

## TRACING THE CRIMINAL JUSTICE: AN INQUIRY INTO THE ROOTS OF THE MODERN PENAL PRINCIPLES

Ersi BOZHEKU\*

**ABSTRACT:** *The question of understanding who we are finds its reply on the path of history, on the cultural and legal principles on which we rely. To understand the present we must begin from the past. The principles of criminal laws are different because every state has its own legislations: every topos has one nomos, although the western law category belongs to the entire world. The reason is not that they are simply the best, but because there have been an exchange of principles and concepts developed from the colonial times. Law was developed in three main historic societies: Israel, Greece and Rome. By analyzing their legislations, we can easily conceive some base principles of the modern criminal law. If we refer to Israel - the criminal law has its roots on the Bible (God gave Moses the ten tables on the Sinai Mountain). Even if is based on the principle that God's law cannot be changed, it is based in the idea that law must be interpreted in order to be properly applied. Based on this principle, Moses judges the people first and then appoints the judges. In the 12 century B.C. the concept of the interpretation of law was accepted and so was the administration of justice. The "Deuteronomy" – the book of Bible written after Moses – envisaged different punishments for those who commit murder willingly or not. In the 6 century B.C., the punishment is based on the psychological element of the offence. In Greece, in his book "Seven against Thebes" Sophocles writes the history of Troy, where the protagonist, Antigone, will be buried alive according to the written law, which prevails over the custom. In this time, the supremacy of the written law over customary law is known. After the revenge of his father, Orestes will be considered not guilty by criminal judgment because the votes of the judges are equal and if there is any doubt, the person in charge is considered free. Hence the Latin principle "in dubio pro reo". We encounter in ancient Rome a high level of legislation. If we refer to Orazi as described from Livio in the 2<sup>nd</sup> century A.C., he will not be punished for murdering his sister, according to lex sacrata, without a preliminary judgment, in this case by people. This is an affirmation of the principle of the rule of law and of separate powers.*

---

\* Lawyer in Roma, Associate Professor of Criminal Law – University of Tirana, Adjunct Professor of "Criminal Comparative Systems" "Sistemi penali comparati" – Telematic University "Pegaso" of Naples. Ph.D. in Criminal & Criminal Procedure Law – "Sapienza" University of Rome. President of "Association Internationale de Droit Pénal (AIDP) – Albanian National Group & Collective Members of Kosovo united in AIDP – Albanian People Group.

*As a conclusion, referring to these elements, it is affirmed that most of the main principles of the modern criminal law are encountered not only in Bekaria but also in the ancient times, as the Mediterranean culture is a homogeneous one.*

*This paper approaches some historic/mythological events in order to find the common and ongoing links between the past and the present in the background of criminal law.*

**KEY WORDS:** *the criminal law, the punishment, the historical patterns, the ancient punitive models,*

**JEL CODE:** *K 14*