* long; I imagine the word to be the Persian *dāman*, meaning ‘skirt’ of the hills. Perhaps this is a dialectic variation. I have followed the printed Report.

² *S. R. D. I. Khan*, 1884, § 250.



families belonging to different share groups. Each clan-territory is here divided into a large number of (usually compact) plots, called *nāla*. Each *nāla* is held by a 'number of families generally closely connected by birth.'¹ Within the *nāla*, each individual family or household seems to have no defined or allotted share, but each took what land its numbers or means of tillage suggested; and some land usually remained undivided for future occupation when required, and meanwhile for the common grazing. When there is water for irrigation, there is a rude arrangement about 'turns' in taking the water.

Still within the Damān region, the Gūmal Valley tenures only call for notice on the point that here the rice-lands are cultivated jointly; but the practice has nothing whatever to do with any idea of common ownership; it is merely for convenience, first, because the money is thus raised to pay the autumn (*kharīf*) instalment of the land-revenue; and next, because this 'strengthens' or prepares the land for the spring crop, which is managed entirely by the separate owners. The Kundi tribe, also in the Damān, demands a passing notice. Its land is held in two large 'villages,' and lies in two portions, north and south of a stream, and distinguished as the Nikannī and Prādu lands respectively. In the Nikannī the whole area is divided *per capita*—i.e. into a number of equal (single) shares or *daddī*, one being allowed for every man, woman, and child; the holding of them was formerly subject to periodical exchange; and the last occurred, among the Amākhel division, in 1852.² The Prādu lands seem either never to have been so treated, or to have been variously acquired by purchase 'or otherwise' in separate holdings.

But the most interesting tribes are those of Pathān origin in the northern part of the Tahsils, D. I. Khān, and Kulānchī.

¹ It is worth while noting, as showing how administrative arrangements may affect forms of tenure, that at the 'summary' or preliminary Settlement every *nāla* was treated as a separate *manza*, or survey village. But this proved inconvenient; for the *nāla* are sometimes small, as might be expected from the variety of numbers in each 'close-kindred.' So now each entire clan area is treated as a single large village; and, as above noticed, they are three in number—Dhannā, Tattā, and Wraspūn.

² S. R. § 267.



The Gundapur tribe occupy a territory, here called *had* (= boundary), of 462 square miles. The tribe have associated strangers with themselves from time to time; and now all are, by a fiction, supposed to be of the same descent. They are divided into six larger sections, or *nāla*.¹ In some *nāla*, all the sharers have the same patronymic, in others there are several groups. Exchange of holdings once existed, but has died out. The original settlement of the tribe, then in a smaller number, was at a village called Rori, which, being dependent on irrigation from a permanent stream, was divided out for the first settlers into so many *kashā* (= water cuts).² The shares are now 352 in number; they have lost their original owners, having been gradually bought up by the *Khāns*, or chiefs of major-sections. The rest of the tribal territory is watered by hill torrents.³ This is not divided into separate larger groups corresponding to the six tribal *nāla*, but at once into 36,000 *daddi*, or single shares. Each of the six tribal *nāla* above mentioned owns 6,000 of these

¹ The hereditary chiefship is properly in the *nāla* called Brahīmzāi; but, as this group suffered defeat some 200 years ago, the right was transferred to the Hamrānzāi (*S. R.* § 275).

² It appears to me from the remarks in § 278 that originally the rights in the Rori irrigated portion were solely rights of water; the soil seems hardly to have been allotted or regarded as property at all, except as far as each year's cultivation required; for in order to allow of fallows the water was taken to one part one year and to another the next. Now that the shares have passed by sale into the hands of chiefs, the cultivation is done by tenants; and, the area to be cultivated as a whole for the year being arranged, the land is divided into strips for as many 'tenants' as are counted, and a corresponding water supply is given to each. The owners distribute the whole of their rent-receipts from the entire area, according to the water-shares.

³ This is called *ḍagar* cultivation; the water, which occasionally rushes down the dry beds during the rainy season, is let on to the embanked field and allowed to soak in. There is a good account of it by Mr. Yates, M.L.C.E., in *Journ. Soc. Arts*, June 1895, xliii. 702. The embankment is raised from three to ten feet high, and is made by aid of bullocks and a short stout board; as soon as one field is filled with water, the stream passes on to the next. Sometimes two soakings are given, but the soil, moistened by the gradual percolation of the mass of water, raises the crop. *Kālāpānī* (= black water) irrigation is from a permanent clear or dark stream, as opposed to the muddy silt-laden and purely temporary rush of the torrents formed by rain on the hillside (*ḍagar*).



shares. And there may be recognised divisions holding, say, 2,000 shares, and then further subdivisions.¹ A large part of the territory was actually divided out; but one part is not. This I regard as instructive, for it throws light on the question of the supposed prior 'joint-holding' by clans and sections, and which appears to me to be more or less imaginary. On one occasion, the tribe was pressed for money (in a time of war with the neighbouring *Miāñkhel* tribe). Ordinarily, whatever was needed was raised by a levy of so much per share or *daddi* held. Under the necessity for full and punctual payment, it was agreed to set apart a certain territory south of a certain stream, and called the *Prādu* tract, in which everyone who failed to pay *should lose his shares and transfer them to the person who paid on his behalf*. Thus many tribesmen, besides their proper shares in the other divided area, have acquired special numbers of shares in the *Prādu*. Whether owing to this cause or to some other, several 'large villages' in the *Prādu* are still held undivided; so that the tribesmen are all entitled each to $\frac{1}{38000}$ share in them; and these undivided lands are called *tummanī* (= *tumānī*?) or 'tribal' lands. The report contains no information as to how these 'tribal' lands are actually cultivated and enjoyed. There is no suggestion that the produce is thrown into a common stock and divided afterwards, or that the proceeds are taken to pay part of the land-revenue. Even if we can speak of this very exceptional area as held 'in common,' it is so under circumstances that can hardly entitle us to take it as a sample of an *earlier and general* method of tribal-holding.

But whatever the true facts may be, the landed rights of tribesmen must be somewhat complex. Thus a man may have his own divided share in his own *nāla*; also some share by transfer in the *Prādu*, some shares which have come to him by purchase or inheritance, and some share in the 'tribal' land;

¹ As the Gundapur had no knowledge of 'vulgar fractions,' they had an awkward system of altering the shares, while always keeping the memory of the real number. If, for instance, a section with 2,000 *daddi* was grouped into 7 equal sub-sections, as the 2,000 will not divide exactly by 7, they altered it to 700 *kaççā daddi*, so as to give each 100, which were equal to $285\frac{1}{7}$ real shares. This detail can, however, be further seen in § 278 of the *S. R.*

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and as 'in each case the lands in which they acquire these complicated rights are scattered over a tract of country 400 square miles in extent, it may well be believed that it is almost impossible even for an intelligent Gundapur to grasp thoroughly the nature and extent of his proprietary rights.'¹

The Mīāñk^hel tribe (with whom the Gundapur were mentioned as having been at war) have two large clan-territories, called Drāban and Mūsāzāi. They would require no particular notice here but for the fact that the tribesmen are not cultivating possessors but landlords living in towns, and leaving the lands to be managed by Jat and other tenants, who form their own villages and groups, having nothing to do with the tribal arrangements of the owners. The Drāban lands are either irrigated (*nālīñ*) or 'dry' (*mankat*). The territory of the former kind is divided into 77 'water-shares,' called *nāla*—i.e. water-course; the latter is divided into 80 shares, called *man*. These shares occur as blocks scattered over the area as a whole; and each clan-section may own several such. Every section will have some irrigated and some dry land, each dependent on its own principle of division. But once more we find certain lands (here called *wanda*) held as 'bocland' outside the customary share system. The Mūsāzāi lands are somewhat similarly held, except that the irrigated *lands* are not divided; the shares in the *water* here form the basis of right. A certain area, fit to be cultivated, is selected for the year, and the parts of it to be taken up by each section or group of the water-sharers are settled by lot. The sections are called *būli*, and each contains so many *dharra*, or single shares (water-shares).

The last instance I can give is that of the comparatively civilised tribe of Bābar. They can all read and write.² Those living in the plains number about one thousand. 'They are very democratic, and exceedingly jealous of any member of the tribe trying to exercise authority over them.' They are divided into two main sections—*Mahsand* and *Ghorāk^hel*.

Mahsand forms four sub-sections, and *Ghorāk^hel* eight. The former hold four *būli*, or sectional shares, and the latter eight *nimakka*, or half-shares; some of the land is dependent on rain,

¹ S. R. § 279.

² *Ibid.* § 315.



and some on *kālāpānī*¹ irrigation. But these shares will be subdivided differently, *according as they refer to the land or to the irrigation water*. Thus, as regards land, each *būlī* and each pair of *nīmakka*, being half-shares and treated in pairs, are subdivided into equal lots (*khulā*) for every head in the tribe. But the same shares, treated in terms of *water*, are different; the water-shares of each member, which are not necessarily equal are counted in 'rupees, *ana*, and *tāt*.' The *būlī*, &c., regarded as a group of men, is subdivided into *gundi*, a term, I take it, cognate with the *handi* above mentioned; and the total numbers of lots, for the whole of the *gundi* of the several *būlī* and *nīmakka*, is at present 1,721; the number actually held in each section and sub-section varies. The land of each is not in one place, but scattered about. Some of the groups still hold their shares jointly among their own members, who are relatives. The water-shares are worked in complete independence of the land-shares; the owners select each year the area which can be conveniently watered, just as if the *land* had no known owners or sharers at all; the land-share is, in fact, in abeyance as long as the irrigated cultivation lasts.

The southernmost frontier district of DERA GHĀZI KHĀN partakes more of the nature of the desert country in the South Panjāb, and the physical conditions under which cultivation is possible affect the forms of tenure.² In the *Sindh* lands (those near the river), and in the level plain, the tendency is to establish separate 'wells,' or homesteads irrigated by a small cut taken from the river; and the right in land depends on the labour and money expended on making the area cultivable. Here also we find that over-lord families ('*alā mālik*') have won established rights over certain *ḥad*, or areas of country, and take a variety of rents and dues from the cultivators and 'inferior proprietors'; with these matters we are not now concerned. In the Pachād country—a tract with light dry soil and low hilly contour, skirting the Sulaimān Range—we have once more the tribal system. Here, too, the cultivation is in embanked

¹ I have explained *kālāpānī* in a note at p. 262, *ante*.

² See p. 65, *ante*.