

## DISCUSSION

## EVOLUTION MORAL BASIS OF BRITISH JUSTICE IN THE ERA OF TRANSITION FROM THE MIDDLE AGES TO THE MODERN TIME

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**Abstract:** *The article deals with the issues about the evolution of the moral foundations of British justice in the era of transition from the middle ages to the modern times. Much attention is paid to arise in the period under consideration features such as: gradual restriction of the powers of the community in the administration of justice, the centralization and strengthening the power of the judiciary, consistent criminalization of acts committed, the formation in the public consciousness the ideology of justice adopted judicial acts and peremptory belief in the inevitability of the resolution of any case. The empirical material article provides links to specific cases before the courts in Britain, said the historical period.*

**Keywords:** *government, morality, justice, the criminalization of acts, enforcement activities, the modern time*

Since the XIV century community (corporate) control system of medieval European society has become to undergo significant changes. The ruling elite has sought to centralize power. Political changes had an impact on the then existing system of justice. The rulers knew that the court is a real instrument of the government, with which you can adjust the changing social relations and preserve the existing law.

Gradually changing views of society on the nature of the offense. If earlier offense considered as an attack on the interests of the community, but now their commission is defined as an attack on the interests of the state as a whole. Law, as a management tool, it gets the distinct criminal in nature. A. Bettoni said: “Until now, the law to exist and develop outside the State; it was formed under the influence of the community, its creator, being in harmony with it and closely interwoven and maintaining its long existence away from the usual policy of”<sup>1</sup>.

These legal novels gradually deprived communities the right to review court cases. Justice community purposefully replaced by officials state justice, endowed with governmental authority. Nevertheless, the existence of a new kind of justice, prepared in accordance with the procedural rules of *ex officio* (official) is not indicative of an instantaneous failure of community justice. Considering the features of the development of justice in a particular historical period, we can not specify the exact chronological framework of changing its forms. Using conventional terms, “the Middle Ages”, “the Modern Time”, we try to reveal the phenomenon of justice in its movement, show that “feature”, which indicates the emergence of a qualitatively new level of development of the research object.

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<sup>1</sup> BETTONI, A. *Fama, shameful punishment and justice history (XVI–XVII centuries). Wine and shame in the context of the formation of the modern European states (XVI–XX centuries)*. St. Petersburg 2011, p. 28.

Italian scientist M. Broccoli, referring to the “Treatise on the atrocities” Albert Gandini, argues that the commission of serious crimes (murder), the parties may reach an agreement to obtain satisfaction, and thus be reconciled. However, these agreements could not prevent the investigation process violations by law enforcement agencies of the government and to deprive them of the possibility of punishing the guilty<sup>2</sup>. It should be noted that during this period in the administration of justice persisted and remained effective pre-existing legal structure that can often seek dismissal of the case on the basis of the general agreement of the parties, albeit with the assistance of the official judge.

In addition, long-term community reserves the right to release one of its members on the use of torture. Such exemption was possible only in the presence of *bona fama* (good tidings) in respect of a particular member of the community. The application of this moral approach is quite justified. The community, as a comparatively small community of people had an idea of each of its member. The moral aspect of man is stable, it develops over a long period of time. That is why representatives of the community could assume that its members, in respect of whom the investigation is conducted, did not commit a wrongful act, and thus protect them from torture. Gradually remove the community from the judicial process. Justice is now carried out by state judges, receives the right to judge and punish. During this period, according to A. Bettoni, “the official images and statues of Justice, the European adorning churches, squares and buildings, in addition to the two mandatory attributes (sword and scales) appears blindfold”<sup>3</sup>. Reducing the role of the community (*ius commune*) in the justice process facilitated by the reduction in public assessments of the values of (rumors) in respect of participants in the judicial process.

Another important feature of justice in the period of modern times is the consistent criminalization of offenses committed in the community. The desire of the ruling elite to strengthen its position reflected in the expansion of the functions of judges to hear and determine, first of all criminal cases. The greatest expression of these features found in British justice.

According to history professor D. Roubotama, “in England of the XVIII century behavior that would have paid little attention to itself or be subjected to condemnation by the middle of the XIX century already it would be considered criminal. This process of expanding the scope of the criminalization of more and more aspects of individual behavior in everyday life continues to this day”<sup>4</sup>.

The radical change in the legislation from the disposition to the imperative in areas such as family, interpersonal relationships, health, health security, and so on, the most detailed the contents of the wrongful act. The process of justice in such cases becomes an instrument of regulation of such actions on the part of public authorities.

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<sup>2</sup> SBRICCOLI, M. *Legislation, justice, and political power in Italian cities, 1200–1400*. Padoa Schioppa A. *Legislation and justice*. Oxford 1997, p. 49.

<sup>3</sup> BETTONI, A. *Fama, shameful punishment and justice history (XVI–XVII centuries)*. *Wine and shame in the context of the formation of the modern European states (XVI–XX centuries)*. St. Petersburg 2011, p. 30.

<sup>4</sup> ROWBOTHAM, J. *The changing nature of censure: review of approaches to the redistribution of shaming and guilt in the English criminal justice*. *Wine and shame in the context of the formation of the modern European states (XVI–XX centuries)*. St. Petersburg 2011, p. 100.

This approach brought the criminalization of acts beyond the legal field. With the goal of improving the social welfare of the population, the government changed the legal assessment of the acts committed, which were previously perceived as valid and legitimate<sup>5</sup>.

The peculiarity of the process of criminalization of the most visually can be expressed by reference to the concepts of “guilt” and “shame”. Guilt is a legal element of the definition of involvement or the involvement of a person to the crime committed. The general theoretical sense, it is a mental attitude of the individual to his committed action (action or inaction), which manifests itself in the realization of its commission, anticipation of socially dangerous consequences and desired their onset. However, to enhance the content of the judicial practice in the process of criminalization is not sufficient to legal definitions of guilt. Broadening the range of offenses require significant stereotypically enshrined moral convictions, which, according to D. Rowbotham, “designed to give meaning to judgment, to explain and to justify it”<sup>6</sup>. For example, the wrongfulness of any act may be due to its social assessment as a reprehensible because of the presence of an immoral motive: greed, cowardice. These aspects of the changing structure of crime by introducing the moral aspect, which, to some extent, must take into account when sentencing the court or a decision in a particular case.

Shame is not a legal term, but it is directly related to the process of justice as a moral factor recognition of wrongdoing. And this factor is equally present in all forms of litigation. Indeed, in terms of shame does not matter whether a criminal investigation is considered the theft of another's property, civil proceedings for unjust enrichment or administrative action of the gross violation of traffic rules as a result of finding the driver was drunk. All of these types of offenses society would be regarded as disgraceful, immoral behavior that violates existing regulations.

Since the modern times the court in the proceedings drew attention not only to auctoritas (the prestige of the party), as it was in ancient times, not bona fama (good rumor about the person), as it was in the middle ages, and especially on the legal, and last but not least – on the moral and religious character of human acts. In this case, the court is the bearer and expression of social reaction to the offense committed.

It should be noted that the judicial systems of some countries recognized the ability of the court to establish the truth of the case was to come not only from society, but also from all parties involved in the proceedings. Thus, when the verdict was announced in the most conservative systems of criminal justice concluded that convicted accept the verdict as a reasonable and fair<sup>7</sup>. That is why in Britain in the era of harsh justice system, popularly called the “Bloody Codex” (XVI – XIX centuries), applied severe pressure on the accused to obtain an oral statement on the person committing a crime, especially if the person concerned to 12–15 % sentenced to death<sup>8</sup>. Moreover, around this process evolved im-

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<sup>5</sup> See for example: CHARLESWORTH, L. *Welfare's Forgotten Past: A socio-legal history of the Poor Law*. New York 2009.

<sup>6</sup> ROWBOTHAM, J. *The changing nature of censure: review of approaches to the redistribution of shaming and guilt in the English criminal justice. Wine and shame in the context of the formation of the modern European states (XVI–XX centuries)*. St. Petersburg 2011, p. 101.

<sup>7</sup> See for example: GATRELL, V. A. C. *The Hanging Tree, Execution and the English People, 1770–1868*. Oxford 1987.

<sup>8</sup> ROWBOTHAM, J. *Punishment and Execution – 1750–2000. Histories of Crime: Britain 1600–2000*. Houndsmill 2010, pp. 180–202.

pressive information field, which allows the public to monitor every stage of the proceedings. The court as a show – this is the true face of the judicial process in Britain in the Victorian era. A striking example of such an approach to justice is a show process of an Irish playwright, poet and writer Oscar Wilde, who was accused of committing “gross indecency”, according to the “Labouchere Amendment”. Even in the absence of direct evidence and the definition of “gross indecency” court, under public pressure, he recognized Wilde guilty and sentenced him to two years' imprisonment and hard labor.

Of particular interest is existed in Britain of the Modern Time, the idea of unconditional establishment of the facts of the case. It lies in the fact that if the information on the actual circumstances cannot be established, it is necessary to rely on divine help. In any case, the State, as the representative of God on earth will be able to arrive at a fair judgment<sup>9</sup>.

In 1827, in the county of Suffolk (England) examined the case of the murder of illustrating the above idea. The violent nature of her death has been established only when it became a ghost appear in the dreams of her stepmother, and told her that the girl was killed and her body buried in a barn. Reported details ghost convinced the girl's father to begin searching for the body. After the discovery of the corpse bride girl has been named a suspect. He did not admit to the crime, but the jury returned a verdict of guilt. The verdict of the trial of a young man was hanged. Before his execution he confessed to the murder and said that she required him to marry because she was pregnant. Interestingly, the testimony of a young man had not been taken into account by the court, the press portrayed the innocent victim, betrayed girl. Being a mother of two illegitimate children, innocent “girl” victims, of course, it was not, however, the tradition of this kind of information support of the process demanded certain adjustments of the real state of affairs<sup>10</sup>. First of all, it contributed the most reprehensible stigma in society. With its judiciary was trying to create order out of randomness of the offenses, to prevent their recurrence by means of interpretation of the event. This process also ensures a high degree of public involvement in the discussion of the cases and the approval of the corresponding decisions.

The presence of certain positive aspects of the process of criminalization combined with its inherent negative consequences. Focus on the court the criminal law (inquisitorial) process contributed to the spread of an appropriate approach when considering other types of cases. So, Rowbotham J. cites the following incident from the archives of the newspaper “Daily Telegraph” of 1870: “Mr. Edmund Buckland, commissioner of Battersea, was summoned to court on the claim of the London gas companies to explain the reason why he should not be jailed for failure to pay the sum of 9 pounds 0 shillings 9 pence, which he is obliged to pay the invoice for consumed gas”<sup>11</sup>.

This example shows how a civil case under the claim for recovery of debt can get a distinct criminal shade. It should be noted that a person called to the court is not questioning the reasons for violations of the terms of payment set out for the gas bill, and to explain

<sup>9</sup> See for example: GASKILL, M. Report murder: fiction in the archives in early modern England. *Social History*. 1998, Vol. 23, pp. 1–30.

<sup>10</sup> WEINER, M. *Men of Blood: violence, manliness and criminal justice in Victorian England*. Cambridge 2003, p. 139.

<sup>11</sup> ROWBOTHAM, J. *The changing nature of censure: review of approaches to the redistribution of shaming and guilt in the English criminal justice. Wine and shame in the context of the formation of the modern European states (XVI–XX centuries)*. St. Petersburg 2011, p. 110.

the reason why he should not be jailed. It turns out that the establishment of the existence of the debt is not related to the subject matter of the proceedings. Doubtful “legal fact” is determined by contacting the gas company to court with a lawsuit and an immediate hearing on the case is necessary in order to resolve the question of the application to the face penalty infamy. Taking into account the fact that the consequences of imprisonment could have a negative impact not only on a particular person’s reputation, but the reputation of the members of his family, English society is not always approve of this kind of judicial decisions.

Based on the above it can be concluded that, since the period of modern times, the administration of justice in the society passed entirely under the control of governmental authority endowed elite. Strengthening its influence can be traced through the gradual restriction of the powers of the community in the administration of justice, the centralization of power and strengthening of the judiciary, consistent criminalization of acts committed, the formation of the ideology of social justice adopted judicial acts and peremptory belief in the inevitability of any resolution of the case.