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FROM THE ERINYES TO THE EUMENIDES: HOW VENGEFUL GODDESSES STILL BARK LIKE DOGS AT A PAST THAT DOES NOT PASS

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ABSTRACT: The initiative to turn off the past and allow the march of time forward is often attributed to the Greeks, because of the composition of the tragedies. Artistically, *Eumenides*, who composed the *Oresteia* trilogy of Aeschylus, represents the invention of justice and of law itself: in the narrative, a court was first institutionalized to judge blood crimes based on a rational discourse, putting an end to the vindictive system known as the *Curse of the Atreidai*. Would it be correct to say that Orestes's distant judgment is still representative of the end of the cycle of revenge, or even that the contemporary systems of law continue to reflect those primitive systems, as if the three drops of Uranus' blood, which gave birth to the Erinyes, still dyed the Earth, preventing the past from happening? The objective of this article, while recognizing the contribution of the Hellenes, is to demonstrate that, on the plane of reality, the conversion of the Erinyes into Eumenides did not complete its cycle: there is a past that does not disconnect from the present and the long memories of the avenging goddesses still cry out for revenge, hindered by Orestes' trial, but it is difficult to deny that the State, by punishing, in a given perspective, does not continue to reproduce feelings and practices of revenge, similarly to the curse of the Atreidai.

KEYWORDS: tragedy; revenge; private justice; public justice; incomplete passage.

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PROLOGUE

Crimes of blood already existed even before the rustic man produced his first artifact, and there is no one who seriously feeds the expectation that they will one day cease to exist. It is in Greek mythology that we find one of the explanations of what is behind the crimes involving members of the same family group, in what has become known, and has come down to the present day, as the *curse of the Atreidai*, the story of a cycle of vengeance that happens, generation after generation, as a way of doing justice. The tragedy of the Atreidai is told by Aeschylus, Greek playwright of the fifth century BC, in *Oresteia*, made up of three pieces: *Agamemnon*, *Choephoroi* and *Eumenides*, with emphasis on the last one, because it is the narrative that represents the end of the vengeful system of justice, when, on the presidency of Palas Athena, The Greek goddess, the first court in history judged Orestes for the murder of Clytemnestra, his mother, which repels the desire for revenge and uses rational criteria to punish blood crimes.

Among other legacies, in addition to the tragedies, the Greeks are blamed for the initiative of turning the past off and allowing time to go forward. In *Eumenides*, there is the literary representation of the invention of justice and, to a certain extent, of law itself: a court was first institutionalized to prosecute blood crimes based on a public discourse, putting an end to the vindictive justice system known as the *curse of the Atreidai*.

After more than two thousand years, would it be correct to say that Orestes's judgment is, in fact, representative of the end of the revenge cycle as a form of justice, or is it that contemporary systems of law, with their civilized processes of punishment, still reflect the primitive vengeful systems, in a word: the three drops of blood – the founding mothers – spilled from Uranus that gave rise to the Erinyes, the avenging goddesses, still dye the earth, and because of that the past does not pass?

Here is the purpose of this article: to demonstrate, without neglecting the great contribution of the Hellenes, that on the plane of reality the conversion of the *Erinyes* into *Eumenides* did not complete the planned cycle: there is a past that does not disconnect, as if the long memories of the avenging goddesses still to cross the corridors of the souls of the victims and relatives, crying out for revenge, interdicted, certainly, from the image

of the judgment of *Orestes*, because it is impossible to deny that the State, with the right to punish, in a given perspective, does not continue to reproduce feelings and practices of revenge, which recall the *curse of the Atreidai*.

In the first act of this study, divided into two parts, the Greek tragedy will be revisited, at which point we will first discuss the Greek legacy and its contribution to the formation of Western culture, and then rescue the history of the *curse of the Atreidai*, when it will be shown that through the tragedies, the Greeks invented law and that one of them, the *Oresteia*, of Aeschylus, symbolically, represents the invention of justice.

In the second act, we will try to describe Orestes's judgment in *Eumenides*, the third part of the trilogy, assigning it the status of zero mark of the institutionalization of justice, as it offers a conception of justice hitherto unprecedented in history, mainly due to its symbolic meaning: the end of revenge as synonymous to the realization of justice, a passage that also marks the transformation – albeit incomplete – of the Erinyes, who until then had been avenging goddesses in Eumenides, the goddesses of benevolence and forgiveness, who assumed a new function in the *polis*, in a demonstration of the overcoming of private justice (revenge) by public justice.

In the third and last act, in general terms, the theme is the difficulty of detaching from the past, as the primitive vengeful systems still provoke resonances in the modern systems of law and administration of justice.

Indeed, in the first part we will show how, after more than two centuries, we can still find traces of revenge in modern legal orders, especially in criminal law, as if they symbolically still represented the presence of avenging dogs who insist on barking at a past that does not pass. In other words: revenge, at least on the plane of desire, has never been extinguished, on the reverse, one can even say that, indirectly, it is reverberated by the state when it relies on the public right to punish, which is made clear in the second part of the third act, where, in a few moments, some passages of criminal legal systems will be evoked as reproducers of the *vendetta*, in a proof that the past almost never goes out, followed in the end by a synthesis with the final thoughts.

FIRST ACT: THE TRAGEDY REVISITED[2]

Scene I: the Greeks and the invention of law

In the beginning was the Word, and its name was revenge. Then out of darkness came the light, which illuminated the Greek areopagus.

It has already been said – and it is true – that here on this Western side, besides Christians, we are all a bit Greek. When the subject is law, there is much talk of a Roman-canonical tradition, remote origin of an almost aseptic law, but with a profound anthropological deficit. It is almost forgotten, however, that it was the Greeks who bequeathed us the idea of reason, justice, democracy[3], among other universal values.

In addition to philosophy, politics, democracy and play – which includes productions in all artistic spheres – what did the Greeks most convey? The law and its invention, certainly. In Greek literature, the myth of the Atreidai resurfaces, and with it the conception of the first court and the first judgment, which, driven by rational criteria, put an end to the vengeful system, the oldest mode of justice. The origin of the discussions between law and morality is but one example, among many, an origin most often concealed by our connection to the Roman-canonical tradition. Epic poems and tragedies will always be present in the imaginary of people and are objects of reflection to think law, philosophy and psychoanalysis, let us register. Anyway, that the genesis and the bases for the questions related to interpretation and application of the law take root in the Greek peninsula, is something that seems beyond doubt.

The Greek lessons still produce resonances and were delivered to us in a privileged way, with the art. If Shakespeare, as Streck (2015, p. 231-232) says in pieces such as *Measure for Measure* and *The Merchant of Venice*, anticipates issues that will be discussed two centuries later, such a contribution is to a certain extent one more point, vertex or not, in the curve of a parabola whose base is in *Antigone*, *Oresteia*, and *Medea*.

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[2] This article deliberately adopts the structure of the plays.

[3] Democracy is the fertile soil of law, without it there is no possible law, as in totalitarian regimes.

As defended by Neves (2015, p. 260), the work of the three great Greek playwrights[4] reveals the conquest of civilization, an extraordinary development that has resulted in the incorporation of values such as democracy, guilt analysis, search for justice. And he adds:

> The Greeks gave us the chromosomes of Western civilization. We, contemporaries, have received this extraordinary legacy, a foundation in the construction of the legal system. *Prometheus bound* is a frank denunciation of tyranny. At Oresteia, the need for ample defense is established. *Antigone*, in turn, represents the struggle for ideals, for justice, in a hymn to legitimate rebellion. [...] All these values were incorporated into our culture through these plays. From there, a theory of law was constructed, laying the foundations for a legal order. These playwrights, therefore, invented law (Neves, 2015, p. 260-261).

Of course, like all that is omnipresent, strong ties with the Roman tradition will always weigh on our conscience, but, as Neves (2015, p. 261) points out, it was the Greeks of the fifth century BC the responsible for establishing the basis for law as we know it today, "based on great values, such as respect for human dignity, the right of defense, appreciation of responsibility and rational judgment".

That Western culture, especially with regard to art, is tributary to the Greek genius, nobody doubts, and the Illustration is perhaps the most emblematic example. It is quite true that in law, much less than in philosophy[5], this influence does not have so much visibly concealed as it was by the historical dominance of an essentially private Roman tradition[6], most likely imposed by the edge of the sword rather than by the power of reason.

In any case, there is no denying that the phenomenon of the re-encounter of law with morality and its anthropological sense, the democratic principle, the constitutionalization of social rights, the horizontal effectiveness of fundamental rights and the widening of the area of public law – the initial conquest of the French revolution, above all –

4 Aeschylus, Euripides and Sophocles.

5 Neves (2015, 63), quoting B. Williams, states that "Greece's legacy to Western philosophy is Western philosophy."

6 As it is known, the old Roman law, the primary source of the civil law tradition, did not know public law, which only emerged from the eighteenth century onwards with liberal revolutions.

with the consequent reduction of private law over the last 60 years, have their deepest inspiration in the Greek culture.

In fact, it was not the Greeks who bequeathed to the world the idea of a set of laws assembled in a book considered so sacred that the orientation was to be kept next to the Bible and which has in Napoleon's Code its most finished example. This does not mean, however, that the Hellenes do not have their share of participation in the emergence of the law, albeit indirectly. In the beginning, law is born of religion, laws are of divine origin, so ancient civilizations believed, but it is the Greeks who are responsible for breaking this paradigm.

Comparato (2013, p. 21) notes that in the fifth century BC, in Asia, as in Greece, during the so-called "century of Pericles", philosophy was born and with it, for the first time in history, the mythological knowledge of tradition was replaced by reason, when the individual dares to make rational criticism of reality, and it is in this same century that in Athens, tragedy and democracy emerged altogether, in a synchrony that was not the result of chance.

In the same track of reasoning, Neves (2015) affirms that the Greeks of the fifth century BC were responsible for laying the groundwork for law in the way it is known today, based on great values such as respect for the dignity of the human person, the right to defense and rational judgment transmitted through the management of a tool that knew no rival in its time: culture, which has in dramaturgy the most privileged example, since it is the source of inspiration for the first lessons of law.

Neves (2015, p. 241-243) argues that,

> "In the works of the Greek playwrights, we have been able to watch how this bridge was crossed, leaving behind the religious aspects, in order to give man the legitimacy to construct legal systems. The walk follows until Aristotle recognize: 'Law is reason'. Philosophy thus kills the gods. [...] Demystification is evident. The gods die, and men gain strength".

And he continues his reflection, noting that

> With the tragedies, all written between the years 500 and 405 a. C, at a certain point, with comedies, we can identify the invention of law as an institution, guardian of values such as justice and respect for the human being. In this historical moment, law separates itself from religion and gains autonomy, with its mainstay in rationality. The law is impregnated in these works, which represent, in

> the purest concept possible, what can be called 'culture' and, as such, shape civilization. Greek playwrights had the role of setting standards, which are still valid today. Dante read the Greeks, Shakespeare read the Greeks, as did Milton and Joyce. Harold Bloom, the famous literary critic and thinker, says: "our only way of thinking comes from the ancient Greeks". [...] We can say, then, that it was through these pieces that law was invented as we know it today (Neves, 2015, p. 31-32).

On the other hand, using the example of Antigone, Pinto (2008, p. 83) points out that it is not surprising that the decision to be made about being or not being at the center of the plot is at the heart of the plot. A more famous example of this dilemma is the dialogue on justice carried out by Antigone and Creon and which involves the controversy over the burial of Polinices. While Antigone maintains that what is at stake is the right to a burial according to the timeless, unwritten and intangible laws dictated by the gods and not by men, Creon, remarking, affirms that, as Polinices attempted against the city, he cannot be buried according to the ritual practiced in the polis, which is followed by the rejoinder of Antigone, in which he remembers that even the sovereign power finds its limits.

In the same sense, Streck (2015, p. 229-230) says that since Sophocles' Antigone, law and right, law and ethics, law and morality are discussed, and it is in this tragedy that Antigone, the main character after whom the play is named, was able to defy a law he considered iniquitous in order to secure the burial of Polinices, his brother, who died in a fratricidal dispute for power in the city of Thebes. In addition, Streck recalls that with the Greeks the first court of history was institutionalized with the function of judging a criminal act and establishing the appropriate punishment through a process of law, ending the revenge law of the "eye for an eye, tooth for tooth" kind, which had hitherto prevailed, because "in Oresteia, the civilizing element is celebrated with the institution, by the hand of the goddess Palas Athena, of a body of jurors to judge the crimes of blood" (Streck, 2015, p. 230).

Certainly the crimes of blood have not been extinguished, but this does not remove from the Greeks, with their tragedies, the invention of the rational way of judging them. This is the lesson conveyed to the contemporary world.

Scene II: the curse of the Atreidai[7]

According to Brandão (1986), it all began with the *hamarty*[8] of a king named Tantalus, son of Zeus and Plouto, who, wishing immortality, sacrificed his own son Pelops and, at a dinner party, offered him to the gods and was cursed. Pelops resuscitated, married Hippodamia, not without first killing Enomo, his father and the king of Elida, who did not want marriage for fear of being confirmed the prophecy that he would be killed by his son-in-law. From the union of Pelops and Hippodamia, the twins Atreus and Tiestes were born. Influenced by their mother, fearful that their children would lose the throne to their stepson, they kill the half-brother Chrysippus. Pelops blames Hippodamia for the misfortune, which is then killed. Atreus and Tiestes vie for the throne of Mycenae and hate each other, hatred that is fueled by betrayals, adultery, incest, cannibalism and death. Aerope, the wife of Atreus, becomes the lover of Thyestes. Betrayed, Atreus, in order to avenge himself, kills the sons of Thyestes and then invites him to a feast, "in a feast of feigned reconciliation" (Berveiller, 1935, p. 112) and makes him eat without knowing that he devours his own flesh. Upon learning of the cruelty, Tiestes swears revenge and is banished. In exile, he consults an oracle and receives a revelation from him: if he had Pelopia, his own daughter, and from that relationship a son would be born, he would kill Atreus. Disguised, Thyestes rapes his daughter and from this act Egisto is born, who is abandoned by his mother. Atreus, a widower, ignoring what had happened, falls in love with Pelopia, orders Egisto to be rescued, and raises him as if he were his son. Some time later, knowing that Tiestes was still alive, Atreus orders Egisto to kill him. Before the consummation of the act, Thyestes identifies himself as the true father and gives him a contra ord, which is performed: to kill Atreus. Pelopia, knowing who the real father of her son was, commits suicide.

Atreus had two sons: Agamemnon and Menelaus. The former was King of Sparta and married Helen; While Agamemnon falls in love with Helen's sister, Clytemnestra, who was already married, with only one alternative left: to kill her husband and the newborn son of the couple. Widowed and unwilling, Clytemnestra marries Agamemnon, and from this

7 Children of Atreus.

8 From the Ancient Greek, it means error, lack.

union four sons are born: Iphigenia, Chrysothem, Electra, and Orestes. During the Trojan War Aegisthus becomes a lover of Clytemnestra, and when Agamemnon returns, he is killed by his own wife – who had never forgiven him for sacrificing Iphigenia, the eldest daughter, before leaving for the Trojan War. After Agamemnon's death, Orestes flees to escape death. Many years later, Orestes returns, and together with Electra, plans and kills his own mother and her lover. Orestes, who is innocent because he avenges his father and at the same time guilty because he kills his mother, goes to trial – and is acquitted by the tiebreaker vote of the goddess Athena, who presides over the Sentencing Council – and for the first time the cycle of death is interrupted and revenge ceases to be a concept of justice.

SECOND ACT: THE INSTITUTIONALIZATION OF JUSTICE AND THE END OF REVENGE

Scene I: the rite of passage: from the Erinyes to the Eumenides

As it is known, it was so in ancient Greece: revenge[9] for a long time was synonymous with justice. According to Neves (2015):

> In all the pieces that make up the Oresteia Trilogy, the element of the heredity of guilt is identified, that is, the characters respond for the harmful acts committed by their ancestors, even though they themselves aggravate this guilt, by also making the wrong decisions. [...]. *Genus*, a group composed of blood-related relatives, is a relevant subject in Greek society and common in tragedies. If one person commits a crime against another, the injured person's revenge must take revenge. If a person acts against someone from their own family group, it is up to all *genuses* to promote revenge. [...] Thus, evil against one of another's own blood brought to the author of the act and to all the *genus* the divine rebuke, so that all descendants were marked. The Greeks believed that those who attacked their own blood would attract the wrath of the gods (Neves, 2015, p. 133).

The end of the meaning of revenge as a synonym for justice would only occur in the third and final piece of the trilogy (*Eumenides*), which imposes an end to the vindictive system by submitting to third parties the crime committed by Orestes. Indeed, in *Agamemnon*, the first play,

9 Neves (2015: 143) records that "the Greek word for vengeance, *diképhoros*, is the literal translation for 'he who brings justice'. Thus, revenge was initially closely related to justice."

Aeschylus deals with the death of the Greek leader in the victory of the war against Troy, murdered by his own wife, Clytemnestra, with the complicity of Aegisthus, her lover. It is a narrative about revenge that assumes the meaning of justice.

In order to be understood, it is necessary to remember part of the story narrated by Homer, in the *Iliad* poem: the gods subject Agamemnon to a very hard test. There was no wind enough to allow the Greek squadron to launch into the sea toward Troy, and the condition imposed by the goddess Artemis to blow the winds was the sacrifice of Iphigenia, Agamemnon's eldest daughter. Between preserving the family and making a state decision, Agamemnon opted for the latter and immolated his daughter, which is why Clytemnestra would never forgive him. This is the main reason for her revenge, influenced also by Aegisthus, her lover, who had also sworn revenge by the death of his brothers and by the humiliation suffered by his father, all victims of Atreus, the father of Agamemnon. For them, it was all a matter of justice, and on the first chance, Clytemnestra, with the help of Aegisthus, kills her husband during the bath and assumes power in the city of Argos.

Choephoroi, the second piece, also has in revenge the main theme. On the grave of Agamemnon, Orestes and Electra were already speaking in justice, which could only be obtained by revenge for the death of the father and the restitution of the throne usurped by the mother and Aegisthus. That's when they decide to avenge him later. Orestes, who is banished from the kingdom, in exile consults the oracle of Delphi, wanting to know whether or not to avenge his father, and obtains the following answer: an eye for an eye, a tooth for a tooth. Determined to take revenge, he spreads the news of his false death, enters the palace in disguise and kills Aegisthus and Clytemnestra, his own mother, who before the fatal blow shows him the breast and asks him how could he have the courage to kill who breastfed him. Orestes seems to hesitate, but, in the end, consummates the act and is justified by saying that for a duty of justice he committed the murder of his own mother.

The guilt that the Atreidai charge for the acts of their ancestors is object of discussion in the third play, *Eumenides*, in which an answer is sought to the following question: must Orestes be punished for avenging

the death of the father or should he be spared, even if he killed his own mother?

The subject is brought to the attention of Athena, the goddess of wisdom and expression of justice, who establishes a trial[10] to judge Orestes, in which the Erinyes[11] act as accusers[12], because they are the goddesses of revenge, being the jury composed of twelve citizens of Athens and chaired by Palas Athena herself. In the end, after the accusation and defense of Orestes, who tries to justify his act, the votes are collected and the result is a tie[13] which it is up to Athena to break[14], when she then decides for Orestes, absolving him, by uttering the following words: "He was acquitted of a murderous crime! The votes were divided into equal sums" (Aeschylus, *Eumenides*, 2016).

Indeed, as Neves recalls (2015, p. 154), the Aeschylus trilogy begins at *Agamemnon*, which takes place in the dark Palace of the Atreidai and ends with *Eumenides*, in the bright Areopagus court of Athens, blessed the

[10] These are the words of Athena when she summons the council of judgment: "Neither oppression nor anarchy: this is the motto that the citizens must follow and respect. [...] I proclaim here instituted an incorruptible, venerable, inflexible court, to keep this city eternally vigilant, giving it a peaceful sleep. This is the message I want to convey to you, Athenians, thinking of your future. Now rise up from where you are, judges, and I have decided with your vows this cause" (Aeschylus, Eumenides, 2016).

[11] Also called Furies, they were goddesses with the mission to persecute those who committed blood crime and that at the end of the trial of Orestes they become Eumenides, assuming a new mission: to maintain the order dictated by human reason.

[12] The trial obeys the process of law, with a guarantee of the adversary, which is evident in the words addressed to the Erinyes by Athena: "I want to tell you that now the word is yours and declare that the debates are open. Speaking first, the accuser must instruct us plainly about the facts" (Aeschylus, Eumenides, 2016).

[13] One of the arguments in favor of Orestes's acquittal comes from the mouth of the god Apollo himself, claiming that Orestes had not committed a crime against his own blood: "He who is called a son is not begotten by his mother – she is only the nurse of the seed sown. In fact, the creator is the man who fecundates it; She, as a stranger, only safeguards the unborn child when the gods do not reach him" (Aeschylus, Eumenides, 2016). That is to say, Apollo's speech reveals the conception – which we would now call misogynistic – that the role of woman in the generation of life was absolutely irrelevant, a conception which would have already been instituted in archaic society, since it is present in Greek mythology, source of Aeschylus dramaturgy, and which persisted in his time. As an example of this, the Greek god cites the origin of Athena herself. According to Greek mythology, Zeus swallowed Metis, his first wife, when she was already pregnant with Athena. Some time later, when the time came for the birth of the goddess, Zeus felt a severe headache and ordered Hephaestus, the fire god, to open his head and from there Athena was already grown and armed. That is to say, according to the line of defense, of Orestes, by the voice of Apollo, the mother would be only an incubator and, in that sense, the son would not carry its blood, reason why in the light of the law, Orestes would not have committed a crime against his very blood, an act reputed as unworthy and unforgivable. In that same line of reasoning, Clytemnestra would not have committed a crime against her own blood either by killing Agamemnon.

[14] In fact, it is not a tie-breaking vote, but rather an anticipation vote, as will be shown below.

passage from darkness to light. It is, as the author says, a conquest of humanity, promoting the leap from the irrational world to the juridical world, where the process of law, contradictory and ample defense, prevail in the determination of criminal responsibility. If, before that, the murder was inexcusable for the Erinyes, regardless of the circumstances, it is now necessary for the crime to be submitted to a trial, in which the defendant is given the opportunity to defend:

> There is, as we see, the establishment of a new order. The old Law of Talian, the familiar punishment (of the *genus*), defended by the Erinyes, loses space. [...] The new law comes from Apollo, god of lights, for the sake of the city and civilization. [...] The new law ignores the family curse, disregards the law of Talian. The Erinyes claim the application of the old law, by which "the drops of blood shed on earth require another's blood". The new law, on the other hand, deals with individual culpability, appreciates the agent's consciousness and the circumstances of the act. [...]. It is an achievement of humanity (Neves, 2015, p. 156-157).

If private justice (revenge) prevailed in *Agamemnon* and *Coephoras*, this method of conflict resolution comes to an end, giving rise to a democratic judgment, with the individual appreciation of guilt, the analysis of the circumstances of the act and the values involved, what Aeschylus called the passage from darkness to light. From then on, the *Erinyes* lose the function and the competence to judge the crimes of blood.

For Karam, "the Aeschylus trilogy takes up the myth of the Atreidai to represent the advent of law in the context of Athenian democracy" (2016, p. 89), adding that "it is a question of exalting the polis, conceived as a model of justice and order, and as a means of reconciling the social and moral problems of man" (2016, p. 90), and even from the perspective of Greek mythology and literature, "from the unstoppable private revenge of the family to public retribution, since punishment ceases to be exercised under the aegis of family revenge, and a council of judges, made up of representatives of the *polis*, assumes the responsibility of justice" (2016, p. 80).

It is in view of such characteristics that the outcome of the trilogy acquires exemplary character:

> the end of the law of the Talian, of this interminable chain of bloody crimes, is with the restoration of order, but with an order guided by reason and which, in *respect for justice*, combines the precepts of the Olympic gods,

> and in *fear of punishment*, the original strength of the Erinyes; An order in which the Law is satisfied without chaos, in which the archaic bonds of blood are extended to conjugal relations and to the covenant instituted by the citizens of the *polis* (Karam, 2016, p. 91).

It is also Karam (2016, p.91) who says that the passage of justice from the divine sphere to the human sphere is represented by the gesture of Athena in recognizing that although it is a difficult case, it is no longer up to the gods but to men to judge and, in setting up the court, choose the sentencing council among the best citizens of the *polis* and alert them to the procedures and values to be observed, in such a way that from then on the court and not the gods would have the jurisdiction to prosecute homicide offenses.

The outcome that brings an end to the Atreidai is the subject of speculation in *Coephoras*, which comes to an end with a chorus line that dramatically conjectures about the fate of the curse that had struck on the house of Atreus, now in its third stage, with the death of Clytemnestra by his own son. There, as a hook for the third play (*Eumenides*) one already asks what will come next: the end of the curse or a new desire for revenge? Will Orestes be punished by death in obedience to the commandment of the ancient divine law which says that blood is washed with blood? Here is the speech:

> The third storm is consumed in this palace of our masters, caused by its own inhabitants. The children of Thyestes, even infants, who were slain and devoured at a banquet, began the horrible sequence of our bitterness; Then the commander of the Achaeans, a king assassinated awkwardly while bathing carelessly, was killed. Now, the third time, he arrived – what shall I say? – the end? The Salvation? Where the forerunner of Vengeance will stop or end (Aeschylus, 1991, p. 137).

In fact, the ancient divine law said that, once drops of blood were scattered on the earth, the bloody drops called new blood. In *Agamemnon* (Aeschylus, 1991, p. 66), after the death of the commander of the Achaeans, Cassandra speaks of this fatal sequence when, alluding directly to Orestes, she says “but there is no death without revenge of some god. There will come another day an avenger – ours”. In other words, now in *Coephoras*, in the voice of Coryphaeus: the motivation of “someone who kills who killed” is made clear (Aeschylus, 1991, p. 94), because, “it is the law that blood,

once poured into full earth, demand new blood. A murder cries out in loud cries for the divine avenging Furies, so that in the name of the first victims they bring about a new misfortune after the old one" (Aeschylus, 1991, p. 106-107).

In the myth, it is certain that Orestes received an order from Apollo to kill himself and his mother and her lover, but Brandão (1984, p. 24) adds a new ingredient in the plot when he remembers that it was not just about fulfilling Apollo's order. Orestes was also stung with the sting of the law of genus, when, at one point, he says: "but if it were not for obedience, the work would have to be done. There are many reasons that agree with me..." (1984, p. 24).

As it turns out, in *Coephoras*, Orestes was in fact in a dilemma: killing his mother would attract the Erinyes who would avenge her. On the other hand, if he did not avenge his father, Agamemnon would not leave him alone. This is clear when, in the face of Clytemnestra's warning to beware of a mother's furious dogs, Orestes thus replied: "and how will I avoid that of my own father if he shows hesitation at this time?" (Aeschylus, 1991, p. 131).

For Brandão (1984, p. 26), the antagonism between the two forces[15] is evident: "on the one hand, *the old past, the ius poli, the themis*, the law of retaliation, those are the darkness; on the other hand, as Orestes's lawyer, Apollo embodies the new law, *the ius fori, the dike*, that is, the light". Put another way, "what is going to happen is a passage, since the law of the ancient gods, who inhabit the darkness of Hades, is about to be replaced by the law of the new gods, who inhabit the pinnacles flooded with the light of Olympus" (Brandão, 1984, p. 26).

In conclusion, Brandão says that

> the drama reflects, as a whole, the struggle between the family curse, regulated by the *ius polis*, that is, the law of *genus*, and the new law which, without denying the family curse, establishes new legal canons through *ius fori*, *a dike*, that is to say, the human right, which will henceforth pass through the Areopagus to legislate on blood crimes (Brandão, 1984, p. 27).

[15] Another reading reveals that the trilogy narrates a dispute between matriarchy and patriarchy, which can still be made in the following perspectives: a) the dispute between matriarchy and patriarchy, when the latter wins; B) the dispute between the old laws and the new laws, which represents the legal reforms of Dracon or Solon, between a new law and an old one.

It is that – one should recall – before the trial of Orestes, the one who committed a crime of blood had no right to a trial. As soon as the act was consummated, it was immediately pursued by the Erinyes of the dead. This is clear in the voice of the Choir, in *Eumenides*, reproduced here according to Brandão: "Ah! Once again he found help! Embracing the statue of an immortal goddess, he wants to be judged by the act of her hands. Impossible to Judge! Once the mother's blood is shed, it's difficult, there! Make him go back to the veins. It has been lost forever, the liquid spilled over land" (Brandão, 1984, p. 35).

In the wake of this line of reasoning, Berveiller (1935, p. 114) points out that Clytemnestra's death at the hands of his own son is the kind of crime that transcends all others in horror and that, in these cases, "murderers did not act for their free will", once they failed to punish a crime, "they would disregard a sacred duty; avenging him they became wicked".

It is not without reason that Brandão (1984, p. 23) points out that the grandiose trilogy of Aeschylus begins with darkness (*Agamemnon*) and ends in full light, in the Areopagus of Athens (*Eumenides*), because it is in the last part of the trilogy that one can find the answers to the question, offered at the end of *Coephoras*, about what would happen after the death of Clytemnestra.

A court is set up for the first time and the result is known: in the end, with a draw, Athena gives a decisive, but early vote[16], which acquits Orestes. This aroused the reaction of the Erinyes, who, initially, disagreed with what they call contempt for the old laws and subdued to the desire of revenge, they react threatening to the *polis* and only after much effort and power of

[16] This is the origin of what is now known as the "vote of Minerva", in honor of the goddess Athena, who among the Romans was called Minerva. In fact, Athena did not vote exactly to break the ball because, before starting the vote, she anticipated the vote, announcing that she would join those who favored Orestes, but would vote last, hence the prevailing idea that she voted to unravel, which is not true, as the following excerpt shows: "I will be the last to pronounce the vote and I will add it to those who are in favor of Orestes. I was born without going through a maternal womb, my mood has always been in favor of men, except marriage; I support the father. So I have no greater concern for a wife who killed her husband, the guardian of the home; For Orestes to win, it is enough that the votes are divided equally" (Aeschylus, 1991, 176). In other words, the vote of Athena was not made when she learned of the tie between the judges. In fact, she decided earlier, in anticipating how she would vote: in favor of Orestes, that in order to be acquitted, a tie of votes would suffice, since hers would be added to that favored by absolution. Moderny, it can be said that Athena decided before and after that she went in search of the fundamentals.

persuasion on the part of Athena they convince themselves that the verdict was the best for the destiny of the city of Athens, then they assume a commitment, together with the goddess of justice, to renounce the right of revenge and take on a new role.

As Berveiller (1935, p. 120) says, here is the meaning of the passage: "the Erinyes become the Eumenides, the goddesses of revenge and blood, and became the goddesses of beneficence and forgiveness. *It is as if, finally, the order of justice triumphs over private justice, over vengeance*" (1935, p. 120).

Or, in the words of Ost (2005, p. 11), "In *Eumenides*, Aeschylus narrates that the city of Athens knew how to reverse the avenging logic of the *Erinyes*, proceeding to the democratic judgment of Orestes, thereby basing social life on trust and justice and not on fear and blood".

In another way, with the creation of the first court to try a blood crime, justice was institutionalized. Before that, whoever committed such a crime would not be subject to a fair trial, for their fate was already traced by an ancient divine law: who kills is credited as the next victim, following the curse of the *genus*. There was no judgment, the condemnation was already given and the execution was summary or it would take the necessary time for its accomplishment.

In this sense, Orestes' judgment represents the passage from the wild state to the civilizing state, and the function of judging will be exercised by a court that will act as a third instance and that will position itself equidistant from the perpetrator of the crime and the victim, condition necessary to establish a punishment that reflects a proportional relationship between the act and the damage caused. Finally, Athena proposes what Ost calls a completely different outcome to the conflict, something that breaks with the paradigm hitherto established, in a kind of Copernican revolution, given its radicalism: "justice, in short, replaces revenge, deliberation surpasses violence, while memory time is replaced by forgiveness" (Ost, 2005, p. 140).

Until then it was as if time had gone backward, because, far from experimenting with the new, it only confirmed the old, fulfilling a duty that was written in the memory of the crime and that was transferred from generation to generation, falling on who had a duty to give continuity to the

heavy fate of preserving the bitter remembrance of a murder to be avenged, in a logic in which not to avenge was equivalent to committing a real injustice.

This is then the role of law in modern criminal systems, which, unlike what happens in private justice – where the perpetrator and the victim do not keep the necessary distance – through the process, ensures a balanced distance between crime and punishment, since, as Ost points out (2005, p. 166), "the process is first and foremost a retreat, a separation, a mediation", as opposed to private revenge presupposing immediacy.

In this sense, Ost also points out that:

> Because of this socially established distance, the process makes the intervention of the third arbitrator in a quarrel that will be triangulated hereafter, and thus verbalized, referring to a law affecting the parties. The judge is separated from the parties, just as the judiciary is in third position in relation to the two other powers, in which the state stands out from civil society. [...] Finally, the sentence is pronounced only at the end of a public and contradictory debate, in the course of which the victim and the suspect had successively the word, thus becoming both the actors of their trial (2005, p. 166).

Within Ost's idea, the criminal process is therefore the instrument that best symbolizes the passage of time from memory, in which crime is not forgotten, to the time of forgiveness, in which there is a compensation that also has the effect of forgetting, to interrupt the cycle of revenge. This passage, however, did not complete its cycle, as will be seen below.

Scene II: the (in)complete passage – the furies still call for revenge

Certainly, in its absolute sense, private revenge today is a forbidden resource in any modern legal order, but what matters here is whether this interdict represented the end of the family curses marked by the syndrome of the *Atreidai* curse and thus revenge was extinguished – or at least the desire for it – as a remedial act of evil caused by the offender. In response to the first part of the question, it can be said that the daily witness of the order of events points to the fact that blood crimes still occur and that there is no indication that they will one day disappear.

Indeed, Brandão (2011, p. 110) argues that Orestes's trial by a court does not even mark the end of the curse of the Atreidai in the space-temporal scope of ancient Greece, since, according to him, "after the nuptials of Orestes With Hermione, Electra married Pylades and the *curse of the sons of Atreus* continued", giving rise to the cycle of fatalities that "served as tragic feast to nine great tragedies that have come down to us".

In fact, in the present times, there is a daily news of the multiplication of the curse of the Atreidai, although not necessarily with their original characteristics: the cycle of revenge that happens, from generation to generation, within the same race, although with the same motivations (dispute over power, betrayal, adultery, rape, cannibalism, greed, violence, parricide, matricide, among other torpid, vile or cruel motives), tends to be, nowadays, soon interrupted or hardly begun[17]. This must be credited to the fence of private justice (revenge) and the absence of a god with the power to judge men, though revenge desires still haunt society, and it is no exaggeration to state, as well as the vestiges of the old vindictive system.

As for the matter of the extinction of revenge, which interests us more closely, it is not reckless that the passage to a penal system has occurred in an incomplete way, in the sense that it would have been institutionalized without restrictions.

If more than two thousand years have passed, it would still be possible to say that Orestes's judgment is really representative of the end of the cycle of revenge as a form of justice, or, on the reverse, would it be more plausible to say that modern systems of law, with their civilized processes of punishment, still reflect the early vindictive systems, in a word: the three drops of blood, in what may be called the *founding mothers*, of Uranus, who were poured out upon the earth and gave birth to the avenging goddesses, still dye it and for this account we live in a past that does not pass?

[17] Sometimes the revenge cycle lasts until the state intervenes. Depending on its agility, the cycle can be stopped at the beginning or after successive deaths driven by the desire for revenge.

In the beginning, to punish is nothing more than to remember and reciprocate, to give back, Ost (2005, p. 121) goes on to make a series of questions, such as: does modern criminal law keep any relation with the obscure past of revenge? Has it finally gotten rid of any idea of reprisal as if it had abandoned the Talian law to a distant past, now only regarded as part of a legal prehistory, now totally out of date?

For Ost, the answer is the analysis of the three functions of the penalty in the contemporary penal systems[18] and which are directly related to different temporal dimensions: preventive penalties, forward-looking; restorative penalties, focusing on the present; finally, retributive penalties, anchored in the past and that would be a way of prolonging the old Talian system. If, through *prevention*, the goal of the penalty turns to the future, in order to prevent undesirable behavior for the community; the *reparation* has as object of concern the very victim, whom it tries to compensate for the damage suffered. Lastly, as regards retribution, it is the oldest purpose of the penalty: "if it is true that 'to reciprocate is to give back', the retributive function of the penalty presupposes a conception of justice, with the axis in the evil of the past (the offense), to which we decline to make up for the equivalent evil (the penalty)" (2005, p. 121-122).

According to Ost (2005, p. 123), the retributive dimension of punishment is present in contemporary law, which is why it would be convenient to understand the meaning and, even more so, the scope of the temporal question that is at stake when the question is whether it is a law of salutation, sacrifice or revenge.

Continuing his keen analysis, Ost says that speaking of vengeance and the law of Talion is not at all easy, so far as false ideas and condemnations have been accumulated about it, but makes it clear that, as a universal law, Talian law presents contrasting readings, such as the one that sees in it a

[18] As will be seen later, Oliver Wendell Holmes (1963) also deals with the theory behind penalties.

regressive form of violence – when one thinks of private, uncontrolled and unending violence – or when, on the contrary, it is analyzed as a rudimentary, solid and legitimate figure of a justice institution, which is translated "either by a civilized and reconciling 'vindictive' system[19], or by a rational principle of compensation applied by embryonic courts" (2005, p. 123-125).

For Ost, revenge, as an apparent (private) system of justice, is no more than a concrete way "that duplicates violence instead of appeasing it" (2005, p. 124), since it would lack it, as happens in public justice, the necessary detachment of the facts for the reflection and the mediation of another, without which justice does not reveal itself in its best light. So,

> Revenge comes from immediacy: it arises from an unrestrained impulse, it demands immediate reprisal. Of course, it is not always satiated at once: in this case, it is fed with rancor, 'as if the initial offense had caused a credit to arise, which was to be recovered with goodwill'. All this then passes as if the clocks had stopped at the time of the offense and the future presented no other perspective than the neurotic rumination of the crime and the hope of its symbolic annulment. In vengeful resolutions, time is petrified in the closed space of the past moment of the offense, of which the present and the future allow only obsessive repetition (Ost 2005, p. 124).

According to Ost (2005, p. 125), revenge is a prisoner of time, since the inability to leave a closed and repetitive frozen state and to move to another time also corresponds to the inability to submit to a social instance, which, assuming an objective function, makes it possible to triangulate the conflict and thus solve it, pacifying it enduringly.

That Orestes's judgment is representative, at least figuratively, of the passage from private to public justice, no one has any doubt. However, what cannot be ignored is the foul breath of the rancid of revenge, which reach out at our days. It is as if the avenging goddesses had never become the benevolent goddesses and remained stuck in their duty to claim revenge.

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[19] This system is nothing more than the criminal procedure, as will be seen below.

THIRD ACT: THE DIFFICULTY OF TURNING OFF THE PAST

Scene I: remnants of revenge in modern systems of law or how avenging dogs still bark a past that does not pass

Not only vestiges, but also the presence of a rudimentary system of repairing errors, which, admittedly, went through different stages of evolution, are still felt not only in the imagination of ordinary people. And it there is more: they resonate over modern systems of law and institutions responsible for managing conflicts.

In this sense, a close look leads us to the conclusion that the famous *law of Talion* represented an evolution if we take into account the meaning of its main statement ("eye for an eye, tooth for tooth"), to assume an equivalence relation . This evolution becomes evident as there was no relationship of proportionality previously, since the loss of an eye could lead to the punishment of the aggressor with their own life, since both the family and the victim were legitimated.

In Greek mythology, as already demonstrated, this changes with the fable of the first court trial, that of Orestes, which, symbolically, represents the end of private justice. From then on, in the empirical world, the system of public justice, which will evolve until it finds its apogee in modernity with the juridical positivism that, in its first moment and influenced by the exact sciences, tried to construct a rigorous language for the law and lived the illusion that it would suffice, since in this scenario, every judgment, based on the letter of the law inscribed in the codes, would be free of any subjective or irrational criteria. Of course, not everything went as expected, but what matters here is to record that everything is an evolutionary line: in the name of rationality, public justice (Orestes trial) replaces the private justice that , in a sense, had replaced divine justice.

Thus, and as a conclusion to these general considerations, it can be said that subjectivity insists on being present in justice systems, be it public or private, and, to some extent, the latter's mode of being still echoes in modern systems of public justice.

All this because, as Joana Aguiar e Silva (2008) points out, we still live with vestiges of private justice and vengeful systems in modern public systems of conflict management, and that is the point of arrival of these initial considerations.

In fact, Aguiar e Silva (2008, p. 132) points out that it is not new "the idea that the legal reality that we know today and in which we move is, in some way, a process of a civilized stylization of this Talian juridicity, in turn a stylization of that vindictive system of unlimited private punishment". The authors adds that, in this system, which is deeply symbolic and ritualistic, the victim or their family group, together or separately, revenge themselves by returning the wrong deed to the offender and/or members of their group, and this aggression itself generates new aggressions and new revenge actions, that alternate in chain in an endless cycle.

According to Aguiar e Silva (2008, p. 132), such practices may seem questionable, but the truth is that the very survival of the social group requires the institution of systems that channel the revenge exercise, and the fact that the law of Talion is enshrined both in the Code of Hammurabi and in the Bible proves this. It is true that, at a given moment in history and for certain crimes, according to the author cited, vengeance was replaced by different formulae, such as ordeals and duels, but in some societies at the doors of modernity, crimes continued to generate, for the victim or their family, a right of revenge.

Quoting Oliver Wendell Holmes, of the US Supreme Court, Aguiar e Silva recalls that the most ardent advocate of American legal realism "also defended the idea that the origin of all law lies precisely in revenge, in sentiment and in practices of revenge" (2008, p. 133) and that "the present legal systems, with the characteristics and attributes that we recognize, would not be, according to the eminent magistrate, the final result of an evolutionary process beginning in this rudimentary mode of Resolving social conflicts that underlies the vindictive system" (2008, p. 133).

In fact, in 1881, the date of the first publication of *The Common Law*, Oliver Wendel Holmes recalled a well-known fact: that the first forms of legal settlement for cases were based on revenge. He says that

"modern authors claim that Roman law originated from blood struggles and that all authorities agree that this is how German law also began" (Holmes 1963, p. 30). And this not only in relation to criminal law, which is the state norm that punishes crimes, as one might at first imagine. It is that, likewise, the feeling of revenge also inspired private law, as he states:

> The original principles of liability for harm done to another person or thing have so far been less carefully considered than those who discipline the offense. [...] I will try to demonstrate that this responsibility also had its roots in the passion of revenge and to indicate the changes through which it arrived in its present form (Holmes, 1963, p.30).

Holmes (1963, p. 34-37) demonstrates that in the old primitive systems animals, slaves (who were not conceived as persons, let us remember) and even inanimate beings, properly so called, were tried and punished, which was common among Jews, Romans, and Greeks. For him, the fact that inanimate beings are subject to criminal repercussions or accountability in the civil sphere could only be justified as they were personified, without which the anger directed at them would have a transient duration.

As Holmes (1963, p. 56) states in bringing these examples, his purpose is to demonstrate that the various forms of responsibility known to modern law – whether civil or criminal – have emerged from a common source: revenge, which is obviously much stronger and rooted in criminal law than in civil law.

Incidentally, in relation to Criminal Law, Holmes points out that in this branch, much more clearly, the offender's liability is an offspring of revenge and that the satisfaction of its desire has never ceased to be the goal of punishment:

> The desire for revenge denotes the opinion that its end is to condemn really and in person. It condemns its victim by the adoption of an internal norm, not objective or external. The question arises in this way: this rule is still accepted, in its primitive form or in a somewhat more developed development, as is usually supposed and does not seem impossible, considering the relative slowness with which criminal law is perfected (Holmes, 1963, p. 58).

For Holmes (1963, p. 58), the desire for revenge, which underlies punishment, is most evident in situations where compensation for the offense is out of the question, as is the case of homicide, in which, on account of disappearance of the offended, the indemnification, at least to the person of him, becomes impossible. Another hypothesis is when there is no means of forcing the indemnification, which occurs in cases in which the offenders are financially and economically costly. In all these cases:

> Punishment stands as an alternative. Suffering can be inflicted on the offender, so that he does not restore his former situation to the injured party, but is inflicted by the true purpose of causing it. And as far as this punishment replaces the compensation, whether due to the death of the offended person, the indefinite number of persons affected, or the impossibility of calculating the value of the suffering in money, or because of the poverty of the criminal, one can say that one of your the is to satisfy the desire for revenge. The prisoner pays with his body (Holmes 1963: 58).

The American is more incisive in declaring that the legislator claims intention of revenge when, by the act[20], it marks, and it has to do so, the satisfaction of the revenge as an objective, a fact which in any case makes them share the same opinion "two authorities as great as Bishop Butler and Jeremy Bentham, so opposed in other points of view"[21], adding at the end: "Sir James Stephen said: 'Criminal law is for the passion of revenge in the same relation as marriage to the sexual appetite'"[22] (Holmes, 1963, p. 59).

What Holmes suggests, it seems, is that the law was the civilized form found by man to preserve the exercise of his desire for vengeance, albeit in a disguised way, a less traumatic means of channeling what would ultimately be no more than revenge. This seems to be his reasoning when he argues that the first requirement to be contained in a healthy body of law is that of correspondence with the real feelings and demands of a community, be they just or unjust. For Holmes, it is as if there were no way out, for "if the people satisfied the passion of revenge outside the law, if it did not support them, then it would have no choice but to satisfy itself with that desire", so as to "thus avoid the greater evil of private retribution" (Holmes, 1963, p.

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[20] Supposedly, the act to which it refers is the elaboration of the law.

[21] In addition to English philosophers, Bishop Butler was an Anglican bishop, and Jeremy Bentham, a renowned jurist and one of the coriphants of utilitarianism.

[22] Sir James Stephen was an English politician who held the post of colonial undersecretary.

59), as was the case in ancient Greece, whose context appears in the representation of the practices that preceded the Orestes trial.

Regarding the foundations of the right to punish, the thought of Tobias Barreto, published in the classic work *Estudos de filosofia*, reprinted in 1977, is interesting. Barreto (1977, p.358), quoting Herman Post, "it is not a mistake to say that, primitively punishment and human sacrifice were one and the same, and that from then on the origin of the right to punish must be sought in that same sacrifice", without saying that it is as true that this idea always was at the origin of the penalty as the fact that even today the same idea is accompanied by the execution of any sentence (Barreto 1977, p. 368).

Of course, it is no longer a mirage that the punishment of the state is to quell the wrath of the gods, to silence the goddesses of revenge, thus reproducing what is represented in the judgment of Orestes when they become *Eumenides*, thanks to the conciliatory spirit of Athena. It should be noted, however, that the process of conversion does not take place without great traumas, for the Erinyes react vigorously to the idea of being institutionally incorporated and it is only thanks to the ability of the goddess Athena that, in the end, they are convinced. However, even though we no longer invoke the presence of the Furies today to punish the crime of blood with revenge, as Barreto points out, deep down, this feeling is only asleep:

> It is no longer plausible, in fact, to want to placate, with the punishment inflicted on the criminal, the angry gods, or to calm the manes of the victim of the crime, but almost proceed according to this intuition, keeping only the differences Determined by the later culture. [...] Theoretical phrases may cover up the true feature of the thing, but at bottom what remains is the indisputable fact that to punish is to sacrifice – to sacrifice in whole or in part, the individual for the good of social communion – more or less sacrifice cruelty according to the degree of civilization of this or that people in this or that given time, but a necessary sacrifice, which, if on the one hand does not conform to the strict juridical measure, on the other hand cannot be abolished by the effect of a humanitarian sentimentality, which usually wants to see things extinguished for the sake of mankind, without which humanity could not possibly exist (Barreto 1977, p. 358-359).

Barreto (1977, p. 359), unlike other theorists, postulates that the first historical moment of punishment is sacrifice, besides the atonement, which gave it a religious character, but even at that moment the feeling of revenge is present, and at the same time it diminishes the religious side of the atonement, it "increases the social and political side of the offense, which still remains as indispensable predicate for a definition of the penalty".

Sharing Holmes's thinking, Barreto considers that the idea of *vindication* – which for a long time prevailed in Roman criminal law and extended even to much later times – has not yet been dismissed, as some theories of the right to punish attempt to understand, since they do nothing but "seek to bind to the laws of modern rationality an old barbaric and absurd thing, if necessary, what is the penalty, without resulting in the slightest change in the nature of the fact" (1977, p. 360).

Barreto, far from developing metaphysical reflections, makes clear that the facts are what are determinant, they are the ones that translate the feeling of a community that never let its acts be determined by abstract ideas and devoid of any passion. In this line of reasoning, for a given community, the sense of justice, by itself incapable of giving rise to the institution of punishment, is confused with the feeling of revenge, as if they were one. For the author cited, the subjective moment of the right to punish was neither abolished nor absorbed by the public power, not even in the more modern states, "where there is recognized the individual right of the complaint or the right to promote criminal prosecution for an offense received, which in any aspect matters more nor less than the recognition of the just vindication of the offended" (1977, p. 362).

Indeed, there are modern societies which, without any great fear, adopt the death penalty as punishment for the commission of homicide crimes, among others, as well as the institute of the crime of the offended person and the figure of the prosecutor who, in the end of the day, are nothing more than a kind of public revenge or private revenge assisted by the state, in the case of the last two hypotheses.

And it is the Brazilian jurist himself who asks: "indeed, even now, what is ultimately the imposition, for example, of the death penalty on a

delinquent, if not a kind of sacrifice to a new Moloch, To an *ignoto deo*[23] of justice, which is intended to be avenged and satisfied?" (Barreto, 1977, p. 358-359).

For Barreto (1977, p. 367-368), positive criminal law generally went through three phases: the initial one, in which the private *vendetta* principle prevailed, adding, depending on the place and the time, religious atonement; The intermediate phase, which emerges as transient and consists basically of the idea of composition, that is, revenge being met by means of pecuniary indemnity, in order to give rise to the third stage, the present stage, which, founded on the social right to punish, is exercised through the State, which imposes a public punishment.

In any case, there will always be the remnants of the primitive punitive systems in modern systems of law, for, as Barreto (1977, p. 368) points out, in consonance with Holmes, even "in ordinary criminal law, however regular its structure may seem structure, there are still signs of primitive rudeness". In this sense, the Brazilian jurist warns that "the principle of vindication has not yet disappeared from any of the current systems of positive punishment" (1977, p. 368), with the subordination of certain crimes to the formulation of the so-called "offender's complaint", one of the indicatives of recognition of this principle.

Besides, revealing perfect harmony with Holmes's understanding (when he states that law is the civilized way of channeling the feeling of revenge), Tobias Barreto mentions that:

> Every force system goes after a state of equilibrium; Society is also a system of forces and the state of equilibrium it seeks is precisely a state of law, for the achievement of which it lives in continuous defensive war, employing means and handling weapons, which are not always forged according to strict humanitarian principles, but which must always be effective. Among these weapons is the penalty (Barreto 1977, p. 368).

In short, primitive systems still reverberate today and, as Aguiar e Silva (2008, p. 135) suggests, the question to be asked is whether we are currently living under the auspices of a juridicity that can be considered as an heir to the vindictive system, whether it is possible to draw an

[23] Latin expression meaning "unknown god."

evolutionary line between primitive, vindictive systems and our modern systems of law. For the author, a more careful reflection makes it possible to verify that such an inheritance is more present in our consciousness than is imagined, which is a paradox, since it is contrary to the idea of evolution. It is undeniable, however, that

> In the many reports, stories and commentaries that are publicized, in these days, the dynamics of judicial life is provoked, and justice seems to be a recurrently invoked notion. In the speeches and interviews that journalists, most of the time little-known and eager for sensationalism, produce at the mouth of the courts, urging magistrates, prosecutors or, more often than not, simply curious/interested people to say what they think, justice appears as the common denominator of the multiple discursive records that in the context are manifested. [...] What often appears when we hear a certain kind of comment, especially made by that last category of "interested people" in the proceedings, *is that people when speaking of justice have in mind – albeit unconsciously – a justice that is essentially vindictive [...]. How many times have we not heard of certain criminals accused of committing a particular crime, who should suffer the same?* (Aguiar and Silva, 2008, p. 133-134, my emphasis).

According to Aguiar and Silva (2008, p. 143), the great advantage of a public retributive system lies in the preservation of public order, but it is an illusion to imagine that it will eliminate the most primitive instincts and/or inspired by History is a witness to the fact that "the impulse of revenge in the face of injustice is one of the most enduring aspects of the human spirit, which cannot be eradicated". The problem, as the author mentioned, is that, if society replaces the individual in the imposition of punishment, at that moment it assumes responsibility before the group of citizens – and, likewise, before the victims of the crime –, which is also a way of rendering an account, and for this reason it has to exercise that function in a competent manner, offering the correct answers in an efficient way and with respect to the laws and the Federal Constitution, otherwise it assumes the risk of people to do justice by their own hands, or, in a word: revenge.

On the other hand, Aguiar e Silva (2008, p. 143) adds to the chorus of many when commenting that when people talk about justice, between the lines, the desire is different, they really want to get revenge, even if not

everyone has the courage to acknowledge this and do not even give joy to the media reporters.

In fact, in general, it can be said not only that the desire for revenge, as a synonym to the realization of justice, is still present in the imaginary of the people, but also that it is represented in various contemporary systems of law by means of various institutes. One of these hypotheses is what happens in Brazilian criminal law in the figure of the prosecution assistant, considered by some experts as a typical example of this practice, whose existence would serve – and for that some scholars claim that there are reasons – to legitimize private revenge in the criminal proceedings.

Indeed, it is undeniable that the presence of the victim or their successors represented by the figure of the assistant to the prosecution is fraught with markedly personal, emotional and vengeful feelings, circumstances which make it difficult to dismiss the argument that their presence reproduces, in The vindictive system.

It is true that there is a counterargument: that the criminal assistance concerns interests of reimbursement or patrimonial recomposition, but its consistency is at least debatable, in view of another counterpoint that cannot go unnoticed: the claim of satisfaction of the patrimonial interests of the offended person can be sought in the civil way, being the criminal procedure inadequate for that purpose, thus the thesis is reinforced in the sense that the presence of the assistant of prosecution in the criminal process is exclusively due to reasons of sentimental order, in a word: revenge, nothing more.

In this sense, it is the understanding of Azevedo (2009), for whom the prosecution assistant is unassisted by the Constitution – which does not place their role in the system –, and that their maintenance in the penal procedural law does not fail to translate an evident vestige of the phenomenon of the privatization of the criminal proceedings.

According to the cited author, the privatization of criminal proceedings should be understood as "the criminal policy movement whose purpose is to give the victim a prominent role in the criminal process, that is, to make the victim a subject of the process, which gives the victim the exercise of revenge" (Azevedo, 2011, p. 326-327). After all,

> On the grounds that, for a long time, the victim has been put aside by criminal procedural law, more recently, the aim is to revert this framework at all costs, thereby giving the victim a role of importance within this branch of law. However, in doing so, the character of the public law of the criminal process is tarnished, the unauthorized nature of the rights with which the process deals and the excess of the victim's interests are sought. Moreover, this is the understanding of Salo de Carvalho, asserting that "assistance to the Public Prosecutor's Office is a remnant of privatization of criminal proceedings – despite the fallacy always invoked that the interest is not criminal but the civil effects of the conviction ...". [...] It is also true, as regards the role of the victim in criminal proceedings that the State assumes as its right of another that the right that has been expropriated should not be returned to the victim. What characterizes a civilized and democratically oriented state is, among other factors, the criminalization of the arbitrary exercise of its own reasons (CP, article 345); *is the construction of the concept of jurisdiction as an activity that replaces the interests of the parties; Is the inability to sublimate the people involved in the conflict, that is, to "get out of the conflict itself and, when observed from the outside, impartially verify the appropriate response to the case".* Therefore, one should not believe so much in human good will (Azevedo, 2011, p. 327-328, my emphasis).

In conclusion, Azevedo (2011, p. 328) recalls that "more than obtaining compensation for the damages suffered, what the victim really wants to see satiated is their desire for revenge, or why not say, to apply the maximum penalty that Law provides and admits for the defendant, since the rule of law does not give them the right to kill".

On the subject, Lenio Streck states: "It should be added that the presence of the Public Prosecutor, who in the jury defends the interests of the society, with the figure of the prosecutor, who defends the private interests of the victim, is antonymic, showing, in addition, *the remains of vendetta* (Streck, 2001, p. 159).

Likewise, Adams (2008, p. 102-114) thinks that when the owner of the action, who is the Public Prosecutor's Office, relinquishes the accusation and requests the acquittal of the defendant, the assistance cannot invoke the conviction, under pain of return to private revenge[24]. In her conclusions, the author states that

[24] It is not, however, how the Supreme Court thinks – and in general that is the tendency in that Court – in a judgment which, invoking precedents of the Supreme Court, it confers the prosecutor not only legitimately to appear in that condition, assisting the Public

> as a branch of public law, criminal law cannot consecrate private means for the victim to defend their interests. For this, there is the civil sphere, whose amplitude is extended in relation to the criminal sphere. Providing the offended criminal reaction is nothing more than a throwback to private revenge. This is because the State, by assuming for itself the means of exercising the *jus puniendi*, removed this condition from the citizen, separating it from any ambition motivated by emotion and the unrestrained pursuit of punishment (Adams, 2008, p. 102-114).

The figure of the assistant prosecutor in some legislations may be the most obvious example of the remnants of the old vindictive system of justice, and more of them are added to it. Here, for purposes of illustration only, it is possible to refer to the case of death penalty, which is present in various systems of criminal procedural law, and which is also an example of the realization of the desire for revenge, in this case by the hands of an official court. The relatives of the victim are thus freed from exercising it personally and thereby attracting to themselves the curse of the Atreidai, for revenge would surely result in another revenge, which in turn would lead to an endless succession, such as it was in ancient Greece and is represented in Greek mythology and literature. In the same way, it can be said that the basis of the so-called criminal law of the enemy would have its origin in the feeling of revenge, as well as the maintenance of the offender's complaint in certain laws and for certain crimes.

Similarly, it would not be reckless to say, although the issue is controversial, that the effects of the confirmation of the criminal conviction in the second degree of jurisdiction, as defended by the Federal Supreme Court recently, may also add to the list of remnants of to a certain extent, the relativity of the presumption of innocence with imprisonment after the conviction of the defendant in the second instance would be, in due proportion, a reflection of the immediacy, which is one of the characteristics of revenge.

In a final consideration, it should be pointed out – in view of the remnants and the presence of revenge that in the modern penal systems

Prosecution Service, But also to appeal against a decision that conflicts with the interests of the victim or his successors, although the Public Ministry, as the true owner of the action, does not resort, for example, to an acquittal. In this sense, see the judgment rendered in Special Appeal n. 1,451,720-SP (2014 / 0097833-1), published in DJe on 06/29/2015.

operates on the symbolic level – that the Greek tragedies remain present, crossing the centuries and reminding us that whoever launches oneself against their own blood – and the human blood is one, regardless of whether or not it belongs to the same family background – attracts the wrath of the gods.

EPILOGUE

Throughout this study, we have tried to demonstrate that, in addition to philosophy, politics, democracy and play, the Greeks have bequeathed us the invention of law, even though such reality has more often than not been concealed by the force of our Roman formation, which does not obliterate the fact that it was the Hellenistic spirit that conceived both the institutionalization of the court and the adoption of rational criteria that put an end to the vengeful system of private justice, which allows us to conclude that the mark zero of what, within an evolutionary line, has become, in modern systems of conflict management in matters of criminal prosecution, the realization of the law.

The difference is that the Greek legacy was not transmitted directly to us through the law, understood as a normative system, but through a privileged cultural display: the myth and the scenic art, especially the tragedies, that we revisited throughout this study with the aim of analyzing what we have learned and what lessons we can still draw from them, since the issues discussed there for more than two centuries still reverberate.

To this end, we plunged into a Greek mythology theme by Aeschylus – one of the three greatest Greek playwrights of antiquity – in the trilogy called *Oresteia*, which presents part of the history of the *Atreidai curse* and culminates in the establishment of the jury court and with the adoption of rational judgment, so as to separate the feeling of revenge from the idea of justice, although, as shown, the passage from private justice to public justice – symbolically represented by the conversion of the *Erinyes into Eumenides* – has not completed its cycle .

In order to reach such conclusions, we analyzed the contemporary systems of law and found that in their civilized processes of punishment there are still reflexes of the primitive vengeful systems. In a final word: there is still a very present past present that does not pass, as if the long

memories of the avenging goddesses still traversed the corridors of the souls of the victims and their families, crying out for revenge, interdicted by the state, to exercise the public right to punish, which, in a given perspective, does nothing other than to reproduce feelings and practices of revenge, to remember the *curse of the Atreidai*, even after more than two thousand years of the fable of the *Orestes* trial.

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