

**Toluid Dynamics of Asia: flexibility, legality and  
identity within Toluid institutions**

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## Abstract

This thesis will show that the concept of Great Yasa is not supported by the contemporary sources and that alternative approaches are needed to investigate law in the Toluid empire. While the concept of Yasa tends to reinforce the perception of Mongol law as being rigid, in fact, considerable room for flexibility and negotiation was embedded within the Mongol legal tradition.

This flexibility can be seen in the traditional Mongol institution of the *quriltai*, an institution which was important not only in terms of the election of khans and taking various decisions, but also in legal terms. The principle of collegiality which was at its foundation was central to Mongol legal culture and its effects can be discerned in the Ilkhanate and the Yuan dynasty. While there was little political will on the part of the Mongol rulers to impose any particular legal practices, including Mongol customs, on the conquered populations, the principle of collegiality had a significant impact on how they dealt with legal matters, and how they and their officials interacted with Persian and Chinese legal traditions. In the many legal cases decided by conference, where many different stakeholders were present, can be seen the enduring effects of the principle of collegiality.

The flexibility of the Mongol approach to law is also seen in the differences in the influence of Mongol law in Persia and China. While in China the eagerness of officials and judges to have the *Qa'ans* produce legislation led to significant mutual influence and the integration of several characteristics of Mongol law into Chinese legislation and into practice even on the local level, in Persia the restrained attitude of the *qadis* led to Mongol influence being significantly less marked, and coming about through cultural influence or imitation.

In conclusion, Mongol law as seen in the Toluid empire was characterized by significant flexibility, which cannot be attributed simply to the failure or abandonment of Mongol legal traditions, since this flexibility was itself an influential and genuine expression of the Mongol steppe legal tradition.

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- i. Physical prisons on the steppe were impractical. Methods of restraint could thus include collars such as the above; and punishments were often the death penalty, a beating, or being forced to serve in the army.

Sir E. A. Wallis Budge, *The monks of Küblai Khân*, London: The Religious Tract Society, 1928, facing p. 264



- ii. The belief in the sacred nature of blood persists. A 'bloodless' animal sacrifice among the Buryats.

Adolf Zeman, *V kraji šamanů a lamů*, Prague: Náklad Památníku odboje v Praze, 1923, p. 110

### **Note on transliteration and use of terms**

Chinese has been transliterated using *pinyin*. The Library of Congress Romanization tables have been used for Persian and Arabic.

English names for the offices within the Yuan dynasty government have been taken from Farquhar, David M., *The Government of China under Mongolian Rule: a Reference Guide*, Stuttgart: Franz Steiner Verlag, 1990

## **Introduction**

Laws and a legal system are a fundamental aspect of governance. Laws can be a way to resolve conflicts, punish transgressions, or demarcate 'belonging' through the privileging of certain groups above others. In the case of a conquest empire, the conquerors have a choice of whether to try to impose their own laws, or recognize existing laws, or some combination of both.

The Toluid empire is a particularly important focus of study as it provides the contrast between Mongol law, which was the legal system of a nomadic people, and the Persian and Chinese legal systems, each of which had a long written tradition. Many studies have examined the nature and content of Mongol law and how it interacted with these two legal systems. However, there has been no study to date focusing on the flexibility of the Toluid rulers and officials in the area of law, or on how this flexibility helps us understand the developments in law in medieval Persia and China. This thesis will show that a flexible attitude towards decision-making, involving as many stakeholders as possible, was integral to the Mongol approach to law, and greatly influenced both the process and the outcomes of interaction with non-Mongols in the area of law.

## Chronological and geographical scope of the thesis

This thesis will focus on Mongol rule in Persia and in China: the Ilkhanate (1258-1335) and the Yuan dynasty (1260-1368), as well as the Mongol legal culture which influenced developments in these polities. The Ilkhanate and the Yuan dynasty, which were ruled by the same branch of Chinggis Khan's descendants and closely connected in military, political and cultural terms, are known together as the Toluid empire. The thesis will compare and contrast the interactions of Mongol law with the local legal systems prevalent in Persia and in China.

The name 'Toluid' refers to Tolui, Chinggis Khan's fourth and youngest son, whose descendants won the *qa'an*ship (the position of ruling over the entire Mongol empire) in 1251, and subsequently ruled the major sedentary territories of Persia and China. However, their rule was not unopposed: opposition from other descendants of Chinggis Khan resulted in 1260 in the *de facto* split of the Mongol empire into Toluid and non-Toluid parts.

The Ilkhanate and the Yuan dynasty had more in common than merely being ruled by descendants of Tolui. The seeds for the two polities were sown when the *qa'an* Möngke, aware of the importance of the sedentary populations and their territories, sent his two brothers Qubilai and Hülegü to rule China and Persia respectively. This situation was indeed unique: "The formation of the Mongol empire marked a break in the history of Eurasia, as countries with a long sedentary tradition, such as China and Iran, were made subject to a single people of the steppes for over a century."<sup>1</sup>

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<sup>1</sup> Aigle, "Iran under Mongol domination," pp. 65 – 78

Möngke also strengthened the administrative structure through which he with some success controlled the far-flung regions of the empire.<sup>2</sup> After Möngke's death, another power struggle pitted two of Möngke's brothers, Qubilai and Arigh Boke, against each other. While Qubilai, who had been governing China for some time was willing to adapt to Chinese patterns in order to gain support,<sup>3</sup> Arigh Boke was more suspicious of adapting to a sedentary life style and preferred the steppe way of life, and many Mongols who thought similarly supported him. Eventually, after a bitterly divisive civil war often trivialized by Toluid chroniclers, Qubilai prevailed over his adversaries, and became qa'an though one without universal recognition. He also moved the capital from Karakorum, Mongolia to Dadu (now Beijing) in China. His brother, Hülegü Khan in Persia, who acknowledging his dependency on the Qa'an adopted the title of Ilkhan, remained his only princely supporter, linked to him by politics, by concerns of legitimacy, and by the willingness to directly govern and interact with the sedentary population.

In terms of economic ties, these resulted not only from the 'natural' penchant of merchants to use all available opportunities to exchange goods and make money, but the Qa'ans and Ilkhans deliberately promoted trade, including long-distance trade, by providing capital and loans to merchants.<sup>4</sup> In terms of military ties, Persia and China continued to exchange both military technology and personnel, an exchange which had started early as Chinggis Khan employed Chinese mangonel-makers and experts in siege warfare in the campaign in Central Asia and Khorasan. In terms of cultural and other ties, Allsen has in his book *Culture and Conquest in Mongol Eurasia* drawn attention to the many connections in fields as diverse as

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<sup>2</sup> Allsen, *Mongol imperialism*, pp. 219-221

<sup>3</sup> Rossabi, "The reign of Khubilai Khan," pp. 421-2; Rossabi, *Khubilai Khan*, pp. 47-8; Langlois, *China under Mongol rule*, p. 5

<sup>4</sup> Allsen, "Mongolian Princes and Their Merchant Partners, 1200-1260," p. 91

agriculture, geography, history-writing, and medicine between the Yuan dynasty and the Ilkhanate. This exchange was based on the transmission of material artifacts and written documents as well as voluntary or forced transfers of people, among whom were soldiers, merchants, artisans and many others.<sup>5</sup>

Another issue which bound the Persian Ilkhanate with Yuan China was the issue of legitimacy. Unlike the other khanates which were founded by a directive of Chinggis Khan, the Ilkhanate was founded as a result of Möngke's specific orders to Hülegü to go west, destroy the Ismailis and subdue the Caliphate. Whether Hülegü was meant to stay in Persia is debatable.<sup>6</sup> In any case, he remained and styled himself as Il-khan, a title with implications of a subordinate position;<sup>7</sup> and for most if not all of the dynasty the Ilkhans recognized their subordination to and dependence on the qa'an in China, in terms of legitimacy. From Hülegü to Baidu (with the partial exception of Ahmad Tegüder), the Ilkhans proclaimed, in their title 'Ilkhan' and in their coinage, the supremacy of the qa'an;<sup>8</sup> and Hülegü, Abaqa and Arghun all requested and gratefully received patents of investiture from the qa'an. Even though with Ghazan the mention of the qa'an on coins largely ceased, contacts, embassies and exchanges of personnel with the Yuan dynasty by no means ended.<sup>9</sup> Of particular note is also the fact that up until Abu Sa'id's time, most of the extant edicts produced by Ilkhanid rulers still display a seal with Chinese characters; the text of one of these seals says: "Seal (attesting the mandate) to sustain the state and to bring peace to the people." Such seals were in the earlier period of the Ilkhanate brought from China on the occasions of delivering patents of

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<sup>5</sup> Allsen, *Culture and conquest*, p. 6

<sup>6</sup> Morgan, *The Mongols*, pp. 130-1; Jackson, "The Dissolution of the Mongol Empire," pp. 221-2, 230-5

<sup>7</sup> Allsen, *Culture and conquest*, pp. 21-22

<sup>8</sup> Allsen, *Culture and conquest*, pp. 21-30

<sup>9</sup> Allsen, *Culture and conquest*, pp. 31-34

investiture, however, even later, when the actual seals were produced in Persia, the Chinese writing, and thus the reference to the authority of the Great Khan, remained.<sup>10</sup>

There were still further mutual influences between the two Toluid polities. It is crucial to note that mutual influence touched not only issues of personal tastes such as cooking or literature, or symbolic issues such as legitimacy, but also government policies which decisively impacted ordinary people. For example, the short-lived adoption of paper money, or the *chao*, in the Ilkhanate is merely one of the best-known instances of such influence. In trying to find a solution for those Mongols who had become impoverished, Ghazan turned to expertise from the Yuan dynasty in the shape of Bolad Aqa, who had travelled to Persia and remained there as a kind of permanent envoy of the Qa'an.<sup>11</sup> There are also other policies of the Ilkhanate with real or alleged origins in Chinese influence.<sup>12</sup> Similarly, there are hints that some policies in Yuan China, such as laws which discriminated against Muslims which were in force for a short period, may have been influenced by events in the Ilkhanate.<sup>13</sup>

Therefore, this thesis will consider the possibility of direct or indirect influence in the area of law between the two polities making up the Toluid empire. However, it will mainly be comparing the interaction between Mongol and Persian and Mongol and Chinese laws. The conclusions of this research are all the more significant because of the close interaction between the khans and the indigenous governmental traditions. The khans did not rule the

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<sup>10</sup> Herrmann, *Persische Urkunden der Mongolenzeit*, pp. 34, 36

<sup>11</sup> Allsen, *Culture and conquest*, p. 79

<sup>12</sup> Morgan, "Who ran the Mongol empire," p. 130, writes that the motivation for appointing joint viziers may have come from China; Martinez, "Institutional development, revenues and trade," p. 95, attributes the 'uhda or mutual responsibility system to Chinese *baojia*.

<sup>13</sup> As to the question of whether the conversion to Islam of the Ilkhans influenced Yuan policy towards Muslims in China, see Ratchnevsky, "Rašīd ad-Dīn über die Mohammedanerverfolgungen," pp. 163-180

sedentary populations from a distance, as was largely the case in the Golden Horde and also in the Chaghatai Khanate.<sup>14</sup> On the contrary, Persia and China were places where Mongols were closely integrated and where they did not keep any issue related to the governance of the territories at arms' length. The khans surrounded themselves with Persian and Chinese administrators, historians, scholars, fortune tellers, doctors, and any other people who might contribute to the successful running of an empire. The entourages of the Ilkhans and the Yuan emperors also included jurists or those with strong opinions on legal matters, as can be seen from the Confucians who tried to convince the Mongol rulers to issue a law code, and from the presence of a *qadi al-qudat* (chief qadi) alongside the Ilkhan in the later Ilkhanate.<sup>15</sup> For this reason, when the khans engaged with the local legal systems, the flexibility of the Toluid khans and their officials with regards to legal matters cannot be attributed merely to indifference. Rather, this thesis will show that it was at least partly due to the traditional Mongol approach to resolving legal conflicts.

### The thesis

This thesis will explain that in the Toluid empire, consisting of the Yuan dynasty and the Ilkhanate, the Mongol rulers engaged with local legal systems, recognizing their legitimacy while requiring basic obedience to themselves as legitimate rulers. They showed considerable flexibility, working together with local legal personnel and seldom demanding that Mongol laws be imposed on non-Mongols.

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<sup>14</sup> Biran, *Qaidu and the rise of the Independent Mongol State in Central Asia*, pp. 95-7

<sup>15</sup> See chapters 6 and 7.



In fact there was no single Mongol ideology requiring the imposition of Mongol laws on other peoples, but rather a plurality of responses to the encounters with non-Mongols. Therefore Mongol legal tradition should not be characterized as embodying rigid customs, rather, there was considerable room for flexibility and negotiation within Mongol legal tradition, and there was some, if limited idea of allowing other tribes or chiefs to implement justice within their own spheres of authority as they saw fit. A whole range of options was available as 'cultural capital' to the Mongols as they conquered their empire, and the Toluids chose the more flexible approaches while building up relationships with local legal personnel.

This relative flexibility of the Toluid rulers cannot be attributed simply to the failure or abandonment of Mongol legal traditions, since it was itself an influential and genuine expression of the Mongol steppe legal tradition. The engagement with local legal systems represents a tendency towards flexibility and consultation within the Mongol legal tradition, which is sometimes known as the principle of collegiality and parallels collegial decision-making practices in other fields, such as the administrative field. The principle of collegiality had great influence in the Toluid empire both within and outside of the legal sphere, and was one of the most important factors influencing the Toluids to adopt a flexible attitude in legal matters.

This flexibility was manifested in the Toluids' frequent acceptance of Persian and Chinese legal principles and practices. It will be shown that while the khans' officials were expected to be subject to the khans, and therefore to Mongol law, Mongol personnel at the local level seldom even tried to impose Mongol legal principles. In addition, the Ilkhans and the Qa'ans failed to take advantage of links to expertise from each other's khanates in legal matters, as they did in so many other matters. It can be concluded that personal relationships with the

local legal specialists were more important than imposition of any particular legal ideas which demanded considerable political will.

Further, it will be argued that this flexibility and cooperation with local legal officials is the best explanation for different results in terms of Mongol influence on law in Persia and China. While there were some similarities in the *yarghus* (trials), punishments and execution methods, there were also great differences, especially in the framework of the legal system and in the degree of Mongol influence in society. The flexibility on the part of the Mongols allowed the choices of Persians and Chinese on whether and how far to engage with the Mongol rulers to have major long-term influence. Most long-term Mongol influence came about not through Mongols imposing law but through compromise and negotiation. This confirms that view that the Toluids did not seek to impose Mongol law, but rather, significant involvement of the Toluids in the existing legal systems occurred when the subjects of the Toluids called for such involvement. When the Toluids became involved in legal matters therefore, it was mostly in response to local legal officials, and often in terms of their own consultative tradition.

These arguments will be pursued mostly in the context of what can be termed ‘criminal law,’ defined for the purposes of this study as laws that carry the death penalty or other serious punishments;<sup>16</sup> civil laws such as tax law and commercial law, marriage laws, and land law do not form part of this study in themselves, although some will be discussed, but only insofar as the competencies of the judges and the conduct of the trials are concerned. This focus on criminal laws is in order to provide a manageable focus for this thesis, and to make the most of the available sources.

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<sup>16</sup> Both physical punishment and the confiscation of the family members and property of the condemned will be discussed in this work.

## Sources and methodology

This thesis will make use of both legal documents and other historical sources. Legal sources are relatively few and unevenly distributed, while non-legal sources provide essential alternative perspectives.

There is no extant Mongol law code.<sup>17</sup> Legal sources for the Ilkhanate include some extant edicts preserved in the archive of Sheikh Safi al-Din of Ardabil, discovered by Alexander Morton and Gottfried Herrman independently, and collected and published by Herrmann as “*Persische Urkunden der Mongolenzeit*,”<sup>18</sup> the volume contains both transcriptions and translations of these edicts, as well as photographs of the edicts themselves. In addition, there are edicts preserved in the section on Ghazan of Rashid al-Din’s *Jami al-tavarikh*. Even though these are a fraction of the documents produced at the time, they still give an indication of the kind and extent of involvement in law on the part of the Ilkhans, especially in the absence of any information on the compilation of any law code in the Ilkhanate. These edicts are also crucial in giving information on who signed and issued these edicts, and who they were addressed to, showing who was meant to obey them and who was meant to assist in their enforcement. Therefore, they provide crucial information on the intentions of the Ilkhans in making laws and some information on relationships with local legal officials, in particular those who were involved in writing or issuing these edicts. Additionally, the language used in the edicts shows the ideology or religious belief that the rulers wished to emphasize. A further important source is the *Dastur al-katib*, which provides documents on

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<sup>17</sup> This will be discussed in detail in chapter one.

<sup>18</sup> Herrmann, *Persische Urkunden der Mongolenzeit: Text- und Bildteil*, Wiesbaden: Harrassowitz, 2004, p. 1

the later period of Ilkhanid rule, such as a document for the appointment of an *amir yarghu* (leader of a trial).<sup>19</sup>

There are additionally a number of documents from Shari'a courts, also preserved in the archive of Sheikh Safi al-Din of Ardabil; these have been partially edited and translated, but to use them more fully was impractical because of my lack of knowledge of Arabic. While the documents give some important insights into the development of law in the Shari'a courts,<sup>20</sup> the very fact that the vast majority are in Arabic is emblematic of the disconnect between the Shari'a courts and the Ilkhanid administration, which used mostly Persian and Mongol.<sup>21</sup> In fact there seems to be so little change following the Mongol invasion that Monika Gronke remarks: "We can forego a detailed description of historical events, since they play no role in these documents."<sup>22</sup>

A far greater number of legal documents are available for China. Leaving aside the vexed question of whether these are 'law codes' or merely 'compilations of edicts,'<sup>23</sup> several compilations, including formal and private ones, are extant.

The earliest, which is not strictly from the Yuan dynasty period, is the *Taihelü* 泰和律, which was the recognized law code of the Jin 金 dynasty, which preceded the Mongols in northern China. This code is relevant because it continued to be used at times even under the Yuan,

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<sup>19</sup> Nakhjavānī, *Dastūr al-kātib fī ta'yyīn al-marātib*, vol. 2, pp. 29-33

<sup>20</sup> Gronke, *Derwische im Vorhof der Macht*, p. 213

<sup>21</sup> Morgan, "Persian as a lingua franca in the Mongol Empire", pp. 160-70

<sup>22</sup> Gronke, *Arabische und persische Privaturkunden des 12. und 13. Jahrhunderts aus Ardabil (Aserbeidschan)*, p. 1 n. 5; in this book, Monika Gronke edited documents from 1123 up to 1256.

<sup>23</sup> Huang Shijian, *Tongzhi tiaoge*, dianjiao shuoming p. 2

and in fact it is largely through quotations in Yuan-era sources that this work is known.<sup>24</sup> The Jin code was modelled on the Tang code but contained some features characteristic of the Jurchen, originally a semi-nomadic people. When the Yuan dynasty was officially proclaimed and the name Yuan 元 adopted, the Jin code was abolished but no substitute was immediately provided; this may be why some officials continued to refer to it in their judgments on legal cases.

The *Dayuan tongzhi* 大元通制 comes closest to being the ‘representative’ legal accomplishment of the Yuan dynasty;<sup>25</sup> it was completed in 1316 and promulgated in 1321. Only a portion of this is extant as the *Tongzhi tiaoge* 通制条格, containing documents from the years 1234 to 1316.<sup>26</sup> Analysis of the content shows that a part was the same or similar to the Tang code (on which most Chinese dynasties have modeled a code) but there were many differences as well.<sup>27</sup>

The *Zhiyuan Xin’ge* 至元新格 was issued in 1291; it has been translated,<sup>28</sup> but it is quite concise and consists mostly of administrative regulations. Another, later compilation, the *Jingshi dadian* 经世大典, has been preserved in the Yuan history or *Yuan Shi* 元史.<sup>29</sup>

However the most interesting source is the *Yuan Dianzhang* 元典章 because, as Birge argues, it was a private effort, published to satisfy a commercial market, based on documents coming

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<sup>24</sup> Franke, “The Chin dynasty,” p. 290; Birge, *Women, property, and Confucian reaction*, p. 210 n. 26

<sup>25</sup> Huang Shijian, *Tongzhi tiaoge*, dianjiao shuoming p. 2

<sup>26</sup> Birge, *Women, property, and Confucian reaction*, pp. 212-213

<sup>27</sup> Huang Shijian, *Tongzhi tiaoge*, dianjiao shuoming p. 2

<sup>28</sup> Ch’en, *Chinese legal tradition under the Mongols: the Code of 1291 as reconstructed*, Princeton, NJ: Princeton University Press, 1979

<sup>29</sup> Ratchnevsky, *Un Code des Yuan*, vol. 1, p. xx

from a local *yamen* archive in either Jiangxi or Fujian, including unedited documents dating from 1260 to 1317, organised by subject.<sup>30</sup> This text is thus more valuable than official publications because the original language is preserved and changes over time and contrasting rulings are not edited out.

While these legal edicts and codes provide very varied and, in the case of China, a huge amount of information, in this study it has been possible to use only a limited amount of this information. In particular, these legal sources have been very valuable in order to determine the intentions of the khans, both in terms of attempts to impose Mongol laws and in terms of acceptance of local legal systems.

However, a thesis about the flexible nature of much of Mongol law cannot be tested on the basis of legal documents alone. A crucial point regarding the methodology of this research has been the concurrent reliance on non-legal sources to glean information on the legal system, most often through examining and collating individual legal cases.<sup>31</sup> Looking at individual cases as represented in the narrative sources makes it possible to take the focus off ideological and religious discussions of the legal situation, and to focus instead on the mechanisms such as the principle of collegiality which enabled the khans, intellectuals and judges to interact and work together in shaping the legal system and individual laws. With much of the research on law in the Mongol empire to date focusing on ‘customs’ and stressing the conflicts between Mongols and other peoples, using non-legal sources enables us to look beyond at the ways in which legal conflicts were resolved in practice.

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<sup>30</sup> Birge, *Women, property, and Confucian reaction*, pp. 213-217

<sup>31</sup> Nielson used this approach to study the *mazalim* trials under the Mamluks. Nielson, *Secular Justice in an Islamic State: Mazālim under the Baḥrī Mamlūks, 662/1264-789/1387*, pp. 35-6

Although the non-legal sources have their own problems in terms of bias, in gleaning ‘incidental’ information from these sources, rather than information which the writers of the sources were specifically focusing on, the problems caused by bias in these sources are greatly reduced.<sup>32</sup> Bias which sometimes occurs in the case of religiously contentious or highly politicized trials has been counteracted as much as possible by using multiple sources, including Persian local histories and some of the writings of Yuan officials. These sources which consist of histories, both official and unofficial, chronicles, and other writings have been crucial for this research.

These include both local histories and those with a more universal focus; among the latter are Ata Malik Juvaynī’s *Tārīkhī Jahāngushā*, Rashid al-Din’s *Jamī’ al-tavarīkh* and Vassaf’s history known as *Tārīkhī Vaṣṣaf*. These histories cover not only history of the Ilkhanate, but also provide information on Chinggis Khan’s early years and rise, and Mongol achievements in other regions such as China and Central Asia. Rashid al-Din’s history is even known as the first world history<sup>33</sup> because of its breadth of information. The histories recount high-profile cases of trials or executions, including trials the outcomes of which the writers disagreed with. They give information on the trials of pretenders to the throne, princes, military leaders, bureaucrats, and rebels. Sometimes there is not much detail, at other times there is considerable detail on who conducted the trials, who was present, how the interrogation occurred, what punishment was imposed. The histories also provide some background information and the authors’ opinions about the justice or injustice of the verdicts given.

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<sup>32</sup> Tosh, *The pursuit of history*, pp. 66-68; Bloch, *The Historian's Craft*, p. 61

<sup>33</sup> Boyle, “Rashīd al-Dīn: The First World Historian,” pp. 20-21

Despite the various biases of these histories, they often agree on at least the basic facts of judicial cases. Ata Malik Juvaynī's veracity is supported by the close similarity of the events he describes with the very anti-Mongol *Tabakat-i Nasiri* of Juzjani.<sup>34</sup> The *Zafarnamah* of Mustawfī is another valuable source, a verse chronicle recounting the vicissitudes of the Ilkhans in some detail.

For trials of less illustrious personages, the local histories provide numerous important stories. Some of these can be cross-checked with other sources. The local histories include the *Tarikhi shahi Qarakhitayan* concentrating on events in Kerman; the *Tarikhi Tabriz*, and the *Simt al-'ula* by Nasir al-Din Munshi.

Sources on the later Ilkhanate include Qashani's *Tarikh-i Uljaytu*; the *Zayl Jami' al-tavarikh* by Hafiz Abru; the *Tarikhi Shaykh Uwais* by Ahri; and the *Majma' al-ansab* by Shabankara'i, which covers events in various provinces, and contains the accounts of several trials. The *Safvat al-Safa*, the history of the religious order of Sufis at Ardabil, provides anecdotes not found elsewhere.

Alternative perspectives are provided by Mamluk historians including al-'Umari and al-Maqrizi who, because of the ideological divide between the Mamluk sultanate and the Ilkhanate gave often radically different assessments of Mongol law and its impact. The anti-Mongol fatwas of Ibn Taimiyya also fall into this category.<sup>35</sup>

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<sup>34</sup> Lane, *Early Mongol Rule*, p. 3

<sup>35</sup> Aigle, D., "Loi mongole vs loi islamique?" p. 994



Other perspectives are also provided by the more locally-focussed Armenian and Georgian sources, which have been translated, such as Stephanos Orbelian,<sup>36</sup> Kirakos Gandzakets'i, and the anonymous Georgian history entitled *Kartlis Cxovreba*.<sup>37</sup>

Among the Chinese sources, the most prominent is the Yuan history or *Yuan Shi* 元史, compiled, as was customary in China, under the Ming dynasty after the demise of the Yuan. Since the compilation was rather hasty, it is not absolutely complete, but this may also be an advantage since much of the material was copied largely unaltered from original sources. The Yuan history contains the most extensive collection of biographies from the Yuan dynasty. Although some of the biographies are biased (a few are specifically grouped under *jianchen* 奸臣 'evil ministers,'<sup>38</sup> and in others, a Confucian emphasis is clearly present), they are nonetheless extremely valuable. The Yuan history also chronicles the salient events of each year.

Other sources which despite their non-legal nature are extremely valuable are the *Qiujiang xiansheng daquan wenji* 秋澗先生大全文集 by Wang Yun 王惲 (1227-1304), who came from an important Chinese legal family and served in the Censorate under the Qa'ans; the *Mumin zhonggao* 牧民忠告, a book of advice for magistrates; and the *Lixue zhinan* 吏學指南, a collection of legal terms and their explanations.<sup>39</sup>

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<sup>36</sup> Orbelian describes Mongol law here: *Histoire de la Siounie*, trans. by Brosset, vol. 1, pp. 226-7

<sup>37</sup> Translated by Marie Brosset as *Histoire de la Georgie*

<sup>38</sup> *Yuan Shi*, ed. by Song Lian, Beijing: Zhong hua shu ju, 1976, ch. 205

<sup>39</sup> Xu Yuanrui, *Lixue zhinan*, Hangzhou: Zhejiang guji chubanshe, 1988

All of these sources provide differing insights into the attitudes of Mongols and local legal officials and their interactions. They provide the raw data showing the extent and quality of interaction between Mongols and non-Mongol legal officials during the Toluid empire.

However, this interaction, and the flexibility which the Mongols often showed, naturally leads to the question of how such interaction came about. Whether it represented a deviation from Mongol tradition, or whether it instead reflected Mongol tradition, can only be answered by an understanding of Mongol culture. The *Secret History of the Mongols* (*Mongγ ol-un ni yuca tobčiyān*) is the only substantial extant source written by a Mongol (or Mongols) from a Mongol point of view.<sup>40</sup> The case can be made that Šigi Qutuqu, Chinggis Khan's adopted brother or son, was its author, although other views remain.<sup>41</sup> It includes information about some legal trials, and its insistence on Mongol values (and occasional criticism of Chinggis Khan) show how it was part of an attempt to preserve Mongol values that some felt were being threatened.

While its Mongol authorship means that its content is extremely valuable, it is also the case that many things which were obvious to nomadic Mongols are left unsaid in the text. This is of particular concern since no other source reflects nomadic culture to this extent. While the *Secret History* mentions *yasa* (commands) and *yosun* (customs), other aspects of Mongol law are not stressed, or are not immediately obvious to the modern reader.

Therefore, it is worth considering what anthropology can contribute to the study of Mongol law. While caution is required in allowing modern studies to complement our knowledge

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<sup>40</sup> Doerfer, "Zur Datierung der Geheimen Geschichte der Mongolen," pp. 87-111

<sup>41</sup> Ratchnevsky, "Šigi-Qutuqu," pp. 90-93

from the historical sources, the influence of anthropology has inspired historians to see Mongol law in broader terms. In 1940 Eric Voegelin wrote about the legal character of the orders of submission that the Mongols sent to foreign powers, demonstrating their legal character although they are usually considered to be simply diplomatic.<sup>42</sup> More recently, Roberte Hamayon, Françoise Aubin and others have written about Mongol marriage customs and the vengeance system,<sup>43</sup> arguing that these, as much as *yasa* and *yosun*, deserve the title of laws.

Law can include many different aspects, and does not necessarily need to be similar to the law that we, as modern historians of the Mongol empire, are familiar with. Rather, anthropological research on the laws of nomads and tribal peoples has been extremely useful in challenging a text-based and state-centred view of the nature of law.

While there is no generally accepted definition of law, the major challenge in defining it is how to differentiate it from morality on the one hand and from custom on the other. Like law, morality has a normative character, while both law and custom are usually obeyed.<sup>44</sup> But while defining law is challenging, whether laws are written down or not has no bearing on the issue. We cannot conclude that certain societies have no laws, simply because they have no writing or because none of their writing has come down to us.

One way of differentiating law from morality and custom is to postulate that only what is recognized as law by the 'state' or the legitimate authority in any given territory is truly law. However, this leaves ambiguous the position of international law, as well as the 'customary

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<sup>42</sup> Voegelin, "The Mongol Orders of Submission," pp. 378–413

<sup>43</sup> Hamayon, "Mérite de l'offensé vengeur, plaisir du rival vainqueur," pp. 107-140

<sup>44</sup> Hart, *The concept of law*, pp. 82-85, 220, 224

law' of societies lacking a 'state' (however 'state' is defined). Rather, law is a common feature of human existence, and exists in every society. This thesis will take the view that laws are norms the violation of which attracts a punishment, however, the punishment does not need to be carried out by a 'state' actor.<sup>45</sup>

Therefore, in the course of this thesis reference will be made to anthropological and historico-anthropological studies of the Mongols in particular, and of other peoples where these can provide additional insight. While these studies do not substitute for a thorough understanding of the primary sources from the Mongol period, they can assist in understanding these sources better.

Thus, this thesis will mention numerous aspects of Mongol law, including those which are more traditionally recognized as 'law' and others which characterized the Mongols' nomadic life. In addition, the thesis will, in chapters six and seven, include discussion of intellectual and cultural trends which had an impact on the legal history in the Ilkhanate and the Yuan empire. The thesis will therefore go beyond what can be strictly termed 'legal history,' in order to understand more deeply the impact of Mongol law in the Toluid empire.

### Literature review

Western scholarly study of Mongol law started with the idea of a law code, the Great Yasa, promulgated by Chinggis Khan at his enthronement in 1206. This was the picture painted by

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<sup>45</sup> Tamanaha, "An analytical map of social scientific approaches to the concept of law," p. 523

Petis de la Croix in 1710,<sup>46</sup> a picture which long remained popular. Because of his work, other scholars such as D'Ohsson, de Sacy, Vernadsky, Alinge and Poliak, also believed that Chinggis Khan had issued a Great Yasa and set about translating some of the primary sources.<sup>47</sup> It was in this tradition that Riasanovsky wrote his *Fundamental Principles of Mongol law* in 1937, which lists a whole 36 laws contained in the Great Yasa, not counting additional maxims of Chinggis Khan.<sup>48</sup> Unfortunately, as David Ayalon has since conclusively demonstrated, this work was based on a shaky foundation, since the mostly Mamluk primary sources that these scholars were relying on were all based on a single source, the *Tarikhe Jahangosha* of Juvaynī, from which work they copied with some distortions. Ayalon's articles, which appeared in the 1970s, effectively ended this era of the study of Mongol law, and opened up new avenues.

In 1986, David Morgan made the then revolutionary claim that the 'Great Yasa' did not exist, or more precisely that if it existed, it was not a well ordered law code which had been promulgated, but more like a collection of case law. He and Prof. de Rachewiltz debated whether the Chinese sources, in the absence of firm proof from the Persian and Arabic sources, implied the existence of the Great Yasa as a law code. Finally, painstaking linguistic research by scholars such as Aigle and Chogt has shown that there is no linguistic basis for the concept of 'Great Yasa.'<sup>49</sup> The nail in the coffin is Chogt's 2010 book about the Great Yasa which shows that the Chinese sources do not support the existence of such a law code any more than the Persian sources.<sup>50</sup>

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<sup>46</sup> Petis de la Croix, *Histoire de Grand Genghizcan, premier empereur des anciens mogols et tartares*, p. 109

<sup>47</sup> Ayalon, "The Great Yasa of Chingiz Khan: a Reexamination, part A," pp. 99-101

<sup>48</sup> Riasanovsky, *Fundamental Principles of Mongol Law*, pp. 57-69

<sup>49</sup> Chogt, *Chingisu Kan no hō*, pp. 85 ff; Aigle, *Loi mongole vs loi islamique*, pp. 974-77

<sup>50</sup> Chogt, *Chingisu Kan no hō*, 2010, pp. 85ff.

However, the idea of the Great Yasa continues to be popular until today. This is not only because some scholars are unaware of the latest research, but also because it is an attractive concept which gives us the illusion of understanding Mongol law. By being understood as a law code, Mongol law is rendered similar to the forms of law that we are familiar with, and it is assumed that we can summarize it under a number of ‘points’ or substantive laws.

In addition, no alternative grand narrative to that of the Great Yasa has emerged. While the research inspired by anthropology is eye-opening, it offers mostly correction on specific points, in particular, that the Mongol marriage practices as well as the vengeance system deserve the title of ‘laws,’ rather than being called ‘customs’ which leads us to devalue their importance, normative character and function within Mongol society. However in terms of the interaction of Mongol law with Chinese and Islamic law, the concept of the Yasa is still very much in the foreground of how such an encounter is conceptualized.

Perhaps because of the dominance of the Yasa paradigm, there has been comparatively little research on case law. This is especially true for the Ilkhanate where there are no extant legal codes. Thomas Allsen gave an insightful analysis of yarghus in Möngke’s time in his PhD thesis,<sup>51</sup> and Lambton devoted half a chapter of her book *Continuity and change*<sup>52</sup> to the topic. There is also a collection of case studies by Ma’dankan which, however, is accompanied by very little analysis. Though the author points out some unique features of Mongol punishments such as the number of strokes in beatings typically being a number ending in seven, the analysis is largely coloured by denigration of the Ilkhans for their executions of

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<sup>51</sup> Allsen, *Politics of Mongol imperialism*, p. 30

<sup>52</sup> Lambton, *Continuity and change in Medieval Persia*, chapter 2: the Law and its Administration, pp. 69-96 (pp. 83-96 are on the yarghu)

Persians.<sup>53</sup> Other authors, notably Aigle,<sup>54</sup> Halperin, Spuler, Ratchnevsky,<sup>55</sup> and Gronke<sup>56</sup> have referred in passing to the yarghu. On the Chinese side, Hu Xingdong has given considerable and detailed attention to the procedure of civil cases during the Yuan dynasty, and *yuehui* 約會 (joint trials) as well as criminal trials have also been the subject of recent research. The relative dearth of research on legal cases means that our conception of Mongol law is incomplete. While knowledge of Mongol substantive law is now fairly extensive, there is little acknowledgment of the processes by which Mongols made, promulgated and enforced laws.

These processes are however key to our understanding of the encounter of Mongol law with other legal systems. Too often, research on this question is overshadowed by the concept of the Great Yasa and the consequent over-emphasis on substantive law at the expense of procedure and case law. Li Yunian and Narenchaogetu are among the many who assume that the Great Yasa was of supreme importance even in the conquered territories and consequently evaluate the encounter of Mongol and non-Mongol law simply as a clash of differing laws.<sup>57</sup>

On the other hand, some recent works have tended to emphasize the flexibility or tolerance in the Mongol approach to non-Mongol legal systems. Lapidus mentions an “alliance” between Mongol rulers and local elites such as qadis, thereby hinting at a much more flexible

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<sup>53</sup> Ma'dan'kan, *Bih yāsā rasīdagān*, pp. 1-18

<sup>54</sup> Aigle, “Le Grand Jasaq de Gengis-Khan,” pp. 62-63

<sup>55</sup> Ratchnevsky, “Die Rechtsverhältnisse,” pp. 64-110

<sup>56</sup> Gronke, *Derwische im Vorhof der Macht*, p. 224

<sup>57</sup> Spuler, *Die goldene Horde*, p. 364; Li Yunian, “Da Zhasa’,” pp. 77-82; Narenchaogetu, “Chengjisihan ‘Da Zhasa’,” pp. 46-68; Dalkesen, *Gender roles and women’s status in Central Asia and Anatolia*, pp. 24, 144-5, 158, 184-5

approach to Islamic law, though he attributes this flexibility to dependence on the support of local notable families.<sup>58</sup> Denise Aigle has remarked that it is extremely unlikely that the Mongols tried to enforce a law code based on custom, since even Ibn Taimiyya in his *fatwas* never denounced the Ilkhans for trying to impose their customs on Muslims.<sup>59</sup> Peter Jackson has pointed out that Chaghatai's decree on the proper method of slaughtering animals was probably not imposed anywhere far from the Mongol centres of power, namely their encampments.<sup>60</sup> George Lane has remarked on the flexibility inherent in the institution of the *yarghu*;<sup>61</sup> while Françoise Aubin speaks more generally of the "profound juridical and legal sensibility of the Mongols."<sup>62</sup>

It has also been acknowledged that in specific instances, Mongol and non-Mongol practices combined to form novel regulations which were then anchored in law. One example is the *shaomaiyin*, a fusion of the Mongol practice of blood money (a reparatory punishment) and Chinese concern for ancestor worship.<sup>63</sup>

However, these works do not provide a detailed analysis as to why the Toluids should be flexible in matters of law. This is despite the acknowledged flexibility or even tolerance of the Mongols in the areas of religion<sup>64</sup> and administrative practice, where Endicott-West speaks of their "conciliar, deliberative style of decision-making."<sup>65</sup> The relevance of the

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<sup>58</sup> Lapidus, *A history of Islamic societies*, p. 278

<sup>59</sup> Aigle, *Loi mongole vs loi islamique?*, p. 994

<sup>60</sup> Jackson, "Chagatayid Dynasty," pp. 343-4

<sup>61</sup> Lane, *Early Mongol rule*, p. 120

<sup>62</sup> Aubin, "La loi, témoin de la vie. Les biens du nomade dans le droit pénal mongol (XVIe-XVIIIe siècles)," p. 25

<sup>63</sup> Aubin, "Les sanctions et les peines," pp. 254-5; Aubin, "Some characteristics," p. 132-6

<sup>64</sup> Atwood, Christopher., "Validation by Holiness or Sovereignty," pp. 237-256

<sup>65</sup> Endicott-West, "Imperial Governance," pp. 525-6



Mongol consultative tradition for legal matters has never been mentioned except very briefly by Mansura Haidar,<sup>66</sup> and in the work of a political anthropologist, Laura Sabloff.<sup>67</sup>

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<sup>66</sup> Haidar, Mansura, *Medieval Central Asia*, pp. 102-3. Mansura, however, focuses on the secrecy of a handful of trials rather than examining the relevance of the consultative tradition for the trials.

<sup>67</sup> Sabloff, "Genghis Khan, father of Mongolian democracy," pp. 91-119

## **Chapter 1 – The Great Yasa**

### **Introduction**

Historically, research on Mongol law in the Mongol empire as well as in the Toluid khanates has been focussed around the concept of the ‘Great Yasa.’ Many books which mention law in the Mongol empire discuss primarily or even exclusively the ‘Great Yasa.’ The present chapter will review this approach to Mongol law. It will be argued that, in line with recent criticism, the concept of ‘Great Yasa’ is inadequate for understanding either the substance or central features of Mongol law.

The first part of the chapter will review evidence for the ‘Great Yasa,’ arguing that such evidence is clearly inadequate, and that the Mongol approach to different laws and legal systems was in any case more complex than assumed on the basis of the concept of ‘Great Yasa.’ The second part of the chapter will argue that the ‘Great Yasa’ is best understood and treated as an idea with its own history, separate from the historical reality of Mongols encountering and reacting to non-Mongol legal systems. The ‘Great Yasa’ is best studied as a concept within intellectual history. The reality of Mongol law on the other hand and practices which had an impact on the encounter with non-Mongol legal systems will be discussed in chapter 2.

## The 'Great Yasa' and the need for reviewing this concept

The Great Yasa<sup>68</sup> is held to be a law code issued by Chinggis Khan or his successors. Scholars have also assumed that the Great Yasa was a codification of Mongol customary law and that the lists of Mongol laws contained in the works of Juvaynī, al-Maqrizi, al-'Umari, Bar Hebraeus and Rashid al-Din are fragments of this law code. Much energy has been invested in attempts to reconstruct the code based on the supposed fragments.<sup>69</sup>

The debate about the Great Yasa is not simply a debate about a concept. Rather, the Great Yasa has been seen as embodying the essence of Mongol law in the Mongol empire and has had paramount influence on how the encounter of the Mongols with non-Mongol legal systems is conceptualized. The concept of Great Yasa has been current since the time of Petis de la Croix in the 18<sup>th</sup> century,<sup>70</sup> but this research will reiterate recent calls to discard it. Because the concept of Great Yasa has encouraged scholars to see Mongol law as a series of substantive laws, other aspects of Mongol legal practice which are not plainly and directly recorded in the sources are most often ignored. Moreover, the focus on substantive laws means that the clash between opposing legal norms is the almost exclusive focus of most research.

The Great Yasa has been used to stress Mongol 'otherness' and opposition to Islamic and Chinese values, to the point where the Yasa is used as a catch-all concept for Mongol

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<sup>68</sup> On the term 'yasa' or *jasaq* in Mongolian, see Doerfer, *Türkische und mongolische Elemente im Neupersischen*, no. 1789 ياساق (yāsāq), vol. 4, pp. 71-82

<sup>69</sup> Morgan, "The 'Great "Yasa" of Chingiz Khan," pp. 163-4

<sup>70</sup> Petis de la Croix, *Histoire de Grand Genghizcan, premier empereur des anciens mogols et tartares*, p. 109

customary law and state ideology, including unrelated authoritarian demands of Mongol khans.<sup>71</sup> This reinforces the idea that the Mongol khans were uncompromising and wished all the conquered peoples to follow their laws, which feeds into the existing stereotype of the Mongols as being in a class apart due to their desire to exploit others.<sup>72</sup> The Great Yasa is problematic as a concept because it is not clearly defined, and therefore lends itself to being used without appropriate methodological rigour.

Moreover, the Great Yasa has negatively impacted our ability to judge the long-term influence of the Mongols on legal matters in Persia and China. This is because, if Mongol law is seen primarily as consisting of a set of customs which it would have been impractical to try and impose on the conquered populations - such as not washing in running water, slaughtering animals in a particular manner, not treading on thresholds and other similar laws – then the conclusion is naturally made that there was little long-term impact, despite the brief imposition of some of these customs in Yuan China. Many authors simply assume the basic incompatibility of Islamic and Mongol law, and suggest that the influence of Mongol law faded with time,<sup>73</sup> in harmony with the assumptions of Mamluks such as the amir Sayf al-Din Aytamish al-Nasiri who stated that after Ghazan's death “the Yasa of the Mongols passed away.”<sup>74</sup> If one equates the Great Yasa with Mongol law, it is easy to mistakenly assume that simply because references to the Mongol word ‘yasa’ in the sources diminish over time, so did the influence of Mongol law.

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<sup>71</sup> Dalkesen, *Gender roles and womens' status in Central Asia and Anatolia*, pp. 24, 144-5, 158, 184-5

<sup>72</sup> Endicott-West, *Mongolian rule in China*, pp. 111-3

<sup>73</sup> Heuschert, *Die Gesetzgebung*, p. 17; Nielsen, *Secular justice in an Islamic state*, p. 106; Riasanovsky, *Fundamental principles of Mongol law*, p. 33

<sup>74</sup> Amitai-Preiss, “Ghazan, Islam and Mongol tradition,” p. 5

In short, the concept of Great Yasa has encouraged research on Mongol law to proceed within narrow and predictable boundaries. There is the need for a new approach to law in the Toluid empire, one which recognizes that Mongols reacted in various ways to non-Mongol laws and legal systems and that Toluid khans were often flexible in their approach. Therefore, it is indispensable that the concept of Great Yasa be critically examined and, if the criticism is justified as this thesis argues, abandoned.

### An evaluation of the evidence for the Great Yasa

The existence of a law code known as the Great Yasa has been postulated on the basis of several passages in the primary sources which seem to support the existence of such a code. One that has often been cited to support the idea of the 'Great Yasa' law code is the following passage from the *Secret History of the Mongols*, where Chinggis Khan says to his foster-son (or foster-brother)<sup>75</sup> 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,

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<sup>75</sup> Ratchnevsky, *Šigi-Qutuqu*, pp. 75-77

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. a 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.”<sup>76</sup>

As Morgan points out however, this passage does not in any way imply the promulgation of a law code.<sup>77</sup> The ‘blue book,’ according to the text of the passage was meant to record particular judicial decisions, as well as the allocation of conquered peoples among the princes of the imperial family. Morgan therefore refers to it as “a kind of case law, a body of written legal precedents.”<sup>78</sup> Chinese sources refer to the ‘blue book’ as a register or census rather than a law code.<sup>79</sup> The book has not survived.

Secondly, the following passage from Ala al-Din Juvaynī seems to support the existence of a written code:

“In accordance and agreement with his own mind he [Chinggiz Khan] established a rule for every occasion and a regulation for every circumstance; while for every crime he fixed a penalty. And since the Tartar peoples had no script of their own, he gave orders that the Mongol children should learn from the Uighur and that these yasas and

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<sup>76</sup> *Secret History of the Mongols*, § 203

<sup>77</sup> Morgan, “The ‘Great “Yasa” of Chingiz Khan,”” pp. 164-5

<sup>78</sup> Morgan, “The ‘Great “Yasa” of Chingiz Khan,”” p. 165

<sup>79</sup> Chogt, *Chingisu Kan no hō*, pp. 137-9

ordinances should be written down on rolls. These rolls are called the Great Book of Yasas [ياسا نامه بزرگ] and are kept in the treasury of the chief princes. 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 and model their actions thereon; and proceed with the disposition of armies or the destruction of provinces and cities in the manner therein prescribed.”<sup>80</sup>

The conventional view is that the *yāsā-nāmah-ī buzurg* is the Great Yasa. Scholars such as Ratchnevsky argue, partly on the basis of this passage, that the Yasa dealt mainly with affairs of state, including military matters and administration. Togan points out that the yasa (*jasagh* in Mongolian) is rendered in the Chinese glossary of the *Secret History* as *junfa* 军法, ‘military law.’<sup>81</sup> It is argued that the relative paucity of information on the Great Yasa and its contents could be due to secrecy which this kind of information deserved.<sup>82</sup>

“It is these [military] injunctions that lent the Yasa of Cinggis khan the nimbus of their almost magical efficacy. To them was attributed the invincibility of the Mongol people and their meteoric rise as a world power.”<sup>83</sup>

“The aim which Cinggis khan pursued by writing down his *jasag* [commands] was the perpetuation of the military-political order introduced by him and the reign of the Cinggisids over their world empire. The [main] instrument for the realisation of this

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<sup>80</sup> Juvaynī, pp. 17-8, Juvaynī/Boyle, p. 25

<sup>81</sup> Togan, *Flexibility and limitation*, p. 147

<sup>82</sup> Rachewiltz, “Some reflections on Cinggis Qan's *jasag*,” p. 92

<sup>83</sup> Ratchnevsky, “Die Yasa (Jasag) Cinggis-khans und ihre Problematik,” 485

goal was the military; a substantial part of the injunctions of the Yasa was undoubtedly dedicated to military discipline and organisation.”<sup>84</sup>

Morgan, however, argues that this passage from Juvaynī is to be understood in the context of the chapter as a general reference to the recording of Chinggis Khan’s precepts; although the term *yasa-name-ye bozorg* is difficult to explain, it does not necessarily refer to a systematic legal code.<sup>85</sup> In addition, there may be an element of distortion or misunderstanding here. As Chogt emphasizes, it is only reasonable to suppose that historians from sedentary cultures, including Juvaynī, may have either misunderstood Mongol law, or wished to present it in a way more familiar to their readers.<sup>86</sup> Therefore, this passage does not show that there definitely was a legal code known as Great Yasa.

Juvaynī also has a whole chapter,<sup>87</sup> supposedly on the Great Yasa, in his *Ta’rīkh-i-Jahān-gushā*. The chapter deals mostly with military and hunting regulations, and the postal system, which would accord with the view that the Great Yasa dealt mainly with state and administrative matters. Morgan argues that the title of the chapter has been mistranslated; that it does in fact deal with Chinggis Khan’s injunctions, but that this chapter likewise does not support the existence of a systematic law code.<sup>88</sup>

A seemingly incontrovertible claim as to the existence of a law code is found in al-Maqrīzī’s work: he writes of a certain Ibn al-Burhan who claimed to have seen a copy of the Great Yasa

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<sup>84</sup> Ratchnevsky, “Die Yasa (Jasaq) Cinggis-khans und ihre Problematik,” 485

<sup>85</sup> Morgan, “The ‘Great “Yasa” of Chingiz Khan,”” p. 167

<sup>86</sup> Chogt, *Chingisu Kan no hō*, pp. 33-49

<sup>87</sup> Juvaynī, pp. 16-25; Juvaynī/Boyle, pp. 23-34

<sup>88</sup> Morgan, “The ‘Great “Yasa” of Chingiz Khan,”” p. 168



in Baghdad. A description of the contents of the Yasa follows this information.<sup>89</sup> However, in 1971 Ayalon convincingly debunked this claim: Ibn al-Burhan can be identified as Ahmad bin Muhammad, biographies of whom can be found in al-Sakhawi, Ibn Taghribirdi and other works<sup>90</sup>. According to these biographies, it is very improbable that he spoke any language apart from Arabic, so he would not have been able to read a copy of the Yasa written in Mongolian in Uighur characters (there is no evidence of any translations).<sup>91</sup> Rather, al-Maqrizi's material was taken unacknowledged from al-'Umari,<sup>92</sup> who took his material, with acknowledgement, from Juvaynī. Thus what were previously thought to be independent accounts of the Yasa, the closeness of which confirmed the reliability of the reporting, are in fact all taken from a single source. There is no evidence that Chinggis Khan himself was responsible for most of the laws as claimed by al-Maqrizi, and it also seems that he deliberately selected those laws he thought Muslims would most abhor, for his own purposes.<sup>93</sup> Since al-Maqrizi's 'evidence' has been shown to be false and the other passages can be interpreted in different ways, the logical outcome seems to be to reject the idea that a formal law code (Great Yasa) ever existed.

Igor de Rachewiltz argued that though the evidence from the sources from the Western part of the empire is inconclusive, the existence of an actual code is demonstrated by Chinese sources.<sup>94</sup> In recent research by scholars within China, the existence of the Great Yasa is

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<sup>89</sup> Ayalon, "The Great Yasa of Chingiz Khan: a Reexamination, part A," pp. 101-2

<sup>90</sup> *Ibid*, pp. 103 n. 1

<sup>91</sup> *Ibid*, p. 103

<sup>92</sup> *Ibid*, p. 104

<sup>93</sup> *Ibid*, pp. 106-7, 114-16

<sup>94</sup> His view also differs from the conventional one because he argues that, like the *Secret History*, the Yasa was drawn up *after* Cinggis Xan's death to commemorate and remember his deeds, and probably presented at the quriltai of 1229: Rachewiltz, "Some reflections on Cinggis Qan's jasag," pp. 94-95, 99-100

accepted as a fact.<sup>95</sup> The Yuan Shi contains references to a “dà” 大 or “imperial” yasa (transliterated as “zha-sa” 扎撒 or 劄撒). One of these is in the account of the *quriltai*<sup>96</sup> at which Ögödei was enthroned, which says that: *Ban da zhasa* 頒大札撒 “the/a great/imperial yasa<sup>97</sup> was promulgated.”<sup>98</sup> As for the definition of “great yasa,” the text edited by Song Lian (1310-1381) contains the note: 華言大法令也。 “This (i. e. the da zha-sa) is called in Chinese ‘Imperial law’”;<sup>99</sup> however, this could refer to the emperor’s edicts rather than a law code.<sup>100</sup> In addition the *Lixue zhinan*, written around 1301 by a Chinese in Mongol employ around 1301,<sup>101</sup> defines “da zha sa” as “大扎撒，謂依條例法度也” “... a system of law based on *tiaoli*.” The same section defines *tiaoli* as being similar to a *lü* (law code), but then says that *tiaoli* are cited to decide legal cases.<sup>102</sup> Although Hu Xingdong takes this as evidence that the Great Yasa existed and had some effect,<sup>103</sup> it is not conclusive evidence, and points rather to the possibility of a legal system based on precedents.

Speculation has also centred on the meaning of the expression *baoxun* 寶訓 “precious precept,” which has been held to refer to the Great Yasa. The expression occurs in the Yuan Shi in the biography of Bayan 伯顏,<sup>104</sup> and in Huang Jin 黃潛’s *Jinhua huang xiansheng*

<sup>95</sup> Narenchaogetu, “Chengjisihan ‘Da Zhasa,’” p. 46; Li Yunian, “Da Zhasa,” pp. 77-86; Xu Yuchun, *Yuandai fadixing kaobian*, p. 24

<sup>96</sup> On the *quriltai*, see chapter 2.

<sup>97</sup> Number is not indicated in Chinese, so the reference could be to ‘yasa.’

<sup>98</sup> *Yuan Shi*, ch. 2, p. 29

<sup>99</sup> Narenchaogetu interprets this as proof that the Great Yasa as law code existed, “Chengjisihan ‘Da Zhasa,’” pp. 46, 55-59

<sup>100</sup> Chogt, *Chingisu Kan no hō*, p. 121

<sup>101</sup> Xu Yuanrui, *Lixue zhinan*, dianjiao shuoming, p. 1

<sup>102</sup> Xu Yuanrui, *Lixue zhinan*, p. 67

<sup>103</sup> Hu Xingdong, *Yuandai minshi falü zhidu yanjiu*, p. 29

<sup>104</sup> *Yuan Shi*, ch. 127, p. 3115

*wenji* 金華黃先生文集. While earlier literature suggests that the “precious precept” is the Great Yasa, according to the most recent research by Chogt it is much more likely that this expression refers to pronouncements of wisdom known as *bilig*. This is because sources such as Rashid al-Din frequently refer to the reading or recalling from memory of *biligs* at *quriltais*.<sup>105</sup>

A strong reason to reject the concept of Great Yasa is the meaning of the word “yasa” itself. Both the French scholar Denise Aigle<sup>106</sup> and the Inner Mongolian scholar Chogt<sup>107</sup> on analysing the word linguistically have concluded that “yasa” is a command given by a khan, or a chief, which derives its authority from the khan’s authority. The word is often used in the plural, and sometimes paired with other words such as *ahkam* (ordinances) for example, in such a way that it could be seen as synonymous with *ahkam*.<sup>108</sup> Indeed the vast majority of references to ‘yasa’ are unproblematic and refer simply to a ‘command;’ only a few, most of which have been discussed above, refer to a ‘great’ or ‘imperial’ yasa. To illustrate how ostensible references to the Great Yasa actually refer to a ‘yasa’ or ‘command,’ al-Maqrizi claims that a law by Chinggis Khan setting down the tax immunity of clergy (of all religions) was included in the Great Yasa. But Juvaynī, from whom al-Maqrizi had ultimately gained this information, speaks in this respect only of *a yasa*, i. e. a command.<sup>109</sup>

In conclusion, there is no solid evidence for the existence of a law code, known as the “Great Yasa.”<sup>110</sup> The attraction of the concept is that it gives us the illusion of being about to ‘grasp’

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<sup>105</sup> Chogt, *Chingisu Kan no hō*, p. 83

<sup>106</sup> Aigle, “Le Grand Jasaq de Gengis-Khan,” pp. 39-44

<sup>107</sup> Chogt, *Chingisu Kan no hō*, pp. 48-9

<sup>108</sup> Juvaynī, pp. 17-8, Juvaynī/Boyle, p. 25

<sup>109</sup> Juvaynī, pp. 18-19, Juvaynī/Boyle, p. 26; Jackson, “The Mongols and the Faith of the Conquered,” p. 265

<sup>110</sup> Chogt, *Chingisu Kan no hō*, p. 130

Mongol law. Since most modern researchers on the Mongols come from sedentary cultures, we find law codes easily understandable. However, the existence of such a code is simply not supported by the Mongolian sources, and evidence in non-Mongol sources is weak and probably due to misunderstanding or deception. The Chinese sources do not imply a written law code.<sup>111</sup>

#### Evidence from initial encounters with non-Mongol practices

While the existence of the Great Yasa could be taken as an indication that the Mongol laws were working towards imposing their laws on the conquered peoples, the actual situation can only be learned through examining the encounters of Mongols with non-Mongol practices. These, rather than chroniclers' direct claims about the Great Yasa, show what the Chinggisids' attitude was.

What the evidence shows is that there were varied reactions to non-Mongol legal practices. Since the opinions of individual Mongols on whether to impose Mongol laws on their subjects varied, there was no consistent project to impose Mongol customary law on the conquered populations. The imposition of Mongol laws cannot be seen as general Chinggisid policy, or as a principle guiding Toluid policy-making.

For example, there was inconsistency among different Mongols as to whether to expect others to eat meat from animals slaughtered in the Mongol way or whether to expect them to slaughter their animals in this way. Due to their shamanist beliefs, the Mongols slaughtered

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<sup>111</sup> Chogt, *Chingisu Kan no hō*, p. 125

animals without shedding their blood, often through opening the chest and squeezing the heart, as result of which the animal's blood remained in the carcass.<sup>112</sup> This was the opposite of the Muslim method which aimed at draining blood from the animal, and was also unusual in the Chinese context.

There were occasional attempts to impose the Mongol slaughtering method, but they were few and cannot be taken as a consistent policy. An edict from Qubilai's time claims that Chinggis Khan himself once told some Muslim merchants: "With the help of heaven I have conquered you. You are my slaves. If you do not eat [the food provided at the imperial court], how is that right?"<sup>113</sup> However, this episode is only known from Qubilai's edict, and not confirmed by other sources. Chaghatai is also said to have forbidden the Muslim slaughtering method: "The *yasa* forbidding the slaughter of sheep in a lawful manner he sent to every land; and for a time no man slaughtered sheep openly in Khorasan."<sup>114</sup>

The claim that Chaghatai sent this *yasa*, or command, "to every land" makes it seem as if it was the aim of the Mongol leadership to impose Mongol laws wherever possible. However, apart from the fact that implementation must have been difficult,<sup>115</sup> Chaghatai was among the stricter members of the Golden Family, and others members of the Golden Family disagreed with his approach.

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<sup>112</sup> al-'Umari/Lech, pp. 8-9 (Arabic), p. 96 (German translation); Marco Polo, vol. 1, p. 420; Juvaynī/Boyle p. 206; Aigle, "Le Grand Jasaq de Gengis-khan," p. 66

<sup>113</sup> *Kōteibon Gentenshō keibu*, ch. 57, p. 617 禁回回抹殺羊做速納; I have somewhat modernised Cleaves' translation ("The rescript of Qubilai," p. 72) which reads: "Protected by heaven we have gathered you. Ye are our slaves. Yet [ye] do not eat our food. How is that right?" Ratchnevsky, "Rašīd ad-Dīn über die Mohammedanerverfolgungen," p. 169 translates: "Mit Hilfe des Himmels habe ich Euch unterworfen. Wenn Ihr es nicht esst, wie soll es Recht sein?"

<sup>114</sup> Juvaynī, p. 227, Juvaynī/Boyle, p. 272

<sup>115</sup> Jackson, "Chagatayid Dynasty," pp. 343-4

Qubilai, as mentioned in the edict and as confirmed by Rashid al-Din,<sup>116</sup> did impose a policy of not allowing animals to be slaughtered in the Muslim way for several years. This was in response to what he perceived as an affront to Mongol “national pride,”<sup>117</sup> or possibly, it was due to political reasons. It is significant that Qubilai imposed the policy as a result of this perceived affront from the Muslim merchants, and not as a matter of course at the beginning of his rule. If the idea of imposing Mongol laws whenever possible had been the prevailing attitude, Qubilai would have imposed, or tried to impose such a policy from the beginning.

An opposite attitude can be seen in the case of Ögödei and other Mongols. According to Ala al-Din Juvaynī,

“A Moslem bought a sheep in the market, took it home, closed the gates securely and slaughtered the animal after the Moslem fashion in [the lane between] two or three houses, not knowing that he was being watched by a Qipchaq, who, awaiting his opportunity, had followed him from the market. When he drew the knife across the sheep’s throat, the Qipchaq leapt down from the roof, bound him tight and bore him off to the Court of the World-Emperor. Qa’an examined the case and sent out scribes to investigate. When the circumstances were made known to his clear intellect, he spoke as follows: ‘This poor man has observed the commandment of our yasa and this Turk has infringed it.’ The Moslem’s life was spared and he was treated with favour, while the ill-natured Qipchaq was handed over to the executioners of Fate.”<sup>118</sup>

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<sup>116</sup> Rashīd, p. 921, Rashīd/Thackston, p. 451; Ratchnevsky, “Rašīd ad-Dīn über die Mohammedanerverfolgungen,” pp. 163-8

<sup>117</sup> Ratchnevsky, “Die Rechtsverhältnisse,” p. 88

<sup>118</sup> Juvaynī, pp. 162-3, Juvaynī/Boyle, 206-7

Whether the motives for the judgment could be found in Chinggis Khan's dislike for traitors,<sup>119</sup> or in the characteristic Mongol tolerance of private matters,<sup>120</sup> the episode shows a lenient attitude to non-Mongol practices. While this anecdote is clearly intended to portray Ögödei in a positive light, nevertheless it is significant that he is portrayed as being so lenient with regards to legal matters.

In addition, meat was prepared in the Muslim way for Möngke's enthronement in consideration of Berke, who was Muslim.<sup>121</sup> But not only Muslim historians report Mongol leniency: Kirakos reports an instance where a Georgian prince and his entourage, in 1230s, refused to eat the food offered them by the Mongol general Chormaghun, "on the grounds that much of it was forbidden to Christians. In response, far from exploding with rage, Chormaghun simply had them provided with food which was acceptable to them."<sup>122</sup> Thus, while there were several attempts to impose Mongol ways in the issue of how animals were to be slaughtered, there are equally as many instances of leniency on the part of Mongols in this issue.

The diversity of opinion among the Mongols on whether to impose Mongol laws is also illustrated by the story of the man who was caught washing in a stream.<sup>123</sup> Mongols, due to their nomadic customs or religious beliefs, avoided washing in running water. According to Juvaynī, they feared that washing in running water would increase the severity of storms and

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<sup>119</sup> *Secret History of the Mongols*, § 200, Shabankara'i, *Majma al-ansab*, p. 57

<sup>120</sup> Rashīd, pp. 1502-3; Rashīd/Thackton, p. 743; Aigle, *Loi mongole vs loi islamique*, p. 994

<sup>121</sup> Juvaynī, p. 38, Juvaynī/Boyle p. 573 and n. 72

<sup>122</sup> Jackson, "The Mongols and the Faith of the Conquered," pp. 261-2; Kirakos/Bedrosian, *Kirakos Gandzakets i's history of the Armenians*, pp. 237-9

<sup>123</sup> Juvaynī, pp. 162-3, Juvaynī/Boyle, 205-6

lightning,<sup>124</sup> although the belief system which included belief in gods of particular locations (mountains, rivers) may be the deeper reason.<sup>125</sup>

“One day Qa’an was returning from his hunting ground together with Chaghatai when at noon they beheld a Moslem sitting in midstream washing himself. Now Chaghatai was extremely zealous in enforcing the *yasa* and spared no one who had deviated even slightly from it. When he caught sight of this man in the water, from the flame of the fire of his anger he wished to commit the earth of his being to the wind of annihilation and to cut off the source of his life. But Qa’an said: ‘To-day it is late and we are tired. This man shall be held in custody until tomorrow, when we can inquire into his case and ascertain the reason for his violating our *yasa*.’ And he ordered Danishmand Hajib to take charge of the man till the morning, when his innocence or guilt might be discovered; he also told Danishmand, in secret, to have a *balish* of silver thrown in the water where the man had been sitting and to instruct the man, when he was examined, to say that he was a poor man with many obligations, that this *balish* was his whole capital and that it was for this reason that he had acted so rashly. On the next day the guilty man was examined in the Qa’an’s presence. Qa’an listened to the excuse with the ear of acceptance, but by way of precaution someone went to the spot and the *balish* was taken out of the water. Then Qa’an said: ‘To whom could it occur to meditate breaking our *yasa* and commandment or swerving a single hair’s-breadth therefrom? But it seems to be that this man is a person of poor estate and little property and so has sacrificed himself for a single *balish*.’ He commanded that the

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<sup>124</sup> Ayalon, “The Great *Yasa* of Chingiz Khan: a Reexamination, part A,” p. 118; Carpini/Dawson, pp. 14, 17; Juvaynī, pp. 161-2, Juvaynī/Boyle, 204-5

<sup>125</sup> *Secret History of the Mongols*, § 272



man should be given ten more *balish* in addition to the one; and a written statement was taken from him that he would not commit a similar action again.”<sup>126</sup>

Here, Chaghatai’s strictness clashes with Ögödei’s leniency. It could be argued that, since the acquittal of the man was obtained through a subterfuge, the prevailing atmosphere at court was one which saw the imposition of Mongol laws as desirable. However, the particular resolution of this case could also be seen merely as a ruse to feign harmony within the royal family, a quality which had been highly emphasized by Chinggis Khan himself.<sup>127</sup>

Ögödei’s final decision shows that in fact there was no unanimity on whether to impose Mongol laws on non-Mongols. Chinggis Khan had given Chaghatai a special role with regards to Mongol law: “For each of [his sons by his principal wife] Chingiz-Khan had selected a special office. ... To Chaghatai... fell the administration of the *yasa* and the law (ياسا و سياست), both the enforcement thereof and the reprimanding and chastisement of those that contravened it.”<sup>128</sup> Chaghatai fulfilled this role by making sure that the case came to trial. However, as Togan points out, he was not in fact given the supreme position of power which would have enabled him to truly enforce Mongol laws, being instead under the *Qa’anship* of Ögödei who was much more lenient.<sup>129</sup> The one who made the final decision was Chinggis Khan’s successor, Ögödei, who did not feel compelled to follow Chaghatai’s wishes. The difference of opinion shows that the Chinggisids had no overall policy to impose Mongol law. Given the number of examples in which Mongols showed leniency, there is no particular

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<sup>126</sup> Juvaynī, pp. 162-3, Juvaynī/Boyle, 205-6

<sup>127</sup> *Secret History of the Mongols* § 19 and 22; Jagchid, “Traditional Mongolian attitudes and values,” pp. 51 ff.; Melville, “*Jahāngošā-ye Jovayni*”, pp. 378-382

<sup>128</sup> Juvaynī, p. 29, Juvaynī/Boyle, 40

<sup>129</sup> Togan, *Flexibility and limitation*, p. 145; Juvaynī, pp. 161-2, Juvaynī/Boyle, pp. 205-6

reason to consider Chaghatai's attitude as more typical than that of Ögödei among those in power.

In China, where most issues ended up being discussed and legislated in writing, the applicability of Mongol customs to Chinese subjects was explicitly discussed. A petition to the Yuan emperor remarked that Mongol livestock thieves were condemned to confiscation of nine times as many animals as they had stolen and possibly a beating in addition; whilst if the thief was a Chinese, these regulations did not apply. The emperor ordered that a consultation should take place with Orlug-Noyan (Uz-temur) and other dignitaries, who came to the decision that this rule should apply to the Chinese as well. They reported to the emperor who ruled that their decision should be implemented, whereupon documents were sent to various administrative organs from which we can learn about these decisions; to what extent they were implemented is not known in detail.<sup>130</sup>

Nevertheless, the fact that the discussion took place shows that imposition of Mongol customs was not a foregone conclusion. On the contrary, the emperor in this case did something which was typical of Mongol practices: he put together Chinese and Mongol advisors and let them come to a consensus. Of course there were power relations involved, and it was not always a level playing field. However, discussion and arriving at a consensus were integral to Mongol lawmaking practices. (This will be discussed in more detail in the next chapter on the *quriltai*.) From this data it can be seen that there was a diversity of attitudes towards the imposition of Mongol laws on non-Mongols, and that the decision to enforce Mongol laws was by no means a foregone conclusion.

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<sup>130</sup> Ratchnevsky, "Die mongolische Rechtsinstitution der Busse," p. 177

## The Great Yasa in intellectual history

Although the Great Yasa probably never existed in reality as a law code, in ideology it had a distinguished history. The malleability of the Great Yasa as an intellectual construct is illustrated by Morgan thus:

“There was probably believed to be a ‘Great *Yasa* of Chingiz Khan’, derived in part from Chingiz himself and perhaps in part from earlier Mongol custom. But this was not written down in any coherent form, and it was therefore possible to attribute to it a wide variety of provisions as was thought necessary or desirable.”<sup>131</sup>

McChesney puts it in even starker terms: “Indeed I think it ought to be asked, was the elaboration *and perhaps even outright creation* of the idea of a great code of Chinggis Khan part of a continuing public discourse about law and authority in society?”<sup>132</sup>

Within the Western Islamic world, the Great Yasa played a great role in the “ideological war”<sup>133</sup> between the Ilkhanate and the Mamluk Sultanate. Both rulers and scholars were engaged in this ideological war. For example, Baybars declared in a letter to Abaqa that “Our yasa is superior to that of Chinggis Khan;” in this instance, ‘yasa’ = ‘Shari’a’ or ‘Islamic legal system.’<sup>134</sup> What Baybars meant was that the law practiced in the Mamluk Sultanate, based on Shari’a, was superior to the legal system used in the Ilkhanate, which was ostensibly

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<sup>131</sup> Morgan, “The ‘Great “Yasa” of Chingiz Khan,”” p. 170

<sup>132</sup> McChesney, “The Legacy of Chinggis Khan,” emphasis added.

<sup>133</sup> Aigle, “Le Grand Jasaq de Gengis-Khan,” pp. 33, 36-7

<sup>134</sup> Amitai-Preiss, “An exchange of letters in Arabic,” p. 30; Aigle, “Le Grand Jasaq de Gengis-Khan,” p. 37

based primarily on the laws of Chinggis Khan. Meanwhile, Al-Maqrizi and Ibn Taghribirdi tried to convince their readers that the term “*siyasa*” (a branch of law within Muslim lands dealing mostly with the law as practiced by the ‘secular’ ruler, or sultan) was in fact derived from “*yasa*,” and this allegation was used to press for more strict adherence to religious law.<sup>135</sup> Al-Maqrizi and Ibn Taghribirdi were unhappy with the growing influence of *hakims*’ (chamberlains’) courts in the Mamluk sultanate,<sup>136</sup> and as a way of arguing against them alleged that the law they were implementing was influenced by the “*yasa*,” i.e. by Mongol laws and ideology. Al-Maqrizi even uses the word *hakim* to describe Mongol judges, thus linking the aspects of Mamluk law he considered undesirable with Mongol law.<sup>137</sup> Thus, Mamluk rulers and scholars used legal discourse as anti-Mongol propaganda, and the scholars also used legal discourse to argue against internal practices of the Mamluk sultanate.

Likewise, the roles of the *Yasa* and *Shari’a* were also a focus of controversy over a long period in Central Asia. Here, the word ‘*yasa*’ was gradually replaced with ‘*töre*,’ the meaning of which is still disputed.<sup>138</sup> Irwin points to the perception of *töre* as “the pagan steppe equivalent of the Muslim sunna,”<sup>139</sup> while it may have acquired more broadly the meaning of a kind of etiquette. Unlike in the Mamluk Sultanate, the *Yasa* was sometimes viewed positively, and sometimes as in harmony with the *Shari’a*,<sup>140</sup> though at other times it was clearly perceived as in conflict with the *Shari’a*.

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<sup>135</sup> Ayalon, “The Great *Yasa* of Chingiz Khan: a Reexamination, part C2,” pp. 115-119

<sup>136</sup> Rapoport, “Legal Diversity in the Age of *Taqīd*,” pp. 218-221

<sup>137</sup> Irwin, “What the partridge told the eagle,” p. 9

<sup>138</sup> Hamayon, *La chasse à l’âme*, p. 224 and p. 760 n. 2; Togan, *Flexibility and limitation*, pp. 147-8; Subtelny, *Timurids in transition*, pp. 15-7

<sup>139</sup> Irwin, “What the partridge told the eagle,” p. 10

<sup>140</sup> Isogai, “*Yasa* and *Shari’a* in Early 16th Century Central Asia,” p. 100; see also McChesney, “Zamzam Water on a White Felt Carpet,” pp. 63-80

The Chagadaid Khan Tarmashirin (r. 1331-34) is said to have abrogated specific aspects of the Yasa or even abolished it altogether.<sup>141</sup> When one looks more specifically at what this entailed, however, it appears the complaint against him was that he had failed to conduct the annual *toy* (an assembly of princes and nobility similar to the *quriltai*, which however met every year and had the power to depose a khan).<sup>142</sup> Timur, in accordance with his intention to recreate much of the Mongol empire, highly valued the Yasa, or *töre*.<sup>143</sup> In practice, the *töre* was mostly about “hunting and raiding, military discipline, and ceremonial” i. e. means of maintaining an identity.<sup>144</sup> But in 1411 Timur’s son Shah Rukh, according to Jalal al-Din Qa’ini, “abandoned the Mongol law court and gave up the Mongol customary laws in favour of the Sharia,” prohibiting alcohol in Herat, declining to keep a descendant of Chinggisid Khan as the nominal ruler, and purifying the tomb of his father Timur in Samarkand of its non-Islamic elements.<sup>145</sup>

The Shaybanids likewise dealt with this controversial issue. Ibn Ruzbehan in the *Mehman-name-ye Bokhara* reports on a discussion about inheritance rights under Shaybani Khan, which took place around 1507-8. It concluded with the implementation of Islamic law which forbids representation in inheritance law, as opposed to the practice supposedly going back to “the rule of Chingiz Khan,” which allowed it.<sup>146</sup> Here, it seems that any Turko-Mongol practice could be referred to as a “rule of Chingiz Khan,” as Chinggis Khan never made a regulation concerning this question of inheritance or even seriously tried to modify Mongol practices or initiate a new practice regarding inheritance law. Later in the Shaybanid dynasty,

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<sup>141</sup> Biran, “The Chagadaids and Islam,” pp. 748

<sup>142</sup> Biran, “The Chagadaids and Islam,” pp. 749

<sup>143</sup> Woods, “Timur’s genealogy,” pp. 100-101

<sup>144</sup> McChesney, *Central Asia*, p. 131

<sup>145</sup> McChesney, *Central Asia*, p. 129

<sup>146</sup> Isogai, “Yasa and Shari’a in Early 16th Century Central Asia,” p. 94

Hafiz Tanish reports that Abdallah Khan II (r. 1583 to 1598) performed Muslim prayers at the Idgah, a large open space outside the city, “in accordance with the Yasa of Chinggis Khan.”<sup>147</sup>

Zahir al-din Babur viewed the *töre* as custom and argued that it need not be followed in its entirety:

“Previously our ancestors had shown extraordinary respect for Chinggisid custom (tora). They did nothing to contradict it either at their formal audiences or in [the etiquette they observed in] sitting and standing. But Chinggisid custom is not a definitive text (naşs-i qāti‘) that a person must adhere to. If someone institutes a good regulation (qā‘ida) it should be followed, but if an ancestor leaves behind something bad, then something good should be substituted for it.”<sup>148</sup>

Feeling on this issue was still strong at the time of the Ottomans. In the *Ahlak-i ‘Ala’i* by Kinalizade ‘Ali Efendi, a leading ‘alim (he rose to rank of kadi-‘asker) under Suleyman and Selim II, felt the necessity to point out that secular law enacted by a ruler, such as the once widely accepted yasa of Chinggis Khan, was bound to be gradually disregarded as the power of that ruler’s dynasty waned. He contrasted this with Islamic law which, he said, though almost a thousand years old, had preserved its vitality unimpaired.<sup>149</sup> This view that the yasa, and by implication Mongol law, was initially strong but quickly waned, is still current among

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<sup>147</sup> McChesney, *Central Asia*, p. 132

<sup>148</sup> Quoted in Subtelny, *Timurids in transition*, pp. 17-18

<sup>149</sup> Heyd, *Studies in Old Ottoman Criminal law*, p. 203

scholars today,<sup>150</sup> some of whom have also argued that the Mongols were quickly ‘conquered’ by the more ‘sophisticated’ cultures of sedentary Persia and China.<sup>151</sup>

Nielsen, author of a book on secular justice in Islamic states, hits the nail on the head when he states that Mamluk authors were able to “shape it [the yasa] to their own preconceived ideas and mould it to the form of the Shari’a they knew.” He goes on to state that,

“This was a comparatively easy task, since the practical validity of the Yasa among the Mongols, at least in their conquered territories, lasted only for a short time. The Yasa very soon became a symbol only, albeit a powerful one, both in Mongol Iran and in the Qipchaq empire of the Golden Horde, although certain elements – for examples its tolerance of religious differences – continued after the adoption of Islam.”<sup>152</sup>

While it is true that the Yasa became a symbol, if one views Mongol law as encapsulated in ‘the Yasa,’ then the conclusion naturally follows that Mongol law did not have much concrete, long-term influence. Therefore in order to grasp the continuing influence of Mongol law within the Toluid empire, it is necessary to redefine Mongol law as wider than, and partially different from, ‘the yasa.’

If the concept of Yasa can change over time, then it is also true that it could have been invented. We should be extremely cautious in applying any conclusions about the Yasa to

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<sup>150</sup> Ayalon, “The Great Yasa of Chingiz Khan: a Reexamination, part C2,” p. 141; Nielsen, *Secular justice in an Islamic state*, pp. 106-7; Spuler, *Die Goldene Horde*, p. 364

<sup>151</sup> See Fragner, “Ilkhanid rule in Iranian political culture,” p. 70

<sup>152</sup> Nielsen, *Secular justice in an Islamic state*, p. 106

Mongol law in the Toluid empire in general. The Yasa, as an ideological concept, is far removed from the reality of the Mongol encounter with non-Mongol legal systems.

### Conclusion

It can be concluded that while the “Great Yasa” is useful as a concept, it does not necessarily bring us any closer to understanding Mongol law as it was practiced in the unified Mongol empire or the Toluid empire. The “Great Yasa” developed primarily as a concept among historians coming from sedentary cultures, and in the “ideological war” between the Ilkhanate and the Mamluk sultanate and more generally, among those who had an interest in stressing the differences between Mongol custom and Islamic law. It is therefore more suitable to being analysed as a phenomenon in culture wars than as a means of understanding more about Mongol law itself.

Together with the rejection of the “Great Yasa” should also be rejected the theory that the Mongols, starting with Chinggis Khan, firmly intended to impose their own laws on the peoples they conquered. Rather, from the beginning there was a multiplicity of reactions towards actions which infringed Mongol laws.



## **Chapter 2 – The quriltai**

### **Introduction**

While the last chapter has shown the danger of trying to shoehorn Mongol law into the categories familiar from legal systems of sedentary peoples, the present chapter will seek to define Mongol law more broadly, specifically discussing an institution which brought some flexibility to the Mongol legal system. While the substantive content of Mongol law is rightly seen in the commands (yosas) of Chinggis Khan as well as the customs<sup>153</sup> of steppe life, the institution of the quriltai provided a forum where legal matters could be discussed or agreed among Mongol leaders.

The quriltai has not been recognized as a legal institution before mostly because the extant sources do not describe it as such. But these sources were nearly all written by people from sedentary cultures who did not necessarily understand Mongol law deeply. Moreover, the only significant historical source written by a Mongol (or Mongols) from a Mongol point of view, the *Secret History of the Mongols*, presents the family history of Chinggis Khan but does not talk about laws in a systematic way, since there was much that was understood and did not apparently require explanation.<sup>154</sup>

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<sup>153</sup> Including marriage customs and the vengeance system.

<sup>154</sup> The contributions of Françoise Aubin, Denise Aigle and Roberte Hamayon have been particularly significant in order to more fully understand the Mongols' attitude to law.

Analysing the quriltai allows us to re-capture the flexibility inherent in Mongol legal thinking. It allows us to see that the Mongol tradition of collegial decision-making applies not only to the administrative field, but also to law. Therefore, the flexibility shown by many Mongols when they first encountered non-Mongol legal systems should not be cast as a rejection of Mongol law but rather as a reflection of the collegial tradition within Mongol law. The flexibility that Mongols and Toluids showed towards diverse legal systems is a fundamental aspect of their interaction with other legal systems; the impact of this flexibility was far larger than that of any attempts to impose Mongol laws on others.

### The quriltai

A quriltai can be seen as a type of “ritualized consultation.”<sup>155</sup> As Fletcher points out, the quriltai was not a regular feature of nomadic existence<sup>156</sup> but, once a supratribal polity emerged, it is hardly surprising that such an institution existed in order to further the aims of the polity. In the Mongol case, the quriltai may be a more formal version of the *yeke eye* (lit. ‘great agreement’ or ‘great consultation’),<sup>157</sup> mentioned in the *Secret History* in connection with the Mongols’ defeat of the Tatars, and the need to decide what to do with the defeated Tatars. The quriltai was an institution suited to and partially reflecting the reality of the Mongols’ nomadic existence. “In a pastoral nomadic economy and society in which a wide

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<sup>155</sup> Bogatyrev uses this term in his dissertation on Muscovite political culture, *The sovereign and his counselors*, pp. 13, 78

<sup>156</sup> Endicott-West, “Imperial governance,” p. 531; Fletcher, “Ecological and Social Perspectives,” 14, 20-21, 26; Di Cosmo, “Periodization,” p. 19

<sup>157</sup> Rachewiltz, *Secret History of the Mongols*, p. 1039 ; Mostaert, Antoine, *Dictionnaire Ordos*, vol. 1, pp. 231-232 ; Lessing, *Mongolian-English Dictionary*, p. 304

dispersal of people and herds was ecologically necessary, it is not surprising to find the existence of a consultative institution which brought together people from great distances.”<sup>158</sup> It served the practical function of bringing leaders together<sup>159</sup> to allow important decisions to be made, usually through creating consensus through discussion;<sup>160</sup> it fostered unity among the participants and reinforced or clarified relations of superiority or inferiority.<sup>161</sup> It sometimes contained extremely important ritual elements, such as the seating of the khan on a throne, the removing of belts and hats in order to salute the new ruler,<sup>162</sup> or an elaborate and expensive redistribution of goods with the aim of promoting loyalty.<sup>163</sup>

Given the nature of steppe life, it should not be considered surprising that the methods of the *quriltai* were mostly discussion and persuasion. Any coercive power within Mongol society was very limited, because of the ever-present possibility of flight, though social exclusion was possible and sometimes practiced. For example, after Temujin (the future Chinggis Khan)’s father was murdered and his family was no longer considered influential or powerful enough,<sup>164</sup> Chinggis’ mother and her children were abandoned by the clan. Military action (often in the form of vengeance) was also a means of coercion. However, coercive power was limited and the *quriltai* was an institution that enabled many decisions to be made by consensus, thereby limiting the need for coercion.

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<sup>158</sup> Endicott-West, “Imperial governance,” p. 526

<sup>159</sup> The word *quriltai* comes from *quri*- “to gather, assemble,” Rachewiltz, *Secret History of the Mongols*, p. 1039. See also Doerfer, *Türkische und mongolische Elemente im Neupersischen*, no. 305, قوريلتاي (*qūriltāi*), vol. 1, pp. 435-7

<sup>160</sup> In consultations with the sovereign in late medieval and modern Russia, the main goal was to seek consensus, Bogatyrev, *The sovereign and his counselors*, p. 78

<sup>161</sup> Heuschert, *Die Gesetzgebung*, p. 129

<sup>162</sup> For example Rashid, p. 806, Rashid/Thackston, p. 393

<sup>163</sup> Fletcher, “Ecological and social perspectives,” p. 23

<sup>164</sup> Holmgren, J., “Observations on marriage and inheritance practices,” pp. 132-5

### The quriltai as a legal institution

The definition of a quriltai as “a conference or council of princes and nobles at which a new ruler was acclaimed”<sup>165</sup> or in which important decisions were taken which regarded the participants, such as decisions about military campaigns,<sup>166</sup> falls short of adequately describing this complex institution. It was in fact by its nature a legal institution.

Institutions similar to the quriltai were characteristic of several Inner Asian societies or empires. The Xiongnu “held three annual assemblies, in the first, fifth, and ninth moons,”<sup>167</sup> at which they practiced ancestor worship, discussed tribal affairs and, at some assemblies, conducted a census.<sup>168</sup> The Khitans used to convene to decide a new leader every three years, so they could cooperate in warfare.<sup>169</sup> The Jurchens also had assemblies, at which generals and common soldiers mixed, which involved both revelry and serious secret discussions.<sup>170</sup> These institutions were still used in part when the Liao and Jurchen were ruling China.<sup>171</sup> The Tangut also had a similar institution.<sup>172</sup>

Some of these institutions which were similar to the quriltai have been recognized by historians as being legal in character. For example the quriltai at which the Oirat regulations

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<sup>165</sup> Endicott-West, “Imperial Governance,” pp. 525-6

<sup>166</sup> *Ibid*, p. 526

<sup>167</sup> *Ibid*

<sup>168</sup> *Ibid*

<sup>169</sup> *Ibid*, p. 527-8

<sup>170</sup> *Ibid*, p. 528-9

<sup>171</sup> *Ibid*, p. 529-30

<sup>172</sup> *Ibid*, p. 530

were produced in 1640 is seen as an event with legal importance.<sup>173</sup> Assemblies of leading Mongols during the Qing dynasty known as *chighulghan*, were relatively formalized; there were fines for non-attendance, and written legislation was produced at them. Therefore, the *chighulghan* is seen as a legal institution.<sup>174</sup> However, seeing only these later assemblies as legal in character displays a bias towards assemblies which produced written legal documents. It would be inconsistent to regard the *quriltai*s as not legal in character, simply because no written legislation, such as the Great Yasa<sup>175</sup> or any other written legal documents, were produced there.

The *quriltai* was a legal institution, whether or not any written legislation was produced there. The decisions taken at *quriltai*s were legal decisions and it was the institution of the *quriltai* which gave them their legal force. This is seen in that attendance was considered compulsory for all those, principally clan or tribal leaders, whose cooperation would be needed to implement a decision, a full attendance at a *quriltai* was sometimes indicated by the phrase ‘*aqa and ini*,’ meaning literally ‘older and younger brothers.’<sup>176</sup> The decisions were considered binding on all who had taken part. Moreover, there are many examples of decisions having already been taken, yet a *quriltai* was still considered necessary.<sup>177</sup> This demonstrates that the *quriltai* was needed to give these decisions their legitimacy and legal force, therefore the *quriltai* is a legal institution. The principle function of a *quriltai* seems to have been in formally granting legitimacy to a new person or to new decisions.

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<sup>173</sup> Perdue, *China marches west: the Qing conquest of Central Eurasia*, pp. 107-8; Sneath, “Mapping and the Headless State,” pp. 44-47; Aubin, “Les sanctions et les peines,” p. 263

<sup>174</sup> Heuschert, *Die Gesetzgebung*, p. 129 n. 96

<sup>175</sup> See Chapter 1 about the Great Yasa; Irwin, “What the partridge told the eagle,” p. 10: Ibn ‘Arabshah says that the yasa (which he calls *töre*) was read out at *quriltai*s.

<sup>176</sup> Doerfer, *Türkische und mongolische Elemente im Neupersischen*, no. 22 آقا (āqā), vol. 1, pp. 133-40; also Juvaynī, p. 220, Juvaynī/Boyle pp. 266

<sup>177</sup> Endicott-West, “Imperial Governance,” p. 526

As for attendance at quriltai being compulsory, this is demonstrated by the delays in holding quriltai, where one or the other of those whose presence was expected declined to come. For example, the quriltai for the enthronement of Güyük was delayed for three years because some of the princes refused to come.<sup>178</sup> In Möngke's case, a quriltai was held despite the absence of many of the descendants of Chaghatai and Ögödei, but it was lacking in legitimacy, and the attendants could fulfill little of the usual business of a quriltai except the enthronement itself, and simply decided to meet again later.<sup>179</sup> This shows that a refusal to attend by some affected the legitimacy of the quriltai. Of course, some real-world political and military conflicts played out partly through acceptance or refusal to attend quriltai. While it was difficult to coerce people to come, pressure could be applied, for example in the form of the threat of Menggeser, Möngke's *yarghuchi*,<sup>180</sup> who decreed that the punishment for non-attendance and holding one's own private festivities was decapitation; a law aimed at rivals for the qa'aniship who might have tried to hold their own quriltai.<sup>181</sup> This prefigures the law valid during the Qing dynasty, where non-attendance at a *chighulghan* attracted a fine in livestock.<sup>182</sup> However difficult attendance was to enforce, it can be seen that the decisions confirmed at quriltai were only considered fully legally binding once a quriltai with all important participants took place.

Secondly, the decisions taken were binding; 'dissenting opinions' were not allowed and everyone who attended was bound to support the quriltai's decisions.<sup>183</sup> It is because the

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<sup>178</sup> Rashid, pp. 802-5, Rashid/Thackston, pp. 391-2

<sup>179</sup> Rashid, pp. 824-6, Rashid/Thackston, 402; see also Endicott-West, "Imperial governance," p. 526

<sup>180</sup> On the position of *yarghuchi*, see chapter 3.

<sup>181</sup> *Yuan Shi*, ch. 2, p. 33; ch. 124, p. 3055

<sup>182</sup> Heuschert, *Die Gesetzgebung*, p. 129 n. 96

<sup>183</sup> Endicott-West, "Imperial governance," pp. 532-3

decisions were binding that some tried so hard to avoid attending certain quriltai, or felt betrayed if they attended and the outcome was not what they had anticipated.<sup>184</sup>

Moreover, the main reason for holding a quriltai was often to give legal force to decisions which, in fact had already been taken. Despite occasional heated discussions, rarely was the outcome of a quriltai for the election of a khan in doubt;<sup>185</sup> rather, the quriltai existed to legitimize a consensus that had already been reached. Various concrete actions, such as an enthronement or the distribution of gifts,<sup>186</sup> helped to give legitimacy to the decisions taken, but these would not give legitimacy if the attendance were not as expected.

All this shows that the quriltai were a legal institution. The implications are very important. This shows that what Endicott-West describes as the “conciliar, deliberative style of decision-making [which] existed among the early thirteenth-century Mongols”<sup>187</sup> was not limited to administrative, but extended to legal matters. The conciliar (or consultative) decision-making style was part and parcel of Mongol legal culture, and even crucial to it. It was an integral part of the Mongol approach to law.

#### Further legal aspects of the quriltai

Thus, the quriltai was an essentially legal institution which gave legitimacy to new decisions, despite the fact that its decisions were not necessarily recorded in writing. However, its legal

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<sup>184</sup> Jackson, “The Dissolution of the Mongol Empire,” p. 203

<sup>185</sup> Endicott-West, “Imperial governance,” p. 526

<sup>186</sup> Bateman, Gillian, “The ‘Pax Mongolica’ and the Ilkhans 1258-1335: The Problem of Extended Lines of Communication,” PhD thesis, SOAS, University of London, forthcoming

<sup>187</sup> Endicott-West, “Imperial governance,” p. 526

aspect was not restricted to the legislative task of formally making decisions about succession to leadership, administrative or military matters. Rather, as Mansura Haidar has noted,<sup>188</sup> it also had a judicial function in that legal cases were often judged during *quriltais*.

It should be noted that in Mongol culture, legal matters were not neatly separated from administrative / governmental matters; the absence of legal specialists in Mongol society is a well-known factor.<sup>189</sup> While in many cultures legal personnel, or court cases, are distinguished through special procedures, places, clothing and other markers, in Mongol culture legal decisions and administrative decisions were taken in remarkably similar contexts. This was because the same factor, namely the presence of all the concerned parties, and therefore the collegial nature of decision-making, gave legitimacy to both administrative and legal decisions.<sup>190</sup>

Both types of decisions, legislative and judicial, were routinely taken at *quriltais*. In fact the *quriltais* usually consisted of two major parts: firstly revelry, banqueting and the presentation or exchange of gifts, and secondly government business of varying nature and scope, often including judicial trials. For example, the *quriltai* held in 1235 after Ögödei's return from campaign in China shows this two-fold division of the *quriltai*:

“...all presented themselves, and he [Ögödei Qa'an] rewarded them with various shows of favour. For one full month he and his relatives banqueted, and, as was his custom, he gave away everything in the treasuries.

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<sup>188</sup> Haidar, Mansura, *Medieval Central Asia*, pp. 102-3

<sup>189</sup> The only specialists were shamans, blacksmiths and bards. Allsen, *Commodity and exchange*, p. 30

<sup>190</sup> Some other factors also contributed legitimacy to the legal trials, for example a person who interrogated another always needed to be of the equal or higher status than the person being interrogated. See chapter 3.



*When they were finished feasting and reveling, they turned to serious matters of state and the military. Since some outlying areas had not been conquered, and rebellions were in progress in others, in order to deal with these matters he was going to assign one of his relatives to each and every corner [...].”*<sup>191</sup>

This pattern was typical of most *quriltais*. When a new khan was enthroned, he would gain legitimacy through the enthronement and acclamation as well as the distribution of presents in the presence of all interested parties; when he had been enthroned, still in the presence of the *aqqa* and *ini*, he would immediately start to exercise that legitimacy. While it was the newly enthroned khan who gave the final judgment in legal cases, the presence of the queens, princes, princesses and amirs was important. There may have been several motivations for exercising justice while they were still present: the desire to accomplish as much as possible while everybody was in one place, could be consulted if necessary, and reactions gauged; the desire to appear as an effective and forceful ruler; or the desire to strengthen unity by making an example of rebels.

It is not simply the judicial trials in the second part of *quriltais* that should be considered as legal in character. While these provide additional confirmation of the legal nature of *quriltais*, it is the whole *quriltai* that should be considered as legal in nature, because it is the fact of meeting together itself which gave legitimacy and legal force to all the decisions taken there.

When Ögödei had been made *qa'an*, he sought to resolve disputes that had arisen since the death of Chinggis Khan. He took a decision on a disputed military campaign and “silenced all

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<sup>191</sup> Rashid, pp. 663-4, Rashid/Thackston, p. 324, emphasis added

those who were speaking against the action.” He also gave a general ordinance pardoning any crimes preceding Ögödei’s enthronement.<sup>192</sup>

The quriltai enthroning Güyük, probably because his election was more controversial than Ögödei’s,<sup>193</sup> involved more specifically getting rid of his rivals or enemies. It was shortly before this quriltai that Otchigin, Chinggis’ brother, had approached with an army, giving the impression that he was aiming for the qa’an-ship. A secretive trial was held at the quriltai: “Since the investigation was extremely sensitive, no one was allowed to attend the proceedings, with only Möngkä Qa’an and Orda making the investigation, and no one else allowed entry.”<sup>194</sup> The trial of Fatima Khatun, the confident of the regent Töregene, also took place at this quriltai according to Rashid al-Din,<sup>195</sup> although the precise timing is difficult to establish; in any case the trial took place during Carpini’s stay at the *ordo* (Mongol encampment), so at most about three months after Güyük’s enthronement.<sup>196</sup>

The second quriltai enthroning Möngke was even more replete with judicial activity. Apparently during the quriltai, a plot against Möngke was discovered. However that may be, the ‘plotters’ were apprehended by an army and taken to the *ordo*, where they were feasted for three days and left with guards over them. “The next day Mongka Qa’an went to Genghis Khan’s ordu and sat on a chair to conduct the trial of Shiramun and the princes himself.”<sup>197</sup>

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<sup>192</sup> Rashid, p. 638, Rashid/Thackston, p. 313

<sup>193</sup> Allsen, *Mongol imperialism*, p. 20; Carpini/Dawson, p. 25

<sup>194</sup> Rashid, p. 806, Rashid/Thackston, p. 393; Juvaynī, p. 210, Juvaynī/Boyle, p. 255, Khvādamīr, vol. 3., p. 56, Khvādamīr/Thackston, p. 32

<sup>195</sup> Rashid, p. 806, Rashid/Thackston, 393

<sup>196</sup> Carpini/Dawson, p. 65; see also Juvaynī, pp. 200-201, Juvaynī/Boyle, pp. 244-6, Rashid, pp. 802-3; Rashid/Thackston, p.

<sup>197</sup> Rashid, p. 834; Rashid/Thackston, p. 406

Shiramun's atabeg, tortured with bastinado, confessed and committed suicide. The next day more noyans and amirs were arrested, and finally 77 people were executed.<sup>198</sup>

Then Yesün Toqa and Büri, two Chagadaid princes, arrived, with very few soldiers. "Büri was sent to Batu under escort by emissaries so that after his guilt was proven he could be executed. Qara Hülägi conducted the trial of Toqashi Khatun [Yesün Toqa's wife] in Yesün Toqa's presence. He ordered her to be kicked to death, and thus relieved his breast of an old grudge."<sup>199</sup> Qara Hülägi was made head of the Chaghadaid *ulus* by Möngke.<sup>200</sup> "The wardens of court" were also sent to bring Qadaq, who had been Güyük's atabeg from childhood and dealt with administrative affairs while Güyük was qa'an,<sup>201</sup> and "although his guilt was clearer than Satan's infidelity, a trial was ordered. After he confessed to his crime, it was decreed that he be dispatched [...]."<sup>202</sup>

Möngke also summoned Oghul Qaimish, Guyug's widow and her son, Khwaja, with a message that gave them hope they could be spared: "If you did not participate in this conspiracy, your welfare depends upon your coming directly to court."<sup>203</sup> Khwaja thought better of the temptation to harm the messenger, but his mother sent a message disputing Möngke's legitimacy. Then she was detained, taken to court and then to Sorqaghtani Beki's *ordo*, where she was tried by Menggeser and drowned in the river.<sup>204</sup>

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<sup>198</sup> Rashid, p. 837, Rashid/Thackston, p. 407

<sup>199</sup> Rashid, p. 837, Rashid/Thackston, p. 408

<sup>200</sup> Rashid, pp. 806-7; Rashid/Thackston, p. 393

<sup>201</sup> Rashid, p. 808; Rashid/Thackston, pp. 394, 396

<sup>202</sup> Rashid, pp. 837-8; Rashid/Thackston, p. 408

<sup>203</sup> Rashid, p. 838; Rashid/Thackston, p. 408

<sup>204</sup> Rashid, p. 839; Rashid/Thackston, p. 409

Meanwhile in the city of Beshbaliq, some Uighurs were apparently plotting a massacre of Muslims. The new qa'an's response allowed him to display his authority over all that happened in his empire:

“A slave who was aware of the plot became Muslim and informed them. Their guilt was established, and after the Idiqut [leader of the Uighurs] was brought in and tried, he confessed to his crime. It was ordered that he be taken to Beshbaligh and executed in the presence of all the people on a Friday after the prayer.”<sup>205</sup>

Möngke also used the quriltai to launch judicial activities covering the whole realm under Mongol rule:

“Since several trouble-makers remained in various corners, and it would have either taken too long or involved too much trouble to bring them in, the emperor dispatched Bala Yarghuchi and a group of liege men to Yesü Möngkä's armies to inquire about them and put to death all who had participated in the conspiracy. He also sent another commander on the same matter to Cathay.”<sup>206</sup>

The quriltai for the enthronement of Geikhatu also included trials which took place after the main celebrations:

“...they all enthroned him in the vicinity of Akhlat on Sunday the 24<sup>th</sup> of Rajab 690 [July 23, 1291] [...] When the banquets and celebrations were over, in early Sha'ban [early August 1291] all the amirs were arrested and trials were begun, for Gaikhatu wanted to have an

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<sup>205</sup> Rashid, pp. 839-40; Rashid/Thackston, p. 409

<sup>206</sup> Rashid, p. 840, Rashid/Thackston, p. 409

investigation made of his brother Arghun Khan's death and the murders of the amirs and viziers. [...].”<sup>207</sup>

It is also noteworthy that, in Köden's note to Töregene about why he was protecting Mahmud Yalavach and other officials from her, he contemplates the prospect of them being tried at a quriltai:

“...Since they have sought refuge with us, to send them back would be unchivalrous. In the near future a quriltai will be held, and I will bring them there with me. In the presence of my relatives and the amirs an investigation into their crimes can be undertaken, and they can be punished accordingly.”<sup>208</sup>

While the majority of quriltais had both an enthronement and feasting as well as governmental business and legal trials, some did not include all these elements. The first quriltai enthroning Möngke in the Qipchaq steppe consisted of the first part, feasting and the enthronement, only, since a number of princes did not support Möngke yet and had not come, so he could not effectively start his reign.<sup>209</sup> Other quriltais did not include an enthronement and were convened for other purposes. Among these, some were convened specifically in order to conduct legal trials.

For example, after the embarrassing defeat of the Mongols at hands of the Egyptians Ghazan judged and punished some amirs at a quriltai in June 1303 at Ujan; at least, Vassaf calls this a quriltai. It raises the question of how a “quriltai” is different from the Mongol legal institution

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<sup>207</sup> Rashid, p. 1191; Rashid/Thackston, p. 580

<sup>208</sup> Rashid, p. 801, Rashid/Thackston, p. 390

<sup>209</sup> Rashid, pp. 825-6; Rashid/Thackston, p. 402

termed the “yarghu.” While the two terms do have different semantic connotations, it is nevertheless significant that either term could be used to describe the same series of events. If the distinction is not always very clear in the sources, perhaps it was not so clear in practice either. Regarding the trial at Ujan mentioned above, according to Vassaf, a *quriltai* was held and the amirs were tried:

قوريلتای مبارک ساخت ... و امرا و لسکرا یارغو فرمود<sup>210</sup>

*Qūriltāy mubārāk sākht... va amrā va luskar-ra yārgū farmūd.*

[Ghazan] held a blessed *quriltai*... and ordered an inquiry (*yarghu*) of the amirs and army.

According to Rashid al-Din however, the *quriltai*, by which he seems to mean the feasting and not meeting together as such, took place after the *yarghu*:

آغاز یارغو پرسیدن کردند ... عاقبه الامر غره ذی الحجه یرغو ها تمام شد ... آنگاه در روز پنجشنبه دوم ذی الحجه

آغاز طوی قوريلتای کردند<sup>211</sup>

*Aghāz yārgū pūrsīdan kardand... ‘āqibat al-āmr ghureh ī Zu al-Hijjah y[ā]rgū-hā tamām shud... angāh dar ruz panjshanbeh duvum Zu al-Hijjah aghāz tūy qūriltāy kardand.*

First they held interrogations... Finally in Zu al-Hijjah the *yarghus* were over... Then on Thursday the second of Zu al-Hijjah they began the feast of the *quriltai*.

Finally, although Khvāndamīr was writing much later, his terminology is also interesting. Like Vassaf, he speaks of a *quriltai* first and seems to regard the questioning as part of the *quriltai*. He writes that after Ghazan arrived in Ujan,

<sup>210</sup> Vassaf, p. 141

<sup>211</sup> Rashid, p. 1315; Rashid/Thackston, pp. 657-8

بعد از دو روز قوريلتای ساخت و قتاقتشاه نويين و چوپان بيگ و ساير سرداران را در موقف يرغو باز داشت و هر يك را على اختلاف مراتبهم بچوب ياساق تاديب نموده<sup>212</sup>

*Ba'd az dū rūz qūriltāy sākht va Qutluqshāh Nū ĩn va Chūpān Bīk va sāyīr sardārān-rā dar mauqef y[ā]rghū bāz dāsht va har yak-rā 'alā ikhtilāf be-chūb yāsaq tādīb namūdeh.*

After two days he held a quriltai and restrained Qutluqshah Noyin and Chupan Beg and other generals at the site of the yarghu and every one of them was subjected to beating according to the degree [of their offence].

Similarly, Khvādamīr describes the trial of Arigh Boke, the brother whom Qubilai vanquished, as a quriltai, but then speaks of yarghuchis and interrogation “in the manner of a yarghu.”<sup>213</sup> This overlap in the way these terms are used confirms not only the similarity of these institutions, but shows that the collegial decision-making practices which characterized them both shows were characteristic of Mongol law. While the terms were not interchangeable, it is significant that in meaning they are so similar.

### The principle of collegiality

Since the quriltais were legal institutions, the principles underlying them were central features of Mongol legal culture. The most important of these principles is what can be termed the “principle of collegiality”<sup>214</sup> or also “consultative tradition,”<sup>215</sup> which means in

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<sup>212</sup> Khvādamīr, vol. 3, p. 156, Khvādamīr/Thackston p. 88

<sup>213</sup> Khvādamīr, vol. 3, pp. 63-4, Khvādamīr/Thackston, p. 36

<sup>214</sup> Allsen, “The rise of the Mongolian empire,” p. 398

<sup>215</sup> Endicott-West, *Mongolian rule in China*, p. 54

essence taking others and their views into account when making decisions. This, after all was the purpose of coming together in order to make decisions, rather than a leader making decisions by himself. How deeply this principle was rooted in Mongol culture can be seen from the way in which it is emphasized and praised in the *Secret History of the Mongols*, which was written for Mongols from a Mongol viewpoint. For example, Chinggis Khan, after having defeated the rival Tatar tribe, held a council to decide what to do with Tatar tribesmen rather than simply deciding himself.<sup>216</sup> Another example is the episode in which companions of Chinggis Khan dared to remonstrate with his decision about the fate of Daritai, an uncle of Chinggis Khan who had not remained loyal but gone over to another tribe.<sup>217</sup>

The *Secret History* also contains an example of a secret trial that Chinggis Khan held which was interrupted by his mother. After hearing from the shaman Teb Tenggeri that his brother Qasar might be a threat to him,

“On these words, Činggis Qa’an that very night rode off to seize Qasar. When he left, Güčü and Kōkōčü informed the mother that he had gone to seize Qasar. When the mother heard this, straightaway – it was still night – she harnessed a white camel and set out in a black covered cart, traveling all night.

On her arrival at sunrise, Činggis Qa’an had tied up the opening of Qasar’s sleeves, removed his hat and belt, and was interrogating him. Činggis Qa’an, surprised by the mother descending upon him, became afraid of her.”<sup>218</sup>

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<sup>216</sup> *Secret History of the Mongols*, §154

<sup>217</sup> *Secret History of the Mongols*, §242

<sup>218</sup> *Secret History of the Mongols*, §244



The mother then vehemently defended Qasar as her son whom she had breast-fed and Chinggis Khan “felt shame.”<sup>219</sup> Although motherly sentiments were obviously important here, perhaps it is indicative that such a secret trial is portrayed as having this outcome. The text implies that Chinggis Khan should have taken his mother’s sentiments into account, since it also says that his disfavour of Qasar was one of the reasons why Chinggis’ mother’s health declined.<sup>220</sup>

Therefore, the principle of collegiality underlying the *quriltai*s was deeply rooted in Mongol culture. It was partly a result of their nomadic way of life, where the difficulty in enforcing decisions meant that it was often better to seek consensus, but it was strengthened by the cultural value attached to it, as seen in the *Secret History*. As Ratchnevsky remarks, the collegial nature of legal trials was one element that worked to prevent gross injustice in Mongol legal trials.<sup>221</sup> Such an important principle could hardly have remained without effects, and did not remain without effects, as Chinggis Khan set about conquering his empire and as the Toluids ruled over Persia and China.

In fact, the principle of collegiality had great influence both within and outside the legal sphere, influence which continued to be felt even though the institution of *quriltai* itself became more ceremonial and less vital as a legal institution. Due to influence from the sedentary Persian and Chinese cultures, primogeniture became more important<sup>222</sup> in the late Ilkhanate and the Yuan dynasty and the administration became more regularized and

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<sup>219</sup> *Secret History of the Mongols*, §244

<sup>220</sup> *Secret History of the Mongols*, §244

<sup>221</sup> Ratchnevsky, “Die Rechtsverhältnisse,” p. 102

<sup>222</sup> Krawulsky, *The Mongol Īlkhāns and their Vizier Rashīd al-Dīn*, pp. 64-5

bureaucratized. Therefore, quriltais were less and less needed as a venue in which to take important decisions.<sup>223</sup>

While originally the principle of collegiality was about Mongols meeting to make decisions, it was a small step to extend it to situations where Mongols and non-Mongols were involved. This is what happened in the Ilkhanate and in Yuan China, where despite the increased power of the khans and the greater hierarchical nature of the polities, the principle of collegiality was influential. It was reflected when Mongol khans appointed two different people to the same post, or when they ordered Mongols to meet with non-Mongols to work out solutions to legal cases. Thus, the principle of collegiality was not limited to Mongols but was extended to others in the Toluid empire.

#### The influence of the principle of collegiality outside of the legal sphere

The theory that the principle of collegiality influenced legal practices in the Toluid empire is strengthened by the amount of influence this principle had in other areas. In the administrative realm, the influence of the principle of collegiality can be seen in the phenomenon of dual appointees in the Ilkhanate. Such appointments of two people for the same task were much more frequent in the Ilkhanate than under previous dynasties. David Morgan raises the possibility that the motivation for this unprecedented use of dual appointments might have come from Chinese practice;<sup>224</sup> the Chinese routinely appointed 'left' and 'right' ministers, for example. If it was a result of Chinese influence, then this was an instance of influence between the Toluid polities. However, the influence may well have

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<sup>223</sup> Krawulsky, *The Mongol Īlkhāns and their Vizier Rashīd al-Dīn*, pp. 64-5

<sup>224</sup> Morgan, "Who ran the Mongol empire," p. 130

come more directly from the Mongol principle of collegiality – from the *quriltai*.<sup>225</sup> The idea may well have played a role that effective decisions are best taken by more than one person through confronting and resolving possible opposition at the stage of decision-making, rather than later.

In particular, it was standard practice for much of the Ilkhanate to have two joint viziers rather than a single vizier.<sup>226</sup> For example Rashid al-Din was vizier alongside Sa'd al-Din Savaji, and then alongside Taj al-Din 'Alishah.<sup>227</sup> Ghiyath al-Din, Rashid al-Din's son, shared the vizierate with Khwajah 'Ala al-Din Mohammad.<sup>228</sup> The relations between such dual appointees were not necessarily cordial, as seen from the example of Rashid al-Din and Taj al-Din 'Alishah. When Rashid al-Din requested some clear division of responsibilities between them, Öljeitü denied his request. The reason Öljeitü gave was that “the peace of the empire lies in the fact that both order the matters in agreement with each other.”<sup>229</sup>

The principle of collegiality was also extremely influential in China. According to Endicott-West's detailed research, the principle of collegiality influenced the organization of both central and local government during the Yuan dynasty.<sup>230</sup> Local government under the Yuan involved daily conferences which the Mongol representative the *darughachi*,<sup>231</sup> his Chinese counterpart and his subordinates were all expected to attend.<sup>232</sup> Government business had to

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<sup>225</sup> Endicott-West, “Imperial governance,” pp. 529, 549

<sup>226</sup> Lambton, *Continuity and change*, pp. 54-55; Aigle, *Le Fars*, 88-91

<sup>227</sup> Mustawfī, *Tārīkhi guzīdah*, vol. 1, pp. 597-8

<sup>228</sup> This joint appointment did not last long, as Ala al-Din resigned after 8 months.

<sup>229</sup> Khvāndamīr, *Dastur al-vuzara*, p. 318; Hāfiz-i Abrū, *Zayl Jāmī‘ al-Tavārīkh Rashīdī*, p. 118

<sup>230</sup> Endicott-West, “Imperial governance,” pp. 534-535

<sup>231</sup> On *darughachis*, see chapter 4. Although there has been some debate about whether the terms *darughachi*, *basqaq* and *shahna* all designate the same position, they will be treated as synonymous in this thesis.

<sup>232</sup> Endicott-West, *Mongolian rule in China*, p. 49, 54

be transacted in the presence of all these officials, and it was not easy to gain exemption from attendance.<sup>233</sup> The Yuan administration as a whole was characterized by frequently overlapping responsibilities which may have made government slightly more cumbersome<sup>234</sup> but ultimately more in tune with Mongol values, in particular the principle of collegiality.

## Conclusion

The great influence of the principle of collegiality in various aspects of Toluid governance shows how collegial decision-making was a principle which was dear to Mongols and which was influential in the empire. Of course, it was not always manifested and competed with various ideologies. The role of collegial decision-making within the quriltai shows that this was no new way of doing things imported from more ‘civilized’ cultures. Rather, collegial decision-making procedures were integral to Mongol culture, as seen by the importance given to this principle in the *Secret History of the Mongols*.

Therefore, the way in which we view Mongol law needs to be revised. Though the institution which scholars most often associate with legal issues in the Mongol empire is the yarghu, in fact the quriltai was also an extremely important legal institution, and one moreover with deep roots in Mongol culture. In particular in the absence of any firm evidence about the existence of a Great Yasa, the quriltai and the collegial decision-making underpinning it are valuable evidence of the Mongol approach to law.

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<sup>233</sup> Endicott-West, *Mongolian rule in China*, p. 54

<sup>234</sup> Endicott-West, *Mongolian rule in China*, p. 45; Endicott-West, “Imperial Governance,” pp. 545, 549; Morgan, “Who ran the Mongol empire,” p. 130

The following chapters will show how collegiality as an aspect of the Mongol legal tradition had considerable impact on legal practices in the Toluid empire. The Toluids were in fact quite flexible in matters of law, working together with non-Mongol legal specialists and including them in decision-making processes. While individual Mongol laws had variable impact in the lands conquered by the Mongols, the principle of collegiality was one aspect that had long-term and noticeable impact within the Toluid empire and is a major feature of the Toluid approach to legal matters. Given that the principle of collegiality was rooted in Mongol culture, whereas the imposition of Mongol law on others was a novel reaction to a situation never before encountered amongst representatives of the Mongol elite, it is collegiality that should be considered most characteristic.

## Chapter 3 - The ‘legal specialists’ – yarghuchis

### Introduction

The previous two chapters have sketched how Mongol law was not necessarily inflexible as the concept of the ‘Great Yasa’ implies, but that cooperation and flexibility, as seen in the *quriltai*, are key characteristics of the Mongol legal tradition. This chapter will show how this flexibility was manifested in practice through examining the role of *yarghuchis* (from Mongolian *jarghuchi*, *zhaluhuchi* 扎魯忽赤 or *duanshiguan* 斷事官 in Chinese),<sup>235</sup> who were the only Mongol-appointed officials in the Toluid empire known specifically as legal specialists. Although it would be misleading to say that legal responsibilities were the *yarghuchis*’ sole responsibilities,<sup>236</sup> they are nevertheless the officials most readily and most often associated with legal matters in the Toluid empire.

This analysis shows that *yarghuchis* operated mostly at the centres of Mongol power, the royal *ordos* and central government offices, and that when operating outside of these centres, it was not unusual for them to be required to work together with local legal personnel. In fact, such requests and arrangements were frequent enough that they can be seen as continuation of the principle of collegiality. Therefore, while Mongol customary law went largely

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<sup>235</sup> On *yarghu* (trial) and *yarghuchi* (judge) see Doerfer, *Türkische und mongolische Elemente im Neupersischen*, nos. 1784 يارغو (*yārgū*) and 1785 يارغوچی (*yārgūcī*), vol. 4, pp. 58-66.

<sup>236</sup> See Yokkaichi, “Jarghuci kō,” about their involvement in the census, and Jagchid, *Menggu shi luncong*, pp. 288, 297, 332, on their continuing involvement in military campaigns.

unchallenged at the *ordo* itself, cooperation with local personnel was a practice which was valued in the Toluids' relationships with the peoples they had conquered. Attachment to Mongol practices at the court did not preclude a flexible attitude to law where the local population was involved. It will be argued that this was not merely a matter of convenience, but that the influence of the principle of collegiality exerted real effects.

This chapter will moreover examine the nature of the institution of *yarghuchi*, arguing that it was primarily characterized not by the requirement for legal knowledge but by a preoccupation with status. Since the legitimacy of a trial was based in large part on the respective ranks of the participants, this may have made it easier for *yarghuchis* to be flexible in other aspects of a trial such as which punishments were imposed or how the outcome was communicated, and would thus have aided Mongol efforts to work together with Persian and Chinese legal specialists.

#### The institution of *yarghuchi* and qualifications required for holding the post

The institution of *yarghuchi* was fundamentally different from many legal institutions of sedentary societies, and certainly from the legal institutions of Persia and China at the time of Mongol rule. While the functions of these institutions – broadly, resolving legal disputes among members of society – were similar, the qualifications of those appointed as judges were radically different. The question of who could be appointed as *yarghuchi* needs to be analyzed within the framework of the Mongols as a nomadic, and initially illiterate, culture.

When examining the people who became yarghuchis, it becomes apparent that, like those appointed to other government positions in the Mongol empire, most of them were people who were very close to Chinggis Khan, or who were part of the *keshig* (guard).<sup>237</sup> Shigi Qutuqu, who was appointed in 1206 or Belgütai, appointed a few years earlier, are variously held up as the first to be appointed as yarghuchi by Chinggis Khan.<sup>238</sup> Both were very close to Chinggis Khan – Belgütai was his half-brother while Shigi Qutuqu was Chinggis Khan’s adopted son.<sup>239</sup> Menggeser and Bulghai, the two most powerful yarghuchis under Mongke, had both been in Tolui’s *keshig*. The issue of trust is well illustrated by the case of Zhaolietai Chawu’er 召烈台抄兀兒 who, according to the *Yuan Shi*, initially served Chinggis Khan, and warned him about a rebellion: for this act of loyalty he was given the title of *darkhan*.<sup>240</sup> His son Nachin served Qubilai as yeke yarghuchi, and Nachin’s son Bansal and Bansal’s son Goroghutai also served as yarghuchis in Yuan China.<sup>241</sup> This shows that the main requirement for appointment to the position of yarghuchi was Chinggis Khan’s trust in that person, and that personal trust and a close connection with Chinggis Khan, even over generations, remained important.

The significance of this is that who was appointed to be a yarghuchi was, overall, more important than the methods by which they set about their task. While the Mongols did have a legal tradition with their own principles about how trials could be conducted, no special legal skills or knowledge were required in order to be appointed as yarghuchi; this contrasts

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<sup>237</sup> On the *keshig*, see in particular Melville, “The Keshig in Iran,” and Allsen, “Guard and government,” pp. 507-521

<sup>238</sup> *Secret History of the Mongols*, § 203, § 154; Jagchid, *Menggu shi luncong*, p. 246

<sup>239</sup> Ratchnevsky, “Šigi-Qutuqu,” pp. 75-77

<sup>240</sup> *Darkhans* had special privileges including supposedly, exemption from punishment for nine infractions. See Jagchid, *Menggu shi luncong*, p. 19

<sup>241</sup> *Yuan Shi*, ch. 123, p. 3022, Jagchid, *Menggu shi luncong*, 319-320, n. 19; *Secret History of the Mongols*, § 120, 129, 141, 202



sharply with the Persian and Chinese societies where judges were required to have detailed legal knowledge acquired through years of study. The absence of a requirement for legal education was not due to ‘backwardness’ on the part of the Mongols but simply to a very different conception of what guarantees the legitimacy of a legal process. While for Persians and Chinese legitimacy was found mostly in specific procedures, laws and punishments, for the Mongols the punishments imposed and the exact order of events during the trial could be very variable, while status was of particular importance.<sup>242</sup>

The idea of trial by one’s peers is very different from for example the Islamic attitude, where a qadi should in theory be able to judge even powerful government ministers. Mawardi explains that the *mazalim* court “was charged with the enforcement of decisions made by qadis not sufficiently strong to see that their judgments were carried out against defendants holding high rank or occupying powerful positions, and also with the suppression of evil-doing and the enforcement of regulations within the jurisdiction of the *muhtasib* but beyond his power to apply.”<sup>243</sup>

This principle of trial by one’s peers can be seen in the *Secret History*, when Chinggis commanded the elders of the companies not to judge dayguards who were equal to them in rank: “Further, elders of the companies without permission from Us shall not, merely on the ground of seniority, reprimand my guards who have been enrolled as *guards* equal to *them*.”<sup>244</sup> It is also seen clearly in the trials following the Toluid coup. Allsen in his PhD thesis<sup>245</sup> drew attention to the fact that Menggeser judged many of the accused, but imperial

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<sup>242</sup> Jackston, “The Dissolution of the Mongol Empire,” p. 195

<sup>243</sup> Lambton, *Continuity and change*, p. 71. On the *mazalim* see below, Chapter 4, Local personnel in Persia

<sup>244</sup> *Secret History of the Mongols*, § 278

<sup>245</sup> Allsen, *Politics of Mongol Imperialism*, p. 30

princes were judged by Möngke himself.<sup>246</sup> Oghul Qaimish was tried in the *ger* of her peer, Sorghaghtani.<sup>247</sup>

There are examples from the Ilkhanate where the question of status is seen clearly. For example, Ghazan chose the vizier Rashid al-Din and a co-judge to try the cases of several amirs who had been unsuccessful in their military assignments. This may have been a fairly novel situation, since traditionally nearly all Mongols had been military men, and many bureaucrats in the emerging Mongol empire had been military men as well. In any case Ghazan assigned a “man of the pen” to judge “men of the sword.” It seems that Rashid al-Din was aware of the delicate nature of the situation and of the question of whether he could actually be seen to have higher status than the military leaders, for Mustawfī relates how he practically apologized to the defendants that he did not have the status that would normally be needed in order to try military men like them. After Ghazan had chosen Rashid and a co-judge to lead the interrogations, and the amirs who were to be tried had been brought, Rashid said:

“O famous and wise elders, before you I am less than your fief-holders. I am not even the door of this kind of court, but when the shah gives an order, it is not fitting to do anything otherwise, and it would be fitting if you would not be angry at this enquiry. An elder must be an example to the Mongols, and it is proper that a general should be admonished before the world. When before the elders, lesser people than he must gird their loins in the shah's business. I have with me famous, chosen elders, who will determine the admonition of this enquiry.” He received the reply, “When the shah so

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<sup>246</sup> Allsen, *Mongol imperialism*, p. 35

<sup>247</sup> Rashid, p. 839, Rashīd/Thackston, p. 409; Allsen, *Politics of Mongol Imperialism*, p. 30; Allsen, *Mongol imperialism*, p. 35

ordered it, you became an elder in the court. You are no less than we are before the shah, and you are his guide in the world. We are not in peril from you, since we know the customs of the shah.”<sup>248</sup>

The great amir Nauruz, after he had fallen out with Ghazan and was about to be judged, said to Qutlughshah, “Only the shah has the right to question me. It is not for you to try me, for only the shah is greater than I.”<sup>249</sup> Regardless of the estimation of Qutlughshah’s status, Nauruz’s reasoning is the same as that of Chinggis when he commanded that the guards could judge people of lower status than themselves, but not those of equal status. In this case, the principle of judgment by one’s peers was not respected and Qutlughshah executed the sentence, probably because Nauruz’s conduct was considered treachery and he had already received permission to carry out capital punishment. In several other cases of treachery and rebellion, the rebels were put to death without a trial.<sup>250</sup>

In China, the idea of trial by one’s peers also persisted. Qubilai tried Arigh Boke himself, and even feigned to ask Hülegü and Berke for their opinions, because Arigh Boke, being his younger brother, had nearly the same status as himself.<sup>251</sup> Up to the end of the Ilkhanate, a large number of those known to be yarghuchis also had experience in the military, or even had concurrent military responsibilities, which gave them the needed status.<sup>252</sup> Moreover, the *dazong zhengfu* 大宗正府, the central government organ set up for yarghuchis to try cases primarily involving Mongols, was staffed and led mostly by imperial princes and their

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<sup>248</sup> Mustawfī, *Zafarnāmah*, p. 1409, Mustawfī/Ward, pp. 526-7

<sup>249</sup> Mustawfī, *Zafarnāmah*, p. 1364, Mustawfī/Ward, pp. 420

<sup>250</sup> See below Chapter 3

<sup>251</sup> Rashid, pp. 889-891; Rashid/Thackston, pp. 434-5

<sup>252</sup> See Appendix 1

representatives;<sup>253</sup> which meant that they would have a status high enough to judge almost any Mongol.

This does not mean that legal knowledge was not respected among Mongols. On the contrary, knowledge of the *yasa*, *yosun* (customs) and *biligs* (sayings) was valued and is said to have been a factor in the election of khans, although there is no firm evidence for this. Möngke is said to have been “the one prince who has seen with his own eyes and heard with his own ears Genghis Khan’s *yasaq* and *yarligh*.”<sup>254</sup> Ghazan was said to have known the *yosun* and *yasaq* well as a boy,<sup>255</sup> and this is obviously meant to be seen as a positive characteristic in Rashid al-Din’s lengthy account of his virtues. However, this would seem to be *post facto* praise by the chronicler rather than a genuine consideration in the selection of khan.

If the status of the respective participants of a trial was, for the Mongols, a consideration more important than almost anything else, it follows that other aspects of trials, such as the precise procedures used, the types of evidence used and the manner of recording the final decision (whether orally or in written form), and even the very laws applied, though important, were ultimately of secondary concern. Thus the procedures and laws used could be subject to change more easily than the practice of appointing judges who had high status. This was the case in particular whenever *yarghuchis* worked together with local legal officials, as was often the case due to the principle of collegiality which was also highly valued by the Mongols.

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<sup>253</sup> *Yuan Shi*, ch. 87, p. 2187

<sup>254</sup> Rashid, p. 825; Rashid/Thackston, 402

<sup>255</sup> Rashid, p. 1210; Rashid/Thackston, 591

### Yarghuchis' cooperation with local legal personnel

Accounts of the trials conducted in a 'Mongol' manner have led some to believe that the Toluids were uniformly inflexible, not to mention cruel and dismissive of Persian and Chinese sensibilities.<sup>256</sup> However, trials which took place at the imperial *ordo*, the centre of Mongol power, should not be taken as representative of trials that took place elsewhere. When the whole spectrum of Toluid involvement in the societies they ruled is considered, it becomes apparent that what happened at the *ordo* was only one part of the Toluid involvement in legal matters. Outside of the *ordo*, as can be seen from the following cases, trials were often, though by no means always, conducted in a manner more congruent with local practices, often with the involvement of local officials or local legal personnel. Moreover, it is most likely trials which took place away from the centres of power which are underrepresented in the accounts that the sources give. The following sections aim to show that the principle of collegiality was important in many trials in the Ilkhanate and in Yuan China.<sup>257</sup>

#### i) Persia

Legal cases in Persia can be divided into several categories. Cases regarding traitors were often not considered worthy of a trial (*yarghu*) at all. This was the case for example with Malik Kamel, who was put to death by Hülegü.<sup>258</sup> Others, such as Malek Salih were put to

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<sup>256</sup> See for example the Introduction in Ma'dankan, *Be yasa rasanidan*, pp. 1-18

<sup>257</sup> That *yarghus* had a role in reconciling different interests was noted by Lambton with regards to the trial of Körgüz, "Yarghu," *Encyclopaedia of Islam, Second Edition*, Brill Online

<sup>258</sup> Rashid, p. 1038, Rashid/Thackston, p. 508

death “in anger” without a yarghu.<sup>259</sup> Nauruz’s relations were also to be put death without questioning.<sup>260</sup> This contrasts with the majority of cases where the sources often contain the phrase: “after his guilt was proven ...”<sup>261</sup> Among the cases which did require yarghus, there was a marked difference between those that took place at the *ordo* and those that took place elsewhere, though the principle of collegiality often played a role both at the *ordo* and in the provinces.

Firstly, there were cases which took place at a centre of Mongol power, where ‘Mongol’ methods were used in the procedure of the interrogation itself. These cases were mostly cases regarding officials of the Ilkhanate or other very prominent people. Among them are trials of Ilkhans themselves; of the successive viziers of the Ilkhanate; trials of local rulers, of tax collectors or military personnel. Many of these cases were politically sensitive.

One such trial was that of the Ilkhan Ahmad Tegüder, which took place after Arghun had vanquished him; he was put to death a day before Arghun was enthroned.<sup>262</sup> After the “ladies and amirs” had pledged fealty to Arghun,

“Ahmad was summoned and tried by Tägänä, Nüregäi Yarghuchi,<sup>263</sup> and Qonqurtai’s liege men, who asked, “For what reason did you kill Qonqurtai and Kuchuk, who had performed valiantly for Abaqa Khan and who had helped to make you king? When Arghun accepted you as king, although his father’s place should have gone to him, and was content with only Khurasan, why did you send Alinaq to raid his artisans and

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<sup>259</sup> Rashid, p. 1043, Rashid/Thackston, pp. 510-11

<sup>260</sup> Vassaf, p. 341

<sup>261</sup> Rashid, p. 1286, Rashid/Thackston, 642

<sup>262</sup> Rashid, pp. 1148, 1154, Rashid/Thackston, 559, 562-3

<sup>263</sup> Also known as Nuraqan.

people and take them captive?” “I did wrong,” he said. “I won’t do it again.” Arghun and the amirs wanted to placate his mother, Qutui Khatun, who held such an exalted position, by overlooking his crime, but Qonqurtai’s mother and his sons and people shouted out. Just then Yesu Buqa Guragan arrived and said, “What is this talk of pardon when Princes Hulachu and Jushkab have gathered a large contingent in the vicinity of Hamadan and are thinking of rebelling?” An edict was therefore issued for Ahmad to be executed in retaliation for Qonqurtai’s blood. On the eve of Thursday the 26<sup>th</sup> of Jumada I 683 [August 10, 1284], corresponding to the 28<sup>th</sup> of Altinch Ay of Daqiqu Yil, they put him to death in the same manner in which he had killed Qonqurtai. “As you judge so you shall be judged.” Pacem.”<sup>264</sup>

This trial shows several aspects of Mongol legal practice. Taking place in the presence of Arghun, the questioning was carried out by Tägänä, an amir, by Nüregäi Yarghuchi, who is also described as an amir and courtier (noyan) in Rashid al-Din,<sup>265</sup> and by the liege men of Qonqurtai, who had a claim for vengeance on Ahmad Tegüder. The choice of interrogators therefore was based on their status and their personal relationships with Ahmad, not on legal knowledge.<sup>266</sup> In the case of Qonqurtai’s liege men, Arghun was in fact recognizing the validity of, or at least the necessity to take into account, their personal quest for vengeance. This more personalized approach to justice was a continuation of the steppe vengeance system, and the demonstration that steppe legal practices could find a niche in the *ordo* of the Ilkhan.

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<sup>264</sup> Rashid, pp. 1147-8, Rashid/Thackston, p. 559

<sup>265</sup> Rashid p. 196, Rashid/Thackston, 104

<sup>266</sup> Rashid only calls Nüregäi a Yarghuchi when describing this trial, and there is no reference to his legal expertise.

Not only that, but this trial vividly shows the participation of different actors and the way in which differing opinions were expressed. The vocal participation of Qonqurtai's mother, and that of Qutui Khatun which, though not explicitly mentioned, may well have been vocal as well, is in line with the relatively high status of women among the Mongols and in the Golden Family. The open discussions in a very public setting – presumably, all those who were present at Arghun's enthronement were also present at the trial – show how the trial was used as a forum to vent opinions, clarify strength of feeling, and cement Arghun's legitimacy. The influence of the principle of collegiality on this trial is evident.

Other trials which took place at the *ordo* also reflect the principle of collegiality. The *yarghu* of alleged Mazdakites took place in the “presence of the amirs and the courtiers.”<sup>267</sup> In addition, when Ahmad Tegüder was being pursued by Arghun's forces and the command had been given for him to be seized, Shiktür Noyan sent a message to Qutui Khatun, saying:

“We are servants of the throne. Just now envoys have arrived to say that all the princes have commanded that Ahmad be seized. What fault is it of us servants? The prudent thing to do is for us to seat Ahmad alone in a tent until the *aqas* and *inis* arrive and confront whatever accusations there are to be made.”<sup>268</sup>

Any of these people could intervene to try to change the outcome of the *yarghu*. For example, Buqa who was vizier to Arghun Khan and had plotted against him was executed but at a separate trial of his co-conspirators, some were pardoned for various reasons, including one because the amirs interceded for him.<sup>269</sup> On another occasion, during the time that Rashid al-

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<sup>267</sup> Rashid, pp. 1318-9, Rashid/Thackston, p. 659

<sup>268</sup> Rashid, pp. 1146-7, Rashid/Thackston p. 559

<sup>269</sup> Rashid, p. 1171, Rashid/Thackston, p. 570



Din and Sa'd al-Din Savaji were joint viziers, some people who had conspired to slander them drank too much at a feast and their plan became known. Although some were condemned to death, one of them, Shaykh Mahmud, was released through the intercession of Bulughan Khatun.<sup>270</sup>

Witnesses were also confronted with other witnesses, or those who had already confessed with those who had not. This technique, known as *tapishmishi*, was used in the case of the *idiqu* of the Uighurs, accused of having planned a massacre of Muslims.<sup>271</sup>

Other trials during the Ilkhanate followed a similar pattern, for example the trial of the Mongol generals who had been defeated in Syria took place in 1303 in Ujan, where Ghazan and his amirs and officials, including Rashid al-Din and Bolad Chingsang, had encamped. The trial took place at the *ordo* "before the court," though some of the interrogations took place in the absence of Ghazan himself. There is no indication that the trial itself had any non-Mongol characteristics, except for the unusual fact that a civilian (the vizier Rashid al-Din) was called on to judge amirs.<sup>272</sup>

Of the cases which were judged away from the *ordo* and from the centre of Mongol power, some were not influenced by the principle of collegiality and made no apparent concessions to Persian legal practices. These are cases where it could be argued that Toluid rulers were imposing their way of judging cases and not cooperating with local judges or elites. However, there are few examples of such cases and they dealt with rebellions against Mongol authority

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<sup>270</sup> Rashid, p. 1299, Rashid/Thackston, p. 650; Vassaf, p. 420; Vassaf/Ayati, p. 251

<sup>271</sup> Juvaynī, p. 37, Juvaynī/Boyle, 51. On *tapishmishi*, see Doerfer, *Türkische und mongolische Elemente im Neupersischen*, no. 847 تاپیشمیشی (*tāpišmīšī*), vol. 2, pp. 428-9

<sup>272</sup> Mustawfī, *Zafarnāmah*, p. 1409, Mustawfī / Ward p. 526

(or against the authority of regional rulers under the Ilkhanate), not ordinary civil or criminal cases. They include the yarghus held by Yasavur Buqa, who was sent with only twenty Mongols to Shabankare to deal with the leaders of Shabankare who had defied Geikhatu by putting Naser al-Din to death and appointing a new ruler without Geikhatu's consent.

“Yasavur Buqa was a sly man. He knew that he could take this province easily. He came towards it from Fars and he was near Fasa. In the city of Fasa he came out and wrote an order saying that he is the hakem of Fasa and that I give the kingship of Shabankare to Ghiyath al-Din and in order to cement a partnership, it is necessary for him to come to Fasa together with all the maleks and amirs and chamberlains and hear the orders. When they read this letter, (they reasoned that) if they did not come they would be guilty, and if they came they would not know what was behind this. In the end all of the nobles and maleks went to Fasa. Yasavur Buqa took them all out on the first day and left them in the pillory, fetters and chains and imprisoned them in the prison of Fasa. Together with twenty Mongol horsemen he went to Ig. And he put Rokn al-Din Hossein, who was ten years old, on the throne and he took this measure with the approval of Naser al-Din. [...] Yasavur was in Ig for four months and every day there was a yarghu so that the proud and cut-throat nobles and the people who had knowledge of this affair could all be punished. Some they roasted on the fire, some were made an example of, and some were put to the sword. In short, every person saw appropriate retribution. When the *yasamishi* was finished, and much property had come into his hands, after four months he returned to Fasa and he took the bound

maleks and returned to the *ordo*. They were imprisoned for a while, [then] there was a yarghu; all were held guilty. It was ordered that all should be put to death”<sup>273</sup>

Though there is no detail on how the yarghus themselves were carried out, there is no mention of cooperation with local legal personnel and, given the circumstances, it is rather unlikely that such cooperation happened in this case. Therefore, in these yarghus led by a military man on a punitive campaign, there is no indication that there was any deviation from Mongol legal methods.

Another yarghu which possibly falls into the same category is that of the Atabeg Tekle of Lurestan, who joined Hulagu Khan’s attack on Baghdad but later withdrew, apparently disgusted at the atrocities committed by the Mongols. He was condemned in a yarghu and executed in the main square of Tabriz, and while it is not entirely clear where the yarghu took place, it is possible that it was held in the public square prior to the execution.<sup>274</sup> Although this execution (and possibly the trial) took place within the Persian sphere of the city of Tabriz as opposed to the Mongol sphere of the *ordo*, again there is no mention of any cooperation with local judges, nor is such cooperation recorded in the sources which mention the qadis of Tabriz during the Mongol period.<sup>275</sup>

But in other cases, local officials were involved. Although the interrogation of some people who had complained against Terkan Khatun, the ruler of Kerman, took place without the involvement of qadis, it should be noted that even in the Islamic context this trial would have

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<sup>273</sup> Shabankara’i, *Majma al-ansab*, pp. 176-7; see Lane, *Early Mongol Rule*, p. 35. The condemned were subsequently spared because Geikhatu died and the sentences were not carried out.

<sup>274</sup> Mustawfī, *Tārīkh-i guzīdah*, pp. 541-2, translation p. 135

<sup>275</sup> See chapter 7.

been perceived as part of *siyasa* rather than one in which qadis would necessarily have been involved. The yarghu involved both the deputies of Terkan Khatun as well as local darughachis and yarghuchis and can therefore be seen as reflecting the collegial nature of decision-making valued by the Mongols.<sup>276</sup> The representatives of Ilkhanid power and the representatives of Terkan Khatun together held the trial, thus implementing justice (as they saw it) at the same time as strengthening their mutual ties. The trial, as George Lane has pointed out,<sup>277</sup> shows the great amount of trust and cooperation between the Ilkhans and the rulers of Kerman, specifically between the Mongol amir Arghun Aqa, and the ruler of Kerman Terkan Khatun. After some opponents of Terkan Khatun had written a document opposing her rule, and this had been passed to Arghun Aqa, he gave her authority to deal with the situation. She in turn took worked together with the darughachis for her purposes, but finally delivered the accused from their hands, probably in order to be able to claim credit for being merciful.

“In this situation he sent a letter to Terkan and sent their story in the middle of his letter to Terkan and said the naibs of Terkan and the *basqaqs* [editor’s note: *iasaqchis*, i.e. perhaps yarghuchis]<sup>278</sup> of the province should get ready and hold a yarghu.”

They were handed over to the *basqaqs* and yarghuchis to interrogate:

“They brought them to the sand and conducted difficult yarghus [interrogations] and tied them up naked for several days and questioned them according to Mongol custom so that they would all confess their crime and would testify to their guilt. Some of

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<sup>276</sup> Morgan, “The ‘Great ‘Yasa’ of Chingiz Khan,”” p. 174

<sup>277</sup> Lane, *Early Mongol rule*, pp. 111-2

<sup>278</sup> *Tarikhi shahi*, p. 156 n. 1

them were executed and some were told that in order to be an example to the people they would be brought to the *ordo* and executed [there], but Khodavand Terkan ordered mercy and forgiveness and took them back from the hands of the yarghuchis and said, I am going to the *ordo* myself and I will take them with me, and I am responsible for their fate, and she did not allow them to molest them. Such was her munificence.”<sup>279</sup>

While this trial shows collegiality involving darughachis, yarghuchis and the local ruler, other trials involved qadis as well. In fact yarghuchis were sometimes expected to work together with qadis in resolving a case. This is seen very clearly in the case of the ‘land yarghus’ concerning ownership of the castle of Sirjan and its surrounding lands, which the Ilkhan Abaqa attempted to resolve after Terkan Khatun, the ruler of Kerman, and leaders from Shabankare both found themselves at the *ordo* at the same time, and disputed this matter. Terkan Khatun presented the case that Sirjan belonged to Kerman and that the local rulers of Shabankare had “fraudulently and aggressively” occupied it.<sup>280</sup> She requested a *yarligh* that Sirjan should be given back to Kerman and this was approved. The inhabitants of Shabankare replied that Sirjan and the castle had been destroyed, that they had built the buildings themselves, and that they therefore had rights to the castle. Thereupon,

“[Abaqa] nominated the great amir Iyaji Aqa, who was the *shahna* of Isfahan, and the khwaja Shams al-Din Khurasani from among the *sahib-divans*, and who was the *nawkar* (*nöker*) of Iyaji Aqa, to go to Sirjan and turn Sirjan and the castle and its belongings over to Khodavand Terkan, and to hold a land yarghu [ یارغوی املاک ] and see arguments and deeds from both parties. Whatever had been purchased by the

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<sup>279</sup> *Tarikhi shahi*, pp. 156

<sup>280</sup> *Tarikhi shahi* p. 192

people of Shabankare should be recognized as their own property and that the land to which water had been brought should [be decided according to] the decrees of former kings – that 4 and a half *dangs* be taken from them and the other [one and a] half should remain the property of the current owners.<sup>281</sup>

The people of Shabankare tried to protest this judgment, complaining that the furnishings of the castle were so many that they could not possibly be removed. Therefore Terkan Khatun had pack animals requisitioned for them, and the people were brought before the castle by the army and made to salvage what they could and leave.

“When they surrendered the castle and Terkan’s secretaries took charge of it, the qadi Imam al-Din Sirjan and his son Taj al-Sin Soleiman and Izz al-Din and Hamad and his brother the qadi ‘Imad al-Din Maqbul were ordered to put the issues of the land *yarghu* up for discussion and they considered the reasons and title-deeds of every party. After arguing about and perusing the title-deeds, some of these properties [...] were given to the inhabitants of Shabankare, and the rest to Kermanis. And the jurisdiction over Sirjan was given to Khodavand Terkan. Because of various reasons, the people of Shabankare said that this had not been mentioned in the *yarligh* and they would not hand it over. The amirs of the *yarghu* said that this would be delayed until an order for its confiscation had been requested [from the court] and received. [Until then] it should remain in the hands of the people of Shabankare.”<sup>282</sup>

What is noteworthy in this case is both the involvement of qadis alongside representatives of Abaqa and of the quarrelling parties, as well as the instruction to convene a ‘land *yarghu*’ on

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<sup>281</sup> *Tarikhi shahi* p. 192; Lane, *Early Mongol Rule*, pp. 112-13

<sup>282</sup> *Tarikhi shahi*, pp. 276-7

the spot and to decide the matter with everyone present, exactly as the Mongol tradition of collegiality would require. Also noteworthy are the instructions to decide the case “according to the decrees of former kings.” Evidently the inclusion of Islamic legal specialists and even the use of some non-Mongol legal practices (such as the division of property into sixths or *dangs*) was unproblematic.

Another case which involved cooperation and which can be explained by the principle of collegiality is the trial of Sayyid Taj al-Din Avaji.<sup>283</sup> At this trial, since the accusation was that he was not a real *sayyid*, the *qadi al-qudat* was present. Perhaps the Ilkhan reasoned that, since the matter concerned religious law, as well as the standing of a senior state minister, the *qadi al-qudat* should be present. Unfortunately it is not mentioned whether he was to be merely an observer or whether, like other ‘interested parties’ present at other *yarghus*, this was to give him the opportunity to speak up, or intercede, if he felt that the proceedings were not fair. The latter is more likely, given the importance of collegial decision-making for the Mongols.

Therefore, the principle of collegiality influenced the manner in which trials were conducted in Ilkhanid Persia, both at the *ordo*, and in the actions of *yarghuchis* at the local level. The principle of collegiality is the only factor that can adequately explain an event such as the ‘land *yarghu*’ concerning the possession of the castle of Sirjan. The instances of trials with both *yarghuchis* and local officials or *qadis* present would seem to point back to the *quriltai*, where decisions were deliberately taken in such a way as to involve the maximum number of influential people in order to ensure their acceptance and effectiveness. In other words, the collegial nature of decision-making which was also a feature of Mongol legal culture was

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<sup>283</sup> al-Qāshānī, *Tārīkh-i Uljaytū*, p. 50

making its influence felt in the Ilkhanate. Although cases in which cooperation occurred are not numerically in the majority among those recorded in the historical sources, this was likely due to the tendency of the sources to report politically important trials, rather than to a general failure on the part of *yarghuchis* to work together with local officials and take local practices into account. Rather, it would seem that for some legal cases, and especially those which took place away from the *ordo* and the Mongol centre of power, the involvement of local personnel or even of local qadis, and even the use of local norms (as can be seen from the use of sixths of a property, *dangs*) was a development of which Mongol rulers and officials approved.

The reason for the involvement of local legal personnel together with *yarghuchis* in these cases would seem to be the Ilkhans' recognition of qadis' authority for most civil and penal matters on the local level, as will be fully discussed in chapter 5. From the legislation promulgated by the Ilkhans one can see that in areas such as weights and measures and land contracts, the Ilkhans expected the qadis' cooperation,<sup>284</sup> so it should perhaps not be surprising that their cooperation in trials on the local level was also expected or welcomed.

These instances of cooperation foreshadowed some examples of trials jointly undertaken under the Timurids, in that Persian and Central Asian realm where Islamic, Mongol and Turkish ideas continued to meet. Under the Timurids, in order to decide certain cases, *yarghuchis* and qadis would sit opposite each other and decide jointly.<sup>285</sup> This shows that though the influence of the collegiality principle in Persia was perhaps somewhat weaker than in China, it was certainly not completely absent, nor was it temporary.

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<sup>284</sup> Rashid, pp. 1387-1390, 1408-10, 1462-1466, Rashid/Thackston, pp. 690-1, pp. 697-8, 723-4

<sup>285</sup> Woods, "Timur's Genealogy," p. 101 and p. 121 n. 74; Lambton, "Yarghu," *Encyclopaedia of Islam, Second Edition*, Brill Online



ii) China

Just as in Persia, in China the cases which can be called yarghus or which were investigated by yarghuchis can be classified into various categories, from the trials of important political figures at the *ordo*, to trials in which yarghuchis and Chinese personnel worked together. The exact configuration of who judged which trials was somewhat different from that in Persia, because of the high degree of bureaucratization in China, which led to the position of yarghuchi being institutionalized under the Yuan dynasty.<sup>286</sup> Therefore, the types of cases which yarghuchis judged on their own, and those which they judged in cooperation with Chinese, also varied somewhat from the situation in Persia. But as in Persia, the principle of collegiality was influential. The integration of yarghuchis into a bureaucracy where they often worked in conjunction with Chinese in judging cases, and the involvement of yarghuchis in the compilation of some of the collections of imperial edicts, shows how the principle of collegiality was still very much at the forefront of how many trials were conducted.

The principle of collegiality can be seen both in trials taking place at the *ordo*, and other trials in which yarghuchis were involved. That Qubilai valued the principle of collegiality can be seen from the trial of Arigh Boke, which manifests several typical Mongol practices. At his yarghu, called a *quriltai* in some sources,<sup>287</sup> Arigh Boke was interrogated at the *ordo* by a number of high-ranking Mongol princes and military commanders.<sup>288</sup> He was confronted with his generals in Qubilai's absence in a method known as *tapishmishi*, to ascertain how he

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<sup>286</sup> Tamura Jitsuzo, *Chūgoku seifuku ōchō no kenkyū*, p. 449

<sup>287</sup> Khvāndamīr, vol. 3, p. 63, Khvāndamīr/Thackston, p. 36

<sup>288</sup> Rashid, p. 887, Rashid/Thackston, 433-4

and his generals would react to each other's statements, and thereby whether they had spoken truthfully. Then, before delivering the judgment, Qubilai made a token gesture of wanting to ask the heads of other Mongol *uluses*<sup>289</sup> for their input.<sup>290</sup>

“The qa’an wanted to try Ariq Bökä, and he would have waited for the arrival of Hülägü Khan, Bärkä, and Alghu, but since they were very far away and it would have taken too long, the princes who were in the area, Taghachar, Yesünggä, Yäkä Qada’an, Hulaqur, Jibik Temür, Ja’utu, and other princes and commanders of Mongolia and Cathay assembled to put Ariq Bökä and Asutai on trial. [...] The monarch issued an edict for all parts of the realm. All the commanders took counsel and said, “How shall we look upon Ariq Bökä’s and Asutai’s crime? For the qa’an’s sake, let us spare their lives.” They sent envoys to Hülägü, Bärkä, and Alghu, saying, “Since it is not possible for you to attend because you are too far away and too occupied with matters, and since there was a possibility, had we waited longer, for breaches to have been made in the fabric of the empire that could not have been repaired, we have therefore executed their officers, tried them, and are consulting with you. We brothers are all agreed that Ariq Bökä’s blood should be spared and Asutai should be released. What say you?”<sup>291</sup>

Qubilai took this step because he recognized that, in theory, a decision as important as judging his own brother needed the support and advice of other members of the family.

According to Rashid, Hülegü and Berke agreed to come for a *quriltai*, but war broke out with Berke and Alghu fell ill, so the *quriltai* did not take place.<sup>292</sup>

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<sup>289</sup> On the *ulus* system, see Peter Jackson, “From Ulus to Khanate,” pp. 12–38

<sup>290</sup> Jackson, “The accession of Qubilai Qa’an: a Re-examination,” p. 5

<sup>291</sup> Rashid, pp. 889–890, Rashid/Thackston, pp. 434–5

<sup>292</sup> Rashid, p. 890, Rashid/Thackston, pp. 435

The principle of collegiality had deep influence in Qubilai's *ulus* and the Yuan empire. Unlike in Persia, the position of yarghuchi was institutionalized as part of the Chinese-style bureaucracy set up by Qubilai. This meant that yarghuchis became a permanent presence within the central government and they could, and did, contribute to the widespread application of certain Mongol practices within China. Since the main government office incorporating them, the *dazong zhengfu*, was made up largely by representatives of various princes,<sup>293</sup> and moreover the *dazong zhengfu* unlike other central government agencies primarily used the Mongolian language until 1295,<sup>294</sup> the office could and to some extent did operate as a bastion of Mongol legal principles,<sup>295</sup> supporting the punishment of livestock thieves by requiring them to return nine times the amount of stolen animals (a long-standing steppe practice) and advocating the use of military exile as a punishment method.<sup>296</sup> However, at the same time another Mongol legal principle, the principle of collegiality, led to the *dazong zhengfu* often working together with other central government offices. Therefore, in the role of yarghuchis in Yuan China one can see traces of the principle of collegiality.

The bureaucratization of yarghuchis happened over several stages. Initially, in 1265, ten yarghuchis were appointed; in 1272 Qubilai specified that they should “deal with Mongolian public cases,” in other words to deal with legal cases involving Mongols. Around 1281<sup>297</sup>

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<sup>293</sup> *Yuan Shi*, ch. 87, pp. 2187-8

<sup>294</sup> *Yuan Shi*, ch. 18, p. 396; *Yuan Dian Zhang*, ch. 14, pp. 227-8, 蒙古刑名立漢兒文案; Liu Xiao, “Yuandai *dazong zhengfu kaoshu*,” p. 11

<sup>295</sup> Zhao Wentan, p. 20 “Yuandai *de xingbu he dazong zhengfu*,” refers to it as Mongolian yarghuchis in Chinese garb; Liu Xiao, “Yuandai *dazong zhengfu kaoshu*,” p. 6

<sup>296</sup> Liu Xiao, “Yuandai *dazong zhengfu kaoshu*,” p. 9, Zhao Wentan, “Yuandai *de xingbu he dazong zhengfu*,” pp. 21-2

<sup>297</sup> The exact year is in doubt. Liu Xiao, “Yuandai *dazong zhengfu kaoshu*,” p. 7

these yarghuchis were incorporated into the office known as the *dazong zhengfu*,<sup>298</sup> which became a final court of appeal for Mongols involved in legal cases. Made up of, and often headed by, imperial princes or their representatives, the office dealt with cases such as that of the Mongol prince Bolanxi. In 1309 “in the eleventh month [...] the prince Bolanxi killed a man because he was privately angry [with him]; [therefore] he should be put to death. The *dazong zhengfu*’s yeke yarghuchi [was] consulted [and decided that] “Boralki comes from a precious imperial ancestry; [I] request that he be beaten (with the heavy stick) and then be moved to the north to serve with the army as a low person.”<sup>299</sup> In this case, a yarghuchi of the *dazong zhengfu* revised a judgment by Chinese officials and in doing so imposed a distinctively Mongol punishment, military exile. It should be noted that the favouritism shown in this example again shows the value ascribed to closeness to Chinggis Khan, and not necessarily to racial group per se. In 1310, when two yarghuchis, Huaidu 懷都 from the Secretariat for State Affairs and Duo’erzhi 朶兒只 from the Office of Surveillance went to *Zhending fu* 真定府 to deal with a case of people spreading rumours that the Mongol presence was only temporary, the Chinese were found innocent while two *Huihui* 回回 people were found guilty.<sup>300</sup>

Yarghuchis of the *dazong zhengfu* also had authority at the local level in the capital Dadu.

For example, when Yueluge was yarghuchi, he

“had about a hundred bodyguards who stayed at his residence and were close to him, and who took orders from him.... If any common people who were passing by had an

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<sup>298</sup> Liu Xiao, “Yuandai dazong zhengfu kaoshu,” p. 7

<sup>299</sup> *Yuan Shi*, ch. 23, p. 519

<sup>300</sup> *Kōteibon Gentenshō keibu*, ch. 41, pp. 78-80, 亂言平民作歹

accusation about a fight or a verbal dispute, he would immediately (go to) investigate until he found out whether it was true or not. Even if it was raining or muddy he would absolutely (go and) decide the case, without being affected by the lobbying of any party. So (the legal officials) in the capital respected his attitude and said of him that he was as clever as a god.”<sup>301</sup>

However, the principle of collegiality is seen in the often overlapping competencies of various central government organs, and the resultant frequent cooperation of *yarghuchis* with non-Mongol officials. The overlapping competencies were not simply a result of the greater bureaucratization in Yuan China compared with the other offshoots of the great Mongol empire, but have been recognized as a characteristic that was particularly pronounced in the Yuan dynasty.<sup>302</sup> In comparison with earlier Chinese dynasties, it seems the Yuan emperors sacrificed some efficiency for greater control from the centre, and a significant part of their strategy for providing checks and balances was the appointment of multiple agencies or officials to the same or similar tasks.<sup>303</sup> This was manifested in the judicial realm by the cooperation (and sometimes competition) between the *dazong zhengfu*, the Ministry of Punishments and the Censorate, as well as by the obligation of *yarghuchis* investigating cases on the local level to work together with local authorities.

The *dazong zhengfu* and the Ministry of Punishments had essentially similar remits as highest judicial appeal courts for the realm.<sup>304</sup> While the *dazong zhengfu* dealt primarily with cases involving Mongols, the tendency for its remit to expand brought it into conflict with the

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<sup>301</sup> Yu Ji 虞集, *Daoyuanxue gu lu* 道園學古錄 ch. 16, quoted in: Liu Xiao, “Yuandai *dazong zhengfu* kaoshu,” p. 10

<sup>302</sup> Hu Xingdong, *Yuandai minshi falü*, p. 202

<sup>303</sup> Endicott-West, *Mongolian Rule in China*, pp. 45, 49

<sup>304</sup> Zhao Wentan, “Yuandai de xingbu he *dazong zhengfu*,” p. 20

Ministry of Punishments.<sup>305</sup> In 1286, the *dazong zhengfu* was made responsible also for criminal cases involving Chinese. In 1312, these cases were returned to the Ministry of Punishments. In 1328, cases from Dadu and Shangdu and those involving Mongols and members of the *keshig* and postal system were given to the *dazong zhengfu* and local cases, even those involving Mongols, were given to local agencies (*yousi*) and the Ministry of Punishments. In 1336, all cases of adultery, robbery, cheating and fraud were given to the *dazong zhengfu*.<sup>306</sup> Although the Censorate's remit was to supervise other officials and remonstrate with the emperor about policy,<sup>307</sup> they were also occasionally involved in judging cases.

In practise, as will be seen from the following examples, *yarghuchis* of the *dazong zhengfu* often worked together with those from other government bodies in deciding cases. This brought Mongols and Chinese together, since most, but not all, of the staff of the *dazong zhengfu* were Mongols,<sup>308</sup> while the staff of the Ministry of Punishments was primarily Chinese.<sup>309</sup> This shows that the principle of collegiality had real effects in Yuan China.

For example, in the year 1294, Qubilai ordered the regional censorate and *yarghuchis* to question the pacification commissioner of Huaixi route Angji'er, who had embezzled from the army 600 *ding*, 450 *liang* of silver, and two horses.<sup>310</sup> In the same year, censors and a minister from the Central Secretariat memorialized that Jiao Hua from the Jiangnan Branch

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<sup>305</sup> Liu Xiao, "Yuandai dazong zhengfu kaoshu," p. 8

<sup>306</sup> Zhao Wentan, "Yuandai de xingbu he dazong zhengfu," p. 21; Liu Xiao, "Yuandai dazong zhengfu kaoshu," pp. 11-12

<sup>307</sup> Hucker, "The Yuan contribution," pp. 224-6

<sup>308</sup> Liu Xiao, "Yuandai dazong zhengfu kaoshu," p. 8

<sup>309</sup> Zhao Wentan, "Yuandai de xingbu he dazong zhengfu," p. 20

<sup>310</sup> *Yuan Shi*, ch. 17, p. 370

Censorate and other officials were not following the law and were falsely accusing officials of the Branch Secretariat of wrongdoing. As a result, “The emperor ordered the [Central] Secretariat, the Censorate and a yeke yarghuchi to investigate this case together.”<sup>311</sup> When Wu Chang’s wife Liu Shi 劉氏 accused the Minister San Baonu 三寶奴 of having robbed an imperial signet of the recently deceased Song emperor and other items, Wuzong ordered officials of the Secretariat for State Affairs, of the Censorate, the yeke yarghuchi Beg Temur, and a representative from the Bureau for the Empress’ Administration to investigate the case.<sup>312</sup> Also, 1319, “the people under the Prince of Jin Yesun Tiemu’er experienced raids and natural disasters, and many people became robbers. [The emperor] ordered the yarghuchi Nangjiatai to go there and interrogate and record [the cases] of the criminal prisoners together with the Prince of Jin’s councillor, and ask the prince of Jin to execute those guilty of serious [crimes] and have those being sent into exile given a beating in addition.”<sup>313</sup>

In addition, the cases of prisoners in the capital Dadu were to be jointly reviewed by yarghuchis and other officials. The emperor ordered that:

“The Ministry of Justice of the Central Secretariat, the Censorate, and the yarghuchis each [should] choose an official and authorize him to decide cases, [so as] to discuss cases of injustice until they become clear, to investigate cases that have been delayed, and to judge cases that are not so serious and then dispatch [the accused back to where he came from].”<sup>314</sup>

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<sup>311</sup> *Yuan Shi*, ch. 21, p. 470

<sup>312</sup> *Yuan Shi*, ch. 23, pp. 519-520

<sup>313</sup> *Yuan Shi*, ch. 26, p. 590

<sup>314</sup> *Kōteibon Gentenshō keibu*, p. 33, ch. 40 审察不致冤滯

Instead of waning over time, the influence of the principle of collegiality only grew and led to further collaborative efforts. After 1335, a body called the *wufuguan* 五府官 (five-offices-officials) was set up:

“When important cases are to be decided, important prisoners to be interrogated, [representatives from] the Central Secretariat, Bureau of Military Affairs, Censorate, [*da*] *zong zhengfu*, Ministry of Punishments, these five must hear the case together. This will be known as the *wufu[guan]*, and the representative from the Central Secretariat will be the *duanshiguan* [yarghuchi].”<sup>315</sup>

Obstacles in the way of collaboration, such as the *dazong zhengfu*'s yarghuchis' use of Mongolian, were eliminated. In 1295, Chengzong ordered yarghuchis to use Chinese and not Mongolian to promote cooperation and supervision between yarghuchis and Chinese officials. “Yarghuchis since olden times have used the national language (i. e. Mongolian). They must change and use Chinese characters.”<sup>316</sup> The Yuan history elsewhere reports that: “All (officials of the) *dazong zhengfu* now decide important cases on which depend the fate (of the accused), (so) they must use Chinese characters to record the case in writing, so that the public texts can be given to the Censorate to be reviewed and sent by the censors to the emperor.”<sup>317</sup> The *Yuan Dian Zhang* dates this decision to 1301.<sup>318</sup> The change completed

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<sup>315</sup> Wang Sicheng 王思誠, *Zhongshu duanshiguan ting ti mingji* 中書斷事官廳題名記, quoted in: Liu Xiao, “Yuanchao duanshiguan kao,” p. 58

<sup>316</sup> *Yuan Shi*, ch. 18, p. 396

<sup>317</sup> *Yuan Shi*, ch. 103, p. 2632

<sup>318</sup> *Yuan Dian Zhang*, ch. 14, 蒙古刑名立漢兒文案, pp. 227-8



their integration with other officials in the Yuan officialdom.<sup>319</sup> Greater integration between the different branches of government became the norm.

Yarghuchis and Chinese officials in the Yuan dynasty worked together not only in judging legal cases but also in writing legislation. In 1303, officials from the *dazong zhengfu*, Central Secretariat, and Censorate worked together on developing consistent laws.<sup>320</sup>

“In 1323, [the emperor] ordered the *shumi[yuan] fushi* 樞密副使 [Assistant Director of the Bureau of Military Affairs] Wanyan Nadan, the *shiyushi* 侍御史 [Associate Censor] Cao Boqi, the yeke yarghuchi Buyan, the *Jixian* Academician Qincha, the Hanlin Auxiliary Academician Cao Yuanyong, to hear and read the imperial *ge* 格 and *li* 例 [statutes and precedents] which were compiled and gathered together in Renzong’s time [...]. In the second month [...], the *ge* 格 and *li* 例 were fixed, altogether 2539 *tiao* 條 [items], among which were 717 *duanli* 斷例 [precedents], and 1151 *tiaoge* 條格. The emperor ordered that 94 of them be expunged, and he ordered them to be classified under 577 [headings]. This was called the Dayuan tongzhi 大元通制. It was promulgated in all-under-heaven.”<sup>321</sup>

In addition, members of the *dazong zhengfu* were also involved in putting together the later compilation known as *Zhizheng tiaoge*.<sup>322</sup>

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<sup>319</sup> Liu Xiao, “Yuandai dazong zhengfu kaoshu,” p. 11

<sup>320</sup> Zhao Wentan, “Yuandai de xingbu he dazong zhengfu,” p. 21

<sup>321</sup> *Yuan Shi*, ch. 28, pp. 628-9

<sup>322</sup> Liu Xiao, “Yuandai dazong zhengfu kaoshu,” p. 13

## Conclusion

This chapter has shown that even those officials who could most be expected to promote Mongol legal practices within the Toluid empire worked together with local legal officials, and local authorities generally, on a number of occasions. While many of them (and it should be remembered that not all yarghuchis were Mongols) did represent Mongol views as can be seen from the use of military exile, the overriding concern seems to have been working together with local officials and finding solutions acceptable to all parties.

It is essential to recognize that this was not simply a case of ‘administrative’ or ‘customary’ practices influencing the law, but of Mongol legal culture directly influencing legal procedures in the Ilkhanate and the Yuan dynasty. Contrary to Jagchid Sechin’s surmise that joint trials in China were due to pressure by Han officials who feared that Mongol or *semu*<sup>323</sup> yarghuchis would not judge cases fairly,<sup>324</sup> the impetus to judge cases jointly came mostly from the Mongols. It was because the principle of collegiality was so important in Mongol legal culture itself that it influenced how yarghuchis dealt with legal cases both in the Ilkhanate and in the Yuan dynasty.

Moreover, the influence of the principle of collegiality on the conduct of trials both in the Ilkhanate and in Yuan China was not short-lived. It can be seen as a precursor of more systematized joint trial methods in the Timurid realm. In Yuan China, the joint trial system was an important impetus for the incorporation of several Mongol practices into the Chinese legal system, even influencing the Ming dynasty, as will be argued in chapter six.

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<sup>323</sup> The term *semu* 色目 was often used to refer to Western and Central Asians.

<sup>324</sup> Jagchid, *Menggu shi luncong*, pp. 300-1, 305

## **Chapter 4 – Darughachis and other local officials**

### Introduction

While the previous chapter focussed on yarghuchis, the present chapter will review other Mongol-appointed officials at the local level and their involvement in law, with a particular emphasis on *darughachis* (also described in the sources with the Turkish term *basqaq* or the Arabo-Persian term *shahna*; transliterated in Chinese as *daluhuachi* 達魯花赤). The chapter will not be a comprehensive examination of legal issues at the local level, but will examine whether there are further traces of the principle of collegiality in the way in which Mongol-appointed officials conducted legal matters.

While *darughachis* and other officials were not primarily involved in legal matters, nevertheless this was an inescapable component of their roles for many local officials.<sup>325</sup> This chapter will show that officials that the Mongols appointed to local areas quickly became integrated into the local fabric and that their involvement in law shows a neutral or even positive attitude towards Islamic or Chinese practices respectively.

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<sup>325</sup> Jagchid, *Menggu shi luncong*, p. 621

## Darughachis

This chapter will put a particular emphasis on darughachis, since they were often the earliest Mongol-appointed officials in any newly conquered area. The imposition of officials known as darughachis was one of the conditions of submission for almost any region that accepted Mongol overlordship.<sup>326</sup> They were appointed from an early period in the wake of Mongol conquests, and usually assigned to cities.<sup>327</sup>

The function of darughachis was to ensure the permanent submission of recently conquered cities and territories. To this end they were involved in suppressing rebellion, keeping order where necessary, and sometimes they were specifically tasked with organizing the rebuilding of destroyed cities.<sup>328</sup> Thus, as a kind of overseer, they were not necessarily involved in day-to-day administration, though with time they came to be closely involved in day to day administration especially in Yuan China, where they were integrated into the local administration at its various levels. Although they were not primarily legal specialists either in theory or in practice, as representatives of the central Toluid administrations in conquered areas, they were at times involved in legal cases.

Their occasional involvement in legal matters came about not least because they had moderate military forces with them which could help them to keep order and enforce their decisions. An accurate estimate of the strength of their forces is difficult, but Vassaf indicates

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<sup>326</sup> Rashid, p. 1029, Rashid/Thackston, p. 504; Juvaynī, pp. 113, 115, 117, 120, 121, 136, Juvaynī/Boyle, pp. 144, 147, 150, 154, 155, 173; an exception are the Uighurs, since their leader, the *idikut*, submitted early and voluntarily to Chinggis Khan. Juvaynī, p. 33, Juvaynī/Boyle, pp. 46-48

<sup>327</sup> There were some exceptions to the general rule, such as military shahnas, shahnas of catapult operators and various other groups, shahnas of whole regions.

<sup>328</sup> Ibn al-Fuwati, *al-Ḥawādith al-jāmi'ah*, p. 333; Juzjani, p. 121, Juzjani/Raverty, p. 1038

that at one point the shahna in Shiraz, Bulughan, fled with 300 soldiers, so it seems that he had at least 300 who were under his command and felt loyal enough to flee together with him.<sup>329</sup> It would also have been impossible for the shahna of Baghdad, unless he had a group of soldiers under him, to arrest a “company” of soldiers which had turned back from accompanying Najm al-Din to Egypt, and put them to death,<sup>330</sup> or for the “shahna of Iraq” to capture and execute a group of Bedouins who had stolen garments from the Friday mosque in Baghdad<sup>331</sup> and had plundered the area around it.<sup>332</sup> However, the detachments of shahnas were not of overwhelming strength. When Barmas, the shahna of Merv, went with the Emir Ziya al-Din to put down a rebellion in Sarakhs, the inhabitants of Merv took the opportunity to rebel, and when Barmas returned from putting down the rebellion, he found the city gates shut and was unable to enter the city. He had to content himself with killing some people whom he found near the gates and leaving for the *ordo* to seek redress; but he died en route.<sup>333</sup>

Connected with the availability of detachments of soldiers under their command was the tendency to call on shahnas to help in military campaigns. For example, Chin Temur was stationed as shahna of Khwarazm when that province was conquered, and during Ögödei’s reign when Chormaqan was sent to Iran, Ögödei “ordered the leaders and *basqaqs* of provinces to go on campaign themselves and assist Chormaqan. Chin Temur set out from Khwarazm as ordered.”<sup>334</sup> Likewise, when in 1278 two thousand Negударis attacked Fars,

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<sup>329</sup> Vassaf, p. 200; Vassaf/Ayati, p. 117; see also Ibn Zar'küb Shīrāzī, *Shīrāznāmah*, p. 66; Aigle, *Le Fars*, 125

<sup>330</sup> Ibn al-Fuwaṭī, *al-Ḥawādith al-jāmi'ah*, p. 352

<sup>331</sup> Steingass, *A comprehensive Persian-English dictionary*, p. 1191

<sup>332</sup> Ibn al-Fuwaṭī, *al-Ḥawādith al-jāmi'ah*, pp. 451-2

<sup>333</sup> Juvaynī, pp. 127-9, Juvaynī/Boyle, 163-4

<sup>334</sup> Rashid, p. 660, Rashid/Thackston, p. 322

Balaghan the shahna was among those who went with an army to repel them.<sup>335</sup> In Yuan China, darughachis are often mentioned in the sources as going on military campaigns.<sup>336</sup>

Another factor which justifies particular attention on darughachis is that they were meant to be non-local. The vast majority of people chosen to be darughachis were from a different place, and even from a different culture, than the people they were assigned to 'guard.' This requirement was even written into legislation in Yuan China, though it was likely not strictly adhered to.<sup>337</sup> The one exception were generals and others who were instrumental in the submission of the cities or areas they had formerly commanded or been officials in.<sup>338</sup> Such people could also be appointed as darughachis, as a reward for the services rendered. Therefore, the darughachis would be the most likely to transmit inter-cultural influence, either Mongol influence in legal matters, or even influence deriving from the culture of their place of origin.

It is for these reasons that this chapter will focus in particular, but not exclusively, on darughachis. While in Yuan China there were many officials at the local level who had regular connections with the central government, in Ilkhanid Persia darughachis were, apart from local governors or sultans, often the only directly Mongol-appointed or -approved officials in a particular local area.

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<sup>335</sup> Rashid, p. 1108, Rashid/Thackston, p. 540

<sup>336</sup> Jagchid, *Menggu shi luncong*, pp. 613-5

<sup>337</sup> Endicott-West, *Mongolian rule in China*, pp. 78-80

<sup>338</sup> *Yuan Shi*, ch. 150; Endicott-West, *Mongolian rule in China*, pp. 27-8

## Local personnel in China

The principle of collegiality is very evident in the legal system at the local level. In fact, the dispersal of authority is recognized as one of the major features characterizing the legal system during the Yuan dynasty, and setting it apart from previous dynasties such as the Song.<sup>339</sup> The influence of the principle of collegiality on Chinese local administration in general has been previously examined by Endicott-West. While many have noted its influence on the legal administration in the Yuan dynasty, this has been seen in terms of a convenient way of dealing with people of many different nationalities, or as due to Mongol administrative traditions. Collegiality in the legal system of the Yuan dynasty has not been seen as a result of the influence of Mongol legal tradition itself, as embodied in the *quriltai*.<sup>340</sup>

The *yuehui* 約會 or joint trials system was the most prominent manifestation of the principle of collegiality at the local level. It was a central element of the Yuan legal system.<sup>341</sup> The *yuehui* system rested on the idea that cases involving people from different groups (in China, household registration groups) should be decided jointly. If a dispute involved two people from different groups, a meeting of the heads of the two groups, sometimes with a government representative in addition, was convened to find a suitable solution. Such a meeting was called a *yuehui* or ‘joint meeting.’<sup>342</sup>

From the beginning of Qubilai’s rule, the solutions proposed to resolve legal conflicts could include joint trials. In response to the complaint of the *darughachi* and the local general

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<sup>339</sup> Zheng Jinfan, *Zhonghua fazhi wenming de yanjin*, p. 616; Endicott-West, *Mongolian rule in China*, p. 49

<sup>340</sup> Buell, “Sino-Khitans administration in Mongol Bukhara,” pp. 146-7, Ostrowski, “The *tamma* and the dual-administrative structure of the Mongol empire,” pp. 270-2; Aigle, “Iran under Mongol domination,” pp. 72-74

<sup>341</sup> Hu Xingdong, *Yuandai minshi falü*, p. 205

<sup>342</sup> Yang Dehua, Hu Xingdong, “Yuandai ‘yuehui’ zhidu chutan,” p. 29

administrator (director-general) of Huaimeng route (*lu* 路) not long after Qubilai had ascended the throne, Qubilai ordered joint trials to be held:

“On the 28<sup>th</sup> day, *ting-ch’ou* [of the 6<sup>th</sup> moon of the 2<sup>nd</sup> year of the Chung-t’ung reign period: 26 July 1261], the Central Secretariat (Tu-t’ang) memorialized and respectfully received an imperial decree (*sheng-chih*) [which said]:

To the Pacification Bureau (*Hsuan-fu-ssu*) of Chen-ting route: According to the memorial of Mi-li-chi, the *Ta-lu-hua-ch’ih* of Huai-Meng, and T’an Ch’eng, the General Administrator, they reported [saying that]:

As for the territory under our jurisdiction, much of it has Mongolian military officials (*t’ou-mu*) who have been stationed on it. If it happens that there is official business concerning a legal case, they are unwilling to come forward to give testimony. Often they do not submit to being summoned and questioned (*kou-chui*), and this results in the delay and obstruction of business.

Approved the memorial (*chun-tsou*).

Let the pacification bureaus in all the sundry routes in all places be instructed: from this time onward, the civilian population overseers (*kuan-min-kuan*) of the various subprefectures (*chou*) and cities, whenever there is official business concerning Mongolian military personnel (*chiin-jen*), when they conduct an investigation, should together with one military overseer (*kuan-chün-kuan*) conduct a hearing and decide the case (*t’ing-tuan*). Let this be put into effect (*shih-hsing*). Let there be no partiality. Approve this.”<sup>343</sup>

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<sup>343</sup> Wang Yun, *Qiuqian xiansheng daquan wenji* 82:7a-7b, translation taken from Endicott-West, *Mongolian rule in China*, p. 39



Darughachis were involved in regular conferences at lower levels of the administration down to the district level, so that any legal cases they dealt with were also discussed in conference. Conferences at the route level were held daily and were attended by the darughachi 達魯花赤, the general administrator (*zongguan* 總管), the associate administrator (*tongzhi* 同知) and the commissioner of records (*panguan* 判官), joined, if the conference was taking place at upper-route level, by an assistant administrator (*zhizhong* 治中).<sup>344</sup> The conferences dealt with diverse affairs, including sometimes legal cases, and were also held at lower levels of local government. An edict from 1264 stated that:

“The officials of the capital [*jing* 京], prefectures [*fu* 府], subprefectures [*zhou* 州], and counties [districts - *xian* 縣] every day sit in conference (*yuan-tso*), [where] they deliberate upon legal cases, and examine into official affairs.”<sup>345</sup>

Another edict from 1277 stated:

“The officials of the capital, prefectures, subprefectures, and counties [districts] gather together every morning. They sit in conference (lit. sit in the round: *yuan-tso*), [where] they deliberate upon legal cases, and delve into official business. Except for those to whom it is appropriate to grant leave, [the others] must not be remiss in their duties [that is, in attending the conference]. As before, every day they must sign in in

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<sup>344</sup> Endicott-West, *Mongolian rule in China*, p. 52

<sup>345</sup> *Yuan Dian Zhang*, ch. 11, p. 163 放假日頭體例, translation taken from Endicott-West, *Mongolian rule in China*, p. 51

the official conference register (*kung-tso wen-pu*). Those who are absent on official business will be marked down above.”<sup>346</sup>

Joint trials were mandated in more and more situations, leading to a situation where joint trials were an integral component of the Yuan dynasty legal system. In most cases, *yuehui* dealt with civil matters. In 1266 Qubilai ordered that:

“In the case of households belonging to the *touxia* [appanage-holders] or *se[mu]*, if there are any criminal cases, the *darughachi* from the local area, the civil officials should meet with the official from the [*zong*] *guan[fu]* to decide and dismiss the case. If they are unable to convene a meeting, they can judge and close the case and implement the punishment [themselves].”<sup>347</sup>

An edict from 1294 mandated joint trials for civil matters involving Buddhist and Daoist monks or Confucian scholars. Qubilai ordered that:

“If Buddhist or Daoist monks or Confucian scholars have a verbal dispute, the civil officials should come together in one place to interrogate [them]. The head of the Buddhist monks, the head of Daoist monks and the head of the Confucian scholars should conduct the interrogation together.”<sup>348</sup>

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<sup>346</sup> *Yuan Dian Zhang*, ch. 13, p. 215 圓坐署事, translation taken from Endicott-West, *Mongolian rule in China*, p. 50

<sup>347</sup> *Kōteibon Gentenshō keibu*, ch. 53, p. 496 諸色戶計詞訟約會

<sup>348</sup> *Kōteibon Gentenshō keibu*, ch. 53, p. 496 儒道僧官約會

In the case of religious personnel, even some criminal matters could be decided by joint trial.

The section on criminal law of the Yuan Shi says that:

“All Buddhist monks, Daoist monks, and Confucian scholars who have a dispute will not have [their cases] decided by the *yousi* [the local government agencies], rather the heads of the three houses [Buddhist, Daoist and Confucian] should come together to interrogate [the litigants].”<sup>349</sup>

Similar regulations were put in place regarding various other household groups. In 1295, emperor Chengzong ordered that: “If a dispute occurs between doctors and ordinary civilians, the civil officials and the head of the doctors should come together in one place to interrogate [the litigants], and make a judgment. Respect this.”<sup>350</sup> In 1300, “The Central Secretariat memorialized and received the edict: [...] If there is a matter that needs to be investigated, the head of the entertainers and the *guanminguan* [civil officials] should interrogate [the litigants] together. Respect this.”<sup>351</sup>

In the year 1301, a complaint reached the court from Henan province about cases between civilians and military personnel, or those under the jurisdiction of princes (*touxia*). The military leaders were failing to show up for the arranged joint meetings, and the officials argued that ordinary people were suffering because their cases were not being decided. The officials of the Central Secretariat referred to an edict from 1267 in which Qubilai had mandated joint conferences and given the civil officials authority to decide a case if meetings had thrice been called but had not been attended by the relevant representatives. The officials

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<sup>349</sup> *Yuan Shi*, ch. 102, p. 2620

<sup>350</sup> *Kōteibon Gentenshō keibu*, ch. 53, p. 497 醫戶詞訟約會

<sup>351</sup> *Kōteibon Gentenshō keibu*, ch. 53, p. 497 樂人詞訟約會

from the Central Secretariat said that this system had been in place for a long time and to implement Qubilai's edict.<sup>352</sup> In 1312, there was a renewed complaint regarding cases between civilians and military personnel or those under princes' jurisdiction. The obligation to hold joint trials was re-emphasized, although if three attempts at meeting were unsuccessful, the *yousi* would have authority to deal with the case and then report it to the censorate for checking.<sup>353</sup>

In 1302, Chengzong ordered that for all cases involving Uighurs, no matter in which area of China or under which administration or in which appanage they were living, for those matters that should be decided by conference, officials of the *duhufu* [the office charged with Uighur matters] and other government offices "should come together, and comparing the evidence in one place should interrogate [the litigants] and decide the case. If this has been commanded, those who judge based on their own ideas [and not together with others], are they not afraid?"<sup>354</sup> In 1314, Renzong repeated that in cases involving Uighurs, even if they were living in far-away cities, their appointed head should hold a meeting together with the city officials to decide the case.<sup>355</sup>

In 1308, Wuzong gave an edict that less serious cases involving both military personnel and civilians should be judged by conference, as had been the practice since the time of Qubilai. The refusal of some to cooperate in the joint investigation and trial process was apparently leading to untold misery:

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<sup>352</sup> *Kōteibon Gentenshō keibu*, ch. 53, pp. 497-8 投下詞訟約會

<sup>353</sup> *Kōteibon Gentenshō keibu*, ch. 53, p. 502 投下並探馬赤詞訟約會

<sup>354</sup> *Kōteibon Gentenshō keibu*, ch. 53, pp. 498-9 維吾爾等公事約會

<sup>355</sup> *Kōteibon Gentenshō keibu*, ch. 53, pp. 501-2 都護府公事約會

“Their leaders know there is no proper system, they delay and make excuses, they don’t turn up for meetings. They delay for days and months, they delay the cases, and create big obstacles. One asks, “Why?” because, no matter in which part of the land, if someone has been murdered or seriously injured, or if a robber has taken someone’s money, and if he has left the owner dead or injured, the body should be examined immediately. If a meeting is arranged, but they don’t arrive quickly, if the weather is hot, the body will start rotting.”<sup>356</sup>

In response, Wuzong ordered that officials who didn’t turn up should be reported and prosecuted, and also investigated by the *lianfangsi* 廉訪司, the regional censorial office. The edict reconfirmed decisions should be taken by joint conference, although the civil officials could decide if three attempted meetings had been unsuccessful. The edict stated about the policy of making decisions by conference that “this has been the practice for a long time; it is not up for discussion.”<sup>357</sup>

Crucially, interrogations were undertaken in conference for the specific purpose of avoiding injustice. In 1298, Chengzong issued an edict in which he emphasized that acting on one’s own leads to injustice, giving an example of a local official and a darughachi who interrogated people on their own, thus breaking the law:

“In Binzhou *lu* (route), the Director-General investigated [the cases of] Zhang Xianjun and other people who died [because of the torture he applied.] Also, the darughachi of Yongzhou

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<sup>356</sup> *Kōteibon Gentenshō keibu*, ch. 53, p. 499 軍民詞訟約會

<sup>357</sup> *Kōteibon Gentenshō keibu*, ch. 53, p. 501 軍民詞訟約會

*lu* (route) Mila investigated the criminals in a way that was illegal. Such behaviour only leads to oppression and cruelty for the people.”<sup>358</sup>

Wang Yun, a prominent and influential official serving the Yuan dynasty, also gave examples of the violation of the principle of collegiality leading to injustices: an archer (policeman) who tortured a suspected thief without informing his superiors, and a police commissioner who tortured a suspected thief to death.<sup>359</sup>

Zhang Yanghao 張養浩, a district magistrate (*xianyin* 縣尹), in his handbook entitled *Frank Advice for the Magistrate* expressed similar sentiments:

“When there are legal cases, [officials] should convene together at a set time and hold an inquiry. One should not take advantage of a time when one is angry to act without proper authorization in administering a beating while interrogating.”<sup>360</sup>

Therefore, on all levels, from the route to the district level, the sentiment prevailed that conducting interrogations in conference was necessary to avoid injustice, reflecting the sentiments expressed in the *Secret History of the Mongols* about the trial of his brother Qasar which Chinggis Khan attempted to hold by himself. This shows that the principle of collegiality penetrated very deep in Yuan China, and did not quickly disappear. The *darughachi* became a part of this system and examined legal offenses together with other officials. The rationale underlying the *yuehui* and other joint conferences was the same as that underlying *quriltais*, of bringing leaders together to decide issues which affected all of them.

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<sup>358</sup> *Kōteibon Gentenshō keibu*, ch. 40, pp. 48-49 枉勘枉禁論罪

<sup>359</sup> Endicott-West, *Mongolian Rule in China*, p. 53

<sup>360</sup> Zhang Yanghao, *Mumin zhonggao*, p. 285; translation taken from Endicott-West, 1989, p. 53

Although the later Yuan did try to limit the use of the *yuehui* and bring more cases under state control, the system, and the principle, persisted.<sup>361</sup>

### Local personnel in Persia

It is extremely significant that there exists evidence for the Ilkhanate of a direct parallel to the joint trials in Yuan China; or at least, of the intention of Ghazan Khan to implement similar joint trials within the Ilkhanate. This fact has remained unremarked on except in the work of Hu Xingdong, the specialist on the civil trial system in the Yuan dynasty. The similarity strongly suggests that the roots of this approach lie in Mongol pre-imperial legal practices, and leaves no practical doubt that collegial decision-making practices had some influence in the legal administration in both Yuan China and the Ilkhanate.

Rashid al-Din states, in the middle of his edict on the delegation of judicial authority, that:

“If a case is between two Mongols or between a Mongol and a Muslim, or if there are other cases that are difficult to decide, we order the *shahnas*, maliks, *bitigchis*, cadis [qadis], and learned Alids [and danishmands<sup>362</sup>] to meet twice a month in the congregational mosque [ به دیوان المطالعه جمع شوند ] to investigate. Let them hear the cases together, get to the bottom of them, make decisions in accordance with the law [ به موجب حکم شریعت فیصل رسانند ], write and record their decisions, and give their

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<sup>361</sup> Yang Dehua, Hu Xingdong, “Yuandai ‘yuehui’ zhidu chutan,” p. 30

<sup>362</sup> The Persian text mentions ‘*dānishmandān*.’

signatures in witness thereto so that afterward no one can raise any objection or invalidate the decision.”<sup>363</sup>

Ann Lambton has interpreted these words as an attempt to revive the *mazalim* trials which had been in use by Islamic sultans, with the purpose of deciding important cases using slightly more lax rules of evidence, providing a forum where even powerful people could be taken to task for any kind of oppression or injustice.<sup>364</sup> The order to meet on a regular basis (twice a month) would perhaps support this view. However, it is equally if not more likely that this initiative in fact stems from the principle of collegiality which was such a strong tradition among the Chinggisids. Legal cases at the *ordo* had not suddenly come to be decided differently after Ghazan’s conversion to Islam, rather the principle of collegiality was and remained very important for the Ilkhans. Moreover, the edict which this provision was embedded in was to be sent out to “basqaqs, maliks, and persons who govern on our behalf” and was part of Ghazan’s attempts to introduce reforms in the whole Ilkhanate; therefore this was an initiative aimed at influencing the local level, and not merely providing a forum for the sultan or perhaps his governor to display their exemplary justice, as was most often the case for the *mazalim*. Therefore, it is important to recognize the similarity with joint trials in China, which has been not been highlighted so far.

Whether or not the joint local trials that Ghazan wanted were actually carried out, his instructions show his intentions and attachment to the principle of collegiality. Moreover, the evidence indicates that in the Ilkhanate as well as in Yuan China, Mongol-appointed officials at the local level quickly became integrated into the local fabric, and that their actions were

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<sup>363</sup> Rashid, p. 1389, Rashid/Thackson, pp. 689-90

<sup>364</sup> Lambton, *Continuity and change*, p. 93; On the *mazalim*, see Nielsen, “Mazālim” in *Encyclopaedia of Islam, Second Edition*



often in tune with local practices when they were involved in legal cases. Darughachis in particular seem to have deeply integrated. For example, when faced with a ‘rebellion’ in Bukhara led by a sieve-maker from Tarab, the darughachis did not act alone; rather, “the emirs and *basqaqs* that were present in Bokhara” consulted together and decided to attack the leader of the rebellion.<sup>365</sup> Similarly, riots in Baghdad because of a prohibition of lion hunting in 1287 were quelled by the shahna Ali Bahadur in conjunction with the *sahib-divan* and the chief religious dignitaries.<sup>366</sup> Rashid al-Din points out that there may have been additional reasons for integrating locally: he alleges that shahnas and *bitigchis* would collude with governors against the central government to cream taxes from the population.<sup>367</sup>

In dealing with legal matters likewise, darughachis can be seen as integrated into the local environment. In some cases, Mongol and Islamic legal principles coincided. It is not surprising that shahnas insisted on putting to death both of those accused of adultery, since Carpini reports that:

“They [the Mongols] also have a law or custom of putting to death any man and woman they find openly committing adultery; similarly if a virgin commit fornication with anyone, they kill both the man and the woman.”<sup>368</sup>

One might suspect that Ibn al-Fuwaṭī has here emphasized the Islamic element of the decision perhaps too much; in any case, if he knew about it, he has not written about the Mongol

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<sup>365</sup> Juvaynī, p. 86, Juvaynī/Boyle, p. 110

<sup>366</sup> Ibn al-Fuwaṭī, *al-Hawādith al-jāmi’ah*, pp. 359-60, 384, 453

<sup>367</sup> Rashid p. 1415, Rashid/Thackston, p. 701

<sup>368</sup> Carpini/Dawson p. 17; Holmgren, “Observations on Marriage and Inheritance Practices,” p. 155

practice of putting to death both adulterers. In the year 1267-8, a darughachi was involved in punishing an adulterous couple:

“And in [this year] a woman by name of Orus Khatun was killed in Baghdad. She had been the wife of one of the companions of Tukai Bakshi the shahna of Baghdad, who was called Hossein Aqa. The reason for that was that she was the lover of a beardless and beautiful *ghulam*. When her husband came to know this, he wanted [that young man] to be killed, but the shahna refused [this] and said: [one must] kill both of them or they should remain [alive] until I implement the *hadd*. So [the husband] took the *ghulam* to the outside of the walls, pounded a stake into the ground, and seated him on it and he died. Then he brought the woman and killed her with his hands, crying out of sorrow for her.<sup>369</sup>

Another case of adultery in Shiraz a few years later shows a father, feeling in need of defending the honour of the family, killing his daughter’s lover on his own initiative, and the darughachi of Shiraz giving the order for his daughter to be publicly put to death in a locally customary manner by being thrown from a mountain near Shiraz:

“And also in this year [1290], the daughter of one of the nobles of Shiraz agreed on a detestable thing with a *ghulam* of her father. When the daughter saw that he deflowered her, she became scared and fled away. When her father became aware of it, he killed the *ghulam* and searched for his daughter until she was found after several days. The shahna of Shiraz gave an order that day for her to be put to death. They brought her to the top of a mountain outside of Shiraz, in which there was a big and

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<sup>369</sup> Ibn al-Fuwaṭī, *al-Ḥawādith al-jāmi’ah*, p. 361; Gilli-Elewy, *Bagdad*, p. 178

deep pit into which they used to throw the women that they wanted to put to death. They also threw the girl into that pit but not only did she not die but none of her limbs was hurt. Those present were amazed and asked for her to be set free. The shahna gave a commentary the meaning of which was that of a saying of a poet: “If one does not die today, does one not die tomorrow, and if one does not die tomorrow, does one not die the day after?” They sent to him Shams al-Daula ibn Montajab who was knowledgeable about her case. They brought her out of the pit and married her off. This happened in Dhul Hijja of this year.<sup>370</sup>

The issue of importance, apart from the penalties imposed, is how the darughachis were involved in punishing these cases together with the community. Other Mongol appointees, such as governors and viziers, likewise dealt with legal matters in a way often congruent with local practices or sensibilities. One exception is the following case which is closer to Mongol practices, through the confrontation of the accuser with the accused (similar to the Mongol practice of *tapishmishi*) and the burning of corpses, which has echoes of the Mongol shamanist belief system where to destroy someone’s bones is tantamount to utterly ending their existence even in the afterlife:

“In this year [1278-9], in Baghdad, there appeared two cunning men, one was called Ibn al-Hammas and the other Taj al-Kafni. A group of foolish people had joined them. They grew in power and were mentioned by many people. The Sahib-Divan [Shams al-Din Juvaynī] used a trick in order for Ibn al-Hammas to be brought before him, and he put him under the watch of a policeman [*shurta*]; he remained there for some days and he asked for his pardon. So [the Sahib-Divan] pardoned him and confined him at

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<sup>370</sup> Ibn al-Fuwaṭī, *al-Ḥawādith al-jāmi’ah*, pp. 462-3

the gate [of his house?]. Then he commanded him to bring Taj al-Kafni and he brought him and he confined him and made him be a comrade for him [i. e. Ala al-Din tied him to the gate as well]. A group of people from Hilla attacked the Sahib's door one night [to get these two men] but they could not get possession of them and it was not possible to get these people. Then Qatada, a police officer, told Sahib-Divan about Ibn al-Hammas and al-Kafni [that they were involved in] corrupt things and that they ventured against and commissioned people and secretly made them fear so that they refused to help them [the police?]. So the Sahib-Divan brought them [the policeman and the two imprisoned men] together and he [the policeman] testified about them. The Sahib-Divan ordered them to be killed and their heads were taken to be shown around. And one day one of their associates attacked Qatada while he was sitting on the bank of the Tigris river and killed him and some of his companions. And Sahib-Divan ordered the exhumation of the corpses of Ibn al-Hammas and al-Kafni and their burning.<sup>371</sup>

Other decisions, however, were very much in line with local practices, showing in particular the influence of Islamic law. What is significant is that there is no evidence that the Ilkhans objected to this. In the many cases of darughachis and other local officials being impeached or reported to the Ilkhanid court, in no case is adaptation to local practices cited as a reason for condemnation. Rather, accusations of embezzlement or of secret contact with Mamluk Egypt were much more frequent because they reflected matters which the Ilkhans thought to be threatening to their income or their identity and legitimacy. Ala al-Din Juvaynī was

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<sup>371</sup>Ibn al-Fuwaṭī, *al-Ḥawāḍith al-jāmi'ah*, pp. 403-4

accused of both of these things.<sup>372</sup> If accusations of following local legal practices had carried any weight with the Ilkhans, it can be supposed that they would have been used.

A poet who had said things deemed to be against the Shari'a was put to death on the orders of Ata Malik Juvaynī, governor of Baghdad, though details on the case are lacking.<sup>373</sup> Also, in the year 1276 in a hammam of Baghdad a man and a woman were arrested for adultery. It is recorded that Ala al-Din gave the order that they be stoned,<sup>374</sup> which is the Islamic penalty for adultery committed by married people. This shows the imposition of strict Islamic law by officials appointed by non-Muslim Ilkhans, from which it is clear that the Toluids gave their governors considerable latitude to handle legal issues.

Another case which again reflects the involvement of local legal officials, though in this case there is little indication that their active involvement was sought, is the following:

“In the year 1295, the vizier Jamal al-Din Dastajirdani gave an order to his own aide Nur al-Din ‘Abd al-Rahman to take and put to death Fakhr al-Din Mozaffar bin Tarah, the *sadr* of Wasit and Basra. He went to Wasit and took Fakhr al-Din and his companions. Then he [...] put a collar around [his] neck and reproached him and got a document from him that he had [wrongly] taken many possessions. And he called upon the qadi and trustworthy men to witness this. Then he brought him to Baghdad and appointed a jailor over him for a few days and beat and punished and killed him.

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<sup>372</sup> Juvaynī, “Introduction,” pp. xxxviii-xlii

<sup>373</sup> Ibn al-Fuwaṭī, *al-Ḥawādith al-jāmi’ah*, p. 359

<sup>374</sup> Ibn al-Fuwaṭī, *al-Ḥawādith al-jāmi’ah*, p. 386

They brought his head to Wasit and hung it on the bridge after walking with it around the streets and the market of Wasit.”<sup>375</sup>

While such involvement of local officials, even if only in the role of witnesses shows some engagement with local legal specialists, and adaptation to local legal practices, as seen above, was not unusual, a further aspect of the legal system in the Ilkhanate which shows the influence of the principle of collegiality was the appointment of joint qadis. While not particularly frequent, and while there were occasional instances of joint qadis before Mongol rule in Persia,<sup>376</sup> the appointments of joint qadis have nevertheless be noted as a specific feature of the legal system of Persia under the Mongols. While these appointments could potentially be due to Chinese influence, it is just as probable that the Mongol principle of collegiality was the inspiration. In 1274-5, Terkan Khatun, who ruled Fars under the Mongols, appointed joint qadis. Fasihi remarks that one of those appointed, Muhammad Shah-sultan, avoided taking bribes, perhaps implying that other qadis did.<sup>377</sup> The second joint appointment took place in 1279-80 when Rokn al-Din Yahya Fali-Sirafi and Naser al-Din ‘Abdullah Baydawi were both appointed qadis. According to Vassaf, the governor of Fars, Suqunchaq Noyan, had planned to appoint Naser al-Din Abdullah Beiza’i / Baydawi, but a group among the qadis, seyyeds, sheikhs and other local notables he consulted supported Rokn al-Din Yahya of the Fali-Sirafi family of qadis. So instead of either alienating the powerful locals (whose goodwill he needed in order to have a chance at governing), or giving in to their demands, two qadis were appointed. Vassaf says that in spite of the arrangement, Rokn al-Din took precedence in practice. According to Subki however, Naser al-Din Baydawi was

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<sup>375</sup> Ibn al-Fuwaṭī, *al-Hawāḍith al-jāmi’ah*, pp. 484-5

<sup>376</sup> According to Lambton, *Continuity and change*, p. 90 the practice was known before the Mongol period, though presumably it was very rare.

<sup>377</sup> Lambton, *Continuity and change*, pp. 90-91

restored to office after travelling to Tabriz and impressing the vizier who happened to be present in one of the religious schools.<sup>378</sup> The presence of joint qadis is consistent with the presence of joint viziers in Persia and points to a common influence behind these phenomena, namely the principle of collegiality.

### Conclusion

The principle of collegiality is the most reasonable explanation for these features of the Ilkhanid and Yuan legal systems. It can be seen how cooperation had greater influence than any desire to impose Mongol ways. The darughachis and other Mongol-appointed officials integrated on the local level and partly used local legal practices.

The integration of the darughachis is due mainly to their precarious position at the intersection of the Mongol elite and the local non-Mongols. In order to remain in their position and avoid facing punishment or execution or murder, darughachis needed to keep all sides happy. Equally important though was the willingness of the Toluid khans to allow adaptation to local practices to happen.

Moreover, the integration of darughachis into the local fabric was mediated at least partially by conferences inspired by the principle of collegiality. This principle is the only factor that can adequately explain the daily joint conferences of local officials in Yuan China, as well as Ghazan's attempt to start similar conferences in the Ilkhanate. The examples of adaptation of the darughachis to local practices and the Ilkhans' willingness to allow this shows flexibility

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<sup>378</sup> Subki, translation taken from Calverley and Pollock, *Nature, man and God in medieval Islam*, p. xxxi

in legal matters, while working together with local officials in conferences was an opportunity for the influence of Mongol legal practices to be absorbed more deeply, as will be argued in chapters six and seven.



## **Chapter 5 – The khans’ attitude to law**

### **Introduction**

Having concluded that both yarghuchis and darughachis in the Ilkhanate and the Yuan empire had an often flexible approach to local law, especially when they were dealing with the local population, and were influenced by the principle of collegiality, it remains to examine the attitude of the khans themselves. By examining their approach to legal matters one can show that they, too, had a flexible attitude. Their flexible, non-ideological approach to law enabled their officials in turn to be flexible and to achieve positive results and agreements through their meetings and discussions with local legal officials.

As mentioned in the introduction, the sources are not such as to give a complete impression of the Ilkhans’ and Qa’ans’ attitudes towards the law. In particular, while there are numerous formal legal documents from the Yuan dynasty, there are few from the Ilkhanate. Even if the documents were sufficient, though, it is in the spirit of this research that one should not rely only on what the khans may have said; one should rely perhaps more so on what they did.

This chapter will seek to deduce the khans’ attitudes about law through their relationships with various actors: firstly, local legal personnel; secondly, other Toluids, and thirdly, through their relationships with minorities in their own territories.

## Local legal personnel

### i) Persia

In the Ilkhanate, the most powerful and prominent representatives of the existing Islamic legal system were the qadis, who were in charge of conducting legal cases. The Mongol encounter with the qadis is therefore key to understanding how they approached the Islamic legal system.

While the very first contact with qadis took place during the Mongol invasion of Persia in the 1220s, it was the foundation of the Ilkhanate which first brought about close contact between them and the Mongol leadership. With Hülegü Khan came the need, and the reality, of an accommodation with the qadis, which amounted in effect to a recognition of their place and role within Ilkhanid society, even though, considering the ideological aims of the Ilkhans, this was not widely proclaimed.

Prior to the coming of Hülegü Khan,<sup>379</sup> qadis enjoyed a certain amount of respect among the Mongols, though their status was not as high as it had been under Islamic rulers. While some perished in the Mongol attacks,<sup>380</sup> the Mongol policy was to spare them out of respect for their religious credentials.<sup>381</sup> They were also exempted from taxes.<sup>382</sup> There was however no

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<sup>379</sup> See Lane, *Early Mongol Rule*, pp. 19-23 on the 'leisurely pace' with which he came.

<sup>380</sup> Khvāndamīr, pp. 35-37, Khvāndamīr/Thackston, pp. 20-21; Sourdél, D, "Les professeurs de madrasa à Alep aux XIIe–XIIIe siècles d'après Ibn Šaddād," pp. 85-115

<sup>381</sup> Rashid, p. 502, Rashid/Thackston, 248; Atwood, "Validation of Holiness and Sovereignty," pp. 248-250

<sup>382</sup> Rashid, pp. 844, 1388, Rashid/Thackston, pp. 411, 689; Bar Hebraeus/Budge, p. 418; Jackson, "The Mongols and the faith of the conquered," 264 ff.

recognition of their role, with the military administration exercising more of a hands-off policy than a hands-on management of Persian affairs.

It was when Hülegü Khan came to Persia that the relationships with qadis were deepened and, to an extent, formalized. That Hülegü understood the role that ulama played in legitimizing rulers is shown by his demand for a ruling from the ulama of Baghdad. According to Ibn Tiqtaqa, when Hülegü conquered Baghdad, he ordered the ‘ulama to issue a *fatwa* stating whether a just infidel sultan or an unjust Muslim sultan was preferable. They hesitated, but after the respected Radi al-Din ibn ‘Ali ibn Ta’us agreed that the just infidel is preferable, they all signed it.<sup>383</sup>

Ibn Tiqtaqa’s story shows that Hülegü was interested in political domination, not in legal affairs *per se*. He was concerned about his legitimacy, about whether the Muslim clergy, with their great influence within society, could try to undermine his rule. Like the demands he had made on the caliph earlier, the demand for the *fatwa* was a political demand similar to those the Mongols made of every place they wanted to conquer.<sup>384</sup> Having accepted his demand for the *fatwa*, the qadis were then allowed to continue functioning as qadis within Persian society.

However, Hülegü also showed a more personal concern for the qadis, by appointing qadis where needed. While little information has come down to us about the appointment of qadis, the available evidence indicates that Hülegü did not appoint qadis systematically, but only where needed. Hülegü appointed Nizamuddin Abdul-Mu’min Bandaniji (d. 1268-9), who had been appointed qadi of west Baghdad by the Caliph in 1254, and chief qadi from 1257,<sup>385</sup> as

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<sup>383</sup> Lewis, *The political Language of Islam*, p. 107, and ch. 5 note 34

<sup>384</sup> Voegelin, “The Mongol Orders of Submission,” pp. 402-412

<sup>385</sup> Gilli-Elewy, *Bagdad*, p. 182 n. 48

chief qadi of Baghdad within a year after the Mongols took the city.<sup>386</sup> Thereafter, the qadiship was passed on through the naming of a successor by the qadi himself or through the intervention of the governors of Iraq under the Mongols.<sup>387</sup> Hülegü also appointed Abu l Fath ‘Umar b. Bundar al-Tiflisi (d. 672/1273-4) qadi in Damascus after taking that city; like his predecessor, al-Tiflisi was a Shafi‘i (Rashid al-Din mentions instead a “Qazi Shamsuddin Qummi”).<sup>388</sup> These appointments show that Hülegü was aiming for stability, appointing qadis where existing structures had been destroyed; the chronicles do not report any systematic effort of his to appoint (or re-appoint) qadis. Therefore, despite the fact that qadis practised a form of law very foreign to the Mongols, and that some of their laws conflicted with Mongol customary laws, Hülegü chose to be flexible in legal matters, and required from them only political allegiance.

The value given to stability in preference to control over the qadis’ activities is also shown by an edict issued through Amir Baytmish<sup>389</sup> on 4<sup>th</sup> September 1288, in the time of Arghun. The edict simply urges two qadis of Ardabil, Sadr al-Din and Baha al-Din, to quickly resolve a dispute about possession of a village, according to Shari’a.<sup>390</sup> Such an edict could not have been issued without the knowledge of Arghun.

Therefore, both Hülegü and Arghun were flexible and allowed qadis freedom to use their own laws. The recognition of the role of qadis did not of course preclude Hülegü or Arghun

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<sup>386</sup> Rashid, p. 1019, Rashid/Thackston, 499; Ibn al-Fuwaṭī, *al-Ḥawāḍith al-jāmi’ah*, pp. 332-3, 362-4, 478; Gilli-Elewy, *Bagdad*, p. 182 n. 48

<sup>387</sup> Ibn al-Fuwaṭī, *al-Ḥawāḍith al-jāmi’ah*, pp. 2-3, 217, 337-8; 484, 490-492, 494-5, 499; Gilli-Elewy, *Bagdad*, pp. 182-3

<sup>388</sup> Rashid, p. 1027, Rashid/Thackston, p. 503

<sup>389</sup> Most probably the same as Baytmish Qushchi mentioned in Rashid and Vassaf, Herrmann, *Persische Urkunden der Mongolenzeit*, p. 52

<sup>390</sup> Herrmann, *Persische Urkunden der Mongolenzeit*, pp. 46-8

from using Mongol laws and forms of trial at the *ordo* as discussed in chapter 3. However the co-existence of Mongol law at the *ordo* and Islamic law in the cities and provinces was a situation which the early Ilkhans, even the staunch Buddhist Arghun, were comfortable with. This shows that an open attitude towards Islamic law did not come about only in the late Ilkhanate, but characterized Ilkhanid rule from the beginning.

The later Ilkhans continued this attitude and even showed a more marked preference for Islamic law, after Ghazan converted to Islam. However, most change at this juncture was theoretical<sup>391</sup> and in practice Islamic law continued to be honoured mostly at the local level. Qadis did however start to be employed by the Ilkhans themselves in order to write legal documents, as for example a certain Qadi Fakhr al-Din of Herat who composed the ‘pledge’ for the qadis that they would obey Ghazan’s command and not accept land title documents more than thirty years old.<sup>392</sup> The later Ilkhans also appointed *qadi al-qudat*, supporting and acknowledging the Islamic legal system in this way:

“Regarding the office of judge: the custom of the land requires that the *qadi al-qudat* of the whole of Persia remain in the retinue of the Sultan. Regardless of the far-flung provinces, he appoints [the legal personnel] everywhere. Only Iraq is an exception, since Baghdad has its own *qadi al-qudat*, who is responsible for Baghdad as well as all of Iraq. The *qadi al-qudat* Abu Mohammad al-Hasan al-Guri said to me, that the maximum salary of the *qadi al-qudat* is [the income from] six villages, and in addition 1 tuman, which is equivalent to 10000 dinar ra’ij.”<sup>393</sup>

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<sup>391</sup> Amitai-Preiss, “Ghazan, Islam and Mongol tradition,” pp. 2-3

<sup>392</sup> Rashid, p. 1392, Rashid/Thackston, p. 691

<sup>393</sup> al-‘Umari/Lech, p. 43, trans. p. 155

“In the *ordo* and also while he is travelling, the Sultan is accustomed to having renowned scholars and professors around him, who draw regular salaries from him. Each of them has their own *fuqahā*’ and students as well. [All together] they are the so-called ‘company of travelling scholars.’”<sup>394</sup>

Whether the *qadi al-qudat* fully exercised the claimed power to appoint qadis in every province is doubtful, since the qadiship continued to be passed on mainly in hereditary fashion throughout the period of Mongol rule.<sup>395</sup> There was also an attempt by Ghazan to forge closer ties between the *ordo* and the local level qadis,<sup>396</sup> and between the qadis and local Mongol officials,<sup>397</sup> but considering the failure of other reforms of Ghazan to have any impact at the local level, it is doubtful whether this was successful.<sup>398</sup>

## ii) China

With the conquest of the Jin empire of north China ruled by sinified Jurchens, and the Song empire of southern China, the Mongols also encountered the Chinese legal system. This was a system in which cases were decided on the district level by magistrates, assisted by clerks, the magistrates basing their judgments on a legal code of the dynasty and governmental edicts

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<sup>394</sup> al-‘Umari/Lech, p. 45, trans. p. 157

<sup>395</sup> See chapter 7.

<sup>396</sup> Rashid, pp. 1392, 1400-1407, 1468, Rashid/Thackston, 691, 694-7, 726

<sup>397</sup> Rashid, pp. 1389, 1398, Rashid/Thackston, pp. 689, 693

<sup>398</sup> Amitai, “Turko-Mongolian Nomads and the Iqta’ System in the Islamic Middle East (ca. 1000-1400),” pp. 152-171

which supplemented it.<sup>399</sup> It was also a feature of the system that particularly complex cases or those involving the death penalty were routinely sent to the central government for review.

The reaction of Qubilai, the founder of the Yuan dynasty, to this situation was that he, like Hūlegü regarding Islamic law, recognized the Chinese officials and the Jin law code known as *Taihelü*.<sup>400</sup> In 1261 he acknowledged the ‘five-punishments system’ as used by the Jin - the Chinese had traditionally divided punishments into five main degrees of seriousness, and the Jurchen Jin had also adopted this classification. Since Qubilai wanted to introduce some changes to the punishment of exile within the ‘five-punishments-system,’ it is evident that he recognized it as valid, at least for the Chinese.<sup>401</sup> Moreover, in 1270, shortly after the Secretariat for State Affairs (*Shangshusheng*) had been set up, the Central Secretariat in support of one of its decisions quoted the *Taihelü*: “According to the old regulations: when people of the same group commit crimes against each other, they should follow their own customary law. Chinese and others may not apply other laws by analogy to settle cases.”<sup>402</sup> As Birge points out, this statement was quoted several times by different government offices, showing unanimity in the central government on this point.<sup>403</sup>

It is true that the principle of *ius sanguinis* was occasionally reversed or not fully respected during the Yuan dynasty; however, it should be stressed that the principle that each ethnicity

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<sup>399</sup> McKnight, *Law and order in Sung China*, p. 157; McKnight, “From Statute to Precedent: An Introduction to Sung Law and its Transformation,” pp. 111-131

<sup>400</sup> *Yuan Shi*, ch. 102, p. 2603

<sup>401</sup> Wang Yun, *Qiuqian xiansheng daquan wenji*, ch. 82; Xu Yuchun, *Yuandai fading xing kaobian*, pp. 33-35

<sup>402</sup> *Yuan Dian Zhang*, ch. 18, p. 274 未过门夫死回与财钱一半; translation taken from Birge, *Women, property, and Confucian reaction*, p. 232

<sup>403</sup> Birge, *Women, property, and Confucian reaction*, pp. 232-33; *Yuan Shi*, ch. 7, p. 127 records the establishment of the Secretariat for State Affairs and the staffing of this office as well as of the Central Secretariat.

should follow their own laws was that initially followed by Qubilai. This is important to note because it disproves any notion that the ‘Great Yasa’ was so important ideologically to the Mongols that they would not tolerate any deviation from it.<sup>404</sup>

It was in early 1272, immediately after adopting the reign name Yuan, that Qubilai officially abolished the *Taihelü*.<sup>405</sup> Several explanations have been proposed as to the reasons for this; the official explanation being that the *Taihelü* was too harsh.<sup>406</sup> Other scholars have proposed that the *Taihelü* was not considered suitable for the new dynasty.<sup>407</sup> Bettine Birge proposed that perhaps because of intermarriage and cross-cultural influences, Qubilai decided that the time was ripe to impose one set of laws valid for everybody.<sup>408</sup> A further possible explanation will be discussed in the next chapter. In any case, by the late 1270s the attempt to impose Mongol laws had been mostly abandoned, and the separation of laws again became the norm.<sup>409</sup>

The recognition of Chinese laws and practices is also seen in the *yuehui* (joint trials) system, which determined how trials concerning litigants from different ethnicities should be decided, and which was not seriously challenged during the Yuan dynasty. The principles of this system have been explained in chapter 4. In 1311 there was an attempt to tighten government control over legal trials, and qadis in China were told not to judge legal cases anymore,

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<sup>404</sup> Li Yunian, “‘Da Zhasa,’” pp. 78-85

<sup>405</sup> *Yuan Shi*, ch. 7, p. 138; Ch’en, *Chinese Legal Tradition*, xiv–xv. By the Western calendar, this day was in early 1272, though for ease of reference many scholars keep the date as 1271, Birge, *Women, property, and Confucian reaction*, p. 238 n. 108

<sup>406</sup> *Yuan Shi*, ch. 102, p. 2603

<sup>407</sup> Ch’en, *Chinese legal tradition*, p. 13

<sup>408</sup> Birge, *Women, property, and Confucian reaction*, p. 239; also Ch’en, *Chinese legal tradition*, pp. 13-14

<sup>409</sup> Birge, *Women, property, and Confucian reaction*, pp. 245 ff.



although the effect of this decree was probably only in the short term.<sup>410</sup> The *yuehui* system was deeply entrenched and continued until the end of the dynasty. Therefore the Yuan dynasty, like the Ilkhanate, both started and ended with those who judged legal cases locally being respected.

#### Inter-Toluid ties: weaker than local ties

An indication of the priorities of the Ilkhans and the Qa'ans in matters of law can also be deduced from their relationship with each other. This is because despite the physical distance between them, they consulted representatives of each other's khanates on matters of concern. Consultation in matters of law between the Toluid khanates would show an intention to develop more efficient legal methods, which would be connected with the desire of the khans to have more control. It could indicate also a desire to find the best ways of imposing Mongol laws. On the other hand, if the possibility for consultation on matters of law existed, yet the Toluid khans did not take advantage of it, this would indicate that there was no political will at the highest level to tightly control local legal matters or even to influence them in a particular direction apart from upholding the role of the local legal specialists. If the Toluid khans considered that they had little to learn from each other on legal matters, then it can be concluded that they were satisfied with their own arrangements and considered themselves, their high officials, and the local legal specialists as the stakeholders in determining the shape of the legal system of their khanate.

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<sup>410</sup> Hu Xingdong, *Yuandai minshi falü zhidu yanjiu*, p. 207

There were numerous matters in which the khans did take advantage of knowledge passed from the other Toluid khanate. For example, the short-lived adoption of paper money, or the *chao*, in the Ilkhanate is merely one of the best-known instances of such influence. The possibility of issuing paper money was first discussed by the vizier Sadr al-Din and his colleagues, and when they mentioned it to Geikhatu, he asked Bolad Aqa, the representative of the qa'an at his court, for more details.<sup>411</sup> Although Muslim and Christian authors of Western Asia were aware of the use of paper money in China, the practical implementation of this Chinese custom, short-lived though it was, would almost certainly not have taken place had there not been the close ties with Yuan China which the Toluid empire afforded. Bolad Aqa also assisted Ghazan when he became concerned about the number of Mongols who had been "compelled by poverty to sell their children," and also those Mongols who were taken prisoners during warfare and subsequently sold as slaves.<sup>412</sup> He drew on Bolad's experience with the social welfare measures of the Yuan court and as one who had trained new recruits in the imperial guard, to work out a solution to this problem which was duly implemented, involving the creation of a new guard unit under Bolad's command.<sup>413</sup> In addition, the khans and their officials took advantage of geographical, historical, agricultural and other types of knowledge coming from the other khanate. This was transmitted sometimes through books or other documents, and sometimes through the forced or voluntary movement of personnel from Persia to China and vice versa.<sup>414</sup>

Given the openness of the khans to availing themselves of information from the other Toluid khanate, it next needs to be asked whether they had the opportunity of doing so in regards to

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<sup>411</sup> Allsen, *Culture and conquest*, pp. 177-9

<sup>412</sup> Rashid, pp. 1487-8, Rashid/Thackston, p. 735-6

<sup>413</sup> Allsen, *Culture and conquest*, p. 79

<sup>414</sup> Allsen, *Culture and conquest*, p. 6

legal matters. As Allsen has noted in his analysis of influence between the Ilkhanate and the Yuan dynasty, information could be transmitted through documents or people.<sup>415</sup> In terms of documents, the Chinese law code of the Jin dynasty known as *Taihelü* 泰和律 was translated into Persian, possibly by Rashid with the assistance of Bolad Aqa.<sup>416</sup> In terms of people, one should consider both judicial personnel and those who, while not yarghuchis in name, nevertheless had experience of legal matters. It is noteworthy that Bala Yarghuchi<sup>417</sup> (also known as Bala Noyan),<sup>418</sup> who was among those judging the alleged conspirators following the enthronement of Möngke,<sup>419</sup> had descendants in both China and Persia,<sup>420</sup> who may have been in contact with each other. There were a number of yarghuchis in China with Persian or Central Asian backgrounds, among them Hesimaili (Isma‘il),<sup>421</sup> Saiyyid Ajall, Halahasun (Harqasun), Temur Buqa, and others. As for people from the East in the Ilkhanate, Shi Tianlin was a Chinese yarghuchi who accompanied the Mongol armies in the conquest of Persia; he probably acted as a yarghuchi within the army.<sup>422</sup> In addition there was Bolad Aqa. While a Mongol, he spent years serving Qubilai. He was one of those entrusted with the politically delicate interrogation of Arigh Boke and his officers in 1264,<sup>423</sup> and held a post in the Censorate, where he became Censor-in-Chief, between 1271 and 1277. In 1278 Qubilai also ordered him together with an official from the Censorate, Xiang Wei, to investigate the activities of the financial minister Ahmad; an investigation which was aborted because

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<sup>415</sup> Allsen, *Culture and conquest*, p. 6

<sup>416</sup> Allsen, *Culture and conquest*, p. 78

<sup>417</sup> Rashid, p. 840, Rashid/Thackston, p. 409

<sup>418</sup> Rashid, p. 528, Rashid/Thackston, p. 257 and Rashid p. 577, Rashid/Thackston, p. 291

<sup>419</sup> Rashid, p. 840, Rashid/Thackston, p. 409

<sup>420</sup> Rashid, pp. 71, 596, 840, Rashid/Thackston pp. 40, 274, 409

<sup>421</sup> Biran, *The empire of the Qara Khitai in Eurasian history*, pp. 126-7

<sup>422</sup> *Yuan Shi*, ch. 153, pp. 3619-20

<sup>423</sup> Rashid, p. 887, Rashid/Thackston, 433-4; Allsen, *Culture and conquest*, pp. 64-5

Ahmad claimed to be ill.<sup>424</sup> Bolad was later sent to the Ilkhanate, where he remained as envoy of the Qa'ans in China. Therefore, it is clear that there were people both in the Ilkhanate and in Yuan China who would have been able to give information about the policies of Qubilai or the practices of the Ilkhans, had such knowledge been requested.

However, it appears that there were no attempts to ask these officials who had experience in the other Toluid khanate about legal matters. Bolad Aqa was asked about many things while in the Ilkhanate, but there is no record of his advice being sought in legal matters. Nor is there any evidence that the translated *Taihelü* had any effect on policy in the Ilkhanate. Though there are Chinese seals on several Ilkhanid edicts, this was for purposes of legitimacy and does not reflect any effort to seek or apply knowledge about the legal policies of Qubilai or his successors.<sup>425</sup> In China, it is a possibility that the accession of the Muslim convert Ahmad Tegüder in Persia may have influenced policies adopted by Qubilai towards the Muslims for several years, but this only shows Qubilai's determination to maintain the Mongol-Chinese character of his realm.<sup>426</sup> In short, any evidence that the khans of the Yuan dynasty or the Ilkhanate sought to learn about legal policies in the other khanate in order to possibly adopt them, is lacking.

There is a single legal case involving Bolad Aqa in the Ilkhanate; however, his contribution was not advising on legal strategies, but rather giving legitimacy to the proceedings. It was his presence and not the information he could convey which was sought.

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<sup>424</sup> *Yuan Shi*, ch. 128, p. 3130; ch. 173, p. 4038; Allsen, *Culture and conquest*, p. 70

<sup>425</sup> Herrmann, *Persische Urkunden der Mongolenzeit*, pp. 35-40

<sup>426</sup> The question of whether the conversion to Islam of the Ilkhans influenced Yuan policy towards Muslims in China. Ratchnevsky, "Rašid ad-Dīn über die Mohammedanerverfolgungen," pp. 163-180

“When Ghazan heard about the battle [in Syria in which the Mongol army had been defeated], his heart was filled with pain and anger. He left Mosul for Ujan, and when he arrived there, the amirs came at the same time. Exhausted and broken hearted, one by one, they came to Ujan. In his anger, the high born shah showed his generals no mercy. Those amirs who had been weak in battle would lift their heads from their disgrace. The shah spoke to Bolad Ching-Sang and ordered an enquiry according to Mongol custom.”<sup>427</sup>

The text seems to imply that Bolad Chingsang was somehow involved in the decision whether or not to try the defeated amirs. However, it seems unlikely that Ghazan would genuinely have relied on him for such an important decision, and more likely that he tried to show that he had Bolad’s, and thereby the great Qa’an’s, approval for these trials. He was using Bolad to bolster the legitimacy a politically sensitive trial.

The appointment of yarghuchis also does not support the idea that the khans were keen on information on legal matters from the other Toluid khanate. Yarghuchis were appointed across geographical regions only in the time of the unified Mongol empire, as seen from the example of Hesimaili 曷思麦里 [Isma‘il], who came from “Guze wo’erduo” [Ghuz-ordo, the Qara-Khitay capital, at or near Balasaghun].<sup>428</sup> He was an official for the Qara-Khitai before surrendering to the Mongols and participating in their further conquests in a military capacity, achieving a good reputation. He was appointed as *bitigchi* (secretary) and in 1232, he was appointed *darughachi* in Huaimeng. In 1239 Ögödei appointed Hesimaili to be yarghuchi in the ‘Western regions’, and Hesimaili only failed to take up the appointment because the great

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<sup>427</sup> Mustawfī, *Zafarnāmah*, p. 1409, Mustawfī/Ward, p. 526

<sup>428</sup> Part of Hesimaili’s biography is translated in Endicott-West, *Mongolian rule in China*, p. 35

commander Chahan<sup>429</sup> and an official of the Branch Secretariat, Tiemudie'er (Temuder),<sup>430</sup> memorialized that he should remain in China. The case of Hesimaili is remarkable for several reasons. If his name, Isma'il, can be taken as an indication of his ethnicity (which is not necessarily the case), he would have been a Central Asia Muslim in the employ of the Qara-Khitai,<sup>431</sup> who were the refugees from the Liao Chinese empire who had fled and established a new empire in Central Asia. Therefore, it seems he was comfortable mediating between cultures even before surrendering to the Mongols. His subsequent employment as darughachi in China and the prospect of sending him back to the 'Western regions' (not necessarily to his birthplace but quite possibly, to the future Ilkhanate) as yarghuchi shows that the Mongol rulers were willing to send people as yarghuchis anywhere in the Mongol empire, without regard to their nationality.<sup>432</sup>

However, there was no systematic attempt either in the Ilkhanate or in the Yuan dynasty to appoint yarghuchis who would contribute experience from the other Toluid khanate; on the contrary, most yarghuchis were Mongols with no experience of the other khanate. Therefore, it can be concluded that legal matters were not of sufficient concern to the khans for them to use the connection between the two Toluid khanates to get better ideas. Only the case of Bolad Aqa suggests turning to a representative of the other khanate for advice, but the case regarded the punishment of Mongol amirs, not ways of dealing with the local population. The Ilkhans and Qa'ans therefore considered the legal system as a matter to be worked out locally, and this shows their identification with the territories that they ruled.

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<sup>429</sup> His biography is in *Yuan Shi*, ch. 120, pp. 2955-7

<sup>430</sup> This official remains to be identified. Endicott-West, *Mongolian rule in China*, p. 152 n. 65

<sup>431</sup> Biran, *The empire of the Qara Khitai in Eurasian history*, pp. 126-7

<sup>432</sup> *Yuan Shi*, ch. 120, p. 2970; Biran, *The empire of the Qara Khitai in Eurasian history*, pp. 126-7

### Minorities: not allowed to derail cooperation with local legal officials

A further mirror through which we can see the khans' priorities is that of their relationship with minorities in their territories. These, like the intra-Toluid relationship, could have threatened relationships with Persian qadis and with Chinese local officials. However, as will be shown below, despite tolerance of diverse religions and groups within society, the relationships with Islamic qadis and Chinese judicial officials remained paramount.

The place and influence of minorities will be examined through two cases studies: Muslims in China and Buddhists in Persia. It is significant that, however powerful and numerous a minority was, the khans did not allow that minority to influence the laws which would apply to the whole of the population.

#### i) Muslims in China

Among the minorities in the Toluid empire, one stands out because its members were both close to the khans and economically powerful. Many Muslims from Central Asia and from Persia settled in China during the Yuan dynasty. Crucially, many were also financial partners of the Toluid khans in the partnerships known as *ortogh*, whereby the khans would provide capital with which merchants would trade and make profits.<sup>433</sup>

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<sup>433</sup> On the *ortogh* see Thomas Allsen, "Mongolian Princes and Their Merchant Partners, 1200-1260," pp. 127-154

Muslims were of course the majority in the Ilkhanate, which contributed to their financial and political strength in the entire Toluid empire. Nor was their presence in China new. Muslim communities had become established during the Tang and Song dynasties, when their community leaders were sometimes known as *fanzhang* 蕃长 “foreign elders”.<sup>434</sup> There is evidence for Muslim communities in Hangzhou and other cities, which had their own mosques and religious leaders.<sup>435</sup>

The Muslims were commonly granted some legal autonomy, though under the Tang and Song, all except “non-acclulturated foreigners” were theoretically under Chinese law.<sup>436</sup> The Song writer Zhu Yu wrote that

“If a foreigner (*fanren*) commits a crime, he goes to Guangzhou to bring up the true [matters], they send him to the office for foreigners who dispatch him to be bound to a wooden ladder and beaten with a cane. From the heel to the crown of the head, every three strokes with the cane are equal to one stroke with the big cane. ... If the [penalty for the crime should be] exile or above, the matter is decided in Guangzhou [by Chinese officials].”<sup>437</sup>

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<sup>434</sup> Wang Dongping, “Yuandai huihui ren de zongjiao zhidu yu Yisilanjiao fa,” pp. 44-45

<sup>435</sup> Wang Dongping, “Yuandai huihui ren,” pp. 44-45

<sup>436</sup> If “non-acclulturated foreigners” committed offenses among themselves, they were judged by their own laws. If the offense was against a Chinese person, the Tang Code was applied. Johnson, *The T'ang Code*, p. 252. Not all cases involving two different non-Chinese nationalities were in fact judged according to Chinese law; but that was the strived for ideal. See also *Cambridge History of China*, vol. 6, “Introduction,” p. 27

<sup>437</sup> Zhu Yu 朱彧, *Pingzhou ke tan* 萍洲可談, ch. 2, quoted in: Wang Dongping, “Yuandai huihui ren,” p. 45



This is confirmed by “Suleiman’s” account of Guangzhou.<sup>438</sup> In two Song documents qadis are mentioned, though without using the word ‘qadi’, which is first found in documents from the Yuan dynasty.<sup>439</sup>

However, during the Yuan period the number of Muslims in China increased dramatically. Apart from the number of Muslims in important government posts, and those involved in the ortagh, the power of Muslims in Yuan China can be seen in the following anecdote:

“I have humbly observed that those Chung-tu [officials] who are personally in charge of overseeing civilian households each year supply the harmonious purchase, corvée obligations, and a host of other items [that are] truly more numerous and burdensome than in other routes. At present I have investigated and found that this route’s (that is, Chung-tu’s) Muslim civilian households from the 1252 original register together with the 1263 supplementary record add up to 2,953 households. Among them, many are wealthy merchants and influential, monopolistic families. Their “entrusted funds” with which they do business are multifarious. They snatch away from people the interest [from loans made by the merchants]. Moreover, they pay not one iota of tax or corvée (*ch’ai-i*).”<sup>440</sup>

Their legal situation was also more advantageous. The qadis were officially recognized, since they were sent official imperial instructions, as shown by the following edict when their fortunes suffered what was presumably a temporary reversal and an attempt was made to

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<sup>438</sup> Wang Dongping, “Yuandai huihui ren,” p. 45

<sup>439</sup> *Song Shi* 宋史, ch. 490, quoted in: Wang Dongping, “Yuandai huihui ren,” p. 45

<sup>440</sup> Wang Yun, *Qiuqian xiansheng daquan wenji*, ch. 88, pp. 5b-6a, translation from: Endicott-West, “Merchant Associations in Yuan China: The Ortoy,” pp. 142-3

restrict their activities, in the context of tightening state control over the legal sphere as a whole.<sup>441</sup> The edict stated:

“On the 29<sup>th</sup> of March, in the 1<sup>st</sup> Year of Huang-Ching [1308], Hsuan-i 宣慰 of Fuchien Province received the order of Chung-shu-sheng 中书省 through Cha-fu 札付 of Chiang-che Hsing-sheng 江浙行省: *Ha-ti Ta-shih* [qadis] who were given the special imperial instructions on the 25<sup>th</sup> of November of a certain year of *Chih-ta* [...], shall be exclusively engaged in their religious business and reciting canons from now on. Any Muslim who has to do with punishment, marriage, lawsuit on property and others, and public affairs, great or small, shall not complain to any *Ha-ti* [qadi], but directly to the government according to the regulations.”<sup>442</sup>

If the qadis had been given special imperial instructions, then that means the Yuan government recognized them and their role. A dramatic example of the use of Islamic law is found in one of the cases in the Yuan Dian Zhang, a private collection of cases reviewed by the central government and sent to the provinces to be used as guidance for future decisions.<sup>443</sup> The case entitled, “If the husband dies before [the bride] has passed through the gate, half of the bride-price should be returned” details a dispute in 1265 between two families because the groom had died after the bride price had been paid, but before the marriage ceremony. The authorities in Dadu [Beijing] asked *Huihui dashi* 回回大師 [Muslim learned man, quite probably a qadi is meant] about Islamic law, and he said that half the bride price should be returned. The decision was nevertheless considered difficult and the case was

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<sup>441</sup> Hu Xingdong, *Yuandai minshi falü zhidu yanjiu*, p. 207

<sup>442</sup> Shinji Maejima, “Muslims in Ch’uan-chou,” p. 31

<sup>443</sup> Birge, *Women, property, and Confucian reaction*, 212-17

passed up to the Central Secretariat, which commented: “Looking at the interrogations there are no mistakes. Half of the wealth should be returned, according to the *li* [customary law].”<sup>444</sup> Therefore even the highest government organ confirmed that Islamic law should be used, at least in a dispute between Muslims in Dadu.

Thus, the practice of Islamic law was well established in Yuan China. Up to the end of the Yuan dynasty, the emperors never promulgated a law code (*lü*) which would have signified the superiority of one kind of laws, whether Chinese or Mongol laws, over all the other laws; thus ensuring a degree of legal independence to recognized minorities including the Muslims.

However, when it came to laws that would affect not just the Muslims but the Chinese population, the attitude of the Qa’ans was entirely different. This can be seen from a request of Shabuding, a Muslim from a locally well-connected merchant family in Jiangzhe province who had entered office through the recommendation of the finance minister Sengge.<sup>445</sup> The *Yuan Shi* says that:

“In 1290 in the autumn in the seventh month, the *pingzhang*[*zhengshi*] (privy councillor<sup>446</sup>) of Jiangzhe Shabuding proposed that, because officials were cheating and stealing money and grain from the storehouses, criminals’ faces should be tattooed as in Song law and hands should be cut off [lit. their wrists should be cut]. The emperor answered: ‘That is *Huihui* [Islamic] law. It will not be allowed.’”<sup>447</sup>

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<sup>444</sup> *Yuan Dian Zhang*, ch. 18, p. 274 未过门夫死回与财钱一半

<sup>445</sup> Yang Zhijiu, “Yuandai Huihui ren de zhengzhi diwei,” p. 134; *Yuan Shi*, ch. 15, pp. 319, 322, 325-6, ch. 23, p. 528

<sup>446</sup> “Privy councillor,” one of the highest positions in the province: Farquhar, *The Government of China*, p. 372

<sup>447</sup> *Yuan Shi*, ch. 16, p. 339, Wang Dongping, “Yuandai huihui ren,” p. 46; Leslie, *Islam in Traditional China*, p. 99

Qubilai Khan immediately recognized cutting off the hands of thieves as Islamic law and rejected it. Therefore, despite their power and privileges, it can be concluded that Qubilai did not wish Islamic law to influence the law of the Yuan empire as a whole; nor is there any indication that the Muslims were allowed to exercise such influence later in the dynasty.

## ii) Buddhists in the Ilkhanate

Though Buddhism had had some influence in Khorasan up to the tenth century,<sup>448</sup> its appearance in Persia during the 13<sup>th</sup> century was largely due to the Mongols' appreciation of this form of religion. Buddhists were summoned, according to Rashid al-Din, from "India, Kashmir, Cathay, and Uighur lands," and the Ilkhans' continuing involvement in Tibet facilitated this process.<sup>449</sup>

That the presence and influence of Buddhists was due to Ilkhanid ties with Yuan China is reflected in the fact that many Buddhists who came to Persia were connected with the Ilkhanid court in some way. For example, at Arghun's court debates between followers of various faiths (including Buddhism) took place.<sup>450</sup> The monk Kamalashri provided the minister and historian Rashid al-Din with information on Buddhism, based on authentic Hinayana texts.<sup>451</sup> How much influence Buddhism had outside the court, and how many

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<sup>448</sup> Bulliet, "Naw Bahar and the Survival of Iranian Buddhism", p. 144; Melikian-Chirvani, "The Buddhist Ritual in the Literature of Early Islamic Iran," pp. 272-279

<sup>449</sup> Rashid, p. 1332, Rashid/Thackston, 664, Sperling, "Hülegü and Tibet," p. 155, see also Grupper, "The Buddhist Sanctuary of Labnasagut," p. 77 n. 168

<sup>450</sup> Lane, "Persian Notables and the Families which underpinned the Ilkhanate," p. 38, 43

<sup>451</sup> Schopen, "Hinayana Texts in a 14th Century Persian Chronicle," pp. 226-235

Buddhist temples were actually built remains questionable. Ghazan himself, while he was still a prince in Khorasan and had not yet become Muslim, built a Buddhist temple in Khabushan.<sup>452</sup> Caves beneath the observatory at Maragha might originally have been Buddhist in purpose,<sup>453</sup> and a temple at Khoi was built in Hülegü's time.<sup>454</sup> However, when Rashid al-Din writes that there were Buddhist temples "in every place", he was exaggerating to make the point that Buddhist influence had vastly increased from the time the Mongols entered Persia.<sup>455</sup> In fact the actual number of Buddhists in the Ilkhanate was most probably extremely low.

Yet despite their small numbers, Buddhists had wider influence on law in the Ilkhanate than the powerful and numerous Muslims did in China. This was because they motivated the Ilkhans to promulgate several amnesties for criminals, which affected prisoners of all faiths; whereas Islamic law in China, as argued above, applied to Muslims only. Though it is impossible to ascertain how many people altogether were affected by the amnesties, it is not the number of people affected, but rather the fact that the Buddhists were able to have such an influence at all, that is significant.

What did the Buddhists in the Ilkhanate have that the Muslims in China, with their superior numbers and wealth did not? The Buddhists, like the Muslims, had personal connections with some of the highest-ranking Mongols in the Toluid empire and with the khans themselves, but the Buddhists also had a faith which coincided in some points with the Mongol belief system. In particular, the two belief systems coincided in viewing sickness as potentially a

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<sup>452</sup> Rashid, p. 1332, Rashid/Thackston, 664; Wilber, *The Architecture of Islamic Iran*, p. 190

<sup>453</sup> Ball, "Two Aspects of Iranian Buddhism", pp. 132-141

<sup>454</sup> Wilber, *The Architecture of Islamic Iran*, p. 190

<sup>455</sup> Rashid, p. 1332, Rashid/Thackston, p. 664

sign of spiritual attack by other people, and thus susceptible to being influenced by ritual human action.<sup>456</sup> While Mongol belief already included the idea that through doing a ‘good deed’ one could heal sickness, either one’s own or someone else’s,<sup>457</sup> the Buddhists introduced to the Ilkhans the concept that freeing condemned criminals was exactly the kind of good deed that could heal sickness. The commutation of death penalties through amnesties had not been a Mongol practice as such, not only because there weren’t large numbers of criminals imprisoned at any one time on the Mongol steppe, but also because the Mongol legal system, which accorded the concept of vengeance extremely high importance, sits uneasily with the idea of commuting penalties.

The eminent official and advisor Yelü Chucai, a syncretist with Buddhist and Confucian leanings,<sup>458</sup> was instrumental in getting Ögödei to issue amnesties, the first of which was issued in 1229 when he obtained “an edict to the effect that crimes committed before the first month of 1229 should not be punished.” This was the first time that an amnesty had been granted by the Mongols.<sup>459</sup> Later in 1241 Yelü Chucai recommended another amnesty which was accepted, as Ögödei’s health was not that good.<sup>460</sup>

An “almsgiving” amnesty was issued by Sorqaqtani Beki while she was ill:<sup>461</sup> “But Beki being ill and her illness having grown worse, as an almsgiving for her long life those who had

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<sup>456</sup> Hamayon, *La chasse à l'âme*, p. 581

<sup>457</sup> *Secret History of the Mongols* § 272; *Yuan Shi*, ch. 115, p. 2887; Rashīd, pp. 643-4, 789; Rashīd/Thackston, pp. 316, 386; Humble, “A Princely sacrifice? The Death of Tolui in Imperial Mongol Historiography”

<sup>458</sup> Rachewiltz, “Yeh-lü Ch’u-ts’ai,” pp. 166-70

<sup>459</sup> Rachewiltz, “Yeh-lü Ch’u-ts’ai,” p. 149

<sup>460</sup> Rachewiltz, “Yeh-lü Ch’u-ts’ai,” p. 161

<sup>461</sup> Juvaynī, p. 38; Juvaynī/Boyle, p. 53

that day been condemned to death all received their pardon.”<sup>462</sup> Since Sorqaqtani was a Christian, she may have been influenced by Christian practices of charity, as seen for example in the recommendation of Christians in Hülegü’s entourage to “be merciful and lighten the taxes” following Hülegü’s death.<sup>463</sup> However, the main factor seems to have been the perceived benefit that giving an amnesty or lightening taxes could have for an ill person. This was something that could speak directly to Mongols still clinging to shamanist beliefs. It is not surprising that both Ögödei and Sorqaqtani adopted the new measure of the amnesty in the time of their need.

A few amnesties were issued during the Ilkhanate, and it is not an accident that two of them are associated with the staunchly Buddhist Arghun. Even the exaggerated claims by some of the chroniclers, such as his alleged desire to attack the Ka’ba,<sup>464</sup> only reinforce the general impression that he had great trust in the *bakhshis* (the term indicates Buddhist priests or shamans)<sup>465</sup> and their teachings. According to Rashid al-Dīn, “Arghun Khan was highly devoted to the *bakhshis* and followed their path,”<sup>466</sup> indicating that he did not merely respect them as representing one of many faiths,<sup>467</sup> but that he was personally committed to following their teachings. He had monks come from India, and built temples and granted estates to followers of Buddhism. He even trusted them to provide medicine which would lead to long life. He retreated and allowed few people other than the *bakhshis* to attend him, again showing that he valued Buddhism above other faiths. “He made a forty-day retreat in

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<sup>462</sup> Juvaynī, p. 38; Juvaynī/Boyle, p. 52

<sup>463</sup> Kirakos/Bedrosian, *Kirakos Gandzakets i's history of the Armenians*, p. 97

<sup>464</sup> Mustawfī, *Zafarnāmah*, p. 1323, Mustawfī/Ward, p. 339

<sup>465</sup> On the meaning of bakhshi see Doerfer, *Türkische und mongolische Elemente im Neupersischen*, no. 724  
بخشی (baḥšī), vol. 2, pp. 271-277

<sup>466</sup> Rashid p. 1179; Rashid/Thackston, p. 574

<sup>467</sup> Atwood, “Validated by Holiness or Sovereignty: Religious Toleration as Political Theology,” pp. 237-256

the fortress at Tabriz, and during that time, other than Ordu Qaya, Quchan and Sa'duddawla, no one was allowed near him – save of course the *bakhshis* who attended him day and night to discuss their beliefs.”<sup>468</sup> He even died as a result of the ‘medicine’ given him by the *bakhshis* and which, according to Rashid, contained sulphur and quicksilver.<sup>469</sup>

Arghun declared an amnesty when he ascended the throne: “Since God the eternal has shown me favor and awarded me my late father’s crown and throne, I hereby pardon all criminals’ crimes. If the Sahib-Divan comes to court, I will receive him with honour.”<sup>470</sup> In this instance, the pardon of Shams al-Din Juvaynī helped him only temporarily;<sup>471</sup> but it seems that other criminals were included in the pardon. Another amnesty was issued by Arghun shortly before his death in 1291. The reason for this later amnesty is given by Ricoldo di Monte Croce as follows:

“Arghun, who had shed a lot of blood and put to death lots of innocent children and women, fell gravely ill. In a dream, a woman appeared to him who inspired respect and fear in him. She quivered and seized his chest and told him: “Come and answer to the Lord for the blood which you have shed.” He answered, “Which Lord? Am I not the Lord of the World?” (for this is the name by which all, including the Christians, call him – namely Lord of the World.) Terrified, he woke up and hurriedly called for his *bakhshis* (*baxitas*) and priests and asked them who this Lord, who had called him

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<sup>468</sup> Rashid, p. 1179-80; Rashid/Thackston, p. 574; in fact, members of the *keshig* were allowed to attend him as well, Rashid, p. 1318; Melville, “The survival of the royal Mongol household,” p. 150

<sup>469</sup> Rashid, p. 1180; Rashid/Thackston, pp. 574-5; on the ‘medicine,’ see Obringer, Frédéric, *L’Aconit et l’orpiment: drogues et poisons en Chine ancienne et médiévale*, Paris: Fayard, 1997

<sup>470</sup> Rashid, pp. 1158; Rashid/Thackston, p. 564; also reported in Mustawfī, *Zafarnāmah*, p. 1314, Mustawfī/Ward, 318

<sup>471</sup> Rashid, pp. 1158; Rashid/Thackston, p. 564



with such authority, was, and how he could free himself from him. They responded that he was someone who concerned himself with avenging [shed] blood and and who had come to demand a reckoning from him for the blood he had shed. It would be impossible to escape him, except through charity. Thereupon Arghun wrote to all the cities of the Orient to liberate prisoners, and bring out great treasures and give generous alms. He died shortly after this.”<sup>472</sup>

It is significant that in this story it is the blood that has been shed, and not just any kind of killing or oppression, that cries out for vengeance, thus mirroring the Mongol belief that it is dangerous (for the person concerned and sometimes for the one performing the execution) to shed someone’s blood.<sup>473</sup> This is further evidence for the interaction between shamanist and Buddhist belief systems which led to the use of amnesties in the Ilkhanate. Of the Ilkhans, Arghun was the one most influenced by Buddhism, and it is more than probable that it is either as a result of his own pious motives, or at the suggestion of the Buddhist personnel present at court, that these amnesties were issued.

One of the first acts of the next Ilkhan, the newly enthroned Geikhatu, was to issue an amnesty; he “ordered prisoners freed” in the context of also ordering freedom from taxation for religious specialists.”<sup>474</sup> Vassaf states that “by nature Gaikhatu abhorred bloodshed”<sup>475</sup> – a stance that seems more reminiscent of Buddhism than the Mongols’ traditional animism,

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<sup>472</sup> Riccold de Monte Croce/Keppler, *Pérégrination en Terre Sainte et au Proche Orient: Lettres sur la chute de Saint-Jean d’Acre*, p. 114, trans. p. 115; Khvāndamīr, vol. 3, p. 132, Khvāndamīr/Thackston, p. 75

<sup>473</sup> This may be connected with ‘magical’ powers attributed to blood by many Mongols. Prof. Dr. Veronika Veit, personal communication, 24/8/2011. See also Roux, *La mort chez les peuples altaïques anciens et médiévaux*, p. 80

<sup>474</sup> Vassaf, p. 264, Vassaf /Ayati, p. 159; Vassaf /Wentker, vol. 3, trans. p. 17; Khvāndamīr, vol. 3 p. 135, Khvāndamīr /Thackston, p. 76

<sup>475</sup> Vassaf, p. 267; Vassaf /Ayati, p. 161; see also Vassaf, p. 262; Vassaf / Ayati, p. 159

which despite the sacred nature of blood<sup>476</sup> allowed for a good deal of killing. Geikhatu had a Buddhist name, Irinjin Dorji, from the Tibetan Rin-ch'en rDo-rje,<sup>477</sup> conferred on him at his enthronement ceremony, a ceremony in which Buddhist *bakhshis* took a visible part and which was held in "relative proximity" to where Hülegü Khan had founded a Buddhist temple at Labnasagut.<sup>478</sup>

The amnesties issued in Persia reflect the use of this practice in China, where they were a longstanding tradition,<sup>479</sup> and where Buddhist monks likewise had some influence on the Toluid rulers. For example, Tanba, a Tibetan *bakhshi* unlike others at the *ordo* was successful in influencing Temür Qa'an (Chengzong) to give an amnesty for 100 prisoners, on the pretext of a heavenly omen.<sup>480</sup> There were so many amnesties that some Chinese officials, such as Chen Tianxiang,<sup>481</sup> criticized the emperors for being lax.<sup>482</sup> It is doubtful whether the amnesties in Persia would have been issued, had the Mongols not brought Buddhists, and Buddhist influence, with them as they came to rule Persia.

This Buddhist influence on law in the Ilkhanate does not, however, equate to a deliberate intention of allowing minorities to influence the legal system of the Ilkhanate. It should be noted that the influence came about not through any formal channels but through influencing the beliefs of the Ilkhans. The amnesties were legal acts but they could also be considered religious acts, and they were issued on the occasion of an enthronement or in response to

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<sup>476</sup> al-'Umari/Lech, pp. 8-9, trans. p. 96

<sup>477</sup> Rashid/Thackston, 578 n. 3

<sup>478</sup> Grupper, "The Buddhist Sanctuary of Labnasagut," p. 51, see also pp. 58-61

<sup>479</sup> McKnight, *The quality of mercy: amnesties and traditional Chinese justice*, pp. 114-120

<sup>480</sup> Rashid, p. 958-9; Rashid/Thackston, p. 469

<sup>481</sup> *Yuan Shi*, ch. 168, p. 3947. Chen Tianxiang lived from 1237 to 1316. See also Ch'en, *Chinese legal tradition*, p. 46

<sup>482</sup> Langlois, "Law, Statecraft, and the Spring and Autumn Annals," pp. 104, 140 and n. 56

personal crises such as illness rather than to any considered policy about how best to order legal matters. The use of amnesties in these circumstances does not negate the fact that for the Ilkhans, it was the relationship with local legal officials, namely qadis, that counted in terms of ordering legal matters in the way they thought would best fit the Ilkhanate.

### Conclusion

In this chapter I have examined the attitude of the Toluid khans towards law in three ways: through their relationships with local legal officials, with the other Toluid khanate and with minorities in their own territory. Since it was the relationship with local legal officials which took precedence over the others, it can be concluded that tolerance of and accommodation to local practices was the prevailing attitude of the Toluid khans in legal matters.

The attitudes of Hülegü and of Qubilai towards local legal officials were mostly tolerant, and subsequent khans likewise respected local legal officials and their role. Neither the Toluid relationship nor the influence of even very powerful minorities was allowed to derail the positive relationships with local legal officials.

This is extremely significant in that it shows that flexible attitudes towards existing legal systems were not simply devised by officials working locally, but had backing at the highest levels. The willingness of many yarghuchis and darughachis to work together with local legal officials merely reflects the attitude of the khans themselves. Therefore, any theory that the khans were intent on imposing Mongol laws on the population, or wished to tightly control

legal matters without respecting local legal systems, does not correspond with the facts for the vast majority of the duration of the Toluid empire.

The theory that 'the Yasa' was invariably conceived of as superior to local laws also needs to be modified. Events in the Toluid empire show that from the beginning of the Ilkhanate and the Yuan empire respectively, the khans saw local laws as complementary to, and not necessarily in competition with, Mongol law. While it is true that at the *ordo* itself Mongol law and practices prevailed, the khans themselves acknowledged complementarity, and showed through their actions, including their instructions to *yarghuchis* and *darughachis*, that they saw Mongol and local laws as appropriate for different realms and therefore complementary to each other. Therefore, the attitude of the khans can only be seen as flexible, not dogmatic.

Since such an emphasis on complementarity is prevalent in both the Ilkhanate and the Yuan dynasty, it can hardly be attributed merely to chance. In the Yuan dynasty, the khans juxtaposed various legal traditions in the *yuehui* (joint trials) system, while in the Ilkhanate, *qadis* were seen as fulfilling a valuable function complementary to that of the Ilkhans. It is more likely that this tendency of the khans to be flexible has its roots in the political-administrative and legal tradition of the Mongols, where disparate nomadic groups needed to work together towards common goals. The recognition of diverse legal systems and the expectation that the representatives work together towards a resolution whenever both are involved reflects the spirit and the practice of the *quriltai*.

## **Chapter 6 – Chinese officials’ dependence on the Yuan emperors**

### Introduction

This chapter will examine the cooperation between Mongols and Chinese in the area of law. It will be argued that not only were the Qa’ans disposed to being flexible, Chinese officials and intellectuals were themselves determined to work together with the Mongol rulers in matters of law. This produced a unique situation in the Mongol empire where the desire on all sides to work together led to significant and enduring Mongol influence in legal matters.

The reason why Chinese intellectuals and officials wanted to work together with the Qa’ans was that in Chinese and Confucian culture, the legitimate bearers of the Mandate of Heaven were regarded as the only legitimate source of law. From the point, therefore, that Chinese began to see the Mongols as legitimate rulers, they needed the Qa’ans in order to promulgate laws, believing that the empire could even collapse without appropriate and just laws.

This fact needs to be recognized because it is the only explanation of what otherwise appears as a paradox. The Yuan empire is the khanate where Mongol influence in legal matters was most pronounced; it is also where officials and scholars put the most effort into trying to influence the rulers away from Mongol law, in this case towards Chinese law. Partly this can be explained because of the greater bureaucratization of Chinese society, but it also appears that Confucian influence was counterproductive, in the sense that it led to greater Mongol

influence in legal matters, rather than less Mongol influence. The very principle of Confucianism that led scholars to look to the khans as the source of law led to Mongol influence becoming more pronounced than it would have been otherwise. This effect of Confucianism on the legal history of China has not been noted elsewhere.<sup>483</sup>

### Uniqueness of Yuan China

It was the willingness of officials and scholars to see the Qa'ans as legitimate bearers of the Mandate of Heaven and as the only people who could legitimately make the laws which led to significant long-term influence of Mongol law within China. The fact that both Chinese and Mongols were willing to work together and, most of the time, to make compromises, led to significant mutual influence. The influence of Mongol law in China was greater than in Persia, Central Asia or in the Golden Horde.

The modes of cooperation which facilitated this influence were several. There were firstly discussions at the imperial *ordo*. These were not unique to the Yuan dynasty, but they played an important role in terms of acquainting the Qa'ans with the expectations of the Chinese and vice versa. Memorials and complaints from the Chinese acquainted the Qa'ans with their viewpoints and proposed changes.

As discussed in chapter 3, the institutionalization of yarghuchis in the *dazong zhengfu* was unique to Yuan China, and meant that there was a long-term presence of yarghuchis within

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<sup>483</sup> Langlois, "Law, Statecraft, and the Spring and Autumn Annals;" Ch'en, *Chinese legal tradition*; Birge, *Women, property, and Confucian reaction* have discussed the Chinese officials' desire to work with the Mongols, but have not drawn the conclusion that Mongol influence was ultimately greater because of this.

the government, some of whom actively promoted Mongol practices. The subsequent opportunities for Mongol and non-Mongol officials to meet together and judge cases together was one of the mechanisms which led to sometimes long-term influence of Mongol practices within the Chinese punishments system.

Another unique factor in Yuan China was the amount of written legislation that the central government worked on. Only the Chinese attempted to create, and involve the Qa'ans in creating, a law code and compilations of edicts. As a result, teams of Mongols and Chinese were tasked with working together to develop legislation acceptable for all groups. Although most legislation which was developed in this way was not finally promulgated, there were still real effects in terms of the Mongols' and the Chinese knowledge of each other's legal practices and sometimes also in the development of legislation which showed a compromise or even amalgam of Chinese and Mongol practices.

Moreover, the Yuan empire was unique in terms of the dependence of local officials on the Qa'ans. As seen in chapter 4, a variety of local officials at the district, prefecture and route levels dealt with legal cases, often in conference. The crucial point is that they were able and willing to communicate regularly with the central government. While legislation sometimes took some years to filter down,<sup>484</sup> communication was more frequent and effective than in any of the other khanates.

Therefore, Yuan China was unique in many respects. The greater level of bureaucratization in China does not in itself account for the greater Mongol influence in law. Rather, it is the willingness of the Chinese to work together with their Mongol rulers, and the determination

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<sup>484</sup> Birge, *Women, property, and Confucian reaction*, pp. 240, 245

of the bureaucracy to implement the laws made by the Qa'ans, which led to the deep and long-term nature of Mongol influence in Chinese law. In no other khanate were local officials implementing originally Mongol punishment methods so regularly. For example, most beatings were given with the number of strokes ending in 7 as was customary for the Mongols; and military exile not only became one of the recognized grades of punishment, it remained so into the Qing dynasty.<sup>485</sup>

### Confucianism as a powerful motive for cooperation

From the beginnings of imperial Chinese history, the emperors made laws for the people and tried to claim that they alone had the right to do so. This was connected with the claim that the emperors were the 'Sons of Heaven,' having the most direct and most authoritative connection with Heaven. The emperors alone knew the will of Heaven and communicated it to the people. They intended to leave no space for other claims, whether religious or otherwise, to be able to make valid laws.<sup>486</sup>

While it is true that cases which were not considered very serious were often dealt with locally without the involvement of government authorities, and the heads of families and village leaders had considerable authority in legal matters,<sup>487</sup> the most significant matters were determined from above by the emperors. This was despite the fact that early Confucians,

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<sup>485</sup> On military exile in the Ming and Qing dynasties, see Bodde and Morris, *Law in Imperial China*, pp. 87-91; Waley-Cohen, Joanna, *Exile in Mid-Ch'ing China: banishment to Xinjiang, 1758-1820*, 1991

<sup>486</sup> Gu, *The boundaries of meaning and the formation of law*, pp. 79, 162-4; Langlois, "Law, Statecraft, and The Spring and Autumn Annals," pp. 89-152, pp. 103, 108

<sup>487</sup> For example, Hu Zhiyu, while regional surveillance officer in Dongxi route in Shandong, preferred the people to resolve conflicts by themselves: *Yuan Shi*, ch. 170, p. 3993



as opposed to legalists, viewed the law in itself with suspicion as a measure of last resort in the governing of society.<sup>488</sup> By the time of the Song and Jin dynasties which preceded the Yuan, Confucians viewed the emperor's laws as essential to the ordering of society. In particular, a legal code organized on the model of the Tang code was seen as an indispensable tool of rule and necessary for the legitimation of each subsequent dynasty.<sup>489</sup> While in practice edicts could modify or even reverse rulings in the law codes,<sup>490</sup> the fact of having a law code with a fixed text had enormous symbolic importance, supposedly lending clarity to the legal system and stability to society.<sup>491</sup>

It is also of immense importance for the case of the Yuan dynasty that while Confucians were committed to remaking society according to traditional Chinese principles, at the same time they believed that the law should not remain static. On the contrary, change was expected, especially on the change of dynasties, and during dynasties as well, because the law was meant to be suitable for the times and the particular situations and challenges being lived.<sup>492</sup>

These convictions were the motivation for Confucians and Chinese scholars to serve the Mongols and urge them to produce laws for the empire. While they were interested in Chinese culture being protected, they were convinced that any laws needed to come from the legitimate ruler, and that some changes might be needed to adapt the laws for the current

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<sup>488</sup> Langlois, "Political thought in Chin-hua under Mongol rule," pp. 156-7

<sup>489</sup> Langlois, "Law, Statecraft, and The Spring and Autumn Annals," p. 94; Langlois, "Political thought in Chin-hua under Mongol rule," pp. 165-8; Franke, "Jurchen Customary Law and Chinese Law of the Chin Dynasty," pp. 216, 224-6; Franke, "The legal system of the Chin dynasty," pp. 390-2

<sup>490</sup> McKnight, "From statute to precedent: an introduction to Sung law and its transformation," pp. 117-123

<sup>491</sup> Langlois, "Law, Statecraft, and The Spring and Autumn Annals," p. 98

<sup>492</sup> Hu Zhiyu, *Zazhu*, p. 166; Langlois, "Political thought in Chin-hua under Mongol rule," pp. 181-4

times. This is why they approached the Qa'ans and asked them to issue laws. This would only be the case, however, if they considered the Mongols to be the legitimate rulers of China.

The opinions of southern Song loyalists, scholar-officials who refused to serve the new dynasty due to their attachment to the Confucian idea of loyalty, have long coloured the historiography.<sup>493</sup> However, in fact the Mongols were accepted relatively quickly as legitimate, particularly in northern China, thereby enabling many who were educated in the Chinese tradition to work for and with the Mongols. Many of the inhabitants, officials and scholars of the former Jin empire were favourably disposed towards the Mongols; the Khitans in particular, who could look back with nostalgia to the Khitan Liao empire and many of whom resented Jin rule, welcomed the Mongols.

Yelü Ahai and Yelü Tuhua were two Khitans who were involved in the Mongol enterprise as early as 1203.<sup>494</sup> Other Khitans, Jurchens and Chinese soon joined them, and were given appropriate titles and offices in return for their loyalty.<sup>495</sup> Some of the warlords (*shihou* 世侯) involved in the 'Red Coat' rebellion in Shandong also turned to the Mongols even before the Mongol conquest could be seen as inevitable. They considered the Mongols as just another alternative to the Song or the Jin, perhaps because the Mongols understood the importance of titles in Chinese political ideology. In submitting to the Mongols, they usually were able to obtain a higher title than the one they held already.<sup>496</sup> Nor did supporting Confucians scholars

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<sup>493</sup> Aubin, "The rebirth of Chinese rule in times of trouble: North China in the early thirteenth century," pp. 121, 126, 129

<sup>494</sup> Rachewiltz, "Personnel and Personalities in North China," pp. 96-7

<sup>495</sup> *Ibid*, pp. 105-7. 110-2

<sup>496</sup> Aubin, "The rebirth of Chinese rule in times of trouble," p. 142

and rituals prevent these warlords from turning to the Mongols.<sup>497</sup> This shows that the Mongols could indeed be perceived as legitimate rulers by many.

In the former southern Song empire, loyalism and the refusal to serve the new dynasty played a greater role. Since a non-Han dynasty had never conquered the whole of China, to the feelings of loyalty were added, for some, racial or ethnic prejudices.<sup>498</sup> Some scholars withdrew from government service, though there were different degrees of withdrawal. Some refused to take up any government positions, others initially refused to serve but accepted positions later, while still others served in schools but refused to be part of the ranked bureaucracy.<sup>499</sup>

As Jennifer Jay has shown in her comprehensive study however, the phenomenon of Song loyalism was both less uncompromising and less long-lasting than has been supposed. Loyalists were not the majority, but the minority of scholar-officials in southern China. In addition, the feelings and actions of even the most ardent loyalists changed over time. Many felt intense loyalism in the first years of Mongol rule, but relaxed their attitude as they met with northerners committed to Confucianism and saw some benefits in the reunification of northern and southern China.<sup>500</sup> In the 1280s and 90s, many started using Yuan reign titles which they had refused to use previously; some took up posts as officials; and others permitted their sons to serve the Mongols.<sup>501</sup>

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<sup>497</sup> *Ibid*, pp. 133-6

<sup>498</sup> Jay, *A change in dynasties*, pp. 250-3

<sup>499</sup> Yan-shuan Lao, "Southern Chinese Scholars and Educational Institutions in Early Yüan," pp. 123-4, 132-3

<sup>500</sup> Jay, *A change in dynasties*, p. 148

<sup>501</sup> *Ibid*, pp. 254-6

Overall, Confucian scholars continued to stress the value of serving the government; some actively encouraged their students to serve the Mongols.<sup>502</sup> Many saw a law code and appropriate laws as essential for the empire. The connection between Confucianism and the desire to obey laws made by the Emperor is shown by the *Mumin zhonggao* 牧民忠告 “Frank Advice for Magistrates,” written by Zhang Yanghao 張養浩 (1270-1329). Although the work is suffused with Confucian principles, he still states: “Now the law is [the law of] the Son of Heaven. If the people should violate it, they violate the law of the Son of Heaven.”<sup>503</sup>

Thus, rather than being a discouragement from working together with the Mongols, Confucianism was on the contrary a strong motivating factor for working together with them, including in regards to legal matters. While Confucian ideals may have prevented a minority of former officials from serving the Yuan, many others had as their aim to ‘civilize’ or sinicize the Mongols.<sup>504</sup> In particular, some were motivated to work for and with the Mongols precisely because they wanted to persuade the Qa’ans to issue new laws or a legal code.

#### Chinese officials’ requests for a law code

Requests for the Mongols to issue laws or a legal code were very frequent in the Yuan dynasty, demonstrating that the traditional Chinese belief that legitimate laws come from the emperor was strong, and that the Qa’ans were considered to be legitimate rulers. The view that the Mongol ‘barbarians’ were totally without any kind of law, as the Ming dynasty

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<sup>502</sup> Langlois, “Political thought in Chin-Hua under Mongol rule,” p. 163

<sup>503</sup> Zhang Yanghao, *Mumin zhonggao*, p. 297, translation taken from Langlois “Law, Statecraft, and The Spring and Autumn Annals,” p. 103

<sup>504</sup> Jay, *A change in dynasties*, pp. 249, 255-6

compilers of the Yuan history implied,<sup>505</sup> may also have played a role in motivating Confucians to try to help them ‘acquire’ law. But only the view that the emperor is the only legitimate source of law can explain why Confucians turned to the Mongol Qa’ans, and not to some other groups or specialists, to provide what they considered to be appropriate laws.

Chinese scholars wanted the Yuan rulers to promulgate a law code in the style of the Tang and Song law codes, since such a code was considered essential for an effective legal system and in preventing disorder.<sup>506</sup> In the absence of such a law code, some scholars looked to earlier codes such as the *Taihelü* or even the *Spring and Autumn Annals* to provide the necessary legal basis, and others viewed the compilations of edicts promulgated during the Yuan as law codes.<sup>507</sup> However, most recognized that in practical terms, up-to-date laws from the Yuan rulers were essential, and were therefore willing to work together with the Mongols. The fact that these Chinese officials and intellectuals wanted not simply a few laws but an entire law code and comprehensive collections of edicts means that the resulting cooperation with Mongols in legal matters was very deep and quite fruitful, in terms of producing laws which reflected a combination of Mongol and Chinese influences.

One of the earliest attempts to get the Mongol rulers’ cooperation in lawmaking is seen in the *Yuan Shi* biography of Guo Baoyu 郭寶玉, who submitted to the Mongols in 1211 and accompanied the generals Sübedei and Jebe on their reconnaissance around the Caspian. For him, a new dynasty meant that new laws were required:

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<sup>505</sup> *Yuan Shi*, ch. 102, p. 2603; Langlois, Law, “Statecraft, and the Spring and Autumn Annals,” p. 100. The phrase is a partial quotation from Mencius.

<sup>506</sup> Langlois, “Statecraft, and the Spring and Autumn Annals,” pp. 92-3

<sup>507</sup> *Ibid*, pp. 93-4

“He [Guo Baoyu] also said: “When a dynasty is just being established it is appropriate to issue new regulations.” The emperor followed the proposal. Thereupon he issued five regulations divided into articles. For example: “When the armies are marched out they cannot wildly kill. When cases at law are tried the punishment is to be death only in the case of major offenses. Other miscellaneous offences are to be punished according to the circumstances through beating with the bamboo. In the case of military households one soldier is to be provided for each able-bodied (*ting* 丁) Mongol and Se-mu 色目 and in the case of Han people those with four *ch’ing* of land and three able-bodied will all provide one soldier. Persons aged 15 and above will be considered able-bodied. Those aged 60 are overage. *Jam* households will be the same as military households. Artisans will be limited to one *ch’ing* of land. Buddhists and Taoists have no benefit for the state. They are harmful to the people. They must be generally prohibited and limited.” Things like this were all set forth by Pao-yu.”<sup>508</sup>

Although Guo Baoyu’s biography presents this proposal of his as having been made soon after he met Chinggis Khan, Buell thinks that the request most likely dates from after Guo Baoyu was appointed as yarghuchi, and had assumed some legal responsibilities. However this may be, his words show his desire for Chinggis to be involved in issuing laws for the new dynasty.

Guo Baoyu was only the first of a long list of Chinese who petitioned the Mongols to produce laws for the empire. Moreover, the frequent calls for the Yuan rulers to harmonize Mongol and Chinese views show how strong was the motivation of many Chinese to work together with the Mongols to produce laws acceptable to all parties. Wang Yun 王恽 (1227-1304)

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<sup>508</sup> *Yuan Shi*, ch. 149, p. 3521, translation taken from Buell, *Tribe, ‘qan’ and ‘ulus’*, pp. 112-113.

came from an important legal family that had served the Jin dynasty for many years, while his father spent much time in studying the Confucian classics. Wang Yun himself was successful in gaining office under the Yuan and served in the Central Secretariat and the Censorate, among other posts. In 1268, he proposed that a new code should be adopted.<sup>509</sup> Since this proposal was made before the Jin code had been officially abrogated by Qubilai, his motivation in calling for a new code was not simply the absence of a code but the conviction that a new dynasty should have a new code appropriate for the times. He wrote:

“If within [this code] there are [items] which cannot effectively function, let us extract [supplements from] the dynastic *cha-sa (jasaγ)* and, by following the practice of [issuing decrees] of the Chin dynasty, establish [these supplements] separately [under] decree authorization.”<sup>510</sup>

From this proposal it can be seen that Wang Yun’s belief in the importance of having a new code trumped any desire of keeping Chinese laws ‘pure’ or free from Mongol influence. He considered having up-to-date laws, even if they contained Mongol influences, to be preferable to having outdated ‘Chinese’ laws. This shows that he considered the Yuan a legitimate dynasty and cooperation with the Qa’ans in matters of law as a duty of the highest importance.

Hao Jing 郝經 came from a family of distinguished Confucian scholars, and became an advisor to Qubilai Khan. When Qubilai, discussing government matters with him, asked him to produce a memorandum on the proper conduct of government, Hao submitted a

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<sup>509</sup> Wang Yun, *Qiuqian xiansheng daquan wenji*, 90:3b

<sup>510</sup> Ch’en, *Chinese legal tradition*, pp. 8-9

memorandum entitled *Liguo guimo* 立國規模 (Plan to Manage the State).<sup>511</sup> Later, after learning that Möngke's eastern army had not had success for some time, he submitted a second memorandum entitled *Dong Shiyi* 東師議 (Discussion on the Eastern Army). In these memorandums, Hao Jing urged Qubilai to establish a complete system of laws, "a civil government based on impartial and universal laws."<sup>512</sup>

In 1262, Qubilai ordered his senior official Shi Tianze 史天澤 and his advisor and Confucian scholar 姚樞 to prepare a Chinese code.<sup>513</sup> However, the delay in actually promulgating the code<sup>514</sup> led to a memorial from Wei Qu 魏初 in 1271, who drew attention to the need to update the laws in each dynasty. In 1273 Qubilai read a draft of the code and submitted it to "his Mongolian advisors" for revisions,<sup>515</sup> but the matter did not go further. Wei Qu had memorialized:

"I hear [the rumor] that Shih T'ien-tse and other elders have discussed and compiled the *Ta Yuan Hsin-lü* [*New Code of the Great Yuan*], and not years and months have passed but [I] have not seen a proposal to promulgate a code. Now [I] thoroughly deliberate [and find that] the Chou dynasty followed [the foundation] of the Yin dynasty, and the latter came after the Hsia dynasty. There were things unchangeable. As to *li* (rites), *yüeh* (music), *hsing* (punishment), and *cheng* (government) they are transitional and are to be modified or expanded according to circumstances nor can

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<sup>511</sup> Lynn, "Hao Ching," p. 354

<sup>512</sup> *Ibid*, p. 359

<sup>513</sup> *Yuan Shi*, ch. 5, p. 82; ch. 158, p. 3714

<sup>514</sup> Birge theorizes that "the Mongolian officials could not yet reconcile themselves to a Chinese-style code." Birge, *Women, property, and Confucian reaction*, p. 211

<sup>515</sup> *Ibid*, p. 211



they be fixed by a [permanent] code. The *T'ai-ho lü* is not a mere Chin code. It adopted supplements from the Five Classics and institutions of the Three Dynasties [i. e., Hsia, Shang, and Chou – P. C.], Han and T'ang dynasties. If [we] expunge [from the T'ai-ho lu] items esteemed by Chin customs as well as laws established by Chin decrees, and then add decrees and rules issued since the beginning of [our] dynasty as well as the established precedents, then a text can be completed and it will become the *Chih-yuan Hsin-lü* [*Chih-Yuan New Statutes*]. Furthermore, since law is a tool for the maintenance of a nation, the Censorate especially cannot but regard the establishment of laws as essential.”<sup>516</sup>

Wei Qu 魏初, like Wang Yun, thought that Mongol and Chinese laws should be combined, and that Mongol influence on the law was either a good thing or the necessary price to pay in order to have an up-to-date law code. Once again this shows the eagerness of Chinese to work together with the Mongols on law, even in the creation of a law code which would be followed by local officials in China.

Around 1274, Zhao Liangbi 趙良弼 made a similar request to Qubilai that it would be advisable to establish unified laws so as to suppress evil bureaucrats.<sup>517</sup> In 1283, Cui Yu 崔彥, a minister in the Board of Punishments, urged the establishment of unified laws.<sup>518</sup> The efforts of another official, He Rongzu 何榮祖, who had started his career as a clerk and had held various positions in the government, were blocked by powerful minister Sengge until his downfall. Subsequently, however, He Rongzu 何榮祖 was appointed Senior Chief Councillor

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<sup>516</sup> Ch'en, *Chinese legal tradition*, pp. 14-5

<sup>517</sup> *Yuan Shi*, ch. 159, p. 3746

<sup>518</sup> *Yuan Shi*, ch. 173, p. 4040

of the Central Secretariat, and was able to work with the Mongols on the *Zhiyuan xingge* 至元新格 which was promulgated in 1291, and also on a second compilation called *Dade lüling* 大元律令.

In 1292 and 1294, seeing that his earlier request had not been heeded, Wang Yun memorialized again on this issue. In the 1292 memorial, Wang Yun wrote:

“I humbly suggest that [it is] proper for the established statutes and ordinances to be promulgated as the *Hsin-fa* [*New Code*]. If there are [items] which cannot effectively function [or] thoroughly fit [the situation], let the holy decrees of previous reigns as well as the *t'iao-ko* (articles and codes) from the Chung-t'ung reign to the present be generally deliberated and be used as supplements.”<sup>519</sup>

After Chengzong came to the throne, in 1294, Wang Yun, who was now *Hanlin xueshi* (Hanlin academician) submitted a further proposal for a *Yuannian xinfa* 元年新法 [First Year New Code], in which he did not mention the *yasa*.<sup>520</sup> Paul Heng-chao Ch'en takes this as clear evidence that the *Yasa*, and by implication Mongol law itself, quickly declined in importance in China;<sup>521</sup> however, as I have argued earlier in this thesis, a single word does not summarize Mongol law, and the influence of Mongol law is much greater than what can be assumed on the basis of the narrative of the Great *Yasa*.<sup>522</sup> The prestige of Mongol customary laws may have waned somewhat, but the collaborative projects which these

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<sup>519</sup> Wang Yun, *Qiuqian xiansheng daquan wenji*, 35: 1b-2a, translation taken from Ch'en, *Chinese legal tradition*, p. 9

<sup>520</sup> Wang Yun, *Qiuqian xiansheng daquan wenji*, 79:15b-16a; Ch'en, *Chinese legal tradition*, p. 10

<sup>521</sup> Ch'en, *Chinese legal tradition*, p. 8

<sup>522</sup> See chapter 1.

memoranda resulted in nevertheless led to Mongol influence on the law which lasted even into the Ming dynasty.

The desire to see the Yuan emperors involved in producing laws – preferably clear laws organized for easy consultation – persisted. Soon after, another official, Zheng Jiefu 鄭介夫, held that the *Dade lǐlǐng* needed more revision. He submitted a memorial to the throne saying that one needs to look at both ancient Chinese laws as well as more recent laws including decisions of the current dynasty. Both the Chinese and the Mongol elements should be harmonized into a single document.<sup>523</sup> After Wuzong succeeded to the throne in 1307, the Central Secretariat submitted a memorial in December 1307 or January 1308.<sup>524</sup>

“Statutes and ordinances are urgent matters for governing the state and are to be modified or expanded in accordance with circumstances. [...] Shih-tsu [Qubilai] once again issued an edict ordering that the *T-ai-ho lǐ* of the Chin be not applied and that elder ministers, who thoroughly understand the laws, consult [laws of] the ancient and present times so as to establish new [legal] institutions. So far it has not been carried out. We, your subjects, think that statutes and ordinances are serious matters and should not be lightly discussed. [We therefore] request that the *t’iao-ko* put into practice since the succession of Shih-tsu [Qubilai] to the throne be examined and unified [into one code] so that [it] may be observed and put into practice.”<sup>525</sup>

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<sup>523</sup> Chen, *Chinese legal tradition*, pp. 19-20

<sup>524</sup> There is some uncertainty as to what exactly it was written in response to; according to Birge, it was in response to the inadequacies of the *Dade dianzhang*, and together with the request of 1309 led to the compilation of the *Dayuan tongzhi* or its precursor of 1316. Birge, *Women, property, and Confucian reaction*, p. 212 n. 36

<sup>525</sup> *Yuan Shi*, ch. 22, p. 492, translation taken from Ch’en, *Chinese legal tradition*, pp. 21-22

Permission was granted for this request to be implemented and it resulted in the compilation of the *Dade dianzhang* 大德典章, of which some fragments are extant.<sup>526</sup>

A further request was made in 1309 by ministers of the Secretariat for State Affairs. This request was successful but remained without effect since Emperor Wuzong died in 1311 before action could be taken:

“In our country the lands are vast and the people are many, beyond that of former dynasties. The statutes (*ko*) and precedents (*li*) of previous reigns are inconsistent. Officials who enforce the laws issue light and heavy punishments as they like. We request that the more than 9,000 statutes (*ling*) implemented from the reign of T’ ai-tsu [Chinggis Khan, i. e. 1206 on] be edited to eliminate the superfluous and render them consistent, and be made into fixed regulations (*ting-chih*).”<sup>527</sup>

Renzong, who took action on the request first approved by Wuzong, was urged on by Xie Rang 謝讓 (1246-1311), a minister of the Board of Punishments: “From ancient times to the present day, those who had the country have all had statutes to support their rulings. How could a conscientious holy dynasty like ours have no laws to follow and thus let bureaucrats indulge themselves and people suffer evilness?”<sup>528</sup> The result was a text completed in 1316 with decrees (*zhaozhi*), statutes (*tiaoge*) and precedents (*duanli*), with documents covering the years 1234 to 1316. It was expanded and promulgated in 1321 as *Dayuan tongzhi* 大元通制.

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<sup>526</sup> Ch’ en, *Chinese legal tradition*, p. 22

<sup>527</sup> *Yuan Shi*, ch. 23, p. 516, translation by Birge in: *Women, property, and Confucian reaction*, p. 212; Ch’ en, *Chinese legal tradition*, p. 23 gives a slightly different translation.

<sup>528</sup> *Yuan Shi*, ch. 176, p. 4111, translation by Ch’ en, *Chinese legal tradition*, p. 24

However, even when a document similar to a code<sup>529</sup> had been issued, Chinese officials continued to request more up-to-date compilations of governmental edicts. In 1322 Li Duan 李端, a censor, suggested to the throne that ordinances should be codified to prevent bureaucrats from committing evil acts and to give the authorities proper guidance, a proposal which was accepted by Yingzong.<sup>530</sup> In 1323 Baiju stated in a memorial that the “former code” should be edited and published as the *tongzhi* “Comprehensive Institutions.”<sup>531</sup>

An additional reason for Chinese to work together with the Yuan rulers on legal matters was their desire that the laws for South and North China, which had differed under the Song and Jin dynasties, could again be unified. It is significant that they looked to the emperor and not to an ideology, a religion or to a common allegiance to past Chinese practices to bring about this unification. Zheng Jiefu in his memorial advocated “selecting from the proper customs of the South and North” in order to produce a code that would be appropriate for all.<sup>532</sup> Hu Zhiyu 胡祗遹 (1227-1295), a scholar-official, poet, and advisor to Qubilai, likewise looked to the government to achieve the elusive unification of the laws of the south and north:

“The reason law has not been established [i.e., a Chinese-style law code has not been promulgated] is because the south cannot follow (the laws of the) north, and the north cannot follow the (laws of the) south. So how can one establish (law) appropriate for the times? One cannot have the south following the laws of the south and the north following the laws of the north, law cannot be established from this. The south cannot

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<sup>529</sup> Huang Shijian, *Tongzhi tiaoge*, dianjiao shuoming p. 2

<sup>530</sup> *Yuan Shi*, ch. 28, p. 625

<sup>531</sup> *Yuan Shi*, ch. 136, p. 3304; Ch'en, *Chinese legal tradition*, p. 28

<sup>532</sup> Ch'en, *Chinese legal tradition*, 19-20

follow the north and the north cannot follow the south. The matters of the south are complicated, therefore the law is complicated; the matters in the north are simple, and therefore the law is simple. For the complicated to follow the simple cannot constitute a system; if the simple were to follow the complicated, people would detest this. But to establish (something) connecting the two systems, one could (order that) in each case they follow the stricter (penalty).”<sup>533</sup>

It is important to emphasize what these Chinese scholars and officials were asking for and why. They were asking firstly for the Yuan rulers to make laws, even if these laws were influenced by Mongol legal practices. Secondly they asked for these laws to be compiled into a law code, preferring such a code (or the compilations of edicts which were in fact produced) to relying on Chinese codes from the previous dynasties. The historical and ideological reasons for these requests lie in the practices of previous Chinese dynasties, each of which had a law code, and in the conviction that the proper and legitimate source of laws is always the emperor.

It is these requests by Chinese officials and intellectuals, and the attitude underlying them, which led to attempts to produce codes reconciling Mongol and Chinese laws. The resulting interaction between Mongols and Chinese contributed towards the embedding of certain Mongol customs into Yuan law in such a way that they influenced the whole Yuan dynasty or even the Ming and Qing dynasties. But before explaining about these Mongol influences I will seek to show that not only did Chinese officials and scholars working in the central government wish for the Qa'ans to be personally involved in proclaiming law, officials at the

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<sup>533</sup> Hu Zhiyu, *Zazhu*, pp. 166-7

local level also looked to the Qa'ans for final rulings regarding the laws which they administered.

### The attitude of local officials

A very important question is whether these requests for the Mongols to be involved in lawmaking mirrored the attitudes of those Chinese officials who dealt with legal cases on the ground. The sources show that this was the case and during the Yuan dynasty. The central government had the same role in the eyes of local officials which it had had during previous dynasties: firstly to make and circulate appropriate legislation, and secondly to act as 'court of appeal' for any difficult cases which could not be decided locally.

That local officials under Mongol rule expected the government to fulfill both these roles is shown both by the contents and by the very existence of the legal compilation known as Yuan Dian Zhang. As Birge has shown,<sup>534</sup> it is a compilation which was commercially produced in southern China. Although, unlike the government legal compilations, it is not devoid of some contradictory rulings from different time periods, it is nonetheless organized by topic and its purpose was to collect and bring together in one volume Yuan government edicts and precedents, which could be consulted by local officials.<sup>535</sup> It was compiled from central government rulings and precedents which were sent to a local route (*lu*) of Jiangxi or local government in Fujian, thus showing that central government rulings did reach the provinces, presumably not just this province, but many or all provinces.

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<sup>534</sup> Birge, *Women, property, and Confucian reaction*, p. 213

<sup>535</sup> Birge, *Women, property, and Confucian reaction*, p. 213

A preface to Yuan Dian Zhang 元典章 cites a request from Jiangxi officials in 1303 that statutes and precedents (*ge li* 格例) be collected and made into a book, to be distributed to local governments.<sup>536</sup> While mentioning this request was probably intended to give some legitimacy to the Yuan Dian Zhang, the existence of the Yuan Dian Zhang, since it is a commercial publication, shows that there was demand for a compilation of precedents, and such demand would have come mainly from those officials dealing with legal matters at various levels of the government. This shows a deep level of interest in and engagement with the laws made by the Yuan rulers, unlike anything that happened in Persia during the Mongol period.

Moreover, that local officials looked to the central government to rule on cases which were difficult to solve is shown by the contents of the Yuan Dian Zhang. The Yuan Dian Zhang contains cases from many provinces around China, from both north and south China. These were cases which, despite the distances involved, were communicated to the central government, decided, and then communicated back to the provinces in the form of edicts, which reached Jiangnan where they were compiled to become part of the Yuan Dian Zhang. The Yuan Dian Zhang contains hundreds of such edicts.

More evidence that cases were indeed being forwarded up to the central government and were receiving answers come from documents excavated in Qara-khoto, the 'black city' (known in Chinese as 'Hei cheng' 黑城). These documents are one more piece of evidence showing that at least some cases did in fact go up to the central government for review. Because the collection contains some documents from the Qara-Khoto region and some

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<sup>536</sup> *Yuan Dian Zhang, Mulu* 目錄 "contents," 1a



produced in Dadu, one can see how communication regarding such legal matters was very quick. From the Emperor at Dadu, documents could reach Qara-khoto in less than 20 days.<sup>537</sup>

This is not to suggest that the system of sending cases up for review was entirely free of problems or faultlessly efficient. It is quite possible for example that corrupt officials could have kept some cases from being forwarded up for review; however this may be, the fact that a significant number nevertheless reached the central government shows that there was not only theoretical but also practical reliance on the central government at the local level, which was one of the ways in which Mongol influence could reach the local level and have concrete effects. This means that edicts of the Qa'ans were usually heeded, unlike in the Ilkhanate where firstly less legislation was produced, and secondly, that which was produced was not necessarily respected at the local level. Even Farquhar, who argues that the Yuan dynasty, as imperial China in general, was much more decentralized than is often held to be the case, admits that the reviewing of legal cases is one instance where the central government and the provinces did have an effective connection.<sup>538</sup>

These observations should lead to a re-evaluation of Qubilai's short-lived attempt to impose some Mongol practices, including the levirate, on the Chinese.<sup>539</sup> As previously discussed,<sup>540</sup> this was not Qubilai's first reaction to the Chinese legal system after coming into contact with it; rather, this came at the moment when he adopted the dynastic name Yuan. Moreover,

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<sup>537</sup> Chen Zhiying "Yuan Huangqing yuannian (gong yuan 1312) shi'eryue Yijinai lu xingfang wenshu' chutan," p. 44

<sup>538</sup> Farquhar, *The government of China*, p. 169

<sup>539</sup> Birge, *Women, property, and Confucian reaction*, pp. 238-244. The most immediate reason for Qubilai's short-lived imposition of the levirate is likely connected with his adoption of the dynastic name *Yuan* and abolition of the *Taihelü*. In other words, it was connected with his efforts to gain legitimacy, rather than being typical of the Mongol attitude towards conquered peoples.

<sup>540</sup> See chapter 5.

Qubilai had worked with Chinese local officials for some years, issuing edicts which they received but not requiring from them major changes in terms of adoption of Mongol legal practices. Is it not possible that he resolved to impose Mongol laws precisely because he had the connection with local officials that he needed in order to implement such a change? In other words, the local officials' respect for the Emperor as the source of law may indirectly have led to greater Mongol involvement in legal matters, which then affected the local officials directly.

Such a supposition becomes more plausible when one compares the Yuan dynasty with the other khanates. There are no examples from the Chaghatai khanate showing that the levirate was imposed, and there is a single example from the Golden Horde which was a levirate union accomplished literally by force at the *ordo* itself. It may have occurred in this way because the khans of the Golden Horde knew that they had no influence with Russian judges, so they took the opportunity of a visit to the *ordo* by the widow and the younger brother of Andrew of Chernigov to force such a union to take place.

“Andrew, Duke of Cerneglon which is in Russia, was accused before Bati of taking Tartar horses out of the country and selling them elsewhere; and although the charge was not proved he was put to death. Hearing this, his younger brother came with the widow of the slain man to the chief Bati to petition him not to take away their territory from them. Bati told the boy to take the widow of the slain man, the boy's own brother, as his wife; and bade the woman take him as her husband according to Tartar custom. She said that she would rather die than break the law. But none the less he gave her to him [as wife], although both of them refused as much as they could.

And they put them both to bed together and forced them to consummate the marriage in spite of their tears and cries.”<sup>541</sup>

In the Ilkhanate, there is no indication that there was ever an attempt to impose the levirate. In China, the greater bureaucratization and the respect for the Emperor which suffused the officialdom, encouraged by Confucianism, led to a greater, though in this case temporary, influence of Mongol law on ordinary Chinese people.

#### Changes in Chinese law as a result of Mongol influence

The fact that local officials in China looked to the Yuan emperors as the source of legitimate law led to significant and enduring Mongol influence on the Chinese legal system. Here it will be shown how Mongol influence led to changes in the punishments imposed on ordinary criminals in China in beatings, military exile, the death penalty, and the confiscation of family members (after a criminal had been put to death).

##### i. Beatings

Beating was one of the ‘five punishments’ in China on which Mongol rule left its mark. This was because legislation specified fixed numbers of strokes to be used for different gradations of culpability. While Chinese traditionally used multiples of ten as the numbers of strokes, the Mongols, due to the symbolism they ascribed to numbers, preferred numbers of strokes

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<sup>541</sup> Carpini/Dawson, pp. 10-11; Jackson, “The Mongols and the faith of the conquered,” p. 60; on the identity of this prince, see Dimnik, *The Dynasty of Chernigov, 1146-1246*, p. 381

ending with the number 7. During the Yuan dynasty, stroke numbers conformed to the Mongol preference, but the change was reversed by the Ming dynasty.

In China the numbers of strokes administered as punishments, which were graded according to the seriousness of the crime, were the subject of an imperial edict by Qubilai which reduced them from multiples of ten such as 50 and 110 to numbers ending in seven such as 47, 107. The reason given was that heaven forgives one stroke, the earth forgives one stroke and the emperor forgives one stroke:

“Qubilai established the punishments in all-under-heaven: beating with the light stick, beating with the heavy stick, penal servitude, exile, and strangling, these five punishments. For beating with the light and heavy sticks, he said: ‘Heaven forgives [the criminal] one stroke; earth forgives [the criminal] one stroke, and I forgive [the criminal] one stroke. If previously the punishment would have been 50 strokes, beat him only 47 times; if the punishment would have been 110 strokes, beat him 107 times.’”<sup>542</sup>

The explanation given for the change, that round numbers were reduced to numbers ending in seven for leniency’s sake, is not necessarily credible; rather, the special importance accorded to the number 7 by the Mongols seems much more probable. The number seven - as well as the number nine - was a very important number in ancient Turkish and Mongol history. They were sacred numbers.<sup>543</sup> Heaven was believed to have either seven or nine levels, and the same for hell; in addition, the cosmic tree or *axis mundi*, which was sometimes depicted on

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<sup>542</sup> Ye Ziqi 葉子奇, *Cao mu zi* 草木子, ch. 3, quoted in Xu Yuchun, *Yuandai fadong xing kaobian*, p. 35

<sup>543</sup> Roux, “Les chiffres symboliques 7 et 9 chez les Turcs non musulmans,” p. 52

shaman's drums, was usually shown as having seven or nine branches.<sup>544</sup> Other numbers ending in seven, as well as 70 and 700 also played a very important role in ancient Turkish stelae and texts.<sup>545</sup>

Although its significance is not entirely clear in all cases, it would seem that the number 7 indicated inauspiciousness, since it was also connected with certain burial rituals, such as how many times one should circle a corpse.<sup>546</sup> In addition there are Mongol stories that tell of 7 demons, 7 robbers, or 7 suns coming out of heaven, which lead to disasters happening on earth.<sup>547</sup> The number 7 is also associated with numbers of strokes of beatings in the *Secret History*. Although the *Secret History* gives only a few examples where the number of strokes is specified, the numbers given are 3, 7, and 37 strokes:<sup>548</sup>

“If a member of the Guard when called on duty fails to take his turn, in accordance with the previous order he shall be disciplined with three strokes of the rod. If the same member of the Guard fails again – for the second time – to take his turn of duty, he shall be disciplined with seven strokes of the rod. If, once more, the same man, without sickness or other reason and without having first consulted the elder of the company, for the third time fails to take his turn, thus regarding his service by Our

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<sup>544</sup> *Ibid*, p. 47

<sup>545</sup> *Ibid*, pp. 36-45

<sup>546</sup> Ch'en, *Chinese legal tradition*, pp. 49-50; Xu Yuchun, *Yuandai fading xing kaobian*, p. 117

<sup>547</sup> The issue of the significance of Mongol numbers has been researched by S. Dulam, in particular in his book *Монгол бэлэгдэл зүй “Mongol number symbolism”* (in Mongolian, and thus inaccessible to me). Personal communication, Professor Diimaajav Erdenebaatar, 11/12/2010

<sup>548</sup> *Secret History of the Mongols*, § 227 and 278

side as too difficult, he shall be disciplined with 37 strokes of the rod and shall be sent to a distant place out of Our sight.”<sup>549</sup>

Thus, as has also been previously recognized,<sup>550</sup> the use of numbers ending in seven is not coincidental and is a result of Mongol influence. That the emphasis on the number 7 was not just theory but affected beatings in practice can be seen from the cases recorded in the Yuan *Dian Zhang*. This document shows government decisions about difficult-to-decide cases that were sent up from the provinces. In many of these cases, where a beating is ordered the number of strokes ends in seven.<sup>551</sup>

Thus, the modification of stroke numbers in Yuan China to numbers ending in seven is an adaptation to Mongol practices and was possible because officials dealing with these cases at the local level felt they had a reason to obey orders that came from the Yuan emperor. Using numbers of strokes ending in seven was the usual practice even on the local level during the Yuan dynasty.

## ii. Military exile

Drafting into the army is another punishment where cooperation between Mongols and Chinese and its results are very apparent. This aspect of Mongol legal culture had much greater influence in Yuan China than in the Ilkhanate because of the greater reliance on legislation from the central government.

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<sup>549</sup> *Secret History of the Mongols*, § 278; see also § 227

<sup>550</sup> Xu Yuchun, *Yuandai fading xing kaobian*, pp. 112-118

<sup>551</sup> *Ibid*, pp. 108-112. Only in a small number of cases, the number of strokes is a multiple of ten. Xu Yuchun, *Yuandai fading xing kaobian*, pp. 118-120

Military exile can be counted among the ‘typical’ Mongol punishments recorded in the *Secret History*. It is with this punishment that Ögödei allegedly threatened Güyük because he had insulted Batu. Despite the fact that this incident probably did not take place as described, since Güyük was on campaign and could not have been in Mongolia at that time,<sup>552</sup> the incident does reflect a method of punishment which was familiar to Mongols and which reflected their nomadic lifestyle. As people for whom fixed prisons were not practical, military exile was a practical way of dealing with criminals and permitted an intermediate punishment between the death penalty and beating.

“Following whose counsel does this mean creature fill his mouth with talk against a person senior to him? May he and he alone rot like an egg! He has turned against the bosom of a person who is senior to him. Therefore,

We shall place him in the vanguard:

We shall make him climb the town walls

Which are as high as mountains

Until the nails of his ten fingers are worn away;

We shall place him in the garrison army:

We shall make him climb the town walls

Which are made of hard-pounded earth

Until the nails of his five fingers are ground down.”<sup>553</sup>

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<sup>552</sup> Kim, Hodong, “A Reappraisal of Güyüg Khan,” pp. 314-320

<sup>553</sup> *Secret History of the Mongols*, §276

In China, military exile had been used occasionally under the Song but had not been included as part of the five-punishments system.<sup>554</sup> During the Yuan dynasty, it was gradually expanded and integrated into the Chinese punishments system, where it came to be one degree below the death penalty and a degree above 'forced labour.'<sup>555</sup> Thus, although initially either military exile or forced labour could be used in the case of a death penalty which had been commuted, by Renzong's time the differentiations between the punishments and their relative severity had been determined more precisely, and military exile was used exclusively in the case of a commuted death penalty.<sup>556</sup> In addition, by Renzong's time, military exile was combined with a beating.<sup>557</sup>

Yarghuchis were heavily involved in promoting military exile as a punishment; they became at one point administrators for the system, keeping records and organizing the travel to the place of service.<sup>558</sup> But the yarghuchis' promotion of this punishment would not have succeeded without their connections with the court and with Chinese legal officials which enabled this punishment to eventually become part of the 'five-punishments-system.' It is precisely these connections that were fostered by the Qa'ans' attachment to the principle of collegiality. The result of such intense cooperation was such that the use of military exile in China had long-term influence and it was "accepted as a major punishment" during the Ming dynasty.<sup>559</sup>

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<sup>554</sup> Bodde and Morris, *Law in Imperial China*, p. 88

<sup>555</sup> Wu Bo, "Chujun zhidu," p. 81

<sup>556</sup> *Ibid.*

<sup>557</sup> *Ibid.*

<sup>558</sup> Zhao Wentan, "Yuandai de xingbu he dazong zhengfu," pp. 21-22

<sup>559</sup> Bodde and Morris, *Law in Imperial China*, p. 88



### iii. The death penalty

The execution methods used during the Yuan dynasty came to be a unique set of practices resulting from an amalgam of Chinese and Mongol principles. In China the two main execution methods in use when the Mongols came were decapitation and strangulation,<sup>560</sup> with beheading seen as the more severe of the two, since the dismemberment of the body was held to prevent the proper passage of the soul.<sup>561</sup> The Mongols considered any form of execution which involved the shedding of blood as more serious, and therefore also saw beheading as the worse penalty. Although there was remarkable convergence in which death penalties were considered more serious, changes occurred during the Yuan which reflected a shift in who could be subjected to which death penalty.

The Mongol principle that the blood of royal personages was not to touch the ground is illustrated by Nayan's execution in 1287, when he was wrapped in a carpet and trampled to death:

“And when the Great Kaan learned that Nayan was taken right glad was he, and commanded that he should be put to death straightway and in secret, lest endeavours should be made to obtain pity and pardon for him, because he was of the Kaan's own flesh and blood. And this was the way in which he was put to death: he was wrapt in a carpet, and tossed to and fro so mercilessly that he died. And the Kaan caused him to be put to death in this way because he would not have the blood of his Line Imperial spilt upon the ground or exposed in the eye of Heaven and before the Sun.”<sup>562</sup>

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<sup>560</sup> Zeng Daiwei, “Meng Yuan fading sixing kaobian,” pp. 60-69

<sup>561</sup> McKnight, *Law and order in Sung China*, p. 447

<sup>562</sup> Marco Polo, vol 1, p. 343

There is no report of a similar execution after 1287, and strangling itself seems not to have been regularly used, neither among the Mongol nobility nor in the punishments meted out to ordinary Chinese. After Qubilai decided to abolish the Jin code, the *Taihelü*, in 1271, strangulation was dropped from the list of official punishments. This was a remarkable change, especially since strangulation had been generally used in both the Mongol and the Chinese cultures as a more ‘lenient’ alternative to decapitation. Although there has been some debate about whether strangling was used again later in the Yuan dynasty, Xu Yuchun in his thesis on punishments during the Yuan dynasty comes to the conclusion that the evidence does not show that strangulation was used.<sup>563</sup>

Although an official reason for dropping strangulation is not recorded, it may have been another opportunity for Qubilai to advertise his leniency.<sup>564</sup> Another, deliberately cruel method of execution known as ‘slow slicing’ was used rarely and in cases of high treason, so beheading was supposedly the only ‘regular’ death penalty. This meant that if it was commuted, meant the offender would be exiled, rather than put to death by strangulation.<sup>565</sup>

In practice however, as Zeng Daiwei has shown, the place that strangulation had held was taken by a new execution method, beating to death. It is not clear exactly how such a beating occurred, and whether it indeed meant that copious blood was shed, or whether it perhaps was similar to the Mongol method of ‘kicking in the pit of the stomach.’<sup>566</sup> This penalty was separate from beating with the light stick (笞) and beating with the heavy stick (杖), and is

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<sup>563</sup> Xu Yuchun, *Yuandai fadixing kaobian*, pp. 52-56

<sup>564</sup> *Yuan Shi*, ch. 102, p. 2603

<sup>565</sup> Xu Yuchun, *Yuandai fadixing kaobian*, pp. 43-4; on ‘slow slicing’ see Brook, Timothy, *Death by a thousand cuts*, Cambridge, MA: Harvard University Press, 2008

<sup>566</sup> *Secret History of the Mongols* §137, p. 60 and commentary pp. 507-8

described using the word 敲 (“to beat”). While beating with the light and heavy stick, when given as a penalty, is always accompanied by the number of strokes to be administered, in many cases there is no reference to a number of strokes, but rather the expression “敲了。” This would seem to indicate that the person was beaten to death. Zeng Daiwei also believes that cases where the penalties in the section of the *Yuan Shi* on criminal law which are described merely as “处死” or “死” (“put to death”) also involve beating to death.<sup>567</sup>

Beating to death was often used, like strangulation previously, in the case of commutation of the penalty of decapitation, or even commutation of slow slicing. Beating to death had not been unknown during the Song, being mentioned in several clauses in the *Xu Zizhi tongjian zhang bian*.<sup>568</sup> During the Yuan it was applied, not according to the status of the offender as would have been the case among the Mongols, but according to the gravity of the crime committed, as in the Chinese system of graded punishments. For example, according to the Yuan history, killing one’s stepmother should be punished by slow cutting. “In the case of sons who murder their stepmother, they should be treated the same as sons who kill their mothers.”<sup>569</sup> “Sons and grandsons who kill their paternal grandparents or mother or father are to be put to death by slow slicing.”<sup>570</sup> However one source says that in 1294 a person found guilty of killing his stepmother was due to have his sentence commuted due to mitigating circumstances. A memorial was sent up to the Central Secretariat as to which punishment

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<sup>567</sup> Only six of the laws specifically mention beheading and nine mention slow slicing, the rest do not specify the execution method. Zeng Daiwei, “Meng Yuan fading sixing kaobian,” p. 64

<sup>568</sup> McKnight, *Law and order in Sung China*, 450

<sup>569</sup> *Yuan Shi*, ch. 104, p. 2651

<sup>570</sup> *Yuan Shi*, ch. 104, p. 2651

should be imposed, and the Central Secretariat's decision was that he should be beaten (to death), and that all further similar cases should be treated in the same way.<sup>571</sup>

Although beating to death was not unknown during the Song,<sup>572</sup> it is quite possible that its use reflects Mongol influence, since there are a few reports of beating to death in the Ilkhanate. One account of a public execution involving beating to death is from the year 1311 when Sayyid Taj al-Din Avaji was put to death “with two of his sons on the bank of the Tigris by consecutive blows.”<sup>573</sup> Perhaps this was similar to the executions by beating to death carried out in Yuan China.

However, possibly the main reason why beating to death was used is that Qubilai did not want Chinese to be treated in a way that was traditionally reserved for Mongol nobles. Using beating to death meant that strangulation or other bloodless execution methods could be reserved for those whom Qubilai judged merited it, whereas there were still two main execution methods, beheading and beating to death, for more serious and less serious cases among the ‘common’ subjects of the empire. In addition, since it left the body whole, beating to death would presumably have been considered slightly less dishonourable than either slow cutting or beheading by the Chinese, and may even have satisfied the Chinese requirements for successful passage of the soul to the next life.<sup>574</sup> In that sense, it may have been an acceptable substitute for strangulation in the Chinese system of punishments, while allowing strangulation to be reserved for those who, from the Mongol point of view, were worthy of it.

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<sup>571</sup> Zheng Chongwei 沈仲緯, *Xingtong wushu* 刑統賦疏, p. 179, quoted in Zeng Daiwei, “Mengyuan fading sixing kaobian,” p. 67

<sup>572</sup> McKnight, *Law and order in Sung China*, p. 450

<sup>573</sup> Vassaf, p. 538

<sup>574</sup> De Groot, *The religious system of China*, vol. 1, pp. 342-347, 355; Brook et al., *Death by a thousand cuts*, pp. 13-15, 91-94

The restriction of the use of strangulation mirrored the fact that even for Mongol nobles and members of the royal family, it was not always used. Ananda, son of Manggala, son of Qubilai was beheaded in 1307.<sup>575</sup> This shows how even princes of royal blood were treated more and more like common people with regards to execution methods. It seems that the Qa'ans were trying to communicate that princes should be no more privileged than any other subjects of the empire.

If the restriction of strangulation more and more to the khans themselves was indeed the reason behind the use of beating to death, it would be a remarkable case of compromise between Mongol and Chinese values. In any case the changes – enforced throughout the Yuan empire, not through force, but through legislation and the respect local officials had for that legislation – were only possible as a result of the Mongols' and Chinese desire to work together on these issues.

#### iv. Confiscation and handing over of family members or property of the accused

A further Mongol punishment method which is reflected in the Ilkhanate and in Yuan China is the 'confiscation' of the possessions or the family of condemned criminals. This practice had its roots in the Mongol vengeance system where the relatives and possessions of a perpetrator were considered legitimate targets for plunder. Given the amount of communication and discussion between Mongols and Chinese about legal matters, perhaps it

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<sup>575</sup> Yi He, Wang Dafang, "Yuandai menggu huangzu Anxiwang Ananda lingmu zai Yuan Shangdu dongnan Hebei sheng 'Bashang caoyuan' bei faxian," unpublished paper; Yi He, Wang Dafang, "Yuandai zhengbian shibai zhe Ananda lingmu zai Bashang caoyuan bei faxian," *Neimenggu ribao*, 23/3/2009

should be no surprise that this practice, too, ‘caught on’ in the Chinese environment and was also incorporated into legislation.

The vengeance system itself was an integral part of Mongol legal tradition, as some scholars have recognized.<sup>576</sup> For example, Chinggis’ wife Börte was taken by the Merkit as vengeance, though he later won her back. While in the vengeance system this principle was usually applied externally, i. e. it was considered legitimate to take or capture the relatives and possessions of an external enemy, in Chinggis Khan’s time the same principle could be applied to warriors within Chinggis Khan’s own following, should they prove unfaithful.

This is reflected in the *Secret History of the Mongols*:

In the days of war,  
If we disobey your commands,  
Deprive us of *all* our goods and belongings, and  
Our noble wives, and cast  
Our black heads on the ground!  
In the days of peace,  
If we violate your counsel,  
Cut us off from retainers and possessions, and  
Our wives, and cast us  
Out into the wilderness!’  
Thus they pledged their word and in  
This way they swore the oath of *loyalty*,<sup>577</sup>

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<sup>576</sup> Hamayon, “Mérite de l’offensé vengeur, plaisir du rival vainqueur,” pp. 107-140

<sup>577</sup> *Secret History of the Mongols*, §123

This passage shows three leading warriors pledging allegiance to Chinggis Khan and recognizing that, should they be unfaithful, Chinggis would be perfectly justified in taking away their families and possessions.

From the time of Chinggis Khan, the principle that relatives and/or possessions of perpetrators could legitimately be taken was intentionally applied to non-Mongols. The practice seems to have been known as ‘anzhu’ 案主.<sup>578</sup> In the 1223 edict which Chinggis Khan gave to Chang Chun, the master of the Daoist sect, and which has been preserved in the Chinese sources, Chinggis prohibited people from becoming monks merely to evade taxes, and the penalty if caught was to be ‘anzhu.’ In Aubin’s opinion this meant that the family members and / or possessions confiscated were to be awarded to the Daoists.<sup>579</sup>

In a case that was decided by Möngke, Bala Bitigchi, who had originally been sentenced to the death penalty, was spared and sent on a difficult embassy, and “his wives and children, his servants and cattle, all his animate and inanimate possessions, were seized and distributed.”<sup>580</sup>

In Yuan China, as a result of Mongol influence, the practice of confiscation became so widespread that even al-‘Umari, a historian in the Mamluk empire, heard about it. He writes:

“One of the most amazing things that I saw in the realm of the Great Khan is that, although he (the qa’an) is an unbeliever, he respects the Muslim communities. If an infidel (i. e. a non-Muslim) kills a Muslim, the murderer is put to death together with

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<sup>578</sup> Chavannes, “Inscriptions et pièces de chancellerie chinoises de l’époque mongole,” p. 368

<sup>579</sup> Aubin, “Les sanctions et les peines,” p. 250

<sup>580</sup> Juvaynī, pp. 38-9; Juvaynī/Boyle, p. 53

his family and his possessions are confiscated. In the contrary case [however], such a punishment is not carried out and only bloodmoney – a donkey – is demanded.”<sup>581</sup>

Looking beyond the obvious pro-Muslim bias, al-‘Umari’s report is correct insofar as the punishment of a murderer extended to his family and possessions as well. His claim that the family of a murderer was put to death is not true, but family members and/or the possessions of criminals were often confiscated.

Political personalities who fell into disgrace often had their possessions confiscated, and often their wives and children as well. For example, Sanggha’s property, wife and slaves were confiscated.<sup>582</sup> Daulatshah’s household and his son’s household were confiscated and awarded to others.<sup>583</sup> By a special edict November 24, 1328, the powerful minister El Temur got sole authority to redistribute confiscated property; under his direction about 125 individual properties changed hands.<sup>584</sup>

Not only that, but the practice of confiscating the wives and children of criminals was also introduced into legislation. For example, the *Yuan Shi* records that traitors who had already planned a crime should be put to death by slow slicing and their associates executed; while traitors without a plan should be exiled and their families confiscated. Likewise sorcerers who confused the masses and created a disturbance were to be executed and their families confiscated.<sup>585</sup> However, attempts to stop the confiscation of wives gained some ground later

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<sup>581</sup> al-‘Umari/Lech, trans. pp. 112-3, emphasis added

<sup>582</sup> *Yuan Shi*, ch. 17, p. 375

<sup>583</sup> *Yuan Shi*, ch. 32, p. 717

<sup>584</sup> *Yuan Shi*, ch. 32, p. 716-723; Dardess, *Conquerors and Confucians*, p. 51

<sup>585</sup> *Yuan Shi*, ch. 104, p. 2651



in the dynasty, because of increased Confucian influence.<sup>586</sup> It would have been difficult for this practice of confiscation to become so widespread if Mongols and Chinese had not together made an effort to produce up-to-date legislation and if local officials had not been relatively diligent in following that legislation and allowing it to shape their jobs.

### Conclusion

The uniqueness of Yuan history with regards to legal matters lies not so much in the extensive bureaucracy but in the willingness of that bureaucracy to look to the Mongol rulers as the legitimate source of law. This has not so far been recognized as a major factor underlying the extent of Mongol influence in law in China. Both Confucianism and legalism saw the emperor as the legitimate source of law and therefore indirectly led to Mongol influence. Local officials, just like many of the Chinese scholars and officials in the central government, looked to the Yuan emperors as the source of law. This was not only a theoretical opinion, rather they relied on the emperor's edicts in practice to perform their jobs day to day.

The effects of this can be seen in the changes in punishments which affected not only Mongols, but also Chinese, including 'ordinary' Chinese at the local level. Changes in the death penalty were possibly a result of the Qa'ans wanting to restrict 'honourable' execution methods to fewer people. Changes in the number of strokes in beatings were due to Mongol influence, and the introduction of military exile even affected the 'five-punishments system' in the long-term into the Ming and Qing dynasties.

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<sup>586</sup> Yang Yinmin, "Yuandai jimo funü de minyun yu jimo funü fa de xingfei," pp. 108-110

These changes are considerable and can be explained through the willingness of the Toluid rulers and of Chinese officials and intellectuals to work together in creating and implementing appropriate laws. Only the flexibility of the Yuan dynasty rulers and elite together with the enthusiasm of the Chinese advisors and officials could have led to such a deep influence of Mongol law within China.

## **Chapter 7 – Self-reliance of Persian qadis**

### Introduction

Unlike Chinese officials, Persian qadis did not depend on interaction with the Toluid rulers in order to perform their legal duties locally. While qadis did have some connections with the Ilkhans and their officials, they did not need regular direct contact; qadis were content to work without input from the Ilkhans, since they considered the source of law to be in religion. The relationship between qadis and the Ilkhans was therefore much more distant than that between Chinese local officials and the Qa'ans.

This self-reliance of the Persian qadis with regards to the Ilkhans had real consequences with regards to the depth of Mongol influence on legal matters in Persia, or rather, their self-reliance led to a much reduced Mongol impact as compared with China. Together with the Ilkhans' willingness to allow them to judge according to their own laws, this resulted in a fairly stable situation where specifically Mongol punishment methods, although implemented at the *ordo*, had little to no wider impact. The practice of military exile remained without effect on the local population, while there may have been some limited influence in terms of numbers of strokes used for beating, probably through imitation of Mongol ways. The principle that bloodless execution methods are more 'honourable' is the only aspect that had long-term influence, but this was through cultural influence rather than through the central government's efforts or the creation of legislation. Overall, the influence of Mongol punishment methods was much less deep and affected less people than in China.

### Positive aspects of the qadis' attitudes towards the Ilkhans and Mongol authority

Qadis' attitudes towards the Mongols were generally less positive than those of local officials in China. A major reason for this was that they considered the ultimate source of law to be in religion. All the laws which society needed had already been revealed, they believed, and instead of taking orders from their ruler, they expected the ruler to conform to their image of a God-fearing sultan.

However, initially their attitude was by no means entirely negative. On the contrary, it was a *qadi al-qudat* from Qazwin who was partially responsible for bringing Mongol khans to Persia. In a general sense, it could be said that qadis were unhappy with the military administration of the Mongol governors. More specifically, they may have been frustrated by their lack of influence on the Mongol khans.

During the years of military rule, before the Ilkhanate was founded, the centre of Mongol power was remote from Persia not only geographically but also in terms of the influence that qadis could exert. The Qa'ans were surrounded by religious specialists from various faiths, which allowed them to resist influence from the qadis. While during the Mongol conquests, qadis and other Islamic leaders were often among those negotiating surrender for their cities, this would not have afforded them any platform from which to influence the Mongols. At other times, qadis travelled to the Mongol centre of power in order to make their influence felt. In 1246 the *qadi al-qudat* of Baghdad Fakhr al-Din came to the *quriltai* enthroneing

Güyük.<sup>587</sup> On 5th of December 1252 a “group of Muslims” led by Qadi Jalaluddin Mahmud Khujandi came to the gate of Möngke’s *ordo*; the qadi delivered the sermon and led the prayer, praying for Möngke, who ordered gifts to be given to them.<sup>588</sup> Muslim clerics were also present in Qaraqorum, the capital of the Mongol empire, where imams rubbed shoulders with *bakhshis* and Christians.<sup>589</sup> While the presence of qadis and imams at the centres of power shows their desire to make their influence felt, it would have been difficult to do so while so many faiths were jostling for influence. One can imagine the frustration of the local qadis, under Mongol rule, under a Qa’an who did not uphold Islamic law, and with few prospects that Islamic law would be honoured at the highest levels. This would seem to explain the extraordinary action by residents of Qazwin, including a *qadi al-qudat*, in inviting a Mongol khan to come and rule Persia. They considered it better to have an accessible, though still non-Muslim khan, rather than a distant khan whom there was little chance of influencing.

The request from a Qazwini merchant emphasized the need for just and effective rule in Persia:

The merchant from Qazwin said: “I have a request to ask, on behalf of the common people. ... I have a wish that ... the victorious qa’an could grant ... that he would build a bridge across the Amu Darya ... we do not speak of a bridge made of stone, or brick, nor a bridge of chains. I want a bridge of justice over that river, for where there is justice, the world is prosperous. He who comes over the Amu Darya finds the

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<sup>587</sup> Bar Hebraeus/Budge, p. 411

<sup>588</sup> Rashid, p. 845, Rashid/Thackston, 412

<sup>589</sup> Rashid, p. 883, Rashid/Thackston p. 431

Qa'an's justice, and on this side of the river there is justice and a path. On that side of the river, the world is evil, and some people become prosperous through injustice.”<sup>590</sup>

This shows that a non-Muslim could be seen as qualified to provide justice. Such justice could include protection from threats such as that of the Ismailis, known as the Assassins, who were disrupting trade. The *qadi al-qudat* shared these sentiments, and according to Mustawfi, expressed himself as follows:

“In the hope of seeing the victorious qa’an, I have travelled a long way to this country. Since the monarch has now stretched out his hand to us, it would be fitting if he gave us justice, as our cry for redress and justice against the oppressor has now reached the just qa’an. For we have seen much injury and a great deal of oppression in the world from that evil-doing brotherhood, who have imposed a heavy toll on us which has caused us much injury.”<sup>591</sup>

This shows how qadis were among those who welcomed the arrival of Hülegü in Persia, and how their attitude towards the Mongols was by no means unremittingly negative. The qadis were willing to work together with the Mongols to an extent.

Once Hülegü came to Persia, some remaining obstacles to good relations between the qadis and their Mongol rulers needed to be overcome, one of which was Hülegü’s demand that the qadis recognize him as the legitimate ruler. Although a *qadi al-qudat* was among those who had invited the Mongols to rule in Persia, it remains questionable whether according to Islamic law, a non-Muslim could even be a legitimate ruler. This topic had been discussed in

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<sup>590</sup> Mustawfī, *Zafarnāmah*, p. 1166, Mustawfī/Ward, pp. 5-6

<sup>591</sup> Mustawfī, *Zafarnāmah*, 1168-9, Mustawfī/Ward, pp. 11-14

Islamic scholarship in the form of the question of whether an unjust Muslim or a just infidel ruler is better. Al-Busti had declared in 1010 AD that the “government (realm) may exist even along with unbelief, but not with injustice;”<sup>592</sup> and al-Ghazali also quoted this maxim, mistakenly attributing it to Muhammad.<sup>593</sup> However, Sadan writes that “most of the writers intended *to stress, by hypothetical example, the importance of justice.*”<sup>594</sup> Only a few even mentioned the possibility of a contradiction with the principle that a ruler should be Muslim; but the few that did, like Mawardi, make clear that the saying should not be used to give legitimacy to a non-Muslim ruler.<sup>595</sup>

Nevertheless, this obstacle was also overcome, probably through *taqiyya*, an Islamic principle which specifies that in time of need, a Muslim may dissimulate his true beliefs.<sup>596</sup> When Hülegü Khan put the question to them as to whether an unjust Muslim or a just non-Muslim is preferable,

“when they became aware of the proposed *fatwā*, they held back from giving an answer. Now Radi al-Din ibn ‘Ali ibn Ta’us was present at this meeting, and he was preeminent and respected. When he saw how they held back, he took the *fatwā* and wrote his reply on it, preferring the just infidel to the unjust Muslim, and the others wrote after him.”<sup>597</sup>

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<sup>592</sup> Sadan, “Community and Extra-Community,” p. 111

<sup>593</sup> *Ibid*, pp. 108, 111

<sup>594</sup> *Ibid*, p. 112 (italics in original)

<sup>595</sup> *Ibid*, p. 113

<sup>596</sup> Strothmann and Djebli, “*Taqiyya*,” in: *Encyclopaedia of Islam*, Second Edition, Brill Online

<sup>597</sup> Lewis, *The political Language of Islam*, p. 107

Hülegü's request and the reaction to it by Ibn Tawus and other clerics shows that these 'ulama were willing to compromise. Another instance of taqiyya concerned Ghazan Khan's desire to marry the wife of his late father Arghun, Bulughan Khatun. While such a marriage was typical for Mongols, under Islamic law it would be illegal.<sup>598</sup> Al-Safadi tells how Ghazan was willing to abandon Islam if the marriage could not be performed, but that one scholar came up with a solution: since Ghazan's father had not been a Muslim, the marriage between Arghun and Bulughan Khatun could be considered invalid, therefore Ghazan could marry Bulughan Khatun. Interestingly, "the unnamed scholar mentioned in this passage was subject to some criticism for his permissive interpretation of the law, but he replied that adopting an indulgent position and thus preventing Ghazan's apostasy and his subsequent antipathy to Islam was the best solution. This cogent explanation was accepted."<sup>599</sup> In addition, some qadis were willing to work for the Ilkhans directly, in particular after Ghazan converted to Islam, to draw up legal documents.<sup>600</sup>

These anecdotes show that, despite some hesitation about working together with the Mongols, a lenient attitude overrode hardline dogmatism. What contributed to this attitude was the hope that the Mongol rulers would convert to Islam, and once converted that they would gradually support Islamic practices more and more. In this sense, the attitude of the qadis mirrors that of other scholars, whether Sunni or Shia, who were willing to serve the Mongols. Nasir al-Din Tusi was one of the most famous scholars who joined Hülegü's entourage after the Assassin stronghold of Alamut, where he had been staying, was destroyed. The Juvaynī brothers, Shams al-Din the vizier and the Ala al-Din the governor of Iraq and historian, also seem to have served the Ilkhans with the hope that they would convert to Islam. This is

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<sup>598</sup> Schacht, "Nikāh," in: *Encyclopaedia of Islam*, Second Edition, Brill Online

<sup>599</sup> Amitai-Preiss, "Ghazan, Islam and Mongol tradition," p. 3

<sup>600</sup> Rashid, p. 1392, Rashid/Thackston, p. 691



shown by the construction of the Takht-e Suleyman, which Ata Malik and Tusi were closely involved with, and the ceramic tiles of which proclaimed Shi'a and Sufi-inclined Islamic beliefs.<sup>601</sup>

Like many Persian officials, qadis were often willing to regard the Ilkhans as legitimate rulers, and had personally positive relationships with the Ilkhans and the Mongol elite. One such qadi who had a positive relationship with the Ilkhans is Qadi Baydawi from Shiraz. One of his extant works is a short history of Persia, the *Nizam al-tawarikh*, which was perhaps “partly envisaged as an offering to the Mongol authorities to help secure his appointment to his father’s post [as qadi of Shiraz].”<sup>602</sup> The *Nizam al-tawarikh* recounts the history of Persia from the beginning (including pre-Islamic rulers of Persia) to Baydawi’s time. In his history, Baydawi praises the Mongol Amir Suqunchaq highly.

What is significant is that the *Nizam al-tawarikh* was extremely popular, at least based on the number of surviving manuscripts; it has several continuations, and was much quoted in later works, including Mustawfī’s chronicle.<sup>603</sup> The motives for writing were not just literary and scholarly, but also political and nationalistic.<sup>604</sup> Baydawi was the first historian after Juvaynī to present the Mongols as “merely another Iranian dynasty;”<sup>605</sup> and he did it in a much more explicit fashion than Juvaynī, who had achieved his end mainly through poetry and literary allusions.<sup>606</sup> Hülegü and Abaqa are mentioned in very positive terms, despite Abaqa’s

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<sup>601</sup> Melikian-Chirvani, “Le livre des rois, miroir du destin II: Takht-e Soleyman et la symbolique du Shāh-nāme,” pp. 33-148

<sup>602</sup> Melville, “From Adam to Abaqa,” p. 82

<sup>603</sup> Melville, “From Adam to Abaqa,” p. 71-4

<sup>604</sup> *Ibid.*

<sup>605</sup> *Ibid.*, p. 78

<sup>606</sup> Melikian-Chirvani, “Conscience du passé résistance culturelle dans l’Iran Mongol,” pp. 135-177

mocking of Juvaynī's Islamic faith at one point; the Salghurids of Fars are included; and the Ismailis and Khwarazmshahs are included but criticized.<sup>607</sup> In short, the Mongols are presented as the latest dynasty of Persia, and presented positively not least for being an enormous improvement on the immediately preceding dynasties.

Therefore, Persian qadis were by no means completely opposed to working together with the Mongol rulers, even in the early Ilkhanate, and some had very positive relationships with the Ilkhans or with Mongol amirs. Nevertheless, as in general they felt no need on a professional level to engage with the legal practices of their rulers, there was less opportunity for Persian and Mongol legal practices to influence each other.

#### The independence of the qadis from the Ilkhans

In Persia unlike China, the source of law was not considered to be the ruler, but rather it was found in religion. The source of law was considered to be God, and the legislation as already revealed and fixed according to the detailed scholarship of the four Sunni law schools. The task of government was considered to be conforming to and upholding the already existing body of law. This meant that there was a fundamental difference with China, where local officials were so keen on having the Mongol rulers produce laws for them. Persian qadis had no need of the central government to provide the laws according to which they would judge.

Therefore, communication between the central government and local qadis was less intense than in China. Communication did happen, of course: Rashid writes that qadis were

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<sup>607</sup> Melville, "From Adam to Abaqa," p. 80

continually coming and going from the *ordo*.<sup>608</sup> But it seems that apart from gaining appointment or having their appointment recognized, qadis did not consider communication with the central government essential to the way in which they performed their jobs. This is shown by the fact that most of the legal documents produced by qadis during the Mongol period were in Arabic, not Persian. There was indeed a trend towards greater use of Persian, but this had significant effects only after the Ilkhanid period.<sup>609</sup> The documents show some influence from Islamic law as practised in Central Asia. There were some changes in the way in which a property's size was reported in land contracts, for example the contracts could mention of the weight of seeds needed to plant the land, or occasionally the weight of the harvest, measurements which had previously only been used in Central Asia, and which found their way into these documents from Ardabil and northwestern Iran.<sup>610</sup> Influence from Mongol practices, however, is not noticeable. Monika Gronke writes in her edition of legal documents from Ardabil dating up to the 1250s that "it is not necessary to go into the details of historical events because the legal documents do not reflect them."<sup>611</sup>

The data shows that throughout the Ilkhanid period, the qadis were an extremely stable influence in society - Hoffmann calls them "islands of continuity"<sup>612</sup> in a sea of elite princes and bureaucrats whose heads rolled as soon as the wind changed. In the cities of Persia, the position of qadi was often held by the same family, or by the same few families, throughout the Ilkhanid period. This was not a departure from earlier practice, since the position of qadi

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<sup>608</sup> Rashid, p. 1446, Rashid/Thackston, p. 715

<sup>609</sup> Gronke, *Arabische und persische Privaturkunden*, p. 10

<sup>610</sup> Gronke, *Derwische im Vorhof der Macht*, p. 213; Nakhjavani, *Dastur al-Katib*, vol. 2, p. 293

<sup>611</sup> Gronke, *Arabische und persische Privaturkunden*, p. 1 n. 5: "Auf eine Darstellung der historische Ereignisse im einzelnen kann verzichtet werden, da sie in den vorliegenden Urkunden keine Rolle spielen."

<sup>612</sup> Hoffmann, *Waqf im Mongolischen Iran*, 48

had already become strongly hereditary.<sup>613</sup> The hereditary tendency contributed to the ability of the qadis to function nearly independently of the central government.

In Tabriz, there were at least three families of qadis that spanned the Mongol period and beyond. The first of these is the Haddadi / Shaybani family, whose members had been qadis in Tabriz for generations who had the additional *nisba* al-Tabrizi. Rukn al-Din ‘Abd al-Malek is attested for Tabriz for 1218. In 1266 Ibn Fuwati met Izzuddin Abu’l Abbas Ahmad b. Qiwamuddin Muhammad b. Abdulmalik al-Haddadi, who had ‘inherited’ the office of qadi from his father (Qiwamuddin), in Tabriz at the home of a relative, the khatib Shihabuddin al-Haddadi.<sup>614</sup> According to Mashkur, he was born and grew up in Baghdad and died in Syria.<sup>615</sup> Ibn al-Fuwati also knew a Fakhruddin Abu al-Fazl Ahmad b. Muhammad b. Abd al-Malik al-Haddadi who, if it can be true that two brothers with the same name were qadis in Tabriz, should be a brother of Izzuddin Abu al-Abbas.<sup>616</sup> A certain Ibn Muhammad al-Shaybani made one of the oldest annotations on the *Waqfname-ye Rashidi*, which is dated 1310;<sup>617</sup> and a legalisation in the *Majmū‘a* of Rashid al-Din is from Mahmud b. Abdullah al-Haddadi, who can be assumed to be a grandson of Qiwamuddin. Qiwamuddin Muhammad al-Haddadi al-Shaybani was qadi in 1383; other members of the al-Haddadi family are also attested at this time.<sup>618</sup>

Other Tabrizi qadi families that spanned the Mongol period are the al-Sharif family and the Qazwini family. The al-Sharif family is significant in that there is evidence of links between

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<sup>613</sup> Hoffmann, *Waqf im Mongolischen Iran*, 48

<sup>614</sup> Ibn al-Fuwati, *Talkhīs*, 4:1, 16, no. 10

<sup>615</sup> Mashkūr, *Tārīkh-i Tabrīz*, p. 822

<sup>616</sup> Ibn al-Fuwati, *Talkhīs*, 4:3, 100, no. 1973

<sup>617</sup> Hoffmann, *Waqf im Mongolischen Iran*, p. 49

<sup>618</sup> *Ibid*, p. 50

its members and the eminent vizier Rashid al-Din, which means that, though the qadis of Tabriz do not seem to have had direct personal relationships with the Mongol Ilkhans, they were nevertheless only one relationship removed. Ibn Fuwati met the Sharifi qadi Majd al-Din ‘Abdallah b. ‘Umar b. Muhammad at the house of Rashid al-Din, which would seem to indicate (although it cannot be proven) a friendship between the qadi and the vizier. Rashid al-Din also answered a theological question of the qadi, and although he wrote much to try to answer critics who branded his Islam as unorthodox, it still shows engagement with theological matters at the highest levels of the Ilkhanate, as well as among the elite of the city. Although it is possible that Rashid’s relations with Islamic scholars were polemical, it is also quite possible to imagine them inviting each other to their houses for friendly theological debate.

Another family of qadis which is attested is the Khurasani family, but it seems to have established itself later than the other families: the earliest documents that *could* be connected with people from the Khurasani family are found in a *waqf* document from 1303; the family is also attested for 1382 and 1408.<sup>619</sup> Its members were writers of legal documents, who called up witnesses, or legalized *zawiyas*, and also signed the *waqfnamah* of Rashid al-Din.<sup>620</sup>

Although hardly any legal documents which these qadis handled have survived (the *waqfnamah* of Rashid al-Din is a significant exception), the legalisations from these documents, as well as the testimony of al-Fuwati, show that the Islamic legal system in Tabriz was functioning and apparently, not in any way abnormally. The qadis continued in their jobs, and due to the Islamic legal sources and to the qadiship being passed on through

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<sup>619</sup> *Ibid*, pp. 51-2

<sup>620</sup> *Ibid*.

inheritance as is clearly seen in the case of the Haddadi-Shaybani family and of the other qadi families, they operated largely independently from the Ilkhanid government.

It is true that one qadi was executed by the Mongol in the main square of Tabriz, however this was Qutb al-Din, the brother of the vizier Sadr al-Din, who had engaged in power politics at the court.<sup>621</sup>

In Ardabil likewise, a family of qadis, the Kakuli family, spanned the Mongol period, showing how the position of qadi remained largely hereditary and stable. The first qadi of this family who is known is Jamal al-Din Isma‘il b. Hamid b. Ahmad, who was judge, writer of judicial documents and a witness as well, and is mentioned for the years 1181-1229.<sup>622</sup>

Although Rashid al-Din claims that an unnamed qadi of Ardabil was put to the sword for “executing fraudulent cases,” this is not substantiated by any other source. Given that Rashid al-Din had a vested interest in making Ghazan’s government appear effective, it can be doubted whether a qadi of Ardabil was really executed as he claims.<sup>623</sup>

The qadis of Ardabil did feel a challenge to their judicial methods, but it did not come from the Mongols; rather, the leader of the Sufi order in Ardabil also claimed the insight and equity needed to judge cases fairly, and in fact presented a significant locus of rivalry to the local qadis. Shaykh Safi said to Qadi Nasir al-Din of Ardabil: “Maulana, in this city [Ardabil] there are libertines, oppressors, drinkers of wine, grippers (*‘awan*) and other people who are

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<sup>621</sup> Rashid, p. 1285, Rashid/Thackston, p. 642

<sup>622</sup> Gronke, *Arabische und persische Privaturkunden*, 66-70. The earliest evidence is a document written by him at dated 17. February 1181, which is no. 41 in the Freiburger Verzeichnis; Gronke, *Derwische im Vorhof der Macht*, p. 155

<sup>623</sup> Rashid, p. 1401, Rashid/Thackston 695; Morgan, “Rašīd al-Dīn and Gazan Khan,” pp. 179-188

not on the straight path, but Maulana does not hinder them.”<sup>624</sup> He also told him, “Maulana, since you know that one should not practice injustice and violence as a qadi, why do you still do it? Have you not read that the most high God has created a mill in hell, which is powered by the blood of unjust qadis and in which the heads of unjust qadis are crushed into small pieces?”<sup>625</sup> The *qadi al-qudat* Shams al-Din Mobarakshah had to hear these words directed at him: “The judges (*mawali*) prevent the people from eating the forbidden food, yet they eat it themselves. Will the people not say: ‘If they tell the truth, why do they eat it themselves?’”<sup>626</sup>

Since the antipathy was mutual, it is likely that insults did not fly in just one direction only. Sheikh Safi was often attacked with regards to the wealth of the order, and was accused of stealing a quantity of silk during disorders in Gilan.<sup>627</sup>

In Shiraz, the Baydawi family vied with the Fali-Sirafi family for the position of qadi. Although the Mongol general Suqunchaq played a role in this contest, re-instating al-Baydawi to his position as qadi after he had been deposed,<sup>628</sup> it is also apparent that the ulama of Shiraz played a major role in selecting a qadi and were able, most of the time, to have their favourite candidate as qadi of Shiraz. While Qadi Baydawi’s friendly relations with Suqunchaq Noyan enabled him to appeal to him in order to be reinstated, once he had his qadiship he didn’t seek the help of Suqunchaq or of any Mongols to carry out his duties.

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<sup>624</sup> Ibn Bazzāz, *Ṣafwat al-ṣafā*, p. 572

<sup>625</sup> *Ibid*, p. 574

<sup>626</sup> *Ibid*, p. 575

<sup>627</sup> *Ibid*, pp. 1060-1061; Gronke, *Derwische im Vorhof der Macht*, p. 266

<sup>628</sup> Limbert, *Shiraz in the age of Hafez*, 83; Calverley and Pollock, *Nature, man and God in medieval Islam*, xxx n. 11

He presumably became judge in Shiraz after his father's death in 1274-5, possibly after a trip to Tabriz to gain this appointment, but he was removed again in 1278-9, when the governor of Fars accepted the young Fakhr or Majd al-Din Isma'il of the Fali-Sirafi family instead of him.<sup>629</sup> He travelled to Tabriz, and was restored to office again sometime in 1279-81. Subki recounts that

“He entered a school there [in Tabriz] and took one of the back seats because no one there knew him. The instructor put to those present a question which he said none of those present could solve or repeat. Then Baydawi started to answer. The instructor said, “I will not listen until I know that you understand the question.” Al-Baydawi said, “You may choose whether I should repeat the question word for word, or give the sense of it.” The teacher was surprised and said, “Repeat the question word for word.” Then Baydawi repeated it and then gave the solution, and showed that the teacher had not stated the problem accurately. Then he confronted the instructor with a similar problem and requested him to solve it, but the instructor begged to be excused. The wazir [of the empire] happened to be present and called Baydawi to his side, and when he found out who he was, he had Baydawi returned to his position in Shiraz.”<sup>630</sup>

Vassaf states that Baydawi was reinstated through the intervention of Suqunchaq Noyan. According to Vassaf, Suqunchaq made a partial concession to the assembled ulama who preferred a member of the Fali-Sirafi family instead, and appointed joint qadis.<sup>631</sup> Vassaf then

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<sup>629</sup> Calverley and Pollock, *Nature, man and God in medieval Islam*, xxx n. 11

<sup>630</sup> Subki, translation reproduced in Calverley and Pollock, *Nature, man and God in medieval Islam*, xxxi

<sup>631</sup> Limbert, *Shiraz in the age of Hafez*, p. 83



says that the ulama's favourite Fali-Sirafi soon took the major role. In any case, Baydawi did not remain in office for long and returned to Tabriz.

Therefore, qadis were fully able to operate independently of the Ilkhans, and did so. Only in the matter of appointment to office did they sometimes require the support of the Ilkhans or provincial governors, as can be seen from the case of qadi Baydawi and some of the qadis of Baghdad. It is true that the Ilkhans represented an alternative locus of judicial authority to which those who had the resources and the connections could turn. According to the *Safwat al-Safa*, some Kirmani notables and scholars planned to go to the Ilkhanid *ordo* at Qarabagh Arran for a judgment on their case; but when they reached Ardabil, they changed their minds, preferring to have their dispute resolved by Sheikh Safi."<sup>632</sup>

However, the number of those able to appeal to the *ordo* was limited, and the crucial point is that qadis themselves did not feel any need to modify their practices as a result of the 'competition' from the Ilkhans as judges. In fact, scepticism towards governmental authority in matters of law was widespread, as can be seen from this anecdote:

“Sheikh Sadr al-Din said: Once, some slanderers had a serious argument with the disciples of the Sheikh. The Sheikh left the city. The band of disciples and admirers started the missionary work and accompanied the Sheikh from village to village, until in this way he came to the vicinity of Tabriz. The vizier Ghiyath al-Din Mohammad Rashidi heard about this. The Sheikh was escorted to Tabriz and accommodated in the *khanqah* of the vizier. There were a great number of people there. The Sheikh remained there for a while, but did not bring a complaint [against the slanderers] and

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<sup>632</sup> Ibn Bazzāz, *Ṣafwat al-ṣafā*, p. 716; Gronke, *Derwische im Vorhof der Macht*, p. 125

when any of the disciples wanted to bring a complaint he did not allow it. He remained there for a while and then left. [The disciples of the Sheikh] said: “We have been here for a while and we were even in the *ordo*, yet the Sheikh has not said anything [about the slander] and has not allowed us to talk about it.” The Sheikh said: “We have a different *ordo* to which we can appeal! You have not allowed us to go to our own *ordo*. Because we turned towards another *ordo*, the sublime God was angry and has not allowed the matter to progress.” They said, “Sheikh, what should we do now?” He said: “If we turn to the heavenly military camp [all will be well],” and he returned [to Ardabil]. Not long after, all the slanderers encountered disaster and that which was wished came to pass.”<sup>633</sup>

While this relates to a religious event, it nonetheless illustrates the suspicion of secular power (and ‘state law’) which is quite frequent throughout Islamic history. The story, whether only embellished or even invented, shows that suspicion of state actors resolving legal issues could occur under any circumstances, even a generation *after* the Ilkhans turned to Islam.

Not seeing the Ilkhans as a higher authority in matters of law meant that Mongol influence on them was extremely limited. This was the distinctive nature of the relationship between the qadis and the Toluid rulers in Persia, a relationship that was completely different from that with local officials in Yuan China.

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<sup>633</sup> Ibn Bazzāz, *Ṣafwat al-ṣafā*, p. 754

## Mongol influence on law in Persia

The result of the self-reliance of the Persian qadis was that, though the Ilkhans imposed, in the trials which they themselves judged, many of the same punishments as did the Qa'ans in China, there was little widespread influence. Military exile failed entirely to have any wider impact, while there may have been some, though very limited, influence of the idea that the number of strokes in a beating should end in 7. Confiscation was practised, but only among those most closely connected with the Ilkhanid government and not, as in China, at the local level. Only the practice of using bloodless execution methods for nobles had wider impact, and this was because of cultural influence that started before the Mongol period in Persia.

### i. Beatings

The significance of the number 7 for Mongols was reflected in beatings in the Ilkhanate as well as in Yuan China, as has been noted by Ma'dankan.<sup>634</sup> The difference was that in the Ilkhanate numbers of strokes ending in 7 were not formalized through any legislation, and might not have been reflected in the qadis' verdicts even if they had been. Therefore, this Mongol preference had little wider impact and seldom affected people unless they were in direct contact with the Ilkhans. Because of their overall good relationship with the qadis and the freedom they allowed qadis to use their own laws on the local level, punishments imposed by the Ilkhans remained just that.

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<sup>634</sup> Ma'dankan, *Be yasa rasanidan*, p. 9

Use of the number 7 in beatings imposed by Mongols can be seen in several cases. Most examples involve numbers of strokes ending in 7. In 1263 Altagu, who was leading an army against Saljuq Shah, refused his counselor and servant Dumar's advice to massacre the population of Shiraz. When a rebellion broke out, he was given 17 strokes for refusing to follow the advice.<sup>635</sup> Tughan, in the time of Arghun, was likewise given 17 strokes.<sup>636</sup> In 1303 when Ghazan got news of the Mongol defeat in Syria, according to Vassaf, he was disturbed. In the year 1303 he prepared a committee of advisors and judged the amirs. The Ilkhan ordered that they be beaten with 87, 77 and 37 strokes according to their rank.<sup>637</sup> Some falconer officers of Ghazan were given 77 strokes each by an ilchi (envoy) for requisitioning fodder and provisions when in fact the court had provided for their needs.<sup>638</sup> In addition, the case of Abatai Noyin involves the number 70; he was given 70 strokes for not having taken good care of Jumghur, whom he was meant to bring to Hülegü.<sup>639</sup> These examples show that the number 7 in beatings was a reality in the Mongol context in Persia.

While there was no formal mechanism for the Mongol practice to be transmitted to Persians, it is possible that there was some influence through imitation. A caution needs to be inserted here as the numbers 7 and 17 were already influential in the Islamic context, so that use of these numbers does not necessarily indicate Mongol influence.<sup>640</sup> Therefore, the following examples could be a result of Mongol influence, but not necessarily so: Three watchmen in the time of Abaqa were given 70 strokes for falling asleep on the job by Baha al-Din son of

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<sup>635</sup> Vassaf, p. 192; Vassaf/Ayati p. 112

<sup>636</sup> Vassaf p. 231, Vassaf/Ayati, p. 139

<sup>637</sup> Vassaf, p. 414; Vassaf/Ayati, p. 248-9; Rashid, p. 1315; Rashid/Thackston, p. 657

<sup>638</sup> Rashid, p. 1523; Rashid/Thackston, p. 753

<sup>639</sup> Rashid, p. 1064; Rashid/Thackston, p. 519

<sup>640</sup> Melikoff, "Nombres symboliques dans la littérature épico-religieuse des Turcs d'Anatolie," pp. 435-445; Deny, "70-72 chez les Turcs," pp. 495-416

Shams al-Din Juvaynī, who was then governor of Esfahan, Tumanat and Iraq.<sup>641</sup> Another example concerns a Shiite maulana who erased the word ‘not’ from the inscription [لعن الله من لا يلعن ابن العلقمي] (May God curse those who do not curse Ibn al-‘Alqami<sup>642</sup>), which in the years following the conquest of Baghdad used to be written on the gates of madrasas, houses and karavanserais. He received 70 strokes for this offense.<sup>643</sup> This episode occurred not long after the Mongol conquest of Baghdad and it is conceivable that the chastisers imitated a Mongol practice. These examples show that while the Mongol practice of using the number 7 in punishments was present in Persia, it may have had some but only very limited influence outside of the Mongol context.

## ii. Military exile

Military exile, another Mongol practice which had enormous influence within China, had no wider influence within Persia. This was not because the Ilkhans were not using this punishment, but because the qadis were uninterested in Mongol practices and the Ilkhans were flexible enough not to insist on others using them.

Ata Malik Juvaynī, who had grown up in a Mongol *ordo* and served the Mongols and then the Ilkhans for many years,<sup>644</sup> speaks of sending people for military exile as a custom of the Mongols, though he does not mention any specific examples of it being imposed in the

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<sup>641</sup> Vassaf, p. 62; Vassaf/Ayati p. 35

<sup>642</sup> Ibn al-‘Alqami was a Shia advisor of the last Caliph al-Musta`sim

<sup>643</sup> Vassaf, p. 42; Vassaf/Ayati p. 23; Vassaf/Wentker, vol. 1, p. 83 [Persian], p. 80 [German translation]

<sup>644</sup> Lane, “Persian notables and the families which underpinned the Ilkhanate,” p. 3

Ilkhanate. He clarifies that the person who was being sent was not necessarily expected to return.

“It is the custom of the Mongols in the case of a criminal who is worthy of death but whose life has been spared to send him into the wars; arguing that if he is fated to be killed he will be killed in the fighting. Or else they send him on an embassy to foreign people who they are not entirely certain will send him back: or again they send him to hot countries whose climate is unhealthy.”<sup>645</sup>

Confirmation that military exile was used during the Ilkhanate itself comes from Vassaf. He comments on the fate of Engianu, the governor appointed to Fars by Abaqa in 1268-9, who was accused by his Persian colleagues of overambition and ruining the province. Engianu escaped the death penalty, but Ilkhan Abaqa then sent him on a mission to Qubilai Qa’an. The reason, Vassaf says, was that this was how Mongols would deal with amirs they were angry with: they would send them on the dangerous journey to the Qa’an or send them to fight against rebels.<sup>646</sup> Vassaf’s testimony implies that military exile was a frequently used punishment employed by the Mongol rulers.

In addition, Rashid al-Din also mentions the practice of military exile. “After [October 13, 1295], Nawroz, Nurin, and Qutlughshah held a special session to investigate the offending amirs [who had opposed Ghazan].” After Qunchuqbal was put to death, “Toladai, Chechak, and Idachu were beaten, released, and assigned to Khurasan to find expiation for their crimes in the field of battle against the enemy.”<sup>647</sup>

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<sup>645</sup> Juvaynī, pp. 38-9; Juvaynī/Boyle, p. 53

<sup>646</sup> Vassaf, pp. 194-5; Vassaf/Ayati, p. 113

<sup>647</sup> Rashid/Thackston, p. 629

Therefore, military exile was used in the Ilkhanate just as in Yuan China. The difference in impact can be explained only through the flexible attitude of the Toluid khans coupled with the ambivalent reactions of the local qadis themselves to Mongol rule.

### iii. The death penalty

The principle of not shedding the blood of nobles is the one aspect of punishments which had long-term influence in the Ilkhanate. This was due not to direct influence on local qadis but to wider cultural influence. The Ilkhans' use of this principle reinforced prior Turkish influence in Persia.<sup>648</sup> In addition, this principle affected few people, mostly those at the top of society, and the implementation of bloodless executions was also the work of leaders and rulers. It would seem to be no accident that the greatest Mongol influence on punishments in Persia occurred in the realm of the *siyasa*, which did not depend on nor require the input of qadis, rather than in the realm of *Shari'a*; though in theory the public realm should also conform to Islamic principles.

The idea that nobles' blood should not be shed had been circulating in the territory of the future Ilkhanate for some time, due to Turkish influence. An early example is Caliph Mutawakkil putting the Turkish army leader Itakh to death by weighing him down with iron chains and possibly making him die of thirst. Then he summoned the judges of Baghdad and

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<sup>648</sup> Köprülü, "La proibizione di versare il sangue," pp. 18-9

the head of the postal service to examine the corpse and witness that Itakh had not been beaten or marked in any way.<sup>649</sup>

It seems that Mongol rule meant that the practice of executing some people without shedding their blood continued, although the precise ranks of who was eligible for an ‘honorable’ dispatch were changing. Of the Ilkhans who were executed, all were put to death using a bloodless execution method. In the year 1284 the Ilkhan Ahmad Tegüder had his back broken.<sup>650</sup> Geikhatu and Baidu were both strangled.<sup>651</sup> Geikhatu was strangled with a bowstring, according to Vassaf.<sup>652</sup> This not only reflected concern for not shedding any blood, it also used a very symbolic item – the bowstring – to perform the operation. While it is true that bows and bowstrings were readily available, its use reflects considerations of power and status. It must have been considered a very “honourable” dispatch. Baidu was put to death in the year 1295, and as later Ilkhans died natural deaths, it is impossible to verify whether the principle of not shedding nobles’ blood would have been applied to them. Nevertheless it is noteworthy that none of the sources even suggests that the blood of any Ilkhan was shed.

As for members of the royal family who were not themselves khans, the principle seems not to have been continuously upheld. While certain people of importance were executed in ‘honorable’ ways throughout the Ilkhanate, some members of Chinggis Khan’s Golden Family were not. Qonqurtai son of Hülegü had his back broken in Qarabagh in 1282.<sup>653</sup> Around the end of the Ilkhanate, Arpa Khan had Malek Sharaf al-Din Mahmud Shah Inju,

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<sup>649</sup> Kennedy, *The Court of the Caliphs*, p. 238

<sup>650</sup> Vassaf, p. 136; Vassaf/Ayati, p. 80; Rashid, p. 1147; Rashid/Thackston, p. 559

<sup>651</sup> Orbelian, *Histoire de la Sioumie*, p. 260; *Histoire de la Georgie*, p. 615

<sup>652</sup> Vassaf, p. 279; Vassaf/Ayati, pp. 169-70

<sup>653</sup> Vassaf, p. 125; Vassaf/Ayati, p. 74



Shahzade and other descendants of Hülegü put to death by strangulation.<sup>654</sup> On the other hand, in the year 1303 prince Horqudaq was decapitated.<sup>655</sup>

The principle of not shedding the blood of honoured or important people was also respected by non-Mongols, as can be seen from the case of Terkan Khatun, the ruler of Kerman, who had Soyurghatmish, the son of her husband who had been challenging her position, put to death by strangulation.<sup>656</sup> In 1327, Ghiyath al-Din the ruler of Herat had Amir Chupan put to death with a bowstring.<sup>657</sup>

#### iv. Confiscation of property or family members of the accused.

The confiscation of the property and / or the family members of condemned individuals was also practiced in the Ilkhanate. Unlike in the Yuan dynasty, however, the practice was not codified in legislation, and it probably affected mostly government officials and other elites. Although it seems probable that it resulted at least partially from Mongol influence, this cannot be proven because fining or confiscation of possessions, especially of government officials, was common in Islamic lands.

The name of *musadara* was given to a practice frequent in Islamic lands which entailed “the confiscation of the property of statesmen upon their death or dismissal from office.”<sup>658</sup> Under the Saljuqs as well as under the Mamluks and Ottomans, *musadara* was frequent. For

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<sup>654</sup> Ḥāfiẓ Abrū, *Zayl-i Jāmi' al-tavārikh-i Rashīdī*, p. 192

<sup>655</sup> Vassaf, p. 465; Vassaf/Ayati p. 273

<sup>656</sup> Shabankara'i, *Majma' al-ansab*, p. 201

<sup>657</sup> Shabankara'i, *Majma' al-ansab*, p. 284

<sup>658</sup> Hallaq, *Shari'a*, p. 212

example Toghril's vizier, Abu al-Qasim al-Darguzini, "ordered confiscations and caused suffering to the great families" of Jibal or Isfahan.<sup>659</sup> Many *waqfs* were even instituted partially in an attempt to safeguard family property from confiscation, a strategy which was not necessarily effective.<sup>660</sup> One personal recollection of a confiscation is as follows:

"I remember the arrival of Qara-Sonqur. His vizier, 'Izz al-Mulk Abu l-'Izz al-Burujirdi was one of the fiends with whom [Abu l-Qasim] al-Darguzini surrounded himself when he was in power. He laid his hands on the remainder of our property that had escaped the [previous] confiscations. He scattered the members of our family and kinsfolk."<sup>661</sup>

From this example it can be seen that, although *musadara* theoretically referred to property, family members were also sometimes confiscated.

The confiscation of property of government ministers and officials who had fallen out of favour or been executed was frequent in the Ilkhanate. Although some of these examples report "plundering" rather than "confiscation," from the Mongol point of view the practice has its roots in the vengeance system, and plundering is similar to confiscation.

When hostility broke out between the Ilkhanate and the Golden Horde, Hülegü ordered that not only should the merchants related to Berke Khan be put to death, their possessions should also be confiscated and handed over to the treasury.<sup>662</sup> In the year 1297, after Hajji Narin,

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<sup>659</sup> Durand-Guedy, *Iranian Elites and Turkish rulers*, p. 258

<sup>660</sup> *Ibid*, p. 223

<sup>661</sup> Bundari, quoted in *Iranian Elites and Turkish rulers*, pp. 220-1. This event occurred in Isfahan in 1136/7.

<sup>662</sup> Vassaf, p. 50

Nauruz's brother was executed, his "tents and flocks were plundered," according to Rashid al-Din.<sup>663</sup>

The vizier Shams al-Din Juvaynī and his brother 'Ala al-Din suffered repeated demands for money; 'Ala al-Din died partly because of the stress and anxiety of these requests, while Shams al-Din was executed not long thereafter. In fact the torture and extortion demands which preceded their deaths seem like a textbook case of *musadara*, which sometimes aimed at recouping the money and property that wealthy ministers had accumulated before they were put to death. Rashid al-Din mentions that after the execution of Shams al-Din Juvaynī, "Buqa sent Amir Ali to Tabriz to take control of his property and holdings."<sup>664</sup>

After the vizier Sa'd al-Dawla was put to death in 1291, Tukul and Toghan, two of the amirs who had earlier conspired to have him put to death, acted:

"Tukul and Toghan went to Sa'duddawla's estates, and the soldiers began to pillage. The homes of both Muslims and Jews there were completely ransacked, and the floors of tents were dug up in search of buried treasure. At dawn the soldiers moved out and created chaos, carrying away everything they found and leaving the people enmeshed in turmoil and strife."

In addition, when Eljighitai, the son-in-law of prince Alafrang, was executed by order of Ghazan shortly before Ghazan's enthronement in 1295, "all he had was given to Bulughan Khurasani," who was one of Ghazan's wives.<sup>665</sup> The vizier Buqa's property was confiscated

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<sup>663</sup> Rashid, p. 1276, Rashid/Thackston, p. 637

<sup>664</sup> Rashid, p. 1160, Rashid/Thackston, p. 565. See also Rashid p. 1157, Rashid/Thackston, p. 564

<sup>665</sup> Rashid, p. 1259, Rashid/Thackston p. 627 n.

by the Ilkhan.<sup>666</sup> After the execution of Sa'd al-Din Savaji, also a vizier, in the year 711, his property was confiscated.<sup>667</sup> Ibn al-Suqai says that after the vizier Rashid al-Din's death, all of his property was confiscated; according to the admittedly late source the *Zeil Jami al-tavarikh*, the confiscation included Rashid's extensive *waqf*.<sup>668</sup>

And after the end of the Ilkhanate, after the execution of Ghiyath al-Din son of Rashid al-Din, Rashid al-Din's *waqf* (which it seems, had survived the first 'confiscation') was plundered again.<sup>669</sup>

As in China, confiscation was not limited to the confiscation of possessions. The confiscation of people in the Ilkhanate started with several relatives of the Caliph. Although the Caliph was executed together with a large number of his family members and other dependents, other descendants of his were not put to death<sup>670</sup> and were instead confiscated and treated, essentially, as war booty. Minhaj-i Saraj puts it this way:

“Hulau seized all the treasures of Baghdad, the enumeration of, and amount of which wealth, the pen of description could neither record, nor the human understanding contain, and conveyed the whole – money, jewels, gold and gem-studded vases, and elegant furniture – to his camp. Such of these as were suitable for Mangu Khan [Ka'an], with some of the females of the Khalifah's haram, together with a daughter of the Khalifa, he [Hulau] dispatched towards Turkistan; some [things?] were sent, as

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<sup>666</sup> Vassaf, p. 234

<sup>667</sup> al-Qāshānī, *Tārīkh-i Uljaytū*, p. 129

<sup>668</sup> Ḥāfīz Abrū, *Zayl-i Jāmi 'al-tavārīkh-i Rashīdī*, p. 129

<sup>669</sup> Ḥāfīz Abrū, *Zayl-i Jāmi 'al-tavārīkh-i Rashīdī*, p. 196; Hoffmann, *Waqf im Mongolischen Iran*, pp. 46, 143

<sup>670</sup> Heidemann, *Das Aleppiner Kalifat*, p. 53

presents, and as his portion, to Barka, the Musalman, and some Hulau himself retained.”<sup>671</sup>

Other sources mention that there were three daughters of the Caliph who survived and were taken towards Turkestan. One of them, Fatima, presumably committed suicide;<sup>672</sup> Khadija later married the son of a famous scholar and returned to her native land in 1273-4 with Abaqa’s permission;<sup>673</sup> the third, Mariam returned to Baghdad and was still living in 1282-3.<sup>674</sup> In addition, the youngest son of the Caliph survived; also treated essentially as war booty, he was given to Hulagu’s wife Oljai Khatun, and according to Rashid al-Din later married a Mongol woman and had children.<sup>675</sup> Ibn al-Kāzarūnī gives the names of four of his children, the Caliph’s grandchildren, thus showing that they were alive at the beginning of the 14<sup>th</sup> century.<sup>676</sup>

While the fate of the Caliphal family still played out in an essentially warlike context, later examples from Ilkhanate show that confiscation of family members was also used in contexts not connected with warfare.

In the case of Buqa, the vizier who was put to death for treachery in 1289, according to Vassaf, Arghun:

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<sup>671</sup> Juzjani, p. 198, Juzjani/Raverty, pp. 1255-8

<sup>672</sup> Juzjani, pp. 198-9, Juzjani/Raverty, p. 1258

<sup>673</sup> Ibn al-Kāzarūnī, p. 276ff.

<sup>674</sup> Ibn al-Kāzarūnī, p. 277

<sup>675</sup> Rashid, p. 1018, Rashid/Thackston, p. 499

<sup>676</sup> Ibn al-Kāzarūnī, p. 275ff

“ordered that his ... property be plundered and his followers such as Maju and Taghlaq Qarunas and Teghli and Eshek Teghli and Sovana Bakhshi and Tushkne with the na’ibs Hesam al-Din Qazvini and Amir Ali Malek Tabriz and the children and ... be put to the sword and their women and daughters be distributed among the army, and he also ordered that those killed be left in the desert/field for the wild animals ... to eat and this they did. Then every person who had the least connection to him was arrested and punished.”<sup>677</sup>

Taghai, the twelve-year-old son of Hajji Narin and nephew of Nauruz, was saved from the death penalty, but became an attendant upon Amir Husain Güregen’s flocks and herds, and “His people were given to Bulughan Khatun Khurasani.”<sup>678</sup>

From this it can be seen that the confiscation of possessions, and sometimes of family members and dependents as well, was practiced in Ilkhanid Persia. However due to the absence of extant legislation on this issue, it remains difficult to determine to what extent such a practice was systematic or to what extent it may have affected people other than government officials. Most probably, the influence of this practice was not deep enough to have any impact on local practices.

## Conclusion

The relationship between qadis and Ilkhans was thus very different from that between Chinese local officials and Qa’ans; where the Chinese officials in general wanted to

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<sup>677</sup> Vassaf, p. 234

<sup>678</sup> Rashid, p. 1276, Rashid al-din p. 637

implement the laws produced by the Qa'ans, qadis had their own sources of authority and did not always appreciate the Ilkhans' involvement. While personal relationships between qadis and Ilkhans or amirs may have been positive, there was no regular communication about legal matters between the central government and the provinces such as was the case in China.

As a consequence, Mongol influence on punishments in Persia is very small; the number of strokes in beatings ending in seven may have had some influence but in a limited number of cases, while the practice of using bloodless execution methods for nobles took hold, but likewise affected a minuscule proportion of the population.

The difference in impact of Mongol punishment methods in China and in Persia should give some insight into the attitudes of the Mongols, Chinese and Persians. Since the Ilkhans required from qadis political allegiance but not the implementation of Mongol punishments, the same Mongol punishments that had great influence in China remained without wider effect in Persia. It was only because the Toluids were flexible and accommodating towards existing legal systems that the attitudes of the local qadis and local officials in China were able to have such a massive impact on the outcome.

This shows that the main reason why Mongol punishments were influential was not because the Toluids were trying to impose them on the conquered populations. Although the contribution of some rulers and individual Mongols, for example some employed in the *dazong zhengfu*, was important, the main factor was the attitude of those dealing with legal cases at the local level. Rather than the Toluids trying to impose their own ways, it is more revealing to see the question in terms of whether and how much local officials wanted to be involved with the Toluid rulers.

## **Conclusion**

This research has shown that it is possible to perceive Mongol law differently from the legendary 'Great Yasa,' and to discover characteristics which were more enduring and influential than many of the substantive Mongol laws themselves. Where the idea of the Great Yasa encourages us to focus on the rigid and the unmoveable, it is necessary to move beyond to ask how the Mongols' life on the steppe influenced their perceptions of legality. It is for this reason, and not merely because there is no evidence for the Great Yasa as a law code, that the concept should be rejected.

Rather, it has been productive to focus on the flexibility of the Mongols' approach towards other laws and legal systems. Flexibility was built into the Mongol attitude towards others in the form of the principle of collegiality, which was exemplified firstly through the *quriltai*, but which allowed changes in laws and procedures to take place as long as the key stakeholders were all involved in decision-making. The principle of collegiality was so treasured by Mongols and by the Toluid rulers that it was influential both in the Ilkhanate and in Yuan China, although it had an especially deep impact in China.

The differences in terms of the depth of Mongol influence on law in Persia and China show us the importance of the attitudes of those judging legal cases at the local level. In Persia where *qadis* were not so interested in implementing laws produced by their rulers, the Ilkhans did not try to force them to accept Mongol laws. In China where local officials believed they needed laws from the Yuan emperors, the Mongols obliged, not to the extent that some would



have wished, but to the extent that Mongol law left a deep impact in China due to all the discussions and negotiations taking place between Mongols and Chinese. It is significant that pressures to adopt a unified legal system came from Persians and Chinese rather than from the Mongols, and that Chinese scholars' clamour for the Yuan emperors' involvement in legal matters had the counterproductive effect of ensuring more Mongol influence on the law.

Although adherence to 'the Yasa' may have *become* a kind of identity in post-Mongol Central Asia, when one was trying to recapture the prestige of Chinggis Khan and his accomplishments, during the building of the Mongol empire and in the Toluid empire, strict adherence to all Mongol laws was not part of the Mongol identity. Rather, the principle of collegiality may be one of the elements of their legal system which was held the deepest and which endured the longest, even when faced with unprecedented pressures from worldviews different from the Mongols'.

## **Appendix**

The following appendix lists known yarghuchis in the unified Mongol empire, in the Ilkhanate and in the Yuan dynasty. Where the individuals are mentioned in the *Yuan Shi*, the Chinese form of their name is given.

A list of yarghuchis in the Ilkhanate has not been attempted to date to my knowledge. In order not to omit any relevant information, included in this section are personages described in the sources as yarghuchis, as well as those who are not described as yarghuchis but nevertheless presided at trials. This is because yarghuchis are not always consistently described as such in the sources.

The section on yarghuchis in the Yuan dynasty is based primarily on Jagchid, *Menggu shi luncong*, pp. 293-329, with some additions. Jagchid's transliterations of the Chinese names are indicated in parentheses.

Yarghuchis in the unified Mongol empire	
Belgütai 別里古台	The first yarghuchi appointed by Chinggis Khan; he was Chinggis' half-brother. <sup>679</sup>
Shigi Qutuqu 胡土虎那顏	The first with a permanent position as yarghuchi, he was Chinggis' foster-son or foster-brother. Members of the <i>keshig</i> were to assist him in deciding legal cases. "He conducted very proper trials and treated the accused fairly and sympathetically. He often would say that one should not confess out of fear. "Do not be afraid," he used to say, "and speak the truth." It is well known among yarghuchis that from that time until the present in the province of Mongolia they conduct inquiries upon the principles laid down by him." <sup>680</sup> Later, "In [1234], in the autumn in the seventh month, [Shigi] Qutuqu noyan became Zhongzhou (today Kaifeng)'s duanshiguan," <sup>681</sup> and he was involved in the 1235 census.
Guo Baoyu 郭寶玉	He first submitted to the Mongols in 1211; after fighting in China for the Mongols, he accompanied Subedei and Jebe on their campaign around the Caspian and was later appointed yarghuchi. Since he played a role in the campaign against the Tangut state and perhaps in the distribution of its booty, Buell surmises that he was yarghuchi in the Tangut area. The <i>Yuan Shi</i> records him as recommending to Chinggis Khan a five-point plan to restore order in China following the Mongol conquest. <sup>682</sup>
Hesimaili 曷思麥裡 (Isma'il)	While he was darughachi in Huaimeng, "in [1230] in the sixth month, the emperor commanded that Khos-melig become duanshiguan and return to the Western territories. The great commander Chahan 察罕 <sup>683</sup>

<sup>679</sup> *Secret History of the Mongols*, §154, *Yuan Shi*, ch. 117, pp. 2905-6

<sup>680</sup> Rashid, p. 84, Rashid/Thackston, p. 47

<sup>681</sup> *Yuan Shi*, ch. 2, p. 34, *Secret History of the Mongols*, §203, §343

<sup>682</sup> *Yuan Shi*, ch. 149, p. 3521; Buell, *Tribe, 'Qan' and 'Ulus'*, pp. 112-3

<sup>683</sup> *Yuan Shi*, ch. 120, pp. 2955-2957

	and <i>xingsheng</i> Tiemudie'er 帖木迭兒 memorialized that he should remain. The emperor granted their request.” <sup>684</sup>
Yuelin Tiemu'er (Yol- temür) 岳璘帖 穆爾	An Uighur descended from the Uighur minister, Tunyugu. When Ögödei became emperor, there were many thieves in <i>zhongyuan</i> (northern China), and he filled the role of great yarghuchi. He assisted Olchin in garrisoning Shuntian (in today's Hebei) and other areas, where they spread good morality, made the taxes lighter; the thieves disappeared and the adulterers reformed, and the <i>zhou</i> (subprefectures) and <i>jun</i> (prefectures) became peaceful. <sup>685</sup>
Sayyid Ajall 賽 典赤瞻思丁	When Ögödei came to the throne, he became duanshiguan (yarghuchi) of Yanjing district (today Beijing). Later, his appointment of two local envoys of the imperial prince Toqur, who was garrisoning Yunnan, as yarghuchis was part of his strategy to win the prince over and establish effective government in Yunnan. <sup>686</sup> Sayyid Ajall told the representatives of prince Toqur:  “You two gentlemen are trusted advisors to the prince, and yet because you have no official appointment, you are not allowed to discuss affairs of state, so I would like to appoint you as prefectural judges [duanshiguan] of the regional secretarial council, but I cannot confirm these positions until I have conferred with the prince.” <sup>687</sup>
Tang Renzu 唐 仁祖	An Uighur, he started serving Chinggis Khan when he was 17 years old, and later served Tolui. Sorghaghtani promoted him to yarghuchi (perhaps already in Ögödei's time). <sup>688</sup>

<sup>684</sup> *Yuan Shi*, ch. 120, p. 2970

<sup>685</sup> *Yuan Shi*, ch. 124, p. 3050

<sup>686</sup> *Yuan Shi*, ch. 125, pp. 3063, 3065

<sup>687</sup> *Yuan Shi*, ch. 125, p. 3065, translation taken from Armijo-Hussein, Jacqueline, in "Sayyid 'Ajall Shams Al-Din: A Muslim from Central Asia, Serving the Mongols in China and Bringing 'Civilization' to Yunnan, PhD thesis, Harvard University, Cambridge, Massachusetts, 1996, p. 22

<sup>688</sup> *Yuan Shi*, ch. 134, pp. 3253-4; Jachid Sechen, *Menggu shi luncong*, 248

<p>Shuhutai (Jokhud)</p>	<p>“When T’ai-tsung [Ögödei] first conquered the central plain the <i>chung-shu ling</i> Yeh-lü Ch’u-ts’ai asked to be allowed to choose employees for the government who were knowledgeable in Confucianism. The emperor accepted his proposal. In [1237], the emperor issued an edict ordering the <i>tuan-shi kuan</i> (duanshiguan) Shu-hu-t’ai and the senior official Liu Chung of the Shan-hsi east <i>lu</i> tax office<sup>689</sup> to go through the various <i>lu</i> and carry out an examination. The examination was to be in three parts on the <i>Lün-yü</i>, the meaning of the classics and <i>tz’u-fu</i>.”<sup>690</sup></p> <p>Buell comments that cooperation was necessitated because many Confucians who would be taking the exams belonged to princes or appanage-holders and there were jurisdictional problems.<sup>691</sup></p>
<p>Xieche 斜徹 (Seche), yarghuchi of Pingyang dao</p>	<p>After Güyük was enthroned, he was executed because he was “unrestrained and unjust and violating the law;” the <i>xuanweishi</i> (pacification commissioner) Weizhong was ordered to put him to death.<sup>692</sup></p>
<p>Mahmud Yalavach 牙魯 瓦赤 / 牙老瓦 赤</p>	<p>“Having completed the conquest of the Sarta’ul people, Chinggis Qa’an issued an order setting up resident commissioners (darughachis) in the various cities. Two Sarta’ul of the Qurumši clan – father and son – called Yalawači and Masqut, came from the city of Ürünggeči. They told Činggis Qa’an about the laws and customs of cities; <i>whereupon the latter</i>, being adequately informed as to <i>these</i> customs, appointed his son Masqut the Qurumši, putting him in charge, with our resident commissioners, of Buqar, Semisgen, Ürünggeči, Udan, Kisgar, Uriyang, Güsen Daril and other cities. He brought back with him his father Yalawači and put him in charge of the city of Jungdu of the Kitat.”<sup>693</sup></p>

<sup>689</sup> Actually the Xuande *lu* tax office, Buell, *Tribe, ‘qan’ and ‘ulus’*, p. 288 n. 263

<sup>690</sup> *Yuan Shi*, ch. 81, p. 2017, translation taken from Buell, *Tribe, ‘qan’ and ‘ulus’*, p. 288 n. 263

<sup>691</sup> Buell, *Tribe, ‘qan’ and ‘ulus’*, pp. 116-7

<sup>692</sup> *Yuan Shi*, ch. 146, p. 3467

<sup>693</sup> *Secret History of the Mongols*, §263

	The <i>Yuan Shi</i> , however, also refers to him as duanshiguan: <sup>694</sup> he was made yeke yarghuchi of North China when Güyük came to the throne. <sup>695</sup>
Menggeser 忙哥撒兒	A member of Toluid's <i>keshig</i> , having previously served Chinggis Khan, he was yeke yarghuchi and senior minister of state ( <i>chengxiang</i> ) under Möngke.  “When the plot of Širemün and Naqu was discovered shortly after Möngke had been enthroned, it was Menggeser who was dispatched to investigate the matter, and it was his troops (i.e., contingents from the <i>kešig</i> ) who surprised and arrested the conspirators. Immediately following their detention, Möngke, as a first step toward sorting out the entire affair, instructed Menggeser to bring to trial retainers of the rebellious princes. A hearing was immediately convened and after several days of subtle questioning, as Rašīd al-Dīn expresses it, the defendants confessed their traitorous intentions, thereby acknowledging the legitimacy of Möngke's claims upon the throne. In the end all were found guilty and most were executed.” <sup>696</sup>
Hadan 哈丹 (Qadan)	“In 1253 at Gun Na’ur, Menggeser was made leader of a thousand and Qadan was made a yarghuchi.” <sup>697</sup>
Chinqai 鎮海, and later his son Yashmut	According to Xu Yuren, Chinqai was appointed yarghuchi during the early 13 <sup>th</sup> century, and according to Juvaynī, he participated in the investigation of Korguz’s case under Ögödei by compiling a report together with the <i>bitigchis</i> . <sup>698</sup> His eldest son Yashmut was later yarghuchi. <sup>699</sup>

<sup>694</sup> Yuan Shi, ch. 4, p. 58, ch. 159, p. 3747; see Jagchid, *Menggu shi luncong*, pp. 258-267

<sup>695</sup> Allsen, “Mahmud Yalavach,” p. 126

<sup>696</sup> Allsen, “Guard and government,” p. 510; the career of Menggeser has been discussed extensively by Allsen, *Mongol imperialism*, p. 35, “Guard and government,” pp. 503-4, 508, 510, and Jagchid, *Menggu shi luncong*, pp. 256-7

<sup>697</sup> Yuan Shi, ch. 3, p. 47

<sup>698</sup> Juvaynī, pp. 234-6, Juvaynī/Boyle, pp. 498-500; Buell, *Činqai*, p. 111

<p>Bujir 不只兒, a Tatar</p>	<p>A hero in battle, his father and he himself served Chinggis Khan. Möngke made him yeke yarghuchi of Dadu and the wider region. Alongside tax and other duties, “Inspecting matters one day, he killed twenty eight people. One of them had stolen a horse and was [initially] beaten and released. By chance he [Bujir] came across a knife-seller, [so he] turned back to pursue the person who had been beaten, and in order to try out a knife, decapitated him. The emperor criticized him and said: [...] For all crimes [meriting] death, there must be a thorough judgment and [only] following this, carry out the punishment. Today, in one day, twenty eight people have been killed. There must [have been] many who had committed no crime, but they have already been beaten [or] decapitated, what kind of punishment is this? Bujir was astonished and could not answer.”<sup>700</sup></p> <p>Jagchid notes how this demonstrates his immense power, both his power over life and death in acting in this way and also in avoiding punishment for his conduct.<sup>701</sup></p>
<p>Tuowutuo 脫兀脫 (Toghto), a Mongol from the Arula clan.<sup>702</sup></p>	<p>Toghto was demoted after complaint by a Jurchen official. Qubilai had appointed Zhao Liangbi to the Aboriginal Control Office of Xingzhou. “It had been a long time since Xing[zhou] had had a good administrator, even though it was a very important crossroads; too many ambassadors made the work difficult, and many people were fleeing. Liangbi was a very good administrator [...] Toghto was sent as a duanshiguan to garrison Xing[zhou]. His people [...] created animosity and obstructed the officials.... When Qubilai travelled to Yunnan, Liangbi hurried by horse to find Hulegu to expose the matter; thereupon Toghto was</p>

<sup>699</sup> Buell, *Činqai*, p. 110

<sup>700</sup> *Yuan Shi*, ch. 4, p. 58, Jagchid, *Menggu shi luncong*, pp. 267-8

<sup>701</sup> Jagchid, *Menggu shi luncong*, p. 268

<sup>702</sup> Jagchid, *Menggu shi luncong*, p. 269

	demoted, and the officials belonging to him were deposed; Xing[zhou] was managed well and the number of households increased. <sup>703</sup>
Hulu Buhua (Kulug-bukha)	Tiemudie'er's uncle Hulu Buhua (Kulug-bukha) at the beginning of the <i>zhongtong</i> years (1260-64) was appointed Junior Chief Councillor of the Central Secretariat and concurrently duanshiguan of the Central Secretariat. <sup>704</sup>
Boluohuan 博羅 歡	A Mongol duanshiguan of the Manggud (his own tribe). His biography also says that in that time all the princes and the 'ten meritorious officials' had their own duanshiguan. <sup>705</sup>
Tuolichi 脫里赤 (Torchi)	Perhaps Mengeser's son Torchi. <sup>706</sup> Appointed yarghuchi by Arigh Boke, who recognized Torchi in the Secretariat for State Affairs of Yanjing and also appointed a yeke yarghuchi in Helin. <sup>707</sup>
Bulghai	A member of Tolui's <i>keshig</i> , having previously served Chinggis Khan. He had wideranging responsibilities and became responsible for state policy under Möngke. On the arrival of Rubruck and his companions he questioned them. <sup>708</sup> When Rubruck's companion inadvertently hit the threshold of a yurt, the guards detained him "and calling someone, they told him to take him to Bulgai, who is the grand secretary of the court, and who condemns persons to death." <sup>709</sup> "Then my companion was brought in and the monk chided him most harshly, because he had touched the threshold. The next day came Bulgai, who was the judge, and he closely inquired whether anyone had warned us to be careful about touching the threshold, and I answered, "My lord, we had no

<sup>703</sup> *Yuan Shi*, ch. 159, p. 3743

<sup>704</sup> Tu Ji 屠寄, *Mengwu'er shiji*, 蒙兀兒史記, ch. 122, quoted in Jagchid, *Menggu shi luncong*, pp. 316-7

<sup>705</sup> *Yuan Shi*, ch. 121, p. 2988

<sup>706</sup> *Yuan Shi*, ch. 124, P. 3057, Jagchid, *Menggu shi luncong*, p. 271

<sup>707</sup> *Yuan Shi*, ch. 157, p. 3707, Jagchid, *Menggu shi luncong*, pp. 270-1

<sup>708</sup> Rubruck, p. 168

<sup>709</sup> Rubruck, p. 189



	<p>interpreter with us; how could we have understood?” Then he pardoned him, but never thereafter was he allowed to enter any dwelling of the Chan.”<sup>710</sup> Bulghai was put to death in 1264 for having supported Arigh Boke.<sup>711</sup></p>
<p>Arghun Aqa 阿裡侃</p>	<p>Described as a <i>duanshiguan</i> (yarghuchi) in the <i>Yuan Shi</i>, and as a <i>sahib-divan</i> in Persian sources. A yarghu held by him is mentioned in the <i>Tarikhi shahi</i>.<sup>712</sup></p>

Yarghuchis in the Ilkhanate	
<p>Shi Tianlin 石天麟, a Chinese</p>	<p>A Chinese from Shunzhou, he learned various languages and was given a Mongol name. He was in the <i>keshig</i>.<sup>713</sup> Perhaps because of his linguistic expertise, he was chosen to be a <i>duanshiguan</i> and to accompany Hülegü’s forces that conquered the Ilkhanate, so he was probably a military yarghuchi.</p>
<p>Ala al-Din Juvaynī, Nasir al-Din Tusi</p>	<p>In 662/1264 they served at the yarghu and execution of an official, Najm ‘Umran al-Bajisri.<sup>714</sup></p>
<p>Toladai / Qadaghay Yarghuchi, of the Arulat Mongol tribe, and</p>	<p>Toladai / Qadaghay and Qara Bulaghan were the sons of Chaghatai Qorchi of the Arulat tribe who came to</p>

<sup>710</sup> Rubruck, p. 192

<sup>711</sup> Allsen, “Guard and government,” pp. 504

<sup>712</sup> *Yuan Shi*, ch. 95, p. 2428; *Tarikhi shahi*, p. 181; Buell, *Tribe, ‘qan’ and ‘ulus’*, pp. 160-1

<sup>713</sup> *Yuan Shi*, ch. 153, p. 3619

<sup>714</sup> Ibn al-Fuwaṭī, *al-Ḥawādith al-jāmi’ah*, pp. 349-50

Toladai's brother Qara Bulaghan; <sup>715</sup> and Uktai / Quday	Persia with Chormaqan. Qara Bulaghan was a yarghuchi according to Rashid al-Din. <sup>716</sup> Toladai and another <i>amir yarghu</i> , Quday, were involved in the trial of Shams al-Din Juvaynī. <sup>717</sup>
Suqunchaq Aqa Noyan, son of Sodon Noyan (Suldus), and Uruq <sup>718</sup>	They investigated Majd al-Mulk in 1282. Suqunchaq Aqa's permission (which he initially didn't want to give) was needed for his execution. <sup>719</sup>
Noqai Yarghuchi	An amir, mentioned by Vassaf. <sup>720</sup>
Taghachar	He was yarghuchi under Abaqa and was sent to Baghdad to look for the treasure that Ata Malik Juvaynī had allegedly amassed there. <sup>721</sup>
Amir Baitmish (Qushchi)	He was sent to arrest Aruq, and supervised the purge following Aruq's execution. He also investigated the case of the Kurdish amir Sejal al-Din al-Zakai. <sup>722</sup>
Buqa Chingsang, a Jalayir Mongol	One of Ahmad's chief officials, he was sent to put Arghun to death but instead freed him.  He led a yarghu of Bibi Khatun and her sons vs. Soyurghatmish and his supporters, and kept Soyurghatmish from being tortured. <sup>723</sup>

<sup>715</sup> Rashid, p. 75; Rashid/Thackston, p. 42

<sup>716</sup> Rashid, p. 75; Rashid/Thackston, p. 42

<sup>717</sup> Rashid, p. 75; Rashid/Thackston, p. 42; Vassaf, p. 141; Vassaf/Hammer-Purgstall, p. 288 (trans.), Vassaf/Wentker, p. 288 (Persian), p. 269 (trans.); al-Ahrī/Van Loon, *Tarikhi Sheikh Uvais*, p. 138, trans. p. 41 and n. 42

<sup>718</sup> Rashid p. 143, Rashid/Thackston, p. 77

<sup>719</sup> Rashid, p. 1128; Rashid/Thackston, p. 550

<sup>720</sup> Vassaf, p. 127; Vassaf/Wentker, vol. 1, p. 260, trans. p. 241

<sup>721</sup> Vassaf, p. 99

<sup>722</sup> Bar Hebraeus/Budge, pp. 480, 489

Nüregäi Yarghuchi, of the Mangqut clan	An officer and courtier in Abaqa Khan's time; Arghun sent him to guard the imprisoned Ahmad Tegüder, whom he then tried together with Tägänä and Qonqurtai's liege men. <sup>724</sup>
Shiktür Noyan, a Jalayir Mongol, the second son of Elgai Noyan, a commander who came to Persia with Hülegü.	Interrogator during the trial of Buqa; leader of the trial of Tughan and other amirs in the time of Geikhatu. <sup>725</sup>
Qutlugh-Shah	Questioned Nauruz during his trial. <sup>726</sup>
Rashid al-Din, a Persian descended from a Jewish family	Involved in the trial of the amirs guilty of defeat in Syria in 1303. <sup>727</sup>
Bolad Chingsang	Involved in the trial of the amirs guilty of defeat in Syria in 1303. <sup>728</sup>
Unnamed yarghuchis who dealt with complaints about taxation	During Ghazan's time, they, as well as amirs and wazirs, dealt with such complaints. Rashid suggests that they were biased in favour of Mongol complainants, or at the very least they accepted complaints against <i>hakims</i> (governors) and <i>mutassarifs</i> too readily. <sup>729</sup>

<sup>723</sup> Munshi, *Simt al-'ula*, p. 56, see also *Tarikhi shahi*, pp. 58-9; Lane, *Early Mongol Rule*, p. 117

<sup>724</sup> Rashid, pp. 196, 1147, Rashid/Thackston pp. 104, 559

<sup>725</sup> Mustawfī, *Zafarnāmah*, pp. 1318, 1326, Mustawfī/Ward, pp. 325-6, 344-5; Rashid pp. 67-8, Rashid/Thackston, 38

<sup>726</sup> Mustawfī, *Zafarnāmah*, p. 1364, Mustawfī/Ward, pp. 420-421

<sup>727</sup> Mustawfī, *Zafarnāmah*, p. 1409, Mustawfī / Ward p. 526

<sup>728</sup> Mustawfī, *Zafarnāmah*, p. 1409, Mustawfī / Ward p. 526

<sup>729</sup> Rashid, p. 1347, Rashid/Thackston, p. 671

<p>Todai Yarghuchi, son of Sorghan;  Noqai Yarghuchi = Buqa  Yarghuchi, grandson of Sorghan;  Alghu Yarghuchi, son of Noqai;  Daulatshah, son of Alghu</p>	<p>Daulatshah, descendant from a long line of yarghuchis, was involved in the trial of Tashtemur together with Shaikh-Hasan and Ghiyath al-Din.<sup>730</sup></p>
<p>Ghiyath al-Din, son of Rashid al-Din</p>	<p>Involved in the yarghu of Tash Temur, and other judicial decisions. Ghiyath studied Islamic sciences and had good relations with Islamic scholars. He changed inheritance law back to Hanafi principles.<sup>731</sup></p>

<p>Yarghuchis in Yuan China</p>	
<p>Bohu'er 伯忽兒 (Baikhur)</p>	<p>A son of Chinggis' younger brother Khachi'un, he was made head of the yarghuchis in 1270.<sup>732</sup></p>
<p>Zhibi Tiemu'er 只必帖木兒</p>	<p>In 1271, when a Branch Secretariat was established in Shaanxi, he became the Secretariat's duanshiguan. Zhibi Tiemu'er was a son of Koden, who was a son of Ögödei.<sup>733</sup></p>
<p>Tubushen 秃不申 (Tübshin)</p>	<p>"In [1286], [...] in the eleventh month, the Central Secretariat's yarghuchi Tübshin was sent off to verify again the finances of Huguang Branch Secretariat."<sup>734</sup></p>

<sup>730</sup> Melville, *The fall of Amir Chupan*, p. 32

<sup>731</sup> Al-Safadi, vol. 4, p. 329; al-'Umari/Lech, p. 158; Ibn Bazzāz/Zirke, pp. 88-89; Melville, *The fall of Amir Chupan*, p. 32

<sup>732</sup> *Yuan Shi*, ch. 7, p. 132

<sup>733</sup> *Yuan Shi*, ch. 7, p. 140, ch. 107, p. 2717

<sup>734</sup> *Yuan Shi*, ch. 14, p. 294

Halahasun 哈刺哈孫 (Harqasun)	In 1287 he memorialized that too many condemned were being executed. The emperor agreed that cases should be reviewed by yarghuchis and that forced labour was a better option. <sup>735</sup>
Yexian (Esen) 也先	Having been appointed by the “imperial grandson” Antan Buhua (Altan-bukha), he was dismissed in 1289, though he still received his <i>paiza</i> . <sup>736</sup>
Zhaolietai Chawu’er 召烈台抄兀兒, his son Nazhen 那真 (Nachin), grandson Bansa 伴撒 (Bansal) and greatgrandson Huoluhutai 火魯忽台 (Goroghutai)	Zhaolietai Chawu’er, according to the <i>Yuan Shi</i> , initially served Chinggis Khan, and warned him that the Halachi (Kharachi), Sanzhi’er (Salji’ud), and Yiqiliesi (Yiqilisi) were intending to rebel against him: for this service he was given the title of <i>darkhan</i> . His son Nachin served Qubilai as yeke yarghuchi, and after his death his son Bansal inherited the post. Bansal’s son Goroghutai also inherited the post. Zhenjin had a stele engraved for his remembrance. <sup>737</sup>
Xiban 昔班, an Uighur, yarghuchi of the dazong zhengfu	He served Qubilai at his appanage, and was ordered to head the <i>bitigchis</i> . In 1260 he became darughachi of Zhending lu, and later yarghuchi of the <i>dazong zhengfu</i> (the reference to <i>dazong zhengfu</i> may be an anachronism). When Arigh Boke rebelled, the emperor ordered Xiban to supervise the transport of supplies to the army. <sup>738</sup>
Kou’erji 口兒吉 (Gorgi)	He had participated in the conquest of the Song. The <i>Yuanshi</i> says he became yeke yarghuchi of the <i>dazong zhengfu</i> after the Song had been

<sup>735</sup> *Yuan Shi*, ch. 14, p. 297, see also ch. 136, pp. 3291-3295

<sup>736</sup> *Yuan Shi*, ch. 15, p. 322

<sup>737</sup> *Yuan Shi*, ch. 123, p. 3022, Jagchid, *Menggu shi luncong*, 319-320, n. 19; see also *Secret History of the Mongols*, § 120, 129, 141, 202

<sup>738</sup> *Yuan Shi*, ch. 134, pp. 3246-7

	pacified, though the reference to <i>dazong zhengfu</i> may be an anachronism. <sup>739</sup>
Talichi 塔里赤, a Kangli	The Henan Branch Secretariat memorialized that he should fill [the position of] <i>duanshiguan</i> [of the army?]. <sup>740</sup>
Liu Haoli 刘好礼	He came from Bianxiangfu and was possibly a ‘local’ <i>yarghuchi</i> . <sup>741</sup>
Wu Yi 吳繹	He served Qubilai’s son Kuokuochu, and then went with the pacification commissioner Yuechicha’er to have an audience with Qubilai and entered the <i>kesbig</i> for five or six years. Later he held posts including <i>duanshiguan</i> ( <i>yarghuchi</i> ) of Central Secretariat and of the State Secretariat. <sup>742</sup>
Tuo’ersu 脱而速 (Dorsu)	A <i>yarghuchi</i> who was put on trial and executed for bribery. <sup>743</sup> “In [1297] [...] in the third month [...] the <i>yarghuchi</i> Dorsu received a bribe, and his slave reported him; he poisoned his slave [who died], and he was put to death publicly in the market. [...] In the ninth month [of the same year] the bribed goods the <i>yarghuchi</i> had chased after were transported to the <i>zhongshusheng</i> .” <sup>744</sup>
Boluo Tiemu’er 孛羅帖木兒 (Boro-Temur)	He became a <i>yarghuchi</i> . In the struggle against Qaidu, he and his soldiers were surrounded and needed to be rescued. <sup>745</sup>

<sup>739</sup> *Yuan Shi*, ch. 135, p. 3277

<sup>740</sup> *Yuan Shi*, ch. 135, p. 3275; Liu Xiao, “Yuanchao *duanshiguan kao*,” p. 59; Jagchid, *Menggu shi luncong*, p. 321 n. 37

<sup>741</sup> *Yuan Shi*, ch. 167, p. 3924-5

<sup>742</sup> Liu Yueshen 刘岳申, *Shenzhai Liu xiansheng wenji* 申斋刘先生文集, ch. 7; quoted in: Liu Xiao, “Yuanchao *duanshiguan kao*,” p. 57

<sup>743</sup> *Yuan Shi*, ch. 19, p. 410, *Yuan Shi*, ch. 136, p. 3297

<sup>744</sup> *Yuan Shi*, ch. 19, p. 410

<sup>745</sup> *Yuan Shi*, ch. 132, p. 3210

<p>Asha Buhua 阿沙不花 (Ashogh-Bukha)</p>	<p>In 1293 he heard Dorsu’s case while at the head of the <i>dazong zhengfu</i>: “Asha Buhua was from the royal bloodline of the Kangli state. [...] When he was fourteen years old when he entered Shizu [Qubilai]’s service. [...] In [1293] Qaidu rebelled. Through an imperial grandson Chengzong pacified an army to the north. Ashogh-bukha followed him, crossed over the Golden Mountains [Altai], fought with Kanghai [Khangghai], and was successful. When Chengzong became emperor, he gathered the <i>dazong zheng[fu]</i> to hear the yarghuchi Tuo’ershu (Dorsu) to hear about [his] bribes and filth, and ordered that he be interrogated. Dorsu concealed his crimes. [Ashogh-bukha] was ordered to execute him.”<sup>746</sup></p> <p>In 1307 when Wuzong took the throne he was also made privy councillor of the Central Secretariat.<sup>747</sup></p>
<p>Yuelichi 月里赤 (Urichi)</p>	<p>A yeke yarghuchi, he was later appointed to the falconry office.<sup>748</sup></p>
<p>Bie Tiemu’er 別鐵木兒 (Begtemur)</p>	<p>Involved in the investigation about the theft of the Song’s emperor’s insignia in 1309, together with other officials.<sup>749</sup></p>
<p>Huaidu from the Secretariat for State Affairs and Duo’erji from the Chashiyuan (Office of</p>	<p>Sent to investigate a case of anti-Mongol rumours together in 1310.<sup>750</sup></p>

<sup>746</sup> *Yuan Shi*, ch. 136, p. 3297

<sup>747</sup> *Yuan Shi*, ch. 22, pp. 479-480

<sup>748</sup> *Yuan Shi*, ch. 22, p. 495

<sup>749</sup> *Yuan Shi*, ch. 23, pp. 519-520

<sup>750</sup> *Kōteibon Gentenshō keibu*, ch. 41, pp. 78-80

Surveillance).	
Mailü 買閭	Renzong summoned him and told him to be sure to judge carefully and work together with colleagues from the Central Secretariat and the Censorate. <sup>751</sup>
Nangjiadai 囊加帶 / 囊加歹 (Nanggiyatai)	Sent to judge robbers together with the <i>neishi</i> of the Prince of Jin and give recommendations on the appropriate punishments. <sup>752</sup>
Tiemu'er buhua 铁木兒不花(Temur-bukha)	He served as censor and yarghuchi of the <i>dazong zhengfu</i> . In 1321 he became overseer of the bureau of military affairs. In 1340 a yarghuchi named Temur-bukha (the same person?), became junior chief councillor of the Central Secretariat. <sup>753</sup>
Buyan 不顏	In 1323, on the order of the emperor, he worked with other officials and scholars to put together a legal compilation known as the Dayuan tongzhi. <sup>754</sup>
Bodasha 伯答沙, son of Temur Buqa and grandson of the yarghuchi Menggeser. <sup>755</sup>	In his youth he was a member of the <i>keshig</i> . In 1327 the yeke yarghuchi Bodasha became Grand Guardian; <sup>756</sup> in 1328 Wenzong promoted him to Grand Tutor <sup>757</sup> and at the same time yarghuchi of the <i>dazong zhengfu</i> ; he was to take the soldiers to protect the northern frontiers. <sup>758</sup>
Tulu 秃忽魯	He served four emperors, his first post was that of yeke yarghuchi in the

<sup>751</sup> *Yuan Shi*, ch. 26, p. 587

<sup>752</sup> *Yuan Shi*, ch. 26, p. 590, ch. 131, pp. 3184-86

<sup>753</sup> *Yuan Shi*, ch. 26, p. 592, ch. 27, p. 603, ch. 40, p. 858

<sup>754</sup> *Yuan Shi*, ch. 28, pp. 628-9

<sup>755</sup> *Yuan Shi*, ch. 30, p. 677, ch. 32, p. 718, ch. 124, p. 3058

<sup>756</sup> *Yuan Shi*, ch. 30, p. 677

<sup>757</sup> On the titles of grand guardian and grand tutor, see Farquhar, *The Government of China*, p. 31

<sup>758</sup> *Yuan Shi*, ch. 32, p. 718



(Tuglug), the son of Esen Buqa and grandson of Boluhuan, the head of <i>bitigchis</i> in Möngke's time. <sup>759</sup>	<i>[da]zong zhengfu</i> ; later he served as minister of the Central Secretariat, in the Censorate and as Grand Tutor. <sup>760</sup>
Kuokuochu 阔阔出 (Kököchü)	The <i>Yuan Shi</i> refers to Kuokuochu as a <i>[da]zong zheng[fu] yarghuchi</i> . <sup>761</sup> He was among those who conspired with several princes against Taidingdi. Kokochu went with the others to Shangdu. After Taidingdi's death, Kokochu went (with the others) to aid Dadu. When this was discovered, Daulatshah killed them.
Yonggutai 雍古台 (Ongghutai)	A <i>dazong zhengfu yarghuchi</i> , after the rebels went to Shangdu, he helped move emperor Taidingdi to Jiangling. <sup>762</sup>
Tian Sun and Anhui 添孙 按灰 (Alkhui)	In [1336] the princely yeke yarghuchi Tian Sun died. [...] Anhui became <i>dazong zhengfu yeke yarghuchi</i> , to deal with adultery, robbery, fraud and deceit everywhere. <sup>763</sup>
Yan Tiemu'er 燕铁木儿 (El Temur)	In [1337] [the emperor] ordered the prince El Temur to become <i>dazong zhengfu yeke yarghuchi</i> . <sup>764</sup>
Shuosijian 搠思监, a Kereit, the son of	In 1349 the yeke yarghuchi Shuosijian became Senior Chief Councillor of the Central Secretariat and concurrently Overseer of the Bureau of Military Affairs. In 1352, the <i>zhongshu pingzhang zhengshi</i> Shuosijian

<sup>759</sup> Jagchid, *Menggu shi luncong*, p. 307

<sup>760</sup> *Yuan Shi*, ch. 134, pp. 3251-2

<sup>761</sup> *Yuan Shi*, ch. 32, pp. 704, 706, 722; see also *Yuan Shi*, ch. 22, pp. 477, 482; ch. 32, p. 721

<sup>762</sup> *Yuan Shi*, ch. 32, p. 704

<sup>763</sup> *Yuan Shi*, ch. 39, pp. 833-4

<sup>764</sup> *Yuan Shi*, ch. 39, p. 839

Yilianzhen, the son of Esen Buqa. <sup>765</sup>	and the yeke yarghuchi Fushou assisted Toghto in conquering Xuzhou. <sup>766</sup>
Fu Shou 福寿, a Tangut <sup>767</sup>	In 1352 he was appointed yeke yarghuchi; in the same year, together with Shuosijian, he assisted Toghto in conquering Xuzhou. <sup>768</sup> Before long he went to Jiangnan to serve as Privy Councillor of the Branch Secretariat. Later he served in the regional censorate in Jiangnan. When Ming dynasty soldiers surrounded Jiqing, he led soldiers to the fight but the city could not resist any longer and walls were breached. All the officials fled, but when others urged him to flee he was angry and said: “I am an important official of this country; I will only survive if the city survives; if the city is conquered I will die; where should I go?” Soldiers surrounded him and he was killed. <sup>769</sup>
Dielimishi 迭里迷失	In 1355, the <i>dazong zhengfu</i> yarghuchi Dielimishi was made Privy Councillor of the Gansu Branch Secretariat. <sup>770</sup>
Yuekuocha'er 月阔察儿 (Ugholchar?)	“In [1355] ... the great military officer <i>dazong zhengfu</i> yarghuchi Yuekuocha'er left his job because he was wounded in battle. He was not seen again.” <sup>771</sup>
Duo'erzhiban 朵尔直班 (Dorji-bal), a descendant of Muqali in the seventh generation.	In 1341 he was appointed as scholar in the Hanlin academy. [...] He was appointed as <i>dazong zhengfu</i> yarghuchi. When he listened to cases, he was always quoting the law ( <i>lüling</i> ), finding out the facts. An old colleague of his sighed and said: I have been in this post for 40 years, when I see the way you deal with the cases, you are almost a god.” [...] When an imperial prince killed his mother, Duo'erzhiban heard this

<sup>765</sup> *Yuan Shi*, ch. 205, pp. 4585-6

<sup>766</sup> *Yuan Shi*, ch. 42, pp. 887-8, 890, 899, 901, see also *Yuan Shi*, ch. 205, pp. 4585-6

<sup>767</sup> *Yuan Shi*, ch. 144, pp. 3441-2

<sup>768</sup> *Yuan Shi*, ch. 42, p. 901, ch. 144, pp. 3441-2

<sup>769</sup> *Yuan Shi*, ch. 144, p. 3442

<sup>770</sup> *Yuan Shi*, ch. 44, p. 926

<sup>771</sup> *Yuan Shi*, ch. 44, p. 929

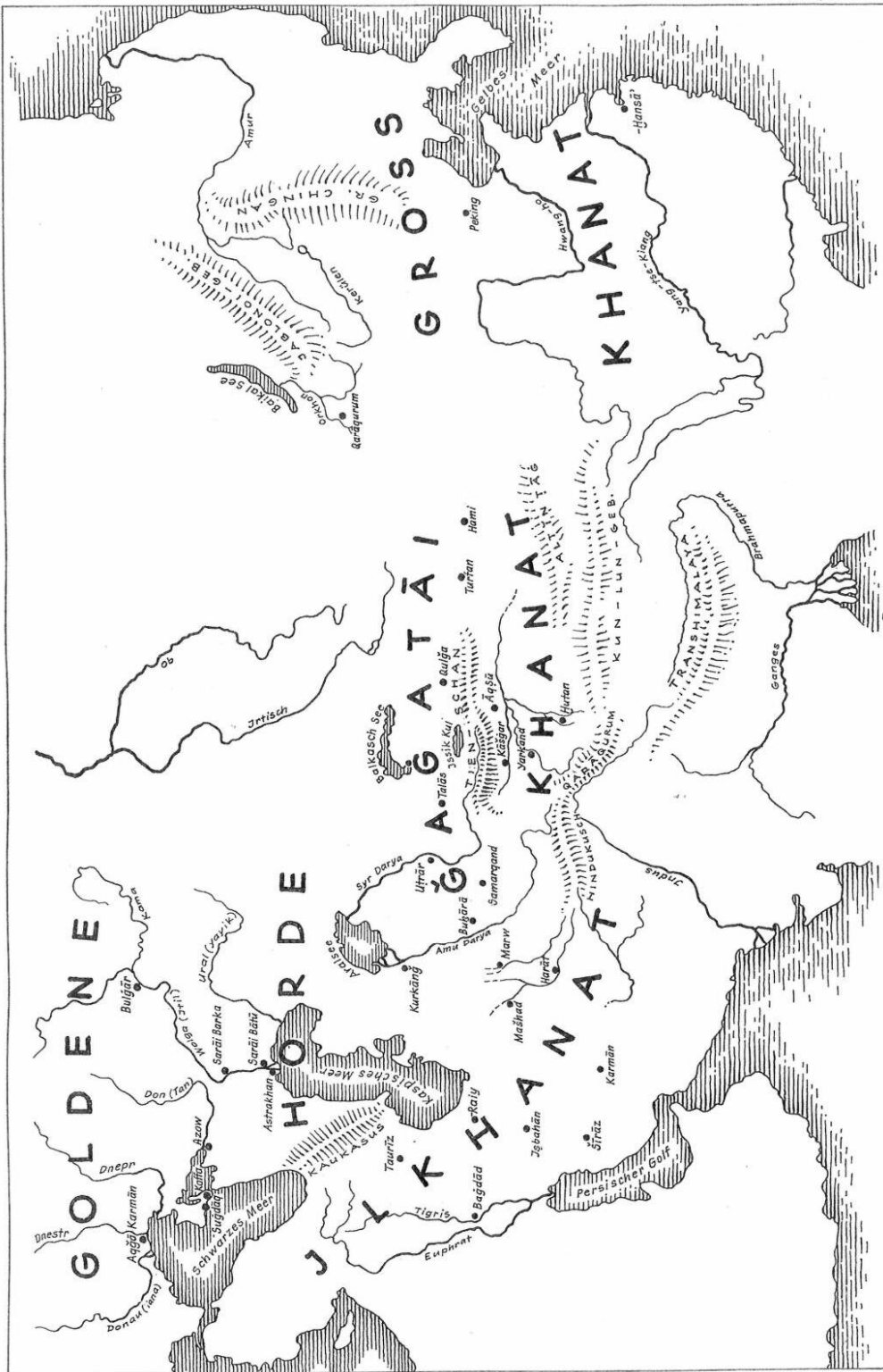
	case with his colleagues, appealed to the court, and made sure the perpetrator was punished. Later, higher officials caused his removal from this post. <sup>772</sup>
Yinashili 易纳室理, son of Yilinzhenban (Erinchin-bal), Tangut	His father (Yilinzhenban) had entered the <i>keshig</i> and held a great variety of offices, including chancellor at the Hanlin academy; he was ‘exiled’ to posts in the south while Bayan was minister, but returned to court thereafter. Yinashili’s brother Pudashili 普达失理 was also chancellor of the Hanlin academy; he himself became yeke yarghuchi of the <i>dazong zhengfu</i> . <sup>773</sup>
Yuelu Tiemu’er 月鲁帖木儿 (Ulug Temur), a Mongol from the Dorbetei clan.	He was <i>dazong zhengfu yeke yarghuchi</i> around the year 1345. <sup>774</sup>
Dalimashili 达礼麻识理 (Darma-shiri), a Kereit	In 1366 he was summoned to be <i>dazong zhengfu yeke yarghuchi</i> . <sup>775</sup>

<sup>772</sup> *Yuan Shi*, ch. 139, pp. 3357

<sup>773</sup> *Yuan Shi*, ch. 145, pp. 3445, 3447

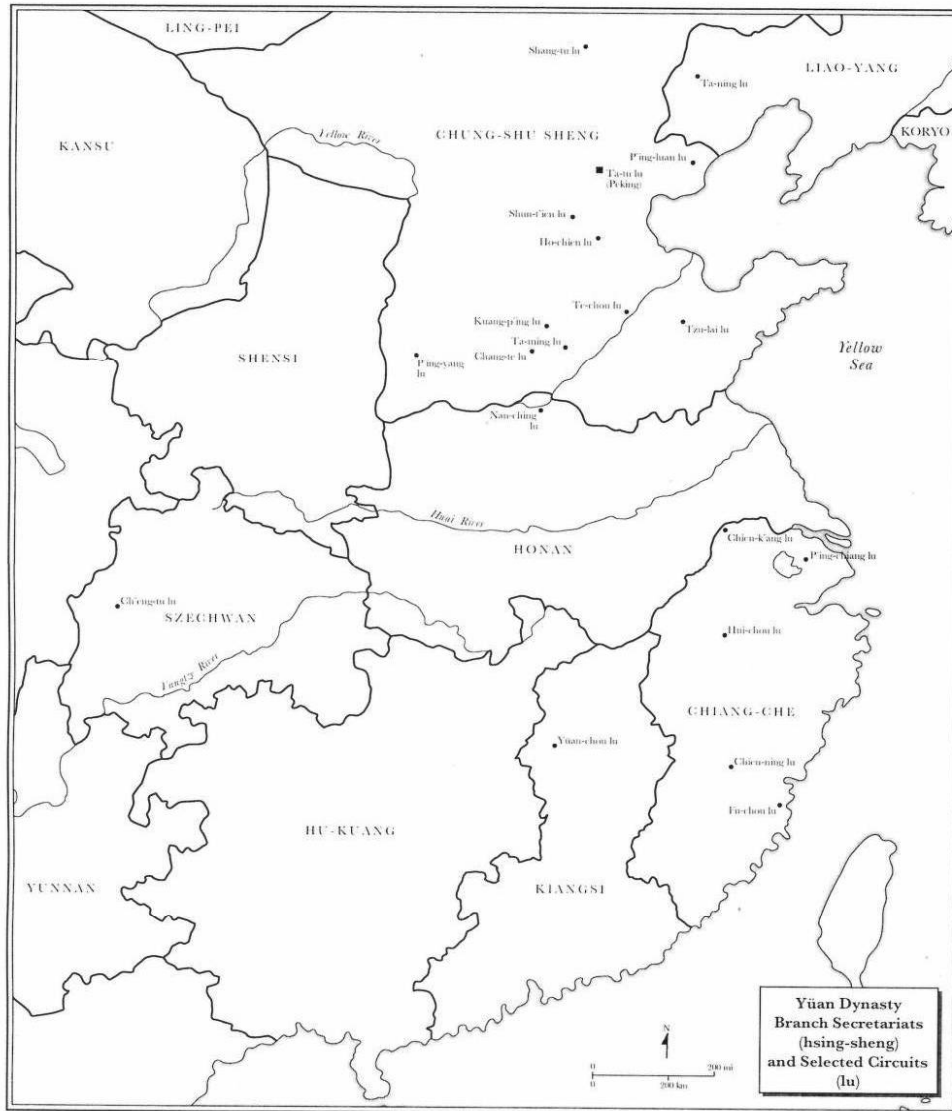
<sup>774</sup> *Yuan Shi*, ch. 144, p. 3435

<sup>775</sup> *Yuan Shi*, ch. 145, p. 3453



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