In Memoriam

Charles Patrick FitzGerald
SOME REFLECTIONS ON ČINGGIS QAN’S JASAY

I. de Rachewiltz

There has been recently a renewed interest in the so-called ‘Great Jasay’ of Činggis Qan—the ‘Great Yasä’ 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 (Jasay) 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.

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’ien.

Ratchnevsky devoted a substantial article to the investigation of the Jasay which he summarized in his excellent book on Činggis Qan. 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, he reached the following conclusions: (1) the Jasay 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 Jasay); (5) the written record of the Jasay 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 Jasay gradually diminished in importance owing 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
HJS: Harvard Journal of Asiatic Studies
JESH: Journal of the Economic and Social History of the Orient
JRAS: Journal of the Royal Asiatic Society
MS: Monumenta Serica
PFEO: Papers on Far Eastern History
ROC: Revue de l’Orient Christian

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


3 P. Ratchnevsky, "Die Yasa (Jasay) Činggis-khan’s und ihre Problemattik," Schriften zur Geschichte und Kultur des alten Orients 5: Sprache, Geschichte und Kultur der altslawischen Völker (Berlin: Akademie-Verlag, 1974), pp.471–87; idem, Činggis-khan. Sein / OVER
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 Jāsāy with the Jāsāy of a particular ruler; (7) as a result, the Jāsāy of Činggis Qan was eventually replaced by the Jāsāys of later Mongol rulers and did not survive in its original form, especially since Činggis Qan’s Jāsāy 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 Allān debter); (8) what we know of the original Jāsāy 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 Jāsāy of later rulers.4

Further, from indirect evidence and what he assumes to be ‘genuine’ fragments of the Jāsāy, 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 Jāsāy: He also stresses the distinction between the jārīy ‘order(s), decree(s)’, jāsāy ‘law(s)’, and bīlīq ‘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’ Jāsāy. Ratchnevsky assumes here that Činggis’ code of laws, the ‘Great Jāsāy’, was embodied in the ‘Great Book of Yasas’ described by Juwainī.7

In his investigation of Činggis’ Jāsāy, 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 Juwainī and, to a lesser extent, of Raṣīd al-Dīn, as well as from Maqrīzī, al-ʿUmarī and Bār Hebraeus, all of whom quote sections or articles of the Jāsāy).8 However, in a series of fundamental articles analyzing Islamic sources on the Jāsāy, written chiefly for the purpose of evaluating the latter’s true status under the Mamluks and the reliability of the Egyptian historian Maqrīzī’s statements in this regard, Professor Ayalon has conclusively shown that all the Islamic sources on the Jāsāy derive directly or indirectly from a single authority, viz. Juwainī, whose Taʾrīḫ-i jahan-giṣay he describes as “a very biased and partisan source.” Ayalon gives examples of Juwainī’s looseness and ambiguity detracting from the trust-
worthiness or accuracy of his information on the Jasay. Now, since Juvaini remains our major source (and, virtually, the only Islamic one) on the subject, any study of Činggis’ Jasay 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 Juvaini’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 Yasa’ of Činggis Khan’ and Mongol Law in the Ilkhanate,” 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 Juvaini in proving the existence of a written legal code compiled under Činggis Qan, Morgan questions Ayalon’s censure of Juvaini as an historian. According to Morgan, Juvaini’s work should be excluded from the discussion not because of its unreliability as a source, but because Juvaini’s chapter on ‘The laws framed by Činggis Qan and the yasas which he promulgated after his rise to power’ in the Ta’rikh-i jaban-kušay does not actually deal with the supposed written code of Činggis, i.e. the ‘Great Yasat’, but only with some of Činggis Qan’s yasas 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 Yasat,”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 Juvaini, 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 Yasat did not exist: only that the sources which have so far been used to demonstrate the proposition that it did 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 Čingiz Khan 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 yasa; 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, Juwayni, Rashid al-Din 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
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-cba-sa* 大札撒 was known as the Great Code of Činggis Qan and seems to have been promulgated in 1229, when Tai-tsung 太宗 (i.e. Ögedei Qan—i.e. 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 本紀*) of which are based on the *Veritable Records (shih-lu 宣録)* 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* (y). The expression ‘Great *Jasay* (y)’ (*Ta-cba-sa*) is glossed in this text as *ta-fa-ling* 大法令 ‘the Great Code’. In the Chinese nomenclature of the Yuan, as in earlier periods, the adjectives *ta* 大 and *tai* 太 (= Mo. *yēke*) ‘great’, ‘grand’, are regularly used with reference to the emperor or to the court.19 Furthermore, Mo. *yēke*, lit. ‘the Great Ones’, is a term designating the (royal) ancestors (= Chin. *tsu-tsung 祖宗*), so that *yēke* bears also this additional connotation of ‘ancestral’.20 In the *Yüan-shih*

---


17 Ibid., p.4.


19 Cf., e.g., the expressions *ta-fu* 大福 ‘the Emperor’s Good Fortune’, *Ta-tu* 太都 ‘the Imperial Capital’, *tsung-chen fu* 太宗 正府 ‘the Imperial Clan Administration’, *Tai-tzu* 太子 ‘the Heir Apparent’, *Tai-miao* 太廟 ‘the Imperial Temple’, *Tai-i 太医 ‘the Imperial Physician’, *Tai-fa chien* 太府 監 ‘the Imperial Treasury’, etc.

20 See the *Secret History*, vii. 10. Cf. F. W. Cleaves, *transl., The Secret History of the Mongols*, 1 (Cambridge, Mass.: Harvard University Press, 1982), p.19, E. Hoenisch, *Wörterbuch zu Mongolien un it zuca tobo an* (Yüan-chü epz-si-shih). Geheime Geschichte der Mongolen, reprint ed. (Wiesbaden: F. Steiner Verlag, 1962), p.170. Thus the words *yēke 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 Töregen’s Edict of 1240, *FREH* 23 (March 1981): 55–61 (where, however, my interpretation must be revised). In a letter to me dated 7 March 1982, Prof. Ratchnevsky writes, *Yēke erke* refers probably to the Good Fortune of the forefathers …. My tentative translation of the passage is as follows: ‘If someone contravenes this my command (word), should (might) he not be punished (by) the great power (of the forefathers)?’. The term *yēke* occurs also in the very name of the Mongol confederation—the future empire—of Činggis Qan: Yeke Mongol Ulus. This expression has been variously rendered as: (1) ‘peoples des grands Mongols’ (P. Pelliot); (2) ‘Grand empire Mongol’ (W. Krotz, followed by N. Poppe, B. Ya. Vladimirov, and L. Igeit); (3) ‘empire des Grands Mongols’ (A. Mostaert and F. W. Cleaves). Several years ago I adopted Krotz’s rendering and defended his interpretation against those of Pelliot, Mostaert and Cleaves. See I. de Rachewiltz, *Qan, Qanun and the Seal of Güyük,* in K. Sagaster and M. Weiers, eds, *Documenta Barbarorum. Festschrift für Walther Heise* (1907–60).
context, therefore, the ‘Great jasa(y)’ is, by definition, the ‘Code (= the body of) laws and regulations) of Činggis Qan’. The item recorded in the Yiwan-sibib follows various other measures taken by Ögedei 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 Ögedei. 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. Ögedei—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 Ögedei was elected, “first of all he made a yasa that such ordinances and commands as had previously been issued by Chingiz 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, as part of the enthronement ceremony, Ögedei not only ordered continued observance of his father’s jasays (yasas), but that he also promulgated them formally, i.e. he proclaimed them at the quriltai. The recital or declamation of Činggis’s 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 Toiu had a reputation for possessing a particularly good knowledge of such pronouncements, which included jasays 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-biin 寶訓) of Tai-tsai (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’s 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 Yiwan-sibib and the Chinese administrative code, Yiwan tien-chang 元典章.25 On that date, Qubilai Qayan (Shih-tsai 世祖, r.1260–94) decreed the change of reign-title from Chung-tung to Chih-yün. In the edict as recorded in the Yiwan tien-chang the emperor states: ‘Since Buỳa, Quča(r), Toman, Alič(a(r), Toyes and others had harmed Our House, and have been duly executed in accordance with Činggis Qan’s jasa(y), (We now) grant a general amnesty to the empire’.26 The ‘plot’ in question is the ‘rebellion’ of Qubilai’s brother Aqiq Böke, which had been supported by the high officials named above. Following Aqiq Böke’s submission in 1264 they were tried and executed. The event in question is well documented and is

22 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 Yasa — I.R.] and model their action thereon.” I shall have more to say on this statement later.


described in detail by Rašid al-Din, who mentions all those personages. It is clear from this that in 1264, in cases of sedition perpetrated by Mongol princes and dignitaries, justice was still carried out in accordance with the *jasaś* of Činggis Qan, i.e. with the Great *jasaś*.

Further instances of the term *jasaś*y occurring in the Yuan *tien-chang* and other Chinese sources of the Yuan period are given by Ch'en, but unfortunately they do not specifically refer to the ‘Great *jasaś*’ or to Činggis Qan and I, therefore, prefer not to consider them in the present discussion, which is only concerned with Činggis’ *jasaś*y. As noted by Professor Cleaves, at least some of those references appear to be to the Great *jasaś*; in the majority of cases, however, the term *jasaś*y simply means ‘the law’, i.e. Mongol (customary) law as updated, supplemented, and enforced by Činggis’ successors.

Ch'en’s conclusion is that the *jasaś* was a collection of rules and instructions given by Činggis Qan in response to the needs of specific circumstances and was later formally promulgated in 1229. Although it was not a systematically organized legal work, the *jasaś* provided the Mongolian ruling clan with guidelines for the administration of government, especially in matters of military discipline and organization. The *jasaś*y did not apply universally as a code to all tribes under the Mongolian domination, but by virtue of its authoritative character, it did serve as a principal legal source in China for the period immediately following the fall of the Sung dynasty. Because Chinese society soon proved too complicated for Mongolian customary law to deal with, the application of the *jasaś*y to Chinese cases diminished gradually and by the end of the thirteenth century, the *jasaś*y as a source of law appeared to be of minimal importance.

Commenting on Ch'en's discussion, Morgan states that Ch’en’s remarks (especially those on pp.4-8), ‘while accepting the authority of Riasanovsky and being “pre-Ayalon” on the *Yasaś’s* contents, do not seem to show that the evidence of the Chinese sources is irreconcilable with the arguments advanced in this paper (i.e. “The *Great Yasaś*” — I.R.). Indeed, it has been said that the Mongol Yuan dynasty was unique in Chinese history in that it did not have a formal penal code. It is even suggested that the notion of such codes was meaningless to the Mongols, and that they preferred to rule through individual regulations and legislation in China. See J. D. Langlois, Jr., in Langlois, ed., China under Mongol rule, Princeton, 1981, p.10, n.20, citing Uematsu Tadashi. In his book *The Mongols*, Morgan does not refer to Ch'en or to the Chinese evidence for the Great *jasaś*.

Although it is true that the Chinese sources supply scant information on the *jasaś*y of Činggis Qan, what they tell us is, I believe, significant, particularly if we analyze it in conjunction with the evidence provided by the *Secret History*, a source which, in my opinion, deserves also closer scrutiny.

In the *Secret History*, the word *jasaś* (= *jasaś*) occurs nine times (§953 [twice], 189, 193, 197, 199, 227, 257, and 278) glossed in Chinese as fa-tu 法度 ‘regulation, ordinance, law’ in all cases except once in §153, where it is
glossed *chûn-*fa 军法 ‘military ordinance’. The glosses are, however, very late additions (end of the fourteenth century), whereas the text of the Secret History goes back to the first half of the thirteenth century. It is necessary, then, to examine the context closely to determine the exact meaning of the term.

1 & 2. (§153, both instances with the same contextual meaning, Činggis’ *jasar* of 1202 is a military one with normative force: “When we overcome the enemy, we shall not stop to plunder. When the victory is complete, the booty shall be ours, and we shall share it. If we are forced by the enemy to retreat, let us turn back to the point where we began the attack. The men who do not turn back to the point where we began the attack will be cut down.” As usual with the *jasar*, punishment for contravention is mentioned (or implied).

3. (§189) Here *jasar* = ‘law(s) issued by the ruler’—in this case by Gürêtesü, the forceful mother of Tayang Qan of the Naiman, whose ‘law’ is described as having become ‘harsh’ (*qurţa*, lit. ‘sharp’). In the present instance, *jasar* is, therefore, virtually synonymous with ‘rule, government’, the meaning that this word still has in modern Mongolian.

4. (§193) Dodaí Čerbi advised Činggis Qan in 1204 to the effect that, to overcome the more powerful Naiman forces, it was necessary to fatten first the lean Mongol geldings. In order to delay the Naimans’ offensive and gain time to fatten the horses, Dodaí proposed a clever scheme, viz., to make the Mongol soldiers light fires in different places at night, thus creating the impression that they were spread over a wide area and more numerous than in reality. The text then says: *ene uge-yi jobšyeyi Činggis Q’an jarliq bolunun teyin bôet gal-muut tulï-ülükün ke’en čerli-ta jasaq tungqabai* “Approving these words (of Dodaí Čerbi), Činggis Q’an gave the following order: ‘(Things) being so, make them light the fires!’ and he proclaimed the law to the soldiers (lit. ‘at the moment when Č.Q. gave the order, saying ‘....’; he proclaimed the *jasaq* to the soldiers’).” What Činggis did, then, was to issue the order and proclaim it as *jasar*, i.e. as if it were a law, or with the full force of the law, meaning that in view of the critical situation facing the Mongols, any breach of this order would be dealt with with extreme severity as prescribed by the *jasar*. In my opinion, this passage has been misunderstood by previous translators, who have incorrectly assumed that Činggis here means simply ‘order’. Now, the rather loose usage of the term *yasa* when an ‘order’ or ‘decree’ (*firmân*) is meant in the Islamic sources is well documented, but the Chinese and Mongol sources distinguish clearly the two terms, as shown by the consistency of the Chinese renderings (*ja-lang fa-tu* for *jasar* and *sheng-chib* 聖旨 for *jarliq*), and by their regular usage in all the Mongol documents (epigraphies, edicts) of the Yuan in Uighur and ‘Phags-pa script. In our passage, *jarliq* is also glossed as *fa-tu* ‘law’ in the Chinese interlinear version.

5. (§197) Činggis Qan, angry at Naya’a Noyan for his delay in delivering Dayir Usun’s daughter Qulan (Qatan), and fearing a case of lèse majesté, /Khan (The Secret History of the Mongols) (Leiden, New York, Kœbenhavn, Köln: E.J. Brill, 1990), p.93. The event in question must be dated 1203/04.


Cleaves, Secret History of the Mongols, p.130 and n.69 (where, however, '197' is a typographical error for '199').

Cf. ibid., p.134.

Cf. ibid., p.165.

Cf. ibid., p.199. In the end, however, Činggis Qan did not execute Toqučar, but had him demoted.

Cf. ibid., p.223.

Cf. ibid., p.21.

The recording (či biči, lü biči) of Činggis' words, as well as of the words of other personages, by scribes at the Mongol court is confirmed by actual eyewitnesses such as the Chüan-chên monk Li Chih-ch'ıang 李志常 (1193–1256) in the Hsi-yu ch'i, Hsi-yung Wang Chung-an hsien-sheng i-shu ed. (Shanghai, 1940), A, 46a; B, 5b. Cf. A. Waley, trans., The travels of an alchemist, The journey of the Tz'u-chi ch'ang-ch'ı (1235) from China to the Hindustan at the summons of Chunga Khan, recorded by his disciple Li Chih-ch'ıang (London: George Routledge & Sons, 1931), pp.102, 113. For the office of bičëči (= bičëčiš), or scribe-secretary, see the important paper by Scheuch, J., Jáchal (Cha-chi)SU-ch'iin (札駹兒訥兒的), "Shuo Yuan-shih chungti 'pi-che-ch'i' ping-chien lun Yuan-ch'i ti 'Chung-shu ling', "reprinted in Cha-chi's Ssu-ch'iin, Meng-ku shih lun-t'ung, 2 vols. (Taipei: Hsieh-hai Ch'u-p'an-shu, 1980), pp.305–405 (esp. pp.305–377). Cf. also I. de Rachewiltz, 'Personnages et personnalités in North China in the early Mongol period,' JesHO 9 (1966): 99–103; F. W. Cleaves in HIA 16 (1953): 61, n.1; and Doerfer, Türkische und mongolische Elemente, no. 718.

Among them, the Uighur Tu-t'a Tung-a 塔塔鈞阿(Tatar Tüg'i; appointed c.1260); the Kereit Sira Oqul (c.1260); the Xitans Yeh-li Nieh-eh 英烈兒 (c.1210); and Yeh-li Ch'ua-t'ei 英烈楚特 (c.1218–19), the Kereit (or Uighur) Chiuqü (or Chingqü) 錦州(錦州), a čerbi and bičëčiš (c.1220), etc. See de Rachewiltz, "Personnals," pp.100–2; I. de Rachewiltz, H. L. Chan, C. C. Hsiung, F. W. Geiger, eds, In the service of the Khan. Eminent personalites of the early Mongol-Yuan period (1200–1300), with the assistance of May Wang, Asiatische Forschungen 121 (Wiesbaden: Otto Harrassowitz, 1995), pp.95–111, 141ff.

wants to make such a breach a matter of 'law.' Date: 1204. Here jasya = 'normative law.' Cf. Cleaves' translation: 'I shall make [it a matter of] ordinance,' adding in a footnote, 'i.e., I shall make a precedent which shall serve as law for the future.' See also §§197 and 257 below for other instances of the application of the jasya. 42

6. (§199). Činggis gives a number of military directives in 1205 concerning the use of horses and hunting for provisions to be treated as 'law', with due apprehension and punishment of transgressors. 43 As in no. 5 above (§197), jasya = 'normative law'.

7. (§227) Further military directives issued in 1205 by Činggis Qan, here with regard to the companies of the Guard (keşik [= keşig]) serving on roster duty, again with prescription of punishment for defaulters. 44 jasya = 'normative law'.

8. (§257) Činggis, angry at his commander Toqučar's plunder of the border towns of Qan Melik (i.e. Amin al-Mulk), thus causing the latter to turn against the Mongols (in 1220), intends to make a law to deal with such matters in the future, just as in no. 5 above (§197). Capital punishment for infringement is also mentioned. 45 Here too jarylı = 'normative law.'

9. (§278). Oğudei re-proclaims (in 1229?) Činggis Qan's regulations concerning the organization and duties of the Guard as enunciated in §§227, 229 and 232, with some modifications. The context in which the term jasya is used is identical with no. 7 (§227) above. 46 jasya = 'normative law.'

Still in the Secret History we find one more occurrence of jasya in §74, as jasya yet (= jasya + poss. suffix -yet) with the meaning of 'lawgivers.' 47

Reviewing the above occurrences in the earliest Mongolian source, we notice that jasya is invariably used in the sense of a ruler's directive, as a legally binding precedent, a normative law the infringement of which entails severe (usually capital) punishment. Since jasya is the law of the ruler, i.e. the law of the state, it can by extension also mean 'governance, rule' (as in Secret History §189). Although one or more 'decrees' (jarylı) may be treated as, or constitute, a 'matter of jasya' if they are deemed important enough for the qan to decide so (as, e.g., in Secret History §197 and 199), on no account can jasya be equated with jarylı since the latter, even though also a ruler's pronouncement, does not have per se the normative force of jasya; and a jarylı can never be understood in the sense of 'rule, governance' like jasya.

In the Secret History we also notice the absence of any reference to the Great Jasya, or to any 'written' jasya: The Law was certainly there in form of laws, prescriptions and rulings issued by the elected qan, but was it written down and codified in his lifetime? We know that Činggis Qan had scribes (bičëčiš) who recorded his words, and instances of their 'recordings' are well documented in the Chinese sources of the period. 48 His chancellory included people with knowledge of the Uighur script and of Chinese. 49 The famous Sīgī Qutuqsh, about whom so much has been written, kept records of judicial
matters and population distribution, no doubt written in Uighur script.** It is reasonable to assume that Činggis' 'laws' were set down in some form, but we cannot prove it, since it is not clear what is meant by the 'decisions on judicial matters' (jarqu jarruqfan) recorded by Šigi Qutuq, and some scholars have suggested that they may have had nothing to do with the Časay.**

When Öödēi 'promulgated the Great Časay' in 1229, he must have intended to make known to the wider audience the principles of governance of Činggis Qan, i.e. those matters that were of primary concern for the security of the state, the ruling clan, the military, and those affecting the subjects. The purpose of such a promulgation would have been threefold: the princes, the nobility and army leaders were to be reminded of their responsibilities; the subjects, of their duties; and the newly elected emperor, of his solemn acceptance of the principles and laws established by his predecessor, the founder of the dynasty. This acceptance implied the respect of Činggis Qan's will and the continuation of his policies. One may cite, in this connection, Juvaini's statement to the effect that when a qan is elected or the army is mobilized, or a quriltai is held, the written code of the Časay is produced, and the qan and princes govern their actions by it.** This practice may indeed have begun at the great quriltai of 1218–19 which decided the Western Campaign, i.e. the war against Khwārazm (1219–24). Referring to the launching of the campaign, Juvaini says that Činggis Qan 'equipped and instructed his sons, the great emirs, the noyans and the thousands, hundreds and tens, disposed the two wings and the vanguard, proclaimed a new yasa, and in the year 615/1218–19 commenced the march.'** Rašíd al-Din, referring to the same event, writes: 'He (Činggis Qan—I.R.) convoked the assembly, held a quriltai, and established anew the guiding principles of the regulations (qiyin), the Law (Y'asa) and the former customs (yorun), and took the field against the country of the Xvarazm-Sah.'** Now one of the most important regulations of the Časay—for it affected the very life of the qan and the core of the Mongol military machine—concerned the organization of the Guard (kesiğ). That a breach of Činggis' ordinances on the Guard should constitute 'a violation of the Časay' is specifically stated in §227 (see above, no. 7). This, of course, flatly contradicts Ayalon's statement that accounts of Činggis Qan's organization of the army and of his bodyguard in the Secret History are 'never ... connected in any way with the making or with the contents of the Mongol law.'** Interestingly enough, these very regulations, albeit in slightly altered form, were re-proclaimed by Öödēi with specific mention of both Činggis Qan and the Časay in §278 (see above, no. 9).** Thus we have here an important section of Činggis' Časay proclaimed anew by his son and heir. Could this not be part of Öödēi's 1229 'promulgation' of the Great Časay duly recorded in writing and hence preserved in the Secret History? I am of the opinion that it very probably is. It is now widely accepted that the main body of the Secret

52 Juvaini, p. 25.
53 Ibid., p.81.
55 Morgan finds it odd that "the incident is not reflected in the Secret History of the Mongols" (p.165). But the Secret History is not a complete record of Činggis' actions; it is an uneven and incomplete epic-chronicle, especially deficient for certain periods of Činggis' life and many important events, such as the Western Campaign, which is treated very superficially. There is nothing odd, in my view, about such an omission, given the nature of the work and the state in which it has been handed down.
56 See Ayalon, Outsiders, p.135.
56 The modifications in question concern the appointment of the new commanders. In view of the substantial identity of the old and new regulations, the Chinese sectional summary of the Secret History §278 does not repeat them, but merely states that Öödēi Qan re-proclaimed Činggis' regulations concerning the duties of the day-guards and of the officers in conformity with the previous ones. See I. de Rachewiltz, transl., The Secret History of the Mongols, Chapter Twelve (= Suppl II), PFEIH 31 (March 1985): 78.
History (§81–268) dealing with Čingiss’ ancestors and his own life was originally put down in writing in 1228, the year corresponding to the one given in the colophon (§282). Čingiss’ regulations on the Guard which are found in §227 were, therefore, also recorded in 1228 at the latest; they were then re-promulgated and again recorded a year later. It is indeed regrettable that the section on Ögdöei’s reign in the Secret History is so short and fragmentary for the period of Ögdöei’s rule is extremely rich and interesting. A fuller record of his deeds would have undoubtedly contained additional information on the Ġasay.

In addition to regulations concerning the Guard, the section devoted to Ögdöei in the Secret History records provisions for the post-relay system (jam). It is almost certain that the latter originated under Čingiss Qan, since the jam ordinance preserved in the Yung-lo-ta-tien 永樂大典, which emanated from Ögdöei although issued one month (15 January 1242) after his death, begins with the words “In accordance with the issued Ġasay[?] that We ever received”—i.e. in accordance with Čingiss Qan’s Ġasay that had already been promulgated (presumably in 1229). 60

Measures concerning the organization of the army and the Guard, and those insuring the efficiency of communications through the post-relay system were of paramount importance for the security and proper functioning of the state. It is therefore not surprising that they were protected by appropriate legislation, viz. by the Ġasay. In spite of the recent demythologizing of the Great Yasa as handed down by the Muslim authors, and the already mentioned ambiguity in the Islamic sources of the very term yasa, there is no reason, in my view, to reject Juvaini’s statements on the yasa(s) when they are supported, directly or indirectly, by independent sources. To this category belong those yasas dealing with the Mongol army and with the jam (= Ġam) which are mentioned in the chapter on Čingiss Qan’s yasas in the Ta’ris-i Ġabān-gūsāy. The Mongol, Chinese and Persian sources all agree in connecting the regulations on such vital matters with the Ġasay of Čingiss Qan, and I have no doubt that they were. As I have already pointed out, Čingiss’ successors ‘updated’ the regulations that were sanctioned by the Ġasay, but the guiding principles of the Ġasay were, by definition, not subject to change. As Pelliot says, the Ġasay was “la loi arrêtée sous Gengis-khan.” 61

As stated earlier, it has been claimed that the Ġasay represented knowledge—either written or verbally transmitted—that was jealously guarded within the narrow ruling circle of the Chingiside princes, and that this may account for the fact that it did not survive as a corpus, and that we know so little about it. Whatever the truth of this claim, we know that the commands of the Ġasay were made known to the leaders of the subjects, or potential subjects, of the Mongols so that they would “respect and fear” the authority of the Mongol qan. In the famous letter of Gūyūg to Pope Innocent IV we read: “And if you keep to your word, thou, who art the great Pope, together with all the kings, must come in person to do homage to Us. We shall then cause you to hear every command (firmān) that there is of the Yasa.” 62 These
words, proceeding as it were straight from the qan's mouth, and not from a less than partial or unreliable historian, are most illuminating, and ought to dispel any lingering doubt in our minds about the existence of the *jasay* as a code of laws. Furthermore, the letter to the pope was issued in 1246, immediately after Güyük's enthronement; therefore, we can safely assume that Güyük's *jasay* was essentially the same *jasay* that Güyük had inherited from his father Ögedei and of which he was said to be such a strict observer: ultimately it was Činggis' *jasay*, the Great *jasay*.

The Franciscan friar who brought back Güyük's reply to Innocent IV was John of Pian di Carpine, whose *Historia Mongalorum* is a precious early
account of the Mongols and their customs. As pointedly noted by Dr. Peter Jackson in his recent review of Ayalon's book *Outsiders in the Lands of Islam*, Friar John distinguishes between the *traditiones* or traditional customs, and the *leges et statuta*, i.e. the laws (lit., 'the fundamental and particular laws') issued by Činggis Qan. The former must undoubtedly refer to Mo. *yosun*, and the latter, I think, cumulatively to the *jassay*. Certainly, the two examples of such laws quoted by Friar John fall within the purview of the *jassay*; rather than within that of the *jarlīys*. In particular, the first example concerning Činggis' *injunction* 66 on the qan's election by *quriltai*, and capital punishment for anyone who assumes the supreme power arbitrarily, is confirmed by Juvaïn who refers to the inviolability of this procedure as one sanctioned by Činggis' *yasa*. 67

In carrying out the above survey, I have covered ground already traversed by several of my predecessors who have investigated the complex problem of the *jassay*; and to whom I am greatly indebted. My purpose has been to put things in better perspective by probing somewhat deeper into the Chinese and Mongol sources in order to extract all the information they can yield. At the same time, I have not lost sight of what the Islamic sources, in particular Juvaïn, say on the subject, my concern being—in the case of the latter—not to throw out the baby with the bath water. Thus, on the basis of all the information gathered from the *Secret History*, the Chinese historical and literary sources of the thirteenth and fourteenth centuries, the historian Juvaïn (selectively), and additional documents whose reliability is undisputed, such as Güyük's letter to Innocent IV, we can draw the following conclusions with regard to Činggis Qan's *jassay*:

1. The existence of the *jassay* is well attested for the period of Činggis Qan (as early as 1202 according to the *Secret History*).

2. The *jassay* consisted of a number of binding injunctions and normative rules concerning matters of governance, military administration, the administration of justice, the division of spoils, etc., as formulated by Činggis Qan, to be handed down to, and implemented by, his successors.

3. The *jassay* was elaborated over several years, its injunctions being determined by particular exigencies and circumstances. It was, therefore, an evolving *corpus* of laws, the core of which was apparently established by Činggis Qan in the period immediately preceding and following his election as qan in 1206. In its original form it was 'closed' at his death in 1227.

4. The *jassay* was meant to be both a body of fundamental laws and a permanent institution to be carefully protected against change, and serving as *the* ultimate authority on policy decisions and judicial matters. In this respect it differed from other imperial pronouncements, such as the *jarlīys*, which lacked those basic characteristics, being *ad hoc* prescriptions on specific issues.

5. There is no direct evidence that the *jassay* was a written code. However, taking into account that (i) scribes and individuals with knowledge of Uighur script were in Činggis Qan's entourage from about the time when the *jassay*
is first mentioned in the *Secret History*, i.e. the first decade of the thirteenth century; (ii) one of these individuals (Ṣīgī Ṭutuq) was entrusted with recording administrative and legal matters in special books in 1206; (iii) we have the personal testimony of a Chinese witness (Li Chih-ch’ang) to the actual recording of Činggis’ orders in 1222; (iv) the *Jasär*, being a collection of Činggis’ pronouncements on vital issues, such as the qan’s election, could not be entrusted to human memory alone, with its whims and failings; (v) there are (admittedly later) sources clearly stating that the ‘ancestral’ *Jasär* was read, not recited, on certain occasions; and (vi) the sections of the *Jasär* preserved in the *Secret History* were put down in writing at the latest in 1228, we may have good reason to assume that the provisions of the *Jasär* were almost certainly recorded already in Činggis’ time. We have, unfortunately, no way to determine whether they had yet been compiled into a proper code like, for instance, the traditional Chinese codes. In my opinion, it is quite likely that these provisions were not arranged and presented in a very systematic way, but rather in a somewhat loose fashion akin, perhaps, to the arrangement of some of the material found in the *Secret History*, but this is pure speculation.

6. After Činggis’ death, his *Jasär* became known as the ‘Great *Jasär*’ (the first occurrence of this expression is in the *Yüan-sibh* Annals, s.a. 1229).

7. Ögdöei Qaγan (r.1229–41) began the custom of ‘proclaiming’ the Great *Jasär* upon the qan’s enthronement to confirm its validity and his adherence to it. Unfortunately, we also have little information on this custom, but its very existence (attested independently by both the Chinese and Persian sources) confirms the importance of the *Jasär* as an institution in the following reigns.

8. Beginning with Ögdöei, the Great *Jasär* underwent some modifications to allow for structural changes in military organization, etc., as determined by the growth of the Mongol empire; these modifications, however, did not affect the fundamental thrust of the *Jasär*.

9. Although the enforcement of the *Jasär* pertained to the qan, who was its depository, and to specially appointed high officials—the (peke) ğaruyčis or (Great) Judges—the provisions of the *Jasär* were made known to ‘outsiders’ for the purpose of making them comply with the Will of Heaven as expressed in the commands of Činggis Qan, in other words to exact obedience to Mongol authority. In this way, some of the contents of the *Jasär*, the original text of which is lost (as is the case of that other great book, the *Altan deber*), has been preserved in other works beside the *Secret History*, such as the *Historia Mongalorum*, the *Ṭarţix-i jahān-gušā*, and various Chinese documents of the Yuan period.

10. For reasons already (and amply) discussed by other investigators, the *Jasär* gradually lost its importance, the main causes of its decline being the political fragmentation of the Mongol empire, and alien (local) cultural influences. The very meaning of the word underwent a change. In the West, the *Jasär* was assimilated to the yāsās or ‘commands’ of individual rulers, thus often becoming indistinguishable from yarṭγys; in the East, it came to
mean simply Mongol 'laws and regulations' as invoked in the case of serious crimes usually entailing the death penalty.\textsuperscript{69} This interesting development is also a reflection of the differing legal traditions in the Muslim world and in China.

It will be seen that the above conclusions confirm, on the whole, those reached by Ratchnevsky; they support also, to some extent, the hypothesis proposed by Morgan, that 'There was probably believed to be a 'Great Yasa of Chingiz Khan', derived in part from Chingiz himself and perhaps in part from earlier Mongol custom. But this was not written down in any coherent form, and it was therefore possible to attribute to it a wide variety of provisions, as was thought necessary or desirable. In practice it may very well have been a gradual evolving body of custom, not only beginning before the time of Chingiz Khan but continuing after him.'\textsuperscript{70} From all the available evidence, I now think we can be more positive about the existence of this 'body of customs' (which I would rather call a 'body of laws'), and the likelihood that it was actually a written document, even if lacking 'coherence' from our point of view. Such conclusions have been reached through a somewhat long and convoluted process, but in my own experience with historical research, especially concerning the Mongol period, it is seldom the case that solutions are neatly served to us on a platter.
Page 91, n.3, ll.4/5: for altais-/chen read altai-/schen
" 94, n.20, l.27: for Čing-gis read Činggis
" 96, n.49, l.13: for Wies-baden read Wiesbaden
" 100, n.65, ll.6/7: for Türk-/ische read Türk+-sche
" 102, n.65, ll.4/5: for medi-/oevo read medio-/evo