WOMEN, DOWRIES AND FAMILY PROPERTY IN THE ROMANIAN PRINCIPALITIES, C. 1730-1840*

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Introduction

Legislative codification and the rationalisation of jurisprudence lie at the very heart of Enlightenment reform projects in many areas of Central-Eastern Europe and Russia. Of such initiatives, the work of Catherine the Great's Legislative Commission (active from 1767 to 1774) as well as the resulting *Nakaz* is probably one of the best-known examples, owing no doubt to the debate it sparked off among philosophers[1]. Judging from the number and quality of law codes and decrees of a juridical nature promulgated in the period 1780 to 1818, the performance of the Phanariot Princes of Wallachia and Moldavia in this area is outstanding, and legal reform can be said to be at the centre of an often mentioned yet understudied Romanian 'Enlightenment'.

By the time Phanariot legislators started work, a number of legal codes were already available to judges in both Principalities: in Moldavia, *Cartea românească de învăţătură* (The Romanian Book of Teachings, also known as *Cartea românească de pravile împărăteşti*) of 1646 and in Wallachia, *Îndreptarea legii* (The Correction of the Law) of 1652[2]. To these were added in Phanariot times, the *Sobornicescul Hrisov* (1785, Moldavia) and the *Pravilniceasca condică* (The Ipsilanti Code, 1780, Wallachia) followed by *Codul Callimah* (The Callimachi Code, Moldavia, 1817) and *Legiuirea Caragea* (The Caragea Law, Wallachia, 1818) initiated by Alexandru Mavrocordat, Alexandru Ipsilanti, Scarlat Callimachi and Ioan Caragea respectively[3]. Use was also made in Moldavia of Andronache Donici's *Manualul juridic*, a law handbook of 1814[4].

The last legal provisions relevant to the period prior to 1850 were those of the *Organic Regulations* (1831, Wallachia; 1832, Moldavia). Broadly speaking, these codes operated a synthesis of common law, Roman-Byzantine law and legal practices arising from occasional princely decrees, and, according to Byzantine

* This essay is a slightly edited version of a chapter from my PhD thesis *Women and Society in the Romanian Principalities, 1750-1850* completed at the University of York, United Kingdom, in July 2003. The years 1730 and 1840 are those of the earliest and the latest of the documents I collected from sources already published in Romanian.

[1] On the Nakaz and the debates on legislative reform in the eighteenth century, Simon Dixon, *Catherine the Great,* Longman, 2001, especially pp. 2-3 and 75-78. Significantly, the Nakaz was promptly translated into Romanian and published in Iaşi in 1773; V.A. Urechia, *Documente dintre 1769-1800*, in "Analele Academiei Române", Seria II, t. 10 (1887-88), pp. 271-273.

[2] Andrei Rădulescu and others (eds.), *Îndreptarea legii,* Bucharest, 1962.

[3] Andrei Rădulescu and others (eds.), *Sobornicescul hrisov,* Bucharest, 1958; Andrei Rădulescu and others (eds.), *Pravilniceasca condică,*Bucharest, 1957.

[4] Andrei Rădulescu and others (eds.), *Manualul juridic al lui Andronache Donici,* Bucharest, 1959.

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tradition, did not abrogate each other, but were in force concomitantly until 1865, when they were supplanted by the Civil Code. This plurality of simultaneously valid written laws ('pravile') gave judges considerable freedom of choice and interpretation, and explains why, throughout the early nineteenth century, juridical practice was persistently ambiguous and arbitrary[5]. The arbitrariness was enhanced by another feature of the Romanian ancien régime legal system, namely the position of the Prince as a supreme judge, the authority which gave final sanction to a decision of the court in the state Divan. In practice, this meant that the will of the Prince as representative of divine justice overrode common and written law, as well as legal precedents set by his previous decisions[6].

Of the Phanariot Princes, Constantin Mavrocordat (active between 1739 and 1743 in both Principalities) and Alexandru Ipsilanti (active 1774-1780 in Wallachia and 1786-88 in Moldavia) were probably the most vigorous reformers in matters of law. The former took measures towards an increasing professionalisation of the judges and attempted to replace the fees they exacted from plaintiffs and defendants with state incomes. Written records of each case were to be kept in special registers sent monthly to the Prince. The trend towards increasing rationalisation of legal procedures and strict definition of competencies was continued by Alexandru Ipsilanti, who created specialised departments such as, for instance, the so-called departments of the seven and of the eight ('departamentul de opt şi de şapte') – named from the number of judges sitting in them – as well as a department hearing the cases of foreign citizens in the Principalities ('departamentul străinelor pricini')[7].

The Organic Regulations continued such trends towards a clearer separation of judicial powers, well-defined state incomes and shorter trials. In addition, they abolished the Prince's right to sit in judgement, recognising only his right to endorse final decisions, and made torture illegal[8].

However, prescription always lags behind practice and, as we shall see in the following chapters, outmoded laws continued to be invoked, class bias retained its force, and the involvement of the church in court hearings remained considerable throughout the first half of the nineteenth century.

Apart from giving information on procedures, my sample of documents, comprising 72 dowry lists and dowry litigation papers from 1730 to 1840, as well as 27 testaments and inventories from 1726 to 1836, also highlights the ways in which moral, spiritual and patrimonial considerations were negotiated by litigants and judges alike, while also pointing to the general worldview on which legal transactions were founded.

The Romanian society of the ancien régime may not have been more conflict-prone or more litigious than others, but it has been noted how often

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[5] Ligia Livadă-Cadeschi, Laurenţiu Vlad (eds.), *Departamentul de cremenalion. Din activitatea unei instanţe penale muntene (1794-1795),* Bucharest, 2002, p. 10.

[6] *Ibidem,* p. 12.

[7] Ioan Ceterchi (ed.), *Istoria dreptului românesc* (3 vols, Bucharest, 1980-1987), vol.2, pp. 169-174.

[8] *Ibidem*, pp. 174-181.

individuals and families went into court to defend their interests. Marital and patrimonial relations – love and land, inextricably bound – were more often than not at the centre of court cases in the late eighteenth and early nineteenth centuries. The written records of such cases, but also many dowry papers and testaments show the legal and emotional difficulties created by this affective/patrimonial nexus within couples and families. In a society where church and state admitted divorce and up to three re-marriages, it is not surprising that, starting with the eighteenth century, emphasis in the written law codes came to be placed less on the penalties for breach of morality – abduction, rape, marital misconduct, bigamy, etc. – than on the need for accurate record-keeping and on standardising the rules affecting dowry provision and inheritance. It was often the case, for instance, that the families resulting from second or third marriages contested, in complex protracted lawsuits that cost money and sometimes lives, the rights of children from previous ones. The need for pricing dowry items and keeping neat estate records became therefore obvious.

The available written evidence reflects the anxiety with which parents sought good marriages for their children the negotiations that took place in pre-marital dowry arrangements. A good dowry was not only an emblem of social prestige for a father, but also served as a social regulator in that it helped, as the law required, to marry a daughter to a partner of similar rank and wealth. I am analysing dowries from the viewpoint of their economic functions within the family as well as from that of the patrimonial rights women had both during and after the marriage. I also refer to women's (and children's) rights of inheritance (mainly with respect to their access to the dowry) and to the ways in which property claims and counter-claims could be perceived to affect family relations. Seventy-two dowry papers from 1740 to 1830 and twenty-seven testaments, inventories and property litigation documents from 1726 to 1836, from both Wallachia and Moldavia, have formed the documentary basis for this discussion.

Reading through the Romanian law codes – from the 1640s (the Moldavian *Carte românească de învăţătură*, the Wallachian *Îndreptarea legii*) to 1818 (the Moldavian *Callimachi Code* and the Wallachian *Caragea Code*) – one notices a steady refinement of dowry and inheritance legislation, undoubtedly under the impact of an increasing number of litigations in this area. As property, especially landed property, became increasingly important and as nuclear families came to have a clearer sense of their cohesion and solidarities, legislators had to devise neater categories to define both collective and individual patrimonial rights. What follows is a brief outline of this legislation.

As early as 1652, for instance, the *Îndreptarea legii* prescribed that the husband's role was only to administer the dowry assets, while the wife remained the sole owner and had pre-emptive rights over her dowry's worth from her late husband's remaining wealth before other claimants or creditors (Articles 265-6). However, the main beneficiaries of the dowry were the children, and in my view, this is the cornerstone of dowry legislation throughout the period. A woman's

proved adultery, for instance, resulted in the loss of her dowry in favour of children, husband or the woman's father, in this order. In the event of a woman's death, likewise, the dowry was allocated in the same order. If either or both spouses died childless, the woman's wealth was divided into three parts: one went to the surviving spouse, if any, the second to any surviving parents, and the third was used for commemorative services ('for the soul' of the dead) or went to charity ('cutia milelor') (Art.272). Subsequent legislation only refined this basic outline, placing an increasing emphasis on the need to value dowry assets and to keep accurate copies of these as well as of husbands' wealth inventories (*Ipsilanti Code*, Wallachia, 1780, Section 'Pentru zestre', Art.1)

Thus, for instance, according to the same *Ipsilanti Code*, a widow had to draw up an inventory of her late husband's wealth and of any items missing from her dowry within six months of her husband's death (Section 'Pentru moştenire', Art.8) and, if childless, she could claim the third part of her husband's movable assets if she did not re-marry within a year of his death (Section 'Pentru trimirie', Art.2). This latter prescription was not just an arbitrary rule meant to control and reward a surviving wife's faithfulness from beyond the grave, but a practical way of ensuring that any children born posthumously within that period were likely to be the late husband's and inherit accordingly. A childless or infertile widow took back her dowry and the pre-nuptial gifts ('darul dinaintea nunţii'.) In addition to these, the *Ipsilanti Code* also ruled that daughters, once dowered, could no longer inherit, and in any case were not allowed to inherit the so-called 'cămin' (the estate that gave a family its name). This was always allocated to the youngest son, in contradistinction to the rule of male primogeniture practised in Western Europe. (*Ipsilanti Code*, Section 'Pentru moştenire', Arts.1, 3). It was he who, bringing his wife into his blood family home, had the duty to look after the ageing, ailing parents, and to keep the land within the family line.

The *Callimachi Code* (Moldavia, 1817) and the *Caragea Code* (Wallachia, 1818) further refined the dowry and inheritance rights of the spouses and children, presumably to bring it in line with new legal practices and with the new political climate[9]. Both codes continued to reinforce the already prominent rights of the children to their mother's dowry, but also seemed to point in the direction of greater rights for the husbands. Both stipulated, for instance, that the bride's parents and the groom with his family could negotiate so-called 'tocmele căsătoreşti' or 'aşezăminte căsătoreşti', nuptial contracts whereby the sides could opt to change the standard rules of dowry provision and inheritance. They could agree, for instance that, in the event of the wife dying without children, her husband rather than her parents could get her dowry (*Callimachi Code*, Section 31; *Caragea Code*, Par. 23, 24).

[9] It is interesting to note, incidentally, that the *Caragea Code*, while maintaining a woman's subordination to her male kin, for the first time expressly stated that a woman may not seek political functions (Chapter 1, Art.3), an interdiction that may hint at women's increasing social visibility and to new potentially subversive undercurrents in society, but this remains speculative in the absence of a detailed study of Wallachian society under Caragea.

Apart from introducing a certain flexibility in the couple's patrimonial rights, the codes also became much more detailed with respect to the uses to which a woman could put her dowry and other possessions she might have had. While the husband remained the administrator of the dowry assets, the woman could use them to pay her own debts, buy land that brought increased revenue to the family, support children from previous marriages, parents and siblings, buy relatives back from slavery or bail them out of jail. (*Callimachi Code*, Section 32, Art. 1641 a, b, c) To these, the more politically-conscious *Caragea Code* added that she could use her own wealth to help her husband obtain a political function or title ('cin politicesc') (Section 16, Art.34), a stipulation that seems to give official and legal endorsement to the 'gift-centred' culture of the Phanariot régimes and to the existing practice of the venality of offices. Another hint at the possibility that women may have, at that time, started to meddle in areas traditionally forbidden to them, was the stipulation that if a woman conspired against her husband, she was to lose half of her dowry (*Caragea Code*, Section 16, Art. 42).

The two codes also refined the rules that governed the rights of inheritance over a woman's dowry and other wealth categories which had previously been left out of the legislator's remit. Thus, the 'paraphernalia' (or 'exoprica') – gifts made to the wife during the marriage, the source of which she had to declare – was, like her dowry, her own property and its usufruct belonged only to herself and her inheritors, even though the husband may have administered it (*Callimachi Code*, Section 33). The counter-dowry, a gift made at the wedding by the groom's parents, was claimed by her children or her inheritors at her death, but its usufruct remained the husband's. If, on the contrary, it was the husband who died, the wife claimed the counter-dowry (Idem, Section 34, Par.1676, 1678). In cases where no counter-dowry had been given, the surviving wife claimed not only her dowry, but also a third part of her late husband's total wealth, the so-called 'ipovolon', or 'widow(er)'s rights' (Idem, Section 34). The 'theoritra', a virginity gift offered by the husband on the day after the wedding, went to the woman in case of divorce, or to her children or inheritors in the event of her death (Idem, Section 35).

It seems obvious that, throughout the eighteenth century, the code made increasingly bold attempts at providing judges with neat and clear-cut definitions and categories. These gradually took matrimonial jurisprudence well beyond the catechismal moralising of the earlier seventeenth-century compilations of Roman-Byzantine law into a secular-oriented system of law fit for a more reasonable and humane age. Out went the limb-chopping and the church's intrusions into the intimate lives of couples in which, for instance the 1652 *Îndreptarea legii* over-indulged, and in came the complex rules and clauses pertaining to dowries, usufruct and widow(er)'s rights.

In practice, however, things were much complicated by the persistence of common law and of legal oral traditions, which, added to the lacunary nature of the archives, make the historian's task highly difficult. In spite of work done by legal historians mainly in the 1930s and 1940s, controversies still linger in a number of

areas. These will not be solved here, but at least one is worth mentioning, if only to throw light on the conundrums that litter the legal historian's path. It concerns a still disputed gender-specific difference between Wallachia and Moldavia in the area of common-law rights to inheritance: it is alleged that in Moldavia inheritors of both sexes had equal rights to property, including rights to the family land, whereas in Wallachia law operated on the so-called principle of 'male privilege' ('privilegiul masculinităţii'), which excluded dowered daughters from further inheritance at the death of the parents. George Fotino, a legal historian with an uncommonly positive view of the legal status of Romanian women in the eighteenth century, was among those who challenged this theory, for instance, in his study *Vechiul drept succesoral românesc* (The Ancient Romanian Law of Inheritance), written in 1965-6. He believed that male privilege was a contamination imported into old Romanian common law from Roman law, and that in any case, it only concerned *secundo gradu* heirs, the children of sons, said to be favoured above those of daughters[10]. He also claimed that Wallachia in fact gradually gave up the principle of male privilege throughout the sixteenth century and re-established inheritance law on a more egalitarian basis. The debate is still open[11].

As suggested by the above outline, the rules of inheritance became increasingly complex during the period considered, and this is reflected in the very intricate lawsuits that opposed spouses, in-laws, and children against stepfamilies and other inheritors or creditors. That such conflicts could be very traumatic can be seen from some of the cases that follow. Because they are taken in isolation and concern families about which little information is otherwise available or known, the dowry litigation papers, testaments and inventories discussed here may not reveal as much as we would like about the precise nature of the power structures constituted within families. Likewise, because the documents are few in number and not evenly distributed regionally or chronologically, it is impossible at this stage to point to regional patterns or to trends in time. They may, however, show how law operated in practice and what were the kind of arguments invoked by litigants and lawyers. Most of the cases mentioned refer to the rights women and their offspring had over the dowries rather than on the couple's joint or acquired wealth, which would have to form the object of a separate study.

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[10] George Fotino, *Pagini din istoria dreptului românesc,* Bucharest, 1972, especially pp. 97 to 113. His earlier study *Studiu asupra situaţiei femeii în vechiul drept românesc* is included in the same volume. It had been published earlier in French as *Étude sur la situation de la femme dans l'ancien droit roumain,* in "Revue historique de droit français et étranger", X, 1931, 1.

[11] For recent discussions on the theory of 'male privilege', see Violeta Barbu, *Cronică de familie. Eseu asupra familiei patrimoniale în Ţara Românească în secolul al XVII-lea,* in "RIS", I, 1996, pp. 29-49, and Matei Cazacu, *La famille et la statut de la femme en Moldavie (XIVe-XIXe siècles)*, in ibidem, II-III, 1997-1998, pp. 1-16.

Dowries, Wives and Children

That a wife's dowry was forbidden territory for husbands is in evidence as early as the seventeenth century in a letter of endorsement of the Moldavian Prince Constantin Duca confirming a boyar’s ownership over parts of land belonging to his brother-in-law who had sold parts of his wife’s dowry[12]. In 1779 in Wallachia, a court of high-ranking boyars ruled that the daughter of a late merchant could not pay her father's outstanding debts out of her late mother's dowry, but only from any inheritance that her father may have left[13]. Husbands of whatever status who had sold assets from their wives' dowries could find themselves in prison as happened, in the same year 1779 to Nicolae, the son of a 'şetrar' who, from prison, suggested a donation of a vineyard and one male Gypsy slave to compensate his wife, Ecaterina, for her loss. Being summoned to court, the defendant and his wife both agreed to the exchange provided the local authorities checked and found the vineyard in good working condition. The wife was represented in court by her own brother, who acted as her 'vechil' (legal representative) as was the case for all women, children and other legally 'incompetent' persons, but also for collective juridical persons, such as, for instance, monasteries[14]. (However, not all of the documents mention explicitly the presence of the 'vechil', and in some cases the women seem to be able to speak for themselves in court. Why this should happen remains as yet unclear).

Two cases from 1777, both in Wallachia, demonstrate the centrality of children to all dowry matters and show that, in the event of the mother's death, surviving children could claim her dowry even as grown-ups. The first, set in the world of small artisans in Bucharest, concerns Zamfira, a young married woman, who brought her maternal aunt Ilinca to court, claiming that the latter had abusively taken away her sister's (Zamfira's mother's) dowry upon the death of both Zamfira's parents. The case is interesting not only because, many years after the events, the court ruled in favour of the daughter, but also because it is a showcase for the legal procedure followed in such litigations. In the first instance, Zamfira sent her complaint to the Prince, who instructed one of the members (the ‘vătaf de copii' – a court clerk in charge of all legal matters related to children) of the Divan (the assembly of notables) to bring the sides in front of an ecclesiastical court headed by the Metropolitan of Wallachia. After a convoluted series of accusations and counter-accusations, and in the absence of evidence or witnesses, the court decided to resort to its ultimate strategy, the oath, generally used when all other legal means failed. Ilinca was asked to swear in church that missing dowry items cited by her niece were not in fact in her possession. In his report ('anafora') to the Prince on March 11, 1777, the Metropolitan presented his decision, which the Prince

[12] In Gh. Ghibănescu (ed.), *Surete şi izvoade,* vol. 8, Iaşi, 1914, doc. LIX, pp. 68-69.

[13] In Gh. Cronţ and others. (eds.), *Acte judiciare din Ţara Românească, 1775-1781,* Bucharest, 1975, doc. 693, p. 749.

[14] Cronţ and others (eds.), *Acte judiciare*, doc. 744, p. 799.

approved on May 6 of the same year. The court decided to resort to the oath, which it always did in a sort of judicial desperation, on the assumption that Ilinca, a God-fearing middle-class woman, would not endanger her soul with a false oath[15]. The outcome in this case is not documented, but we may assume that Ilinca in effect did not dare compromise with a serious spiritual matter such as a church oath.

In the same year, another grown-up daughter, Ancuţa Buzescu, from a boyar milieu, lodged a complaint with the country's Divan against her re-married father and his second wife, whom she accused of keeping in their possession a Gypsy slave and a few items from her late mother's dowry. This time the boyar court could pass its decision on the basis of written evidence presented by the plaintiff, namely a copy of the deceased mother's dowry list. The daughter took back her Gypsy slave, while the county authorities ('ispravnicii de judeţ') were to investigate her other claims, on the order of Prince Alexandru Ipsilanti, appended to the Divan's report ('anafora')[16].

A Wallachian court hearing of 1780 opposed Lucsandra, a young orphaned boyar's daughter, to her aunt and guardian, the 'stolniceasa' (wife of 'stolnic') Zoiţa. The girl, now married, wished to retrieve some of her late mother's dowry assets, and the court of boyars headed by the Metropolitan ruled in her favour, on condition that she repay her aunt for the expenses incurred with her upbringing and her wedding[17].

How central children, even if they did not survive early childhood or even birth, were to dowry and inheritance claims is demonstrated by a Moldavian case of 1806, which opposed the 'spătar' Manolache Donici and the Monastery Doljeşti for ownership of the estate Dumenii. After her first husband's death, being childless, Ecaterina, Manolache's stepmother, had donated the estate to the monastery. Later, however, she had married Donici's father and had eleven children by him. She subsequently gave the same estate as a dowry to one daughter who died childless and later to a second daughter who also died without posterity, the estate being thus finally left to the widowed father. The court decided that the monastery had no claim to this estate because, according to law, Ecaterina's first letter of donation, made while she was a childless widow, was rendered null and void by her subsequent marriage and the birth of her eleven children. Prince Alexandru Moruzi decided, on the basis of the evidence presented, that Manolache Donici was entitled to his late stepmother's land, as all her eleven blood children and her second husband were now dead. As a gesture of goodwill, the boyar was advised to make another donation to the monastery for the 'good of the souls' of his stepmother and her dead inheritors[18].

[15] *Ibidem,* doc. 302, pp. 330-331.

[16] *Ibidem*, doc. 454, pp. 502-503.

[17] *Ibidem*, doc. 816, pp. 880-881.

[18] From L.T. Boga (ed.), *Documente basarabene,* vol. XIV, *Hrisoave şi cărţi domneşti 1607-1806*, Chişinău, 1931, pp. 92-96.

When a man died leaving outstanding debts, the master of the merchants' guild ('staroste de negustori') was normally entrusted with the task of drawing up and valuing a precise register of assets and debts, so that the wealth could be auctioned and divided among the rightful inheritors and creditors. When, for instance, the Wallachian Constantin Micşunescu (presumed to be of the boyar class) died in 1777, his remaining assets amounted to 10,784 thaler, out of which his widow's dowry and pre-nuptial gift represented as much as 3,903 thaler, duly returned to her before any debts were paid. The age of the surviving children is not mentioned and, in this case, their interests were only considered after those of their mother and of their father's creditors, presumably because the dowry was supposed to serve for the upkeep of both widow and children[19].

When a couple had children but none of them survived for long after the mother's death, the dowry was usually divided into three: one part went for the 'good' of the deceased soul (i.e. payment for commemoration rites), the second to the widower, and the third to the closest blood relatives of the dead woman, as evidenced in two Wallachian cases of 1777 and 1783[20]. Expenses for the wife's illness were covered by the husband, as the law required, but the cost of the funeral was met by her parents, as they were the ultimate recipients of her dowry. In the absence of children, in cases of a woman's death or divorce, the dowry went to the woman's parents or next of kin.

As widows, women enjoyed, if not greater property rights than when married, at least a greater autonomy and authority in terms of household management and the education of children. The documentary evidence shows that the implicitly preferred solution was for widows not to remarry and to devote the rest of their lives to the administration of the wealth and to the upbringing and marriage of children, although there were generally no testamentary clauses demanding obligatory renunciation of a second marriage. Many dying husbands left their wives as executrices of their wills and heads of their households, and many women enjoyed a measure of freedom in the way they used their dowries and other wealth left after the deaths of their husbands. Thus, for instance, in 1797 and 1808 in Wallachia, Neaga, a merchant's widow, gave written pledges to contribute to the upkeep of a hospital and a church and adjacent school she had founded together with her late husband. The money was to come from the revenue of lands she had donated to the hospital as well as from her own money, presumably her dowry. The two written letters, signed and sealed by Neaga with her own seal (which suggests a degree of administrative autonomy at least), were, as in many similar cases, contracts that ensured not only the perpetuation of the couple's remembrance through charitable acts, but also a safe haven for a childless widow's last years and an assurance that commemoration rites would continue to be performed in the church endowed by her[21].

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[19] Cronţ and others (eds.), *Acte judiciare,* doc. 250, pp. 273-274.

[20] *Ibidem*, doc. 251, p. 275, and I. Filitti (ed.), *Regeste şi documente,* vol. 2, Bucharest, 1938, p. 7.

[21] From N. Iorga (ed.), *Studii şi documente,* XVI, Bucharest, 1909, pp. 79-82.

The same concern for the welfare of the testator's soul after death is in evidence in a later Wallachian testament of 1840, of the probably young and ailing boyar lady Catinca Slătineanu, who divided her wealth between her mother and her husband, only five years into marriage. In so doing, she mentioned an interesting prescription for the disposal of dowries in wills, for which I could not identify as yet any clause in the legal codes of the period, namely that the law only allowed her to dispose freely of half of the dowry, the other half having to go to the surviving mother. With no children of her own, the young Catinca left her best clothes and her bridal bedlinen to her two 'beloved' nieces, and entrusted both mother and her 'beloved' husband to bury her in her chosen ground and pay for her commemorations. As a final act of redeeming charity, the husband was also instructed to liberate Marica, the Gypsy slave who had attended Catinca from childhood, and give her money and some of her mistress' clothes[22].

Coming back to widowhood, this brought indeed some degree of freedom, but with it came also a greater amount of responsibility, which was not always dutifully discharged. And just as dowry-squandering husbands could be penalised, an inheritance-squandering widow was likewise liable to prosecution, which shows once more that children, the survival of the family and, for boyars, a concern for possible social decline were the main issues in dowry and inheritance arrangements. In a letter of 1781 from the Wallachian Prince to the panel of trustees appointed after the death of a 'pitar', the trustees were advised that the widow, Ilinca Lehliu, made rather liberal use of her dowry and of her husband's inheritance, incurring debts and endangering her three children's future. It was recommended that in the future she was not to be allowed to make any sales or enter any contract without the trustees' permission. Likewise, her eldest son and daughter were to be entrusted to two relatives for upbringing, while her youngest child was to be temporarily left in her care[23].

Repeated marriages (up to three, as allowed by the Orthodox Church) created complicated relationships between the step-families, and often led to merciless competition over property, especially between widows who tried to secure the welfare of their children and suitable marriages for their daughters. Some of the stories of such conflicts are particularly gruesome, as well as raising interesting legal issues.

In December 1777, the Wallachian 'postelnic' (high-rank boyar in charge of foreign relations and protocol at court) Sandu Vărzaru returned home from a business trip to find his young wife, Bălaşa, unexpectedly dead in childbirth, already buried, and the house emptied of many possessions, including the young woman's dowry assets. Following his complaint addressed to Prince Alexandru Ispilanti, the committee of high-ranking boyars appointed to investigate found out

[22] Filitti, *Regeste şi documente*, II, *Familia Slătineanu (1712-1862)*, Bucharest, 1938, p. 21. Cf. also Catinca's dowry of 1835 quoted in the same collection.

[23] Cronţ and others (eds.), *Acte judiciare,* doc. 922, pp. 981-82.

that the young wife's stepmother, Catrina Deleanu, had instructed her Gypsy slaves to commit the theft before the husband returned. Summoned to court by the court clerk ('zapciu de aprozi') and asked to swear an oath, the stepmother admitted the theft and presented a written pledge to return the stolen goods. The court ruled that only the husband could inherit on three legal bases: firstly, the late wife's deathbed wishes, confirmed under oath by witnesses; secondly, the fact that the couple had had a child, albeit it did not live; and thirdly, the fact that Catrina Deleanu was only a stepmother and not a blood relative of the young woman. The Prince approved the court's decision, granting the loser a right of appeal in front of the Divan.

A follow-up to this story occurred in January 1778, when the indefatigable widowed stepmother, having a young son herself with the late Bălaşa's father, was challenged in court by Bălaşa's married sister, Joiţa, over the late father's inheritance. The report to the Prince is one of the rare examples of legal documents mentioning explicitly the delicate negotiations that judges had to perform sometimes between the written codes and customary law:

[…] investigating the case, we wish to inform Your Highness with this anaphora that, according to the law, although the girls have a right to make claims over the estate of their father equally with other siblings, the custom of the land, which is observed in this country renders the written law null and void, so that a married daughter will have to be content only with the dowry that her father has bestowed on her, and has no other claims over the inheritance, with the exception of cases when her father vouchsafes to leave her something in his will.

The court's decision, approved by the Prince, was that Joiţa could only be entitled to her late mother's dowry assets, the remaining wealth of the father belonging rightfully to his second wife Catrina and her young son. Apart from raising the vexing question of inheritance rights in Wallachian vs. Moldavian customary law, both cases make it otherwise clear that only blood children were entitled to their mother's dowry[24].

Family Stories

Testaments – both of men and women – sometimes unexpectedly tell family stories and throw much needed light on the actual rapports of family members in conflict and, more rarely, in harmony. Rather than being mere lists of cutlery, cattle, household utensils, jewellery and Gypsies, testaments often provided men and women with a chance to settle scores, reward love, penalise misconduct and gain a measure of control over posterity. They could also often be meditations on the vanity of human life and attempts to save one's soul *in articulo mortis*. As such, they are eloquent less for the legal than for the human detail[25].

[24] Cronţ and others (eds.), *Acte judiciatre,* doc. 458, pp. 507-508 and doc. 461, pp. 511-512.

[25] More on attitudes to death in Violeta Barbu, *"Sic moriemur": the discourse upon death in Wallachia during the ancien régime*, in "Revue roumaine d'histoire", XXXIII, 1994, 1-2, pp. 101-121.

The 1781 testament of Bălaşa, daughter of the late 'stolnic' Toader Carp, is a story of two marriages. With some bitterness, after a full list of her dowry gifts, she speaks of her 'impoverished' first husband, the 'serdar' Vasile Scărlet, who, during a twelve-year-long, childless marriage, sold or otherwise squandered her golden diamond ring, her diamond earrings and a diamond cross, her horse-drawn carriage, cattle, and silver jewellery (all of which she lists meticulously). However, although, as she recounts, she and her second husband spent a lot of money and time on court cases against her first husband's inheritors to recoup her lost dowry assets, some of the remaining cattle were sold, she explains with rueful self-righteousness, to pay for 'commemoration and duties and other charities for the soul of the deceased'. The second husband, the 'pitar' Ianachi Mavrichi, who 'showed compassion and care in my illness and weakness', is 'especially' remembered and rewarded with a gift of Gypsy slaves. Anastasia, his daughter from a former marriage, raised 'with great love' by her stepmother Bălaşa, was named executrix of her will. It goes without saying that, with the jewellery, cattle and Gypsies given to her stepdaughter came the duty to pay the funeral expenses, as well as to perform the much coveted services in the year after death, all, she adds, 'according to the list I am going to append'. A good name for posterity as well as a healthy soul in heaven's good books were, as always with Romanian testators, essential: '…I give Ioniţă the Gypsy son of Nastasia to my stepson Costachi so that he will remember me, and I give Ioana the Gypsy sister to Ioniţă and daughter to Nastasia to my stepson Dimitrachi, so that he too remembers me' ('ca să aibă şi el a mă pomeni'). Even the insolvent and ineffectual first husband finds a niche in Bălaşa's will: 'I give Maria the Gypsy to the church of Jijia, where the body of my late first husband lies buried'. The will ends with the customary curse against any of her kin who 'might be tempted to change my will', as well as with the testator's signature and seal[26].

The 1785 testament of the widowed Ruxanda Carp (from Moldavia) starts with a long introduction on the transitoriness of human life before recounting another story of insolvent husband and embattled widowhood. This time the wife consented to the sale of her dowry assets, including lands, for the payment of her husband's debts, and the tone is sad rather than vindictive as she narrates how, after eighteen years of marriage, the husband decided to end his life in a monastery, not without leaving some outstanding debts. As a final compensatory gesture, however, Dumitru Carp donated his family estate – given to him as dowry – to his wife[27]. The beneficiaries of Ruxanda's will – mainly in land and Gypsies – are Irina, a niece, and Costache, a hard-working adopted son, who are instructed to agree

[26] L.T. Boga (ed.), *Documente basarabene*, vol. III, *Testamente şi danii 1672-1858*, Chişinău, 1928, pp. 15-19.

[27] For dowries given to sons, see L.T. Boga (ed.), *Documente basarabene*, vol. I, Chişinău, 1928, *Prefaţă*, p. II. Cf. doc. 7/1839, in N. Iorga (ed.), *Documente botoşănene*, in "Buletinul Comisiei istorice a_României", VI, 1927, pp. 31-34 and Iorga, *Anciens documents de droit roumains,* vol. 2, Paris-Bucharest, 1930, p. 295.

amicably on any future sale of land or house. The niece thus rewarded possessed, according to her aunt, the inestimable merit of being meticulously observant of all that was to be done 'for the souls of my husband's late parents and for our own souls and mindful of all the Christian duties'[28].

A poignant later testament is the will drawn in the 1830s by the Moldavian 'Vel logofăt' Vasile Razu. Highly devotional in tone, the text reads like a sermon preached to his children and heirs about what is due to both the heavenly and the earthly powers. They should love God, the boyar advises, but also give due honour 'to the lord and master of this Country chosen by God – knowing that power is given from above and the master is but His representative on earth – you should submit to him, listen to him and faithfully serve him…'.The children are advised to show compassion to servants and behave like parents, not like masters, and are enjoined to abstain from litigations over the inheritance or, he threatens, they will be 'deprived of my fatherly blessing'.

The testament contains a particularly glowing and emotional tribute to his wife Catrina:

I have also considered for my much beloved spouse Catrina, with whom I have lived for over 30 years, and by whom I had daughters and sons, who has honoured me with her honest life, and with wise economy has governed my household, always looking after me in my grave illnesses and especially now in old age keeping wake by my side with great care; our union and her companionship bringing such sweetness in our life together, I could not show myself ungrateful for so much love and kindness that she has shown towards me and my children; and, especially as she was a daughter of boyars, and brought a dowry and some money into the marriage, and as I had to settle abroad, all of these considering, I gave her a part of all that is mine […]

Vasile Razu's unusually emotional testament concludes with a plea to his wife Catrina and his eldest son Iancu to watch over the education of the younger son, Mihai:

And I am addressing you, my beloved spouse and oh, my beloved son Iancu, endeavour, as he is too young, to teach him the value of good deeds, and look after him in his youth, for youth may tempt him into base things, endeavour to keep him away from these and keep him on the path that leads to virtue and good fortune. Thus I beg you and this is my wish, and so may you have my blessing. Vasile Razu Vel Logofăt[29].

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[28] Boga (ed.), *Documente basarabene*, vol. III, pp. 20-22.

[29] My translation of the original Romanian: "Socotit-am dar şi pentru preiubitul meu soţ Catrina, cu care am trăit peste 30 ani, cu care am făcut fii şi fete, care cu cinstită ei viiaţă cinstindu-mă, şi cu înţeleapta iconomia ei ocârmuind cele din lăuntru a casii mele şi peste tot căutându-mă la grelile mele boale şi mai ales acum în vreme bătrâneţălor mele, cu mare purtări di grije privighiind lângă mine, a căreia înoţăre şi întovărăşire făcându-mă să sămt o dulce viiaţă înpreună n'am putut să mă fac nemulţumitori [sic] şi nerăsplătitor de atâta dragoste şi bunătate ci-au arătat cătră mine şi cătră creştiria copiilor mei, mai ales fiind şi fată de boeri, luându o şi cu zăstre, şi cu orece bani şi rămăind şi strein, toate aceste socotindu-le i-am făcut şi eu o parte dintru amele…" (p.84); "Cătră voi

Farewell message, manual of education, homage to a good wife, spiritual guide, Vasile Razu's testament summarises a way of life that must have featured in the world picture of at least one section of Romanian ancien régime society. Based on compassion, virtue, thriftiness, civic responsibility, but also imbued with a sense of the dignity that the boyar title implied, Vasile Razu's prescriptions are, one might say, an aristocratic variant of what is commonly thought of as a decent, honest, bourgeois way of life. How pervasive such a view was in boyar circles and how actively it was pursued by the Romanian 'noblesse de robe' (i.e. the tiny fraction of boyars with court and civic functions) is difficult to judge. However, as the discussion on the law codes and the sample of primary documents presented here suggest, it would appear that the ecclesiastical and the secular authorities of the period worked quite consistently towards bringing order both to the social and to the religious dimensions of human life. While the insistence on the posthumous good 'health' of the soul to be obtained through the correct rites and the fact that the Metropolitan and the Prince were still the ultimate guarantors of order and justice point to a traditional, paternalistic society, the legal attempts to protect the family and the need for good management of money and households both by men and women sprang from a desire to reconcile Christian spirituality and the secular pursuit of material gain and welfare. This amounted to a holistic vision of a religious, moral and well-administered polity of individually responsible citizens. In such a society, women still performed the traditional roles of supportive spouse and nurturing mothers, but the documents show that sometimes, through the death of the husband, they were socially elevated to become heads of households in their own right. In this role, they had to use all their stamina and resourcefulness to ensure the survival of their families both in economic and in spiritual terms.

Many issues relating to property and inheritance could not be addressed here. Were dowered daughters really excluded from the family inheritance? Did this happen only in Wallachia and if it did, how was it justified in jurisprudence? How did judges negotiate between custom and written law? Were there biases in favour of men, especially in cases when the judges were fellow high-ranking boyars? In precisely what ways did legal practice in the mid-nineteenth century differ from the mid-seventeenth? In what ways did the Romanian dowry and property laws differ from similar legislation in neighbouring countries with a similar Roman-Byzantine heritage in the period considered? Did the Code Napoléon and the Austrian civil code (1811) have any impact on the Caragea and the Callimachi Codes, as suggested in the work of earlier legal historians, and what were the consequences for women's rights? These are some of the questions

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întorcând cuvântul meu, o iubitul meu soţ şi o iubitul meu fiu Iancule săliţi-vă cu dânsul pără este tânăr a-l deprinde la faptă bună, să aveţi purtare de grijă de tinereţile lui, el este tânăr, ţinereţile [sic] poate să-l îndemne la multe lucruri netrebnici, săliţi-vă a-l îndepărta dela aceste pre cât a fi cu putinţă, nevoiţi-vă a pune în drumul care-l duce la cinste şi la norocire. Aşa vă rog şi aşa vă poftesc, şi aşa să aveţi blagosloveniia me. Vasile Razu vel logofăt." (p.85), in Boga (ed.), *Documente basarabene*, vol. III, pp. 82-85.

awaiting the attention of researchers as archival material will continue to be retrieved and as the work of the early historians of Romanian law will be rediscovered and reassessed.

Conclusions

At the end of this still rather selective exploration of dowry legislation in late eighteenth- and early nineteenth-century Romania, one can advance a few tentative conclusions as a basis for further explorations into matrimonial jurisprudence.

The legislation in force during the period under study placed dowry provision in the hands of a woman's male relative or acquaintance. This, together with parental and church control over choice of spouse would seem to maintain women's marital lives in the firm and almost absolute grip of a male/ecclesiastic order within a relatively benevolent paternalistic system. The fact that a woman retained sole ownership of her dowry, wedding gifts and 'virginity gift' (theoritra), and that a husband could be prosecuted, penalised and even imprisoned for squandering a dowry, provided a measure of economic security for women and their surviving children, the main beneficiaries of dowry assets. Yet, at the same time, a certain relaxation in the formerly strict church-sponsored rules for separation and divorce – as well as the very availability of divorce – provided women with some freedom of opting out of oppressive or abusive marriages. More importantly for the discussion of dowry arrangements, women, passive as wives-to-be, gained a certain amount of economic independence once they got married, by virtue of the fact that not only could they sue a dowry-squandering husband, but they also could in certain cases, carefully specified by the law codes, use some of their dowry wealth for paying off their own debts or for looking after ailing spouses, children and parents. This, in conjunction with a concern for status, explains why so many boyar fathers agonised over the dowries they had to provide to marrying daughters. As has been seen from one of the case histories, a wife also enjoyed the right to dispose of her dowry as she wished in her will. It would seem that the *Callimachi* and the *Caragea Codes* (1817, 1818) introduced the innovation of 'marital settlements' ('tocmeli căsătoreşti') which allowed parents, brides and grooms to make pre-nuptial arrangements about, for instance, who would inherit the dowry in case of death, but this is a point that needs further study. Finally, as widows, if they did not remarry after the legal 'one year's mourning' ('anul jelirii'), women had full control over the household administration and over their children's education and daughters' endowment.

At this stage, one cannot point to clear trends and shifts in legal practices and one should recognise that it is premature to talk of 'liberalising' trends in the application of matrimonial and dowry legislation. One can point, though, to the fact that, especially after the *Callimachi* and the *Caragea Codes*, the emphasis was increasingly placed on a standardised and neatly categorised jurisprudence, and less on the moral categories underlining individuals' legal rights. This, and other factors, led arguably to the gradual erosion of the traditionally close links between

church and state in matters of law. Whether the relative 'secularisation' of the law also led to the 'moral crisis' famously deplored by foreign and native observers in the early nineteenth century is a contentious issue.

But while such theoretical issues will remain unresolved for the time being, the documents I have presented here have at least the merit, as 'family stories', of giving a voice to men and women who would be otherwise lost to history. They grappled with issues of morality, legality, duties and rights, church and state, public and private spaces, in a transitional society struggling towards a clearer sense of its own identity and of its own institutions. But more importantly, the language some of them used shows concerns that went beyond mere human acquisitiveness and mundane self-interest, and touched on issues of affective family bonds and Christian spirituality in a besieged world where such aspirations might have been obscured by the demands of mere survival.