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## Study of World Legal History Before the Colonial Period

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### ABSTRACT

This paper aims to explore and analyze the evolution of legal systems across several major civilizations—namely Ancient Egypt, Mesopotamia, Greece, Rome, India, China, pre-Islamic Arabia, and Medieval Europe—through historical, philosophical, and comparative approaches. By examining classical legal texts, legal philosophies, and contemporary academic studies, this research identifies the fundamental characteristics, principles, and values underlying each civilization's legal framework. Using a qualitative methodology combined with historical-comparative analysis, data were collected from a wide range of scholarly literature, including ancient legal codes, philosophical treatises, and modern research findings. The results reveal that pre-colonial civilizations shared essential similarities in viewing law as both an instrument of legitimacy and a mechanism of social order. Nevertheless, they differed in the sources of legal legitimacy—ranging from divine revelation, customary norms, to human rationality. The findings affirm that modern legal systems, whether belonging to the civil law or common law traditions, are deeply rooted in pre-colonial legal thought. The universal ideals of justice, morality, and legal certainty found in contemporary law are products of a long historical evolution stemming from the values embedded in ancient societies. Hence, the study of world legal history before colonization serves not only as a historical exploration but also as a philosophical reflection on how law has continuously shaped—and been shaped by—human civilization throughout history.

## INTRODUCTION

Law is one of the oldest social constructions in the history of human civilization. It has never existed in a vacuum; rather, it has always grown alongside social structures, belief systems, and power dynamics. Before the advent of colonialism and the hegemony of Western law, the world had already had various complex legal systems rooted in religious, ethical, and cosmological values. Each major civilization—from Mesopotamia, Egypt, India, China, Greece, Rome, to the Islamic world—produced distinctive legal conceptions that reflect their views on the order of the universe, humanity, and God.

The study of the history of world law before the colonial era is not merely a historiographical effort to record the chronology of the past. It is a philosophical reflection on the very nature of law: does law originate from the will of God, human reason, or social necessity? Is law universal or contextual, moral or neutral, transcendent or pragmatic? These questions have been central themes in the development of law since ancient times, and their answers have shaped the direction of legal thought to this day. In ancient civilizations, law was always intertwined with sacredness.

The society of ancient Egypt, for example, recognized the concept of *Ma'at*, that is, the principle of cosmic balance and divine justice that served as the foundation for every decision made by the king. The Pharaoh was considered not only a political ruler but also a divine intermediary who ensured the order of the universe. Law, therefore, is not positive or secular in nature, but rather part of the *ordo divinus*—a sacred order that maintains harmony between humans and the cosmos. Law is not merely a tool to control behavior, but a moral and spiritual mirror of universal order.

A similar principle can also be seen in Mesopotamian civilization through the Code of Hammurabi (c. 1750 BCE), which became one of the oldest written legal documents in human history. The code presents the law as a manifestation of the king's justice revealed by the sun god, Shamash. In its opening inscription, King Hammurabi declared that

he was sent by the gods “to bring justice on earth, to destroy wickedness, and to prevent the strong from oppressing the weak.” This indicates that the legitimacy of law at that time derived from divine mandate, not a social contract. Yet on the other hand, the structure of the legal system already showed social rationality—that is, an awareness that the law must regulate economic relationships, family, and public responsibilities with the principles of proportionality and reciprocity (*lex talionis*).

Meanwhile, in Ancient India, law was built on the concept of *Dharma*—a moral and cosmic principle that transcends positive rules. The *DharmaŚāstra*, including the *Manusmṛiti*, asserts that law is a manifestation of universal truth. Justice is not the result of human agreement, but obedience to the eternal moral order. Here, law is viewed as a spiritual path to achieving harmony, not merely a mechanism of sanction. Law functions to guide humans toward *moksha* (liberation), not just to regulate social behavior. This model shows that in many pre-modern societies, the boundary between law and ethics was almost nonexistent—law was morality institutionalized.

In Ancient China, the interaction between Confucianism and Legalism produced two opposing yet complementary legal paradigms. Confucian thought emphasized that social order could only be achieved through virtue (*ren*) and the moral example of the ruler. Written law was considered inferior to norms of propriety (*li*) and moral values. In contrast, Legalists such as Han Feizi argued that humans are naturally egoistic, so stability could only be maintained through strict written laws and harsh sanctions. This dialectic between *li* and *fa* became the conceptual foundation of Chinese law for thousands of years, reflecting the tension between morality and legality that also influences modern legal philosophy.

### **Comparatively, pre-colonial laws exhibited three main conceptual characteristics**

First, the sacredness of law: law is never separated from moral or religious values. It functions as a bridge between humans and the cosmic order. Second, the integration of law with culture: law

emerges from the collective experiences of society, not merely from rational abstraction. Third, the teleological orientation of law: the purpose of law is not only social order but also moral goodness and universal well-being. However, European colonialism introduced a new paradigm. With the emergence of the Scientific Revolution and the Enlightenment, law was separated from religion and morality. Legal positivism arose, particularly through the ideas of Jeremy Bentham and John Austin, who asserted that law is merely the command of a sovereign ruler, without requiring moral legitimacy. Consequently, law lost its sacred and philosophical dimension. Modernity demands efficiency and certainty, not wisdom and meaning.

From this perspective, studying the world's laws before colonization is not merely about tracing the past, but also about exploring the “lost dimension” of modern law—that is, the connection between law, morality, and culture. Pre-modern law offers an alternative to positivism: law as an expression of community morals, law as a means of seeking truth, not merely an instrument of social control.

## **METHODS**

This study uses a qualitative approach with a historical-comparative method. Primary data were obtained from ancient legal texts and classical literature; secondary data from relevant modern academic works (Hart, Berman, Fuller, Wignjosebroto). The analysis was carried out through three stages: descriptive-historical, analytical-conceptual, and reflective-philosophical.

## **RESULTS AND DISCUSSION**

### **Systems and Civilizations of Ancient World Law**

The history of world law before the colonial period shows that every major civilization developed legal systems that reflected its social structure, religious beliefs, and intellectual rationality. Law is not a universal entity born uniform, but rather a cultural product influenced by values, religion, and political power.

Studies of ancient world legal systems reveal two major patterns: first, the theocratic and sacred legal system, where law is considered a

manifestation of divine will (as in ancient Egypt, Babylon, India, and Israel); second, the rational and codified legal system, where law is understood as the result of human rationality and state codification (as in Greece and Rome). On the other hand, legal systems in East Asia and the Middle East demonstrate a syncretism between social morality and distinctive political order.

Thus, the legal civilization of the ancient world played not only a role as a historical backdrop but also as a conceptual laboratory that laid the foundation for understanding modern law: the relationship between law and power, law and morality, and law and humanity.

### **Reflection on Philosophy of Law and the Heritage of the Ancient World on Modern Legal Systems**

The development of world law cannot be fully understood without tracing the philosophical and systematic roots of the ancient laws that preceded it. Modern legal systems — whether civil law, common law, Islamic law, or customary law — are not entities that emerged suddenly, but rather the result of a long historical synthesis and philosophical reflection from various past civilizations.

Ancient law, although born within different social and religious contexts, contains universal principles that serve as the seeds for the rationalization of contemporary law. Concepts such as justice, legitimacy, codification, and moral supremacy over power are conceptual legacies that continue to be reinterpreted to this day. Therefore, this chapter seeks to explain how ancient legal systems—whether theocentric, rational, or moral-instrumental—contributed to the formation of modern legal systems, as well as how the philosophical reflections of those civilizations still live on in contemporary legal theories.

### **Influence of Theocratic**

Principles on the Concept of Moral JusticeThe civilizations of Egypt, Babylon, and India show that law from the very beginning contained theological and moral dimensions, where justice was understood not only as adherence to norms but also as the enforcement of cosmic harmony.

This principle became the foundation for the emergence of the "law as moral order" theory, which is the view that law must align with ethical and spiritual values. This perspective is still evident in the thought of Thomas Aquinas, who asserted that an unjust law is not a law at all (*lex iniusta non est lex*). Moreover, the relationship between law and morality in ancient legal traditions inspired the modern natural law school, as seen in the ideas of Hugo Grotius and John Finnis, who rejected a complete separation between law and ethics. Grotius stated that natural law would exist "even if God did not exist," indicating a rationalization of ancient moral-theological principles into a modern secular framework. Thus, the theocratic heritage of ancient law is not merely a form of dogma, but a foundation for ethical awareness in law — that true legal legitimacy derives from justice inherent in human morality.

#### **Rationalization of Law: From the Greek Polis to Modern Rationalism**

The legal rationality that developed in Greece and Rome laid the foundation for Western legal epistemology. In the Greek polis, law was understood as the result of citizen deliberation, not divine decree. This participatory principle became the embryo for the concepts of popular sovereignty and the rule of law in modern systems. Meanwhile, Roman law contributed to systematization. Roman legal scholars introduced deductive and interpretative methodologies, which were later adopted by European civil law systems. Justinian's *Corpus Juris Civilis* became a model for modern codifications such as the Napoleonic Code in France and the *Bürgerliches Gesetzbuch* in Germany. Modern legal philosophy developed by Kant and

Hegel also has its roots in Roman rationality. Kant asserted that law must reflect human rational freedom, not merely external commands. It is this human-derived legal rationality that makes modern law autonomous and universal — yet still rooted on the idea of classical justice originating from Aristotle. Thus, the rationalization of modern law is a dialectical continuation of ancient law: from *nomos* to *lex*, from cosmic will to human rationality.

#### **Social Morality and Law as Instruments of Order**

The legal systems of China and India make significant contributions to the understanding of law as a means of shaping social and moral character. In the Confucian tradition, law is not seen as a tool of coercion but as a mechanism for the internalization of moral values. This principle resonates in modern thought such as restorative justice theory, which focuses on restoring social relationships rather than mere retribution. Thus, law is not only an instrument of external control but also a means of moral transformation of society. Similarly, India's *DharmaŚāstra* demonstrates the integration between law and social duties (*svadharma*). This concept can be equated with the idea of 'communitarian law' in contemporary legal theory — that law cannot be understood outside the context of the values of the community in which it operates. These two traditions teach that true justice can only be achieved when the law aligns with moral order and social balance, not merely with the text of regulations.

#### 4.5 Historical Synthesis: From Cosmic to Codified

If analyzed comparatively, the evolution of world law shows a gradual process of rationalization from sacred systems to modern codified systems.

Table 1. Social Morality and Law as Instruments of Order

<b>Historical Stage</b>	<b>Main Characteristics</b>	<b>Example of Civilization</b>	<b>Contributions to Modern Law</b>
<b>Theocentric</b>	Law as a divine command, is moral and ritual in nature	Mesir, Babilonia, India	The foundation of legal ethics and moral justice
<b>Rational-Political</b>	Law as a result of rationality and public deliberation	Yunani, Romawi	Codification of law, the principle of rationality, and citizens' rights
<b>Moral-Communal</b>	Law as social morality and harmony	Tiongkok, Arab pra-Islam	The principles of restorative justice and social norms
<b>Modern-Secular</b>	Law as a rational system, positif, and codificative	Eropa, pasca-Renaissance	The birth of civil law, rule of law, and positivisme

This transformation shows that each stage of legal history is not a replacement, but rather a conceptual continuity. Modern law owes much to ancient systems because it inherits the values of universal justice, rational structure, and social ethics that are at the core of human civilization.<sup>4.6</sup> Philosophical Relevance to Contemporary Legal Systems The legacy of ancient law remains relevant in 21st-century legal discourse. Firstly, in the context of legal globalization, there is a need to balance the rational universalism of modern law with the particular moral values of society. Ancient law teaches the importance of local wisdom and spirituality in establishing legal legitimacy.

Second, the moral crisis and overly formalistic positive law can be addressed by revitalizing the principles of Ma'at, Dharma, and Li as transhistorical ethical values in modern law. Third, the Greco-Roman legal perspective on public participation inspires legal democracy and the concept of constitutionalism.

## CONCLUSION

A historical-comparative study of the world's legal systems before the colonial era shows that law is not the result of a single source, but rather an accumulation of values, experiences, and philosophical reflections of humans across civilizations. Law was born as a response to the fundamental human need for order, justice, and the

legitimacy of power. The history of ancient world law reveals three main patterns of legal development:

- 1) The Theocentric and Sacred Pattern, in which law is understood as a divine command maintaining cosmic balance. Civilizations such as Egypt, Babylon, and India laid the moral foundation for law by placing justice as a harmony between humans, nature, and God.
- 2) The Rational-Political Pattern, which developed in Greece and Rome, marked a transition toward law based on human rationality. Law began to be seen as the result of deliberation of reason and social agreement. Roman codification and Greek legal philosophy shaped the logical and conceptual structure of modern law.
- 3) The Moral-Communal Pattern, as seen in pre-Islamic China and Arabia, emphasized the importance of social values, ethics, and moral balance in the application of law. This perspective later gave rise to restorative and ethical approaches in contemporary law. These three patterns, although born in different contexts, share a common thread: humanity's pursuit of transcendent and rational justice. In its philosophical reflection, ancient law teaches that: - Justice cannot be reduced to formal rules; it must be rooted in morality and ethical awareness.

Power must submit to universal and rational legal values.

• Law can only function if it reflects a balance between *ius* (norms), *ethos* (values), and *logos* (rationality). Thus, the modern legal system — whether civil law, common law, or Islamic and customary law — is a dialectical legacy of the long history of ancient law. The rationality of Roman codification, the ethics of Confucianism, the morality of Dharma, and the spirituality of Ma'at combine to form the global legal consciousness that we know today. Philosophically, the main conclusion of this study is that the history of ancient law is not merely a mirror of the past, but the epistemological foundation of contemporary law. Understanding these historical roots is not only academically valuable, but also morally and politically significant — considering that modern law often loses its ethical meaning in the domination of instrumental rationality and the interests of power.

#### **Recommendation**

Based on the results of this study, there are several reflective and academic suggestions for the development of legal science and contemporary legal practice:

1. Historical Reorientation in Legal Education. Legal education at universities needs to re-emphasize world legal history as a fundamental course. This is important so that law students understand that every legal system has deep moral, philosophical, and cultural roots.
2. Integration of Morality and Rationality. Modern legal practice needs to balance legal certainty and moral justice. The principles of Ma'at, Dharma, and Li can serve as ethical inspiration in the reform of national and global legal systems.
3. Strengthening Comparative and Interdisciplinary Approaches. Legal research should not be limited to normative analysis, but should also adopt historical, anthropological, and philosophical approaches so that law remains connected to the context of humanity.
4. Revitalization of Local Values in the Context of Legal Globalization. Globalization tends to standardize laws, yet the history of ancient laws shows the importance of legal pluralism that respects local values and customs. Indonesia, with its rich traditions and religions, can utilize this historical approach as a basis for forming a national law with character.
5. Law as a Civilization Project. Law should not be seen merely as an instrument of power, but as a human civilization project aimed at realizing meaningful justice. In this sense, law is a reflection of human intellect striving to uphold moral values amidst social complexity.

#### **REFERENCES**

- Allott, Philip. *Eunomia: New Order for a New World*. Oxford: Oxford University Press, 1990.
- Aquinas, Thomas. *Summa Theologica*. Cambridge: Cambridge University Press, 1947.
- Aristotle. *Politics*. Translated by C.D. Reeve. Indianapolis: Hackett Publishing, 1998.
- Bodde, Derk, and Clarence Morris. *Law in Imperial China*. Cambridge: Harvard University Press, 1967.
- Braithwaite, John. *Restorative Justice and Responsive Regulation*. Oxford: Oxford University Press, 2002.
- Cicero, Marcus Tullius. *De Legibus*. Translated by Clinton Keyes. Cambridge: Harvard University Press, 1928.
- Etzioni, Amitai. *The Spirit of Community*. New York: Crown Publishers, 1993.
- Fuller, Lon L. *The Morality of Law*. New Haven: Yale University Press, 1969.
- Grotius, Hugo. *De Jure Belli ac Pacis*. Translated by F. Kelsey. Oxford: Clarendon Press, 1925.
- Hahm, Chaihark. *The Rule of Law in China*. Cambridge: Harvard Asia Center, 2003.
- Hart, H.L.A. *The Concept of Law*. Oxford: Clarendon Press, 1961.
- Hobbes, Thomas. *Leviathan*. London: Penguin Books, 1985.
- Honoré, Tony. *Ulpian: Pioneer of Human Rights*. Oxford: Oxford University Press, 2002.

- Kant, Immanuel. *Metaphysics of Morals*. Translated by Mary Gregor. Cambridge: Cambridge University Press, 1991.
- King, L.W. *The Code of Hammurabi*. London: British Museum, 1910.
- Kraut, Richard. *Aristotle: Political Philosophy*. Oxford: Oxford University Press, 2002.
- Lichtheim, Miriam. *Ancient Egyptian Literature, Vol. I*. Berkeley: University of California Press, 1973.
- Lingat, Robert. *The Classical Law of India*. Berkeley: University of California Press, 1973.
- Loprieno, Antonio. "Ma'at and the Theology of Justice." *Journal of Egyptian History* 4, no. 1 (2011): 11–22.
- MacIntyre, Alasdair. *After Virtue*. Notre Dame: University of Notre Dame Press, 1981.
- Montesquieu, Baron de. *The Spirit of Laws*. Translated by Anne M. Cohler, Basia C. Miller, and Harold S. Stone. Cambridge: Cambridge University Press, 1989.
- Montgomery Watt, W. *Muhammad at Mecca*. Oxford: Clarendon Press, 1953.
- Olivelle, Patrick. *The Law Code of Manu*. Oxford: Oxford University Press, 2004.
- Plato. *The Republic*. Translated by Desmond Lee. London: Penguin Classics, 2007.
- Rawls, John. *A Theory of Justice*. Cambridge: Harvard University Press, 1971.
- Roth, Martha T. *Law Collections from Mesopotamia and Asia Minor*. Atlanta: Scholars Press, 1995.
- Stein, Peter. *Roman Law in European History*. Cambridge: Cambridge University Press, 1999.
- Tamanaha, Brian Z. *On the Rule of Law: History, Politics, Theory*. Cambridge: Cambridge University Press, 2004.
- Watson, Alan. *The Spirit of Roman Law*. Athens: University of Georgia Press, 1995.
- Weber, Max. *Economy and Society: An Outline of Interpretive Sociology*. Berkeley: University of California Press, 1978.
- Wilkinson, Richard H. *The Complete Gods and Goddesses of Ancient Egypt*. London: Thames & Hudson, 2003.
- Zweigert, Konrad, and Hein Kötz. *An Introduction to Comparative Law*. Oxford: Clarendon Press, 1998.