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LAND LAW, LAND RELATIONS AND
ISSUES OF LAND SURVEY IN HISTORICAL ARMENIA
BY WORKS OF S. BAHATREANTS AND H. MUSAELYAN

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Studies of land relations, land law and land survey issues in different eras in Armenia are now more relevant and important than ever. Armenian nakharars, meliks and even peasants for many centuries basically preserved the lands they owned, land titles (in particular, the right of inheritance) and forms of land tenure even during the times of foreign conquests and loss of statehood. The paper focuses on these particular objectives.

The presented sources are investigated for the first time from the point of view of land law, land relations, and the history of land management.

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Introduction. Land law and land survey in Ancient Armenia are currently more topical and important than ever. For years, they have been in the focus of our attention. We have presented the comprehensive analyse of land survey and land management in Armenia in 1830–1920s as a monograph [1]. We have presented references by Movses Khorenatsi, Mkhitar Gosh, Catholicos Simeon Yerevantsi, Avetik Araskhanyan and others on land law and land land survey issues in separate articles [2, 3].

From the viewpoint of land relations, the works by Sargis Bahatreants (1894) and Hayrapet Musaelyan (1910) are still unstudied and rather remarkable and interesting sources.

Materials and Methods. Bahatreants notes, “The issue of regulating the land and personal rights has always been one of the most critical points everywhere and in the life of various peoples and has been causing lots of noise among people since ancient times. The regulations and rules regarding this right were achieved and established through fighting and blood” [4].

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The ancient organization of human society was based on the fact that the main land ownership right could be held only by the nobility. Later on, there was an idea that persons belonging to another class, other than nobility, could acquire the right to land. As a result, the serfdom was abolished in Russia, and the right to land was regulated on a new basis. This great revolution reached also the Caucasus; however, everything was different there: the local rights were little-studied, while the land and personal rights in the Caucasus were differed greatly from those established in Russia. These changes affected everyone right away both materially, morally and intellectually.

The severe nature of the dispute in the Caucasus Region was incomprehensible in Russia, because the law in Russia was covering the conditions created by the history and the life; while this was not the case with Caucasus. The laws of 1861 on demarcation did not take into account the particularities of the local rights.

Bahatreants has raised these issues back in 1881 in his book “On demarcation and land issue” (Межевание въ связи съ поземельнымъ вопросомъ). We regret to note that these issues are still relevant even after 140 years.

Bahatreants addresses a number of other issues not resolved at the time: demarcation of the fields and meadows handed over to peasants and accessible to the landowners, issues related to users of forests and pastures (easement), regulating the living of peasants working in the royal lands, the issue of “khizans” (*family, extended family, household* in Old Armenian), turning *bahre/bahra* (“chief-rent”) *ghalan* (buy-out) and *kulukh* (“poll-tax”) into money, making the peasant’s “ground” a property, water issues, etc.

Bahatreants thought that the old Armenian organization, although modified, had reached to the 19th century. The author notes that, if an organization has survived for so long time, then it should have had also positive aspects, so the author suggests to address the land rights of Ancient Armenia: “For example, our old life had created, by the way, a kind of limited ownership right. Perhaps Europe will adopt or will create such type of a law, because the issue of land ownership is a subject of dispute here too”.

Having studied a large number of authors, Bahatreants writes about the first Armenian patriarchs, “We can see from the history that peoples living in rocky and sandy places are soon forced to raid the plainlands with the intention of plundering. Something else is happening among peaceful pastoral and agricultural peoples. Here, separate extended families (clans) join together and form tribal societies under the protection of individual chieftains, whose duty is to shepherd their tribe and protect its property and the fruits of its labor against injustice.” Is it that prototype of today’s cooperatives, which questions of effective organization are still actual today?

Since the times of Hayk the Patriarch, very little information has reached to the modern times, with different opinions about its authenticity. Since at that time exercising the rights on villages, settlements, ownership, estates, classes, tribes and nobles caused numerous disputes, verdicts, bills of sale and other written records, also oral traditions that were supposed to be carefully preserved by not only the chancelleries, but also individuals and tribes to establish their own rights.

As a summary, we can say that there was an essential point on which the life of Armenians was based, and the existence of which is acknowledged by all known sources: it was the tribal organization. A tribe was formed from the union of ancient patriarchal families, and the tribes were forming the nation. Examining the existing evidence, we can see that among Armenians (Haykazunk) there were those directly descending from Hayk, who had advantages over others. Armenians were divided into tribes rather early, because the generations and tribes formed from them acquire their borders and rights very early. During the era of Haykazunk, those descended from kings were called *zarms* (kinships, tribes) and each of them owned villages and *dastakerts* (farmsteads, granges).

Summarizing the rights of Patriarch Hayk's period, Bahatreants writes, "Their patriarch was the Prince from Atropatene to the lands of Zuagh and Nakhichevan, therefore, they also were in the tribal organization. The nobles appeared in the following way: first, the uniformity among the tribes was transformed, with the strong, noticeable and famous ones coming forward, who, both before and during the Arshakuni (Arsacid) dynasty, had various types of power, ownership and property rights both as relatives and children of a certain descend, either by inheritance or granted from the king. These rights were granted first for their origin. The relative families and births, when the tribal connections were unbreakable, were making a community and were not separated from the tribe."

Dividing his comprehensive study into separate chapters and subchapters, Musaelyan begins by presenting the land relations in Ancient Armenia, "In cultural and economic terms, Armenians have a leading position in the Transcaucasia. Armenians by origin belong to the Aryan tribe and are one the most ancient inhabitants of the Transcaucasia. The Armenian nation is very ancient..." [5]. In the ancient times, when clan rule still dominated, the relationships between the head of clan and those belonging to the clan were based on family-relations. The head of the clan was ruling as a father; there was still no social inequality, with all members having equal rights. As the clan grew larger and acquired new lands, certain changes took place in its structure: those under the rule of the chief of the clan were no longer necessarily equal. Certain difference was made between those belonging to the clan and the inhabitants of the newly acquired countries: the former were preferred and had more rights.

Results and Discussion. The common people, in the beginning, were divided into two classes: shinakans, who had blood and kinship relations with the head of the clan, and geghjuks, who are the inhabitants of a country conquered by the clan and are subordinate to shinakans. This division also existed during the Arsacid period. Shinakans were free and independent and did not obey the nakharars. Geghjuks, obeyed the king or the nakharars. However, their situation was not so difficult either: they had rights to movables and immovables. Musaelyan notes that slavery never took deep roots in Armenia with many prisoners and captives gradually acquiring the same rights as the shinakans had [6].

During the reign of King Artashes, the communal ownership was dominating in the patriarchal clan. The family's movable and immovable property and all belongings were communal, they belonged to everyone. The land was the property of the clan, not of individuals. In case if the family disintegrated, separated, first

the movable property was divided, while the land remained undivided as a common property [7]. The communal land was cultivated either by joint efforts or by reaching a certain agreement, but the land was still the property of all. This is another example, that Armenian people had high consciousness from the Artashes's period, they did not divide the land and highlighted the effective usage of land.

Determining the borders, Artashes introduced the ground (land) right and the nakharars became the owners of the ground of their villages and estates.

At first, only the villages belonged to the nakharars (village: “a settlement with a population mainly involved in agriculture” [8], “set of houses populated by peasants, farmers” [9]), and they had only the right of disposal, while the shens (shen – “building, facility, village, settlement, inhabited” [10], “cultivated, prosperous land, radiant” [11, 12]) were free and independent. But little by little, the shinakans shared the destiny of the geghjuks. As the nakharars got stronger and acquired a lot of land, they extended their rule over shens as well. Inhabitant of a strong mountainous country did not lose their strength and role. They did not form a class even during the Bagratuni (Bagratid) period, but even if they were called shen by the subordinate people, they still retained many of their rights.

Armenak, Amasia, Aramayis, Gegham, Harman and Aram, directly descended from Hayk, enjoyed a kind of advantage over their fellow tribesmen, they were leading the wars, establishing borders. They were the extended families, i.e. the rulers or patriarchs or they can be called also nakharars. From the very beginning, each of Hayk's generations had occupied some territories: ordered by the patriarch, they had determined the borders between each other. They considered the places they occupied to be their own and passed them on to the generations. The victor received the right to own an estate on the land of the defeated or at the borders, with which they kept the defeated people under taxes. The villages and estates themselves belonged to the church, nakharars, the king and others and were considered as property, estate eternally belonging to them. The villages and the estates, with their ground, borders and servants, were becoming objects of belonging.

During the Arsacid rule, the service was the relationship that occurred between the master and the subject. The nakharars, bdeskhks and iskhkans (princes), as subjects, were considered servants of the king. The servant was not deprived of the right to estate and ownership. The nakharars appointed by the first Arsacids were the head or the master of the people from the viewpoint of the ruler and governor, so the people was not their slave, servant or geghjuk. The right to estate, property and inheritance was in the hands of the people, of which the nakharars, of course, were not deprived either.

The emergence of various rights refers to the period of Arsacids. The lands, being *gandzagingq* (private lands subject to purchase and sale), *pargevakanq* (form of conditional land ownership in medieval Armenia equivalent to *Beneficium* in Europe; gifted estates usually passed from father to son, but were not subject to sale or alienation without the grantor's consent) and *ksakagingq* (bought with money), became object of belonging and were passing from father to son. At the same time, the rights of the nakharars were expanded so much that they simply

stood at the head of the power. And the head of the power considers the unpopulated part of the country – the forests, pastures – as his own, and from the populated parts of the country receives: taxes from the provinces, duties from the cities and wine from vineyards instead of taxes. The head even interferes with the rights of villages and estates, although the latter had become private property. The provinces had their princes. The gavarakal (governor of province) or prince nakharar was leading the army even during the times of the absence of statehood.

Governors or grand duke nakharars were considering the country as their own and, therefore, were taking taxes under various names. The king collected taxes only from his subjects, and, from the land that belonged to the king, he was eligible to receive belongings in accordance with that right as well. This means the people was giving taxes both to the prince or junior nakharar, and the grand duke or senior nakharar, and the king.

During the rule of Arsacids, there were three types of peasantry: state-royal, church and nakharar. The first were called free peasants. The chief was hazarapet (captain over thousand) who mostly collected taxes. The governor of the village was the gyughapet (village head) or dasapet (“head of class”). It is now known exactly what taxes there were during the Arsacid period; however, referring to Nikoghayos (Nicholas) Adonts [13]), we can assume that they must have been the same taxes as in Persia. One of Armenian historiographers, Yeghishe remembers the taxes levied during the Persian rule: mut, sak, bazh and has. Nicholas Adonts considers mut to be the explanation of sak, and has – that of bazh. The terms sak and bazh have Persian origin. Bazh must have been the land tax, while sak – the poll tax. In addition to these taxes, there were also other taxes: kor (corvée) and bekar (chief-rent). The first should be considered as a personal service, while the second – a due on product. During the Persian rule, also taxes on forests, pastures, mountains and other taxes were taken from Armenians. The same taxes existed during the Arsacid period. In general, the situation of the state peasants must have been not so tough: they paid taxes mostly to the state and partly to the church.

The kings, princes and other pious people have gifted lands to the church. The situation of peasants living on the estates of the church and the clergy was quite easy; they were exempt from state taxes and were paying tithe to the church; overall, the church peasants were in the most fortunate conditions.

There is nearly no information about nakharar peasants. Per taxes and duties, it should be accepted that the nakharars were receiving the same taxes as the church and the king, only in larger amounts, because nakharars in their turn paid taxes to the king. This is the reason why the peasants under nakharars were in less favorable conditions.

Musaelyan believes that there were almost the same procedures for peasants in Armenia as in the neighboring Persia and Byzantium. In the East, feudalism did not reach to the same development level as in Europe. Feudalism was comparatively milder, and the situation of the peasantry was not so hard, while serfdom in the European sense did not exist in the East. The nakharars, having large lands, were satisfied with their income and did not have private-owned farms like in the West. The nakharars were considered the owners of the land and received some taxes and duties from the peasants.

The researchers of Armenia of Arab period and in general the early Middle Ages have expressed different opinions on the land ownership right of the Armenian nakharars. Some of them believe that the nakharars fully preserved their hereditary right, while other were convinced that the nakharar system was completely disintegrated during that period. During the Islamic Caliphate, most of the time, agreements were signed with the Christians, according to which the land and the property conquered by non-Muslims were divided into two parts. One part passed to the Caliphate. Unlike the peoples of Assyria and Mesopotamia, the population of Armenia was able to maintain its independence in many matters. The land ownership rights of nakharars were approved by agreements, which are well testified by Armenian and Arab historians. The attitude was different towards the city of Karin (Theodoupolis) in the west of Armenia, on the Byzantine border.

According to the agreement of 705, the land ownership rights of the nakharars as well as the legal status of the Armenian Cavalry were finally determined. Agreements were signed also to approve the land ownership and other rights for the Armenian Church. In 717, Catholicos Hovhannes III Odznetsi was able to conclude a written agreement on the freedom of faith, exempting the church from taxes and granting freedom to Christians across the Caliphate. The form of land ownership used by the nakharars was called *mulk* (estate). They had the free right to sell and pledge the land. Thus, the land ownership confirmed by an agreement was hereditary. The nakharars, keeping a considerable part of the land in their hands, were able to create a basis for the independent Armenian statehood – the Kingdom of Bagratuni (Bagratid) [14].

During the Bagratuni period, the political and social life of Armenia did not undergo any major changes. Everything was based on the old relationships, with some difference. The Kingdom of Bagratuni was inferior to that of Arshakuni both in terms of territory and the power. Following the fall of Arshakuni, the nakhararships underwent many changes: first, they were divided and fragmented and, secondly, many nakhararships were destroyed or weakened by the Persian and Arab powers. However, the nakhararships kept much of their previous position. So, during the Bagratuni period as well, they had a rather eminent strength and were hindering the strengthening of the kingdom.

Although the Bagratuni period, if closer to us in terms of time, there is still very little information about the social order and the state of the people in that period. We can see from the few and fragmentary references that the situation of the peasantry had become relatively worse at that time. We learn from the “Book of Law” (“Book of Judgment”) by Mkhitar Gosh that the following classification existed during the Bagratuni period (except for the clergy): princes (nakharars), *azats*, *shinakans*, *geghjuks* and inhabitants of farms [15]. During that period, there was no big difference between the *shinakans* and the *geghjuks*, and most probably they were the same, while inhabitants of farms were lower in status. Like before, there were three types of peasantry in this period: royal, church and nakharar.

The land, as the “Book of Judgment” says, belonged to the princes and the king, and the peasants had to not only pay a number of taxes, but also deliver personal services. All this is also confirmed by the records found in Ani, where

also the following taxes were mentioned: bishop's, drnagir (household tax), sheep, mill, orchard, cotton, bazh, tithe, seal, animals, church and others [16].

Later on, during the period of Persian rule, the taxes were collected in money and crops in the Sardariat of Yerevan. There were two types of monetary taxes: direct and indirect. The direct taxes were those received from the communities (they were collected from townspeople, villagers and the Etchmiadzin Monastery), various gifts of a tax nature (at the time of Nowruz Bayram and Ramadan), the salaries of state positions (ghullugh puli, etc.), indirect taxes were received from mines, customs duties, etc.

The lands were divided into 4 categories: bahrakiar (the best lands; 1/5 of the harvest was taken), yearikiar (half-leased lands), rashpar (2/5 of the mown harvest was taken) and given on contract [17].

Nakhijevan and Ordubad were annexed to Persia, and both were governed by the same khan. The taxes were much heavier here. In the Karabakh Khanate, many things were uncertain and depended on the khan's whims. In Sheki, Shirvan, Derbend, and Ghuba khanates the beys were in a stable situation, so they did not much bother the people. There was no high class in Gandzak Khanate, so the situation of peasants was rather good.

The subject of the Armenian meliks were in a relatively better situation, especially in the beginning stage. Meliks were independent princes, descendants of ancient Armenian princes; at first, they recognized the supremacy of only the shah, but then they had to submit to the neighboring khans. There were melikdoms in Artsakh, Gandzak, Syunik, and in Yerevan Sardariat; meliks of Artsakh (Krabakh) were the most prominent.

In Turkish Armenia, the peasant was considered a permanent contractor. He had only the right to use his own land. His land holding consisted of the house, the backyard and the garden. The lands that were in their hands were inherited, so nobody had the right to take them away from them. The peasants paid a land tax (tithe), with the Muslims paying 1/10 and Christians – 1/5 and sometimes even 1/3 of the total produce [18].

Conclusion. Summarizing the references from various sources, we can state that the Armenian nakharars, meliks, and even peasants, even during the times of falling under foreign yoke and loss of statehood, for centuries have largely preserved the lands they owned and the right to the land (in particular the right to inheritance), and the forms of land tenure.

All of the listed sources indicate that since ancient times in Armenia, issues of delimitation, land use, land rights and regulation of relations have been resolved, but they have also always been at the forefront of thinking, in the center of attention, and clarified according to rules and codes.

It is also obvious, that since the time of Hayk Nahapet and Artaxias I, issues of land rights, land tenure, land surveying and land taxation have been resolved and regulated at the highest level, which is typical for local, sedentary, native peoples, unlike to nomadic tribes.

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Տարբեր դարաշրջաններում Հայաստանում հողային հարաբերությունների, իրավունքների, սահմանազատման հարցերի ուսումնասիրությունն այսօր, առավել քան երբևէ, արդիական ու կարևոր է: Հայ նախարարները, մելիքները, անգամ գյուղացիները նույնիսկ օտար լծի տակ հայտնվելու, պետականություն չունենալու ժամանակաշրջանում դարեր շարունակ հիմնականում պահպանել են իրենց պատկանող հողերը, դրանց նկատմամբ իրավունքները (մասնավորապես՝ ժառանգության իրավունքը), հողատիրության ձևերը: Այդ նպատակով էլ կատարել ենք այս աշխատանքը:

Ներկայացված աղբյուրներն առաջին անգամ են ուսումնասիրվում հողային իրավունքի, հողային հարաբերությունների, հողաշինարարության պատմության տեսանկյունից:

П. С. ЭФЕНДЯН, Н. А. ХУДАВЕРДЯН, Л. Ю. МАРАЛЯН

ЗЕМЕЛЬНОЕ ПРАВО, ЗЕМЕЛЬНЫЕ ОТНОШЕНИЯ И
ВОПРОСЫ МЕЖЕВАНИЯ В ИСТОРИЧЕСКОЙ АРМЕНИИ
ПО ТРУДАМ С. БААТРЯНЦА И А. МУСАЕЛЯНА

Резюме

Исследования вопросов земельных отношений, земельного права, делимитации в разные века в Армении сейчас как никогда актуальны и важны. Армянские министры, мелики и крестьяне даже во времена чужеземных завоеваний и потери государственности многие века в основном сохраняли принадлежащие им земли, права на землю (в частности право на наследство), виды землевладения.

Представленные источники впервые исследованы с точки зрения земельного права, земельных отношений, истории землеустройства.