

THE CONCEPT OF TRADITION IN MIDDLE-ASIAN TURKISH LAW

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ABSTRACT

There were three different sources for the concept of 'tradition' which was attributed a considerable value in ancient Middle-Eastern Turkish society: rules established by the Khans, rules legislated by the Assembly and rules which took form slowly in public life, called "Yosun Law." The rules which appeared in these ways had to be equitable and all people in the society – including the Khans – had to obey them.

ÖZ

Eski Orta Doğu Türk Toplumunda kendisine önemli bir değer atfedilmiş olan "gelenek" kavramının üç farklı kaynağı vardı: kağanlar tarafından oluşturulmuş kurallar, meclis tarafından çıkarılan kurallar ve "Yosun Hukuku" denen toplum hayatında yavaş yavaş şekillenerek oluşan kurallar. Bu şekilde ortaya çıkan kurallar adil olmalı ve bu kurallara toplumdaki tüm kişilerce - Kağanlar da dahil olmak üzere- itaat edilmeliydi.

Keywords: Tradition, Middle-Asia, Nomadism, Khan, Assembly, Yosun Law.

Anahtar Kelimeler: Gelenek, Orta Asya, Nomadizm, Kağan, Meclis, Yosun Hukuku.

I. INTRODUCTION

In the view of the ancient Turks, 'tradition' mostly expresses the rules related to the establishment, regulation and operation of the state. Turks also used this expression in terms of family life. In this sense, tradition means

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‘custom.’ In this article, the concept of ‘tradition’ has been dealt in the framework of the ‘tradition of the state.’”

Turkish tradition is the sum of the rule from laws – including those from the Khans – which must be obeyed by the members of society. Tradition has such an importance that the prescription of rules and the compliance with the principles of equality and justice have been mentioned among the most important conditions for the continuity of the competence of the Khan and the state. Because of this, the literature has always emphasized that tradition is very important and has the most important place in the state; a nation that has lost its tradition is considered to be extinct. It has always been demanded from the Khans to act in accordance with tradition. Khans have always assumed that this as a very important aspect and felt responsible to the people to uphold tradition. Khans who have not acted in accordance with tradition and have not been successful in the administration were not able to continue their work but were instead required to explain themselves.

In the ancient Middle-Asian Turkish law, the source of tradition was the “Khans.” Furthermore, the decisions taken in the assembly constituted a part of the tradition. The custom and usage rules which appeared slowly but spontaneously in society (Yosun) have been accepted as another source of tradition. However, the Yosun can only become tradition when the support of the Khan at the time of instigation. The Khan established the legal regulation of the society by based on his own orders and if available, the decisions taken by the assembly into the decisions which he has accepted as his own. In such a case, the central position of the Khan in the formation of tradition is very remarkable.

By all means, in the formation of tradition, the effect of the immigrant life style of the Turks in Middle-Asia must be acknowledged. The great importance dedicated to tradition in the ancient Turkish Society has not remained limited to Middle Asia but has been valid for ages and ages in all the Turkish states that have been established.

A similar case may be said for Mongols which have a close relationship with the Turkish people and whose state structure is similar to that of Turkish. Genghis Khan, the famous Mongolian emperor, had warned his nation to definitely not give up customs in order to maintain their domination throughout the world.

The absolute obedience to custom (laws) and its importance for providing justice had continued in the states which were established by Turkish people after they accepted the Islamic religion. However, a totally new understanding occurred with acceptance of the Islamic religion. On one hand Turkish-Islam emperors applied legal laws determined by the Koran, the Sunna, the Icma and

the Comparison; on the other hand, they used the authorization to bring new rules, by taking into consideration state's needs and benefits, provided that these rules would not be against the spirit of Islamic Law. Therefore, the rules made in this way are called 'customary law.' Undoubtedly, the authorization to enact such had been valid for all Islamic emperors but had been especially premier in Islamic Public Law. Emperors tried to take up fields of law which remained open under the Islamic Law in spite of ancient Turkish traditions because of the fact that Islamic Public Law had been organized very poorly in the sources. The authorization to enact customary law had been used as a means to fill this void. As for the Islamic Private Law, it had been well developed during the period in which the majority of the Turkish people had adopted Islam and it had been processed, accepted and applied immediately and exactly by the Turks.

As can be easily seen, the authorization for emperors to enact legal rules, despite being more confined in comparison with the Middle East period, had continued in Turkish states established after the adoption of Islam religion. This case is valid for the Classic period of Ottoman Empire which is considered one of the strongest Islamic states.

By the declaration of 'Tanzimat' in 1839, the period of reception had been launched. The Ottomans, who applied Islamic Law by mixing it with the traditions adopted in Middle Asia, took most of their rules, including their Constitution, from the West. With these rules, providing equality among the citizens had been the goal, but they could not prevent multi-headed administration of law. Even while they were enacting new rules, the old ones had to be preserved to some extent. Additionally, the courts continued their duties even while having a great deal of conflict about their duties and authority for this reason.

Many internal and external reasons, such as the deterioration of education and land, pressure of the Western states on the Ottoman Empire and the capitulations which were hard to remove, brought about the end of the Ottoman Empire, which became the precursor of the new Turkish state. The Turkish Republic created a secular and modern legal system by taking lessons from the negative experiences of the past. Also, it accepted the rule of law as a primary principle for the new scheme of government. Thanks to the fact that sovereignty belongs to a nation unconditionally, the nation as a whole and the Turkish Grand National Assembly, which would use this sovereign authorization on behalf of the nation, became the primary source of law.

As can also be seen, there were only changes made to the customs in Turkish states in history, but the importance given to the custom, particularly to the rules, had not been lost.

The rule of law and the fact that it is accepted because of the presence of the state, the importance and principles of justice could only be achieved by behaving in compliance with the customs (rules), which are the aspects of society which the Turkish people have primarily valued throughout each period of history.

The next section will deal with the homeland of the Turks as the basis for their customs, followed by the concept of the 'Khan' in Section III. The three sources for rules in ancient Turkish society will be dealt with in Section IV, with Section V dealing the necessity for justice in the application of these rules. Section VI then concludes.

II. THE HOMELAND OF TURKS: "MIDDLE ASIA"

Before analyzing the emergence of ancient Turkish Law, we must deal with the geography called 'Middle-Asia' which has formed Turkish Law for the most part as well as the life styles of the ancient Turks in that region.

As is well-known, the geographic character of the region described as the homeland of the Turks had great similarities throughout most parts of the country. Except for some arable lands watered by the Tarım, Seyhun and Ceyhun Rivers, for example, and some oases, the country was thoroughly moorland and desert. These features presented a suitable landscape for the immigrant culture for the Turks. The Turkish tribes were obliged to migrate to other regions because of the droughts, deterioration of their living conditions, enemy invasions and strong tribal pressures after having stayed in a region for awhile.¹ According to the Chinese people, Turks were living by following the grasses and waters. They were carried away their tents by carts or with horses to convenient places for their animals, and were moving in accordance with the seasons. For this reason, the Chinese people called the ancient Turks "The Folks with High Wheeled Carts."² Subjects like horse cultivation, horse care, horse preparation to pull their vehicles and horse treatment emerged as dynamic, reeling and expedient issues for the Turks. Therefore, the migrations were always been supposed to be made quickly. Figuring out that the enemies were also very quick, being quick and disciplined were very important for the Turks. The obligation of being on watch for external dangers made protection and watch duty a requirement not only for the soldiers but also for the civilians.³

¹ For detailed information about the geographic features of Middle-Asia, the homeland of the ancient Turks, see Coşkun Üçok, Ahmet Mumcu, and Gülnihal Bozkurt, TÜRK HUKUKU TARİHİ [TURKISH LEGAL HISTORY] 18 (Ankara 2006).

² Bahaeddin Ögel, TÜRK KÜLTÜRÜNÜN GELİŞME ÇAĞLARI [ERAS OF TURKISH CULTURAL DEVELOPMENT] Vol. II, 15 (Istanbul 1971).

³ *Id.*, at 16-18.

III. THE FORMATION OF COMPETENCES OF THE KHANS BY THE IMMIGRATION LIFESTYLE

To direct the people and establish discipline were considered as very important responsibilities of the Khan. In this framework, the most important responsibilities of the Turkish Khan was the formation of efficient laws and their application as required.⁴ It was obligatory that the Khan had this very important responsibility in order to keep together this dynamic immigrant folk and to bind the tribes to his own authority.⁵

The authority of the Khan to lay down laws was affected not only by the immigrant lifestyle but also by the ancient Turkish understanding of sovereignty. The ancient Turks believed that the sovereignty of the Khan had been given by the Tengri.⁶ According to this belief, the Tengri gave the right of sovereignty to one family in the people and this family then had the right to govern the people. The state was considered to be a shared property of this chosen family. All the male members of the chosen family had a right to participate in the governance. If one of the members of the family was chosen Khan as well, the right of governance belonging to the other members of the family continued.⁷ For this reason, the Khan distributed that land of his country among the male members of his family; this is the basis for all political boundaries in the ancient Middle-Asian Turkish States. The Khan assigned the male members of his family as governors to certain regions of his country and these people could govern the region as they wished; they could establish laws, they could impose taxes and could use their own authority to punish transgressors; the Khan did not interfere with their ruling style. If the Khan had a strong personality, he could secure cooperation among the family members, and this was considered to be a good sign that the state was ruled very well. On the other hand, if the Khan did not have a strong personality, keeping the family

⁴ Halil Cin and Ahmet Akgündüz, *TÜRK HUKUK TARİHİ, VOL. I - KAMU HUKUKU*, [TURKISH LEGAL HISTORY, VOL I - PUBLIC LAW] 42-43 (Konya 1989); Halil Cin and Gül Akyılmaz, *TÜRK HUKUK TARİHİ [TURKISH LEGAL HISTORY]* 39 (Konya 2003).

⁵ For discussion of the role that a migratory lifestyle plays in forming legal rules, *see* Ellen C. Semple, *INFLUENCE OF GEOGRAPHICAL ENVIRONMENT* (London, 1911); Sven Hedin, *THROUGH ASIA* (London, 1893); and Kaare Gronbech, *THE STEPPE REGION IN WORLD HISTORY, VOL I* 54 (Copenhagen, 1959).

⁶ It has been accepted that in the pre-Islam Turkish states, Tengri gave Khan political sovereignty; the people shared this belief. Although Khan received his powers from Tengri, he did not get a blessed personality but was accepted as a human with his duties more emphasized than his rights. *See* Gülçin Çandarlıoğlu, *UYGUR DEVLETLERİ TARİHİ VE KÜLTÜRÜ [UYGAR STATE HISTORY AND CULTURE]*, Vol. II, 209 (Ankara, 2002).

⁷ Halil İnalçık, *OSMANLILARDA SALTANAT VERASETİ USULÜ VE TÜRK HAKİMİYET TELAKKİSİYLE İLGİSİ [SULANATE SUCCESSION PROCEDURE AND TURKISH SOVEREIGNTY FROM THE OTTOMAN POINT OF REFERENCE]*, 14 *AÜSBFD* (1959); Ahmet Mumcu, *OSMANLI DEVLETİ'NDE SİYASETEN KATL [MURDER AS POLICY IN THE OTTOMAN STATE]* 36 (Ankara, 1985).

members under control would be very difficult and the rupture of the state would be very easy.⁸ The Turkish history of the Middle-Asia is full of examples how the state was ruptured in a short time through the governance of weak Khans. Finally, of particular importance in the rupture of the states was breaking the stable rule of laws and not acting in accordance with tradition.

IV. THE FORMS OF EMERGENCE OF THE RULE OF LAW IN THE MIDDLE ASIA TURKISH SOCIETY

In ancient Middle-Asia Turkish society, we can talk about the emergence of the rules for laws in three ways: the establishment of law by the Khans, the establishment of the Rule of Laws by the Assembly, and establishment of law by customary usage.

A. The Establishment of the Rule of Laws by Khan

The Khan was considered to be a source of legislation in ancient Middle-Asia Turkish law. This authority can be explained by the sovereignty stemming from the Tengri.⁹ For example, Bumin Khan, the founder of the Göktürk State, organized the country and tradition of the Turkish nation after his accession to the throne, then he spread his sovereignty to the whole world and established his empire. Elteriş Khan, who gave independence to the Göktürk State which collapsed in the end, revitalized the tradition of the Turkish nation for a period.¹⁰ Bilge Khan mentioned the importance of laying down a law by saying "...After I have ascended the throne, I gave these important laws to the people of the whole world."¹¹ When the Khan laid down laws, this step transformed those

⁸ Üçok, Mumcu, and Bozkurt, *supra* note 1, at 206.

⁹ Kut comes from Tengri. See Masao Mori, RECONSIDERATION OF THE HSIUNG-NU STATE 23 (Tokyo, 1973).

¹⁰ Mahmut Arslan, *Eski Türk Devlet Anlayışı ve Çifte Hükümdarlık Meselesi [State Analysis of the Ancient Turks and the Issue of Dual Sovereignty]*, FIRAT ÜNİVERSİTESİ TARİH METODOLOJİSİ VE TÜRK TARİHİNİN MESELELERİ KOLLOKYUMU [FIRAT UNIVERSITY HISTORY METHODOLOGY AND TURKISH HISTORY ISSUES COLLOQUIUM] 226 (Elazığ, 1990).

¹¹ Vilhelm Thomsen, ÇÖZÜLMÜŞ ORHUN YAZITLARI [DECODED ORHUN INSCRIPTIONS] 158 (Vedat Köken, trans., Ankara, 1993). The statement of Bilge Khan emphasizes the duty of Khans to lay down rules as laws but on the other hand it highlights the world sovereignty in the ancient Turks. Turks believed that the Tengri was protecting only their nation and rendered them dominant to the whole world. The statement mentioned in the Orhun Legend: "Above the blue sky, down the brave ground was created, and between these two the human being was created. Onto the human being my ancestors Bumin Khan and İstemi Khan sat down" (*ibid*, at 88) shows that there was a belief that between the countries and races there was not to be discrimination and all the world regions and societies were under the Khans' regime. "I acceded to throne because the Tengri wanted that and I organized the whole nations in the world" (*ibid*, at 110.) and "All the tribes from the east wind to the westerly wing obeyed me." (*ibid*, at 24.) With these statements, the same thing is being explained.

In the Oğuz Khan legend, we can see these statements related to the subject: "I am the Khan of the Uyğurs and the Khan of the whole world." According to this legend, Oğuz Khan came

rules into tradition, and thus the legislation of the Khan was considered to become tradition for Turkish society.

In the ancient Turkish Middle-Asia state system, the duty of the Khan to lay down the laws is a result of the governance and organization of the people.¹² Related to this duty of the Khan, there were important statements in the Orhun Legend and Kutadgu Bilig. For example, the statements in the Orhun Legend like "...My uncle Khan organized the Turkish nation by sitting"¹³, "... My ancestor Bumin Khan, İstemi Khan sat on the human being. By sitting, they held and organized the tradition and country of the Turkish nation"¹⁴ and "...I regulated many of the people within this area"¹⁵ gained much attention.

In Kutadgu Bilig, there are statements related to this subject as follows:

"The governors are assigned to manage the country and regulate the folk."¹⁶ "O Sovereign! You are today a doctor, and your people is your patient by being deprived."¹⁷ "If you don't treat them by giving medicine, you will be a vital disaster for the people."¹⁸ "God will ask this to you tomorrow, prepare your answer."¹⁹

"Govern always with honesty, the state remains standing with law."²⁰

"O Governor! Follow the law as you can and try to give justice to the folk."²¹

from the sky and married a girl who also came from the sky. After he acceded to throne, he sent delegates to all over the world and said "I am now the Khan of the whole world" and wanted from everyone to obey him. (see Arlan, *supra* note 10, at 229.)

Yusuf Has Hacı stated in his famous work Kutadgu Bilig "Great Tavgaç Bugra Han dominated the whole world, his name should be blessed. God bless him in the two universe." (Yusuf Has Hacı; Kutadgu Bilig, §86, Reşit Rahmeti Arat, trans. Ankara, 1991)(hereinafter "Kutadgu Bilig ".) With these statements, he put forward the ideal of world sovereignty which was an ancient Turkish tradition. The ideal of, and belief in, world sovereignty was combined with the principle that the Tengri was protecting the Turks and favored them over other nations; we can say that played a role that the Turks have the sense of being a nation. The belief of world domination in ancient Turks had been maintained also in Mongols. For the examples about the subject, see George Vernadsky, *THE MONGOLS AND RUSSIA* 97 (London, 1953).

¹² Arslan, *supra* note 10, at 225.

¹³ Thomsen, *supra* note 11, at 16.

¹⁴ *Id.*, at 1.

¹⁵ *Id.*, at 2-3.

¹⁶ Kutadgu Bilig, *supra* note 11, § 4009.

¹⁷ *Id.*, § 5241.

¹⁸ *Id.*, § 5245.

¹⁹ *Id.*, § 5246.

²⁰ *Id.*, § 5285.

²¹ Kutadgu Bilig, *supra* note 11, § 5288.

“To which country reaches my law – even if it is stony or rocky – it always get organized.”²²

“Law is water; if it flows, benediction will grow. O Judge! If you want to prevail in the country for a long time, you have to deal with law properly and protect the folk. With law, the country will extend and the world will be in an order.”²³

With these kinds of statements, it has been emphasized that organizing the country and the people, which is one of the main duties of the Khan, will be secured by laws and the Khan was supposed to comply with the law. It can be said that a “State of Law” would be emphasized.

B. The Establishment of the Rule of Laws by the Assembly

For the ancient Turks, the decisions by the assembly have been seen as a source of tradition. In the Middle-Asian Turkish communities, the assemblies were very important. With the statement which was mentioned in the Orhun Legends: “The governors and the nation were so appropriate that they could prepare laws and protect the country very well,”²⁴ it has been stated that the tribal governors could participate in the legislative duties when necessary.

To the ancient Turks, we can talk about three assembly meetings. Their meeting time was clearly before they were institutionalized. The first one occurred in January, in the Khan’s palace, and it was an assembly with a religious quality. In this meeting, a religious offering was made for the ancestors then administrative and judicial decisions were made.²⁵

In the March assembly which was called the “Grand Assembly,” religious ceremonies were conducted, animals were sacrificed and the oath of loyalty was given. The governors who did not participate in this meeting were considered to be acting against the Khan.²⁶ In the Grand Assembly, administrative decisions were also made and changes that were thought to be necessary to be consistent with tradition were discussed.²⁷ Therefore, the first two assemblies had a role in the preparation of laws or in the preparation to change the traditions.

The third assembly meeting was held in September and was called the “War and Counting Assembly.” In this assembly, again religious ceremonies were conducted and animals were sacrificed. In addition, a census of horses and

²² *Id.*, § 830.

²³ *Id.*, §§ 2032, 2034, and 2036.

²⁴ Thomsen, *supra* note 11, at 90.

²⁵ Sadri Maksudi Arsal, *TÜRK TARİHİ VE HUKUK [TURKISH HISTORY AND LAW]* 204 (Istanbul, 1947).

²⁶ Bahaeddin Ögel, *Devlet Meclisi ve Kurultay [State Assembly]* Vol. II, 875 (Ankara, 2002).

²⁷ M. Akif Aydın, *TÜRK HUKUK TARİHİ [TURKISH LEGAL HISTORY]* 13 (Istanbul, 1999).

soldier was performed so as to determine their military capabilities. Finally, subjects related to war were discussed, followed by decisions regarding military training and movements.²⁸ The reason for these preparations was that war was always coming, yet the warehouses of the settled nations were full.²⁹

It has also been thought that the assembly played a role in limiting the decisions of the Khan by being a controller pattern. For example, the famous Göktürk sovereign Bilge Khan wanted the city to be encircled with walls; he also thought the people should learn Buddhism and Taoism. However, these demands were not accepted by the Assembly.³⁰

Another important duty of the assemblies was the election of Khan from among the members of the chosen family who believed that they had a right to sovereignty.³¹ If there was no one from the family of the recently deceased Khan to be elected, the assembly could choose a new governor or a hero as Khan. Additionally, if a Khan was unable to win a war, could not succeed in his duties, acted against the laws, or could not ensure prosperity, he could be removed or even killed by the other sovereign candidates or tribe chiefs.³²

A typical example of this can be taken from the Göktürk State history. After the death of the Kutluk Khan in 692, Kapgan Khan was Khan for 24 years in which time he developed the Göktürk State in every aspect. He took all Middle Asia under Göktürk sovereignty to become the most powerful state of that period. For this reason 'Kapgan' now means 'conqueror.' Kapgan Khan was the one of whom China was afraid of because he had gained the most victories. He had a hard and decisive management style; this led to certain discomfort in the country and sometimes rebellions hindered the conquests. At that time, the Chinese sovereigns had supported the rebellious tribes in order to weaken the Göktürk State. They gave them certain presents and certain Chinese degrees. Finally, Kapgan Khan was killed by the chief of the "Bayırkular," which was a rebellious tribe. After his death, his young son, Inel, acceded to the throne but the young son of Kutluk Khan, Kül Tegin, did not accept this accession so he

²⁸ Ögel, *supra* note 26, at 875; Arsal, *supra* note 25.

²⁹ Üçok, Mumcu, Bozkurt, *supra* note 1, at 23.

³⁰ İbrahim Kafesoğlu, *Eski Türkler'de Devlet Meclisi [State Congress for the Ancient Turks]*, BİRİNCİ MİLLÎ TÜRKÖLOJİ KONGRESİ [FIRST NATIONAL TURKOLOGY CONGRESS] 206 (Istanbul, 1980).

³¹ This duty was accomplished in the September assembly. For detailed information, see Saim Koca, *Eski Türkler'de Devlet Geleneği ve Teşkilatı [State Custom and Organization for the Ancient Turks]* Vol. II, 832 (Ankara, 2002).

³² Cin and Akgündüz, *supra* note 4, at 40-41.

removed İnel and his whole family. Then, his brother Bilge Şad (Khan) acceded to the throne.³³

C. The Establishment of the Rule of Law through Customary Usage

The third source for the establishment of tradition is Yosun, or customary usage. The rules that emerged spontaneously, slowly and traditionally within the people were considered to be the Turkish traditions.³⁴ For the ancient Turks, rules belonging to private law, especially those regarding the individual, family and inheritance were established like this.³⁵ Additionally, in subjects related to religion, it has been seen that the yosun law was also applied.³⁶

Tradition is the sum of the objective rules which are also binding in terms of the society and even the sovereign.³⁷ In the Orhun Legends, it has been stated that a state regime without tradition is unimaginable. Thus, Bilge Khan stated that “...After I had acceded to the throne, I gave these important laws to the people in every part of the world.”³⁸

We can also find the same understanding in Kutadgu Bilig. The author of this famous work, Yusuf Has Hacıp, stated that “the State is established by guns, but is governed by pencil and laws.”³⁹

V. THE NECESSITY OF THE RULES TO BE IN CONCERT WITH JUSTICE

It has always been desired that the rules which have been laid down for social order and prosperity, as well as their application, should comply with the principle of ‘justice’. The Turkish Khans also gave very much importance to the implementation of justice.⁴⁰ A Chinese source stated that the Tabgaç Turkish Sovereign T’ai-Wu said that “I do not overlook that my people are beaten down

³³ For detailed information about Kapgan Khan’s sovereignty, his successes and his dethronement, see Ahmet Taşagül, *Kapgan Kağan [Kapgan Khan]*, 57 BELLETEN [LEARNED JOURNAL] 51 (1993).

³⁴ Halil İnalçık, *OSMANLI’DA DEVLET, HUKUK, VE ADALET [STATE, LAW, AND JUSTICE WITH THE OTTOMANS]* 21 (Istanbul, 2000).

³⁵ Aydın, *supra* note 27, at 15.

³⁶ Arsal, *supra* note 25, at 288.

³⁷ Arslan, *supra* note 10, at 226; İnalçık, *supra* note 34, at 21.

³⁸ Thomsen, *supra* note 11, at 158.

³⁹ Kutadgu Bilig, *supra* note 11, § 2711.

⁴⁰ For detailed information about justice understanding in the ancient Turkish States and about the values of this notion see Adem Tutar, *İSLAM ÖNCESİ TÜRK DEVLET GELENEĞİNDE ADALET ANLAYIŞI [ANALYSIS OF JUSTICE IN THE TURKISH STATE BEFORE ISLAM]* Vol. II, 868 (Ankara, 2002).

and little ones do the hijacking in my State.” By saying this, he has shown his understanding of the importance in the implementation of justice.⁴¹

Regarding the principle of justice, we can see very important statements, especially from the Kutadgu Bilig. It is very meaningful that one of the four heroes of this work, Kündoğdu Han, represents justice and is the Sovereign. In the Kutadgu Bilig, the state is compared to a silver throne with three legs separate from each other. In the work, it has been explained that nothing with three legs can give more weight to one side and until the three legs are proper, the throne cannot be swung. The three legs in the Kutadgu Bilig mean “legislation”, “execution” and “judgment.” The main element of the throne is integrity and justice. The Sovereign should not discriminate against people as governor and servant in front of justice. The knife in his hand indicates that he cuts work like a knife but does not extend the work of those who need justice. The sugar on his right side symbolizes the people who were persecuted, came to the government office and left with pleasure by finding justice. The bitter grass on the left side explains the situation of the cruel people who wore a long face when they were condemned.⁴²

You can see some important statements about justice which were mentioned in the Kutadgu Bilig:

“...He (governor)... regulates his country and folk by law.”⁴³

“He implemented law with accuracy and the people got rich. He left a good reputation in a good period.”⁴⁴

“State is a very good thing, but law is better and it must be implemented.”⁴⁵

“In front of law everyone is equal for me. I do not separate them as governor or servant. Either he is my son or my relative or cognate; either a passanger or a guest.”⁴⁶

“Implement the law to the people with fairness, so that you will be fortunate in the judgement day.”⁴⁷

⁴¹ Abdülkadir Donuk, *Eski Türkler'de Hükümdarın Vazifeleri ve Vasıfları [Sovereign Functions and Characteristics in the Ancient Turks]*, 17 TÜRK DÜNYALARI ARAŞTIRMA DERGİSİ 108 [TURKISH WORLD RESEARCH JOURNAL] (1982).

⁴² Cin and Akgündüz, *supra* note 4, at 61.

⁴³ Kutadgu Bilig, *supra* note 11, § 286.

⁴⁴ *Ibid*, § 291.

⁴⁵ *Ibid*, § 454.

⁴⁶ *Ibid*, §§ 809, 817-818.

⁴⁷ *Ibid*, § 1374.

“If you want a continuous and perpetual state, do not depart from justice but remove cruelty from the people.”⁴⁸

“Do not establish bad customs, but implement good laws; with bad laws, you cannot dominate the world.”⁴⁹

“This state work is always known by governors; law and order, custom and usage are always implemented by them.”⁵⁰

“The people obey the laws when the governors obey them.”⁵¹

“Protect the poor, widow and orphans; protecting them means implementing the law indeed.”⁵²

“Do not look for your own utility, but think of the utility for your people. Your utility is in the utility of them.”⁵³

“Govern the people with equitable laws; do not allow that someone dominate another; protect them.”⁵⁴

“If the laws applied to the people are always good, God will always protect the state.”⁵⁵

Implementing good laws will make the sovereignty eternal. Punishing the bad ones and protecting the good ones were counted among the important duties of the Khan. Now we can mention some statements related to this which were mentioned in the Kutadgu Bilig:

“O Sovereign! Sword and bat is yours; these lashes and punishments are for the bad ones.”⁵⁶

“When the bad ones do not remove themselves, do not give up to punish them, but get ready your bat.”⁵⁷ “Show to all gracious people compassion and promote them. Do not encourage the bad ones; do not even bring them closer to your door.”⁵⁸ “Give value to good ones, make all possible favors to them so that all the people will be well.”⁵⁹

⁴⁸ Kutadgu Bilig, *supra* note 11, §§1435-1436.

⁴⁹ *Ibid*, §§ 1456-1459.

⁵⁰ *Ibid*, § 1931.

⁵¹ *Ibid*, § 2111.

⁵² *Ibid*, § 5302.

⁵³ Kutadgu Bilig, *supra* note 11, §5353.

⁵⁴ *Ibid*, § 5576.

⁵⁵ *Ibid*, §. 6266.

⁵⁶ *Ibid*, § 5279.

⁵⁷ *Ibid*, § 5280.

⁵⁸ Kutadgu Bilig, *supra* note 11, § 1455.

⁵⁹ *Ibid*, § 1411.

So, it is very clear that in Turkish society justice has always been very important. Everyone is equal in front of the laws. According to tradition, when judging people, they will not be discriminated against. Laws will be implemented; the right ones will get what they deserve and the others will be punished. The basis of the state is fairness and justice. If the sovereigns are fair, the whole world will be at peace. Meanwhile, we must say that while securing fairness and justice, some fear of God and eternity should be placed into the hearts of the sovereigns.

VI. CONCLUSION

The geographic features of Middle-Asia, which is the homeland of the Turks, emerged through the migrant lifestyle of the Turks. Definitely, the migration of the Turks is not the one seen in many primitive tribes. Turks reached a higher living standard than the simple migrant cultures because they had a close relationship with a very old culture, China, and there were large areas appropriate for agriculture.

Such a lifestyle required that the Khans be strict persons and had great authority because governing an immigrant society was very difficult. Among the great authorities of the Khans, the most important one was making definite laws. This was stated as the first source of the rule of society in the ancient Turkish States. The authority to lay down rules was also affected by the ancient Turkish understanding of sovereignty because, in the ancient Turkish tradition, the male members of a family chosen by the Tengri had the right of sovereignty and all these members (and of course the Khan) had the right to lay down rules as laws.

Another way for laying down rule as laws in the ancient Turkish society was to take decisions in the assembly. The assemblies didn't only undertake the role of laying down rule of laws, but they also limited the authorization of the Khan. In the ancient Turks, the governors also took part in the governance. This was often emphasized. Related to this subject, there were very important and didactic statements in the Orhun Legends and Kutadgu Bilig.

There is a third way about the establishment of the rule of laws in the ancient Turkish States. This way means the rules which emerged spontaneously and slowly in the society. These rules were called 'yosun.' Definitely Yosun law became a part of the Turkish tradition provided that they were accepted by the Khan.

However these rules were emerged, all of them had to be in compliance with justice and to act in accordance with tradition was the duty of all the society and the Khan. There was such an importance and prestige of tradition in the society

that the sources always reminded the Khans that they must act in accordance with tradition. Khans took care of this and saw themselves under a liability against the people.

The value of tradition and the binding role of the rules continued in the states established by Turks after the acceptance of Islam, too. It played a role to some extent by limiting the authority of the sovereign. Thus, the Turkish-Islamic state sovereigns did not act against the rules of Islamic law despite their unlimited sovereignty. On the other hand, they followed the application of the customary laws which were established by their own willpower.

Therefore, "Turkish Tradition" should not be thought of as an institution attributed only to the Middle-Asian Turkish societies. We must consider the effect of this institution on all the Turkish States established during the next centuries.

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