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THE 'GREAT YĀSĀ OF CHINGIZ KHĀN' AND MONGOL LAW IN THE ĪLKHĀNATE

By D. O. MORGAN

One of the odder features of the Persian sources on the history of the Mongol period is the vagueness and comparative rarity of references to the 'Great Yāsā of Chingiz Khān'. This struck me with renewed force after reading Professor David Ayalon's articles on the Yāsā in *Studia Islamica*.¹ My suspicions about the whole matter having thus been aroused, it seemed to me that it might be an interesting exercise to look again at the origin and nature of the Yāsā before trying to estimate how Mongol law worked in the Īlkhānate. And so, as I hope to show in this paper, it proved.

I

Let me first of all outline the view that is usually taken of the Yāsā. At some time during his reign, and probably at the *qurultai* of 1206, Chingiz Khān promulgated a code of laws which were to be binding on his people and their descendants for ever. This was a codification of the ancestral traditions, customs, laws and ideas of the Mongols, to which Chingiz Khān added further laws of his own devising. Copies of this great code, the Yāsā, were kept in the treasuries of the Mongol princes for consultation as need arose. No complete copy has survived, but it is possible to assemble 'fragments' of the code from various sources, and by careful study of these fragments the general pattern of the Yāsā can be recovered.

There are, then, three essential elements in this reconstruction: Chingiz Khān laid down a coherent code, this was done at the *qurultai* of 1206, and the code may be reconstituted from surviving fragments. So far as I have been able to discover, these three elements seem first to have been brought together by Petis de la Croix, in his *Histoire du grand Genghizcan*, published in 1710, with an English translation following in 1722.² Petis de la Croix's sixth chapter is entitled 'The Description of the General Diet of the Moguls, called in their Language *Couriltay*. The Establishment of the *Yassa*, that is to say, the Mogul Laws. Temugin changes his Name for that of Genghizcan'.³ After giving an account of the *qurultai*, which he dates in 1205, the author continues:

When he had thanked them all (i.e. those present at the *qurultai*) for the Marks of Love and Respect they show'd him, being sensible that the chief Duty of a Princee is to establish good Laws, he declared to them that he thought to add to the antient Laws some new ones which he desired, and commanded that they would observe.⁴

There follows a list of 22 provisions of the Yāsā, derived in the main, apparently, from the Timūrid historian Mirkhwānd, with additions from the accounts of European travellers and other sources.

¹ D. Ayalon, 'The Great Yāsā of Chingiz Khān: a reexamination', A, *Studia Islamica*, 33, 1971, 97-140; B, 34, 1971, 151-80; C(1), 36, 1972, 113-58; C(2), 38, 1973, 107-56. (Hereafter Ayalon.)

² Paris, 1710. English translation as *The history of Genghizcan the Great*, London, 1722. I quote from the translation.

³ *ibid.*, 78.

⁴ *ibid.*, 79.

Petis de la Croix's view thereafter determined the pattern of all subsequent discussions of the *Yāsā*, and achieved classical formulation in V. A. Riasanovsky's *Fundamental principles of Mongol law*.⁵ It remained more or less unquestioned until Ayalon's articles began to appear in 1971.

The sources for the alleged promulgation of the *Yāsā* at the *quriltai* of 1206 are in effect two: the anonymous *Secret History of the Mongols* and the *Jāmi' al-tawārīkh* of Rashīd al-Dīn. According to the *Secret History*, the most nearly contemporary authority, on the occasion of the *quriltai* Chingiz Khān entrusted the supervision of certain important matters to his adopted brother, Shigi-Qutuqu:

'Divide up all the *subject* people and apportion them to *Our* mother, to Us, to *Our* younger brothers and sons according to the name of the people,

Splitting up those that live in felt-walled tents,

Separating those that live in dwellings with wooden doors.

Let no one disobey your word!

Further, he entrusted Shigi-qutuqu with *the power of judgement* over all and said to him, 'Of the entire people

Chastising the robber,

Checking the liar,

execute those who deserve death, punish those who deserve punishment.

Furthermore, writing in a blue (-script) register *all* decisions about the distribution and about the judicial matters of the entire population, make it into a book (i.e. permanent record). Until the offspring of *my* offspring, let no one change any of the blue writing that Shigi-qutuqu, after deciding in accordance with me, shall make into a book with white paper. Anyone who changes it shall be guilty'.⁶

What are we to make of this account, which even Ayalon regards as a description of the institution of the *Yāsā*? The first thing to notice, I suggest, is that nowhere in the passage is the term *yāsā* used to describe what Chingiz Khān has instituted. Indeed, although the term is found a number of times in the *Secret History*, it generally seems to mean 'order' or 'command'. It never refers to a legal code of any kind. A characteristic example occurs four years before the *quriltai*:

Chinggis-qahan engaged these Tatar *tribes* in battle at Dalan-nemürges . . .

Before fighting, Chinggis-qahan gave *this* order (*jasag*) to all: 'If we conquer the enemy, we shall not stop to plunder . . .'.⁷

Secondly, if we for the moment suspend our commitment to an 'institution of the Great *Yāsā*', what we find here, on further examination, is something quite different. By 1206 Chingiz Khān had reached a pinnacle of success. He

⁵ Tientsin, 1937. See also C. Alinge, *Mongolische Gesetze*, Leipzig, 1934; G. Vernadsky, 'The scope and contents of Chingis Khan's *Yasa*', *Harvard Journal of Asiatic Studies*, III, 1938, 337-60; idem, 'Juwaini's version of Chingis Khan's *Yasa*', *Annales de l'Institut Kondakov*, XI, 1939, 33-45; idem, *The Mongols and Russia*, New Haven and London, 1953, 99-110; M. Haider, 'The Mongol traditions and their survival in Central Asia (xiv-xv centuries)', *Central Asiatic Journal*, xxviii/1-2, 1984, 57-79. P. Ratchnevsky, 'Die *Yasa* (*Jasag*) Činggis-khans und ihre Problematik', *Schriften zur Geschichte und Kultur des alten Orients 5: Sprache, Geschichte und Kultur der altaischer Völker*, Berlin, 1974, 471-87, is an interesting discussion of the problems. See also his *Činggis-khan sein Leben und Wirken*, Wiesbaden, 1983, 164-72.

⁶ L. Ligeti, ed., *Histoire secrète des Mongols*, Budapest, 1971, 173-4. Translation from I. de Rachewiltz, 'The Secret History of the Mongols', *Papers in Far Eastern History*, 21, March 1980, 27. For another translation see F. W. Cleaves, *The Secret History of the Mongols*, Cambridge, Mass., 1982, 143-4.

⁷ Tr. de Rachewiltz, *PFEH*, 13, March 1976, 46-7; ed. Ligeti, 109; tr. Cleaves, 81.

was distributing rewards (*soyurḡal*) to his faithful followers. Shigi-Qutuqu's reward included the privilege of keeping the population registers that recorded the distribution of subject peoples among the royal family, and the exercise of judicial functions. Both the details of the population distribution and Shigi-Qutuqu's judicial decisions were, apparently, to be recorded by him in a 'blue book' (*kökö debter*).⁸ Such decisions were to be regarded as unalterable. But there is absolutely no indication that Chingiz Khān himself, or Shigi-Qutuqu as his newly appointed chief judge, was to lay down a general legal code. At most, Shigi-Qutuqu was authorized to begin the establishment of a kind of case law, a body of written legal precedents. I shall return later to the possible implications of this.

It seems to me, then, that we must conclude that the *Secret History of the Mongols* is innocent of any information whatever on the establishment of a 'Great Yāsā' at the *qurultai* of 1206 or at any other time.

Turning now to the evidence to be found in the *Jāmi' al-tawārīkh*, the standard discussion of it in Riasanovsky's book may be quoted:

Rashid-Ed-Din wrote that after his victory over Wang Khan (1206), Jenghiz Khan 'convoked a great assembly and in gratitude for his great success ordered wise and strong yassaks and happily ascended the throne of the Khans' . . . In another passage of his work, Rashid-Ed-Din spoke more definitely 'When the year of the hare came, which fell on the 614th year of Zul-ka'da (*sic*) (1218?) Jenghiz Khan convoked an assembly, organised the Kurultai, laid the foundation of the yassak which had been composed of innovations and ancient rules, and undertook a military expedition in the country of the Khorezmshah' . . . It is evident that, in the second case, reference was made to the law, or more exactly Code of Laws compiled from ancient provisions and innovations introduced by Jenghiz Khan and approved by the Kurultai. It is possible that the resolution to issue a code of Laws was first adopted in 1206, and that its fundamental rules were confirmed by the Kurultai in 1218 A.D.⁹

The first of Riasanovsky's quotations is misdated, and should refer to the year 599/1202-3. It has no connexion with the *qurultai* of 1206. Rashid al-Din's account of that event occurs later, and contains no reference of any kind to the Yāsā. In any case, the 1202-3 reference speaks of *yāsās* (*yāsāq-hā*), not of 'the Yāsā'. We clearly have here one of the many instances of *yāsā* as 'decree'.¹⁰

Riasanovsky's second quotation, concerning a *qurultai* in 1218-19, might be translated as follows:

He held a *qurultai* among them; he laid afresh the foundation of the practices (*ājin*) and customs (*yūsün*) of the Yāsā.¹¹

I regret to say, since I would prefer a tidy solution to the problem, that there is no escaping the fact that some kind of legal code is apparently implied here. Still, it is odd that the incident is not reflected in the *Secret History of the Mongols*, if this was indeed an event of major importance in the Mongol Empire's evolution. It is even more puzzling that, both on this occasion and elsewhere in the

⁸ On the 'blue book' see P. Pelliot, 'Notes sur le "Turkestan" de M. W. Barthold', and 'Les *kökö-däbtär* et les *hou-k'eou ts'ing-ts'eu*', *T'oung Pao*, 27, 1930, 38-42 and 195-8. Pelliot does not suggest a link between the incident of 1206 and the Yāsā.

⁹ *op. cit.*, 27. Riasanovsky's italics.

¹⁰ Rashid al-Din, *Sbornik letopisei*, ed. and tr. I. N. Berezin, *Trudy vostochnago otdeleniya Imperatorskago Russkago Arkheologicheskago Obshchestva*, XIII and XV, 1868-88. The text only is cited. (Hereafter Berezin). XIII, 238-9.

¹¹ Berezin xv 65.

Jāmi' al-tawārīkh, Rashīd al-Dīn's references to the *Yāsā* are so exceedingly brief and uninformative. Now Rashīd al-Dīn is known to have had unrivalled access to early Mongolian sources on the career of Chingiz Khān. It would hardly seem that he deduced from them that the *Yāsā* was a matter of any great importance. He never gives any kind of list of its contents, whereas he includes a long chapter giving an account of Chingiz Khān's *biligs*, or maxims. Ayalon remarks that 'it is . . . very unfortunate that Rashīd al-Dīn has so little to tell us about the *Yāsā*'s contents'.¹² Not so much unfortunate, I submit, as distinctly suspicious. If the greatest of all Mongol-period chroniclers thought the *Yāsā* hardly worthy of comment, one may very well begin to wonder whether modern historians may not, to say the least, have markedly overstated its significance. But whatever we may make of Rashīd al-Dīn's evidence, it is perhaps worth emphasizing at least that he does not connect the *Yāsā* with the *quriltai* of 1206.

II

So much for the sources on the origin of the *Yāsā*. I would like now to turn to the question of its contents. Here I must refer again to the first of Ayalon's articles. The main authorities that historians have used for the assembling of 'fragments' of the *Yāsā* are Maqrizī, al-'Umarī, Bar Hebraeus and Juwaynī. Ayalon demonstrated the 'inescapable elimination' of Maqrizī's supposed informant, Ibn al-Burhān, who was believed to have seen a copy of the *Yāsā* in Baghdad and to have reported its contents to Maqrizī. He then went on to show—quite conclusively, it seems to me—that Maqrizī derived his information without acknowledgement from al-'Umarī, and al-'Umarī and Bar Hebraeus theirs, with acknowledgement, from Juwaynī. Ayalon has thus drastically cleared the ground. Only one significant source, Juwaynī, remains for the contents of the *Yāsā*, and the total abandonment of the time-hallowed procedure of painstakingly assembling and classifying 'fragments' from other sources is indicated.

We must therefore give some attention to what Juwaynī has to say. The second chapter of his history is entitled: 'Of the regulations (*qawā'id*) which Chingiz Khān framed and the *yāsās* which he promulgated after his rise to power'. It is a chapter by no means lacking in perplexing features. The section in which Juwaynī allegedly describes the 'institution of the *Yāsā*' deserves to be quoted at some length:

As his judgement demanded, he laid down a canon (*qānūn*) for every matter and a regulation (*dastūr*) for every affair; while for every crime he fixed a penalty. And since the Tatar peoples had no script of their own, he gave orders that Mongol children should learn writing from the Uighurs; and that these *yāsās* and decrees (*ahkām*) should be written down on rolls. These rolls are called the Great Book of *Yāsās* (*yāsā-nāma-i buzurḡ*) and are kept in the treasury of the chief princes. Whenever a *khān* 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 and base their actions thereon; and proceed with the disposition of armies and the destruction of provinces and cities after that pattern.

At the time of the first beginnings of his dominion, when the Mongol tribes were united to him, he abolished reprehensible customs (*rusūm*)

¹² Ayalon, A, 139.

which had been practised by those peoples and had enjoyed recognition amongst them ; and he laid down such usages as are praiseworthy from the point of view of reason.¹³

We may notice in passing that, like the other relevant sources, Juwaynī does not associate the *Yāsā* with the *qurultai* of 1206—indeed, he offers no precise date.

Juwaynī's account is set in the context of a chapter in which he discusses Mongol practices with respect to religious toleration, hunting as a training for warfare, the organization of the army, official communications (the *yām* system), and taxation of the conquered territories. I would argue that it is this context that explains and makes sense of the chapter's *yāsā* references. The *yāsā* part of the chapter, it seems to me, amounts to a discussion of the promulgation by Chingiz Khān of precepts of various kinds, and the writing down and preservation of those precepts for future consultation. If the chapter is treated as a whole it is a doubtful proposition that what Juwaynī tells us about Chingiz Khān's *yāsās* should be forced into a pre-cast framework labelled 'Great *Yāsā* of Chingiz Khān'.

What, then, was it that was written down on those rolls in the treasury ? Apparently it was such precepts as might assist in the planning of 'the disposition of armies and the destruction of cities'. The manner in which such actions were to be taken was, it would seem, prescribed by the all-conquering Chingiz Khān. This is not at all the kind of thing that usually tends to characterize the lists of 'fragments' of the *Yāsā* of which Ayalon is so justly scornful—prohibitions of sorcery and adultery, of the Muslim way of slaughtering animals, of washing in running water—the sort of ancestral custom that Chingiz Khān's son Chaghatai defended and enforced so vigorously. No, it is far more likely to be the kind of thing to which, as we have seen, Juwaynī devotes the bulk of his chapter : the hunt ; the army ; the *yām* system.

In his discussion of the sources for the *Yāsā*'s contents, Ayalon—having dismissed Maqrīzī, al-'Umārī and Bar Hebraeus with ignominy—turns his attention to the only remaining source, Juwaynī. Nor does the unfortunate Juwaynī escape unscathed. He is described as 'a very biased and partisan source'¹⁴—not only because of his 'nauseating' 'servile flattery' of the Mongols as a whole, but more particularly because he was biased in favour of one branch of the Mongol royal house, the descendants of Tolui. Ayalon goes on to cast aspersions on Juwaynī's competence as a historian. He complains that Juwaynī continually wanders from the point in his chapter on the *Yāsā*, discoursing on a variety of important but irrelevant matters, when he ought to have been discussing the legal code :

The three major sections of the chapter on the *Yāsā*, which occupy its greater part, namely, the organisation of the army, of hunting and of the horse-post could easily be taken out of that chapter and form a separate entity with no reference to any kind of law . . . The fact that according to the title, the chapter deals with 'The Laws Chingiz Khān framed and the *Yāsās* which he promulgated', cannot serve at all as a guarantee that al-Juwaynī would literally adhere to it.¹⁵

¹³ Juwaynī, *Ta'rikh-i Jahān Gushā*, ed. M. M. Qazwīnī, 3 vols, Leiden and London, 1912, 1916, 1937 (hereafter Juwaynī), I, 17–18 ; tr. J. A. Boyle, *The history of the world conqueror*, 2 vols, Manchester, 1958 (hereafter Boyle), I, 25. I have made a number of changes in Boyle's translation of this passage.

¹⁴ Ayalon, A, 133.

¹⁵ Ayalon, A, 134–5.

This criticism appears to me to be entirely misconceived. Juwaynī says that his chapter will contain Chingiz Khān's regulations (Ayalon follows Boyle's misleading 'laws' for *qawā'id*) and decrees, or orders (*yāsā-hā*). This is precisely what it does contain. Juwaynī never promises to give an account of the 'Great *Yāsā*', and he is hardly to be blamed because we may consider that that is what he ought to have been doing. Juwaynī's use of the term *yāsā*, and even of the phrase *yāsā-nāma-i buzurg*, does not on the whole suggest that he was thinking in terms of a formal code of comprehensive legal enactments. We may notice, for example, the explanatory couplings of words: *qawā'id wa yāsā-hā*, surely, therefore, 'regulations' rather than 'laws'; *aḥkām wa yāsā-hā*, 'commands' or 'decrees'. A few lines before Juwaynī's supposed account of the institution of the *Yāsā* he uses a similar phrase: 'In accordance with the *yāsā* and *ḥukm* which he imposed, he utterly destroyed . . .'¹⁶ The phrase reads *yāsā wa ḥukmī*. The use of the final *ī* on *ḥukm* precludes any possibility of it being a proper noun: the same must therefore surely apply to the other half of the doublet, hence 'a *yāsā*', a decree, rather than 'the *Yāsā*'.

Consequently it is my view that a more generous attitude towards Juwaynī than Ayalon will allow is entirely consistent with the evidence. It is perhaps possible that Juwaynī was indeed attempting to provide an account of the institution of a legal code—an attempt largely vitiated by a frequent and inexplicable wandering from the point, as Ayalon suggests. But it is not very likely. We may more plausibly believe that Juwaynī did in fact know what he was about. He was concerned with a wide range of Chingiz Khān's regulations and *yāsās*, some at least of which were written down for the future guidance of the Mongol princes. Especially important were those *yāsās* that dealt with great affairs of state and with military matters. In short, Juwaynī's chapter, usually regarded as an essential foundation for the study of the Great *Yāsā*, is nothing of the sort. It is an account of some of Chingiz Khān's *yāsās*, certainly, but not of the Great *Yāsā* at all. Ayalon has done away with all the sources on the Great *Yāsā*'s contents with the exception of Juwaynī. It is my contention that, so far as information on the Great *Yāsā*'s contents is concerned, the next step is to discard Juwaynī's chapter too.

III

If such an interpretation of the evidence is allowed, two questions immediately present themselves: did the Great *Yāsā* exist at all? And if it did, was it written down, its contents known and enforced?

It is reasonably clear that a *Yāsā* in the sense of a binding legal code was at least later believed to have existed, and was attributed to Chingiz Khān. There seems to have been very little unanimity, however, over what it contained. Juwaynī sometimes gives *yāsā* the sense of the 'fundamental law' of the Mongols, without specific reference to Chingiz Khān as its author—or even as being in opposition to an individual *yāsā* of his: 'By the *yāsā* and custom (*āyīn*) of the Mongols the father's place passes to the youngest son by the chief wife. Such was Ulugh-Noyan (i.e. Toluī), but it was Chingiz Khān's *yāsā* that Ögedei should be *Khān*'.¹⁷ Juwaynī never uses the term 'Great *Yāsā*' (*yāsā-yi buzurg*), though al-'Umari, who derived his information from Juwaynī, does on one occasion use the phrase *al-yāsā al-kabīra*.¹⁸

¹⁶ Juwaynī, I, 17; Boyle, I, 24.

¹⁷ Juwaynī, III, 3; Boyle, II, 549.

¹⁸ K. Lech, *Das mongolische Weltreich*, Wiesbaden, 1968, text, 8, tr., 95.

Some evidence in the *To'rikk-i Waṣṣāf* tends to support the interpretation of Juwaynī that I have proposed. Waṣṣāf writes that the Great Khān Qubilai issued an edict (*yarliq*) at the beginning of his reign, 'for the renewing of commands (*ahkām*) and the strengthening of the *yāsā-nāma* of Chingiz Khān, containing the customs (*marāsim*) of conquest and rule'.¹⁹ It may be that Waṣṣāf, the avowed continuator of Juwaynī, understood his predecessor better than later historians have contrived to do.

Earlier than this, in the reign of Hülegü or Abaqa, Naṣir al-Dīn Ṭūsī, writing of various financial immunities, had added that 'the *yāsā-yi buzurg* of Chingiz Khān is similar, and they hold this to be laid down, so that the property (*māl*) of men should not decrease'.²⁰ *Yāsā-yi buzurg* is a rare phrase—it occurs only very occasionally in the *Jāmi' al-tawārīkh*—but there are enough instances of its use to testify to the fact that there was a belief in the existence of such a thing. This, however, is not the same as to say that the Great *Yāsā* did in fact exist, in the sense of being written down, its contents generally and indisputably known: though people certainly thought, or said, that they knew what was in it.

There is a possible interpretation that seems to me to fit the facts, such as they are, fairly convincingly. This is that, if we concede that belief in the existence of the code presupposes—even creates—the existence of something, that that something was not written down in a coherent form at all. It may well have been no more than the recollection of those of Chingiz Khān's utterances, or alleged utterances, that were more or less legislative in character: utterances to which he or his descendants attributed binding force.

The only real alternative is that proposed by Ayalon: that the code, if written down, may for some reason not have been available for inspection, possibly because it was regarded as sacred or taboo. A parallel case would be that of Rashīd al-Dīn's use of the Mongol chronicle *Altan Debter*, now lost. As a non-Mongol he was denied direct access to the text, and had to use Mongol intermediaries. But as Hambis's comparison of Rashīd al-Dīn's *Altan Debter* material with the Chinese version of it showed,²¹ this process did not prevent Rashīd al-Dīn from obtaining a perfectly accurate idea of the *Altan Debter*'s contents. Similarly, then, there seems no reason why he or Juwaynī could not have secured reliable and comprehensive information about the contents of a 'taboo' Great *Yāsā*, had they so wished.

But there does not appear to be much evidence, in fact, to support the 'taboo' hypothesis—perhaps only Juwaynī's account of the taking out of the rolls on great occasions. It would seem in any case a singularly bizarre way of treating a series of legal enactments, if the Mongols expected anyone to obey them. However, we must certainly believe one or the other: either the *Yāsā* did not exist as a written code, or it was unavailable to those who were supposed to conform to it. How else are we to account for the fog of vagueness and uncertainty which appears to engulf all the contemporary writers when they come to speak about the *Yāsā*? If high officials in the Mongol administration like Juwaynī and Rashīd al-Dīn could not, or did not bother, to gain access to the text—although they were concerned to write lengthy histories of the rise and development of the Mongol empire—what chance had anyone else? Are

¹⁹ ed. M. M. Isfahānī, Bombay, 1852–3, 17.

²⁰ *Majmū'a-i rasā'il-i khwāja Naṣir al-Dīn*, ed. M. Radawī, Tehran, 1957, 31. See V. Minorsky, 'Naṣir al-Dīn Ṭūsī on finance', in his *Iranica*, Tehran, 1964, 70.

²¹ P. Pelliot and L. Hambis, *Histoire des campagnes de Gengis Khan*, I, Leiden, 1951, introduction.

we not justified in deducing not only that knowledge of the *Yāsā* was vaguely and uncertainly diffused, but also that it was not in reality an institution of any great practical importance ?

There is other evidence to point us in this direction. Ayalon discusses the discrepancies in the application of the *Yāsā*'s alleged prohibition of the Muslim method of animal slaughter. This is hard to account for if the *Yāsā* was embodied in a written document, but it is much less of a problem if it was not. In the second instalment of his article,²² Ayalon has a long discussion of what he (perhaps rightly) sees as Juwayni's biased presentation of how the *Yāsā* was faithfully observed by the ultimately victorious descendants of Tolui. Ayalon's interpretation of this is easier to believe if a widespread vagueness about the *Yāsā* and its contents prevailed. The other side of the dynastic coin is represented by the claim of the Central Asian Mongol prince Qaidu, who according to Waṣṣāf argued (in his own interest) that 'in the *yāsā-nāma* of Chingiz Khān' it is ordained that the Great Khān must be a member of the family of Ögedei²³—so excluding the descendants of Tolui. It was evidently possible to argue a case on either side from the supposed contents of the *Yāsā*.

Whatever allowances are made for the deficiencies of the sources, it is hard to believe that if the Great *Yāsā* was indeed a legal code, the contents of which were clear, published, generally known and generally enforced within the Mongol Empire, one would not be able to find much more evidence of it, and have much less scope for this kind of discussion. I propose the following hypothesis: there was probably believed to be a 'Great *Yāsā* 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 gradually evolving body of custom, not only beginning before the time of Chingiz Khān but continuing after him. This certainly seems to be the implication to be drawn from the references in Chinese sources collected by Professor Cleaves.²⁴ In these the 'Great *Yāsā*' is frequently ascribed to Ögedei rather than to Chingiz Khān.

What role in all this are we to grant to Chaghatai, Chingiz Khān's second son who is usually regarded as the stern upholder and custodian of the *Yāsā* ? Juwayni²⁵ tells us that Chaghatai was chosen by his father to administer and enforce *yāsā wa siyāsat*: not 'the Great *Yāsā*' or '*Yāsā* of Chingiz Khān'. Later Juwayni relates how Chaghatai's retainers were constrained to behave themselves well because of their fear of *his* (Chaghatai's) *yāsā wa siyāsat*.²⁶ And in one of Juwayni's anecdotes about the benevolence of Ögedei, Ögedei is represented as calling the *yāsā* which Chaghatai wishes to enforce (on not

²² Ayalon, B.

²³ Waṣṣāf, 66.

²⁴ F. W. Cleaves, 'The "fifteen 'palace poems'" by K'o Chiu-ssu', *HJAS*, xx, 1957, p. 428, n. 10; pp. 429-33, nn. 14-15. I owe this reference to the late Professor Joseph Fletcher. The remarks on the *Yāsā* in P. Ch'en, *Chinese legal tradition under the Mongols: the code of 1291 as reconstructed*, Princeton, 1979, esp. 4-8, while accepting the authority of Riasanovsky and being 'pre-Ayalon' on the *Yāsā*'s contents, do not seem to show that the evidence of the Chinese sources is irreconcilable with the arguments advanced in this paper. 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.

²⁵ Juwayni, I, 29; Boyle, I, 40.

²⁶ Juwayni, I, 227; Boyle, I, 272.

washing in running water) *our yāsā* and command (*yāsā wa ḥukm-i mā*).²⁷ While it is interesting to note that Rashīd al-Dīn, in his version of the same anecdote, changes this phrase to 'the Great Yāsā' (*yāsā-yi buzurg*),²⁸ I would take the general tenor of the references to Chaghatai to indicate that he was regarded as the guardian and expositor of the—probably unwritten—Mongol customary law rather than of any 'Great Yāsā of Chingiz Khān'.

IV

What, then, may we say about the operation of the Yāsā in the Īlkhānate? The term *yāsā* is not infrequently to be found in the sources for the history of the Mongols in Persia, but more often than not its use can be plausibly explained as requiring the sense of 'decree' or of 'punishment'. The phrase *bi-yāsā rasānīdan* is the most common verb for 'to put to death'. The sources contain numerous mentions of *yāsās*, but there are very few indisputable cases of 'the Yāsā'. For example, Waṣṣāf records that revolt broke out against the Īlkhān Geikhatu because 'he altered (*diḡar kard*) the *yāsā* of Chingiz Khān'.²⁹ Is this the Great Yāsā, or does it refer to a specific decree? Jūzjāni makes my point for me quite explicitly:

To these *aḥkām* (he is referring to Chingiz Khān's prohibitions of telling lies, committing adultery, washing in running water and so forth) they have given the name *yāsā*, that is *ḥukm wa farmān* (translated into) the Mongol language.³⁰

So these, from the perspective of the Delhi Sultanate in 1260, were individual decrees, not part of a comprehensive legal code. And Juwaynī writes that the Great Khān Güyük

made a *yāsā* that just as Qā'ān (Ögedei), at the time of his accession, had upheld the *yāsās* of his father (Chingiz Khān) and no change or alteration occurred in the commands (*aḥkām*) of those (*yāsās*), so too the *yāsās* and commands (*aḥkām*) of his own father should be immune from the contingencies of redundancy and deficiency, and free from the corruption of alteration.³¹

This is a significant passage. As in the Chinese texts referred to above, the *yāsās* of Chingiz Khān and Ögedei are tacitly equated; and they are given the sense of individual decrees or commands. All may be described as *aḥkām* or *farmān-hā*.

One might suppose that the Mongol Yāsā or *yāsās* would come under some pressure during the reign of Ghazan, when the Mongols in Persia went over to Islam and began increasingly to identify with their Persian subjects. This was certainly the view of al-'Umārī, who contrasted the observance of the Yāsā, still strong, according to his information, in the Chaghatai Khānate and in China, with its decline in Persia and in the lands of the Golden Horde, which had both been converted to Islam.³² Ghazan himself is alleged by Rashīd

²⁷ Juwaynī, I, 162; Boyle, I, 206.

²⁸ *Jāmi' al-tawārīkh*, II/1, ed. A. A. Alizade, Moscow, 1980, 183-6; tr. J. A. Boyle, *The successors of Genghis Khan*, New York and London, 1971, 77.

²⁹ Waṣṣāf, 284.

³⁰ *Tabaqāt-i Nāsiri*, ed. 'A. Habibi, 2 vols, 2nd ed., Kabul, 1342-3/1964-5, II, 152; tr. H. G. Raverty, *Tabaqāt-i Nāsiri*, 2 vols, London, 1881, II, 1108.

³¹ Juwaynī, I, 211; Boyle, I, 256. I have altered the translation.

³² Lech, op. cit., text, 41, tr., 118-19.

al-Dīn to have been a fervent exponent of *yāsāq* and *yūsūn* in his younger days. It is interesting, therefore, to note that in his *yarliḡh* granting *iqṭā's* to the Mongol troops Ghazan begins by praising Chingiz Khān's *yāsā*—whatever he may have understood by that—in the warmest terms, declaring that because of it the Mongols had been able to conquer the world.³³ Certainly in this context Ghazan, or at least Rashīd al-Dīn, seems to be expressing a belief in the existence and efficacy of a ' *yāsā* of Chingiz Khān ' of some sort, though the phrase *yāsā-yi buzurg* is not used. However, it looks to me very much as though this lavish praise of the *yāsā* is designed to act as a smokescreen device, to divert attention from the otherwise painfully obvious fact that Ghazan's *yarliḡh* is about to erode some *yāsā* or other attributed to Chingiz Khān. That there was opposition to such erosions is vividly illustrated by a curious anecdote in Qāshānī's *Ta'riḡh-i Ūljāytū*. He gives a long account of disputes at Ūljeitū's court between Ḥanafis and Shāfi'is. At the conclusion of the argument, he writes,

Qutlugh-Shāh Noyan said to the other *noyans* : ' What is this that we have done, abandoning the new *yāsāq* and *yūsūn* of Chingiz Khān, and taking up the ancient religion of the Arabs, which is divided into seventy-odd parts ? The choice of either of these two rites (*madhhab*) would be a disgrace and a dishonourable act, since in the one, marriage with a daughter is permitted, and in the other, relations with one's mother or sister. We seek refuge in God from both of them ! Let us return to the *yāsāq* and *yūsūn* of Chingiz Khān '.³⁴

Two things, I suggest, may reasonably be deduced from this story. First, there was still a considerable amount of feeling for the traditional Mongol way of doing things, at least among some of the Mongol *amīrs* ; and secondly, that if Qutlugh-Shāh was at all typical, the Mongols had not as yet acquired a very profound knowledge or understanding of the tenets of Islam.

A similar reaction against Islamisation is ascribed to the Īlkhān Abū Sa'īd's ephemeral successor Arpa Ke'ūn :

When he ascended the throne . . . he used the Mongol *jāsāq* and *siyāsāt* and did not pay attention to the *yarliḡh* of Sultan Khudābanda (Ūljeitū) and Abū Sa'īd which was presented to him.³⁵

V

I conclude, then, that there are difficulties, possibly insuperable difficulties, in establishing the nature and contents of the Mongol *Yāsā*, its association with Chingiz Khān himself, or even whether it ever existed as a written, coherent, enforceable code of laws. All I have been able to offer so far is a hypothesis that, I hope, conforms more closely than the conventional view to such evidence as we have.

But the concept, at least, of the *Yāsā* seems long to have remained a real one in the minds certainly of western historians but also—so far as it is possible to judge—in the minds of the men of the later Mongol period and after. Maḥmūd Āmulī, writing during Ūljeitū's reign, tells us that Chingiz Khān's

³³ *Jāmi' al-tawāriḡh*, III, ed. A. A. Alizade, Baku, 1957 (hereafter Alizade), 511.

³⁴ ed. M. Hambly, Tehran, 1969, 98, with additional word (omitted from the edition) from the unique MS, Aya Sofya 3019, f. 178a.

³⁵ Abū Bakr al-Qutbī al-Ahrī, *Ta'riḡh-i Shaikh Uwais*, ed. and tr. J. B. van Loon, The Hague, 1954, text, 158, tr., 59.

precepts (*waṣāyā*), maxims (*bīlik-hā*) and *yāsās* were collected into a book (*kitāb*).³⁶ And Ibn Baṭṭūṭa maintains that

Tankiz (Chingiz) had compiled a book on his laws, which is called by them (i.e. the Central Asian Mongols) the *Yasāq*, and they hold that if any (of the princes) contravenes the laws contained in this book his deposition is obligatory . . . If their sultan should have changed any one of those laws their chiefs will rise up before him and say to him, 'You have changed this and changed that, and you have acted in such-and-such a manner and it is now obligatory to depose you'.³⁷

Ibn Baṭṭūṭa goes on to relate that the Chaghatai sultan Ṭarmashirin was indeed deposed for infringing a *Yāsā* regulation about the holding of an annual feast.

So the founder of the dynasty, it came to be felt, had created an institution which should be respected and taken into account, even if its precise provisions were so vaguely known or impractical of execution as to present few obstacles to their evasion. The *Yāsā* remained, apparently, in the Mongol consciousness as a symbol of the Shamanist, primitive, simple and perhaps (to some) 'purer' past, which had gradually been eroded by conquest and world-empire. If the 'Great *Yāsā* of Chingiz Khān' did not exist, it was evidently necessary to invent it.

VI

So far in this paper I have attempted what is very largely a destructive—though to my mind a necessary—exercise. In conclusion I propose to offer some tentative suggestions on the other side: that is to say, what judicial machinery I think *may* in reality have existed.

For this purpose we must abandon the word *yāsā* and look instead at *yārghū*—a very common term in the Persian sources, used in a variety of senses for some kind of court or investigation. There are nearly forty such references, for example, in the section of the *Jāmi' al-tawārikh* which deals with the Mongols in Persia. Most of them are rather brief, and tell us little about precisely what was going on.

According to Rashid al-Dīn, *yārghūs* were held by the Īlkhāns—often with the use of torture—in order to investigate the cases of fallen ministers or other enemies of the ruler such as alleged conspirators.³⁸ There were also courts of enquiry, as into the defeat of Qutlugh-Shāh and Chūbān at Marj al-Šuffar in 1303, of which a record (*yārghū-nāma*) was kept:³⁹ and into who was to blame for reverses suffered during Ōljeitū's campaign in Gīlān, as Hāfiẓ Abrū records.⁴⁰ Juwaynī refers only occasionally to *yārghūs*, always with reference to the investigation of plots or of complaints against officials.⁴¹ Such *yārghūs* as these appear to have been *ad hoc* courts convened to deal with specific cases—a phrase frequently used by Rashid al-Dīn is 'they held a *yārghū* for (i.e. to deal with) him' (*ū-rā yārghū dāshtand*).⁴² And these cases usually involve Mongols or are concerned with Mongol state affairs.

³⁶ Muḥammad b. Maḥmūd Āmulī, *Nafā'is al-funūn*, ed. A. Sha'rāni et al., 3 vols, Tehran, 1377-9/1957-60, II, 250.

³⁷ *The travels of Ibn Baṭṭūṭa*, tr. H. A. R. Gibb, III, Cambridge, Hakluyt Society, 1971, 560-1.

³⁸ Alizade, 171-2, 199, 202, 205, 226, 305, 313, 317, 327, 343, 363.

³⁹ *ibid.*, 359.

⁴⁰ *Dhayl-i jāmi' al-tawārikh*, ed. K. Bayāni, 2nd ed., Tehran, 1350/1972-3, 76.

⁴¹ Juwaynī, I, 36; II, 233-6; III, 48, 52.

⁴² e.g. Alizade, 202, 204, 313.

In the *Ta'rikh-i shāhī*, an anonymous history of the Qara-Khitais of Kirmān written before the end of the seventh/thirteenth century, we have more detailed accounts of what went on in early Īlkhānid times when a local *yārghū* was held. On one occasion a court of enquiry was convened jointly by the deputies (*nā'ib*) of the Qara-Khitai princess Terken Khatun and the local *bāsqāqs* (representatives in this subject kingdom of the Īlkhānid government). This was to investigate complaints by certain dissident persons against Terken. The *bāsqāqs* and *yārghūchīs* had the complainers tied up naked for several days and interrogated, 'as was the Mongol custom'.⁴³

We are told at greater length about a dispute between Terken Khatun and the people of Shabānkāra concerning the rightful ownership of Sirjān. After much argument, in 663/1264-5 the Īlkhān Abaqa sent representatives to Sirjān who were to hand it over to Terken's deputies and to hold a land *yārghū* (*yārghū-yi amlāk*) to examine the documents and title deeds of both parties. A principle of division was arrived at,⁴⁴ but the dispute crops up again later,⁴⁵ when we are told that a further *yārghū-yi amlāk* was held—in the convening of which, interestingly, *qādīs* were prominent. The *yārghū* was presided over by an *amīr-i yārghū*.

These detailed accounts are of great interest, but it is difficult to be sure how far they reflect the practice of the central Īlkhānid government, and how far what was peculiar to the subject kingdom of the Qara-Khitai in Kirmān.

There is evidence of a very specific kind of *yārghū*, however, in the invaluable second volume of Muḥammad Hindūshāh Nakhjawānī's *Dastūr al-kātib*, which contains a long section describing the functions of the *amīr* of the *yārghū*.⁴⁶ The *Dastūr al-kātib* provides information on aspects of Persian administration at the very end of the Īlkhānid period, and it is hence dubiously appropriate to read back from it to the conditions of a century or more earlier. But as it happens there is an intriguing and perhaps significant correlation between the operations of the *Dastūr al-kātib*'s *yārghū* and what I have already argued that we can deduce about the activities of Shigi-Qutuqu in the judicial capacity to which he was appointed by Chingiz Khān at the *qurultai* of 1206.

To recapitulate: Shigi-Qutuqu was to judge certain criminal cases on an *ad hoc* basis; and he was to supervise the distribution of subject peoples. All this was to be recorded in a 'blue book'. The word used for 'case', however one should translate it, is *jarqu*.⁴⁷

In his *History of the tribes*, Rashīd al-Dīn gives an account of the career of Shigi-Qutuqu who, it may be remembered, was a Tatar orphan who became an adopted brother of Chingiz Khān; he is therefore included in the section on the Tatars. Rashīd al-Dīn says this of him:

He conducted courts of enquiry justly (*yārghū-hū bi-rāstī pursīdī*), and he was solicitous and helpful to many criminals and caused his words to be repeated, lest (they) should confess out of terror and fear; and he said, 'Do not be afraid, but speak the truth'. And in the discussions of the *yārghūchīs* it became well-known that from that time to this, in the province

⁴³ ed. M. Bāstānī-Pārizī, Tehran, 2535/1976-7, 156.

⁴⁴ *ibid.*, 192.

⁴⁵ *ibid.*, 275-6.

⁴⁶ ed. A. A. Alizade, Moscow, 1976 (hereafter *Dastūr*), 29-35. Parts of this material, without any precise identification, were quoted by Riasanovsky, *op. cit.*, 41-2.

⁴⁷ See above, n. 6. The word also occurs elsewhere in the *Secret History*, ed. Ligeti, 202. This adds little except the information that Shigi-Qutuqu might have assistants in hearing *jarqus*.

of Mughūlistān and those regions, the foundations of the *yārghūs* are laid on the regulations (*qawā'id*) which he established and followed.⁴⁸

The point worth noticing here is that there is, as usual, no sign of a *yāsā*, Great or otherwise—if anything, judges (*yārghūchīs*) follow the case-law precedents (written or orally transmitted ?) of Shigi-Qutuqu, not the enactments of Chingiz Khān.

Turning now to the *Dastūr al-kātib*'s evidence, what do we find? The passage under consideration is not devoid of difficulties and contradictions, but it is, I think, possible to extract from it a number of revealing points.

According to the writer, the Mongols had caused the decrees (*ahkām*) of the *yārghū* to be laid down as a canon of justice (*qānūn-i rāstī*)⁴⁹ or alternatively as a *qānūn* called *yārghū-nāma*.⁵⁰ This was apparently to regulate solely cases in dispute between Mongols,⁵¹ and this system was regarded as their equivalent of the *Sharī'a*.⁵² The requisite qualifications for the *amīr* of the *yārghū* were that he should be knowledgeable concerning the customs (*rusūm*) and regulations (*qawā'id*) of the Mongol sultans and *amīrs*, and their *yāsāqs* and *tūras*.⁵³ He should settle cases in accordance with the *qūtātghū bīlik* of Chingiz Khān,⁵⁴ with (according to some manuscripts) the decrees (*ahkām*) of Qa'an (i.e. Ögedei) thrown in,⁵⁵ or in accordance with the *qānūn-i yāsā wa yāsāq* of Chingiz Khān,⁵⁶ the *qānūn* of the *yārghū* and the regulation (*qā'ida*) of the *yāsāq*;⁵⁷ sometimes with justice and equity ('*adl, ma'dalat, insāf, rāstī*) added;⁵⁸ and he was to follow the example of the great *yārghūchīs*.⁵⁹ The *amīr* of the *yārghū* was to give the successful disputant a *yārghū-nāma* as a record to produce in the case of further argument⁶⁰—this *yārghū-nāma* apparently being different from the more general record already referred to. The *amīr-i yārghū* and the scribe who had written out the *yārghū-nāma* were to be paid a fee for their services.⁶¹

I suggest as a possibility, therefore, that what we have here is an echo of the functions which, according to the *Secret history*, were delegated to Shigi-Qutuqu by Chingiz Khān at the *qurultai* of 1206. *Yārghūs* at least of this type in Mongol Persia were tribunals for dealing with disputes between Mongols, and their decisions were recorded in writing. Further, there was apparently some body of previous practices or decisions available to the judge for consultation. The cases that such *yārghūchīs* heard might well have included the same kind of disputes as those that Shigi-Qutuqu was instructed to deal with,

⁴⁸ *Jāmi' al-tawārīkh*, I/1, ed. A. Romaskevich, L. Khetagurov and A. A. Alizade, Moscow, 1965, 180.

⁴⁹ *Dastūr*, 30.

⁵⁰ *ibid.*, 32.

⁵¹ *ibid.*, 31, 32, 33.

⁵² *ibid.*, 30, 32. An interesting later parallel is found in a document from the Safavid shrine at Ardabil, dating from 793/1390–1. In this it is claimed that a horse was made off with in accordance, not with the *shar'* of Muḥammad, but with the *yārghū* (not *yāsā*) of Chingiz Khān. (Document no. 282: unpublished. I am indebted to Mr. A. H. Morton for the loan of his transcript of the document.)

⁵³ *Dastūr*, 30. *Tūra* is a synonym for *yāsā*.

⁵⁴ *ibid.*, 31. As was remarked above, a large selection of Chingiz Khān's *bīligs* (*bīlik*) is preserved by Rashid al-Dīn. See Berezin, xv, 178 ff. On how these were taken down and recorded, see Boyle in *The successors of Genghis Khan*, 13.

⁵⁵ *Dastūr*, p. 33, n. 11.

⁵⁶ *ibid.*, 31.

⁵⁷ *ibid.*, 35.

⁵⁸ *ibid.*, 31, 33, 34.

⁵⁹ *ibid.*, 31.

⁶⁰ *ibid.*, 31.

⁶¹ *ibid.*, 32, 34, 35.

recording his binding decisions as he went. And as Rashīd al-Dīn's evidence suggests, Shigi-Qutuqu's practices were regarded as a model for later judges to follow. Could registers of decisions and proceedings (*yārghū-nāma*) on disputes between Mongols have been kept from the time of Shigi-Qutuqu's appointment in 1206 until the writing of the *Dastūr al-kātib*, well over a hundred years later? We do not know, though something of the sort might be the reality behind later notions of a written ' Great Yāsā '. But at least it is one plausible way of explaining in part how a Mongol judicial ' system ' may have worked. And it does have the virtue of avoiding resort to the desperate expedient of a fixed ' Great Yāsā of Chingiz Khān ' laid down in 1206.⁶²

⁶² A remote ancestor of this article formed part of an unpublished doctoral thesis, the research for which was supervised by Professor A. K. S. Lambton.