

	<p>CAN LAW SAVE A SOUL? A ZOROASTRIAN ANSWER</p>	<p>János Jany Pazmany Peter Catholic University (Hungary)</p>
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Zoroastro com a esfera celeste
Rafael, *Escola de Atenas*, 1509

1 The Concept of the Soul

Zoroastrianism is, in the final analysis, an ethical religion since its theology, cosmogony and eschatology are based on two principles, namely the Good and the Bad and their complex relationship in the cosmic and the material world. This view, often called the Iranian dualism, explains the long process of the creation of the material world, the cosmic struggle of *Ohrmazd* (*Ahura Mazda*: Lord

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Wisdom) and its adversary, *Ahriman* (*Angra Mainyu*, Evil Spirit), and the salvation of mankind at the end of history and, obviously, everything which happens here in the "Dasein" from the beginning of human history up to its very end when historic time comes to its end.

Small wonder, then, that in such a religion the concept of the soul has a preponderant place both in the system of religious thinking and in everyday life since man has to choose in his/her entire life between Good and Bad based on the individual's free will. Zoroastrianism is, at least, in theory – which might be at variance with popular religious understanding – , a religion which guarantees the free will of the individual: a person could choose both the Good and the Bad and in doing so, at the same time *Ohrmazd* or *Ahriman*. At the same time and logically, man is liable for his/her actions and the choices he/she had made during his/her lifetime which predominantly affect the fate of an individual's soul.

Before proceeding to cosmogony and anthropology in order to explain the very complex understanding of the soul in Zoroastrianism, it is worth explaining briefly the different terms sacred Zoroastrian languages (Avestic, Pehlevi or Middle Persian) developed for this concept. Lexically speaking, there are at least three important terms, which should be clarified first. One is *urvan*, the soul of a human being which was believed – as early as the pre-Zoroastrian period – to dwell in the underworld, in a shadowy existence and returning to this world once a year, to receive offerings and prayers from the descendants in exchange of blessings. This ceremony was called *Hamaspahmaedaya*, a religious festival of All-souls' day which has close Indian parallels and, therefore, might go back to proto Indo-Iranian times (Boyce 2000). In short, *urvan* is the soul of human beings accompanying them here in the material world but not dying together with the corporal body. *Zadsparam*, a scholar and priest of the early post-Sasanian period (9th century) distinguished – following and enlarging existent tradition explained in the *Denkard* and the

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Bundahishn – three constituent elements of *ruvan*: *ruvan* in the body, *ruvan* outside the body and *ruvan* in the invisible world. The *ruvan* in the body is perceived by analogy as an army commander, that is this element of the *ruvan* is which thinks, speaks and acts (good or bad). The *ruvan* outside the body goes forth when one is asleep and receives good instructions while the *ruvan* in the invisible world is in fact another term for *den* which I will explain later (Bailey 1943: 110–111).

Fravashi, by contrast, is a complicated term, which is subject to debate among Iranists even today although Bailey’s interpretation seems to gain more and more acceptance (Bailey 1943: 109). What makes this term so confusing is that the concept goes back to millennia, but following the doctrinal changes rather different things were understood under the very same term throughout the centuries. Thus, in all probability, *fravashi* meant something different in pre-Zoroastrian times from that of Zoroaster, and again in a next turn, for believers of the later centuries. Following Bailey Mary Boyce also sees the spirits of the warriors fallen in battle in the *fravashis* whose cult was certainly popular in the Iranian Heroic Age as she calls the early centuries before Zoroaster. In these centuries both the cult of the *urvans* and the *fravishis*, that is the cult of the souls of human beings and particularly that of the warriors seem to be very popular. This popularity continued for centuries after Zoroaster’s teaching even though the prophet’s ethical understanding left no room for such cults. As we shall see later, according to Zoroaster’s concept the fate of the soul depends on his/her deeds in life and no cult, offering or prayer could modify the fate of a soul. It is only the ethics of Zoroastrianism, which is decisive in this regard and surviving descendants have no means in their hands to ease the fate of the deceased. As Zoroaster was in favour of non-violence and was against the heroic ethos of his age, which highlighted heroism in battles and subsequent deaths, it is highly probable, as Mary Boyce believes, that Zoroaster was against both cults. Since, however, the cult of the *urvan* and the *fravashi* was so popular, it was not

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abandoned but assimilated into Zoroastrianism, later to be regarded as a vital part of the religion. But such a process confuses clear concepts and this is how the present ambivalent understanding of the *fravashis* came into being (for more on this process see Boyce 2000).

This is, however, only one part of the story because the relationship between *urvan* and *fravashi* is more complicated, at least according to later, that is Sasanian (3rd-7th centuries CE) or early post-Sasanian (8th-9th centuries) theology. In cosmogony, Zoroastrianism developed the idea of the pre-existence of mankind. According to this teaching man is above all a spiritual being whose soul pre-exists his material form, that is his/her body. Thus, *Ohrmazd* created mankind not in a material, but in a spiritual form, which was later followed by a material creation. Since the Earth is not large enough for mankind to be born at one and the same time generations after generations are born in their bodily existence, but they already existed in their spiritual form, waiting for the proper time to be born also physically. To make things more complicated, these pre-existent souls of mankind are also known as *fravashi*, a term, which has nothing to do here with the ancient cult of heroes. Concerning this pre-existence it is very important to note, following R. C. Zaehner that these souls are not eternally pre-existent as in a variety of other Eastern religions but are creatures of God and therefore mankind belongs to God and to the principle of Good (Zaehner 1956: 17). Should someone forget about it and commit sins and choose *Ahriman* (which is actually denying his belonging to God), he/she has to suffer in Hell according to the deeds committed in his/her lifetime. And it is exactly this suffering, which the cult of the dead aims at mitigating and which logically does not fit into the original teaching of Zoroaster highlighting individual freedom of choice, free will and all its consequences. Despite this *fravashis* are very important in maintaining the cosmos as it is: *Ohrmazd* is able to sustain Heaven and Earth only when relying on the *fravashis*, the pre-existent souls of

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mankind the spiritual power of which contribute enormously to the plan of the creator coming to fruition and the final annihilation of the Lie, *Ahriman* (Zaehner 1961: 146–147).

The third term related to soul – though with a variety of meanings – is *den* (*daena*). *Den* denotes religion and also the inner self, conscience and the subtotal of man’s deeds. Here we are concerned only with its latter meaning while the meaning for religion is irrelevant for the purposes of the present paper. Though *den* is considered (here with the meaning of conscience) as one of the five spiritual faculties of man together with vital strength (*axw*), perception (*baodah*), *urwan* and *fravashi*, this does not help us any further to understand its importance in Zoroastrian teaching (Shaki 1994).

To understand the function of *den* we have to deal briefly with Zoroastrian eschatology. Accordingly, the soul of a dead man departs from the Earth at the dawn of the fourth day since he dwelled next to his/her dead body for the previous three anxious days. On the fourth day the soul has to face divine judgment based on his/her deeds in the material world at the Bridge of the Requirer (*Cinvat*) to which the soul is accompanied by divine helpers (*Srosh, Vahram*) and demons of different kinds (e.g. the demon of death and wrath). Since Zoroastrian sages knew perfectly that divine wisdom and justice needs to harmonise and qualify deeds of different kinds, they understood these deeds broadly and defined three subcategories such as thought, words and actions. Obviously, a good thought which was never put into practice counts less compared to a bad action but it is still part of one’s soul, which has to be taken into consideration in the final judgment. This is the reason why good thoughts, good words and good deeds (*huvarsht, humat, hukht,*) are the three most important words of this religion which are at the same time the symbols of Zoroastrianism resembling, as they believe, the heart of this religion and its ethics. Despite this Zoroastrian sages admitted that it is action, which is the most important

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in the divine judgment and the soul of the departed person will be judged accordingly. Divine judgment is not administered by *Ohrmazd* but by other gods (*Rashnu, Mithra*) who are praised to do justice impartially regardless of any consideration but the deeds of the person compared to Zoroastrian ethics. *Menog i Khrad* (Spirit of Wisdom), a late Sasanian text emphasises this notion saying that "he (that is *Rashnu*) is no respecter of (persons), for he deals out impartial justice both to kings and princes and to the humblest of men." (Zaehner 1956: 134).

Divine judgment could sentence a soul either to Heaven or to Hell depending on the sum total of the deeds; obviously, if good deeds outnumber bad deeds, such a soul's fate is Heaven and if bad deeds are more numerous than good deeds, the soul has to face sufferings in Hell. Should, however, good and bad deeds be absolutely equal in every respect, the soul has to go to the *Hammestagan*, the place of the mixed, where there are neither blessings nor sufferings (as this was regarded, seemingly, atypical, the theology of the *Hammistagan* is not developed, compared to Heaven and Hell). After receiving divine judgement the soul has to go through the *Cinvat* bridge where it will meet a young, very beautiful maiden never to be seen on Earth. According to the very same text of the *Menog i Khrad* here a conversation evolves between the soul and the maiden, who is, of course, not a maiden but the symbol of the deeds of the person, its *den*. The maiden makes this abundantly clear: (83) "I am no girl but thy own good deeds....(89) I am thy good thoughts, good words and good deeds which thou didst and say and do." (Zaehner 1956: 134-35). After this the soul is accompanied to Heaven, which is described in Zoroastrian eschatological texts with some detail. By contrast, should a soul be condemned to Hell, demons will carry it off to Hell but this soul, too, will meet the *den*, this time in the form of a hideous and ill-favoured wench never seen on Earth who answers the very same question that: (110): "I am no wench, but I am they deeds, – hideous deeds, – evil

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thoughts, evil words, evil deeds, and an evil religion” (Zaehner 1956: 137). After this conversation the soul has to face torments in Hell to which we shall come back later.

So far I have clarified the three most important terms for soul: *urvan*, *fravashi* and *den* and all the theological concepts attached to them. Here it is worth mentioning just very briefly that the concept of the soul in Zoroastrianism is more complex than this and various scholarly circles (schools) had their own, more sophisticated systems which were at variance with each other at some points but all were regarded as orthodox. That is, there was pluralism in teaching at the late Sasanian period and no understanding gained preponderance to establish itself as *the* orthodox view and disqualify others. *Sad-dar Bundahishn*, a text from the early post-Sasanian period distinguishes among five spiritual capacities: *jan*, *ruvan*, *axv*, *boy* and *fravahr* (*fravashi*). *Jan*, which denotes soul in a general understanding in New Persian means here a spiritual capacity which maintains the body in proper order; *ruvan* is for sayings and doings of both good and bad things (also in the capacity to prevent the latter), *boy* is for wisdom and intelligence, *fravashi* is for the external relation to the physical world (digestion of food) and *axv* is for giving advice to both the body and the other capacities being the higher layer of the soul, an understanding supported by another early post-Sasanian text, the *Denkard*, too (for more on this subject see Shaked 1994: 56-57, 143-145).

To return to our main concern, the fate of the soul, it is important to note that though punishments in Hell are brutal, described in some texts almost with sadistic pleasure, these sufferings are not eternal but limited in time. Hell is therefore not a place of eternal torments and sufferings but a place for temporal – though harsh – punishments for all the evils one had committed on Earth. Such an understanding derives from both the inherent logic of the religion emphasising divine justice and the teaching of the final judgment. The notion of divine justice allows only for temporal sufferings and certainly not everlasting ones if one takes

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into consideration the principle of proportionality, a prerequisite of justice. As the evil deeds of a person – whatever numerous and grave they might be – could be numbered, they being certainly not unlimited, so the punishments for these deeds should not be eternal, too. The second reason for limited sufferings in Hell is final judgment at the end of the historic time when the material world as we know it will cease to exist. This is the end of history when the world will be cleaned off from all evil and corruption, caused by *Ahriman* and his allies, and will be purified. This is a key concept in Zoroastrian thinking called *Frashgird* (making wonderful). The raising of *Soshyans*, a descendant of Zoroaster marks the beginning of this period accompanied by catastrophic events. More importantly, this is the time when all the dead will be raised and judged which was perceived on the model of an ordeal going back to centuries: men, now their rising body united with their soul have to go through the molten metal ordeal for three long days. This very popular ordeal makes no harm to the righteous but causes hardship for the wicked. This is also the time of the final battle between *Ohrmazd* and *Ahriman* out of which the supreme deity emerges as the clear winner. Consequently, *Ahriman*, together with all his demons will be defeated forever and they are no longer capable of attacking again *Ohrmazd* and his creatures. The final victory does not mean, as it seems, the annihilation of *Ahriman* as he is a substance, but Zoroastrian texts leave no doubt that *Ahriman* will be absolutely powerless, incapable of doing any action and, therefore, cause harm. After *Frashgird* time ceases to exist, life will be created anew in perfection, which is free from every corruption. This is not return to the beginning when everything was perfect (before the attack of the Evil Spirit), but a progress since after *Frashgird* no attack of the Devil will harm the world now in a state of perfection. The only point which seemingly divided Zoroastrian theologians was the fate of the wicked: while some thought that they would perish because of their evil deeds others believed that they would be purified during the ordeal of the molten metal and when emerging

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purified from the sufferings caused by the molten metal they too will join the righteous and will praise *Ohrmazd* (Boyce: 1975: 240-246; Zaehner 1956: 139–144, Shaked: 1994: 36).

If we take into account the principle of proportionality and justice it is only the latter view which is in accordance with the substance of Zoroastrian teaching, that is at the end the entire mankind, without any exception, will be raised and enjoy eternal bliss in the presence of God. Despite this, unfortunately we do not know which is Zoroaster's original thought? Boyce thinks it is the former one while Zaehner believes it is the latter (Boyce 1975: 244; Zaehner 1956: 139). In fact, however, Shaked is right in claiming that the texts as we know them today do not allow us to draw such conclusions (Shaked 1994: 39).

After resurrection, the entire material world will be perfect and lasting forever, the Earth being reduced to a flat place with no mountains and dales. All humans will be raised to live for eternity in their resurrected bodies among their relatives and friends (*Bundahishn* has a long text on *Frashgird*, for the translation see Zaehner 1956: 145-150).

The role of private law in eschatology

How can law in such a complex system of theology relating to both the concept of the soul and the eschatology of mankind find its place to protect individuals? And why does anybody think that it is law that might be helpful in this regard? And why is there a need to interfere with legal actions into the field of theology? And if so, what are the remedies law can offer for souls?

To answer these questions we have first to examine briefly the fate of the souls sentenced to Hell. Though a place of temporal sufferings, it is a place of horror where nobody wants to stay even for a second, it is thus understandable why people

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believed that in order to reduce sufferings there it was worth performing acts for the benefit of a family member or a friend. *Arda Viraz Namag* is a book from the early post-Sasanian period, which is devoted entirely to the visions of Heaven and Hell. *Viraz*, a righteous man was allowed a spiritual journey in which he gained insight into the state of affairs of both Heaven and Hell. While the description of Heaven is rather brief, the sufferings in Hell are treated in detail covering the majority of the book's content. In Hell, *Viraz* sees souls suffering from various torments described very naturalistically and each torment is for a certain type of sin. In this way the author also identifies the most grievous sins for which torments are inevitable. What is more, torments in Hell resemble the sin or the crime committed; thus torments also incorporate symbolic values, which are attached to certain crimes but not to others. These punishments resemble a very ancient way of thinking which is also discernible in such an early text as the Code of Hammurabi where there are punishments which mirror some peculiarities of the crime committed, e.g. the motif or the way of action (see §153 and Franke 2000). Some examples will clarify matters (Vahman 1986: 20–215):

- punishment of a woman who was a whore and practised sorcery was this: her tongue was cut out, her eyes were gouged out, snakes, scorpions, worms and other reptiles (all Satanic creatures!) were eating her brain and from time to time she chewed her own flesh;
- punishment of a woman who had a sharp tongue and she hurt with it her husband was this: her tongue was branded;
- punishment of a man who copulated with a woman during her menstruation period is this: his mouth was constantly filled with the filth and the menstruation of the woman and he kept cooking and eating his own child;

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- **punishment of a merciless man who ruled in an evil manner and was destructive and unlawful is this: fifty demons were hitting him with vipers;**
- **punishment of a man who told many lies and falsehoods was this: his tongue was being gnawed by worms;**
- **punishment of a man who was a stealer is this: he had human skulls in his hands and was eating the brains;**
- **punishment of a corrupt judge was this: he was hung by one foot in Hell and he cut his body with iron sickle and was driving an iron nail into his eyes;**
- **punishment of a woman who aborted her child and destroyed it and left it as a carrion was this: she was digging into a mountain with her breast while she had a stone on her head in the shape of a corpse.**

There is, I think, no need to any further explanation after this brief illustration why Persian society believed that the living had to mitigate the sufferings of the dead with all the means they could. It is not, I believe, a peculiarity of the Persian society but a common experience of all societies in which the sufferings of the deceased in Hell find great echo in the mind of the living influencing their behaviour. Just think on how one of the most artistic churches of Europe, the Capella degli Scrovegni in Padua, came into being. Accordingly, Enrico Scrovegni commissioned the building of the chapel in penitence for his father's sin who was a banker and committed usury, a grievous sin in the eyes of his contemporaries. He invited one of the most famous artists of the Middle Ages, Giotto, to plan and build the chapel in the benefit of his father which he did. The marvellous paintings of Giotto are still observable to the joy of millions of tourists going on pilgrimage to Padua. One can argue, of course, that to erect a church for the benefit of a departed soul is one thing and legal action is

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something very different and the two have little in common, but we shall see later that it could be otherwise. For now I will come back to the question of what can law do to protect the soul of individuals?

In theory, there are two ways. One is by which law declares some deeds lawful while it is still not tolerable in the realm of ethics thus giving the possibility to argue that one's action was lawful and therefore, it could be subject to debate in its final assessment. This is certainly unthinkable in Zoroastrianism for more than one reason. First, divine judgment is based on divine wisdom corresponding to Zoroastrian ethics and no law could interfere into this. Divine judgment will certainly not take into consideration legal rules, which are contrary to ethics and justice, the cornerstones of divine judgment. Second, the Roman trichotomy of norms (*ius-fas-mos*) is alien to Zoroastrian thinking (and to Judaism and Islam as well) which believes not in the semi-autonomy of these norms but in their close interdependence. While a Roman *ius* could declare something lawful which is in fact immoral (for example: according to *ius* a *pater familias* has the right of *ius vitae necisque* which gave him the right to decide upon the life and death of his family members, *mos* reduced this capacity of the father very much which resulted in a de facto annulment of this right), Zoroastrian law is interwoven with both ethics and religious norms which define the shape of law itself in the final analysis. In short, Zoroastrian law had to serve morality and was subservient to Zoroastrian religious thinking with no room for such a prominent place as that of *ius* in Ancient Rome. Third, Zoroastrian lawyers were at the same time Zoroastrian theologians and scholars or, properly speaking, it was the Zoroastrian sages who developed the legal rules as theologians or priests and in this capacity they never came to the conclusion to trick out as lawyers something what they defined previously as theologians.

The other way, which was left for law, is to mitigate the consequences of a certain unlawful/unethical deed and to invent legal practices which might help souls

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to reduce their pains. This idea was modelled upon and connected to ritual: as I mentioned above, the offerings for the souls (on all souls' day and other occasions) was believed beneficial though it was at variance with Zoroaster's teaching on individual freedom of choice and responsibility. Despite this the old idea could not be deleted from the religious practice of the society at large and people still continued to administer offerings for the benefit of the departed. Later, when Persian society established huge empires and grew rich, monetary economy was developing and entered the domain of religion too. Here I am not speaking about the great Fire temples, which collected enormous amounts of money and jewels but about the so-called foundations which were open also to commoners to establish with the help of an ever growing number of legal norms regulating this legal transaction in every detail.

These pious foundations, as they are called in contemporary scholarly literature were no foundations but resembled the trust well known to the English-American legal culture. It is, however, not the legal feature of this institution, which is of importance for now but its relationship to the salvation of the souls. These trusts share a variety of common features and differ only in name and some of the detail. According to their name three types of such trusts were known in the late Sasanian period: (1) *ruvan yazishn ray* (for the worship of the soul); (2) *ruvan ray* (for the soul); (3) *pad ruvan* (for the soul). The establishment of such entities was considered *ahlavdad*, pious donation, a work of religious merit. As already their names indicate, these trusts are strongly connected to the fate of the souls and their benefits. The trust *ruvan yazishn ray* was in the service of the cult of a deceased person and all the wealth was dedicated to this purpose alone. Expenses covered from this income were the payment of the priests and the temple servants and the acquisition of the objects used in the rite. The trust established with the expression *ruvan ray* came into being for the benefit of the founder to help the fate of his own

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soul with financing constant rituals but sometimes actions with social benefit could also be financed from such a trust. The trust of the *pad ruvan* type came into being for the benefit of the soul of a third person, not that of the founder but it does not differ in any other detail from the previous form (Jany 2004: 27–275).

Such trusts or foundations are not unique to the Persian society as we can find such institutions elsewhere: recall the *fideicommissum* and the *pia causa* of the late Roman law, the *vaqf ahli* and *vaqf khyari* of Islamic law or the charitable trust of the English-American law. What makes the Persian trust so unique is its purpose: while all other trusts and foundations are devoted – following philanthropic purposes – also to the benefit of others (members of the family, the poor, etc.), Zoroastrian trusts are devoted solely to the benefit of the souls and the offerings and cultic activities relating to it. In other words, while foundations in various societies were based on the principle of philanthropy, which, in its turn, might have a secondary effect also on the fame of the founder, Zoroastrian trusts do not share this aim, focusing only on ritual for the soul and nothing more. This might be due to the very ritualistic understanding of Sasanian Zoroastrianism and to the fear of the fate of the soul in Hell, an idea or, perhaps, sometimes even an obsession overruling other considerations, which might be more real (to help the family or the needy, to feed the poor, etc.).

Thus, private law came to the assistance of society with its own means when monetary economy grew complex and connected already existing rituals with the material resources of society, channelling sometimes enormous wealth from the private sector to the realm of rituals for the benefit of the souls but also of the Zoroastrian clergy. Zoroastrian priests and lawyers (who were the same persons more often than not) did their best to promote these foundations both in the field of religion and law. In theology, the foundation of such a trust (together with the giving of alms to the priests) was considered *ahlavdad*, an act of pious merit and a phrase

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of great significance. In the territory of law general restrictions and prohibitions were lifted when the foundation of such trust was at stake. To cite only some examples: women had, in general, very limited legal capacity and were not allowed to act on their own right, but should they want to establish such a trust out of their own wealth, all restrictions relating to their legal actions disappeared miraculously. Women were also allowed to act as guardians of such trusts in case of duress (in order to prevent the trusts to end their operation), an otherwise unthinkable position as it were the very woman who had to be under a guardianship of a male family member under every circumstances.

These trusts were latecomers in Zoroastrianism as monetary economy was also a rather late phenomenon in Iranian history and, therefore, it is small wonder that we hear about them only in the Sasanian period but not previously. On the other hand, as we can infer from the relatively huge number of these trusts, the institution was popular in these centuries, which was an important factor in maintaining the rituals for the soul. These rituals for the soul are important even today and are a vital part of contemporary Zoroastrian religious life (for a detailed overview on these rites see Stausberg 2004: 447-484).

Criminal law in the service of the soul

As we have seen above, private law was just an instrument to help already existing rituals to flourish but it was not law itself that was of help for the soul. Criminal law, by contrast, was a means, which directly affected the fate of the soul.

To understand this we have to bear in mind that for Zoroastrians the aim of punishment for a crime is not to retaliate a wrongdoing or to protect society from criminals but penitence. Again, the core of the idea is divine judgment and fear from its consequences and torments in Hell, something inevitable according to the original

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teaching. But here again the system is modified for the benefit of the deceased just as we have seen previously with the offerings, prayers and cults for the soul. To put it differently: penitence and the following punishments played the role of the offerings for the soul since the aim of both is to mitigate the sufferings of a soul. What is more, penitence and punishment not only mitigate the sufferings in Hell but annul the crime (sin) for which the penitence and the punishment was administered. In other words, if a wrongdoer was punished for his action here in the material world the very same deed will not be taken into consideration during the divine judgment, that is, the more serious a crime (sin) was the more the delinquent was interested in being punished by authorities in order to avoid more serious consequences at the divine tribunal. Needless to say how divergent this idea is from the original teaching of divine judgment but once this theory was accepted a system of ritual, theology and law was based upon it.

In the field of rituals, all perpetrators were considered impure which is not surprising in a religion, which became more and more ritual-centred throughout the centuries. Ritual impurity in itself had serious consequences for the delinquent in his/her religious and social life suffering from a variety of restrictions and prohibitions, which are not to be listed here. Suffice it to say that a permanent state of impurity was a great obstacle to conduct a normal family and social life and work; therefore individuals were interested in overcoming ritual impurity and in becoming clean again. Obviously, the best and most widespread means to overcome ritual impurity was ritual itself since there were abundant forms of rituals aiming at cleaning someone from the state of impurity. In the majority of cases to perform the required rituals together with reciting the accompanying prayers was enough to become ritually pure again. But for wrongdoers committing crimes this was not enough: as criminals became ritually impure immediately because of the very deed they committed, they could achieve the state of purity only with confession and

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penitence. This is what Zoroastrian scholars unanimously believed during the late Sasanian period as the only point of debate on the fate of the perpetrators committing *margarzan* (a category denoting the most grievous crimes to which we shall return later). *Shayist-ne-Shayist* (SnS), a casuistic writing devoted solely to ritual problems has two opinions: according to one doctrine (which seems to me to be the majority view) even *margarzan* sinners become ritually pure after their confession, penitence and subsequent punishment, but *Roshn*, a sage otherwise less known, denies this by saying that *margazan* sinners remain always impure (SnS 8. 5-6; 2. 107).

Margarzan sinners who do not confess their crimes will be sentenced to Hell regardless of their other actions or even their good thoughts, words and deeds, a position clearly at variance with divine justice. Even after the final judgment their head will be cut off for every crime they committed and subsequently made alive again in order to suffer extra punishments and torments (SnS 8.7). When reading this paragraph a modern reader has the impression that the author went a bit too far in highlighting the sufferings of a *margarzan* sinner with the aim of forcing out confessions and penitence from people frightened by these visions since these endless sufferings are the result of one (or more) *margarzan* sins and the absence of penitence for it. Following this view, then, it is not the crime itself which results in endless sufferings but the lack of confession and penitence which makes the latter more grievous than the original crime, a position hardly in harmony with Zoroaster's own view. To put it differently, confession and penitence will rescue the soul from endless torments in the afterworld but not necessarily in this world since, as we will see soon, penitence and punishments were sometimes as frightening as those in Hell.

Penitence should be announced truthfully and openly, as we learn from the very same text of the SnS: to confess openly means that the perpetrator has to

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enumerate all his sins without omitting any of them while to confess truthfully means that he should declare that he would not sin again (SnS 8. 8-9). Publicity, however, is also an important element of the confession, because the delinquent has to confess in the presence of the victim (or his/her relatives) if a crime was committed against a person, or in the presence of a priest (*rad*) if the crime was a violation of a religious norm (SnS 8.1). After confession perpetrators became ritually pure (without, perhaps, that of *margarzan*) and all their good thoughts, words and deeds could be taken into account in the divine tribunal. Should they, however, not confess their misdeeds, they could be outlawed and if they die in this period, they are regarded as *margarzan* (Nerangistan, Fragard 2, 23.7; Kotwal-Kreyenbroek 2003: 32–33).

Needless to say, only a verbal confession was not enough for being released from the terrible consequences of crimes, therefore punishments of every kind were not to be avoided. In this respect the priest-judge, the *rad* had unlimited power and could pronounce a sentence he saw fit to the crime and all its circumstances. Neither law nor any secular power could limit his competence in this regard. The Middle Persian texts make no secret from this ruling that: "a *margarzan* sinner has to hand over all his wealth and his body to the *rad*" (Sns 8.5). This means that the perpetrator loses all his money and other goods whatever in his ownership and, what is more, according to a court judgment which has come down to us also his family (MHD 97:15: Macuch 1993:). This is not at all surprising because family members were considered as subjects of ownership, therefore, if a pater familias loses his wealth it means that he loses also his family. This, however, was a minor issue compared to the discretion of the *rad* which involved also capital punishment. That is, if the priest-judge believed that a crime just confessed was as grievous that it could be annulled (in the divine tribunal) only by suffering a capital punishment in

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the material world, he ruled just that and his order was carried out. In the majority of the cases, it was beheading by the sword (SnS 8.6).

The sentence of the *rad* – whatever it might be – was considered as judgment in the benefit of *Ohrmazd* (*pad sud-i Ohrmazd*: SnS 8:21), a perplexing expression since it was definitely not in the benefit of *Ohrmazd* who as a chief deity is certainly not depending on such judgments but in the benefit of the soul of the perpetrator – should one follow the immanent logic of the theory of punishment of Zoroastrian thinkers. When the punishment was administered (capital or any other punishment judged by the *rad*) the perpetrator was considered ritually pure again and the very crime he had been suffering for was not taken into consideration in the divine judgment. Moreover, the punishment had in fact a double effect as not only did the perpetrator free himself from the consequences of a crime but as a result of his punishments all his/her previous good thoughts, words and deeds were taken into account again in the divine tribunal (SnS 8. 5-6). In this perspective, the unlimited discretion of the *rad* is a consequence which follows from the fundamental theory of punishment: since the aim of the punishment was not to impose penalty but to help the soul of the delinquent in the divine judgment, the priest, acting in his behalf, should rule whatever he regarded as the most useful means to fulfil this goal. Thus, the discretionary right of the priest found its expression in the priestly ideology as a powerful device for the benefit of the soul of the delinquent, regardless of the often crucial penalty the perpetrator had to suffer in the material world. But we have to bear in mind that all these came into play only when a wrongdoer went to a *rad* and confessed his crime, but there was no legal institution, which brought him to this tribunal. The horrific scenes in Hell, the ritual impurity of a wrongdoer without confession, and the priestly agitation highlighting the sufferings of such a person aimed, perhaps, at just to filling this gap.

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What, then were these grievous *margarzan* crimes for which one had to lose wealth, family and sometimes even his life in order to be released from its consequences? Here comes the next surprise for a modern reader: with some, understandable, exceptions they were all ritual wrongs. Whatever horrific they might have seemed for late Sasanian priests and theologians, these actions still did not harm persons, neither in their physical existence nor in their wealth. Truly, the list of *margarzan* crimes contains ritual behaviours, which are unthinkable for believers because of their symbolic meaning. As fire, water and air are considered venerated elements the ritual purity of which should be kept at all costs, actions that have the opposite effect are something like a ritual horror, the more so if these were done not only negligently but intentionally. If these elements were made impure by what was believed as the ritual impurity *per se*, the dead body, we have reached the climax of ritual horror. Here again some examples will help understand the point. Among *margarzan* crimes we have these: (1) to carry a corpse toward fire so that the corpse enflames; (2) to carry a corpse in rain; (3) to carry a corpse alone; (4) to throw a corpse into water or to leave it there; (5) to eat carrion by a pregnant woman; (6) not to marry off a girl; (7) to give donation to the *rads* from the wealth of a *tanapuhl*-sinner; (8) to kill an animal without *Nerang*-recitation, (9) to fail to recite the *Gathas* because of drunkenness (SnS 2. 9, 40, 63, 76, 81-82, 85, 91, 105; *Nerangestan*: *Fragard* I: 11. 2; II, 36.3; *Herbedestan* 20.5).

The symbolism of these acts is evident: to unite two elements which are to be separated not only because of their own value but rather because of the idea they symbolise: the Good and the Bad, Life and Death, which must be kept separately. Understandable as it no doubt is, it is by no way evident that killing, bodily injuries, highway robbery and other capital crimes which are threatening society in its very basis are missing from the list, secular *margarzan* crimes being only to flee from the battlefield and to attempt at the life of a king (Nyberg 1964: 10, Braun 1915: 43).

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Even crimes the horrific penalties of which we have seen in Hell (the sin of a corrupt judge, the crime of a woman killing her own child, etc.) are missing.

This developed system as we know it today reflects the state of affairs of the late Sasanian period but it is not to say that it came into being in this rather late period of the history of Zoroastrianism. By contrast, the core of the idea must be much older and it might go back to earlier, Indo-Iranian times thus being a heritage of the pre-Zoroastrian times. In Ancient India it was the king and not a priest who had the right and the obligation to administer justice and pronounce final judgments. But the aim of such judgments was just the same as in the case of Zoroastrianism: to diminish the status of ritual impurity and to rescue the soul of a wrongdoer. Book VIII, verse 318 of The Laws of Manu proves this: *But men who have done evil and have been given punishment by kings become free of defilement and go to heaven, just like people who have done good deeds* (Doniger – Smith 1991: 186). This remarkable parallel shows how old this theory of punishment is and we can regard it as a common heritage from the past in both India and Persia.

Family law and the release from sufferings in Hell

As we have seen in the previous paragraph, confession, penitence and punishment went hand in hand to avoiding divine punishment. There was, however, a legal device by which one could free himself from the devastating consequences of a crime, called *khvedodah* in Middle Persian legal terminology.

Khvedodah is a general term for next-of-kin marriages of different types which is such a miracle, we are told in several Zoroastrian writings, that it is "the salvation from Hell (from) the most grievous sin such as death-deserving sorcery" and people who practice *khvedodah* "they are thereby saved and excluded from Hell,

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the prison of Ahriman and the demons; *khvedodah* is such a miracle” (Williams 1990, Part II:11).

The origin and history of *khvedodah* has been disputed for decades. The Zoroastrian community seems to abandon it around the turn of the millennium (as there is no mention of it in works written about this time and later) and forgot it both in theory and practice which led some of them to accuse Western scholars to have "invented" this practice of theirs in order to divest them of honesty (Sanjana 1888), a claim unfounded as it no doubt is. Sasanian and early post-Sasanian written sources clearly prove that *khvedodah* was part of Zoroastrian teaching in this historical period though we know less about everyday practice. To put it differently, the question is that was *khvedodah* only a teaching, a piece of priestly propaganda, or was it at the same time an everyday practice of society? Considerations pro and contra are numerous and we have nothing in our hands to decide with certainty.

The origin of this practice (ideology) is as great a puzzle as its contemporary relevance. As usual in such situations, scholarly theories are abundant: Wesendonk thinks on foreign influence, notably that from Elam, a civilization which influenced indeed in some aspects nomadic Persian tribes when settling down in the neighbourhood of Elam at the beginning of the first millennium BCE. Frye and Spooner think also on Mesopotamian influence while Duchesne-Guillemin – following Gray – believes in an ancient Indo-European origin some traces of which could also be found among the Lithuanians and Prussians. Accordingly, Zoroaster was against this practice but the Magi, priests who adopted Zoroastrianism only later, continued this practice and spread it among the Zoroastrians. Following line, Moulton also thinks that it were the Magi who spread next-of-kin marriages among the Zoroastrians, but not as an alien (Elamite, etc.) custom but as their own. This theory sees the Magi as the originators of next-of-kin marriages as a particular practice of their own which they propagated during the centuries. It is, perhaps, no

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accident that we find emphasis on this practice in works written by priests (Magi), and the climax of this propaganda corresponds exactly to the Sasanian period when the Magi were at the peak of their influence and power. After the disintegration of the Sasanians the power of the Magi was reduced enormously, so too did *khvedodah* disappear from Zoroastrianism. Moulton's theory was followed – with minor modifications – by authorities such as Widengren, Wikander, and Zaehner (Sidler 1971: 106; Duchesne-Guillemin 1970: 150; Macuch 1991: 141, with further references). Though all these theories may have some merit convincing proofs are missing and so they remain what they are: theories, which one can follow or deny according to personal preferences.

For the present purposes, however, the ideology behind this practice is more important than its historical origin. Strangely enough, the ideology of *khvedodah* has very good ground in Zoroastrian cosmogony on which one can base such a practice if he so wishes. *Bundahishn*, a long text devoted above all to the creation myth has a long and detailed description of the cosmogony of which I highlight here only the relevant parts. *Spendarmad* (Spenta Armaiti; Obedience), one of the six *Amesha Spentas* (Bounteous Immortals), so important in the Zoroastrian cosmogony is said to be the daughter of *Ohrmazd*, who is at the same time his wife and "Queen of Paradise, the Mother of Creation" (Williams 1990: Part II: 10.). *Ohrmazd* himself planted his seeds into Earth, that is, *Spendarmad*, his wife and daughter from which *Gayomard*, the first man, came into being. As a result, the first man is a semi-divine being his parents being *Ohrmazd* and Earth-*Spendarmad*. No wonder, then, that *Gayomard* does not resemble human beings in his physical shape: his shape is round, shining like the Sun (Zahner 1956: 68-69). *Gayomard*, the first man or, perhaps, better put, the essence of man, was attacked (as the whole world was) by the Evil Spirit and the demon of Death, so he had to die, but remained alive another thirty years from the time the attack was launched on him. During this period a strange

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figure appeared, *Jeh*, the primal whore, who was in an unholy union with the first man before he died. The seed of *Gayomard* however, fell on his mother, Earth, and this is how a rhubarb plant came into being which later evolved into the first human couple, *Mashya* and *Mashyane* (for the English translation of the text see Zaehner 1956: 44–49; 75–79).

If the primal whore is the female principle inasmuch as *Gayomard* represents the male principle, we have a very negative Zoroastrian view on the female, which is true only in part, as *Spendarmad*, the loving mother also represents the female. Perhaps it is best to understand it as a kind of ambiguity, as the whole story is filled with such ambiguities. As we have seen, the primal whore defiled the first man when forcing to unite with her and afterwards all females will defile the males until the end of this material world. This is because *Jeh* asked from *Ahriman* the desire for men, a request *Ahriman* was unable to resist though he perfectly knew that by doing so he contributed to the perpetuation of mankind he was planning to kill (Shaked 1990: 24). By contrast, according to Zoroastrian teaching and ethics marriage and procreation in general is a duty of men, which led to a high esteem of marriage and the negation of any form of celibacy. But it is impossible to say that it is because they wanted to follow the practice of *Jeh*. This led Zaehner to believe that the whole story with the primal whore is un-Zoroastrian (Zaehner 1956: 43), but this is hard to prove. Perhaps the only aim of the story was to tell how evil was planted into mankind, otherwise the son of *Ohrmazd*: it was due to the attack of *Ahriman* who fulfilled his plan with the aid of the whore who instilled sexual desire into man, but while defiling man in this way she at the same time contributed to the perpetuation of mankind.

Be that as it may, there is no doubt that *Mashya* and *Mashyane* harbour also dark elements, as their story reveals it. The rhubarb plant from *Gayomard's* seed evolved in due time into two stalks which later gained human shape, one male and

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one female, and this is how the first parents of mankind with a true human body came into being. The story of *Mashya* and *Mashyane* is the Zoroastrian variant of the first fallen couple the detail of which is not important here: they blasphemed, they worshipped the demons, a sin which made this couple childless for fifty years. When, at the end, children were born to them, they wanted to devour their own children. The twins, one boy and one girl, were rescued from their parents only by *Ohrmazd* who took away their sweetness. Altogether seven pairs of twins were born and each brother took his sister for wife (for the whole story of *Mashya* and *Mashyane* in the *Bundahishn* see Zaehner 1956: 74-79).

This is very briefly the myth of cosmogony on which *khvedodah* was legitimised. In fact, the *Pahlavi Rivayat Accompanying the Dadestan i Denig* has a long chapter on *khvedodah*, very agitative in style, which has the story of *Mashya* and *Mashyane* as a basis for analogy, since it is true that the first parents were at the same time siblings from a same mother and father. Picking up just this element from the whole, complex myth the text leaves no doubt what *Ohrmazd* himself thinks on *khvedodah* (added to his paradigmatic relationship to his daughter-wife *Spendarmad*): "this should have been the most excellent thing known to mankind"; "since the primal creation *Mashya* and *Mashyane* practised thus, then you also should have practised thus" (Williams 1990 Part II: 10.).

Studying the texts one has the impression that the author agitating for *khvedodah* seems to loose temper sometimes and proposes *khvedodah* so vehemently that his teaching came into conflict with other elements of Zoroastrian doctrines. The next paragraph of the same text (PRDd 8b2) is not balanced but within orthodoxy when saying that "exclusion from Hell, i. e. exclusion from Ahriman and the demons, comes into being at that time (even) if (someone) has committed *margarzan* (sin) because he desired to practice sorcery" (Williams 1990 Part II: 11.). *Margarzan* and sorcery are, perhaps, the two most grievous sins in Zoroastrianism,

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therefore to claim that *khvedodah* annuls these sins is itself a harsh position though in line with Zoroastrian theology since, as we have seen above, there was a debate among Zoroastrian scholars as to the effect of *margarzan*: some believed that *margarzan* sinners remained always impure while others thought just the opposite, but both camps accepted the possibility of getting rid of its consequences with confession and punishments. But the next few lines went beyond this when claiming that there were four best things in Zoroastrianism, the worship of *Ohrmazd*, fire worship, satisfying the needs of priests and *khvedodah*, but from all these the best was *khvedodah* (PRDd 8b3-8c1: Williams 1990: Part II: 11.). To place *khvedodah* above the worship of God is certainly something not every believer would agree with. The text has long pages persuading in the same way but there is no need to cite more as I have demonstrated the main points: the relation between *khvedodah*, the creation myth and eschatology.

One can ask obviously that is in fact the story of *Mashya* and *Mashyane* the best analogy to legitimise *khvedodah*? Certainly not as the first human couple symbolises the Fall and commits blasphemy, devours their own children, etc. But such considerations never came to surface, as the priests were also not disturbed by making use of bad analogies when they claimed that the best *khvedodah* was that with one's own mother while *Mashya* and *Mashyane* were siblings. With coming to this issue we have to deal briefly with the typology of *khvedodah*.

Accordingly, the best such union was between mother and her son, followed by daughter and father, a *khvedodah* between siblings being only in the third place on this list of superiority which ends with half-siblings and illegitimate children (PRDd 8.d 1-6; Williams 1990: Part II: 12). Here the analogy on which the next-of-kin marriages were legitimised fall out of grace and everything is upside down: mother-son relationship is regarded as the best *khvedodah* though there is no hint to such a union even in the creation myth; father-daughter is the second best couple only

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despite the fact that it corresponds exactly to *Ohrmazd* and *Spendarmad*, while the prototype of *khvedodah*, that of *Mashya* and *Mashyane* is only the third on the list. This and other controversies led me to believe that *khvedodah* was in fact not based on the creation myth but evolved independently from it; once Magi wanted to spread this custom (for whatever reason) they have found good analogies in cosmogony. They adopted these stories only when and how it was convenient for them but neglected the conclusion of the same stories immediately when it was in no harmony with their own aims. And the miraculous feature of *khvedodah* (smiting demons, liberating even the most grievous sinners from Hell) served to convince a hesitant society.

Having said this I have to raise now the question of social practice. Unfortunately, the texts that have reached us do not allow us to arrive at a clear-cut answer to the question whether Zoroastrian society in fact followed suit and practiced *khvedodah* or, on the contrary, the persuasive tone we can witness in the theological work is just because they wanted to convince a resisting society. If we believe Herodotus (itself a debated issue), Cambyses wanted to marry his sister and this was a sin at that time, something Persian law forbade. If this true, there was no *khvedodah* in the Achaemenian period, at least not in the Persian society the royal family included (this tells nothing about the practice of the Magi). We can also cite the very same text from which I quoted some paragraphs concerning the miraculous feature of *khvedodad*: this text is written in a form of dialogue between *Ohrmazd* and Zoroaster who asks the chief deity about various issues, including *khvedodah*. Here his questions always reflect the doubts of a hesitating, perhaps even unbelieving, person who learns the answers of *Ohrmazd* in disguise. Two examples will show the attitude: "Zoroaster said: since in this world they call this a most distressing thing, how (do you answer) you who are *Ohrmazd*?" (PRDd 8 a5; Williams 1990, Part II: 10.); Zoroaster said to *Ohrmazd*: In my view (it is) bad and hard and

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strange that I should make *khwedodah* so prevalent among mankind." (PRDd 8. 01; Williams 1990, Part II: 16). Perhaps Zoroaster is advocating here the resistance of the whole society, but should he represent only himself, it is in accordance with history since there is not even a hint in any of the sources that the prophet of Zoroastrianism ever practiced *khwedodah*.

Madigan i Hazar Dadestan, a compendium of hundreds of legal cases produced by late Sasanian everyday life and recorded by a judge is a valuable source for the legal practice of Persian society. In fact, the majority of what we know about Zoroastrian law in this period is due to this work, containing predominantly cases of private law (ownership, family law, inheritance, etc.). It is very interesting that even this law book does not have any legal case concerning *khwedodah* though such cases must have been abundant if they were truly numerous. Consider only the issue of a father-daughter *khwedodah*: a child born from such a union is both a child and a grand child of the very same man, a circumstance ruining very quickly a system of inheritance, and we would think with good reason that legal cases must emerge from such a chaotic state of affairs. But not a single case was brought to court. We are, of course, left in darkness why: because there were in fact no such marriages or, perhaps, because people just did not want to bring to court such family matters and solved their problems at home (for details on legal practice see Macuch 1991: 145-149).

Jesubokht, an Iranian Christian Metropolitan of Persis of the early post-Sasanian period (8th century CE) who produced a law book for his flock demonstrates the superiority of the Christian faith, ethics and law by apologetics. When coming to the issues of family relations he claims that God prevented next-of-kin marriages in three ways: with laws written in the human nature, with law books and with fear from divine punishment. The force of the law of the human nature is so important, the author goes on to say, that even Magi commit *khwedodah* with

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displeasure and against their own will when they follow their "dirty practices" (Sachau: 1914: 35). Here, again, the interpretation of the text is decisive: does it mean that *khvedodah* was hard even for the Magi but they continued this practice after the fall of the Sasanians? Or does this text reflect the resistance of the whole society and the Magi denote the Zoroastrian community at large in the sentence as a Christian observer would call them? We just cannot judge.

Before, however, coming to fast to conclusions with the help of the indices mentioned above, we have to take into consideration also the testimony of *Mar Abha*, himself a Christian Patriarch who produced also a law book for the Iranian Christians in the 6th century, that is, during the peak of Sasanian power in the reign of *Khusraw I* (531-579). *Mar Abha* saw as his duty to unite the oriental Christendom after a bitter inner struggle between Patriarchs *Elisa* and *Narse* (524-539) during which corruption became widespread among the lay people, particularly in family life. Accordingly, Iranian Christians adopted legal practices of Jewish and Persian origin, the levirate on the one hand, and *khweodah* and bigamy on the other.

In his law book devoted exclusively to family law the Patriarch makes clear that such practices are unlawful and intolerable in Christian understanding, though he seems a bit more tolerant towards levirate than to other forms of marriages, that is, the practices of the Persians. A long paragraph (2.§) is devoted against *khvedodah* the practitioners of which are called at the end of the text "students and slaves of Satan" (Sachau 1914: 267). This was a courageous claim as Magi were very powerful in these decades and *Mar Abha* was in fact brought to court and sentenced to prison for this and other activities and he spent ten long years of his life in chains. Despite this he insisted on purifying the Christian community from foreign, notably Zoroastrian influences and continued to rule that should someone live in any form of intolerable marriages (*khvedodah*, bigamy) he will be granted a year to abandon it.

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Should he continue with these marriages, he will be excluded from the Church, together with his wife, as long as they do not separate (Sachau 1914: XXIII-XXVII).

Even a modern reader could sense the outcry of the author when coming to the point of *khvedodah*, and I would not think that such passages came into being only on theoretical basis. The discomfort of the author and the punishment for his brethren makes one to believe that *khvedodah* was a social practice so widespread that even Iranian Christians, or, at least, some of them, adopted this, and the Patriarch had to fight against it in order to preserve the basic principles of Christianity.

To sum up, there is a great ambiguity in issues of family relationship in Zoroastrian tradition from the creation myth and cosmogony to anthropology (concerning females) and everyday legal practice. The propaganda of the Magi and the resistance of the very same priests and the Zoroastrian community at large, proven by Zoroastrian and contemporary non-Zoroastrian texts are two sides of the same thing: *khvedodah* with all its controversies.

Conclusion

As demonstrated, there were in fact legal devices to help the soul of a sinner, either by mitigating pains in Hell or by rescuing the soul completely from Hell. These legal ways came into being in different historic periods and they were certainly not systemic answers to the same question. Should it be otherwise, no one would accept the hardships of the penitence and (sometimes capital) punishment as a way to annul crimes if it could be done by less pain: marriage, though *khvedodah*, as it was.

These legal means disappeared as the state which tolerated, even propagated them, that of the Sasanians, fell victim to the invading Arab-Muslim army. Next-of kin marriages, as it seems, survived the fall of the Sasanians for some centuries but

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was abandoned around the 11th century (perhaps also on the pressure of the by then majority Muslim environment); penitence and punishments were also of no use any more since no Muslim state tolerated capital punishments on Zoroastrian beliefs when one did not commit a deed Muslim authorities regarded a capital offence. Trusts or foundations for the benefit of the soul or to erect fires or Fire Temples, however, remained in practice and continued to function even today since it is only the lack of wealth which could hinder the establishment of these (it is, in fact, a real obstacle among contemporary Iranian Zoroastrians). But in doing so law is not the solution in itself but only a means (contrary to criminal and family law where legal institutions were not only tools) by which one could achieve relief for the soul: praying with all the related ceremonies. The fact that this practice goes back to pre-Zoroastrian times and is at variance with Zoroaster's teaching about the fate of the soul and individual responsibility is no hindrance in the popularity of these rites as it never was during the previous centuries.



Zoroaster

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References

- Bailey, H. W. (1943): *Zoroastrian Problems in the Ninth-Century Books*. Oxford University Press: London.
- Boyce, Mary (1975): *A History of Zoroastrianism*. Volume One: The Early Period. Leiden: E. J. Brill:.
- (1994): Death among Zoroastrians. *Encyclopaedia Iranica*, Vol. VII, Fasc. 2, 179–181.
- (2000): Fravasi. *Encyclopaedia Iranica*, Vol. X Fasc. 2, 195–199.
- Braun, O. (1915): *Ausgewählte Akten Persischer Märtyrer*. München: Kempten.
- Doniger, W-Smith, B. K (1991). *The Laws of Manu. With an Introduction and Notes*. London, New York: Penguin.
- Duchesne-Guillemin, J. (1970): *Symbols and Values in Zoroastrianism*. New York: Harper and Row.
- Franke, Sabine (2000): Magische Praktiken im Codex Hammurapi. *Zeitschrift für Altorientalische und Biblische Rechtsgeschichte*, 6. Wiesbaden: Harrassowitz.
- Hintze, Almut (2000): Fraso. Kereti. *Encyclopaedia Iranica*, Vol. X, Fasc. 2, 190–192.
- Humbach, H –Elfenbein, J: *Erbedestan*. An Avesta-Pahlavi Text. München.
- Jaafari-Dehaghi, Mahmoud (1998): *Dadestan i Denig*, Part I. *Studia Iranica Cahier* 20. Paris: Association Pour L'Avancement des Études Iraniennes.
- Jany, Janos (2004): The Idea of a Trust in Zoroastrian Law. *Journal of Legal History*, vol. 25, Issue 3, 269-286.
- Kotwal, F. M-Kreyenbroek, Ph (2003): *The Herbedestan and Nerangestan*. Vol. III, Fragard 2. *Studia Iranica Cahier* 30. Paris: Association Pour L'Avancement des Études Iraniennes.
- Macuch, Maria (1991): Inzest im vorislamischen Iran. *Archeologische Mitteilungen aus Iran*, Band 24, 141–154. Berlin: Dietrich Reimer Verlag.

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------(1993): *Rechtskasuistik und Gerichtspraxis zu Beginn des siebenten Jahrhunderts in Iran. Die Rechtssammlung des Farrohmard i Wahrman.* Wiesbaden: Harrassowitz.

Mazdapur, Katayun (1990): *Shayist-ne-Shayist.* Tehran.

Nyberg, H. S. (1964): *A Manual of Pahlavi I.* Harrassowitz, Wiesbaden.

Sachau, Eduard (1914): *Corpus juris des persischen Erzbischofs Jesubocht. Erbrecht oder Canones des perischen Erzbischofs Simeon. Eherecht des Patriarchen Mar Abha.* Berlin: Georg Reimer Verlag.

Sanjana (1888): *The Alleged Practices of Next-of-Kin Marriage in Old Iran.* London.

Shaked, Shaul (1994): *Dualism in Transformation. Varieties of Religion in Sasanian Iran.* London: School of Oriental and African Studies:.

Shaki, Mansour (1994): Den. *Encyclopaedia Iranica*, Vol. VIII, Fasc. 3, 279–281.

Siedler, N. (1971): *Zur Universalität des Inzesttabu. Eine kritische Untersuchung der These und der Einwände.* Soziologische Gegenwartsfragen, No. 36. Stuttgart.

Stausberg, Michael (2004): *Die Religion Zarathustras. Geschichte-Gegenwart-Rituale.* Band 3. Kohlhammer: Stuttgart.

Vahman, Fereydun (1986): *Arda Wiraz Namag. The Iranian Divina Comedia.* London and Malmö: Curzon Press.

Williams, A. V. (1990). *The Pahlavi Rivayat Accompanying the Dadestan i Denig.* The Royal Danish Academy of Science and Letters. Copenhagen.

Zaehner, R. C. (1956): *The Teachings of the Magi. A Compendium of Zoroastrian Beliefs.* New York: Oxford University Press.

Zaehner, R. C. (1961): *Dawn and Twilight of Zoroastrianism.* London: Weidenfeld and Nicolson.