

*Two case studies of law and institutions in Chinggisid China (Yuan era)**

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Take any textbook on Chinese history issued by the People's Republic of China for the enlightenment of foreigners: it features Genghis Khan as the sovereign of a "Chinese minority" who dominated China for a relatively short while and brought with them nothing less than chaos. As a rule any general history of China, whether published during the Republican era or later, sees the period of Mongol domination as a kind of hiatus in the course of Chinese history. Moreover, a period of time as short as possible is granted to it: as the first mark of prejudice against it, its beginning is almost invariably set between 1277 and 1279, which was the time of the final collapse of the southern Song dynasty. This fails to take into account the fact that the Chinggisids began to rule the region of Beijing in 1215 before finally dominating the whole of northern China in 1234, after the fall of the Jürchen Jin dynasty. If they reigned for less than one century over southern China, they nevertheless had control of northern China for about a century and a half.

If we try to characterize the peculiarities of the Mongolian administration in China, we find the importance of military management during the first steps of their domination, and in the long term the overlapping of military and civilian functions. An example is the case of the very important post of the *darughachi*, "one who impresses the seal", a key institution at both the regional and local levels.¹ The ethnic variety of the military establishment is surprising, being filled not only with Mongols but also with a great number of foreigners and even of Chinese. From an administrative point of view, another specificity was the piling up of multiple hierarchical and geographical levels of governmental units, which encouraged a trend towards decentralization.

* Many thanks to Mrs Ann. Eastell who kindly polished my English text.

¹ The central role of the *darughachi* / *daruyacı* under Mongol rule is the subject of Elizabeth Endicott-West, *Mongolian Rule in China: Local Administration in the Yuan Dynasty*, Cambridge MA 1989.

Among the diverse institutions typical of the pre-Yuan and Yuan periods, I have chosen to concentrate on two. One presents a distinctively nomadic overtone – a system of infeudation in northern China which is unique in the history of China. The second is definitely Chinese in its purpose – the provincial administrative and judiciary surveillance system. Here I give the content of my talk at the Cairo conference, while a more detailed treatment of the subject, with full references, can be found in a future issue of *Acta Orientalia*.²

The system of enfeoffment

We do not need to insist on the fact that all the countries conquered by the armies of Genghis Khan were supposed to be the Grand Khan's personal possessions, which he could allot freely to his near relatives in shares called *qubi*: at that time the subjugated peoples were nothing more than slaves pertaining to the holder of this gift. Before long, however, it occurred that one of the dominated countries was a part of China. At that time the advisers of the conqueror of northern China, Muqali, happened to be Chinese warlords, referred to by the generic term of *shihou* 世侯, and the main counsellor of the Grand Khan Ögödei was a famous sinicized Khitan, Yelü Chucai (1189–1243). From that time on, the nature of infeudation changed under Chinese influence: the system adopted was called the *touxia* (投 or 頭下), a term designating the fief as well as its holder. In the form we are concerned with here, it was put into practice in northern China by Ögödei, mainly in 1236, for providing income to members of his family and to meritorious servants of the khan or their offspring, and organizing a nucleus of administration over the peasants of the Great Plain. Its implementation was prepared by a census of the population in the conquered Chinese territories, which was directed in 1236 by Shigi-Qutuqu (ca. 1180–ca. 1260), an adopted son of Börte, Genghis Khan's first wife.

An appanage *touxia* was made up of Chinese families living in a given district of northern China, the reward being not slaves, but a fixed tax imposed on the families. These families were called the *wuhu sihu* 五戶絲戶, "Five-Household Silk Households", because five households were bound collectively to pay one pound of silk yarn to their lord, besides a tax to the central government. Each appanage was thus quoted as "so many Five-Household Silk Households in such district". So, for the first time in 1236, the Mongolian emperor took a definite district as the basis for a gift. Nevertheless the fiefs were not the land itself, but following Mongolian custom, a certain number of the population (households) living on it; and the compromise between Chinese and Mongolian habits is evident in the fact that these entrusted people were not slaves but payers of taxes.

It seems that everything has been researched about this system and the changes in its taxation experienced over the course of one hundred and thirty years.

² Besides an immense gratitude to our host, the Hungarian Cultural Counsellor in Cairo, Professor István Zimonyi, I wish to express all my thanks to the editors of *Chronica* and of *Acta Orientalia* who both agreed to publish my articles on the *touxia* and the *anchasi/lianfangsi* systems.

But the case remains worthy of examination in the context of the meeting of Chinese and Mongolian political traditions in the thirteenth century. Thanks to the "Economic Treatise of the Yuan History", we have a list of all the appanages – that is an allocation of certain taxes – granted to one hundred and fifty-four family branches during the Mongolian rule in China. The name quoted is the name of the founder of the branch whose close kinship with the Grand Khan or his services were the cause of the gift and who was supposed to benefit in his lifetime or, more often, after his death from the imperial liberalities – in each generation a son appears as his father's representative, so that sometimes it is difficult to know who was the real beneficiary by 1236. If we consider the distribution in 1236 and take into account only the appanages significant for their size, we find twenty-five grantees whose grant of a *touxia* ranges from eighty thousand households to a little more than nine thousand.

A subject of contention at the time of the census was the definition of a household. The Mongol point of view was that every male adult – over fifteen years – was supposed to be the head of a household. However, Yelü Chucai demonstrated to Ögödei that in China several generations lived under the same roof, in such a way that one household ought to include all the inhabitants of a house: that was a way to reduce the burden of tax on the peasants; and he was listened to. But although the counsellor explained the benefit of administrative centralization, Ögödei adamantly maintained his requirement of independence for the fief holders. Later on, the fight between them and the government began when Qubilai tried to impose centralization in the Chinese way, but it amounted to virtually nothing: the holders of large appanages remained, at least until the end of the dynasty, lords in their domain.

The list of the beneficiaries of *touxia* and the amount of their share also give an insight into the factual history of the Chinggisids during the first decades of the thirteenth century. The questions are: who received what, and why? For example, an interesting case is supplied by the most significant allotment, eighty thousand households in Zhending *lu* 真定路 (in Hebei), which was given, according to the "Economic Treatise of the Yuan History", to Ariq-Böke. This piece of information is quite unexpected, as Ariq-Böke, a grandson of Genghis Khan and the younger brother of Qubilai – later his fierce enemy and rival from 1259 – is merely a nephew of Ögödei, yet the fief is a very large one. Anyway, we know that he actually held a fief in Zhending *lu* under the reign of his older brother Möngke (1251–1259). But in 1236, Ariq-Böke was no older than eighteen years at most and none of his brothers received anything at that time. The solution is supplied by the "Main Annals of the Yuan History": the beneficiary of the Zhending fief was the "Empress dowager", certainly the famous Sorqaqtani, the widow of Tolui, the mother of Möngke and Qubilai. Therefore, Ariq-Böke appears to have been in the privileged position of the youngest son linked to that of his widowed mother. Tolui himself was the youngest son of Genghis Khan and Börte, and when he died in 1232 at the early age of about forty years, it was common knowledge among the Mongols that this death was a voluntary act on his part, to take the place of his brother the khan, threatened by the vengeful spirits of the defeated Jürchen

Jin dynasty. Ögödei, highly indebted to his sister-in-law, gave her all the appanages of Tolui and in 1236 the most important fief in northern China. When she died in 1252, her fief was transmitted to her youngest son Ariq-Böke in the normal way. The principle of ultimogeniture, often coupled with the widowed mother's power, was an important factor in the political and social history of the thirteenth century and remained deeply implanted in customary practices until the present day: this is a lesson taught by the first case of the 1236 list of *touxia*. And there are many others.

The system of provincial and local administration and judiciary

Let us turn now to the system of provincial and local administrative and judiciary surveillance which left its trace in the centuries following the collapse of the Yuan dynasty in 1368. Popular historians generally consider authoritarianism and despotism as the unavoidable result of Mongol domination, especially in Russia and China. For China the idea is that the significant strengthening of authoritarianism in the Ming and Qing eras was the outcome of the politics of administrative surveillance enforced by the Yuan. What do the overabundant Chinese sources allow us to detect?

As soon as Qubilai was elected Grand Khan under the guise of a Chinese emperor, he had the ambition, like any other founder of a Chinese dynasty, to emulate the administrative system of the Tang and Song; but, as had been usual in the course of two millennia, the formal names and titles handed from one dynasty to another hid different realities. Under the guidance of his Chinese or sinicized counsellors, in 1268 Qubilai instituted a Censorate, later with two detached provincial branches. One year later, to help to carry out the work at the provincial and local levels, he created the Regional Investigation Offices, first named the *ti-xing anchasi* 提刑按察司, then in 1291 the *suzheng lianfangsi* 肅政廉訪司: these offices are the object of the present reflection.

There were twenty-two such offices, each responsible for a broad geographical region created for the purpose under the name of *dao* 道 ("the way", here a "circuit"). The major task officially assigned to the censorates and the regional offices dependent upon them was the denunciation of illegalities, essentially acts of bribery, corruption and exaction, in order to impede civil and military officials from plundering the people. They had, moreover, various duties of control and later they received as an extra charge the burden of the encouragement of agriculture which encompassed not only the promotion of agriculture and sericulture, the planting of mulberry trees, the management of water resources, and the establishment of relief granaries for preventing famine, but also the good management of the small local communities, the *she* 社 – a specificity of Yuan administration since Qubilai – where basic education in local schools was strongly advised. Also, in the balance, they must call for all the available talents and recommend to virtuous and scholarly men, especially in southern China after the fall of the Song. The name of the second generation of this institution, the *suzheng lianfangsi*,

entails the idea of respectability, rigour and probity which were expected from the employees of these offices, called "the eyes and the ears of the emperor".

Who were these officials? Happily for historians, the Chinese *literati* were great producers and consumers of all kinds of biographies. Some decades ago, when I was researching the history of these Regional Investigation Offices, I collected two hundred and eighty-one cases of persons, generally very distinguished, who at one time or another had filled a post in one of these offices. The breakdown of this number is interesting: one hundred and ninety-eight Chinese, that is more than two-thirds of the total, eighty-three non-Chinese, including thirty-four Mongols (so it would appear according to their name), seventeen Uyghurs, sixteen Tangut Xixia, eight Central Asian Muslims, four Jurchens, and two Khitans. Thus, the Mongols and their faithful non-Chinese helpers were present, but not overwhelmingly so. For many of them, Chinese as well as non-Chinese, their progress through a Regional Investigation Office was a stage in a brilliant career. Others, mainly Chinese, could spend their whole career in the field of the investigation or related areas. Generally they were *literati* trained in Confucianism (which did not impede them from following a religious creed, essentially Buddhism).

If they were of foreign origin, very often they were descended from military servants at the time of the conquests, that is at the third or the fourth generation, and had themselves the opportunity of getting a Confucian education and, obviously, a certain command of the Chinese language. For the Confucianists, the teaching of virtue to civil and military servants and the promotion of a natural economy were self-evident duties. This idea of virtue also appealed to the Mongols who until modern times have always loved moral precepts and advocated the virtues of loyalty and uprightness. The *Xiaojing* (孝經, "Classic of the Filial Piety") - a compendium of basic moral principles for young Chinese - was, even before the Chinggisids, a manual popular in the steppes through its translations into Xianbi, Khitan, Jurchen and Tangut. A Mongolian translation (in pre-classical language) was published sometime in the thirteenth century or the beginning of the fourteenth, and this text was used for the upbringing of the young imperial princes of each generation.

I do not wish to give a rosy picture of the Chinggisid rule in China and present that time as a paradise for human rights. We know that there were murders, suicides committed to escape political persecution, and imprisonment on false accusations. But these brutal illegalities did not interfere with the work of the censorial institutions: they were the fact of crude ambition at the upper level, especially in the financial field (the case of Ahmed is well known) and inside the imperial family. They were also the result of the permanent balancing act between preserving Mongolian traditions versus converting to Chinese ways of thinking and doing. We also know that from very early in their conquest of China, Mongolian rulers were well aware of the financial advantages to be drawn from farmers: if peasants could produce more, they would pay more taxes. Anyway, my argument is that, when creating a Censorate and the Regional Investigation Offices, Qubilai, who admired Chinese accomplishments and was aware of

the importance of personal merits, wished sincerely to improve the quality of life of his people. Contrary to the prejudice of historians unversed in the field of Mongolian studies, neither in the creation of these institutions nor in their functioning can we discover hints of a forceful introduction of despotism.

To strengthen my argument, I could summarize some conclusions on penal law in the Yuan era which I have already discussed elsewhere: the Mongolian penal law was based on principles and a spirit dramatically different from the Chinese ones and was certainly more humane. For example, basically it took into account the interest of the victim more than the benefit of the State.

In conclusion, China in the thirteenth century and the first half of the fourteenth century was indeed a constituent part of Inner Asia, taking from it as much as giving to it, and not as a dominant power. Its administrative and judicial institutions made up extraordinarily complex systems in such a way that it is impossible to characterize them from outside with some stereotyped sentences talking of despotism and dictatorship. The reality is much more subtle and unexpected and still awaits deeper exploration into the biographies and the collection of judicial cases to be better defined, and then the flexibility of nomadic culture will become more conspicuous. Concerning the Yuan legacy in Chinese society, I would like to remind the reader that the Muslim communities, so solidly established all over China in modern times, had their roots planted under Mongolian rule in the Middle Ages.