

illustrates well how these joint or shared ownerships of villages (where we have nothing to do with clan movements and the foundation of villages in a new territory) always originate in some dismembered territorial over-lordship, or in some position of vantage gained by a revenue-farm, or grant of the revenue-management of a village.

In the Dakhan districts, the early and probably only half-Aryan chiefs who once dominated the country disappeared, as I have stated. In the richer GUJARĀT districts, a much larger and longer continued series of local chiefships attract our attention. For the earlier centuries we have no detailed knowledge; but there is every reason to believe that besides early Aryans coming from the Indus Valley, and probably other Northern leaders also, Greek Princes (connected with the name of Menander) had the rule; and at one time Asokā, the Buddhist Emperor of Magadhā, extended at least his suzerainty thus far. But at some date long subsequent to the establishment of the Aryan clans in the Ganges plain, and when the Rājput chiefs had spread into Rājputāna and Mālwa, we begin to have historic glimpses of powerful Rājput dynasties, still strictly localised. They were of the later Aryan type, either Buddhist, Jain, or Brahmanic, being of the *Āgnikulā*, or 'Fire-born' houses, the *Chāvarā* (locally *Chāvaḍa*) of Anhilwārā, the *Solankhai*, and later *Bāghelā* princes. In the fourteenth century the 'Hindu' rule came to an end, and there succeeded a series of Moslem Sultāns, the results of the early conquests subsequent to Mahmūd of Ghazni. Their rule lasted some 165 years, till Akbar conquered the country in A.D. 1572. A number of local 'estates' or lordships, the remnants of the old chiefs' dominions, were the natural result.¹ With these we are not now concerned. But it is hardly wonderful that under such a varied series of rulers, all desirous of making the best revenue possible, and rewarding their followers, there should be occasional examples of petty lordships over villages: such were the tenures enjoyed by persons called *nāik*, *gāmeti*, *mālik*, *kasbāti*, &c.

The class of village under Bohrā or Kunbi families, which is

¹ There is a particularly good account of Gujarāt in the *Asiatic Quarterly Review* by the late Mr. W. G. Pedder. I think it was in 1889. I have a copy of the article, but, unfortunately, not the reference.

what we have immediately under our consideration, arose out of revenue-farming arrangements. When the time came at which the old fashion of collecting the revenue in grain proved too troublesome, the natural resource was to fix a lump sum in demand from the whole village, whether at a full estimate or at some moderated sum (*udhad-jama*). This was especially the Marāthā system; and the local officials looked about for some village manager to be responsible for the total sum; he in his turn being entitled to take grain or cash (or both) from the villagers, as he best could, to recoup himself. When there was any local chief or *gamēti*, or *kasbāti*, of course he was the person who managed the village. When it was an ordinary *raiyyatwāri* village, either the *pātel* (indigenous) headman might be employed, or some outsider put in. It was merely a question of opportunity and circumstances whether such a revenue-manager grew into being virtual owner of the village, in which case the family would divide the property into shares. In the cases before us—chiefly in the districts of Broach (Bharoch) and Kairā (Khedā)—the revenue-managers had contrived to retain their villages, and had handed them on to their descendants as their own property.

In principle, these estates are joint-villages like those of Upper India. As late as 1827 such villages were more numerous than they are now.¹ Two kinds are now in survival: one is called *bhāgdārī*, or 'held on shares'; and the shares are (in origin at any rate) the ancestral fractions of the law of inheritance, and, in fact, correspond to the *pattidārī* tenure of Upper India. In the Kairā district the prevalent form is the *narwādārī*, which has a somewhat different constitution, and in Upper India would be called a form of *bhaiāchārā* tenure—i.e. fractional shares resulting from the law of inheritance were not observed, but a scheme distri-

¹ The example of a *raiyyatwāri* Settlement all round, and the fact that the revenue officers assessed (in general, for there was some difference in detail) every field and holding, would give a great impulse to the co-sharers already holding in severalty to adopt the survey-rate on their holding, instead of their own fractional shares or other customary modes of levy; and if they consented to give up any waste numbers not in cultivation, they would become practically *raiyyatwāri*. The only drawback was a certain loss of dignity by giving up the 'shared' tenure.

buting the charges for revenue and expenses was made out according to the value and advantages of the several holdings. The word *narvā* itself means a schedule or scheme of rateable or proportionate payments assigned to each sharer. And the shares or holdings were valued by reference to the *urd-bhāgwāri*, which I understand to be certain artificial land-measures adopted for the valuation of the different shares relatively, like the *bhaiāchārā-bighā* of Northern India.

In Bharoch the co-sharing holders (*bhāgdār*) have, I understand, become much mixed as to family and caste. But the prevailing caste of proprietors seems still to be the peasant or agricultural section of the Muhammadan Bohrā or Voharā.¹ These families appear to have acquired a hold over a number of villages at a date which is uncertain, but cannot be many generations ago. They got their footing as revenue farmers, or by the familiar process of lending money, or becoming sureties for village revenue payments; this naturally ends by transferring the land to the surety. In 1818 as many as eighty-four villages were found to be held by Bohrā families, who had undertaken the joint responsibility for the revenue, and accordingly had divided both the land and the responsibility into family shares.

The Kairā villages, again, are mostly held by Kunbi communities; the precise origin has not, as far as I know, been traced; but it seems likely that these enterprising agricultural castemen undertook, on the acknowledgment of a permanent lease or other superior tenure, to be responsible for the revenue, possibly restoring the villages after some calamity had for a time thrown them out of cultivation. They have kept together better than the Bohrā communities, probably because the *narvā* system tended better to prevent the disruption of the community, and secured mutual co-operation and support in meeting the revenue demand.²

¹ I cannot find proof of the correct spelling. In the local dialect the *v* is usually pronounced as *v*: hence *narvā*, *vāntā*, &c. (*narvā*, *vāntā*, &c.), and so with *ō* and *o*.

² It is to be wished that we had a more definite detail about the *classes* or castes actually holding shares, and about the people's own traditions of origin and history. There is a valuable Report on these tenures, by the late Mr. W. Pedder, C.S.I., in the *Bombay Revenue*

The difference between the *narwā* and *bhāgdāri* villages is usually treated, by the Bombay writers, as a question of the form of assessment; in the *narwā* village, it is said, the revenue was, at first at any rate, assessed in the lump for the whole village, according to former custom, and the people prepared the distribution list according to which the co-sharers arranged to pay the total amount.¹ In the *Bhāg* villages, on the other hand, every share-land or family holding, being separate, was separately assessed; and the fields held by tenants were valued at the usual survey-rates. The revenue on the tenant lands was paid accordingly; but the rest was added up together, and the total distributed among the co-sharers, according to their own fractional shares. I cannot believe that this is the real *tenure* distinction; the different mode of assessing must surely have been the consequence, not the cause, of a difference which already existed, and which I have attempted to describe. It will be well to examine a little more in detail the features of each class of village, as it may show that here, in fact, we have the same varieties as naturally occur in joint villages elsewhere. In both cases the origin was, as I have stated, in an arrangement made by individuals of sufficient influence who undertook the responsibility for the revenue-assessment of the whole

Selections, one of those monographs which ought to be reprinted, with notes and explanations added, by some intelligent inquirer of the present time. Some good remarks are to be found in Mr. A. Rogers's Paper on Bombay Tenures in the *Journal of the East India Association*, and in the *Bombay Gazetteer*, iii. 88 (Kairā); for the Broach (Bharoch) district, ii. 377, 483; and for some remains (in Daskroī) of Ahmadābād shared villages, see iv. 156.

¹ None of the reports give any detail as to how a *narwādāri* holding is actually made up; I have no doubt it is of various proportions of each kind of soil; and that the customary valuation is effected by some artificial standard-lot (which is the system called *bhaiāchārā* in North India), and it was worked also with the annual or periodic readjustment of burdens known in the North as *bhejbarār*; both features are certainly implied by Mr. Pedder's Report. It seems to me probable that our first Settlement officers, finding this apparently complicated method, thought it better not to try and assess the *holdings* separately, and so assessed the whole of the *narwā* lands *en bloc*. I can only offer that as my suggestion. It is a fact that the *narwā* lands were assessed in the lump, and the *bhāgdāri* field by field.

village. Thus, as regards the Kairā villages, we are told:¹ 'Under this, the *narwā* system, the headman's responsibility was divided among the members of his family. In such cases, the different branches of the family were traced back to their common ancestor, and the village divided into as many *bhāg*, or primary divisions, as that ancestor had sons. Each share was made over to the representatives of one son, and they divided it into as many lots as there were men (heads of households) in their branch. The head of each branch was called *bhāgdār*, or *pātel*. He acted for the other shareholders, but interfered in no way with the management of their shares.' The families—and sometimes there was only one to a whole branch, would either till their own lands or let out the fields to tenants. Shares were sometimes sold,² and outsiders thus brought in. The peculiar *narwā* feature was this: 'Every year the Government demand (*ānkdo*) was divided equally among all the branches, and in every branch each shareholder had a lot, called *phālā*, assigned to him. If he failed to pay, he forfeited his right to the land, and the other sharers might force him to give it up.'³ But this was not always insisted on, for the others also might fail to pay, or the *parela*, or lapsed shares, might have to be managed direct by the State officer.

The shares were expressed in *ānas* (fractions of a rupee) on an artificial scale. Thus, in a village called Sandesar, in Pitlād, there were seven branches, and the revenue demand was Rs. 7,854. The whole village was treated as = 84 *ānas*, of which 12 were assigned to each of the seven *bhāg*. There were 403½ *bighās* held undivided, and the income of this, Rs. 294, was first devoted to the revenue payment, leaving Rs. 7,560 to be met by the remaining lots held in severalty and covering

¹ *Bombay Gazetteer* (Kairā), p. 88 ff.

² The complicated and readjustable *narwā* share would be less easy to sell than the fixed, demarcated, fractional share of the *bhāgdārī* village; perhaps this was the reason why the latter villages have become more miscellaneously held (p. 389, *ante*).

³ This is noteworthy, as confirming what I said about the Madras Vellalar (p. 377, *ante*). Such a power does not exist in the *pattidārī* communities descended from an 'aristocratic' ancestor in Upper India. It shows a voluntary association for colonising or revenue managing.

1,505 *bighās*. Each *āna* thus corresponded to a holding of 17 *bighās* and a fraction ($17.9 \times 84 = 1,504$ nearly).¹ As there remained Rs. 7,560 to be paid on 1,505 *bighās*, that gave Rs. 90 for each *āna* share ($90 \times 84 = 7,560$). The *majmūn*, or common land, was managed for the community by the headmen. On the whole, the *narwā* village evidently much resembles the democratic *bhaiāchārā* community of Northern India.

In the *bhāgdāri* village the method is somewhat different, and approximates to the ancestral fractional-share system, or *pattidāri*, of the North-West Provinces. In the example selected by the writer of the notice in the *Bombay Gazetteer*, the village has a total area of 2,500 acres, of which 1,800 are held divided and 700 held jointly. Now in Bharoch there might be three 'ancestors,' or representatives of three major shares of four *ānas* each, leaving the undivided land as a kind of fourth share to represent the remaining four *ānas* of the unit rupee. This, it is true, would not be the case with an 'imperfect *pattidāri*' village of Upper India, held on fractional shares in descent from an original founder. In such a village, if there were only three *pattī*, each could represent one-third of the whole ($5\frac{1}{3}$ *āna*), and each would be liable for the same fraction of the revenue, and would take the same fraction of the undivided land when it came to be partitioned, and meanwhile each would have one-third of the rents and profits.²

But in the Bharoch example, each of the three sharers holds 600 acres as a four-*āna* share, and 700 acres are in common ($3 \times 600 + 700 = 2,500$). The total revenue is assumed to be Rs. 10,000, of which Rs. 4,000 come from the manorial dues and income of the common land, leaving Rs. 6,000 to be met by the three sharers. Each of the three *bhāgs* would thus have to find Rs. 2,000, which would again be distributed in regular fractions among the sub-sharers; thus, two '*pātidārs*' (secondary sharers) of the first *bhāg*, would pay Rs. 1,000 each; or, if they were further subdivided, say into eight minor shares, each of

¹ See p. 389, as to the different soils in each holding; and the note at p. 335, *ante*.

² In practice, the rents and profits of the common would probably be first taken to meet the revenue demand, and it would be the balance that would be met (one-third by each) by the main shares.

these would find Rs. 125 and so on.¹ In prosperous times the common land would be held by tenants, and so managed as perhaps to cover the whole or a large part of the revenue demand; but under the Marāthās an assessment would be laid on every separate portion, and the village total would be raised accordingly; and I expect that the arrangement noted above, of treating the tenant land or 'common' as a sort of separate share, arose out of this necessity.

The villages all keep their list of the shares and sub-shares, which is called *phalāvni*. The major share is here locally called *motābhāg*, and the minor share *petābhāg*. Each family share is *pāti*, and the holder of it *pātidār*. This is the usual division of the estate according to the degrees of the original family—sons, grandsons, and great-grandsons of the founder.

The people, Mr. Pedder notices, are unwilling to give up the status of co-sharer, because they would lose 'abru,' or dignity; they can marry their daughters much better with this claim to superiority. On the other hand, the convenience of the *raiyatwāri* method, surrendering the ownership of unused waste to Government, and having to pay just the fixed assessment on the particular field, must in time tempt them to abandon the original form.² It is curious how few villages, comparatively, became definitely constituted like the *narwādari* and *bhāgdāri*. In North India, under similar revenue-farming arrangements, and under the forced sales and similar transfers which they occasion, revenue farmers and purchasers at auction have become the proprietors of a respectable percentage of the total number of village-communities in the North-West Provinces. But the Marāthā administration was never favourable to these growths. Though there were farmers in abundance, they were too strictly looked after, and not allowed to continue long enough, to become

¹ It would often happen that one of the *bhāg* would have part of its land undivided among its own members (*majmūn-bhāg*), then they would meet their 2,000 rupee share just in the same way, as above stated for the whole village; they would first apply the proceeds of the common land to the payment, and then provide the balance according to their shares.

² The people call the *raiyatwāri* villages *sanjā* (in Gujarāt *sejā*), which means 'joint,' or not shared; not because there is or ever has been any joint-holding, but because there are no *bhāg*, *pāti*, &c., but all are on the same footing of equality.

proprieters; and the same is true of the village officers, who in later times presumed greatly on their powers, and in some cases acquired very large holdings,¹ by forced sales and mortgages in their village.

(2) *The Bikaner State.*

We have another instance yet to notice, in conclusion, of a Native State in which both kinds of village exist side by side. I do not doubt that many other cases could be found; but it is only under favourable conditions that they come to notice and get recorded. If the general land system of a province happens to be based on the prevalence of one form or the other, the tendency must be for any other forms that may exist naturally, to assimilate to the one contemplated by the system. In the provinces of Northern India where *raiayatwāri* villages existed of old, as no doubt they did, before the landlord villages grew up and Jat and other invaders established themselves, it is quite likely that some at least would remain without falling under any landlord class; and yet in the present day no distinction would possibly survive after our surveys and records, which are prepared to suit the joint form.² So in Madras, the general system being *raiayatwāri*, the tendency for the local, and already decaying, *mirāsi* or joint-villages to become merged in the prevalent form proved irresistible.

The circumstances of the State of Bikaner have made it possible for both kinds of village to survive together. Bikaner is situate in the northern corner of Rājputāna, in a sandy plain which stretches north and north-west of the Arāvālī mountains. It is possessed of a generally poor soil and is thinly populated,

¹ For example, in the case of the Wamori Patel above alluded to. See also a curious account in *Bombay Gazetteer*, iv. 485 (referring to Forbes's *Oriental Memoirs*, ii. 419). The District Accountant (*majmūdār*, or *despāndyā* of other parts), named Lallubhāi, attained to such pretensions in the Bharoch district as to go about 'with mace-bearers running before him proclaiming idle titles.' This was in 1776. Had this happened under more favourable circumstances, or in Bengal, he would have ended by becoming a great 'Zamindār.' Unfortunately, under the Marāthās, an end was put to his career by a revenue-farm which he was tempted to bid up for against a rival. He got it, but on terms that proved his ruin.

² *Ante*, p. 344.

so that the villages are more easy to observe and to classify. About the latter half of the fifteenth century, a clan of Rājputs (of the Rāhtor stock) established a dominion and divided the territory into a *khālsa* demesne for the Rājā and into chiefships held (on the usual *pattā* or quasi-feudal tenure) by the Thākur or 'barons.'¹ In the *khālsa* area we find two kinds of village—those established in independence, before the Rāhtor dominion, by Jāts,² and villages established since the dominion and mostly within the last century or so. It is probable, says Mr. Fagan, that originally neither the Rāhtor Rājā nor his fiefholders claimed any definite ownership in the soil; but they held the over-lordship as rulers, each realising the grain-share in his own territory. Mr. Fagan goes on to remark that, though primogeniture has to some extent secured the chief's 'estates' from partition, still the issue of grants of villages and maintenance provision for members of the family (which assign the chief's grain-share and the right of cultivating the waste), have virtually created a number of petty estates, in which there is a distinct tendency for the grantee to draw closer to the land and to become the direct owner or village landlord.

In the Rājā's demesne, the chief's connection with the land could not, in the nature of things, be as close as that of a resident landlord; and, consequently, the Rājā collects his revenue and exercises his right of disposing of the waste, without directly influencing the tenure of the land in general.

The Jāt villages, in the absence of any other dominion at the time, established an independent position, and are held in joint ownership by co-sharing bodies—representatives of the original 'founders.' In the Thākur's estates above mentioned, this position has now been overborne by the Thākur's assertion of the superior landlordship; but the original right is still so far recognised as to give a claim to hold permanently and on an hereditary title. It is chiefly in the Rājā's demesne that the joint-village is more distinctly in evidence; but side by side with

¹ *Report on the Settlement of the Khalsa Villages of the Bikaner State*, 1893, by P. J. Fagan, C.S. (Panjab Government).

² *S. R.* iii. § 19. Here the name is Jāt. It will be observed that the Rājputs furnished only the ruling house and its army. Had they been more numerous, they might have formed co-sharing villages, as elsewhere.

the Jāt villages, all the other villages are groups of independent cultivating holders who have settled together under a headman (or *caudhrī*), who was their spokesman in applying for leave to establish cultivation. Here, as in the South-eastern Panjāb, the people commenced the village by driving in a stake or pole on the site of the *ābādī*.¹ Sometimes permission was not formally asked, but as soon as the new village became known the Rājā's officer would go to the spot and settle terms. In the village itself (land being in this case abundant and irrigation from the *johar* or tank being well-nigh indispensable) there was no formal allotment of holdings; each settler took what he could manage. 'There was no partition,' says Mr. Fagan, 'of the whole or part of a definite area by virtue of a joint-landlord claim over it.' Where population is scanty and the area wide, no objection is made to anyone extending his fields into the adjacent waste, or even to new-comers doing the like. But in the more thickly populated parts of the Eastern Tahsils, only the original settlers can so extend their holdings; new-comers (called here, as often elsewhere, *sukhbāsi*) must get the headman's permission to cultivate. The *caudhrī* acts in this respect, not as landlord, but as representative of the State. Mr. Fagan particularly notes that the *caudhrī* has no superior position as claiming general ownership over the village. Nor were the oldest settlers or 'first clearers' owners of the whole area jointly; their position is only marked by exemption from certain local fees, or taxes on marriages, or on weighing of grain, and by their having greater freedom in taking up additional waste to extend their holdings. The actual boundaries of each village, and the jurisdiction of the *caudhrī*, became settled in time by practice, and by the definition which results from contact with the areas of neighbouring villages.

It does not appear whether the Jāt joint-villages are in the *pattidārī* form, or whether (as is more likely) they are in the form of the clan-villages settled on some form of *bhaiāchārā* tenure. It is true that the *raiyaṭwārī* villages are not of ancient origin; but many joint communities in other parts are

¹ In the Panjāb, it will be observed, owing to the system, such villages are classed as 'joint-villages' and are so treated; in Bikaner they appear in their natural *raiyaṭwārī* form.

no older, and there must surely be a real difference in the custom and constitution of the Jāt clans who preceded them. The co-sharing among the latter was due to their sense of superior position, either as descendants from individual founders, or as members of a clan obtaining a new home as a matter of conquest or adventure, and bringing with them this characteristic of clan feeling. The other settlers have no such pretensions; they assert merely a right to their own holdings in virtue of the first clearing and establishment of tillage which they have accomplished. This is not a decay of the former feeling, but one characteristically different.

CHAPTER X

GENERAL SUMMARY AND CONCLUSION

SECTION I.—IDEAS OF PROPERTY, COLLECTIVE AND INDIVIDUAL

THE numerous instances of village formation which have been collected from the Settlement Reports and similar authorities can hardly have failed to suggest the impossibility of disposing of 'the Indian Village Community' by referring the whole of the phenomena to some one theory or generalised view of the subject. But such a conviction does not preclude us from drawing certain general conclusions which appear to arise naturally from a comparative view of the various forms and kinds of village presented to our observation.

One of the first questions which the facts naturally suggest, is: seeing that the village is a group of *persons* as well as an aggregate of *land*-holdings, what kind of right or title was really acknowledged? or, in other words, what kind of connection is there between the *persons* and the *land* of a village? And this question involves the two subordinate inquiries—(1) how has any idea of ownership or right in land in India grown up? and (2) how have these rights been recognised—as residing in the individual, or father of the household, or in a body of wider kindred, or in a still larger body, such as a whole clan?

(1) *Early Ideas of Right in Land*

The sense of ownership in land, if we judge solely on the basis of what has occurred in India, seems to have arisen and progressed in a manner which is purely natural, and which does not, at any rate, need for its explanation an *a priori* assumption of 'collective ownership,' or holding 'in common.' If any evidence

exists of actual collective ownership, at any stage of the development of tenures, that is another matter; but, in so far as it may be regarded in the light of a necessary postulate, it may be not out of place to remark that 'collective ownership,' as a very early phenomenon, is a hazardous thing to assume the existence of; the very name or term is one which it is difficult to employ without bringing in a number of ideas of a kind which, instinctively as they arise in our own minds, can hardly have existed in the minds of primitive or early tribal settlers. We have become so accustomed to a mental analysis of 'ownership,' and to say, at least in general terms, what it involves or in what it consists, that it is not easy to think of any right in land apart from such conceptions. When, for example, we think of the periodical exchange of holdings which is found among certain clan-settlers, and assert that this indicates 'common ownership' because (to use M. de Laveleye's words¹) 'le fonds continue à rester la propriété collective du clan, à qui il fait retour de temps en temps, afin qu'on puisse procéder à un nouveau partage,' this seems to imply that a precedent conception of what 'collective property' is existed in the minds of the clan, and that in consequence of such a conception the surrender of the holdings became required by custom. But it is impossible to suppose that any distinction of the kind was even vaguely understood: exchange was the custom because it gave every one an equal chance; not because the tribe realised the idea of a joint-property, which, in the juristic nature of things, was capable of being recalled and redistributed. Every tribesman knew that he had joined in conquering or seizing a territory, and that he would fight to keep his hold on it. He acknowledged that his chief's word was his law, and that the share allotted to him and his fellows must be observed. His sense of right to his own allotment would make him equally ready to fight for it; and if asked why? he would in all probability reply, because his clan had conquered it, his chief had allotted him 'his inheritance,' and he had cleared and ploughed up the land.

Putting aside the temptation to read modern juristic notions between the lines, it would seem that the right to land grows

¹ *Propriété Primitive*, &c. p. 5.

out of two ideas; one being that a special claim arises, to any object, or to a plot of land, by virtue of the labour and skill expended on making it useful or profitable; the other, that a claim arises from conquest or superior might. In a very early stage, a body of primitive settlers comes to a 'boundless' area of wooded or jungle-clad but fertile plain. As each household group laboriously clears and renders fit for cultivation a certain area, the father, or the united family, as the case may be, regards the plot as now connected with himself or themselves specially, in virtue of the labour expended on it. This claim is recognised by all, because every other member of the clan has the same feeling as regards the field he has cleared. The feeling of right is further developed when each holding is the result not merely of a random choice, but of some regular procedure of allotment by the clan chief.¹

If there are no other human beings to contest the ownership, although the clan occupies a more or less compact general territory, the sense of any wider or more general clan-right is not as keen as it afterwards becomes when other, very likely unfriendly, clans lie all round, and each has to maintain its own limits against aggression. The idea of clan-right to the territory as a whole—both the cleared holdings and the waste which is grazed over and from which wood is cut, must soon, in the natural course of events, become definite. Not only is there sure to be some clan collected together at the time of first settling,² but the families, naturally and by choice grouped together, must help each other a great deal in clearing the jungle, building the cottages, digging the tanks or wells, and in many similar works. Hence, even if there were no general sense of kindred, which long residence together has fostered, there would still be a certain sense of union. The right to the holding selected and cleared by the family is, however, naturally superior to the clan-territorial claim, being more definite: it is, in fact, dependent on the sentiment which originates the notion of

¹ The sentence of the Patriarch and the result of casting lots, are both of them in early times, vested with a semi-divine cogency or significance.

² I refer to the first general (Dravidian) movement, probably unopposed, to a permanent agricultural settlement.

'property' in general—that which a man has 'made' or rendered useful and profitable he has a special title to enjoy.

Professor Kovalevsky, in his interesting lectures on the development of the family,¹ has quoted the curious reflection of Rousseau: 'Le premier qui ayant enclos un terrain, s'avisa à dire "Ceci est à moi," et trouva des gens assez simples pour le croire, fut le vrai fondateur de la société civile. Que de crimes . . . n'eût point épargné au genre humain celui qui arrachant les pieux ou comblant le fossé eût crié à ses semblables: "Gardez-vous d'écouter cet imposteur; vous êtes perdus si vous oubliez que les fruits sont à tous, et que la terre n'est à personne."' The natural sense of the community unfortunately was that the person who did tear up the stakes of the fence or did fill up the ditch would be an enemy and a wrongdoer; everyone consented that the clearer of the waste had a real claim to the field he had made. The sentiment is observed among all tribes when they have made a permanent agricultural settlement; it was, in fact, Nature herself who prevented the early existence of the philosopher who should cry 'Beware of such a supposition,' though it arises instinctively.

The naturalness of such a feeling of appropriation is the more obvious because in early times there is nothing to prevent its action; there is no prior claim nor obstacle to the customary allotment by the clan chiefs: the wide expanse of virgin jungle is as free as the air or water. The modern Socialist asks as against the present possessor of a farm or a park, 'Although you have spent money in draining, planting, and, in fact, in creating the utility and value of the plot, what right had you to deal at all—for any permanent purpose—with that particular section of the surface of the national land?' He considers it an economic wrong that the growth of custom and law should have allowed a permanent individual appropriation. But, in truth, it is only the operation of an instinctive feeling of human nature. The early tribesman, under sanction of custom, appropriated his field, or his share of the tribal land, as he would appropriate a tree to make a canoe or a plough.

But very soon another factor comes into the question: when

¹ *Tableau des Origines et de l'Evolution de la Famille*, &c. (Stockholm, 1890), pp. 50, 51.

tribes multiply, and, moving east or west, come into conflict, and one is superior in energy and in power of combination to another; the possession of land no longer remains a matter of first appropriation in the absence of all other claims. Might becomes right; and conquest gives a new title. The title by 'first clearing' is overborne by the title by conquest, notwithstanding that the claim by first clearing will probably be acknowledged by the conquerors as among themselves. This claim by conquest and superiority the next generation will euphemise as the claim by 'inheritance.' It is curious to observe that a people so advanced as the Romans, and so apt to make that legal analysis of things which has influenced all subsequent views regarding ownership, not only conceived the idea of *res nullius*—i.e. crude material or potential property as yet unappropriated—but they boldly held that when war broke out the lands and property of an enemy reverted to a state of nature and once more became *res nullius*. The conquerors began over again the process of customary appropriation.

Out of this new growth—the right by conquest or 'inheritance'—some further factors in the making of land-tenures are sure to spring. In India, among early tribes like the Mongoloid and Kolarian (as far as we can trace their habits), the cohesion was extremely loose, and the idea of centralised rule quite wanting. This appears to have been gradually improved upon by the Dravidian races; but it is later conquering tribes like the Aryan, the Indo-Scythian, the Jat and the north-west frontier tribes, that had the best developed powers of combination and organisation. Hence we find ideas of the right of a whole clan to a certain territory, in which every member has his share or his equal interest; and we find families expanding into clans, and still keeping up something of this same notion.¹

But it is also a further phase of clan development, under the necessity for military discipline, and organised movement, that the patriarchal rule of chiefs gives way to a system of king

¹ In such a case the sense of individual appropriation exists side by side with the sense of the collective appropriation; and while each gets his separate share, the custom of periodical exchange of holdings is the expression of the *equal right* which results from the unity of the whole body.

and barons, or subordinate chiefs. And no sooner are these dignities acknowledged than there arise various kinds of territorial lordship, which may take the form of a kingdom, or local chiefship, or a sort of manorial holding of smaller portions of land. This right of lordship over an estate has nothing to do with the question of labour or expense incurred in clearing and cultivating the soil, but is an over-lordship, based on caste or family superiority, attained by conquest or otherwise; and it expresses itself by taking a share in the produce raised by tenants, dependents, or a pre-existing body of agricultural settlers. It is made tolerable to the now subordinated original settlers by the degree of protection which the over-lord, even in his own interest, affords to the villages from which he derives his revenue or income.

So far, then, we have the two natural and often concurrently active factors, the sense of right by 'occupation' and 'first clearing,' and the right by 'inheritance'—a term which we shall now understand without further comment, and which has already met us in so many forms as *mirāsī*, *wirāṣat*, *wārīsī*, &c.

It is hardly possible to avoid the suggestion that the main distinction between the *raiyatwāri* and the joint or landlord village (these terms being only provisional, and adopted for want of better) is in some way the outcome of these two principles. The former originated with early unopposed tribes, who, like the Dravidian had strong agricultural instincts and had passed out of the nomadic and pastoral stage: their struggle was more with the forces of Nature than with any human enemies, and their idea of right was that they were *bhūmihār*, the original soil-clearers and settlers. The latter originated with 'inheritors,' who acquired the lordship of existing villages, or founded new ones in the same sense of superiority. If, as in the case of the Jats, the clans were not only superior in conquest and adventure, but also addicted to agriculture, they would combine both feelings of right to their settlements.

Granted, however, such a natural foundation for 'ideas of ownership' in the abstract, it is a further question whether either kind of right is understood to attach itself to the individual, or to the family, or to the whole clan settled in one compact territory.

We can attempt to judge of this by the aid of the actual cases of clan-settlement, family-village, and separate-holding village which we have had before us.

(2) *Collective and Individual Ownership of Village Lands*

This last remark reminds us that some preliminary explanation is necessary to connect the question of the form of ownership with the existence of land-holdings in *village groups*. We remember, in the first place, that the village group does not in any case represent a fixed circle of kindred extending to any particular degree. We talk freely of a 'village community' as owning the land 'in common,' but it will at once strike us on reflection, that the formation of village groups of families is not necessarily connected with any idea of soil-ownership at all. In the case of some clan-settlements, we have seen that there may be a degree of unity maintained over the whole area, or at least over its major divisions, and that villages are quite a secondary, almost accidental, result of the fission of the area. In India, south of the Vindhyas, again, we see an almost universal *village* formation, but there is no claim, either joint or individual, to the ownership of the whole village;¹ there the village is a group formed of several families who settled, or are now resident, together, but whose contiguous holdings within the village boundary are independent, and always have been so, as far as any evidence goes. And where, in Northern India, the *village* as an area of land is also the essential feature, not a casual result of the fission of a clan-area), and where such a village is jointly owned, it is really that the 'village' is the limit of the original acquisition by a single person, and continues as the sphere of ownership of a possibly numerous but still singly descended close-kindred which has succeeded by joint inheritance to the right of the founder or originator.

In the first instance, no doubt, the aggregation of holdings in a 'village' of limited dimensions, and the establishment of a central (perhaps rudely fortified) place of residence, is, under the circumstances of most Indian provinces, a purely natural

¹ The cases in which such an ownership had probably at one time existed or still exists are so far exceptional as not to invalidate the statement in the text for present purposes.

condition under which permanent cultivation can best be established and maintained. There are districts where the nature of the ground or other conditions render any considerable aggregation either of fields or of residences impossible; but in the plains, let us say, in a moist and densely-wooded region, the erection of a group of dwellings on a fairly elevated spot, the united clearing of an area to give breathing room, and the united defence of the cleared fields against the depredations of wild animals—all these things imply the aggregation of families in a village; and the aggregate must be limited in size, or the machinery for its self-government and the supply of its needs would fail to act. Or again, in a dry climate, a similar combination would very likely be necessary with reference to providing or utilising the means of irrigation. But in the second place, the fact that kindred, especially in a tribal stage of society, naturally keep together, and that as the groups expand they must necessarily separate and form a new series of similar aggregates, these facts, and others like them, also furnish the conditions of village formation.

But there is nothing in the causes of such formation to suggest any new form of ownership as resulting from their operation; and as a matter of fact, and looking to the largest number of instances we can recall, we shall find that the sort of ownership which is actually found in villages corresponds to one or other of the following three heads:—

(1) The family or individual holdings are all separate within the village.

(2) The village is an accidental aggregate of kindred families; and the joint ownership or collectivity, such as it is, is in the whole clan; where any further (real) joint ownership appears, it is between members of the 'family' or close kindred.

(3) The village is really the limit of the acquisition, by whatever means, of one founder or originator;¹ and the joint-

¹ It may happen that one geographical village may contain two originally separate groups, but in that case all the phenomena of joint-ownership will exist only within the groups. Where a village has come to be miscellaneously owned, by the intrusion of various strangers there is no joint-ownership at all. Should outsiders have been formally admitted to shares, then there is the fiction of family membership.

ownership now appearing is due to the main branches representing, according to universal custom, the three primary grades of descent, and to such families, descendants of these, as remain joint among themselves being subject to the operation of the 'joint-family' custom and the law of joint-inheritance.

We sometimes find it insisted that the order of these *three* modes ought to be reversed. I do not, however, desire, by placing them as I have done, to imply *any* theory of sequence of development.

It will be well, however, as such a theory has been propounded, to consider the modes of ownership in connection with it. We may readily admit some plausibility about the general idea that (1) the *joint-ownership of land by a whole clan* is natural as a first stage; that (2) this dissolves into the ownership of isolated joint-families; and, finally (3), that family shares are lost sight of and there remains nothing but the modern individuality of title to the several holdings. But I do not think that the evidence in India will really bear out such a succession. For whatever clan-ownership can be asserted, it is not of a kind to change into or produce the real joint-ownership by a family. I should rather say that the process was just the reverse: that the earliest idea was appropriation by the individual—i.e. the father of the family, whose power was a sole and unrestricted power; that this gradually develops into an idea of equality between all the sons in succession to the father's property, which again leads to the restraint of the father's power to deal with ancestral land, and so to the idea of a joint-ownership by a close-kindred of which the father is the head. When a number of such families of common descent, kept together by circumstances, continually fighting side by side and conquering together, have acquired and settled on a new land, they constitute a *clan*, and there is, further, a kind of collective sense of right to the whole, which is over and above the family right to the several lots that fall to each, and is largely dependent on the sense of unity which clan life naturally produces, and on the sense of the right of every member to share in the common acquisition.

But let us briefly recall and analyse the kinds of tenure which we have found to result from the settlement *where a clan-union*

is still to some extent maintained. The details have already appeared in Chapter VI.

We may pass by those early Kolarian and Dravidian clan settlements which resulted in the *raiyaṭwāri* village, because we have no evidence on which to found any assertion of collective ownership among them.¹ Whatever indications they afford of growth of ideas of ownership relate to the family and to the father of the household and not to the clan as a whole.

The clan settlements of Upper India, which introduce us more directly to the question of clan-ownership, are some of them of comparatively late date, but they show tribal ideas in full force, and, at any rate, are the only examples of clan-settlements which afford us any details as to the principles on which the territories occupied were held. It will be remembered that we have two forms of such settlement—(1) of already formed clans; in this case clans with a strong sense of union under patriarchal authority; (2) of clans grown up on the spot out of a single family of settlers on a wide area; so that in this latter case we had the family estate, only expanded in a manner and to an extent that was impossible in the limited area of an ordinary village, and, because of the blood connection of the cultivators throughout the whole area occupied, it preserved some of the features of a clan-settlement.

It is not known, in either case, whether the settlers had had any experience of permanent cultivating ownership of land in any previous home. It cannot be said with certainty that, for example, the frontier tribes, on settling in our north-western districts, emerged for the first time from a nomadic stage and took to agricultural life; probably not. Nor do we know how far the Jats had any experience of settled agricultural life before they came to India. But all tribes possessed herds and flocks, and they necessarily possessed the idea of individual or family property as far as moveables were concerned.

Our north-west frontier tribes certainly exhibit a strong sense of territorial right, which is necessarily a collective one,

¹ If, too, we may take such surviving cases as the Kāndh and a few others as representing very ancient custom—and they very probably do so—they do not show any collective ownership in the clan; and even the 'family' is not regarded as collective owner.

and exhibits itself in the acknowledgment of an '*ilāqa* for the whole body and of certain sub-territories for clans and minor clans, each of which certainly constitutes a unit area. These territorial areas correspond to the main branches of the family of the founder with whom the clan originates. Consequently, the names of the primary divisions follow those of the sons, grandsons, and great-grandsons of the founder respectively. All later and now existing families belong to one or other of the thus established groups and sub-groups, and take shares within the territory belonging to each: there are no new designations given to subsequent divisions. Only, should a certain group move off to another locality, then the whole process would begin anew.¹

Two sentiments appear to have taken hold of the tribal mind: the territorial right to the main divisions as so many units or wholes; and the right to a specific—usually equal, but sometimes ancestral—share within the proper unit-territory. The action of the tribal heads at the time of the settlement seemed to go no further than allotting the primary or major divisions or territories: inside each, the further allotment of actual holdings was made by the minor or sectional chiefs. The space relatively required by each recognised group was roughly estimated by counting the number of single shares which represented the total population of the group. The whole process seems designed to provide for the separate enjoyment of the individual family share.² The shares being intended to be as equal as possible, equality was further ensured by the custom of periodical exchange, which, however, did not apply where the holdings were specially prepared for irrigation, or, in any case, there were circumstances of expenditure which tended to evoke

¹ It is true that sometimes a new series is begun within the lowest original division, called *khel*. We may have the *khel* divided into *kandi*, and that into *thal*—a new series of three grades. This, however, only emphasises the principle. Evidently, here the tribe is old and has much expanded, so that it is convenient to begin again; the lowest of the original divisions has become so big as to be itself a clan.

² In dividing a large surface into a great number of small equal portions, the process is obviously facilitated by first making a few large divisions to start with.

more particularly the natural sense of individual right to the plot.

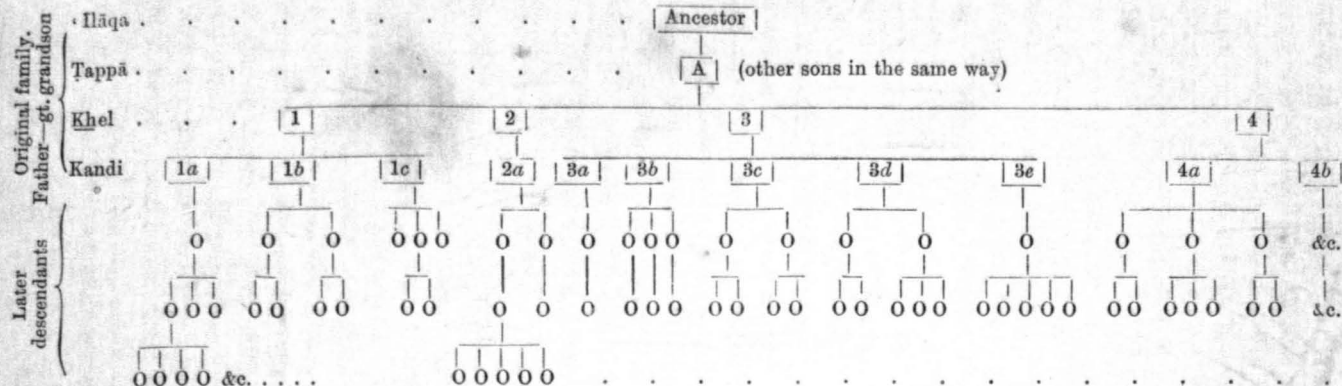
The shares were assigned on one of two principles: either (1) there is a *per capita* distribution—i.e. every man, woman, and child was counted, and each household thus received the number of shares which the count of heads indicated; or (2) the ancestral shares were calculated according to the pedigree table, in descent from the heads of each recognised group. The lots might consist of various bits of different kinds of soil scattered through the whole major-divisions (a *ṭappā*, or a *kheḷ*) dealt with. Diagram I. (on the next page) explains this.

It is quite possible that groups of close kindred will cultivate their shares jointly; it being more profitable to do so than to split up the land into small severalty holdings.

As regards the tenure of the whole major division, nothing in the nature of 'holding in common' ever appears; for in any real sense, 'common holding' implies that all should join in cultivating as large an area as necessary, and that each should then receive a portion of the harvest suitable to his wants, without thought of any particular share calculated on any principle whatever, and without thought of the proportions between the amount of sustenance required and the actual amount of labour and capital, or the number of cattle, contributed to the common task.

Nor is there any evidence of 'joint-holding,' save for special reasons, in special plots of land. I am now speaking, it will be remembered, of the joint-holding by a whole clan or clan-section. Whatever the rule of distribution, partition, or allotment on the ground of the several holdings, appears to take place as soon as may be after the settlement of the clan. Some portion of the area may be left undivided, either because it is not yet wanted for cultivation and is reserved for future extension of the family holdings, or because it is grazing ground, or jungle for wood-cutting, which would be rendered useless by division. If there is any area of cultivated land left undivided, it is for special reasons, and the shares are defined though not partitioned. On the other hand, some kind of 'collective right' may very reasonably be asserted, which is something more than that mere territorial claim which every nation, even under modern conditions of life, feels with regard to its own country. The clan has not only its

DIAGRAM I



I. Tribal sharing (*khulāvesh* or *per-capita* method). There will be as many *tappā* arranged as there are sons of the founder, A, B, &c. [Only one of these is followed out in the above table.] *Tappā* A will be divided into four *khel*, which will contain 3, 1, 5, and 2 *kandi* respectively. Here the descent of the first rank, counting from the ancestor, ends. All the existing heads of households at time of settlement (represented by the last complete line of little circles) will be counted, and each will get such a number of unit shares as represents the number of heads in each.

II. Sharing by the 'ancestral' method. Here the division up to the *khel* areas will be as before; but *khel* 1 will be divided into three equal portions for *kandi* 1a, 1b, 1c. The whole of *khel* 2 will descend to the *kandi*, as there is only one. *Khel* 3 will be equally subdivided among five *kandi*—3a, 3b, 3c, 3d, 3e, and so on.

And coming to the lowest line in the scale, the whole *kandi* 1a will go equally to the three sons; that of 1c will go between two surviving descendants, two being deceased without heirs. So with *kandi* 3a, the one son will take the whole, while 3c will have to be divided among four equal descendants, so that the shares or lots actually held will be very various; the families with fewer members will have larger holdings.

Supposing the *tappā* to be 40,000 acres, the four *khel* in A would have 10,000 acres each, and *kandi* 1a—1c would have each 3,333 $\frac{1}{3}$ acres, *kandi* 2a would take the whole 10,000, *kandi* 3a—3e would each get 2,000, and so on.

Under the first method (which is common) the *khels* would probably have unequal areas, roughly proportioned to the number of houses in each: *khel* 3 having many descendants might be much larger than *khel* 2, for instance. Supposing 15,000 acres to be the area, as the *khel* 3 has eighteen existing houses, each containing (say) five souls or a total of ninety, then taking ninety shares of 166 $\frac{2}{3}$ acres each, *kandi* 3a could take five (for its one house); 3b would take fifteen, and so on.

general boundary, which it would be prepared to defend resolutely as a whole, but every clansman has an indefeasible right to a share in that territory.¹ They will also combine as regards the responsibility for land-revenue and similar charges. All this, however, seems to me to point much more to the sense of kinship and personal obligation to mutual help than to any idea as to the soil being owned jointly. Union is the life of a clan; each section of it must be prepared to send its quota of fighting men to the field, to pay its portion of the contribution necessary for defence, and so forth. Moreover, there is the patriarchal feeling of the obedience due to the chiefs. In a family, as distinct from a clan, there is a recognised bond, which is that of felt blood-relationship, and may be accompanied by a system of joint inheritance and co-ownership. This kind of connection ceases to apply to purely collateral branches, who are only connected at a point a long way back in the pedigree table, and in the person of an ancestor whose very name is probably unknown to a number of the families; but if circumstances have maintained a large circle of ancestral connections through a whole clan, the connection of one family with another is kept up by other feelings: clan-union and all that it implies has survived. I can see no evidence that this ever amounts to a real joint-ownership of the territory by the entire body, such as is observed when a number of co-heirs have each (in theory at least) a definite fractional share of an estate inherited from one original owner and possibly held without actual partition.

This question of joint-ownership by a whole clan is further illustrated by that other case of clan-settlement illustrated in Chapter VI., which is in fact the converse of the one just described: the clan does not arrive ready made, but a family obtains a wide area, and expands, upon it, into a clan. The districts that presented the requisite conditions favourable to such a development are only occasionally to be met with. There must have been a wide extent of suitable land (sometimes twenty to fifty square miles or even more), and circumstances of position such that the entire area has been preserved to the group without disturbance all through the long period during which only

¹ See p. 49, *ante*, as to the effects which physical conditions of agricultural life have on the form which the tribal union takes.

a limited portion could have been actually occupied, and up to the time when the multiplied families had become numerous enough to fill the whole. But here again, judging from the instances which have already been given, though the first family were evidently in a stage of society in which they regarded themselves—father and sons together—as joint-owners, it can hardly be said that this sense of joint-ownership continued as between the more and more distantly related families that grew up and branched off, but still lived on part of the same great area. We observe some cases in which no definite sections of the area corresponding with main branches of the family are demarcated. The *whole area is held directly in separate household-holdings*, usually consisting of so many ‘ploughs;’ and they appear to have been added on to the first centre of cultivation, one by one, as the different male descendants came to an age at which they needed their own separate home with its farmland. Nevertheless, a certain union is maintained all over the estate; but the union appears to consist essentially in a clan-feeling of readiness to defend the common interest in this settlement, and to resist any intrusion of strangers. In India such a union necessarily involves the acceptance of a joint responsibility for the revenue demanded by the sovereign. Sometimes we have the case of a number of smaller compact circles of new cultivation, established round, and in extension of, the original location; and as the original village-site becomes too small to accommodate the new families, fresh hamlets spring up in the centre of the blocks of new cultivation. These in time become completely separate villages; and the only remaining bond of union is some social and ceremonial connection with the parent village on occasions of rejoicing or mourning, of appointing a new headman, and the like.

In other cases of this kind we find that the whole area was, at an early stage, *divided into certain large primary blocks* which represented the sons, and perhaps, further, the grandsons, of the original family; here anything that can be called union is maintained chiefly within the several major divisions. And it depends on the nature of the soil and the conditions of agriculture which have suggested a certain form of holding what sort of union is maintained. Sometimes the plan of cultivation,

within the primary divisions of the area, may have been one according to which each connected group holds its land in several portions—as many portions, in fact, as there are recognised kinds of soil. In that case, groups which under other circumstances might have formed distinct villages must remain intermingled, by reason of the scattering of their lands; and they arrange to distribute the burden of the revenue and expenses by treating the holdings as representing certain artificial measures each containing a certain number of actual measures of each quality of soil, first, second and third—good, bad, or indifferent. Here, again, the household-holdings are very probably minutely subdivided, and are held in complete severalty; but these groups and sub-groups cannot appear on a map as compact local blocks. The groups are only separated in the official records; and the closely connected families retain a joint responsibility as among themselves and for the joint estate they represent. This arrangement will be easier to remember by reference to Diagram II on the next page.

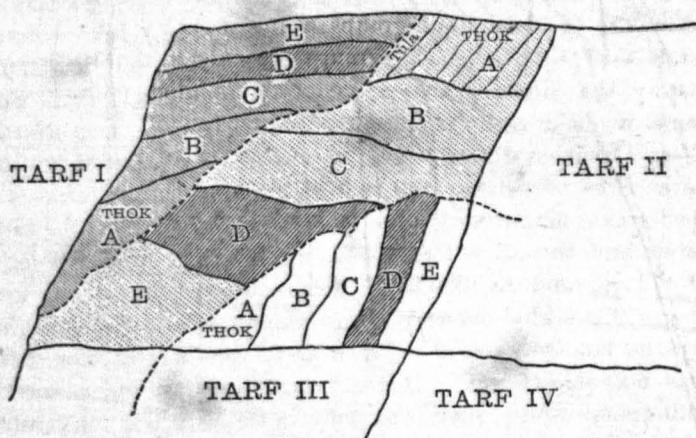
It is chiefly in cases of this kind that we look for those peculiar *bhaiāchārā* arrangements of equally valuated holdings which are characteristic of the clan-expansion.

Thus, in the case of a 'clan-expansion area' the nature of the soil and other circumstances may produce either one of the three varieties we have successively noticed in this class of settlements. We may have (1) the whole of a large area (*e.g.* cases in the Jihlam district, p. 270) held directly in a great number of separate individual or household shares; (2) the area represents the original location of a parent village, with numerous subsequent hamlets, as offshoots from it, developing into separate villages (*e.g.* South-eastern Panjāb, p. 276); and (3) the more complicated *bhaiāchārā*, where the holdings are, within certain main subdivisions, all intermingled (*e.g.* the Mathurā district villages, p. 282). How joint-ownership, beyond the ultimate groups of closely connected relations, can be said to exist in these large areas, I am at a loss to understand. What really exists, or formerly existed, is a personal sense of clan-connection which facilitated distribution of holdings, local government, and the like, while it induced a general willingness to accept a joint liability for the revenue.

DIAGRAM II

Partition among descendants of four sons (of the Founder) whose areas (*tarf* I-IV) were separated in the lifetime of the Ancestor. The *thok* are the groups by sons of the *tarf* holder; the *tūlā* are the sons of those again: all existing houses are aggregated under one or other *tūlā*.

Tarf (I) alone is shown entire. We suppose it to include holdings for five *thok* (grandsons of founder) A, B, C, D, E. We assume also that the managing committee recognise three qualities (having different practical



values) of soil (white, and shaded in two degrees), but in many cases there will be more. Each *thok* for equality's sake must take part of its allotment in each kind of soil. Each such part has again to be subdivided among as many *tūlā* as the *thok* contains. The allotment of one *thok* (D) has been made darker so as to show more readily how the *thok* lands lie about, and hence how the *thok* cannot form separate compact 'villages,' at least not until in course of time exchanges of land, sales, and other accidents have brought their holdings more within a ring fence.

I venture to doubt whether, on the basis of the Indian phenomena alone, we should ever have heard anything about a common or joint-ownership of a whole clan, had it not been for the fact that, in one way or another, these large areas do tend to split up into smaller groups; and, as the bond of clan-union is forgotten under modern conditions, the several local sections are assimilated in many respects with that larger class of real 'villages' which began as the estate of one founder, or one or two conjoined. These latter villages, though never held *in common*, may really be long held *jointly*; as long, that is, as the existing households are sufficiently closely related. Beyond a certain limit of blood-relationship the joint-holding never goes; and when the primary divisions (*pattī*, *thok*, &c.) have become established by partition in the earlier stages of the family history, the subsequent families in each group may again continue to hold their land jointly within them. Our North-West Provinces Revenue system was mainly adapted to this latter class of village; and, naturally, the revenue terms and the forms of land-records were also adapted to it. But the same terms and the same forms were applied also to all varieties of village, and to the larger (clan) areas, where there were shares of one kind or another, and where the joint responsibility for the land-revenue of a given area, whether large or small, was not objected to. Hence a much greater appearance of uniformity resulted than is actually in the nature or constitution of the estates.

CONSTITUTION OF THE 'FAMILY'

This leads us directly to consider the constitution of the family; for it is on this that the existence of joint and co-sharing forms of village-estate really depend. Whatever the source of the idea of ownership, it is obvious that the right to any kind of property may be felt to reside in an individual—*i.e.* in the head of the family or household; or, again, that it may reside in what we call a 'joint-family'—*i.e.* in the head conjointly with his sons, grandsons, and great-grandsons, if he lives to see them.¹ When-

¹ It is hardly necessary to remark that with the superior agricultural tribes leading a simple, healthy, outdoor life, where polygamy is rare and

ever we see an actually joint and undivided family holding, whether extending over a whole village or a smaller area, it will always be found to consist of members of the close-kindred.

Every reader of Indian books is familiar at least with the term 'Hindu joint-family.' But it is perhaps hardly realised that, though this is in itself an ancient institution, it need not be primeval, nor, in all probability, was it the form of family-union recognised by the earliest tribes. As we know it in the text-books of Hindu law, it bears the marks, I may say, of legal elaboration. If, for instance, we compare the customary rules of succession and those on the connected subject of adoption (*i.e.* artificial succession) and the right of the father to alienate ancestral land, as acknowledged by the various Jat, Gujar, and other agricultural tribes of the Panjāb, we observe that they differ in many respects from the rules of the law-books; and also, quite essentially and in principle, from the inheritance rules of the Muhammadan Law. Still, the idea of the joint family exists; and that is why there can be so much general similarity between the Aryan-Hindu, the Jat, and other superior tribes, in their village institutions.

But if we go back to the still earlier customs, of which vestiges remain among Kolarian and Dravidian tribes, it would seem that the head of the family is much more like the sole owner and representative of the share in the tribal possessions—whether divided, as in our Indian examples, or not. In the Welsh tribes it has been observed that as each son came to a certain age he had a claim to an additional maintenance-area of land, which he had, not as a share of his father's possession, but as a member of the clan. The father's authority, at a certain stage of tribal development, is in fact regarded as almost of divine right, and is doubtless the origin of the great influence

confined to the few wealthier owners, and early marriage the rule, it is no impossible thing to find, say, a great-grandfather of eighty-eight years, a grandfather of sixty-five, a father of forty, and a son of nineteen—himself just married, all living on ancestral land. In the earlier ages what reduced families so much was the continual loss of male members in wars, feuds, and forays. Local famines and epidemics must have been rarer because population was smaller and so localised; but when they occurred, as there was no means of combating or relieving either, their effects must have been very severe.

of the tribal and sectional chiefs and patriarchs which lasts long after the power of the head of the individual family has become much restricted. In other words, the *patria potestas* is much more complete at one stage of tribal life than it is at another. In the developed Hindu joint-family, it has almost disappeared except in certain ceremonial and religious aspects. The head of the close-kindred or family is now little more than the manager and elder member of a coparcenary body. Every son, as soon as he is born, has an inchoate interest at least in all the ancestral property. But in earlier (and non-Aryan) custom it was different. Among the Kāndh tribes, who evidently represent a very early (and probably little changed) tribal system quite unconnected with the Hindu law, we find the father regarded as the sole owner during his life; and this would imply in many cases a long continuing ownership in the presence of adult sons and grandsons. But here we observe that the rule has already been established that, on the father's death, the sons will all share equally. There is no primogeniture, which indeed appears to be a custom connected with some dignity or chiefship, and not to prevail in ordinary (not joint) families under their customary law.¹ In some tribes, indeed, it is the youngest who succeeds to the paternal house and homestead, the elder sons having established separate houses elsewhere, possibly on a certain holding that they were entitled to claim as clansmen, irrespective of what their father had.² Where, however, we find tribes of an historically later date, and therefore (presumably) in a later stage of progress, like the Jat or the Panjāb frontier tribes, there it is not surprising to find that the family-holding is already completely regarded as joint-property: a custom has been established that the house-father should not make an alienation of the 'inheritance' to the prejudice of his descendants and that a sonless co-sharer should not adopt an heir except from among the near agnates, and even then with consent of

¹ Primogeniture seems to be connected with the growth of the joint-family, because of the desire to keep someone as the head and representative where the divided members do not themselves become so many separate heads. This sentiment is also counterbalanced by the affection of a father for his 'youngest'—'the son of his old age.' Manu, it will be remembered, suggests a special share to both (p. 305, *ante*).

² p. 192, *ante*.

the rest. From this it is not difficult to pass to the stage at which a body of coheirs remain joint for a long time. The causes of this are various. If the family is of any pretensions, all the descendants are jealous of their equal representation of the dignified founder (equal, *i.e.*, in their proper grade of descent and kinship). And they avoid division for fear lest one or the other should gain an advantage over the rest. Sometimes it is that the land can better be held jointly because the greater part is in the hands of tenants, and the rents are as easily divided as the tenancies themselves. And in a joint-holding among cultivating proprietors, what usually happens is that various members have *de-facto* holdings, which are theoretically liable to be readjusted (partly or entirely) on a formal partition; some of them do not wish for change, and resist a partition as long as possible. Such a joint-holding, as I have before remarked, never continues outside the circle of the close-kindred. At least I have found no case on record; and if instances exist it would be extremely interesting to have them detailed and the circumstances of the holding stated. We are constantly, however, meeting cases in which the larger groups of shares have been separated to a certain degree, and there are groups of close-kindred still holding jointly within the first divided areas.

Just as I have suggested that one of the main types of village (the *raiyatwāri*) is connected with the idea of ownership by 'first clearing' and conversion of the jungle, and that the second type exemplifies the principle of right by superiority or conquest, so, on the further question of the right as residing in the joint-family or in the single head, it may be suggested that the *raiyatwāri* village seems to depend originally on the idea that the house-father is the separate and sole owner, whilst the *joint-village* represents the more developed idea of the joint-family and the limitation (not to say extinction) of the *patria potestas*. In the former case, the father may have remained very long in possession of the holding after the sons and grandsons had grown up to an age to cultivate land for themselves; and both on this account and on account of the growing inability of the elders to take an active part in the cultivation, there must have been a temporary partition if the holding was large, or the acquisition of fresh lands by the increasing junior

families till (on the limit of the direct descent being reached) a final partition was made (among second cousins). Thus there would be a continuous tendency to separate off the holdings; and as every village was composed of a group of such separate holders, and there was no one person who was regarded as the owner of the whole village, there was no possibility of a body of heirs having joint rights over the whole. At the present day, when Hindu law has introduced the Hindu family ideas to a great extent, the change has not affected the *raiṇatwāri* village; it is still the individual holding that has to be partitioned among as many of the co-sharers as can get a sustenance out of it: if they are too numerous, some of them must take a compensation for their small shares, and go elsewhere. But in the case of the joint-village (*i.e.* in one numerous class of cases) the ownership of the whole village has originated with (or passed into the hands of) one man, and it is probable that a partition will have been made as soon as the first series of descents from the ancestor was accomplished. The *patti*, *thok*, and *ṭulā*, or whatever other names are used locally, will have been demarcated on the ground, and it is only the subordinate families within each that remain joint. This is at least the case with the typical *pattidāri* form of village; and it evidently marks a stage where the joint-family has developed fully, and where there is often some aristocratic feeling, and pride of family and caste. The curious 'Āzamgarh joint-villages cannot be explained on any other principle; we have here a number of families descendants from Rājput over-lords who acquired a right over a series of villages already to some extent marked out and existing.¹ But the joint-families and bodies of coheirs of the last lords declined to fit into these shells: they did not accept the village-areas as they stood, and assign them, one by one, to certain groups of connected families. They made a number of shares, parts of which were found in two, three, or more of the villages. The family groups can only bring their estates together into one whole on paper; and the lands of each such major-group are now divided into many varying fractions, because

¹ The over-lord families may have added many new villages in the course of their growth, but there evidently were a number of originally established villages to start with.

of the sense of *family* property existing : there is no democratic equality of a whole clan.

In that other class of joint-villages which have something of a clan-connection, and a more 'democratic' constitution, we may also trace the joint-holding to a family ownership, although in this case it is modified, by a larger sense of equality of all later descendants, which savours rather of the clan-feeling than of the strict joint-family. Still, in the Jat settlements and in those of non-monarchical and non-aristocratic tribes whose villages must for convenience be placed in the joint class, the people certainly show a sense of family-property ; their custom, as I have said, always objects to alienation by the head of the family ; and adoption, as defeating the expectation of other agnatic heirs, is more or less restricted. Such customs cannot be explained, except on the basis that ancestral land is regarded as belonging to the whole family. At the same time, there is a desire for equality, and a consequent tendency to disregard the exact fraction which depends on the grade of descent, as well as on the number of sons, &c., in each house.¹ When the whole land has become fully occupied, this desire cannot any further be given effect to, because there must necessarily come a point at which, of two existing holdings which we will suppose are equal in extent and value, one is inherited by a single son and the other is inherited by seven sons jointly, and no more land is available in the village or estate. It is only in the earlier stages of the growth of such a community, when waste land is still abundant, that the seven sons could add on enough out of the waste to make each of their holdings, if not quite equal to that of the more fortunate sole-heir, at least sufficient for their wants. So in some communities (usually holding large areas) we find the ancestral descent only followed in making the *primary divisions*, when it was the natural and indeed the only possible basis of allotment ; after that, the later families have all acquired holdings, added on one by one, as the numbers and general requirement, of each indicated.

¹ In fact, in some of the old *bhaiāchārā* areas, or 'cultivating fraternities,' we find exactly the same idea of equal holdings for all existing households that we found in the Panjab frontier tribes under the *per capita* or *khulāvesh* custom. (Cf. Diagram I. at p. 410.)

To resume the general conclusion shortly, I believe that individual ownership of the personally cleared and prepared holding in the tribal territory is quite consistent with the customs of tribal society at an early stage. Actual joint-property does not exist among the whole clan: at best, there is an appearance of collectivity caused by the common origin and close defensive and offensive alliance of the whole clan; by the equal right of everyone to share in the land obtained by the united exertion of the clan; and by the obligation to obey the patriarchal authorities, and to submit to that equalisation of holding in the tribal territory to secure which custom decreed that all holdings should be periodically exchanged.¹ Actual joint-ownership is exhibited in the records of the Indian villages, as far as I can discover, only (a) among the *families* forming separated groups on a clan territory, (b) where there has been one owner of the whole village and his direct heirs continue to hold it without partition, (c) when the cultivation of an entire village has been undertaken by a group of colonists who prefer to arrange for each year, or cultivating season, what area or what fields each member shall take up, according to the number

¹ I have seen it argued that joint-ownership by a family necessarily implies an antecedent joint-ownership by a whole clan; but that is on the supposition not only that the idea of the joint-ownership as between a father and his sons existed when the clan began its growth and continued unchanged till it had reached its full dimensions, but also that the same joint idea was maintained through wider and wider circles of relatives so long as the whole body as a 'clan' were able to keep together, there being no limit to the degree to which joint-ownership can extend. Now, certainly it is not possible to assert that the notion of the family as a body of co-owners has never varied; and equally certainly it is possible to assert that we have no evidence in any tribe in the world of any jointness or common estate kept up to an unlimited degree of relationship. There is always a customary limit—usually of three descents, as I have explained in the text. It is possible theoretically that a whole clan may acknowledge a joint-ownership of an entire area conquered and settled by it on the ground of equal right to the acquisition by the united effort, but not because the original family was joint or because the jointness has been continued throughout the widening circle; of that no kind of proof exists. It is equally possible also that the idea of the joint-family may develop at any stage, and under varying circumstances. It has certainly not been uniformly found among any large number of tribes.

of hands, number of cattle, &c., he can bring to the work. The most extensive instance of this kind is that which has been fully explained in Chapter VIII., in connection with the traditional *Vellālan* colonies in the Tamil country. (d) It is also possible that particular plots of land may be always held in a sense jointly by a number of sharers, who may represent even an entire group of village owners, when there is some peculiarity, as for instance when a portion of the village lands are along a river, and so are both liable to be washed away at one time and added to at another, and also to be exceptionally valuable, a little further inland, owing to the unfailing percolation of moisture; here, besides devices of making narrow strips which run at right angles to the river course,¹ we often find that permanent shares are not allotted, but a series of holdings for the year only are arranged, and these are held in rotation by the different co-sharers. In all these cases the shares are perfectly well known.

If there are other forms or cases, of joint-holding, it will be very interesting to hear of them; but it is necessary that they should be reported in their actual form, and not merely called 'joint' or '*zamindāri*' or by some such indefinite name. I have not met with any such.

The theory, then, that all joint villages *begin* with a 'common ownership'—that this, by a process of natural evolution, goes on to strict shares; that, next, the shares become irregular; and, finally, that mere individual *de-facto* holdings emerge; is distinctly contrary to the facts. It is based on a false generalisation from 'joint villages' of different kinds and origins; and it ignores the fact, that when, in any given village, there has actually been a joint holding, followed by a partition into ancestral fractional shares, and these have been transformed into simple *de-facto* holdings, the joint condition was not original, but consequent on a prior *single* title of the founder, grantee, &c., of the village;

¹ This simple device secures each strip having a portion of all the advantages and disadvantages of the situation. If, for instance, the divisions were drawn *parallel* to the river, those nearest the water would be all liable to destruction or injury by flood; the few next would be of exceptional value, being moist and yet safe from erosion; and the furthest series would be all equally deprived of the benefit of moisture altogether.

the joint holding was the result of the joint-succession (on ancestral shares) to that one founder. There is no progress of ideas, or evolution, in the matter.

SECTION II.—SOME PRACTICAL CONSIDERATIONS REGARDING THE VILLAGE FORMS

It has been the argument throughout these pages, that the *raiyatwāri* village is of distinct origin from, and of quite equal importance with, the joint-village of Upper India; and that there is a fundamental objection to theories which, albeit unconsciously, ignore the one as an independent form, and, further, are based on a view which really takes in only one kind or class even of the joint-village. It may be interesting now to take note of some practical results which arise from the difference in question, and also those which arise from differences in the internal constitution of the joint-village. These points of difference have a direct bearing on the value of the 'village' as a form of aggregation in agricultural society with reference to economic and administrative considerations. In the first place, something should be said about the difference in the *modern title* to the land in each form of village, which is the outcome of their past history.

The origin of the claim of the ruler to be owner of the land in India, has been explained, and no further mention of the subject in this place is called for.¹ But the effect produced in former days on the two kinds of village, by the assertion of this claim, deserves to be noted. In the *raiyatwāri* countries² the several cultivating land-holders were in general regarded as, and called, 'raiyat' (*raiyat*=dependent, subject, &c.), a sort of indefinite name which well expressed the actual relations where the landholder had theoretically no ownership-rights at all, and practically (under every settled and well-conducted Native Government) had all the assurance he needed of tolerably certain hereditary tenure, from which ejection was unheard of. The

¹ See p. 207 ff. *ante*.

² It will be perhaps useful to remind the reader that the term includes Bengal Proper (as far as its villages are concerned), the Central, Western, and Southern districts of India, and it practically includes Assam and Rajputāna.

State demands left him enough to live on, but no more; but he was not pressed in a bad season; and, on the whole, his position, if one of constant labour, and little prospect of accumulating wealth, was by no means intolerable.¹ In the Dakhan and in the South, the raiyat was not allowed to sell his land; indeed, it may be questioned whether as a rule it had any market value, as there was no surplus profit or value when the revenue was paid and the subsistence of the family taken into account. Ownership was only acknowledged in land granted revenue-free by the State, and apparently in lands held on the privileged tenure of *waṭan* (land held in virtue of office in a village or district). In the Dakhan also we remember that there were vestiges of the *mirāsi* right, that of superior families who once held the lordship of villages. We are told that even the Marāthā rulers would pay for land held on a *mirāsi* title when it was wanted for any State purpose. It is curious to remark that the privileged tenure was not unattended with corresponding drawbacks; for the rulers appear invariably to have taken advantage of the attachment which these older families, with pride of origin, had to their ancestral lands, to assess them at a much higher revenue-rate than could be taken from the raiyat, whose resource was flight when a rate was imposed which he could not pay.

It might be thought that, as the joint-villages of Upper India were held on a superior tenure and by more energetic and self-asserting agricultural and fighting tribes, and largely by

¹ I may once for all explain that in speaking of the old administrations, I refer to the normal earlier governments under well-established sovereigns, and not to exceptional (and generally later) times of war and turmoil, or to the precarious possession and temporary rule of Rohilla chiefs and the like, or the local tyranny of bad governors—which things, terrible as they were, can only be regarded as occasional at least in comparison with the entire period of history and the entire extent of Indian kingdoms. There have been periods at which, and countries throughout which, the raiyats have been cruelly robbed and oppressed, and land-holding made a burden rather than a profit; but these are abnormal, and it would not be fair to cite them as specimens of Native rule in general. And when I speak of the condition of the raiyat as 'not intolerable,' I mean with reference to the ideas and state of Eastern society at the time. Such a condition of life is obviously inconsistent with modern notions of political freedom or intellectual advance.

bodies having pretensions to dignified descent and general superiority of rank or caste, the State governors would have treated them differently. But in theory it was not so; the village co-sharers were just as much tenants on sufferance of the ruler, as the 'raiya' of Central and Southern India; only that the joint constitution enabled the villages, on the whole, to make better terms, and at least to escape much internal interference, by their power of combining to meet the demands made on them. It certainly was the practice of former rulers to care nothing for forms of tenure, and to take every revenue from actual occupier, irrespective of his proper position as owner or tenant. Indeed, it may fairly be said that most Native revenue systems, before the universal adoption of revenue farming, were as nearly *raiya-wāri* as possible. No doubt, where there was some local 'Zamindār,' who could be held responsible for the revenue of a given area, he was dealt with, because it saved trouble, or, in the case of an hereditary chief, was politically necessary. And so the local 'Āmils or revenue officers found it profitable to deal with districts made up of joint-villages all of one clan, and also with the stronger joint-villages generally, by making the local *Çaudhari*, or the village headman, responsible to bring in the required revenue total. In the Panjāb, to take another example, the Sikh governors took the revenue (here very generally collected in kind) from co-sharer and tenant alike; they made no distinction; the land belonged to the *Sirkār* (the governing power), and whoever held it must pay.

When we find Marāthās according a certain measure of respect to the higher family tenures, it was perhaps because these belonged to (virtually) the same rank or caste as the rulers themselves; and the Muhammadan kings of the Dakhan respected similarly privileged holders, because it was their policy to deal with the cultivators through them; but in the North the Moslem rulers would feel no particular sympathy with higher caste Hindu communities or with Jat co-sharers. When any special village-tenure was respected, it was because of some State grant, or religious obligation, as in the case of Sayyad communities or others which it was politic to preserve or countenance.

While the State theory did not distinguish, the people them-

selves cherished very different feelings. The *raiyyatwāri* villagers may perhaps have acquiesced in the position they had as 'Crown tenants.' It has been observed that in some cases they were more anxious to secure the power of relinquishing the land when they could not make it pay than to have a fixed title. The Northern joint-villages would never have admitted any such change in their position, at least not to themselves. When a heavy revenue was demanded, they combined to meet it and called in other settlers to help; they always acted as far as possible as owners of the land. The State claim to the land was not one of defined principle, nor of declaration by Imperial decree, but of tacit assumption; it did not alter the position of the villages ostensibly. When proprietary communities lost their right and fell into the grade of tenants under a new proprietor or a new family of over-lords, it was that the latter had individually gained the upper place by reason of some revenue-free grant, some opportunity of farming the village revenue, or standing security for it to the State Collector; and not infrequently by reason of the village body voluntarily putting themselves under the protecting lordship of some neighbouring magnate. The State ownership of itself, produced no such ostensible degradation. It is probable, on the whole, that, owing to the power of combined effort and an internal sense of abiding right, the joint-village holders were more rarely interfered with or driven from their homes than the villagers in the *raiyyatwāri* provinces.¹

The practical distinction became manifest when British rule began. In Upper India, the joint body of village co-sharers was recognised as the proprietor of the entire village, arable and waste together, the limit being ascertained by inquiry and equitable adjustment, and fixed by formal demarcation and survey. It is true that no proclamation was put forth acknowledging or conferring this right in set terms, as was done with the landlords of Bengal under the Permanent Settlement; nor did the first Settlement Law (Regulation VII. of 1822) of the

¹ Not that the *raiyyatwāri* villages were always helpless. I think it is in the *Chāndā S. R.* (Central Provinces) that there is an account of how the *pāṭels* (headmen) defended their villages and fortified their *garhī*, or central residence, for the purpose.

North-West Provinces declare the right in so many words ; but the fact of ownership is implied throughout the Regulation, as it is in the subsequent Land Revenue Laws ; and it is evident from the terms of the land-records. The joint-village tenure is *zamīndāri*—i.e. a proprietary or landlord tenure, with no greater limitations than those which accompany the tenure of the Zamindār or Taluqdār of Bengal or Oudh.¹ In both cases alike, the right is subject to certain limitations owing to the existence of subordinate rights and to the lien of Government on the land for its land-revenue ; and the mere fact that the amount of the revenue is or is not liable to periodical revision makes no difference whatever in the tenure. The village co-sharer can sell and mortgage his land,² and lease it to whom he pleases, subject of course to any special rights of tenants ; and so long as the Government Revenue is paid the owner is at liberty to cultivate or not, or to build on the land if he pleases.³

On the other hand, in the *raiyyatwāri* countries, where the Settlement deals direct with the several landholders in the villages, as in Bombay, or Berār, or Madras, there were various reasons why the British Government did not, as a matter of policy, completely or formally renounce its own proprietary right in the soil and confer it on the raiyats. Only in the Central Provinces was a proprietary title to most of the villages, under many limitations, exceptionally conferred on certain persons ;⁴ and so the villages ceased to be *raiyyatwāri* and became *zamīndāri*. Speaking generally, the difficulty was this : the raiyat holdings had been so crushed by excessive revenue charges under the

¹ It is for this reason that I have called the joint-village also the 'landlord village.' It is always held on a superior sort of tenure, at all events throughout Upper India and the Central Provinces.

² Subject to any restrictions of his own tribal or caste law or custom, such as pre-emption, &c., but to none directly imposed by the State.

³ There is some difference about the subsoil right to minerals, which in the Panjāb and other provinces are expressly reserved by law to the State. In the North-West Provinces those rights, in all the plain districts, belong to the village owner, as the Secretary of State expressly allowed in a despatch of 1880.

⁴ It would be unnecessary here to go into any detail on the subject. The history of the conferment of right in the Central Provinces villages is given in some detail in my *L. S. B. I.* ii. 455 ff.

later Marāthā and Moslem rulers, and especially during the period when Central India became the focus of the wars of contending chiefs and armies, that the first relief required was to lower the charges, especially as the British system was at first much stricter and less elastic than the Native rule.¹ But such reduction was especially unpalatable to the authorities under the constant pressure which the times produced on the State Treasury, and it was but tardily acquiesced in. So much, however, was gradually conceded, that the raiyat might relinquish his holding, at a suitable season, if he felt unable to pay the revenue; and this rule came to be a fixed principle of the *raiyaṭwāri* revenue system. It operated as an efficient test, in many cases, as to whether the revenue really was excessive or not. I am not, however, writing a history of the revenue management, and can only so far allude to the subject as helping to show why a formally 'proprietary' title was not recognised. A holder who can give notice that he will not be responsible for land after a certain date can hardly be called 'owner,' even under the ordinary limitations of Indian law. Accordingly, in Madras the question of the raiyat's title has been left undefined by law, though judicial decision has left no doubt that he has the practically proprietary enjoyment of his holding. But in Bombay, the holder of land is, by express legislative enactment, called 'occupant;' and in Burma and Assam, which are *raiyaṭwāri* provinces in principle, though not formally so designated, he is called 'land-holder.' The right is legally

¹ The Native rulers in general put down the revenue demand at a high figure; but their officers were extremely good judges of the power to pay in each particular season, and were adepts in alternately squeezing and letting go by rule of thumb and without any system whatever. The British power was irresistible, and worked with mechanical regularity. Our early authorities sometimes forgot this, and were disposed to think that rates must be equitable when they were no more than former rulers had entered in their assessment-rolls, and when peace and security were now assured to the cultivator in a manner previously unknown. Hence it was that rates not nominally enhanced, but collected with strict regularity, proved intolerable in the first years of our rule. Those who wish to see specific examples will find plenty in Mr. A. Rogers's *Land Revenue in Bombay* (2 vols., Allen, 1892) and in the *Madras District Manuals, passim*.

defined as a permanent hereditary and alienable right of occupancy.¹ In prosperous times, under our modern well-adjusted assessments, nobody ever 'does' 'relinquish' permanently cultivated land under any ordinary circumstances, but the power is there.

It may be noted that this theoretical distinction between the 'proprietary' tenure of the Upper Indian joint-village and the 'occupancy' tenure of the several holdings in a *raiyatwāri* village, as well as the fact that in one case the right applies to the village as a whole, and in the other to the holding only, is the immediate cause of the difference between the Provincial Land Revenue systems. These distinctions are now well understood; but they would have been unintelligible to an Imperial Revenue officer of the seventeenth century, or, at all events, to one after the reign of Aurangzeb, in the early eighteenth century. For the old systems cared nothing for tenures as such, and in fact acknowledged none but the tenure of 'Government' land, and that of land held by some hereditary chief, or held in free grant [*milk*] which was an exceptional favour. In general, the country was classified into two large divisions—one that was *khālśa*, or paying revenue to the State; the other that was held in *jāgīr*—i.e. the revenue of the land was assigned to and collected by the grantee, the great State official, or the military tenant, who had the assignment. The assignee was bound to apply the revenue, to the amount fixed, to the support of the local administration, to the maintenance of a certain military force, and to the support of his own state and dignity. The grants (charitable, religious and special) of lands or villages revenue-free, and therefore free of all State claims, might be found in either division, but more commonly in the *khālśa* lands. The only considerable change in the system was brought about by the general introduction of revenue-farming on a large scale. It was a change, because then the details of villages and lands included in one 'farm' all disappeared from the Treasury Books; nothing was entered but the total due; and the farmer had the entire management. This

¹ See *L. S. B. I.* iii. 269, 403, 498. The difference is technical or legal rather than practical—i.e. affecting the actual enjoyment of the holding. The Madras theory is discussed, *ibid.* iii. 128 ff.

system of farming very often resulted in the farmer becoming so far owner of the land, whether a village or a larger estate, that in after years it was hardly possible to deny the title to his descendants.

The British Government went on an entirely different principle: it started with the avowed policy of defining, and confirming on an equitable basis, the right of private persons in the soil. At first, this right, from the experience of Bengal, seemed to reside in some one landlord; but, as further provinces came to be settled, it was found that other kinds or forms of right had to be acknowledged. It followed that whoever was entitled to the chief interest, whether called 'ownership' or 'occupancy,' that person was the one to be primarily and directly responsible for the land-revenue. Consequently, each provincial revenue-system differed according to the character of the legal tenure which was most generally prevalent.

In Bengal, land was held for the most part by great landlords; and hence the system was designed to suit the case of owners whose revenue assessment the Government thought it politic to fix in perpetuity, and whose title it was thought right explicitly to declare. In Northern India, again, in spite of the fact that in Oudh there were great landlords called *Taluqdārs*, and that similar landlords appeared in some parts of the North-West Provinces, the prevailing feature was the tenure of joint-villages; accordingly, the system provided primarily for dealing with these as units, fixing a sum of revenue on each, which was engaged for by the representatives of the village body, and distributed among the co-sharers according to their own custom and constitution. The minor variations of the system necessitated by the peculiar conditions of the Central Provinces, Ajmer, and the Panjāb, caused subordinate varieties of the North-Western Provinces system to be formulated; but they are the same in general plan and principle.

There remained the Central, Western, and Southern districts, where, in general, the country was not held either by landlords or by joint-villages, but by separate holders in *raiyatwāri* villages; and here the two varieties of *raiyatwāri* management, the Madras system, and the Bombay system, were perfected in the course of time. Each holding is here dealt with on its own

independent merits, and assessed by a special method of valuation purely based on the consideration of the quality and value of the soil. Here, of course, the right of each holder extends only to the assessed holding; no area of waste is included in a village to be partitioned or held in common. Thus it will be evident that the difference between the great revenue-systems essentially depends on the difference of prevalent tenure, whether of a great landlord, a joint-village body, or the separate village land-holder.¹

It may be advisable here to note that a suspicion may arise in some minds that the *raiyyatwāri* village, as it is under existing systems of administration, is something very different to what it was in old times; and that the system of revenue administration is quite different from that in use in former days. No doubt our modern surveys have defined, demarcated, and recorded the separate holdings in a manner that was never attempted in old days, but it certainly has not altered the characteristic custom by which the holdings are essentially separate, and the boundaries of each known. And so the modern mode of collecting the cash revenue is different from the old plan—first, of taking a share in the grain from each holding, and afterwards of calling on the entire village to arrange among its members for the payment of a total estimated cash sum. But the old method, equally with our own, recognised the individuality of the holdings; it never supposed that the raiyats were co-sharers, and that one was, under all circumstances, liable for the default of another. When injustice was done, or rights ignored, it was not by reason of any theory of land-tenures, it was simply from the oppressive methods of the farmer or the tax-gatherer.

It is curious to notice how the two ideas, now so easy to us, of the joint-village as a unit-estate, embracing arable and waste together in one general co-shared right, and the *raiyyatwāri*

¹ Hence the absurdity of the attempts which were made in former days to compare and discuss the relative merits of this system or that. No comparison is possible, for each is only good for the particular sort of tenure it is designed to fit. Any one may be, and has proved to be, capable of great improvement in itself, and all of them may have certain features in common; but it is impossible to look upon one as intrinsically better than another, because each is based on a different groundwork.

village as a collection of individual families, each having its own holding without any joint responsibility to Government, struck the minds of the early revenue officers at the end of the last and the beginning of the present century. When the co-shared villages of Benares and the Upper Provinces first came to the notice of officers accustomed to the Bengal system of individual landlords over considerable areas,¹ they were at first quite puzzled : there must be, so they thought, some one person who is landlord, and with whom the Settlement of the village-estate ought to be made. The idea of the village as an 'estate' within a certain boundary, consisting of arable and waste together, was intelligible enough; and it was understood that the Government claim to ownership, [except as to some residuary and super-eminent right] was given up; what they could not understand was that the title should reside, not in some one village-head, or other individual, but in a joint body under a more or less complicated constitution. It needed all the arguments of Holt Mackenzie's gigantic Minute of 1819 to make it understood. In the South, on the other hand, it was the idea of a village-estate, as an area of arable and waste in a ring fence and owned by the 'raiya'ts' as a whole, that was so difficult to realise. Here they felt that the Government was the absolute owner of the soil, except indeed where there was some special 'inām' (revenue-free) grant or some greater 'Polygar' or 'Zamīndār' landlord, on whom had been conferred a patent 'of perpetual ownership.' The raiyat in a village was secure enough, no doubt, in the enjoyment of his individual holding; but he could not have a right to anything beyond the fields for which he held the Collector's *pattā* or lease; and the Collector would also insist on his duly cultivating the land, or else the revenue could not be paid. Hence, when the inquiry was made (as detailed in Chapter IX.) as to the former existence of a number of village-estates held by co-sharing bodies (*mirāsīdārs*), the officials could not well take in the idea.

¹ And these landlord tenures, as confirmed in 1793 by Lord Cornwallis's legislation, seemed to them to be in accord with the natural order of things. In early 'Minutes,' papers, and books, we often find expressions which indicate that in the mind of the writers, the tenure of land by a landlord with tenants under him was the natural and necessary order of things—the only conceivable kind of permanent tenure, in fact.

And so they confused the alleged village-estate rights with other hereditary claims to special privileges, which had nothing whatever to do with the question. This difficulty of conception is reflected in the laboured judgments of some of the courts on the claims of alleged co-sharers to such village rights, and in the language of most of the district Reports; and not least in the lengthy but very ill-designed series of questions which the Board of Revenue of those days circulated to District Officers with a view of elucidating the existence and history of *mirāsi* claims. Mr. Ellis, and, before him, Mr. Place, seemed to grasp the idea of the joint-village, but hardly anyone else; and it was little wonder that the joint-villages, which were no doubt in an advanced stage of decay, perished altogether.¹

But there is yet another practical result of the difference between the *raiyatwārī* and the joint-village. In the former, as a simple aggregate of individual cultivating holdings, held together by local ties and under the authority of the hereditary headman and village officers, there were no superimposed rights, at least not as a general rule. The holder was the separate occupant, and held by hereditary descent² possibly from the first clearer of the soil. If he employed a tenant, as he often did, the tenant would, in most cases, have been located by him; there would, in short, seldom be anything but a simple contract tenancy. Here and there, no doubt, it would be otherwise. In the northern parts of the Bombay territory we have various local instances of over-lord tenures, where the occupants themselves have to pay rent to some *taluqdār*, *kasbāti*, *gāmeti*, or other superior intermediate between them and the State. And even in ordinary villages it has happened that particular persons have been able to acquire lands and be recorded as the occupant, although cultivators were on the soil before them, and are now 'inferior occupants' or tenants

¹ The practical treatment of the remains of such rights is described in *L. S. B. I.* iii. 126.

² It will be remembered that the 'inheritance,' which is referred to by such terms as *mirāsi*, *warisī*, &c., is always the landlord or superior title; it has nothing to do with ordinary holdings, which, notwithstanding that they pass from father to son by inheritance, are not held in virtue of any conquest or superiority, and so are not *mirāsi* in the technical sense.

whose position did not originate in any contract. In such cases there may be some express local customs about rent-payment, which, on proof, the Courts will give effect to. But, speaking generally, the practical effect of the *raiyyatwāri* tenure has been to avoid tenant-right difficulties.¹

But in provinces in which joint-villages are prevalent it is otherwise. We have seen how often this tenure has arisen (especially in the North-West Provinces and Oudh) by grant, conquest, or usurpation (in the more or less distant past) over the heads of earlier cultivating bodies probably in the *raiyyatwāri* form. Very often, too, the present body of co-sharers are the descendants of one or more 'farmers' or other intruders who have borne down the rights of an earlier joint-community who once had the village lordship, and are now reduced, in their turn, to being tenants. Then, there are sure to be distinctions of grade and privilege among the tenants: some will have claims as 'ex-proprietor,' or as descendants of a family that once held the village in grant and perhaps did much to improve it; and on other grounds also.

Even where, as in the Panjāb, the joint-villages are more commonly original foundations by superior agricultural clans and families, it is often found that tenants have claims by custom, as having taken part in the work of founding and having held their lands ever since; or they may be absentee co-sharers who have returned after many years, and have been admitted to cultivate, but have not been allowed their old place in the co-sharing body. Or they may be persons who were called in, in the days of Sikh or Durāni rapacity, to help cultivate enough land to make up the heavy revenue demanded, and have never paid anything beyond their quota of the total amount. It would be unjust not to recognise those who had borne the heat and burden of the day as entitled to consideration. To put it shortly; the joint-village tenure, being of the superior or over-lord character, is constantly associated with subordinate or inferior interests in particular plots or fields, and sometimes with interests extending over the whole of the older cultivation, if not over the whole village area. * There

¹ In fact, they only appear in such special cases of superior tenure as the Khot's estates of the Konkān districts, and certain others, in which case there is a special provision made by the Legislature.

are, then, besides the ordinary class of contract-tenants located by the proprietors, others whose position is due to no contract whatever, and is on the basis of *status*. Fortunately, each province has been able, on the ground of an historical and practical view of the actual kinds of claim, to formulate its own tenant-law, which defines what circumstances have to be established, and what degree of privilege, as to fixity of tenure and non-liability to enhancement, or limited liability to enhancement, attaches to each kind of tenancy. It should, however, be added that a difficult question of tenant-right of a more general character arose, as it did under the Bengal landlords, chiefly in connection with the village estates of the North-West Provinces, where a number of the villages were owned by communities of non-agriculturist castes. In such cases, the lands were naturally entirely in the hands of tenants; and it became difficult, and sometimes historically impossible, to distinguish between tenants that had been located by the landlords, and who might be presumed to be tenants on some basis of contract, and those who were the old cultivating holders of the land, and over whom the co-sharing community of proprietors had grown up. Hence a general (arbitrary but equitable) rule was laid down of a presumption in favour of every tenant who had held, under certain conditions, for twelve years.

In the Panjāb the villages were so much more generally the result of original location, and were so frequently cultivated by the co-sharers themselves, that there this difficulty was not seriously felt; and the tenants who are protected by law are the purely natural classes, the circumstances of whose position it is not difficult to prove.

It is not within my present scope to justify these rules or to give a detailed account of the different kinds of tenant which are to be found in joint-villages, and in larger landlord estates,¹ but what has been said will have been sufficient to show the difference between *raiyatwāri* and joint-villages as regards the existence of tenant-right.

¹ If a succinct account of the chief features of the Tenancy Laws in Bengal, Oudh, North-West Provinces, Central Provinces, and the Panjāb is desired, it will be found in ch. vii. sec. 5 of my *Short Account of the Land Revenue Administration in India* (Clarendon Press, 1894).

As regards the social and economic advantages of the village grouping of agricultural society, I find it impossible to make any choice between the two forms. That the 'village' formation (of either kind) facilitates revenue management, and is favourable to arrangements for police, sanitation, irrigation, and other matters of public administration, will not be doubted. But the advantages which can be claimed do not appear to me to depend much, if at all, on the internal constitution, whether joint or several.¹

No doubt, in past days the joint-village was especially well adapted to confront the class of difficulties and dangers peculiar to the times; though I suspect that the successful maintenance of so many villages intact was more dependent on the character and spirit of the castes and clans which furnished the proprietary families, than on the special features of their joint-holding. However that may be, the strong sense of union which exists, or once existed, in the North-Indian joint-villages, especially those that had a clan-origin, or that were proud of a connection with a common ancestor, was no doubt valuable in times of continuous war and local feuds and raids, and when defence was also needed against extortionate Revenue officers. But in modern times these evils have no longer to be guarded against; and the joint constitution does little for the village except that it keeps strangers out, to some extent, through the exercise of the power of pre-emption; and to some extent it promotes mutual help. But there is an undoubted tendency for the joint-villages, in some cases, to fall too much under the power of the official

¹ I do not propose to discuss the advantages of the village-aggregation with regard to the revenue administration. I will only mention that in former days it was supposed that the task of dealing with a multitude of individual holdings or 'survey-numbers' was beyond the power of any Collector, and that either a landlord-middleman or at least a dealing with whole villages as units, was the only practicable method. Such ideas have long since been exploded. The Collector of Bombay or Madras makes his annual demand accounts (*jamabandī*), and deals direct with every holding in every village in his district, with perfect facility; and the *raiyyatwārī* revenue management is just as easy and as efficient as that of the joint-village. Indeed, though in the latter only the village-total is (in theory) looked to, as a matter of fact, the local revenue officers have almost as much concern with the individual holdings in the villages as they have under the other system.