

## **Genesis of Establishment and Essential Characteristics of Ancient Laws and Norms**

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**Abstract :** *The article deals with the history of establishment and essential features of development of Near Eastern normative acts and laws, and the history of Ancient Greek and Ancient Roman rules and laws, in particular. It underlines the road map of how and under which conditions these principles were set which constituted the inseparable part of the human life, its culture, language, community customs and traditions.*

*The research materials show that, it is not so easy to define to what extent unwritten laws left hang in midair within their legal geneses terms and define the order or command of any authenticity related to them. The article highlights that, there exists a considerable disparity of age between the establishment of norms and laws and their release in a written code form. The tendency and tradition observed throughout the history of the Ancient Near East, including Ancient Greek and Roman norms and laws have been shaped in this manner, yet mythological, anthropomorphic and spiritual facets have always served as a prerequisite.*

*The article shows the main assumptions of the authors referring to the necessity of shaping and growing process of norms and laws in the Ancient Near East which have gone through both prosperity and depression phases and throughout millennia, but could succeed and develop until our days*

**Keywords:** *History of establishment of norms and laws, genesis and essential characteristics of norm and laws, evolutionary process of normative acts and laws, history of Ancient Greek rules and laws, essential characteristics of Ancient Roman norms and laws, ancient Near Eastern legislative and normative principles*

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### **I. INTRODUCTION**

As history of ancient norms and laws, their early genesis and establishment occupy a special place in socio-political and juridical sciences. There is no doubt that human beings and their walk of life have always been framed within certain socio-economic and organizational structure; otherwise, norms and laws might have been useless for mankind. If human beings had been isolated from these patterns, they would have lived like animals.

Social intelligence is one of the most important features differentiating human community from animal kingdom because mental capacity which is characteristic to humans is not peculiar for animals. It means that evolutionary processes that the law banks have gone through included adaptation of human being's socially developed nature to these changing physical environments.

### **II. History of lawmaking**

While investigating the history of lawmaking existed in different periods and within different unifications, we, willy-nilly, come up with some questions: Which formative elements have brought norms and laws into our life? How did the evolutionary process of norms and laws take place? While seeking answers to these and other similar questions, we ought to denote that the establishment and evolutionary process of law-making is associated with the social factors, which at times, have been overlooked by some researcher-scholars [1-7], thereby posing grave problems to get to the bottom of lawmaking process. Historian John Zane (1863-1937), who was deeply engaged in the study of the genesis of laws and establishment of normative rules which delineated the history of laws as an integral part of trade which sounds to be somewhat bizarre [8]. By his

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opinion, these laws were more identical with the established trade norms within which the trading interrelations developed at that time.

Animals are used to follow the rules and norms by the inherent them inborn instincts and they usually follow the actions which are anticipated in certain conditions to do so whereas human beings' behaviour may possibly include some deviations from the rules which are mostly peculiar to them. If humans had followed the same principles as animals had in abiding the established norms and laws, it would have not been necessitated the emergence of changing rules, norms and laws overtime. The likely necessity of shaping and growing process which continued in close touch with social adaptation allows us to draw some rational conclusions:

- a. By nature, a human being is a sole social creature to be considered as a fundamental fact throughout the history and genesis of establishment of norms and laws;
- b. Social reasoning and struggling for better life by humans have always inherited the processes of adaptation and change all surroundings which have served as the initial and physical prerequisites for the establishment of norms and laws;
- c. By their nature norms and laws are considered as by-products of a human activity and the results of his/her mental reasoning. They are primarily related to the "*universitas*" (or *bundle*) of rights and duties or "*universitas juris*" [9, p.158] belonging to some individuals experiencing them in their own life without the likely facts that human beings could not have the universality of rights and duties;
- d. Due to changeable features of human intelligence, norms and laws have always gone through development and evolutionary phases which simultaneously passed the entire aggregate of responsibilities - momentous duties and the virtue of the same legal capacities;
- e. Historical roots of norms and laws are associated with ongoing myriad physical and mental processes of human beings who closely interacted with nature and other community members.
- f. Genesis of norms and laws is not only related to the quality of human intellect to be obedient to law, but also to the matter of necessity of human conducts;
- g. Establishment of primary norms and laws and their application constitute the fundamentals of morals, religions, emotions and senses, habitual thoughts resulting from general human practice.

### **III. Written and oral norms and laws**

Despite the times past, a human being's "physical structures" (all acts, ancestral rules, birth, feeding, growing, and death) remain intact. It is because a human being's mental development has always been supernatural phenomenon for its material life. Thus, physical frames of a human entity and realized activities by him or her have always been the main reasons for the rise and development of norms and laws, though there is a big difference between the social norms or rules and written laws.

The two different characteristics of norms and laws also conceptualize the requirements of "written rules and laws". Yet, it is not our intent to research when norms and laws had been published as codes, but what matters to us is their history of development and essential peculiarities.

Initially, this concept stood for "law or rule of life" relating to "Themis" and "Themistes" that had been deified in the ancient Greek mythology ("Θέμις" *thimís*-derives from ancient greek of "Titaness" and means "a good counselor or advisor"). She was also personified as divine orders, natural laws and customs and traditions...later "Themis" or "Themistes" was no longer associated with the orders developed and set out by people, instead she was related to divine concept of shrines, namely, either to Pantheon - where all goddesses were believed to be buried or to the "God of Justice", even in "Iliad" she was portrayed as the helper of Zeus[9]. Therefore, this study necessitated some social relations to be preconditioned in the establishment of law concept. These social relations include: a) social factors, development and progress history of humankind ("via dolorosa" - from slavery to freedom), contrary to animals, "rude" and "disobedient" spirit of humans, ability to create and re-create, inability of humans to create "artificial shelter"; b) religious factors; c) necessity to regulate trading relations

### **IV. Evolution of laws in the Ancient East and some research histories**

Evolutionary history of laws in the Ancient Near East is associated with ethical relations, the history of science and politics. The relations in point of time, circumstance and material object, of course, assume more importance. Obviously, the theory of factors takes up wide space in the establishment history of laws, nonetheless, we are of the opinion that the need to find out determinant of this process has been emerged from the relations between human and human, and human and nature, irrespective of whether to live in a cave or in a house.

Association between the establishment of law concept and contract law does not necessarily contain sufficient historical sources, for any "enforceable contract is specifically different... and we certainly can not collate the history of law with that of jurisprudence. [10, p.9-10]

Another issue relates to the study of a complex of reasons that determined development and evolutionary process of normative acts and laws in five civilizations (including Hammurabi's Babylonian Empire), namely in Mesopotamia, ancient Egypt, ancient Hebrew history, the Hittite Empire [10, 11, 12, 13] that existed during the Bronze Age (1600-1178 B.C.E.) and covered the territory what is presently Turkey, Syria and Lebanon, including but not limited to Ancient Greek and Rome. "To be more precise, what we know about the Ancient Near East dates back to the V – IV millennium BC, and spells out information gathered from the excavation works conducted to the early human settlements in ancient Sumer, Palestine (in the vicinity of Yerikhon), in southern Turkey (Anatolia). These circumstances called for some certain tribal customs and rules to be observed. From the west to the east, historical map of the Ancient Near East covered Tunis (capital – Carthage), modern China, Indonesia and Japan; from the south to the north it stretched from modern Ethiopia to the Caucasian mountains and the southern coasts of the Aral Sea. This vast geographical area was once home for numerous states of influential power – the Ancient Egyptian kingdoms, the Babylonian Empire, the Hittite Empire, the Great Assurian Empire, Urartu, Phoenicia (the costs of the Aral Sea), including small states in Syria, Palestine, Troy, Phrygia, Lidia (last two territories are presently Asia Minor), Elamite I (on the Iranian plateau), Aratta, which was surrounded by the Urmia Lake (some foreign scholars consider Arrata to be part of Afghanistan), including but not limited to, the Great Persian Monarchy which entailed, in the whole or in part, the states of Middle East, Central Asia, India, China, Korea and southeastern Asia. [15, (срп.) p.4]. " The particulars with reference to the early norms and laws on this area are certainly associated with the ancient Egyptian, Babylonian, Indian and Chinese sources. Establishment of normative rules and laws, as a whole, culminate in the "introduction of jurisprudence and code"... that is why, when the researchers allude to the Roman Laws, they mostly use the language that was employed in written "Twelve Tables" [9, p.1]. For example, in Egypt, during this period, legal norms regarding land property, taxation, etc. were outlined. Tax collectors in then-fully centralized government appear to have concentrated more superior power in their hands; what took priority over any other matter within this society was the belief that advocated "*pharaoh be law itself*".

Furthermore, military practices grew into a more developed shape. With the increased jurisdiction of the kings, the governors in charge of the ancient public orders were also being dislodged, the roots of conception of normative rules, laws and of jurisprudence, on the other hand, grew down. Four inextricably intertwined tendencies observed during this particular period which took high precedence:

- firstly, the concept of normative rules and law were not fully constructed, for the great mass of population which were still going on by the principles of religion;
- secondly, it was not that difficult to rule the population with central government which was represented by the opulent;
- thirdly, perfection of normative rules and laws had not yet evolved into a social fact;
- lastly, due to their rudimentary patterns, rights and freedoms did not allow the norms to shape and the laws to develop.

One of the most characteristic features of the ancient norms and laws is associated with their usage by the privileged ones as an instrument of intelligence. Of course, being free from central government would have revived all legal institutions and economic life. In fact, exchange of local goods became a far-reaching activity. In most cases new polices were sprang up from those communities where all common norms and laws were complied with. Endeavors to unite the country and whittle down the nomarchs' powers were markedly escalating. However, newly emerging social norms and laws were still seen as incompatible.

Another issue also arouses interest: it is the historicity of establishment of norms and laws and the conditions of their transfer into the written codes. There is a considerable disparity of age between the establishment of norms and laws and their release in a written code form. It is true that tendency and tradition observed throughout the history of the Ancient Near East have been shaped in this manner, yet mythological, anthropomorphic and spiritual facets have always served as a prerequisite. *Upholding the supremacy of class, spirit, and tribe have more preponderated over the establishment of written normative rules and laws.* For instance, in ancient Greece, there were some common peculiarities of assemblies which played a decisive role in Greek society of the period. A general custom required a prior judicial sentence as a priori reasoning. This judgement was also expected to confirm a custom or punish its breach; it meant that, the historical reality was shaping the circumstance in which the early norms and laws were unfolding. At the same time, the notion of a supernatural presidency over the State and all races came forth. The execution of all races and sacrifices by men in accordance with the common principles, purifications of these rituals, as well punishments inflicted for being disrespectful, either involuntarily or neglectfully, were assumed to be imperative measures.

According to Henry Sumner Maine (1822-1888- England), the "sacra gentilitia" – the key role of tribes played in the establishment of the early Greek normative rules, laws and wills, which are frequently remembered in classical Greek literature, had gained a unanimous approval of society. By his opinion, punishments imposed in respect of disobedience to norms and laws where they had been established, rules with reference to solemnization of matrimony, and the funeral ceremonies of the dead men, and other ceremonies

alike were the framework of religious and customary features which were created by special men prior to jurisprudence. Hereby, the varieties of all essential normative rules and laws applied to everyone pave the way their distinctive features to come into existence beforehand. Yet, S. Maine tends to prove the absence of jurisprudence, lawmakers, and of their arduous brain-racking on laws in the infancy of mankind [9, p.1].

We think that the mutation of customs into norms and laws had not been that easy (it is much more likely to be identical to practices). It is very hard to define to what extent unwritten laws left hang in midair within their legal genes terms and mainly presented the order or command of any authenticity. In his "Ancient Law, its connection with the early history of society and its relation to modern ideas" (published in London) [9] Henry Sumner Maine's reference to associate the history of ancient Roman norms and laws and their development tendency mostly with religious and customary practices had been turned down by many scholars, including German historians and jurists, Friedrich Carl von Savigny (1779-1861) and William Holloway (1829-1893) [10]. They think that "the foreign elements' interference in the establishment process of the ancient Greek and Roman norms and laws have been overlooked by Henry Sumner Maine [10, p.49]. Furthermore, they stated that classification of norms and laws according to the names of any class or event did not entitle them to the right to live. "In our point of view, neighboring, trade and other relations of any nature among communities and tribes give customary or religious appearance to the laws, but they are unable to keep these laws away from foreign impacts; thus, it would be wrong to ascribe the establishment of the ancient Greek and Roman laws to the only one person. The evolution of intrastate laws may seem to be alien and enervate socio-political phenomena, but this process cannot be entirely isolated from the mutual relations and harmony of life" [10, p.51]. In fact, there were a lot of mismatches between the real life and formulation of norm and laws. We can generally underline the following main peculiarities of the development history of Ancient Greek rules and laws:

1. Existing high discrepancies between the set of reforms and norm and laws of Ancient Greece, we face with actual situation where these regulations related reforms have incompatible nature with old norms and laws of the time;
2. Diversity of social stratifications in the country led to incompatible development of normative rules and law concepts;
3. Irrespective of written property regulations, it was early days to speak about a broad range of rights bestowed upon citizens;
4. Family and inheritance rules and laws were of obligatory nature, nevertheless by legislative rules women were still dependent members of family and equality was out of question;
5. Criminal law seemed to be improved and it encompassed a range of punishments including death penalty. However, all was designed to torture offenders rather than preventing wrongdoings;
6. Although judicial system reserved the right to appeal, not all citizens were eligible for full citizenship.

All these peculiarities make a testimony that, realization the thoughts of ruling class through normative rules and laws assumed more sporadic, subjective and individual character, rather be fixed by their nature. Moreover, they were not too much distanced yet from the existing social customs and rules which were inherent for the society of that period.

While analyzing the common and diverse feature between the Greece and Roman norms and laws, we find out that, the emergence and development history of norms and laws in Ancient Rome had its own peculiar characteristics; they were more inclined to draw demarcation line between public and private norms and laws. Moreover, these setting were more formal and in writing than the ones that Greece owned. These Romanian norms and laws had the following essential characteristics:

1. The formula of these norms and laws has been built on creation, development and judgement systems;
2. Private and public norms and laws have served as the two main divisions for their emergence;
3. The Code of the Laws of the Twelve Tables and the established societal rules had epitomized early written laws, decisions adopted by the assembly of the people and the senate, counsels provided by Romanian judges on civil rights and the Romanian community law;
4. The Romanian norms and laws turned into the legislative history of the Romanians in the process of development history;
5. Initially, rules for possessing property and the relevant law manifested in the Romanian legislation were rich in various legal obligations and a variety of contracts;
6. The Roman norms and laws are especially distinguished in attaching a specific attention to responsibilities and inheritance rules and standards;
7. During its evolutionary processes the Roman norms and laws benefited from that of other countries and enriched them.

### **Ancient Near Eastern legislative and normative principle and their characteristics**

All in all, ancient Near Eastern legislative and normative principles reflected the following features:

1. Establishment of norms and later the laws is related to communal religions, customs and traditions, development of writing system and state, as well as to the processes of transition to class society;
2. Declining role of religion in public relations exerted a great deal of influence and significance on the final amount and nature of norms and laws and on their evolutionary processes;
3. In their initial stage of establishment, norms and laws served as the main tools to advocate for priorities set by classes, religions, clans and tribes;
4. Confrontations and wars arising both amongst and within countries were deemed to have impacted on establishment and modification of norms and laws;
5. Norms and laws were considerably associated with evolutionary history of science, politics, and contractual relations;
6. Concept of “god” has served as a prerequisite for the establishment of religious rules and religious standards;
7. Historical, social, ethno-social, biological, mythological, anthropomorphic and behaviorist factors are believed to be paramount in the establishment of norms and laws.

In the history of the Ancient Near East, establishment of history of norms and laws, proof of their nature are associated with an array of written rules and laws, and this process was determined towards the end of the IV millennium BC, when early concepts of lawmaking were examined. After many centuries, early written norms and laws emerged. There is no doubt that initial records related to these normative laws date back to ancient civilizations, e.g. India and China. The impact of these civilizations certainly manifests itself in the remnants of legislation which indicates that the Hebrew Bible might have benefited from the sources of European legislation. It is assumed that these relations were not created directly, but created via classical system of Jewish, Greek and Romanian normative rules and laws; and legacy of these systems reflects the relations between two contemporary legislations.

Nowadays, the key role of classical cultures in interpretation of modern norms and standards, the relevant laws seems to be more compelling. That is to say, establishment of basic principles for them in the Ancient Near East is not a by-product of only one system, but also the interactions between communities of other languages and cultures which have also contributed to this process. By other word, cultural, linguistic and community interactions serves as major features in commonalities for the development of norms and laws in the Ancient Near East. In this way the norms and laws have gone through both prosperity and depression phases and throughout millennia they succeeded each other and survived until our days. Due to the ups and downs of history, the flow of sources regarding the establishment of the norms and laws has been stauded; at times chronology falls back on archival sources related to cultures, politics which have been investigated and uncovered by historians. This also means that it is hard to define the exact date of establishment of norms and laws as an “historic event”. Bearing in mind what have been mentioned earlier, we feel the need to take a two-pronged approach – in terms of both history and fact about the establishment of norms and laws and as well as the related institutions.

Historical factor is related to the credibility of information accrued from the investigations into jurisprudence and authoritarian impacts of information, while the second approach is pertinent to the development of written and unwritten rules, norms, laws, judicial system and their powers.

### **V. Resume**

*The history of established norms and laws is closely connected with human activities, and the evolutions of human intelligence embracing myriads of centuries. It is one of the major phenomena which from its inception included the multifunctional human interrelations within certain legal frameworks of the time. These events could have not developed without consideration the status and character of the socio-economic processes bypassing the religious, ethnic, anthropological features of the societies in which these social phenomena rose. Evolution of norms and laws are also linked to the history of written rules and laws the history of which is determined starting from IV millennium BC when early concepts of lawmaking were examined. Of course, establishment of norms and laws had various history and individualistic features in all Ancient Near Eastern communities. For example, it did not need so much codification in the Ancient Egypt because by their status and positions held in the society, “pharaohs were the laws themselves”. By contrast to this, in Ancient Rome the formal principles of normative laws were more rigid and included the private and public norms separately. It is assumed that the relations among classical systems of Jewish, Greek and Romanian normative rules and laws were not directly created, but evolved through the diversity of social stratifications, confrontations, history of science, religion, politics, and contractual relations. They also reflected the writing system and the status state regimes, as well as the processes of transitional peculiarities to a class society.*

*Summarising the theoretical framework around the genesis of establishment of norm and laws we may conclude that, their antiquity is characterised by vagueness and ambiguities and they can only be understood through the modes of thoughts of present.*

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