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JUDICIAL CONTRADICTIONS IN ARDAKHŠĒR'S SUCCESSION*

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The Middle Persian *Deeds of Ardakhšēr Son of Pābag* (*Kār-nāmag i Ardakhšēr i Pābagān*) contains the story of Ardakhšēr, later the founder of the Sasanian dynasty. The author of this article analysed the judicial relevant data of the epic and compared them with the Zoroastrian customs and Sasanian jurisprudence. The contradictions found led him to doubt the legitimacy of the first Sasanian king.

Key words: History of the Sasanian Empire, private law, marriage, legitimacy, Kār-nāmag.

In this paper I shall draw attention to the fact that in the Middle Persian *Deeds of Ardakhšēr Son of Pābag* (*Kār-nāmag i Ardakhšēr i Pābagān*)[1] there emerge some judicial contradictions and inconsistencies which overcomplicate the situation of Ardakhšēr and at the same time jeopardise his claim to the Achaemenid heritage.

Our only direct source for Sasanian law is the *Mādigān i Hazār Dādestān* (MHD+A),[2] a compilation of 1000 judgements. The text is thus neither a legal code in the modern sense nor a lawbook like Hammurabi's Codex. Most importantly, the legal basis of the judgements is not stated. This means that we have no direct access to the actual wording of Sasanian laws.

Toward the beginning of the *Kār-nāmag* we are informed about the situation before the actual plot begins. The Great (Parthian) King Ardawān is the sovereign ruler of the land, and Pābag is one of his vassals. Sāsān, a descendant of the Achaemenids, lives as a shepherd in Pābag's fields. About this Pābag we are told that he "had

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[1] Nyberg (1964, pp. 1–18).

[2] The work was edited and translated with commentaries into German by Maria Macuch (1981, 1993), into Russian by A. Perikhanian (1973), but I had access only to its English translation by Nina Garsoian (1997). The first part of the work (MHD) was edited by Modi (1901), the second (MHDA) by Anklesaria (1913), for the entire work the abbreviation "MHD+A" is used.

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no *nām-burdār* offspring" (*Pābag rad hic fradand- i nāmburdār nē būd*). The literal meaning of the term *nām-burdār* is "preserving the (father's) name",[3] however, as I shall try to point out, the term used here has far-reaching legal implications, though it is not a legal expression, or at least it does not occur in the MHD+A.

Among the various types of Middle Persian marriages there are *pādikhšāy*, *čagar*, *khwasrāyūn*, etc., marriages,[4] of which the *pādikhšāy* marriage was the oldest[5] and most important. This type of marriage is a strict and rigid form of marriage, in which the *pater familias* has almost unlimited control over his wife and children. Although the MHD+A bears witness to a slow process in which the rights of the wife and the children had increased, they never matched those of the father. This process was encouraged by the judges, who established the so-called *kardag*, or "made/created (law)", which was more flexible than the ancient rules, the *čāštag* "taught (law)".[6] At this stage the *pādikhšāy* marriage was still similar to the marriage *cum manu mariti*, well known from Roman law. According to the law of inheritance only a son born in the *pādikhšāy* marriage could become *khwāstagdār* heir. It was he who succeeded to the social status, functions, and privileges of the father, as well as to his entire estate, including debts. As the only heir he was obliged to accept the inheritance and could not refuse it.[7] This means that if the passive bequest, that is, the debt, was more than the active bequest he was liable with his whole property.[8] He also inherited the late *kadag khwadāy*'s cultic functions, including the duty of caring for the body and the soul by strictly regulated rites, which have survived into modern times, as shown by Mary Boyce.[9] These legal principles of inheritance are those known also from Roman law, in which those who must accept the inheritance are called "necessary heirs" and their liability is expressed by the phrase *ultra vires hereditatis*.[10] As a result, children born in other forms of marriages were not considered as full-right legal heirs of the deceased person.

The person, who had no legal male offspring was called *abē-nām*,[11] "having no name". The idea behind this term is that the male offspring carries on the name (and the property) of the family, meanwhile the daughter does not because of her marriage to an alien family. This idea is expressed in the post-Sasanian lawbook of

[3] MacKenzie (1971, p. 57).

[4] Perikhanian (1983, pp. 646–650), Macuch (1981, pp. 73–77, 100–113).

[5] There is no evidence to decide which form of marriage was the oldest, but there are some indications which show the primacy of the *pādikhšāy* marriage: children born from *pādikhsāy* marriage were the full-right legal heirs of the deceased person (in cases of *čagar* and *khwasrāyūn* marriage it was not the case), the rights of the family father over his family in the *pādikkhšāy* marriage were the widest, etc. In short, the *pādikhšāy* marriage represents a typical patriarchal family model, while the other forms were just subsidiary marriages.

[6] Macuch (1981, pp. 146, 150).

[7] Perikhanian (1983, p. 652).

[8] Ibid.

[9] Boyce (1977, pp.186–211).

[10] Dulckeit–Schwarz–Waldstein (1995, p. 65).

[11] This term does not occur in the MHD+A but in the Handarz-literature; see Macuch (1995, p. 155).

the Persian Christian Jesubocht.[12] We can conclude, therefore, that the nām-burdār son is a son, who carries on the name of the father (family) and the deceased person is in no danger to be abē-nām. It is highly possible therefore that a nām-burdār son is at the same time the khwāstagdār-necessari heres.

According to the Zoroastrian teaching it was an obligation (*khwēškārīh*) to get married and produce children. This point has been studied by Maria Macuch,[13] who has shown that the crucial source of this teaching was the alliance between the priesthood and the nobility, because the latter's main interest was to ensure the wealth within the family. It was in fact this alliance that led to the institution of another marriage, the *čagar* marriage.

From the MHD+A we learn that the *čagar*[14] marriage was an artificial marriage made by the Sasanian lawyers. If a man died without a legal heir or had no hope of ever engendering a legal heir, a member of the family was obliged to enter a *čagar* marriage only to produce a legal heir for the *pater familias*. The exact circumstances that required a *čagar* marriage were specified in the law, as also which family members (called *stūr*[15]) were qualified to enter such a marriage. These were generally the female members of the family: the daughter, widow, or the sister of the deceased. If a son was born from this marriage, he was of course the legal heir of the deceased for whom the *čagar* marriage was made, and no longer that of his natural father, who was obliged by law to bring up the children and to be the guardian of the deceased man's wealth until the son had attained the age of fifteen. Such a son also had no demands upon the heritage of his natural father.

If a daughter was born from the *čagar* marriage, her duty was to produce a *khwāstagdār-nām-burdār* (?) son called *stūrīh-pus*, and in this manner the line went on until a son was born. A trace of this institution is still seen in Firdausi's *Šāhnāme*, in the legend of Feridun, who is separated from his successor Manučihr by a chain of daughters.[16]

How does all this fit into the context of the *Kār-nāmag*? First, we must conclude that the author wants to say that Pābag had no full-right legal heir, either because he did not live in marriage or because he had no son. If Pābag had children, these were therefore not his full-right legal heirs. In fact, he did have a daughter, whose name is never mentioned in the text, but she – being a female – cannot have been a nām-burdār son.

Such was then the situation of Pābag, who only had a daughter, but not a son. At this point in the story, however, Pābag had a dream, in which Sāsān, a descendant of the Achaemenids appeared. This dream gave Pābag the idea of attaching Sāsān to himself by family ties. Theoretically, he had two options: he could either adopt him,

[12] Sachau (1914, Buch IV, pp. 3–4).
[13] Macuch (1995, pp. 151–165).
[14] Macuch (1981, pp. 73–77), Perikhanian (1983, pp. 649–651).
[15] Macuch (1981, pp.115–117), Bartholomae (1920, p. 48; 1922, p. 51; 1923, pp. 5–11, 17–24), Perikhanian (1970, pp. 353–357).
[16] Perikhanian (1983, p. 654).

thereby making him his legal son and heir, or give him his daughter in *čagar* marriage, but, surprisingly he chose neither of those options.

Further in the text we learn that Sāsān did get married to Pābag's daughter, but the author does not state in what kind of marriage, but, by applying an *argumentum a contrario*, I suppose it must have been a *pādikhšāy* marriage. According to the *Kār-nāmag*, when a child was born from the marriage of Sāsān and Pābag's daughter, Pābag adopted this son, Ardakhšēr, later the founder of the Sasanian dynasty. Now, if Sāsān's marriage with Pābag's daughter had been a *čagar* one, there would not have been any need to adopt the child, since a son born from a *čagar* marriage was a legal son and heir. We must therefore conclude *a contrario* that, if Pābag adopted Ardakhšēr, it was because his daughter's marriage was not a *čagar* marriage and, consequently, a *pādikhšāy* marriage.[17] The *pādikhšāy* marriage of Pābag's daughter could not have satisfied Pābag's desire for a legal heir, however, since Ardakhšēr would be Sāsān's son and heir. Hence Pābag had to adopt the child to ensure a legal heir for himself. So why did Pābag resort to this more complicated way of obtaining a legal heir?

To understand this, we need to remember that one of the "purposes" of the *Kār-nāmag* is to legitimise both Ardakhšēr, who actually usurped the power from a ruling king, and the new dynasty. *Prima facie*, it would seem that Pābag managed to combine in Ardakhšēr both the Parthian royal authority, since he was himself "one of the appointees[?] of Ardawān" (*Pābag hac gumārdag-i Ardawān būd*), and the Achaemenid heritage, since Sāsān was a descendant of the Achaemenids. Such a reasoning is faulty, however, since by adopting the boy he severed the boy's family ties with Sāsān and thus lost the Achaemenid connection.

The solution to this dilemma is in fact very simple in Sasanian law: Pābag should simply have adopted Sāsān. In this way Pābag would have a legal heir, and Sāsān's lineage would be continued in *his* offspring, and so Ardakhšēr would incorporate both the Achaemenid legacy and the Parthian royal authority. After the adoption of Sāsān Pābag's daughter could get married to him, since this kind of endogamic relationship, called *khwēdōdāh*[18] was not an offence, but one of the greatest merits. In short, if the adoption of Sāsān by Pābag had taken place before Sāsān's marriage with Pābag's daughter, it would have been the best solution for the judicial problem and at the same time a religious merit.

I feel convinced that this is what the author wanted to happen, but he did not use those options which the middle Persian law gave him in a correct manner, and so he was caught in contradictions.

The story of Ardakhšēr's replacement of the Parthian king is found in another corpus of literature, as well, namely the *Šāhnāme* and the Arabic and Persian histories from the Muslim period.[19] In the majority of these sources, the relationship

[17] It is impossible to think it was a *khwasrāyūn* marriage, because this marriage came into being without the consent of the daughter's *sālār* (guardian), and in the Kār-nāmag it is evidently not the case.

[18] See Macuch (1991, pp. 141–154).

[19] The related chapters of Tabari: *Tārikh al-rusūl wa'l-mulūk*; Dīnawarī: *Kitāb al- Akhbār al-Ṭiwāl;* Ibn al-Athīr: *al-Kāmil fi'l –Tārikh;* al-Mas^{c}ūdi: *Murudj al-Dhahab.* In: Farahvashi (1354).

between Sāsān, Pābag, and Ardakhšēr is one of grandfather, father, and son (in that order), and this version does have the merit of preserving the Achaemenid heritage as well as the Parthian governorship in the lineage of Ardakhšēr, but without recourse to marriage and adoption legalities. It is remarkable that the Arabic and Persian sources differ on just the point where the original version is problematic. What complicates the situation further is the fact that the extant manuscript of the *Kār-nāmag* is later than the *Šāhnāme* and the earliest Arabic and Persian historians.

What could be the reason for the difference? Did anybody change the received version of the *Kār-nāmag* in the light of the inheritance laws, or were there two different traditions that survived from the earlier Sasanian period? Obviously, there is not enough evidence to decide.

There is another situation in Sasanian history which seems to be similar to that of Ardakhšēr: Narseh, the youngest son of Šāpur I and granduncle of the late king, Wahrām II, was also not a legal heir to the throne, since he was a member of another lineage of the royal family. In his famous inscription at Paikuli,[20] Narseh informs us in which way he became a king. Surprisingly enough, no legal term seems to be mentioned in this text, nor does the argumentation seem to be based upon legal concepts. The crucial passage of the inscription runs as follows:

> "*(And from the Hargbed) and the Landholders and the Princes (and the Grandees and the Nobles and) the Persians and the Parthians then also a message (and) an answer was brought to Us (saying) thus that:*
>
> "*If we knew that there is either of (the Landholders and?) all the Princes or in Eranšahr and the whole realm someone (who would be more suitable for?) the rulership (?) than your Majesty, (then) he should be king?). But we know (that) there is not (?). Your Majesty is the greatest and the best, and the rulership suits (You) (?) and is most becoming for Your Majesty*."[21]

Although the Paikuli inscription, because of its fragmentary state, is one of the most difficult of the Middle Persian sources to interpret, there is no doubt that Narseh was elected by the nobles of the Sasanian society. This kind of election had a very old tradition in Persian history; note especially the role of the heads of the seven Persian clans in Darius' irregular accession, well known from several ancient sources. I feel convinced that Darius' Behistun inscription may well have been the ultimate model for Narseh in his effort to legitimise his new power.

Analysing the sources I think there are two models in Persian literary tradition on which the rulers drew to legitimise their positions. The first one is represented by the *Kār-nāmag*, which makes use of essential epic themes, such as divine help and signs (*khwarrah*, the mythical bird, etc.), as well as the power of the law. From this aspect, it is irrelevant that the legal situation was later misunderstood by the author(s) of our extant version, who were obviously writing down a tradition that was often no

[20] Humbach–Skjaervo (1983).
[21] Humbach–Skjaervo (1983, pp. 68–69).

longer well understood and so had been corrupted. Ardakhšēr, who was a usurper of the throne, had to appeal to the epic tradition to succeed.

Narseh's position was less dubious, since he was a member of the Sasanian family, though not of the lineage of the current kings. Therefore he did not need legal arguments to secure his throne. The election by the nobles gave him enough power and legitimacy to regard himself as a legitimate ruler. Ardakhšēr, on the other hand, was in no position to do so, because all the nobles and landholders were waging war against him.

The second model, used by Darius and Narseh, does not involve a dramatic change in the government, and so resorts to the ancient procedure of election. Although the procedure of election by the nobles did not make the new king a real *khwāstagdār* heir of the deceased ruler, in this case the question of political succession was separated from that of family relations. It is the failure on the part of the author of the *Kār-nāmag* not to understand this separation in Ardakhšer's case that led to the confusion discussed above. On the other hand, it is true that Ardakhšer's adoption by Pābag solved his problem that emerged by Sāsān's marriage to Pābag's daughter. As a result, Pābag remained no more *abē-nām*, but for Ardakhšēr the Achaemenid heritage seems to be dubious.[22]

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[22] There was a disagreement in the jurisprudence over the family status of an adopted son. The scholars of law fought fierce debates to decide whether an adopted child belonged to the family of the adoptive parents (MHD 70. 12–16). As Maria Macuch points out: "Offenbar bewirkte die Adoption, ganz anders als im klassischen römischen Recht, für das angenommene Kind nicht das völlige Ausscheiden aus dem bisherigen Familienverband." (1993, p. 474). There are several decisions (MHD 69. 10–12, 12–14, 14–17; 71. 2–4) which support the fact that an adopted son was not warmly welcomed in the family of the adoptive father. In short, the adoptive son belonged to the family of his adoptive father, but his relation to his former family remained extant in financial claims.

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