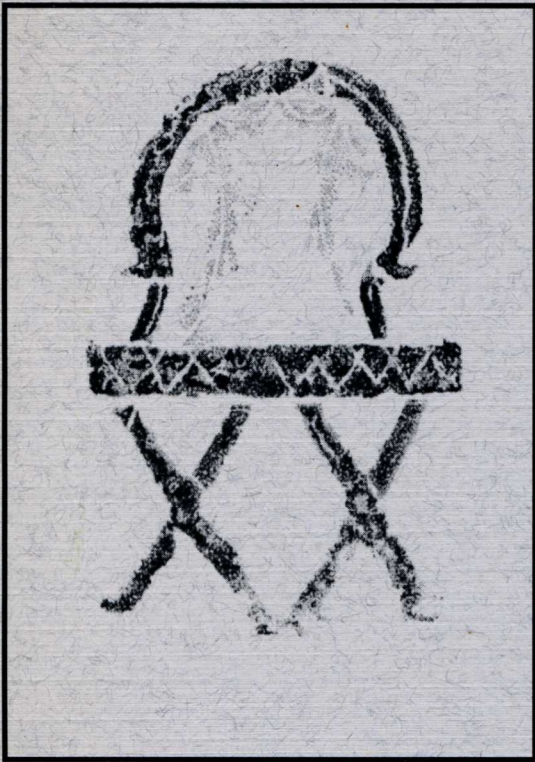


To Natasha
with my best wishes
for 1995,
Jan. 95

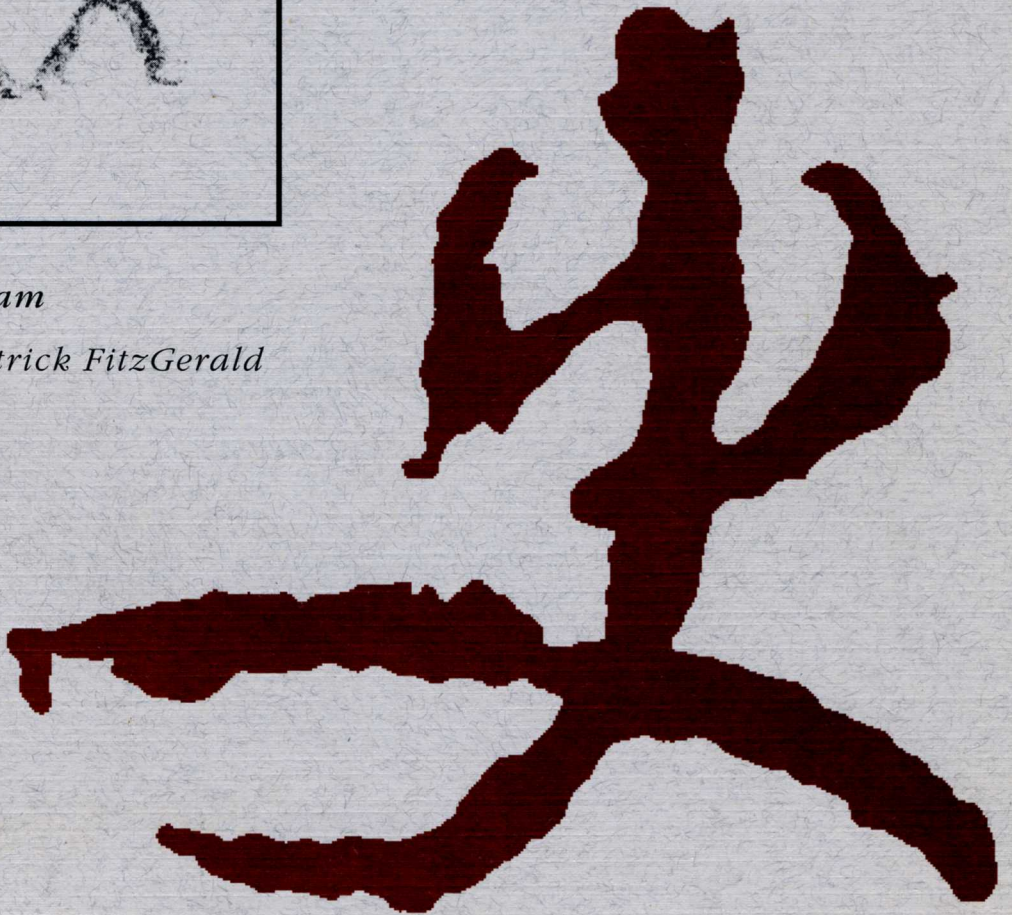
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史 *In Memoriam*

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 *yasag* 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 *Ĵasay*. See their titles in the 'Liste der zitierten Werke' on p.110.

⁸ See D. Ayalon, "The great *Yasā* 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 *Ĵasay* with the *Ĵasay* of a particular ruler; (7) as a result, the *Ĵasay* of Činggis Qan was eventually replaced by the *Ĵasays* of later Mongol rulers and did not survive in its original form, especially since Činggis Qan's *Ĵasay* 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 *Ĵasay* 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 *Ĵasay* of later rulers.⁴

Further, from indirect evidence and what he assumes to be 'genuine' fragments of the *Ĵasay*, 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 *Ĵasay*. He also stresses the distinction between the *jarliy* 'order(s), decree(s)', *Ĵasay* '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' *Ĵasay*. Ratchnevsky assumes here that Činggis' code of laws, the 'Great *Ĵasay*', was embodied in the 'Great Book of *Yāsās*' described by Ĵuvaini.⁷

In his investigation of Činggis' *Ĵasay*, 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 Ĵuvaini and, to a lesser extent, of Rašīd al-Dīn, as well as from Maqrīzī, al-'Umari and Bar Hebraeus, all of whom quote sections or articles of the *Ĵasay*.⁸ However, in a series of fundamental articles analyzing Islamic sources on the *Ĵasay*, written chiefly for the purpose of evaluating the latter's true status under the Mamlūks 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 *Ĵasay* derive directly or indirectly from a single authority, viz. Ĵuvaini, whose *Ta'riḫ-i Ĵaban-gušāy* he describes as "a very biased and partisan source." Ayalon gives examples of Ĵuvaini's looseness and ambiguity detracting from the trust-

worthiness or accuracy of his information on the *Ĵasay*.⁹ Now, since Ĵuvaini remains our major source (and, virtually, the *only* Islamic one) on the subject, any study of Činggis' *Ĵasay* 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 Ilkhānate," 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, Rashid 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*, 1-11, 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 Mangḥol un niuca tobca'an (Yüan-ch'ao pi-sbi). Geheime Geschichte der Mongolen*, reprinted. (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 Qaγan—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* (γ). The expression 'Great *jasay* (γ)' (*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 Dgedü 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 Qaγan, 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., *Stnica 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 'magnus 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(y)' 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 Ĵuvaini refer to the same event when he writes: "And he [Güyük—I.R.] made a *yasas* 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 *yasas* 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 Ĵuvaini) 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 *jasays* (*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 *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-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 Bulya, 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(y), (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 Ĵuvaini, 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 Ĵuvaini'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), *Chin-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 Mengku 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 ĴasaŦ', and not to the *biligs* or maxims. Cf. F. W. Cleaves, "The 'Fifteen "Palace Poems" by K'o Chiu-ssu," *HJAS* 20 (1957): 428, n.10; 430, n.14. In the first of K'o's poems the expression 'Ancestral Precepts' stand for 'Great ĴasaŦ', 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 Toyos for Toyos. Bulya is the famous Nestorian minister Bulyai or Bolyai mentioned in William of Rubruck's *Itinerarium*. See Van Den Wynngaert, *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

/p.304b. Cf. P. Pelliot, "Chrétien d'Asie Centrale et d'Extrême-Orient," *TP* 15 (1914): 629.

²⁷ See Rashid al-Din, *Successors of Genghis Khan*, pp.263–4.

²⁸ Cf. the case of 'Otegin', i.e. of Činggis Qan's brother Temüge Otčigin, who was put to death in 1246 "in accordance with the *yasa*." See Juvaini, p.255.

²⁹ Ch'en, *Chinese legal tradition*, pp. 5–8.

³⁰ Cleaves, *Secret History of the Mongols*, pp.429–30, n.14. There are, for instance, numerous cases in Chinese documents where we find the expressions 'to contravene the *jasay*(*y*)' (*wei cha-sa* 違扎撒), 'to transgress the *jasay*(*y*)' (*fan cha-sa* 犯扎撒), and 'in accordance with the *jasay*(*y*)' (he, they) will be judged and punished' (*chao-i cha-sa tuan-tsui* 照依扎撒斷罪), and the like, all of which imply a breach of the law as understood by the Mongols, and the effect of which for the Chinese was invariably severe punishment. See Fang Ling-kuei, *Meng-ku yü*, pp.329–30; Ts'ai Mei-piao 蔡美彪, *Yüan-tai pai-hua-pei-chi-lu* (Peking: K'o-hsüeh Ch'u-pan-she, 1955), p.9 and n.5. Cf. Ratchnevsky, "Die *Yasa*," p.475.

³¹ Ch'en, *Chinese legal tradition*, p.xiv. Cf. *ibid.*, pp.4–8.

³² Morgan, "Great *Yasa*," p.170, n.24.

³³ See Haenisch, *Wörterbuch*, p.86; I. de Rachewiltz, *Index to the Secret History of the Mongols*, Uralic & Altaic Series, no.121 (Bloomington, Ind.: Indiana University Publications, 1972), p.246a.

³⁴ On this question see I. de Rachewiltz, "Some remarks on the dating of the *Secret History of the Mongols*", *MS* 24 (1965): 185–206; *idem*, "Brief comments on Professor Yü Ta-chün's article 'On the dating of the *Secret History of the Mongols*,'" *MS* 37 (1986–87): 305–9.

³⁵ Cf. Cleaves, *Secret History of the Mongols*, pp.81–2.

³⁶ Cf. *ibid.*, p.117; L. Ligeti, trans., *A mongolok titkos története* (Budapest: Gondolat Kiadó, 1962), p.77: "Fejedelemszönyvünknek, Gürbeszünek kemény a törvénye." Cf. §194: "The order (= discipline: *jasal*) has become lax."

³⁷ Hence Onon's rendering: "the rule of our Qatun, Gürbesü has become harsh." See U. Onon, trans., *The history and life of Činggis*

described in detail by Rašid al-Din, who mentions all those personages.²⁷ 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 *jasay* of Činggis Qan, i.e. with the Great *jasay*.²⁸

Further instances of the term *jasay*(*y*) occurring in the *Yüan tien-chang* and other Chinese sources of the Yüan period are given by Ch'en,²⁹ but unfortunately they do not specifically refer to the 'Great' *jasay* or to Činggis Qan and I, therefore, prefer not to consider them in the present discussion, which is only concerned with Činggis' *jasay*. As noted by Professor Cleaves, at least some of those references appear to be to the Great *jasay*; in the majority of cases, however, the term *jasay* simply means 'the law', i.e. Mongol (customary) law as updated, supplemented, and enforced by Činggis' successors.³⁰

Ch'en's conclusion is that the *jasay* "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 *jasay* provided the Mongolian ruling clan with guidelines for the administration of government, especially in matters of military discipline and organization. The *jasay* 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 Sùng dynasty. Because Chinese society soon proved too complicated for Mongolian customary law to deal with, the application of the *jasay* to Chinese cases diminished gradually and by the end of the thirteenth century, the *jasay* as a source of law appeared to be of minimal importance."³¹

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 *Yasa*'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 *Yasa*" —I.R.). Indeed, it has been said that the Mongol Yüan 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."³² In his book *The Mongols*, Morgan does not refer to Ch'en or to the Chinese evidence for the Great *jasay*.

Although it is true that the Chinese sources supply scant information on the *jasay* 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 *jasay* (= *jasay*) occurs nine times (§§153 [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 *čhün-fa* 軍法 'military ordinance'.³³ 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.³⁴ 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' *jašaŦ* 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."³⁵ As usual with the *jašaŦ*, punishment for contravention is mentioned (or implied).

3. (§189) Here *jašaŦ* = 'law(s) issued by the ruler'—in this case by Gürbesü, the forceful mother of Tayang Qan of the Naiman, whose 'law' is described as having become 'harsh' (*qurča*, lit. 'sharp').³⁶ In the present instance, *jašaŦ* is, therefore, virtually synonymous with 'rule, government', the meaning that this word still has in modern Mongolian.³⁷

4. (§193) Dodai 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, Dodai 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 üge-yi jöbšiyejü Činggis Qa'an jarliq bolurun teyin bö'et qal-nu'ut tüle'ülükün ke'en čeri'üt-te jašaq tungqabai* "Approving these words (of Dodai Čerbi), Činggis Qa'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 *jašaq* to the soldiers')." What Činggis did, then, was to issue the order and proclaim it as *jašaŦ*, 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 *jašaŦ*. In my opinion, this passage has been misunderstood by previous translators, who have incorrectly assumed that *jašaŦ* here means simply 'order'.³⁸ Now, the rather loose usage of the term *yāsā* when an 'order' or 'decree' (*firman*) is meant in the Islamic sources is well documented,³⁹ but the Chinese and Mongol sources distinguish clearly the two terms, as shown by the consistency of the Chinese renderings (*fa-ling* 法令 / *fa-tu* for *jašaŦ* and *šbeng-čhib* 聖旨 for *jarliq*),⁴⁰ and by their regular usage in all the Mongol documents (epigraphies, edicts) of the Yüan in Uighur and 'Phags-pa scripts.⁴¹ 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 (Qatun), and fearing a case of *lèse majesté*,

/Khan (The Secret History of the Mongols) (Leiden, New York, København, Köln: E. J. Brill, 1990), p.93. The event in question must be dated 1203/04.

³⁸ Cf. Ligeti, *A mongolok titkos története*, p.79; Cleaves, *Secret History of the Mongols*, p.121; Onon, *Činggis Khan*, p.96.

³⁹ Cf. Morgan's remarks in "Great *Yāsā*," pp.165, 168. For *firman* = *šbeng-čhib/jarliq* see Honda Minobu, "On the *Hui-bui-kuan i-yü* (Chinese-Persian vocabulary)," *Hokkaidō Daigaku Bungaku-bu kiyō* 11 (1963), p.171, no.1575. Cf. Doerfer, *Türkische und mongolische Elemente*, no. 1849. In the *Muqaddimat al-adab*, *jašaq* is actually translated as *salīq* 'tax'! See N. Poppe, *Mongol'skii slovar' Mukaddimat al-Adab*, 3 vols (Moscow & Leningrad, 1938–39; reprint ed., Westmead, Hants: Gregg International Publishers, 1971), p.203a.

⁴⁰ See Haenisch, *Wörterbuch*, p.86; A. Mostaert, *Le matériel mongol du Houa i i iu de Houng-ou (1389)*, I, édité par I. de Rachewitz avec l'assistance de A. Schönbaum, *Mélanges chinois et bouddhiques* 18, (Bruxelles: Institut Belge des Hautes Études Chinoises, 1977), p.65. Cf. also the 'Phags-pa inscriptions, where *jarliq* invariably = *šbeng-čhib*. Cf., e.g., E. Haenisch, *Steuergerechtheite der chinesischen Klöster unter der Mongolenherrschaft* (Leipzig: S. Hinzl Verlag, 1940), p.58, line 1 *et passim*.

⁴¹ The term *jašaŦ* does not occur in any 'Phags-pa inscription that I know of, but we find frequent references to *jarliq* (= *jarliq*) in them. See N. Poppe, *The Mongolian monuments in h'pags-pa script*, 2nd ed., trans. and ed. by J. R. Krueger, *Göttinger Asiatische Forschungen* 8 (Wiesbaden: Otto Harrassowitz, 1957), p.125a. As for texts in Uighur script, see for instance the inscription of 1362, where we find several occurrences of *jarliq* (= *jarliq*) 'Imperial order', and one of *jašaŦ* 'the law'. See F. W. Cleaves, "The Sino-Mongolian inscription of 1362 in memory of Prince Hindu," *HJAS* 12 (1949): 74a (Index). In the Mongolian version of the *Bodhicaryāvatāra* by Čhos-kyi 'od-zer (ed. 1312), we find the expression *jašaŦ yabudal* 'code and conduct', i.e. the moral code (= observance) of spiritual practice (rendering Tib. *brtul žugs* and Skr. *vrata*). See F. W. Cleaves, "The *Bodistw-a Čari-a Awatar-un Tayilbur* of 1312 by Čosgi Odzir," *HJAS* 17 (1954): 77, 78. Other examples could be cited.

⁴² Cleaves, *Secret History of the Mongols*, p.130 and n.69 (where, however, '197' is a typographical error for '199').

⁴³ Cf. *ibid.*, p.134.

⁴⁴ Cf. *ibid.*, p.165.

⁴⁵ Cf. *ibid.*, p.199. In the end, however, Činggis Qan did not execute Toqučar, but had him demoted.

⁴⁶ Cf. *ibid.*, p.223.

⁴⁷ Cf. *ibid.*, p.21.

⁴⁸ The recording (*chi* 記, *lu* 錄) 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 Ch'üan-chen monk Li Chih-ch'ang 李志常 (1193–1256) in the *Hsi-yu chi*, Haining Wang Ch'ing-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 Taoist Ch'ang-ch'un from China to the Hindukush at the summons of Chingiz Khan, recorded by his disciple Li Chih-ch'ang* (London: George Routledge & Sons, 1931), pp.102, 113. For the office of *bičēci* (= *bičigeči*), or scribe-secretary, see the important paper by Sechin Jagchid (Cha-ch'i Ssu-ch'in 扎奇斯欽), "Shuo Yüan-shih chung ti 'pi-che-ch'ih' ping-chien lun Yüan-ch'u ti 'Chung-shu ling'," reprinted in Cha-ch'i Ssu-ch'in, *Meng-ku shih lun-ts'ung*, 2 vols (Taipei: Hsüeh-hai Ch'u-pan-she, 1980), pp.365–463 (esp. pp.365–77). Cf. also I. de Rachewiltz, "Personnel and personalities in North China in the early Mongol period," *JESHO* 9 (1966): 99–103; F. W. Cleaves in *HJAS* 16 (1953): 61, n.1; and Doerfer, *Türkische und mongolische Elemente*, no. 718.

⁴⁹ Among them, the Uighur T'a-t'a T'ung-a 塔塔統阿 (*Tatar Toṅa?; appointed c.1204); the Kereit Šira Oṅul (c.1206); the Khitans Yeh-lü Nieh-erh 耶律捏兒 (c.1210) and Yeh-lü Ch'u-ts'ai 耶律楚材 (1218/19); the Kereit (or Uighur) Činqai (or Čingqai) 鎮(稱)海, a *čerbi* and *bičēci* (c.1220); etc. See de Rachewiltz, "Personnel," pp.100–2; I. de Rachewiltz, H. L. Chan, C. C. Hsiao, P. W. Geier, eds, *In the service of the Khan. Eminent personalities of the early Mongol-Yüan period (1200–1300)*, with the assistance of May Wang, *Asiatische Forschungen* 121 (Wiesbaden: Otto Harrassowitz, 1993), pp.95–111, 141ff.

wants to make such a breach a matter of 'law'. Date: 1204. Here *jasay* = '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 *jasay*." 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), *jasay* = 'normative law'.

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

9. (§278). Ögödei 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 *jasay* is used is identical with no. 7 (§227) above.⁴⁶ *jasay* = 'normative law.'

Still in the *Secret History* we find one more occurrence of *jasay* in §74, as *jasaytan* (= *jasay*+ poss. suff. *-tan*) with the meaning of 'lawgivers.'⁴⁷

Reviewing the above occurrences in the earliest Mongolian source, we notice that *jasay* 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 *jasay* 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' (*jarliṅ*s) may be treated as, or constitute, a 'matter of *jasay*' 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 *jasay* be equated with *jarliṅ* since the latter, even though also a ruler's pronouncement, does not have *per se* the normative force of *jasay*; and a *jarliṅ* can never be understood in the sense of 'rule, governance' like *jasay*.

In the *Secret History* we also notice the absence of any reference to the Great *jasay*, or to any 'written' *jasay*. 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 (*bičēcis*) who recorded his words, and instances of their 'recordings' are well documented in the Chinese sources of the period.⁴⁸ His chancellery included people with knowledge of the Uighur script and of Chinese.⁴⁹ The famous Šigi Qutuqu, about whom so much has been written, kept records of judicial

matters and population distribution, no doubt written in Uighur script.⁵⁰ 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' (*Ĵarqu Ĵarqulaqsan*) recorded by Šigi Qutuqu, and some scholars have suggested that they may have had nothing to do with the *Ĵasay*.⁵¹

When Ögödei 'promulgated the Great *Ĵasay*' in 1229, he must have intended to make known to the wider audience of the *quriltai* 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, Ĵuvaini'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 Ĵasay* is produced, and the qan and princes govern their actions by it.⁵² 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, Ĵuvaini 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."⁵³ Rašid 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 (*āyin*), the Law (*Yāsā*) and the former customs (*yūsün*), and took the field against the country of the Xvārazm-šāh."⁵⁴ Now one of the most important regulations of the *Ĵasay*—for it affected the very life of the qan and the core of the Mongol military machine—concerned the organization of the Guard (*kešig*). That a breach of Činggis' ordinances on the Guard should constitute "a violation of the *Ĵasay*" 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."⁵⁵ Interestingly enough, these very regulations, albeit in slightly altered form, were re-proclaimed by Ögödei with specific mention of both Činggis Qan and the *Ĵasay* in §278 (see above, no. 9).⁵⁶ Thus we have here an important section of Činggis' *Ĵasay* proclaimed anew by his son and heir. Could this not be part of Ögödei's 1229 'promulgation' of the Great *Ĵasay* 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*

⁵⁰ See P. Ratchnevsky, "Šigi-qutuqu, ein mongolischer Gefolgsmann im 12–13. Jahrhundert," *CAJ* 10 (1965): 96–8; idem, in I. de Rachewiltz et al., eds, *In the service of the Khan*, pp.79–80.

⁵¹ Cf. Ayalon, *Outsiders*, pp.135–7; Morgan, "Great *Yāsā*," pp.164, 174–6.

⁵² Ĵuvaini, p. 25.

⁵³ *Ibid.*, p.81.

⁵⁴ Rašid-al-din, *Sbornik letopisei*, I/2, trans. L. A. Khetagurov and O. I. Smirnova (Moscow & Leningrad: Akademiya Nauk SSSR, 1952), p.197. Cf. Morgan, "Great *Yāsā*," pp.165–6 (his translation is slightly different). 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.

⁵⁵ 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 Ögödei Qa'an 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)," *PFEH* 31 (March 1985): 78.

⁵⁷ See above, n.34. Among the scholars who accept the date 1228 are G. Doerfer, Š. Gaadamba, F. W. Cleaves (pers. comm.) and, more recently, M. Taube and U. Onon. Cf. also Ratchnevsky, “Šigi-qutuqu,” pp.118–19.

⁵⁸ I say ‘at the latest’ because these regulations were, of course, issued much earlier, at the 1206 *quriltai*; and in view of what has already been said about *bičēcis* and the recording of Činggis’ words, they may well have been written down before 1228.

⁵⁹ See Cleaves, “Fifteen ‘Palace Poems,’” p.429, n.14 (my emphasis).

⁶⁰ See Juvaini, pp.30ff.

⁶¹ See P. Pelliot, *Les Mongols et la Papauté*, ROC 23 (1922–23): 20, n.3. Cf. idem, *Notes on Marco Polo*, 3 vols. (Paris: Adrien-Maisonneuve, 1959–73), vol.1, p.336: “The *yāsā* is the code laid down by Chinghiz-khan, and the *yōsūn* (Mong. *yosun*) is the Mongol customary law.” On the inalterability of Činggis’ *ĵasay* see also Juvaini, pp.189, 256, 573.

⁶² Cf. the text of Güyüg’s seal in A. Mostaert and F. W. Cleaves, “Trois documents des Archives Secrètes Vaticanes,” *HJAS* 15 (1952): 485–6.

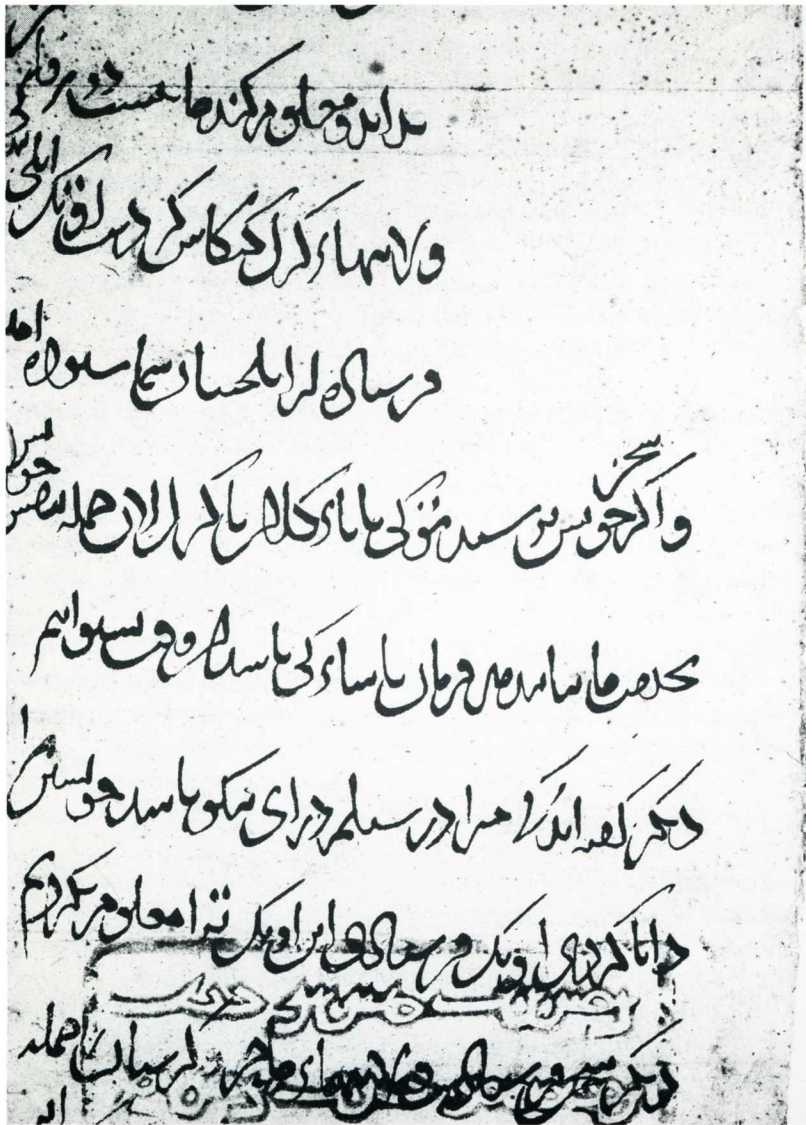
⁶³ Persian text in Pelliot, *Les Mongols et la Papauté*, p.17; French translation, *ibid.*, p.20; English translation by J. A. Boyle (followed here) in I. de Rachewiltz, *Papal envoys to the Great Khans* (London: Faber & Faber, 1971), p.213; German translation in Doerfer, *Türkische und mongolische Elemente*, vol.4, p.75. See Figure 1. Unfortunately, the Latin ‘version’ of the letter is different and to the words ‘every command that there is of the *Yāsā*’ of the Persian text correspond the words ‘nostram ... responsionem pariter atque voluntatem.’ See Pelliot, *Les Mongols et la Papauté*, p.13. Cf. Voegelin, “Mongol orders of submission,” pp.387–8.

History (§§1–268) dealing with Činggis’ ancestors and his own life was originally put down in writing in 1228, the year corresponding to the one given in the colophon (§282).⁵⁷ Činggis’ 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.⁵⁸ It is indeed regrettable that the section on Ögödei’s reign in the *Secret History* is so short and fragmentary for the period of Ögödei’s rule is extremely rich and interesting. A fuller record of his deeds would have undoubtedly contained additional information on the *ĵasay*.

In addition to regulations concerning the Guard, the section devoted to Ögödei in the *Secret History* records provisions for the post-relay system (*jam*). It is almost certain that the latter originated under Činggis Qan, since the *jam* ordinance preserved in the *Yung-lo ta-tien* 永樂大典, which emanated from Ögödei although issued one month (15 January 1242) after his death, begins with the words “In accordance with the issued *ĵasa(y)* that We have received”—i.e. in accordance with Činggis Qan’s *ĵasay* that had already been promulgated (presumably in 1229).⁵⁹

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 *ĵasay*. In spite of the recent demythologizing of the Great *Yāsā* as handed down by the Muslim authors, and the already mentioned ambiguity in the Islamic sources of the very term *yāsā*, there is no reason, in my view, to reject Juvaini’s statements on the *yāsā(s)* when they are supported, directly or indirectly, by independent sources. To this category belong those *yāsās* dealing with the Mongol army and with the *yam* (= *jam*) which are mentioned in the chapter on Činggis Qan’s *yāsās* in the *Ta’rix-i ĵabān-gušāy*.⁶⁰ The Mongol, Chinese and Persian sources all agree in connecting the regulations on such vital matters with the *ĵasay* of Činggis Qan, and I have no doubt that they were. As I have already pointed out, Činggis’ successors ‘updated’ the regulations that were sanctioned by the *ĵasay*; but the guiding principles of the *ĵasay* were, by definition, not subject to change. As Pelliot says, the *ĵasay* was “la loi arrêtée sous Gengis-khan.”⁶¹

As stated earlier, it has been claimed that the *ĵasay* 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 *ĵasay* 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.⁶² In the famous letter of Güyüg 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 (*firman*) that there is of the *Yāsā*.”⁶³ These

**Figure 1**

Section of Güyüg's letter to Pope Innocent IV (1246) containing a reference to the *Yāsā* (5th line from the top)

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 *Ĵasay* as a code of laws. Furthermore, the letter to the pope was issued in 1246, immediately after Güyüg's enthronement; therefore, we can safely assume that Güyüg's *Ĵasay* was essentially the same *Ĵasay* that Güyüg had inherited from his father Ögödei and of which he was said to be such a strict observer: ultimately it was Činggis' *Ĵasay*, the Great *Ĵasay*.

The Franciscan friar who brought back Güyüg's reply to Innocent IV was John of Pian di Carpine, whose *Historia Mongalorum* is a precious early

⁶⁴ See *JRAS* (1989): 327.

⁶⁵ See Giovanni di Pian di Carpine, *Storia dei Mongoli*, a cura di P. Daffinà, C. Leonardi, M. C. Lungarotti, E. Menestò, L. Petech (Spoleto: Centro italiano di studi sull'alto medioevo, 1989), p.264. Cf. Van Den Wyngaert, 64.

⁶⁶ Lat. *mandatum*. This is the word that Friar John uses elsewhere in his *Historia* for this particular provision of Činggis Qan. See *ibid.*, pp.284–5, and 293; cf. Van Den Wyngaert, pp.84 and 93.

⁶⁷ See Juvaini, pp.573–4; and Jackson's pertinent remarks.

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*,⁶⁴ 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.⁶⁵ The former must undoubtedly refer to Mo. *yosun*, and the latter, I think, cumulatively to the *Ĵasay*. Certainly, the two examples of such laws quoted by Friar John fall within the purview of the *Ĵasay*, rather than within that of the *jarliys*. 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 Juvaini who refers to the inviolability of this procedure as one sanctioned by Činggis' *Yāsā*.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 *Ĵasay*, 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 Juvaini, 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 Juvaini (selectively), and additional documents whose reliability is undisputed, such as Güyüg's letter to Innocent IV, we can draw the following conclusions with regard to Činggis Qan's *Ĵasay*:

1. The existence of the *Ĵasay* is well attested for the period of Činggis Qan (as early as 1202 according to the *Secret History*).
2. The *Ĵasay* 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 *Ĵasay* 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 *Ĵasay* 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 *jarliys*, which lacked those basic characteristics, being *ad hoc* prescriptions on specific issues.
5. There is no *direct* evidence that the *Ĵasay* 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 *Ĵasay*

is first mentioned in the *Secret History*, i.e. the first decade of the thirteenth century; (ii) one of these individuals (Šigi Qutuqu) 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 *Ĵasay*, 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' *Ĵasay* was *read*, not recited, on certain occasions; and (vi) the sections of the *Ĵasay* 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 *Ĵasay* 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 *Ĵasay* became known as the 'Great *Ĵasay*' (the first occurrence of this expression is in the *Yüan-shih* Annals, *s.a.* 1229).

7. Ögödei Qayan (r.1229–41) began the custom of 'proclaiming' the Great *Ĵasay* 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 *Ĵasay* as an institution in the following reigns.

8. Beginning with Ögödei, the Great *Ĵasay* 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 *Ĵasay*.

9. Although the enforcement of the *Ĵasay* pertained to the qan, who was its depository, and to specially appointed high officials—the (*yeke*) *ĵarĵučis* or (Great) Judges—the provisions of the *Ĵasay* 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 *Ĵasay*, the original text of which is lost (as is the case of that other great book, the *Altan debter*),⁶⁸ has been preserved in other works beside the *Secret History*, such as the *Historia Mongalorum*, the *Ta'rix-i ĵabān-gušāy*, and various Chinese documents of the Yüan period.

10. For reasons already (and amply) discussed by other investigators, the *Ĵasay* 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 *Ĵasay* was assimilated to the *yāsās* or 'commands' of individual rulers, thus often becoming indistinguishable from *yarli* ys; in the East, it came to

⁶⁸ For the *Altan debter* described by Rašid al-Din and its *Problematik* see P. Pelliot and L. Hambis, trans. & ann., *Histoire des campagnes de Gengis Khan. Čheng-wou ts'in-tcheng lou* (Leiden: Brill, 1951), vol.1, p.xv (not very reliable; see the following title, p.478, n.104); W. Hung, "The transmission of the book known as *The Secret History of the Mongols*," *HJAS* 14 (1951): 471, 474, 478, n.104 (Addendum), 481. Cf. Morgan, "'Great Yāsā'," p.169; idem, *Mongols*, p.226 (Index).

⁶⁹ Cf. n.30 above; and the Yüan handbook of official terms compiled by Hsü Yüan-jui 徐元瑞 (n.d.) entitled *Li-hsiieh chib-nan*, reprint ed. (Taipei: Wen-hai Ch'u-pan-she, 1970), p.53, where 'Great *Yasa*' is defined simply as 'in accordance with the laws and regulations' (*i t'iao-li fa-tu* 依條例法度).

⁷⁰ Morgan, "Great *Yasa*," p.170 (my emphasis).

mean simply Mongol 'laws and regulations' as invoked in the case of serious crimes usually entailing the death penalty.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 Khān', 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 Khān but continuing after him.*"⁷⁰ From all the available evidence, I now think we can be more positive about the *existence* of this 'body of custom' (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.

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CORRIGENDA TO I. DE RACHEWILTZ, 'SOME REFLECTIONS ON ČINGGIS
QAN'S YASAT' IN EAST ASIAN HISTORY 6 (DEC. 1993), 91-104

Page 91, n.3, ll.4/5: for altais-/chen read altai-/schen

" 94, n.20, l.27: for Čing-gis read Činggis

" 98, n.49, l.13: for Wies-baden read Wiesbaden

" 100, n.63, ll.6/7: for Türk-/ische read Türki-/sche

" 102, n.65, ll.4/5: for medi-/oevo read medio-/evo