The Rules of Barat
Tribal documents from Yemen

Paul Dresch
The rules of Barat. Tribal documents from Yemen

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Paul Dresch Rules of Barat presents several eighteenth-century agreements among tribesmen from Jabal Barat, north-east of Yemen. These documents, previously unedited, shed new light on the history of customary law (‘urf) in Yemen.


PAUL DRESCH

Paul Dresch teaches Social Anthropology at the University of Oxford, and is Fellow by Special Election of St. John’s College. He first did fieldwork in northern Yemen in 1977. His publications include Tribes, Government, and History in Yemen (Oxford, 1989) and A History of Modern Yemen (Cambridge, 2000). He has edited a number of collective volumes: with Wendy James and David Parkin, Anthropologists in a Wider World (Berghahn, 2000); with Pierre Bonte and Edouard Conte, Émirs et Présidents (CNRS, 2001); and with James Piscatori, Monarchies and Nations: globalisation and identity in the Arab states of the Gulf (IB Tauris, 2005).
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مقدمة
جان لامبرت

Introduction

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D'une importance capitale pour l'histoire de l'Islam, le patrimoine manuscrit du Yémen est aujourd'hui en péril. Menacé par des conditions de conservation parfois insuffisantes ou par la dilapidation, il souffre surtout de l'ignorance trop grande dans laquelle il est encore actuellement tenu.

Le Deutsche Archäologische Institut (DAI) et le Centre français d'archéologie et de sciences sociales de Sanaa (CEFAS) ont porté depuis de nombreuses années un intérêt constant à la sauvegarde du patrimoine du Yémen au travers d'actions diverses. Entre
2005 et 2007, ils ont ainsi décidé d’unir leurs efforts pour la conservation du patrimoine manuscrit du Yémen

Cette collection franco-allemande (La Bibliothèque yéménite) a pour ambition de publier des textes jusqu’à présent peu connus : manuscrits des minorités religieuses ou des mouvements d’opposition, ouvrages scientifiques anciens, archives ou recueils juridiques. Ces textes ont jusqu’à présent peu attiré l’attention des chercheurs. La Bibliothèque yéménite contribuera ainsi à renforcer la prise de conscience nationale et internationale de l’importance du patrimoine yéménite.
General Map of Yemen

Map 1: Yemen general


contemporain. Au cours d’une longue enquête que l’on pourrait qualifier de « philologie de terrain », il sillonna les tribus du nord-est du Yémen pendant des années pour trouver des versions différentes des Qawâ'id pouvant l’aider à établir un texte fiable. C’est ainsi qu’est née cette édition critique juxtaposant le texte manuscrit, le texte transcrit imprimé, la traduction (en anglais) qui permet de traquer le sens, mais aussi l’analyse de la liste des signataires (les « garants », source importante d’informations personnelles), ainsi qu’un glossaire des termes spécialisés. Cette édition critique répond ainsi à la nécessité de publier les documents historiques originaux, seuls à même de permettre une écriture rigoureuse de l’histoire, y compris contemporaine, du Yémen.

5 Ces textes revêtent une grande importance historique : datant du milieu du XVIIIème siècle, ils permettent de restituer pour une tribu en particulier, les Dhû Mohammed de Barat, ce type de pactes qui ont disparu pour beaucoup de tribus, et dont, pour beaucoup d’autres, seules des versions tardives sont encore conservées. Pour sa part, le Qawâ'id al-malâzim est le texte qui nous permet de remonter le plus loin dans le temps, et de montrer certaines continuités des structures tribales sur la « longue durée », que Paul Dresch avait déjà commencé à montrer dans ses précédents travaux. Rules of Barat permet d’approfondir l’histoire de cette région fascinante, et en particulier les relations socio-économiques et politiques entre ces tribus d’agriculteurs sédentaires et les élites religieuses citadines, relations qui ont été abordées d’un tout autre point de vue par Bernard Haykel dans son livre sur l’imam al-Shawkâni (2003, 65).

6 L’une des difficultés liées à l’étude du droit tribal, c’est qu’il est inséparable des aspects politiques d’une part, et des aspects moraux, anthropologiques, de l’« être » tribal d’autre part. Pour cette raison, il est souvent délicat de le comparer aux systèmes juridiques savants et d’en discuter les avantages respectifs. Avec Rules of Barat, Paul Dresch tente de mettre en lumière les principes juridiques qui ne sont pas toujours explicites dans ce droit essentiellement pratique et oral. Il met ainsi à la disposition des chercheurs et des juristes les outils permettant de mieux comprendre – de l’intérieur – ce corps de principes jusque-là inaccessibles.

7 La présentation des textes originaux qu’offre Paul Dresch est suivie d’une réflexion comparative sur le droit coutumier au Yémen et en Europe, ou l’auteur opère une ouverture théorique d’une grande largeur de vues : contrairement à ce que l’on pourrait croire, ou à ce que prétendent certains, le droit tribal yéménite contient des dimensions universelles qui font toute sa valeur humaine. Le droit coutumier, et en particulier sous son aspect tribal, est l’une des trois grandes références juridiques au Yémen, avec le droit islamique, sharî‘a, et le droit positif moderne. Il est même souvent considéré comme un recours ultime lorsque les deux précédents ne sont pas capables de résoudre les problèmes des citoyens, et ceci jusque dans la vie urbaine moderne. Quelque en soient les raisons et même si on peut le regretter, c’est un fait sociologique éclairant pour comprendre la société yéménite contemporaine.

8 Paul Dresch a pu démontrer que si les relations du droit tribal avec la sharî‘a sont souvent présentées comme conflictuelles – il s’agissait là plus d’une rhétorique des lettrés citadins qu’une véritable opposition – et que cette dernière était souvent suscitée par des problèmes politiques plus que proprement juridiques. Cette diversité et complémentarité des références juridiques a été présentée notamment par l’ouvrage Le sheykh et le procureur, récemment édité par Baudouin Dupret et François Burgat. De nombreux débats autour de la rénovation du système juridique du Yémen, se heurtent à cette réalité.
sociologique et politique incontournable, qu’il est impératif d’étudier, en particulier d’un point de vue anthropologique.

9 La tribu est un phénomène contemporain très important, à la fois, en tant que structure sociale, et dans son articulation au système politique actuel du Yémen. Ces documents tribaux sont aussi des « pactes » ou des « codes » donnant forme à une entité politique, ce qui pose la question de la nature du système tribal. Celui-ci à coexister avec deux grands systèmes politiques, le système imamite et le système républicain. Alors même qu’il avait préexistant à ces deux systèmes et même s’il est en train, aujourd’hui, de se transformer, notamment pour une question générationnelle, il a un certain dynamisme interne qui lui permettra probablement de perdurer tout en s’adaptant. D’une manière plus générale, Rules of Barat permet d’apporter une alternative à la vision citadine, dominante depuis les débuts du zaydisme au Yémen jusqu’à nos jours, des tribus comme groupes « barbares » ou « incultes », et montre qu’elles représentaient surtout un contre-pouvoir de fait au régime autoritaire des Imams. Sur ce plan, Paul Dresch prend nettement position en définissant la tribu et la pratique du droit coutumier comme appartenant à la « société civile » de l’époque. Nul doute que cette position suscitera le débat.

10 Alliant ainsi philologie, histoire, études juridiques et anthropologie, cette nouvelle publication offre l’occasion au Centre Français d’Archéologie et de Sciences Sociales de Sanaa d’approfondir sa collaboration avec l’Institut Allemand d’Archéologie (Deutsches Archäologisches Institut) dans le domaine des manuscrits. Cet ouvrage est le premier d’une série de co-réditions qui, à n’en pas douter, viendront enrichir la liste des sources économiques, juridiques et administratives disponibles. Que la directrice du DAI, Iris Gerlach, en soit remerciée.

11 Il me faut aussi remercier tous ceux qui ont contribué à l’édition de cet ouvrage : tout d’abord mon prédécesseur, François Burgat, qui en avait pris l’initiative, et l’auteur lui-même, pour avoir fait confiance au CEFAS du début jusqu’à la fin ; Laurent Bonnefoy, pour sa relecture de la présente préface, Judith Scheele pour l’édition et la mise en page du livre ; Irène Lainey pour l’édition finale de la couverture et de l’ensemble du livre.

AUTEUR

JEAN LAMBERT
Directeur du CEFAS
مقدمة

جان لامير

بول دريش تحققًا للكثير من المخطوطات المتعلقة بالقضاء يعتبر كتاب "قواعد الملزم" لـ
العرفي والقلي "العرف" في اليمن. وتحمل المخطوطة الرئيسية فيه، التي تعود للقرن الثامن
عشر الميلادي، اسم "قواعد الملزم" وهي المنبثقة من قبيلة ذو محمد يجلي برط، في الشمال
الغربي لليمن.

والحذر بالذكر أن العالم الأنثروبولوجي البريطاني بول دريش,
يعتبر من أفضل المتخصصين في النظام القلي في اليمن، وتصنف أعماله من أهم المراجع المستقيمة خاصة "القد
بول دريش يملك معرفة واسعة حول هذا الموضوع، فإن الباحث الوحيد الذي بإمكانه تحليل ودراسة هذه القواعد الع
م التطرق لجميع الحالات القضائية وتخصص هذه المخطوطات بتحديد حماية أسواق وحدود القبيلة، وكذلك الأفراد ال
المتعلقة بالحياة اليومية للقبيلة في شمال اليمن.

وتسمح لنا مجموعة قواعد الحماية تلك المسماة "قواعد التهجير". تعريف هذا المفهوم الرئيسي لمجتمع الحضاب ال
بول دريش "قواعد الملزم" هو ناج عمل دهوب ومُجدُد من الكاتب الذي أعترض نفسه واحداً من النصوص الر
ش هذه التفسيرات المتعددة إلا بعض خلافته وافترضه الواصلة عن القضاء القبلي المعاصر ومن خلال القيام بتحف
وم تعتبر هذه النصوص التي تعود لمنتصف القرن الثامن عشر الميلادي غاية في الأهمية التاريخية حيث أنها قامت بإبراز
الاقتصادية والسياسية بين تلك القبائل الزراعية المستقرة والخبثة الدينية المتحضردة، تلك العلاقات التي تطرق لها بر
إن أهدى المشكلات المرتبطة برداسة القضاء القبلي هو كومه غير منفصل عن المفاهم السياسية من جهة، والمفاهي
بول دريش من خلال كتابه "قواعد الملزم"، ينصب الضوء على المبادئ القضائية التي لم تكن واضحة المعالم في هذه الأ
وتتبع تقديم التصويب الأصلية دراسة مقارنة حول القضاء العرفي في اليمن في أوغوريا، حيث يفتح الكاتب المجال أمام الفتي من وجهات النظر المختلفة. وعلى عكس ما قد وقع أو ما يدعى العالم، فإن القضاء في اليمن يشتمل على مجموعة عالمية تشكل طباعة الإساني. فالعفر يعالج القليل بشكل خاص يعتبر أحد المراجع القضائي الأساسية في اليمن إلى جانب القضاء الإساني والشريعة والقضاء الحديث العقار "القانون". في بعض الأحيان، تعتبر هذه الأعراف جزءًا من خارجًا إذا عبر القضاء الأخبار عن إيجاد حلول لمشاكل المواطنين حتى في الحياة المدنية المعاصرة. ونعتبر القضاء عن الأساليب، فإن هذا القضاء القيبلي عبارة عن واقع إجتماعي يساعدنا على فهم المجتمع اليمني المعاصر.

بول دي. بيرهين

ش على أن العلاقات بين العرف والشيروة تتسم دائمًا بممارسات وخلافات غير حقيقية تحتم طابع سياسي أكثر منه فالفيله. على الرغم من وجودها قبل تطور هذين النظامين والغيرات التي تشهدها، فإنها لا تزال تحتفظ بعض من دينامكتها الداخلية التي تسمح لها بالتأمل مع الحاضر. ويكشف عن كتاب "قواعد العزل"، بأن تلك القبائل "الهمجية" أو "المثقفة" شكلت قوة معارضة لا يستهان بها لنظام الأمومة المنسط.

بول دي. بيرهين

ومع جمع العلم النصوص التاريخية والدراسات القضائية والسياسية، يتيح هذا الكتاب القراءة للمعهد الفرنسي للآثار والعلوم الاجتماعية بصفته التعاون مع المعهد الألماني للآثار في مجال المخطوطات. يتيح هذا الكتاب أولى نشر هذا التعاون في النشر الذي دون أدنى شك سيتيق قانون الاقتصاد الاجتماعي والقضاء والإدارة المناسبة للناحين، ويشير على مدير المعهد السيد إيريس غراش.

كما يتوجب على شكل جميع من ساهم في نشر هذا الكتاب، أولاً السيد فرانسوا بورغ. كما يتوجب على عين جميع من ساهم في نشر هذا الكتاب، أولاً السيد فرانسوا بورغ. كما يتوجب على عين جميع من ساهم في نشر هذا الكتاب، أولاً السيد فرانسوا بورغ.

AUTEUR
جان لامير
مارك المعهد الفرنسي للآثار والعلوم الاجتماعية بصفته
Introduction

To the tribes of Barat, the “firebrand of the Arabs” as the chronicles call them, and these days an admirable group of people.

Also to the late Bob Serjeant, an admirable person in his own right.

The documents presented here are eighteenth-century agreements among tribesmen from Jabal Baraṭ, east of Ṣa’ dah and south of Najrān at the edge of the desert world. Some refer to the main text (texts A and B, below) as simply qawāʾid baraṭ, the Rules or the Code of Baraṭ. Others equate it with the legendary qawāʾid al-sabʿīn. This latter phrase belongs perhaps with such names as that of Bin Zīnba’, whose house is pointed out in places as far apart as al-ʿUṣaymāt (near Shahārah) and Khawlān al-Ṯiyāl (east of Ṣanʿā’) and who himself was supposedly a jurist of note among Yemen’s tribes but otherwise is lost in the mists of time. The phrase qawāʾid al-sabʿīn is used by Faḍl Abū Ghānim of a different text, written in archaic script, of obscure provenance. The name is used sufficiently often of the present code, however, whether by those who know it well or by those who know only rumours of its existence, that provisionally I incline to accept the equation and translate the phrase qawāʾid al-sabʿīn in as the Rules of the Seventy Shaykhs. A widespread story says that once, long ago, seventy shaykhs signed a document committing themselves to ancestral custom; an alternative tradition says qawāʾid al-sabʿ or al-qawāʾid al-sab’, for perhaps there were once only seven shaykhs or perhaps even seven codes. The documents at hand concern primarily the tribe of Dhū Muhammad.

It may be that behind these texts, and others from the Jawf as well as Baraṭ, lies a so-called “mother code” (al-qāʾidah al-umm) from which all derive, but this for the moment is scattered hearsay. The term umm or “mother” can be used of any original document (it occurs in lists of copies of the texts below) and the formulae in tribal documents of
“renewing” ancestral practice suggest indefinite regression to a mythic past. Nor is the term qāʿidah (pl. qawāʿid) easy to pin down, despite how commonly one finds it used in historical sources. In the 1660s, for instance, a group of tribesmen from Baraṭ are reported to have pillaged a caravan in the territory of Sufyān, who demanded from them payment for the insult ʿalā qāʿidah-hum. To translate this “according to their usage” might not be wrong (a qāʿidah can be something as abstract as a rule of grammar); probably, however, there were written agreements. There certainly were further west, two generations earlier, when the people of Zafīr Ḩajjah refused to let the Imam al-Qāsim garrison the place in his fight against the Turks: it was hijrah, or protected, and this was expressed in qawāʿid, some parts of which, says the chronicler, were soundly Islamic and others not. Early in the twentieth century, at the start of his rising against the Ottomans, Imam Yahyā took qawāʿid and dawābit from the tribes to the effect that, for instance, spoils be divided fairly and that he have control of captured artillery.

In tribal usage the term qāʿidah would usually mean a written document, something like a pact or treaty. One might sign an agreement to recognize a paramount shaykh, for instance. Quite commonly in tribal circles we find qāʿidat or qawāʿid al-sūq or al-ḥarām, which are documents providing for protection of a market (two examples are given in the present work); qawāʿid al-hudūd, meaning agreements or rules about tribal borders; and qawāʿid al-ṣabh, documents that affirm a tribe’s solidarity. The main texts considered here (texts A and B, below) are referred to as qawāʿid al-malāzim, roughly the Code or agreements setting out the tribe’s responsibilities. They also comprise a pact of fellowship (ṣabh) or brotherhood (ikhāʾ). But why and how the first of them was drawn up on the date that it was remains a mystery. If this is indeed “the Rules of the Seventy”, or somehow derived from that mythic text, it may be that, rather than seventy shaykhs first convening to agree their custom, the meeting went on for seventy days or that seventy clauses were agreed. Further interpretations are possible and are sometimes the subject of speculation among tribesmen with a taste for the heroic past. Others, by contrast, may fear the whole subject is somehow ṭāghūt or wickedness.

Custom and (Imamic) law

These codes or rules form part of a world much affected by claims to exclusive truth. From the time of the first Zaydi Imam in Yemen (circa AD 900) we have rumours of tribal practice at odds with Islamic virtue, and through much of Yemen’s written history we find mentions of texts and books of distinctively tribal law contradicting that of true Islam. In southern Yemen, where the term manʿ appears to have continued being used of tribal law, the two were perhaps seen as complementary. Ibn al-Mujāwir in the thirteenth century (AD), discussing the whole area, mentions the law of manʿ calmly enough although identifying it with the jāhilīyah; and R.B. Serjeant, whose experience lay mainly in the south, quotes a treatise from about the same period to the effect that arbitrators should “judge by the sharʿ in relation ... to the sharʿ, and by manʿ in that to which manʿ pertains”. In Upper Yemen, however, in the Zaydi sphere, such law was condemned quite often as ṭāghūt.

The latter term itself is interesting, for although it occurs eight times in the Holy Qurʿān, and plainly refers to something reprehensible, scholars were already wondering what exactly it meant within 200 years of the Prophet’s death. In many Yemeni formulations later the obvious association might be with tyranny, and most references cannot safely
count as meaning ḥukm al-man\textsuperscript{14}. In the early seventeenth century, for instance, a shaykh of Khawlān is denounced as belonging to "the evil ones (ashrār) and the rulers of ṭāghūt", which need hardly mean more than that the Imam’s people thought him a wicked influence; one of the Imam al-Qāsim’s appointees, however, is said more specifically to have taken from tribes their “books of ṭāghūt” and burned them.\textsuperscript{12} Imam Yaḥyā, before conquering al-Ūṣaymāt in the 1920s, complained of “judgement by the ṭāghūt”, evidently meaning tribal custom,\textsuperscript{13} and in the 1930s is said to have threatened anyone owning books of ṭāghūt with execution.

Such reports lead some authors to suppose there are two distinct codes of law – even written law – inextricably at odds. Usually, in fact, this apparent conflict is a matter more of jurisdiction (and of course of political and moral rhetoric) than of textual contradiction or dissent from the Law of God. Some modern authors are concerned to show how compatible tribal custom is with shari‘ah or Islamic law; tribesmen for their part would not wish to be thought less than good Muslims. It has always been the case, more importantly for the present purpose, that Islamic law is free to use (indeed, by many reckonings obliged to use) what customary resources are to hand provided they are not at odds with shari‘ah principles, and that neither domain of law was categorized or bounded.\textsuperscript{14} No simple opposition of codes is possible. Indeed the idea of opposed and coherent codes is usually the product of Western empires. The Dutch in the East Indies thus turned adat or “custom” into adatrecht; the French in North Africa attempted to formalize Berber usage as an alternative to Islamic law and provoked widespread anger, not least among Berbers at the time.\textsuperscript{15} Why local productions should appear as “codes” to those who write them we shall touch on later.

The common form in Yemen, as elsewhere in Islam, would seem to have been a certain tolerance of subordinate legal patterns. In Rasūlid court documents, ably collected and edited by Muḥammad Jāzīm,\textsuperscript{16} one finds hints of quite elaborate ‘urf or “custom” that governs such things as markets. Anyone familiar with modern-day disputes over grazing or water-rights knows how Islamic law uses local knowledge: for that matter the famous Statute of Ṣan‘ā’ (AD 1748), although scrutinized closely, was not denounced.\textsuperscript{17} But distrust of imposed authority is evident in tribal practice, which perhaps explains scholars’ enmity. In texts A and B, below, we find mention of “weak” neighbours, people of less than tribal status at Baraḥ who lived under the protection of the Baraḥ tribes, and text A section 19 (reproduced in part five, below) tells us that if they differ among themselves then tribesmen are not to take sides with them but drive them to a shari‘ah judge. Such people were known, in fact, as juḥhāl al-shari‘ah, the shari‘ah being Islamic law and juḥhāl being “children”, or more literally those who are “ignorant” and unable to care for themselves. To be a child of shari‘ah was to be a dependent person. Tribesmen, by contrast, were meant to resolve their own problems. If they had recourse to shari‘ah judges (as opposed to shar‘i, customary arbitration by those they knew),\textsuperscript{18} they did so ideally of their own volition.

It seems to be tribal custom, not the practice of peasants, traders or fishermen, that attracted the term ṭāghūt from learned Zaydis, and Ḥayīm Ḥāshūsh in the late nineteenth century reports ṭāghūt as simply the name of tribal law; so too does Eduard Glaser.\textsuperscript{19} From manuscript material collected in the 1930s, however, Rossi was forced to conclude that the ḥukm al-ṭāghūt condemned by scholars corresponded “only in part” to what actually was tribal law, and the degree to which this depiction of tribal customary judgement (ḥukm qabali, ‘urf qabali) as ṭāghūt was internalized as self-description remains
What we can say is that a fairly coherent tradition, or set of traditions, existed that seems very different from those of the schoolmen and that claims its legitimacy in different style but matches the learned traditions in sheer longevity. The documents at hand represent what passes as “tribal” law quite well. The earliest of them claims to date from the equivalent of AD 1763.

Even Islamic law is dealt with too easily by writers on the Middle East. For instance, learned tradition within Islam often accuses the common people of denying inheritance to women, yet anthropologists and historians alike must surely be struck by how often in fact people try to follow the Qur’ānic rules in circumstances where evasion would be much easier: there is no real equivalent to the formalized hiyal (“devices”, “tricks”) by which merchants squared the letter of the law with practice. On the other hand, many usages, not least to do with kinship, are thought of as “Islamic” which in fact have no scriptural warrant. The ideal of such warrant recurs everywhere and with it an ideal of moral certainty. The jurisprudence (fiqh) which deduces law from scripture, and which its practitioners sometimes opposed rhetorically to the common people’s ignorance, was itself meanwhile “open”, elliptically phrased and matter for debate among the learned.

It was also, as scholars from many schools expressed this, like a sea without limits. In effect the shari‘ah or Islamic law is the whole of society conceived, and argued over, from a certain viewpoint: so too perhaps, more locally, was “custom”. But the practical uniformities of scholarly tradition are themselves not at all a mystery. Learned persons read each other’s work and travelled extensively to learn from each other’s teachers, and Islam in that sense is no more a question of a vague, insubstantial Geist than is contemporary physics or biology.

The geographical spread and historical continuity of non-formal law (of ʿurf or “custom”) is harder to explain. No obvious institution sustains it, and those who have absorbed the metaphysic of histoire historisante prefer to ignore the subject. Within the Arab world, however, repetitions of custom are often striking. Within what some would call “tribal” worlds the reach is greater still, and people interested in, let us say, the Berber fringe of the Maghreb find an odd sense of familiarity as they read of rural (Arab) Iraq, or those interested in the pastoral world of (Arab) Nejd find themselves not wholly on foreign ground as they read about hill-farmers in (Pakhtu) Afghanistan, particularly as regards protection, compensation, and forms of settlement. Certain principles of social organization (or better, of self-definition) recur widely. Indeed, one can reach well beyond what is now called the Middle East and find parallels between the customary law of many Arabic-speaking groups and the dooms (so called) of Anglo-Saxon England, law-texts from Celtic Ireland, or the legal codes of early Iceland (part seven, below).

Structural principles recur. Rather widely within the Middle East, however, one also finds repetitions of key terms and of phrases with related meanings. Behind this, of course, lie such larger questions as to how and why the term nāmūs (presumably the classical Greek nomos, well known to philosophers) recurs so widely as denoting a vulnerable moral integrity, and why the Arabic hurmah should recur from North Africa to Afghanistan with the meaning of that which a man must protect from others. Yet the detail of repetition in the Arab world is impressive. If compensation for wounds is often calculated in formally the same way, we may suspect an Islamic model; but four-fold compensation for other wrongs finds echoes in Exodus, while minor resemblances of procedure and terminology link North and South Arabia, and the Maghreb too. Much work needs doing on which of these patterns are, so to speak, parasitic on the great tradition of Islamic
justice and which of them suggest a lost common origin of the kind that is likely with “Greek” medicine or with magic. To speak in each instance simply of ‘urf or “custom” is to skirt large problems.

12 Recent studies of tribal customary law in the Arab world are summarized by Frank Stewart, who himself has produced an excellent scholarly edition of disputes from Sinai. But one has to say as a Yemenist that disappointingly little is said of Yemen, where related forms occur from Ḥadramawt to the far north-west and the reports that we have suggest something very like a corpus. Admittedly, we are not making rapid progress unravelling its connections. Indeed, the history of studies of tribal law in Yemen is one of frustration and delay. The late Professor R.B. Serjeant, for instance, who published several pieces on tribal law and often mentioned a collection of documentary material, gave me many years ago a photocopy of what seems to be part of Kitāb al-tabyīn fi l-manʿ, which he had written out for his own use but not found time to edit fully or to publish; and such texts had been lent him or given him, many years before, by Ettore Rossi, who cites the work in his classic article on diritto consuetudinario but never found time to publish the text either. What has become of other texts Rossi cites I do not know.

13 Rossi’s achievements were remarkable, not least that he acquired manuscript copies of important works on tribal law at a time, in the late 1930s, when possession of such works was supposed in Ṣanʿāʾ to be punishable by death. Perhaps we shall never be sure where for instance Kitāb al-tabyīn fi l-manʿ came from. As important as the demonstration such texts really did exist, however, was Rossi’s summary of the principles apparent in tribal custom. It is these which pull together in his article several earlier reports from Ḥabshūsh, Glaser and others, and a good deal of linguistic detail to be found in, for instance, Landberg. These principles, some of which had been noted by Glaser, also inform much that has since been written on ‘urf or custom among Yemen’s tribes. Let us single out three for the present purpose.

14 First, offences are recuperated by vengeance or compensation, and the stated scales of recompense imply formal equality among tribesmen. Secondly, asymmetric relations, marked by such terms as jār and mujawwir (the protégé and one protecting), are reversible: the protector on one occasion can, on another, be the one protected. Thirdly, this reversibility applies only among tribesmen. It does not apply to “weak” people, to slaves or servitors, to women or minors, who are always dependants and protégés. These people, said Ḥabshūsh in the nineteenth century, are not subject to retaliation because “they have no price”.

15 The tribesman does have a “price”, by contrast. Indeed, apart from wounds to himself, multiple amends are due him for violating his protection whether the person he protects is somehow of higher than tribal status or of lower – a “judge”, for instance, or a lowly servitor may equally require amends four-fold. Serjeant, following Rossi and on the basis of his own wide experience in Ḥadramawt and the Aden hinterland, as well as in northern Yemen, summarized the tribesman’s status as sharīf, qawwī, manī, that is, honourable, strong, and able to protect others. In the summaries below (part three, sections a and c) I set out the implications and try to explain how distinctive a moral world may be at issue.

16 Obviously, in doing this one is scratching the surface. Whatever else may be found, the Rossi and Serjeant material, which seems to span a half millenium, needs collecting and
editing, and what connections there may be among even these few sources remains unclear. As Rossi suggests, the Kitāb al-sinnah wa-l-ṣāḥībah, a manuscript dating to 1059 hijrī (AD 1649) which deals with Ḥāšid and Bakil, and the (undated) Kitāb al-tabyīn attributed to an author from al-Bayyād (near Najrān) seem part of overlapping traditions; more surprisingly, so does Kitāb al-ādāb wa-l-kaflūzim (perhaps early fourteenth century), collected by Serjeant in Ḥadramawt.” In places one finds common terms and, less expectedly, closely parallel formulations.

Where Kitāb al-tabyīn fi l-manʿ is a treatise, the qawāʿid examined here are practical documents which not only specify certain points of law but also express a political formation among the signatories. It is partly for this reason that they appear so much like a “code”. Although few general principles are set out, and no claim is made to be exhaustive, the points agreed are each applicable to everyone bound by the pact. As tribesmen at Barāṭ say, the qawāʿid are like a constitution (dustūr). One of documents’ essential features, indeed, is their long lists of guarantors (ḍumānā) who commit themselves to uphold the agreement on their own behalf and that of their men, all acting together to maintain a set of rules, such that lawyers might be tempted to use the phrase legal sovereignty. But the pact at Barāṭ was not a state in the making. It was a political association of a specific kind, which in one degree or another must have recurred endlessly in Yemen and which the histories of states or rulers and of formal learning tend strongly to obscure.

History of the project

I was first shown a version of the main text (text B, below) near Sūq al-ʿInān, Jabal Barāṭ, in 1979 and was allowed both to photograph this and to copy it by hand. By late 1980 I felt I had a sense of the document overall, but there remained several passages I did not feel confident of paraphrasing or translating. A typed version was provided as an appendix to my doctoral thesis in 1982, which was deposited at the Yemeni Centre for Research and Studies. A few passages were translated in the thesis for illustration, and some were later used in articles and in a monograph on the northern tribes.34 Others copies came to light through the years, but only recently have I sought them out and tried to reconcile them.

The text itself appeared also in Fadl Abū Ghānim’s work on the tribal system in 1985, this time, very helpfully, as a photocopy of a handwritten version but without any commentary or explanation.35 A printed version in Arabic then appeared in 1986 as part of Rashād al-ʿAlīmī useful study of tribal justice.36 This is plainly the same text (text B in part six, below) of which I copied a version at Barāṭ and Abū Ghānim presents a closely related copy. Unfortunately the author gives no indication of where his own version came from37, and at several points either he or the person who wrote for him a transcript has distorted the text in directions standard Arabic grammar suggests might clarify the sense or allow one to parse the sentences. As al-ʿAlīmī himself says, the language of the document presents difficulties.38 Not all his readings and interpretations are sound, I think, but this was the first real attempt, so far as I know, to provide an explanation of all the document’s substantive passages, and the clarity of al-ʿAlīmī’s effort is admirable.

Text A, a shorter but related set of qawāʿid al-malāzim, was first shown me at Barāṭ in 1983, and I copied this by hand in less than ideal circumstances. As far as I know, it has not been published. Two clean copies were found me in 2003, and a third at the turn of 2004; a fourth soon followed in March that year. At first, in 1983, it seemed this shorter
text might simply be a reduced version of text B, but as copies of B accumulated it became more likely that A and B were related yet distinct documents, and further copies of text A have strengthened that supposition. The history of the copies will be summarized below. Even with the clearest, however, one has trouble on occasion with the script and often with divining those ideas which the original scribes took for granted as common sense. The documents are written almost in a kind of short-hand, particularly the market-guaranty procured for me in 2003.

Finding well-informed help with interpreting the texts among tribesmen elsewhere than Baraṭ, let alone finding help in Ṣanʿāʾ, is difficult. Time and again one finds oneself in need of local knowledge from people who live where a document was written, and even they, we should always remember, are separated from the texts at hand by more than two centuries. The problem is intensified by the way tribal judges or arbitrators use contemporary documents often as aides-mémoire. The thrust of intention (maṣūd) is what matters, not the detail of grammatical meaning (maʿnā lughawī); and most people steeped in “custom” are not used to parsing sentences. The ideal situation is thus to have a young person present who probably has no clue about custom but knows roughly how grammar works and can suggest, with due respect to his uncle or grandfather, that a word or particle is missing, and grandfather who has little idea of formal grammar but once lived in the kind of world to which the document refers. This is one of those subjects that, unless handled carefully, leaves everyone exhausted with the other’s dim-wittedness. The problem is compounded by my own poor knowledge of classical Arabic, in which many supposedly “dialect” words might be found if one only had the breadth of learning.

In 1983 I had the chance to work on text B in Yemen with Gerd-Rüdiger Puin of the University at Saarbrücken, who was then engaged on a manuscript-restoration project in Ṣanʿāʾ. Singly and together we visited Baraṭ several times. Dr. Puin transcribed a further copy of text B, which he pursued with his own tribal contacts. I received particular help at the time from Muḥammad Ḥasan Dāris, Ḥamūd Muḥammad Abū Ra’s, ‘Abdullāh ‘Ā’id Yaʿqūb of al-Maʿāṭirah, and Šāliḥ Muqbil Juzaylān, the latter two figures being widely-known experts in ‘urf. Dr. Puin and I had intended to pursue this effort to a published article. In 1985 I sent him draft translations and what notes I had on tribal law, and he sent to me a hand-written version of text B which represented the work he had done resolving doubtful readings. Unfortunately, pressures of teaching and of family meant he could not pursue this further and the effort lapsed. From time to time others expressed an interest. The main result was to remind one how little sense the text made without the principles informing it. In 1999 a serious interest was expressed by Laila al-Zwaini, then a doctoral student at Leiden, who typed up an Arabic draft of text B in 2000, but her own work had of course to come first and again the chance was lost of a joint project.

Discussions with Ahmad ʿAbduh Thawābah and al-Naʿīb ʿAbdullāh Muḥsin Thawābah of Dhū Muḥammad in late 2000 revived my personal interest, and they kindly found me a further copy of the main text (text B, below). François Burgat of the Centre Français in Ṣanʿāʾ (CFEY, now CEFAS) expressed enthusiasm the following year for publishing text B. His organizational and financial help in 2002–3 were invaluable and without the technical assistance of the Centre staff the project would not have been completed. It is a pleasure to be able to thank François at last for his encouragement: Jean Lambert, his successor, extended the same hospitality in 2003–4 although the project had grown more complex. I should also like to thank Dhikrā Muṭahhar and Amīrah ʿĀ’id of CEFAS for their secretarial
help, and on the financial front, St John’s College, Oxford, generously paid travel-expenses for several short trips to Yemen.

24 The greatest possible thanks are due to ʿAbdullāh Muḥsin Thawābah (himself a justly noted arbitrator and expert in ʿurf for the patience he showed in taking me through text B again and attempting to riddle out the details. Shaykh ʿAbdullāh b. Nājī Dāris then kindly gave me the run of his dāwūn, where tribesmen from Dhū Muḥammad congregate at al-Rawdah, out by Ṣanʿā’ airport. Naṣr b. ʿAbdullāh Dāris and Šāliḥ Muḥammad al-Farajī provided enormous help in the summer of 2003; Nājī ʿAbdullāh and Nūr al-Dīn ʿAbdullāh did so later, and so too did Ḥamīd Muḥammad Jarād. ʿAbd al-Karīm ʿAbdullāh al-ʿAnsī, a very old friend, mobilized endless friends and relations from Baraṭ and the Jawf. Special mention should be made of Muḥsin Muḥammad al-Ghuraybī of Wādī Silbah, who not only knows tribal custom well (his father was a respected arbitrator) but showed an admirable knack for comparing texts and spotting clues in the script and grammar. As with most foreign work on Yemen, the bulk of useful ideas has come from Yemenis.

25 I can only apologize for the long delay in publishing the main texts and commentary, and apologize for the obvious shortcomings. Even certain key-terms, explained as best I can below, resist translation. Certain passages remain obscure. One hopes that historians, anthropologists, linguists, and others concerned with Yemen will be encouraged to publish what they have on customary law and thus allow a fuller reading than I can manage here. There are signs, at least, of a fresh interest in custom and arbitration if not yet in the detail of texts. It seems important to precipitate criticism and some solid work.

Document 1: Dhū Muḥammad and Dhū Ḥusayn (1251/1836)
The different versions of the texts

26 All the texts available are recent copies, and we do not have means to verify dates. Nonetheless the postscripts give dates on which earlier copies were made, and provisionally we seem to be dealing with successive versions of the Code. These in turn rest on earlier agreements. Both texts A and B make mention of existing market-rules (qawā'id al-sūq) or qā'īdat al-ḥaram, a document that defines the protected space of the market and what should be done to uphold the market-peace at Sūq al-ʿInān, Dhū Muḥammad’s main centre at Jabal Baraṭ. Text A begins, “The first thing [concerns] the market”; text A section 21 says that later agreements do not erase (lā timḥaq seems to be the pronunciation) the existing market-pact. People in the area insist that the original market-guaranty must still exist, and the status of the market is referred to with great confidence, but despite extensive efforts by friends from Dhū Muḥammad we never found quite the document referred to.

27 When a market was first established at al-ʿInān is unclear, and to pin down the date might in any case not help since markets often lapse for a time and are then renewed. Nor does geographical logic explain the distribution of markets. The other main markets in the area, apart from Ḥarf Sufyān (a long day’s walk and more to the south-west), are Rajūzah, just a few kilometres away from al-ʿInān in Dhū Ḥusayn, and al-Mahjal, 60 km. or so further east in Dhū Ḥusayn’s territory at Wāḍī Khabb. Āl Sālim and al-ʿAmālisah, tribes to the north and north-west of Baraṭ, seem to have no weekly markets of their own. The late Turk Khursān of Dhū Ḥusayn was said to have a qāʿīdah for Rajūzah, dated 1206 hijrī (AD 1791–2), which placed it somehow under the joint guaranty of Dhū Ḥusayn and Dhū Muḥammad; Bayt al-Bahr of Dhū Zayd in Dhū Muḥammad are said to hold further documents. Whether a reciprocal agreement was ever made that involved Dhū Ḥusayn in al-ʿInān’s protection is unclear, but it deserves remembering that tribal agreements often overlap and may supplement or contradict each other.

28 From the texts of qawā'id al-malāzim (texts A and B) one can take a fair guess at what must have been in documents concerning al-ʿInān pre-1763, that is, before the date claimed for first drawing up text A. They must at least have specified a ḥaram, or protected area, and stated who was responsible for upholding the market-peace; they would also have specified amends for violating that peace. Unfortunately the only text of the guaranty we have, which begins with the claim that Dhū Muḥammad have decided to establish the market, dates its own first copying to 1185 hijrī (AD 1771–2), a decade later than would be ideal. The explicit additions dated 1225 and 1275 hijrī (AD 1811, 1859) are interesting in themselves. But an obvious contradiction arises in that text 1, the market-guaranty, continues to specify amends as four-fold, while text B section 16 (1211 hijrī, AD 1796) says eleven-fold when the dates of renewal claim that text 1 was still in force. To get much further with understanding the original system is probably not possible for the moment, not least because in recent years, as the centre of events has shifted towards Ṣanʿā’, many people have declared themselves quit of responsibility for upholding the Baraṭ market-peace (ibtaraw min al-ḍamānah).

29 The version of the guaranty we have to work with (text 1, below) is a curious document in that various attempted classicisms occur of a kind not usually seen in scripts like this (e.g. nāqūn for those seeking vengeance or compensation) yet simple things like the names of Islamic months are mis-spelled. Although the scribe who made the final copy in 1998
notes scrupulously where something is missing (hunā kalimāt maṭmūsah) and says at the end that the crossings-out are internal to the text (al-shatb alladhī fī bāṭin), I am all too familiar with his work from other texts, not least an illegible copy of text A. I provide (in part four, below) a photocopy of the guaranty, which gives an idea of what one is sometimes up against. But the standard of hand-writing is so poor in places as to be embarrassing, and I have therefore left off the name of the final copyist.

We then have two versions of qawāʾid al-malāzīm. First there is a short version (text A), which I transcribed by hand in 1983 from a copy in the possession of Ḥamūd Muḥammad Abū Raʾs. This corresponds quite closely to hand-written notes shown me by ʿAbdullāh Muḥammad al-Rudaymi and referred to him simply as “the custom of the Jawf” (the provenance was unclear and the guarantors not listed). A clean copy was later given me by ʿAbdullāh Nājī Dāris in 2003 (reproduced here, as part five, in photocopy), and another by Sāliḥ Muḥammad al-Faraj; a further, rather splendid, copy was given me at the turn of 2004 at al-Qāʾīdah near Taʾizz by Yayqar Muḥammad Nājī of Bayt Abū Raʾs, and another in March that year by Nājī ʿAbdullāh Dāris. The manuscript copies of text A all carry the date Muḥarram 1177 hijrī (AD 1763) and comprise an agreement solely among the sections (the five akhmās) of Dhū Muḥammad. Al-Rudaymi’s version differs in certain details from the others, and these differ sometimes among themselves, though mainly in simple omissions and the ordering of adjacent names or phrases. Where the differences seem important I note them in parentheses under text A. Apart from this, and discussing the few passages that differ markedly from text B, I present text A simply in Arabic and in summary translation, working out from the Abū Raʾs text I was shown first and keeping notes to a minimum.

Second is a much longer and fuller document (text B: part six, below) which corresponds to the text, first shown me by Ḥamūd b. Nājī Dāris, that I gave in my doctoral dissertation in 1982. This comprises an agreement among Dhū Muḥammad, Āl Muḥammad (al-Maʾāṭirah), and Dhū ʿAmr. Abū Ghānim reproduces a closely related copy of the same text as I photographed; another (copied for al-Maʾālim of Āl Ṣalāḥ at al-Marāshī in the early 1980s) was provided by friends from Dhū Ḥusayn, and Nājī ʿAbdullāh Dāris found me a further copy from one held by al-Maʾāṭirah. With a version given me by Ahmad ʿAbduh Thawābah in 2000 this makes five manuscript copies. The photocopy is of the Thawābah text, the one with the clearest script, written out (like text A) by perhaps the best copyist at Baraṭ, Yaḥyā ʿAbdūh Atīq. The typed version represents an edition compiled from the different copies and from discussions with experts on ʿurf at Baraṭ. This is followed by an English translation and explanatory notes. Most of the explanatory material relevant to text A as well will be found here or in the introduction (part three). The first date mentioned on all the copies we have of text B is Muḥarram 1211 hijrī (AD 1796). Despite the obvious resemblance to text A, none mentions the date 1177 (AD 1763) or a previous agreement.

Odder still, the list of guarantors is identical in texts A and B, except that signatories for al-Maʾāṭirah and Dhū ʿAmr are added on to those for Dhū Muḥammad’s “fifths”. The original witnesses (shuhūd) are the same too, though in one document they are dated an implausible thirty-three years later than in the other.
The obvious conclusion, particularly since both lists of witnesses are dated to the same month, Muḥarram, would be that at some stage an error was made in copying the dates (they are only in numerals, not written out) and we have, so to speak, a corrupt text. However, the first provision of text A, on the market, is omitted from all the versions of B, as too are the details of rights that derive from sharing food or drink (text A section 17) and provisions at the end on a market-tax (text A sections 21, 22); on the other hand, text B contains several passages that are not in A. Readers must judge the relation for themselves, but the copies of A are consistent and the copies of B are consistent (lists of contents are provided as Figure 1). Whatever part mistakes in transcription may or may not have played, it seems to me that one cannot reduce the relation between A and B to scribal error. People kept, reproduced, and perhaps referred to these texts in parallel.

In three of our copies of text A the lists of transcriptions run strictly in parallel until 1300 or 1311 hijri (although there is no solid means to choose, this means the 1880s or early 1890s). All end the text, after listing the guarantors, with the witnesses and the name of the original scribe, Muhammad Ahmad ‘Ali, and mention copies being made in Rabi’ Awwal 1214 (AD 1799) from a version in Dhū Mūsā’s possession, the scribe being ‘Ali Ḥasan Ṭuḥayf. A copy was then made by Muḥammad Yaḥyā ‘Abd al-Raḥmān in 1218 (AD 1803), at the request of al-Naqīb Mufliḥ b. Šāliḥ Abū Ra’s, from a version of this owned by Dhū Zayd. The Abū Ra’s family of shaykhs are not from either Dhū Mūsā or Dhū Zayd but from
Though it properly belongs in B, the reflux action of text B on A seems evident, where the phrase ʿAl Aḥmad b. Kawl (these, to anticipate, are all separate “fifths” or ḥĀMĪṣ of Dhū Mūḥammad). Ḥusayn b. Muḥṣin Abū Raʿs apparently had a copy made in 1232 (AD 1817); from this a further copy was made for Muḥammad ʿAbdullāh al-Baḥr of Dhū Zayd in 1883 or 1894 (Shawwāl 1300 or 1311), and this in turn comes down to us via recent copies for Bayt Juzaylān (Dhū Mūṣāb), Bayt al-Baḥr (Dhū Zayd), and Bayt Dāris (ʿĀl Dumaynah). Plainly these documents are not simply passed on in families or even in tribal sections such as Dhū Mūḥammad’s fifths.

Two other copies of text A, shown me by different branches of Bayt Abū Raʿs, claim a different transmission. Muḥammad Aḥmad ʿAlī’s version was again copied by Muḥammad Yahyā ʿAbd al-Raḥmān, though the only date given is Rabīʿ Awwal 1214 (1218 is not mentioned; nor does ʿAlī Ṭuhayf appear). The next date is unclear, al-Qaʿdah 1249 (AD 1834, which seems more likely) or 1349 (AD 1931), when apparently a fresh copy was made by ʿAbd al-Khayr al-Maḥāmīn (AD 1967) because the original was in poor condition. The text is unclear on the details, but it appears that a comparison was made among different copies in writing the full version, which in all the recensions I have seen comes down to us through a copy made in 1238 hijrī (AD 1822) for ʿĀl al-Dūwaynī, who are shaykhs of al-Maʿāṭirah at Baraṭ, One copy, belonging to ʿĀl Yaʿqūb of al-Maʿāṭirah, looks to have been taken from this about fifty years ago but is not dated. The others, made for various shaykhs at Baraṭ, are more recent. Unlike the case with text A, unfortunately, we do not have clearly separate routes of transmission.

Text B lists the same witnesses (although the date is 1211 hijrī, not 1177) and also mentions Muḥammad Yahyā copying from Muḥammad Aḥmad ʿAlī, who himself apparently wrote multiple copies (qawāʿid marqāmān mutanāẓirah) at the start. Again copies are made in 1214 hijrī, but in Jamād Awwal (Jumādā Ulā), two months later than for text A. Ḥusayn b. Muḥṣin Abū Raʿs, presumably the man mentioned in the later copying of text A, seems to have made a copy of text B, as does Qadi Muḥammad ʿAlī Muḥammad. The text is unclear on the details, but it appears that a comparison was made among different copies in writing the full version, which in all the recensions I have seen comes down to us through a copy made in 1238 hijrī (AD 1822) for ʿĀl al-Dūwaynī, who are shaykhs of al-Maʿāṭirah at Baraṭ, One copy, belonging to ʿĀl Yaʿqūb of al-Maʿāṭirah, looks to have been taken from this about fifty years ago but is not dated. The others, made for various shaykhs at Baraṭ, are more recent. Unlike the case with text A, unfortunately, we do not have clearly separate routes of transmission.

The version of text B that I transcribed in 1979 and the version Abū Ghānim published in 1985, though the final stage of transmission differs, both carry the same first paragraph at the top of the scroll, explaining that a copy was made by Muḥṣin Ismāʿīl ʿĀlmar al-Shaʿr of ʿĀl Ṣalāḥ in 1387 hijrī (AD 1867) because the original was in poor condition. Yet the list of transcriptions at the end of the document in others I have seen with the same small distinctive features jumps from 1238 (AD 1822), when a fairly important note was made about the status of witnesses and the payment of ʿayb (amends for shame or disgraceful acts), to the latest transcription without mention of Muḥṣin Ismāʿīl. It is not impossible, although I think it unlikely, that all but one of the extant copies of text B in fact come from the 1967 version.

Plainly there is much more one wants to know. Text A describes itself as “five equal codes” (khamsah qawāʿid mutanāẓirah) and text B as three such, but neither text divides at
all obviously into anything of the kind. The repeated phrase *qawāʿid mutanāẓirah* can hardly mean a division of the text into chapters or its derivation from existing documents. Probably what is meant is that five master-copies were made of text A (one for each of the fifths of Dhū Muḥammad, the main parties to the first agreement) and three such copies of text B (one for each of Dhū Muḥammad, al-Maʿāṭirah and Dhū ‘Amr, the parties to the later pact). Support for this is found in the postscript to text B which mentions al-Maʿāṭirah and Dhū ‘Amr asking for their own copies. But how, and quite when, the two texts diverged remains unclear in detail. Plainly copies of each were made and were passed back and forth regardless of the tribes' divisions.

**The market and the tribes involved**

In the documents, as at present, the fifths or akhmās (sing. khamīs) of Dhū Muḥammad are Āl Dumaynah, Āl Aḥmad bin Kawl, Āl Ṣalah, Dhū Zayd, and Dhū Mūsā, Guarantors for each are listed in order. But the signatories for Dhū Faraj (these days called Āl Faraj) and Dhū ‘Āṭif, both of which now fall within Āl Dumaynah, are listed separately. In text A section 20 we find a distinction between al-Maḥlaf (meaning Dhū Zayd and Dhū Mūsā, as is still the case) and a compound identity referred to as Āl Aḥmad b. Swaydan and Ibn ‘Āṭif. Nowadays Āl Aḥmad b. Swaydān comprises Āl Dumaynah, Āl Aḥmad b. Kawl, and Āl Ṣalah (see Figure 2).

Dhū Mūsā and Dhū Zayd (al-Maḥlaf) are supposed to descend from Swaydān b. Muḥammad (b. ‘Amr) b. Ghaylān. People agree that Ṣalah and Dumaynah, as well as Aḥmad, were all sons of Kawl b. Aḥmad b. Swaydān b. Muḥammad, offset from al-Maḥlaf by two generations; but Faraj, the eponym of Dhū Faraj, now in Āl Dumaynah, is said to have been son of Ahmad Swaydān. ‘Āṭif, on the other hand, is said to have been son of Muḥammad Ghaylān, three generations back, and thus “half the tribe”. But were there originally only five “fifths”? Or did Dhū Faraj and Dhū ‘Āṭif have some other status? The answer – or part of the answer – appears in the market guaranty (text 1 section 1), where responsibility for the market-peace circulates month by month among the fifths and we find Dhū Faraj and Dhū ‘Āṭif though named explicitly, listed with Āl Dumaynah as they would be now. In text A section 8, purportedly from AD 1763, however, where the obligations of “blood and flesh” are spelled out (primarily these are obligations that derive from marriage), Dhū Faraj are said to be separately answerable for Dhū Faraj and Dhū ‘Āṭif for Dhū ‘Āṭif.
Each fifth –or in one case, perhaps, a fifth and two associated units– was responsible in turn for the ḥaram of the market, serving in rotation as ahl al-shahr, “the people of the month”. The guarantors of each unit within the other fifths were responsible to ahl al-shahr for their fellow tribesmen paying what amends they themselves incurred (text 1 sections 2, 3, 4) and for supporting the “people of the month” in the event of claims against outsiders (text 1 sections 8, 16). The market also figures as one of those issues where intestine disputes among the signatories are suspended and responsibility is definitively shared (text A sections 11, 15, 16; text B sections 11, 25). How far geographically such responsibility extended is unclear. But a recurrent theme in discussion is that Dhū Muḥammad’s writ once ran on all the market-roads, beyond their own territory, even “from Bāb Swaydān”. Acceptance or rejection of outsiders at the market devolves on the parties to the pact as a single unit (text 1 section 11, text A section 18, text B sections 23, 25).

That protection of the market might provide the nucleus around which grows something larger comes as no surprise. The beginnings of Islam itself, turning as they did on control of trading towns, seem to have involved a protection pact of a kind familiar later in Yemen’s history. References to Yemeni markets are numerous, and in Upper Yemen, as Ḥabshūsh says, markets are hijrah or muhajjarah, set aside and protected. A document from Bani Ṣūraym (reproduced here as Document 2) shows a typical hijrah system of fines and guaranty agreed in AD 1831. Near our own time, in the 1920s, we can point to how appropriating tribal market-guaranty was part of how Imam Yahyā established control over Upper Yemen, and how towards the end of a civil war in the 1960s –republican against royalist, but also a proxy-war between Egypt and Saudi Arabia for control of the Arab world– tribes aiming to preserve their formal cohesion did so by protecting a common market. To reduce this to “economic” considerations would miss the point. (The nearest market geographically may not always be protected by one’s own tribe). As anthropologists would expect from the works of Mauss or Hocart, the market has a moral value determined by its contrast with the dispersed forms of everyday life. Briefly put, the market on market-day is the one shared space in the moral system, and the one place recognized by all where violence of all kinds is forbidden. It is also where agreements are formed on collective matters and where announcements must be made of public claims.

In Upper Yemen, on the northern plateau, markets seem not to have been a direct source of income for local chiefs as often they were in Europe. If a tax was imposed it usually
went to non-tribal learned persons. The system at al-‘Inān is somewhat out of the ordinary in that a tax (majbā, jibāyah) was levied on for instance livestock-traders (text A sections 21, 22) and this went to maintaining a guard at the market-place throughout the week drawn from the protecting tribe. More than this, responsibility for maintaining the market-peace on market-day rotated, as it still did until recently, among the fifths, who each provided the standing guard for a month in turn.68 Outside the haram, or protected space, the “people of the month” were not responsible for disputes among their fellow tribesmen (text 1 section 16); if blood were spilled inside the haram on market-day, however, they were to take vengeance or extract compensation four-fold (text 1 section 10). The other fifths were obliged to support them if required, and were responsible for the wider space of tribal territory and the roads to market. This broader responsibility was shared by the market-guarantors together and hence by all the tribesmen for whom they signed.

Document 2: Market guaranty from Banī Ṣuraym (1246/1831)
Whatever the history of the texts, we seem provisionally to have a political history of the region. Supporting evidence is thin to non-existent. Internal evidence, however, suggests strongly a sequence from an agreement among the “fifths” (akhmās) of Dhū Muḥammad to uphold their market-peace to a wider agreement embracing their immediate neighbours. Text A (AD 1763), as we saw, like the market-guaranty binds only the fifths of Dhū Muḥammad; text B (AD 1796) comprises an agreement among Dhū Muḥammad, Āl Muḥammad (al-Maʿāṭirah), and Dhū ’Amr. In certain copies of text B the conjunction “and” appears between Āl Muḥammad and al-Maʿāṭirah, which is simply wrong: Āl Muḥammad (as opposed to Dhū Muḥammad) and al-Maʿāṭirah are the same. They are not one of Dhū Muḥammad’s fifths but live interspersed among them. Although members of Dhū Muḥammad sometimes claim al-Maʿāṭirah have no ḥudūd, no distinct “borders” or “territory” of their own, they in fact have distinct locations and rights of territory at Wādī Tamr, in the upper reaches of Wādī Silbah, at the border area of al-Rahāʾīt, and at three locations on Baraṭ itself—at Wādī Khanaq (around Bayt al-Qayl), Ḥajjān, and Wādī al-Balasah. It is said that al-Maʿāṭirah do not fight alongside Dhū Muḥammad against the neighbouring tribe of Dhū Ḥusayn.49

In Dhū Ḥusayn one finds a similarly anomalous section, al-Ḥuṭbān, who form part of Āl Ḥusayn50 but apparently are not part of Dhū Ḥusayn’s “eighths”. Al-Ḥuṭbān do fight alongside the eighths of Dhū Ḥusayn against Dhū Muḥammad, or in theory should do. It is said that long ago they held much of what is now Dhū Ḥusayn’s territory and part was held by Banī Nawf, a tribe now associated with the Upper Jawf. Banī Nawf themselves have supposedly lost territory to Hamdān and Dhū Ḥusayn; but their name remains in Wādī Banī Nawf at Baraṭ, south-east of Raḥūzah. Āl Sulaymān, whose centre is now al-Haḍābat and part of whose border with Dhū Muḥammad lies at Wādī al-ʿArīshah just east of Raḥūb, are supposed once to have held Jabal Āl Ẓalāḥ, now squarely within Dhū
Muḥammad’s borders. The scattered distribution of al-Maʿṭirah’s territory at and around Barat suggests perhaps they too once held more of the region than they now do. Mere geography or supposed genealogy, however, do not determine politics and text B section 36 precisely in assimilating al-Maʿṭirah to an alliance with Dhū Muḥammad severs certain forms of joint responsibility between them. Where al-Maʿṭirah (Āl Muḥammad) may have stood at which date with regard to Dhū Muḥammad remains obscure. In two documents from Qadi Ismāʿīl al-Akwa concerning the protection of Bayt al-ʿAnsī at Barat, between the mid-seventeenth and nineteenth centuries, they appear as an independent unit of the same structural order as Dhū Muḥammad’s fifths.

47 The third major party to the pact in text B are Dhū ʿAmr. Local tradition has it that they were once a major tribe of the region but there are now only scattered remnants: their territory was mainly in the low-lying area of al-Marāshī, on the route west and south from Barat to Sufyān and from there to Ṣan’a’. In the early 1980s they were still to be found in some numbers at the village of Shaqrat bin Ḥaydān, at al-Marāshī, and some thirty men lived at al-Jaljalah in the territory of Dhū Mūsā (Dhū Muḥammad) near al-Kharāb. Bin Ḥaydān, a shaykh of Dhū ʿAmr, is said to have dominated long ago the whole region, not least the trade route. A proverbial saying was that kānat arḍ al-marāshī ʿashīrah min dān shaqrat bin haydān, meaning that if it were not for Bin Ḥaydān, who extorted taxes from the area and from caravans passing through, al-Marāshī and its surroundings would only have paid the Islamic tithe.

Document 3: Agreement among Dahm (1231/1814)
'Amr is also, it seems, a collective name for Dhū Muḥammad, Dhū Ḥusayn, and Ṣa‘d b. Ṣam‘ū. The collective name for Dhū Ghaylān (that is, Dhū Muḥammad and Dhū Ḥusayn together), Ṣa‘d b. Ṣam‘ū is perhaps Nasr. Despite this ranking of proximity, we should note, the market guaranty (text 1 section 7) draws no distinction of kind between Ṣa‘d b. Ṣam‘ū and Āl Ṣālim; more strikingly, none of our documents mentions Dhū Ḥusayn, supposedly Dhū Muḥammad’s “brother”, except to exclude them.

Different views of the relations among tribes of the area are common, but Steffen’s team in the 1970s were offered a sketch of the main genealogy, and ‘Abdullāh ‘A’id Ya’qūb of al-Ma‘āṭirah some few years later gave me a related sketch of local detail (see Figure 3).

The idea that Dhū Muḥammad and Dhū Ḥusayn both descend from Ghaylān Muḥammad, and that repetition of the name Muḥammad suggests a possible historical priority of one over the other, is current even among shaykhs of Dhū Ḥusayn. For other purposes Dhū Muḥammad and Dhū Ḥusayn are spoken of as brothers, two parts of Dhū Ghaylān. The name Ghaylān itself is old, although attached a millennium ago to a location nearer Ṣa‘d b. Ṣam‘ū than to Baraṭ; Dahm (or Duḥmah) and Shākir, higher up in the genealogy, provide larger, fairly stable conceptual shapes, already associated with the relevant geographical space north of the Jawf as early as the tenth century.
century. The names Dhū Muḥammad and Dhū Ḥusayn, however, seem not to be attested until about AD 1600.³⁷

'Amr, as we have seen, had at least two meanings. In its lesser sense, lower down the supposed genealogy, Dhū 'Amr was a unit of the order of al-Maʿāṭirah, Text B of the qawāʾid thus has Dhū Muḥammad, Āl Muḥammad (al-Maʿāṭirah), and Dhū 'Amr as three distinct parties; one of al-Akwaʾ’s documents from Baraṭ, dating to the early nineteenth century, binds Dhū 'Amr, al-Maʿāṭirah, and Āl Ṣalāh (one of Dhū Muḥammad’s fifths). In its larger sense, by contrast, higher up an imagined genealogy, Dhū 'Amr would include Dhū Muḥammad and the others. But the texts here are far from clear.

Text A binds the fifths of Dhū Muḥammad. Section 13 of that document distinguishes Dhū Muḥammad and Dhū 'Amr, section 8 mentions both but then lists only Dhū Muḥammad’s fifths as if the names were equivalent, and section 10 says that anyone committing a wrong at a meeting of Dhū Muḥammad or of its sections can call on no obligation at further meetings anywhere “in the territory of Dhū 'Amr, east or west” or even at market in al-‘Inān. Text B binds Dhū Muḥammad, al-Maʿāṭirah, and Dhū 'Amr in the lesser sense; but someone committing a wrong at a meeting has no obligation to call on at further meetings among “Dhū Muḥammad, east or west...” (section 10), as if Dhū Muḥammad (in text B) and Dhū 'Amr (in text A) were identical. In one of al-Akwaʾ’s earlier texts, whose first renewal is dated to 1112 hijrī (AD 1700), we find the same implication that the names are synonymous.³⁸ Dhū 'Amr promise to protect the descendants of 'Ali Qāsim al-ʿAnsī, but the fifths of Dhū Muḥammad are then mentioned as if they comprise the whole of the people involved, and all the signatories look to be from Dhū Muḥammad. Under each of these tribal names, of course, sections may have views of their own worth and history.

Domiciled among the sections of Dhū Muḥammad one finds people called manāʾī, who are spoken of as having been agricultural workers or sharecroppers (hurrāth, shurakāʾ) and who, unlike the groups discussed so far, were not of full tribal status.³⁹ In the early 1980s there seemed to be about four or five hundred men of al-manāʾī, scattered among several villages. They shared ghurm wa-jurm with Dhū Muḥammad, in other words they contributed to joint debts and expenses in tribal conflicts; they could not and cannot, however, make undertakings to escort or protect others in their own name. Nor could they shelter one Muḥammadī from another.

Although they would fight alongside Dhū Muḥammad in battles with other tribes, if one of them were killed in circumstances other than war then recompense was demanded four-fold, a common sign of subordinate or protected status despite the fact al-manāʾī bore arms.⁴⁰ Their position is now a sensitive issue and hard to enquire about. On several occasions I have blundered by asking about the status of al-manāʾī in a qat-chew where it
turned out one of al-manū‘ was present. On each occasion people changed the subject and quietly told me to do so.

Some practical ambiguity, also, can attach to this status. Dhū ‘Ali, who live around Khays, Malāḥah and Zafq al-Ṭawil, and were reckoned manū‘ by most people, seem to have been attached partly to Dhū Mūsā and partly to Āl Dumaynah. After a difference with Dhū Mūsā, in the late 1970s, they found Āl Dumaynah would only help them on the clear admission that they were dependants. They went to Dhū Zayd for help and concluded a pact of brotherhood (ṣaḥb, īkḥā‘). This implies equality. The rest of Dhū Muḥammad appear to have declined to recognize its validity, and through the 1980s Dhū ‘Ali acted as a quasi-independent section (about 70 rifles strong), neither clearly manū‘ nor clearly part of Dhū Muḥammad.

For the moment we can only suspend judgement on what the status of al-manū‘ may originally have been in detail. The qawā‘id are unclear. Text B section 28 says that if any of them offends against a tribesman of Dhū Muḥammad then he has only one day’s right of escort, and presumably has to leave Baraṭ; but if the next line also refers to them (one cannot be entirely sure) then the manū‘ are nonetheless “brothers” with Dhū Muḥammad in affairs that concern the whole tribe. Most intriguing of all is the association of the term manū‘ with the term ‘urwah (text 1 section 14), which usually means specifically the bond produced by marriage. Whether that linguistic connection denotes habitual kinship, whereby al-manū‘ would structurally have been sisters’ sons to the tribesmen as mothers’ brothers, or denotes a mere parallel of subordinate status is obscure.

Tribesmen in discussion now tend to deny inequality in marriage between different types of people and say simply the manū‘ are attached to land (yuḥībbū al-ard). The manū‘ themselves sometimes claim they are Baraṭ’s original inhabitants and perhaps descendants of the legendary Banī Hilāl, left behind in Yemen at the great migration which followed the collapse of the Ma’rib dam. The story that al-manū‘ were there first at Baraṭ is widely accepted in Dhū Muḥammad, and many suppose that al-manū‘ until fairly recently made up a third of Baraṭ’s settled population: they are said to be found also in Dhū Ḥusayn, Āl Sālim, and al-‘Amālisah. It may be worth noting that none attaches to al-Ma’āṭirah.

Though also of subordinate status and protected by the tribes, the jirān should be distinguished from the manū‘. The term jirān (pl. of jār) means “neighbours”. It can apply to tribesmen, as it plainly does in the market guaranty (text 1 section 8) where the phrase qarawā‘ jirān means guarantors who act together to uphold the market-peace. But it also applies, quite differently, to non-tribal protected persons, not least the bayya‘, the traders or market-folk. These are the “people of Baraṭ” referred to in text A section 16 (text B section 24). They had no “face” (wajh), that is, no ability to make undertakings, to protect people or provide surety, and were spoken of as “weak” (du‘a‘). Although again this is a delicate subject, it seems fairly clear that tribal families took wives from them but were unwilling to give them wives. Unlike the manū‘, the jirān did not receive or contribute to collective payments in disputes with other tribes, except with regard to losses at the market (text 1 section 14), and certainly they did not bear arms. All these people, like the dawīshīn or non-tribal heralds at Baraṭ, were settled villagers, described as ḥajarī or qarawī.

In Dhū Ḥusayn and Banī Nawf, and further south near Ma’rib, one hears the term qarār used to mean “weak” non-tribesmen or jirān. Ḥabshūsh in the late nineteenth century gives the singular qarārī, which I have not heard in Dhū Muḥammad. The word qarawī
(pl. qurū), literally a “villager”, can sometimes be used of the manū‘ as opposed to tribesmen, as it is in text A section 8 (the logic perhaps is that they are assumed to have been there before the tribes of Dḥū Ghaylān arrived), but usually in Dḥū Muḥammad it just means a settled person as opposed to a nomad or badawi (pl. badū) and refers to someone of full tribal status. Text A section 6 contrasts badawi and qarawī, text B section 5 says badawi and hajari; but whether one lives in a house or a tent makes no difference. What does make a difference, as tribesmen see things, is descent, and although tribal status may perhaps have been lost in the distant past by those later spoken of as “weak”, it cannot explicitly be gained. Supposedly tribesmen have been there in effect forever.

NOTES


3. For the association of these phrases with Baraḍ, see R.B. Serjeant, The interplay between tribal affinities and religious (Zaydi) authority in the Yemen, al-Abḥāṭh vol. 30 (1982) pp. 43-4.

4. ʿAbdullāḥ ʿAlī al-Waṣīr ʾṬābaq al-balwāw wa-sīfāf al-mann wa-l-salwāw (Muḥammad Jāzim ed. 1985) p. 223. For simplicity, most terms in the present work will not be inflected more than they are in colloquial pronunciation. The letter ‘ayn is dropped from transliteration if followed by an apostrophe.


9. Ibn al-Muʾjamār ʾṢifāt bilād al-yaman wa-makkah wa-baʿd al-ḥijāz, ... tāriḵ al-mustahṣir (Mamdūḥ Ḥasan Muḥammad ed. 1996) p. 117. It has to be said that Ibn al-Muʾjemār mentions many odd things quite calmly. But it is interesting that he feels no need to explain the term manī to his readers elsewhere. For the following quotation see Serjeant, Sunnah, qur′ān, ‘urf in C. Toll and J. Skovgaard-Petersen (eds.) Law and the Islamic World (1995) p. 45.

10. See e.g. Ibn Hishām (d. AH 213 or 218), cited Dresch Tribes p. 196. The term tāḥhūṭ was used in southern Yemen as well as the north, but the case of this Serjeant cites (Sunnah, qur′ān, pp. 46-7) is from a late 19th century author of Salafi inclination. Though it is often difficult to be sure from Serjeant’s work which periods are at issue, the impression he gives is that the term manī was current fairly recently in southern Yemen.

11. For such phrases as ʿal-kām al-tāḥhūṭ and ṣukkām ṭawāḥhūṭ see e.g. Ḥusayn al-Dīn Muḥsin Tāriḵ al-yaman ‘aṣr al-istiqlāʾ ʿan al-ḥukm al-ʾuthmānī al-awwal 1056-1160 hijriʿ (ʿAbdullāḥ al-Ḥibshi ed.
1990) pp. 24, 35. In the “time of corruption” in the 19th century the word is extremely common. When marauding tribes are driven away from Ṣan‘āʾ, and the roads made safe, a Ṣanʿāʾi author says simply “the ṭāḥḥūt was effaced”: Ḫusayn al-Ṣayāghī (ed.) Ṣafahāt majhūlah min tārikh al-ṣāmi (1978) p. 74.

12. Dresch Tribes p. 199, from Ṣubdahāh mushīrah p. 435. For the Khawālīnī passage, Ṣubdahāh mushīrah p. 276. Sources are patchy and my own knowledge very limited, but this use of ṭāḥḥūt seems more common from about al-Ḳāsim’s time.

13. Zābārah Ḳīmāṭ al-ṣāmi vol. 3 p. 197. For the story of threatening execution, below, see Serjeant ‘Tribal affinities’ p. 44.


18. Even this contrast between ʿshr and ʿshārīʿah, although common in documents, should be treated carefully. On occasion the two terms are synonyms for Islamic law, contrasted with other custom (Rossi ‘Diritto’ pp. 24, 33). On the following point, that ʿshārīʿah judgement should be freely chosen, see P. Dresch, Keeping the imam’s peace: a response to tribal disorder in the late 1950s, Peuples Méditerranéens vol. 46 (1989). Tribesmen might well agree to mandatory ʿshārīʿah judgement, but usually within the bounds of some specific place or with reference to specific persons, cf. Ismaʿīl al-Akwa’ al-Maḍkhal ilā maʿrifat hijar al-ʾilm wa-maʿāqil-hu fī l-ṣāmi (1995) pp. 41-4.


20. Rossi ‘Diritto’ p. 16, also p. 34. In Saudi Arabia, surprisingly, ṭāḥḥūt may perhaps be a term used by tribesmen themselves of tribal law. But I have not heard this in Yemen, and the slippage between a term of denunciation and more substantive self-description needs treating cautiously: cf. F.H. Stewart, Ṭāḥḥūt in New Encyclopaedia of Islam vol. 10 (2000) p. 94. Whether ṭāḥḥūt and ṭāḥḥ(ิน) are really cognates seems doubtful. But whenever I have asked tribesmen the meaning of the former term I have been given examples of what in English one would call tyrannical conduct: e.g. arbitrary demands for wealth or labour. I do not think a tribesman has ever spontaneously described ḥukm ʿurf to me as ṭāḥḥūt.


23. The phrase histoire historisante comes of course from Bloch’s Métier d’historien.

28. Serjeant’s copy differs somewhat from Rossi’s account and suggests perhaps access to further copies. He also gave me part of Rossi’s second text (cf. Abū Ghānim *Bunyah qabāliyah* pp. 363-84: again there are differences) and several sections of *Kitāb al-ādāb wa-l-lawāzīm*, on which he had plainly done much work. Unfortunately these copies are not very clear and have, for instance, missing margins. Serjeant’s papers were given by his widow, Marion, to the University of Edinburgh, where presumably the originals now are.
29. Habshīsh Ruʿyah, *Yemen*; Glaser Maʿrib, ‘My journey through Arhab and Ḥāshīd’ (1884, 1993). Carlo Landberg published a great deal, but the most convenient source for the present purpose is his wonderful *Glossaire dağtinois* (1920-42).
30. Habshīsh Ruʿyah p. 83. The spelling of Arabic in what follows is that in the original.
31. Material damages (for instance blood-money) are nominally the same for all males. The multiple here is paid partly to the victim, partly to his protector, sometimes wholly to the latter. While offences against judges (ṣudāb) and “weak” market-folk are each supposed to be compensated four-fold at Baraṭ, those against descendents of the Prophet (sādah) and heralds (dawāṣīn) are supposed each to be eleven-fold. For notes on the *dawāṣīn* see Dresch *Tribes* pp. 120-1, 406-7.
32. Serjeant ‘Sunnah jāmīʾaḥ’ p. 14. The order of terms has been reversed for euphony. The term *manī* derives from *man* or *manʾah*, which itself has associations with defence and protection, Rossi ‘Diritto’ p. 29, Serjeant ‘Sunnah, qurʾānʾ’ p. 45.
33. Overlaps are found even within Rossi’s material. If Rossi’s (untitled) second manuscript is indeed Abū Ghānim’s text, then certain passages recur out of sequence in *Kitāb al-tabyīn* (cf. Rossi ‘Diritto’ pp. 23, 25-6, Abū Ghānim *Bunyah qabāliyah* pp. 370, 372). Resemblances extend beyond this. To take an obvious case, tribesmen will claim, quite wrongly, that the present documents (texts A and B) provide even for what happens if one kills someone’s dog. They are often quoting almost verbatim from Serjeant’s manuscripts although none has heard of these, far less read them. It is difficult not to feel that there is, or was until recently, a fund of shared formulae extending through much of Yemen.
36. al-ʿAlimi Ḍādāʾ qūbāli pp. 118-40. Neither the preamble to the text nor the list at the end of guarantors and recopyings is given, and the order of the clauses is changed, which makes the document more difficult to read. Also al-ʿAlimi (op. cit. pp. 42, 117) dates the text to 1127 hijrī. This is much earlier than other versions, and I assume is a mistake: the figure 1211 has been miscopied as 127 and the assumption made that it must mean 1127. (For how easy this would be to do see the copy in Abū Ghānim’s *Bunyah qabāliyah*).
37. Rashād al-‘Alimi is at present Minister of the Interior and has more pressing concerns than digging out old notes from his student days. But his recollection is that a copy was given him by the late Qadi ʿAlī al-Kuhālī.

38. al-‘Alimi Qadāʾqabālī p. 117, cf. al-ʿUdī Turāth šaʿbī p. 219. What is not clear is whether the changed order of certain sentences and sections in the published versions derives from a manuscript copy or from an editor’s attempt to make sense of the text.

39. Cf. an editor’s comments on Anglo-Saxon laws: “... it is not in all cases possible to expand their laconic statements without committing oneself to an interpretation which was not necessarily the author’s meaning. There are many places also where there can be doubt as to what antecedent a pronoun refers [to]”, D. Whitelock (ed.) English Historical Documents c. 500–1042 (1979) p. 365.

40. Vocabulary differs from place to place, and so does use of the same vocabulary (the way rifles as pledges are described would fill a pamphlet). But so, on occasion, do more profound assumptions. Men from Dhū Muḥammad, for instance, are very cautious about fighting groups that include their in-laws: al-ʿAmālisah, more or less next door, treat the in-laws as responsible for opting out of the dispute.

41. One does not wish to suggest that nothing at all changed until recently and that Baraṭ lived in a timeless world until the 1962 revolution. But there is no doubt things have changed very fast in the last twenty years or so. The foreign ethnographer thus finds himself these days sharing terms and common sense with a few old men, while younger people, often raised primarily in towns, do not recognize even the terms.

42. ‘Abdullāh Nāji al-Duwaynī of al-Maʿṭirah was also enormously helpful, and so were friends such as the late ‘Abdullāh Dhaybān of Sufyān, who shared much of Baraṭ’s vocabulary. It has been a long time. A lot of old friends have died.

43. The term naqib is used as a title by certain shaykhly families, mostly from Bakīl tribes (Dresch Tribes p. 405). Presumably it was given them by some ruler or set of rulers, but I cannot tell which set of rulers or when. Although naqīb was already current as a tribal title, 18th century sources mainly use it of what look to be slave commanders.

44. These thanks are much more than formal. Although, for instance, I have known Ḥāmid Muḥammad Abū Ra’s half a lifetime, it was well beyond the call of friendship for his son Fahd to track down on his own initiative and have copied for me a version of the market-guaranty. Working in the Dāris diwān was especially interesting. Although anthropologists as a matter of course distrust the idea of “disappearing cultures”, there was no doubt what was happening: those furthest from the world of ʿanʿa, particularly badu living east of Baraṭ, were by far the most familiar with the terms and phrases in the older documents.


46. I do not have a linguist’s ear, and asking people to write vowels, where they know how to do this, runs the risk of them reverting to classical pronunciation. But this occurrence of initial kasrah in imperfect verbs, active voice, is common. It also occurs in many people’s pronunciation of certain verbs in the perfect tense, e.g. fisala for fasala, to fail in one’s duty: al-Akwa’ (Madkhal p. 32) goes so far as to suggest fisila, which I doubt.


48. The version given here in photocopy was kindly found me by Sāliḥ Muḥammad al-Farajī. Nūr al-Dīn ‘Abdullāh Dāris later found me a copy that belonged to Aḥmad ‘Alī Fādīl. The latter is helpful at some points to check readings of the former but lacks many details. Fahd Ḥāmid Abū Ra’s later had made for me a further copy and acquired a very faded (no less illegible) photocopy
of a version dated 1275 hijri. Unfortunately none of these gives a chain of transmission. The translation (part four, below) suggests how less “finished” a text this seems than texts A and B despite the few isolated classicisms. Readers from Baraṭ, just as much as the translator, are left guessing. But comparison with other original documents (see e.g. Abū Ghānim al-Qabīlah wa-l-dawlah) gives no safe stylistic grounds for deciding the document’s likely history.

49. Leaving off the copyist’s name means also leaving off an official stamp from the ibtidā’ī law-court at al-ʿInān, which some would seize on as evidence of rapprochement among idealized versions of ʿurf, qānūn, and shariʿah. In fact all the court does in a case like this is to stamp the copy as being written on the date claimed, rather as a notary or commissioner of oaths might do: no legal opinion is offered on the contents.

50. Perhaps I should say lent rather than given. Even where people have offered hand-written versions it has always seemed best to make a copy and return the manuscript. Yayqar Muḥammad’s copy is written in beautiful script, with many spellings and many points of orthography corrected to classical form, but at 65 x 35 cm. is simply too large to be reproduced here.

51. The document begins with the common formulae of “renewing” or “clarifying” existing custom. What there may have been earlier is unclear. Serjeant (‘Tribal affinities’ p. 43) suggests that Ṭabq al-ḥalwā, a century before, contains references to “the laws of Baraṭ”, but I cannot find this in the published version. The copy given me by Nājiʿ ʿAbdullāh Dārīs is dated 1171, but the others are all very clear and I am inclined to think this a miscopying.

52. A copy from Muhammad al-Sudumī, made for the Ministry of Justice in the early 1970s, was passed on to me by Laila al-Zwaini, but neither al-Sudumī’s copy nor his notes adds anything to what we have. Even the copies made at Baraṭ or in Lower Yemen simply pile up. I have 8 copies of text A, now, and 9 of text B, but they only repeat what is in the copies cited or differ in such obvious ways that one can strike out minor transcription errors.

53. This is taken from text B. For text A see the photocopy in part five, below. Some explain the repetition of names by saying guaranty is “inherited”, which ideally it is. But comparison with other documents of this sort (see e.g. al-Akwa’ Madkhal) suggests that changes of the order apparent here should be freshly witnessed.

54. The earlier date seems marginally the more likely, appearing clearly in the better-written versions by copyists who are usually careful to note if something is illegible.

55. Bayt Ṭuhayf were part of the qādi family, Bayt al-ʿAnsī (of whom more in parts two and three). The name is no longer current, but ʿAbdī Usūm al-Shaʾr remembers the story. A ṣahfāh is a small white moth of the kind that flutters around lamps at night. The ancestor of the family is supposed to have worn a particularly extravagant white turban whose ends flapped about, hence Ṭuhayf, the little moth.

56. Resolving this would need tracking down the names in Lower Yemen, which I have not had a chance to do. The later date (1349 hijri) appears in Yayqar Muḥammad’s copy which, despite the beauty of the script, plainly miscopies one of the earlier dates. All one can do for the present is suspend judgement.


58. Unfortunately I never managed to get the story from Muḥṣin Ismāʾīl of how the copy was made and how it got into wide circulation, as it did quite quickly. The copy I photographed at Baraṭ was made for Ḥamdūd Nāji ʿAbdul lah exactly a year later; Abū Ghānim reproduces one made for ʿAbdullāh Nāji Thawābah just nine months after that. Al-ʿUdiʾs copy was made in Jamāḍ Awwal 1389.

Muḥṣin Ismāʾīl’s preface says also that the person who dictated or passed on (mutmil) the text was Ḥājī Ḥusayn Dawmān. Bayt Dawmān are the main dawāshīn or heralds of Dhū Muḥammad.
Traditionally the *dawshān* often held important documents, and would not show them to others without a formal request from his shaykhly sponsors.

59. Credit for this explanation, which I think very likely to be right, goes to Muḥsin al-Ghuraybī. I had fretted over the phrase, in a vague sort of way, for two decades and not spotted it. For a parallel usage see the 1231/1816 agreement given later as Document 3.

60. The postscript to the Thawābah copy is given in full with the list of guarantors in part six, below. See also Abū Ghānim Ḫunyāq qabālīyah p. 400.


62. Swaydān is a rather mythic name, and where Bāb Swaydān may have been is a mystery. Many at Baraṣ say it was a gate at Ṣa‘dah, but it seems not to be listed as such in standard gazetteers.


67. Things may have been different elsewhere in Yemen, and the rule may not have held throughout the north. For references to market-tax see Ḥusayn al-‘Amrī: *Yemen in the 18th and 19th Centuries* (1985) p. 121.

68. The same system of monthly responsibility applied to protection of a learned family at Baraṣ that we shall look at later: al-Akwa’s *Madkhal* p. 36. One cannot be entirely sure of dates from the layout of texts, but probably this provision dates to AD 1851. How old the system of rotating market-guaranty may be is unknown.

69. In other words, they are not expected to fight. While Dhū Muḥammad speak of them often as a “sixth fifth”, al-Ma‘āthirah consider themselves a tribe apart. In the course of disputes in the 1970s and 1980s which we shall sketch in the footnotes to part two, they found themselves at odds with Dhū Muḥammad as a whole and attempted to establish a market of their own at Ḥajjān.

70. Āl Ḥātbān, who are not at all numerous, seem to live mainly to the east of Baraṣ around Wādī Khabb, cf. al-Ḥajrī Buḍdān p. 113. The category Āl Ḥusayn, though I have never succeeded in pinning this down, is supposed to include a number of ashrāf, or groups descended from the Prophet.

71. ‘Amr is nearly always spelled as if it were ‘Umar. Although the classical *waw* is added in books, and in modern renderings such as that on the wall of ‘Abdullāh Dāris’s reception room (below), most tribesmen insist it is simply wrong: some have even said the name should be pronounced ‘Amir. In transcribing the texts I have followed the local preference.

72. There are very few plainly ‘Amrī names among the signatories to text B. In one of al-Akwa’s documents (al-Akwa’s *Madkhal* pp. 47-8), which clearly names Dhū ‘Amrī, I am not sure one can find any. Nowadays Āl Baṭḥān and Āl Daḥwā are still thought of in Dhū Mūsā as ‘Amrī. While people “remember” al-Marāshī as once all controlled by Dhū ‘Amrī, the trail peters out in fragmented folk-tales.
73. See e.g. text B section 21. One might have expected the pact to spread further and involve Dhū Ḫusayn, but apparently it never did. Repeatedly people have said they know of a joint Muḥammadī-Ḫusaynī document and then produced Abū Ghānim’s copy of text B, which he labelled misleadingly (Bunyah qabāliyyah p. 385). Other agreements between the two neighbours of course exist (see e.g. Document 3) but not qawā’id al-malāzim.

74. Steffen et al, Final Report p. II/119, have Sha’bān and ‘Amr transposed, making Āl Sulaymān more distant than al-‘Amālisah from Dhū Ghaylān. I followed suit, wrongly (Dresch Tribes p. 347). The scheme is here corrected on the basis of information from shaykhs of Āl Sulaymān. The spelling of names is corrected also. But, despite the unanimity of written accounts, the few people I have known from Āl Sālim all insist the order of al-‘Amālisah and Āl Sālim should be as Steffen has it, and with it the order of ‘Amr and Nasr.

In the lower reaches of the genealogy some give ‘Amr(w) b. Muḥammad b. Ghaylān b. Muḥammad b. Sha’bān, others (e.g. al-Yāzili Thawrah p. 30) give Muḥammad b. ‘Amr(w) b. Ghaylān b. Muḥammad b. Sha’bān.

75. Though it is hardly by itself evidence, one finds mention in the early 17th century of someone named ‘Ali Sāliḥ al-Ma’āthīrī al-Muḥammadi as if al-Ma’āthīrah were a sub-set of Dhū Muḥammad. See Nubdah musāhirah p. 256. This is about as early as one hears of Dhū Muḥammad and Dhū Ḫusayn themselves.

76. According to some versions (e.g. Steffen Final Report p. II/119), Ghaylān includes also ‘iyāl Yazīd, miles away to the south and west in the area near Raydah, but this has no significance in practice. Few people at Baraṭ imagine any connection. The name Ghaylān is still recognized, however, as a toponym (I think in Āl Sālim’s territory) towards Ṣā’dah.

77. Dresch Tribes p. 325. Serjeant’s reference to a mention in al-Rasūli’s Tarfūt as-ṣāḥīb (Serjeant ‘Tribal affinities’ p. 28) is surely wrong here. For the larger categories of Shākir and Dahm in the area a thousand years ago see al-Ḥasan al-Hamdānī, Ṣifat jazirat al-‘arab (D.H. Muller ed. 1891, 1968) pp. 167, 168, 194.

78. al-Akwa’ Madkhal pp. 27 ff. The al-‘Ansīs will be discussed in part two and the text itself in part three, below.

79. al-‘Alīmī (Qaḍā’ qābulī p. 134) gets this badly wrong, guessing al-manā‘ might be “representatives of the state in the area”. There were none. The manā‘ were surely indigenous, and their status seems to have been like that of people referred to elsewhere in Arabia as khaḍyay. The manā‘ are probably the same stratum referred to in Dhū Ḫusayn as qabā’il al-wasat, and wasāṭ in tribal usage near Baraṭ means not “in the middle” but “under the care of”.

80. The carrying of arms is the usual test of tribal status, but how reliable it is in the present case is doubtful. In the Jawf and at Baraṭ in the 19th century even some of the Jews went armed: Ḥābsūshīsh Ru’yāh 89, 112, Yēmen p. 137, 170-1.

81. al-Akwa’ (Madkhal p. 40) suggests ‘urwah means gifts between affines. In fact it means simply the bond of affinity itself. The term man‘ is also used of the relation produced by marriage. Dhū Ḫusayn at odds with Dhū Muḥammad in the 1980s ibtaraw min al-ḥilf wa-l-man‘ (Dresch Tribes p. 86), meaning they repudiated all their obligations deriving from sworn alliance and from affinity.

82. The term ‘urwah and the related phrase ‘urūq al-lahm wa-l-dam are said by many at Baraṭ to include not only affinity but the relation of belonging namesake (samī) to someone: a bond can be formed by naming one’s son for somebody of equal or higher status. Cf. Rossi ‘Diritto’ pp. 21-2, al-Sudumi Nazzariyyat al-qabāliyyah fī l-shari‘ah wa-l-a‘rāf al-qabāliyyah fī akhām al-qabā’il al-yamāniyyah (1993) pp. 135-6. But how far the resulting obligation extended at Baraṭ is unclear: it seems not to have bound whole tribes.

83. Most of these “weak” people appear to have been concentrated around al-‘Inān and Kharāb al-Marāshī: indeed al-‘Inān in the strictest sense, excluding what were thought of as adjacent villages, contained only market-folk. In tribal eyes the bayyā‘ were identified with weak servitors
such as mazāyiynah, small numbers of whom were scattered about tribal settlements. For a general account of their status see e.g. Dresch Tribes pp. 118-23.

One of the oddities of the present documents is that we find no mention of the Jews, who, though obviously different from the (Muslim) “market-folk”, were also jirān or protected neighbours and must surely have been present at Baraṭ. Ḩabshūsh, a century later, has a good deal to say about them.

84. See, for instance, the passage from Ḩabshūsh quoted earlier in Arabic, Ruʿyah p. 83. Also op. cit. pp. 52, 86. Several references to this family of terms are given by Rossi, ‘Diritto’ pp. 2-3, 8. In Sufyān one hears the plural qarwān used to mean simply settled folk. In Dhū Ḥusayn, on the other hand, qurā or qarā seems always to mean weak, non-tribal people or the manū'.

INDEX

Mots-clés: imamat zaydite
Keywords: Zaydi imam
Part 1. The detailed setting
Tribes and borders

1 Discussion of ‘urf or “custom” makes only abstract sense without attention to the populations involved and the details of where they live. In this case the landscape and provisions for its use are distinctive. Jabal Baraṭ is a steep-sided granite plateau (altitude about 2,000 metres), the approaches to which from Ṣanʿā, up Wādī al-Nīl from Kharāb al-Marāshī, are difficult; and those from the north and east are not a great deal easier. Elaborate plans are now afoot for tarmac roads, but even the bulldozed dirt roads of 20 and 30 years ago left the approaches to Baraṭ among those mythic places where a few men with rifles could delay an army. The Jabal, about 500 metres higher than al-Marāshī, is classically said to be two days across in each direction. A more practicable estimate for modern times might be 40 km. north to south and 60 km. west to east, where (at around 1600 metres) the Jabal falls away into broken terrain before the desert begins in earnest.

2 The plateau itself is sandy, with outcrops of darkly weathered rock. Some of these form spires, others boulder-strewn hills; and in many places weathering has left isolated large black rocks in the midst of nowhere which look as if they dropped on the sand from heaven. Between these outcrops the run-off (on those rare occasions the plateau gets decent rain) is such that trees grow, grazing can sometimes be very good, and fields are established. Deep wells provide some insurance against drought, and although field-crops suffer immediately that rain fails, small flocks can be watered for a year and more. Apart from the usual grain crops, mainly sorghum, there are walled grape-gardens and groves of date palms. Al-Hamdānī a millennium ago described the plateau as “wide, with numerous different settled areas (buldān) and many crops... ; the summit of Baraṭ is one of the healthiest parts of Yemen, one of the most agreeable, and one of those with the most equable climate”. Were there only more reliable rain, Baraṭ would be paradise, but drought is frequent and in recent times periods of six or seven years without rainfall have been common.

3 Along the wādīs on the plateau are scattered houses, which cluster rather loosely as settlements. Steffen’s demographic survey map from the 1970s, reproduced later as Map 2, gives a good idea of the lay-out, though the density of settlement has since increased. The looseness of the settlement pattern is suggested by the fact Muḥammadīs gave me a list of about 120 place-names just for part of the area shown by the map, and even for that small area my list and Steffen’s are not quite identical. From what documentary clues we have, the major settlement names seem quite stable; less expectedly, so too are the names
of families and tribal sub-sections. The population itself, however, is less constant than the names suggest and, as we shall see later, many people have connections elsewhere in Yemen which are hugely important in times of famine. The houses, clustered around wells and along the wādis, are often four or five stories high, some even six stories. In the late 1970s money from migrant labour and political disbursements to Baraṭ’s shaykhs funded a good deal of building. But tall mud houses are nothing new. Steffen’s team provide excellent photographs and drawings.

When Steffen and his colleagues were at Baraṭ in 1976 they reckoned that 60–80% of Dhū Zayd may have been nomadic, and 30–40% of both Āl Aḥmad b. Kawl and Āl Ṣalāḥ. Although the overall numbers have perhaps not fallen, the percentages would be lower now. One imagines that in the eighteenth century the proportion of Dhū Muhammad who lived in tents and moved with flocks might have been quite high (at least as high as when Steffen visited), but the qaṭā’id, for their part, seem to concentrate on settled tribesmen, hence for instance the passage on breaking and entering houses or firing from the houses of enemies (text B section 26). The qaṭīr who “places his house alongside another’s” (text B sections 6, 7) might be a nomad. But when the documents speak of getting a man “out of his house” by agreeing to truce (text B section 22), they almost certainly mean mud buildings not the badu’s “houses of hair”. This is despite the fact that many sections mentioned in the lists of signatories have been largely nomadic in recent times, and one imagines they were largely nomadic two hundred years ago.

Besides the many villages at Baraṭ, there are two small market-towns, which nowadays are centres of administration. Sūq al-ʿInān is in Dhū Muḥammad; Rajūzah, about 10 km. to the east, is in Dhū Ḥusayn. Between these is a clear border-line which runs from near the head of Wādī al-Nīl across the plateau and probably goes northwards then eastwards uninterrupted, separating the two tribes along the length of Baraṭ. Provisions on protecting the market (text B section 16) mention al-Farah, saying any offence committed by Dhū Ḥusayn west of there (by implication, in Dhū Muḥammad’s territory) is governed by the market-rules. Al-Faraḥ is well south and east of Baraṭ: a line from al-Faraḥ would join up readily with that on the plateau, and tribesmen often insist that a hadd or ḥaṭṭ fāsil (a border or dividing line) also separates the two tribes east of the Jabal, as if territory were everywhere contiguous and exclusive. Between Baraṭ and the end of Wādī Silbah, 60–70 km. to the north-east of al-ʿInān, however, Dhū Muḥammad and Dhū Ḥusayn do not have a simple line between them. Rather, each claims specific areas within what appears to be simply Dahm’s territory. Dahm, a major subdivision of Shākir (part one, above), includes also al-Māʾṭīrah and Āl Sulaymān, among others, both of which have similar restricted patches of territory along the wādis east and north of Baraṭ.

Further eastward still, Dhū Ḥusayn make extravagant claims about what the territory of Dahm as a whole might cover and if one asks where the furthest borders (aqsā ḥudūd) of Dahm are, then one is sometimes told Qaṭār. More realistically, the meeting point of Dahm as a whole with al-Ṣayʿar and Kurab is near Sharūrah, just north of the recently agreed Saudi-Yemeni border at the longitude of central Ḥadramawt. A transect from west to east, from the main Ṣanʿāʾ-Ṣa’dah road to the desert, by way of Baraṭ, in fact connects very different systems of territory and borders. Briefly, that to the west, in Ṣufyān, can be seen as related to systems in more densely settled areas further south, where the territory of subordinate units exhausts that of the larger set comprising them; systems to the east of Baraṭ, by contrast, merge with nomadic arrangements further east.
and north in which rights to resources may be determined by time or season as much as space, and tribal territory is not made up of exhaustive and exclusive section-territories.  

7 Some way north of Barat lies Wa'ilah, which is spoken of as a quite separate branch of the tribal scheme. Dhū Muḥammad, Dhū Ḥusayn, Ḍū Sālim, Āl Sulaymān, and sundry others all think themselves part of Dahm. The opposite of Dahm, within the larger category of Shākir, is said to be ‘Ulah, and Wa'ilah may apparently refer to themselves or be referred to by Dahmīs as rijāl ‘ulah, although the name seems only to refer to Wa'ilah: so far as I can gather, it does not align Wa'ilah with anyone else.  

8 Dhū Muḥammad and Dhū Ḥusayn together make up Dhū Ghaylān, and the collective name for Dhū Ghaylān and al-‘Amālisah is said to be ‘Ammār, as we mentioned in part one; the collective name for Dhū Ghaylān, al-‘Amālisah, and Āl Sālim together may perhaps be Nasrī.  

9 Tribesmen at Barat will insist there are clear border-lines between each tribe and the next within this scheme as there are between Wa'ilah and Dahm. But quite where the line between Āl Sālim and Dhū Muḥammad runs, for instance, if there is a simple line, I am not sure. The upper reaches of Wādī Jawār, shown on the excellent Swiss map (Map 2, below) to the west of Sāq al-‘Inān, belong to Āl Aḥmad b. Kawl of Dhū Muḥammad; the tributaries of this wādī, both from Qasabah Bin ‘Īshān and from Maqām Dhū Mahdī, appear to belong to Āl Sālim.  

10 On the Sufyān side of Dhū Muḥammad (to the west and south of Barat) is a clear border-line, most of which coincides with the crest of Aṣḥar. Even this is complicated, however, by the presence of an outlying division of Sufyān, named al-Marānāt, which lies well within Dhū Muḥammad’s borders near Kharāb al-Marāshī. In Wādī Madhāb one routinely finds groups from Dhū Ḥusayn as well as Dhū Muḥammad. Al-Jabal al-Mafūq (Split Mountain, which seen from the south and west as one goes up the main road to Ša’dah looks like a pair of elephants standing head to head) is divided at least three ways: Āl ’Ammār to the north, Sufyān to the west, and Dhū Muḥammad to the east. What the division of the mountain itself may be, and for what purposes, is not certain. To the east and north of Barat one’s attempts to map territory become still more difficult, or perhaps, in extreme cases, misdirected.

11 Some idea of the issues is given by an agreement drawn up among Dhū Muḥammad and their immediate relatives or allies in Rajab 1377 (AD 1958), probably in the course of a dispute with Wa'ilah.  

12 Guarantors are first listed for four of Dhū Muḥammad’s “fifths” (the last, Dhū Mūsā, seems only to have joined when the dispute flared up again 25 years later). The pact can be joined, it says, by “the rest of their tribes” (bāqī qabā’il-hum), presumably meaning the rest of Dhū Muḥammad, and three other groups are then mentioned: not Dhū Ḥusayn, who are Dhū Muḥammad’s closest relatives genealogically, but al-Ma’āṭirah, Āl Sulaymān, and al-Kharashah.  

13 Dhū Muḥammad provide the leading names:

\[\text{حِضْرَوا دو محمد وترأوا بما يرضي الله سماهان وعلى جميع رأهم على حفظ حدودهم وخدمت الوحي منهم بما ذكر... وتواجروا على رضاء الله سماهان بما بدا عليهم في حفظهم المعروف لديهم أولاً من جهة القبلة مجزو الوداد في الغُلُف مصابة الخضر من مصيق خرام وشرق المعروف بينهم وأعصار القبل القليلة ومن جهة الشرق حيث نفيلة الفطاف جابتة بينهم وبين الاخبار وذلك غاوية الرياح الجامعة لهم حذّ دقهم ولهضية وأم الشداد.}\]
The phrasing is obscure, but the main points to note are these. A border between Dahm as a whole and Wā’ilah (probably part of Yām also) coincides with Wādī al-‘Atfayn, which runs north-east towards the modern international border-post of al-Buq‘. The document, however, specifies the “bed of the wādī at al-‘Atf where it runs down to al-Ḥajr from Maḏiq Khizām”: this appears to be some way short of the line between Dahm as a whole and Wā’ilah. Most probably the areas of shared concern to Dhū Muḥammad and Āl Sulaymān are not quite those of shared concern to either of them and, say, Dhū Ḥusayn, No mention is made, therefore, of where borders lie in the Upper Jawf. To the south, however, the borders are where Dhū Muḥammad meet Sufyān at the mountain ridge of Asẖar, adjoining Wādī Khabash (a tributary of Wādī Madhāb); to the west the border is al-Jabal al-Maflūq.
The pact says simply that all recognize their joint borders, “correcting what came before in the way of border-pacts between them”. Whatever happens within the borders is their joint concern, and the signatories will pay and be paid together, acting as “one hand and one arm”. But arrangements for payment are worth brief note. Generally badu compute ghurm (joint expenses and collective debts) on the basis of simple numbers; settled people often do so by tribal divisions, regardless of their exact size, as for instance the fifths of Dhū Muḥammad are meant each to pay the same although within a fifth counts of men or of households are made for each sub-section. Here it says expenses for the settled person (ghurm al-hajarī) are to be assessed simply by the number of grown men (ʿalāʾ l-rajul al-kāmil) on what is usually the badu model. Both are mentioned, however, reminding us how far even Dhū Muḥammad extends. Members of the tribe may routinely be involved with grazing in places as far apart as al-Jabal al-Maflūq and al-Ḥaqbah or Umm al-Shidād, a straight-line distance of perhaps 120–130 km.

The eighteenth-century qawāʿid (text A section 6, text B section 5) seem to give four days for news to reach members of the pact in the general area around Baraṭ, “whether nomad or villager”. But an announcement that a truce was over appears to have been effective immediately if made in the market at al-ʿInān on market-day (text B section 20), perhaps on the assumption that news from there would reach even the badu at least as rapidly as their enemies might reach them. All the “fifths” contain badu as well as settled persons; often quite small sub-sections within a fifth also contain both. Although settlements in predominantly badu areas of course are small and scattered, the badu are present at Baraṭ itself as well in Wādī al-Nīl or around al-Marāshī and in regions to the north-east, making the signatories to these pacts a rather dispersed and variegated set of people whose nominal centre is the weekly market. I shall probably not have the chance of long-term fieldwork at Baraṭ, so let me try to put down what little I know in the hope that others will find out more.

NOTES

1. The inhabitants seldom present a unified front, however, and Baraṭ falls repeatedly to deception and negotiation. A famous case in the early 1890s saw Fayḍi Pāshā slip into Baraṭ from Sufyān, retrieve his prisoners, loot al-ʿInān and march out again, while 2,500 tribesmen assembled at Rajūzah to discuss what to do about it. See Muḥammad Zabārah, Āʾimmat al-yaman bi-l-qarn al-rābiʿ ashar (1956) vol. 1/2, pp. 82-3, 97-100.

2. al-Ḥasan al-Hamdānī Sīfāt jaʿrāt al-ʿarab (1968) pp. 194-5. Between the two parts of this flattering description of Baraṭ comes a famous description of its people, from Duhmah of Shākir bin Bakīl: “the bravest [or strongest] of Hamdān, protectors of women, and defenders of the weak [or of the neighbour]. They are called the Quraysh of Hamdān”. Cf. Rossi ‘Diritto’ p. 9. They were not, however, called Dhū Ghaylān in those days.

3. H. Steffen et al. Final Report of the Airphoto Interpretation Project (1978) p. II/198. At a very rough guess, about 20% of Dhū Muḥammad near Baraṭ these days might be nomadic; but in drought years many now move to the major cities.
4. A good deal of detail is given in Muḥammad al-Ḥajrī Ṣulṭān al-yaman pp. 109-11. See also ʿIbrāhīm al-Maqḥafū Ḥusayn, Muʿjam al-buldān wa-l-qabāʾil al-yamaniyah (2002), though this is less reliable and the proof-reading has left many names mis-pointed.

5. The location of al-Faraḥ (cf. Document 1, above) is surprisingly difficult to pin down. Many have said it is almost as far off as Shawābah, towards Wādī Dhībīn; some have said it is in Bānī Nāwī’s territory. In fact it seems to be a well or cistern to the south-east of Kharāb al-Marāshī, about a day’s journey from al-ʿInān, between Madhāb and al-Ḥumaydāt.

6. Dresch Tribes pp. 343-4. When we come to mention areas further east again, the inadequacy of the standard maps becomes pressing. They do not all show the same settlements, or even show the same physical features, and one is left flipping back and forth among different maps to guess where places stand in relation to each other. A great deal of basic survey work needs doing. But for the present purpose see the 1:500,000 map sections of which are reproduced by the Yemen Arab Republic Survey Authority.


9. ʿUlah is a very ancient name, mentioned in al-Hamdānī, and formed part of Madhḥaj not of Shākīr. It recurs in southern Yemen. Whether in Wāʿilah’s case it is thought of as an ancestral name I do not know, but the phrase riǰāl ʿulāh is not uncommon.

10. Sunḍary other names are used. Ḥadrānī, for instance, seems to be used of Wāʿilah and Āl Salīm together. On occasion in the 1980s one heard it used as a “summons” to collective action. Ḥadrānī, however, is not genealogical but apparently is the name of a wādī and mountain where the borders of the two tribes meet.

11. I am grateful to Ahmad ʿAbduh Thawābah for a copy of the document, and to many for discussing it. Such pacts are made and remade constantly, see e.g. Document 3 in part one, above, dated 1231/1816. An agreement dated 1301/1884, which I was not able to copy, bound Dhū Muḥammad, Āl Sulaymān, and al-ʿAmāliṣaḥ to defend a section of border against Wāʿilah. The pact (ḥilf) between the former two tribes was renewed in 1977 and again in 1983, within a few months of Document 4, but directed against Dhū Ḥusayn.

12. The last of these is a tiny grouping which seems to have minor settlements near Ṣaʿdah and in the lower reaches of al-Marāshī. The split distribution sounded so unlikely that I asked several Barāṭ shaykhīs about al-Kharashah specifically. There was fairly general agreement about where they live, but little about their place in the broad scheme of genealogy.

13. Connections south and east would be particularly interesting to know more about. Āl al-ʿUkām’s hijrah at al-Marqāb, for instance, although in al-Marānāt, seems to involve shared borders of some kind among Dhū Muḥammad, Dhū Ḥusayn, Bānī Nāwī, and Ṣufyān.

14. Connections south and east would be particularly interesting to know more about. Āl al-ʿUkām’s hijrah at al-Marqāb, for instance, although in al-Marānāt, seems to involve shared borders of some kind among Dhū Muḥammad, Dhū Ḥusayn, Bānī Nāwī, and Ṣufyān.

15. Ghāwiyat al-Rabāʾ, mis-pointed, is mentioned by al-Ḥasrāwī (Mashriq al-yaman p. 17) as a border-line (ḥadd fāriq) between Yām, to the north, and Dahm to the south. Most people at Barāṭ describe it as actually quite a wide area. I have not had the chance to visit anywhere much north of Silbah, and my own information is thus hearsay.
The major shaykhs at Barat have all for a long time been settled, but the minor sections to which their families belong often include nomads. Lesser families of shaykhs are very numerous; nor is the position of shaykh confined to a particular line. I doubt overall that there was much political or economic stratification between nomadic and settled members of the tribe. What mattered far more, as we shall see below, was access to funds from land elsewhere in Yemen.
**Territory in the Baraṭ region**

1 Dhū Muḥammad comprise five fifths, as we have seen, and most members of these fifths who are not scattered elsewhere in Yemen live on or around the western part of Jabal Baraṭ. People will speak of the “borders” of particular fifths (ḥudādh Dhū Zayd, for instance) but Baraṭ itself does not, in fact, divide as contiguous, exhaustive territories. Perhaps this is why the qawāʿid (text B section 36) specify that tribesmen from elsewhere who encountered trouble in the area had to be conducted to the nearest group or settlement (ilā qarab ḥayy). Asking about responsibility nowadays for anonymous killings, one hears the same phrase. Rather than responsibility devolving on a section, as it would in such tribes as Banī Ṣūraym or Arḥab, because some event occurs in their exclusive territory, it is imposed on a particular settlement, and thus perhaps on the tribe or specific section, because people are taken there from what in effect is common land. The parts of a section do not, so to speak, join up.

2 When one of al-Akwā’ī’s Baraṭ documents, dating originally from AD 1660, says that the “judges” of Bayt al-ʿAnsī have right of residence anywhere in the “homelands” (awtān) of al-Maʿāṭirah and Āl ʿṢalāḥ the plural deserves noting. They can live wherever members of these sections live, not choose a site of residence within a generalized collective space. At present when a dispute flares up within Dhū Muḥammad, or between them and al-Maʿāṭirah, one needs a quite detailed knowledge of political geography to guess who will feel free to move where and who constrained to stay at home. One man may easily be able to thread his way past friends or neutrals to reach, say, Ṣanʿā’; another, from the same small section, may be blocked from leaving home at all by the presence of enemies who are virtual neighbours.

3 The fifths do cluster (most of the settled population of Dhū Zayd are in the north-east of Baraṭ, for instance, Āl Dumaynah to the west of them, and Mūsā in the south; there are many nomadic Dhū Zayd nearer al-Marāshī), but a group of houses or settlements belonging to one fifth may be found among settlements all belonging to another. For instance the cultivated area around al-Maḥṭawiyyah, Bayras, and al-ʿIshsh (just north of al-ʿInān) belongs to sections of Dhū Zayd. Between this and major Dhū Zayd concentrations to the north and east are villages such as al-ʿAshrah (Āl Aḥmad b. Kawl), Bīr Mahdī and Umm al-Ḥalā (Āl Dumaynah), and al-Dabāḥ (Dhū Mūsā). Bishrān (north of al-ʿInān) is said to belong partly to Dhū Mūsā. It is many kilometres away from the main Dhū Mūsā areas south of the market. At al-ʿIshshah three different fifths (Zayd,
Dumaynah, Aḥmad b. Kawl) all have fortified towers overlooking one stretch of farmland, where members of each own property. The contiguity of Āl Dumaynah’s settlements is meanwhile interrupted by the presence of a Dhū Zayd village at Majzaʿ, just south of there. It is not surprising that local notables in the 1970s felt unable to divide up the area on sectional lines for modern survey purposes. Indeed the urge to reduce life to maps and categories runs counter to local understandings.

In particular, one has to be careful not to assume that words carry technical meanings derived from šarīʿah law. Notably, people in the Baraṭ region will say for instance ḫāda milk al-maḥāmidah ku-kull, “this is the property of Dhū Muḥammad as a whole” (as opposed, that is, to the property of some family or section in the tribe), and what they mean is something as vague and all-embracing as the English “belongs to”, not that it obeys all the rules of classical milk in law-books. The terms people use are general –milk, ḥaqq, ḥuḍūd, etc.– and take their sense very much from context. One is often told that land is maryūs or murawwas (“shared”), but quite how it is shared by whom is complex and “technical” terms are not much in evidence. Faysh (pl. fuyūsh), for example, means roughly common land or even waste-land, and maḥjūr or maḥjar (pl. maḥājir) and maqṣūr (pl. maqṣāṣir) by contrast mean land whose use is in some way restricted, but the phrase faysh khāṣṣ, roughly “private common land”, is not found paradoxical. Everywhere is subject to restriction of some kind, although these restrictions are difficult to map or catalogue.

Map 2. Baraṭ

People at Baraṭ are hesitantly distinguishing maqṣūr from maḥjar in general terms, though all distinguish both terms from faysh. Having gone over the ground on several occasions now in a half-dozen places, I am confident that maqṣūr (lands off-limits) are very much what near Ṣanʿāʾ one hears called marāḥiq or masāqi, small areas defined by run-off. The usual view at Baraṭ seems to be that anyone from Dhū Muḥammad (perhaps even from other tribes) can graze sheep and goats there, though to approach someone’s house too
closely is impolite and arable is always restricted space; what strangers cannot do is take “wood or stone”, and certainly not build anything, dig anywhere, or do anything that might disturb the existing pattern of run-off or compromise rights that run-off describes. Those rights are in force at all times.

5 *Mahjar* (pl. *mahājjir*) is rather different. Such areas are sometimes larger than *maqāṣir*, they are not defined clearly by patterns of surface-water, and the rights they describe are seasonal. The general rules governing *ḥijrah* seem still to be as they were in the eighteenth century (text B section 32):

The laws of restricted places (*mahājjir*) are that there are two *ḥijrah* periods in the year, one from the summer to before autumn, when it finishes (*yubāh*), and one from autumn to after ‘*allān*, when it finishes. This is for grazing-land (*qasrah*). As for trees (*nawābit*), these are under the eye of their owner and are restricted at all times.³

6 The star period *khāmis* ‘*allān* begins in early September, and *sādis* ‘*allān* finishes in early October, which in most parts of Yemen is roughly when one harvests sorghum. The dates are not exact, however. The owners declare a *mahjar* restricted when they wish (usually after good rains) and declare it open more or less when they wish also. There would seem, in fact, to be some *mahājjir* that are permanent and are never opened (Āl Īfaraj’s *ḥijrah* at al-Ghayb is a case in point). Most, though, are seasonal and the dates depend on that year’s rainfall.

7 While the *ḥijrah* is in force no-one else can graze there. The *ḥijrah* ends when the owners declare it “open” (*mubāh*) or when they introduce their own household cattle –most households at Baraṭ have a cow or two– and collect fodder. Others are then free to introduce sheep and goats. A similar idea is evident among tribes around Khamir and Raydah, further west and south, where farming is more intensive: there fields are *mahjūr* until after the crop is harvested, when the owner lets his sheep on the stubble or *mahsharah*, and a week later his fellow villagers can also let in their sheep to graze. In the more extensive *mahājjir* at Baraṭ the period during which the owners alone can pasture sheep may be longer and there is no close connection with farm-land. The *qawā'id* seem to say that animals which stray onto ground that is *mahjūr* can be killed by the *mahjar*’s owners but must still be paid for (text B section 17).⁴ Nowadays a stray may be hamstrung, and the owner then confronted, at which point the beast is killed and the meat divided.

8 The main *mahājjir* at and around Baraṭ seem to be as follows. Al-Wādiyyayn, about 20 km. east-north-east of Sūq al-ʿInān, is divided between al-Maʿāṭirah and Āl Dumaynah; arable at the top and bottom of the wādi-system is Dumayni, the middle stretches are Maʿṭirī, and the whole area is *ḥijrah* twice a year for all of the two sets who live there. Al-Raḥābah belongs to Dhū Zayd, although this area is separated from much of the rest of Dhū Zayd by a belt of Āl Dumaynah settlement; al-Raḥābah too is *ḥijrah* twice a year for its residents. Al-Jirjar, near Dabāh, belongs to a single family of Dhū Mūsā, Āl Faraj’s *mahjar* at al-Ghayb, just south of the market, belongs to a single family or minor section of Āl Dumaynah. Bishrān (north of al-ʿInān) belongs jointly to Āl ʿUmayr of Dhū Mūsā and Āl Abū ʿUrūq of Āl Aḥmad b. Kawl, and again is *ḥijrah* twice a year for those living there. Asnam al-ʿUlyā, which belongs to Āl Dumaynah, is *ḥijrah* but Asnam al-Safīl, which belongs to al-Maʿāṭirah, is not. Jabal Āl Ṣalāḥ belongs to all Āl Ṣalāḥ, regardless of where their wells and houses are. This seems to distinguish it from the other cases, where so far as I
could ascertain, only the people living there (or who at least have a permanent base there) have preferential access in the hijrah period.\(^9\)

Surprisingly often, despite the shared nature of rights in many maḥājir, people will stress how these rights were once seized by force and defended by force thereafter, which is not said of maqāṣir. By comparison with other categories of local land maḥājir are arbitrary. But which category might be used by whom to discuss which other piece of land is far from settled. Where the qawāʾid (text B section 32) specify that five oaths from each side be demanded to adjudicate disputes over borders (ḥudūd), land off-limits (maqāṣir) or property (amlāk), the witnesses would be supposed to know not only the physical extent of particular rights but what exactly the rights themselves were. With the exception of ma ḥājir, however, people insist that shortage of grazing is no reason to exclude outsiders from tribal territory at Baraṭ (wells are perhaps more contentious).\(^11\) A person should be able to stay with his personal flocks as a qaṭīr, almost a guest, unless relations with his tribe or section have been severed on other grounds.

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**NOTES**

1. The term ḥudūd is used very loosely of borders and territory. If one wants a “line” one has to ask carefully for khaṭṭ fāṣīl. And one has to ask even more carefully for examples of cases where that line is important—for the boundary (if there is one) which governs, say, rights of escort need not be that governing where one can graze, and neither may correspond to that where one can rightfully plough a field or dig a well.


3. The clusters are labelled on Steffen’s map (reproduced here as Map 2), and in breaking these down I have tried to take examples which the map shows clearly.

4. Steffen et al. Final Report p. II/199. Obviously people would have been aware that survey divisions implied administrative divisions; but detailed lists of section- and village-names show there is more involved here than political caution.

5. The dispersal of settlement does not always mean lack of political solidarity. When relations were particularly bad with Dhū Muḥammad around 1980, al-Maʿāṭirah fortified some of their settlements with armed watch-towers and seemed to do so from funds they raised in common, although each tower was the property of a specific village.

6. The issue is apparent elsewhere in the way that e.g. Wilkinson (‘Territory’) drifts quickly into Latin terminology such as dominium utile. We really know very little about the detail of how tribes in Arabia conceptualized and controlled resources.

7. Glaser (‘Arḥab’ p. 14) reports the term faysh from Khārif as meaning simply an uninhabited area. The point is more that it is open to many people: at Baraṭ it is used of shaʿrād; grazing or scrubland, that anyone can use. But in this most general sense, which an outsider might then be tempted to apply without care for context, there is no simple faysh in Dhū Muḥammad’s part of Baraṭ except right at the edges: at al-Namāsah (on the western edge draining into Wādī Madḥāb), for instance, or Wādī Awaṣā’ or Jabal Nīhm (to the east).

8. For maqāṣir (or more usually muqāṣarāt) in Sufyān, see Dresch Tribes pp. 339-40.

9. Killing a stray elsewhere appears to be fined an additional quarter of the animal’s value. This seems very little by comparison with four-fold amends for stealing livestock (text B section 17), but a similar rule applied to stray sheep in Sufyān 30 years ago. If one slaughtered a stray other than on restricted ground, one gave half the meat to the owner and also paid him the animal’s fair cost.

If, to take the opposite perspective, someone repeatedly let livestock onto mahjar ground, we would be dealing with deliberate violation of territory, precisely the kind of trouble that routinely leads to tribal strife.

10. Jabal Āl Ṣālah does not have obvious physical boundaries, nor does it seem ecologically any different from less plainly restricted areas such as Jabal Nihm. As Jaussen said of areas near Palestine and Jordan, “le droit de pâturage est fort simple en apparence, mais en fait il est soumis à une réglementation traditionnelle qui varie suivant les régions. Les conditions, en effet, ne sont pas les mêmes ni pour le sol ni pour les habitants”: A. Jaussen Coutumes des Arabes au pays de Moab (1948) p. 117. Despite a vast and often-quoted literature, I am not sure we understand how pasture-rights really worked in any part of Arabia where arable is not a dominant feature.

11. Cf. W. Lancaster and F. Lancaster, The concept of territory among the Rwala Bedouin, Nomadic Peoples vol. 20 (1986) pp. 43, 45. Obviously, despite this, control of territory must articulate with preserving scarce resources; but to understand how for instance grazing is actually apportioned around Baraṭ would require extensive fieldwork, which nobody has done. All one can safely say is that grazing is conceived in terms of sovereignty, not economics.
Rights to land

The system of land-use at Baraṭ does not work by cadastral survey. But there must be common principles at least if local arguments are to be intelligible among those involved, and a reasonable approach to the problem is through the question of owning trees. 1 ‘Ulūb (pl. of ‘ilb, or jujube, supposedly the Qur’ānic sidr) seem to be property in the sense envisaged by sharī‘ah conceptions of milk. They can be held jointly or severally; the fruit is edible, green branches are sometimes cut as fodder, and ‘ilb wood is the best for building. Qaraḍ and talḥ (two types of acacia) are less useful for this purpose because the first usually grows in too twisted a form to make good roof-beams, and the second is liable to wood-worm and to crumbling away. 2 The only term I have heard freely used in discussion of ownership or use of these latter trees is again milk, but, unlike with ‘ilb trees, the pattern of ownership for qaraḍ and talḥ is not what sharī‘ah law envisages. Again the qawā‘id (text B section 30):

If a well is [newly] established or a well is damaged/destroyed and needs wood [to repair it], its owner is free [to take] what wood is needed of qaraḍ or talḥ from common land (faysh) or land off-limits (maqṣūr)...

2 No distinction is made here between live wood and dead. Usually only dead wood is taken by any but trees’ owners (these owners may be joint or several), and others who cut live growth, whatever the variety of tree, are liable to a fine. 3 Theoretically, leaves and branches of ‘ilb trees on common land may be used for fodder by anyone sharing the common land, and planting an ‘ilb where no specific rights obtain would, again in theory, be li-sabīl allāh, done in God’s name for the common good. In practice ‘ilb seems always, despite the theory, to be heritable milk or property. 4 Ownership of the other main trees is often more clearly joint.

3 Qaraḍ and talḥ in Wādī al-Nīl (between Baraṭ and al-Marāshī) are said by some to belong to all Dhū Muḥammad. Down most of the wādī there are no settlements, but the area is used for grazing. In the early 1980s no-one was gathering fire-wood there, except badu for camp-fires on the spot, for fear that Sufyān might move in and gather wood commercially, which itself argues a certain indeterminacy of rights. Others argued that most of Wādī al-Nīl “belonged” specifically to Dhū Zayd, so therefore did the trees and Dhū Zayd could take what dead wood they wished. To resolve the disagreement in terms that might produce a map is probably not possible. Opinions differed and there was no reason among Dhū Muḥammad’s fifths ever to put them to the test: low-level gathering
by herders who belonged mainly to Dhū Zayd went on, and intensive gathering, whether by people of Dhū Zayd or by others, was avoided, as seems still to be the case two decades later.

4 As one nears the lower end of the wāḍī, however, rights become clearer. A few kilometres above al-Kharāb are several agricultural areas that belong to people of Dhū Zayd. Where the course of the wāḍī clearly leads to these areas, the trees are clearly Zaydi property. Where the run-off goes to a particular field, the qarād and ṭālıḥ belong to the field’s owners; where the run-off goes to a settlement, the settlement as a whole owns the trees –subject to the rule in both cases that one does not without permission cut any tree in which others have specific rights. Near the head of the wāḍī (the Baraṭ end) it is probably true to say the area “belongs” to Dhū Muḥammad generally, but the rugged nature of the terrain means questions of ownership in trees do not arise.

5 The seeming coherence of the scheme in the lower reaches of Wāḍī al-Nīl is disrupted by the presence of al-Shaʿābiyah (sing. Shuʿbī), who are shaykhs of al-Kitmān in Dhū Ḥusayn, a quite different tribe.⁴ Most live at Daḥiyah, east of Rajūzah. The story is that once, in the distant past, Dhū Ḥusayn held most of the area at the lower end of Wāḍī al-Nīl but were pushed out by Dhū Muḥammad, all except al-Shaʿābiyah, who were heavily intermarried with Dhū Muḥammad, particularly with Dhū Mūsā and Āl Dumaynah, and were treated more as kin than rivals. A half dozen families thus remain where they were, well within Dhū Muḥammad’s territory but unequivocally part of Dhū Ḥusayn. Their fields lie about five km. north of Kharāb al-Maʿāshī.

6 Sundry trees belong to them because of run-off, and al-Shaʿābiyah also own there a conspicuous defensive tower or ḥusayn. There is nonetheless a border, a little east of there, between Dhū Muḥammad and Dhū Ḥusayn as wholes.

7 In arguments about ownership of wood, the principle invoked is simple. Land from which water runs to a piece of arable “belongs” (people say it is milk) to the owner of the arable.⁵ In practice, understandings about this piece of land or that are complex. Drainage divides and coalesces. One can therefore find small clusters of trees that belong to two or three families (the run-off from there goes only to their land), while a similar group of trees a few metres away belongs to a whole settlement because the drainage at that point has not divided. And the principle of run-off is suspended arbitrarily by the location of villages. One can therefore have trees right next to a village that in fact belong to a village much further off, because the run-off from where the trees stand goes to this second village, not to the first; on the other hand trees that by the rule of run-off should belong to village A are in fact the property of village B because a border is recognized. Villages and their sectional attachments are taken as given.

8 Asnam al-ʿUlyā and Asnam al-Safl, as we mentioned earlier, are respectively Dumaynī and Maʿṭīrī. One could not, I think, deduce from physical geography that the settlement forms two halves, but the divide is shown by a line of marker-stones each side of the wāḍī-bed; the rule of run-off starts and ends at the line. Drainage, more generally, though it otherwise specifies use-rights or property, does not define villages, sections, or even tribes.⁶ Thus Wāḍī ʿUmayr seems to run all the way from al-Akhbāb, at the northern edge of Baraṭ near where the track turns off for Wāḍī Amlāḥ, to al-Babābāḥ in Dhū Ḥusayn’s territory. Al-ʿAkhbāb belongs to people from Āl Salāḥ, as does the next settlement southeast along the wāḍī, Nuṣayf; al-Miṣlā’ belongs to people from Āl Dumaynāh; Ḥajjān belongs to al-Maʿṭirah, and al-Malḥ (near al-ʿUqbah), the last settlement before Dhū
Husayn’s territory, belongs to manūi who attach to Al Dumatnah, although right on the border-line fall groups from Dhū Mūsā.

Hajjān, one might note in passing, receives run-off not only from Wādi ‘Umayr but also from Wādi Asnam.

Such stories as that about al-Sha‘ābīyah assume sections and tribes have sometimes pushed others off their land. But pinning this down seems impossible. Al-Mahāşimah, for instance, recurs as the name of a fraction in, I think, three of Dhū Muḥammad’s fifths and in Al Sulaymān, and probably denotes a small separate tribe as well, but what the connections among these elements are, if any, remains unclear. Names may recur in different places for reasons other than displacement of groups. In Nīhm, well south of Baraṭ, one finds sections with the names of tribes elsewhere (‘Idhar and Murhibah, for instance); al-Hudhayl, a conspicuous section name in Sufyān, recurs in Dhū Muḥammad; Sufyān’s Abnā‘ al-Marzīq echo the Marāzīq of Bānī Nawf; in both Dhū Muḥammad and Dhū Ḥusayn one finds such distinctive family or section names as al-Qahūm and Al Thaybah. Some of these names may well denote families who have moved; others may be parallel traces or appropriations of ancient names. Around Baraṭ it is said there are many families of Dhū Muḥammad and Dhū Ḥusayn who came originally from Najrān or ‘Asīr, but there seems no agreement on exactly who they are or when they came.

The arbitrary location of villages and the rights their inhabitants possess at Baraṭ are taken as given. They have been there min zamān, “from long ago”. Within these sets of facts, the use of land may be modified but the constraints are those of existing relations among groups of people. One can sink a well on one’s own property, for instance. If there is doubt about how far that property extends, then documents are produced and witnesses called. If one wishes to sink a well elsewhere, however, one needs the agreement of all those to whom the land “belongs” (again the general language used is of ḥudād and milk). Outside the ḥudād of particular groups—in other words in the fāysh or sha’rā‘, the common grazing land—a new well is supposedly li-sabīl, a work in God’s name for the benefit of all, but in the qawā‘id rules apply (text B section 43):

If one of ahl al-malāzim [the people bound by this agreement] sets himself up on empty land (ard baydā‘; literally, “white land”) where nothing is and digs there a well or builds there [a house], and if someone [then] wants to build next to [his] building or dig next to [his] digging, then the set-aside area (ḥaram) of the house [where the second man cannot build] is [as wide as] the height of the house and the set-aside area of the well is [as wide as] the length of its wellrope. This is in empty land (ard baydā‘) where no-one has rights, or property, or anything disputed.

Once a well is sunk, the possibility arises of new land being brought into production by ploughing. The run-off to that land will become ḥudād and milk, and the arbitrary starting point for discussion of what belongs to whom thus shifts. For this to happen one needs the agreement of all those within whose existing ḥudād the land would lie and all those whose run-off might be affected, which in practice means no agreement is usually forthcoming for areas in which, or next to which, a significant number of people live.

Presumably which places count as ard baydā‘ (“white land”) must have shifted over time as areas were newly taken by one tribe from another or fell out of use because of drought and tribal conflicts and were later reappropriated. Technological changes more recently have produced quite obvious shifts. For example, the advent of drilled wells exacerbated conflicts among the tribes around Tamr and Silbah, far to the east of Baraṭ, which came to a head in the early 1980s. Although there had previously been some restricted farming by
Dhū Ḫusayn at the end of the Wādī at Yatmah, this activity spread and deepened with the availability of diesel pumps. Land which previously had been grazing (perhaps even arḍ ba ṭāḍā’ became potential crop-land. The initial argument at Silbah turned on ḥudūd not of particular fifths (or in Dhū Ḫusayn’s case, eighths) but of Dhū Muḥammad and Dhū Ḫusayn as wholes. The extent of the claims was disputed at great length, the nature of the claims was not that Dhū Ḫusayn had ḥudūd, which previously defined preferential grazing rights, at the north edge of Silbah and Dhū Muḥammad at the south edge. Between the several limited ḥudūd, everything would seem to have been ḥudūd Dahm. The development of pump-well farming did nothing to change this, but the privative interests of specific families or tribal sections have been replicated in an area that before was space shared simply by Dhū Muḥammad.

14 The area of Silbah that Dhū Muḥammad claimed was theirs, they said, would be divided equally among the tribe’s fifths and sub-divided thereafter, which by the mid-1990s was what in fact had happened.13 The fifths are nothing like of equal size, but collective debts, of the kind with which the qawāʿid deal, have always been managed this way: blood-money after wars was collected in equal amounts from each fifth although some fifths have three times the membership of others.14 At Silbah communal rights, attaching to all Dhū Muḥammad, were allocated as rights of property to sections, households and persons, thus producing a set of particular, geographically rooted identities where previously there were none. Perhaps something similar happened long ago at Baraṭ and al-Marāṣī, producing the loose blocs of territory one sees now. If so, then a great deal must have happened subsequently.

NOTES

1. Wilkinson (‘Territory’ pp. 304-5, 306, 307) is one of very few authors to point out the importance of wood. In discussions on the spot it is one of the first things people mention.
2. Neither qaraḍ nor ṭālḥ provides good fodder for sheep, but in times of famine one could burn off the thorns, smash the remains, and feed starving animals the bits and bark. Qaraḍ leaves, apparently, were also used to scrub hides for tanning and curing.
3. Estimates of the fine vary, perhaps with how immediate the ownership seems. Discussing trees on fairly distant land people often say the cost of the damage and a sheep; on land near the owner’s house or arable, perhaps a sheep and four times the damage. Such amends are paid to the owners of the trees, not to e.g. a village or tribal council.
4. A certain theoreticism creeps into explanations here, such as the person planting the tree owning “one quarter” of it; but how and when such a calculation would be made is most unclear. Nonetheless people do sometimes plant and protect ʿilb other than on their land, apparently for the general good, building a wall around the sapling. On the other hand, ʿilb in Wādī al-Nīl that looks as if by rules of run-off it should belong to no one in particular (or perhaps to all Dhū Muḥammad) has always turned out on enquiry to be the property of some particular badu family.
5. Cf. al-Ḥajrī Buldān p. 112. In tribes further west and south the principle is quoted that “borders do not enter into questions of [private] property” (at-hadd mā yadhkhlu fi 1-maḥdūd): one can own
arable within others’ borders. That seems not to be the case at Baraṭ, but I cannot think of cases in e.g. Ḥāshid where a section of one tribe lives inside another tribe’s borders.

6. This is also the principle invoked in rights of pre-emption, roughly the Islamic shufʿah. Arable is inherited in the usual way, with women usually being bought out (at least nominally) for cash. But any attempt to buy or sell land among families provokes arguments over shared run-off.

7. To take an obvious case from this region, Wādī Amlaḥ, just north of Baraṭ, seems to belong in its upper reaches to Āl Salīm, to Wāʾilah lower down, and to al-ʿAmālisah further still downstream, with each tribe’s territory including also parts of quite separate drainage systems (Dresch Tribes p. 337).

8. Apart from the list of signatories to text B, where the name appears under Dhū Mūsā and Āl Ahmad b. Kawl, see e.g. al-Ḥajrī Baldūn pp. 109, 114, al-Maqṭāfī Muʿjam pp. 1464, 1670. The same sources allow one also to follow the names given below, but al-Mahāshimah present a particular puzzle for informants.

9. Sections of tribes may redefine themselves by “brotherhood”, changing from membership of one larger section or tribe to another without people necessarily moving. The effect is easier to track among tribes further west where section territory is contiguous and historical geography often resembles the “Rubik’s cube” puzzle: the pattern of different coloured cells changes, but the space within which the change occurs is constant. Doubtless something of the kind occurs at Baraṭ, but where territory is not contiguous there seems no way of distinguishing redefinition from migration.

10. The region’s political history will be touched on below, but the Qāsimī Imams were involved with al-Ḥijāz in the 17th century, and at the beginning of the 19th century Wahlabī expansion provoked interaction with ‘Asīr; in the 1840s Sharīf Ḥusayn was heavily involved with Baraṭ and with Baraṭ tribes in Lower Yemen, as well with areas to the north (Dresch Tribes p. 216, Haykel Revival and Reform p. 188). Quite apart from more parochial alliances, there is nothing implausible about claims of family origins from north of Baraṭ.

11. In shariʿah law, mawāt (the “dead land” which corresponds to tribal “white land”) can be “vivified”, and property rights accrue explicitly. I have not heard a corresponding theory from Baraṭ specialists in ʿurf. Accruing rights happens, so to speak, outside custom. The possibility of unoccupied land, however, is envisaged clearly by the qawāʿid

12. Āl Sulaymān had previously been at odds here with al-Maʾāṭirah, whom Dhū Muḥammad had refused to support. Āl Sulaymān and Dhū Ḥusayn then fell out over grazing and Dhū Muḥammad acted first as mediators, but in about 1979, as the dispute near Yatmah intensified, Dhū Muḥammad and Āl Sulaymān formed a pact against Dhū Ḥusayn. When serious fighting broke out it was al-ʿAmālisah, in 1983, who first forced a truce or kuflah.

13. An older anthropology of Arab tribes used sometimes to grapple with whether genealogy or co-residence was the more basic, often trying to reduce the identity of sets or tribes to questions of ecology. In fact this rendering of small identities in spatial terms which did not exist before happens widely whenever new land is acquired or settled.

14. 25 years ago Dhū Zayd at Baraṭ was said to count some 700 grown men, Āl Ahmad b. Kawl about 500, and Dhū Mūsā about 200. The absolute figures seem low, and may reflect the numbers willing to be actively involved in the dispute then going on with Wāʾilah, but the proportions are, I think, about right.
Political history

1 A detailed history of the tribes at Baraṭ itself is not possible. As usual in Arabia, the documents that might allow us to reconstruct the detail of tribal movements and redefinitions locally are not in any central archive but in the possession of families—if they exist at all. We can, however, say something about Yemen’s political history, to which Dhi Muḥammad and their neighbours, in the sense of adjacent tribes, were at once both important and in some ways marginal. Although the tribes at Baraṭ were not within “the land of state”, they provided on occasion the state’s troops or mercenaries; just as often, they appear as the state’s antithesis. As it happens, at the time our documents claim to have been drawn up the term “state” or dawlah had become common Zaydi usage and the apparatus of government, having grown in the century before, was under strain.  

2 Although Baraṭ features in accounts of the first Zaydi Imam in Yemen (d. AD 911), it was usually beyond the detailed control of rulers. The period 1177–1275 hijrī (AD 1763–1859), to which our texts and their main revisions date themselves, was no exception. The Imam al-Qāsim (d. AD 1619), when he rose against the Turks at the end of the sixteenth century had taken refuge at Baraṭ, and he returned there for a time in 1604-5 when the Turks drove him out of al-Ahnūm; but the centre of his political activity and his tribal support lay further west, and as his sons drove out the Turks (1620–36) and won control of Yemen the centre of the newly emerging Qāsimī state moved to near Ṣanʿāʾ and further south. By the mid-seventeenth century, and again in the eighteenth century, Baraṭ was an obvious place to escape an Imam based in the central highlands. In 1651 Muḥammad al-Ḥaydānī, known as “al-Fūṭī”, thus went to Baraṭ before moving down through the Jawf, perhaps to al-Maṣʿābayn, and apparently claiming to be the Awaited Mahdī. More seriously, in 1665, Sayyid Muḥammad ‘Alī al-Ghurbānī went from Ṣanʿāʾ to Baraṭ, He denounced the Qāsimī ruler of the day, in due course claimed the Imamate himself, and was a thorn in the Qāsimī’s side thereafter. ‘Alī Ṣalāḥ al-Dīn al-Kawkabānī migrated to Baraṭ in 1750; Ahmad Muḥammad Ishāq did so five years later, before moving to Wūṣāb and briefly claiming the Imamate. This pattern of Imamic claimants taking refuge at Baraṭ persists through the nineteenth century, and al-Mahdī Muḥammad al-Ḥūthī declared himself Imam at Baraṭ in 1882. As interesting are less prominent figures, such as Sayyid al-Qāsim b. Ṣaḥm of Bayt al-Muʿayyad who, late in the seventeenth century, spent twelve years at Baraṭ, while three Imams came and went elsewhere in Yemen, before returning “at the beginning of the state (dawlah) of al-Nāṣir al-Mahdī...”
What, then, was the state or dawlah? The centre, in so far as it had a centre in the sense of a formal court, was often Ṣanā’ (around AD 1700 it lay further south than that), and the Imams’ own rhetoric of Islamic justice suggests a uniform claim to authority across all Yemen, thwarted only by practicalities. In fact it was not so simple. Al-Mutawakkil Ismā’il (r. 1644–76) had appointed his sons as provincial governors, several relatives of al-Mahdī Aḥmad (r. 1676–81) declared themselves Imam at al-Mahdī’s death, others of the family lodged claims to this area or that, and patterns of localized Qāsimī influence seem to last over long periods while particular Imams rise and fall. Al-Mu’ayyad Muḥammad’s family recur in events around Shahārah, for instance; the descendants of al-Mahdī Aḥmad recur around Ṣa’dah. Besides this, one can see other patterns that link families or particular tribes. Sufyān, for example, with whom we often find Dhū Muḥammad dealing, are associated with Āl ‘Ammār (Sufyān’s immediate neighbours to the north) but also with transactions based specifically on Ṣa’dah. A link between Sufyān and Dhū Muḥammad recurs, not least because the learned family of Bayt al-ʿAnsī bridged the gap between ʿIyān (in Sufyān) and Baraṭ, and it was natural for Imams concerned with Baraṭ, perhaps particularly with Dhū Muḥammad, to convene negotiations at ʿIyān. Dhū Ḥusayn, who are Dhū Muḥammad’s immediate neighbours at Jabal Baraṭ itself, are associated more with the Jawf. When the Imam al-Mutawakkil Ismā’il in 1660 recruited Dahm to raid the badu east and south of there, one imagines Dhū Ḥusayn would have been the principal tribe involved. But next to them, as we have seen already, are such tribes as Āl Sulaymān, Bāb Nāwī, Āl Sālim, and al-ʿAmālisah.

**Document 5: Baraṭ and Sharifs of Mecca (c. 1850)**

Often, unless family names are mentioned, one cannot tell who exactly is meant in chronicles by “the tribes of Baraṭ”, but they appear in events almost everywhere from ʿAsīr, in the far north, to areas south of Taʾizz, and from Ḥadramawt, in the distant east,
to the Red Sea coast, hundreds of kilometres from their homeland. It would be hard to write political history without noticing their presence. Though the subject remains unstudied, they corresponded in the nineteenth century with the Sharīf of Mecca (Document 5), and indeed with the British in Aden post-1839; they were central to Qāsimi concerns before that. From the viewpoint of Ṣanʿā’, however, or from that of most Yemenis in the eighteenth century, Baraṭ itself was, as Bernard Haykel says, a “peripheral region”. It remained so until the 1930s, when Crown Prince ʿAlī Maḥmūd conquered the area, and remains so in some part now.

In 1852 ʿAlī b. al-Maḥdī, after one of his many proclamations that he was the true Imam, went to Baraṭ, where he married a woman from the shaykhly house of Bayt al-Ḥāfī (of Dhū Zayd in Dhū Maḥmūd). “And they welcomed him and hosted him, and marvelled at his coming to them, for they had not known anyone come to their parts from Ṣanʿā’ the protected of God since the Imam al-Maḥdī ʿAlī Maḥmūd b. Ḥasan b. al-Qāsim [d. AD 1681]”.

They exaggerate, as we have seen, but one takes their point. Baraṭ and Ṣanʿā’ were indeed quite separate in many ways. More than this, the network of sayyid families, descendants of the Prophet whose status as ḥiğraḥ or protected by the tribes informs so much of Upper Yemen’s history (that is, of the area around Ṣanʿā’ northwards), seems to have been sparse in the far north-east.

What sayyids there were appear to have come and gone, often fleeing specific problems elsewhere. In about 1858, for instance, a mob in Ṣanʿā’ pillaged the house of Sayyid ʿAlī Maḥmūd al-Kiblī, who, hurt by the loss of his library, moved to Baraṭ, and Ḥāshishī mentions Kibṣī at Baraṭ in 1870. Later still, with the Imam al-Maḥdī Maḥmūd, Bayt al-Ḥūthī established a presence in al-ʿInān.

Before the late nineteenth century, however, and quite unlike most areas of Ḥāshishī and Bakīl, there seems to have been little permanent or integral sayyid presence at Jabal Baraṭ. Learning was instead represented by the ʿātim family of Bayt al-ʿAnṣī, and a member of Bayt al-ʿAnṣī is mentioned in many of our copies as writing out the document, the kind of person who knew about scripts and papers: many are still scribes at Baraṭ nowadays. Their position in the eighteenth century, however, was grander. ʿAlī Qāsim al-ʿAnṣī (d. AD 1661), who had moved as a child to Jabal Baraṭ from ʿīyān in Sufyān with his learned father, was referred to by chroniclers as the Ruler (ḥākim) of Baraṭ. The tribes there paid their canonical taxes to him (if to anyone) and not to an Imam, and his successors maintained that status. In 1673–4 the Imam of the day “expressed his sorrow” at the state of affairs, for half the tax from Baraṭ was supposed by treaty to go to one of the Imam’s own Qāsimi relations and half “to ʿAlī Maḥmūd al-ʿAnṣī and his relatives” but in practice the al-ʿAnṣī retained control.

ʿAbd al-Raḥmān al-ʿAnṣī led the tribes of Baraṭ against Luḥayyah, in the northern Tihāmah, in 1732; Ḥasan al-ʿAnṣī opposed the Imam in 1770, arriving near Ṣanʿā’ with a large force of Baraṭ tribesmen, and forty years later his son ʿAbdullāh had Ṣanʿā’ all but under siege. The al-ʿAnṣīs and their relatives the ʿĀl al-ʿUkām recur in accounts of Dhū Maḥmūd and Dhū Ḥusayn at odds with various Imams, not least over land in Lower Yemen (to the south of Ṣanʿā’), well into the nineteenth century.

At Baraṭ itself the qādis of Bayt al-ʿAnṣī were muḥajjarīn, protected by the tribes. Ismāʿīl al-Akwa’ suggests the first of them to come from ʿīyān in Sufyān was ʿAlī Qāsim (d. AD 1637), who perhaps founded the ḥiğraḥ, or protected place, at al-Raḍmah; an alternative version has al-Raḍmah founded by his grandson ʿAlī b. Maḥmūd b. ʿAlī Qāsim. (The latter’s uncle, Ahmad ʿAlī, was mentioned earlier.) Al-Akwa’ presents a document, dated 1112 hijrī (AD 1700) but apparently a renewal of some earlier pact,
placing all the descendants of 'Ali b. Qāsim al-ʿAnsī at al-ʿRaḍmah and al-Sawādāh (just north-west of al-ʿInān) under the protection of Dhūʿ Amr; an even earlier text, dating initially to AD 1660, however, places the descendants of Ḥusayn b. Qāsim, not least at al-Sara’ah (four or five km. north of the market), under the protection specifically of Āl Ṣalāḥ and al-Maʿāṭirah. There were plainly several branches of Bayt al-ʿAnsī,16 and the complexity of the different protection pacts we can only guess at, but these pacts were renewed repeatedly through the period of our own documents. (Some of the detail will be touched on in part three).

8 In 1768, in a well-known episode, the al-ʿAnsīs at Baraṭ wrote to the learned persons of Ḥūth, Kawkabān and Dhamār, inviting a general revolt against the Qāsimīs. They objected particularly to one Sayyid Muhammad Ḥusayn b. Qāsim (the famous “Ibn al-Amīr”), who seemed to them to be promoting Shāfiʿī (Sunnī) practice in Ṣānʿā’ at the expense of proper Zaydīsm; but he had also, fifteen years before, omitted the name of Qāsim the Great from Friday prayers, which one might have thought would meet with approval from those opposed to dynastic rule by al-Qāsim’s descendants.

Map 3: Upper and Lower Yemen

9 The doctrinal differences between the al-ʿAnsīs at Baraṭ and Ṣānʿā’i-based supporters of the Qāsimī state remain unclear.17 The issues underlying the tribes’ ferocity in support of Bayt al-ʿAnsī, and indeed towards government more generally when times were hard, are easier to grasp (see Map 3).

10 Lower Yemen was conquered at the start of the Qāsimī period, and the tribes of Baraṭ are mentioned there long after the Qāsimī state had disappeared. For those not steeped in Yemen’s history the point deserves spelling out that Lower Yemen (around Ibb and Jīblah) was the country’s main agricultural region; Upper Yemen (the land of the tribes) was and is much drier, and Baraṭ, in the far north-east, was especially vulnerable to
drought. In the late seventeenth century, when the badu of Āl Sulaymān moved south from their usual territory, famine was so bad there were rumours of cannibalism. A serious famine and drought struck the whole country in 1723-4; the passage of Baraṭ tribes southward through Ṣanʿāʾ in 1795 was driven, again, by crop-failure; in 1823 a drought turned the tribes of Baraṭ to raiding Lower Yemen, and in 1835, again a famine year, their women and children moved west on their own while their men raided the far north-west. In the longer term, however, Lower Yemen was more important: “if you’re fleeing death there is no escape; if you’re fleeing hunger, settle in Ṣaḥīl Ibn Nājjī”. A traditional verse at Baraṭ itself gives these raids and displacements an heroic cast:

ḥajarnā wa-taraknā al-baqāʾ ḥawūris, rijālan ḏuʾ f qalīl juhūd-ah
We emigrated and left the rest as guards, the weaker men who made small effort.

In the city-centred chronicles, from early in the eighteenth century through the nineteenth, one hears repeatedly of tribesmen from Dhū Muḥammad and Dhū Ḫusayn appearing around Ṣanʿāʾ and demanding payment from Imams, who often had to buy them off. Baraṭ was never self-sufficient.

Year after year the tribes of Baraṭ are reported as supporting or opposing one Imam or another, threatening Ṣanʿāʾ, and fighting in Lower Yemen. In the drought of 1823 they spread out, once south of the Sumārah pass, “as if their fathers had left them the land as inheritance”, which probably by then they had done in many cases: “they settled there, married there, and forgot the east”. They owned the whole area, says a Ṣanʿānī chronicler, until the Faqih Saʿīd drove them out circa 1840. Yet after that date they are just as conspicuous. Indeed their personal status was uncontentious. When in 1848, the Imam of the day executed Ahmad Ṣāliḥ Thawābah (from Dhū Ṣayd of Dhū Muḥammad), who controlled part of al-Makhādir, just north of Ibb, Thawābah’s sons retained their father’s land at Badʾah.

Haḥšişh in the late nineteenth century says what must have been true in the century before, at the time our documents were written: when the people of Baraṭ controlled Lower Yemen they were well off (or some were, at least), and when they lacked such income they lived in poverty. But the impression the chronicles give of waves of northern invaders lapping across Lower Yemen and then receding to Upper Yemen is illusory. Families stayed and settled, and a common estimate is that three quarters of Dhū Muḥammad now live south of Ṣanʿāʾ towards Ibb and Taʾizz: the first thing one sees at the road junction in al-Qāʾidah for Dhū Sīfāl, for instance, is a pharmacy with the sign “Makhzan al-Dumaynī”, very much a Baraṭ name. Most of the households in the area, though local reasons for doing this may not reduce to shared history, claim origins at Baraṭ. Indeed the list of guarantors for text B contains several names familiar from Lower Yemen, where relatives may well have lived when the texts were written. The list for Āl Ahmad b. Kawl, for instance, contains Aḥl al-ʿInān of Āl Abū ʿUrūq, who are not around al-ʿInān at Baraṭ but nearly all now in Lower Yemen. Al-ʿUtalāṭ of Āl Ṣalāḥ have long had people around Dhū Sīfāl; Bayt Abū Asbaʿ hold land near Jīblah. To date their arrival is as yet guess-work.

It seems well established now that many great families of tribal shaykhs come to prominence early in the eighteenth century. Around 1710, Ibn Juzaylān of Dhū Mūsā in Dhū Muḥammad is among the most conspicuous, being played off by the Imam of the day against Ibn Ḥubaysh of Ṣufyān; around 1740 Nāṣir Juzaylān is involved with a fresh generation of Bayt Ḥubaysh and with Ḥasan ʿAlmah al-ʿAnṣī “the leader of Dhū Ḫusayn”, not least in Lower Yemen, which “filled up with tribes”. The connection between Baraṭ
and Lower Yemen involves more than just a few great families. Even families of shaykhs are numerous. But at Baraṭ it must surely have been wealth from elsewhere that allowed, for instance, the possession of slaves and the employment of share-croppers, for Baraṭ itself is not a wealthy place. Nor, it seems, did tribesmen or shaykhs routinely employ other tribesmen on their land there or even acquire large holdings of land at Baraṭ: there is little sign of chiefly dominance in the patterns of property-rights and territory that we looked at earlier. What the pattern may have been around al-Makhādir, al-Qāʿidah, or Baʿdān is unclear.

Although these northerners would first have appeared south of Ṣanʿ āʾ as raiders, they form an integral part of Lower Yemen’s society: at Dimnat Khādir, indeed, some 30–40 km. south-west of Taʿizz along the main Aden road, is the tomb of a shaykh from Āl Abū Raʿs, which apparently is “visited” by local people as one visits the tombs of saints. Chronicles repeatedly cite Baraṭ tribesmen being driven out of this region or that. But in fact they continued to prosper throughout the area after Qāṣimī times (i.e. post-1850). The families of Juzaylān and Abū Raʿs are thus mentioned as great property-owners in Lower Yemen in the late nineteenth century; and when Ḥasan b. Qāyīd Abū Raʿs was killed there by the Ottoman Turks in 1917 a large body of tribesmen came from Baraṭ to seek amends or vengeance.25 A modern author attributes to the family not only charitable aid to the poor in the nineteenth century but huge subventions to reformist nationalists in the twentieth century, presumably derived from land around Ibb and Dhī Sīfāl.

Dhū Muḥammad remains unusual among the northern tribes in that many people in Lower Yemen come home when needed. They did so in the civil war of the 1960s; they have done so in more parochial disputes since then.26 The ecological dependence of Baraṭ on greater Yemen is these days apparent in the number of men having jobs in the army and civil service, and educated young men from shaykhly and qāḍī families are conspicuous in for instance the oil ministry.27 Earlier the pattern was in some ways simpler. From the time, in 1660, that al-Mutawakkil Ismāʿīl sent money and robes of honour to recruit Baraṭ tribes for a war against the eastern badu, to the last days of Imam Aḥmad circa 1960 the shaykhs of Baraṭ enjoyed intermittent gifts from rulers; many lesser families must have had income from rulers, too, if only as part-time soldiers, or from land they themselves owned near Ibb and Jīblah. Yet from the documents at hand one would scarcely guess that such connections existed in the eighteenth century. The Ṣanʿānī view of Baraṭ as a separate world is reciprocated.

In texts A and B we find mention of “the land of the state” as a region distinct from Baraṭ. In text A section 15 collective responses to wrongs against all Dhū Muḥammad (for instance, those involving women or the market) are said to mean suspending internal hostilities, and someone who usually would be liable to vengeance is thus to be escorted to and from state territory: text A section 22 suggests that if he leaves state territory he has eight days’ law to reach the safety of home. In text B section 21 we are told that a tribesman who owes amends to his fellow but whose rights to refuge at Baraṭ have expired (najahat al-malāzim) still has the right to an escort, who will see him either to his house or out of tribal territory to “the land of the state” (bilād al-dawlah).

The reference recurs, less directly and less clearly, in text A section 6 (text B section 5). Provision is made, if I read this correctly, for news to reach parties to the Code who are living elsewhere in the event that relations in which they are implicated are severed or formed at Baraṭ. The distance from Baraṭ to Ṣanʿ āʾ was reckoned eight days, and to Lower Yemen (in practice, to the mountains around Ibb) fifteen days.28 For the link to be
reckoned sound needed twice that time, presumably for the message to arrive and an answer to be returned. The areas mentioned –Ṣanʿā‘ and Abū ‘Arish, the rest of the Tihāmah and Lower Yemen – suggest that men from Dhū Muḥammad were routinely living almost everywhere. The distinction between state-land and Baraṭ is therefore all the more striking. There may well be more at issue here than mere distance or isolation.

19 The texts we are dealing with seem to date from the time of al-Mahdī Al-‘Abbās (r. 1748–75) and his son al-Manṣūr ‘Alī (r. 1775–1809). Both were very much Ṣanʿānī Imams. The usual rhetoric of Zaydi Imams against the tribes –that they were ignorant, evil ones, followers of the ṭāghūt (part one, above)– was aligned with a certain urban parochialism to produce an image, that we still live with, of civilized state-ruled towns against a savage and disordered countryside. Ibn al-Amīr (d. AD 1769) preached all but a generalized jihad against the northern tribes, not least those of Baraṭ, and condemned al-Manṣūr al-Ḥusayn (r. 1727–48) for not suppressing them. Muḥammad ‘Alī al-Shawkānī (d. 1834), in his later years the judge of judges, continued the theme in a now well-known quotation, condemning “these brutish Arabs” who do not even pray or fast. His view of the Imamate was in its way as simple.

20 This is a period when the state, or dawlah, was conceived of in terms very much of secular authority and of temporal order. The Zaydis’ mediaeval heritage, such as Ibn al-Murtaḍā’s fifteenth century Azhār, was accepted only in part:

The tyrant (baghī) in the Azhār is defined as the one who acts as if he is right... and the Imam is wrong... Further, he is one who fights against the Imam. Al-Shawkānī concurs and, moreover, is against any open opposition to the Imam, even if he is unjust...

21 In a manner familiar from other polities, the fear and fact of civil disorder were countered by the principle of obedience to strong rulers, regardless of their moral value personally, and the population ideally were “subjects” (raʿāyah) cowed by the ruler’s capacity to inspire in them dread, or haybah. The Imam al-Manṣūr ‘Alī b. al-Mahdī in AD 1802 thus flogged and exiled rioters in Ṣanʿā‘: “This led people to avoid the roads he took. He could leave his palace with a small retinue and no-one would dare look him in the eye”.

But if enthusiasts for dynastic rule were defining the “state” increasingly as the monopolist of legitimate power –and indeed of truth– then tribes in the countryside had their own concerns. To speak of an alternative morality to that of state power is not extravagant. Indeed, that is much of the interest of tribal law and of judgement by supposed “custom”. To use the cant term of present times, this was civil society.

NOTES

1. The term dawlah occurs in early Zaydi Yemeni sources. e.g. Musallam al-Lahji The Sīrah of... al-nāṣir li-dīn allāh (W. Madelung ed. 1999) p. 66. But from the 17th century it becomes very common in chronicles, along with the odd verb tadaywala.

2. An 18th century author lists only four Imams under whom Baraṭ had been within “state” control since the start of Zaydism in Yemen, and his count is generous: ‘Abdullāh ‘Alī al-Wazīr Ṭabaq al-halwā wa-ṣihāf al-mann wa-l-salwā (Muḥammad Jāzim ed. 1985) pp. 273-4.


6. T. Klaric, Chronologie du Yémen (1045–1131/1635–1719), Chroniques Yéménites vol. 9 (2001), Zabārāh Nashr al-‘arf vol. 1 pp. 93-4, 549. A great deal remains to do on this basic political geography, which runs at odds with the usual depiction of successive Imams.


10. For hijrah see e.g. Serjeant ‘Tribal affinities’. The earlier sayyid presence at Baraṭ is very hard to assess. At al-Namāsah, in the west of Baraṭ, is said to be the tomb of ‘Ali b. Ismā‘īl b. ‘Abdullāh b. Muḥammad b. al-Qāsim al-Rassī (d. 570 hijrī), which until fairly recently was used to be “visited” by badu and given minor presents. But I do not know of any long-resident sayyids families there.


12. The status of such qudāḥ (literally, “judges”) is hereditary. They were not all individually scholars of the law. Nor were they generically rivals of the sayyids, who provided the Imams: indeed often they were referred to as “the shī‘ah” with the sense of the Imamate’s supporters (see e.g. al-Akwa’ Madkhal p. 34). The al-‘Ansīs were heavily involved with e.g. Muḥammad al-Ghurbānī’s claims at Baraṭ (Ḥusayn al-Dīn Tārīkh p. 175).

13. al-Wazir Tabaq al-ḥalwā pp. 172,3


15. The repetition of names within families means there is ample room for confusion here, and more work is needed to pin down the names and death-dates, such as that of a second ‘Ali b. Qāsim. Compare al-Akwa’ Hijār al-‘ilm pp. 888, 1520-21 with e.g. Ḥusayn al-Dīn Tārīkh p. 175. The grave of the original ‘Ali b. Qāsim at al-Raḍmah is said to be dated 1045 hijrī, a year or so earlier than suggested by written sources.

16. The al-‘Ansīs themselves assume they predate Dhi Muḥammad and Dhi Ḥusayn. They are surprisingly willing to derive themselves from al-Aswad al-‘Ansī, whose homeland is supposed to have been Wādī Khābb. See e.g. Zabārāh X’immah vol. 1/1 pp. 24-6. Certainly the name is very old, cf. al-Lahjī Sīrat... al-nāṣir pp. 94, 116. By most accounts (e.g. al-Ḫārīj Buldān p. 114) the al-‘Ansīs at Baraṭ form part of a larger family grouping in the area named Āl al-Shar‘ī.

17. Haykel, Revival and Reform pp. 63-66. The al-‘Ansīs were not only at Baraṭ. In fact one of Ibn al-Amīr’s teachers was the famous scholar and poet ‘Alī Muḥammad al-‘Ansī al-Ṣan‘ānī who grew up in Şan‘ā‘ and himself studied there with ‘Alī Yahyā al-Baraṭī (Zabārāh Nashr al-‘arf vol. 2
pp. 280-300). It remains the case, as Serjeant lamented decades ago (‘Tribal affinities’ p. 46), that historians concentrate on the towns. There must surely be alternative sources to be had from the rural branches of these learned families.


19. I am indebted to Nājiʿ Abūdīlāh Dāris for the lines following. They sound, one has to say, very much what one hears in accounts of the Banī Ḥilāl. For the proverb on Sāhīl Ibn Nājiʿ, just above, see al-Ḥibshī (ed.) Ḥawliyāt p. 70. People from Dhū Ḥusayn, not least from the shaykhly family of al-Shāyif, also acquired land in Lower Yemen. But Dhū Ḥusayn’s main involvement was with the west, towards Ḥaṣṣálah, while families of Dhū Muḥammad are found mainly between Ibb and Taʾizz.

20. al-Ḥibshī (ed.) Ḥawliyāt pp. 34-5, 46, 92, 99, 102, 105-6, 134-5. For Thawābah, below, ibid. pp. 164-6. The chronicle describes people from Baraṭ as khārijīn (outsiders): certainly they were naqāʾil (people who had moved), but many, one suspects, had by now long been permanent residents of Lower Yemen.


22. Muḥammad al-Dumaynī was an important merchant in the 1950s. He became associated with Muṭṭī al-Dammājī, a great Lower Yemeni magnate whose family is, again, originally from Baraṭ and who himself played a conspicuous role in republican politics. See e.g. P. Dresch A History of Modern Yemen (2000).

23. Many of the names can be found associated with Lower Yemen in al-Ḥajrī’s Buldān. The history remains largely unexplored, although I believe Zayd b. ‘Alī al-Wazīr is now researching Dhū Muḥammad’s involvement with the areas around Ibb and Jīblah. In passing one should note how easily people have usually assimilated to the region, adopting Shāfī’ī forms of prayer and local forms of dress.

24. Ḥusayn al-Dīn Ṭārīkh pp. 323-5, 334, 354, 478-9, 487. The connections among the different branches of Bayt al-ʾAnsī, and the extent of their influence over Dhū Muḥammad, Dhū Ḥusayn and neighbouring tribes, are hard to trace. For a later generation of Āl Juzaylān see e.g. Ḥusayn al-ʿAmrī Muʾāt ʿām min tārīkh al-yaman al-ḥadi th (1988), pp. 100, 117, 138.


26. For example, in the dispute over Wādī Silbāh that we mentioned earlier people came from near Taʾizz in quite large numbers and many others contributed funds. For Dhū Muḥammad’s involvement in national politics, and references to the relevant sources, see Dresch Modern Yemen. Suffice it to say that standard depictions of tribal shaykhs at the period as figures of the right wing apply poorly in Dhū Muḥammad’s case.

27. Dhū Muḥammad is not, however, central to governmental interests. Indeed one of the shaykhs said to me bitterly some years ago, “We are the Ḥugariyyah of the north”, al- Ḥugariyyah being a region south of Taʾizz that was long a by-word for under-development. As everywhere, in fact, a gap is opening between the poor and rich.

28. Yayqar Muḥammad Abū Raʾs’s remembers as a boy doing the journey in twelve days. The traditional Yemeni reckonings of time or distance, which go back at least to al-Hamdānī, are given in al-Ḥajrī’s Buldān. What is not at all clear is the relation between the rules at Baraṭ and the conduct of Muḥammadīs living e.g. in Lower Yemen. The only clue is in text A section 22 where raids away from Baraṭ are briefly mentioned.

29. If these areas are taken as equivalent to the land of the state, then by default they specify the land of the tribes. In the latter type of space, one assumes, refuge and compensation would involve claims against other tribes, governed by the principles we shall look at in part three.
30. Such common sense runs deep. It informed much rhetoric by urban intellectuals in the period of Arab Nationalism, and it continues now in the age of the new imperialism where tribal areas are depicted as a haven for “terrorists”.


32. H. al-‘Amrî The Yemen in the 18th and 19th Centuries (1985) p. 163, cf. Haykel Revival and Reform p. 85. Rising against injustice had once been the cardinal tenet of the school. For the broader significance of this shift in values see Haykel. The term baghî (tyrant) might better be translated simply wrong-doer: it is routinely used in this literature of tribal figures, and were dictionaries not to hand, one would think it meant rebel or dissident.

33. Luṭf Allâh Jahḥâf quoted Haykel Revival and Reform p. 179. Unfortunately Jahḥâf’s chronicle of al-Manṣûr’s time (Durar nihûr al-hûr), covering AD 1775–1809, has not, I think, seen print yet. The marginalia covering 1816–18, in al-Mahdî ’Abdullâh’s reign, have been edited by Ḥusayn al-‘Amrî as Ḥawlîyât al-mu’arrîkh jaḥḥâf (1998).

INDEX

Keywords: Zaydi imam
Chronological index: XVIIIe s., XIXe s., XXe s.
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Part 2. Customary law in context
Law and the moral system

1 If a principle emerges from the Baraṭ documents it is that of personal protection. This is not a form of individualism, however, nor even of the endlessly disputed household-power apparent in for instance early Iceland. The condition of a tribesman’s ability to protect is its recognition by fellow tribesmen, and people are conceived of as implicated by nature in their fellows’ actions: families thus fall within sections, and sections within tribes, which is loosely expressed in a language of shared descent. Much of customary judgement (ḥukm ‘urf) deals with when such relations are binding, when they can be suspended or denied. They are always there, however. Famously, these “nested” identities are not hierarchical, in the sense that, quite unlike the modern state, a larger set of people in the usual course of things has no authority over constituent sections and families; but it is only by having a place in the larger scheme that, to borrow Ḥabshūsh’s phrase, “one has a price”.

2 Between tribesmen at odds this means exact restitution for material damages, including wounds and death. Further amends are prescribed for moral damages. “Weak” people and the learned are both reckoned under tribal protection, and offences against them attract moral damages usually paid in some part to tribesmen; the distinctions among society’s estates, meanwhile, with tribesmen’s position as in effect the norm, are marked by supposed genealogy. Both tribal standing, which descends through the male line, and the proper amends for offences against that standing are treated as indefinitely old, from the father and forefather (min ab wa-jadd). Such standing is what both requires and allows the settlement of wrongs.

3 The ambiguities of the term sinnah (translated consistently below as “right”, though I must also use the English word for other purposes) are indicative of the issues in texts A and B. Sinnah (classical sunnah) of course means that which is right because established practice. Apart from its use to describe the Prophet’s practice, sinnah might often in tribal contexts be treated as a synonym of silf or ‘urf, in other words, of ancestral precedent or custom. But Rossi, citing Ḥabshūsh, gives the phrase yaflub al-sinnah, meaning to ask someone to accept amends, or specify the amends they wish, and thus allow a dispute to be settled, making sinnah the customary amends due. This presumably is the meaning – or part of the meaning – in text B section 2 (part six, below), where “there is no sinnah” to wounding a woman: no settlement is possible, no customary payment is recognized, unless conditions are met.
A further meaning is apparent in that passage, however, and in other passages where *sinnah* is attributed grammatically not to a wrong but to a man, as for instance in text A sections 5, 10, text B sections 5, 6, 16, and 22. Al-ʿAlimi gives two distinct glosses: a connection (*silah*) and a way or a means (*ṭarīqah*). The word also denotes a status. The ambiguities of the English term “right” allow us to mimic the essential idea that correct action and an individual’s standing as legal subject, which here turns on giving protection, are equally involved with some collectivity, as in two copies of text A section 13 where a man invokes a claim *bi-sinnat qabilat-ah*, the *sinnah* of his tribe. Someone takes responsibility on the basis of tribal identity. He may also, however, in the judgement of fellow tribesmen, lose his ability to do so. If a tribesman loses the ability to give protection then he loses the ability to claim protection, and through text B there runs a refrain that a man who commits a wrong intentionally or defaults on an obligation has “no right (*sinnah*), no obligation [to call on], and no fellowship”. The logic is particularly striking in text B section 19 where a man “has no *sinnah*” except to an escort. He does not have right of refuge. Here we seem to be dealing with a generic right, of which escort (*ṣiyār*) and refuge (*qiṭār*) are contrasting instances, and the general condition of good standing as a tribesman which allows one to seek or to offer protection can be suspended. It is only when that status is recognized that settlement can be made of material damages, or compensation be exchanged for wounds or killing. At this seemingly “procedural” point, custom and morality become law in the sense that actionable rules emerge.

Arguing solely from terms would be unwise. But to judge from all we have on the subject, the logic of tribal morality seems consistent and worth brief summary as the basis of law or *sharʿ*. A tribesman in good standing is morally equal to other tribesmen, whatever the practical inequalities of wealth or influence may be, and his standing consists in his right and ability to give protection. In the first instance this means protecting his women-folk and children, his house and land. These elements form the core of “honour”, or more exactly of the couple *sharaf*/*ʿarḍ*. The first of the two terms marks honour’s external or public aspect (something close to “reputation” or one’s worth in the eyes of others); the second refers to the vulnerable, private aspect of honour on which one’s worth in the eyes of others rests. To claim moral standing on the basis of protection one must have something worth protecting. To be fully a man one has to have related women-folk and children, who themselves, we should note, do not have *sinnah* in the sense discussed.

To be fully a tribe, it seems, one has to have protected people, the *jārūn* or neighbours (pl. of *jār*) whom we mentioned in part one. They do not have *sinnah* either. They cannot escort or shelter others, traditionally they did not bear arms, and they are always under tribal protection, all which is true of women also. A tribesman who wrongs one of them both commits a disgrace or shame himself (*ʿāba*) and insults or disgraces (*ʿayyaba*) those under whose protection the person lives. Women are often situated between marital and paternal kin; the two sets of family may be placed at odds, if only in routine property-transactions, and the role of third parties is limited to mediation unless wrongs against women involve outsiders from beyond the tribe (text A sections 9, 16). In the case of “weak” protégés, however, the divisive effects of offences within the tribe are denied (how well the denial worked is a separate question). In the documents at hand it is specified that tribesmen not take sides with one *jār* against another (text A section 19), and if a member of Dhu Muḥammad wrongs any *jār* under Dhu Muḥammad’s care, he has one week to make amends, after which responsibility falls on his section, then on the half
of the tribe his section belongs to, then on the whole tribe (text A section 20, text B section 18).10

7 If an outsider wrongs a jār, this is one of the definitive cases where the tribe fights and pays, or is paid, as a unit: text A section 16 (cf. sections 11, 15, text B section 11) lists specifically the market, jīrīn (i.e. “weak” people) andshawfah, the most salient meaning of the last term being women. A certain association of protected status with the female is widely evident. Serjeant, for instance, discussing a law-case from Wāḥidī in southern Yemen, notes the phrase “that which shames and blames” (shāyim wa-lāyim) and says “into this category would enter presumably any dispute relating to a woman, or an attack on a protected person, etc”.11 The two, in some formal way (not substantively, of course), are equated.

8 This association of moral vulnerability with the female is part of what draws one to words such as “shame” in English, but the principle underlying that association does not depend on language. A call for support or a call to arms (nakfah)12 can be as simple as firing spaced shots from a meeting-place. If one feels oneself oppressed one can slaughter animals (“a qā”r, usually bulls) to demand support; if the case is desperate one can slaughter dogs, perhaps with the implication that tribesmen are dogs without honour if they do not respond. For a woman to bring slaughter-beasts as nakfah or tankīf, let alone to bring a dog, or for a woman of a noted family to appear in such roles at all, intensifies the claim still further, for in an ordered world a woman should not have to represent herself publicly.13 No insult need be threatened to claim support. There is a generalized ideal of right and wrong at issue, such that not to uphold the right is to be in the wrong oneself, hence the power of for instance the daughter of an imprisoned sharīf in the 1840s slaughtering horses to seek help from unrelated men. Certain parts of women’s physical presence are particularly charged, not least their hair. The women of Radmān in Arḥab thus went on their own to Baraḥ in the eighteenth century to have Nāji Juzaylān intervene with the Imam of the day and get their men-folk released from prison: they cut off their own forelocks to “urge” or “shame” (tankīf) the shaykh into meeting a just demand.14

9 In much of northern Yemen, as at Baraḥ, a common everyday term for a woman is shawfah, and it is therefore no surprise that in the present documents tashwīf means amends for an offence against a woman. But it is also used of offences against houses and land, and even (text B section 4) of cutting a fellow tribesman in the face, as well as of compensation for such offences; conversely it means shaming or degrading someone for evil action.15 The word ‘ār suggests a similar logic. Apart from its association with private parts of the body (‘awrah), ‘ār is used colloquially of a man’s womenfolk, yet it is also on occasion a synonym for “black shame” (‘ayb aswād) that has nothing to do with females. In the case mentioned earlier (part one, above) of Baraṭ tribes attacking a caravan in the 1660s, Sufyān wanted ‘ār, amends for the insult suffered; in AD 1717 men from near Baraṭ fought in Ḥḍramawt in part because they had suffered ‘ār from the tribes there, “disgrace” in an earlier defeat.16

10 These terms for being wronged can be distinguished, certainly. But they can also run together, as in the market guaranty (text 1 section 15: part four, below) where the three passive participles muʿāyyab, mushawwaf, and muʿāwwar are all but synonyms, meaning simply a person who has suffered a loss other than dam āfdī, that is, other than “clean blood” which is taken in a straightforward fight or vengeance. Where someone is muʿāwwar or mushawwaf what should be protected or hidden, if only men’s vulnerability, is exposed. Particular amends are due.
Overlapping with this one finds elsewhere than Baraṭ the term muʿawwarāt, which refers to those vulnerable things on defence of which honour rests: women and the family, obviously, but also land, the house, the market or borders of a tribe, and everything that properly is sacrosanct.\(^1\) I have not heard the word muʿawwarāt used spontaneously in Dhū Muḥammad or Dhū Ḥusayn. One often hears the cognate ʿurr; however, and in discussing reparations for moral damage friends from Dhū Muḥammad say ʿurr concerns matters of ʿard or hurmah, that is, questions which impinge on the private, protected aspect of honour associated with for instance women and the house; ʿayb, they say, strictly speaking concerns matters of sharaf, those questions that impinge more on honour’s public aspect, where for instance one “gives one face” (yadī wajh-ah)\(^1\) and promises to escort a traveller or protect a refugee. Such undertakings do not always involve weak dependants. Indeed usually they involve potential reciprocity, and someone wronged in such a case would not be muʿawwar or mushawwaf but muʿayyab.

A tribesman may protect his moral equals, that is, protect a fellow tribesman. The logic is explored by Julian Pitt-Rivers in his classic essays on the law of hospitality and on women and sanctuary,\(^\text{19}\) which also explain how dependent or protected status so often connects with female objects, spaces, and linguistic terms. Many societies have been depicted by anthropologists (some in fact depict themselves) as groups of men linked through their exchange of women. Male and female are here opposed symbolically, and in exogamic systems women mediate between male-defined groups: “exogamy ... serves to structure relations between social groups that recognize each other as different but capable of being associated”. In the Middle East and the ancient Mediterranean, by contrast, one finds an interest in close-range marriage. The symbolic opposition between male and female is at least as marked, but the terms are arranged differently, the female being identified not with the spaces between males but with the interior of a male space.

Guests, protégés, and dependants are thus in the same position conceptually as are women. All are in a space defined by a male name, be it that of a living person or that of an “ancestor” who defines a set of persons. Such spaces are opposed to each other, and the relation between opposed men or sets of men is potentially one of hostility. But a fugitive “failing to escape out of the masculine order ... can”, in Pitt-Rivers’s phrase, “escape in”: if he gains the interior space identified with females then, logically, he has either committed an appalling affront or renounced the very power to affront. In the latter case the refugee becomes part of what his host must defend, part of the host’s own honour (his sacra, one might want to say), even if the two men were previously at daggers drawn.\(^2\)

In less dramatic circumstances, the law of hospitality rests on the same logic. A stranger from beyond the moral system may be taken in, of course, or equally may be treated as fair game (mubah, “open” to robbery and even killing),\(^2\) but people of the same type as oneself yet from different social units, opposed to one’s own in the same moral universe, are defined as potential guests. A permanent guest who can never be host is a dependant, obviously (the more literal-minded might say he is “feminized”).\(^2\) A moral equal, by contrast, is one who, at least in theory, can be guest on one occasion, host on another. The reciprocity that defines such equality “resides, not in an identity, but in an alternation of roles” (again, Pitt-Rivers’s phrasing), and the status that allows reciprocity must be recognized by others. The formal ability to act as host—or escort or protector—is precisely sinnah in texts A and B, below, or what tribesmen north of Şan‘ā’ more usually would call ʿard.
This is the same term, ʿard or ʿird, as signifies the protected, domestic aspect of honour (the aspect identified so heavily with women), but it also refers to a man’s formal ability to give protection. In short, it denotes his standing as a tribesman. The rights and obligations that derive from that individual’s standing are conceived of as applying to or implicating other tribesmen in varying degrees, and people say for instance yā maʿṭīrī mā la-k ʿard ala l-muḥammadī; meaning someone in Dhū Muḥammad denies the right of a man from al-Maʿāṭirah to protect one Muḥammadī against another or to intervene in Dhū Muḥammad’s affairs. Brotherhood pacts, on the other hand, may assert that ʿard is shared by a whole tribe. One hears more generally the phrase al-ʿard māḍī meaning the right to protect others (or to be protected) is “effective” or “current”, recognized by fellow tribesmen. Slightly oddly, this term occurs once in text A (section 2) but nowhere at all in text B, where either more specialized terms are used or the term employed is sīnah.

To single out the term sīnah, as texts A and B themselves do, is to pursue a specific view of tribal law. As we shall see, the usual image of tribes as solidary blocs that coalesce unthinkingly against their neighbours is a long way removed from the documents’ concern with when rights are recognized by whom, and with what should be counted a breach of right. Much turns on the distinction between amends (for moral damages) and simple compensation. Across the whole corpus of tribal law, in fact, runs a line between different types of relation and of conduct.

Document 6: Dhū Ḫusayn and Hamdān (1275/1858)
NOTES

1. For Iceland, W.I. Miller, Bloodtaking and Peacemaking: feud, law and society in saga Iceland (1990). Between households and the Allthing came quarters and quarter-courts (post-AD 962), but whatever the arrangements, there seems a quite un-Yemeni assumption that freemen belong with chiefs (ibid. pp. 17,22-3, 116-17); and the nested implication of agnatic language is of course displaced by open-ended cognatic claims.

2. The principles that result recur widely in northern and eastern Yemen. Apart from al-ʿAlimiʿs Qaḍāʾ qabālī and Rossi’s classic ‘Direitto’, Muḥammad al-Sudumī’s Naẓāriyat al-ʿuqubah fī l-shariʿah wa-l-ʿarafa l-qabāliyah (1993) deserves consulting. This presents a detailed analysis of ʿurf drawing mainly on al-Sudumī’s home-area of Khawlān al-Tiyāl. He constantly uses the word text (naṣṣ) and seems often to be quoting from documentary sources, but unfortunately never tells us what the sources are.

3. A shaykh of Nihm says naṭlub al-sinnah min ahl al-maqṭūl, Rossi ‘Direitto’ p. 7, Ḥabshūsh Ruʿyah (1992) p. 54, see also pp. 38, 103. Naʿīm-Sanbar (Ḥabshūsh Yemen p. 92) has, I think, slightly mistranslated this as “nous demandons à la famille de la victime de se comporter conformément à la législation”. What the shaykh is asking them to do is specifically to accept compensation and thus allow the tribe as a whole to pursue claims against outsiders. We shall describe the case itself later.

Conversely, one hears yadī al-sinnah meaning someone says to another that he will accept payment for an offence: he “gives” sinnah, i.e. specifies (or agrees he will specify) the amount due. And in discussing the texts below, people have often used sinnat-ah miʿat riyāl interchangeably with ḥukm-ah miʿat riyāl.

4. al-ʿAlimiʿs Qaḍāʾ qabālī p. 118. The term sinnah, one should note, seems still to be current in Sufyān, around Baraṭ, and in the Jawf with the meaning of right of refuge. It is not familiar with this meaning further west and south in Arḥab, Khārif or Bani Ṣuraym.

5. There are several ways one might approach the problem in archaic English, by speaking for instance of a man having or losing “law”. But friends from Dhū Muḥammad have often explained sinnah precisely as haqq, which falls naturally into English as “right”: e.g. li sinnah an usayyir-ak they explain as li haqq an usayyir-ak (“I have the right to escort you”). Note the convention used here that the pronominal suffix is transcribed -ah in colloquial.

6. Historians of law might be drawn to the term “immunity”; but in ordinary-language terms, a tribesman is not immune from wrongs, nor is someone whose rights are suspended fair game for third parties. To talk of “legal personality” is easier, but not without problems. Although normally claims and counter-claims are conducted between tribesmen, a “weak” person, who has no sinnah, can nonetheless make claims in law. It is best if we try simply to follow the shape of the Arabic.

7. That men were in most respects not equal is obvious. To ignore their formal equality, however, which is just as plain, is to refuse understanding of the world they lived in, cf. Miller Bloodtaking p. 33.

8. Dresch Tribes p. 55. The terms show some resemblance to what Pitt-Rivers called honour as precedence and honour as virtue: J. Pitt-Rivers, Honour and social status in J.G. Peristiany (ed.) Honour and Shame (1965). The closer parallel, however, is with Bourdieu’s account of the Kabyle, ‘The sentiment of honour’, in the same volume. ‘Arḍ and sharaf are much like ḥurmah and nīf, which Bourdieu calls (perhaps too grandly) honour of the left hand and of the right.

10. This is despite the fact most jirān attach only to particular small sections, cf. Ḫabšūṣḥ Ruʿyḥ pp. 102-3. They are described at Baraṭ as jār al-qāṣr. Only a few families enjoy wider formal links. The same sequence of responsibility recurs, however, in the market-guaranty (text 1, below) and in documents for the protection of learned persons (al-Akwa’ al-Madkhāl ilā maʿrīfat ḫijar al-ʿilm p. 37).

11. Serjeant ‘Law cases’ (part one) p. 42.

12. al-Ḥibshi (*Ḥawliyūṭ* p. 10 n.) misunderstands nakfaḥ slightly as “coming out” (khurūj) against an opponent: daʿwah (a “summons” or “call for help”) would be the better gloss. But for interesting cases that employ the phrase darab al-nakfaḥ see ibid. pp. 227, 296, 388.


15. Perhaps the oddest example I have come across is in Ḫusām al-Dīn Ṭūrākh (al-Ḥibshi ed.) 1990) p. 492. Nāǧī ʿNāṣr Juzaylān’s companions from Dhū Muḥammad had killed 12 men and four women in Dhayfān. To shame (tashwifan li-) Juzaylān the people of Dhayfān dug up the grave of Ḥamīd ʿAḥmar al-Shaʿr, also from Dhū Muḥammad, who had died there of illness some time before, and scattered his bones on the ground.

16. al-Wāẓīr Ṭuḥqa al-ḥalwā p. 223, Ḫusām al-Dīn Ṭūrākh p. 391. Classically this might well be derived from ‘ārā but in colloquial usage one finds the verbs yuʿawwir and yuʿir linking ‘ār and ‘awrah as if they are from one root.

17. Dresch *Tribes* p. 57. The related terms ‘urr and muʿawwar are explained as concerning mumtalakāt, things that “belong” to or attach to a man. The word ḥurūmah, often used in the manner of his wife, works slightly differently. It can describe, as it were, the inviolable moral space of a man, a house, or a tribe’s territory; but it is not used like ‘urr to equate directly honour and recompense. In text B section 40, one thus finds ghālī ḥurūmah al-shaykh, the centenary tribute the shykh’s honour.

18. For wajh with this sense see e.g. Dresch *Tribes* pp. 59-60. For making a commitment, particularly putting one’s name to a document, one also finds gharasa l-wajh, to “plant” one’s face, name, or reputation.

19. J. Pitt-Rivers *The Fate of Schechem* (1977), chapters 5 and 6. Hospitality is also important in systems with very different marriage rules, see e.g. F. Kelly *A Guide to Early Irish Law* (1988) pp. 36-7, 139-40. But Pitt-Rivers provides a particularly neat approach to the (non-exogamous) Arab cases, setting the rhetoric of marriage itself within a pattern of potential hostility and “undifferentiated” exchange.

20. This reversal of value informs more than tall stories. In a battle, where the combatants are not too panicked to respond, the phrase ḥajīt wa-naqīt transforms one from enemy to guest, much as proffering one’s sword used once to do among officers of European armies. The more profound reversal of sexual privacy is explored in W. Dostal, *Sexual hospitality and the*
problem of matrilinearity, *Proceedings of the Seminar for Arabian Studies* vol. 20 (1990), though the evolutionary assumptions the author uses will seem exotic to those not immersed in German ethnology. For one of the famous cases that Dostal cites see Ibn al-Mujawir Tārikh al-mustabsir p. 67. Op. cit. p. 38 is also of interest.

21. The term “open” (mubah) is used of, for instance, unrestricted grazing, but it also used, both in ‘urf and in more formally Islamic contexts, of people and property denied the moral right of protection: see e.g. P. Dresch, A letter from Imam Yahyā concerning the Idrīsī, *New Arabian Studies* vol. 3 (1996) p. 63.

22. Literal-mindedness is a curse of much contemporary anthropology, perplexingly where “gender” is used of what used to be called “sex” and no men or women exist but thinking makes them so. In the present case, however, “feminized” has analytic sense. The dawshān (heralds) and mazāynah (servitors such as barbers) are reckoned “deficient” or muqāṣ by tribesmen, and therefore always protégés or dependants: they may enter the events and spaces peculiar to tribal women in a way that tribal men cannot. Also, in a world of male-defined family spaces collective hospitality to outsiders poses a problem in that the individual tribal host may claim prominence over his fellows. It used to be common practice (see e.g. Serjeant ‘South Arabia’ p. 231) to lodge guests who were strangers with the muzayyin or dawshān.

23. Classically honour is ‘ird. In several places I have tried having literate tribesmen write in the vowels, but ‘ard seems nearer to the Baraṭ pronunciation. There is no doubt that the general term for honour and the term for rights of protection are, so to speak, one word, cf. the entry for ‘ird in F.H. Stewart *Texts in Sinai Bedouin Law* part two (1990).

24. The rules about who recognizes whose ‘ard and thus how far collective responsibility extends for such questions as escorting strangers vary from one tribe to another, cf. E. Glaser ‘My Journey through Arḥāb and Ḥāṣid’ ([1884] 1993) p. 5. As in Glaser’s day, al-ʿUṣaymāt recognize a single ‘ard: any member of the tribe can escort a stranger in the name of all. In Bānī Ṣūraym escort is the specific concern of each “ninth” unless otherwise agreed. In Sufyān, meanwhile, there is one ‘ard for Ṣūbahrah and another for Ruhm, Sufyān’s other half.

25. The terms ‘ard and sinnah are not quite synonyms. The former overlaps with meanings of vulnerability in a way the latter does not. But in such phrases as al-ʿard māḍī and al-sinnah māḍiyah (more usually al-sinnah tamḍī) the grammatical constructions are often exactly parallel. For examples of ‘ard or ‘ardah from Baraṭ at the period which concerns us here see al-Akwa’ Madkhal pp. 29, 35. A recent example from Sufyān is given later.
Connections, amends, compensation

Terms concerning protected status as a travelling companion, guest, or refugee will be specified when we meet them in the texts. But each such status involves a “link”, the conventional gloss I use at all points below for ‘ulqah,’ which can serve as a generic term to cover such instances as escort (siyār), refuge (qiṭār), protection (rabā’), truce and settlement (ṣuḥ) or, perhaps less expectedly, the ties which derive from eating together (zād al-batn). All these instances have something about them of contract: they are quite specific and one enters them voluntarily. While the sections of tribes are far from solidary, and one can always say fellow-tribesmen are in the wrong and therefore do not deserve support, a “link” is freely and personally agreed to and is therefore, in so far as people agree that the link was formed, binding.

The texts at issue in the present work purport to be something over two hundred years old, but the language they use has in some respects not changed until recently. We can take for example a letter sent by shaykhs in Sufyān to their counterparts in Banī Ṣuрайm when the latter asked advice on ‘urf in March 1983. Among the questions discussed were precisely links or ‘ulqah:

Companionship/escort is a recognized/established link (‘ulqah masnūnah) among the tribes, for the escort and the one who takes escort. There is no companion save the companion of safety/peace. As for the companion who leaves his companion’s side, he has no link and is in the wrong (mā la-h bayḍā’: literally, “has no whiteness”). His sheet [flag] is the black one; the white is for the white, who is owed and owes nothing. The white [flag] is for he who executes faithfully the link of a companion/escort. As for the one escorted [or protected], if his companion/escort abandons him after taking on the [duty of] escort and allows him to be threatened, and does not do his duty as companion as agreed, then he [the man who took on the responsibility] loses his ‘ard. Who loses his ‘ard loses his tribe and is owed a black flag (shāsah sawdā’).

The symbolism of black and white flags is fairly self-explanatory; the details of procedure we can look at later. Suffice it to underline that this is plainly a public issue whose importance extends beyond the claims of the escort and one escorted. Breaching the
“link” of companionship, once formally agreed to, means losing one’s ‘ard; one’s ability to give and take protection. One is not simply refused support: one is cut off from formal relations with fellow tribesmen.

Compensation for material damages is largely a collective matter, and members of one tribe or section at odds with a second are in most circumstances expected to pay and be paid together, or fight and be fought together: if one’s fellows are in the wrong and deserve no support, that is a contingency to be addressed as such. To pay compensation jointly for “clean blood” (dam ṣāfī) is right and proper. But everyone, right down to family-level, should disown a man who owes amends for “moral” damages (ʿayb or ʿatb) and refuses payment. In the documents at hand (text A section 18, text B section 23), and still in colloquial usage, one finds the phrase māʾ al-ʿālāʾ i-dhamm i-tirād “there is no intervening for [or protecting] others in cases of shameful action”. Al-Sudumī quotes in parallel what amounts to a proverb: là yaqbal al-ʿālīb illaʾ aṭīb, “no-one will accept a shameful person [i.e. one who commits ʿayb] but another shameful person”. Breaking a “link”, although particularly important in the way that breaches of “custom” are brought to justice, as we shall see, is not the only disgrace that compromises moral and legal status.

We have already noted how ʿayb (a disgraceful act, or the compensation for such an act) can be contrasted with ‘urr; an act that does wrong specifically to one’s womenfolk or land, giving ʿayb the particular meaning of an offence against public commitments and reputation. In other contexts a simpler contrast is evident. The term ʿayb can be used of any disgraceful act, whatever its nature, and thus be contrasted with material damage or the compensation for such damage, called naqṣ or naqṣāh. This same distinction is made with dhamm and dam, roughly shame-money and blood-money. The principle is often quoted that al-dhamm qabla l-dam (or al-ʿayb qabla l-naqṣ), meaning shame or disgrace must be dealt with before a debt can be composed for wounds, killing, or material damage. In some contexts a virtual synonym for dhamm (shame-money) is hashm. In cases of multiple amends one sometimes hears the phrase, dam wa-dhamm wa-hashm. In all of these cases, it is only once amends are paid that a debt can be settled and thus the dispute resolved or properly contained (cf. text B section 37).

Document 7: List of wound-prices from Sufyān (undated)
The status of not being owed amends and the action which wipes out a debt are both called naqā' (or naqā': tribemen at Baraṭ neither write nor pronounce the hamzah). The term means “purity”, perhaps, and often one might want to say “good name”. Correspondingly, and more conspicuously here, it means the taking of amends or revenge to restore good name, and a reasonable gloss might be “absolution”. Where the word is not defined explicitly or by context it usually means blood-vengeance, but in some passages (e.g. text B sections 13 and 27) context suggests a less dramatic meaning of appropriate payment. Obviously, if one is owed even payment for wounds or for damage to property, and the debt is not paid, then one suffers an insult and naqā', in the sense of good name, is at issue. A table of wound-prices from Sufyān, reproduced here separately as Document 7, gives an idea of how recompense is depicted as exact, law-bound, and therefore just. But custom defines certain actions in themselves as inadmissible and deserving of separate, defined amends.

In many cases a standard payment may be imposed for 'ayb. In most of Bakīl this would have been 110 silver pieces or riyāls, in Hāshid 88 riyāls, accompanied often by a bull, and half-'aybs or quarter-'aybs of this sort (half the money and perhaps two sheep) are common; lesser penalties are recognized also, as in Sufyān a generation ago seizing a man’s dagger in an argument was supposed to be recompensed by payment to the man offended of five silver pieces. But a common form, where material damage is done in some disgraceful circumstance, is to pay for the disgrace or shame at the same rate as the damage: al-dhamm mithla l-dam or al-'ayb mithla l-naqīṣah. In other words, the material damages or payments for a wound are doubled. For more serious offences the culprit may have to pay four-fold (bi-l-marbā') or even eleven-fold (bi-l-muḥaddash), and the principle may be applied, in theory, to vengeance for a major wrong. If one of a man’s women-folk were deliberately killed, for instance, or if his guest were killed, he might not have wiped out the disgrace until he had killed four men from the culprit’s tribe or section.

Multiple revenge is the subject of much condemnation by Islamic jurists and of ambivalent stories among tribesmen (there is seldom a clear-cut moral to the tale). For instance, long ago a man from Āl Ṣalāḥ was escorting a man from Yām in Dhū Muḥammad’s territory. The Yāmī was murdered by a group of his escort’s in-laws, also from Āl Ṣalāḥ, and the escort killed all six of those he thought responsible. Much later, he realized from a passing remark that his own mother’s brother (khāl) must have been with the killers that day and killed him too. Yām, in gratitude, brought a conspicuous white tombstone for their own murdered man, which supposedly can still be seen. The escort, having whitened his face (bayyāḍa wajh-ah) by killing seven for one, but having also provoked an insoluble conflict with his kin and neighbours, fled to Lower Yemen -where he became, so the story runs, a wealthy shaykh. Pursuing the right in a personal or an abstract sense can disrupt all parochial attachments. It is better in local terms if amends are agreed in cash or kind.

Revenge and cash-payment may be combined, so if one of the manā’ whom we mentioned earlier (part one, above) were killed by an outsider other than in war, Dhū Muḥammad, it is said, might have sought a death in return and goods or cash to the value of three times the blood-money. In the market guaranty (text 1 section 10) one can hardly envisage naqā’ four-fold meaning the guarantors always seeking four deaths for a death, four wounds for each wound inflicted. Whether payment or blood is taken as absolution depends on the way a dispute unfolds. But amends for ‘ayb that involve either wounds or
material damage are conceived of in discussion, if not always paid in practice, as multiples of compensation, such as blood-money, which itself is reckoned in cash terms.  

NOTES

1. For the vowelling of ʿulqah see al-Sudumī Naṣārīyah pp. 130, 132.

2. This passage was cited in Dresch ‘Placing the blame’ (1987) p. 435. The document was shown me, along with a brotherhood pact among Ṣubārah, several letters on ‘urf addressed to shaykhs elsewhere, and a number of fragmentary lists on wound-price (arsh), by acquaintances from Bayt Ḥubaysh in al-Madaqqah. Unfortunately I was not able to follow up on what looked to be a substantial fund of material.

Apart from adding hamzahs and some vowels for ease of reading I have left the spelling as I found it. Note the ḥād for ‘in in ṣaqāta, to lose or drop. Note also the use of masnūn, cf. al-Sudumī Naṣārīyah pp. 95–9.


4. al-Sudumī Naṣārīyah p. 103, cf. al-Akwa’ MadkhaI pp. 29, 40 for the same idea in more formal contexts expressed through the term ʿitnā. Obviously this overlaps with ideas of “outlawry” in other systems. But unlike e.g. the Icelandic case (Miller Bloodtaking p. 69) the plaintiff is not obliged to hunt down the person whose immunity is suspended. Nor, as happens early with English law, is society as a whole invoked. As in aboriginal Australia, to put this in rather instrumental terms, the system “favours justice by abandoning the wrongdoer to the avenger. In the gamble of private strife it loads the dice in favour of the just” (Hocart Kings and Councillors p. 130).

5. These distinctions and equations are partly contextual. The term naqīṣah (pl. naqāʾīṣ) is sometimes used in the present documents (e.g. text B section 25) to mean losses or debts of all kinds. But elsewhere (e.g. text B section 26) a distinction is apparent between naqās, as material damage or compensation for such damage, and for instance ghālī or ʿatb, amends for a disgraceful act or breach of some obligation.

6. In other contexts dhamm and ḥashm can be contrasted. If someone is under the protection of another and a third party wrongs him, then multiple amends are due: the portion paid to the wronged protégé would be ḥashm, and the amount paid his protector for the insult would be dhamm. Confusingly, dhamm can sometimes also be used simply of a wound (syn. kawn) whatever the circumstances in which it was inflicted.

7. For discussion of naqāʾ, al-Sudumī Naṣārīyah pp. 113, 178 ff. The same term in North Arabia provokes some confusion among authors, e.g. A. Jaussen Coutumes des Arabes au pays de Moab ([1908] 1948) p. 161, Stewart Texts part 1 p. 213, part 2 p. 187. Presumably the phrase radd al- naqāʾ ʿalā there means to hand the responsibility for war to one’s enemy: he can preserve one’s good name by behaving sensibly or force one to seek absolution in blood.

8. For an example of this principle in action, P. Dresch, Keeping the Imam’s peace, Peoples Méditerranéens vol. 46 (1989). It deserves noting that translations of e.g. Anglo-Saxon codes usually omit the long lists of nominal wound-prices that in fact take up much of the original
texts: where calculation is bound to be arbitrary in practice, the assurance of theoretical exactitude has its own value in all these systems.

9. Glaser (‘Arḥab’ p. 5) seems to suggest a standard ʿayb of 110 (or 100) riyāls in Ḥāshid, also, a century ago. I doubt he is right. A fragment from Khiyār in Banī Ṣuraym, which seems from the paper and the documents it was rolled up with to date from the mid-19th century, gives 44 riyāls, a half-ʿayb, for what looks to be a default on guaranty.

10. al-Sudumi Naṣrīyah pp. 54-7. Note the contrast with for instance the Irish “face-price” (lóg n-enech), which varied with rank but for any given man was constant: Kelly Irish Law pp. 8, 125, 126. In the Yemeni case all men are nominally of equal price, whether wounds are being paid for or killing, and what is multiplied according to the setting in which wrong is done is the cost of the harm or damage.

11. Visitors enquiring about ḥukm ʿurfī are often told of exemplary judgements bi-l-marbūʿ bi-l-muḥaddash, forty-four-fold, but I have never heard of this actually being done or seen evidence for it in documents. Multiple payment, meanwhile, seems compatible with shariʿah law, falling readily under the rubric of taʿzīr; multiple revenge would not be, and this is one of few points (perhaps the only point) where ʿurf and shariʿah differ quite fundamentally.

12. How much cash was actually available until recently must be in doubt, see Ḥabshūsh Ruʿyah p. 70, Yémen p. 113. Cf. P. Grierson, La fonction sociale de la monnaie en Angleterre aux VIIe–VIIIe siècles, Settimane di Studio del Centro Italiano vol. 8 (1961). Of great interest, and worth coming back to later, is the very idea of money, rather than land or livestock, compensating for a person in case of murder.

13. The full blood-wit is supposed from early Islamic example to be 100 camels, equivalent to 1,000 gold mithqāl, which means 333 1/3 wiqīyahs or dīnārs. One then finds conventional rates for wounds, such as 40 dīnārs for a wound that cuts to the periosteum (ṣimḥāq): the same scales apparent in one of Abū Ghānim’s texts (Bunyah qabalīyah p. 384) occur in Kīṭāb al-lawāzīm (supposedly early 14th century) and in a list from Sufyān drawn up in AD 1891–2.

Even apart from conversion of these nominal sums to silver or goods, the amount to be paid in practice is far from clear. The price of silver itself shifted wildly in the 19th century, with important effects in America and British India, but apparently none on blood-money.
Assessing wrongs

1 We are not told anywhere in our documents what the standard rate was for diyāh or full blood-money, and nineteenth-century accounts suggest the nominal sum being lowered arbitrarily in tribal practice. But a sensible guess would be of the order of 770 or 800 silver pieces. In text B section 14 the fine for shooting at a man without good reason is said to be 110 silver pieces, and doing so at truce, a worse offence by definition, is a quarter-diyāh: somewhere between 192, which is roughly a quarter of 770, and 220 silver riyāls, twice the usual ‘ayb, sounds plausible for the latter sum, and a full diyāh was thus probably close to 800 riyāls in the eighteenth century as it was in the nineteenth and early twentieth. The standard ‘ayb of 110 riyāls, where no multiple is applied, is itself quite serious. In Sufyān a generation ago this, with an accompanying bull, was the amount prescribed for entering a man’s house by force and denying the man access. According to the texts at hand, if one rejects the judgement of an arbitrator one must give the arbitrator surety worth 110 silver pieces before going to appeal (text B sections 39, 40); shooting at a man without reason, as we saw, requires payment of that amount; the cost of wrongly “vilifying” a fellowtribesman (the details will be explained below) is fined the same; and doing so in the tribe’s own market is penalized that much eleven-fold. Killing a man at market might perhaps be eleven times the blood-money, more than 8,000 silver pieces or fairly nearly a king’s ransom.

2 To make a table of amends would be pointless if one drafted it simply in terms of money. Although the terms and rhetoric are consistent, their interpretation is not. “Four-fold” can be as different as four times the blood money or four times the standard ‘ayb (a difference of an order of magnitude in gold or silver); and in one case that I noted, “eleven-fold”, which sounded at first to mean eleven times the blood-money, turned out in the end to be five bulls and six head of sheep slaughtered as formal amends for breach of the market-peace. Nor is the division of amends specified. The principle is that they go to those insulted, but who counts for legal purposes as having been insulted varies. Two stories from Ḥabshūsh about Nīhm in the nineteenth century will make the point.

3 In the first, a Jew under Bin Miṣār’s protection was robbed; his protector retrieved the Jew’s goods by violence and then pursued a veritable war against the culprit, finally killing him and his brother, but what amends, if any, were ever paid to whom fade from notice. In the second, one of Bin Miṣār’s people (somewhat unbalanced and later claimed to be outright mad, which removes the need for personal vengeance) killed a Jew under
Abū Lahūm’s protection. Abū Lahūm and Bin Miṣār confronted each other, each with some 2,000 men. Shaykhs from miles around were called on to arbitrate, and they judged against the killer’s people four times the blood-money, 3,080 riyāls in total. Abū Lahūm kept two diyahs and passed the others to the dead man’s heirs. This has the appearance less of a right (the amends could as well have been split three to one) than of Abū Lahūm making a grand gesture.

4 A Jew, as Habshūsh puts it, “had no price” (mā la-h thaman). But the same indeterminacy recurs with tribesmen. The difficulty at points in the market-guaranty (text 1 sections 3, 9, 10, 12) of understanding whether payment is once, twice, or four-fold derives in part from unstated assumptions about the course of a claim, as do ambiguities about who receives how much of, say, four-fold recompense. If the guarantors of the market act promptly to restore the loss, their offer of multiple amends should be waived by the claimant. If they tarry, then the claimant would expect rather more of what they take from the culprit (he may even have a separate action against the guarantors for an ‘ayb in multiples); and if they expend much effort in pursuing the culprit, perhaps fighting to extract what is due, the guarantors would be expected as those primarily wronged to take, say, three parts in four of the complete amends. Even compensation for material loss or damage obeys this logic. A prompt, unambiguous offer should draw a partial waiver;6 delay involves further insult.

5 As we shall see when we come to the Bārāṭ documents, particularly texts A and B, most payments simply between antagonists are made through specific guarantors. They too may take part of a prescribed payment (text B section 37: part six, below). A certain balance is often arrived at in the payments themselves, meanwhile, not by summing the wrongs on each side and simply according the surplus or deficit to one of the disputing parties, but by prescribing reciprocally payments for each wrong. In Murhibah some years ago, for example, a rather volatile man shot at another for no good reason, and the second man, rushing into his own house, fired off in return a whole magazine from an automatic rifle. Neither man was hurt; but the first had to pay the second a full ‘ayb (110 riyāls with a bull), and the second paid the first a half ‘ayb (55 riyāls and two sheep) for gratuitous aggression. Compensation for wounds and for damage to property is usually paid back and forth in the same way. An arbitrator, for his part, is supposed to be guided by the principle, al-ridā’sayyid al-akhām, “satisfaction [of the parties] is what rules judgements”, or perhaps more classically al-ṣulh sayyid al-akhām, what matters is “reconciliation”.7

6 What payments are finally agreed between parties at odds, or prescribed by an arbitrator, may be divided among recipients. Blood-money for a man killed by an outsider, where there is no aggravating circumstance, tends increasingly these days to go to the victim’s family: the owners of the blood (awliyāʾal-dam) are then approximately the heirs described in sharī’ah law. But a common “rule” even twenty years ago was that half went to the family, half to “the tribe” (qabilah or ‘ashirah), usually understood as a sub-section of the kind that make up Dhū Muḥammad’s fifths.8 If extracting the payment involved effort by a larger unit, “the tribe” here might be larger: half the blood-money, or even more, might rightly (if notionally) have been spread among a great many recipients. At every stage of dispute, opinion on the justice of claims is formed both within and between the units conceptually opposed, and thus determines who exactly is involved to what degree. A section or tribe that appears on a diagram as a solid bloc is in practice “a virtual court of equity”.”9
Collecting compensation (naqṣah) from one’s fellows is again a matter of right and wrong. In the theoretical case nowadays that someone from Dhū Muḥammad killed an outsider where no specific blame attached (a squabble erupted on the road or in open country, for instance, and each man simply went for his gun) the blood-money would supposedly be paid by the man’s laḥmah (pl. liḥām). The liḥām at issue in Āl Aḥmad b. Kawl (one fifth of Dhū Muḥammad) might be Āl Yahyā b. Aḥmad (some 300-350 grown men), for instance, or Āl Thaybah (perhaps 200), which are surprisingly large units. In practice, unless a case had developed in such a way that it became a collective issue, blood-money would usually be paid by something more like a family group, perhaps a dozen men; also, the maternal kin, who formally share no responsibility at all for blood, may be called on and most of the paternal kin omitted.10 But a man faced with large payments of any kind can yatarraffad (that is, ask riḍah, the same word as is used of voluntary contributions at a wedding) as widely as he likes. He can go from village to village announcing his case, rather as people sit in mosques with a placard asking help, or send friends and relatives to ask: there is nothing dishonourable about doing so.11

In brief, no table of shared identities specifies what occurs in practice. It does, however, specify the range of events first possible, and collective identity works primarily from the outside inwards: if someone from Dhū Muḥammad kills someone from Dhū Ḥusayn, for instance, then the two tribes as wholes are potentially at odds and the implication needs denying. Normally this is done by others in Dhū Muḥammad, now themselves all under threat, proffering rifles to the victim’s people.12 Such rifles can also form a link whereby someone from the culprit’s section or tribe takes responsibility for payment of his debt and for his conduct. Hardly any but the smallest dispute occurs without the proffering of slaughter-beasts and pledges of rifles to define who is implicated in what degree, and the “links” that result, not least those of guaranty for others’ conduct, may last for years, if not indefinitely. One always, so to speak, comes in half-way through: before a particular dispute emerges, there are already links of truce, of guaranty, and ongoing arbitration that cross-cut the simple identities of who belongs to which tribe and section.
The importance of arbitration is obvious, and the amends or compensation prescribed are only part of this. At arbitration the dispute itself is defined, as too are the parties actually at odds. Beyond this, a structure of guaranty is established. The arbitrator himself is inviolate, and each party chooses guarantors or bondsmen (ḍumanāʾ kufalāʾ) for the other. The connections among these people –disputing parties, guarantors, arbitrator– are links (ʿulaq) that are formed explicitly, that are actionable, and that cannot be broken, any more than those of escort or protection, without risking one’s standing as legal subject. Around them often form links of secondary guaranty (radm or ṣawn). Although a dispute may to start with be ill-defined and subject to differing interpretations, the structure of the truce is formed of clear commitments; and within that structure, the plaint is specified (drafted in document form as raqm al-maraḍ) and a ruling given by the arbitrator. A document typed in the late 1980s, reproduced here as Document 8, shows the then-Governor of the Jawf, himself a noted shaykh of Dhū Muḥammad, exhorting tribesmen in the name of “religion and custom” (din wa-ʿurf) to observe a truce of arbitration on pain of a fine of 220 silver riyāls each day they remain in breach. Half would go to those who sought or agreed the truce and half to those pursuing settlement, “for this is a weighty link (ʿulqah ghasṣābah) for the seeker [of truce] and the arbitrator”.

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an insult (‘atb, ‘ayb), and someone who commits an ‘ayb is due no support. As recent documents from Sufyān express it, he loses his ‘ard, and “who loses his ‘ard loses his tribe”. As texts A and B phrase the matter, he has no sinnah.

The market-guaranty (text 1 section 13) states the point in perhaps archaic language: whoever of Dhū Muḥammad commits theft in the market at al-‘Inān, or fails to act against a thief when called on by the tribe to do so, shall have “no fellow and no paternal cousin” (lā la-h šāhīb wa-lā ibn ‘amm). Until settlement is made, he ceases in effect to be a tribesman. But there are very few offences that cannot with due care be composed by payment,27 and once the payment is made, then right (sinnah), obligation (malzam), and fellowship (ṣāḥb) each fall back into place as previously. Normally that payment is owed to specific persons, whether guarantors whose trust has been breached or a claimant directly wronged, but with some offences the wrong-doer is said also to shame/insult his [own] tribesmen (yu‘ayyib qabā‘il-ah).28 For this to be clearly so a set of agreements needs to be in place, whether signed qawā‘id of the kind represented in the texts at hand or for instance a truce, again signed by guarantors.

Tagged on to text B as a later postscript (section 44) is the note that whoever shames their own honour (‘āba fi wajih-hum) must pay eleven-fold. This might mean, for instance, breaking a truce agreed to and upheld by all the signatories. But the meaning consistently given it by shaykhs from Baraṭ has been that the offender breaks his own commitment by, for instance, wronging his guest or a person he has promised to escort in safety.29 He thus breaches the very basis of the moral system we discussed above, and is guilty of what al-Sudumī notes as madhammah, a wrong affecting the tribe’s general reputation (sum‘ah).

In some cases there is no way out. As one of Rossi’s texts explains, a protector who deliberately murders someone under his protection should in turn be killed by his own kinsmen: “there is no means of abolution (naqā) for him, and if his kin do not kill him then they themselves are covered with disgrace (i’tābū) and become dishonoured”.21 In cases like these people speak of black shame (‘ayb aswād).

It certainly happens on occasion that a man is wiped off the tribal map, though rarely, I suspect, by execution.22 Only a few years ago, in the 1990s, for instance, a Muḥammadī came from Ṣan‘ā’ with a companion from Dhū Ḫusayn and, probably to steal his money, murdered him near Kharāb al-Marāshi, at the foot of Baraṭ on the road to Sūq al-‘Inān. Although there had not been any formal engagement of escort, which the eighteenth-century texts stress as definitive (text A section 7, text B section 9), Dhū Muḥammad turned on the murderer. Not even the market-guaranty seemed the crux of the matter; rather, the killer had acted in a way that no-one among the tribes should act. He produced no satisfactory explanation of why he had killed the man from Dhū Ḫusayn, and Dhū Muḥammad not only drove him from their territory but destroyed his house to wipe out the stain on their collective honour (li-ajli l-naqā).

Stories of houses being razed like this, some deeply mythic and others with much circumstantial detail of names and dates, recur widely in Upper Yemen.23 On the other hand, dreadful things may be done and then left alone. For instance, the great hero of Yemeni nationalism, Muḥammad al-Zubayrī, was murdered at Baraṭ in 1965 when effectively the guest of Dhū Ḫusayn, The people who shot him from concealment were relatives of those escorting him (the implication for the tribe’s collective name or sum‘ah could scarcely have been more serious) but, despite the disgrace at national level, they still live in Dhū Ḫusayn and seem still to draw a pension from people domiciled in Saudi Arabia. The inhabitants of Baraṭ, like those of Britain or America in comparable
circumstances, look disgusted and say “politics”. One doubts the eighteenth century was in this respect much different.

Obviously such language excludes arbitrarily much that might be thought inherent to the tribal world, leaving tribalism as sometimes merely an idealized image. The tribes, however, are indeed vulnerable to politics conducted in other terms. Party allegiances, for instance can divide men within a tribe, as presumably alliance with rival claimants to the imamate once did. On the other hand, the “customary” practice of large meetings to debate claims and wrongs makes public and evident much that otherwise is hidden; and the differences that emerge are accessible to customary law, which may not resolve them but does at least contain them. A certain promise of unity and justice, meanwhile, runs through the language of both nationalist and Islamic statcraft.

NOTES

1. Ḥabshūsh Ruʿyah p. 55, Yémen pp. 93-4, cf. al-ʿAlimi’s Qadāʾ qabāli p. 51. For estimates of the nominal ḏiyah at 770 silver pieces, below, see Ḥabshūsh loc. cit. The ratio of blood-money to ‘ayb would come out neatly were the former 880 riyāls, but I have not seen clear evidence for this ever being so. A woman’s full blood-money is formally half a man’s.

2. Zabārah (ʿInmāh vol. 1/1 pp. 66-7) quotes Husayn Jaghmān’s table and poem of rates for wounds, where the full blood-money for killing a man amounts to 787 1/2 silver pieces. If the dates of our texts are right (that is, mid to late 18th century), then the coins in texts A and B might be Spanish riyāls; later a qirsh abyaḍ would be a Maria Theresa thaler. In Sufyān, twenty years ago, I was told that 800 Maria Therases would be paid and 12.1/2 handed back as milqāt, or “tweezers”; the theoretical total paid would thus have been 787 1/2, although Sufyāni tribesmen were not aware of scholarly calculations and no rationale was offered for their own custom.

3. To imagine a whole tribe, let alone a family, really paying this amount is difficult. But early twentieth-century (supposedly “Islamic”) provisions for the market at Ḥūth, one should note, prescribe for murder in the market four bulls, a ḏiyah of 800 riyāls, and an additional fine of 1,200 riyāls: see Dresch Ḥūth’ p. 77.

4. For slaughter-beasts in amends cf. al-Akwa’ Madkhal pp. 28, 40, Dresch Ḥūth’ pp. 65, 77, ‘Sufyān’ p. 54. The practice of paying cash and livestock together (sometimes cloth as well) opens up still further variation. A judgement “four-fold” might be just the blood-money and four bulls, or the blood-money plus four bulls and four times the standard ‘ayb-money, or four times the blood-money, or the blood-money plus 110 riyāls plus a bull all multiplied by four, a huge difference in nominal money value.


6. The initial claimant says, sāmīḥ la-kum, “I allow you”, “I treat you kindly”. Large differences between the judgement announced and the amount finally to be paid were long ago documented for North Arabian cases, e.g. Jaussen Pays de Moab p. 224 and passim, G.W. Murray Sons of Ishmael: a study of the Egyptian Bedouin (1935) p. 204. The same is found in Yemen, where the demonstration of generosity or moderation overlaps with giving, or imposing on, the claimant self-judgement:
the debtor by letting his creditor specify the debt’s extent all but forces him to make it little.

Miller (Bloodtaking p. 371) finds Iceland and Yemen unusual in this respect. But surely in any system that takes honour and morals seriously, which in some form means human society, something of this kind must happen? The question may be whether or not it features in anything approximating formal law.

7. Serjeant ‘Sunnah, Qur’ān’ p. 48. Earlier (ibid. pp. 45-6) he quotes the line that an arbitrator in customary law should “also judge by the politics in his tribe and according to his own understanding” (yaḥkum ayyan bi-l-siyāsah fi ‘ashirat-hu wa-‘alā qadr ijtihād-hu). This seems to come from Rossi’s Bin Zinbā’ text, cf. Abū Ghānim Bunyah qabāliyyah p. 375. The phrases resurface in my own notes of conversations from just the last few decades.

8. Cf. al-Sudūmī Nazarıyyah pp. 116, 121. Notes from Sufyān, Arḥab, and al-ʿUṣaymīt two decades ago and more (Dresch Tribes pp. 112-13) all suggest a similar idea, and the key payment-group mentioned was always of the same order, a cluster usually of 100-300 men. The extreme case in my notes is from Sufyān, where people said that of incoming diyāh only 110 riyāls would go to the immediate kin and the rest to the laḥmah or section.


10. Stewart (‘Contract’ pp. 171,269) describes a system in Sinai where even very small payment-groups of 10 or 15 men are a question of formal contract. I have not come across anything comparable in Yemen. The lists giving divisions of joint expenses within a tribe are very hard to find. But the insistence there are rules that govern sharing compensation, when in practice it is surely indeterminate, find echoes elsewhere, cf. Miller Bloodtaking p. 144, Kelly Irish Law p. 15 on the contributions of affines and maternal kin.

11. Ideals of fairness, sympathy, and charity do not end or begin at the borders of sections. Within a section, although rules about payments may be invoked, one also hears such phrases as ‘alā l-mūjad an yuqaddim ‘alay-h, meaning a person who is well-off should help a poorer man with his debt.

12. Cf. Habshūsh Ruʿyah pp. 38, 70. The practice is discussed in Dresch Tribes pp. 51, 86-7, 254, 268, and al-Sudumî Nazarıyyah pp. 151, 156 ff. The vocabulary describing such pledges is extensive and is not by any means standardized: indeed a large part of dealing with claims and counter-claims turns on arguments about what exactly people are obliged and not obliged to do by a specific pledge and what it should properly be called.

13. For the importance of guaranty elsewhere than Yemen see e.g. Jaussen Pays de Moab pp. 185, 195-6, 223, Murray Sons of Ishmael pp. 206, 227 ff., Stewart ‘Contract’. For a brief sketch of how such guaranty at arbitration is organized in Yemen, Dresch Tribes pp. 93-6. As Stewart, points out (‘Urf in Encyclopaedia of Islam vol. 10 p. 888), Yemen is unusual in that guarantors are made answerable to the arbitrator as well as to one of the disputing parties.

14. The word siʿayah or suʿayah in the Arabic text here is a plural of sāʾīn, “one who tries or works for something”, not the verbal noun meaning denigration. Readers will note how close some of the terminology is to that in the older documents.

15. A truce in the name of, say, a tribe is binding on all the tribe’s members, and breaking the truce insults all who signed up to it. But gaining agreement to a wide-scale truce is difficult, and by the time that a breach occurs the enthusiasm of the moment has often evaporated such that no-one on the culprit’s side except the signatories feels an insult. For truces generally, al-Sudumî Nazarıyyah pp. 53, 113, 120, 179.

Lesser truces come in several forms. The party ahead in the calculus of blood or damage may offer their opponents sulḥ (the same word used of settlement); if this accepted, a period of truce is specified and guarantors appointed. Alternatively third parties intervene and force a cease-fire (ḥudnah or kuflah), which lasts eight days, and sulḥ may follow.
16. At truce or under guaranty a dispute is said to be ħāmid jāmid, quiet and frozen, or bārid bard al-mā‘, cold as water. The truce or settlement that resolves personal killing is often permanent, guaranty being for life, or even supposedly heritable (‘afw wa-‘āfiyyah).

17. Cf. Kelly Irish Law pp. 125-6, Miller Bloodtaking p. 190, though the case Miller cites seems to end with the debtor being killed: a presumptuous, explicit claim that mere compensation will settle matters can be an insult to those who suffered the loss.

Texts, conversation, and observation all suggest that disputes of most sorts in Yemen can be composed, but in practice the claimants’ anger must be appeased: it is usually only after others have been involved and e.g. slaughter-beasts given that claimants will “give sinnah”, i.e. admit that recompense is possible.

18. This does not mean amends are due to the tribe as such or to e.g. a village. One sometimes for convenience wants to use the word “fine”, but as Stewart points out, in the Mashriq there seems no equivalent to the Maghrebi concept of offences against a discrete, bounded moral community: see Stewart, ‘Urfa in Encyclopaedia of Islam vol. 10 p. 890. Nonetheless, the pacts expressed in texts A and B, below, do align breaches of important links with an insult to the guarantors. See e.g. text B sections 5 and 6.

19. The plural form (wajh) is unexpected here, and may well be a copying error, but the distinction between ‘āba fi wajh (to commit an act disgracing oneself, besmirching one’s own honour) and ‘ayyaba fi wajh (to insult or disgrace some one else, besmirching his honour) is standard usage. Interpretation of the passage has been consistent among the experts on urfa, and between interviews with the same expert 20 years or more apart.

20. al-Sudumi Naṣariyyah pp. 96-7. I have not heard madhammah used spontaneously at Baraṭ but the term is immediately intelligible there, rather as with mu‘awwarāt which we mentioned earlier. “Black shame” is the usual phrase.


22. In 1966, in the midst of the civil war, a meeting was convened between Arḥāb (largely royalist) and Ḥāṣid. Ḥāmid ‘Abdullāh Radmān of Arḥāb was shot in the back and killed on the way to the meeting, the intention being that the blame fall on Ḥāṣid. Actually the murderer was a relative of his victim. He was caught by Arḥāb, dragged to the meeting and shot dead there by the victim’s brother, who was also paid four diyāhs by Arḥāb as a whole.

23. This practice of razing a culprit’s house is called kharāb wa-turāb. It is not all that rare. It occurred in the Radmān case just mentioned. A house was also destroyed by the guarantors of a man killed at truce in Sufyān during 1983: Dresch ‘Placing the blame’ p. 438. A few years earlier at al-Fasīrah, in Bāni Ṣuraym just west of Khamīr, a house was destroyed when, although no truce was in force, a man gratuitously murdered another for his money and did so in brutal fashion when he was the victim’s guest.

INDEX

Mots-clés: Juif yéménite
Keywords: Yemeni Jew
Privileged persons and circumstances

1 When writing of law, whether customary or formally Islamic, one finds oneself moving from period to period as if no great change occurred, and the same usually happens when discussing moral principles. Written histories, although the values they exhibit seem as changeless, are all but obsessed with dates and sequence. To resolve this tension in the modern style, by concentrating on how values and assumptions themselves might alter over time, if they do in the case at hand, is ruled out by lack of sources. We can, however, look at how people of the kind with whom history deals, or who themselves “make history”, are inserted in the tribal system. The obvious case is that of Bayt al-ʿAnsī, or Āl al-ʿAnsī, whom we noted in the summary of political events (part two, above) as at odds with the Qāsimī Imams in the eighteenth century and also as protected (ḥijrah, muhajjarīn) near al-ʿInān. Documents concerning them provide a useful supplement to the Baraṭ texts presented here.

2 Ismāʿīl al-Akwaʾ’s “Introduction to Knowledge of the Hijrahs and Fortresses of Learning in Yemen” (al-Madkhal ilā maʿrifat hijar al-ʿilm wa-maʿāqīl-hu) has been ably translated by Brigitte Marino. Unfortunately the French translation has not found as wide an audience as it deserves; the Arabic original has fared as poorly. It therefore worth quoting the texts in these works that deal with Baraṭ, the first of which (dated 1112 hijrī, or AD 1700, renewed and expanded though the 1890s) concerns Dhūʿ Amr’s guaranty of the hijar or protected enclaves at al-Raḍmah and al-Sawādah: 1

3 Any breach of the peace within the ḥijrah’s bounds is thus fined as such, and wounds or damage must be paid for (the details we can look at later). The people who are ḥijrah or

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muḥajjar – in this case, descendants of ‘Āli Qāsim al-ʿAnsī (d. AD 1637) – are themselves protected, and the principle applies that what they are due is [also] due from them (mā la-hum ʿalay-hum): if they commit a fault, then payment is four-fold as it is for “deliberate” wrongs against them. The physical bounds of the hijrah place, meanwhile, are specified and apply to all.6

4 Any offence within a hijrah counts as shameful, and, as we saw in general terms earlier, “there is no intervening for others in cases of shameful action”. No-one can intervene for an offender as “neighbour of the house”, or “companion at one’s side”, or on account of eating together or any other form of protection (lā shay’ min al-ʿard),7 and restitution is on the honour of the guarantors. These are very much the provisions we find in text 1 and elsewhere for markets, which also are hijrah or muḥajjar: indeed in the present case, according to an amendment of AD 1851, responsibility for the hijrah devolves first on the “people of the month” (ahl al-shahr, see part one, above) who guard al-ʿInān’s market. Hijrah’s contrast with the general give and take of tribal morality. But they are far from being simply neutral in the sense of unmarked or unimportant. As with meetings among tribes and sections (text A section 10, text B section 10), or the market on market-day, the promise of unity, and for that matter peace, they embody is matched by a capacity to set men at odds if the peace is broken by one of those committed to uphold it.

5 Ḥādī b. Ḥasan, the ancestor of today’s Abū Aṣba’ family in Āl Dumaynah, is remembered as protagonist in such a case that involved the market.6 Raiders from Wāʿilah stole sheep being tended by Ḥādī’s sister, and they took her with them to prevent her raising the alarm; when they let her go, unharmed, they took a silver band she was wearing on her upper arm. Ḥādī later saw a Wāʿilī at Dhū Muḥammad’s market wearing the band and confronted him, but the Wāʿilī denied involvement in the sheep-raid and said he was safe in the security of God and of the market (āmin fī amān allāh wa-amān al-sūq).8 He was there again the following week. On the third week’s market-day Ḥādī killed him on the road to al-ʿInān and fled, taking refuge with Āl Qumlān of Dhū Ḫusayn. The rest of Dhū Muḥammad demanded Ḥādī’s blood for violating the market-peace. Qumlān slaughtered a sheep on the mountain, letting the blood run downhill towards Sūq al-ʿInān as if to imply they had killed Ḥādī and thus done their duty to the market-guarantors, when in fact he had moved on and taken refuge with Dhū Ḫusayn.

6 Minor conflicts between Dhū Muḥammad and Dhū Ḫusayn at Baraṭ were inflamed by Ḥādī Ḥasan staying with Dhū Ḫusayn while Dhū Muḥammad, having found he was there, demanded his expulsion (Āl Qumlān’s position after tricking the market-guarantors is not related), and when the two tribes one day convened at al-Baḥbāḥah, which itself was hijrah or protected, Ḥādī attended with Dhū Ḫusayn.

7 Provoked, Dhū Muḥammad launched a raid soon afterwards, and general war threatened. The dispute was settled, however, by Nāṣīr b. Ḥādī Juzaylān of Dhū Mūsā.11 Nāṣīr rose to the obligation about the market (qām bi-lāzīm al-sūq) and showered it with slaughter-beasts and silver, or as people say, “furnished” the market (farasha l-sūq), spread amends there as one would a carpet. He also paid blood-money for the dead man from Wāʿilah, and Ḥādī b. Ḥasan Abū Aṣba’ built his house near the border-line at al- Baḥbāḥah, where descendants of his still live.

8 Plainly agreements were not always observed (Ḥādī, despite his own tribe’s guaranty, killed a man on the road to market), and the way in which “custom” was restored or upheld was not rule-bound: Nāṣīr Juzaylān, from a different fifth of Dhū Muḥammad,
wipes the problem away with a grand gesture. But in stories of this kind, and indeed in the course of the everyday, markets are in some sense a sacred space. This is not to say there is anything “religious” about them: like the ancient Greek agora or the open area of a Fijian village the market was simply “the chief place in which men sought the all-round welfare of the tribe”. In fact a common anthropological recourse to “the sacred” needs here reversing. Rather than some extra-societal reality valorizing singular events, and thus resolving within a conceptual whole the opposition of sets of people, it is precisely that opposition which gives to exceptional places and events their value. “Religion” (din) is separate question. The qāḍīs of Aḥ al-ʿAnsī at Baraṭ, for instance, were associated with Islamic learning, and thus with a promise of moral certainty; but the value of religious persons can be very much that of markets, or indeed of a meeting-place denoted perhaps by no more than a cairn or tree. The point is illustrated by a story Ḥabshūsh gives from Nihm in the nineteenth century. A tribesman from Nihm was married to a woman from a hijrah family (presumably, therefore, a qāḍī family rather than sayyids, but we are told no details), and the pair of them went to Ḥaḍūr, west of Ṣanʿāʾ, where the man was murdered. The wife was suspected of complicity. Back in Nihm she threw herself on the mercy of Banī Samḥ, one of Nihm’s fractions. At a meeting on market-day a shaykh of Nihm suggested that were she innocent they should pay her the appropriate fraction of the blood-money and take vengeance from Ḥaḍūr; were she guilty, then apart from vengeance on Ḥaḍūr, “We shall kill her and take from her family, the hujar, what is due in law”. Banī Samḥ’s intervention to protect the woman, at the same meeting, threatened war among different parts of Nihm. The leading shaykh of Banī Samḥ suggested asking the dead tribesman’s family to accept settlement (naṭlub al-sinnah min ahl al-μaqṭūl). The blood-money should be paid by the woman’s father, he said, and Nihm should turn on Ḥaḍūr for vengeance. A second shaykh of Nihm, somehow related to the hijrah woman by marriage (we are told no more about him, unfortunately; it would be useful also to know which section of Nihm the dead tribesman came from), then makes the grand gesture, like Nāṣir Juzaylān in the Baraṭ story, stepping in on the accused’s behalf:

“The blood money will be paid after twenty days”. At once, in the presence of [all] these people, he put down his rifle and its fittings to help the woman’s father who had to pay blood-money to the dead man’s heirs—and his dagger with its finery, and his sword with its finery, and his horse with its saddle. He said, “I have so-and-so many qadāḥs of grain, and so-and-so-much clarified butter [a valuable commodity given at e.g. weddings], so-and-so-many cows, and so-and-so many dirhams”. When the gathering of tribes left the meeting-place he went to the house of the woman’s hijrah father to help with the blood-debt, with dirhams and cattle and grain and weapons from his friends, and friends of friends, from acquaintances and acquaintances of acquaintances...

This shaykh had said at the start that Nihm had a claim against Ḥaḍūr for revenge (qiṣāṣ) and blood-monies (diyāṭ): note the plural and that multiple amends are in addition to, not instead of, vengeance. We are told by Ḥabshūsh at the end that, years later, Nihm had taken from Ḥaḍūr blood-money but the claim for vengeance stood. The hijrah family near the centre of the initial story simply fade from view.

The degree to which sacred space may be turned to “religion” (din) depends on the particular standing of those living there. Even then, Islamic law as such may not be the crux of their importance. But in al-Akwaʾ’s Baraṭ documents the signatories commit...
themselves to uphold the shari‘ah wherever it is sought from Āl al-‘Ansī as a means of settlement, and a qādī who is “ordering the good and prohibiting what is reprehensible” (that is, promoting Islamic order) can apply punishments, even prison, without incurring retaliation: the honour or repute (jūh) of the qādī’s ancestor applies everywhere. A further pact from AD 1822 binds Āl Ṣāliḥ al-Ma‘āṭirah specifically to the welfare of Ahmad Ṣāliḥ Ahmad al-‘Ansī. This, says the document, is quite separate from protection of the hijrah and applies to no-one else (lā yuqāṣ bi-h ghayr-ah): all offences against Qādī Ahmad personally or his dependants or, most importantly, against his judgement by shari‘ah law, are to be compensated four-fold after, or in addition to, vengeance or absolution (murabba’ ba’id al-naqā‘). More generally, however, the process or site (maqām, very roughly the “court”) of shari‘ah judgement by Āl al-‘Ansī is set aside and protected like the hijrah itself

13 Customary judgement of guaranty, protection, and amends is thus what allows its learned complement, Islamic law, to function. A line in the first of the al-Akwa’ texts seems to say not only that “intervention” to protect those who violate the hijrah is forbidden but that the agreement itself is “unconnected” to shari‘ah jurisdiction: the rules (qawā’id) that establish protection have their own validity. Certainly the forms of reparation are not those envisaged in classical jurisprudence. In the same document, for instance, we find a horse being taken from the qādī in AD 1749:

There came who came from our tribesmen of Dhū Muḥammad and took responsibility (jāzū) for the guaranty within the pact after a fault (naqā‘ah) was committed by al-Shāmī, who had taken the horse. Naqīb Nājī and his tribesmen of Dhū Mūsā returned it, and returned the culprit, to the family of Qādī ʿAlī b. Qāsim. No obligation was confirmed against them [i.e. none had been accepted by them as regards the culprit], no escort, companionship or protection, accordingly as mentioned in the agreement. They gave all the judgements and slaughter-beasts for the hijrah, and all that covers the hijrah [i.e. amends] to the family of Qādī ʿAlī b. Qāsim, and a slaughter-beast for the accusation and clothes that do not appear if an oath is taken...

14 Plainly in this case the system of guaranty worked, for Nājī (Juzaylān?) brought al-Shāmī to make amends, both of them being from Dhū Mūsā: the settlement was witnessed and approved by all Dhū Muḥammad, in whose joint name perhaps the kiswah or clothes were given. The details of the settlement, far less of the case itself, are not made clear. But the rule would seem to be multiple amends.

15 Earlier we quoted the first of these documents to the effect that a fault in the hijrah be recompensed four-fold in slaughter-beasts and cloth, which includes, one imagines, the provision that a man who draws his weapon there pays four head of livestock. But “deliberate” wrong requires naqā‘ (absolution). Later we meet a different phrasing, focused less on the place than on the protected persons:

And whoever draws his weapon in the migration then he is certainly punished (sic?)

16 In a second document, concerning a separate branch of Bayt al-‘Ansī, the context differs slightly but the phrasing is similar:

Briefly, faults within the hijrah require beasts and cloth unless deliberate, when the accused owes absolution (naqā‘) in blood or money. Explicit wrongs that involve the qādīs themselves demand absolution four-fold, presumably with additional beasts and cloth,
but the meaning is qualified in the last passage, and can fairly be read back to the first: it is “deliberate” action (‘amd, ‘amdah) that requires four-fold amend (in effect, this is what absolution means here) while “error” requires merely compensation doubled, or perhaps only compensation. Apart from beasts and cloth one would pay for instance four times the wound-money if intent was not disproved.

NOTES

1. We quoted earlier two chronicles of the early 18th century: Ḫusām al-Dīn Tārīkh and al-Wazīr’s Ṭabāq al-dalwā. Later one can draw on, for instance, al-Ḥibshī’s Ḥawflīyāt yamāniyyah. The late 18th century, however, is not well covered, and the tarjīm (biographical collections) have little to say of the tribal countryside at any date.


3. al-Akwa’ Madkhāl p. 28, Foreresses p. 11. As explained in part one, above, Dhū 'Amr here seem to be equivalent to Dhū Muḥammad: the undertakings are made in terms of the tribe’s five “fifths”.

4. The association of slaughter-beasts and clothes or cloth in amends of this sort recurs in the histories as well as in tribal documents, see e.g. al-Ḥibshī Ḥawflīyāt p. 282, al-Sayāghi (ed.) Ṣafahāt p. 98, Ḫusayn al-‘Amrī: Mi’at ‘ām min tārīkh al-yaman (1988) p. 100. We shall meet it again in texts A and B. I have not found any rationale for the practice.

5. Here Marino has, I think, gone slightly astray translating as “Si la faute est involontaire, seul un homme intégre pourra accorder le pardon” (Foreresses p. 11, also ibid. p. 12). The mā in the Arabic mā kīna ‘amd is not a negative particle but a relative pronoun. The “absolution” mentioned here would not be simply slaughter-beasts or cloth but payment for the damage, itself perhaps multiplied by four, cf. al-Akwa’ Madkhāl pp. 30, 41. Alternatively, in a serious case vengeance might be taken as naqī and cash-multiples paid in addition. Interpretation is not made easier by al-Akwa’ s punctuation, which I suspect divides the sentence wrongly and has here been omitted.

6. al-Akwa’ Madkhāl p. 34, cf. ibid. p. 40 for Hijrat al-Sara’ah. For the principle that “what they are due is due from them” see ibid. pp. 30, 31, Foreresses p. 12, Dresch Tribes p. 144.

7. The term ‘arḍ, or ‘ird, we discussed in general terms earlier. Again the Marino translation is slightly inaccurate here, and the phrases lā yahawl ḥā’il and lā shay’mīn al-’arḍ seem to have been elided.

8. I am indebted to Ḥamīd b. ‘Askār Abī Asba’ of Āl Dumaynah for the story following. By his reckoning, his ancestor Ḥādī Ḥasan lived some nine or ten generations ago, which if the count means anything in practice, puts us somewhere in the 18th century.

9. For parallel phrases see Ḥabshūsh Ru’uyah pp. 35, 38, 54, 101, 131. The Wā’ilī’s invocation of the market-peace is balanced, of course, by the wrong done Ḥādī’s sister: two potential ‘aybs or shameful things are here opposed. What should ideally have happened is that Dhū Muḥammad rally to defend Ḥādī’s sister.

10. There are several families or fractions with this name. Āl Qumlān are certainly found in Āl Aḥmad b. Kāwî: see al-Ḥajrī Buldān p. 110, al-Maqhāfī Mu’jam al-buldān p. 1435, and Document 4 in
part two, above. The Āl Qumlān family of Dhū Zayd appear in the list of signatories to text B (part six, below).

11. Nāṣir b. Ḥādī is the eponym of a present-day fraction within Dhū Mūsā (see al-Ḥajrī Buldān p. 109). In the list of signatories to text B we find Ḥasan b. Nāṣir, quite possibly his son. “Just-so” stories of this kind are common in explaining, for instance, where people live.

12. Hocart Kings and Councillors p. 256. Having cautioned against common-sense notions of religion, Hocart himself then goes on to elaborate a cosmology of exactly that kind, constituting “society” as an active whole within which institutions gain their sense. I doubt very much that such holism works in most Middle Eastern cases.

13. Habshūsh Ruʿyah pp. 53-5, Yémén 90-4. For the relevant divisions of Nihm, al-Maqhāfi Muʾjam al-Buldān pp. 1770-1. From Habshūsh’s account one might almost think Samh, whose shaykh intervenes below, to be a separate tribe, but in fact they form part of ʿIyāl Ghufayr in Nihm (al-Ḥajrī Buldān p. 746).

14. In general, and by some readings of jurisprudence as a rule, sayyids (descendants of the Prophet) did not give wives to others. The non-sayyid “judges” or qāḍīs intermarried more freely with tribal families.

15. It is hard to see how this fits the usual principle with ḥijrah families that “what is due them is due from them” (mū la-hum ʿalay-hum, as discussed above) unless perhaps “what is due in law” represents multiples of blood-money in addition to the death. Killing a woman in revenge for a woman, and as to the pattern of events.

16. Habshūsh wrote his account two decades after the journey he describes (see Nāʿūm-Sanbar’s introduction to Yémén), but one must say the account rings true both as to the language of the tribesmen and as to the pattern of events.

The meeting at which this drama took place over a ḥijrah woman, and Ḥādīr killing a man from Nihm, was apparently convened to discuss a separate dispute with the neighbouring tribe of Bānī Jubar in Khawlān. When the shaykh says “let us ask for the sinnah” from the dead man’s people in Nihm (i.e. ask that they accept compensation) it is so as not to have Nihm fragment in the face of Bānī Jubar’s aggression.

17. A fourth document in al-Akwaʾ’s collection, concerning the related qāḍī family of Āl al-ʿUkām and dating to AD 1890, makes no explicit mention of Islamic jurisdiction (Madkhal pp. 49-50, Forteresses p. 16). Nor does a slightly later (1903) hijrah for Āl al-ʿUkām, although very unusually for a qāḍī family, it sets certain amends at eleven-fold, not four-fold, and thus marks them as of special importance (Dresch Tribes pp. 138-9). They may well have been scholars and in practice judges, but the provisions we shall see below for establishing Islamic law are nowhere mentioned.

18. jāḥ al- ḡādī ʿalī mādī, al-Akwaʾ Madkhal p. 30, also ibid pp. 29, 42, 44. Alternatively, amr al-ḥādī ʿalī mādī. The effective meaning seems to be that al-ʿaḍī mādī, the qāḍī’s right to take responsibility for others is recognized. The term punishment, in the line preceding, translates taʿdīb (Madkhal pp. 42, 44), which Marino (Forteresses p. 14, 15) glosses variously as châtiment corporel and as simply punir. The former seems to me unlikely, although it is not impossible. The same verb is used elsewhere in the documents to mean simply a fine.


20. lā tuʿqam bi-sharʿah wa-lā yaqbal fi-hā maʿrūd, al-Akwaʾ Madkhal p. 31. I doubt we can properly take this as meaning “ne sont pas comparables” (Forteresses p. 12).

For the quotation following see Madkhal p. 35, Forteresses pp. 12-13. The last line of the quotation is very obscure. It seems to imply that the kiswah or clothes mentioned earlier would be waived if
an oath were received, perhaps to the effect that one were innocent; but the slaughter-beast is owed for any accusation (tuhmah). I have failed to find an explanation or a parallel elsewhere.

21. The Arabic quotations following are from *Madkhal* pp. 30, 40. The first includes the difficult phrase *fi l-mahmi wa-l-muttaham*. Al-Akwa’s suggestion that the second term means someone against whom no fault has (yet) been proved seems doubtful, cf. ibid. 28, 35; nor is his gloss of *mahmi* as *khafi* (hidden) at all certain. Indeed one wonders in context if it might not even be an active participle, “the accuser” as against “the accused”.

22. For parallels see text 1 (the market-guaranty) sections 10, 12 and 14, text A section 17. Where the *al-Ansī hijrah* document differentiates 4:1 intentional from non-intentional, the market-guaranty makes an exactly parallel differentiation according to whether restitution is made promptly or collective responsibility is flouted by delay. I strongly suspect one could swap the wording without any effect in ‘urf. “Deliberate” and “intentional”, as we shall see, do not refer primarily to presumed antecedent states of mind but to actions in the world.
Forms and degrees of truth

1 Even in Islamic law the notion of “intent” or 'amd is not that of English or American court-proceedings. In sharī‘ah it largely depends, as it can do in custom, not formally on premeditation, but on the nature of the weapon used. In custom it will often determine what amends are due, as for instance in text B section 2 (part six, below) where if oaths establish lack of intent then harm to a woman is paid two-fold, but otherwise is paid four-fold; in text B section 4 it seems to determine if amends are acceptable at all. Violating the bond of “the bread and the salt” requires simply compensation if oaths show it was done “in error” but additional amends in case of 'amd (text A section 17: part five, below). Again, where oaths say the act was unintentional, “whoever owes shawfaḥ [amends for offences against women] to the neighbouring tribes..., Dhū Muḥammad as a whole are responsible [for paying] ...” (text A section 9). Otherwise, one presumes, the culprit is on his own, and the rule would apply that “there is no intervening in cases of shameful action”. The very nature of the offence is defined by oath.

2 Men may swear individually to their own actions and also to the wrongs done them. In particular cases the latter kind of testimony requires no support. A person robbed on the way to market, for example, is to be believed (text 1 section 9), as too is a “weak” person wronged by tribesmen (text B sections 30, 44); on the other hand, an arbitrator is a trusted witness as to wrongs done at arbitration (text B section 15), and so is a protected qāḍī as to wrongs done himself, his peace, or property.1 In other cases, multiple testimony may be sought on points of supposed fact: five men from each side, chosen by the other party, must swear to where disputed borders run for instance (text B section 32). But a common formula in 'urf is ‘alā l-mudda’i al-bayyān (or al-'inwā) wa-‘alā l-munkir (or al-mujhid) al-yamīn,2 meaning the plaintiff makes his claim and the (specific) defendant must swear, if he wishes, to his innocence. Often this seemingly individual “debt” (dayn) itself involves compurgation, or collective oath, which assigns both intent and responsibility, as well as establishing points of fact or whether an obligation has been discharged.3 Forty-four oaths are required in case of killing, twenty-two in other cases.

3 The oath-takers do not have to have seen what happened. To describe them as “character witnesses” may mislead, however: their relation with the man accused is more intimate than the phrase implies. For example if someone is killed in a fight between two fifths of Dhū Muḥammad, and the killer’s fifth claim not to know who specifically was responsible, then all of them might swear to that effect and then bear responsibility together (text B
section 34). Swearing to an individual’s action, though he alone is accused, involves as close a moral identity. A witness must himself be, so to speak, “oath-worthy”, but his judgement implies willingness to align himself before others with the person accused, and does not reduce to either dispassion or self-interest. To swear that an action was or was not “intentional” (bi-l-‘and or qasd, maqṣūd, as oppose to khaṭa’ or bi-ghayr al-‘and) is usually to judge whether the accused deserves recognition: whether, indeed, he has sinnah, the general right to give or take protection. It decides, in effect, if his action can be acknowledged in public claims and thus how the case unfolds. The truth-value accorded these proceedings is high, and failure to secure collective oath is explained by saying the defendant or his fellow tribesmen do not dare lie because they fear God (yakhfā min allāh).

Protected places and persons, as much as quasi-contractual “links”, are a crux of moral values. How well men could agree on specific cases is a separate question, for reputation (sum'ah) may fragment indefinitely with each man or section claiming right against the others. “Weak” people such as Jews for instance were individually protected, and there was supposed, in eastern Yemen at the time Ḥabshūṣ was there (circa 1870), to be a second protector, the “neighbour of the error” (jār al-ghawā) who if the first protector defaulted on his obligation or wronged the protégé, would demand from him heavy amends. “Most often,” says Ḥabshūṣ, doubtless justifiably, “they [just] get involved in killing and fighting [each other], quite apart from the losses suffered. Such is the law (shar') of Yemen’s tribes”.

As with the case of markets and of learned hijrāhs, so with protected persons, be they women, “weak” people or the learned, the point of insertion in tribal values is asymmetrical protection and thus the commitment of tribal honour. Beyond this the cases differ. Again let us quote from a recent Sufyānī document, dated AD 1965:

The neighbour (jār, protected person), if someone offends against him then he is due a sheep and clothes’ ... If a man attacks a woman by striking her then she is due amends for tawṣīf, a hundred and ten riyāls and a sheep. If a man strikes his wife at home he must pay [to her paternal kin] a sheep in judgement, and [to her] clothes.

If he is in her guardian’s house and has not complained [to her guardian of her behaviour], he owes a bullock (tab') and one hundred and ten [riyāls] and clothes.

In minor wrongs, the amends due to women vary with situation or structural distance; they do not for protected men (cf. the discussion of jirān as a collective concern, earlier). But amends for more serious wrongs are in both cases four-fold, as they also are for protected qādīs whose position is associated with the promise of learned certainty. Unlike a woman or a weak person, however, the qādī himself has ‘ard or sinnah, in other words he can shelter or protect others. Hence a reference in Qadi Aḥmad’s document (AD 1822):

He will be honoured, respected, and protected by qādī and tribesman [alike]. Whatever is guarded by him or concerns his honour [more specifically, his family affairs], and his property, and messengers, and children, and whatever might shame them, is [to be recompensed] four-fold after absolution. His presence (mawqīf-hu, i.e. the meetings or sittings he convenes to administer justice) are honoured and respected.

The qādī, like the tribesman, has his own domain of “things worth protecting” (urr or mu’awwarāt). More than this, his messenger, in all these agreements, is secure wherever he goes, even if involved in other disputes; and though the qādī himself has
neighbour-right (jīrah) if acting justly, none may invoke such rights at his expense.\textsuperscript{11} The ʿqāḍī’s rights of protection, accorded by the tribesmen, thus seem to exceed, and sometimes contain, those of tribesmen themselves. Even unseemly speech at his expense (kalām mā yaliq) is inadmissible. This sounds very much like authority, yet plainly it had limits, for no lasting political hierarchy emerges.

In Qadi Āḥmad’s personal hijrah-document (1822), those who dissent from his judgement by shariʿah are referred to the Imam’s court (diwān al-imām), “and what comes from the Imam’s court applies [or should be relied on].”\textsuperscript{12} Presumably when a powerful Imam controlled Baraṭ, which happened in the twentieth century, shariʿah judges, appointed or confirmed by the centralizing ruler, monopolized the more serious areas of justice.\textsuperscript{13} Before that, however, we find al-Mahdī Muḥammad, in 1897, merely counter-signing a hijrah-pact as might a notary public. Power (from an Imam’s view, perhaps, righteous order) comes and goes with external circumstance. Throughout the period, and indeed for a great deal longer, we seem to have evidence of what might be thought of as resting state of the system, whereby “customary” law sometimes empowers shariʿah jurisdiction and at other times compensates its absence. The possibilities are spread among a great many kinds of document.

Despite their obvious importance at the period, the ʿqāḍīs of Bayt al-ʿAnsī get no mention in Baraṭ’s main qawāʿid (texts A and B: parts five and six below), save that one of them appears as witness and others as copyists. Nor do chiefs (mashāyikh, nuqabāʾ), such as Āl Juzaylān or the Āl Abū Raʾs whom we touched on in parts one and two, receive mention except as witnesses and guarantors.\textsuperscript{14} In their way, they must have been at least as important as the Baraṭ ʿqāḍīs. It was they who would have raised troops against or in support of this Imam and that, they who would have taken the major payments from such powerful figures, and they, not least, who gained extensive land in western and southern Yemen.\textsuperscript{15} It was external wealth that allowed the “grand gestures” we touched on earlier, resolving the impasses of internal tribal rivalry. Some shaykhs at Baraṭ, not always the most powerful, were hijrah or muhajjar like the ʿqāḍīs: an offence against or by them would have been compensated four-fold, and their status expressed in further pacts.\textsuperscript{16} The greatest of shaykhs, to judge from Document 9 (this concerns the al-ʿAnsīs and the leaders of Dhū Ḥusayn), disputed large sums of tax with their ʿqāḍī allies.\textsuperscript{17}
In brief, anyone set of documents, let alone a single text, provides a very partial view of society at a given date. Each might at best give a slice of reality. Nonetheless, the parties who agreed and in some degree upheld the singular status of “judges”, of shaykhs, servitors, the hijrahs or the market, were tribesmen, whose own assumptions about the nature of truth and responsibility provided points of insertion for others’ views. What “contextual strata” might locate our documents are largely guess-work. Written pacts are not routinely quoted in judgement, though as we saw with al-Shāmī’s horse, they are sometimes invoked explicitly; nor are they as “public” as the edicts of kings. But, as Messick says with Ibb primarily in mind, “It would be difficult to overstate the high regard ordinary Yemenis have for legal documents”. This is a society in which committing collective decisions and positions to scrolls of paper was commonplace, and even individual guaranty at Barat might equally be proved by witnesses or by documentary evidence (text A section 13).

Separating genres of document would for most purposes not be helpful. Political history of the kind sketched in part two shows how misleading it would also be to separate shaykhs, tribesmen, and qādis. The preambles to documents of most sorts show that tribesmen thought themselves to be doing God’s work as much as did their scholarly neighbours or opponents, though the promise of “Islamic” unity which the learned offered was always powerful. But the documents al-Akwa’ presents and those presented here do show, apart from unity of style, a certain unity of assumption about status, recompense, and social order. They are plainly expressions of the same society. In the nature of the case, admittedly, most of our evidence will result from breaches, whether real or imagined, of some ideal order.
To read off from rules to what happens, as many anthropologists used to do elsewhere, is naive. To ignore the rules in pursuit of supposed “practice”, as many would now do, is equally unhelpful, for the analyst’s native common-sense simply fills the gaps left by lack of thought. What law of any kind provides is a clue to local categories, to the usually unstated assumptions or principles that inform what people do and that define in effect who they are. (Not for nothing, though in some ways naively, did the Année Sociologique school pursue droit et morale as a key to social analysis). Even an abstract treatise may thus be useful. A pact or treaty has its own more immediate concerns but will often show, as disputes and judgements do also, a layering of implication that isolated lines or paragraphs make appear as contradictions. To quote a rather tangential authority (Louis Althusser), “C’est là que l’exception se découvre la règle, la règle de la règle, et c’est alors à partir de la nouvelle règle qu’il faut penser les anciennes ‘exceptions’...” Besides listing individual laws, therefore, we should follow through the main implications. Let us concentrate on the larger qawa‘id, text B, dated 1211 hijri (AD 1796). What should emerge, in the nature of a pact like this, is a preliminary map of the moral system.

NOTES

1. al-Akwa’ Madkhal pp. 30, 44, 47. Parallels with early Europe come to mind where for instance in the laws of Wihtraed the testimony of priests is self-sufficient, but lesser clergy and laypersons require “oath-helpers” (Whitelock English Historical Documents p. 398). Throughout the Yemeni material such terms are used as yahla‘ and yamīn, but the verbs yuthabbit and yunajjid also refer to sworn testimony: there seems not to be any difference of meaning, in any of these cases, between yamīn and dayn. Testimony that requires no support is referred to by means of the word thiqah and by qawl maqūl.


3. Multiple oath of course is the Islamic qasāmah. Although largely ignored by textualists, it appears to have been common among tribes in the Arab world: see e.g. Serjeant ‘Dawlah’, Murray Sons of Ishmael p. 231-2, 316. Around Barat such oaths are called simply aymān, and the word qasāmah (which, literally, might imply “dividing up”) seems on occasion to be a synonym for gharāmah, the collective responsibility of cash-payment.

4. In Islamic law this centres very much on the individual –is he, or is he not, an honest man? In custom, where discussion of the subject is formalized at all, it seems also to have depended on arms-bearing status: Serjeant ‘Dawlah’ p. 148, Abū Ghānim Bunyah qabalīyah p. 373.

5. The term ‘amād overlaps in tribal usage with qaṣ. The latter term itself overlaps with niyāh (for a quasi-philosophical discussion of the latter in jurisprudence see B. Messick, Indexing the self, Islamic Law and Society vol. 8/2, 2001). But ‘amād and niyāh do not overlap, the former being very much a “legal” term in tribal usage and the latter referring to a presumed internal state, a state of “conscience” or damīr.

For a good account of “intention” in a parallel system of non-state law see Miller Bloodtaking pp. 53, 63-7. The difficulty of phrasing such material in English derives almost solely from the bizarre pretention in modern Western jurisprudence that actions derive from something like forethought: increasingly, it seems, the equivalent of slaughtering bulls at market is a ritual of personal contrition and thus redemption.
6. There is a general reluctance, even among those who know themselves innocent, to take what might be described as unnecessary oaths. Committing one’s honour like this is not done lightly. But it also true that stories of false oaths often mention how the oath-taker’s descendants were cursed with ill-fortune or how his line died out.

7. Habbsúsh Ru’yah p. 39. Naín-Sanbar (Yémen p. 72) gives protecteur de l’offense, but “error”, I think, is more the meaning here than “insult”. See e.g. Ru’yah p. 54, where ghawā is the antonym of ḥaqq.

8. This will be mis-read by some as if I were claiming that what actually occurs does not matter. That is not what I have said. Until we can grasp, at least provisionally, the local distinctions among different types of person and among different types of situation, “what actually occurs” is a chimera.

9. The term translated here as sheep is jalabah, which looks as if it could as easily mean an item of clothing, and it is common enough to give e.g. kiswah wa-ṣabīghah, meaning a garment and a head-cloth. But the meaning is not in doubt, and often jalaḥah is used to mean specifically a ewe (al-Iryāni Mu’jam al-lughāh p. 147). The passages on the jār and on women are given in reverse order.

10. al-Akwa’ Madkhal p. 46, Forteresses p. 15. Again this is a difficult passage. Marino says “il sera considéré, respecté et protégé, de même que les gens qui se rapprocheront auprès de lui et leurs familles, corps et biens”. It is entirely possible that al-qabili huw mā yalūd means someone taking protection, but mā yalūd appears in an earlier document (Madkhal p. 30) with what looks to be a broader meaning and the string of singular pronominal suffixes (including “his messengers”) surely refers here to Qadi Ahmad, not his protégés. Marino’s reading would be more likely if the text read al-qabili man ḫuwa... For the points made after the quotation see Madkhal pp. 29, 30, 31, 41.

11. In other words, no-one may act to shelter a person from the qāḏī’s judgement by providing refuge or escort. The qāḏī, however, can claim protection in the event of disputes with others.

12. al-Akwa’ Madkhal p. 47. The Imam in question can hardly be the Ṣan’ā’i-based al-Mahdi ‘Abdullāh, whom the tribes seem generally to have disliked. It may perhaps be Ismā’īl al-Kībī (al-Mutawakkil), who several times tried to raise the tribes of Baraṭ; see Haykel Revival and Reform p. 180. For the reference to al-Mahdi Muḥammad, later, Madkhal p. 38.

13. This returns us to the letter of the law, and if the logic of ‘urf or “custom” is sometimes hard to recover, that of shari‘a is no less so. Thus, when Ḥasan Qāyid Abū Ra’s in Lower Yemen was killed by the Turks in 1917 Imam Yahyā imposed a “heavy diyah” (al-Yāzilī al-Thawrah al-bikr p. 71). Sensible and just though the ruling may have been, one is left to wonder what the phrase meant in formal jurisprudence.

14. One should note that such shaykhs or nuqabā’ at all dates appear also as copyists. Though few shaykhs would have made claims to formal learning, we should be wary of supposed divisions of labour between “learned” fiqah or qādīs and “political” shaykhs. Some of the latter, by the standards of the day, were evidently quite highly educated.

15. For the concerns of a great 19th century magnate from Dhū Muḥammad, linking the two poles of Upper and Lower Yemen, see the will or testament of Qāyid Ḥusayn Abū Ra’s reproduced in al-Yāzilī al-Thawrah al-bikr p. 43.

16. Not all shaykhs or even all nuqabā’ are hijrah, and few have ever been hijrah from more than their own “fifth”. For a brief list of which major families have such status with whom at Baraṭ see Dresch Tribes p. 105.

17. The plaint here, for 13,000 riyāds, is from Naqīb ‘Ali’ Abdullāh al-Shāyīf presumably the same man as fell foul a few years later of the Imam al-Mahdi ‘Abdullāh Aḥmad and was executed in Ş an’ā’: Jaḥīfāt ḥawīyat al-mu‘arrith (al-Amri ed. 1998) pp. 93, 99.

18. No document is an innocent source of anything. Wormald shows brilliantly for early European history “that ‘law-codes’ are themselves... a contextual stratum” to be analysed as
such: P. Wormald The Making of English Law (2001) p. 264, also Wormald Legal Culture in the Early Medieval West (1999). In Yemen there was plainly no “Rome” to imitate, nor was there quite a “church”. But the value of composing and then possessing such texts as A and B deserves study apart from their detailed content.


20. The best effort in this direction is still J. Comaroff and R. Roberts Rules and Processes: the cultural logic of dispute in an African context (1981), which attempts at least to deal structurally with “context”. But much similar work requires what Mark Hobart in a different connection calls “an antic theory of the person”. The problem has intensified with anthropologists’ fascination with e.g. human rights: S.F. Moore, Fifty turbulent years of legal anthropology, 1949–99, Journal of the Royal Anthropological Institute vol. 7 (2001). The human world is reduced to an inadequate reflection of bureaucracies in Washington or Brussels; and, while lawyers write much of interest to anthropologists, legal anthropology in its classical form is now moribund.

INDEX

**Keywords:** qadi
Legal summary: substantive and procedural

1 The first thing, says text B (section 2), is wounding a woman. A culprit who shows by collective oath this was done in error pays the blood-compensation twice (dam wa-dhamm), plus a camel and a length of cloth referred to as the price of tashwīf. If he fails to show the wounding or killing was unintentional, he pays four-fold and his right (sinnah, to give and receive protection) is valid or again recognized. This latter clause is surprising. The payment sounds too little. For cash-payment to be taken at all for killing a woman these days it would have to form part of a more complex settlement, whereby honour was somehow satisfied, and even then would usually be described as eleven-fold if it could not be defined as non-intentional (bi-ghayr al-ʿamd). We have no way of telling whether provisions in the Code for a woman’s wounding or death being compensated four-fold were a theoretical provision seldom acted on or whether Baraṭ two hundred years ago was in some sense a rougher place than it is now.

2 Text B section 3 (text A section 4) describes offences against uncircumcised males, where the detail of expectation has changed considerably. Circumcision is nowadays done in the first weeks of life. In those days it came much later, and those particularly in danger of being killed (the only son of a family owing blood to determined neighbours would be the obvious case) had circumcision postponed indefinitely. Although many at Baraṭ now reject the possibility as un-Islamic, it may have been that men could even marry without being circumcised; most insist also that uncircumcised males could not have born arms and their position must have been “like that of women”, but text A section 4 suggests perhaps they had sinnah, so that too must be in doubt. What we do know (or at least this is widely remembered) is that uncircumcised males were once distinguished by a ḥawt, an iron ring or collar around the neck, and their blood-money was that of other men. In the world of the documents, a man or boy who is not circumcised, whatever his age, cannot honourably be killed or wounded.

3 We are told that if he is killed, then the payment due, in addition to the standard blood-money, is a hundred sheep and a camel and a length of cloth (the camel and cloth here are the same as for tashwīf). If the killing or wounding can be shown by oath to be unintentional, then three quarters of the fine are dropped and the culprit again has his right (sinnah) to escort and protection. But, despite this, “the blood remains to be
judged”. In other words, the dead person’s kin may continue to seek revenge: the blood-debt itself and a threat of vengeance can persist indefinitely. Here is a point where rules, so to speak, are governed by other rules. If the culprit has paid the recognized amends, and thus has sinnah, one must visualize a kind of shell-game whereby he moves from the protection of one group or person to another, perhaps seeking escort for specific journeys or refuge for specified periods, and is therefore often safe (in theory) from those who still want his blood.

4 In the following section (text B section 4, text A section 5), which deals with mutilation, such as wounding a man in the face for instance (the term used again is shawfah or tashwif), even that possibility is omitted and perhaps denied. If one secures the oath that one’s act was not intentional, one pays amends; but if the oath is not secured, and one is judged to have maimed a man deliberately, then one has no right, no companion, and no “link” to others (mā la-h sinnah wa-lā ṣāḥib wa-lā ‘ulqah). The culprit has no right to escort or protection. In the end there are only two real options: either the wrongdoer stops constantly at home, besieged in his own house, or he leaves the tribe’s territory and ceases to exist in local terms.

5 Some provisions in the present documents seem archaic at Baraṭ these days, but the principles informing such provisions remain familiar in most places north and east of Ṣanʿā’. It does not often happen that a man is trapped in his house indefinitely; it is not unknown, however. The son of a particular friend in Sufyān, for instance, having committed a squalid act of adultery close to home, spent more than three years like this, never leaving the house in daylight and after dark outdoors, when moving among the sorghum for a breath of air, never striking a match or lighting a cigarette for fear that someone was out on the hill-side with a rifle. At the time of writing, a friend from Baraṭ has chosen the other option and is living at the far end of Yemen, having fled the tribe. He killed a woman in the course of a gun-battle, and although he certainly did not intend to do so, he is not willing even to secure the oath and pay the resulting fine, so living at Baraṭ would mean a constant guard against assassination and for several years he has lived near Taʿizz. In the end most disputes are contained satisfactorily, if not resolved. But it can take some while.

6 To concentrate on extremes is to misrepresent how such moral and legal systems work, and what appear, in for instance fieldwork, as “exceptions” to a rule of collective liability are actually examples of something else. On the middle ground, between exile and unconstrained violence, a person will yataḥajjab, that is, place himself under or be under another’s care. The root hajaba suggests “covering”, and the meaning of this cluster of terms in ‘urf is that someone takes the culprit under his protection and makes himself responsible (yaltazim) for managing the debt the culprit has incurred. If a man from group A injurs someone from group B then not only those two individuals but the two whole groups are potentially at odds: someone else from A will often step in and yahjīb (yahjub) ‘alā the original culprit, perhaps giving a rifle (bunduq al-ḥujbah or bunduq al-wifā) to the claimants. The immediate dispute is displaced to a relation between the claimant and a representative, so to speak, of the person against whom the claim is made, and the representative (if the rifle is taken) is not to be treated as an enemy. Muḥammad al-Sudumi quotes in parallel the formula that man ḥajaba aw taʾayyaba hurima qitāl-hu, meaning roughly that a person who agrees to see through the process of payment cannot be offered violence. This, almost certainly, is what the qawāʿid (text B section 13, cf. A...
section 13 and B section 21) mean by the phrase *al-jār yastaqīm muṣān*, “the neighbour stands in [for the debtor] as protected”.\(^7\)

Acting in this way entails responsibilities, and intervening to “cover” one’s kinsman or neighbour is voluntary. If kinsmen and neighbours refuse any part in the dispute, the culprit is on his own; if they take on the person involved, they also take responsibility for the debts and claims. Numerous distinctions are available in the language of ʿurf, but the texts at hand describe ʿhijbah consistently in general terms which recur in a range of settings (e.g. text B sections 5, 13, 37, 40, 41). The man from section or family A who gives the rifle, and acts in effect as a guarantor, becomes the lazīm: his mulazzim is the initial victim in B, who can invoke the obligation (*malzam*) the lazīm has taken on and can claim from him ʿayb, or amends, if it is not discharged.\(^12\) Text B section 20 says payment for blood is to be made in three instalments, as it seems to have been also in, for instance, al-ʿUṣaymāt until recently and apparently still is with certain Jawf tribes such as ʿAbīdah. It is done through a lazīm, thus displacing the original antagonism between creditor and debtor until full compensation has been paid.\(^13\)

The same could apparently be done, which is less predictable, with amends for a disgraceful action (ʿayb or ʿatb) if the creditor agreed accepting these. Text B section 37 again specifies payment over three years, but says any claim for blood (*nuqṭat dam*) underlying the amends is a separate matter. Creditor and debtor are still not at peace, and al-dhamm qabla l-dam, only once amends for the insult (ʿayb or dhamm) are paid can settlement begin for compensation (*naqṣ* or *dam*). What cannot honourably be done in a case of ʿayb is to prevent the claimant seeking vengeance if he so wishes from the man who insulted or disgraced him, for mā ʿalā al-dhamm iʿtirāḍ, “there is no intervening [no protecting the culprit] in cases of shame or insult” (text B section 23).\(^14\) Nonetheless the qawāʾid set limits on action within the pact. The claimant cannot summon his whole group for a raid (ghazū) on the person who shamed or insulted him but can take only twenty men (text B section 21, cf. text A section 15). All this depends, of course, on the culprit’s neighbours and relatives recognizing what he did was shameful and therefore standing aside. (If they do not, which means they consider their fellow’s initial action was justified, then one is facing a major dispute between tribes or sections). In most circumstances, violence itself is formalized among the pact’s members.\(^9\)

The claimant for an ʿayb, like a man seeking vengeance within the pact, is said to get only three “rifles”, three shots on each occasion, at the man who wronged him (text B sections 20, 21). If he exceeds this, amends are due. The interpretation of the same idea is nowadays liberal, and at present there is almost a routinized process: on the first day one fires over the house, on the second at the top of the house (but avoiding the kitchen area, or tajwāb, where women might be), and on the third day into the walls half-way down. After that one starts on the windows, on the man’s car if he has parked it by the house, on whatever material objects are in reach, while the man himself is placed in effect under personal blockade. He should by then have decided to settle the claim, or one of his relatives or neighbours should yahjib ʿalay-h, take responsibility and arrange payment.\(^15\) If no-one does, or if the claimant refuses cash-amends, then the dispute drags on until blood is taken, and perhaps beyond.\(^10\)

If protection can be withdrawn by immediate neighbours in case of ʿayb, it can also be extended by others in cases of *naqṣ* or simple loss. Provisions for internal disputes among the pact’s signatories are complex, and the texts here are difficult to read. Text A (section 14) and text B (sections 19, 20) deal in closely parallel terms with compensation (
naqīṣah) for wounds or killing. Both use verbs to do with refuge or covering (yahjīb or yatabahijāb, cf. ḥuybah) and refer to obligations (malāżim), but each is unclear at first reading what the obligations are and the texts seem at first to contradict each other on whether a man has or does not have sīnah, the right to take and give protection. Each takes a great deal as understood.

A recent document from Subārah in Sufyān, dated Shawwāl 1384 (March 1965), provides a useful parallel:

Whoever kills for an honourable reason (ʿalā maḥd al-naqāʿ, to clear his name) has the [right to the] first intervention (darak) offered him and his tribesmen.

Whoever of Subārah is present has the right to intervene, and that intervention is [good for] fifteen days ... Likewise the killer has right (sīnah, to protection), and the right is three months: he must move to [take] his right from the sections of Śubārah.

The first intervention (darak), from anyone present of Subārah, can be replaced by rufqah, a more general relation of care and protection, also good for fifteen days but announced at market. A man who commits ‘ayb has no rights to protection, whether rufqah or darak, only to escort from Subārah’s territory.17 Killing for an honourable reason, however, leads to three months’ more general right (sīnah), and the verb yatanaqqal (to move) suggests clearly that to claim this the killer must leave his home.

Among the signatories of the present documents, and particularly among Dhū Muḥammad, there seems to have been a system of refuge or protection such that, if one man wounded or killed another in circumstances that involved no ‘ayb, each fifth but his own would shelter the culprit for a month in turn, or a month and ten days by some accounts.18 This status of qīṭār or refuge was personal. While it lasted, those who had suffered the loss (ahl al-manqūṣ) could not attack the culprit himself but could seek vengeance from his fellows. If they sought vengeance and, rather than balancing the account, lost another man, then the initial culprit’s right of residence was forfeit. According to text B section 19, when the period of residence and shelter with the other fifths expired he retained right of escort but not of refuge.

Whether or not he moves to the shelter of another section, the rule is that, provided no ‘ayb or disgrace has been committed, a man whose opponent refuses payment and seeks revenge has sīnah (right of protection, such as escort) with his fellows; on the other hand, he who refuses payment when those wronged within the pact have said they will accept it has no such right (text B sections 20 and 21, text A section 14). This general morality does not start or end at tribal boundaries, however, but applies to everyone in the region and beyond simply as “tribal custom” (a’rāf al-qabā’īl).

An outsider who owes compensation to someone in the pact thus has no place in their territory or at market (text B sections 7, 25). But the same outsider can take shelter (rabā‘) with another of the pact’s members so long as he pays or agrees to pay this second man what he owes (text B section 7): the second man thus “covers him” (yahjīb ‘alay-h, takes responsibility), and in due course will see his own fellow in the pact is somehow recompensed.19 Neither tribes nor sections are solid, homogeneous blocs. Debtors and creditors, fellow-tribesmen and foreigners, are inter
mixed geographically and socially. What the pact does is claim a moral coherence among the signatories in that everyone agrees what his fellows’ rights are and how these should be recognized. A deliberate breach of those rights by one of the pact against another shames or insults all the pact’s guarantors.

A man protected by others because living in their territory is referred to as qaṭīr (text B sections 6 and 7, cf. sections 19, 23, 30), whether taking refuge or simply living there for other reasons (in much of the area, as we mentioned in part two, people can graze within the borders of other tribes): the two meanings of qaṭīr are distinguished only, though clearly enough, by context. Most people at Baraṭ these days also decline to draw distinctions between qaṭīr and rabī’. Glaser, in the Jawf of the nineteenth century, while agreeing these terms overlapped, suggested the qaṭīr was someone “delegated” by his tribe, whose residence elsewhere expressed an existing relation, while the rabī’ invoked a general right of hospitality; more recently, perhaps with Khawlān al-Ṭīyāl in mind, al-Sudūmī explains the rabī’ as someone seeking protection and the qaṭīr as someone who moves for economic reasons. Text B section 6 implies that at Baraṭ two centuries ago rabī’ was a general term, encompassing both the sayyīr (escort) and qaṭīr, but if so, this is no longer common usage, and in fact the word rabī’ itself is little heard.

The qaṭīr (or rabī’), we should also note, can be either the person protecting or the one protected. Usually the one protected is the one who moves, whether to escape threats of vengeance or simply to graze flocks, but the spatial relation can be reversed. Although not common, this remains intelligible practice. In the late 1970s, for example, people from al-Ma‘āṭirah found themselves at odds with Āl ʿAḥmad b. Kawl of Dhū Muḥammad, and a minor dispute over grazing sheep (in fact, over maḥjar of the kind described in part two) led to several killings. Al-Ma‘āṭirah invited in people from the other fifths of Dhū Muḥammad. So long as such a person lived as qaṭīr alongside the particular families of al-Ma‘āṭirah who feared attack, the latter were reckoned under his protection and that of his agnatic kin.

In brief, the definitional sets expressed through a language of shared male descent do not correspond to the groups who accept responsibility in given case, or who are held responsible, and neither the sets nor the groups correspond to the pattern of people on the ground. Nor, as we explained earlier, do sections or tribes as wholes clash unavoidably in warfare. Let us take a contemporary example that probably corresponds to older practice. Al-Qaḥūm are a small fraction (what text A section 9 of the qawa‘id refers to as a badanah) within Āl Dumaynah of Dhū Muḥammad, and number about 150 people. Their genealogy (or place in the local classification of fractions, at least) is Qaḥūm b. ʿAḥmad b. Ṣāliḥ. Not long ago someone from al-Qaḥūm killed someone from al-Ma‘āṭirah, and at the time of writing there is blood between them: members of al-Qaḥūm are thus in danger of vengeance from the fraction of al-Ma‘āṭirah involved. But their closest relatives within Āl Dumaynah, Āl Qāsīm b. Ṣāliḥ (the fraction that includes the shaykhly family of Bayt Dāris), have no quarrel with al-Ma‘āṭirah and where need be can escort members of al-Qaḥūm anywhere at Baraṭ, There is no question of al-Ma‘āṭirah versus all of Āl Dumaynah, let alone all of Dhū Muḥammad.

In other circumstances (very much as with populist nationalism) a small-scale dispute can erupt without thought into large-scale conflict. To constrain the spread of conflict, meetings are called; so they are to widen a conflict and gain support from whole sections
or tribes, or indeed from distant, unrelated allies. Such meetings are held at market on
market-day or at meeting-places called mawṭā or mīṣrākh. Animals may be proffered and
rifles pledged, as described earlier. Everything is cross-cut by specific relations,
concretized in the system of guaranty, and irregularly members of tribes come together
to guarantee their own moral solidarity as they do the safety of borders or the market,26
actualizing what is meant to be the case anyway. The preambles to texts A and B
(section 1 of each) thus speak of “renewing” together the parties’ brotherhood, their
guarantors, and the customs of fathers and forefathers.

18 The qawā’id al-malāzīm, as texts A and B are usually called, are also a qā’idat ṣaḥb or qā’idat
ikḥā’, a pact of brotherhood. The usual brief formulae of such documents (in effect, that
the signatories undertake to be a single unit in vengeance)27 are spread out through texts
A and B, but concentrated particularly in text A, which deals solely with Dhū Muḥammad.
If someone rejects (yashidd) his fellow, for example, and refuses the claim for
contributions to collective debts or costs, then not only must his section pay in his place
but he himself loses his fellowship (ṣaḥb) in the tribe and thus his right of protection (sinnah)
until he pays his share (text A section 9). As we saw earlier, certain elements such
as the market, borders, women and protected people, are marked as collective matters:
defence of these, in significant contrast to the usual rule, means suspending internal
blood-debts “even if [a man] has disgraced/insulted his [own] tribesmen” (text B
section 11, cf. text A section 15).28 Specific commitments can ideally be of equal weight
(text A section 17):

Whoever fails his fellow (man fāwata ṣāḥib-ah) in their obligations (malāzīm), or in a
payment (ghurm) that gathers them as some obligation gathers Dhū Muḥammad, ...
no longer [himself] has any obligation he can call on or to which he is subject (lā baqā [sic] la-h malzam wa-lā ‘alay-h malzam).

19 The reference in the first line here is to undertakings that are concluded by individual
tribesmen but recognized as just by all.

20 A malzam (pl. malāzīm) is an “obligation”. Some are permanent, such as those to
immediate kin or dependants in the same household. Others are voluntary “links” (‘ulaq),
such as escort or guaranty or that deriving from commensality.29 The law of “the bread
and the salt” has entered English literature, and doubtless French, and acquired a
dubiously “oriental” air, but among tribes in eastern Yemen as late as the mid-1980s it
was real, and even the foreign visitor was taught the rules by concerned acquaintances in
Arḥab, Sufyān, and Dhū Ḥusayn before being allowed to wander off by himself in the
Lower Jawf.30 Text B (sections 13, 25) mentions the convention briefly; text A section 17
spells out the details –so much time for a cup of coffee, so much for eating dates, so much
for a meal of bread and meat.31 Any offence during that period between people who
shared food was actionable in the same way as a breach of formal guaranty.

21 The ability to take on such obligations would distinguish the tribesmen of Dhū
Muḥammad and their fellows from, for instance, the manū’, who live at Baraṭ but cannot
give escort or protection. It defines tribal status. But recognition of “rights” and “links”
as a common concern also defines one set of tribesmen against another, as in text B
section 23 where the signatories to the pact decide not to support or take on obligations
made by Dhū Ḥusayn.32 Commitments may be limited or divided out even within a pact, as
they are between Dhū Muḥammad and al-Ma’āṭirah in text B section 36. What makes a
pact like this, however, is the shared recognition of which links and obligations are
actionable by whom, which expenses (ghurm or gharāmāh) are shared,13 and which
commitments, as for instance to protect the market, are held in common: a particular “obligation” is the concern of all in so far as its breach now compromises shared reputation. In fact malzam overlaps here with ’ulqah and more generally with sinnah, the word we have translated everywhere as “right”. Text A section 14 thus gives madat malāzīm (pl. of malzam) for a set of rights or obligations running out, and text B section 19 in exactly the same sentence gives madat sinan (pl. of sinnah). The terms sinnah, ’ulqah, and malzam appear usually as denoting three aspects of the same thing.

This brings us to a key phrase which recurs throughout text B, ahl al-malāzīm. Given there are three major parties to text B and that no ancestral name defines them neatly against others (part one, above), a general phrase of some kind is needed, and as al-ʿAlimi suggests, it clearly means the tribes or persons “committed” (multazīmīn) to the pact’s provisions. The singular presumably would be malzam, an “obligation” or “undertaking”, perhaps even a section or clause (standard Arabic malzamah) in which such an undertaking was agreed. A reasonable gloss of ahl al-malāzīm would thus be “the confederates” or “adherents to the pact”, and throughout text B it is glossed here as simply “the allied people”. In a more limited sense, tribesmen from Baraṭ say, it means the documents’ signatories, the guarantors. In most passages it plainly includes those for whom they sign, and some malāzīm are of their nature joint. But in many places (e.g. text B, sections 10, 20, 21, 23, 24) malzam is an individual status which can be recognized or suspended by these signatories and the people for whom they give guaranty, a concrete instance of sinnah or general “right”.

The qawāʿid al-malāzīm (texts A and B) set out what types of obligation are recognized and upheld by whom. They do not imply unconditional solidarity. Tribal identity is constitutive, if that word be allowed, and says who is who; it is not predictive in a simple way of who next does what, or of who confronts whom on which occasion. The assumptions apparent in the documents are consistent with what one sees and hears now, or has done in recent decades. Personal obligations are formed or invoked, and upheld by others, in pursuit supposedly of what is just; and a call to arms (nakfah), of the kind described at the start of this chapter, is answered or ignored on the same grounds. He who suffers a loss (al-manqīṣ) is spoken of as oppressed (maẓlīm), which all should recognize. Restitution or absolution, in money or blood, restores in some measure the victim’s standing; but arranging restitution, or its promise, as we have seen, involves a vast range of possible interventions by neighbours, kin, or virtual strangers. One has to get away from ideas of solidary groups, of inherent propensities to violence, and thus of a balance of power, for the balance at issue is a moral balance expressed through tribal identities, each of which has its reputation (sumʿah) as against other tribes and sections.

Text B section 38 thus prescribes what to do if a member of one of Dhū Muḥammad's fifths or of al-Maʿāṭirah (in other words a member of the pact) fails to get satisfaction from his fellows and goes to some other tribe to claim brotherhood (ṣāḥib, ukhūwah or i khā). His fellows, the members of the pact, have to go after him within fifteen days. They give rifles as surety to the people who have taken him in, and if his claim is found to be justified they must pay him his due to retrieve him: judgement in effect rests with those who take in the claimant. The same rules apply, symmetrically, if a person from another tribe claims shelter with members of the pact, and “these are weighty laws” (shuriʿi ghaṣṣābāh). If someone from Dhū Muḥammad or al-Maʿāṭirah goes to another “fifth”, however, claiming oppression by his specific fellows and seeking justice through shelter with others of the pact, two shaykhs are appointed, one from each fifth, to judge
the matter. If those he left are judged at fault and now fail to give him recompense, their guarantor, who signed the pact for them, is “vilified” (shutama) as one would be for reneging on a link of escort.

25 The details vary from tribe to tribe, and I have not heard of anything so elaborate south or west of Sufyān, but the general idea remains widespread in the further parts of northern and eastern Yemen. The process is known as baydā’ wa-khiyār, roughly “whiteness and choice”.

If one has a claim against a guarantor, an escort, a protector of any kind who defaults on a commitment (see text B sections 12, 15, 23, 38, 41), then, to take the most concrete form of the practice, one announces the claim publicly and puts up a white flag and black flag (baydā’ and sawdā’). If the person summoned does not discharge his obligation, or give rifles that guarantee doing so, then the white flag comes down and the black one is left in place. The final period of “choice” (khiyār) begins. Dhū Muḥammad, unlike for instance Āl Sālim or al-ʿAmālisah, seem rarely to place actual flags now and simply make announcements at market by way of the dawshān, though the same terminology is used: baydā’, sawdā’, khiyār. The first phase is usually reckoned at eight days, and the second at eight days, giving a total of two weeks (“fifteen days” as they are counted locally). If the defaulter has still not responded (istaqāma, irtadda) then one places a jīdhn or malām, known also as shutūmah, from shatama to “vilify”. The jīdhn, at simplest, is a blackened stick which stands for the defaulter.

41 It is reckoned an extreme insult, and deprives the people vilified of all rights to escort, refuge, or access to the claimant’s market. It therefore matters where the jīdhn is planted and by whom.

26 In the 1983 note from Sufyān to Banī ʿṢuraym that we quoted earlier we find a distinction between two different cases within the tribe.

The escort or companion (rafīq) who fails in his duty is due a black flag in the market and, according to ʿSubārah’s custom, is vilified in the surrounding countryside (shutama fi l-bādīyah, in other words a jīdhn is placed there, presumably at the claimant’s village); on the other hand, the bondsman or guarantor (kafīl) who fails to act after being formally summoned has fifteen days’ “choice” and then the jīdhn, like the black and white flags, is placed at the market in al-Ḥarf itself. In our documents from Baraṭ, supposedly two hundred years earlier, both the flags and the jīdhn are placed in the market if the claim is against outsiders (text 1 section 11, text B section 23): so can the flags be if a claim is made within the pact. It is forbidden, however, for one of the members of this pact ever to place a jīdhn against another member in their own market, on pain of an eleven-fold fine (text A section 12, text B section 12).

28 Around this concern for the protected market and for common borders forms a shared agreement that certain actions are inadmissible. For example, if one of those governed by the pact steals livestock from another, he must pay four times the value of the animal (text B section 17); if he fails to do so, then his rights as a tribesman are suspended. If he cuts the produce from a fruiting palm-tree, he must pay four times the damage plus a pair of sheep (text B section 31). Certain rules about land-use, not least the seasonal status of mahājir and rights concerning wells (text B sections 30, 43), were touched on in part two.
Assignment of responsibility in killing is mentioned (text B sections 27, 33, 34, 35), and much space accorded to arbitration (text B sections 15, 39, 40, 42). Substantive law is, in a sense, outweighed by procedural.

29 There is scant sign in the texts, any more than in recent ethnography, of formalism: plaints, for example, do not depend on a set form of words. But the bulk of the pact concerns, in effect, when a man has and does not have right, or simmah, and no distinction can usefully be drawn between law and self-help, or even self-help and litigation. The “custom” invoked or specified in these texts is procedural in the sense that it allows or does not allow those at odds with others to claim help from their fellows. One may “have no fellow” (lā hā shāhib), or be backed by the tribe, or more usually and more importantly, be allowed one’s simmah as the process of dispute and settlement unfolds. This is nonetheless law. Indeed, in discussions of ‘urf one is often reminded of the Norse proverb quoted famously by Njál: “With laws shall our land be built, but with disorder [ðólog, unlawful] laid waste”. It might be that, in some measure, possessing such a pact as text B gave a feeling of identity that reached beyond the nested obligations of shared descent and residence.

30 The common assertion by Baratīs that this is a “constitution” is well founded. The agreement presents itself as between free but related persons, signed for by guarantors who are very numerous. The total population (male and female, of whatever age, tribal and non-tribal families alike) in the whole area was of the order of 15,000 souls in the late 1970s. In the 1770s it can scarcely have been half that, and the relevant part, the tribal families of Dhū Muḥammad, may have been far less. The relation between Dhū Muḥammad in Upper Yemen and in Lower Yemen at the time is unclear. Nor is an exact count of names possible (a mere stroke of the pen or a line on a photocopy can divide a name in two by accident or run two names into one), but there are something of the order of 150 signatories named on text B. The ratio of representation, if we can coin a phrase, is therefore extremely high, about one signatory for every ten adult men. (Very roughly speaking, the famous Constitutional Convention at Philadelphia in 1787, at around the time of our Barat texts, would have needed not 55 delegates but approximately 10,000). The sheer number of independent parties to a pact like text B suggests the difficulty of ever enforcing it as a set of rules; it also suggests a general acceptance of the categories and definitions which the pact supposedly “renewed”.

31 Importantly, these texts, and those that al-Akwa’ gives, provide a glimpse of moral structures at Barat, which chronicles and learned biographies ignore or suggest can hardly have existed. The nature of that literature was touched on in parts one and two. We might simply remind ourselves of how conspicuous Barat was at the level of events. If the dates of texts A and B are correct (that is, AD 1763 and AD 1796), then they straddle the al-‘Ansī’s call from Barat for rejection of Qāsimī doctrine (1768), a massive revolt by the Barat tribes against the Imam in Ṣan‘ā’ (1771), and a rising by Ḥusayn b. Ḥasan al-‘Ansī in 1793, through all of which one finds little in the town-centred chronicles but denunciation of the “disbeliever tribes” as in effect savages. Plainly there was more to the land of the tribes (bilād al-qabā’il) at the period than this. Yet text B saw print in Arabic twenty years ago and remains uncited, and al-Akwa’ ten years later on saw no reason to correlate it with his own texts concerning Barat, As so often, the published editions of standard histories obscure our view of who Yemenis beyond learned circles may have thought they were.
The habit that Yemeni authors have formed of including in their work photocopy documents is a huge step forward, but there is surely a great deal out there still to be sorted, assembled, and understood. There may well be other codes like qawā'id al-malāzim.

There are certainly many market-guaranties and pacts of brotherhood; dispute documents, like inheritance papers, are numerous; clues to 'urf at different times and places are often apparent in documentary fragments, and these are often thrown away as the house-cleaning attendant on a change of generation now unfolds in changed conditions. Yemen is simply littered with writing. The “land of the tribes” is no exception. But while epigraphists concerned with the pre-Islamic age correlate their smallest finds to build up a picture of a distant society, analysts of Yemen’s long Islamic history seem content to leave for termites the paperwork of everyday life beyond a few major cities. If the present effort, with all its faults, suggests only that such material is worth exploring, then it serves a purpose.

NOTES

1. The only recent case on which I have much detail concerned a dispute between fifths of Dhū Muḥammad. Āl Aḥmad b. Kawl lost a woman killed and blamed Dhū Zayd, who said she was killed by a stray shot from Āl Aḥmad b. Kawl themselves. An arbitrator found against Āl Aḥmad b. Kawl and judged the shooting deliberate. Though the judgement has still not been implemented at the time of writing (and may perhaps not be) it was certainly bi-l-μuḥaddash, meaning 11 times the woman’s blood-price, which is half that of a man.

2. Circumcision used to be done between the ages of about seven and 14. It was also done this late in many of Yemen’s towns. But accusations that circumcision was never done recur in for instance Saudi denunciations, pre-World War Two, of tribal “ignorance” in al-Ḥijāz: Dickson, quoted Serjeant ‘Sunnaḥ, Qur’ān’ p. 46.

3. Obviously this is a difficult subject to pin down (a gentleman does not enquire about another man’s genitals), but I am sure I knew people 25 years ago who were married yet not circumcised. I suspect that the system has evaporated –if it has evaporated– only recently. In the case of which I am surest the man had been shot in the leg when a young boy.

4. Text A section 4 says also that amends are due, as well as compensation, if one uncircumcised man wounds another. But, unlike the case where a full tribesman offends against such a person, no oath of intent is specified, a point Muḥsin al-Ghuraybī promptly explained as due to the fact the antagonists are “equal”.

5. Cf. al-Sudumī Naẓarīyah pp. 119, 120, 122, Ḥabshūsh Ru’yāh p. 55. Even when blood-money is paid in an ordinary killing the debt of blood in a sense remains. Guaranty for the individual parties at odds may be made permanent, for after money is taken, and the public relation between sections or tribes restored, the wish for revenge might itself endure. This theme recurs elsewhere. See e.g. Bourdieu ‘Sentiment of honour’ pp. 205, 216. Even in the very different world of southern Sudan, where payments are not only complex formally but embedded in elaborate connections of cattle, blood and life, there remains the ideal of eventual vengeance: S. Hutchinson Nuer Dilemmas: coping with money, war, and the state (1996) p. 62.
6. We mentioned in part two, above, provisions for escorting people to “the land of the state” when their other relations expired or were forfeit (text A sections 15, 22, text B section 21). At Barat the short-term arrangement that allows this is called rafaq al-mashadd.

7. What was interesting about this case was its specificity. How realistic the son’s fears were I cannot say, though I remember from many occasions the shutters kept closed at night in the heat of summer; the father, who was my special friend, did not feel at risk and wandered around the area in daylight without a rifle, which in those days was unusual. Similar specificity is found with less personal wrongs than adultery once rifles or slaughter-beasts have been given which make clear the attitude of the culprit’s kin.

8. Obviously if I know where he is then so do all Dhū Muḥammad, including his antagonists. But leaving tribal territory or staying in one’s house both illustrate a principle that is badly understated in most accounts of Middle Eastern tribalism: “out of sight, out of mind”. A standard form of truce at Barat is thus mā fi-h lā ʿarrāh wa-lā jarrah, the main condition of which is that each party simply stays off the other’s land and away from his house or houses.

9. There is a whole series of Vth form verbs like this that usually take the preposition “from”: e.g. yatarafaq or yatasyyar min-nī, he is escorted by me, under my protection. Some, confusingly, seem also to serve as transitive verbs.

10. al-Sudumī Nasāriyyah pp. 150-3. The account he gives of guaranty is accurate and useful, overlapping with that of “brotherhood” as obliging men of a section or tribe ideally to act for each other in this way (ibid. 130-1). “Representative”, in the line before, is my own brief gloss: it is not how tribesmen speak of the relation.

11. For the verb istaqāma see al-Sayūbī (ed.) Ṣafihiṣ p. 71, where someone at Ṣan’ā’ in the 1850s stands forward to pay blood-money on behalf of his fellows and thus contain a dispute. In fact it can mean taking on or accepting any obligation. In text B section 23, concerned with enforcing obligations on men from other tribes, it corresponds to “doing the right thing”, tabayyaḍa, in text A section 18.

12. This is what Stewart (‘Contract’ p. 179), discussing the badu of Sinai, calls a “three party contract”. His account is complex, not least because of close comparison with European legal thought, but the essential points apply equally to Yemen.

13. Such arrangements are specific. If a killing is being paid for, then a separate set of guarantors would be appointed to maintain the peace after payment was completed. If a truce formed part of settlement, then again separate guarantors would be chosen. The man who “covers” his fellow (yaḥīb ‘alay-h) is responsible only for arranging the agreed payments. Someone who arranges payment in this way as a lazīm, with the agreement of debtor and creditor, is formally entitled to part of the payment, by many reckonings a third.

14. Most of the offences that are reckoned ‘ayb are listed in the early parts of text B: wronging someone escorted or granted refuge; violence at a meeting; and breach of guaranty, for instance. Note that if payment of amends for ‘ayb is arranged through a lazīm, then the lazīm is inviolable, as he would be in payment of compensation; but the culprit, for whom he pays, is not. He would not, for instance, be due anything if shot at (cf. text B section 14).

15. It goes almost without saying that in the absence of any sovereign authority, events can be reinterpreted as they unfold. This is what happened in a claim for tashwīf, many years ago now, when someone firing at another’s house ignited a pile of brushwood (Dresch Tribes p. 56). It turns out that the neighbours of the man who owned the wood had agreed he was liable for amends, and his antagonist was proceeding in the way just described. When the wood ignited, the neighbours changed their minds.

16. To be at all confident we have the meaning here it is as well to compare carefully all the passages where sīnnaḥ is recognized or suspended after blood is shed. The provisions in text A section 14 are spread across text B sections 19, 20, 21. It should be noted clearly that, despite the currency of such terms elsewhere, friends from Barat...
have not been comfortable with reading ṭabajjaba or yatābajjah in the present documents. In text A section 14 and text B section 19 many have felt more comfortable reading Ṿajjat (to end or run out) than ṭabajjaba at the start of the section or have insisted ṭabajjaba itself must somehow mean to run out. Though this works for isolated lines, it does not work for the passages as wholes.

17. laysa la-h bayna ʿubārah ‘ulqah tashṭal sawāʾa rafaq al-mashall wa-huwa khamṣat ‘ašar yawman wa-illā fa-šā la-h akh wa-lā saḥib wa-lā ‘ulqah wa-lā nazā wa-man azā-a-h fa-kān mu’ayyib al-jami’ ṭīn ʿubārah. The wording is almost identical to that of the much older Baraṭ documents. Both at Baraṭ and in Sufyān people have said rafaq al-mashall here is the same as rafaq al-mashadd, but I have not heard the first phrase used spontaneously and it may be a scribal error.

18. Again one notes that solidarity is not automatic. In a case like this the man’s own fellows within the fifth have not washed their hands of him, but nor have they agreed to support him actively and thus provoke a fight with the whole of his antagonist’s fifth. If the initial dispute involves men from two different fifths, then there are three fifths left to offer the man refuge in turn, giving a total of three or four months’ cover. During that time a truce or some process of arbitration might presumably start and the problem thus be contained by other means.

19. The provision applies only to compensation, not to amends, i.e. payment for ḿayb or shame. It should also be noted that where the text says pay (more literally, as we shall see, “cough up”) what is meant is agree to pay. Even nowadays, when wealth in cash is far more available that it would have been previously, debts are often managed gradually, though they are not, I think, deliberately drawn out beyond three years to maintain guaranty.

20. The guarantors, as well as the person whose protection has been violated, are then due amends. How these might have been divided, if they were paid at all, is unclear. Perhaps more important is that wronging the guarantors would clearly have lost the man his sinnaḥ.

21. This is not say everyone knows why someone is present in their territory. In the course of a serious dispute between Dhū Muḥammad and Dhū Ḥusayn I met a Muḥammadī living in Ḥusayni territory; in a later dispute with Wā’ilah I encountered a Wā’ilī living with Dhū Muḥammad. People simply accepted that each was somebody’s qaṭīr. The first seemed, as it were, an economic migrant; the second had moved to his in-laws because of trouble at home.

22. Glaser Maʿrib p. 134, al-Sudumī Naẓarīyah pp. 103, 109-10, 136, 140. Ḥabshūsh (Rūʿyah p. 99) mentions rubʿān (pl. of rabiʿ) as meaning share-croppers, perhaps of less than full tribal status; the same meaning attaches to ṣutaraʾ (pl. of qaṭīr) in al-ʿUṣaymāt, where a refugee or someone moving for economic reasons would usually be referred to as labīṭh.

23. The Yemeni qaṭīr is the North Arabian qaṭīr. What philological relation there is between the words, if any, is unclear. But for a close North Arabian parallel to the incomer protecting his hosts near Baraṭ see Jaussen Pays de Moab p. 218.

24. Turning back to the Dāris genealogy in part one, we see that eponyms like this are only five or six generations removed from the present. People will often fill in the gaps quite confidently, and consistently, with personal names. For detail at this level within Āl Dumaynah see al-Ḥajrī Buldān p. 111.

25. No great flurry of rifles and meetings preceded this arrangement: it seemed simply common-sense. Nor does the involvement of an important family of shaykhs make any difference. This kind of pattern is actually far more common than large-scale confrontations between whole sections or tribes even in the event of murder.

26. Small numbers of people may invoke the tribe’s name in doing this for themselves, but others in the tribe may reject the provisions or simply ignore them. If one turns back to the agreement on borders given as Document 4 in part two, above, one sees that not only was one fifth of Dhū Muḥammad missing but the signatories for the others are rather few. Quite possibly the practical effect of their agreement was unimpressive.
27. For simple brotherhood formulae see Dresch Tribes pp. 85, 330-1, ‘Sufyān’ p. 52, al-Sudumī Ṣuṣarīyāh pp. 95-6. Where no redefinition of tribal membership is involved, usually pacts of this kind seem to follow on a crisis, but what was happening at Baraṭ at the time when texts A and B were first signed is a mystery.
28. Cf. Dresch ‘Sufyān’ p. 57 for a similar provision in case of simple blood-debts and thus of revenge or compensation (nāqṣ). But so far as I am aware, this is the only exception in the Baraṭ scheme to the rule that someone owing ʿayb loses his general right or ṣinnah.
29. For the equivalence of such relations see text B section 13 (text A section 13). How far the obligation extended is unclear, as too is the reason commensality receives special mention at a number of points, e.g. text A section 8, text B section 25.
30. Apart from the problem of foreigners having no ultimate guarantor to back them up, one should not take too romantic a view of this: Ḥabūsh’s experiences with e.g. escorts in the 19th century Jawf were not uniformly happy. But other researchers twenty years ago will remember how easy it was, provided one were plainly harmless, to go anywhere one wished in tribal territory and feel entirely safe. With the spread of state power, free movement has become far more difficult.
31. Cf. Ibn al-Mujāwir Tārikh al-mustabṣir pp. 253-4. The details he gives are uncertain, and not quite identical with those here, save that water gave one day’s link as coffee does in text A. Nonetheless the resemblance over so large a span of time is striking.
32. In al-ʿUṣaymāt, far to the west of Baraṭ, a little west of Ḥūth, the word malzam can mean relatives by marriage, as it can further south in Khārif, which conceivably it could do here. Though the usage is not known at Baraṭ these days, and I consider this most unlikely, it is not impossible that in text B sections 19-21 we have two words that look the same: malāzim meaning “relatives/fellow tribesmen” who give the man support and protection (section 19), and malāzim meaning “rights of protection” that have run out (section 21).
33. Joint payment in effect defines tribal unity, to the point where the men of a tribe may be called simply al-gharrāmah (those who pay ghurm): al-Sudumī Ṣuṣarīyāh pp. 50, 73, 75, 130 and passim. In text B Dhū Muḥammad and al-Maʿāṭarah share responsibility for e.g. the market; but it is not clear whether ghurm more broadly is shared as against outsiders.
34. ‘Alīmī: Ṣaḍa’ qabālī p. 118, cf. al-Sudumī Ṣuṣarīyāh p. 127. Aside from our qawāʿid the only clear reference I have to a similar phrase is in Safāḥāt maḥfūlah (al-Sayāghī ed. 1978) p. 68 n. 171, where the editor mentions aḥl al-malzam as supporters of a leader who takes responsibility for their costs and losses. In passing one should also note an association of these words in early sources with ideas of fighting or confrontation, e.g. Nabdāḥa mushirah pp. 106, 120.
35. One does not want to be drawn into false oppositions between e.g. status and contract. Suffice it to say that right action (that which “whitens” a man) is external to the individual and can be sought, accepted, or rejected. The bias of the material at hand is obvious, but it is worth browsing the glossary at the end of the present work and noting how many terms relate to taking on, discharging, or rejecting claims.
36. The balance of power I had thought of as a peculiarly British view of the world, drawn in part from Hobbes and Harrington, in part from a position at the edge of Europe. But discussion with French, German, and American colleagues keeps reverting to this same idea of tribes as solidary masses of people who would press on each other as wholes. Nothing could be more misleading.
37. An obvious indication of this is the way that agreements concerning one tribe or one set of sections are often formally witnessed by signatories from elsewhere. For examples see al-Akwaʾ Maḏḵalapp. 33, 43-4.
38. Whole sections and tribes can change identity by brotherhood (see Dresch Tribes pp. 329-32); individual families can do so as nṣāḥil without leaving memories of profound dispute. Seeking brotherhood because one is oppressed or abandoned by one’s own tribe is nonetheless a powerful statement.
39. This is not so as a formal provision of ‘urf, but the tribe to which the claimant goes will accept him as long as they see his claims as justified, and the tribe he left are thus disgraced until the other tribe’s acceptance is withdrawn. (The story about Ḥādi Ḥasan Abū Asba’ of Dhū Mūḥammad taking refuge with Dhū Husayn that we gave earlier is an illustration). Conversely a tribe who accept an outsider may expel him if convinced he has acted shamefully. Bani Ḥubar of Khawlān thus expelled al-Jarāḍī, who had gone to them for refuge, when convinced by Bin Miṣar of Nihm that al-Jarāḍī had wronged a Jew: Ḥabūshī Ru’yḥāh pp. 37-9, Yémen pp. 69-71.

40. For a fuller account see Dresch ‘Placing the blame’, the title of which plays off the term malām, below. Also Glaser Ma’rib pp. 76-7, 103, 180-1, where the form lā’imah is given for the final part of the process. When I first encountered the procedure it seemed something of an ethnographic rarity, but I am struck by how references to studies. For photocopy material relevant to the tribes see e.g. Abū Ḥasan Abū Asba’ of Ma’rib, Khawlān, who had gone to them for refuge, when convinced by Bin Miṣar of Nihm that al-Jarāḍī had wronged a Jew: Ḥabūshī Ru’yḥāh pp. 37-9, Yémen pp. 69-71.

41. I am indebted to Geert van Gelder for suggesting, at last, a derivation of jidhn. Al-Zabidi’s Tāj al-arūs lists jīdhn as a variant of jidhln, a tree-trunk or wooden post, not least one set up for mangey camels to scratch against (‘ūd yunṣubu l-l-lābil al-jarba’). As to the truth, allāhu ʿl-lam.

42. The passage goes on in terms we shall encounter later: wa-yastarafaq’ alā l-jidhun lā yunṣṭah hattā yashhar wa-yarqhu wa-man l-h ḥaqqu lā yasqat ḥaqqu-ah. The jidhn can only be “struck down” when the culprit is seen explicitly to accept his obligation.

43. For a parallel, Jaussen Pays de Moab p. 153, where within a šabbah livestock must simply be returned or paid for, but within a bin ‘ammah theft is compensated four-fold. Nonetheless, the provision in text B that failure to pay means ones loses šahb is striking.

44. For a brief discussion of traditional legal history on this score, Miller Bloodtaking pp. 248-9, 363 n. 40. Even the great Maitland was inclined to think rigid formulae distinctive of early law, though there is little evidence for it in the early English record: see P. Wormald, Legal Culture in the Early Medieval West (1999) pp. 290, 294, 309 and passim. The assumption was that empty ritual would be later displaced by a care for “objective” evidence. As Wormald suggests, and as one might pursue through much recent literature on early Europe, this rested particularly on a profound misunderstanding of collective oath.

45. Cf. Miller’s comments on Iceland (Bloodtaking pp. 21, 227-9), where the possession of law, without anything resembling kingship, did much to define what Iceland was. For the quote from Njāl, above, ibid. p. 229.


47. Of the 62 delegates nominated, 55 had taken an active part; at the end there were 39 signatories to the famous draft, and the best part of three years’ work was needed to gain ratification from all the states. Much of the effort required to produce the US constitution comes before and after the conference: the popular assemblies that ratified it at state-level give us a far higher ratio of representation, and the agreement reached gave the federal government almost as limited a remit as that of al-‘Itnān’s market guarantors.

Nonetheless the very idea of a delegate or deputy that allowed the process was more inclusive and binding than that in the tribal system. The signatories of text B are merely guarantors (wāmanā’) of and for their men. To mimic Philadelphia in the Yemeni system one would need to assemble a vast and unmanageable meeting, and constantly reconvene it.


49. Sayyid Muṣṭafā Sālim’s Wathāʾiq yamanīyah (1982) marked a quiet revolution in Yemeni studies. For photocopy material relevant to the tribes see e.g. Abū Ghānim ‘unyah qabāliyah,
al-Qabilah wa-l-dawlah, al-Yazili Min al-thawrah al-bikr. The new convention of giving photocopy texts extends to e.g. al-Akwa’ Hijar al-’ilm wa-ma’aqil-hu (5 vols., 1995).

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Keywords: women
Editing conventions

1. To make the texts readable and yet fairly accurate in English is not easy, and the critical apparatus can be cumbersome. Each Arabic text is therefore given separately and in full; photocopies are followed by typed versions of the Arabic and these typed versions are divided into numbered sections for ease of reference. I have then divided the translations into corresponding sections, with commentary to each where needed. First comes the market guaranty (text 1; part four), with an English translation and explanatory notes, then text A (part five) in photocopy with a typed version and summary translation. This is followed, as part six, by a photocopy version of text B, with a typed edition of the text drawn from five manuscript copies and discussions with those who know the “custom” of Baraṭ best, then a more heavily annotated translation. The guarantors in texts A and B are apparently the same (to get the list for A one simply subtracts al-Maʿāṭirah and Dhūʿ Amr from B). I have therefore given only one list, placed after part six, along with the list of transcriptions from a copy of text B given me by Bayt Thawābah.

2. Knowing how far to go with editing is difficult. Obviously one could “correct” the Arabic to the point where a colloquial text disappears entirely, and with it all the ideas one wants to capture; on the other hand, people well used to reading manuscripts of histories or legal works have sometimes found even typed versions of the present documents difficult. I have therefore standardized spellings (in certain copies of texts A and B, for instance, the word miʿah, a “hundred”, might be spelled in three different ways by the same scribe) and added vowelling to several words to help with ease of reading. I have added tamān on occasion (for instance, jamīʿan), and I have written khamsat ʿashar yawm though no one but a pedant would read it other than khamsat ʿashar, or perhaps khamast ʿashar yawm. Where I have added, for instance, a particle or preposition I have said so in the notes.

3. The word for woman (marʿah) I have spelled as such, though it is written and pronounced marah. Elsewhere hamzahs have been added although at Baraṭ none is usually written or pronounced in, for instance, dumanāʾ, naqāʾ, or hāʾulāʾi (the last of these would be pronounced and is often spelled hawlāyi): for ease of reading some hamzahs have been added even where optional, as with riḍāʾ or raḍāʾ. There seems in effect to be no real hamzah al-qatʿ in local usage, so for instance al-awwal, the first, is read lawwal, and in transliteration I have everywhere used the simplest convention, omitting both hamzat
al-waṣal and initial hamzah, so for instance wa-l-awwal (“and the first”), not wa-ʿl-ʾawwal. The word explained as muʿminah (“making secure”, text 1 section 15) sounds in fact more like mūminah.

This is not to say scribes do not sometimes scatter hamzahs at random like confetti.

In places one finds șād in the original for șin (e.g. waṣṭ in text 1 section 14; șariqah for theft in text B section 33; yaṣīr for to go or do in text B section 20), and since this reflects simply local pronunciation and anyway is not done consistently by copyists, I have standardized the spelling. On the other hand yaʿūd, although explained quite firmly by some readers as yaʿūdh, has been left (its relation to the word ʿawd or ʿūd is more convincing anyway, although not altogether clear: text 1 section 13, text B section 34). Dots have been added where terminal hā is obviously tā marbūṭah. But even correcting ẓā to ḍā, as I have in such words as ḍumanāʾ or “guarantors”, looks to my eye slightly overdone: this is really so typical of tribal documents that one almost feels one is reading a translation. Readers should also be aware that most speakers at Baraṭ use alif-mīm in place of alif-lam.

One also finds ʾillā (il-lā, “if not” or “otherwise”) and ʾilā (“to”) spelled the same, and I have differentiated these in the typed versions. Other typical oddities include in hu (or in huwa, “if he”) spelled as inna-hu or anna-hu and kullī man (“whoever”, “all who”) written as one word. These have not been corrected, though in the former case vowels and tashdīd have been added. Where the imperfect or incomplete tense, third person plural, of whatever mood, ends simply with a waw I have added an alif, as I have, more properly, for the third person plural perfect. Faʿlā for the imperative “do” has been left.

Alif maqṣūrah and alif mamdūdah are often not distinguished, nor are the orthographic forms of alif maqṣūrah as an upright alif or the letter yā. Many of these I have left as I found them. Some people pronounce the perfect of “it remained” or “stayed” bāqīya rather than baqīya or baqi. Also, with an absence of pointing, it is possible I am sometimes misreading an active for a passive verb, and readers should not have their judgement too badly clouded; on the other hand, the name Mūsā spelled with an upright alif tends to bring readers up short, so I have standardized the spelling. In summary I have tried to use a light touch but to make the texts easier for readers of standard Arabic. In the notes and glossary, verbs in the perfect tense are transcribed as e.g. qatala though in colloquial usage the final vowel is not pronounced. In the translations, where Arabic verbs appear in parentheses, they are given more as they sound, without the final vowel.

NOTES

1. al-ʿAlīmī (Qaḍāʾ qabali p. 118-41) divides text B into seventy numbered sections, thus fitting the idea of “the Rules of the Seventy” (qawāʿid al-sabʿān). I do not see that the exercise is justified. My own divisions try just to follow the sense of the Arabic, though some of the paragraph breaks are arbitrary.

2. Vowelling is difficult to pin down in speech. I have been as careful as I can manage. Local usage is not itself quite uniform, however. For example, the usual pronunciation of the passive perfect,
form 1, is e.g. qutal, he was killed, not qutila; dhukar, it was mentioned, not dhukira, and so on. That is the pattern followed in vowelling the Arabic texts here. But some speakers consistently pronounce the passive dhikar.

3. This is not to say documents never contain the upright alif. Some from Sufyān, which we have quoted already, do so consistently. But the Barāṭ texts generally do not.

4. Examples can easily be multiplied, e.g. musabbagh / muṣabbagh; sabīghah / sabīghah; mistrākh / mistrākh. Less expectedly, and more confusingly, this can happen with other pairs of consonants, but sīn and sād are the most commonly exchanged or assimilated.

5. For further notes on colloquial Yemeni orthography see Samia Naïm-Sanbar’s introduction to the Arabic edition of Ḥabsbūsh’s Ru’yah. She had a more difficult job than mine in that the original is not accessible. In the present case readers have several photocopy texts to consult, and what other copies I have will be deposited at CEFAS in Ṣanʿā’.

6. Some of these speakers assimilate alif-mīm to “sun” letters, so fī m-bayt but fawq as-sayārah. Others do not, so fawq am-sayārah or taḥt am-shajarah. This does not show in script, with the occasional exception of proper names: e.g. Āl al-Nūfīyah, read by some as Āl am-Nūfīyah, can warp into al-Amnūfīyah or even, which presumably is downright error on the scribe’s part, Āl al-Manūfīyah. I have failed to attach the variation of alif-mīm to geography, age, or section-membership.

7. The odd script out here is the market guaranty (text 1) which writes both illā and ilā as if they were bi-lā, a habit quite common in Lower Yemen but less so in documents from Upper Yemen.

8. Cf. Rossi ‘Diritto’ p. 18, where some oddities of Yemeni dialect are also mentioned, such as the use of qad and of lā. The word illā in fact is commonly used where other forms of Arabic might use aw: e.g. he’ll arrive today or tomorrow, al-yawm wa-illā ghudwā, which sounds very much like al-yawm wa-lā ghudwā. Other colloquial habits, such as lam for the negative with perfect verbs, require no comment.

9. E.g. text A section 4, text B sections 3, 38. One might wish to take this as faʿalā, meaning “then [what should be done is] according to...,” but informants insist it is an imperative form of faʿala.

10. Again, I have failed to spot a pattern. The perfect “to take or make absolution”, naqāya, is generally pronounced naqī. Why some say baqī and others baqā eludes me.
Part 3. Texts and translations
Market Guaranty for Sūq al-ʿInān (Text 1)

قاعدة الحرم: ضمان السوق في العنان

Guaranty of the market, photocopy

Text 1 (original undated): Guaranty of the market

بسم الله الرحمن الرحيم ١
لا يمكنني قراءة النص العربي المقدمة حتى أترجمه.
(9) أن المذكورين الأخوين نقة على من خلف عليه أنه قومه (من قومه) إنه مقبول في وجه الحجار أن يقبلوه ويسوعوا النقطة فقط لم اليه الميم جسماً سبق وفي قدراً فإن عليه مقبول فيه يستقبلوا مولاً الشهر وتُلزمه جسماً ذُكر

(10) وهذه الذي ألقوا نأ محمد أن قواعدي السوق صحية على مواتيرها وما زعم فيها وكن من حصل بين هذين في السوق فإن كان كل تلك العقيرة في يوم يحصل فيها بد (من) دم فكان نقاء الشرع مريح وإن كان من إيجاد كان قائل في كل من يعرف في هذه السوق ولا إجادة عيب صنعة وطيب مولى الشهر والفضل (ولا فاها).backend فكان يتم من الحرم وخراج وكان من مسل في السوق خصم في الحرم كان ينتر السوق في وجه مولى الشهر بعقرة وكان إذا جرأ شن من الآن وأول كان ما هو مثل وهذه صحة من هذا التاريخ وأخر في وجه مولى الشهر تاريخه شهر الفعدة 1225

(11) وتناحوا دو محمد أن من قنيل في صمامة ولا يُلزم من ارتفاع اللفيف فيهم وشئ في العتان بعد ناقل في جمع من حضر من دو محمد يوم الاثنين فكان ما عاد يُبَتِّل منه ضال إلا يندقي ولأ ولايات ولا ارتفاع الجمع حق قهر وإن جات بدئ فيه فقويل وكان هذا يرضوا دو محمد الجمع وكان الشعاع حسب القواعد فواعظ عادة أب وجد.

(12) وتناحوا دو محمد أن الشرفة في الحرم يوم الاثنين أحد الخرم كَرَبَأها فكان أدبها مثل مهبها رأس النقطة برساله والأذى الذي نذو محمد إذا فاها العزم بنزم يقتد القوم إليه. جمع آدم ورضي الله عليه آخ حسب قواعد السوق فإن كان له جار مما له مخزون ولا فيه شأنه. والب من ارتفاع اللفيف مما له رقيق ولا دو لدى مقتصر إلا من اعتراض ينفث حسب القواعد ومن فاها مما لامَّع إلا في الخرم فقط وكاتب حسب القواعد على الجمع بتاريخ الأصل المقول في سنة 1185 ونقله في شهري ربيع آخر سنة 1239

(13) هذا وبعد هذا التاريخ جاء في القيادة مما كُلّف، ومن فعل في فاص القواعد من اللفيل الخارجية إن كان في خذل لاهو كان الجُبر عليه في وجه المنام زار الحقوه هذه وتناحوا دو محمد أن من اتهمن من دو محمد في سرح في العتان ولا في ارتفاع اللفيل على مدينة العتان وطرفه فكان عنه دعائه وشغله وكان ينصح حسب المحمدي سرحه ولا جزاء للفيل فإن ككان المحمدي أسير فكان والد دو محمد في على الكجمع وإن تأخر (من) يُؤُثّر من دو محمد في المساح على فكان غرم وكانوا دو محمد سلموها) ولا له صاحب ولا ابن عم وكان النذروحة جبًا عليه ولا عليه عند دو محمد

(14) وكان يوم يُزعم ما كُلّف عند محمد كان مروع إنه في مدينة العتان فكان يُشْرِح المروع فإنه في السوق والجانب من حرزم فكان موعد عليه دو محمد آخ حسب اللفيل وطيب فيه قواعد صحة على ما فيها وتناحوا احواضه دو محمد عن هذه الزيادة أنها صحيحة على ما زعم فيها. وكان هذا البقية محمد بن عثمان أبو رأس وحصر النقية محسن بن حسن قريلان وحسن بن ناصر قريلن ومقبل على التحرر وحسن وشقيق عنوة على نسمة (وفي حسن ابن علي) وحيى بن أحمد بن دارس وحسن بن ناصر مصطفى وحسن بن هادي وحبوق وحسن بن محمد قناع وفهد بن محمد بن أحمد أبو غرسة
We were asked to copy (naqāl) the market-code and do so verbatim (lafz-hā). After praise to God, whose due is praise, and prayers and peace on our lord Muḥammad and his kin:

SECTION 1

The men of Dhū Muḥammad [all] met together, and God gathered their opinion that they make for themselves a market at al-ʾInān, [to be held on] Mondays –blessed if God wills. They specified for each of their sections a month, [by] fifths: ʿAl Ahmād b. Kawl for a

1. I have added here the prefix bi- to give bi-ḥamās. Most friends from Dhū Muḥammad see no need to do so. The passage would also read more comfortably were there a preposition: lī-āl ahmad b. kawl or min āl ahmad b. kawl shahr(ān).

SECTION 2

They made there, all together, a neighbourly guaranty from each section for whoever of God’s creation should come to market.¹ It is on the honour of (fī waḥīh) the neighbour guarantors [i.e. it is their shared responsibility]. Whoever shames/disgraces his brother there² shall have no fellowship (ṣaḥb, in the tribe), no neighbour-right (jirah), no companionship (ruʾfah), and no answer [to a call for support]. Whoever of his fellows answers him and compounds [the offence]³ shall have shamed/insulted the neighbour guarantor [i.e. the guarantor for his specific section of Dhū Muḥammad].

1. neighbourly guaranty, ḍamān jīrān. The meaning would seem to be that all the signatories share responsibility. I have not found comparable phrases in recent tribal documents, and one would expect instead e.g. ḍamān shabk or ḍamān khashar, or else some construction around the phrase ḍamānъ jīrān.

whoever of God’s creation, khalq allāh. This is an old, well-established usage to describe simply people (see e.g. Ibn al-Muḫāwir Ṭārīkh al-mustabsir p. 146), and 19th century histories elsewhere in Arabia use it constantly. Nonetheless, a point is being made. Part of the tribe’s boast to the world is that anyone at all may come in safety, which apparently is not stressed in parts of al-Ḥijāz, cf. W. Dostal, The special features of the Yemeni weekly market system, New Arabian Studies vol. 3 (1996).

2. there, fi-h, literally “in it”; but this probably has the more general sense of “in matters concerning the market”. Breaches of guaranty, for instance, are as much at issue as are fights in the market-place.

3. compounds [the offence], zād-ah, cf. text A section 14, text B sections 19-21. If the direct object is a person, as it is with the preceding ajiba-h, the meaning of zādā is usually to pay or feed someone, not to abet him; probably the grammatical object here is the offence itself.

SECTION 3

Whoever seeks vengeance there for some previous disgrace (dhamm qad taqaddam) has no [right of] vengeance there.¹ If he acts against² or shames (dhamm) his fellow there, then his neighbour guarantors must pay³ in the culprit’s name four-fold – whatever thing [befalls], four things like it – for what occurred [and must do so] before the [next] market.⁴ He [the claimant] shall not leave the market except that he takes his due (haqq-ah, i.e. what he’s owed) with him.

1. seeks vengeance: naqi is the usual pronunciation at Baraj rather than naqiya. The phrase “[right of] vengeance” here translates naqā‘. I have added haqq where the copyist says something is missing (ḥunā kalimūt matmūsah). The meaning of the text is disputable, however.

Some have insisted that dhamm qad taqaddama (something which “came before”) must refer to an offence on the road on the way to market, others that it refers to a claim made previously at market, by announcement or by setting up flags. The simplest explanation seems to me the most persuasive, that no previous disgrace of whatever kind can be pursued by violence on market-day, cf. Dresch ‘Ḥūth’ pp. 75, 77.

The term dhamm can be used of simply a wound (syn. kawn), not always of a disgrace (syn. ‘ayb), but any offence committed in the market, as in line 2, would be dhamm in the latter sense of disgraceful or insulting action.
2. acts against, *ajbara* (cf. Dresch 'Ḥūth' p. 75), which makes good sense in context (some have read *qajbara*). More usually in Dhū Muḥammad, however, *ajbara* has the sense of acting with someone, as form 1 of the verb (*jabara*) does further west, which would fit uncomfortably with the following phrase, *aw dhamma ṣāḥib-ah*.

3. pay, *yujabbir*. The wording is not as clear as it might be. The usual formula would be that the guarantor *yujabbir al-manṣūṣ* (pays directly the person who has suffered the loss), and thus *yujabbir ‘alā man fa’ala* (pays "on behalf of" the culprit). This could be resolved by reading *man fa’ala fi-h* as the passive *man fa’ila*, but that would not be a common construction in this kind of document.

4. what occurred... before the market, *mā ukhadha qabla l-sāq*. The verb *akhadha* often means something like to "happen" or "befall" (not to "take"), although here it might suggest the guarantor "acquires" responsibility. The verbs *ajbara, dhamma, and fa’ala* between them suggest physical violence is at issue.

Again (cf. note 1, above) some people have argued that *qabl al-sāq* must mean an offence committed on the road coming to market. Others make a more persuasive argument that the intention might be *qibal al-sāq*, meaning what "concerns" the market (cf. Piamenta Dictionary p. 385).

The majority interpretation adopted here -- "before the [next] market" -- is supported by the mention of a *miqāṭ* or deadline in the section following. One has a week to make amends, or promise to do so by giving rifles, and after that one is liable to a formal summons by the claimant planting a black flag.

SECTION 4

Whoever does not pay [on a culprit’s behalf] and is sluggish about this commitment (*miqāṭ, deadline*) has committed a disgrace. He is exposed [to blame] and becomes due having the black [flag] planted against him at every market, and the person who has suffered the loss shall plant [the black flag] in his [own] territory. If [literally, "after"] the nearest [person to the culprit] proves useless [and] the rest of their guarantors in the borders of their territory fail [to act] then the foreign tribes (*qubul khārijyah*) and their own people pay for them (*yujabbir ‘alay-hum*) in accordance with the conditions [laid out] already.4

1. This refers to the process of *bayda’ wa-khiyār* discussed in part three of the introduction. If the guarantor acts promptly he pays four-fold for offences of all kinds among the signatories (just once, perhaps, in making amends to others, but amends must be made); if he fails to make amends, then his rights in the tribe are suspended like those of the original wrong-doer. As the phrase "at every market" suggests, this could go on longer than the usual week or two weeks. Indeed, his rights are suspended as long as the other guarantors agree to the flag remaining in place.

2. the nearest, *al-aṭraf*. Normally *aṭraf* would mean the furthest, but the sense here seems fairly clear: responsibility falls first on the culprit’s nearest relatives in the tribal scheme, then on Dhū Muḥammad as a whole, cf. text A sections 9, 20.

3. fail to act, reading *ya’jazī* or *yata’ajzā* for what many feel might perhaps be *yunajjizā-h* ("do it", or "accomplish it"). The latter reading would account well for the lack of a conjunction before the verb, and for the pronominal suffix, but less well for the line following. It is only if the guarantors in succession fail to act that a need would arise for others to pay.

One might read *wa-yata’ajzā baq̱iyat al-damanā’* la-hum *fi ḫudād bilaḥ-hum*, as I do here, or else *yunajjizā-h baq̱iyat al-damanā’ wa-in hum fi ḫudād bilaḥ-hum... Somewhere, at the least, one needs a conjunction.

4. the foreign tribes, *al-qubul al-khārijyah*, might conceivably refer to other parts of Dhū Muḥammad. Comparison with section 13 makes this unlikely, but there is no obvious reason
why other tribes would “pay on their behalf” (yujabbir ʿalay-hum). If we read tājbir for yujabbir, which Muḥammadīs have conspicuously not done, we can read min as defining who commits the offence. So, “they should pay (tājbir) whether the culprit is one of theirs or from elsewhere”. However we parse the sentence, it is clear that the guarantors bear the main responsibility.

SECTION 5

[The market-goer’s] security from his house to his house, including for ordinary travellers1 and beyond the borders of their own territory [if the culprit comes] from among themselves,2 is five days around market-day, two days before and two days after, for whoever’s people are far off. For whoever is in reach of [or “intending”]3 his [own] territory and his people are near [this security lasts] until he reaches his house, except for their brothers Dhū Ḥusayn: if their territory is near, then they have security on market-day as far as the border on the honour of [all] the guarantors together.4 If each [of those bound by this agreement] gathers his fellow after the payment as mentioned, then they take vengeance for it [i.e. the offence] together, and together seek from him [the culprit] amends for the disgrace,5 and take vengeance [or extract amends] from him such as whitens them [i.e. restores their good name] if they [can] catch him.6 If not, the cutting off [of his access and theirs to market] continues.7

1. [his] security, amān-ah. The subject is left unspecified, but it can hardly be the culprit or the defaulting guarantor in the last part of the preceding section. Everyone has read it as meaning amān al-mutasawwīq, the security of the general market-goer. Note that protection against wrongs by Muḥammadīs extends beyond Dhū Muḥammad’s territory. Ordinary travellers, abū ʿāṣā. There is a family in Dhū Muḥammad, in fact a family of (“weak”, non-tribal) market-people, named Abū ʿĀṣā; but the meaning of “father of the stick” here is almost certainly an ordinary person not carrying a rifle or travelling in an armed group.

2. from among themselves, min anfus-hum, meaning “if the culprit is one of them”, i.e. from Dhū Muḥammad. If the culprit who attacks the market-goer outside Dhū Muḥammad’s territory is from another tribe, the offence is that other tribe’s concern.

3. in reach of, yantarā, i.e. able to get there; or perhaps (the script is very unclear) to intend or to be close, nasama ilā. But Ḥusayn b. ʿAskar Abū ʿAṣba’ reminds me that yansam can also mean yantarā or yanzil, here perhaps with the sense of stay overnight, cf. Ḥabshūs Shūr’īyah p. 75. A provision for people staying overnight at the market would not be unusual, see e.g. Dresch Ḥūth’ p. 68.

4. as far as the borders, adding an alif-lam to give ilā l-ṭaraf, which is how most Muḥammadīs have read it. The texts in fact read bi-l-ṭaraf, which might be simply an orthographic quirk; or the meaning could be “on market-day at most”, i.e. only until sundown. The sentence is judged to refer specifically to Dhū Ḥusayn. Their border is just a few kilometres from al-ʿInān. Some readers have suggested that “as far as their borders” could mean as far as Dhū Ḥusayn’s further borders at Baraṭ, e.g. al-Dahiyah, south-east of Rajūzah, but this would surely depend on some reciprocal agreement about Rajūzah’s market and seems unlikely in view of text B section 16.

5. seek amends from him: this is read by most people from Dhū Muḥammad as muʿāyyibūn (i.e. muʿāyyibn, active participle) ʿalay-h, but yuʿāyyib ʿalā is not a very common construction. Aḥmad Fāḍil’s copy has nāqūn min-ah in the clauses both before and after this. Sāliḥ Muḥammad al-Farajī’s copy, reproduced here, has what looks to be nāqūn fi-h in the first clause, i.e. taking vengeance (or making honourable amends) for the offence, and nāqūn min-ah in the second clause, which would mean taking vengeance or amends from the culprit.
6. if they can catch him, in kāna yaltahaq la-hum. Everyone who has read the passage has given it this meaning, though the construction is unexpected and the literal meaning is “if he were connected with them”. They have also taken naqā’ to mean blood-vengeance. The verb yaltahaq would usually mean “to be attached”, i.e. not expelled or cut off from relations; in which case naqā’ might well be payment of amends, to be made by his fellows if the culprit remains associated with them.

7. The cutting off of access to market, and from relations more generally with Dhū Muḥammad, may affect the individual or his group. If the people of his section pursue him, he has no standing in the tribe and none may help him; if they fail to act against him, they themselves are “cut off” from their fellows in Dhū Muḥammad.

SECTION 6
They made the market for whoever comes to market, whether innocent or guilty, except [for] he who has shamed/insulted them in [matters concerning] the market and its roads and has not then paid.1 He has no security there. They made [it that] on market-day there shall be no confrontation,2 no rising up (quwāmah, against others), and no vengeance. Each [man] is on the honour of his fellow among the neighbours.3

1. innocent, bari (cf. classical barī; with a hamzah); has not then paid, reading maṭall-hum bi-l-bu’d or, slightly less likely, muḥṭil-hum bi-l-‘ayb (cf. al-Akwa’ Mādkhal p.30).
2. confrontation, qublah. This is a common term for a legal process. Tribesmen have nearly all taken it to mean “cause for a legal process”, i.e. a dispute of any kind; people from qāḍī families have taken qublah to mean the process itself and said that, since the market is precisely where one would go to law, the word here must actually be qatlab (killing). I suspect that, despite the script, the intention may originally have been simply fitnah, i.e. violence and disorder.
3. each on the honour of his fellow, kullin fi wajh ṣāḥib-ah min al-jirān. The jirān or “neighbours” here are plainly the guarantors together. Each tribesman is answerable to his guarantor; each guarantor, as we saw above, is answerable to the others.

SECTION 7
The guard for the market at night in al-‘Inān is the responsibility of the people of the month [i.e. those of the fifth whose turn it is].1 Whoever builds a shop there has the right to do so; none shall prevent him. And the market-goer from al-Zāḥir, whether Nawfī or otherwise, is on the honour of/under the protection of the guarantors [from Dhū Muḥammad] coming and going.2 The market-goer in Sūfīn’s territory [is their responsibility] until he gets there [i.e. Dhū Muḥammad are responsible for what befalls him on their own side of the border; Sūfīn are responsible on theirs], from themselves and from all of the foreign tribes (ṣā’ir al-qubul al-khārijyah) according to what has come before.3 The market-goer from al-‘Amālisah or Āl Sālim [is protected] from and to [their territory or borders].4

1. the people of the month, mawlā al-shahr. Strictly speaking this is singular (“he of the month”), but even when the intention is plainly a whole set of people the plural form seems not be used. One thus finds equally fi (or ilā) wajḥ mawlā al-shahr (singular) and wajīh mawlā al-shahr (plural).
2. The whole of this section is drafted in terms that take everything as already understood. But the masculine pronoun in min-ah wa-lay-h deserves noting. In colloquial usage sūq or market is masculine; territory (bilād) and borders (hudūd) are feminine. This seems to me more important than that al-Zāḥir may be masculine.
   Al-Zāḥir is in Bani Nawf’s territory in the Upper Jawf. Dhū Muḥammad, if we look later on in this passage, can hardly be guaranteeing everyone who attends all their neighbours’
markets. The meaning of *mutasawwiq al-Zāhir* must be people coming and going from al-Zāhir to the market at al-‘Inān. But *mīn nawfī wa-ghayr-yh* might perhaps refer to the culprit, not the victim: in other words, anyone coming to al-‘Inān from al-Zāhir is Dhū Muḥammad’s concern, whether the person who wrongs him is from Banī Nafīr or some other tribe.

3. Again the drafting takes for granted an understanding of the system, i.e. “what has come before”. There is little to go on here but geography and the gender of the pronouns. But again, as at the start of section 5, above, *mīn naflās-hum* ... (‘from themselves’ etc.) surely refers to the identity of the potential wrongdoer.

4. While Sufyān has just *ilay-hā, Āl Sālim* and al-‘Amālisah have *mīn-hā ilay-hā*. Attempts to elicit a reason for this lead to lengthy comment on how Āl Sālim and al-‘Amālisah are part of Dahm and thus are “closer” than Sufyān to Dhū Muḥammad, which is true but does not explain the wording.

The different wording may be a slip of the pen or some polite formula, but ‘Abdullāh Yahyā al-‘Ansī came up with an ingenious (if, I think, unlikely) solution. Āl Sālim and al-‘Amālisah have no weekly markets of their own. The phrase *mīn-hā ilay-hā* might therefore refer to Dhū Muḥammad guaranteeing the safety of such people in Dhū Muḥammad’s territory on their way to and from Sufyān’s market.

### SECTION 8

The borders of the market among Dhū Muḥammad are from Mašwar to Ghayb al-Ṭawīl [or “Qubbat al-‘Twāl’] to the foothills at Maqarrah, to the walled gardens at al-Ḥabl, to the place of Āl Mas‘ūd and al-Mabda‘ah, to the mosque by the wash [Masjid al-Sāyīlah, or perhaps “al-Sayyāqīlah”] to the [start of the] cultivated ground at al-Maḥtabīyah [al-Mahtabīyāh?], and where the water runs off from Qarādah to the hilllock (*rizwat*; or channels/tracks, *durūb*) of al-Khadrā’. These are the borders of the market among Dhū Muḥammad [effective] only on market-day. Whatever takes place within (*huwā dākhīl*), these borders among those mentioned is on the honour [i.e. is the responsibility] of him of that month [the fifth whose turn it is]; other things are on the honour of all the neighbour guarantors [together]. Except [in case of] an attack/response (*ghārah*) on market-day against someone who acts against what is being brought to market, if he can be taken there. If he cannot, then [he must be taken] the next day, on the honour of the neighbour guarantors.

1. The favoured reading among friends from Dhū Muḥammad has been Qubbat al-Ṭuwāl, but the only conspicuous *qubbah* or domed tomb in the area is Qubbat al-Mahdī, which dates from about 1901. There is also a place just north of the market called al-Qubbah, and there may be a small tomb there; I have not been able to check. On the other hand, al-Ghayb is a village about 15 minutes walk south-west of the centre of al-‘Inān, and Mašwar is about the same distance south-east. It seems likely that the writer is working clockwise around the market to describe the boundaries.

2. foothills, outcrops, ‘ūrūg; walled-gardens, ḥayat; and al-Ḥabl lies just west of al-‘Inān. Almost certainly this is al-Maqarrah not al-Maqbarah, “the cemetery”.

3. al-Mabda‘ah seems to be a field or a set of fields west or north-west of al-‘Inān, and Āl Mas‘ūd were slaves of the Abū Ra‘r family, whose own maqām lies north-west of the market.

4. Masjid al-Sāyīlah (the mosque by the wash) looks likely. Although not called that nowadays, there is a mosque in the right place, a little north-west of the main market. Several people have insisted it is Masjid al-Sayyāqīlah, as in the photocopy here, or al-Sayyāqīlah, but none has suggested plausibly which mosque this would be or where the name comes from. *Sayyāqīlah* (al-Faraj’ī’s copy) might perhaps be jewellers or metal-workers; *sayyāqīlah* (Aḥmad Fāḍīl’s copy) might be cultivators of some kind.
5. One possible reading here would be jirab al-as’ad, jirab being fields; but no-one can think of a likely set of fields with that name. The intention is almost certainly ḥarth al-sinnah, the place where soil is turned by the plough-tooth, i.e. farm-land. Al-Makhtabiyah is fairly clear in two copies of this text and is a village northeast of al-‘Inān, but much too distant; and the run-off from al-Qarādah, in the clause following, goes the wrong way. Unless there is another Makhtabiyah, nearer the market, the intention must surely be al-Mahtawiyah, due north of the market-place.

6. rizwah is explained as a hillock (syn. tībāh); some favour durūb, in the sense not of tracks but of paths or channels that run-off follows (i.e. the marāḥiq or masāqī). Qarādah is the mountain north-east and east of the market-site. Al-Khadrā’ (or Khadrā) is south of the market. Despite the difficulty of pinning down the names, there is little doubt we are looking at an area only two kilometers or so across.

7. A ghārah is equivalent to a dakkah (text A section 11, text B section 11) or what elsewhere is called faza’. Regardless of divisions among fifths, everyone should turn out immediately to right the wrong. Readers who have taken time over the text have all read ma yusawwaq al-sīq (the script looks more like yusawwar), meaning what is being brought to market: in other words, things attacked or taken on the road to al-‘Inān. Presumably the passage refers to crimes committed by Muḥammadīs.

With this exception, disputes among members of Dhū Muḥammad within the ḥaram are to be dealt with by the people of the month, as are all disputes with or among foreigners; disputes among members of Dhū Muḥammad outside the ḥaram devolve immediately on the whole tribe or are left to the disputing parties.

SECTION 9

Those mentioned who have something taken¹ are [to be] trusted when they swear as to who did them wrong.² If this is plausible,³ [it is] on the honour of the neighbours [i.e. the guarantors] that they accept [the testimony] and pay only the loss.⁴ He [the claimant] need do nothing except swear [to who the culprit was] as previously and [to an] estimate of the loss he has suffered.⁵ If it is plausible, he of the month [must] accept this and is obliged [to act, or perhaps, “is owed”] in accordance with what has been mentioned.⁶

1. who have had something taken, al-ma’kādhdīn. The grammar and sequence suggest ma’kādhdīn should be the culprits who are “taken” in the lines preceding; sense suggests otherwise. One could read the next few words as meaning that culprits should swear to who their accomplices were, but the sentences following suggest far more strongly that al-ma’kādhdīn are the people who have been robbed.

2. trusted [as a witness], thiqah, cf. al-Akwa’ Madkhal p. 30. See also text B sections 13 (part 2), 15, 30, 33.

swear as to who did them wrong, reading ḥalāfa ʿalay-h ann-ah qawm-ah. Some have wanted to read in qawwama, meaning “if he sets the value (qi‘mah)” of the loss or damage, but this seems to be covered separately by qadr al-fāyīt in the next line. The meaning could be very general. Colloquially one says ayn qawm-ah to mean simply “What’s this about?”, “What’s going on?” The possibility that qawm is a particular “group” (such as that to which the claimants themselves belong) seems excluded by the lack of any subsequent differentiation among wrongdoers.

3. plausible, maqīb (syn. ma’qīl). In other words, if the accusation does not defy probability or logic.

4. It seems surprising that only the loss (al-naqīṣah faqat) should be paid, and not multiple amends. See also section 12, below. But in this instance it seems the wrong is done on the road, not in the market-place: if restitution is made immediately, no further amends are due the victim, though they may be to the guarantors.
5. to an estimate of the loss, fī qadr al-fājīt. The terms qadr and taṣdīr with the meaning of estimating or assessing cost are common, cf. Text A section 4 and text B section 3. The word fājīt is from fīta, to vanish or disappear.

A little earlier, the words before yāmin (an oath) are illegible in al-Farajī’s copy, but several people have guessed mā tammā la-hum ilā or mā lam ilāy-hum. Ahmad Fāḍil’s copy has wa-lam ‘alay-h. In documents of this kind ilāy-h and ‘alay-h often look to be interchangeable, and very few people have read the passage other than with the meaning here.

6. In other words, if prompt restitution is made then that is an end of it so far as the victim is concerned. If the people of the month fail to act promptly, however, then the victim or his protectors would have a claim against them.

SECTION 10 (addition of 1225 hijrī)

This is what Dḥū Muḥammad added to it [i.e. to the agreement]. The rules of the market are correct according to their bases/precedents (mawāthīr) and what is written there. Whoever commits an offence (haddah) in the market shall [owe] slaughter-beasts for each offence.1 When [literally, “on the day that”] a matter of blood occurs, the people of the month [i.e. the fifth responsible] shall take vengeance/seek absolution (naqā’) four-fold: if it’s a wound, four-fold; and if it’s a killing, four-fold.2 Whoever acts [with]3 his fellow in an offence against the market or takes his part (ḥijājah) shall have shamed/insulted his guarantor and shamed/insulted the people of the month. The person of the month shall not confront4 the offender there in the haram [i.e. the protected space], but shall follow him from the haram to outside. Whoever draws a weapon in the market shall have blackened5 the haram and [must pay] what covers the market [i.e. a set fine] in slaughter-beasts, on the honour of the people of the month. And if some [other] thing has taken place up until now, it sets no precedent.6 This is correct/true from this date forth, on the honour of the people of the month, dated the month of Qa’dah 1225.7

1. slaughter-beast, ‘aqīrah: although the form is singular, there is no reason to suppose a single animal is required for each offence. For almost any offence several would be more likely, cf. Dresch ‘Ḥūth’ pp. 75, 77, al-Akwa’ Madkhal p. 28.

2. vengeance/absolution, naqā’. A common contrast in ‘urf (see e.g. Dresch ‘Ḥūth’ p. 69) is between naqā’ and ghardā’ vengeance and cash compensation, and most people have said, as they have for section 5, above, that in the present case blood must be taken. This seems to me unlikely. One imagines that extracting four times the blood-money would suffice as naqā’ in most cases, with or without additional beasts or cash for ‘ayb.

3. acts [with], ṣibara, rather than “acts against”, cf. section 3 note 2. This is the more common meaning at Barat, and fits well with what follows: hijājah has usually the meaning of taking sides, cf. text A section 19.

4. confront [him], yulāqīf-ah or yulāqīf bi-h. This is the majority reading, despite the script in the photocopy, and it appears as such in Ahmad Fāḍil’s copy.

5. blackened, ḥammama, i.e. defiled or disgraced. The phrase sulla masal is read less classically by most as shalla mashall, but the meaning is the same: to draw one’s dagger, cf. al-Akwa’ Madkhal p. 28, Dresch ‘Ḥūth’ pp. 75, 77.

6. sets no precedent, mā huwa mathal. Many people, with the same meaning of “example” in mind, pronounce the word mīthl or mithāl.

7. The figure in the photocopy is clear, as it is in the 1275 copy, but it is possible, given the recurrence of al-Qa’dah in section 16, below, that it should have been 1275.

SECTION 11

Dḥū Muḥammad agreed that whoever of the neighbouring tribes (arbā’ al-qubul) fails in his guaranty or obligation towards them and is vilified1 [in the market] at al-‘Inān after
consultation at a gathering of whoever is present of Dhū Muḥammad on a Monday, no truce/ settlement shall be accepted from him unless [he gives] two rifles, or three or four, together worth a hundred silver pieces. If the rifle for it [i.e. the offence] arrives, then it can be accepted. This is for Dhū Muḥammad together to decide. The judgement shall be in accordance with the code/rules, the rules of custom of the father and forefather.

1. vilified, shutama or shutima. This again refers to placing the jiddn, discussed in part three of the introduction and referred to in text A sections 12, 18, text B sections 12, 23. Someone from e.g. Sufyān who has defaulted on an obligation or violated a “link” (ʿulqah) is formally summoned at market; if after 15 days he has not “whitened his face” by doing what he should, the jiddn or malām (“blame”) is placed.

2. consultation, walā (pronounced also walā); cf. al-Akwa’ Madkhāl p. 36. See also mawalāt in text B section 29. The word is quite clear in Aḥmad Fāḍil’s copy of the market text. In al-Farajī’s copy, given here, it looks more like shuwā, which no-one cared to make sense of.

3. These rifles, usually referred to as rifles of whiteness (banāḍiq al-baydā’, cf. text B section 41) are a pledge that one will either discharge one’s obligation or submit to judgement by the claimant’s people.

4. to decide, bi-ridā’ (pr. usually bi-ridā'); rather than a conditional meaning, “if they all agree”. This may seem a fine, or even illusory, distinction; but in recent documents one often finds the phrase in contexts where it looks to mean that everyone has agreed and in fact means they should now discuss the matter, cf. the confusion between British and American English in “tabling” something at a committee.

SECTION 12

Dhū Muḥammad agreed that [in cases of] theft in the market, within the ḥaram at the time it is set apart (muharram, protected) on a Monday, if [the thing stolen] is returned as such (bi-ra’s-hā) then the fine is the same as its price, the amount of the loss at the same amount (ra’s al-naqīṣah bi-ra’s-hā). As to the fine due Dhū Muḥammad if the culprit turns his back on the one responsible, this remains for them all to assess/decide, [both] the fine and the damages, on the honour of the people of the month. When [literally, “on the day that”] a Muhammadī is the thief he shall have no fellow and no brother, in accordance with the rules of the market. If [the culprit] is a jār [i.e. a “weak” non-tribesman], he shall have no neighbour-right (majūrah, no protection) and no-one shall stand up for him (lā fī-h thā’ir). If [the culprit] is from the neighbouring tribes, he shall have no companion/escort (rafiq) and no-one shall intervene on his behalf, except if he offers his rifles (i’taraḍ bi-naḍiq-ah) according to the rules. Whoever refuses (qaffā) turns his back, i.e. defaults on his obligations] shall have no security except within the ḥaram alone, in accordance with the [existing] rules/code [that are binding] on everyone, the date of the original copying being 1185, and it was copied again in the month of Rabi’ Akhir 1239.

1. This follows the usual principle that al-dhamm mithla l-dam, al-‘ayb mithla l-naqīṣah, applied in some markets elsewhere to physical injury, cf. Dresch ‘Hūth’ p. 68.

2. turns his back on, qaffā bi-; despite the preposition bi-, some have preferred to read qaffā (form II). If the object stolen is returned immediately, then the fine due is the same as the object’s cost; if the culprit, having been taken under someone’s responsibility, fails to make prompt amends, the matter becomes more serious.

the one responsible, lazīm. Where the culprit is from Dhū Muḥammad the lazīm here would be his guarantor. For an outsider the lazīm could be anyone from Dhū Muḥammad , so long as the culprit gave rifles as a pledge to pay amends.
3. là fi-h thā’ir: Compare e.g. thāra (“to act”) in text A section 20 and mathār in text B section 18, or yathaww (yathūr) in text B section 9. Although tha’r with a hamzah classically is “vengeance”, I am not at all sure two verbs are distinguished colloquially. To take someone’s part, as here, or to act against them are usually to seek restitution in blood or money.

4. no-one shall intervene on his behalf, là dhi la-h mu‘ārid, i.e. no-one from Dhū Muhammad shall stand between him (i’tarada ‘alay-h) and the guarantors seeking amends from him (cf. al-Akwa’ Madkhal pp. 29, 40, 42). Later in the sentence i’tarada as a transitive verb has a different meaning, to offer or give over rifles for judgement.

SECTION 13 (post-1239 hijri)

After this date there came into the rules/code that which is [written here] verbatim. Whoever of the foreign tribes (al-qubul al-khārijīyah) offends against someone coming to their market, if it happens within their territory then the payment (ta’jbir) for him [i.e. in the culprit’s place, initially, to the person wronged] is on the honour of the guarantors. Moreover they added this. Dhū Muhammad agreed that whoever of Dhū Muhammad is accused of theft in al-‘inān, or whoever of the neighbouring tribes [is accused of theft] in the town of al-‘inān or on its roads, shall be subject to judgement and sooth-saying.

When theft is proved against a Muhammadī, or the neighbouring tribes commit some offence and a Muhammadī is the culprit, he shall have no fellow and no paternal brother. Dhū Muhammad together shall turn on him. Whoever of Dhū Muhammad tarries in acting against him (fi-l-misrāh ‘alay-h, making him pay) is a culprit [too]. Dhū Muhammad shall vilify him [or perhaps, “pay the loss”] and he shall have no fellow and no paternal brother. The obligations on him are live, and he shall have no link (‘ulqah, as of e.g. traveller to escort) among Dhū Muhammad.

1. within their territory, fi ḥadd bilād-hum, i.e. in Dhū Muhammad’s territory. The guaranty is being extended from the market-place itself and roads leading there to the whole of Dhū Muhammad. More than that, the guarantors undertake to make amends to the victim if an outsider should be the culprit and then pursue the claim themselves against the “foreign” culprit and his tribe.

2. soothsaying, bish’ah. There are still people known as mubashshi’ who by numerology or reading the sand can supposedly find lost objects: a generation ago there was a famous practitioner at Baraṭ who would write on the head and hand of a child, who in turn would then “see” the culprit or the stolen goods in a coffee-cup. The dramatic associations of the term elsewhere with ordeals, such as placing hot iron against the tongue (Glaser Mu’rib p. 124), seem not to be prominent at Baraṭ.

A quite different reading may be possible. Badu from Dhū Zayd and Āl Sālim say that in the Jawf the phrase shar‘wa-bish’ah refers to a set fine comprising two oxen and a length of white cloth. Context makes that unlikely here.

3. culprit, gharīm. The meaning is that if, say, a robbery were committed by some other tribe but a Muhammadī was their accomplice, or instigated the crime, his rights would be forfeit.

4. turn on him, ‘awd ‘alay-h, cf. al-Akwa’ Madkhal p. 32. Some at Baraṭ identify this noun with ‘ād, a stick, and argue that the root meaning is to strike as one, like a club; classically, of course, ‘ād can also mean strength or power. But ‘awd (nearly always pronounced that way) seems more likely to connect with ‘āda, ya‘ād, to return.

5. Here following the Ahmad Fāḍil copy. For misrāh see Serjeant ‘Dawlah’ p. 138. What looks in the script to be yu‘akkhir, “to delay” (transitive), “to hold up”, must surely be the intransitive ta’akkhara.

6. vilify him, yashtumā-h, i.e. place a jidhn against him, which in turn means his rights e.g. to give and receive escort are suspended: he is cut off from relations with the tribe. Ahmad Fāḍil’s copy has yusallimā-hā, which is much less likely.
7. I strongly suspect a negative particle is missing here: wa-mā kāna l-malāzīm ḥayyah. The obligations referred to may be specifically those of the guarantors who must act against the culprit, but usually someone who is bound by obligations (al-malāzīm ‘alay-h, as here) also has obligations to call on (al-malāzim la-h), which the culprit does not in this case. See also text A section 17. Aḥmad Fāḍīl’s version has al-malāzīm ‘ayb ‘alā dhū muḥammad.

SECTION 14
When what was mentioned is proved against a Muḥammadī [payment] is four-fold if [the offence] was in the town of al-‘īnān. He shall pay four-fold.† If [the offence] is on roads to the market,‡ and what is taken is from the market-roads, then that which was taken (akhdhāh) is [to be made good] by Dhū Muḥammad, Āl Muḥammad, and those [living] among them§ who are ‘urwah [i.e. the manā‘] or jār [“weak” non-tribesmen]. [This is] on the honour of the people of the month from Dhū Muḥammad responsible [for the market] that month. Whoever of Dhū Muḥammad intervenes on [the culprit’s] behalf,¶ whether brother or fellow, shall have shamed/insulted the people of the month and shamed/insulted [all] Dhū Muḥammad together. The rules/code are true as to what is in them. The notables (ajā‘īd, i.e. the shaykhs) of Dhū Muḥammad agreed that this addition is true [also] as recorded here. The scribe is al-Naqīb Muḥammad b. ‘Arfaḫ Abū Ra’as. Present [also] were al-Naqīb Muḥšin b. Ḥusayn Juzaylān, Ḥasan b. Nāṣir Juzaylān, Muqīb b. ‘Alī al-Bahr, Ḥasan Mifla ba Ḥusayn, Ḥasan b. ‘Alī Dumaynah, Yahyā b. Aḥmad b. Dāris, Ḥasan b. Nāṣir Maḏmūm, Muḥammad b. Ḥādi Yaʿqūb, Ḥusayn b. Muḥammad Qannāf, Muḥammad b. Mahdī Qannāf and Ḥājj Muḥammad b. Aḥmad Abū Gharīsah.

1. Aḥmad Fāḍīl’s copy again differs. Between fa-kāna and yusarrīḥ, the second sentence of the translation here, comes jabbara ‘alay-h wa-lā la-h ‘ulqah. This seems to be a copying error.
2. The form sawāq in al-Farajī’s copy (the photocopy version here) is not usual, and it is most unlikely to be a badly copied plural (aswāq). Most have read this as simply sūq, which is how it appears in Aḥmad Fāḍīl’s copy.
3. living among them, wuṣṭ-hum (classical wasaṭ-hum). This has more than a physical sense. The manā‘ (here ‘urwah), whose position was discussed in part one of the introductory essay, seem to be referred to in Dhū Ḥusayn as qabā‘ il al-wasaṭ, with the meaning perhaps of being in the tribe’s care. Note also the spelling of wuṣṭ with a șād in the photocopy; in Aḥmad Fāḍīl’s copy it is written with a șīn.
4. intervenes, ... taraḍa ‘alay-h, cf. lā dhū la-h mu‘tarid in section 12, above. For a discussion see part three of the introductory essay. No-one can rightly stand between the culprit and the guarantors who want from him amends or vengeance.
5. The name Dumaynah is missing from Aḥmad Fāḍīl’s copy and it does seem unlikely here (no other fifths are named). Obviously, all readings of the personal names should be treated as provisional.

SECTION 15 (addition of 1275 hijrī)
Dhū Muḥammad came to the market-rules and arrived [at an agreement] that these make secure the haram of the market for those involved in an offence (muḥram or muḥrim) and for those not involved.† They [i.e. the rules] exclude no-one.‡ The muḥrim/muḥram is whoever offers insult (mu‘ayyib) and whoever has suffered a disgrace (mushawwaf),§ the killer [or his people] or the [people of] one killed. Whoever has the smallest demand or the greatest demand, they [i.e. the guarantors] shall set it right. The market is for the one who commits a disgrace/insult and for the one insulted, or disgraced, or shamed.¶ It is safe/secure for whoever enters the boundary of its haram on a Monday.

1. The obvious reading seems at first to be muḥarram; so, “protected or not protected”, perhaps referring to the haram itself on market-day or otherwise. But this fits poorly with the
phrase, a few words later, al-m-h-r-m huwa l-muʿayyib. The majority reading is muḥrim or muḥram, with the meaning of (perhaps even as a miscopy of) mūjrim or mūjarām, someone offending or offended against.

Parallels with early Islamic sources might suggest muḥrim as a guarantor or upholder of the market-peace (here perhaps the people of the pact as opposed to members of other tribes), but no-one at Baraṣ has been attracted to this interpretation.

2. exclude, akhrājat. As with muʿmināh (“make secure”, pr. roughly mūminah), in the line above, it is the code or rules that serve as the subject grammatically, not the persons or place.

3. The reading of muʿayyib and mushawwaf here as respectively an active and a passive participle is by comparison with the two following, qāṭil and maqtūl.

4. muʿayyab, mushawwaf, muʿawwar: As explained in the introductory essay (part three), these terms can be given discrete technical meanings but here they seem to be synonyms piled up on each other to stress a point: however badly wronged you may be, you are safe in the market at al-ʿInān on market-day.

SECTION 16

As for outside the ḥaram [and as concerns affairs specifically] among Dhū Muḥammad, the people of the month are in no way responsible.¹ As for the foreigner (mukhrājī), do what is mentioned in the market[-rules], and what is mentioned is on the honour of the people of the month [or “should be referred to them”], who have [behind them] Dhū Muḥammad,² according to the rules and guaranty of the market. In the presence of those who bore witness: ‘Abdullāh b. Ḥusayn Thawābah, Ḥusayn b. Ḥusayn Thawābah, Al-Ḥāṣim b. Ḥusayn, Ḥusayn b. Ḥusayn, ‘Anṣār b. Ḥusayn, Al-Barāq b. Al-Barāq, Al-ʿĀṣim, ‘Abdullāh b. Ḥusayn Thawābah, Al-Barāq b. Al-Barāq, Al-ʿĀṣim.

1. Compare section 8, above. Outside the ḥaram disputes among members of Dhū Muḥammad, even if they concern people going to market, devolve on the whole tribe.

2. on the honour of/should be referred to, ilā wajīh. The use of ilā rather than fi suggests that responsibility is handed to the guarantors by whoever first encounters the problem. Note again, as in section 7, above, the plural form wajīh and the seeming singular mawūl, although the latter plainly means a set of people.

have [behind them]..., wa-dhū muḥammad la-h. This is said to mean that he (i.e. the one responsible for the ḥaram that month, given here as a plural) has Dhū Muḥammad at his disposal or has them to call upon if need be.

SECTION 17

After which, they said: The guarantors from Āl Aḥmad b. Kawl are Ḥasan b. Muḥammad Huwaydah, Muḥammad b. Aḥmad Abū Raʾs, Nāṣir al-Rizayqī, Nāṣir b. Šāliḥ Abū ʿUrūq, Muḥammad b. Šāliḥ b. Nāṣir and Maṣūr b. Hādī Ḥusayn. [These are] for Āl Aḥmad b. Kawl [signing for] whoever was present or not present. Each of them represented and stood surety for his fellow.¹

And the neighbour guarantors from Āl Dūmaynah [are] Ḥasan b. Muḥammad b. Dāwūd, Aḥmad b. ʿĀli b. Mahdī, and Šāliḥ b. Dāwūd together for Āl Dūmaynah. From Dhū Faraj, ʿĀli b. ʿAbdullāh b. Ḥudaysh, and Qāsim b. Aḥmad b. ʿĀṭif –these from Ahl Khamīs– together [or “accordingly”]² as each of them represented his fellow and stood surety for whoever was present or not present.
And the neighbour guarantors from Āl Ṣalāḥ b. Kawl [are] 'Ali b. Muṣṭir, Mahdī b. 'Ali b. Muṭʿab, Nāṣir al-Qawr, Aḥmad b. Milqāṭ, Muṣṭir b. 'Ajlān, and Nāṣir b. Mubārak. These are the guarantors for Āl Ṣalāḥ together [or “accordingly”] as each represented his fellow and stood surety for whoever was present or not present.

And the guarantors from Dhū Zayd [are] 'Umayr b. 'Alī Ṭaššān, Ḥasan b. Aḥmad Ṭaššān, and Raṭīq b. 'Abdullāh. Those mentioned are together [responsible] for Dhū Zayd. Each of them represented and stood surety for his fellow.


After this and a note by the scribe saying that he has added and subtracted nothing, but before the scribe’s name and an official stamp, comes the note:

1. represented and stood surety, qadama wa-kafala. The exact meaning of the first verb is unclear. Although it takes a direct object, as here, it is certainly pronounced as form I, with no tashdīd: A more common formula in documents is qaddama (form II) wa-jah-ah ṣan-ah wa-‘an qabāʾil-ah, “he gives his face [i.e. commits his honour] on his own behalf and that of his tribesmen”.

2. together, khashar, i.e. is a shared responsibility, cf. Landberg Glossaire p. 596, al-Akwa’ Madkhal pp. 32, 43, 48. Oddly, this meaning of the term seems unknown further south in Yemen. It is sometimes used in rural areas of shared land or run-off, as murawwas would be at Baraṭ, but khashar near Ṣanʿā’ means usually things “mixed in” extraneously, such as chaff in a sack of wheat. At certain points in the list here it may be one should read ḥasāb (“accordingly”) in place of khashar.

3. not knowing, ghāfil, but the term in colloquial usage (see e.g. Ḥabshūsh Ruʿyah p. 84) can apparently mean simply “absent”, i.e. man lam yahḍur as in the lists of names preceding.
Agreement among the Fifths of Dhū Muḥammad (text A, AH 1177/AD 1763)

Qawa'id al-Malazim Text A (1177 hijrī) in Arabic
وصمّموا نحن أبا محمد ونجوا كي نكون بينك وبين صاحبنا ولهن السلام على سيدنا محمد وإله سفه النجاة.

(1) حضرنا ذو محمد ونجوا كي نكون بينك وبين أبا وحيح وانتهم مجدون ضحكم وقضاهم وإن ما
قد حصل فيها من الخرافات من هذا التاريخ وأولما أعلين بعد بلين في وجه الصمامة وابنها
قمت الصحبة نية وثاب وكان ما ذكر لحدودهم ضحكم (وكأن تعودوها وصحبها عادة أبا وجد)
وانت فقير لمن حصل بينه وبين صاحبنا أو هذا فرق وهي حسن قواعد مئات القلة

(2) أول شيء (في) إن ما فيه غرض على من تدعى في السوق وطريق إن ما فيه غرضة إلا من
اعترض وطريق بذاته في خجم السوق بشره وقودة وقودة السوق الأصلية على خجمها
وورثها

(3) وكان فعل الشؤفة (فعل المرآة) ما فيه شبيه إلا إذا بافق في الرجل وأعذر فأغلب الشؤفة
أنها خارجية فعدت ذين الغد وكان فيها شرعها (كان بسوق شرعها) وإذا فعل الليل فكان فيه
ذين الغد

(4) وغن فعل في المزاز كان ما له شبيه إلا يخرج في الغد ودي شرط الغد فإن ظن فيه
مكانية بين (فشره) في الغد وعجر (بمعنى وعجر في الغد) (والسابع)
بحمص الغدا (فإن كان الراكب كان على فده (فكان يَنْتِر بين كون وفطل في الغدا)
ويوم يقتلا ملعين وأيهمما قٌن نفسه فكان رجله يَنْتِر بشرها والبيئة تفصل فإنه كون
فعل ما قد وتر

(5) ويوم يقتلا ملعين وبجين في أنهما شؤفة (ويحياء فعل بالوجة) فإن يخرج في الغد في الشؤفة
يشيرها وإن ما يخرج في الغد فكان ما له شبيه (والرقف خُلُو بالبيئة)

(6) وجار الغدا (بين أهل الملاك) إنه ين اربع أيام الودود والقوروي وكان صنعاء والمغرب وأبو
عريس ثمان أيام وبأقي تهامة و (مولو) الين خمسة عشر يوماً وفن بعدا ضحك (ضحك
البيئة) في وجه الجبر ومن غلب صاحبه في شبيه قد قدم فكان ماله ضحك في وجه الصمامة

(7) ورقيقه رقيق، نحن في أن ارتفع في له وامرأة وكان عن غلب فريق
الكلب وجَار البدف فإن ما له ضحكه ولا شبيه في وجه الصمامة وإن كان جار البدف فإن حالي
فيه وحَّطْبك) (هَل هو جارب وعَرْوَة) على شروع الغدا (والتابعة ما له إجارة وكان عن
عدها نقيصة لذو محمد سلاح أو غروة شبيته بها أو قَتِل من ارتفاع الغدا فإن ما له جامع ولا
إجارة وطق رابع على نقيصة سلاح أو غروه فإن لج الودا إلى ربيعة وجماعته كان الربيعة له
وكان يُنْتِر (وان ما لج النوا) فهناك ما له جامع ولا تنزيل ولا إجارة

(8) وكان عُرْوَة الدا وحلم من أتباع الغدا من ذه غائر وخرج إلى جيران ذو غمر وفرآهم
فلظلز لحمي على الجميع وأما مثهم نحن فكلهم بنو على لحم خمسة آل أحمد بن
كول على آل أحمد بن كول وسائر لقام ذو محمد كذلك (آل صلاح بن كول على آل صلاح بن
كول والدمية على آل ديمية وهو غزج على ذه غزج وهو عاطف وده زيد على ذه زيد وده
موسي على ذو موسي كلمه على لحم كل حمسية أما مقد حزت من هذا
التاريخ و.tpl كان في وجه الصمامة وقله مسترخمو ودن هذا التاريخ وشقه بعد الخطاب
حسبما ذكر كلاً (كل أحد يرب) على لحمه ورد المعلام (كلَّ) على لحمه على ما ذكر في
غرور اللحم والدم
(9) وحرات ذو محمد (وتوأجا ذو محمد) إن واحد ومانه سواء وكان ما أيهم ينبذ صاحبه على عادة أحد وحيد في وجه النساء، وهم يحمل قاتل في جرحهم في جيههم، وينبذ الطيار على يدهما طلب عزم الطيار كان ذو محمد بترى على إخالهم ذي بيرونا ولم ما كان إلا واحد في البلد كان في وجه صمائه البينة على تلقاء (من نتبا) الجمع حسب القواعد ومن شرد عيبه صامية القريب، وكان يد عزم وكان مقطعي من بيت وملزم ووضعه وأول قطاع من قبيلته ثم من ذو محمد الجمع في وجه النساء ومنه من كفتا في أرايع القبل والجرب في...

(10) وكان بدر ذو محمد ومؤذنه الذي يحتج ذو محمد ولا لتشتمين من ذو محمد وفعل كان ما أوهع (ما هو) ظريف بوضيتيتل ويشمداه ما أنه ملزم في مجعب بلاد ذو عشر مشرق ومغرب وموكب العنان والموسع مجمع محدد ومحدور ومن فعل فيها كما أنه ملزم ولا يشتكي إلا ظريف بوضيتيتل...

(11) ودكأنه على سوفهم ولا حدودهم على ما ذكر له رفيقه...

(12) وإذا كان وأي ذو محمد طلب صاحبه (طلب رفيقه) غلب كان ما يطلب إلا على أنظار ذو محمد وكان للملعوب خمسة عشر يوماً أيد هو (أن بترى) البضاء على ما وتر في قوفدهم إلا فكان يشعره صاحبه عند أهل وكان في وجه النساء ما أيهم من ذو محمد يشتم صاحبه في السوق...

(13) وإذا أهمل تجد عند صاحبه غلب أما صمان إلا فضل ولا راز بطن ولا ما يعث على شروع ذو محمد أما نظامه أو يهوده أعدول فكان أحاشه وساق الحصن صامته للسنين ولا وإن ما ردى نظمه فكان ما له سينه فإن ما يغذبه بذلكه إلا يشهد شهادته ما كان لزمه...

(14) وذكر كان له فيهم من ذو محمد يشتم صاحبه وارد صاحبه أصلمه فإن كان دور له كون وزارد حصل منه كون فوق الكون الأول فما له سينه وإنه يذكر طرظ وارد قاتل فوق فوق الأذى وهو ممسك مازم فإنه فكان ما له سينه وإن كان أذى في كون وزارد فوق الكون قاتل كنت السينه له ماصيه في القبل وإذا طلب كنت كان وجه الجار إشبهه وكان يوم ما يسوق عزم الكون فكان ما له سينه لا في كون ولا في شتم وكان يوم يبلغ مواك الكون ما يقبل وينقي في كونه فكان السينه تمس في قيل وكون...

(15) وذكر كان له فيهم من ذو محمد يشتم صاحبه في هذه الملعم المذكور كان له صفتح عليه التجمع واللغز من عهدين ونزل وبرموا إلى بيته ولا ما صاده فهم إلى حد ثلاث بنادق برمي بها وسرير ذا متحزنة أو أخطاءه ومن عند قاتل ذو محمد وردت مازم فإنه ورفته في ذكره السون والصباح الذي يجمع ذو محمد أما على خذ أو شوق أو غيره أو عنيفة تجمع ذا هو محمد يوم يحسن كان رفيقه له (من حسن يسلو الدولة وما خرج فله رفيقه) يوسل بينه (ومن ابنه لصاحب صلح وهو خارج من بينه واتنرى منه فله رفيقه إلى بيته)
Here follows the list of guarantors. This in turn is followed by a postscript:

26 This is followed by the names of the witnesses, dated 1177 hijri and then by the list of later copies.
Qawa'id al-Malazim Text A (1177 hijrī): Translation and notes

27 In the name of God the compassionate and merciful. After which, praise be to God and prayers and peace on our lord Muḥammad and his kin, the means of deliverance:

28 SECTION 1

Dhū Muḥammad attended [a meeting] and agreed among themselves on the custom of their fathers and forefathers, [and] that they were renewing their fellowship (ṣaḥb) and their guarantors. Those transgressions [of custom] which have occurred until now will no longer occur among them, on the honour of the guarantors. This confirmation [or “setting right”] is established for small things and great. What is mentioned [here] concerns their borders and fellowship [or “is its renewal and correction”] and [provides] means of settlement (firq, faraq) for whoever has a difference occur between himself and his fellow. This is the solution/settlement. It is five equal codes [i.e. copies of the code], word for word.

1. In one version here we have li-ḥudūd-hā wa-ṣaḥb-hā, where the gender and number of the pronoun raise doubts although the script is clear; in another we have tadjūd-hā wāṣaḥḥat-hā. Here and elsewhere, copies of text A show considerable minor variation although generally the sense is stable. The Dāris version given in photocopy is not the best editorially, but is at least clearly legible in most places; the version followed more closely in the typed edition is that given me by Ḥamūd Abū Ra’s.

The four main copies used, labelled for those who found them for me, are as follows: h (Ḥamūd Abū Ra’s), a (‘Abdullāh Nājī Dāris), s (Ṣāliḥ Muḥammad al-Farajī), y (Yayqar Muḥammad Abū Ra’s). ‘Abdullāh Muḥammad al-Rudaymī’s notes, whose provenance is unclear, appear as (r).

29 SECTION 2

The first thing [concerns] the market. There is no protecting (ʿard) someone who commits aggression in the market or on its roads. There is no right of protection except for he who presents [himself] and puts down (ṭaraḥ) his rifles for the judgement of the market according to its law and codes and the original market-code, its ruling[s] and precedent[s].

1. right of protection, ‘ardah (or ‘urdah). This is the same as ‘ard discussed in the introductory essay, which appears as such in the preceding line, cf. also Dresch ‘Ḥūth’ pp. 71, 75, 78, al-Akwa’ Madkhāl pp. 29, 35. The offender can neither claim protection nor offer, for instance, escort in the tribe’s name.

2. presents [himself], i’taraḍa. This also appears as a transitive verb, as in text 1 section 12, meaning to present or give over something else such as pledges or payment.

3. precedent[s], wuthra or wuthrā, cf. withr, Serjeant ‘Law cases’ (part two) p. 44. Some at Baraṭ go so far as to insist there should be an alif maqṣūrah.

30 SECTION 3

In wounding a woman there is no right (mā fi-h sinnah) unless there are wounds to men and [the man] who wounds the woman claims that she was [hurt or involved] wrongly. He has the debt of intent and she has her [proper] judgement/amends. [Even] if the wound is done by night there is a debt of intent.

1. Copy (y) has min rijāl, the other versions all have fi. The meaning is simply that a fight of some kind was going on at the time the woman was hurt or killed.
2. debt of intent, *dayn al-ʿamid*, meaning one must gather oaths from twenty-two witnesses. In effect *dayn* here means the oath itself. Some have wanted to distinguish two terms, *dayn* and *din*, for debt and oath but this is not the usual understanding.

3. done by night, *fiʿl* (or perhaps *fuʿala*) *al-layl*. There is a commonly quoted understanding in *ʿurf* that *lā bi-layl rafaq,* escorts have no responsibility by night, when presumably the chance of underhand action by others is greater.

31 **SECTION 4**

Whoever wounds an uncircumcised male has no right (*sinnah*) unless he escapes the [assumption of] intent1 and pays the judgement/amends [due] the uncircumcised. If he [the uncircumcised male] is killed, his blood-money and [or “the judgement due is”]2 one hundred sheep [or perhaps “silver pieces”], a camel (*baʿir*) worth twenty-five silver pieces, and a *subāʾiyah* [a length of cloth] worth five silver pieces.3 Wounding an uncircumcised male [is to be judged] according to its extent [or “a comparison made between the wound and killing”].4 When [“on the day that”] two uncircumcised males fight each other and one of them kills his companion, this is to be judged/paid for according to the law of offences against the uncircumcised, and the right is [again] effective.5 If he [the uncircumcised male] is wounded, do what was mentioned above.

1. Informants from Baraṭ have all preferred *kharaja fi l-ʿamid* to *kharaja min al-ʿamid*. Rather than being the intention itself, *ʿamid* here is the collective oath establishing intent or its lack.

2. Two copies have *diyāh* in place of *sharʿ-ah* or *sharʿ-hā*; as if the sense were “the blood-money is a hundred *sinn*. But informants agree that the judgement (*sharʿ*) would have been in addition to the blood-money, not in place of it. The preferred reading is thus either simply, as in copy (a) and in (r), *fa-sharʿ-ah* (or *sharʿ-hā*) *miʿat sinn* or, as in copy (h), *wa-diyat-ah wa-miʿat sinn*, where *sinn* means sheep. Copy (y) has *miʿat qirsh*. For further discussion see text B.

3. Copies (a) and (s), along with (r), have 15 *qirsh* instead of 25. Comparative prices at the time when the texts were first written are guess-work. But in recent decades mature camels have usually cost about twenty times what a sheep does. Though the script is very hard to read, the same ratio of 20:1 seems to be given in Abū Ghānim’s (undated) Bin Zinba’ text: Abū Ghānim Bunyah qabaliyah p. 381.

4. according to its extent, *ʿalā qadr-ah* (or *kāna taqādīr*, a comparison is made). So, if for instance someone lost a leg, and a half *diyāh* was thus owed as recompense, fifty sheep (*sinn*) or fifty silver pieces would be paid in addition. Plus the camel and cloth.

5. the right is [again] effective, *al-sinnah tamdī*. This raises the possibility that the uncircumcised male had *sinnah* in the sense discussed in the introductory essay. Most informants prefer to take it as meaning his kin have *sinnah*, which seems to me to read more into the sentence than is there: one does not lose *sinnah* in this general sense because of others’ actions.

32 **SECTION 5**

When [literally “on the day that”] two [men] fight and one of them suffers *shawfah* [i.e. a wound to the face], then if [the culprit] escapes the [assumption of] intent the *shawfah* is [to be] paid for [literally, “has its covering”]. If he does not escape the assumption of intent then he has no right, and companionship is [here] equivalent to/included in right.2

1. Copies (s) and (y) have *fiʿl bi-l-wajh* after *shawfah*. See also text B section 4. companionship is equivalent to/included in right, *al-rafaq malwi bi-l-sinnah*. This occurs in copy (y) and in (r). The term *malwi* has been explained consistently as *maʾkhūd bi-* or *maʾkhūd min.* rafaq itself (cf. *rufqah*, text 1 section 2) may here be a very general relation, not specifically
escort by ṭaql qaṭ. If one encounters trouble with someone and asks one of his friends or relatives to intervene with him, then one is seeking ṭaql qaṭ. If the friend agrees, he may or may not formalize the arrangement, perhaps by taking from one a rifle. The formal link or 'ulqah might then be referred to as ḥabqah.

33 SECTION 6
The neighbour apart (jār al-tulqa) among the allied people has twice four days whether nomad or villager.1 For Ṣanʿa', the west, and Abū 'Arish it is [twice] eight days. For the rest of the Tihamah and [those living in Lower] Yemen it is [twice] fifteen days. After that the right becomes sound/valid, on the neighbour's honour.2 Whoever deliberately shames his fellow in his right (ṣinnah) has no fellowship, on the honour of the guarantors.

1. the allied people ahl al-malāzim. This phrase occurs only in copies (a) and (y), and nowhere at all elsewhere in text A. I assume that it results from having read and copied text B. But the period of four days plainly applies to the Baḥr area, as opposed to the other places listed twice, thanā. Copies (y) and (s) both have a terminal alif maḍārah, but even with this, most people have read thanā rather than thinw or thinwā, which one might have understood, by connection with ṭiḥna'ā, as simply a "period" of time. Nearly all have explained thanā unambiguously as meaning mathmī, "twice" or "doubled".

2. Copies (h) and (y) have šahhāt al-ṣinnah. The other copies have only šahhāt, leaving the subject of the verb implicit.

34 SECTION 7
His companion is the companion at one's side who accompanies his companion.1 The companion at one's back has no part (jāzāh, i.e. no claim or responsibility) even if [the relation] was announced. Whoever shames the companion at one's side or neighbour of the house has no fellowship (ṣubbaḥ, in the tribe) and no right (ṣinnah), on the honour of the guarantors. The neighbour of the house is he who settles/lives there and is [to be] ruled on [or "is he who neighbours his house and sheep there"] according to the judgement/laws of the tribes.2 The incomer has no part [in collective responsibility or debt]. Whoever from the neighbouring tribes owes compensation (naqiṣah) to Dhū Muḥammad, [be it for] a weapon or livestock that is made known or a killing, has no following (jamā'ah) and no neighbour-right.3 Whoever offers him protection (rabā'ā-h) in the case of compensation for a weapon or livestock, if he [the offender from elsewhere] pays [or promises to pay] his protector and his people, then he has right of protection.4 If he does not pay [or promise to pay] then he has no following, no right of protection, and no neighbour-right.

1. The possessive suffix ("his" companion) seems meaningless. A man who had committed a deliberate disgrace (ayb qaṣīd) would have no companion of any kind. Presumably the intention is to define an escort as someone actually with one, as opposed to the "companion at one's back". Text B section 6 is clearer. Copy (y) has raṭq al-'ulaq after raṭq al-jānāb, as if explaining the significance of the latter term.

2. Copies (h) and (y) both have bāl fi-h from hāla, to live alongside someone. The first has yuḥkaṭ ah and the second simply ḥukm-ah. The other copies have jāra (presumably a verb) bayt-ah wa-ghan-ah.

3. Copy (a) has jāzāh here, echoing the line about the companion at one's back; the others all have ḥa-rah (neighbour-right), which makes better sense. The precise meaning of jamā'ah in this passage is obscure; usually it would mean support or a following in one's own tribe. Copy (a) has a peculiar muddle, rabi'ah jamā'iyah.
35

SECTION 8

The bond of blood and flesh [i.e. from marriage] among Dhū ‘Amr as against the neighbouring tribes with respect to Dhū ‘Amr’s neighbours (jirān-hum, i.e. “weak”, protected people) and settled-folk (qurā-hum, i.e. the manāʾ) [means] the obligation applies to all of them.1 As for them[elves] as against outsiders, all of them act [only] against their section or fifth –Āl Ahmād b. Kawl against Āl Ahmād b. Kawl [Āl Ṣalāḥ b. Kawl against Āl Ṣalāḥ b. Kawl, Āl Dumaynah against Āl Dumaynah, Dhū Faraj against Dhū Faraj, Dhū Āṭif against Dhū ‘Āṭif, Dhū Zayd against Dhū Zayd, and Dhū Mūsā against Dhū Mūsā], and all the sections of Dhū Muḥammad likewise, each of them against [or according to] his section, each against [or according to] his fifth.2 Except that what has [already] happened up to this date is on the honour of the guarantors, and they [i.e. those affected] shall pay what is due.3 From this date onward, once [the obligations are] severed as mentioned,4 everyone acts [only] against his section. As for [rights that derive from] eating together (zād bāṭn), everyone acts [only] against his section as mentioned for the bonds of flesh and blood.5

1. Text B section 8 is less complex. The intention seems to be that claims based on marriage with another tribe are the concern of everyone if they involve “weak” people (jirān) or manāʾ (almost certainly the meaning here of qurā): if, for instance, a tribesman from Sufyān claims assistance from his in-laws in Dhū ‘Amr to right a wrong against a weak person in Dhū ‘Amr, then all Dhū ‘Amr must answer. An alternative reading, not favoured by Muḥammadī but fitting the text well, would be that the in-law here is himself one of the manāʾ or jirān and makes a claim on what in effect would be his mother’s brother’s people among the tribesmen of Dhū ‘Amr. See also section 19, below, where a link of kinship (‘urwah) is referred to. In some copies of text A, and all of text B, ‘urwat al-lahm becomes ‘urāq.

2. Here there seems to be a contrast. Whereas those claims involving the manāʾ or the weak people (jirān) require all Dhū ‘Amr to respond, apparently meaning Dhū Muḥammad, other claims implicate only one’s particular section. Neither (b) nor (y) has the full list of tribal sections (in brackets here). Each says simply Āl Ahmād bin Kawl wa-sāʾir līḥām dhū muḥammad. Both copies were found me by members of Āl Abū Raʿa’s, who belong to Āl Ahmād b. Kawl, but neither purports to have been transmitted solely within that fifth.

3. Here we might perhaps read mulzām or mulzīm instead of malzām. The mulzām would be the person owed a debt or obligation; mulzām is the thing or the person owed. Oddly, no-one has read mulazzām.

4. once... severed, ba’d al-qīṭā. Presumably this means that existing obligations will be respected, but from now on the rule will be as laid out in the document. If so, the caveat has disappeared from text B (section 8), supposedly agreed a generation later, although a general point is made that obligations not be taken on for Dhū Ḥusayn (text B section 23).

5. The length of obligations given by various foodstuffs is specified in section 17, below. But the precise obligations and the penalties at issue are unclear.
SECTION 9

Offences that concern Dhū Muḥammad [as a whole] are the same, whether one [person is involved] or a hundred.¹ No-one shall reject his fellow² according to the custom of father and forefather, on the honour of the guarantors. When [as a result of] such [collective] offences, there is a killing [or “when one of their neighbours is killed”]³ and pursuing vengeance/absolution devolves on a [particular] fraction and the expenses of vengeance are sought,⁴ then Dhū Muḥammad answer by their sections as they [usually] do (dhū yasirū, perhaps “as is proper”). Even if there is only one man in the fraction, it is on the honour of the guarantors of the fraction that they pay for all according to the code/agreements.⁵ Whoever refuses (sharad, i.e. to contribute his share) shames his nearest guarantor. His fraction [then] pay his share and he [himself] is cut off from rights, obligations and fellowship, first from his [own] tribe⁶ and then from all Dhū Muḥammad, on the honour of the guarantors. Whoever owes shawfah [i.e. amends for offences against women, dependants etc.] to the neighbouring tribes and has escaped [the assumption of] intent, Dhū Muḥammad as a whole are responsible [for paying], on the honour of the guarantors.⁷

1. Reading jarāt (or perhaps jarrāt), rather than jirān, in two of the copies. The Dāris text (a) differs significantly from the others in that the first line starts tawājabū and has neither jarāt nor jirān in the first line.

2. reject, yashidd, i.e. in disputes with other tribes one cannot deny responsibility, and say simply that one’s fellow is responsible for his own misfortunes. Actually one can do that, in theory as well as practice: if he is in the wrong one can say so. Perhaps the stricter meaning is that one cannot gratuitously deny collective responsibility, or deny it once a dispute has become general and a meeting of the tribe has been held.

3. Again copies differ as to whether this should be jirān or jarāt. jirān here could mean “weak” people under tribal protection, but the balance of probability would be that tribesmen are referred to, and thus the usual division of amends and costs in conflicts that involve the whole tribe. Overall jarāt is by far the more likely reading, to mean wrongs or disputes that affect all Dhū Muḥammad.

4. In (a) and (s) the script is particularly unclear, and people have suggested yanḥā, yunḥā or yunḥāḥī al-ṭard; a few have even suggested it should be yanḥāz. Some copies look to have yantaḥ. A collective debt devolves on, or is referred to, the fractions of the tribe: each fifth or khamīs pays the same, and within the fifth expenses are then subdivided. expenses of vengeance, ghurm al-ṭirād, i.e. blood-money owed outsiders, and probably also expenses incurred in war. Copy (s) inverts the terms here, raising the possibility that ṭirād is not an abstract noun but means the persons seeking vengeance.

5. that they pay for all. Again the script is unclear; ilā, illā, and ‘alā naqā‘ al-jami‘ are all suggested, as is illā tanaqqā (more likely is ann tanaqqā. The meaning is fairly plain, however: the guarantors are responsible for all the members of the fraction contributing to amends (naqā‘) that absolve the tribe.

6. tribe, qabīlah, here plainly meaning just a small fraction or section of Dhū Muḥammad, a badanah or laḥmah.

7. A number of people have suggested this refers to men having daughters married into other tribes. The mention of ‘and makes it almost certain, however, that the reference is to amends owed by Muḥammadis to outsiders for offences against women, houses etc. If the damage is done in error, all Dhū Muḥammad contribute to amends; if it is deliberate, then presumably the tribe can disown the culprit.
SECTION 10

At a meeting or conclaves of Dhū Muḥammad, where Dhū Muḥammad [as a whole] meet, or two sections of Dhū Muḥammad, if [someone] commits an offence/inflicts a wound there, he shall have no security except his companion shall see him to his house. After he has seen him [to his house], he [i.e. the culprit] has no [claim on or ability to enter] an obligation (malzam) at meetings anywhere in the territory of Dhū 'Amr, east or west or even at market in al-ʻInān. And al-Muwassa', the meeting-place of Dhū Muḥammad, [or “the space of a meeting”; or simply “a meeting”]1 is delimited and guarded. Whoever commits an offence there has no obligation [to call on] and no right (sinnah e.g. to refuge), except that his companion/escort see him to his house.

1. security, imnah (or amnah), among the most general of all these terms. Copy (a) has sinnah.

One might have expected azā or wazā here to stress the immediate and temporary nature of such protection, cf. section 16, below.

In the first part of the sentence there seems to be something missing in all our copies (as there is in text B), if only a pronoun to denote the culprit.

2. As in section 8, above, Dhū 'Amr appears to mean exactly the same as Dhū Muḥammad. Although witnesses (shuhūd) from al-Ma‘āṭirah are mentioned at the end, all the guarantors (ḍūmanā) for text A are from Dhū Muḥammad’s fifths.

at market in al-ʻInān, mawkab al-ʻinān. The term mawkab is explained not as the crowd or procession of market-goers (classical mawkib) but as the extent (ṣāḥah) of the market, the bounds of the ḥaram or market-enclave, cf. wakab, awkāb, boundary stones, Piamenta Dictionary p. 531.

3. the space [of a meeting], mawsa': this is the reading usually favoured by Muḥammadīs, as if this sentence simply stresses the one preceding. Copy (y) has an alif-lam sketched in as an afterthought as though the writer did not understand what he was transcribing; copy (s) has wasa', and (a) al- wasa', which makes no sense. Copy (h), along with (r), is fairly clear, however, and all the copies except (y) have majma' after the word.

The intention was almost certainly al-Muwassa’, a site just south of Sūq al-ʻInān where meetings were traditionally held and which supposedly was hijrah or protected. If this reading is correct, it is worth noting that al-Muwassa’ gets no mention in text B section 10, supposedly written some years later.

SECTION 11

[Responses to] offences (dakkāt) against their market or their borders are [dealt with according to the rules] as mentioned: he has his escort.1

1. This line, which occurs in all our copies, seems somewhat out of place. The point is made in section 15, below, that claims of vengeance within Dhū Muḥammad are suspended in such cases. The phrase “as mentioned” (ʻalā mā dhukara) perhaps refers back to section 9 and the division of payments.

SECTION 12

If it should be that one of Dhū Muḥammad seeks amends from his companion he shall only do so in view of/with the agreement of Dhū Muḥammad.1 The person [thus] summoned has fifteen days to do what is right [literally “to give the white”]2 according to what is laid down in their code/rules. If not [i.e. if he fails to do this] then his fellow vilifies him before his [i.e. the claimant’s] people.3 It is on the honour of the guarantors that no-one from Dhū Muḥammad shall vilify his fellow in the market.

1. in view of/under the supervision of, 'alā naẓr, cf. Piamenta Dictionary p. 489. For further discussion see the notes to text B.
2. Copies disagree as to whether this should be yadū-h, raddū, or yaraddū. It is not clear why the verb should be plural, and one would anyway expect yartadd.

3. vilify his fellow, yashūtum ṣāḥib-ah. This refers to placing a jīdhn, as described in part three of the introductory essay. The details are explained in text B section 12. In a case like this the jīdhn or “blame” (malām) would be set up in the claimant’s village or in front of his house.

SECTION 13 (part one)

If any of them proves [a claim for] amends against his fellow concerning guaranty, truce, eating together, or whatever deserves amends according to Dhū Muḥammad’s laws, whether [he proves this] by a document/agreement or by honest witnesses (shuhūd ‘udā‘l), then [if he [the one claimed against] owes shame-money (ḥasham, vb.) and he pays the shame-money (sāq al-ḥashm), he has his right [e.g. to refuge or escort]. If he does not pay [or undertake to pay] the shame-money then he has no right. If [the claimant] does not prove his claim by a document or witnesses, then his opponent owes [an oath] that he did what was right (ann fa’al ‘alā maḥd al-naqa‘). If witnesses are found, he owes [or “must swear to”] what [their] testimony confirms.

1. amends, ‘atb. Copy (a) has najjada ‘ayb ‘ind ṣāḥib-ah. The terms ‘atb and ‘ayb can be virtually synonyms in a context like this: both refer to amends for a breach of honour, not simply compensation for wounds or damage (naqṣ, naqṣah).

The section of the text in curled brackets, below, is missing from copy (a) but occurs in all the others and also, slightly differently worded, in text B.

2. As with the market-guaranty (text 1) we should remember that payments could rarely have been made promptly, and “if he pays the shame-money” (in sāq l-ḥashm) could well mean in practice that the man or group give rifles which promise payment.

3. The word mā in the phrase mā najjada-h here could equally well be a negative particle or an indefinite pronoun (“whatever he proves...”). The former reading is confirmed by text B section 13. For discussion of the whole passage see the notes to text B.

SECTION 13 (part two)

If it should be that any of Dhū Muḥammad or Dhū ‘Amr establishes/invokes (waṣṣal bi-) the right of his tribe (sinnat qabīlat-ah), and his fellow claims amends, then the neighbour stands [in for him] as protected. Whether or not he proves what came before, he owes only [an oath] that he did what was right. The neighbour is a bondsman (kašf) and covers for (yahjīb ‘alā, i.e. takes responsibility for) Dhū Muḥammad. The one responsible (lażīm, here the bondsman or guarantor) is under the supervision/at the disposal of (‘alā ra‘y) the one to whom he is responsible (mulazzīm-ah). When [“on the day that”] he departs from his mulazzīm’s wishes he is in the wrong (mā la-h baydā‘) and has shamed/insulted his [own] guarantor.

1. protected, muṣān, Dresch ‘Ḥūth’ pp. 75, 89, cf. ṣawān, al-Akwa’ Madkhal p. 47. Often in ‘urf this root is associated with secondary guaranty, in other words with ensuring someone else meets his obligation to a third party. Here muṣān might mean either that the person freshly covered by invoking this sinnah is protected, as of course he would be, or that the protector, the one making himself responsible, is safe. Shaykhs from Baraṭ have tended to the latter reading, cf. al-Sudumī Naṣārīyah p. 150.

The phrase sinnat qabīlat-ah appears only in copies (h) and (y). The others all have simply bi-sinnah or sinnah, and some even leave out the verb waṣṣala or waṣṣala, at which point the sentence collapses into nonsense. For yastaqūm (“stands [in for]”) see the notes to text B sections 13, 21.
SECTION 14

Whoever is owed compensation, and obligations cover/protect [his opponent],1 if his fellow pursues vengeance and his fellow has [the offence] compounded then he [the first culprit] bears responsibility.2 If [the man first owed compensation] seeks a wound [in revenge] and a further wound occurs on top of the first wound then [the original culprit] has no right (sinnah). If he [the claimant] pursues vengeance for a killing and a further killing occurs on top of the first, and his [the first culprit’s] obligations have expired, then [the latter] has no [further] right. If the vengeance pursued is for a wound and a killing occurs on top of the wound, then his right is effective [as regards] the killing. If he seeks [cash-payment for] his wound, then it is on the neighbour’s honour to pay it.3 When he does not pay [or agree to pay] the expense of the wound (ghurm al-kawn) then he has no right [e.g. to refuge or escort], either [as regards] the wounding or [as regards] the killing. When [literally, “on the day that”] the owners [i.e. claimants] of the wound refuse to accept payment for the wound4 then the right (sinnah) is effective [as regards] killing and wounding.

1. Copies vary, with yahjīb al-malāzīm, tahajjaba l-malāzīm, yahjīb ‘ind-ah al-malāzīm and even yahjīb ‘ind-ah ahl al-malāzīm. The likely meaning is discussed at length in the notes to text B section 19.

2. As elsewhere in these documents, the subject of the verb here seems to shift unannounced. At first glance this passage and the corresponding passage in text B (section 19) can seem difficult to reconcile; but one starts off, I think, with the claimant first in mind, and the other with the person claimed against. It is as well to compare this section with all of text B sections 19, 20, 21. Also, for the idea of obligations (malāzīm) running out see section 15, below.

3. This assumes that the fellow-tribesman of the man owing the debt has agreed to act as lazīm, that is, in effect, as guarantor. Doing so is voluntary. But the way in which this is phrased perhaps expresses the ideal that everyone is a lazīm to his fellow, cf. al-Sudūmi Ḋu’l-Muḥammad pp. 130-1.

4. refuse to accept, yaghlab... mā yuqqal wa-yaltaqī in most copies. The mā here is plainly a relative pronoun, but no-one has suggested why the construction should be so complex. Everyone has read it to mean simply “refuses what is acceptable”.

SECTION 15

Whoever shames/insults his fellow in these obligations just mentioned, he [the person insulted] has no call on all of them, but [rather] the raid [to force amends or take vengeance] is [to comprise only] twenty men or less.1 They [can] fire at his house or wherever he hunts him down.2 He [the person insulted or disgraced] has up to three rifles/shots to fire with, whether he hits his opponent or misses.3 Whoever of ḍu’l-Muḥammad has wronged/wounded [his fellow] and his obligations have run out, has an escort in [the case of] offences against the market or [any] call (ṣāyiḥ) that gathers ḍu’l-Muḥammad, whether concerning a border or offences against women or some other matter where the call to arms (nakfah) gathers ḍu’l-Muḥammad. On the day he attends he shall have his escort until he arrives [again] in the land of the state or, if outside [state territory], until he arrives at his house.4 And whoever grants his fellow a truce when [the latter is] outside his house and [then] declares himself quit of it, he [the person granted the truce] has an escort to his house.5

1. call on all of them, ṣāyiḥ ‘alay-hum al-jami’, although (a) and (r) give ṣuhbāh jam’, which is not impossible. Both also replace the phrase wa-l-ghazū min ‘ishrin, very clear in other copies, with something that may perhaps be yantaqūs.

2.
2. hunt down, ṣāda-h, although the same verb a line later must surely mean “to hit” (text B, sections 20 and 21, has yuṣīb in this second context). The particle mā is taken as meaning ayn-mā (“wherever”) by comparison with text B section 21.

3. The verb yasīr is not translated here. It might mean simply “to go” or “leave” after the three shots, or may be an impersonal construction meaning something like “as is right”. A negative mā before ṣāda (in all our copies, but not in text B) is odd, giving in effect a double negative: “if he doesn’t hit his opponent or he misses”. I have omitted the negative when translating.

4. The script here is less than clear in most of our copies, even copy (y) where the phrase bracketed in the Arabic text is scribbled in as apparently an afterthought. It is not in (h). The provision about state territory is repeated in the postscript to text A (section 22, below). Here, though, a man who was simply trapped at home by a local dispute would also have security to fight in a collective action.

5. This line appears only as fragments in (s) and (r), and not at all in (h) and (y). The provision is spelled out separately in text B section 22.

SECTION 16
The people of Baraṭ – those neighbours (jirān, i.e. “weak” non-tribesmen) who live there, and have houses there, not strangers – if one of them offends against/wounds [one of the parties to this agreement] he shall have [only] one day’s escort/companionship. The tribesman who has no residence there – whether a stranger (min al-aghrāb) or from neighbouring tribes (arbāʾal-qubul) – if he offends against/wounds someone from Dhū Muḥammad, he shall have no protection (azā) and no companion (rafq, no escort). Whoever protects him shames/insults his [own] guarantor and has no obligation [to call on], on the honour of the guarantors [together]. Whoever of Dhū Muḥammad wounds [someone] in response to [offences against] their markets or their neighbour [i.e. a weak person under their protection] or their women-folk, it is the responsibility of Dhū Muḥammad together if he has no offence of his own [outstanding].

1. escort/companionship, rafq, in fact here a rather general relation of support, cf. section 5 note 2, above.

2. no offence of his own [outstanding], idha mā la-h fiʾl li-nafs-ah. In other words, if a man already has a dispute of his own with people from another tribe and now claims particular support then his case is to be looked at separately. He cannot simply claim to be defending Dhū Muḥammad’s collective honour.

SECTION 17
Among Dhū Muḥammad, eating together [produces] eight days’ duty [i.e. mutual obligation] for meat and bread; grapes, raisins, dates, and milk [each] give four days’ duty; and coffee just that day, according to the custom of father and forefather. If someone offends against/wounds another when they have eaten together, [then] if he escapes the [assumption of] intent, he [the other man] is owed [only the cost of] the damage if he seeks it. If he [the offender] remains answerable [i.e. fails the oath] then he pays a fine (ghālī). Whoever fails (fawat) his fellow in their obligations, or in a payment that gathers them as some obligation gathers Dhū Muḥammad, shames his guarantor. He no longer has any obligation to call on or to which he is subject.

1. Baraṭīs have all read this as an active verb, ṭalaba, not ṭulaba or ṭuliba. The suggestion that the claim might not be pursued is worth noting in contrast to the other malzams these documents deal with.

Shaykhs at Baraṭ disagree what the penalty would have been for a deliberate breach – perhaps two-fold, dam wa-dhamm, although some rate it as seriously as breach of escort. It is
also unclear how far the obligation extended to others. Text B section 13 lists together amends for breach of guaranty, truce, and sharing food: though the text is ambiguous, a reference to al-muṭṭalab [‘alay-h] aw jumā‘ at-ah might mean that more men were implicated than the person who actually shared bread.

2. remains answerable, maḍâ fi l-‘udhr. Most have wanted to read this as a negative, in ma ni maḍâ, and explain it as equivalent to in hāba min al-dāy, i.e. if he refuses or fails the collective oath. Nājjī ‘Abdullāh Dāris very plausibly reads in maḍâ fi l-ghadr, i.e. if he remains judged guilty of betrayal or treachery. In several places (e.g. sections, 13, 19) the Dāris text has a superfluous illā: here there are two, one of which the scribe has caught and crossed out.

3. to call on or to which he is subject, lā .. la-h maḥzam wa-lā ‘alay-h maḥzam. No explanation has been offered for the second half of this phrase (cf. text 1 section 13). In passing, note the alif on baqā in the Dāris script. Both in speech and writing baqā sometimes displaces baqī or baqa‘, but I have not found a pattern.

### SECTION 18

Whoever from the neighbouring tribes owes amends (ta‘attab) to Dhū Muḥammad has fifteen days to become white (yatābāyyad, do what is demanded). If not, he is vilified [i.e. a jidhn or scarecrow is set up in the market]. If it should be that he enters the market to do what is right [“to become white”], and puts down his rifles [with the market guarantors as surety]1 and strikes down the blame (nā‘ah al-shutūmah), then he has an escort [to accomplish this]. If he is vilified, there is a cutting off [of relations with his group] by consent and the cutting off does not end except by consent,2 on the honour of the guarantors. In that which concerns [amends for] disgrace there is no intervening [for others] among Dhū Muḥammad.3

1. puts down [his rifles], ṭaraḥa, cf. Ḥabshūsh Ru‘yah pp. 38, 55. Also in section 2, above. One could as well say sallama or i‘tarada, but ṭaraḥa has strong associations of committing one’s honour: offering or throwing down one’s head-cloth, for instance, is referred to as ṭarḥ al-jāh. The rifles as surety for a claim made at market are those nominally valued at 100 riyals in text 1 section 11.

2. by consent, bi-rīḍā’, i.e. a collective decision requires taking, cf. text 1 section 11. Unlike the case in section 7, above, where compensation (naqqis) is at issue, an action against outsiders for “amends” (‘ayb, ‘ath) here, and planting the jidhn, means severing relations with the defendant’s whole tribe.

3. no intervening for others, mā ‘alā dhamm i‘tirāḍ, cf. text 1 sections 12, 14. This line about Dhū Muḥammad seems out of place where claims specifically against outsiders have just been discussed, but it retains the same position in text B section 23.

### SECTION 19

The neighbours (jīrān i.e. “weak”, protected people) of Dhū Muḥammad whom they all protect (mujayyirīn ‘alay-hum al-jamī‘) are a shared responsibility (muRAWAṢĪN).1 If one of them at al-Ma‘aṣiḥ or Baraṭ claims assistance [of whatever kind against another] from his protector, he shall have no link [to call on] of kinship (ʿurwah) or as namesake (samī).2 And none of them [i.e. none of the tribesmen] shall take on (yashīl luhqah, take the part of) a weak person (jār) in a dispute with his [own] weak person, except they should go to a shari‘ah judge. The guarantors of the ḥaram [i.e. of the market] should drive them [to go], or otherwise whoever is present of Dhū Muḥammad. As for taking sides (al-ḤIJJĀJAH) among
the weak people, none of them shall take sides with (yataḥṣaṣṣajjaj li-) one weak person against another.¹

1. shared, murāwwasān. The families of “weak” people who were formally protected (muḥājjarin) by all Dhū Muḥammad were very few: al-Ṣānʿānī, Qatālān, Shāḏhirī, perhaps Mabtal and one or two others. Most weak people enjoyed the formal protection of only a fifth, or two or three fifths, or some combination of individual fractions (badan). But the provisions here for joint responsibility are compatible with those of section 20, below.

2. Something seems to be missing from the start of the passage, if only a verb governed by “one of them at al-Marāšši”, and the construction around mā is unclear. By “protector” here I translate simply sāḥib, a fellow or companion. The implication seems to be that the jirān or weak people are connected to tribesmen by naming (samī or samāya) and by ‘urwah, which commonly means links through marriage but might also refer perhaps to broader household relationships. These links cannot be invoked in what might become a dispute between different families or sections of Dhū Muḥammad’s tribes folk.

3. take sides with, yataḥṣaṣṣajjaj li-. A hijjaj or hujjah can be simply a dispute; ḥajj can mean a protector or advocate (muḥāmi) or one protected; but yataḥṣaṣṣajjaj suggests (gratuitously) taking sides, partisanship. Copy (a) has ghayr al-hijjajah in the previous line, presumably meaning those who should drive the disputing parties to judgement would be other than people at odds themselves.

SECTION 20
When [“on the day that”] anyone from Dhū Muḥammad commits a fault against any of the neighbours [i.e. against the weak, protected people] from any section, he has eight days to do his duty (qām bi-wajh-ah), to act (thār perhaps even “take revenge”), and to provide satisfaction (arḍā). He is first. If not [i.e. if he fails to act], then his section are guarantors for the fifth and give satisfaction for him on their behalf.² If they fail (fisaṭ, to act), then if [the culprit] is from any section of Āl Aḥmad bin Swaydān and Ibn Āṭif, then Āl Aḥmad bin Swaydān and Ibn Āṭif shall act against him (yathawr ‘alay-h) and his section. If [the culprit] is from al-Mahlaf then his section are first [to act] against him, and if they fail [to act] then any of the other sections of al-Mahlaf shall act.³ If the guarantors of al-Mahlaf fail, then the guarantors of Āl Aḥmad bin Swaydān and Ibn Āṭif shall act against them; and if the guarantors of Āl Aḥmad bin Swaydān and Ibn Āṭif fail [to act against a culprit of their own], then likewise the guarantors of al-Mahlaf shall act against them.

1. give satisfaction for him on their behalf, yarḍaw (or perhaps yurḍā) min-hum ‘alay-h, Presumably this is the equivalent of taḥbīr in text 1 sections 3, 4, 13.

2. Dhū Muḥammad, it will be remembered, is two halves: al-Mahlaf comprises Dhū Mūsā and Dhū Zayd; Āl Aḥmad Swaydān (“and Ibn Āṭif”) contains the other three fifths or akhmās, cf. al-Akwa’ Madkhal p. 37.

SECTION 21
The market-code (qā’idat al-ḥaram) is [a thing] apart, [resting on] its own bases/precedents (mawāthir), which this code does not erase. The guaranty is on the honour of the guarantors. They [i.e. Dhū Muḥammad] agreed that the first guarantor is not removed [from his responsibility] except by judgement [i.e. someone else may be selected as guarantor in a particular law-case].¹ Otherwise he [must] stand by his guaranty. They [also] agreed that on each head of sheep slaughtered in the market [there should be a tax of] one rupee, and on each head of cattle slaughtered [a tax of] one eighth of a silver
piece. Let [all] this be known (wa-yu‘lam dhālik), on the honour of the guarantors together.

1. The implication seems to be that the market guarantors are also the general guarantors for their sections, and perhaps for the present agreement. It is hard to see why else a mention of a “first guarantor” (damīn muqaddam) should come between two lines specifically on the market.

2. This tax is referred to variously as majbū, jibāyah, or ‘ā‘īād. The last of these three terms was once used of the returns on tax paid by rulers to tribal shaykhs. The income in this case, however, went to maintain a small standing guard at al-‘Inān as discussed in part one of the introduction. For the rupees in question, see Serjeant and Lewcock Šan’a’ pp. 229, 307.

Then comes the list of guarantors, reproduced separately at the end of part six, below: for Dhū Zayd, Dhū Mūsā, Dhū Faraj, Al Dīmūnayn, Al Šalāh, Dhū ‘Ātif, and Al Ahmad b. Kawl, including al-Mahāshīmah.

SECTION 22, POSTSCRIPT

After the guaranty was signed/sealed, they agreed that if a group (qa‘wān) from Dhū Mūhāammad are on a raid (maghāzāh) and something happens between them, then an [existing] obligation among them is effective (hayy) according to the custom of father and forefather. The accused’s responsibility [debt, dayn; perhaps an oath] is on his own head until he reaches those concerned. If the two sides resolve [a problem] by agreement, without exact judgement (qaṣā‘), or without having [access to a copy of] the code/agreement, it does not set an example or erase/abrogate the code. Whoever owes amends, if the obligations [he can draw on] have run out then he has [the right to] an escort. If he goes to [or “opts for”] the land of the state he has only eight days. He has his就想到达他家。The trader who sells in al-‘Inān after the market during [the rest of] the week, shall pay] a rupee on every two head of sheep.

1. Presumably the meaning here is that existing ties, such as those of guaranty or truce, remain in force even when men are away from Baraṭ.

2. The copies we have are far from clear, but the most likely reading seems to be wa-l-muttaham dayn-ah bi-ra’s-ah mā (with the meaning of law mā, until) yaṣal mawlā al-malzam, which is how it looks to be in copies (h) and (y).

Others have wa-[word illegible] bi-dayn-ah bi-ra’s-ah yaṣal mā la-h al-malzam, which is very hard to make sense of. Al-Rudaymī’s notes (r) have wa-l-sinnah la-h fa-diyat-ah [or fa-dayn-ah] bi-ra’s-ah mā yaṣal mā la-h al-malzam.

Copies (a) and (s) are both hard to read. They seem to say wa-l-ṣayyīr badal-ah bi-diyat-ah [or bi-dayn-ah] murawwasah, but the lack of pointing and the number of ligatures strongly suggest that the copyist did not understand the passage they were transcribing and tried simply to follow the lines of an existing script.

The intention, presumably, is that disputes which break out among a raiding party should be frozen until the raiders get home, or at least get to somewhere the problem can be resolved.

3. This line does not depend solely on the one before. It recurs after the names of the guarantors in text B, immediately before section 44, without mention of a raiding party. The idea seems to be simply that the agreement is in general binding even if, in some particular dispute, people choose to arrive at settlement by their own means.

4. Note how these same provisions, added here as an afterthought, are spread out in text B, particularly among sections 19-21.

5. trader or dealer, qammāt, here a dealer in livestock. This seems to be a very old word in Yemen, see. e.g. Muhammad Jāzīm (ed.) Nūr al-ma‘ārif part one p. 548. Elsewhere than the north (Landberg Glossaire p. 2530) it can be used even of a fish-seller.
6. [the rest of] the week, ʿarḍ al-waʿd (cf. Landberg Glossaire p. 2928, Dresch ʿSufyānʿ p. 55): in other words, not just on the Monday yawm al-sūq. Some copies have yabqā (remains, or stays) fi ʿinān baʿd al-sūq, others have yabiʿ (trades, sells). The latter seems to me more likely. This is followed by the names of witnesses, as listed in part one of the introduction, dated Muharram 1177, and then by the list of later copies.
Agreement among Dhū Muḥammad, al-Maʿāṭirah and Dhū ʿAmr (text B, AH 1211/AD 1796)

Text B (AH 1211/AD 1796), photocopy: Agreement among Dhū Muḥammad, al-Maʿāṭirah and Dhū ʿAmr

قاعدة الملازم بين ذو محمد والمعاطرة ودو عمر
Qawā’id al-Malāẓīm Text B (1211 hijrī) in Arabic

بسم الله الرحمن الرحيم

الحمد لله والصلاة والسلام على ﷺ ﷺ ﷺ ﷺ

1

قد حضرنا رجال ذو محمد وآل محمد المعاطرة وذو غير وتباعوا على إقامة عادة آباه وأجدادهم وعلى صحته وصحته وأخوهم وosalsهم ومساندهم وأما قل حصل فيها من الحُرُقات أن حصل فيها من هذا التاريخ وأنه ما عاد بعد بئسنا إلى وجيه الصماد وأنه أقتبسا أن يقالهم ومساندهم تواباً وثابراً وكان كان تجديدها وصحته في هذا التاريخ وأما وأنه هذه عادة أبي وكذب وفرق لين حصل بينه وبين صاحبه لأهو فجره له

2

وهذه ثلاث فوائد مثيرة للثقة بالثقة

(2)

أول شريك في الرجل ما فيه بينه إلا إذا أعذر فاعل السوءة أنه غيره فيه ذين الفقد على العنف إمام انتين وعشرين ده وان فن من بين الطلب سرح المزروع وضعف له السبيء وإذا عضض في العبد فسرح وتمله ذن ذو تصور بوجود سبياء وسباعية وهو ربي الشرفاء وسباعية

3

ونحن في الوداع ولد هو كم ملك فلا له سبي في خرجة الأتباع في الحمد ومدة شروق المراع فإنه ذين فسائره من بين مشرووع المراع وذر سبياء وسابعة والسباعية في قوطى صلب سوي مدافع مثبت هذا في الزغبة وإن كون في المراع فإن تقبيل ما بين كون وقل في الزغبة وإلزمه باقي على خذمته لا له غير ما ذكر وكما حم في العبد إمام انتين ودنش خنك في وقت ولا ازدياد الزغبة ودنش بيع مع تصور العلب السباعية والسبياء

4

فإذا اقتبسا معطلين فعلماً فقد وتر اعلاه

(4)

وإذا أقتبسا انتين غير زركى وقع في أنها شرعة أعين ذلك فعل الوقام مع الإذان أو في السبياء أو في الكفبن فإن كان وحرج الفاعل في الحمد فسوى ستره على شروع التشوف ودشدر التشوف ما بين الذكر والانتى شرذه مع تصور العلب السباعية والسبياء وإن ما حرج في العبد فكان ماله سبيه ولا صاحب ولا عئة

5

وكان جار الطلاق بين اهل الملازم لثوب اربع أيام لتثدي وحرج وصياع وؤوب عريض والمغرب

(5)

ثماني أيام كمال وعلم امتدت عشر يومًا ومن بعد هذه المدة ضاقت في وجه الجار والأنار هو الازن وغب صاحبه في سبيه أو غلبه قصد فكان له صاحب ولا سبيه

6

ولا ملزم في وجه الصماد

(6)

ووفيق القلق هو المسارب لرفقة ولا عئة إلا ما علة من جميع القلق ورفقة القلق الذي يطلبه ف لما كمال والسيار الذي يطهير في رقص القلق و الروابط الأشرار والمطاوع وملزم ولا سبيه ولا عنة ولا عئة وكان من غب سير الحب وحار البيت اعني القطب أو جار المسارف فكان ماله سبيه ولا سبيه في وجه الصماد

7

وكان جار البيت مس هو حال بيه أو غنه على شروق الققبل وكانت الفئلة ما لها إجاء والفقيلة من جه يحده على قطع أو سبائر فلا تصح بعد هذا وكان حين عند نفس بعد محمد ذو محمد وذو عذر اهل الملازم قلل من شهير فإن لغوا الله يباع اعني قطير أو سبى كان التراب له وإن ما لغوا الودا (الوداد) كان له زرع ولا إجاء
وكان غرور اللحم والدم من ارتفاع العقل كله بنور على حلمه لا خيم بنور على خياس أخًّا بين أهل الملازم المذكورين فلزَّم لغز أو فيهم كله بنور على حلمه على ما ذكر في غرور اللحم والدم

وأذا تسبروا أثنا أو أكثر بدون أن كله بنور على غزرة على صاحبه وجرا على أحدهم جاري فلا لروم على السير أن بنور إلا يقافي سيري وقنه

وكان مجاعم ذو محمد وأل محمد ودو عُرَّم أهل الملازم الذي يخضع أهل الملازم في حلمه وطاع وفأ إذا أحد الجماع كان先是 لا غزرة في المجاعم إلا رقيبه بوضاءته وین بعد ما بوضاءته بينه فأما هو لطلَّم ولا غزرة في المجاعم دو محمد مشرّم ومغرب ووضاء اليد بن يتيم في ين غزرة على عض قِلّ أهة كانت الأحذة أو عض خشي أن يقول ووم يغ غزرة فلا بنور ولا غزرة إلا فين يفته بينه لا غير إلا إذا

بُسِرت ما ذكر من العلاني أخرى عبن اهل القاعدة مع الاستمر فشبيه به الغزرة والسيئة

وكان دُكانهم على سق.empty وطرازات واحدة وشُوفتهم واحدة من عالمهم وأدا وداع دّة

شوفهم أو الشوق وأدَّهم عند أحد أهل الملازم دم رقيقه إلى بينه ولون فغي الرب

وكان يوم أهل الملازم تُبَلِّب صاحبه غزرة كان يطيله بصائر على أثرٍ أهل الملازم وكان للمطلوب خمسة عنصر بما أرده على البصائر فكان يطالبه بهم الفي المثلم، وإن أكان في وجه الضمان ما أياً أهل الملازم يطلب صاحبه في السوق وإذا أحسن أسلم صاحبه في السوق فقد غزرة ضمانه ضمانه ويُضمنه وضح الجند لصاحبه في السوق بالزينة سماه لضمانه فعذر الملازم من الهلال الشهير الذي يوضع فيه الملازم ونافذة للمنشوع وما هو لاهل القاعدة من العين والملاط

فهو لهم على شروعهم غير ما ذكر

وأذا أحد أهل الملازم تجهّز عند صاحبه عبَّا أسا صائم أو طلَّه ولا راز بْنًًّ من المطابق أو جماعته على نور أهل الملازم أو ما عينهم أو بقآنهم لا لشيها وبضوعها أهل الملازم فإن حسن وواعد التائه كان ليسته له الكلفة وإن ما حسن وواعد التائه أگمان ما له سبيه ولا غزرة وإن ما أخ جهانه إلى فلانش وله شاهد كان عليه ما شاهد به الشهوة وإن كان وصد أهل الملازم جنة وغزرة لمز بناء سُيّه وغزرة في نزل بناء سُيّه وكان بناء كفيف بين أهل الملازم وكان لب بأهل الملازم وكان البناء على رأي ما تلفه ومزبَّب من زو مُلُزمة بما لب بناء وغزرة ضمّن القواعد غزرة قَضَد

وكان البناء تلفه مُلُزم في شروع أهل الملازم

وأذا إذا غزرة على أجر أهل الملازم وهو في مال وغزرة لا يبطن في الندقة المخططة يغزرة ما بين أهل الملازم ومثله وذكآه كان في غزرة بِّيَّة ولا غزرة في الذوق المحتمة مانة عوشرة في وجه ضمان القواعد فإن سُع الفاع وألا لب بُناء إلا إذا طلب المطلوب في أفراء أهل الملازم بالصواب ولا ارتَّاد (للصواب) بعد إعراض عليه بظاهرة في السوق بعد ما ينها ويصلا فلا في سلمانة عزامة مع بغرة من الصواب على شروع أهل الملازم

والشيخ المخطّط هو نحو مُحترم بين العرَّاء وفيا وريع في القطاع للشيخ على رأيه على أفراء أهل الملازم وإن دعاه جاوده وإن تطأه غزرة له ذلك ولا حق على الصمو قيدون داعي شيخ أو غرم وكان قيمة الجذب الغرمنة مانة بناء وعشرة بناء على شروع أهل الملازم في وجه ضمان القواعد
(16) وكان السوق وطرفانه آمنة حسب قواعدهم وحسب قواعد السوق ومن فعل فيها شيء فلم يسَّنَّ ولا صاحب إلا إذا سَرَّح المُحْذَّش فيما وقع في السوق أيام سوقة ولياليه حسب قواعده.

(17) وكان إذا أخذ أهل الملازم جَلّْ صاحبه من القرارة حق أهل الملازم فقد غيِّب الضمناء ولا له ضُحْحَة ولحال بِسَبْل أهل الملازم بالمروع بنكر أو فَلْه وَكَان من اعتدي على فارشة من أهل الملازم وغَرَفَه في غير مُحْجَّر أو في مُحْجَّر في أيام جُحْهُ كان عليه تسليم على العُجَر.

(18) وقَتْل المُنفعة وهو ربع النعم فوق العدل ولا شيء يعد وأن يسَّرَح فلا سَّنَّ ولا عُلت.

(19) ولكن كان له نقش مدع عند أحد من أهل الملازم وتحيَّب ملازمه عند الاخلاق كان الأفطار بدو ووجري على شروع أهل الملازم وظَرْد صاحبه في ذمته (وإن) صاحبه راز حمله فإن كان دُوَّر له كون ورد حُدَّده فِي كُون فوق الكُون الأول سُيِّر منه وطرد فِي كُشر وراف قتل فوق القتلة الأول وقد مضت سنتين عند أهل الملازم فما له سَّنَّ إلا سَنَّ الجموع ولم يعاد له قطع أما السِّيبار فهو له والبيار لزم في قتل وَكُون.

(20) وكان إذا طلَب مولان الدو نقصه شُوْفٍ الدم تَشْمُّ كان في وجه الجار سبقوه في ثلاثة أهل على شروع أهل الملازم وإذا أخذ طرود فِي كُون ورد، فِي كُتّ كُتّ فلمنعه تَحَكَّم صاحبه وَكُون وَكُنُون من معن يتسليهم شؤون الدم فلا له سَّنَّ وكان من عده لصاحبه كُتّ أو كُون وطرد فِي قَتْل مفعول اله من ثلاثين ناشئ بنادق يرمي به ويسير يخطئ وإلا يقبض وإذا زاد على الثلاثينات فهي مُحْجَّرة ومن صحبته فألا له سَّنَّ ولا عُلت ومن ملزم أهل الملازم وَكُون.

(21) وإذا بدل أحد أهل الملازم دم صاحبه على شروعهم وغلب صاحبه الدم أن ينطب دمه فكانت البسَّة والتغطية ماصية بصاحب وكان الجار بسفخ بين أهل الملازم ومن غيِّب صاحبه فما له في بليله صحبه إلا من المُرتدين ومن تركهما إلى ابن أو ابن ما إصطلبه وَلَعَبَ إلى حَدَّ ثلاثين ناشئ يرمي به ويسير يخطئ وإلا يقبض ومن عنده لصاحبه دم وَكُنُون.

(22) وقَتْل ملازمه فَلَّه رفقة إذا حصر بلاد الدولة أو أراد بلاد غيرها فَلَّه رفقة وإنه جار ونَجْحُ ومَن زيادة فَلَّه رفقة إلى بيت.

(23) وقَتْل ملازمه من قِبَل واحد من أهل الملزام طُنَّح خادم على نائبه فإنه على فَلَّه رفقة إلى بيت وَكُنُون إذا أخذ صاحبه طُنَّح وابن فَلَّه رفقة إلى بيته فإنه على فَلَّه رفقة إلى بيته وإلا فإنه على ذُلَح وفَلَّه رفقة إلى بيته وإلا فإنه على ذُلَح، وفَلَّه رفقة إلى بيته، فإنه على ذُلَح ولا هو سَّنَّ ولا عُلت. وَكُون ضمناء القواعد.
(23) ومن تفتب من ارباع القُبل في أحد أهل اللملزم فكان يذَّاعي بصاع وخير في السوق، وله خمسة عشر يوما أن اسمه ولا شَّم في السوق، فإذا دخل السوق وطَّح الماء فرَّبه، ويوثق في أرباع اللملزم فإن شَّم كان القطب في براءة وما يغضب القطب إلا رضاء في وجه الصناء وكان وهو ذُمّ اعتراض بين أهل اللملزم وكان ذو محمد والمعاطرة وتواري ما أنهم يحملن مُلَّرم لأدو حسن لا قتار ولا غزوة الدم والنخَّم ولا غيره من ارباع القَبَل.
ولا رقيق الحب المانئ إلا كل منهم يثور على لحمه.

(24) وكان أهل صناعت حاله فيه من الخبراء الذي بيوت دون الأغراض إذا حصل منهم فَقَل في أحد أهل اللملزم فكان له قوميًّا رفق لا غير الغليل، الذي ماله فتره من الأغراض أو من أرباع القَبَل، و卤ل منه فَقَل في أحد أهل اللملزم كان ما له أولا فلا رقيق ومن أراه أو رقيق عَتْب الصناء قضاء القواعد وما له مَلَّرم.

(25) وإذا جلاب المنتعة أمَّن إلى السوق إذا كان ولا غنده تفاصيص لاهل اللملزم ألم دم أو جلّ أو عنب أو غير ذلك من الفناء ومن غنده تفاصصة لا شَّعّه له في بلاهم من ارباع القَبَل إلا يرضاء الجميع بعد ما ينص من شروة القَبَل، وكان من أراد أن ينص في أهل اللملزم لحق قرط الجَّبُر ومن نَقْل في السوق وطوارف فلا له شعب ولا راز بطن ولا غزوة ولج وما جزا في السوق فهو عند أهل السوق اللملزم على شروة القَبَل وما طفروا به يُتَّرِئ فيه فريضة على أعراضهم.

(26) وإذا أحد أهل اللملزم دخل رَّنْب صاحبه وترِّق منه شَرِفة فلا أُلَّ ولا صاحب إلا قد ستَّروت النقيصة وغالب البيت على شروة القَبَل فإن كان الرَّنْب مَخْلَف على الفاعل إستنار البيت فقري وعنيف وإن كان بلا باب أو بلا مفتاح فعلي منه شاقي غالف البيت المفعَّل وواصفة نسق متالر تّزك الرَّنْب، مشتاج وإذا أحد دخل رَّنْب من رُّون صاحبه ورمان من شَّعّه وهو لا مفتاح أو لا باب فعله رأس بقر ونابي الغالب يُتَّخَط فيه مقلق، وأيّاه ومقفاح وكسر الباب أو لعج وما صاحبه منه فعله تسليمه غالي الباب و lãi البقري وعنيف من فضائل القواعد عيب فساد ومن حرق بيت صاحبه أو شيء من زمنه نكر أو يصر فص لا له بَيت ولا طَّحكة ويصرح الغالب.

(27) وكان ابنكم القَبَل اريع وأربعين جد واستبان النقاء ائشان وعشرين جد وذلك على المهمم أو المدعى عليه وقابلبه على أقرع الهلاس.

(28) وكان المُنْتَوِع الحال بيوته في ربط إذا وقع منه في أحد أهل اللملزم فله سمش يومه رفق لا غير على أهل اللملزم وحالا أخوه على حدوهم وبلادهم وشَّوهن ودَّوات سوفهم.

(29) وكان إذا وقع جَّحه بين ارباع القَبَل وبعض أهل اللملزم وأراد صاحبه فطَق فكما قطعتها على تطر أهل اللملزم ولا لأنهم أن يقطع جَّحه بينه وبين ارباع القَبَل إلا بقولاتهم أهل اللملزم.

(30) وكان إذا قامت بير أو جَّزَّات بير وأحاطته إلى احتجاج فيه يَتَّرِئ من الخثاش من قرض أو طَّلح في قَبَل أو مسرور ومن قَبَل. فبمسف وهن ترعى في قَبَل وشعاع أو سيقات في جهة ونحن أشقت مطيحة أو غيرها في مهلة منفعة وقَط عليه الموت كانت جَّملة. ومن طرد مطية من شجر وضعت خفّه كانت حملة حيث أنها في قَبَل لم يفي في إملاك. وأجبت نفسي في المدة لا غير.
وادا كان وادا ما في واردته وقعت من ثقالها كثيرة أو قل فعليها خفّتها رأسين غير شمس
وغراب والنقيصة بالمربوط وادا أحد ما في واردته غير منيرة فسرّح سترها على ما ذكر مع
النقيصة.
وكان إذا تناكروا المتحددين أهل الملازم أو بينهم وبين أرباع القبل فكان في الحدود إبان
خمسة مخاطرة في حدود أو مقام أو إملاق وكانت شروط المحاخرة لجائزتها في النشة
جائزتين فإن الصيف إلى قبل الصرف ويثاب ومن الصرف إلى بعد علان ثم يباح هذا في
النشرة أما النواب فهي يرَأى ما زالتها محضارة دائماً
وادا اثنين قلّا واحد فمَن شرّب احتفل والشرب (على شربه) نفة في الشرفة أبا الدم فلا
يتَش ثوب على شريمه.
وادا حدث بين خمسين فتنة ووقع قتل فكل أحد من الخمسين يدوي لنقيضي من عند الذي
تقصى على أثواب أهل الملازم وادا تناكروا المجترة فعلن كل فريق إبان ارتباط واربعين جدًّا
أنه يعود وترش وهم يحمل الخلفين الجمع دم أو دسم
وادا كان وادا اثنين قلّا واحد أخذهم قبض والآخر طلع فكان القبل بنين ثلاث تلت على
الثلاث وتلت على الفائل أنهم استثروا في قتله ومن ثلاث احتفل ولو القائل غيره في
جميع الحروب
وكان ما باقي بين دو محمد والماعتيرا غلغلة كلهم على الآخر للحسيدي على المحدي
والمعطار على المعطرة إلا إذا أنعْنُ قبلي وصل عن أدهم فعله أن يوضع إلى أقرب
حيّ ثم يثير من القبلين كل منهم على تحمله وكذا القطار وصالح أرباع القبل وهذا من
التاريخ سراً وآخر حين أن كان النبي والقطر ماسي على الحسيمة وهذا فرق خراب السنين
المتازة لم تبقى إلا قطار للبدوية أربع عشرة وعشر والله يجزيه.
وقد عند لما يأتي قلب فعليه تسليمه على شروع وأهل الملازم عقبة في ثلاثة أشبال والأحالي ثلاث
سبي وادا كان والهرم لنسر الغلب فلق ناصفة بأماكن ولم ينقر أن يسليفو وأنه يرازي
قاطل دم تحت الغلب فلا أمان ولا أمان يجري ما بين سابق ومسان فإنه ينتو ذكر
من أ صالحة الغلب وأول جنّ وقير ابض وثاني وثالث جنّ ما بين السواق وقابله إلا يبتدأ
عليهم في أول جنّ ويذكر في الأسان فيبسط ما يقوله ما بين العرب منه قد كان الأحالي
ما بين ساقي ومسان في عبوت ويشويف وشمر وغير ذلك
وفي شتى ومتنا بين اخبار القبل ودخل في ضحكهم فعله أهل الملازم الثقاب بعده في مدة
خمسة عشر يوماً وبحفوها نسبي النزاع (النزاعات) فوق من نحو فوه من أراب القبل فإن
ضح وخرجوه بجدعه وامّرة فعلى ققابلة تسريح ما يحب وإنما يحب عند قابلة لا غبّرة ولا
علم من جد لا يروح فعلى القبلين له روعة وإذا أحد حتى عدد دو محمد والل من محمد فعل هذا
وهذه الشرع المفضلة إذا أحد من القوم والماعتيرا وصل إلى فوق خمسة آخر فعلى
خمسه أن يلقحه نسبي النزاع (النزاعات) على شروع القبل وعملوا نشج علي من
المطلبين وشيخ من القبلين فإن تحقّق قصرة وامّرة وأوقعوه على شروع القابل إذا أوقعوه
وبين أن برح فوق قابلة فعلى لحماه واهل ضعفت طراده ورجاع فوق قابلة وإذا لم يوقعوه
قابلة بما كَّم له فهم القاصرين في شروع القابل وصممهم يدّعى ويشتّم حتى يفوح بما
حكِّم عليهم.
SECTION 1

In the name of God the compassionate and merciful. Praise be to God and peace on the one after whom [comes] no other prophet, our lord Muḥammad, God bless him and grant him peace. After which:

The men of Dhi Muhammad, and Al Muḥammad al-Maʿṣīrah, and Dhū ’ʿAmr attended [a meeting] and committed themselves to what would please God. They committed themselves to establishing the custom of their fathers and forefathers and to confirming this [or “setting this right”, saḥīḥ]. Their rules/agreements (qawāʿid-hum), their brotherhood (ukhūwat-hum), and their obligations were confirmed, and the guarantors for

Qawāʿid al-Malāzim Text B (1211 hijrī): Translation and notes
these. What has happened until now in the way of transgressions, by which I mean wrongdoings, will no longer take place among them, on the honour of the guarantors. Their customary usage (ʿarāf) and obligations (malāzim) are established in great things and small. What is mentioned here is their renewal and confirmation, [valid] from this time forth. This is the custom of father and forefather, and a solution/settlement for whoever has a difference occur between himself and his fellow. This is the solution/settlement. It is three equal codes [i.e. copies of the code], word for word.

1. wrongdoings, ʿatharāt, cf. Serjeant ‘Law cases’ (part 1) p. 44. This more usually appears as part of the pair ʿathrah wa-qaṣrah (e.g. section 38, below) and seems superfluous here.

2. in great things and small, thara(n) wa-thurayya; or perhaps “now and forever”. A stereotyped phrase in Arabic, though no-one seems sure how to explicate it, cf. Serjeant ‘Law cases’ (part 2) p. 165, al-Akwaʿ Madkhal p. 40.

3. solution, firq or farq (pl. firaq), rather than the dispute or difference to be solved. Several people have explained firq as faṣl al-mushkilah or ḥall al-mushkilah. difference, lawā (or lawā was explained consistently not as a “hardship”, which dictionaries might suggest, but precisely as an inability to agree.

4. By comparison with text A, the copies of B are consistent with each other and are generally well written. The photocopy version, given me by Bayt Thawābah, needs little comment. The wording is almost identical with that of the copy I photographed in 1979 and that of Abū Ghānim’s published photocopy in Bunyah qabalīyah. I have not listed minor errors such as repetitions in the Abū Ghānim text at section 13.

SECTION 2

The first thing is wounding a woman. There is no right in this (mā fi-h simnah) unless there are wounds to men [inflicted at the time] and [the man] who wounds the woman claims she was involved or wounded wrongly.

He then has the debt of intent [i.e. he is assumed to have wounded her intentionally unless he can demonstrate otherwise], according to usage/custom, by the oath of twenty-two witnesses.

If he fears the debt of intent [fails to secure sufficient witnesses], then he pays four-fold and his right (sinnah) is [again] effective.

If he passes the debt of intent [i.e. secures sufficient witnesses], then he pays blood[-money] and shame[-money] like it, together with a seven-year-old camel and a subāʿīyah. This is the price of tashrif.

1. fiʿl (pr. also faʿl) can mean any action, but the usual meaning in ‘urf in a context like this would be specifically a wound (syn. kawn) and that is how shaykhs from Baraṭ have all read the passage.

2. ghārib/ghārikah and related terms are commonly used to mean wrongly or in error (cf. al-jidhn al-gharb in section 15, below). I have heard ghārib used in Ḥāshid, for example, to describe a man who was shot “by mistake” in a fight between others. But here, according to Sāliḥ Muqbil Juzaylān, it means primarily that the woman should not have been there. Hence the cautious translation “wrongly”.

The repetition of illā ādhā is read as meaning simply “and” by general consent and by comparing this sentence with text A section 3. If the two conditions were separate alternatives, this would sanction the “deliberate” wounding of women in a fight among men, which is not the case in ‘urf. First there must have been a fight, then the woman present wrongly, then we reach the question of intent.

3. witness, jadhīḥ, local syn. qaṭ‘ (see also section 27). Oddly, the same equation of jadhīḥ and qaṭ‘ is reported by Landberg (Glossaire p. 272) but with the meaning of a “bit” or “piece” rather than a “witness”. For notes on oath-taking see part three of the introductory essay.
4. his right is [again] effective, maḍat la-h al-sinnah and later on here al-sinnah māḍīyah. Compare the more common phrase al-ʿard māḍi (Dresch Tribes p. 82), which means a man’s right to grant protection is current or effective, recognized by fellow tribesmen. The verb maḍā can equally well mean to continue or to finish, but the meaning here seems clear from context. If one’s sinnah were not again recognized there would be no point in paying four-fold.

5. blood-money and shame-money like it, dam wa-mīthl-ah dhamm, quite a common phrase in ‘urf: if one does 50 riyāls of damage in a circumstance other than straightforward fighting, then one often pays that plus another fifty. See part three of the introductory essay.

6. The subāʿīyah is defined below (section 3) as a two-piece, indigoed length of cloth. The two strips are sewn together across the long axis. Within living memory indigoed cloth came both from Zabīd and from southern Yemen. The term subāʾī was explained to me by badu from Wādī Sillah, to the east and north of Baraṭ: at seven years apparently a camel is just full grown, i.e. in the prime of life. Shaykhs at Baraṭ concur. Classically one might expect it to mean seven hand-spans to the shoulder, but this is surely not big enough (Lane suggests seven cubits). Some copies of text B have baʾāyir. Text A section 4 suggests values: 15 or 25 qirsh for the camel and five for the cloth.

SECTION 3

Whoever wounds an uncircumcised male, even if [the latter] is full grown,1 has no right (fa-lā la-h sinnah) unless he escapes by oaths the [presumption of] intent and the judgement for an uncircumcised male (sharʿ al-rughlah) is sought.2 If he [the uncircumcised male] was killed, the judgement for him [i.e. the amends due] is a hundred sinn,3 [which is] the judgement for offences against the uncircumcised, and a seven-year-old camel and a subāʿīyah. The subāʿīyah is a two-piece length of cloth dyed in indigo and seven cubits long. This is for an offence against an uncircumcised male. If he wounds4 the uncircumcised male, then a comparison (taqdīr) is made, with regard to the fine for offences against the uncircumcised, between the wound and killing. The blood remains to be judged by his people5 apart from what has been mentioned. If [the culprit] escapes the [presumption of] intent [by means of] oaths from twenty-two witnesses, three quarters of [the fine for] an offence against the uncircumcised are dropped and it is reckoned at one quarter, together with payment of a seven-year-old camel and a subāʿīyah. If two uncircumcised males fight, do what has been set out above.6

1. The murghal (often pr. mirghal) or uncircumcised male was not fair game in vengeance. Families involved in a bitter feud would simply not circumcise a boy who would otherwise be threatened with death, and some men were never circumcised (see introductory essay). The term kāmil refers to such a person being fully grown, therefore, not physically whole.

2. rughlah, cf. classical ghurlah, the foreskin. At the end of the first line of the Arabic many people read yudʾi as if it were a form IV active verb, which is not found in classical; the passive yudāʾ ("is sought") anyway fits the context well. No-one has spontaneously read this as form VIII. Text A has yadī. The fine would have been paid in addition to the standard blood-money.

3. miʿat sinn. Parallels with early Islamic law might suggest 100 camels (the classical full-blood-money), and some argue sinn means a camel’s hump. However, most informants insist the term here means sheep (sinn would be literally a “tooth”). In some copies of text A (section 4) we are told compensation for a slain murghal is 100 qirsh. The immediate assumption that this means silver pieces should be resisted, however, since qurāsh is a common term for sheep and goats. Also, parallels with the Latin pecunia aside, a prime sheep might well have been worth about one riyāl.

5. His people, *ahl-ah*, more literally “its people”, i.e. the people or owners of the blood, those referred to in Islamic law as *awliyā‘ al-dam*.

6. Reading *iqtalā‘ū* for *qatalū* or *qutilū* in three copies of text B. If it were simply two uncircumcised males coming to grief at the hands of tribesmen, then the course of action would be obvious. Text A section 4 has plainly *yaqtatalā‘*, the dual of form VIII. The verb *wuthara* or *wuthira* is here a synonym for *dhukara* (*dhukira*, i.e. “mentioned” above), but in other contexts it can mean more specifically “established”, as for instance by formal precedent or an old agreement.

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**SECTION 4**

If two [men], not uncircumcised males, fight and one of them suffers *shawfah*, by which I mean a wound in the face, plus the ears, or in the Achilles tendon (*salabah*) or the lower leg (*ka‘b*); if this happens and the culprit escapes [the presumption of] intent [by collective oath], then he pays what covers it [i.e. amends for the offence] according to the judgement/laws of *tashwīf*. A distinction is made in *tashwīf* between men and women, everything [being judged] according to its rule, together with payment of the seven-year-old camel and the *subā‘īyah*. If [the culprit] does not escape [the presumption of] intent, he has no right (*sinnah*), no fellow (*ṣāḥib*), and no link (*ʻulqah* e.g. as of traveller to escort).

1. In the first line of this passage one might expect *shaw‘ah* (“mutilation”), and later *tashwīf*, but informants well steeped in *ʻurf* have all read *shawfah*. The term commonly means a woman. Elsewhere one finds *tashwīf* used not only of offences against women but of all offences against the moral integrity of persons or tribes (see the introductory essay).

2. According to its rule, *bi-shar-‘ah*. Unfortunately the actual scale of amends is nowhere spelled out. Most experts at Baraṭ assume it was payment two-fold, *dam wa-dhamm*; some have suggested four-fold.

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**SECTION 5**

The neighbour apart, [whether] nomad or settled person (*badawi wa-hajari*), has twice four days among the allied people (*bayn ahl al-malāzim*). Ṣan’a‘ and Abū ‘Arish and the west have [twice] eight days. Those of the Tihāmah and [Lower] Yemen have [twice] fifteen days. After this period the [link/obligation] becomes sound (*ṣaḥḥat*), on the neighbour’s honour, and the neighbour is [the one] responsible. Whoever deliberately commits a disgrace against his fellow [when the latter is linked to another] in his right (*sinnah*) or obligation (*malzam*, e.g. they are at truce or are traveller and escort) has no fellow (*ṣāḥib*), no right (*sinnah*) and no [ability to enter an] obligation (*malzam*), on the honour of the guarantors.

1. The neighbour apart, *jār al-ṭulaq*. Learned informants have been consistent in their pronunciation of the phrase, less so in their interpretation. Some have gone so far as to suggest this is someone gratuitously helping an outsider who comes to grief in Dhū Muḥammad. Much more probably it refers to a fellow tribesman who is simply not present when a relation is formed or invoked. For instance a dispute may arise between elements of two fifths, and someone from another element of one of these, who is not present at the start, may or may not be willing to involve himself. Or a truce may be agreed or terminated, or someone be called on for collective oath. The intention of what follows is clear enough: to form or sever a relation one must give notice, and time must be allowed for the news to reach the other party and an answer to be returned.
2. Most copies of text A section 6 give bâqî al-tihâmah. All the copies of text B give mawlû. One is tempted at first to fish among such meanings as “provinces” but it is hard to think what might be referred to. Informants agree it means simply someone living there, “he of” the Tihâmah or Lower Yemen (cf. “he of the month” in text 1 sections 10, 12).

3. Two copies of text A section 6 give sâḥbat al-sînnah. By “the one responsible” (lazîm, syn. mulazam) is meant someone in the position of e.g. guarantor. The mulazam (or mulzim), by contrast, would be the one to whom he is responsible (see part three of the introductory essay and e.g. sections 13, 14 below). The jâr or neighbour here is a fellow tribesman.

4. man ‘ayyabba sâhib-ah fi sîmnat-ah could mean a man wronging another to whom he is specifically linked himself, e.g. as escort to traveller. Shaykhs from Barât have taken it to have a more general meaning: if one tribesman bound by this pact wrongs another by attacking, say, the second man’s guest or protégé, wherever the protégé comes from, then he insults not only his fellow but all the guarantors.

5. It is unclear whether this passage follows directly from provisions concerning jâr al-ţulaq or belongs with the sentence following. In either case it serves well as a statement of the general importance of these quasi-contractual links.

SECTION 6

The companion at one’s side is the one who accompanies (al-musâyîr lî-) his companion.¹ There is no link (‘ulqah, no binding obligation) except the particular link formed [i.e. a specific agreement to escort the person from one place to another].² The companion at one’s back who [is claimed as such only] by announcement has no part [in mutual defence and responsibility], and escort [claimed only] by an announcement gives him [the claimant] no right of escort.³ From now on among the allied people the companion at one’s back, or the refugee who pays, or announcements [by themselves] no longer [count as] an obligation, or right, or link.⁴ Whoever acts disgracefully toward the escort at one’s side or the neighbour of the house, [by which] I mean a refugee (qatîr), or the neighbour of the nail⁵ shall have no companionship (sâhb in the tribe) and no right (sînnah) on the honour of the guarantors.

1. the companion at one’s side, rafiq al-janb, and later sayîr al-janb, often understood as the Qur’ânîc sâhib bi-l-janb (cf. Rossi ‘Diritto’ p. 20).

2. Here I read wa-țâ ‘ulqah illâ mā ‘alaqa-h (or ‘allaqa-h) min jamî al-‘ulaq, not fi jamî al-‘ulaq. Some copies have ‘ulaqat. All learned informants agreed on the meaning –that only specific agreements are binding, so once my escort has delivered me to the place specified I cannot claim his protection if I press on somewhere else or decide to go somewhere else en route.

3. announcement, sâhirah: specifically an announcement at market. ‘Abdullâh Ya‘qûb of al-Ma‘âţirah remembered this system being used in Sufyân when he was a child. His father arrived at al-ţârîf and was afraid to go further because someone in Sufyân wished to kill him, so he made an announcement in the market that he was under the protection of a particular Sufyânî shaykh; he was then safe to go to the shaykh’s house although the shaykh did not know of the claim. Dhû Muhammad are here abandoning a system of that kind. An announcement no longer gives protection. From now on the protector/escort has actually to be with the traveller escorted.

The passage would read more easily were it wa-l-sayîr (or musâyîr) alladhî bi-ţâhirah là siyâr la-h. The word siyâr refers usually to the status, not the person.

4. Here I have inserted a negative particle before bâqî. Although the copies are consistent, informants all agree the text is faulty and should read wa-kâna mā bâqî (or mâ baqî, which some pronounce baqî) ba‘l al-mulâzîm fi rafiq al-qafî wa-qatîr al-ţurah wa-l-ţawâhir malzam ... The terms malzam, sînnah, and ‘ulqah overlap so much that one cannot have one positive and the other two negative.
the refugee who pays, qaṭīr al-ʿajrah. The qaṭīr may equally be the refugee or the one giving refuge (see the introductory essay). The qaṭīr al-dakhān (supposedly named for the “smoke” of the hearth), who lives with his protector or protégé, is still recognized but presumably must be there for sound reason. I suspect the system of payments re-established itself, because older men I talked to around 1980 remembered a practice of giving two silver riyāls a year to maintain qaṭīr whether or not the parties actually lived side by side.

5. the neighbour of the nail, jār al-mismār, a “weak” (i.e. non-tribal) person, who apparently would slaughter a sheep at a tribesman’s house and drive a nail into the door to establish protected status. The refugee (qaṭīr) or neighbour of the house (jār al-bayt), by contrast, would be a tribesman.

SECTION 7

The neighbour of the house (jār al-bayt) is whoever places his house [perhaps, his tent] or his flocks alongside [another’s] according to the tribesmen’s judgement/laws. An incomer (naqilah) has no part (jāzah in collective responsibility, payments, defence, etc.).

The incomer who [gains his position by] the taking of money for refuge or escort is henceforth not recognized. Whoever [of other tribes] owes compensation to Dhū Muhammad or Āl Muhammad or Dhū ‘Amr – the allied people – [for a] known killing, if he pays [or agrees to pay] his protector (rabi’-ah), [by which] I mean he who provides him refuge (qaṭīr-ah) or he who gives him escort (sayyir-ah), he has right of protection (rabā’). If he does not pay [or agree to pay], he has no right of protection and no neighbour-right.

1. It is unclear whether ‘alā shūrū’ al-qabā’il here means “according to tribal custom” (i.e. anyone can claim protection by placing his tent next to mine) or “according to the tribesmen’s judgement” (i.e. the particular person is allowed by us to pitch camp in our territory because he has a specific problem elsewhere).

2. The construction man hīyā seems equivalent simply to alladhī, “who”: it introduces a qualifying clause rather than defining what a naqilah is.

3. pays, lathagha, perhaps literally to “spit out” or “cough up”. Both at Baraṭ and near Ḥūth I have heard it used of a cow spitting cud. In Nihm, and perhaps elsewhere, it can mean the way a snake bites, the snake being thought to “spit out” its poison. The term widā (in some copies widād) and in the next line widādah means simply “payment”. It seems not to be thought of as from diyāh, blood-money.

4. Reading wa-lā jārah rather than lā ʿajzah as above, although the more common term is majārah or jirah (see text 1 sections 2 and 12, al-Akwa’ Madkhal p. 41).

SECTION 8

[Obligations deriving from] the roots of flesh and of blood [i.e. from marriage]1 with neighbouring tribes2 are that everyone acts against [only] his [own] section, not one fifth acting against another fifth. As for [such matters] among the [above-mentioned allied people, the obligation (lazam) for the roots of flesh and of blood among them is that everyone acts [only] against his [own] section, as was mentioned [in connection with] the roots of flesh and of blood [with other tribes].3

1. roots of flesh and blood, ‘urūq al-laḥm wa-l-dam (in text A and two copies of B, ‘urwah). Informants were unanimous that this refers to links produced by marriage. But many say it would also include e.g. ties to the samā’ or namesake (see part one of introductory essay and cf. text A sections 8, 16).

2. neighbouring tribes, ārbā’ al-qubul. Note the contrast in section 24 between ārbā’ al-qubul and al-aghrāb or a’shār al-qubul, “strangers” who are further away. It is ārbā’ al-qubul with whom disagreements are possible over borders (section 32, below).
Much depends on context, as in section 38, below, where in a single sentence the same tribes are referred to as *a’shār*, when their difference from *ahl al-malāzim* (“the allied people”) is stressed, and *arbū*, when their relatedness or proximity matters.

3. If, as a Muḥammadī, I marry a woman from Dhū Ḫusayn and her kin then get in trouble with someone from Dhū Muḥammad, they can come and ask me for help, rather as the *halif* or “ally” from another tribe does in Glaser’s nineteenth century account of tribal custom (Glaser ‘Arḥab p. 6).

What the qaʿwāʾid are saying is that in these circumstances I can only act for my in-laws against someone in my own section: e.g. if I am from Āl Aḥmad b. Kawl and my relatives in Dhū Ḫusayn are at odds with someone from Āl Aḥmad b. Kawl, then I can try to help them. If my relatives in Dhū Ḫusayn are at odds with someone in Āl Dumaynah, I cannot intervene.

SECTION 9

If two or more men travel together without each forming a [specific] link with his fellow,¹ and something befalls one of them, the escort/traveller is under no obligation to act (yathawr, in defence of or to avenge his fellow) except as he [gratuitously] helps² his travelling companion³ at the time [of the incident].

1. This is the complement of section 6, above. Simply moving from place to place together does not form an *ʿulqah*. One has to say explicitly, “I will escort you from this place to that”.

2. help, *yuqāfī*. I have had this explained to me, not only at Baraṭ but by friends in Ḥāshid, as “to help someone where there is no obligation to do so”. For example, if I see someone’s house catch fire, I do not have to do anything (*lā luzūm*). If I put out the fire, I do it for humanitarian reasons. I do it gratuitously (*uqāfī*).

The term *qāfī* is used as a noun of acts that are expected but are not enforced by formal sanctions. If, for instance, one is visiting some other tribe and a woman from one’s own tribe is married there, then she should offer one bread: that is her *qāfī*.

To look at the term, one would expect a connection with *qaf* or *qaffā*, “to turn one’s back” on someone, i.e. abandon them (see glossary). Informants at Baraṭ insist the words are unrelated.

3. travelling companion, *sayyir*. I have translated this differently in the two places it occurs here. It seems to mean simply a fellow traveller (*syn. musāyir*), but in discussion I have always heard *sayyir* used to mean specifically *sayyir al-janb*, a formal escort (compare section 6, above), which is precisely what a casual fellow-traveller is not.

SECTION 10

At meetings of Dhū Muḥammad, Āl Muḥammad, and Dhū ‘Amr – the allied people (*ahl al-malāzim*) – where the allied people meet as two sections or more, if [someone from] one of the two sections offers violence to one of those attending the meeting,¹ he shall have no right and no link [to call on] among those at the meeting, except that his companion shall see him to his house.² After he has been escorted to his house he has no [ability to enter] an obligation and no link [with anyone] at meetings of Dhū Muḥammad in the east or west or [even] at market in al-‘Inān. Instead he [must] remain in his house until he pays amends (*ʿatb*) to the guarantors of [these] rules. As for amends for killing or shame,³ [by which] I mean a wound [is inflicted, or damage done] on the day a meeting is held, [the offender] shall have no [ability to enter an] obligation and no link, except that his companion see him to his house – nothing more than this, unless he pays what he must of the cost/fine, [by which] I mean amends to the people of the agreement/rules⁴ together
with what covers [the offence]. [Then] his link[s] and right[s] are [again] effective/recognized.

1. The phrase *ahad al-lahmatayn* here means “one of the men who belong to either of the two sections”, rather than referring to the whole section committing an offence. A common shortened form in documents.

2. This companion or escort would be appointed at the time of the offence by those who had convened the meeting. He is not already the offender’s “companion” by virtue of belonging to the same section. Someone is simply nominated to get the offender out of the way before further trouble ensues.

3. amends, *ʿatb*: usually this means for a disgrace (*ʿatb* and *ʿayb* can virtually be interchangeable, see e.g. text A section 13) as opposed to compensation (*naqṣ*) for wounds or material damage. The distinction between *ʿatb qatl* and *ʿatb ḥashm* in the present context is unclear.

Any offence at a meeting requires amends for the insult and compensation for the injury or damage done, if any. The usual procedure in *ʿurf* is that anyone who breaks the peace at a meeting must pay amends to those shaykhs who convened the meeting.

4. people of the agreement, *ahl al-qāʿidah*, presumably means the same as *ḍumanāʾ al-qawāʾid* a few lines earlier. It may be here that paying *ahl al-qāʾidah* (the guarantors of this agreement) is symptomatic of the way the document makes Dhū Muhammad et al. a cohesive unit, but we cannot discount the possibility that *ahl al-qāʾidah* is not the same as *ḍumanāʾ al-qawāʾid* and may instead mean those who called the meeting – the people usually referred to in customary law as *ahl al-mawqif*.

SECTION 11

Their [responses to] offences against their market and the roads to it are one, and [responses to offences against] their women are one, from within [the tribe] as against outside. If there is [a response to] an offence against their market or a woman, and one of them owes [a debt of] blood to another of the allied people, he shall have an escort to his house even if he has disgraced/insulted his [own] tribesmen.

1. *dakkah* means both the offence against the market and the collective response to that offence, i.e. what elsewhere in Upper Yemen is called *fazaʿ*. Everyone is supposed to turn out, regardless of sectional differences.

2. The most obvious meaning of *shawfah* here is “woman/women”, but learned informants agree that it refers more generally to offences against *muʿawwarāt*, all the “domestic” matters in a tribesman’s care. See part three of the introductory essay.

3. as against outside, *ʿazma-hum wa-khārij*: in others words, specifically as regards aggression by tribesmen from elsewhere. This differs from the explanation given me for the phrase in a recent document (Dresch ‘Sufyān’ p. 52) that it covers both internal and external relations. See also al-Akwa’ *Madkhal* p. 30.

4. During a collective response to certain offences all internal claims and disputes are suspended. If someone is confined to his house because he wounded or killed a man and no settlement has been made, he can come out and join the tribe to right a wrong against the market or a *shawfah* and cannot be attacked: he is escorted to the front, fights alongside us, and is then escorted home again. The earlier claim to vengeance can only be pursued afterwards (cf. Dresch ‘Sufyān’ p. 57).

This is a striking exception to the rule that a man who commits *ʿayb* or disgrace has no legal standing.

even if he has disgraced, in *muʿayyib* in the Thawābah text, but in most copies law *muʿayyib*. This is a striking exception to the rule that a man who commits *ʿayb* or disgrace has no legal standing.
SECTION 12

When [literally “on the day that”] one of the allied people claims amends from his fellow he shall do so by bayḍā’ wa-khiyār in view of/with the agreement of the allied people. The one against whom the claim is made has fifteen days to answer the white flag (irtadd ‘alā al-bayḍā’) according to their rules/agreements and their customs. If not [if he fails to answer the claim] then [the claimant] vilifies him at his house [i.e. the claimant’s house] and before his people/relatives. It is on the honour of the guarantors [that] no-one of the allied people shall vilify his fellow in the market [at al-ʿInān]. If one of them vilifies his fellow in the market, he shall have insulted the guarantors, the guarantors of [this] agreement, and insulted the guarantors of the market. He must [pay] eleven-fold for placing the jidhn against his fellow in the market, half to the guarantors of the market-rules from the section [responsible for the market] in the month when the blame (al-malām, i.e. the jidhn) was placed and half to the [person] vilified. The people of the agreement [i.e. the guarantors of these rules] can claim amends and malzam as they judge fit, apart from [the fines] mentioned.

1. The details of this procedure are discussed in part three of the introductory essay. See also Dresch ‘Placing the blame’. The claims here are for amends (ʿatb): in other words, recompense for breach of an obligation, not simply for material damages. Some of the copies differ, but most people prefer to read yatluḥ-ah bayḍā’ rather than bi-bayḍā’.

2. in view of/with the agreement of, ‘alā anṣār (not inṣār, apparently). Setting up a white flag and black flag has to be public, and one of the points always stressed in discussion of setting up flags or the jidhns is that these symbols have to be guarded. Otherwise, the person they are set up to disgrace would simply knock them down. More generally naẓar has associations not only with supervision (ishrāf) but with mediation (wāṣiṭah): ‘alā naẓar might almost be explained as “by way of”, the meaning Piamenta lists for bi-naẓar while giving “in the presence of” for ‘alā naẓar (Piamenta Dictionary p. 489). The plural form anṣār is unexpected here. Usually it would occur only if a handful of named individuals were responsible.

3. vilify, shatama, a term always used of the act of placing the jidhn. I have certainly not seen it in writing, and I think I have never heard it, used to mean anything else around Barat or in the Jawf.

4. the section responsible, ahl al-shahr, the fifth who uphold the market-peace in a given month (see the introductory essay, part one, and text 1 sections 7, 8, 10).

5. This seems to be the only such use of malzam in the document, referring not to a status or formal obligation but instead to what is due as a payment. Perhaps we should read it mulzam, “that which is due”.

SECTION 13 (part 1)

If one of the allied people proves (najjad) amends against his fellow, such as [for] guaranty or truce or having eaten1 with him against whom the claim is made or with his people, according to the allied people’s judgement/laws, or [for] whatever deserves amends [according to] a document or witnesses (shuhūd), and if the allied people accept/confirm this (yamaddā-hā), then if [the culprit] repairs the disgrace and pays the damages,2 he has right[s] and link[s]. If he does not repair the disgrace and pay the damages, he has no right and no link. If [the claim] is not proved by a document or by witnesses (shuhūd), he [the defendant] must [provide/find] an oath of recompense (aymān al-naqāʿ) from twenty-
two [persons] that he has done what clears him. If he makes recompense (tanaqqā) and witnesses are acquired, then the debt [still] owed is as the testimony says.

1. having eaten, sād al-batn, the famous link of “the bread and the salt”. For details see text A section 17.

2. repair the disgrace, hashama (rather than commit disgrace, as the word is used to mean in text A section 13); pay the damages, sāqa l-naqā. Probably these would both have been cash payments, but the first concerns ‘ayb and the second naqīshah, where the principle would apply that al-‘ayb qabla l-naqqs: only when the disgrace has been repaired can material damages be settled. Text A section 13 is simpler and clearer: ammā hashama wa-sāqa l-hashm.

3. what clears him, mahā al-naqā'. The word mahā is used of e.g. fresh camel’s milk, and again there is the association here of right action with “whiteness”, rather than, as one might expect from classical dictionaries, with e.g. sincerity.

For the preceding clauses cf. text section 13, where for aymān al-naqā’ we have ‘ind gharim-ah dayn... In the present version, as so often, subject and object swap places without very clear indication.

4. makes recompense, tanaqqā, cf. the simpler phrasing in text A: in jawṣal shuhād kān dayn-ah ‘alā shahādat-ah or ‘alā mà yuthabbat min al-shahādā: The meaning would seem to be that if he pays or takes vengeance as asked, the witnesses then evaluate what he has already done and decide how much remains to do. The verb tanaqqā could mean to “owe recompense” rather than to have already paid it (cf. text A section 9, note 5), but text A section 13 makes this unlikely unless the testimony (shahādā) here is one now sought by the defendant, not the claimant.

witnesses, shuhād; as above; testimony, shahādah. These are people who testify to the detail of the particular case, as in effect eye-witnesses. The oath of recompense (aymān al-naqā’) is from a quite different kind of witness, the jadhīh, who need not know the detail of events but who swears in what amounts to compurgation.

debt, dayn, though this could again be an oath, whereby the man summoned affirms that he has now done what the testimony required he do.

SECTION 13 (part 2)

And if it should be that he establishes/invokes with the allied people a right and link, then the neighbour (jār) must stand [in for him] as protected. The neighbour [is reckoned] a bondsman among the allied people, and the one responsible (lāzīm) is bound by the wishes of him to whom he is responsible (mulazzīm-ah). The day he departs from the wishes of the one to whom he is responsible, he is in the wrong [literally “has no whiteness”] and deliberately insults the guarantors of these rules. The one responsible is a trusted witness in [i.e. as regards] his obligation, according to the allied people’s laws/judgement.

1. establishes/invokes, waṣṣala. Opinions differ. It is possible that this should be waṣṣala, “arrive”, but if so, then something is missing. On the other hand, form II can mean to settle, as for instance by vengeance, and form IV (awsala), like form II on occasion, can mean to establish or to prove (syn. anjada or najada).

The likely meaning here is that someone from A has a claim against someone from B, and someone else from B stands forward (waṣṣala), perhaps giving a rifle, to invoke or establish a relation with the defendant. The defendant (the first jār or “neighbour” in this passage) is then reckoned protected, or muṣān: the second jār (see note 3, below) takes responsibility as muṣawwīn. Alternatively the initial claimant himself may “prove” (waṣṣala) an existing relation, demonstrating to ahl al-malāzīm ("the allied people", the parties to the agreement) that the other man really was his host, escort, or guarantor and thus owes him amends: in either case ahl al-malāzīm, the indirect object in English, provides the direct object of the
verb in Arabic.
The subject of the verb "waṣṣala" is unclear. The implicit "he" may be anyone of the allied people and the statement general; just as easily it may run on from the preceding line (section 13 part one).

2. Text A (section 13) here is more elaborate. If someone invokes a right "and his fellow demands amends" then the neighbour must stand [in for him] as protected: "whether or not what came before is proved, he owes only an oath that he did what was right".

3. bondsman, kafīl. Some people at Baraṭ draw a clearer distinction than is usual further west (cf. Dresch Tribes p. 93) between the bondsman (kafīl) and the guarantor (damīn): the former is specifically concerned with payment. This allows them to read the passage as meaning a non-tribal person or jār is sent as intermediary in settling these debts. Text A section 13, however, adds that the jār or kafīl takes responsibility (yaḥjib, covers) for Dhū Muḥammad, which a "weak" non-tribesman could not do.

4. trusted witness, thiqah, cf. al-Akwaʿ Madkhal p. 30. The meaning is that no collective oath is required to confirm his claim to have discharged his obligation: he simply swears for himself. If these provisions run on from those earlier (section 13 part one), the obligation in question seems here to be a new one, taken on by a fresh guarantor or lazīm, to oversee settlement of the first claim to amends. Text A section 13 suggests the obligation is valid whether or not the first claim is proved.

SECTION 14

If one of the allied people is shot at when he is at truce or has a link [e.g. he is under someone's supervision or protection through refuge or guaranty] and [the shot] does not hit, then the mistaken rifle is [fined at] one quarter of the blood-money, [divided between] the person responsible (lazīm, the protector or guarantor) and the person to whom he's responsible (mulazzīm-ah). If there was no [such] right or link, then the mistaken rifle is [fined at] one hundred and ten [silver pieces], on the honour of the guarantors of [these] rules. Whether the culprit pays or not, he [the claimant] has no right unless the demand is sought as just recompense (sawāb) according to the allied people's customs and [the culprit] does not respond/answer (irtadd) when [settlement] is offered him by an announcement at market. After he is shot at and escapes, then where there's no harm there's no fine to pay, although he [the one who fired] is forbidden his just recompense according to the allied people's judgement/laws.

1. The couple lazīm/ mulazzīm was met with in section 13. The obvious case in the present section would be that someone acts as guarantor (damīn) for a settlement and the person under his supervision is shot at: both are due amends.

2. Here, we should note, the whole process of "self-help" is regularized and is encompassed in public rules. Compare sections 20 and 21, below. If someone refuses to accept payment, and insists on his right to vengeance, then he is on his own; if he accepts the payment offered, no-one enforces any further judgement (the blood itself may "remain to be judged") but they do admit his usual rights to escort and refuge.

Much here turns on the meaning of irtadda. In standard Arabic it might mean to refuse or renenge on something. The meaning here seems to be "to answer", as in section 12, above, where someone who is summoned by setting up flags at market has to "answer the claim" or face having a jīdhn planted.

3. where there's no harm there's no fine to pay, lā fi salāmah gharāmah. This is a very common phrase and is used in far less formal settings than judgement by customary law. If someone
breaks something or knocks into one by accident and one just wants to say “never mind, no harm done”, one says lightly lā ṭī salāmah gharāmah.

4. The passive verb (yurmū, “shot at”) makes the construction of this sentence awkward: in fact, despite the upright alif maqūrah, many people have read yurmū, “shoots at”, which is how it appears in Abū Ghānim’s copy. To make sense of the sentence here we have to assume the subject of the verb shifts from meaning one party, who is shot at (yurmū), to meaning the other, who fired the shot and is therefore forbidden (yurna’) his recompense. Logically the second part of the sentence itself seems to fall more naturally before the sentence beginning “Whether the culprit pays or not…”

SECTION 15
A shaykh who is [chosen as] arbitrator1 is a trusted witness2 [regarding what occurs] between those at odds and [regarding] what befalls him [during arbitration]. The guarantors [answerable] to the shaykh are under his supervision (‘alā ra’yi-h, at his disposal or bound by his wishes)3 according to the usage/customs of the allied people: if he summons them they [must] answer, and if he declares himself quit of them4 he is allowed [to do] that. The guarantor has no duty (haqq ‘alay-h, i.e. to act against one of those at odds) without the request/demand of the shaykh or of the disputing party.5 The price of a mistaken ḥidhn is one hundred and ten [silver] riyāls according to the judgement/laws of the allied people, on the honour of the guarantors of [these] rules.6

1. chosen as arbitrator, muḥakkam: the passive vowelling is definite here. Informants say muḥakkim would mean one of the parties to the dispute, i.e. one of the ghurāmā’.
2. trusted witness, ṭiqaq maḥdar-āh. This phrase occurs in a number of recent ḥijrah documents as well as elsewhere. If the arbitrator says one of the ghurāmā’ broke the truce by attacking him or attacking the other gharīm, that is the end of it: one cannot argue with him. If he says one has to pay amends, one cannot appeal to anyone else for judgement. The term maḥdar presumably means his “presence”. Al-ʿAlīmī (Qādā’ qabālī p. 131) suggests taking it as a collective noun meaning those present with him, i.e. those involved in the arbitration, but I have not heard this suggested by friends from Barāṭ.
3. under his supervision, ‘alā ra’yi-h, cf. section 13, above. I heard this phrase used (interestingly enough, by ‘Abdullāh Ya’qūb of al-Maʿāṭirah) in a dispute in Sufyān. It meant that the guarantor had to do what he was told by the person he guaranteed. A’s guarantor (kafīl) for B’s behaviour was told by A, after B had killed someone at truce, that he (the kafīl) must take vengeance on B. He refused. ‘Abdullāh Ya’qūb judged he should indeed hunt him down, and said al-lazīm (i.e. the guarantor) ‘alā ra’yi muḥazzim-āh: he was bound by the wishes of A to whom he had offered guaranty. So, here, the guarantor must do what the arbitrator shaikh tells him to do.
4. declares himself quit of them, takāfā ‘an-hum. Most informants says this means barā or ibtarā, i.e. he decides to have nothing further to do with the guarantors. Others have argued it means “demand as much as one wants”, so “whatever he asks of them, they must do or give”.
5. has no duty, lā haqq ‘alā l-dāmin. But despite the grammar, which seems unambiguous, one would expect haqq here to mean a “right” to act, rather than a duty: the guarantor might well wish to avenge some perceived slight to himself, and the shaykh or disputing party not wish it.
6. Most argue the ḥidhn would be placed, probably in front of his house, by one of the disputing parties who considered that the guarantor had not discharged his obligation. But section 41, below, also sandwiched between provisions on arbitration, says that a ḥidhn can properly follow any failure to respond to a formal summons, whether or not the summons itself is
justified. How a claim prima facie plausible and its judgement as right or wrong are separated here is not clear.

SECTION 16

The market and its roads [i.e. the roads leading to it] are secure, according to their [the allied people's] rules/agreements and the market-rules.1 Whoever does anything (fa' al, commits an offence or inflicts a wound) there2 shall have no right and no fellow unless he pays eleven-fold for what occurred in the market on the days and nights of the market according to [the market's] rules. [Payment] eleven-fold is for [offences committed on] the day of the market.3 The roads to the market are secure in all four directions for he who brings goods (jallāb al-manfa'ah). If Dhū Ḥusayn commit aggression on one of the roads and it is [within the area] from the crest of Ashar northward or on the Jawf road west of al-Faraḥ, they are liable to [the provisions] in the rules of the marker.4

1. Presumably this means the roads within Dhū Muḥammad's territory, but as we saw in the introductory essay (part one) and discussing the market-guaranty (text 1), claims are made that guaranty of the roads once extended further.

2. Strictly, the offence is against the market-rules rather than the market itself (fī-hā, not fī-h). As in the market-guaranty (text 1 section 2) the provision here perhaps applies to any offence concerning the market, not just to personal theft or violence, (one might, for instance, fail to provide support when asked) though the original case from which dispute arose would doubtless be a violation of the peace on market-day.

3. This sentence seems superfluous, although all the copies of the text are clear.

4. Ashar is the ridge between Dhū Muḥammad's territory and that of Sufyān. Āl-Faraḥ, according to many informants, is in the territory of Bānī Nawf or even as far off as Shawābah; more probably what is meant is a place near al-Marāšī about a day's journey on foot from al-ʿInān (see introductory essay, part two).

SECTION 17

If one of the allied people steals [livestock]1 from his fellow —from the allied people's flocks2—he insults the guarantors and has no fellowship [in the tribe]. Stealing livestock among the allied people [is fined] four-fold, whether much or little. Whoever commits violence against an animal [belonging to one] of the allied people and kills it in other than a restricted area (mahjar) or in a restricted area other than during the restricted period (fī ghayr ayyām hijrat-ah)3 must pay the cost of killing the beast, the cost of hocking (salabah), a quarter of the [animal's] price on top of the fair price. If not [i.e. if the animal were on the person's mahjar at the relevant time], then he just pays the fair price.4 If [the culprit] does not pay [this], he shall have no right and no link [to others].

1. jalla (verbal noun, jall) refers specifically to stealing livestock. Other forms of theft are described as maddah, sariqah, or nahb according to context.

2. flocks, qarshah (cf. qarishah pl. qurāsh). Although the copies of text B are consistent, it is not impossible the word should be qashrah, meaning grazing-land (see section 32, below). There is disagreement over whether to read mīn al-qarshah or fī l-qarshah.

3. restricted area, mahjar (also mahlūr); restricted period, hijrah. For details see the introductory notes on territory and land-use (part two). Around Barāṭ most of Dhū Muḥammad's territory is open to grazing by everyone, but mahjar is restricted to use by its owners twice a year (section 32, below).

4. Reading thaman al-ʿadl. But the intention may have been thammana-[h] al-ʿadl, with al-ʿadl referring to the “honest” adjudicator rather than the “just price”: so, “if not, then an honest man is to set the price of the animal”. The use of ʿadl to describe a person (pl. ʿudūl) is very common.
SECTION 18

If one of the allied people commits an offence against a protected person (jār, or neighbour: a “weak” non-tribesman) who is under the protection of (mujawwar min) one or more sections, his neighbours [i.e. the broader set of tribesmen under whose protection the victim lives] cannot act [to extract compensation or take revenge] until the neighbour from whose [particular] section the culprit comes should fail [to do so]. If [the culprit’s] neighbour fails [to extract compensation] then action against the culprit [should be taken by] any section of the allied people.  

1. commits an offence, madda. This, like the noun maddah, seems to refer to any offence, whether large or small (in section 31, below, it is used of damaging palm trees). The use of maddah to mean specifically blood-money, reported by Landberg (Glossaire p. 2681) seems not be known at Baraṭ. Usually it means a blow.  

2. section, laḥmah, usually a unit of the scale of Dhū Muḥammad’s “fifths” or a major division of one of the fifths: smaller units are referred to in the documents as badanah (see text A section 9), though this is not common usage now.  

3. Text A section 20 specifies the order of responsibility in more detail. “Weak” people, like borders and the market, are the common concern of all the signatories; but here the point is made that with internal disputes it is only when those to whom a weak person is particularly linked have failed to make amends that others act.

SECTION 19

Whoever is owed blood-compensation (naqṣ dam) by one of the allied people and his [i.e. the debtor’s] obligations among the fifths [of the tribe] cover him, the rights of refuge for a nomad or a settled person are according to the laws of the allied people. His fellow’s pursuit [of revenge] is his concern (fi dhimm-ah) and [if] his fellow has the offence compounded [i.e. further deaths or wounds are inflicted] then he [the original culprit] bears responsibility (iḥtamal). If a wound is being sought from him [i.e. an attempt is made to wound the culprit’s kinsmen or fellows in revenge] and another wound is inflicted on top of the first wound, he shall have [the right to] an escort. Whoever pursues [revenge for] a killing and a further killing is inflicted on top of the first killing, and his [antagonist’s] rights [to protection] among the allied people have expired, he [the initial culprit] shall have no right except [to] a companion at his side [i.e. to escort him safely from A to B]. He no longer has right of refuge (qiṭār). As for right of escort (siyār), he has that; and right of escort is obligatory in [cases both of] killing and wounding.  

1. cover him, tabajjaba-h. As noted in the introductory essay (part three), many friends from Baraṭ are not comfortable with this reading and prefer to take tabajjaba as being or as meaning najabat, to end or finish. Comparison with text A section 14 makes this unlikely: yahjib al-malāzim or tabajjaba ‘ind-ah al-malāzim are found in place of tabajjaba –ah malāzim-ah ‘ind al-akhmās. The passage as a whole is difficult to read, not least because at several points the subject of the verb shifts unannounced –as it seems to in this first sentence.  

2. The malāzim or obligations referred to here are probably those arising from a system of obligatory truces or cooling-off periods (see part three of the introductory essay). After a wounding or killing within Dhū Muḥammad the culprit had the right to refuse with or protection from each of the other fifths for a month in turn, or a month and ten days. The first line of this section in the Thawābah copy of text B includes the stray phrase madda fi jār mujawwar, obviously miscopied from two lines above.  

3. This is one of the few places in the qawāid where shurū’ must mean “laws”, rather than a specific judgement. Refuge is a right, apparently, and its duration already specified. rights of refuge, aqtār or iqṭār in all our copies of B. One would expect simply qiṭār, so this
may well be a plural, referring to successive periods of refuge with different sections of the tribe, probably of a month or a month and ten days each.

4. is his concern: dhimm-ah here could be dhamm-ah, which in turn could mean simply a wound. This would fit with the simpler provisions of text A section 14, and some readers suggest the word should in any case be dam (cf. Al-ʿAlimī Qādāʾ qabālī p. 120). The copies of B are consistent, however, and the phrase seems to have been added in an attempt to clarify text A, specifying that rights are already in force which may be annulled. Cases where no special rights are in force at the beginning seem to be addressed below in section 20. The original culprit has right of protection for a specified period, as explained above. But those who suffered the loss can pursue revenge against some other member of his group. If in the process they fail to gain revenge and thus balance the account, but instead lose another man, then the original culprit loses his right of refuge. Some have wanted to read wa-ṭard ṣāḥib-ah. Something is missing (at least an “if”), and translation all but requires switching active and passive voices, but the nearest I can get to a grammatical reading is to take wa-ṭard as a verbal noun.

5. rights... have expired, madat sinan-ah (muṭat sinan-ah, as some read it): maṭā must have this “completed action” meaning here, especially since it is followed by the clause fa-mā la-h sinnah. If maṭā had the meaning of “had become effective” or “were effective”, the question of whether or not there was further sinnah would not arise. The rights or obligations (sinan, malāzīm) that have ended are those of the initial period after the first offence when refuge can be taken with the fifths. After the second offence the question arises of the initial culprit’s status. Text A (section 14) says simply that he has no sinnah; text B says more specifically here that he does have right of escort but does not have right of refuge. Abū Ghānim’s copy (Bunyah qabālīyah p. 391) has a few words missing.

71 SECTION 20

If the owner of the blood [i.e. the dead or wounded man’s kinsman] seeks his compensation (naqṣat-ah) as payment for the blood [rather than revenge], the neighbour [i.e. the debtor’s fellow tribesman] is honour-bound to pay it in three instalments according to the allied people’s judgement/laws. If someone pursues [revenge for] a wound and an additional killing results, then the right (sinnah, e.g. to refuge) is effective in [the cases of both] killing and wounding. Whoever refuses payment of [cash] compensation for blood[-debts] has no [such] right. Whoever has [a claim] against his fellow for killing or wounding and pursues [vengeance] for it, the person who has suffered the loss [i.e. the one now seeking vengeance] has up to three rifles [i.e. three shots] to fire, whether he misses or hits [his enemy], and if he goes over (zād ‘alā) the three rifles, this is excess (ṣabahāḥ). Whoever commits excess [of this sort] against his fellow has no right [e.g. to refuge], no link [with his fellows, as of traveller to escort] and no [claim to any] obligation among the allied people, and he insults the guarantors of [these] rules/agreements unless he pays the cost of excess [i.e. a fine], according to the allied people’s judgement/laws, in cattle and camels and tashwif, according to their weighty customs.

1. payment for the blood [rather than revenge], sawq al-dam dasm. This is quite a common formulation.

2. As in section 13, above, the jār or fellow tribesman steps in to provide huṣbāh and takes responsibility as lazīm; the person from the other group, who is seeking compensation, is then his mulazzīm.

3. Compare text A section 14. The preceding sentence seems out of place, or superfluous, and may perhaps refer to killing and wounding that occurs before payment is sought.
Alternatively, the first sentence of this section could be attached as a postscript to section 19, and the present section taken to deal with cases where refuge has not been sought with another part of the tribe but the disputing parties instead remain with their own people.

4. Informants agree that the limit of three shots applies not to the dispute as a whole (pace Al-ʿAlimi Qaḍāʾ qabālī p. 121) but to each occasion when the wronged party tries for vengeance. A month later one could try again, but again only take three shots. The amount of the fine is disputed, but experts have usually said 110 riyāls.

I have not translated yasīr in the phrase “whether he misses or hits”. It could just mean “and off he goes”, as it could in the corresponding line of text A section 15. In text A section 9, however, dhī yasīrū seems to mean “as they (usually) do” or “as they should”, i.e. as is right. There is also some doubt among the copies as to whether it should be yasīr or yasīr.

5. Their weighty customs, aʿrāf-hum al-ghaṣṣābah. The latter term is fairly common and occurs elsewhere in the present document as well as in Document 8 in the introduction. A common explanation of ghaṣṣābah is ijbārī, “obligatory”, but something a little broader seems needed (see also sections 39 and 42, below).

Why tashwīf appears separately in the last line escapes me, unless perhaps some combination of slaughter-beasts and cloth is involved as in sections 2 and 3, above. Sāliḥ Muqbil Juzaylān suggested perhaps this would only be due if the excess shots did damage to the house or property.

72 SECTION 21

If one of the allied people offers [to pay for] the blood of his fellow according to their judgement/laws and the owner of the blood [i.e. the man wounded or the kinsman of a man killed] refuses to accept [payment for] his blood, then right[s] and link[s] are recognized, including right of escort. The neighbour stands [in for him] among the allied people. Whoever commits disgrace against his fellow [e.g. by breaking an ʿulqah, or formal link], he [the person offended] shall have no claim [to support] from his tribe except from twenty men or less, and [the offender] may be fired on at his house or wherever [his opponent] hunts him down. The man disgraced/insulted has up to three rifles/shots to fire [whether] he hits him or misses. Whatever goes over this is counted as excess. Whoever owes his fellow a debt of blood and his obligations [of refuge] have expired, has [the right to] an escort. If he goes to the land of the state or wishes [to go] somewhere else, he has an escort. If he is outside the land of the state, he has [the right to] an escort to his house.

1. offer, badhala; refuse, ghalaba. Abdullah Muḥsin Thawābah suggests badhala in line one may mean to throw the culprit out, to hand him over, or refuse to support him against a just claimant. This is possible (see al-Sudūm ʿNaṣṣāriyāh p. 124), but the opposition between badhala and ghalaba suggests the interpretation I have given here.

2. stands [in for him], yastaqīm. Presumably the meaning is that he can do so if he wishes or he should so ideally: if a man is willing to pay compensation but his antagonist seeks revenge, then one of the man’s neighbours or relatives can provide raṣāq. Text A section 13 and text B section 13 have yastaqīm muṣān. The term “neighbour” is reciprocal, applying both to the lazīm and to the muṣālīm: one here is muṣān or muṣawwān and the other muṣān.

3. claim [to support], ṣayḥah: more literally, “calling [for help]”. In Suṭyān and elsewhere I was given ṣayḥah or ṣāyiḥ; as a gloss for nābī, meaning a right to support on demand from other members of the tribe (cf. Dresch ‘Suṭyān’ pp. 52-3). In some copies the word looks more like suḥbāh or even sabāḥah, neither of which makes as good sense in context.

The qabilah or “tribe” here might be quite a small set of people, a subsection of a “fifth”, as in text A section 9.
4. Reading *wa-qad najahat malāzim-ah*, as it appears in three copies, not *qad tāḥajjab* or *yahjib malāzim-hu*. For *najahat*, “expired”, “run out”, “come to an end” see al-Ḥibšī (ed.) Ḥawliyāt yamānīyah, p. 388, Ḥabshiṣḥū Ṭu‘y̱ūh pp. 92, 126. Also section 41, below.

5. goes to, ḥadara (written ḥazarā in most copies), but the intention may have been *akhṭara*, which seems to be what we have in Abī Ghānim’s copy, and confusion is even possible with *ikhṭāra*, to choose (*ṭāʿ* and *tā‘* are occasionally assimilated). The wording here is almost exactly that of the postscript to text A (section 22).

### SECTION 22

Whoever grants his fellow a truce, and [thus] gets him out of his house, [then] declares himself quit of it,¹ he [the person granted the truce] shall have an escort to his house. Whoever grants his fellow a truce then declares himself quit of it, the quittance [i.e. the declaration that the truce is over] is only correct/valid if [the news] reaches the man granted the truce (al-ṣalīḥ) among the allied people (bayn ahl al-malāzim) or if [the quittance] is announced in the market on market-day,² if he [the man ending the truce] does anything [to the other party] before the announcement in the market or before [news of] the quittance is brought to the man [originally] granted the truce, then he commits a disgrace: he has no right (sinnah) and no fellowship (ṣāḥh, in the tribe) and has insulted the guarantors of [these] rules.

1. declares himself quit, *ibṭarā‘*. A truce or *ṣulh*, like a *ḥudnah* (armistice, cease fire) would usually have guarantors, but either of the parties to a truce can announce unilaterally that the truce over.

2. The reference here to *bayn ahl al-malāzim* may perhaps be making a contrast with *ṣalīḥ* elsewhere in Yemen: note the reference to *bilād al-dawlah* in section 21, above. An announcement at market is reckoned to reach everyone concerned, but otherwise the time-limits set out for *jār al-tulaq* in section 5, above, might well apply to a case like this.

### SECTION 23

Whoever from the neighbouring tribes owes amends (ta‘attab) to one of the allied people and is summoned by *baydā‘ wa-ḥkiyār* has fifteen days to do the right thing [istaaqām, i.e. to accept his obligation]. If not [if he fails to do this], then he is vilified in the market [i.e. the *jidhn* is placed]. If he enters the market and strikes down the blame,¹ then he has an escort and makes amends according to the judgement/laws of the allied people. If he is vilified [i.e. if the *jidhn* is placed], then there is a severing [of relations with his tribe] by consent, and the severing [of relations] is not ended except by consent, on the honour of the guarantors.² In [that which concerns amends for] disgrace there is no intervening [for others]¹ among the allied people. Dhū Ṭuḥayyayn: not refuge (*qītār*), nor [claims arising from] a tie of blood and flesh [i.e. from relations by marriage], nor anything else from the neighbouring tribes. Nor is the companion at one’s side recognized¹ except that all of them are [responsible] for their sections.

1. strikes down the blame, *yaṃṭaḥ al-malām*. The process was apparently quite ritualized, with the person summoned not simply coming to market to discharge the claim but camping out by the *jidhn* and repeatedly shooting it.

2. The copies of the text are not fully consistent: presumably it should read either *ma‘ yanqaḍ al-qītā‘ ilā bi-ridā‘* or *ma‘ yanqad... illā ridā‘* (pr. usually *radā‘*). The “consent” (*ridā‘* in question is the agreement of whoever of the allied people is present at a meeting on market-day (cf. text 1, section 11).

3. no intervening [for others], *ma‘ ṣālīḥ l-ḥamm i‘tirād*. As section 37 (below) implies, the payment of amends (*ʿatḥ, ‘utūb*) for disgraceful action, or *ḥamm*, can be mediated by a *lazīm*
just as can payments of compensation. What one cannot do is support, or protect from claimants, any tribesman who has committed a disgrace and refuses to pay amends (see also text 1 sections 12, 14).

As in text A section 18 these provisions specifically about the pact’s members seem slightly out of place. Not sheltering outsiders who wrong the market is covered in section 25, below.

4. recognized, māḍī: more properly, perhaps, current or effective. The meaning is that Dhū Muḥammad have no general obligation to support their relatives from the neighbouring tribes whose own escort or protection of others has been violated. The specific mention of Dhū Ḥusayn seems to suggest that they and ahl al-malāzim may until now have supported one another in claims concerning others.

SECTION 24

If one of the people of Baraṭ–one of the [“weak”] protected people (jīrān) who live there and have houses, not strangers– commits an offence [or inflicts a wound] against one of the allied people, he has [right of] escort¹ for the length of that day [i.e. the day of the offence] and no more.² A tribesman who has no dwelling [there]–a stranger, or from the neighbouring tribes³– and commits an offence against one of the allied people has no protection⁴ and no escort. Whoever protects him or escorts him insults/shames the guarantors, the guarantors of [these] rules, and has no [ability to enter or invoke an] obligation (malzam).

1. [right of] escort, rafaq: in fact rafaq here may be a more general relation, as perhaps in text 1 section 2 (rafqāh) and text A section 5. See also section 28, below.
   But, as with tribesmen who have committed some insoluble wrong, rafaq al-mashadd, escort out of the tribe’s territory, is spoken of as the “last connection” (ākhir ‘ulqah).

2. The implication is that the protected (“weak”) person’s only course of action would be to leave Baraṭ. In practice one can easily imagine a fraction or section of the tribe defending “their” weak person against claims by another section.

3. Note again the contrast between al-aghrāb (strangers) and arbā’ al-qubul (the neighbouring tribes such as Dhū Ḥusayn).

4. protection, azā (vb. yazī or perhaps yuzzī), encountered quite widely in tribal documents, e.g. Dresch ‘Sufyān’ p. 55. This seems to refer to an informal, short-term intervention. One also finds yutāzī (sic), the noun wazā (Dresch ‘Ḥūth’ p. 78), and wazī as a participle or adjective to mean “protected”.

SECTION 25

Similarly,¹ one who brings goods to the market is secure if he owes no compensation to the allied people, [whether] blood-/debts or for theft [of livestock] or amends or compensation of other sorts. Whoever from the neighbouring tribes (arbā’ al-qubul) owes compensation has no standing² in their territory except by the consent of them all after he has cleared [his debt] according to the judgement/laws of the tribesmen. Whoever of the neighbouring tribes wishes to clear [his debt] with the allied people shall have an escort, the escort at one’s side. Whoever owes amends for [an offence against] the market or its roads has no [right of] escort [apart from this] and no [rights deriving from] eating together or [from] the bond of blood and flesh [i.e. relationships through marriage]. Whatever happens in the market is for the people of the market, the allied people, to deal with⁴ according to the judgement/laws of the tribesmen. Whatever they newly decide [in such cases]⁴ will be confirmed as a precept (farīḍah) of their customs/usage.

1. similarly, kadhālik. This seems to make little sense unless perhaps in the first line of this section jallāb al-manfa’āb refers specifically to “weak” market-folk, but in that case ‘utūb or “amends” would surely not be at issue.
2. standing, saʿāh: this means place or position, whether literally (syn. maqarr, a place of residence) or, as here, metaphorically.

compensation, naqṣah, must here be a general term that includes amends for disgraceful action as well as compensation for wounds, theft, or material damage.

3. for [them] to deal with, ʿind al-abyaḍ ʿind ahl al-malāzīm, cf. Dresch ‘Sufyān’ pp. 58-9, al-Akwa’ Madkhal p. 32. The most widely accepted interpretation is that al-abyaḍ means simply the honourable man; so the honourable man should intervene, or the right thing to do is to intervene. However, several shaykhs have suggested it also means anyone can act against the culprit and/or that the course of action (perhaps even the amends due) is for them to decide, not limited by law or custom.

Abū Ghānim’s copy (Bunyah qabāliyah p. 393) has ghayr al-abyaḍ, which seems to be a slip of the pen.

4. whatever they newly decide, wa-mā faṭarū bi-h. But the intention may perhaps have been maḍrūbah. A maḍrūb is a new decision on ʿurf by a council of shaykhs.

SECTION 26

If one of the allied people enters the building (zabn)1 of his fellow and steals something from it, he shall have no brother [in the tribe] and no fellow unless/until he has paid compensation [i.e. returned or paid for the thing stolen] and the cost of the house (ghālī al-bayt)2 according to the tribesmen’s judgement/laws. If the building was locked, the culprit must [pay] in cattle and sheep3 what covers [the cost of] the house. If it was without a door or without a key [i.e. unlocked], he must [pay] half the cost of the locked house, and half is dropped on account of the building being left without a key.4 If someone enters one of the buildings of his fellow and fires at him from his building, and it was without a key or without a door, he must [pay] a head of cattle. The rest of the cost lapses. If [the house] was locked with a door and a key, and he broke the door or pulled [the latch string]5 and fired from there at his fellow, he must pay the cost of the door and the house in cattle and sheep and he has deliberately insulted the guarantors of [these] rules. Whoever sets fire to the house of his fellow or to part of his buildings [or perhaps “to anything within his buildings”], whether much or little, he shall have no right and no fellowship and shall pay the cost four-fold, on top of compensation [for the damage].

1. zabn may be used of any building, but it has connotations of being set apart (cf. Lane’s Lexicon) and is used in contexts of separateness and defence. A building on its own, with a clear field of fire around it, is a zabn. But an ordinary house is spoken of as zabn when one is talking about differences with the people next door, even if their house is only a few metres off: cf. zābinīn al-ḥudād, “defending the borders” as an honourable epithet (Dresch Tribes p. 80).

2. cost of the house, ghālī al-bayt not the cost of the building itself but a fine for breach of the house’s inviolable status. A common explanation in the 1980s was a bull for each door one passed through or forced and a sheep for each floor one entered: any aggravating circumstance, such as theft or denying the owner access, meant the bull was accompanied by 110 silver riyaḍs.

3. in cattle and sheep, baqarī wa-ghanāmī: a common set phrase in ‘urf. It deserves noting that baqar can sometimes refer to camels, but bulls and sheep are the usual combination of ‘aqīr at Baraṭ as elsewhere north of Ṣan‘ā’.

4. on account of, muqābil, The Thawābah text here has ilā muqābil.

5. khalaʿa, meaning either to pull the latch-string or to reach through the slot in the door and slide the bolt across. Several words are missing around this line in the Abū Ghānim copy.
SECTION 27

The oath [required in cases] of killing is [from] forty-four witnesses. The oath of [other] claims/damages is twenty-two witnesses. This is the responsibility of the one accused or summoned and of his [fellow] tribesmen, according to the customs/usage of the allied people.

1. This is said still to be the case in Dhū Muḥammad. In Dhū Ḥusayn, by contrast, only twenty-two witnesses are required in cases of killing, the same as for wounding or material damage.

2. claims/damages, naqāʿ, which here must mean any kind of debt, not just a blood-debt for murder, and is parallel to the formulation in section 12. In other contexts, however, naqāʿ is used to mean specifically blood revenge and contrasted with accepting payment: hence, e.g. la-hum khīyār bayn ghadāʾ wa-naqāʾ, “they have a choice between lunch (cash amends) and absolution or good-name”. Also, a parallel deserves noting here with section 13, above.

SECTION 28

[As for] the manūʿ living in their houses at Baraṭ, if one of them commits [an offence] against one of the allied people, he has [right of] escort for the length of that day [and] no more, according to the judgement/laws of the allied people. They are brothers [with regard] to their borders, their territory, their women-folk, and [responses to] offences against their market.

1. dispute, ḥijjah, cf al-Akwa’ Madkhal p. 30. This can serve as a generic term for disputes of all sorts, but it has strong associations with ḥijjāh and yatāḥajjaj (text 1 section 10, text A section 19) which tend to refer to “taking sides” and even to stirring up trouble by doing so gratuitously.

2. For notes on the manūʿ, or people of semi-tribal status, see the introductory essay (part one).

Again, as in section 24, rafaq here would in fact be a more general relation than escort.

2. for [them] to approve, ʿalā naẓar, cf section 12, above, but here the phrase may well mean “in the presence of” (Piamenta Dictionary p. 489). Text 1 section 11 says that accepting truce or peace with outsiders is to be decided on market-day by whoever of Dhū Muhammad is present.

If a dispute occurs between neighbouring tribes and some of the allied people, and the one [particularly involved] in the dispute wishes to cut off [the dispute with the other tribe], then the cutting off is for the allied people to approve. No-one can cut off [i.e. end] the dispute between himself and the neighbouring tribes without consulting the allied people.

1. For [them] to approve, ‘alā naẓar, cf section 12, above, but here the phrase may well mean “in the presence of” (Piamenta Dictionary p. 489). Text 1 section 11 says that accepting truce or peace with outsiders is to be decided on market-day by whoever of Dhū Muhammad is present.

2. cutting off, qatʿ (or qiṭāʿ). Confusingly, this can be used either of severing all ties with someone or of ending a dispute with them. In the line following, the meaning seems to be the latter. Presumably the dispute must be one that has somehow involved the allied people as a whole, perhaps because those particularly at odds with another tribe have already asked that relations with that tribe be severed.

3. consulting, bi-mawālāt: see al-Iryānī Muʿjam p. 925, and cf. wulā or walā in the market guaranty (text 1 section 11).
SECTION 30

If a well is newly established or a well is damaged/destroyed and needs wood [to repair it], then its owner is free [to take] what wood is needed from qarḍ or ṭalḥ in common land (faysh) or land off-limits (maqṣūr).¹ Whoever loosens the hobble of a riding-animal which is grazing on common land, it is [his] responsibility if [the animal] gets lost or is driven away. Whoever waters [to excess] a riding animal or other [beast] at a distant water-hole, it is [his] responsibility if [the beast] dies.² Whoever drives a riding-animal away from trees on common land is responsible³ if [the animal] dies. It is [his] responsibility because it is on common land, not on [private] property. The jār is his own witness only in [case of] an offence [against himself].⁴

1. common land, faysh; land off-limits, maqṣūr. For the types of land at issue and the nature of the trees mentioned here see part two of the introductory essay.
2. This prescription has surprised colleagues used to e.g. the practice of badu in Oman, where a penalty would be due for not watering a stray beast. Informants are fairly unanimous in their explanation, however, and I have added “to excess” in brackets to differentiate kindly conduct from malice or negligence.
3. is responsible/responsibility, ĥamala and ĥimlah. Glaser (‘Arḥab’ p. 5) gives yuḥammil as meaning to impose a responsibility on one’s fellows, for instance by offering escort to a stranger, but this is not common usage at Baraṭ.
4. offence, maddah. This line, which seems not to attach easily to the one before or after but is echoed in the postscript (section 44, below), is a mystery. Some here have suggested that jār means a weak person, who somehow brings news about lost or dead animals; others that the jār is a fellow tribesman. But one would expect some phrase such as “the owner of the beast”.
Muḥsin al-Ghuraybī suggests reading middah (a period of time), not maddah, and that one can swear to the loss of an animal only when it comes to grief, not retrospectively. Note again thiqah for a trusted witness (cf. sections 13 part two, 15, and 33).

SECTION 31

If it should be that someone damages (madd) a fruiting palm tree (nakhlah muthmirah) and cuts some of its fruit, whether much or little, he must [pay] a judgement/penalty of two head of sheep, one old and one young,¹ and four times the [cost of the] damage. If someone takes from a non-fruiting palm tree, he must pay what covers it as mentioned [i.e. two sheep] plus the cost [of the damage].

1. one old and one young, sadas wa-rubāʿ: this refers to the number of front teeth the sheep has (six or four, respectively), and thus to its age. Cf. Piamenta Dictionary pp. 173, 218 for such terms used of camels.

SECTION 32

If the allied people who share borders [with each other] disagree [on where the borders run], or if [there is disagreement] between them and the neighbouring tribes (arbāʿ al-qubul), then borders [are to be decided by] the oath of five chosen [persons from each side]: for borders [between tribal territories], for land off-limits (maqṣūr), or for [private] property. The laws of restricted lands (maḥjūrah) are that there are two restricted periods (ḥijratayn) in the year, one from the summer to before autumn, when it finishes, and one from autumn to after ʿallān, when it finishes.¹ This is for grazing (qashrah). As for trees,² they are under the supervision of their owner [and are] restricted (maḥjūrah) at all times.

1. ʿallān a star-period ending in early October. This raises the question of when summer (ṣayf) ends and autumn (kharīf) begins. Presumably, although the calendar dates differ hugely
from year to year, the ḥijrah is declared after rainy periods, which tend to fall around April-May and in about September-early October.

2. trees, nawābit. Elsewhere the term is used, as in standard Arabic, of plants of any kind, not least of growing crops. At Baraṭ and in the Jawf, however, it means quite specifically trees as opposed to grazing, qashrah.

SECTION 33
If two men kill one man, then the accomplice bears responsibility [i.e. both killers are answerable]. The accomplice¹ is a [trusted] witness² for theft. In [cases of] blood [i.e. wounding or killing] one accomplice cannot prove/establish (yuthabbit, the conduct of) the other accomplice.

1. accomplice, sharīb. Some informants have raised more complex possibilities, suggesting for instance that sharaba can mean to deny one did it and to blame the other man. If one accuses another man and cannot prove the claim then, rather as in Islamic law, one is held responsible and may be subject to amends or vengeance. Others have said sharaba could even mean ḥārasha i.e. incite or egg on the culprit.

2. [trusted] witness, thiqah, cf. sections 13, 15, 30. In other words, in cases of theft the accomplice can take an oath by himself and should be believed when apportioning blame among the culprits. In cases of wounding or killing, by contrast, his testimony cannot deny or confirm what his partner did.

In the Abū Ġähim text (Bunyah qabalīyah p. 394) the word after thiqah is not sariqah, but no one agrees on quite what it might be. In the Thawābah copy it is spelled with a sād instead of sin, but there is general agreement on the meaning.

SECTION 34
If conflict (fitnah) occurs between two fifths [of Dhū Muḥammad] and a killing takes place, and each of the fifths seeks compensation from whoever inflicted the loss, according to the allied people’s customs/usage, and if those who fought [now] claim ignorance [as to who specifically was responsible], then each party must [provide] oaths from forty-four witnesses that it [or he, the specific man accused] is wholly innocent.¹ Then [all] who swear are liable together for blood-revenge or payment.

1. claim to be wholly innocent, yaʿūd wa-yabrā (classical yabara’, with a hamzah), apparently a set formula. The verb yaʿūd here is said by some to be a colloquial equivalent of yaʿūdh, as in yaʿūd bi-lāh, “take refuge with God”; and it is true that dhāl is sometimes realized as dāl. But by far the more likely connection is with ʿawd, yaʿūd and hence the term ʿawd meaning acting together (cf. text 1 section 13, al-Akwa’ Madkhal p. 32).

SECTION 35
If it should be that two men kill one man, one of them holding him and the other stabbing him, then [the blood-money for] the dead man is [reckoned] between them by thirds, one third from the man who held [the victim] and two thirds from the killer. Moreover, they took part together in killing him and the one who [owes] a third¹ [also] bears responsibility (iḥtamal) even if the killer is from another group than him in all [other] wars.

1. the one who owes a third, man thalatha. As al-Sudūmī says (Naẓariyah pp. 91, 132), the term also means simply to take part, or even to intervene as peacemaker. Several people have raised the point that if someone claims to have taken part in a killing, even if he did not and the claim was just boasting, he is liable for amends.

SECTION 36
It shall no longer be [as was previously the case] that a link [is reckoned binding] on Dhū
Muḥammad and al-Maʿāṭirah together. Rather the Muḥammadi is [answerable only] for the Muḥammadi and the Maʿāṭir [only] for the Maʿāṭir,¹ except that if a tribesman from elsewhere² reaches one of them he shall take him to the nearest settlement.³ Then he [the outsider] is accompanied by both tribes, each [escort being] responsible to his own section. Similarly with refuge (qitār) and truce (ṣalāḥ, settlement of disputes) for neighbouring tribes. This is from now and henceforth, where [right of] escort and refuge was [previously] effective for all [or “was binding on all”], and this is the answer (firq) to the ruination of past years.⁴ There only remains [right of] refuge (qitār) of four months and ten days for the nomad and [the length of] a crop-season for the settled person.⁵

1. Part of the meaning here, and not the least important part, would be that a Maʿāṭir cannot give refuge to a Muḥammadi at odds with another Muḥammadi, or vice-versa. But why shared recognition of escort or refuge for outsiders should be as destructive as suggested later in the passage is not clear.

2. tribesman from elsewhere ‘usr qabilī; cf. aʾshār al-qubul in text B section 38, below.

3. nearest settlement aqrab ḥayy. Even badu usually explain this as being a village, rather than, say, a camp. To the east of Baraṭ one might have been quite a long way from a village, and it is possible the rule applies only to Baraṭ and al-Marāshī.

4. A minority of copies have firq wa-kharāb al-sinīn (cf. Al-ʾAlīmī Qaḍāʾ qabilī p. 133). If the conjunction “and” does belong here, then we should read, “this was [the cause] of trouble and ruination over past years”.

5. This provision applies to the allied people as a whole providing refuge (qitār) to outsiders. Shaykhs at Baraṭ nowadays are surprised at four months and ten days: three months, they feel, would be more reasonable for someone seeking temporary residence.

SECTION 37

Whoever owes his fellow amends (ʿatb) must pay it according to the allied people’s judgement/laws in three instalments (thalātah ahlāl), and the instalments [are to be paid over] three years. If it should be that the lazīm pays the amends, he gets half of what is paid and half goes to his mulazzim –half of the payment and half the [expenses of] settlement.¹ If there is a blood-debt (nuqtat dam) behind the [debt for] amends, there is no safety or peace between the payer and recipient until [payment] is made in full with the last instalment of amends.² The first instalment [must be] silver coin; the second instalment and third instalment are [to be paid] from whatever the one who is paying and his tribesmen have to hand, unless they excuse themselves³ at the first instalment and escape [the debt] by oath and cut off [payment] at what they have in hand as reckoned [equivalent to the cash value] by an honest man although [perhaps, “where” or “even if”] a difference had occurred between payer and recipient over amends, tashwīf, murgal, or other things.⁴

1. [expenses of] settlement, fārāʾah; the term refers here to the coming and going, and hosting of visitors, that settlement involves. It can also mean simply the process of settlement or arbitration. Pace al-Akwaʾ (Madkhal p. 46), it seems not be a plural of fāriʾ in the sense of arbitrator or peacemaker.

2. payer and recipient, sāiq wa-mustāq, i.e. the debtor and creditor, as opposed to “the one who is paying” (al-suwāq, below), the man who as lazīm actually handles the payment on the debtor’s behalf.

3. excuse themselves, yaʿtadhir. Translating this as a plural seems fair, since the oath that the one who is paying does not have sufficient cash for the first payment would be collective. For a case of assembling compensation from cash, grain, and personal goods see Ḥābshūsh Ruʿyah p. 55.
4. Several people have wanted to read this as a difference (ikhtilāf) between the debtor and the man paying on his behalf, but the meaning of sāyiq and mustāq seems clear from earlier in the passage. No-one has offered a good explanation of the construction maʿa ann, “although”. Perhaps a contrast is being drawn with an earlier system where no-one was called in to evaluate payments in kind.

SECTION 38 (part 1)

Whoever leaves and sets himself up among [one of] the other tribes (aʿshār al-qubul) and enters their fellowship [i.e. asks to becomes brother to them], the allied people must go after him within a period of fifteen days and claim him (yalḥaqū-h) by [giving] rifles of dispute1 to those of the neighbouring tribes (arbāʾ al-qubul) with whom he has sought shelter. If [his complaint] is true and he left on account of neglect or oppression,2 his [fellow] tribesmen must pay what is proved. If neglect or oppression is not proved against his [fellow] tribesmen, nor any other duty, those who accepted him must [arrange for] his return. If someone seeks shelter3 with Dhū Muḥammad or Āl Muḥammad, do this. These are the weighty judgements/laws.4

1. leaves and sets himself up, shadda wa-awthana. A set phrase which I have not heard broken down in explanation. Presumably the first term corresponds to the classical shadda, to saddle up and leave; the second to planting a marker or wathn. rifles of dispute, banāḍiq al-nizāʿ, cf. section 42, below. Shaykhs from Baraṭ have insisted the form nazāʿāt, which occurs consistently in several copies, is wrong; but a connection with nazāʿ in the sense of “removal” (Dresch Tribes p. 109) cannot be ruled out, and I suspect nazāʿāt is actually correct here.

2. neglect or oppression, qaṣrah wa-ʿathrah: the first means a shortcoming, not doing what one should, and the second means doing what one should not, i.e. sins of omission and commission.

3. seek shelter, tajannā. Although informants associate this with the word jināyah (crime), they nearly all explain it as ṭalaba himāyah, seek protection. One wonders whether tajannā might not connect with the verb janna rather than with janā. The construction man tajannā fawq-ah is confusing, but for the verb tajannā being governed by the man claiming help see two lines later (section 38 part two).

Al-ʿAlīm (Qaḍāʿ qabaṭ p. 127) reads takhabba’, but I have not seen this in a written copy or heard it suggested by anyone from Baraṭ.

4. these are the weighty judgements/laws, hādhīh [ḥīy] al-shurūʾ al-ghaṣṣābah. Cf. sections 20, 39, 42.

SECTION 38 (part 2)

If someone from one of the fifths [of Dhū Muḥammad] or from al-Maʿāṭirah goes to another fifth, his own fifth must claim him with rifles of dispute according to the judgement/laws of the tribes and appoint two shaykhs, one from [the group] who seek [the absconder's return] and one from those accepting [him]. If neglect or oppression is proved and they settle [the claim] in accordance with the judgement/laws of the tribes; if they settle and he refuses to return to his [own] tribesmen, then those who claim him and those with whom he concluded fellowship must [both] pursue him and make him return to his [own] tribesmen. If his tribesmen do not settle in accordance with what is judged [due] him, they are negligent of the tribes' judgement/laws and their guarantor is
[to be] summoned and vilified until they settle in accordance with what was ruled against them.¹

1. In other words, the other fifths or sections within a fifth would place black flags, or if need be jidhn, against the defaulting guarantor and his section, who would thus lose their right or sinnah until settlement was made.

SECTION 39
If a shaykh when he is settling a dispute¹ between those at odds suffers an offence from the disputing parties, or a wound or a killing, then what befalls him is [to be compensated] eleven-fold. If he issues his ruling between the disputing parties and one of the disputing parties is not willing to accept the decision, the guarantor [of this person who refuses the judgement] must drive [his charge] to honour the decision or to give the shaykh rifles of severance (banāḍiq al-kasr), which are valued at one hundred and ten riyāls.² The shaykh and the disputing party [must then] be driven to a weighty expert [in customary law].³ The guarantors must drive all of them [to go].

1. settling a dispute farāʿ yafraʿ. An arbitrator is far (cf. section 42), yafraʿ is to separate disputing parties by arbitration, and farāʿ we have met already in section 37 meaning the trouble and expense, the coming and going, involved in arranging a settlement.

2. Giving rifles as surety to an arbitrator is not unusual. What is somewhat out of the ordinary is the provision here that any arbitration whatever requires “rifles of severance” if one rejects the outcome (the costs are potentially severe, as we see in the section following). Dhū Mūḥammad claim this is still their practice now, and that Dhū Ḥusayn’s custom is simply to give the arbitrator two silver riyāls and seek a second opinion.

3. weighty expert [in customary law], marāqḥah ḡaṣṣābah. For the adjective see also sections 20, 38, 42. The noun marāqḥah is widely attested, and seems even to have been used by Yemeni Jews of their own experts in custom or of custom itself (Ḥabshīsh ʿRuʿyah p. 42), but where the term comes from is unknown. See al-Iryānī Muʾjam pp. 826-7.

SECTION 40
If the shaykh’s decision was correct, he is paid a hundred and ten riyāls for being right and a quarter blood-money [is divided between] the guarantors and the shaykh, the lazīm and their mulazzim,¹ plus a seven-year-old camel and a subāʾīyah, which is the price of the shaykh’s honour.² If [the disputing party] was correct and [the shaykh’s] decision faulty, then the shaykh [must] put up with what befell him. He has no [further] claim against the disputing party who gave the rifles of severance, and his rifles return to him [i.e. to he who gave them].

1. lazīm wa-mulazzim-āh here stand in apposition to the guarantors and shaykh. The guarantor is the lazīm, the one answerable; the shaykh is the one to whom he answers. For a general description of the role of guarantors in arbitration see Dresch Tribes pp. 92-3.

2. the shaykh’s honour, ḥurmat al-shaykh, i.e. the respect due him. Compare such phrases as ḥurmat al-watan (Rossi ‘Diritto’ p. 19, Dresch Tribes p. 80), used of cases where the respect due a tribe’s territory is violated by an outsider committing wrong there.

SECTION 41
If a guarantor or lazīm or one of the allied people is summonsed by the white [flag], he must give a rifle of whiteness.¹ If he fails to do [what he is required to] and the periods of bayḍāʿ wa-khiyār expire² and he has [still] not responded (lam yartadd, not answered the
1. rifle of whiteness, bunduq al- baydâ’. Opinions differ as to whether this rifle should be lodged with a guarantor, with the plaintiff, or with the dawshân, the “herald”. It signifies a willingness to engage with the claim, to submit it to judgement if need be. As the last line of this section implies, it does not imply that one accepts liability or agrees to make a specific payment; that would be bunduq al-wîfâ’ or bunduq al-tasrûh.

2. periods... expire, najahâh wuhûl al-baydâ’. Repeated enquiries among friends from Barât who know very well how Arabic grammar is supposed to work leave no choice but to accept wûhûl as the plural of jawâl, a period. I am grateful to 'Abdullâh Muhsin Thawbâbah for forcing me to take seriously this possibility.

3. This seems at odds with the rules in section 15. The contradiction is resolved if we assume section 15 deals specifically with guaranty for arbitration and that the present section sets out a more general rule; but the present section itself falls conspicuously between two provisions concerning arbitration.

SECTION 42

If a dispute or conflict occurs among the allied people and they do not agree on one of the allied people’s [own] arbitrators or experts [in customary law], then all of them must drive the others to go, and go along themselves, to the experts of Dahm, Bin Mulhibah, unless they wish an expert from Dhû Ḥusayn. The weighty [law experts] are Bin Mulhibah or Bin Dughshân. Whoever of Dhû Muḥammad, or Āl Muḥammad al-Ma’âtirah, or Dhû 'Amr does not go to the weighty law-experts, everyone must force him [to do so], on the honour of the guarantors of [these] rules.

1. arbitrators, furût; experts, marâyîgh (pl. of marâghah). Pace al-Sudûmi, Nâzâriyah p. 81, these are not the same. A far’ or fâri’ is any recognized arbitrator; a marâghah is in the nature of an appeal judge, a masfî or manhâ with whom cases ideally are “cleared” or “finished”.

2. Bin Mulhibah are shaykhs of Bâni Nawf, and Bin Dughshân are shaykhs of Āl ‘Ammâr. By “weighty” I again translate al-ghaṣṣâb, which we already met in a slightly different context in sections 20 and 38, above.


4. Apart from the introduction (section 1, above), this seems to be the only occurrence in text B of lâl wajîh-hum rather than fî wajîh-hum. There is no great difference in meaning, although one usually finds lâl used of cases where something is newly referred to guarantors: in some degree that is so here, but the duty of driving others to arbitration is already in place and fî wajîh-hum would have served as well.

SECTION 43

If one of the allied people sets himself up in empty land (ard baydâ’) where nothing is and digs there a well or builds there [a house], and if someone [then] wants to build next to [his] building or dig next to [his] digging, then the set-aside area of the well is [the length of] its well-rope. This is on empty land where no-one has rights, or property, or anything contested.

1. set-aside area, ḥaram. In other circumstances there is no formally defined ḥaram, for instance of so many cubits, though houses have their own “inviolability” or protected status (jurmah) and should “from respect” not be approached gratuitously.

2. Presumably this means empty land within Dhû Muḥammad’s territory or within that of the members of the pact generally. Even in the latter case one finds it hard to imagine, for
instance, a Muḥammadī sinking a well in al-Maʾāṭirah’s territory at Wāḍī Tamr or adjoining Wāḍī Silbah. There are always residual rights of some kind.

This is followed by the names of the guarantors, given separately at the end of the present section (part six). These in turn are followed by the witnesses, prefaced with the single line, which also occurs in the postscript to text A: If two sections settle [a dispute] between themselves, without exact judgement (bi-ghayr qaṣā) or without [a copy of] the code present, this does not nullify/erase the code (lā timḥaq al-qāʾidah).

This in turn is followed by the list of transcriptions since 1211 hijrī (AD 1796), and after mention of the 1238 (AD 1822) copying by Ṣāliḥ Aḥmad al-ʿAnsī comes a further note:

SECTION 44, POSTSCRIPT

The neighbour (jār) is trusted [as witness] if he claims for a wrong, [but] not [as regards] his property.¹ Whoever shames their own honour [e.g. wrongs his own guest or the person he himself is escorting],² it shall be [fined] eleven-fold according to the judgement/laws of the allied people, in [matters concerning] payment of amends and other things.³

¹ neighbour, jār, is taken by most readers from Baraṭ as referring here to a weak person under tribal protection, and they do not associate it with the line following (cf. section 30, above). Most copies have bi-maddah fī-h, though Thawābah’s has just bi-maddah. The verb is read by most people as form IV, adʿāʾ not usual in classical (cf. section 3, note 2). The same is done with e.g. Ḥabshūsh Ruʿyah p. 83. Almost nobody has read it as form VIII, although the participle muddaʾī is standard usage at Baraṭ as it is elsewhere. This line is almost identical with one in section 30, above, and plainly stands by itself. The meaning would be simply that a protected person’s claim to have been wronged by someone must be accepted, like that of a person robbed on the way to market (text 1 section 9). But his claim to material loss (cf. qadr al-fāyit, loc. cit.) would need support by testimony from others.

² The plural form wajīh-hum is unexpected, but experts such as Ṣāliḥ Aḥmad Thawābah, Ṣāliḥ Muqbil Juzaylān, and Ṣāliḥ Muḥsin Thawābah have all given the same interpretation consistently at widely different times over many years. Note ‘āba, to act shamefully or commit a disgrace, as distinct from ‘āyyaḥa, to shame or insult someone else. Several copies, in different hands, have a cross over wajīh-hum as if recognizing a mistake of some kind.

³ payment of amends and other things, sāq al-ʿatb wa-ghayr-ah. The meaning is not clear. The reference could be to amends and to damages, even to vengeance, saying that all these should be multiplied eleven-fold, not just the material damages or compensation (naqāʾis or naqṣ). Alternatively, though this seems less likely, the reference could be to breach of trust specifically when managing payment of amends for others as lazīm or guarantor.
**List of Guarantors (text B)**

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1. The role of guarantor or ḍāmīn (pl. ḍumānā') has been mentioned several times, and the term itself occurs prominently in our major texts: in the market agreement and in both versions of the broader pact called qāʾiday al-malāzim. Attention has already been drawn (part three) to the large number of guarantors who signed the latter. Their names are listed, below, in the present section. A brief note is in order, first, however, on the general phenomenon of guaranty. Although a range of terms is found in Arabic (damān and kafālah are perhaps the best known of these), and the instances to which one term applies may differ, there seems always to be in evidence a simple concept of taking responsibility for others.¹

2. Certain figures may be spoken of as shaykhs of guaranty, and Imams sometimes recognized men by that title as responsible for collecting tax or providing hostages. In tribal terms, however, “shaykh of guaranty” (shaykh al-ḍamān) is hardly an administrative rank. People may disagree as to who deserves the name, and as to how many such figures or families there are in a given tribe or section.² The present documents (texts A and B) suggest that prominent shaykhs at Baraṭ had no kind of monopoly on speaking or signing for elements within their section: one could not, I think, safely guess from the lists of guarantors, as opposed to the names of witnesses, even which were the most prominent. Everyone equally who signed, for however many men or however few, qaddama wa-kafala, as the formula usually runs: he “put forward” (his face or wajh: in other words his honour) and “gave surety” (for his men). In doing so he made himself answerable to others.

3. The guarantors of the market or of the Code are meant all to act together, but each is responsible for his own people. If someone refuses to pay his share of a debt incurred by the whole tribe, for instance, his specific guarantor or guarantors must pursue him (text A section 9): they are responsible for seeing the payment made, indeed, even if the man himself is “cut off” from their tribal section. If one of Dhū Muḥammad wrongs his fellow at market, his guarantor has to pay in the culprit’s name four-fold, then recover the debt (text 1 section 3). If someone takes refuge with another section and his own section refuse amends for a wrong that he suffered, their guarantor is “vilified” (text B
Penalties seem to fall mainly, and at first solely, on the guarantor. In the case of shaykhs, questions about the apparent “cost” of the role—about the risks attendant on default by those for whom one “gave one’s face”—are met with what seems incomprehension. Providing guaranty is part of being a shaykh. The relation itself is markedly asymmetrical: guaranty by the shaykh requires no formal loyalty from the tribesman for whose actions he provides surety.

Guarantors for qawā‘id al-malāzim, or indeed the market-guarantors (dumanā‘ al-sāq), might seem to act as such almost ex officio, as shaykhs of their minor sections. Certain other dumanā‘, or guarantors, do not. Those at arbitration (text A section 21, text B sections 15, 39, 40), for instance, could be anyone agreed by the parties at odds. The grouping in our texts of amends for breach of guaranty with those concerning truce and sharing food (text A section 13, text B section 13) suggests that guaranty might involve any tribesman and might arise in a range of circumstances. Certain terms overlap here (ḍamīn, kafīl, lazīm) and usually in fact are virtual synonyms. Different circumstances, however, can be dealt with separately.

The most prominent cases of formal guaranty are those that attend arbitration, truce, or the settlement of debt. Each principal party, whether single or collective, chooses guarantors for the other’s actions. Party A thus have a guarantor (or several guarantors) li-A ‘alā B, responsible to A for B’s conduct; part B have a guarantor li-B ‘alā A. The guarantors for each side may agree among themselves to act together (shabk), but each principal has claims only on their own guarantor, that is, their ḍamīn or kafīl. Although the choice involves all manner of practical considerations, such guarantors may in theory be drawn from anywhere. The guarantor is answerable for a debt, no doubt, but the emphasis is all on forcing the principal to pay, or otherwise to act as required, and one might often choose a guarantor who for instance lives on a route by which the principal must reach the main road, so he can easily bring pressure to bear if need be.

A rather different case arises at the start of disputes. Person A wrongs a person B from another family or section, and commonly someone else from A’s own section steps forward to provide B with surety that the debt will be paid, providing “cover” (ḥajb or ḥujbah) for the debt and debtor. The two whole sections are therefore not placed at daggers drawn or at rifles raised (part three, above). In this case, too, one can speak of a ḍamīn or kafīl. All these guarantors, whether acting for their own section or ensuring a truce for others, are “responsible” to someone else, and in our documents each is referred to on occasion as lazīm. The person to whom a guarantor of any kind is answerable is his mulazzim.

A lazīm paying a debt on behalf of the original culprit is said to get half the total amount due, and half goes to the original creditor on whose behalf he acts (text B section 37). Shaykhs at Baraṭ these days think that excessive: a third seems to them a more proper maximum, and in practice only the costs of mediation (farā‘ah, of the coming and going required) are usually sought. But even half the debt, if one ever received it, appears a poor return on what can be a large risk. In fact guarantors for arbitration and the settlement of debts can be hard to find. People stepping forward to “cover” their fellows in immediate dispute with outsiders is less problematic, for obvious reasons: one does not usually want a fight between whole tribes or sections. But relations of guaranty, some for a specified period and some permanent, all of them specific, are extremely numerous.

Concern with personal commitments to ensure payment or truce recurs in many “archaic” or non-state systems. It recurs in early Wales or Scotland, for instance, in the
Frankish world, and in much of mediaeval Europe. Security for an undertaking was provided in the form of claims to persons or property; and persons other than the principals bound by that undertaking acted as sureties, or bondsmen, or guarantors. Modern security is “essentially collateral or ancillary” to some other obligation. In so-called archaic law, by contrast, “the participation of sureties [was] central to the formation of agreements which gave rise to ‘debt’... as well as to the performance of other acts.” The duties of these sureties or guarantors could be quite specific.

Early Irish law presents a rich set of distinctions. The rath was a surety who pledged the value of a debt, and if the principal defaulted twice then the rath’s own property was distained by the creditor. The attic, by contrast, was a surety who pledged his freedom, agreeing to be held for a time by the creditor if the debtor failed to pay. Both types of bondsmen or guarantor seem to act with a naidm, an “enforcing surety”, whose honour was pledged to enforcing payment and who could rightfully attack, if need be, the debtor who refused payment. The concepts themselves are not crystal-clear. We are told that a rath (who guaranteed the amount owed) should be someone who would pay meekly; yet he should not only possess ten cows and himself be free of debt, but apparently should be a large man, with a shield and a sword, who had won three fights. One would have thought that more what was needed of a naidm. What does seem clear is that the naidm (who enforced compliance) had no liability for the debt itself, but a rath did.

Unlike tribesmen further west and south, people at Baraṭ sometimes distinguish between a kafīl, responsible for monetary debt, and the damin, responsible for persons’ conduct, of which paying a debt might be an instance. But there seems not to be a clear distinction between persons on the Irish model. More to the point, perhaps, is that merely financial debts present one set of problems: they are likely to arise from commerce, there are several ways one might address them, and financial surety might therefore perhaps be given by a non-tribesman. The guaranty of others’ actions presents quite other problems, which can only be taken on by men of tribal standing. But in either case one could usually say equally damin or kafīl. A terminological distinction which does arise often, however, is that between primary and secondary guaranty, the latter being called radm or sāwn. Secondary guarantors back up the kufal’ or ḍumanā’, and in effect provide guaranty for the primary relation between guarantor and principal.

In all these cases, the parties to the original dispute (the antagonists, or ghuramā’, creditor and debtor) cannot act directly against each other, nor can a guarantor act against one of these principals without a demand from the other or, in the case of arbitration, from the arbitrator (cf. text B section 15). The guarantor for person A must act against B if person A demands it (al-lazīm ‘alā ra‘yi mulazzim-hu); the guarantor for A’s conduct must act against A if B demands it. In a sense, though not quite that of common or of civil law, each of the disputing parties is bound to the other by a unilateral contract. Meanwhile, action by one of the original principals or antagonists, no matter how sound his claim, directly against the other insults the guarantors, who are due from him amends.

Stewart invokes here a Germanic distinction between duty and liability (Schuld and Haftung), such that the original creditor may owe a duty, or otherwise a debt, and only the guarantor be liable. “The distinction between the ideas of debt and liability is useful”, as Walters remarks, “even if their primitive location in separate persons is unproved”, and their practical identity in much state-centred law, one might think, is indicative of the way that states impose duties uniformly, at all times, on citizens or subjects: a duty
recognized in law, as distinct from simply morals, will usually entail liability. An easier solution to the (tribal) Arab cases, however, may be to distinguish simply between separate duties, and to distinguish rights from means of restitution. After all, the original debtor is still liable for the original debt and has a duty to pay, though he is not rightly vulnerable to retaliation; the guarantor has a duty to enforce payment, and is separately liable, for the creditor can summons him (indeed, “blacken” him) if he fails to act.\footnote{13}

Whatever juristic approach is taken, the practicalities are clear. In all but the simplest debts, restitution is made by way of third parties, and our disparate cases all illustrate the general idea of covering (ḥājb). As we saw in the introduction (part three) a person from the tribe, but unrelated to the antagonists, can simply step in (darak) and take responsibility; or a protector (rabi‘) can secure to his fellows the promise of payment from a stranger (text B section 7); or an existing guarantor can pay others on the culprit’s behalf (text 1 section 4). The debt or duty is everywhere displaced. Person A owes person B either payment or some other duty, and person C provides B with surety.

Stewart offers two causal explanations of what he calls the three-party contract (the case where A agrees to pay B or attend arbitration and B selects a guarantor for A’s conduct).\footnote{14} First, payment is arranged by way of guarantors to keep the antagonists apart, for pursuing the original debt directly would simply exacerbate the original dispute. That is certainly how people in Yemen speak of guaranty and settlement. Secondly, the guarantor is liable to “blackening” (i.e. loss of honour), not just liable for the debt, because otherwise one faces an infinite regression: person A fails to pay, for instance, and his antagonist B therefore calls on C, who is guarantor for A’s behaviour; B now has a claim against C and to ensure that C pays this second debt he finds a guarantor for C’s behaviour, called D; and if D fails in turn to act, then one needs an E or, if that fails, an F.

An instrumental approach may serve to describe single actions, perhaps, but hardly to explain a social fact. The system, if we choose to call it such, does not always work. Just a few decades ago, for example, men from ʿIdhar fell out with each other, and guarantors from al-Ahnūm, nearby, were arranged to oversee settlement. One of the original antagonists seems not to have paid; the guarantors summoned the defaulting principal, then the secondary guarantors (kufalā’ al-radm), and tried to enforce the judgement; the principal again defaulted and lodged claims against the guarantors; these claims and counter-claims went more than once to arbitration, which each time involved further (quite separate) guaranty, and for years the trouble simply spread with people being shot at and property seized on every hand.\footnote{15} Even the supposedly more definitive practice of “blackening” (part three, above) can unravel. A jidhn or malām placed to “blame” a defaulter may be met by a jidhn elsewhere in reply.

Pacts such as those examined here try to fix responsibility, or at least to fix the course of procedure: men contract to recognize each other’s covering of others, or not to do so, in specific circumstances. More generally, however, the prominence of surety implies not certainty of outcome so much as clarity of definition.\footnote{14} Any disagreement implicates the two largest tribal sets to whom the principals respectively belong, and potentially also their respective friends, acquaintances, neighbours, and in-laws. As we said in the introduction, arbitration specifies, among other things, the disputing parties. But even before that, and again afterwards, guaranty pins down answerability. Although sections or tribes as such may figure as plaintiffs and respondents, they fragment indefinitely into potentially conflicting views from this family-group or that (quite who is answerable for what is labile), while guarantors, in strong contrast, are named personally in a dispute-
document or otherwise have been named already in signing some variety of pact.¹⁷ In the former case pledges are given, usually in the form of rifles.¹⁸ In the latter case one gives one “face” in writing, and responsibility is assumed to be passed on within the family.

Text B carries about 150 such names. It seems worth reproducing them in the hope that one day more documents will come to light from the same place and period and we can start on the detail of local history. Obviously, caution is needed. The texts that we have show the problems one has to expect in copying out mere lists, whether *saut de même au même* or repetition, and no “redundancy” allows firm corrections. I have tried to reconcile the personal names as they appear in the different copies of texts A and B, showing major alternatives and ambiguities in parentheses. Most of the family names can be found in gazetteers.¹⁹ Some names that are prominent nowadays are contained within the (agnatic) sets that names in the documents define, as Bayt Thawābah, for instance, probably form part of Āl Ṭashshān in Dhū Zayd. Personal names often recur between generations within a family, but attention is drawn to how close those of Dhū Mūsā are here to those in the market-guaranty.

List of guarantors, text B

Witnesses
Transcriptions

وكتب محمد بن أحمد علي نقلها القاضي محمد بن يحي عافاه الله من القواعد المرجمة بخط القاضي محمد بن أحمد

كتبه الفقير إلى الله

يحي بن أحمد عنيق البرطلي ووفاه الله

NOTES

1. For guaranty in 'urf see al-Sudumī نازريَّة ﺍلْعَوْبة pp. 149-74. His inclusion of wide a range of cases under the same general heading of ُدامنات seems to me right. He begins, very reasonably, with “topical” or “substantive” cases of ḥajb or ḥujbah, and goes on the types of pledge or guaranty that accompany “procedure”.

2. Dresch Tribes pp. 89-91, 96. The view given there of Dhū Muḥammad needs qualifying. It seemed in the early 1980s that there was one family in each fifth who were spoken of as shaykhs of guaranty. Obviously families rise and fall, so Bayt Dāris, for instance, had become prominent in Āl Dumaynah after the death of Fayṣal Awfān in the 1960s. But there seems in fact a more basic disagreement over whether there need even be a single family called mashāyikh ُدامن for each fifth.

3. Plainly there are limits to these expectations. As we mentioned in the introduction (part one) many shaykhs recently have “declared themselves quit” of the market guaranty; to avoid a specific guaranty being imposed on them by people presenting slaughter-beats etc. shaykhs will sometimes flee the house. On the other hand, standing forward as guarantor in transactions with outsiders is an obvious part of maintaining more general influence for politically ambitious shaykhs. But it is hard to avoid wondering at the sheer trouble involved in responsibility for people over whom one has no formal authority, and often no real sanction. Managing relations among them occupies one’s whole life.

4. For the equation of ُدامن and ُلازم, text 1 section 12, text B section 40; for ُلازم and ُكاف, text A section 13, text B section 13. Plainly there are contexts where one term would be more natural to use than another, but I have not found at Baraṭ any basic differences of meaning among them. Examples are discussed below.

5. See the introductory essay (part three). Al-Sudumī (نازريَّة p. 151) says the debtor can “cover” himself rather than being covered by a third party. I have not heard this usage among friends from Baraṭ, but it deserves noting in discussions of duty and liability, below. My own understanding is that covering applies primarily to persons, rather than the debt.

6. Cf. al-Sudumī نازريَّة pp. 153-4. Usually the formal claim should be waived.


8. Kelly Irish Law pp. 167-73 and passim. The material is rehearsed in Walters ‘European suretyship’ pp. 99-101. Both the ráth and ُأَثْرِه, below, had a separate claim against the defaulter
whose debt they had guaranteed. The nāidm, it seems, was by contrast meant to act against the principal without further or later claim at law. Both the nāidm and the ráth, however, stood to lose their honour-price if they failed to keep faith with the person to whom they had given surety.

9. Cf. the discussion in note 3 to text B section 13/2 (part six, above).

10. For further discussions and examples see P. Dresch, Episodes in a dispute between Yemeni tribes, Der Islam vol. 64/1 (1987), ‘Ḩūth’ (1990) p. 73–4,81. I have pursued with friends from Baraṭ the possibility of a distinction between a “paying surety” and an “enforcing surety” but found no clear instances. In discussion we have usually ended up saying kafīl for the first possibility and radīm or kafīl al-radīm for the second, which may result from my own rather Ḩāshidī way of putting things.

11. Stewart ‘Contract’ pp. 176–7, 254 ff. Aligning terms from other systems with those of English or Roman law, although hard to avoid, produces problems. Revealing though Stewart’s analysis is here, one cannot help doubting whether “contract” is quite the crux. A “unilateral contract” might arise from an offer to all the world, as in such splendidly named English cases as Carlill v. Carbolic Smokeball Co.; Civil Law, as in France, deals with contract quite differently. But the ethnography is clear enough without the jurisprudence.

12. Stewart ‘Contract’ pp. 223–28. For the quotation below, Walters ‘European suretyship’ p. 101. Stewart has uncovered here a set of questions to which anthropologists have given sadly little thought since Davy’s La Foi jurée.

13. The complexities of “modern” law are considerable. Anglo-American arguments about liability seem usually, if I understand them, to begin from a breach of duty. The Roman tradition argues instead from a wrong (culpā, in modern French law une faute). Both traditions, however, distinguish liability or obligation from restitution. “Natural obligations” in French law thus cannot be legally enforced, but nor can a payment which discharges such an obligation be recovered. The same applies in English law, oddly, to gaming debts.


15. See Dresch ‘Episodes in a dispute’. For something of the broader context, idem. Tribes pp. 379–83. For the jidhn, below, Dresch ‘Placing the blame’ and Glaser Ma’rib pp. 76–7, 86, 103. As we shall see in part seven, functionalist argument works poorly.

16. Elsewhere clarity and certainty in this sense may be related more closely. Where rank is admitted, a guarantor may be admitted like the Germanic Leistenbürger whose promise might explicitly overawe the debtor: Walters ‘European suretyship’ p. 104. That happens in Yemeni practice (where Irish warnings against choosing too powerful a surety have also their echo), but it does not appear formally in law.

17. Sections or tribes may figure in disputes as plaintiffs and respondents, but a collective identity has no face (wajh), cf. Dresch Tribes p. 79. To form an agreement one needs individual “faces” (wajīh), a common classical usage, of course, for notables.

18. al-Sudum Naṣāriyyah pp. 175 ff. Someone who wrongs outsiders may even give a rifle to one of his kinsmen or fellow tribesmen, securing “cover”, and the second man then offer rifles to the wronged outsiders. In large-scale confrontation and truce such pledges come in bundles. Although compensation “forty-four-fold” is in my experience mere rhetoric, 44 rifles may often be pledged by one tribe to another. It used to be, even two decades ago, that the ground floor of houses of noted shaykhs was often stacked with bundles of rifles as surety. The quality of such weapons varied from excellent to simply rubbish.

19. al-Ḩajrī Baldān al-yaman, al-Maḥqāfī Mu’jam al-buldān. As noted earlier, spelling and vowelling are generally more reliable in the former work.
End matter
Contrasts and Principles

Those of us intrigued by Yemen become obsessed with purely Yemeni sources, and reading even of North Arabian badu seems a poor distraction. There is a great deal to be done on existing material from South Arabia (the documents examined here are merely provocation); there is much to do also with evidence from al-Ḥiżāz. It may, however, be worth standing further back. Shared history is not the only prism through which to view customary law, and neither is generalized comparison of a simple kind. Although partly the product of translation, where English falls without thought into set rhythms, the resemblances between Yemeni ʿurf, or “custom”, and for instance early Irish, Icelandic, or Anglo-Saxon law-codes are sometimes striking, and one wonders if we are flirting with elementary forms of self-definition. Let us start by clearing away some obvious differences, then explore what if anything underpins the feeling of familiarity.

Rank and order

Going back to the Anglo-Saxon law-texts one is struck first of all by the interest they show in rank. The earliest Kentish laws, those of Aethelbert (c. AD 600), thus distinguish two or three grades of freemen, and three half-free; the West Saxon law of Ine (c. AD 690) is broadly similar, and it is hard to avoid the impression that men in the Saxon world were considered naturally unequal. Nor was southern England alone in this. The so-called “Law of the North People”, a good deal later, lists ten different grades of wergeld (blood-money), from kings and archbishops down to Welshmen who hold no land. The Celtic ideals of early Ireland are in many respects different –so far as kings and their relation to moral unity go, Ireland obeys a separate logic– but the honour-price or face-price (lóg n-enech) varies with rank, and such abilities as that to form contracts or that to swear oaths vary with the honour-price as they do with Anglo-Saxon wergeld and perhaps mundbryce. The enthusiasm of later clerks and commentators for elaboration in the Irish case only strengthens one’s impression that legal inequality was a feature of common sense.

This seems not to have been so in the (tribal) Arab world. As people at Baraṭ insist, tribesmen are all of one marṭabah, one rank or level; indeed, the blood-money is the same even for non-tribesmen such as Jews and market-folk. Although there is surely rank in
evidence—as with tribesmen, the manūʿ, and “weak” people—it only takes legal form in the ability to give protection, and tribesmen themselves are nominally equals. In this respect the legal common sense of South Arabia resembles more that of early Iceland, where formal compensation differentiated only free persons and slaves. All these systems recognize “aggravating circumstances”; the relation of circumstance to status can itself be intricate. But the lack in our Baraṭ documents of distinctive provisions for chiefs—that is, for nuqabāʿ and shaykhs—is fairly typical of Yemen, and separate documents that accord some of these figures or their families hijrah-status, like that of protected qādis (part three, above), stress that mā la-hum ‘alay-hum, what is due to them is [also] due from them. Their status is singular but not unequivocally superior.

Anglo-Saxon laws show also an extraordinary interest in relations between men established through women, and in what can properly be called a traffic of women among men. This too is informed by rank. “If anyone lies with a maiden belonging to the king, he is to pay 50 shillings compensation. If it is a grinding slave, he is to pay 25 shillings compensation; [if a slave of] the third [class], 12 shillings”. Purloining a ceorl’s serving-woman means payment of six shillings but illicit sex with his slave-woman of the third class requires only thirty sceattas. A welcome degree of clarity is provided by Alfred’s prescription, c. AD 890, that a male slave who rapes a slave-woman be castrated (the freeman who does the same owes money). Throughout the record, however, compensation for offences against females, whether or not free-born, varies both with the woman’s status and with that of the men to whom she legally attaches.

Besides the obvious wrong of rape, we find mention in Arabian material of forced miscarriage and also of “transactional” concerns with fornication and adultery, marriage and divorce. These have their echoes in European law-codes. A distinction is occasionally implied between women who are veiled or secluded (ahl al-ḥajb) and others, the former, one assumes, being those of respectable families. But in customary law a woman’s blood-money is simply half that of a man, and amends are due (sometimes discrete payments, sometimes multiples of damage) which vary not with rank but with circumstance, very much as with the world of men: for a man to kill an honest woman, meanwhile, is inherently disgrace, or ʿayb. None of this is to say that wrongs against women all met the same response. An offence against women of a prominent and respected family might well draw collective outrage, and lesser families receive tepid commiseration; non-tribal families might fail to gain even that. Nor do rules about compensation tell us anything of sexual morality more broadly. Again, however, by comparison with much of northern Europe this seems a “flat” moral landscape in which men are opposed symmetrically to men, and women each fall within male-defined spaces.

What makes the Anglo-Saxon world, and the otherwise very different worlds of Ireland or even (with due caution) of Norse tradition, seem familiar to a Yemenist is first merely vengeance and compensation. Where wrongs that a state claims to deal with as “criminal” offences, thus monopolizing legitimate force in the way that Weber spoke of, are dealt with by exchange between the parties at odds, all the latter cases look falsely similar. But the parties themselves are conceived on occasion in similar ways. Often men have bodily value (so much for their life or death, so much for a limb) but also a value that attaches to their protection of other men, and the right to protect defines a freeman or tribesman as against the dependant, the slave, or foreigner. Sometimes this is accorded a separate price, sometimes the value of the man’s own life: in a slightly different mode, it is marked by recompense for an “aggravated wrong”. But men of full legal status are
commonly treated as minor sovereignties. In old Irish law, as in many others, injuring someone under protection was an offence against the protector himself and specifically required amends; a formal “power to protect” was recognized in early England, and parallels may be found elsewhere in Europe.

Before we ever come to such plainly collective issues as markets, courts or meetings, we find certain features marked off from the social. Not infrequently there are echoes of the Baraṭ provisions (text B section 26: part six, above) on houses, and thus physical trespass; more importantly, domestic hierarchy is treated as preceding custom or legislation. The sets within which the elements lie vary not just in size but in nature, and the elements themselves are therefore of different value. Male-centred spaces, which households exemplify in concrete form, are nonetheless often marked in law. We saw earlier (part three) how a rhetoric of close-range marriage may give “symbolic” clarity to the opposition of men or sets of men and to mutual refuge. More widely, however, one finds what looks to be a partial equation between the value of male-defined spaces and that of spaces or events between them. A mosque or a church for instance, or a pagan temple, may be set aside from the usual run of interaction. So too may markets and meetings. Breach of the peace there is commonly due amends for an “aggravated” wrong as is breach of protection, both being distinguished from mere exchange of violence.

Here we encounter difference that in so far as it attaches to persons may equally be read in terms of circumstance or rank. An arbitrator’s status, such that amends are due for wronging him, depends in Yemen on temporary circumstance; the status of a sayyid (descended from the Prophet) was often more akin to rank, and was permanent. Rank suggests a vision of the whole. But in many cases, where the peace of God is only one of several, it is hard to know how we should best describe formal prominence. For example, are bishops in the Anglo-Saxon texts “set aside”, as one might translate the Arabic muhja‘ar, and because of this in Aethelbert’s laws due compensation eleven-fold (bi-l-muḥaddash, as one says in Yemen) or are they politically superior? One can become the other, as happened perhaps with kings.

In the laws of Aethelbert (c. AD 600) the king is due fifty shillings for violence in his presence. In addition to this, injuries done at a meeting convened by him are paid twofold; so are injuries done in someone’s house if the king is drinking there. But in Hloththeare and Eadric (c. AD 685) anyone who draws a weapon when drinking with others, “yet no injury is done”, owes the householder a shilling and owes the king twelve shillings although the latter is nowhere at hand and is personally unconnected with the matter. A few years later “we reach the point that the huge sum of 120 shillings (also payable for a fight in church) is applied to a punch-up in a labourer’s home, or even in open countryside...”, which payment, again, is due the king. The code of Ine (c. AD 690) says also that someone fighting in the king’s house now forfeits his property. The king can decide whether even to spare his life. The value of the king at home is perhaps less important analytically than the reach of his peace, which encompasses, where it does not replace, the peace of other men: “it is surely not too bold to detect a trend here”.

What exactly the trend consisted in must be left to experts. But the effects are evident in language: “mund, once the value of the king’s protection, was now the premium on his commands; bót, once the redress of wrong to an injured kin, was now a fine for damaging society as a whole”. Other men’s mund existed still, as evidenced in redress for trespass, and well after Alfred’s laws (c. AD 890) compensation for violence against others surely varies in practice with people’s status. But all men now live more or less in the king’s
peace. “Meanwhile, [c. AD 950] wergeld was payable for violating the king’s laws, for incest or precipitate second marriage (!)…” To disentangle our political and legal language from that involution and from others elsewhere in Europe, is far from easy. Difference, rank, and equality—the very stuff of equity and justice—are often hard to conceptualize apart from an imagined whole identified with public order.

Decentred society

A long early history in Europe and a far later historiography attaching to what might be called the bourgeois state (that form of state which reached its apogee in the nineteenth century and seems now to be evaporating) both turn on ideas of a body politic, that is, of a bounded entity in which power and morality coincide. Claims to continuity are difficult to unpick. Suffice it to say for the present purpose that legal distinctions between, for instance, private and public domains are established within a political whole, not preserved from an earlier state of society before the whole was formed. Rights claimed as the moral basis for several current polities, whether phrased as ancient freedoms or generically as les droits de l’homme, are in practice thus treated as “liberties” granted by the body politic, and in the name of this imagined unity such liberties can be suspended.

What now seems the “pre-modern” world is characterized at many times and locations by a plethora of different spaces to which different rights attach: churches or mosques, markets, particular roads, and the territory of settlements. None outranks and validates the others. Rights may be validated, and seemingly preserved, by larger sovereignties, as in the English conception of immemorial practice: such validation may underpin the phrase “customary law”. But state authority shows often a marked intolerance of rights to refuge. Kelly thus cites an English treaty of 1583 that forbids an Irish magnate giving legal protection (comairce, or “comrick”) to other lords. The history of France in North Africa (1830 onwards) provides ample cases. The attempt to form a Berber “civil law”, for instance by Hanoteau and Letourneux in the 1860s, had it been pursued might have led to judgement distinct from others, under state tutelage, yet surely without local refuge. There is nothing specific to the nineteenth century, meanwhile, about monopolizing validation.

The state in the North Atlantic world, no matter how organized internally, has long been a jealous state. It tolerates at home no rivals. Its domestic debates in recent centuries throw often an historical shadow, as if the state succeeded lesser groupings of broadly similar kind and formed or imposed peace among them. The only alternative, one might think, is a pre-social (individualist) condition of unstructured hordes. Actually this is not so. Rather than “units” of society existing naturally they were often enough, at all periods, constituted by state-like powers: famously, Canute (c. AD 1020) required all freemen above the age of twelve to be part of a “hundred” if they were to have legal standing, which included having each a blood-price and being oath-worthy. What bounded groups existed before this is hard to judge. Indeed, the very breadth of modern literature on “kindreds” suggests how dubious the question is, yet plainly there was custom, sociability, and even law.

What we loosely refer to as social “worlds”, such as that of Yemeni tribalism, are made up not of groups or of individuals but of shared assumptions. In early Europe, in Africa, in the tribal Middle East, or indeed among the Inuit of the frozen north, foreigners had no status save as they attached to locals, any more than they did in Fustel de Coulanges’s
ancient city. That is not to say locals were defined in the way of those cities as a body politic. Asymmetrical rhetorics of first-comer and second-comer, host and guest, or indeed of mothers’ brothers and sisters’ sons –centred merely on persons– allow visits, expulsion, or incorporation of strangers; moral equals may themselves be defined by no more than, for instance, mutual recognition of ability to speak the truth. For an incoming king like Canute to attach oath-worthiness to membership in bounded groups is a compelling means to assert control.

Oath itself can do many things. It can underline the seriousness of a statement or constitute a promise of future action; it can specify (retrospectively) “intent”. Often, though by no means always, it appeals to a source of value beyond the social such as God or spirits, but its crucial importance is surely that it excludes a lie, and “to lie is to deny the truth to someone who has the right to be told it”. Who that is depends upon wider circumstance. Guarding a truth, and the corresponding capacity to tell it, may be ordered symmetrically through opposition, or hierarchically such that some can demand unilaterally the truth of others: appeal to the sacred fits either case. But the capacity to swear a common oath (to establish truth) in the former case is often limited to arms-bearing men. In Yemen individual oath that another has met an obligation is usually limited to the same type of people, yet outsiders of tribal status, too, are oath-worthy. Despite variability in the detail of local practice, the nature of obligations and the need for oath are explained as “the customs of the tribes” (ārāf al-qabā’il) supposedly common to much of at least Arabia.

The moral field here is indefinitely wide, not bounded. This does not mean that it encompassed everyone: the tribes of Upper Yemen repeatedly acted in Lower Yemen and in other places as if connected in no way at all to people they raided there. It did not, however, and still does not, have obvious limits. Any people recognized as “tribes”, no matter how little is known of them in practice or how scant interaction, can be recognized as equals. Earlier (part three) we stressed the importance of refuge with neighbouring tribesmen (arbā’ al-qubul) as a means of pressuring one’s fellows to right a wrong, and the reciprocal importance of accepting refugees. A concern with reputation extends the logic to comparative strangers (a’shār). Some part of the network of relatedness, meanwhile, may be actualized for a time by a pact of “brotherhood”; on the other hand, a unit in such moral schemes may sub-divide and the parts decline common action. To study a tribe in isolation would be perverse, for the values of tribalism are, by definition, not localized. What roughly we shall call morality and politics are therefore not coincident.

The complex geography of Baraṭ (part two, above) should not distract us from how important territory is, and the borders between many tribes in Yemen are extremely clear. Inviolability of territory (ḥurmāt al-wātān) is a principle all recognize; pacts refer almost always to shared borders (ḥudūd). But such lines take their value from the opposition of tribes to tribes, or sections to sections, and in no way bound a “corporation”. There is no rule determining which elements of a tribe should speak with one voice (determining for instance how many guarantors should sign for a section); and, although specific rights of course differ sharply, no distinction of kind is recognized between men on one side of a border and those on the other. The same laws (shurū’t) are appealed to within tribes and between them.

There are several ways locality may be established and lines thus drawn among people who potentially each recognize the others. In much of Europe at different dates, lordship
and kingship (the former here a general term, the latter often quite ambiguous) are at least as conspicuous as territory or kin-links; even godar or chiefs in Iceland, though to start with their power was minimal, seemed the obvious answer to who belonged where and with whom for such purposes as oath. Moral unity in Arab tribalism, however, is expressed as descent from a common ancestor who is long dead, or thought indeed never to have lived. Identity forms no focus of authority, and “nested” identity no political hierarchy. The power of shaykhs, when it emerges, tends to misfit the map of tribal divisions, which themselves are not “groups” in the usual sense but better spoken of usually as abstract “sets”. Expectations of moral and juridical unity can be misleading.

How bounded the village communities in Berber-speaking parts of French North Africa were before French administration is open to doubt, but certainly the idea was there; the principle almost certainly did not extend to tribes, however. Across the Arabic-speaking world even villages are seldom conspicuous as moral units. The value of tribes, for their part, is predicated on what supposedly they share, on what Gibbon in a different context refers to as “a general resemblance of religion, language, and manners”. The laws of the tribes (sharīʿ al-qabāʿīl) are thus like a ius gentium. In this respect tribalism in Arabia is very different from the small societies that have often drawn anthropology’s attention where morality might begin and end at boundaries. No self-evident “groups” can be isolated, yet persons have value only through relatedness.

Much Western (and now global) argument proceeds on individualist lines as if persons pre-existed society. Only contract would link them morally, or otherwise a state align them. Most other traditions, by contrast, (Arab tribalism is an obvious case) have recognized people as connected of their nature and seen groups, whether transient or permanent, as deriving their value from relations in a broader world. They may do so as conquerors, which tends to paradox in that no equals are admitted to recognize one’s worth; they may do so as elective subordinates, hugging their values to themselves (in short, Nietzsche’s Rome and Judaea). But a common mode is to accept mutual emulation and repute over wide distances, and to admit—or to claim, when oppressed—a common humanity. For all their experience of this phenomenon, analysts find it awkward to rationalize as sociology.

Anthropology, like jurisprudence, seeks often a whole where no body politic is evident. Provoked by individualism in the Europe around them, the students of Durkheim for instance sought a body moral. The model for this communion, briefly put, was of a “church”, and the ill-defined qualities associated with matters sacred were pursued as the stuff of society, leaving endless confusion as to what the profane might be. A classic case is Bichr Farès’s justly famous L’Honneur chez les Arabes avant l’Islam (1932) where the language of ʿird and sharaf—that is, of honour— is equated with “religion”. But insistence on the social was surely right. The current alternative to visions of the whole in English-language material is a mindless recourse to “agency” or to “practice”, which reduces the sacred to obfuscation and makes all values null or equal. It becomes very hard to say why, for instance, oath should matter or what the meaning is of aggravated wrongs.

The values of what roughly we call honour are identified in the case at hand with a relation of males to females, with what earlier we referred to as domestic hierarchy. That theme recurs, it might seem, in a vast range of ethnographic cases. But in Yemen, as elsewhere, it does not reduce to mere sexual difference (the sacred of the left and of the right as Bourdieu would have it). The same language of reputation and protection applies in Arabia to land, to territory, to guests or protégés, indeed to a range of instances, some
permanent and others temporary, that give persons value. These hierarchical relations of responsibility are what insert men (most obviously, but women also) in the world of symmetrical opposition. Without them neither persons nor sets of persons need be anything but empirical phenomena and would lack obvious moral, not to say legal, worth.  

One can readily see why Farès discussing honour was drawn to Durkheimian parallels with religion and the sacred.

The opposition of sacred and profane is no more (and no less, be it said) than that between extra-ordinary and ordinary, though formalized and marked off as such, and points of “ultimate” reference are thus arbitrary. The principle at issue is apparent in children’s games: one has only to trace a circle on the ground and say anyone within the circle is “it” for a compelling logic to emerge which may or may not be rationalized with explanation. No “religious” cosmology validates the ritual status of parade-grounds or common rooms. Those transient collective events to which Mauss pointed in non-state systems, meanwhile, have recurrent value and very often appear in law. Breach of the (temporary) peace at meetings in Yemen is an obvious example. Even in Iceland –one of the “loosest” polities in the European record in that households were thoroughly autonomous- people’s personal compensation-value was doubled at the spring and the autumn council-assemblies.

Pitt-Rivers’s account of the sacred as an inner space to which (mysterious, and therefore perhaps themselves sacred) strangers may be admitted needs supplementing. Hospitality, protection, and mutual honour indeed depend, as Pitt-Rivers argues, on avoiding simultaneity through “an alternation of roles”. But simultaneity can mean more than conflict. Where the moral spaces identified with arms-bearing men are brought together at meetings or markets they generate a separate form or instance of the sacred, the breach of which is due amends. No one group’s or person’s peace encompasses the others, although the honour of guarantors may be at stake; no political whole specifies right conduct. Yet, rather as with oath, the values which insert one in the world (which, in a symptomatically trivial modern image, “put one in the game”) are committed and displayed.

To deny those values by violence after formal exchange of greetings is to deny the commonality which makes all of those present recognizable to their fellows as moral persons. This, like protection, is marked in law. Injury at a meeting might thus incur multiple amends as may injuring one’s guest.

Murder, recompense, and loss of right

The very idea of paying for a life with money deserves note. An anthropologist might expect instead forms of settlement that restore the dead person’s place in society and thus restore in some measure the integrity of a line or group to which that person belonged. The provision of a woman in marriage, whose male offspring in patrilineal schemes could perhaps be named for a murdered man, denotes an obvious moral recuperation. So too may provision of farm-land to a household. Still more obviously, and regardless of any spiritual identification with people (or none that is made explicit), livestock provide the promise of fecundity and continuity which death removes. In many societies, indeed, one finds some notion of “life” or of shared substance that makes sense, potentially, of restitution in blood or in beasts alike and allows one to pursue analytical coherence.
Yet even the classical Islamic valuing of full blood-money as one hundred camels was surely a dead metaphor. In custom one can almost treat the value of a life as the sum of the body’s parts or capacities, and those recent instances where valuation of blood was in livestock appear less “survivals” than simply cases among others. Values are (potentially) all convertible, as they also were in early Europe. The sums due in compensation are rarely paid wholly to the victim’s close relatives, and in the case of death do not serve obviously to maintain, say, widows and orphans; on the other hand, even when paid as large amounts in full they seem not to figure in imagery of collective subsistence. Typically they are subject to dispute, they appear precise (therefore just) once agreed on, and often they are afterwards all but impossible to track. The insistence that damage of all sorts has precise cash-value is meanwhile made the more intriguing by a probable lack of actual coin.

In the introductory essay we touched on divisions of compensation. The arbitrariness of political response was also stressed: the groups which form to pursue or compose a dispute are not identical with the sets defined by shared descent or territory, producing an endless deferral of “collective” logic. This theme is apparent elsewhere. Many authors have noted the theoreticism of Northern scribes, for instance, who worked out divisions of amends among degrees of kin to a point where the sums prescribed were tiny and such kin might be difficult to find; on the other hand, cognatic cousinship must have meant most people could count a great many relatives or be counted as relative by others, not all of which connections coincided with acquaintance. Payments defined a group in practice as much as the opposite was true in legal theory. The agnatic kin, meanwhile, came in several degrees. In Irish law, for instance, the fine was everyone connected by six generations of male descent, but the “real” kin (more properly what the laws call “certain” kin) were descendants of a great-grandfather, and for many purposes this less negotiable set was probably the one that mattered. The same is likely true of Anglo-Saxon kindreds.

It is true in extreme form of Arab cases. Stewart’s instance from Sinai of basic vengeance groups (perhaps a dozen men) being thought of as contractual appears rare, although not unique, but assertions that larger units share “one blood” are usually of this form, written out as pacts. Meanwhile, the claim by wronged outsiders that a section or tribe, who share an “ancestor”, of their nature share responsibility is met with slaughter-beasts, pledged rifles, or sworn denial from those implicated. In North Arabia the “camel of sleep” (ba‘ir al-nawm) excuses kin two generations from the killer, leaving few men who must move or confront vengeance; among settled folk in South Arabia they may be trapped at home. In either case, the extreme possibility exists of a miscreant being declared a non-person by his own brothers. While this core of joint responsibility thus recedes indefinitely, the same offence and arguments over payment may involve whole tribes.

In many legal traditions besides those of Arab tribes the exact and general equivalence which is promised by coin or by precious metals co-exists with real indeterminacy as to who is involved and how, and insult does not reduce to injury. Gathering and distributing payment, which in effect determines who is involved in which respect, is properly no business of outsiders; the payment itself, from outsiders or to them, is by contrast everyone’s concern. Honour is satisfied by agreement to a sum, potentially applicable to all, that all can recognize. This pretence to uniform valuation, whether or not in societies that differentiate men by rank, is apparent often in a practical distinction: while
personalized objects are used in pledges (the obvious Yemeni case is the dagger as surety), compensation and amends, even if paid partly or largely in household goods, demand always cash-valuation. Insults considered breach of law may be dealt with, by the same generalizing logic, as cash-multiples.

Non-state law

Justice ('adl) means exact reparation, but no standing authority exists to enforce payment. As in many systems of decentred law so in tribal Yemen, personal surety is conspicuous (part six, above) and the stake the guarantor must pledge is not the value of a debt but his own honour. At markets guarantors must pay multiple amends on a culprit’s behalf (tajbir, in text 1, above), but even here default results first in “blackening”, or loss of the guarantor’s standing. In an ordinary dispute the debts themselves are pursued and specified, or accepted in judgement at the end, by those at odds. For them only shameful action incurs definitively loss of honour, in which case their antagonists must invoke not contingency but a breach of law; and across the whole scheme of ‘urf, as we outlined in the introductory essay, runs a legal distinction between compensation for damage (naqṣ) and amends for shame.

Stewart’s question in the case of Sinai whether loss of honour is strictly loss of right receives here a legal answer. In the Barat texts instances of ‘ayb, or shame, including default on guaranty, mean loss of sinnah (texts A and B, above). More is therefore at stake than mere reputation, on which people will anyway disagree. The negative complement of ability to provide surety or an oath is formal denial of the right to exchange refuge. Again early Europe and its fringes provide parallels in the form of outlawry.

The most striking case is perhaps that of Iceland, where the enormously full and complex laws of Grágás (written out in the thirteenth century, but plainly containing much that is older) have little to say, by comparison with what seems “procedure”, about amends: strictly speaking, “monetary damages for injury or killing were not available at law, as they were at arbitration”.

For many wrongs one threatened formal suit for outlawry, then removed the case to arbitration and potential settlement. Full outlawry left a man no call of any kind on others: if he escaped from Iceland, despite a ban on people giving passage to full outlaws, he could be killed with impunity abroad as he could among the barren places of home. Lesser outlawry was more like temporary banishment. Though the outlaw lost his property, his exile and loss of right were for only three years, and he had three summers in which to arrange passage abroad, during which time, still in Iceland, he had three named homes. Within bow-shot of each, and once a month within bow-shot of the roads between them, he was safe much as other men, as he also was beyond Iceland.

The divisions of space and time here are typical of many pre-modern systems. Within such worlds bounded groups (in effect corporations) may offer refuge to outsiders or deny rights to their own members, perhaps expelling them formally; in other cases immunity may be denied by far looser congeries of persons. Often in both types of case justice is fragmented, with one locality’s exile being the other’s refugee. Iceland, indeed, is unusual as a European instance that defined itself in part by the absence of kings yet “the collectivity with well-defined boundaries, from which expulsion was the ultimate sanction, was the society itself”. In some legal dispensations a whole community might
be bound to hunt down the outlawed man, in others (perhaps the more common case) he was left to fortune or to those he had initially wronged. But loss of right ensues where amends are either not admitted or are wilfully refused.

In Arabia a presumption of refuge appears to have been usual. One could demand that another set of people expel one’s opponent if he had committed disgrace, or ‘ayb, and then fled to them: one could not demand they hunt him down. Inviolability of territory was recognized, and those with whom the culprit had taken refuge would be appealed to publicly on grounds of justice, perhaps summoned legally, to withdraw protection.\(^{56}\) A man whom all considered “blackened”, or whom none would stand up for, disappeared from the tribal world. Pacts, or qa‘ād, meanwhile defined a space in which rights are agreed specifically, not least rights of refuge and when “covering” (ḥajb) should be recognized by whom.\(^{57}\) The divisions of space within such pacts are comparable in effect to those of truce lā ‘arrah wa-lā jarrah, whereby one stays off the other person’s or people’s land. In settlement of disputes it is not unusual to find a provision that one or other party not attend a specific market; more rarely by far, those at odds may be allotted alternate weeks. Social space, unlike abstract value, is differentiated of its nature, and the idea of peace takes forms rather different from those of public order in the rhetoric of states.

Such phrases as “loss of immunity” (very apt to Iceland, where immunity might translate helgi) need treating with caution in Arabia. Even where protection is withdrawn of the kind that allows one escort, or to stay with others as qafr, the dispute is still between only the original parties. If someone else killed the miscreant for some other reason, a whole new set of blood-debts and procedures would arise as if the victim had no different history than other men. If a tribe with whom the miscreant took refuge withdrew their protection then his proper antagonists could kill him. But so long as any recognition at all were left the man, each exchange of violence would usually implicate someone, or some set of people, who would have to decide for themselves on the justice of what had happened. In short, there is no body politic. Instead there is a string of practical decisions, with or without legal process, that redefine the possibilities of violence but do not impose general order.

To ask that law of itself provide political order is to ask a great deal, but the habit of states rhetorically is often to equate the two; and attempts are made frequently to show that non-states achieve somehow the same equation. Law is identified with its application, and two different meanings of order are conflated, that of categories or definitions and that of statistical (administrative) regularity. Mechanisms of social control are sought. Sophisticated historical work on northern Europe thus continues to cite with surprising tolerance less sophisticated anthropology drawn from southern Africa, such as Gluckman’s “peace in the feud”.\(^{58}\) One can seek all too easily (in Yemen as elsewhere) types of regularity, or predictability, that those within the system simply do not expect or seek for they do not think in terms of bodies politic.

Nineteenth-century accounts of tribal Yemen (Ḥabshūsh is the best instance) depict persuasively the insecurity in which people lived and the arbitrariness of endemic violence. Yet mentions of organized warfare over farm-land or grazing, for instance, are probably less numerous in the histories than those of small-scale bitterness and of pillage from strangers in tribal territory, all these being dwarfed by vicious dispute conducted in other terms or in no terms at all. Given the poverty of the region and the lack of an established logic allotting wealth from elsewhere, it would be surprising to find much
“Order”, meanwhile, was promised by strong Imams. The strong Imamate of the twentieth century was remembered less favourably in its aftermath, however, than the “time of corruption” it succeeded, and since then the tribes have passed through periods of sustained violence and periods of calm. Rarely does one find oneself drawn to a logic of collective feud.

Drama on a large scale is surely possible. Al-Hamdānī (writing c. AD 930) describes the death of three hundred men in a war between Duhmah and Wā’ilah that resulted from a “weak” person under Wā’ilah’s protection being killed by somebody from Dahm; at almost the other end of the historical record, in the late nineteenth century, a shaykh from Sufyān carried off women from Ḥāshid (an appalling affront in local terms), who responded by laying waste part of Sufyanī’s territory. But it is scarcely the threat of such drama that informs the course of daily life. The tribal world is one of endless procrastination, avoidance, and locally explicable “exceptions to the rule”, making patterns of dispute untidy. People should and do step in where possible, imposing temporary truces (most confrontations between large sets of men, in fact, are smothered by mediation). But where something like feud ensues, on whatever scale, neighbours stand aside.

Although there is a generalized idea that peace results from justice, there is no collective means to secure such peace, and those intractably at odds are in practice left (with regret, perhaps, yet in local terms justly) to pursue their quarrel. Settlement (ṣulḥ) depends on the willingness of those at odds, and conjuring such willingness from mutual anger may prove impossible. Yet “custom” is valued as promising just settlement.

Disputes are seldom resolved definitively but nearly always are somehow contained or managed. It is partly for this reason, whether in tribal areas or in other parts of Yemen, that custom has often been preferred to shari’ah judgement. The scrolls of repeated judgements and repetition of the underlying case may be equally long in the two modes of law; but in ‘urf, or custom, the process unfolds among people one knows, and provisions to contain violence are as integrally part of the process as are sums decreed in compensation. Each is specific to the individual case. In the absence of jurisprudence, the inherent slippage between rule and application can seem to outsiders wide; and the structure of guaranty depends (rightly, in the local view) on expediency.

Rhetorics of state-law in Europe would surely denounce both features. Law and its administration need not be identified so closely, however; nor should we be drawn unthinkingly to the lawyer’s common identification of law with jurisprudence. Both equations are typical of those specific bodies politic which define themselves juristically.

But custom, or ‘urf, in Yemen does not work with “propositions” as in much of Europe; nor is there a system of formal “precedent” as in the English system. Those knowledgeable in law and skilled in arbitration, meanwhile, are not a specialist class of the kind to whom Weber drew attention in Europe’s history but generally are tribal shaykhs, and those who turn to them for arbitration or advice are simply tribesmen. Mismatch between reality and justice is extruded, without need for further thought, to the realm of “politics” and of personal character.

Reconciliation is what rules judgement (al-ṣulḥ sayyid al-ḥkām). No conflict of principle is assumed between law and fair settlement, ex aequo et bono as lawyers say; no abstract “rationality” requires maintaining. Cheyette depicts the logic for early mediaeval France, where (as in Yemen later) payments were made back and forth in settlement:

The practice of giving everyone something was ... so prevalent that it is impossible to reconstruct any objective rules of decision on the basis of arbitral judgements in
lower Languedoc, at least before the mid-thirteenth century ... When there were conflicting claims to property, nothing would be settled until everyone was satisfied.

Studies of non-state law thus evaporate often into study of “dispute resolution”. The existence of law itself may be identified with the claims of practitioners in courts and chanceries; or the absence of a lawyer’s “objective rules” may be attributed to droit coutumier as opposed to droit écrit. The former is known just as much as the latter through written evidence, and often its value is defined in advance by myths of state. But much of that myth is extremely recent, forming part of the discourse that gives us the notion of “early law”. Such generalizing schemes work poorly.

Cheyette points elsewhere to a style of composition, rather different from that of professionalized law, which accounts for much of the initial feeling of resemblance between, say, Arabia and early Europe. He does so by quoting not “custom” but codes from early English kings: “If someone does this, then the following...”; “If it should be, and someone does that...”. While later European law tends often to abstraction, the rules here are immediate and concrete. The condition of using such a style is that the terms make sense independently, and no totalizing system is assumed in which categories must themselves be defined, through endless self-reference, by the law or philosophy which uses them: in other words, no jurisprudential enterprise claims exhaustive truth. The law of the tribes in Yemen takes the concrete form. Definitions of persons, for instance, are treated as given, and rules concern instead what counts among persons, where and when, as right action or responsibility. That is what one might expect, perhaps, of pacts (qawā'id ). But it is also the style of law (shar', pl. shur'ū') supposedly not limited by time or place, or voluntary commitment. The law is not seen in lawyers’ terms.

Arabic ḥukm might, abstractly, be translated as arbitration, judgement, or even political dominion. A ḥākim (or someone muḥakkam) in ‘urf is an arbitrator, agreed to by those at odds. But the ḥukm he issues is a ruling. Usually he specifies certain amounts due, and often he refers some to ‘urf al-jihah, the supposed “custom” of the plaintiff’s area or people: an element of self-judgement is thus approved. Yet all, if justly done, accords with “the laws of the tribes” (shurū‘ al-qabā‘il), which supposedly apply to all. The lawyer’s question of how “custom” becomes “law” has a quite different meaning here than it would in a jurisprudential state. While all things are arguable, what is actionable is most obviously default on specific responsibilities. Certain instances, such as escort, hospitality and guaranty, are thus the focus of what was once called ḥukm al-man‘ (roughly, law or judgement which centres on ideas of protection, and therefore honour), while custom itself (that is, simply ‘urf) includes potentially the whole of life.

To argue over definitions is not to think. What we recognize as “law” may be an appeal to custom, the legislation of a sovereign body, or simply the world inhabited by lawyers. Yet rules are invoked widely, and resemblances among ethnographies are numerous. The circumstances defy reduction to instrumental order. Early kings in Europe were thus associated by name with law-codes, and references to such law being used in practice are to start with significantly absent: what mattered was promulgating a written text. Elsewhere, as with Ireland, we find bodies of specialists identified with formal law. Iceland provides a further type of case, with its vast amount of (later) manuscript that appears to regulate almost everything: this mass of rules was mercifully unaccompanied by any state enforcement mechanism. There was no bureaucracy to oversee their administration, no
permanent presence, other than the inscrutable Law Rock, that had a vested interest in their being honoured...\textsuperscript{72}

Whole societies on occasion, some with ideas of communal sovereignty and some with none at all, seem fascinated with legal procedure. More generally, however, the world is seen as governed morally by rules. This is hardly to say more than that life can or should make sense. Where such rules are invoked as law it is not primarily because they constrain individuals or offer such individuals a bargain with their fellows (both may be true of course) but that they express in intelligible form what justly cannot be otherwise.\textsuperscript{73} Not all are of equal weight, nor all of equal generality (some, indeed, are trivial or highly localized); all, however, might fit Hart’s simple precept, “Treat like cases alike and different cases differently”.\textsuperscript{74}

Like state-centred law, customary law in Yemen specifies rights and obligations, and often (by no means always) the sanctions or penalties for wrong. Jurisprudence, which custom does not have, produces in other systems –not all of them state-centred– a coherent account of how the parts fit together, or on rational grounds do not: it produces, indeed, an hierarchical vision of the whole. But whether law is enforced, or enforceable, is rarely fundamental. Acceptance that there simply is law (we need not all know, of course, what it says in detail) is far more basic, and not surprisingly its significance depends on wider self-definition. Some societies thus attributed law to kings, others to mythic legislators; still others, rather oddly but with huge results, have claimed to discover or invent law as they go along. The tribes of Yemen are one of that large set of people who treat law as having always been there.

Custom, or ‘urf, among the tribes is in no sense an agreement among bodies politic. Nonetheless, its nature is less that of a complement or precursor to the internal law of states than of a parallel to what used to be thought the law of nations,\textsuperscript{75} where again the “whole” to which anthropology so often appeals is felt by lawyers: “it is only by reference to a higher legal rule in relation to which they are all equal, that the equality and independence of a number of sovereign States can be conceived”.\textsuperscript{76} But that rule, if its existence be admitted, is merely imminent in what is done. Something of the kind is true of many systems. Indeed, where no jurists exist to formulate doctrine (that is, to formulate the world in the terms of their profession) “law” may be as little bounded as the moral field it expresses and in part defines.

The order of (national) states

Within what students of international law call “municipal” jurisdiction, more is going on than government prescribes or legislates. Most social formations exhibit in this sense legal pluralism.\textsuperscript{77} In Yemen rhetorical contrasts among shari‘ah (Islamic law), ‘urf (or appeal to “custom”), and qānūn (governmental legislation) obscure a more complex practice where ‘urf itself varies among activities and geographic areas, and shari‘ah remains conceptually unlimited: an empiricist might find as many “domains” of law as there are villages, activities, or city neighbourhoods. The current world, however, is that of the jealous state. State law in Yemen, for instance, thus recognizes and in its own terms “validates” the fact of non-governmental arbitration.\textsuperscript{78} But the political whole in whose name such legitimacy is granted is itself not institutionalized uniformly, any more than elsewhere, and people, still, are related of their nature. Let us take a case from the 1990s.
Bal Ḥārith, just north of Ṣanʿā’, were afraid the government were about to sequester part of their land to extend the airport. They went to Dhū Muḥammad, with whom they have no immediate connection of politics or genealogy, and slaughtered beasts to demand help, just as they might in dispute with some other tribe: talahhaqāq fawq dhū muḥammad ‘alā l-dawlāh (or min al-dawlāh). In other words they formed a connection (luḥqāh). Dhū Muḥammad duly approached the Governor of Ṣanʿā’, who gave them rifles in the usual way to promise good faith and asked a shaykh of Dhū Muḥammad to arbitrate. Bal Ḥārith’s concerns were taken up by Dhū Muḥammad and compensation agreed in the event that Bal Ḥārith land be needed.

Whatever the chances of a happy outcome to the process, this is ‘urf or “custom”, as much as are rules defining vengeance. There is simply an accepted way of doing things. Yet this is not what state enthusiasts, or tribesmen when denouncing the state’s shortcomings, mean by “tribalism”. One set blame disorder on tribalism, the other blame disorder on tribalism’s demise: writers on politics translate this as geographical division. The distinction between tribal territory and “the land of the state” in our eighteenth-century material is long gone, however, and was anyway contingent on the Qāsimī Imamate’s perceived injustice. Nationalist states in the current world present different questions. If we wish to abstract from the present two concepts of law, then a difference of principle suggests itself: states of their nature are monist, so to speak, and tribalism pluralist.

Settlement of a dispute in custom means not subordination to a common good but separation of those at odds. Ideally, as the phrase runs, “there is nothing between them”. Appeals to more general relatedness through all-encompassing (agnatic) descent are appeals not least to a proper autonomy, and the nominal equality apparent in law, which ignores so many practical inequalities, expresses this unthought axiom. Tribes are of different size (thus strength), men are of different wealth and influence. All identities save that of the person are contextual or provisional. But the comparison implicit in disputes over compensation, which threatens always to rank those at odds, is never generalized, for each of the parties at odds, apart from the encounters of dispute and trade, subsists in their own moral space.

Such themes recur elsewhere in systems of morality that could hardly be more different. In the classically economic space of nineteenth- and early twentieth-century Europe, for instance, domestic finance was a private sphere: overt comparison of wealth and wage-rates meant a ranking that compromised the space for self-respect implied in decency. Nor was “privacy” a matter only of morality. The “rule of law” expressed precisely the ideal that moral persons, and associations of persons, were not subject arbitrarily to collective valuation by the state which encompassed all. What many worlds exhibit, in fact, is a systematic non-comparability of persons, or of sets or groups, in all but defined spheres.

This is a principle to which anthropologists, and perhaps historians, have given less thought than it deserves, accepting too often as exhaustive the distinction between hierarchy (where value derives from a vision of the whole, promulgated often by a specialist class, of whom the legal profession are for Weber a type case) and egalitarianism, where individualism threatens always disorder or a violently imposed conformity. All hierarchy need do –if the term be appropriate– is to allot the spaces, be they physical, as with territory, or abstract, such as domains of civil life. The bourgeois state, with its invention of “private” space as against public rights and duties, thus
counterfeited within a moral whole what many societies had the luxury of treating as a
natural order. Turn the prism another way, indeed, and tribalism and the bourgeois state
appear in the same moral set: with tyranny as their shared opposite.\textsuperscript{82}

The case might be made that in tribalism there is no whole, and that the language of
hierarchy is superfluous beyond the domestic realm, or beyond the more general realm of
protection which domestic examples typify.\textsuperscript{83} It is hard to construct a “cosmology” to
which tribal divisions would correspond as part to whole; the “sacred” appears not as
validating or encompassing society but often as imminent in social events and
circumstance. Yet there is no doubt that in law (amply evident in the settlement of
disputes) men are opposed to men, and tribes to tribes, as nominally equals. This is so
without recourse explicitly to a “higher legal rule”. What is evident in actual rules is a
certain priority of procedural over substantive law, and a concern to separate, not
subordinate, those at odds.

The vulnerability of agreements to disagree is notorious. The complement to the endless
recurrence of tribal pacts in Yemen, for instance, is an endless recurrence of “strong
leaders”, such as many of the Qāsimī Imams in the eighteenth century who promised
order at sword-point. In Europe elected dictatorship recurs (from Rome if a classical past
is sought) through Napoleon III of France to Italy’s and Germany’s disasters of the century
just past. The rule of law offers little safeguard morally where law is conceived of as the
expression of collective will. In our own days the bourgeois distinction between public
and private spheres collapses in the face of populism, and concerns dealt with previously
as embedded in “contexts” of responsibility are reflected in an abstract vision of
community.\textsuperscript{84} All forms of autonomy become suspect. At the same time, and among the
same constituencies as favour brisk action to right perceived wrongs at home, the
pluralism that characterized international law is displaced by a demand for effective
pan-national sovereignty.\textsuperscript{85}

The detail of short-term politics aside, the conceptual stakes are high and room for
bitterness extensive. The provisional nature of social truths becomes hard to argue, and a
space between morality and politics becomes difficult for moral activists to conceive of as
other than condoning wickedness; yet many traditions, widely separated in time and
space, have placed refuge over sanction, as if on the assumption that claims to absolute
truth are to be mistrusted. The conceit was maintained that what is right is not defined
by groups, even by bodies politic, but only exemplified by them in varying degrees.
Behind or beyond what Europe called “positive law” thus lay values that for all but state
functionaries were more basic; and the prominence in both American and Continental
jurisprudence of what amounts to natural law exemplifies how the argument continues.
After all, law could be “posited” by tyrants, and where kings are replaced by “the people”
the threat to morality is all the greater, the claustrophobic constraints of “the state” all
the less escapable.

The logic of the modern state is total, and expanding it to global dimensions, as even
those who cite Kant seem sometimes to envisage, is the stuff of nightmare, for community
and morality are different things, the distinction being sometimes allowed by mere
contingency of history. The nineteenth century in Europe gave us evolutionary and
historical arguments over where “law” had come from; the eighteenth century had posed
the (misleading) terms of individual against society. Such terms present always the
dilemma whose horns are commonly chaos and sovereign power. But enlightenment
thinkers worked within a social order as little theorized as that of Yemeni tribes with
their notions of a common, uninstitutionalized morality. Edward Gibbon in the third chapter of his *Decline and Fall of the Roman Empire* (1776) depicts the contingency with his usual charm:86

> The division of Europe into a number of independent states, connected, however, with each other by the general resemblance of religion, language, and manners, is productive of the most beneficial consequences to the liberty of mankind.87 A modern tyrant, who should find no resistance either in his own breast or in his people, would soon experience a gentle restraint from the example of his equals, the dread of present censure, the advice of his allies and the apprehension of his enemies. The object of his displeasure, escaping from the narrow limits of his dominions, would easily obtain, in a happier climate, a secure refuge, a new fortune adequate to his merit, the freedom of complaint and perhaps the means of revenge.

60 Readers more concerned with order than with liberty might place this as a mere concomitant of supposedly endemic civil war. One might equally complain that while Voltaire could skip from court to court, most of the population could not, and even in Gibbon’s time there were those who saw justice as better served by unity on the Roman model.

> But the empire of the Romans filled the world, and when that empire fell into the hands of a single person, the world became a safe and dreary prison for his enemies. The slave of imperial despotism, whether he was condemned to drag his gilded chain in Rome and the senate, or to wear out a life of exile on the barren rock of Seriphus, or the frozen banks of the Danube, expected his fate in silent despair. To resist was fatal, and it was impossible to fly... Beyond the frontiers, his anxious view could discover nothing except the ocean, inhospitable deserts, hostile tribes of barbarians, of fierce manners and unknown language, or dependent kings, who would gladly purchase the emperor’s protection by the sacrifice of an obnoxious fugitive. ‘Wherever you are,’ said Cicero to the exiled Marcellus, ‘remember that you are equally within the power of the conqueror’.

61 In the modern age the erstwhile barbarians live under dependent kings, and neither oceans nor deserts can offer refuge: the frontier, in a sense, is closed. To constrain the emperor by municipal law, or its global equivalent, scarcely resolves the problem. No matter how just the polity, the language of the jurisprudential state invites always the equation of one moral regime with humanity itself, and of moral action with the exercise of power. Other legal traditions such as customary judgement (*ḥukmʿurf*) offer means at least to retain distinctions of understanding among justice, morality, and political order. Natural law, for instance, need not be seen as municipal law write large, a code ideally to be imposed on all. It need only be the recognition of shared humanity in the same degree as are the laws of the tribes (*ʿirāf al-qabāʿil*). The “procedural” features such as escort and guaranty to which *ḥukm al-man* always gave such prominence provided means ideally for settlement by *ʿurf al-jihah*, the supposed custom of the plaintiff’s area or people, and what that was, precisely, was not for the plaintiff’s antagonist to define.
NOTES


2. The three traditions from northwest Europe have little to do with one another, and none, I assume, shares much history with Arabia: such simple parallels as paying for the violation of a man's protection are therefore worth noting. Obviously one could reach out to unwritten rules of dispute and settlement in Africa, New Guinea and elsewhere, but literate traditions by themselves provide food for thought.


4. The wergeld is compensation for a man's life, as in murder. The mundbryce is the value of his peace or protection, and mund itself means a general power to protect. The first manuscript use of mundbryce seems to come in the 10th century, but the idea is plain in e.g. Hlothhaere and Eadric's laws.

5. The Icelandic material is here quite complex. The wergeld ring-lists, which nowhere appear in e.g. saga accounts, might allow one to differentiate free farmers from freedmen and the latter from slaves. In practice the amount of compensation paid, or extorted, varies hugely, and "the likelihood of commuting blood into money varied inversely with the popularity of the corpse" (Miller Bloodtaking p. 203, cf. ibid. p. 278). But the law seems to envisage formal compensation as properly the same for all free Icelanders: ibid. p. 37, A. Dermis et al. Laws of Early Iceland part one (1980) p. 8.

6. For the phrase "aggravated crimes", Murray Sons of Ishmael pp. 206, 209 and passim. In Sinai and the Western desert as in Yemen the usual penalty was demanded "four-fold". Al-'Alimi drawing on more generalized legal terms to describe Yemeni custom, distinguishes žurūf takhfīf and žurūf mushaddidah (Qaḍā' qabali pp. 72-3).

7. This is not to say such law never recognizes political authority. The Bin Zinbā' text makes reference to duties owed to one who "orders the good and prohibits the reprehensible", that is, a person claiming to uphold Islam: Abū Ghānim Bunyah qabaliyyah pp. 378, 383. Others of Rossi's texts ('Diritto' pp. 21, 24) mention sultans.

8. The same theme looks to occur in the famous pièces justificatives that make up part four of A. Hanoteau and A. Letourneux La Kabylie et les coutumes kabyles (3 vols., 1873). Closer inspection shows, however, that most of these deal with conceptually fairly equal transactions among families, concerning marriage, adultery, divorce, and inheritance. What is striking about the Berber qânouns by comparison with Arabian material, meanwhile, is the sheer amount they contain concerning women.


10. In Arab practice the link of a woman to her paternal kin is never wholly lost: M. Meeker, Meaning and society in the Near East, International Journal of Middle East Studies vol. 7 (1976). But even close-range marriage among paternal relatives, though the case is hard to frame in customary-law terms, seems not to mean women drop out of moral space in the way that happens with modern prisons or with ancient slavery. Obviously one should not search for parallels with bourgeois ethics, but neither does any parallel come to mind with the struggle the
church often had in early Europe to promulgate the idea that men harming women was inherently a wrong.

It is common, nonetheless, for women in Yemen seeking to escape local constraints, or these days state initiatives, to appeal specifically to Islamic law. See A. Wurth, Mobilizing Islam and custom against statutory reform in B. Dupret (ed.) Le Shaykh et le procureur (2005). Ibn al-Mujāwir (Tārikh al-mustabsir pp. 103, 154-5) suggests long ago some intriguingly parallel worlds, where for instance only women’s testimony would be admissible in disputes among women.

11. Even setting aside the polemical tendencies of Imams, there is little doubt that sexual morality in early Yemen was very different from present ideals: Serjeant ‘Tribal affinities’ pp. 19-20. What the practical expectations were in different areas later is hard to guess.

12. Kelly Irish Law pp. 140-1. The amount owed was the protector’s honour-price or face-price. The Anglo-Saxon rates are set out in Whitelock (ed.) English Historical Documents.

13. As we suggested earlier (part three, above), subordinate status, as for instance within a household, although even this only illustrates the more general logic of protection, may “feminize” men symbolically if they cannot reciprocate. This is not the same as substantive identity. Loose talk of “patriarchy”, as if all the world were like legal Rome, is equally unhelpful, for rather few societies grant men powers of life and death over free-born women though many have done so over slaves. Aristotle stressed (Politics, Book 1, chapters 2 and 12) that wives are of a different nature to slaves though both were subordinates in households: indeed it is here, in family affairs, that political virtue supposedly has its origin. The failure to grasp the distinction between slaves and free-born wives he claimed typified certain barbarians, much as Western propagandists now claim is true of the Muslim world. Muslim suspicions of European barbarism concern often the same domain.

14. Obviously we are here on ground mapped out by Louis Dumont. I do not want to pursue formal arguments about hierarchy, for one ends up with logic-chopping; and when I say “opposition” I mean always a symmetrical relation. In practice we need only concern ourselves with how values are ordered, and with whether and how an order is made explicit. Although Meeker (‘Meaning and society’ part two p. 421) is properly cautious, claims to Islamic righteousness complement the provisional nature of claims made in terms of e.g. territory or kinship. It would be useful to know far more of the practical ideologies informing such less than sectarian Islamic states as that of the Rasūlids.

15. No evolutionary logic underpins the sequence. If an explanation is wanted of hierarchical developments across early Europe, it lies not with the qualities of kin-groups but with monopolies of writing and with relations of the church to worldly power, cf. F.L. Cheyette, The invention of the state in B. Lackner and K. Philp (eds.) Essays on Medieval Civilization (1978).

16. For this and the points following, Whitelock (ed.) English Historical Documents pp. 391, 395, 399-400. Not only are injuries in the presence of the king paid two-fold (below), so are those at church or at meetings. The principle is amply familiar from Arabia.

17. P. Wormald Legal Culture in the Early Medieval West (1999) p. 194, cf. op. cit. p.193. The seeds of the idea are evident from the start in that Aethelbert’s code prescribes payment to the king of his protection price for the killing of any freeman: Whitelock (ed.) English Historical Documents p. 391. The important point for our purpose is not whether kings at a given date actually controlled people, but whether the moral claim to hierarchy made sense.


19. Claims to ancient precedent are made at most dates: English kings ruled as they did, in theory, because “the law doth permit”. But that is not to say precedent unrolled of itself into later constitutional thought and ideas of “civil society”. The English constitutional case starts on this score from a newly formed system of absolute monarchy, the Tudor state, not hugely different from that of inter-lacustrine Bantu kingdoms. For an interesting, if sometimes too
elaborate, examination of “modern” politics arising within such a moral whole see S.L. Collins From Divine Cosmos to Sovereign State (1989).

20. The involution of the federalist American system is a striking case. Rarely can such care have been taken in establishing a polity both to anticipate the threat of populism and to limit the powers of government, yet moral alarms phrased in terms of the unmediated whole repeatedly over-ride provisions in the founding document. Winning back space from absolutist claims requires often legal additions at federal level to precisely the institutions that acted ultra vires: the idea of rolling back federal jurisdiction to its original bounds, thus preventing such questions arising, has only a quaint charm.


22. Whether under British or French imperialism, it was not that all law was unified (often quite the opposite occurred) but that autonomous conduct of proceedings was forbidden: “native courts” or the like were subordinated to the state, if not wholly state inventions. To look for signs of imperial power in “the letter of the law” is often to look in the wrong place. Validation of courts and denial of rights to refuge are usually of more importance.

23. This is hardly the place to pursue the history of European ideas, but “civil society” (again now a current phrase) is often written of as if it precedes the state both logically and historically. Rather the opposite is true, in fact. People are social of their nature, but to speak of “society” in this sense is to speak of what does not exist without the state. The idea of preventing disorder through political hierarchy, meanwhile, runs deep. From the legal historians of the 19th century (indeed, from Milton) to recent historians and anthropologists, one need only note how “anarchy”, or having no leader, is used as a synonym for chaos.

24. “Hundreds” probably pre-exist Canute by at least two generations. But typically (I would guess, diagnostically) we know little about what they were: it is only as monarchy co-opts ways of doing things that the latter come into view and take solid form. The point about “kindreds”, below, is a separate one but surely obeys the same logic.

25. The mere distinction between locals and others is asymmetrical. But incomers are commonly depicted as, for a time at least, inferior to or controlled by those already present, and in many cases it seems to be recognition of this role as patron that makes absorption of outsiders unproblematic. When the status of patron is removed, as it is by modern states, foreign residents become easily an impersonal, undifferentiated threat.

26. Cf. J. Pitt-Rivers, Honour and social status in J.G. Peristiany (ed.) Honour and Shame (1965) p. 33, see also p. 34. For the related issue of intention, ibid. pp. 26-8, 32. Early anthropology showed a fascination with oaths invoking deities, and it is well to remind ourselves that oaths may equally well be sworn on personal value: one’s beard, one’s mother, one’s mother’s grave, and so on.

27. A famous example is Ibn Ḥubaysh of Sufyān and his men raiding Lower Yemen at the turn of the 18th century, and women’s ear-rings, some with ears attached, appearing for sale in the Ṣan‘ā’ markets. See Muhammad Zabārah Nashr al-‘arf vol. 2 (1958) p. 670.

28. All these rival descriptions might be used of local societies with their own logic. The Irish túath or “tribe” is a good example. It supposedly needed not only a king, but a churchman and a poet; the physically unblemished king was associated with prosperity. The fact that a king took no fine from disputing parties does not mean that justice was therefore, by default, “purely kin-based” (Wormald Legal Culture pp. 195-6).

29. Meeker ‘Meaning and society’ (part one) pp. 254-5, 259, discussing specifically “segmentary” sharaf. In practice different levels of identity are not all stressed equally. We saw earlier how Ṣubārah, half of Sufyān, could agree its own pacts; so can smaller units. But the word tribe (
in Upper Yemen is used mostly of such units as Dhū Muḥammad, Sufyān or Banī Ṣuraym, not of their components. I cannot provide a sound explanation why.


31. A. Bernard and L. Milliot, Les qânouns kabyles dans l’ouvrage de Hanoteau et Letourneux, Revue des Études Islamiques vol. 7 (1933), pp. 22-3. The diagnostic question is whether “fines” are payable to a group as such or “amends” to named guarantors.

32. The simple question of boundedness, very obviously problematic in the case of Arab tribalism, recurs in a valuable discussion of Lowland New Guinea: S. Harrison, The symbolic construction of aggression and war in a Sepik River society, Man n.s. vol. 24/4 (1989). “Society” is often something to be carved from the social by suppressing or denying relations of common humanity with those outside it, but humanity itself, and thus the unbounded social, extends indefinitely far.

33. Where states are conceived of as legal persons, the logic permeates discussion of international relations, as in Kant’s famous essay on “Perpetual Peace” (constitution.org/kant): “the harmony of politics with morals is possible only in a federative alliance...” But, whether in Europe or New Guinea, an assumption of common humanity keeps recurring; and the ability to give one’s word (surely the logical requirement of Kant’s “federation”) was assumed in European relations with many non-European powers until after Kant’s time.

34. Mutual recognition, of course, may be denied, cf. Harrison ‘Symbolic construction of aggression’. Nor need one go to New Guinea for cases. Aggressive states in Europe’s recent history or the conquest kingdoms of Africa provide striking examples of moral exceptionalism. “No triumph of peace is quite as great as the supreme triumphs of war” said Theodore Roosevelt, chief of a polity with no natural enemies that almost from its founding showed a popular taste for military adventure and an earnest moral singularity.


36. “What religion was (the veneration of idols and so forth) he does not say”: Dresch ‘Mutual deception’ p. 129. Fàrzès, to be fair, is cautious: “Nous ne prétendons point que les éléments de l’honneur sont, de par leur nature, des croyances et des pratiques religieuses. Ça serait s’abuser outre mesure. Cependant, ils en remplissent la fonction: ne font-ils point communier dans les mêmes représentations et fraterniser dans les mêmes actes la totalité des Arabes?” Plainly “religion” here is not at all the same as Islamic din.

37. We shall touch briefly, later, on Western distinctions between public and private. The associations of such distinctions more generally with sexual asymmetry mean the distinctions are deeply (one might also think rightly) suspect to those concerned with the moral autonomy of women. But when sexual hierarchy is removed, we still face a fundamental problem: without a domain of their own to control, legal subjects, be they female or male, become morally mere objects to be ordered by administration.

38. The arbitrariness of venerated things and places requires thinking through. The law-stone of Iceland (Miller Bloodtaking p. 228) and the tomb of Jubār b. Khawlān (Habshūsh Yémen p. 70, Ru’yah p. 38) are related cases. North Africa, despite an easy analytical recourse in the literature to barakah, provides ample cases where one need only white-wash a rock to produce a “saint”.

39. E.g. Mauss Essai sur le don pp. 180-81. Between the idea of congrégations dont la permanence peut excéder une saison de concentration sociale and that of l’instant fugitif où ... les hommes prennent conscience sentimentale d’eux-mêmes lies room for much investigation.

41. Calling a meeting “sacred” will seem to some readers frivolous by comparison with oath. Yet the common use of the term in anthropology is arbitrary, and very often it serves to round out an holistic analysis by appeal to external value. In tribal Arabia the social appears not to be validated by anything beyond itself except presumed antiquity.

42. An older anthropology spoke of “juridical communities”. Actually, anyone not obviously dependent, or defined in advance as such, who is willing to recognize the penalty can thus recognize the law and become part of the moral field of those willing to live and let live as mutually recognizable persons. Powerful outsiders who refuse the formalities appear savages, intent on something akin to rape.

43. This was once widespread in the (tribal) Middle East. See e.g. Jaussen *Pays de Moab* p. 224, Murray *Sons of Ishmael* p. 203, Peters *Cyrenaica* p. 77. Dislike of the practice by the women involved was parallel, symptomatically, to their dislike of exchange marriage.

44. Often one has no means of knowing whether compensation-values correspond with such ideas. To what extent, for instance, did the Irish at different periods think in terms of silver, and to what extent in terms of actual heifers, milch cows or female slaves, which provide the terms for units of compensation? Cf. Kelly *Irish Law* pp. 112-16.

45. See e.g. S. Hutchinson *Nuer Dilemmas* (1996), which deals admirably with a morality of vengeance and compensation encountering cash transactions. A set of very different cases needs thought, where before any notion of “economy” was present lives were valued in money.

46. The term capacities needs adding here because loss of sanity, the senses, continence, or reproductive ability is commonly valued at the full blood-money. See e.g Document 7 in part three, above. Nonetheless, a limb is half a life and vice-versa. Islamic law, unlike custom, introduces a distinction by denying a general *lex talionis*: for murder one has a choice between killing and payment, but wounds should be settled by paying *arsh*.

47. To the person outside the system it always seems there “should be” a logic of e.g. kinship or religion. It can also appear that way to people within the system (hence “family ties are not what they were”, “in those days there was really Islam”). But for them a complementary view suggests equally that all other values must be denied to uphold those of honour which make one what one is: hence extravagant tales of e.g. killing one’s kin who wrong a protégé.

48. See e.g. H.R. Loyn, *Kinship in Anglo-Saxon England*, *Anglo-Saxon England* vol. 3 (1974), p. 197. A famous case of this sort is the elaborate scheme of *baugatal*, paying blood-money, in saga Iceland, for which there appears to be no evidence but jurists’ musings (Miller *Bloodtaking* pp. 144-5), not to mention the likelihood of a population too small to furnish the requisite degrees of cousinship.

49. As always one is not comparing quite like with like. In certain respects the *khamsah*, so called, in North Arabia suggests ambiguities that may not have arisen with e.g. the Irish *fine*. The older literature on descent and marriage illustrates a very deep-rooted pattern in the Arab world: where close-range marriage is culturally marked, as Murphy and Kasden said 45 years ago, men who share agnatic descent, “do not occupy a status in Maine’s sense, but nor are they related just by contract”. Relatedness is unavoidable and inherently ambiguous.

50. See e.g. Jaussen *Pays de Moab* p. 160, Murray *Sons of Ishmael* pp. 205-6. In all the badu systems which the literature describes those immediately liable in a killing move elsewhere. Typically there is a brief period in which unthinking retaliation is admitted, and then the party at risk are either under others’ protection or are simply absent.

51. A generalized idea of damage and wrongs as having value in objects recurs elsewhere (Kroeber’s account of the Yurok in California used once to be well known). Money introduces other questions. Across southern Europe, as for instance in Visigothic documents, one finds land-values expressed in gold, where presumably almost no-one had any; in Ireland, by contrast, only kings could pledge a gold object. But the idea of cash-compensation haunts many cases where authors have wished to speak of honour.
52. Stewart ‘Contract’ p. 246. The idea of tajbīr introduces complications here, but it does not, I think, invalidate Stewart’s point that a guarantor’s liability involves primarily his honour: vengeance, as much as payment, would discharge his duty to the initial victim. Indeed, quasi-contractual links only illustrate a more general priority of status over sanctions. The implications for law of this stress on honour (specifically on ‘ird) as defining liability and duty will be footnoted later.

53. Miller Bloodtaking p. 276 of a society where money-compensation was in practice common, or at least was much argued over. Obviously a great deal might end up at arbitration rather than at a formal council or thing, giving “law” in mediaeval Iceland a very limited meaning. The law itself agreed at some stage that arbitration was binding. But this, and the provision that arbitrators who reneged on a commitment to give judgement should themselves be outlawed, appears less than conspicuously in Grágás: A. Dermis et al (eds) Laws of Early Iceland part two (2000) pp. 204-6, 355-7.

54. The outlaw himself named his three places at the compensation court, held 14 days after the ruling of banishment: Dermis et al. Laws of Early Iceland part one p. 93. Lesser outlawry and full outlawry do not derive from one Icelandic term, but there seems every reason to see them as locally two degrees of the same practice.

55. Miller Bloodtaking p. 175. For the founding myth of escape from royal domination, ibid. pp. 13-14. For Anglo-Saxon provisions, Whitelock (ed.) English Historical Documents; for Ireland, Kelly Irish Law pp. 222-4. An interesting feature of the latter cases, is that kings might retain in their households men whose rights at home were forfeit.

56. The tale from Ḥabshūsh of Nihm and Khawlān, which we mentioned earlier, in part three, is a case in point. One has to go to those who have provided refuge and invoke the principle that “no-one but a shameful person can accept a man who committed ‘ayb”. Disagreement in such a case threatens serious insult of one tribe or section by the other.

57. A distinction is conventionally drawn between substantive and procedural or adjectival law. Sometimes one finds the latter described, in a way suggesting how the basic idea is centred on a body politic, as “delegatory”. Even Hart’s more subtle distinction between primary and secondary rules (H.L.A. Hart The Concept of Law, 1972, pp. 78-9, 91-2) fits uncomfortably with customary law here. But in so far as primary rules are identified with sanctions (cf. ibid. p. 27) one would have to say that in ‘urf they come second to rules defining who is vulnerable to whom. As we shall see later, various “types” of rule need not form a self-defining whole.

58. See e.g. Wormald Legal Culture p. 63. Gluckman, of course, was a friend of the great J. Wallace-Hadrill. But it is odd that his Judicial Process Among the Barotse (1955), which actually contains much of interest, has been forgotten and his Custom and Conflict in Africa (1956) remembered. The reductio ad absurdum comes at the end of Custom and Conflict with a chapter on “the bond in the colour-bar”, as if apartheid South Africa had somehow been sustained by a balanced tension and interlocking ties between black and white. What sustained the old South Africa less fortuitously, as Gluckman himself says, was the South African police and army.

59. This is not to say poverty causes violence: only relative poverty, compared against one’s neighbours and lacking a rationale, does that. Nor are the chronicle sources unproblematic. But the typical cases of local violence seem to be pillage of the unprotected and bitter dispute over external funds. One suspects that part of that bitterness would be removed by recognition of the parties as simply having worth in the world of states and powers.

Certain areas of the country, such as the Jawf, were and are notorious for endemic, fragmented violence, where the usual forms of containment are said to fail routinely. Unfortunately, state sensitivities make research difficult. The question remains, however, as to why the area south-east of al-Ḥazm towards Ma’rib has so much harder a time than, say, Baraţ or Wädi Madḥāb where customary law is similar.

61. A striking recent case was a dispute between two sections of Bani Ṣuraym, which went on for the best part of a generation so bitterly as to prevent children attending school. But not even the two whole “ninths” of the tribe became closely involved: a handful of villages on each side were left to snipe across their own land and ambush each other elsewhere. On an even smaller scale, at Baraṭ two neighbouring households were at odds for years. One side of the house was in effect a free-fire zone, and even strangers were ill advised to expose themselves; on the other, neighbours met in the shade as if nothing unusual were going on.

62. Settlement of violent dispute is important. But it often draws one to what Hart called the “bad man” approach, and thus to sanctions preventing wickedness. “Why should not law be equally if not more concerned with the ‘puzzled man’ or ‘ignorant man’ who is willing to do what is required, if only he can be told what it is?” (Hart *Concept of Law* p. 39). The conventional problem cases in text-books, of international law and so-called “primitive law”, both make more sense if this is recognized. In Yemen people often want ʿurf defined, even at formal arbitration, for quite other reasons than avoiding a blood-bath.

63. The scrolls referred to can be very long, sometimes covering at least a century, the original issue being never settled. In “custom” that surprises no-one. Meanwhile, most people would say that sharīʿah is, by definition, superior to all forms of law. Its administration is not. Unhappy outcomes (or the lack of any outcome at all) are usually blamed on judges, but the problem is often more that the process involves antagonists with a style of argument they do not command and with people they do not know.

64. The supposed coherence of “rational” law was on this score contrasted by Weber with “qadi-justice”, an image used later by Justice Frankfurter. It is well to remember that Weber used the phrase of English law. The Court of Chancery did not follow even its own previous decisions until at least the 17th century, “binding precedent” had to wait for proper law-reports in the 19th century, and equity in England was not formally aligned with common law until the 1870s.

65. Hart’s celebrated “secondary” rules of recognition, change and adjudication, and his suggestion that their union with primary rules is the essence of law (*Concept of Law* p. 151), place us firmly within this sort of world. The reference to Weber, below, is of course to the long eighth chapter of *Economy and Society* (Roth and Wittich eds., 1968, vol. 2). In retrospect it seems odd, in fact, that Hart left Weber so thoroughly aside.


67. The French distinction was geographical, some regions claiming more immediate reference than others to Roman law, and the *pays du droit coutumier* sometimes revealing in local difference. As Maine remarked, this encouraged an interest in relations between civil and natural law, not least on the part of Montesquieu. But twisting the original meaning of the terms here seems justified.

68. Cheyette ‘Invention of the state’ p. 161, cf. Wormald *Legal Culture* p. 23, and *English Law* p. 95, where the prevalence of simple conditionals in Aethelbert is noted. Cheyette’s argument that a particular type of abstraction links Western law to theology and philosophy, and thus to conceptions of the state, is persuasive. A very different style of coherence was sometimes sought for Islamic *fiqh*: see e.g. Wael Hallâq, The development of logical structure in Sunni legal theory, *Der Islam* vol. 64/1 (1987).

69. The form of pacts is shown by the texts translated earlier. An idea of more generalized law is given by the Bin Zinbāʾ text in Abū Ghānim’s *Bunyah qabalīyah*. But the fragments I have of Serjeant’s *Kitāb al-ādāb wa-l-lawāzim* (they are only fragments, unfortunately) suggest
extraordinary detail on duties and obligations, and links with Islamic reasoning. Even to guess at the style of the work overall would be premature.

70. For these practical distinctions and the forms of rhetoric see e.g. Dresch ‘Episodes in a dispute’, where ‘the laws of Ḥāshid and Bakīl’ are invoked by a plaintiff. An attempt to specify what exactly those would be is effort misdirected.

71. Cf. Cheyette ‘Suum cuique’ p. 287. The English term is notoriously all-inclusive. In French what one practices or appeals to may be la loi yet a student of law is said to faire son droit. In English, “law” covers both and much else besides. All the major languages of Europe, despite this, seem in practice to work with the same indeterminacy of reference. The suggestion that “law” can be simply the world as seen by lawyers is not intended frivolously. See e.g. B.Z. Tamanaha A General Jurisprudence of Law and Society (2001).

72. Miller Bloodtaking p. 228. For the earlier points about kingly law, Wormald Legal Culture chapter 1, English Law chapter 2. For Ireland, Kelly Irish Law. Stewart’s Sinai material provides a non-written case of what has to be admitted as in a full sense “law”.

73. Kant, of course, built an approach specifically to ethics around the categorical imperative that one only act on maxims one can will as universal. In the secondary literature on law (not in Kant, I think) this degenerates into instrumental arguments: only will rules that will not contradict your interests if the rules are generalized to others. Far more to the point for an anthropologist is the original idea of universalizing statements.

74. Concept of Law p. 155, discussing specifically the idea of justice. For all that rules are not the whole of social life (perhaps not even a large part), talk of “law”, or even “legal anthropology”, without a focus on rules is simply talk of blinkered sociology.

75. The law of nations, as ius gentium, was for Rome first a lowest common denominator, inferior to civil law. Mediaeval theorists, in a quite different mood, seem almost to equate it with natural law. Late in the renaissance it resurfaces as ius inter gentes, governing how states interact, what the Romans might have called ius fetiale and what the moderns called droit des gens. What I am thinking of here is the last of these in the period, say, 1645-1945, from Grotius to Nuremberg.

76. L. Oppenheim International Law vol. 1 (1958) p. 38. Higher rules can as well be called basic rules, and one sometimes find experts in international law writing of ius cogens, law that all acknowledge or which “gathers” all, something like natural law. But what this is appears difficult to pin down: we might all agree there are human rights, for instance, but what exactly they are is only specified by treaty. This is very much the position with tribal ‘urf.

77. S. Merry, Legal pluralism, Law and Society Review vol. 22 (1988). In “modern” states, however, such pluralism exists within an ultimate claim to legitimacy, which has real-world effects. For example, in Southern California a great many people seem to be driving cars without insurance (often without a license), and a whole folk-jurisprudence governs how to get one’s fender fixed. In following that accepted system one presumably places oneself in a vulnerable position as regards California law, by e.g. “not reporting an accident”. The state at any point can define the private pursuit of equity as wrong.

78. L. al-Zwaini, Mediating between custom and code: Dâr al-Salâm, an NGO for tribal arbitration in Şan‘ā’ in B. Dupret (ed.) Le Shaykh et le procureur (2005), pp. 327-9. The organization al-Zwaini examines in her paper hopes to codify custom (ibid. p. 314), thus inviting the self-contradictions involved in codifying shari‘ah. But they are at least left to pursue their project. In other cases, implicated more deeply in the problems of e.g. vengeance, attempts to formalize arbitration meet suspicions of political subversion.

79. “Tribalism” is my abbreviation of the arguments, not a local term (although reported from western Yemen and from Khaulān al-Ṭiyāl, qabyalah is not common usage in most places north of Şan‘ā‘). In arguments of this kind, what people of all sorts now often say, symptomatically of modern conditions, is “the tribal system” (al-nīṣām al-qabali).
80. No-one who has read Mauss will be surprised at the aligning of dispute and trade. Quite widely in the Middle East, however, we find exchange being treated as inherently problematic. It used to be that direct exchange at market had to be mediated by non-tribal “weak” people. See e.g. Dresch ‘Mutual deception’ pp. 126-7.

81. Changes in what some call advanced democratic states have provoked much literature on “governmentality”. Public-private distinctions are judged outmoded. Yet the 18th century ambition expressed in John Adams’s splendid line “a government of laws, and not of men” encounters a paradox: regimes of total law, whether mediated by commercial institutions or governmental administration, leave no private space for moral judgement. Right action often comes to exist in a domain akin to that of reparations from uninsured drivers in the Southern Californian case.

82. As the constitutional (administrative) state took increasingly solid form in Britain, at the turn of the 19th century, such authors as Elphinstone and Burckhardt, with Tacitus and the Roman republic in mind, found political virtue in the tribal worlds of Afghanistan and Arabia. The tyrannical opposite they found in respectively lowland India and the Turkish empire. A generation before, in Kant for instance, the tribes of Arabia were imagined, with equal freedom, as examples of quasi-savagery. It may be that their history again demands thought from those whose experience is wholly of state order.

83. To appeal to lack of evidence is to raise the possibility merely of weak ethnography. But no account of Arabian tribalism, over a span now of some century and a half, suggests a fixed scale of values such as is commonly reported elsewhere. Does “honour” encompass “religion”, for example, or vice-versa?

84. A value-judgement would be premature and in any case irrelevant to understanding. But here, analytically, is where we find our clues for the guess made earlier that the specifically “bourgeois” state is at its end. The non-public space par excellence, the family, no longer has, for better or worse, any obvious legitimacy: intervention there is no longer considered an exceptional necessity but a moral imperative.

85. One would not contest the status of international law with experts, and the principle that it applies to individuals, not only to states, was enforced at the end of World War Two. Nonetheless political appeals to such law as over-riding national sovereignty have blossomed, not coincidentally, since the collapse of a balance between blocs of states circa 1990. In popular discourse almost any act of mass brutality committed elsewhere is now called a war crime, and certain governments are willing to use such language.

86. For the quotations following, E. Gibbon _The History of the Decline and Fall of the Roman Empire_ (1895) vol. 1, p. 109.

87. Judgements of this kind are never mere reports on empirical similarity or difference. In passing one should note Gibbon’s view of language, so very much at odds with recent analyses of ethnicity and nationalism. Gibbon’s French was excellent, but he is not under the illusion that everyone who mattered spoke French or English. What he might perhaps have claimed is that certain assumptions about the world were broadly shared.
Glossary of Words and Phrases

Many supposedly dialect words in Yemen can be found in classical dictionaries. For relevant Yemeni usage see particularly Landberg’s Glossaire. Al-Iryanî’s Mu’jam is also helpful, and Piamenta’s Dictionary of Post-Classical Yemeni Arabic, although it lacks ethnographic depth, lists much useful material. References to Lane are to the Arabic-English Lexicon (1863-93). The aim here is not to provide a concordance but simply to show that the Baraṭ documents connect with what else we know of Yemen.

I have tried to err on the safe side. If a word or phrase is not in Wehr’s Dictionary of Modern Written Arabic with its meaning in the present documents, then I have usually noted it. I have also for convenience included terms not found in the texts but mentioned in the notes and introduction. Entries are in the order of the Roman alphabet, ignoring ‘ayn, and initial hamzah is not marked.

• abyad, ‘ind al-
for the honourable man to deal with, but also perhaps with the meaning of being open to appropriate judgement or decision, al-Akwa’ Madkhal p. 32, Dresch ‘Sufyân’ p. 58.

• ‘adl
a just person (pl. ‘udul); also a just amount or price, Serjeant ‘Law cases’ (part one) p. 45, (part two) p. 169, ‘Glossary’ p. 574.

• ajbara
to act wrongly, commit an offence, Dresch ‘Ḥūth’ p. 75; at Baraṭ, unlike in Ḥāshid, usually to commit an offence with s.o., to second or abet a wrongdoer. But also perhaps confused with or assimilated to jabbara (q.v.).

• ‘amd
intention (syn. qaḍ). Also an oath to establish whether an act was intentional or not, hence e.g. yakhruj fi l-‘amd, not min al-‘amd.

• annah (also pr. innah)
protection, security.

• anṣār
pl. of naẓar (q.v.).

• afaq

to refuse one’s responsibilities, cf. Serjeant ‘Law cases’ (part two) p. 168. See also qafā.
• 'aqīrah (pl. 'aqā'ir)
a slaughter-beast, paid as amends or in appeasement, Rossi 'Diritto' pp. 5-7, al-Akwa’ Madkhal pp. 28, al-Iryanī Mu'tam pp. 641-3.

• arba' al-qaqul
the neighbouring tribes as opposed to al-aghrāb or a'shār al-qaqul (q.v.), tribes more distant geographically or in descent terms. For the pl. form arba’ see Landberg Glossaire p. 1090.

• 'arḍ (classical 'ird)
honour, but also, sometimes as 'ardah or 'urḍah, the right or capacity to give or receive protection, Dresch Tribes pp. 82-3, 138-9, al-Akwa’ Madkhal pp. 29,35.

• a'shār al-qaqul
other tribes, tribes further off or not closely related to one’s own (see also 'ushr), as opposed to arba’ al-qaqul (q.v.).

• 'atb (pl. 'utūb)
amends, but in most cases specifically amends for a disgrace or insult as opposed to “compensation” (naqīṣah, q.v.) for wounds or material damage, al-Sudumī Naẓarīyah p. 57.

• athrah (also pr. 'uthrah)
an offence, a sin of commission, as opposed to qāṣrah (q.v.), Serjeant 'Law cases' (part one) p. 44.

• awthana
to set oneself up elsewhere, to seek membership in another tribe.

• awd (perhaps also 'ud)
turning against or acting together against an offender, acting as one group, al-Akwa’ Madkhal p. 32.

• 'ayb
a disgraceful or shameful action; but also the amends due for such an action, Dresch Tribes pp. 39-41,48-9. One can thus “seek” 'ayb from a wrong-doer.

• azā
protection, usually of an immediate, unpremeditated form. Corresponding verb yazī, yuzzī, or yuwaazzī, Dresch 'Sufyān' pp. 54-5.

• 'azma-hum wa-khā rij, min
within the tribe and/or as against outsiders, al-Akwa’ Madkhal p. 30, Dresch 'Sufyān' p. 52.

• badanah
a (small) fraction of a tribe, usually something less than a laḥmah (q.v.).

• badhala

• ba‘rīf subā‘ī
a camel in the prime of life, probably with the idea of its being seven years old (see e.g. Lane). For ba‘īr as a (male) camel of particular value, Serjeant 'Dawlah' p. 159.

• baydā’
white or whiteness, hence good name and right action. Also the white flag which forms part of baydā’ wa-khiyār (q.v.), Glaser Ma’rib p. 134, ‘Arḥāb’ p. 6. See also tabayyāda.

• baydā’ wa-khiyār
whiteness and choice, a process of publicly summoning, and potentially shaming, someone to discharge an obligation. If the obligation has not been met at the end of the period of “choice” (usually two weeks) one plants a jidhn (q.v.). Dresch 'Placing the blame'.

• bayyana
to prove, establish, cf. bayyana, Rossi 'Diritto' p. 25, which Landberg tells us (Glossaire p. 224) was often a plural meaning “witnesses”.

• ʿaqlīrah (pl. ʿaqlāʾīr)
a slaughter-beast, paid as amends or in appeasement, Rossi 'Diritto' pp. 5-7, al-Akwa’ Madkhal pp. 28, al-Iryanī Mu’tam pp. 641-3.
• **bīsh’āh**
sooth-saying or divining, particularly the finding of lost objects, Glaser Ma‘rīb p. 134, Rossi ‘Diritto’ pp. 5-6, Piamenta Dictionary p. 32.

• **dakkah**
an offence against something of common value (e.g. borders or the market) and, more importantly, the response to such an offence, cf. dākka, Landberg Glossaire p. 826, piler, broyer, tasser. Synonym elsewhere faza’.

• **damān**
(also damānah) guaranty, Serjeant ‘Glossary’ p. 577, Dresch Tribes pp. 93, 95-6.

• **damīn**
a guarantor, someone responsible for another’s conduct, Dresch Tribes pp. 93, 95-6. At Baraṭ, but rarely elsewhere, distinguished on occasion from a kafīl or bondsman (q.v.). See also laźīm.

• **darak**
an intervention, usually taking responsibility for someone in order to prevent an immediate dispute developing, cf. dāraka, Landberg Glossaire 764-6, atteindre, soutenir, and mudarrak, Piamenta Dictionary p. 149, responsible.

• **dasm**
cash payment as amends, contrasted sometimes with dam, or blood, meaning vengeance. (The word dasm means, more literally, “fat” or “grease”).

• **dawshān**

• **dawwara**
to seek, look for, Piamenta Dictionary pp. 159-60, cf. dawr, al-Ḥibshi (ed.) Ḥawlīyāt p. 27.

• **dayn**
a debt, but often with the meaning of a required oath, hence e.g. dayn al-ʿamd, an oath to deny intention.

• **dhamm**
shame, disgraceful action, and the compensation paid for such, Dresch ‘Huţh’ p. 68. The word can also be used simply of a wound (syn. kawn, q.v.).

• **dhamma**
to commit, or to owe amends for, a disgraceful act, cf. Landberg Glossaire p. 956, blâmer.

• **dhimm**
(also dhimmah)

• **far** (pl. farū’)
a judge or arbitrator, al-Iryanī Mu‘jam p. 688.

• **farā’ (or farā‘ah)**
the process of arbitration and settlement.

• **faṣl**

• **fawāta**
to fail someone, not to discharge a responsibility.

• **fa‘īt**
that which has gone or disappeared, a material loss such as in theft.
• **faysh**

• **faza**
  alarm, panic; but also the collective response to an alarm, Dresch ‘Sufyān’ p. 54.

• **fi’l (also pr. fa’l, pl. af’āl)**
  an action, and in context sometimes an offence of any kind. But commonly in tribal documents a wound (syn. kawn q.v.).

• **firq (also pr. farq, pl. firaq)**
  an answer to a disagreement, a solution; perhaps with the idea of “separating” those at odds, cf. faṣl, a judgement. Less often, the difference or disagreement itself.

• **fisala**
  to fail to act, to fail in one’s duty, al-Akwa’ Madkhal p. 32 (cf. classical fasala, to lack manly virtue: Lane).

• **fūṭah**
  a man’s skirt, Piamenta Dictionary p. 382, or any length of cloth.

• **ghala**

• **ghāli**
  cost, expense, but with the sense of a specific fine for an offence, cf. al-Sudumī Naṣarīyah pp. 55, 112.

• **gharāmah**
  expenses, costs, or the amends due collectively, al-Ḥībshi (ed.) Hawliyūt p. 293, 305, Piamenta Dictionary p. 355. Also ghurm (q.v.).

• **gharasa l-wajh**
  to commit one’s honour, particularly to sign one’s name as a guarantor or ḍamīn (q.v.).

• **gharīm**
  one of the parties to a dispute or law-case, Serjeant ‘Law cases’ (part one) p. 45, Dresch Tribes pp. 92-3.

• **gharrāmah**
  the set of men who together pay ghurm or collective costs, the members of a tribe, Glaser Ma’rīb pp. 133-4, al-Sudumī Naṣarīyah p. 133.

• **ghaṣṣāb**
  important, weighty or compulsory (syn. ḫāṣṣāba), cf. ghassaṣaba, Serjeant ‘Glossary’ p. 578, to compel.

• **ghurm**
  payment, costs, whether owed individually or in common by a set of people. Common responsibility within a tribe is referred to as ghurm wa-jurm. See also gharrāmah.

• **ḥajaba ʿalā**
  to cover, take under one’s care and thus take responsibility for a person or obligation, cf. Landberg Glossaire p. 357, garder, préserver, al-Sudumī Naṣarīyah pp. 150 ff. See also tahajjaba.

• **ḥajari**
  a settled person (syn. qarawī, q.v.) as opposed to a badawī or nomad.

• **ḥajīj**
  a party to a dispute (syn. ḥarīm, q.v.), someone involved in a squabble. Hence on occasion a protector or one who takes another’s part.
• **hajjara (verbal noun tahjir)**
  to set apart as protected. Also to pay amends for violating such protected status, Dresch Tribes pp. 58, 136-7, 146-7 and passim. See also hijrah and muhajjar.

• **hala**
  to settle somewhere or to live alongside someone, Landberg Glossaire p. 522, se placer à côté de. Hence ḥāl (pl. ahrāl or ḥarlāl), living with or living at.

• **ḥarrt al-sinnah**
  cultivated land, land which is ploughed (sinn or sinnah is a plough-shear).

• **ḥashm**
  a disgraceful action (syn. ‘ayb or dhamm). Also, like dhamm (q.v.), one of a set of multiple payments for amends, cf. al-Sudumi Nażariyah pp. 55, 57. Hence dam wa-dhamm wa-ḥashm. Sometimes that part of multiple amends paid specifically to the immediate victim.

• **ḥammama**
  to blacken (cf. classical ʾahmm, pl. ṣumm), hence to violate, besmirch, commit a wrong against. See also himam.

• **ḥawl**
  a period of time (colloquial syn. often mahl, cf. classical muhlah?).

• **ḥawr**
  the act of driving others to an arbitrator or to settle a dispute, Dresch Ḥūṭh’ pp. 77, 89, ’Episodes’ pp. 77, 84.

• **ḥawt**
  an iron ring or collar once worn around the neck to distinguish an uncircumcised male or murghal (q.v.).

• **ḥayāt**
  walls, hence walled gardens, as for instance for growing grapes, cf. ḥayt, pl. ʾahyāt, Piamenta Dictionary p. 114.

• **ḥayy**
  a settlement, a village.

• **ḥijājah**
  dispute (cf. hijah), but usually with the meaning of taking sides, supporting one person against another. See also taḥaţaja.

• **ḥijjah (classical ḥuţjah)**
  a dispute, al-Akwa’ Madkhal p. 30.

• **ḥijrah**
  a restricted area where others may not graze flocks, or the period in which such restrictions apply. See also mahjar.

• **ḥijrah**
  a place, event, or set of persons set aside or protected by the tribes, commonly a place where learned families live under such protection, Serjeant ‘Tribal affinities’ pp. 26-9, Dresch Tribes pp. 145-8, al-Akwa’ Madkhal

• **ḥill (pl. ahlāl)**

• **ḥimam**
  charcoal or black ash, as on a piece of burnt wood (cf. classical ʾahmm, pl. ṣumm): ṣumm or ḥimm, Piamenta Dictionary p. 106.

• **ḥujah (also ḥajib)**
  covering s.o., taking responsibility for them, cf. al-Sudumi Nażariyah pp. 150 ff., hence e.g.
bundaq al-ḥujbah, a rifle as a token that one has done this and taken responsibility for settlement or payment.

- ḥurmah
  inviolability, as of a person, a house, or tribal territory. A common term for a woman and more particularly for one's wife, Ḥabshīsh Ra'jah p. 53, 74, Rossi ‘Diritto’ p. 4.

- ḥurmat al-shaykh
  a shaykh's inviolability, immunity, e.g. when acting as arbitrator.

- ḥurmat al-watan
  inviolability of tribal territory, breached if an outsider commits some wrong there, Rossi ‘Diritto’ pp. 19, 23, Dresch Tribes p. 80.

- ibtarā (cf. classical bara'a)
  to declare oneself quit of (min) a relationship or obligation, al-Akwa’ Madkhal p. 32.

- ihtamala
  to be answerable, responsible, for a claim by others, cf. al-Sudumī Naṣarīyah pp. 91, 132, to bear responsibility.

- ijārah
  neighbour-right, right of protection. See also jirah, majārah,

- ijāzah
  part or share in responsibility, particularly in payment of amends or compensation. One finds e.g. a shaykh signing as guarantor for his men, 'alā kāfīf at ashāb-ah hasab ijāzat-hum la-h.

- 'ilb (or 'alb, pl. 'ulūb)
  a jujube tree, probably of the genus Ziziphus, whose leaves provide fodder and whose fruit is edible.

- imnah
  see amnah.

- intāla
  to reach or be close to, cf. nāla, Lane, to attain or obtain.

- irtadda
  to respond, to answer e.g. a summons, to pay a debt. Usually with an indirect object (li-, 'alā), but also governing a thing or person directly.

- 'irḍ
  see 'ard

- istaqāmā
  to stand up and do what one should, to accept or discharge an obligation such as overseeing payment, al-Sayāghī (ed.) Šafāhī p. 71.

- i'taraḍa
  to present or offer, as a transitive verb (e.g. i’taraḍa banādīq-ah, offering one's rifles as surety for judgement); and apparently as an intransitive or reflexive verb (man i’taraḍa nafṣ-ah, whoever presents himself, e.g. for judgement). Also to intervene: see i’tirād.

- i’tirād
  intervention, with the meaning of preventing others reaching someone to extract from him amends or vengeance, al-Sudumī Naṣarīyah p. 119, cf. al-Akwa’ Madkhal pp. 40, 42.

- jabbara
  to pay amends on someone’s behalf and thus take responsibility: the usual form is that one yujabbir (direct object) the person who has suffered the loss, and yujabbir ‘alā (indirect object) the culprit.

- jadhdh
  a witness in collective oath, as opposed to an eye-witness (shāhid).
• jalabah
  a head of sheep, normally a ewe, Landberg Glossaire pp. 293–4, al-Iryanī Mu’jam p. 147.
• jalla
  to steal livestock.
• jār (pl. jirān)
  neighbour, either in the meaning of a tribesman somehow related to oneself or in that of a
  “weak” person under tribal protection. For jirān as something like a caste or class see Glaser
  Ma’rib p. 24.
• jār al-bayt
  neighbour of the house, a tribesman living under one’s temporary protection or bound to
  one as a permanent co-resident.
• jār al-mismār
  neighbour of the nail, a “weak” (i.e. non-tribal) person who supposedly gained protection by
  driving a nail in the door of a tribesman’s house.
• jār al-qaṣra
  a weak person protected by some specific family or section, not by the whole tribe.
• jār al-tulāq
  probably a fellow tribesman linked to one by some obligation, if only kinship, but not living
  close at hand.
• jārī
  an event (from the verb jārā), Piamenta Dictionary p. 66, meaning usually a mishap.
• jarrah
  an offence, a wicked action.
• jīdh
  a stick or scarecrow set up to shame someone who defaults on an obligation, Glaser Ma’rib p. 76, Dresch ‘Placing the blame’.
• jīrah
  right of protection, neighbour-right, al-Akwa’ Madkhal pp. 31, 41. See also jīrah, majūrah.
• kafīl
  a bondsman. In most places north of Ṣan‘ā’ all but synonymous with guarantor (damīn q.v.),
  but at Baraṭ more usually one concerned with ensuring payment than one concerned with
  ensuring conduct. See also lazīm.
• kawn
• kawwana
  to inflict a wound. The passive participle mukawwan is common for “someone wounded”,
  and the plural is often mukāwīn, al-Sayāghī Ṣafahāt pp. 20, 108, 115.
• khalā’a
  to pull, and specifically to pull from outside the latch-string that opens a wooden door-lock.
• khashar (also perhaps khashur)
  shared, joint, something held in common, cf. al-Akwa’ Madkhal pp. 32, 43, 48, Landberg
  Glossaire p. 596.
• kuflah
  a truce imposed by the intervention of third parties, al-Sayāghī (ed.) Ṣafahāt p. 116.
• labīth
  s.o. protecting or protected: in places, though not at Baraṭ, syn. of qatīr (q.v.). The term labīth
  elsewhere can apparently denote amends for shameful action, al-Sudumī Naẓariyyah pp. 110,
  115, 117 and passim.
• **laḥmah**
  a section of a tribe, usually something larger than a *badanah* (q.v.) such as one of the “fifths” of Dhū Muḥammad or a major division of a fifth.

• **lāqa fa** to confront (cf. classical *laqafa*, to seize).

• **lathagha**
  to spit out, meaning often to pay, to cough up. Ḥabshūš (Ra’yah p. 30) transcribes the term as *ladhaγha* with a *dhāl*.

• **lawā**
  (also pr. *lawā*) a difference or disagreement.

• **laẓim**
  someone who has taken on an obligation, and thus is answerable to a *mulazzim* (q.v.). See al-Sudumī *Naẓarīyah* p. 130. Often overlaps with *ḏāmin* and *kafīl* (q.v.). It is also used, though this is not common at Baraṭ, of the person answerable to a guarantor, i.e. al-*mukaffal* ʿalay-h.

• **luḥqah**
  an attachment, usually short-term and capable of being formed with any tribesman, wherever they are from, who is willing to offer aid. See also *talāḥqa*.

• **maḍḍā**
  to accept as valid, to approve.

• **maḍḍah**
  a wrong, and particularly a blow, cf. Serjeant *‘Law cases’* (part two) p. 168. Also verb-form *madda*, to commit a wrong against (fi) someone.

• **madhmmaḥ**

• **maḍrūb (also maḍrūbah)**
  a decision in customary law, a precedent.

• **maḥḍ al-naqā’**
  the whiteness of purity, i.e. doing the right and honourable thing, clearing one’s name by vengeance or payment.

• **maḥjūr (also maḥjūr pl. maḥjūjir)**
  a restricted area of land where others cannot graze flocks at certain times of year, cf. Landberg *Glossaire* pp. 360–1, *territoire réservé ou protégé*, Piamenta Dictionary p. 84.

• **maḥsharah**
  the stubble after a crop is harvested, also the period when others can graze their animals on it, al-Iryanī *Mu’jam* p. 179.

• **majūrah**
  protection as a neighbour. See also *jūrah*, *ijūrah*.

• **malām**
  literally “blame” but meaning specifically a *jidhn* (q.v.), cf. *lā’imah*, Glaser *Ma’rib* pp. 76, 134.

• **malāzim**
  pl. of *malzam* (q.v.).

• **malāzim, ahl al-**
  people linked in support of common obligations, sharing responsibility, cf. *ahl al-malzam*, al-Sayāghi (ed.) *Ṣaḥḥah* pp. 68–9, 82, 89. Also al-Sudumī *Naẓarīyah* pp. 127. In text B glossed as “the allied people”.

• **malwi**
  equivalent to, included in (syn. *ma’khūdh bi- or min*).
• **malzam (pl. malāzim)**
  an obligation, and the ability to take on or invoke one. Also, in Ḥāshid and elsewhere but not at Baraṭ, an in-law, relative by marriage.

• **man’ (also man‘ah)**

• **manhā**
  an authority on customary law, someone with whom, as an appeal judge, disputes can “finish” (cf. marāghah, q.v.).

• **manā’**
  people of less than full tribal status at Baraṭ who seem to have worked as sharecroppers on tribesmen’s land. (Also known in Dhū Ḥusayn, I think, as qabā’il al-wasat).

• **maqām**
  seat, dwelling place, as in place-names such as Maqām Abū Ra‘s at Baraṭ, the place where s.o. is established. Also a court. Letters from Imams used often to be dated from al-maqām al-sharīf.

• **maqṣad**
  a slaughter-beast (syn. ‘aqīrah q.v.), Piamenta Dictionary p. 401.

• **maqṣūr (pl. maqāṣir, cf. marāḥiq in areas near Ṣān‘ā’)**
  area of land off-limits to others, cf. muqṣṣarāt, Dresch Tribes pp. 339-40: usually defined by run-off.

• **marāghah (pl. marāyīgh)**
  a recognized expert in tribal custom, whom one can turn to as an appeal judge, al-Sudumī Nazariyah pp. 50, 81, al-Iryanī Mu‘jam pp. 826-7 (see also manhā, masfā). Ḥabshūsh (Ru‘yah p. 42) suggests the term could mean not only an expert in law, but customary law itself.

• **marāḥiq**
  slopes, catchment-area above a field, lines of run-off (or water-channels, masāqī, q.v.), al-Sudumī Nazariyah p. 76, Piamenta Dictionary p. 190.

• **marbū‘ (or murabba‘)**
  four-fold, Serjeant ‘Law cases’ (part one) p. 46, al-Sudumī Nazariyah pp. 54, 57.

• **maryūs**
  shared, held in common (also murawwas, q.v.).

• **masāqī**
  lines of stones or of earth directing run-off to fields.

• **masfā**
  in customary law, an authority or appeal judge, with whom cases can ideally be “cleared”. See also manhā, marāghah.

• **mashadd**
  leaving, especially leaving tribal territory, hence rafq al-mashadd someone who sees a wrong-doer out of tribal territory when his rights of protection have expired. From shadda (q.v.).

• **mawāthir**
  bases or precedents (cf. mawthar, the foundations of a house).

• **mawālāḥ, bi-**
  in consultation with or by consultation among (syn. bi-istishārah), Piamenta Dictionary p. 533, al-Iryanī Mu‘jam p. 925. See also walā.

• **mawkab**
  area, boundaries, cf. wakab, pl. awkāb, boundary stones, Piamenta Dictionary p. 531, citing Rossi.
• mawlā
he of: e.g. he of the month (responsible that month for the market), he of the Tihāmah (the person living there). In colloquial usage there seems to be no separate plural, and mawlā is used at Baraṭ only of clients or dependent followers.

• mawqīf
a case, the matter of a dispute. Also a meeting, hence ahl al-mawqīf, the shaykhs who convene a tribal meeting.

• mawṭāh
a meeting place (syn. mīrākh, q.v., but mawṭāh is the more common term near Baraṭ).

• mazāyinah
pl. of mazāyin (q.v.).

• misrāḥ

• miṣrākh
(as often spelled with sin) a meeting place, al-Sudumī Nazārīyah pp. 137, 145 (syn. mawṭāh, q.v.).

• mu‘ayyab
shamed, disgraced, or offended, and thus due amends. (The corresponding active participle, mu‘ayyib, is one committing a disgrace and thus owing amends to others).

• muḥaddash (sic)
eleven-fold, al-Sudumī Nazārīyah pp. 54, 57.

• mulazzam
someone under an obligation, but the usual form is lazīm (q.v.).

• mulazzim
someone invoking, or able to invoke, an obligation on another. For instance, if a man from another group owes me amends or compensation and another from his group promises to deal with the matter (yahlījib ‘alay-h), that second man is my lazīm (q.v.). I am his mulazzim.

• murawwas
shared, held in common (also maryūs, q.v.).

• murghal (or mirghal)
an uncircumcised male, from rughlah (q.v.).

• musabbagh

• muṣān
protected, inviolable, Dresch ‘Ḥūth’ pp. 75, 89, cf. ʂaw (q.v.), ʂawān op. cit. and al-Akwa’ Madkhal p. 47. A protector might be muṣawwīn,

• mutasawwiq
market-goer. See also tasawaqqā. (To be distinguished from musawwiq, s.o. selling things, a vendor).

• muzayyin
a “weak” non-tribal servitor, typically a butcher or barber.

• najība
to finish, to run out, al-Ḥibshī (ed.) Ḥawlīyāt p. 388, Ḥabhshīsh Ru’yah pp. 92, 126.

• najiada
to prove, to establish (syn. ṭhabbata). Also form IV, anjāda.

• nakfah (also nakaf)
a call to arms, al-Iryanī Mu’jam p. 882; cf. nakfah, Landberg Glossaire p. 2823, réunir; mobiliser; Serjeant ‘Glossary’ p. 589, nakfah “to put shame on”, hence tankīf (q.v.).
• *naqā* (or *naqā*)
purity, the state of not owing or being owed amends or damages; also the amends themselves, usually in the sense of blood-vengeance, Landberg *Glossaire* p. 2817, Dresch *Tribes* p. 49, al-Sudumī *Nazariyah* pp. 109, 113. Hence “absolution”, Rossi ‘Diritto’ p. 20.

• *naqā’il*
pl. of *naqilah* (q.v.).

• *naqīb*
hereditary title born by certain families of shaykhs, mainly in Bakī’ tribes north and east of Ṣan‘ā’, Serjeant ‘Glossary’ p. 589, Dresch *Tribes* p. 405 (pace several authors, it is not a rank superior to that of shaykh).

• *naqilah*
someone who moves to the territory of another tribe or to another region, Serjeant ‘Glossary’ p. 589.

• *naqīṣah* (also *naqṣ*, which is reckoned by most people less colloquial) a material or physical loss, as opposed to *ʿayb* or *ḥashm* (q.v.)

• *nasaba*
to set up. But used with a certain intensity, e.g. of setting up flags to enforce an obligation, or stones on a grave to mark revenge, cf. Landberg *Glossaire* p. 2775, hence *tanṣib* for “vengeance”, Dresch ‘Sufyan’ p. 52.

• *nasama*
to intend, go towards, cf. *tanassama*, Lane (supplement), to seek or look for; *nasam min al-ṭarīq*, denoting nearness. Also to rest or stay, Ḥabshūsh Ru’yah p. 75, Landberg *Glossaire* p. 2767, Piamenta *Dictionary* p. 484.

• *nawābit*
plants, but in the Baraṭ region used specifically of trees. Elsewhere, as in much of Ḥāshid, it can mean cultivated plants, such as growing crops, as distinct from rough grazing.

• *nazar*
view, supervision. Piamenta (*Dictionary* p. 489) gives *bi-nazar*, under the care of, with the knowledge of, and *ʿalā l-nazar*, in the presence of.

• *qadaḥ*
a dry measure of grain, roughly a bushel, Piamenta *Dictionary* p. 388.

• *qafū* (noun)
the back, hence e.g. *rafiq al-qafū* as a person who claims to protect one but is not at one’s side, as opposed to *rafiq* or *sayyir al-janb* (q.v.).

• *qafū* (verb, also *qaffū*)
to turn one’s back on, to refuse (cf. *aqfū*; the present tense, if used at all, seems to be *yuqaffū*), Landberg *Glossaire* p. 2518, Serjeant ‘Law cases’ (part one) p. 46, (part two) p. 168. See also *qafū*.

• *qāfū*
the past tense seems not to be used, and may not exist in practice: the present tense, *yuqaffī*, however, means to help someone, perhaps gratuitously, at the time of an incident.

• *qaffī*
a gift or help, perhaps expected of someone but not a formal duty (note the contrast with Serjeant ‘Law cases’, part two, p. 168, where the term is used of a fine).

• *qammāṣ*
• qarārī
one of a non-tribal servile stratum, Ḥabshūsh Ru'yah pp. 52, 83, 85, 86. The word is not widely heard or attested. More usually one hears qarawi (q.v.).

• qarawi (pl. qurār or qarwān)
a settled person or village-dweller; also sometimes a weak person or one of the manū‘ (q.v.), cf. Ḥabshūsh Ru'yah p. 52, Glaser Ma'rib p. 24, Rossi 'Diritto', p. 8.

• qard
a type of acacia, probably Acacia etbaica or A. arabica.

• qarāshah (also qirsh or qarsh, pl. qurāsh)

• qāṣā
exact judgement, careful examination (classical taqassīn).

• qasāmah
collective oath, but also syn. gharāmah (q.v.), collective payment.

• qashrah
grazing, cf. qishār, Landberg Glossaire p. 2494, Rinde, Schale.

• qasrah (also pr. quṣrah)

• qatīr
someone living in the space of another and thus under his protection; also the one who provides such protection, Glaser Ma'rib pp. 107, 108, 134, al-Sudumī Naṣāriyyah p. 140.

• qirsh
a silver piece (e.g. a Spanish real, or later a Maria Theresa thaler, pl. qurūsh), but also, perhaps as qarsh, a sheep or goat (see qārishah).

• qiṣā‘
cutting off, whether of relations with a tribe (e.g. denying outsiders access to market; denying insiders right of protection) or of a problem, i.e. ending a dispute.

• qiṭār
right of co-residence and thus protection (see qaṭīr).

• qublah
a confrontation, and specifically a law-suit or legal process.

• raḥā‘ (also perhaps rubā‘)
right of protection, or the status of protecting or being protected, cf. Landberg Glossaire p. 1074. The verb to offer or give protection seems usually to be raḥa‘a.

• raḥī‘

• radm
secondary guaranty, i.e. ensuring the conduct of a kafīl or dāmin (q.v.), hence rudmā‘, secondary guarantors, Dresch ‘Ḥūth’ pp. 68, 73-4, cf. raddama, Landberg Glossaire p. 1228, réparer; boucher les trous.

• rafaq (also ruṣqah or rifqah)
companionship, implying protection or support.

• raṣq al-janb
a formal escort (syn. sayyir q.v.), Glaser 'Arḥab' p. 5, Ma'rib pp. 9, 36.
• raqm
  a document, s.t. written or recorded, hence e.g. raqm al-maraḍ a document setting out claims in a law-case.

• ra'y, 'alā
  under someone’s supervision, at their disposal, or as they wish, Piamenta Dictionary p. 171, cf. Ḥabshūsh Ru'yah p. 55. Also bi-ra'y.

• rizwah
  a small hill (syn. tibbah).

• rubā'
  with four teeth (of sheep at a certain age, hence a sheep not fully grown), cf. Piamenta Dictionary p. 173.

• rufsah
  a small hill (syn. tibbah).

• rubā'
  with four teeth (of sheep at a certain age, hence a sheep not fully grown), cf. Piamenta Dictionary p. 173.

• rufqah
  syn. rafaq (q.v.).

• rughlah
  state of not being circumcised; also payment for offences against uncircumcised males, Glaser Ma’rib p. 135 (cf. classical ghurlah, the foreskin).

• sa'ah
  place, whether literally (syn. maqarr, a dwelling-place) or metaphorically, to mean a person’s legal or moral standing.

• sabaḥah
  excess.

• sabīghah (spelled as often with a sin)
  an indigoed cloth, Serjeant ‘Glossary’ p. 594, but usually in Upper Yemen a head-cloth.

• sadas

• saḥb (also suḥbah)
  fellowship or brotherhood in the tribe, Dresch ‘Sufyān’ p. 52, al-Sudumī Naṣāriyah p. 90.

• salabah

• samī

• sarraha
  to pay. Though the verb is sometimes used in form I, the verbal noun is always tasrīḥ (classical tasrīḥ).

• sāqa (yasāq)
  to drive, but also to pay, Piamenta Dictionary p. 239, as in yasāq al-naqīṣah, to pay compensation or damages. The passive, “to be paid”, seems always to be form VIII, istāqa.

• sawdā'
  a black flag, forming part of the process of bāyāt wa-khiyār (q.v.). Also used metaphorically, as in English one speaks of a “black mark” against someone.

• sawn
  secondary guaranty (also radm, q.v.), Dresch ‘Ḥūth’ pp. 73-4, 81, cf. šāna, Landberg Glossaire p. 2217, avoir soin de. Hence šawwān, s.o. responsible, al-Akwa’ Madkhal p. 47. See also muṣān.

• sayyāh
  a call or summons for assistance or support (syn. nābī). Also, with the same meaning, in the active participle form šāyīḥ.
• sayyir
escort, formal companion on the road, Glaser Ma’rib pp. 9, 36, Landberg Glossaire p. 209.
Synonymous usually with sayyir al-janb (or rafq al-janb) and distinguished from the simple
musāyir or fellow traveller.

• shadda (yashidd)
to get up and move somewhere else. See also mashadd. Apparently not thought of as
connected to the following:

• shadda (yashidd)
to cast off, repudiate, cf. the decisive phrase ashidd-ah bi-lihyatī (said always with a vigorous
gesture of tugging one’s beard off), “I repudiate him by my beard”: I want nothing to do with
him, I deny absolutely what he says.

• shar’ (pl. shurū’)
law, judgement. Sometimes used of shari’ah (Islamic law), sometimes of its complement,
tribal custom.

• sharaba
to take part, act as an accomplice; perhaps also to bear witness against.

• sharada
to flee, to avoid or decline a responsibility, cf. Landberg Glossaire p. 2037, s’enfuir.

• shatama
to vilify or insult, but in tribal usage specifically to place a jīdhn (q.v.). The jīdhn is known
also as shutūmah or malām (q.v.).

• shawfah
a woman, Ḥabshūsh Ru’yah p. 54, al-Iryanī Mu’jam p. 529; but also a shameful action and the
amends for such action, hence tashwīf (q.v.).

• shurū’
pl. of shar’ (q.v.) but also perhaps a verbal noun meaning judgement.

• shatūmah
syn. malām or jīdhn (q.v.). See also shatama.

• silf (pl. aslāf)
ancestral custom or precedent, cf. salīf, Serjeant ‘Law cases’ (part one) p. 45.

• sinn
literally a tooth, and hence an animal, one of a flock or herd, but usually with the sense
specifically of a head of sheep. Also, sometimes as sinnah, the “tooth” of a plough, hence
barth al-sinnah (q.v.).

• sinnah
primarily the “right” to offer or receive protection, but also that which is right because
established practice (cf. classical sunnah, masnūn).

• sir (also sitrah and istūr)
what “covers” an offence, the fine or recompense due, cf. al-Akwa’ Madkhal p. 53.

• siyār
right of escort, Glaser Ma’rib p. 135. See also sayyir.

• subā’i
see ba’ir subā’i.

• subā’iyah
a length of cloth, cf. subā’i, al- Wazir Tbaq al-ḥalwā p. 205, a headcloth, usually black;
Landberg Glossaire p. 1894, épithète d’une étoffe qui vient des Indes. In text B a cloth seven cubits
long.
• ṣubbah
  see šāḥb
• taʿayyaba
  to take responsibility for paying amends, Landberg Glossaire p. 2344, garantir, assumer la responsabilité, al-Sudūmi Naẓāriyah p. 150.
• tabayyaḍa
  to be or become white, i.e. discharge an obligation or do what is right.
• tabiʿ
  a bullock or calf, Landberg Glossaire p. 227.
• tabajjaba
  to claim or to provide protection, to cover or hide, to be under s.o.’s care, Landberg Glossaire p. 357, se cacher, s’enfermer.
• tabajjaja
  to take sides with someone, to join in a dispute.
• tajannā
  to seek protection, Ḥabshūsh Ruʿyah p. 54.
• tajwāb
  the upper level of a Baraṭ house where the kitchen is.
• talahqa
  to form a relation (luḥqah, q.v.) with someone to gain their help: the usual form is that one yatalahqa faq the people whose help is sought ‘alā or min those causing one trouble.
• ṭalh
  a type of tree, of the genus Acacia.
• tanaqqā
  to clear one’s name by taking vengeance or assuring appropriate amends, Landberg Glossaire p. 2817, se venger.
• tankīf (from nakfah, q.v.)
• tarada
  to drive away, but also to pursue: specifically to pursue amends for wounds, death, or damages (verbal noun tarḍ or tīrūd), al-Sudūmi Naẓāriyah p. 53.
• tarāḥa (yatrah)
  to put down or offer, specifically with the meaning of putting down something as a pledge, Ḥabshūsh Ruʿyah p. 38, cf. ṭarḥ al-jāḥ, throwing down one’s head-cloth to appease s.o. or to claim justice, Dresch Tribes pp. 49-50.
• tasawwaqa
  to go to market. See also mutasawwiq.
• tashwif
  (presumably from shawfah, q.v.) the amends due, or the act of claiming or making amends, for a disgraceful action. Also the act of shaming or disgracing another person, Ḥusām al-Dīn Tārīkh p. 492.
• thalatha
  to take part in, to act as an accomplice, but also, in context, to intervene, as for instance to stop a fight, cf. al-Sudūmi Naẓāriyah pp. 81, 91, 132.
• thamarah
  the length of a crop-season, Serjeant ‘Dawlah’ p. 139.
• **thanū** (also sometimes pronounced or written thanwa)
  twice, two-fold, synonym mathnī.

• **thiqah**
  a trusted witness, one who does not need supporting evidence or testimony if he makes a

• ‘ūd
  see ‘awd

• **‘ulqah**
  a link formed explicitly between tribesmen, as for instance of traveller to escort or between
  the parties to a truce, al-‘Alimī Qaḍā’ qabalī p. 118, al-Sudumī Naẓarīyāh p. 132.

• ‘urr
  something shameful, amends for a shameful act.

• **urf al-jihah**
  the custom of a particular group or area.

• **urwah**
  a bond, but also with the meaning of affines, and apparently of people linked to one by
  naming (see samī), al-Sudumī Naẓarīyāh pp. 135-6. At Baraṭ on occasion a synonym for manā’
  (q.v.).

• **ushr**
  a stranger, cf. a’shār al-qubul, as opposed to arbā’ al-qubul (q.v.)

• **wa’d**

• **wajh**
  face, but used in the sense of honour or responsibility, Landberg Glossaire p. 2905, hence fi
  wajh-ah, on his honour, meaning under his care or protection, Dresch Tribes pp. 59, 124 and
  passim.

• **wasṣala** (or awṣala)
  to establish or to prove. Also elsewhere, though not I think at Baraṭ, to take vengeance.

• **walā** (or wulā; also pr. wulā) consultation, agreement, syn. shūrā or istishārah, cf. al-
  Akwa’ Madkhal p. 36.

• **wathara**
  to mention earlier, syn. dhukara; to precede, or to form a precedent (see also wuthra and

• **widā** (also widād and perhaps widādah)
  a payment, or what is due.

• **wifā**
  good faith, hence bunduq al-wifā’ a rifle that pledges payment of a debt or the discharge of
  an obligation.

• **wuḥūl**
  period or periods, the colloquial plural, oddly or not, of ḥawl (q.v.).

• **wulā**
  see walā

• **wuthra** (sometimes written with a terminal alif)
  a precedent established or recognized by law, cf. wīthr, Serjeant ‘Law cases’ (part two) p. 44.
  See also wathara and mawāthir.

• **zabn** (pl. zuḇān)
  a building, in the sense of a place protected, al-Iryanī Mu’jam p. 381, cf. zibn, sabbana,
  Landberg Glossaire p. 1820, secours, défendre.
• **zād al-Baṭn (or simply al-zād)**

• **zāhirah**
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