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The Origin of a Jury in Ancient Greece and England

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ABSTRACT

The purpose of the study is to analyze the implementation of the democratic principles in the court and judicial process in the trial by jury by the example of the history and development of this institution in Russia. The authors used different methods and approaches, in particular, historical, systemic and Aristotelian method, concrete historical approach and rather-legal analysis. The paper assessed significance of the historical experience related to the organization and activities of the jury as a guarantor of successful implementation of democratic principles in the criminal trial, with regard to the international experience. The authors conclude that jury trial has its ancient roots, however, this modern phenomenon is taken from England. The research findings may be useful for future explorations on the origin of a jury by historians, philosophers and lawyers etc.

KEYWORDS
Justice, jury trial, court proceedings in Russia, England, Ancient Greece

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Introduction

The jury's historical homeland remains a debating point among different researchers. Analyzing the question whether the Russian jury is a fully adopted institution or a new phenomenon, one should study its historical development.

One of the main arguments in favor of a trial by jury is its history and tradition of this form of justice. Originating from the Greek geliast court and the century assembly in ancient Rome, the jury trial emerged in his classic form in England in the 11th century (Heinze, 1896; Lobban, 2002). Its long history (over 800 years) is an important and positive argument in its further development. Succession, embodying universal values and humanistic principles is one of the most important qualities of a civilized society.

It is pertinent to point out that in the 17th-18th centuries, the British established their court orders in India, Burma, Australia, New Zealand, South Africa, etc. (Nasonov, 2015a; Mitnick, 1988). Later, after gaining independence, these states retained the former procedure, which is presently called the Anglo-Saxon or the Anglo-American type of judicial process (Lloyd-Bostock & Thomas, 1999).

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In Russia, judicial reform and the establishment of jury trials was based on the Anglo-Saxon and the continental legal experience, which resulted in the formation of a panel of twelve jurors (Bazhenova, 2015; Gromikova at al., 2015). However, we believe that one should discuss implementation of both grand and small juries into the Russian judicial system.

Literature review

R.C. Caenegem (1988) and C. Hanly (2005) observe the introduction of jury trials and magistracy in England has common goal: maintenance of public order by the society per se in accordance with the unwritten rules of social justice and judicial precedents.

Scholars agree that the merit of the Russian historical experience in terms of creating a jury lies in the fact that it was created in the period of well-developed feudal system with low development of capitalist institutions (Gromikova, 2015; Nasonov, 2015a; Bazhenova, 2015), and, most importantly, the panel of twelve jurors included representatives of various social strata behind one bench, in contrast to England and other European countries (Nasonov, 2015b; Tarasov & Rahmetullina, 2015; Heinze, 1896).

Characteristically, the jury trial is referred to the preferential gains of the English judiciary not only by modern scholars-lawyers, but also by the prominent lawyers.

N. Kovalev & A. Smirnov (2014) argue the necessity of the jury system cannot be explained solely by the defects of its mechanism of checks and balances. The adversarial jury system is traditionally respected in those countries in which citizens prefer to rely on their own abilities rather than government due to deep-rooted historical and legal tradition. In this regard, the situation in modern Russia is similar to the situation in the USA (Kolomenskaya, 2004).

L.I. Appleman (2009), J.M. Mitnick (1988), N. Kovalev & A. Smirnov (2014), S.A. Kolomenskaya (2004) think jury trial is the best form of trial, because this trial is moral and reflects public opinion in return and justice. At the same time, E.M. Tetlow (2005) believes the jurors can be harmful to justice.

Aim of the study

The aim of the study is to analyze the embodiment of the main principles in the court and judicial process in the trial by jury (by the example of the history of this institution in Russia).

Research questions

How did the principles of independence of the judiciary, morality, transparency, equality of all before the court etc. implement in judicial system in Russia (in comparison with other countries)?

Method

Research methodology is largely based on the historical continuity in the development of the state and law. The analysis of historical significance of the jury should identify conditions, causes and patterns that lead to changes in the modern jury trial.

Studying significance of the jury, the authors widely used general scientific, general philosophical, general social and specific scientific methods.

Philosophical methods included a universal method of reality cognition. The jury concept presents a specific social reality with its intrinsic properties, connections, regularities that are revealed, perceived and analyzed by people, being reflected in their consciousness.

The authors widely used chronological method as well as rather-legal analysis, which included comparative analysis.

The paper was also based on the system-structural analysis as well as on statistical and empirical sociological methods.

Data, Analysis, and Results

The jury historically originates from the ancient period. Ancient justice constantly adjoined two principles - public and popular. The public provided the common interest of all citizens in a particular case; the national one implied the outwardly democratic form of power implementation.

In ancient Greece, judicial functions were originally performed by the basileus - tribal leader who had absolute power over his fellow citizens, their life and property. Subsequently, the basileus was substituted by the annually elected Board of archons. This Board included nine members; the first three of them were the most important people: archon eponymous, Basileus and archon polemarchos. The first dealt with complaints of Athenian citizens, and sent the cases for examination on their merits; the second person (basileus) was in charge of the cults and prosecuted for blasphemy, kept an eye on morality of the priests. Archon polemarchos supervised the sacrifices, organized commemoration in honor of the fallen soldiers. His jurisdiction also included criminal offenses committed by metics (foreigners). Other archons (thesmothetes) determined the order of proceedings (Tetlow, 2005).

It is widely documented that The National Assembly had the supreme power in Athens; this body made effective gave effect to the decisions taken by the court of aldermen, elected the officials, but the right to vote belonged only to the chairperson, and judicial recount was rarely allowed.

The Areopagus and the geliast trial later became the sophisticated forms of proceedings. The composition of the Areopagus was determined from the former archons, who were elected for life.

Areopagus (from Greek "Hill of Ares", the name of one of the hills where the proceedings took place) was originally a patrician advisory body to the king, but with the collapse of the monarchy (ca. 900 B.C.) it became the supreme judicial and religious authority, including control over the magistrates.

The competence of the Council included legal protection, supervision over public order, bringing perpetrators to justice, fines and penalties, the Supreme Court proceedings in cases of violence and violations of public order as well as other judicial functions.

Solon, one of the famous legislators of the time, lodged the Areopagus with powers related to hearing of murder cases, proceedings related to crimes against the state, supervisory and control functions. This body supervised the integrity of democratic foundations, as well as precise execution of laws. Areopagus (or the board of ehrets) remained the patrician court and consisted of 51 members, chaired by the king himself (Archon).

In the VI century B.C., the geliast court for free citizens was established by Solon, and later finally adopted by Cleisthenes (the authors of this study believe that its function is consistent with the functions of the jury).

After the reform introduced by Ephialtes in 462 B.C., political functions of Areopagus were divided between the National Assembly, the Council of Five Hundred and the Heliaia.

The Heliaia (from Greek "Sun") considered the most significant criminal offenses. Every free citizen of Attica (including women and metics) had the right to appeal to the Heliaia for protection against any oppression or public injustice. It is significant that the law determined supremacy of this court over state authorities, so the complainant had no negative consequences.

The Heliaia consisted of six thousand members. Every citizen upon the attainment of the age of 30 could become a judge. The Heliaia included 10 judicial boards (dicasteries). All available cases were distributed between these trial chambers. Each dicastery consisted of 500 judges; the remaining 100 candidates were kept in reserve.

The trial was open and transparent. The deliver judgement was delivered in accordance with the results of the secret ballot, which was carried out by throwing stones into the ballot boxes. Court decisions and judgments were not always bound by the law. The court could follow the customs of its country and, in fact, the court generated the rule of law, which made decisions taken by the Heliaia especially important. Despite the fact that by this time Greece was already familiar with review of judicial decisions, verdicts by jury were not subject to appeal (Kadri, 2005).

The jurisdiction of the geliast jury encompassed consideration of crimes of high treason, the attempts upon democracy, serious criminal offenses, and official crimes. Furthermore, all meetings of the Heliaia were open. Parties had equal rights in impanelling a jury, enjoyed equal recusation opportunities.

The principle of competitiveness was vividly embodied in the Heliaia. As regards particularly important cases, 10 special prosecutors were appointed; the

speakers (sinegors) who conducted the defense also participated in the judicial debate. Before the process started, lawyers (logographs) wrote speeches for the parties; these speeches were memorized and pronounced by heart.

Before the voting process, two pebbles were given to each of the two jurors - one white, the other - black and drilled. The first pebble indicated discharge, the second – accusation.

The Heliaia considered appeals of the Athenians from illegal actions of all magistrates. This was an important indicator of democratic character of such a court, promoting fair verdicts, regardless of the administrative influence. Thus, the Greek Heliaia became the jury prototype that was born in Athens approximately in the 6th century B.C.

Along with the expansion of polis, the number of appeals increased and the Heliaia was unable to consider them. Therefore, a number of specialized courts was organized; they were called dicasteries.

State officials presided over the proceedings. The case was heard by dicasteries during one day: judges considered the circumstances of the case, listened to the arguments of the parties and rendered a verdict without any discussions. The number of judges depended on the case complexity, but usually counted a few hundred people. People believed that it was difficult to bribe so many people. In IV century B.C., odd number of judges were appointed with a view to exclude tie vote.

Each year, six thousand people were appointed; these people were elected from among the volunteers, and twelve judicial offices were formed, each of them consisted of 501 person. Thus, any capable and willing citizen aged over 30 could become a juror in ancient Greece.

Solon (c. 638-559 B.C.), the outstanding public official and legislator, conducted a number of reforms that extended political rights of citizens and strengthened the position of the public court. According to Solon's reform, the National Assembly was attended by all the citizens of the polis, including poor people. Cases referred to particularly important crimes such as "eysangeliya" (high treason), were considered by the National Assembly, not by trial jury.

Pursuant to the reform, introduced by Cleisthenes, most court offices consisted of 501 member, responsible for administering justice in public affairs. Any citizen could become a member of the Council of Five Hundred, but no more than twice in a lifetime. In the case of Proceedings of especially serious cases demanded doubled quantity of judges. Cases of exceptional importance were transferred to the fifteen hundred judges (i.e. ternary composition).

Before John the Landless signed the Magna Carta, the jury in England was hardly nominal, as they performed witness functions. Thus, waging the law implied the fact that the accused person had to name 12 people, who could provide affidavit confirming the innocence of the defendant based only on acquaintance with him. On the contrary, the Heliaia jury rendered their verdicts upon personal participation in the examination of evidence, voting their conscience. In other words, they directly carried out judicial functions.

The beginning of legal proceedings (commencement of action) was restricted by the English criminal proceedings. It is possible that reducing the number of geliasts from five hundred (or one thousand, depending on the case complexity) to twelve people presents an entirely English invention. At the

same time, law history testifies to the fact that cases were resolved by the jury, which consisted of 12 persons, for example, in Denmark. Thus, Saxo Grammaticus indicates that in the VIII century Danish king Ragnnar Ladbroke established the jury, which consisted of 12 jurors.

Based on the above arguments, proving the existence of the jury trial in ancient times, the authors of this research conclude that the latter originated in the heyday of Greek democracy; the occurrence of this phenomenon in the XII century in England indicates its revival, the jury trial was finally formed in its English version only after a few centuries.

The small jury was developed along with the indictment jury - in both civil and criminal cases. In order not to be subjected to punishment, the accused person had to clear himself of a charge providing evidence of his innocence. The main proof of that era were ordeal (God's judgment) and a legal fight, combined with waging the law. In 1215, the ordeal was canceled according to the decision of the Lutheran Cathedral, and the legal fight in England gradually went out of use.

Therefore, one had to fill the evidence gap, (excluding the affidavit). Over time, a new method of proving the truth gradually came into use: the defendant was entitled to ponere se super patriam, in other words, to refer to people familiar with his case, his possible witnesses. These people formed the new jury - the jury, which became a means of proof. Twelve people were usually involved in proceedings. In this new form, the old recognitores and the new testes – "proceeding" people and witnesses - were combined. The role of the jury was gradually expanding. Formation of the jury was accompanied by the general announcement that anyone can come and tell the jury everything he knew about the case according to a new custom. In this way, the jury gradually transformed from the initial means of proof into the active judicial institution: it gained the right to listen to the testimony of witnesses, to discuss the evidence and to provide their decisive opinion - vere dictum, the guilty verdict. The small modern English jury originated from this jury. The indispensable feature of the old jury - familiarity with the case of the accused person- disappeared. Only the formal one remained - discussion about the guilt of that person by 12 people representing the average population.

The jury was linked to the royal court long ago. Already in the 18th century, under Edward I, the Statute of Westminster ordered the sheriff to announce that the jury had to go to London, to Westminster, to participate in a regular session at the end of their each visiting session, unless a royal judge appeared in the county before (nisi prins). The judges, of course, always arrived in advance. Going to a county, they received special royal orders to judge, to release the prisoners, commissions of oyer and terminer, Commissions of gaol delivery, - and it became a constant form up to the present day.

This historical development resulted in the fact that the jury system in England changed. The trial in all cases, exceeding the total jurisdiction of magistrates was accomplished by the decision of a large, or grand jury (12-13 persons). The judicial investigation was carried out before the small jury of 12 people. They were elected for the entire session by lot from the list, which was pre-compiled by the sheriff or by his assistant. The reply of these 12 people to the final paragraph of the indictment had to be agreed. The crown judge or the lay magistrate in quarter sessions or a member of the London High Court was the corporate leader of the board of twelve. This person explained to the jury the nature of evidence and rules of the system, as well as summarized the data obtained by the judicial investigation and provided a detailed outline of their legal significance. This same judge determined the type of punishment for the defendant.

Approximately, in the beginning of the 16th century the English procedure was characterized by the separation of functions between witnesses and jurors: the first provided all related information they knew, and the latter decided whether a person was guilty or not and rendered a verdict (Caenegem, 1988).

Formation of the English jury, independent of the will of the royal judges, took place by the end of the 17th century due to the precedent developed in relation to the Bushel's case and the bishop proceeding. These precedents established the independence of the jury from the royal power and strengthened the national element; therefore, they can be considered a starting point in the development of a strong and independent jury in England. Verdicts rendered by public trial became binding for the state authorities and that moment became the starting point in the history of modern jury trial.

This process also determined the rule, which said the jury only had to discuss the facts and legal questions fell within the competence of judges. Major transformation of the jury trial started when the judges began to consider the submitted evidence.

Since the time of Edward III, the English jury trial developed into its present concept.

Although after the famous case that created a new precedent, history from time to time witnessed unjust verdicts, these events were rare and the English criminal trial progressively developed.

Initially, the jury decided to establish the fact whether an act was committed or not. Subsequently, the range of issues to be addressed by the jury, steadily decreased, and the competence of judges accordingly expanded. The judges did that at their sole discretion, which was largely caused by the casuistry of the Anglo-Saxon evidence law.

The English jurors did not raise the question whether the case contained extenuating circumstances, but they could (at their sole discretion) ask the judge for an uncensorious attitude to the defendant, which, however, was not binding for the judge.

In 1877, the House of Lords in the Jackson's case worked out a precedent, which made a distinction between the functions of crown judges and juries: the first were in charge of the law, the second were in charge of the fact (Hanly, 2005).

In the 17th-18th centuries, the British crown established its court proceedings in India, Burma, Australia, New Zealand, South Africa, etc. These countries were liberated from colonial dependence and retained the former type of proceeding, which is presently called the Anglo-Saxon or the Anglo – American proceeding.

After the bourgeois revolutions that occurred in the capitalist countries, many of them constitutionally enshrined the principle of justice based on equality, publicity, morality and adversarial proceedings by jury trial.

Discussion

Traditionally, historians believe that the emergence of a jury in England is associated with trips of the royal judges to different districts of the kingdom (Baker, 1979; Bobotov, 1995). W. Burnham (1995) is dissentient in this regard; he believes that the jury emerged in England because of the invasion of William the Conqueror in 1066.

While studying sources of the Norman law – the Coutume Collection of the XII century − M.A. Tcheltsov-Bebutov (1957) also convincingly concluded the undoubted Norman origin of the English jury, which developed there as a coherent phenomenon under the impact of local conditions, being long considered specifically English.

At the same time, R. Walker (1980) believes there is irrefutable evidence that the jury existed in England before the Norman Conquest. In other words, the jury took part in the Anglo-Saxon proceedings before the spread of Christianity in this country.

Therefore, the idea of a jury in Europe developed both through reception and originally - through the transformation of the ordinary courts by increasing the role of the representative of judicial boards. The very reception of jury trials was implemented in two ways: firstly, by extending the common law, like in the former British colonies, and secondly, due to the perception of civil law. Thus, the jury in its French version was introduced along with the Napoleonic Code in Belgium, Italy, Switzerland, Poland, Greece, and then in Mexico, Brazil, Peru and other countries (Langbein, 1987; Kamnev, 2015).

Conclusion

In summary, England is traditionally considered the homeland of the jury trial. However, this question has not been fully resolved by the historical science. At the same time, continental jurists were especially interested in a jury trial, which was considered a legal standard in England.

It is widely documented that the jury in various countries was not blindly copied from the English “sample”, but it embodied the basic principles of law:

independence of the judiciary, morality and transparency, equality of all before the court, public participation in the administration of justice.

The study develops the thesis that specific principles related to the jury establishment and functioning should be consolidated in the international instruments with a view to show their implementation mechanism. Moreover, we consider that the jury should become the democratic institution mandatory for all legal countries of the world, which guarantees fair trial based on the verdict returned by the representatives of various social strata.

Implications and Recommendations

The historical experience of jury trials can be used to improve the organization and operation of modern trials by jury. For example, practical organization and activity of historical jury trials provide the possibility to detect and to classify deficiencies of modern jury trials, as well as the number of factors that affect the nature of their verdicts. This provides great opportunities for further improvement of modern legislation on jury trials.

Studying the history of jury trials along with the basic principles of criminal proceedings, one can argue that the world science and criminal proceedings could be improved in terms of implementing legal fundamentals, namely, transparency, equality, fairness, competition, etc. in the jury activities. Many aspects related to the organization and activity of modern jury trials in all countries can be improved with regard to the historical development of this concept.

The authors of this paper hope that the analysis of foreign and domestic experience related to the jury's development and functioning, along with identification of its strengths and setbacks would contribute to the development of the world science and the global law. They believe that this research will trigger further legislative initiatives to improve the legal norms related to the trial by jury and will contribute to the development of the world science and the global law.

Disclosure statement

No potential conflict of interest was reported by the authors.

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References

Appleman, L. I. (2009). The Lost Meaning of the Jury Trial Right. *Indiana Law Journal*, *84*, 397.

Baker, J. H. (1979). *An introduction to English legal history*. Direct access: http://lawweb.usc.edu/users/dklerman/secure/documents/3AssumpsitBofMEjectment.pdf

Bazhenova, T. M. (2015). The results of judicial reform 1864. *The Russian Judicial journal, 1(100)*, 224-231.

Bobotov, S. V. (1995). *Where Jury Trial came from?* Moscow: Russian Legal Academy of the RF Ministry of Justice, 253 p.

Burnham, W. (1995). *Jury Trial*. Moscow: Publishing of Moscow independent University of International Law, 352 p.

Caenegem, R. C. (1988). *The birth of the English common law*. Cambridge: Cambridge University Press, 265 p.

Gromikova, O. E., Ilyukhin, A. V. Mukhamedov, R. A., & Mukhamedov, R. R. (2015). *The jury in the Russian Empire: the idea, legislation, practice*. Moscow: Publishing House "Yurlitinform".

Hanly, C. (2005). The decline of civil jury trial in nineteenth-century England. *The Journal of Legal History, 26(3),* 253-278.

Heinze, R. (1896). *The English judicial system in connection with the jury*. St. Petersburg: Peter, 254 p.

Kadri, S. (2005). *The trial: A history, from Socrates to O J Simpson*. Random House Incorporated, 363 p.

Kamnev, A. S. (2015). Forms of reviewing a jury trial decision and its grounds in France. *Bulletin of Tomsk State University, 396*, 122-128.

Kolomenskaya, S. A. (2004). *A jury in the United States and its role in criminal matters*. Petrozavodsk: Petrozavodsk State University, 374 p.

Kovalev, N., & Smirnov, A. (2014). The Nature of the Russian Trial by Jury. *European Journal of Crime, Criminal Law and Criminal Justice*, *22(2),* 115-133.

Langbein, J. H. (1987). The English criminal trial jury on the eve of the French revolution. *The Trial Jury in England, France, Germany*, *4*, 1700-1900.

Lloyd-Bostock, S., & Thomas, C. (1999). Decline of the" Little Parliament": Juries and Jury Reform in England and Wales. *Law and Contemporary Problems, 62(2),* 7-40.

Lobban, M. (2002). The Strange Life of the English Civil Jury, 1837-1914. *The Jury in the History of the Common Law*, 173-215.

Mitnick, J. M. (1988). From neighbor-witness to judge of proofs: The transformation of the English civil juror. *The American Journal of Legal History, 32(3),* 201-235.

Nasonov, S. A. (2015b). The Continental Model in the jury: genesis and procedural features. *Law and Politics, 11,* 1567-1572.

Nasonov, S. A. (2015a). European models of proceedings in the trial by jury: trial by jury in Spain (comparative legal studies). *Actual problems of the Russian law, 8,* 154-160.

Tarasov, A. A., & Rahmetullina, O. R. (2015). *Jury trial and problems of popular participation in justice*. Monograph. Moscow : "Rusayns" Publishing House, 263 p.

Tcheltsov-Bebutov, M. A. (1957). *Course of Soviet Criminal Procedure Law*. Moscow: State publishing ow law literature, 374 p.

Tetlow, E. M. (2005). *Women, crime and punishment in ancient law and society*. London: Continuum, 374 p.

Walker, R. (1980). *The English judiciary*. Moscow: Judicial literature, 264 p.