

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 2nd 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*

Stories and myths in criminal patterns

(Historical continuity of criminal law in the ancient punitive models of to Israel, Greece and Rome: their influence in Albanian customary law)

1. HISTORY AS A MEANS OF RECOGNITION AND DEVELOPMENT. SOME METHODOLOGICAL COORDINATION: FINDING MODELS.

The history is the means by which we know not only the past of a nation, of a civilization or an era, but also the present. We cannot know who we are if we do not know where we came from. The study of the past constitutes the starting point to understand how we arrive at a certain moment of the history, as only the knowledge of the latter makes possible the achievement of the learning, and the construction of the future. The study of history is not only a simple recognition tool, but also, a means of development. This is particularly true in the field of law, generally, and the in the criminal law, particularly. Just as the knowledge of the past, the knowledge of the creation and the development of some basic principles of a legal system constitute elements to understand and, therefore, to contribute for the emancipation of the society. It is not surprising at all that many of those principles are the constitutive element of the "*humus*" of our culture. Even before than the legal systems, finding their roots in remote times, ancient ones, where the myth, the legend and history intertwine harmoniously, in that recognized as the culture of "ancient". Many of the principles that today form the basis of our legal apparatus are born and developed in the earliest time. A fact that indicates a historical, legal and cultural continuity, because - as Mayer says - "a close a relationship exists between culture and rules".

The idea of this paper is inspired by the desire to bring, in a high scientific and cultural level, a red thread that ideally connects some known events in the ancient mythology and history with those that constitute the bases of the modern criminal justice systems; among which we may find the Albanian legal system. The purpose of this paper is - by a diachronic comparison -to discover the lines of the development of the contemporary penal system, and its principles.

To realize this scientific and cultural operation we need, primarily, to establish some coordinates on the past that has to be taken as the object of the analysis. In the first place, it seems reasonable to make a clarification about the title. The word "model" that appears in the title should be specified in the sense that when it refers to "model" does not intend to the "system". System (for instance like justice) has a functional meaning, while the model is a concept that goes beyond the system. Because it has not to do with the qualities of a system, since it is the tool that guides the creation of the system, and this last finds its

basic features. In other words, the concept of the model has to do, at least with two coordinated entities: the first entity operates as the basic foundation; the second is modeled on basis of this foundation, thus realizing a system. By applying the idea on the current criminal system model, it can be said that in our culture there are some traces of several forms documented criminal justice that, in comparison with our current system, may be considered as models. Previous models, existing models, models that continue functioning, however referring points can help us to understand and to explain the concrete development and transformation of systems and legal institutions. Secondly, from the methodological point of view a further clarification should be made. When we talk about models for the discussion that has to take place, a famous expression of Max Weber is constituted by the premise at the introduction in his piece of work: "The Protestant Ethic and the Spirit of Capitalism", in which he explains the relations between the Lutheran Reform and development of the ethics of affairs founding the basis of the capitalist society, when writing "*nur in Okzident*" ("only in the West"); since only in these countries the great economist considered worthing his arguments, which – conversely –he did not deem suitable for those economic systems based on different principles from those of western countries. The illuminist expression of Weber ("*nur in Okzident* ") also should be considered in analyzing the development of criminal law in antiquity, due to the fact that not all historical realities represent a homogeneous culture and a tradition. We cannot for instance, take into account the history of the "Maya" of Latin America or the philosophical system of "Confucianism" in China to find common elements with our current system. Although there we might suspect that "Maya "have been one of the prosperous and developed people in antiquity", or that the "philosophical system" of Confucianism, constitutes the whole ethical, cultural and legal system of China.

In order to identify a historical, principal and cultural continuity we should focus our attention to those cultural and historical models who laid down legal elements in common with those that are the basic principles of the modern society. Since only in this manner we can avoid to fall under an Aristotelian "*ignoratio elenchi*".

2. NOTIONS ABOUT MODERN CRIMINAL LAW AND ITS ROOTS.

Before analyzing the historical patterns in which is created and developed the modern criminal law, primarily it deems reasonable, to answer to the question; what is criminal law? In our days, in the ordinary human experience, with the phrase "criminal law" are intended those human conducts against the authors of which the State authority reacts through the use of force of the police, with criminal procedures and finally with sanctions like deprivation of liberty or patrimonial sanctions such as fines. The criminal law constitutes a manifestation of state apparatus, which reacts against those human conductions that generally are called criminal offenses¹. Based on a deeper analysis we can say that the criminal law is that complex of rules foreseen by the legislature in the penal code, the criminal procedure code and other laws of the State, which have as a common element the repression of those human behaviours called criminal offenses. This

¹ However, this conception of criminal law, although accurate, is not sufficient because let aside an entire world: that of legal norms that govern the response of the state apparatus, which demonstrates its legal force by performing through the execution of the norms of law.

by the mean of the application of criminal sanctions provided for in the Penal Code and other penal laws. From the point of view of the socio-philosophical, criminal law on one hand, presupposes a universe of social rules, religious, ethical, etc., on the basis of which it finds its roots. On the other hand, it contributes for the protection, in a decisive way, for the development of the society in which it finds application, by playing a key role inside the general system of social control (Fiore, 2006). The latter may only be realised through the implementation of a system of social values recognized and accepted by the entire society². The criminal law, although in our days is very sophisticated, has the main purpose in orienting the society to those values that are the basis for the realization of a peaceful coexistence. To this end, several harmful facts to the individual or to the society are criminally forbidden and, if committed by the individual, the latter becomes subject to criminal prosecution and, at the end, subject to a criminal conviction. The purpose of this latter is not only the avoidance of dangerous individual from society, but also and primarily, on his re-education for the respect of those social values violated during the commission of the criminal offence (Ramacci, 2001) (Ramacci, 2003). From these few arguments, it clearly appears that the main objective of criminal law is the realization of a control through social consensus which primarily should be a spontaneous consensus, in particular, a practical consensus, in terms of respect of a general rules. To this purpose, it is necessary for the lawmaker knowing and realizing social needs at a certain moment of history by setting rules to which citizens will feel the need of in case of absence (Ramacci, 2001) (Ramacci, 2008). Since only in this way we can speak for a criminal law accepted by society. However while, in the today's society it belongs to the lawmaker the duty to read the feelings and the social needs, in order to build criminal laws that seek to punish socially harmful acts, in ancient times, criminal law arises spontaneously as the right of the individual in reacting against a suffered damage.

In antiquity, the first forms of criminal law arouse from the need to restore a suffered damage: a right affirmed by the need to achieve a balanced society (Alimena, 1910). In this framework, criminal law arises as a right to revenge, where the trial on the merits about harm of a fact, was left, firstly to the individual, afterwards to "the tribe". In few words to the social agglomeration in which he was part. Therefore, historically speaking the first rudimental of criminal law arose from the individual's need for social peace, which is for social peace within the group³. A given a constant throughout the history of criminal law is that: facts committed by human behaviours endangering or impairing the fundamental goods (assets) of the individual or the society are subject to repression by the

² We all agree that the legal assets (goods) as life or private property have a high value of such importance, which justifies, in case of their violation, deprivation of freedom for those subjects that by not conforming to the rules of conduct, namely they deny the abovementioned values. In other words, if a person realizes the murder of another individual, all we agree that such person should be held liable for the offense of murder and shall be criminally punished. All of us, express our consensus about the existence, and if necessary, on the application of punishment to the offense of murder.

³ In this perspective, we can say that, historically, ongoing needs of everyday life have brought about the formation of a system of prohibited facts and threatened punishments, long time ago before the man asked about how and why something prohibited by organized community and why is threatened application of punishment. This happens, in the area of criminal law, as well as in all fields of human activity, for the reason that the practical needs arise before and long ago before the development of scientific study begin: the needs to avoid or to remedy malice are arisen before scientific research and study of the phenomena, which are based on these behaviors.

community, which for these facts threatens and - in case of commission - apply a criminal sanction. This conclusion although (Ramacci, 2001) corny constitutes the essence of criminal law since antiquity to our days. Over the centuries many things have changed, many ideas and concepts of the past have given the floor to the most advanced ideas. The science of law has moved forward by delivering legal concepts and reasoning increasingly more sophisticated. However, the criminal law in its essential aspects has not changed, because ultimately the history of criminal law is nothing but the history of mankind. However, scientific accomplishment in the field of criminal law would illustrate the degree of civilization that a society or a nation has achieved it in a particular historical moment⁴.

To the question: which are the historical - cultural - legal models forming the basis of modern criminal law? We can answer: the modern criminal law finds its roots in three main *topoi*, which are Israel, Greece and Rome. It is about three models that, although diverge from each other, due to the fact that each state has its own laws, "each *topos* has *nomos*, they represent homogeneous elements on the basis of which we would admit the existence of a common cultural substrate. This last has influenced the ways of thinking of modern legal and that constitute the great intellectual-cultural tradition of all the "Mediterranean". These are the three main *topoi*'s over which we will focus the discussion that follows.

3. BIRTH AND DEVELOPMENT OF CRIMINAL LAW IN ISRAEL.

The criminal law in Israel arises from documental sources: its roots can be found exactly in the five books of the Bible (Old Testament)⁵ - known as "Pentateuch"- that constitute for the Hebrew people "the fundamental laws" so called "torah"⁶, which regulated the moral, social and religious life of people⁷.

Under the terms of the criminal law, while consulting the Bible we may learn that Moses, after liberated the people of Israel from the Egyptian oppression, along the way to the "promised land", receiving the 10 commandments at to the Mountain of God, sits

⁴ The criminal law represents the best terrain to develop a comparative historical analysis, because criminal law has as its object the protection of rounds of legal goods (assets) (so called legal goods or judicial interests or legal assets) which constitutes very high values for society and for this, they require a stronger protection from legislator. It is about basic legal goods such as human life, private property, dignity, for which the protection through other legal means of civil (private) law or administrative law it is not enough, an additional intervention is necessary being more deep and strong: precisely in this context originates and develops criminal law. Criminal norms stems from the need (*extrema ratio*) and for this, before it becomes necessary, should be tried all the alternative ways to better protect law put in danger by means other remedies and different from that of deprivation of liberty.

⁵ The first five books are Creation (also known as Genesis, which begins with the origin of the world), stand (or exodus, which begins with the emergence of Israeli people from Egypt, Leviticus (or Levi, containing the laws of the priests of the tribes of Levi), Numbers, Deuteronomy (or second law).

⁶ Historians agree in order to have a much simpler text for consultation; the original text is divided into five equal length papyrus. From here derives its name given by the Greek context: "Pentateuch's" i.e. "Book with five volumes", while the Israelites called the "five-fifths of the law".

⁷ Pentateuch (while continuing to use the Greek term), is a "legislative corpus" which is thought to be carried out about 3,500 to 2,600 years ago on the path to lead a nation of religious and social "Nomad", farmers and breeders. It regulates all aspects of life of the people of Israel society and surprises for clarity and for the affirmation of a series of principles that we still find our days as under social and religious terms, as well as criminal justice.

every day from morning to evening giving people justice. His father-in-law, Jethro, after he looks what he does for the people, asked: "What do you do so for the people? Why do you sit alone, while people sit near you from morning until evening?"⁸ Moses replies: the people come to judge and resolve disputes and conflicts: in the end I make known to them the decisions and laws of God. Ietro replies that the manner he operates does not fit, as it is a hard work and it cannot be done alone. Therefore, he advises to choose some judge. To the question: how Moses must act to find judges, Ietro replies that it must choose between people, the fair persons judging correctly and in a reasonable manner. "These people will judge every case. If you will do this and the God's order, you will be able to resist and your people will achieve its objective of peace"⁹. Despite the legendary aspects of the Old Testament, leaving aside any judgment or religious belief, this biblical episode shows quite clearly that since in ancient times it has been felt the need to administer justice on behalf of the people, by the people who were able and capable to do it. This episode shows that biblical law, although based on the principle that the law comes from God and is not changeable, developed the idea of interpreting the law to be applied. Moses tries himself at the beginning and then assigns judges from the people. In this way is borne the figure of administration of justice, followed by the interpretation of facts based on reason, as well as by the reason aroused the interpretation of law. A sacral justice borne, however a human one, as alternative to the "divine" justice. Justice that derived by God, but was administered and applied by a man selected among the people. This aspect deserves to be evaluated, especially if we consider the history of criminal law until 1805 (the "Napoleon Code") administration of justice belonged to kings or feudal. The selection of judges was not effectuated based on preparation or legal merits, but on the basis of family background.

A highly significant moment in the history of criminal law in Israel is when the God gave to Moses "the ten commandments", in the Mount of Sinai. This circumstance, under the light of the history for law researcher, constitutes a key moment since it marks the transition from customary law to the written law, which transcend from the God. In the "Ten Commandments" (otherwise known as the alliance tables between God and the people of Israel, also known as "Decalogue" ten words) we may find, for the first time in writing, the protection of some of the fundamental good (values) for human life: "Do not kill, Do not steal, Do not bear false witness"¹⁰. These constitute some of the main "commandments" for the protection of fundamental values as life, property, justice, goods, etc., that we find protected throughout the modern criminal codes. Therefore, it may be surprising the actuality of these legislative predictions, especially if one considers that we have to do with pre-texts¹¹ written about 1200 years before the birth of the Christ¹². It is Worthing taking into account the criminal offense of homicide. Offence which we find disciplined since the Decalogue, where was established the distinction between intentional homicide punished with the death penalty, and negligent homicide (unintentional) which was punished with ostracism from the society and finding shelter in other cities¹³. If

⁸ Exodus 19:19.

⁹ Exodus, 19:23.

¹⁰ Exodus, 20:13; 20:15; 20:16.

¹¹ It is believed that Moses himself had written the books of Exodus and the Levite.

¹² It is believed that Moses himself had written the books of Exodus and the Levite.

¹³ Exodus 20:13; 21:25.

nowadays is considered that the intent is figured out in those cases where there is a configuration and a willingness to kill, these criteria are found in the Bible in the expression: "*precedent hatred*" or "*use of tools capable to realize death*"¹⁴. These elements show the existence of a killing desire. Interesting to note is the existence of the provision "six refuge cities" in Israel for individuals who have committed manslaughter. Moreover, it has been expressly written that: "*You shall build the road and will divide the territory that your Lord gives to you in inherence, so that each killer may find shelter in these cities. "the killer will be able to find shelter and save his live in these cases: anyone who has killed another unintentionally, without having previously hated him first, when he goes into the forest with his friend to cut wood and, while holding the ax to cut the tree, the iron ax escapes from his hands, and strike his fired who dies"*"¹⁵. The criminal offense of "unintentional homicide" for the Bible is not "worthy for the application of the death penalty", as result, the author could have escaped the "rage" of the family of the victim, without shedding "innocent" blood. In these cases, the killer, awaiting trial, could have found asylum in one of the six designated cities. If during the trial he was able to prove that the killing was carried out inadvertently, then his life was to be saved and continuing of letting him to live in the "*asylum city*" until the death of the high priest. During his stay in this city, family members of the deceased were not supposed to touch him, but if he was to be found out of the city, the family members of the victim regained the right to retaliation and, thus were able to legally kill him¹⁶. In contrast, if the defendant was known as responsible for intentional homicide, then the he was to be surrendered to the avenger of the "*shedded blood*" – for instance to a relative of the deceased in order to execute him. Intentional homicide was the only criminal offense for which was foreseen the personal "revenge" which, belonged although, only to a relative of the victim¹⁷. So, in case of intentional homicide then "*eye for eye, tooth for tooth, hand for hand, foot for foot, life for life*"¹⁸, so that others may learn from the talione principle.

Justice begins to function, not only as a means of revenge, but also as a social orientation. Conviction is not just a simple punishment for the author of the fact amounting to criminal offense, but starts beginning to be a general prevention means (making an example for the society to not commit any criminal offense) and also, a special prevention means (avoiding from the society socially dangerous subjects). Another aspect to be evaluated in the Bible is the existence of the principle of proportionality between facts amounting to criminal offense and its punishment. Emblematic, in this sense, is the discipline of theft. This criminal offense punished in ancient and modern legislations with punishment up to death, amputation of hands, beating the thieves etc. While in the Bible, the culprit for this criminal offense was punishable by a civil sanction: he should return the object of theft to the owner, by restoring the consequences of the harm with the measure of payment consisting in the sum of money amounting from two to five times the value of the object. The biblical principle known as the principle of taglione "*eye for eye, tooth for tooth*" for criminal offenses against property becomes "*thing for thing*" in addition with an economic penalty.

¹⁴ Second law, 19:4-6, Numbers 35:15-21.

¹⁵ Second Law 19:1-13.

¹⁶ Numbers 35:12-25.

¹⁷ Second Law 19:11-12, Numbers 35:21.

¹⁸ Second law 19:21.

The Law of Moses contained some essential principles, which are unknowing not just by almost all ancient legislations, but also even by much current legislations, referring to the system of proof, in which the criminal decision is based. No sentence could be given against a person, except testimony was based on at least two witnesses. This norm was envisaged not only for the death penalty¹⁹, but was applicable even to any civil or criminal penalty²⁰. In addition, in case of doubt on the issue of false testimony, the parties could ask to the judge to conduct a "careful investigation". For the witness committing false testimony the conviction was applying the harm "what he had in mind to commit against his brother"²¹.

In terms of punishment, in the Bible we may find three types of available penalties: death penalty, expulsion from the community, monetary penalty.

4. CRIMINAL LAW IN MYTHOLOGICAL GREECE AND ANCIENT ROME.

In ancient Greece is to be distinguished between legendary era (otherwise known as the heroic age) and historical era. In the legendary era, the right to punish was wont of the Zeus; the sentences were public or private if people or family were offended. The study of this period is possible by means of analyzing the Greek mythological stories, poems of Homer, the Aeschylus Sophocles, Tucidit, Herodotus tragedies, etc.

The most ancient source of Greek mythology that we find is that of "Seven against Thebe" and more exactly the myth of Antigone.

This myth is very significant as it has the protagonist those who are considered the parents of Trojan heroes: this act has been developed circa 1220-1230 BC, while the Trojan War occurred in the year of 1200 BC. Antigone is the last act of this piece of work, which speaks about the dramatic end of Oedipus, the Theban king. In the act of Antigone, the permanent authority and power conflict is being illustrated, or better saying in contemporary terms, the problem between written law and customary rules has been treated²².

Antigone wanted to perform a series of funeral rituals on the body of her brother Polince (who was killed from her other brother Etheokleus), although the king Kreonte had forbidden this funeral practice by a specific law (Kreonte's Edict) providing the death sanction for the violators. Antigone claims her intend not to respect this law, because it conflicted with the divine unwritten laws "*agrafoi nomoi*". There are very famous words of the young woman " ... *But for me it was not Zeus who promulgated that edict (Law), nor Justice who dwells among the Gods [...]. I follow the sacred and uncontrolled laws of the gods, laws that are unwritten, from those one day I'll receive the judgement [...]. I do not believe that your publication will be so powerful to oppose and to overcome the moral laws of the gods! ...* ". The guards informed the king for the violation of the law, and

¹⁹ Numbers 35:30; Second law 17:6.

²⁰ Second law 19:15.

²¹ Second law 19:16-19.

²² The myth of Antigone fascinates for dramatic complexity and richness. This tragedy has inspired the German philosopher Hegel in highlighting the ethical laws of conflict between the laws of the state, giving a high value of the latter, because - according to him - a state institution is more developed than the family one, being this latter more ancient and less developed.

Antigone was sentenced: she will be buried alive under the provisions of Edict of Kreont, in case when it is being violated.

What is interesting about this episode, is the birth of the idea that the written law has to be implemented: the law to be implemented, the punishment if the law is violated, the written law that applies even contradicts the customary rules of affirmative social tradition. This is how the affirmation of the idea of the supremacy of the written law, which ranks in the first line in the hierarchy system of source law rules²³.

Another more revealing mythological myth episode is that of Orestes, son of Agamemnon who avenges the murder of his father²⁴. Orestes it is still very young when Agamemnon, after returning from the Trojan War was killed by Aegisthus, lover of the mother. Elektra concerned for the fate of his brother, uncle shall entrust to his uncles Stofiu, king of Focides. After ten years Orestes comes back in Argo- capital of Mycenae-together with his friend Pylades, he avenges the killing of his father by killing Aegisthus and his mother Clytemnestra²⁵. What is interesting by this legend is the criminal proceeding, which Orestes is subject. Orestes is charged with a criminal ugly offense, for the murder of his mother (matricide). He will be tried before the Areopagus. The presiding judge is the Goddess Athena, the god of reason. The charges will be presented by Erins - female entities with snake in their heads that bring the soul of the deads, "thirsty for revenge" - emissaries of Goddess Themis, god of justice. Orestes defender will be Apollo who had shown him the path of revenge and will take the burden back of the defence during the proceedings. Orestes shall be found by the judging panel as innocent with the decisive vote of the Goddess Athens, which decides its discretion to abstain. The judging panel is divided: six judges recognize Orestes innocent, six others not. In an equality of votes, the idea prevails that Orestes doubt on the innocence are enough not to condemn him²⁶. The myth of Orestes conveys its political and ideological aspect. Characterize symbolisms that are highly significant in light of the birth of a series of basic principles of criminal law and the criminal process. A strong symbolic meaning has the formation of the judging panel. The sentence is not led by Dice, god of the court, not by Themes, god of justice, but from Athens, god of reason. Criminal proceedings arise as something that is related to the reason on which finds solutions. If justice, the desire to take revenge for suffered damage, the desire to close an open wound of crime, inspires the emissaries of Themis, the Erins; these desires find in the proceedings an impassable limit. This limit is the reason. Prosecution is not revenge, but a clash of reasons. Recognition of innocence of Orestes shows the triumph of reason. So, arises the principle that in case of doubt on the guilt/innocence of a person, it must be declared the innocence "*In dubio pro reo*".

In ancient Rome, cradle of civilization and the interpretation of the law (famous is Roman "*phrase nemo jurista nisi romanista*") there is a significant document written on history of Rome by Titus Livy. Livy was a historian, not a lawyer, but he shows the facts

²³ On criminal law in Greco-Roman antiquity, see: (Cantarella, 1991); (Cantarella, Milano, 1976).

²⁴ The episode is well known in the poems of Homer, though Homer does not explicitly cite episode Clytemnestra murder of his mother. The myth of Orestes will be taken and carried especially by Aeschylus, who will dedicate two tragedies its history, both part of the acclaimed autobiographical trilogy Orestes.

²⁵ According to some sources besides Agamemnon Aegisthus kills his son Orestes. (Petrelli, 2004).

²⁶ Orestes will turn free in his mountains in Mycenae where he will live for many years, where he will marry Hermione, daughter of Menelau, reigning over Argo. He will die in Arkadi from a snakebite.

with an accurate juridical absolute precision. The facts: the war between Rome and Alba Longes, under the reign of Tullio Ostilios of VII century BC. The story is familiar: since none of the two cities was able to defeat each other, was decided that the issue has to be resolved by a duel: three brothers against three brothers, Kuriaces of Alba Longes against Oriaces of Rome. The duel has been won by Rome, as one of the Oraces remained alive. What is interesting to note is the closing of the case, after the winning Orac kills her sister Oracia who was crying after seeing on the shoulders of brother the mantle of her fiancé Curiaac, mantle that she had sewed herself. Orac kills the sister after he interprets her cries as betrayal of the motherland, winner in the battle. However, with the murder of his sister, Orac had betrayed the Roman constitution, which provided for the conduction of a processus to a Roman civilian. Orac therefore had to be killed according to the "lex horrendi carminis" (law of the terrible revenge: death through beating with the whip), after the killing a Roman citizen, not pursuant to a court decision and who had realised "perduellio" considered Criminal act of betrayal of the homeland²⁷. Application of the law belonged to the king, Tulio Ostilio, Rex King Sacrorum oracle. The King will not apply the punishment, since according to him this is not a reasonable punishment against hero of Rome and therefore appoints two judges to try Orac. These latter condemn him, but not based on divine law, but on secular law, which could be blocked by means of "intercessio ad populum", listening of the people, and people owing versus Orac for the victory against Alba Longa forgives his life.

This episode shows how in Rome by a "divine" justice is passed in a "secular" justice. The historical epoch is the VII century BC, which correspond, in general lines, with the era in Israeli and Greece where is reached the secular models of justice. Nevertheless, in Rome, we found a further level: although the penalty remains horrible (*Lex horrendi carminis*), it cannot be applied when the people deems it unnecessary. This shows not only the transition from a criminal divine justice into a secular criminal justice, but also succeeding to achieve a popular awareness about the social function of the punishment.

5. CRIMINAL MODELS AND THEIR LEGAL-CULTURAL INFLUENCE: THE EXAMPLE OF ALBANIAN CUSTOMARY LAW.

The above-mentioned models have a very great historical value, as they have influenced the development of the criminal law in all of Mediterranean area. A concrete example is found in the Old Canon of Albania that is considered as the customary law of the Albanians.

Albanian Canon in general and the Lekë Dukagjini's Canon in particular has opted for principle of talion accepting the principle of "blood for blood". A principle that, as we were able to conclude, constitute the basis of Biblical criminal law. Like the Biblical Criminal Law, the Canon does not accept the principle of "blood for fault". Expressly its article 127 reads: "Blood for not blame shall not be made"²⁸. The Albanians' Canon determines that the blood cannot be taken in case of slander, insult, theft, threat or

²⁷ Livy never speaks for murder, but for high treason against the fatherland.

²⁸ Nyja 127, Kanuni i Leke Dukagjinit, Tho code of Leke Dukagjini, Albanian text collected and arranged by Shtjefen Gjeçov. Translated with an introduction by Leonard Fox. New York, p. 173.

injury²⁹. Very similar to Biblical law is also the criminal offense of unintentional homicide, which, according to the Canon shall not be pursued followed by with rifles. Like in our law, the Biblical authors of unintentional homicides must stay hidden for a long time, as we called the Canon, "the blood is hot" and until the issue could have been reviewed and well clarified. Canon (as well as the Bible, according to which the killer had to go in six cities around Israel awaiting trial) has foreseen that during the time that he lies hidden, presbytery decides whether the assassination was indeed unintentional. The strong biblical influence finds full confirmation on the fact that the Albanian Canons (like the Bible) knew not barbarous punishments typical of Byzantine law, sharia law, or other feudal states, such as amputation of hands, beheading, burning person, drawing the eyes, etc.³⁰ This testify and proves the strong biblical influence of punishment of the theft offense. The latter as we were able to ascertain previously before, in the Bible are punished according to the maxim "*thing for thing*", with the civil sanction of returning the item to the owner in addition to the payment of an amount of money. The same maxim and the same procedure we may find it at the Canon of Lekë Dukagjini, exactly with the criminal offense of theft. Sanctions for this criminal offence were provided in accordance with principle "two for one", principle that was applied as for small livestock and big livestock, as well as all the stolen items.

More aspects that are similar can be found between the Albanian customary law and revenge in ancient Greece, which we mentioned above. If we take into account the myth of Orestes, the latter kills mother - Clytemnestra - and uncle - Aegisthus – avenging his father's murder, similarly with the Canon of Lekë Dukagjini in article 124 (and ongoing) providing the principle blood feud that "*the price of life is one, for the good and the bad person*" (Kanuni , fărã an).

On the strong influence of the Roman criminal law on the customary criminal law of Albania may be adduced more arguments. Historians are of the opinion that the Albanian customary law existed in that period pre-roman Illyria (Meksi, 1969). In fact, as one of the four prefectures of the Roman Empire, Illyria had its autochthon customary law officially recognized by Rome. Several historical sources, as well as the famous Roman jurist Ulpian shows that the Roman governors of provinces adjudicated according to local law confirm this. Even after Caracalla law (since 212 AD), the criminal law continued to be applied in customary law in legal practice.

In the state of Skanderbeg, besides the right of the central government created by the criminal law Roman - Byzantine feudal, Skanderbeg also issued specific acts as the main sources of law (Luarasi, 1982), these acts demonstrate great cultural influence of the Roman law. In the field of criminal justice in particular customary act of criminal law, which recognizes the notions of crime (e.g. betrayal) or necessary defence. An episode of the history of the Albanian customary criminal law that proves the influence of the Roman criminal law over the Albanian criminal law, is the episode of trial of Hamza Kastrioti³¹ The Canon of Skanderbeg provided for some kind of death penalty as a punishment:

²⁹ Nyja 127, Kanuni i Leke Dukagjinit, Tho code of Leke Dukagjini, Albanian text collected and arranged by Shtjefen Gjeçov. Translated with an introduction by Leonard Fox. New York, p. 173.

³⁰ On the main aspects of Albanian Canons see: (Elezi, 1998).

³¹ This trial is too close to the trial of Orestes, during Tullio Ostil, although it should be noted that, unlike Orestes, Hamza Kastrioti, was not a hero but a traitor.

punishment by imprisonment, exile, expulsion, confiscation of property, feud, etc. The death penalty was applied for serious crimes such as treason, espionage, etc. Hamza Kastrioti traitor of the Arber state, will be tried for the crime of betrayal, he will be sentenced to death, but Skanderbeg will replace the punishment with a sentence of imprisonment. However, Skanderbeg decision was not without unlawful, that is breaching customary rules- on the same grounds like the Roman law, whereas the king or magistrates- could reform the judgments or the application of punishments, in accordance with the law, the Albanian King could commute the type of punishment as foreseen by the customary law.

We could conclude that from the legal point of view, or rather historical-juridical point of view, the biblical criminal law, Greek law and Roman law have exercised a great influence on the development of Albanian criminal law.

6. CONCLUSIONS.

The tradition of Albanian customary criminal law demonstrates the great influence that had plaid the three historic models object of this paper for the development of criminal law in the Mediterranean. This development may be encountered in a uniform manner in other states for the reason that the sources of European law and foundations of European criminal law are similar.

As we have been able to ascertain the three reviewed models have developed with one another, and as consequence, the influence they have had in the criminal law of the various countries of Europe is more or less the same. This similarity between the models and their influence on criminal patterns of each country of Europe, makes that today criminal systems of any European country can undergo or can be described, without systematic perturbation, by rules that do not come from "*toposi*". Therefore, do not come from the culture of the territory in which they apply, but derived from international law subjects such as the UN, the EU, etc. In spite of the laws that come from these entities are included in the legal system of different states in harmony, because they have the same legal form of the local model. They have the same structure of the states whose laws address.

In conclusion, the continuous harmonisation of national legislations, reveals the existence of several judicial common models which underlie law for common descent, not only geographical, but also cultural one, which are the base of our principles not only in the criminal filed.

REFERENCES

- Alimena F., *Diritto penale*, Napoli, 1910.
Cantarella E., *I supplizi capitali in Grecia e a Roma*, Milano, 1991.
Cantarella E., *Studi sull'omicidio in diritto greco-romano*, Milano, 1976.
Elezi I., *Zhvillimi historik i legjislazionit penal ne Shqiperi*. Tirane, 1998.
Elezi I., *E drejta zakonore penale e shiptareve*, Tirane, 1983.
Fiore C., *Diritto penale*, Torino, 2006.

- Kanuni i Leke Dikagjinit, Tho code of Leke Dukagjini, Albanian text collected and arranged bu Shtjefen Gjeçov. Traslated with an introduction by Leonard Fox. New York.
- Luarasi A., *E drejta ne shtetin e Skenderbeut*, ne “*Drejtesia Popullore*”, n. 3, 1982.
- Meksi V., *Problemi i antikitetit te institucioneve juridike te shqiptareve*, ne “*Konferencen e dyte te studimeve albanologjike*”, Tirane 12-18 janar 1968, II, Tirane, 1969.
- Ramacci F., *Corso di diritto penale*, Torino, 2001.
- Ramacci F., *Reo e vittima*, ne “*Indice penale*”, 2001, and *Iuris vincula, Studi in onore di M. Talamanca*, Torino, 2001.
- Ramacci F., *La tutela penale della persona nelle zone di penombra delle garanzie costituzionali (in vista di una possibile riforma)*, ne *Giurisprudenza Costituzionale*, 2003.
- Ramacci F., *I delitti di omicidio*, III ed. Torino, 2008.
- Petrelli F., *La nascita del processo accusatorio*, Rome, 2004.
-
-
-