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Customs in the Trans-border territories of the North-West Frontier Province.—COMMUNICATED BY H. A. ROSE, I.C.S.

The following notes on the customs, or 'Customary Law,' to use a term which is somewhat apt to be misconstrued, in the protected tribal territories which lie beyond the administrative border, but within the Durand Line, of the North-West Frontier Provinces, have been compiled by the Political Agents of the following territories:—

Southern Waziristan—F. M. Johnston, Esq., C.S.

Northern Waziristan, (including Daur):—Capt. W. J. Keen, Political Agent; also Settlement Officer, Tochi.

Karram—Stuart Waterfield, Esq.

Dir, Swāt and Chitrāl Agency—Major S. H. Godfrey.

The notes are chiefly in the form of answers to questions taken, with some modifications, from Tupper's Punjab Customary Law, Vol. III, and are published as they stand. Any attempt to reduce them to a single connected account would almost certainly only result in misrepresenting the meaning and effect of the answers recorded, and it appears inexpedient to attempt to arrange or condense a purely tentative series of rough notes, as this professedly is, until more accurate and complete information has been obtained. Still less advisable

would any idea of codification be. The notes have moreover no authority or validity from a legal standpoint.

The trans-border territories on the North-West Frontier offer a probably unique opportunity for the study of custom in primitive communities, affected very deeply in some ways by Mahomedan ideas, but in others quite uninfluenced by them. In such communities we should expect to find few general principles at work, and this is actually the case, but those principles are observed with a remarkably rigid consistency, considering that might is above all right in these poor and turbulent communities. On the whole, some of the customary rules will compare not unfavourably with those in force in the Indian schools of Muhammadan Law.* One or two of the underlying principles stand out clearly enough:—

1st.—There is no distinction between a crime and a tort, and as conception of a criminal act as an outrage against the peace of the community. There is no state whose peace could be violated, and only a very rudimentary conception of a commonwealth. Hence every offence is merely a tort which entitles or requires the person injured to seek redress and obtain it if he can. Punishment, apart from the enforcement of the customary compensation, there is none. In appealing to the customary law the injured person is actuated solely by a desire for redress or revenge. It would afford him little satisfaction to see the man who had robbed him punished, unless he were indemnified for his loss. The highly artificial and perhaps peculiarly English conception of a crime as distinct from a tort, and as an offence against the crown, is wanting. The idea is probably prevalent far beyond those territories and doubtless underlies the curious reluctance sometimes observed in India to treat crime as something far more serious than a tort. It is not perhaps going too far to say that justice in primitive communities would be more popular if the civil and criminal procedure were amalgamated and no penal codes introduced.

2nd.—The limited extent to which the Muhammadan Law of inheritance has been adopted by communities so fanatically Muhammadan in religious matters is striking. The Muhammadan rules of inheritance are not observed. More especially is this the case where women are

* Cf. p. 14 below.

concerned. This is probably due to the conception of women as chattels, as things owned and therefore incapable of owning. It is difficult to explain in any other way the absolute disregard of the Muhammadan rule of inheritance, which are eminently fair to women.

The trans-border territories offer an unrivalled opportunity for the study of customary law. They have been entirely free from the influences of our legal system and are likely to remain so for a long period. The investigation of local variations in custom, and the developments of custom under changed economic conditions, will doubtless give results of great interest to any careful enquirer.

In conclusion, it should be observed that these notes do not deal with 'Customary Law' in the ancient state of Chitrāl. The states of the vast mountain region of the Hindu Kush will probably be found to preserve some customs and ideas of great antiquity, but they remain so far a *terra incognita* in this respect.

For a study in 'Constitutional Law' in a modern Muhammadan State, attention may be directed to *The Constitution and Laws of Afghanistan*, by Mir Munshi Sultan Mahmud Khan, F.R.G.S. (John Murray, London, 1900).

31st December, 1904.

H. A. R.

I.—A SHORT NOTE ON THE CUSTOMARY LAW OF THE SOUTH WAZIRISTAN AGENCY.

In this Agency, local and tribal custom are practically identical, but all questions of custom are liable to variation according to the positions of the parties, in a country where the first principle is that "might is right" and "let him keep who can."

Status of women.—A female is generally looked on as having no status of her own, and as long as her husband is alive, she is his chattel. When she becomes a widow she can only enjoy her deceased husband's property, so long as she remains in his house or dwells with his heirs, but she cannot under any circumstances alienate any property, nor can her son by a former marriage inherit her second husband's property. If she marries again or is unchaste she loses all right to maintenance from her deceased husband's property.

Inheritance.—Sons of one father, whether their mothers be one or more, inherit equally. In the absence of sons, a man's brothers would inherit, or if there are none, the nearest male relative or relatives. A father can nominate his eldest son to a larger share than his brethren

A daughter cannot inherit nor can her husband, even if he has lived with her father prior to his demise.

Betrothal and marriage.—Wazirs arrange marriage and agree on a price, then the man's friends come and do *nanawati* and pay a little money: this is called *losniwai*. The bridegroom then visits the bride's father's house and brings a sheep with him to furnish food for a feast. This ceremony is called *khara*.

(After the *losniwai* the girl belongs to the bridegroom's family, and if he dies, his father gives her to a brother, cousin, etc., but if she dies her father sticks to what money he has received). After this the real marriage by a *mullah* takes place. Wazirs usually marry late, between 20 and 25.

Adoption.—Adoption exists among the Wazirs.

Tenure of land.—Land is usually held according to tribal and sectional shares. In the case of land acquired by one tribe from another by force such land is generally divided among the conquering tribe or section according to their tribal or sectional shares. A custom of pre-emption exists.

Mortgages.—Mortgage is often employed to save the honour of the mortgager and keep alive his rights in his land. When a stronger tribe threatens to acquire by force the lands of a weaker, the members of the latter often mortgage their land to the stronger for nominal sums and then retire. On their return, years after, in case of their having become stronger, they claim the right to redeem, but in such mortgages the right to redeem is doubtful. There is another kind of mortgage, in which the mortgagee, if not repaid within a year or thereabouts, has the right to take possession and cultivate the mortgaged land.

Offences.—In case of murder or bodily injury, the law is retaliation, the custom of vendetta existing among all the tribes of the Agency. It is open, however, for a murderer or a man who has wounded or injured another to indemnify the heirs of the murdered man or the wounded man at the following rates, (a woman being calculated as half a man and children as man or woman as the case may be):—

For death, if the murder, was accidental—

			Rs.	} Now fixed in cases decided judicially at 1,200 cabulis.
Mabsūds	...	...	1,700 cabuli.
Stār Wazir	...	...	1,300 „

But in payment of such compensation fictitious values are often placed on kine or sheep. It is rarely, however, that compensation stops a vendetta. Compensation if taken is often given back to a third party quietly and the murderer slain.

Permanent lameness, loss of an arm or of sight = half a life.

For other injuries, compensation is payable as below:—

	Rs.
Loss of a thumb or second finger	100
Other fingers	50
Teeth	100 and a sheep.

In case of adultery the woman is killed and the man loses his foot or nose, but if the man be killed his heirs can claim one-fourth the value of a life.

Burglary by day is compensated for by the return of stolen property and two sheep; burglary by night, ditto, plus Rs. 100; the compensation for arson by two sheep and Rs. 100; damage to crops by payment of Rs. 100 and two sheep.

It is not necessary for the heirs of a murdered man to kill the actual murderer; they can kill any of his relatives, if they cannot find an opportunity to kill the actual murderer, or even any other man of the section. Hence sectional and tribal vendettas also exist.

In many cases during the course of a blood feud the actual murder is not committed by the parties to the vendetta, but by an assassin, known as a *Baskar*, hired for the purpose. When the murder has been committed the hirer lets himself be known as the principal *Zhagh Karvi*, and he alone is responsible for the killing, and no blood feud lies against the *baskar*, who indeed if he has done his work may be hired by the other party to murder his own former employer.

If a murderer takes shelter with another tribe or section the latter become responsible for his life. But if he be killed when living with them as an *hamsáya*, the protecting tribe may take *sharmana* or compensation for disgrace, and drop the matter, or they may take up the murdered man's cause and start a vendetta in the same way as his relations in addition to their efforts. Wazirs are usually very quick to kill, the usual causes being either women, land or water. But Mahsúds have been known to kill one another over a handful of berries.

A truce often takes place in a vendetta, and sometimes neither side moves for months; but after this may come a succession of murders within a few days. Generally, however, a Wazir will be ready to make a truce whenever he can.

The tribes in the Agency are all divided into sections and sub-sections.

The Mahsúd sectional shares are recorded in Political Agent, Wano's No. 212, dated 27th Maroh, 1903.

The Darwesh Khels are well known. There are no Utmanzais in this Agency except a few Malikshais.

The Dotanis are divided into the Hassan Khels and Umar Khels. The Suleman Khels of Zarmelan belong to the Manzai section of that tribe.

The organization for settlement of cases is a *jirga*, which consists of a body of men usually of age or influence who sit as a board of magistrates. Their decisions are final and it is the custom to reward them for their labours.

The oath on the Quran is a common means of settling cases. Where there is no evidence or any difficulty, as for instance, in the case of a murder, if the accused man can get hundred men to swear to his innocence the complainants often agree to this method of settlement. If the accused can only produce ten men, each of these may swear ten times, and thus complete the hundred oaths.

Customary Law in Daur, Northern Waziristān.

In drawing up this Rivaj-i-am I have endeavoured to show the general rules which are supposed to govern the intercourse of the people of Daur. These rules must not as yet be taken to be hard-and-fast, for it must be remembered that the country has only just lately emerged from anarchy, where every man was a law unto himself and did what seemed right in his eyes. There were certain rules to which the people were supposed to conform, but these rules were hazy and capable of very different interpretation according as the person concerned was powerful or otherwise. Might was right, and if a man chose to disregard the rules, he did so, taking any consequences that might ensue in the way of a blood feud or otherwise. Should he offend very gravely indeed against tribal etiquette, the tribe as a whole would sometimes rise up and exact reparation, but this would only be in very flagrant cases of injustice.

Subject to these general remarks, the following rules hold good for the Dauris, and more or less for the Waziris also:—

CIVIL.

Q. 1.—Are any persons considered relations besides those descended from a common ancestor?

A. 1.—No. The relations of the wife are considered as close connections of the husband, but are not relations. With reference to succession to property, relationship is entirely agnatic.

The following are the relations of the wife who are considered as connections of the husband, with local names:—

Wife's brother	...	...	...	<i>Ukshai.</i>
„ sister	...	...	...	<i>Shina.</i>
„ father	...	...	...	<i>Askhar.</i>
„ mother	...	...	...	<i>Khoshi.</i>

Q. 2.—Explain the system of reckoning generations, and give a table of kindred in both ascending and descending lines, with local names of each.

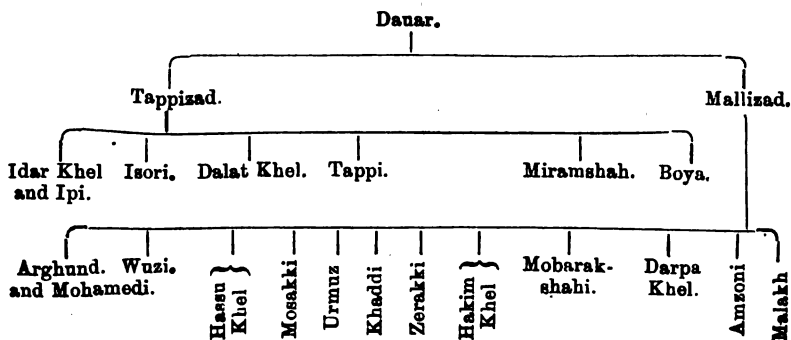
A. 2.—Generations are reckoned in the direct male line from father to son—

<i>Par nika.</i>	...	...	...	Great-great-great-grandfather.
<i>Tar nika</i>	...	...	...	Great-great-grandfather.
<i>War nika</i>	...	...	...	Great-grandfather.
<i>Nika</i>	...	...	...	Grandfather.
<i>Plar</i>	...	...	...	Father.
<i>Zoi</i>	...	...	...	Son.
<i>Almosai</i>	...	...	...	Grandson.
<i>Kosai</i>	...	...	...	Great-grandson.
<i>Kandai</i>	...	...	...	Great-great-grandson.
<i>Pradai</i>	...	...	...	Great-great-great-grandson.

Pradai—great-great-great-grandson—means in reality “a stranger,” which shows that the relationship is so remote that it does not really count.

Q. 3.—Is your tribe divided into sections? If so, by what names are they known? Does each section send representatives to the *jirga*?

A. 3.—The Dauris are to all intents and purposes a homogeneous tribe, though they say themselves that they are divided into two main divisions, namely, Tappizād and Mallizād. These two are again divided as shown below:—



There is also one disconnected section:—Idak, inhabiting Idak village.

Amzoni, inhabiting the tract between Boya and Darpa Khel, including the villages of Aghzan Killa, Khare Killa, Khatti Killa on left bank of the river, and Chiton, Umarzai, Ali Khel and Ahmad Khel Raghzi Kella and Urmar Killa on the right bank.

Malakh, inhabiting the villages of Boya, Land, Muhammad Khel, Dehgan, Idal Rhel, Pai Khel and Ghazlamai.

Each village has a right to be represented at tribal *jirgas*.

There is, as far as I can ascertain, no Khān Khel amongst the Dauris. It is said that the Shajāwal family in Mubārakshāhi, of which Malik Shaikh Mansūr is head, is the Khān Khel of the Dauris, but there are many, and especially the older men, who say that this is not so. The fact is that the inhabitants of Daur are a very mixed race, people having come from all parts: *e.g.*, the people of Malakh were originally Kharotis, of Mosakki Bangashes, of Isori Khattaks, of Amzoni Wazirs, and there are very few *asl* (real) Dauri families. Shajāwal is one of these.

Betrothal.—*Q.* 4.—At what age does betrothal take place? and who has power to dispose of the hand of a girl or boy?

A. 4.—The ceremony of betrothal takes place at an early age, and may be in infancy. The right of disposing of a girl or boy rests first with the parents of the girl or boy if alive. If dead, the right rests with the next-of-kin who inherits the estates. Women are considered as an asset and part of the estate.

Q. 5.—Whose consent is necessary? Can a boy or girl have anything to say in the matter of his or her own engagement?

A. 5.—No one's consent is necessary beyond that of the parents or guardians of the child to whom the girl or boy is to be betrothed. As a matter of form, however, the members of the family of each are as a rule consulted, though their opinion need not be taken into consideration.

No girl or boy can have anything to say to his or her own betrothal. Should the man concerned be of ripe age, he will have to do as he is ordered by his father and marry the girl, and if he objects to the arrangement, he can divorce her afterwards.

Q. 6.—Describe the formalities of a betrothal. Which ceremony is it that makes the contract binding?

A. 6.—The ceremony known as *lasniwai* (hand clasp) is the only ceremony of betrothal, and after it the contract is binding.

This ceremony is a simple one, and only consists in the father or guardian of the bridegroom going to the guardian of the prospective

bride and arranging the matter with him. When the bargain is clinched hands are clasped, hence the name. The relations of both the prospective bride and bridegroom are present, and sweetmeats are distributed to them all by the guardian of the bridegroom.

Q. 7.—Does priority in betrothal entitle to priority in marriage?

A. 7.—There is no custom on this matter. Nor does priority in marriage carry with it any privileges. Other things being equal, the first wife is naturally head of the household, but she has no right to it, and the head of the household may be the husband's special favourite, or the one with the most and strongest sons.

Q. 8.—Upon what grounds can a betrothal be annulled?

A. 8.—Upon no grounds can a betrothal be annulled by either party. Should the man be discontented, he must go through with it and then divorce the woman after marriage. The woman cannot annul a betrothal after the ceremony of *lasniwai* has taken place, but in the case of a woman of mature years, if she objects to marrying a man when the idea is broached to her before the *lasniwai*, she can refuse to marry that man, but in that case she must wear white clothes and marry no one else for her life.

Q. 9.—Does the contract of betrothal cease on the death of one party? Has the heir of either party any interest in the survivor?

A. 9.—The contract ceases on the death of the girl, but should the boy die, the girl is still considered as betrothed to the family, so to speak, and the guardian can give her to anyone he likes as if the marriage ceremony had taken place. For purposes of inheritance, should the boy or man die his betrothed becomes the property of his heirs. This is not applicable in the case of Darpu Khel village, where the betrothed becomes the property of her parents when her husband dies.

Q. 10.—Give the custom *re* breach of promise.

A. 10.—Custom on this point is hazy. Such a thing as breach of promise is very rarely known. The principals, not being allowed a say in the matter, are also not allowed to break it off. Should the guardian of either of the parties to a betrothal give the bride or bridegroom in marriage elsewhere, the penalty is the payment by the offending party of the expenses incurred, if any, by the aggrieved party, and a feud.

Should a woman refuse absolutely to marry a man before the ceremony of betrothal has actually taken place, she can do so, but this is extremely rare. If she does, she must not marry anyone else.

Should a girl elope with someone else when betrothed to a man, the husband with whom she has eloped must pay Rs. 1,200 Kabuli to the bridegroom originally selected.

Marriage.—*Q.* 11.—With what relations is marriage unlawful?

A. 11.—In this the people of Waziristān profess to follow the rules laid down in the Quran.

Q. 12.—What physical defects are enough to establish grounds for annulment of marriage?

A. 12.—Under no circumstances can a woman claim to have a marriage annulled, not even on the ground of impotence or lunacy in the man. The man, on the other hand, can divorce the woman for any reason which he may choose to advance.

Q. 13.—Are there any disabilities, besides relationship, which are a bar to marriage?

A. 13.—A Muhammadan may not marry one of another religion, but otherwise there is absolute free trade in marriage.

Q. 14.—May a man re-marry a woman whom he has once divorced?

A. 14.—A man may not marry a woman whom he has once divorced, unless she has previously married someone else and been divorced by him.

Q. 15.—Describe in full the usual ceremonies of marriage, and in particular the one which makes the tie indissoluble.

A. 15.—The ceremony of *lasniwai* (betrothal) has already been described. That may take place when the parties are any age. Marriage, however, does not take place till the parties reach puberty. When it is considered time for the marriage to take place, then takes place the ceremony known as *warro*. This consists in the bridegroom collecting a party of friends, and going in procession from his house to that of the bride. A party at the bride's house turn out to resist the bridegroom's party, and a sham fight takes place, in which clods of earth and stones are thrown on both sides, and also swords drawn. Occasionally it happens that someone is killed in these encounters, but this is rare. The bride's party at length desist, and the bridegroom comes to the bride's house where he feasts all the bride's relations. Next day the ceremony of marriage, *nikāh*, takes place. The *mullah* is called in and the religious ceremony is performed in presence of two witnesses besides the *mullah*. Anyone is competent to be a witness. When the ceremony is over, the bride is taken away to her husband's house. The tie is indissoluble after the *nikāh*. A religious ceremony is absolutely necessary to make marriage binding. Marriage cannot be presumed from cohabitation.

Q. 16.—Give the customs relating to divorce.

A. 16.—The Wazirs and Dauris recognise only one form of divorce and that is irrevocable. The word *talāk* is uttered three times, and three stones are thrown on the ground, and the divorce is complete.

A husband may divorce his wife at his own sweet will, but if he divorce her simply for his own pleasure and for no fault of hers, he has to pay *sharmāna* of some Rs. 60 Kābuli to her relatives. The wife can under no circumstances whatsoever claim divorce from the husband.

Q. 17.—What is the usual dower of an average woman? and when is it payable?

A. 17.—The dower of an average woman is a camel, sheep or cow according to the means of the bride. It is payable at the time of the *warro* as a rule, though this is not a *sine qua non*. This is only applicable to the Waziris: the Dauris give jewellery as a dowry.

Succession.—Q. 18.—If a man die, upon whom does his inheritance devolve? Give the heirs in order of succession.

A. 18.—When a man dies his inheritance devolves as follows:—

1st.—His sons in equal shares, or, if dead, to their sons, if any.

2ndly.—His brothers.

3rdly.—Father's brothers.

4thly.—His brother's sons.

5thly.—His brother's grandsons.

6thly.—Males descended from a common grandfather (*turburs*).

7thly.—To his tribe or section.

The shares in all cases are equal, unless the deceased has made a will leaving more to one than another. Wills are not common in Waziristān.

Grandsons inherit the shares of their fathers, and each set of grandsons divides their father's shares equally.

Q. 19.—Can women inherit? and if so, state the custom on the matter.

A. 19.—Amongst the Dauris and Waziris of the hills women cannot inherit under any circumstances. I am told that should a man leave a share of his property to his widow or daughter, he may do so, but it would only be hers for life, and after her death would return to the ordinary line of succession; but this is not done as a matter of fact. Widows and daughters, and other female dependents are entitled to maintenance only from the estate till they die or marry again.

Guardianship.—Q. 20.—What are the customs as to guardianship?

A. 20.—The customs on the matter of guardianship of minor children are hazy. Guardianship devolves as a rule to the nearest male relation in the same order as succession to property, and the father can only appoint another guardian should the next-of-kin be an enemy of his.

Women are treated as property, and the guardianship of them devolves as shown in A. 18.

A guardian can only alienate his ward's property provided it is in the interests of his ward.

As regards illegitimate children, anyone can adopt them who likes. They are treated as the *hamsayas* of the man who adopts and maintains them.

The age of majority for men is about 15 and for females about 14.

Miscellaneous.—Q. 21.—What are the rights of stepsons and daughters?

A. 21.—Sons of a wife by a former husband have no right of inheritance in the second husband's estate. They are entitled only to maintenance.

Q. 22.—What are the customs as to adoption?

A. 22.—There are none. They do take boys and treat them as sons during their life, but they have no right of inheritance whatever. A man cannot leave his property out of the ordinary succession.

Q. 23.—Does pre-emption obtain? If so, state the custom with regard to it.

A. 23.—Pre-emption does obtain in Daur. The right lies first with the relations of the owner of the property in order of succession, and after them with the man whose property borders with the property to be disposed of. After that with the members of the village. It applies only to sales and not to mortgages. Notice should be given by the person wishing to exercise the right of pre-emption as soon as he knows of the sale.

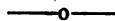
Q. 24.—What is the custom with reference to mortgage?

A. 24.—Mortgage with possession is the almost invariable rule. There is no custom as to foreclosure whatever. A mortgage may continue *ad libitum*.

Wood and trees growing on the land are the property of the owner.

Q. 25.—What are the local customs as to alluvion and diluvion?

A. 25.—There are none. Should land be reclaimed by alluvion, a *jirga* sits on it and settles to whom it belongs.



II.—CRIMINAL CUSTOMS IN DAUR.

I attach the following notes on the customs in regard to criminal offences in Daur because I have found them useful myself during the time I have been Political Agent in North Waziristān. They must not however, be taken as hard-and-fast laws to be strictly adhered to, but only as rough notes intended as a guide to enable the Political Agent to

exercise a supervision over the decisions of *jirgas*. For this purpose I have found them useful as a guide to tell me whether a decision given is more or less in accordance with tribal custom. The notes were written largely by Ahmad Din, Political Tahsildar, who has had long experience of these people, and I have re-written them, adding some of my own experience. I hope they may be useful, but I must again say that they are not to be taken as hard-and-fast rules, but only as guides.

Criminal, General.—With regard to offences against the human body, the general principle of the customary penal law in Daur may be said to be that of “an eye for an eye and a tooth for a tooth.” For murder the penalty is death; for bodily injury, bodily injury of a small nature. The Dauri, though, like every other Pathān, has his price by which either his wounded body or pride may be salved, and for most offences a fixed sum is laid down by which the offender may satisfy the wrath of the party offended. The amount actually paid, however, depends largely on the strength and influence of the opposing parties, the weaker usually having to go to the wall, being mercilessly fleeced if the offending party, and having to be content with little or nothing if offended.

As a general rule for purposes of calculating compensation a woman is considered as equal to half a man, and a Hindu is equal to a woman.

Children, when they can distinguish right from wrong, are considered men or women, according to sex, for purposes of assessing compensation.

Customary law in Daur only takes cognisance of the actual deed accomplished and not the intention of the offender: for instance, there is no such thing in Daur as attempted murder. If the man is only wounded in the attempt, the compensation given is only that for the hurt caused. Again, there is no such thing as letting a man off because he killed another man accidentally. Accident or no accident, the man is dead and the penalty must be paid either in cash or kind.

In Daur the right of self-defence is recognised, but in no case does it extend to the causing of death or permanently maiming the person against whom it is exercised, not even if he be attempting to commit murder. Should he be killed or permanently maimed, compensation must be paid to his relations or to himself.

Revenge is taken, if possible, on the actual offender while he lives. After his death then his brother inherits the feud, and after him the heirs of the murderer. If he has no such relation, then his section is responsible if the injured party belongs to another section.

If the offended party kill a relation of the actual *badidār* while he is still alive, then Rs. 500 British must be paid as compensation.

If the offender and brothers die without revenge having been taken, and the inheritance falls to a relation, then that relation can, if he wishes to escape the feud, renounce the heritage with the feud attached to it.

The tendency amongst Waziris and Dauris is that the blood penalty should be exacted, but if a person is afraid, he can go and get the village elders, and go and kill a sheep before the house of the offended party (a ceremony known as *nanawati*), and have the compensation assessed, and the case settled in that way.

The general method of setting cases is by oath, and the general rule as regards administering the oath is that if the offence was committed by night, the option of taking oath is given to the accused, and if it occurred by day the oath is given to the complainant, the presumption, I suppose, being that there was more chance of the accused being recognised by day than by night. The result of this rule is that most offences take place by night. Of course, if either party can produce sufficient evidence, this rule is set aside.

Penal Law.

Offences against the human body—Murder.—In Daur as far as the consequences of the deed are concerned, there is no difference between murder and the accidental killing of a man or woman. The penalty is the same in either case. The punishment is death by the hands of the relatives of the murdered man, or if they cannot do it themselves, by the hand of assassins hired by them.

The case can, however, be compounded on the intervention of the village *jirga* by the payment of a sum of money varying from Rs. 1,000 to Rs. 1,200 in cash. In some cases, too, a woman is given in marriage to one of the relations of the murdered man by the murderer, in which case the price of the woman is agreed upon between the parties and deducted from the amount of compensation to be paid.

If both of the parties do not willingly compound the offence but one is forced to do so by the other, or both are forced to do so by the village or tribal *jirga*, then compensation in cash only is paid.

The compensation paid for a woman is in all cases half that of a man, and the compensation for the murder of a Hindu is the same as that for a woman.

In no case does the right of self-defence extend to the causing of death to the attacker or to permanently maiming him. Should a man in self-defence kill another one, he has to pay compensation as above. As a general rule cases of accidental killing are settled by the payment of money, though the tendency in cases of intentional murder was to exact a life for a life and not to take compensation.

There are four exceptions to the law that the death or hurt of a man or woman must be avenged by the relations, either by taking a life, or by taking money in compensation. The exceptions are—

- (i) If a man is accidentally killed or shot in a *nandara* (the name given to the local dance at the Id), unless it can be proved that the man who killed the other had a feud or any grudge against the deceased. This applies to hurt also.
- (ii) If anyone is accidentally hurt or killed in the stone-throwing which sometimes accompanies a wedding, provided again that there is no grudge or feud.
- (iii) At a tent pegging match, if a *sowar* warn the by-standers that his horse is unmanageable, and if anyone is injured, no claim lies against the *sowar*.
- (iv) If a man cutting wood in a tree warn any person sitting under the tree, the man cutting is not responsible for any accident that may happen from falling branches.

If a person is injured by a runaway horse or other animal, the animal is usually given in compensation.

The burden of proof of any injury being accidental is on the party who inflicts the injury. A counsel of elders is summoned at his expense, and if he can satisfy them that the matter really was an accident, they assess the compensation as they think fit.

All feuds are suspended while the parties are out with a tribal *lashkar* or *chigha*.

Hurt and grievous hurt.—According to law the punishment for hurt is hurt of a similar nature to that inflicted, *i.e.*, for the loss of a limb, the punishment is the loss of a limb; for a wound, a similar wound; for a nose or ear cut, a nose or ear cut.

Revenge is the law, but should the offender either from fear or any other cause wish to avoid the revenge and stop the quarrel, he has to bring a sheep to the house of the injured man and kill it (*nanawati*). He must also bring some of the big men of the village or tribe with him. The case can then be compounded and payment of compensation made.

There is, however, a scale of compensation fixed by which nearly every form of hurt is to be compensated. The scale of compensation is as follows :—

For the permanent, total disablement of an arm or a leg, Rs. 500.
If the disablement be not quite total, then the compensation is Rs. 250.
If the disablement be only slight, the compensation is Rs. 120.

	Rs.
For loss of one eye 	250
For loss of both eyes 	500

The rates for loss of fingers are as follows:—

					Rs.
Thumb	...	...	...	...	250
1st finger	...	...	...	...	100
2nd „	...	...	...	...	86
3rd „	...	...	...	...	40
4th „	...	...	...	...	30

Compensation for teeth is—

Front, upper or lower	...	...	...	...	100
Further back	...	...	...	...	50
Back teeth	...	...	...	...	25

Rates of compensation for a female are the same as those for a male, as also are the rates for Hindus, except in Malakh *illāqa*, where the rates for woman and Hindus are half. The general scale of rates in Malakh *illāqa* for woman and Hindus is half that for Muhammadan men.

Offences in connection with women—Adultery.—If they are caught in the act, they may both be killed, but in the Malakh and Tappizad *illāqas*, where a woman is considered half a man, the woman is to be killed and the man's foot cut off; or, if the man is killed, half compensation must be paid to the relations of the man killed. This latter is the procedure invariably adopted in the Malakh *illāqa*.

Here, in a sense, the custom is at least as logical as the curious rule of Muhammadan Law (all rogated in 1801 by a regulation of the Bengal Government), that a person who intended to kill *A* but accidentally killed *B* instead, was not punishable capitally for what he intended or for what he actually did.—SIR R. K. WILSON.—*Introduction to the Study of Anglo-Muhammadan Law*, p. 113.

Rape.—The man may be killed.

Assault with intent to outrage the modesty of a woman.—The man may be killed and half compensation paid or his foot may be cut off.

House-trespass to commit adultery.—The man's nose or ear may be cut off. If the husband suspects wife of being a consenting party, he may kill her.

Elopement.—The penalty for this is death or Rs 1,000, as is also the case with abduction.

Should a woman go wrong and become a bad character, the husband may cut off her nose and divorce her. Should she marry again, he is entitled to no compensation.

Offences against property.—The punishment for burglary, robbery and theft are all much the same. The amount of property stolen and compensation for damage done and expenses of the suit are recovered, plus a village fine of Rs. 40 to Rs. 200 according as the man can afford to pay.

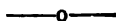
If no damage is done and no property stolen, then the village fine alone is recovered.

Arson.—In cases of arson the matter is referred to the village *jirga*, who, if the offence is proved, realise a village fine of from Rs. 100 to Rs. 200, and compensation is realised and paid to the offended party.

Should any loss of life result from the fire, the penalty for murder is exacted in addition for each person who perishes in the flames.

Cutting of crops.—Compensation for the damage done is paid as well as a fine of Rs. 5 if the offence is committed by night, and Rs. 2 or Rs. 3 if the offence is committed by day.

W. J. KEEN, CAPTAIN,
Political Agent and Settlement Officer, Tochi.



III.—CUSTOMARY LAW IN KURRAM.

Family and Tribal Connection.

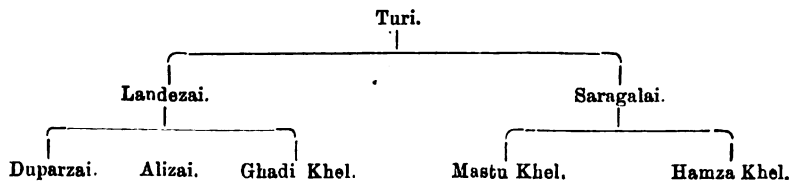
1. Among the Muhammadan inhabitants of the Kurram valley only persons descended from a common ancestor are considered to be relatives, i.e., *wārisān*. For the purpose of succession to property moveable or immoveable, the kindred of a wife are not considered to be relatives of the husband or of his relatives or children, except in cases where husband and wife belong to one family.

2. The system of reckoning generations is as follows:—

The generation of the person whose relatives are to be reckoned is regarded as the first generation, that of his father and uncles as the second generation in the ascending line, that of his grandfather as the third generation in the ascending line, and that of his son as the second generation in the descending line, and that of his grandson as the third generation in the descending line.

3. The Kurram valley is inhabited by Tūris, Sayyids, Bangash and Zaimusht. Only the first three clans are represented in the so-called Tūri *jirga*; the Zaimusht are quite separate from the Tūris, residing in the Lower Kurram and have a *jirga* of their own.

The following statement shows the various divisions among the Tūri clan:—



The Duperzai consist of 14 branches, *viz.* :—

					Jaffar Khel, Sari Khel, Doulat Khel, Ambor Khel, Sultan Khel, Payas Khel, Shergaha Khel, Megakh Khel, Mir Dad Khel, Tor Khel, Kleemi Khel, Dreplarai, Kachkina, and Kamr Din Khel.
The Alizai	„	„	7	„	„ ... Misri Khel, Chagga Khel, Malik Khel, Mir Hassan Khel, Sharino Khel, Khoedad Khel, and Ahmad Khel.
The Ghandi Khel	„	„	8	„	„ ... Alam Khel, Adin Khel, Panj Pai, Ynsuf Khel, Mamat Khel, Nandar Khel, Tani Khel, Kami Khel.
The Mastu Khel	„	„	8	„	„ ... Feroze Khel, Haji Khel, Torkha Khel, Khel, Gharibzai Jani Khel, Bughdi Khel, Drewandi and Maru Khel.
The Hamza Khel	„	„	13	„	„ ... Janak Khel, Saragala, Pari Khel, Shakas Khel, Sati Khel, Spin Khel, Dreplarai, Badarzai, Badi Khel, Malli Khel, Jaji Khel, Aka Khel, and Kheshti.

There are four leading families of Tūri Sayyids, *viz.* :—

(1) Sayyid Fakhr-i-Ālam Kaul, the descendants of which live in the village of Kirman, Grām, Zerān and Shālozān. The present head of this family is Sayyid Muhammad Akbar, son of Hanif Miān of Grām.

(2) Sayyid Mir Ibrahim Kaul, the descendants of which live in Ahmadzai, Nasti Kot, Nūrki and Shālozān. The present head of this family is Sayyid Hanif Jān, son of Bādshāh Gul Miān of Ahmadzai.

(3) Sayyid Ashāq Kaul, the descendants of which live in Mahūra, Āgra and Baliāmin. The head of this family is Sayyid Pahlwān Shāh of Mahūra, though Sayyid Gul Husain of Baliāmin considers himself the head of the Baliāmin branch of the family.

(4) Sayyid Lāla Gul Kaul, the descendants of which live in Kharlachi. At present Sayyid Mir Kāsīm considers himself to be the head of the family, but the others do not recognise him as such.

Besides the above there are at present living in Kurram a number of Tirāh Sayyids, all descended from one Sayyid Shāh Anwār Miān; they are bitterly opposed to the Tūri Sayyids and possess great influence among the members of the Miān Murid faction of which they are the *pirs*. The present head of the Tirāh Sayyids is Mir Akbar Miān of Shakkardarra.

The Tūri Bangash (Shiahs) consist of 10 branches, *viz.*, Bakar Khel, Tajak, Yūsaf Khel, Hassanzai, Baghzai, Qādir Khel, Gabarai, Gharbina, Manjarai and Jalamzai. The leading men of this clan are Shāh Jahān Khān and Shirak, both of Shālozan.

The Tūri Bangash (Sunnis) are of one branch the present head of which is Muhammad Nazir of Ghamkot.

It is customary for every branch to depute one or more members as representatives to the Tūri *jirga*. If no factions exist in the branch itself then usually only one representative attends, otherwise each faction is represented.

The Zaimusht are composed of:—

- (1) Khoedād Khel.
- (2) Mannattuwāl.
- (3) Mindan.
- (4) Wattizai.
- (5) Dāūdai (now extinct and not represented on the *jirga*).

The Khoedād Khel living in Kurram reside in Chappri. The headmen are Sāleh Khān and Rasūl Khān.

The Mannattuwāl and Mindan living in Kurram occupy Durānai Chashi. The headmen are Usmān Khān and Khadin.

The Wattizai living in Kurram occupy Manduri, Ahmadai Shāh Mir Killi, Baggan and Uchat Killi. The headmen are Hamīd Khān, Ghulam Haider, Izzat Khān, Mir Mast and Mir Aslam.

CIVIL.

Betrothal.—1. In Kurram there is no fixed age laid down at which or before which betrothals can take place. The general custom is that the girl should be about 15 or 16 years of age.

2. In the case of a girl, or of an unmarried woman who has attained the age of puberty, the contract of betrothal is made by her father or, in the event of her father being dead, by his heir. In the case of a widow, the making of the contract of betrothal lies with the heir of the deceased husband. No woman can make the contract of betrothal on behalf of herself or of her children.

In the case of a minor male the contract of betrothal can be made by his father or, if he is dead, by his heir, or by the guardian of the estate. A man, considered to be of age, can without reference to his own relatives, make a contract of betrothal on behalf of himself.

3. In Kurram betrothal and marriage is merely a matter of buying and selling; the formality observed at the time of betrothal is common throughout the valley; the man's relatives visit the father of the girl and, having before witnesses arranged as to the price to be paid for the girl, they offer up prayers and go through the ceremony of *las porta kawal*, i.e., raising the hands or clinching the bargain.

4. Priority in betrothal does not entitle the female to priority in

marriage. A man having contracted a betrothal may marry another woman before he marries the woman to whom he was first betrothed.

5. A contract of betrothal can only be annulled on the following grounds:—

- (1) That both parties to the contract consent to the annulment.
- (2) That the man is proved to be impotent.
- (3) That either party is an idiot.
- (4) By death of either party.

6. In all cases of annulment of a contract of betrothal, the party by whom expenses have been incurred can claim a refund.

Marriage.—1. A man may not marry his mother, grandmother, mother-in-law, step-mother, step grand-mother, foster-mother, daughter, daughter-in-law, grand-daughter, grand-daughter-in-law, step-daughter, sister, foster-sister, niece, aunt.

2. Impotence, idiocy and mutilation are sufficient to annul a marriage. Should the party seeking annulment of the marriage have been aware of the defect at the time of or before the marriage, the other party can claim damages.

3. There are no disabilities, other than those which arise out of blood relationship or physical defect, which operate to bar marriage. Sunnis and Shiahs intermarry with Sayyids occasionally, but very rarely intermarry with other sects.

4. Yes, a man may marry two women closely related to each other provided that they are not barred by the articles of his religion.

5. A man may marry again a woman he has divorced, and it makes no difference if since the divorce proceedings the woman may have married another man. In such cases it is usual to delay the consummation of the marriage for a term varying from five to six months since the death of, or separation from, her last husband.

6. The degrees prohibited by consanguinity are also prohibited by fosterage, there being no exceptions.

7. A man is allowed by the Muhammadan Law to marry four wives only.

8. In Kurram it is customary for the marriage to take place when both the man and woman are over 16 years of age.

9. In the case of both parties being minors the consent of the guardians of both is necessary to the validity of the marriage. In the case of both parties being of full age, the consent of the woman's guardians is indispensable.

10. —

11. Any Muhammadan of full age and good reputation is a competent witness to a marriage contract.

12. No such contracts exist in the valley. A woman when married becomes the absolute property of her husband.

Divorce.—13. (1) The only recognised ground for the divorce of a wife is proof that she is an adulteress.

(2) Change of religion (i.e., Shiah to Sunni) may constitute grounds for a divorce, but cases are known in which divorce has not taken place.

(3) A husband can divorce his wife without assigning any cause, but should he do so he would bring upon himself the wrath of his wife's relatives.

14. In Kurram there is no difference in the formalities to be observed in publicly announcing a divorce; as already noted, divorced parties may re-marry. There is no distinction between *tilak* and *khola*: in fact the latter is very rarely practised except when conjugal differences are brought to court for settlement.

15. A divorced wife has no claim whatever on her husband for maintenance.

16. A wife can only claim divorce from her husband on the grounds that (1) he is impotent, (2) he is insane.

Dower.—17. There is no such custom as giving or demanding dower with a woman at her marriage. In fact, women are merely sold and bought like cattle.

18.—

19. No marriage is considered valid unless all necessary ceremonies have been performed. Cohabitation does not constitute marriage.

Guardianship and Minority.—Yes, a father can appoint whomsoever he will, to be, after his decease, guardian of his children.

2. The guardianship of a male minor devolves on his mother as long as she does not re-marry. If the mother be dead the guardianship devolves on the paternal uncles; in the absence of such on the nearest male relatives on the paternal side.

No distinction is made as to the property; if the mother acts as guardian to her son she manages the estate in the name, and for the benefit of, her son.

The guardian of a female minor is the heir of her father, and the right to dispose of her in marriage lies with such guardian.

3.—

4. A guardian cannot alienate the property, moveable or immovable, of his ward without the permission of the Political Agent. A guardian may lease the property for the period until his ward comes of age.

5. No contract of the guardian regarding moveable property is binding unless sanction as shown in answer 4 has been obtained.

6. The mother of her husband is entitled to the custody of a

married female infant; in the absence of such, the husband may himself obtain custody of such infant or appoint any person to look after her. The father of a married female infant has no claim to her custody.

7. A widow on remarriage loses the right to be guardian of her minor children, and on her again becoming a widow the right cannot be revived.

Powers of minors.—8. No.

9. Such contracts are not binding.

10. (1) A fatherless minor is liable for his father's debts.

(2) The property cannot be alienated without the consent of the creditor.

11. Females are always under guardianship. In the case of a married female her husband is her guardian; if she be a widow then she becomes the property of her deceased husband's heir.

In the case of an unmarried female her father and in his absence his heir is the guardian.

12. The mother or her relatives have first claim to the guardianship of the illegitimate children.

13. As regards capacity to act in marriage, divorce, the minority of a male ceases at the age of 16 years, but of females no age is fixed, for a woman is nothing more or less than a chattel.

Succession. 1—The estate of a man who at his death leaves widows, sons, daughters, brothers, etc., devolves first upon his sons; if there are no sons, upon his grandsons or great-grandsons and so on; in cases where a man has no sons his estate will devolve upon his brother. Females cannot inherit property.

2. Sons take equal shares in the inheritance. As a rule an estate is partitioned according to the number of widows, and their sons then receive their respective shares. No regard is paid to the caste or tribe of the mother, nor is any regard paid to the ages of the sons.

3. No, a father cannot nominate a particular son to inherit more than his brothers, nor can he bestow any excess share on any son during his lifetime.

4. In cases of partition of an estate held jointly by a father and his sons on the decease of the father, the whole estate is shared by the sons, whether or no any of the sons may have acquired or inherited any portion of it during the lifetime of the father.

5. No, the nearer descendants do not exclude the more remote, *i.e.*, grandsons or great-grandsons, whose fathers may be dead, will on the demise of the deceased receive their share of the estate along with and at the same time as the sons of the deceased.

6. An estate is divided into a number of equal shares corresponding

to the number of sons or brothers as the case may be, and these shares are further sub-divided among their descendants.

7. See answer 6.

8. The distribution shown in answer 6 applies to all cases of inheritance.

9. No degree is fixed.

10. The inheritance will devolve on his brothers or their descendants.

11 to 20. No woman can inherit. All widows and unmarried daughters become the property of the deceased's heir at his death and should be maintained by him.

21. In cases where a man dies leaving no male lineal descendants, the inheritance in the first instance devolves on his brothers or their descendants: if there be none and his father be alive, he would take over the estate.

22. As stated above, no woman can inherit an estate.

23. When the estate devolves on brethren, the order of succession is:—

- (1) Uterine associated brethren.
- (2) Unassociated brethren of the whole blood.
- (3) Associated brethren of the half-blood.
- (4) Unassociated brethren of the half-blood.

If a man die leaving a uterine brother separated, and a half-brother associated, his estate devolves on his uterine brother.¹

24. No.

25. Their sons inherit in the same order.

26. Never, unless their father was a lineal descendant of the deceased.

27. As before stated, no woman can own property in the valley.

28. A son will always inherit the estate of his natural father, but has no claim to the estate of a step-father.

29. No.

30. A step-father is not bound to maintain his step-children, but it is customary in the valley, when a widow with children re-marries, that an agreement is drawn up by which the step-father binds himself to maintain his wife's children by a former husband until they are of age or married.

31. In Kurram the condition of society is such that no case has been known of a man dying and leaving no relations; should such a case

¹ This appears to be in strict accord with the general principle of Muhammadan Law explained in Wilson's Introduction, pp. 146-7.

occur, his estate, in all probability, will be divided up among the members of the section to which he belonged. I would note here that a custom peculiar to Kurram exists as to the inheritance of the property of a *hamsāyah*. The system of maintaining *hamsāyahs* has existed ever since the Tūris have been in Kurram. Should a *hamsāyah* die the custom is for the *nāik* or over-lord to inherit his property, and his descendants still remain the *hamsāyahs* of the *nāik* or of his descendants.

32. Should a man retire from the world and enter a religious order, this makes no difference to his right to succeed to an estate by inheritance.

Adoption.—Adoption is not recognised in the valley.

Bastardy.—1. In such case the offspring of such marriage will be considered illegitimate.

2. If the father publicly acknowledges the child to be his son the latter can inherit. No such cases are known in Kurram, all wives are purchased, and are nothing more nor less than slaves.

3. No.

4. —

Wills and legacies.—No customs regarding wills or legacies exist in the valley.

Gifts.—No such custom exists.

Partition.—1. In Kurram it is the custom for families to live together and manage the estate jointly; should, however, any member of a family desire to manage some portion of the estate for his own use, the consent of all partners must first be obtained. On the death of the head of the family this portion already partitioned again comes into the joint estate for partition among the heirs, though if they agree to continue to manage the estate jointly, the previous holder with the consent of the remaining partners may retain possession.

2. Yes, sons have the right to claim partition, but this is rarely exercised.

3. No, sons have the right to equal shares.

4. Wives are not entitled to any shares.

5. If a partition is made of an estate during the lifetime of the father, the estate is divided equally between father and sons, each receiving an equal share.

6. Redistribution of the estate will have to be made. The father's reserved share will be divided equally among all the sons.

7. Only sons can claim a partition of the estate as a matter of right.

8. A widow cannot claim any share, see answer 4.

9. All property, moveable or immoveable, acquired or inherited, belonging to the estate must be brought into partition.

10. No.

11. All property acquired by the father after partition will be shared equally at the father's death by all sons, whether they remained associated with him or not.

12. No.

Penal law among the Turis of the Kurram valley.—In the Kurram valley as far as the consequence of the deeds are concerned, there is no difference between murder and the accidental killing of a man, whether male or female, adult or minor. The penalty is the same in either case. Blood-money or compensation for murder in the valley is Rs. 360 Kābuli for any person of any class or social standing and of any age or sex. There is no distinction of Hindu and Muhammadan. In the case of murder the punishment is death by the hands of the relations of the murdered person or, if they cannot do it themselves, by the hands of a hired assassin.

2. The case can be compounded on the intervention of the village *jirga* on payment of a sum of Rs. 360 Kābuli which in the valley is called *Saz*. In some cases when the relations of the murdered person agree, a girl is given in marriage to the nearest relation of the deceased.

3. In no case does the right of self-defence extend to the causing of death or to permanently maiming one. Should a person in self-defence kill another one, he has to pay compensation for his actions as stated above. There is no exception to the general rule. If a person is accidentally killed by the hands of another, the person who thus kills him is supposed to be a murderer and so will have to pay blood-money as usual. Accident in such matters is nothing. There is one point, however, worthy of note, *i.e.*, the person who accidentally kills another is not regarded as an enemy. His blood-money is accepted and no blood feud arises. If a person is accidentally killed in a *ghara* (local dance) or in the ceremony of stone-throwing at a marriage procession or tent-pegging, blood-money will have to be paid for the sake of removal of bad feelings which may otherwise arise. If a person is killed by an animal, for instance horse, mule, donkey, cow, bullock, and the animal is not known to be vicious, and besides its owner is not present at the time of the accident, nothing for such an accident is to be paid by the owner. If, however, an animal is known to be vicious, its owner will have to pay blood-money to the heirs of the person killed.

4. There is no right of self-defence except in the following case. If a person is killed when he is at night breaking into the house of

another person for any purpose, his relations can make no claim to blood-money.

Simple and serious hurt.—In the valley it is customary in cases of simple and serious hurt for the parties to compound, i.e., the assailant performs *nanawathi* at the house of the injured party. There are, however, besides the performance of *nanawathi* the following penalties in cases when injury of a permanent nature has been inflicted :—

- (1) For one hand Rs 190 Kābuli is paid.
- (2) For two hands Rs. 360 Kābuli is paid.
- (3) For one eye, Rs. 190 Kābuli is paid.
- (4) For two eyes, Rs. 360 Kābuli is paid.
- (5) For thumb, whether of hand or foot, Rs. 25 Kābuli is paid.
- (6) For other fingers, Rs. 10 Kābuli is paid for each.
- (7) For each of the ears, Rs. 20 Kabuli is paid.
- (8) In the case of teeth, Rs. 25 each is paid, but if it is proved that two or more teeth have been injured by a single stroke then in that case some reduction in the compensation which is to be paid is usually made.

- (9) In the case of nose, Rs. 190 Kābuli is to be paid.

Adultery.—In the case of adultery the man and woman both, if caught, are liable to be killed. If only suspicion is aroused against a man and he is unable to clear himself by taking oath, then Rs. 85 Kabuli only is to be paid as *sharmana*, and the woman not killed. In the case of an assault with intent to outrage the modesty of a woman, the punishment for the man is to pay Rs. 85 Kābuli only as *sharmana*. In the case of house trespass to commit adultery, the same amount of Rs. 85 is to be paid as *sharmana*. In the case of elopement, if the girl eloped with is not married her father or brother will have to take her price fixed by a tribal *jirga*. If she is a married woman then her original price, i.e., what had been paid for her by her former husband, and Rs. 85 Kabuli in addition as *sharmana* will have to be paid.

The punishment for burglary, robbery, theft, arson, cutting crops, and damaging trees in a garden is payment of compensation amounting to the value of the loss or damage, which is determined by a tribal *jirga* sworn to on oath by the person injured, in addition to the amount of fine which the tribal *jirga* may consider proper and fix to be paid.

Marriage.—1. In the valley usually young persons of about the same age are engaged and married.

2. Sometimes an old man marries a young woman, when his first wife is dead or very ugly, to pass his life with.

3. Sometimes an old woman marries a young man, when the man

stands in need of a wife and is too poor to arrange for regular marriage for himself.

4. Girls and boys are seldom married.

5. When a person intends to engage his son to the daughter of another, he with some of his friends settles the question of price with the guardian of the girl, and then the engagement is celebrated by singing and drinking. The first duty after the contract of engagement is made is *las porta koul*.

6. A week or so after the engagement the female relations of the young man engaged take gifts with them and go to the girl's father's house. This is called *khaparta*.

7. When a date for the completion of the marriage ceremonies is fixed and the amount of expenditure which is to be paid to the girl's father agreed upon, then the female members of the young man go to the girl's house with more gifts, and this custom here is called *khowāra*.

8. The marriage procession of men is called *janj* and of women *wāra*.

9. A *mullāh* makes the marriage contract after the girl gives her consent before two reliable witnesses.

10. The price of a woman was in former times from Rs. 60 to 110 Kābuli and never more, but now it is from Rs. 200 to 2,000 according to the beauty and position of the girl.

11. The Tūris, Sayyids and Bangash of the valley usually don't give their daughters to poor people, but if they can find a man of position and wealth, then they make no objection in giving their girls, whoever he may be in nationality.

12. After engagement, if the man engaged dies, the girl, if her guardian has no objection, may be married to his brother or some other near relative. If she or her guardian make any objection they will have to return what they have been paid for the girl, and then they may give her to any person they like.

13. After marriage a woman becomes the property of her husband and after his death of his heirs. She may be disposed of by her husband and after his death by his heirs, if she is not liked or otherwise objected to. Some time when the father or the brother of the woman married agrees to pay back the price originally paid for the woman by her husband, then the woman is made over to him or them. The father or brother then have the right to dispose of her as they please.

S. WATERFIELD,

Political Agent, Kurram.

5th October, 1903.

IV. DIR, SWAT AND CHITRAL AGENCY.

Note on Customary Law in Swāt.

The Native State of Dir is under the rule of the Nawab. His family are Yusafzais and the customary law there differs from that of Swat chiefly because the will of the ruler often prevents the people from following the unwritten dictates of their *riwaj* or customary law.

The first chapter of the unwritten Penal Code of the Yūsfaizis is the one dealing with offences affecting the human body. The highest crime in this class is the taking of human life. If the act is voluntary, it can only be condoned by the death of the aggressor. The heirs of a murdered man are bound to secure the death of the murderer, by fair means or foul, and the latter must take shelter in exile in another village or *tappa*, which is expected to give him sanctuary. If the aggrieved party determines on retaliation against the refugee, he does so at the recognised risk of his own life, and men have often lost their lives in the attempt to obtain their revenge. The payment or acceptance of blood-money is exceptional. The price fixed for a Pathān's life is Rs. 360, and if it is not acceptable when patching up a *rogħa* or *sulah*, a *swarah* is added. This means that a girl is given away unceremoniously, mounted on horseback and not taken in a dooly, to the party making the peace. In the matter of compensation, a woman is equal to half a man, and a serious or grievous injury to half a life in both cases. Children as soon as born bear the full value of human lives, male or female as the case may be. There is no difference in the case of Hindūs who, while living amongst Pathāns and conforming to their rules and customs, have similar valuations. Attempt at murder is considered an offence, and the man whose life is attempted is justified in killing his adversary as in self-defence. But the offence is compoundable on payment of a *nagħa* or fine to the *jirga* which may amount to Rs. 100, or a *nanawate* to the aggrieved party. The *nanawate* is a deputation of *mians*, *mullas* and elders sent by the aggressor to intercede and bring about a *rogħa* with the opposite party. If the aggrieved party is not inclined to come to terms, he forewarns the *nanawate* not to come, or quits his house to avoid it; but it is not considered good form to do so, and generally a man is prevailed upon by a second if not the first *nanawate*. If a man absolutely refuses to listen to a *nanawate* his only recourse is to leave the village.

Causing serious hurt with intent to commit murder is half a murder. The compensation is Rs. 180, which may be reduced to Rs. 100, if the wound is not dangerous or severe. Causing the death of a

man is excusable, if it is proved to be the result of accident or chance. The burden of proof of this lies on the party causing the death. The right of self-defence is allowed to everybody even if he be under a sentence of death according to *riwaj*, i.e., if he is a *dushmandar* or *sharunkai* for murder or elopement. It may extend to the killing of an antagonist. Revenge must follow the actual offender in the first instance, but failing him his next of kin is under the blood-feud especially in cases of murder. In *matiza* or elopement cases only the guilty pair are liable. An abettor comes within the scope of the custom of revenge, and is liable to a fine of Rs. 80, by the *jirga*. If the injured party kill a relation of the actual offender when he has not been guilty of the abetment of the crime, this is held to clear the original culprit and the *Badla* or feud revenge is over. If the offender escapes revenge upon himself, personally, the legacy is handed down to his progeny who must stand the chances of a blood-feud or make atonement by means of paying blood-money, giving a *swara*, or trying the good offices of a *nanawate*. The employment of a hired assassin for purposes of revenge is considered awful, and in case of failure or success, the bravo is not involved in the progress of the blood-feud.

There are many cases, in which unintentional loss of life resulting from a rash or negligent act is attributed to *kismet* or fate and the delinquent is exempted from the consequences of his doings.

Such are :—

Casualties occurring in sham fights at the *Ids*, or during marriage processions.

Fatal accidents attending a *shikār* or hunting expedition.

Mistaken treatment or operation by a doctor.

Meeting with death in learning to swim or ride with the help of another person.

Any other fatalities which may be plainly ascribed to unforeseen circumstances.

In such cases no claim for compensation lies, nor is a basis for a blood-feud admitted by the *jirga*. When a tribal fight is raging, or a *ghazā* or religious war is declared, all feuds remain in abeyance. And similarly when a *laskhar* or tribal force is turned out for offensive or defensive purposes.

Bodily injury.—For this the Mosaic law of retaliation in the same degree holds good—an eye for an eye, and a tooth for a tooth. But if the parties are amenable to a mutual settlement, there are scales by which the varying amounts of compensation can be assessed.

			Rs.
For the total loss of an arm	...	...	180
For the total loss of a leg	...	...	180
For fracture of the skull	...	...	30—80
A wound or cut on the face	...	...	40—80—100
Loss of an eye	...	...	180
Cutting off the nose	...	...	105—180
Cutting off an ear	...	...	40—50
Breaking or pulling out a tooth	...	...	30—50
Cutting off a finger or fingers	...	...	40—100
Castration, partial or total	...	...	100—180

As before stated, there is no reduction in the case of a Hindu, but a woman's injuries would be assessed at half the prices quoted above.

Adultery.—The punishment for this is death for both parties, whether they are caught in the act or after it. Presumptive or circumstantial evidence, or general report is considered sufficient to establish the guilt of the parties, who may or may not be married. If only the woman is killed and the man escapes, or *vice versa*, he or she is considered an outlaw liable to be killed at any time by the wronged party or their paid assassin. For a woman thus exiled there is no hope of grace, but a man may succeed in securing his pardon by giving a *sawara* to the offended person or his next of kin, and paying a fine of Rs. 80 to the *jirga* for his rehabilitation in the village.

Rape.—The man must be killed, but the woman is not considered fit to or allowed to live. She is generally killed to justify the death of the man. Should the heirs of the woman not wish to kill her, they are called upon by the *jirgah* to pay a fine of Rs. 80 for their low sense of honour. Assault with intent to outrage the modesty of a woman is tantamount to rape in all respects, and is treated in the same manner.

House trespass to commit adultery.—For a first offence the man is liable to a *nāyha* of Rs. 40—80, provided no encouragement was known from the woman's side. If the man repeats his visit he is supposed to be acting in concert with the woman and the consequences are similar to those of adultery. If another woman is suspected of playing the go-between in such intrigues her nose is cut off. This is generally the punishment for abetment of illicit intercourse.

Elopement.—Whether the man or woman be married or unmarried, the offence and its punishment is the same as that of adultery. In rare cases a *rogħa* can be effected by means of a *swara* as before mentioned. Divorce is very uncommon amongst Pathāns, and though sanctioned by religion, is not practised by those having any self-respect. If a man finds fault with his wife he may supersede her by another, or send her away to her parents; but her honour would still be bound

up with his, and if she misbehave herself, her husband has a right to kill her. When living in such separation the woman cannot have the custody of her children.

Offences against property—Burglary, robbery, etc.—If a man is caught in the act of lurking house-trespass or house-breaking by night, he is liable to be killed, whether he is armed or unarmed, and his relations can claim no reparation. The same is the case with a highway robber caught red-handed. If only suspected or caught after the commission of the crime, incriminating evidence is looked for, and, if it be obtained, the accused has to make good the loss to the injured party in accordance with what the latter may take oath to, besides paying to the *jirga* a fine of Rs. 40—80. An unsuccessful attempt at theft, or even a case when the stolen property is quietly and amicably returned, renders the guilty man liable only to a fine, which may be anything under Rs. 40.

Arson.—The offender is fined up to Rs. 100 by the *jirga* and made to pay the loser the value of the property lost or damaged. If the act of an incendiary entails loss of life, intentional or unintentional, he is responsible for the consequences like any ordinary murderer. In such cases, as in all wanton and deliberate murders, the malefactor's escape causes the punishment to fall upon his house, which is burnt down, his cattle, which are cut up, and his land, which is partitioned amongst the aggrieved party; or, if they are too proud to profit by the loss of their relatives, amongst other members of the community.

Cutting or damaging of crops.—If a man is found at night cutting another's crops, he can be killed or wounded with impunity by the owner or watchman. Failing this the owner is entitled to recover the value of the crops destroyed, and the *jirga* may impose a fine ranging from Rs. 5 to 40. Cattle found stray and grazing in crops are at the mercy of the owner or his watchman. According to custom they can be killed on the spot,¹ but not after the animal has left the field where it has been feeding, nor if the animal be muzzled. An animal cannot be destroyed for feeding off a heap of corn or a stalk of garnered sheaves. Then the owner is supposed to be more careful than in the case of crop, and if he allows cattle to get near he is supposed to have himself to thank. Destruction in this case is not warranted and has to be compensated for.

Marriage customs.—As a rule, marriages are arranged by the parents of the parties. When a boy comes of age, his parents or guardians cast about for a suitable match for him. If a girl is available

¹ This custom has now been declared illegal by the Raniyai, and the Sam Raniyai jugas also have agreed that claim for damage shall be substituted—S. H. G.

in the family, no search is made in the outer circle, as it is always considered desirable and advisable to cement the bonds of possible union in each family. The Muhammadan law provides a wide field for selection among relations, and close marriages are very common. In such cases money dealings do not play an important part, as the contracting parties are equally interested in the consummation of the union. Only the expenses befitting the position of the parties in society and necessary for the celebration of the nuptial ceremonies are incurred, and they are chiefly borne by the relatives of the bridegroom. When recourse has to be had to the outer world, enquiries are undertaken by agents and go-betweens before the scheme can be seriously started by either side. The jealous care with which women are generally kept concealed, renders the selection of a bride an affair of extreme interest and difficulty. This mission is undertaken by professional negotiators in the persons of *dums* who are a privileged class. They are entrusted with the secret councils of a family, and their wives act as servants to the ladies. Through their agency they know both the character and the personal appearance of every eligible young woman in the countryside. They are prominent factors in all matrimonial engagements, and being critics of experience their advice is followed to a considerable extent. Among the lower classes the preliminaries would be simpler¹ and more direct. If these are satisfactory, a day is appointed on which a deputation from the bridegroom's party, sometimes accompanied by his womenfolk, proceeds to the residence of the girl to celebrate the betrothal or *kozhdan*. This does not consist of any feasting or noisy music, but a sum varying between Rs. 100 and 1,000, according to the attractions of the bride or the importance of her family, is paid down to her parents or guardians, and a piece of ornament is deposited as a present for the girl in token of the affiancing, which is thereby considered as a solemn pledge that cannot be broken. The ceremony is attended with the drinking of *sharbat*, and this is known as the *gut* or sip. Sometimes the form of the religious *nikah* and an oration by the *mullah* coupling the names of the contracting parties is gone through, in order to attach more gravity to the bond and make it still more binding. After this there is an interchange of visits between the representatives of both families, and as long as the actual marriage or *wadah* has not taken place, periodical presents of clothes or trinkets are sent for the bride on the occasion of each *akhtar* and *shab-kadar*, i.e., the 14th and the full moon of the lunar month of Shaban. This

¹ The term 'Nindra,' originally Panjabi, is also known as signifying the subscription for marriage. But 'janj' is usually used.—S. H. G.

may continue for some years if the *kozhdan* happens in early life, as the full marriage only takes place when parties have attained puberty. If the bridegroom dies before the marriage his brother or other near relation succeeds him and claims the girl as his bride. In this sense she belongs to the man's family and is inherited as such. Should the engagement be broken off and the girl given away to some other person, or the girl choose her own husband, it involves the parties in a feud on the lines of adultery as before mentioned. If the bride dies during the period of betrothal, her parents must return all the money, jewels, etc., which they have received on her account, or arrange to provide a substitute in the person of her sister or a near relation satisfactory to the people of the bridegroom, who resume their relations and dealings with the new fiancée as usual. When the time of the final marriage approaches, a day is mutually fixed upon, and on this date a procession of men, women and bards, called together for the occasion, starts from the residence of the bridegroom. On arrival at their destination, the men proceed to the *hujra* of the bride's relations, and the women called the *riva* go to the house of the bride. As a rule the latter find the door shut against them, and are refused admission until they pay a tribute to the bride in the form of a trinket or two. Then they are allowed to enter, and singing and dancing and feasting is indulged in for two or three days. To meet the necessary expenditure there, a subscription in aid of the bridegroom's party is contributed by the members of the marriage procession. This is called the *janj*.¹ It is a reciprocal and provident arrangement by which the pressure on the bridegroom's party is relieved for the time. The term is also used for marriage procession in Swab. On their departure with the dooly conveying the bridegroom, the procession is invariably assailed by a troop of boys from the village who pelt them with stones, regardless of consequences to which no responsibility attaches.

Widow remarriage is very common. The first claimant for a widow's hand is her late husband's brother, and next to him his near relations. If she takes a man of her own choice, the pair run the risk of a feud similar to that arising out of adultery. If a widow elects to remain a widow, she is entitled to enjoy the produce of her husband's legacy but has no right to encumber or alienate the same.

Polygamy is universal, with its domestic jealousy, intrigue and trife. The co-wives are supposed to occupy an equal position, and

¹ This word occurs in Western Panjabi in the sense of 'marriage procession, the company that attends the bridegroom at a wedding.'—Wilson's Dictionary of Western Panjabi, p. 27; G. O'Brien's Glossary of Multani Dictionary, p. 332. (The word appears to be connected with *janju*, Braminical thread: *ibidense*.)

only differ in their command of influence and affection on the part of their husband. The mere bartering of women is common enough, and the lowest price in such transaction is Rs 40 rising in direct proportion to the charms or qualifications of the female. This business is generally conducted by professionals. There is no geographical limit to the intermarriage of Pathāns or others, so long as they occupy corresponding social position and status.

Hindus living amongst Pathāns are affected to a great extent by the customs and manners of the latter, whom they follow very closely in their civil and criminal law. For instance, a Hindu will not hesitate to marry his brother's widow—a double abhorrence to a Punjab Hindu. They are implacable in their blood-feuds, and having the longer purse, are less amenable to mild measures of settlement. They resort to most Muhammadan *ziārats* or places of pilgrimage with offerings.

Inheritance.—The guiding principle is the Muhammadan book law, with the exception that a woman is debarred from the independent acquisition of property; but she has the option of disposing of her marriage portion or dowry which is conceded to her as a personal asset.
