

Zoroastrian law and the spread of Islam in Iranian society (ninth–tenth century)¹

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Abstract

This article explores three important Zoroastrian legal texts from the ‘Abbasid period, consisting of questions and answers to high-ranking priests. The texts contain a wellspring of information about the social history of Zoroastrianism under Islamic rule, especially the formative encounter between Zoroastrians and Muslims. These include matters such as conversion, apostasy, sexual relations with outsiders, inheritance, commerce, and the economic status of priests. The article argues that the elite clergy responsible for writing these texts used law to refashion the Zoroastrian community from the rulers of Iran, as they had been in Late Antiquity, into one of a variety of *dhimmī* groups living under Islamic rule. It also argues that, far from being brittle or inflexible, the priests responded to the challenges of the day with creativity and pragmatism. On both counts, there are strong parallels between the experiences of Zoroastrians and those of Christians and Jews, who also turned to law as an instrument for rethinking their place in the new Islamic cosmos. Finally, the article makes a methodological point, namely to show the importance of integrating Pahlavi sources into wider histories of Iran and the Middle East during the early Islamic period.

Keywords: Zoroastrianism, Islam, Law, ‘Abbasids, Sasanian history, Iran, Late Antiquity

Introduction

At the height of its power, the Sasanian Empire stretched from the shores of the Mediterranean to the heart of Central Asia. This was an empire of laws – sometimes very elaborate laws – presided over by the King of Kings and a hierarchy of priests. Indeed, the Zoroastrian clergy were in many cases also jurists and government officials, who ensured that the affairs of the state were conducted in accordance with the principles of the “Good Religion” (Pahl. *wehdēn*).²

- 1 I would like to thank the following people for their assistance and feedback: Kianoosh Rezania and Eduard Iricinschi (whose invitation to Bochum prompted me to write an early draft of this piece), Robert Hoyland, Götz König, Yuhan Vevaina, Uriel Simonsohn, Oded Zinger, and the two anonymous reviewers. All remaining mistakes are my own. I would also like to thank the John Fell–OUP Fund of the University of Oxford, which supported research leading to this article.
- 2 For an introduction, see M. Macuch, “Judicial and legal systems iii. Sasanian legal system”, in E. Yarshater (ed.), *Encyclopædia Iranica* (London: Paul Kegan and Routledge, 1982–present) (Online, henceforth *Elr*); also A. Perikhanian, “Iranian society and law”,

This system came crashing down in the wake of the Arab conquests of the seventh century. Henceforth, there was no Sasanian Empire for the priests to serve, nor imperial law for them to enforce.³ Zoroastrians were suddenly a people without a state of their own – a predicament shared by a range of Christian groups across the Near East, North Africa, and al-Andalus, who also witnessed their imperial power dwindle almost overnight.

This is an essay about how Zoroastrians in the early ‘Abbasid period (c. ninth–tenth centuries) made sense of this predicament. In particular, it is about the shrinking legal authority of the clergy, who claimed jurisdiction over a more limited range of matters than their counterparts had done at the height of Sasanian power, now mostly issues of internal concern to the Zoroastrian faithful. It is also about how priests used law, broadly construed, to conserve their flocks and reinforce their identity at a time of increasing conversion to Islam. The great narrowing of horizons implied by the sources may seem like a melancholy tale. But the responses of the clergy to the challenges of the day reveal a religious elite of tremendous creativity and adaptability.

We know precious little about the social history of Zoroastrianism in the early centuries of Islamic rule.⁴ This applies especially to how Zoroastrians negotiated their place in the reconfigured cosmos created by Islam, as well as how the former lands of the Sasanian Empire became predominantly Muslim. This essay is an attempt to improve our understanding of these important issues.

in E. Yarshater (ed.), *The Cambridge History of Iran. Volume 3, Part 2: The Seleucid, Parthian and Sasanian Periods* (Cambridge: Cambridge University Press, 1983), 627–80.

- 3 For overviews of the fall of the empire and the beginnings of Islamic rule, see A. Christensen, *L'Iran sous les Sassanides* (Copenhagen: Ejnar Munksgaard, 1944), 497–509; M. Morony, *Iraq after the Muslim Conquest* (Princeton: Princeton University Press, 1984); P. Pourshariati, *Decline and Fall of the Sasanian Empire: The Sasanian–Parthian Confederacy and the Arab Conquest of Iran* (London: I.B. Tauris, 2008); R.G. Hoyland, *In God's Path: The Arab Conquests and the Creation of an Islamic Empire* (New York: Oxford University Press, 2014); B. Spuler, *Iran in the Early Islamic Period: Politics, Culture, Administration and Public Life between the Arab and the Seljuk Conquests, 633–1055*, R.G. Hoyland (ed.), with G. Goldbloom and B. Walburg (trs) (Leiden: Brill, 2015).
- 4 For overviews of Zoroastrianism in the early Islamic period, see M. Morony, “Madjūs”, in Peri Bearman et al. (eds), *The Encyclopaedia of Islam. Second Edition*, 13 vols (Leiden: Brill, 1954–2009) (Online, henceforth *EF*²); J. Choksy, *Conflict and Cooperation: Zoroastrian Subalterns and Muslim Elites in Medieval Iranian Society* (New York: Columbia University Press, 1997); T. Daryaei, “Apocalypse now: Zoroastrian reflections on the early Islamic centuries”, *Medieval Encounters* 4, 1998, 188–202; M. Stausberg, *Die Religion Zarathustras. Geschichte–Gegenwart–Rituale*, 3 vols (Stuttgart: Verlag Kohlhammer, 2002–04), i, 263–351; T. Daryaei, “Zoroastrianism under Islamic rule”, in M. Stausberg and Y. S.-D. Vevaina, with A. Tessmann (eds), *The Wiley-Blackwell Companion to Zoroastrianism* (Chichester: Wiley Blackwell, 2015) (henceforth, *WBCZ*), 103–8; S. Shaked, “Islam”, in *WBCZ*, 491–98; P. Crone, *The Nativist Prophets of Early Islamic Iran: Rural Revolt and Local Zoroastrianism* (Cambridge: Cambridge University Press, 2012); S.B. Savant, *The New Muslims of Post-Conquest Iran: Tradition, Memory, and Conversion* (Cambridge: Cambridge University Press, 2013).

Along with this, the essay aspires to make a strong historiographic and methodological point, namely, to show what scholars of early Islam and the pre-modern Middle East stand to gain by integrating Zoroastrian sources into their view of the past. As is well known, the field of early Islamic history has been transformed in recent decades by efforts to read Islamic sources in Arabic alongside non-Islamic sources in languages such as Syriac, Greek, and Armenian. This approach, pioneered by Patricia Crone and Michael Cook in *Hagarism* (1977), has greatly enhanced the way we understand the momentous changes which swept across the Near East and Central Asia in the wake of the Arab conquests.⁵ One body of literature has escaped this trend, however, and these are Zoroastrian sources in Book Pahlavi (otherwise known as literary or Zoroastrian Middle Persian), mostly written between the ninth and tenth centuries. By and large, they have not been tapped to tell wider histories of medieval Iran or the rise of Islam in the post-conquest period.⁶

Of course, Pahlavi sources from the ‘Abbasid period are far from unknown. But as I have argued elsewhere, specialists in Zoroastrianism tend to read them with an eye to the prior “Golden Age” of Sasanian history, not the early medieval environment in which they were written and redacted.⁷ Islamicists, meanwhile, are largely unaware of these sources, and if they do happen to know them, their attitude tends to be dismissive. This view is reflected in Robert Hoyland’s *Seeing Islam as Others Saw It* (1997), a magisterial survey of the non-Islamic sources for early Islamic history and an indispensable reference work in the field:

Zoroastrian lore continued to be transmitted, and in the ninth century it began to be set down; but it represented the literature of an already moribund society and so was concerned with preserving the glorious tradition of the past, not recording the decadence of the present. And except for question-and-answer collections, which frequently discuss issues such as apostasy and relations with non-Zoroastrians, this literature is largely

5 P. Crone and M. Cook, *Hagarism: The Making of the Islamic World* (Cambridge: Cambridge University Press, 1977).

6 For exceptions to this rule, see S. Shaked, *From Zoroastrianism to Islam: Studies in Religious History and Intercultural Contacts* (Aldershot: Ashgate, 1995); F. de Blois, “The Persian calendar”, *Iran* 34, 1996, 39–54; A. de Jong, “Zoroastrian self-definition in contact with other faiths”, *Irano-Judaica* 5, 2003, 16–26; A. de Jong, “The *Dēnkard* and the Zoroastrians of Baghdad”, in A. Williams, S. Stewart and A. Hintze (eds), *The Zoroastrian Flame: Exploring Religion, History and Tradition* (London: I.B. Tauris, 2016), 223–38; K. Rezaia, “The *Dēnkard* against its Islamic discourse”, *Der Islam* 94, 2017, 336–62.

7 C.C. Sahrer, “A Zoroastrian dispute in the Caliph’s court: the *Gizistag Abāliš* in its early Islamic context”, *Iranian Studies* 52, 2019, 61–83, here: 63–4. For overviews of Pahlavi literature in the Islamic period, see J. de Menasce, “Zoroastrian literature after the Muslim conquest”, in R.N. Frye (ed.), *The Cambridge History of Iran. Volume 4: The Period of the Arab Invasion to the Saljuqs* (Cambridge: Cambridge University Press, 1975), 543–65; T. Daryaei, “Middle Iranian sources for the study of medieval Islamic history”, *Al-‘Usur al-Wusta* 10, 1998, 36–9. And an interesting effort to compare Zoroastrian law with other legal systems: J. Jany, *Judging in the Islamic, Jewish and Zoroastrian Legal Traditions* (Farnham: Ashgate, 2012).

inward-looking, concentrating on the life and heritage of its own community.⁸

Among Islamic historians, Hoyland deserves great credit for flagging these texts in the first place. After all, they are usually completely ignored. But his portrayal of Zoroastrian society as “moribund” and “decadent” perhaps inadvertently makes it seem as if there is little worth reading in the Pahlavi books (especially in contrast to works by Christians and Jews).

In this essay, I would like to explore one of the most important genres of Zoroastrian literature from the Islamic period (which Hoyland rightly singles out as significant): legal *responsa*, often known as questions-and-answers, or in Pahlavi, *pursišnīhā* (“questions”). They are also sometimes called *rivāyats*, a New Persian term which is both late and something of a misnomer, for it encompasses a wider array of texts than simply questions-and-answers.⁹ These works show strong parallels with the *responsa* of Jews, Christians, and Muslims from the same time (which have recently been studied in a series of important articles by Uriel Simonsohn).¹⁰ What is more, they contain a tremendous reservoir of information about Zoroastrian society which cannot be gleaned from other texts or communities.

From one point of view, the sources are well known: we have multiple editions and translations of varying quality, along with scattered scholarly commentary across books and articles.¹¹ From another point of view, however, as a body

8 R.G. Hoyland, *Seeing Islam as Others Saw It: A Survey and Evaluation of Christian, Jewish and Zoroastrian Writings on Early Islam* (Princeton: Darwin Press, 1997), 242–3, and more generally, 241–3, 321–30, 511–12.

9 For instance, see the medieval work known as the *Pahlavi Rivāyat Accompanying the Dādestān ī Dēnīg* (a title given by a modern editor), which has overlapping contents with the *responsa*, but is not structured around questions and answers in the same way: A.V. Williams, *The Pahlavi Rivāyat Accompanying the Dādestān ī Dēnīg*, 2 vols (Copenhagen: Munksgaard, 1990). Another example are the later New Persian *rivāyats* (c. 15th–18th c.), consisting of epistolary exchanges between Indian and Iranian Zoroastrians on ritual, theological, and legal matters; for an overview, see D.J. Sheffield, “Primary sources: New Persian”, in *WBCZ*, 529–42, here: 533–4.

10 U. Simonsohn, “Conversion to Islam: a case study for the use of legal sources”, *History Compass* 11/8, 2013, 647–62; U. Simonsohn, “Are geonic *responsa* a reliable source for the study of Jewish conversion to Islam? A comparative analysis of legal sources”, in A.E. Franklin et al. (eds), *Jews, Christians and Muslims in Medieval and Early Modern Times: A Festschrift in Honor of Mark R. Cohen* (Leiden: Brill, 2014), 119–38; U. Simonsohn, “The legal and social bonds of Jewish apostates and their spouses according to Gaonic *responsa*”, *The Jewish Quarterly Review* 105, 2015, 417–39; U. Simonsohn, “Communal membership despite religious exogamy: a critical examination of east and west Syrian legal sources of the late Sasanian and early Islamic periods”, *Journal of Near Eastern Studies* 75, 2016, 249–66.

11 For editions and translations, see below, notes 13–15. For discussion, see esp. B. Hjerrild, *Studies in Zoroastrian Family Law: A Comparative Analysis* (Copenhagen: Museum Tusulanum Press, 2002); M. Macuch, “Pahlavi literature”, in R.E. Emmerick and M. Macuch (eds), *The Literature of Pre-Islamic Iran: A Companion to A History of Persian Literature* (London: I.B. Tauris, 2009), 116–90, here: 130–51, 185–90; M. Macuch, “Law in pre-modern Zoroastrianism”, in *WBCZ*, 289–98, here: 296–7. See also C.G. Cereti, *La letteratura pahlavi: Introduzione ai testi con riferimenti alla storia degli studi e alla tradizione manoscritta* (Milan: Mimesis, 2001), 139–69.

of literature and as expressions of Zoroastrian culture in the Islamic period, these texts are essentially unknown. Indeed, thanks to the work of scholars such as Maria Macuch, we understand far more about the influence of Zoroastrianism on certain aspects of early Islamic law (for instance, temporary marriage, religious endowments, or inheritance) than we do about how Zoroastrian jurists responded to the Islamic environment of their day.¹² This article is an attempt to fill this gap by historicizing a body of texts which are seldom historicized.

Among other things, the *responsa* show how Zoroastrian priests tried to: stem the tide of conversion; discourage intermarriage; regulate social and economic exchanges with outsiders; emphasize distinctive Zoroastrian beliefs and practices; and use law to reshape their flock into members of the *ahl al-dhimma*. The article begins by providing an overview of the *responsa* genre. It then explores the methodological challenges of using these sources for social history before summarizing the contents of the texts which may reflect the changing Islamic environment of their day. Finally, it concludes by considering how the texts throw new light on the Islamization of Iranian society during the early ‘Abbasid period.

The genre

There are three main collections of legal *responsa* in Pahlavi produced between the ninth and tenth centuries. These include: 1) the *Rivāyat of Ādurfarnbag ī Farroxzādān*,¹³ 2) the *Dādestān ī Dēnīg* of Manuščīhr son of Gušn-jam;¹⁴

- 12 M. Macuch, “Die Zeitehe im sasanidischen Recht – ein Vorläufer der šī’itischen *mut’a*-Ehe in Iran?”, *Archäologische Mitteilungen aus Iran* 18, 1985, 187–203; M. Macuch, “Die sasanidische Stiftung ‘für die Seele’ – Vorbild für den islamischen *waqf*”, in P. Vavroušek (ed.), *Iranian and Indo-European Studies: The Memorial Volume of Otakar Klíma* (Prague: Enigma Corporation, 1994), 149–67; M. Macuch, “Die sasanidische fromme Stiftung und der islamische *waqf*: Eine Gegenüberstellung”, in A. Meier, J. Pahlitzsch and L. Reinfandt (eds), *Islamische Stiftungen zwischen juristischer Norm und sozialer Praxis* (Berlin: Akademie Verlag, 2009), 19–38; M. Macuch, “Descent and inheritance in Zoroastrian and Shi’ite law”, *Der Islam*, 94, 2017, 322–35. For the view that Sasanian law had little influence on Islamic law, see J. János, “The four sources of law in Zoroastrian and Islamic jurisprudence”, *Islamic Law and Society* 12, 2005, 291–332.
- 13 Pahlavi text and transcription, English translation: B.T. Anklesaria, *The Pahlavi Rivāyat of Ādurfarnbag and Farnbag-Srōš*, 2 vols (Bombay: M.F. Cama Athornan Institute, 1969). Manuscript facsimile, Pahlavi transcription, Persian translation: Hassan Rezai Baghbidi, *The Revāyat of Ādur-Farrōbay ī Farroxzādān* (Tehran: Centre for the Great Islamic Encyclopaedia, 2005).
- 14 English translation (complete text): E.W. West, *Pahlavi Texts, Part II: The Dādistān-i Dīnik and the Epistles of Mānūshīhar* (Oxford: Clarendon Press, 1882), 1–276; Pahlavi text of questions 1–40: T.D. Anklesaria, *The Datistan-i Dinik* (Bombay: Fort Printing Press, no date); Pahlavi text of questions 41–92: P.K. Anklesaria, “A critical edition of the unedited portion of the Dādestān-i Dīnik” (Ph.D. thesis, School of Oriental and African Studies, London, 1958); Pahlavi transcription, English translation (questions 1–40 only): Mahmoud Jaafari-Dehaghi, *Dādestān ī Dēnīg, Part I: Transcription, Translation and Commentary* (Paris: Association pour l’Avancement des Études Iraniennes, 1998).

and 3) the *Rivāyat of Ēmēd ī Ašawahištān*.¹⁵ The three texts were produced in Baghdad, Fars, and Kirman, respectively. It is important to note they are not the only examples of Zoroastrian question-and-answer literature. Indeed, there are a number of other sources which belong to the genre which were written both before and after the Arab conquest.¹⁶ By and large, I will steer clear of these texts because they generally have less to say about Islam, and/or because it is hard to situate them firmly in the Islamic period on account of their ambiguous authorship.

Each collection of *responsa* is structured around an exchange between a petitioner and a priest. While clearly emanating from a clerical milieu, these texts contain queries which seem to reflect the quotidian concerns of the laity. This suggests that they were written with a pastoral purpose in mind, if not also a readership made up of educated laymen. Indeed, the names of petitioners are sometimes given in the texts, and we should not automatically assume these were all priests.¹⁷ In general, the texts are shorn of the kinds of contextual details that could help us establish a clear *Sitz im Leben*, such as references to places, events, or people (other than the interlocutors). This is in sharp contrast to the contemporary *responsa* of the Geonim, the rabbis of the talmudic academies in Iraq.¹⁸ In the case of these Jewish texts, we sometimes know where the questions came from, how they were transmitted to the rabbis, how the answers were disseminated to readers, and even whether the advice was actually followed. The same cannot be said of the Zoroastrian material. Here, it is important to note that

- 15 Pahlavi text and transcription: B.T. Anklesaria, *Rivāyat-ī Hēmūt-ī Asavahistān* (Bombay: The K.R. Cama Oriental Institute, 1962); Pahlavi transcription and English translation: N. Safa-Isfahani, *Rivāyat-ī Hēmūt-ī Ašawahištān: Edition, Transcription, and Translation. A Study in Zoroastrian Law* (Cambridge, MA: Harvard University Printing Office, 1980).
- 16 For instance, *Dādestān ī Mēnōg ī Xrad* (exchanges between “the knowing one” [*dānāg*] and the “Spirit of Wisdom”): English translation: E.W. West, *The Book of Mainyo-i Khard or the Spirit of Wisdom* (Stuttgart: Carl Grüniger, 1871); Pahlavi text: T.D. Anklesaria, *Dānāk-u Mainyo-i Khard* (Bombay: T.D. Anklesaria and Sons, 1913). Or *Dēnkard 5* (exchanges between Ādurfarnbag and the Jew Ya‘qūb son of Xaled and the Christian Bōxt Mārē): J. Amouzgar and A. Tafazzoli, *Le cinquième livre du Dēnkard* (Paris: Association pour l’Avancement des Études Iraniennes, 2000).
- 17 See for instance Mihrxwaršēd son of Ādurmāh, the main questioner in the *Dādestān ī Dēnīg*: Jaafari-Dehaghi, *Dādestān ī Dēnīg*, 30–31; or Ādurgušnasp son of Mihrātāxš, the questioner in the *Rivāyat of Ēmēd ī Ašawahištān*: Anklesaria, *Rivāyat-ī Hēmūt-ī Asavahistān*, 1; Safa-Isfahani, *Rivāyat-ī Hēmūt-ī Ašawahištān*, 1–2. While it is likelier that these men were priests, the ‘Abbasid period was a time when highly educated lay intellectuals were coming to prominence, at least if Mardānfarox son of Ohrmazddād, author of the *Škand-gumānīg Wizār*, is any indication: M. Timuş, “Changer les mots, altérer les idées: autour du traité apologétique Škand Gumānīg Wizār”, *Studia Asiatica* 9, 2010, 135–48.
- 18 Along with Simonsohn’s articles listed above (n. 10), see I. Ta-Shema, “*Responsa*”, in F. Skolnik and M. Berenbaum (eds), *Encyclopaedia Judaica*, second ed., 22 vols (Detroit: Macmillan and Keter, 2007), here: xvii, 228–31; R. Brody, *The Geonim of Babylonia and the Shaping of Medieval Jewish Culture* (New Haven: Yale University Press, 1998); B. Lifshitz, “The legal status of the *Responsa* literature”, in H. Ben-Menahem and N.S. Hecht (eds), *Authority, Process and Method: Studies in Jewish Law* (Amsterdam: Harwood Academic Publishers, 1998), 59–100; O. Zinger, “Toward a social history of Jewish *Responsa* in medieval Egypt” (forthcoming).

when we speak of *responsa* as “legal sources”, we must remember they are not law books in the conventional sense of the term (like the famous *Mādayān ī Hazār Dādestān*, to be discussed below); nor are they collections of case law based on actual events and people. Rather, they are miscellanies of legal, ethical, and theological topics, couched within the framework of petitions and responses.

In general, the *responsa* do not follow a set order, nor do they necessarily touch on a consistent range of subjects. Certain themes recur from one source to the next, especially matters related to ritual, inheritance, pollution caused by dead matter (*nasāy*), the fate of the soul after death, and marriage by proxy (*stūrīh*). Contact with religious outsiders is also a popular theme, but the status of non-Zoroastrians is never treated as a discrete domain of law (comparable to the way Muslim jurists conceived of *dhimmī* laws).¹⁹ Rather, non-Zoroastrians tend to appear in a variety of semi-disconnected contexts, such regulations about marriage, sex, inheritance, commerce, and ritual defilement. By and large, what binds the *responsa* together is less their contents than their common structure and goal of providing priestly advice.

Zoroastrians did not begin writing law in the Islamic period, of course. The *responsa* of the ninth and tenth centuries built on a tradition of legal writing going back centuries. Unfortunately, with the exception of the *Mādayān ī Hazār Dādestān* (“Book of a Thousand Judgments”), none of these Sasanian-era law books survive, making it difficult to establish just how much Zoroastrian law changed with the coming of Islam.²⁰ All scholars agree, however, that Islamic-era texts contain plenty of pre-conquest material, though we lack a reliable heuristic for sifting apart the Sasanian and post-Sasanian content (a problem common to nearly all domains of Pahlavi literature, not just law).

As the work of Maria Macuch has shown, Zoroastrian law before the advent of Islam was concerned not only with matters of theology and daily practice, but also the administration of a state. This is because before the conquests, priests were entrusted with numerous civil and political responsibilities, including tax collection, crime and punishment, and the administration of government offices.²¹ Naturally, this vast power shrank with the collapse of the Sasanian Empire, and the texts of the Islamic period seem to reflect this diminished state.²² For instance, as Macuch notes, the *responsa* tend to use simplified legal terminology and avoid discussing complex institutions such as those that

19 For an overview, see Y. Friedmann, *Tolerance and Coercion in Islam: Interfaith Relations in the Muslim Tradition* (Cambridge: Cambridge University Press, 2003), on Zoroastrians, see 72–6, 184–6.

20 Along with the overviews cited in n. 11, see M. Macuch, *Das sasanidische Rechtsbuch “Mātakdān ī hazār Dātīstān” (Teil II)* (Wiesbaden: Kommissionsverlag Franz Steiner, 1981); M. Macuch, *Rechtsskizzen und Gerichtspraxis zu Beginn des siebenten Jahrhunderts in Iran: Die Rechtssammlung des Farroḡmard ī Wahrāmān* (Wiesbaden: Harrassowitz, 1993); A. Perikhanian, *The Book of a Thousand Judgements (A Sasanian Law Book)*, tr. N. Garsoïan (Costa Mesa, CA: Mazda Publishers, 1997).

21 S. Shaked, “Administrative functions of priests in the Sasanian period”, in G. Gnoli and A. Panaino (eds), *Proceedings of the First European Conference of Iranian Studies. Part 1: Old and Middle Iranian Studies* (Rome: Istituto Italiano per il Medio ed Estremo Oriente, 1990), 261–73.

22 For an overview of these changes, see also P.G. Kreyenbroek, “The Zoroastrian priesthood after the fall of the Sasanian empire”, in P. Gignoux (ed.), *Transition Periods in*

must have existed before Islam. What is more, the ninth- and tenth-century sources usually obscure the existence of conflicting legal opinions or schools. Such information seems to have been a common feature of Zoroastrian law in the Sasanian period, but this was streamlined in the Islamic period in order to project a semblance of simplicity and coherence within the tradition. Finally, the *responsa* present theology and jurisprudence as a unity, such as was uncommon under the Sasanians, who treated them as separate disciplines.²³

From time to time, 'Abbasid-era works contain anachronistic passages which recall the former power of the Zoroastrian clergy. A good example comes from the *Pahlavi Rivāyat accompanying the Dādestān ī Dēnīg* (a text I will not discuss here, but which shows interesting parallels to the three *responsa* works). At one point, it states that those guilty of a *margarzān* sin, one worthy of death (such as apostasy), should have their heads cut off. As the Persian martyr acts written in Syriac show, this was common practice in the Sasanian period, but implementing it would have been much harder after the conquests, particularly when the sinners in question were Zoroastrian converts to Islam. In a seeming admission of these changed circumstances, the text states that while it may not be possible to decapitate a sinner now, punishment may be deferred to the afterlife.²⁴

Flashes of "imperial law" like this are rare in Islamic-era legal literature. Indeed, if we take stock of the sources as a whole, it is clear that they are mainly concerned with internal matters among the Zoroastrian faithful, such as marriage, guardianship, and inheritance. In this, we see the transformation of the Zoroastrian clergy from political functionaries, as they had been during the Sasanian period, into *dhimmi* leaders not unlike contemporary Jewish rabbis and Christian priests. The powers of the Sasanian state had been absorbed into the Islamic caliphate, and what was left over for the priests were essentially private matters of immediate concern to the flocks they served. That being said, as the Ṭabaristān archive of Pahlavi legal documents from the eighth century shows, priests did not completely give up their old combination of judicial and spiritual power.²⁵ The key change was that their sphere of influence –

Iranian History: Actes du Symposium de Fribourg-en-Brisgau (Paris: Association pour l'Avancement des Études Iraniennes, 1992), 57–79.

23 Macuch, "Law in pre-modern Zoroastrianism", 296–7.

24 Williams, *Pahlavi Rivāyat accompanying the Dādestān ī Dēnīg*, i, 14, 80–81, ii, 26–9; on Sasanian penal law and its representation in Syriac sources, see C. Jullien, "Peines sup-plices dans les *Actes des martyrs persans* et droit sassanide: nouvelles prospections", *Studia Iranica* 33, 2004, 243–69.

25 P. Gignoux, "Une archive post-sassanide du Tabarestān (I)", *Res Orientales* 21, 2012, 29–96; P. Gignoux, "Une archive post-sassanide du Tabarestān (II)", *Res Orientales* 22, 2014, 29–71; P. Gignoux, "Une archive post-sassanide du Tabarestān (III)", *Res Orientales* 24, 2016, 171–84; M. Macuch, "The legal context of the Tabarestān court records (Tab. 1–8, 10)", *Res Orientales* 24, 2016, 145–70; M. Macuch, "Pahlavi legal documents from Tabarestān on lease, loan and compensation: the juristic context (Tab. 13, 14, 15, 17, 18, and 23)", *Res Orientales* 26, 2017, 165–95; D. Weber, "Court records of lawsuits in Tabarestān in the year 86/7 PYE (737 CE): a philological examination", *Res Orientales* 24, 2016, 21–144; D. Weber, "Two documents from Tabarestān reconsidered (Tab. 12 and 26)", *Res Orientales* 24, 2016, 185–92; D. Weber, "Pahlavi legal

while still extending to certain civil matters – now lay mainly with their own communities, not the whole of Iranian society.²⁶

This brings us to the purpose of the texts. As Macuch has put it, their goal “was to conserve age-old Zoroastrian customs, including especially those on marriage, family, and inheritance which differed basically from the new regulations of Islam”.²⁷ One could go a step further by arguing that the *responsa* played an important role in consolidating the legal, social, and cultural identity of Zoroastrians at a moment when they were diminishing in size and being forced to reconceive of themselves as members of the *ahl al-dhimma*. Zoroastrians were no longer the dominant community in Iraq, Iran, and Central Asia, but one of a variety of subordinate groups who were notionally subject to the law of Islam. In such a world, it fell to elite priests to articulate core Zoroastrian beliefs and rituals, and then to present these in a digestible form to the lower clergy and laity. This is what we find in many ‘Abbasid-era *responsa*. We can measure the importance of these works by the fact that they were copied and transmitted across the centuries. Considering how little Pahlavi literature from the medieval period survives to the present, this is no small sign of their significance.

My argument is fundamentally similar to the one Lev Weitz has recently made in a brilliant book about Christian family law in the early Islamic period. As he puts it:

Bishops in Syria, Iraq, and Iran responded to Islamic law and governance by creating a new Christian law of their own, one centered on marriage, inheritance, and the distinctive features of Christian family life. . . . Encounters like the one in question – in which the caliphate’s non-Muslim subjects transformed themselves in response to Islamic institutions and traditions – lie at the very heart of the story of the medieval Middle East’s formation.²⁸

One could rewrite this paragraph with Zoroastrians instead of Christians in mind and make the same point. While we know far more about Christian law – how it was codified, how it was implemented, and how it was debated under Islamic rule – it is clear that Zoroastrians engaged in a similar process of communal self-fashioning, centred on legal texts, practices, and institutions.

Challenges of using the genre

While Pahlavi *responsa* are a promising source for social historians, reading them historically is by no means straightforward.²⁹ They present familiar

documents from Tabarestān on lease, loan and compensation: a philological study (Tab. 13, 14, 15, 17, 18 and 23)”, *Res Orientales* 26, 2017, 131–64.

26 That being said, priests continued to give opinions on small-scale economic activity, such as matters of credit and debt, e.g., Anklesaria, *Pahlavi Rivāyat of Āturfarnbag*, i, 35–38, 120–21, ii, 77–80; Rezaei Baghbidi, *Revāyat of Ādur-Farrōbay*, 50–55.

27 Macuch, “Pahlavi literature”, 185.

28 L.E. Weitz, *Between Christ and Caliph: Law, Marriage, and Christian Community in Early Islam* (Philadelphia: University of Pennsylvania Press, 2018), here: 2.

29 For a successful example of this, see S. Secunda, “On the age of the Zoroastrian Sages of the Zand”, *Iranica Antiqua* 47, 2012, 317–49, which attempts to identify the dates and relationships among the priestly authorities cited in the *Zand*.

challenges to anyone wishing to write social history on the basis of legal texts. Such sources are shaped by convention and the need to make prescriptive statements, not necessarily reflect reality.³⁰ As we have seen, the *responsa* rarely provide contextual clues about their origins other than the names of their authors. Yet even these cannot be trusted. It is not obvious, for instance, whether the priests named in the texts actually wrote them, or if the texts were ascribed to these authors at a later point as a way of burnishing their authority.³¹ What is more, the manuscripts containing the *responsa* are all late – copied down in the sixteenth century and beyond – a common feature of Pahlavi literature across the board (not to mention other literary traditions from Late Antiquity and the Middle Ages). This is outside the scope of the present article, but suffice it to say, it is impossible to measure just how much change took place between the time of their composition and their recording in manuscript form. What is more, as Albert de Jong has recently noted, in classical Pahlavi literature, we are dealing with a tradition in which the importance of texts does not derive from their having authors, titles, discernible subjects, structures, dates, or boundaries.³² These characteristics, common to many forms of Zoroastrian writing, can make the task of historicizing the material very difficult.

Another problem is that medieval Zoroastrian authors saw themselves as working within an unchanging scholarly tradition. The *dēn* (that is, the Zoroastrian religion, associated with the wisdom of Ohrmazd) was the *dēn* no matter the vicissitudes of time.³³ To state otherwise (or to anchor a text in the present too explicitly) was to disrupt the illusion of continuity and coherence. For the historian, the problem of timelessness is compounded by a special feature of the Zoroastrian worldview: humanity was thought to be split between “Iranians” or “Iranianness” (*ērān*, *ērīh*) and “non-Iranians” or “non-Iranianness” (*anērān*, *anērīh*), as well as adherents of the Good Religion (*wehdēnān*, or Zoroastrians) and of the Evil Religion (*agdēnān*, or infidels).³⁴ These reflected the still greater rivalry between Ohrmazd and Ahrimen, Good

30 See the collected essays in A. Musson and C. Stebbings (eds), *Making Legal History: Approaches and Methodologies* (Cambridge: Cambridge University Press, 2012).

31 A point also made by A. de Jong, “The culture of writing and the use of the Avesta in Sasanian Iran”, in É. Pirart and X. Tremblay (eds), *Zarathustra entre l’Inde et l’Iran. Études indo-iraniennes et indo-européennes offertes à Jean Kellens à l’occasion de son 65^e anniversaire* (Wiesbaden: Reichert, 2009), 27–41, here: 29–30. Generally, we know almost nothing about most of the authorities cited in these texts: P. Gignoux, “La controverse dans le mazdéisme tardif”, in A. Le Boulluec (ed.), *La controverse religieuse et ses formes* (Paris: Éditions du Cerf, 1995), 127–49.

32 A. de Jong, “Zoroastrianism and the three Judaisms”, *Jerusalem Studies in Arabic and Islam* (forthcoming); I am grateful to Albert de Jong for sharing this work with me in advance of its publication.

33 For good comment on this, see Y. S.-D. Vevaina, “Theologies and hermeneutics”, in *WBCZ*, 211–34, here: 213.

34 M. Macuch, “Legal constructions of identity in the Sasanian period”, in C.G. Cereti (ed.), *Iranian Identity in the Course of History: Proceedings of the Conference held in Rome, 21–24 September 2005* (Rome: Istituto Italiano per l’Africa e l’Oriente, 2010), 193–212, here: 199–208; J. Mokhtarian, “The boundaries of an infidel in Zoroastrianism: a Middle Persian term of otherness for Jews, Christians, and Muslims”, *Iranian Studies* 48, 2015, 99–115.

and Evil, Light and Darkness. Although Zoroastrian authors sometimes drew nuanced distinctions among religious outsiders, by and large they were indifferent to the shades of grey separating Jews, Christians, Muslims, and others.³⁵ They were all manifestations of the same demonic force which had entered the world through Ahrimen.

This worldview creates obvious problems for any scholar wishing to see the presence of Muslims in the *responsa*. Technically speaking, whenever we encounter a word like *anērān* or *agdēnān*, there is no surefire way of knowing which group the author is alluding to.³⁶ Sometimes there are contextual clues pointing to one community or another, but such passages are few and far between.³⁷ A fascinating – and to my eyes, unique – example comes from the *Rivāyat of Ēmēd ī Ašawahištān*, which mentions a Zoroastrian apostate “who bears a brand on his member as the infidels do” (*pad handām drōš ī čiyōn agdēnān pad kardag darēnd*) and whose severed member is then placed in water or fire or buried in the ground. This is probably a reference to the Islamic practice of circumcising converts and then discarding their foreskins (though of course, converts to Judaism would also have undergone circumcision).³⁸ Again, such details are exceptional and, more often than not, we are simply left to guess the identity of the outsiders in question (if such an identity is even relevant in a passage).

That being said, a number of scholars have argued that when Islamic-era sources use terms like *anērān* and *agdēnān*, they are mainly referring to Muslims.³⁹ I am inclined to agree with this too, mainly because the texts

- 35 In attempting to decipher pre-modern Zoroastrian views of religious outsiders, scholars have often turned to the famous inscriptions of the priest Kerdīr (fl. late third c.) which mention the treatment of Jews, Buddhists, Hindus, “Nazarenēs”, Christians, “Baptists”, and Manichaeans: G. Herrmann and D.N. MacKenzie, *The Sasanian Rock Reliefs at Naqsh-e Rostam* (Berlin: Dietrich Reimer Verlag, 1989), esp. 57–61; see now the thought-provoking analysis of R. Payne, *A State of Mixture: Christians, Zoroastrians, and Iranian Political Culture in Late Antiquity* (Oakland, CA: University of California Press, 2015), 23–58.
- 36 This is not unique to Zoroastrian *responsa*. A Christian text in Arabic known as the *Questions and Answers of Basil and Gregory*, also a *responsa* work, was written after Islam but is set in the fourth century. It alludes to Muslims but does not call them by name due to the frame story, referring to them as “pagans” (*ḥunafāʾ*) instead. See B. Roggema, “Christian–Muslim–Jewish relations in Patristic literature: the Arabic questions and answers of Basil and Gregory”, in D. Bertina, S.T. Keating, M.N. Swanson and A. Treiger (eds), *Heirs of the Apostles: Studies on Arabic Christianity in Honor of Sidney H. Griffith* (Leiden: Brill, 2019), 395–414.
- 37 Concerning whether it is permissible to purchase wine and other foods from Christians (*tarsāgān*), see Anklesaria, *Pahlavi Rivāyat of Āturfarnbag*, i, 67, 139, ii, 109; Rezaei Baghbidi, *Revāyat of Ādur-Farrōbay*, 104–5.
- 38 Anklesaria, *Rivāyat-ī Hēmūt-ī Asavahistān*, 10; Safa-Isfahani, *Rivāyat-i Hēmūt-i Ašawahištān*, 21–2; on circumcision in early Islamic culture, see A.J. Wensinck, “Khitān”, *IE²*.
- 39 For the *rivāyat* works, see J. de Menasce, “La « Rivāyat d’Ēmēt ī Ašavahištān »”, *Revue de l’histoire des religions* 162, 1962, 69–88, here: 76; Williams, *Pahlavi Rivāyat accompanying the Dādestān ī Dēnīg*, i, 15 (though Williams’ claim that the author avoided referring to Islam out of fear of persecution is far-fetched – as if most Muslims had the ability to read Pahlavi books! Furthermore it misses the logic of an all-encompassing term such as *agdēn*). While Muslims are in all likelihood the targets of terms such as

were all written in Iran and Iraq at the height of 'Abbasid power. The main threat to Zoroastrianism came not from Manichaeism or Christianity, as it had done in Late Antiquity, but from Islam. Thus, the archetypal “non-Iranian” or “infidel” in the *responsa* must have been a Muslim (even if the laws were theoretically meant to apply to a wide range of outsiders).

Responsa were a popular literary genre among many religious communities in the early medieval Middle East, not just Zoroastrians.⁴⁰ The central methodological question which confronts the reader of Zoroastrian *responsa* is the same as for readers of Jewish, Christian, and Islamic legal texts: which aspects of these sources reflect social reality, and which aspects reflect the conventions of the genre? Put differently, do the *responsa* tell us something about daily life among Zoroastrians, or are they mainly theoretical works penned by elite clergy? In my view, the sources are a bit of both. Many of the questions posed in the *responsa* are straightforward, showing clear connections to experiences that would have been familiar to any Zoroastrian person of the time, elite and sub-elite alike. They also would have been familiar to other *dhimmi* communities struggling to defend and define themselves in a new era of Muslim domination. Indeed, we find strong parallels between the contents of these sources and the *responsa* of non-Zoroastrian groups, especially when it comes to topics such as conversion, apostasy, repentance, intermarriage, inheritance, and commercial exchanges with outsiders. Such parallels underscore the impression that we are dealing not with legal fictions, but with reflections of real scenarios.⁴¹

Despite the traces of lived experiences, there is also plenty of abstract and theoretical material in the *responsa*. Indeed, practical-seeming questions often prompted highly academic replies which exhibited the priests' intricate mastery of theology, exegesis, philosophy, and law. Indeed, in the case of certain texts like the *Dādestān ī Dēnīg*, the ideas themselves – not to mention the written style – can be so abstract and recondite as to make one wonder who could have understood them other than a small circle of learned priests.⁴² Other *responsa* are more straightforward, such as the *Rivāyat of Ādurfarnbag ī Farroxzādān*. In such cases, one can imagine a wider audience of readers and listeners other than simply educated clergy.⁴³ Still, the problem remains that in many instances, straightforward questions provoked a cascade of complex answers. Many have the flavour of Christian debates about “how many angels can dance on the head of a pin”. This may be a universal feature of the *responsa*

agdēn, to proactively translate *agdēn* as “Muslim” is also misleading, as in Safa-Isfahani, *Rivāyat-i Hēmūt-i Ašawahištān*, 20.

40 See above, notes 10 and 36.

41 Here, we might draw parallels between law and hagiography: both are important sources of information about the social history of the pre-modern Middle East, but both are tricky to use because they are bound by the conventions of their respective genres and the need to project ideals as opposed to describe realities; for further reflections, see C.C. Sahner, *Christian Martyrs under Islam: Religious Violence and the Making of the Muslim World* (Princeton: Princeton University Press, 2018), esp. 7–12.

42 On the style of this text, see Macuch, “Pahlavi literature”, 143.

43 On the style of this text, see Safa-Isfahani, *Rivāyat-i Hēmūt-i Ašawahištān*, vii.

genre, for a similar tendency is evident in Jewish, Christian, and Islamic sources, which revel in scholastic complexity and contingency.

Still, given the pastoral thrust of the genre, few questions posed in the *responsa* are completely divorced from reality – whatever the elite identity of the respondents and the abstract quality of their answers. For this reason, I believe the *responsa* contain insights into the social history of Zoroastrianism in the ninth and tenth centuries, but we must read them constantly with an eye to the genre. Put simply, the *responsa* may not tell us about reality, in the sense of actual events affecting actual people we know by name. But they can tell us about the kinds of scenarios which petitioners and respondents regarded as plausible or pertinent. Of course, we should be careful not to confuse the views of the sources with those of Zoroastrians at large. In a sense, the *responsa* collections do nothing more than reflect the opinions of three highly educated male priests in Baghdad, Fars, and Kirman, hardly a representative cross-section of Zoroastrian society as a whole. What is more, as the work of Patricia Crone has recently shown, Zoroastrianism and related religious movements in this period were far more diverse than just the views of the highly-educated clergy who produced the Pahlavi books.⁴⁴ But as a window into their small but highly influential world, they are a priceless source of information.

Rivāyat of Ādurfarnbag ī Farroxzādān

The oldest of the Pahlavi *responsa* is the one linked to Ādurfarnbag son of Farroxzād, who was active during the early ninth century. In manuscripts, the text consists of 147 answers from Ādurfarnbag, along with a further five from a priest named Farnbag-srōš son of Wahrām, who was alive in the eleventh century and seems to have belonged to an illustrious family of clergy.⁴⁵ A further 30 questions and answers are anonymous. For reasons of relevance and dating, I will focus only on the portion of the text attributed to Ādurfarnbag.

Ādurfarnbag was one of the most prominent scholar-priests of the medieval period.⁴⁶ The leader of the Zoroastrians of Baghdad (the *hudēnān pēšōbāy*), he seems to have played a role analogous to that of the East Syrian catholicos or the Jewish exilarch, mediating relations between his non-Muslim community and the ‘Abbasid court. Ādurfarnbag was the first compiler of the *Dēnkard*, the great compendium of Zoroastrian religious knowledge. He also features as the main disputant in a text known as the *Gizistag Abāliš*, in which he is shown debating a heretical dualist (a *zandīk*) in the presence of the caliph al-Ma’mūn.⁴⁷ Along

44 Crone, *Nativist Prophets*; see also below, n. 96.

45 This individual may be related to Farroxmard son of Wahrām, who compiled the *Mādayān ī Hazār Dādestān* and is named in the text’s preface. He is usually thought to have been alive in the seventh century, when the text was written, but it is equally possible that he was a later compiler who was alive in the Islamic period. The preface shows a marked stylistic difference from the rest of the text, recalling that of Islamic-era works such as the *Dādestān ī Dēnīg* and the *Dēnkard* instead: Macuch, *Rechtssammlung*, 10–11, 16–21; Macuch, “Mādayān ī Hazār Dādestān”, *EIr*. I owe these ideas to a conversation with Götz König.

46 A. Tafāzžoli, “Ādurfarnbag ī Farroxzādān”, *EIr*.

47 Sahner, “A Zoroastrian dispute”.

with this, Ādurfarnbag is widely quoted as an authority in later Pahlavi works such as the *Dādestān ī Dēnīg*. If Ādurfarnbag was indeed involved in the composition of this text, we might see his views as reflecting the cosmopolitan environment of Baghdad in which he lived, where contact and competition with religious outsiders was a constant feature of everyday life.⁴⁸ We might also contrast Ādurfarnbag's perspective with that of Zoroastrians living in other parts of the Islamic empire, especially more homogenous areas to the east, far from Muslim power and influence (a point we shall revisit below).

The *rivāyat* of Ādurfarnbag touches on many topics that seem to reflect the social environment of the day, especially the challenge of living under Islamic rule. For instance, several questions explore the issue of apostasy and repentance – that is, what happens when someone leaves the Good Religion and then wishes to return. Since these questions have recently been studied by Yishai Kiel and Prods Oktor Skjærvø in an important article, I will leave them aside and examine a related series of questions about what happens to the legal status of a Zoroastrian when a close family member apostatizes.⁴⁹ In one instance, the question revolves around a family which has become entirely “non-Iranian” except for one woman. Ādurfarnbag was asked whether this woman may become a *pādxšāy* wife or only a *xwasrāyēn*. The term *pādxšāy* refers to the highest form of marriage in Zoroastrian law, one with full marital rights; with guardianship (*sālārīh*) of the woman passing from her father (or brother) to her husband; and with their children serving as legal successors. By contrast, a *xwasrāyēn* marriage was lower in rank and usually occurred when a man and woman decided to marry without the consent of a guardian. Thus, the question sought to resolve the fate of a woman who no longer had Zoroastrian male relatives to give her away in marriage. Absent a guardian of her own, Ādurfarnbag stated that the clergy – including *rads*, *mowbeds*, and *dastwars* (religious judges, the highest-ranking priests, and religious teachers/consultants, respectively) – could appoint a guardian for her. If such clergy did not exist, a local man who was learned in the law, the Avesta (the Zoroastrian sacred scripture), and the Zand (the Middle Persian translation and commentary of the Avesta) could appoint a guardian for her.⁵⁰

A related section in the *rivāyat* sought to address the guardianship of a woman whose husband became “non-Iranian” – that is, converted to a non-Zoroastrian faith. Specifically, the questioner asked whether this woman was eligible to

48 On the literature of this community, see de Jong, “Zoroastrians of Baghdad”.

49 Y. Kiel and P.O. Skjærvø, “Apostasy and repentance in early medieval Zoroastrianism”, *Journal of the American Oriental Society* 137, 2017, 221–43.

50 Anklesaria, *Pahlavi Rivāyat of Āturfarnbag*, i, 2–3, 101, ii, 48; Rezai Baghbidi, *Revāyat of Ādur-Farrōbay*, 2–3. For overviews of Zoroastrian family law, see Hjerrild, *Zoroastrian Family Law*; M. Macuch, “Zoroastrian principles and the structure of kinship in Sasanian Iran”, in C.G. Cereti, M. Maggi and E. Provasi (eds), *Religious Themes and Texts of Pre-Islamic Iran and Central Asia* (Wiesbaden: Dr. Ludwig Reichert Verlag, 2003), 231–45; Macuch, “Judicial and legal systems”, *EIr*. On *pādxšāy* marriage specifically, see M. Macuch, “The Pahlavi 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* (Wiesbaden: Harrassowitz, 2007), 183–204.

become a *pādixšāy* wife of another man, presumably because the marriage to her original husband was nullified following the man's conversion. Ādurfarnbag reported that scholars disagreed about the matter: some said that she could become a *pādixšāy* wife as before, others merely a *xwasrāyēn*.⁵¹ Yet another section explores what happens when a man died, leaving his wife and daughter on their own. His wife then became "non-Iranian" or died (demonstrating the principle that apostasy and death were, legally speaking, the same thing), thereby bringing the daughter's marital status into question. Ādurfarnbag stated that the daughter could still become a *pādixšāy* wife to someone, this seemingly in spite of her mother's apostasy or death and provided the mother had herself been a *pādixšāy* wife at the time of her own husband's death.⁵² Taken as a whole, these questions try to solve what must have been common dilemmas for Zoroastrians in a period of religious change: what happened to girls whose marital prospects were dependent on the consent of senior male relatives when these very relatives were busy converting? Could the Zoroastrian community come up with alternative solutions which protected the girls as prospective wives and mothers?

A related subset of questions in the *responsa* of Ādurfarnbag concerned illicit sexual relations between Zoroastrians and non-Zoroastrians. In one, Ādurfarnbag was asked about a man whose wife slept around with "non-Iranians" and whether he could divorce her. Ādurfarnbag replied that he could choose to divorce his wife or keep her, in the latter case because he thought she may sin less if they remained together. Regardless of what he chose, the priest emphasized that the husband bore no responsibility for the wife's philandering – that is, unless he was in a position to stop her and did not do so.⁵³ Later in the work, Ādurfarnbag discussed the opposite scenario: what happened to a man who had illicit relations with a non-Zoroastrian woman and conceived a child with her? Furthermore, what happened if the infidel woman was menstruating while they were having sex (given that menstrual blood would defile him)? On all three counts, Ādurfarnbag stated that the man had committed a grave sin by having sex with an outsider.⁵⁴

Were Zoroastrian men actually fornicating with non-Zoroastrian women, and if so, could these women have been Muslims? Such relationships were theoretically forbidden by Islamic law, which prohibited Muslim women from marrying or otherwise engaging in sexual contact with non-Muslim men.⁵⁵ For their

51 Anklesaria, *Pahlavi Rivāyat of Āturfarnbag*, i, 2, 101, ii, 47–8; Reza'i Baghbidi, *Revāyat of Ādur-Farrōbay*, 2.

52 Anklesaria, *Pahlavi Rivāyat of Āturfarnbag*, i, 3, 102, ii, 48; Reza'i Baghbidi, *Revāyat of Ādur-Farrōbay*, 3–4.

53 Anklesaria, *Pahlavi Rivāyat of Āturfarnbag*, i, 19–20, 110, ii, 61–2; Reza'i Baghbidi, *Revāyat of Ādur-Farrōbay*, 24–5; on divorce in Zoroastrian law, see B. Hjerrild, "Zoroastrian divorce", in W. Sundermann (ed.), *A Green Leaf: Papers in Honour of Jes. P. Asmussen* (Leiden: Brill, 1988), 63–71.

54 Anklesaria, *Pahlavi Rivāyat of Āturfarnbag*, i, 72, 142, ii, 48; Reza'i Baghbidi, *Revāyat of Ādur-Farrōbay*, 114–5 (see also the following question, which concerns a similar subject).

55 Though it of course happened: 'Abd al-Razzāq al-Šan'ānī, *al-Mušannaḥ*, ed. Ḥ.-R. al-A'zamī, 12 vols (Beirut: al-Maktab al-Islāmī, 1970–72), here: vii, 210 (in which an Arab woman confesses to the caliph 'Umar ibn 'Abd al-'Azīz to sleeping with her Greek slave boy – presumably of Christian stock, though possibly a convert – justifying

part, Muslim jurists banned sexual relations with Zoroastrians *tout court* because they did not count as “People of the Book” (like Jews and Christians). This is not to say that such relations never happened, especially in mixed areas where Muslims and Zoroastrians lived in close proximity to one another and may have been related by prior ties of kinship. It may have also happened in rural areas where Islamic legal norms were weaker, or in cities where Zoroastrian slaves were being sold as concubines into Muslim households. As much is stated in early works of *ḥadīth* and *fiqh*, which discuss the permissibility of sex between Muslim men and Zoroastrian women – insisting that the women convert before doing so. This suggests it was a common practice, at least in some parts of the empire.⁵⁶ That being said, my hunch is that if the question in the *Rivāyat* reflects a social reality, it may be the phenomenon of Zoroastrian men taking Jewish and Christian consorts (as was common at the elite level, at least during the Sasanian period; the evidence dries up after the conquests).⁵⁷ Regardless, the topic is found in other Zoroastrian *responso*, indicating that it must have been perceived as a threat to the community.

As we have seen, the *responso* literature was preoccupied with matters of purity and pollution, and debates over how to handle the corpses of non-Zoroastrians crystallized these concerns. In one question, Ādurfarnbag was asked to describe what counted as the corpse of a “non-Iranian”. He replied in a manner which strongly suggested that he was talking about Muslims, identifying these as “the corpses of those who come to the land of the Iranians to

her actions on the basis that Muslim men could freely have sex with their slaves, so why not Muslim women with theirs? I owe this reference to Michael Cook); Sahner, *Christian Martyrs under Islam*, 72 (martyrs in al-Andalus born to a Christian father and Muslim mother).

- 56 Friedmann, *Tolerance and Coercion*, 184–6; extensive discussion in Abū Bakr al-Khallāl, *Aḥkām ahl al-mīlāl*, ed. S. Kisrawī Ḥasan (Beirut: Dār al-Kutub al-‘Ilmiyya, 2003), 159–68 (marriage), 196–8 (slave girls); on Zoroastrians in Islamic law generally, see ‘A.-Ḥ. S. Riḍwān, *Min aḥkām al-majūs fī ‘l-islām (dirāsa fiḥiyya)* (Cairo: Dār al-Nahḍa al-‘Arabiyya, 1999). According to al-Khallāl (162 and supra), the companion Ḥudhayfa ibn al-Yamān married a Zoroastrian woman from al-Madā’in (Ctesiphon) named “Shīrīn Duḥt” (read: “Dukht” for “daughter”), though other reports claim she was a Jew or Christian (which may reflect later disapproval of the practice of taking Zoroastrian women). The story is attested elsewhere: ‘Abd al-Razzāq, *al-Muṣannaf*, vii, 178 (where Ḥudhayfa is said to have inspired other Muslims to marry Zoroastrians); and for further comment on sex with Zoroastrian slaves: Ibn Abī Shayba, *al-Kitāb al-muṣannaf fī ‘l-aḥādīth wa-‘l-āthār*, ed. M. ‘A.-S. Shāhīn, 9 vols (Beirut: Dār al-Kutub al-‘Ilmiyya, 2005), here: iii, 476–7 (including the view that one may have sex with Zoroastrian women without their needing to convert), vi, 433–4.
- 57 To cite but a few examples: the Sasanian king Narseh (r. 293–302) had a Jewish mother and Yazdgerd I (r. 399–420) had a Jewish wife (Shīshīnduxt). She was reportedly the daughter of the Jewish exilarch and the mother of Yazdgerd’s successor Bahram Gor (r. 420–38): T. Daryaei, *Šahrestānīhā ī Ērānšahr: A Middle Persian Text on Late Antique Geography, Epic, and History* (Costa Mesa, CA: Mazda Publishers, 2002), 25, 27. Khusraw II (r. 590–628) had two Christian wives – Maria, a Roman, and Shirin, a Mesopotamian. Shirin later became famous in Persian lore: W. Baum, *Schirin: Christin—Königin—Leibesmythos* (Vienna: Verlag Kitab, 2003).

attack it and who [now] dwell in it".⁵⁸ Many questions about the corpses of "non-Iranians" pertain to the setting of the caravanserai, where Zoroastrians and non-Zoroastrians might rub shoulders as they transacted business. For instance, Ādurfarnbag was asked about the fate of a Zoroastrian who died in a caravanserai with no dog on hand to purify his body (a common practice known as *sagdīd* in Pahlavi, since dogs were thought to have the power to drive away demons which normally lingered around a corpse, thereby rendering it impure).⁵⁹ Furthermore, Ādurfarnbag was asked whether one could trust that a body which had died in the land of the non-Iranians had actually been seen by a dog (no, unless it was obvious that a dog had been present with the corpse).⁶⁰ In both questions, the text's concern is less for intercommunal fraternization than the proper treatment of dead bodies.

Dādestān ī Dēnīg

The second major collection of *responsa* from the 'Abbasid period is the *Dādestān ī Dēnīg*, consisting of 92 questions posed to Manuščihr son of Gušn-jam (or Juwānjam), who was high priest of Fars and Kirman at the end of the ninth century. The main questioner was Mihrxwaršēd son of Ādurmāh, about whom nothing is known other than his name. There are also several anonymous questioners in the text. Manuščihr was a very important figure in Zoroastrian history, hailing from a priestly family that also included his brother Zādspram, a prominent priest in his own right, who was based at Sirjān in Fars province.⁶¹ The two engaged in a famous dispute about the merits of simplifying the *barašnūm* purification ritual, which we know about thanks to three lengthy, slightly baroque epistles penned by Manuščihr. Zādspram supported the reforms, while Manuščihr bitterly opposed them.⁶²

Through this debate, Manuščihr presented himself as an arch traditionalist at a time when a faction of Zoroastrian elites was clamoring for reform and new approaches to the Good Religion. Indeed, we might read his epistles (as well as the *Dādestān ī Dēnīg*) as conservative reactions to new rationalist approaches ascendant at the time (reflected in polemical works such as the *Škand-gumānīg Wizār* of the Zoroastrian layman Mardānfarrox son of Ohrmazddād, which may date from the ninth century).⁶³ In this, geography may have been an important

58 Anklesaria, *Pahlavi Rivāyat of Āturfarnbag*, i, 69–70, 111, ii, 63–4; Rezai Baghbidi, *Revāyat of Ādur-Farrōbay*, 27–8.

59 Anklesaria, *Pahlavi Rivāyat of Āturfarnbag*, i, 50–51, 127, ii, 90; Rezai Baghbidi, *Revāyat of Ādur-Farrōbay*, 72; for background, see M. Moazami, "The dog in Zoroastrian religion: *Vidēvdād* chapter XIII", *Indo-Iran Journal* 49, 2006, 127–49.

60 Anklesaria, *Pahlavi Rivāyat of Āturfarnbag*, i, 69, 111, ii, 63; Rezai Baghbidi, *Revāyat of Ādur-Farrōbay*, 27–8.

61 Jaafari-Dehaghi, *Dādestān ī Dēnīg*, 23–4; M. Shaki, "Dādestān ī Dēnīg", *Elr*; P. Gignoux, "Zādspram", *Elr*.

62 Overview with further references given in M.A. Andrés-Toledo, "Primary sources: Avestan and Pahlavi", in *WBCZ*, 519–28, here: 526.

63 J. de Menasce, *Škand-gumānīg Vičār: La solution décisive des doutes. Une apologétique mazdéenne du IXe siècle* (Fribourg: Librairie de l'Université, 1945); with updated edition and translation in D. Taillieu, "The Zoroastrian polemic against Manichaeism in

factor: Manuščihr hailed from Fars, one of the traditional strongholds of Zoroastrianism which, according to medieval Arabic geographers, retained a large Zoroastrian population long after the conquests.⁶⁴ If this is true, it seems possible that Manuščihr was writing from the vantage-point of a more homogeneous environment than his earlier counterpart in Baghdad, Ādurfarnbag, who lived in the cosmopolitan capital of the Islamic empire. The worldviews of the two men may have reflected these different milieux.

While the dispute between Manuščihr and Zādspram over the *barašnūm* ritual may seem esoteric to modern readers, it was related to a broader crisis facing Zoroastrian clergy during the ‘Abbasid period. At this time, more than 200 years after the Arab conquest of Iran, Zoroastrians were far poorer and weaker than they had been in Late Antiquity. As a result, as the *Dādestān ī Dēnīg* makes clear, there were fewer resources to support the still-extensive network of clergy found across Iran. Indeed, the push for simplified rituals may reflect this social and economic crisis. In a brilliant article about the *Dādestān ī Dēnīg*, Philip Kreyenbroek showed how the two main classes of clergy at the time – *hāwišts*, the priestly students who performed the rituals, and *hērbeds*, who studied the canonical texts – came into increasing conflict over money and patronage during the ninth century.⁶⁵ The Zoroastrian laity could not afford to pay both groups, and therefore focused their largesse on the priests who performed the most essential services, such as celebrating the liturgy. This had the effect of sidelining the *hērbeds*, who had deep knowledge of the scholarly tradition but were not licensed to preside over religious ceremonies. To support themselves, *hērbeds* had a choice of either pursuing secular work (such as farming) or acquiring the liturgical skills of their competitors. In the long term, this led to a gradual erosion of any distinction between a *hāwišt* and a *hērbed*, such that *hērbed* came to signify priests generally (as opposed to scholar-priests specifically). Indeed, the term *ervad* today merely refers to a man who has undergone the first stage of initiation into the priesthood.

From the point of view of Islamic history, the crisis of the priesthood seems to reflect wider shifts in Iranian society that were underway at the time. The competition for resources between these two groups was a downstream consequence of the Zoroastrian community’s economic and social marginalization, of the fact that a poorer and gradually shrinking Zoroastrian church could no longer support its

Škand-Gumānīg Wizār and *Dēnkard* III”, 2 vols (PhD thesis, Katholieke Universiteit Leuven, 2004). I owe this observation to Götz König.

64 Al-Isṭakhrī, *Kitāb al-masālik wa-l-mamālik*, ed. M.J. de Goeje (Leiden: Brill, 1870), 139; Ibn Ḥawqal, *Kitāb šūrat al-arḍ*, ed. J.H. Kramers, 2 vols (Leiden: Brill, 1938–39), here: ii, 292; Spuler, *Iran*, 180–81. More broadly, see T. Daryaei, “The fall of the Sāsānian empire and the end of Late Antiquity: continuity and change in the Province of Persis” (PhD thesis, University of California Los Angeles, 1999).

65 P.G. Kreyenbroek, “The *Dādestān ī Dēnīg* on priests”, *Indo-Iranian Journal* 30, 1987, 185–208. For further comment on this rivalry, emphasizing how it was overlain with concerns about the *hāwišts* usurping the more senior *hērbeds* (in essence, acting uppity), see Y.S.-D. Vevaina, “Miscegenation, ‘mixture’, and ‘mixed iron’: the hermeneutics, historiography, and cultural poesis of the ‘four ages’ in Zoroastrianism”, in P. Townsend and M. Vidas (eds), *Revelation, Literature, and Community in Late Antiquity* (Heidelberg: Mohr Siebeck, 2011), 237–69, here: 260–62.

leaders and institutions. The *Dādestān ī Dēnīg* provides an especially clear picture of the clerical crisis induced by the coming of Islam. One can easily imagine similar dilemmas affecting Jewish and Christian clergy at the same time, and in fact, there are hints of precisely this in the sources.⁶⁶ For Zoroastrians, Jews, and Christians alike, the early ‘Abbasid period was a time when financial resources were dwindling, when the number of potential recruits to high office was shrinking, and when Muslim officials were increasingly interfering in the institutional life of *dhimmī* communities. The full extent of these difficulties can be hard to grasp from Jewish and Christian sources, yet they are spelled out in vivid detail in the *Dādestān ī Dēnīg* (though not linked explicitly to Islam, it must be said). This makes it a tremendously valuable mine of information.

In addition to these insights about priests, the *Dādestān ī Dēnīg* discusses other themes that seem to reflect the Islamic environment of the ninth century. Like other contemporary Pahlavi texts, it laments the present as an era of “damage and fear which affect us because of the rulers of the time [. . .].”⁶⁷ Indeed, it bemoans how the “good people [have been] scattered like jewels” due to persecution and other hardships.⁶⁸ In contrast to other *responso*, however, the *Dādestān ī Dēnīg* does not have much to say about marriage, inheritance, guardianship, and dead matter – the sorts of issues which tended to prompt discussion of non-Iranians and infidels in most other legal works. Rather, it contains interesting passages about apostasy (including one in which Manuščīhr is asked about the rewards awaiting a believer who saves someone from converting to an infidel faith [*agdēnīh*]) and passages about commerce with non-Zoroastrians.⁶⁹ To my eyes, these latter sections are unique and deserve an extra look.

In one chapter, Manuščīhr was asked whether Zoroastrians were permitted to take property away from non-Iranians (*anērān*) and infidels (*agdēnān*). In the course of his reply, he stated that if non-Iranians took the property unlawfully in the first place, Zoroastrians should be free to seize it back (though it is not clear how this could have worked in practice, considering that Muslims – if they are the ones implied here – had the power of the state on their side).⁷⁰ He then added something remarkable: in the case of an infidel who was not a foreigner (*agdēn ud nē anēr*), it was permissible to give him food, clothing, or medicine in order to save him from death, hunger, thirst, cold, or heat.

66 This comparison requires further development. For preliminary thoughts on the crisis of leadership in Jewish and Christian communities, see U. Simonsohn, *A Common Justice: The Legal Allegiances of Christians and Jews under Early Islam* (Philadelphia: University of Pennsylvania Press, 2011), 114–17 (decline in the reputation and status of Christian clergy), 135–42 (decline in numbers of direct graduates of the central rabbinic academies and their replacement by local figures of diverse educational and social backgrounds); Sahner, *Christian Martyrs under Islam*, 212–25 (tensions within the Christian clergy regarding collaboration with the Muslim authorities).

67 T.D. Anklesaria, *Datistan-i Dinik*, 18; Jaafari-Dehaghi, *Dādestān ī Dēnīg*, 48–9.

68 T.D. Anklesaria, *Datistan-i Dinik*, 8; Jaafari-Dehaghi, *Dādestān ī Dēnīg*, 38–9.

69 For the passage about apostasy, see P.K. Anklesaria, “Dādestān-i Dīnīk”, 72–4; West, *Dādistān-i Dinik*, 139–41.

70 See the parallel case of a Jew who lost property that then ended up in the hands of a Muslim: Simonsohn, *Common Justice*, 180–81.

Under no circumstances, however, was it permissible to give him property, horses, weapons, instruments, wine, or land. The clear conclusion was that Zoroastrians were free to help non-Zoroastrian Iranians in dire circumstances. They were not free, however, to give them material which could be turned against them. If we assume the passage is speaking about Iran's Muslim rulers (or, given the wording, local Muslims of Iranian descent), this was sensible advice.⁷¹ Other questions about commerce sought to clarify whether Zoroastrians could sell cattle and other goods to outsiders,⁷² and whether Zoroastrians could sell wine to non-Iranians (*anērān*) and infidels (*agdēnān*).⁷³ We also find an interesting discussion of the children of mixed unions, like the ones we have already encountered above and will read about below.⁷⁴

Rivāyat of Ēmēd ī Ašawahištān

The final *rivāyat* work is a collection of questions posed to Ēmēd son of Ašawahišt by one Ādur-gušnasp son of Mihr-ātaxš.⁷⁵ Ēmēd was a nephew of the illustrious Manuščihr and succeeded his uncle as high priest of Fars and Kirman during the first half of the tenth century.⁷⁶ Interestingly, Ēmēd is also mentioned in two medieval Arabic texts. Al-Mas'ūdī (d. 345/956), for instance, almost certainly referred to him while speaking about a priest named "Anmādh ibn Astawahisht" (likely a corruption of "Umīd ibn Ashawahisht", per Yāqūt below), who was alive at the time. This man presided over "the Jibāl, Iraq, and all the lands of the Persians (*wa-sā'ir bilād al-ā'ājim*)". Al-Mas'ūdī

71 P.K. Anklesaria, "Dādestān-i Dīnīk", 124; West, *Dādistān-i Dīnīk*, 196–7; the passage is singled out for discussion in Macuch, "Pahlavi literature", 143. For a Jewish parallel, which bans the sale of weapons to enemies, but permits their sale to Persians and Muslims "who defend us", see S. Abramson, "Five sections of Rabbi Hai Gaon's 'Sefer Hamekach'", in S. Israeli, N. Lamm and Y. Raphael (eds), *Jubilee Volume in Honor of Moreinu Hagaon Rabbi Joseph B. Soloveitchik*, 2 vols (Jerusalem and New York: Mosad Harav Kook and Yeshiva University, 1984), here: ii, 1312–70, esp. 1350 (in Hebrew). I thank Uriel Simonsohn for this reference.

72 P.K. Anklesaria, "Dādestān-i Dīnīk", 110; West, *Dādistān-i Dīnīk*, 182–3.

73 P.K. Anklesaria, "Dādestān-i Dīnīk", 106; West, *Dādistān-i Dīnīk*, 176–7; note the parallel passage on the permissibility of selling wine to Christians in the *responsa* of Ādurfarnbag, above, n. 37; more generally, T. Daryaei, "Food, purity and pollution: Zoroastrian views on the eating habits of others", *Iranian Studies* 45, 2012, 229–42. For their part, early Islamic legal texts have much to say about Zoroastrian food, especially meat, which Muslims were forbidden from consuming: e.g. 'Abd al-Razzāq, *Muṣannaf*, vi, 108–9, 121; Ibn Abī Shayba, *Muṣannaf*, iv, 246–7, v, 125–6, vi, 435–6; al-Khallāl, *Ahkām*, 375–82; for a famous debate on this issue, see M. Cook, "Magian cheese: an archaic problem in Islamic law", *Bulletin of the School of Oriental and African Studies* 47, 1984, 449–67.

74 P.K. Anklesaria, "Dādestān-i Dīnīk", 150–53; West, *Dādistān-i Dīnīk*, 229.

75 For discussion of this work's historical context, see J. de Menasce, "Problèmes des mazdéens dans l'Iran musulman", in G. Wiessner (ed.), *Festschrift für Wilhelm Eilers: Ein Dokument der internationalen Forschung zum 27. September 1966* (Wiesbaden: Harrassowitz, 1967), 220–30.

76 Generally, J.J. Modi, "The Modadān Mobad Omīd bin Ashavast, referred to by Hamzā Isphahāni. Who was he?", in W. Wüst (ed.), *Studia Indo-Iranica: Ehrengabe für Wilhelm Geiger* (Leipzig: Harrassowitz, 1931), 274–88; de Menasce, "Rivāyat d'Ēmēd Ašawahištān".

mentioned him in relation to a massive book about ancient Iran, which could only be found in the possession of *mawbadhs* like Ēmēd.⁷⁷

The geographer Yāqūt al-Ḥamawī (d. 626/1229) also quoted Ēmēd as an authority on the Sasanian kings, with special knowledge about the ruined palace known as Īwān Kisrā near Baghdad.⁷⁸ Yāqūt quoted Ēmēd on the authority of another man named Ḥamza al-İṣfahānī (d. after 250/961), who wrote a well-known history of his home town of Isfahan and had much to say about Iran in the pre-Islamic period. We know from his history that Ḥamza relied on Zoroastrian priests for information, and Ēmēd was clearly one of these informants.⁷⁹ Taken as a whole, the two reports suggest that Ēmēd was in contact with contemporary Muslim intellectuals and served as an important mediator of traditions about the Sasanian kings. The interest he showed in non-Zoroastrians throughout his *rivāyat* work may have stemmed from these encounters. It may also have stemmed from his role overseeing a large and geographically diverse flock of Zoroastrian believers across Iran, many of whom lived alongside Muslims.

On balance, the *rivāyat* of Ēmēd is much more varied in its questions and detailed in its answers than the *rivāyat* of Ādurfarnbag. Still, in contrast to the *Dādestān ī Dēnīg* of Manuščīhr, it returns to the familiar set of themes, including dead matter, marriage, and the structure of the family. New topics also appear, including consanguineous marriage (*xwēdōdah*, the highest form of sexual union, along with the lowest, sodomy) and the fate of the soul after death.⁸⁰ There is also a lengthy discussion of priests, which reflects some of the same concerns we find in the work of Manuščīhr. Yet Ēmēd pushed the conversation in new directions, for instance, discussing the status of sinful priests and of priests who were defiled by fighting in an army against the enemy.⁸¹ Possibly reflecting

77 al-Mas'ūdī, *Kitāb al-tanbīh wa-l-İshrāf*, ed. M.J. de Goeje (Leiden: Brill, 1893), 104–5; French translation in de Goeje, *Le livre de l'avertissement et de la revision*, tr. B. Carra de Vaux (Paris: Imprimerie nationale, 1896), 149. See de Goeje's note (104–5, n. T) on the orthography of the name. The report also mentions a *mawbadh* named İsfandiyār ibn Adharbād ibn Anmīdh (read "Umīdh"), whom the caliph al-Rāḏī had killed in Baghdad in 325/936–37 for collaborating with the notorious Qarmaṭī leader Abū Ṭāhir al-Jannābī. On this episode and its significance for the history of Zoroastrianism, see now C.C. Sahner, "Ending Islamic rule in medieval Iran? The life and times of Mardāwīj b. Ziyār (d. 323 H/ 935 CE)", in A. Bosanquet, S. Heidemann and K. Mewes (eds), *The Reach of Empire: The Early Islamic Empire at Work* Vol. 2 (Berlin: De Gruyter, forthcoming).

78 Yāqūt al-Ḥamawī, *Mu'jam al-buldān*, no ed., 5 vols (Beirut: Dār Ṣādir, 1977), here: i, 294.

79 For another priestly informant, this one named Bahrām ibn Mardānshāh (alias Bahrām al-Mawbadhānī), see J. Hämeen-Anttila, *Khwadāynāmag: The Middle Persian Book of Kings* (Leiden: Brill, 2018), 71–2.

80 On *xwēdōdah* in this work, see Anklesaria, *Rivāyat-ī Hēmīt-ī Asavahistān*, 84–6, 96–8, 104–10; Safa-İsfahani, *Rivāyat-ī Hēmīt-ī Ašawahistān*, 155–8, 175–8, 189–206; for background, see M. Macuch, "Incestuous marriage in the context of Sasanian family law", in M. Macuch, D. Weber and D. Durkin-Meisterernst, *Ancient and Middle Iranian Studies* (Wiesbaden: Harrassowitz, 2010), 133–48; on Islamic portrayals of the practice, see G.J. Van Gelder, *Close Relationships: Incest and Inbreeding in Classical Arabic Literature* (London: I.B. Tauris, 2005).

81 Anklesaria, *Rivāyat-ī Hēmīt-ī Asavahistān*, 31–48; Safa-İsfahani, *Rivāyat-ī Hēmīt-ī Ašawahistān*, 56–85. It is unclear what real-world scenario the text has in mind when

the precarious state of the clergy at a time of “hardship, confusion, [and] misery”, Ēmēd told his audience that to be obedient to priests was to fulfil the law.⁸² Reading against the grain, one wonders whether this was a statement of clerical strength or weakness. Was it actually a plea to fall in line at a time when the clergy’s authority was eroding under pressure from apostasy and the emergence of new centres of leadership in the Zoroastrian community? Both are possible.

As one would expect, conversion constitutes a major topic throughout the work. In one passage, Ēmēd puzzled over what to do with a family made up of a father, wife, daughter, and two sons when one of these sons went to a foreign place and converted to an infidel faith (*ō dād ī agdēnīh šud būd*, perhaps reflecting the well-known practice of emigrating to the *amšār* – the Muslim garrison towns, which had become religiously-mixed cities by the ‘Abbasid period). The other brother then died. Meanwhile, the daughter married and gave birth to a boy. Ēmēd was asked to address the fate of the daughter, specifically whether she was allowed to remain the *pādixšāy* wife of her husband or if she had to become the *ayōgēn stūr* of the apostate brother. The role of the *ayōgēn stūr* was to provide heirs to a male relative who had died without children of his own through a process of posthumous adoption. Because apostasy was considered equivalent to death (as it was for some Jews and Christians at the time), the question was, did the sister have to serve as the proxy wife of her “deceased” brother? Provided the apostate brother did not have a *pādixšāy* wife and child of his own, Ēmēd stated that the sister’s primary duty was to her brother, and she was henceforth joined to her husband as an *ayōgēn*.⁸³ Although this scenario reflects the notoriously complex and idiosyncratic details of Zoroastrian family law, it is not hard to see a social concern behind it: what did Zoroastrians owe to relatives who had abandoned their communities – not through natural death – but through conversion, presumably to Islam?⁸⁴

Conversion also had profound consequences for inheritance. In one case, Ēmēd was asked about a son who became an infidel and whether this man was entitled to inherit from his Zoroastrian mother and father. As mentioned above, this is a rare example of a passage which gives just enough information to know the religion of the apostate: Ēmēd referred to the circumcision of the

it speaks about priests serving in an army (Anklesaria, 33–8; Safa-Isfahani, 60–67). The author of an earlier Christian question-and-answer work, Jacob of Edessa (d. 708), discussed whether priests, deacons, and monks who were forced to fight on behalf of Muslims had committed a sin; cited in J. Tannous, *The Making of the Medieval Middle East: Religion, Society, and Simple Believers* (Princeton: Princeton University Press, 2018), 459.

82 Anklesaria, *Rivāyat-ī Hēmīt-ī Asavahistān*, 57–58, 68–69; Safa-Isfahani, *Rivāyat-ī Hēmūt-ī Ašawahistān*, 104–5, 123–24.

83 Anklesaria, *Rivāyat-ī Hēmīt-ī Asavahistān*, 2–5; Safa-Isfahani, *Rivāyat-ī Hēmūt-ī Ašawahistān*, 3–10; on the institution of proxy marriage (*stūrīh*) and related concepts, see M. Shaki, “Ayōkēn”, *Elr*; B. Hjerrild, “The institution of *Stūrīh* in the Pahlavi *Rivāyat* of Āturfarbāg, Trust settled property”, in A. van Tongerloo (ed.), *Iranica Selecta: Studies in Honour of Professor Wojciech Skalmowski on the Occasion of his Seventieth Birthday* (Turnhout: Brepols, 2003), 91–107.

84 This was a common dilemma for many kinds of non-Muslims; for a Jewish parallel, see Simonsohn, “Legal and social bonds of Jewish apostates”.

convert and the disposal of his foreskin, signifying that he was talking about Muslims (though conversion to Judaism is technically possible, too). If the man did not repent, we read, then he automatically forfeited his inheritance and the family's property passed into communal ownership. Ēmēd called this principle "to the first of the 'faithful'" (meaning that the property belonged to whichever Zoroastrian managed to seize it first). But in an interesting admission of the difficult conditions facing Zoroastrians in the 'Abbasid period, Ēmēd stated that it was sometimes difficult to stop converts from taking their inheritance. This was presumably because of the high status they enjoyed as Muslims, which enabled them to act with relative impunity when they seized family assets (though it is unclear how often this would have happened, since Islamic law theoretically forbade inter-confessional inheritance).⁸⁵ If Zoroastrians did manage to retake their property, Ēmēd said, "They ought to arrange things in the most careful and least harmful way".⁸⁶ Again, one wonders whether there is a social reality behind this question. To one degree or another, Zoroastrians, Jews, and Christians all regarded converts as outsiders to their original communities, and therefore as ineligible to inherit. But all three groups had to reckon with the reality that Muslim converts enjoyed privileged access to social and political power, and this meant they could not necessarily be stopped from taking what was theirs.⁸⁷ Furthermore, we know that apostates sometimes occupied a legal grey zone, in which they continued to inherit despite their conversion.⁸⁸

While Zoroastrian jurists may have been unforgiving towards those who remained outside the community, they showed leniency towards those who were willing to return and repent. Again, this is a feature of Zoroastrian law with strong parallels in Jewish and Christian texts. In all three cases, it was considered preferable to recover wayward sheep than to lose them permanently to an infidel faith. As we have seen, Kiel and Skjærvø have discussed the laws governing apostasy in Zoroastrianism, so I will not dwell on this point for long.⁸⁹ Suffice it to say, the most interesting part of Ēmēd's discussion deals with those "infidels whose infidel faith is inherited and not from selfhood" (*agdēnān kē-šān agdēnīh az abārmand nē az xwadīh*) – in other words, the descendants of converts who ended up outside Zoroastrianism not by their own choice, but by that of their ancestors. Ēmēd's attitude towards these people was remarkably liberal: provided an individual "acts like an Iranian [and] abstains from a sin that is a sin in the Good Religion, and performs a good

85 Friedmann, *Tolerance and Coercion*, 57.

86 Anklesaria, *Rivāyat-i Hēmīt-i Asavahistān*, 9–12; Safa-Isfahani, *Rivāyat-i Hēmīt-i Ašawahistān*, 19–24. A nearly identical passage appears later in the text (Anklesaria, 98–100; Safa-Isfahani, 179–82).

87 Muslim jurists were also interested in the inheritance of Zoroastrians, especially in the context of conversion and close-kin marriage, e.g. 'Abd al-Razzāq, *Muṣannaf*, vi, 30–32, x, 351–4; Ibn Abī Shayba, *Muṣannaf*, vi, 284–5; al-Khallāl, *Aḥkām*, 412–4.

88 O. Irshai, "The apostate as the inheritor in *Responsa* of the Ge'onim: foundations of the ruling and parallels in gentile law", *Shenaton ha-mishpat ha-ivri*, 11–12, 1984–86, 435–61 (in Hebrew); summarized in Simonsohn, "Legal and social bonds of apostates", 424.

89 Kiel and Skjærvø, "Apostasy and repentance"; and for the wider non-Muslim context, see U. Simonsohn, "'Halting between two opinions': conversion and apostasy in early Islam", *Medieval Encounters* 19, 2013, 342–70.

deed that is a good deed in the Good Religion to the best of his ability”, his infidel status was not considered a sin. Unfortunately, the chapter trails off at this point, so it is difficult to establish precisely what Ēmēd had in mind. What is clear is that the text shows sympathy for what we might call “Zoroastrians outside the Zoroastrian fold”, members of a vast Muslim (or Jewish or Christian) population who were descended from Zoroastrian converts. In a way, we might see the passage as a Zoroastrian version of the well-known Christian debate over “salvation outside the church”. This applied particularly to virtuous infidels with a family connection to the Good Religion. Again, this seems to be a practical question reflecting the rapid Islamization of Iranian society and concerns about the salvation of infidel relatives.⁹⁰

As we have already seen, Zoroastrian jurists often fretted over the prospect of sexual contact with outsiders. Ēmēd was no different in this respect from other contemporary priests, as we see in a passage in which he discusses a Zoroastrian man who has had relations with an infidel woman. What was the status of the child which issued from this union? If the woman was already married, should the child be raised as a Zoroastrian with its father or as an infidel with its mother? Ēmēd was resolute that the child should be reared as a Zoroastrian, though such a position (to say nothing of the scenario itself) strikes me as wildly unrealistic.⁹¹ That being said, we encounter a similar passage in a later Pahlavi *responsa* work known as the *Wizirgerd ī Dēnīg*, which discusses a child born to a Zoroastrian man and an infidel woman (*juddēn*) who ended up serving as his father’s proxy (*stūr*) – again, automatically assuming that the child would be raised as a Zoroastrian!⁹²

Earlier, we saw how the priest Ādurfarnbag attempted to regulate interactions between Zoroastrians and non-Zoroastrians in mixed settings such as caravanserais and markets. One similar environment was the bathhouse, especially one owned by infidels (*garm-ābag ī agdēnān*), where believers and non-believers went to wash side-by-side. For Ēmēd, the main problem with a bathhouse was the risk of encountering *hixr* and *nasāy*, that is, dead matter shed by the body (such as hair or nails) and dead matter in the form of human flesh. Because infidels – possibly meaning Muslims – did not protect water or fire from these pollutants, there was a high risk of contamination. Ēmēd’s solution

90 Anklesaria, *Rivāyat-i Hēmīt-i Asavahistān*, 100–3; Safa-Isfēhani, *Rivāyat-i Hēmīt-i Asavahistān*, 183–8. Muslims also puzzled over the salvation of non-Muslim relatives, usually those who had lived before Islam, as opposed to contemporaries who did not convert (as in the case of the Zoroastrians). A nice example comes from Ibn Sa’d (*Kitāb ṭabaqāt al-kabīr*, ed. ‘A.M. ‘Umar, 11 vols (Cairo: Maktabat al-Khānjī, 2000), i, 280–82), where the Prophet tells two converts from the tribe of Ju’fiyy that their beloved mother – who was a pagan, but had exemplary conduct, almost like that of a Muslim – was burning in Hell because she had engaged in the *jāhili* practice of burying a baby girl alive. I owe this reference to Ella Landau-Tasser. Early Muslims also debated the salvation of the Prophet’s pagan ancestors: N.A. Husayn, “Treatises on the salvation of Abū Ṭālib”, *Shii Studies Review* 1, 2017, 3–41.

91 Anklesaria, *Rivāyat-i Hēmīt-i Asavahistān*, 157–60; Safa-Isfēhani, *Rivāyat-i Hēmīt-i Asavahistān*, 281–6.

92 D.J. Sheffield, “The *Wizirgerd ī Dēnīg* and the evil spirit: questions of authenticity in post-classical Zoroastrianism”, *Bulletin of the Asia Institute* 19, 2005, 181–9, here: 186 n. 3.

was simple: if Zoroastrians wished to use a bathhouse, especially for medicinal purposes, they could simply build one of their own. After all, he noted that the infidels had originally taken the idea from Zoroastrians, who used to build bath houses near their fire temples. Once again, the question and answer reflect a plausible social reality, given Zoroastrians' concern for pollution and contact with infidels.⁹³

Conclusion

This article has attempted to accomplish two things: first, to show what scholars stand to gain by integrating Pahlavi sources into the social history of Iran and the medieval Middle East; and second, to highlight a group of Zoroastrian legal texts whose contents reflect the changing Islamic environment of the day. Through these, the article has tried to explain how a small circle of elite Zoroastrian priests used the instruments of law to help their flocks navigate the changed circumstances of the post-conquest world. Now, what does all this mean for the social history of Zoroastrianism and the gradual Islamization of Iranian society?

Efforts to explain the collapse of the Sasanian Empire and Iran's conversion to Islam frequently fall back on well-known tropes. One of these is that the empire was rotten from within, too consumed with petty rivalries at the court and too distracted by *la dolce vita* to care about – and thus halt – the Arab invasions. The collapse of the Sasanian Empire is sometimes given as an explanation for the allegedly rapid conversion of Iran to Islam. Since Zoroastrianism was the official religion of the toppled state, the logic goes, it could no longer thrive in a world in which this imperial patronage had dried up. Since priests were also government functionaries, they found themselves suddenly rudderless, no longer capable of protecting their flocks, who were irresistibly drawn to the religion of Iran's new rulers. In short, Zoroastrianism is sometimes portrayed as a brittle, aristocratic religion, destined to disappear along with the brittle, aristocratic system that sustained it.

There is little to recommend this way of seeing things. In recent decades, scholars have arrived at a more nuanced understanding of what led to the death of the Sasanian Empire. This was less a result of some intrinsic flaw at the highest echelons of the state than a consequence of the Arabs' strategic advantages.⁹⁴ These included their prowess on the battlefield, their capacity to co-opt local elites, and their pragmatism in administering the newly conquered territories. There is only slightly more to recommend the thesis about Iran's

93 Anklesaria, *Rivāyat-i Hēmūt-i Asavahistān*, 77–9; Safa-Isfahani, *Rivāyat-i Hēmūt-i Ašawahistān*, 141–8. Typically, an infidel religion is referred to as *agdēn(īh)*, but here the term used is *kēš* or “doctrine”, from Avestan *tkaēša-* (“[There is no rule about] keeping *hixr* and *nasāy* away from water and fire in their religion” [*pad kēš*]). While relatively uncommon in the *responso*, it is a standard term for non-Zoroastrian religions in texts such as *Dēnkard* 3 and the *Škand-gumānīg Wizār*, where it is often used in the pejorative sense of a “false doctrine”; e.g. J. de Menasce, *Le troisième livre du Dēnkard*, 9, 46, 65, 182; Taillieu, “*Škand-Gumānīg Wizār*”, i, 36–7, 80–3, 100–1, 112–3, 132–3.

94 For some of this recent scholarship, see above, n. 3.

de-Zoroastrianization. While it is wrong to view Zoroastrians as powerless and passive in the face of the new religion, according to our best estimates, Islam may have spread more rapidly in Iran than in other parts of the early Islamic empire, such as Egypt or Syria.⁹⁵ Be that as it may, we must acknowledge that we understand this change all too little. What is certain is that the emergence of an Islamic society in Iran over the course of the medieval period can be attributed to myriad factors – political, economic, intellectual, and otherwise – and our best explanations must take this full range of factors into account.

How do Pahlavi legal sources tie into these wider debates? As I have argued, the *responsa* literature of the ‘Abbasid period helps us see how elite Zoroastrian priests – whose predecessors in Late Antiquity had been custodians of a vast legal, administrative, and political system – were forced to reconceive of themselves as leaders of a *dhimmi* community instead. This entailed shedding many of their claims to worldly power, at least of the kind which stemmed from the existence of a Zoroastrian state. Instead, they refocused on becoming shepherds of a discrete confessional community. No longer did these priests provide rulings on taxation, capital punishment, and the running of government offices. They focused instead on internal matters of the Zoroastrian faithful, especially marriage, inheritance, purity, and pollution. In this, elite Zoroastrian clergy were not so different from high-ranking Christian and Jewish leaders of the time. These clergy also used law to establish their authority over *dhimmi* flocks, ceding much else to the jurisdiction of the state. While their sphere of influence was much diminished vis-à-vis the situation in Late Antiquity, they were no less proactive in using law to lay claim to their place at the head of the Good Religion.

Thus, we should see the composition and dissemination of legal texts as part of a broader power play aimed affirming the authority of elite priests at a time of great uncertainty. This occurred in competition with other centres of power in Iranian society, most notably, Iran’s Muslim rulers, but perhaps also non-Zoroastrian communities (including Christians, who were actively proselytizing at this time) and alternative claimants to leadership among the faithful (who can be difficult to detect in the sources, but must have included Zoroastrian lay elites and even non-priestly religious leaders).⁹⁶ In short, one

95 R.W. Bulliet, *Conversion to Islam in the Medieval Period: An Essay in Quantitative History* (Cambridge, MA: Harvard University Press, 1979), 43–63 (stating that most Iranians became Muslims by the mid-ninth century, and by the tenth, Iran was a “Muslim country”). Bulliet’s 1979 estimates for Iran are too early in my view, and indeed, he himself subsequently argued that it may be necessary to push them a century later. As he put it, they did not take the slower pace of rural conversion into account: R.W. Bulliet, “Conversion-based patronage and onomastic evidence in early Islam”, in J. Nawas and M. Bernards (eds), *Patronate and Patronage in Early and Classical Islam* (Leiden: Brill, 2005), 246–62, here: 261. See also Choksy, *Conflict and Cooperation*, 93 (stating that by the fourteenth century, Zoroastrians formed less than 20 per cent of the population).

96 Patricia Crone’s final book, *The Nativist Prophets of Early Islamic Iran*, makes the case that early medieval Zoroastrianism was more doctrinally diverse and regionally varied than the monolithic picture we gain from the Pahlavi books. While Crone is no doubt correct in broad stroke, it is difficult to reconcile her view with the complete absence of these “competing Zoroastrianisms” in the priestly texts of the period, even if it is only for the purposes of criticism. Were these really different expressions of the same

way of reading the *responsa* is as part of a campaign to refashion the adherents of the Good Religion into respectable members of the broader *ahl al-dhimma*. They were also part of a campaign to secure the power of priests at the head of this refashioned community.

The *responsa* reveal the Zoroastrian clergy to be leaders of tremendous creativity and flexibility. Remaking a religion from a position of dominance to one of subservience was no small feat, yet this is precisely what the clergy of the 'Abbasid period attempted to do. Their core mission was to conserve their flock at a moment of political, social, and economic marginalization. It was also to create laws which discouraged things like conversion, intermarriage, and the flight of wealth from the community. At the same time, their goal was to establish a *modus vivendi* that would enable the faithful to live alongside Muslims constructively. This entailed erecting walls in some contexts – including especially dangerous settings like the bedroom – yet creating passageways for communication in others – including less threatening spaces such as the market. Far from being brittle and unimaginative, the authors of the *responsa* were adept at encouraging behaviours which walked a fine line between outright rejection of the heathen world and constructive engagement with it. This they wrapped in the language of an unchanging religious tradition – what Zoroastrians called the *dēn* – so as to make their innovations look safe and conservative.

This article is a first step towards showing the potential of Pahlavi sources to enrich our understanding of Iranian and Middle Eastern history at this crucial juncture. They reveal that the experiences of Zoroastrians had strong parallels with those of other non-Muslim communities. Indeed, a path forward in research could be to compare and contrast how Zoroastrian, Christian, Jewish, and Muslim jurists used law to wrestle with common social dilemmas. This would no doubt reveal fascinating similarities, but also important differences. Yet this is an exercise best left for another time.

general religious beliefs, and if so, would these competing forms of Zoroastrianism have been recognizable to one another as “Zoroastrian” in their own day?

Still, what is obvious is that the priestly texts of the period are extremely limited in their allusions to the views of competing groups, even if these groups may have been known to the authors in actual fact. For example, a passage from *Dēnkard* 6, as discussed by Shaul Shaked (*Wisdom of the Sasanian Sages*, Boulder, CO: Westview Press, 1979, 176–83) mentions dissension among a group of priests who criticized court clergy for their life of luxury. It is difficult to say whether such opposition was ever organized. I am grateful to one of the anonymous reviewers for this reference.