

## Law, Succession, and the Eighteenth-Century Refounding of the Romanov Dynasty

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On 5 February 1722, Peter I “the Great” (ruled 1682–1725) issued a new Law of Succession (*Ukaz o nasledii prestola*), the first such law in the history of modern Russia. It replaced the fairly stable, though never legally formulated, system of succession in Muscovy that provided that sons succeeded fathers on the throne—a system of male primogeniture that, though violated in some instances, functioned successfully from the time of the Muscovite civil wars of the second quarter of the 15th century down to the end of the Daniilovich dynasty in 1598 (and was picked up again under the Romanovs in 1613). As laws of succession go, Peter I’s was not a success. It authorized and required the ruler to nominate as his or her successor anyone he or she so desired, whether that person was a member or relative of the Romanov dynasty or not. It placed no limitations on the choice of successor, and it essentially created for the first time a true autocratic regime in Russia, where even the succession was in the hands of the ruler—“a prerogative,” in Anthony Lentin’s words, “claimed by no other contemporary monarch.”<sup>1</sup>

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<sup>1</sup> A. Lentin, ed. and trans., *Peter the Great: His Law on the Imperial Succession in Russia 1722—The Official Commentary (Pravda Voli Monarshei)* (Oxford: Plantagenet Press, 1996), 22. For Peter I’s law of succession, see *Polnoe sobranie zakonov Rossiiskoi imperii (PSZ)*, series 1, vol. 6, 496–97 (no. 3593) (5 February 1722). On succession systems before Peter’s law, see Peter Nitsche, *Grossfürst und Thronfolger: Die Nachfolgepolitik der Moskauer Herrscher bis zum Ende des Rjurikidenhauses* (Cologne: Böhlau Verlag, 1979); Nancy Shields Kollmann, “Collateral Succession in Kievan Rus’,” *Harvard Ukrainian Studies* 14, no. 3–4 (1990): 377–87; Sergei Bogatyrev, “Reinventing the Russian Monarchy in the 1550s: Ivan the Terrible, the Dynasty, and the Church,” *Slavonic and East European Review* 85, no. 2 (April 2007): 271–93; Russell E. Martin, *A Bride for the Tsar: Bride-Shows and Marriage Politics in Early Modern Russia* (DeKalb: Northern Illinois University Press, 2012), esp. chap. 3; and Donald Ostrowski, “Systems of Succession in Rus’ and Steppe Societies” (unpublished manuscript). See also, more generally, Janet Martin, *Medieval Russia, 980–1584*, 2nd ed. (Cambridge: Cambridge University Press, 2008). On the problem of laws of succession generally, see, for a start, the following: Andrew W. Lewis, *Royal Succession in Capetian France: Studies on Familial Order and the State* (Cambridge, MA: Harvard University Press, 1982); Lewis, “Anticipatory Association of the Heir in Early Capetian France,” *American Historical Review* 83, no. 4 (October 1978): 906–27; Ralph E. Giesey, “The Juristic Basis of Dynastic Right to the French

Seventy-five years later, on 5 April 1797, Peter I's great-grandson, Paul I (1796–1801) issued a new law of succession. It provided a clear system of male primogeniture, but also contained provisions for succession to and through female dynasts in the event of the extinction of the male line, as well as other provisions necessary to any stable dynastic regime: provisions for regencies; for an official age of majority of junior members of the dynasty; for the distribution of titles, ranks, and pensions; and provisions for the regulation of marriages among Paul I's descendants. Most importantly, it stated that "the heir should be determined by the law itself," not the current occupant of the throne.<sup>2</sup> Thus, the Pauline law was in a very real sense the first formal, legal limitation of monarchical power in modern Russian history, taking the succession out of the ruler's hands and putting it firmly and irrevocably in the "law itself." The Pauline Law of Succession (*Zakon o prestolonasledii*)—and its accompanying Statute on the Imperial Family (*Uchrezhdenie ob Imperatorskoi familii*), issued on the same day as the Law of Succession—replaced and improved the Petrine law, which had only created confusion over the succession, not clarity and stability.<sup>3</sup> Paul I's Law and Statute provided that clarity and stability—both edicts remaining in force until the end of the Russian Empire, and even today regulating the titles and relationships among the remnant members and descendants of the House of Romanov.<sup>4</sup>

The shortcomings in Peter I's law of succession were clear to many well before Paul I came along and fixed things. In 1727, Catherine I (1725–1727),

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Throne," *Transactions of the American Philosophical Society* 60, pt. 5 (1961): 1–47; Howard Nenner, *The Right to Be King: The Succession to the Crown of England, 1603–1714* (Chapel Hill, University of North Carolina Press, 1995); and François R. Velde's useful website on royal succession (and other related topics): <http://www.heraldica.org/topics/royalty/>.

<sup>2</sup> *PSZ*, series 1, vol. 6, 588 (no. 17.910) (5 April 1797).

<sup>3</sup> The Pauline Law of Succession: *PSZ*, series 1, vol. 24, 587–89 (no. 17.910) (5 April 1797). The Statute on the Imperial Family: *PSZ*, series 1, vol. 24, 525–69 (no. 17.906) (5 April 1797). On how these two legal acts worked together to produce a coherent law of succession and regulation of the House of Romanov in the 19th and 20th centuries, see Russell E. Martin, "For the Firm Maintenance of the Dignity and Tranquility of the Imperial Family': Law and Familial Order in the Romanov Dynasty," *Russian History* 37, no. 4 (2010): 389–411; and Richard S. Wortman, "The Russian Imperial Family as Symbol," in *Imperial Russia: New Histories for the Empire*, ed. Jane Burbank and David L. Ransel (Bloomington: Indiana University Press, 1998), 60–86.

<sup>4</sup> See Stanislav Vladimirovich Dumin, *Romanovy: Imperatorskii dom v izgnanii* (Moscow: Zakharov AST, 1998); Archbishop John (Maksimovich), *Proiskhozhdenie zakona o prestolonasledii v Rossii* (Shanghai: Izd. Russkogo Prosvetitel'nogo Komiteta v g. Shankhae, 1936; repr., Podol'sk: n.p., 1994); B. Nol'de, "Zakony osnovnye v russkom prave," *Pravo*, no. 8 (1913): 447–61, and no. 9 (1913): 524–41. On the Pauline Law of Succession and Statute on the Imperial Family today, see Brien Horan, "The Russian Imperial Succession," <http://www.chivalricorders.org/royalty/gotha/russuclw.htm> (accessed 20 October 2011). For a competent but contrasting view, see Mikhail Nazarov, *Kto naslednik Rossiiskogo Prestola* (Moscow: Russkaia idea, 1998).

Peter I's wife and successor, wrote (or, more likely, had written for her) a will that plotted out the succession after her death in a regularized way, tracing a course for the succession that generally matched the course the succession would follow according to a primogenitural system.<sup>5</sup> The will limited the succession to the line of the Romanov dynasty descending from Tsar Aleksei Mikhailovich (1645–76) and his second wife, Natal'ia Naryshkina, the mother of Peter the Great. Later, on 2–4 November 1741, Andrei Ivanovich Osterman, Count Gavriil Ivanovich Golovkin, Prince Aleksei Mikhailovich Cherkasskii, and Archbishop Amvrosii (Iushkevych) of Novgorod held a series of discussions aimed at more concretely specifying the system of succession, especially in the female line descending from Ivan V (1682–96), and drawing on examples in the ruling dynasties of Denmark, England, Spain, and Portugal.<sup>6</sup> In both 1725 and 1741, the goal was to alter Peter I's law into a predictable and stable rubric that would limit the succession to one or the other of the two branches of the dynasty—the Miloslavskii or Naryshkin lines. Both attempts, however, came to nothing.

The most important and most promising (albeit also failed) attempt to create a new and viable system of succession was undertaken by Empress Catherine II the Great (1762–96). On three occasions—in 1766–67, 1785, and 1787—Catherine II wrote draft laws of succession, each more expanded and detailed than the one before. Like the attempts to establish a system of succession in 1727 and 1741, none of these plans would ever be promulgated, but they are enormously important in the history of the Russian monarchy's attempt in the 18th century to root itself firmly in law, displaying what Richard Wortman has described as Russian “legal consciousness.”<sup>7</sup> The three draft laws identified and defined many of the key requirements for any law of succession, such as the rules for the transference of the imperial title (in this case, by primogeniture), regencies, age of majority, honors and titles, and dynastic marriage. The projects thus became a space for discourse not only on the problem of the Russian succession, but for legality and the rule of law, generally. Finally, Catherine II's draft laws of succession constitute a moment in the struggle between the Miloslavskii and Naryshkin branches of the Romanov

<sup>5</sup> See Russkii gosudarstvennyi arkhiv drevnikh aktov (RGADA), f. 2, d. 21; and PSZ, series 1, vol. 8, 790 (no. 5070) (7 May 1727). On this will, see O. A. Omel'chenko, “Stanovlenie zakonodatel'nogo regulirovaniia prestolonaslediiia v Rossiiskoi imperii,” *Themis: Yearbook of the History of Law and Jurisprudence* 7 (2006): 15–54, esp. 36–38; Gary Marker, *Imperial Saint: The Cult of St. Catherine and the Dawn of Female Rule in Russia* (DeKalb: Northern Illinois University Press, 2007), 218–19; and Evgenii Viktorovich Anisimov, *Elizaveta Petrovna* (Moscow: Molodaia gvardiia, 1999), 97.

<sup>6</sup> RGADA f. 2, d. 55.

<sup>7</sup> Richard Wortman, “Russian Monarchy and the Rule of Law: New Considerations of the Court Reform of 1864,” *Kritika* 6, no. 1 (Winter 2005): 145–70; and Wortman, *The Development of a Russian Legal Consciousness* (Chicago: University of Chicago Press, 1976).

dynasty in that they grappled with the concept of an “emperor-progenitor” (*imperator-rodonachal’nik*) and, consequently, a concept of an imperial family itself—concepts that would be strongly emphasized later in Paul I’s Law of Succession and Statute on the Imperial Family in 1797. In other words, the feud between the two branches of the family became, in essence, a feud over who was to be reckoned as the emperor-progenitor—Ivan V, Peter I, or Catherine II. Thus the various legal projects in the 18th century—from Peter I’s ill-conceived non-law of succession (in 1722), to the last of Catherine II’s three projects (in 1787)—were drafted, discussed, and ultimately dismissed in the context of a family rift that went back more than a century and that consequently transcends the so-called Petrine divide.<sup>8</sup> Placing Catherine II’s draft laws of succession in the context of this family feud—a longer, Muscovite context—helps to identify the ways that general European notions of lawful monarchical government emerged in, and blended with, an indigenous Muscovite political culture that was rooted in kinship and marriage politics.

### A Tale of Two Families

In his important study of the marriages of the first three generations of Romanov tsars, John LeDonne showed that “the families of the first two wives of Tsars Mikhail, Aleksei and Peter on the one hand, and those of the second wives of Tsar Mikhail and Aleksei on the other, formed the core of two extended political families.”<sup>9</sup> These two “extended political families”—the Dolgorukovs, Miloslavskii, and Lopukhins, on the one hand, and the Streshnevs and Naryshkins, on the other—formed in the 17th century, but their influence and favored positions in the central and provincial administrations only increased as the rulers in the 18th century abjured marriage for the most part, leaving the members of these families as the only royal in-laws around, and therefore the only Russian elite families with any kinship ties to the dynasty. The enmity between these two branches of the Romanov extended family came to a boiling point on the death of Tsar Fedor Alekseevich in 1682, when candidates for the throne from both factions—Ivan V (of the Dolgorukov-Miloslavskii-Lopukhin faction) and Peter I (of the Streshnev-Naryshkin faction)—were, after a moment of hesitancy, placed on the throne together as co-tsars, with their elder sibling, Sofiia Alekseevna, serving as regent (see Figure 1, opposite).<sup>10</sup>

<sup>8</sup> On the Petrine Divide, see Russell E. Martin, “The Petrine Divide and the Periodization of Early Modern Russian History,” *Slavic Review* 69, no. 2 (Summer 2010): 410–25.

<sup>9</sup> John P. LeDonne, “Ruling Families in the Russian Political Order, 1689–1825. Part I: The Petrine Leadership, 1689–1724; Part II: The Ruling Families, 1725–1825,” *Cahiers du Monde russe et soviétique* 28, no. 3–4 (July–December 1987): 233–322, here 234.

<sup>10</sup> The best treatments of this period and these issues are the most recent ones: Paul Bushkovitch, *Peter the Great: The Struggle for Power, 1671–1725* (Cambridge: Cambridge

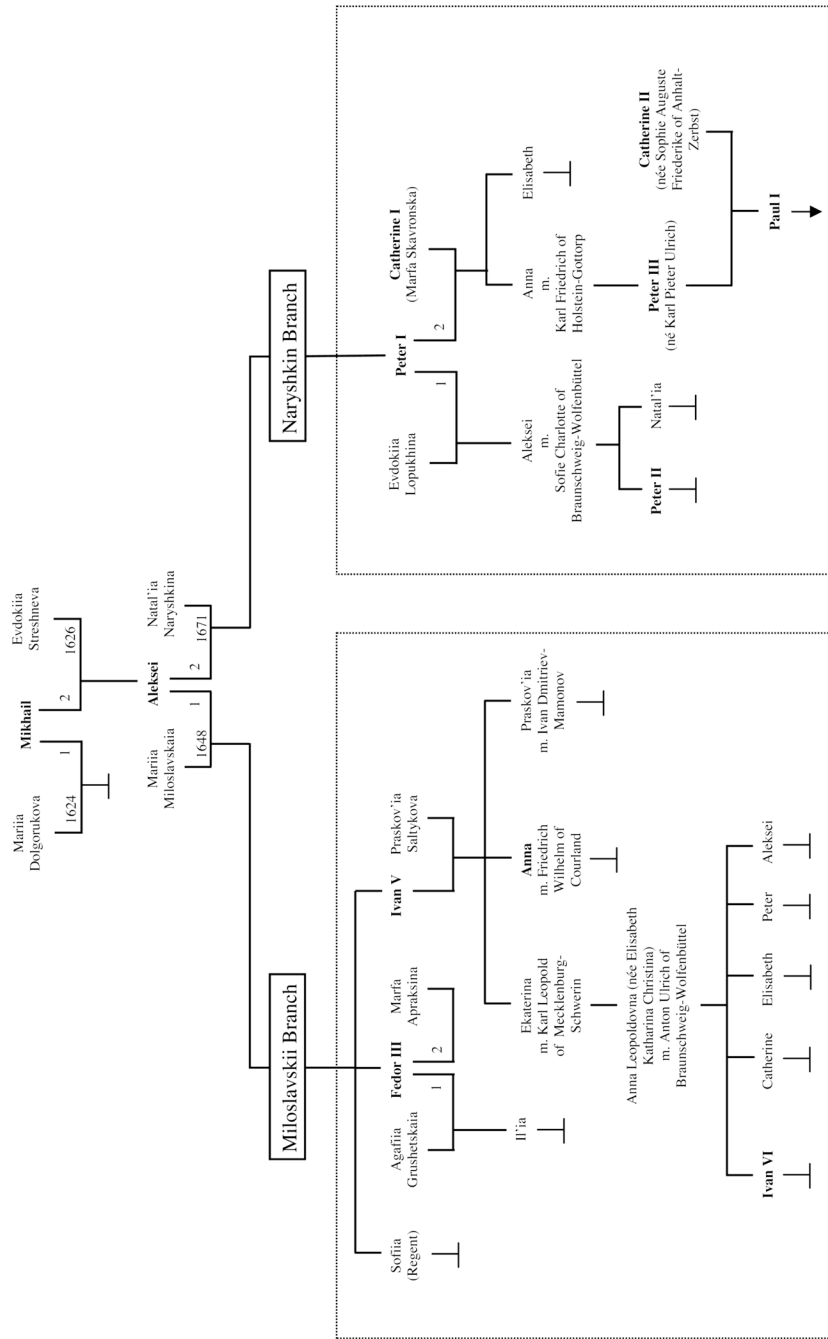


Figure 1. Select Genealogy of the House of Romanov

University Press, 2001); and P. V. Sedov, *Zakat moskovskogo tsarstva: Tsarskii dvor kontsa XVII veka* (St. Petersburg: Dmitrii Bulanin, 2006).

Peter I's 1722 Law of Succession should be evaluated in the context of this Romanov family feud. Traditionally, the 1722 law has often been understood as a moment in the story of the fitful relationship between Peter the Great and his son from his first marriage, Aleksei Petrovich. And for good reason: In 1718, Peter the Great found ample cause to disinherit, try and convict, and then cause the death of his son and heir presumptive. The betrayal of Tsarevich Aleksei is prominently mentioned in Peter's Law—his "wickedness" is likened to that of Absalom, the treasonous son of the biblical King David (2 Sam. 13–18)—and the tsarevich's inadequacies are enumerated at length in Feofan Prokopovich's pæan to the Law, the *Pravda voli monarshei*, as a justification for adopting the new Petrine rule of succession.<sup>11</sup> Still, James Cracraft is probably right in suggesting that the Petrine Law is better thought of as relating to the feud between the two branches of the Romanov dynasty, Miloslavskii and Naryshkin, than to the Tsarevich Aleksei affair.<sup>12</sup> As Cracraft put it,

In the absence of a succession law, a dynastic feud broke out in the 1680s between the relatives and supporters of the late Tsar Aleksei's two wives.... Peter's solution to the dynastic crisis, and to the perceived shortcomings more generally of the political system that he inherited in stages (death of his elder half-brother, Tsar Fedor, in 1682; deposition of his half-sister, the regent Sofia, in 1689; death of his other half-brother and co-tsar, Ivan V, in 1694; death of his mother, Tsaritsa Natalia, in 1696), was to lay down a succession law.<sup>13</sup>

In other words, the feud between the two branches of the Romanov dynasty was fueled by the lack of clarity about who the next ruler was to be after Peter.

Peter's Law eliminated the need for an emperor-progenitor and, in effect, abolished the notion of the dynasty. The relevant portion of the Law reads that "we have thought fit to lay down this statute, whereby it should always be in the power of the reigning monarch to appoint whomsoever he wishes as his successor; and if he sees any fault in him whom he has appointed, to revoke the succession."<sup>14</sup> In fact, Peter I believed that it was "the old custom of

<sup>11</sup> See Lentin, *Peter the Great*; and James Cracraft, "Did Feofan Prokopovitch Really Write *Pravda voli monarshei*?" *Slavic Review* 40, no. 2 (Summer 1991): 173–93.

<sup>12</sup> The best treatment of the affair remains Paul Bushkovitch, "Aristocratic Faction and the Opposition to Peter the Great: The 1690's," *Forschungen zur osteuropäischen Geschichte* 50 (1995): 80–120. See also his *Peter the Great*, 339–425.

<sup>13</sup> James Cracraft, *The Petrine Revolution in Russian Culture* (Cambridge, MA: The Belknap Press of Harvard University Press, 2004), 157.

<sup>14</sup> *PSZ*, series 1, vol. 6, 496 (no. 3593) (5 February 1722). This translation is taken from Lentin, *Peter the Great*, 131.

granting the succession to the eldest son" that was at heart to blame for Aleksei's treachery because, as history had shown, this "old custom" served only to foster a lackadaisical attitude toward duty and a penchant for rebellion among royal heirs, like his son.<sup>15</sup>

But then, there is law and there is the application of law. Of the seven sovereigns between Peter I's death in 1725 and Paul I's promulgation of his new Law of Succession on 5 April 1797 (the day of his coronation), only three Russian rulers actually named their heirs in accordance with the Petrine Law: Anna Ioannovna (1730–40), who selected her grand-nephew, Ivan VI Antonovich (1740–41); Elizabeth Petrovna (1741–62), who selected her nephew Karl Pieter Ulrich, or Peter III; and Catherine II the Great, who selected her son, Paul I.<sup>16</sup> The other four transitions of power came after coups (Elizabeth succeeding Ivan VI, Catherine II succeeding Peter III) or at the whim of the court elite (Catherine I succeeding Peter I, Peter II succeeding Catherine I). Thus, the Petrine Law never took the crown outside the lineage of the Romanov dynasty, but it did permit the contest between the two branches of the dynasty, Miloslavskii and Naryshkin (represented by Anna Ioannovna and Ivan VI, and by Catherine I, Peter II, Peter III, and Catherine II, respectively) to continue (see again Figure 1, p. 229).

The death of Catherine I—Peter I's second wife and successor—prompted the first significant reconsideration of the Petrine Law of Succession. At the time of her death on 6 May 1727, courtiers suddenly produced a testament that is almost certainly a forgery (the handwriting is A. V. Makarov's, Peter I's private secretary, and the document was made public only the next day).<sup>17</sup> The document does more than indicate a successor, as the Petrine Law required. It sketches out a path for the succession beyond Catherine's designated heir (her stepson, Peter Alekseevich, or Peter II) and includes provisions that impose rules on the succession that violate the word and spirit of Peter I's unfettered Law of Succession:

If the Grand Duke [i.e., Peter II] dies without heirs, then Tsesarevna Anna Petrovna and her descendants succeed after him. After her, Tsesarevna Elizabeth and her descendants, and then the Grand Duchess [*velikaia kniazhna*—Tsarevich Aleksei's daughter, the granddaughter of Peter I, and the older sister of the future Peter II] and her descendants. However, heirs of the male sex take precedence over those of

<sup>15</sup> PSZ, series 1, vol. 6, 496 (no. 3593) (5 February 1722); Lentin, *Peter the Great*, 129.

<sup>16</sup> I omit the designation of Peter II (1727–30) by Catherine I (1725–27) since the authorship of Catherine's will (*zaveshchanie*) is disputed. See Omel'chenko, "Stanovlenie zakonodatel'nogo regulirovaniia prestolonaslediia," 24–28; Cynthia Hyla Whittaker, *Russian Monarchy: Eighteenth-Century Rulers and Writers in Political Dialogue* (DeKalb: Northern Illinois University Press, 2003), 67–68; and Marker, *Imperial Saint*, 218–19.

<sup>17</sup> Omel'chenko, "Stanovlenie zakonodatel'nogo regulirovaniia prestolonaslediia," 25.

the female sex. Under no circumstances shall anyone occupy the Russian throne who does not follow the Greek Orthodox faith or who has another crown.<sup>18</sup>

Whether the testament is authentic or not, its purpose is entirely clear. First, it imposes new qualifications on anyone who should succeed to the throne. While Peter's Law only required that the heir be selected by the current ruler—evidently solely on the basis of perceived merit—Catherine I's testament required that the heir be Orthodox and not be reigning on any other, foreign throne. Perhaps Peter I assumed that his successors would have the good sense to avoid picking a Heterodox or foreign monarch as his or her heir, but Peter I's Law nowhere prohibits this. The monarch's *volia*, or will, is entirely unrestricted. Second, the testament assumes that the emperor-progenitor is Peter I. Interestingly, the text of the testament does not make Catherine I or even Tsar Aleksei Mikhailovich the emperor- (or empress-) progenitor. Assigning that position to Catherine I would have excluded Peter II (her stepson) from the succession, which was clearly not the intent of the author(s) of the testament since, according to it, Peter II was to (and did) succeed to the throne after Catherine I. Nor does the text give that role to Tsar Aleksei since doing so would have necessarily pulled in his descendants from his first marriage (the Miloslavskii branch of the dynasty). Thus this testament contemplates Peter I as the emperor-progenitor, and so plots out the succession as if there were no living descendants of Ivan V, which there were. The crown was to stay in the Naryshkin line of the Romanov dynasty.

And it did, but not for long. The pendulum swung back to the Miloslavskii branch of the family with the sudden death of Peter II in January 1730. Anna Ioannovna ruled, unpopularity, for a decade before she nominated her grand-nephew, the 14-month-old Ivan VI, as her heir, with his mother, Anna Leopoldovna, as regent. It was during Ivan VI's brief reign that the next major attempt was made to revise the Petrine Law, now with the goal of excluding the Naryshkin branch of the dynasty.

On 1 November 1741, Anna Leopoldovna ordered a special commission be formed to discuss the problem of the succession.<sup>19</sup> It was a sensible, if self-serving, move. It was sensible because no one could count on the longevity of a 14-month-old infant in that day and age, though the boy did have a younger sister (Catherine, who was four months old) and his parents were healthy and still of child-bearing age (they would have, besides Ivan VI and Catherine, three more healthy and long-lived children). If Anna Leopoldovna's commission could agree to it, it would be possible to devise a rule of succession that passed the throne on to Ivan VI's sister or other future siblings. Anna Leo-

<sup>18</sup> PSZ, series 1, 7:790, no. 5007 [should be 5070] (7 May 1727); Marker, *Imperial Saint*, 219.

<sup>19</sup> Omel'chenko, "Stanovlenie zakonodatel'nogo regulirovaniia prestolonaslediia," 32.



poldovna's commission was also self-serving, because part of her motive in forming it was to have recognized her own succession rights to the throne. On 2–4 November the commission, made up of Andrei Ivanovich Osterman, Count Gavriil Ivanovich Golovkin, Prince Aleksei Mikhailovich Cherkasskii, and Archbishop Amvrosii (Iushkevych) of Novgorod, met and discussed at length the principles of a new system.<sup>20</sup> The four men went back and forth on many issues, but generally agreed that Peter I's Law had to be replaced with a new law rooted in a stable and rational rule of succession. They also discussed and largely agreed that the succession should operate by male primogeniture but have provisions for the succession of women should the male line expire. In this discussion, the experiences of female succession (that is, succession to or through female members of the ruling dynasties) in England, Denmark, Spain, and Portugal were cited as useful models for how the succession could work in Russia, too.

The four men also grappled with the notion of an emperor-progenitor, which must have been the most radical element of their discussions. After all, succession by male primogeniture and female rule were familiar enough concepts: primogeniture was very much like the system that had been in place in Muscovy, and by 1741, the idea of a female ruler must have hardly been anything shockingly new (by this date, there had been one sovereign regent and two empresses). To be sure, the notion of an emperor-progenitor was familiar, too. It was rooted in the Confirmatory Charter (*Utverzhdennaia gramota*) that brought Mikhail Romanov—the original Romanov emperor-progenitor—to the throne, and which records the professions of loyalty not just to the new tsar, but to all the heirs of his body—to “the royal [*tsarskim*] children that God may in the future give to him, the sovereign.”<sup>21</sup> But for Osterman and the others, Tsar Mikhail (1613–45) was too remote an ancestor for their purposes, which, in part, were to secure the succession in the line of Ivan V—the Miloslavskii branch of the family. Thus the issue for the commission was to identify a new emperor-progenitor—in this case, Ivan V—that would limit the succession to the Miloslavskii branch of the Romanov dynasty: to the regent, Anna Leopoldovna (the granddaughter of Ivan V) and to her current and future offspring (Ivan VI, Catherine, and any other children who might be born). In this way, Anna Leopoldovna's commission had the rules of primogeniture on its side in trying to limit the succession to the Miloslavskii branch of the dynasty since Ivan V was the older (half-) brother of Peter I, and so his line would have preeminence in a strict primogenitural system. These discussions therefore perfectly blended two very different impulses—the emerging

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<sup>20</sup> RGADA f. 2, d. 55, ll. 1–11ob.

<sup>21</sup> *Utverzhdennaia gramota ob izbranii na Moskovskoe gosudarstvo Mikhaila Fedorovicha Romanova*, with an introduction by S. A. Belokurov, 2nd ed. (Moscow: Izd-vo Imperatorskogo obshchestva istorii i drevnostei rossiiskikh pri Moskovskom universitete, 1906), 47, 70.

Western legal notions about the role of law in the structures of government and royal succession, and the native, traditional, kinship-based conflicts between two factions of royal in-laws.

### Catherine the Great's Projects for a Law of Succession

These two impulses—Western and Muscovite—are very much still in evidence in the second half of the 18th century. Just three weeks after Osterman, Golovkin, Cherkasskii, and Archbishop Amvrosii had convened their commission to rewrite the succession law, the pendulum swung back to the Naryshkin branch—the last swing of that pendulum, it turns out—when Peter I's daughter, Elizabeth Petrovna, seized the throne from Ivan VI and his mother, Anna Leopoldovna. The restoration of the Naryshkin branch of the Romanovs also meant the restoration of the Petrine Law of Succession, at least for a time. Empress Elizabeth is noteworthy for having been one of the few rulers actually to use the Law as it was intended, nominating her nephew, Karl Pieter Ulrich, or Peter III (ruled 1761–62), who was later arrested in a coup arranged at the behest of his wife, Sophie Friederike Auguste of Anhalt-Zerbst, or Catherine II. Catherine would be the last to use the Law, and the first to put forward a serious proposal for replacing it.

Catherine tackled the problem of the succession in the same methodical and rational way she was approaching many of Russia's other legal and political ills. In 1766–67, Catherine sketched out the first scribblings of a modern, Western-style rule for the succession—a draft (*chernovik*) law that survives today and has been published, though remains largely unstudied and ignored in many of the best historical treatments of her reign and biography. The draft law is written in Catherine's own hand, with numerous grammatical and spelling irregularities, as one might expect in a non-native speaker of Russian.<sup>22</sup> It begins with a preamble which situates her law within her other, larger attempts to regularize the laws and political system of the Russian Empire. She mentions her *Nakaz* (or "Instructions") to the Legislative Commission and her desire to compile a new compendium (*ulozhenie*) of Russian laws, but she singles out the law of succession as something that she, as sovereign, should handle personally, and not turn over to the Legislative Commission: "But the first and fundamental [*nachal'nyi*] law of this autocratic realm should, because of its nature, be given and inscribed by Our own Imperial hand, that is: a law that assures the stability of the throne and clarity

<sup>22</sup> RGADA f. 10, op. 1, d. 12, ll. 1–2ob. The text has been published: "Otryvok sobstvennoruchnogo chernovogo proekta manifesta Ekateriny II o prestolonaseldii," *Russkaia starina* 12, no. 2 (1875): 382–85; Omel'chenko, "Stanovlenie zakonodatel'nogo regulirovaniia prestolonaslediiia," 36–37. The publications are not scholarly, ignoring the many corrections Catherine II made to her own text.

in the succession."<sup>23</sup> Catherine further justifies her desire to write this new law of succession on the basis of the troubled history of kingdoms that had no firm laws of succession. "Not only Russian chronicles and history, but the histories of many states in the world are filled with examples of great tumult, which have their origins in the instability of the throne and of the succession, even to the point that it caused the dismemberment of the realm and permitted, in the end, the invasion of barbarians, hardship, and utter destruction."<sup>24</sup>

Catherine defined the provisions of her law within five articles. (A sixth article is left blank: "6)...") Article 1 establishes Catherine's authorship of the law: "To call this law an Imperial decree [*stat'ia*] of Catherine II." Article 2 states that "the Imperial throne may never be vacant." This provision prevents interregna, to be sure; but it also implies that the succession to the throne is automatic upon the death of the ruler, and, furthermore, implies that it is the operation of the law itself that guarantees that continuity. That element—that the law itself determines the succession—which is only implied here, will reappear explicitly in later versions of Catherine's law and in Paul I's Law of Succession and Statute on the Imperial Family. Article 3 in Catherine's draft law of succession names her son, Paul, as her heir: "After my death, my son will inherit [the throne]." This provision may on first glance appear to resemble the kind of nominations of heirs required by the Petrine Law of Succession, which Catherine was attempting to replace. But Catherine was more likely mentioning her only legitimate son not to nominate him in the manner of Peter's Law, but so as to designate herself as the empress-progenitor of the Romanov dynasty. That motive becomes clear when the first part of Article 4 is considered, which establishes a system of primogeniture among Paul's descendants: "After my son, then his eldest son inherits [the throne], provided his eldest son has reached the age of 21 years." Leaping over the second part of Article 4 to Article 5, Catherine elaborates there that "if the male line should die out, then the eldest daughter succeeds [to the throne]."<sup>25</sup> In this way, the law implies a system of male primogeniture, with the option of female succession in the absence of male heirs.

But the second part of Article 4 contains an odd and intriguing provision. It states that "if he [the eldest son of Paul or another of her successors] is 20 years old or younger, then his mother is to be crowned and reign her entire life, for it is a dangerous time during the minority of a sovereign."<sup>26</sup> While Catherine's draft law was clearly forward looking—toward securing the succession for her son and future descendants—this phrase was clearly all about her own legitimacy on the throne. It will be remembered that Catherine

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<sup>23</sup> *Ibid.*, l. 1–1ob.

<sup>24</sup> *Ibid.*, l. 1ob.

<sup>25</sup> The five Articles are on ll. 2–2ob.

<sup>26</sup> RGADA f. 10, op. 1, d. 12, l. 2ob.

seized the throne from her husband, Peter III, and chose not to become a regent for her eight-year-old son, but sovereign empress herself. She held that title for the rest of her life. Catherine was thus ensconcing in law her own possession of the throne—not her usurpation of it from Peter III (that was a topic she assiduously avoided), but her keeping it for herself once her son had reached adulthood (however “adulthood,” for purposes of succession, might legally be defined—15, 21, or whatever age a law of succession might specify). Catherine’s first draft law of succession was therefore doing double duty: it was securing herself on the throne as much as it was defining the rights to it of future generations of her descendants.

Catherine II’s first attempt at writing a new law of succession came to nothing, just like many of the empress’s other ambitious projects embraced by the Legislative Commission. Her next attempt to write a law of succession was also linked to larger legal and administrative reforms, and was just as unsuccessful. In 1785, Catherine devised an expansive reorganization of her central government and provincial administration, and part of that reorganization included detailed provisions for the succession.<sup>27</sup> These provisions repeat, in a more expanded form, those that appeared in Catherine’s 1766–67 project, including the system of male primogeniture. The text provides that Catherine’s empire (which is given the official name of the “All-Russian Empire” — *Vserossiiskaia imperiia*),

is to remain whole and indivisible; that after my demise, the autocracy and crown of this realm shall pass to my beloved son and heir, Tsesarevich and Grand Duke Paul Petrovich, who will reign his entire life; that after him the autocracy and crown shall pass to his eldest son (Our beloved grandson), Grand Duke Alexander Pavlovich, who will reign his entire life; and after him the autocracy and crown shall pass to his eldest son, who shall reign his entire life. If the legitimate line of descent from Grand Duke Alexander Pavlovich should fall extinct, then the autocracy and crown shall pass to [Grand Duke Paul Petrovich’s] second son (Our beloved grandson) Grand Duke Constantine Pavlovich, who will reign his entire life. After him shall reign his eldest son his entire life. If the legitimate line of descent from Grand Duke Constantine Pavlovich should fall extinct, then the autocracy and crown shall pass to his next eldest brother, who shall

<sup>27</sup> Ibid., d. 17. The document was published in Omel’chenko, “Idei konstitutsionnogo zakona i ‘vseobshchei zakonnosti’ v pravovoi politike ‘prosveshchennogo absoliutizma’ v Rossii,” in *Problemy pravovoi i politicheskoi ideologii*, ed. Z. M. Chernilovskii and I. A. Isaev (Moscow: Gosudarstvennyi komitet SSSR po narodnomu obrazovaniu, Vsesoiuznyi iuridicheskii zaochnyi institut, 1989), 103–04; and V. A. Grigor’ev, “Proekt manifesta Ekateriny II o prestolonasledii,” in *Zhurnal ministerstva narodnogo prosveshcheniia*, ch. 1, n. s., no. 3 (1914): 124–25.

reign his entire life. And after him, the autocracy and crown shall pass to his eldest son, who shall reign his entire life, and so on—the eldest son after the father.<sup>28</sup>

Catherine's law also allowed for the succession to and through females, after all of the male lines descended from her had expired: "Should the legitimate male lines of descent, by God's will, all fall extinct, then the autocracy and crown should pass to the eldest sister and to her line of descent, and then to the younger sister, and her line of descent."<sup>29</sup> Though it is not stated in the text, it appears that, once the succession should pass to a female line of descent, male primogeniture would again be reinstated in the cognatic line.

The draft law of succession ends with a list of disqualifying factors for any potential heir to the throne:

From the succession to the autocracy and crown are excluded:

1. he or she who is not of the Greek Orthodox faith,
2. he or she who wears the crown of another realm,
3. he or she who is married to someone who does not belong to the Greek Orthodox faith.<sup>30</sup>

These exclusions, it will be remembered, also appear in the so-called will of Catherine I (quoted above), though here there is added a new regulation of dynastic marriage.

In some ways, Catherine II's proposed law is much better than her first attempt some 20 years earlier. There is vastly more specificity about how the system of male primogeniture is to work (though there are still important aspects of the system that are ignored, such as the resumption of the preference for male successors after the throne has passed through a female). The addition of the three exclusions also is a sensible (if not very original) improvement. But there are signs that this second project was still very much a working draft. The omission of any discussion of regencies or the age of majority render the law rather incomplete, though the elimination of Catherine's provision that regencies of royal mothers last a lifetime is a welcome improvement. The elimination of this self-serving provision is likely explained

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<sup>28</sup> RGADA f. 10, op. 1, d. 17, ll. 206ob–207; Omel'chenko, "Idei konstitutsionnogo zakona i 'vseobshchei zakonnosti' v pravovoi politike 'prosveshchennogo absoliutizma' v Rossii," 103–04.

<sup>29</sup> RGADA f. 10, op. 1, d. 17, l. 207; Omel'chenko, "Idei konstitutsionnogo zakona i 'vseobshchei zakonnosti' v pravovoi politike 'prosveshchennogo absoliutizma' v Rossii," 104.

<sup>30</sup> RGADA f. 10, op. 1, d. 17, l. 207ob; Omel'chenko, "Idei konstitutsionnogo zakona i 'vseobshchei zakonnosti' v pravovoi politike 'prosveshchennogo absoliutizma' v Rossii," 104.

by the simple fact that, by 1785, Catherine had been on the throne for nearly a quarter century, and she therefore may have felt less need to manipulate this law into a vehicle for propping up her own legitimacy. In assigning the role of empress-progenitor to herself, Catherine displayed her confidence that the rift in the Romanov dynasty between the Miloslavskii and Naryshkin branches was by 1785 all but over. In 1780, the three surviving siblings of Ivan VI (Catherine, Peter, and Alexei) had been moved to Horsens in Denmark, there to live under the protection of Queen Julianne (their aunt) and supported financially by a pension granted by Catherine II.<sup>31</sup> None of the children married, and the Miloslavskii line of the House of Romanov conveniently passed out of existence.<sup>32</sup>

### Toward a New Law of Succession

The last of the three projects Catherine II devised for the Imperial succession was the most expansive and best conceived. It appeared, again, as part of Catherine's continuing efforts to rationalize and regularize Russian government, and, again, was never enacted.<sup>33</sup> But it had a lot in common with Paul I's Law of Succession and Statute on the Imperial Family, which actually was promulgated (in 1797) and which successfully regulated the succession down to the end of the empire (and does so even today).

The 1787 project accomplished far more than all the previous efforts at writing a law of succession. First, the project is more complete and well-considered than any previously proposed or actual rule of succession in Russian history, anticipating possible permutations in the succession—and in the Romanov family—over time. It provided for a system of male primogeniture, clearly giving women the right to inherit the throne and permitting the succession to pass through women to the next available male heir. It contemplated the concept of *repraesentatio*, whereby the son takes the place in the line of succession of a deceased father (a concept that, for example, was not available to the Muscovites during the succession crisis of 1497–1502, when Ivan

<sup>31</sup> For more on Anna Leopoldovna and her husband and children, see Leonid Levin, *Rossiiskii generalissimus gertsog Anton Ul'rikh (Istoriia "Braunshveigskogo semeistva" v Rossii)* (St. Petersburg: Peterburgskii pisatel' and Russko-Baltiiskii informatsionnyi tsentr BLITs, 2000); and M[odest Andreevich] Korf, *Braunshveigskoe semeistvo* (Moscow: Prometei, 1993). One additional daughter, Elizabeth, died in 1782, before their exile to Denmark.

<sup>32</sup> The last sibling of Ivan VI died in 1807.

<sup>33</sup> RGADA f. 10, op. 2, dd. 321–28. Published in its entirety in Omel'chenko, "K probleme pravovykh form russkogo absoliutizma vtoroi poloviny XVIII veka," in *Problemy istorii absoliutizma* (Moscow: Ministerstvo vysshego i srednego spetsial'nogo obrazovaniia SSSR, Vsesoiuznyi iuridicheskii zaochnyi institut, 1983), 43–61 (see esp. 48–56).

III was deciding between his grandson—the son of his eldest son—and his own second-born son).<sup>34</sup> It provides detailed (and conventional) provisions for a regency. It involved the Imperial Senate in the operation of the law, requiring that it be notified of deaths in the Imperial family so that the succession of the new emperor could be publicly proclaimed and oaths taken. And it provided precise rubrics for the distribution of titles among members of the Imperial house. Catherine's third project also expanded upon provisions in previous iterations of the law, adopting the requirement that emperors and their spouses be Orthodox, that they not simultaneously hold the crowns of other realms, and that the marriages of members of the Imperial house be regulated by the requirement that the emperor or empress give his or her consent. Finally, Catherine's 1787 project provides new and expanded rules for disqualifying her descendants from the succession, including the sensible requirement that heirs to the throne be of sound emotional and physical health and not be deficient morally (how that was determined and defined remained rather vague). There was also a provision that any heir who had participated in an uprising against the sovereign, or had plotted to do so, would be excluded from the succession.

Of course, there are lots of questions that remained unanswered in this third draft law of Catherine's. What procedure, exactly, was to be used to exclude one of her descendants from the succession? Did the requirement for Orthodox spouses preclude marrying someone who had converted? The crowns of what "other realms" were to be counted as disqualifying, especially when Russian sovereigns had numerous official titles (including, at a later point, the titles of king of Poland and grand duke of Finland)? There is also the question of Paul's status in the third project. It has been noted by biographers of Catherine II that, toward the end of her life, she had planned to pass over her son, Paul, in favor of her eldest grandson, Alexander. The case for skipping over a generation has been based largely on rumors reported in the memoirs of several of Catherine's courtiers.<sup>35</sup> The rumors seem to be supported by this third project, which, unlike the first two, fails to reference Paul—either as "my son" or by name—as her successor. It merely points to

<sup>34</sup> On this concept, see Giesey, "Juridical Basis of Dynastic Right," 24. On Ivan III's succession crisis, see Nancy Shields Kollmann, "Consensus Politics: The Dynastic Crisis of the 1490s Reconsidered," *Russian Review* 45, no. 3 (July 1986): 235–67; John V. A. Fine, Jr., "The Muscovite Dynastic Crisis of 1497–1502," *Canadian Slavonic Papers* 7 (1966): 198–215; Gustav Alef, "Aristocratic politics and royal policy in Muscovy in the late 15th and early 16th centuries," *Forschungen zur osteuropäischen Geschichte* 27 (1980): 77–109.

<sup>35</sup> On these stories and rumors, see M. M. Safonov, "Zaveshchanie Ekateriny II (vopros o prestolonasledii vo vtoroi polovine XVIII v.)," in *Problemy sotsial'no-ekonomicheskoi i politicheskoi istorii Rossii XIX–XX vekov: Sbornik statei pamiati Valentina Semenovicha Diakina and Iuriiia Borisovicha Solov'eva*, ed. A. N. Tsamutali et al. (St. Petersburg: Aleteiia, 1999), 151–67.

the general principle in the law that the eldest son succeeds to the throne on the death of the sovereign. M. M. Safonov has, however, made a convincing argument that these rumors are groundless—in each case, the courtier reporting these rumors was not privy to Catherine’s plans, or made factual errors in their accounts, or was wildly speculating. O. A. Omel’chenko, the leading scholar of the laws of succession in Russia, is probably right when he points out that the third draft was a more abstract, normative description of the succession system: “The law project of 1787 *includes no reference to Paul* as the undisputed, concrete heir, although it clearly specifies that the succession is to follow the principle of male primogeniture and the seniority of the ‘eldest son.’”<sup>36</sup> In other words, the third draft omits a specific reference to Paul because it is a better general law of succession—written so as to apply generally and in perpetuity, not just to Paul as the immediate successor to Catherine.

Catherine’s third attempt at a law of succession was an impressive monument to her well-known (if uneven) respect for the rule of law and rational governance. Her third stab at a law of succession was very likely well-enough designed to have worked, had it ever been promulgated. In fact, a form of it *was* promulgated. Paul I’s Law of Succession and Statute on the Imperial Family included many of the same provisions as Catherine’s 1797 draft law (see Table 1, opposite); and it is hard not to imagine that the experience of drafting Catherine’s three laws of succession (if not, perhaps, the texts themselves) was enormously influential for Paul I when he sat down to write his own law. It may not be coincidental that Paul I wrote the text of the edict that would become his Law of Succession on 4 January 1788, in St. Petersburg, when he still was the heir-apparent—just a few months after Catherine wrote her third draft law.<sup>37</sup>

Paul I’s Law of Succession and Statute on the Imperial Family did not appear out of the blue. The influence of foreign, especially Austrian, succession laws has been well documented, but perhaps also overemphasized.<sup>38</sup> Paul’s system of succession clearly has Russian roots as well; and placing Paul’s law next to its near antecedents demonstrates that the ideas imbedded in the Law and Statute of 1797 had been evolving and improving over the course of the 18th century—almost immediately after the promulgation of Peter I’s faulty Law of Succession of 1722. How much the Pauline law draws on its Western and Russian antecedents is something that calls for specialized study.

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<sup>36</sup> Omel’chenko, “Stanovlenie zakonodatel’nogo regulirovaniia prestolonaslediiia v Rossiiskoi imperii,” 46 (italics in the original).

<sup>37</sup> PSZ, series 1, 24: 589, no. 17910 (5 April 1797). On the 1788 text of the Law, see Martin, “For the Firm Maintenance.”

<sup>38</sup> See Wortman, *Scenarios of Power: Myth and Ceremony in Russian Monarchy*, 2 vols. (Princeton, NJ: Princeton University Press, 1995 and 2000), 1: 177.



**Table 1. Comparison of Elements in the Russian Succession Over Time**

	Catherine I's "Will"	Catherine II's 1766-67 Project	Catherine II's 1785 Project	Catherine II's 1787 Project	Paul I's Law of Succession and Statute on the Imperial Family
Emperor/Empress-Progenitor	Aleksei Mikhailovich	Catherine II	Catherine II	Catherine II	Paul I
Succession System	Modified primogeniture (in the Naryshkin branch of the Romanov House); women may inherit after men	Male primogeniture, women may inherit after men	Male primogeniture, women may inherit after men	Male primogeniture, women may inherit after men	Male primogeniture, women may inherit after men
Regency		Mother rules for junior males, 20 and younger		Regent is appointed, close blood relative	Regent is appointed, close blood relative
Senate				Notified of deaths in Imperial family	Notified of births, deaths, and other changes in Imperial family
Titles				Specified for Heirs and other members of the dynasty	Specified for Heirs and other members of the dynasty
Marriage		Spouse must be Orthodox		Permission of the Sovereign; spouse must be Orthodox	Permission of the Sovereign; spouse must be Orthodox
Exclusionary Rules:					
Religion	Must be Orthodox			Must be Orthodox	Must be Orthodox
Dynastic Unions with Other Realms	None permitted		None permitted	None permitted	None permitted
Loyalty				No plots or revolts against sovereign permitted	No plots or revolts against sovereign permitted
Health				No emotional and physical disabilities	

Among the most important Russian factors in the origins of Paul I's Law and Statute was the feud between the two branches of the Romanov House, Miloslavskii and Naryshkin. This feud did more than bounce the succession back and forth between the two branches of the dynasty, something that has been noted often enough by historians and biographers; it shaped the nature of the discussion about the system of succession in Russia around the concept of the emperor-progenitor. To be sure, most laws of succession in this period utilized the concept: it is an efficient means for defining a dynasty and regulating the relationships among members of large royal families. But the concept of an emperor-progenitor in the Russian context was as much rooted in the high-stakes contest between the Miloslavskii and Naryshkin court factions as it was in Montesquieuian notions of monarchical legitimacy and the rule of law. In Russia in the 18th century, the legal profession had not yet fully moved from kolpak and kaftan to wig and robe.

The progression toward a new law of succession in the 18th century culminated in the redefinition—to be sure, the recreation—of the Romanov dynasty. Peter's 1722 Law abolished hereditary succession, and therefore any useful notion of a dynasty. That notion had to be reconstructed by adopting and applying the concept of the emperor-progenitor. But only after the feud between the two branches of the dynasty was resolved (by the dethroning and subsequent murder of Ivan VI and the callous exiling of his siblings) could the notion of the emperor-progenitor be durably applied and ensconced in a law. When the feud ended—or better, was won—the Romanov dynasty could be refounded by Paul I as a monarchical regime firmly defined by, bound to, and (at least with regard to the succession) limited by the law.