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JUDICIAL AND LEGAL SYSTEMS III.
SASANIAN LEGAL SYSTEM
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iii. Sasanian Legal System

Sources. Extant texts providing material on the Sasanian legal system encompass primary sources, including original documents from the Sasanian period, Avestan texts with Pahlavi translation and commentary as well as Pahlavi sources from the late Sasanian and early Islamic periods, and secondary material in other languages, especially Armenian, Syriac, Persian, and Arabic. Since no legal codex, digest, or systematic work on jurisprudence has survived, the legal system has to be reconstructed meticulously from all the available material at hand. Only very few original texts from the Sasanian period in the form of inscriptions and documents on parchment, cloth, and papyri provide details. Of these the great inscription of Šābuhr I on the Kaʿba-ye Zardušt in Naqš-e Rostam (Huyse, 1999) from the third century and the inscription of the prime minister Mihr-Narseh in Firuzābād (Henning, 1954) from the fifth century are valuable sources of information on legal foundations. Technical terminology is attested in recently found original documents on parchment and cloth from the seventh century in Iran (Weber, 2008; Macuch, 2008[a]). Since religion and law were inseparable in an early

stage of Zoroastrian jurisprudence, several extant Avestan texts also contain legal material: the *Hērbedestān* "Book of (advanced) Priestly Studies" (Humbach and Elfenbein, 1990; Kotwal and Kreyenbroek, 1992) together with the *Nērangestān* "Book of Ritual Directions" (Kotwal and Kreyenbroek, 1995 and 2003), the *Vidēwdād* "Law (prescribing) Abjuration of the Demons" (on the title see Benveniste, 1970). The Pahlavi commentaries of priestly scholars from the Sasanian period on legal matters in these texts often reflect the conditions in Sasanian and post-Sasanian Iran, being only very loosely connected to the content of the original Avestan source. Valuable evidence is also transmitted in the Avestan-Pahlavi glossary traditionally known as the *Frahang ī ōīm-ēk* "Glossary (beginning) with (the word) 'one' [Av. *ōīm* = MP *ēk*]" (Klingenschmitt, 1968; Reichelt, 1900-1901). Another important source is the summary of the Avestan *nasks* or "divisions" dedicated to legal matters (*dādīg*) in Book 8 of the Pahlavi *Dēnkard* "Acts of the Religion" (West, 1892) from the 9th century, which is a valuable treasury of Zoroastrian legal traditions, but unfortunately extremely difficult to understand because of its synoptical character.

A great number of treatises on jurisprudence must have existed in the Sasanian age, called *dādestān-nāmag* "Lawbooks," but only one text from this period has survived in a unique manuscript, which is of fundamental importance for our knowledge of pre-Islamic Iranian law. It has erroneously been named *Mādayān ī hazār dādestān* by the first editor of the manuscript, but its actual title is *Hazār dādestān* "A Thousand Judgements" (Macuch, 1993, pp. 10 f.). The Lawbook is not a codex, but a lengthy compilation of actual and hypothetical case-histories which the author, a certain Farroxmard ī Wahrāmān, of whom nothing is known apart from his name, collected from court records, testaments, various works on jurisprudence, and other long lost documents. It was compiled in the first half of the 7th century before the Arab invasion, sometime during or after the reign of Xosraw II (r. 590-628). The content is purely Sasanian and differs from later texts mainly in that it does not mingle theological and legal material, but concentrates entirely on legal matters, without offering explanations (editions Macuch, 1981 and 1993; Perikhanian, 1973 and 1997; called in the following "Sasanian Lawbook").

Several Pahlavi religious works from the post-Sasanian period also contain important material on the legal system and institutions of pre-Islamic Iran crucial for our reconstruction of Sasanian law, notably the *Dādestān ī dēnīg* "Religious Judgements" (Dehaghi, 1998), the *Pahlavi Rivāyat accompanying the Dādestān ī dēnīg* (Williams, 1990); the *Pahlavi Rivāyat of Ādurfarrbay and*

Farrbay-srōš (Anklesaria, 1969); the *Rivāyat ī Ēmēd ī Ašawahištān* (Safa-Isfehani, 1980), the *Šāyist nē šāyist* "Valid and not Valid" (Tavadia, 1930) with Supplementary Texts (Kotwal, 1969) and several texts in the Pahlavi commentary (*zand*) to the *Xwurdag abestāg* "The Small Avesta" (Dhabhar, 1927 and 1963). One of the main purposes of all these post-Sasanian writings was to conserve age-old Zoroastrian customs, including especially those laws on marriage, family, and inheritance which differed basically from the new regulations of Islam. A specimen of a marriage-contract (*paymānag ī kadag-xwadāyīh*) dated to the 13th century, but far older in content, has also been preserved (the last edition by MacKenzie and Perikhanian, 1969 is by now outdated; for the new edition see Macuch, 2007). Another important text for understanding Sasanian jurisprudence has only survived in a Syriac translation: the "Lawbook of Jesubōxt" (Sachau, 1914), originally written in Pahlavi by the archbishop of the Christians in Persia in the 8th century for the Christian community of Fars, based—apart from the sections on family law—entirely on Sasanian Zoroastrian jurisprudence.

Other valuable sources have only survived in Arabic or Persian translation. The "Letter of Tansar" (Boyce, 1968), the "Testament of Ardašīr" and the "Book of Deeds" of Anuširwān" (Grignaschi, 1966) provide details on the social and legal institutions of Sasanian Iran. The most important secondary sources include the Acts of Christian Martyrs in Syriac for criminal law (see Wiessner, 1967) and the Babylonian Talmud, which was completed during Sasanian rule (see Macuch, 1999; 2002[b], 2008[b]). Several later Persian and Arabic texts also contain remarkable details on different legal institutions of pre-Islamic Iran. These must, however, be used with the historical changes in mind (the most important of these sources are listed in Macuch, 1993, p. 6).

Law and religion. The Sasanian legal system was based on Zoroastrianism. There can be no doubt that law had its origin in religion and was legitimized accordingly. Not only was the Prophet Zoroaster himself pictured as the foremost lawgiver (Macuch, 2002[a], pp. 89 f.), but some of the most important legal institutions in the field of family law and inheritance would have been impossible in a society confessing any other religion except Zoroastrianism in the form it had developed by the Sasanian period. Almost none of the complex institutions determining the structure of kinship in Sasanian Iran could have developed in a society confessing Manicheism or Christianity—to mention only two of the most important spiritual challenges to Zoroastrianism in the Sasanian period. As will be seen below in the field of family law, the most

important prerequisite in this area is the Zoroastrian acceptance and promotion of incestuous alliances in combination with the obligation to be fertile and to procreate children. Zoroastrian requirements may also be perceived with regard to regulations concerning the behavior of the adherent of the Good Religion towards beneficent animals (Macuch, 2003[a]). As in other legal cultures of an early period, Zoroastrian law was primarily religious law, but by the late Sasanian period jurisprudence had become fairly independent of theology, although many famous jurists named in the Sasanian Lawbook were engaged in both disciplines.

The origin of law in religion may be observed in the theoretical division of sins or offenses which were to be punished in the Zoroastrian community into two main categories (Macuch, 2003[a], pp. 172 ff.):

(1) moral offenses against religious prescriptions (*wināh ī ruwānīg* "sins pertaining to the soul");

(2) offenses directed against other members of the Zoroastrian community (*wināh ī hamēmālān* "offenses/sins regarding opponents").

These categories reflect the two main fields of work of the priests who were in an early age mediators and arbitrators, later jurists and judges, and at the same time responsible for the moral guidance of the community (Macuch, 2002[a]). They originate from an early stage of Zoroastrian law, not exactly dateable, but in any case pre-Sasanian, a time in which jurisprudence had not yet evolved into the complex independent discipline reflected in the Sasanian Lawbook. The term *wināh ī ruwānīg* was used of offenses endangering the soul of the delinquent, committed against religious norms, such as the obligation to avoid harming beneficent animals willfully or unwillfully and the duty to feed and protect animals in one's guardianship. *Wināh ī hamēmālān* "sin regarding adversaries," on the other hand, was used with regard to offenses which could be taken to court. It must have originally comprised both civil and criminal offenses, since it is used of *all* types of offenses leading to clashes between men. These could be controversies regarding the right to a certain property or loans and debts (which would belong to civil law nowadays) as well as complaints relating to criminal acts, such as theft, robbery, assault, manslaughter, murder (which belong to criminal law today). In the latter case, the delinquent was not necessarily prosecuted by the community (or the State, as is the case today), but had to be sued by the offended party in order to be punished by judicial authorities. These replaced the avenger of an earlier stage

of development, in which the offended party or his friends and relations took the law into their own hands and blood feud was practiced (Macuch, 2002[a]). In short, the *wināh ī hamēmālān* comprised offenses which are prosecuted in civil and criminal law today and could only be atoned for by recompensing the damage. Both offenses of the *hamēmāl* and the *ruwānīg* kind were subject to corporal punishment, which was usually replaced by fines. Compensation in the former case had to be paid to the offended person himself, whereas the spiritual masters, or *radān*, received the remuneration designated for the latter category of sins.

The close connection between religion and law even in the late Sasanian period may also be derived from the fact that Zoroastrian priests, the *rad* and *mowbed*, were engaged as judges in the legal system, besides other State officials, such as the *dādwar* "judge." The highest legal official, whose judgement could not be questioned, was the *mowbedān mowbed*, at the same time the head of the Zoroastrian Church (Macuch, 1981, pp. 188-208). Only the head of the State, the king himself, could replace the latter, and pass judgement in criminal cases, as we may conclude from the Acts of the Christian Martyrs (see Wiessner, 1967).

Legal theory and practice. Being based on religion, the Holy Scripture of the Avesta and its translation and commentaries in Pahlavi (*zand*) remained the foundation of the legal system in the Sasanian age. However, since society had changed considerably since the legal *nask*s of the Avesta had been composed, one of the main tasks of Sasanian jurists was to adapt legal prescriptions to the requirements of their own time. The names of famous commentators of the Avesta, such as Sōšāns, Mēdōmāh and Abarag, are also given in legal literature, leading us to the conclusion that in many cases the same authorities were followed in the fields of theology and jurisprudence. According to a passage in the *Dēnkard*, the decision of the judge (*dādwar*) had to take three major sources of law into consideration: the Avesta (*awistāg*), its Pahlavi translation and commentaries (*zand*), and the consensus of the Righteous (*ham-dādestānīh ī wehān*) (Macuch, 1993, p. 12, no. 34). Although there is very little evidence on the activities of theologians and jurists we may assume that various schools developed (e.g., that of Abarag and Mēdōmāh) with divergent opinions on religious and legal matters which are often expressed side by side in the commentaries to the Avestan texts as well as in the Sasanian Lawbook. Their commentaries, called *čāštag* "teaching," became another important guideline to legal practice.

Despite the meticulous theoretical work of these sages the ancient regulations in Avestan texts could not cover the needs of a complex society which had changed considerably since the composition of the Holy Scripture. There is a remarkable discrepancy between the simple legal prescriptions in the Avestan sources and the highly differentiated juridical discussion of complicated cases in the Sasanian Lawbook. We may assume that law gradually developed into an independent discipline by the late Sasanian period, retaining only a loose connection to the Avesta (see Macuch, 1993, pp. 12 f.). Although the theoretical work (*čāštag*) of legal authorities remained important and was especially considered in formal procedure in court, legal practice also led to change. Cases occurred, in which legal theory could not be followed by the courts, resulting in a different procedure, which was called *kardag* "(legal) practice." The *kardag* procedure was, however, not considered as "reliable" (*ēwar*), but only as a temporary solution which had to be revised if a decision based on canonical law was required (Macuch, 1981, pp. 141-62). We may nevertheless assume that the discrepancy between the legal theory of the commentaries (*čāštag*) and the legal practice (*kardag*) of the courts was one of the main reasons for the evolution of Zoroastrian law and the development of a sophisticated legal system, which had to take far more into consideration than only theological arguments.

Social organization and the law of persons. Although the division of the Zoroastrian community into three social estates is already attested in the Avesta, there is no corresponding evidence on the structure of society in the Achaemenid and Parthian periods. By the late Sasanian age, however, many sources attest the division of society into four estates (*pēšag*), by which not only a person's rank, grade, and position in the State, but also his legal status, were defined. These were the estates of the priests (*āsrōnān*), to which also the judges belonged, the warriors (*arteštārān*), with which the nobility was associated, the scribes (*dibīrān*), comprising members of the bureaucracy, and finally the estate of the cultivators (*wāstaryōšān*) and artisans (*hutuxšān*), encompassing the mass of people working in agriculture and as craftsmen. Special charters of rank (*gāh-nāmag*) were drawn, in which an individual's position in society in relation to others and to the sovereign was determined exactly. It was almost impossible to change from one estate to another, and the question of a person's rank and station was regarded as one of utmost importance. There was not only a visible distinction between nobles and commoners regarding "horses and clothes, houses and gardens, women and servants" (Boyce, 1968, pp. 44 f.), but also between the different grades of

nobles themselves. The division of Sasanian aristocracy into several grades, including the *šahryārān* (local dynasties), *wāspuhragān* (princes), *wuzurgān* (chiefs of the most important aristocratic families), and *āzādān* (other noblemen), is already attested in the third century inscriptions of Šābuhr I at Hājjiābād and of Narseh at Paikulī. Only as a man belonging to one of these higher grades of nobility was it possible to attain access to any state or court office of importance.

Although differences in class or rank in connection with the estate to which a man belonged are not explicitly mentioned in the legal material, they were of considerable importance in legal practice, if we take all the available sources into consideration. It seems that in theory law, being based on religion, was regarded as valid for all Zoroastrians regardless of their position in society. But there can be no doubt that even in legal theory Sasanian jurists had a completely different conception of the "legal person" than the one prevailing in today's Western societies. Their idea of "legal personality" does not correspond by any means to our modern Western image of "free individuals," having equal rights regardless of race, gender, religious beliefs, and status in the community. On the contrary, the legal rights and duties of individuals were defined by their position in society, which could be changed only in the rarest cases. Taking all the available material into consideration, we may distinguish five basic criteria determining the legal status of individuals (see Macuch, forthcoming[a]):

(1) their position either as freeborn men and women (*āzād*) or as slaves (*anšahrīg*, *bandag*);

(2) their status either as citizens of Iran (*mard ī šahr*, *ādehīg*, *ēr*) and subjects of the king of kings (*šāhān šāh bandag*) or as foreigners (*an-ēr; uzdehīg*);

(3) their religious beliefs as Zoroastrians (*weh-dēn*) or infidels (*ag-dēn*);

(4) their rank and station (*gāh*) in the community as members of the nobility or as commoners;

(5) gender and age (placed together here, since women and underage children are often mentioned together with regard to restrictions concerning persons with limited legal capacity).

This division according to birth, rank, religion, citizenship, gender and age is fundamental for the construction of the "legal subject" in Sasanian law. Only a

freeborn man of age, who was a subject of the king of kings (*šāhān šāh bandag*) and a citizen of *Ērānšahr*, confessing Zoroastrianism and belonging to a noble family, was considered as a person having full legal capacity (*tuwānīgīh*). All other persons were by no means without rights, but these were restricted to certain areas, as will be seen below.

Being defined as a "legal subject" the Zoroastrian freeborn man, belonging to nobility, was nevertheless bound with numerous rules and regulations to the traditions and customs, religious duties, and the social structure of the family, and also remained as an Iranian citizen "bound" to his sovereign, the king of kings (*šāhān šāh bandag*). A man came of age at fifteen years and became a person *sui iuris*, attaining full legal capacity with the right to participate in the religious and social life of the community, capable of contracting and dealing with legal transactions. He had as many important duties as rights, especially with regard to his descent group (*paywand, nāf, tōhmag*), since descent groups were the basic political, religious, and economic units, in a society completely different in this respect from our own. As the legitimate son (*dādestān-pus*) of a *pater familias* he stood in the direct successorship of the father and was the inheritor not only of his property (*xwāstagdār*), but also of his name (*nām-burdār*) and place in the descent group, his standing in the community, and his rank (*gāh*) in the social estate (*pēšag*). The mature son assumed all the rights and duties of the head of the household (*kadag-xwadāy*) at the latter's demise, including the responsibility for his debts (*tōzišn ī pidarān*), 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*). One of the most important tasks the son also inherited from the father as the new head of the household was guardianship (*sālārīh*) over the women and minors in the family (Macuch, 2003[b]).

All other persons mentioned in the list above had only limited legal capacity with varying rights according to their position in society. Commoners belonging to the lower estates were not allowed to acquire estates and house-property from the nobility, neither by marriage and inheritance, nor by acquisition, thus having only limited rights as legal subjects. This excluded a large part of the population from the possibility of undertaking transactions of property with the aristocracy (Boyce, 1968, p. 44; Macuch, 1995, p. 160, and forthcoming[a]). Foreigners (*an-ēr*) and infidels (*ag-dēn*) were accepted as "subjects of law" when they had concluded a contract with a Zoroastrian or were involved in litigation with an Iranian citizen, but were not conceded the

same rights as Zoroastrian Iranians in the field of family law and succession. The position of freed slaves depended on the grade of their manumission, as will be seen below in the passage on slaves.

Persons under guardianship (*sālārīh*) with limited or no legal capacity encompassed women, minor children, and slaves. In contrast to the adult man, the woman remained under the legal guardianship of a man not only as a minor, but during her whole life. She never gained full legal capacity, since she was, as a rule, first under the *manus* of her father, brother, uncle, or any other relative who became family guardian (*dūdag-sālār*), later under the guardianship of her husband in the marriage "with full matrimonial rights" (*pādixšāy*-wedlock). As in the case of underage children, women were also represented by their guardians in legal matters and remained dependent persons (*personae alieni iuris*). There were, however, exceptions to this regulation regarding widows who did not marry again (a rare case) and women who had entered a so-called "consensus marriage" (see below under Family Law).

Slaves had theoretically no legal capacity, being "objects of law," but could be accepted in practice under specific circumstances as legal subjects, capable of entering litigation and giving testimony. As in other societies of late antiquity, Sasanian law distinguished exactly between the legal status of a freeborn man and a slave. A large number of slaves were occupied in three major areas (Macuch, 1981, 79-84 [no. 15], 1988[a] and forthcoming[a]):

(1) In the household (*dūdag*, *kadag*). These slaves belonged to the property (*xwāstag*) of the *pater familias* and could be bequeathed together with their children as part of the "total estate; undivided inheritance" (*abarmānd*) of a man to his heirs.

(2) In agriculture. Slaves working in large estates (*dastgird*) and also in smaller units had the status of so-called *glebae adscripti*, persons "bound to the soil." They belonged to the land on which they worked and were alienated together with the animals if the land was sold.

(3) In fire foundations. Fire temples were often foundations with extensive property at their disposal, consisting usually of farming land, orchards, vineyards, etc. Unfree persons working on this property were called *anšahrīg ī ātaxš* "slaves of the fire" (not to be confused with the *bandag ī ātaxš* or *ādurān bandag* "servant of the fire," who was no slave in the sense of an "unfree

person"!). We have hardly any details on their lot, but there is evidence that also non-Zoroastrians (in this instance Jews) could be employed as fire-slaves (Macuch, 2002[b], pp. 126 f.).

We may assume that the lot of slaves working in these three areas differed considerably, although all slaves were regarded as "unfree" persons in legal theory. A slave belonging with his family to a household would have probably been treated better in most cases than one bound to the soil or working on a large estate. Slaves were treated legally as "objects of right," since they could be sold, leased, bequeathed, transmitted as gifts, and be used as security for loans, but their human faculties were not completely ignored by law. They could have a double legal status, as objects and persons, which placed them on a somewhat different level from other material objects. This becomes quite clear in litigation, where the slave's human faculties were allowed and the slave was accepted in court as a legal person, as a witness and a defendant, although legal theory takes another stand and is clearly opposed to accepting the testimony of a slave.

The most frequent and unambiguous term for "slave," *anšahrīg*, lit. "outlander," draws attention to the fact that slaves were originally persons who came from outside the Iranian community as captives of war or by other means of abduction. Slavery could also ensue by being born to a parent who was a slave or by debt bondage resulting in enslavement or by selling freeborn children and other members of the family one could no longer maintain. The status of every person, whether freeborn or slave, was determined by the position of his parents, so that children of slaves were quite naturally regarded as slaves, whereas the position of a child born in a connection between a freeborn person and a slave had to be determined by law (see Macuch, 1993, pp. 27-31 [no. 2], and 2010). The third major cause for slavery, debt bondage, seems to have been one of the most frequent reasons for enslavement besides captivity. A debtor could offer a member of his family (one or several of his children) as a security (*pāyandānīh*) for a loan to the creditor (see below under Law of Property). The technical term used for the person in debt bondage was *tan*, lit. "body, person," which does *not* yet denote his status as a slave. Enslavement followed only in case the debtor was unable to fulfil the terms of the loan contract on time and the person serving as security was transferred into the ownership of the creditor. Outright selling of members of one's family as slaves seems to have been far more restricted legally. The Lawbook accepts only one reason, which is a state of emergency in

which a guardian is no longer able to maintain the persons under his guardianship with food and other necessary utilities due to a shortage of supplies called *adwadād* (see Macuch, 1993, pp. 247-51 [nos. 6 and 9] and 2005[b], pp. 378 f.).

A slave could belong as joint property to different masters at the same time in Sasanian law. These owned the slave together jointly as shareholders (*bahr-xwēš*), each one of them having an "ideal portion" at his disposal, which could be one-half, one-third, or even one-tenth of the slave. If one of the shareholders manumitted the slave, then he was liberated to the extent in which he belonged to that master; that is, he was half free or one-third or one-tenth of his person was regarded as free accordingly. A slave could also be completely manumitted, acquiring legal capacity to a certain extent with the right to own property and undertake obligations on his own. Manumission changed his position in the community by making the freedman a "subject of the king of kings" (*šāhān šāh bandag*), who could not be enslaved again (at least according to one school of legal thought). A slave belonging to a non-Zoroastrian could also acquire freedom by converting to Zoroastrianism. In this case the Zoroastrian community was even obliged to help the slave buy himself free (by a loan or other means). On the other hand, a Zoroastrian was not allowed to sell his slave to a non-believer: both the seller and the buyer were treated legally as thieves and punished accordingly (Macuch, 1988[a]).

Kinship structure and family law (marriage, inheritance and succession). The organization of Zoroastrian kinship is of fundamental importance not only for understanding the rules governing family law, marriage, and succession, but also the basic social and political structure of Sasanian Iran. This was a completely different society from our own, based on descent groups which were the most influential political, religious, and economic units. Seen from the perspective of kinship structure, Sasanian family law was thoroughly Zoroastrian. None of the basic regulations concerning marriage and inheritance would have been possible in a society which did not expressly confess Zoroastrianism. This becomes quite clear by comparing the content of the Lawbook of Jesubōxt, which was originally written in Pahlavi for the Christian community of Pārs and translated into Syriac (the only version which has come to us), with that of the Sasanian Lawbook. Jesubocht's work is completely based on Sasanian law with the sole exception of family law and the law of succession, which was far too Zoroastrian to be adapted by the Christians and is expressly refuted by Jesubōxt (Sachau, 1914, pp. 30-41).

Although succession belongs to the category of property law today, certain aspects will have to be discussed within the framework of family law, since the complex regulations regarding marriage, succession, and inheritance cannot be understood correctly without taking the numerous cross-connections between these fields into consideration.

The most common explanation of "kinship" in Social Anthropology defines it simply as the relations between "kin," persons related by real, putative, or fictive consanguinity. The definition of those who count as "blood" kin varies, however, considerably in different societies and cultures. A consanguine must not necessarily be a "real" blood relative as we usually understand the term today, that is, a person genetically related to another, but can be defined as one by the society (and consequently its legal system). The *pater*, or legal father, for example, need not necessarily be the *genitor*, or actual biological father. The most obvious case, known in almost all societies, is that of the adopted child who is not related by blood to his parents and siblings, but assumes the role of the child with all its legal implications. No society treats the question of consanguinity in an arbitrary fashion, but assumes its own theory and has its own reasons to encourage the development of certain fictive consanguineous relationships.

Sasanian kinship is full of presumed consanguineous bonds to an extent that can be quite confusing. The main reason for the overwhelming number of fictive ties, to be described below, lies in the obligation to ensure the continuity of a man's lineage (*nāmburdārīh*) on the one hand and the performance of religious ceremonies in his name (*nāmgānīh*) on the other, while keeping the inherited property of a lineage intact. These obligations were also known in other ancient societies, but none of these went so far as to develop such an elaborate system of constructed ties as that of Sasanian Iran in order to avoid the extinction of a lineage. Zoroastrian kinship may also be distinguished from almost all other systems by the complete lack of an incest taboo. One of the major principles of kinship in other societies, that is, the rule that primary kin should not mate with each other, does not apply to Sasanian society, leading to various options in the field of family law and marriage, which would be forbidden in a system observing the ban on incestuous relationships (Macuch, 2003[b]).

The Sasanian structure of kinship was of fundamental importance for those estates and classes of society that had property at their disposal, in any case the aristocracy and the clergy, probably also the town-dwelling middle classes

belonging to the third estate. The basic unit was the family (*dūdag* or *kadag*), consisting in its most simple form of a *kadag-xwadāy*, master of the house or *pater familias*, and his wife from an arranged marriage of the *pādixšāy* type (marriage with full matrimonial rights), who had the title *kadag-bānūg* (*mater familias*) and was under the guardianship (*sālārīh*) of the husband. The children from this alliance were the father's legitimate offspring (*dādestān-pus* "son according to the law" and *dādestān-duxt* "daughter according to the law") and his legal successors (*yōhē pasčaēta*). The *pādixšāy*-marriage was the regular type of arranged matrimony with legal implications which were defined exactly in jurisprudence. These included, besides the guardianship (*sālārīh*) of the husband over the wife, her duty to obey the husband (*tarsāgāhīh*) and the legitimacy of the children, and the entitlement of the wife to maintenance and to a certain portion of the husband's inheritance corresponding to the share of a son (Macuch, 2005[a]). Another important obligation of the *pādixšāy*-wife was to give birth to children for her husband even after his death, especially in the case that he should remain childless. The technical term used to designate the wife in this case is the expression *ayōgēn* with the legal meaning of "intermediary successor" (Macuch, 1981, pp. 104 f., and 1985, pp. 189 f.; on the most likely etymology see Klingenschmitt 2000, pp. 225 f.). The "intermediary successor" was regarded as a link between a man and his legal successor (who had to be a male) and had the obligation to produce a son for the deceased. In order to fulfil her task, the *ayōgēn* entered a marriage of a completely different type, called *čagar* (with the technical meaning of "auxiliary marriage"), with a man inside or outside her lineage. None of the regulations determining the *pādixšāy*-marriage was valid for *čagar*- wedlock: the wife was not under the guardianship of the husband, had no right of maintenance, and did not inherit from him. Moreover, the *čagar*-husband was only the *genitor* of the children from this type of marriage, but never their legal father or *pater*. The children from the *čagar*-marriage all belonged legally to their fictive *pādixšāy* father, for whom the offspring had been conceived.

The term *ayōgēn*, or "intermediary successor," applied not only to the wife or wives in the *pādixšāy*-status, but was used with reference to two other groups of women belonging to the lineage of a *pater familias*, his unmarried daughters and sisters (Macuch, 1985 and 2003[b]). These women all could put their reproductive capacities into the service of their lineage. If a man died without leaving male offspring, then either his wife or his daughter or sister was engaged as "intermediary successor" with the task of procuring at least

one legal successor for the husband, father, or brother. Here we are confronted with a mass of complicated juridical constructions, defining the legal status of the persons involved as exactly as possible. The obligation of the *pādixšāy*-wife to act as *ayōgēn* was laid down in the marriage contract, but in the case of the daughter or sister serving as an "intermediary successor," a "fictive" incestuous (*xwēdōdah*) marriage of the *pādixšāy*-type with the father or brother was legally constructed. The legal position of the *ayōgēn*-daughter or sister was automatically that of a wife in the *pādixšāy*-status, that is, her children were legitimate sons and daughters of the father or brother with full rights of inheritance and succession.

The complex rules of marriage, inheritance, and succession can only be understood correctly in the context of the Zoroastrian concept of life and fertility and its encouragement of endogamous alliances. Three main types of marriage were known. Besides the two forms already mentioned above—the arranged marriage with "full matrimonial rights" (*pādixšāy*) and the "auxiliary marriage" (*čagar*)—a third type, the "consensus marriage" (*xwasrāyēn*), could be concluded (for which the expression *gādār kardan*, lit. "to take a lover," was used). The "consensus marriage" came into being when a man and woman decided to marry without the consent of the woman's guardian (usually her father or brother). As in the *čagar* type, the wife was not under guardianship of the husband and was neither entitled to maintenance, nor to inheritance (Macuch, 1981, pp. 89-95, no. 31, and 1985). This form of wedlock differs fundamentally from the other two in that it does not fit into the underlying pattern of Sasanian matrimony, except in those rare cases in which a girl's guardian failed to arrange a marriage for her when she reached adolescence. All three types of matrimony could be contracted with no time limit or for a specific period of time, which had to be stated exactly in the marriage contract. They could also be concluded either as endogamous (*xwēdōdah/xwēdōdād*) or as exogamous alliances (*bayaspān*) (Macuch, 1993, 182, no. 3). Temporary marriage was known, but it was *not* a separate and distinct type of marriage in Sasanian law. It was an inherent part of the kinship system with its own specific function in the Zoroastrian family. This also seems to be the reason why no special technical term was used for this type of marriage, since each of the three legal forms of matrimony mentioned above could be contracted with a specific time limit. By allowing temporary marriages, the reproductive capacities of the females in a lineage could be used to the fullest possible degree. If a woman remained married to one man her whole life, her fertility would be reduced to producing offspring for a

single man, since a woman could be married as a *pādixšay* wife only to one man at a time in full accordance with the patrilineal principle of marriage. Allowing legal temporary unions, on the other hand, made it possible to engage women in procreating offspring for several men in different phases of their lives. A woman could, for example, be engaged as an *ayōgēn* for her husband in a temporary marriage for an exactly limited period of time and could act as an intermediary successor for her father or brother in her natal lineage after the temporary marriage expired (Macuch, 2006).

Sasanian jurists distinguished exactly between direct successorship, which was the privilege of the legitimate son or sons, and intermediary succession, as described above. Although the legitimate daughters from a *pādixšāy*-marriage were only accepted as intermediary successors, they were also entitled to a certain portion of the father's inheritance (*bahr ī duxtīh* "portion of the daughter"), corresponding to one-half of a son's share. This was either handed out on the occasion of a marriage outside the descent group as a dowry (*pēšīgān-wāspuhragān*) or remained an undivided "ideal" (*a-baxt*) share of the total estate (*abarmānd*) left by the deceased if the daughter remained in her natal lineage by endogamy. The legitimate sons, on the other hand, stood in the direct successorship of the father and were not only inheritors (*xwāstagdār*) of his property, but also of his name and place in the descent group, his standing in the community, and his rank in the social estate. 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*) (Macuch, 2003[b] and 2005[a]).

According to the rule that no man should die without leaving at least one male legal successor, Sasanian jurisprudence also developed another important method of securing the continuity of a man's lineage if the deceased had no sons. The first method, already mentioned above, was to engage the wife, unmarried daughter, or sister of the deceased as an "intermediary successor" (*ayōgēn*). The second method of securing a man's male offspring became another unique, characteristic institution 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 person engaged as *stūr* could be a man, who could put his reproductive capacity in the service of several different men, or a woman, who could be *stūr* only for one man in correspondence with the marriage laws that allowed a woman only a single “marriage with full matrimonial rights” at a time in order to insure the position of the children as legitimate successors of their *pater* or legal father (Macuch, 2005[a]).

A considerable amount of a man’s property was expressly set aside for the purposes described above. The hereditary property or total estate (*abarmānd*) of a deceased *pater familias* was usually transferred into the possession of the heirs as a whole (*pad xwāstagdārīh*), giving them “ideal” shares (in specific cases the property could be partitioned, *pad bahr*). It consisted of three major parts: (1) the portion that was conveyed “to the ownership” (*pad xwēšīh*) of the heirs, denoting the private property of the children, wives, and other possible inheritors; (2) property “for the soul” (*pad ruwān*), denoting certain possessions and pious endowments, founded for the cult of a dead man’s soul, which was bound to the purpose defined by the founder; and (3) property “for the (institution of) substitute succession” (*pad stūrīh*) designating that part of the estate set apart for the purpose of ensuring the continuation of the name and lineage of the master of the house by installing a proxy (*stūr*) who would produce an heir and legal successor for the deceased. The heirs had a title to full ownership only in the case of property *pad xwēšīh;* in all other cases only a right of usufruct.

Sasanian law did not know the legal concept of primogeniture (there was no *primus agnatus* as in Roman law); therefore all the legitimate children of the deceased from a *pādixšāy*-marriage were entitled to receive a certain portion of his inheritance, which varied according to their gender (daughters received half the share of a son). In order to keep the property together (the most important part of which was real estate), the sons often entered into a partnership (*hambāyīh*) of co-inheritors or co-holders (*brād ī hambāy*) including also the daughters under certain circumstances (when they had to function as *ayōgēn* for their natal lineage). A joint partnership was one of the best possibilities to avoid the division (*baxtīgīh kardan*) of the property into

small units, especially if it was real estate. In a Zoroastrian community the siblings also had the additional option of concluding *xwēdōdah*-marriages in order to avoid splitting the inheritance, since the patrimonium of the daughter would remain within the family.

As a result of these complex regulations Sasanian kinship structure was hardly ever as simple as in the ideal case described above. The head of a household (*kadag-xwadāy*) could marry several wives of the *pādixšāy* type in order to ensure his progeny, besides taking wives in the *čagar* status and concluding marriages of the "consensus" type (*xwasrāyēn/gādār*). The offspring from the *pādixšāy* wives would all be his legitimate children (*dādestān duxt/dādestān pus*) with the right to inherit, direct succession being reserved for the males. The household could furthermore include children who were his natural issue (*frazand ī tanīgzād*) but belonged legally to another man, since they were procreated by the former as proxy (*stūr*). The offspring of a *pater familias* could therefore consist of various categories of children with completely different rights (Macuch, 2003[b]). Moreover, the *kadag-xwadāy* could be a co-holder (*brād ī hambāy*) of property inherited from his legal father, having entered a joint partnership with his siblings, thus belonging to a large descent group kept together by numerous ties.

Law of property and obligations. Although no theoretical definitions have been transmitted, the exact use of legal terminology indicates that jurists dealt with matters in the field of property and obligations according to clearly defined concepts of a highly abstract nature. In the context of property law the expression *xwāstag* "object of value, property, wealth, money, thing" was also used in the specific sense of "legal object, thing" (in contrast to "legal subject") to denote generally all objects of a right, without taking the specific qualities of the object in question into consideration, comparable to the Roman *res*. The term *xwāstag* is used with three meanings: (1) in the general sense of "property, wealth, object of value," including the complete mass of an inheritance as a whole (*abarmānd*); (2) as a technical term "object, thing" with a range of meaning that encompasses legal objects of a completely different nature, such as immovables (real estate, a piece of land, canals, houses, etc.) and movable property (goods and chattels, cattle, slaves, money, etc.); (3) in the wider sense of "object at issue, matter in dispute" to denote everything that could be a subject of litigation (all attestations of the term should be taken into consideration; Macuch, 1993, pp. 713 f.).

Every "legal object" or "thing" (*xwāstag*) was again divided into two main

parts: the "substance, capital, principal, base" (*bun*), on the one hand, and its "fruit, increase" (*bar*) or "income, interest" (*windišn*, *waxš*, *waxt*), on the other hand. This could mean that the "owner of the substance" (*bun-xwēš*) could be a different person from the one who utilized the product or fruits, the "owner of the increase" (*bar-xwēš*). This division of "things" into *bun* and *bar* was extremely important for the development of a number of complicated institutions which were founded on the basic difference between ownership or possession of "substance" and "income." A man's inheritance, for example, was divided into different categories which could be kept apart according to the form of ownership of the "substance" and the "income" (see Family Law above and Macuch, 2005[a]).

Moreover, Sasanian jurists distinguished exactly between "ownership" (*xwēšīh*), that is, a person's right to dispose of a certain object according to his will, and "possession, holding, tenure" (*dārišn*), that is, 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; for attestations see Macuch, 1993, pp. 700 and 715). This differentiation resembles the distinction in classical Roman law between *dominium* or *proprietas* "ownership," on the one hand, and *possessio* "possession, holding, tenure," on the other, although the use of the Iranian terms does not correspond exactly with the definition of these technical expressions in classical Roman law. 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. *Dārišn*, on the other hand, only denotes immediate possession, which can, but does not necessarily, include ownership. The distinction between these two categories played a very important part in the forming of Sasanian property law, even though we must bear in mind that the Roman idea of "absolute ownership" was not known. In the latter, *dominium* "ownership" was defined as an "absolute right" or "real right," which could be defended on this ground against the claims of others, whereas "possession" (*possessio*) only expressed that a person had physical control over a certain property, no matter whether he was entitled to it or not. In Sasanian law "ownership" was regarded as a "relative right," depending on the ability of the potential owner to prove his legal title (*dastwarīh*) to the object in question by specifying the manner in which it had come into his ownership (*čē ēwēnag xwēšīh*), if the title was contested by another party. The party having a "better title" to ownership (to be proved by official documents, reliable witnesses, by the testimony of the

legal predecessor, etc.; see Macuch, 1988[b]) was regarded as the legal owner. This right could, in turn, be contested by a third party providing evidence of a more reliable kind (for example a document of ownership sealed not only by witnesses to the transaction, but by official authorities regarded as far more reliable; see Macuch, 1999). Ownership as a relative right does not necessarily point to a generally lower level in legal theory, since Sasanian jurists also developed abstract concepts in the field of property law that were closer to the reality of distribution of property than those of Roman law.

Three types of property were distinguished according to the manner of acquisition: (1) possessions which had been passed down from the ancestors (*abarmānd ī pidarān*); (2) property assigned to a person (or several persons or family) by a third party (*dād*); (3) property acquired by a person himself (*handōxt ī xwēš; handōzišn ud windišn*). The two latter means of acquiring property through gifts and donations, on the one hand, and by earnings, revenue and interest, on the other, were called collectively *mad ud rasēd*, lit. "(property that) has come and shall be attained," a technical term comparable to the *bona adventitia* of classical Roman law, designating every kind of surplus income (*bar*) not belonging initially to the first category of property inherited from the forefathers (Macuch, 1993, pp. 156-69; see also 2007).

Each of these categories could include different forms of property, that is, movable property (e.g., goods and chattles, cattle, slaves, money) and immovables (e.g., real estate consisting of farming land, houses, irrigation canals, mills, orchards, vineyards) which could be subject to different legal regulations with respect to "substance" and "income." We can divide these varieties of property and proprietory rights according to this distinction into the following groups:

(1) Hereditary possessions of a descent group, held as joint-property or partitioned among the heirs, the substance of which had to be kept intact for the next generation. The characteristic feature of this type of property is the right of the successor(s) to the income (*bar*), without being entitled to dispose of the substance (*bun*), except in cases of extreme emergency if debts left by the deceased *pater familias* could not be repaid by the income of the estate alone. The following expressions are used in this context (see also Macuch, 1993, pp. 413-32, and 2005[a]):

(a) *pad xwāstagdārīh* "in possession of the estate as heir and successor." The *xwastagdār*, lit. "possessor of the estate," with the technical meaning of "heir,

inheritor," was—as the literal meaning implies—not the owner, but only the "possessor" or "holder" of the total estate (*abarmānd*) inherited from the ancestors, encompassing movable property as well as immovables. The term designates the successor of the head of a household (*kadag-xwadāy*), replacing the deceased as the person responsible for all hereditary possessions as a whole. All persons to whom the deceased had bequeathed property, including fellow-citizens (*mard ī šahr*) outside the family, were denoted as *xwāstagdār*. The heir or heirs were obliged to accept all rights and duties of a *pater familias*, including the obligation to pay for debts and liabilities of succession. Ideally the substance of family property belonged collectively to all the heirs (*xwāstagdārān*), including unmarried daughters or daughters in an incestuous marriage, and was inalienable. They became shareholders of the estate with "ideal" (*a-baxt*) portions of the "substance" and the right to dispose of their individual shares of the "income" in correspondence with their portion of the joint property.

(b) *pad abarmānd* "as undivided inheritance." The expression is used in the same context with similar implications as *pad xwāstagdārīh,* but emphasizes a different aspect. Whereas the latter term stresses the position of the heir(s) as possessor(s) (not owners!) of the estate, *pad abarmānd* focuses on the form in which the property is bequeathed, namely as a whole, giving the heirs joint proprietory rights. Since *abarmānd* designates the "total (i.e., undivided) estate" of the *pater familias,* the term implies that hereditary property is held as joint-property by the heirs, giving them "ideal" (*a-baxt*) (lit. "undivided") shares and, as in the former case, the right to alienate the "income," but not the "substance."

(c) *pad bahr* "in portions," or *pad ǰud bahr* "in separate portions." In contrast to *pad abarmānd* the term indicates that the inheritance of a person has been (or should be) divided among the heirs, giving each of them his or her share. Ideally the principal or substance (*bun*) of family property, especially real estate, was to be kept together. 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. In practice, however, there were many cases in which inherited property had to be partitioned (*baxtīgīh kardan*) among family members and could both be disposed by will or initiated by the heirs. Each heir receiving a portion remained, however, only a "possessor as heir" (*xwāstagdār*) with the right to the "income," not to the "substance," which had to be preserved for the next generation.

(2) Personal assets and private property of individual members of a household, referred to with the expression *pad xwēšīh* "in ownership." Whereas the expressions listed above are only variants denoting only entitlement to the income of hereditary property, in contrast *xwēšīh* designates ownership, which gave the owner a title to both the "substance" (*bun*) and the "increase" (*bar*) of this property. The term denoted a person's exclusive right to keep this property apart from the joint-property of the family, to enjoy and to dispose of it according to his will. Property owned "in ownership" could consist of goods transmitted to a person as a gift (*dād*), could be acquired property (*mad ud rasēd*) or also belong to the category of inherited possessions (Macuch, 2005[a]).

(3) Property set apart for a specific purpose, which could not be changed by the members of a descent group. The characteristic feature of this type of property is that the heirs only had the right of usufruct, but could neither alienate the principal, nor alter the dedication to the purpose set down by the founder. Two types of property may be distinguished in this category, using Sasanian terminology:

(a) *pad stūrīh* "for substitute succession, in trust." A large part of the property acquired by the head of the household could be expressly reserved for the institution of "substitute succession" (*stūrīh*), described in the section on Family Law above. This category of property could also include all kinds of possessions, but these had to be large enough to provide an income over a long period of years for the maintainance 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 "substance" of property "in *stūrīh*" was inalienable and the proxy (*stūr*) only had the right of usufruct, but—in contrast to the former categories—no access whatsoever to the principal of *stūrīh*-property.

(b) *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 a *pater familias*. They were called *xwāstag ī ruwān* "property of the soul" and could be spent for rites and ceremonies to be performed for the individual after his death as well as other charitable acts which were also considered to benefit the soul of the deceased according to the purpose laid down by the founder. This property could be set apart for financing objects of public utility (roads, bridges, irrigation canals) or establishing pious foundations, such as fire-temples, which were furnished

with income-producing property, called *xwēšīh ī ātaxš* “ownership of the fire” or *xīr ī ātaxš(ān)* “property of the fire(s).” The principal of such an endowment could not be alienated, only the income from foundations of the profitable kind (*barōmand*) was spent on its upkeeping, 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 (see Macuch, 1993, pp. 255-66, and 1991).

(4) Immovable property granted in perpetuity (as a fief?) in exchange for military service. The grant, consisting mainly of land belonging to the crown, was given to the *aswārān* “horsemen,” described as warriors belonging to the higher ranks of Sasanian society who were exempt from paying taxes, so that they could finance their military equipment (*pad ēmōzan hangārišn* “to be taken into account for the equipment”). The horsemen had lifetime possession of the grant, but they were regarded only as holders, not owners, and the land alloted to them was returned to the royal treasury (*šāhīgān*) after their demise. The heirs (*xwāstagdār*) could also have conditional possession of this land belonging to the crown, but had to pay taxes yearly corresponding to the value of the equipment of the deceased horseman until the grant was returned to the royal treasury (Macuch, 2005[c], pp. 97 f.).

(5) Leasehold property held for a specified term. The object of a lease (*tāg*) was mainly immovable property. Although in these cases the general expression *xwāstag* “object, thing” (see above) is used, we may assume from the context of the few passages in the Sasanian Lawbook that land and real estate yielding income (e.g., farming land, orchards, vineyards) were granted as a lease. The grant could confer the right of possession for a limited time or in perpetuity (comparable to the Roman agricultural lease called *emphyteusis*), requiring the payment of a periodic sum or rent (Macuch, 1981, p. 172). According to the wording of the contract two possible forms of payment of rent could be agreed on for the period of the lease: (a) a fixed sum which was independent of the amount of income (*waxt*) achieved by the leaseholder; (b) a fee based on the amount of income (or harvest) brought in by the leaseholder. A basic sum was fixed in the second type of leasehold as well, but it also took the possibility of crop shortfall into consideration, whereas in the first type the leaseholder was obliged to pay the fixed sum even in the case of crop failure without reduction (Macuch, 1993, pp. 485-88).

(6) Assets held for a stipulated term by a creditor as a security for a loan or debt with the permission of the latter to have the fruits (*bar*) in lieu of interest. Sasanian law knew this kind of mortgage, called *grawgān(īh)*, which corresponds to the Roman *antichresis*, giving the creditor access to the income of the object given as security. Both immovable property (e.g., farming land, real estate, orchards, vineyards), yielding income, and movable property, especially slaves and animals, whose labor and offspring were used, could be stipulated as *antichresis* (*pad grawgānīh*) until the debt was repaid and the mortgage discharged (Macuch, 1993, pp. 282-98).

Property could be transferred for a specified term or in perpetuity by the means of sale, barter (*guharīg*), lease, donation, acquisition by marriage, or inheritance, as security for a loan (as pledge, lien, deposit, or mortgage). Apart from transmission by right of inheritance (*pad abarmānd*), which was subject to different regulations (see Family Law above and Macuch, 2005[a]), the transfer of all other proprietory rights "by conveyance" (*pad dād*) took place in a formal procedure regulated exactly in Sasanian law. The background of this exact procedure seems to be twofold: (1) the realization that there is a fundamental legal difference between conveying an object for a limited period (e.g., as a loan, pledge, deposit, or other form of security), hereby transferring only the right of possession, or, on the other hand, conveying ownership to another person with a full title; (2) the idea that a contract in the widest sense of the word, that is, an agreement between two parties, came into being. The agreement consisted of an offer made by the person willing to transfer an object (the offeror or transferor) which was accepted by the other receiving party (the offeree). The type of right being transferred (possession or ownership) and the conditions of the transfer had to be specified in each individual case, but the procedure conveying these rights was formalized and generalized, encompassing all kinds of property (land, real estate, houses, silver and gold, money, slaves, and a person's personal income are mentioned in this context).

Several conditions had to be fulfilled in order to conclude a binding contract and to transfer property legally (Macuch, 1993, pp. 450-62):

(1) The transferor or conveyor (or donor) had to have the right to dispose of the object, corresponding to the manner and extent to which he himself was entitled (*čē ēwenag xwēšīh*). He could either name the recipient directly or delegate this right to a third party, giving him the power of agency to the extent mentioned in the declaration.

(2) The recipient or acquirer (or donee) had to have the right of acquisition, that is, he had to have legal capacity according to the rules set above (see Law of Persons). Legally dependent or subordinate persons (women, underage children, slaves) and persons with limited legal capacity (members of the lower estates, foreigners, infidels) were subject to different regulations, depending on their status. In the case of women, underage children and slaves usually the legal guardian (*dūdag-sālār*) or master (*xwadāy*) had to give his consent to the transfer. (There were, however, cases in which the deed was also concluded when a woman—the bride—had agreed to the offer, as in the marriage contract, see below.)

(3) The offeror or transferor declared in the presence of three witnesses (or of the head of the Zoroastrian Church, the *mowbedān mowbed*) his will (*kāmag*) to convey a certain object to the recipient under the condition that the latter declare his approval (*sahišn*) of the transaction, using the formal words *ān ī tō sahēd* "that which you approve of" (or as variants *ān ī tō kāmēd; ān ī tō pasandē* or *ān ī tō abāyēd*; see Macuch, 1993, 454, no. 2). If the declaration was recorded without witnesses the written document was valid after having been sealed by the transferor (Macuch, 1981, p. 11).

(4) The transaction was only valid if the recipient (offeree or donee) gave his consent (*sahišn; padīrišn*) to the transaction, by accepting with the words *dōšīd* "it is sanctioned" or *kāmag dōšīd* "the will (of the transferor) is sanctioned" (Macuch, 1993, p. 454, no. 1) or *andar abāyēd* "it is necessary" (for attestations see Macuch, 1993, p. 686). If he was not willing to accept the transfer, he could refuse with the words *andar nē abāyēd* "it is not necessary" (Macuch, 1993, 163, no. 4). Transfer of property only took place in the former case, when the recipient publicly declared his acceptance, called *padīrišn pāydāgēnīdan* "to reveal acceptance," by which a binding contract between offeror and offeree was concluded (attestations see Macuch, 1993, p. 726).

The acceptance of an offer did not have to take place immediately. In verbal agreements and contracts of sale and barter three nights were conceded to both the offeror and the offeree in which the former could withdraw his offer and the latter could think it over before accepting the sale or barter. The seller (or barterer) was compelled to guarantee that he had the right to sell and to even defend the title of the buyer (or recipient) in court, should a third party claim possession of the acquired object. As the "legal predecessor" (*dastwar*) of the buyer he was obliged to appear in court and give testimony in favor of the latter in a procedure which was also known in ancient Roman law (see

Macuch, 1988 and below, under Law of Procedure). Indirect evidence indicates that larger transactions involving real estate were documented and sealed by witnesses to the transaction or official authorities, and that documents with the seals of the latter were regarded as the most reliable evidence in cases of dispute. A land certificate document belonging to the estate, in which all the assets of the premises were set down exactly, including slaves and animals who worked on the land and belonged to the estate, was also transmitted to the new holder or owner (Macuch, 1981, p. 11, and 1999).

The procedure described above consisting of offer and acceptance is also attested in the clause on the dower (or marriage-portion, settlement) in the model Pahlavi marriage contract (clause no. 7; see Macuch, 2007). We may therefore conclude that this was the standard procedure for different forms of agreements, including various types of verbal and written contracts, though this is not expressly stated in the sources. It is well known that keeping agreements was regarded as one of the most important obligations of the Zoroastrian, stated already in the Avesta. The fourth chapter of the *Vidēwdād* offers a simple description of agreements, dividing them into six categories, two according to their form (verbal or by handshake) and four according to the value of security offered as an equivalent (a sheep, an ox, a man, and a piece of land). By the late Sasanian period, law of contract had developed into a far more complex field, dealing not only with verbal agreements, but especially with written contracts (*pašt*, *paymān*). Three main issues are discussed in the Lawbook: (1) the exact interpretation of the wording and content of an agreement; (2) means of ensuring the fulfillment of contractual obligations by offering various forms of security; (3) enforcing the fulfillment of obligations by taking legal action.

The first issue, the exact interpretation of an agreement, was one of the main tasks of the jurist whose work was to find out the intention of the parties involved, especially if the phrasing of a contract was ambiguous. This was often the case despite the use of precisely prescribed formulae in the contract, due to the general inaccuracy of language (see Macuch, 2005[c]). The second topic concerning the ensurement of contractual obligations was another main concern of jurisprudence which had reached a high level of development by the late Sasanian period.

The law of obligations knew different forms of security for a loan or debt (*abām*), which can be divided into two basic types:

(1) Forms of security conferring recourse to particular funds or property, such as mortgage, pledge, lien, deposit (Macuch, 1993, pp. 224-39 and 282-98). Sasanian law distinguishes between two forms of mortgage, the conveyance of land, real estate, or an assignment of chattels, giving the creditor (or mortgagee) a title to the mortgaged property if the loan is not repaid by the debtor (or mortgagor) as agreed, called *āgraw*. In the *āgraw* type the substance or principal (*bun*) is given as mortgage. The other type of mortgage, giving the creditor (or mortgagee) only access to the fruits (*bar*) of the property, instead of interest until the loan is repaid, is called *grawgān* "antichresis." Not only land and real estate could be mortgaged as *antichresis*, but also slaves, animals, trees, and other kinds of property yielding some sort of income or fruit. The "pledge" or "pawn," called *graw*, usually refers to chattels and designates an object (including animals and slaves) given to the creditor (or pledgee, *grawdār*) by the debtor (pledgor) as a security for a loan. We may conclude from the meticulous use of terminology referring to these three different forms of security (*āgraw*, *grawgān*, and *graw*) that they were distinguished exactly as various means of ensuring the repayment of a debt and its due interest in accordance with the provisions put down in the loan agreement. Besides the pledge, lien, and mortgage, the deposit (*ǰām*) also was known, consisting of an object (or money) given to the creditor as a security for the performance of a loan contract.

(2) Forms of security permitting a creditor to look to a third party for satisfaction, such as guarantee, indemnity and debt bondage (Macuch, 1993, pp. 391-95). A loan could be safeguarded by providing one or several sureties (*pāyandān/pāyēnān*), who could be either primarily liable for the debt according to an agreement comparable to the indemnity or be appointed as security with a secondary obligation to make payment only if the principal debtor was in default (as in the guarantee). The surety or warrantor could either oblige himself by using the prescribed formula "I am warrantor of such-and-such a man with respect to this money (= loan)" or be appointed by the debtor ("I have made such-and-such a man warrantor with respect to this money [= loan]"). In cases using either of these two formulae a guarantee was created, which obliged the warrantor only secondarily to settle the debt if the principal debtor failed to do so within the period laid down in the contract. The guarantee was conditional on the principal debtor's default, that is, the surety could only be held responsible for payment if the former failed to repay the debt on time. If, on the other hand, several debtors in a partnership (*hambāyīh*) agreed to act at the same time as co-warrantors (*ham-*

pāyandān/ham-pāyēnān), they had joint liability with regard to the debt and the creditor could demand full payment from any of the persons under contract, who had in turn the right of regress to the other joint debtors. Another formula was prescribed if the warrantor wished to create a primary obligation, giving the creditor direct access to payment: "Because of my warranty for such-and-such a man I will pay you so-and-so much money." With this phrasing an agreement comparable to the indemnity was concluded, allowing the creditor to demand payment from the surety directly without first suing the original debtor. A third form of personal security was known, which may best defined as debt bondage. A debtor who had no other property could offer a member of his family, especially one or several of his children, as surety (*pāyandānīh/pāyēnānīh*). If the creditor accepted the security, using the formula "I have accepted so-and-so *pad tan* (lit. 'as a body') from you (= the debtor)," then this family member was given into debt bondage. The term *pad tan* "as a body, as a person" designates this special form of warranty, meaning that the person appointed as surety was obliged to serve the creditor personally and become part of his property if the principal debtor failed to settle the debt.

Criminal offenses. As already described under *Law and Religion*, Sasanian law does not distinguish theoretically between civil and criminal law. Being based on religion, Zoroastrian law only differentiated between "sins (or offenses) regarding the soul" (*wināh ī ruwānīg*) and "offenses (or sins) regarding adverseries" (*wināh ī hamēmālān*) (Macuch, 2003[a], p. 172 ff.). The former category comprised all offenses against religious norms which could endanger the soul of the delinquent (a few examples are given above) and were subject to punishment by religious authorities. The latter category of "offenses regarding adversaries" denoted all torts leading to disputes between men, which could be taken to court, including both civil and criminal cases. Many criminal offenses involving injury were not necessarily prosecuted by the State, as is the case today, but had to be brought to court by the offended or injured party in order to be punished. We may, however, conclude from the terminology referring to the correct legal procedure in this context that certain acts denoted as *margarzān* "worthy of death" were mainly prosecuted in official courts. These were prominently crimes endangering the social and religious order of the State and are listed in the Lawbook as "blasphemy, apostasy" (lit. 'enmity towards the gods', *yazdān dušmenīh*), "crimes against the sovereign, rebellion" (lit. 'enmity towards the sovereign', *xwadāy dušmenīh*), and "heresy" (*ahlomōgīh*), which were obviously regarded as capital crimes

subject to the procedure described below in criminal cases (Macuch, 1981, p. 217). According to the Letter of Tansar, punishments for criminal offenses were divided into three main categories, comprising transgressions (1) "of the creature against his Lord . . . when he turns from the faith and introduces a heresy into religion"; (2) "of the subject against the king when he rebels or practices treachery or duplicity"; (3) "between fellow-men when they act unjustly one to another" (Boyce, 1968, p. 42). These three categories correspond exactly to the ones described above, which would be, using Sasanian legal terminology: (1) *yazdān-dušmenīh* and *ahlomōgīh*, (2) *xwadāy-dušmenīh* and (3) *wināh ī hamēmālān.* Not surprisingly, the category described as "sins pertaining to the soul" (*wināh ī ruwānīg*) is missing in this typology of crimes, since offenses of this type did not fall into the jurisdiction of the Sasanian courts, but were minor misdemeanors subject to the rulings of religious authorities.

Unfortunately not many details are transmitted in the Sasanian Lawbook on criminal law, since the compiler was far more interested in discussing complicated civil cases, but the Zoroastrian categorization of offenses and punishments is well attested in other sources (mainly *Vidēwdād*, chapter 4; *Dēnkard* 8, the chapters on wounding [*zaxmestān*] and injury [*rēšestān*]; several passages of the *Frahang ī ōīm-ēk*, *Šāyist nē šāyist*, and the *Zand ī xwurdag abestāg*). However, since these texts deal mainly with religious matters, there is no differentiation between offenses of the *ruwānīg* and *hamēmālīg* type, and we are not informed on the correspondence between the threefold categorization according to the law of the State mentioned above and the religious typology of sins and penalties. Furthermore, the information given in these texts differs especially in the number and sequence of the smaller offenses. The minor sins most frequently mentioned are called *srōšočarnām* (< Av. *sraošō.carana-*), originally the designation of the "whip" with which corporal punishment was carried out (on the degree of sin, see Kotwal, 1969, pp. 22 f.), and *framān* (lit. "order") or *andarz framān* (lit. "instruction in the will") which originally denoted the sin of not carrying out a promise given to a person dying or going to another country (Tavadia, 1930, p. 13). Both terms are used (among other expressions) to designate the lowest degrees of minor torts, which could include various kinds of misdemeanors categorized in this grade, originally punished by executing corporal punishment. By the Sasanian age corporal punishment was largely replaced by fines (*tāwān*) or recompense (*tōzišn*), corresponding to the grade of the offense. In the case of the more severe crimes, originally designating various

grades of intended assault and bodily injury, most sources seem to agree as to their sequence and give the following list of offenses, leading from the smallest to the most severe delinquencies (see, e.g., Tavadia, 1930, p. 27):

1. *āgrift* (< Av. *āgərəpta-*)*:* originally the "seizure" of a weapon with the intention of striking another person. It was the offense of "threatening" another person with bodily injury, which is defined as holding a weapon and lifting it four fingerbreadths from the ground (Klingenschmitt, 1968, n. 699; Kotwal, 1969, p. 68). The expression became the technical term for the smallest grade in the hierarchy of severe delinquences.

2. **ōwirišt/*ōyrišt* (< Av. *auuaoirišta-*)*:* originally "turning down" or brandishing the weapon with the intention of injuring another person (Klingenschmitt, 1968, n. 700; Kotwal, 1969, pp. 68 f.).

3. *arduš* (< Av. *arəduš-*)*:* originally touching lightly with a weapon, a light "stroke" or "blow," which does not cause severe bodily harm (Klingenschmitt, 1968, n. 701; Kotwal, 1969, p. 69).

4. *xwar* (< Av. *xᵛara-*)*:* originally a "wound" which cuts into the flesh to a certain depth (half a finger or one-fifth of a short span; see Klingenschmitt, 1968, n. 702; Kotwal, 1969, p. 69).

5. *bāzā* (< *bāzā-zanišnīh;* Av. *bazūjata-*)*:* originally the offense of "striking on the arm," by which the hand is broken, causing a wound of three fingerbreadths (Klingenschmitt, 1968, n. 703; Kotwal, 1969, p. 69).

6. *yāt* (< Av. *yāta-*)*:* an elliptical expression; originally the offense of injuring the foot (the organ of "walking") by breaking it, causing a wound of three to four fingerbreadths (Klingenschmitt, n. 704; Kotwal, p. 69).

7. *tanāpuhr* (corresponds to Av. *tanū.pərəθa-* and *pəšō.tanū-* "whose life is forfeited"): the designation for the highest offense which is "atoned for with the body" (Klingenschmitt, 1968, n. 709; Kotwal, 1969, p. 69; on the reading *tanāpuhr* see Cantera, 2004, pp. 57 f.).

The most grievous crime of all, called *margarzān* "worthy of death" in Pahlavi texts (missing in the list of terms taken from the Avesta), occurred when a *tanāpuhr* offense was not atoned for in the course of a year. The system derived from the Avesta was rather complex, leading from the mere attempt to cause injury, hereby taking the attitude of the delinquent into consideration

(in the first two offenses), to concrete acts of assault and bodily harm (offenses three to six) and, finally, the most severe crime, deserving the death penalty. This categorization not only took the degree of the offense into consideration, but also the frequency with which it was committed. Every time an offense was repeated it was regarded as the next higher one, no matter of its nature: a repeated *āgrift* became an **ōwirišt/*ōyrišt*, which, when repeated, in its turn became an *arduš*, etc. (*Vidēwdād,* chap. 4). Furthermore, there is evidence that (at least in certain cases) even the intention of the delinquent was taken into consideration. The terms *bōdōzed* (< Av. *baoδō.jaiti-* "striking consciously, willfully, intentionally") and *bōdōwaršt* (< Av. *baoδō.varšta-* "conscious, willful deed") both denoted offenses which were committed deliberately and intentionally, whereas *kādōzed* (or *kēdōzed*; the Avestan equivalent is not transmitted) designated offenses by which injury was caused by "negligence" (Macuch, 2003, pp. 180-82, 187-88).

By the Sasanian period the expressions in the list of delinquencies had become abstract, technical terms by which different grades of offenses, regarded as criminal acts, were categorized. These acts did not necessarily involve bodily injury, but could also be sins belonging to the *ruwānīg* category mentioned above (such as disregarding Zoroastrian purity rules, for example sullying water and fire, having intercourse with a menstruating woman, not feeding beneficent animals). An elaborate system of fines was derived, replacing to a large extent corporal punishment (on the fines see Kotwal, 1969, p. 115; Tavadia, 1930, p. 28). The highly abstract nature of this system in the Sasanian period becomes quite obvious when also good deeds (*kirbag*) are evaluated according to the same grades which originally designated offenses (see Tavadia, 1930, p. 14).

It is not clear to which extent this system of torts and fines, developed in religious circles, was adapted by the Sasanian courts. The term used for the most grievous crime is always *margarzān* (never *tanāpuhr*) in the Sasanian Lawbook. It refers to criminal offenses belonging to the three categories named above (crimes committed against the gods, against the king, and against other fellow-men) and is dealt with as a crime in its own right, not one derived from an original *tanāpuhr.* But there are references to the terms *bōdōzed* "intentional injury," and *kādōzed* "injury by negligence," and a *xwar ī šahr* "(offense of) *xwar*-(degree) of the State" is also mentioned (unfortunately without explanations; see Macuch, 1981, pp. 144, and 230, no. 27). Furthermore, there is plenty of evidence that, besides fines, in criminal cases

also corporal punishment was executed. In the context of theft (*duzīh*) a punishment called *drōš* (< Av. *draoša-* "mutilation, maiming, brand"), was applied, which probably consisted of branding the face or cutting off a member (e.g., the nose), hereby stigmatizing the delinquent visibly (see references, Macuch, 1993, p. 702; compare Boyce, 1968, pp. 42 f.).

We may assume that the system of offenses and fines described above was mainly used with regard to Zoroastrians who were encouraged to repent and atone for their sins. Apostates from Zoroastrianism and heretics who were not willing to renounce their faith were certainly not punished by the means of fines. The Acts of the Christian Martyrs bear testimony to extremely cruel methods of torture and execution which were probably also used with regard to Manicheans and other converts from Zoroastrianism (see Colditz, 1998, pp. 30 f.). They convey an impression of the methods of corporal punishment applied in *margarzān* cases, which seem also to have been generally used with regard to severe crimes (such as sorcery and highway robbery, see Boyce, 1968, pp. 47 f.).

Law of procedure. A great number of cases discussed in the Sasanian Lawbook seem to have been taken directly from the practice of the Sasanian courts of law. The author of the Lawbook, Farroxmard ī Wahrāmān, refers himself to several transcripts and other court documents he used as sources for his compilation (see Macuch, 1993, p. 14). But although even a whole chapter is dedicated to officials engaged in the judiciary (*kārdārān*; see Macuch, 1981, pp. 188-93), many details on the legal procedure in Sasanian law-courts are scattered throughout the text, due to the unsystematic character of the Lawbook. Here again the procedure in civil and criminal cases will have to be reconstructed by taking all the available material into consideration (for references to the following description, see Macuch, 1981, pp. 13-20).

Both state officials and religious authorities were engaged in the administration of justice in the courts. The highest religious dignitary, the head of the Zoroastrian church, *mowbedān mowbed*, was at the same time the foremost judicial authority, whose judgement was regarded as infallible and incontestable. His judgement was even more reliable (*ēwar*) than the oath (*war*), which was otherwise one of the most important means of producing evidence, and his testimony as a witness was decisive. Besides the *mowbedān mowbed* another high official, the *šahr dādwarān dādwar* "the judge of judges of the State," is also mentioned, whose competences are not described, but who must have been the head of judges (*dādwar*) employed by the state

(Macuch, 1993, p. 652). The Lawbook refers to four types of judges with the title *dādwar*, two of which belong to different stages of appeal: the "lesser" or "junior judge" (*dādwar ī keh*) and the "greater" or "senior judge" (*dādwar ī meh*). The former presided over the court of the first instance, whose judgement could be overruled by the "senior judge" if one of the disputing parties in a civil case did not agree with the decision of the first court and gave notice of appeal. Although also other state officials, such as the *war-sālār* "supervisor of the oath," and the *frēzwān* "policeman, inspector," took part in the trial as informants, it was the duty of the judge to summon the parties, to gather the preliminary information necessary for taking legal action, to evaluate the evidence, and, finally, to give judgement (see duties of the judge, Macuch, 1981, pp. 188 f.). The wording of the other two expressions, *dādwar ī pēšēmāl* "judge of the plaintiff" and *dādwar ī pasēmāl* "judge of the defendant," indicates, that it was possible to submit a dispute to arbitration—a procedure which is still known in the case of conflicts relating to civil law in our own age. Although the terms are not explained, the construction leaves no doubt that these judges were chosen by the plaintiff and the defendant and that they were engaged as arbitrators with the duty to reach an agreement between the disputing parties. This procedure is probably a continuation of an age-old method of solving conflicts by arbitration, for which each of the conflicting parties could choose their "own spiritual master" (*rad ī xwēš*) to find an agreement and settle the dispute (see Macuch, 2002[a]).

According to the testimony of the Lawbook, the officials called *dādwar* were engaged in lower instances, whereas religious dignitaries, the *rad* and the *mowbed*, presided as judges in the courts of appeal up to the highest court, led by the *mowbedān mowbed* himself (Macuch, 1981, p. 19). According to the Acts of the Christian Martyrs, the king himself presided over criminal cases involving apostasy and high treason with the right to dictate the sentence (see Wiessner, 1967, pp. 162 f.). Since the Sasanian Lawbook is mainly concerned with civil cases, we are far better informed on the procedure involving private disputes than criminal law, but a few divergences between the two are mentioned which will be referred to in the following description of the Sasanian trial (references in Macuch, 1981, pp. 16 ff.).

Legal proceedings were initiated by a suit brought forward by the plaintiff (*pēšēmāl*) against the defendant (*pasēmāl*), who was summoned to appear in court at a specified place and time. The suit could involve a civil case (e.g., dispute over property, default of payment, non-performance of a contract) or a

criminal offense (such as fraud, cheat, theft, bodily injury), since misdemeanors of the latter kind were also subject to private prosecution. When the parties or their legal representatives (*ǰādag-gōw*), holding a mandate, appeared in court at the specified time legal proceedings could begin, which we can divide into three major stages: (1) establishing the identity of the parties involved; filing action on the part of the plaintiff and the statement of defense on the part of the defendant, (2) taking evidence, (3) pronouncement of judgement. The trial could be adjourned if the defendant in a suit regarding possession or ownership of a certain object requested that the seller of the object in question be summoned to court in order to defend him against the claim of the plaintiff and give testimony as his "legal predecessor" (*dastwar;* Macuch, 1988[b] and 1993, pp. 91-95). This procedure was also known in ancient Roman law in the institution of the *auctor* "legal predecessor, informant," the exact parallel to the Middle Persian legal term *dastwar*, which denoted both the original possessor of the purchased object and at the same time the defender of the buyer in a lawsuit. The *dastwar* was obliged to take part in the trial as a spokesman of the defendant, although he was not a lawyer or advocate, but only a layman who had the duty to guarantee that the object he had sold to the defendant did not belong to a third party.

In the first phase of the lawsuit the plaintiff stated his case in the presence of the judge (*dādwar*), keeping a distance of "three steps" (*sē gām*), after which the defendant gave his statement of defense, keeping the same distance. Both statements were put to writing in a record of court proceedings called *saxwan-nāmag* "transcript of statements." If one of the parties did not appear in court, the party that was present put an entry (*čak*) into the transcript that his opponent had "failed to come" (*nē āmad*). The transcript also recorded the presence of the party that had followed the summons with the words "he is taking legal action" (*kār rāyēnēd*). Not obeying an order to appear in court was regarded as an obstruction of justice (*azišmānd*), which was punished by an interlocutory judgement consisting of a fine or of a pledge equivalent in value to the object in dispute to be deposited until the trial was over. The expression *azišmānd* is the technical term for all kinds of "obstruction" which could be caused by both parties in the course of a trial, denoting not only the failure of a party to follow summons, but also various other acts demonstrating contempt of court. The cases transmitted include deviating statements of two representatives of the same party in court, deliberately interfering with the outcome of legal proceedings by the attempt to seize the object of dispute from

the opponent before judgement is given, refusal of a party to take an oath, and other defaults of pleading. Every obstruction was punished by an interlocutary judgement, and if any of these acts of default were committed three times by the same party, the judge gave final judgement against the defaulting party and the trial came to a close (see also Macuch, 1993, pp. 118-20).

In the second phase of the trial, consisting of taking evidence, the judge first had to decide which one of the parties would have to carry the burden of proof (*onus probandi*). According to the cases transmitted in the Lawbook, the exact phrasing of a contract could be decisive in certain cases. The judge also had to determine which one of the parties should take an oath (the technical term used here is *wehdādestāntar*, lit. "better decision" or "better justice," referring to the party whose oath would be most valuable for reaching a just decision; see Macuch, 1993, pp. 130 ff., and forthcoming [b]). Judicial evidence was based mainly on witnesses (*gugāy*) and written documents, which bore the seal of witnesses or officials of the state. In the latter case, the judge had to evaluate the validity (*wāwarīgānīh*) of the documents by examining the seals attached to them. Documents bearing the seals of state officials were generally regarded as better proof than those bearing the seals of witnesses to a certain transaction (see Macuch, 1997 and 1999). If the main evidence was based on the testimony of witnesses, at least three were required, with the only exception of state officials (*kārdār*) giving testimony in their field of expertise or the *mowbedān mowbed* as head of the judiciary. In these cases one witness sufficed. Refusal to give testimony was regarded as a grievous offense, comparable to the "deceitful verdict" (*drō wizīr*) of a judge, and giving false testimony (*zur-gugāyīh*). It was a *margarzān* offense to be punished accordingly.

Other important means of proof were the oath (*war*), derived from the ordeal, and circumstantial evidence. Different forms of the oath were known, which seem to have been still very close to the ordeal in the Sasanian trial, since the oath was not only a pronouncement swearing the truth of a statement, but was combined with a precise ritual which took place in a special place, called *xwārestān* "place of swearing," or *war gāh* "place of the oath," under the supervision of an officer called *war-sālār* "supervisor of the oath." The Lawbook mentions the names of various forms of oaths, such as the *war ī dēnīg* "religious oath," the *war ī pay nišān* "oath of tying the feet," and the *war ī pad sōgand* "oath of (drinking) sulfur," without describing the procedure, which was of course well known (Macuch, 1993, pp. 130 ff.; another type,

which involved pouring molten copper onto the breast of the accused to prove the truth of a statement, is also known from the ordeal of the famous religious authority of the fourth century, Ādurbād ī Māraspandān; see Macuch, 1987 with further references). The oath, consisted of a statement to be spoken by one of the parties, such as *ēdōnīh* "it (is) so" or *nē ēdōnīh* "it (is) not so," or *nē dānom* "I do not know," or *nē tō xwēš* "it (is) not your own," in combination with a certain ritual, to be performed by the oath-taking party which was recorded in a special transcript called *yazišn-nāmag* "record of recitation" or "transcript of oath-taking."

Circumstantial evidence obviously played an important part in the context of crimes "worthy of death" (*margarzān*), which were prosecuted by the State (involving major criminal acts against the Church and the State, such as apostasy, heresy, high treason; other crimes, such as sorcery, theft, highway robbery, and manslaughter, are also mentioned in this context). In these cases in the first stage of the trial another transcript, called *pursišn-nāmag* "record of interrogation" or "questioning," was taken down, in which not only crimes regarded as *margarzān* were recorded, but all other misdemeanors of the accused and also information regarding his reputation in the community. In short, the "record of interrogation" noted all available circumstantial evidence which could lead to the conviction of the accused. The sentence of the judge was documented at its end (Macuch, 1981, pp. 217-18; also 1999, pp. 98-100).

In cases concerning trivial matters (*čiš ī keh*) the judge could deviate from the procedure required in legal theory (*čāštag*) by giving judgement according to the discretion of the court (in a procedure following legal practice, designated by the phrase *ō kardag kard ēstēd*). If the plaintiff, however, insisted on a "reliable" procedure (*pad ēwarīh*), the case had to be heard according to canonical law (it was "withdrawn from the procedure according to judicial discretion," *az kardag hišt ēstēd;* Macuch. 1981, pp. 141 ff.). The judge also had to take the particular circumstances of a case into consideration before giving his verdict. In an interesting example, not the woman, who had committed theft after being abandoned by her husband during her menstruation, received the punishment for theft (*drōš*), but the husband who was deemed responsible for her action (Macuch, 1981, p. 19).

After hearing the verdict of the judge, both parties had the right to either declare their consent with his judgement or to appeal to the next stage in the sequence of judicial authorities. The stages of appeal led from the lowest judge (*dādwar ī keh*) to the senior judge (*dādwar ī meh*), followed by the next higher

courts, presided over by the *rad* and *mowbed*, up to the highest tribunal in presence of the *mowbedān mowbed* (or the king). The appellate tribunals, however, did not overrule interlocutary judgements of the first court.

Transcripts and records of the trial were kept in an archive (*dīwān*), and the parties had to pay a sum equivalent to a certain percentage of the value of the object in dispute to the court. The costs of a trial could also be paid out of property belonging to fire foundations (*ātaxšān* or *xīr ī ātaxš*) and be claimed back from the parties (presumably with high interest; Macuch, 1981, pp. 19 f.).

Influence of Sasanian law on other legal systems. Evidence in the Babylonian Talmud, in Syriac Christian legal texts, and in Islamic law indicates that Sasanian jurisprudence had a tremendous impact on different legal systems and that it not only influenced those communities, with which it was contemporary (Jewish law in the Talmud and Nestorian Christian law), but also left its mark in the Islamic *šarīʿa* (on Sasanian legal terminology in the Talmud, see Macuch, 1999 and 2002[b]; on pious foundations in Sasanian and Islamic law, 1991 and 1994; on temporary marriage, 1985 and 2006). Interesting parallels may also be found between Byzantine and Sasanian law (Macuch, 2004). Work in this comparative field is still very young, but it seems that Zoroastrian law, which had been prevalent in Iran for many centuries, was far more influential in forming legal systems in its environment than hitherto assumed and that certain features continued to exist in the form of customary law in Iran long after the Muslim conquest, forming its particular variant of Islamic jurisprudence.

On the Sasanian legal system see also the following entries: BARDA AND BARDADĀRĪH; CHARITABLE FOUNDATIONS; INHERITANCE; MĀDAYĀN Ī HAZĀR DĀDESTĀN; MARRIAGE.

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