

ОРИГИНАЛЬНЫЕ СТАТЬИ

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**THE LAW OF THE MONGOLS AS SEEN BY
JOHN OF PLANO CARPINI: HISTORICAL LEGAL VERIFICATION*****R. Yu. Pochekaev***

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Abstract: *Research objectives:* The goal of the article is a comparative analysis of information recorded by John of Plano Carpini on Mongolian and Mongol Empire law, along with other sources on the Mongolian law and legal traditions aimed at determining the objectivity of diplomat’s materials and observing the evolution of traditional law of the Mongols.

Research materials: Verification is carried out on the basis of the work “The Story of the Mongols Whom We Call the Tartars” by John of Plano Carpini, making comparisons with the corpus of other historical sources, including travelers’ notes and historical chronicles by authors of the medieval and modern eras, as well as materials of ethnographic research on the legal traditions of nomadic peoples of Eurasia.

The novelty of the study: The presented article is the first attempt to compare the information of John of Plano Carpini on the customary and imperial law of the Mongols with other sources on Mongolian law to observe certain legal traditions of the Mongols and the evolution of law among the Eurasian nomads.

Research results: The author has found that the majority of information from John of Plano Carpini on Mongolian law in the middle of thirteenth century can be characterized as objective as it is confirmed by the data from independent sources dating from the thirteenth to nineteenth centuries. These include testimonies of other foreign travelers who visited Mongolia in different epochs, medieval historical chronicles, studies resulting from ethnographic research, etc. Besides that, the value of the information of the diplomat is emphasized within the context of comparative legal research on the history of the state and law of the Mongol Empire and Chinggisid states.

Keywords: Mongol Empire, Chinggisid states, Jochi Ulus, Chaghatay Ulus, Iran under the Safavids, Great Moghuls, Mongol imperial law, Islamic law, privileges and immunities

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Introduction

The work “The story of the Mongols whom we call the Tartars” by John of Plano Carpini is one of the most famous sources on the history of the Mongol Empire of the 1240s as well as the early Golden Horde. These notes contain valuable information on different aspects of the Chinggisid empire, including a description of Mongol law. The author of this article already attempted to analyze the kinds of sources of law of the Mongol Empire reflected in the work of friar John [47, p. 17–28] and now he sets an aim to “verify” the content of the Mongol legal rules mentioned by the Minorite, i.e. examine the objectivity of his information by comparison it with other sources on similar Mongol legal rules. To our mind, such analysis allows, firstly, to confirm or disprove the information of John of Plano Carpini and, secondly, to observe the evolution of specific Mongol legal rules during the ages. The second task could be accomplished by using the wide scope of sources of the Medieval and Modern ages. So we intend to analyze the contemporary evidence (notes of foreign travelers in Mongolia of 13th–19th cc.), historical works of medieval authors, results of ethnographic studies, etc. Such a series of historical sources provide objective research on the trustworthiness and value of the work of John of Plano Carpini.

Our verification is based on three passages of “The story of Mongols” devoted to everyday bans, rules on crimes and punishments and, at last, on statutes of Chinggis Khan.

We should note that some personal names and terms could have different spelling in the author’s text and citations of sources.

Everyday bans (ch. 3)

“Even though the Tartars have no law to do justice or prevent sin, all the same they do claim certain actions are sins which they or their ancestors have established. One of these is to thrust a knife into a fire or to touch fire in any way with a knife, or to pull meat from the flames with a knife, or to cut wood with a hatchet next to a fire. They actually believe that the head of the fire would be cut off in this way. Also, one must not lean on the whip with which one strikes a horse (they do not use spurs), or touch an arrow with a whip, or kill or catch young birds, or strike a horse with a bridle, or strike one bone with another, or toss milk or other drink or food on the ground. Also one must not urinate inside a tent. If a person does this intentionally he is killed; if done otherwise he must pay a heavy fine to a sorcerer who purifies him and he must have the tent and all that is in it pass between two fires, but before it is purified this way no one dares enter or take anything from it. Also, if a piece of food is given to anyone and he cannot eat it and he spits it out of his mouth, a hole is made beneath the tent and he is drawn out through the hole and killed without mercy, and if anyone treads on the threshold of the tent of any prince he is killed this way. And they have many similar customs that are too numerous to recount. However, to kill men, invade others’ lands, acquire others’ goods by unjust methods, to fornicate, to do injury to other men, to act against the commands received from God is not a sin among them” [21, p. 44–45].

This passage contains an information on rules which baned some activities in the everyday life which are defined by the Minorite as “sins”. The fact, that friar John considers these bans as a certain alternative to lacking “law to prevent sin”, gives some authors a reason to consider these bans as officially fixed legal rules,

supposedly even included into the Great Yasa of Chinggis Khan [63]. But such opinions seems to be mistaken as only some of such activities caused a capital punishment, while others are described only as prohibited ones. Besides that, there was more than one exception mentioned in the sources (as we will demonstrate below) which helped to avoid death penalty in case when activities were unintentional or nonpublic.

Thus, most of “sins” mentioned in the passage (with several exceptions) were, in fact, everyday bans, and their ascription to official Mongol law seems to be mistaken [1, p. 42]. The fact that these activities would cause punishments, most likely, could be explained by fear of anger of the Heaven on the place of offence or tent if offender acted intentionally or wanted to insult the owner of the tent. Therefore, these bans were related not to official legislation of the Mongol Empire (Yasa of Chinggis Khan and *jarligs* of his successors), but to customary law (*yusun*) which were observed by Mongol rulers as well as by their subjects.

John of Plano Carpini mentioned a series of “sins” without the explanation of their nature. But other sources help us understand a meaning of such bans which could have sacral as well as rational explanation¹.

“... *the Tartars have no law to do justice or prevent sin...*” Indeed, there was not an official legislation on the organization of court and justice in the Mongol Empire during the epoch of John of Lano Carpini, but the judiciary system already was institutionalized. Chinggis Khan appointed Shikhi Khutuug, the adopted son of his mother, a supreme judge of the Empire and ordered him to judge and write decisions into special “Koko Defer Bichig” (“blue-script register”) [49, p. 135]. Later, in the Empire and Chinggisid states the appointment of judges (imperial *jarguchis*, as well as Islamic *qadies*) and designation of their credentials was regulated by personal khans’ *jarligs* [22, p. 103–104, 109–110; 56, p. 676–677].

“...*they do claim certain actions are sins which they or their ancestors have established.*” In the Latin original text of friar John was used term *traditiones*, so he distinguished these “claims” from the official legislation and even opposed to a certain extent them to official *leges*. This characteristic is accordant to the information to Andre of Longjumeau: “They believe that the one god is, and have rites which they observe under threatening punishment” [37, p. 161].

“... *one must not lean on the whip with which one strikes a horse (they do not use spurs)...*” Benedict, the Pole, companion of friar John in his mission to Mongols, this “sin” is described as follows: “It’s prohibited to set on the horse lash (as they do not use spurs)” [10, p. 117]. The ban to lean or seat on the whip or lash is explained by the magical characteristics of these things in different cultural traditions: they could be used not only for purposes but also as a weapon or for protection. Whip was used as weapon toward against enemies who did not deserve “honorable” stab of saber, etc. and also could be used to punish juniors [33, p. 81]. Whip (lash) is mentioned as a magical thing in the epic and folklore tales of Turkic-Mongol and Slav peoples: it was used against magical enemies, helped to conjure away, etc. [26, p. 232; 34, p. 186]. At the same time, the remark, that Mongols “do not use spurs”, allows to suppose also a rational explanation of this ban: if whip or lash would be broken, there will be nothing to urge the horse.

¹ We do not comment the bans connected with fire as they already were analyzed more than once.

“...touch an arrow with a whip...” This “sin” is literary mentioned also by Benedict the Pole [10, p. 117]. Like whip, arrow had sacral meaning. Bow and arrows in the nomadic cultures were sacred weapon to withstand against evil spirits [53, p. 278–279]. Thus, they used not only as weapon, but also as defensive amulets. In traditions of Turks, Slavs (up to the Moscow Kingdom) and Tibetans they used in wedding rites: arrows were stuck around house or bride-bed [60, p. 273, 281, 282]. Arrow also became a political symbol of Turkic peoples in different epochs: it was one of symbols of khan’s power and sometimes had personal name [7, p. 77–78; 59, p. 275]. It is possible that ban to touch arrows with the whip has an explanation that the contact of two sacral items could cause vanishing of their magical characteristics.

“...kill or catch young birds...” Benedict the Pole mentioned this ban more clearly: “to take baby birds from the nest” [10, p. 117]. Attempts to find the sacral meaning of this activity (for instance, to consider birds as ancestral spirits, *ongons*, of Mongols [63, p. 182]) seem to be strained. No doubts, it has rational origination and is connected with relations of human and nature: killing young birds will cause the danger for reproduction of this kind and, consequently, decreasing of quantity of hunting prey in future. Such ban was extended not only for birds, but also on other kinds of animals. In particular, there was a custom to liberate a part of animals after the battue [12, p. 443–444]. It seems, this principle later became a legal rule – there is a *jarlig* of Chinggis Khan in the “Secret history of the Mongols”: “There will be many wild animals on your way; when you go, thinking ahead, do not allow your soldiers to gallop after and hunt down wild animals, nor let them make circular battues without limits. If you make a battue in order to give additional provisions to your troops, hunt with moderation” [49, p. 127]. It is possible that John of Plano Carpini refers this everyday ban to “sins” because of explanations of his Mongol informers: they could substantiate it within their traditional contexts of maintenance of balance between the word of people and world of animals – the imbalance could cause the punishment of Heaven [1, p. 54–55].

“...strike a horse with a bridle...” This “sin” is mentioned literary by Benedict the Pole [10, p. 117]. “Notes on the Black Tatars” by Peng Da-ya and Sui Tin contain the following “state ban”: “who beats horses constantly... will be put to death himself” [24, p. 55]. The ban to exhaust horses also was mentioned in the *jarlig* of Chinggis Khan to Subedei: “Except on limited battues, do not allow the soldiers to fix the crupper to the saddle and put on bridle, but let the horses go with their mouth free” [49, p. 127]. Thus, friar John could interpret this rule falsely. At the same time we could suppose that this ban continues one connected with the role of whip or lash: it was obligatory to urge horses only with these items. Taking into consideration a sacral role of whip, John of Plano Carpini had reason to refer this rule to “sins”.

“...strike one bone with another...” “Sin” of this activity could be explained in two ways because of role and meaning of bones in the Mongolian culture. Firstly, the bone (human or animal) embodied the continuity of the family line, connection of ancestors and descendants. According to beliefs, using preserved skeleton allowed to resurrect a human or an animal; even modern Mongol herdsmen, while killing animals, preserve their skeleton intact. On the contrary, if there was a necessity to get rid of enemy once and for all, his bones were broken, burned and ground into dust [32, p. 100]. Everyday ban to break bones, mentioned by friar John,

provided the saving of succession between eaten animal and its possible descendants. Thus, it is a continuation (though at the sacral level) of a ban “to kill or catch young birds”.

Secondly, John of Plano Carpini could mean a “sin” related to special animals or bones. For instance, Benedict the Pole in his description of veneration the spirit of Chinggis Khan mentioned: “Also animals, which killed by them to be eaten, they firstly offer him, i.e. idol, and do not break bones of animal” [10 p. 116]. Chao Hung, ambassador of Sung dynasty to Mongols in “Mengda Beilu” describes the Mongolian ceremony of divination: “Telling fortunes or misfortunes, advance or retreat, massacre and march, each time they take lamb shoulder, break it in fire by the iron hammer and look at its cracks to solve this problem” [40, p. 79]. Foreign travelers mentioned that divination was performed by monarchs themselves: Chinggis Khan, Ögedei, Möngke [24, p. 44; 40, p. 71; 50, p. 193, 198]. Thus, breaking bones in other circumstances and by other people could be considered as infringement of divination prerogative of monarchs and cause a punishment for lese-majesty.

“... *toss milk or other drink or food on the ground.*” This ban could have sacral as well as rational explanation. It was connected with tradition to drink a cup, given by host, to the last drop. Some foreign travelers confirm such rule, at that they not always mention punishment for its non-observance. Chao Hung says: “According to Tatar custom, a host of the feast holds dish and cup and persuades the guest [eat and drink]. If the guest, who drinks, keeps a drop at least, the host does not take a cup back. If the see that guest drinks fully, they are glad” [41, p. 82]. Peng Da-ya and Sui Tin as well as Armenian chronicler Kirakos Gandzaketsi mentions a custom of exchange by cups between host and guest, pointing that it was done before “to avoid a poison” [24, p. 37; 25, p. 172]. Thus, we can see how originally rational meaning of this custom later was transformed in to ban which not needed in explanation.

Another possible reason of this ban could have everyday origination: its goal was keeping cleanness in the tent, i.e. hygienic rule. As is well known, the earth-floor of the tent was covered with skins to protect from the dirt. Naturally, nomads should take measures to save skins clear as much as possible [42, p. 260]. Perhaps, this custom was described by William of Rubruck: “They never wash their dishes either, but instead, when the meat is cooked, rinse the bowl in which they are to put it with boiling broth from the cauldron and then pour it back into the cauldron” [50, p. 90–91]. Similarly, producers of koumiss do the same way nowadays.

At the same time we should not except the sacral aspect of this ban because of it ascription to “sins” by friar John. William of Rubruck more than once mentions special concern of Mongols to *koumiss*: “we were given ... just a little *comos*, since they prize it highly”, “they make much of it when someone drinks *comos* with him in his own dwelling” [50, p. 104, 133]. The only reason to sprinkle *koumiss* on the ground was a special festal rite “on the ninth day of the month of May [50, p. 241–242]. Such care for milk products was saved in Mongolia for ages. Russian scientist and traveler Grigoriy Potanin, who visited Mongolia at the last quarter of the 19th c., wrote: “It is a sin to spill on the ground *tchigen* (*koumiss*) and *tsagan iden*, “white food” in general. Spilling, they wet in a puddle fingers and dry them on the right shoulder and right knee. If they spill before wandering, they gather wet dirt, take with them and throw at the next stand” [48, p. 131].

Finally, according to several sources, spill of koumiss was “sin” not because of anger of Heaven for host of the tent, but for offender himself. Peng Da-ya and Sui Tin notice: “who lets fall a pitcher while pours milk or *koumiss*, he is reputed doomed to loose descendants” [24, p. 55].

“*Also one must not urinate inside a tent. If a person does this intentionally he is killed...*” This “sin” is also mentioned by Benedict the Pole [10, p. 117]. The rational origination of the ban is obvious: its goal is saving cleanness in the tent. It is confirmed by the presence of capital punishment only for intentional offence as insult of dwelling and its owner. Special “*corpus delicti*” is mentioned by the Arabian author of the 15th c. al-Makrizi: Who urinates into water of on ashes, also is sentenced to death [5, p. 28]. Perhaps, in this case the “sin” could have a sacral nature as it was connected with bans to contact with water (similarly to washing oneself or clothes) and special care for fire also mentioned by John of Plano Carpini in the analyzed passage.

“*Also, if a piece of food is given to anyone and he cannot eat it and he spits it out of his mouth, a hole is made beneath the tent and he is drawn out through the hole and killed without mercy...*” The “sin” is described by Benedict the Pole in the same way [10, p. 118]. The ban is connected with participation in feasts or sacrifices when the host or head of ceremony distributes (or even put into the mouth of each participant) pieces of ritual food in accordance with status of the guest or host’s attitude to him. This rite is described by William of Rubruck in details: “With the meat of a single sheep they feed fifty or a hundred men: they cut it up into tiny pieces on a dish along with salt and water (since they make no other sauce); and then on the end of a knife or a fork made specially for the purpose – the sort with which we usually eat pears and apples baked in wine – they offer each of the by-standers one or two mouthfuls, depending on the numbers at the meal. Before the mutton is served, the master himself first takes what he pleases, and if, furthermore, he gives anyone a special portion, the man who takes it is required to eat it all himself and may not pass it to anyone else. Should he be unable to eat it all, he may take it away with him or give it to his servant [*garcio*], if he is at hand, to keep for him” [50, p. 79–80].

Thus, imperative rule of festal or sacrifice meal was demand to eat all given by the host personally [32, p. 97]. So, this custom is connected with above mentioned ban to spill milk-drinks. At the same time, the passage of Rubruck allows to state that this “sin” was not non-eating given meal here and now, but only non-eating meal put in the mouth. Severe punishment for the person who spits out the meal (according to friar John’s notice) is explained by Peng Da-ya and Sui Tin: “if [anybody] chokes or his nose is bleeding during the meal, he is to be blamed that his heat is dishonest” [24, p. 55]. Thus, the real reason of punishment in this case was not the fact of spit of food, but participation of offender in the meal with hostile intentions.

It is interesting to notice that the way of execution, described by John of Plano Carpini, is not found in other sources.

“... *if anyone treads on the threshold of the tent of any prince he is killed this way.*” Perhaps, this Mongol custom is one of the most known and described by foreign contemporaries. It is mentioned by Benedict the Pole [10, p. 118] as well as other European and oriental eye-witnesses. Julian, the Hungarian Dominican, says: “Foreign ambassadors who pass through the doors afoot or astride [*sic!* – *R.P.*], if

touch by foot a threshold of the door, are immediately stroke by the sword” [19, p. 386]. Peng Da-ya and Sui Tin also mention “those who touch the threshold by shoes” among offenders who “is to be executed themselves” [24, p. 55]. The “Book of Marco Polo” contains information on special officers of khan Kublai: “At all the doors of the hall, or of any place where the lord may be, stand two great men like giants, one on one side and the other on the other, with a rod in hand; and this because no one is allowed to touch the threshold of the door, but he must stretch his foot beyond. And if by accident he touches it the said guards take away his clothes, and to have them again he must redeem them; and if they do not take his clothes they give him as many blows as are appointed him. And this is done because if the threshold is touched it is held as a bad omen” [36, p. 219].

The fact that Mongols emphasized this ban is accentuated by European travelers who more than once mentioned that khans’ courtiers especially warned them not to step on threshold. William of Rubruck wrote: “we were warned not to touch the tent-ropes, which for them represent the threshold of the dwelling” [50, p. 132]. According to Marco Polo, “there are some barons deputed who have to arrange in their proper and suitable places the foreigners who come over, who do not know the customs of the court” [36, p. 219].

At that, in case of offence (just as well as in case of urination in the tent) there was taken into account, was it intentional or not. Rubruck tell about one of his companions who after finishing the reception of Möngke “turned to face the Chan and bowed to him; and then, in his haste to follow us, stumbled over the threshold of the residence”. He was arrested immediately, but when Bulgai, khan’s dignitary, found that he offended unintentionally, “he pardoned him” and only prohibited to attend khan’s receptions later [50, p. 194, 196]. It is possible, that indulgence toward this offence was explained by the fact that it was done on coming out – Marco Polo says: “But in coming out of the hall, because some arc overcome with drink nor could by any means control themselves, no such ban is required” [36, p. 219].

“*And they have many similar customs that are too numerous to recount.*” John of Plano Carpini did not include in his passage a series of bans known from works of Moslem and Chinese authors: washing of oneself or clothes, special rules on killing animals for the meal, order to approach to oncoming horseman, acceptance of given food or drink, etc. [5, p. 28; 9, p. 205–207; 24, p. 55; 40, p. 122; 56, p. 331].

“*However, to kill men, invade others’ lands, acquire others’ goods by unjust methods, to fornicate, to do injury to other men, to act against the commands received from God is not a sin among them.*” This passage of friar John is seems to be strange as bellow he tells about the laws of the Mongol Empire providing punishments for theft and robbery, adultery, etc. The sense of the passage makes clear after words of Benedict the Pole: “While friars said that it is sin to shed human’s blood, get drunk, appropriate someone else’s belongings and many other in the same way, they laughed, not worry about that” [10, p. 118]. Thus, John of Plano Carpini in this passage does not fixed legal or religious views of Mongols, but reflexes own disappointment on their attitude toward Christian commandments. It is interesting that Mongols in response to admonitions of friars John and Benedict only “laughed”, while the same attempt was made by their colleague Ascelin who visited noyon Baiju, Mongol ruler of Iran, caused an anger of Mongols: “Hearing that, they became furious and abashed... , cried, made a fuss and raged” [62, p. 233, 235].

Crimes and punishments (ch. 4)

“By law or custom they kill men and women whom they discover in open adultery. It is the same with a virgin: if she has been slept with they kill the man and the woman. If someone is caught openly robbing or stealing in their domain he is killed without mercy. If one of them reveals their plans, especially when they wish to go to war, he is given a hundred strokes on the back mostly with a so stick so heavy it would take a peasant to handle it. Also, when one gives slight offense in something the Tartars do not spare him because of his rank but beat him severely with switches” [21, p. 53].

“... kill men and women whom they discover in open adultery.” According to Benedict the Pole, “depravity and adultery occurs rather rarely among them [Mongols – R.P.]” [10, p. 123]. Series of foreign sources mention adultery among crimes fixed in the Mongol law. Peng Da-ya and Sui Tin say: “who commit adultery and escape with [wife of] neighbor is sentenced to death” [24, p. 55]. Andre of Longjumeau in his report states: “if anybody neglects own wives and housemaids will be found with wife, housemaid or daughter of another man... he will be executed mercilessly” [37, p. 161]. William of Rubruck writes: “They punish murder with the death sentence, and also intercourse with a woman who is not one’s own” [50, p. 93]. According to John of Joinville, dignitary of French king Louis IX, Chinggis Khan stated “that no one should force the wife or daughter of any one, under penalty of death” [22, p. 479]. Kirakos Gandzaketsi says that “they kill those who commits adultery with their wives” [25, p. 172]. His nationals Magakiya (Grigor Aknerts) and Vardan the Great refer to laws of Chinggis Khan rule “not to commit adultery” or “not to have extramarital relations” [44, p. 4; 45, p. 24]. Similarly al-Makrizi mentions that “there is a rule in *yasa* to execute adulterer without distinction for married or unmarried person” [5, p. 27–28]. It is indicative that John of Plano Carpini himself is not sure, if this rule was law (*lex*) or custom (*conuetudo*): that fact allows to doubt that it was included into statutes of Chinggis Khan named the Great Yasa.

Perhaps, the reason of so cruel punishments for the adultery was connected with personal relations in the Chinggis Khan’s family. The “Secret history of the Mongols” contains a passage on khan’s suspicions of noyon Naya who too long escorted his future wife Khulan [49, p. 123–124]. The legends and tales of Chinggis Khan tell about his suspicions of his own relatives and courtiers on solicitation of his own wives and daughters. For instance, khan suspected, that his brother Jochi-Khasar wooed his above mentioned wife Khulan or one of his daughters, and ordered to imprison him until the end of investigation [31, p. 238: 35, p. 236; 38, p. 421]. The legend of Arghasun-khurchi, on onf Chinggis Khan’s dignitaries, is also tells about khan’s suspicion that he wooed his senior wife Borte and intention to execute the courtier [38, p. 446]².

Modern scholars suppose that punishment for adultery caused only for offenders who did it only with women of the same tribe or clan – to provide an exogamy among Mongols [1, p. 62]. This suggestion is confirmed by foreign contemporaries: for instance, Kirakos Gandzaketsi mentions that Mongols “wherever they

² It is interesting to notice that when sons and grandsons of Chinggis Khan acted in the same way, there were not any consequence: in particular, Rashid ad-Din mentions infringements (even with constraint) of Ögedei and Chagatai, but did not says on punishment for such actions [56, p. 300, 362].

chance upon foreign women, they copulate with them indiscriminately” [25, p. 172].

This information is partly confirmed also by Marco Polo who gives an interesting information on customs of citizens of Hami (in the Eastern Turkestan): “If a stranger passes through the region and comes to him to his house to lodge, he is too much delighted at it, and receives him with great joy, and labours to do everything to please. And he tells his wife, daughters, sisters, and other relations to do all that the stranger wishes more than for him; and he leaves his house and his wife for the stranger, and goes immediately to do his work and stays two days or three on the farm or elsewhere, where he will... And the stranger stays with his wife in the house and does as he likes and lies with her in a bed just as if she were his wife, and they continue in great enjoyment. And in this way it can be said that all those of this city and province aforesaid of Camul are shamed by their wives as you have heard... And the women are very fair and gay and very wanton and most obedient to all that their husbands order, and greatly enjoy this custom. Now it happened one day that at the time when Mongu the great Kaan, reigned... And that Mongu having learnt the habits and so shameful customs, sends to them immediately commanding under very great penalties that they and all of that province must for the future leave this so indecent belief [and] not dare to lodge the strangers any more in that way.... And when they of Camul had had this order they were much grieved by it... and counsel... They sent their ambassadors who took a great & beautiful present and carry it to Mongu and pray him that so great a wrong with so great loss to them & danger should not done, & that he would be content that they might observe that which by their old fathers and grandfathers had been left them with such solemnity [and] would leave them to make the use of their wives which their ancestors had left them, and that otherwise they knew not how to live, and could not; and they tell him how their ancestors had said that for the pleasure which they made for the strangers with their wives and with their things that their idols held them in great favour and that their corn and their labour on the land multiplied greatly because of it... And when Mongu Kaan heard it he says, For my part I have done my duty; but since you wish your shame and contempt so much, then you may have it. Go and live according to your customs, and make your wives a charitable gift to travelers. And then he revoked the order which he had made about this and consents that they do their will with their evil usage. And I tell you that with this answer they went home with the greatest joy of the whole people and -from that time till now they have always kept up and still keep up that custom throughout that province” [36, p. 154–155]³.

The attitude on adultery of later Mongol khans – Yuan emperors is contrasted with the policy of Chinggis Khan and his direct successors. Already in 1270s the punishments for this crime were mitigated: there was corporal punishment (47 to 87 blows by bamboo sticks, at that, the status of offenders (married or unmarried) was taken into consideration; the punishment was executed even if woman was forced to sexual intercourse [8, p. 288–291; 11, p. 57].

³ Perhaps, the Venetian exaggerated the institution of so-called “temporary marriage” that indeed allowed foreigners during their stay in the Eastern Turkestan to have liaison with local women without formal offence of Islamic regulations. It is interesting that this custom survived several stages of Islamization of the Eastern Turkestan and was mentioned even by Europeans visited the region at the last third of the 19th c. [4, p. 384–385; 14, p. 84–85].

In Mongolia of 16th–18th cc. such crime was punished only with fine: “If anybody escapes with [married] woman, and her husband later will agree take her back, there is no blame. If does not take back, to fine two valuable items (*berke*)”; “the fine for adultery with woman is three nines⁴” [43, p. 40, 46]. The only exception was an adultery of representatives of different classes: “If commoner carries on with princess, his property is to be confiscated, and he is to become a slave of slaves among the subject of noyon of this princess” [13, p. 50].

As for the 19th c., foreigners visited Mongolia mention that Mongolian women “rather few respect the purity of the bed and demonstrate a little of shyness even before the foreigners” [5, p. 170]; “according to Mongols, the lost of virginity is not a blemish for the girl. Short intrigues of the wife even with stranger does not causes an anger of her husband, who also may find amenities away from home” [27, p. 22]. Travelers connected such dissolution of morals among Mongols with Chinese influence during the integration of Mongolia into the Qing Empire [28, p. 144–145].

“If someone is caught openly robbing or stealing in their domain he is killed without mercy.” This crime is also mentioned in different sources. According to Peng Da-ya and Sui Tin, those, who “robs” are punished with confiscation of families and property; for the theft made by slaves they were executed while their master lost his family and cattle [24, p. 57]. William of Rubruck wrote: “For petty theft, such as for a sheep, provided the man has not been caught doing it often, they inflict a cruel beating – and when giving a hundred strokes they have need of a hundred rods” [50, p. 93–94]. Kirakos Gandzaketsi says: “[The Mongols] loathe theft so much that they torture to death anyone caught at it” [25, p. 172]. According to John of Joinville, Chinggis Khan established a rule, “that no one should seize the goods of another without his will, nor to his loss ; and that no one should strike another, under pain of his hand being cut off” [22, p. 479]⁵. Marco Polo says: “It is true that when a man has taken some little thing for which he ought not to die, they condemn him to be beaten. There is given him by the government at least seven blows with a rod or, if he has stolen two things, seventeen blows or, if three things, twenty-seven blows or thirty-seven or forty-seven, and in this way it goes up sometimes to a hundred and seven, always increasing by ten blows for each thing which is stolen, according to that he has taken and the measure of the crime. And many of them die of this beating. And if the man steals 15 oxen so that it would come to exceed 107 blows [or] a horse or other thing for which he ought to lose life he is cut in two with a sword and killed; so, truly, that if he who steals can pay and will give nine times as much as the value of that which he has stolen he escapes from death and they do not dispatch him with the sword” [36, p. 175]. The information of Arabian traveler Ibn Battuta is similar: “Their animals [pasture] without keepers or guards; this is due to the severity of their laws against theft. Their law in this matter is that any person found in possession of a stolen horse is obliged to restore it to its owner and to give him along with it nine like it; if he cannot do that, his sons are taken instead, and if he has no sons he is slaughtered just as a sheep is slaughtered” [17, p. 473–474].

⁴ Nine heads of cattle (horse or camel, cows and sheep) – usual instrument of payment in Mongolia.

⁵ It seems that Joinville mixed Mongolian and Islamic principles of punishment for the theft.

Thus, the most part of medieval authors accentuate that the range of punishment depended on the size of theft. However, in the post-imperial Mongolia the principle of indemnity for the theft by fine (firstly mentioned by Marco Polo) became dominant. Only in case of evident robbery offender was to be executed and his property was to be handed over to victim “according to the old code” [13, p. 27–40, 43], i.e. Mongol imperial regulations. At that the theft from strangers and foreigners was not considered a crime, and this fact is confirmed by John of Plano Carpini that “acquire others’ goods by unjust methods... is not a sin among them”: even in the 19th c. “stealing is not a sin in Tsakhar’s [inhabitant of Chakhar, region in the Inner Mongolia – *R.P.*] opinion, but a skill” [27, p. 30].

Some authors, oriented for the alliance with the Mongols” would like to see in the Mongol law something like Christian commandments and simply mentioned that Chinggis Khan established a rule “not steal” [44, p. 4; 45, p. 24]. The anonymous Georgian chronicle of the 14th c. mentions that “unacceptance of theft” was established by Chinggis Khan in his laws on a base of admonition of Jesus Christ himself [15, p. 320].

Special ban was established for plunder of civilians by soldiers. Chinggis Khan in his *bilik* ordered: “A man should [stand silent] like a calf in the midst of the people” [56, p. 280]. In the age of Kublai this rule was confirmed by the khan’s edict prohibited plunder of civilians by soldiers as well as their commanders [55, p. 162–163].

“*If one of them reveals their plans, especially when they wish to go to war, he is given a hundred strokes on the back mostly with a so stick so heavy it would take a peasant to handle it.*” This information of friar John is unique one as other sources do not mention that rule. Magakiya in his “History of the Mongols” tells about the rule “not to be a traitor” [44, p. 4], but it is not obvious was it disclosure of secrets or treason. Chao Hung wrote: “All plans of campaigns are firstly defined during the third or fourth moon and sent in all countries” [41, p. 68], at that there are not any mentions on keeping secrets by participants of council or couriers. Marco Polo in his description of war between Kublai and Nayan, descendant of Temuge Otchigin, brother of Chinggis Khan, said “that the great Kaan made all his preparation in twenty-two days so secretly that none knew anything of it but those of his privy council” [36, p. 194]. Thus, the secrecy of military plans discussed by khans and commanders was understood, but there was not any information on punishment for such offence.

Nevertheless, there is an interesting scene in the “Secret History of the Mongols” on the indiscretion of Belgutei, half-brother of Chinggis Khan, who blabbed out the plan of his brother to kill all captive Tatars: that allowed prisoners to prepare for repulse and caused heavy tolls among the Mongols. Chinggis Khan punished Belgutei by prohibition to take part in future councils [49, p. 77–78], but we also could not say that this act became an acted legal rule. We do not find such crime and punishment in Chinggis Khan’s *biliks* as well in the military legislation of his successors. So, we suppose that information of John of Plano Carpini could be based on responses of his Mongolian informers who suspected him on purpose to get some secret information on military plans of Mongols and as they did not want to answer him, explained their refuse by this rule that, as we already said, is not confirmed by other sources.

“Also, when one gives slight offense in something the Tartars do not spare him because of his rank but beat him severely with switches.” This passage demonstrated the formation of civil and military hierarchy in the Mongol Empire with providing of implicit obedience for superiors and respect for their status. Original principle of political system in the state of Chinggis Khan based on the personal loyalty and sometimes blood brotherhood was transformed into the system of obedience disabling the freedom of former Steppe leaders, as the borders of the empire were widened and state system became more complicated [3, p. 295–296]. One Chinggis Khan’s *bilik* reflects this trend: “No one who goes to an elder should speak until the elder asks him a question. Then let him give an appropriate answer to the question. If he speaks more than this and they listen, well and good; otherwise, it is like beating cold iron” [56, p. 280]. The “Secret history of the Mongols” contains another order of Chinggis Khan referred to the formation of military hierarchy and leading status of his own guard: “My guards [*khishigten* – *R.P.*] are of higher standing than the outside commanders of a thousand; the attendants of my guards are of higher standing than the outside commanders of a hundred and of ten. If outside leaders of a thousand, regarding themselves as equal to and a match for my guards, quarrel with them, We shall punish the persons who are leaders of a thousand” [49, p. 157].

The status of commanders and regulations of their relations with subordinates was fixed in the imperial legislation that medieval Moslem authors referred to the Great Yasa. According to Juvaini, commanders had to obey khan’s couriers – even if they brought an order to fine or to kill such commander himself [9, p. 31]. Al-Makrizi mentioned among Chinggis Khan’s statutes the ban for subordinates to address to anybody besides own emir and repeated the principle of total subordination of commanders off all degrees to khan’s couriers [5, p. 30, 31]. The information of Marco Polo is similar: “You may know that when a lord of the Tartars goes to war he takes with him an army of a hundred thousand horsemen. He plans his business so as you shall hear; and he arranges his men in this way. He makes a chief to every ten, & to every hundred, & to every thousand, and to every ten thousand, so that the chief lord he has to take counsel with only ten men, the captains of ten thousand men, who are heads of a hundred thousand; and he who is lord of ten thousand men had only to do with ten men; and he who is lord of a thousand men had only to do with ten; and likewise he who is lord of a hundred has only to do with ten. Thus as you have heard each answers to his chief” [36, p. 171–172].

Thus, term “offence” of superior could have wide meaning and cover different activities. No wonder that foreign contemporaries mentioned strong discipline among the Mongols, effectiveness of their military and civil administration, implicit obedience of commoners to aristocracy which also held high positions in army and administration.

The principle of implicit obedience and inadmissibility of offence of superior referred not only to imperial administrative system, but also forming of class society among the Mongols. That is why it (one of a few mentioned by friar John) survived the Mongol Empire and used during next ages. For instance, offence of a noble by commoner is fixed in Mongolian legal monuments of 16th–17th cc., although corporal punishment for such crime was replaced by penalty: “If one insults Borjigin [descendant of Chinggis Khan or his brothers – *R.P.*], he is to be fined with five [heads of cattle – *R.P.*]”; “if one insults *elchi* [courier – *R.P.*], he is to be fined with nine and besides one horse”; “if one defames tabunagn [son-in-law of

Borjigin – R.P.], he is to be fined with nine. Who defames noyon’s wife, he is to be fined with five”; “if one reproves *tushimel* [official – R.P.], he is to be fined with five”; “if one insults a privileged person, he is to be fined with nine and a camel”; “if one insulted an official with action, he is to be fined with three nines; if he defames him, he is to be fined with nine and, besides that, a camel” [43, p. 40, 41, 43, 47, 55]. As we can see, fines for offence of officials were higher than for offence of nobles: that confirms the protection of the state for its representatives.

Chinggis Khan’s statutes (ch. 5)

“When he had returned to his own country Chinggis Khan enacted many statutes and laws which the Tartars invariably observe, of which we relate only two. One is that whoever is so proud that by his own authority he claims the throne without election by the princes, he is to be killed without mercy. Because of this law one of the princes, a nephew of Chinggis Khan, was killed, before the election of Cuyuc-- he had wished to reign without election. The other statute is that the Tartars must subject the entire world to themselves and have no peace with anyone unless they submit to the Tartars no matter how long it would take to kill them. The Tartars have fought forty-two years and shall reign another eighteen years; after which they say that they must be defeated by another people- they do not know who it might be; so it is prophesied among them. It is said that those who would escape the Tartars should follow the rules which those people obey who have defeated the Tartars in war. Their army must be organized by captains of thousands, captains of hundreds and captains of tens and common soldiers, thus groups of ten thousand men. There are many other statutes which take too long to tell, and indeed we do not know them” [21, p. 63–64].

“... many statutes and laws which the Tartars invariably observe...” Friar John mentioned “many statutes and laws” (*leges et statute multiplicia*) which referred by scholars to the Great Yasa of Chinggis Khan. Taking into account that the chapter is a “legendary history of Chinggis Khan” [10, p. 342, 348], it is impossible to determine the date of his return and following proclamation of laws. Scholars suppose three dates of promulgation of the Great Yasa: 1206, 1218 and 1225 [39, p. 165].

During the long time the Great Yasa was considered a code of laws of Chinggis Khan covered basic fields of legal relation in the Mongol Empire. The fact that supposed “codification” was not saved in original Mongol version neither completely, nor partly, did not confuse researchers who more than once attempted to “reconstruct” its structure and content on a base of foreign sources: European (John of Plano Carpini, William of Rubruck, John of Joinville, Marco Polo), Persian (Juvaini, Rashid ad-Din, Mirkhond), Arabian (al-Umari, al-Makrizi), Armenian (Magakiya, Vardan, Kirakos Gandzaketsi), etc. Attempts of “reconstruction” of the Great Yasa were made by F. Petis de la Croix in the 18th c., I.N. Berezin in the mid of the 19th c., Ya.I. Gurlyand in 1900s, H. Lamb, E. Khara-Davan in 1920s, K. Alinge, V.A. Ryazanovskiy and G.V. Vernadskiy in 1930s, N. Nyam-Osor and Ts. Minjin in 2000s, etc.

In 1970s Israeli scholar D. Ayalon was the first who doubted that the Great Yasa was just a code of laws and paid attention to the fact that the only authentic source of information on the Chinggis Khan legislation was the passage of “The History of the World-Conqueror” by Juvaini, who was a dignitary of the Mongol Empire in the second half of the 13th c. His arguments were supported in 1980s by

American scholar D.O. Morgan who also supposed that the Great Yasa proclaimed during the *quriltai* of 1206, in fact, was above-mentioned “Koko Defter Bichig” (“blue-script register”) which was a register of military units and court decisions. Australian orientalist I. de Rachewiltz, who in 1990s was in polemics with Morgan, had to agree that laws of Chinggis Khan, seemingly, were not codified during his life, but stated that the codification was made by his son Ögedei who supplied it with own legal regulations which, however also were ascribed to Chinggis Khan to be more effective. The ideas of D. Ayalon and . Morgan later were advanced by the author of this paper [see details: 46].

We suppose, information of friar John basically confirm such version: Minorite never mentioned any codification (although the rule of Ögedei already finished when he visited Mongolia), but used only terms “laws” and “statutes”. It is agree with the practice of legislative activity of Mongol rulers in the first half of the 13th c. who show their will by issuing special edicts (*jarligs*), while the first attempts of legal codification were attempted only in 1260s by Kublai, founder of Yuan dynasty.

Considering Yasa as a legal code, scholars have two opposite ideas on its nature. Some of them (E.I. Kychanov, I. de Rachwiltz, T.D. Skrynnikova, etc.) suppose, it was a fixation of customary rules which were transformed into official legislation by Chinggis Khan’s will. Their opponents (G.V. Vernadkiy, B.Ya. Vladimirstov, L.N. Gumilev, etc.) think, it was special new imperial law originally created by Chinggis Khan in the changed political realities.

Analysis of the John of Plano Caprini’s information allows to state that the legislation of Chinggis Khan combined elements of customary law as well as his own principles and regulations. That is confirmed by using by friar John of terms “laws” and “statutes” equally with “customs”, “traditions”, etc. The fact that some regulations are characterized as “law or custom” means that during Minorite’s staying in Mongolia these rules were transformed from customary law into imperial legislation. Thus, this passage is a valuable source not only on specific legal regulations, but also on the lawmaking process in the Mongol Empire.

“*One is that whoever is so proud that by his own authority he claims the throne without election by the princes, he is to be killed without mercy.*” This rule is mentioned literary in the report of Benedict the Pole [10, p. 117]. John of Plano Carpini used term “principes” for princes and “duces” for leaders and military commanders, but without specification of their relation to ruling dynasty or tribal elite. Thus, this passage is a description of *quriltai*, i.e. congress of the Mongolian nobility which took the most important state decisions (including the election of the new khan) or of the “family council” of Chinggisids which included male and female representatives of the ruling family, sons-in-law (*gurgens*) and the most influential dignitaries of civil and military administration. According to some modern scholars, it was this council that formulated agenda for *quriltai* and chose candidates for the throne, and *quriltai* had to elect one of them [5, p. 40–41; 16; 29, p. 373–374]. Such councils took place before *quriltais* and are mentioned in the sources. For instance, “Secret history of the Mongols” mentions that Chinggis Khan decided to appoint Ögedei as his successor at the meeting with relative and confidants [49, p. 181–188]. Persian sources contain an information on the council called by Batu there he proposed Möngke as a candidate for the throne of the Mongol Empire [9, p. 557–562; 56, p. 395–396]. Nevertheless, friar John, obviously,

meant *quriltai* as he reported that visited Mongolia just during such congress, while he could not get an information on the family council because of specific (and even private) nature of such meeting.

Election (confirmation) of khan at the *quriltai* (equally with belonging to Chinggisid family) was an important requirement for the legitimacy of new khan: without election such pretender was recognized an usurper [54, p. 65–66]. Official confirmation by the majority of *quriltai*'s participants made pretender a sovereign ruler of the Mongol Empire. That is why some representatives of the Chinggisid family, who did not have a chance to be elected, tried to delay the calling of *quriltai* to keep power in own hands (Tului in 1227–1229) or to provide an election of the appropriate candidate (Töregene in 1241–1246 and Oghul-Gaimish in 1248–1251) [40, p. 188; 56, p. 383–385, 396–397].

John of Plano Carpini refers necessity of election of khan at the *quriltai* to the laws of Chinggis Khan. But such tradition existed as a customary rule since the ancient Turks and was inherited by the Mongols as traditional “constitutional law” *töre* [57, p. 66]. It is doubtful, that Chinggis Khan himself needed to transform this custom in the edict or statute. But his descendants could have a reason to do it because of attempt of Temuge Otchigin to usurp the power in 1242 and following his bringing to account. It seems that this case was reflected in the passage of friar Jonn: “Because of this law one of the princes, a nephew of Chingis Khan, was killed, before the election of Cuyuc-- he had wished to reign without election”. The point is that after the death of Ögedei there were at least three pretenders of his own descendants: elder son Guyuk, next son Godan and grandson Shiremun (who was appointed a successor by his grandfather)⁶. Because of lack of the legal rule of succession the throne Töregene, the widow of Ögedei, became a regent of the Mongol Empire for five years and constantly replaced high officials. In this conditions of political instability Temuge Onchigin, the youngest (and the last survived) brother of Chinggis Khan, took occasion to fight for power. Gathering his numerous *nökers* (personal subjects), he advanced for the khan's headquarter to claim for the throne. But his attempt was unsuccessful: Töregene was able to gather loyal troops under the command of her son Melik-Oghul and sent them toward Temuge. The rebellious prince abandoned his claim and retreated, at that he tried to present his raid as misunderstanding and retreat as observance of funeral ceremony for one of his courtiers. Juvaini finishes his tale on the raid of Temuge by spiteful phrase: “In the meantime there came tidings of the arrival of Güyük at his *ordu*, which lies on the bank of Emil; whereupon his [Otchigin – R.P.] repentance increased” [9, p. 244; cf.: 56, p. 385]. Thus, the misunderstanding among relatives seemed to be settled, and nobody recalled the Temuge's deed during several years.

Did Chinggis Khan's brother break some law? We should remember that there were not any legal rules on succession the throne in the Mongol Empire this time. The “Secret history of the Mongols” contains words of Chinggis Khan which could be interpreted as an establishing of monopoly for his direct descendants for the throne: “Supposing that the descendants of Ögödei are all born so worthless that / Even if one wrapped them in fresh grass, / They would not be eaten by an ox; / Even if one wrapped them in fat, / They would not be eaten by a dog /, is it pos-

⁶ To our mind, this multiplicity of pretenders caused a confusion in the information of friar John: he could mix up Godan (grandson of Chinggis Khan), Shiremun (grandson of Ögedei) and Temuge (brother of Chinggis Khan).

sible that among my descendants not even a single one will be born who is good?” [49, p. 188]. But these were said not officially, but at the private meeting of khan with his sons, relatives and confidants; they even were not included into *biliks* of Chinggis Khan – his aphorisms used by his successors equally with laws.

Nevertheless, when new khan was elected in the *quriltai* in 1246 (it was Guyuk, son of Ögedei), one of his first deeds was bringing Temuge to trial headed by Ordu, eldest son of Jochi, and Möngke, first-born of Tului. “In accordance with *yasa*”, they sentenced Otchigin to death [9, p. 255; 56, p. 387]. Thus, the only crime of Temuge referred to legislation could be, in fact, his attempt to ascend the throne without election by *quriltai*.

Of course, we could not state now, if Chinggis Khan’s brother intended to proclaim himself a khan without calling of *quriltai* or only wanted to seize a control over khan’s headquarter and organize his elections by own adherents (as Möngke did in 1251). But as his intentions were stopped at the stage of “criminal attempt”, and he became a loser, Chinggisids had an opportunity to blame him with any purposes and formally prove his guilt at the trial for getting a legal reason to rid of dangerous competitor in the fight for power. We suppose, just trial and execution of Temuge Otchigin gave birth to monopoly of Chinggis Khan’s direct descendants for the throne of the Mongol Empire and successive states. As a result, the private words of Chinggis Khan on his successor later confirmed by the execution of his brother transformed into official law which had force during ages.

John of Plano Carpini mentioned the agreement of Guyuk and Batu: it is possible that implacable enemies decided to unite against competitors from the branches of Chinggis Khan’s brothers. It is significant that soon after the execution of Temuge they began undisguised confrontation.

Aforesaid gives a reason to state that the rule mentioned by friar John as a law established by Chinggis Khan, in fact, could be invented not long before arrival of Minorite to Mongolia.

However, election in the *quriltai* was a compulsory condition for legitimacy of khan. Moreover, since the 14th c. *quriltais* became congresses only for election of khans while their other functions passed to khans, family councils or high officials and commanders. Tradition of election of khan was saved in the Turkic-Mongol states up to 18th–19th cc. in Kazakh Steppe and Central Asian khanates. Sometimes election of khan in the *quriltai* could cause extraordinary legal consequences. Arabian traveler Ibn Battuta mentioned that in 1334 participants of *quriltai* in the Chagatai Ulus deposed legitimate khan Tarmashirin under the pretext of breaking the *Yasa* of Chinggis Khan [18, p. 560–561]: thus, *quriltai* has authority not only to elect, but also to depose monarchs. In 1756 *quriltai* elected Muhammad Rahim of Mangyt dynasty a khan of Bukhara: this emir was, in fact, ruler of the khanate before his election, but at that he was not a descendant of Chinggis Khan; it means that election in the *quriltai* became more important condition of legitimacy that membership of Chinggisid dynasty [30, p. 267–268]!

Nevertheless, even election on the *quriltai* did not guaranteed the total recognition of the monarch by all subjects. Sometimes competitors for the throne organized own *quriltais* where were elected by their adherents. At that alternative *quriltais*, naturally, was not recognized by participants of another. Probably, the first example of that was simultaneous election of two khans in 1260: after the death of khan Möngke two his brothers, Ariq-Buka and Kublai, called *quriltais* and

were proclaimed khans. They fight for power during four years and only in 1264 Ariq-Buka was defeated, captured and had to recognize his “injustice” before Kublai [56, p. 421–422, 427]. This practice was continued in Chinggisid and post-Chinggisid states.

Sometimes one ruler could be elected in the *quriltai* more than once. So, Chinggis Khan himself was proclaimed a khan twice: at the edge of 1180–1190s by his adherents and in 1206 by all tribes of the Steppe [49, p. 49–50, 133]. Sultan Said, khan of Khoqand, who ruled only three years (1862–1865), was elected on *quriltai* three times [2, p. 250–251, 254–255, 278].

Thus, the importance of *quriltai* as a factor of legitimacy of khans and of punishment for any usurpation was strengthened by ascription of this principle to Chinggis Khan and interpreted as one of his laws. Its significance is confirmed by the fact that John of Plano Carpini mentioned it among only two “leges et statuta” of founder of the Mongol Empire. Perhaps, Minorite was deeply impressed by the ceremony of coronation itself which was described in details by different occidental and oriental authors [20, p. 148–149; 56, p. 308, 387].

“*The other statute is that the Tartars must subject the entire world to themselves and have no peace with anyone unless they submit to the Tartars no matter how long it would take to kill them. The Tartars have fought forty-two years and shall reign another eighteen years; after which they say that they must be defeated by another people- they do not know who it might be; so it is prophesied among them. It is said that those who would escape the Tartars should follow the rules which those people obey who have defeated the Tartars in war.*” This topic, already fixed by Benedict the Pole [10, p. 117], is one of the most mysterious in the notes of friar John on the Chinggis Khan’s laws and Mongol legal realities. Of course, it could not be included into the status of Chinggis Khan (“Great Yasa”) as contradicted all its principles and goals. Rashid ad-Din cited *biliq*: “Henceforth, for however many years – five hundred, a thousand, or ten thousand – that my offspring will come into existence and rule as khans, my progeny, no matter how grand they may become, will safeguard themselves with the Genghisid *yosun* and *yasaq* and will not replace it. They will enjoy favor from heaven, and they will always have pleasure and enjoyment” [56, p. 278]. Thus, Chinggis Khan proclaimed the firmness of his empire and rule of his descendants for ages and millennia if they would observe his legislation and therefore Heaven would protect them. As we can see, he did not foretell the fall and disappearance of his state in several decades.

This principle is also presented in *jarligs* of Chinggis Khan and his successors. In the “Secret history of the Mongols” founder of the empire states: “Now, by the strength of Eternal Heaven, my power has been increased by Heaven and Earth and I have brought the entire people to allegiance, causing them to come under my sole rule...” [49, p. 152]. Julian, the Hungarian Dominican, cited the letter of khan Guyuk to Bela IV, king of Hungary of 1237: “I, khan, messenger of Heavenly Father, who give me a power over the earth to exalt subordinates and suppress resistant” [19, p. 389]. The letter of Guyuk to the pope Innocent IV of 1246 widely known in Europe due to friar John, says: “Esteeming the God, we by his power devastated all earth from East to West. And as it was God’s power, what people could do?” [52, p. 226]. Thus, the idea of Heaven protection and firmness of power of the Mongol ruling family (in the person of current khan) was fixed in legal sources – “doctrine” (*bilik* of Chinggis Khan) and “statutory” (*jarligs* and letters of khans).

The idea of finiteness of power of Chinggis Khan's successors and inheritance of their "rules" by their winners was got by friar John, of course, not from Chinggisid princes or Mongolian aristocracy. Such views could be translated by court officials represented other peoples and religions who was interested in Chinggisids' adoption of specific religion and its traditions of power, administration, social relations, etc. As exponents of these ideas were khan's courtiers, John of Plano Carpini could falsely consider their views as an official ideology of the Mongol Empire. In combination with references to the God's will in khans' messages he interpreted them with one of 'statutes' of Chinggis Khan.

"*Their army must be organized by captains of thousands, captains of hundreds and captains of tens and common soldiers, thus groups of ten thousand men.*" This principle of organization of the army is also falsely ascribed by John of Plano Carpini to Chinggis Khan. It is well known that decimal system was used in the nomadic states of the Central Asia since the ancient times: Chinese authors mention it since the times of Xiongnu. Of course, Chinggis Khan was not an inventor of this system, moreover, at the beginning of his rule his army was divided only into thousands and only shortly before his death *tumens* (troops of ten thousand men) were organized, as one of his biliks says [49, p. 133–134; 56, p. 279]. Nevertheless, medieval and modern authors [9, p. 31; 20, p. 149–150; 36, p. 172; 57, p. 65] have reasons to refer this principle to the legislation of Chinggis Khan and, in particular to its basic rules ("Great Yasa"). But why the founder of the Mongol Empire decided to transform well-known legal custom into official regulation?

The answer is in the information of Juvaini: "Another *yasa* is that no man may depart to another unit than the hundred, thousand or ten to which he has been assigned, nor may he seek refuge elsewhere. And if this order be transgressed the man who transferred is executed in the presence of the troops, while he that received him is severely punished. For this reason no man can give refuge to another; if (for example) the commander be a prince, he does not permit the meanest person to take refuge in his company and so avoids a breach of the *yasa*" [9, p. 32]. Thus, novelty was not in decimal system, but in strict attaching of each soldier to his detachment: the ten, the hundred, the thousand and *tumen*. G.V. Vernadsky characterized this rule as "*krepostnoj ustav*" (serf system) [59, p. 347–348]. Besides, transformation of custom into legal regulation provided severe punishment for offender who left his detachment and for his accessories. Finally, transforming custom into regulation, Chinggis Khan extended it for all levels of military leadership including high commanders and princes (while during the age of Xiongnu inferior commanders could form their units at own discretion).

Necessity to transform the custom into the *yasa* was also caused by further widening of the Mongol Empire and spreading of decimal system outside the area of nomadic peoples: settled subjects of Chinggis Khan and his successors also were subjugated to this rule. Thus, decimal system was spread on territories of the Golden Horde as well as its vassal states including Russian principalities which were divided into seventy *t'mas* (*tumens*), and such division was kept until 15th c. [58, p. 217–218].

It makes sense to notice that *tumen*, thousand, hundred not always corresponded to their names: in fact, *tumen* could number 7 thousands, and thousand – 8 hundreds [61, p. 400]. Thus, there were names of military detachments as well as administrative units which had to assign soldiers in the appropriate quantity.

“There are many other statutes which take too long to tell, and indeed we do not know them.” This passage confirms that legislation of Chinggis Khan was not codified and included various rules established in different times to regulate different fields of relations. Therefore, Minorite mentioned regulations which became known for him during his staying in the Mongol Empire. With taking into account level of legal culture and legal development of Mongols in the age of friar John, the existence of the great Yasa as a “universal legal code” seems to be impossible.

Conclusion

Thus, our verification allows us to find that information of John of Plano Carpini on the law of Mongols and Mongol Empire reflected real legal situation. At that if some rules and principles of legal regulation remained unchanged for ages, others, as our analysis showed, evolved during the next centuries. Of course, that fact does not minimize the value of information of the Pope’s ambassador.

At the end of our study we could say that used methodology of research seems to be effective enough to use it for study of other medieval texts, in particular, testimonies of foreign travelers on the Turkic-Mongol political and legal realities since the time of the Mongol Empire and until the beginning of the 20th c.

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ПРАВО МОНГОЛОВ В ЗАПИСКАХ ИОАННА ДЕ ПЛАНО КАРПИНИ: ОПЫТ ИСТОРИКО-ПРАВОВОЙ ВЕРИФИКАЦИИ

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Цель исследования: сравнительный анализ сведений Иоанна де Плано Карпини о праве монголов и Монгольской империи с другими источниками о праве и правовых традициях монголов разных периодов времени для выяснения вопроса об объективности сведений дипломата и об эволюции традиционного права монголов.

Материалы исследования: верификация проводится на основе записок Иоанна де Плано Карпини «История монголов, именуемых нами татарами», а также комплекса источников – путевых заметок и исторических сочинений авторов эпохи Средневековья и Нового времени, а также – материалов этнографических исследований, касающихся правовых традиций монголов и других кочевых народов Евразии.

Новизна исследования состоит в том, что впервые сведения Иоанна де Плано Карпини о монгольском имперском и традиционном праве исследуются в сравнении с другими источниками, содержащими сведения о праве монголов, прослеживается сохранение определенных традиций и эволюция развития традиционного права кочевников Евразии.

Результаты исследования: Автор приходит к выводу, что в большинстве своем сведения Иоанна де Плано Карпини о монгольском праве середины XIII в. являлись достаточно объективным, что подтверждается информацией из независимых источников, датированных XIII–XIX вв., включая свидетельства других иностранных путешественников, посетивших Монголию в разные исторические эпохи, средневеко-

вые исторические сочинения, результаты этнографических исследований и пр. Вместе с тем, подчеркивается ценность наблюдений дипломата в контексте историко-правовых исследований по истории государственности и права Монгольской империи и чингизидских государств.

Ключевые слова: Монгольская империя, Чингис-хан, право Монгольской империи, традиционное право кочевников Евразии, записки путешественников, Иоанн де Плано Карпини, историко-правовая компаративистика

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