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# The Preconditions to Becoming a Judge (*Yarǧuči*)

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## in Mongol Iran

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Dedicated to the “judgement” of our  
celebrated friend, David Morgan

### Abstract

*Despite the existence of some general overviews, the institution of the Mongol tribunals has not been studied in a satisfactory way. A great deal of details are unclear and the functioning of the whole legal procedure is shrouded in obscurity. The present paper makes an attempt to elucidate an aspect of the historical development of this Turco-Mongolian institution in Ilkhanid Iran, one of the Chingisid uluses, namely what were the preconditions and prescriptions of being appointed to the rank of a Mongol judge? The focal point will be the three charters of appointment (or yarlik samples) presented by Muḥammad ibn Hindūshāh Nakhchivānī (ca. 679/1280 – after 768/1366), in his Dastūr al-kātib fī tā’yīn al-marātib (“Guidelines of the Secretary for Defining the Echelons”), a manual of Ilkhanid and Jalayirid administration, accomplished in the 1360s.*

Immediately after the foundation of Chingis Khan’s Mongol Empire in 1206, the new Chingisian law called *yasaq* came into force. *Yasaq* had to be implemented and put into practice, hence soon the institution of tribunals headed by judges was established.<sup>1</sup> Their primary task was the enforcement of *yasaq*, the Mongol law sanctioned by Chingis Khan himself. Although the Mongol terms for the lawcourt and the judge (*yarǧu* and *yarǧuči*) were evidently of Turkic origin,<sup>2</sup> they appear mainly in their original Turkic garb as *yarǧu* and *yarǧuči* in all non-Mongolian sources, among others the all-important Persian ones.<sup>3</sup>

In the Khan’s residential town there was a supreme lawcourt the jurisdiction of which extended to the Mongol elite and the non-Mongol foreign layer of state administration. The lawcourt (*yarǧu*) treated all litigations referred thereto by the Khan as the supreme judge. The causes of the vassal rulers and their aristocracy also belonged to the lawcourt of the Khan.<sup>4</sup>

<sup>1</sup>On *yasaq* (in Muslim sources attested mainly as *yasa*) there is a vast literature, for some of the most informative ones, see: Ayalon A, B, C1, C2; Morgan 1986; Rachewiltz 1993; Aigle 2004; Morgan 2005.

<sup>2</sup>For Turkic *yarǧu* and *yarǧuči*, and the etymology of the word, see Clauson 1970, p. 963 (s.v. *yarǧu*). In the *Codex Cumanicus* (14th c.) it is *yarǧu* ‘legal decision, adjudication, judgment, verdict, writ; court of law, tribunal [Entscheidung, Urteil; Befehl; Gericht]’, *yarǧuči* ‘judge [Richter, Bürgermeister, potestas]’; *yarǧula-* ‘to judge [richten, ein Urteil fällen]’ (Grønbech 1942, p. 115); in the *Sanglah* it is *yarǧu* 1. *mulhākama* ‘a tribunal, court of justice’, 2. *dā’vā va nizā’* ‘lawsuit, litigation’ (Clauson 1960, 329r 25).

<sup>3</sup>TMEN IV, no. 1784 (pp. 58–64); no. 1785 (64–66).

<sup>4</sup>Spuler 1968, p. 381.

But *yarǧu* was also the organ where ingoing foreign envoys were subjected to preliminary hearings concerning the aim of their missions.<sup>5</sup>

*Yarǧu* and *yarǧučī* survived in all Chingisid *uluses*, namely in the Golden Horde, Ilkhanid Iran and the Chaghatay *ulus*. Moreover, astonishingly enough it survived also in the Turco-Mongolian polity of Timur and thereafter, with the Timurids, and disappeared only toward the end of the fifteenth century.<sup>6</sup> After the fifteenth century, with the fading away of Mongol tradition and the total Islamisation of the Turco-Mongolian world, the terms *yarǧu* and *yarǧučī*, though surviving in some of the Turkic and Mongolian languages, thenceforward lost their historical connotation that connected them to Mongol law.

Until now, despite the existence of some general overviews,<sup>7</sup> the institution of the Mongol tribunals has not been studied in a satisfactory way. A great deal of details are unclear and the functioning of the whole legal procedure is shrouded in obscurity. The present paper makes an attempt to elucidate an aspect of the historical development of this Turco-Mongolian institution in Ilkhanid Iran, one of the Chingisid *uluses*, namely what were the preconditions and prescriptions of being appointed to the rank of a Mongol judge? The focal point will be the three charters of appointment (or *yarlik* samples) presented by Muḥammad ibn Hindūshāh Nakhchivānī (ca. 679/1280 – after 768/1366), in his *Dastūr al-kātib fī tā'yīn al-marātīb* (“Guidelines of the Secretary for Defining the Echelons”), a manual of Ilkhanid and Jalayirid administration, accomplished in the 1360s.

The author began to compile his work during the reign of the Ilkhan Abū Sa‘īd (716–736/1316–1335) by the assignment of the vizier Ghiyāth al-Dīn Muḥammad, son of the famous vizier and historian Rashīd al-Dīn Faḏlallāh. It provides an authentic insight, based on first-hand information, into the structure and functioning of the late Ilkhanid state in Iran. However, Nakhchivānī’s enterprise was not accomplished during Abū Sa‘īd’s lifetime, but only during reign of the Jalayirid ruler, Shaikh Uways (757–776/1356–1374).<sup>8</sup>

The work contains an enormous quantity of precious information by publishing samples of and patterns for diplomas, especially letters of appointment for various dignitaries of the Ilkhanid state. They contain, among others, invaluable information concerning the Mongol legal procedures and practices under the late Il-khanids, thus a detailed description of the functions of a judge (*yarǧučī*), and clearly elucidate the process of appointing someone to the rank of *yarǧu* and the underlying requisites that were the *sine qua non* of such an appointment.

Although the complete work was not published until 1964,<sup>9</sup> certain parts of it have been known and utilised by researchers. It was Joseph Hammer-Purgstall, the admirable and undefatigable Austrian pioneer of Ottoman and Near Eastern studies, who first paid attention

<sup>5</sup>E.g. when the delegation of Rubruc arrived at Mengü Khan’s court in Karakorum, on 17 May 1254, the next day they were invited by Bulghai, the chief secretary and judge (“In crastino fuimus vocati a Bulgai, qui est maior scriptor et iusticiarius, . . .” (Rubruc: *Itinerarium*, XXXII.2, in: Wyngaert 1929, p. 286).

<sup>6</sup>Roemer 1952; Manz 1989, pp. 169–172.

<sup>7</sup>As, for example, Spuler 1968, pp. 381–382; Spuler 1987, pp. 416–424; Spuler 1965, p. 303, n. 1; Grekov – Īakubovskii 1950, pp. 134–136; Morgan 2007, pp. 83–87.

<sup>8</sup>On Nakhchivānī and his work, see D. O. Morgan, “*Dastūr al-kātib*”, *Enclr* Vol. VII, Fasc. 2 (1994), pp. 113–114 (also online: <http://www.iranicaonline.org/articles/dastur-al-kateb>, last updated November 2011); Šafā 1987–88, pp. 1300–1303; Bayānī 1992/93, p. 549; Bayānī 2003, pp. 415–416. — A reliable critical edition of the work, based on the best manuscript (Köprülü Library, Istanbul, ms. no. 1241, dated 798/1396), was done by Ali-zade 1964–1976.

<sup>9</sup>See Ali-zade I/1, I/2, II (1964–1976).

to the *Dastūr al-kātib* and published the most important *thirty-six* pieces in German translation, among others one of the three appointments to the office of judge.<sup>10</sup> Hammer's important publication of certain parts of the *Dastūr al-kātib* went rather unnoticed in the scholarly world, unless one considers that the outstanding Russian Turkologist, Platon Melioranskiĭ utilised Nakhchivānī's text in an article treating Chinggis Khan's wise saws.<sup>11</sup> Later, Mahmud MirafTAB, a Persian scholar presented and interpreted some of the most important parts of Nakhchivānī's work, in his unpublished doctoral dissertation.<sup>12</sup> In a short chapter he analysed the relevant appointment of the *Dastūr al-kātib* but did not go further than asserting commonplace remarks.<sup>13</sup> The next scholar who, in his treatment of the Mongol law system, referred to the *Dastūr al-kātib* was A. Īakubovskii, although he did not delve into details.<sup>14</sup> Finally, V. Riasanovsky, the eminent legal historian, in his book on the fundamental principles of the Mongol law, dedicated a short chapter to 'The question of the Code "Koudatkou Bilig" ascribed to Jenghiz Khan' in which he investigated whether a "special collection of laws concerning legal procedure" existed, as formerly stated by Melioranskiĭ.<sup>15</sup> In doing so, he gives an English translation of the essential parts of the three judicial appointment letters of the *Dastūr al-kātib*, based on Melioranskiĭ's Russian translation, which in turn, was really translated from the Persian original.

Before proceeding to the explication and interpretation of the text, in what follows, I would first bring forward the relevant passages from the three alternative charters of appointment presented in the *Dastūr al-kātib*.<sup>16</sup>

### I. The appointment of Amīr Bāyān

The *ulus* emirs, the ministers and deputies of the Great Council (*vuzarā va nuvvāb-i dīvān-i buzurg*), and the governors of the provinces (*hukkām-i vilāyāt*) should know that the order of the religious and state affairs, and the arrangement of the welfare of the holy law and the country depends on the implementation of two important factors; and the separation of one from the other is impossible. The first factor is the enforcement of religious affairs and the promotion of the Islamic commandments (may God prolong his mercy until the rise of the hour and the hour of resurrection), the second one is walking in the steps of justice (*maḍḍalat*) and following the way and customs of the grandees of equity (*aṣḥāb-i naṣfat*). That is, if any of these factors weakens, the laws of the country (*salṭanat*) deteriorate and the manners of the country become loose. The arrangement of the rules of a tribunal

<sup>10</sup> Hammer-Purgstall 1840, pp. 463–516; for the diploma of the appointment of a judge (*amīr-i yārgūhū*), see *ibid.*, pp. 466–468. Hammer's translations were based on the text of his own copy of the work and the Leiden MS (*ibid.*, p. xxv).

<sup>11</sup> Melioranskiĭ, 1901.

<sup>12</sup> MirafTAB, 1956.

<sup>13</sup> MirafTAB, 1956, pp. 31–32: "Mongolengerichtsherr (Amīr-e yārgū)". He renders the Mongolian terms in German as follows: *yārgū* 'Mongolengericht'; *yārgūchī* 'Mongolengerichtsvogt'; *amīr-e yārgū* 'Mongolengerichtsherr'; *yārgū-nāmā* 'Mongolengerichtsurteil' (MirafTAB 1956, pp. 95, 101).

<sup>14</sup> Grekov – Īakubovskii 1950, p. 106.

<sup>15</sup> Riasanovsky 1965, pp. 40–43.

<sup>16</sup> The Persian texts can be found in Ali-zade II, pp. 29–35. — Although I tried to complete a trustworthy translation which follows the original as much as possible but sometimes it was necessary to simplify the text, since the verbosity and flowery style of the Persian original cannot be rendered in English in a proper way.

(*qavā'id-i yārghū'ī*) was an invention of the state of Chinggis Khan and the Mongol sultans, who exerted such an effort in its promotion that its orders were instituted as the law based on righteousness, and made it their own holy law; In complying with justice and equity they [the Mongols] made significant steps forward and attained high degrees. Because of all the aforesaid, it is necessary to appoint an official whose character is formed on the basis of equity and justice for the examination of legal judgements [*qaḍāyā'-i yārghūyī*] that are binding for the Mongol emirs and soldiers.

Amīr Bāyān surpasses all the emirs of the present time with his numerous talents and expertise and knowledge of the customs (*rusūm*) and laws (*qavā'id*) of the Mongol sultans and emirs, as well as with his knowledge of their laws and customary laws (*yāsāqhā va tūrahā*). Therefore, the performance of the office of the judge (*imārat-i yārghū*) and the inquiry into those cases of the Mongols which by their nature and substance pertain to him, is entrusted to him in order that he may dedicate himself to examine disputes between Mongols in accordance with examples which he has seen and read in the *Qutadghu Bilig* of Chinggis Khan (*dīda va ḥvānda bar qūtātghū bilik-i jīngīz-ḥānī*) and observed among the chief judges (*akābir-i yārghūchiyān*). He must not violate the principles of justice and equity (*'adl va insāf*) even by a hair's breadth, and he must decide the cases between the adversary parties in accordance with the rules of the law (*bar mūjib-i ḥukm-i yāsāq*). When he makes a decision in favour of one of the parties, he must give him a charter of adjudication (*yārghū-nāma*), in order that he may keep it as a written document. If one of the adversaries incommodes [the judge] for a second time, the judge must insist upon the resolution of the *yārghū-nāma* and know that it is incumbent to refuse him [the appellant].

For this reason the present decree was issued (*ḥukm naḥād yāft*), so that, from this date onward, he [Amīr Bāyān] should be considered the judge of the great court (*amīr-i yārghū-yi ordū-yi mu'azzam*), and that, concerning the affairs which pertain to this office, everyone must apply only to him and not trespass his opinion and decision. The Mongol emirs must not disregard the judgement in cases that were [once] examined by him and decided according to the law of Chinggis Khan's *yasa* and *yasaq* (*bar qānūn-i yāsā va yāsāq-i jīngīz-khānī*); and they are not allowed to renew the inquiry for a second time. The litigants present before the council of the court (*bi-dīvān-i yārghū*) are bound to pay a certain fee (*rasmī*) to him [i.e. the judge], his assistants (*bā-ū va naukarān-i ū*) and the scribe of the adjudication (*kātib-i yārghū-nāma*), so that he, after having made efforts, may decide the case according to the regulations of his office. (Ali-zade II, pp. 29–32)

## II. The appointment of Bāyān-Tīmūr Bakhshī

In olden days the Mongol tribes, in accordance with their customs, had a law which helped them, and the litigation between two persons were settled without delay in the spirit of this law, so that none of the parties experienced any injustice, violence, excessive force or transgression of the law. This law was called *yārghū-nāma* [sic!]. In the same manner as Muslims, in case of dissension between the laws of the human race, refer to the noble *sharī'at* of Muḥammad (May its legislator be blessed with the most virtuous prayers and saluted with the the most perfect salutations!), the Mongol tribes refer to the decisions of the *yārghū*; and they perpetuate to the extreme that law [*tūra*] and recognise that canon [*qānūn*]. This custom

is a certain path and a beaten track to them. In terms of the implementation of the statutes that apply to the emirs and the Mongol tribes, this law has to be applied, for they firmly believe it is a straight path and that it can stop oppositions and controversies.

For this reason, firstly, Bāyān-Tīmūr Bakhshī was appointed to the office of judge of the great court (*amīr-i yārghū-yi dar ordū-yi mu'azzam*), who is from the Mongol emirs of yore, who was all the time busy with juridical cases, obtained expertise in the law of justice and the *yāsāq*, solved problems in the spirit of equity, never received [undue] favour from anybody, refused [illegal] services and abstained from bribery. He has acquired such a firm grip and independence in binding and loosing these highly important matters and grand affairs that his righteousness and expertise in handling the affairs of the *yasaq* is confirmed [by everyone] Let him practise his jurisdiction in his centre. Therefore the present decree was issued (*hukm nafād yāfi*), so that, from this date onward, the *ulus* emirs, the ministers (*vuzarā*) and members of the Great Council (*aṣḥāb-i dīvān-i buzurğ*), the myriarchs (*umarā-yi tūmānāt*), the commanders of the thousands and hundreds (*umarā-yi hazārḥā va ṣadḥā*), the governors of the provinces (*hukkām-i vilāyāt*) and the whole Mongol military (*laskariyān-i Moghūlān*) should consider Bāyān-Tīmūr Bakhshī as the judge of the great court (*amīr-i yārghū-yi ordū-yi mu'azzam*). [Members of] the Mongol community (*jamā'at-i Moghūlān*) must appeal to him with their legal cases, and are not allowed to disregard his opinion and decision which he makes on the basis of the *Qutadghu Bilig* (*qūtātghū bilik*). They must not recognise anybody else and dispute [his opinions], but keep him in reverence and respect. After the litigation they are bound to pay the prescribed fee of the tribunal to him [i.e. the judge], his assistants and the scribe of the adjudication (*naukarān va kātib-i yārghū-nāma*). Nothing else can be expected or hoped for in this matter, and molestation or defiance must not be perpetrated. It was written at the date so-and-so. (Ali-zade II, pp. 32–34)

### III. The appointment of Shaikh 'Alī

Since Shaikh 'Alī has for long been an associate and attendant of the Mongol emirs and judges (*aṣḥāb-i yārghū*), and acquired a real knowledge of the provisions concerning a *yārghūchī*, become familiar with the *Qutadghu Bilig* of Chinggis Khan and the decrees of the Great Khans (*qūtātghū bilik-i jīngīz-khānī va aḥkām-i qā'anī*), and implemented them in the lawcourts and brought to conclusion the litigations of the adversary parties according to the law of justice and the *yasaq*; from this date onward, he is appointed to the office of the judge of the Great Court, owing to his perfect competence and expertise. In this office, he was given full mandate that he may separate the cases of cooperation from those of interference and conclude them in a manner which is concomitant with his justness. He should arrange the cases of the litigants attentively, process the inquiry and the verification effectually, and bring them to conclusion in accordance with the regulations of the tribunals and the rules of the *yasaq*, and avoid violence, injustice or excessive force. For this reason [the present] decree was issued (*hukm nafād yāfi*), so that the *ulus* emirs (*umarā-yi ulūs*), the ministers and the *ülke* emirs (*vuzarā va umarā-yi ülka*), the myriarchs (*amīr-i tūmānāt*), and members of the Great Council (*aṣḥāb-i dīvān-i buzurğ*) consider him as judge (*amīr-i yārghū*). All lawsuits submitted to the tribunal must be referred to him, and everyone is bound to be obedient and submissive to his resolutions based on justice and equity. When he makes the interrogations and, according to

justice and the *yasaq*, passes a resolution and issues a charter of adjudication (*yārghū-nāma*), no one may launch [the lawsuit] again. After the verdict all litigants are obliged to pay a certain fee (*rasmī*) to him and the scribe of the document (*kātib-i yārghū-nāma*), without falling short of anything. He should do nothing else. (Ali-zade II, pp. 34–35)

First, let us have a closer look at the structure of the lawcourt. In case of an impeachment and the subsequent litigation, a lawcourt was convened the name of which was *dīvān-i yārghū* ‘council of the court’. The convenor and president of the trial was the judge who was called by its Mongol name *yārghūchī*, or *amūr-i yārghū* in Persian; once they are referred to as *aṣḥāb-i yārghū* ‘chiefs/leaders of the judge’. His work was backed up by his assistants, again designated by the Mongol term *nöker* (in Persian plural *naukarān*), whose number and duties are not defined but their tasks must have been connected with the hearings. At the end of the litigation a written verdict or writ (*yārghū-nāma*) had to be filled in and passed over to the litigants by the scribe of the adjudication (*kātib-i yārghū-nāma*). The most important dignitary was the judge of the capital town where the Khan’s court resided, he was called *amūr-i yārghū dar ordū-yi mu’azzam* ‘the judge of the Great Court’.

Needless to say, all Mongol judges came from the circle of the Mongol military-administrative aristocracy, called emirs in Iran (Ar.-Pers. *amīr* = Mong. *noyon* ~ *noyan*, Tur. *beg*). In addition to being of illustrious descent, having outstanding personal qualities and enjoying the ruler’s confidence what else was needed for an appointment? I am inquisitive about the fact whether any professional knowledge was demanded of a would-be judge, and if so, what were those requirements. As is apparent from the appointment decrees *four* such prerequisites can be selected: 1. Knowledge of the customary law and the imperial law; 2. Familiarity with the *Qutaḡhu Bilig* of Chinggis Khan; 3. Acquaintance with the decrees and resolutions of the Great Khans and knowing the provisions and regulations concerning the judges; and finally, a less formal requirement was 4. Abiding by the the principles of justice and equity. In what follows I will review these points.

I. The following passages relate to a knowledge of the customary law and the imperial law:<sup>17</sup>

“knowledge of the customs (*rusūm*) and laws (*qavā'id*) of the Mongol sultans and emirs”; “deep knowledge of their laws and customary laws (*yāsāqhā va tūrkhā*)”; “in accordance with the orders of the law (*bar mūjib-i hukm-i yāsāq*)”; “according to the law of Chinggis Khan’s *yasa* and *yasaq* (*bar qānūn-i yāsā va yāsāq-i jīngīz-khān*)”.

The customary law played a decisive role in the life and society of Turkic and Mongol nomads, it was the main regulator of everyday life until the advent of the great world religions (Buddhism and Islam with the Turks, and Buddhism with the Mongols). In Turkic the common term for ‘traditional, customary, unwritten law’ was *törü* (*törö*) which is widely attested already in Old Turkic, beginning with the eighth-century Orkhon inscriptions.<sup>18</sup> The Turkic word was borrowed into Mongolian,<sup>19</sup> and after the Mongol period, from

<sup>17</sup>The citations are taken from the above three texts, and owing to the brevity of these texts I deemed any further closer reference superfluous.

<sup>18</sup>For the Turkic word *törü*: (*törö*); see Clauson 1970, pp. 531–532.

<sup>19</sup>See Kowalewski III, p. 1939; Lessing 1960, pp. 835–836 (s.v. *törü*). — The peculiar Persian plural form *tūr-hā* occurring in the text of the *Dastūr al-kātib* is a *hapax legomenon*, so probably is an error instead of the regular *tūra-hā* attested frequently elsewhere.

the thirteenth century onward probably reborrowed into Turkic in the form *töre*.<sup>20</sup> In Maḥmūd Kāshgharī's *Dīwān lughat al-Turk*, an eleventh-century lexicographical work, the Arabic equivalent of the word *törü* is *rasm* 'custom'<sup>21</sup> just as in our text *rusūm* (plural of *rasm*) also refers to the customary law.

Originally the Mongols had their own Mongolian term *yosun* for the customary law,<sup>22</sup> which after the Mongol period appeared in Turkic texts too, thus in the Uighur civic documents and Chagatay.<sup>23</sup> But the term *yosun* survived in Mongolian even after the Turkic *töre* had taken root. Moreover, sometimes they were used as synonyms, as parts of the binom *yosun töre*. According to the *SHM* (ch. 263) after the conquest of Turkestan (*Sarta'ul*) Chinggis Khan appointed governors (*danuğaçı*) to manage the towns, thus two Khvaresmian (*Qurumšı*) Muslims coming from Ürgenç, Maḥmūd Yalavač and his son Mas'ūd. "They told Činggis Qa'an about the laws and customs (*yosu dörö*) of cities, . . .".<sup>24</sup> So in the latter case, the laws of a foreign polity (the Muslim towns of Central Asia) were also called by the Turko-Mongol term *yosu dörö*.

Otherwise, in early Mongol texts, especially in the *SHM* both synonyms, *töre* and *yosun*, were used generally with the attribute *yeke* 'great', as *yeke töre* and *yeke yosu*. They can be translated as 'the great principle' or 'the great norm', as Rachewiltz does. Although not expounded explicitly, it is apparent from the context that these phrases refer to one of the cardinal principles, maybe the cornerstone of the Chingissian imperial law, the *yasaq*, namely the principle of mutual obligations between lord and subject: loyalty and service of the inferior party (the subject), and protection and reward from the superior party (the lord).<sup>25</sup>

According to the *SHM* (ch. 208) Chinggis Khan donated one of his wives Ibaqa-beki to Jürčedei, as a reward for his services, "in deference to the great principle (*yeke töre*) whereby services are duly rewarded".<sup>26</sup>

At another place, the *SHM* (ch. 252) relates that the Chinese (Jurchen) emperor, when the Mongol troops arrived to the vicinity of Jungdu (Beijing), handed it over to a governor (*liushiu*) called Qada and abandoned the city. Qada came out to receive Chingis Khan's people, Önggür, Aqai Qasar and Šigi Qutuqu, and wanted to present his gifts as signs of his submission. The first two men accepted Qada's presents but Šigi Qutuqu declined, referring to the principle that no goods appropriated from Chingis Khan can be accepted. When Šigi Qutuqu reports on the events, "Činggis Qa'an then mightily rebuked Önggür and Arqai. As for Šigi Qutuqu, he greatly favoured him, saying, 'You, Šigi Qutuqu, have been mindful of the great norm concerning one's obligations to the qan'".<sup>27</sup> In the latter case the great norm

<sup>20</sup>Clauson 1970, p. 531. — Cf. TMEN I, no. 134 (pp. 264–267).

<sup>21</sup>Dankoff II, p. 264. — There is an interesting proverb too given by Kāshgharī: *el qaldı törü qalmas* "The realm has been left behind, but custom cannot be left behind." He then remarks "This is coined to advise someone to act according to custom". (Dankoff I, p. 399).

<sup>22</sup>See Kowalewski III, pp. 2381; Lessing 1960, pp. 435–436 (s.v. *yosu(n)*).

<sup>23</sup>Clauson 1970, p. 975; TMEN I, no. 408 (pp. 555–557).

<sup>24</sup>Rachewiltz I, p. 194 and II, p. 963. — In the original: *balaaqasun-u yosu dörö* (Ligeti 1971, p. 236).

<sup>25</sup>Rachewiltz II, pp. 790–791, 814–815.

<sup>26</sup>Rachewiltz I, pp. 140–141; in the original: *yeke törö* (Ligeti 1971, p. 179). — For another example when Chinggis rewarded Naya'a for his being mindful of the great principle, see Rachewiltz I, p. 151; in the original: *yosu yeke törö-yi* (Ligeti 1971, p. 191).

<sup>27</sup>Rachewiltz I, p. 180. — In the original: *yeke yosu* (Ligeti 1971, p. 222).

(*yeke yosu*) refers to the basic principle that all confiscated goods and war booty belonged to the khan who solely had the right to distribute it to his confidants as a reward.<sup>28</sup>

Although the customary law (*töre, yosun, yosun töre, yeke töre, yeke yosun*) underlay the *yasaq*, the Mongol imperial law constructed and sanctioned by Chinggis Khan himself, but was not identical with it. As in modern states, the constitution encapsulates the principles of law at a higher, theoretical level, similarly *yasaq* was the “constitution” of the Mongol Empire which was superior to the customary law, although the two are generally mentioned together. Elements of the customary law (*yosun töre*) must have been the basic constituents of the imperial law (*yasaq*), the constitution of the empire. But given the lack of source material it is extremely difficult to draw a dividing line between the two, moreover since they often overlapped. The peculiar phrase *yāsā va yāsāq-i jīngīz-khānī* that occurs in the first charter of appointment is probably nothing else but a redundant wording so frequent in Persian style. That is, *yāsā* and *yāsāq* are actually the same notion, the first used in Muslim (Turco-Persian) sources, the second one being the original Turco-Mongol form. Consequently, no distinction can be made between them.

2. Another important requirement was the familiarity with the *Qutadghu Bilig* of Chinggis Khan. The following passages can be cited here:

“he has seen and read in the *Qutadghu Bilig* of Chinggis Khan (*dāda va hvānda bar qūtātghū bilik-i jīngīz-khānī*) and . . .”; “according to the law of the *Qutadghu Bilig* (*bar qānūn-i qūtātghū bilik*)”; “the *Qutadghu Bilig* of Chinggis Khan and . . . (*qūtātghū bilik-i jīngīz-khānī va . . .*)”.

Up to now a great deal of misunderstanding has prevailed as to the real meaning of “the *Qutadghu Bilig* of Chinggis Khan”. First, we must begin our scrutiny with the second element, i.e. *bilig*. *Bilig* was a widely used Mongol word meaning ‘knowledge, wisdom, intelligence’ (similarly to *töre*, it was also borrowed from Turkic, probably from Uighur).<sup>29</sup> In the nomadic tribal world, from which the Mongol Empire grew, one of the main sources of knowledge was traditional wisdom that found its expression in sayings and proverbs. These were also popular and frequently used in the *SHM* where it seems to be a well attested Mongolian custom, often resorted to by Chinggis Khan, his mother and sons as well (chs. 244, 260, etc.). Some of these sayings and words of wisdom were collected, identified and compared to recent material by Cêrensodnom.<sup>30</sup>

Let us refer to a few instances from the *SHM*. After Qasar and Temüjin (Chinggis) had murdered their half-brother Bekter, their mother Hö’elün severely reprimanded her mischievous sons: “Thus she spoke, and citing old sayings, / Quoting ancient words, mightily reviled her sons.” (*SHM*, ch. 78).<sup>31</sup> Similarly, after the conquest of Ürgench, the three sons of Chinggis Khan, Jöchi, Cha’adai and Ögödei, wanted to keep the whole booty, retaining also their father’s share for themselves. On hearing this Chinggis became infuriated and rebuked his sons: “Quoting ancient words, / Citing old sayings” (*SHM*, ch. 260).<sup>32</sup> — These “old

<sup>28</sup>Rachewiltz II, p. 919.

<sup>29</sup>Kowalewski II, pp. 1142–1143; Lessing 1960, pp. 104–105. — Clauson 1970, p. 339 (*bilig*) — *TMEN* II, no. 835 (pp. 416–418).

<sup>30</sup>Cêrensodnom 1986. Cf. also Gaadamba 1968.

<sup>31</sup>Rachewiltz I, p. 22. — In the original: *qa’učin üges qadalun / ötögüs üges orkidun* (Ligeti 1971, p. 48).

<sup>32</sup>Rachewiltz I, p. 193. — In the original: *ötögüs üges orkitü / qa’učin üges qadalju* (Ligeti 1971, p. 234).



sayings and ancient words” may be the first references to the folk wisdom sayings from which later the *biligs* of Chinggis Khan and his successors sprang.<sup>33</sup>

But not only the wise sayings and pronouncements of Chinggis Khan were held in high esteem but also those of his successors. When Hülegü died, his eldest son and the heir presumptive, Abaqa was summoned to the court where he arrived on 19 Jumāda I 663 (9 March 1265). Then the old commander “Shiktür Noyan, to whom the Ilkhan had given his last testament and entrusted his *biligs*, and Su’unchaq Aqa gave testimony before anyone else to Abaqa’s being the heir designate and his father’s successor”.<sup>34</sup> Moreover, not only khans but emirs and princes also pronounced aphorisms, e.g. in 1254 when an imperial assembly (*quriltai*), convoked by Möngke Khan and held at Qorqonoq Jubur at the Onon river in Mongolia, was ended “each of the amirs and princes spoke a *bilig* [word of wisdom]”.<sup>35</sup>

Finally, an interesting episode is described in the *Jāmi’ al-tavārikh* of Rashīd al-Dīn, in the section treating the life and reign of Temür (son of Jimgim, son of Qubilai, son of Tolui, son of Chinggis Khan). When Qubilai died (1294) a *quriltai* was convoked to elect a new khan. “There was a dispute for the throne between Temür and his brother Kammala, who was older, and words were exchanged. Kökächin Khatun, who is extremely intelligent, said to them, “Chechän Qa’an (i.e. Qubilai Qa’an) said that whoever knows the *biligs* [maxims] of Genghis Khan better should occupy the throne. Each of you now pronounce his *biligs* so that the elders who are present may see which of you knows it better”. Since Temür Qa’an is very eloquent and masterful, he pronounced the *biligs* well with a nice *ayalghu* [intonation]. Kammala, on the other hand, has a slight stutter and is not so perfectly endowed in this regard, so he did less well. All unanimously shouted, “Temür Qa’an knows the *biligs* better and pronounces them better. He is worthy of the crown and throne”.<sup>36</sup> This story is very important since it sheds light on the relevance the Mongols attributed to the pronouncements (wise sayings) of Chinggis Khan and explains that these utterances were preserved and performed orally. In the process not only the contents but the quality of the intonation (Mong. *ayalyu*) also mattered.<sup>37</sup>

So *bilig* as ‘maxim, aphorism, proverb, word of wisdom’ is well attested in Mongolian. But what is *Qutadghu bilig* and whence is it taken? Doerfer clearly defines *Qutadyu bilig* as ‘Bezeichnung von Aussprüchen Čingis Chans (wörtlich “Beseligendes Wissen”)’ ← tü. (chwar.) *qutadyu bilik* id.<sup>38</sup> But what is this ‘felicitic knowledge’, i.e. ‘knowledge that makes one happy’, and why are Chinggis Khan’s maxims termed as such? First and foremost, we must state that the term *Qutadghu bilig* can be attested in no other Persian texts but Nakhchivānī’s *Dastūr al-kātib*. Second, we must see that it is a Turkic structure and, although *bilig* was borrowed and used in Mongol, the first element *qutadyu* has never become part of the Mongol or Persian vocabulary. It is attested solely in Turkic, viz. for the first time it occurs in the title of the famous Islamic didactic poem of the Karakhanid Turks (eleventh

<sup>33</sup>The term *qa’uūn üge* ‘ancient word’ survives also in modern Khalkha Mongol with the meaning ‘proverb’ (хууч үгэ ‘поговорка’: Luvsandэндэв 1957, p. 571).

<sup>34</sup>Rashīd al-Dīn, (ed.) Thackston, III, p. 517 = Rashīd al-Dīn, (ed.) Tehran, II, p. 1059<sub>11–14</sub>.

<sup>35</sup>Rashīd al-Dīn, (ed.) Thackston, II, p. 413 = Rashīd al-Dīn, (ed.) Tehran, II, p. 849<sub>2–4</sub>.

<sup>36</sup>Rashīd al-Dīn, (ed.) Thackston II, p. 464 = Rashīd al-Dīn, (ed.) Tehran, II, p. 948<sub>5–15</sub>.

<sup>37</sup>For Mong. *ayalyu*, see *TMEN* I, no. 72 (pp. 195–196).

<sup>38</sup>*TMEN* III, no. 1548 (p. 538).

century), as *Qutadyu bilig* ‘wisdom, which brings good fortune; felicitic knowledge’. The Turkic word *qutadyu* is a nominal derivative of the verb *qutad-*, both with intransitive and transitive meanings: ‘to enjoy divine favour, or good fortune’ or ‘to bestow divine favour, or good fortune’. In turn, the verb *qutad-* itself is a verbal derivative of Old Turkic *qut* ‘the favour of heaven; good fortune; happiness’.<sup>39</sup> As mentioned above (n. 8) Melioranskiĭ was the first who tried to explain this term of the *Dastūr al-kātib*, basing his research on the Leiden and London manuscripts of the work. He arrived at the conclusion that in addition to Chinggis Khan’s law code, the *yasa(q)*, there existed a special collection of laws, the *Qutadyu bilig* which must have contained regulations concerning the order of inquiry and legal proceedings compiled by Chinggis himself or somebody in his following.<sup>40</sup> It was then Riasanovsky who reexamined Melioranskiĭ’s thesis and convincingly proved that Melioranskiĭ erred when he supposed the existence of a separate law code in addition to the *yasaq*. In conclusion Riasanovsky rightly asserts: No special code such as the “Koudatkou Bilig” was created in the epoch of Jenghiz Khan.<sup>41</sup>

On the whole, Riasanovsky’s arguments are convincing. In the following I will put forward his reasoning complemented with some of my own arguments. The precise meaning of *Qutadyu bilig* is not ‘royal knowledge’ or ‘royal science’ as Melioranskiĭ translates it but ‘felicitic/reviving *bilig*’, i.e. ‘maxims which make one happy and fortunate’. As is known and could be seen above, not only *yasaq*, the imperial law sanctioned by Chinggis Khan was held in great esteem with the Mongols, but his wise sayings and maxims were equally venerated. The latter were not only orally preserved but also put down in writing for better preservation. As was seen above in the story of the Yuan emperor Temür, son of Jimgim, the knowledge and recitation of these Chingissian maxims was an important requirement for the election of a ruler.

In his *Jāmi‘ al-tavārikh* Rashīd al-Dīn noted down some of the aphorisms of Chinggis Khan,<sup>42</sup> and it is apparent from these *biligs* or sayings that they have nothing to do with juridical texts concerning the legal procedure but were simply aphorisms or words of wisdom that were orally transmitted and, on occasion, as the *Jāmi‘ al-tavārikh* shows, also put down in writing. In the relevant passage of the charter of appointment which reads “he has seen and read in the *Qutadghu Bilig* of Chinggis Khan (*dīda va hvānda bar qūtātghū bilik-i jīngīz-khānī*)” the use of the words “see (*dīda*)” and “read (*khvānda*)” may refer to the fact that Chinggis Khan’s *biligs* were not only orally bequeathed but incidentally recorded in writing too.

Despite these facts, Tursun Sultanov, in his latest work on Chinggis Khan, insisted on the obsolete views of Melioranskiĭ that the *biligs* of Chinggis Khan referred to the legal procedure of the Mongol lawcourts,<sup>43</sup> although no new data have cropped up that would necessitate changing Riasanovsky’s view and mine expounded above. Finally, I would call attention to one interesting moment concerning the *Qutadghu Bilig* of Chinggis Khan, hitherto left unnoticed. As was mentioned earlier, the *biligs* of Chinggis Khan are called

<sup>39</sup>For these Turkic words, see Clauson 1970, p. 597 (*kuta:d-*), p. 594 (*kut*).

<sup>40</sup>Melioranskiĭ 1901.

<sup>41</sup>Riasanovsky 1965, pp. 40–42.

<sup>42</sup>Rashīd al-Dīn, (ed.) Thackston II, pp. 293–301 = Rashīd al-Dīn, (ed.) Tehran, I, pp. 581–591.

<sup>43</sup>Sultanov 2006, p. 12. He claims that “**билики** являлись своего рода процессуальным кодексом, согласно которому совершался суд над нарушителями Ясы — действующего закона.”

*Qutadghu Bilig* only in Nakhchivānī's *Dastūr al-kātib*, and it is a Turkic expression that does not occur in Mongol and Persian sources. The question may justifiably be raised: Why did Nakhchivānī use a Turkic phrase, otherwise unknown in the Mongol and Persian context? For me there is only one plausible explanation: although he was equally literate in Arabic and Persian, nonetheless Nakhchivānī's mother tongue was Turkic,<sup>44</sup> and it could be only him who connected the *biligs* of Chinggis Khan to the *Qutadghu bilig*, a well known notion and topic in the Muslim Turkic world.

3. The third requirement for a Mongol judge was in close connection with the first two: he had to be well acquainted with the decrees and resolutions of the Great Khans and knowledgeable about the provisions and regulations concerning the judges:

“he has . . . observed (in practice) among the chief judges (*akābir-i yārghūchiyān*)”; “knowledge of the provisions concerning a *yārghūchī* (*qavā'id-i yārghūchī*)”; “. . . the decrees of the Great Khans (*ahkām-i qā'anī*)”. These preconditions were of a practical tenor and were destined to ensure the professional expertise of judges: they had to know the former decrees, legal transactions and juridical practice as precedents to the ongoing lawsuits.

4. Finally, the last precondition was of a general and theoretical character: “walking in the steps of justice (*ma'dalat*) and following the way and customs of equity (*naṣfat*)”; “He must not violate the principles of justice and equity (*adl va insāf*) even by a hair's breadth”. These theoretical requirements display no special features, and can be interpreted only within the given cultural context of what was regarded as just and righteous. Obviously, the principles of justice in Islam were not identical with those of the Turko-Mongol nomadic world, but the contents of the term ‘justice’ was flexible enough to use it successfully in both cultures: everyone could interpret it as he wished.

In sum, having analysed the charters of appointment in the *Dastūr al-kātib*, we can once more come to the conclusion, which has increasingly become apparent owing to the investigations of the past few decades, that the Mongolian law system, similarly to other institutions of the Mongol states of the thirteenth to fourteenth centuries, was highly sophisticated and, despite temporary collisions, could for long coexist with Islamic *sharī'a*, the Islamic law, as was the case in Ilkhanid and Jalayirid Iran. [vasaryi@gmail.com](mailto:vasaryi@gmail.com)

### Abbreviations and Bibliography

- Aigle, Denise (2004): Le grand *jasaq* de Gengis-Khan, l'empire, la culture mongole et la *sharī'a*, *Journal of the Economic and Social History of the Orient* 47/1, pp. 31–79.
- Ali-zade, A.A. (ed.) (1964), (1971), (1976): Muḥammad ibn Hindūshāh Nakhchivānī, *Dastūr al-kātib fī ta'yīn al-marātib* (Rukovodstvo dlia pisca pri opredelenii stepenei), I/1, I/2, II, Moscow.
- Ayalon, David (A), (B), (C1), (C2): “The Great Yāsa of Chingiz Khān. A Re-examination,” *Studia Islamica* 33 (1971): 97–140 [A]; 34 (1971): 151–80 [B]; 36 (1972): 113–58 [C1]; 38 (1973): 107–56 [C2].
- Bayānī, Shīrīn (1382 [2003]): *Tārīkh-i āl-i Jalāyir*. Intishārāt-i Dānishgāh-i Tahrān: Tehran. (First edition: 1345 [1966]).
- Bayānī, Shīrīn (1367 [1988/89]), (1371 [1992/93]), (1375 [1996/97]): *Dīn va davlat dar Irān-i 'ahd-i moghūl*, I–III. Markaz-i Nashr-i Dānishgāhī: Tehran.

<sup>44</sup>Ali-zade II (1976), pp. ix, 43. Cf. also Hanaway, in: Spooner – Hanaway 2012, pp. 107–108.

- Cèrensodnom, D. (1986): Пословицы и поговорки в “Сокровенном сказании”, *Аман зохиол судлал (Studia Folclorica)* 13/4, pp. 69–85.
- Clauson, Sir Gerard (1960): *Sanglax. A Persian Guide to the Turkish Language by Muhammad Mahdí Xân. Facsimile text with an Introduction and Indices by Sir Gerard Clauson.* (E.J.W. Gibb Memorial New Series XX) London.
- Clauson, Sir Gerard (1972): *An Etymological Dictionary of Pre-Thirteenth-Century Turkish.* Clarendon Press: Oxford.
- Dankoff, Robert (ed., trans.) (1982), (1984), (1985): Maḥmūd al-Kāšyarī, *Compendium of the Turkic Dialects (Dīwān Luyāt at-Türk).* Edited and Translated by in collaboration with James Kelly. Parts I–III. Harvard University Printing Office.
- Gaadamba, M. (1968): Некоторые художественные особенности “Сокровенного сказания”, *Монголын судлал (Studia Mongolica)* 6/27, pp. 62–126 (19–69).
- Grekov, B. D. – Īakubovskii, A. Ju. (1950): *Золотая Орда и ее падение.* Moscow – Leningrad.
- Grønbech, K. (1942): *Komanisches Wörterbuch.* (Monumenta Linguarum Asiae Maioris.) Copenhagen.
- Hammer-Purgstall, J. von (1840): *Geschichte der Goldenen Horde in Kiptschak, das ist: der Mongolen in Russland.* C. A. Hartleben's Verlag: Pesth.
- Herrmann, G. (2004): *Persische Urkunden der Mongolenzeit.* (Documenta Iranica et Islamica 2.) Harrassowitz Verlag: Wiesbaden.
- Juvaynī, tr. Boyle = Boyle, John Andrew (tr.): *The History of the World-Conqueror by ‘Ala-ad-Din ‘Ata-malik Juvaini* I–II. Cambridge, Massachusetts, Harvard University Press – Manchester, 1958.
- Kowalewski, J. E. (1844), (1846), (1849): *Dictionnaire mongol-russe-français,* I–III. Kasan.
- Ligeti, Louis (1971): *Histoire secrète des Mongols.* Akadémiai Kiadó: Budapest.
- Manz, B.F. (1989): *The Rise and Rule of Tamerlane.* Cambridge.
- Meliioranskiĭ, P. M. (1901): О Кудатку Билике Чингиз хана, *Zapiski Vostochnogo Otdeleniia Russkogo Imperatorskogo Arkheologicheskogo Obshchestva* 13, pp. 015–023.
- MirafTAB, Mahmud (1956): *Dastur al-Katib Fi Ta’yin al-Maratib.* Edition und Darstellung. Dissertation . . . Georg-August-Universität, Göttingen. vii, 107, (1)ff. Lrg. 4 to. Wraps. Mimeograph. Göttingen.
- Morgan, David (1986): The ‘Great Yāsā of Chingiz Khān’ and Mongol Law in the Īlkhānate, *Bulletin of the School of Oriental and African Studies* 49, pp. 163–176.
- Morgan, David (2005): The Great Yasa of Chinggis Khan revisited. In: *Mongols, Turks, and Other: Eurasian Nomads and the Sedentary World,* (ed.) R. Amitai and M. Biran. Leiden – Boston, pp. 291–308.
- Morgan, David (2007): *The Mongols.* Second edition. Oxford: Blackwell Publishing.
- Rachewiltz, Igor de (1993): Some Reflections on Činggis Qan’s *jasar*, *East Asian History* 6 (December 1993), pp. 91–103.
- Rachewiltz, I. de (2006): *The Secret History of the Mongols. A Mongolian Epic Chronicle of the Thirteenth Century.* Translated with a historical and philological commentary by —. (Brill’s Inner Asian Library 7/1–2) Brill: Leiden – Boston.
- Rashīd al-Dīn, (ed.) Tehran: *Jāmi‘ at-tavārikh-i Rashīd ad-Dīn Faḍlullāh Hamadānī,* (ed.) Ravshan Muḥammad –Mūsavī, Muṣṭafā, I–IV. Tehran, 1373 [1994/95].
- Rashīd al-Dīn, (ed.) Thackston: Thackston, W. M. (English translation & annotation of): Rashiduddin Fazlullah. *Jami’u’t-tawarikh. A history of the Mongols,* I–III. Sources of Oriental Languages & Literatures 45 = Central Asian Sources IV. Cambridge, MA: Harvard, 1998–99.
- Ravshan, Muḥammad – Mūsavī, Muṣṭafā, see Rashīdaddīn, (ed.) Tehran.
- Riasanovsky, Valentin A. (1965): *Fundamental Principles of Mongol Law.* (Indiana University Publications, Uralic and Altaic Series, Vol. 43.) Indiana University: Bloomington.
- Roemer, H. R. (1952): *Staatsschreiben der Timuridenzeit.* (Veröffentlichungen der Orientalischen Kommission 3.) Wiesbaden.

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Şafā, Dabīh-allāh (1366 [1987–88]): *Tārikh-i adabiyāt dar Īrān*, vol. IV. Intishārāt-i Firdavs: Tehran.

Spuler, B. (1965<sup>2</sup>): *Die Goldene Horde. Die Mongolen in Rußland 1223–1502*. Leipzig – Wiesbaden. (First edition: 1943).

Spuler, B. (1968): *Die Mongolen in Iran: Politik, Verwaltung und Kultur der Ilchanzeit 1220–1350*. Akademie: Berlin. (First edition: Leipzig, 1939).

Spooner, Brian – Hanaway, William L. (ed.) (2012): *Literacy in the Persianate World: Writing and the Social Order*. University of Pennsylvania, Museum of Archaeology and Anthropology: Philadelphia PA.

Steingass, F. (1977): *A Persian-English Dictionary*. London.<sup>7</sup> (1st edition: 1892)

Sultanov, T. I. (2006): *Чингиз-хан и Чингизиды. Судьба и власть*. Moscow.

Thackston, W. M., see Rashīd al-Dīn, (ed.) Thackston.

TMEN (1963), (1965), (1967), (1975): Doerfer, G., *Türkische und mongolische Elemente im Neupersischen*, I–IV. Wiesbaden.

Vásáry, István (2015): *Shari‘a and Yasa*. Islamic Attitudes toward the Mongol Law in the Turco-Mongolian World. (to be published in Exeter, UK)

Vernadsky, George (1938): The Scope and Contents of Chingis Khan’s *yasa*, *Harvard Journal of Asiatic Studies* 3, pp. 337–360.

Wyngaert, A. van den (ed.) (1929): *Sinica Franciscana I: Itinera et relationes fratrum minorum saeculi XIII. et XIV. Ad Claras Aquas (Quaracchi – Firenze)*.

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