

# *Adjudication and Partition in the Tibetan Stem Family*

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This paper examines one dimension of the interplay between the Tibetan legal system and the Tibetan corporate stem family. Specifically, it focuses on the relationship between a tendency for partition engendered by the ideal norms governing inheritance of land and particularistic aspects of the formal adjudicative process.

Since the data on which this paper is based were obtained through reconstruction interviewing, a brief statement of the sources and the methods by which they were elicited is in order. These data were collected during the course of a twenty-month field trip (December 1965–August 1967)<sup>1</sup> of which about seventeen months were spent in a Tibetan resettlement agricultural colony in Mysore, India.

Reconstruction research is obviously fraught with pitfalls, but these, I think, do not preclude the procurement of accurate data. One of the most serious of these dangers is the all too common tendency to extrapolate from the comments of a handful of “available” informants to the society in general, this being particularly true in complex societies like Tibet. A second basic problem concerns validating or determining the accuracy of informants’ statements, especially differentiating the ideal from the behavioral patterns.

In order to cope with these and other problems, I focused the reconstruction aspects of my project on a small area in Tibet that was well represented in the Mysore settlement. The area eventually selected for intensive study was primarily the village complex of Samada (*sa mda'*)<sup>2</sup> and secondarily the village

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<sup>1</sup> The project was sponsored by the American Institute of Indian Studies.

<sup>2</sup> The transcription of Tibetan terms follows the system elaborated by T. Wylie, *A Standard System of Tibetan Transcription*, 22 HARV. J. ASIATIC STUDIES (1959).

of Chimdro (*chim 'brog*). Both of these were in Gyantse district (*rgyal rtse*), Tsang (*gtsang*) province.

There were about eighty persons from the Samada region in Mysore as well as a number of individuals from villages neighboring Samada, such as Gala (*Ka la*) and Khangmar (*Khang dmar*). Contrary to popular opinion, the refugees did not consist predominantly of monks and aristocrats. They included persons from all the different social statuses, ascribed and achieved, high and low, clean and "un-clean."

The accuracy of the data collected was greatly facilitated by the presence of this relatively large sample. I was able to work in terms of specifics—specific families and incidents—and, crucially, was able to cross-check the remarks or opinions of one informant with others from the same and different intra-village social groups as well as with persons from neighboring villages. Finally, in addition to this intensive study of a narrow area, I also carried out general questionnaire interviewing of a sample representing the other areas in Tibet—together with a few in-depth interviews—so as to afford me some criteria for deciding the limits of generalization. For a number of reasons too involved to cite here, I decided to limit the scope of my generalizations to the heartland of political Tibet, Central Tibet.<sup>3</sup>

#### THE FAMILY<sup>4</sup>

Tibet was characterized by a well developed system of stratification. Although the political system was not really feudal, arable land was divided into manorial estates held by aristocratic families, religious corporations, and the central government. Typically, these estates not only comprised land but also a variety of types of attached serfs (*mi ser*). The religious corporations and the aristocracy, together with a category of serfs, or landowning non-taxpayer, usually referred to as *tre-ba* (*khral pa*),<sup>5</sup> characteristically possessed inheritable land. The latter two categories, moreover, were organized into corporate extended families which, as will be explained briefly below, fit into the category of stem family. In this short paper, I shall have to restrict the discussion to the family organization of the *tre-ba* serfs, particularly the *šung-gyu-ba* (*gzhung rgyugs pa*) or "government" *tre-ba* serfs.

The *šung-gyu-ba tre-ba*, although far outnumbered by the other main category of serfs, or non-landowning non-taxpayers, called *dü-jung* (*dud*

<sup>3</sup> Central Tibet is taken to include primarily the areas of *Dbus*, *Gtsang*, eastern *Stod* and secondarily the areas of *Dwags po*, *Lho Ka*, and *Kong po*.

<sup>4</sup> Many of the subjects which are only briefly touched on in this paper will be dealt with in detail in a monograph I am presently preparing on kinship, stratification, and politics in Tibet.

<sup>5</sup> Different areas often used different terms, e.g., (*khral mjal*) or *trong-ba* (*grong pa*).

*chung*), were without question the dominant social, political, and economic stratum in village Tibet. In Samada, for example, there were only eight corporate *tre-ba* families, but approximately seventy-five, non-corporate nuclear *dü-jung* families. These eight families, however, hereditarily held all the land in Samada, the *dü-jung* existing as their dependent tenants.

Both the verbalized ideal and the actual behavioral pattern for the *tre-ba* saw the basic social unit as an agnatically oriented, named corporate, stem-type family. These named corporations were perpetuated preferably through agnatic links, but both fictive modes such as adoption and uterine links through daughters were permissible. The primary possession of these corporate families was land, which in many instances included both arable land and pasture land. Written title to this land was in the name of the corporate family, and so long as they fulfilled certain obligations, the *tre-ba* had the right to unilaterally, that is, without having to obtain even token permission, transmit this land to their progeny.<sup>6</sup> The nature of these obligations is indicated by the meaning of the term *tre-ba* which glosses as "one who does taxes" or "taxpayer." The land they held was considered the basis (*rten*) from which tax obligations in-kind (*lag 'don*) and in corvée service (*'u lag, rta'u, khal ma*) were performed for their lord. Although taxes in-kind were theoretically fixed, the corvée taxes were open-ended, and together they comprised obligations of some considerable magnitude.

But whereas on the one hand the *tre-ba* had large tax responsibilities, on the other they had relatively large, permanent land resources affording them an economic base from which to obtain rapid economic success. The histories of the *tre-ba* families I was able to collect showed a high degree of economic fluctuation between generations with families moving from wealthy to impoverished and back again over the course of several generations. Certainly good fortune and capability were important variables, but the availability of manpower was also a significant factor and was repeatedly singled out by the verbal statements of informants, as well as the events in the case histories.

In relation to this, the *tre-ba* considered the intact perpetuation of their corporate lands of critical importance. So long as it remained so, the resources through which to achieve rapid economic mobility were available, even though at any given point the family might be impoverished. The nature of the norms governing inheritance, however, posed a potential threat to this intact perpetuation of the family's estate. The ideal norm stated that all males of the named corporate family have demand rights to a portion of the corporation's land. Therefore, although partition of the family land was perceived as disastrous, the ideal norms offered males just such an option. The reasons why such partition was not common will concern us in the rest of this paper.

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<sup>6</sup> The complicated question of land tenure and inheritance will be discussed in the above-mentioned monograph.

THE MONOMARITAL PATTERN AND THE STEM FAMILY

There were several important factors that tended to override the right to partition afforded by the inheritance norms. One such factor concerned a monomarital marriage pattern, another the adjudicative process, and the third a pattern of downward mobility into the status of *chi-mi* ("common or collective man"). The *tre-ba*, as did the aristocracy, followed a "monomarital" principle in their marriage arrangements.

This "monomarital" principle or pattern can be defined as one whereby for each generation one and only one marriage should be made, the children of which are considered members of the family unit with full jural rights relative to their sex. Tibetans considered that situations with two conjugal families in a given generation were unstable and that in a situation such as Figure 1 structurally molded tensions and conflicts of interest between the conjugal families of X and Y would almost inevitably lead to partition between

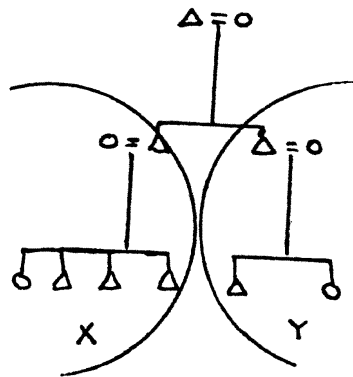


Figure 1.

the two units. Depending on the composition of the persons in the "marriageable" generation, as well as such factors as individual capabilities and personalities, the monomarital principle was employed to guarantee the

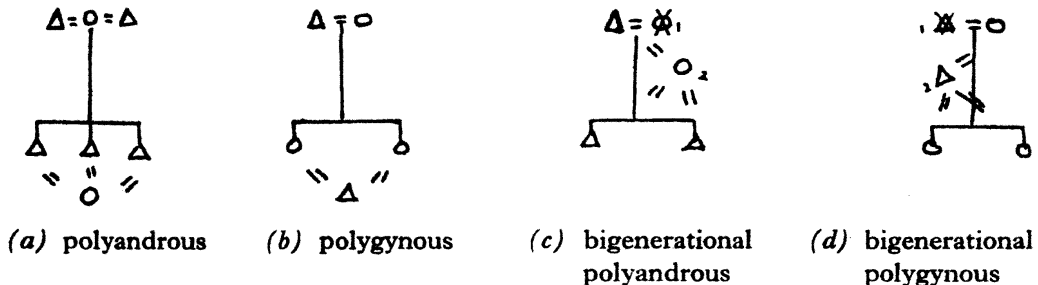


Figure 2. Monomarital Pattern.

establishment of only one jurally recognized marriage, this thereby minimizing one potential source of partition, namely the presence of two separate conjugal families on a given generation. In fact, in the several examples I obtained when

two such conjugal families (within a single corporate family unit) were present on a single generation confirmation of this overt Tibetan belief was found since partition eventually occurred.

The four types of marriages cited in Figure 2 by no means exhaust the possibilities. In (a) the monomarital pattern operated by perpetuating the family via agnatic links yet establishing only one conjugal family. Example (b) often occurred when a family had no male children and brought in a bridegroom (*mag pa*) for their daughter(s). Example (c) also illustrates the monomarital principle. If the sons were of, or close to, marriageable age and the father was still relatively young, remarriage by him, followed by a separate marriage of the sons, would lead to the creation of heirs of two conjugal families. The bi-generational polyandrous marriage solved the sexual problems and lessened this potential source of conflict between the offspring of those concerned. The fourth example (d) is the reverse of this. In actuality, in Tibet any type of marriage was permitted so long as it did not involve individuals defined as within the parameters of exogamy.<sup>7</sup>

The effect of this monomarital principle on the structure of the family was that it led to the establishment of a unit that closely resembled a stem family. The stem family is commonly defined as a family in which the conjugal family of only one married child is linked with his natal family in a common household.<sup>8</sup> If we take the critical fact to be that the link must be through only one child, then obviously the Tibetan family we briefly described above cannot be regarded as a stem family since polyandrous marriages are invariably contracted when more than one son is present. For example, in the reconstruction of the kinship system in Chimdro, I found that in the twenty-six examples of in-taking marriages reported for their nine *tre-ba* families, 60 percent were polygamous, but in each of the remaining 40 percent of the cases there was only one son present. If, however, we take the basic characteristic of the stem family to hinge not on the character of the linkage but rather on the fact that only one jurally recognized conjugal family is formed, then the Tibetan *tre-ba* family and others like it can be considered a type of stem family. In order to differentiate this type of stem family from those formed by such rules as primogeniture (e.g., Japan), I shall refer to the Tibetan variety as a monomarital stem family.

In terms of its organization, the dominant status in the monomarital stem family was that of family head or *abo* (*trong bey abo*). Very briefly, the head

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<sup>7</sup> Exogamy was defined at seven generations collaterally (or seven generations patrilineally and five generations matrilineally).

<sup>8</sup> G. Murdock, *Cognatic Forms of Social Organization*, in *SOCIAL STRUCTURES IN SOUTHEAST ASIA* 4 (G. Murdock ed. 1960); E. Johnson, *The Stem Family and its Extension in Present Day Japan*, 66 *AM. ANTHROPOLOGIST* 839 (1964); H. Befu, *Patrilineal Descent and Personal Kindred*, 65 *AM. ANTHROPOLOGIST* 1330 (1963); C. ZIMMERMAN & M. FRAMPTON, *FAMILY AND SOCIETY* (1935).

had managerial rights over the property and resources of the unit. The head was always officially a male and usually the oldest male of the generation in power. However, it is clear that the head was not simply the eldest male. Accession to that position followed a developmental pattern. There was a point in the family's development when the incumbent head relinquished his control and retired, usually into a religious role for old people (*rgan chos*). The new head normally was the eldest male of his generation, although transfer of authority sometimes occurred within a generation, e.g., elder brother to younger brother. The family head, knowing that he would be dependent in his old age on the head of the following generation, often attempted to manipulate the options available to him through the monomartial pattern so as to retain those of his children who would be most likely to cause no difficulty before, and to treat him well after, retirement.

There were then two critical points in the development of the family that were particularly susceptible to partition: the early period when the parental generation was trying to manipulate the human resources to their advantage, and the later point when the children's generation attempted to wrest authority from the incumbent head. A third important recurrent source of tension and potential partition occurred within a generation in polygamous marriages, particularly polyandrous ones. The problems and tensions related to two or three men sharing one wife cannot be discussed here, but it should suffice to show that (1) families in Tibet that did not have such inheritable land almost never contracted such a marriage, and (2) in India, these *tre-ba* adults and their children all marry monogamously. The only instance I found of polygamous marriage in Mysore was one sororal polygynous marriage that was a carry over from Tibet.

What then restrains male children from demanding their right to a share of land? Even though problems exist concerning marital relations, what keeps brothers together in one unit? These obviously are complex problems and all the relevant factors and possible alternatives cannot be examined here. However, in the remaining portion of this paper, I shall focus on one important factor restraining such activation of partition rights, viz., the adjudication system.

#### THE TIBETAN LEGAL SYSTEM

The Tibetan Central Government administered the polity by means of a network of provincial districts (*rdzong*), each headed by one or more District Commissioners (*rdzong dpon*) selected by the government from among the permanent Lhasa based government bureaucracy, usually for terms of three years. The District Commissioner was the link between the center and the countryside. His responsibilities broadly consisted of collecting taxes, implementing government directives, formulating the particular needs and requirements of the district to the center, and, finally, adjudicating disputes and

punishing criminals. Although the District Commissioner was the highest legal authority in his district, it is important to note that he had no law enforcement organization subordinate to him. The legal function he performed was fundamentally passive in nature. He did not initiate proceedings, and it was only when the participants to a dispute or the victims of a crime brought their case (or the criminal) before him that his authority to punish and render written decisions was activated.<sup>9</sup>

Although ancient legal texts and district edicts (*rtsa tshig*) existed, these were not consulted as the basis for settlements, and disputes should have been adjudicated according to relevant legal norms. Some of these "legal" norms were quite explicit. For example:

*ra yod tsa ka zas dus*  
*ra med g.yas la zur dang*  
 When horned animals are eating grass,  
 hornless animals have to stay aside.

In other words, if for example a donkey was killed by a grazing yak, the owner of the donkey had no claim to compensation. In disputes brought before him, the District Commissioner should have rendered a decision after listening to both positions, after interrogating the disputants, and sometimes even after sending out investigators. These decisions were formal written documents called *tra-ma* (*khra ma*) which had to be signed by both parties to the dispute. If one of the parties felt the decision was unfair, he could refuse to sign (*khra log*) and appeal the decision to a higher authority (usually the Council of Ministers in Lhasa), although he did not have the option of simply ignoring the decision. Once a case was brought before the District Commissioner, he had the authority to use the legitimate force controlled by the Central Government to enforce his decisions, unless they were formally appealed. Since there were relatively clear-cut norms governing inheritance of land, the District Commissioners should have decided disputes on that basis, and, subsequently, procurement of partition of the corporate family's land should have been relatively simple. However, although the ideal pattern was characterized by such impartial, universalistic orientation, the actual operation of the adjudicative process deviated significantly from that ideal. How it did so, and how that deviation was relevant to partition will be discussed below.

First, there was a significant financial aspect to the initiation of litigation. The act of bringing a dispute before the District Commissioner entailed potentially a considerable expenditure of capital. The trip from the village

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<sup>9</sup> I should mention that there were certain circumstances when the District Commissioner could in fact initiate action, but these were usually in special types of criminal cases and usually were of minor consequence.

to the district headquarters often took several days, and once there, there was no way to predict how quickly the case would be heard and, even more so, how quickly the adjudicator would render his verdict. Food and lodging as well as the loss of labor time at home could add up to a considerable expense. Tibetans in fact have a folk saying, which reflects this factor:

*yang na rku ma ma shor dgos*  
*yang na rku mjes ma zim dgos*  
 Either one should not lose to thieves or  
 one should not catch them (because of the expenses involved).<sup>10</sup>

This financial factor in formal adjudication had another even more significant dimension. It was common practice for individuals involved in disputes to present gifts of value privately to the adjudicator. Whereas these gifts were not outright bribes in the Western sense of the term, since they were neither solicited nor were they coterminous with any overt agreement between the giver and the adjudicator, nevertheless, their goal was to particularize the disputant-adjudicator relationship. The nature and size of these gifts varied in very complex ways with the nature and significance of the dispute. What is important to this paper, however, is simply that often both parties to the dispute entered into a pattern of competitive gift giving and that this magnified drastically the importance of financial resources in what ideally was a universalistic, formalized adjudication system.

But not only was a litigant likely to have to spend a considerable amount of money, there was also an element of uncertainty resulting from what I call the "reasonable settlement" pattern. Although the District Commissioner had the authority to unilaterally settle a dispute in favor of one or the other disputants, in many instances the adjudicator attempted rather to settle the dispute so as to preclude its being appealed to a higher authority. This pattern can be seen to result from the acceptance of gifts by the adjudicator, but it was also a consequence of intra-bureaucratic considerations. One of the main purposes of the position of District Commissioner was to diminish the quantity of minor disputes that might otherwise end up in Lhasa. It was, therefore, generally considered a reflection of the District Commissioner's lack of ability and incompetence if any number of disputes were appealed to Lhasa after he had adjudicated. The acquisition of such a pejorative reputation could seriously affect an official's subsequent appointments, and it was due also to this that the pattern of "reasonable settlement" existed. General awareness of this is illustrated by the following folk saying:

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<sup>10</sup> This verse specifically related to criminal cases, and it should be noted that it not only referred to the financial aspect, but also to the danger that in the interrogation process the adjudicator might resort to whipping both the "plaintiff" and the "defendant" in order to determine prevarication.



*ham pa ri tsam bshad na*  
*bden pa g.yag tsam thob yong*  
 If you tell a lie as big as a mountain  
 you'll obtain a truth as big as a yak.

In other words, a person who boldly lied might obtain more than he was entitled to, or than he would have obtained had he presented less fantastic demands. While this might or might not favor a particular individual wanting partition, it did add an element of uncertainty over and above the ideal norm. Even after a large outlay of money and forceful presentation of one's demands, the outcome was still somewhat dubious and, anyway, in the end could be appealed with a new round of even greater expenses.

The adjudication process was thus characterized on the one hand by a need for ready financial resources, and on the other by an element of ultimate uncertainty. It is not surprising, therefore, that the formal adjudication system was normally turned to only after all local attempts at mediation and reconciliation had failed to settle the matter. Moreover, it was generally the case that such disputes that reached the District Commissioner were between persons of the same social stratum, *i.e.*, between *tre-ba*, or if between *tre-ba* and *dü-jung*, between wealthy *dü-jung* and *tre-ba*. The formal adjudication system was generally not useful to the majority of poor persons in rural Tibet who depended more on asymmetrical dependency relationships with prominent *tre-ba* (or their lords) for protection of their rights.

It is clear, then, that the actual operation of the adjudication process was a major factor in restraining and limiting the enforcement of the ideal right concerning land. By imposing a potentially large, open-ended financial burden on litigants as well as an element of uncertainty, the initiation of litigation at this level was discouraged. Moreover, Tibetans clearly had a notion of opting to live in an unpleasant situation rather than turn to the formal adjudication system for satisfaction.<sup>11</sup> The idea of Pyrrhic victory was perceived. This does not mean that litigation over land never occurred, nor does it imply that the absence of frequent partition derives solely from the nature of the adjudication process. In fact, it is possible to show that certain types of persons in certain types of situations initiated litigation even though they were aware of the potential expenses. Nonetheless, in general, we may say that the particularistic aspects of the adjudicative process functioned to restrain partition litigation.

Let me now mention briefly one last important factor. We mentioned above that at various times, particularly in polyandrous or polygynous marriages, conflicts and tension arose. A wife favored one brother; a brother rejected a wife who desired him; a brother fell in love with another girl. However, in terms of the cases I collected, such situations did not usually end in partition, this being a relatively rare phenomenon. But, if litigation for partition were

<sup>11</sup> Cf. the verse on p. 212.

not perceived as a viable alternative, what happened in such instances if the tensions and anxieties became intense? Obviously, in some instances the individual simply tried to make the best of the bad situation. But for many, the solution was through descending to the status of *chi-mi* (*spyi mi*).

*Chi-mi* literally translates as “common man,” the common referring to the fact that the *chi-mi* were serfs of the village (*i.e.*, the *tre-ba* families) as a collective entity. *Chi-mi* were thus a type of *dü-jung* serf and as such had no hereditary land. While they were not tied to land, they did have to make a yearly payment to their Lord, the village, and, if needed, they could be sent to serve in the army as the village’s representative (albeit with salary from the village). Other corvée obligations sometimes came into play, but they really do not concern us here since, generally, new *chi-mi* who had just voluntarily moved from the higher *tre-ba* status were somewhat differentially treated and tended not to get the unpleasant corvée obligations sometimes required of *chi-mi*.

If a conflict arose within a family and if the individual involved felt he did not want to or could not remain in the common household but yet either did not have the necessary resources or drive or even intelligence to attempt to activate his right to a share of the corporate land via litigation, he could ask for or accept a small settlement of such items as household goods, grain, and sometimes even a few heads of livestock. He would then enter the status of *chi-mi* (village) serf and thereby relinquish all rights to the remaining possessions of the corporate family. While this *chi-mi* status was ranked lower in prestige than the *tre-ba* one, the *chi-mi* were in many ways freer as individuals. They could marry whomever they desired, could work whenever and at whatever they felt like, and could go wherever they pleased. Moreover, while they were usually poorer than the *tre-ba* and without any voice in the decision-making process in the village, they also had none of the worries and responsibilities that the *tre-ba*, as a result of their heavy tax obligations, were burdened with. In all, the relative freedom and lack of responsibility provided sufficient incentive to make downward mobility into the status of *chi-mi* a viable alternative to litigation.

I have tried in this paper to briefly set out the manner in which the legal-adjudicative process in traditional Tibetan society affected change in the family structure by inhibiting and discouraging litigation relating to the activation of partitionary rights to land, and thereby supported the perpetuation intact of large, landholding corporate families. This, in turn, played an important role in stabilizing the general socioeconomic system characteristic of rural Tibet.