

CLASH OR COMPROMISE? MONGOL AND MUSLIM LAW IN THE ILKHANATE (1258–1335)

SUMMARY

With the Mongol invasion of Persia and the founding of the Ilkhanate in 1258, the stage was set for the sometimes difficult encounter between Islamic and Mongol law, which has often been described as a ‘clash.’ This paper will look at factors which smoothed the encounter by allowing co-existence and compromise between Mongol and Islamic law. While many Mongols were willing to allow Muslims to practice their own law, Muslim objections to Mongol legal practices were also tempered by several factors, including the previous acceptance of ‘secular’ forms of trial such as the *mazalim*; the source of law being in religion rather than the ruler, which allowed Islamic legal practices to easily continue; and the possibility interpreting events in moral rather than strictly religious terms. Thus, the attitudes of both the conquerors and the conquered contributed to Mongol rule creating relatively small and painless ripples in the Persian legal landscape.

INTRODUCTION

When the Mongols invaded and came to rule Persia, they brought with them their own legal norms, but also had to confront the fact that in Persia there existed already a functioning legal system. How the Mongols reacted to this legal system, and how Muslims reacted to Mongol laws, is the subject of this paper.

The Mongol and Islamic legal systems were very different. Not only did they represent different cultures, they were also representative one of a sedentary way of life and the other of a nomadic way of life. The Muslims had a class

of legal specialists and a voluminous literature surrounding the legal system; the Mongols initially had neither legal specialists nor writing, although they assiduously and even religiously respected certain norms and taboos, while serious disputes were more often than not solved by the aggrieved ‘taking the law into their own hands’ in vengeance.

Therefore it is not at all surprising that the encounter between Mongol and Muslim law is often described as a clash. Many authors simply assume the basic incompatibility of Islamic and Mongol law, and suggest that the influence of Mongol law faded with time.¹ The idea that there existed a ‘Great Yasa’ i.e. codification of Mongol customary law to which the Mongols held strongly has reinforced the idea of the fundamental incompatibility of Mongol and Islamic law.²

However, others hold an opposite view and write not of a clash but of coexistence or even cooperation. Ira Lapidus mentions an ‘alliance’ between Mongol rulers and local elites, including qadis.³ George Lane has written about the friendly relations between some members of the Golden Family and some Persians, including some who took their Islamic faith very seriously indeed.⁴

This paper, recognizing that the second view is more correct than the first, will examine some of the reasons that made cooperation between Mongols and Muslims in the area of law possible.

YARGHUCHIS AND QADIS

Mongol judges known as *yarghuchis* were active in Persia under the Mongols, however their activities were mostly limited to within the *ordo* or Mongol camp. Where they were active outside the Mongol *ordo*, they sometimes worked together with local legal officials.⁵

Mongol law did intrude in some ways on Persian space. Some Persians were subjected to Mongol forms of trial, but these Persians were mainly officials of

¹ Heuschert, *Die Gesetzgebung*, p. 17; Nielsen, *Secular justice in an Islamic state*, p. 106

² The idea of ‘Great Yasa’ was questioned by David Ayalon, ‘The Great Yasa of Chingiz Khan. Part A,’ and by David Morgan, ‘The ‘Great Yāsā of Chingiz Khān’ and Mongol Law in the Ilkhānate.’

³ Lapidus, *A history of Islamic societies*, p. 278.

⁴ Lane, ‘Persian Notables and the Families which underpinned the Ilkhanate,’ p. 22.

⁵ Lane, *Early Mongol rule in thirteenth century Iran*, pp. 112–113.

the Ilkhanate. Executions were sometimes carried out by Mongols in prominent places, such as city squares or gates or riverbanks, but these too do not seem to have disturbed the overall legal situation. Executions carried out over the years by Mongols in the main square of Tabriz were executions not of local Tabrizis but of ‘traitors’ or disgraced officials of the Ilkhanate.⁶ The qadis of Tabriz continued in office and had no apparent clashes or disagreements with the Mongols, and likewise the qadis of Fars, Ardabil, and other places;⁷ the continuity of the great qadi families was hardly broken by Mongol rule.

Rather, there were several instances of cooperation or perhaps even friendship with qadis. One qadi who was close to the Mongols was the qadi Baidawi of Fars (d. c. 716/1316). When he had trouble holding on to his post as qadi in Shiraz because of rivalry with the Fali-Sirafi family, the general Suqunchaq Noyan, who had been appointed governor of the province, helped him to regain his post. Baidawi also wrote a short history of Persia in which he highly praised Suqunchaq Noyan, and this does not seem to have affected his standing with other ‘ulama, by whom he was respected, nor did it reflect negatively on how his theological work was perceived; Baidawi’s commentary on the Qur’an, *Anwar al-tanzil wa asrar*, was very influential.

The question this paper is seeking to resolve is how this coexistence and even cooperation between Mongols and Islamic judges was possible. I will mention some of the factors which allowed this cooperation from the Mongol and from the Muslim points of view.

FORCES FOR COMPROMISE ON THE MONGOL SIDE

Professor Ann Lambton pointed out that the Mongols would have struggled to impose a legal system different from the Persio-Islamic one in place, or to substantially alter the system, because of a lack of experienced personnel.⁸ However, it was not merely this which led the Ilkhans to tolerate, even in some cases support, the Islamic legal system. That the Ilkhans were hardly interested

⁶ Rashid/Thackston, *Compendium of Chronicles*, pp. 565, 633, 645.

⁷ Rashid al-Din claims that a qadi of Ardabil was put to death for not following a decree of Ghazan; there is no supporting evidence for this claim. Rashid/Thackston, *Compendium of Chronicles*, p. 695.

⁸ Lambton, *Continuity and change in medieval Persia*, p. 90.

in imposing their own laws can be seen from the way in which they interacted with qadis and dealt with legal cases which were brought to their attention.

In the year 656 A.H. [1258], when Hulagu conquered Baghdad, he gave orders that the ulema be asked for a fatwa stating which is preferable, a just infidel sultan or an unjust Muslim sultan [...].⁹

This shows that Hülegü Khan, the founder of the Ilkhanate (d. 662/1265), was interested in political domination, not in religious 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, it was a political demand.¹⁰

Apart from this, Hülegü appreciated the role of qadis and himself appointed qadis when necessary. Nizamuddin Abdul-Mu'min Bandaniji (d. 667/1268–1269), a former qadi of western Baghdad, was confirmed as chief qadi by Hülegü within a year after the Mongols took Baghdad.¹¹ Hülegü also appointed Abu l Fath 'Umar b. Bundar at-Tiflisi (d. 672/1273–1274) qadi in Damascus after taking that city; like his predecessor, at-Tiflisi was a Shafi'i.¹² These appointments show that Hülegü was aiming for stability and did not wish to disrupt existing structures. Despite this, the chroniclers do not report any systematic effort of his to appoint (or re-appoint) qadis in the various provinces and cities of his realm.

This lack of interest in imposing Mongol law is, I believe, not an attitude the Mongols acquired only late or that they somehow absorbed through Persian influence. From the beginning, Mongols had differing attitudes about whether their laws should be imposed on others,¹³ and a 'consultative tradition' in which decisions were jointly taken was engrained in Mongol political culture.¹⁴ Therefore, the flexible attitude of the Ilkhans towards the local legal system should not be considered surprising.

⁹ Lewis, *The political Language of Islam*, p. 107.

¹⁰ Voegelin, 'The Mongol Orders of Submission to European Powers,' p. 411.

¹¹ Rashid/Thackston, *Compendium of Chronicles*, p. 499; Gilli-Elewy, *Bagdad nach dem Sturz des Kalifats*, p. 182, no. 48.

¹² Rashid/Thackston, *Compendium of Chronicles*, p. 503.

¹³ Juvayni/Boyle, *The history of the world-conqueror*, pp. 205–206.

¹⁴ Endicott-West, 'Imperial Governance in Yuan Times,' pp. 525–526.

TAQIYYA

On the Muslim side, one factor which smoothed the Muslim encounter with Mongol law to a degree is *taqiyya*. This practice is summed up in the saying: ‘The forbidden is permitted in case of necessity.’ There are several examples of *taqiyya* during the Ilkhanate. When Hülegü Khan asked the ‘ulama of Baghdad about whether an unjust Muslim ruler or a just Muslim ruler is preferable, this was the response:

... when they became aware of the proposed fatwa, they held back from giving an answer. Now Radi al-Din ibn ‘Ali ibn Ta’us [589/1193–664/1266] was present at this meeting, and he was preeminent and respected. When he saw how they held back, he took the fatwa and wrote his reply on it, preferring the just infidel to the unjust Muslim, and the others wrote after him.¹⁵

The hesitation in giving an answer was due to the fact that the answer they wanted to give was not the one which Hülegü wanted to hear. While the question of whether an unjust Muslim or a just infidel ruler is better had been raised in Islamic scholarly writing, the theoretical preference for a just infidel was only ‘intended to stress, by hypothetical example, the importance of justice.’¹⁶ In practice, it was clear that a Muslim was always preferable.¹⁷

Another instance of *taqiyya* concerned Ghazan Khan’s desire to marry the wife of his late father, Bulughan Khatun. While such a marriage was typical for Mongols, under Muslim law it would be illegal. Al-Safadi tells how Ghazan (r. 694/1295–703/1304) 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, his marriage with Bulughan Khatun could be considered invalid. 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.’¹⁸

A further example concerns Amir Nauruz (d. 696/1297), who was involved in the power struggle between Ghazan and Baidu Khan for the khanship. Acting on Ghazan’s side, he was sent by Ghazan to Baidu to negotiate. However,

¹⁵ Lewis, *The political Language of Islam*, p. 107.

¹⁶ Sadan, ‘Community and Extra-Community,’ p. 112 (emphasis in original).

¹⁷ Sadan, ‘Community and Extra-Community,’ p. 113.

¹⁸ Amitai-Preiss, ‘Ghazan, Islam and Mongol Tradition,’ p. 3, no. 14.

when he arrived Baidu threatened him, and demanded a promise that he would seize Ghazan and turn him over. Rashid comments that ‘In accordance with the dictum “Necessity cancels discretion” Nauruz swore without hesitation that he would turn Ghazan over bound up.’¹⁹ What he actually did was to wrap up a brass kettle (*ghazan*) and send it to Baidu.²⁰

These examples show that acceptance of Mongol law in certain situations could be justified also on religious terms. This is a factor which should not be taken for granted and which helped to avoid some open conflict between Mongols and Persians.

SULTAN’S JUSTICE

Sa’di writes in the *Golestān* about a peasant who spoke these words: ‘Children look to their parents for affection; a suit is referred to the qadi; and justice [dād] is expected from the monarch [pādishāh]...’²¹ These words can be taken as emblematic of a judicial system where qadi and sultan were both expected to provide justice, but in different ways.

The coming of Islam to Persia did not erase a very strong attachment to the Persian past.²² This included an attachment to a ‘Persian’ concept of justice which had its roots in the pre-Islamic past. The Persian concept of justice, which centred on the ruler and his actions, included principles such as punishing traitors promptly and harshly, and is reflected not only in legal practice, but also in literature, particularly in the genre known as mirrors for princes.²³ This, and not the Shari’a that the qadis practiced, was the justice that the sultan was expected to provide.

Therefore, despite the contrast that was often made between ‘Yasa’ (Mongol law) and Shari’a,²⁴ most likely Persians were not measuring the Ilkhans according

¹⁹ Rashid/Thackston, *Compendium of Chronicles*, p. 618.

²⁰ Rashid/Thackston, *Compendium of Chronicles*, p. 619.

²¹ Sa’di/Thackston, *The Gulistan of Sa’di*, p. 33.

²² Melikian-Chirvani, ‘Conscience du passé et résistance culturelle dans l’Iran mongol,’ pp. 136–137.

²³ Subtelny, *Le monde est un jardin: aspects de l’histoire culturelle de l’Iran médiéval*, pp. 58–65.

²⁴ On the conflict between Yasa and Shari’a as an ideological war, see Aigle, ‘Le Grand Jasaq de Gengis-Khan,’ pp. 33, 36–37; Aigle, ‘Loi mongole vs. loi islamique. Entre mythe et réalité,’ pp. 972–974, and the English translation of this last article, ‘Mongol law vs. Islamic law: Myth and Reality,’ *forthcoming*.

to the yardstick of Shari'a at all. Rather, it would be more consistent and logical to think that they were judging the Mongol rulers against the 'Sultanic code'²⁵ or the principles espoused in the mirrors for princes literature. For example in writing about a court case involving the Uighur *idiquit*, who had allegedly plotted against the Muslims in Beshbaligh, Ata Malik Joveini mentions two Qur'anic verses as well as a poem in praise of the Caliph Mustasim, but does not criticize the conduct of the trial itself. In another case, the cupbearer of the *atabeg* of Güyük (r. 1246–1248), Shira, was accused of sorcery and put to death. Joveini quotes the Qur'an and the *Shahname* and implies that the judgment was just, because Shira had himself earlier accused someone of sorcery.²⁶ These are cases where the conduct of the Ilkhan was seen as just, despite not following the regulations of the Shari'a.

Mongol law therefore did not necessarily directly threaten the Shari'a. Rather, the impact of Mongol norms was in the area of Sultanic law, which was constantly developing. For example, the *mazalim* was a specific form of judicial trial developed in response to specific societal needs, which was retroactively justified in Islamic terms. Perhaps, if the Ilkhanate had lasted longer, Mongol trials might have been similarly justified. However that may be, the Persian concept of justice made it easier for Persians to accept and live with Mongol practices.

SOURCE OF LAW IN RELIGION

A further factor for the relative lack of conflict between Mongols and qadis becomes apparent when the Ilkhanate is compared with Mongol rule in Yuan China (1260–1368).

If there was deeper influence of Mongol law, and more conflict over the jurisdiction of Mongol law in China than in Persia, this was not because of the attitudes of the Mongols but rather primarily because of attitudes of the Chinese. In China from ancient times the central government (and ultimately the emperor) was considered the source of law.²⁷ Therefore, Chinese officials expected the active involvement of the central government in legal affairs, and even expected the central government to continually adapt legislation to the needs of the day.²⁸

²⁵ Hallaq, *Shari'a*, pp. 211–213.

²⁶ Juvayni/Boyle, *The history of the world-conqueror*, p. 246.

²⁷ Gu, Sharron, *The boundaries of meaning and the formation of law*, pp. 162–163.

²⁸ Hu Xingdong, *Yuandai minshi falü zhidu yanjiu*, pp. 24–26.

In addition to government officials lobbying for a Tang-style law code, local officials sought the advice of the central government whenever they did not know which law to apply or had a case the resolution of which was unclear. These laws and the rulings by the central government on ambiguous cases, and at least some local officials' sense of duty in enforcing them, meant that the views of the emperor and of the central government had substantial, tangible effects on the work of officials involved in judicial cases.²⁹ This led to substantial cooperation but also increased conflict about the place of Mongol laws within Chinese society.

In Persia on the other hand, the source of law was not considered to be the ruler, but rather religion. The source of law was considered to be God, the legislation was already revealed, and the task of the government was considered to be conforming to and upholding the already existing body of law. This meant that communication between the central government and local qadis seems to have been less intense than in China, and this was at least partly because qadis themselves did not consider such communication essential, whereas Chinese local officials relied on it. Communication did happen, of course, but it seems that apart from gaining appointment or having their appointment recognized, qadis did not consider such communication essential to the way in which they performed their job. In fact, most of the legal documents produced by qadis during the Mongol period were in Arabic, not Persian.³⁰ It is likely that any doubts were mostly resolved at the local level, either through religious expertise,³¹ or at the discretion of governors or local rulers. As a result, there was little if any discussion between qadis and the Ilkhans about what kind of punishments should be imposed; Mongol punishments had less of an influence at the local level, and there was not much conflict between qadis and Ilkhans about which punishments they should use.

This is a further factor which meant that conflict over legal matters was very limited in the Ilkhanate. Because qadis, unlike Chinese local officials, considered that they had all the resources they needed in order to judge cases without communicating with the Mongols, they simply continued performing their duties and, since the Ilkhans mostly did not interfere, there was very little conflict over legal matters.

²⁹ As for example in the case of the (brief) Mongol attempt to impose the levirate: Birge, 'Levirate Marriage and the Revival of Widow Chastity,' pp. 120–124; for an example of close interaction between Mongol and Chinese legal principles, see Aubin, 'Some Characteristics of Penal Legislation,' pp. 132–136.

³⁰ Gronke, *Arabische und persische Privaturkunden*, p. 10.

³¹ Cases could be decided by qadis, or even by Sufi sheikhs: Tawakkul ibn Ismā'īl, *Safwat al-Safa*, p. 716.

CONCLUSION

In conclusion, we can see that Islamic law not only existed but to an extent thrived under Mongol rule. Qadis continued to serve as leaders of the community and make their judgments without reference to Mongol law or expectations, and the overall influence of *yarghuchis* on law in the Ilkhanate seems to have been very small.

This was due not in small part to the willingness of the Mongol rulers to accommodate legal systems that were different from their own. While they themselves decided cases as they thought most appropriate, their openness to other legal traditions contributed to their positive attitude towards qadis.

On the other hand Persians, through making use of *taqiyya*, judging the Ilkhans according to the Sultanic code, and finding the source of law in religion, contributed their part to a largely peaceful encounter of Mongol and Islamic law.

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