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THE DEATH PENALTY MORATORIUM IN 18th-CENTURY RUSSIA*

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This article examines the twenty-year moratorium on the death penalty in 18th-century Russia during the reign of Elizabeth Petrovna. The paper analyses the most important reasons for the unofficial abolition of capital punishment and the correlation between the decision of the empress and the events of the palace coup of 1741. The moratorium on the death penalty raised the urgent issue of "pardoned convicts", whose conditions of detention on Rågervik Island are also described in the article. Such a harsh and peremptory humanisation of criminal penalties undertaken solely on the internal motives of the empress aroused the displeasure of the Senate and affected the preparation of the draft of the New Law Code. Only the death of Elizabeth prevented the impending conflict of the throne with the court elite. The moratorium on the death penalty considerably influenced not only the internal political climate of subsequent reigns, but also the foreign perception of the Russian Empire. Three years after the death of Elizabeth in 1764, the Italian philosopher Cesare Beccaria published his famous treatise *On Crimes and Punishments*, in which he proved the inconsistency of the death penalty, both in terms of the concept of a social contract and in terms of the effectiveness in the prevention of serious crimes. Beccaria used the 'Great Example of the Russian Empress' as an important argument not only in his famous treatise, but also in discussions with Leopold I, duke of Tuscany, who was the first to abolish the death penalty in Europe in 1786 under the influence of the philosopher's arguments.

Keywords: death penalty; political death; social control; social consciousness; 18th-century Russia.

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Статья посвящена феномену двадцатилетнего моратория на смертную казнь в России XVIII в. во время правления Елизаветы Петровны. Анализируются важнейшие причины негласной отмены высшей меры наказания и связь этого решения императрицы с событиями дворцового переворота 1741 г. Мораторий на смертную казнь с особой остротой поставил вопрос о судьбах «помилованных колодников», условия содержания которых на острове Рогервик также описываются в статье. Столь резкая и безапелляционная гуманизация уголовных наказаний, предпринятая исключительно по внутренним мотивам императрицы, вызвала недовольство Сената и отразилась на подготовке проекта нового Уложения. Лишь смерть Елизаветы Петровны предотвратила назревавший конфликт престола с придворной элитой. Мораторий на смертную казнь имел глубокие последствия, повлиявшие не только на внутриполитической климат последующих правлений, но и на внешнеполитическое восприятие Российской империи. Итальянский философ Чезаре Беккария через три года после смерти Елизаветы Петровны (1764) издал трактат «О преступлениях и наказаниях», в котором доказывал несостоятельность смертной казни как с позиции общественного договора, так и для предупреждения тяжких преступлений. «Великий пример русской императрицы» Беккария использовал в качестве важнейшего аргумента не только в своем знаменитом трактате, но и в дискуссиях с Леопольдом I, герцогом Тосканским, который в 1786 г. впервые в Европе отменил смертную казнь под влиянием доводов философа.

Ключевые слова: смертная казнь; политическая смерть; социальный контроль; общественное сознание; Россия XVIII в.

Before the Icon of the Saviour

As is well known, not a single execution took place throughout the entire twenty-year reign of Empress Elizabeth from 1741 to 1761. The French diplomat and man of letters Joseph de Maistre referred to this 'abolition' of the death penalty during her reign as 'false philanthropy and a sign of national inferiority' [Местр, с. 85, 284–285]. The Italian philosopher Cesare Beccaria, however, took inspiration from the 'renowned example of the Empress of Moscovia' and, three years after her death, published his work *On Crimes and Punishments* [Beccaria, 1809]. Catherine II praised this meritorious act of "our Auntie Elizabeth" as superior to "the most glorious conquests," while herself making an exception for cases involving "disturbances of the national peace" – executing Lieutenant Mirovich and those who had taken part in the Plague Riot of 1771 and the Pugachev Rebellion of 1773–1774 [Екатерина II, 1907, с. 62].

This precedent, unique not only for Russian history but for all countries in the early modern era, has remained virtually without academic interpretation. Specialists have stubbornly contented themselves with the account of Prince Mikhail Shcherbatov, who wrote of the palace coup of 1741:

> Она при шествии своем принять всероссийский престол пред образом Спаса Нерукотворенного обещалась, что если взойдет на прародительский престол, то во все царствование свое повелением ее никто смертной казни предан не будет[1] [Радищев, Щербатов, с. 55].

This story, with some variations, is reproduced in all works devoted to the reign of Elizabeth. However, research into the circumstances of this mid-eighteenth century suspension of the death penalty contains rich material for the study of the self-consciousness of the imperial person, for the channels of representation of power, mechanisms of social control, and the correlation between divine and state law in the notions of contemporaries. Apart from this, the events connected in one way or another with this subject give us the opportunity to understand what consequences may arise from prayer and the heightened religious feelings of an autocratic monarch.

Specialists have often expressed sceptical opinions regarding the authenticity of such a classically[2] arranged scene as that portrayed by Prince Mikhail Shcherbatov in his essay. However, the French envoy at the Russian court, le Marquis de la Chétardie, who had played a key role in the events of the coup of the 5 December 1741, informed Paris the very next day of the circumstances surrounding the transfer of power in Russia in these terms:

> On 5 December, four-thousand guardsmen received the sudden order to march out to Vyborg in twenty-four hours. <…> Elizabeth's party regarded [this] as intended to remove the guards from the scene, in view of their well-known devotion to the princess. The [princess's] supporters persuaded her to decide upon carrying out their plan. On the same night of 5/6, she first prayed to God, then sat in her sleigh and set off straight for the barracks [Маркиз де ля Шетарди в России, с. 398–400].

Moreover, Chétardie mentions the names of three witness of the prayer uttered by the future empress: chamber-junker M. I. Vorontsov, the surgeon Johann Lestocq, and Jacob Schwarz, 'who had served initially as a musician, receiving a small pension from the Imperial Academy of Sciences, and who enjoyed free access to the court of the princess, who from time to time had granted him significant allowances' [Там же].

The reliability of Chétardie's testimony is confirmed in the notes of Christoff Manstein, a Prussian major-general then in Russian service, as well as in the dispatch of the Dutch resident in Saint Petersburg, Marselies de Schwart [Манштейн, с. 250; Маркиз де ля Шетарди

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[1] 'While making her move to take the throne of All Russia, she vowed before an image of the Saviour Not-Wrought-By-Human-Hand that, should she gain the throne of her forefathers, none should receive the death penalty by her command for the entirety of her reign' (Hereinafter the translation of E. Marasinova).

[2] Reference is made in Russian sources of the staging of such a *mise en scene*. On 1 September 1598, having accepted the royal crown from the patriarch, the elected Tsar Boris Godunov solemnly swore to have nobody put to death for a period of five years [Устрялов, с. 11–12].

в России, с. 425–426].[3] Moreover, the noted nineteenth-century historian and philologist P. P. Pekarskii states in his research that he managed to get hold of, by chance one time in Moscow, an eighteenth-century manuscript, to all appearances a poor translation of some foreign account in which several highly curious facts were related. On 18 December 1741, on the birthday of the recently enthroned Empress Elizabeth, the Russian resident at the English court had, on the request of those there assembled, retold a letter he had received from a friend in Petersburg. It turned out that Elizabeth's predecessor, Anna, had actually decided to send the unreliable guards regiments out on a campaign. On the evening of 5 December, a delegation of nine grenadiers had been sent to Grand Duchess Elizabeth Petrovna with the following plea:

> All-Merciful Sovereign! Deign to see the misfortune thou and all Russia now bear: we are to be sent on campaign tomorrow morning, have mercy, do not leave us orphaned, but shield us with thy motherly vouchsafement from this plan! [Маркиз де ля Шетарди в России, с. 431–433].

According to the words of the resident, then occupying the centre of attention at the English court, the future empress had welled up with tears, requesting everyone to go out into the next room, 'and herself, bowing her head to the ground before an image of the Saviour, pray[ed] in the secrecy of her own heart' [Там же]. Elizabeth then appeared with a crucifix before her waiting faithful subjects and demanded their oath of loyalty [Там же].

The empress's prayer was no brief emotional impulse, though her promise, made before the icon of the Saviour not to deprive a single one of her subjects of their life, contained no rational principle connected with the humanistic ideas of the Enlightenment. The impulsive actions of the Russian monarch the night before the coup were motivated, primarily, by her deep religious sensibilities. Shcherbatov also noted insightfully that:

> Хотя не можно сказать, чтобы Елизавета Петровна не имела исполненное человеколюбием сердце, но смертные казни при самом восшествии ее на престол отставлены были не на основании систем человеколюбия, но по единой набожности[4] [Щербатов, с. 66].

For the empress, the image that had opened her way to power took on a lofty sacral significance. In September 1742, J. S. Petzold, secretary to the Saxon embassy, informed August III that:

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[3] In 1754, the French *Gazette d'Utrecht* confirmed the existence of a peculiar moratorium on the death penalty in Russia, which had been introduced solely as a result of a "formal promise", made by the Russian empress on the night of the "wondrous transition which raised her to the throne" [Архив князя Воронцова, с. 649–650].

[4] "Although it cannot be said that Elizabeth Petrovna was lacking a heart filled with philanthropy, the suspension of death sentences on her very accession to the throne were based not on any philanthropic system, but on religious devotion alone".

> Last Thursday, there occurred for the first time, on the orders of Her Majesty the Empress, a nationwide church celebration in honour of the miracle-working icon that Emperor Peter I had had brought into his home during dangerous and important ventures, and which had been brought before the empress on the night she led the troops of the guards out of their barracks and then took the throne [Дипломатические документы, с. 442].

Elizabeth created a special cult of this icon of the Saviour, handing it over for safekeeping to the Donskoi monastery, regularly arriving in the company of the court to pay reverence to the image and obtaining a diamond worth thirty-thousand roubles for its casing [Там же].

If the reliability of this account is accepted, it then becomes clear why this richly decorated image found its way to the Donskoi monastery. To keep up such a ritual was beyond the strength of any mortal, but the prohibition of the death penalty by the autocratic will of the monarch in absolutist Russia was quite real.

"Sentences of execution and political death are not to be carried out"

The decree suspending the carrying out of sentences for those convicts sentenced to death, political death, or, in certain cases, eternal exile was issued on 7 May 1744. The chanceries were thenceforth to send case descriptions to the Senate and await further instructions. This essentially unprecedented decision was formulated in a restrained manner, without any explications and accompanied only by a short remark: 'It is perceived that death sentences and political death not be carried out on either the guilty or the innocent' [ПСЗ-1, т. 12, № 8944 (1744, 7 мая), с. 114].

The monarch was clearly displaying caution here, resulting in a lack of clarity in interpretation: on the one hand, it was ordered that 'executions not be carried out' [Там же]; on the other, the number of death sentences issued was by no means restricted, and they continued to be pronounced on the basis of existing legislation as though nothing had changed. Even among the upper classes, few were made aware that any moratorium had been declared. The decree of 5 May 1744 was composed in the empress's own hand as a resolution on a report submitted to her by the Senate, written on the very same sheets of paper. This original was at once hidden away in a secret dispatch, with a copy produced for public consumption that contained only the monarch's instructions that case extracts for those sentenced to the most severe punishments be sent without delay. It was precisely this copy, omitting all mention of the existence of any concealed decree, which was sent out to the collegia, chanceries, governorates and provincial administrations.

The preparation of extracts for royal confirmation was entrusted to a specially created Senate expedition headed by the secretary Ivan Sudakov. Hearings of sentences given to those condemned to death or political

death took place in the utmost secrecy: Senate minute-takers were not permitted to attend these sessions, and Sudakov's special expedition with its clerks was given 'a chamber set apart from public affairs' [РГАДА. Ф. 248. Оп. 113. Д. 919. Л. 99–100].

In turn, observance of the accepted but unpublicised moratorium demanded permanent monitoring by the government and even the intervention of the royal personage in the most varied legal cases. The decision to suspend the death penalty was reiterated with disturbing regularity throughout Elizabeth's reign and gave rise to all manner of new renditions, clarifications and explanations. The persistent repetition of one and the same decree bears witness to the difficulties associated with its implementation, and to the fact of its occasional contravention, several instances of which reached the throne and found reflection in legislative acts.

For example, in 1749, when the governor general of Kiev, M. I. Leontyev, was forced to inform the Senate that, despite the published decree, two Cossacks had been hanged in Zaporozhye for banditry and robbing the home of the Polish Jewish copyholder Shmoll. Here, the koshevoi ataman of the Zaporozhian host had referred in his report to a certain imperial ordinance, clearly known to himself alone, to proceed with death penalties: without such, «it would be impossible to eradicate thievery and other mischief» [ПСЗ-1, т. 13, № 9586 (1749, 13 марта), с. 25] (on this, also see: [Соловьев, 1964, кн. 12, т. 23–24, с. 40]). Not long before this, a similar paper had come from the chancellery of Revel province. The local landraten and magistrate asked the Senate not to abolish their 'ancient justice', urging that they be permitted to retain the privilege to sentence convicts to death without confirmation from the sovereign, justifying this by the increasing numbers of 'evildoers' on their hands and the ever more difficult task of keeping them fed [ПСЗ-1, т. 12, № 9312 (1746, 5 авг.), с. 583–584].

The position of the throne with regard to such attempts at revision of the legislation remained firm: in all territories of the empire, without exception, 'those condemned to death and political execution are not to have these sentences carried out, case descriptions are to be sent to the Senate and a decree awaited' [ПСЗ-1, т. 12, № 8944 (1744, 7 мая), с. 114]. Of course, no further instructions were forthcoming: the Senate was inundated with lists of convicts. The prisons and places of incarceration were filled to bursting, but the death sentences remained only on paper. The empress was zealously attached to the enacted legislation, acting in advance, on the annexation of new territories, to immediately dispatch orders there on the suspension or abolition of the death penalty.[5] The moratorium even extended to those convicted by the Secret Chancellery and to military criminals. On 31 May 1744,

[5] Cf. the 1794 *imennoi ukaz* (edict that the empress signed) 'on the abolition of torture and execution' in the Lithuanian provinces; the 1801 *imennoi ukaz* on the abolition of the death penalty in Georgia, etc. (See the emperor's decree of 1794 on the end of torture and the death penalty in the Lithuanian provinces; the emperor's decree of 1801 abolishing the death penalty in Georgia, etc.: [ПСЗ-1, т. 23, № 17264 (1794, 20 окт.), с. 576; т. 25, № 18943 (1799, 20 апр.), с. 622–623; т. 26, № 20007 (1801, 12 сент.), с. 786]; etc.

the Senate sent out special instructions to both the agencies of political investigation and to the regimental leib-companies and leib-guards [РГАДА. Ф. 248. Оп. 113. Д. 919. Л. 18–18 об.].

As a result, in the ten years following the promulgation of the decree of 1744, 279 death sentences accumulated in the Senate and a further 3,579 cases concerning murder, theft and brigandage were pending, awaiting the confirmation of the empress. 'The number of convicts grew by the hour' and the jailers were unable to cope with their duties [ПСЗ-1, т. 13, № 10086 (1753, 29 марта), с. 817–819] (on this, cf. also: [Анисимов, с. 256]). Catherine II also recalled of the first few months of her reign that:

> Тюрьмы были так наполнены колодниками, что хотя при смерти своей императрица Елизавета Петровна освободила до семнадцати тысяч колодников, однако при коронации моей 22 сентября 1762 года оных еще до восьми тысяч было[6] [Екатерина II, 1917, с. 200–201].

There appeared an ambiguity – what was to be done with the growing numbers of thieves, murderers, forgers and other 'evildoers' who, while awaiting their fate, required close security and a not insignificant degree of 'maintenance'? [Сенатский архив, 1893, с. 642–643]. The decree on suspending the death penalty had been signed, but all sentences remained without royal confirmation and without alternative punishment. In March 1746, the Senate reported that it had already received 110 accounts of murders, 169 case notes on thievery, banditry and other crimes, and 151 life sentences of hard labour. Having described the situation, the senators themselves suggested a solution to the empress: 'that all of the above described be sent to labour at Rågervik' [Там же].

The 'Rye Island' of Rågervik

'Rye Island' was the name given by the Swedes to a rarely frozen natural harbour fifty kilometres from Revel, which passed to Russia during the Northern War. Peter visited Rågervik six times, personally conducting a survey of the depth of the harbour and taking the decision to construct a port on the site and a stone embankment from the island to the mainland. In 1718, the first Russian emperor attended in person the foundation-laying of the seawall and a fortress on the coast. Control over the work was entrusted to a descendant of Scottish émigrés, the engineer Major Johann Ludwig Luberas, and the first labourers would be sullen and refractory, though mostly harmless, poor beard-wearers and schismatics, made available by the moratorium on the death penalty. In 1722–1723, two royal edicts were issued, 'on the exiling to Rågervik of those not willing to shave their beards and being unable to pay the fine' [ПСЗ-1, т. 6, № 4041 (1722, 28 июня),

[6] 'The prisons were so full of convicts that even though seventeen thousand had been granted amnesty by Empress Elizabeth Petrovna on her death, at the time of my coronation on 22 September 1762 they still numbered up to eight thousand'.

с. 725; № 4109 (1722, 15 окт.), с. 782] and 'on the exiling of schismatics to eternal labour at Rågervik instead of to Siberia' [ПСЗ-1, т. 7, № 4256 (1723, 28 июня), с. 86–87]. The number of convicts engaged in hacking away at the cliffs and dragging away unliftable boulders would, on occasion, reach three thousand (on this cf., for example: [Сенатский архив, 1893, с. 639]). Construction continued, but the plight of those driven to break stones for holding fast to the faith and traditions of their forefathers did not escape the almighty reforming emperor. In the last decrees issued by the dying autocrat on 26 and 27 January 1725, he commanded that all convicts be freed, save murderers and bandits, that they might pray to God for the alleviation of His Majesty's sufferings [ПСЗ-1, т. 7, № 4638 (1725, 26 янв.), с. 408; № 4642 (1725, 27 янв.), с. 409–410]. On 28 January, Peter was no more. On 30 January, Empress Catherine Alexeevna, clearly motivated by concerns for the soul of her deceased royal husband, confirmed once more the amnesty extended to those convicted of less serious crimes.[7]

While royal mercy and displays of Christian spirituality on the throne are, of course, touching, Rågervik was emptied and the port began to experience labour shortages. According to Lubertas's report of 1726, only 450 persons remained at the fortress, of which 150 would soon be transferred to the silver mines in Nerchinsk. By 1746, the Senate discovered that the island housed

> …nobody, apart from ten artisans, and the works begun there were not being carried out, with the timbers having become unusable due to lying for so long in damp and poor weather conditions, and the breakwater that had been built by the hard labour of the convicts, was now [almost half] submerged by water [Сенатский архив, 1893, с. 639–642].

After having described all the advantages of keeping a timber fleet in a salt water port that rarely ever froze over,[8] the senators recommended to Elizabeth that work be renewed on Rågervik harbour.

The empress received the Senate's report in March 1746, and was already making a personal visit to Rågervik in July, where a demonstration of naval manoeuvres had been planned involving thirty-two military vessels, though this intention was foiled by the absence of a suitable wind. Elizabeth was accompanied by the court, representatives of prominent noble families, the heir to the throne and his wife, the Grand Duchess Catherine Alekseevna.

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[7] Cf.: [ПСЗ-1, т. 7, № 4645 (1725, 30 янв.), с. 411–412] as well as various other decrees of Catherine I on improving the situation of convicts, "apart from those convicted on the first two points, of murder and repeated robbery": [ПСЗ-1, т. 17, № 4655, 4968, 4970, 4985] and others.

[8] The Danish pastor, Peder von Haven, having travelled through Russia, also noted the advantages of Rågervik's harbour and the crippling inadequacies of the port at Kronstadt: «However many new ships are built, as many old ones are rendered unserviceable each year. The main reason for this is considered to be the peculiar nature of the water in this harbour, which is why the work on construction of a new port, began by Emperor Peter I, has been renewed' ([Хавен, с. 305].

The young German princess hurt her feet on the island's rocky surface, and was, perhaps, the sole member of the party to notice the Rågervik convicts in her written account. Catherine recalled:

> Почва этого местечка каменистая, покрытая густым слоем мелкого булыжника. <…> Мы стояли здесь лагерем и должны были ходить по такому грунту в течение нескольких дней; у меня ноги болели потом целых четыре месяца. Каторжники, работавшие на моле, носили деревянные башмаки, и те не выдерживали больше восьмидесяти дней[9] [Екатерина II, 1859, с. 50][10].

Following Elizabeth's visit, the number of these convict labourers, working on the breakwater increased markedly.[11] Convicts sentenced to death or political death were drawn thither from all across Russia, with the exception of the provinces of Siberia, Astrakhan and Orenburg (cf., for example: [ПСЗ-1, т. 13, № 9943 (1752, 23 февр.), с. 609; т. 14, № 10541 (1756, 12 апр.), с. 551–552]). And yet some Muslims, 'Trukhmentsy, Kalmyk and others', shackled hand and foot in chains under the watch of an 'appropriate convoy' [ПСЗ-1, т. 14, № 10764 (1757, 24 сент.), с. 795–796], did end up being driven to Rågervik from Astrakhan and Orenburg.[12] Women found guilty of serious crimes were unsuited for stone breaking and so were sent to Siberia.[13]

The crowd at the harbour construction site had changed in comparison with Peter's day. The majority were now not gloomy beard-wearers and religious dissenters, but murderers, bandits and forgers of counterfeit notes. Guarding these was both dangerous and difficult due to the regime demanding the constant presence of officers and soldiers on the breakwater in wind, rain and snow. The celebrated Andrei Bolotov happened to be serving in the guard there on Rågervik in 1755. 'The honest or villainous throng' with whom the future memoirist had to take daily roll-call, impressed him with their variety and striking confirmation of the dictum that in Russia one can never 'rule out either the beggar's bowl or the gaol' [Болотов, стб. 341–342].

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[9] 'The soil of this spot is stony, covered in a thick layer of fine gravel. <…> We set up camp here and had to walk on this gravel for several days in a row; my feet ached for a full four months afterwards. The convicts working on the breakwater pier wore wooden clogs that didn't last any longer than eighteen days.'

[10] In the St Petersburg edition of 1907, this topic was omitted, cf.: [Екатерина II, 1907, с. 92–93]. Cf., for example, other recollections of the court's 1746 visit to Rågervik island: [Jetze, 1788, s. 92–97 etc.; Императрица Елизавета Петровна, с. 417–420; Поездка императрицы Елизаветы Петровны, с. 5–12 и проч.].

[11] In 1751 alone, the number of 'those exiled convicts assigned to labour in Rågervik [was] around 2,000 persons' [ПСЗ-1, т. 13, № 9871 (1751, 31 июля), с. 462–463; № 9872 (1751, 31 июля), с. 463–464].

[12] The Senate decree on exile to Rågervik of serious criminals from the governorates of Orenburg and Astrakhan: Trukhmentsy, Kalmyks and other Mohammedans [ПСЗ-1, т. 14, № 10764 (1757, 24 сент.), с. 795–796].

[13] The Senate decree on not sending to Rågervik women condemned to death; and on their life exile to Siberia [ПСЗ-1, т. 13, № 9911 (1751, 28 нояб.), с. 543–544].

> Были тут [люди] всякого рода, звания и чина: знатные, были дворяне, были купцы, мастеровые, духовные и всякого рода подлость… кроме русских, были тут люди и других народов, были французы, немцы, татары, черемисы и тому подобные[14] [Болотов, стб. 341–342].

Having escaped execution and political death, the convicts were doomed to severe suffering and a speedy end.

> Каторжных водили на работу окруженных со всех сторон беспрерывным рядом солдат с заряженными ружьями, собственное жилище их построено в превеликом остроге… разделенном внутри на разные казармы. Сии набиты полны злодеями, которых в мою бытность было около тысячи. <…> Все без изъятия они закованы в кандалах, и многие имеют двойные и тройные железа[15] [Там же].

From 1753 to 1756, 13,242 inmates arrived on the island of Rågervik, of whom 13,101 perished there (on this cf., for example: [История пролетариата СССР, с. 179]).

During the years of Elizabeth's reign, the Rågervik labour camp served an important function as a colossal prison at a time when the empress firmly upheld the suspension of execution. Although it seemed that the practical aspect of things had been dealt with, an underlying conflict remained between the political elite and the sovereign on the matter of the death penalty.

'The Senate has great misgivings'

The senators expressed their bewilderment in the autumn of 1743, immediately after the empress had sent her instructions to Field Marshal Lacy that Stockholm be informed of the substitution in Russia of political death for the death penalty, even for such terrible crimes as offences caused to Swedish subjects. Elizabeth's insistence, pronounced in a May 1744 royal decree written in her own hand on the suspension of execution of convicts and sent directly for the attention of the Senate, stoked passions even further.

The senators attempted to dissuade the monarch and immediately put forward several arguments against a moratorium on the death penalty. First of all, they stated that the numbers of thieves, bandits, murderers and forgers left among the living would grow unceasingly. This army

[14] 'Here were found [people] of all types, callings and ranks: the well-born, nobles, merchants, artisans, clergymen and all manner of scum… and apart from Russians there were people too of other nations, there were Frenchmen, Germans, Tatars, Cheremis and the like.'

[15] 'The convict labourers were led out to work surrounded on all sides by an unbroken line of soldiers with loaded weapons, they built their own quarters in a great fort… divided inside among the different barracks. These were packed completely full with miscreants, who numbered around a thousand in my time there… They were all clapped in irons that were never taken off, many of them with double or triple shackles.'

of villains would be very difficult to hold in subjection, and escapes would doubtless ensue, leading to the ruin of her law-abiding subjects. Secondly, these subjects, seeing the absence of punishment, would themselves become inclined to evildoing, and the army to insubordination. Finally, in the opinion of the senators, this perilous form of mercy went directly counter to the traditions of Russian law-making, particularly against the firm governmental actions of the 'parent' of the ruling sovereign, 'the blessed and eternally worthy of memory Peter the Great', who had punished 'mortal guilt' with ruthless executions [Сенатский архив, 1892, с. 651; Сенатский архив, 1893, с. 62, 642]. The dignitaries diffidently suggested that only death sentences be presented for the monarch's inspection, and that the sentence of political death be carried out, as formerly, on the provincial level. To all these protocols and their many pages, the empress replied with the single instruction – 'that political death sentences not be carried out' [РГАДА. Ф. 248. Оп. 113. Д. 919. Л. 1–4, 5 об., 10–10 об.; Д. 1023. Л. 14–16 об.] (on this, see also: [Писаренко, с. 33, 44–48]).

The opinion of the ruling elite was thus dismissed with ease in autocratic Russia, and the moratorium on capital punishment and political death was enacted and rigorously enforced. However, the contradictions concealed behind the faithful-subject rhetoric of the Senate's reports would also reveal themselves distinctly in the composition of the unfinished text of the new law code.

In August 1754, on the motion of the empress's favourite P. I. Shuvalov, a specially convened Senate commission sat for the 'composition of clear and understandable laws' [РГАДА. Ф. 248. Оп. 113. Д. 919. Л. 1–4, 5 об., 10–10 об.; Д. 1023. Л. 14–16 об.],[16] including in its number Major General Ivan Divov, vice president of the College of Justice Fyodor Emme, Senate Ober-Secretary Alexander Glebov, college assessor Vasilii Liapunov, burgomaster and chief magistrate Ivan Vikhliaev, senior judge of the detection prikaz Nikita Bezobrazov, senior judge of the judiciary prikaz Ivan Iushkov, and Academy of Sciences professor Friedrich Heinrich Strube de Piermont. These 'elucidators and experts in law' were furnished the aid of experienced clerks, as well as such means from the state bureaucracy as paper, ink, sealing wax, firewood and candles. Their task was to write up the project for a future law code, comprising four parts – 'on the courts', 'on the various conditions of subjects', 'on moveable and fixed property', and 'on executions, punishments and fines' [ПСЗ-1, т. 14, № 10283 (1754, 24 авг.), с. 201–209]. A year later, two of these were ready; the most thoroughly elaborated, from the commission's point of view, was the so-called 'justice' and 'criminal' sections. To all appearances, however, the wax and quills had been used up in vain – Elizabeth kept silent on the project submitted to her until 1759, after which she ordered the text to be revised and the two other parts

[16] For details on the work of the Commission as a whole, cf.: [Омельченко, с. 39–53].

completed. The commission was reinforced by the addition of the senators Roman Vorontsov and Mikhail Shakhovskii [ПСЗ-1, т. 15, № 11335 (1761, 29 сент.), с. 793].[17] In the fateful year for the empress of 1761, she finally received in her hands a manuscript work intended to direct the sovereign's attention to the truly meticulous investigation of the issue, including 'arguments previous to the commission' and matters as 'reasoned by the present commission' [Сенатский архив, 1892, с. 651; Сенатский архив, 1893, с. 62, 642].[18]

However, at first glance, the articles of the codex presented, on the one hand, merely a continuity with the Council Code, Military Articles, Naval Regulations and General Regulations and, on the other, revealed a total obliviousness of all the decrees issued by the ruling monarch concerning the death penalty and political death. After a decade of a virtual moratorium in practice on the execution of such sentences, the sphere of action for the most drastic forms of punishment was extended, and the very procedure of execution made crueller. According to the project, lives were to be taken not only of convicted bandits, murderers and forgers: the scaffold was also open to those who had stolen over forty roubles, any thief convicted for a third time, importers of metal money from abroad, tomb robbers, those causing damage to another's health by means of roots, as well as governors or military commanders who deliberately failed to promulgate among subjects the content of decrees intended for universal awareness, and so forth [Проекты уголовного уложения, с. 120–121, 143–144, 148, 171 etc.]. In other words, the death penalty was proclaimed the single or maximum sanction for a vast spectrum of deeds: crimes against religion, the Church, the state, public order, murder, theft, banditry, smuggling, witchcraft, fornication, complicity, failure to report a crime, and so on.

The methods proposed for the execution of criminals also do not witness any humanisation of criminal law. On this matter, the members of the commission displayed particular inventiveness, and reproduced the most varied kinds of capital punishment: alongside the banal act of beheading, a convict might be quartered, hung by the ribs, burnt, have molten lead poured down his throat, or even be torn apart by five horses,[19] which represented something of a novelty for the Russian tradition.[20]

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[17] The positions freed up on the departure of A. I. Glebov, I. I. Vikhliaev and F. H. Strube de Piermont were subsequently filled by A. P. Kvashnin-Samarin and A. M. Eropkin.

[18] Corrections to this part of the project for the code were also inserted after the death of Elizabeth during the reign of the new emperor, Peter III.

[19] This fearsome means of execution, in the opinion of the authors of the first version of the project, was befitting of 'evil deeds against the health of a loved one' of the emperor. In the second version, being torn into five pieces was generously replaced by quartering ([Проекты уголовного уложения, с. 76]).

[20] Breaking on the wheel was proposed, for example, as punishment for murder in the presence of the emperor, bandits were to be hung by the ribs, counterfeiters to have molten lead poured down their throat, and arsonists and those failing to report them were to be burnt, etc. ([Проекты уголовного уложения, с. 68–69, 76, 92, 103–106, 111, 137–144 etc.]). Strangely, the authors left out impalement and burial alive.

In this context, the project for a new law code cannot be regarded as some peculiar form of legislative rebellion on behalf of the Senate commission. Rather than any softening of the criminal code, Elizabeth's reign was concerned with the rules for the sovereign's confirmation of all sentences of death and political death, which, were not even promulgated among the greater part of her subjects. As for the confirmation of sentences, the authors sensibly proposed a reduction in the level at which sentences were ultimately proclaimed, and that differentiation be included according to the person of the condemned. In other words, it was proposed that the fate of convicts belonging to the nobility and merchants of the first guild be decided at the level of the Senate, and that cases of 'base-born and common villains' be examined no higher than that of the governorate or, in extreme cases, the College of Justice. As for what would follow confirmation, the commission had no doubts, and so, 'without any delay', the condemned would undergo two weeks of repentance, take communion, and on a subsequent day be executed – not in town, to be fair, but 'in an appropriate public place' not far away,[21] with the crime of the convict and the fact of their execution being promulgated to the universal acquaintance [Проекты уголовного уложения, с. 54–57].

Clearly, it was on precisely this point that the pragmatics of this approach went counter to the nuances of worldview in the empress's decrees, which implied a prohibition on implementation of execution or political death without royal confirmation for any crime, committed by any person, regardless of rank and state, as was also witnessed in the social make up of those exiled to labour on Rågervik.

The situation around the preparation of the code and the position of Elizabeth looks even more incredible if we take into account that, before work began on the second redaction of the project, cabinet minister Adam Olsufyev had proclaimed verbally that 'Her Imperial Majesty commands that the death penalty not be inserted in this new code for those found guilty' [РГАДА. Ф. 342. Оп. 1. Д. 41. Ч. 6. Л. 15] (on this, cf.: [Сергеевский, с. XIV; Таганцев, с. 973; Омельченко, с. 42]). This was followed by decrees on the election of noblemen and merchants from the towns for a 'hearing of the newly compiled code' [ПСЗ-1, т. 15, № 11335 (1761, 29 сент.), с. 792–794; № 11378 (1761, 8 дек.), с. 862–863. 1761]. By this, an object of potential public discussion was made not only of the moratorium on capital punishment and political death, but also the fundamental alteration of criminal law itself. It now becomes clear that the empress was in no mind to give way, and only her death ended this confrontation, hitherto unseen in Russia, between the autocrat and the political elite on the matter of introducing humane punishments for serious crimes.

[21] As described famously in song: "For that I grant you, child, high gallows in a field – two posts and a cross-bar" (A. S. Pushkin, "The Captain's Daughter").

The 'renowned example of the Empress of Moscovia'

Thus, in the mid-eighteenth century Russian Empire, a moratorium on the death penalty was observed for over twenty years. The hypothesis, made by Shcherbatov, about the empress's oath before the icon of the Saviour not to deprive a single subject of their life has passed into all textbooks and academic works, being taken on faith and without receiving any scholarly commentary. And yet the attitude of the monarch, the political elite and contemporaries as a whole towards the death penalty constitutes an important characteristic of the frame of mind in a society.

In this case, we are faced primarily with a clear collision of consciousness in a particular individual. In desperate life-or-death situations, it is human nature to turn to God and hope for a miracle when, it seems, nobody is there to help and nothing can save us. Depending on one's individual life history, religion, and depth of spiritual experience, these irrational 'deals' with the Almighty can take on the most unexpected forms.[22] The promise made to the preacher from Judaea fits well within the kind of piety specific to the women's chambers at the Russian court and displayed by Elizabeth. To all appearances, Elizabeth really did take upon herself certain obligations to her God in the event of Him granting success to her military insurrection. As is known, the revolt met with success, and so the debt had to be paid.

All these curious details of religious sensibility would have remained the intimate experience of a single person, had this person not been an empress ruling the autocratic Russian Empire. On the one hand, the Byzantine coronation rite lent a special exaltation to the Christian faith of any Russian monarch. On the other, the sacred will of the sovereign, of God's Anointed, was taken in its own right as something incontestable. It is exactly these circumstances, so far from political pragmatism – these existential factors, we might say – that explain the context of the laws on the non-execution of capital sentences.

The impression is made that the decision of the empress to forbid taking death sentences to their conclusion, or enacting political execution without the confirmation of the monarch, was something that concerned solely her own relationship with her God. Her subjects, never mind those 'evildoers' among them whose fate depended directly on this decision, had no business even knowing of its existence. No decree on the moratorium as such, accompanied by explanatory notes and praise of the royal mercy, was ever issued. In its stead came only semi-secret instructions, not intended in any way for 'proclamation to the universal acquaintance', requiring that case notes be presented to the Senate on all those sentenced to the most extreme punishments. The empress thus did not concern herself at all with

[22] A well-known example of the abrginndning with markedlyiy material offerings is that of Anton Antonovich Skvoznik-Dmukhanovskii: 'Just grant, God, that it be sent from your Hands the sooner, and then I will set up such a candle as nobody has ever set up before: for each beast of a merchant, I will add three *pud* of wax. O, my God…' [Gogol Government Inspector].

the fates of the pardoned convicts, any salvation of their sinful souls or any possible correction. They would all die anyway, whether it be under the blows of the knout or due to backbreaking penal servitude on the northern 'isle of Rågervik'.

On the other hand, Elizabeth was steadfast and uncompromising in her resolution, whose motivation she saw no cause to reveal. Clearly, in line with her understanding of Christian truths, there were neither Jews nor Hellenes, and all were saved, not just the elect: nobody was to be put to death, regardless of the crime committed. As well as the abolition of natural execution, the prohibition also fell upon its imitation in the form of being 'placed upon the block or led up to the gallows' which, for the empress, signified the ritual of political death. The theatricalised motions of taking the life of a subject had clearly also been part of the contract made with the Almighty.

Meanwhile, the reflection of a devout empress in absolutist Russia, coming twenty years before the publication of Cesare Beccaria's noted work, effortlessly made a reality that philosopher's dream, something which Europe was only beginning to discuss. However, Elizabeth and the Italian thinker were separated by more than two decades, living in completely different eras: no such enlightened ideals were embodied in her moratorium, but rather a combination of mediaeval religiosity and the autocrat's assuredness that the law of the state and her own will were one and the same. The suspension of executions for serious crimes had no theoretical groundings, and was not connected in any way with the contemporary development of legal thought. The empress had few notions of limiting the public nature of executions to shift the emphasis from a showy retribution to a triumph of justice in the courts,[23] or of moving from the punishment of the body to the prevention of recidivism, or any other ideas that might trouble European philosophers and jurists (on this, see, for example: [Фуко, с. 7–104; Evans, p. 130–137 etc.; Graff, p. 477–491; Martschukat, s. 12–53; Фридланд, с. 119–134; Bryner, p. 389–416] etc.). It was the logic of the Christian Commandments[24] that had led her directly to pose the well-known question: 'And who set me here

[23] The historiography is practically devoid of any comparative culturological analysis of the public spectacle aspect of the death penalty in Russia and the gradual decline of showy executions in Europe. It can only be stated that, in correspondence with the Assembled Codex, the public aspect of executions, employed as a means of retribution and deterrence, was considered obligatory: 'Death sentences are to be carried out in those places where "thieving people" have stolen or where they lived, so that they be seen, otherwise they would be *povadno*, and such thieves are not to be executed in deserted places' [ПСЗ-1, т. 1, № 431 (1669, 22 янв.), с. 799]. In 1727, an attempt was made to regulate the ritual of executions to some extent. First of all, corpses and heads were removed from columns and spikes, and the remains of the criminals were buried. Secondly, it was forbidden to carry out executions in either capital, with punishment moved outside their boundaries to specially allotted sites as, for example, the Moskovskaia and Vyborgskaia sides outside St Petersburg [ПСЗ-1, т. 7, № 5118 (1727, 10 июля), с. 824; № 5155 (1727, 17 сент.), с. 859; Опись высочайшим указам и повелениям, т. 2, с. 101]. As is well known, the last decree was often ignored in practice.

[24] It is characteristic that the members of the Synod, even when in full agreement with the sentence, had no right to sign a death sentence, 'in so far as they belong essentially to a clerical rank. (see, for instance: [ПСЗ-1, т. 14, № 12241 (1764, 15 сент.), с. 906–907]).

as a judge over who should live and who should die?' Having resolved that the best means of showing gratitude to God would be to refrain from employing the death penalty,[25] the Russian empress, by means of her autocratic will, forbade a single execution during her reign, or even imitation thereof in the form of political death, and, a few months prior to her death, raised the question of a fundamental alteration of criminal law, evidently to bring it into line with the faith she professed.

Contemporaries and successors made little effort to fathom the monarch's motives in all their complexities, which were likely not fully understood by Elizabeth herself. The twenty-year moratorium by supreme order became a reality, however, and perhaps this fact was sufficient to prompt the Italian enlightener to ask 'whether the punishment of *death* be really just or useful in a well governed state?' [Beccaria, 1809, p. 83]. In any case, it was precisely Cesare Beccaria who became one of the first to unabashedly applaud "императрица Московии, подавшая отцам народов знаменитый пример, равный по меньшей мере многим победам, купленным кровью сынов отечества'[26] [Beccaria, 1780, p. 74, 76–77].

> Если только немногие общественные союзы и только на короткое время воздерживались от смертной казни, то это скорее говорит в мою пользу: такова участь великих истин – подобно молнии, озаряющих лишь на один миг мрачную ночь, которая окружает человечество[27] [Beccaria, 1809, p. 92].

The empress would never hear these words, nor discover how the moratorium had influenced the mind-set of her subjects. However, two generations of people matured in Russia who had never witnessed a death on the scaffold. The profession of executioner gradually disappeared, as did the skills of erecting a gallows, as was demonstrated by the tragic events connected with the executions of the Decembrists. And the ruling elites became subconsciously accustomed to the death penalty existing only on paper, with the spectacle of public execution no longer constituting the main condition for upholding order in society.

A mere few decades previously, the bodies of criminals left out to hang as a deterrent to others, with tin plaques listing their offences, had been

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[25] Properly speaking, such logic would not have been something mutually exclusive for the Russia of the mid-eighteenth century. V. N. Tatishchev, in his collection of laws regulating labour in mineral production, expressed similar thoughts on the death penalty, though admittedly only concerning injustices: 'Some judges, forgetful of the fear of God and the fate of their eternal soul… condemn to death or deprivation of honour without any corresponding evidence' [Соловьев, кн. 10, т. 19–20, с. 490; Татищев, с. 98 (177)].

[26] 'the Empress of Moscovia, who gave the fathers of their country an example more illustrious than many conquests bought with the blood of the sons of the fatherland' (transl. by Simon Belokowsky, see: [Marasinova, p. 309]).

[27] 'That some societies only, either few in number, or for a very short time, abstained from the punishment of death, is rather favourable to my argument, for such is the fate of great truths, that their duration is only as a flash of lightning in the long and dark night of error' (transl. by Simon Belokowsky, see: [Marasinova, p. 309]).

a familiar sight in Russia's social landscape.[28] It had seemed that a wave of uprisings and disorder might sweep the country if a 'hereditary fear' was not sown in the minds of its subjects, as Lieutenant-General Prince Vasilii Urusov noted at the time of the suppression of the Bashkir Revolt [Соловьев, кн. 10, т. 19–20, с. 608]. The first Russian procurator-general, Pavel Iaguzhinskii, proposed in a special note to Empress Catherine I that one of the senators be sent to the provinces with the right 'to put [rebels] to death, and until this be carried out, there will be neither fear nor order' [Ягужинский, с. 271].

In all of two decades, the ruling and educated elite were already primed for a discussion on the utility of the most severe punishments and the scale of their employment, a shift that had taken place not due to any treatise by Beccaria, but as a result of the internal disposition of Empress Elizabeth. The insightful historian S. M. Solovyov wrote of this that:

> Народ должен был отвыкнуть от ужасного зрелища смертной казни. Закона, уничтожавшего смертную казнь, не было издано: вероятно, Елизавета боялась увеличить число преступлений, отнявши страх последнего наказания; суды приговаривали к смерти, но приговоры эти не были приводимы в исполнение, и в народное воспитание вводилось великое начало[29] [Соловьев, кн. 11, т. 21–22, с. 527].

"This great beginning" underwent a deep transformation during the reign of the other empress: Ekaterina Alekseevna did not pray to the Russian or German God on the night before the palace coup, she did not give any vows before an icon. However, the twenty-year moratorium on the death penalty forced Empress Catherine II to resort to such punishment only in exceptional cases of protecting the throne, and, in 1775 after the defeat of the Pugachev uprising, generally repeat Elizabeth's decree on the moratorium.

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[28] In January o1726, it was therefore ordered that the commissioners of the Obonezhskaia Piatina in the Province of Novgorod, Nikita Artsybashev, Grigory Baranov and subdeaconn Iakov Volotskii, be 'hanged in the same Obonezhkaia Piatina, with their guilt written on placards nailed to the gallows, and that their bodies not be taken down from these gallows'. Their crime, carried out in this way in the sight of all the inhabitants, consisted of taking bribes and embezzling public funds, particularly in the purchase of loaves on means taken from the recruitment collections and making use of the proceeds without paying the requisite fees [ПСЗ-1, Т. 7, № 4826 (1726, 24 янв.)].

[29] 'The people had to be weaned off the ghastly spectacle of the death penalty. The law abolishing it was not published: it is likely that Elizabeth feared an increase in the number of crimes committed once the fear of the ultimate punishment had been taken away; the courts sentenced people to death, but the sentences were not carried out, and so a great first step was taken on the road to popular enlightenment.'

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