

Nation of Red People the jurisdiction and government of all the persons and property that may be within their limits west, ...' (Prucha ed. 2000: 54).

The territory of the Indian 'nations', however, began to be stealthily changed in nature to the 'common land' (jointly owned land) of the Indian 'nations' under the sovereignty of the U.S.A. The Supreme Court judgment of 1831 (*Cherokee Nation v. Georgia State*) declared that 'those tribes which reside within the acknowledged boundaries of the United States' were 'domestic dependent nations' 'under the sovereignty and dominion of the United States' (Prucha ed. 2000: 59). Thus, the territorial (sovereign) right of the Indian 'nations' began to be denied from the 1830s.

Further, from the 1850s, the provision that bestowed on the President of the U.S.A. the authority to divide the 'common land' (jointly owned land) called the reservation of the Indian 'nations' into lots of privately owned land and allot them to the members of the Indian 'nations' began to be included in the treaties with the Indian 'nations'. The treaty with 'the confederate tribes' of Oto and Missouri in 1854, for example, provided: 'The President may, from time to time, at his discretion, cause the whole of the land herein reserved or appropriated west of the Big Blue River, to be surveyed off into lots, and assign to such Indian or Indians of said confederate tribes, as are willing to avail of the privilege ...' (Prucha ed. 2000: 88). The General Allotment Act of 1887 (*The Dawes Act*), that finalized this process, prescribed as follows:

That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, ..., the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation or any part thereof of such Indians is advantageous for agricultural or grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed if necessary, and to allot the lands in said reservation in severalty to any Indian located thereon in quantities as follows:

To each head of a family, one-quarter of a section;

To each single person over eighteen years of age, one-eighth of a section;

To each orphan child under eighteen years of age, one-eighth of a section;

... (Prucha ed. 2000: 170)

Further, the Curtis Act of 1898, applicable to the Five Civilized Tribes (*Cherokee, Choctaw, Chickasaw, Creek, and Seminole* tribes who were forcibly removed from their native places to the so-called Indian Territory in Oklahoma in the 1830s) who had been excluded from the application of the General Allotment Act, included the provisions to divide the 'common land' into lots and allot them to the members of these Indian 'nations'. As the necessary result of this, their tribal

governments and tribal laws and courts were abolished (Prucha ed. 2000: 196).<sup>2</sup>

Thus, the sovereign territory of Indian 'nations' was, first, stealthily changed in nature to the 'common land' (jointly owned land) of the Indian 'nations' under the sovereignty of the U.S.A., and then the 'common land' of the Indian 'nations' was divided into the lots of the privately owned land and allotted to the members of the Indian 'nations'. The first process, that is, the stealthy change in nature of the sovereign territory of Indian 'nations' to the 'common land', was necessary for the U.S.A. government, as the sovereign territory of a 'nation' (as a category of public law) was not divisible but the 'common land' (as a category of private law) could be divided into a large number of lots of privately owned land.

The ideological background of the land-allotment policy of the U.S.A. was the same belief in the historically progressive nature and civilizing function of the private landed property that propelled the Raiyatwari Settlement in India. For example, John Q. Smith, the Indian Commissioner, remarked in his annual report of 1876 as follows:

It is doubtful whether any high degree of civilization is possible without individual ownership of land. The records of the past and the experience of the present testify that the soil should be made secure to the individual by all the guarantees which law can devise, and that nothing less will induce men to put forth their best exertions. No general law exists which provides that Indians shall select allotments in severalty, and it seems to me a matter of great moment that provision should be made not only permitting, but requiring, the head of each Indian family, to accept the allotment of a reasonable amount of land, to be the property of himself and his lawful heirs, in lieu of any interest in any tribal common possession. (Prucha ed. 2000: 148).

The division and allotment in severalty of the Indian 'common land', however, resulted in the

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2 The Curtis Act of 1898 provided as follows:

Section 11. That when the roll of citizenship of any one of said nations or tribes is fully completed as provided by law, and the survey of the lands of said nation or tribe is also completed, the commission heretofore appointed under Acts of Congress, ..., shall proceed to allot the exclusive use and occupancy of the surface of all the lands of said nation or tribe susceptible of allotment among the citizens thereof, ....

Section 19. That no payment of any moneys on any account whatever shall hereafter be made by the United States to any of the tribal government or to any officer thereof for disbursement, ....

Section 26. That on and after the passage of this Act the laws of the various tribes or nations of Indians shall not be enforced as law or in equity by the courts of the United States in the Indian Territory ....

Section 28. That on the first day of July, eighteen hundred and ninety-eight, all tribal courts of Indian Territory shall be abolished, .... (Prucha ed. 2000: 196)

deprivation of a great quantity of land from the Indian. In 1887, when the General Allotment Act was enacted, the land reserved for the Indian 'amounted to 138,000,000 acres'. By the act 78,000,000 acres were allotted to the Indian, but the remaining land of 60,000,000 acres was designated as 'surplus' and sold by the government to white settlers. 'In addition to this tribal land, 27,000,000 acres or two thirds [It must be one third.—Author] of the land allotted to individual Indians was also lost by sale between 1887 and 1934' (Washburn 1995: 145). Thus, by 1934, when the General Allotment Act was abolished and the Indian Reorganization Act was enacted, 87,000,000 acres of land was lost from the Indian and only 51,000,000 acres remained in the hands of the Indian. This was the actual result of the forcible introduction of the private landed property in modern jurisprudence into the Indian society in North America.

### **3. Diversity of Historical Development in Non-European Societies**

In European historical studies, the development of landed property in history has been one of the focal points of discussion and the degree of the development of private landed property has been assumed to be the criterion of historical development of a society itself. Under the strong influence of the European historical studies, the historical studies started anew in Asian countries like modern Japan and independent India have been more or less land-system-centred. As a result, the history of non-European societies too has been understood by the same perspective of history, that is, the development of private landed property. The dynamism of historical development in non-European societies, however, must have been much more diverse. Then the problem for us is to pursue the unique dynamism of historical development in pre-modern societies in non-European areas. Here I will take up Indian society as an example of the typically non-European society. The problem to be examined is what sort of dynamism of historical development operated in Indian society before the forcible introduction of the modern private landed property under British colonial rule.

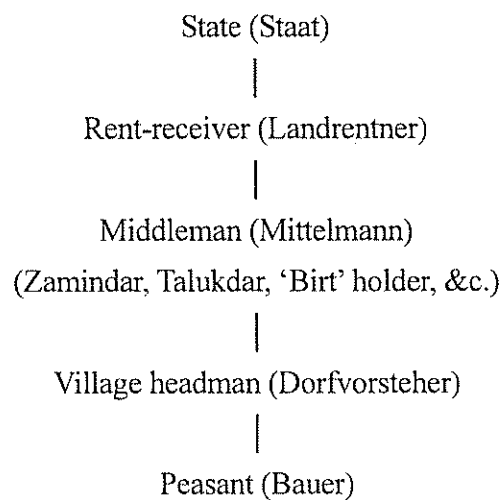
#### **(1) MAX WEBER ON THE UNIQUE DEVELOPMENT OF INDIAN SOCIETY**

Max Weber, as a European social thinker, paid exceptionally careful attention to the historical dynamism of non-European societies. He pointed out, for example, the unique development of Indian society as follows:

Es ist der indischen Entwicklung eigentümlich, daß unter Umständen eine ganz Serie von Renten, schichtweise übereinander, auf der Steuerpflicht der Bauern gegründet, und aus den Bodenerträgen zu zahlen waren. Ueber dem eigentlich »Bauer«, d.h. dem effektiven Bebauer des Landes, konnte zunächst ein oder, der Regel nach, eine Gemeinschaft von

Landrentnern stehen, welche als Eigentümer des Bodens galten und nach oben für die Steuersumme desselben hafteten. Zwischen diesen und der Staatsgewalt aber stand meist wiederum ein Mittelsmann [sic], der Zamindar oder Talukdar, der entweder nur Rentenanteile (im Nordosten oft 10% des Steuerpauschale) oder weitergehende, eigentlich grundherrliche, Rente zu beanspruchen hatte. Zuweilen blieb es aber nicht bei diesem einen Mittelsmann, sondern außer dem alten Steuerpächter fand sich noch ein mit Rentenrechten durch »birt« beliehener oder ein Grundherr, dessen Rechte sich daraus herleiteten, daß er das Dorf gegen Uebernahme der Pflicht zur Zahlung der Steuer-Rückstände »gekauft« hatte. Dazu konnten schließlich die eventuellen Rentenansprüche des erblichen Dorfvorstehers treten, die ihm eine Art grundherrlichen Charakter verliehen. (Weber 1921: 71)

Weber thus found the uniqueness of the historical dynamism of Indian society in the fact that the surplus produce was shared among a variety of share-holders claiming their rights as intermediaries between the state and peasants, and that the number of these share-holders ever increased in history. He enumerated the following share-holders of the surplus produce<sup>3</sup>:



To paraphrase Weber's understanding of the historical dynamism of Indian society, the development of Indian society was reflected in the development from the rather simple produce-sharing system to the minutely fabricated produce-sharing system as the society advanced in productivity and the surplus produce increased.

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3 Weber used the term 'Rente' (rent) to denote a share of the surplus produce. In place of 'Rente', however, the term 'share of produce' is used in this paper, as, first, 'Rente' in Weber's terminology is different from the rent in the political economy, and secondly, the term 'Rente' would remind us of the relationship between the landlord and serfs in medieval Europe.

## (2) DEVELOPMENT AND CHANGE OF THE PRODUCE-SHARING SYSTEM IN INDIAN HISTORY

Development and change of the produce-sharing system seems to have been the most conspicuous feature of historical dynamism in pre-colonial India in a much wider sense than Weber's. The key-terms for further investigating the dynamism of the development and change of the produce-sharing system in Indian history are the term *birt* and the terms corresponding to *birt* in other Indian languages like *kāni* in Tamil.<sup>4</sup> The term *birt* is derived from the Sanskrit term *vritti* meaning profession, occupation, &c. (Weber too referred to *birt* in the above-cited passage.<sup>5</sup>) These terms (*birt* [*vritti*], *kāni*) denoted the hereditary family occupation (role) in the local society united with the remuneration (income) that was a share of the surplus produce of the local society. The holders of such hereditary family occupation-cum-remuneration (patrimonial family property) included not only the intermediaries between the state and peasants like *zamīndār* as was mentioned by Weber, but also every sort of community member such as district (*pargana*) headman, village headman, village carpenter and untouchable village servant.

Under the strong influence of the Perso-Arabic language, the hereditary family

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4 As to *kāni*, see Karashima 2001: 17-21, &c.

5 Weber seems to have come to know the term *birt* from Baden-Powell, *The Land-Systems of British India*. For example, Baden-Powell wrote as follows:

In Oudh, we have instances where the Rājā has made grants to younger members of his family, or courtiers, or where some family in the village of higher caste or more energy than the rest, has asked for and obtained the king's favour. The grant is called 'birt', or in the Sanskrit form, 'vritti.' (Baden-Powell 1892: Vol. I, 131-132)

Further, the sale-deed of a *birt* quoted in Baden-Powell's book runs as follows:

I have given to Tulsī Ram, Brahman, a grant (*birt*). He will get continuously village Ganeshpur, with tanks, groves, dih (certain land explained in No. 5), and *parjā anjari*, *biswa* and *bondha* (certain house and other fees). He is to get *zamīndārī* allowances (i. e. special allowances of *nākār*, &c., made ordinarily to the managers whether the village was held in farm or direct). He is to take possession in belief. R. 701 have been taken. (Baden-Powell 1892: Vol. II, 240, n. 1)

In this case, *birt* meant the right of zamindar (*zamīndārī*) over the village Ganeshpur. The Zamindar as an intermediary between the state and the village collected taxes from the villagers of the village in lieu of the state and got a certain portion of them, and further various fees from the villagers. This right of zamindar (*birt*) was not only hereditary but also saleable at a high price.

The term *birt* was used in the same meaning in Persian documents of the Mughal period. Irfan Habib remarked as follows:

The use of the term *birt* in a 17th century document also suggests that it was simply a term for *zamīndārī* created out of gift. The author of a transfer deed of 1669 declares that he gave away his "*milkiyat, zamīndārī and chaudhurāt*" of a village "in the form of *birt*". (Habib 1999: 183, n. 65)

occupation-cum-remuneration (patrimonial family property) in pre-colonial western India was popularly called *vatan* as a substitute for *vritti*. Thus, the produce-sharing system of the local society in pre-colonial western India was constituted by a variety of *vatandārs* (*vatan*-holders). I defined this social system of the local society as the Vatan-system.<sup>6</sup> The Vatan-system was constituted by various *vatandārs* at both district (*pargana*) level and village level as shown in Table 2 (Kotani 2002: 29).

**Table 2: Vatan-System**

District ( <i>pargana</i> )	
I Primary <i>vatandārs</i> Deshmukh (head of district community) Deshpande (scribe of district community) Mhetar (head) of castes	II Secondary <i>vatandārs</i> Sardeshmukh Sardeshpande Sarpatil
Village	
I Primary <i>vatandārs</i> Patil (headman) Kulkarni (scribe) <i>Vatandār</i> Kunbi (peasants) <i>Bārā Balute</i> (artisans and servants)	II Secondary <i>vatandārs</i> Teli (oilman) Tamboli ( <i>pān</i> -seller) Vani (merchant)
Market town Shet (head of market) Mahajan (scribe of market)	Fort Sarnaik (hereditary head of fort) Naik (hereditary soldier of fort)

The local society in pre-colonial western India consisted of the two-layered community structure, that is to say, the village community and the district (*pargana*) community that comprised about 50 villages. The primary *vatandārs* (in the shadowed portions of Table II) constituted the basic fabric of these two communities. The hereditary head of the district (*pargana*) community was called the Deshmukh and hereditary scribe the Deshpande. The *vatan* of Deshmukh was called Deshmukhi, by which the Deshmukh could get lucrative fees from the villagers of his district (*pargana*). In this sense, the Deshmukh was the leader of the district (*pargana*) community, and at the same time, the class-exploiter of the local society.

The primary body of each caste was grouped together district (*pargana*)-wise, in which

6 See Kotani 2005: 15-62. T. Mizushima, who found a similar produce-sharing system in eighteenth-century south India (Tamilnadu), named it the Miras-system, as the hereditary family occupation-cum-remuneration (patrimonial family property) there was more popularly called *mīrās* than the original Tamil term *kāni* (Kotani et al. 2008: 41-44).

existed the head (Mhetar) of each caste of the district (*pargana*). The *vatan* of the Mhetar was called Mhetarki, by which the Mhetar could take various perquisites from his caste members. The primary group of each caste was connected secondarily with the same caste group of the neighbouring districts (*parganas*).

On the village level, the most important *vatan*dār was the Patil (village headman). The Patil also could take various fees from the villagers of his village. The Patil was thus the village leader as well as the small-scale exploiter on the village level. The peasants as regular members of the village community were called *vatan*dār Kunbi (Kunbi is the name of the peasant caste in western India). The members of artisan and service castes as regular members of the village community (*vatan*dār) were collectively designated as *bārā balute* (12 sorts of *balute* earner), *balute* meaning the allowance given to them by the village community. *Bārā balute* included, generally speaking, carpenter, blacksmith, potter, barber, washer, priest (Joshi), Hindu temple keeper (Gurav), and some members of untouchable castes like Mahar, Mang and Chambhar. The division of labour between the *vatan*dār Kunbis and *bārā balute* constituted the basic structure of the village community.

The Vatan-system must have been formed by the twelfth or thirteenth century in western India. In the course of time, however, the Vatan-system came to include various secondary *vatans*. On the one hand, the states in medieval and early-modern India created new *vatans*, that had no role to play in local society, merely to pump up the surplus produce remaining in the local society even after paying the taxes, and gave these *vatans* to government officials and others as bounty without burdening the states themselves. The *vatans* of Sardeshmukh (Sardeshmukhi), Sardeshpande (Sardeshpandepan) and Sarpatil (Sarpatilki) were such newly created *vatans*. On the other hand, as the market economy developed, the village community began to accept the commodity maker-cum-seller like Teli (oilman), Tamboli (*pān*-seller) and merchant (Vani) giving respective *vatans* (Teli-*vatan*, &c.) to them, and recognized them as *vatan*dārs of the village. When new market places were constructed in a village or with the approval of a state, the new *vatans* of Sheth (head of market) and Mahajan (scribe of market) were bestowed by the village or the state to the persons who took part in the construction of the market, mainly merchants. In the course of time, these secondary *vatans* much multiplied in the local society.

Further, as the market economy advanced, the hereditary family occupation-cum-remuneration (patrimonial family property) of almost all sorts became transferable and saleable property. Thus, the lucrative *vatans* such as the *vatan* of Deshmukh (Deshmukhi) and Patil (Patilki) became valuable property saleable at a very high price. Even the *vatan* of peasant (*vatan*dār Kunbi) was saleable in pre-colonial western India (Kotani 2005: 41, 43-44).

Thus, the Vatan-system included an ever increasing number of newly created *vatans* (secondary *vatans*) as the society advanced in productivity and class-exploitation relationships

proliferated. As a result, the Vatan-system became a more and more minutely fabricated produce-sharing system in which not only the highly developed social division of labour but also multiple class-exploitation relationships were included. In other words, the Vatan-system continued to develop and change its nature within the same frame-work in history.

The development and change within the same frame-work of the produce-sharing system like the Vatan-system was the unique characteristic of the historical development in pre-colonial India. This type of historical development of a society, however, could not be recognized by the land-system-centred perspective of history. As a result, the society with this type of historical development was often misunderstood to be a stagnant or changeless society in nineteenth-century European social thought.

### **Conclusion**

The belief in the historically progressive nature and civilizing function of private landed property and the land-system-centred perspective of history were cause and effect of each other in nineteenth-century European social thought, in particular, that of England. The former served to frame the colonial policy such as the Raiyatwari Settlement in India and the allotment of Indian land in North America, and the latter tended to confine the historical studies in non-European countries within the framework of the land-system centred perspective. Thus, there remain problems further to be investigated: first, what has been the factual working of private landed property in the long history of the relationship between man and land; secondly, what was the actual dynamism of the historical development in various other non-European societies in the pre-modern period.

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