Between Cosmic Order and State Law: A Comparative Analysis of Justice Systems in the Ancient World

1.0 Introduction: On the Origins of Justice and Mediation

This contribution aims to explore the deep roots of conflict management and justice administration systems through a comparative analysis of some foundational civilisations of the ancient world: the Sumerians, China, India, Egypt, Greece, and Rome. To these, an analysis of the Albanian Kanun will be added, which serves as a crucial bridge between customary practices and the birth of modern mediation theory. Understanding the origins of these mechanisms is not merely an academic exercise; it represents a strategic step for appreciating the historical evolution and structural complexity that characterise modern legal systems. By analysing how these societies addressed the universal need to resolve disputes, we can shed light on the foundations of our own legal thought, discovering that formal procedures and alternative methods have always coexisted in a hybrid system, "contaminating" each other.

The central thesis guiding this analysis is that, despite the extraordinary variety of solutions adopted, a common evolutionary trajectory emerges. This trajectory moves from primordial models of justice, deeply rooted in the community, the sacred, and divine order, to progressively more structured, formalised, secular, and centralised systems under state control. This shift, though not linear, reflects increasing social complexity, the birth of private property, and the centralisation of political power, laying the foundations for the principles that, through the Enlightenment, would define modern mediation.

The document is structured to guide the reader through this historical journey. We begin with a detailed analysis of individual models of justice, then proceed to a comparative analysis highlighting structural similarities and differences. Finally, a synthesis will trace the overall evolutionary trajectory, from communal and divine origins to the affirmation of state law and its philosophical codification. We open this exploration starting with Mesopotamia and the Sumerian civilisation, where we find some of the earliest evidence of an organised justice system.

2.0 Models of Justice in the Ancient World: A Detailed Analysis

Each ancient civilisation developed a unique approach to justice—a system not as a theoretical abstraction, but as a direct reflection of its social structure, religious beliefs, and economic needs. Justice could be a ritual to appease the gods, a mechanism to preserve community harmony, or a tool to consolidate the power of an emerging elite. Analysing each model, with its key figures and procedures, will provide the fundamental building blocks enabling us, in the next section, to construct a comparative synthesis and understand broader evolutionary

dynamics. Our journey begins in Sumer, where justice oscillated between the divine and the royal.

2.1 Sumer: Justice Between Matrilinear Deities and Patriarchal Order

The foundation of Sumerian justice was intrinsically divine, but its conception underwent a profound transformation that reflected an epochal change in social structure. In an archaic phase, associated with a matrilinear society, justice was bound to female deities such as Inanna, the great mother, goddess of fertility, justice, and vengeance. This model expressed a collaborative social dynamic. Later, between the third and second millennia BCE, the assertion of a patriarchal order imposed by the male deity Marduk took place. Mythology symbolically records this transition through two crucial murders: the killing of Dumuzi, Inanna's consort, to prevent an alliance between the two deities, and that of Tiamat, goddess of primordial chaos. With these acts, Marduk "restores order", inaugurating an era of monolatry in which a supreme god dominates the others, and political, social, and economic power is held by men.

The structure of the Sumerian-Babylonian judicial system was hierarchical and multifaceted:

- The king held competence over the most important cases, a feature that would remain constant in many later civilisations.
- An assembly of elders ("lukal") assisted the king, playing a consultative or, in some cases, decision-making role.
- Priests had a significant judicial role, and temples often served as courts.
- The appointment of specific judges to handle individual cases dates back to the Babylonian period, marking a step towards greater specialisation.

A figure of extraordinary interest, anticipating modern practices, was that of the Mashkim. These officials were multifaceted, holding roles comparable to those of notary, bailiff, examining magistrate, and, above all, mediator. Their primary task was to assess the merits of a case before it reached court. At this preliminary stage, Mashkim helped the parties resolve their disagreements independently. If mediation failed, the case proceeded to formal judgement. To fulfil their function, they had to possess qualities also essential for a modern mediator: impartiality and neutrality, and they could only make proposals that the parties were free to accept or reject. Historical sources indicate that their number was fixed at 100.

In summary, the Sumerian system represents a fundamental early example of the coexistence of divine justice, royal power, and pre-trial mediation mechanisms. It forms an ideal bridge towards the analysis of the Chinese system, where the ideal of community harmony will play an even more central role.

2.2 China: The Pursuit of Collective Harmony (hé)

In early Chinese Neolithic societies, based on agriculture and strong clan ties, the supreme value was not individual right but collective harmony (hé). Group survival depended on balance and cooperation—a past that Confucius would later idealise. According to his philosophy, the interests of the community and the family must always prevail over the individual. Conflict (lì)

was seen not as a clash of rights, but as the product of poor family upbringing—a shame that befell the entire household.

This conception began to change with the rise of sedentary agriculture, which led to the accumulation of wealth and the birth of private property. The resulting social stratification created structural inequality and an elite that needed to protect its interests. It was in this context that the state was born, not to preserve harmony, but to manage conflicts between divergent economic interests and to control an ever-larger population no longer bound by kinship.

This transition gave rise to two distinct approaches to justice, which would coexist and merge over the centuries:

- Community justice (pre-state): based on the ideal of harmony, its aim was not to punish but to restore balance. The most effective sanctions were social pressure and shame (xiū) for having disappointed the family and community. The preferred solution was compensation to make good the victim's loss—a corrective, not punitive, approach.
- Legalist (state) justice: With the ascent of dynasties and the need for centralised control, the Legalist school emerged. Law (fǎ) became an instrument of power to strengthen the state. This system was characterised by extremely severe punishments (law of retaliation, mutilations), collective guilt, and the use of terror as a deterrent.

The synthesis of these two approaches was realised in the imperial system, particularly from the Han dynasty onwards. This hybrid system (lǐ-fǎ) combined the moral persuasion of rites (lǐ), of Confucian origin, with the coercion of a detailed and written legal structure (fǎ). The structure was Legalist, with defined codes and penalties, but its application was tempered by the search for a solution that, at least formally, preserved social harmony.

In conclusion, despite the emergence of a powerful state apparatus and a coercive legal system, the ideal of collective harmony has remained an ethical and political beacon for millennia. This conception of a social order reflecting a greater equilibrium finds a significant parallel in the notion of cosmic order present in India.

2.3 India: Justice as a Reflection of Cosmic Dharma

The main reference text for understanding justice in ancient India is the Manava-Dharmasastra, known as the Code of Manu. It is essential to clarify that it is not merely a code of laws in the modern sense, but a comprehensive treatise on dharma: the cosmic order, duty, moral law, and righteous conduct that every individual must follow.

The Indian approach to justice was strikingly psychological. Verses 25 and 26 of the Code of Manu instruct the judge (pradvivaka) to "discover the minds of men by means of external signs". He had to be a true "detective of the human psyche", interpreting tone of voice, facial colour, posture, and gestures to grasp the "entire thought" and unmask falsehood. This system anticipates by millennia modern concepts of behavioural analysis, starting from the premise that falsehood creates an internal dissonance that inevitably manifests in the body.

The king was the supreme guarantor of dharma, and his duty was to maintain order and protect his subjects. For dispute resolution, he had four "upaya" (expedients) at his disposal, to be used in sequence:

1. Sāma (conciliation/persuasion): the first and preferred option, based on dialogue and diplomacy.
2. Dāna (gift/compensation): offering compensation to end the dispute peacefully.
3. Bheda (division/sowing discord): a strategic tactic to weaken opponents.
4. Daṇḍa (punishment/force): military force as the last resort.

Sāma was considered the noblest expedient, reflecting an ideal of harmony with strong analogies to the Chinese concept of Hé. Justice, therefore, was not just the application of a rule, but an act to restore a balance that was both social and cosmic. A similar concept of a universal order to be maintained on Earth is also found in Egypt, embodied by the goddess Maat.

2.4 Egypt: Justice as the Maintenance of Maat

At the heart of Egyptian civilisation was not a code of laws, but a universal principle: Maat. She represented cosmic order, truth, justice, and balance—the life force that regulated the Nile's cycle, the movement of the stars, and human conduct. Her opposite was Isfet: chaos, falsehood, and injustice. The fundamental duty of every Egyptian, from pharaoh to the humblest peasant, was to preserve Maat and repel Isfet. An unrepaired injustice was a victory for chaos that threatened the entire society.

The structure of Egyptian justice was a sacred hierarchy in service of this principle.

- The Pharaoh was the "lord of Maat", the supreme guarantor of cosmic order on Earth. His decisions were not acts of a despot, but expressions of Maat, and dispensing justice was a religious duty.
- The Vizier, the highest state official, was the "priest of Maat" and head of the judicial system. Instructions to him urged absolute impartiality, "the same for the known and the unknown".
- Local courts (Genbet), composed of notable citizens, managed daily disputes (contracts, inheritance, petty theft). Their primary aim was often reconciliation and compensation, to restore social harmony in accordance with Maat.

An emblematic example of practical justice in service of Maat was the work of the Arpenodapti ("rope-pullers"; later surveyors in Roman times and finally modern geometers). Every year, Nile floods erased field boundaries. These technicians, using ropes and geometric principles, restored boundaries. This was not merely a technical act, but a sacred act of justice, fundamental for preventing land disputes and literally re-establishing the order of Maat on the territory.

The concept of justice was deeply influenced by the judgement of the afterlife, the psychostasia (weighing of the heart). This belief explains the complete absence of lawyers in Egyptian society: each individual was solely responsible for their actions and had to justify

them before the court of Osiris. During this otherworldly judgement, the deceased's heart was weighed against the feather of Maat. To pass the test, the deceased had to recite the 42 negative confessions ("I have not stolen", "I have not slandered"), a true code of ethics guiding conduct in life to remain in harmony with Maat.

In conclusion, Egyptian justice was intrinsically religious and cosmic—a sacred duty to maintain the world's balance. This indissoluble link with the divine begins to crack in the Greek world, where justice becomes progressively more earthly, a pillar of the civic life of the polis.

2.5 Greece: From Private Vengeance to People's Justice

The path of justice in Greece, especially in Athens, represents a paradigmatic evolution from private vengeance to a system founded on written law and public arbitration, without ever fully abandoning its privatised nature.

In the archaic period, conflict resolution relied on two main mechanisms:

- Vengeance (dikē): the right and duty of the family group (genos) to take justice into their own hands. The act, regardless of intent, contaminated the community and required purification.
- Settlement with compensation (poinē or aidesis): the offended family could refrain from vengeance in exchange for compensation in goods or money. This was a genuine private contract, whose execution was guaranteed by honour and one's word. The community, as illustrated in the famous scene on Achilles' shield in the Iliad, did not impose justice but acted as arbiter and legitimised the solution agreed between the parties.

The "great turning point" came in the 7th century BCE with legislators like Draco in Athens and Zaleucus of Locri in Magna Graecia. The written codification of laws removed justice from the discretion of aristocracies, who administered oral law. Law became public, certain, and equal for all. Zaleucus, in particular, introduced the principle of fixed and proportionate penalties, eliminating judicial discretion and laying the foundations for objectivity in law. Tradition attributes to him the introduction of the mandatory attempt at conciliation before a lawsuit could be filed.

The judicial system of classical Athens (5th–4th centuries BCE) developed unique features, aimed at promoting concord (homonoia) and discouraging litigation.

- In the preliminary phase (anakrisis), a mandatory attempt at conciliation (diallage) was required.
- Every citizen at 59 had to serve a year of compulsory civic duty as a dietetes (public arbiter).
- There were economic disincentives (parastasis, itēmoria) to discourage frivolous lawsuits, such as heavy fines for those abandoning a trial or failing to obtain a fifth of the jury's votes.

The distinctive character of Greek justice was its hybrid nature: the initiative was always private (there was no public prosecutor), but its administration was a public affair. Above all, unlike

other civilisations, justice was not administered by priests, kings, or bureaucrats, but by the sovereign people through randomly selected popular juries. Importantly, laws were not regarded as consolidated doctrine but were treated as “means of proof”. The logographers, orators who wrote speeches for the parties, as sources report, “invented them outright” to persuade the jury, highlighting the rhetorical and non-professionalised nature of Athenian justice.

The Athenian model thus represents an original path—a compromise between the archaic instinct for vengeance and the democratic ideal of law. Reconciliation was considered the true victory for the polis, and the trial an extreme resort. A different evolution would occur in Rome, where law would professionalise in an unprecedented way, becoming a genuinely secular science.

2.6 Rome: The Evolution from Sacred to Secular in Law

At its origins, justice in Rome was not a matter for judges, but for the gods. It was based on the mores maiorum, the customs of the ancestors—an ensemble of moral obligations such as pietas (respect for gods and family), fides (loyalty to one’s word), and pudor (shame for breaking the rule). The primary objective was to maintain the pax deorum, peace with the gods. In this context, failing to seek conciliation was a religious offence. The pontiffs, as priests, were the only custodians and interpreters of this sacred-legal knowledge.

The publication of the Twelve Tables (circa 450 BCE) marked the pivotal moment. The written codification transformed law from secret, aristocratic knowledge into a public system, certain and accessible to all. This process initiated a progressive secularisation of the legal system, leading to the rise of the class of jurists (giureconsulti)—lay experts who, through their opinions (responsa), constructed the imposing architecture of classical Roman law.

Even the central figures of the Roman process reflected this particular evolution and differed markedly from their modern counterparts.

- The iudex was not a professional jurist, but a respected citizen, chosen as arbiter to decide on the facts of the case, based on common sense.
- The patronus (like Cicero) was not a legal representative with a power of attorney, but an influential orator who “spoke in favour” of a party, using rhetorical skill to persuade the iudex.

Rome developed an extraordinary variety of figures dedicated to mediation and conciliation, underscoring the centrality of these practices in social and commercial life:

- Conciliatio: term used for religious and matrimonial harmony.
- Negotiatio: mediation and negotiation activity among merchants, bankers, and financiers.
- Mediatio / proxeneta: figure putting two or more parties in contact to conclude a deal, similar to a modern business mediator.

- Disceptatio domestica / disceptator: a form of evaluative conciliation, often conducted by a friend, relative, or jurist to resolve private disputes. The disceptator was a "moderator of facts and decisions".
- Interpres: a paid conciliator.
- Sequester pacis: a conciliator who could also act as judicial depositary.
- Publicae gratiae sequester: a mediator intervening in official reconciliations of great importance, such as between patricians and plebeians.

The nature of the Roman process was predominantly private. The summons to court (vocatio in ius) was a private act: the plaintiff literally had to find the defendant in a public place and order him to follow. The considerable practical difficulties of this procedure, combined with a strong sense of honour, strongly encouraged recourse to domestic conciliation attempts (disceptatio inter paretes). This preference for the private route is vividly illustrated by Macrobius's critical description of the Roman iudex, often portrayed as drunk, bored, more interested in food than justice, and inclined to urinate in alleys on the way to the forum.

In conclusion, Rome, while developing the most secular, technical, and professionalised legal system of the ancient world, always maintained conciliation as a fundamental pillar of dispute resolution, relegating the formal trial to the role of last resort.

2.7 From Vengeance to Negotiated Forgiveness: The Albanian Kanun and the Roots of Modern Mediation

A fundamental chapter in the history of conflict management, serving as a bridge between ancient customs and modern theory, is represented by the Kanun of the Albanian mountains. Its roots lie in Illyrian culture, based on the principle that "all men are equal and good" and, consequently, no man can judge another without their consent. In such a system, the only response to a grave offence was blood vengeance (gjakmarrja), a duty of honour.

A crucial turning point came in the mid-15th century. The two Albanian leaders, Skanderbeg and Lek Dukagjin, had to unite against the Ottoman Empire. Skanderbeg, influenced by Western humanism, forgave a traitorous lieutenant and proposed inserting the possibility of forgiveness (falja) into the Kanun. After heated debate, a historic negotiation was reached: forgiveness was granted, but under a condition requested by Dukagjin—if chosen, vengeance could be extended to all male relatives of the offender.

This compromise gave rise to a new social dynamic: alongside vengeance, the possibility of an agreement mediated by "good friends" (miq të mirë) emerged. These mediators did not impose a solution, but facilitated dialogue to repair wounded honour and prevent bloodshed. Their role was crucial in transforming a potentially deadly conflict into reconciliation.

This ancient customary practice had a decisive and direct influence on the birth of modern mediation. In 1765, the German Enlightenment philosopher Christian Wolff, fascinated by the practices described in the Kanun, translated its principles into a philosophical-legal system. Wolff provided the first modern and systematic definition of mediator and mediation, codifying the fundamental principles that still guide practice today: impartiality, party self-

determination, voluntariness of the process, and the prohibition for the mediator to impose solutions. The Kanun, therefore, is not just a historical relic, but the direct source from which the Enlightenment drew to formulate the theoretical foundations of contemporary mediation.

3.0 Comparative Analysis: Structural Similarities and Differences

Having examined the individual justice systems, we can now proceed to a cross-sectional analysis. This comparative approach allows us to move beyond cultural specificities to identify recurring patterns, surprising similarities, and fundamental differences in approaches to conflict resolution. We will compare the source of legal authority, the main actors in the system, and the preferred resolution mechanisms.

3.1 The Source of Legal Authority: Divinity, Community, or State?

A first, fundamental element of differentiation concerns the source from which law and justice derive their legitimacy. We can identify three main models:

- Divine and cosmic order: In Egypt, India, and archaic Rome, justice was a direct emanation of a higher order. In Egypt, an injustice was a violation of Maat, an act that strengthened chaos (Isfet) and threatened the balance of the universe. In India, law reflected dharma, and its observance was a cosmic duty. In Rome, before secularisation, it was the mores maiorum that dictated conduct to maintain the pax deorum. In these contexts, the offence was not only against an individual, but against the entire religious and cosmic order.
- Community and tradition: In other systems, authority primarily derived from the community and its unwritten norms. In pre-state China, justice was maintained through social pressure, the ideal of harmony (hé), and the fear of shame (xiū). In archaic Greece, the system was based on family vengeance (dikē), a mechanism regulated and legitimised by community consensus, which acted more as arbiter than enforcer.
- The state and written law: The rise of centralised political structures marked a watershed moment. Law became a tool of state power. The Chinese Legalist approach (fǎ) used draconian punishments to bolster central authority. This transition was driven by the shift to sedentary agriculture and the emergence of private property, which created structural inequality and required a centralised power to protect elite interests. In Greece, the written codification of laws by Draco removed justice from aristocratic discretion, making it certain and public. In Rome, the Twelve Tables had a similar effect, transforming sacred and secret law into secular law accessible to all citizens.

3.2 The Actors of Justice: Priests, Bureaucrats, Elders, and Citizens

The diversity in sources of authority is directly reflected in the nature of those called to administer justice. The following table summarises the main judicial actors in each civilisation.

Civilisation	Main Judicial Figures
Sumer	King, priests (in temple-courts), assembly of elders (lukal), mashkim (pre-trial mediators).

Egypt	Pharaoh (guarantor of maat), vizier (head of the judicial system), local courts (qenbet) composed of notables.
India	King (guarantor of dharma), judges (pradvivaka) specialising in psychological analysis.
China	Officials and bureaucrats of the imperial state apparatus.
Greece	Sovereign people (randomly selected popular juries), dietetes (public arbiters).
Rome	Pontiffs (in the archaic era), lay jurists, iudex (private citizen as arbiter of facts).

Clear structural differences emerge from the table. On one side, we have priestly and royal-led systems, such as in Egypt and Sumer, where justice is closely tied to religious and monarchical power. On the other, we find bureaucratic systems, as in imperial China, where justice is a tool of state administration. Finally, civic participation models stand out, unique in the ancient world: Greece, with its direct democracy exercised through popular juries, and, in part, Rome, where a private citizen (the iudex) was called to decide based on the facts.

3.3 Resolution Mechanisms: The Primacy of Conciliation

Despite deep structural differences, a surprising similarity emerges: almost all ancient civilisations regarded formal proceedings as an extrema ratio—a solution to be avoided if possible. Conciliation and mediation were almost universally preferred as the primary method for resolving disputes.

- In Sumer, the mashkim had the explicit task of helping the parties reach an agreement before going to court.
- In India, sāma (conciliation) was the first and most noble expedient available to the king.
- In Egypt, local qenbet courts primarily sought reconciliation to restore social harmony.
- In Greece, the attempt at diallage (conciliation) was a mandatory phase of the Athenian procedure.
- In Rome, the difficulties of the vocatio in ius and the strong sense of honour favoured domestic conciliation (disceptatio domestica).

This preference for conciliation was motivated by two main factors. Firstly, it was deeply tied to cultural ideals of social harmony (Chinese hé, Greek homonoia, Roman pax). Formal disputes created permanent rifts in the social fabric, whereas an amicable settlement repaired them. Secondly, there were practical reasons: legal proceedings were expensive, uncertain, and socially disruptive. Conciliation represented a faster, cheaper, and more sustainable route for the community.

4.0 The Evolutionary Trajectory: From Community to State, From Divine to Secular

Returning to the central thesis of this article, the analyses conducted so far allow us to summarise the evidence and more clearly trace the dominant evolutionary trajectory of justice in the ancient world. Although each civilisation followed a unique path, it is possible to identify two macro-trends that, intertwining, shaped the transition from archaic to classical systems: the secularisation of legal authority and its centralisation in the hands of the state.

The Shift from Divine to Secular

The first major transformation concerns the gradual separation of legal authority from the purely religious sphere. Initially, law was indistinguishable from divine precept. In Sumer, we see this change symbolised by myth: the shift from the collaborative order of the goddess Inanna to the hierarchical order imposed by the god Marduk, foreshadowing royal written codes. The clearest example of this evolution, however, is that of Rome. Here, legal authority shifts tangibly from the pontiffs, custodians of sacred and secret knowledge, to lay jurists, experts in a public, rational civil law. Law, while maintaining a moral foundation, becomes a human science—a product of reason and legal technique.

The Shift from Community to State

The second trend, parallel and connected to the first, is the transition from informal social control managed by the community to justice administered and imposed by the state. In archaic societies, such as Homeric Greece or Neolithic China, conflict was managed within the group through mechanisms such as regulated vengeance or social pressure. With increasing social complexity and the concentration of power, the state claimed the monopoly of justice. The imposition of written codes (such as the Babylonian ones or Draco's laws), the creation of state courts, and the application of standardised penalties (as in the Legalist system of the Chinese empire) are all manifestations of this process. Justice was no longer a private affair to be negotiated, but a public function to be administered to guarantee order and central control.

This double evolution, with exceptions and non-linear paths, represents the dominant historical trend that laid the foundations for modern legal systems. Justice, born as a religious and community duty, was transformed into a right administered by a secular and centralised state authority.

5.0 Conclusion: The Legacy of Ancient Legal Systems

The comparative analysis of justice systems in the ancient world has revealed a landscape of extraordinary complexity, characterised by a hybrid system in which formal proceedings and negotiated resolution have always coexisted. We have observed how the pursuit of harmony and the preference for conciliation were common elements across distant cultures, from Rome to China. At the same time, fundamental differences emerged regarding the source of law

(divine, communal, or state), the role of actors (priests, citizens, bureaucrats), and the degree of professionalisation of law.

The legacy of these systems is still deeply rooted in our legal thinking. The ideal of equality of citizens before written law finds its first affirmation in Greece. The need for certain, public, and rational law, developed by lay experts, is the great legacy of Rome. The crucial importance of mediation as a tool for preserving relationships—an idea now central to modern ADR—was already a principle practised in nearly all cultures, from Sumerian Mashkim to Roman disceptatores.

However, the most significant discovery of this journey is that the roots of modern mediation are not merely a diffuse generic legacy, but are grounded in a precise historical and philosophical moment. The practice of conflict resolution, evolving over millennia, finds its turning point in the Albanian Kanun, where the negotiation between vengeance and forgiveness institutionalises the figure of the mediator as guarantor of peace and honour. It is this customary tradition, filtered through Enlightenment thought and the work of Christian Wolff, that is transformed into the universal principles of self-determination, impartiality, and voluntariness that today define mediation. The history of law thus reveals itself not only as the story of the tension between imposed order and negotiated fairness, but as a journey that, from Sumer to Rome and through the Albanian mountains, led to the codification of one of the most refined instruments for civil coexistence.