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Two autograph pages from C. P. Fitzgerald's diary of February 1928, reproduced with the permission of his daughters, Mirabel and Anthea

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February 25
Saturday

Temp 50. Sunny. A very warm, the best day so far, quite extraordinary for February.

The stream down a
inch. It is very little
over the banks now
only just around the
middle bridge and
quayhouse, and by
the weir bridge.

In the morning, we went into
the woods for primroses.
Christopher arrived in
time for dinner.

News. The morning
have at last held a
plenary session of the
Central Committee; 26

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handing which definitely
selects the stamp of legality
on their government
as opposed to the cliques
in Hankow or Canton.

This is a great political
triumph for Chiang, who
position is thus consolidated.

Temp is reported to be
attacking 大明.

The Ilford bye-election resulted in the Town
losing 1000 out of 1000
of the previous majority,
almost all of which went
to the Liberal
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Cover photograph: Rubbing of a bas-relief, Hsin-ching, Szechuan Province
(C. P. FitzGerald, *Barbarian Beds* [London: Cresset Press, 1965]).
SOME REFLECTIONS ON ČINGGIS QAN'S ĮASAŁ

I. de Rachewiltz

There has been recently a renewed interest in the so-called 'Great Įasał' of Činggis Qan—the 'Great Yasa' of the Muslim authors. While the subject is one of far-reaching significance, a problem arises as to the historicity or otherwise of a written code Įasał supposed to have been compiled in the time of Činggis Qan (1162–1227), which embodied the conqueror's legal pronouncements, i.e. the laws which he issued on matters of state, administration of justice (rewards and punishments), military ordinance, diplomatic exchanges, tributary practices, etc., constituting the normative basis of Mongol governance.2

The most important recent contributions towards clarifying this problem are those of Paul Ratchnevsky (d. 1991), David Ayalon, David Morgan and Paul Heng-chao Ch'en.

Ratchnevsky devoted a substantial article to the investigation of the Įasał which he summarized in his excellent book on Činggis Qan.3 Having reviewed the information contained in the Secret History of the Mongols, the Chinese sources of the thirteenth and fourteenth centuries, and the works of the Persian historians (see below), he reached the following conclusions: (1) the Įasał of Činggis Qan did not represent a legal code drawn up at one particular point in time; (2) it was not a homogeneous and systematically constructed document; (3) rather it was a collection of orders and decrees issued over the years by Činggis Qan, as circumstances required, and based on actual needs; (4) the collection of such ad hoc rescripts was edited and recorded in written form at the time of Ögüdei's enthronement in 1229 (on which occasion Ögüdei introduced the ceremony of the presentation of Činggis Qan's Įasał); (5) the written record of the Įasał was to set the established order introduced by Činggis Qan for ever, and was to serve as an unvarying guide and model for the government of his successors; (6) the Įasał gradually diminished in importance owing (i) to developments which took place within the Mongol empire through symbiosis with the settled...
cultures, and the conversion of the Mongol rulers to Buddhism or Islam; and (ii) to the law-enforcing activities of individual khans over their domains which led to the supplementation and modification of the contents of Činggis Qan’s Časay with the Časay of a particular ruler; (7) as a result, the Časay of Činggis Qan was eventually replaced by the Časays of later Mongol rulers and did not survive in its original form, especially since Činggis Qan’s Časay was a jealously guarded document, of which few copies were made, and access to which was restricted to the rulers of the Chingiside line (cf. the case of the similarly lost text of the imperial chronicle Altan debter); (8) what we know of the original Časay is limited to quotations preserved in the works of eastern authors who never saw the original themselves, which do not convey the words of Činggis Qan verbatim, and some of which may be either completely fictitious, or pertaining to the Časay of later rulers.4

Further, from indirect evidence and what he assumes to be ‘genuine’ fragments of the Časay, Ratchnevsky elaborates on the nature and contents of Činggis Qan’s legislation, concerning in particular military organization, various offences (lying, adultery, infringement of religious taboos, etc.), and the duty of hospitality, emphasizing the distinction between the non-recorded common law of the Mongols (which continued to be observed according to tradition and custom),5 and the recorded new legislation of the Časay. He also stresses the distinction between the Čīrliy ‘order(s), decree(s)’, Časay ‘law(s)’, and bilgi ‘maxim(s)’ pronounced by Činggis Qan, their respective legal weight, and the difference of opinion among scholars concerning their form.6

In a subsequent paper which appeared in 1987, Ratchnevsky surveyed the entire legal scene in the Mongol society of the twelfth to thirteenth centuries, systematizing data and results from previous studies, and adding new information, without, however, discussing further the problem of Činggis’s Časay. Ratchnevsky assumes here that Činggis’ code of laws, the ‘Great Časay’, was embodied in the ‘Great Book of Yāsās’ described by Čuvainl.7

In his investigation of Činggis’ Časay, Ratchnevsky has drawn on all available eastern and western sources (among the latter, the reports of the Franciscan friars sent as envoy to the Mongol court), but most of his information derives from the works of Čuvainl and, to a lesser extent, of Rašid al-Dīn, as well as from Maqrizi, al-‘Umarl and Bar Hebraeus, all of whom quote sections or articles of the Časay.8 However, in a series of fundamental articles analyzing Islamic sources on the Časay, written chiefly for the purpose of evaluating the latter’s true status under the Mamlūks and the reliability of the Egyptian historian Maqrizi’s statements in this regard, Professor Ayalon has conclusively shown that all the Islamic sources on the Časay derive directly or indirectly from a single authority, viz. Čuvainl, whose Ta’rif-i Čahān-gušāy he describes as “a very biased and partisan source.” Ayalon gives examples of Čuvainl’s looseness and ambiguity detracting from the trust-
worthiness or accuracy of his information on the Jasa'. Now, since Juvaini remains our major source (and, virtually, the only Islamic one) on the subject, any study of Činggis' Jasa' which fails to take Ayalon's criticism of the Persian historian into account appears to be vitiated or impaired from the start, which of course applies also to Ratchnevsky's investigation. It should be pointed out, however, that notwithstanding his serious reservations about Juvaini's testimony, Ayalon does not go so far as to deny the existence of a Mongol law embodied in a written code under Činggis Qan (see below).

Prompted largely by Ayalon's penetrating study, Dr. Morgan published in 1986 an interesting and challenging article on "The 'Great Yasa of Chingis Khan' and Mongol Law in the Ilkhanate," the results of which are summarized in the section on 'Law' of his book The Mongols which appeared soon after.10

While accepting Ayalon's conclusion regarding the lack of validity of the Islamic sources deriving from Juvaini in proving the existence of a written legal code compiled under Činggis Qan, Morgan questions Ayalon's censure of Juvaini as an historian. According to Morgan, Juvaini's work should be excluded from the discussion not because of its unreliability as a source, but because Juvaini's chapter on 'The laws framed by Činggis Qan and the yasas which he promulgated after his rise to power' in the Ta'rīx-i jāban-gušāy does not actually deal with the supposed written code of Činggis, i.e. the 'Great Yasa', but only with some of Činggis Qan's yasas or regulations.11 In Morgan's opinion, the exclusion of this chapter, which as he rightly says is "usually regarded as an essential foundation for the study of the Great Yasa",12 leads him to question the very existence of a written code, particularly in view of the fact that a source like the Secret History of the Mongols makes no mention of it but, like Juvaini, records only specific regulations and decrees issued ad hoc by Činggis Qan. Morgan comes to the conclusion that "it is not feasible at this stage to state with certainty that the Great Yasa did not exist: only that the sources which have so far been used to demonstrate the proposition that it did do not show anything of the sort."13 And, in reply to Ayalon's remark that he (Ayalon) does not agree "with the view of some scholars ... that in the reign of Čingiz Khan there seems to have been no Mongol law embodied in a written code. For such a view much stronger proof must be found,"14 Morgan writes, "In the nature of things, we are unlikely ever to be able to prove the negative; but in any case that is not where the onus of proof lies. The ball is firmly in the court of those who believe in the existence of a written yasa; they must, if they can, find some evidence for it. Perhaps Ayalon, in the fuller version of his study which he promises, will be able to produce some such evidence. If he does, I shall happily recant. But it will need to be something other than those old but in this instance, unhelpful friends, Juwayni, Rashid al-Din and the Secret History of the Mongols."15

In Ayalon's and Morgan's studies attention is focused primarily on the Islamic sources and, to a lesser extent, on the Secret History. Very little

9 Ayalon, Outsiders, IVa, pp.133ff.
12 Morgan, "'Great Yasa ',' p.168.
13 Morgan, Mongols, p.99.
14 Ayalon, Outsiders, Introduction, p. x.
attention is paid to the Chinese sources of the thirteenth and fourteenth century, no doubt because they are poor in specific references to the Jasa\yn of Cinggis Qan. Furthermore, the Chinese material of this period is somewhat intractable and a specialized knowledge is required to handle it critically. Chinese scholars have collected virtually all the references to the Mongol Jasa\yn and much of this information has indeed been used by Ratchnevsky in his earlier-mentioned publications. More recently, Dr Paul Heng-chao Ch’\en has discussed the problem of the Jasa\yn in Chinese documents within the framework of his investigation of the legal system in Yuan China.\footnote{16}

With regard to the first reference to the Great Jasa\yn, Ch’\en states, “The Ta cha-sa 大扎撒 was known as the Great Code of Cinggis Qan and seems to have been promulgated in 1229, when Tai-tsung 太宗 (i.e. Ögedei Qan—I.R.) was elected to succeed Cinggis Qan.”\footnote{17} This reference is very interesting. It is found in the Yuan-sibih\footnote{18} the official history of the Yuan dynasty, the ‘Basic Annals’ (pen-chi 本紀) of which are based on the Veritable Records (shib-\l{u} 實錄) of each reign. As recorded in Yuan-sibih 1, 29, one of the very first actions of the new emperor upon his enthronement on 13 September 1229 was to promulgate the Great Jasa\yn. The expression ‘Great Jasa\yn’ (Ta cha-sa) is glossed in this text as ta jia-\l{u} 大法令 ‘the Great Code’. In the Chinese nomenclature of the Yuan, as in earlier periods, the adjectives ta 大 and t'ai 太 (= Mo.yeke) ‘great’, ‘grand’, are regularly used with reference to the emperor or to the court\footnote{19}. Furthermore, Mo.yeke, lit. ‘the Great Ones’, is a term designating the (royal) ancestors (= Chin. tsu-tsung 祖宗), so that yeke bears also this additional connotation of ‘ancestral’\footnote{20}. In the Yuan-sibih

\section*{zuan 70. Geburtsstag} (Wiesbaden: Otto Harrassowitz, 1983), pp.274–5. Professor Cleaves disagreed with my argument in his article “A Mongolian rescript of the fifth year of Degedü Erdem-tu (1260),” in HJAS 46 (1986): 191, n.4. In further support of my argument, and in addition to what I have said on the subject in my article “The Mongols rethink their early history” (to appear in the Rivista degli Studi Orientali), n.44, I should mention a significant piece of evidence which has been hitherto ignored. I refer to the letter of Mangu Khan (i.e. Möngke Qan, r.1251–59) to Saint Louis as recorded in Latin by William of Rubruck in 1254, where we read: “Per vittutem eterni Dei per magnum mundum Moallorum preceptum Manguchan ... ” (A. Van Den Wyngaert, ed., Sinica Franciscana, I: Itinera et relationes Fran trum Minorum saeculi XIII et XIV, Quaracchi-Firenze, 1929; reprint ed., Quaracchi-Firenze, 1962), p.308. I think there is no doubt that the ‘magnus mundus Moallorum’ to which reference is made in the letter is the Yeke Mongol /Uls. Cf. E. Voegelin, “The Mongol orders of submission to European powers, 1245–1255,” Byzantion 15 (1940–41): 398. This would confirm the correctness of the rendering ‘Great Mongol Empire’ (or Nation) as opposed to ‘Empire of the Great Mongols’. As for the expression Yeke Mongol\l{u} tai\l{u} court, which is at the root of the problem, it should be emphasized that it does not occur as such in any Mongol document or text of the Mongol-Yuan period and that, for that period, its existence is inferred only indirectly from Chinese and Latin sources. See A. Mostaert and F. W. Cleaves in HJAS 15 (1952): 486–91. My view is that the expression Yeke Mongol or ‘Great Mongols’ was actually extrapolated from Yeke Mongol\l{u}; in other words, after the establishment of the Great Mongol Empire (better: Nation—in 1206), the members of the ruling ethnic group, i.e. the Mongols, became known as the Great Mongols.

\footnote{21} Juwaini (as cited in n.11), p.256.

\footnote{22} Ibid., pp.189–90 (my emphasis).
context, therefore, the 'Great Jasa'(γ) is, by definition, the 'Code (= [the body of] laws and regulations) of Chünggis Qan'. The item recorded in the Yuan-sbib follows various other measures taken by Ögedei upon his enthronement and is precisely dated. We may therefore take it that this is what actually happened, even though we still do not know the nature of the 'Great Code', nor in what form it was 'promulgated' by Ögedei. Can Juvaini refer to the same event when he writes: "And he [Güyük—I.R.] made a jasa that just as Qa’an (i.e. Ögedei—I.R.), at the time of his accession, had upheld the yasas of his father and had not admitted any change of alteration of his statutes, ..."?21 We know from the same source that when Ögedei was elected, "first of all he made a jasa that such ordinances and commands as had previously been issued by Chüngiz-Khan should be maintained, and secured, and protected against the evils of change, and alteration, and confusion." On that occasion he also decreed (according to Juvaini) as follows: "Every hasty speech which until the day of our accession hath issued from the mouth of any man, we shall pardon and cancel it; but if from henceforth any man shall set foot to an action that contravenes the old and new ordinances and yasas, the prosecution and punishment of that man shall be proportionate to his crime."22

From these accounts, it would seem to me that, as part of the enthronement ceremony, Ögedei not only pledged continued observance of his father's jasa(y) (yasas), but that he also promulgated them formally, i.e. he proclaimed them at the quriltai. The recital or declamation of Chünggis' pronouncements on festive and formal occasions such as a quriltai is a well attested practice in the thirteenth century; and we know that other members of the qan's family, such as Çaśatai and Tolui had a reputation for possessing a particularly good knowledge of such pronouncements, which included jasa(y) as well as biligs ('maxims').23 According to a Chinese source of the fourteenth century, it was a Mongol practice to read the 'Precious Precepts (pao-bsin寳訓) of T'ai-tsu (i.e. Chünggis Qan)’ at the quriltai that elected the qan, on the very day of his enthronement.24 I shall return later to the question of the 'promulgation' of Chünggis' legal pronouncements or laws, and their probable form.

Another interesting reference in the Chinese sources mentioned by Ch'en is an imperial edict of 10 September 1264, the text of which is preserved in both the Yuan-sbib and the Chinese administrative code, Yuan tien-chang 元典章.25 On that date, Qubilai Qaśan (Shih-tsu 世祖, r.1260–94) decreed the change of reign-title from Chung-tung to Chih-yuan. In the edict as recorded in the Yuan tien-chang the emperor states: ‘Since Buša, Quśa(r), Toman, Aliča(r), Toyos and others had plotted to harm Our House, and have been duly executed in accordance with Chünggis Qan’s Jasa(γ), (We now) grant a general amnesty to the empire’.26 The ‘plot’ in question is the 'rebellion' of Qubilai's brother Ariq Böke, which had been supported by the high officials named above. Following Ariq Böke's submission in 1264 they were tried and executed. The event in question is well documented and is
described in detail by Rashid al-Din, who mentions all those personages.\textsuperscript{27} It is clear from this that in 1264, in cases of sedition perpetrated by Mongol princes and dignitaries, justice was still carried out in accordance with the \textit{jasay} of Chinggis Qan, i.e. with the Great \textit{jasay}.\textsuperscript{28}

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

Ch’en’s conclusion is that the \textit{jasay} “was a collection of rules and instructions given by Chinggis Qan in response to the needs of specific circumstances and was later formally promulgated in 1229. Although it was not a systematically organized legal work, the \textit{jasay} provided the Mongolian ruling clan with guidelines for the administration of government, especially in matters of military discipline and organization. The \textit{jasay} did not apply universally as a code to all tribes under the Mongolian domination, but by virtue of its authoritative character, it did serve as a principal legal source in China for the period immediately following the fall of the Sung dynasty. Because Chinese society soon proved too complicated for Mongolian customary law to deal with, the application of the \textit{jasay} to Chinese cases diminished gradually and by the end of the thirteenth century, the \textit{jasay} as a source of law appeared to be of minimal importance.”\textsuperscript{31}

Commenting on Ch’en’s discussion, Morgan states that Ch’en’s remarks (especially those on pp.4–8), “while accepting the authority of Riasanovsky and being ‘pre-Ayalon’ on the \textit{Yasa’s} contents, do not seem to show that the evidence of the Chinese sources is irreconcilable with the arguments advanced in this paper (i.e. ‘The “Great \textit{Yasa}”’—I.R.). Indeed, it has been said that the Mongol Yuan dynasty was unique in Chinese history in that it did not have a formal penal code. It is even suggested that the notion of such codes was meaningless to the Mongols, and that they preferred to rule through individual regulations and legislation in China. See J. D. Langlois, Jr., in Langlois, ed., \textit{China under Mongol rule}, Princeton, 1981, p.10, n.20, citing Uematsu Tadashi.”\textsuperscript{32} In his book \textit{The Mongols}, Morgan does not refer to Ch’en or to the Chinese evidence for the Great \textit{jasay}.

Although it is true that the Chinese sources supply scant information on the \textit{jasay} of Chinggis Qan, what they tell us is, I believe, significant, particularly if we analyze it in conjunction with the evidence provided by the \textit{Secret History}, a source which, in my opinion, deserves also closer scrutiny. In the \textit{Secret History}, the word \textit{jasaq} (= \textit{jasay}) occurs nine times (§§153 [twice], 189, 193, 197, 199, 227, 257, and 278) glossed in Chinese as \textit{fa-tu} \textit{法度 ‘regulation, ordinance, law}’ in all cases except once in §153, where it is
glossed \textit{chün-fa 軍法} ‘military ordinance’.\textsuperscript{33} The glosses are, however, very late additions (end of the fourteenth century), whereas the text of the \textit{Secret History} goes back to the first half of the thirteenth century.\textsuperscript{34} It is necessary, then, to examine the context closely to determine the exact meaning of the term.

1 & 2. (§153, both instances with the same contextual meaning.) Čınggis' \textit{jasay} of 1202 is a military one with normative force: “When we overcome the enemy, we shall not stop to plunder. When the victory is complete, the booty shall be ours, and we shall share it. If we are forced by the enemy to retreat, let us turn back to the point where we began the attack. The men who do not turn back to the point where we began the attack will be cut down.”\textsuperscript{35} As usual with the \textit{jasay}, punishment for contravention is mentioned (or implied).

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

4. (§193) Dodai Cerbi advised Čınggis Qan in 1204 to the effect that, to overcome the more powerful Naiman forces, it was necessary to fatten first the lean Mongol geldings. In order to delay the Naimans’ offensive and gain time to fatten the horses, Dodai proposed a clever scheme, viz., to make the Mongol soldiers light fires in different places at night, thus creating the impression that they were spread over a wide area and more numerous than in reality. The text then says: \textit{ene üge-yı jóbšiyéjū Čınggis Qa’an jarliq ból Yun gey bő’t qal-nu’ut tüle’ülükün ke’en ēri’üt-te jasag tugqabai “Approving these words (of Dodai Cerbi), Čınggis Qa’an gave the following order: ‘(Things) being so, make them light the fires’!}, and he proclaimed the law to the soldiers (lit. ‘at the moment when Č.Q. gave the order, saying “......”, he proclaimed the \textit{jasaq} to the soldiers’).” What Čınggis did, then, was to issue the order and proclaim it as \textit{jasaq}, i.e. as if it were a law, or with the full force of the law, meaning that in view of the critical situation facing the Mongols, any breach of this order would be dealt with with extreme severity as prescribed by the \textit{jasay}. In my opinion, this passage has been misunderstood by previous translators, who have incorrectly assumed that \textit{jasay} here means simply ‘order’.\textsuperscript{38} Now, the rather loose usage of the term \textit{yasà} when an ‘order’ or ‘decree’ (\textit{firmân}) is meant in the Islamic sources is well documented,\textsuperscript{39} but the Chinese and Mongol sources distinguish clearly the two terms, as shown by the consistency of the Chinese renderings (\textit{fa-ling 法令} \textit{fa-tu} for \textit{jasay} and \textit{sheng-chib 聖旨} for \textit{jariq}),\textsuperscript{40} and by their regular usage in all the Mongol documents (epigraphies, edicts) of the Yūan in Uighur and \textit{Phags-pa} scripts.\textsuperscript{41} In our passage, \textit{jariq} is also glossed as \textit{fa-tu} ‘law’ in the Chinese interlinear version.

5. (§197) Čınggis Qan, angry at Naya’a Noyan for his delay in delivering Dayır Usun’s daughter Qulan (Qatun), and fearing a case of \textit{lèse majesté},
Asiatische Forschungen of the emiy Mongol-YUan period the service of the Khan. Eminent personali­
H. L. Chan, C. C. Hsiao, P. W. Geier, eds,
North China in the early Mongol period,' (or Uighur) Cinqai (or Cingqai)
pp.365-463 (esp. pp.365-77). Cf. also I. de
Ssu-ch'in
Cf. ibid., p.100-2; I. de Rachewiltz,
Cf. ibid., p.199. In the end, however,
Hsueh-hai Ch'u-pan-she, 1980),
recorded by his dLKipie Li Chih-ch 'ang
1204. Here jasay = ‘normative law.’ Cf. Cleaves’ translation: “I shall make [it a matter of
ordinance,” adding in a footnote, “I.e., ‘I shall make a precedent which shall
serve as law for the future.’ See also §§197 and 257 below for other instances
of the application of the jasay.”
6. (§199). Činggis gives a number of military directives in 1205 concerning
the use of horses and hunting for provisions to be treated as ‘law’, with due
apprehension and punishment of transgressors. As in no. 5 above (§ 197),
jasay = ‘normative law’.
7. (§227) Further military directives issued in 1205 by Činggis Qan, here with
regard to the companies of the Guard (kešik [= kešig]) serving on roster duty,
again with prescription of punishment for defaulters. jasay = ‘normative
law’.
8. (§257) Činggis, angry at his commander Toqučar’s plunder of the border
towns of Qan Melik (i.e. Amin al-Mulk), thus causing the latter to turn against
the Mongols (in 1220), intends to make a law to deal with such matters in
the future, just as in no. 5 above (§197). Capital punishment for infringement
is also mentioned. Here too jarliy = ‘normative law.’
9. (§278). Ögedei re-proclaims (in 1229?) Činggis Qan’s regulations
concerning the organization and duties of the Guard as enunciated in §§227, 229
and 232, with some modifications. The context in which the term jasay
is used is identical with no. 7 (§227) above. jasay = ‘normative law.’
Still in the Secret History we find one more occurrence of jasay in §74, as
jasaytan (= jasay+ poss. suff. -tan) with the meaning of ‘lawgivers.’
Reviewing the above occurrences in the earliest Mongolian source, we
notice that jasay is invariably used in the sense of a ruler’s directive, as a
legally binding precedent, a normative law the infringement of which
entails severe (usually capital) punishment. Since jasay is the law of the
ruler, i.e. the law of the state, it can by extension also mean ‘governance,
rule’ (as in Secret History §189). Although one or more ‘decrees’ (jarliys)
may be treated as, or constitute, a ‘matter of jasay’ if they are deemed
important enough for the qan to decide so (as, e.g., in Secret History §§197
and 199), on no account can jasay be equated with jarliy since the latter,
even though also a ruler’s pronouncement, does not have per se the
normative force of jasay; and a jarliy can never be understood in the sense of
‘rule, governance’ like jasay:
In the Secret History we also notice the absence of any reference to the
Great jasay, or to any ‘written’ jasay. The Law was certainly there in form
of laws, prescriptions and rulings issued by the elected qan, but was it written
down and codified in his lifetime? We know that Činggis Qan had scribes
(bičēći) who recorded his words, and instances of their ‘recordings’ are well
documented in the Chinese sources of the period.48 His chancellery included
people with knowledge of the Uighur script and of Chinese.49 The famous
Sigi Qutuqu, about whom so much has been written, kept records of judicial
matters and population distribution, no doubt written in Uighur script.\footnote{See P. Ratchnevsky, "Sigi-qutuqu, ein mongolischer Gefolgsmann im 12–13. Jahrhundert," CAJ 10 (1965): 96–98; idem, in I. de Rachewiltz et al., eds, In the service of the Khan, pp.79–80.} It is reasonable to assume that Činggis' 'laws' were set down in some form, but we cannot prove it, since it is not clear what is meant by the 'decisions on judicial matters' (jarqu jarqulaqsan) recorded by Sigi Qutuqu, and some scholars have suggested that they may have had nothing to do with the jasay.\footnote{Cf. Ayalon, Outsiders, pp.135–7; Morgan, "Great Yasa,'", pp.164, 174–6.}

When Ögödei 'promulgated the Great jasay' in 1229, he must have intended to make known to the wider audience of the quriltai the principles of governance of Činggis Qan, i.e. those matters that were of primary concern for the security of the state, the ruling clan, the military, and those affecting the subjects. The purpose of such a promulgation would have been threefold: the princes, the nobility and army leaders were to be reminded of their responsibilities; the subjects, of their duties; and the newly elected emperor, of his solemn acceptance of the principles and laws established by his predecessor, the founder of the dynasty. This acceptance implied the respect of Činggis Qan's will and the continuation of his policies. One may cite, in this connection, Juвaini's statement to the effect that when a qan is elected or the army is mobilized, or a quriltai is held, the written code of jasays is produced, and the qan and princes govern their actions by it.\footnote{Juвaini, p. 25.} This practice may indeed have begun at the great quriltai of 1218–19 which decided the Western Campaign, i.e. the war against Khwarazm (1219–24). Referring to the launching of the campaign, Juвaini says that Činggis Qan "equipped and instructed his sons, the great emirs, the noyans and the thousands, hundreds and tens, disposed the two wings and the vanguard, proclaimed a new yasa, and in the year 615/1218–19 commenced the march."\footnote{Ibid., p.81.} Rašid-al-din, referring to the same event, writes: "He (Činggis Qan—I.R.) convoked the assembly, held a quriltai, and established anew the guiding principles of the regulations (ajim), the Law (Yasā) and the former customs (yusūm), and took the field against the country of the Xvarazm-sāh."\footnote{Rašid-al-din, Shornik letopisei, 1/2, trans. L. A. Khetagurov and O. I. Smirnova (Moscow & Leningrad: Akademija Nauk SSSR, 1952), p.197. Cf. Morgan, "Great Yasa,'", pp.165–6 (his translation is slightly different). Morgan finds it odd that "the incident is not reflected in the Secret History of the Mongols" 1218–19.) But the Secret History is not a complete record of Činggis' actions; it is an uneven and incomplete epic-chronicle, especially deficient for certain periods of Činggis' life and many important events, such as the Western Campaign, which is treated very superficially. There is nothing odd, in my view, about such an omission, given the nature of the work and the state in which it has been handed down.\footnote{See Ayalon, Outsiders, p.135.} The modifications in question concern the appointment of the new commanders. In view of the substantial identity of the old and new regulations, the Chinese sectional summary of the Secret History\textsuperscript{52} does not repeat them, but merely states that Ögödei Qa'an re-proclaimed Činggis' regulations concerning the duties of the day-guards and of the officers in conformity with the previous ones. See I. de Rachewiltz, transl., "The Secret History of the Mongols, Chapter Twelve (= Suppl. II)," PFEH 31 (March 1985): 78.

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History (§§1–268) dealing with Činggis’ ancestors and his own life was originally put down in writing in 1228, the year corresponding to the one given in the colophon (§282). Činggis’ regulations on the Guard which are found in §227 were, therefore, also recorded in 1228 at the latest; they were then re-promulgated and again recorded a year later. It is indeed regrettable that the section on Ŭgödei’s reign in the Secret History is so short and fragmentary for the period of Ŭgödei’s rule is extremely rich and interesting. A fuller record of his deeds would have undoubtedly contained additional information on the Časas.

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

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

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

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

In carrying out the above survey, I have covered ground already traversed by several of my predecessors who have investigated the complex problem of the *jasay*, and to whom I am greatly indebted. My purpose has been to put things in better perspective by probing somewhat deeper into the Chinese and Mongol sources in order to extract all the information they can yield. At the same time, I have not lost sight of what the Islamic sources, in particular Juvaini, say on the subject, my concern being—in the case of the latter—not to throw out the baby with the bath water.

Thus, on the basis of all the information gathered from the *Secret History*, the Chinese historical and literary sources of the thirteenth and fourteenth centuries, the historian Juvaini (selectively), and additional documents whose reliability is undisputed, such as Güyük’s letter to Innocent IV, we can draw the following conclusions with regard to Činggis Qan’s *jasay*:

1. The existence of the *jasay* is well attested for the period of Činggis Qan (as early as 1202 according to the *Secret History*).
2. The *jasay* consisted of a number of binding injunctions and normative rules concerning matters of governance, military administration, the administration of justice, the division of spoils, etc., as formulated by Činggis Qan, to be handed down to, and implemented by, his successors.
3. The *jasay* was elaborated over several years, its injunctions being determined by particular exigencies and circumstances. It was, therefore, an evolving *corpus* of laws, the core of which was apparently established by Činggis Qan in the period immediately preceding and following his election as qan in 1206. In its original form it was ‘closed’ at his death in 1227.
4. The *jasay* was meant to be both a body of fundamental laws and a permanent institution to be carefully protected against change, and serving as the ultimate authority on policy decisions and judicial matters. In this respect it differed from other imperial pronouncements, such as the *jarliys*, which lacked those basic characteristics, being *ad hoc* prescriptions on specific issues.
5. There is no direct evidence that the *jasay* was a written code. However, taking into account that (i) scribes and individuals with knowledge of Uighur script were in Činggis Qan’s entourage from about the time when the *jasay*
is first mentioned in the Secret History, i.e. the first decade of the thirteenth century; (ii) one of these individuals (Sigi Qutuqu) was entrusted with recording administrative and legal matters in special books in 1206; (iii) we have the personal testimony of a Chinese witness (Li Chih-ch'ang) to the actual recording of Činggis' orders in 1222; (iv) the Časay, being a collection of Činggis' pronouncements on vital issues, such as the qan's election, could not be entrusted to human memory alone, with its whims and failings; (v) there are (admittedly later) sources clearly stating that the 'ancestral' Časay was **read**, not recited, on certain occasions; and (vi) the sections of the Časay preserved in the Secret History were put down in writing **at the latest** in 1228, we may have good reason to assume that the provisions of the Časay were almost certainly recorded already in Činggis' time. We have, unfortunately, no way to determine whether they had yet been compiled into a proper code like, for instance, the traditional Chinese codes. In my opinion, it is quite likely that these provisions were **not** arranged and presented in a very systematic way, but rather in a somewhat loose fashion akin, perhaps, to the arrangement of some of the material found in the Secret History, but this is pure speculation.

6. After Činggis' death, his Časay became known as the 'Great Časay' (the first occurrence of this expression is in the Yuan-shih Annals, s.a. 1229).

7. Ögödei Qayan (r.1229-41) began the custom of 'proclaiming' the Great Časay upon the qan's enthronement to confirm its validly and his adherence to it. Unfortunately, we also have little information on this custom, but its very existence (attested independently by both the Chinese and Persian sources) confirms the importance of the Časay as an institution in the following reigns.

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

9. Although the enforcement of the Časay pertained to the qan, who was its depository, and to specially appointed high officials—the (yeke) ğarjučiş or (Great) Judges—the provisions of the Časay were made known to 'outsiders' for the purpose of making them comply with the Will of Heaven as expressed in the commands of Činggis Qan, in other words to exact obedience to Mongol authority. In this way, some of the contents of the Časay, the original text of which is lost (as is the case of that other great book, the Altan debter), 68 has been preserved in other works beside the Secret History, such as the Historia Mongalorum, the Ta'rīx-i ğahān-guśāy, and various Chinese documents of the Yuan period.

10. For reasons already (and amply) discussed by other investigators, the Časay gradually lost its importance, the main causes of its decline being the political fragmentation of the Mongol empire, and alien (local) cultural influences. The very meaning of the word underwent a change. In the West, the Časay was assimilated to the yasās or 'commands' of individual rulers, thus often becoming indistinguishable from yarlığys; in the East, it came to
Cf. n.30 above; and the Yuan handbook of official terms compiled by Hsü Yuan-jui 徐元瑞 (n.d.) entitled Li-bsieb chih-nan, reprint ed. (Taipei: Wen-hai Ch’u-pan-she, 1970), p. 53, where ‘Great Jasa’ is defined simply as ‘in accordance with the laws and regulations’ (i t’iao-li fa-tu 依條例法度).


It will be seen that the above conclusions confirm, on the whole, those reached by Ratchnevsky; they support also, to some extent, the hypothesis proposed by Morgan, that “There was probably believed to be a ‘Great Yasā of Chingiz Khan’, derived in part from Chingiz himself and perhaps in part from earlier Mongol custom. But this was not written down in any coherent form, and it was therefore possible to attribute to it a wide variety of provisions, as was thought necessary or desirable. In practice it may very well have been a gradual evolving body of custom, not only beginning before the time of Chingiz Khan but continuing after him.”70 From all the available evidence, I now think we can be more positive about the existence of this ‘body of custom’ (which I would rather call a ‘body of laws’), and the likelihood that it was actually a written document, even if lacking ‘coherence’ from our point of view. Such conclusions have been reached through a somewhat long and convoluted process, but in my own experience with historical research, especially concerning the Mongol period, it is seldom the case that solutions are neatly served to us on a platter.