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State Authority Contested along Jurisdictional Boundaries. Qing legal policy towards the Mongols in the 17th and 18th centuries

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State Authority Contested along Jurisdictional Boundaries. Qing legal policy towards the Mongols in the 17th and 18th centuries[1]

Dorothea Heuschert-Laage[2]

Abstract

Controversies over jurisdictional competence played an important role in defining the nature of the relationship between the Qing emperors (1636–1912) and their Mongolian subjects. Manchu-Mongolian interaction in the field of law goes back to the time before the proclamation of the Qing dynasty, when it was common for Mongols to appeal to the Manchu ruler in legal situations they were dissatisfied with. The establishment of the Court for Mongolian Affairs, better known under its Chinese name *Lifanyuan*, can be understood as an attempt to channel this incoming communication of Mongols. Mongolian legal authorities invested with limited jurisdictional power or litigants trying to play authorities against each other were contending with the *Lifanyuan* over its areas of responsibility and therefore were instrumental in shaping this office's scope of tasks. Looking at the *Lifanyuan*'s competences in the field of law this paper maintains that we can see a shift from a multi-jurisdictional legal order towards greater coherence and consistency and a trend towards incorporating Mongols into the legal system of China.

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Introduction

During the 17th and 18th centuries the Qing considerably expanded the boundaries of China into Inner Asia. Mongolian and Tibetan territories, as well as today's Xinjiang were brought under the control of the dynasty. As a result, the Qing government, like Western colonial powers, faced the challenge of integrating newly acquired territories and peoples into the state administration. When we look at the effects of Qing rule in Inner Asia, transformations such as the instrumentalisation of the local elite, unequal economic development or the transfer of Chinese law with its strongly Confucian background will remind us of colonial situations in other parts of the world. This paper deals with the role of law in the establishment of Qing control, and argues that – as in other colonial encounters – the legal arena became a place of contest among diverse interest groups. Qing rule over frontier regions was not an established fact, but rather a process involving a wide range of actors. The Qing as an imperial formation expanding into Inner Asia created conditions, which "required constant judicial and political reassessments of the criteria for affiliation" (Stoler 2009: 42). The ensuing permanent restructuring of the legal order led towards a more hierarchically legal system, a trend, which Lauren Benton observed in the histories of many early empires (Benton 2007: 56). While at the onset of Manchu rule there was a plurality of co-existing legal orders with different sources of legitimacy, along with a stronger hierarchisation and standardisation of law, the degree of legal pluralism decreased.[3]

In order to understand Qing policies in Inner Asia, we have to keep in mind that the Qing had an Inner Asian background themselves. The imperial elite were Manchus, their ancestors settling in the territory which today makes up the North Eastern part of the People's Republic of China. In the period of state formation, Mongolian communities as immediate neighbours of the Manchus with close cultural and linguistic ties played an important role in the consolidation of political power. Only with Mongolian support had the Manchus gained the strength to conquer China, and in 1644 were able to take Beijing and overturn the Ming dynasty. In the administration of China, the Qing relied heavily on the model of previous Chinese dynasties. Pei Huang recently reignited the debate on how much the Manchus as emperors of China were able to preserve their own cultural identity (Huang 2011). Calling into question the conclusions of scholars, who emphasise the distinctive Manchu features of the last Chinese dynasty (for example Crossley 1999; Elliott 2001), Huang (2011) maintains that the Manchus were widely sinicised and that the process of their acculturation started long before their conquest of China. The question of how the Qing dealt with – especially Inner Asian – cultural diversity within their realm is closely related to the sensitive issue of Manchu identity, and therefore must be understood in the context of this discussion. In return, investigating Manchu interaction with Inner Asian political authorities and subjects may allow us to gain some insight into the changing conceptions of Manchu rulership and legitimation, and enable us to reassess Inner Asian and Chinese elements of Qing rule.

Qing Administration of Inner Asia and the Role of Law

The central government institution, which functioned as the main pillar of Qing administration of the frontier regions was the *Lifanyuan*. The *Lifanyuan* was established by the Qing in order to manage the relations with the Mongols, but with the expansion of the empire its duties were

[3] For degrees of legal pluralism as useful parameters for comparison see Woodman (1998: 54).

extended, and it also assumed responsibilities in the administration of Tibet and Xinjiang as well as in the relations with peoples of Russia and Central Asia. It is generally accepted that the *Lifanyuan* used strategies to cooperate with the native elites, e.g. the Mongolian aristocracy, Muslim *beg*s[4] or – in the case of Tibet – also religious authorities.

When characterising the nature of Manchu rule in Inner Asia, scholars usually stress the high degree of flexibility of Qing administration. By adapting to local conditions, the Qing allowed a variety of administrative systems to coexist in Mongolia, Xinjiang, and Tibet. According to Peter Perdue, "*Begs, jasaks*, and lamas retained a kind of hereditary authority, even though Qing officials approved their posts, and held considerable autonomy in local administration beyond the typical district magistrate. In practice, this form of negotiated, delegated authority added useful flexibility to the administration of the frontier" (Perdue 2005: 558). Mark Elliott underlines "the diversity of this system, the lack of consistency across regions, and the fact that it differed so utterly from the administrative system used in the interior provinces", and points out that "the Qing put an emphasis on adapting to local conditions, on taking advantage of existing local systems of authority and ruling through them, and on keeping its ambitions modest (e.g., the queue was never imposed in Xinjiang or Tibet)" (Elliott 2011: 406). At least until the end of the 19th century, when Xinjiang became a province in 1884, the frontier regions were governed separately from China proper. As Pamela Crossley argues, they were managed as "distinct societies", which meant that "local traditions in law and religion were given priority whenever they did not conflict with the immediate imperial agenda" (Crossley 2006: 68). Examining Qing administrative structure and policies in Xinjiang, James Millward and Laura Newby emphasise that the Qing state and its ministers "were not interested in assimilation of new subjects to Chinese ways, but rather were content to let diverse cultures and administrative systems coexist in the territory" (Millward and Newby 2006: 130). Contrasting the administration of the northern and western borderlands with that of the south, according to Nicola Di Cosmo "in Inner Asia, however, the Qing had no interest in assimilation, showed greater sensitivity towards Mongol, Tibetan, and Islamic cultures and left Manchu and Mongolian officials, who did not push for sinicization, in charge" (Di Cosmo 1998: 294).

The emphasis on flexibility is consistent with the fact that, among the political tools used by the *Lifanyuan*, the field of ritual and ceremonial seems to be the most researched area of this office's responsibilities.[5] Ritual, according to Laura Newby, "was an integral part of Qing foreign policy", and "it was, in fact, above all an agent of flexibility" (Newby 2005: 9¬10). Analysing Qing relations with the khanate of Khoqand, she argues that, by the 18th century, tribute had become "a diplomatic toolbox", which "could be employed and adapted in order to regulate a wide spectrum of relations" (ibid.). Nevertheless, the *Lifanyuan* also had other instruments of power at its command, and, as Nicola Di Cosmo has pointed out, "a central function of the *Lifanyuan* in the Inner Asian territories was the exercise of legal powers" (Di Cosmo 2009: 356). When looking at the recently published routine memorials of the *Lifanyuan*, the high proportion of records of legal cases is remarkable: About one third of the documents in this publication of 23 volumes are judicial files, altogether more than five hundred items documenting the workings of this institution from

[4] Title of local officials appointed by the Qing.
[5] Due to the important work of Chia Ning we have a good understanding of the duties of the *Lifanyuan* in the field of ritual (Chia 1993).

1653 to 1795 (Oyunbilig, Wu Yuanfeng and Buyandelger 2010).[6] As these records show, the *Lifanyuan* was regularly concerned with cases of livestock theft, or, to a much lesser amount, also with cases of murder, homicide, robbery, sexual harassment. The fact that, at least in the first 150 years of its existence, legal issues were at the core of the *Lifanyuan*'s activities invites us to reconsider the role of law in the process of institution building and may lead us to observe the flexibility of Qing rule in Inner Asia from another perspective.

As the basic structures of the *Lifanyuan* were established in the 17th and 18th centuries, the focus of this paper is on the early Qing period. However, very few records of legal cases from this time have come down to us. I thus had to rely heavily on imperial orders and in some cases I can only assume that – prior to the expression of an imperial decision – there was a situation the emperor considered unacceptable and saw the practical need for new regulations. This issue is closely linked to the question to what extent Qing law as state law was "in fact involved in the maintenance of societal normative order" (Tamanaha 1993: 210). According to Brian Tamanaha, in the colonial context "transplanted state law norms" were "frequently a kind of virtual norm, with an existence only on paper until invoked to justify the decisions and actions of the state legal apparatus" (ibid.). More research is needed on both the effectiveness of Qing law, i.e. the extent to which it was enforced by state institutions, and its interaction with other forms of social ordering (on these topics see Hagihara 2006).

Although the *Lifanyuan* was responsible for the administration of various Inner Asian ethnic groups, its strong commitment, especially to Mongolian legal affairs, is notable. The legal records mentioned above (Oyunbilig, Wu Yuanfeng and Buyandelger 2010) concern almost exclusively this ethnic group and originate from territories corresponding roughly with today's Inner Mongolia and Qalqa, i.e. the state of Mongolia. Therefore, this paper will devote particular attention to the *Lifanyuan*'s policies towards the Mongolian subjects of the Qing. I will argue that Mongols, by rejecting, allowing, or even calling for the *Lifanyuan* to exercise legal authority, participated actively in the process of shaping this office's area of responsibilities.

Long before it started to routinely decide on Mongolian legal cases, it was common for Mongols to approach the *Lifanyuan* with petitions. In order to manage the amount of cases coming in, the *Lifanyuan* had to redelegate authority to local rulers and define more clearly which cases were to be part of its responsibilities and which were not. Its scope of duties developed over a series of jurisdictional conflicts with Mongols, be it members of the elite or commoners. This was an ongoing process as the jurisdictional boundaries established by the *Lifanyuan* were inherently unstable and, for this reason, subject to continual – and time and again fundamental – revisions. Talking about jurisdictional politics in colonial settings, Lauren Benton points out that "disputes over the rules structuring this complex legal order were not merely procedural conveniences or tactical weapons but important, even vital, symbolic markers of the boundaries separating colonial constituencies" (Benton 1999: 564). A better understanding of the controversies and legal

[6] We do not know what other *Lifanyuan* related material is still in the archives and may change this ratio one day. The collection, for example, does not cover the years 1703–1735, and it contains only eleven documents dating from the twenty-three years of 1667–1690. The absolute number of Mongolian legal cases handled by the *Lifanyuan* together with the compilation of a Mongolian Code (see below), however, provide ample evidence of the crucial significance of law in Manchu Mongolian relations and, correspondingly, its importance for the *Lifanyuan*. For routine memorials see Bartlett (1991: 21–22).

strategies, which shaped the *Lifanyuan*, will thus allow us to gain a better understanding of the nature of the Qing state as an imperial formation.[7]

Manchu-Mongolian Interaction in the Field of Law

Manchu claims on sovereignty over Mongolian legal matters were a heritage from the time, when Manchu politics were directed at winning Mongolian communities over as allies in their war against the Ming. The loyalty of individual Mongolian noblemen was vital to the strength of the evolving Manchu state. The Manchus, who at that time still referred to themselves as Jusen, attempted to gain influence on legal matters of confederate Mongolian communities as early as in the 1620s. The Manchu Qan – while accepting the vow of allegiance from them – demanded of Mongolian rulers to take part in his campaigns. For this reason, Manchu activities in the field of law were clearly aimed at securing the operational readiness of the Mongolian troops.[8] Manchu-Mongolian interaction in the legal arena, however, was manifold and went beyond the declaration of martial law for Mongolian military units in combat. Hong Taiji (reigned 1627–1643) did not only have to make sure of his allies' loyalty, availability, and discipline in times of war. Moreover, apart from times of crisis, it was crucial for him to prevent internal conflicts among his allies, which might have weakened the fighting strength of the Mongols or even caused the confederation to disintegrate.

Within this context, two other directions of impact in the field of law have to be mentioned: Firstly, Manchu law was introduced among the Mongols in the guise of Mongolian law (Heuschert 1998a: 80), as the Manchu ruler availed himself of the instrument of traditional Mongolian law-making.[9] This implied the assembling of leading representatives from the fields of politics and religion, who, in a solemn act, would communicate about legal foundations. As a declaration of mutual consent, they would lay down a list of legal directives in written form. As I have argued elsewhere, the significant weight of these legal records derived not so much from the actual content of the rules, but they were rather important as expressions of the collective will to abide by the general principles of law and, in cases of conflict, try to achieve an amicable settlement of the dispute (Heuschert-Laage 2004: 151–153; Heuschert 1998a: 79–81). By joining in with the efforts of Mongolian leaders to create conditions for peaceful coexistence, Hong Taiji presented himself as a pillar of social stability. He resorted to the formal language of his Mongolian allies and followers in order to clearly state his commitment to commonly accepted values.

The role of Hong Taiji as a guarantor for peace and social harmony leads us to another aspect of Manchu-Mongolian relations in the field of law: Long before the *Lifanyuan* was established, it was common for Mongols to present petitions to the Manchu ruler urging him to take their part in ongoing disputes. For Hong Taiji, to accept the task of arbitrator was a way to give evidence of his will – and his ability – to protect people and property and to prevent the excessive use of force. In this context, his intermediary role in Mongolian legal disputes added another facet to Hong Taiji's efforts to attain political legitimation. In connection with the rivalry between the Čaqar Mongols

[7] I adopt this term from Ann Laura Stoler, who defines imperial formations as "ongoing processes that produce gradations of sovereignty, not as exceptions to their architecture but as constitutive of them" (Stoler 2009: 35 and 40f).
[8] For the regulations soldiers and commanders had to observe during the wars against Čaqar, see Di Cosmo (2002: 343–347).
[9] For early Manchu legislation for the Mongols, see the publications of Michael Weiers (1979, 1981, 1986a, 1986b, 2009), especially Weiers (1979). See also Dalizhabu (2009).

and the Manchus, Nicola Di Cosmo pointed out that "charismatic leadership had to undergo social validation before it could attain political legitimation. Validation could not occur without addressing the leader's capacity to respond satisfactorily to the needs, beliefs, and aspirations of the social and political basis" (Di Cosmo 2006: 255). Moreover, we should keep in mind that the Manchu ruler by accepting petitions may also have supported 'informal' mechanisms of dispute resolution. As Benjamin Kelly has argued with regard to Roman Egypt, "as in many societies, making complaints or even beginning court hearings were merely ways to force private settlements. In this sense, then, state adjudication, even though probably a failure in its own terms, did sometimes play an important role in alternative methods of resolving a dispute" (Kelly 2011: 329–330). Going to the law was a strategy in private systems of control, and, by underpinning these methods, the state signalled its determination to support peacemaking processes. These aspects of Manchu-Mongolian communications in the field of law can hardly be overestimated as factors for establishing of the *Lifanyuan*.

The Manchus continued to lay claim on the legal authority over the Mongols even when disputes among them ceased to have the potential of destabilising their evolving state. With the consolidation of their rule after the defeat of the Čaqar Mongols in 1634 and the increasing number of Mongols under Qing hegemony, this called for new ruling strategies. The demand was met by the *Lifanyuan*, which – among other things – took over the arbitration of unresolved disputes, the announcement of legal decisions, and the supervision of legal matters among the Mongols.

Controversies over jurisdictional boundaries continued to be of crucial importance for redefining the areas of responsibility of the *Lifanyuan*, but, at the same time, the influence of the *Lifanyuan* on Mongolian legal traditions was enormous. The Mongols were not simply the only ethnic group in the Qing empire for whom – in addition to the *Da Qing Lüli*, the Great Qing Code, which was based on precedents of previous Chinese dynasties – a separate legal Code was established under the aegis of the *Lifanyuan*.[10] As Mamoru Hagihara has shown, the great amount of records of Mongolian legal cases dating from the 18th to the early 20th centuries, which went through the official channels of Qing bureaucracy, demonstrate that the Qing claim on exercising supreme authority over Mongolian legal affairs was not merely nominal (Hagihara 2006: 52–90).

As tendencies to unify, formalise, and centralise became stronger, the willingness of the Qing to grant exemptions and privileges for their Mongolian subjects dwindled. For the Mongols of Southern Mongolia, who had accepted Manchu rule in 1636, this trend became manifest as early as during the Shunzhi period (1644–1661) (Heuschert 1998b: 316), i.e. under the second Qing emperor, who was the first to take up residence in Beijing. Elements of Chinese law were increasingly incorporated into the Mongolian legislation and legal administration. In the course of these changes, the role of the *Lifanyuan* altered: Powers it had once taken over from Mongolian legal authorities it later had to share with other state offices or even relinquish. Examining its activities in the legal arena reveals the *Lifanyuan*'s ambivalent role: it paved the way for Mongols being more firmly incorporated into the Qing legal system. The more successful the *Lifanyuan* operated, however, the less the emperor would have to rely on its expertise.

[10] In Chinese *Menggu Lüli.* For editions in Mongolian language of this legal code, see *Mongγol-un čaγaǰan-u bičig* and Bayarsaikhan *Mongγol čaγaǰ̌n-u bičig* in the reference section.

The *Lifanyuan* as a Port of Call for Mongolian Petitioners

The establishment of a "Court for Mongolian Affairs" (mo. *mongγol-un yabudal-un yamun*) – later renamed *Lifanyuan* – is usually dated to 1636 (Zhao 1989: 47). As the Mongolian name of the *Lifanyuan* ("Court for Administration of the Legal Order of Mongols on the Outside", *γadaγadu mongγol-un törö-yi ǰasaqu yabudal-un yamun*) suggests, this office, at least in the 17th and 18th centuries, was first and foremost concerned with Mongols. Its establishment has to be seen against the need to provide steady and efficient communication channels. Looking at the choice of members for delegations sent to allied Mongols after 1636 will show that in the early years it was an agency of minor significance. The delegations almost always included members of this office but were not made up exclusively of *Lifanyuan* personnel (Zhao 1989: 49). Other high-ranking central government officials were also responsible for the administration of Mongolian matters. After 1644 at the latest, however, it was explicitly the *Lifanyuan* that had the duty of circulating imperial proclamations among Mongols (Čimeddorǰi and Wu Yuanfeng 2003: II, 11–21). This office became the mouthpiece of the emperor for communicating legal decisions to Mongols under Qing authority.

In what way does the interposing of the *Lifanyuan* mark a change in Manchu-Mongolian relations in the field of law, which, when the office was founded in 1636, already had an eventful history? As indicated above, the first Manchu legislation for Mongols had been individual settlements by separate political bodies, drafted on the occasion of a personal meeting and to some extent possibly negotiable. The laws circulated by the *Lifanyuan*, however, bore a different quality. There was no longer any question of native Mongolian authorities having a say in Qing Mongolian legislation. Instead, it was now the *Lifanyuan* that sent envoys to inform the Mongolian nobility about regulations drafted by central government officials and endorsed by the Qing emperor.[11]

This development not only invites conclusions about the balance of power, which obviously shifted in favour of the Manchu side. It is also worth noting that, parallel to assigning responsibilities to the *Lifanyuan*, the Qing began to treat those Mongolian communities, which they considered to be part of their confederation, as a more or less unitary group. This can be seen from the way the target group of the respective Manchu rules is addressed: The earliest surviving Manchu-Mongolian laws specify the Mongolian *ulus* (polity) or mention the names of the Mongolian leaders, with whom and for whom regulations were laid down. The laws drafted and – after imperial approval – distributed by the *Lifanyuan*, however, usually make no reference to individual Mongolian authorities or their respective polities. Instead, the recipients of the *Lifanyuan* regulations were the so-called "Mongols on the outside" (*γadaγ-a-du mongγol*) or, since the 18th century, "the Mongols".

The policy of subsuming many different Mongolian communities and bringing them together as one unitary target group for imperial instructions had far-reaching consequences in both political and legal respect. Politically, this strategy worked towards smoothing over the differences in influence and status that prevailed among Mongolian rulers or polities that were now all governed equally by Qing legislation.[12] Where legal aspects were concerned, regulations distributed by *Lifanyuan* officials set standards pertaining to all Mongols under Qing rule. In a legal environment

[11] For an early example on how regulations drafted by the *Lifanyuan* were communicated to the Mongolian rulers, see a document of the 19th year of Kangxi (1680) in Gō (1942: 6). See also Weiers (1981: 32–34).

[12] For an exception in case of the Qorčin see *Mongγol-un čaγaǰan-u bičig* (Mongolian Code, Kangxi edition), fos. 48r/v. See also Heuschert (1998a: 151–152 and 220–222).

that was by no means uniform, the regulations systematically made known among the nobility in written form may have worked towards streamlining legal standards and thus caused the tentative adjustment of legal practices.[13]

The *Lifanyuan* was not only responsible for the outgoing communication and delegations to the Mongols. It also functioned as an 'inbox' for the correspondence the Mongols sent to the Qing court. Before it took over this function, however, the Mongolian allies or, depending upon point of view, subjects of the Manchus were accustomed to addressing their written messages directly to the throne. There are examples from the late 1620s that Mongolian correspondence directed to Hong Taiji also included legal issues. Rivalling parties in legal disputes tried to strengthen their position by attaining support from Hong Taiji as a superordinate authority. It seems to have been common practice for Mongols to accuse an opposing party of unlawful behaviour and – by drafting up a letter – call for the Manchu sovereign to step in on their behalf.[14] From our present point of view, the conflicts Hong Taiji was asked to intervene in may not have been of a special political relevance but rather concerned individual solutions for property issues. Even though only a handful of petitions have come down to us and nothing is known of their outcome, it is reasonable to assume that the Manchu ruler – or his delegates – reacted satisfactorily to the concerns of the senders and tried to put a stop to the unlawful appropriation of dependant households, livestock, or other possessions or valuables. To put it briefly, Mongols appealed to the Manchu court asking the ruler to intercede in legal situations they were dissatisfied with. In turn, the throne would endeavour to find a balance between the parties in dispute, possibly by supporting informal resolution processes, and through this cultivate an image of a ruler possessing the power to re-establish social peace.[15]

The responsibility for Mongolian correspondence rested with the *bithei jurgan*, the Bureau for Writing, which in early April 1636 was replaced by the *bithei ilan yamun*, the Three Courts for Writing (Weiers 2001: 71–79). One of these Three Courts for Writing, the *narhūn bithei yamun*, was responsible for "secret writing", and, among other things, was in charge of "complaints about crimes one fell victim to"[16]. We know very little about decision making processes and – since the exact date of the establishment of the *Lifanyuan* is not clear – do not know whether the *Lifanyuan* took on tasks, which so far had been performed by the *bithei ilan yamun*. Nonetheless, we may see the establishment of the *Lifanyuan* as an attempt to channel incoming communication and to avoid unclear responsibility and confusion. With the following words in 1637, the Mongols were informed of the *Lifanyuan* becoming the first point of contact for their legal matters at the Qing court:

[13] For the coexistence of oral and literary legal cultures in 18th century Qalqa Mongolia, see Heuschert-Laage (2004: 154–155).

[14] Examples for this role of the Manchu ruler can be found in Li Baowen (1997). Relevant passages translated in Di Cosmo and Bao (2003: for example 50–51, 140–141, 165–166, 167–168). See also Weiers (2009: 348–349).

[15] Because no case records have survived from this time, we do not know how native Mongolian courts at the time were organised, how decisions were reached and what the role of written rules was. Even though some native authorities were already qualified as *ǰasaγ* (regents), we cannot assume that the legal authority rested exclusively with them.

[16] *Muribuha weile be habśaha gisun* (Chen 1969: fol. 4687–4688; Weiers 2001: 72 and 85–86).

> "If you come in punishable offences, which were not finally settled in the polities of the Mongols on the outside, you should not as hitherto make a report to the throne at your own discretion! Write down the grounds for the punishable offence and inform the Lifanyuan!"[17]

The *Lifanyuan* was instituted in order to investigate Mongolian petitions before they were presented to the emperor. Its officials were responsible for coordinating the flow of information between the Mongolian nobility and the court. There is reason to assume that they were authorised to regularly check each item, decide on the action to be taken and on the priority to be allocated to the matter. In this way, the *Lifanyuan* became the filter for communications of Mongolian origin with the throne.

Two important conclusions can be drawn from the imperial instruction that Mongols should bring unresolved legal cases before the *Lifanyuan*: Firstly, it was explicitly for punishable offences or criminal matters (*yal-a-yin učir*)[18] that the *Lifanyuan* was installed as a point of contact for incoming Mongolian correspondence. We may assume that there was a wide definition of 'punishable offences' and that these included political matters or behaviour considered to be disrespectful. The emperor nonetheless did not arrange for all Mongolian communication to go through the hands of *Lifanyuan* officials. Reading between the lines, some sort of communication – sensitive diplomatic correspondence or military intelligence – could still be addressed directly to the throne. This leads to the conclusion that the *Lifanyuan* was established to relieve the workload of other governmental authorities, but was given responsibility only in the field of law in a clearly defined measure and not generally for all Mongolian matters.

Secondly, it is important to note that the imperial order cited above is directed at Mongols memorialising to the Qing court by their own initiative. Apparently, in 1637, Mongolian legal matters were not meant to be handled by the *Lifanyuan* as a matter of routine, but were brought forward by Mongolian legal authorities at their own discretion, or, as the case may be, by informants or parties in dispute who wished a higher authority serve as advocate in their case. On the face of it, the establishment of the *Lifanyuan* did not change the mechanism of communication between centre and periphery. Mongols were expected to bring their matters before the court as before – they were only supposed to note 'the change of address'.

The possibility of turning to a higher authority evidently was well-received among the Mongols. More people brought their disputes before the *Lifanyuan* than this office actually could – or wanted to – deal with. This can be concluded from an order given by the Shunzhi emperor in 1651. It seems that litigating commoners had tried to circumvent their Mongolian lords and had turned directly to the *Lifanyuan* by their own initiative, thus trying to play off local authorities. For this reason, it was ordered that only holders of high Qing ranks should have the right to transfer legal matters to the *Lifanyuan*.[19] People who had bypassed their lord were supposed to be arrested and returned to the authorities under whose jurisdiction they were to be. A later – undated – amendment reveals that even this could not be achieved. To transfer unwarranted petitioners back into the

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[17] *Mongγol-un čaγaǰan-u bičig* (Mongolian Code, Kangxi edition), fo. 4v.: *yadaγ-a-du mongγol-un ulus tende sigüǰü ese baraγsan yal-a-yin učir-du irebesü urida öber-ün ǰoriγ-iyar + deger-e buu ayiladq-a. yal-a-yin učir siltaγan bičig bičiǰü . yadaγ-a-du mongγol-un törö-yi ǰasaγči yabudal-un yamun-dur ügülegtün*: In the Mongolian Code this order is not dated. This order of Hong Taiji, however, is also included in the Collection of Mongolian *dangse*-archives of the Inner Secretariat of the Qing State where it is dated 4 Sept. 1637 (Chongde 2nd year, 7th month, 16th day) (Čimeddorǰi 2003: I, 187).

[18] For connotations of the Mongolian word *yal-a*, see Aubin (1991: 270–271).

[19] *Mongγol-un čaγaǰan-u bičig* (Mongolian Code, Kangxi edition), fos. 67v-68r. In the Mongolian Code this paragraph is not dated. According to the *Da Qing Huidian* (Kangxi edition), chap. 145, fos. 2v/3r, it was drafted in the 8th year of Shunzhi (1651).

hands of local administrators overstretched the resources of *Lifanyuan* personnel. If we consider the long distances and lack of infrastructure in the Mongolian territories and also the political conditions that were not as stable as it might appear in retrospect, we can imagine the difficulties that central government officials would have had to deal with when they attempted to enforce regulations and escort people back to their competent court. Moreover, areas of responsibility were still in the process of being defined and petitioners may not have been quite open about the nature of their dependencies. In this way, just by trying to refer the case to the competent authority, the *Lifanyuan* could not but take sides and would be entangled in a dispute. For this reason, the office – with imperial approval – facilitated its work and confined itself to rejecting unauthorised petitioners without effecting their return or contacting the competent court.

In summary, while in 1637 Mongols were encouraged not to bring their petitions directly to the emperor but instead have the *Lifanyuan* investigate them first, fourteen years later new regulations became necessary. Contrary to expectations, parties in dispute had not tried to bypass the *Lifanyuan*, but besieged it with petitions. It seems that people preferred their case to be decided by the *Lifanyuan* and for this reason did not present their appeals to local courts. The *Lifanyuan* – that is what we can conclude – was viewed as the forum (Benda-Beckmann 1981) where Mongols expected the most favourable treatment. The growing number of Mongolian legal matters presented to the *Lifanyuan*, however, increased the workload of central government officials and eventually became a burden. The stipulation of Hong Taiji's time – i.e. to address one's petition to the *Lifanyuan* – was regarded as an instance of malpractice in the Shunzhi period.

Handling Mongolian Legal Cases on a Routine Basis

The new regulation of 1651 restricting access to the *Lifanyuan* did not resolve the problem of Mongols approaching this office on their own initiative. A regulation drafted 120 years later in 1774 tackled the very issue of petitions to the *Lifanyuan*. By that time, the Qing had created a superordinate administrative unit, the league, and herewith established a new form of appellate court for judicial proceedings. Mongols, who wanted to bring a case were first to approach local authorities, i.e. the *ǰasaγ*. If they were dissatisfied with the outcome of the case, they could file a complaint with the league, and, if the heads of the league "did not make a decision based on facts"[20], appeal to the *Lifanyuan* (Bayarsaikhan 2004: 03.11a–03.13b). Thus, this regulation does not take an unequivocal stand. It emphasises the requirement of litigants to bring cases before local courts, but immediately continues with entitling them to appeal the judgements of native courts independently. If they were dissatisfied with decisions on the level of the *ǰasaγ* or the league, they were allowed to lodge an appeal with the *Lifanyuan* by their own initiative. The *Lifanyuan* reserved the right to either punish local authorities for decisions not in accordance with Qing law, or, if "the accusation proved to be false",[21] punish the person who brought the case. Unlike the situation in the early Qing period, the *Lifanyuan* in 1774 was not only to reject unwarranted petitioners but to contact the competent authorities and effect their punishment. We can infer that spheres of responsibility and action were much more clearly defined than in the early Qing period; while in 1651 *Lifanyuan* officials had to acknowledge that it was impossible for them to trace back petitions to local courts, in the Qianlong period (1736–1795) the *Lifanyuan* had better command of the

[20] *Čiγulγan-u terigüd basa siduryu-bar ese sidkebesü,* (Bayarsaikhan 2004: 03.11b).
[21] *ǰaγalduγsan anu qudal bolbasu*, (Bayarsaikhan 2004: 03.13a).

relevant channels of communication. Moreover, Mongolian legal authorities did not only have to accept that their decisions were revoked by the *Lifanyuan* – they also had to be prepared to be held responsible for alleged misjudgements. If litigants won their case in appeal proceedings, local authorities were likely to face penalties.

The repeated urgings of the *Lifanyuan* not to bypass local courts when bringing cases must be seen in the context of the conflicting signals given by this office.[22] The *Lifanyuan* performed a balancing act. In order to control local authorities and to limit their scope for independent action, it almost encouraged people to report breaches of Qing law. Yet, the restrictions issued in 1651 and in 1774 reveal what must have been a constant element of irritation for the *Lifanyuan*: It had to fend off unrequested correspondence from Mongols who wished the *Lifanyuan* to intercede on their behalf. To deal with what in the eyes of metropolitan officials were insignificant disputes unnecessarily increased the workload of the *Lifanyuan* and caused confusion about legal competence.

It may thus be concluded that as an unforeseen result of Qing efforts to make the Mongolian judiciary part of the imperial legal system, the authority of local courts was questioned and people tried to find ways to have cases revised that had already been adjudicated. This is a situation historians have encountered in different settings. Using the example of Turkestan under Russian rule, Paolo Sartori gives an explanation for "the exceptional number of Muslim appeals for revision, which was apparently not a widespread legal custom in pre-colonial Central Asia" (Sartori 2009: 428). According to Sartori,

> "the Russian government became guarantor on all legal matters. This legal polity had a significant implication which had not been foreseen by the colonial rulers, namely that the indigenous population would perceive the colonial administration as determining the legal authority of the region's traditional courts". (ibid.: 427)

In the eyes of Turkestani Muslims, the colonial government provided locals with an opportunity to have legal decisions over-turned they were dissatisfied with. The Russian government soon learnt that it did not have the means to maintain the petitioning system, and thus in 1886 established second-instance judicial proceedings based on Islamic law (ibid.: 429). Both the Qing and the Russian government had to deal with the conflicting interests of establishing their supreme legal authority, while still acknowledging the irreplaceable role of local courts. This ambivalence is equally evident in the interaction with various ethnic groups: As Virginia Martin has pointed out, Middle Horde Kazakh nomads were not only allowed to practice legal customs, but played an active role in negotiating Russian imperial laws (Martin 2001: 2–3). Likewise, Dittmar Schorkowitz has shown that Russian local government left day to day legal administration to Buryat courts while still claiming supreme legal authority (Schorkowitz 2001: 72). In the case of the Qing, Mongolian courts were not all equally accepted, but the weight of their decision was graded according to the social and political recognition they had received by the emperor. The higher the rank of the authority whose judicial decision was questioned, the heavier the penalty for the person, who – unsuccessfully – tried to lodge an appeal (Bayarsaikhan 2004: 03.10b–03.11a). While there is sufficient evidence of the Qing policy to back up the position of native authorities,

[22] According to the Chinese legal tradition, it was not uncommon for litigants to forward difficult cases to the imperial court for judgement and to try to avoid stages of appeal. In contrast to the situation among the Mongols, however, until the beginning of the 19th century this was not a key issue and there seems to have been no significant increase in the number of capital appeals (Ocko 1988: 310).

we shall now take a look at the opposite trend, i.e. the process by which the local courts were limited in their sphere of competence.

Reducing the Authority of Native Courts

In 1651, Mongols were advised not to bring their case directly before the *Lifanyuan* but to the local authorities first. Apparently, at that time the *Lifanyuan* did not attempt to encroach significantly on the field of competence of native courts: There is no mention that it was obligatory for Mongolian judges to transfer any kind of cases to the *Lifanyuan*. It seems that no guidelines were given as to define what should be considered 'an unresolved case' or when the *Lifanyuan* should be called in. The ones to provide impetus for the *Lifanyuan* to take action were Mongolian authorities or Mongols, who either had chosen the *Lifanyuan* for processing their dispute or who had had their case heard before and were dissatisfied with the decision of local authorities. The *Lifanyuan* was not in charge of routine inspections of Mongolian legal cases. Over the course of the second half of the 17th century, the Qing gradually modified their position of acknowledging jurisdictional competence of Mongolian courts. Legal authority, however, did not pass directly from the hands of individual Mongolian personalities to the *Lifanyuan* or its representatives. Rather, in a first step, the Qing encroached on the autonomy of local courts by urging them not to execute judgements single-handedly.

For this reason, native Mongolian authorities were grouped in assemblies of two or three and were instructed to administer the law together. Jurisdiction over capital offences was thus removed from the hands of the individual, and had to be shared with the neighbouring rulers. Earlier attempts to implement this policy were clearly reinforced after the April 1675 rebellion of the Čaqar nobles Burni (†1675) and Lubsang (†1675).[23] A few months later, in the middle autumn month of the 14th year of Kangxi (19th September – 18th October 1675), the emperor stipulated that Mongolian ruling noblemen should no longer dispense justice by their own initiative:

> "According to what was decided by the Taizong emperor[24], ruling Wang and Noyan who govern a banner should carry out an execution [only] after they have notified the neighboring ruling Wang and Noyan and examined [the case] in court. If they carry out an execution without notifying the neighboring ruling Wang and Noyan and without examining [the case] in court, let us punish them as if they had carried out an execution at will. If small Taiji or commoners (33r) [insist on the execution of][25] taxpayers or domestic servants, they should set out the reason of the matter to their own ruling Wang or Noyan! The Wang and Noyan should likewise carry out the execution [only] after they have notified the neighboring ruling Wang and Noyan and examined [the case] in court. If you convene an assembly, have a court hearing and there is a person condemned to death, you should carry out the execution according to the judgement immediately at the place where the assembly was convened."[26]

[23] On the Čaqar rebellion, see Fang (1943–1944, reprint 1991: I, 304–305).
[24] Title of Hong Taji, which was given posthumously.
[25] This passage is illegible in the Mongolian text.
[26] *Mongγol-un čaγaǰan-u bičig* (Mongolian Code, Kangxi edition), fos. 32v-33v: (32v) *aliba alaqu yal-a-du kümün-i + tayisung quvangdi-yin toγtaγaγsan yosuγar qosiγu ǰakiruγči ǰasaγ-un vang. noyad köndelen ǰasaγ-un vang noyad-dur ügüleǰü sigüǰü alatuγai : köndelen ǰasaγ-un vang . noyad-dur ügüleǰü sigükü ügei alabasu . ǰoriγ-iyar alaγsan yosuγar yalalay-a : baγ-a taiyiǰi-nar qaraču kümün . albatu ger-ün kübüd-i (33r) […] öber öber-ün ǰasaγ-un vang noyad-dur učir-i γaryaǰu ügületügei : vang noyad mön-kü köndelen ǰasaγ-un vang noyan-dur ügüleǰü sigüǰü alatuγai . čiγulγan neyileǰü sigüǰü alaqu yal-a-du kümün bolbasu darui čiγulγan neyilegsen yaǰar-a sigügsen yosuγar alatuγai*. Translation by the author.

There is much to suggest that the rules for stricter control of Mongolian leaders' judicial competences resulted from imperial irritation about the ongoing insubordination of the Čaqar. As early as 1659, there had been a conflict over the legal competences of the Čaqar ruler Abunai († 1675), who had the entire family of one of his internal opponents killed.[27] Even though the Qing left Mongolian rulers a certain scope of discretion when it came to handling internal affairs, the court would not yield to Abunai and imposed a heavy fine on him. In the years to come, disagreement with the Čaqar ruling house became more acute and culminated in the open rebellion of 1675. Even though reference is made in the passage above to an earlier directive given by Hong Taiji,[28] there seems to be a direct connection between the armed conflict in early 1675 and measures to limit the native authorities' scope for independent action taken later that same year. The anti-Qing strategies pursued by the Čaqar ruling family apparently were answered by the emperor with a closer integration of Mongols into the imperial state.

This scheme of inhibiting unilateral actions by enforcing the cooperation of Mongolian authorities was not an isolated phenomenon. The policy of diminishing the Mongolian rulers' sovereign powers by compelling them to consult each other was not only pursued as far as the use of force was concerned. It was also the guiding principle when it came to the confiscation of fines. According to Qing legislation, fines – in accordance with Mongolian legal customs – could be paid as compensation to the aggrieved party, but – depending on the convicted persons and the nature of the crime – they could also be collected by the government (Aubin 2004: 142). The Qing court lay a direct claim to fines imposed on holders of office in the banner administration and, since 1692, there is evidence that livestock was indeed confiscated and transferred to Beijing (Yates 1986: 192–193).

Fines that Mongolian rulers had imposed on their own dependents, however, were a different matter, as no provisions were made how these assets should be appropriated. This changed after the 1675 Čaqar rebellion. From that time onwards, native authorities were no longer allowed to dispose of these fines alone but had to share them with neighbouring rulers in joint trials.[29] For this purpose, the Southern Mongolian rulers – with no mention of the Čaqar, who from then on were under direct imperial control – were organised in groups of two to four and were obliged to coordinate legal decisions with one another. Fines in the form of livestock had to be divided and were allocated to each ruler according to set quotas. Obviously, with these measures the Qing tried to avoid the risk of single-handed actions and arbitrary confiscation of livestock.

In this context, the Čaqar rebellion can be understood as the trigger for a fundamental change in strategy: By making provisions for the redistribution of their subject's property and diminishing their rulers' sovereign rights of administering justice over their own people, the Qing, after 1675, interfered increasingly in the internal orbit of power of Mongolian rulers. However, albeit restricted by quotas, 17th century Mongolian authorities still had a free hand to dispose of confiscated livestock. This changed in the mid-18th century when new provisions for the redistribution of property were made. By that time, the networks of neighbouring (*köndelen*) rulers formed in the Kangxi period (1662–1722) had been expanded into leagues. These units comprised sometimes

[27] Strictly speaking, he was accused of killing his opponent and his officials were accused of killing the family. For this dispute, see Dalizhabu (2005: 57).
[28] According to Dalizhabu, the Qing included a similar regulation already in the Mongolian Code printed in Beijing 1667 (Dalizhabu 2003: 2).
[29] Relevant passages in *Mongγol-un čaγaǰan-u bičig* (Mongolian Code, Kangxi edition), fos. 48r-51v. Translation in Heuschert (1998a: 220–223). For the dating of this passage on the grounds of the mentioned persons (ibid: 151).

more than twenty banners and were under the control of a league chief appointed by the emperor through the *Lifanyuan*. The authorities were to convene an assembly every three years, among other things, in order to decide over outstanding legal cases. Moreover, the *Lifanyuan* delegated an official who was present at every meeting.[30] The fact that rulers had to come to an agreement in a larger group went along with the very process of diminishing individual judicial competences. According to Qing law, livestock confiscated as a fine was no longer distributed among the authorities concerned with the case but was given as a reward to people who excelled in and demonstrated their loyalty to the Qing (Bayarsaikhan 2004: 04.25a–04.25b).

There is strong evidence that the native authorities' right of control over their own subjects was not only reduced by interference from imperial representatives endeavouring to assume control. Rather, the power of the Mongolian legal authorities was curtailed by a system of mutual control among the Mongolian rulers – under the surveillance of the *Lifanyuan*. Compulsory cooperation among Mongolian authorities and prohibition of unilateral actions can be understood as a scheme of the Qing to prevent individual rulers from single-handed actions.

When viewing the strategies of Qing control over Mongols, fragmentation has rightly been identified as a key instrument of Qing policies (Crossley 2006: 74–75; Perdue 2005: 556). But this is only one side of the coin: the notion of fragmentation presupposes a former unity. Mongols of what was to become Inner Mongolia, however, did not speak with a single voice. For this reason, we should not disregard that – in conjunction with breaking up established structures – there was in fact a reverse trend, a trend of merging distinct entities into newly created administrative units. Native authorities, which so far had acted independently, were urged to collaborate and agree on important decisions. The Mongolian rulers were required to concertedly toe in the political line purported by the Qing and to supervise each other.

In this regard, I believe there is a close connection between what I call compulsory cooperation among Mongolian authorities and expanding the *Lifanyuan*'s responsibilities. By definition, the *Lifanyuan* was in charge of the heterogeneous group of the "Mongols on the outside" collectively; it was the agency to integrate the distinct Mongolian polities progressively and to deescalate violent situations, which might have led to a shift in power. Acting as a sort of umbrella, it must have been in the interest of the *Lifanyuan* to avoid that single rulers expanded their position at the expense of others.

The Qing Claim on Legal Hegemony: consequences for the *Lifanyuan*

Qing policies were clearly aimed at diminishing the authority of native rulers. When looking at the role of the *Lifanyuan*, this office aimed at supervising the composition and the judgements of local courts. Even though there are indications that Mongolian authorities were asked as early as in 1662 to report capital cases to the *Lifanyuan* (Labapingcuo 2006: 169), it remains doubtful, whether this law was enforced – given the fact that 13 years later, in 1675, the emperor demanded Mongolian rulers to dispense justice collectively without requiring further concessions. Archival evidence shows that, from the mid-18th century onwards, the *Lifanyuan* made efforts to exercise its legal authority more directly (Bawden 1969). Only petty crimes could be decided by the courts at banner level. All other cases had to be transferred to a higher court at the level of the league, which was

[30] According to Zhao (2002: 274), after 1751 no *Lifanyuan* official was sent to league meetings of the Inner Mongolian leagues.

composed of a group of regents. In cases involving the loss of human life, the league office, after reviewing the case, was required to send a report to the *Lifanyuan*. The *Lifanyuan* had to confirm the case together with the highest judicial body in the capital, the Three High Courts, i.e. the Board of Punishments, the Censorate, and the Court of Revision. A joint memorial summarising the case and proposing an adequate judgment was presented to the emperor, and capital punishment could only be carried out after imperial approval (Bayarsaikhan 2004: 04.31a–04.32a).

With this order the handling of capital cases originating from Mongolia was brought into line with the legal practice in China: The Chinese emperor, as the ultimate guardian of cosmic harmony, had to sanction each individual death sentence. Capital punishment – ideally – was sparingly used and was carried out only after going through the usual procedure of the Three High Courts and careful review of the case. Instances of summary executions remained an exception (Meijer 1984: 1–5; Ocko 1988: 293). We can conclude that in the Qianlong period, the task of the Qing emperor to maintain order in the universe by ensuring that no blood was split unnecessarily was no longer limited to his Chinese subjects. This underlines the argument of Christopher Atwood that "the Qing emperors did not always have to act as split personalities, despite the diversity of peoples within their realm" (Atwood 2000: 129). In the field of law, Chinese conceptions of cosmic harmony – and the role intended for the emperor – were extended to Mongols under Qing rule.

The gradual shifting of decision-making authority from the periphery to the centre went hand in hand with tendencies to unify and harmonise the legal administration over Mongols with the Chinese tradition. We can observe this trend not only in procedural law. It is even more obvious in the field of penal law, where elements of Chinese law were increasingly incorporated. *Lifanyuan* officials faced a dilemma: Mongolian law as it had been laid down in the early 17th century was conceived to be insufficient to the standards of the legal code of the Qing dynasty. The *Lifanyuan* had to formulate regulations that, in elaborateness and form, would meet the standard of Qing penal law as it was practiced in China but that were still specifically Mongolian. For lack of archetypes, legislators started to model Mongolian legal rules on their counterparts in the Qing Code (Heuschert 1998b: 315–317; Constant 2007: 249–251). This development had far-reaching consequences not only for legal rules and the administration of justice over Mongols, but likewise had repercussions on the *Lifanyuan*'s areas of operation. In 1658, the emperor demanded that the *Lifanyuan* be more specific about the form of capital punishment inflicted on Mongols (Heuschert 1998b: 316), which led to the incorporation of elements of the Chinese penal system into the Mongolian legislation. From the years 1689 and 1690, we have evidence that regulations drafted by the Board of Punishments, which was responsible for the administration of justice in China proper, were declared to be legally binding also for Mongols (Heuschert 1998a: 95–96 and 241–242). In the Qianlong period, it became common practice for the emperor to order *Lifanyuan* officials to deliberate decisions over Mongolian legal cases together with officials from the Board of Punishments and – occasionally and depending on the context – with members of the Grand Council. The results of these deliberations were handed to the emperor as drafts in the form of a joint memorial.

This procedure shows quite clearly that the emperor regarded the competence of the *Lifanyuan* as limited and that he wanted to counterbalance it by consulting officials of other central government agencies with different background knowledge. By the end of the 18th century, merely a good understanding of the subtleties of internal Mongolian conditions (as *Lifanyuan* officials could be

presumed to have) was no longer adequate and had to be complemented by specific legal or strategic expertise and familiarity with the Qing Code.

Conclusion

A closer look at Manchu-Mongolian interaction in the field of law reveals the importance of conflicts over the position of Mongols in the Qing state in the shaping of the *Lifanyuan*. Mongols, in their interaction with the court, had a great influence on the definition of this office's responsibilities. As Lauren Benton has pointed out, "the colonial state became a state not by imposition but through a series of conflicts over the nature and relation of its subjects" (Benton 1999: 565). To incorporate the Mongols into the imperial legal system was not a foreseen result of Manchu politics or the outcome of careful and long-term planning. Rather, this development – and hence the formation of the *Lifanyuan* – was contested along jurisdictional lines and developed through the interplay of the imperial centre and various actors on the Mongolian side, be it petitioners trying to serve their own interests or indomitable Mongolian rulers not willing to admit to Manchu interference in their internal affairs.

The establishment of the *Lifanyuan* was closely connected to the practice of Mongols of presenting petitions to the Manchu ruler. As a point of contact for Mongols at the court, it was responsible for reviewing and organising their correspondence, deciding on the appropriate course of action and preparing it for presentation to the emperor. In return, it would inform petitioners of imperial decisions and circulate proclamations. In the 17th century, the clientele of the *Lifanyuan* were the so-called "Mongols on the outside", a heterogeneous group of rulers and polities among the Southern Mongols, who so far had not adopted a coherent policy. In this context, the *Lifanyuan* represents the intention of the Qing to overcome internal divisions among the diverse groups of Mongols under their rule and to eliminate antagonism or political infighting. There is every indication that Mongols made wide use of the possibility of bringing cases before the *Lifanyuan*. The possibility of lodging complaints with the *Lifanyuan* was readily accepted and at times exploited. Mongols seized the opportunity to litigate as far as Qing law permitted and used the *Lifanyuan* to pursue their own ends.[31] Even though the Qing tried to restrict the number of complaints, the *Lifanyuan* continued to hold considerable attraction for Mongolian petitioners, because it reserved the right to re-examine legal cases decided by native authorities and to set aside their judgements.

The earliest example of the *Lifanyuan* being entrusted with drafting laws for the Mongols dates from 1658. For this time, it is difficult to establish how the *Lifanyuan* ensured the abidance of the laws it had distributed among the Mongolian nobility. As it did not review Mongolian legal cases as a routine, it is very likely that the Qing relied heavily on informants to enforce their law. It seems that at one point in time, the Qing emperor turned the tables: People, who were discontent with the decisions of native authorities and presented their cases to the *Lifanyuan* in order to have the judgments revoked, took the role of informants. Making them an instrument of its own purposes, the petitioners' discontent with their competent authorities allowed the *Lifanyuan* to supervise the local courts' decisions.

[31] For the phenomenon of colonised people attempting to manipulate the legal system of the colonial state and making themselves into "legal actors", see Cooper (2005: 173) and Benton (2002: 169).

Up until the last decades of the 17th century, the Mongolian rulers had a certain discretion when handling internal affairs. After the conflict over the legal competences of the Čaqar ruler Abunai, who in 1659 had the whole family of one of his internal opponents extinguished, and the open rebellion of the Čaqar in 1675, this situation changed. The order of emperor Kangxi instructing Mongolian rulers to administrate justice collectively can be understood as a first step towards the interaction of the multiple legal spheres among the Mongols under Qing hegemony. On the face of it, the Qing left the administration of justice in the hands of the nobility, but legal authority now rested with a network of rulers of relatively equal standing. Observance of Qing law was guaranteed by mutual surveillance. In the 18th century, the Qing further encroached on the autonomy of the Mongolian legal authorities, while concurrently attempting to draw up a more coherent unified legal system.

The fact that, from an overall perspective, Qing legal administration of Mongols differed fundamentally from the legal system in China proper should not lead us to overlook the general trend, which may not be immediately obvious. To proceed from the assumption that "distinct legal regimes prevailed on the frontier, with the Mongols governed by laws more appropriate to their nomadic lifestyle" (Esherick 2006: 230) is a simplistic approach, preventing us from a fair assessment of the transformations, which occurred in the field of law. Qing rule had an enormous impact on Mongolian legal traditions, and, by the end of the dynasty, the Mongols were no longer able to draw on their own legal tradition (Heuschert 1998b: 324). We should address these transformations in the context of colonial techniques of rule and try to reveal the contested nature of this development, which Eurasian hegemonial powers may otherwise camouflage "with ideologies of 'civilization', 'modernity', and 'harmony'" (Schorkowitz 2012: 52).

According to Lauren Benton, one of the broad shifts characterising European imperial history is "the transformation of the plural legal order of early empires, in which multiple jurisdictions overlapped and sometimes competed, to a more hierarchically organized legal order in which the colonial and imperial state formulated a more explicit claim to legal hegemony" (Benton 2007: 56). In this context, a closer look at Qing legal policy towards the Mongols reveals a trend towards streamlining, centralising, and standardising legal administration. The first imperial decisions pointing in this direction go back to the Shunzhi period, i.e. the years immediately after the Qing claimed control over China. This tendency was unidirectional, in the sense that it were elements of Chinese law incorporated into the legislation for the Mongols, and affected not just the penal system but also procedure (establishing stages of appeal) and the law of evidence (Heuschert 1996: 65). In comparative perspective, this development led in the same direction as in Russia. Russian legal policies towards various ethnic groups were by no means uniform, but, as Dittmar Schorkowitz has shown, there was a general tendency towards limiting the authority of local courts (Schorkowitz 2001: 84). As in the case of Qing policies towards the Mongols, establishing stages of appeal was an important cornerstone in this programme.

Ann Laura Stoler reminded us that "imperial formations" were "not fixed macropolitical entities but ongoing processes" (Stoler 2009: 35). In this context, when turning our attention to the diversity of Qing rule in Inner Asia, we should not confine ourselves to analysing the patchwork quilt of Qing rule in Inner Asia. It is important to be aware of the underlying trend, which pointed toward a higher degree of standardisation and a more hierarchically organised system of governance. Even though the pace of this development may have been slow, the process was nonetheless steady, irreversible, and directed towards a greater integration of Mongols into the

Qing state. The role of the *Lifanyuan* in this streamlining process was ambivalent. While at one time the weight of *Lifanyuan* influence on the administration of justice over the Mongols had increased at the expense of native legal authorities, with the trend towards legal uniformity, it progressively had to leave space for other central government agencies exercising legislative and judicial authority over Mongols.

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