

Early Modern Prayer

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THE PRAYER OF AN EMPRESS AND THE DEATH PENALTY MORATORIUM IN EIGHTEENTH-CENTURY RUSSIA

Elena Marasinova

'Before the icon of the Saviour'

No execution took place during the reign of Empress Elizabeth Petrovna, from 1741 to 1761. The French diplomat Joseph de Maistre referred to this 'abolition' of the death penalty as 'false philanthropy and a sign of national inferiority'.¹ 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*.² Catherine II also praised this act of 'our Auntie Elizabeth' as superior to 'the most glorious conquests',³ and followed her example, making exceptions only for cases involving 'disturbances of the national peace', executing Lieutenant Mirovich and those who had taken part in the Plague Riot of 1771 and Pugachev's Rebellion of 1773–4.

This moratorium on the death penalty, unique in European history in the period, has remained without academic interpretation. Scholars have contented themselves with the account of Prince Mikhail Shcherbatov, who wrote of the palace coup of 1741:

While making her move to take the throne of All the Russias, 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.⁴

This story, with some variations, is reproduced in all works devoted to Elizabeth's reign. Research into the circumstances of Elizabeth's suspension of the death penalty and of the ritual called 'political death' contains rich material for the study of prayer as well as the self-consciousness of the imperial person, for the channels of representation of power,

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mechanisms of social control, and the correlation between divine and state law in the minds of contemporaries. The subject is also a chance to understand the consequences of a prayer and the heightened religious feelings of an autocratic monarch.

Before the icon of the Saviour

Scholars have been sceptical about the authenticity of the scene portrayed by Prince Mikhail Shcherbatov. However, the French envoy at the Russian court, Marquis de la Chétardie, who had played a key role in the events of the coup of 5 December 1741, informed Paris of the circumstances of the transfer of power in Russia:

On the 5th 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 for the princess. The [princess's] supporters persuaded her to decide upon carrying out their plan. On the same night of the 5th/6th, she first prayed to God, then sat in her sleigh and set off straight for the barracks.

Moreover, Chétardie names three witness of Elizabeth's prayer: chamber-junker M. I. Vorontsov, the surgeon Johann Lestocq and the musician Jacob Schwarz.⁵

The reliability of Chétardie's testimony is confirmed in the notes of Christoph Manstein, a Prussian major-general then in Russian service, as well as in the dispatch of the Dutch resident in Saint Petersburg, Marseillais de Schwart.⁶ Moreover, the nineteenth-century historian and philologist P. P. Pekarskii managed to obtain an eighteenth-century manuscript, a poor translation of a foreign account, in which several facts were related. On 18 December 1741, on the birthday of the recently enthroned Empress Elizabeth Petrovna, the Russian resident at the English court had recounted the events. His account explained that Elizabeth's predecessor, Anna Leopoldovna, had decided to send the unreliable guards regiments out on 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!’ According to the words of the resident, then the centre of attention at the English court, the future empress welled up with tears, asking everyone to leave the room, ‘and herself, bowing her head to the ground before an image of the Saviour, pray[ed] in the secrecy of her own heart’. Elizabeth then appeared with a crucifix before her waiting faithful subjects and demanded their oath of loyalty.⁷

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 principle connected with the rational humanistic ideas of the Enlightenment. The impulsive actions of the Russian monarch before the coup were motivated, primarily, by deep religious sensibilities. Shcherbatov also noted that: ‘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.’⁸

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

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.

Elizabeth created a cult of this icon of the Saviour, handing it for safe-keeping to the Donskoi Monastery, regularly going with the court to pay reverence to the image and giving a diamond worth thirty thousand roubles for its casing.⁹

The anonymous author of the text entitled ‘Anecdotes and collected customs and peculiarities concerning natural history pertaining to the various peoples of Russia, the writings of a traveller who had spent thirteen years living in this country’ described also a formal promise made by the Empress:

Coming to the throne, she made a promise that, on the turn of each hour, day and night, she would pray to the image of the Saviour which was in her possession and hung at the head of her bed. There were certain old women whose duty it was to wake her on the ringing of each hour.¹⁰

If this account is reliable, it becomes clear why this icon found its way to the Donskoi Monastery.

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

The decree suspending the execution of convicts sentenced to death, political death or, in certain cases, even to eternal exile, was issued on 7 May 1744. The chanceries were thenceforth to send case descriptions to the Senate and await further instructions. This unprecedented decision was formulated without explanation and accompanied only by the remark: 'It is perceived that death sentences and political death not be carried out on either the guilty or the innocent'.¹¹

Elizabeth was clearly displaying caution, which has led to multiple interpretations: on the one hand, it was ordered that 'executions not be carried out', while on the other, the numbers of death sentences issued were not restricted, and they continued to be pronounced as though nothing had changed. Even among the upper classes, few were told that the moratorium had been declared. The decree of 5 May 1744 was written in the Empress's own hand on the same sheets of paper as a resolution submitted to her by the Senate. This original was hidden, with a public copy that contained only the monarch's instructions that case notes for those sentenced to death be sent without delay. It was this copy, omitting mention of the secret decree, which was sent out to the collegia, chanceries, governorates and provincial administrations.

The preparation of extracts for imperial confirmation was entrusted to a specially created Senate group headed by the secretary Ivan Sudakov. Hearings of death sentences took place in secret: Senate minute-takers were not permitted to attend these sessions, and Sudakov's special group was given 'a chamber set apart from public affairs'.¹²

Observance of the moratorium required monitoring by the government and even the intervention of the Empress in some cases. The

decision on the suspension of the death penalty was reiterated with regularity during Elizabeth's reign and gave rise to new renditions, clarifications and explanations. The repetition of the decree suggests the difficulties associated with its implementation, as well as occasional contravention, several instances of which reached Elizabeth and were reversed.

Thus, in 1749 the governor general of Kiev, M. I. Leontyev, informed 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. The koshevoi ataman of the Zaporozhian host had referred in his report to the imperial ordinance, clearly known only to himself, to proceed with the executions, without which 'it would be impossible to eradicate thievery and other mischief'.¹³ Not long before this, a similar paper had come from the chancellery of the Revel Governorate. The local Landraten and magistrate had 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 difficulty task of feeding them.¹⁴

The position of Elizabeth on such attempts to change the decree 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'. No further instructions were forthcoming so the Senate was inundated with lists of convicts; prisons were full, and the death sentence existed only on paper. The Empress, however, was committed to the change. On the annexation of new territories, she immediately dispatched orders on the suspension of the death penalty.¹⁵ The moratorium even extended to those convicted by the Secret Chancellery, and to military criminals. On 31 May 1744, the Senate issued the instruction to the agencies of political investigation and to the regimental leib-companies and leib-guards.¹⁶

As a result, in the ten years following the promulgation of the decree of 1744, 279 death sentences had 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 jailers were unable to cope with their duties.¹⁷ Catherine II recalled of the first few months of her reign that: 'The prisons were so full up of convicts that even though seventeen thousand

had been granted amnesty by the Empress Elizabeth Petrovna on her death, at the time of my coronation on the 22nd September 1762 they still numbered up to eight thousand.¹⁸

The problems which emerged from the implementation of the second part of the 1744 decree's statement 'on the non-execution of death sentences and political death sentences' were just as problematic. If the meaning 'natural death' was clear, the phrase 'political death' was not understood in Saint Petersburg or the provinces. Elizabeth demanded that the Senate should list the laws governing the ritual of 'political death' and indicate the crimes for which the punishment was incurred. Elizabeth received the answer: 'Concerning for which crimes political death is enacted, and on the particularities of this punishment – there are no precise decrees'.¹⁹

In an attempt to avoid Elizabeth's displeasure, the Senate mentioned several executions which could, as far as they were concerned, be understood as falling under the category of 'political death'. These had all taken place during the reign of Peter the Great. These executions had involved several common procedures: the 'utterance of death', 'lying on the block', and the merciful deliverance from natural death. However, the Senate's list was not comprehensive, lacking any analysis of case descriptions or sentences, and the examples were not termed 'political death'. The concept had appeared in Russian legal terminology, under European influence, in the notorious case of Peter I's interpreter, the diplomat and vice chancellor P. P. Shafirov.

The Shafirov Case

Shafirov was accused of 'contumacy against official decrees' in the Senate on 31 October 1722, and removed from his control of the post offices for twenty years. According to regulations, Shafirov had to leave the discussion, and was informed of the same by the ober-procurator Skorniakov-Pisarev. Shafirov, being a senator, refused to leave and called Skorniakov a 'thief'. Skorniakov-Pisarev opposed Shafirov, after which he left the gathering. Those remaining, Golitsyn, Dolgoruky and Matveev, were willing to continue the hearing, but Skorniakov-Pisarev insisted that the Senate session ended. Unfortunately, procurator-general Iaguzhinskii was absent, and Peter was away on a Persian expedition. Word reached the Emperor of the dispute in the Senate. Peter was incensed at the

disregard for state decrees, the 'disagreement in the Senate', and the insulting of the 'honour of a place of justice with insolent bad language'.²⁰

The sentence in a case involving such a prominent political figure called for an exemplary punishment. Shafirov was formally divested of his blue ribbon and sword, and condemned to death by beheading, having been reminded also of, among other things, his 'Jewish nature'. The execution was to take place on 15 February 1723 in the Kremlin, where a scaffold had been specially erected.²¹ The Holstein nobleman Friedrich Wilhelm von Bergholz, then in Moscow, wrote:

At around seven o'clock, I entered the Kremlin. Around the scaffold stood an innumerable throng. Once the condemned had been brought from the Preobrazhensky Prikaz on a humble sled, his sentence and crimes were read out to him. He was thereupon divested of his wig and old fur coat and taken up on to the elevated scaffold, where he knelt down and placed his head on the block; but the assistants of the executioner then pulled his legs in such a way that he was forced to lie down on his fat belly. The executioner then lifted a large axe into the air, but brought it down to the side, on to the block, and here it was that Makarov proclaimed in the name of the Emperor that the criminal, in honour of his services, had been granted his life.²²

Shafirov had come very close to death. Stunned and tearful, he made his way down from the scaffold with difficulty, paying no heed to calls of congratulation. Such a balancing act between life and death by an important politician shook everyone, some sympath with Shafirov, as Bergholz sincerely remarked, a 'very honourable man'. Peter was very gloomy, receiving no one, remaining in one room and eating alone that day.²³

Shafirov's case was the first instance in Russia of ritual 'political death'. From then, all such punishments, including those resulting from earlier judicial proceedings, were referred to using this specific term. Following the punishment of the cabinet minister A. I. Ostermann, who lay on the block and was subsequently pardoned in 1742, the term 'political death' became established in the law and was used in conjunction with the concept of the death penalty. In the situation of a moratorium on the death penalty, the significance of 'political death', as well as the detailed understanding of its procedures and ritual, would grow.

Natural death and its imitation

By the spring of 1743, the matter of the relationship between these two forms of sentence arose in a diplomatic context. The lengthy negotiations concluding the Russo–Swedish War were dragging on. Russia’s international aims were no longer ambitious, and the position of Elizabeth, newly enthroned after the palace revolution, was not yet secure. Any political misstep might lead to an interruption of the signing of a ceasefire. Consequently Elizabeth was incensed when she was told of instances of marauding and even the murder of peaceful Swedish subjects by Russian troops. The situation was exacerbated by the fact that those suffering were Finns, to whom Elizabeth had promised support in their struggle for independence in return for their neutrality. The decision not to execute the marauders was problematic for the military commander, and also in diplomatic terms.

The solution was found in the concept of ‘political death,’ which was used in communications to the Swedish chancellor. Elizabeth wrote to her Commander in Chief:

Regarding the sentencing that all murderers and plunderers be broken on the wheel, and that the corporals and lance-corporals that permitted them to seek plunder be shot [. . .]; on this, our resolution is: that although they merit the most cruel death penalty for their evil-doing according to the laws of God and the ordinances of state, We, in Our mercy, do not wish to put them to death [. . .] and that you write to Count Schlenburg that We do not command these criminals to commit any delinquencies, and that We have not ordered them to be put to death, but declare that We have determined that all mortal crimes be punished not by natural, but by political death.²⁴

Elizabeth tried to soften the offence of Swedish chancellor Gyllenborg, and of the local inhabitants, by ordering that offenders be punished ‘there, where they committed their misdeeds, in the presence of Swedish deputies, to which, following inquiry, all booty is to be returned’. The sentence was made public and corresponded to the sentences prescribed by the General Regulations: ‘Murderers proper are to have their right hand chopped off and, on having their nostrils slit, are to be exiled to Siberia, and those who have engaged in plundering, to be beaten with rods and exiled to three years’ hard labour.’²⁵

The decree of 2 August 1743 would have remained without consequences, had it not been for the 'terminological reverence' paid the Swedish chancellor. But the reference to 'political death', which sometimes included the lopping off of the right hand, as a substitute for the death penalty, gave rise to problems in criminal legislation in the eighteenth century; this led to erroneous conclusions in the historiography interpreting the moratorium on the death penalty during Elizabeth's reign.

The 1743 decree, composed for diplomatic ends and limited to marauding on alien territory in the midst of peace negotiations, contradicted the general moratorium on both political death and the death penalty. In addition, the form of public execution of insubordinate Russian troops that was presented in the decree as political death, but involving severing the right hand, did not correspond to the previously existing ritual of 'announcing the death and lying on the block'. The 1743 case would later find its way into a decree of 29 March 1753 and, ultimately, during the codification process that took place in the nineteenth century would determine the title of a decree of 30 September 1754.²⁶ Based upon this mistaken definition of the sense of the decree, some scholars have come to erroneous conclusions about the practice of replacing execution with political death.

In reality, execution and 'political death' were regarded as almost equivalent means of punishment, both of which were banned without imperial or Senate confirmation. Moreover, death and its public imitation in the form of 'political death' were so closely linked in the formula of sentences some confusion was inevitable. The problem of precise definition was difficult because both punishments remained only on paper. Consequently senators introduced distinctions between the two punishments.

In the spring 1746, a report was submitted to the Empress, in which it was recommended that:

those sentenced to a natural death penalty, having been submitted to cruel chastisement with the knout and slitting of the nostrils, be branded on the forehead with the letter 'V', and on each cheek with 'O' and 'R' [*vor*, 'thief'], and those condemned to political death to be punished with the knout and slitting of the nostrils.

After this had been done, the branded convicts were to be sent away in chains 'to eternal heavy and constant labour'. The report also contains a

description in general terms of the ritual of ‘political death’: ‘if anyone is to be placed on the block or led to the gallows, and then to have declared to him the mercy of Her Imperial Majesty’.²⁷ On 9 June 1746, a decree was issued ‘On the branding of thieves, bandits and other criminals with word *vor*, with ‘VO’ on the forehead, ‘R’ on the right cheek, and ‘B’ [the Cyrillic ‘hard sign’] on the left’.²⁸ Naturally, this was a form of indelible shame and the escape for those sentenced to the death penalty. The fate of those condemned to political death, just like the nature of the concept itself, still remained without imperial confirmation. The report was submitted to Elizabeth several more times, in 1746 and 1750, but imperial approval was only received in 1753.²⁹

Scholars have suggested that Elizabeth kept silent for several years while patiently waiting for the senators to soften somewhat in their desire to ‘compensate ‘natural death’ by an increase in physical tortures’.³⁰ However, the decision concerning the branding of ‘VOR’ was made without any delay. Senators urged that convicts should not be crippled but their labour used; this was not a matter of Christian mercy but of pragmatism and finance: ‘the Senate makes so bold as to humbly state that those who have had their right hand cut off and nostrils slit and are sent to lifetime labour will not be suitable for any kind of work, but will only be a mouth to feed’.³¹

A detailed definition of ‘political death’ was only forthcoming in 1753:

The Senate has determined that: political death is the term that should refer to such cases in which the convicted is laid upon the block or led up to the gallows, but who then is punished by means of the knout and the slitting of the nostrils or who, without corporal punishment, is condemned only to eternal exile.³²

The apparent contradiction of this interpretation lay in the fact that some sentences of political death remained without being carried out, while the knout, mutilation of the nose and exile for ‘theft and brigandage’ were carried out routinely without report to the Senate, and were not regarded as ‘political death’. Consequently, the Empress’s ban fell not only upon the death penalty, but also upon ‘political death’, practically equated by the moratorium to a death sentence in its severity.

If the question of ‘political death’ was a problem of terminology and judicial theory, the actual suspension of the death penalty was a practical problem. There was the issue of what was to be done with the growing

numbers of criminals who, while awaiting their fate, required guarding and feeding. The suspension of the death penalty had been signed, but all sentences remained, albeit 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. The senators suggested to the Empress 'that all of the above described be sent to labour at Rågervik'.³³

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. The Emperor Peter visited Rågervik six times, personally conducting a survey of the depth of the harbour and taking the decision to construct a port and a stone embankment from the island to the mainland. In 1718, Peter attended in person the foundation-laying for the seawall and a fortress on the coast. In 1722–3 royal edicts were issued, 'on the exiling to Rågervik of those not willing to shave their beards and being unable to pay the fine' and 'on the exiling of schismatics to eternal labour at Rågervik instead of to Siberia'.³⁴ The number of convicts engaged in hacking away at the cliffs and breaking boulders would reach three thousand. 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 Peter. In his last decrees, on 26 and 27 January 1725, he commanded that all convicts be freed, except murderers and bandits, so that they might pray to God for the alleviation of His Majesty's sufferings.³⁵ On 28 January, Peter died. On 30 January, Empress Catherine Alexeevna, motivated by concerns for the soul of her husband, confirmed the amnesty to those convicted of less serious crimes.³⁶

This imperial mercy and piety emptied Rågervik, and the port experienced labour shortages. By 1726, only 450 convicts remained at Rågervik, 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 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.³⁷

The senators recommended to Elizabeth that work be renewed on Rågervik harbour.

The Empress received the Senate's report in March 1746, and made a personal visit to Rågervik in July. Elizabeth was accompanied by the court, representatives of prominent noble families, the heir to the throne and his wife, Catherine. 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. 'The soil of this spot is stony covered in a thick layer of fine gravel. . . . The convicts working on the breakwater pier wore wooden clogs that didn't last any longer than eighteen days.'³⁸

Following Elizabeth's visit, the number of these 'convict labourers, working on the breakwater' increased markedly.³⁹ Convicts sentenced to death or political death were sent from all across Russia, with the exception of the governorates of Siberia, Astrakhan and Orenburg. Some Muslims, 'Trukhmentsy, Kalmyk and others', shackled hand and foot under the watch of 'the appropriate convoy', were driven to Rågervik from Astrakhan and Orenburg too. Women found guilty of serious crimes were regarded as unsuitable for stone breaking and so were sent to Siberia.⁴⁰

The harbour construction site had changed in comparison with Peter's day. The writer Andrei Bolotov, serving in the guard on Rågervik in 1755, described 'the honest or villainous throng' with whom he took daily roll call. They impressed him with their variety and confirmed the dictum that in Russia one can never 'rule out either the beggar's bowl or the gaol'. They were, Bolotov recalled, [people] 'of all types, callings and ranks: the well-born, there were 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.'⁴¹

Having escaped execution and political death, the convicts nevertheless experienced severe suffering. Bolotov recorded that

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, in the middle of which was a

huge chain, 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.⁴²

From 1753 to 1756, 13,242 inmates arrived on Rågervik, of whom 13,101 perished there.⁴³

During the years of Elizabeth's reign, the Rågervik labour camp served an important function as a prison at a time when the Empress firmly upheld the suspension of execution. Although it seemed 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 Senate expressed its bewilderment in the autumn of 1743, immediately after the Empress had punished the troops who had violated the Finns. At Elizabeth's insistence, in May 1744 a royal decree written by her own hand on the suspension of execution of convicts was sent directly to the Senate, which further stoked passions.

The senators attempted to dissuade Elizabeth and put forward arguments against a moratorium on the death penalty. First, they stated that the numbers of criminals would grow. This army of villains would be very difficult to control, and prison escapes would doubtless ensue, disturbing her law-abiding subjects. Secondly, people, seeing the absence of punishment, would themselves become inclined to crime, and the army to insubordination. Finally, in the opinion of the senators, this dangerous form of mercy was counter to Russian legal tradition. They cited 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' ruthlessly. The Senate suggested that only death sentences be presented for the monarch's approval, and not those of political death. To all these suggestions, the Empress replied with the single instruction – 'that political death sentences not be carried out'.⁴⁴

The opinion of the Senate was thus dismissed with ease in autocratic Russia, and the moratorium on capital punishment and on political death was rigorously enforced. However, the ideas behind the Senate's

suggestions were revealed in the composition of the unfinished text of the new law code.

In August 1754, on the motion of the senator P. I. Shuvalov, a specially convened Senate commission sat for the 'composition of clear and understandable laws'. The commission's task was to propose 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'.⁴⁵ The 'justice' and 'criminal' sections were completed in a year. But Elizabeth did not respond to them until 1759, after which she ordered the text to be revised and the two other parts completed. The commission was reinforced by the addition of the senators Roman Vorontsov and Mikhail Shakhovskii,⁴⁶ and in 1761 the Empress received the 'arguments previous to the commission' and matters as 'reasoned by the present commission'.

The revised articles, on the one hand, represented a continuity with the Code of Law of 1649, Military Articles of 1716, Naval Regulations of 1720 and General Regulations of 1720, and, on the other, ignored the decrees issued by the Empress concerning the death penalty and political death. After a decade of a moratorium on executions, death penalty was extended, and the process of execution made harsher. According to the commission, the death penalty should continue to apply to convicted bandits, murderers and forgers and would also include those who had stolen over forty roubles, thieves convicted for the third time, importers of coins, grave robbers and those damaging another's health, as well as governors or military commanders who failed to promulgate decrees intended for the public.⁴⁷ The death penalty was proposed as the sentence for a wide spectrum of crimes against religion, the Church, the state and public order, for murder, theft, banditry, smuggling, witchcraft, fornication, complicity and failure to report a crime.

Among the proposed methods of execution, a convict might be beheaded, quartered, hung by the rib, burnt, have molten lead poured down his throat, or even be torn apart by five horses, which was unknown in the Russian tradition.⁴⁸

The proposed new law code therefore did not soften the criminal code. As for imperial confirmation of sentences, the Senate proposed a reduction in the level at which sentences were subject to approval. It was proposed that the fate of noble and mercantile criminals would be decided by the Senate, while that of 'base-born and common villains' would be determined by the governorate or the College of Justice.

Following confirmation, the commission proposed that ‘without any delay’, the condemned would have two weeks for repentance, take communion, and on a subsequent day be executed ‘in an appropriate public place’ not far away, with the crime of the convict and the fact of their execution being announced.⁴⁹ Clearly this approach was counter to the Empress’s decree.

The preparation of the code was more remarkable since before work began on the project, cabinet minister Adam Olsufyev had reported that: ‘Her Imperial Majesty commands that the death penalty not be inserted in this new code for those found guilty.’⁵⁰ It is clear that the Empress was unwilling to give way, and only her death ended this confrontation between the sovereign and the Senate on the matter of introducing humane punishments for serious crimes.

The ‘renowned example of the Empress of Moscovia’

The moratorium on the death penalty was observed for over twenty years. The hypothesis, made by Shcherbatov, on the Empress’s oath before the icon of the Saviour not to deprive a single subject of their life, has become the established interpretation. And yet the attitude of the monarch, the political elite and contemporaries towards the death penalty constituted an important element in the debate.

In Elizabeth’s case, we are faced primarily with a crisis of conscience; Elizabeth turned to God for a miracle. A promise of piety was displayed by Elizabeth, who was ‘undesirous of receiving interesting profits from the enemies of Christ’. Elizabeth appeared to take this upon herself as an obligation to God, in the event of Him granting success to her military insurrection. Since the revolt met with success, the debt had to be paid.

This religious sensibility could not be private because Elizabeth became the ruler of the Russian Empire. The coronation rite lent a special exaltation to the Christian faith of any Russian monarch, and the sacred will of the sovereign, of God’s Anointed, was regarded as incontestable. The decision of the Empress to ban executions was based solely on her own relationship with God. Her subjects, including those whose fate depended directly on this decision, had no need to know of its existence. No decree on the moratorium, accompanied by explanations of the royal mercy, was issued. Only semi-secret instructions, not intended for ‘proclamation to the universal acquaintance’, were issued. The Empress

did not concern herself with the fate of pardoned convicts, or of their salvation. They would die anyway, whether it was under the knout or the penal servitude in Rågervik.

Nevertheless, Elizabeth was uncompromising in her secret resolution. In line with her understanding of Christianity all were saved, not just the elect: nobody was to be put to death, regardless of the crime committed. The prohibition also applied to the ritual of 'political death'. The theatrical taking of life had also been part of the contract made with the Almighty.

Elizabeth Petrovna and Cesare Beccaria were separated by more than two decades, and Baccaria's enlightened ideals were not embodied in her moratorium. The decision was a combination of mediaeval religiosity and the belief that the law and the Empress's will were one and the same. The suspension of executions for serious crimes had no theoretical grounding, and was not connected in any way with the contemporary development of legal thought. The Empress did not aim to limit the public nature of executions to shift the emphasis from retribution to a triumph of justice in the courts,⁵¹ or to move from punishment to prevention of crime, or other ideas from European philosophers and jurists.⁵² It was the Christian commandment that led her to pose the question: 'who set me here as a judge over who should live and who should die?'⁵³ Having resolved that the best means of showing gratitude to God would be to refrain from employing the death penalty, Elizabeth forbade a single execution during her reign. A few months before her death, Elizabeth raised the question of a fundamental alteration of criminal law to bring it into line with the faith she professed.

Few attempts have been made to fathom the complexity of Elizabeth's motives. The twenty-year moratorium by supreme order became a reality, however, and prompted Beccaria to ask: 'whether the punishment of *death* be really just or useful in a well governed state?' In any case, it was precisely Beccaria who was the first to applaud the Empress

who gave the fathers of their country an example more illustrious than many conquests bought with the blood of the sons of the fatherland . . . 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.⁵⁴

Two generations of Russians never witnessed a death on the scaffold. The job of executioner gradually disappeared, as did the skills of erecting a gallows, and the ruling elites became 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 few decades previously, the bodies of criminals left out to hang as a deterrent to others, with tin plaques listing their offences, had been a familiar sight in the Russian landscape.⁵⁵ It was feared that uprisings and disorder might sweep the country if ‘hereditary fear’ was not sown in the minds of its subjects.⁵⁶ The first Russian procurator-general, Pavel Iaguzhinskii, proposed in a 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’.⁵⁷

The reign of Elizabeth primed the ruling and educated elite for a discussion on the utility of the death penalty, a shift that took place not due to any treatise by Beccaria, but as a result of the decision of Empress Elizabeth. The historian S. M. Solovyov wrote of this that:

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.⁵⁸

Notes

¹ Zhosef de Mestr, *Peterburgskie pis'ma* (St Petersburg, 1995), pp. 85, 284–5.

² Cesare Beccaria, *An Essay on Crimes and Punishments* (Albany, 1872), pp. 97–108.

³ *Nakaz imperatritsy Ekateriny II, dannyi Kommissii o sochinenii proekta novogo Ulozheniia*, ed. N. D. Chechulin (St Petersburg, 1907), p. 62.

⁴ M. V. Nechkina and E. L. Rudnitskaia (eds), ‘O povrezhdenii npravov v Rossii’ kniazia M. Shcherbatova i ‘Puteshestvie’ A. Radishcheva (Moscow, 1984), p. 55.

⁵ P. P. Pekarskii, *Markiz de lia Shetardi v Rossii 1740–1742 godov* (St Petersburg, 1862), pp. 398–400.

⁶ See K. G. Manshtein, *Zapiski o Rossii: 1727–1744* (St Petersburg, 1875), p. 250; Pekarskii, *Markiz de lia Shetardi v Rossii 1740–1742 godov*, pp. 425–6. In 1754, the French *Gazette d’Utrecht* confirmed the existence of the 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' (see *Arkhiv kniazia Vorontsova* (Moscow, 1871), bk 3, pp. 649–50).
- ⁷ Pekarskii, *Markiz de lia Shetardi v Rossii 1740–1742 godov*, pp. 431–3.
- ⁸ M. M. Shcherbatov, 'Razmyshleniia o smertnoi kazni', *Chteniiia v Obshchestve istorii i drevnostei rossiiskikh* (hereafter Cht. OI DR) (1860), bk 1, p. 66.
- ⁹ *Sbornik Russkogo istoricheskogo obshchestva* (hereafter Sb. RIO) (1871), vol. VI, p. 442.
- ¹⁰ *Russkii arkhiv* (1871), bk III, p. 391.
- ¹¹ *Polnoe sobranie zakonov Rossiiskoi imperii s 1649. Sobranie 1-oe* (St Petersburg, 1830) (hereafter PSZ), 12: 114, no. 8944, 7 May 1744.
- ¹² *Rossiiskii gosudarstvennyi arkhiv drevnikh aktov* (hereafter RGADA), f. 248, op. 113, d. 919, ll. 99–100.
- ¹³ PSZ, 13: 25, no. 9586, 13 March 1749.
- ¹⁴ PSZ, 12: 583–4, no. 9312, 5 August 1746.
- ¹⁵ PSZ, 23: 576, no. 17264, 20 October 1794; 25: 622–3, no. 18943, 20 April 1799; 26: 786, no. 20007, 12 September, 1801; ff.
- ¹⁶ RGADA, f. 248, op. 113, d. 919, l. 18–18 (reverse).
- ¹⁷ PSZ, 13: 817–19, no. 10086, 29 March 1753. On this, see also Ye. V. Anisimov, *Russkaya pytki. Politicheskii sysk v Rossii XVIII veka* (St Petersburg, 2004), p. 256.
- ¹⁸ 'Sobstvennaia zapiska Ekateriny II o pervykh godakh tsarstvovaniia', in M. N. Kovalenskii, *Khrestomatiia po russkoi istorii* (Moscow, 1917), vol. 3, pp. 200–1.
- ¹⁹ PSZ, 13: 819–20, no. 10087, 29 March 1753.
- ²⁰ F.-V. Berkhgol'ts, *Dnevnik kamer-iunkera Berkhgol'tsa, vedennyi im samim v tsarstvovanie Petra Velikogo, s 1721-go po 1725-y god* (Moscow: 1860), ch. 3, year 1723, p. 28.
- ²¹ RGADA, f. 248, d. 300, l. 271; cf. also ll. 263–6, 267–70 (reverse).
- ²² See Berkhgol'ts, *Dnevnik kamer-iunkera Berkhgol'tsa*, ch. 3, year 1723, p. 28.
- ²³ Berkhgol'ts, *Dnevnik kamer-iunkera Berkhgol'tsa*, ch. 3, year 1723, pp. 28–9.
- ²⁴ N. S. Tagantsev, *Russkoe ugovolnoe pravo: leksii. Chast' obshchaia* (St Petersburg, 1902), vol. II, pp. 972–3; see also *Senatskii arkhiv* (St Petersburg, 1892), t. 5, p. 651.
- ²⁵ Tagantsev, *Russkoe ugovolnoe pravo: leksii*, vol. II, 972–3; see also on this RGADA, f. 248, op. 105, d. 8321, ll. 262–3 (reverse); f. 248, op. 113, d. 919, ll. 1–4.
- ²⁶ See PSZ, 14: 235–6, no. 10306, 30 September 1754.
- ²⁷ RGADA, f. 248, op. 113, d. 1023, ll. 11–16 (reverse).
- ²⁸ PSZ, 12: 558, no. 9293, 9 June 1746.
- ²⁹ RGADA, f. 248, op. 113, d. 1023, ll. 33–4.
- ³⁰ See, for example, K. A. Pisarenko, 'Sekretnie protokoly Senata ob otmene smertnoi kazni, 1743–1744 gg.', *Rossiiskii arkhiv: istoriia otechestva v svдетельstva i dokumentakh XVIII–XX vv. Tom XVIII* (Moscow, 1991), pp. 33–50.
- ³¹ RGADA, f. 248, op. 113, d. 1023, ll. 14–16 (reverse).
- ³² PSZ, 13: 819–820, no. 10087, 29 March 1753.
- ³³ *Senatskii arkhiv* (St Petersburg, 1893), vol. 6, pp. 642–3.
- ³⁴ PSZ, 6: 725, no. 4041, 28 June 1722; 6: 782, no. 4109, 15 October 1722; 7: 86–7, no. 4256, 28 June 1723.
- ³⁵ See PSZ, 7: 408, no. 4638, 26 January 1725; 7: 409–10, no. 4642, 27 January 1725.
- ³⁶ See PSZ, 7: 411–12, no. 4645, 30 January 1725.
- ³⁷ *Senatskii arkhiv* (St Petersburg, 1893), vol. 6, pp. 639–42.
- ³⁸ *Zapiski imperatritsy Ekateriny II* (London: 1859), p. 50. See, for example, other recollections of the court's 1746 visit to Rågervik island, F. Ch. Jetze, *Statistische Politische und galante Anekdoten von Schweden, Lief- und Rußland* (Liegnitz, 1788), pp. 92–7 ff.

- ³⁹ In 1751 alone, the number of 'those exiled convicts assigned to labour in Rågervik [was] around 2,000 persons' (PSZ, 13: 462–3, no. 9871, 31 July 1751; 13: 463–4, no. 9872, 31 July 1751).
- ⁴⁰ See, for example, PSZ, 13: 543–4, no. 9911, 28 November 1751; 13: 609, no. 9943, 23 February 1752; 14: 551–2, no. 10541, 12 April 1756.
- ⁴¹ A. T. Bolotov, *Zapiski* (St Petersburg, 1870), *Russkaia starina*: appendix, vol. 1, pp. 341–2.
- ⁴² Bolotov, *Zapiski*, vol. 1, pp. 341–2.
- ⁴³ On this see, for example, *Istoriia proletariata SSSR* (1933), nos. 13–16, 179.
- ⁴⁴ RGADA, f. 248, op. 113, d. 919, ll. 1–4, 5 (reverse), 10–10 (reverse); d. 1023, ll. 14–16 (reverse); *Senatskiy arkhiv* (St Petersburg, 1893), vol. 6, pp. 62, 642. On this, see also Pisarenko, 'Sekretnie protokoly Senata ob otmene smertnoi kazni, 1743–1744 gg.', pp. 33, 44–8.
- ⁴⁵ See, for example, PSZ, 14: 201–9, no. 10283, 24 August 1754. For details on the work of the Commission as a whole, see O. A. Omelchenko, *Zakonnaia monarkhiia Ekateriny Vtoroi: prosveshchennyi absolutizm v Rossii* (Moscow, 1993), pp. 39–53.
- ⁴⁶ PSZ, 15: 793, no. 11335, 29 September 1761.
- ⁴⁷ *Proekty ugovnogo ulozheniia 1754–66 godov (novoulozhennoi knigi chast' vtorai: o rozysknykh delakh i kakie za raznye zlodeistva prestupleniia kazni, nakazaniia i shtrafy polozheny)*, ed. A. A. Vostokov (St Petersburg, 1882), pp. 120–1, 143–4, 148, 171, ff.
- ⁴⁸ 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 rib, counterfeiters to have molten lead poured down their throat, and arsonists and those failing to report them were to be burnt, and so on (*Proekty ugovnogo ulozheniia 1754–1766*, pp. 68–9, 76, 92, 103–6, 111, 137–43, 143–4, ff.).
- ⁴⁹ *Proekty ugovnogo ulozheniia 1754–1766*, pp. 54–7.
- ⁵⁰ RGADA, f. 342, op. 1, d. 41, ch. 6, l. 15. On this, see N. G. Sergeevskii, 'Predislovie', *Proekty ugovnogo ulozheniia 1754–1766 godov*, p. xiv; O. A. Omelchenko, *Zakonnaia monarkhiia Ekateriny Vtoroi*, p. 42.
- ⁵¹ 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 Code of Law of 169, 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, and such thieves are not to be executed in deserted places' (PSZ, 1: 799, no. 431, 22 January 1669). 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 to be moved outside their boundaries to specially allotted sites (PSZ, 7: 824, no. 5118, 10 July 1727; 7: 859, no. 5155, 17 September 1727; *Opis' vysochaishim ukazam i poveleniiam, khраниashchimsia v sankt-peterburgskom senatskom arkhive za XVIII vek. T. II. 1725–1740* (St Petersburg, 1873), p. 101.
- ⁵² On this, see, for example: M. Foucault, *Discipline and Punish: The Birth of the Prison* (NY, 1995), pp. 3–72; R. J. Evans, *Rituals of Retribution. Capital Punishment in Germany. 1600–1987* (Oxford, 1996), pp. 130–7, etc.; H.-J. Graff, 'Crime and Punishment in the Nineteenth Century: a New Look at the Criminal', *Journal of Interdisciplinary History*, 7:3 (Winter 1977), 477–91; J. Martschukat, *Inszeniertes Töten: Eine Geschichte der Todesstrafe vom 17. Bis zum 19. Jahrhundert* (Köln, 2000), pp. 12–53.

- ⁵³ 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 PSZ, 16: 906–7, no. 12241, 15 September 1764).
- ⁵⁴ Cesare Beccaria, *An Essay on Crimes and Punishments*, pp. 98–107.
- ⁵⁵ In the January of 1726, it was therefore ordered that the commissioners of the Obonezhskaia Piatina in the Province of Novgorod, Nikita Artsybashev, Grigory Baranov and subdeacon 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 (PSZ, 7, no. 4826, 24 January 1726).
- ⁵⁶ S. M. Solovyov, *Istoriia Rossii s drevneishikh vremen* (Moscow, 1964), bk X, vols 19–20, p. 608.
- ⁵⁷ 'Zapiski P. I. Iaguzhinskogo o sostoianii Rossii', Cht. OI DR (1860), bk 4, p. 271.
- ⁵⁸ Solovyov, *Istoriia Rossii s drevneishikh vremen*, book XI, vols 21–2, p. 527.