

ADAT LAWS IN MODERN MALAYA

*Land Tenure, Traditional Government
and Religion*

M. B. HOOKER

Koleksi Hooker
Universiti Kebangsaan
Malaysia

23

PTSL, UKM



00000456420



KUALA LUMPUR SINGAPORE
OXFORD UNIVERSITY PRESS
LONDON NEW YORK
1972

LAW AND SOCIAL STRUCTURE

Law and Society

IN standard editions of legal text books it is unusual to find any reference to 'society'. This is usually confined to texts on jurisprudence, i.e. the study of law in all its aspects—moral, philosophical and so on. The reasons for considering this here may be simply illustrated by the following example of a traditional adat rule:

Warder of the wife is the husband,
 Warder of the husband his wife's family,
 Warders of the family its elders
 Warder of the territory the chieftan....¹

(Caldecott, 1918: 20-1)

If we wish to interpret this stanza we have to ascertain the meanings of such terms as 'wife', 'husband', 'elder' and 'family'. Moreover, we have to describe the function of each entity. This requirement is the one which differentiates systems of law,² such as adat, from Euro-American and some oriental systems³. This is not to deny that we need some such information on these matters respecting the latter legal systems but the requirement is less in the quality and depth of information required.

The reason for this is not difficult to isolate and may best be summed up, in Maine's terminology, as the requirement of status. All this means is that the legal accretions which are attached to a person are based on such factors as kinship, religious affiliation and residence. In Euro-America, on the other hand, these factors are not so important: our systems of law do not rely upon these factors except in a minimal way, but concentrate instead on inter-personal relations entered into by voluntarily submitting oneself to the demands of predetermined rules. This is because Euro-American systems of law are made up of a series of self-justifying norms which require no outside validation and which possess a peculiar language and set of practitioners. Thus, for example, the 'rightness' of a law

¹This is a translation of part of a *perbilangan*, a traditional statement of adat rules. For an analysis of *perbilangan*, see Chapter 2 below.

²I am assuming that adat is a system for purposes of this chapter. Cf. Chapter 2 below.

³Islamic law, Hindu law and (classical) Chinese laws.

may, according to one school of jurisprudence, be irrelevant to its validity (cf. Hart, 1961: 7-8). Morality, in this case, is held to be a personal or social thing and not a legal matter. Law, then, forms a distinct and special sub-culture, self-justifying and institutionalized. It is of course true that it is about *people* and not things, but 'person' is defined by law. And further, a person, in the sense of an existential object, may exist socially but not legally.¹ The definition of 'person' is always in terms of the legal system concerned but it may always be rejected or amended by another legal system: in other words, legal systems are exclusive.

Now adat shares some of these peculiarities. It is traditionally found in a special form, the *perbilangan*, though it does not have any special body of practitioners. But, and here is Maine's distinction between status and contract, it does not provide its own definition of 'person' in an abstract normative fashion independent of factors such as kinship and residence. But at the same time adat is a complete and self-contained normative system in some respects, e.g. land tenure (see, for example, Taylor, 1929). However, because adat does not extend to matters of family law² we are faced with the problem of specifying the relationship between it and the society in which it finds its context. It is the nature of this relation which forms the subject matter of this chapter. Because adat itself cannot provide us with a base for investigation we turn to the structure of Malay peasant society itself. At this stage, therefore, we deny that the status in law of a Malay peasant can be structurally separated from his status in what anthropologists term social groups.³

The Matrilineal Lineage⁴

This group, the Malay term for which is *perut*,⁵ may, following Titiev's usage (1943: 518-19) be described as a matri-unilocal group. Though this term will not be used hereafter its introduction here is

¹E.g. a lunatic, an infant (in some respects).

²This is the preserve of Islamic law.

³The theoretical implications of this statement are continued in the next chapter.

⁴Matrilineal descent groups are to be found only in the state of Negri Sembilan, in part of Malacca state and in one or two areas in Perak and Johore. Complete data are available only for Negri Sembilan and Malacca and attention will be concentrated on these two areas alone.

⁵'Womb'; other terms used include *sa-kadim*, sisters with the same mother; *sa-pangkal*, one origin, usually referring to a number of generations; and *sanak-ibu*, daughters of one mother.

useful in emphasizing that not only is a woman's residence matrilocal after marriage but also that it forms an extension of her mother's residential unit. Swift (1965: 16) is making the same point when he describes perut as 'sub-clan' also laying emphasis on the residence factor. From this point on the perut will be referred to as lineage but the comments about residence must be kept in mind.

The effective relevant¹ members of the lineage are a woman and her daughters. When a daughter marries, her house is built on a piece of *pesaka*² land close to her mother's. The land is worked through their joint efforts. On the death of the mother the land is subdivided among the sisters. In one sense, though not a legal sense, the land is jointly owned but this does not necessarily tend to make the sisters a closely knit group. District Office records of land distributions are full of disputes between sisters over shares of inheritance of *pesaka*. These disputes are exacerbated where, as often happens, part of the land is 'promised' to one daughter during the mother's lifetime. It is true to say, however, that the members of the unilocal group are bound together, even in a love/hate relationship, by residential ties (through the senior female) and by rights of inheritance. It should be noted that inheritance ties are not 'joint'. The true position is that daughters share equally *per stirpes* but each owns and is registered as owner of an equal part of the inheritable land on the death of the registered holder.

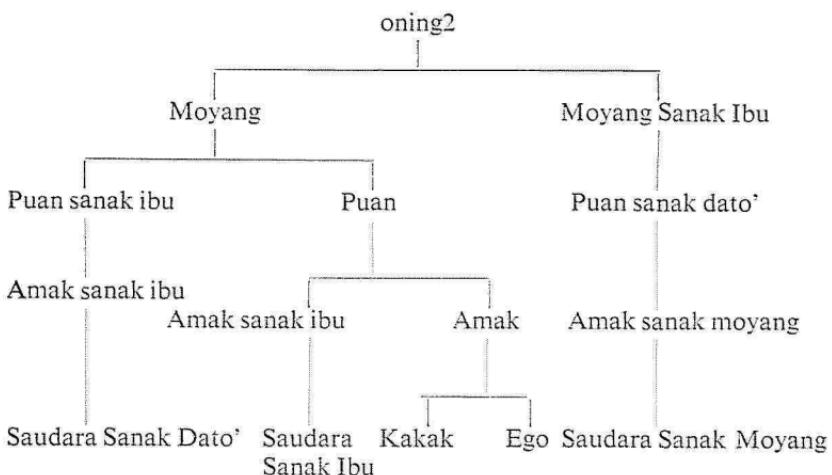
The most important kinship tie in the perut is that which exists between sisters. In tracing descent the sister tie and that between mother and sister is traced in the female line (mother/daughter) through sisters in each ascending generation to a common female foundress. The diagram on p. 16 illustrates the structure of the lineage.³

Each circle represents a female. Ego and her older sister, *kakak*, form a *kadim*: ego's mother, *amak*, and her mother's sister, *amak sanak ibu*, form another *kadim* and so on. Ego's lineage is made up of ego, her older sister and her mother, but the term is also used to refer to the common ancestress, *onung*². This reference term is also used by great great-grandmother to refer to ego and thus marks the generational limits of the perut.

¹Both from the anthropological and adat law point of view.

²'Ancestral'. So far as land tenure statutes are concerned it also bears the special meaning of 'entailed', i.e. subject to restrictions on disposal: see Chapter 3.

³Diagram and explanation are taken from Lewis 1962: 125-7.



The relationship of ego to her collaterals is differentiated on the basis of whether the relationship is traced by the fact that their mothers were sisters, *sanak ibu*, their grandmothers were sisters, *sanak dato'*, or their great grandmothers were sisters, *sanak moyang*. Ego's relationship to her female ascendants is expressed in the same manner. The members of the unilocal group are thus sisters, *satu kadim*, first cousins, *sanak dato'*, or third cousins, *sanak moyang*.¹

It is quite common to find three or four generations of females working and occupying land as yet undivided. In the past it was only when the registered holder died that the property was formally subdivided in District Office proceedings when new titles would be issued. The issue of titles thus tended to fragment the unilocal group and new groups would then form not only on the basis of descent but also on the basis of residence as represented by title deeds. The status of an individual is thus a function of these two factors.

This can be illustrated by considering briefly the position of children: they are members of the lineage. On the divorce or death of the parents they remain in their mother's lineage and there are in fact perbilangan to the effect that a father has no right to the custody of the children. The reason is simple. Outside the lineage the children have no status if attached to the father because he has status only as a member of another lineage (i.e. the one into which he was born). His status does not extend to them; they cannot succeed to property or office in his lineage.

¹*Sanak* = 'sibling set'.

This follows from the fact that on marriage a man moves from the residence area of his own lineage and lives in his wife's house, i.e. in a house which he may have built for her on her land but which she owns. He still retains membership in his mother's lineage and is eligible to enjoy his rights, such as they are, in that group. But in his wife's lineage he has few rights, especially as to authority which is held rather by the wife's brother.

This brings us to two further kinship relations: the husband/wife tie and the sister/brother tie.

A man who marries into the lineage (the *orang semenda*) is traditionally subservient to the members of his wife's lineage (who are known as the *tempat semenda*). This of course is largely a result of the husband's change in residence, from his village to a new village of strangers. This residence change is a potential point of friction and there are many perbilangan confirming a husband's subservient position. These are to the effect that first, the husband has no right to any lineage office and, second, no right to deal in any way with any pesaka in the lineage. Although the *orang semenda* may listen in and take part in discussion, the decisions in any adat matter ideally rest with the *tempat semenda*.

It is well recognized that this tension existing between these two categories of wife's relations is one factor in tending toward divorce. But it need not necessarily be decisive for two reasons. First, the *tempat semenda* are mostly themselves married and living elsewhere so that the *orang semenda* have some degree of 'first instance' control over village affairs. This is limited but it exists. Second, and related to this, individuals may and often do preserve their marriage tie even where the *orang semenda* is in trouble with the *tempat semenda*. Swift (1965: 141) describes how a husband and wife tie persisted even at the expense of the matrilineal group. This was accomplished, in the last resort, by the *orang semenda* moving away from the *tempat semenda* and building his own house on his own land. But the traditional, and possibly still the current, practice is for divorce to take place in such circumstances.

We may also note the peculiarly Negri Sembilan kinship term of address and reference—*dato' aki*. This refers to mother's father who is an *orang semenda* but who will also be grandfather, grand-uncle, father and uncle of many *orang tempat* of the lower generation. He is, therefore, at least entitled to respect, affection and obedience from his family and there are perbilangan to this effect. This is rather an

important point. As we will see in the next chapter, the *perbilangan* represent the most systematic efforts in Malay oral tradition to state adat rules formally. And so far as we can judge from nineteenth century reports they achieved a high degree of success. The significant factor here is that specific members of the social group, such as *orang semenda* and *dato' aki* are specifically included in the relevant *perbilangan*. In other words, the kinship system is directly limited to a series of adat rules involving non-kinship factors. These points are discussed further in the next chapter. However, one point may be concluded at this stage: that adat *perpatih* does not provide for the accretion of legal rights on the basis of marriage alone. This is a function of birth into the relevant descent group. To this extent, therefore, adat is merely an expression of the kinship system.

We may elaborate on this point by describing the sister/brother tie which, after the sister/sister tie is the most important in the matri-lineal lineage. Sister's brother is the guardian of the *perut* and he is known to his sister's children as *buapak*¹ and he refers to them as his *anak buah*.² He administers *pesaka* and in the past he was responsible for the formal division of property on death. This is now a function of government but *buapak* very often attend and take part in District Office proceedings.

His present function may best be explained by comparison with that of father's brother. Lewis informs us that maternal uncle is referred to as '*buapak adat*'³ while the father's brother is known as '*buapak hukum*'.⁴ (cf. Lewis, 1962: 129). This terminology reflects two different functions. The *buapak adat* is a member of the adat structured lineage and he has rights to office within that *perut* and, it should be noted, these rights and their accompanying duties are cast in familial terms similar to those which exist between sister's brother and sister's children. On the other hand, father's brother is not a member of the adat lineage but, at Islamic law, he is the *wali* or guardian of his marriageable nieces in the event of the father's death. This remains so even though the girl is a member of another *perut*.

This illustrates very clearly the major feature of differentiation between adat law and Islamic law. The former ascribes a status on

¹Father.

²'Children of the fruit'.

³'Father who deals with adat'.

⁴'Father who deals with (Islamic) law'.

the basis of descent factors: now while this is partially true for Islamic law in some categories of personal relationship¹ this does not depend on the existence of descent groups as such. This cleavage is fully illustrated when we look at marriage. The permissible categories of marriageable persons are more restricted under adat law than under Islamic law.

Under adat, marriage between the children of sisters is prohibited. The reason is that these persons are members of the same descent group, the lineage, and also because, ideally at least, they reside in the same village. Such a marriage would be regarded as incest (*sumbang*) and in former days was punished with death or banishment. Even now the incidence of such marriages is slight and where they do occur they involve people who have become somewhat removed from peasant farming life.²

But, in addition, the ban on the marriage between the children of sisters is extended to prohibit marriage between the children of brothers. In the past this prohibition has puzzled various writers. Winstedt calls the prohibition illogical (Winstedt, 1947: 49) and Blagden explains it, incorrectly, as being due to Muslim influence (Blagden, 1930: 311). The real reason appears to be that the persons involved, though not members of the same perut, are in fact closely related, *satu bineh*—‘from the same semen’ (Lewis, 1962: 130) just as members of the same lineage are from the ‘same womb’. This prohibition, however, extends back for only two generations not, as in the case of sister’s children, for five generations. Thus, both sets of parallel cousin marriage are forbidden,³ the assumption being that these offspring stand in the same relation to each other as real siblings.

In contrast, marriage with cross cousins is encouraged, given that the respective families are approximately equal in wealth and that the age of the parties is about the same. Such a marriage of course assures that property, more especially *charian*,⁴ will be kept in the perut. In addition, differences between orang semenda and tempat semenda will be minimized, though this is not always so. On this point it is also relevant to note that there is a tendency to keep up

¹E.g. Father—Son, Uncle—Nephew, etc.

²For example, government servants or school teachers, residing in the towns.

³The writer has a statement from three adat chiefs in the Kuala Pilah district that marriage between the children of brothers is permitted so long as the respective mothers are from different clans.

⁴Property acquired during the subsistence of marriage: see Chapter 3.

a marriage relationship between two descent groups through *ganti tikar*, i.e. remarrying into the lineage of the deceased wife. Such a marriage is of obvious convenience in respect of inheritance of charian property.

The basic exogamous unit is ideally the clan but more often it is the lineage.¹ Statements by earlier writers are contradictory on this point. Parr and Mackray (1910: 77) state that in the district of Rembau marriage within the clan is permissible if no common ancestress can be traced. This is denied by Winstedt (1934: 80) who insists that the unit is the clan, even extending to clans of the same names in different districts. The correct position is that the lineage, at least, is the exogamous unit. There are even suggestions that in some adat districts marriage within the lineage is permissible (Winstedt, 1934: 43, 81, 82) but this, as well as being reported for the members of a single clan² in one particular district, has not been satisfactorily substantiated.³ At this stage we may take it that it is as a member of a named lineage that an individual acquires an adat status.

This proposition is substantiated when we come to consider the topic of political office in the lineage. The political head of the lineage is the buapak.⁴ He is elected by his anak buah, i.e. by all the adult members of the lineage. The election itself is not normally conducted with any great formality, and indeed, the term 'consensus' more accurately describes the appointment process. No special qualifications except a knowledge of traditional adat sayings and honesty and commonsense are required. The relationship of the buapak to lineage members parallels that of mother's brother to his sister's children. He even refers to them as his anak buah. His presence is required at all lineage ceremonies in which there are adat requirements. The most important of these are engagement, marriage and certain sorts of limited adoption. His former functions involving the economic well being of his lineage⁵ have now been largely taken over by government appointed officials.

He does, however, have two functions involving individuals other than members of his lineage. First, he acts as the lineage representa-

¹ Complete lists of lineages and clans are given in later chapters of this book together with the particular rules relating to each as to inter and intra-clan marriage. At this point we may note that there is much local variation.

² See below on the Biduanda Waris. (p. 132.)

³ See below for a possible explanation of how these reports arose. (p. 133.)

⁴ Father: an alternative term is ibu-bapa 'mother-father'.

⁵ For example, directing the repair of the bunds in the rice fields.

tive in disputes between members of his own lineage and those from other lineages. These most frequently arise in respect of land transactions, especially the sale of ancestral land (pesaka). Second, all the buapak in the clan together elect the clan chief (the *lembaga*). This is possibly one of the most important single functions exercised by the buapak because, as the lembaga have legal and administrative duties by law, it brings the buapak into direct contact with the state government. Apart from this, the buapak has no official function so far as the formalized legislative and administrative systems are concerned. But the lineage is the basic grouping in the adat constitution.¹

The Clan²

Traditionally, there are twelve clans in Negri Sembilan³ though not all twelve are represented in each adat district (*luak*—see below) in the state. The Biduanda or Waris clan is theoretically pre-eminent as representing the original aboriginal inhabitants of the land. The other eleven clans are immigrants from Sumatra and hold their land by purchase from the Biduanda.⁴ Apart from this, the internal constitution of the clans are identical.

The office of clan chief, styled lembaga,⁵ illustrates very well the adat structure of the clan. The requirements for election to office are as follows: first, *saka*: this is merely ascertaining that the candidate is a member of the eligible lineage under *giliran*, i.e. under the rule that each lineage is entitled in turn to provide a lembaga. In principle the order of rotation is fixed and certain but in practice there is often an adjustment if no suitable⁶ candidate can be found. Once it has

¹See below, Part II of this book.

²Referred to in official documents and by early authors as the 'tribe'. The Malay term is *suku*.

³These are:

1. Biduanda or Waris	7. Sri Lemak
2. Batu Hampar	8. Batu Belang
3. Paya Kumboh	9. Tanah Datar
4. Mungkal (Mungkar)	10. Anak Acheh
5. Tiga Nenek	11. Anak Melaka
6. Sri Melenggang	12. Tiga Batu

For the position in Nanang, the adat district in Malacca where clans exists, see Chapter 5.

⁴For an excellent summary see Lewis, 1960: 65–94.

⁵Custom. The term 'Lembaga' is probably a shorthand term for '*Penghulu Lembaga*'—the chief who deals with custom. (cf. Josselin de Jong, 1951: 145).

⁶'Suitable' includes not only objective qualifications but also the amount of support a candidate can muster.

been settled that a particular lineage is entitled to provide the next chief more personal factors enter into the choice. It is impossible to categorize these formally but an important factor is sometimes described as *baka*: this is '...both hereditary characteristics and the lustre of a good family name and inherited wealth' (Gullick, 1949: 25). It relates not only to the paternal side of the pedigree but also to male ascendants in the maternal line. For example, great weight is given to the holding of office by a male descendant. The interplay of these and other related factors has been summarized by Swift in his description of an election he observed in the luak of Jelebu (Swift, 1965: 19-20). An important factor, mentioned by Swift, and invariably stressed by informants in discussions on this point, is that a candidate must be married to a wife from the luak. The explanation given for this is that a foreign woman would not possess affinal ties in the luak. This is significant when we remember that residence after marriage is matrilocal.

Election to office is subject to the rule that unanimity (*kebulatan*) is necessary. But the definition of unanimity varies. In the luak of Sungei Ujong, Rembau and Jelebu, this means that all buapa must agree to one candidate. However, in the luak included in the administrative district of Kuala Pilah¹ a simple majority is regarded as sufficient. In the four luak possessing an *Undang*² the successful candidate is then presented to the Undang for his approval.

We should also note that a lembaga, according to some authorities, may be subject to the authority of his wife's lembaga (cf. Taylor, 1929: 8). This results from the rule that on marriage a man goes to live with his wife's unilocal group, the perut. However, Moubray (1931: 119) considers the lembaga to be exempt from submission. The difference of opinion between these authorities may be explained on the basis of local variation of adat: Taylor deals with Rembau and Moubray with Jelebu. But all the same, this situation provides another interesting example of the distinction between clan and lineage. The perbilangan on the position of the husband do not differentiate between a husband who is a lembaga and one who is not. In other words, though the adat deals with factors which we should categorize differently, i.e. as kinship and political, there are areas in which it does not relate these two structurally different factors. In former days, quarrels resulting from this sort of situation could

¹Gunong Pasir, Terachi, Inas, Jempol, Ulu Muar.

²Sungei Ujong, Jelebu, Johol and Rembau.

easily result in petty wars, especially if an Undang was involved. Today, bitterness is never absent from elections to the office.

From the adat of election and power holding in the clan we turn now to the adat of land. The clan is the property controlling group and membership of the clan defines rights to hold and dispose of property. Corporeal property consists of pesaka (ancestral) land which is made up of *sawah* (wet rice land), *kampong* (house land) and *dusun* (orchards). Pesaka can only be owned and transferred within the clan and the lembaga's assent is required to any sale. He also witnesses devolutions in the case of death. Detailed adat rules have for some time¹ been partially embodied in federal and state legislation and this has helped to formalize some exceptions to the clan monopoly over land ownership. The most important is that pesaka can be disposed of to a non-clan member provided that the purchaser is a member of another clan and the price offered is substantially higher than that offered by a clan member. In effect, the legislation has widened the area of transfer though disposal of land in this way is quite uncommon.

In addition to *tanah pesaka* there is also an increasing amount of corporeal property which is not pesaka: the most important is newly acquired rubber property. This property is not under clan control in that it is not registered as 'customary' under the relevant legislation (cf. Chapter 3 below). But the precise status of this property is uncertain and this has involved the lembagas in continuing disputes with the local land administration. The former tend to insist that the land be registered as 'customary' under the relevant legislation and thus remain within the clan sphere of influence. The land administration is reluctant to do this in the absence of clear proof that the land has been held under adat rules and this is sometimes difficult to show. In addition, newly acquired property can also raise disputes between two clans over its control. This arises when the land was acquired during a marriage, which is now dissolved, between members of two different clans. Even more important, the clan may sometimes find itself embroiled with the local religious authority on the question of devolution of recently acquired land. The Malay, as a Muslim, is subject to the Islamic law of inheritance and this does not recognize the adat clan's restrictions on ownership.² These continuing tensions are dealt with in greater detail in other parts of

¹From 1909.

²Notably, that only female clan members can hold or dispose of land.

this book but they serve to show here the integration of the peasant legal system, adat, and the corporate landholding group, the clan.¹

We may conclude our description of the clan with a brief comparison of the offices of lembaga and buapa. These terms are themselves contrastive: 'the chief who deals with custom' and the 'father' which suggests familial control. The alternative to the term buapak, *ibu-bapa*—mother/father supports this suggestion. One may thus draw a distinction between a kinship office and an office founded on adats which are not wholly kinship based: in other words an office founded on a legal system which professes claims to universality. Two facts bear out this interpretation. First, the position of lembaga is only a kinship position in an extremely ideal sense. Though the members of a clan are supposedly of common descent it is a fact that this is almost impossible to trace. In addition, the device of adoption is widely used to incorporate foreigners into the clan and no pretence of putative common descent is made. The important factor here is common residence and landholding. The second factor is that the office of lembaga is recognized and given functions in the government legislation on adat and also in the state constitution. Further, the function of the buapak in respect of the localized lineage is not at all directly connected with the state administration. At the kampong level local matters are dealt with by a *ketua kampong* who is a minor government appointed official receiving a small salary. The lembaga, on the other hand, is intimately associated with land control and also with state matters in so far as he elects the *penghulu luak* (cf. below).

The Luak

Unlike the lineage and the clan this is a territorial unit and not a genealogical one. It is also more purely 'political' and less kinship

¹We should note here the existence of 'splinter groups' variously referred to as *persukuan* or *pechehan*. These groups have a clan like structure and consist mainly of recent immigrants. They lack a traditionally authenticated pedigree (*berteromba*) and thus become 'attached', not to a particular suku, but to the luak in which the group resides. They are found especially in luaks Sungai Ujong and Terachi. Normally, such a group has no claims to any political office in the luak, though by arrangement (pakat) with a political title holder, its leader, referred to as lembaga, may be given some sort of minor office. He and the pechehan then become indirectly 'attached' to the political structure in the luak (see below). It is possible for these groups to attain a 'proper' status (*suku betul*) by a process of intermarriage with other clans, and the reverse process also occurs. Small and weak clans gradually disappear from the luak constitutional affairs. For example, the clan Anak Melaka is now found only in Naning (in Malacca State) and, in very small numbers, in Rembau. It is no longer present in any other Negri Sembilan luak.

based in that it is the major unit in adat power politics. The luak, the customary districts, are expressly recognized by the Negri Sembilan state constitution and in various state and federal enactments. Traditionally there were nine *negeri* or states in the constitution though the actual number has varied at different historical periods. At the moment, for example, we may isolate thirteen or fourteen. So far as the existing luak are concerned, they may be divided into two groups, the 'inner' and 'outer circles'. The significance of this division for the purposes of this chapter is to point up a difference in quality between the rulers of the two respective sorts of luak. The outer circle, which consists of the luak of Sungei Ujong, Jelebu, Johol and Rembau (in order of 'seniority') is ruled by an official known as the 'Undang'. This is usually translated 'Lawgiver' (cf. Humphreys, 1916: 26) but is probably an abbreviation of *Penghulu Undang*, i.e. the 'chief who deals with law'. The rulers of the inner circle luak are known simply as '*Penghulu*' or sometimes as *Penghulu Mengandong*,¹ i.e. 'Penghulu of the Motherland'.²

The Undang are known collectively as the Ruling Chiefs and the State Constitution recognizes their function and position as electors of the Yamtuan (the Ruler of Negri Sembilan state). These Undang are themselves elected by the lembaga of the clans in their luak. This is fully dealt with elsewhere (cf. Part II below). The persons qualified to be elected, however, are restricted to certain divisions of specified clans in each luak. In comparison to the office of lembaga this is a significant difference. The restriction seems to give rise to a possible tendency to dynasticism, i.e. the retention of high office within a group of related families. This may be accomplished without breaching any adat rule as to giliran. For example, given that the Undangship is confined to a certain limited number of lineages in one clan, an Undang may marry a woman of the lineage from which the next holder will be drawn and hope that his son by a mother right and paternal lustre will succeed him (cf. Gullick, 1949: 27, for examples). Their election is supposed to be unanimous though a simple majority will suffice in some luak. The position of the Penghulu of the non-electing luak is similar except that they owe their positions and functions solely to adat and not to any legislative instrument. Their position is, however, explicitly recognized by the state government in

¹From *Kandong*—'contained in an enclosed space'.

²See below, Chapter 6.

that they appear in the Negri Sembilan civil list. The offices of these penghulus also show a tendency to dynasticism.

This completes our necessarily brief summary of Negri Sembilan social structure. We may note the following points in respect of adat and this social structure. First, adat claims a significant degree of completeness and internal consistency within the limits of the adat universe. This universe is bounded by religion (Islam) and by the government regulation of the adat political scheme. At the kinship level, adat, so far as its structure as a system is concerned, is an expression of kinship principles. That is, one can describe the rules of adat ('rules of law') in terms of kinship groupings. For example, the status of a person is not determined exclusively by an adat which is separate from and unrelated to the kinship system. At the level of the orang semenda, for example, a 'rule' of adat may be just a residence rule which anthropologists would describe in a formally different manner. But adat is also concerned with non-kinship principles and contains rules which determine status in accordance with strictly adat principles. Thus the detailed perbilangan which deal with the powers and functions of the Undang pay little heed to non-adat rules. This is also seen in legislative enactments where these principles have become effectively divorced from the rest of the world. The next chapter following deals with this aspect of adat.

However these considerations should not give rise to the temptation of speaking of a dual legal culture: of more than one adat. The whole adat corpus is in fact a structural unity: but changes in peasant social structure will inevitably alter the rest of the non-kinship based adat. This is in marked contrast to Euro-American legal systems where changes in economic and social norms either do not affect or affect only in part, and at varying speeds, the total legal sub-culture in our societies.

Bilateral Kinship Groups

The kinship system of the peninsular Malays, excluding those parts of Negri Sembilan and other states subject to adat perpatih, is bilateral in that equal importance is attached to kin on the father's and mother's side. Unfortunately very little has been written on the characteristics of this system: the standard works probably being those of Burridge (1956, 1957) and Djamour (1965).¹

¹Firth (1966: 13-21) also gives data on kinship.

Burridge in his earlier article on a village in Johore, points out that though bilateral kinship groups exist there are different emphases in this system to one side or another for certain purposes. He notes that agnation, preferential marriage within the *saudara*,¹ political power, and wealth in terms of landholding are associated together. There is a tendency for households to cluster around an agnatic or patrilineal descent group associated in some way with wealth. Further, these clusters identify in some way with the largest and most powerful agnatic group which is explicitly associated with political power and landholding. Values within the *saudara* are primarily kin and moral values though these are linked to wealth and power (Burridge, 1956: 76).

But the emphasis is not all on the side of agnation. Burridge notes two factors of prime importance here. First, landholding is associated almost as equally with females as with males, though agnation is the definitive criterion. Second, though descent, in that it involves passing on to the next generation wealth, power and influence, is through males, there is also a recognition of kinship ties through females which often provide links between powerful agnates and the whole *saudara* (Burridge, 1956: 77).

The factor of agnation in its purely political sense reappears in Burridge's second article which deals with managerial influences in the same Johore village. Especially interesting is his discussion of constituted authority (cf. 1957: 94-7). The *penghulu* of the *mukim*² is an agnatic descendant of the founder of the premier group of agnates. This group can also trace a line of agnatic descent from the Royal House of Malacca. In addition, the present *penghulu mukim* is the tenth to inherit a *penghulu*-ship within the same group of agnates descended from the Malacca Royal House. The authority and influence of the office are thus far wider than the limits officially laid down.³ Thus the agnates not only possess authority in purely agnatic terms but also in terms of the state wide administrative structure. The *penghulu* is a member of the *Penghulu's Association* and thus intimately associated with the District Officer and local government affairs generally. In addition the agnatic group is strongly

¹Relatives from either side, but often used to include neighbours with whom close ties of friendship are maintained.

²A small administrative and land registration district. Rather similar to 'parish'. It has no connexion with any *adat*.

³Found in a publication entitled '*The Johore Penghulus' Handbook*', published by the Johore Government at Johore Bahru in 1951.

represented on the Local Council where all the Malay members have saudara ties with the dominant agnatic group. We may further note that all the Islamic offices in the area are held by persons who are either agnates or have saudara links with agnates (cf. Burridge, 1957: 98-9). Finally, all Malays in the village accept the UMNO¹ political party as the one suitable for their aspirations, so to this extent, modern political life has not disturbed the agnatic power structure.

Burridge does not mention the existence of an adat specifically by name but the present writer has noted the use of such terms as *adat Melayu*, *adat kampong* and, rather uncommonly, *adat temenggong*.² Djamour also notes that this latter term is uncommon in Singapore (cf. Djamour, 1965: 14). However, the characteristics of the adat called '*temenggong*' seem to be similar to those kinship factors described by Burridge and Djamour. In summary form these are: that political power rests with agnatic groups and, in general, that an agnatic bias in the descent system is dominant. Secondly, inheritance and ownership of land is divided equally between male and female. Djamour also notes that the adat in Singapore prohibits marriage between the children of two brothers while at Islamic law no such bar exists (1965: 14). Djamour also notes (1965: 41) that the Singapore adat provides that adopted children should share in a deceased estate, though at Islamic law they are barred absolutely.

For the remainder of this book the term *adat temenggong* will be used to refer to the *non-perpetah adats*. An attempt will now be made to describe its characteristics starting from the proposition that it is found to exist in the context of bilateral kinship groups. We saw above that this is mainly characterized by inheritance being bilateral whilst succession to office is patrilineal. At the very least, land ownership and possession is distributed equally among male and female though in the case of household goods the female share is probably greater: in addition adoption confers rights to inheritance. None of these characteristics are clearly Islamic though the stress on patriliney is consonant with Islamic principles.

Now these characteristics have been noted by earlier authors but in using the term *adat temenggong* some misinterpretations have arisen. Caldecott, for example, in a memorandum dated 1930,

¹'United Malays National Organization'—the dominant ethnic Malay political party.

²This term is most commonly found in Negri Sembilan and Malacca States. Perhaps the existence of a dominant named system in these areas, such as *adat perpetah*, has encouraged this specificity.

apparently considers that adat temenggong and Islamic law amount to much the same thing, at least so far as inheritance is concerned. This proposition is refuted by Taylor (1948: 77) on the following grounds. First the register books of many titles to land are in the name of a female and almost none have been transmitted in Islamic fractions. Second, there are many transmissions to women including transmissions to women as 'representatives'. Third, there are titles in the names of a man and a woman in equal shares. Taylor goes on to report that according to general practice in the non-perpateh areas distributions are arranged in the form of a family settlement or *pakat*. Burridge is in effect making the same points in his discussion of the composition of a Johore village (cf. 1956: 63ff). In other words Caldecott's mistake was to assume that because of the absence of matrilineal descent, then other kinship factors were not relevant.

Moubrey also makes a similar equation. He says, for example, '...Adat Temenggong, a form of patriarchal custom which has now assimilated itself almost entirely to Muhammadan law...' (Moubrey, 1931: 5). The equation in this case is: lack of formal matrilineal descent groups equals Islamic law. The hard evidence of title register books refutes such an equation.

One of the most interesting writers on this problem is Wilkinson, especially in his essay on Malay law (cf. Wilkinson, 1908). In this article Wilkinson sets Islamic law apart from adat temenggong and then proceeds to try and establish the relationship between this adat and adat perpateh. His historical evidence on Malay migration to support a relationship¹ between the two is inadmissible (cf. Josselin de Jong, 1951: 169-70). But in attempting to deduce the common origin of the adats Wilkinson adduces several important facts. He notes first of all, that in Perak succession to titles and office is through the male line, while succession to lands and houses suggests rules of adat perpateh. He quotes Maxwell: 'In that state [Perak] the lands and houses of the deceased descend to his daughters equally while the sons divide the personal property' (Wilkinson, 1908: 36). This is comparable to a statement obtained by the writer in 1967 from an island in Singapore harbour where a Malay fishing village is located.

¹A favourite theme of the historical jurists writing on Malay adat was that at one time there was a common adat applicable to all Malays. However, because of Hindu influence parts became corrupted, and these, entitled adat temenggong, are thus merely a decayed version of adat perpateh. The problem with this theory is that it ignores the existence of two dissimilar kinship systems in Malaya. Proponents of this view would have to show that formerly matrilineal societies became bilateral.

Here it was said that daughters inherit (fathers') houses and their contents whilst sons take 'outside property', in this case fishing boats and gear. This was specifically stated to be a 'rule' of adat temenggong and not of Islamic law. But these examples do not of course amount to matrilineal descent in which a man's sister's daughter would have to inherit.

Another piece of evidence comes from Gullick (1949: 18) who says '...*adat temenggong* recognises matrilineal relationships for clan purposes but stresses patrilineal descent in the devolution of office and property'. Gullick is here discussing the establishment of adat perpateh as the 'official law' in its present territories. This use of the term 'clan purposes' shows that this writer agrees with Josselin de Jong (1951: 171) in that both consider the emigration to Negri Sembilan as disrupting a prior Minangkabau form of clan organization.

In conclusion the following observations may be made on the two kinship systems. First, there are patrilineal traits of importance in the predominantly matrilineal system of Negri Sembilan, e.g. *baka* (Josselin de Jong, 1960a: 383). This is dealt with in greater detail in later chapters where a tendency to dynastic principles in some *luak* is noted. On the other hand, the kinship system in the rest of the Malay States is not simply bilateral with patrilateral stress: there is considerable importance attached to matrilateral filiation especially in relation to property and the structure of the saudara.

One final point needs to be noted. Adat temenggong has never achieved the status of a system of law integrated with a centralized political authority. The reason for this appears to be that no such authority based on non-genealogical principles ever existed outside Negri Sembilan. This is so despite Winstedt's attempt to define adat temenggong as 'Law of the Minister for War and Police' (cf. Josselin de Jong, 1951: 169). The term adat temenggong then, refers to some fragmentary rules which are direct expressions of kinship factors.

On the other hand adat perpateh, though it also contains rules of this type, has reached a stage where it claims the status of a system integrated with the political power structure of a state-wide government. In addition, it attempts to define its own scope and function in respect of a religious ideology (Islam) which claims a competency in areas of common interest. Because of the fact that adat temenggong has no such pretensions to quasi-universal power, it cannot be

considered as a self-sufficient legal system, but is limited to isolated inheritance rules.

The explanation for this distinction is to be found in historical factors, and some account of these should be given here so as to put modern systems of adat into their proper perspective. The beginnings of an indigenous system of political units in the Malay Peninsula may be dated from about A.D. 1400 with the founding of the Malacca Sultanate. Though it lasted only a century until overcome by the Portuguese in 1511, its influence was decisive in the subsequent development of the Malay states. It was formed around a royal patrilineage¹ under which there was a hierarchy of greater and lesser officers. The system of administration extended to outlying districts, especially along the coasts and estuaries of the west coast of the Malay Peninsula. On the fall of the Sultanate to the Portuguese the expelled rulers established themselves in Johore, whilst in the more northerly states of Pahang and Perak weak and semi-independent dynasties took control. By the early eighteenth century, Bugis invaders from the Celebes had overcome the Johore Sultanate and also established themselves on the Selangor coast, once a dependent area of the Malacca sultanate.

In Negri Sembilan, where, it will be recalled, adat perpatih is the dominant system of social organization, the sultans of Malacca had established district headmen. From the sixteenth century onwards, there was extensive immigration into the general area of what is now Negri Sembilan from Minangkabau in West Sumatra. There was no central government in the state but the established rulers of the districts became 'culturally assimilated', to the matrilineal social system of the later arrivals from Minangkabau (Gullick, 1965:9). The Malacca headmen were accepted as the ruling class of titular owners of the land ('*waris negri*') and so entitled to provide the ruling chief of the district, but in time the rules for the transmission of office became assimilated to the matrilineal model. This was mostly achieved before the nineteenth century, though in one district, Sungai Ujong, the change was not fully accomplished until the early nineteenth century, and even now an aura of artifice hangs around the constitution of this district.²

This change from patrilineal to matrilineal succession was, as

¹This also included Hindu influenced 'divine king' attributes. Cf. Chapter 4 below on the Malacca Code.

²See below Chapter 7.

Gullick explains (1965: 39) validated by the propagation of myth. Briefly, the *waris* group, in order to justify their matrilineal succession, claimed that the founders of their families were the sons of aborigine ancestresses married to the Malacca aristocracy. This enabled them to argue for a primacy over the matrilineal immigrants. The *waris* emphasized this in applying the term 'Biduanda', which in certain contexts refers to aborigines, to themselves. This account has gained wide credence within the adat perateh area and all constitutions possess *Biduanda*, or *Biduanda waris* clans, though they are not the ruling lineages in all adat districts.¹

But the political primacy of the *waris* was accepted only on limited terms. The district chief (Undang) was drawn from their ranks but the choice of the individual office holder rested with the leaders (*lembaga*) of the immigrant clans (suku). The latter, moreover, retained complete control over their clans. Later immigrants were assimilated to this model either by adoption into an existing clan or by being allowed to set up their own clan often based on their place of origin (e.g. '*Anak Aceh*'). But the success of this integration varied from district to district under stress of population. Large areas were subject to Bugis invasion and here integration, where it was attempted, was not wholly successful. Thus, for example, parts of the adat district of Sungai Ujong which extends down to the coast does not acknowledge the adat perateh system of land ownership because the inhabitants of this area are descendants of those Bugis who never adopted the matrilineal system.

By the eighteenth century the districts of the present state had become organized on this basis but there was as yet no centralized political power. The districts formed a loose confederation for purposes of defence, but under pressure of increasing Bugis attack the Undangs decided to appoint a leader for all the states. The first of these was Raja Melewar, a member of the Royal house of Minangkabau from Sumatra. But the powers and authority of the office holder (the Yang di-Pertuan Besar) were limited, and the first three incumbents were appointed for life only. The second and third incumbents married the daughter of his respective predecessor and thus began a royal dynasty which provided for patrilineal succession and attempted to extend the authority of the office outside the original limits imposed.² By the time of British intervention the

¹See below Chapters 6-8.

²For details see Chapter 6.

original districts under their respective Undangs still managed to preserve their independent status.

The issues of British intervention have been dealt with elsewhere (cf. Loh, 1969 and the sources there cited; Mills, 1960). The important point here is that each of the districts under their Undang (the district chief) was, until the formation of the confederation of Negri Sembilan, treated with on an individual basis by the British, and the existing political system based in the matrilineal clans was left untouched,¹ to become enshrined in later constitutional documents.

In the rest of the Malay states, on the other hand, the ruling power had always been exercised from the centre² on the model of the Malacca Sultanate. The ruling classes were organized in patrilineal descent groups, and authority was exercised on a territorial basis and not on a clan/lineage basis as in Negri Sembilan (Gullick, 1965: 37). Intervention, therefore, and later constitutional development under British rule affected the central authority but did not touch the Malay peasant social structure. The distinction between ruler and ruled was wide outside the Negri Sembilan, and rise in status was particularly difficult (Gullick, 1965: 79-82). In these circumstances it is easy to see that localized adats had to remain as such: there was no necessary link between them and the source of authority in the state unit. The reverse was true in the Negri Sembilan where the particular adat could be seen to be part of a total district and, later, state-wide system.

¹For a summary of the treaty procedures see Loh 1969: 41-3; 51-8; 99-102, 203-4.

²With varying degrees of effectiveness.