

Washington Law Review

Volume 23 | Number 2

5-1-1948

Mongol Law—A Concise Historical Survey

V. A. Riasanovsky

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wlr>



Part of the [Comparative and Foreign Law Commons](#)

Recommended Citation

V. A. Riasanovsky, Far Eastern Section, *Mongol Law—A Concise Historical Survey*, 23 Wash. L. Rev. & St. B.J. 166 (1948).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol23/iss2/9>

This Far Eastern Section is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact lawref@uw.edu.

Soviet society is thought of as a moral or "moral-political" unity; its members are but youths and children, requiring training and education, Soviet law educates them to a Communist social-consciousness, "ingrafting upon them," in the words of a recent Soviet writer,¹⁴ "high, noble feelings." However repressive the Soviet legal system may appear to the "reasonable man" of American tradition, the importance of the underlying conception of *Law as a teacher* should not be minimized.

¹⁴ Kareva, *The Role of Soviet Law in the Education of Communist Consciousness*, BOLSHEVIK, No. 4 (in Russian) (1947).

MONGOL LAW—A CONCISE HISTORICAL SURVEY

V. A. RIASANOVSKY*

Two basic systems of law, one Chinese, the other Mongol, co-existed in Eastern Asia. Because they arose from contrasting cultural bases, the systems were entirely different. Chinese law sprang from a settled agricultural way of life while the law of the Mongols arose from a nomadic, pastoral economy. The Chinese developed the fundamental institutions of settled agrarian culture and law in the Far East which greatly influenced the peoples of Korea, Japan, Annam, and so forth. The Mongols unfolded the basic institutions of nomadic, pastoral law and culture which likewise affected the nomadic tribes of Asia which once formed parts of the empire of Jenghis Khan and his successors—the modern Buriats, Kirghiz, Tunguses, etc.

The Mongol law is interesting from the standpoint of comparative jurisprudence and sociology. There, in the nineteenth and twentieth centuries, we find, well-preserved, a manifestation of the legal principles of a mode of life through which the modern European and American nations passed long ago (over 1,000 years). We meet here, not only with the patriarchal mode of life which preceded our era, but with one even more ancient—the epoch of the matriarchate.

For the convenience of study, we may divide the history of Mongol law into the five following periods: (1) General Mongol law of the epoch of Jenghis Khan and his successors; (2) Local national law of

*Formerly Professor of the Harbin Faculty of Law; author of *THE MODERN CIVIL LAW OF CHINA*, Part I (Harbin, 1927), Part II (Harbin, 1928), *FUNDAMENTAL PRINCIPLES OF MONGOL LAW* (Tientsin, 1937), *CUSTOMARY LAW OF THE NOMADIC TRIBES OF SIBERIA* (Tientsin, 1938).

Mongolia, (3) General law of Chinese origin; (4) Law of Autonomous or Outer Mongolia, (5) The Modern law.

GENERAL MONGOL LAW OF THE EPOCH OF JENGHIZ KHAN (1217) AND HIS SUCCESSORS¹

Territory: The area over which the power of the great Khans spread was enormous, occupying approximately half of the then known world. In 1259 the empire of the fourth great Khan, Mangu or Munke, included the greater part of Asia with the exception of Southern China, Japan, Korea, Tibet, India, and Arabia. It included all Eastern and part of Southern Europe. His successor, Kublai Khan, by 1294 had conquered Southern China, Korea, Tibet and part of India and had established the Mongol Yuan dynasty in China in 1271. But during the reign of Kublai Khan began the secession of the western appanages (uluses) and the disintegration of the Great Empire into the more and more independent Mongol kingdoms of Persia, Jagatai, and the Kipchak. The power of his successors, until the fall of the Yuan dynasty in 1368, extended over China, Mongolia, and a few adjacent countries.

Population: The Mongols, never a numerous people, comprised but a small proportion of the population of the Great Mongol Empire. Some authors (e.g., Maisky) estimate their numbers at approximately 2,500,000. Meanwhile the number of the peoples subjected to the Mongols during the reign of Mangu and Kublai Khan exceeded 100,000,000.

Social Organization and State Power: The Mongols of the Great Empire were divided into two classes: the nobility or "White Bone"² and commoners or "Black Bone."³ They existed by war, hunting, and cattle breeding. In religion, the Mongols of the time were Shamanists, worshiping the forces of nature. The social and state organization of the Mongol Empire was based on the clan principle. An autocratic ruler, The Great Khan, stood at the head of the state and his clan, "The Golden Clan of Jenghis Khan," was in possession of the government. The Khan's closest clansmen ruled over the chief uluses and the conquered peoples. According to custom, there existed the Kurultai, or assembly of ruling princes, which decided the most important questions, such as the election of the Great Khan and the promulgation of the Yassa, etc. Jenghis Khan himself divided his empire into ap-

¹ Roughly the thirteenth and fourteenth centuries.

² Princes of the Blood, ulus Princes, Beks, and Murzas.

³ Merchants, artisans, warriors, slaves, etc.

panages among his sons. Elected by the Kurultai, he stood at the head of the whole empire. His power was enormous, limited only by custom. The appanage Khans had the same power over their dominions as that of the Great Khan over the entire empire, limited of course by that of the greater entity

Records of Law The chief legal record of this era, the thirteenth and fourteenth centuries, was the Great Yassa of Jenghiz Khan, published about the year 1218. The Great Yassa had force in the whole of the Mongol Empire and in the separate states into which it was subsequently divided. However, it applied only to Mongols and other nomadic peoples and not to the settled agricultural populations, e.g., in China, Russia, Persia.

Administration: Administration during the reign of Jenghiz Khan was simple. The headquarters or "Court of the Great Khan" existed with the Khan as chief administrator. He invited some Uigors and Chinese, Tashatun, Chin-Gai, and Yeh-Lu-Chu-Ts'ei, as councilors in government. He established the offices of Chief Bek and Chief Judge and the offices for the keeping of records and archives. His son, the Great Khan Ogodaï, established the separate departments of the administration and created regulations of official service. Khan Mangu developed the administration further.

Private Law The ancient Mongols did not know individual property in land nor transactions in immovables. They were likewise not acquainted with agriculture. The land was held for the common use of the tribe and served only for cattle breeding and hunting. Other civil transactions had reached a certain degree of development.⁴ The Mongols lived under a patriarchal clan order with exogamy and widespread polygamy. The power of the husband and father in the family was strong, but there also existed among them vestiges of the matriarchate. One of the wives, usually the first, was considered the eldest or superior. Marriage was by ransom of the bride from her clansmen, thus giving the transaction the form of a purchase. In spite of the high power of the husband, the position of a woman in the family was not too servile. In her husband's absence or after his death the wife-mother ruled the house and family economy, even the state as Turakina after the death of Ogodaï, and Ugue-Gamish after the death of Kuik. She occupied an honorable position.⁵ The Mongol's heirs were

⁴ Cf. Yassa, Fr. 5, regarding third bankruptcy.

⁵ Yassa, Fr. 19, Maxim 14.

his sons, including sons by concubines, the eldest son receiving more than the others, and the youngest inheriting his father's household and his wives, becoming full master over the fates of the latter, with the exception of his own mother. He could marry them himself or give them in marriage to others.⁶

Criminal Law: The system of punishments of the Great Yassa was simple, the penalties being death, flogging with rods, and exile. The punitive law of this epoch was distinguished for its severity. The chief and commonest punishment was death.⁷ The death penalty was used to uphold the power of the Khan and to enforce a number of military regulations. Death was also the punishment for a number of serious crimes such as murder, sodomy, and large thefts, as well as for some minor offenses such as premeditated lies, or urinating into water or ashes. The Yassa, however, permitted the substitution of ransom for the death penalty; mayhem or crippling punishments were unknown.

Organization of the Courts: The organization of courts was in an embryonic stage. Jenghiz Khan instituted the office of Chief Judge, but only the more important cases were brought before him. The lesser cases were settled by administrative decision in the Court of the Khan. In many cases *in flagrante delicto*, Mongols were allowed to take the law into their own hands and do justice in accordance with the cruel and superstitious customs of the times.

LOCAL NATIONAL LAW OF MONGOLIA⁸

Territory: During this period the area of Mongol power diminished greatly and consisted of Mongolia proper and territories of related and conquered tribes.⁹ Even this limited territory did not represent a unit but was split up into three separate parts: Southern or Inner Mongolia, Northern or Eastern Mongolia (Khalka), and Western Mongolia or Djungaria.

Population: The great majority of the population was composed of the Mongol tribes: Chachors, Khalkhas, Torguts, etc. Among these, several non-Mongol peoples lived, such as the Kirghiz, Sarts, and Chinese. The number of Chinese in Inner Mongolia increased considerably towards the end of this period. The chief occupation was no-

⁶ Yassa, Frs. 21, 34-35, Plano-Carpini, Rubruquis, Marco Polo.

⁷ Thirteen "Fragments" or Articles of the Great Yassa out of thirty-six prescribed the death penalty.

⁸ Fifteenth through part of the eighteenth centuries.

⁹ *E.g.*, the Bargu-Buriats, Altai Kalmucks, Uriankhais, etc.

madic cattle raising. The religion of the Mongols changed in the second half of the sixteenth century to Buddhism in Lamaism form.

Social Organization and State Power. The Mongols of this period (fifteenth-eighteenth centuries) were divided into three main classes: the nobility, common people, and (since the second half of the sixteenth century) clergy. There existed, however, a middle layer — Tarkhans or the lower clan chiefs, and some military ranks. Originally the Great Khan at Karakorum was the ruler of the whole of Mongolia. With the gradual development of the appanage system, Mongolia ceased to have an actual, and later even a nominal, supreme ruler. In Northern Mongolia or Khalkha, the appanage Khoshun princes were grouped into three Aimaks ruled by three Khans.¹⁰ These Aimaks sometimes united in the common interest, usually for attack or defense against a common foe. The Western Mongols or Oirats also sometimes united into federations. More rarely there appeared in Mongolia even wider alliances, e.g., the alliance of the "Forty and Four" Mongol tribes, i.e., Northern and Western Mongols, in 1640. Such unions were temporary and ceased to exist after the achievement of their common purpose, or as a result of internal dissension.

During the first half of the seventeenth century, Southern (Inner) Mongolia was subjugated by China, in 1691 Northern Mongolia (Khalkha) followed, in 1757 Western Mongolia (Djungaria). In 1789 the Chinese Code for all Mongolia was promulgated.

Records of Law: The basic records of the law of this period were the Ancient Tsaadjin Bichik, the Mongol-Oirat Regulations of 1640, the Great Code of the Seven Khoshuns, and the Khalkha-Djirom of 1709. Of these records, the Mongol-Oirat Regulations of 1640 were the most important, being, for a time, the effective code in both Northern and Western Mongolia (Khalkha and Djungaria). After the disintegration of the alliance of the "Forty and Four," this code remained effective in Djungaria until the promulgation of the Chinese Code or Regulations of 1789 and among the Russian Kalmucks until 1917. In Northern Mongolia the Mongol-Oirat Regulations of 1640 were replaced by the Great Code of the Seven Hoshuns and later by the Khalkha-Djirom, which also retained its effectiveness until 1789. The Khalkha-Djirom also continued to function among the herdsmen Shabinars of the Urga Gegen until superseded in 1925.

¹⁰ Tushetu Khan, Tsetsen Khan, and Yassaktu Khan.

Administration: During this period the administration was centered in the headquarters of the appanage or Hoshun (Ulus) prince, where there were special officials concerned with the conduct of military, administrative, and judicial functions.¹¹ Chiefs who governed parts of appanages, Otoks, Bags, etc., bore titles of Djaishas, Chinsans, Zaisans, etc.

After the subjection of Mongolia to China, the administration was reorganized. In 1719 Mongol princes were deprived of the right of foreign relations; in 1725 there was created in Khalkha the fourth Aimak of Sam-Noyon Khan, and in 1727 the administration of Khalkha was handed over to the four Seims (leagues) headed by their elected representatives. This reform destroyed the political importance of the four Khans of Khalkha. The number of Khoshuns was considerably increased. The Uliassutai Chiang Chun (Commander in Chief of the Chinese troops) was made the supervisory organ over the Khoshun and Seim administrations, and the Ambans (governors) of Ulasutai, Urga, and Kobdo were named as his assistants.

Private Law: The right of property in immovables did not yet exist. Land was held for common use by the clan units, the Khotons, Otoks, etc., for the purpose of pastoral economy.¹² The right of private property in movables was defined. Economy for the most part was natural, and civil legal life was little developed. However, in the Khalkha-Djirom of 1709 it was advanced further than in M. O. Regulations of 1640. Relationship was recognized only in the male line. The family structure was patriarchal in character. The power of the husband and father was great, but not despotic. Marriage was exogamous and based on the payment of ransom for the bride, and polygamy existed. Vestiges of the matriarchate were, however, evident (the remnants of the avunculate, hetarism, the levirate, etc.) Elder sons could separate themselves from the paternal household.¹³ Inheritance was determined by custom and divided among the sons, the custom of the handing over of the household to the younger son being followed. The widow-mother managed the inherited property.

Criminal Law: Crimes and offenses were primarily customary in character, as were many of the penalties applied. The penal system of the Regulations of 1640 and the Khalkha-Djirom of 1709 was more

¹¹ The Yassaul (administrator), Daruga (commander), Demchi (tax collector), Elchi (messenger), and others.

¹² Cf. Mongol Oirat Reg. 15, 122, Khalkha-Djirom, IV-IX, etc.

¹³ Ancient Tsaadjin Bichik, 5.

complex (since more than ten varieties of punishment were provided for in each) than that of the Great Yassa, but considerably milder. The death penalty was rare and the commonest punishments were the property fine in cattle and flogging. The punishments for personal insults were determined by the social position of the insulted person as well as that of the person offering the insult. A peculiarity of the Mongol-Oirat Regulations and the Khalkha-Djirom was the provision, alongside of the system of punishments, for a system of rewards for certain altruistic actions, such as the saving of human lives, cattle, and property.

Organization of the Courts: The courts were organized as state institutions. Among the Western Mongols there were two courts of justice, the Khoton and the High Court. Two courts also evidently existed among the Northern Mongols, but among them the courts were more closely connected with the Khoshun and Aimak administration. Definite, although not detailed, rules of procedure existed. The number of cases in which Mongols were permitted to take the law into their own hands was considerably diminished.

GENERAL LAW OF CHINESE ORIGIN (1789-1911)

Territory: The territory of Mongolia as a state coincided with the geographical conception of Mongolia, *i. e.*, it comprised Southern, Northern, and Western Mongolia. It was otherwise divided into Inner (Southern) Mongolia and Outer (Northern and Western) Mongolia. Inner Mongolia fell earlier under Chinese sovereignty and was more closely connected with China. It was divided into six Seims (leagues) and forty-nine Khoshuns while Outer Mongolia comprised the four Seims (leagues, Aimaks) of Khalkha and two Aimaks of Dzungaria, containing 111 Khoshuns and the Department of Urga Gegen (Shabi D). Besides this, one Aimak of Altai Mongols was included in Outer Mongolia.

Population. The total number of the Mongol population during this period was from 2,500,000 to 3,000,000. Inner Mongolia had the greatest population. The Chinese were especially numerous there, engaging in agriculture and trade. The chief occupation of the Mongols was nomadic cattle breeding.

Social Organization and State Power: There were among the Mongols the same social groups as in the previous period. Clergy became very numerous. The clan ties among the Northern Mongols in Khalk-

han weakened but they retained their force to a greater extent among the Western Mongols in Djungaria. The supreme power was now vested in the Emperor of China. The Mongol princes were divided into six degrees and the Taidji nobility into four. The princes were divided into Djasaks, ruling a Khoshun, and Noyons, non-ruling princes.

Records of Law: The chief judicial records of this period were the Chinese Codes for Mongolia, promulgated in 1789 and in 1815.

Administration: The chief organ of the internal administration of the Aimak was the Seim or conference of the Hoshun princes. Seims were called once every three years for the decision of the most important judicial cases, apportioning of levies in kind and the taking of the census. The president of the Seim was elected from among the princes of the Aimak and confirmed in his post by the Emperor. He had an assistant or substitute and an administrative officer (Yamen). The President of the Seim was entrusted with the duty of supervising the condition of the Aimak and the activities of the Hoshun princes, and had the right of appeal to the Chinese Board of Foreign Relations against any order of the Chinese authorities.¹⁴ At the head of each Hoshun was a Djasak or ruling prince, an office which was hereditary, but subject to confirmation by the Emperor. Each Djasak had one or two assistants (Tusalakchis) who had charge of civil affairs. These Tusalakchis were usually appointed from among the Noyons and Taidjis of the Hoshun and were the actual administrators attached to the hereditary Djasak. The military affairs of the Hoshun were in the hands of a special Commander, the Zahirakchi, whose staff contained one assistant, a Tsahan or regimental commander or two assistants—a Tsalan and a Meiren. Two Tusalakchis, a Zahirakchi, a Tsalan, and a Meiren composed the administrative council of the Hoshun-Tamga.

The supervisory organ was composed of the Uliassutai Commander in Chief and the Ambans at Ulasutai, Urga, and Kobdo;¹⁵ the Shabınars of the Urga Gegen were governed by the clerical Shabı Yamen.

Private Law: Private law in this period was represented almost entirely by custom. The Regulations or Codes of 1789 and 1815 contained only a few provisions of private law. In the Shabı Department, the provisions of Khalkha-Djirom were still applied.

¹⁴ Commander in Chief in Ulasutui, Ambans, etc.

¹⁵ Two Ambans at each point, one Manchu and one Mongol.

Criminal Law The criminal law of both codes was strongly influenced by the law of China. In place of the comparatively mild provisions of the Regulations of 1640 and the Khalkha-Djirom, we meet here a criminal law of great severity with various forms of the death penalty, including qualified capital punishment, hard labor, imprisonment for long periods, beating with rods, etc., as well as punishments of a local character. The severe penalties for some crimes were glaringly out of keeping with the spirit of Mongol life and law, e.g., the punishment for arson (there were no houses in Mongolia), for violation of graves (the Mongol rarely buried their dead), and others.

Organization of the Courts: The courts were identified with administration. The first judicial instance was the Hoshun prince and his administration (Tamga), the second, the President of the Seim and the Seim administration (Yamen), and the third, the Board of Foreign period was remarkable for the movement of population from village to trade was in foreign, chiefly Chinese, hands. While elsewhere the Relations in Peiping. The rules of court procedure were not sufficiently defined. Torture was commonly applied in investigation. Tracking, search, the testimony of witnesses, and the oath were allowed. The personal attendance of the litigants at court was required.

LAW OF AUTONOMOUS (OUTER) MONGOLIA (1911-1924)

In the beginning of the twentieth century Mongolia represented a strange anachronism in the family of modern nations. In an age of exceptional development of private property, Mongolia did not yet have immovable property. In an era of industrial prosperity, social crises, and national finance, this country had no industry of its own, no labor problems, and no national currency. Its weakly developed town, Mongolia had almost no towns at all; in the few that did exist, the population was chiefly composed of foreigners. Even the house was unknown in Mongolia. The inhabitants of the country were nomads, as they had been a thousand years before, with little knowledge of agriculture or settled life. In Outer Mongolia only the most primitive avenues of communication existed—"directions" along which people rode on horses. There were no bridges on these roads. A people which had once been noted for its military prowess and had conquered half the world lived as small herdsmen under foreign sovereignty, passive, weak, and disunited, split into 150 small principalities with a large class of Lamas, forced to pay a multitude of levies in kind, and de-

prived of any of the achievements of modern civilization. The Chinese revolution of 1911 brought about many changes.

Territory: In 1911, after the revolution in China, the whole of Mongolia declared her autonomy. However, in accordance with the terms of the Sino-Russian Treaty of 1915, Outer, *i.e.*, Northern and Western, Mongolia was declared to be an autonomous state under the sovereignty of China and the protectorate of Russia. Since that time (with the exception of an interlude of about one year), Outer Mongolia has remained practically autonomous. The independence of Outer Mongolia was recognized by China only in 1945. Inner Mongolia, on the other hand, remained under the direct rule of China, being organized into three territories, Jehol, Chahar, and Suyuan, later becoming provinces. Outer, autonomous, Mongolia consisted of the four Aimaks of Khalkha and two Oirat Aimaks.

Population: The population was composed chiefly of Mongols (about 550,000), Chinese (about 100,000), Russians (about 5,000), some Kirghiz, Uriankhais, etc. The chief occupation remained nomadic cattle breeding. According to the census of 1918, 5.7 per cent of the population belonged to the nobility; 22.3 per cent or 44.6 per cent of the male population to the clergy; and 72 per cent to the common people including serfs. Towns, the chief of which was Urga, now Ulan Bator, were not populous and their permanent population was composed chiefly of foreigners.

Social Organization and State Power: The social organization of Autonomous Mongolia was the same as in the previous period. The head of the state in this short period was the Urga Bogdo-Gegen-Khutukhta, the Living Buddha, the spiritual leader of the whole of Mongolia. During the first period of autonomy, 1911-1919, he was an autocratic monarch. He had a Council of Ministers, composed of five members and an assembly of Khoshun princes as a consultative body. During the second period, 1921-1924, the Bogdo-Gegen was a constitutional monarch having only a limited power of veto, and the country was governed by the Mongol Provisional People's government by the Mongolian People's Party.

Records of Law: During the short period of so-called Autonomous Mongolia, no general codes were issued. A Code of Laws was, however, prepared and partly printed, and drafts of civil and criminal codes were compiled. During the second period, a series of important separate laws were issued, *e.g.*, laws abolishing serfdom, corporal punish-

ment, and others. At this time the separation of State and Church began.

Administration. Administrative power rested in the Hoshun authorities, the Tamga, and in the Aimak administration of Yamen. The supervisory organ over the Hoshun and Aimak administrations was the Ministry of the Interior at Urga.

Private Law. The right of private property in land was not recognized; hence the purchase, sale, and mortgage of land were not allowed. The renting of land was allowed only with regard to foreigners. Civil legal life was more developed than previously. The family remained patriarchal. Polygamy was permitted, and divorce was easy. The power of the husband and father prevailed in the family, but the mother also participated in decisions with regard to family affairs, and in the rearing of the children. Inheritance went first to the widow and her sons. If there were no children, the widow received her dowry while the rest of the inheritance passed to collateral relatives. The youngest son inherited the household of the father in accordance with ancient Mongol custom. The making of wills, usually verbal, was permitted if the provisions were not in violation of custom.

Criminal Law. The influence of Chinese law through the Code of 1815 was strong. Qualified capital punishment, imprisonment for long terms, the cangue, rods, and other purely Chinese punishments were long applied among the Mongols according to the Codes of 1789 and 1815, along with cattle fines, whippings, and other Mongol punishments. At the same time, although the above-mentioned Codes prescribed severe punishments for adultery, the violation of graves, etc., the courts acted in accordance with custom and imposed light punishment. Thus, in the criminal law of Autonomous Mongolia, we find a mixture of Chinese institution and Mongol custom.

Organization of the Courts: The courts were still identified with the administration. In minor cases, the first instance was Koshun's Tamga, the second, Aimak's Yamen, and the third, the Ministry of Justice in Urga. In the more important cases, the first was omitted. In cases involving Princes, the first instance was the Ministry of Justice with appeal to the Bogdo Gegen. Gegens, Khutukhtus, and Shabiners were judged by the Shabi Yamen with appeal to Bogdo Gegen.

MODERN LAW

The last Bogdo Gegen Khutukhtu died in May of 1924. In November of the same year, the Great Khural or Constituent Congress adopted a new Constitution for Outer Mongolia. Mongolia was proclaimed an independent People's Republic, (without a President), in which the entire power was vested in the working class and exercised through the "Great People's Khural," which elected the government. The period of great reforms in the life and law of Mongolia began.¹⁰

SUMMARY

In summarizing the basic features and tendencies of the development of Mongol law up to 1924, it may be said that Mongol law delineates a highly developed culture, based on nomadic clan-patriarchal culture with clan and sub-clan administration, but with a weak appreciation of the state principle. Relationship was recognized only in the male line. The family was based on exogamous marriage, with the institution of ransom for the bride, polygamy, authority of the head of the family, and upon respect for the elders. Property in immovables did not exist and civil legal life was generally but little developed. Along with the system of penalties, the basis of which was the personality fine and flogging, there existed a well-developed form of rewards. This originated in clan solidarity which was formerly promoted by a special system of rewards and punishments.

The institutions of Mongol law showed a noticeable tendency to further evolution. disintegration of the clan, recognition of close relationship on the mother's side, weakening of both exogamy and polygamy, and development of the power of the father, etc. At the same time, it is possible to discern the presence in Mongol law of survivals from the matriarchate (*e.g.*, vestiges of the avunculate, hetarism, the levirate, the special respect shown to the clan of the mother and wife, and a few other institutions), which although formerly stronger gradually retreated before the advance of new forms of social relations. Thus it is necessary to admit that the original type of social organization among the Mongols was not the patriarchal clan order, which in turn showed tendencies towards further evolution.

Among the Mongols, the state power had its origin in the power of the clan chief, and the Great Mongol Empire was organized on clan

¹⁰ EDITOR'S NOTE: see *Mongol Law—Later Developments*, page 178.

principles. But the state unification of the Mongols, built on clan principles, was not stable and clan relations served continuously as an obstacle to the creation of a strong state.

In the sphere of private law, individual property among the Mongol tribes was developed only in connection with movables. Individual property in movables slowly separated itself from clan and family property. In its original form it represented property acquired by the personal labor or exploit of its possessor, *e.g.*, in war, in the hunt, etc. In regard to immovable property, there was no general recognition of individual property in Mongol law, and immovable property was used in the common (clan and tribal) interests of pastoral economy. The theory of the successive development of the matriarchal, the patriarchal, and the mutually equal family finds confirmation in the materials of Mongol law. In general, the origin and development of the basic institutions of Mongol private law (the property, family, inheritance, responsibility for damages, the development of contracts) were subject to the general principles of this process as they have been established by the sciences of sociology and comparative jurisprudence.

MONGOL LAW—LATER DEVELOPMENTS

LAWRENCE KRADER*

(Professor Riasanovsky's article carries us up to the year 1924. A new constitution for the Mongol People's Republic was adopted in 1940. It is an extraordinary document, and is reprinted herewith in order to complete the picture. By way of introduction the following additional facts are given.)

In 1924, the history of Outer Mongolia entered a new era. De facto Soviet control had been established, and China had agreed to recognize the autonomy of Outer Mongolia in the Sino-Russian Treaty of that year. Russia felt sufficiently secure of her control to undertake the withdrawal of troops. The year before, the northwesternmost section of that land, Tannu-Tuva, had cut herself off and had become more closely attached to the Soviet Union than the body of Outer Mongolia. This attachment became definitive in August, 1944, when Tannu-Tuva gave up her status as a republic to become an autonomous region of the R.S.F.S.R. The remainder of Outer Mongolia underwent a different fate. The last Khutukhtu, the reincarnation of the living Buddha, died in 1924. At the same time, the country was involved in

*Research Associate, Far Eastern Institute.