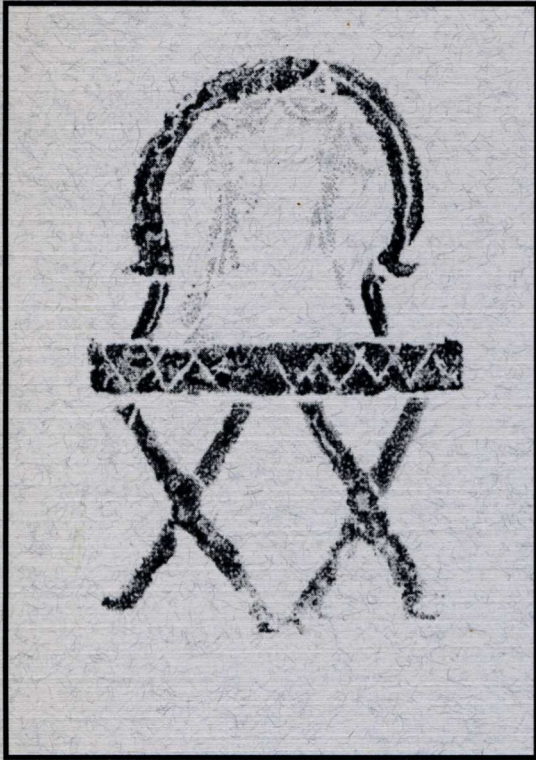


To Natasha
with my best wishes
for 1995,
JP
Jan. 95

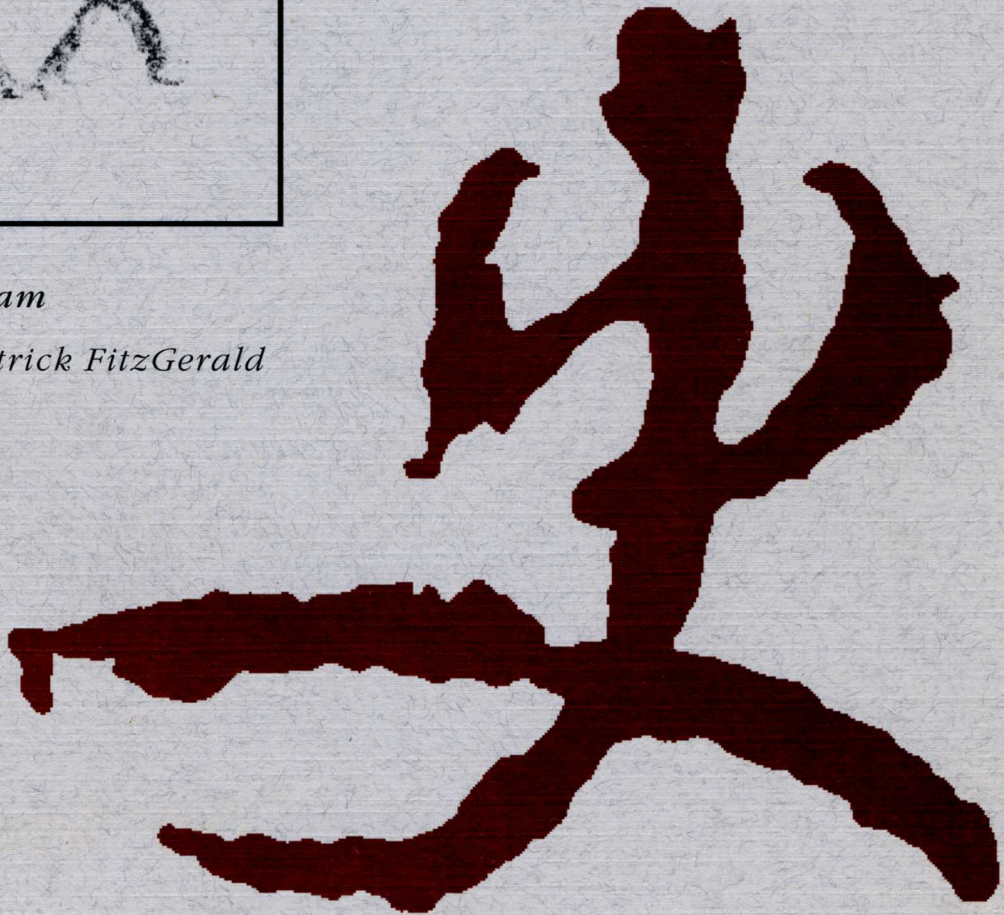
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史 *In Memoriam*

Charles Patrick FitzGerald



SOME REFLECTIONS ON ČINGGIS QAN'S *ĴASAY*

 I. de Rachewiltz

There has been recently a renewed interest in the so-called 'Great *Ĵasay*'¹ of Činggis Qan—the 'Great *Yāsā*' of the Muslim authors. While the subject is one of far-reaching significance, a problem arises as to the historicity or otherwise of a written code (*Ĵasay*) supposedly compiled in the time of Činggis Qan (?1162–1227), which embodied the conqueror's legal pronouncements, i.e. the laws which he issued on matters of state, administration of justice (rewards and punishments), military ordinance, diplomatic exchanges, tributary practices, etc., constituting the normative basis of Mongol governance.²

The most important recent contributions towards clarifying this problem are those of Paul Ratchnevsky (d. 1991), David Ayalon, David Morgan and Paul Heng-chao Ch'en.

Ratchnevsky devoted a substantial article to the investigation of the *Ĵasay* which he summarized in his excellent book on Činggis Qan.³ Having reviewed the information contained in the *Secret History of the Mongols*, the Chinese sources of the thirteenth and fourteenth centuries, and the works of the Persian historians (see below), he reached the following conclusions: (1) the *Ĵasay* of Činggis Qan did not represent a legal code drawn up at one particular point in time; (2) it was not a homogeneous and systematically constructed document; (3) rather it was a collection of orders and decrees issued over the years by Činggis Qan, as circumstances required, and based on actual needs; (4) the collection of such *ad hoc* rescripts was edited and recorded in written form at the time of Ögödei's enthronement in 1229 (on which occasion Ögödei introduced the ceremony of the presentation of Činggis Qan's *Ĵasay*); (5) the written record of the *Ĵasay* was to set the established order introduced by Činggis Qan for ever, and was to serve as an unvarying guide and model for the government of his successors; (6) the *Ĵasay* gradually diminished in importance owing (i) to developments which took place within the Mongol empire through symbiosis with the settled

The following abbreviations are used throughout this article:

BSOAS: *Bulletin of the School of Oriental and African Studies* (London University)

CAJ: *Central Asiatic Journal*

HJAS: *Harvard Journal of Asiatic Studies*

JESHO: *Journal of the Economic and Social History of the Orient*

JRAS: *Journal of the Royal Asiatic Society*

MS: *Monumenta Serica*

PFEH: *Papers on Far Eastern History*

ROC: *Revue de l'Orient Chrétien*

¹ The Middle Mongolian form of the word is *Ĵasaq*, but *Ĵasay* is the regular Preclassical and Classical Mongolian form. To avoid confusion, I shall use the latter form throughout.

² See G. Vernadsky, "The scope and contents of Chingis Khan's *Yasa*," *HJAS* 3 (1938): 337–60 (and n.1 on p.337 for the literature on the subject); the important note on *yasaq* in G. Doerfer, *Türkische und mongolische Elemente im Neupersischen*, I–IV (Wiesbaden: Franz Steiner Verlag, 1963–75), no. 1789; and the literature cited in D. O. Morgan, "The 'Great *Yāsā* of Chingiz Khān' and Mongol law in the İlkhānate," *BSOAS* 49 (1986): 163–76, at 164, n.5.

³ P. Ratchnevsky, "Die *Yasa* (*Ĵasaq*) Činggis-khans und ihre Problematik," *Schriften zur Geschichte und Kultur des alten Orients* 5: *Sprache, Geschichte und Kultur der altaischen Völker* (Berlin: Akademie-Verlag, 1974), pp.471–87; idem, *Činggis-khan. Sein /OVER*

Leben und Wirken (Wiesbaden: Franz Steiner Verlag, 1983), pp.164–72 (ed. and English trans. by Th. N. Haining, *Genghis Khan. His life and legacy* (Oxford & Cambridge, Mass.: Blackwell, 1991), pp.187–96.

⁴ See Ratchnevsky, "Die Yasa," pp.486–7; idem, *Činggis-khan*, pp.164–5 (cf. Haining, *Genghis Khan*, pp.187–8).

⁵ In Mongolian *yosun*.

⁶ See Ratchnevsky, *Činggis-khan*, pp.165ff.

⁷ P. Ratchnevsky, "Die Rechtsverhältnisse bei den Mongolen im 12.–13. Jahrhundert" *CAJ* 31 (1987): 64–110, at 84. In this, his last contribution to the subject, Ratchnevsky integrates the results of his previous investigations into the legal system of the medieval Mongols besides those solely devoted to the *Yasa*. See their titles in the 'Liste der zitierten Werke' on p.110.

⁸ See D. Ayalon, "The great *Yasa* of Chingiz Khān. A reexamination," *Studia Islamica* 33 (1971): 97–140; 34 (1971): 151–80; 36 (1972): 113–58; 38 (1973): 107–57; reprinted in D. Ayalon, *Outsiders in the lands of Islam: Mamluks, Mongols and eunuchs* (London: Variorum Reprints, 1988). References are to the reprint.

cultures, and the conversion of the Mongol rulers to Buddhism or Islam; and (ii) to the law-enforcing activities of individual khans over their domains which led to the supplementation and modification of the contents of Činggis Qan's *Yasa* with the *Yasa* of a particular ruler; (7) as a result, the *Yasa* of Činggis Qan was eventually replaced by the *Yasas* of later Mongol rulers and did not survive in its original form, especially since Činggis Qan's *Yasa* was a jealously guarded document, of which few copies were made, and access to which was restricted to the rulers of the Chingiside line (cf. the case of the similarly lost text of the imperial chronicle *Altan debter*); (8) what we know of the original *Yasa* is limited to quotations preserved in the works of eastern authors who never saw the original themselves, which do not convey the words of Činggis Qan verbatim, and some of which may be either completely fictitious, or pertaining to the *Yasa* of later rulers.⁴

Further, from indirect evidence and what he assumes to be 'genuine' fragments of the *Yasa*, Ratchnevsky elaborates on the nature and contents of Činggis Qan's legislation, concerning in particular military organization, various offences (lying, adultery, infringement of religious taboos, etc.), and the duty of hospitality, emphasizing the distinction between the non-recorded common law of the Mongols (which continued to be observed according to tradition and custom),⁵ and the recorded *new* legislation of the *Yasa*. He also stresses the distinction between the *jarliy* 'order(s), decree(s)', *Yasa* 'law(s)', and *bilig* 'maxim(s)' pronounced by Činggis Qan, their respective legal weight, and the difference of opinion among scholars concerning their form.⁶

In a subsequent paper which appeared in 1987, Ratchnevsky surveyed the entire legal scene in the Mongol society of the twelfth to thirteenth centuries, systematizing data and results from previous studies, and adding new information, without, however, discussing further the problem of Činggis' *Yasa*. Ratchnevsky assumes here that Činggis' code of laws, the 'Great *Yasa*', was embodied in the 'Great Book of *Yasas*' described by Juvaini.⁷

In his investigation of Činggis' *Yasa*, Ratchnevsky has drawn on all available eastern and western sources (among the latter, the reports of the Franciscan friars sent as envoys to the Mongol court), but most of his information derives from the works of Juvaini and, to a lesser extent, of Rašid al-Din, as well as from Maqrizi, al-'Umarī and Bar Hebraeus, all of whom quote sections or articles of the *Yasa*.⁸ However, in a series of fundamental articles analyzing Islamic sources on the *Yasa*, written chiefly for the purpose of evaluating the latter's true status under the Mamlūks and the reliability of the Egyptian historian Maqrizi's statements in this regard, Professor Ayalon has conclusively shown that *all* the Islamic sources on the *Yasa* derive directly or indirectly from a single authority, viz. Juvaini, whose *Ta'riḫ-i jahān-gušāy* he describes as "a very biased and partisan source." Ayalon gives examples of Juvaini's looseness and ambiguity detracting from the trust-

worthiness or accuracy of his information on the *ĴasaĀ*.⁹ Now, since Ĵuvaini remains our major source (and, virtually, the *only* Islamic one) on the subject, any study of Činggis' *ĴasaĀ* which fails to take Ayalon's criticism of the Persian historian into account appears to be vitiated or impaired from the start, which of course applies also to Ratchnevsky's investigation. It should be pointed out, however, that notwithstanding his serious reservations about Ĵuvaini's testimony, Ayalon does not go so far as to deny the existence of a Mongol law embodied in a written code under Činggis Qan (see below).

Prompted largely by Ayalon's penetrating study, Dr. Morgan published in 1986 an interesting and challenging article on "The 'Great *Yāsā*' of Chingis Khān' and Mongol Law in the İlkhānate," the results of which are summarized in the section on 'Law' of his book *The Mongols* which appeared soon after.¹⁰

While accepting Ayalon's conclusion regarding the lack of validity of the Islamic sources deriving from Ĵuvaini in proving the existence of a written legal code compiled under Činggis Qan, Morgan questions Ayalon's censure of Ĵuvaini as an historian. According to Morgan, Ĵuvaini's work should be excluded from the discussion not because of its unreliability as a source, but because Ĵuvaini's chapter on 'The laws framed by Činggis Qan and the *yāsās* which he promulgated after his rise to power' in the *Ta'rix-i ĵāhān-gušāy* does not actually deal with the supposed written code of Činggis, i.e. the 'Great *Yāsā*', but only with some of Činggis Qan's *yāsās* or regulations.¹¹ In Morgan's opinion, the exclusion of this chapter, which as he rightly says is "usually regarded as an essential foundation for the study of the Great *Yāsā*,"¹² leads him to question the very existence of a written code, particularly in view of the fact that a source like the *Secret History of the Mongols* makes no mention of it but, like Ĵuvaini, records only specific regulations and decrees issued *ad hoc* by Činggis Qan. Morgan comes to the conclusion that "it is not feasible at this stage to state with certainty that the Great *Yāsā* did not exist: only that the sources which have so far been used to demonstrate the proposition that it did do not show anything of the sort."¹³ And, in reply to Ayalon's remark that he (Ayalon) does not agree "with the view of some scholars ... that in the reign of Chingiz Khān there seems to have been no Mongol law embodied in a written code. For such a view much stronger proof must be found,"¹⁴ Morgan writes, "In the nature of things, we are unlikely ever to be able to *prove* the negative; but in any case that is not where the onus of proof lies. The ball is firmly in the court of those who believe in the existence of a written *yāsā*; they must, if they can, find some evidence for it. Perhaps Ayalon, in the fuller version of his study which he promises, will be able to produce some such evidence. If he does, I shall happily recant. But it will need to be something other than those old but in this instance, unhelpful friends, Juwaynī, Rashīd al-Dīn and the *Secret History of the Mongols*."¹⁵

In Ayalon's and Morgan's studies attention is focused primarily on the Islamic sources and, to a lesser extent, on the *Secret History*. Very little

⁹ Ayalon, *Outsiders*, IVa, pp.133ff.

¹⁰ See above, n.2; and D. O. Morgan, *The Mongols* (Oxford: Basil Blackwell, 1986), pp.96-9.

¹¹ See Morgan, "Great *Yāsā*," p.168; idem, *Mongols*, p.98. For the chapter on the laws of Činggis Qan in Ĵuvaini's work see 'Ata-Malik Ĵuvaini, *The history of the world-conqueror*, I-II, transl. J. A. Boyle (Manchester: Manchester University Press, 1958), pp.23-34.

¹² Morgan, "Great *Yāsā*," p.168.

¹³ Morgan, *Mongols*, p.99.

¹⁴ Ayalon, *Outsiders*, Introduction, p. x.

¹⁵ D. O. Morgan, review of Ayalon, *Outsiders*, in *BSOAS* 52/1 (1989): 351.

¹⁶ Paul Heng-chao Ch'en, *Chinese legal tradition under the Mongols. The code of 1291 as reconstructed* (Princeton: Princeton University Press, 1979), pp.xiv, 4–10.

¹⁷ *Ibid.*, p.4.

¹⁸ Sung Lien 宋濂 a.o., *Yüan-shih* 元史 (Peking: Chung-hua Shu-chü, 1976).

¹⁹ Cf., e.g., the expressions *ta-fu* 大福 'the Emperor's Good Fortune', *Ta-tu* 大都 'the Imperial Capital', *ta tsung-cheng fu* 大宗正府 'the Imperial Clan Administration', *t'ai-tzu* 太子 'the Heir Apparent', *t'ai-miao* 太廟 'the Imperial Temple', *t'ai-i* 太醫 'the Imperial Physician', *t'ai-fu chien* 太府監 'the Imperial Treasury', etc.

²⁰ See the *Secret History*, § 70. Cf. F. W. Cleaves, transl., *The Secret History of the Mongols*, I (Cambridge, Mass.: Harvard University Press, 1982), p.19; E. Haenisch, *Wörterbuch zu Manghol un niuca tobca'an* (*Yüan-ch'ao pi-shi*). *Geheime Geschichte der Mongolen*, reprint ed. (Wiesbaden: F. Steiner Verlag, 1962), p.170. Thus the words *yeke erke* that are found in the Mongolian text of the Sino-Mongolian inscription of 1240 may mean 'the great (= imperial) power', or 'the great (= ancestral) power', i.e. the power of the imperial ancestors—as indeed embodied in the *jasay*. Cf. I. de Rachewiltz, "Some remarks on Töregene's Edict of 1240," *PFEH* 23 (March 1981): 53–61 (where, however, my interpretation must be revised). In a letter to me dated 7 March 1982, Prof. Ratchnevsky writes, "*yeke erke* refers probably to the Good Fortune of the forefathers . . . My tentative translation of the passage is as follows: 'If someone contravene this my command (word), should (might) he not be punished (by) the great power (of the forefathers?)'." The term *yeke* occurs also in the very name of the Mongol confederation—the future empire—of Čing-gis Qan: *Yeke Mongγol Ulus*. This expression has been variously rendered as: (1) 'peuple des grands Mongols' (P. Pelliot); (2) 'Grand empire Mongol' (W. Kotwicz, followed by N. Poppe, B. Ya. Vladimircov, and L. Ligeti); (3) 'empire des Grands Mongols' (A. Mostaert and F. W. Cleaves). Several years ago I adopted Kotwicz's rendering and defended his interpretation against those of Pelliot, Mostaert and Cleaves. See I. de Rachewiltz, "Qan, Qa'an and the Seal of Güyüg," in K. Sagaster and M. Weiers, eds, *Documenta Barbarorum. Festschrift für Walther Heissig*

attention is paid to the Chinese sources of the thirteenth and fourteenth century, no doubt because they are poor in specific references to the *jasay* of Činggis Qan. Furthermore, the Chinese material of this period is somewhat intractable and a specialized knowledge is required to handle it critically. Chinese scholars have collected virtually all the references to the Mongol *jasay* and much of this information has indeed been used by Ratchnevsky in his earlier-mentioned publications. More recently, Dr Paul Heng-chao Ch'en has discussed the problem of the *jasay* in Chinese documents within the framework of his investigation of the legal system in Yüan China.¹⁶

With regard to the first reference to the Great *jasay*, Ch'en states, "The *Ta cha-sa* 大扎撒 was known as the Great Code of Činggis Qan and seems to have been promulgated in 1229, when T'ai-tsung 太宗 (i.e. Ögödei Qayan—I.R.) was elected to succeed Činggis Qan."¹⁷ This reference is very interesting. It is found in the *Yüan-shih*,¹⁸ the official history of the Yüan dynasty, the 'Basic Annals' (*pen-chi* 本記) of which are based on the *Veritable Records* (*shih-lu* 實錄) of each reign. As recorded in *Yüan-shih* 1, 29, one of the very first actions of the new emperor upon his enthronement on 13 September 1229 was to promulgate the Great *jasay*. The expression 'Great *jasay*' (*Ta cha-sa*) is glossed in this text as *ta fa-ling* 大法令 'the Great Code'. In the Chinese nomenclature of the Yüan, as in earlier periods, the adjectives *ta* 大 and *t'ai* 太 (= Mo. *yeke*) 'great', 'grand', are regularly used with reference to the emperor or to the court.¹⁹ Furthermore, Mo. *yeke*s, lit. 'the Great Ones', is a term designating the (royal) ancestors (= Chin. *tsu-tsung* 祖宗), so that *yeke* bears also this additional connotation of 'ancestral'.²⁰ In the *Yüan-shih*

/zum 70. Geburtstag (Wiesbaden: Otto Harrassowitz, 1983), pp.274–5. Professor Cleaves disagreed with my argument in his article "A Mongolian rescript of the fifth year of Degeđü Erdem-tü (1640)," in *HJAS* 46 (1986): 191, n.4. In further support of my argument, and in addition to what I have said on the subject in my article "The Mongols rethink their early history" (to appear in the *Rivista degli Studi Orientali*), n.44, I should mention a significant piece of evidence which has been hitherto ignored. I refer to the letter of Mangu Khan (i.e. Möngke Qayan, r.1251–59) to Saint Louis as recorded in Latin by William of Rubruck in 1254, where we read: "Per virtutem eterni Dei per magnum mundum Moallorum preceptum Manguchan . . ." (A. Van Den Wyngaert, ed., *Sinica Franciscana, I. Itinera et relationes Fratrum Minorum saeculi XIII et XIV*, Quaracchi-Firenze, 1929; reprint ed., Quaracchi-Firenze, 1962), p.308. I think there is no doubt that the 'magnum mundus Moallorum' to which reference is made in the letter is the *Yeke Mongγol*

/Ulus. Cf. E. Voegelin, "The Mongol orders of submission to European powers, 1245–1255," *Byzantion* 15 (1940–41): 398. This would confirm the correctness of the rendering 'Great Mongol Empire (or Nation)' as opposed to 'Empire of the Great Mongols'. As for the expression *Yeke Mongγol tout court*, which is at the root of the problem, it should be emphasized that it does not occur as such in any Mongol document or text of the Mongol-Yüan period and that, for that period, its existence is inferred only indirectly from Chinese and Latin sources. See A. Mostaert and F. W. Cleaves in *HJAS* 15 (1952): 486–91. My view is that the expression *Yeke Mongγol* or 'Great Mongols' was actually extrapolated from *Yeke Mongγol Ulus*; in other words, after the establishment of the Great Mongol Empire (better: Nation—in 1206), the members of the ruling ethnic group, i.e. the Mongols, became known as the Great Mongols.

²¹ Juvaini (as cited in n.11), p.256.

²² *Ibid.*, pp.189–90 (my emphasis).

context, therefore, the 'Great Ĵasa(Ƴ)' is, by definition, the 'Code (= [the body of] laws and regulations) of Činggis Qan'. The item recorded in the *Yüan-shih* follows various other measures taken by Ögödei upon his enthronement and is precisely dated. We may therefore take it that this is what actually happened, even though we still do not know the nature of the 'Great Code', nor in what form it was 'promulgated' by Ögödei. Can Juvaini refer to the same event when he writes: "And he [Güyük—I.R.] made a *yasa* that just as *Qa'an* (i.e. Ögödei—I.R.), at the time of his accession, had upheld the *yasas* of his father and had not admitted any change of alteration of his statutes, ..."21 We know from the same source that when Ögödei was elected, "first of all he made a *yasa* that such ordinances and commands as had previously been issued by Čingiz-Khan should be maintained, and secured, and protected against the evils of change, and alteration, and confusion." On that occasion he also decreed (according to Juvaini) as follows: "Every hasty speech which until the day of our accession hath issued from the mouth of any man, we shall pardon and cancel it; but if from henceforth any man shall set foot to an action that contravenes the old and new ordinances and *yasas*, the prosecution and punishment of that man shall be proportionate to his crime."22

From these accounts, it would seem to me that, as part of the enthronement ceremony, Ögödei not only pledged continued observance of his father's *Ĵasays* (*yāsās*), but that he also promulgated them formally, i.e. he proclaimed them at the *quriltai*. The recital or declamation of Činggis' pronouncements on festive and formal occasions such as a *quriltai* is a well attested practice in the thirteenth century; and we know that other members of the qan's family, such as Čayatai and Tolui had a reputation for possessing a particularly good knowledge of such pronouncements, which included *Ĵasays* as well as *biligs* ('maxims').23 According to a Chinese source of the fourteenth century, it was a Mongol practice to read the 'Precious Precepts (*pao-hsün* 寶訓) of T'ai-tsu (i.e. Činggis Qan)' at the *quriltai* that elected the qan, on the very day of his enthronement.24 I shall return later to the question of the 'promulgation' of Činggis' legal pronouncements or laws, and their probable form.

Another interesting reference in the Chinese sources mentioned by Ch'en is an imperial edict of 10 September 1264, the text of which is preserved in both the *Yüan-shih* and the Chinese administrative code, *Yüan tien-chang* 元典章.25 On that date, Qubilai Qayan (Shih-tsu 世祖, r.1260–94) decreed the change of reign-title from Chung-tung to Chih-yüan. In the edict as recorded in the *Yüan tien-chang* the emperor states: 'Since BulƳa, Quča(r), Toman, Aliča(r), Toyos and others had plotted to harm Our House, and have been duly executed in accordance with Činggis Qan's Ĵasa(Ƴ), (We now grant a general amnesty to the empire'.26 The 'plot' in question is the 'rebellion' of Qubilai's brother Ariq Böke, which had been supported by the high officials named above. Following Ariq Böke's submission in 1264 they were tried and executed. The event in question is well documented and is

23 See Juvaini, pp.40, 186, 205, 272; Rashid al-Din, *The successors of Genghis Khan*, trans. J. A. Boyle (New York: Columbia University Press, 1971), Introduction, p.13; pp.18, 77, 155–6, 321; Ratchnevsky, "Die Yasa," p.481, n.55. Cf. also Juvaini's statement (p.25) to the effect that "Wherever a khan ascends the throne, or a great army is mobilized, or the princes assemble and begin [to consult together] concerning affairs of state and the administration thereof, they produce these rolls [of the Great Book of *Yasas* — I.R.] and model their action thereon." I shall have more to say on this statement later.

24 Huang Chin 黃潛 (1277–1357), *Čhin-bua Huang hsien-sheng wen-chi*, ph. repr. of the Yüan edition, *Ssu-pu ts'ung-k'an*, 1st series, 24, 3b. As already stated by Fang Ling-kuei 方齡貴, *Yüan Ming hsi-ch'ü chung ti Meng-ku yü* [Mongolian expressions in Yuan and Ming dramas] (Shanghai: Han-yü ta-tz'u-tien Ch'u-pan-she, 1991), p.330, the 'Precious Precepts of T'ai-tsu 太祖' correspond to Činggis Qan's 'Great ĴasaƐ', and not to the *biligs* or maxims. Cf. F. W. Cleaves, "The 'Fifteen "Palace Poems" by K'o Chiu-szu," *HJAS* 20 (1957): 428, n.10; 430, n.14. In the first of K'o's poems the expression 'Ancestral Precepts' stand for 'Great ĴasaƐ', as explicitly noted by K'o himself. See *ibid.*, p. 419. For 'Ancestor' = Činggis Qan, cf. what has been said earlier and n.20. The fact that the 'Precepts' were 'read' (*tu* 讀) deserves special attention.

25 Ch'en, *Chinese legal tradition*, p.5. Ch'en does not discuss the nature and contents of the edict. For the *Yüan tien-chang* 元典章 see the ph. repr. of the Yüan edition of the National Palace Museum (full title: *Ta-Yüan sheng-cheng kuo-ch'ao tien-chang*) (Taipei: Kuo-li Ku-kung po-wu-yüan, 1976), 1, 2a. Cf. *Yüan-shih* 2, p.99.

26 The *Yüan-shih* text has 'T'ai-tsu' (the temple name of Činggis Qan) instead of 'Činggis Qan'. Two names are also spelled differently: Tuman for Toman, and Toyus for Toyos. BulƳa is the famous Nestorian minister BulƳai or Bolyai mentioned in William of Rubruck's *Itinerarium*. See Van Den Wyn-gaert, *Sinica Franciscana*, p.584a; P. Jackson, trans. (introduction, notes and appendices by P. Jackson and D. Morgan), *The mission of Friar William of Rubruck. His journey to the court of the Great Khan Möngke 1253–1255* (London: Hakluyt Society, 1990) /OVER

