

The Instructions of Catherine II to the Legislative Commission of 1767

The Instructions to the Commissioners for Composing a New Code of Laws

1. The Christian Law teaches us to do mutual Good to one another, as much as possibly we can.
2. Laying this down as a fundamental Rule prescribed by that Religion, which has taken, or ought to take Root in the Hearts of the whole People; we cannot but suppose that every honest Man in the Community is, or will be, desirous of seeing his native Country at the very Summit of Happiness, Glory, Safety, and Tranquillity.
3. And that every Individual Citizen in particular must wish to see himself protected by Laws, which should not distress him in his Circumstances, but, on the Contrary, should defend him from all Attempts of others that are repugnant to this fundamental Rule.
4. In order therefore to proceed to a speedy Execution of what We expect from such a general Wish, We, fixing the Foundation upon the above first-mentioned Rule, ought to begin with an Inquiry into the natural Situation of this Empire.
5. For those Laws have the greatest Conformity with Nature, whose particular Regulations are best adapted to the Situation and Circumstances of the People for whom they are instituted. This natural Situation is described in the three following Chapters.

Chapter I

6. Russia is an European State.
7. This is clearly demonstrated by the following Observations: The Alterations which Peter the Great undertook in Russia succeeded with the greater Ease, because the Manners, which prevailed at that Time, and had been introduced amongst us by a Mixture of different Nations, and the Conquest of foreign Territories, were quite unsuitable to the Climate. Peter the First, by introducing the Manners and Customs of Europe among the European People in his Dominions, found at that Time such Means as even

he himself was not sanguine enough to expect.

Chapter II

8. The Possessions of the Russian Empire extend upon the terrestrial Globe to 32 Degrees of Latitude, and to 165 of Longitude.

9. The Sovereign is absolute; for there is no other authority but that which centers in his single Person that can act with a Vigour proportionate to the Extent of such a vast Dominion.

10. The Extent of the Dominion requires an absolute Power to be vested in that Person who rules over it. It is expedient so to be that the quick Dispatch of Affairs, sent from distant Parts, might make ample Amends for the Delay occasioned by the great Distance of the Places.

11. Every other Form of Government whatsoever would not only have been prejudicial to Russia, but would even have proved its entire Ruin.

13. What is the true End of Monarchy? Not to deprive People of their natural Liberty; but to correct their Actions, in order to attain the supreme Good.

14. The Form of Government, therefore, which best attains this End, and at the same Time sets less Bounds than others to natural Liberty, is that which coincides with the Views and Purposes of rational Creatures, and answers the End, upon which we ought to fix a steadfast Eye in the Regulations of civil Polity.

15. The Intention and the End of Monarchy is the Glory of the Citizens, of the State, and of the Sovereign.

16. But, from this Glory, a Sense of Liberty arises in a People governed by a Monarch; which may produce in these States as much Energy in transacting the most important Affairs, and may contribute as much to the Happiness of the Subjects, as even Liberty itself.

Chapter III

17. Of the Safety of the Institutions of Monarchy.

18. The intermediate Powers, subordinate to, and depending upon the supreme Power, form the essential Part of monarchical Government.

19. I have said, that the intermediate Powers, subordinate and depending, proceed from the supreme Power, as in the very Nature of the Thing the Sovereign is the Source of all imperial and civil Power.

20. The Laws, which form the Foundation of the State, send out certain Courts of judicature, through which, as through smaller Streams, the Power of the Government is poured out, and diffused.

21. The Laws allow these Courts of judicature to remonstrate, that such or such an Injunction is unconstitutional, and prejudicial, obscure, and impossible to be carried into Execution; and direct, beforehand, to which Injunction one ought to pay Obedience, and in what Manner one ought to conform to it. These Laws undoubtedly constitute the firm and immoveable Basis of every State.

Chapter VII

61. There are means of preventing the growth of crimes, and these are the punishments inflicted by the laws....

63. In a word, every punishment which is not inflicted through necessity is tyrannical. The Law has its source not merely from Power [but also from] Nature....

66. All laws which aim at the extremity of rigor, may be evaded. It is moderation which rules a people, and not excess of severity.

67. Civil liberty flourishes when the laws deduce every punishment from the peculiar nature of every crime. The application of punishment ought not to proceed from the arbitrary will or mere caprice of the Legislator, but from the nature of the crime....

68. Crimes are divisible into four classes: against religion, against manners [morality], against the peace, against the security of the citizens....

74. I include under the first class of crimes [only] a direct and immediate attack upon religion, such as sacrilege, distinctly and clearly defined by law.... In order that the punishment for the crime of sacrilege might flow from the nature of the thing, it ought to consist in depriving the offender of

those benefits to which we are entitled by religion; for instance, by expulsion from the churches, exclusion from the society of the faithful for a limited time, or for ever....

76. In the second class of crimes are included those which are contrary to good manners.

77. Such [include] the corruption of the purity of morals in general, either public or private; that is, every procedure contrary to the rules which show in what manner we ought to enjoy the external conveniences given to man by Nature for his necessities, interest, and satisfaction. The punishments of these crimes ought to flow also from the nature of the thing [offense]: deprivation of those advantages which Society has attached to purity of morals, [for example,] monetary penalties, shame, or dishonor ... expulsion from the city and the community; in a word, all the punishments which at judicial discretion are sufficient to repress the presumption and disorderly behavior of both sexes. In fact, these offenses do not spring so much from badness of heart as from a certain forgetfulness or mean opinion of one's self. To this class belong only the crimes which are prejudicial to manners, and not those which at the same time violate public security, such as carrying off by force and rape; for these are crimes of the fourth class.

78. The crimes of the third class are those which violate the peace and tranquillity of the citizens. The punishments for them ought also to flow from the very nature of the crime, as for instance, imprisonment, banishment, corrections, and the like which reclaim these turbulent people and bring them back to the established order. Crimes against the peace I confine to those things only which consist in a simple breach of the civil polity.

79. The penalties due to crimes of the fourth class are peculiarly and emphatically termed Capital Punishments. They are a kind of retaliation by which Society deprives that citizen of his security who has deprived, or would deprive, another of it. The punishment is taken from the nature of the thing, deduced from Reason, and the sources of Good and Evil. A citizen deserves death when he has violated the public security so far as to have taken away, or attempted to take away, the life of another. Capital punishment is the remedy for a distempered society. If public security is violated with respect to property, reasons may be produced to prove that the offender ought not in such a case suffer capital punishment; but that it seems better and more comfortable to Nature that crimes against the public security with respect to property should be punished by deprivation of property. And this ought inevitably to have been done, if the wealth of

everyone had been common, or equal. But as those who have no property are always most ready to invade the property of others, to remedy this defect corporal punishment was obliged to be substituted for pecuniary. What I have here mentioned is drawn from the nature of things, and conduces to the protection of the liberty of the citizens....

Chapter VIII

80. Of Punishments.

81. The Love of our Country, Shame, and the Dread of public Censure, are Motives which restrain, and may deter Mankind from the Commission of a Number of Crimes.

82. The greatest Punishment for a bad Action, under a mild Administration, will be for the Party to be convinced of it. The civil Laws will there correct Vice with the more Ease, and will not be under a Necessity of employing more rigorous Means.

83. In these Governments, the Legislature will apply itself more to prevent Crimes than to punish them, and should take more Care to instil Good Manners into the Minds of the Citizens, by proper Regulations, than to dispirit them by the Terror of corporal and capital Punishments.

84. In a Word, whatever is termed Punishment in the Law is, in Fact, nothing but Pain and Suffering.

85. Experience teaches us that, in those Countries where Punishments are mild, they operate with the same Efficacy upon the Minds of the Citizens as the most severe in other Places.

86. If a sensible Injury should accrue to a State from some popular Commotion, a violent Administration will be at once for a sudden Remedy, and instead of recurring to the ancient Laws, will inflict some terrible Punishment, in order to crush the growing Evil on the Spot. The Imagination of the People is affected at the Time of this greater Punishment, just as it would have been affected by the least; and when the Dread of this Punishment gradually wears off, it will be compelled to introduce a severer Punishment upon all Occasions.

87. The People ought not to be driven on by violent Methods, but we ought to make Use of the Means which Nature has given us, with the utmost Care

and Caution, in order to conduct them to the End we propose.

88. Examine with Attention the Cause of all Licentiousness; and you will find that it proceeds from the Neglect of punishing Crimes, not from the Mildness of Punishments.

Chapter IX

97. Of the administration of Justice in general...

119. The Laws which condemn Man upon the Deposition of one Evidence only are destructive to Liberty.

120. Two Witnesses are absolutely necessary in order to form a right Judgment: For an Accuser, who affirms, and the Party accuses, who denies the Fact, make the Evidence on both Sides equal; for that Reason a Third is required in order to convict the Defendant; unless other clear collateral Proofs should fix the Credibility of the Evidence in favour of one of them.

123. The Usage of Torture is contrary to all the Dictates of Nature and Reason; even Mankind itself cries out against it, and demands loudly the total Abolition of it. We see, at this very Time, a People greatly renowned for the Excellence of their civil Polity, who reject it without any sensible Inconveniencies. It is, therefore, by no Means necessary by its Nature...

156. By making the penal Laws always clearly intelligible, Word by Word, every one may calculate truly and know exactly the Inconveniencies of a bad Action; a Knowledge which is absolutely necessary for restraining People from committing it; and the People may enjoy Security with respect both to their Persons and Property; which ought ever to remain so, because this is the main Scope and Object of the Laws, and without which the Community would be dissolved.

158. The Laws ought to be written in the common vernacular Tongue; and the Code, which contains all the Laws, ought to be esteemed as a Book of the utmost Use, which should be purchased at as small a Price as the Catechism. If the Case were otherwise, and the Citizen should be ignorant of the Consequences of his own Actions, and what concerns his Person and Liberty, he will then depend upon some few of the People who have taken upon themselves the Care of preserving and explaining them. Crimes will be less frequent in proportion as the Code of Laws is more universally read, and comprehended by the People. And, for this Reason, it must be ordained,

That, in all the Schools, Children should be taught to read alternately out of the Church Books and out of those which contain the Laws....

193. The Torture of the Rack is a Cruelty established and made use of by many Nations, and is applied to the Party accused during the Course of his Trial, either to extort from him a Confession of his Guilt, or in order to clear up some Contradictions in which, he had involved himself during his Examination, or to compel him to discover his Accomplices, or in order to discover other Crimes, of which, though he is not accused, yet he may perhaps be guilty.

194. (1) No Man ought to be looked upon as guilty before he has received his judicial Sentence; nor can the Laws deprive him of their Protection before it is proved that he has forfeited all Right to it. What Right therefore can Power give to any to inflict Punishment upon a Citizen at a Time when it is yet dubious whether he is innocent or guilty? Whether the Crime be known or unknown, it is not very difficult to gain a thorough Knowledge of the Affair by duly weighing all the Circumstances. If the Crime be known, the Criminal ought not to suffer any Punishment but what the Law ordains; consequently the Rack is quite unnecessary. If the Crime be not known, the Rack ought not to be applied to the Party accused; for this Reason, That the Innocent ought not to be tortured; and, in the Eye of the law, every Person is innocent whose Crime is not yet proved. It is undoubtedly extremely necessary that no Crime, after it has been proved, should remain unpunished. The Party accused on the Rack, whilst in the Agonies of Torture, is not Master enough of himself to be able to declare the Truth. Can we give more Credit to a Man when he is light-headed in a Fever, than when he enjoys the free Use of his Reason in a State of Health? The Sensation of Pain may arise to such a Height that, after having subdued the whole Soul, it will leave her no longer the Liberty of producing any proper Act of the Will, except that of taking the shortest instantaneous Method, in the very twinkling of an Eye, as it were, of getting rid of her Torment. In such an Extremity, even an innocent Person will roar out that he is guilty, only to gain some Respite from his Tortures. Thus the very same Expedient, which is made use of to distinguish the Innocent from the Guilty, will take away the whole Difference between them; and the Judges will be as uncertain whether they have an innocent or a guilty Person before them, as they were before the Beginning of this partial Way of Examination. The Rack, therefore, is a sure Method of condemning an innocent Person of a weakly Constitution, and of acquitting a wicked Wretch, who depends upon the Robustness of his Frame.

195. (2) The Rack is likewise made use of to oblige the Party accused to

clear up (as they term it) the Contradictions in which he has involved himself in the Course of his Examination; as if the Dread of Punishment, the Uncertainty and Anxiety in determining what to say, and even gross Ignorance itself, common to both Innocent and Guilty, could not lead a timorous Innocent, and a Delinquent who seeks to hide his Villanies, into Contradictions; and as if Contradictions, which are so common to Man even in a State of Ease and Tranquillity, would not increase in that Perturbation of Soul, when he is plunged entirely in Reflections of how to escape the Danger he is threatened with.

196. (3) To make use of the Rack for discovering whether the Party accused has not committed other Crimes, besides that which he has been convicted of, is a certain Expedient to screen every Crime from its proper Punishment: For a judge will always be discovering new Ones. Finally, this Method of Proceeding will be founded upon the following Way of reasoning: Thou art guilty of one Crime, therefore, perhaps, thou hast committed an Hundred others: According to the Laws, thou wilt be tortured and tormented; not only because thou art guilty, but even because thou mayest be still more guilty.

197. (4) Besides this, the Party accused is tortured, to oblige him to discover his Accomplices. But when we have already proved that the Rack cannot be the proper Means for searching Out the truth, then how can it give any Assistance in discovering, the Accomplices in a Crime? It is undoubtedly extremely easy for him, who accuses himself, to accuse others. Besides, is it just to torture one Man for Crimes of others? Might not the Accomplices be discovered by examining the Witnesses who were produced against the Criminal, by a strict Inquiry into the Proofs alledged against him, and even by the Nature of the Fact itself, and the Circumstances which happened at the Time when the Crime was committed? In short, by all the Means which serve to prove the Delinquent guilty of the Crime he had committed ? . . .

209. Is the punishment of death really useful and necessary in a community for the preservation of peace and good order?

210. Proofs from fact demonstrate to us that the frequent use of capital punishment never mended the morals of a people.... The death of a citizen can only be useful and necessary in one case: which is, when, though he be deprived of liberty, yet he has such power by his connections as may enable him to raise disturbances dangerous to the public peace. This case can happen only when a People either loses or recovers their liberty, or in a time of anarchy, when the disorders themselves hold the place of laws. But in a

reign of peace and tranquillity, under a Government established with the united wishes of a whole People, in a state well fortified against external enemies and protected within by strong supports, that is, by its own internal strength and virtuous sentiments rooted in the minds of the citizens, and where the whole power is lodged in the hands of a Monarch: in such a state there can be no necessity for taking away the life of a citizen....

220. A Punishment ought to be immediate, analogous to the Nature of the Crime and known to the Public.

221. The sooner the Punishment succeeds to the Commission of a Crime, the more useful and just it will be. Just; because it will spare the Malefactor the torturing and useless Anguish of Heart about the Uncertainty of his Destiny. Consequently the Decision of an Affair, in a Court of Judicature, ought to be finished in as little Time as possible. I have said before that Punishment immediately inflicted is most useful; the Reason is because the smaller the Interval of Time is which passes between the Crime and the Punishment, the more the Crime will be esteemed as a Motive to the Punishment, and the Punishment as an Effect of the Crime. Punishment must be certain and unavoidable.

222. The most certain Curb upon Crimes is not the Severity of the Punishment, but the absolute Conviction in the People that Delinquents will be inevitably punished.

223. The Certainty even of a small, but inevitable Punishment, will make a stronger impression on the Mind than, the Dread even of capital Punishment, connected with the Hopes of escaping it. As Punishments become more mild and moderate; Mercy and Pardon will be less necessary in Proportion, for the Laws themselves, at such a Time, are replete with the Spirit of Mercy.

224. However extensive a State may be, every Part Of it must depend upon the Laws.

225. We must endeavour to exterminate Crimes in general, particularly those which are most injurious to the Community: Consequently, the Means made use of by the Laws to deter People from the Commission of every Kind of Crimes ought to be the most powerful, in proportion as the Crimes are more destructive to the Public Good, and in proportion to the Strength of the Temptation by which weak or bad Minds may be allured to the Commission of them. Consequently, there ought to be a fixed stated

Proportion between Crimes and Punishments.

226. If there be two Crimes, which injure the Community unequally, and yet receive equal Punishment; then the unequal Distribution of the Punishment will produce this strange Contradiction, very little noticed by any one, though it frequently happens, that the Laws will punish Crimes which proceed from the Laws themselves.

227. If the same Punishment should be inflicted upon a Man for killing an Animal as for killing another Man, or for Forgery, the People will soon make no Difference between those Crimes....

239. (Q. 8) Which are the most efficacious Means of preventing Crimes?

240. It is better to prevent Crimes than to punish them.

241. To prevent Crimes is the Intention and the End of every good Legislation; which is nothing more than the Art of conducting People to the greatest Good, or to leave the least Evil possible amongst them, if it should prove impracticable to exterminate the whole.

242. If we forbid many Actions which are termed indifferent by the Moralists, we shall not prevent the Crimes of which they may be productive, but shall create still new Ones.

243. Would you prevent Crimes? Order it so, that the Laws might rather favour every Individual, than any particular Rank of Citizens, in the Community.

244. Order it so, that the People should fear the Laws, and nothing but the Laws.

245. Would you prevent Crimes? Order it so, that the Light of Knowledge may be diffused among the People.

246. A Book of good Laws is nothing but a Bar to prevent the Licentiousness of injurious Men from doing Mischief to their fellow Creatures.

247. There is yet another Expedient to prevent Crimes, which is by rewarding Virtue.

248. Finally, the most sure but, at the same Time, the most difficult Expedient to mend the Morals of the People, is a perfect System of Education....

Chapter XIX

439. Of the Composition of the Laws

447. Every subject, according to the order and Place to which he belongs, is to be inserted separately in the Code of Laws -for instance, under judicial, military, commercial, civil, or the police, city or country affairs, etc. etc

448. Each law ought to be written in so clear a style as to be perfectly intelligible to everyone, and, at the same time, with great conciseness. For this reason explanations or interpretations are undoubtedly to be added (as occasion shall require) to enable judges to perceive more readily the force as well as use of the law...

449. But the utmost care and caution is to be observed in adding these explanations and interpretations, because they may sometimes rather darken than clear up the case; of which there are many instances [in the existing laws].

450. When exceptions, limitations, and modifications are not absolutely necessary in a law, in that case it is better not to insert them; for such particular details generally produce still more details.

451. If the Legislator desires to give his reason for making any particular law, that reason ought to be good and worthy of the law....

452. Laws ought not to be filled with subtile distinctions, to demonstrate the brilliance of the Legislator; they are made for people of moderate capacities as well as for those of genius. They are not a logical art, but the simple and plain reasoning of a father who takes care of his children and family.

453. Real candor and sincerity ought to be displayed in every part of the laws; and as they are made for the punishment of crimes, they ought consequently to include in themselves the greatest virtue and benevolence.

454. The style of the laws ought to be simple and concise: a plain direct expression will always be better understood than a studied one.

455. When the style of laws is tumid and inflated, they are looked upon only as a work of vanity and ostentation....

511. A Monarchy is destroyed when a Sovereign imagines that he displays his power more by changing the order of things than by adhering to it, and when he is more fond of his own imaginations than of his will, from which the laws proceed and have proceeded.

512. It is true there are cases where Power ought and can exert its full influence without any danger to the State. But there are cases also where it ought to act according to the limits prescribed by itself.

513. The supreme art of governing a State consists in the precise knowledge of that degree of power, whether great or small, which ought to be exerted according to the different exigencies of affairs. For in a Monarchy the prosperity of the State depends, in part, on a mild and condescending government.

514. In the best constructed machines, Art employs the least moment, force, and fewest wheels possible. This rule holds equally good in the administration of government; the most simple expedients are often the very best, and the most intricate the very worst.

515. There is a certain facility in this method of governing: It is better for the Sovereign to encourage, and for the Laws to threaten....

519. It is certain that a high opinion of the glory and power of the Sovereign would increase the strength of his administration; but a good opinion of his love of justice will increase it at least as much.

520. All this will never please those flatterers who are daily instilling this pernicious maxim into all the sovereigns on Earth, that Their people are created for them only. But We think, and esteem it Our glory to declare, that "We are created for Our people." And for this reason, We are obliged to speak of things just as they ought to be. For God forbid that after this legislation is finished any nation on Earth should be more just and, consequently, should flourish more than Russia. Otherwise, the intention of Our laws would be totally frustrated; an unhappiness which I do not wish to survive.

521. All the examples and customs of different nations which are introduced in this work [the Instruction] ought to produce no other effect than to

cooperate in the choice of those means which may render the people of Russia, humanly speaking, the most happy in themselves of any people upon the Earth.

522. Nothing more remains now for the Commission to do but to compare every part of the laws with the rules of this Instruction.

Source: *The Grand Instruction to the Commissioners Appointed to Frame a New Code of Laws for the Russian Empire: Composed by Her Imperial Majesty Catherine II.* (London, 1768).