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PRESTUPLЕНИЕ” (CRIMINAL
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OF CATHERINE II**

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**THE CONCEPT OF “UGOLOVNOE PRESTUPLENIE”
(CRIMINAL OFFENCES) IN THE PENAL DRAFTS OF
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This article analyzes the history of the concept “ugolovnoe prestuplenie” (criminal offences) in the penal drafts of Catherine II as an integral part of the penal policy that transformed and modernized the Russian legal system. Based on published and unpublished legal sources, materials of the legislative commissions, and acts of civil and military legislation, the paper focuses on the new language of the law. New legal terms and concepts defined an individual as a legal entity and marked a shift in the relations between subjects and the state which in securing the personal safety and property rights of every citizen led toward the political liberty of a modern state.

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Catherine II's handwritten draft *On the Form of Criminal Procedure* (the second half of the 1770s to the 1780s) defined *ugolovnye prestupleniya* (criminal offences) as “actions strictly prohibited by the law” or “failures to observe a law as relating to the peace, quiet and safety of society or citizens”³. In the 18th century legal tradition, it was the first definition of criminal offence that criminalized legal abuses and linked them with the protection of the citizens and society. Catherine II was the first to use the phrase *ugolovnoe prestuplenie* (criminal offence) as well as the word *ugolovny* (criminal). An analysis of 18th century penal legislation, both civil and military, and drafts of the criminal code drawn up by the legislative commissions in the first half of the century shows this.⁴ Issued on April 8, 1768 *The Instruction How to Bring to the End the Commission Appointed to Frame a New Code of Law* was the first regulation to introduce the word *ugolovny* (criminal) and the term *ugolovnoe delo* (criminal action) in the official language of the law.⁵

In this article, I argue that the new terms and concepts of the law were an integral part of Catherine II's legal policy. The second half of the 18th century was a time of development of the Russian legal system. This resulted from Catherine II's own activity to make it correspond with the new claims of Enlightenment political and legal discourses which, firstly, made the law the main and the most effective instrument of political and social improvement and, secondly, after *The Spirit of the Laws* by Ch.-L. de Montesquieu, and book 12 “Of the laws that form political liberty as relative to the subject” in particular, claimed the liberty of the citizens to depend upon the perfection of the penal legislation:

Political liberty consists in security [...]. This security is never more dangerously attacked than in public or private accusation. It is therefore on the goodness of criminal laws that the liberty of the subject principally depends.⁶

Catherine II heeded this idea (she read Montesquieu for the first time in 1754, then in 1758-1761⁷) and repeated it in article 467 of her *The Grand Instruction to the Commissioners*

³ RGB NIOR. F. 222. Kart. XVIII. F. 6. P. 2 back – 3.

⁴ See: RGADA. F. 342. Op. 1. F. 33. Part. 2; PSZRI. I. V. VI-XVI; Rossiyskoe zakonodatel'stvo X-XX vv. / ed. by O. I. Chistyakov. In 9 volumes. Moscow, 1985-1987. V. 3-5; Senatskiy archiv. SPb., 1909-1913. V. XIII-XV; *Chulkov M.D. Slovar' uyridicheskii ili svod rossiyskikh uzakoneni, vremennyh uchrejdeniy, suda i raspravy*. Moscow, 1793. Part. I. P. 722; *Myshlaevskii A.Z. Petr Velikiy. Voennye zakony i instruksii*. (Izdannye do 1715 goda) // *Sbornik voenno-istoricheskikh materialov*. SPb., 1894. № IX. P. 1-45, 51-74, 75-81; *Rozengeym M.P. Ocherk istorii voenno-sudnykh uchrejdeniy v Rossii do konchiny Petra Velikogo*. SPb., 1878. P. 269-313; *Proekty Ugolovnogo ulojeniya. 1754-1766 gg.* / ed. by A.A. Vostokov. SPb., 1882.

⁵ *Ekaterina II. Izbrannoe* / [ed. by A.B. Kamenskii, comp., comment. by G.O. Babkova]. Moscow, 2010. P. 271, 273, 274.

⁶ *Montesquieu baron de, M. de Secondat, Ch.-L. The spirit of the laws*. Glasgow, 1793. V. 1. P. 220.

⁷ *Ekaterina II. Zapiski imperatritsy Ekateriny II* / ed. by A.S. Suvorin. SPb., 1907. P. 625-640; *Omel'chenko O.A. “Zakonnaya monarchiya” Ekateriny II: Prosveshchenny absolutizm v Rossii*. Moscow, 1993. P. 72-73.

Appointed to Frame a New Code of Laws for the Russian Empire of 1767: “Liberty of a citizen depends chiefly upon the goodness and excellency of the penal Laws.”⁸

The legislation itself should correspond to the “genius” of the nation. Only then, could it secure the safety, property and welfare of every individual and create the tranquility of mind that let the people “enjoy” liberty. This would move the subjects to follow the legislation, because it was their nature to do nothing so well as what they do freely. It did not mean that people had the right to do whatever they wanted. Political liberty was framed in the laws: it was they which prescribe the citizens what to do and how to do it. Otherwise, everyone would have the equal power of doing the same that would annihilate the liberty and made an individual to stand in fear of another. Citizens should “fear” only the law, because they were all subject to the same rules and equal in this way. State legislation was able to assure civil liberties only if it was properly understood and put in force in “simple” and “native” words. Such “purity” would result in a language of the law comprehensible for everyone and, finally, could guarantee the stability of the state. The last point was of the highest importance: laws “engrafted” in the people’s minds “the idea of the state”. Being misinterpreted because of vague and indefinite terms, they could extinguish this idea and bring the state and the society to the collapse.⁹

The legislator, whose peculiar and regular establishments were laws, had to regard to “the general sense” of the people and take special care of the language of the legislation. He had to avoid “tumid and inflated” as well as “sublime, lofty or elevated” expressions that would darken the sense of the law and demonstrate nothing more but his “vanity and ostentation”. Each law should be written in such a clear manner and laid down in such “simple and concise” words as to be perfectly intelligible to everyone. Both people of moderate capacities and those of “genius” should perceive the language of the ruler’s prescriptions. It was the duty of every individual to act according to the laws; therefore, it was necessary that everyone should understand them properly. All new legal acts, regulations, injunctions, and orders should procure the greatest possible good to the people and to conform to their “genius”. Laws, customs and habits of other nations could serve only as examples that, as Catherine II wrote in *The Grand Instruction*, were “only intended to contribute to the choice of those means, whereby the Russians might be rendered a people the most happy possible of mankind.”¹⁰

All these principles formed the base of Catherine II’s lawmaking activity. While she borrowed from 18th century legal and political treaties, such as *The Spirit of the Laws* by Ch.-L. de Montesquieu, *On Crimes and Punishments* by C. Beccaria and *Commentaries on the Laws of England* by W. Blackstone, the empress never transferred foreign clauses or stipulations directly

⁸ *Ekaterina II. Izbrannoe*. P. 171.

⁹ *Ibid.* P. 118, 120, 171, 176.

¹⁰ *Ibid.* P. 170, 178.

to Russia. She “untwined” de Montesquieu’s or Blackstone’s ideas and consistently checked them against the Russian legal tradition, making special emphasis on the language of the law that she tended to frame in clear style and intelligible to everyone. In Catherine II’s penal drafts and criminal legislation, the result of this work were new legal terms and notions that formed new judicial language.

Extracts from Catherine II’s reading in 1762 show that criminal laws and procedures were one of her main concerns when she was the Grand duchess. Based on the “Mélanges de littérature, d’histoire et de philosophie” by D’Alembert (first edition had been published in 1752, the second in 1759), Catherine II insisted on the monarch’s right to commute punishment by “mercy”, underlined the necessity to abolish torture, proposed a new classification of legal violations (reproduced in chapter 10 of *The Grand Instruction*, articles 68-72¹¹). Her main idea was connecting the “safety” of the citizens with effectiveness of the judicature.¹² Catherine II’s undated note *How to help people in case of disasters* repeated almost the same range of ideas: commuting punishments for the oldest and youngest members of society, reducing sentences, using the death penalty only for the severest crimes.¹³ Just after ascending the throne in June 1762 Catherine II focused on penal reforms. Her ukase from February 10, 1763 strictly reduced the possibility to subject a person on trial to torture (only for once as distinct from the previous legal tradition)¹⁴. In June 1765 Catherine II approved the Senate report which commuted the system of punishments for under-age criminals.¹⁵

The Grand Instruction, Nakaz, was the next step in criminal law reform. Promulgated on July 30, 1767 it formulated the theoretical principles a future law code was to be based on, putting special emphasis on criminal laws and procedures in chapter 10 “On the forms of criminal courts”. It included more than 100 articles (142-250) and was the biggest in *Nakaz*.¹⁶ *The Grand Instruction* insisted on equal legal protection and equal consequences for transgressions for all social groups. It set delinquent moral correction as the final goal of the penalty which should fit the crime committed and have a more shameful than physical or oppressive effect. *Nakaz* declared the necessity to abolish torture and all kinds of physical methods of investigation. The Senate ukase of November 13, 1767 put it in force following Catherine II’s prescription of November 11. According to this only governors had the right to make decisions on the use of torture. In turn, in doing so, they had to follow prescriptions of

¹¹ *Ekaterina II*. Izbrannoe. P. 121.

¹² *Ekaterina II*. Sochineniya impertarizy Ekateriny II na osnovanii podlinnukh rukopisey. SPb., 1907. V. XII. Part. 2. P. 663-674.

¹³ *Ibid.* P. 657-658.

¹⁴ PSZRI. I. V. XVI. № 11750.

¹⁵ PSZRI. I. V. XVII. № 12424.

¹⁶ See: *Ekaterina II*. Izbrannoe. P. 130-147.

chapter 10 of *Nakaz*.¹⁷ The ukase was secret; nevertheless, it implied “the factual abolishing of torture in Russia”.¹⁸

In *The Grand Instruction*, Catherine II proposed a new classification of the delicts. All legal transgressions were divided into four groups by the object of encroachment. In chapter 7 “Of the law in particular” of *The Grand Instruction* Catherine II generalized all kind of offences by the word *prestuplenie* (crimes) and grouped them into four classes: 1) “against religion”; 2) “against manners”; 3) “against the peace”; 4) “against the security of the citizens” (art. 69-72).¹⁹ It was a novelty for the Russian legal tradition; it had no unique gradation of the crimes or terms to define them. From the second half of the 17th century to the first half of the 18th the acts of law had no general concept for criminal activity and determined it in different ways: *vorovstvo* (crime, robbery), *vina* (fault, guilt, crime), *likhoe delo* (crime, offence), *zlodeyastvo/zlodeyanie* (felony, crime), *prestuplenie* (criminal action), *rozysknoe delo* (crime, felony), *kriminal'noe delo* (criminal action), *razboynoe, ubiystvennoe, tatinoe/tatebnoe delo* (brigandage, murder, robbery).²⁰ Catherine II unified the usage and fixed the word *prestuplenie* (crime), in *Nakaz* it was used 147 times as a generic term for both criminal offences and misdemeanours. It recognized an individual as a legal entity who possessed civil rights and could claim state protection.

Composed by the Catherine II, *The Instruction How to Bring to the End the Commission Appointed to Frame a new Code of Law* (1768), *Nachertanie*, reproduced crime classification of *Nakaz* and defined *prestuplenie* as “acts that shake public order”.²¹ In *Nachertanie* along with the word *prestuplenie* Catherine II used phrase *prestupitel'noe delo* (criminal act) twice. It implied all four classes of crimes and included *ugolovnoe delo* (criminal offence). In the law drafts, the empress associated it with the fourth sort of delicts, i.e. “against the security of the citizens”; in the final copy, she added to it all attempts against “the security of the state”²². In the 18th century, the official legislation *Nachertanie* was the first act of law that used both the word *ugolovny* and the word-combination *ugolovnoe delo*.

18th century dictionaries fixed the first usage of the word *ugolovny* (in the word combination *ugolovnaya beda, ugolovnoe delo* (capital cases)) in 1731 and etymologized it as *golovnoy*.²³ In the 12-16th century legal tradition the term *golovnoy* characterized criminal

¹⁷ *Ekaterina II. Zakonodatel'stvo Ekateriny II.* Moscow, 2000. V. 2. P. 914.

¹⁸ *Omel'chenko O.A.* Op. cit. P. 288.

¹⁹ *Ekaterina II.* Izbrannoe. P. 121.

²⁰ *Babkova G.O.* *Lichnye prestupleniya v proekte Ugolovnogo ulojeniya Ekateriny II. K voprosu o stanovlenii yuridicheskoy terminologii v Rossii vtoroy poloviny XVIII veka // “Ponyatiya o Rossii”*: K istoricheskoy semantike imperskogo perioda. Moscow, 2012. V. 1. P. 176-179.

²¹ *Ekaterina II.* Izbrannoe. P. 273.

²² *Ibid.* P. 274.

²³ *Weismann E.* *Nemetsko-latinskiy i russkiy lexicon kupno s pervumi nachalami russkogo yazyka k obschey pol'ze.* SPb., 1731. P. 367.

offences aggravated by murder. During the 16th century, it gradually fell out of use.²⁴ In 1790 *Slovar' Akademii Rossiiskoy* applied *ugolovny* to “capital crimes”.²⁵

It is remarkable that in the rough copies of *Nachertanie* the phrase *ugolovnoe delo* (criminal action, capital crimes) was substituted for the word *kriminal'ny* (criminal) and its combinations. At the empress's request, count Andrey Petrovich Shuvalov, chief of the protocol in the Legislative commission of 1767-1774, composed a “general plan” of the law. Shuvalov made no use of the word *ugolovny* (criminal, capital) and defined the penal sphere only as *kriminal'ny* (criminal).²⁶ Catherine II borrowed from the plan, but all Shuvalov's usage of “civil matter and criminal matter” she corrected for “civil and *ugolovny* cases”.²⁷

In winter 1774-1775 Catherine II made similar substitutions in the project *Prestupnicheskiy ili rozysknoy sud po kotoromy sudebnue mesta proizvodyashchie sii sudy postupat' doljny* / *On the Criminal Process* translated by her secretary Grigoriy Vasil'evich Kozitskiy.²⁸ The draft *Criminal-Prozess-Ordnung* was worked out by Friedrich Boehmer, who in 1771-1777 held the post of the vice-president of the Collegium of Justice in Lifland and Estland.²⁹ In the translation the empress replaced the word *prestupnicheskiy* (criminal) and phrase *prestupnicheskiy i rozyskonoy* (criminal and investigative) by the word *ugolovny*³⁰.

Thus in Catherine II's view *ugolovny* was synonym of *kriminal'ny*, *prestupnicheskiy* and *rozysknoy*. The synonymy does not explain the empress's preference for the word *ugolovny* and actualizes the necessity to understand the reasons for such a choice.

Slovar' russkogo yazyka 18 veka states that the word *kriminal'ny* (criminal) came into use in the beginning of the century (form *kremen* in 1705; form *krem* in 1721, form *krimin* in 1723) and had three meanings: 1) “criminal (*ugolovny*) law, investigation of the criminal offences (*ugolovnoe prestuplenie*)”; 2) “criminal offences (*ugolovnoe prestuplenie*)”; 3) those who “committed criminal offence (*ugolovnoe prestuplenie*)”³¹. Hence, in all senses *Dictionary* connected the word *kriminalny* (criminal) with the penal acts and the modern word-combination *ugolovnoe prestuplenie* (criminal action). It does not clarify the connotations that the term had in the first half and middle of the 18th century, especially since the phrase *ugolovnoe prestuplenie* (criminal action) appeared in the political and legal discourse only in the middle of the 1770s.

²⁴ *Slovar' russkogo yazyka XVII v.* Moscow, 1979. Part. 6. P. 65; *Jivov V.M.* Istoriya russkogo prava kak lingvosemioticheskaya problema // *Jivov V.M.* Razyskaniya v oblasti istorii i predystorii russkoy kul'tury. Moscow, 2005. P. 200-201.

²⁵ *Slovar' Akademii Rossiiskoy.* Spb., 1790. Part II. Column 183-184.

²⁶ *Florovskiy A.V.* Dva proizvedeniya imperatritsy Ekateriny II dlya Zakonodatel'noy komissii 1767-1774 gg. // *Russkiy archive.* 1917. Book 2/3. P. 9.

²⁷ *Ekaterina II.* Izbrannoe. P. 271, 273, 274.

²⁸ RGADA. F. 16. F. 193. P. 1-31; RGB NIOR. F. 222. Kart. XVIII. F. 5. P. 1-54 back.

²⁹ SIRIO. V. 13. SPb., 1874. P. 81.

³⁰ RGB NIOR. F. 222. Kart. XVIII. F. 5. P. 2, 8, 8 back, 9, 9 back, 10 etc.

³¹ *Slovar' russkogo yazyka XVIII v.* Part. 11. SPb., 2000. P. 17.

In the commentaries to *The General Regulations* of 1720, Peter the Great explained the significance of the word *kriminal'ny* (criminal) and glossed it as “capital guilt”. Chapter 6 “On voting” fixed responsibility for “improper” and “untrue” voting in the collegiums. Depending on the matter, three kinds of penalties could be imposed on the collegium members: 1) fines for *rozysknye* (criminal, investigative) cases; 2) “damages” for the financial crimes; 3) *kriminal'noe* (criminal) punishments for the *kriminal'noe delo* (criminal case).³² Thus, the death penalty followed *crimianl'nye dela* (criminal cases) which were separated from *rozysknye* (criminal, investigative) and financial cases. However, by 17th century penal law, both financial and *rozysknye* (criminal, investigative) offences could be punished by death.³³ Therefore, Peter I’s gloss did not give an interpretation of the word *kriminal'ny* (criminal) which could be properly included in the existing legal system. The result was the word *kriminal'ny* (criminal) remained at the margin of the legal discourse. For instance, in 1723 no legal act made use of this word.³⁴

The later development, in comparison with the western tradition, of the jurisprudence and the science of law in Russia and “the impassible gap” between it and everyday law enforcement,³⁵ meant that it is highly probable that the legislative commissions of the first part of the 18th century were the institutions that borrowed adopted and reinterpreted terms and notions from other languages. The specificity of the tasks they had to carry out, especially under Peter the Great, made them actively translate foreign sources of law. For instance, by Peter I’s ukase of 1718 the Collegium of Justice had to “combine” the codex it was working out, and the Sweden statutes.³⁶ Starting from 1722-1723, nine translators from German, Swedish and Danish worked in the commission; by 1727 they translated number of Danish and Swedish acts (for example, *Kristoferss landslag* (1442), *Christian’s V Danske Lov* (1683), *Exekutionstaga* (1669))³⁷.

It was commission members who correlated the word *kriminal'ny* (criminal) with the existing terms and glossed it as *rozysknoy* (criminal, investigative). The title of the criminal code draft, drawn up by the legislative commission of the 1720, *O prozesse v kriminal'nykh ili rozysknykh i pytochnykh delakh / On the criminal process*, equated *kriminal'nue* (criminal) and *rozysknie* (criminal, investigative) cases.³⁸ Materials and papers of the legislative commission of 1754-1766 let us trace the same kind of the synonymy. The book 4 of the code draft was titled *O rozysknukh delakh i kakie za raznye zlodeystva i prestupleniya kazni, nakazaniya i shtrafy*

³² PSZRI. I. V. VI. № 3534.

³³ PSZRI. I. V. V. № 2707, 2872; V. VII. № 4270 etc.

³⁴ PSZRI. I. V. VII. № 4137-4404.

³⁵ See: *Feldshtein G.S.* Glavnue techeniya v istorii nauki ugolovnogo prava v Rossii. Moscow, 2003.

³⁶ PSZRI. I. V. V. № 3197, 3201, 3202, 3207, 3463 etc; *Serov D.O.* Sudebnaya reforma Petra I: Istoriko-pravovoe issledovanie. Moscow, 2009. P. 389-395.

³⁷ *Serov D.O.* Op. cit. P. 390, 395; *Zamuruev A.S.* Raboty raznykh let. Pskov, 2006. P. 358-359.

³⁸ RGADA. F. 342. Op. 1. F. 33. Part. 2.

polojeny. In the preliminary materials it was called *kreminal'nyay chast' / the criminal part*.³⁹ In 1739 the Senate members needed a special explanation of the word *kriminal'ny* (criminal) that was defined as *rozusknoy and putochnuy* (criminal, investigative and torture).⁴⁰ Even in 1760 the authors of the instructions, which local nobility presented at the Legislative commission of 1767-1774, gave preference for the traditional terms and concepts of Russian law. Analysis of 43 instructions proves that only two of them (from the districts of Venev and Efremov) wrote about *kriminal'nye dela* (criminal cases)⁴¹.

In *The Grand Instruction* (1767) Catherine II used the word *kriminal'ny* (criminal) 5 times in word-combination: *kriminal'ny sud* (criminal court) (art. 142), *kriminal'noe delo* (criminal case) (art. 152, 191), *kriminal'nue zakony* (criminal laws) (art. 467, 468). In all the cases, it was a calque from French and had two meanings: 1) capital crimes; 2) criminal offences.⁴² In the legal drafts of 1770–80s (*Penal Code, On the Form of Criminal Procedure, On the Prisons, On the Senate, On the Laws in General*) she defined penal acts, law, procedures, and courts only as *ugolovny* (criminal).⁴³ For instance, in Catherine II's project *On the Senate*, which she was working on it in the second half of the 1780s to the beginning of the 1790s, the word *ugolovny* was used 63 times in the following combinations: *ugolovnye dela* (criminal cases) (art. 15, 20, 22, 69, 73); *ugolovnoe prestuplenie* (criminal action) (art. 16, 17, 100); *ugolovny sud* (criminal court) (art. 16, 73, 86 – 89, 91, 114); *ugolovny departament* (criminal department) of the Senate (art. 16); *palata ugolovnogo suda* (criminal court chamber) (art. 19, 22, 107); *stryapchiy ugolovnykh del, ugolovny stryapchiy* (criminal law agent) (art. 19, 45, 52-54, 73, 75, 100, 103); *ugolovny zakon, ugolovny zakon i obrayd, zakony po chasti ugolovnoy, obryad ugolovnykh del* (criminal law, criminal procedure) (art. 21, 92, 100, 108, 109).⁴⁴

The word *kriminal'ny* (criminal), foreign and rare in use, did not fit with Catherine II's intention to make the language of the law comprehensible for every subject. The interpretations and commentaries that it required were unable to guarantee “life” and “safety” of citizens and made them depend on “inconstant” reasoning and “the bad mood” of a judge rather than the letter of the law. Obscure and unknown, the language of the legislation introduced irregularity into law enforcement so that the citizens were ignorant of the consequences of their own actions. Person and liberty of the individual subjected to some few of the people who had taken upon

³⁹ RGADA. F. 342. Op. 1. F. 41. Book II. P. 44 back, 63.

⁴⁰ RGADA. F. 342. Op. 1. F. 37. Part I. P. 7, 17 back.

⁴¹ SIRIO. SPb., 1869. V. 4. P. 340; SPb., 1889. V. 68. P. 470.

⁴² *Ekaterina II. Izbrannoe*. P. 130, 131, 137, 171.

Catherine II wrote *The Grand Instruction* in French. She finished it by the spring 1766. The empress' secretaries G.V. Kozitskiy, S.M. Koz'min and N.N. Motonis translated it in Russian. Catherine II checked the translation for three times and corrected it (*Omel'chenko O.A.* Op. cit. P. 81). It lets affirm that the meaning of the word *kriminal'ny* (criminal) was highly probable Catherine II's one.

⁴³ See: Ibid. P. 370-448, 451-468, 471-498, 556-596, 614-633. There was one exception - the empress's project *Kriminal'noy glavy materialy / Materials for the criminal chapter* (Ibid. P. 365-369).

⁴⁴ Ibid. P. 556-596.

them the care of preserving and explaining the laws. It could cause a breakdown of the legal system of the state and result in society's dissolution because nobody would enjoy security with respect both to person and property. "Life and liberty" would depend upon "chance". On the contrary, the law had to be written in the common "vernacular tongue" and be clearly and exactly defined. Clear language lets peoples know and calculate the inconveniences of a bad actions and has a preventive effect, restraining them from committing crimes and offences.⁴⁵

Claims for the "vernacular tongue" that had to be cleansed of all kinds of loan words and adoptions were "commonplace of Russian philology" by the middle of the 18th century.⁴⁶ As Mikhail Vasil'evich Lomonosov wrote in *Predislovie o pol'ze knig tserkovnukh v rossiyskom yazyke* (1757-1758), words, which "came from foreign languages", were nothing more than "strange and odd nonsenses". They "shadowed the beauty of our language" and had to be eradicated.⁴⁷

Such purism was part of the "national self-consciousness": starting from Elizabeth's reign Russia, Russian culture and language started to be an integral part of Europe.⁴⁸ It was one the main statements in Catherine II's *Nakaz*, in which article 6 affirmed, "Russia was a European state". The "facility" and "better success" that the changes and alterations Peter the Great undertook in Russia, demonstrated it. He succeeded because he was introducing "the manners and customs of Europe" among the European people.⁴⁹ Thus, Russian language was equal to other European tongues; it was self-sufficient, multifunctional and able to put into words all kinds of matters, notions and concepts.⁵⁰

The grand opening of the legislative commission on July 30, 1767, whose task was to "elaborate a new law code and to present it for confirmation", actualized this linguistic structuring.⁵¹ The new codex was to be composed of simple, clear, exact and native definitions so that it could become a book of utmost use like an alphabet or ecclesiastical texts. In *The Grand Instruction* as well as in *Nachertanie* Catherine II tried to avoid both vague or polysemantic, and foreign words and expressions. She accepted all remarks of Vasilii Grigor'evich Baskakov who had read *Nakaz* and presented a "writing-book" with unintelligible, from his point of view, phrases.⁵² Preliminary materials for the drafts of *Nachertanie* show that the empress methodically looked for substitutions for all loan words and notions and marked them "NB". For instance, she proposed to use the word *delo* (affairs), *postupki* (deeds), *delanie*

⁴⁵ *Ekaterina II. Izbrannoe*. P. 132-133.

⁴⁶ *Jivov V.M. Yazyk i kul'tura v Rossii XVIII veka*. Moscow, 1996. P. 296-297.

⁴⁷ *Lomonosov M.V. Polnoe sobranie sochineniy*. Moscow-Leningrad, 1952. V. VII. P. 591.

⁴⁸ *Jivov V.M. Yazyk i kul'tura*. P. 163-165, 268-269.

⁴⁹ *Ekaterina II. Izbrannoe*. P. 115.

⁵⁰ *Jivov V.M. Yazyk i kul'tura*. P. 269. 271.

⁵¹ PSZRI. I. V. XVII. № 12801.

⁵² *Ekaterina II. Izbrannoe*. P. 208-209.

(actions) instead of the word *akty* (acts); the phrase *slova i vyrazeniya* (words and expressions) in place of *terminy* (terms); the word-combination *rassujdeniya, snosheniya, sovety* (reasoning, relations, advices) instead of *konferentsia* (conference).⁵³

The word *kriminal'ny* (criminal) needed substitution. Its Russian equivalent *rozysknoy* (criminal, investigative) did not satisfy the empress because of its negative connotations of torture. The word *rozysknoy* (criminal, investigative) and its combinations came from the word *rozysk* (investigation). Published in the beginning of the 1790s *Slovar' Akademii Rossiyskoy* fixed two meanings for this term: 1) “diligent investigation, examination, imploring”; 2) “interrogation with torture”, “torture”.⁵⁴ The materials and cases of the *Sysknoy prikaz*, which was the main investigative agency in the Moscow region in 1730-1763, state the synonymy of the word *rozysk* and the word *pytka* (torture). The secretary's remark “for *rozysk*” could accompany the judges' decision to torture a suspect.⁵⁵ Instructions from the local nobility in the legislative commission of 1767-1774 also equated *rozysk* and torture.⁵⁶

Catherine II, who right from the beginning of her reign presented herself as “merciful” and “gracious” “the mother of the subjects”, could not substitute *rozysknoy* (criminal, investigative) for *kriminal'ny* (criminal) and turn to the people with the words of threaten and menace.⁵⁷ The empress needed concise and native expressions, which coincided with her intention to eliminate torture. All loan words, as Catherine II wrote in the *Slovar' Akademii Rossiyskoy*, had to be avoided “as far as possible” and replaced by “ancient” or “newly composed expressions”.⁵⁸ The phrase *ugolovnoe prestuplenie* (criminal action) as well as the word *ugolovny* (criminal) met all these requirements: it came from the “ancient” term *golovnoy* (capital); and the word-combination *ugolovnoe prestuplenie* (criminal action) was a “newly composed” concept. In addition, in the first half of the 18th century the words *kriminal'ny* and *ugolovny* had almost the same meanings.

The Statute on the Local Administration (1775), composed by the empress, was the first ordinance to introduce the term *ugolovnoe prestuplenie* (criminal action) that had a double meaning. It defined not only capital crimes but also those that implied corporal or dishonorable punishments.⁵⁹ Catherine II's penal drafts (*Ugolovnoe ulojenie / The Criminal code*, in particular) and the legislation of the 1780s conceptualized and generalized it.

⁵³ Florovskiy A.V. Op. cit. P. 9, 10.

⁵⁴ Slovar' Akademii Rossiyskoy. Spb., 1792. Part III. Column 338.

⁵⁵ RGADA. F. 372. Op. 1. F. 481. P. 6 back, 9, 9 a; F. 957. P. 14, 21; Akel'ev E.V., Babkova G.O. “Daby pytki i rozyski mogli chiniitsya poryadochno kak ukazy povelevayut”: Evolyutsiya teorii i praktiki rozysknogo prozessa v Rossii pervoy poloviny XVIII v. // Cahiers du Monde Russe. 2012. № 53/1. P. 21–26.

⁵⁶ SIRIO. SPb., 1871. V. 8. P. 561; SPb., 1889. V. 68. P. 471, 490-491.

⁵⁷ PSZRI. I. V. XVI. № 11584, 11616, 11667, 11750; V. XVII. № 12560, 12561, 12600, 12673 etc.; Schierle I. Patriotism and Emotions: Love of the Fatherland in Catherinian Russia // Ab Imperio. 2009. № 3. P. 65–93.

⁵⁸ Quot.: Chernysheva M.I. Postroenie Slovarya Akademii Rossiyskoy // Almanakh issledovateley Slovarya Akademii Rossiyskoy. 2006. September-December. P. 2-3.

⁵⁹ Ekaterina II. Zakonodatel'stvo Ekateriny II. Moscow, 2000. V. 1. P. 396-397.

In the 1770s and 1780s Catherine II was working on several criminal drafts: *Laesae Majestatis Law* (1774-1775); *Ugolovnoe ulojenie / The Criminal code* (the second half of the 1770s to the 1780s); *On the form of criminal procedure* (after 1775); *On prisons* (the 1770s to the 1780s)⁶⁰. *Ugolovnoe ulojenie* was the most detailed and elaborated of Catherine II's penal draft. It is difficult to fix the time when Catherine II started working on it: it might be that she made the first preliminary notes in 1774-1775. In 1775 issuing *The Statute of the Local Administration*, the empress promised to add "the form of criminal procedure" to it.⁶¹ 1779-1780 was time of Catherine II's the most active work on the draft as her own date in the text shows. In the chapter *Criminal offences against the public trade*, she wrote that it was impossible to have more interest than "it was legitimated in this year of 1779".⁶²

A considerable number of the preliminary notes and three fair copies of *The Criminal code* draft emphasize its importance to the empress. The first copy, written and paginated by Catherine II herself and containing 17 paragraphs, was dedicated to crimes against religion, sovereign, state and laws of nations.⁶³ The second copy is the biggest and most detailed. It includes eight parts divided in 37 chapters. It was made by a clerk and contains Catherine's own handwritten remarks. This copy is about crimes against person, property, public and society.⁶⁴ The third copy has different kind of the structure which in outline coincides with the structure of *The Police Statute* of 1782. It contains 5 chapters and 170 paragraphs.⁶⁵ As in *The Police Statute*, the word *zakon* (law) in every new chapter title. This lets us suppose that the empress was working on it in the first half of the 1780s, when she was drafting *The Police statute*. It also might be the copy planned to be added to the statute, in the preface to which Catherine II wrote that "it was the first part of the ... Code" issued "in waiting for others ones that would follow it with God's help".⁶⁶

Commentaries on the Laws of England by W. Blackstone, which the empress was reading from the middle of the 1770s, had a strong impact on *Ugolovnoe ulojenie*. *Commentaries* became Catherine II's book of "reference" and "an inexhaustible" source of ideas, as she wrote to Baron von Grimm in 1776. A year later in a letter to the same correspondent the empress characterized *Commentaries* as "a classical book" and mentioned it several times in the following four years.⁶⁷ Catherine II's secretary Alexander Vasil'evich Khrapovizkiy listed

⁶⁰ *Ekaterina II*. Izbrannoe. P. 358-364, 370-448, 451-468, 471-498.

⁶¹ Quot.: *Grigor'ev V.A.* Reforma mestnogo upravleniya pri Ekaterine II. SPb., 1910. P. 284.

⁶² RGADA. F. 10. Op. 1. D. 703. P. 53.

⁶³ RGB NIOR. F. 222. Kart. XVIII. F. 4. P. 1-20

⁶⁴ RGB NIOR. F. 222. Kart. XVIII. F. 3. P. 1-46.

⁶⁵ RGB NIOR. F. 222. Kart. XVIII. F. 8.

⁶⁶ *Ekaterina II*. Zakonodatel'stvo Ekateriny II. V. 1. P. 557.

⁶⁷ SIRIO. SPb., 1878. V. 23. P. 52, 66; Russkii archiv. 1878. № 9. P. 33, 36, 48, 51, 65.

Commentaries on the laws of England among the texts that the empress was reading in the second half of the 1780s.⁶⁸

There are two reasons for such emphasis on the English legal tradition. First, it resulted from Catherine II's adaptation of Montesquieu's attitude toward the English monarchy as the closest to the ideal polity, where political liberty was "the business" of the state and the separation of powers guaranteed its actual realization and protection. The publisher of a French translation *Commentaries*, which appeared in print in Bruxelles in 1774-1776 and was used by the empress, underlined connection between the two "grand men": Montesquieu and Blackstone. In his view, *Commentaries* contained "grand" principles that "laid the solid foundation of the grand edifice" and would "immortalize" Blackstone as *The Spirit of the Laws* had "immortalized" "President Montesquieu".⁶⁹ Blackstone's *Commentaries* give the empress access to the "spirit" of England and its legal tradition, displaying the rules and principles which it was based upon. The result was Catherine II's knowledge in this field that shocked the English envoy to Russia J. Harris; as he reported in one of his dispatches, "she could be a judge so well she knows our laws and constitution".⁷⁰ Secondly, Catherine II's and Blackstone's ideas of how a legal system and criminal legislation ought to be came from the same two sources – Montesquieu's *The Spirit of the Laws* and Beccaria's *On Crimes and Punishments*. The empress also shared the basic points of the Enlightenment legal discourse, the necessity to deduce punishment from the particular nature of every crime, the correction of a criminal and "precaution" against future offences as the final goal of a penalty, the restriction of the right to inflict capital punishment. It is remarkable that reasoning on capital punishments and sovereign's right to inflict them, Blackstone presented Catherine II as the ruler that abolished the death penalty in Russia.⁷¹

In the draft of *The Criminal code*, Catherine II conceptualized all criminal offences as *ugolovnoe prestuplenie* (criminal action). The term defined all sorts of illegal activity notwithstanding the sanctions. The empress also renewed the classification of the crimes and grouped them in accordance with *Commentaries*. In the fourth book of *Commentaries*, which was dedicated to public wrongs, Blackstone divided offences, which were punishable by the laws of England, into four classes:

First, those which are more immediately injurious to God and holy religion; Secondly, such as violate and transgress the law of nations; Thirdly, such as more especially effect

⁶⁸ *Khrapovizkiy A.V. Pamyatnye zapiski*. Moscow, 1862. P. 17, 27, 34.

⁶⁹ *Blackstone W. Commentaries sur les loix angloises de M. Blackstone*. Bruxelles, 1774-1776. T. 1. P. I.

⁷⁰ Quot.: *Ikonnikov V.S. Znachenie zartsvovaniya Ekateriny II*. Kiev, 1897. P. 32.

⁷¹ *Blackstone W. Commentaries sur les loix angloises*. T. 6. P. 325.

the sovereign executive power of the state or the king and his government; Fourthly, such as more directly infringe the rights of the public or commonwealth; And, lastly, such as derogate from those rights and duties which are owing to particular individuals.⁷²

In the preliminary copies of the draft, Catherine II borrowed the classification of the delicts and distributed acts injurious to civil society under the following general headings: 1) “God and the Holy Orthodox Greek religion”, 2) “the rights of nations”, 3) “the sovereign and state”, 4) “the rights of the public”, 5) “the rights of individuals”.⁷³ In the final copy of the project, the empress changed this gradation slightly and classified all crimes in the following groups: 1) “God and the Holy Orthodox Greek religion”, 2) the sovereign, 3) nations, 4) “autocratic power”, 5) individuals and 6) the public.⁷⁴ The innovative character of the gradation lies in the fact that *The Criminal code* implied “rights” that nations, the public and individuals could have and criminalized encroachments on them. By “negative” determination the draft was to objectify the nation, society and the individual as legal entities that could possess rights. In the Russian legal tradition, it was also the first attempt to qualify certain actions as injurious to the rights of nations.

Nevertheless, the method of adopting inner the gradation and specification of every type of *ugolovnoe prestuplenie* (criminal action) was of the same pragmatic character which Catherine II used to work on *The Grand Instruction*. She did not transfer English laws and procedures directly to Russia but “untwined” Blackstone’s ideas and checked them against existing Russian legislation.⁷⁵ For instance, in the rough copy of *Ugolovnoe ulojenie* actions against religion were the first class of the delicts; offences injurious to the laws of nations and the state and its rule followed them. The gradation of the delicts in the fair copy of the draft was headed by the same religious offences, but the acts against the sovereign were second, those against the laws of nations third. Such a grouping coincides with the Russian legal tradition: as *The Law Code* of 1649 (chapters 1-2) as *The Military Article* of 1714⁷⁶ (articles 1-17) qualified an assault on religion and the sovereign as the most serious offences and put them first.⁷⁷ Catherine II’s draft on *Laesae Majestatis Law* (the empress was working on in 1774-1775; one of the notes is dated November 9, 1774) displayed the same classification: actions against religion and state and sovereign were first.⁷⁸

⁷² Blackstone W. Commentaries on the laws of England by sir. W. Blackstone: In 4 vols. London, 1809. Vol. 4. P.42-43.

⁷³ RGADA. F. 10. Op. 1. F. 17. P. 19.

⁷⁴ Ekaterina II. Izbrannoe. P. 370-448.

⁷⁵ SIRIO. SPb., 1878. V. 23. P. 52.

⁷⁶ About new date see: Serov D.O. Zabytye redakzii “Artikula voinskogo” i “Kratkogo izobrajeniya prozessov i sudebnykh tyajeb” (Iz istorii kodifikazii voennogo zakonodatel’sтва v Rossii) // Lex Rossica. 2013. № 2. (V. LXXV). February. P. 113-121.

⁷⁷ Rossijskoe zakonodatel’stvo X-XX vekov. Moscow, 1985. V. 3. P. 85-89; Moscow, 1986. V. 4. P. 331-328.

⁷⁸ RGADA. F. 10. Op. 1. F. 19. P. 61-120.

Under the title *ugolovnoe prestuplenie lichnoe* (crimes against individuals), the draft criminalized acts against individuals, their person, property and habitations. This was another novelty of the project in that it contrasted with the previous Russian legal tradition which had no general concepts to define encroachments upon person and property.⁷⁹ The empress divided *lichnye* offences in three groups: homicide, crimes against property and those against habitation.⁸⁰ Such a gradation and names for every crime was a word-for-word translation of Blackstone's *Commentaries* which divided all actions against private subjects into three kinds: 1) against their persons which meant the "offence of taking away their life"; 2) against their habitations and 3) against their property.⁸¹ Preliminary materials and final copies of the draft's chapter *On homicide* displayed how the *Commentaries* was adapted. Catherine II borrowed names and in some cases exact definitions of injurious acts, omitting all that was theoretical or conceptual. Her definitions were short and clear which seemed to be reasonable taking into consideration her final aim – to compose a new criminal code. For instance, in the rough copy the empress summarized as "cases that demanded punishments" Blackstone's reasoning on surpass of necessary defense, *se-defendendo*.⁸²

In *Ugolovnoe ulojenie* the empress tended to clarify and make more concise every notion. Under the influence of *Commentaries*, Catherine II's terminologically clarified the concept of inadvertence and introduced new kinds of unpremeditated homicide. The 18th century Russian legislation had no exact definition of unpremeditated homicides. Records of the Senate second department show in that investigating cases of unpremeditated murder local courts based their sentences on articles 200 and 201 of 10th chapter of *The Law Code 1649* and articles 156-159 of *The Military Article*.⁸³ These law acts qualified as unpremeditated murder four types of actions: 1) self-defense; 2) shooting at target in a public place and killing someone ("inadvertent and unwilling"); 3) to shoot at a target "in a field" and to kill someone who is passing beyond the target or will run between it and shooter; no responsibility ("accidental and inadvertent"); 4) to hit a family member and to kill him ("inadvertent and unintentional").⁸⁴ Despite the terms' convertibility, they denominated acts of diverse character and a share of guilt. The first and the fourth implied justifiable homicide that had no guilt and were followed by an acquittal; the second and the third were actually inadvertent.

Following *Commentaries*, *The Criminal code* defined unpremeditated murders as committed "without any intention and preparation" and classified according to share of guilt in

⁷⁹ Babkova G.O. *Lichnye prestupleniya v proekte Ugolovnogo ulojeniya Ekateriny II*. P. 183-196.

⁸⁰ *Ekaterina II. Izbrannoe*. P. 380-398.

⁸¹ Blackstone W. *Commentaries sur les loix angloises*. T. 6. P. 80-166.

⁸² RGADA. F. 10. Op. 1. F. 703. P. 64; Blackstone W. *Commentaries sur les loix angloises*. T. 6. P. 93-97.

⁸³ RGADA. F. 248. Op. 126. F. 4966. P. 102-105; F. 4967. P. 438-439, 441-442; F. 4968. P. 194, 198; F. 4988. P. 439-441; F. 4989. P. 466-466; F. 4992. P. 403-435

⁸⁴ *Rossiyskoe zakonodatel'stvo X-XX vekov*. V. 3. P. 134-135; V. 4. P. 356-357.

the following kinds: “1) by carelessness and by negligence, 2) by necessity, 3) by deadly fear, 4) in self or some other defense, 5) in brawl, 6) by accident”. It also prescribed exact consequence (punishment or acquittal) for every kind. Acts that they determined (except necessity) were not new for Russian legislation, but it did not make precise distinction between justifiable and excusable activity.

Unpremeditated homicide “by necessity” was reinterpretation of *Commentaries*’ killings by “unavoidable necessity” and “for the advancement of public justice”, which was a “justifiable” act that had “no share” of guilt and faced no charge. Rough and fair copies of *Ugolovnoe ulojenie* display how Catherine II borrowed from *Commentaries* and reinterpreted Blackstone’s concepts. The empress partly followed Blackstone’s classification and justified taking life in cases of resisting legal arrest, or dispersing a rebellious mob, or preventing a prisoner from escaping. At the same time, she reduced the explanatory determination of each crime to a short and exact definition and avoided all that was not part of the Russian legal tradition (such as killing in forests, parks, chases, or warrens’ trespassers, or in trail by battle.)⁸⁵

The outcome of such work was a “synthetic” combination of new judicial theoretical notions with the local legal tradition. Such a “reinterpretation” realized one of the basic Enlightenment ideas – the necessity for the legislator to “regard to the Genius of the People” and to “adapt its Laws to the general Sense of a Nation”. Catherine II never promulgated her penal drafts. Nevertheless, *Ugolovnoe ulojenie* draft strongly influenced penal legislation of the 1780s. Ukase *On different kind of the robbery* of 1781 reproduced the draft’s chapter about the crimes against property. The *Police statute* of 1782 put in force criminal classifications based on *Commentaries on the Laws of England*, introducing into Russian legislation new types of criminal offences (*ugolovnoe prestuplenie*) such as those against persons, habitation, property, public justice, public peace, public trade and public health.

Introducing the general concept of *ugolovnoe prestuplenie* and qualifying a person, habitation or property as an object of state protection, Catherine II implied and recognized civil rights for every individual. In the penal drafts and legislation Catherine II clearly articulated the idea of state responsibility to institute criminal proceedings against the all attempts to transgress or encroach upon these rights. In Russia, it marked a serious shift in the relations between the subjects and the state creating a path toward the political liberty of a modern state.

⁸⁵ Blackstone W. *Commentaries on the laws of England*. V. 4. P. 17-18; *Ekaterina II*. Izbrannoe. P. 382.

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