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INHERITANCE I. SASANIAN PERIOD

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Our main source on jurisprudence during the Sasanian period is the Lawbook *Hazār dādestān* “One Thousand Judgements” of the 7th century, known since the facsimile edition of a large part of the manuscript (Modi, 1901) as the *Mādayān ī hazār dādestān (MHD)*. This text does not supply a systematic overview on the law of inheritance, nor does it convey a complete picture of all the regulations in this legal field. In accordance with the general tenor of this compilation, the Lawbook deals mainly with those cases, whether of a concrete or a hypothetical nature, which were of utmost interest to Sasanian jurists and deemed to be most difficult and complicated. The main traits of the law of inheritance, including many remarkable details, presented below are reconstructed from these numerous cases in different chapters of this important source (see Macuch, 1981 and 1993) and later Pahlavi texts dealing with family law.

The technical term *abarmānd* “total estate, undivided inheritance” is used in the Lawbook to designate the entire estate (which is the subject of inheritance) of a deceased *paterfamilias* (*kadag-xwadāy*). This term expressly denotes the *undivided*, i.e., not partitioned, estate of the deceased, including moveable

property (e.g., goods and chattels, cattle, slaves, money, etc.) and immovables (e.g., real estate consisting of farmland, houses, irrigation canals, mills, orchards, vineyards, etc.), which were subject to different legal regulations, as will be seen below. In short, *abarmānd* comprised the complete mass of collective family property subject to transmission from one generation to the next, which was to be inherited jointly by the community of heirs and preserved by the head of the household (*kadag-xwadāy*, *dūdag-sālār*) for future generations. (This definition takes all attestations of *abarmānd* into consideration; for references see Macuch, 1993, p. 686.) It included property which had been passed down from the ancestors (*abarmānd ī pidarān*) as well as property assigned to the family by a third party (*dād*) and that acquired by the deceased himself (*handōxt ī xwēš*, *handōzišn ud windišn*), if he had not disposed of it during his lifetime in another manner. Sasanian law of property distinguished between the first category of property inherited from the forefathers (*abarmānd ī pidarān*) and the two latter means of acquiring property (gifts and donations, earnings, revenue, interest, etc.), called collectively *mad ud rasēd*, a technical term comparable to the *bona adventitia* of classical Roman law, which designated every kind of surplus income (*bar*) not belonging initially to the former category of property inherited from the forefathers (Macuch, 1993, pp. 156-69). Ideally all expenses of the family were to be covered by the income (*bar*), whereas the principle or substance (*bun*) of family property, especially real estate, was to be kept intact. It should neither be alienated nor partitioned among a man's heirs, in order to maintain financial stability and avoid diminishing a family's wealth. (This also seems to be one of the reasons for the persistence of real and fictive inces-tuous marriages, *xwēdōdah/xwēdōdād*, by which a division of property among the heirs could be avoided; see Macuch, 1991a, 1995, 2003.) In practice, however, there were many cases in which inherited property had to be partitioned (*baxtīgīh kardan*) among family members and could be disposed of through a will (*handarz*) or by an action initiated by the heirs. Legal terminology reflects both means of transmission of property: the expression *pad abarmānd* "as undivided inheritance" implies that the entire estate of the deceased is bequeathed as a whole to his heirs, giving them joint possession and "ideal" (*a-baxt*, lit. "undivided") shares of the family property, thus keeping the substance of the estate together. Used in contrast to *pad abarmānd*, the expression *pad bahr* "in portions" or *pad ǰud bahr* "in separate portions" (often with the verb *dādan* "to transmit") indicates that the inheritance of a person has been (or should be) divided among the heirs (*MHD* 61.3-5, 5-6; 60.1-5; see Macuch, 1993, pp. 415, 419 ff.).

Since Sasanian law knew no right of primogeniture (there was no *primus agnatus* as in classical Roman law), the legitimate children, sons and daughters (*dādestān-pus* "son according to the law" and *dādestān-duxt* "daughter according to the law") from a "marriage with full matrimonial rights" (*pādixšāy-zanih*) and the wife or wives from this form of marriage all were entitled to inherit and received a legal portion (*bahr*) of the estate as joint heirs. If the deceased had left no will, intestate succession was as follows: the *pādixšāy*-sons of the deceased were allotted equal portions of the "son's share" (*bahri ī pus/pusīh*); the wife (or wives) received a portion (*bahr ī kadag-bānūg* or *bahr ī zanīh*) the same size as that of a son; unmarried daughters from the "marriage with full matrimonial rights" were entitled to half the portion (*bahr ī duxt/duxtīh*) of their brothers. Married daughters were no longer entitled to inherit, since they had already received their share of the estate as dowry (*pēšīgān-wāspuhragān*) at the time of entering matrimony (Macuch, 1981, pp. 85 f., no. 17). Sons who were crippled and disabled and their mothers received twice the share of a healthy son (on the sources see Macuch, 1981, pp. 3-77, no. 4, with further references). Wives and children from the two other forms of matrimony, the "auxiliary marriage" (*čagar*) and the "consensus marriage" (*xwasrāyēn/gādār*), were not entitled to any part of the deceased's estate—in full accordance with the different purposes of these two marriages. All heirs received their shares as "ideal" portions (*a-baxt*) of the undivided inheritance (*pad abarmānd*), which consisted of different elements (to be described in detail below). In order to keep the property together, the sons often entered into a partnership (*hambāyīh*) of co-inheritors or co-holders (*brād ī hambāy*). This arrangement could also include the daughters as shareholders under certain circumstances: when they were not married outside their descent group and had to function as so-called *ayōgēn* "intermediary successor" for their natal lineage (see below). A joint partnership offered one of the best possibilities for avoiding the division of the property into small units. The siblings also had the additional option of concluding incestuous marriages (*xwēdōdah*) in order to avoid splitting the inheritance, since the patrimonium of the daughter would remain within the family, as already mentioned above. On the other hand, if the heirs came to an agreement that their ideal shares should be partitioned into real portions (*baxtīgīh kardan*), the property could be divided among the recipients. If there was no agreement in this respect, a partition could nevertheless take place under the condition that the sons in favor of partition accept guardianship (*sālārīh*) of the minors, disabled and infirm members of the family, and of the property as a whole (*MHD* 52.17-53.3; Macuch, 1993, p. 367, no. 63).

These rules of inheritance, applying only in the case of intestate succession, could, of course, be changed by will. There are numerous examples in the Lawbook for the alterations a testator could enforce by changing the status of his *čagar*– and *xwasrāyēn*-children through adoption (hereby also changing the size of the individual shares of his regular *pādixšāy*-children) or entitling his wives and daughters to larger portions of the inheritance in his will. Extreme care was taken in the wording of the will, and many passages of the Lawbook are dedicated to the interpretation of the exact meaning of certain formulations. For example, if a father assigned property to his son and daughter using the formula *owōn čiyōn* "as" with the designation of the recipients (*kū-m ēn xwāstag owōn čiyōn-am ō pus xwāstag dād ō duxt dād*, lit. "I gave this property—as I gave property to the son—to the daughter"), the formula was interpreted in the sense of "in the same manner," meaning that son and daughter of the testator should be allotted *portions of exactly the same size*. If he, on the other hand, only employed the term *čiyōn*, using otherwise exactly the same phrase (*kū-m ēn xwāstag čiyōn-am ō pus xwāstag dād ō duxt dād*), this wording was interpreted temporally in the sense of "as soon as, at the same time," meaning that son and daughter should receive their portions at *exactly the same period of time*. The latter formulation has, of course, a completely different implication than the former one and does not provide that son and daughter should be alloted equal portions (*MHDA* 20.15-22.1; Macuch, 1981, pp. 167-68, 182-84, nos. 36-43; also *MHD* 51.2-6; Macuch, 1993, pp. 327, 364, no. 58). The head of the household could also assign gifts from his acquired property to his children or wives during his lifetime, providing in his will that the donation should be taken into consideration (*pad bahr hangārišn*, *az bahr hangārišn*) at the time of the distribution of property among the heirs, in order to avoid disadvantaging the other recipients (*MHD* 61.14-62.2; Macuch, 1993, pp. 416, 428 f., no. 15).

Although children of both genders were entitled to inheritance—and not only sons, but also daughters and wives in the *pādixšāy* status, had the right to an individual portion of the family estate—a fundamental distinction was made between succession by male and female descendants. The Lawbook employs the same Avestan technical term *yōhē pasčaēta*, lit. "who (succeeds) him afterwards," for every type of legal successor of a *paterfamilias* in general, no matter whether succession took place directly or through intermediaries. The phrase has been taken from a lost Avestan context not known to us and reflects in its simplicity probably an early period of Zoroastrian law, in which the sophisticated legal terminology of the late Sasanian period regarding

succession and inheritance (and also its complex institutions) had not yet been developed. Although it remained the general term for "successor," denoting both males and females, Sasanian jurists in fact drew a sharp distinction between *direct succession* by a legitimate son (*dādestān-pus*) and *intermediary succession* by a legitimate daughter (*dādestān-duxt*) or any other relative or fellow-citizen recruited for this purpose (Macuch, 1985, pp. 189 f., and 1993, pp. 170-91). The "intermediary successor" was regarded as a link between a man and his legal successor and had the obligation to produce a son for the deceased. According to the Lawbook, daughters were only accepted as intermediary successors (*ayōgēn*; Klingenschmitt, 2000, pp. 225 f.; Macuch, 1981, p. 104, no. 3, and 1985, pp. 189 f. with further references). A daughter could not become the direct, universal successor of the *paterfamilias* in the sense of replacing him completely and accepting all his rights and duties, since females were generally not regarded as legal persons with full rights. Hence she could usually not take responsibility alone for the estate as a whole, including transactions, paying debts, etc. (there were, however, exceptions to the rule), nor serve as guardian (*sālār*) of the minors and other women in the family, although she was entitled to a hereditary share of her father's property. The legitimate sons, on the other hand, stood in the direct successorship of the father and were inheritors, not only of his property with full legal responsibility (*xwāstagdār*), but also of his name (*nām-burdār*) and place in the descent group (*paywand*, *tohmag*), his standing in the community, and his rank (*gāh*) in the social estate (*pēšag*). In short, the legitimate sons replaced the father totally and assumed all his rights and duties, including the responsibility for his debts (*tōzišn ī pidarān*) and guardianship (*sālārīh*) over the women and minors in the family, as well as the important religious obligation to perform the required rituals for the soul of the deceased (*ruwān yazišn*) and to keep the cult of the souls of the ancestors (*nāmgānīh*) (Klingenschmitt, 1971, pp. 145-50; Macuch, 2003, p. 235 with further references).

Since only a male could replace the head of a household completely as his universal successor, assuming all the responsibilities listed above, it became incumbent on every man to procreate sons during his lifetime, so that he might not remain "nameless" (*abē-nām*) on his demise. According to the rule that no man should die without leaving at least one male legal successor, Sasanian jurisprudence developed two important methods of securing the continuity of a man's lineage if the deceased had no sons despite all measures to procure them. The first method was to engage the wife or the unmarried

daughter or sister of the deceased as an "intermediary successor." The technical term used in this context, *ayōgēn*, is employed in all sources (including those of the post-Sasanian period) exclusively of women belonging to the family of the dead man (see Macuch, 1985, pp. 189 f., and 2003, pp. 238 f.). As intermediary successors they were obliged to put their reproductive capacities into the service of the deceased (the *pādixšāy*-husband or brother or father) by entering a *čagar*-marriage with another man (either a relative or another fellow-citizen). This completely different type of matrimony was concluded as an "auxiliary marriage" in order to procure children for a man who had no offspring. The wife of the deceased remained legally the spouse of her dead husband in *padixšāy*-wedlock when she contracted the *čagar*-marriage; and the children from this second marriage were not counted as the legitimate offspring of their genitor, but of their *pater* or legal father, i.e., the deceased man who had left no son. In the case of the daughter or sister of the deceased a fictive, incestuous marriage of the *pādixšāy* type was arranged between daughter and father or sister and brother, again with the same legal implication that the woman should enter an "auxiliary marriage" (*čagar*) and the children from this alliance should all belong legally to the deceased father or brother. Only the sons of the *ayōgēn* were finally regarded as the direct, legal successors and heirs of the deceased *paterfamilias*, entitled to inherit his estate and replace him in the community. If the *ayōgēn* only had daughters, one of these (usually the oldest) was obliged to continue the duty of her mother as "intermediary successor," acting as *ayōgēn* of her legal grandfather. The son who was finally born as legal successor could in certain cases even be separated from the deceased by several generations (Macuch 1991a, 1995, 2003).

The second method of securing a man's male offspring became one of the unique and characteristic institutions of Sasanian jurisprudence, denoted by the technical term *stūrīh*, which can be rendered by "substitute succession," "subsidiary succession," or "succession by proxy." A large part of the estate of the deceased could be especially set apart for establishing this institution, devoted to procuring a male successor for a man with no son. Both men and women from inside and also outside the family could be engaged as "proxy" or "substitute successor" (*stūr*) with the duty to produce a son in an "auxiliary marriage" (*čagar*) who could be installed as heir of the property reserved for this purpose (*pad stūrīh*) and as universal successor of the deceased. The *stūr* never inherited the substance of this property but was entitled to use its income for his (or her) expenses during the period of raising the children.

Sasanian jurisprudence distinguished between three types of proxies:

(1) The "natural proxy" (*stūr ī būdag*). The *ayōgēn*-women engaged as "intermediary successors," i.e., the *pādixšāy*-wife of the deceased, his unmarried daughter, and his unmarried sister, were also categorized as "natural proxies," since they were obliged by their status as women of the family to put their reproductive capacities into the service of their lineage. The unmarried daughter and sister of the deceased belonged legally to their native descent group, whereas the wife in a "marriage with full matrimonial rights" changed from her native lineage to that of her husband, agreeing to fulfill her duty as his *ayō-gēn* in the marriage contract (Macuch, 2003, pp. 240 f.).

(2) The "appointed proxy" (*stūr ī kardag*). A man could appoint another person by will to be his substitute successor. This person could be male or female, an adopted son, a relative, or a fellow-citizen, according to the wishes of the deceased. Appointment by will had the additional advantage that the women in the family of the testator were freed from their obligation as *ayōgēn*. A man appointed as proxy also became the "natural" guardian of the family (*dūdagsālār ī būdag*, *MHD* 26.10-12) after the demise of the *paterfamilias*.

(3) The "nominated proxy" (*stūr ī gumārdag*). If the head of the household left neither a *pādixšāy*-wife, nor daughter or sister, and had not appointed another person as proxy in his will, but had left an estate of a minimum value of 60 *satēr*s, then a *stūrīh* had to be established by official authorities. Judges in civil service (*dādwarān*) and a congregation of mowbeds following instructions of the king are mentioned in this context (*MHD* 43.14-16, 49.15-17; *MHDA* 14.9-11). These nominated a relative of the deceased regarded as the "most fitting" or "most worthy" (*sazāgtar*) as substitute successor according to a specifically established sequence, giving priority to the women in the family of the deceased; for example, the daughter of the brother was regarded as "worthier" to be *stūr* than the son of the brother (Macuch, 1981, pp. 115-16, no. 10; 1995, pp. 154-57 with further references).

Both males and females could be engaged as *stūr*, with the difference that males could serve as proxies for several other men, whereas women were only allowed to be *stūr* for a single man at a time. The *stūrīh* could, however, be limited in time (for example ten years), which would allow a woman to serve as proxy for another man after the first obligation was fulfilled (in these cases a temporary *čagar*-marriage could be contracted; see Macuch, 1985). The Lawbook discusses a great number of difficult cases in this context, such as the

question, whether *all* the children (including daughters) born in the *čagar*-marriage of a *stūr* should be regarded as the heirs of the deceased or only the sons, or whether a *čagar*-father was allowed to adopt his natural *čagar*-children into the *pādixšāy* status (e.g., *MHDA* 40.11-14; Macuch, 1981, p. 224).

Towards the end of the Sasanian period every *paterfamilias* with a certain amount of property at his disposal (with a value of at least 60 *satēr*s) was legally obliged to establish a *stūrīh*, no matter whether he had sons or not, in order not to risk remaining "without name" if the existing offspring were to die. The Lawbook distinguishes between *ayōgēn*(*īh*) and *stūrīh*, which are confused to a certain extent in later sources of the post-Sasanian period. Although both institutions were developed for the same reason, that is, to procure offspring, the different terminology and the details given in the Lawbook seem to indicate that they were originally separate strategies for ensuring the lineage. The former was certainly far older than the latter, since *ayōgēnīh* contains elements of cognatic descent which were combined with the patrilineal system of succession to the advantage of the lineage. It seems that the *stūrīh*-institution developed later in order to increase the options for procuring children, especially sons, for a man who left no wife, daughter, or sister who could act as his intermediary successor. The son of the proxy (*stūrīg pus*) inherited from his legal father and was regarded as his legal successor with the obligation to accept all the rights and duties of a legitimate heir listed above.

In accordance with these divergent forms of direct, intermediary, and substitute succession, the total estate (*abarmānd*) of the deceased consisted of various elements subject to different regulations. In the Sasanian law of property every "legal object" (*xwāstag*, including a family's entire estate) was divided into two main categories: the "substance, capital, principle, base" (*bun*) on the one hand and its "fruit, increase" (*bar*) or "income, interest" (*windišn*, *waxš*, *waxt*) on the other hand. In the case of a piece of land, for example, this could mean that the person having the power of disposal of the land, the "owner of the substance" (*bun-xwēš*), could be a different person from the one who utilized the land and disposed of the crops, the "owner of the increase" (*bar-xwēš*). Sasanian jurists, moreover, distinguished exactly between "ownership" (*xwēšīh*, "*dominium*"), i.e., a person's right to dispose of a certain object according to his will, and "possession, holding, tenure" (*dārišn*, "*possessio*"), i.e., the *de facto* possession of a thing which does not necessarily include ownership (such as leasehold, tenancy, etc.) and may not even be

lawful (e.g., in the case of a stolen object). The division of "things" into *bun* and *bar* was extremely important for the development of a number of complex institutions which were founded on the basic difference between ownership (*xwēšīh*) and possession (*dārišn*) of "substance" and "income." Based on this fundamental distinction Sasanian jurists distinguished between different forms of bequeathing property with respect to the form of ownership and possession of the "substance" and "income." These different means of holding inherited property were called (using Sasanian legal terminology):

(1) *pad xwāstagdārīh* "in possession of the estate as heir and successor." The expression *xwāstagdār* has the literal meaning of "possessor of the estate" and is used as the technical term for "heir, inheritor," referring to the successor of a deceased, who replaces him as the person responsible for the estate as a whole and is obliged to accept all his rights and duties, including the obligation to pay for debts and liabilities of succession (*MHD* 59.11-63.5; Macuch, 1993, pp. 413-32). The *xwāstagdār* is, as the literal meaning implies, only the "possessor" or "holder" of the total estate (*abarmānd*), who has the duty to protect and increase the property with the right to dispose of the income (*bar*) but in principle does not have the right of disposal of the substance (*bun*). The term refers to every person to whom the deceased has bequeathed property with the right of possession (not ownership!), including fellow-citizens (*mard ī šahr*) outside the family. A son could also be installed as heir by his father during his lifetime and was regarded automatically as *xwāstagdār* after the father's demise (except in the case that the son expressly renounced future successional rights). Ideally the substance of family property, belonging collectively to all the heirs (*xwāstagdārān*), was inalienable, but this rule did not apply in cases of large debts which could not be repaid by the income alone. The son took full responsibility for all liabilities of succession as joint debtor (*hamāg-tōzišn*) with the obligation to fulfill the claims of potential creditors with all the property of the family. If the deceased had several sons, who became his heirs as shareholders of the estate, each of these sons took full responsibility for all liabilities of the father as joint debtor (*hamāg-tōzišn*); that is, a creditor could charge each one of them with the fulfillment of the whole debt. Unmarried daughters who still belonged to their native lineage and were shareholders had the same obligations as the sons. Fellow-citizens appointed as heirs by the testator, on the other hand, were only regarded as part-debtors (*xwāstag-tōzišn*) with the obligation to contribute to the payment of debts according to their share of the property. In contrast to the following category, the standard regulation for holding property "in possession of the estate as an

heir" (*pad xwāstagdārīh*) provided that the heirs had the right of disposal of the income (*bar*) of a family's collective property and became co-possessors of the estate. This right could only exceptionally be expanded to the substance (*bun*) in emergencies, such as the payment of extensive liabilities of succession.

(2) *pad xwēšīh*, "in ownership." Property bequeathed in this category is clearly distinguished from the former (*MHD* 61.14-15, 62.6-7; Macuch, 1993, pp. 416 f.). The term *xwēšīh* is used with respect to the private property of a person and denotes his exclusive right to enjoy it, to keep it apart from the joint-property of the family, and to dispose of it according to his will (again all attestations of the term should be taken into consideration; see Macuch, 1993, p. 715). In contrast to the former category, the owner had the right to dispose of both the "substance" (*bun*) and the "increase" (*bar*) of this property at his own discretion. Possessions acquired by the head of a household (*mad ud rasēd*) and transferred as a gift to his children or wives during his lifetime or bequeathed to them by testament could be expressly designated as *xwēšīh*-property, a status giving the recipient full ownership rights. This was also the case with gifts from a third party to certain members of the family (also women) if the donator expressly used the formula *pad xwēšīh* (e.g., *MHDA* 4.5-10; Macuch, 1981, p. 72). We have reason to assume, not only that the personal property of the members of a household belonged to this category (such as clothing, jewelry, and other personal utensils), but also that it included valuable objects of all kinds, also immovables and real estate. Property "in ownership" could, of course, also be alienated in order to pay liabilities of succession and other debts.

(3) *pad stūrīh*, "for substitute succession, in trust." A large part of the property acquired by the head of the household was expressly set apart for the institution of "substitute succession" (*stūrīh*) described above (e.g., *MHDA* 21.2-5, Macuch, 1981, p. 16; for attestations of the term, see Macuch, 1993, p. 732). This category of property could include all kinds of possessions, but these had to be large enough to provide an income over a long period of years for the maintenance of the person engaged with the duty of producing sons for the deceased, the *stūr*, and all of the children born in this context. The property had to be "profitable" (*barōmand*)—a term referring to property yielding a revenue, especially real estate, farming land, orchards, vineyards, etc.—with a minimum value of 60 *satērs*. The "substance" (*bun*) of property "in *stūrīh*" was inalienable, since it was part of the "total estate" (*abarmānd*),

which would be transferred to the son or sons of the *stūr* as heirs of the deceased as soon as they came of age. The proxy (*stūr*) only had the right of usufruct, but, in contrast to the two former categories no access whatsoever to the principal of *stūrīh*-property.

(4) *pad ruwān dāštan* and *pad ahlawdād* "for the keeping of the soul" and "for charitable purposes." Possessions belonging to this last category consisted of property dedicated to the salvation of a man's soul, but also intended to ensure an income for the children and descendants of the deceased (*MHD* 34.1-36.2; Macuch, 1993, pp. 255-66). Wealthy individuals of this period set apart a considerable portion of their property for the specific purpose of "preserving the soul" (*pad ruwan dāštan*). This portion, which could comprise up to one-third of a person's estate (*MHDA* 21.2-5; Macuch, 1981, p. 167), in certain instances even all of a man's property (*MHD* 31.8-15; Macuch, 1993, p. 226), was called *xwāstag ī ruwān* "property of the soul"; it could be spent for rites and ceremonies to be performed for the individual after his death, as well as for other charitable acts, which were also considered to benefit the soul of the deceased. The purpose to which the funds were dedicated was specified in a person's will by using a special formula: if the testator wrote *ruwān yazišn rāy* "for religious services for the soul," the funds were used to perform rites and ceremonies after his decease; if he determined that they should be spent *ruwān rāy* "for the soul," they were set apart for other charitable acts regarded as "most beneficial to the soul" (*ruwān rāy sūdōmandtar*), such as alms for the poor and needy or the financing of objects of public utility, such as roads, bridges, and irrigation canals, or the establishing of fire-temples, which were furnished with income-producing property, called *xwēšīh ī ātaxš* "property in ownership of the fire" or *xīr ī ātaxš(ān)* "property of the fire(s)." The principal (*bun*) of such an endowment could not be encroached upon; only the income from profitable foundations (*barōmand*) was spent on its upkeep and for taxes and the payment of the guardians and trustees. The profit which remained after meeting these expenses was spent for the pious purposes specified by the founder (offerings, alms to the poor, etc.); the rest went to the founder and his family or to the beneficiary named in the endowment deed and his heirs. It seems that, apart from religious piety, one of the main reasons for establishing a charitable foundation was to secure an income for one's own children and descendants (or those of other family members and friends), since the beneficiaries had the right of usufruct, and pious foundations were probably safe from confiscation by government authorities. Foundations "for the soul" were inalienable. The founder had the right to assign guardianship (*sālārīh*) or

trusteeship (*dāštārīh*) of the foundation to a person he chose, which could—but did not necessarily have to—be a member of his own family. In case no particular person was named as a trustee in the endowment deed of the founder, his son or other relations were obligated to serve as guardians (*sālār*) of the foundation. In this manner the *xwāstag ī ruwān* remained in the founder's family and was inherited as a distinct part of the property of the deceased by his descendants, who only had a title to the "income" (*bar*), but no right of ownership (*xwēšīh*), and were not authorized to change its legal status (Macuch, 1991b, 1994, 2002).

We may assume that the "total estate" (*abarmānd*) of wealthy families usually consisted of all these various elements, subject to different legal regulations. The heirs received shares of each of these parts as "possessors of the estate" (*xwāstagdār*), either as joint holders of the entire property with "ideal" portions (*pad abarmānd*) or in separate legal portions (*pad bahr*). Being holders, not owners, they had the power of disposal over the income of *abarmānd*-property, but they took full responsibility for debts and liabilities of succession, which gave them the right to hypothecate (*āgraw kardan*) or even alienate the substance in emergences. Only in the case of "property held in ownership" (*pad xwēšīh*) did the heirs have full power of disposal over both the substance and the increase of property bequeathed to them expressly in this manner and become "owners" in the full sense of the word. In the cases of *stūrīh* and *ruwān* property the power of disposal was restricted from the outset to the income of the property, giving the successors only the right of usufruct, although the substance usually (but not always) remained in the "possession" or "holding" (*dārišn*) of a man's heirs.

BIBLIOGRAPHY

Texts. [*MHD*] J. J. Modi, *Mâdîgân-î Hazâr Dâdistân. A Photozincographed Facsimile* ..., Poona, 1901.

[*MHDA*] T. D. Anklesaria, *The Social Code of the Parsis in Sassanian Times or*

Madîgân-i Hazâr Dâdistân. Part II, Bombay, 1912.

Studies. B. H. Carlsen, "The *čakar* Marriage Contract and the *čakar* Children's Status in the *Mātiyān i hazār Dātistān* and *Rivāyat i Ēmēt i Ašavahištān*," in *Middle Iranian Studies*, ed. W. Skalmowski and A. van Tongerloo, Leuven, 1984, pp. 103-14.

B. Hjerrild, "*Ayōkēn*: Woman between Father and Husband in the Sasanian Era," in *Medioiranica. International Colloquium 21st-23rd of May 1990*, ed. W. Skalmowski and A. van Tongerloo, Leuven, 1993, pp. 79-86.

Idem, *Studies in Zoroastrian Family Law. A Comparative Analysis*, Copenhagen, 2003.

G. Klingenschmitt, "Die Erbtochter im zoroastrischen Recht nach dem Mādiyān ē hazār dādistān," *MSS* 21, 1967, pp. 59-70.

Idem, "Neue Avesta-Fragmente (FrA.)," *MSS* 29, 1971, pp. 111-74.

Idem, "Mittelpersisch," in *Indoarisch, Iranisch und die Indogermanistik. Arbeitstagung der Indogermanischen Gesellschaft vom 2.-5.10.1997 in Erlangen*, ed. B. Forssman and R. Plath, Wiesbaden, 2000, pp. 191-229.

M. Macuch, *Das sasanidische Rechtsbuch "Mātakdān i hazār Dātistān" (Teil II)*, Wiesbaden, 1981.

Idem, "Die Zeitehe im sasanidischen Recht—ein Vorläufer der šīʿitischen *mutʿa*-Ehe in Iran?" *AMI* 18, 1985, pp. 187-203.

Idem, "Inzest im vorislamischen Iran," *AMI* 24, 1991a, pp. 141-54.

Idem, "Charitable Foundations i. In the Sasanian Period," in *EIr*. V, 1991b, pp. 380-82.

Idem, *Rechtskasuistik und Gerichtspraxis zu Beginn des siebenten Jahrhunderts in Iran: Die Rechtssammlung des Farroḫmard i Wahrāmān*, Wiesbaden, 1993.

Idem, "Die sasanidische Stiftung 'für die Seele'—Vorbild für den islamischen *waqf*?" in *Iranian and Indo-Europaean Studies. Memorial Volume of Otakar Klíma*, Praha, 1994, pp. 163-80.

Idem, "Herrschaftskonsolidierung und sasanidisches Familienrecht: zum

Verhältnis von Kirche und Staat unter den Sasaniden," in *Iran und Turfan. Beiträge Berliner Wissenschaftler, Werner Sundermann zum 60. Geburtstag gewidmet*, ed. Christiane Reck and Peter Zieme, Wiesbaden, 1995, pp. 149-67.

Idem, "The Talmudic Expression 'Servant of the Fire' in the Light of Pahlavi Legal Sources," in *Studies in Honour of Shaul Shaked*, Jerusalem Studies in Arabic and Islam 26, Jerusalem, 2002, pp. 109-29.

Idem, "Zoroastrian Principles and the Structure of Kinship in Sasanian Iran," in *Religious Themes and Texts of pre-Islamic Iran and Central Asia: Studies in honour of Professor Gherardo Gnoli*, ed. C. Cereti, M. Maggi, and E. Provasi, Wiesbaden, 2003, pp. 231-46.

A. Perikhanian, "On some Pahlavi Legal Terms," in *W. B. Henning Memorial Volume*, London, 1970, pp. 349-57.

Idem, "Iranian Society and Law," in *Camb. Hist. Iran* III/1, pp. 627-80.

Idem, *The Book of a Thousand Judgements (a Sasanian Law-book)*, Costa Mesa, 1997.