

# FORMATION OF MORAL AND PHILOSOPHICAL PRINCIPLES OF O. W. HOLMES

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## ABSTRACT

The article deals with the formation of the views of one of the prominent lawyers of the 19-20 centuries, the founder of legal realism in the science of constitutional law, an Associate Justice of the Supreme Court of the United States Oliver Wendell Holmes. The importance of judicial decisions taken by Holmes, including dissenting opinions, as well as their impact on the historical development of the country and the Common law in general, occupies an important place in the world of legal science. In this regard, it is especially important to identify and study those starting points that have become the basis for the formation of his views, both moral and philosophical. There are three main periods in the life of Oliver Wendell Holmes, which significantly influenced the formation of his worldview and the formation of his moral and philosophical views. First, it is childhood and youth, which took place in a Puritan family. The ideas of this doctrine became the cornerstone in the formation of his personality. Secondly, it is active participation in the Civil war, which in some sense turned his mind, sharpened feelings and honed a unique view of many issues. And finally, studying in higher education, familiarity with legal science and awareness of the scarcity and lack of accumulated theoretical knowledge of common law, his contact with the actual dogmas adopted in law, all this has served as a new impetus for the final formation of his moral and philosophical approach in the future to the solution of Court cases.

In the framework of this writing the authors used the following methods: historical and genetic method (in the study of biographical data) and analytical method to identify the stages of formation of moral and philosophical views of O. W. Holmes.

**Keywords:** *Justice Oliver Wendell Holmes, law, U.S. Supreme Court*

## INTRODUCTION

Oliver Wendell Holmes (1841-1935), the U.S. Supreme Court justice, is considered to be one of the prominent lawyers of the late 19th – early 20th centuries. O.W. Holmes was at the head of legal realism and pragmatism in the science of constitutional law, pursued a line to abandon the consideration of the US Constitution as a dogma to be followed, because the Constitution, like life itself, has the right to experiment. What is more, he introduced the concept of

"tolerance" in court cases and was an implacable opponent of "deliberate haziness" of laws that allow different interpretations of a trial. It is necessary to stress, that Holmes laid the foundation of one of the most important doctrines of modern US constitutional law – the doctrine of judicial self-restraint when considering political issues [1]. Moreover, Justice Holmes is believed to be the founder of modern liberalism in the United States [2]. In addition, Holmes was one of the official leaders of the intellectual elite of the United States of America, belonged to the so-called "Boston Brahmins", the highest stratum of American society.

Throughout his life, both professional and social, O. W. Holmes was guided by those moral and philosophical principles that were formed under the influence of certain life circumstances. However, of great importance is the personal approach of Holmes to certain life situations, his deep understanding of historical, philosophical and scientific processes. As a member of the US Supreme Court, Holmes did not contradict his moral principles and even disagreed with the position of President T. Roosevelt.

In this regard, it is extremely important to trace what influenced the formation of the principles of Oliver Wendell Holmes and identify the main stages in the formation of his moral and philosophical ideas.

## **THE FIRST STAGE – CHILDHOOD AND YOUTH**

Oliver Wendell Holmes was born on March 8, 1841, in Boston, Massachusetts. He was the son of Oliver Wendell Holmes Sr., a famous American physician and writer, and Amelia Lee Jackson, who were true Puritans. Holmes spent his childhood in Boston, where he was educated. In 1857, as befits Puritan families, he entered Harvard College.

It was the Puritan upbringing and environment that formed the basis of the philosophical and moral principles of O. W. Holmes, which he adhered to all his life and which were implemented in his activities, both scientific and practical. Holmes carried through all his life the deep attachment to Puritan tradition and environment. In one of his references to his Puritan ancestors he said, "I love every brick and shingle of the old Massachusetts towns where once they worked and prayed"[3].

Puritanism in America was the impetus for the development of democratic ideas and the creation of a completely new type of state based on liberal principles and freedoms. In one of his speeches, he wrote that the Puritans and their supporters founded a Congregational Church from which a democratic state grew, which is something more powerful than all the institutions. Holmes pointed out that whether Puritans had understood it or not, but they had sown the spirit of democracy in the heart of a man [4]. The freedom of thought, independence of opinion and an unbiased approach to different aspects of society, developed by

Holmes during this period, would serve a solid foundation for the creation in the future of a new direction in the philosophy of law and philosophical doctrine.

The main ideas that served as the cornerstone in the formation of moral and philosophical principles of young Oliver Holmes are the main beliefs of Puritans: the salvation of every human is given only by God, the Bible gives the necessary guidance to life. Puritans believed that the Church should be organized on the basis of biblical teaching. Puritans' views of rescue, the Bible and the Church made a revolution in the public consciousness. Puritans demanded the destruction of the episcopate, replacing it with elected elders (presbyters), removal of Church decorations and so on. According to Puritans, God has blessed the unity of people and thus, society is a unified whole.

Most Puritans believed that the life of society should be governed by a single, coordinated power. Secular ethics of Puritans promoted thrift, the worship of wealth and contempt for poverty, hard work.

They regarded the knowledge of the world as the knowledge of the divine plan: anyone who seeks salvation must strive for the knowledge of the world — the embodiment of the divine plan. Thus, there was an absolutization of scholarship, the acquisition of the last theological character. Scholarship, broad education, practical knowledge were highly valued in the New World. In particular, in 1636 was founded the first American University - Harvard College.

Thereby, the first stage of the formation of moral and philosophical principles of O. W. Holmes is characterized, on the one hand, by strict moral principles based on the Divine predestination of all things, a strong state power that instills religious morality. Meanwhile, on the other hand, the search for Puritans of religious freedom and the acquisition of extensive and deep knowledge.

## **THE SECOND STAGE – THE CIVIL WAR**

The year of Holmes's graduation coincided with the beginning of the Civil War between North and South. After serving three years, from 1861 to 1864 in the 20th Massachusetts regiment, he mustered out with the rank of captain.

During the war, he was seriously wounded three times and returned home as a national hero, although he did not consider himself such, and regarded the war as an "organized bore". However, Holmes noted that the personality of a person in the conditions of military actions acquires naturalness, and the disguise of convention flies away like a husk. "War, when you are at it, is horrible and dull," he said [5].

The experience he gained on the battlefields was of great importance for the continuation of the formation of his ideological, philosophical and political views.

Felix Frankfurter, a disciple and follower of Oliver Wendell Holmes, thought that “the Civil War probably cut more deeply than any other influence in his life” [6].

Thus, the Civil War was the second most important stage in the formation of moral and philosophical foundations of Holmes the scientist and Holmes the lawyer. The war taught Holmes to think openly, not to constrain his thinking, but rather to express his thoughts freely and impartially and to formulate doctrines. "Think under the fire" was his motto when making decisions. There is a big difference when someone makes a decision far away from the battlefield, and another thing to think under the fire, to make a decision on which much will depend, because a hasty or wrong decision in war conditions leads to tragedy [7].

For Holmes, his whole life became a battlefield, where he was "under the fire" and had no right to make a mistake. This postulate became the second point of Holmes's system of philosophical views, later implemented in his understanding of the legal science on which he relied when making decisions as a justice of the Supreme Court of Massachusetts and the Supreme Court of the United States.

### **THE THIRD STAGE - SCIENCE**

In 1864 Holmes entered Harvard Law School, he graduated it two years later. There he first encountered formalism in the legal tradition, the stagnation of legal science, which was based on case law and began to study the history and philosophy of law very seriously. In 1866 Holmes visited England, where he met many outstanding people of that time: John Stuart Mill, sir Henry Mayne, Benjamin Jowett and made friends with Leslie Stefan, James Bruce and Sir Frederick Pollock. With Frederick Pollock they had the closest relationship, which was maintained for about 60 years and is reflected in their correspondence.

In 1867 he was admitted to the Bar of Boston, and since that time he had the opportunity to apply his knowledge and moral and philosophical principles in practice. During this period, his first articles, reviews and comments on American law appeared. Working in the Bar, he published the Twelfth Edition of the classic work on American jurisprudence of the early period "Kent's Comments on American law" with its additions. From 1870 to 1873, Holmes was the editor of the American Law Journal, American Law Review, in which he published several articles. In 1880-1881, he honed his thoughts in lectures at the Boston Lowell Institute. In his lectures on common law, Holmes developed a model of analytical jurisprudence and was the first person in the United States to develop a method for achieving substantive results based on comparative analysis [8]. The apogee of his work is the publication of "The Common law", where Holmes created the first theoretical basis of American law, since before him, The Common Law was enriched by caution in dealing with individual cases but impoverished by the lack of established theoretical principles. All this was accompanied by the inevitable arguments about all-pervading principles that defy precise definitions... such an

approach to the experience of practice, based on the rules of common law, had to develop into a whole philosophy, or rather, in the American version of philosophy. Its name is pragmatism [9].

"The Common law" attracted widespread public attention and immediately put Holmes in the first ranks of legal scholars. In his work, he argued that laws must evolve as societies evolve, and that economic and social realities must prevail over cabinet theories. "The life of the law has not been logic: it has been experience," he concluded [10].

Holmes was convinced that knowledge would give the new American civilization the ideal option of peace and coexistence, but only on the basis of law and order. He defined the legal policy of the state as an important political task, as the main achievement of democracy. At the same time, it should be noted that the foundation of his research lied on European democratic institutions, the legal norms of States that had a deep history and stable democratic traditions, and the priority of his careful study of legal democratic trends was England.

The questions that Holmes raised before the law represent a certain kind of revolution in legal science: what are the sources of law and what are their legal sanctions, what are the components of conscious and unconscious determine the objective approach of the judge to the decision (the concept of "unconscious" Holmes used before Z. Freud), whether there is a limit of the requirements of the two parties (meaning the prosecution (Prosecutor) and the defense (lawyer), which determines the level of psychological pressure on the judge's decision.

In 1882, Oliver Wendell Holmes became Professor at the Harvard Law School, and by the end of the year he was offered the position of one of the seven members of the Supreme Court of Massachusetts. For Holmes, new prospects were opened up – to combine the knowledge and scientific experience that he acquired as a scientist, with their direct implementation.

The period from 1864 to 1882 (the third stage of formation of ideas) can be described as the time of accumulation of theoretical knowledge on history, law and philosophy by Holmes, the time of "immersion" in science and the final formation of moral and philosophical views not only on the science of law, which at that time was in a state of stagnation, but also on many socio-political aspects of life at that time. It was the dogmatism of legal tradition and the orientation of legal science on case law that forced Oliver Holmes to seriously engage in law and form his own, independent, new vision of law, based on morality. In fact, this period was revolutionary in the American jurisprudence of the 19th century, and the pioneer was Oliver Wendell Holmes, who was able not only to make legal science interesting and respectable occupation, to give a strong impetus to the study of law [11], but also allowed progressive circles to feel the support of the legislative branch.

The moral and philosophical principles of Holmes's legal doctrine are clearly reflected in his decisions in court cases. The opinions he had on a political, economic or social issue were expressed regardless of the status or authority of the individual or corporation involved in the proceedings. As a Justice of the U.S. Supreme Court, Holmes even opposed the position of U.S. President Theodore Roosevelt in the North Security's Company case. After that, he was described as the largest dissident in the Supreme Court, and in the public opinion, he looked like a radical liberal judge seeking to implement progressive reforms.

Holmes devoted himself entirely to his work and was extremely active. The desire to work and be useful and necessary for society was not due to the fact that he took up a new field of activity. Big politics, as before, did not interest him very much, first of all he was a philosopher who used law as a field for the application of his philosophy, his moral principles, and who wanted to bring them into life.

The eighties of the 19th century – the time of great change. The first individual farms were replaced by the collectivism of corporate labour. This period was not simply the time of change; it was a kind of revolution, and Holmes was aware of it. He studied the history of States, the change of formations and the reasons for this process and believed that when society changes, the legislation changes as well, otherwise the new system is doomed to failure.

## CONCLUSION

To sum up, we can clearly highlight three important stages in the formation of moral and philosophical principles of Oliver Wendell Holmes, which influenced the formation of his personality. The first stage (1841-1861), it is the family and Puritan environment, their views, lifestyle which formed a holistic and deep approach to the philosophy of the world order. The second one (1861-1864) is the participation in hostilities, which sharpened the understanding of the laws of life, deepened understanding of the essence of things and the universe. The third stage in the formation of Holmes's principles (1864-1882) is a close and serious study of the history of law and jurisprudence, and awareness of the need for an early change in the approach to the study of law in general.

Holmes's application of the philosophical and moral approach to cases before the Supreme Court of Massachusetts and the Supreme Court of the United States was manifested in the fact that Holmes makes decisions on a particular case not so much as a judge, in accordance with the rules and precedents of law, but as a philosopher of law, based on his own beliefs. The system of philosophical and moral views of Holmes is vast and complex. It is the historical, legal, philosophical, social heritage not only for America but also for all countries whose legislation is based or seeks to be based on the principles of legal positivism. Holmes came to a basic understanding of the law and the main merit of Holmes is that he developed his vision of law.

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