

family as a land-owning corporation.<sup>35</sup> The dual form Pitarau regularly means 'father and mother,' 'parents.'<sup>36</sup>

<sup>35</sup> Baden Powell, whose various works (*Indian Village Community*, 1896; *Village Communities in India*, 1899, etc.) have done most to combat the view of the village community in India as a land-holding institution, is prepared to recognize the family as a land-owning unit, considering that the *patria potestas* is a later growth, and not Indian (see, e.g., *Village Communities in India*, 128 *et seq.*). Hopkins, *India, Old and New*, 218 *et seq.*, adopts a theory which allows of individual and joint family ownership side by side, the latter being apparently the earlier but the decadent stage. He expressly considers (p. 222) that the son had an indefeasible right to prevent the father from alienating the hereditary land, which could only be parted with by the consent of the village if it were a case of joint ownership (*cf.* the verse cited by Jolly, *Recht und Sitte*, 94). But it must be remembered that, as is very clearly shown in the case of English law by Pollock and Maitland (*History of English Law*, 2, 337-352), the recognition of the rights

of sons may well be, not a sign of original joint or family ownership, but a development from the existence of intestate succession, and as in England, so in India, there is no trace of a corporate joint family in the early books. And, as Jolly (*op. cit.*, 76, 80) shows, there are clear traces, both in old and modern times, of a despotic control of the family by the father even after his sons grew up, provided only that he was physically able to control them. The same state of affairs seems proved for early English law, as it is beyond question for Roman law (see Smith's *Dictionary of Antiquities*, 2, 351 *et seq.*). In Greece also, which is sometimes contrasted with Rome, there is the clearest trace of both a real *patria potestas*, and of the absolute ownership of the land by the father as against the son, especially in the archaic laws of Gortyn (see Gardner and Jevons, *Greek Antiquities*, 404, 405, 563, 566).

<sup>36</sup> Rv. i. 20, 4; 160, 3; ii. 17, 7; vii. 67, 1; Kāthaka Saṃhitā, xxiii 10; Vājasaneyi Saṃhitā, xix. 11, etc.

Pitṛ-yāna, the 'way of the fathers,' mentioned in the Rigveda<sup>1</sup> and later,<sup>2</sup> is opposed to the Deva-yāna, or 'way of the gods.' Tilak<sup>3</sup> considers that the Devayāna corresponds with the Uttarāyāna, 'northern journey' of the sun, and the Pitṛyāna with the Dakṣiṇāyāna, its 'southern journey.' He concludes from a passage of the Śatapatha Brāhmaṇa,<sup>4</sup> where three of the seasons—spring, summer, and the rains—are ascribed to the gods, but the others to the Pitṛs, or Fathers, that the Devayāna began with the vernal equinox, and the Pitṛyāna with the autumnal equinox. With this he connects the curious

<sup>1</sup> x. 2, 7. *Cf.* the allusion to it in x. 18, 1, as other than the Devayāna, which appears in x. 98, 11.

<sup>2</sup> Av. viii. 10, 19; xii. 2, 10, etc.;

Vājasaneyi Saṃhitā, xix. 45; Chāndogya Upaniṣad, v. 3, 2, etc.

<sup>3</sup> Orion, 22 *et seq.*

<sup>4</sup> ii. 1, 3, 1-3.