RUSSIAN CIVIL LAW.


PART IV.*

Notwithstanding the ukase of February 5, 1722, whereby Peter the Great decreed that the reigning monarch should have the right to designate his successor, he failed to appoint his own. This was a misfortune which seriously affected the stability of his reforms. The reactionary or anti-reform party immediately declared for Peter, the son of the lamented Alexis, but the real affection of the Imperial Guard for the widow, Catharine, and the bountiful distribution of money by Menshikov, the favorite councillor of her late husband, caused her selection by a form of election wherein the assembled nobles declared that which their hearts rebelled against.

Fortunately, this first female ruler of Russia was surrounded by the able advisers who had forcefully aided her husband in his great work. Unfortunately, opportunity and human weakness combined to promote individual ambition and dishonesty among them. The extraordinary opportunities that Menschikov had for satisfying his thirst for honors, wealth, and power bore such early fruit that he became the practical ruler almost immediately after Catharine was proclaimed. She had much need of a masterful guide in state affairs, and her own gratitude directed her to select the man to whom she owed all her good fortune, even without the approving estimate in which she knew Peter the Great had held his abilities. Thus the baker-boy, whose bright eyes had attracted the great Reformer's attention on the streets of Moscow, after assisting his master in national affairs and learning the lesson of autocratic government, came to be his practical successor. He likewise became the first of those

* For Parts I, II, and III see numbers of the American Law Register for March, April, and September, 1904.
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favorites who triumphed with rocket-like rapidity and brilliancy only to follow one another "in melancholy procession to the snows of Siberia." ¹

Having been appointed Commander-in-Chief of the army to assure his political standing, and further having been assured a civil status by the gift of fifty thousand serfs, with lands constituting him the largest fief-holder in Europe, he began to rule the country in the name of his gracious sovereign, Catharine I.

The reforms of Peter the Great were not disturbed except in so far as necessary for the new method of controlling state affairs, but the old, vigorous spirit of progress was wanting. The Senate and the Holy Synod lost their title and function of "directing," the government being conducted by a Special High Council composed of Menshikov, Apraksin, Golovkin, Tolstoi, Golitsin, and Ostermann, under the theoretical presidency of the Empress. The latter, however, as appears by the records, was present only at the initial meeting.

Little was done towards bettering the confused condition of the civil laws or their administration, although some modifications were adopted. The corruption encouraged, or at least made possible, by the municipal system introduced by Peter was so rampant that the central magistracy of St. Petersburg was replaced by a simpler organization (the ratoucha) based upon an elective principle but curtailed in jurisdiction. The other cities were at first put under the immediate control of governors, but almost at once changed into ratouchi. Says Kapnist in the introduction to his "Code d'organisation judiciare de 1864: "Les reformes municipales de Pierre le Grand, empruntées à une législation étrangère et par conséquent sans racines dans le pays, n'ont guère survécu à leur auteur." While this is true as to form, the bases were retained and became permanent elements in subsequent municipal government.

The "Third Code Commission," which was still in existence when Peter died, was ordered to continue its work,

¹ W. R. Morfill—Russia.
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its membership at the same time being augmented by the addition of two churchmen and also representatives from the civil, military, and merchant classes. Absolutely nothing was done, however, by the Commission during the reign of Catharine, and it expired at her death, May 17, 1727. In her name four hundred and twenty public acts of force as proclamations, administrative regulations, or positive laws were issued, but practically none left any impression upon the country's institutions. Her reign was lacking in all helpful initiative measures except in the founding of the Academy of Sciences, but even that was one of the cherished objects planned by Peter which he had not lived to see accomplished. It subsequently greatly assisted in all fields of research.

By the will of Catharine the son of Alexis became her successor as Peter II (May 17, 1727-January 30, 1730). He was but thirteen years of age and became the puppet of the reactionists. Their speedy repudiation of the regency of Menshikov was accompanied by the prompt exile of that Russian Wolsey. Notwithstanding the avowed intention of the dominant party to return to the old order of things, the reforms of Peter the Great were beyond eradication. With the removal of the royal residence to Moscow the spirit of iconoclasm subsided and existing conditions were permitted to remain undisturbed. The Special High Council, reconstituted with members of the new oligarchy, continued its functions and imposed its will upon the complacent and obedient Senate. During the two years and eight months which marked the reign of Peter II four hundred and twenty-eight imperial documents were issued, most of which were administrative measures and proclamations. Among the few private laws was the ukase of May 16, 1729, on bills of exchange, promulgated in the Russian and German languages and clearly of German source.

In 1728 the "Fourth Code Commission" was appointed. The nobility was ordered to elect five deputies from each province, "men of probity and education," to take up the general work. Special commissions were also appointed to collate the laws of Livonia and Little Russia. While the
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former idea of a Code of Concordance was to be the base, the new Commission was instructed to introduce certain modifications to perfect the system of laws generally, but without drawing from foreign jurisprudence. Before this new body had completed even its preliminary plans the sovereign died and the deputies dispersed.

By another one of the "palace revolutions" so familiar in Russia during the first half of the eighteenth century Anne of Courland, then thirty-eight years old, became Tzarina (1730–1740). The firm purpose of the nobles who proclaimed her was to change the autocracy into a mere shadow and divide the imperial power among themselves. Though the daughter of Ivan V, who reigned jointly with Peter the Great, she was practically a foreigner, and was expected to be complacently grateful for her selection. Once within the capital, she, however, repudiated the accepted terms, which would have obliterated all the progress achieved subsequently to Ivan IV, and by a coup as dexterous as audacious showed herself a true autocrat. Her dramatic destruction of the "Conditions" so dismayed the scheming nobles that in their fear of some unrevealed support they bent the knee to one whom they had reckoned would become a plastic instrument of their own power and gain. She at once placed her favorite, Biren, in control. He appointed Germans to all important offices. While the Senate was restored as Council of the Empire such as it had been under the Great Reformer, a cabinet of three members of foreign birth, Biren, Münich, and Ostermann, really governed the country, giving rise to the derisive title of the "Régime of the Bironovitchina." Despite the just criticism visited upon Anne for her extravagance, encouragement of luxury, and the terrors of the secret Chancery, the nation profited by the general maintenance of modern institutions and systems. While it is true that she approved excessive adornment of the person in a mixture of antique barbarity with belated German fashions, she represented western ideas of government and

*Bernhardi—Geschichte Russlands.
opened the way for more refined social tastes. "Les Allemands préparaient la voie aux Français." 3

That her ministers were not idle appears from the fact that she issued two thousand seven hundred and sixty-seven acts, many of which were in the genuine interest of the people. Taxes were generally levied with more uniformity and the peasant capitation tax reduced; administrative and police measures were rendered less oppressive, commerce was encouraged, and vigorous laws were promulgated to cure the venality of the courts. Only in one enactment did she repeal a positive law of Peter the Great—that which in abrogating the right of primogeniture provided that property should descend to all children in equal shares as provided by the Ulozhenie of 1649.

It was hoped, however, that the many fragmentary, supplementary, and emergency enactments might be avoided. Ostermann, who had been an earnest supporter of every Code Commission, urged Anne to take up the great work immediately upon her accession, so that the special ukase would be resorted to less frequently. By his efforts the “Fifth Code Commission” was formed in 1730 with instructions to prepare a new and complete code of laws for the whole Empire. The idea of a mere concordance was abandoned. Recourse to foreign sources also was again sanctioned.

The Commission began on the two heads that were then regarded as the most important: (1) the administration of justice and (2) inheritable property. These titles were intended to embrace practically all the civil and criminal laws as well as procedure. The work proceeded slowly. Meanwhile the confusion and uncertainty of the laws, rather than any lack of them, so embarrassed the central, provincial, and municipal tribunals that the situation could no longer be endured. The course of justice was stayed by the multiplicity and incoherence of the laws and their intricate contradictions. Litigation was dragged along and trials became interminable. The new code was awaited impatiently under

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3 Rambaud—Histoire de la Russie.
these conditions, which were further aggravated by well-intentioned efforts from time to time to assist by some ukase hastily issued without sufficient consideration only to require another ukase that made its cloudy meaning still more unintelligible. More than two thousand such acts were promulgated not only without material relief, but consisting of measures seriously at variance with the systematic legal principles which the Commission was endeavoring to impress upon the new code.

Amid this chaos, under the imperious necessity for an immediate remedy, it was suggested that a working body of laws could be promulgated at once by using the sections of the work performed by the first, second, and fourth Commissions. With characteristic precipitancy, assuming that the former undertakings had duly matured, the Tzarina in 1735 gave the order for promulgation of the Code of Concordance. When the officials proceeded to execute their instructions they discovered that the labors of the previous codifiers were far from complete. Some of the chapters prepared by the first two Commissions had also been annulled or altered by new laws. Contradictory sections of old laws were found joined under single heads and impossible of use in pending causes or had no relation to existing conditions: in fine, the new Code of Concordance was manifestly an impossibility. It was reported that the only means by which such a work could be prepared was by directing divers courts and governmental colleges themselves to at first collect the laws in force in their respective departments and to then unite them into one work after the notes of accord and disagreement had been passed upon. It is evident that such a solution was not quickly feasible. The courts and colleges were already overburdened with the weight of current affairs, and the chanceries were so badly organized and permeated with bureaucratic indifference that nothing could be expected from them. Thus the time passed in consultations, correspondence, directions, and explanations while sections of the Commission completed rough drafts of the two chap-
ters and prepared to submit them for discussion and revision.  

The Commission came to an end at the death of the Empress in 1740 and left few traces of its ten years' existence. Anne appointed to succeed her the son of her niece, Anne, and the Prince of Brunswick, who, though but three months old, was duly recognized as Ivan VI, with Biren as regent. This regency, however, by another "palace revolution" was annulled, Biren sent upon his way to Siberia, and the mother of the child-Tzar appointed in his place. The German influence was thought to be firmly fixed with the Emperor's father, Anthony of Brunswick, as Commander-in-Chief of the army, Münich as Prime Minister, and Ostermann as High Admiral. Unfortunately, the Germans had become thoroughly unpopular, and as their conspicuous part in state affairs had been brought about by the two sovereigns of the line of Ivan, half brother of Peter the Great, it was not difficult to foment a revolution in favor of Elizabeth, the surviving child of the latter. It is significant that the surgeon Lestocq, supported by the French Minister, De la Chétardie, was the guiding spirit of this movement by which the preliminary adherence of the Imperial Guard and their unanimous declaration of fealty raised an Empress to the throne much as had been done in Rome by the Pretorian Guards. At any rate, Elizabeth began to reign on November 19, 1741, and Germany gave way to France at the Russian Court. It is needless to say that Ivan VI in one year and one month of his reign left no traces upon the laws of his country. It is true that the Regents issued two hundred and eleven sovereign acts, but these did not affect the systems of substantive law or procedure.

Notwithstanding the flagrant immorality and indolence of Elizabeth, State affairs were conducted by her Ministers with such advantage to the nation that her reign marked a revival of the reform spirit and a continuation of the work

* S. G. Zezas—Études historiques sur la legislation russe; "Historical Review of the Formation of the Code"—Obozrenie istoritcheskich sviedenie o sved zaconov: official publication prepared by Count Speransky and published in Russian, German, and French in 1833.
begun by her illustrious father. The Scandinavian ideas imported by Peter the Great had been subjected to the utilitarian processes of the Germans, and were now to be permanently engrafted upon Russian nationality by French culture and elegance. It cannot be doubted that this new influence aided the movement towards greater perfection of legislation even under the autocracy. While the fruition could not be immediate, this reign clearly established conditions which of themselves incited the enlightened steps taken not only by Elizabeth herself, but continued with earnest persistency by her successors.

Under the guidance of the corrupt but able Bestuzhev and the patriotic Vorontzov she again placed the Senate at the head of government, submitting to that body the various colleges or official boards, and restored the powerful and highly necessary office of Procurator General, making him the real Prime Minister of the Empire. While she seldom interfered with the plans of her Ministers, it is surprising to observe that when she did so it was generally within the field of religion. She insisted upon expelling all Jews from her Empire in face of the suggestion from the Senate that she was ruining commerce. She furthermore encouraged the persecution of the Raskolniki (dissenters) and even ordered the closing of many mosques in Tartar territories. On the other hand, she took measures to insure better discipline and higher education among the monks and priests, ordered catechisms to be freely distributed among the young, and had a newly corrected edition of the Bible put on sale.

To assist commerce, the tax on goods at city gates was abolished and many manufacturers of cloths, silks, etc., were raised to the tchin. On this same line rural banks were established from which small landed proprietors could borrow at six per cent. interest instead of paying the fifteen per cent. of the usurers.

By her encouragement of Lomonosov, Tatistchev, and Sumarokov she established the beginning of Russian literature and became entitled to the gratitude of her people by establishing at Moscow the first Russian university, in which the celebrated Ivan Schuvalov gave the first impetus to th
study of Russian law by appointing ten professors to cover jurisprudence, medicine, and philosophy. A most important feature of this intellectual movement was the appointment of Trediakovsky to the chair of Latin and rhetoric. To his efforts must be attributed the grammatical regularity and the finish of the modern Russian language. He found three distinct tongues: the old Slavonic of the Church, the popular (sensibly different), and the official. The last was the creation of Peter the Great, adopted originally in the College of Foreign Affairs, and largely made up of German, Dutch, and French words. From this reign onward foreign gave equal honors to domestic literature, owing largely to the learning and industry of these progressive professors of the new University. Certainly results were not apparent at once, but attention is called to this as a period of commencement. The French influence became so great that not only were Paris and Versailles aped in dress, manner, politics, and language, but many of the nobility did not even deign to employ their native tongue save to serfs. Meanwhile the savants were building for the future.

While Elizabeth was thus advancing the arts and sciences and promoting western elegance her Ministers were not unmindful of the serious needs of law reform. The serious conditions of the preceding twenty years were becoming constantly aggravated. At the outstart, with a view of gathering materials for a definite solution of the code problem, the Senate was directed to gather and classify the divers laws, so that those which had been repealed or fallen into disuse should be separated from those considered in force. The theory, doubtless born of the former Code of Concordance, was that upon the completion of that classification it would remain but to distribute the several laws according to subjects and thus constitute a working code. From 1741 to 1754 the Senate was occupied with the task, and, indeed, completed some lines of classification, but the tardy progress and the imperative needs of the country for speedy relief from a state that was extremely hurtful to commerce and landed interests led to a new movement.

In 1754, at a special council presided over by the Empress
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in person, it was decided "to prepare a body of laws that should be clear, intelligible for all, and adapted to the present times." Accordingly, in the same year the "Sixth Code Commission" was created to prepare an entirely new code. It was provided that the details should be worked out by sub-committees, whose reports should be passed upon and revised by the general Commission, which should report to the Senate. This last body, after finally revising and adopting it, was to present it to the Empress for her approval and promulgation. The general subject was outlined under four heads: (1) judicial procedure, (2) criminal causes, (3) property rights, and (4) personal status. As the term "judicial procedure" was then understood to embrace not only the regulation of civil trials but also the subjects of contractual obligations and damages for torts, it is apparent that the scope of the whole work really called for complete civil and penal codes with their respective procedure, together with laws settling the civil status of all inhabitants.

In order to facilitate immediate applicability of the work as it progressed special sub-committees were appointed to cooperate with the various governmental colleges for preparing administrative regulations suitable for introducing the laws pertaining to each subject.

Within a year the Commission completed the first three parts—judicial procedure, criminal causes, and property rights—and in 1775 laid the first two before the Senate and the Holy Synod. These bodies approved and sent them to the Empress for her sanction, embodying in their report a recommendation that five months should elapse before promulgation in order that new features might become familiar.

The expected sanction was never given. The reasons appear to have been, first, that Elizabeth desired to summon special provincial deputies to examine the new laws, and, second, because the draft of the criminal code admitted the death penalty, which at the beginning of her reign she had declared should not be inflicted, and had actually abolished by ukase of September 30, 1745.

This abatement of the imperial interest reacted on the Commission. The remaining parts of the work were not completed, and until 1750 the body existed in name only.
In that year the Empress again became solicitous about the state of the laws and appointed the "Seventh Code Commission" by uniting the sub-committees of the former body under the direction of two senators and the addition of new members. It was resolved to finish the part relating to Personal Status and to then submit the four parts to a new examination at the hands of a body of deputies to be selected from the nobility, the clergy, and the merchant guilds. Before these plans were much advanced Elizabeth died (December 25, 1761). Her efforts for law reform had failed and her reign was distinguished by the usual emergency legislation. In the twenty years and one month of her imperial domination she issued two thousand nine hundred and twenty-two public acts, not one of which bettered the system of civil law or procedure, and most of which tended to make codification more difficult.

With the advent of Peter III (December 25, 1761, to July 9, 1762), who succeeded his aunt by her appointment, the German ascendancy returned, and many institutions of Peter the Great were saved from obliteration only by the brevity of his grandson's reign. Indeed, the influence of the Prussian Frederick the Great at the Russian Court was an outspoken cause of the Tzar's unpopularity. He also especially antagonized the clergy by announcing his intention to resume all monastery holdings with their serfs and putting the higher clergy upon a definite stipend. To offset this he repealed the ukase of his grandfather which required all members of the aristocracy to take State employment. He also continued the last Code Commission of Elizabeth, and had already summoned the deputies provided for by her when the bloodless revolution of July, 1762, dethroned him and placed the destinies of Russia in the hands of his vigorous wife as Catharine II (1762-1796).

For the second time a female ruler of western blood now broke in upon the Romanov line, and this one was destined to illumine the pages of Russian history as no sovereign who preceded her had done. Her imperial achievements are the more remarkable in view of the idle and vicious life she had
led at Oranienbaum, where every summer kiosk had its special reminiscence of an amorous rendezvous. She assumed the reins of government with more than a man's strength in masculine affairs, but with worse than weakness in woman's sphere.

This contradictory composition of her nature manifested itself at the very outset of her reign. Having secured the adherence of the clergy by condemning the plan of Peter III to resume the monastic lands, one of her first acts affecting existing institutions was the appointment of a mixed lay and clerical commission devoted to her to consider the question. Upon the report and recommendation of that body the land of some two hundred and fifty monasteries and upward of a million serfs became the property of the State, in lieu of which the clergy became pensioners of the Crown. The work begun by Peter the Great was thus completed and the dual head of "Holy Russia" at last became but one, materially as well as spiritually. She had no scruples to annoy her, looking as she did upon religion as a mere instrument of government and seeing no danger in toleration. Shortly after this event, in one of the letters preserved of that fifteen years' correspondence with Voltaire, she wrote: "Je pense que vous vous plairiez dans cette réunion où l'orthodoxe est assis entre l'hérétique et le musulman, écoutant tous trois la voix d'un idolâtre et se concertant tous les quatre pour rendre leur avis supportable à tous." Nor was this the only topic any more than he the only Frenchman thought of and studied by the versatile Catharine. Prior to her accession she had been attracted by the advanced philosophy of the dawning new France, whose language she knew better than that of Russia, and her continued interest in the Encyclopédistists did not appear to her inconsistent with autocratic rule. Indeed, it will be recalled that she sought to have both Diderot and D'Alembert settle in Russia, and that she bought the libraries of both the former and also that of Voltaire when they respectively died. It was with the same seeming unconsciousness of her own position that she delved into all branches of the science of government. Though she had no claim to the throne except what the English barristers
set up for Henry VII,—"present possession and the will of God,"—the works of Montesquieu, Blackstone, and Becarria were earnestly studied by her without raising any doubt of her right to reign. It was this same illogical spirit that prompted her in 1766 to propound to the Society of Political Economy at St. Petersburg, composed mainly of foreign savants, the question—"Would the State be benefited by the serf becoming the free owner of his land?" and without awaiting an answer to drive more rivets into the chains of the already miserable peasant.

Definite results, however, soon began to pierce through this methodless search for knowledge. She had not been unobservant of conditions immediately about her. The rampant evils resulting from the state of the laws and the corruption of officials could not well be overlooked. In a ukase of 1762 this language appears: "I consider as my most indispensable duty to declare to the people, with profound grief of heart, that dishonesty has made such progress that hardly a tribunal or administrative office is not infected. If one solicit a place, it is necessary to pay; if an accusation is to be resisted, it must be done with money. . . Many judges have transformed into a market the sacred place where they should render justice in the name of the All Powerful."

Having re-established the principal administrative aids of Peter the Great—the Senate and government colleges and chanceries—and selected a competent Council of State, she made it known that the laws must be reformed. In 1766 she issued her famous Instruction (nakase) for preparing a code, claimed to have been the product of her own brain and written by her own hand in the Russian and French languages. This truly remarkable document was composed of twenty-two chapters and contained six hundred and fifty-five articles—declarative, argumentative, and directive. One is astonished to find such phrases as—"The nation is not made for the sovereign, but the sovereign for the nation;" "Equality consists in obedience to the law;" "Liberty is the right to do all things that are not prohibited by the law;" "It is better to spare ten guilty ones than to condemn an
innocent;" "Torture is an admirable means to convict an innocent of feeble health and to liberate a robust guilty one." In the same lofty language religious intolerance and cruel punishments for crimes were severely condemned. One of her generals, Peter Ivanovich Panin, said that she had announced maxims strong enough to knock down walls. Catharine herself declared that she had "pillaged" all the western philosophers. The fact is that while Bacon, Locke, Blackstone, Puffendorf, and even Confucius were perceptibly drawn upon, the great bulk was borrowed from Beccaria and Montesquieu. Indeed, the latter's *Esprit des lois* was stamped on the whole work, yet Kovalevsky says it "may be considered as a masterpiece in interpreting an author in a way contrary to almost all his expressed beliefs." Ideas in conflict with autocracy were skilfully remodelled to suit the existing form of government. Peter the Great had secured practical reform institutions and systems from abroad and had installed them with brutal incongruity. This time only ideas were borrowed, principally those first elaborated in England and popularized in France by the forerunners of the Encyclopedists. While intended only as a guide, the *Instruction* was really a code outline and became of material service in subsequent law reforms.

The directions for organization were immediately put in motion and brought into existence the "Eighth Code Commission." The following reasons for its creation were set forth: (1) The lack of necessary laws in many cases and their superabundance in others, (2) the mixture of permanent and provisionary laws, (3) the obscurity and uncertainty that lapse of time, frequent modifications, and arbitrary interpretation had cast upon the spirit in which the ancient laws had been conceived, and (4) the change in the times and manners of life since the early days of Russia.

Delegates were summoned from all parts of the Empire to represent all State bodies, orders, classes, and races.

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"*Russian Code Commissions of the 18th Century*"—Zakonodatel'nyia Kommissii v Rossi v XVIII st., Prof. Latkin. St. Petersburg, 1887.

Maxime Kovalevsky—*Russian Political Institutions*. 
Beyond the specially appointed representatives from the Senate, the Holy Synod, the governmental colleges and chanceries, the nobility elected one from each district, the burghers one from each city, the odnovortsi or free cultivators, the soldiers, communal militia, and other "men of service," the Crown peasants and the stationary tribes, Christian or otherwise, each for their respective classes, one from each province, and the hetmans of the several groups of armed Cossacks one or more according to numbers. Each delegate was subject to specific written instructions provided same were signed by five of his constituents. This was to invite knowledge of local provincial conditions and customs requiring special attention. At Moscow on July 31, 1767, the five hundred and sixty-four senators, priests, officials, nobles, merchants, peasants, Tartars, Kalmucks, Laplanders, and Samoyeds formally assembled, and Catharine in person with solemn impressive ceremony opened the Commission which was intended to give Russia at last a truly complete and enlightened body of written laws. To commemorate the great event she gave to each delegate a medal stamped with her image and these words: "For the happiness of all and of each, 14 December, 1766," the date marking the proclamation of the "Instruction."

Three days thereafter (August 3) the initial working meeting was held and the planning of a course of procedure begun. The whole subject of legislation (except branches relating to the army and navy, which were not to be touched) was divided into fifteen categories, such as penal justice, schools, public order, personal rights, etc. Nineteen special commissions, or sub-committees of members of the main body, were appointed, one for each of the fifteen classes of legislation and four with special functions: direction (presided over by the Procurator-General), charged with managing the work in all branches and also with the duty of revising all special commission reports; expedition, to compare and correct matter and language in all drafts of laws submitted; mandates, to examine all instructions, requests, and complaints of the constituencies and report material extracts thereof, and concordance, to collect
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all the ancient laws and collate such parts of them as might be used by the special commissions. These various auxiliary divisions were to proceed separately and present such drafts of laws as would be completed from time to time to the special commission of direction, whence all reports were to be submitted to the general assembly. It was agreed that the bases for the entire work should be (1) the Instruction of the Empress, (2) the mandates or directions given the delegates by their constituents, and (3) the concordances of the laws to be prepared by the special commission having that duty.

On August 21 the Commission in general assembly presented to the Empress an address thanking her on behalf of the entire nation for her liberality to the people and devotion to the State. After this the sessions were occupied with the regular order and presented scenes never before witnessed upon Russian soil. Questions of vital importance to the country were discussed with a freedom which not many years before would have quickly started the participants on the road to Siberia or a worse fate. The Baltic nobles asserted their provincial privileges, the merchants denounced the existing municipal organizations and abused officials about economic conditions, free farmers proposed to liberate the serfs, and landed proprietors declared for greater powers over their servants. The strength of the Commission proved its weakness. Rambaud says: "Ce n'était pas une assemblée si nombreuse, si divisée par les intérêts des classes, si mêlée au point de vue ethnographique, qui pouvait rédiger un code. Cette œuvre était presque impossible dans la Russie d'alors, où se rencontraient tant de diversités." The sequel proved this to be true. Upwards of two hundred sessions were held and the proceedings were becoming a continuous discussion without results when Catharine made a pretext of the prospects of foreign complications to send the delegates to their respective domiciles. After five months (December 29, 1767) she ordered that the meetings of the general assembly be suspended until further order, but that

7 Alfred Rambaud—Histoire de la Russie.
the work of the special commission proceed nevertheless. She artfully declared: "The Code Commission has given me lights and needs concerning the whole Empire. I now know what is necessary and what should receive attention. It has elaborated all the lines of legislation and distributed them under proper heads. I would have gone on had it not been for the war with Turkey. At least a unity without example has been introduced into the principles and the methods of discussion."

The special commissions continued irregularly according to the original plan, but only a few of them completed definite drafts on their subjects. At the end of five years some had presented to the special commission of direction parts of their subjects in the form of essays or rough drafts, but they were never revised nor accepted. Of this class were the following:

A proposed law of one hundred and fourteen articles on city and village schools; views on the establishment of a postal service; forty-five chapters of a penal code; three hundred and forty-one articles on police organization; some chapters on domestic relations; fifty-one articles concerning the nobility as a class; thirteen chapters on the burghers, and a law concerning the civil status of the Cossacks. Then in 1774 Catharine formally dissolved the great Commission, but created a Chancery to preserve its records. Sigel says: "Notwithstanding this failure, the wishes expressed by the different classes of the nation had a great influence on the organization of society and the administration of very important laws of Catharine II."

Reforms that had been intended to be forerun by clearly defined substantive laws and an adequate modern system of jurisprudence were now begun by enactments amounting to special codes. Indeed, some measures had not even awaited the end of the Commission. While the delegates were actually discussing servitude in 1767 a ukase had issued interdicting complaints by serfs against their masters and giving the latter the right to send the former to Siberia or

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*Feodor Sigel—Slavonic Law—Ilchester Lectures, 1900.*
give them as army recruits. Shortly afterwards followed the first of the donations of lands in Little Russia to the favorites, whereby serfdom became established—where it had never legally existed before. On the other hand, however, cruel treatment of serfs by their masters was condemned, as shown in the conviction and life imprisonment of Madame Saltykof in 1768 for torturing some of her domestic servants.

The measures promulgated after the Code Commission was dissolved distinctly show the benefits derived from the discussions in that assembly, although other momentous current events during the five years preceding the end of that body also served to remind the elegant and frivolous Court of the grave needs of government. The plague at Moscow in 1771, the war with Turkey in that same year, the invasion of Poland, which ended in the first partition of that unhappy country in 1772, and the ominous politico-religious revolt of Pugachev in 1773 were serious admonitions that the State needed wise legislators at home and skilled diplomats abroad. No man in the Council of State realized this more than the enigmatical Potemkin, favorite of predilection, at once a discerning statesman of reform tendencies and gallant man of a thousand follies. His unusual foresight and sound judgment made him the guide and the instrument most needed by the capricious Tzarina. He was truly the Creator of New Russia as he has been called. His suggestions so adroitly entered the mind of his mistress-sovereign that she believed them to have originated there, when his enthusiasm and ability turned them into realities. It was his appreciation of the true weight of the code debates and the passing events that led Catharine to begin that series of legislative acts which laid the bases of all later administrative and judicial systems in Russia.

The first step was towards practical and reasonable provincial organization. By the ukase of November 7, 1775, which was a veritable code, an entirely new system was established. The Empire with its forty million inhabitants was divided into fifty governments (gubernii) containing from three to four hundred thousand people (not counting...
chattel "souls"), which were subdivided into districts (у изда) comprising from twenty to thirty thousand. Governors-general (nаместники) were appointed to advise groups of two or three governments, each of which also had its governor and vice-governor. The most important feature was the complete separation of administrative and judicial functions and the maintenance of certain class franchise privileges approaching popular elections. The governors were assisted by a Council of Regency for police affairs, a Chamber of Finance for collection of taxes, Crown land management, and registration of inhabitants, and a College of Assistance for hospitals and indigent inhabitants.

The judicial system was marked by class distinctions. District courts (у izdни суд) were established for the nobility, village magistrate courts (ратуши) for the burgher class, and justices (низняя rasprava) for the одноворты, or free farmers and Crown peasants. No tribunal was provided for serfs of the lords. Corresponding appeal systems were respectively provided at the seat of each government by a supreme court (верхний сенский суд), a government magistrate (магистрат), and a superior justice (верхняя rasprava). Right of appeal from these to the Senate was given. The civil and criminal jurisdictions were exercised by the same courts throughout. There were also two special courts for affairs between members of different classes or optionally common to all in each government, with separate criminal and civil chambers. In these criminal courts juries were summoned to assist in trials for high crimes. The composition of the several courts was as follows: district court, one judge and two assessors, elected by the nobles for three years; village magistrate courts, one burgomaster and two rathmann, all elected for three years by the voting classes of the respective villages; justice courts, one judge named by the provincial regency and four assessors elected by the peasants (Crown land tenants and free farmers). The appeal courts were mere extensions of the same system. There were also special courts at St. Petersburg and Moscow for the floating population of nobles and merchants. They were called надворные суды, inferior, and надворные суды,
superior, representing first instance and appeal. The first had a president and two assessors and the second, divided into two chambers, two presidents, two councillors, and four assessors. These were all named by the Senate and formed the only exception to the general application of the elective principle.

Another kind of tribunal worthy of notice was the Court of Conscience, product of the times and entirely unknown before. There was one for each government, being composed of one judge and six assessors. The president and two assessors were elected by the nobility, two by the burghers, and two by the Crown peasants. These courts were directed to decide "not only according to the laws, but also natural equity." The civil side was rather a court of conciliation and arbitration in domestic relations and such other affairs as were voluntarily submitted by the parties. It took special cognizance of crimes committed by minors, persons of unsound mind, and "victims of misfortune." In certain cases appeal to the Senate was allowed, but otherwise the judgments were final.

The reorganization of the provinces under this law was manifestly a real advance, as subsequent events have abundantly shown, and particularly so in respect of the judicial features. It would have been still more enlightened had some provisions been inserted to improve procedure. The gathering of evidence in secret and the production of written testimony in lieu of the appearance of witnesses, as inaugurated by Peter the Great, offered too much temptation to officials whose venality had become part of the nation's history. It is true that Catharine ordered severe penalties to be inflicted upon corrupt officers in every grade, but the vice remained.

The ukase of June 25, 1781, regulating commerce, and that of November 23 of the same year concerning navigation, both indicated a determination to advance the perfecting plan and a desire to put Russia abreast of Western Europe. These laws lacked many necessary elements but helped existing conditions by creating confidence abroad. The ideas of French international law writers were largely
used, but in a modified form to make them harmonize with Russian methods.

The next year (April 8, 1782) the ukase establishing new police administrative methods was issued, but while it removed the confusion existing in the mass of contradictory regulations, it made the State more completely master of the citizens of all classes by centralizing the police control of the whole Empire in a special bureau at St. Petersburg.

The year 1785 was made memorable by the Charter of Municipalities and the Charter of Nobility. By the first (April 21) cities were for the first time given recognition as corporations with landowning powers, besides a complete system of practical self-government by council (douma) and mayor (golova) and right of franchise based upon a reasonable classification of the inhabitants. The provisions of the provincial government ukase of 1775 were improved upon for this special code, which was made to apply exclusively to the larger cities.

The second of the two important acts of this year (April 24) gave the nobility a separate provincial organization with more voice in local affairs, and to an extent re-established the theory of Peter the Great that all nobles should be in the active service of the State. The rights and obligations generally of the nobles may be traced to this ukase and have changed little. The disciplinary powers over the members of their own order, the practical supervision of provinces in the interest of the Crown by their elected marshals, and their exclusive eligibility to certain local offices were the bases established. This piece of legislation was clearly prompted by the well-known dictum of Montesquieu, "La noblesse est l'appui naturel de la monarchie."

It was in the nature of things that these governmental steps and the encouragement given to intellectual pursuits which had already resulted in the Russian Academy (1783) should draw attention to the great educational lacks. Catherine was long-occupied with the earnest and learned Betsky upon the question of public schools. Unfortunately, it was impossible to secure sufficient Russian teachers to carry out his great plan of national education, and the Empress was
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obliged to limit her efforts to establishing secondary public schools in the large cities (1786). In addition she founded the Institute of Smolna for the education of young girls and later the Vospitatchnyi dom, or House of Education, of Moscow for foundlings and indigents. As to the pupils of the former she wrote Voltaire: “Nous ne les voulons ni prudes ni coquettes.” As to the latter, she decreed that any serf who would marry a female inmate should be free. Both the sentiment and the decree were characteristic of the woman, the country, and the times.

The educational movement was the crowning act of Catharine’s reign. The clouds of discontent, outspoken complaint, and revolt began to gather over France in angry premonition of the coming storm. The philosophy of her Gallic friends was bearing fruit, which astonished the Semiramis of the North. The governed were asserting as actual rights things that had only been dallied with in theory. Under the shock of the first news that the French people not only considered themselves oppressed but had dared to say so, Catharine issued a ukase (1788) revoking the right of Crown peasants to remove and tightening the chain about every serf throughout all the Russias.

The fall of the Bastille aroused her fear and indignation and forever shattered all her dreams of betterment for the burgher and the peasant. “She, who had been the friend and disciple of the French speculative writers, now wished to be re-enveloped in the ages of barbarism ... and the legislatrix of the north, forgetting her own maxims and philosophy, was no longer anything more than an old sybil.”9 So complete was her volt-face that she publicly condemned even the American Revolution, which she had formerly pretended to approve, called Washington a rebel, declared that no honorable man could wear the order of Cincinnatus, and forbade the insignia to be worn by the few Russians upon whom it had been conferred.

No more reform measures were instituted, and the ancient administrative and judicial vices were permitted to reappear without rebuke, while she furiously entered into the Polish

*Russia, compiled by W. K. Kelly, from Karamsin, Tooke, and Segur.
intrigues and imprisoned or exiled every Russian author of liberal word in speech or book. After the death of Potemkin in 1792 her attention was directed almost wholly to external affairs until her own death on November 6–17, 1796. Thus was brought to an end the most brilliant, the wisest, and the most vicious reign recorded on the pages of Russian history, thenceforward destined to be as well unsoiled by the weakness and crimes as unillumined by the wisdom and virtues of a female sovereign.

*William W. Smithers.*