

## Observations on the Sasanian Law-Book in the light of Roman legal writing

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The Sasanian Law-Book or *Mādayān ī Hazār Dādestān* (the book called *A Thousand Judgements*, hereafter MHD)<sup>1</sup> is the only legal work of the Sasanian period to survive in its original form and language, Middle Persian (Pahlavi).<sup>2</sup> The closest other such work is the *Corpus Iuris* of Jesubokht, an eighth-century compilation for Christians living under Islamic rule, known from a Syriac translation, but apparently deriving from texts of Sasanian date.<sup>3</sup> Otherwise, the Sasanian legal context has left its mark upon the Babylonian Talmud, in

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<sup>1</sup> There are two editions of the MHD: 1) A. Perikhanian ed. and tr., and N. Garsoïan English tr., *The Book of A Thousand Judgements: A Sasanian Law-Book*, Persian Heritage Series 39 (Costa Mesa CA and New York, 1997). This contains a Middle Persian text in Latin-script transcription with a facing English translation (based on a Russian translation). There are few notes, but an extensive glossary. 2) M. Macuch, *Rechtskasuistik und Gerichtspraxis zu Beginn des siebenten Jahrhunderts in Iran: die Rechtssammlung des Farrohmard i Wahrāmān*, Iranica 1 (Wiesbaden, 1993) and *Das sasanidische Rechtsbuch Matakdan i hazar datistan (Teil II)*, Abhandlungen für die Kunde des Morgenlandes 45.1 (Wiesbaden, 1981). These contain a Middle Persian Latin-script transliteration, with each chapter followed by a German translation and very full, primarily legal commentary. The 1981 volume contains the second (Anklesaria) portion of the text, the 1993 volume the rest.

<sup>2</sup> For a brief survey of the limited Sasanian legal literature, see M. Macuch, 'Pahlavi literature', in R.E. Emmerick and M. Macuch eds., *The Literature of Pre-Islamic Iran*, Companion Volume 1, A History of Persian Literature 17 (London, 2009), 116-96, pp. 185-90.

<sup>3</sup> E. Sachau, 'Corpus juris des persischen Erzbischofs Jesubocht', in *Syrische Rechtsbücher III* (Berlin, 1914), 1-201. Note also a section from Gabriel of Basra's ninth-century ecclesiastical collection: S. Brock, 'Regulations for an association of artisans from the late Sasanian or early Arab period', in P. Rousseau and M. Papoutsakis eds., *Transformations of Late Antiquity: Essays for Peter Brown* (Farnham and Burlington VT, 2009), 51-62.

which Persian civil law is severally opposed and imitated.<sup>4</sup> Useful material can also be extracted from the surviving portions of the Sasanian Avesta/Zand codification.<sup>5</sup> Further, some aspects of Sasanian family law continued to be used among Zoroastrians under Islamic rule, and so are explained in later Middle Persian works of the ninth and tenth centuries, such as the *Dādestān-ī-Dēnīg* and the various *Rivāyats*, which are usually in the form of a dogmatic ‘question and answer’ format (*erotapokrisis*).<sup>6</sup> Christian martyr acts can also be mined with caution to provide evidence for aspects of criminal law and procedure and Sasanian administrative structures.<sup>7</sup> Of complementary documentary evidence, however, there is very little, beyond a single authentic (if late) Pahlavi marriage formula<sup>8</sup> and a scattering of later seventh-century (mostly *c.* 660-680) letters and documents reflecting a Sasanian afterglow.<sup>9</sup>

The MHD is preserved in a single early seventeenth-century manuscript (written by just one scribe some time before 1637), discovered in two parts and

<sup>4</sup> See, for instance, Y. Elman, ‘Marriage and marital property in Rabbinic and Sasanian law’, in C. Hezser ed., *Rabbinic Law in Its Roman and Near Eastern Context*, Texts and Studies in Ancient Judaism 97 (Tübingen, 2003), 227-76 and ‘Middle Persian culture and Babylonian sages: accommodation and resistance in the shaping of Rabbinic legal tradition’, in C.E. Fonrobert and M.S. Jaffee eds., *The Cambridge Companion to the Talmud and Rabbinic Literature* (Cambridge, 2007), 165-97; M. Macuch, ‘An Iranian legal term in the Babylonian Talmud and in Sasanian jurisprudence: *dastwar*’, in S. Shaked and A. Netzer eds., *Irano-Judaica VI: Studies Relating to Jewish Contacts with Persian Culture Throughout the Ages* (Jerusalem, 2008), 126-38.

<sup>5</sup> E.g. M. Macuch, ‘The Hērbedestān as a legal source: a section on the inheritance of a convert to Zoroastrianism’, *Bulletin of the Asia Institute* 19 (2009), 91-102.

<sup>6</sup> Macuch, ‘Pahlavi literature’, pp. 142-6. For versions in English, see M. Jaafari-Dehaghi, *Dādestān-ī-Dēnīg, Part 1*, Studia Iranica cahier 20 (Paris, 1998) and A.V. Williams, *The Pahlavi Rivāyat Accompanying the Dādestān-ī-Dēnīg*, 2 vols. (Copenhagen, 1990) (hereafter Dd and PRDd). For a useful study comparing some aspects of the MHD with later texts, see B. Hjerrild, *Studies in Zoroastrian Family Law: A Comparative Analysis*, The Carsten Niebuhr Institute Publications 28 (Copenhagen, 2003).

<sup>7</sup> For the mining of such texts, see for instance C. Jullien, ‘Contribution des Actes des Martyrs perses à la géographie historique et à l’administration de l’empire sassanide’, in R. Gyselen ed., *Contributions à l’histoire et la géographie historique de l’empire Sassanide*, Res Orientales XVI (Bures-sur-Yvette, 2004), 141-169 and in R. Gyselen ed., *Des Indo-grecs aux Sassanides: données pour l’histoire et la géographie historique*, Res Orientales XVII (Bures-sur-Yvette, 2007), 81-102; J.T. Walker, *The Legend of Mar Qardagh: Narrative and Christian Heroism in Late Antique Iraq* (Berkeley, 2006), 117-120.

<sup>8</sup> Dated 1278. See M. Macuch, ‘The Pahlavi model marriage contract in the light of Sasanian family law’, in M. Macuch, M. Maggi and W. Sundermann eds., *Iranian Languages and Texts from Iran and Turan: Ronald E. Emmerick Memorial Volume*, Iranica 13 (Wiesbaden, 2007), 183-204.

<sup>9</sup> See most recently D. Weber, *Berliner Pahlavi-Dokumente: zeugnisse spätsassanidischer Brief- und Rechtskultur aus frühislamischer Zeit*, Iranica 15 (Wiesbaden, 2008); also P. Gignoux, ‘Les comptes de Monsieur Friyag: quelques documents économiques en pehlevi’, in R. Gyselen ed., *Sources pour l’histoire et la géographie du monde iranien (224-710)*, Res Orientales XVIII (Bures-sur-Yvette, 2009), 115-143.

totalling 75 folios (150 pages), but even so incomplete.<sup>10</sup> Further, the original order of the manuscript in the larger part (55 folios) has been disrupted, and despite some surviving original page numbers, cannot be restored in full. Even where the sequence is known, there are often intervening folios missing. The situation is made even more difficult by the fact that the surviving chapter numbers are themselves additions to the manuscript (albeit almost certainly by the scribe himself), but with several chapters left unnumbered. Both main editions of the MHD generally keep the current manuscript page order rather than trying to perform an uncertain palingenesis. These modern editions also use two separate page sequences to reflect the bi-partite discovery.<sup>11</sup> While this conservative approach is understandable, it can make using either edition and keeping track of changes between chapters and pages extremely perplexing. From the start, therefore, the manner of the survival of the MHD has not made study of it at all easy.

It is my intention, nonetheless, to give some account of the content and nature of the MHD, its author and the Sasanian legal context as far as it can be illuminated. I claim no special expertise in Sasanian affairs and know little Persian of any period (beyond some curses taught me by my father!),<sup>12</sup> so can only approach the source material in translation. However, I hope that there is virtue in introducing this much neglected legal text to a wider audience and offering some general observations informed by my knowledge of Roman legal history. Thus I will illustrate various features by offering, where appropriate, contrasts and parallels with Roman law and legal writings. This is not because I regard Roman law as the norm against which to measure Sasanian law, but rather because, given Sasanian dearth, there is at least a wealth of near-contemporary Roman legal material to provide food for thought, and because it seems natural to seek to compare 'the two eyes of the earth',<sup>13</sup> the two great empires of late antiquity. Further, Roman law itself provides a variegated background with different types of text prevalent at different times during the period matching the Sasanian empire's existence. The latter's early period coincided with the final efflorescence of classical juristic writing, and its later period with the high point of imperial codification. As we shall see, it is perhaps Rome which is anomalous, for the Zoroastrian bedrock of much Sasanian law suggests that

<sup>10</sup> Twenty folios were purchased by T.D. Anklesaria in 1872 and published in facsimile in 1912; the other 55 folios came into the library of M.L. Hataria, being published in facsimile in 1901. Both sets of folios have ended up together in the same library in Bombay.

<sup>11</sup> Thus the references used here cite the pages of the longer Hataria portion prefaced by the abbreviation MHD [1-110], with MHDA [1-40] for the Anklesaria portion. To avoid confusion, I use Arabic numerals for the page references, but Roman numerals on the rarer occasions when I cite the chapter numbers.

<sup>12</sup> My late father, James Vincent Corcoran, O.B.E. (1922-2006), worked as a civil engineer at Bandar Mashur near Abadan between 1947 and 1949. The photograph used for this paper was taken by him during a trip across south-western Persia in 1948.

<sup>13</sup> Khusro II to Maurice, according to Theophylact Simocatta, *History* IV.11.2, M. and M. Whitby tr., *The History of Theophylact Simocatta* (Oxford, 1986), p. 117.

Sasanian legal thought was closer in manner to aspects of the Jewish and Islamic legal traditions.

The MHD is divided up into chapters with headings. At least most of the sequence between chapters XVI and LIV seems to be present, plus V-VIII.<sup>14</sup> By good fortune the opening two pages also survive (MHD 79-80), which give us the book's title and its author's name: respectively *A Thousand Judgements* and Farrakhmard son of Vahram.

This preface and the initial chapter which follows set out the author's ideology in addition to his name. We do not know much of Roman juristic prefaces, but what little we can tell suggests that they were short, practical and to the point. Thus the third-century jurist, Modestinus, opens his work on excuses to escape tutorships as follows:

Herennius Modestinus to Egnatius Dexter. I send you a commentary which I have written entitled 'Excuses from Tutelage and Curatorship', which appears to me most useful. I shall do what I can to make the exposition of the problems clear, translating technical terms into Greek, although I know that such translation is not particularly suitable. In the course of the work, I will include the original terms of provisions where they are required so that by providing both the text and the commentary, we shall provide both what is necessary and what is useful.<sup>15</sup>

Farrakhmard writes very differently and is worth quoting *in extenso*. His preface reads:

In the name of Hormizd, Lord of all... This book is 'A Thousand Judgements', which examines only in their very essence the greatness, piety and merits of people, whosoever they be, as a result of their zeal. This book is a weapon of the creator's power, to rout 'the Lie'<sup>16</sup> through omniscience, for the re-establishment of his rule, for the regulation of creation, for the removal of enmity, for the final establishment of the immortal truth and all-powerfulness of light. So great a text has been given into the keeping of the human race that gods and men should be blessed to the end of time for its beneficial existence. This is a repository of the bases of the wisdom of creation, of discernment and of prudent consciousness... (MHD 79.3-11).<sup>17</sup>

<sup>14</sup> Perikhanian, *Book of a Thousand Judgements*, pp. 186-7 (MHD 76.3) mistakenly prints the chapter number as XLVII, when it should read VII. Thus we can infer that MHD 73 contains ch. V, with the numberless title at MHD 74.12 being ch. VI and that at MHD 77.4-5 ch. VIII. See Macuch, *Rechtskasuistik und Gerichtspraxis*, pp. 8-9.

<sup>15</sup> *Digest* 27.1.1.pr.-3; see also Gaius on the Twelve Tables (*Digest* 1.2.1) and Hermogenian from his *Epitomes of the Law* (*Digest* 1.5.2). See the discussion by S. Corcoran, 'The publication of law in the era of the tetrarchs: Diocletian, Galerius, Gregorius, Hermogenian', in A. Demandt, A. Goltz, and H. Schlange-Schöningen eds., *Diocletian und die Tetrarchie: Aspekte einer Zeitenwende*, Millennium-Studien 1 (Berlin and New York, 2004), 56-73, pp. 59-63.

<sup>16</sup> For 'the Lie', compare DB (Darius at Bisitun) chs. 10, 54-55 and 63-64, and DPd (Darius at Persepolis) ch. 3: A. Kuhrt, *The Persian Empire: A Corpus of Sources of the Achaemenid Period* (London and New York, 2007), pp. 143, 148-9 and 487.

<sup>17</sup> The English versions offered here are abbreviated, adapted and tidied from the English

The first chapter, entitled ‘The value [of religion] and the limits of knowledge’, then reads:

The most useful education for men concerns the things in this material world containing their body that serve the spiritual principle and soul, as well as those things in which the increase is in accordance with the law. The gods are the highest bastion for creatures struggling for righteousness as is clarified by religion. And with the help of knowledge from religion, it is possible to reach perfection through every manifestation of understanding, through all knowledge and capacity to discern, and through activity. Then the respect found in religion as regards claims and judicial investigation carried out with awareness is praised by the divine word... And that portion which comes from the gods and the *manes* as against acquired property is to be considered the most important, beneficial and deserving of being learned, and the most determinant in all the aspects of the prosperity and exaltation of one’s name in the Great and Good. But he from whom the portion was stolen, and who as a result of the theft abandoned the spiritual teachings of the righteous and command of the gods, he perishes through his thoughts, words and deeds. It has been shown beyond question by others that he, who through his own striving and zeal, has obtained a share of immortality and eternal prosperity, who being versed in matters of religion and of the gods has made himself invulnerable to claims and judicial investigations through a knowledge of his obligations, and who has kept the form of his thought, speech and action pure in accordance with righteousness, is to be considered the more fortunate. And I Farrakhmard, son of Vahram, to make this prosperity more prosperous... [the text breaks off] (MHD 79.15-80.17).

Farrakhmard is clearly coming from a strong Zoroastrian viewpoint, so that justice and the legal system are an integral part of true religious practice. The righteous man is naturally righteous also in matters of law, and thereby invulnerable to undesirable litigation. In this Farrakhmard echoes the Persian kings, as with the words of that paradigm of kingship, Khusro I, as apparently preserved in the *Kārnamag ī Anoshiravan*:

... I have sought the course of action most pleasing to God, and have found that it consists in that whereby sky and earth is kept pure: that is to say, in equity and justice.<sup>18</sup>

Where such programmatic statements exist in Roman law it is with the great prefatory constitutions to the various parts of Justinian’s codification, where arms and the law provide the twin pillars supporting the state.<sup>19</sup>

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translation of Perikhanian/Garsoian to aid ease of reading. This may mask the obscurities and difficulties of the original.

<sup>18</sup> English version from M. Boyce, *Textual Sources for the Study of Zoroastrianism* (Chicago, 1984), p. 115, no. 10.3.5a. For the full text, see M. Grignaschi, ‘Quelques spécimens de la littérature sassanide conservés dans les bibliothèques d’Istanbul’, *Journal Asiatique* 254 (1966), 1-142, pp. 16-45.

<sup>19</sup> Thus *C. Imperatoriam Maiestatem*, the introductory constitution for the *Institutes*: ‘The Imperial Majesty must not only be adorned with arms, but armed with laws...’: P. Birks and

Unfortunately, after setting out his grand ideological stall, Farrakhmard's name occurs at the bottom of a page with no continuation, so that further details as to his identity, as well as to anything else he might have told us of himself and his work, are lost. We cannot even be sure of the extent to which he is the author rather than perhaps the editor of the text, although it seems most natural to take the occasional first person interventions in the work as being indeed those of Farrakhmard himself. One key point, however, is that further direct engagement with religious issues ceases. There is certainly plenty about Fire Temples and priests. But almost none of this is discussed in sententious theological language and the focus is on civil law. Despite the truncation of the introductory material, some guesses can be made about him on the basis of the work itself, as to who, where and when.

First the 'who?'. He must be a legal professional, trained in Avestan jurisprudence and entirely familiar with legal literature, court practice and his significant legal contemporaries and predecessors. He also had access to various documents and archives, although there is no indication that this is the specially privileged access of someone 'codifying' the law at the behest of a higher authority. Further, the book is achingly obscure: sentences are long and ambiguous, technical terms are never explained. This is a work written by a professional for other professionals and makes no concession for either student or amateur. Thus it is neither a textbook nor a treatise, but a reference-collection for a skilled practitioner. It is perhaps no surprise, therefore, that the law remains rather opaque to us, with the translations and interpretations of modern scholars often differing greatly. Given that one of the more frequently cited legal authorities is Vahram, I do rather wonder if that Vahram was his father, although he is nowhere described as such, and it is hardly an unusual name. That this specialism ran in the family, however, is certainly an attractive idea.

Next the 'where?'. He is based in the city of Gor, also known as Ardeshir-Khwarra ('Glory of Ardeshir'), near Firuzabad (its medieval and modern successor), the mighty circular city built by Ardeshir the Great near the site of his victory over Artabanus IV, which brought him the title of king of kings. It is in the ancient region of Persis (Fars), the Sasanian homeland, 120 km south of Persepolis, and was at this time capital of a homonymous province of Ardeshir-Khwarra.<sup>20</sup> Most of the surviving geographical references in

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G. McLeod, *Justinian's Institutes* (London, 1987), pp. 32-3.

<sup>20</sup> C.E. Bosworth, 'Ardašir-Korra', *Encyclopaedia Iranica*, online edn., 15 December 1986, <http://www.iranica.com/articles/ardasir-korra>. For administrative status, see R. Gyselen, *La géographie administrative de l'empire sassanide: les témoignages sigillographiques*, *Res Orientales I* (Paris, 1989), pp. 70-73. For a useful map, see C. Brunner, 'Geographical and administrative divisions: settlements and economy', in E. Yarshater ed., *The Cambridge History of Iran 3: The Seleucid, Parthian and Sasanian Periods*, 2 vols. (Cambridge, 1983), vol. 2, 747-77, pp. 748-49. For a wonderful aerial view, see D. Stronach and A. Mousavi, *Irans Erbe in Flugbildern von Georg Gerster* (Mainz, 2009), p. 82. For Ardeshir's nearby rock-reliefs

the MHD, especially those to documents, are to Gor, Ardeshir-Khwarra or to other places in Fars.<sup>21</sup> This also seems to be the perspective from which more distant places are viewed, on the few occasions when they occur.<sup>22</sup> In one instance, a document is recorded as being sent from Hormizd-Ardeshir (Ahwaz, in Khuzestan) to Gor.<sup>23</sup> A reference to 'Kurds' in fact denotes no more than 'nomads', common in the region of Fars, and no doubt very similar to the nomadic Bakhtiari of the region in more recent times.<sup>24</sup>

Finally the 'when?'. Most chronologically identifiable persons in the work lived in the fifth or sixth century; but the latest dateable reference is Year 26 of Khusro II, i.e. AD 615/6.<sup>25</sup> It is therefore presumed to be a work of the 620s or 630s and so not long before the Arab conquest. Since Fars was an area of strong resistance to the Moslems and Gor itself, indeed, was not taken until quite late, in 649/50, the MHD could even have been written in the 640s. It has sometimes been thought to represent a later redaction of a Sasanian work under Islamic rule, as has been supposed for some other key Middle Persian texts such as the *Vīdēvdād*, *Hērbedestān* and *Nērangestān* in the forms in which they currently survive.<sup>26</sup> The names of some persons mentioned match other rather later known Zoroastrians, but since so many names are quite common, such identifications cannot be made with certainty.<sup>27</sup> The most likely case in the MHD, because of his patronymic, is Zurvandad, son of Yuvan-Yam, matched to a figure of the ninth century, but this passage, even if correctly interpreted, could be an intrusive anomaly.<sup>28</sup> An isolated reference to mixed marriages and

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celebrating his victory, see Yarshater, *Cambridge History of Iran 3(2)*, plate 89; J. Wiesehöfer, *Ancient Persia from 550BC to AD650*, tr. A. Azodi, rev. edn. (London, 2001), plate XX.

<sup>21</sup> Thus MHD 5.5-8 (Gor, and Kazarun, nr Bishapur, west of Shiraz), 42.7 (A-Kh and Darabgerd), 70.11-12 (Darabgerd), 78.13 (A-Kh, and Khurram-Ardeshir, nr Khabr), 93.4 (Bishapur), 93.7 (Fars), 98.2 (Istakhr), 99.7 and 100.4 (A-Kh), 100.8-9, 12 (Gor/A-Kh), 100.14-15 (Khunafagan, between Firuzabad and Kuvar: Ibn al-Balkhi, *The Farsnama*, G. Le Strange and R. Nicholson eds. (London, 1921), pp. 134 and 163, cited by A.S. Shahbazi, reviewing Perikhanian's MHD in *Iranian Studies* 32 (1999), 418-421, p. 420); MHDA 19.13-15 (Kuvar, between Firuzabad and Shiraz, and Khabr, north-east of Firuzabad), 19.17 and 20.2 (Kuvar), 37.9 and 40.9 (A-Kh). See generally N. Miri, *Historical geography of Fars during the Sasanian period*, e-Sasanika 10 (Irvine CA, 2009).

<sup>22</sup> Thus Asuristan, i.e. Babylonia (MHD 72.7; MHDA 31.1-2); cf. the Tigris at MHDA 13.11; Gurgan, i.e. Hyrcania (MHD 44.3); Khorasan (MHDA 31.4).

<sup>23</sup> MHD 100.9-10.

<sup>24</sup> MHD 99.8-13; Brunner, 'Geographical and administrative divisions', pp. 751-2.

<sup>25</sup> MHD 100.7-10. According to his coinage, Khusro's last regnal year was 38 (627/8). See S. Tyler-Smith, 'Calendars and coronations: the literary and numismatic evidence for the accession of Khusrau II', *Byzantine and Modern Greek Studies* 28 (2004), 33-65.

<sup>26</sup> The Pahlavi *Vīdēvdād* must post-date the execution of Mazdak (528), while the *Hērbedestān* and *Nērangestān* post-date the calendar reform of Yazdegerd III (632). See Macuch, 'Pahlavi literature', p. 129.

<sup>27</sup> For dating anomalies, see Jaafari-Dehaghi, *Dādestān-i-Dēnīg, Part 1*, p. 24; F.M. Kotwal and P.G. Kreyenbroek, *The Hērbedestān and Nērangestān vol. III: Nērangestān, Fragard 2*, *Studia Iranica cahier* 30 (Paris, 2003), pp. 17-8. I remain sceptical of these identifications.

<sup>28</sup> MHD 36.9. The names Zurvandad and Yuvan-Yam each occur on their own in other

apostasy,<sup>29</sup> the latter in particular something dominant religions tend to reprove and punish with severity, has been thought to reflect perhaps the situation of beleaguered Zoroastrians losing converts to Islam. But in fact the attitude of the Sasanids to such matters fluctuated.<sup>30</sup> From time to time some Sasanian kings were, or were believed to be, rather well disposed towards Christians, or could even be rumoured to have considered converting.<sup>31</sup> However, the passage concerned seems rather to refer to sons as minors following their mother's religion in a mixed marriage or in a relationship perhaps not considered marriage at all.<sup>32</sup> This is not about adult religious choice. Everything else about the book suggests that the full panoply of the Sasanian state and its hierarchy was still functioning and that a broad range of judicial issues was within the competence of judges, not just those issues of family law allowed to Zoroastrians under Islamic rule. There seems no good reason, therefore, to doubt that this is in essence a genuine work from the last decades of the Sasanian empire, if perhaps with limited later interpolation.

The only other reference to conversion is in regard to slaves of Christians becoming Zoroastrians, which reads as follows:

It is written in one place that if a slave belonging to a Christian converts to the Good Religion and enters service with a Zoroastrian, the latter must return the price of the slave to his former master and free the slave, and the slave must compensate him for his loss. But if a slave does not enter service with a Zoroastrian and yet converts, he himself must repay his own price. (MHD 1.10-13)

This is an interesting point of contrast with parallel but harsher Roman rules with regard to Jewish ownership of Christian slaves. However, for the Roman legal position, we can trace its evolution over 200 years from Constantine to

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passages.

<sup>29</sup> MHD 44.6-8. Compare *Hērbedestān* 12.2-3 (F.M. Kotwal and P.G. Kreyenbroek, *The Hērbedestān and Nērangestān vol. I: Hērbedestān*, Studia Iranica cahier 10 (Paris, 1992), pp. 62-3), mentioning Christians and infidels, but not Jews nor, explicitly, Muslims.

<sup>30</sup> The Sasanian penalty for apostasy was apparently death at one time, and this is reiterated in ninth-century works, when it can hardly have been applied. See Dd 40.1-2, with the comments of Jaafari-Dehaghi, *Dādestān-ī-Dēnīg, Part 1*, pp. 168-9 and 232-3, and PRDd 7.2, with Williams, *The Pahlavi Rivāyat Accompanying the Dādestān-ī-Dēnīg*, pp. 9 and 125. However, this does not seem to have been the position in the late Sasanian period. See *Letter of Tansar* 16-17: M. Boyce, *The Letter of Tansar* (Rome, 1968), p. 42.

<sup>31</sup> E.g. Yazdegerd I: S. McDonough, 'A second Constantine?: the Sasanian king Yazdgerd in Christian history and historiography', *Journal of Late Antiquity* 1 (2008), 127-140; Hormizd IV: Boyce, *Textual Sources*, p. 115, no. 10.3.5b; Khusro II: N. Frye, 'The political history of Iran under the Sasanians', in Yarshater, *Cambridge History of Iran 3(1)*, 116-80, p. 166; G. Greatrex, 'Khusro II and the Christians of his empire', *Journal of the Canadian Society for Syriac Studies* 3 (2003), 78-88.

<sup>32</sup> Note that Syriac canon law in the Sasanian empire forbade Christian priests from marrying non-Christians: V. Erhart, 'The development of Syriac Christian canon law in the Sasanian empire', in R. Mathisen ed., *Law, Society and Authority in Late Antiquity* (Oxford, 2001), 115-129, p. 121.



Justinian, from a position banning Jewish owners from circumcising their non-Jewish slaves, to one where the non-orthodox of any description could not own Christian slaves at all. Thus Justinian states:

A pagan, Jew or Samaritan or whoever is not orthodox cannot have a Christian slave. The slave shall be liberated, and the owner is to pay 30 pounds of gold to the *res privata*. (CJ 1.10.2; c. 530)<sup>33</sup>

This issue extends to the ransoming of war-captives to save them from forced conversions, an important task for Christian bishops.<sup>34</sup> The MHD does refer to one Fire Temple ransoming its own *hierodouloi*, when captured by the enemy, although without suggesting that forced conversion was a key motivating fear.<sup>35</sup> The other notable reference to non-Zoroastrians is a discussion of the confiscation of Manichaean or heretics' property to the royal treasury.<sup>36</sup> Jews are nowhere mentioned in the MHD. It is not clear if this rather limited attention given to religious minorities is a sign of Farrakhmard's judicial focus and juristic interests, coupled with the fact that much litigation within the minority communities, even if conducted according to Persian rules, would generally have been carried out by their own judges or arbiters. Otherwise, it might simply result from there being few members of such minorities in the area of Ardeshir-Khwarrah.<sup>37</sup> It is clear, however, that our author can imagine Persian judges ruling on inheritance cases where non-Zoroastrians might have some claim.<sup>38</sup>

Scholars have so far been unable to find an organizing principle for the overall sequence of chapters in the MHD, although the incomplete and disordered nature of the manuscript, including the many missing or uncertain chapter numbers, makes the task all the harder.<sup>39</sup> Some of the headings are thematic, and adjacent titles are sometimes related – for instance chapters V-VII seem concerned with civil procedure<sup>40</sup> – but others are simply bundles of decisions

<sup>33</sup> Starting from previous Roman concern with circumcision (e.g. Modestinus at *Digest* 48.8.11), the earliest known Christian imperial law on slaves of Jews was issued by Constantine in 335 (*Sirmondian* 4; *CTh* 16.8.5 and 16.9.1). See the useful collection of texts by A. Linder, *The Jews in Roman Imperial Legislation* (Detroit, 1987).

<sup>34</sup> W. Klingshirn, 'Charity and power: Caesarius of Arles and the ransoming of captives in sub-Roman Gaul', *Journal of Roman Studies* 75 (1985), 183-203.

<sup>35</sup> MHD 103.9-10. This may be more of a worry in the post-conquest situation: e.g. PRDd 30 (Williams, *The Pahlavi Rivāyat Accompanying the Dādestān-ī-Dēnīg*, II, p. 56).

<sup>36</sup> MHDA 38.16-39.1. Note also MHDA 20.5-8.

<sup>37</sup> Most of the Christian dioceses of Fars were located on the coast (Walker, *The Legend of Mar Qardagh*, pp. 102-3), but even Istakhr had a bishop.

<sup>38</sup> MHD 60.16-61.1. On the difficulties of this passage, see Macuch, *Rechtskasuistik und Gerichtspraxis*, pp. 425-6.

<sup>39</sup> A useful English summary of the chapters and contents is provided by M. Macuch in her article 'Mādayān ī hazār dādestān', *Encyclopaedia Iranica*, online edn., 20 July 2005, <http://www.iranica.com/articles/madayan-i-hazar-dadestan>.

<sup>40</sup> Thus MHD 73-77 covers ch. V on offences, penalties and the obstruction of justice, ch. VI on the activity of the legal representatives and ch. VII on the plaintiff.

or rulings. This is not necessarily confined to the later known chapters, whose compilation of diverse matters calls to mind the late miscellaneous titles at the end of Book 50 of the *Digest*. These, however, were not necessarily the final chapters in the MHD's complete form and in fact deal with important matters of jurisdiction and procedure.<sup>41</sup> One obvious organizing principle would have been to follow the Avestan legal nasks. These do not survive intact, although summary headings of some obscurity deriving from the Sasanian Zand text are known from Book VIII of the later ninth-century compilation, the *Dēnkard*.<sup>42</sup> However, this provides no obvious correlations. The loss of the text after MHD 80 has deprived us of any blueprint Farrakhmard might have offered, and he nowhere else indicates that he is following either the pattern of an external source or some internal logic of his own. Even within a title, the organization of the material is not obvious. By contrast, the organization of Roman legal works is generally more transparent and indeed a great deal more can be deduced, not only where programmatic statements survive, such as imperial promulgatory constitutions, but also because source citations are remarkably explicit; thus to author, work and book number within a work for jurists, and to emperor and date for imperial laws. Thus, although it does not survive, much of the shape of the Praetor's Edict and its importance as an organizing principle for large parts of the imperial codifications can be ascertained.<sup>43</sup> Even within the titles of the *Digest*, which follow no simple chronological sequence as with the imperial laws in Justinian's *Code*, a pattern in the arrangement of material has long been identified (the so-called 'Bluhmian masses'), based on the reading and excerpting practices of Justinian's commissioners.<sup>44</sup>

The topics included in the MHD touch on most areas of law, but with a pronounced bias. Religious law as such (e.g. purity rules, as preserved in one of the few intact surviving sections of the Avesta, the *Vīdēvdād*<sup>45</sup>) is generally

<sup>41</sup> Thus MHDA 16-40 includes ch. LI (On several decisions which have to be taken especially into consideration because of the phrasing), ch. LII (On the competences of the officials), ch. LIII (On different considerations regarding written and sealed documents) and ch. LIV (On statements belonging together with other statements); cf. *Digest* 50.16 (*De verborum significatione*) and 50.17 (*De diversis regulis iuris antiqui*).

<sup>42</sup> On the *Dēnkard* (of which Books III to IX survive), see Macuch, 'Pahlavi literature', pp. 130-6; also M. Macuch, 'On the legal nasks of the *Dēnkard*', in F. Vahman and C.V. Pedersen eds., *Religious Texts in Iranian Languages: Symposium held in Copenhagen May 2002* (Copenhagen, 2007), 151-64.

<sup>43</sup> See, for instance, J.D. Harries, 'How to make a law-code', in M. Austin, J.D. Harries and C.J. Smith eds., *Modus operandi: Essays in Honour of Geoffrey Rickman*, BICS supplement 71 (London, 1998), 63-78; J.F. Matthews, *Laying Down the Law: A Study of the Theodosian Code* (New Haven and London, 2000), pp. 106-108; M.U. Sperandio, *Codex Gregorianus: origini e vicende* (Naples, 2005), pp. 389-395. For the reconstructed edict, see O. Lenel, *Das Edictum perpetuum: ein Versuch zu seiner Wiederherstellung*, 3rd edn. (Leipzig, 1927).

<sup>44</sup> Most recently analysed by T. Honoré, *Justinian's Digest: Character and Compilation* (Oxford, 2010).

<sup>45</sup> On the *Vīdēvdād*, see A. Hintze, 'Avestan literature', in Emmerick and Macuch, *Literature of Pre-Islamic Iran*, 1-71, pp. 38-46; M. Moazami, 'Ancient Iranian civil legislation: a legal

ignored. Criminal law also is not treated in a substantive fashion, although crimes are largely defined according to Zoroastrian norms.<sup>46</sup> Most references to criminal law come under sections dealing essentially with procedural law, which gets rather fuller treatment.<sup>47</sup> This includes a crucial chapter on the judicial competence of various officials and the organization of the courts.<sup>48</sup> There is also detail about the important question of seals and their use, both of private individuals and officials. Plentiful surviving examples of seals and seal impressions support the importance of written documents suggested by this.<sup>49</sup> A notable passage, discussing the introduction of seals for various officials by Kavad and Khusro I, has been confirmed by extant sealings, because of the detail it gives about the chief priest of Fars, whose seal was to describe him as defender of the poor.<sup>50</sup> Some other passages concern administrative matters to do with the new 'land for service' cavalry instituted by Khusro I.<sup>51</sup>

However, it is what we would regard as civil law that predominates.<sup>52</sup> Issues of property are paramount, whether matters arising from the Sasanian equivalents of *patria potestas* and *manus* marriage (*pādixšāy*-marriage); property rights, which have a distinction not entirely dissimilar to that between *dominium* and *possessio* in Roman law; pledges, deposits, debtors, co-ownership (e.g. regarding water-rights<sup>53</sup>); charitable foundations or trusts (ancestors to the Islamic

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section of the Pahlavi Videvdad', *Studia Iranica* 30 (2001), 199-224; P.Skjaervø, 'The Videvdad: its ritual-mythical significance', in V.S. Curtis and S. Stewart eds., *The Idea of Iran vol. II: The Age of the Parthians* (London, 2007), 105-141.

<sup>46</sup> J. Jany, 'Criminal justice in Sasanian Persia', *Iranica Antiqua* 42 (2007), 347-86.

<sup>47</sup> On civil procedure and the courts, see J. Jany, 'Private litigation in Sasanian law', *Iranica Antiqua* 45 (2010), 395-418.

<sup>48</sup> Ch. LII (MHDA 25.5-30.5).

<sup>49</sup> M. Macuch, 'The use of seals in Sasanian jurisprudence', in R. Gyselen ed., *Sceaux d'Orient et leur emploi*, Res Orientales X (Bures-sur-Yvette, 1997), 79-87; R. Gyselen, *Sasanian Seals and Sealings in the A. Saeedi Collection*, Acta Iranica 44 (Louvain, 2007), with an administrative seal from Ardeshir-Khwarra, p. 92, no. 00.2; cf. R. Gyselen, *Nouveaux matériaux pour la géographie historique de l'empire sassanide: sceaux administratifs de la collection Ahmad Saeedi*, *Studia Iranica* cahier 24 (Paris, 2002), p. 131. Jews and Christians, of course, also used seals: S. Shaked, 'Jewish Sasanian sigillography', in R. Gyselen ed., *Au carrefour des religions: Mélanges offerts à Philippe Gignoux*, Res Orientales VII (Bures-sur-Yvette, 2004), 239-56; D.M. Friedenbergh, *Sasanian Jewry and Its Culture: A Lexicon of Jewish and Related Seals* (Urbana and Chicago, 2009).

<sup>50</sup> MHD 93.4-9; R. Ghirshman, *Iran: Parthians and Sassanians* (London, 1962), p. 244, fig. 303; V.G. Lukonin, 'Political, social and administrative institutions, taxes and trade', in Yarshater, *Cambridge History of Iran* 3(2), 681-746, p. 732; Gyselen, *La géographie administrative de l'empire sassanide*, pp. 31-33, 44 and 113.

<sup>51</sup> MHD 77.6-9; MHDA 16.11-17.1, 19.2-6.

<sup>52</sup> For a general account of the law, based to a large extent on the MHD, see A. Perikhanian, 'Iranian society and law', in Yarshater, *Cambridge History of Iran* 3(2), 627-80; M. Macuch, 'Judicial and legal systems iii. Sasanian legal system', *Encyclopaedia Iranica*, online edn., 15 September 2009, <http://www.iranica.com/articles/judicial-and-legal-systems-iii-sasanian-legal-system>.

<sup>53</sup> Ch. XXXIV: MHD 85.7-86.17. Access to water is clearly of the greatest importance, as

*waqf*),<sup>54</sup> but most of all the issue of succession, especially sturhship.<sup>55</sup> This is a peculiarly Zoroastrian institution designed to ensure that a man without a male heir has one provided. Thus someone is essentially adopted, usually a close relative if possible, and entrusted with ensuring the provision of the desired male heir within the next generation or two, which involved marriage (called *čagar*-marriage) to surviving female members of the family, such as the wife or daughter. The children produced from this sort of marriage were the heirs of the deceased man, not of the biological father. There are some parallels with Jewish levirate marriage, and even with the Athenian epiklerate. However, this is not simply about carrying on a man's line and preserving his property, but is intended to ensure the continuation of the relevant rituals for him and his house after his death. The obvious contrast is with Roman succession and the *sacra*, the religious rituals required of an heir and subject to supervision by the *pontifices*. Here Republican jurists came up with ways for people to inherit without the burden of performing said *sacra*.<sup>56</sup> For the Sasanian jurist, the ritual aspect was never abolished by clever legal thinking. The essences of ritual and property remained for the most part intertwined, even if the actual property itself was of course a major part of the issue. By far the longest chapters in the book as it survives are on sturhship and succession. Succession is something both complex and liable to be contested, with enough at stake to make litigation a likely option. Certainly this emphasis makes the book feel in many ways not unlike the writings of the Roman jurists, where issues of succession and transfer of property are predominant.

It has been argued that the attention paid to succession reflects a crisis of the Sasanian aristocracy, failing, as aristocracies so often do, to reproduce itself.<sup>57</sup> Thus the jurists or judges would have been responding to real and widespread dilemmas created by genuine social problems, at least among the elite. However, legal practitioners will naturally have had to spend more time tackling the most complex and intractable problems, and this need not mean that such cases were

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it was in the Mediterranean world. For a Roman law perspective, see F. Beltrán Lloris, 'An irrigation decree from Roman Spain: the *Lex Rivi Hiberiensis*', *Journal of Roman Studies* 96 (2006), 147-197; C.J. Bannon, *Gardens and Neighbors: Private Water Rights in Roman Italy* (Ann Arbor, 2009).

<sup>54</sup> M. Macuch, 'Pious foundations in Byzantine and Sasanian law', in *La Persia e Bisanzio, Atti dei Convegni Lincei* 201 (Rome, 2004), 181-96; J. Jany, 'The idea of a trust in Zoroastrian law', *Journal of Legal History* 25 (2004), 269-86.

<sup>55</sup> M. Macuch, 'Inheritance i: Sasanian period'. *Encyclopaedia Iranica*, online edn., 15 December 2004, <http://www.iranica.com/articles/inheritance-i>. B. Hjerrild, 'Some aspects of the institution of *sturih*', in Vahman and Pedersen, *Religious Texts in Iranian Languages*, 165-74.

<sup>56</sup> A. Watson, *Roman Private Law Around 200 BC* (Edinburgh, 1971), pp. 93-4 and 111-2, and *The Law of Succession in the Later Roman Republic* (Oxford, 1971), pp. 4-7.

<sup>57</sup> See, for instance, Elman, 'Marriage and marital property', pp. 250-76. For the Roman senatorial class not reproducing, see W. Scheidel, 'Emperors, aristocrats, and the grim reaper: towards a demographic profile of the Roman élite', *Classical Quarterly* n.s. 49 (1999), 254-81.

necessarily typical – or if they were, that they had become more frequent than in earlier periods.

Within each chapter, there is a series of individual sections, which do not make up a continuous discussion. This is no treatise, and seldom seeks to explain. The sections can take various forms. Some simply state: ‘if such and such, then such and such’; elsewhere, the format is ‘It is said’ or ‘It is written’. Quite commonly a named authority is cited: e.g. ‘Vahram has said’ or ‘Vayayar has written’. In neither case is it clear whether one derives from an oral decision and the other from a written work. Nor is it clear in most cases whether or not these are contemporaries, whose opinions or judgements may have been heard by the author in person. Again, it is unknown whether citations are taken from a distinct work of the person cited, or from more varied collections of *sententiae* or *responsa* of numerous different authorities. Sometimes, however, such authorities are themselves named as citing from other authorities, very much in the manner of the Roman jurists citing each other (discussed further below). Sometimes specific cases are mentioned, and indeed specific documents. One unnumbered chapter is described as ‘containing a number of legal decisions evident from what was written and sealed in the past’, and these seem to relate to local rulings, whose records the author could have seen.<sup>58</sup> However, references to the wills of high-ranking individuals probably derive from reports of well-known texts rather than from sight of the originals, especially when such documents were one or two centuries old, as with the testament of Veh-Shapur, Khusro I’s chief priest,<sup>59</sup> or that of Adurbad son of Zardust, chief priest under Yazdegerd I.<sup>60</sup> Autopsy, however, is specified for some documents or court records. Thus at one point the author confirms his statement on the basis of an ordeal court document he has himself seen.<sup>61</sup> One or two chapters are described as based on judgements or *responsa* actually heard and recorded by others, although how far in the past is not necessarily clear, as we shall see. One unnumbered chapter is entitled ‘Certain legal decisions by the Avestan commentators written down precisely by those who heard these from them’.<sup>62</sup> In this chapter, therefore, it is sometimes the jurists who are the principal conduit for information on the numerous specific cases and documents mentioned which are local to the region in and around Ardeshir-Khwarrah.<sup>63</sup> This chapter

<sup>58</sup> MHD 77.4-5. This chapter refers to a decree issued under Khurso I by the *rads* specifically for Ardeshir-Khwarrah (78.2-11); also to a document preserved in the archives of a Fire Temple in nearby Khabr (78.11-14); cf. 93.3-4 (document of Zardust, *mowbad* of Bishapur, in the temple archives there).

<sup>59</sup> MHDA 35.14-16, 36.16-37.1. Veh-Shapur also sealed the will of the magnate, Dat-Gusnasp (MHDA 39.3-7).

<sup>60</sup> MHDA 36.3-12

<sup>61</sup> MHD 8.16-9.1.

<sup>62</sup> MHD 95.5-6.

<sup>63</sup> Vahram cites Pusanveh son of Azadmard for a document from Istakhr (MHD 98.1-5). Pusanveh twice discusses cases relating to Mahadur Freh Gusnasp, *mowbad* of Ardeshir-Khwarra (MHD 95.15-96.3 and 99.3-8) and once mentions Burzak, also *mowbad* of

also gives the two latest datable references, to the reigns of Hormizd IV and Khuro II.<sup>64</sup> Where no named source is given, there is a special vocabulary used to indicate something deriving from the Avestan commentaries. Indeed, there is a contrast between essentially Avestan juristic opinion, *častak*, and actual judicial practice, *kardag*.<sup>65</sup> For instance, regarding the confiscation of the property of a man condemned on a capital charge, an opinion was given that enough for the maintenance of his family should be kept back from it; but court practice was different, requiring that all connection between man, family and property be broken.<sup>66</sup> Similarly, Vahram cites an earlier commentator for the validity of witness depositions by two women, but based on an actual case, while Zurvandad claimed this was not judicial practice.<sup>67</sup> It is not clear, however, if thereby a distinction can be drawn between jurists and judges, or if there was an increasing gap between the theorists and the practitioners.

A feature to note is that, very commonly in the examples or cases cited, similar sets of names recur: Farrakh, Mihren, Pusak and so forth. These are clearly ‘John Does’ and ‘Richard Rowes’, just like the Roman Seius and Titius or Primus and Secundus. Whether these are purely imaginary and exemplary cases, however, or ones where the original personae have been anonymized, is not clear. Certainly genuine cases involving the identification of real individuals are discussed, such as in the matter of the marriage of Veh-Shapur and Khataydukht.<sup>68</sup> The title of the book may be rendered *A Thousand Judgements* or *A Thousand Legal Decisions*, which seems to mean real cases. But are we dealing with *sententiae* delivered in judgement, or with *responsa* to legal problems which are either real (from a prospective litigant) or perhaps imaginary (from a student)? Or is there a mixture of these?

Another point to note is that divergent opinions are sometimes cited, although not necessarily with any resolution of the issue,<sup>69</sup> a feature also of the surviving Sasanian Zand commentaries on the Avesta (*Hērbedestān* and *Nērangistān*).<sup>70</sup>

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Ardeshir-Khwarra (MHD 99.17-100.5).

<sup>64</sup> MHD 100.7-15.

<sup>65</sup> *Kartak*: MHD 8.11-13; 51.16-52.15 (*kartak* follows *častak* of Medomah against *častak* of Abarag).

<sup>66</sup> MHD 97.15-98.1.

<sup>67</sup> MHD 98.1-5.

<sup>68</sup> MHDA 14.12-13. This is drawn from the *Dādestān Namag* (Book of Judgements).

<sup>69</sup> MHD 20.7-13, 22.5-6, 32.4-10, 42.5-9, 42.12, 50.13-17, 51.16-52.15; MHDA 11.12-17.

<sup>70</sup> E.g. *Nērangistān* 30.15 (Kotwal and Kreyenbroek, *Hērbedestān and Nērangistān III*, pp. 136-137) and 67.6 (F.M. Kotwal and P.G. Kreyenbroek, *The Hērbedestān and Nērangistān vol. IV: Nērangistān, Fragard 3*, *Studia Iranica cahier 38* (Paris, 2009), pp. 28-29). Note the statement of Kay-Adur-bozed at *Nērangistān* 28.43 (Kotwal and Kreyenbroek, *Hērbedestān and Nērangistān III*, pp. 102-103): ‘The ancient teachers have not taught the Avesta without dissent, but as to this pronouncement there is agreement.’

But unanimous or convergent views appear as well.<sup>71</sup> Sometimes both occur in the same passage:

Vahram has said that if a father transmits to his wife and children a future estate and subsequently frees a slave, then according to the opinion of Syavakhs, the (freed) slave cannot be brought back from being a subject of the king of kings, and I express the same opinion, but Rad-Hormizd has rendered a different judgement on this question. (MHD 20.7-10 = 31.15-32.1)

In one remarkable passage, one jurist cites an anecdote told by another jurist about himself, in which he gives impromptu *responsa*, but ends up both at a loss and taken to task for not admitting it!

Vahrič has said: I have learned that Adur-parzkar has said the following: ‘When I was going to the ordeal court, three women were sitting by the road and one of them said: “Master, decide this legal case. If two persons receive money as a loan and declare that they are joint-guarantors, then how shall it be?” And I said that if the principal contractor is solvent, then no claim may be addressed to the guarantor. And then she said: “And if one receives the loan and the other declares ‘I am the guarantor’, what then?” And I said that this case too is resolved likewise. And then she said: “Now what if the principal contractor is insolvent, and payment is claimed from the guarantor, but subsequently the contractor becomes solvent?” And I stood and did not know what answer to give. And then one of them said: ‘Master, do not hesitate but say truthfully “I do not know”.’

But the answer is evident from the decision rendered by the *andarzbed* of the Magi, regarding which it is written below. (MHD 57.2-12)

The final sentence seems to be that of Farrakhmard, not Vahrič, in particular because it provides a rare internal cross-reference within the work. The decision mentioned in the text is in fact cited two pages later as being that by Vehpanah from the *Nipištak*.<sup>72</sup> Such rare references are usually to something not far removed, since there is too little detail given to enable such passages to be located otherwise within the work. Also, the author occasionally gives his own opinion,<sup>73</sup> in one instance even giving his reasoning, which is rare indeed.<sup>74</sup> In another case, regarding whether someone should be considered a plaintiff in his own right or merely a representative, he admits his perplexity, perhaps as a rhetorical ploy, since he then gives his best understanding of how to resolve the issue.<sup>75</sup> Sometimes he appears to leave admonitory notes, such as ‘to be examined carefully’, although the interpretation of such passages is uncertain.<sup>76</sup>

<sup>71</sup> MHD 4.7, 14.4-5, 42.5-9.

<sup>72</sup> MHD 57.2-12 referring forward to MHD 59.1-10.

<sup>73</sup> MHD 9.1-3 (contradicting Adur-Hormizd), 13.4, 20.7-13; MHDA 6.5-14 (‘this does not seem right to me’).

<sup>74</sup> MHDA 29.9-30.2; cf. 52.14.

<sup>75</sup> MHD 76.4-13.

<sup>76</sup> MHD 20.1 (cf. 64.14-15 from Vahram) as per Perikhanian’s translation. In Macuch this simply introduces the explanation in the paragraph (Macuch, *Rechtskasuistik und*

Certainly, there is much about this format which is redolent of Roman juristic writing: the opinions, the disagreements, the citation of authorities, the discussion of both real and fictitious cases. However, as already noted, the MHD lacks a discernable structure or shape, in contrast to those Roman works, which often shadowed the Praetor's Edict or a standard Civil Law commentary (e.g. Sabinus); nor does it have the intellectual coherence of Gaius's institutional scheme.<sup>77</sup> The closest parallel might be collected sets of juristic *responsa* or imperial rulings. The eleventh-century Byzantine work known as the *Peira* is perhaps the most suggestive text in the Roman legal tradition, based as it is on the rulings of a particular judge.<sup>78</sup> But the MHD seems more diverse and comprehensive than that.

So what are the book's sources? First, the key group of sources is essentially jurists or judges. These are generally referred to by single names, occasionally with patronymics. With the exception of Veh-Shapur's *Memorandum*,<sup>79</sup> works of theirs are never actually named. It is far from clear how much derives from court papers, or contemporary judgements or *responsa*,<sup>80</sup> as opposed to earlier writings, nor whether these latter were of an individual author as opposed to miscellanies, such as the *Dādestān namag* (Book of Judgements).<sup>81</sup> However, as already noted, some forms of reference make it clear that the citation derives from a commentary on the Avestan nasks. It is presumed that, just as many Roman works were commentaries on specific texts of the Civil Law (thus essentially derived from the Twelve Tables) or on the Praetor's Edict, so the Sasanian jurists' works were generally commentaries on the Avesta. Unfortunately, it is not clear whether they wrote on all the Avesta or only certain parts, and therefore how wide or narrow their interests were. In some cases we do know. Thus Veh-Shapur, who is cited in the MHD for his *Memorandum*, his testament and his marriage, is best known as the compiler of – and indeed authority cited in – the definitive Sasanian Avesta-cum-Zand under Khusro I, appearing for instance in the *Nērangestān*, primarily a book about liturgy and ritual.<sup>82</sup> Sošans, who also appears in the MHD, is the supposed author of the second fragard of

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*Gerichtspraxis*, p. 160).

<sup>77</sup> P. Stein, 'The development of the institutional system', in P.G. Stein and A.D.E. Lewis eds., *Studies in Justinian's Institutes in Memory of J.A.C. Thomas* (London, 1983), 151-163.

<sup>78</sup> N. Oikonomides, 'The *Peira* of Eustathios Rhomaïos', in *Fontes Minores VII* (Frankfurt-am-Main, 1986), 169-92; L. Burgmann, 'Peira 51', in S. Troianos ed., Κατευόδιον: *In Memoriam Nikos Oikonomides* (Athens, 2008), 5-26.

<sup>79</sup> MHDA 34.7 and 38.7.

<sup>80</sup> MHDA 4.15-5.2: *responsum* of Dad-Farrakh son of Adurzand; MHDA 10.2-8: *responsum* of Yuvan-Yam to Veh-Hormizd in presence of Zurvandar.

<sup>81</sup> MHD 11.2 and 36.2.

<sup>82</sup> E.g. *Nērangistān* 23(41).11 and 79.29 (Kotwal and Kreyenbroek, *Hērbedestān and Nērangestān III*, pp. 34-35 and *IV*, pp. 64-65).



the *Nērangestān*.<sup>83</sup> In all some ten commentators appear in common between the MHD and the *Hērbedestān* and *Nērangestān*.<sup>84</sup>

One thing is quite clear, however: two of the jurists, Abarag and Medomah, had schools of interpretation named after them.<sup>85</sup> In neither case were they the founders, but, as with the Sabinians and Proculians, later successors.<sup>86</sup> They are also distinguished by a similar difference regarding strict versus flexible interpretation. Schools of jurisprudence, of course, are very common, being a feature not only of Persia and Rome, but also in Jewish and Islamic law. In general schools for many disciplines, for instance philosophy and medicine, are a well-attested phenomenon, even if the ‘succession lists’ of teachers often show creative hindsight.<sup>87</sup> It is perhaps possible, however, to say a little more about the Sasanian schools. While the first formal collecting of Zoroastrian materials began with the advent of the dynasty in the third century, the creation of a special script for the Avesta and the writing down of a full and fixed canon including the Pahlavi Zand translation and commentaries were things not swiftly done, especially for a tradition that had been resolutely oral. The key period in creating a fixed Avesta and Zand, perhaps marking a significant move from a largely oral to a more literary culture, is attributable to the reign of Khusro I (531-579), in the wake of the suppression of the Mazdakite ‘heresy’ at the end of his father’s reign.<sup>88</sup> Indeed, it is Veh-Shapur, mentioned above, the *mowbadan mowbad*, the priest of priests (i.e. high priest of the realm), who was the key figure in achieving this.

Thus it is argued that only with the creation of a fixed canon could consistent commentary also come into being. The succession of commentators in the two

<sup>83</sup> Kotwal and Kreyenbroek, *Hērbedestān and Nērangestān III*, p. 17.

<sup>84</sup> Compare Kotwal and Kreyenbroek, *Hērbedestān and Nērangestān IV*, pp. 22-23 with Perikhanian, *Book of a Thousand Judgements*, pp. 416-18. Not all the identifications can be made with confidence: Abarag, Dad-Farrakh, Mah-Adur?, Martbud?, Medomah, Sošans, Pešakser, Vehdad?, Veh-Shapur, Zurvandad.

<sup>85</sup> MHD 50.13-17; cf. 22.5-6, 51.16-52.15.

<sup>86</sup> On the Roman schools, see H.F. Jolowicz (rev. B. Nicholas), *Historical Introduction to the Study of Roman Law*, 3rd edn. (Cambridge, 1972), pp. 379-80; B.W. Frier, ‘Early classical private law’, in A.K. Bowman, E. Champlin and A. Lintott eds., *The Cambridge Ancient History vol. X: The Augustan Empire 43BC-AD69* (Cambridge, 1996), 959-78, pp. 969-73.

<sup>87</sup> A. Tropper, *Wisdom, Politics, and Historiography: Tractate Avot in the Context of the Graeco-Roman Near East* (Oxford, 2004), pp. 158-172; B. Jokisch, *Islamic Imperial Law: Harun-Al-Rashid’s Codification Project* (Berlin and New York, 2007), pp. 63-65; C. Melchert, ‘The formation of the Sunnī schools of law’, in W.B. Hallaq ed., *The Formation of Islamic Law* (Aldershot and Burlington VT, 2004), 351-366.

<sup>88</sup> A late semi-legendary account of the creation of the Zoroastrian canon under successive kings, ending with Khusro I, can be found in the *Dēnkard* Book IV (Boyce, *Textual Sources*, pp. 113-4). The true chronology remains vexed. See A. Hintze, ‘The Avesta in the Parthian period’, in J. Wiesehöfer ed., *Das Partherreich und seine Zeugnisse*, *Historia Einzelschriften* 122 (Stuttgart, 1998), 147-161; P. Huyse, ‘Late Sasanian society between orality and literacy’, in V.S. Curtis and S. Stewart eds., *The Idea of Iran vol. III: The Sasanian Era* (London, 2008), 140-155; Macuch, ‘Pahlavi literature’, pp. 124-30.

schools goes Adur-Hormizd, Gogušnasp, Medomah; versus Adurfarnbay, Sošans, Abarag.<sup>89</sup> Three commentaries appear paramount: Gogušnasp on Adur-Hormizd, Medomah on Gogušnasp, Abarag on Sošans. Perhaps we should imagine these as being along the lines of Ulpian's *Ad Sabinum*,<sup>90</sup> but their exact format is unknown. In both cases we have just three generations for the commentaries to be written and crystallize their respective traditions. However, trying to pin down the chronology of the commentators relative to Farrakhmard or anyone else is extremely difficult. Sošans, in a very early section of the surviving MHD manuscript, is described as a contemporary of Vahram:

It is said that, up to the reign of Vahram, persons became the owners of a slave born of a father, but not of a mother. For Sošans stated that the child belongs to the father; but now it is said to the mother. (MHD 1.2-4)

Unfortunately, the king named is given no patronymic, and the age of the commentators has sometimes been pushed far back by identifying a fifth- or even third-century king.<sup>91</sup> Most recently, however, Jany has explored the possibility that the king is Vahram VI (Vahram Chobin), the rebel general who overthrew Hormizd IV and briefly replaced Khusro II in 590-1.<sup>92</sup> All lines of reasoning for this derive from the change in the law mentioned in the passage concerned, that a slave previously took his status from his father, but from the time of Vahram or shortly thereafter from his mother (following what the Romans regarded as the rule of the *ius gentium*). This change may be associated with the succession dispute, hinging on the issue of whether the child of a king or other noble by a slave concubine was a slave or a free-born royal pretender. Thus Vahram might have changed the law to damage Hormizd, whose mother was Turkic, perhaps a concubine. But Khusro would surely have repealed the change, to re-establish not only Hormizd's legitimacy, but vicariously his own. Other explanations of the change (economic, or even imitation of Roman rules) can be less convincingly tied to Vahram's brief reign. In the end, Jany remains

<sup>89</sup> *Šāyist nē Šāyist* 1.3-4; Macuch, 'Pahlavi literature', pp. 147-48; J. Jany, 'The jurisprudence of the Sasanian sages', *Journal Asiatique* 294 (2006), 291-323; J. Jany, *Sasanian Law*, e-Sasanika 14 (Irvine CA, 2011), pp. 8-11. Four appear in the MHD: Gogušnasp and Adurfarnbay do not. Only Adur-Hormizd does not seem to be in the *Hērbedestān* and *Nērangestān*.

<sup>90</sup> D. Liebs, 'Jurisprudenz', in K. Sallmann ed., *Die Literatur des Umbruchs von der römischen zur christlichen Literatur 117 bis 284 n.Chr.*, Handbuch der lateinischen Literatur der Antike 4 = HAW VIII.4 (Munich, 1997), 83-217, pp. 178-9.

<sup>91</sup> E.g. Vahram V in Perihkhanian, *Book of A Thousand Judgements*, p. 418; Macuch, *Rechtskasuistik und Gerichtspraxis*, pp. 29-30 is agnostic as to the king's date, but places Sošans in the late third century.

<sup>92</sup> Jany, 'The jurisprudence of the Sasanian sages', pp. 300-4. On the usurpation, see Frye, 'The political history of Iran under the Sasanians', pp. 163-165; P. Pourshariati, *Decline and Fall of the Sasanian Empire: The Sasanian-Parthian Confederacy and the Arab Conquest of Iran* (London, 2008), pp. 397-414.

agnostic. It is perhaps strange, however, that Vahram has no patronymic, nor is he explicitly called king of kings.

The association of this legal change with high politics should be regarded as unlikely, but the chronology it suggests certainly creates a plausible succession history for the two schools of Avestan jurisprudence, with their originators belonging to the reign of Khusro I, their successors to the later sixth century and the most recent to the early seventh, making Farrakhmard a younger contemporary of the most recent. This also suggests that Sasanian jurisprudence was at this time remarkably vital, but that many of its key practitioners had broad interests across the Avesta and were not narrow 'civil law' specialists.

The alternative is to suggest that the major commentaries pre-date the Avestan 'codification' of Khusro I. Thus this provided the terminal point for the schools by ossifying the existing commentary tradition, which may still have been largely oral up to that point. We may doubt how much was really known about these older commentators or that there was much in the way of fixed written works of individuals which could be consulted. This might suggest that the best comparison is not with Justinian's *Digest* (AD 533), which re-edited and recompiled the earlier Roman juristic commentaries into an updated and fixed form. Justinian was dealing with a long tradition of legal writing by well-known authors. Perhaps a closer parallel is with the other great enterprise under the Sasanian empire, which in the longer term led to a form of jurisprudential 'codification', namely the Bavli (the Babylonian Talmud). In this, and indeed in other rabbinical writings of late antiquity, the quoting of numerous opinions of authoritative interpreters and recounting of anecdotes about them are no longer generally taken by scholars as allowing a straightforward palingenesis of individual rabbis' scholarship or even providing reliable information about their dates and lives. Rather, long oral traditions end up creatively reimagined at the time of their later crystallization.<sup>93</sup> We can perhaps suppose something similar for the Avestan commentators, at least the earliest ones, with the reign of Khusro I as the moment of crystallization.

The chronology of the most august authorities in the MHD, therefore, remains difficult to determine. When we look at all the jurists mentioned, the problem is exacerbated in that many persons have the same name, either within the work, or sometimes in other sources, yet need not thereby be identified as the same person. Farrakhmard mentions three Pusanvehs, two with distinct patronymics.<sup>94</sup> Is the third another man, perhaps the most famous since he required no patronymic, although he is not in fact cited more frequently? Or is he to be identified with either of the previous two, and could this differ in different passages? Did Farrakhmard himself always know who was who anyway? Can we make anything of the appearance of several jurists in the

<sup>93</sup> See the various contributions in Fonrobert and Jaffee, *Cambridge Companion to the Talmud*, introduction and chs. 1-4.

<sup>94</sup> See the index list in Perikhanian, *Book of A Thousand Judgements*, p. 417.

same passage, or the citation of one jurist by another? This is not easy to do. First, even where Farrakhmard cites several authorities in the same section, it is seldom clear that these were necessarily contemporaries of one another, and thus the juxtaposition will often simply result from Farrakhmard's choice. Secondly, clear citations, which show that the person doing the citing must be contemporary with or later than the person cited, are not that common and do not allow us to construct much in the way of a relative chronology, even if we suppose the minimum number of identities for repeated names. However, there are occasional references to historical personages (especially various kings of kings), which can provide an anchor. Taking all this into account, we can tease out a few broad chronological interrelationships. It appears that Vahram is not only one of the authorities most frequently cited by Farrakhmard, but also the one who himself cites others most frequently, perhaps strengthening our view that Farrakhmard is his son and using his materials. Vahram cites Vahramsad and Rad-Hormizd,<sup>95</sup> probably Vahramsad and Yuvan-Yam,<sup>96</sup> Pusanveh son of Azadmard and Veh-Hormizd.<sup>97</sup> From another passage, one of the clearest of all, we know that Veh-Hormizd, Yuvan-Yam and Zurvandad were contemporaries.<sup>98</sup> I would like to identify Zurvandad as Yuvan-Yam's son,<sup>99</sup> learning by watching his father in action. The mention of Yuvan-Yam in a passage about Mihr-Narseh does not mean that the former must be a contemporary of the latter (i.e. fifth-century).<sup>100</sup> Veh-Hormizd appears to refer to Rosn-Hormizd,<sup>101</sup> who may be the same as the man who sealed Adurbad son of Zardust's will in the first half of the fifth century.<sup>102</sup> Yuvan-Yam cites Nev-Gušnasp (= Gogušnasp, school of Medomah?).<sup>103</sup> Vahram's citation of Pusanveh son of Azadmard concerns the *List of Horsemen*, which resulted from the reforms of Khusro I, while Pusanveh also mentions Burzak, *mowbad* of Ardeshir-Khwarrah, who lived during or shortly after the reign of Khusro I.<sup>104</sup> From the above cursory survey, it appears that even if the 'classical' Avestan commentators were pre-codification and now formed a fixed canon, Vahram, Pusanveh son of Azadmard and a number of the others, who were primarily local to Ardeshir-Khwarrah, belong to the second half of the sixth century or even the early seventh, making their own rulings, even if aware of the more ancient commentators.

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<sup>95</sup> MHDA 9.5.

<sup>96</sup> MHDA 11.12-17.

<sup>97</sup> MHDA 16.14-15 and 29.16-17 respectively.

<sup>98</sup> MHDA 10.4-5.

<sup>99</sup> MHD 36.9.

<sup>100</sup> MHDA 35.16-36.3.

<sup>101</sup> MHDA 30.2. I wonder if Peroz son of Veh-Hormizd is the jurist's son (MHD 108.10).

<sup>102</sup> MHDA 36.6-12.

<sup>103</sup> MHDA 31.9. Perhaps the same as cited at *Vidēvdād* IV.35 (Pahlavi commentary)?

<sup>104</sup> MHD 99.17-100.5; MHDA 37.1-15.

It should be pointed out, however, that both Vahramsad and Yuvan-Yam are names of ninth-century high priests, with Zurvandad and Manuščihir being Yuvan-Yam's sons.<sup>105</sup> Some have accepted this identification, but I still find it hard to believe that Vahram and Farrakhmard himself, later than them all, would compile a work as redolent of the Sasanian empire if it had already vanished. I am, therefore, sceptical of identifying MHD persons generally with their ninth-century homonyms, except perhaps as rare and isolated interpolations.<sup>106</sup>

One particularly vexed and obscure passage is a quotation from the *Memorandum* of Veh-Shapur, giving guidance on how to interpret chronology. Thus, a statement that Yazdegerd lived in the first fifty years of the tenth century refers to the period of the ancestors of Khusro I (Veh-Shapur's monarch) and is closest to the present, while the second fifty years refers to the earlier time in office of Hudad, Farnbay, Adurbozet and Adurbad son of Zardust.<sup>107</sup> It is not clear which Yazdegerd is meant and I presume that is precisely the point. In the first case Yazdegerd II (439-457), the nearer ancestor of Khusro must be meant, in the second Yazdegerd I (399-421), who is thus contemporary with the chief priests listed. Adurbad, in fact, is part of a dynasty of Zoroastrian notables stretching back into the mid-fourth century and the reign of Shapur II, via his father Zardust, his grandfather Adurbad (the Zoroastrian hero) and his great-grandfather Mahraspand. All four of those mentioned in the *Memorandum* were famous sages, if we take Hudad as a mistake for Vehdad, and are cited in the same section of the *Dēnkard*.<sup>108</sup> Unfortunately, they are little cited elsewhere in the MHD,<sup>109</sup> and cannot be used to fix the chronology of other commentators.

In addition to named jurists (by which we must understand primarily Avestan commentators) and judges (but not distinguishable as such), there are certain works named in the MHD. The *Dādestān namag* (Book of Judgements)<sup>110</sup> and *Mustawar namag* (Book of Appeals)<sup>111</sup> seem to have been miscellanies, and thus sources for at least some of the *sententiae* of the named jurists/judges. There are also two books regarding the duties of, respectively, high priests and other

<sup>105</sup> Thus Jaafari-Dehaghi, *Dādestān-ī-Dēnīg, Part 1*, p. 24; Kotwal and Kreyenbroek, *Hērbedestān and Nērangestān III*, pp. 17-18.

<sup>106</sup> Thus is the son of Yuvan-Yam and author of the *Dādestān-ī-Dēnīg* to be identified with the Manuščihir cited on a single occasion at MHD 24.2?

<sup>107</sup> MHDA 38.6-12. It is unknown to which era this 'tenth century' belongs. On this obscure passage, see Macuch, *Das sasanidische Rechtsbuch*, pp. 232-233, differing from Perihkhanian, *Book of A Thousand Judgements*, p. 317.

<sup>108</sup> *Dēnkard* VI.D10 (Adurfarnbag, Adurbozed, Vehdad); *Dēnkard* VI.D5, D6a, D6b (Vehdad); *Dēnkard* VI.D8-9 (Adurbad son of Zardust); S. Shaked ed., *The Wisdom of the Sasanian Sages (Dēnkard VI)*, Persian Heritage Series 34 (Boulder, 1979), pp. 181-5.

<sup>109</sup> The will of Adurbad son of Zardust is discussed at MHDA 36.3-12. Vehdad is cited at MHD 65.2 according to the reading of Perihkhanian, *Book of A Thousand Judgements*, pp. 162-3, but disappears in the reading of Macuch, *Rechtsskasuistik und Gerichtspraxis*, pp. 435, 438 and 443. Adur-Hormizd need not be the father of Vehdad (MHD 9.2; *Dēnkard* VI.D5).

<sup>110</sup> MHD 11.2 and 36.2.

<sup>111</sup> MHDA 5.11.

officials.<sup>112</sup> Then there are the *Memorandum* of Veh-Shapur, the *mowbadan mowbad* under Khuro I,<sup>113</sup> and the *Nipištak* (writ/edict/memorial?) which may go back to Shapur II on account of its association with Mahraspand, father of Adurbad, but this dating is rather uncertain.<sup>114</sup> Presumably some of these works were written or compiled at one of the major royal capitals (but probably not including Gor, despite its symbolic association with the dynasty). This is clear in the case of works attributed to important central officials such as Veh-Shapur. Chapter L, which, with unusual explicitness, is entirely drawn from the *Dādestān namag*,<sup>115</sup> has only one geographical indicator which contrasts with most of those given elsewhere in the MHD, namely a reference to a slave thrown into and saved from the Tigris, presumably a real case.<sup>116</sup> Another geographically anomalous reference to Gurgan (Hyrcania) is also from the *Dādestān namag*, although the point here is that one should follow local procedure, so that the perspective of the passage is not of someone in Hyrcania!<sup>117</sup> One would guess, therefore, that the *Dādestān namag* was written or compiled by someone in Ctesiphon.

One interesting legal coincidence between the MHD and one of the persons named in it may also have a local cause. The vuzurg-framadār, Mihr-Narseh, one of the most notable non-royal figures of the fifth century, is discussed in relation to his career under successive kings.<sup>118</sup> Given the honourable position of *hierodoulos* at two Fire Temples by Vahram V, he was then relegated (along with his guiltless wife) to the royal estates by Yazdegerd II for unspecified offences. Later rehabilitated by Peroz, he was restored to the honour of *hierodoulos*, but, with the consent of the chief priest, was assigned to a different Fire Temple. In this way, Farrakhmard illustrates various points about *hierodouloi* and Fire Temples (see plate) made in surrounding passages through a very concrete example. However, Mihr-Narseh had strong local connections to Fars and Ardeshir-Khwarrah.<sup>119</sup> He is famous for his inscription on the ruins

<sup>112</sup> MHDA 26.15 and 38.16-17.

<sup>113</sup> MHDA 34.7 and 38.7. As already noted, his Testament appears at MHDA 35.15 and 36.17.

<sup>114</sup> MHD 13.4, 59.1-10 (both from the author's autopsy). Note Mahraspand at MHDA 36.1, 39.7-8. On Adurbad, see T. Daryaei, *Sasanian Persia: The Rise and Fall of an Empire* (London, 2009), pp. 84-86. *Nipištak* simply means written document (H.S. Nyberg, *A Manual of Pahlavi II* (Wiesbaden, 1974), p. 141), so that the exact nature of the work cited is unclear.

<sup>115</sup> MHDA 12.10-16.6.

<sup>116</sup> MHDA 13.11-13.

<sup>117</sup> MHD 44.2-3.

<sup>118</sup> MHDA 39.11-17, 40.3-6. On Mihr-Narseh, see Pourshariati, *Decline and Fall of the Sasanian Empire*, pp. 60-5. For the recent likely identification of one of his seals, see R. Gyselen, *Great-Commander (vuzurg-framadār) and Court Counsellor (dar-andaršbed) in the Sasanian Empire (224-651): The Sigillographic Evidence* (Rome, 2008), pp. 10-14 and 46.

<sup>119</sup> As reported by Tabari, *History* I.870; C.E. Bosworth tr., *The History of al-Tabarī vol. V: The Sāsānids, the Byzantines, the Lakhmids, and Yemen* (Albany NY, 1999), p. 105.

of a Sasanian bridge near Firuzabad, and this connection of his to the locality is perhaps the explanation of the interest shown in the details of his case. The inscription reads:

This bridge was built by order of Mihr-Narseh, the Vuzurgframadār, for the benefit of his own soul, at his own expense. Whoever has come on this road, let him give a blessing to Mihr-Narseh and his sons for that he thus bridged this crossing. And while God gives help, wrong and deceit there shall be none therein.<sup>120</sup>

This is a good example of a typical Sasanian trust, since Mihr-Narseh will not only have built the bridge with his own resources, but made a settlement for its future maintenance with a trustee to look after it.<sup>121</sup> Unfortunately, despite considerable discussion of such trusts in the MHD, neither the bridge nor any other settlements by Mihr-Narseh (such as of various Fire Temples known from other sources) is cited by our author.

One figure, however, is largely missing from the MHD: the king of kings. Although several kings are cited in various contexts, they are rarely of legal significance, and most often feature only as chronological indicators. No edict, rescript or ruling of a king on matters of substantive law is cited. There are no appeals to him. Only twice are kings seen to act. In the first instance concerning an important administrative reform, Kavad and then Khusro I lay down rules for the form and use of official seals.<sup>122</sup> By contrast, another significant administrative reform for the province of Ardeshir-Khwarrah under Khusro is attributed to the decrees of the *Rads*, the religious authorities.<sup>123</sup> In the second instance, we find kings exercising judgement in a particular case: that of the vuzurg-framadār, Mihr-Narseh, as already noted. And even here Peroz was careful to get the agreement of a council including the *mowbadan mowbad*. It is not clear, however, whether this was constitutionally necessary or simply good politics. Thus as both legislator and judge the king is largely a blank. There is however a strong statement that the edict of rulers is above that of priests:

And nothing may be above the edict of the *dehpats* (rulers/princes), because of their competence in matters which lie beyond the priestly class. (MHDA 27.5-7)

This appears to represent a close quotation from the Avesta, given the archaic and unusual word for ruler used.<sup>124</sup> It is surrounded by very clear statements of the unquestionable authority, or at least veracity, of the high priest.

<sup>120</sup> W.B. Henning, 'The inscription of Firuzabad', *Asia Major* n.s. 4 (1954), 98-102 (repr. in *Selected Papers II*, Acta Iranica 15 (Leiden and Teheran, 1977), 431-5). The Sasanian-era palace at Sarvistān has sometimes been attributed to him, although more usually to Vahram V (D. Shepherd, 'Sasanian art', in Yarshater, *Cambridge History of Iran 3(2)*, 1055-1112, pp. 1065-7).

<sup>121</sup> Perikhanian, 'Iranian society and law', pp. 661-662; Jany, 'The idea of a trust in Zoroastrian law', p. 281.

<sup>122</sup> MHD 93.4-9.

<sup>123</sup> MHD 78.2-11.

<sup>124</sup> The term occurs also at MHD 3.1; MHDA 39.10 and 40.2. See Perikhanian, *Book of A*

Concerning the *mowbadan mowbad*: all that is subject to doubt, when it is said by another person, is not subject to doubt when stated by the *mowbadan mowbad*. (MHDA 27.4-5)<sup>125</sup>

The statement about *dehpats*, therefore, does not seem in this context to be specifically about the king of kings, although some other works do seem to make this equivalence.<sup>126</sup> If the statement is taken as rather general, it may be contrasting essentially lay and priestly authority, so that *dehpats* have supremacy in those areas in their competence and outside that of the priests. The *dehpats* should be read as provincial governors, regional kings, marcher lords or other local non-priestly wielders of authority,<sup>127</sup> so we need not presume that the king of kings is included in their number. I have found only two statements in the MHD which seem to throw light on the constitutional position of the king of kings. First, appointments to certain guardianships are made by priests at the behest of the king of kings,<sup>128</sup> which might be reflected also in Tabari's account of Khusro I's government.<sup>129</sup> Secondly, in discussion of slavery and freedom, a free man is defined as being precisely a 'subject of the king of kings'.<sup>130</sup>

The contrast with Roman legal sources is pronounced. The writings of the second- and third-century jurists, which provide the closest parallel to the MHD, contain plentiful references to imperial rescripts, letters and judgements,<sup>131</sup> and there are also discussions of the emperor's legislative authority.<sup>132</sup> Then, in the course of the third century, the emperor became the sole means of law making and of legal interpretation as the previously existing forms, namely *leges* passed by the popular assemblies, *senatus consulta* (decrees of the senate), edicts of magistrates (principally the Praetor's Edict) and the legal opinions and commentaries of the jurists themselves were in turn superseded as sources of new law, although existing laws and writings did not lose validity. Of course by

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*Thousand Judgements*, p. 353; Nyberg, *A Manual of Pahlavi II*, p. 57 s.v. 'dahyupat'; 'princes' in H.W. Bailey, *Zoroastrian Problems in the Ninth-Century Books*, 2nd edn. (Oxford, 1971), p. 154.

<sup>125</sup> Cf. MHDA 28.5-7; also 10.8-13 (the chief priest does not need to take an oath). Note discussion by Jany, 'Private litigation in Sasanian law', p. 399, n. 18.

<sup>126</sup> Thus a clear reference to the king of kings at *Nērangestān* 23(41).12 (Kotwal and Kreyenbroek, *Hērbedestān and Nērangestān III*, pp. 34-5) compared to the use of *dehpat* in similar passages in the *Dēnkard* VI.232-234 (Shaked, *Wisdom of the Sasanian Sages*, pp. 90-1).

<sup>127</sup> Macuch, *Das sasanidische Rechtsbuch*, pp. 15 and 201-2.

<sup>128</sup> MHDA 14.11-12. It is not clear to me whether this means that the king himself had the right to appoint guardians, but either acted through priests or had delegated this power generally to them; or whether there had simply been a royal ruling that priests, rather than any other type of judge, would have jurisdiction in these cases (cf. MHDA 26.12-13). See Macuch, *Das sasanidische Rechtsbuch*, p. 158, n. 40.

<sup>129</sup> Tabari, *History* I.897 (Bosworth, *The History of al-Tabarī vol. V*, p. 156).

<sup>130</sup> MHD 1.1, 20.9, 31.17.

<sup>131</sup> Conveniently assembled in G. Gualandi, *Legislazione imperiale e giurisprudenza*, 2 vols. (Milan, 1963).

<sup>132</sup> E.g. Gaius, *Institutes* I.5; Ulpian at *Digest* 1.4.1.



the sixth century, Justinian's codification had gathered all legal materials into a single imperially edited and authorized collection. Tribonian and others may have done the work, but Justinian's presence throughout is palpable. While he took over and even preserved much of what already existed, it was on his own terms, since not only did his *Code* contain a mass of his own legislation, but the edited versions of the earlier material placed in both *Code* and *Digest* were adapted to reflect his legal changes. Further, Justinian made it clear that only in this new form in which he had promulgated them were the old legal materials valid, the originals being now obsolete. Essentially *Digest*, *Code* and *Institutes* were each an imperial enactment, albeit subsuming in altered form previously authoritative material.<sup>133</sup>

Did Sasanian kings act in this fashion? Certainly there are sources other than the MHD, which, if surviving in rather late versions, do derive from late Sasanian originals, such as the *Letter of Tansar*, the *Testament of Ardeshir* and the *Kārnāmag ī Anoshiravan*.<sup>134</sup> These respectively show both Ardeshir I and Khusro I as active rulers and indeed legislators at key moments. There is also the *Khwadāy-namag* ('Book of the Lords'), the official Sasanian history, probably compiled under Khusro I and updated under Yazdegerd III, which, although it does not survive, is reflected in many later sources.<sup>135</sup> None of these, however, allows us to see much more than in general terms the process of royal law making or exercise of justice. The best illustration of the king of kings in action is perhaps Khusro I as depicted by Tabari in his *History*, drawing mainly on the *Khwadāy-namag*. This gives a vivid account of Khusro's government, covering his administrative and land reforms, and his economic and legal policies.<sup>136</sup> One section in particular shows Khusro's extensive involvement with matters of family law and property, resulting from the Mazdakite crisis and its aftermath:

He killed a large number of those people who had confiscated other people's possessions and restored these possessions to their original owners. He commanded that every child, concerning whom there was a dispute before him about his or her origin, should be attributed to that person in whose family the child was, when

<sup>133</sup> Justinian's view is explicitly set out in the prefatory constitutions to the various part of his codification: *C. Haec* (Code 1st ed. commission, 528); *C. Summa* (Code 1st ed. promulgation, 529); *C. Deo Auctore* = *CJ* 1.17.1 (Digest commission, 530); *C. Tanta* (= *CJ* 1.17.2) with *C. Dedōken* (Digest promulgation, 533); *C. Omnem* (legal education reform, 533); *C. Imperatoriam Maiestatem* (Institutes promulgation, 533); *C. Cordi* (Code revised ed. promulgation, 534). See P. Birks and G. McLeod, *Justinian's Institutes* (London, 1987), pp. 32-3; T. Mommsen, *Corpus Iuris Civilis vol. I: Institutiones, Digesta* (Berlin, 1872), pp. xiii-xxix, and P. Krüger, *Corpus Iuris Civilis vol. II: Codex Iustinianus* (Berlin, 1877), pp. 1-4.

<sup>134</sup> Boyce, *Letter of Tansar*; Macuch, 'Pahlavi literature', pp. 181-3, where she also refers to a Rule-Book of Ardeshir, concerned with the ranks and conduct of the aristocracy.

<sup>135</sup> J. Howard-Johnston, *Witnesses to a World Crisis: Historians and Histories of the Middle East in the Seventh Century* (Oxford, 2010), pp. 341-53.

<sup>136</sup> Khusro's reign is covered by Tabari, *History* I.892-900 and 958-966 (Bosworth, *The History of al-Tabarī vol. V*, pp. 146-62 and 252-65).

the real father was not known, and that the child should be given a share in the estate of the man to whom the child was now attributed, provided that the latter acknowledged the child. In regard to every woman who had been forced to give herself unwillingly to a man, that man was to be held to account and compelled to pay the bride price to her, so that her family was thereby satisfied. Then the woman was to be given the choice between remaining with him or marrying someone else, except that if she had an original husband, she was to be restored to him. He further commanded that every man who had caused harm to another person in regard to his possessions or who had committed an act of oppression against another person should make full restitution and then be punished in a manner appropriate to the enormity of his offence. He decreed that, where those responsible for the upbringing of the children of leading families had died, he himself would be responsible for them. He married the girls among them to their social equals and provided them with their bridal outfits and necessities out of the state treasury, and he gave the youths in marriage to wives from noble families, presented them with money for dowries, awarded them sufficient riches, and ordained that they should be members of this court, so that he might call upon them for filling various of his state offices...<sup>137</sup>

Tabari is a rich and important source for Khusro, but this account still lacks the legal minutiae we would like. Were these typical actions or extraordinary measures taken to sort out the chaos left by the Mazdakite upheaval? Did these actions create precedents and were basic changes to the law intended? Indeed, is Khusro's action as here recounted reflected in the passage on guardianship in the MHD as suggested above?<sup>138</sup> What documents did these royal actions generate, and were they in the king's name or that of other officials? Tabari states that Khusro's reformed tax assessments were plausibly issued in multiple copies;<sup>139</sup> also that he studied the 'conduct, writings and legal decisions of Ardeshir' as models for his government.<sup>140</sup> Christian martyr acts plausibly suggest the existence of written royal orders and judgements (using that flexible term *nipištak*), at least in late Sasanian times.<sup>141</sup>

Daryaee compares Khusro I to Justinian as a great codifier of law.<sup>142</sup> He seems to regard the MHD itself as a later revision of an early codification by Khusro. This is surely wrong. The MHD is a juristic work, with no sign of being or drawing upon anything like a legal codification. However, Khusro can be regarded as a codifier to the extent that he provided the impetus for the Avesta/Zand compilation, which was to be the authoritative version for late Sasanian Persia, and this in turn provides the background for the legal world of Farrakhmard and the MHD. Khusro is also associated with a fundamental

<sup>137</sup> Tabari, *History* I.897 (Bosworth, *The History of al-Tabarī vol. V*, pp. 155-7).

<sup>138</sup> MHD A 14.11-12.

<sup>139</sup> Tabari, *History* I.963 (Bosworth, *The History of al-Tabarī vol. V*, p. 261).

<sup>140</sup> Tabari, *History* I.898 (Bosworth, *The History of al-Tabarī vol. V*, p. 157).

<sup>141</sup> *History of the Heroic Deeds of Mar Qardagh* 52 and 64 (Walker, *The Legend of Mar Qardagh*, pp. 57 and 66-7). The king in question is Shapur II, but the text is of late Sasanian date.

<sup>142</sup> Daryaee, *Sasanian Persia*, p. 30.

revision of the tax system and other significant administrative reforms, even if some of this had already begun under his father, as witnessed not only from Tabari, the key source for much of this, but even from the MHD passage on seals.<sup>143</sup> It is notable, however, that major actions are associated with the king holding assemblies, notably Khusro's tax reform, during which a scribe who asked an inappropriate question was supposedly killed by his fellows,<sup>144</sup> and it has been pointed out that accounts other than Tabari show the chief priest as key in the execution of this reform.<sup>145</sup> So perhaps, even where royal authority lay behind a measure, the key documents seen by judges were generated by assemblies or the high priest, with the king's role masked. Thus it is the actions of delegated authorities that are reflected in the MHD. It appears that Veh-Shapur's *Memorandum* was sealed by him on the orders of the king of kings (i.e. Khusro).<sup>146</sup> The result, however, is that it is Veh-Shapur that the MHD cites, not Khusro. It is as if sixth-century Roman sources mentioned mostly Tribonian in relation to law-making, while passing over Justinian. It is true, however, that there is a problem of interpretation with the earliest Roman 'codes', since the lack of an imperial nomenclature for the Gregorian and Hermogenian Codes of the 290s means that it is very hard to know how far either work, even though each was made up of imperial constitutions, was in any sense an official project sanctioned by Diocletian.<sup>147</sup>

It has often been noted that legislatures do not necessarily involve themselves much with private law.<sup>148</sup> For instance, in the late Republic, formal *leges* did not generally deal with such matters, which developed more organically via the flexible Praetor's Edict. The Augustan legislation on marriage and on the manumission of slaves was an unusually extensive foray into this area.<sup>149</sup> Yet in the end, emperors did interfere extensively in all areas of law, partly because their great power meant that virtually any form of imperial statement had or

<sup>143</sup> Z. Rubin, 'The reforms of Khusro Anushirwān', in Averil Cameron ed., *The Byzantine and Early Islamic Near East III. States, Resources and Armies* (Princeton, 1995), 225-97 and in *Encyclopaedia Iranica*, online edn., 6 March 2009, <http://www.iranica.com/articles/kosrow-i-ii-reforms>.

<sup>144</sup> Tabari, *History* I.961 (Bosworth, *The History of al-Tabarī vol. V*, pp. 256-57).

<sup>145</sup> Rubin, 'The reforms of Khusro Anushirwān', pp. 225-97.

<sup>146</sup> MHDA 38.6-8, with Macuch's reading of the text: Macuch, *Das sasanidische Rechtsbuch*, pp. 65 (MLK'n'MLK) and 221, vs. Perikhanian, *Book of A Thousand Judgements*, pp. 316-7.

<sup>147</sup> Compare S. Corcoran, *The Empire of the Tetrarchs: Imperial Pronouncements and Government AD 284-324*, rev. ed. (Oxford, 2000) ch. 2, with my modified view in 'The Tetrarchy: policy and image as reflected in imperial pronouncements', in D. Boschung and W. Eck eds., *Die Tetrarchie: ein neues Regierungssystem und seine mediale Präsentation*, ZAKMIRA Schriften 3 (Wiesbaden, 2006), 31-61, pp. 40-42 and 48-49.

<sup>148</sup> E.g. A. Watson, 'Law in books, law in action, and society', in *Fides, Humanitas, Ius: studii in onore di Luigi Labruna VIII* (Naples, 2007), 5899-5908.

<sup>149</sup> Marriage: various *Leges Iuliae* (18 BC), *Lex Papia Poppaea* (AD 9). Manumission: *Lex Fufia Caninia* (2 BC), *Lex Aelia Sentia* (AD 4), *Lex Iunia* (undated, before AD 4?). General discussion by S. Treggiari, 'Social status and social legislation', in Bowman, Champlin and Lintott, *Cambridge Ancient History vol. X*, 873-904, pp. 886-897.

came to have the force of law, irrespective of its formal nature and intended scope. Indeed, under Justinian, we are not even dealing with the usual pattern of 'petition and response' as the typical prompter of antique legislation, but rather with proactive engagement with legal problems, as Tribonian sought to solve many outstanding disagreements between the *veteres*, old jurists, via the Fifty Decisions, which he wrote as quaestor to Justinian.<sup>150</sup> We may regard Roman emperors in general, and Justinian in particular, as atypical in this regard, and be unsurprised that Sasanian kings saw no need to legislate about marriage, succession and so forth. But even so, it is perhaps odd that at least some thorny legal problems, having exhausted every other avenue, did not eventually reach the king for resolution and thus leave a trace in the case law reflected in the MHD.

One reason for this absence may be the era. If the MHD was composed late, in the 630s or even early 640s, perhaps the damaged monarchy in the years after the overthrow of Khusro II and the dynastic confusion which followed, to say nothing of the Arab invasion, made the king of less account. But in fact Yazdegerd III does not emerge as in any sense wearing a weakened or diminished tiara during his reign.<sup>151</sup> Further, even if true, this hardly explains why the decrees or judgements of earlier kings were not still relevant, since surely they would, if important, have remained embedded in the existing legal writings that Farrakhmard used, just as *leges* and *senatus consulta* remain in the *Digest*, more than three hundred years after those types of law-making ceased.

An alternative reason why the king is absent in the MHD may simply be the local focus, with the king being too distant and too infrequent a visitor to have much impact. But in fact the symbolic importance of Persis for the Sasanids, with numerous important temples, palaces and monuments, and a major royal treasury sited at Istakhr, means that kings cannot have been infrequent visitors, even if the cities of the region were not long-term royal capitals. Further, even infrequent royal visits could have left their imprint. Consider how a rare imperial visit to Egypt by Severus and Caracalla in 199-200 saw a rush of people eager to seize the opportunity to seek rulings and judgements from them, and the mass of rescripts issued in reply were copied, recopied and used for decades to come.<sup>152</sup> We should also consider that, while many of the juristic authorities cited by Farrakhmard are otherwise unidentified and could well be local,

<sup>150</sup> C. Russo Ruggeri, *Studi sulle Quinquaginta decisiones* (Milan, 1999).

<sup>151</sup> For the dynastic confusion and a recent positive assessment of Yazdegerd's reassertion of control, see Howard-Johnston, *Witnesses to a World Crisis*, pp. 347-8 and 443-4; *contra* Frye, 'The political history of Iran under the Sasanians', pp. 170-2; Wiesehöfer, *Ancient Persia*, p. 174.

<sup>152</sup> For this Severan material, see J.H. Oliver, *Greek Constitutions of Early Roman Emperors from Inscriptions and Papyri*, *Memoirs of the American Philosophical Society* 178 (Philadelphia, 1989), nos. 220-243. Additional and more recent items can be found by perusing the list in V.I. Anastasiadis and G.A. Souris, *An Index to Roman Imperial Constitutions from Greek Inscriptions and Papyri 27BC to 284AD* (Berlin, 2000), pp. 2-12.

reinforcing the idea of the MHD as a highly localized production, this does not in fact limit Farrakhmard's horizon. For, as we have already seen, several of the jurists named are key Avestan interpreters known from other sources. Similarly, while the king of kings is not cited, the *mowbadan mowbad* or high priest of the kingdom is, as with Adurbad, son of Zardust, and Veh-Shapur.

The answer probably lies in the most fundamental aspect of the legal system. The Sasanian realm was constructed alongside a newly created, although often contested, Zoroastrian orthodoxy. This underpins the nature of the courts and judiciary in which Farrakhmard operated. Thus, although scholars often speak of 'church and state' in Sasanian Persia, this does not mean, as in medieval Europe, that the law was divided between canon and civil law. Although there was a 'civil' administrative hierarchy in the provinces, and a separate priestly one, this did not create parallel courts applying different law. There is one substantive law for all courts, which formed part of a single system. By contrast, there were separate Jewish courts operating in Mesopotamia, although it is not entirely clear how far they were formal courts recognized by the Sasanian authorities, as opposed to more informal arbitration tribunals.<sup>153</sup> However, even there R. Samuel in the third century had famously insisted on the application in these courts of Persian civil law.<sup>154</sup> We cannot, therefore, argue that Farrakhmard was a limited 'canon lawyer', dealing only with priestly law (in a narrow sense). In reality, whatever personal bent he had, based on his intellectual attitude or practical court experience, he does not entirely exclude any aspect of law. Some sections illustrate their point by examples of registration into the *List of Horsemen*, thus concerning the membership of the warrior, not priestly, caste, yet this is not regarded as inappropriate.<sup>155</sup> One of the longest sections of the MHD deals with the areas in the competence of *dadwars*, the judges ordinary, and other judges and officials, whose jurisdiction is described at length in Ch. LII.<sup>156</sup> It is clear from this that there are complex overlapping jurisdictional boundaries and many types of judge, including priests (*rads* and *mowbads*), of varying competence and sometimes with appellate functions.<sup>157</sup> Thus some types of property or legal institutions (Fire Temples, sturhship) were proper to certain types of priest judge.<sup>158</sup> Most important of all from a procedural point of view were the ordeal courts, presided over by *Rads*. The

<sup>153</sup> S. Schwartz, 'The political geography of rabbinic texts', in Fonrobert and Jaffee, *Cambridge Companion to the Talmud*, 75-96, pp. 89-93.

<sup>154</sup> A statement frequently cited in the Babylonian Talmud; e.g. B. Bava Batra 54b; also B. Bava Kamma 113a (N. Solomon ed., *The Talmud: A Selection* (London, 2009), p. 451). See Elman, 'Middle Persian culture and Babylonian sages', p. 174.

<sup>155</sup> MHDA 16.11-17.1; 19.2-6. These references, however, all appear to derive from the rulings/writings of Vahram.

<sup>156</sup> MHDA 25.15-30.5.

<sup>157</sup> For a recent attempt to make sense of judicial procedure and court organization, see Jany, 'Private litigation in Sasanian law'. See also M. Macuch, 'Judicial and legal systems iii. Sasanian legal system'.

<sup>158</sup> Lukonin, 'Political, social and administrative institutions, taxes and trade', pp. 733-4.

swearing of oaths, often under ordeal conditions, either ‘sulphur water’ or ‘bound feet’, was an important part of the legal process and could be crucial, or at least strongly persuasive, in deciding a case.<sup>159</sup> One of the most iconic moments of Zoroastrian history under the Sasanians was the ordeal of Adurbad, son of Mahrspand, who endured the ordeal of molten metal poured on his chest, to prove the authenticity of sacred texts in Pahlavi.<sup>160</sup> The swearing of oaths, and indeed over-swearing, were part of Roman legal procedure, although not much discussed in our legal sources, and therefore perhaps appearing of lesser importance than was in fact the case.<sup>161</sup> However, the Romans did not use any form of ordeal in regular court proceedings. One of the few recorded examples concerns a Vestal Virgin, who is atypical, as her case in fact fell under the jurisdiction of the pontiffs.<sup>162</sup> But it is not even true to say of the Sasanian legal system that priests were embedded powerfully within it. Essentially, priests *were* the Sasanian legal system, and the *dadwars*, the judges ordinary, were themselves from the priestly caste. The Sasanian caste system, although attributed to Ardashir I, more probably dates in its developed state to the time of Khusro I, being formalized after the Mazdakite upheaval, although the theory may never have been fully realized. There were four castes: priests, warriors, scribes, and artisans.<sup>163</sup> Among the priests were counted also the judges.<sup>164</sup> This priestly legal dominance was something recognized even by such a distant observer as Agathias, himself a trained and practising Roman lawyer.<sup>165</sup>

The religious aspect, therefore, is the major difference between Persia and Rome. At Rome, although sacred law existed and was written about, it proved largely separable. As Alan Watson has frequently declaimed, Roman

<sup>159</sup> Drinking sulphur water ordeal: MHD 13.9; bound feet ordeal: MHD 13.3 and 14.3. The exact nature of these is obscure. See Macuch, *Gerichtspraxis und Rechtskasuistik*, pp. 130-6.

<sup>160</sup> J. Duchesne-Guillemin, ‘Zoroastrian religion’, in Yarshater, *Cambridge History of Iran* 3(2), 866-906, pp. 886-7; *Dēnkard* V.22.4 (J. Amouzgar and A. Tafazzoli, *Le cinquième livre du Dēnkard*, Studia Iranica cahier 23 (Paris, 2000), pp. 70-1). The idea of the ordeal of metal is extremely ancient, being present in the oldest Zoroastrian texts, the Gathas. See Yasna 32.7 and 51.9 (M.L. West, *The Hymns of Zoroaster* (London, 2010), pp. 70-1 and 156-7); cf. Plutarch, *Artaxerxes* 14.5 (= Ctesias F26). See B. Lincoln, *Religion, Empire, and Torture* (Chicago, 2007), pp. 85-6 and 138.

<sup>161</sup> See *Digest* 12.2; *CJ* 2.58 and 4.1.

<sup>162</sup> Tuccia proved her innocence by carrying water in a sieve (230 BC?). See Valerius Maximus, *Mem.* 8.1.absol.5; Pliny, *Hist. Nat.* 28.iii.12; Augustine, *De Civ. Dei* 10.16 and 22.11.

<sup>163</sup> A. Tafazzoli, *Sasanian Society*, Eshan Yarshater Distinguished Lectures in Iranian Studies 1 (New York, 2000).

<sup>164</sup> *Letter of Tansar* 12 (p. 38). Note also *Dd introd.* 8 (Jaafari-Dehaghi, *Dādestān-ī-Dēnīg, Part 1*, pp. 32-3). For some reason Kreyenbroek’s edition and translation of this passage omits the *dadwāran* (P.G. Kreyenbroek, ‘The introduction to the *Dādestān-ī-Dēnīg*’, in Gyselen, *Au carrefour des religions*, 171-177, pp. 172 and 174).

<sup>165</sup> Agathias, *Hist.* 2.26.5 (J.D. Frendo tr., *Agathias: The Histories* (Berlin, 1975), p. 61). For Agathias’ training and career as a lawyer, see A. Cameron, *Agathias* (Oxford, 1970), pp. 1-8.

law was relentlessly secular.<sup>166</sup> It is not that the Romans were not religious. Cicero regarded Roman success as a measure of their piety to the Gods.<sup>167</sup> But although most Roman legal processes were in origin supervised by priests (*pontifices*), priestly control was loosened at a very early stage, starting with the publication of the Twelve Tables in 451/0 BC, a collection which for the most part did not itself relate directly to religious matters. As a result, the 'sacred' texts lying behind Roman law came to be the Twelve Tables and later the Praetor's Edict. There was religious law and priestly jurisdiction (as over the Vestals, cited above), but this was relatively narrow in scope. Civil law became a largely separate entity, nor was this trend reversed by the fact that the emperor himself was also *pontifex maximus*, and so had overriding authority in all areas of law. Thus, by the time that a new religious order asserted itself with the advent of Christianity as a favoured and then official religion in the fourth century, there was a strong pre-existent legal culture, not entwined in religious paraphernalia. In Justinian's codification, the *Digest* has no reference and the *Institutes* little to things ecclesiastical or religious.<sup>168</sup> The *Code* opens with Theodosius I's statement of Nicene Orthodoxy (*CJ* 1.1.1.), but half way through Book I (from title 14) the previous legal order reasserts itself. But Sasanian civil law was always essentially Avestan law and in this it is closer to Jewish and Islamic law, each with clearly religious texts providing the ultimate background. Emblematic of the symbiosis of state and religion is Kerdir, the self-promoting *eminence grise* of the Sasanian monarchy during the third century, who became both chief priest and chief judge of the kingdom and also established priestly schools.<sup>169</sup>

This last point does, however, raise another question: that regarding legal training. In Rome, legal training in the late Republic was essentially on-the-job, watching one's mentor performing, whether in court or giving *responsa*, although study of written works must have become more important as these increased in volume. By the second century AD, Gaius's *Institutes* seem to indicate that more formal teaching was developing and accessible textbooks were required. Beirut took off as a centre for legal learning in the third century,<sup>170</sup> and by the fifth, there were lecture courses on a standard syllabus.<sup>171</sup> Christian

<sup>166</sup> E.g. A. Watson, *The State, Law and Religion: Pagan Rome* (Athena GA and London, 1992).

<sup>167</sup> Cicero, *De Haruspicum Responso* 19; cf. Polybius, *Histories* 6.56.6-15.

<sup>168</sup> I suspect that the amount of religious law excised in the editorial process was not very extensive, although clearly references to legislation against Christians would have disappeared! See Lactantius, *Divine Institutes* 5.11.18-19; V. Marotta, *Ulpiano e l'impero II: studi sui libri de officio proconsulis e la loro fortuna tardoantica* (Naples, 2004), pp. 80-7.

<sup>169</sup> Daryae, *Sasanian Persia*, pp. 75-7; P. Huyse, 'Inscriptional literature in Old and Middle Iranian languages', in Emmerick and Macuch, *Literature of Pre-Islamic Iran*, 72-115, pp. 98-100. For part of his famous inscriptions in English, see Boyce, *Textual Sources*, pp. 112-3.

<sup>170</sup> L.J. Hall, *Roman Berytus: Beirut in Late Antiquity* (London and New York, 2004), ch. 9.

<sup>171</sup> In *C. Omnem* (533) (*Corpus Iuris Civilis I*, pp. xv-xvii), Justinian usefully describes the legal syllabus both before and after his reform.

learning was something quite different, as Zachariah of Mytilene shows in his life of Severus of Antioch, who pursued his legal studies at Beirut as a model student, but spent the weekend on scripture and worship.<sup>172</sup> But, although a 'law degree' had by the fifth century become a requirement to practise at the Bar,<sup>173</sup> and despite its being also popular for those seeking an imperial administrative career, there was no requirement for legal knowledge in a provincial governor (the Roman equivalent of a judge ordinary) or others exercising jurisdiction. A judge would be aided by his own picked panel of assessors to advise him, which usually contained some persons with legal training. Ammianus Marcellinus highlights this as a point of contrast with the Persians. In his generally critical but derivative excursus on Persia, he atypically praises the Persians for their upright and experienced judges, who had no need of assessors<sup>174</sup> (although according to the Talmud they were still bribable!).<sup>175</sup> Ammianus, of course, took a jaundiced view of overly clever lawyers, so presumably thinks a single legally trained judge is a simplifying improvement.<sup>176</sup> However, while his Persian judge is probably more a foil than based on detailed understanding of the Sasanian legal system,<sup>177</sup> his representation of Persian practice appears accurate on this point, and certainly matches the later world of Farrakhmard.

In the Sasanian empire, judges were professionals and the only place for them to learn law in depth must have been in an Avestan priestly school. In the earlier period (e.g. at the time of Ammianus), those outside the priestly caste could attend, although they do not seem to have been instructed in the same way as priests. However, after the suppression of the Mazdakites, Khusro I restricted access to the priestly class alone.<sup>178</sup> The Avesta itself, put into its final canonical form at that time, contained a great many different kinds of work, which were not necessarily 'religious' in a narrow sense (that is spiritual, ritual, liturgical etc).<sup>179</sup> While we may suppose that all students had the same basic education, one wonders if some degree of specialization was possible. Unfortunately, it is

<sup>172</sup> L. Ambjörn, *The Life of Severus by Zachariah of Mytilene*, Texts From Christian Late Antiquity 9 (Piscataway NJ, 2008), pp. 46-54.

<sup>173</sup> *CJ* 2.7.11 (460); 2.7.22 (505); 2.7.24 (517). Note, however, that the law-schools and their formal syllabus do not seem to have continued much beyond the death of Justinian, certainly not into the seventh century.

<sup>174</sup> Ammianus Marcellinus 23.6.82.

<sup>175</sup> B. Gittin 28b; J. Neusner, *A History of the Jews in Babylonia IV: The Age of Shapur II*, Studia Post-Biblica 14 (Leiden, 1969), p. 54.

<sup>176</sup> Ammianus 30.4 in his famous digression on lawyers. See J.F. Matthews, *Roman Perspectives: Studies in the Social, Political and Cultural History of the First to Fifth Centuries* (Swansea, 2010), ch. 14.

<sup>177</sup> For Ammianus's attitude, see J.W. Drijvers, 'Ammianus Marcellinus' image of Sasanian society', in J. Wiesehöfer and P. Huysse eds., *Ērān ud Anērān: Studien zu den Beziehungen zwischen dem Sasanidenreich und der Mittelmeerwelt*, Oriens et Occidens 13 (Stuttgart, 2006), 45-69.

<sup>178</sup> Kotwal and Kreyenbroek, *Hērbedestān and Nērangestān I*, pp. 15-18.

<sup>179</sup> Hintze, 'Avestan literature'.



difficult to tell whether being *mowbad* or *dadwar* represent alternative ‘careers’, since both exercised jurisdiction within a single judicial system and should have had some shared legal knowledge. Thus it is not clear what range of actual judicial posts our MHD jurists may have held, although the variety of topics treated suggests that some could have been variously *dadwar*, *rad* and *mowbad*. We cannot tell, therefore, whether the Avestan schools turned out identikit graduates, or varied specialists. In addition, much real legal training presumably took place on the job.

It appears that scribes, who made up the third of the Sasanian estates and had their own schools, must have had some legal knowledge for the drawing up of documents.<sup>180</sup> However, it is not clear how extensive this was. There are two passages where Farrakhmard appears to cite a scribe. Once he talks of Khwataybut the Scribe (*dipir*),<sup>181</sup> in another case of an anonymous scribe. However, this second may better be taken as a personal name, Dipir, so perhaps Khwataybut is son of Dipir.<sup>182</sup> This would remove scribes as juristic experts, unless the name itself is indicative and would have been avoided by priestly families.

A further point to note is that there are no professional advocates in Sasanian law. In the Roman system (at least of the fifth and sixth centuries) these would be the trained professionals routinely present in the courtroom, whereas Roman judges would not necessarily have much legal background. In the Persian system, there are personal representatives or mandatories (*jādag-gōwan* or *dastwaran*), who can stand in for someone in court, not dissimilar to the Roman *cognitor* or *procurator*, or otherwise act as trustees, but these did not need to be trained lawyers (or orators).<sup>183</sup> There was certainly a priestly title, *dastwar*, meaning an authoritative expert, but the two are not identical.<sup>184</sup> It appears that judges themselves were conceived of as having duties regarding plaintiff or defendant, although this may represent their functions as arbiters outside formal legal proceedings.<sup>185</sup> It is worth noting that there was an official priestly title ‘defender of the poor and judge’, widely attested on seals, including the notable reference to this in relation to the *mowbad* of Fars in a passage of the MHD.<sup>186</sup> It is not

<sup>180</sup> Tafazzoli, *Sasanian Society*, pp. 18-37. For regulations issued under Khusro I regarding limits to the number of scribes attached to each court, see MHD 78.4.

<sup>181</sup> MHD 2.5 with Perikhanian, *Book of A Thousand Judgements*, pp. 28-9; accepted by Tafazzoli, *Sasanian Society*, p. 33.

<sup>182</sup> Thus Macuch, *Rechtskasuistik und Gerichtspraxis*, pp. 433 and 748 (s.v. Dibir).

<sup>183</sup> MHD 74.12-76.3 (Ch. VI) and MHD 5.3-8.13 (Ch. XX). M. Macuch, ‘An Iranian legal term’, pp. 126-38.

<sup>184</sup> Dd *introd.* 8 (Jaafari-Dehaghi, *Dādestān-ī-Dēnīg, Part 1*, pp. 32-3). M. Shaki, ‘Dastūr’, *Encyclopaedia Iranica*, online edn., 15 December 1994, <http://www.iranica.com/articles/dastur>.

<sup>185</sup> Jany, ‘Private litigation in Sasanian law’, pp. 398-9.

<sup>186</sup> MHD 93.8; Gyselen, *Nouveaux matériaux*, pp. 57-59. P. Gignoux, ‘Driyōšanjādag-gōw ud dādwar’, *Encyclopaedia Iranica*, online edn., 27 July 2005, <http://www.iranica.com/articles/driyosan-jadag-gow-ud-dadwar>.

clear, however, whether this represented a general programmatic commitment to justice for all, or went further and actively encouraged some form of ‘legal aid’ system. However, it is possible that, as had happened in Rome, there was a progressive tendency for legal representation to become more professional.

Finally, the MHD discusses the jurisdiction of the *ōstāndār*, the provincial governor, who dealt also with the royal demesne,<sup>187</sup> and the *āmārgar*,<sup>188</sup> who dealt principally with the treasury and taxes.<sup>189</sup> If these formed part of the ‘secular’ hierarchy, and did not come from the priestly caste (and neither statement is necessarily true), they must either have had some independent legal training or have called on others for advice, although their activities may have been narrowly administrative. The flavour of the chapter on judges and jurisdiction (Ch. LII), however, is that it is Farrakhmard or the commentators who are to a great extent demarcating the competences of the various officials. There is debate, for instance, regarding the overriding authority of prison wardens to establish prisoners’ identity in cases of confusion.<sup>190</sup> This presumption must in part be a result of Farrakhmard’s ‘clerical’ perspective, but this is not necessarily a false one.

Thus, in a Sasanian court, the judges, of whatever style or title, drawn from the priestly caste were the only routinely participating legal experts. One presumes that jurists were inevitably also judges, since there is no evidence of assessors or advisers to judges or other officials. They might, of course, have acted as legal representatives, although none of the opinions in the MHD seems to represent a jurist playing the clever lawyer before a judge. Further, it can hardly be proved that there were no ‘armchair’ jurists, or jurists who only taught (as supposed for Gaius). Given the embedding of the legal hierarchy within the priestly caste, there is less cause for surprise at the strong statements about the overriding authority of the *mowbadan mowbad*, even against the results of an ordeal.<sup>191</sup> And against several references to the high priest, there is only one to the *dadwāran dadwār* (judge of judges, i.e. chief judge of the kingdom), and that only to his will as a document, not to any ruling.<sup>192</sup> He must have been outranked in the priestly hierarchy. Again, the closest thing to petitioners seeking a rescript is in fact an approach by several persons to the *andarzbed* of the Magi, Dad-Farrakh, very high in the clerical hierarchy, who in this case

<sup>187</sup> MHDA 27.12-13.

<sup>188</sup> MHDA 27.13-28.5. Gyselen, *La géographie administrative de l'empire sassanide*, pp. 35-7; Gyselen, *Nouveaux matériaux*, pp. 39-56 and 110-3.

<sup>189</sup> Lukonin, ‘Political, social and administrative institutions, taxes and trade’, pp. 726 and 733-4, but there is now more plentiful sigillographic evidence. On *ostandars*, see Gyselen, *Nouveaux matériaux*, pp. 30, 69-75 and 117-9; P. Gignoux, ‘Aspects de la vie administrative et sociale en Iran du 7ème siècle’, in Gyselen, *Contributions à l'histoire et la géographie historique de l'empire sassanide*, 37-48, pp. 40-41.

<sup>190</sup> MHDA 28.11-29.5.

<sup>191</sup> MHDA 27.4-5, 28.5-7.

<sup>192</sup> MHD 110.5-11. Note that Kerdir had earlier been both chief priest and chief judge.



Ruins of Izadkhast in Fars, on the road between Shiraz and Isfahan, site of a Sasanian Fire Temple. See K. Schippmann, *Die iranischen Feuerheiligtümer* (Berlin, 1971): 210-11. (Photo: James V. Corcoran)

at least refuses to issue any rulings changing the law.<sup>193</sup> Thus according to Farrakhmard's legal horizon, the highest authority in the unified legal system is in practice the chief priest of the kingdom.

It is against this background of priestly Avestan jurisprudence that we should view the position of the king of kings. In the contrasting Roman situation, expert jurists did not necessarily hold office as judges or even practise as advocates, yet their expertise could be borrowed, whether from their more accessible treatises and institutes, or if they were asked to sit as assessors advising those exercising jurisdiction. This applied also in relation to the emperor, whose legal training would usually have been limited. Whether sitting as judge or answering legal queries via rescripts or issuing reforming legislation, the emperor spoke or wrote in his own name, while the content was devised by those with appropriate expertise. Often the emperor's chief legal officials were themselves experts (Ulpan, Hermogenian, Tribonian), but even they need not be and could in turn draw on those lower down. There is no sign that this vicarious jurisprudence was approved of or expected in the Sasanian monarch. The king of kings was outside the caste system, although, especially in the later period, he could regulate it, as other matters of rank and status.<sup>194</sup> But he was not of the priestly caste himself nor trained in Avestan jurisprudence, upon which most Sasanian law was based. Therefore, it was not appropriate for him routinely to issue judgements, rescripts, or laws on such matters directly, although no doubt, on such occasions as he did so, he must surely have relied upon the suitably trained to formulate his words. This is my best suggestion as to why the king of kings has such a muted presence for Farrakhmard in the MHD. For most issues of civil law, the king was not an acknowledged source of law or legal interpretation.<sup>195</sup> Indeed, Farrakhmard's 'clerical' view is still reflected in later post-Sasanian works. A ninth-century Arabic 'mirror for princes' shows the king of kings (modelled on Khusro I Anoshiravan) as an example of good kingship submitting twice a year to complaints or civil cases brought against him under the supervision of the chief priest.<sup>196</sup>

So what impression can we take away about Farrakhmard and his *Book*? He is of the priestly caste, perhaps the son of a judge/jurist. He must have trained in an Avestan priestly school, followed by work experience (seeing his

<sup>193</sup> MHDA 15.12-15.

<sup>194</sup> *Letter of Tansar* 13 (pp. 38-9), although stressing that social mobility is not a good thing!; J. Wiesehöfer, 'King, court and royal representation in the Sasanian empire', in A.J.S. Spawforth ed., *The Court and Court Society in Ancient Monarchies* (Cambridge, 2007), 58-81.

<sup>195</sup> See J. Jany, 'The four sources of law in Zoroastrian and Islamic jurisprudence', *Islamic Law and Society* 12 (2005), 291-332, who delineates four sources of law: 1) the Avesta; 2) oral law; 3) the consensus of the sages; 4) the judicial practice of the courts. The king's active involvement in criminal law was rather greater (Jany, 'Criminal justice in Sasanian Persia' and 'Private litigation in Sasanian law', p. 401).

<sup>196</sup> Al-Jahiz, *Kitāb at-tāj* 159-163 (French tr. C. Pellat, *Le livre de la couronne* (Paris, 1954), pp. 179-81); J.R. Perry, 'Justice for the underprivileged: the ombudsman tradition of Iran', *Journal of Near Eastern Studies* 37 (1978), 203-215, p. 204.

father in action?), and become a judge himself, perhaps serving in a succession of different types of court. He had heard others give judgement, as well as hearing juristic experts deliver *responsa*. He had access to archives and court records. All this is in the local context of Ardeshir-Khwarrah and Fars. He also had various legal compilations at hand, primarily in the form of Avestan Zand commentaries, but also legal miscellanies. Some of these works were local, some from the capital or a major royal centre. Some of these authorities were contemporary or near contemporary judges giving actual decisions, others were earlier writings, probably from both before and after the Avestan 'codification' under Khusro I. But Farrakhmard's audience was surely other legal practitioners, capable or utilizing his allusive and difficult combination of both commentary-derived and judge-made law. It is clear that there was a lively Persian legal culture comparable in some respects to Rome: not so much the contemporary empire of Justinian's codification, but the Rome of the second and third-century juristic writings. Disputing and scribbling jurists have much in common, as has often been pointed out in comparisons also between the classical Roman jurists and their rabbinical contemporaries.<sup>197</sup> Yet there is also great difference. The religious Avestan background contrasts with that of the non-religious Twelve Tables and Praetor's Edict. There is an apparent lack of a desire to explain or instruct. We must remember, however, that Roman legal writing had a long pedigree, while Sasanian legal writing, only just moving away from orality, was still quite young. Already it has a strong 'civil law' aspect, making it appear as a distinct specialism within Avestan learning. One can wonder how far such a trend might have developed towards creating a largely independent legal system, but for the Arab conquest. In any case, although we should be grateful for the MHD's survival, it is unfortunate that our knowledge of Sasanian law relies so heavily on one legal work, and that it should be a difficult professional text, preserved incomplete and disordered. Given the demands placed by scholars upon him and his work, Farrakhmard can hardly meet all our expectations. But it is also most unlikely that there ever existed an introductory *Institutes* of Farrakhmard, now waiting to be discovered as a palimpsest in some forgotten near-eastern library.<sup>198</sup>

<sup>197</sup> Tropper, *Wisdom, Politics, and Historiography*, ch. 7. But there are also parallels of codification: C. Hezser, 'The codification of legal knowledge in late antiquity: the Talmud Yerushalmi and Roman law codes', in P. Schäfer ed., *The Talmud Yerushalmi and Graeco-Roman Culture I*, Texts and Studies in Ancient Judaism 71 (Tübingen, 1998), 581-641.

<sup>198</sup> Knowledge of pre-Justinian Roman law, of course, was transformed by the discovery of the palimpsest of Gaius's *Institutes* at Verona in 1816.

