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Origin of a Jury Trial in the European Countries

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Abstract

Traditionally it is believed that the birthplace of the jury trial creation is England, but the issue of the birthplace location of this particular form of popular participation in the criminal justice administration is not yet fully resolved by the historical science. The continental lawyers were particularly interested in the jury trial among other institutions of English law, in which the English themselves identified the stronghold of the country's law and order, its political and civil freedom. It is not difficult to see that the main role was not played by the judges, but by the community representatives in this form of justice administration. Since then the community has been gaining more and more importance in England as a state body in the matter of justice administration, and the initial forms of its activity have being further developed in this direction. This works investigates roots of jury trial by basing on such methods as historical, systemic, formally logical, concrete-historical, comparative legal analysis method. The authors, in turn, come to the conclusion that the jury trial has its roots still in the Ancient States, but the classical modern model owes its origin to England.

Keywords: England, The council of 12 jurors, Liberty, Justice, Court, Jury trial, Jury lawsuit, Criminal justice.

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Introduction

According to many researchers, a jury trial is the best form of the court that can be specified in the history of all civilizations (Burnham, 1995; Bobotov, 1995; Cairns & Macleod, 2002; Mittermeier, 1865). The significance of this institution is enormous for us. It is quite clear to us that the period of true social activity began in the world practice since the jury bench was set up in it.

There is still no consensus on the historical homeland of the jury trial among researchers. To analyze the question of whether a jury trial is an institution copied from the foreign countries for Russia, that is, fully recaptured, or whether it is a new phenomenon, it seems necessary to study the historical experience of establishment of this institution abroad.

In our opinion, many aspects of organization and activities of the modern jury trial can be improved on the basis of historical experience. For example, the practice of organization and activities of the pre-revolutionary jury trial enables to identify and classify the shortcomings of a modern jury trial, as well as a number of factors affecting the nature of the jury judgment, which provides great opportunities for further improvement of the modern legislation on jury trial.

Due to the study of the history of formation and development of the jury trial, the basic principles of criminal justice, and the history of formation of these principles, we can offer the world science and the science of criminal justice to improve the implementation of basic principles, namely, transparency, equality, justice, competition and many other criteria in the jury trial activity. Many aspects of the organization and activities of the modern jury trial in all countries of the world can be improved on the basis of using the historical experience of establishment of this institution in these countries. For example, the practice of organization and activities of the jury trial in the past enables to identify and classify the shortcomings of a modern jury trial, as well as a number of factors affecting the nature of the jury judgment, which provides great opportunities for further improvement of the modern legislation on jury trial. We hope that the study of foreign and domestic experience in the formation, organization and activities of the jury trial, the identification of merits and demerits, will be our contribution to the world science and the world jurisprudence.

Methods

The main methodological prerequisite of this work is the historical continuity in the development of the state and law. The analysis of the historical significance of the jury institution should reveal such conditions, causes and patterns that lead to changes in the modern jury trial.

When studying the significance of jury trial, we widely used the general scientific, general philosophical, general social and concrete scientific methods. The universal method of reality cognition is among the general philosophical methods. The jury institution is a specific social reality, has internal properties, connections, regularities that are identified, perceived, analyzed by people, being refracted in their consciousness.

The next method is the chronological one. A comparative legal method is also widely used in the work, which consists in a comparative analysis. The system-structural, statistical and concrete sociological methods are also used in the work.

Literature Review

The issue of participation of the people's element in the criminal court attracted attention not only of the scientists, but also of the modern and historical periods. The work pays much attention to the works of scientists and practicing lawyers of the second half of the 19th century. In particular, the works of the

following researchers have been studied: R. Heinze (1869), Gue-Gluneka (1865), V.P. Danevsky (1895), A. Koenigson (1871), K. Mittermeier (1865), D.M. Petrushevsky (1918), S. Shaikevich (1865).

Traditionally, the origin of jury trial in England is associated by the legal historians with the beginning of travels of royal judges in various counties of the kingdom. There is a concept according to which the introduction of institutions of jury trial and magistrates in England has been the result of achieving one goal: protection of public order by the society itself in accordance with unwritten social norms of justice and judicial precedents.

W. Burnham holds another position assuming that the jury trial has arisen in England as a result of invasion of the hordes of William the Conqueror in 1066.

M.A. Cheltsov-Bebutov, while studying the monuments of the Norman law - the Collection of Coutumes of the 12th century - also came to the conclusion about the undoubted Norman origin of the jury trial, brought to England at its very source and developed there, under the influence of local conditions, into a complete institute, long considered to be specifically English. The version of the Norman origin of the jury trial may also be confirmed by the existence of a special type of criminal prosecution.

At the same time, R. Walker thinks that there is the incontrovertible evidence that the jury has existed before the Norman Conquest in England. That is, the jury has participated in the courts of Anglo-Saxon kings even before the spread of Christianity in this country.

So, the idea of a jury trial in Europe was making its way both by the way of reception and by the original way through the transformation of ordinary courts by increasing the role of representative judicial panels. The very reception of the jury trial was carried out by two channels: firstly, by extending the action of common law, such as in the former British colonies, and secondly, by perception of the Roman-German law institutions. Thus, the jury trial in its French version was implemented along with the Napoleonic Code in Belgium, Italy, Switzerland, Poland, Greece, and then in Mexico, Brazil, Peru, etc.

According to the German lawyer G. Brunner, the jury trial was the only one institution in the history of law, which so widely spread in such a short time and so energetically took root in the legal life of various countries. Until the last decade of the past century, it was known in England and in America. Since then it has become almost the entire legal institution and the time when the jury's obstacle in the courts will be viewed as an essential sign of culture is not apparently far away.

According to the analysis results of various opinions on the merits and shortcomings of the jury trial, we can conclude that we agree with most researchers on the democratic nature of this institution and the need for its development, but we offer to constantly analyze the foreign experience and the history of judicial practice of trials involving jury and improve this institute. Of course, we occupy a small place in the framework of science, but we hope that our further research will lead to legislative initiatives to improve the legal norms of organization and activities of the jury trial. Within the framework of Russian science, our work, unlike other researchers, is based on the analysis of historical experience of the formation and development of a jury trial in various regions of Russia. We also thoroughly study the specific court cases.

We believe that our researches are reliable and proven, although, there is always some space for a convention, discussions, but there would be no science without this.

Results

The scientific novelty of this work is that for the first time an attempt is made to make a comprehensive analysis of the implementation of democratic principles of the court and process in the jury trial activities

by the example of the history of establishment and development of this institution in Russia, taking into account the foreign experience and assessing the historical experience of the organization and activities of this institution as a guarantor of more successful implementation of all democratic principles of the criminal process. Also, the scientific novelty lies in the fact that the author analyzes the issue of the Russian jury trial as a new institution or as exclusively copied one from the foreign countries.

Before John Lackland signed the Magna Carta, one could talk with a great deal of convention on the jury trial in England, since they performed only witness functions. It is possible that reduction of a number of jury-helists from five hundred (or one thousand, depending on the case complexity) to twelve people was exceptionally English invention. At the same time, the history of law showed that long before the jury in England, the function of case solution was carried out by a jury consisting of 12 court men, for example, in Denmark. Thus, Saxo Grammaticus reports that as far back as the 8th century, the Danish king Ragnar Ladbroke established the council of 12 juries (Koenigson, 1871; Mittermeier 1865; Mikhailov, 2004; Nasonov, 2015; Petrushevsky, 1918; the Jury Trial and on the Policemen Courts in Russia, 1860; Tarasov, 2015; Walker, 1980; Shaikevich, 1865).

Based on the above arguments, which enable to judge the existence of the jury trial institution in antiquity, we conclude that the latter has originated in the heyday of Greek democracy; the emergence of a similar institution in the 12th century on the territory of England is its revival, the final design of the English version of jury trial ended only a few centuries later.

In the Middle Ages, the jury trial did not develop on the continent, probably because the states of Europe almost continuously waged wars against each other during the second millennium. Only the territories that were more influenced by the Roman law had some prerequisites for the jury trial establishment. So, a number of communes that used the city liberties had a court of equal for their members, in which the process was conducted without fights and hordes, that is, in private lawsuits in medieval Europe.

Many states of continental Europe went along the path of the inquisition formation, which was greatly promoted by the form of the state structure and the features of political development. And only the wave of bourgeois revolutions, which began in the 17th century, gave impetus to the democratization of judicial system and revived interest in the jury trial (Hanly, 2005).

It should be noted that the jury trial as a foreign element hardly got accustomed to practically all territories on which it was forcibly "planted" by the Normans, including in England. So, there was a parallel process of establishing the justice administration procedure with the help of 12 jury, who originally had witness functions and had judicial powers later in the 10-12th centuries. The criminal procedure legislation of England mentions the witnesses-ring members, of Denmark - rahimburgers, of Normandy - foremen-tenans.

Undoubtedly, the institution of jury trial in these states can be considered as such only conditionally, because the its functioning stipulated the existence of equal freedom, the existence of citizenship.

In the specified time period, some categories of citizens (slaves, serfs) were generally deprived of all rights. Obviously, the process of forming the jury trial began in Normandy long before the invasions, when the main mean of solving the criminal disputes were judicial fights. Usually such fights were arranged with a large crowd of people, which not only watched the events, but also confirmed (testified) about the rightness of one or another party.

Despite the numerous scientific evidence supporting the version about the Norman origin of the jury trial, traditionally, England of the 12-16th centuries is considered to be the homeland of the latter.

A petit jury was developed along with the accusatory jury - both in civil and in criminal cases. As a result of such historical development, the structure of the jury trial has changed in England. The referral of all cases that exceeded the total jurisdiction of petite lower judges was carried out by a decision of a grand, or accusatory, jury (12-13 people). The judicial investigation was conducted before a petite jury consisting of 12 people.

Approximately since the beginning of the 16th century there has been a gradual demarcation of the functions of witnesses and jurors in the English process: the former inform the information known to them, and the latter consider the issue of guilt and make a judgment.

The formation of a jury trial in England as an institution independent of the will of royal judges occurred towards the end of the 17th century due to the precedent developed in connection with the Bushell case and the bishop process.

These precedents, which establish the independence of the jury panel from the royal power and strengthen the position of the people's element, can be considered the starting point in the formation of a strong and independent jury trial in England. The decisions of the public court became mandatory for the administration, and one could count down the history of formation of a modern jury trial model approximately from this time. The result of this process also laid the foundations for the rule formation, according to which the jury should discuss only the facts. The issues of law should be left within the competence of judges.

The most important transformation of a jury trial started from the time when the evidence began to be submitted for its consideration. It has begun with the time of Edward III, and since then the English jury trial, in effect, has become what it is today. Although there were examples of unfair sentences from time to time after a famous case that developed a new precedent. Such phenomena were rare and the English criminal process got its best development (Shaikevich, 1865).

Initially, the jury decided the issue of establishing the fact of commission or non-commission of a particular act. When the judgment began to address the issue of guilt, it was called the general one. The practice of making a general judgment was first based on the precedents, and then received the legislative consolidation.

Subsequently, the range of issues to be decided by the jury was steadily decreasing, and the judge competence was accordingly expanded. And the judges did it at their own discretion, which greatly contributed to the casuistic nature of the Anglo-Saxon evidentiary law.

In 1877, the House of Lords in the Jackson case developed a precedent that established the distinction between the functions of Crown judges and jury in the Great Britain: the former were in charge of law issue, the latter - of fact issues (Cheltsov-Bebutov, 1948).

In the 17-18th centuries the English established their judicial systems in India, Burma, Australia, New Zealand, South Africa, etc. Later, having escaped from the colonial dependence, these states retained the former type of process called the Anglo-Saxon or Anglo-American now.

After the wave of bourgeois revolutions that swept the capitalist countries, many of them constitutionally enshrined the principles of justice on the basis of equality, openness, oralism and adversarial nature of the parties, with the jury participation.

After the revolution of 1789 the jury trial was introduced in France. Napoleon triumphantly marched through Europe together with his Civil Code. Even the authoritarian Napoleon, who often mocked the "comedy of popular elections", urged the members of the codification commission to study English experience. On October 30, 1804, he first took the floor at the State Council to defend the need for the

existence of two separate panels in the criminal court. Here are his words: "We should entrust the decision making on property issues to the civil judges, since such issues require technical knowledge. But since we are talking about a decision on the merits of a criminal case, we should listen to the sixth sense, which is called conscience. Therefore, it is necessary to appeal to people from the crowd in the criminal cases. Then the citizens would be guaranteed that their honor and life would not be given to the judges who once decided the fate of their property".

In the 19th century the jury trial was also introduced in Germany - it moved here from the Prussian provinces, where it consolidated himself during the French rule. After this, the jury spread to the rest of Europe. Currently, it does not exist only in the Scandinavian states - Denmark, Sweden and Norway, in the Netherlands and some cantons in Switzerland.

France and Germany gave the continental type of jury trial. Its differences from English one are reduced to the absence of an accusatory jury, the system of offering the jury not only one but several issues about the defendant's guilt. Some features are also represented by the crown element of the court. While a jury trial is convened either at the fourth sessions of magistrates or at an exit session of the royal family court member in England, it is convened at the first collegiate instance (Strafkammer des Landgerichts) in Germany, and at the second instance, that is, at the appellate court in France. But the main features of the jury trial remained the same even under the continental system.

Conclusion

Traditionally it is believed that the birthplace of the jury trial creation is England, but the issue of the birthplace location of this particular form of popular participation in the criminal justice administration is not yet fully resolved by the historical science. Every nation ascribes to itself the merit of creating and developing this kind of court. There is a myth circulating among the British scientists, which considers a jury trial a kind of social creativity of the Anglo-Saxon tribe, in particular - a kind of personal ingenuity of King Alfred and his knights. It was *per juratam patriam* prosecution in Germany. Later, the institute of English grand, or accusatory, jury was formed from this institute. It is not difficult to see that the main role was not played by the judges, but by the community representatives in this form of justice administration. Since then the community has been gaining more and more importance in England as a state body in the matter of justice administration, and the initial forms of its activity have been further developed in this direction.

The social and political conditions of life paid general attention to England in the continental Europe at the end of the 18th century. The continental lawyers were particularly interested in the jury trial among other institutions of English law, in which the English themselves identified the stronghold of the country's law and order, its political and civil freedom.

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